The Journal

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IN THIS ISSUE

Executive Director's Report

We did not let the rain dampen our enthusiasm or stop the fun at the NNLSO Conference held in Washington, D.C., last April. The sessions drew good attendance despite some members having a fear of flying and some not able to attend due to law schools' freezing travel monies. AACRAO also experienced an overall drop in attendance. Current budgetary constraints bring up an issue that NNLSO may have to face in the coming years. The delivery system may have to expand from the annual meeting to Web-based delivery, conference calling, or to regional meetings, although the mystique of Las Vegas may be a big draw next year. (Start saving those quarters, dimes and nickels.)

In our nation's capital, NNLSO saw a changing of the guard. After four years of leading the NNLSO membership, Executive Director Ken Pokrowski stepped down. Ken will, however, serve on the Executive Committee as an *ex-officio* member, so your fears are laid to rest that I will be allowed to lead you down the wrong path. Ken, thanks for your outstanding leadership. I know that I can count on your help. Members also expressed gratitude and thanks to outgoing board members Loretta Lyons-Pick (Registrar, Detroit-Mercer), Julia Yaffee (Assistant Dean for Student Services, Santa Clara), Pat Trainor (Registrar, New Mexico), Jodie Needham (Registrar, John Marshall), and *The Journal* Editor Alicia Cramer (Assistant Dean of Admissions, South Texas).

New board members are Jodie Needham (Registrar, John Marshall), Marjorie Zhou (Registrar, San Diego), LeAnn Steele (Registrar, Wake Forest), and *Journal* Editor Judith Calvert (Registrar, Yale).

The Area Representatives Standing Committee was appointed again. We would like to thank Kaye Castro (Associate Dean for Student Affairs, Ave Maria), LeAnn Steele (Registrar, Wake Forest), and Marjorie Zhou (Registrar, San Diego) for directing regional activities for the past two years.

New area representatives joining the committee are: Northeast Region, Mary Ellen Durso (Assistant Dean and Registrar, Quinnipiac) and Erin Morin (Director of Academic & Business Services, Quinnipiac); Midwest Region, Chezarae Rose (Registrar, Ave Maria) and Loretta Pick-Lyon (Registrar, Detroit-Mercer); West Region, Mary Morgan (Registrar, Seattle), Southeast Region, Patsy Crammer (Registrar, Mercer).

You will be receiving a phone call or e-mail from your area representatives in the near future (if not already). Their charges are to (1) update directory information and (2) increase communication within each region.

At the luncheon/business meeting, major revisions to the NNLSO constitution and bylaws were presented. The membership voted to accept all changes. Look on the NNLSO Web site to read the revised bylaws (it's a page turner). The revisions reflect organizational changes that have occurred over the years within NNLSO.

To see what your Executive Committee (used to be Board of Directors…bylaws change) has been doing, read the summary of minutes contained in this issue of the *Journal*.

Posted on the NNLSO Web site are the results of the latest salary/staff survey. Use it to your advantage for a request for a salary increase. Thanks to Chris Matheny (new first-time dad and Assistant Dean for Student Services, Chicago-Kent) for administering and calculating the results once again.

A primary goal of the NNLSO Executive Committee is to plan relevant sessions for the upcoming Las Vegas meetings and to determine the best ways in which to meet the needs of our membership so as to assist you in doing your job better. However, we need to hear from you to know what you expect and want from us. Contact a member of the Executive Committee or contact your area rep with suggestions, ideas, or gripes (you will feel better). My e-mail address is trainor@law.unm.edu.

Wishing all of you success as we start yet another school year. Hope your first-years are the best class yet!!

Pat Trainor, Executive Director
Registrar, University of New Mexico School of Law

Brown v. Board of Education Revisited: 50th Anniversary Symposium

Saturday, November 1, 2003
Washburn University–Memorial Union
Washburn Room

8.0 CLE CREDIT HOURS

About the Seminar

Groups around the country will celebrate the 50th anniversary of the landmark decision *Brown v. Board of Education* on May 17, 2004. It is especially appropriate that Washburn University School of Law bring together a diverse group of practitioners and scholars to discuss the case, its implications and its legacy. From filing to final arguments, Washburn Law graduates played vital roles in *Brown v. Board of Education.* The case was originally filed by three Washburn Law graduates, two graduates represented the Topeka School Board at trial, and another graduate, an assistant attorney general, argued on behalf of the state before the Supreme Court. Meanwhile, spirited discussion ensued in both legal and non-legal communities in Topeka, Kansas. The decision in *Brown* and its consequences continue to be controversial. As professor and symposium coordinator Ronald Griffin states:

> In *Brown v. Board of Education*, the Justices said that the states could not make laws to perpetuate the social enclaves set aside for whites – e.g., public schools, pools, hospitals, theatres, and restaurants. But white privileges not mandated by state law survived the *Brown* decision. In *Brown II*, whites could capitalize upon inequalities created by segregation and control the pace of change. In *Milliken v. Bradley*, the Justices caved in to social pressure and politics. They relieved the state of its duty to tackle public school inequalities created by policies and practices of segregation.

Washburn University School of Law invites you to join the discussion on November 1, 2003, as we explore the many perspectives and legacy of *Brown v. Board of Education.*

Betty Fischer, Assistant to the Dean for Administration
Washburn University School of Law

Brown

Ronald C. Griffin
Professor of Law, Washburn University

Where can the good sit and not be taken by evil? In the 1950s, there was no answer for that. Too many people lived in a world they did not understand. Some clung to nostalgia. Others drifted from one ideology to another. A few died in bewilderment. Many were broken by the nutty acts of deranged white men. The question was: what could ordinary men, average politicians, and government do to put bigotry and hatred against a whole people to rest? Some thinkers had uplifting answers. "Petition the government for freedom" was one. If granting freedom was something politicians loathed doing, parents with the aid of good lawyers had to fight for the freedom of their children.

