

SALT EQUALIZER

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SALT EQUALIZER

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

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Co-Presidents' Column

Deborah Waire Post, Touro College, Jacob D. Fuchsberg Law Center, and Margaret Martin Barry, Catholic University of America, Columbus School of Law

On November 4, 2008, SALT members had reason to celebrate, we hope with the exuberance and joy anyone watching television that day or the next saw in Grant Park or D.C. or New York. We are not sure what an Obama presidency will look like, but we are sure that it will be our job to articulate and to explain the need for legislative and administrative reforms, judicial appointments, and litigation that will promote social justice. We know it is not all about the middle class, but the huge economic disparity that was created and widened over several decades. Even as we celebrate what many of us see as the culmination of a centuries' long struggle for civil rights in the election of a Black President of the United States, we must also acknowledge the civil rights reverses suffered by the LGBT



Margaret Martin Barry and Deborah Waire Post

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Executive Director's Column

Hazel Weiser

Since launching the SALT^{LAW}.org website, we have grown our on-line readership to about 10,000 visits per month, with more visits immediately following the release of the weekly electronic newsletter. Now that SALT members are growing accustomed to using the website, we want to take advantage of one of its features, the professional profile available to all current SALT members. *After renewing your membership, take a moment to update the information in your profile so that we know more about you.* Only other SALT members have access to this information; it is not available to the general public.



SALT Executive Director Hazel Weiser

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Co-Presidents:

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community in California and elsewhere.

This time last year we announced our intention to make affirmative action a priority for SALT. We did this several ways, but the one that was the most ambitious was our decision to oppose the ballot initiatives introduced in five states by Ward Connerly. These “civil rights initiatives” were defeated before they made it on to the ballots in Oklahoma, Missouri and Arizona. We can’t take credit for the success in blocking these initiatives. Litigation over voter fraud by the ACLU and the NAACP, along with the exposure of voter fraud by BAMN in Oklahoma, the challenge to signatures in Arizona, and the opposition of the State Attorney General in Missouri, get credit for the defeat of these initiatives.

We *can* take credit for recruiting SALT members to work with the local organizations opposing the referenda. Barbara Atwood, University of Arizona, wrote us this wonderful note when the Arizona referendum went down to defeat: “I think I got way more involved in the Connerly opposition here because of SALT. If I hadn’t gone to the SALT meeting in New York last January, I probably wouldn’t have followed the issue that closely—and then I felt obligated to get more involved as the SALT rep—and I’m really glad that I did. So, THANK YOU, SALT!” We didn’t have to recruit a stalwart SALT member and veteran of many referenda battles, Roberto Corrado, who was already working with a dedicated grass roots organization. The defeat of Amendment 46 was a real blow to the American Civil Rights Institute and Ward Connerly.

Despite the very hard work of SALT member Anna Shavers and Nebraskans United, the reddest of red states, Nebraska, was the only one of the five states originally targeted by Connerly that adopted a “civil rights initiative,” Measure 424. It seems ironic that the voting public in a state with

a minority population significantly smaller than that in any of the other states targeted would be convinced that fairness requires race neutrality or color-blind policies. Those who voted for Measure 424 obviously did not believe that diversity is a desirable goal or that the participation of women and minorities is in any way diminished or thwarted in

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the absence of affirmative action.

In the aftermath of the election of an African American man as the 44th President of the United States, we have to be careful to avoid, to borrow a phrase from the economic sphere, irrational exuberance. We’ve seen the numbers and we know that the enrollment of African Americans in many law schools is declining at an alarming rate. The Journal of Blacks in Higher Education reported in November that the number of black students enrolled in thirty of the leading (highest-ranked) law schools declined at rates between four and almost fifty percent between 1999 and 2007. Cornell, Columbia, Georgetown, Stanford, the University of North Carolina and the University of Illinois all had declining enrollments.

Rather than respond to attacks when Ward Connerly or Richard Sander picks a fight, it is really incumbent on us to educate the public and law school administra-

tors about the continuing importance of affirmative action. If all that is changed in law school admissions is to create an “even” playing field, change is a matter of form, not substance. There is no real equality where class barriers and the absence of personal connections disadvantage those who are not privileged and even those who are less privileged. Maybe the days when violence was used to exclude people of color are over, but habitual and unquestioned preferences still influence decision makers.

So, where do we go from here? The Cover Workshop at the AALS Annual Meeting in January will be devoted to a discussion of the “Progressive Agenda after the Election in 2008.” Clearly we have a lot to discuss and we hope many of you will attend. We also hope our members will continue to work with the SALT leadership to create opportunities to continue this dialogue about race, gender, sexuality and other bases for discrimination. Notwithstanding the election of Barack Obama as President, we do not live in a “post racial” moment nor do we live in a time when human rights and human dignity are affirmed in every case.

We believe that part of this discussion should lead us to consider the decidedly unprogressive effect of ballot initiatives. Well-funded national organizations, like Connerly’s American Civil Rights Institute, are not really local. There may be local support for these initiatives but the point is that the local people often are not the ones *initiating* the movement in the state. Perhaps as progressive law professors, we should think about working with those who wish to reform a process that is used to injure vulnerable groups in our society.

We look forward to seeing many of you at the SALT events during the AALS Annual Meeting in San Diego. Meanwhile, we wish you a joyous holiday season!

