



NEWSLETTER

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SOCIETY OF AMERICAN LAW TEACHERS

Georgetown University Law Center, Rm. 442
600 New Jersey Ave., N.W., Washington, D.C. 20001

SALT BOOK ON BURGER COURT OUT IN OCTOBER

A book of essays entitled **THE BURGER COURT: THE COUNTER-REVOLUTION THAT WASN'T**, sponsored by SALT and edited by Board member Vincent Blasi, Corliss Lamont Professor of Civil Liberties at Columbia Law School, will be published by the Yale Press this October.

In this critical assessment of the Burger court, some of the nation's leading legal scholars evaluate different areas of Supreme Court decision making, identifying and commenting upon noteworthy themes, trends, and problems. While the book's authors have diverse perspectives and opinions, most agree that the work of the Burger Court has not displayed the ideological fervor that might have been expected in light of the rhetoric and controversy that accompanied the change of personnel on the

Court. Fourteen years after the appointment of Warren Burger as Chief Justice of the United States, and in spite of the subsequent appointment by Republican presidents of five justices, most of the legacy of the Warren Court remains intact. In addition, the Burger Court has broken new ground of its own, handing down important, innovative decisions on such controversial issues as abortion, capital punishment, school busing, freedom of the press, executive privilege, aid to religious schools, and sex discrimination.

As editor Vincent Blasi states in the preface to the book: "Since 1969 the Court's work does not lend itself to any concise, comprehensive characterization. In certain areas, the recent Court has consolidated the landmark advances of the Warren years. In other areas, a mild retrenchment has taken place. Much of the time, the Court seems to have been drifting. It adds up to a curious but nonetheless intriguing period in the history of a remarkable institution."

continued on page 2

SALT SURVEY WOMEN IN LAW SCHOOL TEACHING

by *David Chambers*
University of Michigan Law School

During the 1981-82 school year, SALT sought to learn about women and minority group members now in tenured or tenure-track positions at American law schools. We sent a mail survey to a SALT member or the dean at the 172 ABA accredited law schools. Persons at 97 schools responded. Our findings with regard to minority-group members were published in the November 1982 newsletter. Here we set forth our findings

about women. Table I reports on women faculty members at the 97 responding schools.

The AALS also gathers information on women in law teaching. We undertook a separate survey because we sought information on offers made to women, tenure decisions about women and resignations by women, none of which is currently reported by the AALS. Table II compares our overall findings with those gathered by the AALS on all full-time women in teaching. The findings are closely similar.

A brief summary follows of some of our principal findings.

- Over the last fifteen years, there has been a steady growth in the numbers of women teaching at American law schools. Between 1976 and 1981, at the 172 ABA-accredited law schools, the average proportion

continued on page 3

continued from page 1

The 325 page book, containing eleven essays and profiles of the justices, retails for \$25.00, but will be available to SALT members for only \$16.00. (An order form will accompany dues notices in September.) New members can order the book when they join SALT. A membership application form appears on the last page of the Newsletter.

THE BURGER COURT:

The Counter-Revolution That Wasn't

—edited by Vincent Blasi

—sponsored by The Society of American Law Teachers

Contents

Freedom of the Press under the Burger Court

Thomas Emerson

The Burger Court and the Freedom of Speech

Norman Dorsen and Joel Gora

The Burger Court and the Poor

Robert W. Bennett

The Warren Court (Was It Really so Defense-Minded?), The Burger Court (Is It Really so Prosecution-Oriented?) and Police

Investigatory Practices

Yale Kamisar

The Burger court and the Family

Robert A. Burt

Race Discrimination

Paul Brest

The Burger Court's Grapplings with Sex Discrimination

Ruth Bader Ginsburg

Individual Rights in the Work Place: The Burger Court and Labor Law

Theodore St. Antoine

The Burger Court, Antitrust, and Economic Analysis

R.S. Markovits

The Rootless Actiivism of the Burger Court

Vincent Blasi

Fathers and Sons: The Court, The Commentators, and the Search for Values

Martin Shapiro

Profiles of the Justices

ANNOUNCEMENTS

Asian Scholars-in-Residence. Under the Fulbright Program, American colleges and universities are invited to submit proposals to bring foreign scholars to lecture on their campuses. The purpose of the program is to strengthen the international dimension of U.S. scholarship by enabling colleges and universities to bring scholars from Asia to teach courses on Asia from a comparative or foreign area perspective with emphasis on the humanities and social sciences, serve as a resource for students and faculty and participate in the general development of international aspects of the curriculum. Inquiries and requests for information should be sent to: Mrs. Mary Ernst, Council for International Exchange of Scholars, 11 Dupont Circle, N.W., Washington D.C. 20036.

