



## THE PRESIDENT'S MESSAGE

### Transformative Scholarship: Legal Academic Knowledge for What?

By Rachel Moran,  
University of California, Berkeley

These comments continue the theme I chose for my year as AALS President, transformative law, by turning to legal scholarship. For most faculty, scholarly work is central to a sense of professional identity—but in ways that are, to some degree, constrained. This column addresses obstacles to transformative scholarship and identifies and celebrates some successful examples of it.

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## The Honorable Guido Calabresi Announced as AALS Keynote Luncheon Speaker

### Judge Calabresi also to be Presented with AALS Award for Lifetime Service to Legal Education and to the Law

The Honorable Guido Calabresi, Judge, United States Court of Appeals for the Second Circuit and Sterling Professor and Professorial Lecturer, Yale Law School, will be the keynote speaker during the AALS luncheon at the 2010 Annual Meeting in New Orleans. Additionally, prior to Judge Calabresi's speech, President Rachel Moran will present him with the AALS Award for Lifetime Service to Legal Education and to the Law — a Triennial Award established in 2006 to formally recognize lifetime contributions to service, to legal education and to the law made by a faculty member or retired faculty member at an AALS member school.

Judge Calabresi received his B.S. degree, *summa cum laude*, from Yale College in 1953, a B.A. degree with First Class Honors from Magdalene College, Oxford University, in 1955, an LL.B. degree, *magna cum laude*, in 1958 from Yale Law School, and an M.A. in Politics, Philosophy and Economics from Oxford University in 1959. A Rhodes Scholar and member of Phi Beta Kappa and Order of the Coif, Judge Calabresi served as the Note Editor of *The Yale Law Journal*, 1957-58, while graduating first in his law school class. He began his teaching career at Yale Law School in 1959 and served as Dean from 1985-1994. On February 9, 1994, President Bill Clinton nominated Calabresi as circuit judge to the U.S. Court of Appeals for the Second Circuit and he was confirmed by the United States Senate on July 18.

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## 2010 Annual Meeting

### New Orleans, Louisiana

January 6-10, 2010

For more information and to register online go to:

[www.aals.org/am2010/](http://www.aals.org/am2010/)

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## President's Message

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Transformative scholarship is undertaken in the service of civic-mindedness. It addresses what law professors, practitioners, aspiring lawyers, and members of the general public can do to improve society. Such research may be rooted in theories of justice and rights, in insights from cognate disciplines and professions, or in specific questions related to legal practice.

Transformative scholarship is rich in possibilities and reflects as many ideological perspectives as the term "activism" itself. Judge Michael McConnell's research on religious freedom, Catharine MacKinnon's research on pornography and civil rights, and Kimberlé Crenshaw's research on intersectionality all reflect the desire to use scholarship to effect social transformation.

Transformative scholarship does not necessarily require taking a side in the longstanding debate over the relative merits of "theoretical" versus "doctrinal" research. The best transformative scholarship probably combines both. Professor Joseph Sax developed basic theoretical work exploring the nature of public trusts; the doctrinal refinement and application of his insights led to the Michigan Environmental Protection Act.<sup>1</sup> David Harris incorporated theoretical insights from other

disciplines into his groundbreaking legal analysis on racial profiling; in a more doctrinal mode, he has educated courts and law enforcement officers about the implications and utility of his findings.<sup>2</sup>

Transformative scholarship may largely be understood by noting what it is not: it is neither arcane nor disinterested. It engages real-world problems in ways that those charged with solving such problems can understand. These characteristics sometimes undermine its academic cachet, but while the legal academy benefits from research that some might consider recondite, a high level of abstraction should not be a prerequisite for respectability.

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*Transformative  
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### I. Academic respectability, scholarly arcana, and reform advocacy

These insights (or laments) are nothing new. On the eve of World War II, sociologist Robert Lynd wrote a book posing a question to the academy: "Knowledge for What?"<sup>3</sup> Speaking of his home discipline, he insisted that:

[S]ocial science is not a scholarly arcanum, but an organized part of the culture which exists to help man in continually

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<sup>1</sup> See Carol M. Rose, *Joseph Sax and the Idea of the Public Trust*, 25 *ECOLOGY L.Q.* 351, 352-53 (1998).

<sup>2</sup> See generally David Harris, *Profiles In Injustice: Why Racial Profiling Cannot Work* 175-207 (2002).

<sup>3</sup> Robert Lynd, *Knowledge for What? The Place Of Social Science In American Culture* (1939).

## President's Message

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understanding and rebuilding his culture. And it is the precise character of a culture and the problems it presents as an instrument for furthering men's purposes that should determine the problems and, to some extent, the balance of methods of social science research.<sup>4</sup>

Lynd's "for what?" question still resonates today, no less pressing for legal scholars than social scientists. Ironically, law schools could recently be described as relatively infertile ground for scholarly arcana. Only twenty-five years ago, Professor Wallace Loh included this sentence in his casebook on Social Research in the Judicial Process:

Law schools, unlike graduate schools, are primarily teaching schools, not research schools.

. . . Most social scientists, in contrast, view teaching as ancillary to their research commitment. If they were as preoccupied about teaching as their law school colleagues, their scholarly productivity would be compromised.<sup>5</sup>

Contemporary law school faculty would truckle at this comparison. Only the rare scholar would cheerfully endorse the notion that research is a relatively unimportant part of his or her career, a philosophy deemed more appropriate to trade schools.

But as legal scholarship sought increasing academic respectability, various prices were imposed. Continuing from Loh's historical survey:

[S]ocial science and legal realism were offshoots of the same historical root, namely social reform. However, by the 1930s, they were branching out in different directions. Social scientists aspired to academic respectability and political neutrality—as law professors had half a century earlier—by severing their ties to social action and by adopting the language and methods of the "hard" sciences.<sup>6</sup>

Academic respectability thus required erudition and abstraction and a concomitant shift away from reform advocacy—a component of transformative scholarship.

I have written thus far as if "academic respectability" is an obvious good. For individual academics, it presumably is. But for the field of law as a whole, its intrinsic value is contested. In his famous 1992 critique of legal academia, Judge Harry Edwards complained that law schools too closely resemble graduate schools, focusing excessively on topics of little use to judges and practicing attorneys.<sup>7</sup> His commentary raises the question of what purpose legal scholarship should serve. For example, the *New York Times* reported two years ago that federal

courts are citing academic scholarship less frequently.<sup>8</sup> This trend may simply reflect the impact of widely available on-line databases that facilitate citation of primary sources rather than secondary literature, but also may suggest, according to Edwards, that judges and appellate lawyers find academic research of decreasing value.

In the competition between academic respectability and reform advocacy, Edwards weighs in on the side of "reform advocacy" — but the reform he seeks is itself modest, disinterested, even arcane in its own way. Edwards defines "reform advocacy" largely as serving the collective enterprise of the legal profession — clarifying doctrine for judges and practitioners — rather than fostering social change outside the courtroom. Such scholarship may be (and generally is) admirable, but it too eschews broad social transformation as a goal.

