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## More of the Same: Elitism and Exclusion at the AALS Annual Meeting

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# MORE OF THE SAME: ELITISM AND EXCLUSION AT THE AALS ANNUAL MEETING

*David E. Steinberg*

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## MORE OF THE SAME: ELITISM AND EXCLUSION AT THE AALS ANNUAL MEETING

David E. Steinberg\*

### I. INTRODUCTION

At the Association of American Law Schools (AALS) meetings and in materials published by the Association, probably no one word appears more frequently than "diversity." For example, the theme of the 2000 AALS Annual Meeting was *A Recommitment to Diversity*.<sup>1</sup> In a 1986 essay titled *Collegial Diversity*, AALS President Susan Westerberg Prager wrote: "The different perspectives of our colleagues can illuminate other areas of research to give us new classroom direction."<sup>2</sup> And, in a 1996 statement on diversity adopted by the AALS Executive Committee, the committee stated that an objective of diversity was "to create an educational community—and ultimately a profession—that incorporates the different perspectives necessary to a more comprehensive understanding of the law and its impact on society . . . ."<sup>3</sup>

Or so they say.

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I received helpful comments on the Association of American Law Schools annual meeting and on this essay from Susan Bisom-Rapp, David Alexander Brennen, Christine Alice Corcos, Vivian Grosswald Curran, Howard S. Erlanger, Paul Finkelman, John Flym, Shubha Ghosh, David L. Gregory, William A. Gregory, Paul J. Heald, Ronald James Krotoszynski, Jr., Terri LeClerq, Sue Liemer, James Lindgren, Robert Justin Lipkin, Philip N. Meyer, Gregory L. Ogden, Edward P. Richards, III, Richard Henry Seamon, Steve Semeraro, John Steele, Mark V. Tushnet, Joan E. Vogel, Eugene Volokh, Richard Wright, and Todd J. Zywicki.

Special thanks to Amy Campbell, my research assistant at the Thomas Jefferson School of Law. Amy provided me with a lot of help in compiling the empirical data presented in this article. Amy's work was simply outstanding.

1. Gregory Howard Williams, *2000 Annual Meeting Theme: A Recommitment to Diversity*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Apr. 1999, at 4.

2. Susan Westerberg Prager, *Collegial Diversity*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Sept. 1986, at 1 (president's message).

3. *AALS Executive Committee Adopts Statement on Diversity, Equal Opportunity and Affirmative Action*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Mar. 1996, at 9.

The AALS and its officers frequently describe the Association's commitment to furthering diversity. See, e.g., *Joint Diversity Workshop Planned*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), April 2000, at 15 (describing a workshop co-sponsored by the AALS, and titled "Action and Accountability: Diversity Imperatives for a New Century"); Gregory H. Williams, *Progress in Leadership and Diversity*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Nov. 1999, at 1, 5 (president's message) (discussing "the critical importance of the issues of diversity and leadership"); *Commission on Meeting Challenges of Diversity Publishes Report*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), April 1998, at 7 (describing a report titled *Perspectives on Diversity*, published by an AALS Special Commission); Deborah L. Rhode, *The AALS Statement at the SALT March on Diversity*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Feb. 1998, at 6 (describing a rally, march, and speeches at the 1998 AALS annual meeting in support of diversity); Wallace D. Loh, *Diversity*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), Apr. 1996, at 1, 3 (president's message) (discussing the need "to develop new strategies for promoting diversity that can bring people together rather than tear them apart"); *AALS, ABA and LSAC Present 'Access 2000: The Challenge to Assure Diversity in the Legal Profession'*, ASS'N OF AM. LAW SCH. NEWSL. (AALS D.C.), June 1988, at 10 (discussing a conference co-sponsored by the AALS).

A look at the faculty members who actually are invited to speak at the AALS annual meeting paints a very different picture. The annual meeting panels are dominated by a handful of insiders, who teach at a few elite law schools. At the annual meeting, these faculty members are the featured panelists program after program, year after year. The vast majority of law school professors never have been and never will be invited to speak at the AALS annual meeting.<sup>4</sup>

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4. I now have served as the program chair for four panels at the AALS annual meeting. In candor, faculty members teaching at third-tier and fourth-tier law schools have not been any better represented on the panels that I have organized than on the typical AALS panel.

In 1995, I was the co-chair for a Section on Civil Rights program, titled *The Problematics of Civil Rights Immunities*. See Section on Civil Rights, *The Problematics of Civil Rights Immunities*, in ASS'N OF AM. LAW SCH., PROC. OF THE 1995 ANN. MEETING 91 (1995) [hereinafter 1995 AALS ANNUAL MEETING PROCEEDINGS]. One of the two panelists taught at a first-tier law school—Susan Low Bloch (Georgetown University). *Id.*; see also *Exclusive Law Rankings: Schools of Law*, U.S. NEWS & WORLD REP.: BEST GRAD. SCHS. 46 (2001) (special issue on graduate schools) [hereafter U.S. NEWS LAW RANKINGS]. The other panelist was Alan K. Chen (University of Denver), who taught at a second-tier law school. Moderator Sheldon H. Nahmod (Chicago-Kent College of Law) also taught at a second-tier law school. 1995 AALS ANNUAL MEETING PROCEEDINGS, *supra*, at 91; U.S. NEWS LAW RANKINGS *supra*, at 48.

The most diverse panel that I worked on was the 2000 AALS Annual Meeting program, titled *Children, Spiritual Healing, and Religious Exercise*. Section on Family and Juvenile Law & Section on Law and Religion, *Children, Spiritual Healing, and Religious Exercise*, in ASS'N OF AM. LAW SCH., PROC. OF THE 2000 ANN. MEETING 112 (2000) [hereinafter 2000 AALS ANNUAL MEETING PROCEEDINGS]. At this joint program of the Section on Family and Juvenile Law and the Section on Law and Religion, one of the panelists taught at a first-tier law school—Richard Wingfield Garnett, IV (Notre Dame Law School). *Id.*; U.S. NEWS LAW RANKINGS, *supra*, at 48. A second panelist taught at a third-tier law school—James G. Dwyer (University of Wyoming). 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra*, at 112; U.S. NEWS LAW RANKINGS, *supra*, at 48. The other two panelists were practitioners: Terry Gustafson (District Attorney, Clackamas County, Oregon), and Steffen N. Johnson (Mayer, Brown & Platt, Chicago, Illinois). 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra*, at 112. I served as the moderator. *Id.*

At the 2001 AALS annual meeting, I was the program chair and moderator for a joint program of the Section on Civil Procedure and the Section on Litigation, titled *Litigators in a Legal System Without Trials*. Section on Civil Procedure and Section on Litigation, *Litigators in a Legal System Without Trials*, in ASS'N OF AM. LAW SCH., PROC. OF THE 2001 ANN. MEETING 7 (2001) [hereinafter 2001 AALS ANNUAL MEETING PROCEEDINGS]. Three of the four panelists taught at first-tier law schools: Richard A. Boswell (Hastings College of the Law), Marc S. Galanter (University of Wisconsin), and Judith Resnik (Yale Law School). *Id.*; U.S. NEWS LAW RANKINGS, *supra*, at 46. The fourth panelist was Kevin C. McMunigal (Case Western Reserve University), a teacher at a second-tier law school. 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra*, at 7; U.S. NEWS LAW RANKINGS, *supra*, at 48.

At the 2002 AALS annual meeting, I was the program chair and a panelist for a joint program of the Section on Civil Rights, the Section on Intellectual Property Law, and the Section on Law and the Social Sciences. Section on Civil Rights et al., *Privacy on the Internet*, in ASS'N OF AM. LAW SCH., PROC. OF THE 2002 ANNUAL MEETING 96 (2002) [hereinafter 2002 AALS ANNUAL MEETING PROCEEDINGS]. The program was titled *Privacy on the Internet*. *Id.* Two of the five panelists taught at first-tier law schools: Orin S. Kerr (George Washington University) and Peter P. Swire (Ohio State University). *Id.*; U.S. NEWS LAW RANKINGS, *supra*, at 46. The third panelist was Daniel J. Solove (Seton Hall University), a teacher at a second-tier law school. 2002 AALS ANNUAL MEETING PROCEEDINGS, *supra*, at 96; U.S. NEWS LAW RANKINGS, *supra*, at 48. I served as the fourth panelist. ANNUAL MEETING PROCEEDINGS, *supra*, at 96; Arthur Cockfield served as the moderator and a panelist. *Id.* Professor Cockfield teaches at Queen's University, a Canadian law school.

Of the twelve American law school faculty speakers (other than the author) who participated on these four panels, seven of the speakers (54%) taught at first-tier law schools. *Id.* U.S. NEWS LAW RANKINGS, *supra*, at 46. Four of the participants taught at second-tier law schools. U.S. NEWS LAW RANKINGS, *supra*, at 48. The one faculty panelist teaching at a third-tier law school was Jim Dwyer (University of Wyoming).

This essay demonstrates the exclusive and elitist nature of the AALS annual meeting through an empirical survey of the faculty members who were invited to speak at the 2000 and 2001 annual meetings.<sup>5</sup> As ranked by *U.S. News & World Report* (*U.S. News*), the top twenty-six law schools constitute about 14%<sup>6</sup> of the 185 law schools that participate in the AALS.<sup>7</sup> However, these top twenty-six

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U.S. NEWS LAW RANKINGS, *supra*, at 48. By the time that Professor Dwyer appeared on the *Children, Spiritual Healing, and Religious Exercise* panel, he had accepted an appointment at the College of William and Mary—a first-tier law school. U.S. NEWS LAW RANKINGS, *supra*, at 46.

To the extent that this essay indicts the AALS for failing to include more faculty members who teach at third-tier and fourth-tier law schools on annual meeting panels, I am indicting myself. But in fairness, I invited these panelists only after consulting with other law school faculty members who were active in the AALS. I did not make unilateral decisions to seek out prominent faculty members who taught at first-tier law schools, at the expense of potential speakers who taught at third-tier and fourth-tier law schools.

5. All figures for the 2000 and 2001 annual meetings were derived from the program booklets for these meetings. See 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4. These booklets list each AALS program, and the speakers on each panel.

The panelists listed in these booklets will not precisely match the panelists who actually speak at an AALS meeting. The AALS receives a roster of panelists for each program in September, months before the January annual meeting. Prior to the meeting, panelists sometimes cancel for a variety of reasons.

This essay asserts that annual meeting speaking invitations are received by only a small group of faculty members, who typically teach at elite law schools. For the purpose of this study, the fact that some invited panelists ultimately do not participate at the annual meeting is of little consequence.

6. All percentages were approximated by rounding up or rounding down.

7. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 46-49.

