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Academic Freedom and Academic Duty

2011 AALS Presidential Lecture

Michael A. Olivas

IHELG Monograph

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The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions--with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

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Academic Freedom and Academic Duty,

2011 AALS Presidential Lecture,

Michael A. Olivas, University of Houston

In preparation for this talk, I went into training, but I always knew what my theme would be. I read and produce higher education literature for a living, and began to narrow the focus to 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 so many serious threats in law schools that it seemed a natural observation trail: a William Mitchell law faculty member arrested in Rwanda for his pro bono representation in an election matter there;¹ an NYU law faculty-journal editor sued for criminal libel in France for publishing a book review;² law school clinics reviled for their work, and threatened in Maryland, Louisiana, Michigan, New Jersey, and in several other states;³ a law scholar sued for her research on family law, where her university chose not to indemnify her;⁴ a law review that pulled a piece from publication, due to threats from the company that was being written about;⁵ other law faculty, such as UC-Berkeley's John Yoo, punished for their views, as have been others who were not on law faculties.⁶

The zone where professorial speech is protected is shrinking, so that law professor habitat is akin to that of the disappearing savannahs and rain forests. Exhibit No. One is the 2006 *Garcetti v. Ceballos* case, where 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.”⁷ The majority allowed that “there is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for” and held, “We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship and teaching.”⁸ Nonetheless, 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*. Recognition that this case will likely frag its way through college governance policies and practices is dawning upon legal scholars and the academy.⁹

These external threats must be recognized and dealt with, as appropriate in each instance, as they arise both in legal education and in many other fields of study. And I will be drawing 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.¹⁰ Attention must be paid to these examples, which are too-common and which diminish us all, even when remote threats, or threats that seem remote, arise. In truth, if any one of us is in danger for our discourse or our work, we are all endangered: the bell tolls on behalf of all of us. In the final section, I spell out the correlative obligations to undertake service and draw attention to the features inherent in academic duty.

Threats to Academic Freedom and Tenure:

Perhaps more disturbing, there are many internal threats as well, such as the ABA Council Standards Review Committee (SRC) considering de-coupling its tenure requirements from its insistence upon academic freedom, and no longer requiring a system of tenure or security of position.¹¹ Not only are these immediate and pending threats to the clear and longstanding ABA requirement that its accredited law schools must have a tenure system or equivalent, but there is even a revisionist attack upon the history of the requirement itself, including the extraordinary assertion that there never was or had ever been a tenure requirement (what one press report called in July, 2010 an “interpretation of current policy [that] is being met with much skepticism.”)¹² This was such a shocking interpretation that I was, however implausibly and temporarily, struck silent. Applicant institutions such as Husson University thought there was a tenure requirement, and brought suit; the Court deciding the case certainly did so as well.¹³ When I served on the ABA Council and then on the panel that drafted the 2008 Report of the Committee on Security of Position, I certainly did so.

It is quite extraordinary that in the decades during which Standard 405(c) required for regular full-time faculty a policy on academic freedom and tenure, apparently no one ever advanced a serious view that this requirement could be satisfied by a law school asserting its policy that “we do not have a tenure system here.” Moreover, it is odd that clinicians must under the present Standards be accorded security of position “similar to tenure,” while a law school may (under the SRC panel’s proposed reading) provide only that much, or apparently even less, to traditional full-time faculty. Surely the clinical Standard has been thoroughly and widely understood to accord lesser protection to clinicians than it did to traditional faculty, and even less to legal writing instructors. If

the SRC, The Council, or the ABA wish to change this, they should say so, and do so without attempting to hide the ball or re-write history. To do so would be a bad—dreadfully bad—idea, and this discourse requires better than “it was never so” or “’twas never thus.” Our Association will continue to work with its long-term sister organization, with whom we collaborate in the re-accreditation process by virtue of our own membership review efforts, but this development must be seen for what it is: a plan to reconstitute the law professoriate into a contingent, part-time, untenured faculty, apparently to strengthen the hand of school administrators in the service of “flexibility” and “business-like efficiencies.” It is hard to square these developments with the increased attention we at AALS have paid to our core values. Perhaps the ABA is unwittingly doing us a favor by acting in a way that has highlighted these fracture lines. But likely not.