Executive Director

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What we want to do is to put together an experts' list, both regionally and nationally, on an array of topics affecting the legal academy, how law operates, and the areas of expertise that are the focus of members' research. We are establishing relationships with congressional staffers and media outlets, and want to expand these connections by becoming a trusted source for background information and analysis. But that's only the beginning. We want to help transform your scholarship, where appropriate, into accessible ideas for distribution to policymakers and the media.

For example, Deirdre Bowen, a law professor at Seattle University School of Law, gave a presentation at the LatCrit conference in October on the impact of banning affirmative action on college campuses. The campaigns to eliminate affirmative action in Nebraska and Colorado, this time around, appear to have incorrectly asserted that passage of similar anti-affirmative action initiatives in other states had not adversely affected students of color. However, the under-represented minority students who attend schools in California, Washington, Michigan, and Florida told a different story, according to Professor Bowen.

A recent national study Bowen conducted of 335 high-achieving under-represented minority students from 33 states majoring in the hard sciences shows grim results for those students attending schools in the aftermath of campaigns ending race-based admissions. Asked whether they had encountered overt racism from other students, 43 percent of students who attended school in California, Washington, Michigan, and Florida, where affirmative action is banned, said "Yes." Less than half of that number (20 percent) of students who attend schools in states that allow for race-based admissions answered similarly. The arguments

that race-conscious policies are outdated and that banning affirmative action will lead to greater equality for all students just aren't true. We aren't living in a color-blind society.

What we want to do is to put together an experts' list, both regionally and nationally, on an array of topics affecting the legal academy, how law operates, and the areas of expertise that are the focus of members' research. We are establishing relationships with congressional staffers and media outlets, and want to expand these connections by becoming a trusted source for background information and analysis. But that's only the beginning.

Professor Bowen turned her research into op eds that were disseminated to thousands of media outlets throughout the nation, so that her research could help inform the discussion about the Nebraska and Colorado ballot initiatives and affirmative action generally. We did the same with research conducted by SALT Board member

Angela Onwuachi-Willig, Emily Houh, and Mary Campbell. Their scholarship disclosed that despite claims to the contrary, African American students were not stigmatized by affirmative action admissions policies. Their work was converted into an op ed and distributed in Nebraska, to inform voters before the November 4th election.

This is an invitation to email me your articles and research so that we can create a library of SALT member work on the web, and then see which articles might transform into op eds that members write themselves, for wider distribution. Of course, this service is only available to current SALT members, which leads me to my usual pitch: Join or renew your SALT membership now!

We are building our membership through our network of SALT reps. We are still recruiting, so if you are interested, please give me a call. We are also expanding our membership base through visibility at conferences, emails, snail mail, and just plain nagging. The legitimacy of SALT statements on academic freedom, affirmative action, the bar exam and issues of licensing and curriculum, judicial and governmental nominations, LGBT, and peace post-9/11 human rights depend on a broad membership among all of the tiers of law schools. Our membership can include adjunct faculty, librarians, career and admissions professionals, along with full-time law teachers and administrators. Support SALT now by renewing or joining.

And take a moment to browse through this issue of the *Equalizer* and the SALT^{LAW}.org website to learn more about what the SALT committees have been doing. See something interesting? Email addresses for the chairs of each committee are provided on the website Committees page, under "About Us," so that you can contact a chair and get involved. Know some colleagues who might benefit from an association with SALT? Send me their names and I will invite them to join. It's really that easy.

New Co-Presidents Aldana and Bender and Four New Members Elected to SALT Board

Hazel Weiser, Executive Director

The membership of SALT selected two new co-presidents-elect and four new members of the Board of Governors in the October election. Raquel Aldana, currently at the University of Nevada, Las Vegas—although on her way to the University of the Pacific, McGeorge School of Law in September 2009—and Steven Bender, University of

Oregon, were elected to be the incoming SALT Co-Presidents. Both Raquel and Steve have worked together on the SALT Peace Post-9/11 Human Rights Committee and co-authored the “SALT Statement of Post-9/11 Anti-Immigrant Measures,” available on the SALT^{LAW}.org website. Congratulations, Raquel and Steve!



Co-President Elect Raquel Aldana



Co-President Elect Steve Bender

In addition, the SALT membership elected four new members to the SALT Board. Benjamin Davis, University of Toledo, has energetically chaired the Peace Post-9/11 Human Rights Committee, adding his expertise to SALT’s

recent statements on criminal investigation and prosecution of U.S. officials responsible for authorizing the use of torture. Olympia Duhart, Nova Southeastern University, has already contributed her enthusiasm to the Membership Committee. Jackie Gardina, Vermont Law School, has done extraordinary work organizing the effort to repeal the “Don’t Ask, Don’t Tell” military policy. Ngai Pindell, University of Nevada, Las Vegas, was the force behind last year’s Trina Grillo Social Justice Retreat when it was hosted by UNLV.

SALT warmly welcomes back for an additional term Bryan Adamson, Seattle University; Jane Dolkart; Avi Soifer, Hawai’i; and Kellye Testy, Seattle University.

We thank SALT Nominations Committee members Holly Maguigan, Joan Howarth, and Neil Gotanda for their work in crafting an energetic and creative slate.

Join Us at the Annual SALT Awards Dinner on January 9, 2009, in San Diego

Ruben Garcia, California Western School of Law, and Jane Dolkart

The SALT Annual Dinner will go forward as planned at the Prado in Balboa Park on Friday, January 9, 2009, at 6:30 p.m. Despite the acrimony over the passage of Proposition 8 ending same-sex marriage in California and the \$125,000 donation made to support the proposition by the owner of one of the conference hotels, Douglas Manchester, SALT will hold its dinner in a wonderful alternative location to celebrate our victories and nourish our spirits for the struggles to come.