A number of law school faculty members and administrators have issued harsh criticisms of the annual survey published by *U.S. News*, contending that the law school rankings are unreliable, unhelpful, or both. For example, the Law School Admissions Council website includes a statement, titled *Deans Speak Out*. Law School Admissions Council, *Deans Speak Out*, at <http://www.law-services.org/LSAC.asp?url=lsac/deans-speak-out-rankings.asp> (last visited May 7, 2002). The statement describes law school ranking systems as “inherently flawed.” *Id.* The statement is signed by a long list of law school deans. *Id.* See also Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want to Be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097, 1099-1100 (1999) (stating that the *U.S. News* rankings do not measure important law school qualities, and may mislead students). But cf. Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403, 407-14 (1998) (arguing that the *U.S. News* rankings provide students with useful information about the relative prestige of different institutions).

I have no interest in joining the debate about the accuracy or the value of the *U.S. News* rankings. In this essay, I am using the rankings only as a very rough indicator of the relative prestige of different law schools. For example, the *U.S. News* rankings correctly indicate that Yale Law School is a more prestigious institution than the University of Connecticut School of Law, which is a more prestigious institution than the Quinnipiac University School of Law. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 46-49. Other recent articles have used the *U.S. News* rankings in much the same way. See, e.g., Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 ARIZ. L. REV. 15, 15-18 (1997) (using the *U.S. News* rankings to determine the “national prominence” of law professor authors who publish in law reviews); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 212 (1997) (ranking law school prestige in part by reference to the “academic reputation rank as reported by *U.S. News & World Report*”); Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 607 (1999)

schools accounted for more than 36% of the panelists at the 2001 AALS annual meeting.<sup>8</sup>

In 2001, thirteen annual meeting panelists taught at the Georgetown University Law Center, and another twelve panelists taught at the New York University School of Law.<sup>9</sup> At the same time, thirty-eight of the law schools ranked by *U.S. News* were not represented at all on AALS panels. Thirty-one of these thirty-eight schools (81%) appeared in the bottom two tiers of law schools, as ranked by *U.S. News*.<sup>10</sup>

Part II of this essay includes a brief description of the AALS annual meeting. As discussed in Part II, the focal point of the annual meeting is panels where three to five faculty members give presentations. Part II also recognizes some legitimate reasons why professors teaching at elite law schools are disproportionately represented on the annual meeting panels.

Part III documents the central thesis of this essay—that the AALS panels are dominated by a small number of well-connected faculty members who typically teach at a few elite law schools. This small group of faculty members tends to appear on AALS panels again and again, year after year. Of the law school faculty members who appeared on panels at the 2001 annual meeting, eighty-one panelists (about 18%) also were panelists at the 2000 annual meeting. And although most faculty members never will be invited to speak on an AALS panel, thirty-eight faculty members (about 8%) appeared on more than one panel in 2001.

Part IV of this essay briefly considers the representation of women and minority faculty members on AALS panels. Despite persistent assertions that these groups are under-represented in legal academia,<sup>11</sup> Part IV concludes that women and mi-

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(stating that top law journals almost never accept articles written by faculty members who teach at low-ranking law schools).

8. Of the 435 panelists at the 2001 annual meeting, 160 of these panelists taught at the top twenty-six law schools. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. (Author's calculation).

9. See *infra* Appendix, Table 1.

The *U.S. News* rankings of various law schools often change slightly from year to year. This Article relies entirely on the 2001 *U.S. News* rankings of law schools. U.S. NEWS LAW RANKINGS, *supra* note 4, at 46-49.

10. See *infra* Appendix, Table 5 (listing law schools that were not represented on AALS annual meeting panels in 2001).

11. According to many critics of exclusion in the law teaching profession, women and minorities are under-represented on law faculties. See, e.g., Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 540 (1989) ("Black bitch hunts are alive and well in the territory where minority female law faculty labor."); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 563 (1984) (asserting that almost all widely-cited civil rights scholarship has been written by "an inner circle of about a dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand on each other's ideas"). However, some recent works have asserted that faculty members who do not teach at elite law schools often are excluded from meaningful participation in academia—regardless of the faculty member's race or gender. See, e.g., Subotnik & Lazar, *supra* note 7, at 607.

Subotnik and Lazar reviewed the law school affiliation of authors publishing in nine of the most prestigious law reviews—including the Yale Law Journal, the Harvard Law Review, and the Stanford Law Review. *Id.* Based on data from 1993 to 1998, Subotnik and Lazar noted "the virtual impossibility, for an author at a third- or fourth-tier law school, of getting an article published in a top-9 journal." *Id.* In fact, during this five-year period, the percentage of articles in these nine journals written by faculty teaching at third-tier and fourth-tier law schools ranged from a high of only about 11 percent (Harvard Law Review and Michigan Law Review) to 0 percent (Virginia Law Review). *Id.* at 609, Table 4.

norities are reasonably well-represented on AALS panels. Rather than race or gender, the basis of exclusion from these panels seems to be employment at a low-ranking law school.

Part V of this essay suggests a radical reconstruction of the AALS annual meeting. Instead of organizing the annual meeting around relatively large programs dominated by a few faculty members, the annual meeting could be devoted to small group discussions. In these small groups, all faculty members would participate as equals.

## II. THE AALS ANNUAL MEETING

The AALS is a non-profit association of American law schools. The Association seeks to further "the improvement of the legal profession through legal education."<sup>12</sup>

Four times each year, the AALS publishes the *Journal of Legal Education*, a collection of articles about law school teaching, administration, and scholarship.<sup>13</sup> The AALS also publishes an annual *Directory of Law Teachers*.<sup>14</sup> The AALS operates an annual Recruitment Conference, where teaching candidates seek faculty positions.<sup>15</sup> In addition, the AALS presents conferences and workshops on particular legal topics throughout the year.<sup>16</sup>

### A. A Brief Description of the AALS Annual Meeting

The AALS annual meeting is the largest single meeting of American law professors. Each year, the four-day annual meeting takes place at a large hotel in early January—just after New Year's Day, and just before the beginning of the law school spring semester.<sup>17</sup> In recent years, about 3,000 law professors have attended the four-day annual meeting.<sup>18</sup>

The annual meeting is a big program, and includes a variety of events. One large convention room is occupied by legal publishers, who attempt to market their existing titles and solicit new book ideas.<sup>19</sup> Some of the AALS events are purely social. For example, on Thursday or Friday night, the AALS usually presents a "Gala Reception" at some attractive local venue.<sup>20</sup>

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12. Ass'n of Am. Law Sch., *What is the AALS?*, at <http://www.aals.org/about.html> (last visited Apr. 17, 2002) (internal quotation omitted).

13. *Id.*

14. *Id.*

15. Ass'n of Am. Law Sch., *AALS Faculty Recruitment Services*, at <http://www.aals.org/frs/index.html> (last visited April 17, 2002). The AALS also publishes a placement bulletin, which describes available law school faculty positions and administrative openings. *Id.* The AALS distributes the placement bulletin six times each academic year. *Id.*

16. Ass'n of Am. Law Sch., *What is the AALS?*, at <http://www.aals.org/about.html> (last visited Apr. 17, 2002).

17. *Id.*

18. E-mail from Tracie L. Thomas, Senior Meeting Manager, Association of American Law Schools, to Author (Feb. 14, 2001) (on file with Author).

19. See, e.g., 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 15 (describing an area where companies display "a variety of academic, teaching and administrative products and services of interest to those in legal education").

20. See, e.g., *id.* at 36 (describing an AALS Gala Reception at the San Francisco City Hall).

However, the majority of time at the annual meeting is devoted to programs on specific topics. Most of the seventy-eight AALS sections sponsor one or more programs,<sup>21</sup> with multiple sections frequently joining together to co-sponsor a panel.<sup>22</sup> Both the 2001 AALS annual meeting and the 2000 annual meeting included ninety section programs.<sup>23</sup>

The programs follow a standard format. The typical program lasts for one hour and forty-five minutes. The program generally includes three to five panelists and one moderator—although the program may be longer and the panel may include more speakers.<sup>24</sup> Presentations by the panelists usually consume the vast majority of the program, leaving only a few minutes for questions and comments from the audience.

Any interchange between the panelists and the audience is limited and formal. To ask a question, members of the audience typically must walk to a stationary microphone, ask a question, and then return to their seat.

The AALS employs the microphone procedure for two reasons. First, very large audiences sometimes attend the AALS programs, necessitating the use of large conference rooms.<sup>25</sup> With the panelists seated a long way from many members of the audience, some sort of voice amplification is necessary for the panelists to hear the audience members, and vice versa.

Second, the AALS sells recorded tapes of each program,<sup>26</sup> and insists that everyone participating at a program must speak into a microphone. By purchasing these tapes, faculty members who are unable to attend the annual meeting may listen to the programs. Also, sales of the tapes generate revenue for the AALS. Although taping the annual meeting programs may serve worthwhile purposes, the requisite use of microphones makes any communication between the audience and the panelists formal and awkward.<sup>27</sup>

In short, meaningful participation at the AALS annual meeting programs largely is limited to the invited panelists. But as discussed below, AALS sections repeat-

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21. The Association currently has seventy-eight sections, typically devoted to a particular legal subject. See Ass'n of Am. Law Sch., *What is the AALS?*, at <http://www.aals.org/about.html> (last visited Apr. 17, 2002).

22. For some examples of co-sponsored programs from the 2001 AALS annual meeting see 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 2 (describing a joint program of the AALS Section on Criminal Justice, Section on Poverty Law, and Section on Pro Bono and Public Service Opportunities); *id.* at 7 (describing a joint program of the Section on Civil Procedure and Section on Litigation); *id.* at 9 (describing a joint program of the Section for the Law School Dean, Section on Graduate Programs for Foreign Lawyers, and Section on Post Graduate Legal Education).

23. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4.

24. For some typical AALS programs, see Section on Aging and the Law, *Aging with Diversity*, in 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 48 (panel included one moderator and three panelists); AALS Section on Civil Rights, *Constitutional Torts: Deterrence and Corrective Justice*, in *id.* at 58 (panel included one moderator and four panelists); AALS Section on Criminal Justice, *The Reaffirmation of Miranda: What's Next?*, in *id.* at 99 (panel included one moderator and four panelists).

25. At the 2001 AALS annual meeting, the audience that attended individual programs ranged from 10 people to 300 people. E-Mail from Jane M. La Barbera, Associate Director, Association of American Law Schools, to Author (Aug. 3, 2001) (on file with Author).

26. See, e.g., 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at xi.



edly invite the same small group of panelists who teach at a few elite law schools.<sup>28</sup> Participation at the AALS annual meeting is neither diverse nor inclusive.

### B. The Arguments for "Repeat Player" Speakers

This Article contends that continually inviting a small group of panelists from elite law schools is antithetical to the purported AALS goal of diversity. But in fairness, program organizers have some good reasons for limiting most of their invitations to a small group of well-known faculty members, who typically teach at a few elite law schools.