One of the additional arguments for tenure is 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 publics with the decline of state support so evident, faculty governance is rapidly eroding as changed economic conditions are pushing administrators to make quick decisions: they don’t have the time to be involved with a cumbersome faculty debate on issues. Or faculty will apprehend, perhaps correctly, that if they are only being hired for instructional outputs, they will act accordingly as subcontractors for hire—field hands like the United Farm Workers. At the same time as faculty governance is declining, the for-profit undergraduate colleges are generating much more faculty concern about

learning outcomes than we are and they are actually rewarding faculty based upon what their students learn (largely unheard of in the rest of higher education). In this instance, the ABA concerns about learning outcomes may have a salutary effect, although both god and the devil will reside in the eventual details.

The 2012 Annual Meeting's presidential sessions in Washington, DC, will examine these and related issues, including the many moving parts of legal education in this new century. I urge the membership and leadership in the Sections to consider turning their attention, as appropriate, to issues we consider crucial. I suggest that some of these will include financing legal education and the implications for financial aid and student debt;¹⁴ the restructuring of the professoriate;¹⁵ the institutional balance of instructional technology, distance learning, and asynchronous faculty-student interaction;¹⁶ service learning and skills training issues;¹⁷ and more creative curricular developments in the third year of the J.D. Moreover, GATS and other international negotiations will affect bar membership and legal practice eligibility,¹⁸ in ways we have not yet divined. All these issues are worthy of attention in our deliberations and ongoing dialogues, and if we do not get in front of these developments, we shall surely trail after them. I do not have a single answer for any of these complex and interlocking issues, and would insist that every school must find its own pH levels, but I feel that these likely are among the right questions, ones arising whether or not we like them. I trust all of you, my colleagues, to think these through with our usual gusto and commitment.

The Restructuring and Devaluing of the Faculty Role in Academic Governance:

In particular, the decline of the full time, tenure-eligible professoriate is occurring obliquely and diagonally, without everyone's notice. Law teaching has not been re-structured as much as has the remainder of the academy, where the overall fulltime teaching ranks have declined from 78% in 1970 to a disturbing 51% in 2007,¹⁹ but legal education has also been subject to this same regression to the mean, and even full time clinical law teaching has declined to only 34.2 % in tenure track or clinical tenure positions in 2008.²⁰ As professors Peter A. Joy and Robert R. Kuehn have authoritatively demonstrated in their path-breaking work on the developing history of law faculty status: "The history of the Standards for clinical faculty demonstrates that although some in legal education have been resistant, the ABA has long supported the full integration of clinical courses and the faculty teaching those courses into law schools. The history shows an unbroken movement by the ABA toward a system that provides a long-term relationship between the clinical faculty member and the law school so that the clinical faculty member has job security and the ability to participate in faculty governance comparable to other full-time law faculty teaching doctrinal courses."²¹ It is precisely because of this longstanding stewardship of required faculty autonomy and security that the 2009 turn of direction by the various ABA components has been so sharply disappointing. Reforming the entire system, as appears to be underway, makes it impossible to gauge the overall effect, as with other complex system changes. One thinks of the complexity of health care reform or comprehensive immigration reform, with their own centripetal forces.

I am most concerned with the subtleties of this realignment, the effects upon governance and upon academic duty. I believe, as does former AALS president Judith Areen, that disappointing rulings are already flowing from the decision of the U.S. Supreme Court in *Garcetti v. Ceballos* to allow the government to control the speech of its employees.²² Many of these cases are detailed in a 2009 report from the American Association of University Professors, *Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*.²³ Though comprehensive, the report does not have the space to list the dozens of cases currently moving through the system, and it could not possibly identify instances where government employees have chosen the path of least resistance by not speaking out or not challenging employer decisions, knowing how the deck is now stacked against them. Because of this, when discussing *Garcetti*, college faculty and others defending faculty members' free speech need to highlight what it really means to individuals affected by the Supreme Court's crabbed reading of the First Amendment. As I vigorously and frequently exercise my First Amendment and academic freedom privileges, I often have felt the sting from running afoul of authoritarian interests, several of whom have complained directly to my UH president(s), especially after I had been involved in issues concerning undocumented college students,²⁴ public college admissions (the top ten % plan),²⁵ and a law that precluded state employees, including professors, from serving as consultants or expert witnesses against the state in legal actions (aimed in part at my activities).²⁶ My then-president indicated that if so many legislators were going to complain about me to him, as they were, I should have at least kicked up more dust.