Balboa Park is San Diego’s “Central Park”—just five minutes from downtown. The Prado is a public facility that is catered by the outstanding Prado Restaurant right next door. The menu will include California fare with special San Diego accents. There will be seafood, beef and vegetarian fare alike. The dinner will feature an outdoor

reception (weather permitting) and plenty of wine and conviviality into the night.

SALT will honor some of the most admired members of the progressive legal movement at the dinner. In past years, the “Great Teacher” Award has been given to a number of luminaries in the academy, including deans, judges, clinical professors, and entire law schools. This year, we will honor Stephen Wizner of Yale Law School for his lifetime of contributions to training dedicated professionals in the service of clients. The M. Shanara Gilbert Human Rights Award has been presented to members of Congress, human rights lawyers, and nonlawyer activists. This year, Rhonda Copelon of CUNY



Rhonda Copelon

Law School will receive the award for her work as a scholar-activist for equality.

We hope that you will join us for a wonderful night of good food and good company on January 9, starting with a reception from 6:30 p.m. to 7:30 p.m. and progressing to dinner from 7:30 p.m. to 9:30 p.m. Go to www.saltlaw.org/salt-annual-dinner by December 15 to reserve tickets and tables, ads for the dinner journal, and to become a sponsoring school.

We’ll be in San Diego to enjoy the charms the city has to offer but also to stand in solidarity with those who continue to fight for full equality under California law.



Steve Wizner

January 2009 Cover Workshop at the AALS Annual Meeting: “The Way Forward: The Post Election 2008 Progressive Agenda”

Camille Nelson, Saint Louis University School of Law

Each year, SALT convenes a Cover Workshop at the AALS Annual Meeting, bringing together faculty and practitioners to discuss important legal issues. This year, the SALT Cover Workshop is titled “The Way Forward: The Post Election 2008 Progressive Agenda.” Confirmed participants include Professors Doug Colbert, Professor of Law, University of Maryland School of Law, and Charles Ogletree, Jesse Climenko Professor of Law, Harvard Law School, and Director, Charles Hamilton Houston Institute for Race and Justice.

The 90-minute Cover Workshop begins at 8:00 p.m. on January 7, 2009, in Room 200 of San Diego’s Thomas Jefferson School of Law, on 2120 San Diego Avenue.

The new Obama administration will be charting troubled terrain. While this is an historic presidency, one founded upon hope and change, President Obama and his Cabinet have inherited a precarious situation. Among other matters, the new administration must quickly assess and deal with two wars, an economic crisis with significant

international repercussions, environmental degradation, a health care crisis and a huge deficit. There is much work to be done, yet resources are constrained. This workshop will use an interactive participatory approach to brainstorm and discuss the priorities and possibilities of a renewed progressive agenda.

Please join us and our panelists. See you there!

SALT Co-President Margaret Martin Barry to Receive Pincus Award at AALS Conference

The AALS, the Section on Clinical Legal Education’s Executive Committee, and the Section’s Awards Committee would like to announce that Professor Margaret Martin Barry, Professor of Law at The Catholic University of America Columbus School of Law, will be awarded the William Pincus Award at the AALS Conference in San Diego, California, at the Clinical Section lunch on Wednesday, January 7, 2009. The Pincus Award honors one or more individuals or institutions of clinical legal education who have demonstrated excellence in service, scholarship, program design and implementation, and other activity beneficial to clinical education or to the advancement of justice.

Professor Barry exhibits these qualities in abundance. She has been a tireless advocate for clinical legal education, and she has fought to protect and enhance the role of clinics and clinical faculty in law schools in numerous ways. In addition to help to build a strong clinical program at her own law school where she is an inspiring teacher, she has contributed to the development of clinical legal education in the United States and

in other countries through her work with many organizations and by mentoring other clinical faculty. Her service to the clinical community includes serving as a Chair of the Clinical Section, a President of CLEA, an active member of Global Alliance for Justice Education (GAJE), and frequently presenting at conferences in the United States and in other countries. She has continued her work to advance the development of legal education and the incorporation of clinical legal education and the justice mission into law schools by currently serving as a Co-President of SALT and serving as Vice-Chair of the ABA Section on Legal Education and Admissions to the Bar Standards Review Committee. She is the author of important scholarship on clinical legal education, clinical teaching methodology, access justice, and family law issues. Through her scholarship, Professor Barry has made a significant contribution to advancing clinical education as well as justice.

Professor Barry’s work toward advancing the cause of clinical education, her scholarship, and her inspiring commitment to her students and her clients make her a worthy



Margaret Martin Barry

recipient of the 2009 William Pincus Award.

The members of the 2008 Section on Clinical Legal Education’s Awards Committee are Baher Azmy, Seton Hall Law School; Gordon Beggs, Cleveland State University College of Law; Deborah Epstein, Georgetown University Law Center; Zelda Harris, University of Arizona College of Law; and Peter Joy, Chair, Washington University in St. Louis.

In the Wake of State Constitutional Amendments Barring Same-Sex Marriage, SALT Will Continue to Work for Marriage Equality

Jane Dolkart

On November 4th, as one barrier of intolerance was shattered, others were erected, reminding us that the struggle for equality is far from over. In the same election in which Californians gave President-elect Obama 61% of their vote, 52% of voters cast ballots to take away the right of same-sex couples to marry. Never before has a group whose members currently enjoy a basic constitutional right had that right taken away. Arizona and Florida also added constitutional amendments to prevent same-sex marriage, and in Arkansas, voters approved a ban on adoption or foster parenting by unmarried couples.