Faculty members teaching at elite law schools often are highly productive and thoughtful scholars. The top law schools typically offer the highest faculty salaries, the best students, and the most prestigious faculty positions. For the most part, these law schools are able to hire anyone they want. Typically, the elite schools will hire the best and the brightest scholars.

Faculty members at elite law schools are likely to engage in cutting-edge scholarship for reasons beyond innate ability. Top law schools are able to devote resources toward scholarship that simply are not available at more typical law schools. Faculty at elite law schools often benefit from reduced teaching loads, outstanding student research assistants, and generous summer research stipends.<sup>29</sup>

Aside from attempting to present cutting-edge scholarship, AALS section officers may have other legitimate reasons for choosing panelists from a small group of prominent faculty members.<sup>30</sup> Perhaps most importantly, well-known faculty members are able to draw an audience.

At the 2000 AALS annual meeting, I experienced a concrete example of the power of name recognition. I was the moderator and co-program chair for a program titled *Children, Spiritual Healing, and Religious Exercise*.<sup>31</sup> The program considered whether the state should allow parents to treat their ill children with spiritual healing, rather than conventional medical care.<sup>32</sup> That certainly seemed like an interesting and timely topic—at least to me.

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27. In addition, all of the panel members often will respond to any question or comment from the audience. Even if an audience member asks a brief question, often several minutes will elapse before the panelists complete their answers.

28. See *infra* Part III.A.

29. At less prestigious law schools with lower faculty salaries and fewer summer research stipends, faculty sometimes supplement their salaries by teaching summer school. Summer school obligations will reduce a faculty member's time for research and writing.

30. Because the AALS annual meeting takes place at a somewhat inconvenient time, some faculty members may decline an invitation to serve as a panelist. The AALS annual meeting always occurs just after January 1. Professors are rushing to finish fall semester grading. At many law schools, the winter semester begins the day after the AALS annual meeting ends. And regardless of when the AALS scheduled its annual meeting, some faculty members simply may lack interest in attending or speaking at the meetings, further decreasing the pool of potential panelists.

31. Section on Family and Juvenile Law and Section on Law and Religion, *Children, Spiritual Healing, and Religious Exercise*, in 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 112. Professor Joanne C. Brant (Ohio Northern University) worked with me as the co-chair for this program. *Id.* The program would not have been possible without Professor Brant's tireless efforts and always reliable good judgment.

32. *Id.* at 112-13.

However, the panelists at this program were not well-known to law school faculty members. The four panelists included two law professors—a new professor at Notre Dame Law School and a professor at the University of Wyoming College of Law. The other two panelists were an Oregon district attorney who had attempted to bring criminal prosecutions against parents who relied on spiritual healing to treat their children, and an attorney in private practice who had litigated spiritual healing cases.<sup>33</sup>

The *Children, Spiritual Healing, and Religious Exercise* program took place from 9 A.M. to 10:45 A.M. on Sunday, January 9, 2000.<sup>34</sup> At the same time as the *Children, Spiritual Healing, and Religious Exercise* program, the Section on Constitutional Law held a program, titled *What Brown Should Have Said*.<sup>35</sup> The panelists for *What Brown Should Have Said* read like a “Who’s Who” of American legal education. The ten panelists included Derrick Bell of New York University, Catharine MacKinnon of the University of Michigan, Frank Michelman of Harvard Law School, Cass Sunstein of the University of Chicago, and so on.<sup>36</sup>

Faculty attendance at the *Children, Spiritual Healing, and Religious Exercise* program was sparse, to put it kindly. If a faculty member decided to get out of bed and attend a program on Sunday morning, the faculty member went to *What Brown Should Have Said*.

In short, AALS program organizers have a number of legitimate reasons for repeatedly choosing panelists from the same small group of well-known faculty members who teach at elite law schools, again and again, year after year. But while limiting panelists to this elite group may serve a variety of purposes, this method of selection is antithetical to the purported AALS policy of diversity. In fact, a careful review of the elitism and exclusivity of AALS panels leads inevitably to questions about whether the AALS really is serious about diversity at all.

### III. MORE OF THE SAME: ELITISM AT THE AALS ANNUAL MEETING

#### A. Elite Law Schools

A disproportionate number of faculty members who are invited to speak at the AALS annual meeting teach at a relatively small number of elite law schools.

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33. *Id.* at 112. The four panelists were James G. Dwyer (University of Wyoming), Richard Wingfield Garnett, IV (Notre Dame Law School), Terry Gustafson (District Attorney, Clackamas County, Oregon), and Steffen N. Johnson (Mayer, Brown & Platt, Chicago, Illinois). *Id.* I served as the moderator. *Id.*

James G. Dwyer now teaches at the Marshall-Wythe School of Law, College of William and Mary.

34. *Id.* Sunday programs at the annual meeting often are attended sparsely. Classes at many law schools start the next day. For this reason, many faculty members depart from the AALS annual meeting on Saturday night or Sunday morning.

35. *Id.* at 107-08.

36. *Id.* The entire roster of panelists on *What Brown Should Have Said* were Bruce A. Ackerman (Yale Law School), Jack M. Balkin (Yale Law School), Derrick A. Bell, Jr. (New York University), Drew S. Days, III (Yale Law School), John Hart Ely (University of Miami), Catharine A. MacKinnon (University of Michigan), Michael W. McConnell (University of Utah), Frank I. Michelman (Harvard Law School), Cass R. Sunstein (University of Chicago), and Patricia J. Williams (Columbia University). *Id.*

Many law faculties are almost completely excluded from participating as panelists at the annual meeting.<sup>37</sup>

As illustrated by Table 3 and Table 4, the bias in favor of a relatively small number of elite law schools is profound and pervasive.<sup>38</sup> For example, the top twenty-six law schools ranked in *U.S. News* account for only about 14% of the 185 AALS member and fee-paid law schools.<sup>39</sup> But at the 2001 AALS annual meeting, these elite law schools accounted for about 36% of the panelists.<sup>40</sup> At the 2000 AALS annual meeting, this same top 14% of law schools accounted for about 41% of the panelists.<sup>41</sup>

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37. Although most annual meeting panelists are American law professors, a significant number of panelists do not teach on American law faculties at all. The AALS panels frequently include scholars who teach in university departments outside of American law schools, as well as judges, government officials, and practicing attorneys. See, e.g., Section on Law Libraries and the Section on Legal Writing, Reasoning, and Research, *What is "Authority"?*, in 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 53 (panelists included Judge M. Margaret McKeown, Ninth Circuit Court of Appeals); Section on Conflict of Laws, *The Role of Comparative Law in the Conflict of Laws*, in *id.* at 50 (panelists included Professor Benedicte Fauvarque-Cosson, Paris V Rene Descartes University, Paris, France, and Michael Traynor, President, American Law Institute).

This essay considers only which law school faculty members receive invitations to speak as AALS panelists. The study excluded any panelists who were not law school faculty members.

38. See *infra* Appendix, Tables 3 and 4.

39. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. As of June 30, 2001, 164 member law schools participated in the AALS. E-Mail from Jane M. La Barbera, Associate Director, Association of American Law Schools, to Author (Aug. 3, 2001) (on file with Author). Twenty-one additional law schools approved by the American Bar Association were not members of the AALS, but participated as "fee-paid" schools. *Id.*

Between 2000 and 2001, some law professors changed schools. In this Article, each faculty member is designated by the school where the faculty member taught in 2001.

40. See *infra* Appendix, Table 3. This essay makes no distinction between faculty members who serve as speakers and faculty members who serve as moderators. Actually, speakers and moderators are selected in different ways and serve different functions.

The speakers on each panel give the substantive presentations. The moderator typically introduces the speakers. The moderator also organizes a question and answer session, which usually concludes a program. However, the moderator often does not give a substantive presentation.

The speakers and moderators also typically are chosen in different ways. The speakers are invited to make a presentation on an AALS panel. The moderators typically are the section officers who organized the panel. When a moderator appears on a panel, the moderator's appearance in part recognizes the hard work of organizing a program.

I would expect the over-representation of elite law schools to be even more profound if this study looked only at panel speakers, and not at panel moderators. For example, I already have served as the moderator for two AALS programs. However, I almost certainly never will be invited to speak on an AALS panel.

41. See *infra* Appendix, Table 4.

In a November 2001 e-mail message to the LAWPROF listserve, Professor Mark Tushnet raised some questions about the methodology used in this survey. Posting of Mark Tushnet, tushnet@law.georgetown.edu, to lawprof@chicagokent.kentlaw.edu (Nov. 28, 2001) (on file with Author). Professor Tushnet accurately noted that I was measuring the number of AALS panel invitations per law school. *Id.* This measure could over-emphasize the representation of large law schools on AALS panels. *Id.* A large law school might send many panelists to the AALS, but not because its faculty members receive a disproportionate number of speaking invitations. *Id.* At a large law school, a few of the many faculty members simply are bound to receive speaking invitations. *Id.*

Expanding the survey to the top fifty-four law schools—the “first tier” of the *U.S. News* rankings<sup>42</sup>—again demonstrates a profound bias in favor of faculty members who teach at these elite schools. The top fifty-four law schools comprise about 29% of the 185 AALS member and fee-paid schools.<sup>43</sup> At the 2001 AALS annual meeting, this top 29% of law schools accounted for about 54% of the law school faculty panelists.<sup>44</sup> At the 2000 AALS annual meeting, these same schools accounted for about 59% of the law school faculty panelists.<sup>45</sup>

As one moves down the hierarchy of American law schools, the number of faculty members invited as panelists continues to decline. The second tier of the *U.S. News* law schools includes about 19% of the AALS member and fee-paid schools.<sup>46</sup> At the 2001 AALS annual meeting, the second-tier schools accounted for about 20% of the law school faculty panelists.<sup>47</sup> At the 2000 annual meeting, the same schools accounted for about 19% of the panelists.<sup>48</sup>

By the time that one reaches the third tier of the *U.S. News* law schools, invitations to speak at the AALS annual meeting are few and far between. The *U.S. News* third tier includes about 24% of the AALS member and fee paid schools.<sup>49</sup>

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As Professor Tushnet correctly observed, this survey would reach more accurate results by considering the number of invitations per faculty member in each *U.S. News* tier, rather than the number of invitations per law school in each tier. *Id.* However, Professor Tushnet immediately acknowledged “how much a pain it would be to actually count the number of faculty members at each school.” *Id.* In addition to full-time professors, law school communities include visiting scholars, retired professors, administrators, and staff members. Any of these individuals may do some teaching. Attempting to determine which of these individuals should count as a “faculty member” would prove extremely difficult. *See id.*

At any rate, the status of a law school seems to affect the number of AALS invitations far more than the size of the law school faculty. Yale Law School, Thomas M. Cooley Law School, and the Southwestern University School of Law all employ about the same number of tenured and tenure-track faculty members. Yale Law School employs about 55 tenured and tenure-track faculty members. *See ASS'N OF AM. LAW SCH., DIRECTORY OF LAW TEACHERS: 2001-02*, at 197-98 (2001) [hereinafter *AALS DIRECTORY OF LAW TEACHERS: 2001-02*]. Thomas M. Cooley Law School employs about 60 tenured and tenure-track faculty members. *See id.* at 203-04. The Southwestern University School of Law employs about 50 tenured and tenure-track faculty members. *See id.* at 161-62.

