

SALT EQUALIZER

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Paula Johnson, Fran Quigley, Ramona Fernandez, Bill Quigley, Michael Rooke-Ley, Ron Chisom, and Rebecca Johnson

SALT EQUALIZER

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

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Drake and Texas Affairs Raise Specter of Federal Interference with Academic Freedom

Nancy Ehrenreich, University of Denver College of Law

Drake Subpoenas

The threat to academic freedom and civil liberties that always accompanies war raised its ugly head this past February, when Drake University law professor Sally Frank revealed that the local U.S. Attorney had issued subpoenas against both the Drake administration and four Des Moines anti-war activists. The protestors were subpoenaed to appear before a grand jury, while Drake was told to turn over the records of its National Lawyers Guild (“NLG”) chapter, including names of officers and of those who had participated in a recent conference the Guild had hosted at the law school. Within two days after the subpoenas were issued, a federal court imposed a gag order on employees of the university, prohibiting Frank and others from protesting the subpoenas or spreading word of the events at Drake.

A national outcry against this blatant attempt to silence dissent and constrain open

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Co-Presidents’ Column

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



Greetings! We have a confession to make. When we began our co-presidency in January, we feared that one of two things was about to happen: (1) in order to continue the extraordinary record of achievements posted by our predecessors, Paula Johnson and Michael Rooke-Ley, we would simply have to forego sleep for the next two years; or (2) by the end of January, the SALT membership would discover our inadequacies and demand our resignations.

We are thankful that neither has happened. Instead we have been continually reminded of the built-in advantage every SALT president has: the willingness of SALT members to volunteer to carry out the work of the organization. Whenever we have asked you to help, you have responded generously. Even when we’ve asked some of you repeatedly for help, you’ve continued to reply to our e-mails and returned our voice mail messages.

As the articles in this issue of the *Equalizer* illustrate, we have had lots of reasons to call on you. One was the service in February of a federal subpoena on Drake University, demanding information about the student chapter of the National Lawyers Guild. Another, in the same month, was the investigation of a student-run conference on Islam at the University of

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Co-Presidents:

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Texas School of Law by Army intelligence officers. Both remind us that we and our students are not immune from the willingness of some in government to use these troubling times as an excuse to squelch constitutionally protected activities. (See Drake article, p. 1.)

On another front, through its role as a plaintiff in the lawsuit currently on appeal before the Third Circuit, SALT continues to challenge the Solomon Amendment's infringement of the right of law schools to exclude employers who discriminate on the basis of sexual orientation, and we monitor the proposed new legislation. (See Solomon Amendment article, p. 3.) There is, of course, yet another area of continuing struggle: Notwithstanding the Supreme Court's validation this past summer of affirmative action programs in *Grutter*, opponents of affirmative action continue to attempt to persuade universities that they should not retain or reinstitute affirmative action programs. (See Affirmative Action Update, p. 5.) Of crucial importance in each of these areas is the fact that the nomination of extremist judges whose records reveal an unwillingness to apply the law to protect fundamental rights continues unabated. (See Judicial Nominations article, p. 4.)

One of SALT's most important roles for each of us – and we hope one of its roles for you – is the support it gives in working on these issues. There is so much to do, and it can quickly become overwhelming. SALT's public interest retreats are a wonderful opportunity to gather with other SALT members, students, and lawyers to learn from each other how to better carry on this work. Holly attended the Cover Retreat, Beto attended the Grillo Retreat, and numerous other members of SALT and the SALT Board attended the Amaker Retreat. If you've not yet been to a retreat, we encourage you to attend. You will find

it well worth the time and minimal cost. (See Retreat articles, pp. 6–11.)

The work that SALT does on substantive issues requires an organizational infrastructure. In October 2003, a remarkable gathering of former presidents and co-presidents of SALT generated a flurry of ideas for SALT's future. We presented a report on these ideas to the SALT Board at the January 2004 meeting. The Board will have an opportunity to consider these ideas (and, we hope, come up with other great suggestions) at a Board retreat to be held at Northern Illinois University College of Law in May 2004. There is so much that SALT is asked to do, and therefore much that we ask you to do. The two-day Board retreat will ensure that SALT's infrastructure is efficiently organized to enable SALT to carry out its work. It will also assist us in allocating SALT's resources to address issues in the future. We will report in the next *Equalizer* on this Board retreat.

SALT does an amazing number of things on an incredibly small budget. We thank all of you who have renewed your membership dues, which provide the bulk of our budget. And for those of you who haven't done so yet, take a moment now to mail your membership check, or to ask your school to send the check to us. You'll find a renewal form inside the back cover of this issue of the *Equalizer*.

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. Former SALT President Norman Dorsen made a generous contribution to SALT to fund 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. The Stuart & Ellen Filler Fund supports the work of law students doing public interest work in the summer.

At this early stage in our co-presidency, we could not be more excited about our involvement with SALT. We treasure the

opportunity to work with so many wonderful people on issues about which we all care deeply. If there is an issue you'd like to work on, or an issue you think SALT should be working on, let us know. You can e-mail Holly at holly.maguigan@nyu.edu, and Beto at bjuarez@stmarytx.edu. We look forward to hearing from you!

Warmest wishes,
Holly and Beto

SAVE THE DATE: SALT Board Meeting

Northern Illinois University College of Law, DeKalb, Illinois
May 25-26, 2004

The Board of Governors of the Society of American Law Teachers will meet at Northern Illinois University College of Law in DeKalb, Illinois, during the two days before the Law and Society Association convenes in Chicago on May 27. As is the case for all Board meetings, SALT members are welcome to attend. We will start at 2:00 p.m. on Tuesday, May 25, and end at 6:00 p.m. on Wednesday, May 26. NIU faculty member Elvia Arriola, on behalf of the Retreat Planning Committee, requests that all who plan to participate advise the committee by May 18th so that meeting rooms, transportation to and from airports, and food orders can be confirmed. For SALT members who are not on the Board, that notification should go to Joan Howarth, Retreat Committee chair, at jhowarth@unlv.nevada.edu. Board members should reconfirm their attendance with Holly Maguigan at holly.maguigan@nyu.edu. All participants are asked to make their own hotel reservations at the NIU campus hotel: Call 815-753-1444 or fax 815-753-5099 and ask for the SALT Board Retreat rate (\$60-\$68 per night).

