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Welcoming Remarks and Panel 1.

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>> Good morning.

>> Morning.

>> My name is Ron Weich and I'm the Dean here at the University of Baltimore School of Law. I'd like to welcome all of you to our school and to the John and Frances Angelos Law Center. A number of you I know are from out of town and haven't had the opportunity to see our building before and I'm always pleased to see the reaction people get when people come into our building and are very energized by all of light and glass and color and activity that goes on here. Our building opened in 2013, so coming up on our three year anniversary. And it has been a wonderful thing for us in lots of ways. And among other things, it has challenged us to make sure that the things that happen inside the building are just as contemporary and exciting and light filled as the building itself. And that pertains to our teaching and it certainly pertains to our scholarship. So we're gathered here on a very important and timely subject. The subject as you know,

is The Fate of Scholarship in American Law Schools. And I want to, at the very outset, offer thanks, and congratulations and commendation to the mastermind of this enterprise, Professor CJ Peters who's here and will be addressing you shortly. CJ is our Associate Dean for Faculty Scholarship and Chair of our Faculty Research and Development Committee and he is someone who has thought long and hard and deeply about the issue of scholarship and how it relates to the practice of law and how it relates to legal education and how it can be as relevant to everyday lives as it can be. So CJ came to us and suggested that we gather people from around the country to think about this issue over the course of two days, talk about it and hopefully, emerge with some conclusions that will be relevant to the wider world. And I'm very confident that we will do that and I look forward to participating in the discussion. Let me also thank the University of Baltimore Foundation which provided the generous grant to support this activity. And want to thank all of my University of Baltimore colleagues who are here as observers and participants in the conference and who helped CJ pull it together. You know we are at an incredible moment. The title, The Fate of Scholarship, the word fate I think is a somewhat portentous word. CJ chose it deliberately to get our attention. Fate suggests that somehow it hangs in the balance. Will it live? Will it die? Will it be pulled from the railroad tracks in time? But that's exactly the question that's before us. We have in the audience a number of my fellow Deans, Kellye Testy from the University of Washington. Wendy Scott from the University of Richmond. And so we Deans can report to all of the rest of you that legal education

is facing an incredible challenge. It's both an economic challenge and really a challenge of mission and purpose. The profession is changing in ways that has led to fewer jobs for our students and the market being what it is, it is worked that applications to law schools across the country have declined. That creates budget challenges that sort of correspond to challenges for funding from states. We of course a public institution and the other schools that are represented hereby Deans know this. State funding for legal education and for education, higher education in general, is down. So at a moment when schools face very hard choices about scarce resources we are confronted with the question, can we afford to support legal scholarship? Here at the University of Baltimore we answer that question emphatically in the affirmative. We are working hard to do just that and while our resources are stretched thin and we haven't been able to support it in all of the ways that we have supported it in the past, we continue to regard it as a core activity. When I became Dean four years ago, my predecessor, Mike Higginbotham, explained to me, and I needed an explanation because I came from outside the academy and didn't quite know which way was up here. Mike explained to me that the work of a professor is like a three legged stool. Equally long legs of teaching, service and scholarship. And I came to understand that scholarship is absolutely central to the balance of a law school and to the mission of a law school. Having said that, I think there's great skepticism in the wider world about legal scholarship, how it is produced. How it is disseminated. And how relevant it is to students and then to the practice of law. So those are the

themes that are going to be discussed today and tomorrow in sessions in this courtroom and in some breakout sessions and over lunch. And we very much hope this will be an interactive opportunity. That people will participate, not just on the panel, but through questions from the audience and in all of the informal ways that participants are going to interact. So thank you all for being here and participating in this very important enterprise. And please join me in welcoming and thanking our mastermind here, Professor CJ Peters.

[ Applause ]

>> And feel like the evil genius in the Minions movies, being introduced as a mastermind. I'm CJ Peters, I'm the Associate Dean for Faculty Scholarship here. I want to echo the Dean's welcome to all of you. I'm very excited to have so many smart people in the same room, albeit a rather large room at the moment. For the purpose of discussing the very important subject of scholarship in American law schools. Ron alluded to the title, *The Fate of Scholarship*, and its portentous nature. In fact, there was so much I think early on in the University's public relations department who suggested we changed it, change the title and said it's just too gloomy. But we resisted, partly, frankly because we thought the title was a little bit catchy, but also because as Ron alluded to, I think perhaps a somewhat alarmist tinge is not inappropriate in the subject. Amidst all of the attention, I think most of it welcomed ultimately likely in many respects to produce some very good outcomes that legal education has received in the last few years. Attention to things like, curriculum, like pedagogy, mission standards. One thing

that I think has not received as much attention and as gone best unmentioned and at worst has been tossed entirely under the bus, is one of the core things that we do, one of the legs of that stool that Ron referred to as professors, which is our scholarship. Support for scholarship as Ron alluded to, in many schools, is the low hanging fruit of cost cutting. It's much easier to reduce or eliminate it summer research stipends or travel budgets than it is to reduce staff or fire people or to stop paying the electricity bill. And when the choice is put that way, I think most of us would probably agree that scholarships should not be the top priority. But the problem of course is that eventually, like that proverbial frog that sits in the slowly warming pot of water and ultimately boils to death. The outcome might be the virtual elimination of financial support for scholarship at many law schools. That would be to reverse what in my view is one of the most notable developments in legal education over the past two or three generations, namely a movement from a world in which serious faculty scholarship was the nearly exclusive property of a handful of lead schools to the world of today in which professors of "third and fourth tier" schools, are doing research and writing which is every bit as good as what you'll find at Harvard and Yale. Now it may be that the old world was better. I don't know. That's a not quite spoken premise I think of the 2014 report of the ABA Task Force and the Future of Legal Education, which some of you may have seen, which calls, among other things, for greater heterogeneity among law schools, allowing, for example, for schools "where relatively little time is committed to faculty research and publishing ". And

indeed, many have argued with great force including some people in this room, I think, that much legal scholarship that is published these days is too frothy, too insular, too self indulgent. Not engaged enough with real world problems. Not useful enough for real world lawyers and judges, or some combination of these flaws. If that's what we've purchased by democratizing legal scholarship over the past several generations, thousands of pages of borderline useful print and Law Reviews that no one reads, at the cost of resources moreover that could be used to better educate our students, well if that's the bargain that we've struck, then it's not a very good bargain. The premise of this conference is that both legal scholarship and its critics deserve to be taken seriously. That the fate, for lack of a better word, of legal scholarship is an important enough topic to be addressed head on thoughtfully by people who care about it, who are intelligent, rather than to be determined by fall.

So the conference is organized into five plenary sessions over two days. Five plenary sessions, two keynote addresses and circuit concurrent sessions for each afternoon and I want to talk a little bit about what's going to unfold in the next few days. In the plenary sessions we start today with what we might call, the first principles of legal scholarship. The panel this morning is going to address the relationship between legal scholarship and legal education. And the panel this afternoon is going to address the relationship between legal scholarship and the legal system. And today we also have two distinguished keynote speakers. Over lunch up on the 12th floor beginning at noon, the talk will begin somewhat

later, Dean Kellye Testy, the 2016 President of the Association of American Law Schools, Dean of the University of Washington School of Law, will give a talk entitled, *Now More Than Ever, Legal Scholarship and Our Complex, Connected and Contested World*. And then at 5:00 p.m. in this room professor Jack Balkan of Yale will speak on the topic of American legal scholarship and American politics. And 3:15 p.m. today, after the second panel and before Professor Balkan's talk, we will have three 90 minute concurrent sessions relating to scholarship. You should have received the descriptions and locations of these sessions when you checked in this morning. If not there are lists on the table in the back of this room and on the table by the front entrance of the law school and there are lists posted on the scholarship website, the URL for which is in the program that hopefully, you received. More programs in the back of this room as well if you haven't already gotten one. So that's today. Tomorrow we have three plenary sessions. And today the sessions move, I think, from the debate about the value of legal scholarship to discuss of new forms of legal scholarships. New forms it's taking now and new forms it may take in the future. First session tomorrow morning deals with merging forms of legal scholarship with an emphasis on the interplay between scholarship and technology. Our second session tomorrow morning addresses the interrelationship among legal scholarship, journalism and new media. And our capstone session tomorrow afternoon looks forward by a generation, asking the panelists what they hope legal scholarship will look like in 25 years. Prior to that capstone session in the early afternoon, we will have three more concurrent

sessions and again it descriptions and locations of those are on the sheet that I just mentioned.

