



President's Message

Ask Not For Whom the Law School Bell Tolls

Michael A. Olivas, University of Houston Law Center, AALS President

It is a fact universally acknowledged that law faculty are in want of purpose. It takes a lot to get us riled, and even more to call us to the barricades. But the current state of financing legal education is just such a burning theater, and we all should be troubled by the fast-churning events. Because most of us went to law school during the Golden Age, which I situate as having ended about five years ago at the top of the application apex and the height of the modern-day job markets for law graduates, most of us are blissfully unaware of recent developments that literally threaten the enterprise. I write to discuss these many moving parts and to call us to action as a community, for threats to the universe of legal education will affect us all to our collective detriment.

Let me set out the many parts, and then describe their interrelationships.

A number of states, faced with ruinous economic conditions, are reducing their subsidy to public institutions. This development and the rising cost of private education have meant that it is harder to finance education without resorting to substantial student debt burdens. Many already arrive at our law schools with substantial obligations and compromised credit worthiness. [1]

Some states have privatized their public law schools, rapidly increasing the tuition prices. Private law school tuition costs have continued to outstrip the consumer price index. Both these features have meant that law student debt loads have also increased substantially. These developments have also led to internal reorganization and the creation of revenue streams to law schools, such as increased CLE and short-term curricular offerings, executive-style programs especially at the graduate level, additional and more-specialized LLM programs (including on-line and asynchronous course offerings), and other revenue-generating and auxiliary enterprises.

In a difficult post-baccalaureate job market, law schools historically have been reasonable and accessible options to medical school, MBA programs, and other graduate or professional alternatives. While there are more law students enrolled at present than in history, the demographics of law study are shifting as well, and not all the populations will be equally able to undertake law study. [2]

Students have increased information about their choices, but there are substantial information asymmetries; these can lead to imperfect self-assessments. As with choices of annuities, 401(k) plans, and prepaid tuition plans, there are so many choices that applicants are in a position to have too much data, and a poor sense of what law school is the best for them. [3]

Up until recently, many of our students were in a position to finance the cost of their college and professional education with subsidized loans, which they repaid from employment in a well-paid profession, where career earnings improved over the trajectory of lawyers' careers. All the parts of this equation are shifting, and the equation itself is unlikely to continue as a working model for many of our students. [4]

Without the complex regime of relatively inexpensive and subsidized student loans, many students could not assume the growing risks of undertaking law study, at least not in the traditional three year format of fulltime enrollment.

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Some institutions, especially newly established and a number of other struggling law schools, may not be able to meet the increased regulatory requirements for administering loan programs, such as the proposed "gainful employment" and 90/10 criteria. While these are very technical matters, they mean that schools with undercapitalized operating expenses (that is, they rely almost exclusively upon tuition) and poor placement and/or bar passage records for graduates will find it more difficult to operate and be authorized to administer federal loans. [5]

The law firm and legal employment market are being restructured in a fashion that will likely lead to lower employment opportunities; structural changes are likely to result in lower salaries and more contingent lawyer workforces. As one sign, major U. S. law firms are "outsourcing" legal work to staff attorney law firms in lower-cost cities such as Wheeling, West Virginia and Dayton, Ohio; some outsourcing of routine legal work to foreign cities has been evident for years. [6]

While relatively few international lawyers seek or gain employment in the United States, several observable trends will likely result in a more-globalized legal job market; these include bar admissions pressures, international General Agreement on Trade in Services (GATS) negotiations, and other flattening trends in international legal education. In some instances, these will lead to decreased opportunities for U.S. lawyers, at least those who speak only English. [7]

In-school subsidies are ripe targets for legislative cost-cutting and

budget efforts. Any changes to this and other features of the current financial aid system will lead to more expensive financing options. [8] Not all of our enrolled students or their families will be able to avail themselves of stricter lending requirements.

All the features in the current financial aid system were creatures of Congress; living by this sword can also lead to dying by this sword, should deferral periods/bar exam financing/grace periods for repayment disappear. At the least, the costs of borrowing are likely to increase, postponing the debt burden but also substantially increasing that burden. At the successful urging of legal educators, Congress adopted both an income-based repayment plan and a public interest loan forgiveness program, but the same thermodynamics and Congressional action could repeal them. Our successes have bred envy and resentment, as efforts to preserve lower-cost governmental financing has been cast as special-pleading by the guild. [9]

The Congressional and Administration efforts to tighten up the gainful employment/ability to benefit equation has largely been a function of undergraduate proprietary schools, but the increased scrutiny to law school employment issues, including institutional honesty and transparency, may well extend to legal education overall, which could restrict some schools from participation in the federal scheme. Law schools have not been fully scrutinized on these issues until the last year. [10]

Limitations on bankruptcy for
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student loans mean that there will be pressure upon state bar authorities to use financial health and credit records in the moral character and fitness determination process. [11]

These are daunting developments in the world of legal education, and many in this list will in fact occur, knocking out or reducing the possibility of law school, especially for students from poor families, for first-generation college graduates, for immigrant families, and for minority communities. Because these communities are growing and will provide the applicants for our future classrooms, these developments are ominous and unforgiving. While many people see some of these, and some see many of these, I write to put the entire polity and legal education community on notice that we face significant challenges in all these areas, and not all law schools can survive the end game of some of these events. One need only look at the housing bubble and credit market collapse to see how quickly and precipitously such problems can occur.

I do not suggest for a moment that all legal educators have ignored these markers or that no one has tried to point out the problems. One of the more thoughtful in our community is New York Law School Dean Richard Matasar, who has pointed out many of these issues, and has done so in both scholarly fashion and through his service on the Board of the Access Group. I urge you all to read his forthcoming article in the *Iowa Law Review*, *THE VIABILITY OF THE LAW DEGREE: COST, VALUE, AND INTRINSIC WORTH*. [12] If he is right, and I suspect he is absolutely correct in his diagnosis of the problems, we all owe him a debt of gratitude—in this context, I mean **debt** in the literal sense. As I will note at the end, he and I strenuously disagree on what the conditions will require, so we do not read the problems as driving the same solutions, but I start with the premise that we all need to look at the developments, or they shall surely engulf us at high tide, and there will be no safe harbors. Indeed, by his metrics, schools all across the spectrum will encounter serious problems, not just the more-marginal schools that are part of our expansive universe.