Third Circuit to Hear Oral Argument in May on Denial of Preliminary Injunction in Solomon Amendment Litigation

Kent Greenfield, Boston College Law School

The Third Circuit is to hear oral argument at the end of May on the plaintiffs' appeal of the trial court's denial of the preliminary injunction requested in SALT's Solomon Amendment suit. SALT and a coalition of two dozen law schools called the Forum for Academic and Institutional Rights ("FAIR") filed suit against the Defense Department in September 2003, seeking to enjoin the Solomon Amendment, the common name for the statute that requires law schools and other academic institutions to allow military recruiters on campus notwithstanding the military's discrimination against gays and lesbians. If law schools are found out of compliance, the entire parent university can lose all defense department funding. SALT and FAIR, along with plaintiffs representing student groups and a few individually named law professors and students, alleged in their complaint that the Solomon Amendment violates the First Amendment rights of law schools by forcing them to use their resources to further speech that they abhor. The government filed a motion to dismiss, claiming that SALT, FAIR and the other plaintiffs did not have standing.

In November, United States District Judge John Lifland, sitting in Newark, New Jersey, denied the government's motion to dismiss, holding that every plaintiff has standing. (For a copy of the opinion, see <www.solomonresponse.org>.) FAIR had sought to keep its membership list secret, and the judge made clear that at that stage of the litigation it could do so and still have standing. (Several members of FAIR have identified themselves since the

complaint was filed. They include Golden Gate University School of Law, NYU School of Law, and faculty bodies at Georgetown, Fordham, and Stanford law schools. FAIR now has 24 members, a third of which are institutions. The remaining members are law school faculties, acting as bodies.)

The court also dispatched the government's claim that the members of SALT and the law student and law faculty plaintiffs had suffered only dignitary harm that was insufficient to confer standing. The judge endorsed the plaintiffs' argument that what had been injured was the law professors' and students' "right to receive, benefit from, and in some cases, send information — the law schools' message of non-discrimination."

Unfortunately, Judge Lifland denied the plaintiffs' motion for a preliminary injunction, saying that the statute regulated conduct and not speech. Judge Lifland thus applied the lower, intermediate level scrutiny for alleged First Amendment violations outlined in *United States v. O'Brien*, 391 U.S. 367 (1968). The court found that the plaintiffs did indeed have First Amendment interests at stake, but that they were not as strong as those asserted by, for example, the Boy Scouts in *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), or the parade organizers in *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995). The plaintiffs' interests, according to the court, were outweighed by an important governmental interest in military recruiting.

The plaintiffs immediately filed an interlocutory appeal to the Third Circuit. The plaintiffs' lead attorney, Josh Rosenkranz of Heller Erhman White & McAuliffe, filed a brief in early January. Six amicus briefs were also filed on the plaintiffs' behalf. These amici represent an even broader coalition of groups and individuals who believe the Solomon Amendment should be overturned. Briefs

were filed on behalf of the Association of American Law Schools, the American Association of University Professors, the National Lesbian and Gay Law Association, the American Civil Liberties Union, the Servicemembers Legal Defense Network, law school career services professionals, a majority of individual faculty members at Harvard Law School, and others. Oral argument in the case is scheduled for the last week of May.

Another important development pertains to dicta appearing in Judge Lifland's opinion, in which he made clear that he disagreed with the Defense Department that the Solomon Amendment requires "equal access" for military recruiters. He recognized that the military itself is inconsistent on this point, requiring, on the one hand, no "substantial disparity," while on the other hand "[i]nsisting on 'equal access.'" Noting that Congress could easily have included a provision for equal access but did not, the court said that it "simply fails to see how the statute requires absolute parity when all that it requires is that a school not 'prohibit' or 'in effect prevent' military recruiting efforts." The judge wrote: "[A]nything short of preventing or totally thwarting the military's recruiting efforts does not trigger funding denial pursuant to the statute."

In response, the Armed Services Committee of the U.S. House of Representatives rushed through a bill that would codify the "equal access" requirement. The *ROTC and Military Recruiter Equal Access to Campus Act of 2004* (H.R. 3966) was introduced on March 12th by Rep. Mike Rogers (R-AL). Under the bill, universities would be required to grant "equal access" to recruiters, giving the U.S. military the same recruiting advantages as employers that offer equal opportunities to lesbian and gay students. The bill passed the House by an overwhelming margin but has not yet been heard in the Senate.

Judicial Nominations Remain Contentious

Bob Dinerstein, American University,
Washington College of Law

It is springtime in Washington, D.C., a time for thoughts of renewal and growth. Alas, in the area of judicial nominations, it is more “same old, same old,” with some new twists that continue to cause consternation among people of good will.

Faced with successful filibusters against two of its most retrogressive nominees, Judge Charles Pickering, Sr., and William Pryor, Alabama Attorney General, the Bush Administration appointed both men to Court of Appeals judgeships (to the Fifth and Eleventh Circuits, respectively), by means of a recess appointment. Recess appointments, which the President can make while Congress is not in session, permit the person named to serve in his position until the end of the congressional session. Pickering will be able to serve until late 2004, and Pryor until sometime in 2005, unless they are re-nominated and confirmed by the Senate. Ironically, given his record on civil rights, Pickering was given his recess appointment during the Martin Luther King, Jr. recess. Pryor’s appointment came during the Presidents’ Day recess.

While recess appointments are not unprecedented, presidents have used them infrequently for judicial nominations in recent years. Neither the first President Bush nor President Reagan made any judicial recess appointments, while President Clinton made only one near the end of his term, that of Judge Roger Gregory to the Fourth Circuit. Gregory, an African-American, was appointed to fill a long-vacant position on a theretofore all-white court. When the next congressional session began, President George W. Bush re-submitted Gregory’s name, and the Senate overwhelmingly confirmed him (with only Trent Lott dissenting). In contrast, both Pickering and Pryor were the subjects

of heated opposition (with Pickering in fact rejected by the previous Congress). Thus, these recess appointments fly in the face of the advice and consent process that is supposed to define the judicial nominations process.

The second major development in recent months has been the investigation by the Senate Sergeant at Arms into two Republican staff members of the Senate Judiciary Committee, who apparently, over the course of two years, took advantage of lax computer security to gain access to thousands of strategy memoranda and e-

“[T]hese recess appointments fly in the face of the advice and consent process that is supposed to define the judicial process.”

mails from Democratic staff members of the Committee. The former counsel to Orrin Hatch, Manuel Miranda (who later moved on to work for Majority Leader Bill Frist), has vehemently denied any wrongdoing in the incident, claiming that all he did was read e-mails and memoranda that came to him — though he knew they were not meant for him. Miranda’s role in the incident seems much more extensive than first alleged, however, and he resigned from his position on Frist’s staff in February. Just as this article went to print at the end of April, the Justice Department referred the case to the U.S. Attorney’s Office for the Southern District of New York for possible criminal prosecution.

Interestingly, Miranda was on a panel on judicial nominations with me, Nan Aron from the Alliance for Justice, and my colleague Steve Wermiel, at a November

2003 program at American University, Washington College of Law. He came across as highly partisan and an articulate defender of his position. Little did we know just how partisan he was!