Despite the similar size of these faculties, Yale Law School professors have been invited to speak on AALS panels far more frequently than professors at Southwestern University or Thomas M. Cooley Law School. In 2000, 11 Yale faculty members served as AALS panelists. *See infra* Appendix Table 2, at pp. 44-45. In the same year, only one faculty member from Southwestern University and one faculty member from Thomas M. Cooley Law School participated on AALS panels. *See infra* Appendix, Table 8, at pp. 57-58.

Without question, Yale Law School faculty received more invitations because the law school is highly-ranked and prestigious. The *U.S. News* survey ranked Yale Law School as the top law school in the United States. *See U.S. NEWS LAW RANKINGS supra* note 4, at 46. Meanwhile, Southwestern University ranked in the third tier of the *U.S. News* survey. *Id.* at 49. Thomas M. Cooley Law School ranked in the *U.S. News* fourth tier. *Id.* In short, the relative prestige of a law school appears to affect the number and frequency of AALS speaking invitations far more than the size of the law school faculty.

42. *See U.S. NEWS LAW RANKINGS, supra* note 4, at 46.

43. *See infra* Appendix, Table 3.

44. *Id.*

45. *See infra* Appendix, Table 4.

46. *See infra* Appendix, Tables 3 and 4.

47. *See infra* Appendix, Table 3.

48. *See infra* Appendix, Table 4.

49. *See infra* Appendix, Tables 3 and 4.

In both 2001 and 2000, these schools accounted for only about 12% of the law school faculty panelists.<sup>50</sup>

The percentage of faculty panelists who teach at fourth (bottom) tier law schools are similar to the numbers for the third-tier law schools. The fourth tier includes about 22% of the AALS member and fee paid schools.<sup>51</sup> However, at the 2001 AALS annual meeting, these schools accounted for only about 12% of the panelists.<sup>52</sup> At the 2000 AALS annual meeting, these same schools accounted for only about 8% of the panelists.<sup>53</sup>

As these figures suggest, a few elite law schools are represented heavily on AALS panels, while other law schools are not represented at all. Table 1 reviews the law schools with the most faculty members who served as panelists at the 2001 AALS annual meeting, while Table 2 reviews the same figures for the 2000 AALS annual meeting.<sup>54</sup> In 2001, thirteen faculty members from the Georgetown University Law Center spoke at the AALS annual meeting—the most of any law school.<sup>55</sup> In 2001, the New York University School of Law was second, sending twelve faculty panelists to the annual meeting.<sup>56</sup> Three law schools sent ten faculty panelists to the AALS annual meeting—the UC Berkeley School of Law (Boalt Hall), the George Washington University Law School, and the University of Texas School of Law.<sup>57</sup> According to *U.S. News*, each of these five schools ranks among the top twenty-six American law schools.<sup>58</sup>

In 2000, each of the schools sending the most speakers to the AALS annual meeting again ranked among the top twenty-six law schools.<sup>59</sup> The Georgetown University Law Center again ranked first, sending twenty faculty panelists to the AALS annual meeting.<sup>60</sup> The other top four schools were Harvard Law School (14 faculty panelists), New York University School of Law (13 faculty panelists), Columbia University School of Law (12 faculty panelists), and Yale Law School

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50. *Id.*

51. *Id.*

52. *See infra* Appendix, Table 3.

53. *See infra* Appendix, Table 4.

In e-mail messages sent to the Author, several faculty members have suggested that different AALS sections choose annual meeting panelists in very different ways. According to these faculty members, some of the seventy-eight AALS sections only invite well-known faculty members who typically teach at elite law schools. However, other AALS sections choose a broad range of faculty members as panelists. *See, e.g.,* e-mail message from Terri LeClercq, Senior Lecturer, Univ. of Texas School of Law, to Author (Nov. 26, 2001) (on file with Author); e-mail from Philip N. Meyer, Professor, Vermont Law School, to Author (Dec. 20, 2001) (on file with Author). Like these other faculty members, my own anecdotal experiences suggest that some AALS sections are highly elitist, while other sections are somewhat more open.

This Article only reports aggregate data from the AALS annual meeting. The Author has not attempted to determine whether the pattern of speaker invitations differs from one section to another. *But see infra* Part III.B.3 (noting that some faculty members have made multiple appearances on panels organized by the Section on Civil Procedure, the Section on Constitutional Law, and the Section on Law and Religion).

54. *See infra* Appendix, Tables 1 and 2.

55. *See infra* Appendix, Table 1.

56. *Id.*

57. *Id.*

58. *U.S. NEWS LAW RANKINGS*, *supra* note 4, at 46.

59. *See infra* Appendix, Table 2.

60. *Id.*

(11 faculty panelists).<sup>61</sup>

A review of Table 1 and Table 2 illustrates that schools sending large numbers of faculty panelists to the AALS annual meeting almost always rank among the most elite law schools in the country. In 2001, twenty-two law schools had six or more faculty members speak at the AALS annual meeting.<sup>62</sup> Seventeen of those twenty-two law schools (77%) ranked in the top tier of the *U.S. News* survey.<sup>63</sup> In 2000, twenty-five law schools had six or more faculty members speak at the AALS annual meeting.<sup>64</sup> Nineteen of those twenty-five law schools (76%) ranked in the top tier of the *U.S. News* survey.<sup>65</sup>

Although first-tier law schools often are heavily represented at the AALS annual meetings, third-tier and fourth-tier law schools almost never send a large number of faculty panelists to these meetings. In 2001, no third-tier law school sent as many as six faculty speakers to the annual meeting.<sup>66</sup> In 2000, only one third-tier law school (Syracuse University) sent six or more faculty speakers to the annual meeting.<sup>67</sup> In 2000 and 2001, no fourth-tier law school sent as many as six speakers to the AALS annual meeting.<sup>68</sup>

While law schools like Georgetown, Harvard, and New York University send a large number of faculty members to speak at the AALS annual meeting each year, faculty members teaching at a large group of law schools almost certainly never will be invited to participate on an AALS panel. At thirty-eight law schools, no faculty member spoke at the 2001 AALS annual meeting.<sup>69</sup> At another thirty-seven law schools, only one faculty member served on an AALS panel.<sup>70</sup> While thirteen Georgetown University faculty members spoke at the 2001 AALS annual meeting,<sup>71</sup> about 41% of all AALS member and fee-paid law schools had zero or

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61. *Id.*

62. *See infra* Appendix, Table 1.

63. *Id.* In 2001, the law schools with at least six annual meeting panelists that did not rank in the first tier of the *U.S. News* survey were American University (7 speakers), University of San Diego (7 speakers), Yeshiva University (7 speakers), Arizona State University (6 speakers), and the University of Miami (6 speakers). *Id.* All of these law schools appeared in the second tier of the *U.S. News* rankings. *See U.S. NEWS LAW RANKINGS, supra* note 4, at 48. Of the twenty-two law schools with six or more speakers, none of these law schools ranked in the third tier or the fourth tier of the *U.S. News* survey. *See infra* Appendix, Table 1.

64. *See infra* Appendix, Table 2.

65. *See id.* In 2000, the law schools with at least six speakers that did not rank in the first tier of the *U.S. News* survey were University of Miami (7 speakers), Syracuse University (7 speakers), Brooklyn Law School (6 speakers), Chicago-Kent College of Law (6 speakers), Georgia State University (6 speakers), and the University of San Diego (6 speakers). *Id.* Five of these six law schools appeared in the second tier of the *U.S. News* rankings. *U.S. NEWS LAW RANKINGS, supra* note 4, at 48. Only one law school (Syracuse University) appeared in the third tier of the *U.S. News* rankings. *See id.* at 48-49. None of the law schools ranked in the fourth tier of the survey. *See id.*

66. *See infra* Appendix, Table 1.

67. *See infra* Appendix, Table 2. At the 2000 AALS annual meeting, seven Syracuse University School of Law faculty members served on AALS panels. *Id.*

68. *See infra* Appendix, Tables 1 and 2.

69. *See infra* Appendix, Table 5. In 2000, forty-one law schools were not represented on a panel at the AALS annual meeting. *See infra* Appendix, Table 6.

70. *See infra* Appendix, Table 7.

71. *See infra* Appendix, Table 1.

one faculty member invited to participate on an AALS panel.<sup>72</sup>

Predictably, the law schools with only zero or one faculty speaker typically rank in the bottom two tiers of the *U.S. News* survey. In 2001, about 82% of the law schools with zero panelists were located in the third tier and the fourth tier of the *U.S. News* ranking system.<sup>73</sup> About 62% of the law schools represented by only one speaker were located in the *U.S. News* third tier and fourth tier.<sup>74</sup>

In fact, of the 41 fourth-tier law schools,<sup>75</sup> thirteen law schools (31%) did not have a single faculty member speaking at the 2001 AALS annual meeting.<sup>76</sup> In contrast, only two of the 54 first-tier law schools (about 4%) were not represented by a single faculty panelist at the 2001 AALS annual meeting.<sup>77</sup>

The statistics paint a clear picture of how panelists are chosen for the AALS annual meeting. A disproportionate number of panelists teach at a few elite law schools. With rare exceptions, faculty members teaching at lower-ranking law schools will not be invited to participate on an AALS panel.

### *B. Repeat Speakers*

The vast majority of faculty members never will be asked to speak on a panel at the AALS annual meeting. Of the about 3,000 faculty members who attended the 2001 AALS annual meeting,<sup>78</sup> only 435 faculty members (about 14%) appeared on a panel.<sup>79</sup> Yet while most faculty members never will be invited to participate on a single panel, a small group of elite insiders make multiple speaking appearances at the AALS, and appear year after year.