Transformative legal scholarship is not mired in either scholarly or professional arcana. The prototypical example of transformative law, in the eyes of most legal academics (and probably practitioners and laypersons as well) is *Brown v. Board of Education*,<sup>9</sup> which in 1954 overturned the "separate but equal" doctrine that legitimated Jim Crow segregation.<sup>10</sup> *Brown* is a vivid success story, both inspiring and daunting, of transformative law.<sup>11</sup>

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<sup>4</sup> *Id.* at ix.

<sup>5</sup> Wallace D. Loh, *Social Research In The Judicial Process: Cases, Readings, And Text* 737 (1984).

<sup>6</sup> *Id.* at 727 (reference omitted).

<sup>7</sup> Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34-38 (1992).

<sup>8</sup> Adam Liptak, *When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant*, N.Y. TIMES, March 19, 2007, available at <http://select.nytimes.com/2007/03/19/us/19bar.html> (quoting Chief Judge Dennis Jacobs as saying "I haven't opened up a law review in years. No one speaks of them. No one relies on them.")

<sup>9</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>10</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding the constitutionality of "separate but equal" public services).

<sup>11</sup> Some within the academic civil rights community itself, however, strongly criticize *Brown*. See generally Derrick Bell's essay in Jack Balkin's *What Brown V. Board Of Education Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision* 185 (2002) (characterizing *Brown* as a mere palliative).

## Hot Topic Proposals at the AALS Annual Meeting

Time is being reserved in the Annual Meeting schedule for programs devoted to late-breaking legal issues or topics. Faculty members who are interested in organizing a panel on such an issue or topic will have the opportunity to submit proposals until November 21, 2009 for the 2010 Annual Meeting.

The purpose of this special “hot topics” slot is to provide a forum for a panel presentation on a timely and important issue of general interest that arises after the deadline for section and other programs. Visit [www.aals.org/am2010/](http://www.aals.org/am2010/) for an up-to-date program of events.

Each proposal should contain the following information: (1) the title of the proposed program; (2) a brief description of the program; (3) a confirmed list of panel members; and (4) an explanation of why the proposed topic is “Hot”—i.e., why it could not have been the subject of other program proposals that had to be submitted by April 25th. In addition, the proposed topic should not be one addressed elsewhere in the Annual Meeting program.

Proposals will be evaluated by an Executive Committee member designated by the AALS President. If no program proposals are chosen, the reserved slot will not be filled. Proposals should be e-mailed to [hottopic@aals.org](mailto:hottopic@aals.org). If you have questions, please contact Elizabeth Patterson, AALS Deputy Director at [epatterson@aals.org](mailto:epatterson@aals.org).

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## President’s Message

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One might think that this landmark victory, largely the culmination of a brilliant litigation strategy associated with Howard University Law School (referred to below as “Howard Law”), was also an outstanding work of legal scholarship. On closer examination, however, *Brown* differs substantially from what we currently define as “scholarship” — a point that should prompt re-examination of how we use that term. The differences between legal scholarship then and now tell us much not only about the lawyers behind *Brown*, but about ourselves. After grappling with *Brown*’s implications for transformative scholarship, I will describe contemporary efforts that offer alternative ways of conceptualizing this research.

### **2. *Brown* considered as a model for transformative law and legal scholarship**

*Brown* is a landmark case with an especially interesting history. Consider how the institution that provided much of its scholarly force became a font of intellectual firepower on civil rights. As Richard Kluger documents in his book *Simple Justice*, the path to *Brown* commenced with an academic purge at Howard Law of a scope to shock a tenured

law professor. Starting in 1930, incoming Dean Charles Hamilton Houston trimmed the faculty (firing part-timers and demoting one Full Professor to Instructor), shut down the night school that had allowed his own father to earn a law degree, raised academic standards for admission, and reduced the graduating class from what had been 58 students in 1923 to 11 in 1934.<sup>12</sup>

In doing so, Houston turned Howard Law into an institution that less resembles most contemporary law schools and more resembles our best legal advocacy centers by providing scholars, activists, and practitioners (often the same people) for the NAACP Legal Defense Fund (LDF). Howard Law was largely federally funded. Congress responded to Houston’s statements and actions in support of civil rights by threatening to curtail that funding; Houston welcomed that prospect rather than sacrificing his school’s academic freedom. Howard Law’s faculty and alumni, working at or with the LDF, pursued a decades-long litigation strategy that ultimately led to overturning the “separate but equal” doctrine.

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## Annual Meeting Workshop: *Pro Bono and Public Service*

As the country faces record-high unemployment and an economic recession, there is a critical and most urgent need for lawyers to be engaged in promoting access to justice. Throughout our law schools, programs have sought to inspire students to engage in pro bono and public interest work through a variety of program models. While this activity and emphasis has been on the rise, educators, the bar and the bench grapple with best practices to engender a lifelong commitment to pro bono.

The Workshop on Pro Bono and Public Service will raise critical questions regarding the ways in which we approach pro bono in legal education and will provide participants with specific models and approaches to making pro bono a central part of the campus culture. Attendees will have the opportunity to explore how to develop realistic pro bono practices, evaluating different program models and goals. In addition, participants will hear from faculty who have made pro bono a central part of their curriculum in doctrinal courses, seminars and workshops, going beyond the traditional model of pro bono through clinical and externships only.

The workshop will also explore the ways to leverage the relationships between the administration, faculty, students and alumni to encourage pro bono engagement. Registration for the Workshop is included in the Annual Meeting registration fee. Visit [www.aals.org/am2010/](http://www.aals.org/am2010/) for an up-to-date program of events and to register online.

### Planning Committee for 2010 Annual Meeting Workshop on Pro Bono and Public Service

Arlene R. Finkelstein, University of Pennsylvania  
Marni B. Lennon, University of Miami  
Jack McMahon, University of Idaho  
Deborah Schmedemann, William Mitchell  
William M. Treanor, Fordham University, **Chair**

### Topics:

- Exploring the Role of Pro Bono
- Developing Best Realistic Practices in Pro Bono Programs
- Engaging Faculty: Using Pro Bono to Teach Doctrine and Skills
- Transforming Campus Culture: Enriching the Law School Experience for Students and Faculty Through Pro Bono Programs

### Speakers:

- Cynthia F. Adcock, Charlotte School of Law
- Linda L. Ammons, Widener University School of Law
- Anita Bernstein, Brooklyn Law School
- Arlene R. Finkelstein, University of Pennsylvania Law School
- Victor B. Flatt, University of North Carolina School of Law
- Bryant G. Garth, Southwestern Law School
- Charlene Gomes, Public Interest Coordinator, Office of Public Interest, American University, Washington, D.C.
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- Karen A. Lash, Consultant, Irvine, California
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- Deborah A. Schmedemann, William Mitchell College of Law
- Thomas J. Schoenherr, Fordham University School of Law
- William M. Treanor, Fordham University School of Law
- Patricia D. White, University of Miami School of Law

## President's Message

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Howard Law had certain advantages in pursuing this long-term litigation campaign: excellent institutional support, the luxury to provide intensive faculty attention to a select few top students, and the need to make a virtue of necessity. To succeed in a largely segregated profession, Houston had to take risks. Howard Law's students had little, and faculty had no, opportunity to excel via the conventional paths to greatness available to other leading institutions. Only the emergence of great African-American lawyer-scholars like Robert L. Carter and Spottswood W. Robinson III, largely at Howard, would ultimately integrate elite law school faculty. (If this in turn diluted Howard Law's ability to attract the best and brightest African-American faculty, one suspects that this "self-inflicted wound" was happily endured.)