These defeats are hardly the end of the battle. As the *New York Times* so eloquently put it in a November 6, 2008, editorial, “We do not view these results as reason for despair. Struggles over civil rights never follow a straight trajectory, and the ugly outcome of these ballot fights should not obscure the building momentum for full equality for gay people, including acceptance of marriage between gay men and women.”

The campaign over Prop 8 was the most expensive social issue initiative in history, with the two sides spending over \$70 million. More than 50% of the money raised in support of Prop 8 came from Mormons who were encouraged to contribute by the Mormon Church, which also led a massive misinformation campaign concerning the impact of same-sex marriage.

In working to defeat Prop 8, an enormous coalition of individuals and organizations from all walks of life banded together to work for equality. The leaders of this coalition have vowed to place initiatives on the California ballot to overturn Prop 8 for as long as it takes. Since November 4th, marches and demonstrations protesting Prop 8 have taken place all over California, many of them on Sunday mornings in front of

Mormon Temples. A lawsuit has been filed reviving arguments made in an effort to keep the initiative off the ballot. The basic argu-

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ment is that Prop 8 is not an amendment to but a revision of the California Constitution, because it would severely compromise the core constitutional principle of equal citizenship and strip courts of their authority to enforce basic constitutional guarantees. SALT will continue to support the effort for marriage equality in whatever way it can.

The success of Prop 8 puts into question the 18,000 same-sex marriages performed after the California Supreme Court decision validating same-sex marriage and before the passage of Prop 8, including the marriage of our own former SALT Co-Presidents Pat Cain and Jean Love. Governor Schwarzenegger

has declared these marriages valid.

On far more positive notes, on October 10, 2008, the Supreme Court of Connecticut became the third state Supreme Court to interpret its state constitution to require the state to allow same-sex marriage. Voters rejected a proposed constitutional convention through which opponents of same-sex marriage wanted to overturn the decision.

SALT has also voted to sign on to a letter urging a group of 15 major legal employers to allow their attorneys to self-identify as GLBT. The letter originates from Andrew Chapin, who chairs the NALP GLBT committee. At present, more than 60% of NALP's leading employers invite such self-identification, and NALP has sample language that can be used to email employees once a year for such information. Such self-identification, or its lack, sends a strong message concerning an employer's culture and its receptivity to openly gay employees.

Academic Freedom Committee Requests Suggestions for “Best Practices” Manual

Natsu Saito, Georgia State University College of Law

SALT's Academic Freedom Committee continues work on its “best practices” analysis. We hope these efforts will result in a useful guide for teachers, administrators, and students confronting the issues that can arise as efforts to encourage critical thinking encounter political pressure. If you have suggestions of issues that need to be addressed, or specific situations you'd like SALT to weigh in on, please contact SALT Executive Director Hazel Weiser at hweiser@saltlaw.org or (631) 650-2310.

Post-9/11 Human Rights Committee Identifies Priorities for the Obama Administration, Invites Participation from SALT Members

Raquel Aldana, William S. Boyd School of Law, University of Nevada, Las Vegas

President-elect Barack Obama's victory of hope comes with a strong moral mandate for change. During his campaign, Senator Obama made laudable promises, including promises on issues of extreme importance to the Post-9/11 Human Rights Committee and to SALT members. Millions of voters, including first-time voters of color and

We invite you to craft (or help us craft) policy statements with specific plans for executive or congressional action on any of our priority issues or others that you propose.

immigrants, forged a new democracy to elect our new president. With his election, President-elect Obama gained the opportunity to restore the rule of law and reclaim the nation's moral standing in the world. But this opportunity is not his alone. Your activism, engagement, vision, hope and visible resilience are key to this grass-roots civil rights restorative journey.

This committee has identified several priorities that we will seek from the new administration. These include ending the war in Iraq; shutting down Guantanamo Bay and granting due process to the detainees; eradicating torture and holding accountable those who perpetrated it or condoned it; restoring privacy rights; and responding humanely to immigrants by, for example, halting raids and instituting effective immi-

gration reform. Some of this work is already underway. Even with the looming task of rebuilding the economy, this President-elect is already working toward some of these goals. Obama advisers are crafting plans to close Guantanamo Bay and prosecute some of the detainees, perhaps even in open trials in U.S. civilian courts. This plan alone will require the creation of a new legal system likely to be opposed by some members of Congress. It will also require determining the fate of the 250 detainees already cleared for release after years of detention. Much of all of this is likely to be unpopular with the public. Without open and persistent public support for such efforts, President-elect Obama will not move as far or as quickly as many SALT members might like.

This committee is calling on you to help us. We invite you to craft (or help us craft) policy statements with specific plans for executive or congressional action on any of our priority issues or others that you propose. We would then ask you (or others) to turn these policy statements into op-eds to improve the visibility of these issues with the public. When good plans are put forward, we will call on you to pester your members of Congress to do the right thing. At a minimum, we would appreciate it if you would write us to give us your ideas on what we should be doing or how we should be responding to these monumental tasks ahead. We cannot be complacent if we want real change to happen.

Committee on Issues in Legal Education Continues Work on Alternative Assessment Methods

Andi Curcio, Georgia State University College of Law

The SALT Committee on Issues in Legal Education [formerly known as the Bar Exam Committee] is continuing its work to help develop alternative assessment methods, with an ultimate goal of facilitating changes in the way states license new lawyers. One of the Committee's goals is to broaden access to legal education and the bench and bar by moving away from narrow standardized tests as a method of assessing who will make a good lawyer.