So before we begin in earnest I have a couple of administrative details to take care of and a little thanking to do. Actually more than a little thanking, so I'll ask you to bear with me. First the administrative details. Throughout the day, Laurie Schnitzer, I don't know if Lorie's in the room. Many of you yes, she's outside. Laurie Schnitzer, my wonderful and indispensable administrative assistance, will be around and she is accompanied by I think four student volunteers who are helping out with various matters today. They all have name badges on. If you need anything and you cannot find me, if you have a question or you want to know where the bathroom is, not how to solve the Donald Trump problem, but something simpler that relates to this conference, ask me, or if you can't find me, ask Laurie or one of the student volunteers. If you're attending the dinner this evening then you probably have a colored dot or I guess it's more of a rectangle or a square with a letter in it on your name badge, and that just indicates the entree that you ordered so that the staff who are serving dinner know what entree you ordered. So please, don't be mystified by that and if you can, remember to bring your badge to the dinner this evening. And there is, if you want Wi fi access, we do have free Wi fi access for guests. The password and the access ID are a little bit too labyrinthine for me to give you over the microphone right now, but if you want it, I have it, Lorie has it, the student assistances have the access code and password for Wi fi access, if you'd like that. Now for the thanking.

I want to thank Dean Ron Weich and Associate Dean Vicki Schultz for their enthusiastic support of this conference throughout, for the last year or 18 months since we've been planning it. I want to thank, Hope Keller, our Communications Director for her terrific and tireless work and publicity. Thanks to the other members and staff whose hard work made this possible including Jed Weeks, Linda Lanie, Steve Wilson, Rose McMun and Ethyl Banks. Thanks to Assistant Dean Jeff Zavrotny his staff for accommodating our schedule and moving around some of the things that they wanted to do. Thanks to the University of Baltimore Foundation and its Fund for Excellence, which as the Dean mentioned, made this event possible. Thanks to Megan Cardona and her provost office for facilitating that fund for excellence grant. Thanks, also to the Association of American Law Libraries for its financial support and to our Library Director, Adeen Postar, for doing the legwork on that grant. Thanks to the people at the Office of Technology Services and Conference Services for helping us with the infrastructure we need to carry out an event like this. Thank you to the folks at University Relations for the outstanding design of the conference materials and the graphic program and the mailer that we went out was all their responsibility. Thanks to my colleagues on the Faculty Research and Development Committee for their advice and assistance in planning the conference, and in particular, my colleagues, Tim Sellers, Colin Starger and Garrett Epps who provided I think particularly dedicated advice and help. Thanks to the student volunteers who are providing needed assistance with the many logistics over the next couple of days. Thank you to all of the panelists

and moderators, the speakers and the concurrent section participants for your invaluable contributions and an extra special thanks to my assistant, the aforementioned, Laurie Schnitzer, for keeping us on track, minding the details and putting out of the fires I managed to set. And of course, thanks to all of you for attending. I've gone too long, so let's get started with panel number one. The panelists can come up and I'll turn it over to Tim.

[ Applause ]

>> While Professor Sellers and his colleagues are settling in, I need to correct something. I incorrectly misidentified my Dean colleague, Wendy Perdue, from the University of Richmond. I said Wendy Scott. She and I know, Wendy Scott is a law school dean, but not at the University of Richmond. And I was wrong when I said it and I was trying to decide whether to correct it and I want to correct it now. Sorry, Wendy. Thank you for being here.

>> I'm Tim Sellers, professor here at the University of Baltimore. I have the honor of chairing this session which will be on legal scholarship and legal education. How they relate to one another. Why they matter or should matter or not in legal education. This is of course at the heart of our broader discussion about the fate of scholarship at US law schools. Scholarship better have something useful to do with legal education or we should not be doing so much of it at law school. So I just want to take a moment to say how important I think today's discussion is, how grateful I am to Professor Peters for organizing this. To the University of Baltimore, to Dean Weich for embracing the idea of this conference.

Our speakers at this first session are going to be, Professor Shari Motro, Professor of law at the University of Richmond School of Law. Jeffrey L Harrison, Steven C. O'Connell Chair at the University of Florida Levin College of Law. And Anita LaFrance Allen, Henry R Silverman Professor of Law and Professor of Philosophy at the University of Pennsylvania. They're going to speak in the order in which I just mentioned their names and I will introduce them again in turn as they come to the podium. Each of our speakers will speak for roughly 15 minutes and then we're going to have a general discussion in which all of you will participate. I'm looking forward very much their remarks and to yours. Our first speaker will be Professor Shari Motro. Shari Motro is Professor of Law and Professor of Philosophy, Economics and Law at the University of Richmond School of Law. She teaches about tax law, mindfulness and the legal regulation of the intimate relationships. She's the author of, "The Income Tax Map, A Bird's Eye View of Federal Income taxation for Law Students". She's a graduate of Yale University and NYU School of Law and my former colleague with Wendy Perdue at Georgetown University Law Center. Professor Motro.

>> Good morning. Where is your heart in this work? So this is a question that I ask candidates who we're interviewing for faculty positions and it's a question that I hope that we'll all ask ourselves and each other throughout these few days. Where is our heart in this work? And it's also the question that I started with in this article that got me invited to the conference. And the article's called, "Scholarship Against Desire ". So I'm going to read from parts

of this article. Where is your heard in this work? I often pose this question to faculty candidates. A depression proportion seemed baffled by the question. One refreshingly honest candidate answered, it's not. He had started his career writing about a topic that he was passionate about, but he concluded that it hurt his marketability so he switched and his stock went up. Now I'm just solving an intellectual puzzle, he said. And in the same breath, its business. Legal scholarship as Dean Weich said, is at a crossroads. In part because of the economic downturn and its effect on the employment market, but the pressure to prove our relevance or prepare for extinction are part of a broader phenomenon that is shifting priorities in all higher education. And Anita's going to talk about other aspects as well, other parts of the university. Across the universities there the rise of the corporate university. The corporate ethos prizes detachment over empathy, economics over humanities, practice over theory and external consensus over the love of good work for its own sake while marginalizing those who speak in a different voice. It dovetails with an orientation that has dominated legal scholarship and teaching for decades. A veneration for detail oriented linear rationalism of the left side of the brain, coupled with the distrust of the right hemisphere's knack for drawing connections, thinking creatively and seeing the big picture. Until recently I didn't question this reality. As a student I quickly bought in to what Patricia William called, the crisp refreshing clear headed sensation that thinking like a lawyer reportedly endows. When other modes competed for my attention, I shunned them like a child exposed by embarrassing

relatives. In law practice I continued to internalize the message that heart centered wisdom is irrelevant to law. That people with highly developed intuitive and creative skills don't belong in the law. At best, these qualities are icing on the cake. At worst, they are the label we dread most of all, soft. This sensibility followed me into academia as an aspiring law teacher on the academic job market and then as an assistant professor on the tenure track, I quickly learned that I would stand a better chance of being taken seriously if I talked law economics rather than law amenities. If I asked questions I could solve rather than ones that nearly invited a conversation. If I wrote about tax law rather than feminist theory. No one spelled this out explicitly. My institution didn't tell me what to write about and it supported many of my non traditional experiments, but it is part of the world, a world in which Law Review placement is the point of the realm, and I wanted to do a good job. So I wrote in the mode most valued in this world. In the beginning, making these choices didn't feel like a compromise, I enjoyed solving problems. I enjoyed writing about tax and I enjoyed the benefits that came along with publishing top reviews. And then I made tenure and something shifted. I began to see more clearly the subtle ways in which external pressures and incentives had skewed my work. So I'm not going to talk about the example that I use in this article because I don't have time, but use my own pre tenure strategizing as the case study for this and I was writing about the legal relationship between unmarried lovers who have conceived. So men and women not married, yet pregnant, what is their legal relationship? And my first article