The intellectual triumph of *Brown's* team of attorneys and outside scholars is undeniable. Thurgood Marshall assembled an interdisciplinary task force of lawyers, political scientists, and historians from across the world, who worked together for six months in 1953. Under pressing time constraints, they developed a theory on the original understanding of the Fourteenth Amendment that neutralized their opponent's best arguments and facilitated the Warren Court's outlawing of segregated public education.<sup>13</sup> In *Brown's* wake, Marshall predicted the end of school segregation by 1959,<sup>14</sup> but turning a legal victory into

transformative impact on public education was a longer and less successful project, particularly given the Court's later decision in *Brown II* that desegregation proceed with "all deliberate speed." Notwithstanding this setback, *Brown's* fundamental success was not merely in reshaping public education policy, but in shifting the nation's self-perception from a society rooted in segregation to one committed to equality.

The most obvious problem transformative scholars would have with *Brown* as a model is its breathtaking scope, which few could hope to emulate. But there is another less obvious difference between this transformative scholarship and the contemporary demands of the law school world: the transformative lawyering exhibited in *Brown* barely resembles our current notions of scholarship.

Traditional legal academic publishing played little or no role in establishing the theoretical and doctrinal basis for *Brown*. Rather than affording a debate stretching out over months or years, the impending hearing forced disparate scholars to confront one another in the crucible of the LDF office—the diametric opposite of an "ivory tower"—to produce their best work quickly. Only after 1954 did some members of the *Brown* team who were or would become honored faculty, such as Charles Black and Jack Greenberg, publish well-regarded

papers on *Brown's* theory and implications in a more standard academic mode.<sup>15</sup> Theorization in the legal academic literature largely followed the courtroom triumph.

### 3. Viable models for combining reform advocacy and academic respectability

If the effort behind *Brown* seems too large, too unique, and too distant from our own time to provide a good model for transformative legal scholars, many contemporary examples warrant emulation. I now review some successful efforts and the principles each reveals.

#### A. Devoting sustained attention to a single problem

The academic world often assesses scholarly productivity as prolific writing about discrete topics. A legal academic model more friendly to transformative scholarship would recognize the value of sustained attention to a single problem—sometimes instantiated by a single client or group of clients—as a way of obtaining deep understanding and fostering fundamental change.

Consider the example of Neal Katyal, recently of Georgetown Law School and now Principal Deputy Solicitor General of the United States for the Obama Administration. With Laurence Tribe, Katyal co-authored a *Yale Law Journal* article in April 2002 asserting that the military

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<sup>13</sup> See *id.* at 619-46.

<sup>14</sup> *Id.* at 714.

<sup>15</sup> See, e.g., Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions*, 69 *YALE L. J.* 421 (1960); Jack Greenberg, *Race Relations And American Law* (1959).

## 2010-2011 Visiting and Foreign Visiting Faculty Registers

The Visiting, Foreign Visiting and Retiring Faculty Registers are services available for faculty who are identified in the current edition of the AALS *Directory of Law Teachers* as a faculty member or administrator at an AALS member or fee-paid law school (for the Visiting Faculty Register and Retiring Faculty Register) or who are employed at a foreign law school as a law teacher or administrator (for the Foreign Visiting Faculty Register).

### Visiting Faculty Register

Since 1971, the AALS has offered to full-time law teachers and administrators at AALS member or fee-paid schools an opportunity to be listed in the Visiting Faculty Register. This register is sent to deans and is made available to appointments committees. The VFR lists information such as the subjects a visitor is interested in teaching, as well as time period availability and location preferences. It is a service available to those interested in considering invitations to visit for all or part of an academic year but does not apply to summer visiting positions. The VFR is published in October and February, with respective deadlines for submission of the register form on October 10 (for the October edition) and February 10 (for the February edition).

Go to [www.aals.org/vfrform/](http://www.aals.org/vfrform/) to fill out the Visiting Faculty Register Form.

E-mail [visitingfaculty@aals.org](mailto:visitingfaculty@aals.org) with any further questions.

### Foreign Visiting Faculty Register

The Foreign Visiting Faculty Register is for faculty who are faculty members at non-U.S. law schools seeking to visit at a U.S. law school. Twice each year the Association circulates to law school deans a list of foreign legal scholars interested in visiting at a U.S. law school. The Foreign Visiting Faculty Register contains a summary of biographical information on each registrant, including his or her education, present law school affiliation, teaching experience in common law countries, U.S. law teacher references, and date of availability. The Foreign Visiting Faculty Register is published in October and February, with respective deadlines for submission of the register form on October 10 (for the October edition) and February 10 (for the February edition.)

Go to [www.aals.org/vfrform/](http://www.aals.org/vfrform/) to fill out the Foreign Visiting Faculty Register form.

E-mail [foreignvisitingfaculty@aals.org](mailto:foreignvisitingfaculty@aals.org) with any further questions.

### Retiring Faculty Register

Many deans have expressed an interest in recruiting visiting faculty members from those who have recently retired at other law schools. In response, the Association has for the past several years solicited the names of retiring faculty and published a list that is sent to deans in October and February of each year. For more information, e-mail [retiringfaculty@aals.org](mailto:retiringfaculty@aals.org).

## 2010 Annual Meeting Presidential Programs

### Presidential Program I –

#### Transformative Scholarship

Professors enjoy remarkable opportunities to capitalize on their research and expertise to forge partnerships to transform law and policy. The faculty on this panel will share the podium with practicing attorneys who collaborated on important reform efforts in a wide range of areas. These initiatives all required creativity, commitment, and courage to pursue change both in the United States and abroad. In each instance, a theory of rights — whether related to real property, the criminal process, or international law — was tested in the crucible of real-world cases.

#### Speakers:

Dana Berliner, *Senior Attorney, Institute for Justice, Arlington, Virginia*  
Richard A. Epstein, *The University of Chicago Law School*

Neal K. Katyal, *Georgetown University Law Center*  
Additional speaker to be announced

Catharine A. Mac Kinnon, *The University of Michigan Law School*  
Maria T. Vullo, *Esquire, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York*

**Moderator:** Robert C. Post, *Yale Law School*

### Presidential Program II –

#### Transformative Teaching and Institution-Building

Professors enjoy the great privilege of shaping a future generation of legal thinkers through teaching and institution-building. The faculty on this panel will describe how they reach students in the classroom, how they form mentoring relationships that transcend a particular course, and how they work on curricular change to improve what law schools have to offer. The participants will be paired with partners, whether a former student, a talented professional from another field, or even the audience itself to explore how innovation can begin at our home institutions.