Special Project on U.S.-Japan Economic and Trade Relations. Proposals are invited by the Japan-United States Educational Commission (Fulbright Program) from Japanese and American scholars and professionals for its special project on U.S.-Japan Economic and Trade Relations: Collaborative and Comparative Research. The objective of this special project is to encourage research on the current economic and trade issues between Japan and the U.S. Possible topics include US/Japan economic relationship, the impact of energy on the relationship, productivity and management of the respective economies, the nature of Japanese and American markets, industrial trade issues, agricultural trade issues, high technology issues, US/Japanese trade law and economic disputes and political friction. For further information or a proposal form contact: Jennifer Keefe, Program Officer, Council for International Exchange of Scholars, 11 Dupont Circle, Suite 300, Washington D.C. 20036, Te. (202) 833-4981. Application deadline is September 30, 1983.

ANNOUNCEMENT! WE PRINT ANNOUNCEMENTS OF INTEREST TO LAW TEACHERS. IF YOU WISH SUCH AN ITEM TO APPEAR IN THE SALT NEWSLETTER, PLEASE TYPE IT UP AND SEND IT TO WENDY WILLIAMS AT THE NEWSLETTER ADDRESS.

continued from page 1

of women on faculties grew from 7.6 to 12.3 percent. The experience across schools was not, of course, uniform. By 1981, at 18 schools, over 20 percent of the faculty were women. On the other hand, at 43 schools women still represented 8 percent or less of the faculty. In fact, as of 1981, 10 schools still had no women on their faculties and ten other schools within our sample that did have some women in 1981 had fewer women in 1981 than they had had in 1976. One of the purposes of our study was to try to understand why some schools have so much higher a proportion of women on their faculties than others.

- During the period from 1976 to 1981, schools within our sample varied widely in the numbers of offers made to women and in the proportion of offers to women among all offers made. Not surprisingly, by far the most significant factor among law-school decisions that bear on the number of women currently on faculties is the number of offers that have been made to women.
- Variations among schools in tenure decisions affecting women could in theory have explained part of the difference among schools in the number of women currently on their faculties but did not do so in fact. Perhaps our most striking finding regarding tenure was that at over half our responding schools, no one of either sex was denied tenure between 1976 and 1981. At that minority of schools in which there has been some tenure denial, there is no statistically significant difference in the tenure denial rate for men and women.
- Tenure nonetheless remains an issue of concern. Nearly a third of our respondents indicated a recent tightening of tenure policies at their schools. Because of their recent entry into teaching, a much higher proportion of the women in teaching have yet to face the tenure-decision moment. For this reason, a general increase in the rate of adverse tenure decisions over the next few years could produce a decline in the proportion of women among all law teachers, even if an identical proportion of women and men who are considered are granted tenure.
- As with tenure, differences in rates of resignations by women and men from faculties might explain part of the difference among law schools in the proportion of women on their faculties as of 1981, but do not do so in fact. On the other hand, there was in general across all law schools a substantially higher resignation rate among women than men. At the median school within our survey, one in four women on the faculty at any time during the period from 1976 to 1981 resigned during the period, whereas the resignation rate among men was one in seven.

We do not know the reason for this worrisome pattern, but it deserves further inquiry. It is possible that a higher proportion of untenured women than untenured men received signals that they were likely to be denied tenure and resigned after receiving such signals. If this explanation proved accurate, the positive fig-

ures we report above regarding tenure decisions requires reconsideration. On the other hand, it is equally possible that the generally higher resignation rate among women is due to aggressive affirmative-action efforts by others seeking to attract women away from their current positions. Within our survey schools, for example, twenty percent of the women who resigned went on to take positions in government, including judgeships, over twice as high as the proportion of resigning men who went into such positions.