on this went in lots of different directions towards is it this or is it that? And I had a really hard time with this in feminist theory, and I had a hard time placing that piece. And then I had the idea of framing this question for tax reform and I called it pregimony. And so we had this deduction like the alimony deduction, the pregimony deduction. And there were diagrams and I knew when I had the idea that it would be really easy to place and it went smoothly. So this is sort of a meditation on that process. And I like that piece, I think pregimony's a great idea. I think we should talk about it. And also, if that's the only way we're looking at things, if that's the only thing that counts and gets the gold star, then that's something that I'm hoping to reflect on in these two days. Okay. So I made tenure, started thinking about these incentives. I also discovered that despite the unparalleled security that came with my new title, these influences didn't disappear. I understood the deal, if I continued to produce within the mode that got me tenure, I could stay in the gain. I could continue to attract prestigious speaking invitations, queries from hiring committees and rising star type awards. If I tried something new, I risked squandering the platform I'd worked so hard to build. I would dilute my brand. These personal considerations paralleled institutional ones. If I kept hitting the top reviews, my school would be better positioned to continue to rise in the rankings and I would continue to enjoy the warm inner glow that comes when we score for the home team. If I went the alternative, what value would I bring? Could I justify pursuing my passion as anything other than selfish? When I began this article I didn't know the answer

to these questions but spending time exploring them seemed indulgent in itself ask I tried multiple time to abandon the project. Over the course of the writing however, I've come to believe that legal academics are not only justified in investing in work we love, we have a responsibility to do so. And I didn't know as I was writing it that it would get me more invitations and I would come to plays like this. So that's a wonderful side effect and side benefit, but you know, I think we need to taking these risks when we don't know if they're going to pay off. Teacher scholars have a responsibility to follow our deepest sense of calling because when we hold back or delay indefinitely, we contribute to the cynicism that plagues many of our students. Former Dean of Yale Law School, Anthony Kronman, who I came to through Wendy Perdue, when she first joined our faculty, so she was talking about Kronman and that's how I found this. He believed that students grow cynical through their encounter with accuracy, a discipline that views truth at most as an instrumental good. Cynicism is dangerous, he thinks, because it breeds callousness. Why do we as a society link the training of lawyers with the academic study of law? Why allow intellectuals to shape the next generation of counselors? Because intellectuals value truth as an entity in itself and truth matters to our students and ultimately to our profession. To be a lawyer is to be entrusted with nothing less than the survival of our civilization. A less cynical, more honest bar is more likely to help us away from the brink of self destruction. When law professors allow instrumental considerations to drive our scholarship we fail to honor our mission. Instead

of modeling integrity, we model something quite dark for our students. We model fear. The compromised academic also jeopardizes the intellectual mission of the university. Truly creative ideas are often dismissed as wild and impractical. This is one of the reasons we give people tenure. Those of us who have it are duty bound to explore and deliver the ideas that come through us, regardless of the accolades they may or may not bring. And inauthenticity in scholarship undermines community. When idealistic scholars like other minorities, withhold or dilute their radical visions, they squander an opportunity to chip away at the isolation that plagues other colleagues at the margins. When eccentrics try to blend in they squander the chance to demonstrate that we are not the problem, that the droves of law students, lawyers and law professors who crave something else might be something valuable to say to the profession. That our choices are not limited to assimilating or slinking away in shame. There is another way. There is another story. A story in which we not only belong, we're critical. True diversity requires not only the insiders accept others as guests, it requires an openness to the possibility that change can enrich everybody. An openness to a different kind of conversation. It's up to those of us who think differently to begin this conversation or rather, it's up to us to continue the conversation that our old heroes began for us. A conversation that at its heart is about broadening law's intent. The scholarship I admire most reminds us that law is always a work in progress. That every lawyer is both reader and co author. It deepens our relationship with the law as something alive, something that's not out there ruling

over our small insignificant lives, but is part of us. Something that each of us cannot only tweak, but fundamentally reimagine. It encourages us to position legal rules and the clever ways we can manipulate them within the context. A context each of us must discern and choose. Great scholarship models a sense of purpose that stems from a different source than the drive towards personal advancement. It models courage. I think I'll stop there. Thank you.

[ Applause ]

>> Thank you very much Professor Motro for those very perceptive and also inspiring remarks. Our next speaker will be Jeffrey L Harrison. Professor Harrison is the Steven C O'Connell Chair at the University of Florida School of Law. He has his BS, his MBA and his PhD from the University of Florida and a law degree from the University of North Carolina. He teaches antitrust, contracts law and copyright. And has a wide international experience including time teaching at the University of Leiden and at the Sorbonne. And now to this he adds the University of Baltimore. Professor Harrison.

[ Applause ]

>> Thank you. I think the best way to introduce my talk is to explain why I was invited, and that is a result of an article my co author Amy Mashburn and I wrote that was quite critical of legal scholarship, as least the useableness of it. And so I am sort of the Eeyore of today's session. I am going to say the word, you, a lot, but I don't mean you, I mean anybody but you. [ Laughter ] And frankly, I also mean me because I think Amy Mashburn and I have a record of writing

a self indulgent, irreprovably useless articles ever published. It was about 20 or 30 years ago, I wrote an article about the connection about the new wave filmmakers and critical legal studies. Maybe what I'm going to rail about is us, and why we would ever write something like that. I'm sort of dividing my talk into three or four parts. I'm going to talk about what scholarship and isn't and then I want to talk about sort of a different way of looking at scholarship than I think is usually employed and finally, when we wrote our article we got a flood of reasons why we were wrong. So I want go through those because, maybe you'll agree with some of them and maybe we are wrong. The fate of scholarship, when I read that description of our session, I thought well, it's a recurring thing with it. Of course we have enough money to support all of the scholarship that's going on. We don't have enough money to support all of the advocacy that's going on in Law Reviews. By scholarship I mean you're looking for truth. You're looking for answers. You're looking to learn something and as opposed to what we call advocacy, is when you know the answer before you start writing. So you could go through and cherry pick using the ubiquitous C, for example, citation and you arrive at the conclusion, I must be right because all of these other people agreed with me and ignore all of the people who disagree with you. So for real scholarship I think there's plenty of funding. I don't think of us do real scholarship. And that brings me to kind of the second point, is that, also start thinking about, is there a different between scholars and scholarship? And by scholarship I mean the actual production of something. I don't know if this is directly on point,

but it occurred to me that the emphasize on production of scholarship has been beginning to squeeze out being a scholar. The scholar looks at things and tries to learn something new, tries to prove his or her thinking about something. And then the scholarship producer writes it down and the footnotes and deals with the long view editors and tries to ratchet their article up by saying I only have ten days until it might split off. I've been doing this at least 30 years, I think I've seen a movie production as big emphasis as opposed to being a scholar and then once in a while you think you actually have thought of something important, then you write it up. It seems like the cart and the horse have switched positions and now it's get something on paper, okay now think of something you can do. As opposed to, I'm doing my work and then in the actual course of thinks I find something intriguing and I think this is intriguing enough to share with others. And so I think part of what we're seeing and we can talk about the fate of scholarship, is maybe too much emphasis on churning out pages and pages and not enough emphasis on actual scholarship. The way that I look at this, which will probably seem really odd, I came from a working class background. I tend to think about money and I think about how expensive scholarship is. And my rough calculation, which I think is low, but probably about 8,000 Law Review articles are published a year. 8,000 a year. My god. I couldn't read all of those in a lifetime. This is a number that really bothers people most because I think it's probably an investment of at least \$240 million in legal scholarship. Now if you want to take it one more step, you'd say, that's \$30,000 an article. That may