#### *1. Multiple Appearances at an AALS Annual Meeting*

Of the 435 law school faculty members who served as panelists at the 2001 AALS annual meeting, thirty-eight faculty members (about 8% of all panelists) appeared on more than one panel.<sup>80</sup> Of the 438 law school faculty members who served as panelists at the 2000 annual meeting, forty-eight speakers (about 10% of all panelists) appeared on more than one panel.<sup>81</sup>

Not surprisingly, most of the speakers who appeared on more than one panel teach at elite law schools. The first tier of the *U.S. News* rankings is comprised of fifty-four law schools,<sup>82</sup> or about 29% of the 185 member and fee-paid law schools

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72. The AALS includes 185 participating law schools. E-mail from Jane M. La Barbera, Associate Director, Association of American Law Schools, to Author (Aug. 3, 2001) (on file with Author). Of these 185 schools, 75 schools had zero or one faculty panelist at the 2001 AALS annual meeting. See *infra* Appendix, Tables 5 and 7.

73. See *infra* Appendix, Table 5.

74. See *infra* Appendix, Table 7.

75. U.S. NEWS LAW RANKINGS, *supra* note 4, at 49.

76. See *infra* Appendix, Table 5.

77. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 46; see *infra* Appendix, Table 5. The two law schools were the University of Colorado and Washington and Lee University.

78. E-mail from Tracie L. Thomas, Senior Meeting Manager, Association of American Law Schools, to Author (July 18, 2000) (on file with Author).

79. The 2001 *Proceedings* include 435 faculty speakers. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4.

80. See *id.* (Author's calculation).

81. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation).

82. U.S. NEWS LAW RANKINGS, *supra* note 4, at 46.

that participate in the AALS.<sup>83</sup> However, of the thirty-eight law school faculty members who made more than one appearance at the 2001 annual meeting, twenty-six speakers (68%) taught at a first-tier law school.<sup>84</sup> Of the forty-eight law school faculty members who made more than one appearance at the 2000 annual meeting, thirty-two speakers (66%) taught at a first-tier law school.<sup>85</sup>

As these figures suggest, faculty members who teach at low-ranking law schools almost never participate on more than one panel at the AALS annual meeting. This is indeed the case.

The third tier and the fourth tier of the *U.S. News* rankings contain eighty-six law schools,<sup>86</sup> or about 46% of the 185 law schools that participate in the AALS.<sup>87</sup> But of the thirty-six law school faculty members who appeared on more than one panel at the 2001 annual meeting, only five of these faculty members (13%) taught at third-tier and fourth-tier schools.<sup>88</sup> And of the forty-eight law school faculty members making more than one appearance at the 2000 AALS annual meeting, only nine faculty members (about 18%) taught at third-tier or fourth-tier law schools.<sup>89</sup>

## 2. *Appearances at Consecutive AALS Annual Meetings*

Almost one out of every five panelists at an AALS annual meeting also will have appeared on a panel in the previous year. Of the 435 law school faculty members who participated on a panel at the 2001 AALS annual meeting, eighty-one faculty members (about 18%) had appeared on a panel at the 2000 AALS annual meeting.<sup>90</sup> And of the 438 law school faculty members who participated on a panel at the 2000 AALS annual meeting, seventy-one faculty members (about 16%) had appeared on a panel at the 1999 AALS annual meeting.<sup>91</sup>

83. E-mail from Jane M. La Barbera, Associate Director, Association of American Law Schools, to Author (Aug. 3, 2001) (on file with Author).

84. See 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46 (Author's calculation).

85. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46 (Author's calculation).

86. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49.

87. See e-mail from Jane M. La Barbera, Associate Director, Association of American Law Schools, to Author (Aug. 3, 2001) (on file with Author) (Author's calculation).

88. See 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

89. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

90. See 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation).

91. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; ASS'N OF AM. LAW SCH., PROC. OF THE 1999 ANN. MEETING (1999) [hereinafter 1999 AALS ANNUAL MEETING PROCEEDINGS] (Author's calculation).

In a series of e-mail messages sent to the LAWPROF listserve and to the Author, Professor Paul Finkelman expressed skepticism about the conclusions in this essay. See, e.g., e-mail from Paul Finkelman, Professor of Law, Univ. of Tulsa College of Law, to Author (Nov. 28, 2001) (on file with Author); e-mail from Paul Finkelman, Professor of Law, University of Tulsa College of Law, to Author (Nov. 25, 2001) (on file with Author). Professor Finkelman teaches at the University of Tulsa College of Law, a fourth-tier law school. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 49. Professor Finkelman reported that since 1986, he has received at least seven invitations to speak on AALS annual meeting panels. E-mail from Paul Finkelman, Professor of Law, University of Tulsa College of Law, to Author (Nov. 28, 2001) (on file with Author).



As the reader no doubt already has guessed, most of these repeat speakers teach at elite law schools. Recall that law schools appearing in the *U.S. News* first tier comprise about 29% of the law schools that participate in the AALS.<sup>92</sup> Of the eighty-one faculty members who appeared on panels in both 2000 and 2001, fifty-five of these faculty members (about 68%) taught at law schools ranked in the *U.S. News* first tier.<sup>93</sup>

In contrast, very few of the speakers making repeat appearances at consecutive AALS annual meetings teach at third-tier or fourth-tier law schools. Recall that about 46% of the law schools that participate in the AALS are ranked in the third tier and the fourth tier of the *U.S. News* survey.<sup>94</sup> Of the eighty-one faculty members who appeared on panels in both 2000 and 2001, twelve of these faculty members (about 15%) taught at schools ranked in the *U.S. News* third tier or fourth tier.<sup>95</sup> And of the seventy-one faculty members who appeared on panels in both 1999 and 2000, fourteen of these faculty members (about 20%) taught at schools ranked in the *U.S. News* third tier or fourth tier.<sup>96</sup>

### 3. Multiple Appearances Over Time: A Look at Three AALS Sections

In addition to the aggregate data from 2000 and 2001, I also reviewed the panels for three AALS sections over a longer period of time. I examined the panels from 1991 to 2001 for the AALS Section on Civil Procedure, the Section on Constitutional Law, and the Section on Law and Religion.<sup>97</sup> These three section programs represent only a tiny fraction of the about ninety programs that take

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According to Professor Finkelman, many of the other faculty members joining him on annual meeting panels did not teach at "elite" law schools. E-mail from Paul Finkelman, Professor of Law, University of Tulsa College of Law, to Author (Nov. 25, 2001) (on file with Author). Professor Finkelman concluded that "certainly my experience does not fit your pattern." *Id.*

However, this essay does not assert that the AALS exclusively invites speakers from the most elite law schools. Instead, the essay only reports that faculty at elite law schools are represented disproportionately on annual meeting panels. Faculty at third-tier and fourth-tier law schools sometimes are invited to participate on these panels—but such invitations are few and far between.

Professor Finkelman's experience actually is consistent with the central thesis of this essay—that a small group of insiders are repeatedly invited to speak at the AALS annual meeting, panel after panel, year after year. Rather than finding a new faculty member with a different perspective, the AALS organizers have brought Professor Finkelman back to speak on at least seven different annual meeting panels. While Professor Finkelman has received seven AALS speaking invitations, most faculty members never will be invited to participate on an AALS panel.

92. See *supra* text accompanying note 43.

93. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46 (Author's calculation).

94. See *supra* text accompanying notes 49-53; see also *infra* Appendix, Tables 3 and 4.

95. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

96. See 1999 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 91; 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

97. I chose these particular section programs arbitrarily. I have written and taught in each of these areas. Also, I have attended these AALS section programs fairly regularly.

place each year at the annual meeting.<sup>98</sup> These sections may not be representative. One should hesitate to generalize from such a small sampling of AALS programs.

Nonetheless, the ten-year review produced some interesting data. As summarized in Tables 9 through 11,<sup>99</sup> a significant number of faculty members made repeat appearances on each of these section programs. Ten faculty members made at least two appearances on the Civil Procedure programs from 1991 to 2001,<sup>100</sup> twelve faculty members made at least two appearances on the Constitutional Law programs during this time period,<sup>101</sup> and twelve faculty members made at least two appearances on the Law and Religion programs.<sup>102</sup>

As one would expect, most of these repeat speakers taught at first-tier law schools.<sup>103</sup> In fact, twenty-seven of the thirty-four repeat panelists (79%) taught at first-tier law schools.<sup>104</sup>

The degree of elitism seemed to vary rather dramatically by section. All twelve of the Constitutional Law repeat speakers taught at first-tier law schools.<sup>105</sup> Nine of the ten Civil Procedure repeat panelists taught at first-tier law schools.<sup>106</sup> However, only six of the twelve Law and Religion repeat panelists taught at first-tier law schools.<sup>107</sup>

The ten-year period also included a frequent interchange of speakers between the Constitutional Law programs and the Law and Religion programs. A panelist on a Law and Religion program often would turn up on a subsequent Constitutional Law panel, and vice versa. For example, Michael W. McConnell (University of Utah) appeared on Law and Religion programs in 1990, 1996, and 2000.<sup>108</sup>

98. See, e.g., 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4. In some years, these sections co-sponsored more than one program. This survey includes faculty speakers from each program that a section sponsored or co-sponsored.

99. See *infra* Appendix, Tables 9-11.

100. See *infra* Appendix, Table 9. Three faculty members made three appearances on Civil Procedure panels. *Id.* The three faculty members are John Bilyeu Oakley (UC Davis), Judith Resnik (Yale Law School), and Stephen N. Subrin (Northeastern University). *Id.*

101. See *infra* Appendix, Table 10. Three faculty members made three appearances on Constitutional Law panels. *Id.* These three faculty members were John H. Garvey (Boston College), Richard S. Kay (University of Connecticut), and Robert C. Post (University of California at Berkeley). *Id.*

102. See *infra* Appendix, Table 11. Emily Fowler Hartigan (St. Mary's University) made four appearances on Law and Religion programs. *Id.* Frederick Mark Gedicks (Brigham Young University) and Michael W. McConnell (University of Utah) each made three appearances. *Id.*

103. See *infra* Appendix, Tables 9-11. Faculty members sometimes will move to a new law school. This study uses each faculty member's law school affiliation as of 2001, even though some of these professors taught at another law school earlier in their careers.

104. See *infra* Appendix, Tables 9-11. See *id.*

105. See *infra* Appendix, Table 10.

106. See *infra* Appendix, Table 9. Stephen N. Subrin (Northeastern University) was the only Civil Procedure repeat panelist who did not teach at a first-tier law school. *Id.*

Georgene Vairo appeared on the Civil Procedure panels in 1992 and 1993. *Id.* At the time of these appearances, Professor Vairo taught at Fordham University, a first-tier law school. U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. Professor Vairo currently teaches at Loyola University-Los Angeles, a third-tier law school. *Id.* at 48.

107. See *infra* Appendix, Table 11. The first-tier law schools make up only 29 percent of the law schools that participate in the AALS. See *supra* text accompanying note 43; see also *infra* Appendix, Tables 3 and 4. Therefore, faculty who teach at these first-tier schools were represented disproportionately among the repeat speakers invited by each of the sections—even on the relatively egalitarian law and religion programs.