Experts claimed that there was a correlation between the quality of one's education, a child's personality development, and the amount of money a school district spent on children.

What was the battleground? The answer was public schools. What were the goals? To establish an emotional distance between youngsters, unsullied by racism, and adults who were hostile to them; to claim a psychological domain where children (soon to be adults) could make autonomous decisions unselfconsciously; to foster happy feelings in children about their immediate environment and what they could achieve with effort; to build places of learning where youngsters could collect educational assets they'd need to live productive lives as adults.

What were the campaigners' weapons? The first was *Plessy v. Ferguson.*[1] The second was equality. The third was equity jurisprudence. The fourth was the *Federal Rules of Civil Procedure.*[2] The fifth was the equal protection clause in the Fourteenth Amendment. The sixth was liberty. The seventh was the due process clause in the Fifth Amendment. We will examine these instruments in the text under subheadings entitled Background, Breakthroughs, Public Schools, The Crunch, and Social Fallout.

Background

It was a grim time in America.[3] Blacks were a minority in a sea of white folks. Too many were labeled persona non grata. Most lived on the fringe of society. Life expectancy was short. Living wages came from agricultural labor and domestic work. Blacks were tenant farmers in the South, petty government employees in the District of Columbia, and ghetto dwellers everywhere. Blacks were systematically excluded from jury service, partisan primaries, and the ballot box. They were criminalized by the media[4] and terrorized by the police.[5] They were denied union membership and consigned to menial jobs in the workplace.

In booming industries like steelmaking, and automobile manufacturing in the Midwest, collective bargaining agreements were rigged to demean, marginalize and, in all too many cases, exclude blacks. Black teachers were underpaid; schools were underfunded; facilities were Spartan; books were out of date; curriculums were skimpy and antiquated; school districts had fallen into the habit of cutting salaries for black teachers to subsidize other programs; and, for too many children, high school and college training were far fetched goals.

This nation was opposed to social change. The laws were rigged against black men. The states had the power to prevent race mixing.[6] The Supreme Court had denied Congress the power to reign in the liberty interest of entrepreneurs bent upon the promotion of racial separation.[7] Citizens were endowed with the power to use contracts to deny home owners the option to sell their dwellings to blacks.[8] The FHA condoned, applauded, and promoted this practice. *Plessy v. Ferguson* was everybody's social mantra. The separate-but-equal doctrine governed race relations in the United States.

Breakthroughs

Murray v. Maryland was a breakthrough case.[9] An action was brought to integrate the University of Maryland Law School. At the time Donald Murray was a Baltimore resident. He was an Amherst graduate who came from a prominent family. He was arbitrarily and wrongfully rejected for law school at the University of Maryland. Since he was fully qualified for admission, a good student, and neither state law nor the University charter barred him, the NAACP filed a petition in equity to secure a space for him.

In *Gong Lum v. Rice*, the Supreme Court upheld a state's right to define, segregate, and assign students to "colored" schools.[10] Where there were no schools for colored students to attend, the state (intimated the Court) had to integrate blacks and whites. Since that was the matter before the Baltimore City Court in the Law School case, Murray's admission should be ordered under a writ of mandamus. The presiding judge heard the argument and granted the writ. The Maryland Court of Appeals sustained the lower court's decision.

Carter v. School Board of Arlington County, was another breakthrough case.[11] African-Americans were spread like an oil film across the water in Arlington County, Virginia. Officials had established segregated schools. A black youngster registered for a high school course she could

not get. She brought an action in equity to get one. The United States District Court denied her relief. With *Plessy* in mind the Fourth Circuit Court of Appeals wrote the following: Variations in physical plant and instruction speak volumes about a school district's treatment of black folks. Variations should not be fobbed off to defects in administration, somebody's inattentive stewardship, or faulty judgment. Rather, variations are harms sustained by individual students that are correctable under the Fourteenth Amendment. If a plaintiff can show that he or she was denied an educational advantage accorded others in a like situation, the court must furnish relief.

At the time, public education was in the bailiwick of the states. *Cummings v. Richmond County Board of Education* was the law of the land.[12] Local officials had the power to allocate school funds. The question was: whether officials could shave some funds earmarked for blacks to subsidize other programming. In dicta the Maryland Court of Appeals said no.[13] In 1951, the Maryland Legislature repealed its Jim Crow laws.[14] At roughly the same time, in South Carolina, a courageous federal judge ended the practice.[15] There was a similar turn of events in Virginia. Lawyers took the school board in Norfolk, Virginia, to court and won.[16]

American courts had said that segregation (as practiced) produced inequalities. It stigmatized students; limited their economic opportunities; sapped their motivation to learn; chilled a youngster's ambition; poisoned the learning process; slowed the development of democratic sentiments; and engendered feelings of inferiority.

There were breakthroughs in higher education. With *Plessy v. Ferguson* in mind, the Supreme Court said the following: States can't make learning an ordeal.[17] They can't add shame and ridicule to the academic mix, if it poisons the learning process. It's wrong to furnish students with bargain basement, half backed, non-credentialed, untested graduate facilities. They produce unequal economic opportunities.[18] Such acts amount to state interposition and nullification. Maintenance of the practice is wrong. The remedy for the offense is to do away with the facilities, mix the students, or build equal ones.

There were breakthroughs in other arenas. Citizens were stripped of the power to use contracts to deny people the option to sell their homes to blacks.[19] Management and labor were denied the option to use collective bargaining agreements to eliminate co-workers who were non-union members and black.[20] Social scientists had come around to the idea that white oppression caused black ignorance, poverty,[21] and their anti-social attitudes.[22] The Supreme Court declared that the federal government couldn't add to a Negro's social and emotional misery, when he traveled in interstate commerce.[23]

Public Schools

Racism embarrassed the United States. It was an eyesore in seventeen states and a blot on the conscience of the nation. Racial segregation perpetuated ignorance and fueled antisocial attitudes among blacks. It stunted the personality of children; enhanced the chance of self rejection; slowed the development of democratic sentiments; and, last but not least, built dams in the minds of youngsters, so that some blacks gathered less formal information than others in like situations.