seem odd, but think about this, if you're making \$120,000 as a law professor and a fourth of your time was devoted scholarship and you wrote one article a year, you've written a \$30,000 article. So it's not that crazy to think that that's what they are. Now \$30,000, I know there's no like huge extreme trade in the world where we could take one that's worth this and trade it into something like this, but the Habitat for Humanity builds houses that cost \$85,000 each. That's three Law Review articles. Do I think any three Law Review articles, I would weigh those against a house for somebody who can't afford a house on their own? I don't think so. Now, I wouldn't do that. Now, I know we can't turn the articles into those houses, but just in terms of a scale of what that means. We send the average student out in the world with \$140,000 worth of debt. In other words, the equivalent of a small mortgage payment. Do I think any four of my articles would be just fine in sending somebody beginning their career out with \$140,000 in debt? Which by the way, means they're less likely to serve less affluent people because they need a job to pay the debt that they incurred because we're writing articles. So it just seems to me that we need to start thinking about the connectedness between what we're doing and the people who are paying the bills. And if you can't draw a line between what you're doing and what they need, then I don't you should do it. I think the problem is that we very often are isolated, we're not writing about real needs. We are, as hard as it is for somebody to realize, we're just the means to an end. There's nothing about us, we exist because other people will learn from us and hopefully, the clients will

be better off or who else could, is consuming legal services. And to me this drift towards more pages, more pages, more pages, has meant also losing that sort of train of thought that, why am I where writing this? Will anybody be better off other than me, that is, by virtue of writing it? The other thing I want to talk about is the idea of defenses that I hear and they're not very convincing to me. The main one we get, Professor Mashburn and myself is, I just know it's useful. And so we'll say, okay, it's not, that article's never been cited by anybody anywhere and granted, that's not the only measure of usefulness, I'll be the first to admit that. But then it's just a non falsifiable argument. I just know it. You could go to church and say that. I just know it. I just know the word. Okay. I've got no use for that argument. Tell me something other than you just believe it. I believe the moon is going to crash into Donald Trump and all of our problems will be over. I just really believe that. [ Laughter ] Doesn't mean it's true. The other one we get, and this is like clockwork, you can predict it, is if we say there's too much legal scholarship the law board needs to emphasize scholarship, we get the ten articles, it ten greatest articles that are ever been written. So you're wrong, look at these articles, they were very influential. So don't we have a problem of fallacy of composition here? Just because those ten are useful all 8,000 per year, 80,000 in a decade, those were useful? I don't think so. But this makes people who like that argument cringe. You have people like Richard Posner who he compares law articles, I'm not kidding, to salmon swimming upstream. And we can't know ahead of time which ones will make it, so

we let them all swim upstream. I can just see these little Law Review articles.

[ Laughter ] And he says, we've got to let them all go because we don't know which ones are going to make it to the top. Well, you know, I don't know. I think somebody who knows about the law of life could probably, if possible, look at some salmon before they start going up stream and say, that one looks a little skinny. That one has a damaged fin. That one doesn't have enough determination. Just something. I don't believe all 8,000 have to be written to get those five or ten or fifteen or twenty gems. I don't, but apparently he does. One of the other arguments that we run into is, Law Reviews are a public good. Okay, now, whose public good is it? Public good something that everybody wants but they're unable to internalize the benefits of it when they produce it, so they sort of sit back hoping somebody else will produce it so they can free ride and therefore nothing is produced. So the government steps in and has place protection and national defense and those sorts of things. Are Law Reviews a public good? Well yes, they are in the sense that you can't internalize the benefits of doing it. [ Laughter ]

] So it's the subsidization. And guess the other question is, does anybody internalize the benefits? But part of the problem is, when you think about public goods, we usually identify a need, even our government doesn't build too many roads to nowhere and announce because it was a public good. Nobody else would be built that road if we didn't build it. Yea, but it goes to the middle of Alberta? And so the sort of public good argument fails for me because there has to be some sort of built up demand or perceived need and that gets back to my idea that we are

means an end and we need to taking that more seriously. The other one we get is, you are interfering with my academic freedom, which really is ironic coming from law professors who are the most timid group of people on the universe. Right? They're going to test academic freedom, right. But I tell you, if I say you can't write about it. Oh, academic freedom. I want to stay, say something controversial, then you can write anything you want. [ Laughter ] But is it academic freedom when the Dean tells you to teach these three courses instead of the other one? Sure. We had somebody, and maybe this is true, say, we adopted a curve and it was interfering with our academic freedom. So this academic freedom idea is as broad as you want or as narrow as you want, but I'm not sure it extends to subsidizing your expression. I mean, I'd be very upset if my Dean said don't write anymore of those nasty blogs that you've been writing. But if she said, I can't subsidize what you're doing, that doesn't have any impact on me other than, yea, I'll just write it on my hand and you can write those articles. I'm not sure academic freedom and I mean, sincerely I don't know if it includes the right to be subsidized to write whatever you want. So that's one of the other arguments that we get. I have just am I still within my 15 minutes? I'm at 13?

>> 13.2.

>> Okay, that's great. Now to make this gloomy picture a little bit gloomier, I don't know how we're going to get out of this. Law professors are human. They have self interest. And how do you get ahead of this repression? You write lots of articles and you hope that they get into fancy places. And that's just the

way the system works. So you're sort of asking them to do something because the economists wonders whether you can make choices that are against your preferences. And that's really what we'd be asking professors to do, is do not do the thing that gets you ahead in the profession. And then on top of that you have the issues of the law schools. Get more articles out. Get more articles out because our U.S. News & World Report ranking will get better. I don't care what it is, just publish more. So how do you get out of that world where we personally have every right to I think, I want to get ahead, and the law schools want you to get ahead because it's the way they get ahead? I just, I don't know, maybe one of the other panelists will have the answer to that, but I'm not sure how to break that cycle. Thank you.

[ Applause ]

>> Thank you very much Professor Harrison for your bracing and yet at times poetic remarks. Our next speaker will be Professor Anita Allen. Anita LaFrance Allen is the Henry R Silverman Professor of Law and Professor of Philosophy at the University of Pennsylvania Law School. She's also a Senior Fellow in the Bioethics Department at the University of Pennsylvania School of Medicine and a member of the Presidential Commission for the Study of Bioethical Issues. She has her BA from New College in Florida, her MA and PhD in Philosophy from the University of Michigan and her JD from Harvard. Professor Allen is an expert among many other things, on privacy law, women's rights and race theory. She is currently Associate Provost for Faculty at the University of Pennsylvania and

someone I very much admire. Professor Allen.

[Applause]

>> Thank you. Good morning. So I have a different take on scholarship, legal scholarship than what you just heard from Jeffrey Harrison. I feel like I live in a world that is popping and brimming, stimulating, dynamic, exciting, challenging, wowing in a large part because of the scholarship that's being produced in my law school and law schools around the country and in other departments in great universities and colleges. So it was just mentioned that I am the Vice Provost for Faculty at the University of Pennsylvania and I wanted to start with that because by virtue of being the Vice Provost for Faculty, I have the responsibility for receiving and managing the process by which all faculty in all twelve of PENN schools receive tenure and promotion. So I see all of those and I'm present in the provost staff conference committee where eight deans of our twelve schools, along with four vice provosts advise the provost on who should get tenure and who should be promoted. So I've become deeply familiar with at least one research institution's approach to deciding what is the significance of the scholarly output, not only of law professors, but also professors of medicine, dentistry, engineering, economics, business and so forth. So in these meetings, which are confidential, I am often amused by the reaction that my colleagues have to the law dossiers. They think they're really peculiar. What, only four articles? What, coming up for tenure in year five? Why don't they come up in year six or seven or nine like the rest of us? What, full professor directly