After detailing a number of the developments that I have highlighted in bullet format, Dean Matasar notes,

*... "merit" has many metrics,
not just how well one did on a
Saturday morning in a large
group, with a no. 2 pencil.*

"The simple answer is that the law degree will continue to be viable... for some. Law schools with ancient and powerful reputations will prosper over the short to medium-term. The very few schools currently offering inexpensive degrees should survive, joined by newer, innovative, less costly programs that will emerge. For the remaining, expensive mid-tier schools, the degrees they offer will become less and less attractive, unless they seek to create value for their graduates commensurate with their costs." He also notes, and this may be the most important admonition he raises, "And for a large group of wanna-be lawyers, the degree will make sense only if they properly evaluate its cost, their expected financial returns, **and most importantly, the intrinsic value of becoming a lawyer.**" (emphasis added) He also resorts to a clever (and devastating) characterization, one that will resonate for the politics of many legal educators: "If Robin Hood took from the rich and gave to the poor, law school often does the reverse. It gives scholarships to top students, who have employment opportunities at firms that pay top salaries, funded by full-paying, lower-ranked students, whose employment will often be at organizations paying more modest salaries." I stand shoulder to shoulder next to him in this critique, and have dedicated my professional life to inculcating this view and trying to persuade all who will listen that "merit" has many metrics, not just how well one did on a Saturday morning in a large group, with a no. 2 pencil.

Even so, as I indicated, he and I fundamentally differ on our solutions or prescriptions for what we both agree is an ailing system. For example, he has successfully articulated a need to increase the number of contingent faculty as a cost-control measure. (For example, his views have substantially affected deliberations on ABA security-of-position proposals.) In my belief system, this top-down managerial approach would compromise the entire system, rendering the cure worse than the ailment. He concludes that "law schools, law-school regulators, and the profession must be willing to experiment and permit new models of legal education to arise that can produce sufficient value at a reasonable cost in order to assure the continued viability of the law degree." I am not as sanguine, and believe that a number of these develop-

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ments will lower the quality of instruction to a deplorable level, particularly if some of the tenure-eliminating proposals making their way through the Council of the ABA Section on Legal Education and Admissions to the Bar process are adopted, and if more legal study is delivered by internet and distance education. In my calculus, losing some lower-quality or inefficient law schools may be an acceptable price to retain the core faculty and traditional governance structures. As I wrote in my first column to readers, these indispensable features of legal education in the United States are like our democratic processes: worse than anything except the alternatives. Increasing the number and percentage of contingent and transitory faculty will diminish the overall quality of the enterprise, and should be resisted vigorously. [13]

But all of us similarly have a dog in this fight of cost containment and in making legal education accessible and affordable to our students. We cannot simply hope that the problems will resolve themselves. We have erected a substantial system of training lawyers, one that is a spectacular success by any measure, notwithstanding the cracks in the infrastructure. We all need to keep up with these developments, counter challenges to our existence, and work harder to explain why our system is worth saving at its core. We also need to do a better job of explaining the large role of lawyers in the world society, not only as technicians with attention to detail but as defenders of important core values and democratic principles. I do not view the migrating role of lawyers to civilian life across non-law fields as evidence of our declining competence, as some commentators have in analyzing legal employment figures, but rather this as robust evidence of the growing value of being a lawyer and applying our skills to the many societal problems in need of our multifaceted talents. It is no accident that a disproportionate number of lawyers serve in business enterprises, as well as in positions of governmental leadership and civic participation, giving generously of our time and talent.

Perhaps most importantly, we need to be cheerleaders for legal education writ large and our way of life, and to

be critics that hold it to high standards. In many countries, law faculty are entirely part-time, and widespread student access is limited by a filter of counterproductive and inefficient attrition. This is not the path we have chosen, and it is our glory. At the least, we should not weaken our chosen profession by inattention, avarice, or acrimony. Speaking out against lawyers is an ugly habit, yet I have witnessed law teachers do it in public venues. Others will attempt to diminish both the rule of law and its means of transmission, so we need not add to this chorus. We should not belittle law's accomplishments, just as we should not overlook its weaknesses or inefficiencies

or inequities. The bell will toll for all of us, even if we do not always hear its loud peals.

REFERENCES

I acknowledge my substantial debt to Dean Richard Matasar for his scholarship and service in this important area. I also thank Lauren E. Schroeder and Professors Peter Winograd and Phil Schrag for their useful suggestions, and note the work of my two official food-tasters (Dean Larry Dessem and Professor Robert Gorman) for their efforts in reviewing all my AALS columns. Of course, we all disagree on many of these issues, but their views have substantially affected my attention to the subject.

[1] Tamar Lewin, "College Loans Weigh Heavier On Graduates," *N.Y. Times*, Apr. 12, 2011, at A1. (2/3 of all bachelor's degree recipients graduated with debt in 2008; in 1993, it was fewer than 50%. In 2010, college graduates who took out loans averaged \$24,000 in debt). But see Ann Carrns, "College Students Don't See Debt as Burden," *N.Y. Times*, June 15, 2011, available at: <http://bucks.blogs.nytimes.com/2011/06/15/college-students-surprising-attitude-toward-debt/?nl=your-money&emc=your-moneyema5> (suggesting the opposite, that students were not burdened with debt). See also Daniel de Vise, "College merit aid produces bidding wars," *Wash. Post*, May 30, 2011, available at: http://www.washingtonpost.com/local/education/college-merit-aid-produces-bidding-wars/2011/05/17/AG7JwzEH_story.html?wpisrc=emailtoafriend

[2] See Michael A. Olivas, "Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt," 49 *J. Legal Educ.* 333 (1999). For a more recent study, see David

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We should not belittle law's accomplishments, just as we should not overlook its weaknesses or inefficiencies or inequities. The bell will toll for all of us, even if we do not always hear its loud peals.