The most recent spate of Bush nominees continues the sorry record he has established from the beginning of his presidency. The current list of neer-do-wells includes nominees William Myers III (Ninth Circuit), William Haynes (Fourth Circuit), and Brett Kavanaugh (D.C. Circuit). Each of these nominees presents serious problems: While in private practice and as Solicitor in the Department of Interior, Myers has been a fierce opponent of environmental protections and the rights of Native Americans; Haynes has been a key architect in crafting and advocating the Administration’s enemy combatant policies; and Kavanaugh, who was associate counsel to Ken Starr, is the person most responsible in the Bush White House for promoting and vetting the Administration’s slate of right-wing judicial nominees. As of this writing, these nominations are in various stages short of consideration by the entire Senate. Action on the Senate floor on these and prior pending nominations (including the previously-filibustered nominations of Priscilla Owen, Carolyn Kuhl and Janice Rogers Brown) is suspended until Senator Daschle receives assurances from the Republicans that the White House will not put forward any more recess appointments (unless the Republicans can override Daschle’s opposition).

So things remain hot and heavy on the judicial nominations front, and will likely remain so until the end of July when the parties turn to their national conventions. The SALT Judicial Nominations Committee — with me and Florence Roisman of Indiana University at Indianapolis as committee co-chairs — will continue to monitor developments, and, as always, will gladly accept any assistance SALT members are willing and able to provide.

An Update on Affirmative Action

Margaret E. Montoya, University of New Mexico School of Law

In addition to drafting the letter to the editor of the Chronicle of Higher Education that is reprinted below, SALT members are active on a number of fronts in their battle to combat actions against, and miscomprehensions about, affirmative action.

Just after the Supreme Court announced its *Grutter* and *Gratz* decisions in June 2003, Ward Connerly and the radical right wing groups who have promoted the campaign against affirmative action announced that they would work to place a constitutional amendment

barring “race and gender preferences” on Michigan’s ballot. That effort has encountered significant financial and organizational obstacles and it now appears that the so-called Michigan Civil Rights Initiative (“MCRI”) will falter. Most recently, a state court judge ruled that MCRI’s petition forms were invalid because they did not state the text of the article of the Michigan constitution that the initiative would amend.

In early April of this year, the Equal Justice Society released a comprehensive manual analyzing the *Grutter* and *Gratz* decisions. The Manual, to which SALT’s letter to the Chronicle of Higher Education refers, contains the basic legal and constitutional principles that frame an analysis of higher education admission

policies. Part One provides a detailed examination of the “compelling interest” and “narrow tailoring” tests created by the Court. Part Two makes specific suggestions for fashioning lawful race-conscious admission procedures, including guidelines for institutions located in states where the consideration of race in admissions is prohibited. Part Three discusses the appropriate use of race in financial aid, scholarship recruitment, outreach, retention, preparation and academic support programs, and explores the legality of considering race in faculty and staff hiring.

The SALT Board of Governors plans to take up the issue of SALT’s affirmative action agenda during the May Board Retreat.

Following is the text of a letter sent to the editor of the Chronicle of Higher Education by SALT Co-Presidents Holly Maguigan, New York University School of Law, and Beto Juárez, St. Mary’s University School of Law

Letter to the Editor, Chronicle of Higher Education

A recent Chronicle of Higher Education article describes efforts to roll back the gains of the Supreme Court’s ruling in *Grutter v. Bollinger* (“Advocacy Groups Pressure Colleges to Disclose Affirmative Action Policies,” April 2). The Society of American Law Teachers (SALT), America’s largest organization of law professors, wishes to set the record straight on affirmative action.

In *Grutter*, the Court held that student diversity was a compelling interest, and it found, based upon a large body of social science, that the substantial educational benefits of diversity “are not theoretical,

but real.” The Court also declared: “Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”

Having failed to roll affirmative action back through the courts, the Center for Equal Opportunity, the National Association of Scholars, and the Center for Individual Rights are now engaged in a coordinated, media-savvy campaign of resegregation through intimidation by using onerous demands for information from state-supported universities. We urge higher education officials to stand their ground.

Quotas have been illegal since the Court’s 1978 *Bakke* ruling. *Grutter* distinguishes quotas from the University of Michigan Law School’s flexible program, which seeks a critical mass of underrepresented minorities. The Court explained that a quota “is a program in which a certain fixed number or proportion of opportunities are reserved exclu-

sively for certain minority groups.” Moreover, “some attention to numbers, without more, does not transform a flexible admissions system into a rigid quota.”

Race-neutral solutions, such as the Texas Ten Percent Plan, are often not sufficient. At Texas A&M, the percentage of African American freshmen dropped 40% — and Latinos 34% — after the first five years of the Ten Percent Plan.

Grutter requires “serious, good faith consideration of workable race-neutral alternatives.” When selective institutions make their own good faith assessment, they will usually find that affirmative action — that is, the careful consideration of race or ethnicity as one factor in an admissions program — is strongly needed. Universities looking for substantive analysis can find it in “Preserving Diversity in Higher Education,” a 200-page admissions manual by leading American law firms, available at www.equaljusticesociety.org/compliancemanual.

A Brief History of the Annual Robert M. Cover Public Interest Retreat

Stephen Wizner, Yale Law School



Danny Greenberg and Steve Wizner

Shortly before his untimely death in the summer of 1986 at the age of 42, Robert Cover, a beloved law professor, legal scholar, and social activist at Yale Law School, circulated a memorandum among his colleagues on the faculty, advocating the creation of an annual public interest retreat for law students, law teachers, and public interest practitioners that

would serve four related purposes: First, it would be an opportunity to break the isolation. Students from around the country with common concerns would get to know one another and would realize our national scope of problems and professional opportunity. Second, students would interact with lawyers, legal academics, and other professionals who might provide both practical guidance and role models for the variety of possible public service careers. Third, the conference would be a forum for thinking about reform or change of legal education. Fourth, the conference would provide students with a jump-off or starting place for the formulation of programmatic politics of legal change. In Cover's words, "careers in public service work seem more exciting and worthwhile when there is a sense of movement — of common effort and common commitment."

Some of Bob's friends — Milner Ball of the University of Georgia, Avi Soifer, then at Boston University and currently Dean of the University of Hawaii School of Law, and I, joined a short while later by Danny Greenberg, then Director of Clinical Programs at Harvard Law School and currently President and Attorney-in-Chief of the New York City Legal Aid Society, and the late Henry Schwarzschild, a long-time advocate of abolition of the death penalty — decided to honor Bob's memory by organizing an annual public interest retreat as he had advocated.