The Committee currently is working on two projects. The first involves identifying states, and professors and others in those states, willing to explore an alternative licensing program such as the Daniel Webster Scholar Program in New Hampshire. In that

program, new lawyers are licensed based upon their performance of professional skills and judgment in a series of simulations and other experiential courses during their second and third years in law school. For more information about this program, see www.piercelaw.edu/websterscholar/.

The Committee's second project involves working with faculty around the country who want to begin empirically validating assessment methods. For both of these projects, we have been in the information-gathering stages. Next semester, we will begin long-range planning and implementations. If you are interested in either project, please contact Andi Curcio, Committee Chair, at acurcio@gsu.edu.

SALT Files Amicus Brief in Right-to-Counsel Case

Doug Colbert, University of Maryland School of Law

At a time when we are reading about the crisis in public defenders' rising caseloads and their inability to adequately represent indigent defendants, SALT members should take pride in SALT's decision to participate as an amicus in a *Gideon* right to counsel case to be argued before Maryland's high court on January 8th or 9th. This appeal has statewide and national implications for guaranteeing a poor person's representation by a court-appointed lawyer when first appearing before a judicial officer. In *Richmond v. District Court of Maryland*, SALT filed a brief that joined five others that spoke for a powerful coalition of fifteen public interest, human rights, and law professor groups supporting an accused poor person's constitutional and statutory right to counsel at the initial appearance of a criminal proceeding.

Are you among those surprised that 45 years after the landmark *Gideon* decision established indigent defendants' Sixth and Fourteenth Amendment right to counsel, an accused poor person still remains without counsel after a criminal prosecution has commenced? You are not alone. Having engaged in decade-long reform efforts with my Maryland Law School clinic students, I still witness the surprised reaction when lawyers and non-lawyers learn that the constitutional guarantee to counsel does not exist for people who cannot afford private counsel at this crucial time when their liberty is initially at stake and when an attorney must commence investigation and preparation of a defense.

Indeed, it is not only followers of "Law and Order" who believe that the scene they regularly view of a lawyer standing next to a defendant in New York City, arguing for pretrial release before a judge, is repeated in other states and local courtrooms. Practicing lawyers in most major U.S. cities are accustomed to representing lower income and

working people at the initial bail proceeding. They, too, have difficulty accepting that cur-

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rently only eight states guarantee assigned counsel's representation of indigent defen-

dants. Law professors who teach and who author criminal procedure textbooks usually take class time to applaud *Gideon's* ruling, but give scant attention to the reality of non-representation in twenty states and in most jurisdictions within the remaining states.

Consequently, SALT's amicus brief had special meaning because it speaks for the country's law professors most interested in issues of social and equal justice. SALT's brief should be applauded for having taken on the most difficult and sweeping of the three legal arguments raised, namely that the Sixth Amendment's right to counsel is triggered at this initial appearance because it is a "critical" stage of a criminal proceeding. As I describe below, SALT and the amici should also be congratulated for submitting their briefs under extraordinary time pressures that are best understood by providing a brief background of the collaboration between the private bar and a law school's clinical public interest program that led to the filing of the *Richmond* class action lawsuit.

Since 1998, the Maryland Law School Access to Justice students have pursued legislative and administrative reforms to extend indigent defendants' right to counsel to the bail stage. Achieving partial success, they turned to a litigation strategy that they hoped would raise the broad issue before the state's highest court. Clinic students and their faculty supervisor sought the support of the private bar. In March 2006, students made a full presentation to interested partners at Venable, Baetjer & Howard, Maryland's largest private law firm. The students' impressive argument persuaded the firm that the importance of the suit required their involvement. Two partners accepted the case on a pro bono basis.

Working closely with the pro bono at-

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SALT Files Amicus Brief

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torneys, Access to Justice clinical students helped draft the complaint that was filed in November 2006. The suit alleged that there is a statewide practice of denying counsel at defendants' initial appearance before a District Court Commissioner, a practice that prejudices an accused's rights to pretrial liberty and to a fair trial. *Richmond v. District Court* focuses specifically on what occurs in Baltimore City when an accused first sees a District Court Commissioner, a hearing that the NAACP Legal Defense Fund's amicus brief described as a "unique type of a judicial proceeding" because it lacks the usual safeguards: The hearing is held inside the belly of the city's pretrial jail and is closed to the public; the proceeding is neither recorded nor transcribed; the prosecutor frequently engages in ex parte communications with the Commissioner regarding the appropriate bail; and the defendant has no access to counsel or to family while sitting opposite the Commissioner on the other side of a plexiglass divider.

The *Richmond* suit raised three legal arguments against denying counsel to indigent defendants: First, indigent defendants have a statutory right to counsel under the Public Defender Act; second, they have a Fourteenth Amendment due process right to a lawyer to protect individual liberty (*Powell v. Alabama*), and third, they have a Sixth Amendment right to counsel ("critical stage").