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Barnhizer, "Redesigning the American Law School," *Mich. St. L. Rev.* 249 (2010).

[3] As one example of a call to simplify, see Libby Nelson, "White House Urges States to Make College-Savings Plans More Usable," *Chron. of Higher Educ.*, Sept. 9, 2009, available at: <http://chronicle.com/article/White-House-Urges-States-to/48345>. For a study of more vulnerable populations, see Michael A. Olivas, "Undocumented College Students, Taxation, and Financial Aid: A Technical Note," 32 *Rev. of Higher Educ.* 407 (2009).

[4] For recent stories about undergraduate employment markets, see Catherine Rampell, "Many With New College Degree Find the Job Market Humbling," *N.Y. Times*, May 19, 2011, at A1; the most recent and devastating legal employment figures are regularly reported by NALP: Press Release, The Association of Legal Career Professionals (NALP), Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted (June 1, 2011), available at: http://www.nalp.org/uploads/PressReleases/IIS_electedFindings.pdf.

[5] Frank Donoghue, "The Gainful-Employment Rule—New Developments and Implications," *Chron. of Higher Educ.*, June 20, 2011, available at: <http://chronicle.com/blogs/innovations/the-gainful-employment-rule-new-developments-and-implications/29690>

[6] See Catherine Rampell, "At Well-Paying Law Firms, a Low-Paid Corner," *N.Y. Times*, May 24, 2011, at A1 (domestic outsourcing); John Markoff, "Smarter Than You Think: Armies of Expensive Lawyers, Replaced by Cheaper Software," *N.Y. Times*, Mar. 5, 2011, at A1 (restructuring of legal work through technology).

[7] Penn State law professor Laurel S. Terry is among the leading scholars on this complex subject, and I am in her debt for spelling out the likely effect that GATS negotiations will have in more-easily allowing foreign lawyers to practice in the U.S. A sampler of her recent articles include: "The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as 'Service Providers,'" 2008 *J. Prof. Law.* 189 (2008); "The European Commission Project Regarding Competition in Professional Services," 28 *NW J. Int'l L. & Bus.* 1 (2009); From GATS to APEC: "The Impact of Trade Agreements on Legal Services," 43 *Akron L. Review.* 875 (2010); "An Introduction to the Financial Action Task Force and the FATF's 2008 Lawyer Guidance," *J. Prof. L.* 3 (2010); and "Transnational Legal Practice: 2009 Year-in-Review," 44 *Int'l L.* 563 (2010).

[8] Paul Campos, as one such critic, accuses law schools of misrepresenting graduation placement figures. Paul Campos, "Served, How law schools completely misrepresent their job numbers," *New Republic*, Apr. 25, 2011, available at: <http://www.tnr.com/article/87251/law-school-employment-harvard-yale-georgetown>. See also Eric Kelderman, "American Bar Association Takes Heat From Advisory Panel on Accreditation,"

Chron. Higher Educ., June 9, 2011, available at: <http://chronicle.com/article/American-Bar-Association-Takes/127869/?key=SWg1IgU5ZXVKZnlqZj0UYD0AbHItNhx2YnhNPNnotblxREw%3D%3D> (ABA not in compliance with 17 regulations, but accrediting status renewed)

[9] Jack Crittenden, "A 45% employment rate? How law school employment numbers are inflated," *Nat'l Jurist*, May 3, 2011, available at: <http://www.nationaljurist.com/content/45-employment-rate-how-law-school-employment-numbers-are-inflated>. See also Philip G. Schrag, "The Federal Income-Contingent Repayment Option for Law Student Loans," 29 *Hofstra L. Rev.* 733 (2001); he published a fuller version as a book: *Repay As You Earn: The Flawed Government Program to Help Students Have Public Service Careers* (2001). More recent authoritative research on the subject by Professor Schrag include: Philip G. Schrag, "Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations," 36 *Hofstra L. Rev.* 27 (2007) and Philip G. Schrag & Charles W. Pruett, "Coordinating Loan Repayment Assistance Programs with New Federal Legislation," 60 *J. Legal Educ.* 583-612 (2011).

[10] See William Seth Howard, "The Student Loan Bubble and the Race to Princeton Law School," *Geo. Mason J. L. Econ. & Pol'y* (forthcoming, 2011) [available in SSRN: <http://papers.ssrn.com/abstract=1850354>] (conservative critique of law school financing policies); Gene R. Nichol, "Wages, Work, Privilege, and Legal Education," 5 *Harv. L. & Pol'y Rev.* 401 (2011) (liberal critique of these issues).

[11] As two of literally hundreds of bar admissions cases that turn on financial responsibility, including bankruptcy issues, see Application of G. W., 13 A.3d 194, 161 *N.H.* 401 (*N. H.* 2011) (financial irresponsibility, fraud, and deceit in bar application); "In Re Application of Griffin," 128 *Ohio St. 3d* 300, 2011-Ohio-20, 943 *N.E.2d* 1008 (2011) (concerning bankruptcy). For a thorough review of the bankruptcy hardship provisions affecting students, see Rafael I. Pardo & Michelle R. Lacey, "The Real Student-Loan Scandal: Undue Hardship Discharge Litigation," 83 *Am. Bankr. L.J.* 179 (2009); Rafael I. Pardo & Michelle R. Lacey, "Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt," 74 *U. Cin. L. Rev.* 405 (2005).