### Presidential Program II, Continued

#### Speakers:

Cheryl Hanna, *Vermont Law School*  
Elizabeth M. Schneider, *Brooklyn Law School*

Michael H. Schwartz, *Washburn University School of Law*  
With the audience as his partner

Kyle Homstead, *Chief Technology Officer, Chronicle Technologies, Florence, Massachusetts*  
Susan P. Sturm, *Columbia University School of Law*

**Moderator:** Devon Wayne Carbado, *University of California, Los Angeles School of Law*

### Presidential Program III –

#### Transformative Advocacy

Professors enjoy an increasing number of ways to combine teaching and advocacy through clinics and centers devoted to research, policy, and practice. These programs represent a profound and continuing transformation in legal education, and they are reaching an increasingly broad cross-section of the communities they serve. The professors on this panel will share the experience of partnering with students, organizers, and activists to address controversial issues of pressing concern. This transformative advocacy often has given a voice to those in need of legal assistance, whose concerns about injustice might otherwise go unheard.

#### Speakers:

Lael R. Echo-Hawk, *Reservation Attorney, The Tulalip Tribes of Washington, Tulalip, Washington*  
Ron J. Whitener, *University of Washington School of Law*

Robert R. Kuehn, *The University of Alabama School of Law*  
Marylee Orr, *Executive Director, Louisiana Environmental Action Network, Baton Rouge, Louisiana*

Raul Pinto, *Law Student, City University of New York School of Law, Flushing, New York*  
Jenny Rivera, *City University of New York School of Law*

**Moderator:** Elliott S. Milstein, *American University Washington College of Law*



## Call for Poster Proposals at 2010 Annual Meeting

You are invited to submit a proposal of a poster presentation for the 2010 AALS Annual Meeting in New Orleans, Louisiana (January 6-10, 2010).

Please send your proposal by e-mail to [sections@aals.org](mailto:sections@aals.org) by **September 4, 2009**. The proposal should state your name, the name of your law school, the Section for which you are submitting, a title of the poster, a description of what you will be presenting and an actual electronic copy of the poster itself. Your proposal will be sent to the Section Chair and Chair-elect and they will review and select the posters that will be presented as the Section's posters at the 2010 AALS Annual Meeting. This is an opportunity to share your work with the larger academic community. If your Section is not sponsoring posters, you may still submit a poster proposal; the AALS Committee on Sections and Annual Meeting will review it. AALS will notify all posters proposers by October 14, 2009 of the section's decision.

The following AALS Sections are seeking proposals from individuals for poster presentations for the 2010 AALS Annual Meeting:

1. Administrative Law
2. Aging and the Law
3. Animal Law
4. Clinical Legal Education
5. Contracts
6. Disability Law
7. Education Law
8. Family & Juvenile Law
9. Graduate Programs for Foreign Lawyers

10. International Human Rights
11. International Legal Exchange Section
12. Law and Interpretation
13. Law, Medicine and Health Care
14. Legal Writing, Reasoning and Research
15. Minority Groups
16. Nonprofit Law and Philanthropy
17. Pro-Bono & Public Service Opportunities
18. Property Law
19. Taxation
20. Teaching Methods

### Goal of Posters at AALS Annual Meeting

Posters are intended to provide authors an opportunity to present in clear and succinct fashion the thesis and conclusion of their research or to describe teaching innovations outside formal program presentations. Because the focus is on the content of the research and innovative teaching, posters that are primarily promoting a particular school program, project, book or materials are not eligible for poster display. Other advertising or fliers are not permitted with posters.

### Audience for Posters

The readers of posters may be professors casually passing through the hallway, professors who are reading posters for insights into possible interdisciplinary links to their own work or professors who seek out a particular poster because it presents research important to the reader. It is important to keep poster information succinct and readable increases exposure to the core ideas of the poster.

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### Posters at the 2009 AALS Annual Meeting in San Diego



## Call for Poster Proposals for 2009 Annual Meeting

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### Who Can Submit a Poster?

A faculty member or professional staff member at an AALS member law school or AALS fee-paid law school can submit a poster proposal to a Section. **Please send your proposal by e-mail to [sections@aals.org](mailto:sections@aals.org) by September 4, 2009.**

### Display of Posters

Posters will be displayed outside in the hallways Hilton New Orleans Riverside from Wednesday, January 6 through Sunday, January 10, 2010. Posters will be grouped and identified as a Section's poster. AALS will provide the easels and the poster presenter will provide the poster. Your poster will be displayed on an easel and needs to be easily read from 2-3 feet away, the content easily digested by viewers who stop for a minute or two to review your work. Specific suggestions on size, format and logistical details of preparing and getting your posters to New Orleans are described below.

### Poster Presentations

AALS will schedule an hour for Sections' posters to be presented during the Annual Meeting. The current plan is to have one day during the Annual Meeting with three one hour time slots assigned to poster presentations, most likely, the day of presentation will be either Friday, January 8 or Saturday, January 9. Poster presenters should be prepared to have their posters displayed in the hallways from January 6 through January 10, 2010 throughout the AALS Annual Meeting. If AALS receives too many Section posters to fit in the appropriate space, we will have presenters post their posters on an easel for an hour and allow other posters to replace it, so that all can be shown.

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## 2010 Annual Meeting Keynote Speaker and Service Award Recipient, Guido Calabresi

*Continued from page 1*

Professor, Dean and Judge Calabresi's service "to the law" is best exemplified in the body of his scholarship which transformed our profession's thinking about tort law. Two of his four books earned recognition from the American Bar Association, and one received the Order of the Coif's Triennial Book Award. The American Bar Foundation honored him with its Award for Outstanding Research in Law and Government. He has received the Morton A. Brody Distinguished Judicial Service Award and continues his active judicial service after fifteen years as a Judge on the U.S. Court of Appeals for the Second Circuit. Judge Calabresi's service "to legal education" is multi-faceted. It includes nine years as Dean of the Yale Law School, membership during the late 1980s on the AALS Executive Committee, an exceptionally high degree of informal mentoring of law students and graduates over the generations, continued law school teaching despite the demands and satisfactions of his judicial role, willingness to participate in furthering the transition of individuals into law teaching through, for example, his frequent participation in the AALS's Workshop for New Law School Teachers, and his service to law schools other than his own exemplified in over 70 named lectures and service on advisory boards.

## 2010 Annual Meeting Theme: “Transformative Law”

In 2010, we will be meeting in New Orleans for the first time since Hurricane Katrina forced the relocation of our 2006 Annual Meeting. During my Presidential year, I am adopting the theme of “Transformative Law,” mindful of the symbolic significance of our return there as well as of the successes and failures of the legal profession in addressing this perilous past decade. Our meeting this year takes place at a time of crisis in our economy, our ecology, and our international standing as the leader of the free world. Many lawyers (including our President, Vice-President, and many Cabinet officials and congressional leaders) must tackle these challenges. Media coverage of their efforts, however, portrays these public servants as people who happen to be lawyers, not as lawyers whose leadership grows out of their mastery of law and whose accomplishments represent the pinnacle of their professional pursuits. To a significant degree, the news accounts reflect the fact that these leaders have not pursued a traditional law firm practice but instead have devoted themselves to government and public service. The image of the citizen-lawyer, whose training can be used to advance the common good, has so thoroughly disappeared from the popular imagination that those who pursue this path are no longer centrally defined as lawyers.