Predictably, the lower Baltimore court rejected the arguments. After we filed an appeal in the intermediate appellate court in the summer of 2008, the Maryland Court of Appeals—the state's highest court—took the extraordinary action of granting certiorari sua sponte in late July. The high court scheduled the filing of our brief in early September. While the Venable lawyers and I knew we would meet the deadline, we agreed

that gaining outside amicus support could prove pivotal and influential. I spent the month of August reaching out to national legal defense and human rights groups, such as the NAACP LDF, ACLU, Brennan Center for Justice, National Association of Criminal Defense Lawyers and Legal Aid & Defenders Association, the ABA and Maryland State Bar Associations, Maryland and Baltimore law school professors, and numerous Maryland statewide organizations, including the Public Justice Center. While I have taken on many difficult causes, I found none more challenging than locating available lawyers in August who were willing to draft an amicus brief and persuading an organization to commit itself to a streamlined amicus review process. Most of the groups agreed to streamline their usual process and to participate as amicus.

The SALT Board demonstrated its capacity once again to respond and to act when people's legal rights are at stake. Despite the summer hiatus, Board members responded immediately and quickly reached consensus that an amicus brief should be filed. Volunteer law professors and students, following Brooklyn Law School Professor Ursula Bentele's excellent working draft, submitted an excellent draft that made a convincing argument for why an accused's initial appearance should be regarded as a critical stage and mandate counsel's presence and advocacy. SALT Co-Presidents Margaret Barry and Deborah Post, and Executive Director Hazel Weiser, somehow found time in their incredibly busy schedules to read and edit drafts, while SALT member Professor Leigh Goodmark provided the local counsel that enabled the suit to be filed. Volunteer Maryland law students and administrators aided Professor Goodmark in serving the amicus brief.

SALT has built a well-deserved reputation for championing the critical legal and human rights issues of our day and for taking a leadership role in educating students and the

bar to protect the rights of people considered most vulnerable to government action that deprives them of their fundamental freedoms. In the criminal justice domestic arena, though, SALT has been less active, despite many race and class discrimination issues remaining unchallenged. SALT took advantage of the opportunities presented in *Richmond* to address these issues and to further *Gideon's* promise of equal justice so that it becomes a reality for every person lacking funding for private counsel.

SALT answered the call for help. It submitted a powerful, well-written amicus brief that provides a sound basis for states, and for the U.S. Supreme Court, to consider the initial appearance as requiring assigned counsel's presence. SALT's participation in *Richmond* represents a huge step for the membership and for law professors to take an active role in educating students about the glaring inequities that now exists in our nation's lower criminal courts, a discrepancy that frequently results in African Americans and lower income defendants disproportionately being denied a lawyer when accused of a criminal offense.

Sixth Annual Junior Faculty Development Workshop a Great Success

Steven Bender, University of Oregon School of Law

Held Thursday, October 2nd, and Friday, October 3rd, at Seattle University School of Law before the annual LatCrit conference, the sixth annual Junior Faculty Development Workshop was another success. Co-sponsored by SALT and LatCrit, this annual workshop is designed primarily for pre-tenure professors, including clinicians, as well as those on the market or contemplating a teaching career. This year, almost 100 participants attended the workshop. Seattle Dean and SALT Board



Frank Valdes

member Kellye Testy kicked off the workshop on Thursday morning, and over the next day and a half, panels addressed SALT and LatCrit principles and values, progressive teaching, scholarly agendas, and professionalism and balance. (To see Frank Valdes's presentation on the principles and values of LatCrit, check out the link on SALT's Faculty Mentoring page, www.saltlaw.org/faculty-mentoring.) On Thursday afternoon, candidates in the job market delivered mock job talks with critique from the faculty members in attendance. That evening, the group shared a spirited dinner over a live broadcast of the vice-presidential debate, followed by break-out discussions into career groupings of coming-up candidates, just juniors, suddenly seniors, and totally tenureds.

This annual workshop aims to support the success of progressive and critical faculty as scholars, teachers, and activists, and to provide progressive faculty with a ready "network" for future professional advice. Several SALT Board members contributed to the workshop as planners, speakers, and participants. Particularly deserving of credit are organizers and SALT Board members Ruben Garcia (California Western); Adele Morrison (Northern Illinois/visiting at Washington University-St. Louis), a workshop committee co-chair; Camille Nelson (Saint Louis/visiting at Washington University-St. Louis); and Angela Onwuachi-Willig (Iowa). Other organizers from outside the SALT Board also contributed, including Catherine Smith (Denver), a committee co-chair; Rachel Anderson (UNLV); Mario Barnes (Miami); Jackie Bridgeman (Wyoming); Jennifer Chacon (UC Davis); Frank Rudy Cooper (Suffolk); Kaaryn Gustafson (Connecticut); Osamudia James (Miami); Kevin Maillard (Syracuse/visiting at Fordham); Christian Sundquist (Albany); and Rose Cuison Villazor (SMU). A majority of these organizers credited are current SALT members. Ad-



Kellye Testy

ditionally Steven Bender, the author of this article and SALT Co-President-Elect; Bob Chang (Seattle); Nancy Ehrenreich (Denver) and Beth Lyon (Villanova), both SALT Board members; and Deborah Post, current SALT Co-President, contributed by formally participating in panels and mock job talks.

Next year's workshop will kick-off the annual LatCrit conference in Washington, D.C., sponsored by American University's Washington College of Law. As they become available, details will be posted on the SALT and LatCrit websites.



Holly Maguigan and Camille Nelson

Commemorating 1808: Examining the Legacies of the Federal Prohibition on Importing Slaves

Benjamin Davis, University of Toledo College of Law

On October 24th and 25th, 2008, a distinguished group of scholars gathered at the University of Toledo College of Law to commemorate the 200th anniversary of the 1808 federal prohibition on the importing of slaves.