- SALT also sought to learn whether certain types of law schools or law schools in certain types of localities tended to have a higher proportion of women. We were seeking other sorts of clues about the reasons why some law schools have more women than others. To this end, we coded for each of the 172 ABA-accredited schools not only information from our mail survey but also census and other information about localities and universities within which the law schools were located and other information about the law schools themselves.

Among over a hundred possible relationships that we tested between these characteristics and the proportion of women on current faculties, two sorts of factors bore the strongest relationship. (See Table III.) The higher and more dense the population in a locality in which a law school was located, the higher the proportion women were likely to represent of the school's faculty. Schools in the most densely populated counties had, on average, over 60 percent higher proportion of women faculty members than schools located in the least densely populated counties. This pattern tends to confirm the soundness of the guesses of respondents to our survey in answer to an open-ended question about the nature of any special disadvantages the respondent believed that his or her school suffered in attracting women. The two answers most commonly given were that limited social opportunities for women in their cities and the limited job opportunities for women's spouses.

The other factor that appeared to be most closely tied to the proportion of women on faculties was more surprising to us. It was the founding date of the law school. The 26 law schools founded after 1965 have, on average, over 50 percent more women than the schools founded before 1871 and over 15 percent more than those founded between 1871 and 1965. It is easy to hypothesize reasons why the most recently founded law schools might have more women. On the other hand, it is harder to understand why the earliest founded schools should have fewer than those founded in the middle period. The most likely explanation is chance, although it is possible that we have captured some otherwise unmeasured conservatism at these earliest founded schools. In this regard, it is interesting to note that we found no relationship whatever between the proportion of women on faculties and either the "prestige" ranking of the law school

continued on page 5

Table 1
Women in Law Teaching in 1981
 Persons in Tenured or Tenure-Track Positions
 (97 Schools Responding to SALT Survey)

	Percentage Women in			Percentage Women in	
	Total Women	Total Faculty		Total Women	Total Faculty
Akron (McDowell)	2	10%	Florida State	4	16%
Alabama	4	15%	Georgetown	9	17%
Arizona	3	13%	Golden Gate	7	28%
Arkansas/Little Rock	4	19%	Hamline	2	11%
Boston University	3	8%	Harvard	5	5%
Bridgeport	6	30%	Hawaii	2	18%
Brooklyn	9	27%	Howard	4	13%
California/Berkeley	5	10%	Illinois	3	11%
California/Davis	4	14%	Chicago-Kent	6	25%
California/Hastings	7	15%	Indiana/Bloomington	1	4%
California/UCLA	7	14%	Indiana/Indianapolis	5	14%
California Western	5	17%	Iowa	4	11%
Capital	3	13%	Kansas	4	17%
Case Western Reserve	2	9%	Kentucky	2	7%
Chicago	2	7%	Lewis & Clark	0	0
Colorado	2	8%	Loyola/Chicago	6	29%
Columbia	3	7%	Maine	2	13%
Connecticut	4	12%	Maryland	3	7%
Cornell	2	8%	Michigan	2	4%
Creighton	3	14%	Minnesota	2	7%
Dayton	1	6	Missouri/Columbia	2	10%
Detroit College	2	8%	Missouri/Kansas City	2	9%
Drake	1	4%	William Mitchell	4	14%
Duke	5	17%	Nebraska	1	4%
Emory	2	7%	New Mexico	5	20%

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	Percentage Women in		Percentage Women in		
	Total Women	Total Faculty	Total Women	Total Faculty	
New York/St U Buffalo	6	21%	Southern Methodist	4	13%
New York University	6	9%	Stanford	3	7%
North Carolina	3	10%	Syracuse	2	7%
North Dakota	1	8%	Temple	5	10%
Northeastern	4	22%	Tennessee	2	7%
Northern Illinois	3	15%	Texas	4	7%
Northern Kentucky	3	15%	Texas Southern	4	18%
Northwestern	3	8%	Tulane	3	12%
Nova	3	12%	Utah	4	15%
Ohio Northern	3	16%	Valparaiso	3	14%
Ohio State	5	16%	Villanova	1	4%
Oregon	5	18%	Virginia	1	2%
Pace	6	22%	Washburn	6	22%
Pennsylvania	2	6%	George Washington	5	14%
Franklin Pierce	1	8%	Washington Univ.	4	17%
Pittsburgh	5	17%	Washington & Lee	2	10%
Puget Sound	3	13%	Wayne State	7	18%
Rutgers-Camden	5	13%	West Virginia	1	4%
Rutgers-Newark	6	14%	Western New England	3	11%
St. Louis	4	13%	Willamette	2	13%
San Francisco	3	14%	William & Mary	3	14%
Santa Clara	7	24%	Wisconsin	6	12%
Seton Hall	7	23%	Yale	3	7%
Southern Illinois	2	9%	Yeshiva	4	15%