A. In Clarendon County, South Carolina, white schools were brick and mortar. Black schools were shacks.[24] Though blacks outnumbered whites in the county, less money was spent on their education than whites. Experts claimed that there was a correlation between the quality of one's education, a child's personality development, and the amount of money a school district spent on children. Since less money

was spent on Clarendon County blacks, white children had both healthy minds and countless educational advantages.

Outsiders and people in the know in South Carolina could see it. A nominal minority (whites) capitalized upon their economic clout to impose their educational views on everybody. White students went to schools with running water. Blacks went to schools that had none. White students had indoor toilets. Black students had none. Whites went to schools with serviceable desks, chairs, blackboards, and new books. Black students went to schools with scarred desks, wobbly chairs, and old books. The question was: whether local officials could use a South Carolina law to perpetuate the misery dogging blacks? In *Briggs v. Elliot* the court said no.[25] Abandoning the psychological evidence for the statistical stuff substantiating physical differences between facilities for blacks and whites, the court ordered Clarendon County to build equal schools for blacks.

B. In many ways, the Kansas school situation was like the South Carolina mess. In other ways, it was different. Kansas was admitted to the union as a free state. The territorial government's petition for admission was accepted by the U.S. government on the condition that "Negroes be denied the vote." By law first-class cities could segregate their elementary schools. By law blacks and whites attended integrated high schools. By law universities, colleges, and schools for public instruction were open to everybody.

Since less money was spent on Clarendon County blacks, white children had both healthy minds and countless educational advantages.

Having said that: white Kansans were hostile to blacks. By law, custom, and practice blacks and whites lived separate social and economic lives. White banks starved black businesses. Men trying to do had to take menial work. In Topeka, black teachers were financially dependent and socially beholden to white folk. The police kept tabs on some people. School officials gave blacks of all ages guff and grief. In the 1950s, people of color in the capital city lived on tenterhooks.

In 1950, Mckinley Burnett petitioned the Topeka School Board to integrate its elementary schools. When the request was tabled by the Board, Burnett recruited Oliver Brown to file a lawsuit.[26] The question was: whether state sponsored segregation dulled a student's ambition; poisoned the learning process; and damaged his psyche? In *Brown v. Board of Education of Topeka*, the court said yes. But on technical grounds (e.g., more to do with the physical facilities in Topeka) it denied the petitioner's request for a remedy. *Plessy v. Ferguson* was still the law of the land. The Supreme Court had not reversed itself. Since the Topeka schools were equal there was nothing the court could do for the petitioner.

C. On September 11, 1950, Gardner Bishop led a group of students to John Phillip Sousa Junior High School, a spacious glass-and-brick structure located across the street from a golf course in a residential section of Southeast Washington, D.C. It had forty-two bright classrooms, a six-hundred seat auditorium, a double gymnasium, a playground with seven basketball courts, a softball field, and no blacks. Some of the classrooms were empty, and Bishop asked that the black youngsters (that he had in tow) be admitted to them. He was refused, and his charges began the year, as they had done in the past, at all-Negro schools. One of the children was twelve-year old Spottswood Thomas Bolling. Young Bolling attended Shaw Junior High School. It was forty-eight years old, dingy, ill-equipped, and located across the street from a pawnbroker. Its science lab consisted of one Bunsen burner and a bowl of goldfish.[27] Bolling's name led the list of plaintiffs for whom James Nabrit brought suit.

Nowhere in the pleadings was any claim made that Bolling and the others attended schools that were unequal. Their plainly inferior facilities were beside the point. The petitioners had launched a frontal assault against state-sponsored segregation. The burden of proof was upon the District of Columbia to show a reasonable basis for or a public purpose in racial restrictions on school admissions.

In his submission to the Court, Nabrit dwelt upon the Supreme Court's wartime decisions on the relocation of Japanese-Americans as a emergency measure—that is, the temporary deprivations of civil rights and liberties that the Justices excused in the face of threats to national security.[28] "Pressing public necessity may justify the existence of such restrictions, [but] racial antagonism never can."[29] Since the nation's security wasn't threatened, and no evidence had been adduced by the government that race mixing threatened law, order, and safety, the District of Columbia had to integrate its schools.

There was another argument proffered by Nabrit. The educational rights asserted by the petitioners, he said, were fundamental rights embedded in the due process clause of the Fifth Amendment. They were liberty interests protected against arbitrary and unreasonable restrictions. Since the Civil War Amendments stripped the federal government of its power to impose racial distinctions upon citizens, Congress couldn't make legislation separating whites and blacks in schools.

The Crunch

The Universal Declaration of Human Rights came into existence in 1948. Sadly, American legal practices were in conflict with every provision. What we did at home embarrassed the United States abroad. Segregation undermined the government's campaign to woo newly independent nations in Africa to the West's cause. American courts had said that segregation (as practiced) produced inequalities. It stigmatized students; limited their economic opportunities; sapped their motivation to learn; chilled a youngster's ambition; poisoned the learning process; slowed the development of democratic sentiments; and engendered feelings of inferiority.

The nation was changing. *Brown* sparked a wave of change.

The question was: whether state sponsored segregation was unconstitutional per se? In *Brown*, the Court said yes. It considered the Civil War Amendments, but decided that the legislative history didn't cast enough light on the topic to answer the question before it.[30] It turned to the psychological evidence tendered by experts, ruminated about it, and made a bold pronouncement.[31]

Because state-sponsored segregation furnished some with smaller packages of formal knowledge to cope with the outside world; dulled a youngster's ambition; killed a student's motivation; stunted personality development; and engendered feelings of inferiority, segregation had no place in public education. Maintenance of the practice deprived students of the equal protection of the law.