from assistant professor after only five years? What, no book? Only one book? What, not a single peer reviewed article? No co authors? No collaborators? No teams? No grants? No PhD? No H index? Because for some of our colleagues in other disciplines in the university there are expectations reflected in that series of questions and we don't have to meet the same standards, the same expectations that our colleagues around the university meet. And I would actually say, it's a little easier to get tenure and promoted in law than in most other disciplines, at least in my university. The question about legal scholarship could be framed around whether legal scholarship is worthwhile, if it serves the immediate needs of our students to be educated into skillful lawyers or the needs of the legal profession, or the needs of legal justice, not only in our country but around the world. But I think I have a little bit of a different way of thinking about legal scholarship and its value and maybe it reflects my background as a humanist more than my background as a lawyer, but it seems to be that legal scholarship should be defined in relation to the scholars who are producing what I believe is a contribution and understanding to the human condition. It seems to me that the way we judge legal scholarship should not be narrowly in relation to how it serves the legal profession or our students, but how does it serve humanity as a whole? How does it contribute to human knowledge? If legal scholarship can both help educate students and improve legal profession and also serve as a contribution to human knowledge, that to me is a great well rounded kind of success. At my university we value very much interdisciplinary scholarship and we enfold the legal

scholars in our community into that set of values. President Amy Gutmann who is the leader of PENN, she several years ago announced a university wide initiative, she calls it 2020, and the pillars are things that sound very familiar like inclusion, impact and innovation. And we think about whether the work of our various schools is part of succeeding in relation to our priorities by the ways in which they're achieving innovation, inclusion and impact. So I often ask myself, are the law professors on board here? Are they producing scholarship which is impactful, innovative and inclusive? And I think the answer to that question is generally, absolutely. Our faculty is about 40% of us are terminal degrees outside of law, whether it's economics, philosophy, history, sociology, etc., master's degrees in various topics and I think we've been trying to use that extra training to produce scholarship which is more than functional, but also has a potential for my impact and contribution to human knowledge. And we try to work in collaboration with other scholars. I used to teach at Georgetown Law School and I absolutely love Georgetown University, but the one thing I didn't like about Georgetown is that the Law School is geographically separate from the university. So you've got to get in a taxi, get across town, spend 45 minutes getting across Georgetown in order to have a conversation with a philosopher or historian. By contrast at PENN, where I've worked since I left Georgetown, the entire university, all twelve schools, business, dental, engineering, law, education, communications, nursing, they're all within about a ten block area so you can walk everywhere and there's no friction. There's no reason not to be a collaborator

with your colleagues in other disciplines. One great example for me of how the ideal of a multi disciplinary, interdisciplinary approach to scholarship that enfolds legal scholars and that promises impact and promises to be innovative and promises to be inclusive, is a recent project by one of my colleagues, Dorothy Roberts. So Dorothy Roberts is an African American professor. She came to PENN about four years ago and she same as a certain kind of distinguished professor that we call our PIKs. Our PENN Integrates Knowledge Professors. In order to become a PIK, you have to be appointed by two or more separate schools in the university. Not just the law school, but the law school and something else. Not just the med school, but the med school and something else. Dorothy came with an appointment in the law school and also in the school of arts and sciences, with a particular appointment within our department of sociology. So she came as already a multi disciplinary scholar, but someone who wanted to continue in this vein, because she believes and I think I believe, and many of my colleagues believe that the best legal scholarship is not the sole written article, one of those 80,000 articles that written all by yourself just to crank out pages to get tenure. But rather it's scholarship that is really trying to move human understanding forward in some ways that do improve or promise to improve all of our lives. So in 2005 Dorothy published in the, one of the two most prestigious science journals in the country, the Journal of Science, an article co authored with Sarah Tishkoff, who is a population geneticist at the University of Pennsylvania, and another professor who professor at Drexel University, which is just across the street from our

university, and a fourth person who is a museum administrator in the Museum of Natural History. So you have these four scholars coming from different types of fields and institutions, coming together to write an article, a path breaking article, a seminar I hate to use that word. A path breaking article that argues that we need to stop using the concept of race in genetics. Powerful thesis. We need to stop using the concept of race in genetics. Why? Because although race is social construct which has its uses, it does not have a use, a proper use in science and genetics because we don't have genetic genes. Sorry. We don't have racial genes. Our genes are not black genes, white genes, Asian genes, etc.. They're just genes. And the distribution of different genotypes varies across different population groups but they don't map on to particulars. So it's okay to talk about the particular risks say that Ashkenazi Jewish women might have to having the BRCA's gene. It's okay to talk about the possibility that a drug like BiDil might be more beneficial to people of African ancestry and others, but it's a mistake to perpetuate the notion that you can tell by a person's genome what race they are or you can predict from someone's race what their genome must look like. Their article got a lot of attention. You may have heard them interviewed on National Public Radio. You may have seen them other places and in various magazines, newspapers, blogs. This article is making an impact and it's raising a very important question. They also are working with the national academies in Washington to try to put this issue on that agenda because they think it's so important. And there are many people who believe that it really should be on the

agenda. Many years ago, back in the early 1990s I was appointed to something called The National Advisory Committee on Human Genome Research. I was the only non scientist on this panel and this panel was giving out the money, distributing the money, the government's money to bring the human genome project forward and to advance science in ways which is now being advanced. We've now, you know, spent over 15 years since the human genome was sequenced. And even I, I began asking questions back in those days, why are the geneticists using racial categories and asking about, black people's genes? Why are we using race? Isn't it social and I'm really happy to see that other people also, even those who are not scientists can see there's a problem if you just walk to a room and say we want to do research on African American or on Jews or on Hispanic people, on the assumption that that's going to tell us something automatically about the gene or genetic basis of disease and illness. So I think that one of the ways, you know, if legal scholarship has a fate and the fate is worrisome, one way to improve our chances of, not just surviving, but thriving, is to see ourselves as part of a larger intellectual enterprise. It's not the law school, it's the university. It's not just the university, it's the entire scientific and humanistic community. It's human knowledge we want to move forward. Now to me this does have some implications for what we do. It means that we probably shouldn't be just focusing on, are I gotten up to page 70 so I can send out my Law Review article to be accepted so I can get tenure in the law school? If that's the way we're thinking about law scholarship, not only are we not reflecting the heart and the courage that Shari

was talking about, we are just making the problem that was talked about by Professor Harrison. And we're doing nothing to address the need for legal minds to be a participant in the production of human knowledge. Thank you.

[ Applause ]

>> Thank you very much, Professor Allen for your thoughtful and far seen remarks. I am very grateful to all three of our speakers for their clear incisive, provocative and carefully timed controlled statements. [ Laughter ] Now it's your turn, the larger group in this room, to broaden the discussion. You do not have to restrict yourself to questions. You can make statements or observations. Our hope is that we'll have a conversation and come up with the sort of ideas that Professor Allen referred to, that can only emerge from conversation and the exchange of ideas. So let's go.

>> May I ask that, since this is pardon me. Since this is being recorded we would like to get all of your questions and comments.

>> [inaudible]

>> I think it's better if people come up, actually. So I'm going to put it here and if people can come up and speak and wait in line in the aisles. Professor Murphy.

>> Hi. Jane Murphy from the University of Baltimore. Thank you for this wonderful provocative panel. My question is for primarily for Shari. Have you thought about, and I found your comments particularly provocative, how your insights might be translated to changing the law school culture or the promotion

and tenure standards? I think about Professor Allen's comments and how our standards discourage collaboration and use words like disinterested and analytical in ways that might be misinterpreted. So I'd be interested in your comments.

>> So I think we've decided to take the few comments and questions together so that we.

>> Can you talk into the microphone?

>> So when we convened before this, we thought of inviting a few comments and questions so that we can make sure that we get as much on the table and we'll respond at the end. Is that all right with everybody?

>> Bob Land from the University of Baltimore Law School. I'd like to hear everyone, but especially Professor Harrison react to the argument that scholarship makes for better law teachers, more passionate and more engaged law teachers, especially once you get tenure it's really easy to go on autopilot and not to be on the forefront of your field. If you engage in scholarship and you go to conferences and you write articles and you get attacked and you respond, then you can't go on autopilot. You're more passionate and engaged teacher. And there may be other ways to prevent tenured professors from going on autopilot and losing their passion, but certainly one way for them to do that is to be an engaged scholar.