But none of these earlier controversies prepared me for the firestorm that hit when it became known that I had helped end a practice of legacy point admissions at a different public institution, Texas A&M University. When *Hopwood*²⁷ was overturned by *Grutter v. Bollinger*,²⁸ this institution nevertheless continued to quietly practice reverse affirmative action through the legacy point system, while announcing it would not follow *Grutter*, but would emphasize “merit.” Two black colleagues (one a key legislator and the other Professor John Brittain, now teaching at the UDC School Law) and I wrote an opinion column calling the institution's leadership out for its hypocrisy.²⁹ Within days, the legacy policy was discontinued. I had more than a dozen letters, several e-mails and many phone calls calling for my scalp. I even received a remonstrance from an inmate in federal prison, who excoriated me in a letter for “helping eliminate the Aggie Legacy, which [he] had hoped to pass to [his] own children.” Many of these letters were copied to my president, who called me and congratulated me for the column and its results. He told me that he was proud to have me on his faculty, and would I please let him know next time I was going to do this kind of thing, so he could be prepared to defend me. Recounting the several instances where I had been complained about, he also said, “This is why we need tenure and academic freedom,” a generous sentiment that many college presidents would neither hold nor acknowledge.

In my more-than-thirty years of teaching, scholarship and public service, I have leaned into the wind and called out wrongdoing when I discovered it. Many of you know my activities with the Annual Dirty Dozen List,³⁰ making my selection as AALS

President all the more unlikely. I have not been seriously threatened, but only because I use footnotes, briefs, and r-squares, not more militant means or lunchroom protests. When I was the AAUP General Counsel, the Unabomber was still at large, sending letter bombs to university faculty and officials around the country.³¹ (His moniker was in tribute to his status as the University and Airline Bomber.) I had serious discussions about my safety with college security and mail facility officials, at the suggestion of another of my University of Houston presidents, who was worried about my high profile. She told me quite memorably that tenure would not protect me from a letter bomb. Today, more than I fear any letter bomb or physical threat, I am concerned about the more generalized *Garcetti* chilling features and silencing that occur in hard times, whether economic or political. Each of you will likely have your own personal set of experiences, especially if you are afflicting the comfortable, rather than comforting the afflicted. Law professors are blessed with many opportunities to do both.

Academic Duty:

An increasing number of scholars have noted that the professoriate is being restructured, and that it is occurring on cats' feet. In the thermodynamics of faculty governance, if tenure were not available, why should faculty commit to any institution, and not act as if they are solo, independent contractors? Why take duty seriously? I think it a likely result that a contingent and parttime and adjunct faculty will regress down to the mean, and will not perform the many ancillary activities that full time faculty are expected to undertake in their institution-building. I have always considered academic

citizenship an important requirement of being a professor, and have felt called to the vocation of service as an essential component of my teaching and scholarly obligations. Being a faculty member carries a number of unenumerated responsibilities, particularly institutional service to improve the life of the organization, and also to professional groups, growing from our singular status as lawyers and professors. On almost a daily basis, I have come to appreciate the organic way that these different facets of one's professional life become intertwined and enrich the other parts. Surely I am a better scholar of higher education law and casebook author for my service as an expert witness, for and against colleges, and these skills will assist me in making certain that the results of the repeal of DADT³² and of *CLS v. Martinez*³³ are figured into our law school policies, as the tenets of *Grutter* have informed and helped shape admissions practices. Just as all members of a polity or community determine their civic duties and involvement, so should professors choose among many alternatives, whether they are in AALS, in other legal organizations, or in other important sectors where our skills and interests reside.