The District of Columbia case was different. The question was: whether Congress could fiddle with the liberty interest of black students? Though liberty had not been defined with great precision by the Court, it did include the full range of conduct which individuals were free to pursue.[32] Generally speaking, liberty could not be restricted except for a proper governmental objective. Since segregation was not related to a proper governmental objective, the practice had to end. The maintenance of school segregation constituted an arbitrary deprivation of a student's liberty under the due process clause of the Fifth Amendment.

Social Fallout

Let's pause for a moment and reflect a bit. Fifty years have cooled people's passions about *Brown* and, in some cases, dulled folk's memories. Some scholars would have you believe that *Brown* was a minor footnote in American history.[33] In North Carolina, for example, just 0.026% of black

children attended desegregated schools in 1961.[34] During the same period, in Virginia, a grand total of 208 blacks out of a statewide population of 211,000 attended desegregated schools.[35] In the Deep South not a single black child attended an integrated public elementary school in Alabama, Mississippi, or South Carolina, as of the 1962–63 school year.[36]

Having said all that: Brown changed the laws and practices for common carriers, golf courses,[37] municipal airports,[38] hospitals, city libraries, public beaches,[39] municipal pools, athletic events, parks,[40] amusement parks,[41] and public accommodations[42] in the North, South, Midwest, and Far West.[43] Common carriers (that is, company owners) couldn't use *Plessy v. Ferguson* and the local police to reseat its black patrons.[44] City fathers couldn't use leases with private management companies to circumvent their duty to make public facilities available to everybody.[45] Entrepreneurs couldn't use business concerns, economic considerations, the First Amendment right of freedom of association, trespass laws, employment contracts, and the patina of the state (e.g., off-duty county deputies moonlighting for private concerns) to denigrate contract rights bestowed upon benighted people by Congress.[46]

The nation was changing. *Brown* sparked a wave of change. There was a flood of lawsuits everywhere to quicken the pace. From one day to the next, life got better for black children; and most people (indeed, the most informed about the situation) were pleased about that development.

Conclusion

There was a dream called America. People referred to the dream in a whisper for fear that it would be swept away by the wind. This fragile thing nearly perished but for a tide in history, a case, the courage of ordinary men, the grit of women, the skill of lawyers, the vision of judges; and people with the will to do the right thing.

FOOTNOTES

1 *Plessy v. Ferguson*, 163 U.S. 537 (1896).

2 Richard Kluger, *Simple Justice* 267 (1977). Hereinafter cited as Kluger.

3 Kluger, *supra* note 2 at 117. American history is replete with examples of white men embracing practices that disable blacks. There was slavery, codes to perpetuate slavery, corporal punishment; black codes to restore indentured servitude after slavery; white terrorism after Civil War emancipation; lynching (over 2000 people lost their lives between 1880 and 1910); state-sponsored segregation; underfunding integrated schools to guarantee their failure; and last, but not least, the habit invariably on display in the media of marginalizing poorly educated blacks in politics. Lecture, Roger Wilkins, Professor of History, George Mason University, on "Race, Law and the American Creed: Examining the Social and Legal Impact of *Brown v. Board of Education*," at the Robert J. Dole Institute for Politics, University of Kansas, on September 18, 2003.

4 Kluger, *supra* note 2, at 87.

5 Id. at 224.

6 *Berea College v. Kentucky*, 211 U.S. 45 (1908).

7 Civil Rights Cases, 109 U.S. 3 (1883).

8 *Corrigan v. Buckley*, 275 U.S. 78 (1927).

9 *Murray v. Maryland*, 182 A. 590 (Md. 1936).

10 *Gong Lum v. Rice*, 275 U.S. 78 (1927).

11 *Carter v. School Board of Arlington County*, 181 F.2d 531 (4th Cir.1950).

12 *Cummings v. Richmond County Board of Education*, 175 U.S. 528 (1899).

13 Kluger, *supra* note 2, at 214–215.

14 *Slack v. Atlantic White Tower Systems, Inc.* 181 F. Supp. 124,127 (D.Md. 1960).

15 Kluger, *supra* note 2, at 297.

16 *Alston v. School Board of City of Norfolk*, 112 F.2d 992 (1940).

17 *Sipuel v. Oklahoma State Board of Regents*, 332 U.S.631 (1948). In *Simple Justice*, there is a narrative about the petitioner's educational ordeal and the social fallout. See Kluger, *supra* note 2, at 259–260, 268.

18 *Sweatt v. Painter*, 339 U.S. 629 (1947).

19 *Shelly v. Kraemer*, 334 U.S. 1 (1948); Hurd v. Hodge, 334 U.S. 24 (1948).

20 *Steele v. Louisville & Nashville Railroad*, 323 U.S. 192 (1944).

21 Kluger, *supra* note 2, at 310–11.

22 Id. at 313.

23 *Henderson v. United States*, 339 U.S. 816 (1950).

24 Kluger, *supra* note 2, at 301–02.

25 *Briggs v. Elliott*, 98 F. Supp. 529 (E. D.S.C. 1951).

26 *Brown v. Board of Education of Topeka*, 98 F. Supp. 797, 798 (D. Kan. 1951).

27 Kluger, *supra* note 2, at 521.

28 *Korematsu v. United States*, 323 U.S. 214 (1944).

29 Kluger, *supra* note 2, at 512. See *Korematsu v. United States*, 323 U.S. at 223.

30 *Brown v. Board of Education of Topeka*, 347 U.S. 483, 489 (1954).

31 Id. at 494.

32 *Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954).