>> Solangel Maldonado, Seton Hall Law School. Thank you so much for this panel. So this is a question for all of you, it seemed that the focus really was on Law Review articles, so that when we're thinking of legal scholarship we're mostly thinking of Law Review articles. But given the title of the conference,

The Fate of Legal Scholarship, I would love to hear what you think the role of books is in legal scholarship and do the same sort of concerns apply to both academic books and what we refer to as trade books? How does that further scholarship?

>> I think those were all questions, and there are enough of them, so I think we should start answering them.

>> Oh I'm sorry. I was really excited by that last question because I've built my legal career around writing books, not around Law Review articles. In fact, I think I've written four sole authored books and a couple of casebooks. And one of my sole author books was a trade book written for a general audience. So I, and I think that that's a very important way in which law professors can speak to larger audiences, engage interdisciplinary scholarship that relates to their topic and also earn their place in the community of scholars, which I was describing in my remarks. I do think we have some adjustment to make as far as how do you evaluate books, all right. Colleagues, if you have a single law school where some people are only writing articles and some people are only writing books, you have questions about how do you understand productivity? How do you evaluate? How do you evaluate books outside your field? How do you evaluate articles outside your field, for that matter? But I do think, and I wanted to put your issue on the table too, that we, that legal scholarship today means books. It means book chapters. It means essays. It means Law Review articles. It means articles written outside of Law Reviews in philosophy journals or economics journals. It means peer reviewed papers. And so we have to open ourselves up to the fact that

it's no longer a world in which almost everybody is getting promoted based on three Law Review articles.

>> We have enough on the table, we'll try to address all of them.

>> Okay. Well on the book think, I think we have to be careful because we all know that a lot of books are recycled articles. You write four articles on one topic and then write an introduction and you send it to a book, a publisher and then it becomes I also have a book, but in fact you have three articles and ten more pages. I've done that, okay, also, in addition to writing the most useless Law Review article, I've also done that. But I think that the books, I actually think, and I know this is like not probably popular with you, but it's certainly not exciting that the treatise and casebooks are really the biggest connection that we have tween, in terms of actual classroom and teaching that people refer to those and use them more often. There are way too many casebooks because we know the publishing companies have another breakeven point must have like 20 copies because if you send in a proposal, they'll do it. But they can be very useful as well. And I think good casebook could easily be part of somebody's tenure package if it's imaginative and different than others. And this ties into the question about, I think that post tenure question about scholarship. I did a study a few years ago, pre and post tenure scholarship and there's a pretty significant drop off in terms of the number of pages, but in terms of it making you a better teacher, I value that tremendously and I actually think that we would be better off if Law Reviews had some of the system that some social science journals have

where somebody writes an article and you can respond pretty quickly, let's say a four or five page response and that the debate is actually carried out over several issues. It seems to me that would be a great way to keep post tenure people interested and it's also I think conferences like this. And I guess what I'm saying is there's more efficient ways to engage post tenure people than the 80 page 300 footnote, 50 pages of lead in before you to get the punch line type of scholarship.

>> So on books, I think.

>> [inaudible]

>> Can everybody hear me? I think form should follow function. So when I start writing now, I'm brainstorming and thinking and ideas are coming through and I don't know what it's going to be. It will be an article, it will be a book, it will live in a drawer in my house. There are lots of projects on my computer that I haven't published. So yes, I think there's room for different genres and we should expand in that way. On the tenure question, so I still feel quite recently tenured and in those tenure and promotion meetings I feel like I'm the most more than having opinions, I'm learning and I'm thinking about exactly those questions. Early in my teaching I went to a conference similar to this at New York Law School, and I think it was Ann Alston who said something about the discipline of writing Law Reviews pre tenure and to kind of reverse what I had said earlier, I did find it useful to be kind of forced to push these things out. I might not have published, and there was a useful discipline to that. But I think so my thinking now is focusing on post tenure people and what we can model to the

pre tenure people. So in conversations like this, to really ask these questions that everyone's talking about here. And I love what Anita said about sending positive forces out into the world, things that can improve humanity, and I would love that to be part of the conversation in addition to the disinterested and analytical.

>> I, on the tenure question, which I think is a really interesting one in our school was the same thing going on that Anita described. In fact, I've sometimes been on the tenure committee at the university tenure committee as sort of the defender of the law school. Why only two articles? Why only three? Even if you point out that they're 90 pages long, and in fact no co authors is actually a plus, not a negative, because it means that they did all of the work. It wasn't like five economists ran one experiment and then all co authored it with somebody writing the article. That's quite an undertaking. But one of the things that I think is wrong is I don't know how you balance that we want people to be scholars and we want them to start on projects that might fail because they don't find anything or they're unable to come to any conclusions, we're real conclusion oriented. And I guess the answer is just to make sure pre tenure they write the standard Law Review article and hopefully, after tenure they will begin to take chances in their research, but it's unfortunate to force them into that lull at the outset of their careers when maybe they're actually more imaginative than they might be later.

>> I see what looks like another flight of three remarks sitting there waiting

to go. And I think we should bring that back and then weave them in because there were some things that we didn't address yet and we'll continue to weave them in. And then at the end I'll come back to things that were not addressed. Why don't one of the three of you say your pieces.

>> Thank you very much to the panel for convening. My name is Linden Remwick. I'm an LLM student at the University of Baltimore. I'll try to speak slow lest my accent betray me. This question goes more directly to Professor Harrison, but feel free for the entire panel to distribute. You mentioned the sending out of law graduates into the world armed with legal articles, but with heavy debt and the potential for disparate value. Assuming that legal scholarship provides a form in which ideas, theories and interpretations can be tested and refined without prejudice to real client interest, if this firm is removed, then these unseasoned and typically young graduates left to test their theories amid the fires of real practice.

>> I'll let all three of them go. But be ready.

>> Hi. My name is Dave Jaros. I teach here at UB. Thank you for coming. My heart is with scholarship and I agree, I think, with the suggestion of Professor Land, that I'm a better teacher for the scholarship that I do. But I want to recognize that when we talk about the fate of legal scholarship we're really talking about resources and incentives, because it's actually not very expensive to write an article. My time is expensive, I need to be paid to write an article. And since this panel is about legal education and legal scholarship, I think it's

important to recognize. I'm wondering if the panel has an opinion about how we incentivize the other part of legal education. I changed textbooks and I was amazed at how much time that took. And I know lots of people who teach the very same textbook every year because of the time and cost of switching. So I'm wondering when we think about the cost benefit of scholarship, how do we incentivize and balance that with the cost benefit of incentivizing other forms of improving our teaching.

>> Hi. I'm Greg Dolan and I teach here at the University of Baltimore as well, and I guess I wanted to follow up on the first questioner's comment. And I just wondered, it seems to me that legal scholarship is being held by this panel or by some of us to somewhat different standards. Somehow legal scholarship needs to attach itself, it needs to have an effect on the actual practice of law, and I wonder why that necessarily has to be? We have a number of colleagues across the street, large university of colleagues in departments that don't necessarily, you know, that produce wonderful scholarship. I have a number of friends who teach, who are medievalists and they write about medieval books and medieval art, and I love reading their books because I love old stuff. But I don't see necessarily their work changing, you know, the practice of anything, it's just knowledge for the sake of knowledge and it's great. And I just wonder why should legal scholarship should be held to a different standard than a potential scholarship in arts and sciences or in humanities also?

>> I have something to say.

>> We'll start with Professor Allen.

>> Thank you. So just to start with that last point, you know we, why do we expect law to be in some sense, law scholarship in some sense to be practical? That question too is part of a larger conversation, universities. For example, in medical schools you have the question of basic science versus translational research that might impact rather quickly on clinical practice or in the development of drugs and pharmaceuticals. So there's versions of this problem in other schools, it's not really unique to law. I think the part that's unique to law may be that to some extent law feels like its part of the humanities and not a stem field, and yet we're asking it to be practical. So maybe we should spend some time today talking about, is law really more analogous to the stem fields where there is some expectations of benefit or is it more like the classic humanities, English, art history, music, where they're more inherent or intrinsic values? I do think, the question of whether scholarship makes better teachers is absolutely yes, but it also works in reverse. Not only does doing scholarship give you more important subtle nuance content for your classroom teaching, but also classroom teaching, in my experience, students bring up issues, questions, problems that then motivate to push our scholarship maybe a bit deeper in different directions. I've often written pieces directly inspired by things that I've had students ask me about in class. And then finally, as to books, I think Jeffrey because being a little bit funny about, you write the articles and you slap on an introduction and you've got a book because it's a little bit more than that.