Here, to elaborate upon the concept of academic duty, I take my lead from the estimable 1997 Harvard University Press book written by the former Stanford President and distinguished biologist Donald Kennedy, *ACADEMIC DUTY*. In his thoughtful and provocative reflections upon his long Stanford career, he sets out an entire ethos of "academic duty," across all the traditional categories of faculty life. However, when I read the book a dozen years ago, I was struck by his old-fashioned sense of dignity in faculty work, and the corresponding and reciprocal obligations that flow from academic

freedom. He wrote, “The terms *responsibility* and *ethics* are often used interchangeably in speaking of the [academic] professions, and it is tempting to elide them here and let it go at that. But there is a distinction between two different kinds of obligation, one worth making at the outset. Responsibility suggests the duty one owes to the institution—and first and foremost, to one’s students. It means meeting one’s classes well-prepared and maintaining one’s standards of scholarship. It means giving a student the time he or she needs to work out a problem. It means retaining some detachment and objectivity about highly partisan issues in which it might be possible to exert an unfair influence over students. In essence, it means delivering full support to a set of institutional objectives. . . . Academic life in America, despite its diverse institutional forms, presents common experiences and challenges. Every professor teaches; most write papers or books and review those written by others; most have relationships, friendly or otherwise, with peers; many get grants to support scholarly work; many publish their findings in scholarly journals or books. And all are looked upon, by students and others, as persons somehow responsible for advancing the capacities and potentialities of the next generation. That is a very large responsibility, and it is the essence of academic duty.”³⁴ Every reader may sketch in his or her own definition of this concept, a synoptic and contextual term that allows personal reflection and invites self-reference.

I decided upon a personal case study, even at the risk of appearing self-serving. (How legal academics spend their actual time is a subject on which virtually no data exist.) In order to apply these exacting norms of Kennedy’s academic duty in case study fashion, I recorded my own activities for a week at random, and as many junior

associates in firms do, maintained a log in fifteen-minute increments for seven days. I live a life quite different than do many others, and come in every day during the week before 7:00 a.m., and leave after 7:00 p.m. (I tell my friends that I spend “half-days” at work.)

By definition, everyone’s time aggregated and apportioned will be different, and as an AALS board member and president-elect, my time may even be more idiosyncratic than that of others. But it was very clear from the surprising logs that I spend a great deal of time in work that does not redound directly to my own direct and personal benefit, quite apart from my AALS duties. I am certain that this proportion of externally-directed time has shifted since I entered the academy in 1982, and when I was first making my own way and establishing myself in my career. This has resulted in a more satisfying mix of time spent with students, especially my Research Assistants, and this has been true for many years. If I had measured a different week this or another semester, the mix would be different, and I would have recorded more dissertation advising and less lecture preparation. I just ended a long period of work in which I served as an expert witness in a protracted legal matter, so the many hours I had billed dropped off. Earlier in the Fall term, I wrote six letters for promotion and tenure cases, so none of these complex drafting issues showed up on this log. But one thing is crystal clear: I give away a great deal of my time to pro bono and other service work, and this is how it should be. When I kid that I am paid to grade papers, but throw in a lot of other things, it is only partially in jest.

Many of you do what I have done, and more, or less. One of the glorious, unwritten parts of our job descriptions is that we get to spend our time on important service duties, defined as we see fit, but which lawyers alone may undertake. Examples are known to all of us: forays into federal government;³⁵ service on the U.S. Civil Rights Commission;³⁶ acting as interim Attorney General for the State of Ohio;³⁷ serving as a tribal court judge with the Pueblo of Laguna, presiding judge with the Isleta Court of Tax Appeals, or appellate judge with the Southwest Intertribal Court of Appeals;³⁸ leaving a deanship to become the United Nations Deputy High Commissioner for Refugees.³⁹ Many, if not most law schools have well-trodden pathways between the classroom and various governmental and NGO service. The Bible admonishes that those of us with many talents must use them for the good of the whole and toward society, as much is expected of us. Our own bar organizations, academic societies, and professional associations need the very best we have to offer, and our society needs us to be active and generous with our time. Virtually all of us do some of this academic duty, but it is devalued and unrewarded for the most part. Yet who will do this sometimes-thankless and unrecognized but essential work in a world of contingent faculty, which will also require us to add countless hours of assessment activities to evaluate all the visitors passing through?

Professor Kennedy notes that the “instructions for fulfilling [academic duty] are left vague even for the prospective practitioners. For this reason confusion and misunderstanding often prevail inside academia, and the public is equally confused. Thus, understanding the professional responsibilities that constitute academic duty is important

for those who will fulfill them. But it is equally important that they be understood in the same way by the public.”⁴⁰ 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 **AALS Handbook Statements of Good Practices, 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 your AALS website.⁴¹ These are aspirational, but lay out the premise of Academic Duty of which I am speaking.