The first Cover Retreat was held at Boston University's Sargent Camp, a rustic outdoor recreation center in Peterborough, New Hampshire, during the first weekend in March of 1988. The Retreat has become an annual event, held at Sargent Camp during the first weekend of March. Each year, the Retreat has been coordinated by students from a different law school, providing them the opportunity to learn how to organize such an event, to plan the program, and to select and invite public interest practitioners to be speakers and mentors. Over the years, students from Yale, Boston University, Boston College, Columbia, NYU, and other schools have organized the Retreat. Students also have chosen the themes for the Retreats, and the following examples show the range of their concerns: 1992, "Correcting Politics: Pursuing Public Interest in Legal Education and Practice"; 1995, "Privilege and Power in Public Interest Advocacy"; 1997, "Without a Net: Public Interest Practice in a Mean-Spirited Age"; 2002, "Lawyering in Context: Exploring the Intersections of Law and Community"; and 2004, "Confronting Challenges: Making Public Interest Work."

The Cover Retreat has inspired the development of the annual Grillo Public Interest Retreat on the West Coast, and the annual Amaker Public Interest Retreat in the Midwest; all three retreats receive support and sponsorship from SALT. The three retreats offer public interest-minded law students across the country opportunities to gather with other like-minded law students and with public interest practitioners to encourage and learn from one another, and to be inspired to become the next generation of public interest lawyers in America.

Cover Public Interest Retreat: Bonding, Debating and Playing in Preparation for a Lifetime of Public Interest Work

Zabrina Aleguire, New York University School of Law '05

At the wheel of a rented minivan in mid-February, I'm driving two lawyers and three law students out of Manhattan up into rural New Hampshire for the annual Robert M. Cover Public Interest Retreat. The student from Rutgers riding shotgun plays my impromptu navigator while Skyla Olds, one of the students who planned the retreat this year, is on her cell phone with NYU students who have already hit the road, and Lynn Paltrow, Director of Advocates for Pregnant Women, is on *her* cell phone to a colleague who has just argued in front of a circuit court. "Did you guys remember the ingredients for S'mores?" is overlaid with "Are you telling



Eileen Kaufman, Holly Maguigan, Deborah Post, and Marjorie Silver

me that the judge stuck his tongue out at you during your closing argument?! Unbelievable!" This is the odd patchwork that makes up the Cover Retreat every year — an outright good time combined with honest dialogue about the challenging realities of public interest lawyering. As I drive, I realize I'm drawn to attend this retreat by the idea that we'll be addressing how we, as public interest lawyers, navigate power and privilege in our work with disadvantaged clients, as well as by the cross-country skiing. Luckily, the weekend

delivers on both fronts.

This year, students from NYU Law School, led by Nathaniel Kolodny and Skyla Olds, took the reins of the Cover Public Interest Retreat and made it one of the most successful in its history. More than 120 students, lawyers and law professors attended from schools and



Deborah Post, Marjorie Silver, Rose Dortch, Dana Koos, Eileen Kaufman, and Rachel Gilbert

practices throughout the Northeast and Southern regions of the country. By Friday evening, most participants had descended on the Sargent Retreat Center, welcomed by a warm meal and a full array of “ice-breaker” games. Keeping with tradition, Danny Greenberg (NYC Legal Aid Society) and Steve Wizner (Yale Law School) opened up the weekend, invoking the memory of Robert M. Cover and his dream of mentorship and community within the public interest field. Remarking that law students often sound more disempowered than legal aid clients, Greenberg sent out a call for students to take charge of their careers and bring their own unique contribution to the profession.

Taking charge the following morning, NYU students facilitated group break-out sessions on this year’s theme: “Confronting Challenges: Making Public Interest Work.” Building on the sharing of cross-generational perspective brought by the practitioners and students, the groups discussed strategies for sustaining personal and political strength. Many groups discussed ways that sexism and racism play out in public interest work. The level of honesty that participants reached with each other

built trust within groups and established a feeling of community for the remainder of the weekend.

Lynn Paltrow spoke after lunch, synthesizing themes raised in the morning sessions. Drawing from her experience advocating for pregnant women who have been incarcerated for drug use, Lynn pointed out the importance of continuing to fight uphill battles and build alliances. She encouraged us to find a space to feel and express emotions from the work and seek out community when it doesn’t exist already. She spoke about public interest work as a personal investment with great rewards that may not come through traditional measures of success.

Saturday afternoon playtime is a highlight of the Cover Retreat, and the Sargent Center provides cross-country skis



Documentarians Sarah and Emily Kunstler

and snowshoes for scenic jaunts through the surrounding woods. The most adventurous of us skied across the frozen lake adjacent to the Center and finished off by sailing down the sledding run. Those with more sedentary inclinations were happy feeding birds out of their hands farther down the lake or playing guitar on the back porch of the conference center.

As participants gathered together in the late afternoon, Alliance for Justice and Impact 2004 gave them an activist booster shot to help with organizing around judicial nominees and ensuring a fair presidential election. Impact 2004 is a new organization started by students from Columbia Law School to create opportunities for involvement in voter turn-out drives and effective monitoring of the

November 2004 elections. Alliance for Justice is well known for its Judicial Selection Project, which aims to ensure an independent and capable federal judiciary by encouraging public participation in the selection and confirmation processes. Led by Nan Aron, Alliance for Justice members have been attending the Cover Retreat for years. This time around, Nan’s son



Cover Retreat participants at work and play

Nicholas was one of the NYU student organizers of the Cover Retreat and he moderated the afternoon panel.

The focus of Saturday evening at the Cover Retreat was the highly successful legal campaign to exonerate scores of African-American residents of Tulia, Texas, who were wrongfully convicted on trumped up drug charges. Screening their new documentary, “Tulia, Texas: Scenes from the Drug War,” Emily and Sarah Kunstler participated in a question/answer session about their use of media to help with the legal campaign. Vanita Gupta, a Soros Fellow at the NAACP’s Legal Defense Fund, showed the “60 Minutes” coverage of the story and spoke about her experience as the lead attorney on the project fresh out of law school. She spoke about the interplay of identity and culture when building trust with clients and challenged the rest of us to examine our motivations for working with clients more disadvantaged than ourselves. Looking around the room, participants acknowledged the lack of diversity among Cover Retreat attendees and spontaneously formed into small groups to brainstorm strategies for making the retreat more inclusive next year.