[12] Richard A. Matasar, "The Viability of the Law Degree: Cost, Value, and Intrinsic Worth," 97 *Iowa L. Rev.* (forthcoming, 2011). He has a long record of scholarship in this area, including Richard A. Matasar, "Does the Current Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?," *N.Y. St. B.J.* 20, Oct. 2010 (legal education financing in 2010).

[13] Michael A. Olivas, "Academic Freedom and Academic Duty" [2011 AALS Presidential Lecture], 2011-1 *AALS News* 1 (Mar. 2011), available at: <http://www.aals.org/documents/newsletter/february2011.pdf>.

Register Now

2012 AALS Annual Meeting

January 4-8, 2012 in Washington, DC

Register Now for the 2012 AALS Annual Meeting to be held January 4-8, 2012 in Washington, DC

Registration

You may register online at www.aals.org/am2012/ if you are listed in the *AALS Directory of Law Teachers*. If you are not listed in the *AALS Directory of Law Teachers* you may fax or mail your registration form which you can find as a PDF on the AALS website to download and print. The early bird registration deadline date is **November 17**. For Registration Questions, please contact Registration at (202) 296-8851 or email registration@aals.org

Program

Look for your copy of the full printed program and registration materials mailed to the dean's offices of every member and fee-paid law school in early October. The full printed program is also available as a PDF to view on the AALS website at www.aals.org/am2012/ and click on the PDF link. The electronic version of each program session is available on the website where you can click on the session to see the updated speakers and program descriptions.

AALS Gala Reception at National Building Museum

Friday, January 6th from 6:30 - 8:30 p.m.

The 2012 AALS Gala Reception will be held at the National Building Museum on Friday, January 6, 2012 from 6:30-8:30 pm. The historic home of the National Building Museum is one of the great American buildings of the 19th Century and one of Washington, DC's most spectacular works of public architecture. Built between 1882-1887 for the United State's Pension Bureau's headquarters, the design was inspired by two Roman palaces. The exterior was modeled closely on the brick, monumentally-scaled Palazzo Farnese, completed to Michelangelo's specifications in 1589. The Pension Building continued to serve as office space for the government through the 1960's. Congress passed a resolution in 1978 calling for the preservation of the building as a national treasure and a 1980 Act of Congress mandated the creation of the National Building Museum as a private, non-profit educational institution.

Buses to the Reception will board at the 24th Street entrance of the Marriott Wardman Park Hotel and the T Street entrance of the Washington Hilton at 6:00 pm. The buses will shuttle between the National Building Museum, the Marriott Wardman Park Hotel and the Washington Hilton until the conclusion of the reception. The 2012 AALS white full registration badge is required for admission into the Reception for both registrant and spouse /significant other. The Gala Reception is an adult event but children's tickets can be purchased if necessary. Sign up for the Gala Reception on your registration form using session code 5440.

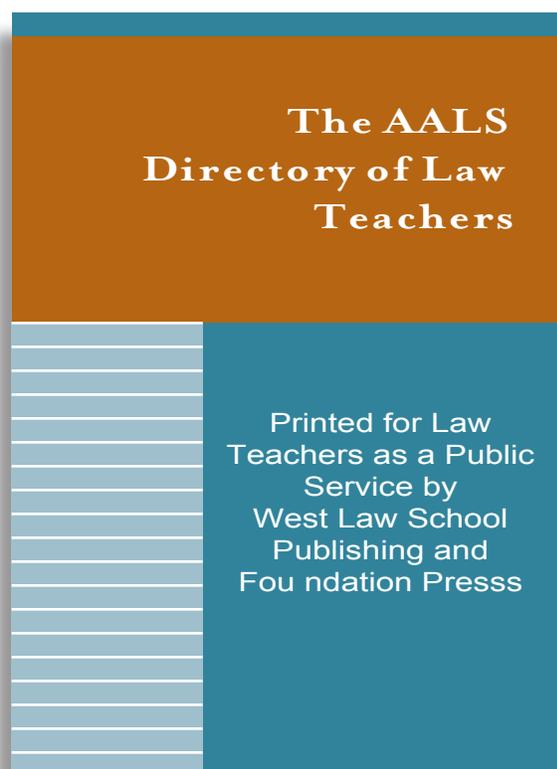
AALS to Offer Child Care at 2012 Annual Meeting in Washington, D.C.

The AALS Executive Committee has agreed to offer for 2012 an AALS Annual Meeting child care center. Depending on participation, the child care center would be subject to sunsetting after a two year offering.

The AALS will include, as it has in the past, the child care center information in the AALS Annual Meeting Program announcement and on its Annual Meeting website.

For information on the 2012 AALS Annual Meeting Child Care Center go to www.aals.org/am2012/ and click on the "child care" tab.

Be on the lookout for your copy of the 2011-2012 AALS Directory of Law Teachers!



*Copies will be mailed to
the dean's offices of every
AALS member and fee-
paid school late fall.*

Association of American Law Schools 2012 Annual Meeting Luncheon

José A. Cabranes, Judge of the United States Court of Appeals for the Second Circuit to make 2012 AALS Annual Meeting Luncheon Keynote Address

Friday, January 6th, from 12:30 - 2:00 p.m.



© 2007 RON JORDAN NATOLI 0118957.Judge Cabranes.IMG 0126

AALS President Michael A. Olivas extended the speaking invitation to Judge Cabranes, particularly with the Annual Meeting theme of Academic Freedom and Academic Duty. He noted, "I asked Judge Cabranes to speak, particularly given his longstanding involvement in law teaching, his serving as Yale's General Counsel, and his experience as a college trustee. He is an exceptional scholar, and he brings extensive experience to us at this important time in legal education."

José A. Cabranes was appointed a Judge of the United States Court of Appeals for the Second Circuit in 1994. He served as a United States District Judge for the District of Connecticut for fifteen years and was serving as Chief Judge of that court when he was appointed to the Court of Appeals.