I hope to spend this year on my watch of this extraordinary enterprise that is the AALS, learning and listening about the academic duty that is at our core and then working with you to elevate it in our public lives. I promise to all of you that I will not squander this wonderful gift you have given me, and I will work hard to be worthy of it. Representing you and our members, I will defend tenure and academic freedom, especially in the legal academy, and will raise my voice in chorus with yours for an expanded reading and recognition of academic duty into all our professional lives. Thank you for this opportunity.

1. Josh Kron, *Lawyers Report Intimidation by Rwanda*, NY Times, June 13, 2010, A16.

2. Jennifer Howard, Libel Case, Prompted by an Academic Book Review, Has Scholars Worried, Chron. of Higher Educ., April 25, 2010, available at: <http://chronicle.com/article/Libel-Case-Prompted-by-an/65224/>; see also, Jennifer Howard, British Libel Law Chills U.S. Scholars' Speech, but Change Is Afoot, Chron. of Higher Educ., April 23, 2010, A8, 10 (UK libel case).

3. See, e.g., Robert R. Kuehn and Peter A. Joy, "Kneecapping" Academic Freedom, Academe, 8-15 (November-December 2010) [including Table: Publicized Instances of Interference in Law School Clinics, at 12-13, available at: <http://www.aaup.org/AAUP/pubsres/academe/2010/ND/feat/kuehchart.htm> .]

4. Scott Jaschik, Twisting in the Wind, InsideHigherEd.com, November 30, 2005, available at: <http://www.insidehighered.com/news/2005/11/30/liability> (including other examples of lawsuits against scholars). The chilling legal effect upon scholarship has been widely chronicled; see, e.g., Benedict Carey, Academic Battle Delays Publication by 3 Years, NY Times, June 12, 2010, A13 (psychology publication delayed); Amy Gajda, The Trials of Academe: The New Era of Campus Litigation (2009).

5. Peter Monaghan, A Journal Article Is Expunged and Its Authors Cry Foul, Chron. of Higher Educ., December 8, 2000, A14, available at: <http://chronicle.com/article/A-Journal-Article-Is-Expunged/15905/> ; Peter Monaghan, Professors Settle Suit With U. of Denver Over Retracted Article, Chron. of Higher Educ., September 7, 2001, A25, available at: <http://chronicle.com/article/Professors-Settle-Suit-With-U/22321/>

6. Peter Jaschik, Torture and Tenure, InsideHigherEd.com, April 14, 2008, available at: <http://www.insidehighered.com/news/2008/04/14/yoo> (reviewing calls for firing Professor Yoo for White House memos); Frances Tobin, Torture Memos' John Yoo Greeted at Berkeley by Protesters, PoliticsDaily.com, September 2, 2009, available at: <http://www.politicsdaily.com/2009/09/02/protests-welcome-torture-memo-writer-john-yoo-back-to-berkeley/> . His class location has had to be hidden from non-class members, so as to avoid disruptions. Class in Hiding, Nat'l Jurist, February 2010, 12, available at: <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0210/#/12>. Perhaps the most prominent academic punished for his views was Ward Churchill, who has exhausted virtually all his options, although a jury found him to have been wrongly dismissed from his tenured position at the University of Colorado. Scott Jaschik, A Loss for Ward Churchill -- and Others?, Insidehighered.com, November 29, 2010, available at: <http://www.insidehighered.com/news/2010/11/29/churchill>; Christopher N. Osher, Churchill loses bid to return to CU job, Denver Post, November 24, 2010, B1.
7. 547 U.S. 410, 421 (2006). See, e.g., Sheldon H. Nahmod, Public Employee Speech, Categorical Balancing and § 1983: A Critique of *Garcetti v. Ceballos*, 42 U. Rich. L. Rev. 562 (2008). See also Matthew W. Finkin and Robert C. Post, For the Common Good: Principles of American Academic Freedom (2009). While threats to academic freedom and tenure are thought of as the province of liberal academics, these issues cross partisan lines, as with Professor Yoo and with Professor Richard J. Peltz, who has written at length about his own situation, where he felt he was “mobbed” for his viewpoints. See Richard J. Peltz, Penumbra Academic Freedom: Interpreting the Tenure Contract in a Time of Constitutional Impotence, 37 J. Coll. U. L. 159, 160-162 (2010) (recounting his experience at University of Arkansas, Little Rock).
8. 547 U.S. 410, 425 (2006).