Celebrating the success of the weekend,

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Sixth Annual Trina Grillo Public Interest and Social Justice Law Retreat: Empowerment for Social Change

*Emily Fisher, Santa Clara University School of Law '04
Tobin Dietrich, Santa Clara University School of Law '06*

On March 13 and 14, 2004, law students, professors and practitioners gathered to share strategies and ideas on “Empowerment for Social Change” at the Sixth Annual Trina Grillo Public Interest and Social Justice Law Retreat. The Grillo Retreat, held this year at the Park Plaza Hotel in San José, presented a special opportunity for students and practitioners to share invigorating stories and advice

Cover:

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organizers broke out the karaoke machine. Walking around the Center, seeing NYU students bartending at the makeshift open bar while other attendees sat in circles laughing or playing games, I thought again about the importance of personal bonds and playtime in public interest work. There was a cohesiveness to the weekend – a self-reflection that carried the themes of personal integrity and sustainability through every part of the retreat. This year, the NYU organizers had a vision that participants would not shy away from hard questions, but would grapple with race, privilege and personal challenges in a way that would inspire and sustain every participant. At the conclusion of the retreat, Nick Arons told the lead organizers, “I remember when I was a kid, my mom was always telling me about this amazing retreat in New Hampshire and how inspiring it was. Well, I think the founders never had anything in mind close to what you guys pulled off.”

about the importance and effectiveness of empowering each other as well as underrepresented populations. This annual event, co-sponsored by SALT, the University of San Francisco School of Law, and the Santa Clara University School of Law Center for Social Justice and Public Service, honors Trina Grillo, a devoted social justice advocate.



Santa Clara students Emily Fisher and Tobin Dietrich

Stephanie Wildman and Dean Donald Polden, both of Santa Clara University School of Law, convened and welcomed the group. Their welcome was followed by a moving tribute to the life and career of Trina Grillo by Margalynne Armstrong, also of Santa Clara.

The first plenary session, titled “Exploring Empowerment” and moderated by Angela Riley of Southwestern University School of Law, featured Elena Popp of the Legal Aid Foundation of Los Angeles (“LAFLA”), Sam Paz of the Law Offices of R. Samuel Paz, Chris Daley of the Transgender Law Center, and Paul Harris of the National Lawyers Guild. Each of the panelists briefly described ways in which empowerment issues had affected their clients, practice, or both. Ms. Popp recounted some of her recent work with LAFLA and focused on the way that community lawyering empowers attorneys within the communities they serve, in addition to empowering the community as a whole. Mr. Paz brought a

wealth of experience to the discussion, urging young lawyers to empower themselves by choosing an area of specialty and dedicating themselves to the mastery of that specialty. Mr. Daley focused on the barriers one must overcome to change power structures, such as the inevitable failures associated with implementing new ideas as well as the resistance to change faced by advocates of social justice. Mr. Harris brought some levity to the session by demonstrating his juggling skills to illustrate how guerrilla lawyering tactics can empower the client as well as the lawyer, leading to more effective advocacy. A common thread throughout the discussion – and one that reappeared throughout the weekend – was the suggestion that in order to bring about social change, one must keep a long-term goal at the fore to endure the inevitable setbacks.

The Honorable Cruz Reynoso introduced the 2004 Ralph Abascal Memorial Address, given by United States Senator Barbara Boxer in honor of Ralph Santiago Abascal, a prominent public interest advocate who spent his legal career



Sam Paz, Stephanie Wildman, and Cruz Reynoso

working on behalf of poor and immigrant communities. Senator Boxer spoke about the political battles faced by those who advocate for social change. She emphasized that constituencies who organize and pressure their representatives to effect change are a political force unmatched by the deep pockets of special interests. Senator Boxer concluded her remarks with

a warm personal remembrance of Ralph Abascal.

During the Career Strategy Lunch, participants broke into small groups with practitioners to discuss a variety of public interest and social justice practice areas. After lunch, the second plenary, a roundtable on “Equal Justice Society”



Senator Barbara Boxer and Santa Clara Dean Donald Polden

moderated by Professor Armstrong, explored the theme of Empowerment and Identity and featured panelists Gary Blasi of the UCLA School of Law, Victor Hwang of Asian Pacific Islander Legal Outreach, Sheila Thomas of the Law Offices of Sheila Thomas, and Rowena Gargalicana of the Tour-Sarkissian Law Offices. This panel focused on issues of community empowerment and how those communities establish their identities. Professor Blasi contrasted two different legal actions, one that began as an organized, empowered community seeking change, and another that began as an individual suit and grew to encompass a community of similarly situated individuals. Mr. Hwang discussed the evolution of Asian Pacific Islander Legal Outreach as an example of the fluidity of community identity, and the need to re-vitalize and re-mobilize communities to stay relevant as new issues are identified and resolved. Ms. Thomas discussed the value of issue-based community identity for purposes of empowerment around a specific issue set. She urged lawyers to let the community guide them,

Grillo continued on page 10

Grillo Retreat: It's All About Heroes

Patricia Massey, Santa Clara University School of Law, Teaching Scholar for the Center for Social Justice and Public Service



Patricia Massey

I first heard about the Trina Grillo Retreat at an introductory program for newly-admitted students at Santa Clara University School of Law. As one who entered law school with a commitment to social justice work, I knew that I wanted to attend every year and so this was my fourth Grillo Retreat. I came this time not as a law student, but as a newly-admitted member of the California Bar and as the Teaching Scholar for the Center for Social Justice and Public Service.

I return each year to rediscover the treasure I found at the first retreat: heroes. At my first retreat, I was introduced to Trina Grillo and Ralph Abascal, heroes I experience through their legacies of amazing achievement. To know them now only through the loving voices of their friends and colleagues highlights the importance for me of learning from and connecting with the social justice pioneers, passionate advocates making a difference now, and with those who will emerge from our law schools — the students.

I also return each year because social justice advocates are my “tribe.” This retreat included the celebrations, sharing of wisdom, and challenges of finding new ways to work and think that bond me to those who share a passion for social justice. This year I was challenged to renew my commitment to empowering those I serve — clients and students — and myself. I

was inspired by Elena Popp’s community empowerment story of the Venice, California African-American community members who worked with housing advocates, both locally and nationally, to halt regulatory changes that would have allowed the destruction of the only low-income housing in that city. Similarly, Anamaria Loya told of the courageous leadership that emerged from the community of day workers in San Francisco. Chris Daley and Paul Harris reminded me that empowerment requires patience and that we will not always encounter success, but that in the long run, the work is worth it.

Some panelists spoke to the need to empower ourselves in order to work for social justice. Olivia Wang talked about the strategies she employs to maintain her passion for her work in the area of prisoners’ rights so she can stay engaged for the long run despite the frustrations and demands that could lead to burn-out. She emphasized the importance of setting aside time for reflection and of having friends and colleagues who can be a mirror, helping her stay true to her vision. Rowena Gargalicana shared the challenges she encounters in maintaining her voice and identity in a profession that seems to promote a type of identity neutrality. Karen Lash emphasized the need to learn and utilize networking skills as a means to develop and sustain a career in social justice.

The Grillo Retreat is an investment in the future of social justice work that strengthens all who participate. It is also a gathering of a passionate “tribe” of social justice advocates to honor the work of the past, celebrate that of the present, and nurture that of the future. I am grateful for our time together. I feel more empowered and know that I will return.

