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Building Bridges

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Building Bridges

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The Association of American Law Schools Annual Meeting
Second Meeting of the House of Representatives
Presidential Address
San Diego
January 5, 2018

I am deeply honored to assume the role of president of this organization and to stand in front of so many friends and colleagues whom I have known over the years. Many of you are people with whom I have worked through AALS, some are former colleagues from Georgetown or current colleagues from Richmond, and still others I know only through your scholarship and reputation. It is my hope that this year will provide an opportunity for me to reconnect with many of you as we pursue our shared interest in further strengthening and supporting our system of legal education.

I hope you will indulge me a brief set of thank-yous. First, to the staff of AALS. The work of this organization is made possible by an exceptionally dedicated staff who work behind the scenes. This year's annual meeting, for example, will have over 250 sessions, with more than 1,000 moderators, speakers, and discussion leaders. That means the number of things that could go wrong is, well, really large. But this year, like every year, the staff makes it look easy. Most of what could go wrong doesn't, and if it does, it gets fixed so seamlessly that no one notices—all thanks to our wonderful executive director and the amazing staff. This is a group that strives for excellence, so if you noticed something that could have been better, let them know. But while you are at it, if you noticed something that went really well, you might also consider mentioning that. They are loyal and dedicated, and deserve our deepest thanks.

Second, I want to offer a special thanks to our outgoing president, Paul Marcus. A year ago, Paul announced that his theme for the year was access to justice, and it has proven to be exceptionally appropriate. On January 27 last year, only a few weeks after Paul reminded us of the importance of access to justice, a remarkable thing happened: lawyers, law professors, and law students from around the country grabbed their computers and their cell phones and went as quickly as they could to our airports. They sat on the floor

beneath handmade signs that said “free legal help” in multiple languages. And if their access was blocked, crowds broke into spontaneous chants of “let the lawyers in.” “Let the lawyers in”—that’s a far cry from the more commonly invoked refrain, that line from Shakespeare: “The first thing we do, let’s kill all the lawyers.”

“Letting the lawyers in” surely means expanding access to justice for millions of people around the country, whether they are refugees, victims of domestic violence, or small businesses needing to protect their intellectual property. Thank you, Paul, for your work this year on such an important theme.

But there is another way in which “letting the lawyers in” can have important and much-needed social benefits. Lawyers are healers of a sort—the doctors of our social lives—and there’s a role for lawyers to play in addressing what currently ails us: the deep polarization of our society.

A recent survey by the Pew Research Center found that political polarization has increased dramatically over the last 20 years. It is not just that people strongly disagree about important social and policy issues—that has always been true. But there are two new and disturbing trends that we’re seeing. First, there are fewer political moderates—people who hold what we would think of as liberal views on some issues and conservative views on others—and that means there is just less common ground. But more than that, people who inhabit these ideological silos tend to cut themselves off from those who do not share their full constellation of views. And the result is less opportunity to even find the common ground that might exist.

And second, our politics have become increasingly personal with an almost tribal cast. We see those who disagree with us as unintelligent or ignorant, or selfish or even evil. Those of you of a certain age will remember the Saturday Night Live “Point/Counterpoint” “debates” between Dan Aykroyd and Jane Curtin—a take-off on a segment by the same name on 60 Minutes. Aykroyd and Curtin would approach the debate with deadpanned seriousness and Aykroyd would begin with the same personal and deeply gendered slur: “Jane, you ignorant ...” ...you remember the rest. At the time we thought it silly parody—ridiculous, not something you would hear an actual news commentator say. But that bit of comedy now seems sadly prescient.

As our society struggles with this problem of deep polarization, lawyers and law schools have an important role to play. Lawyers are, after all, in the dispute resolution business. Resolving conflict is central to what we do. And today, perhaps more than ever before, the skills that we as lawyers have, and we as law professors teach, are of critical importance.

Lawyers understand how to structure decision-making and dispute resolution processes. We understand the importance of the opportunity to be heard and other aspects of fundamental fairness. We understand the importance of considering both sides and crediting the merits of opposing views. We understand the importance of facts—the ones we can prove, not merely the ones we wish to be true—and we understand the importance of

getting opposite sides of an issue to the table, to get them talking to each other in the first place.

Lawyers are not only comfortable navigating a world of conflict and disagreement, but they also approach disagreements with a methodology that is built on recognizing the strength of the opposing views. Legal pedagogy, like good lawyering, emphasizes the importance of developing a deep, even empathetic understanding of the arguments on the other side. Our case books include dissents which force students to confront opposing arguments. In moot court, students are assigned the side they must argue, and sometimes they are asked to brief one side and then do oral argument for the other. We constantly push our students away from the psychological comfort of certainty to that uneasy place where opposing views loom large.