33 Michael Klarman, "Brown, Racial Change, and the Civil Rights Movement," 80 Va. L. Rew. 8 (1994). Hereinafter cited as Klarman. See Gerald Rosenberg, "*Brown* is Dead! Long live *Brown*!: The Endless Attempt to Canonize a Case," 80 Va. L Rew. 161 (1994).

34 Klarman, supra note 33, at 9.

35 Id.

36 Id.

37 *City of Greensboro v. Simkins*, 246 F.2d 425 (4th Cir. 1957).

38 *Henry v. Greenville Airport Commission*, 279 F.2d 751 (4th Cir. 1960).

39 *Dawson v. Mayor and City Council of Baltimore*, 350 U.S. 877 (1955).

40 *Watson v. City of Memphis*, 373 U.S. 526 (1963).

41 *Griffin v. Maryland*, 378 U.S. 130 (1964).

42 *Bell v. Maryland*, 378 U.S. 226 (1964).

43 Lecture, V.P. Franklin, Professor, Teachers College, Columbia University, on "Race, Law and the American Creed: Examining the Social and Legal Impact of *Brown v. Board of Education*," at the Robert J. Dole Institute for Politics, University of Kansas, on September 18, 2003. See V.P. Franklin and Bettye Collier-Thomas, *My Soul is a Witness: A Chronology of the Civil Right Era, 1954–1956* (2000).

44 *Flemming v. South Carolina Electric and Gas Company*, 239 F.2d 277 (4th Cir. 1956).

45 *City of Greensboro v. Simkins*, 246 F.2d 425 (4th Cir. 1957).

46 *Griffin v. Maryland*, 378 U.S. 130 (1964); Bell v. Maryland, 378 U.S. 226 (1964).

NNLSO Annual Meeting Highlights: Washington, D.C. 2003

Conflict and Negotiation: Two Views of a Workshop

View One: ADR/Negotiation Techniques and the Law School Registrar

Betty Fischer,
Assistant to the Dean for Administration
Washburn University School of Law

Each year the NNLSO Board tries to come up with topics of particular interest to its members. In response to their request to the Graduate & Professional Schools Committee of AACRAO, Robert D. Dinerstein, professor of law and associate dean for academic affairs at American University, Washington College of Law, presented a two-part Law School Workshop on "Negotiation/Conflict" on April 6, during the AACRAO/NNLSO annual meeting in Washington, D.C.

Professor Dinerstein presented six scenarios in which law school registrars were given problems relating to faculty, faculty conflict, scheduling, staff, and student problems. After giving his audience the intricacies of the relationships in each problem, he asked the workshop participants to consider: who they would include in the decision making process; what additional information was needed in order to begin decision making; the perceived and real role of the registrar; law school policies and appeal policies; and how the decision making process affects the overall effectiveness of the registrar.

In summary, Professor Dinerstein emphasized that negotiating conflict involves listening. When using alternative dispute resolution/negotiation techniques, one must determine:

- the legitimate real issues of the conflict;
- what flexibility there is in decision making;
- what are the rules and who determined them;
- where support lies (deans?);
- what kind of discretion is possible;
- what kind of documentation is available and must be created during the process;
- with whom should one consult (who is wise counsel); and
- finally, an understanding of what one's personal feelings and motives are in regard to the situation.

View Two: Conflict and Negotiation

Pat Trainor, Registrar,
University of New Mexico School of Law

We have all experienced and had to deal with an angry faculty member, a disgruntled student, or a co-worker not happy with any kind of change. Robert Dinerstein, professor and associate dean for academic affairs at American University, Washington College of Law, conducted a workshop dealing with conflict in the work place and negotiating a resolution. He presented a number of different scenarios that can occurr in a law school setting. Professor Dinerstein then asked the group to discuss how they would negotiate to resolve the conflict.

Registrar/Faculty Conflict: You are the registrar at a law school with a part-time evening division. The faculty, per a policy adopted a number of years ago, have agreed to rotate through the evening division. You are now about to schedule the next year's constitutional law class (required for first-year students) and you are faced with the following situation. It is Professor Smith's turn to teach in the evening but he will be on sabbatical. Professor Jones is next in line but she objects as she taught family law in the evening this year (she has been more flexible in the past, willing to change and accommodate your scheduling needs). Professor Thompson has a bad back that prevents him from teaching large sections as it requires him to stand and walk around, which

does cause his back to act up. Professor Johnson, who does not like Professor Thompson, does not believe Professor Thompson's excuse, so his position is that he'll teach in the evening the year after Professor Thompson does (though he adds he does not see well at night but will do it as part of the rotation).

Acceptable solutions to resolve the problem:

1. Some faculty are more team players than others, so work on Jones who seems more reasonable.
2. Highlight the fact that this was "their rule" not yours. Bring all of them together to reach a solution.
3. Make Thompson document his back trouble.
4. Separate out some of the personalities so as to be fair with each.
5. As a last resort, ask for assistance from the dean but only use this route if necessary.

Registrar/Faculty/Student "Situation": A student comes to you about a class in which she is having difficulty with a professor. With the professor's permission, she took an incomplete, turning in the paper two months later. It is now two months after she submitted the paper and the professor has not submitted a grade. The professor will not return her phone calls or answer her e-mails. She does not want to get too confrontational for fear of the professor taking it out on her when he turns in the grade. The student is applying for summer jobs, and employers keep asking her about her grade in this course.

You know that the professor is notorious for turning in late grades. Indeed, he has been known to "lose papers," to such an extent that you have suggested that he have his students turn in the papers directly to your office. He has been sarcastic in the past with students who complained about their grade, so he could react badly to being pressed about this grade. The student has asked your advice on how to proceed.

Acceptable solutions to resolve the problem:

1. It was the right thing for the student to go the registrar and allow the registrar to be the mediator between the student and faculty member.
2. Ask for a copy of the paper and give it to the professor again, telling the professor you really need the grade turned in ASAP to meet the semester grade compliance deadline.
3. To avoid this problem, all papers or take-home exams should be turned in to the Registrar's Office and the student should be given a receipt stating the time and day the work was turned in.
4. Try to teach students to be responsible and professional (maybe both parties need to be professional).