Contrast today’s portrayals to those of fifty years ago, when the word “lawyer” might conjure up images of crusaders in the civil rights movement. Or, compare these images to those of an even earlier era, when attorneys entered public life as architects of the New Deal. When citizen-lawyers embarked on these campaigns for change, the result was transformative law. By this, I mean that law became a powerful tool to challenge and reconfigure social institutions. Transformative law can take place at the national, state, or local level. Challenges can come through landmark Supreme Court decisions like *Brown v. Board of Education*, which forced the nation to reconsider the meaning of racial equality. Or, change can be the product of ground-breaking statutes and administrative action, as the battle for the New Deal that President Franklin Delano Roosevelt waged with a reluctant Supreme Court reminds us. Whatever the forum, citizen-lawyers have produced transformative law because they understood their professional role as integral to achieving the American dream.

Today, when lawyers receive attention as lawyers, they are more likely to be defending the notorious than building the nation. Is there no greater role for lawyers as professionals in our contemporary public life? Is the citizen-lawyer now largely relegated to some lost golden age of reform? I believe that law still has a vital role to play at moments of national crisis like this one, but we must once again recognize that lawyers can be powerful agents of change and not merely advocates for agendas set by someone else. We, as members of a learned society, can play a critical role in resurrecting the citizen-lawyer and the possibilities for transformative law. In fact, the current crisis of confidence in our country provides an unparalleled opportunity for lawyers to answer the call of service and restore a sense of integrity and trust.

-Rachel Moran,  
AALS President and University of California, Berkeley School of Law

## 2010 Mid Year Meeting Workshop on Race & Law: “Post Racial” Civil Rights Law, Politics and Legal Education: New & Old Colorlines in the Age Of Obama

June 8 – 10, 2010

New York, New York

When Du Bois wrote in 1903 that “the problem of the Twentieth Century is the problem of the color line,” he was reflecting on momentous changes over the previous decades. For Du Bois, the turn of the century offered an opportunity to take stock of race, to gauge its recent past and predict its immediate future. The turn of the millennium offers us a similar backward- and forward-looking opportunity. Thus this AALS workshop on race and the law.

Entitled “Post Racial Civil Rights law, Politics & Legal Education: New & Old Colorlines in the Age of Obama” (hereafter “Post Racial Civil Rights”), the aim of this workshop, broadly framed, is to mark three significant post civil rights changes to the American racial landscape and to explore the implications of those changes for the future of racial justice advocacy, organization, litigation and legal education. As will become clear, while the three developments we have in mind are not exhaustive of the shifts in U.S. racial dynamics post *Brown v. Board of Education* and the passage of the Civil Rights Act of 1964, each raises profound questions about the direction and substantive content of civil rights reform in the decades to come.

**Change I:** The installation of colorblindness as both the normative backdrop against which race is publicly discussed and a formal legal technique to adjudicate civil rights cases. This instillation produces racial denials (of racism), racial prohibitions (of racial consciousness) and racial elisions (of existing racial inequalities). Colorblindness has simultaneously undermined the emancipatory potential of civil rights law and made conversations about racial justice in civic and political arenas virtually impossible. At the same time, colorblindness has enabled and legitimized a discourse of cultural difference and social responsibility that now serves as the principal explanation of and justification for existing racial hierarchies.

**Change II:** The shift in America’s racial demographics from a majority white nation to a majority-minority nation. There are two significant features of this shift. First, no single racially-defined group represents a majority of the population; and, second, Latinos constitute the new majority-minority. By the year 2000, these patterns were firmly established in California; they now exist in numerous other states, and many of the nation’s major cities, as well.

### Planning Committee for 2010 Mid Year Meeting Workshop on Race & Law

Devon Wayne Carbado, University of California,  
Los Angeles, **Chair**

Ian F. Haney Lopez, University of California,  
Berkeley

Audrey McFarlane, University of Baltimore

Robert O. Porter, Syracuse University

Reva B. Siegel, Yale Law School

Stephanie M. Wildman, Santa Clara University

**Change III:** The momentous election of Barack Obama as the first Black President of the United States. When Obama announced his decision to run for United States presidency, few people thought he would win the democratic nomination, let alone the White House. But win the White House is precisely what he did, changing the face of American politics in the process and facilitating the introduction of a new term in our ever-shifting racial vocabulary: Post racialism. Exactly what this term will come to mean is anybody’s guess. What is clear is that post racialism has already begun to operate as “replacement labor” for the ideological work that colorblindness has traditionally performed.

Organized over three days, Post Racial Civil Rights will examine what the foregoing developments portend for civil rights legal practice, education and political reform. An informal reception opens the workshop on the evening of Tuesday, June 8. The substantive sessions will begin on Wednesday, June 9, with a plenary focused the role law plays in reproducing inequality, even and perhaps especially when no formal

## 2010 Mid Year Meeting Workshop on Race & Law

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“racial classifications” are involved. Entitled “The Legal (Re)production of Inequality,” the plenary will demonstrate some of the distinctive mechanisms through which law reproduces racial inequality in areas including: criminal justice, healthcare, housing, education, employment, immigration, and constitutional law. Small group informal breakout sessions will follow the plenary. There will be no room change. Rather, the plenary attendees will simply form small groups based on where they are seated and engage the members of their group for 30 minutes around the themes the plenary presented. Group participants will then have the opportunity to draw on their group discussions to direct questions at the plenary speakers.

Lunch then follows and will feature a keynote presentation. A second plenary will launch the afternoon sessions, this one devoted to “New Paradigms of Racialization.” As mentioned above, the United States has shifted from a majority white nation to a nation within which (1) no single racial group constitutes a racial majority, (2) people of color outnumber whites, and (3) Latinos are the new minority majority. This plenary panel will explore whether these demographic changes—and social response to them—reflect new paradigms of racialization. How should we now count race? What are the frames in which we now talk about race? And what are the intersectional implications of

these shifts in demographics and discourse? How do they affect our conception of whiteness? Do they have implications for relations of intimacy—shaping perceptions about childbearing and child care, or the social expression of sexuality? How do these new forms of racialization shape claims about citizenship and security, immigration and sovereignty? Staying with this theme, the second afternoon session will feature a choice among several concurrent sessions, including sessions on the census, immigration and profiling, sovereignty, race and dependency and race, family and sexuality.

The second day of the workshop, Thursday, June 9, will open with the plenary, “Race Across the Curriculum & Law School: Race Law 101 and Beyond.” This plenary will focus on race, legal education and law school environment. Senior, mid-level and junior professors will discuss not only the substantive content on the basic race law course, but also how if, at all, that course does or should differ from a course in Critical Race Theory. The panelists will also consider whether identity specific courses, such as Latinos and the Law and Asian American Jurisprudence, enhance or diminish a multiracial approach to civil rights reform. Finally, because race is endogenous (and not just exogenous) to legal environments, the plenary will consider some of the ways in which—outside of the classroom—race shapes and is itself shaped by the institutional

culture and life of law schools. To permit further discussion of these issues, the plenary will be followed by small group breakout sessions that, in addition to continuing the discussion of law school environment and race-specific courses, will examine how to incorporate race into non-traditional race law classes, such as tax and the basic first year curriculum.

Lunch then follows with a keynote presentation on the Obama Administration and Civil Rights. The afternoon sessions will turn to solutions. The discussion will begin with the plenary, “Interventions: The Possibilities & Limitations of Law.” As the title suggests, this plenary will examine whether law remains a productive vehicle with which to achieve racial reform. From antidiscrimination law to immigration law to human rights to housing and criminal justice reforms, the panelists will explore the possibilities and limitations of law—working alongside large and small scale political organizing—to effectuate progressive racial change.