Good lawyers and good judges also understand fallibility. Learned Hand once suggested that each court session should begin with the statement “think that we may be mistaken.”

This lawyerly approach to conflict and disagreement is reflected in legal scholarship as well. The best scholarship engages with opposing views. It acknowledges weaknesses in one’s own position and considers contrary positions in the strongest light. To be sure, it seeks to persuade, but it seeks to do so on the strength of the ideas presented, never by simply belittling or dehumanizing those who hold opposing views.

The point is not that arguments should be drained of emotion. Where the stakes are high, emotions will run high. But lawyers understand that disputes, even on matters upon which convictions are deeply held, need not be personal and that it is possible to separate the substance of an argument from the person making that argument. Lawyers likewise understand that it is possible to disagree without being disagreeable—indeed, we are admonished to do just that in our principles of professionalism.

Our traditions of professional respect and collegiality stand in marked contrast to what we sometimes see around us. And our traditions can be powerful. Picture, if you will, a court room in Durham, North Carolina in 1933—a courtroom in which no African American would be allowed to serve on a jury and certainly would not be allowed to be a judge. A court room in a court house that no doubt had segregated wash rooms and drinking fountains. Into that court room walked William Hastie, an African American lawyer for the NAACP. The spectators in that courtroom witnessed Mr. Hastie treated with a level of professional respect that they had never seen accorded to an African American. And that demonstration of respect was, as Ken Mack has written, “electric.” Hastie himself reported back to the NAACP, “town agog... Incalculable good done whatever the outcome.”

Lawyers are not social workers, but they are, as Lon Fuller put it, architects of social structure. And in that role as architects, they can be—we can be—enormously helpful in reconnecting a fractured world. That is to say, in building bridges.

We have some great examples of what lawyers who build bridges can accomplish. One who comes to mind for me is Chief Justice John Marshall, whose home in Richmond, Virginia, I have visited on multiple occasions. Known for his even temperament and collegiality, Marshall was a great practitioner of the gentle art of persuasion without rancor. He was an expert at what my Richmond Law colleague Kevin Walsh calls “disagree-ability.” Marshall’s approach was profoundly consequential. By building connections and finding common ground, he transformed the Supreme Court from an assembly of individual Justices, each of whom wrote separate opinions speaking only for themselves, into an institution that could issue opinions of the Court and speak with one voice. It was revolutionary, but so in keeping with a man who believed he could help to build a nation by building bridges between friends and foes alike.

So that is my theme for the year: building bridges. Over the last few years, there has been much focus within the legal academy on bridging theory and practice. And that work should continue. But at this moment in time, we lawyers, and educators of lawyers-to-be, need to be building other bridges as well, and teaching our budding lawyers to build bridges in a different way too.

Society needs us to model civility and the John Marshall skill of “disagree-ability.” Society needs us to model listening skills, so that we can openly and honestly build dialogue with respect for one another’s views. And society needs us to lead the way in dispute resolution, which requires civility, listening, open mindedness, and a host of other skills that are part of the lawyerly repertoire. So over the course of the year, I hope to celebrate and encourage law schools as leaders of civil discourse, reasoned debate, and productive dispute resolution. I know that law schools are already active in this arena:

- You have programs explicitly designed to model our ideals of informed, respectful debate;
- You are training law students in the skills of dialogue across difference;
- You are serving as the facilitators of deliberative decision making on important policy issues; and
- You are reaching out to local schools to train students and administrators in the skills of conflict resolution.

These are just a few of the ways that law schools are building bridges, and I hope we will all find ways to do more. Let us put our traditions of professionalism, civility, and reasoned disagreement on display for all to see, and let us inspire the next generation to “think like a lawyer” about society’s problems—to listen, consider, reason, collaborate, resolve, and even heal.

Let me close by thanking each of you for the many ways that you are already building bridges. You are not only modeling the best of our profession, but you

are also doing the work of building bridges within your law schools, within your universities and local communities, within the bar. And as scholars you are calling out the ways that law facilitates or impedes a social architecture of connections. The work that you do as teachers, scholars, and lawyers has enormous impact.

As we go about that work, I hope we will remember the admonition of Justice Thurgood Marshall which appears on the Virginia Civil Rights Memorial: “The legal system can force open doors and sometimes even knock down walls, but it cannot build bridges. That job belongs to you and me.”

I look forward to working with each of you in the coming year and thank you again for this opportunity to serve.