Registrar/Staff Problem: Over the years, you have taken on additional responsibilities from other administrators. For example, in the past other administrators would decide which projects would be approved for independent study credits, who receives credit for upper-class writing requirement, etc. You now implement policies in these areas. However, students sometimes are confused as to whom they should see for approval for various credits. Most colleagues direct students to you but one colleague, a senior administrator, has a habit of telling students, "Well, I would approve your paper, but I don't decide this matter any more, so you should see the Registrar." Does it matter if the senior administrator is one or two years away from retirement, or that he is a longtime friend of the dean's? Naturally, when the student comes to see you and you propose a different resolution, one that the student is not seeking, the student tells you what the other administrator has said.

Acceptable solutions to resolve the problem:

1. You must uphold the rules. Explain to the student why rules are important. If you make one exception, 30 more will follow.
2. This cannot continue to happen. Talk with the senior administrator and explain that you are the one that makes the determination and his advising the student to a different resolution compromises your position. You appreciate his working with you and advising students to see you.
3. Avoid the senior administrator; he only has a couple more years before retiring.
4. Talk with the senior administrator and explain that maybe you have it wrong and is there more room in the rule to play with?

Random comments:

1. E-mail: downside is you blast off a reply and should have waited until the next day to reread your e-mail and soften up on the reply.
2. Establish rules. They assist in what you can or cannot do.

Some thoughts to consider when in a difficult situation[1]:

1. It is often said that conflict can be beneficial. Conflicts allow issues to be aired; they produce new and creative ideas; they release built-up tension; they can strengthen relationships; they can cause groups and organizations to re-evaluate and clarify goals and missions; and they can also stimulate social change to eliminate inequities and injustice.
2. The most important feature of conflict is that it is based in interaction.
3. Conflict interaction is colored by the interdependence of the parties. For a conflict to arise, the behavior of one or both parties must have consequences for the other. Therefore, by definition, the parties involved in conflict are interdependent.
4. Conflicts are always characterized by a mixture of incentives to cooperate and to compete.
5. Productive conflict interaction depends on flexibility.
6. Productive conflict interaction results in a solution satisfactory to all and produces a general feeling that the parties have gained something.

[1] *Working Through Conflict*, pages 1–9, Joseph P. Folger, Marshall Scott Poole, and Randall K. Stutman, Addison-Wesley Educational Publishers Inc., New York.

Welcome, New Law School Deans!

Peter C. Alexander, *Southern Illinois University*
James J. Alfini, *South Texas College of Law*
Brian Bromberger, *Loyola University, New Orleans*
Robert Butterworth, *St. Thomas University*
Evan H. Caminker, *University of Michigan*
Jon M. Garon, *Hamline University*
David Getches, *University of Colorado*
J. Richard Hurt, *Barry University*
Robert H. Jerry, *Fredric G. Levin College of Law, University of Florida*
Elena Kagan, *Harvard Law School*
Joseph D. Kearney, *Marquette University*
David A. Logan, *Ralph R. Papitto School of Law, Roger Williams University*
Patricia Mell, *John Marshall Law School*
Donald J. Polden, *Santa Clara University*
James H. Rosenblatt, *Mississippi College School of Law*
Kurt Schmoke, *Howard University*
Frederick G. Slabach, *Texas Wesleyan University*
Rodney A. Smolla, *T.C. Williams School of Law, University of Richmond*
Aviam Soifer, *William S. Richardson School of Law, University of Hawaii*
Barry R. Vickrey, *University of South Dakota*
David S. Walker, *Drake University*

Would you like to contribute an article to the NNLSO Journal? Please contact judith.calvert@yale.edu.

Dean's Corner

Affirmative Action in Law Schools

Suellyn Scarnecchia, Dean, University of New Mexico School of Law

I grew up in Ann Arbor, Michigan, graduated from the University of Michigan Law School and taught there from 1987 to 2002. I moved to Albuquerque to become dean at the University of New Mexico School of Law in January 2003, months before the Supreme Court issued its opinions in the Michigan affirmative action cases.[1]

At the University of Michigan, during the litigation of the cases, it was interesting to experience for ourselves the feelings related to being a defendant in a lawsuit and to being the client, not the lawyer. My worst memory is of the day we received word that the Federal District Court had ruled against us in the law school case. Students of color whom I knew and respected learned that a court had found unconstitutional the policy that had led to their admission to law school. It was an emotional and difficult day.

So, when I heard that the Supreme Court found the law school's policy constitutional and affirmed diversity as a compelling state interest, I was both relieved and happy. As a clinical professor at the law school, I had first-hand experience with the educational benefits of a diverse student body. I was able to better prepare students for the practice of law in a complex and diverse society when the students themselves were from a variety of racial and ethnic backgrounds.

As the new dean at the University of New Mexico School of Law, I also was relieved to know that we could continue to consider race and ethnicity among several other factors in admitting students. In a state where no racial or ethnic group is in the majority, it is important that our student body continues to reflect the rich diversity of the state.

In the Michigan Law School case (*Grutter*), Justice O'Connor, writing for the majority, held that the law school's interest in diversity constituted a compelling state interest that could justify the consideration of race in the admission policy. The policy must also be narrowly tailored, and the Court held that the school's practice of reviewing each individual student's full profile and considering race as only one among several other factors was constitutional. Further, the resulting range of percentages of students of color admitted each year did not constitute a forbidden quota system. The Court accepted the law school's stated interest in admitting a critical mass of minority students to assure the educational benefits of a diverse student body.