108. See *infra* Appendix, Table 11.

Professor McConnell also appeared on Constitutional Law programs in 1999 and 2000.<sup>109</sup> Stephen Lisle Carter (Yale Law School) appeared on the Constitutional Law program in 1990,<sup>110</sup> and on the Law and Religion programs in 1991 and 1997.<sup>111</sup> Eugene Volokh (UCLA Law School) appeared on the Constitutional Law program in 1998,<sup>112</sup> and the Law and Religion program in 1999.<sup>113</sup>

Based on these observations, one might speculate that a small group of legal scholars tends to circulate from one section to another. In other words, a prominent Constitutional Law scholar might appear on the Constitutional Law panel one year, the Law and Religion panel the next year, the Section on Scholarship panel the following year, and the Section on Civil Rights panel the year after that.

I have attended presentations by Stephen Carter, Michael McConnell, and Eugene Volokh. These faculty members are all first-rate scholars. Their talks are consistently thoughtful and provocative. But featuring talks by the same small group of faculty members, year after year, does not introduce faculty audiences to diverse ideas.

#### 4. Particular Section Programs

A survey of a few section programs again confirms that the AALS panels are dominated by faculty members who teach at a relatively small number of elite law schools. Recall the January 2000 Section on Constitutional Law program, titled *What Brown Should Have Said*<sup>114</sup> and mentioned briefly above.<sup>115</sup> Eight of the ten panelists taught at institutions ranked by *U.S. News* in the top seven law schools—including three professors who taught at Yale Law School.<sup>116</sup> Nine of the panelists taught at first-tier law schools.<sup>117</sup>

On the *What Brown Should Have Said* panel, the two professors not currently teaching at top-ten law schools had the all-important pedigree of previous teaching experience at such institutions. John Hart Ely (University of Miami) previously was a professor at both Harvard Law School and Yale Law School.<sup>118</sup> Professor Ely also served as the dean of Stanford Law School.<sup>119</sup> Michael W. McConnell (University of Utah) previously taught at the University of Chicago School of Law.<sup>120</sup>

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109. See *infra* Appendix, Table 10.

110. ASS'N AM. LAW SCH., PROC. OF THE 1990 ANN. MEETING 47-48 (1990).

111. See *infra* Appendix, Table 11.

112. ASS'N AM. LAW SCH., PROC. OF THE 1998 ANN. MEETING 65 (1998).

113. 1999 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 91, at 23-24.

114. 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 107-08.

115. See *supra* notes 34-36 and accompanying text.

116. See 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 107; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. These eight panelists were Bruce A. Ackerman (Yale Law School), Jack M. Balkin (Yale Law School), Derrick A. Bell, Jr. (New York University), Drew S. Days, III (Yale Law School), Catharine A. MacKinnon (University of Michigan), Frank I. Michelman (Harvard Law School), Cass R. Sunstein (University of Chicago), and Patricia J. Williams (Columbia University). 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 107-08.

117. (cite) 2000 ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 107; see also U.S. News Law Rankings, *supra* note 4, at 46. The ninth panelist was Michael W. McConnell (University of Utah). (cite).

118. AALS DIRECTORY OF LAW TEACHERS: 2001-02, *supra* note 41, at 455.

119. *Id.*

120. *Id.* at 756.

The 2000 panel on *What Brown Should Have Said* certainly was not the only AALS panel dominated by faculty members teaching at elite law schools. In 1996, the Section on Law and Religion presented a panel, titled *The Religious Voice in the Public Square*.<sup>121</sup> Although the moderator of this panel did not teach at a first-tier law school,<sup>122</sup> the three panelists taught at the Columbia University School of Law, the University of Chicago Law School, and Yale Law School.<sup>123</sup> In fact, two of the three panelists on the 1996 Law and Religion program would appear again four years later, on the panel titled *What Brown Should Have Said*.<sup>124</sup>

In 1995, the Section on Civil Procedure co-sponsored a program, titled *Theories of Rulemaking: An Advisory Committee Meeting on Rule 26(c)*.<sup>125</sup> All of the law professors participating on this program taught at first-tier law schools.<sup>126</sup>

Not all of the AALS panels are so exclusive. Faculty who teach at law schools outside of the *U.S. News* first tier do wind up on panels once in a while. For example, the AALS Section on Law and Religion brought together faculty from an unusually diverse group of law schools for a 1991 panel titled *God Talk and Law "In Public."*<sup>127</sup> The panel included two faculty members from first-tier law schools,<sup>128</sup> two faculty members from second-tier law schools,<sup>129</sup> and two faculty members from fourth-tier law schools.<sup>130</sup> But although the 1991 Law and Religion panel featured faculty members teaching at a wide range of law schools, such institutional diversity is the exception rather than the rule on AALS panels.

121. ASS'N OF AM. LAW SCH., PROC. OF THE 1996 ANN. MEETING 39 (1996) [hereinafter 1996 AALS ANNUAL MEETING PROCEEDINGS].

122. See *id.*; see U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. The moderator was Kurt T. Lash of Loyola Law School in Los Angeles. 1996 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 121, at 39. Loyola Law School ranks in the third tier of the *U.S. News* survey. See U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49.

123. 1996 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 121, at 39. In the 2001 U.S. NEWS rankings, Yale Law School ranked first, Columbia University ranked fourth, and the University of Chicago ranked sixth. U.S. NEWS LAW RANKINGS, *supra* note 4, at 46.

124. 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 107-08. Bruce A. Ackerman (Yale Law School) and Michael W. McConnell (University of Chicago and the University of Utah) appeared on both panels. See *id.*; 1996 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 121, at 39.

125. 1995 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 28-29. This panel was sponsored jointly with the Section on Alternative Dispute Resolution. *Id.*

126. See *id.*; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. The speakers on this panel were Robert G. Bone (Boston University), Bruce L. Hay (Harvard Law School), Deborah R. Hensler (University of Southern California), and Edward F. Sherman (University of Texas). 1995 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 28-29. Richard L. Marcus (Hastings College of the Law) served as the moderator. *Id.* The panel also included a judge and an attorney in private practice. *Id.*

127. ASS'N OF AM. LAW SCH., PROC. OF THE 1991 ANN. MEETING 34-35 (1991) [hereinafter 1991 AALS ANNUAL MEETING PROCEEDINGS].

128. See *id.* at 35; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46. These two faculty members were Stephen Lisle Carter (Yale Law School) and Frederick Mark Gedicks (Brigham Young University). 1991 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 127, at 34-35.

129. See 1991 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 127, at 34-35; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48. These two faculty members were J. David Bleich (Yeshiva University) and Emily Fowler Hartigan (University of Nebraska).

130. 1991 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 127, at 34-35. See also U.S. NEWS LAW RANKINGS, *supra* note 4, at 49. These two faculty members were Michael S. Ariens (St. Mary's University) and Marie A. Failing (Hamline University). 1991 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 127, at 34-35. Professor Ariens served as the moderator for the panel. *Id.* Professor Failing served as one of the speakers. *Id.*

## IV. WOMEN AND MINORITIES

In recent legal scholarship, authors persistently assert that women and minorities are excluded from meaningful participation on law school faculties.<sup>131</sup> But at the AALS annual meeting, faculty seem more likely to be excluded because they teach at a low-ranked law school, rather than because of their race or gender.

Women currently make up about 51% of the United States population.<sup>132</sup> Women make up about 29% of all law professors at law schools approved by the American Bar Association,<sup>133</sup> and about 29% of the attorneys in practice.<sup>134</sup>

Of the 435 faculty members who appeared on panels at the 2001 AALS annual meeting, about 179 women (41%) participated as speakers.<sup>135</sup> Of the 438

131. See, e.g., Roy L. Brooks, *Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?*, 20 U.S.F. L. REV. 419, 420 (1986) (minority law professors "are depersonalized, sometimes dehumanized, and potentially bent out of shape by a law faculty and administration that too often gives low priority to their concerns"); Pat K. Chew, *Asian Americans: The "Reticent" Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 51 (1994) (Asian American attorneys are under-represented on law faculties); Deborah J. Merritt, Barbara F. Reskin & Michelle Fondell, *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395, 395 (asserting that women "begin teaching at significantly lower ranks than men and are significantly less likely than men to obtain jobs at the most elite schools"). See also sources cited in note 11 *supra*.

132. According to the 2000 Census, about 281,421,906 people lived in the United States and about 143,368,343 of these residents were women. U.S. CENSUS BUREAU, PROFILES OF GENERAL DEMOGRAPHIC CHARACTERISTICS 1, table DP-1 (May 2000), available at <http://www.census.gov/prod/cen2000/dp1/2kh00.pdf>.

133. See AM. BAR ASS'N & LAW SCH. ADMISSION COUNCIL, OFFICIAL GUIDE TO ABA-APPROVED LAW SCH. 804 (2001) [hereinafter ABA-LSAC]. As of 1999, 5586 full-time faculty members taught at law schools approved by the American Bar Association. *Id.* Of these, 1631 faculty members were women. *Id.*

134. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, EMPLOYED PERSONS DETAILED BY OCCUPATION, SEX, RACE, AND HISPANIC ORIGIN 177 (2001), available at <http://www.bls.gov/cps/cpsaat11.pdf>.

Although the percentage of women faculty members equals the percentage of women in practice, this does not necessarily mean that women are represented adequately on law faculties. A number of scholars have asserted that women frequently hold faculty positions with the lowest pay, the lowest status, and the least job security. See, e.g., Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 580 (2001) (seventy percent of legal writing instructors are women, and these instructors receive much lower salaries than other law school faculty members); Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 1, 1 (2001) ("[T]he legal academy has an explicit and de jure two-track system for its lawyers: a high-status, high-pay professorial track made up overwhelmingly of men, and a low-status, low-pay 'instructor' track made up overwhelmingly of women."); Merritt & Reskin, *supra* note 7, at 275 (a statistical study showed that "[m]en were significantly more likely than women with comparable credentials to teach constitutional law, a high-status course that can enhance a professor's career," while women tended to teach low status courses that would diminish career prospects).

135. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation). To identify women faculty panelists, I relied primarily on the first names of faculty members. For example, I assumed that a faculty member named "Linda" was a woman, and that a faculty member named "Steve" was a man.

Of course, women and men share some first names, such as "Terri" or "Lauren." In cases of an ambiguous first name, I checked the website of the law school where a particular faculty member taught. If the website did not clearly identify the faculty member's gender, I called the law school.

faculty members who appeared on panels at the 2000 AALS annual meeting, about 164 women (37%) participated as speakers.<sup>136</sup> The representation of women panelists at the AALS annual meetings thus outstrips the representation of women on law faculties, and the overall representation of women in the bar.