*“I was challenged to
renew my
commitment to
empowering those I
serve...and myself.”*

Grillo:

▼ *continued from page 9*

not only to the right issue but to the appropriate remedy as well. Ms. Gargalicana discussed the difficulties in identifying with a community when one belongs to many communities, each with its own disparate issues, and spoke about how a lawyer's own sense of identity can disempower the client if that identity conflicts with the best interests of the client. The panel, and the breakout discussions that followed, stressed the idea that issue-based identities provide excellent opportunities for community and coalition building, but community and coalition members need to invest in the larger group in a meaningful way in order to sustain community-based power structures.

A late afternoon break and reception gave participants a chance to relax and chat. After dinner, Michael Hone of the University of San Francisco School of Law introduced Anamaria Loya, who gave an inspirational keynote address about her work as Executive Director of La Raza Centro Legal. Ms. Loya discussed ways in which her organization was able to facilitate and empower organizers of immigrant labor forces to effect change at the local and state level.

Sunday morning began with a plenary on "Empowerment in the Corridors of Power" moderated by Eric Wright of Santa Clara. This plenary featured Olivia Wang of Legal Services for Prisoners with Children and Kathleen Graham, a consultant on international economies. Ms. Wang discussed several definitions of corridors of power, including legislative

halls, prison cells, and courtrooms. She discussed how seeking solutions in alternate corridors of power can lead to greater empowerment in the long run. Ms. Graham focused her remarks on her experiences in Tajikistan, empowering women entrepreneurs and using the marketplace as a corridor of power. The small group breakout session included Kent Greenfield of Boston College Law School, who has been working on the Solomon Amendment litigation discussed elsewhere in this issue. (See Solomon



Career Strategy Lunch participants

Amendment article, p. 3.) Patricia Massey of Santa Clara moderated the final plenary on "Empowerment Strategies for the Future," featuring David Ackerly of LAFLA, Camille Holmes of the Center for Law and Social Policy, Karen Lash of Equal Justice Works, and Sonia Mercado of Mercado and Associates. The panelists tied together themes of the retreat and discussed how these themes could be used to create strategies for long-term empowerment of historically marginalized members of society. At the end of this plenary, attendees collectively brainstormed about the role of empowerment in the legal field, strategies to take away from the retreat, and memorable themes that were emphasized during the retreat. In his concluding remarks, SALT Co-President Beto Juárez reflected on the enlightening and inspirational events of the weekend.

Once again, the Grillo Retreat gave students and practitioners a unique opportunity to gather together and to share viewpoints from a wide range of social justice and public interest perspectives. The knowledge and experiences brought by panelists and attendees will contribute to our ongoing social justice work.

SAVE THE DATE:

Meet Us in Las Vegas for the SALT Teaching Conference on *Class in the Classroom*

University of Nevada, Las Vegas
William S. Boyd School of Law
October 15-16, 2004

The annual SALT Teaching Conference will be held at UNLV Law School, on October 15-16, 2004. The theme of the Conference is "Class in the Classroom." In plenary sessions and workshops, we will explore curricular designs and pedagogical techniques to integrate questions of political economy and class in legal education. The questions to be explored include Globalization, Corporate Responsibility, Labor and Employment, Poverty and Criminal Justice, Intersections of Race and Class, Housing and Land Use, Class and Post-Grutter Affirmative Action, and Class and Clinical Education. One session of the Conference will be devoted to Elections and Voting Rights. In addition, this year we will initiate the practice of devoting one session of the SALT Teaching Conference to "Local Issues." The unique challenges and opportunities faced by Las Vegas will furnish the agenda of this session.

We have reserved rooms at the Luxor at discounted rates for conference attendees. In the coming weeks we will send out more detailed information about the conference program and registration materials. We hope all members and friends of SALT will join us in Las Vegas for what promises to be a very productive conference.

Third Annual Amaker Retreat: Challenging, Informative, and Invigorating

Robert Lancaster, Indiana University School of Law-Indianapolis

The Third Annual Norman Amaker Public Interest Law Retreat was held from March 26th to 28th, 2004, in Bradford Woods, Indiana. The theme of the 2004 Retreat was "Access to Justice" and the event brought together practitioners, faculty and students for an informative and productive weekend held in a beautiful setting. The weather was perfect and the discussions were lively.

Florence Wagman Roisman, the Michael D. McCormick Professor of Law at Indiana University School of Law-Indianapolis, delivered the keynote address, "The Judge-Making Power: The Struggle



for 'Integrity and Moderation,'" on opening night. She spoke about how important it is that law students be informed and involved in the judicial nominating process. She talked about some of the issues raised by current nominees and recess appointments, and called upon students to become active in working to ensure that quality, temperate, and fair men and women get appointed to the bench.

Other speakers included Margaret Stapleton, from Chicago's National Center on Poverty Law, and Sherry Bruckner, from the Appalachian Research and Legal Defense Fund. They discussed how difficult it is for people living in poverty to access

attorneys and the justice system. They described the particular problems that arise in lawyering for the poor and emphasized the need to approach the practice holistically and to think creatively about helping



those living in poverty to solve their problems. Heather Vlieger from the Minnesota Justice Foundation joined their discussion and talked about the role that legal scholarship can play in addressing access to justice issues. Crystal Francis and Dennis Frick, experienced elder law attorneys who practice with Indiana Legal Services, spoke about the special needs of the elderly and some of the current predatory lending schemes plaguing so many of the elderly living in the Midwest.

The plenary session on "The Struggle for Equality: The Work for Legal Recognition of Gay Families" was extremely well attended. The author of this article explained the impact of the Solomon Amendment and the current litigation challenging the constitutionality of the law, and talked about the ameliorative activities that students could start at their schools so that their colleagues would become aware of the issue. Fran Quigley, the Executive Director of the Indiana Civil Liberties Union, spoke about the same-sex marriage case currently pending in the Indiana Court of Appeals. Tom Maynard from the Human Rights Campaign discussed proposed state and federal marriage amendments and what students can do to lobby and work for their defeat.

Norman Lefstein, Professor of Law and Dean Emeritus of Indiana University School of Law-Indianapolis, and Jean Giles, of Oklahoma City University School

of Law, spoke about access to justice issues, including access to effective assistance of counsel for indigent criminal defendants. Luke Cole, from San Francisco's Center on Race, Poverty and the Environment, and Cecilia Martinez, Associate Professor at Metropolitan State University, spoke about the correlation between environmental issues and race and poverty. Professor Martinez described the history of environmental racism and Native Americans. Their presentation was informative and inspiring to students interested in how their work in law can empower marginalized people and change their lives. Students also learned a great



deal about the particular skills needed and challenges presented in group and organizational representation.

Students who attended the Retreat enjoyed lots of free time for exploring Bradford Woods, talking, and playing games — Balderdash was popular again this year! On Saturday night, students watched the film "Bread and Roses" and Professor Maria Pabon Lopez of Indiana University School of Law-Indianapolis led a discussion of the immigration, employment, poverty, and access to justice issues that Mexican immigrants face.