The day ends with another plenary, this one structured in the form of a roundtable to maximize audience participation. Entitled, “The Future of Race, Law and Civil Rights: Asking & Answering the Hard Questions,” this plenary will press the panelists to engage some of the most difficult and controversial questions about the future of race, law and civil rights? Some of the

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## 2010 Mid Year Meeting Workshop on Race & Law

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questions will explicitly draw from, though they will not be exhausted by, the themes around which the preceding plenaries are organized. Is Obama's presidency likely to be more symbolic than substantive? Are there progressive terms upon which assimilationist projects can be articulated? Should whiteness be more explicitly engaged in our public and political discourses about race? How we should we theorize the notion of a black/white binary? Has civil rights advocacy failed meaningfully to engage class? How, if at all, should arguments based on hierarchies of oppression figure in civil rights advocacy? To what extent should our racial engagements be more globally-centered? What is role of international law in domestic civil rights reform? These are some of the questions this plenary will take up.

### Who Should Attend?

This workshop has been planned for (1) anyone interested in post civil rights changes to the American racial landscape and the implications of those changes for the future of racial justice advocacy, organization, litigation and legal education, (2) scholars and teachers in the field of race and the law and anti-discrimination law, including but not limited to, those who write about or teach courses in constitutional law, employment discrimination, women and the law, sexual orientation and the law and feminist jurisprudence, and (3) law professors who teach courses that are not explicitly marked in terms of race and are interested in developing new and exciting ways to incorporate race into their courses.

### When is this Workshop?

The workshop will be held at the Sheraton New York Hotel and Towers located at 811 7th Avenue at 53rd Street in New York. The workshop will begin on Tuesday, June 8, with an opening reception from 6:00 to 8:00 p.m., followed by two days (June 9 & 10) of plenary and concurrent sessions. Both June 9 and 10 will feature luncheons with keynote speakers.

Registration information will be sent at a later time and will also be posted online at [www.aals.org/midyear/](http://www.aals.org/midyear/).

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## 2010 Mid Year Meeting Workshop on Civil Procedure

**June 10-12, 2010**

**New York, New York**

Civil Procedure is a shifting field, requiring mastery of a rapidly changing subject. A new approach to pleading, elaborate litigation financing mechanisms, expanding frontiers in preclusion law, and an increasingly detailed awareness of the landscape of civil litigation all present difficult challenges to teacher and scholar alike.

This workshop will address these important issues. It will also focus on three central pedagogical challenges: teaching the hardest cases,

incorporating innovative and varied classroom methodologies, and constructing a successful course in fewer credit hours.

Our speakers will include established scholars and newer voices. The program is designed to benefit Civil Procedure teachers and scholars at all levels of experience.

Registration information will be sent at a later time and will also be posted online at [www.aals.org/midyear/](http://www.aals.org/midyear/).

### Planning Committee for 2010 Mid Year Meeting Workshop on Civil Procedure

Frederic M. Bloom, Brooklyn Law School  
 Laura Hines, University of Kansas  
 Richard A. Nagareda, Vanderbilt University  
 Patrick Woolley, University of Texas at Austin, **Chair**  
 Stephen C. Yeazell, University of California, Los Angeles

## 2010 Mid Year Meeting Workshop on Property

June 10-12, 2010

New York, New York

Two major crises in the last few years have exposed deep tensions and pressures on our understanding of Property Law. The foreclosure of more than 2 million homes, and the anticipated default of another 6 million mortgages has shaken common notions about the ability of consumers to understand real estate transactions and the terms of their mortgage contracts, posed stark questions about the failure of the law to limit the ability of the market to produce property transactions that created significant principal/agent costs, moral hazards, and externalities, and presented challenging questions about racial disparities in access to prime credit and in the underwriting of troublesome new mortgage products. Similarly, vigorous debates over the responsibility of industrialized countries to control global warming, the need to protect future generations from the effects of global warming, and the fair allocation of the burdens of reducing greenhouse gases similarly have posed challenging questions about the regulation of risk from activities on private property, the nature of property owners' obligations to future generations, and the failure of regulation to control externalities from the use of property. Both crises raise serious theoretical and practical challenges to traditional notions about the comparative advantages of the free market, our ability to craft property laws that limit systematic risk without unduly discouraging innovation, and the continuing inability of the law to prevent racial discrimination, exclusion and exploitation.

The crises also have shown that property conundrums are hardest when they fall at the intersections of state and federal law; constitutional, statutory, regulatory and common law; and substantive environmental, international, financial instruments and risk regulation fields. Property law professors increasingly must come to terms with these intersections as they struggle to distinguish property from other subjects. At the same time, property law professors must master and incorporate into their scholarship and teaching the considerable insights normative theory, theories about race, gender and inequality, and scholarship on law and economics (especially behavioral law and economics) and political economy provide about property.

To address these issues, the workshop will begin substantively on Friday, June 11 with an opening plenary focused on identifying the core of property that must be taught in the introductory property course. As the credits allotted to introductory property courses shrink in schools across the country, but as the crises of the last few years show just how fundamental property law is to our legal and financial systems, senior, mid-level, and junior professors will debate what is critical to include in the basic property course. A second plenary will launch sessions on the mortgage and housing crises, focusing first on "Property in Dangerous Packages: Subprime and Skin in the Game." The luncheon keynote will feature a discussion of federal efforts to address the need for reform in the regulation of the financial and mortgage sectors.

### Planning Committee for 2010 Mid Year Meeting Workshop on Property

Vicki L. Been, New York University Law School,  
**Chair**  
Carol N. Brown, University of North Carolina  
School of Law  
Eduardo Moises M. Penalver, Cornell Law  
School  
Joseph W. Singer, Harvard Law School  
Alfred Chueh-Chin Yen, Boston College Law  
School

The afternoon sessions will then feature breakout sessions on what behavioral law and economics tells us about the mortgage crisis; what norms underpin the mortgage crisis; what the crisis tells us about the regulation of risk; and what we can learn about and from the political economy of homeownership. We will then reconvene in a third plenary session to talk about inequality and the subprime market.

The morning of Saturday, June 12th will feature breakout sessions organized around works in progress selected through a request for proposals. A fourth plenary session will then focus on what the global warming crisis tells us about property law. Breakout sessions will follow, again to allow examination of the global warming crisis through the perspective of various normative theories and theories of equality and fairness, as well as from a political economy and risk regulation vantage point. The day will end with very early works in progress roundtables, at which scholars with very preliminary ideas will be given just ten minutes to outline their ideas and get feedback on the viability of the topic.

Registration information will be sent at a later time and will also be posted online at [www.aals.org/midyear/](http://www.aals.org/midyear/).