continued from page 3

(on Jack Gourman's highly dubious scale) or the entry credentials (LSAT and grade-point averages) of entering students.

- What will the next decade bring? Will the proportion of women on faculties rise as the proportion of women rises in the profession? The answer may well be "yes" at most schools. Our data does contain a disturbing

hint, however, that some schools will work hard to attract a few women and then, having succeeded, cease to make special efforts to hire more women, even though the proportion of women on their faculty remains low in relation to either the proportion of women in the bar or the proportion of women in their own student bodies.

The hint comes from another hypothesis we tested
continued on page 6

Table 2
All ABA Accredited Member Schools
Listed in the AALS Directory

Proportion of Full-time Faculty who are Women	Number of Schools in this Range	% of Law Schools in this Range
0%	10	6%
1-5%	14	8%
6-10%	50	29%
11-15%	53	31%
16-20%	26	15%
21% or more	18	11%
	171	101%

97 Schools Responding to SALT Questionnaire

Proportion of Tenured or Tenure Track Faculty who are women	Number of Schools in this Range	% of Law Schools in this Range
0%	1	1%
1-5%	7	7%
6-10%	31	32%
11-15%	32	34%
16-20%	15	16%
21% or more	11	11%
	97	101%

continued from page 5

within our data. We had expected that at schools that already had several women on their faculties in 1976, more women would be found among the new faculty members hired between 1976 and 1981 than would be the case at schools with no women or few women in 1976. Our expectation was based on hunches about the tastes of the faculties at the schools that had already hired women, about the influence on the hiring process of the already-hired women, and about the preferences of women applicants considering places where they would like to teach.

Somewhat to our surprise, however, there turned out to be no relationship between the proportion of women on faculties in 1976 and the proportion of women among people newly hired at those schools between 1976 and 1981. On average, schools with few women seemed to be as successful in adding women as schools with several. One explanation, the simplest, would be that gender has become an irrelevant consideration in the hiring process. Another, however, is that the average we found reflects two contrasting phenomena: some schools with no women or few women making strong (and successful) efforts to add some;

other schools with several women (but still a substantial majority of males) becoming complacent and working less hard to continue to add women. Unless gender has truly disappeared as a factor affecting people's predilections and judgments—and it seems doubtful that it has—a continuing conscious commitment to add women to faculties may be required at most schools if the number of women on faculties is to continue to grow.

FOOTNOTES

1. For earlier studies drawing on the AALS data, see D. Fossum, *Women Law Professors*, 1980 Amer. Bar Foundation J. 903; K. Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. of Legal Ed. 226 (1979).
2. A longer version of this report may be obtained by writing David Chambers, University of Michigan Law School, Ann Arbor, MI 48109
3. See footnote 1 in Table III.
4. Jack Gourman, *Gourman Report: A Rating of Graduate & Professional Programs in United States and International Universities*, Publishers National Educational Standards Incorporated, Los Angeles, 1980.

Table 3

ABA—Accredited Law Schools
 Relationship of Proportion Women on Faculty to Founding Year
 of Law School and Population Density
 Law School Founding Year

Schools Founded ¹	N=	Proportion Women	After controls for other factors ²
Before 1871	31	9%	9%
1871-1920	70	12%	12%
1921-1965	34	12%	12%
After 1965	24	14%	14%
	<u>159³</u>	<u>12%</u>	<u>12%</u>
County Population Per Square Mile			
Under 275 persons	39	9%	9%
276-1000	44	11%	11%
1000-2000	32	13%	12%
over 2000	45	15%	15%
	<u>159³</u>	<u>12%</u>	<u>12%</u>

¹We divided schools by founding date into 5 groups. We used 1965 as the date after which women were beginning to come to law schools in substantial numbers. The other four groups were arbitrarily created to produce groups of roughly equal size. The schools reported here as having been founded between 1871 and 1920 were originally divided into two groups each of which had an average of 12% women. They were combined for purposes of display.