Participants left the Retreat feeling challenged, informed, and invigorated to continue their work for social justice.

Photos, from left: Crystal Francis, Dennis Frick, and Florence Roisman; Fran Quigley and Robert Lancaster; and students taking advantage of Bradford Woods.

Yesterday My Friend Chose Prison: Dedicated to the SOA Prisoners of Conscience

Bill Quigley, Loyola University New Orleans School of Law

Yesterday my friend walked freely into prison
chose to violate a simple law to spotlight the evil
of death squads and villages of massacred people that we cannot even name
mothers and children and grandparents butchered buried and forgotten
by most, but not by my friend.

Yesterday my friend stepped away from loves and family and friends
was systematically stripped of everything, everything
and systematically searched everywhere, everywhere
was systematically numbered and uniformed and advised and warned
clothes and underwear and shoes and everything put in a cardboard box,
taped and mailed away

Yesterday my friend joined the people we put in the concrete and steel boxes
mothers and children and fathers that we cannot even name
in prison for using and selling drugs
in prison for trying to sneak into this country
in prison for stealing and scamming and fighting and killing
but none were there for the massacres
no generals, no politicians, no under-secretaries, no ambassadors

Yesterday my friend had on a brave face
avoiding too much eye contact with the stares of hundreds of strangers
convicts, prisoners, guards, snitches
not yet knowing good from bad
staying out of people's business
hoping to find a small pocket of safety and kindness and trust in the weeks ahead

Last night my friend climbed into bed in prison
an arm's length away from the other prisoners
laying awake on the thin mattress
wondering who had slept there last
wondering how loved ones were sleeping
awake through flashlight bed checks
and never-ending noises echoing off the concrete floors and walls
some you never ever want to hear

Yesterday my friend chose prison over silence
chose to stand with the disappeared and those who never counted
chose to spend months inside hoping to change us outside
chose the chance to speak truth to power
and power responded with prison

Though my heart aches for my friend in prison
no one on this planet is more free.

SALT's Annual Awards Dinner a Rousing Success

Fran Ansley, University of Tennessee College of Law

The Annual Awards Dinner held in Atlanta in January 2004 continued SALT's long tradition of honoring extraordinary people who

exemplify the organization's deepest values and commitments.

This year's SALT Teaching Award was



Congressman John Lewis

conferred on Professor Bill Quigley, teacher and director of the Gillis Long Poverty Law Center at Loyola University of New Orleans. The SALT Human Rights Award was given to Georgia's revered and beloved Congressman, civil rights hero John Lewis.

A large contingent of SALT members, friends, and special guests gathered for the event at 103 West, an Atlanta restaurant that provided delicious food and drink, excellent service, and a welcoming atmosphere. On the other hand, the assembled crowd itself provided the warm climate of celebration, affection, respect and political engagement. It was a rare privilege to be in the presence of these two non-violent warriors for justice and peace, and to learn more about each of them and their work.

Those present heard from battle-seasoned allies in the labor and civil rights movements; from far-flung and loving family members; from grateful students, clients, and constituents; from a recently-released prisoner of conscience; and from other admiring colleagues. All spoke from the heart — and with the head — about

SALT Dinner continued on page 13

Excerpts from the SALT Annual Awards Dinner Remarks by Outgoing SALT Co-Presidents Johnson and Rooke-Ley

Paula C. Johnson, Syracuse University School of Law

“[W]hen Michael and I came in as Co-Presidents, September 11, 2001, had occurred just three months before. We knew that any preconceived ideas about our term would be changed forever by that event and the imperative we felt to firmly place SALT on the side of peace as our country waged war in response to that horrible event.... We did everything we could, with your support, to voice our views as lawyers, law professors, and citizens to protest a war waged in our names, and to resist the erosion of civil rights and civil liberties perversely touted to preserve our freedom and safety. . . .

“Michael and I felt a similar imperative that affirmative action would not be dismantled on our watch. Again, drawing on the resources of this organization, we were in the courts, in our institutions, and in the streets demanding that this nation move forward, not backward, in becoming more, not less accessible and diverse. Truth willed out in this instance, and the Supreme Court did more of the right thing than we might have expected. Vigilance, then, is the new watchword, to prevent backsliding on what the Court has acknowledged as the central value of diversity in our schools and societal institutions. We all must continually remind our own institutions, our profession and our society that the status quo is not acceptable and that we must do more — now — to realize the promise of *Brown* and the directive of *Grutter*.

“In our current struggle against the Department of Defense and Congress on the Solomon Amendment, we believed that

SALT must be a party — out front — for the principles of fairness, inclusion and dignity on the basis of sexual orientation. These are principles that our schools adopted and in the refusal of many of them to uphold these values, SALT stepped forward

“While we would have wanted to do more, to do any less would have been a betrayal of all that we have been given, to all who preceded us, and to all who will follow”



Paula C. Johnson and Michael Rooke-Ley

Michael Rooke-Ley, Seattle University School of Law (visiting 2003-04)

“Paula and I want to tell you how proud we are to be part of the work of SALT — how grateful we are to all of you, as SALT members, who have done so much on so many fronts, for the cause of justice.

“When the *Grutter* case finally came before the Court and an amicus brief needed to be drafted (just as we had done in the *Bakke* case), demonstrations to be

organized, coalitions to be built, newspaper ads to be drafted, paid for and published, you all were there.

“When bar exams across the country continued to arbitrarily deny access to the profession, when a definitive report was needed on the shortcomings of the bar exam, when the need was clear for working in coalition to address bar exam reforms, you all were there. . . .

“When it become more and more apparent that the law school admission process has not reflected the values of diversity and excellence, what with its over-reliance on the LSAT and all the power we’ve ceded to the U.S. News & World Report rankings — when the need was clear for a definitive report critiquing the LSAT and for nation-wide organizing around admission reform, you all were there.

“When the Bush Administration interpreted its election-day mandate as permission to nominate to the federal bench an endless slew of right-wing extremists, when the progressive voice of law professors needed to fill the important role of researching nominees and advising the Senate Judiciary Committee, you all were there.

“SALT members: You continue to be the voice for social justice, you continue to be on the cutting edge. The academy desperately needs your continued engagement. And Paula and I have been grateful for the opportunity to work with you.”

SALT Dinner:

▼ *continued from page 12*

these two men and what they continue to contribute to the long and unfinished struggle for a just and peaceful America and a just and peaceful world.