## 2010 Conference on Clinical Legal Education

May 4-8, 2010

Baltimore, Maryland

### Why Attend?

The Carnegie Report, *Educating Lawyers*, and *Best Practices For Legal Education* have stimulated a conversation about change in many law schools, including about how and whether to educate lawyers for practice. As professors who have played a central role in educating graduates for practice and in pushing reform in legal education, clinicians have been and will be an important voice in these conversations. The conference will provide clinical educators with knowledge and skills needed for improving their own programs and participating meaningfully in institutional change. The conference's goal is to empower clinicians and other faculty whether their school is deeply engaged in discussions about Carnegie and *Best Practices* or whether the conversation has not even begun.

Both Carnegie and *Best Practices*, as well as the ABA, have called for law schools to identify with greater precision what our students should learn and be able to do after graduation. Thus, the conference will begin with a focus on outcomes and assessment, identifying how to frame outcomes that shape the student's education and how to measure our effectiveness as teachers.

Next, as we think about changing legal education and our own clinical courses, we must ensure that change is not limited to creating greater technical competence but includes educating students about professional values and norms, especially commitments to social justice. Carnegie criticizes an approach to teaching law that eliminates a justice dimension and both reports identify professional commitments to justice and equality as important professional values to teach. The conference will address these concerns by exploring the contributions that critical race and other critical theories about law, practice and legal education can add to the discussions about what students need to learn and how best to teach them.

Finally we will explore how change occurs by engaging theories of institutional change and applying them to legal education, our law schools and our clinical courses. We will look at a variety of issues such as content, sequencing and design of clinical programs, integration of clinical courses and methodologies within the entire curriculum, and status.

Through a range of plenary and mini-plenary sessions, focused concurrent sessions, and small working group meetings, clinicians will examine these issues by drawing on expertise both within and outside of legal education. The emphasis, as in all clinical conferences, will be on the interaction among participants and between participants and presenters.

### Who Should Attend?

This conference will be of interest to both veteran and novice clinicians as well as other faculty who are interested in addressing issues surrounding preparation of students for practice.

Registration information will be sent at a later time and will also be posted online at [www.aals.org/clinical/](http://www.aals.org/clinical/).

### Planning Committee for 2010 Workshop on Clinical Legal Education

Alicia Alvarez, The University of Michigan  
C. Elizabeth Belmont, Washington and Lee  
Susan J. Bryant, The City University of New York, **Chair**

Kristin Henning, Georgetown University Law Center

Charles D. Weisselberg, University of California, Berkeley



## President's Message

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commissions then being established by the Bush Administration were unconstitutional. When the Office of Military Commissions was constituted, Katyal contacted the chief defense counsel and offered his services. He ultimately collaborated with two defense attorneys, Lt. Cmdrs. Charles Swift and Philip Sundel, successfully arguing before the Supreme Court what became the landmark 2006 case *Hamdan v. Rumsfeld*.<sup>16</sup>

Katyal's efforts to transform academic scholarship into effective action were extraordinary, but not qualitatively different from that which other transformative legal scholars can and do undertake. Georgetown's willingness to provide him with adequate time and resources to pursue this case deserves both note and praise. His sustained attention to a single lawsuit exemplifies the spirit of *Brown* translated into a form that contemporary legal scholars can imagine pursuing. Katyal's work also demonstrates how one can maintain academic respectability even while breaking some of the rules. His work was "interested," not dispassionate. It addressed complex areas of constitutional law but waged a defense of our most cherished principles that went well beyond a purely academic debate. Katyal's efforts provide an excellent example of what transformative legal scholarship can achieve and of what we consumers and promoters of legal scholarship can choose to value.

### B. Forming partnerships with non-academics

My previous column noted the tendency of legal academia to undervalue clinical work. No one, however, looks askance at clinical professors doing what they are hired to do. For non-clinical professors, perhaps particularly theorists, to venture into practice is less common, but still respected when—as with Neal Katyal's partnership with Lt. Cmdrs. Swift and Sundel—it means taking on a prominent, novel, constitutional case of first impression. Most cases where academic lawyers (and their theoretical insights and doctrinal knowledge) are most needed have much lower profiles.

Legal scholars have not wholly neglected the challenges of injustices so pervasive and commonplace as to seem almost ordinary. Professor Eric Yamamoto has long been a leading figure in Critical Race Theory, but one who resists being limited to theory. His influential 1995 essay on "Critical Race Praxis" was a self-conscious effort to push those in his field into the messy, and often low-profile, world of transformative litigation. Yamamoto decried "the disjuncture between progressive race theory and political lawyering practice" and "the intensifying dissociation of law from racial justice."<sup>17</sup> He lamented that

Race theorists, particularly legal race theorists, and political lawyers often seem to operate in separate realms: the former in the realm of

ideologies, discursive strategies, and social constructions; the latter in the realm of civil rights statutes, restrictive doctrinal court rulings, messy client management, discovery burdens, and politically conservative judges; the former in the ethereal realm of postmodern critiques of knowledge and power; the latter in traditional civil rights rhetoric and strategies.<sup>18</sup>

Yamamoto has done more than simply identify the divide between theory and practice. He has tried to bridge this gap in many ways, notably teaming up with anti-sweatshop activist and MacArthur Genius Grant winner Julie Su. Su was a civil rights attorney in Los Angeles when she became aware of the plight of Thai garment workers kept in de facto slavery by their employers from 1988 to 1995. With the Asian Pacific American Legal Center, she achieved substantial success in forcing garment manufacturers and retailers to accept legal responsibility for illegal acts of their suppliers.<sup>19</sup>

Su and Yamamoto collaborated to write a chapter on what Critical Race Theory might "offer to and learn from groups engaged in building alliances and forging coalitions."<sup>20</sup> Their piece acknowledges their different perspectives from the outset: Su is especially concerned with the ability of those in subordinated communities to gain power; Yamamoto's complementary interest is how to "remake civil-rights law and practice into a viable instrument for progres-

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<sup>16</sup> See T.R. Goldman, *Katyal's Crusade: How An Overachieving Law Professor Toppled The President's Terror Tribunals*, LEGAL TIMES, July 31, 2006, available at <http://www.law.georgetown.edu/new/documents/Goldman7-31-06.pdf>.

<sup>17</sup> See Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 829 (1997).

<sup>18</sup> *Id.* at 832-33.

<sup>19</sup> Su chronicled her experiences litigating these cases in *Making the Invisible Visible: the Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998).

<sup>20</sup> Julie Su and Eric Yamamoto, *Critical Coalitions: Theory and Practice*, in *Crossroads, Directions, and a New Critical Race Theory* 379 (Francisco Valdes, et al. eds. 2002).

## President's Message

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sive change.”<sup>21</sup> Readers can assess for themselves the success of this particular effort to address cross-racial solidarity among minority groups placed in potential conflict. What I note is the clear statement that even highly theoretical scholars can and should aspire to be transformative—ideally by working with those who themselves engage in struggles for change.