One of the things that I found about writing books is that it gives you an extra level of peer review for your scholarship because the publisher, my last book was published by Oxford University Press. The publisher sends out the manuscript, sometimes more than once, to external reviewers who then give the author feedback and that helps to improve the book. And then the book is published. And while it's true that probably all of my, well at least three of my four books, some of the content was published in Law Reviews, I think it would be a terrible mistake to see the books as simply just Law Reviews just written in a different way. And furthermore, I do think that you really change your audience when you publish your material as a book. It is delightful to me when I go around giving talks to learn that students in philosophy departments or engineering schools or communication schools have actually read my book. They haven't read my Law Review articles because that genre does not connect with everybody in the world, but they will have read some of the same arguments and ideas if they're published in a book form.

>> On the last question, you know, I guess it's a little different because we're a professional school and people who enroll expect to come out prepared to practice a profession. I'm not at all against knowledge for knowledge sake, but it seems to be that we should define what we're doing and maybe it would make sense to every department in the university called the jurisprudence department, or something like that where it's understood that they're doing the same things as other departments in the humanities. But I think it has a lot to do with the expectations of the students and sort of this whole notion, especially in the case

of a public school, that we're being, it's subsidized because for some reason somebody decided we wouldn't have enough lawyers unless it were subsidized. And I'm afraid we're sort of stuck with that mission. So I love knowledge for the sake of knowledge is wonderful, I'm just not sure that we should be doing that, that much.

>> I think most law schools have, in addition to a standing faculty, they have clinical faculty and practice professors and I think that one way to get around this very difficult issue, because yea, we are a professional school, is to employ a faculty that is itself diverse where some people are focusing very carefully on legal skills, training, legal writing, legal practice to make sure that when they leave the building in three years they're not unprepared for the realities of law, but at the same time there are people there in the building who are promoting ideas in the realms of say legal history or legal philosophy that may not have an immediate practical application, but nonetheless are part of the stimulating and broad legal education.

>> So thank you for these great questions. On the last question, on practicality, I want to read a short quote by David Grayburg who is an anthropologist, and I think it goes to this issue of in my mind, the practicality is great and important and also we can't always know in advance what's practical and what's not. And big ideas ultimately are connected to the world in ways that we can't always predict. So David Grayburg says, "Normally when you challenge conventional wisdom, the first reaction you're likely to get is a demand for a

detailed architectural blueprint of how an alternative system would work. Next you're likely to be asked for a detailed program of how this system will be brought into existence. Historically this is ridiculous. When has social change ever happened according to someone's blueprint?" So big ideas are practical in a different way than we usually think of. On the question of incentivizing, revising textbooks and teaching, so just before this conference I had such an inspiring conversation that reminded me of that, the blurriness of the line between teaching and scholarship. So Mark Edwards, who's here, reached out to me before the conference. He was driving through Richmond on the way, we had dinner on Tuesday, and he has really exciting ideas about rethinking textbooks. Chart a course and he'll tell you about it later in the conference. So yes, I think, and I have a colleague who says teaching is part of scholarship, it's just a different form. So I think this is important and I'll expand from that and say that I think our clinical professors and our legal writing professors do work that is just as important as the scholarship that we do. And I find the hierarchy in legal education to be really troubling. So there's some thinking around that. And I'll pause there so we can get more questions.

>> Yea. Back to the I think one thing we have to come to grips with is we're not part of, we're technically part of a graduate faculty, but we're not. We're a professional school. So the idea that we are would love to, I think, spend time thinking about the big things and more philosophical things, we're all drawn to that or we wouldn't be doing this at all. It's that we're playing with somebody

else's mind and I don't think they're paying us to do that sort of thing. Maybe we have a fiduciary obligation whether it's tuition money or tax money to use it in a way that fits the mission for what the school has created in the first place. And so that's why I lean toward, you know, I'm drawn by the big ideas but I also feel torn that I need to fulfill the function of the school. On the book question, I think the second book question, I hate to admit this, but I wrote a nutshell and it was pretty much the hardest thing I ever did because of the organizational issues and really explaining difficult concepts in a way that could be understood by somebody who didn't know them. So I think the diversity of types of scholarship is important and some of it is under rated when it shouldn't be, at least in terms of the difficulty. And I also think that if you're going to be a good teacher you must be a good scholar. You may not produce pages, but you can't be a good teacher without being a good scholar.

>> So you confess that you wrote a nutshell. I'll go even further. I had a column in Oprah Magazine which I would give advice on topics, some of which had to do with law, but some had to do with other matters, you know, health care and personal life and so forth. And I did find that, and so we with scholarship in the background of my skills, being able to use my overall learned self to participate in a conversation with the readers of Oprah Magazine, it was a wonderful experience and I really liked that I got recognized in supermarkets and things like that. In a similar vein, I had a newspaper column in the New York Star Ledger called the Moralist and I would in 800 words, comment on questions. Sometimes

it was capital punishment, sometimes it was violence against black teenagers, whatever the events of the day suggested to me, I would write articles and I was using my scholarly background to have a conversation with ordinary people. And I really loved that. And I loved, you know, responding to all of the e mail I would get, including the hate mail, from the general public. And then finally, in this vein, I was on a TV show for a while on MSNBC called the Ethical Edge. And it was me, the professor, the rabbi and the priest. I kid you not. I was on for a year and a half and we would talk about current issues, and again, you know, that's not a scholarly thing, a TV show, but I think I brought to the table my background in scholarship. So whether you're writing for Oprah or on TV or writing for the newspaper or writing books for Oxford University Press, or wherever, there's different ways that we legal scholars can contribute to important conversations in the public sphere. And I think that I wanted to add that little bit because I do think that it's another angle on what our responsibilities are and how we can earn our keep. We can earn our keep also by reaching out to the larger world.

>> I think we have more questions from the audience.

>> My name is [ indiscernible ]. I'm a law student here at Baltimore. I want to first thank you all for your critical academic proficiencies, it's very encouraging to us who are law students here. My question to you all is, there is a saying that necessity is the mother of the invention. The law school of United States actually has fallen down in the section of this program. The Dean said

that the people graduating from law school are actually diminished and depreciated. That actually means that the strategy's not working. And we might continue to say that the students could contribute to the problem as we also have to hold the teachers and scholars accountable for predicament that we're seeing in law schools today. When you write articles, what strategy do you use? I do firmly believe that teachers of today are not more connected into the problems of students. If you don't have a strategy how to change the strategy and have you actually incorporated foreign laws or foreign practices like the United Kingdom? There are many countries that law schools and education is really doing well, have we outdone that? Seriously speaking, the articles that we have read and the Socratic teaching of our remaining classes, I feel strongly that it's given a very conspicuous understanding that the teachers are actually not doing the work. The strategy is not working. When you write articles you tell a story, you write articles that are captivating and enticing to students who want to study the law. Given the reasons why they should enjoy studying law. Make law to be fun, you know, feel to be at. This is not being seen in articles I've read in many of the vast articles today. So my question is, what are you doing, or what are you going to do to create an environment or strategy that is captivating, telling stories and putting the finesse of the articles you write based on the problems you see in today's world and incorporating sometimes other places like United Kingdom law practices and operations there into the articles you write with the motif of creating a victory in the minds of students so that by the time the students read

the articles and come to class, they have no reason but to see I am so much in love in the practice of law, in the law field. Thank you.