The enormity of the history became abundantly clear to all the participants, as did the burden and legacy of slavery in the United States today. Professor Evelyn Wilson started off the conference by having us come to terms with her ancestors, who were bred to make slaves. Professor Sakui Malakpa pointed out the racism in the American Colonization Society's principal members, which led to both free and former slave blacks being repatriated to Africa where, to the locals, they were just another type of settler bent on controlling the country. The keynote address was given by Congressman Donald M. Payne, who described the sinuous turns his bill to commemorate the 200th anniversary had taken in Congress. Professor Jason Gillmer told the remarkable story of the few free blacks in Texas who were able to maintain their presence pursuant to legislation supported by white neighbors in the Texas State House. There, black Texans owned land and slaves and operated at the intersection of white supremacy and slavery in a complex space. Professor Roy Finkenbine spoke to the cycles of optimism and despair that have operated in the African-American communities over the centuries as each new group comes to terms with the reality of their epoch in the United States. Professor Angela Mae Kupenda helped us look at the progress of African-Americans from slavery as a road to greater autonomy—moving from objects to subjects capable of contracting.

Family history and the legacy of 1808 filled many of the presentations. Zeno and George White, Ohio residents, told the story

of their great-grand uncle George White, who had been the last Congressman from North Carolina during Reconstruction. Congressman Payne remembered White's farewell speech to Congress in January 1901. James Dewolf Perry presented and led a discussion of his family's film, "Traces of the Trade: A Story from the Deep North," which outlines the slave trading dominance of his ancestor operating out of Bristol, Rhode Island.

Professor Margaret Barry addressed the trans-Atlantic legacy of the slave trade in telling the story of her father—a fighter who was not permitted to fight in England for championships under a color line—who ultimately came to the United States and made a life here for himself and his family. Dorothy M. Davis spoke of her childhood growing up in Liberia and Tunisia, far away from bus boycotts in an almost parallel universe of privilege—and at the same time having to come to terms with her blackness upon arrival in the United States at age 6. Dr. Carter Wilson explored numerous paradoxes, going back to Roman times and into the future, to help us see the complex nature of the concept of race.

In the next panel, Professor Karen Bravo demonstrated the analogy between the slave trade and sexual trafficking today and what that portends for future action. Naomi Twinning reminded us of great Toledoans such as Howard, Ashley, and King, who in the 19th century helped "freedom seekers," as the Native-Americans called them, find a way to freedom. In a bearing-witness segment, Professor Deleso Washington pointed out to all the second narrative of the slave women on which the father of gynecology, J. Marion Sims, experimented in perfecting his instruments. Professor Peter Linzer pointed out the difficulty of marshalling support for black

freedom as the dominant classes frequently have moments when they have other "fish to fry"—a sort of permanent deterrent to rapid progress. Professor Steven Kimber spoke by video on the predicament of those slaves who were freed after the Revolutionary War and were British loyalists. After a go in Canada, many of them were frustrated by the effort to dominate them by the white British loyalists who also were sent to Shelbourne, Nova Scotia. Finally, many of these African-Canadians returned to Sierra Leone to try—like those in Liberia—to make a new life back in Africa.

All told, the students and faculty had a remarkable experience examining the legacies of 1808.

At the end of the day, the sheer burden of all the history described back to the Romans and forward into the future weighed down on all of us in the room. We endeavored to keep faith with the ancestors—both slave and slave owner. We felt that all those ghosts of the middle passage of man's dehumanization of man are with us still, to warn us not to allow ourselves to be dehumanized by actions done today. We saw how threads from slavery remain present in our lives today in such deep and unconscious ways that, once they are revealed, one is overwhelmed by how deep is our debt to that past. Far more than truth and reconciliation or reparations, we were confronted with the painful reality that the initial task may just be to allow ourselves permission to recognize the legacies of slavery and of 1808.

SALT Honors SALT Historian Joyce Saltalamachia and SALT Webmaster Richard Chused

Hazel Weiser, Executive Director

On November 13th, a rainy Thursday evening, in the Wellington Conference Center at New York Law School, NYLS Dean Richard Matasar and SALT co-hosted a cocktail reception to honor the service of Joyce Saltalamachia as SALT's historian and Richard Chused as SALT's webmaster. Our long-serving SALT historian Joyce is also retiring as librarian



Joyce Saltalamachia

at NYLS. Richard, after years at Georgetown University Law Center, began teaching at NYLS. SALT members from around New York attended the elegant event.

The author of this article began the evening's program with a thank you to Dean Matasar. When we asked Dean Matasar if he was interested in co-hosting the evening, he didn't hesitate, a sign of his generosity and commitment to his faculty.

Dean Matasar then spoke highly of Joyce after years of service to NYLS and of Richard as a new member of the NYLS faculty.

SALT Co-President Deborah Post, in addition to speaking about Richard's long service as SALT's first webmaster, discussed how important his early scholarship on gender has been to bringing more women into law teaching. "Richard is a true feminist," she said.

Former SALT Co-President Holly Maguigan read comments from Howard



Deborah Waire Post and Richard Matasar

Glickstein, another former SALT president. "I know that Joyce will remain an active participant in SALT's work. She is a SALT person we would not want to do without."

Joyce closed the program with how and why she became involved with SALT. "Things

were very disorganized," she remembered. "Librarians like to bring order."

The November 13th gathering was the first of several regional events that SALT is planning as a way to bring SALT members together socially.