9. A very large literature has arisen to analyze this rise in the legalization of colleges. See, e.g., Gajda, *supra* at note 4; Barbara A. Lee, *Fifty Years of Higher Education Law: Turning the Kaleidoscope*, 36 *J. Coll. U. Law* 649 (2010).

10. The organization's work is featured at: scholarsatrisk@nyu.edu . To see a 2010 example of an Iranian legal scholar, Nasrin Sotoudeh, jailed for his views, see: <http://scholarsatrisk.nyu.edu/Education-Advocacy/Alerts-Scholars-in-Prison.php>.

11. For example, see <http://www.abanet.org/legaled/committees/comstandards.html> (summary of documents proposed and considered by ABA Council, Section of Legal Education and Admissions to the Bar, 2010).

12. Scott Jaschik, *Law School Tenure in Danger?* InsideHigherEd.com, July 26, 2010, available at: <http://www.insidehighered.com/news/2010/07/26/law>.

13. *In Re Petition of Husson University School of Law*, 989 A.2d 754, 756-757 (Supreme Ct., Maine, 2010).

14. Michael A. Olivas, *Paying for a Law Degree: Trends in Student Borrowing and the Ability to Repay Debt*, 49 *J. Leg. Educ.* 333 (1999); Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 *Hof. L. Rev.* 27 (2007).

15. There are virtually no data on law faculty time expenditures or the overall restructuring of the law professoriate. One exception examining clinical faculty is Center for the Study of Applied Legal Education, *Report on the 2007 - 2008 Survey 29* (2008), available at: www.CSALE.org. See also, Ronald G. Ehrenberg, and Liang Zhang, *Do Tenured and Tenure-Track Faculty Matter?* 40 *J. of Hum. Res.* 647 (2005).

16. Bruce J. Winick, Foreword: What Does Balance in Legal Education Mean? 60 J. Leg. Educ. 107 (2010); see, e.g., Bradley E. Cox, Kadian L. McIntosh, Patrick T. Terenzini, Robert D. Reason, and Brenda R. Lutovsky Quaye, Pedagogical Signals of Faculty Approachability: Factors Shaping Faculty–Student Interaction Outside the Classroom, 51 Res. in Higher Educ. 767 (2010).
17. See, e.g., William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007); Nelson P. Miller and Bradley J. Charles, Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit--Subsidiary Skills to the IRAC Framework, 59 J. Leg. Educ. 192 (2009)
18. See, e.g., the work of Professor Laurel S. Terry: GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers, 34 Vand. J. of Transn. L. 989 (2001); and 35 Vand. J. of Transn. L. 1387 (2002); The Bologna Process and its Implications for U.S. Legal Education, 57 J. Leg. Educ. 237 (2007).
19. U.S Department of Education, *Digest of Education Statistics: 2009* (Washington DC, 2010), table 249, available at: <http://nces.ed.gov/programs/digest/d089> .
20. Center for the Study of Applied Legal Education, Report on the 2007 - 2008 Survey 29 (2008), available at: www.CSALE.org.
21. Peter A. Joy and Robert Kuehn, The Evolution of ABA Standards for Clinical Faculty, 75 Tenn. L. Rev. 183, 229 (2008).
22. Judith Areen, Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance, 97 Geo. L. J. 945, 1000 (2009)