In the undergraduate case (*Gratz*), the Court, in an opinion by Justice Rehnquist, found that the use of a point system, where a student of color automatically received 20 points, was too mechanistic and too far removed from the individual reviews employed by the law school. The Court held that the undergraduate admission system violated the Constitution.

The *Grutter* case is a clear and strong acknowledgment that race continues to be relevant in our society and that race-conscious policies, narrowly crafted, may be used to further the educational benefits of a diverse student body. Now, the natural question for law school administrators is: "Will there be further legal challenges to policies that permit consideration of race and ethnicity?" In what other areas do law schools consider race and ethnicity? Academic programs, specially developed for students of color, may be subject to scrutiny. Financial aid programs, like scholarships targeted for minority students, might be tested. Programs aimed at employing a more diverse staff or aimed at providing special benefits to students of color in the career services area may be at risk.

If you have questions about your own programs, I recommend that you consult your university or school's general counsel. In July, the National Association of College and University Attorneys provided an excellent virtual seminar on the affirmative action cases and the future issues that may arise. The Law School Admission Council sponsored a conference for law school deans and admissions officers on the same topic in September. The materials from these conferences and others should prove quite helpful in evaluating your school's current policies in light of the *Grutter* and *Gratz* cases.

It is important to keep in mind that the great majority of these programs grew out of the same motivation: to admit and support a talented and diverse student body. The values that support the use of affirmative action in the admission process apply as well to related programs in our schools. We should not shy away from supporting successful programs that advance the educational benefits of preparing lawyers to practice in increasingly diverse local and global communities.

1. *Grutter v. Bollinger et al.*, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003); *Gratz v. Bollinger et al.*, 123 S.Ct.2411, 156 L.Ed.2d 257 (2003).

News from the Regions

Share information with the NNLSO membership about what is happening in your region: upcoming events, staff news, special achievements—anything of interest!

The regional representatives are listed below. Send those tidbits and news announcements. We'll gather everything together for the Spring 2004 issue of the Journal.

Northeast
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Quinnipiac University School of Law
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Loretta Lewins-Peck
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Walter F. George School of Law
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Plains
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Registrar, South Texas College of Law
pilkent@stcl.edu

West
Mary Morgan
Registrar, Seattle University School of Law
mamorgan@seattleu.edu

Deadline for submission: January 9, 2004.

A View of the Session on LL.M. Programs

Betty Fischer, Assistant to the Dean for Administration
Washburn University School of Law

Professor Robert Dinerstein began his comments by saying that LL.M. programs with foreign lawyers were not accreditation or rankings issues. The ABA does not accredit LL.M. programs and the site team is only interested in whether the LL.M. program detracts from the regular J.D. program. Usually the tuition from the LL.M. program enhances the regular programs. Schools are much more able to structure graduate programs. More than half of all LL.M. seekers are foreign with more than thirty-five law schools having programs of interest to foreign lawyers.

The Counsel on Legal Education and the Bar says that a graduate degree is not the basis for bar exams and it is up to the state bar to determine if those students can take their bar with only an LL.M. if they do not also have a J.D. About ten states currently permit such students to take the bar exam with certain prerequisites. Professor Dinerstein said that at American University they try to counsel foreign students concerning their plans in regard to taking a bar exam and to inform them of how American students prepare for the bar.

There are many issues to consider when admitting foreign students into an LL.M. program: the integrity of the program, truth in advertising, and other goals of the program and student.

He did not believe that foreign LL.M. students passing the bar had a competitive effect on the U.S. job market. Globalization may invite more foreign lawyers into LL.M. programs, but Professor Dinerstein sees the opportunity for legal and cultural comparison as a real value to all students. There are some differences in regard to class expectations and an interpretation of work product versus plagiarism that may vary from culture to culture. However, those are areas that can be handled through group orientation and one-on-one counseling when new students come into a program.

There were questions relating to accommodations, credit hours, internships, immigration requirements, time involved in obtaining visas in the post-9/11 period, and possible changes in various states as to whether foreign students will be allowed to take the bars.

Professor Dinerstein closed by saying that there is an increasing interest in dual-degree programs with foreign universities and a lot of discussion on how such programs work.

Calling All Deans!

Would a dean from your law school like to contribute an article to the Journal? Contact judith.calvert@yale.edu.

It's All About Service

Marjorie Zhou, Registrar, University of San Diego School of Law

Now that the 2003–2004 academic year is well underway, the *Admissions Officers* have already been on the road. Again. They hardly had time to catch their breath from executing this past year's plan to handle the bumper crop of applicants and get the lucky admittees to confirm and enroll, when off they went again on a new mission for the entering class of 2004–2005 — and here come the applications! They are the ones who most often say, "You are invited" or "I regret to inform you."

The *Financial Aid Officers* are hard at work making sure the institution is in compliance with the ever-challenging rules and requirements of the Department of Education. They are managing limited scholarship resources, as well as funds from other sources. They are counseling students about debt management and advising those in need about the various financial resources available to them. While working with the current students, they are also planning for next year's incoming class. They are the ones who most often say, "You have been awarded…"

The *Records and Registration Officers* are making sure everyone is in the right class with the right professor in the right room for the right amount of credit and that degree requirements are being met. They are protecting student information, while issuing transcripts and letters, as well as certifying enrollment and graduation to lenders, employers, and bar jurisdictions. They're reporting and advising, counting and counseling, planning for exams and grades and next semester. They are the ones who most often say, "Welcome" and "Good-Bye."

The *Career Services Officers* are working through the whirlwind of this year's round of resumé drops, interviews, editing, programming, e-mailing, writing, and counseling, counseling, counseling students and alums. They are brainstorming and coming up with fresh ways of marketing their students to the American legal community and preparing those students to put their best foot forward for their introduction to that world. They are the ones who most often say, "What would you like to do next?"