Judge Cabranes was born in 1940 in Mayagüez, Puerto Rico, and at the age of five moved with his family to the South Bronx. He graduated from Columbia College (A.B., 1961), Yale Law School (J.D., 1965) and the University of Cambridge, Cambridge, England (M.Litt. in International Law, 1967). He studied at Cambridge under a Kellett Research Fellowship from Columbia College and the Humanitarian Trust Studentship in Public International Law from the Faculty Board of Law of the University of Cambridge. He prac-

ticed law in New York City, taught on the full-time faculty of law of Rutgers University and served as Special Counsel to the Governor of Puerto Rico and head of the Commonwealth's Washington office, before moving to New Haven as General Counsel of Yale University in 1975.

He is a founding member of the Board of Directors of the Puerto Rican Legal Defense and Education Fund, of which he later served as Chairman, and he served also as Chairman of a second leading Hispanic organization, *Aspira* of New York, the Hispanic community organization that helps inner-city youth advance through education.

From 1987 to 1999 he served as a trustee of Yale University (Fellow of the Yale Corporation). Cabranes has served also as a trustee of Colgate University and of the Yale-New Haven Hospital.

He is the author of *Citizenship and the American Empire* (Yale University Press, 1979), a legislative history of the American citizenship of the people of Puerto Rico, and with Kate Stith, *Fear of Judging: Sentencing Guidelines in the Federal Courts* (University of Chicago Press, 1998) (Certificate of Merit, ABA) and articles in law journals.

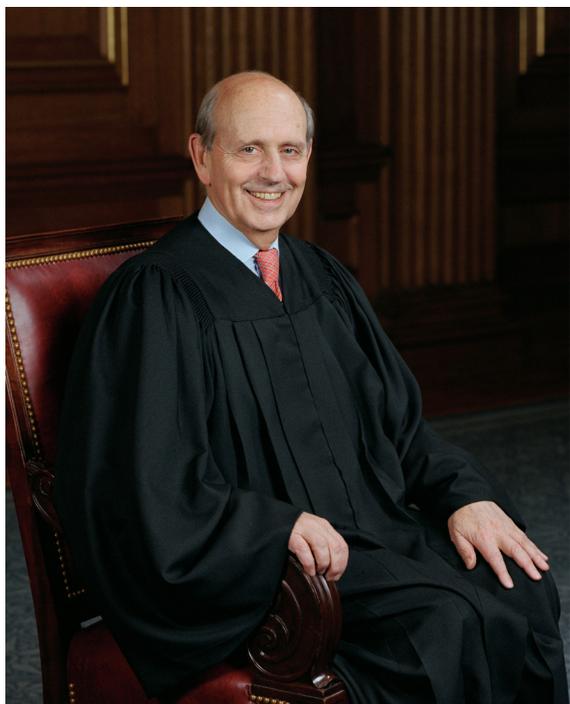
Advance ticket purchase is necessary.

Tickets may be purchased for \$65 when you pre-register for the Annual Meeting using session code 1401.

A Conversation with Justice Stephen G. Breyer, Supreme Court of the United States

Saturday, January 7th, from 12:15-1:30 pm

On Saturday, January 7th, from 12:15-1:30 pm, Justice Breyer will speak and answer questions from the audience. This is an open event to all registrants without lunch provided. You can sign-up for this program using session code [6285] when you register.



Stephen G. Breyer, Associate Justice, was born in San Francisco, California. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

AALS Hot Topic Workshop at the 2012 Annual Meeting

The AALS Committee on Professional Development is planning a daylong workshop at the 2012 Annual Meeting titled **AALS Workshop on Political Crises/Tensions and Constitutionalism: War and Money**. This hot topic Workshop will include panels on crisis, war and the use of force (with a focus on Libya) and panels on the financial crises (with a focus on the debt ceiling). Workshop details with the date, time, speakers and descriptions will be sent out to law school faculty members this fall.

2012 AALS Annual Meeting Workshop on the Future of the Legal Profession and Legal Education: Changes in Law Practice: Implications for Legal Education

Thursday, January 5th from 8:45 a.m. - 5:00 p.m.

Major changes in the legal profession raise important questions about the future of legal education. These changes in the legal profession reflect both long term trends, such as increasing globalization and cross-border practice, advances in technology, and a shift from internal to external sources of regulation and policing of professional misconduct, and recent developments, such as a worldwide economic recession and a global political situation that has heightened both national security and civil liberties concerns. In turn, these changes raise important questions about the future, not only regarding how law will be practiced and what professional skills our students will need, but also how law schools will operate and how professionals dedicated to legal education will teach and otherwise conceive of their missions.

Among the questions these many developments raise: What new or different kinds of training will the law schools of the future need to provide? How can law schools better serve students seeking to develop critical skills in the areas demanded by changes in legal practice, including advanced problem identification and problem solving, entrepreneurship, legal judgment, creativity, and complex case management? How can and should law schools respond to critiques from both practitioners and educators (such as in the Carnegie Foundation report) urging an expansion in the range of cognitive skills addressed through legal education and a broadening of the scope of law school pedagogy beyond traditional methods?

A second set of questions focuses on changes in the legal academy: What innovations are currently underway in law schools to respond to changes taking place in the legal profession and in legal education? How

will projected changes in the economics of the legal profession affect law students' priorities and law schools' budgets? Most fundamentally, what could and should members of the legal academy be doing to plan for the future in response to the many changes currently underway and to be expected in the near future in both the legal profession and in legal education?

The 2012 AALS Annual Meeting Workshop will take up these and other related questions. This one-day workshop aims to stimulate thought and the sharing of ideas throughout the legal academy about the many interrelated issues raised by change in both the legal profession and legal education. Participants will have the chance to hear from expert observers and to offer their own ideas, in frank and open exchanges featuring a wide range of perspectives and approaches.