>> Isaac Woods. I'm a Supreme Court Fellow, and I'm here as a civilian. I wonder if I could push a little bit on the issue of type of scholarship and vehicle for publication. It seems to me that one of the sources of criticism of legal scholarship is that when you have an article that belongs in science or a magazine, that it ends up in a Law Review and that institutionally there is a question of does that belong there? Should it get there? What sort of credit should it get being there? Because the process of all three of the methods of publication are very different. There's peer reviewed for one, there isn't if there's a Law Review process for another. So I wonder if the panel could speak to both the institutional side of how you view those kinds of articles and where they should be and from the new law professor or new hopeful law professor side of you get your scholarship placed the right way.

>> When you said, cred I'm sorry.

>> I just wanted to say that we're coming to the close of our allotted time so we're going to go to the panel and then they're going to take the two questions that we just had and then everything else that we heard and put it together and I just want the panelists to be aware that's what's about to happen. But you had a question.

>> I wouldn't use the word credit. I don't understand, what credit do you mean like in terms of for promotion purposes?

>> Yes.

>> Okay.

>> So I think what we'll do is we'll run from my left to my right and the knowledge that this is the last chance you have to say anything, so put it all in there. And then we're going to adjourn.

>> Okay. So I'm not going to answer anything because we're running out of time. But I'm happy to speak with the, anybody who had a question that wasn't answered, I'm looking forward to the next two days.

>> I'm sorry. Did you have a question too?

>> I did.

>> Why don't you ask your question. I'm sorry, I didn't see you there.

>> My name is Megan Wood. I'm from Georgia State. I'll start off by saying that I teach legal writing so much of the scholarship that I produce is very practical type scholarship. But my question is this, and I was hoping that some of you could speak to it. It seems to me that in some schools, not all, there is actually a dissonance to produce what we would consider more practical scholarship because tenure promotion many seem to value traditional Law Review articles over blog posts or more practical type articles that we would put in Salon or Huffington Post or things of that nature. So I wondered if you could speak a little bit to the disconnect there and how we might be able to overcome it for those of who do produce more practical based scholarship.

>> I apologize Professor Motro for interrupting.

>> No, that's perfect because that actually dovetails with the question that I'm going to touch on in my closing remarks, which is Jeffrey's question about how do we get out of this warp with connections, right? You said that essentially we're wanting professors to make choices that are against their own interests. Not to do the thing that's going to get you ahead. Right. To write the doctrinal article. And I think what's been occurring to me as we speak is that, my article I talked about tenure, you know. Tenure is supposedly this vehicle for which we give people the security and the freedom that they need to go outside. But it's not enough and I talk about it in the article why I think it's not enough. And I think what we need in addition, and what I hope this conference can be part of, is a movement. A movement of people who together, band together to oppose the culture of production and promote a culture of diversity and sending into the world ideas that are positive for humanity. And the other thing that I'll plant here is a wish for this conference and it's something that I'm working on in my classes and my teaching and in conversations with colleagues, is to try to be more intentional about how we take and how we listen. So this room is set up in a frontal way where we're the panel and we're the experts. I love how we did this, how we created something closer to a circle. And this is constantly what I'm trying to do, to create a kind of dialogue that's different from the Law Review article that's really advocacy. I have an idea and I'm here to defend it and the questions are challenges and it's this kind of back and forth dialect, which is a great way to think of ideas and not the only one. So I want to expand our range and speak and

listen in a way that is, that's kind of looking for the wisdom of the group. That is often more than the sum of our parts. I'll pause there. Thank you.

>> My main worry is that we didn't answer the question of the first person in the second group and I thought it was sort of sympathetic towards me. I wish I could remember what he asked. But nothing was said. On the cycle of the credit, you know some of the top Law Reviews that anybody who teaches law knows, they say don't put your name on the article and I think several of us have received essentially questions or requests to review articles. So there's a little bit of a peer review movement I think afoot in the top ranges. And supposedly our substitute for peer review, since it's not peer reviewed, it's a tenure promotion, we send the articles to experts, so it's sort of an after the fact of peer review. I don't think that works very much in the theory that there's a market for good reviews and no market for other reviews. And so people send good reviewers more often than once if they're not sure. But I think, if anything, the credit has to be based on the quality of the work. That's pretty trying to say that, and that means having people read it other than deciding it on the basis of the level of the review it's published in. Have somebody look at it without knowing where it was published and without knowing who wrote it and evaluate the article and then under those circumstances. And then the disconnect think, the last woman, I think it's going to care of itself. I think there will be increasing attention to, I mean some blogs now have an actual real substance, it's not just bickering about did they do this or did they not, but there's actual content. And I think

that will be the point, especially as electronic journals take over, it's going to be more and more difficult to separate that sort of thing. But yea, there are a lot of really good ideas that are discounted because of the form that they appear in.

>> Thank you. So I've been in legal education now for 30 years, this is year 31, in fact and I've seen some changes that I think are worth noting. But one thing, Law Review articles have gotten shorter. There were back in the 1970s and 80s Law Review articles that were 150 to 200 pages long and the norm now is 70 to 80 pages. I think it's a change that's probably an improvement because you're actually able to I think condense your ideas into a more effective and efficient format. The use of first names, some of you who are young may not realize this, but when I went into legal education, you only used the initial of your first name. You couldn't tell the gender of the person who was writing the article because the assumption was it was all men. And I actually believed in the 1980s that the convention, the blue book rule of including the first name was actually designed against women, designed to make it easier to discriminate against women who wanted to publish in top law journals. Another big change I'm seeing is there is now a lot more story telling. We had a question about, tell us your stories. Well there is a lot more storytelling, a lot more voice, a lot more experience, personal experience blended into Law Review articles and Law Review articles that do count for tenure. There's also I think a lot more data. It's very common to have charts, graphs, data, formal analysis be part of Law Reviews. Much more so then when I

started 30 years ago. So the good news here is that as change happened and I think we'll keep seeing change, I think we have on the one hand, a lot of scholar's script that is still pretty traditional in Law Reviews, but as someone mentioned, we have people publishing about the law on Huffington Post. I myself have written for the Daily Beast, for Politico. We also haven't talked about MOOCs at all, but we have an introduction to American law MOOC at PENN on our platform that has about 17,000 students and I have a one-hour lecture which I condense the entirety of tort law into one lecture. Yea. Yea me. But we're reaching audiences through using technology and I think that's something that we should take a little bit more about over the next couple of days too. But great conversation, with like Shari I'd like to continue the conversation after this session.

>> So now I get the big payoff for the Chair, the last word. I want to respond to the appeal that we had from one of our students, Kingsly, wanted his professors to be engaged to the wider world. He wanted for his professors to give him a reason to love the law. I think that's what each of our three speakers has done today. I think you've seen that each of our speakers believes that law is a profession and that profession has a purpose. I'm not entirely sure that we agreed on what that purpose was, nevertheless, I think that they come to this enterprise as Kingsly, you said, you would wish us to do, looking to give you a reason to love the law, and I think that's what we've heard today. So thank you all three, I think it was a wonderful panel. [ Applause ]

>> Thank you panel and Professor Sellers. A couple of words, first of all,

Professor Motro is doing double duty today because she may have mentioned today she's actually hosting and leading one of the concurrent sessions later this afternoon, session A in room 603 at 3:15 where she may have an opportunity to talk a little bit more about some of the things that she mentioned in her remarks today. For those of you who have preregistered for today's activities, there is a lunch next in 10 minutes up on the 12th floor. So if you're new to the building and want to get a bit of a view of the building you can take the glass elevators near the entrance all the way up to the 12th floor and kind of get a rapid view as you ascend up to 12. You can also take the other elevator bank which is much less interesting. Dean Kellye Testy will be the keynote speaker at that lunch. She'll probably start her remarks 12:20 or so, 12:30 we'll introduce her. So we hope to see you up there in a few minutes. And then the next panel in this room after the lunch begins at 1:30. That's the panel on legal education, excuse me, legal scholarship and the legal system. And I suspect we'll hear many of the same kinds of dynamics with a little bit of a different angle that we heard from the panelists today. So thank you all, and again a round of applause for our panelists. [ Applause ]

[ Event concluded ]

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