²The controls used were the two variables reported here and county per-capita incomes another factor with a mild positive correlation with proportion of women.

³For 13 of the 172 ABA-accredited schools we had missing data for one or more variables in the regression.

SALT AWARD COMMITTEE

The SALT Award Committee solicits members' suggestions for the 1984 SALT Award recipient. The Award is bestowed annually upon a law teacher who has made a significant contribution to the development or reform of legal, governmental or social institutions through teaching, writing, or public service related to his or her academic career. Last year's recipient was Charles Black, Jr., Sterling Professor of Law at Yale, poet, harmonica player and student of Icelandic, who was honored as a teacher and scholar of Constitutional law and for the commitment of his professional energies and talents to racial justice and abolition of the death penalty. Previous recipients include the late Arthur Leff, Judges Harry Edwards and Ruth Ginsburg, Rennard Strickland, Thomas Emerson, Charles Miller and David Cavers. Suggestions should be passed on to Roy Mersky (Texas), the committee chair, or to committee members Norman Amaker (Loyola), Elizabeth Bartholet (Harvard), Tho-

mas Emerson (Yale), Charles Halpern (CUNY Law School at Queens College) and Mark Tushnet (Georgetown).

NOMINATIONS COMMITTEE

The nominations committee, Howard Glickstein (Bridgeport), chair, is preparing a slate of nominees for the presidency of SALT and seven positions on the Board of Governors. The list will be submitted to the Board at its September 24 meeting. SALT members can involve themselves in the process in two ways. First, they can propose names to Dean Glickstein or committee members Reginald Alleyne (UCLA), John Baker (Indiana), Joel Gora (Brooklyn), Herb Semmel (Yeshiva) and Nadine Taub (Rutgers-Newark). Suggestions are most welcome. Second, they may, under the procedure set out in SALT's by-laws, nominate by a petition signed by 15 members of SALT and received no later than October 20, 1983.

SALT PROJECTS

Committee on Law School Parental Policies: After an initial survey of existing studies, legal considerations and institutional parameters (AALS, ABA standards), the committee is moving into high gear this fall. Questionnaires aimed at determining institutional practices and attitudes and faculty perceptions and needs have been constructed and will be disseminated at the beginning of the fall semester, according to Richard Chused (Georgetown), chair of the committee. The committee's report will be forthcoming in 1984. A summary of the findings and conclusions will appear in the SALT Newsletter.

The committee continues to solicit individual views, experiences and suggestions from faculty members who have dealt with their institutions on matters of pregnancy, childrearing leaves, childcare and other parental issues. Committee members include: John Baker (Indiana), Ellen Y. Suni (Missouri-Kansas City), Winnie Taylor (Florida) and Wendy Williams (Georgetown). Nancy Rogers (Ohio State) is working with the committee as liaison to the AALS Section on Women in Legal Education; Ann Cauman of Columbia is also working with the committee. Both Professor Rogers and Ms. Cauman have studied aspects of the law school parental policies problem; their expertise is a substantial contribution to SALT's Parental Policies Project.

Korematsu amicus brief: On January 19, 1983, petitions for writ of error coram nobis were filed in Seattle, Portland and San Francisco on behalf of Gordon Hirabayashi, Minoru Yasui and Fred Korematsu, seeking to overturn their World War II convictions for violating military curfew and exclusion orders directed to Americans of Japanese ancestry. The petitions are part of the ongoing efforts of Japanese Americans to right the wrongs of the curfew and internment during the war.

SALT is participating as amicus curiae in the San Francisco case, *Korematsu v. United States*, which is pending before Federal Judge Marilyn Patel. According to the chair of SALT's Korematsu amicus committee, Neil Gotanda, Judge Patel has scheduled a hearing on the petition for October 3, 1983. For further information on these cases contact the Committee to Reverse the Japanese American Wartime Cases, c/o 1322 Webster Street #210, Oakland, CA 94612, Tel: (415) 835-1475.