As one moves down the ranks of AALS law schools, the percentage of women panelists remains relatively constant. For the fifty-four law schools that appeared in the first tier of the *U.S. News* rankings, 39% of the panelists appearing at the 2001 AALS annual meeting were women.<sup>137</sup> For law schools in the second tier, women made up 40% of the panelists.<sup>138</sup> Women accounted for 50% of the panelists from third-tier law schools, and 41% of the panelists from fourth-tier law schools.<sup>139</sup>

As with women law professors, minority faculty members appear regularly on AALS annual meeting panels. Minorities currently make up about 25% of the United States population.<sup>140</sup> Minorities make up more than 8% of the attorneys in practice,<sup>141</sup> and about 13% of all law professors at law schools approved by the American Bar Association.<sup>142</sup>

Of the 435 faculty members who appeared on panels at the 2001 AALS annual meeting, about seventy-nine minority faculty members (18%) participated as speakers.<sup>143</sup> Of the 438 faculty members who appeared on panels at the 2000 AALS annual meeting, about seventy-two minority faculty members (16%) participated as speakers.<sup>144</sup> As was the case with women faculty members, the representation of minority faculty speakers at the AALS annual meetings again exceeds the representation of minorities on law faculties, and the overall representation of minorities among practicing attorneys.

As with women faculty members, little change occurs in the percentage of minority panelists as one moves down the ranks of AALS law schools. For the 54 first-tier law schools, 18% of the panelists appearing at the 2001 AALS annual

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136. See generally 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation).

137. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46 (Author's calculation).

138. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48 (Author's calculation).

139. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

140. See U.S. CENSUS BUREAU, *supra* note 132, at 1, table DP-1. As of 2000, 281,421,906 people lived in the United States. *Id.* About 69,961,280 of these residents were minorities. *Id.*

141. See U.S. DEP'T OF LABOR, *supra* note 134, at 177. The Bureau of Labor Statistics estimates that about 8.2% of all lawyers are African American and Hispanic. *Id.*

142. As of 1999, 5586 full-time faculty members taught at law schools approved by the American Bar Association. ABA-LSAC, *supra* note 135, at 453. Of these faculty members, 743 were minorities. *Id.*

143. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation).

To identify minority faculty speakers, I relied on List II in *The AALS Directory of Law Teachers*. List II identifies minority law faculty members teaching throughout the United States. See AALS DIRECTORY OF LAW TEACHERS: 2001-02, *supra* note 41, at 1421-29 (listing minority faculty members).

The names of some minority faculty members may not appear in List II. Accordingly, this essay may understate the level of minority participation on AALS panels.

144. See generally 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4 (Author's calculation).

meeting were minority faculty members.<sup>145</sup> For the 34 second-tier law schools, minority faculty members made up 22% of the panelists.<sup>146</sup> Minority faculty members accounted for 12% of the panelists from the 45 third-tier law schools, and 18% of the panelists from the 41 fourth-tier law schools.<sup>147</sup>

Ideally, the percentage of women and minority AALS panelists would more closely approximate the percentage of these groups in the general population. Nonetheless, it is noteworthy that the percentage of women and minority panelists outstrips the representation of these groups on law faculties and in the bar. Rather than women or minority law professors, faculty members who teach at less prestigious law schools seem like the group that is most profoundly under-represented on the AALS panels.

#### V. TOWARD A RADICAL RECONSTRUCTION OF THE AALS ANNUAL MEETING

If the AALS really is committed to diversity, the preceding discussion suggests some fairly obvious reforms that would make the AALS's annual meeting more diverse and inclusive. Law faculty members would be strongly discouraged from serving on more than one panel in a single year. Panelists also would be strongly discouraged from speaking on panels in consecutive years. If the elite insiders of the teaching profession were not available to participate year after year on panel after panel, the professors organizing those panels would need to cast a wider net for speakers. In addition, the AALS could encourage more effective audience participation by abandoning the required use of a microphone—at least during the smaller programs.

Perhaps most importantly, the AALS leadership would recognize that faculty members who teach at third-tier and fourth-tier law schools rarely participate on annual meeting panels. The AALS could encourage more speaking invitations for these faculty members.

Nonetheless, as long as the AALS maintains the current approach of a few panelists speaking to a large audience, significant exclusion will continue to occur at the annual meeting. Including a greater variety of faculty speakers would lead to a somewhat greater diversity of opinion. But regardless of how the AALS chooses its panelists, AALS annual meeting programs still would be characterized by three or four actively involved speakers, making their presentations to a passive, largely disconnected audience.

In 1999, I attended an annual conference on Law and Religion at the Hamline University School of Law.<sup>148</sup> Many of the Hamline conference programs were no different from the typical AALS panel. A few, well-known panelists lectured to a largely uninvolved audience. However, one program at the Hamline conference suggested a very different approach for organizing an AALS annual meeting.

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145. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 46 (Author's calculation).

146. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48 (Author's calculation).

147. See generally 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4; see also U.S. NEWS LAW RANKINGS, *supra* note 4, at 48-49 (Author's calculation).

148. Hamline Univ. Sch. of Law, *What is Justice?: Twelfth Annual Symposium on Law, Religion & Ethics*, Oct. 14-15, 1999 (conference program) (on file with Author).

The program was on restorative justice, and was attended by an audience of about twenty-five people.<sup>149</sup> After a very brief introduction to restorative justice, Program Moderator Kay Pranis<sup>150</sup> arranged the audience in a circle. Everyone in attendance soon became involved in a lively interchange.<sup>151</sup> Some members of the audience were relatively familiar with restorative justice, and they had more to say on the subject. Newcomers to the topic like myself had relatively little to offer.

But by the end of the program, everyone in attendance had the opportunity to participate and become involved. When the program concluded, many members of the group continued our conversation. We began talking about other subjects, as well as restorative justice.

Afterwards, I thought for a while about how my reaction to this program had differed from my reaction to a typical AALS program. Rather than being an anonymous, irrelevant member of a largely silent audience, I had become actively involved in the subject. I had questioned some of the other participants, and they had challenged some of my suggestions. I had learned from these exchanges. And unlike the typical AALS program, I felt that my presence mattered.

The AALS annual meeting programs could look much more like the Hamline restorative justice program. Rather than organizing large programs where a few select faculty members lecture to hundreds of their colleagues, the annual meeting could emphasize small programs. A moderator could be on hand to introduce the program, and to smooth over any rough starts. But the moderator quickly would get out of the way. Everyone at the program then would discuss a topic, participating as equals, rather than merely listening to a lecture from an elite member of the teaching fraternity.<sup>152</sup>

The AALS has made some attempts to incorporate such interactive discussions. On the first day of the annual meeting, the AALS typically organizes two or more extended workshops that explore different themes. These workshops often include small group discussions.<sup>153</sup> The AALS has attempted to introduce net-

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149. See *id.* The program was titled "Transforming Our Practice." *Id.*

150. Kay Pranis served as the Restorative Justice Planner for the Minnesota Department of Corrections. *Id.*

151. The approach used by moderator Kay Pranis was critical to the success of this program. As an expert on restorative justice, Pranis could have dominated the discussion. Instead, Pranis said very little, preferring to cede her time to the other people in attendance.

152. In other words, AALS annual meeting programs could aspire to provide the same sort of interactive learning environment that many law professors seek to promote in their classrooms. A number of law faculty members advocate active student participation, which these professors describe as a critical component of the law school classroom. See, e.g., C. John Cicero, *The Classroom as Shop Floor: Images of Work and the Study of Labor Law*, 20 VT. L. REV. 117, 118 (1995) (describing "an interactive or experiential approach" to teaching labor law, which "allows students to better understand the values that underlie legal doctrine"); Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977, 1982-86 (1993) (advocating role playing as a method for developing an interactive classroom).

153. See, e.g., *Workshop on Property, Wealth and Inequality*, in 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 15-17 (listing small group programs on property, wealth, and inequality); *Workshop on Shifting Boundaries: Globalization and Its Discontents*, in 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 18-20 (listing small group programs on globalization); *Mini-Workshop on Major Issues of the 21st Century: Their Impact on the Legal Academy and Our Students*, in 2000 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 4-6 (listing small group programs on the future of legal education).



working sessions at the annual meeting, where faculty meet together in small groups. At the 2001 and the 2002 annual meetings, joint programs organized by the AALS Section on Clinical Legal Education and the Section on Litigation included break-out sessions, with small group discussions that lasted for about twenty minutes.<sup>154</sup> Nonetheless, such interactive interchanges remain the exception to the much more typical annual meeting program, where only a few select panelists actively participate.

Unfortunately, I don't expect that the AALS annual meeting will switch to smaller, more interactive programs any time soon. First, because so many professors attend the annual meeting, smaller programs would prove difficult to organize. Assume that the AALS limited all annual meeting programs to no more than twenty faculty members. Now assume that 2,000 faculty members wanted to attend a program at any particular time—perhaps Saturday at 10:30 A.M. The AALS would need to offer 100 different programs at this time. Finding conference rooms and moderators for so many panels could prove a difficult task.

Beyond these practical concerns, a second, more formidable obstacle probably will preclude the AALS from switching to an annual meeting based on small programs. The elite members of the teaching profession will have little interest in foregoing their privileged status at the AALS annual meeting. For well-known faculty members who teach at elite law schools, the AALS panels offer an annual opportunity to espouse their views to a passive, largely uncritical audience. The annual meeting panels provide a regular acknowledgement of the status of elite faculty members. Accordingly, these leaders of legal education have little incentive to endorse any profound change in the AALS programs.

## VI. CONCLUSION

Although the rhetoric of the AALS insistently endorses diversity, speaker invitations for the AALS annual meeting tell a very different story. In short, participation on annual meeting panels usually is reserved for a small group of insiders, who typically teach at the most prestigious law schools. While these well-connected faculty members appear repeatedly as panelists, employment at a low-ranking law school is the basis for almost certain exclusion from the AALS panels.<sup>155</sup>

Rather than developing an inclusive community, the leadership of legal academia maintains an exclusive country club, where only the right faculty members at the right law schools matter. The legal academy probably has been organized in this way for a very long time, and the members of the country club seem quite comfortable with the arrangement.

But they should at least be honest about it.

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154. See Section on Clinical Legal Education et al., *Pro Se Litigation Part II: Where Do Law Schools Fit Into the Picture?*, in 2002 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 85 (describing an "interactive exercise and discussion," where members of the audience "will explore what the role of law schools and law students can or should be in responding to the needs of pro se litigants"); Section on Clinical Legal Education and Section on Litigation, *What is Justice and How Do We Get There?: (Re)Envisioning Litigation as a Tool of Achieving Justice*, in 2001 AALS ANNUAL MEETING PROCEEDINGS, *supra* note 4, at 26-27 (describing one part of a joint program, which would "involve the audience in seeking creative alternative methods to achieving justice when the litigation option is unavailable, undesirable, or insufficient in and of itself").