The Workshop will involve a series of discussions organized around two plenary sessions. The first plenary will be held in the morning and is entitled "Changes in the Legal Profession and Regulation." Featuring experienced observers of the profession, including both practitioners and law professors, this plenary will explore and link together the many facets of change currently underway, addressing topics including developments in large firm practice, public interest practice, legal regulation, legal education, and regulation of legal education. A second plenary, to be held in the afternoon, is entitled "Innovations in Legal Education," and will focus on legal education and innovations currently underway that respond to the changing conditions of law practice or point the way towards the future of legal education in other respects.

After each plenary session, workshop participants will be invited to choose among a range of concurrent sessions that will explore in more depth particular aspects of the general themes raised by the plenary sessions. These sessions will include both morning and afternoon panel discussions on innovations in teaching, which will feature some invited speakers and some speakers selected from proposals submitted in response to an AALS Request for Proposals (RFP) seeking descriptions of innovative teaching currently taking place.

Continued on page 11

Planning Committee for Workshop on the Future of the Legal Profession and Legal Education

Susan D. Carle, American University,
Washington College of Law, **Chair**

Renee Newman Knake, Michigan State University College of Law

Carol A. Needham, St. Louis University School of Law

Carla D. Pratt, Pennsylvania State University,
Dickinson School of Law

Milton C. Regan, Georgetown University Law Center

2012 AALS Annual Meeting Workshop on the Future of the Legal Profession and Legal Education

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Another panel will focus on innovative work of many kinds currently being done at the intersections among teaching, scholarship and service, and will also include speakers selected through a RFP.

Other concurrent sessions will address topics related to changes in the legal profession, such as globalization, access to justice, technological innovation, innovations in delivery of law and law-related services, and government lawyering, with time reserved for audience discussion. Still other sessions will focus on subjects related to legal education, including the innovations in teaching and scholarship panels already mentioned as well as a session on financing and organizing law schools of the future. Participants especially interested in either "side" of the interrelated subjects of change in the legal profession and change in legal education should find ample choices to pursue the topics of most interest to them during both the morning and afternoon concurrent sessions.

Confirmed Speakers:

Jane H. Aiken, Georgetown University Law Center; Amy G. Applegate, Indiana University Maurer School of Law; Judith C. Areen, Georgetown University Law Center; Amy Bach, Author, Rochester, New York; Leonard M. Baynes, St. John's University School of Law; Susan D. Bennett, American University Washintgon College of Law; David Bogen, University of Maryland Francis King Carey School of Law; Kathleen Clark, Washington University School of Law; Laura J. Cooper, University of Minnesota Law School; Michele DeStefano Beardslee, University of Miami School of Law; Roger J. Dennis, Earle Mack School of Law at Drexel University; Stephen Denyer, Allen & Overy, LLP, Frankfurt, Germany; Mary Jean Dolan, The John Marshall Law School; Tanya M. Evans, Widener University School of Law; Bryant Garth, Southwestern Law School; Stephen Gillers, New York University School of Law; Bruce Green, Fordham University School of Law; Susan Hackett, Legal Executive Leadership (formerly with the Association of Corporate Counsels), Washington, DC; Gillian K. Hadfield, University of Southern California; Thomas Harvey, ArchCity Defenders, Inc., St. Louis, Missouri; Ramzi Kassem, City University of New York School of Law; Stephanie Kimbro, Kimbro Legal Services, Wilmington, North Carolina; Angela Mae Kupenda, Mississippi College School of Law; John Leubsdorf, Rutgers School of Law, Newark; Leslie Levin, University of Connecticut School of Law; Paul Lippe, CEO, Legal OnRamp, San Francisco, California; Peter Marguilies, Roger Williams University School of Law; Richard A. Matasar, New York Law School; Therese H. Maynard, Loyola Law School; James E. Moliterno, Washington and Lee University School of Law; Thomas D. Morgan, The George Washington University Law School; Ashish Nanda, Harvard Law School; Ira S. Nathanson, St. Thomas University School of Law; Paul D. Paton, University of the Pacific McGeorge School of Law; Andrew Perlman, Suffolk University Law School; Burnele V. Powell, University of South Carolina School of Law; Margaret Jane Radin, The University of Michigan Law School; Deborah Rhode, Stanford Law School; Irma Russell, University of Montana School of Law; Paul Salsich, Jr., St. Louis University School of Law; Paula Schaefer, University of Tennessee College of Law; Ann Shalleck, American University Washington College of Law; Carole Silver, Indiana University Maurer School of Law; Kenneth Starr, President, Baylor University; Ronald W. Staudt, Chicago-Kent College of Law; Gary Tamsitt, Australian National University College of Law; Aaron Taylor, University of Arkansas at Little Rock School of Law; Laurel S. Terry, Pennsylvania State University Dickinson School of Law; Paul R. Tremblay, Boston College Law School; Craig Watkins, Dallas District Attorneys' Office, Dallas, Texas; Judith Welch Wegner, University of North Carolina School of Law.

Topics:

- Changes in Legal Profession and Regulation
- Teaching Innovations
- Globalization
- Technological Innovation in Practice and Education
- Innovation in Delivering Legal and Law Related Services
- Government Lawyering
- Innovations in Legal Education
- Teaching Innovations
- Financing and Organizing Law Schools of the Future
- Innovations at the Intersections of Scholarship, Teaching, and Practice
- Regulation of the Legal Profession and the Academy
- Access to Justice

2012 AALS Annual Meeting Theme: Academic Freedom and Academic Duty

By Michael A. Olivas, University of Houston Law Center and AALS President

The theme for the 2012 Annual Meeting centers around academic freedom and academic duty – including threats to tenure and to academic freedom, and the concomitant academic duty obligations that arise out of our status as tenured professors. There have been many serious threats to academic freedom arising from the environment and the polity: a law faculty member arrested in Rwanda for his pro bono representation of an opposition candidate in an election matter there; a law faculty-journal editor sued for criminal libel in France for publishing a book review; law school clinics reviled for their work as well as threatened legislatively and in the courts in Maryland, Louisiana, Michigan, New Jersey, and in several other states; a law scholar sued for her research on family law, whose university chose not to indemnify her; a law review that pulled a piece from publication, following threats from the company criticized in the article; and other law faculty and non-law faculty punished for their views.