1984 SALT Conference Committee: As the work on the December 1982 conference finally comes to a close, a new committee has been constituted to begin planning the next conference, tentatively scheduled for December 1984. Each of SALT's last three conferences has focused on some aspect of law school faculty life; the upcoming

conference will do likewise. Chair Rhonda Rivera (Ohio State) will handle the planning in two phases: first, identification of the central theme of the conference (to be achieved by May, 1984); second, the detailed planning and production of the conference (commencing in May 1984). Committee members include: Vincent Blasi (Columbia), Holly Hartstone (CUNY Law School at Queens college), Charles Lawrence (University of San Francisco), Carrie Menkel-Meadow (UCLA), Marjorie Shultz (U.C. Berkeley), Mark Spiegel (Boston College), Winnie Taylor (U.Fla), Elizabeth Warren (Texas) and Wendy Williams (Georgetown). Members interested in suggesting ideas for the conference or joining the committee should contact Rhonda Rivera. The committee will hold a major planning meeting at the AALS meetings in San Francisco in January.

Financial Aid: As tuition rises, concern about financial aid for students, diversity of student bodies and time-consuming paid employment of students increases. SALT Vice President Gary Bellow and SALT member Sylvia Law are looking at the problem of financial aid and will be reporting to the Board at its September meeting. The Board hopes to be able to issue a report and recommendations this fall.

SALT BOARD MEMBER CANDIDATE FOR TRUSTEE OF CREF

SALT, gadfly and sometime critic of TIAA-CREF, now has a chance to place one of its own on the CREF Board of Trustees. SALT Board member Marjorie Fine Knowles, Associate Dean and Professor of Law at the University of Alabama, is an independent policyholder nominee for trustee of CREF. Participants in the CREF retirement system will have the opportunity to vote. Don't throw away that ballot this time. Vote!

And if you want to know more about the workings of TIAA-CREF, read on. With SALT support, Roy Schotland (Georgetown), a SALT member, sparked a dialogue on TIAA-CREF in *Business Officer*, the monthly magazine of the National Association of College and University Business Officers. The Schotland critique and TIAA-CREF response appear in the May 1983 issue. The essence of the Schotland-TIAA-CREF debate is reported in the *Chronicle of Higher Education* (May 11, 1983) at page 21. Reprints of the *Business Officer* articles are available at a combined cost of \$1.00, but a minimum order of \$5.00 is required. Write: NACUBO ORDER DESK, One Dupont Circle, Suite 510, Washington 20036.

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PRESIDENT'S MESSAGE

SALT has formed yet another committee. But this one wasn't conceived in advance, turned into an agenda item and formally proposed to the Board. Instead, it welled up late in the afternoon at the May Board meeting. It doesn't have an official title yet. Nobody is quite sure what its mission is.

I think I know something about where this committee came from. Derek Bok's critique of the legal profession is on people's minds. Shrinking enrollments in the not-too-distant future will tighten the screws on hiring and tenure, most likely reducing the diversity of faculties. The Critical Legal Studies folks are criticizing the structure of legal education as well as its content. Clinicians such as Carrie Menkel-Meadow and Tony Amsterdam have developed critiques of how we teach that have implications for who the teachers should be. Most significant is SALT's own deep and long-standing concern for life in the law school, reflected, most recently, in a SALT conference on that subject. SALT's study of minority and women law teachers, the second installment of which is reported in this Newsletter, focusses on law schools' progress in hiring and tenuring women and minorities. SALT's chief concern has always been who we (law teachers) are and ought to be.

This is a committee that wants to examine, critically and freshly, the criteria for membership in the club. What should a law faculty be? What standards applied to applicants for membership will contribute to that ideal faculty? The committee members—Beatrice Moulton (Stanford), chair, Joel Gora (Brooklyn), Howard Lesnick (CUNY Law School at Queens College), Carrie Menkel-Meadow (UCLA) and Nadine Taub (Rutgers-Newark)—are among the most outspoken visionaries, social critics, cynics and idealists on the Board. The Committee's conclusions and recommendations are certain to be thought-provoking and controversial—if the members can speak with one voice. If this Committee can't sing in harmony, it ought at least turn its dissonance into an agenda for an electric SALT conference a few years down the road.

Whatever the outcome of its work, this is a committee whose spontaneous appearance suggests the depth of interest and concern of the Board that welcomed it and made it official. We urge it on and wish it well.

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