23. REPORT: Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos* (2009), available at: <http://www.aaup.org/NR/rdonlyres/B3991F98-98D5-4CC0-9102-ED26A7AA2892/0/Garcetti.pdf>
24. Andrew Guy, Big Man on Campus, Law professor fights for issues dear to his heart, Hous. Chron., June 4, 2001, A1.
25. Rick Casey, Of Fairness, Privilege and Top 10 Percent, Hous. Chron., August 22, 2010, B1, B4, available at: <http://www.chron.com/disp/story.mpl/metropolitan/casey/7164545.html>.
26. 146 F.3d 304, *superseded by* Hoover v Morales, 164 F 3d 221 (5th Cir. 1998). I served as an expert witness against the University of Texas Health Science Center. University of Texas v. Than, 901 S.W.2d 926, 931-32 (Tex.1995) [TX Supreme Court]; 188 F.3d 633 (5th Cir. 1999).
27. Hopwood v. Texas, 861 F. Supp. 551 (W.D. Tex. 1994), *aff'd*, 78 F.3d 932 (5th Cir.), *cert. denied*, 116 S. Ct. 2581 (1996).
28. 539 U.S. 306 (2003).
29. Sen. Rodney Ellis, Michael A. Olivas, and John Brittain, Editorial, Hous. Chron., January 11, 2004, Outlook-1(calling upon Texas A&M to employ affirmative action and to discontinue legacy preferences).
30. Ediberto Roman and Christopher B. Carbot, Freeriders and Diversity in the Legal Academy: A New Dirty Dozen List? 83 Ind. L. J. 1235, 1238-1239, 1245 (2008) (outlining Dirty Dozen project and reputational damages).
31. The FBI has posted Unabomber information at:
http://www.fbi.gov/news/stories/2008/april/unabomber_042408.

32. Carl Hulse, Senate Ends Military Ban on Gays Serving Openly, NY Times, December 19, 2010, A1. For the policy's application to law schools, see Barbara J. Cox, AALS as Creative Problem-Solver: Implementing Bylaw 6-4 (A) to Prohibit Discrimination on the Basis of Sexual Orientation in Legal Education, 56 J. Leg. Educ. 22 (2006).
33. Michael A. Olivas, Who Gets to Guard the Gates of Eden? InsideHigherEd.com, June 29, 2010, available at: <http://www.insidehighered.com/views/2010/06/29/olivas> .
34. Donald Kennedy, Academic Duty 19, 21-22 (1997).
35. At the present, consider the examples of Elizabeth Warren [<http://www.law.harvard.edu/faculty/directory/index.html?id=82>] and Neal Katyal [http://www.law.georgetown.edu/faculty/facinfo/tab_faculty.cfm?Status=Faculty&ID=272], among many.
36. See, for example, Gail Heriot [<http://www.sandiego.edu/law/academics/faculty/bio.php?id=701>] and Cruz Reynoso [<http://www.law.ucdavis.edu/faculty/Reynoso>].
37. Dean Nancy H. Rogers of Ohio State stepped in when the Ohio AG position was vacated: <http://moritzlaw.osu.edu/news/newsrel.php?ID=249>.
38. Christine Zuni Cruz of the UNM Law School has held all these positions while engaged in law teaching: [<http://lawschool.unm.edu/faculty/zuni-cruz/index.php>].
39. T. Alexander Aleinikoff took a leave from the Georgetown law deanship to assume this position, as he had done to serve as General Counsel of the then-Immigration and Naturalization Service:
http://www.law.georgetown.edu/faculty/facinfo/tab_faculty.cfm?Status=FullTime&ID=208
40. Kennedy, supra note 34, at 22.

41. The Statement is online at: http://www.aals.org/about_handbook_sgp_eth.php .

Week of October 18-24, 2010, non-travel week

Hrs. Activities

- 4 Teaching class (reduced load)
- 4 preparing for teaching (new text)
- 7 class advising/review student papers/office hours (arranged)
- 3 committee/faculty meetings (UH/UHLC)
- 5 faculty development (lunch speakers and lectures, proposal
 reading and review)
- 2 student development (speaking invitation, faculty advisor to
 student organization)
- 10 AALS (calls, drafting, oppressing minorities and immigrants)
- 2 letters (faculty, staff, student recommendations)
- 10 research, scholarship (reading, writing, drafting, computer
 searches, editing galleys, meeting with RA's)
- 4 other phone (professional, referrals, other)
- 2 proposal writing, IRB protocols
- 10 lecture preparation (four different upcoming lectures, including AALS)
- 5 miscellaneous (coffee, bathroom breaks, music recording, messing around, schmoozing,
 Prairie Home Companion)
- 2 emails (surfing, googling, snarking)

70 hours [7:00 a.m.-7:00 p.m. M-F; 10 hrs on weekend]