### C. Embracing controversy in a world that idealizes a studied distance from conflict

My previous column addressed the political reaction that controversial advocacy, such as that undertaken by environmental law clinics, can induce; that these enterprises exemplify transformative scholarship is understood. One of the most striking and successful examples of transformative legal scholarship in our time, however, may be the sustained effort of scholars like those associated with the University of Chicago Law School to promote the discipline of “Law and Economics.”<sup>22</sup>

The Law and Economics movement shows that even a highly theoretical analysis can be influential and politically interested, embracing conflict as the price of success.<sup>23</sup> Law and Economics transcended a narrowly theoretical orientation by aiming directly at influencing judicial decisions, encouraging student

interest, and even establishing, with Olin Foundation assistance, educational programs to introduce judges and others to economic concepts.<sup>24</sup> Some critics like law professor Mark Tushnet ultimately doubt the long-term transformative influence of the field both within and beyond the academy, largely because generations succeeding the movement’s founders have become both more arcane in their research and more moderate in their politics.<sup>25</sup> Although the extent and permanence of the impact of Law and Economics is open to debate, and while its shifting commitments illustrate the difficulties of changing both academia and society more broadly, this movement is a prime example of legal scholars taking social transformation seriously and pursuing it assiduously.

### 4. Valuing transformative legal scholarship

As these examples demonstrate, transformative scholarship remains a vital part of legal academia. However, as former AALS President Deborah Rhode notes in a 1992 review of legal scholarship, “[i]f we are seriously committed to improving the quality and impact of academic work, we need to alter both individual and institutional reward structures.”<sup>26</sup> Rhode favors helping young faculty conduct empirical work that generates facts rather than opinions, arguing that institutions should be

more flexible about the kinds of academic research they value, and that “the tenure system should be both more rigorous and less rigid.” In a key passage, she states:

The most productive opportunities for some talented faculty lie elsewhere than theoretical tomes or dutiful tramps down already well-traveled doctrinal paths. More of their time and talents could go to other labor-intensive projects that generally are undervalued in legal education, such as skills training or supervision of clinical and pro bono projects.<sup>27</sup>

Institutional reforms such as Rhode describes would be welcome. But we can make one immediate change that requires no budgetary analysis or formal accommodation. Prior to any such reforms, we as faculty can adjust our own opinions of academic respectability. Within broad bounds—continuing to demand scholarly ethics, creativity, and competence—academic respectability is what we scholars judge it to be. Sustained, engaged, brave, and effective transformative research should be especially valued. A legal academy that recognizes that civic-minded research, far from being suspect, should be encouraged and embraced will be stronger for having made that choice.

<sup>21</sup> Id.

<sup>22</sup> See Anthony T. Kronman, *The Lost Lawyers: Failing Ideals of the Legal Profession* 166 (paperback ed. 1993) (stating that Law and Economics was “the intellectual movement that has had the greatest influence on American academic law” over the prior 25 years).

<sup>23</sup> See generally Steven M. Teles, *The Rise Of The Conservative Legal Movement: The Battle For Control Of The Law* (2008) (chronicling, inter alia, the advent and institutionalization of the movement).

<sup>24</sup> See, e.g., id. at 101-14 (describing Henry Manne’s establishment of the model Law and Economics Center and particularly the Economics Institute for Federal Judges at the University of Miami).

<sup>25</sup> Mark Tushnet, *What Consequences Do Ideas Have?*, 87 TEX. L. REV. 447, 449-53 (2008). Former Olin Scholar David Bernstein, also responding to Teles’s book, offers a positive but mixed assessment of the Olin Foundation’s success in promoting conservative transformative scholarship. See David Bernstein, “The Influence of the Olin Programs in Law and Economics at Yale Law School and Otherwise” (Feb. 26, 2008), available at <http://volokh.com/posts/1204019661.shtml>.

<sup>26</sup> Deborah Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1357-61 (2002).

<sup>27</sup> Id. at 1359.

## The AALS Files Amicus Brief

Continuing its long history of acting to protect law school clinical programs, the AALS recently submitted an amicus brief in a New Jersey case involving the Rutgers–Newark School of Law’s Environmental Law Clinic and its representation of a citizens group that opposes a major retail development project.

In *Sussex Commons Associates, LLC vs. Rutgers, The State University of New Jersey* a developer brought suit to obtain information from the Rutgers–Newark Environmental Law Clinic under the theory that the New Jersey public records law means that information could be obtained from the clinical program outside the rules that normally apply in litigation. Sussex Commons claimed that, since the clinic is part of the state university, the New Jersey open records laws apply to the clinic’s records. The clinic responded that the files requested are not subject to the open records act because they are neither public nor government records. The trial court agreed with the University, and the entity requesting the documents appealed the trial court decision.

As the authors of the brief point out, this case is important to AALS because of the association’s aim to protect the integrity of clinical education – one of the most important educational developments in law schools over the last 40 years. Public law school clinical professors and their students practicing law in a clinical setting will not be able to competently or ethically represent clients if they must reveal client confidences that other members of the bar would be required to keep. As a result, clinical education would not be viable in public law schools but would instead be limited only to private law schools.

“The AALS has a profound interest in defending legal education programs when the integrity of the curriculum is at risk. Our nation’s clinical programs were created for the purpose of educating law students,” Susan Prager, Executive Director of the AALS emphasized.

The AALS’ amicus filing is another instance in its longstanding position in protecting the role of law schools and faculty in designing educational programs based on principles of academic freedom. The AALS participated in this case because it represents a direct attack on important aspects of legal education offered by law schools through their clinical programs. The AALS has previously countered challenges to the structure of clinical education or to particular choices made by law school clinics in Louisiana, New Jersey, North Dakota and Oregon.

“The challenges to law school clinical programs where AALS has spoken seem to have the same common thread,” Prager said. “Persons or entities in the community or the state were or are attempting to eliminate or affect the substantive content of the activity in a law school’s clinical program. In one instance, a potential plaintiff argued that a clinic in a state law school was required to accept his case.”

In the recent amicus filing, the AALS brief was prepared by two former AALS Presidents. Both authors have also served as Dean of their law school. Professor Nancy H. Rogers of The Ohio State University, Michael E. Moritz College of Law, served as AALS President in 2007. She recently returned to her faculty office from her service as Interim Attorney General of Ohio where she had considerable exposure to public records act issues. Professor Elliott S. Milstein of American University, Washington College of Law, was AALS President in 2000. Recognized for many decades as a leader in clinical education, Milstein was the first clinical faculty member to serve as AALS President. The case came to the attention of the AALS through its Committee on Clinical Legal Education, and particularly through the efforts of Professor Robert R. Kuehn, then of The University of Alabama School of Law, who co-authored an amicus brief at the trial level on behalf of the Clinical Legal Education Association as well as a subsequent one in the appeal.

## Upcoming Meetings and Events

### 2009 Faculty Recruitment Conference (FRC)

November 5-7, 2009

Washington, D.C.

### 2010 Annual Meeting

January 6-10, 2010

New Orleans, Louisiana

### 2010 Conference on Clinical Legal Education

May 4-8, 2010

Baltimore, Maryland

### 2010 Mid-Year Meeting

June 8-12, 2010

New York, New York

- **Workshop on Race and Law**  
June 8 – 10, 2010
- **Workshop On Property**  
June 10-12, 2010
- **Workshop on Civil Procedure**  
June 10-12, 2010

## Future Annual Meeting Dates and Locations

- January 4-8, 2011, San Francisco
- January 4-8, 2012, Washington, D.C.
- January 4-8, 2013, New Orleans

## Future Faculty Recruitment Conference Dates

### Washington, D.C.

- October 28-30, 2010
- October 13-15, 2011
- October 11-13, 2012
- October 17-19, 2013
- October 16-18, 2014