The zone of protected professorial speech is shrinking. In the 2006 *Garcetti v. Ceballos* case, the Supreme Court ruled that when public employees speak “pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline,” regardless of whether or not the speech involves a “matter of public concern.” Almost immediately, this limited decision was used by lower courts to allow public colleges to sanction faculty who would not have been punished for their views before *Garcetti*. Legal scholars and the academy have begun to recognize that this case will likely negatively impact college governance policies and practices.

The academy must identify and contend with these external threats as they arise both in legal education and in other fields of study. These programs will draw additional attention to international threats to law professors and academics around the world, as exemplified by the admirable work conducted by Scholars at Risk, who try and rescue these imperiled colleagues to safer situations. Attention must be paid to these examples, which are too common and which diminish us all, even when seemingly-remote threats arise; the bell tolls on behalf of us all. In addition, sessions will spell out the correlative obligations to undertake service and draw attention to the features inherent in academic duty.

There are many other threats as well, such as law school accreditors considering de-coupling their tenure requirements from their insistence upon academic freedom, and no longer requiring a system of tenure or security of position. It is difficult to square these developments with the increased attention we at AALS have paid to our core values. Arguments for tenure include that the promise of continual employment gives faculty an incentive to work on behalf of the institution and that good faculty governance requires a tenure system. Even at major institutions, particularly public universities with the decline of state support so evident, faculty governance is rapidly eroding as changed economic conditions are undermining longstanding governance structures.

Part of our social contract is that we contribute, particularly to legal reform—however defined—and not just work for hire and pay. In fair exchange for extraordinary discretion and deference accorded us, we must repay these privileges with our academic duty. We need not merely speculate about this responsibility, as it is explicated in substantial detail in the Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities (“Responsibilities to the Bar and General Public”), available at www.aals.org/state-ments. These are aspirational, but lay out the premise of Academic Duty.

The 2012 Annual Meeting’s presidential sessions in Washington, D.C., will examine these and related issues of legal education in this new century. Those crucial issues are: financing legal education and its implications on financial aid and student debt; the restructuring of the professoriate; the institutional balance of instructional technology, distance learning, and asynchronous faculty-student interaction; service learning and skills training issues; and more creative curricular developments in the third year of the J.D. Moreover, General Agreement on Trade in Services, 1995 Treaty (GATS) and other international negotiations will affect bar membership and legal practice eligibility, in ways not yet divined. All these issues and others are worthy of attention in our deliberations and ongoing dialogues. We do not have a single answer for any of these complex and interlocking issues, but we feel that these likely are among the right questions.

2012 AALS Annual Meeting Presidential Programs

Friday, January 6th from 2:15 p.m. - 4:00 p.m.

Law School Faculty Demographics and Law School Finance

Moderator: Pat K. Chew, University of Pittsburgh School of Law

Speaker: Ronald G. Ehrenberg, Irving M. Ives Professor Industrial and Labor Relations and Economics and a Stephen H. Weiss Presidential Fellow, Cornell University School of Industrial and Labor Relations, Ithaca, NY

In this session, Professor Ronald G. Ehrenberg of Cornell University, one of the country's most accomplished labor economists, will review law school teaching demographics and data on the professoriate. He will analyze this data, and will comment upon the changes in demography and the restructuring of the professoriate, in particular, the shift to the use of more contingent faculty. Professor Ehrenberg is also actively engaged in the governance of higher education, and serves as a Faculty Trustee on the Cornell Board as well as a Regent of the SUNY system.

Threats to Academic Freedom: Domestic and Universal/Internal and External

Moderator: Amy Gajda, Tulane University School of Law

Speakers: Robert Quinn, Executive Director, Scholars at Risk Network, New York, NY
Joseph H.H. Weiler, New York University School of Law

In his 2011 Presidential Address, Professor Michael A. Olivas identified a number of issues that had recently arisen in U.S law schools that threatened faculty autonomy and independence, as well as international threats to college professors throughout the world. In 2010, an NYU law professor was sued in an international forum for his having been editor of an academic journal that published a book review. While he was fully exonerated in the matter, this event became a cause célèbre, and drew attention to issues of academic freedom, the civil procedure of international defamation litigation, and risks inherent in academic publishing. In this session, Professor Joseph H.H. Weiler of New York University School of Law, the editor sued for publishing the review, will discuss the case and its implications. Robert Quinn, the Director of the Scholars at Risk Network, will discuss the work of the SAR program, which attempts to provide safe havens and relocation for international scholars across fields, whose viewpoints have put them at risk.

Academic Duty and Public Service

Moderator: Linda S. Greene, University of Wisconsin Law School

Speakers: Harold Hongju Koh, Legal Advisor, U.S. Department of State, Washington, DC
Nancy H. Rogers, The Ohio State, University Michael E. Moritz College of Law

Many law faculty become involved in service in their professional associations and in other groups where their legal expertise is called upon. In addition, it is not uncommon for such faculty to take leaves from academe to provide formal public service by holding appointive office. In this session, the recent experiences of two highly-visible law deans—The Ohio State University's Nancy Rogers and Yale Law School's Harold H. Koh—who have undertaken public service will discuss the circumstances that led to their appointments (one following an elected state official's resignation due to a scandal, and the other a more-traditional appointment to federal service), the nature of their engagement, and the appropriate role of faculty in engaging in this type of Academic Duty.