Richard Chused and Elizabeth Langer

SALT's Annual Social Justice and Public Interest Retreats: Coming Soon to a Location Near You

Bob Lancaster, Paul M. Hebert Law Center, Louisiana State University

SALT sponsors three annual social justice and public interest law retreats, and SALT members are encouraged to participate in at least one of the retreats and to encourage your students to attend. The retreats are designed to foster a community of law teachers, students, and practitioners who are interested in social justice and progressive issues. All three retreats are open to interested law students and law faculty throughout the country.

SALT began sponsorship of social justice retreats in 1988 with the Robert M. Cover Social Justice and Public Interest Law Retreat. Steve Wizner documented the history of the Robert Cover Retreat in a 2004 *SALT Equalizer* article, a history that informs all three SALT retreats. Wizner wrote: "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."

The 2009 Cover Retreat will be held from Friday, February 27, through Sunday, March 1, 2009, at the Sargent Center in Peterborough, New Hampshire. The 2009 Cover Retreat theme is "Energizing Your Interest in Public Interest Law." The keynote speaker will be Ezra Rosser, a 2003 graduate of Harvard Law School and currently an Assistant Professor of Law at American University College of Law. Professor Rosser will be speaking on the topic of "Public Interest, Individual Responsibility, and Markets." Also speaking are William Eubanks, a 2007 graduate of the environmental LLM program at Vermont Law; Rafael Cancel-Vazquez, a 2008 graduate of the University of Puerto Rico School of Law and Echoing Green Fellow; Ben Smilowitz, a 2009 J.D. Candidate from University of Connecticut School of Law and also an Echoing Green Fellow; as well as Priti Rhadakrishnan and Tahir Amin, a husband and wife team of Echoing Green Fellows who hold law degrees from the University of Westminster School of Law and the NYU School of Law. The Cover Retreat regulars will also join the event this year: John Brittain from the Lawyers Committee for Civil Rights; Danny Greenburg of Schulte, Roth and Zabel; Professor Chris Northrop from the Juvenile Justice Clinic at Maine Law; Zach Heiden from the Maine ACLU, and many others. The Cover Retreat promises to be informative and a lot of fun. Salsa dancing lessons are scheduled for one night.

The Cover registration form and further information can be found on the retreat website at www.law.yale.edu/news/cover-retreat.asp or by contacting Heidi Pushard at

heidi.pushard@maine.edu.

The Trina Grillo Social Justice and Public Interest Law Retreat will be co-hosted this year by Stanford Law School's Levin Center and the Seattle Law School's Access to Justice Institute. The Grillo Retreat is in its 11th year and will be held at Stanford Law School on February 20-21, 2009. The retreat honors the memory of Trina Grillo, a dedicated social activist and justice advocate, scholar and teacher. First held in 1998, the Grillo Retreat offers public interest-minded law school students an opportunity to interact with lawyers, legal academics, and other professionals who can offer guidance and act as role models for the variety of ways in which one can serve the public interest. By bringing together students, faculty, and practitioners, the retreat can generate creative ways to use the law as an instrument of social change.

This year's Grillo Retreat, entitled "Global Social Justice Lawyering: Across Boundaries and Disciplines," will promote an informative exchange among practitioners, students and academics about a broad range of themes. Topics include: the interrelationship of human rights, environmental degradation and international economic development; the emerging international disability rights movement; and the application of international human rights law to civil legal services. In addition to substantive panels, the retreat will include a panel on pro bono and career opportunities in the realm of public international law, as well as a free training on freeing political prisoners. Confirmed Grillo speakers include Jared Genser, President of Freedom Now; Michele Magar of Ratify Now; Marcia Levy, Special Counsel for Pro Bono Initiatives at Sullivan & Cromwell; Barbara Olshansky,

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Professor of Human Rights at Stanford Law School; Maran Turner, Executive Director of Freedom Now; Kyong-Whan Ahn, Chairperson of the National Human Rights Commission; Raquel Aldana, Professor of Law at U.C. Davis; Martha Davis, Professor of Law at Northeastern University; Constance de la Vega, Academic Director of International Programs at U.S.F. Law School; Dolores A. Donovan, Professor of Law and Director of International Programming at U.S.F. Law School; Kathleen Kelly, Clinical Teaching Fellow at Stanford Law School; Svitlana Kravchenko, Professor of Law at the University of Oregon; Michelle Leighton, Director of Human Rights Programs at U.S.F. Law School; Raven Lidman, Clinical Professor of Law at Seattle University; Paula Rhodes,

Professor of Law at the University of Denver; Ron Slye, Associate Professor and Director of International and Comparative Law Programs at Seattle University; Beverly Watson, CEO of Global Imprints; and Neta Ziv, Professor of Law at Tel Aviv School of Law.

For more information on the Grillo Retreat, contact Consortium Co-Chair Susan Feathers, Executive Director of the Stanford Law School Levin Center at feathers@law.stanford.edu, or Co-Chair Diane Singleton, Director of Seattle Law School's Access to Justice Institute.

The Norman Amaker Social Justice and Public Interest Law Retreat will be held early this year, from February 6-8, 2009, at Camp Courage in Maple Lakes, Minnesota. The theme of the 2009 Amaker Retreat will center around Economic Justice. SALT members wishing to participate in the 2009 Amaker Retreat are encouraged to do so.

The move to Minneapolis-St. Paul creates a new opportunity for collaboration among the Minnesota Justice Foundation and the four area law schools: William Mitchell College of Law, St. Thomas University School of Law, University of Minnesota Law School, and Hamline University School of Law.

For information on how you can participate in the Amaker Retreat, please contact Cathy Powell Finnegan at cmpowell@stthomas.edu.

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