155. For one law professor's poignant story of exclusion, see Philip N. Meyer, *Confessions of a Legal Writing Instructor*, 46 J. LEGAL EDUC. 27 (1996).

## **Appendix**

**Law School Representation:**

**AALS 2000 and 2001 Annual Meetings**

**Tables 1 through 11**

Table 1

**Law Schools With Six Or More Faculty Panelists:  
2001 AALS Annual Meeting**

<u>LAW SCHOOL</u>	<u>U.S. NEWS RANKING</u>	<u>NO. OF FACULTY SPEAKERS</u>
Georgetown University	14	13
New York University	5	12
UC Berkeley (Boalt Hall)	9	10
George Washington University	23	10
University of Texas	15	10
University of Minnesota	19	8
Stanford Law School	2	8
American University	Second Tier	7
Columbia University	4	7
Harvard Law School	3	7
UC Hastings	36	7
University of Iowa	20	7
University of Michigan	7	7
University of San Diego	Second Tier	7
University of Virginia	7	7
Yeshiva University	Second Tier	7
Arizona State University	Second Tier	6
UC Davis	32	6
Fordham Law School	32	6
UCLA	16	6
Northwestern University	13	6
University of Miami	Second Tier	6

Table 2

**Law Schools With Six Or More Faculty Panelists:  
2000 AALS Annual Meeting**

<u>Law School</u>	<u>U.S. News Ranking</u>	<u>No. of Faculty Speakers</u>
Georgetown University	14	20
Harvard Law School	3	14
New York University	5	13
Columbia University	4	12
Yale Law School	1	11
University of Pennsylvania	10	9
UC Berkeley (Boalt Hall)	9	8
University of Florida	47	8
University of Michigan	7	8
Duke Law School	10	7
Fordham University	32	7
George Washington University	23	7
University of Miami	Second Tier	7
Stanford Law School	2	7
Syracuse University	Third Tier	7
University of Texas	15	7
University of Virginia	8	7
Brooklyn Law School	Second Tier	6
Chicago-Kent Law School	Second Tier	6
UC Davis	32	6
Emory Law School	27	6
Georgia State University	Second Tier	6
University of Maryland	50	6
Northwestern University	13	6
University of San Diego	Second Tier	6

Table 3

**Percentage of Panelists: 2001 AALS Annual Meeting<sup>156</sup>**

<u>U.S. News Rank</u>	<u>Percentage of AALS Law Schools</u>	<u>Percentage of Annual Meeting Panelists</u>
First Tier	29%	54%
Second Tier	19%	20%
Third Tier	24%	12%
Fourth Tier	22%	12%
Law Schools Not Ranked By <i>U.S. News</i>	6%	2%
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Top 26 Law Schools	14%	36%
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156. All percentages were approximated by rounding up or rounding down.

Table 4

**Percentage of Panelists: 2000 AALS Annual Meeting<sup>157</sup>**

<u>U.S. News Rank</u>	<u>Percentage of AALS Law Schools</u>	<u>Percentage of Annual Meeting Panelists</u>
First Tier	29%	59.75%
Second Tier	19%	19%
Third Tier	24%	12%
Fourth Tier	22%	8%
Law Schools Not Ranked By <i>U.S. News</i>	6%	.25%
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Top 26 Law Schools	14%	41%
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157. All percentages were approximated by rounding up or rounding down.

**Table 5****Schools With Zero Faculty Panelists:  
2001 AALS Annual Meeting****First-Tier Law Schools (2 Law Schools)**

University of Colorado

Washington and Lee University

**Second-Tier Law Schools (5 Law Schools)**

Lewis and Clark University

Loyola University—Chicago

University of Mississippi

University of Nebraska

University of Pittsburgh

**Third-Tier Law Schools (18 Law Schools)**

University of Akron

Albany Law School

Campbell University

Creighton University

Gonzaga University

University of Idaho

University of Memphis

Mercer University

University of Missouri—Kansas City

University of Montana

Pace University

University of South Dakota

Southern Illinois University

University of Toledo

Valparaiso University

Vermont Law School

Willamette University

University of Wyoming

**Fourth-Tier Law Schools (13 Law Schools)**

University of Detroit

Detroit College of Law

Duquesne University

Franklin Pierce Law Center

North Carolina Central University

Northern Kentucky University

Ohio Northern University

Oklahoma City University

Regent University

Southern University

Texas Tech University

Western New England College

Whittier Law School

**Table 6**

**Schools With Zero Faculty Panelists:  
2000 AALS Annual Meeting**

**First-Tier Law Schools** (2 Law Schools)

University of Connecticut

University of Washington

**Second-Tier Law Schools** (7 Law Schools)

University of Arkansas—Fayetteville

Baylor University

Florida State University

University of Louisville

University of Mississippi

University of Richmond

University of South Carolina

**Third-Tier Law Schools** (16 Law Schools)

University of Akron

Albany Law School

Campbell University

Drake University

Gonzaga University

University of Idaho

Loyola University—New Orleans

University of Maine

University of Memphis

William Mitchell College of Law

University of North Dakota

Pepperdine University

University of San Francisco

Santa Clara University

Stetson University

Valparaiso University

University of West Virginia

**Fourth-Tier Law Schools** (16 Law Schools)

Capital University

University of Detroit

Detroit College of Law

Duquesne University

Franklin Pierce Law Center

McGeorge School of Law

North Carolina Central University

Northern Kentucky University

Oklahoma City University

Regent University

Southern University

Texas Southern University

Texas Tech University

Texas Wesleyan University

Whittier Law School



Table 7

**Schools With One Faculty Panelist:  
2001 AALS Annual Meeting**

**First-Tier Law Schools** (5 Law Schools)

Brigham Young University	University of Cincinnati
Emory University	Notre Dame Law School
Wake Forest University	

**Second-Tier Law Schools** (9 Law Schools)

University of Arkansas—Fayetteville	Baylor University
University of Kansas	University of New Mexico
University of Richmond	University of South Carolina
State University of New York at Buffalo	Temple University
Villanova University	

**Third-Tier Law Schools** (9 Law Schools)

University of Arkansas—Little Rock	DePaul University
Dickinson School of Law	Drake University
University of Maine	Northern Illinois University
St. Louis University	Seattle University
Stetson University	

**Fourth-Tier Law Schools** (14 Schools)

University of Dayton	Hamline University
Howard University	Mississippi College School of Law
New England School of Law	Quinnipiac University School of Law
St. Thomas University	Texas Southern University
Texas Wesleyan University	Thomas M. Cooley Law School
Touro College—	Washburn University
Jacob D. Fuchsberg Law Center	Widener University
Roger Williams University	

**Table 8**

**Schools With One Faculty Panelist:  
2000 AALS Annual Meeting**

**First-Tier Law Schools (6 Law Schools)**

University of Alabama  
George Mason University  
University of Utah

University of Arizona  
University of Kentucky  
Washington and Lee University

**Second-Tier Law Schools (5 Law Schools)**

Arizona State University  
Loyola University—Chicago  
University of Pittsburgh

University of Kansas  
University of Oklahoma

**Third-Tier Law Schools (12 Law Schools)**

University of Arkansas—Little Rock  
Creighton University  
Louisiana State University  
University of Missouri—Kansas City  
Southwestern University  
Vermont Law School

Cleveland State University  
Dickinson School of Law  
Marquette University  
University of South Dakota  
University of Toledo  
University of Wyoming

**Fourth-Tier Law Schools (13 Law Schools)**

University of Baltimore  
Mississippi College School of Law  
Nova University  
Roger Williams University  
Suffolk University  
Washburn University  
Widener University

California Western School of Law  
New York Law School  
Quinnipiac University School of Law  
Samford University  
Thomas M. Cooley Law School  
Western New England College  
School of Law

**Table 9**

**Faculty Members With Two Or More Appearances  
AALS Section Programs, Section on Civil Procedure:  
1991 to 2001<sup>158</sup>**

Paul Carrington (Duke University)  
1990, 2000

Mary Kay Kane (UC Hastings)  
1990, 1991

Linda Mullenix (University of Texas)  
1991, 2000

John Bilyeu Oakley (UC Davis)  
1996, 1997, 1998

Judith Resnik (Yale Law School)  
1992, 1997, 2001

Thomas D. Rowe (Duke University)  
1991, 1998

Edward F. Sherman (Tulane University)  
1991, 1995

Stephen N. Subrin (Northeastern University)  
1991, 1994, 1996

Mary Twitchell (University of Florida)  
1993, 1999

Georgene Vairo (Loyola Law School—Los Angeles)  
1992, 1993

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158. Some of the faculty members who appear in Tables 9, 10, and 11 changed schools during the period from 1991 to 2001. For each faculty member, their 2001 school affiliation appears in this chart.

**Table 10**

**Faculty Members With Two Or More Appearances  
AALS Section Programs, Section on Constitutional Law:  
1991 to 2001**

Jack M. Balkin (Yale Law School)  
1995, 2000

Jesse H. Choper (UC Berkeley)  
1990, 1994

John H. Garvey (Boston College)  
1992, 1993, 1994

Pamela S. Karlan (Stanford Law School)  
1998, 2001

Richard S. Kay (University of Connecticut)  
1990, 1991, 1993

Larry Kramer (New York University)  
1996, 2001

Sylvia Ann Law (New York University)  
1995, 2001

Michael W. McConnell (University of Utah)  
1999, 2000

Robert C. Post (UC Berkeley)  
1991, 1995, 1998

Reva Siegel (Yale Law School)  
1995, 2001

David A. Strauss (University of Chicago)  
1993, 1999

Kathleen M. Sullivan (Stanford Law School)  
1996, 1998

**Table 11**

**Faculty Members With Two Or More Appearances  
AALS Section Programs, Section on Law and Religion:  
1991 to 2001**

Stephen Lisle Carter (Yale Law School)  
1991, 1997

Robert A. Destro (Catholic University)  
1993, 1995

Frederick Mark Gedicks (Brigham Young University)  
1990, 1991, 1995

Marci A. Hamilton (Yeshiva University)  
1998, 1999

Emily Fowler Hartigan (St. Mary's University)  
1991, 1992, 1994, 2001

Steven F. Friedell (Rutgers Law School—Camden)  
1994, 1997

Douglas Laycock (University of Texas)  
1998, 2000

Ira C. Lupu (George Washington University)  
1999, 2000

William P. Marshall (University of North Carolina)  
1995, 2000

Michael W. McConnell (University of Utah)  
1990, 1996, 2000

Sheldon Nahmod (Chicago-Kent College of Law)  
1995, 1996

Ruti G. Teitel (New York Law School)  
1992, 1999