Hot Topic Proposals for the AALS 2012 Annual Meeting

Request for Hot Topic Proposals for the AALS 2012 Annual Meeting

Time is being reserved in the Annual Meeting schedule for programs devoted to late-breaking legal issues or topics. Faculty members at AALS member law schools who are interested in organizing a 1 ¾ hour panel on a late breaking legal issue or topic will have the opportunity to submit proposals until **November 10, 2011** for the 2012 Annual Meeting in Washington, DC.

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. Hot topic program proposals should only be submitted by individuals or groups of individuals from AALS member law schools and may not be submitted by sections or other organizations.

When developing the proposal you should consider the following:

- Is there a diversity of presenters?
- Is there junior and senior teacher involvement?

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 as to why the topic is “hot” and could not be identified prior to March 15, 2011;
- 5) in addition, the proposed topic should not be one addressed elsewhere in the Annual Meeting program.

We are attaching a sample of a successful proposal from the 2011 Annual Meeting to help proposers submit their hot topic proposal - “Taxing Internet Sales: The Battle Between States and Retailers.”

Hot Topic program proposals will be evaluated by the AALS Committee on Special Programs for the Annual Meeting. Hot Topic program proposals that are selected will be assigned a program time slot by the AALS National Office with attention paid to relevant conflicts. Hot Topic programs selected do not choose their assigned time slot.

Please note that the AALS Committee on Professional Development is planning a daylong 2012 Annual Meeting **AALS Workshop on Political Crises/Tensions and Constitutionalism: War and Money**. This Workshop program will include two 1 ¾ hour hot topic time slots to be available in the Workshop program.

AALS will notify proposers of Hot Topic programs of the committee’s decisions by December 1.

If no program proposals are chosen for a particular year, the hot topic slots will not otherwise be filled. Proposals may be emailed to hottopic@aals.org. If you have questions, please contact Jane LaBarbera, AALS Managing Director at jlabarbera@aals.org

2012 AALS Annual Meeting Workshop on Academic Support Got ASP?: Leveraging Academic Support Principles and Programs to Meet Strategic Institutional Goals

Saturday, January 7th from 8:45 a.m. - 5:00 p.m.

Why Attend?

The current challenges facing legal education include increasing diversity, sustaining student enrollment, preparing students to practice law effectively, ensuring strong bar passage, complying with evolving ABA accreditation standards, enhancing student learning for this generation, measuring learning outcomes, and providing an overall educational experience that engage students and motivates them to become excellent lawyers and generous alumni. We encourage deans, faculty members, and senior administrators to attend this special workshop to learn how Academic Support principles and programs can help law schools meet a number of their strategic goals.

Law school academic support programs were initially charged with supporting access-admission students to increase diversity and help ensure their success. Today, Academic Support Programs (ASPs) have evolved and now assume a variety of forms to provide a range of services for all students, including providing intense intervention for the academically at-risk students. The ASP mission has also expanded from providing programs that help students transition into the first year of law school to include programs that provide specific interventions in upper-level courses and support bar passage. In some schools, ASPs are also a resource for faculty members who want to innovate inside and outside the classroom. Consequently, ASPs can be a center for effective, creative teaching and learning as schools seek to support pedagogy development.

As a group, ASPs have experimented with and developed particular pedagogical strategies that support student learning and enable all levels of students to reach their potential. During this day-long workshop, our goal is to explore what law schools can learn from ASP and how we, as educators, can best maximize these programs as we continue to improve upon the curriculum, pedagogy, and law school environment to produce effective, ethical, and engaged lawyers.

Topics:

- Maximizing the Academic Support Investment: Understanding ASP Programs
- A Vision for Maximizing ASP: Developing a Comprehensive Vision, Exploring the Myths and Challenges of ASP, Maximizing the Benefits of ASP in Your School
- The Importance of Diversity to Legal Education and the Legal Profession: Why Providing Practical Skills Training in Law School Benefits the Profession and the Greater Community
- Principles of Academic Support Pedagogy: Teaching Students with Different Learning Styles, Active Learning, Feedback Mechanisms, Maximizing Student Engagement and Performance, Teaching the Whole Student and Establish Learning Communities, Creating Context

Confirmed Speakers:

Rory D. Bahadur, Washburn University School of Law; Okianer Christian Dark, Howard University School of Law; Kirsten K. Davis, Stetson University College of Law; Linda B. Feldman, Brooklyn School of Law; Phoebe A. Haddon, University of Maryland Francis King Carey School of Law; Ruth A. Mc Kinney, University of North Carolina School of Law; Herbert N. Ramy, Suffolk University Law School; Pavel Wonsowicz, University of California, Los Angeles School of Law; Stephen N. Zack, Administrative Partner, Boies, Schiller & Flexner LLP, Miami, Florida, and 2010-2011 ABA President, Laurie B. Zimet, University of California - Hastings College of Law.

Planning Committee for Workshop on Academic Support

Robin A. Boyle, St. John's University School of Law
Darby Dickerson, Texas Tech University School of Law, **Chair**
Russell A. McClain, University of Maryland
Francis King Carey School of Law
Paula Lustbader, Seattle University School of Law

aalscalendar

2012 Annual Meeting

January 4-8, 2012
Washington, DC

Conference on Clinical Legal Education

April 30-May 3, 2012
Los Angeles, California

2012 Mid-Year Meeting

Conference on Torts, Environment and Disaster

Workshop on When Technology Disrupts Law: How Do IP, Internet and Bio Law Adapt?

June 2012
Berkeley, California

Workshop for Beginning Clinical Law School

Teachers

June 20-21, 2012
Washington, D.C.

Workshop for New Law School Teachers

June 21-23, 2012
Washington, D.C.

Workshop for Pretenured People of Color Law School Teachers

June 23-24, 2012
Washington, D.C.

For more information go to www.aals.org/calendar/

Future Annual Meeting Dates

- January 4-8, 2013 - New Orleans

Future Faculty Recruitment Conference Dates

Washington, D.C.

- October 11-13, 2012
- October 17-19, 2013



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