The *Student Services Officers* are listening, advising, counseling, offering options, coordinating, mediating, planning, mentoring, admonishing, encouraging, running interference, etc. They are the ones who most often say, "Let me put you in touch with…"

The *Academic Support Officers* are managing programs that will give students the greatest chance for success in law school. They are identifying and devising methods that will reach those in most need of academic assistance. They are conducting workshops, training leaders, meeting with and counseling students. They are the ones who most often say, "Is there anything more I can get for you?"

The *Publications Officers* are planning, writing, editing, shooting, begging for or demanding copy and corrections, doing press checks, issuing press releases, getting media coverage, meeting deadlines. They are the ones who most often say, "People need to know just how good you are!"

The *Alumni and Development Officers* are planning programs, managing events, and coordinating the efforts of various constituencies. They are developing and maintaining important relationships. They are the ones who most often say, "Thank you."

The *Budget, Human Resources, and other Administrative Officers* are making sure that the funding is there to equip and staff all of these offices, while managing the sometimes conflicting genuine need for limited resources. They are making sure the lights are on, the water is running, there are enough chairs and tables, and a million other needs are met. They are the ones who most often say, "What do you need?"

The *IT Officers* are planning and leading the way into new technology arenas, to be more efficient and have more reliable and secure data. They are the ones who most often say, "Here. Let me help you with that."

TREASURER'S SUMMARY REPORT 2002–2003

Starting Balance	**$14,638.65**
Credit	
Membership	$ 6,460.00
Advertising	1,212.50
Bank Interest	24.85
CD-Deposit	3,018.64
NNLSO Luncheon	850.00
Total	**$11,565.99**
Debit	
Mailing	$ 438.69
Printing	2,848.73
Lunch Bags	437.91
Internet Service	69.50
Bus Service (Hamline)	280.00
Lecturer Cost	300.00
NNLSO Luncheon	1,921.04
Plaques	363.20
Total	**$ 6,659.07**
Ending Balance	**$19,545.57**

Membership Statistics
498 Individual Members
126 Schools

These officers may have different titles—some may be Associate or Assistant Deans; some may be Directors, Associate Directors, Assistant Directors, Coordinators, etc. It is not in the title. It is in the work—the work described above and more work than there is space for here. It is the work of being of service to those engaged in the most serious matter of legal education.

And just what is all of this hard service work for? It is for the person who feels threatened or vulnerable and needs the protection of the law. It is for the person who has been harmed and needs some redress. It is for the person who will come with his or her freedom, fortune (whether billions or pennies), or future and place them in the hands of an attorney.

While there may seem to be quite a distance between the recruiting trip and the courtroom, it really isn't that far. Every step along the way, a future attorney is meeting and hearing from law school officers and every interaction is adding to that future attorney's collective experience. The better law school officers can be at their myriad worthwhile jobs and the more positive an influence they can have on future attorneys, the greater the chance that the person in need—and that could be any of us—will have his or her freedom, fortune, and future assured.

Summary of Recent Executive Committee Meetings

The Executive Committee met twice during the annual meeting in Washington, D.C., in April 2003. On April 6, Ken Pokrowski chaired his final meeting of the committee as executive director, in which he summarized the progress NNLSO made during his tenure. Among the accomplishments: regional representatives now attend board meetings and help with membership drives; the Journal has been expanded and been given a more professional design. The committee discussed future workshops and reviewed the Staff/Salary Survey (view the results on the NNLSO Web site), and of course planned for the next evening's NNLSO Social, which was held at Buca de Bepo on Connecticut Avenue.

On April 8, the new executive director, Pat Trainor, convened a second meeting of the board immediately following the annual business luncheon. Pat set out some of her goals for the next two years (see her executive director's report on the front page). In particular, Pat wants to expand the role of the regional representatives to encourage more communication within and between the regions, and she is also going to write to all law school deans to encourage membership in NNLSO. The committee adjourned after setting the date for its summer meeting, which was hosted by Chris Matheny (Chicago-Kent) and Jodie Needham (John Marshall) in Chicago in July. More news about that meeting in the next issue!

Left NNLSO Socials are always memorable: The board toasting the successful conclusion of the Albuquerque meeting.

Middle Outgoing Executive Director Ken Pokrowski prepares for life after his directorship during a social evening at the October 2002 Executive Committee meeting in Albuquerque, New Mexico.

Right Hot air? Or ducks out of water? Neither. The Executive Committee enjoyed a hot air balloon festival during its meeting in Albuquerque last year.

Mark Your Calendars!

AACRAO/NNLSO
Annual Meeting

April 19–22, 2004
Mandalay Bay Resort and Casino
Las Vegas, Nevada

Hotel Reservations must be made through the AACRAO/WCTC Housing Bureau.

Hotels will not accept direct reservations.
For more information, see www.aacrao.org

Ever Get Confused by AACRAO/NNLSO?

If you're wondering:

- How do I register?
- Must I register for AACRAO to attend NNLSO?
- What do I miss if I don't register for AACRAO?
- What is the cost to attend NNLSO?

Here are some tips:

1 Attending the NNLSO Conference does not require registering and/or participating in AACRAO. If attending NNLSO has been cost prohibitive, this is something to consider.

However, if you would like to attend any of the AACRAO sesssions, visit the vendor area, attend the Graduate and Professional Schools Luncheon, or participate in any of the AACRAO social events, you must be a registered AACRAO participant!

If cost is not a major consideration, AACRAO has always proven to be informative and beneficial.

2 If you are planning to register and attend the AACRAO Conference, you should have received registration materials. If you did not, or if you prefer to register online, please visit www.aacrao.org.

3 Whatever you decide about attending either conference, you are responsible for making your own hotel and travel arrangements.

4 There is currently no registration fee to atend the NNLSO Conference. However, there is a $25 fee to attend the NNLSO Luncheon. For information, contact Nancy Hamberlin at (801) 378-4275, hamberlinn@lawgate.byu.edu.

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