Veteran co-chairs of the SALT Dinner and Awards Committee, Bob Dinerstein and Margalynne Armstrong, worked long and hard to plan and carry out this year’s events, and they were aided by many others in the organization in tackling a long list

of tasks that ranged from the maddeningly tedious to the inspiringly sublime. All labored with good grace under the impossible mandate of properly celebrating two such impressive people in the brief span of a single evening. SALT thanks all of them, including Nancy Cook, Tanya Hernández, Beto Juárez, Holly Maguigan, Marnie Mahoney, and Norm Stein, and especially those who spoke so movingly: Ron Chisom, Ramona Fernandez, Paula Johnson, Rebecca Johnson, Fran Quigley, Harris Raynor, and Michael Rooke-Ley.

Drake:

▼ *continued from page 1*

inquiry on college campuses ensued. It was led by the NLG, whose past president Bruce Nestor filed a motion to quash the subpoenas, and was joined by many organizations around the country, including SALT. SALT Co-Presidents Holly Maguigan and Beto Juárez contacted NLG President Michael Avery to offer support, and remained in close contact with him as events unfolded. SALT began preparations for writing an *amicus* brief in support of the motion to quash, as well as a letter to Drake urging the university to resist the subpoena and a press release criticizing the issuance of the subpoenas. Academics throughout the country echoed this public condemnation of the government's attempt to chill the free exchange of ideas in universities. The American Association of University Professors issued a statement charging that compelling a university to reveal the records and names of members of a recognized campus organization "intrudes deeply and dangerously into the affairs of a group of students and encroaches upon freedom of expression and association."

The government quickly backed down in response to this uproar, withdrawing the subpoenas a week after they had been issued (and making the planned SALT actions unnecessary). Both in the NLG's publication, *Guild Notes*, and on national radio (on the Pacifica Network's *Democracy Now!* program), President Avery thanked SALT, along with other organizations, for their visible support of Drake University and the Guild.

Stifling Protest

The Drake subpoenas didn't come out of nowhere. Rather, they were the culmination of several months of increasingly tense interactions between local activists and local authorities, raising the distinct possibility that the subpoenas were used for political purposes. There is a history of

civil disobedience actions at the National Guard armory in Des Moines, and Professor Frank, a clinical professor at Drake and the faculty advisor of the law school's NLG chapter, has represented protestors arrested at those events. The November before the subpoenas were issued, the Drake NLG chapter had hosted an event at the law school, entitled "Stop the Occupation! Bring the Iowa Guard Home!" That session included discussion of the civil disobedience tradition in American history, as well as nonviolence training for those planning

"To anyone familiar with history, [the subpoenas are] a chilling reminder of the fragility of our civil liberties, especially in times of 'war'..."

to engage in a protest at the National Guard headquarters the next day. The four activists who were served subpoenas had all attended that protest.

It seems likely, therefore, that the immediate impulse behind the subpoenas came from local authorities focused on chilling such demonstrations, rather than from interest at the national level. Nevertheless, it also seems likely that the "October memo" issued by Attorney General John Ashcroft (and reported in the *New York Times*), in which he encouraged state law enforcement authorities to monitor anti-war demonstrations for suspicious activity, could have encouraged the use of such heavy-handed tactics. Ashcroft's 2002 loosening of the Levi Guidelines, which prohibited the FBI from engaging in political intelligence investigations absent probable cause to believe that criminal activity was involved, could also be construed as an invitation to return to COINTELPRO-era surveillance tactics. The Drake subpoenas, along with these federal developments, raise the

specter of increased willingness by both state and federal authorities to interfere with the freedoms of speech and association on university campuses, and perhaps especially at law schools.

Texas, Too

Recent events at the University of Texas confirm that willingness. On February 4, 2004, the U.T. law school hosted a conference sponsored by the local NLG chapter, entitled "Islam and the Law: The Question of Sexism?" Two undercover military officers attended the conference, and two Army intelligence agents subsequently returned to the campus to interview the conference organizers and seek a list of attendees. The Army later said that the agents' suspicions had been aroused by a conversation they had with three Middle Eastern men at the conference. No explanation was given for the presence of the agents at the conference in the first place.

The law students who were approached gave no names to the agents (who had no warrant), and one student brought the Texas dean of student affairs the card given to her by one of the agents. Notified of these events, the law school dean, Bill Powers, emphasized the law school's support for students' First Amendment rights and voiced concern that the agents' conduct would have a chilling effect on the holding of such academic conferences. While no subpoenas have been issued, the situation at U.T. appears to be ongoing. The conference organizers are being represented by local attorneys, and Jim Harrington of the Texas Civil Rights Project is investigating the circumstances surrounding the military's actions. SALT has offered its assistance and will continue to closely monitor the situation.

The Importance of Resistance

Central to the successful resistance of the Iowa subpoenas was the resolve of the Drake administration in general and its law school dean, David Walker, in particular. "An open and free discourse is

the core value of a university,” the Chronicle of Higher Education later quoted Walker as saying. “We’re supposed to be *the* place in society to discuss ideas – unpopular ideas most of all, because popular ideas don’t need protection.” Walker and the Drake University administration initially agreed to turn over the documents, but stated that they would have to notify the students, citing the Family Educational Rights and Privacy Act. The gag order followed. Unable to talk to the press or even its own trustees, the university administration began to prepare motions to set aside the gag order and quash the subpoenas, arguing that it had standing to protect the free speech rights of its students. “We [assumed] we had to comply with the law,” the Chronicle article quoted Drake President Drake E. Maxwell as saying. “But it seemed to us from the beginning that what we had been asked for was inappropriate.”

To anyone familiar with history, this

effort to get the University to reveal the members of an organization – especially an organization like the NLG, which represented individuals who refused to testify before the House UnAmerican Activities Committee during the McCarthy Era – is a chilling reminder of the fragility of our civil liberties, especially in times of “war” (whether real or contrived). It is crucially important now, as it was then, for both individuals and institutions to be willing to stand up to such threats. For universities, it is important to have a plan of action in place to confront similar threats to academic freedom should they arise on their own campuses. SALT members can play a central role in helping their schools to prepare for such contingencies.

As for Drake, while the U.S. Attorney’s office in Des Moines withdrew the subpoenas, its investigation is apparently continuing. It will be important to keep a vigilant eye on that investigation, and the tactics that the government uses in

pursuing it. Meanwhile, the NLG has called for congressional hearings to determine the extent to which the government is surveilling protected free speech activities on college campuses, and SALT will support that effort.

All these events place a special burden on law professors, as the legal experts on their campuses, to be aware of and respond quickly to issues that may arise at their own schools. SALT’s 9-11/Peace Committee urges all SALT members to alert the Committee, or the SALT Board, of any similar incidents. As the Drake incident illustrates, threats to civil liberties are much more easily thwarted when exposed to the light of day. Silence and secrecy, the hallmarks of the Bush administration, are the enemies of an open and democratic society, and of the spirit of free inquiry that is central to the mission of universities and law schools. SALT will continue to keep an eye out for such threats, and to respond appropriately if and when they occur.

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