

## LEGAL SCHOLARSHIP FOR EQUAL JUSTICE: SUMMARY OF PANEL DISCUSSION

Introduction by Sam Magavern<sup>†</sup>

### PANELISTS

Beverly Balos, Professor, University of Minnesota Law School  
Eric Janus, Professor, William Mitchell College of Law  
James Liebman, Professor, Columbia University Law School  
Tim Thompson, Litigation Director, Mid-Minnesota Legal Assistance

### MODERATOR

Robin Magee, Professor, Hamline University School of Law

### INTRODUCTION

People with low incomes face a devastating shortage of lawyers to represent them. In Minnesota, for example, the Minnesota Legal Services Coalition estimates that there is one attorney for every 3000 poor persons, compared to one attorney for every 253 persons in the general population. Public defenders are asked to carry overwhelming caseloads and to give ever-shorter amounts of time to their clients. As a result, legal representation for people with low incomes tends to resemble emergency room medicine—responding to dire, individual crises—without doing in-depth research and writing on the systemic problems that cause the crises or on the legal strategies that might prevent them.

Meanwhile, law schools face a very different, nearly opposite, set of problems. In academia, professors and students have the time and resources to do exhaustive legal research and writing. However, what they often lack are ways to ensure that their work addresses real problems and reaches an audience that can use it.

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<sup>†</sup> Attorney, Legal Aid Society of Minneapolis; J.D. 1990, UCLA Law School, first in class; B.A. 1985, *magna cum laude*, Harvard College.

Too often, a student's work is read only by her professor, and a professor's work is read only by a handful of students and colleagues.

Of course, the problem of connecting academia and practice is hardly new, and academics are fully aware of it. In 1992, Harry T. Edwards, a judge and law professor, published an eloquent essay arguing that because too few law professors are doing work that is useful to judges, policymakers, and practitioners, too many social issues were being resolved without their input.<sup>1</sup> Many within the academy concur. As Deborah L. Rhode writes, "all is not well in the state of legal scholarship."<sup>2</sup> Rhode documents the fact that the some 20,000 law professors and law review editors<sup>3</sup> in the country are writing "largely for each other."<sup>4</sup> She cites a survey in which "[o]ver two-thirds of surveyed attorneys had consulted law reviews fewer than six times in the preceding six months; over [one]-third had not consulted them at all."<sup>5</sup> "[O]f all law review articles published during the 1980s and early 1990s, more than half had never been cited."<sup>6</sup>

For a research-starved equal justice practitioner, these approximately 40,000 articles that were written and never cited,<sup>7</sup> not even in other law review articles (which are notoriously cite-happy), represent a gigantic missed opportunity. What if just a portion of that energy and those resources had been devoted to legal research to advance equal justice for people with low incomes and other disadvantaged groups in our society? Law professors and students are a talented group of people with more than ordinary interest in equal justice concerns. With the growth of clinical and public interest programs at law schools, law students and faculty now devote large amounts of time to direct client work that advances equal justice. Law professors can often be found serving on nonprofit boards, litigating equal justice cases, or offering advice to advocacy groups. Savvy practitioners are able to call upon academics for help, and occasionally are able to encourage

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1. Harry T. Edwards, *The Growing Distinction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992).

2. Deborah L. Rhode, *Symposium: Law, Knowledge, and the Academy*, 115 HARV. L. REV. 1327, 1328 (2002).

3. *Id.* at 1334.

4. *Id.* at 1336.

5. *Id.* at 1336-37 (citation omitted).

6. *Id.* at 1331 (citation omitted).

7. *Id.* at n.16.

research on a topic. Still, within the realm of research and writing, we lack an institutionalized set of pathways and incentives to connect the work of academics and practitioners.

Furthermore, in the structure and subculture of law schools, there are some barriers and disincentives to doing impact scholarship on equal justice issues. As Bev Balos points out in our panel discussion, law professors are rewarded for publishing in law reviews, not for drafting legislation or for publishing in practitioner journals.<sup>8</sup> Law reviews, of course, are limited-circulation, heavily subsidized periodicals, generally edited by law students—without ways and incentives to find out what articles would be relevant to practitioners or judges. Should law reviews include practitioners in their editing process? Should law schools reward professors for publishing in practitioner journals? As Tim Thompson suggests in the panel, practitioners may use law review articles when writing briefs, but they do not scan law reviews as they seek innovative approaches to equal justice issues.<sup>9</sup> On the other side, when professors or students are thinking about topics for a research or writing project, they have no easy way to connect with practitioners to learn what topics would be most useful and germane.

Often, what practitioners, policy makers, and judges find most useful and germane is empirical work of the kind that Professor Liebman has done in analyzing death penalty errors,<sup>10</sup> or the kind that Tim Thompson used in looking for effective desegregation remedies. Unfortunately, law professors get no particular training—in or after law school—in collecting and analyzing empirical data. Further, connections between law faculty and social science researchers tend to be ad hoc and fortuitous, rather than institutionalized. Should law schools include social science researchers on their faculty or staff, or should they establish formal relationships with social science departments? Should law students be required to learn how to use empirical research in their legal research and writing? Should standard law classes include more study of how the laws actually work—what effects they have on the public—in addition to pure doctrinal analysis?

In 2002, a group of professors, deans, equal justice

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8. *See infra* Balos.

9. *See infra* Thompson.

10. *See generally* James Liebman, *A Broken System: Error Rates in Capital Cases*, THE JUSTICE PROJECT, at <http://justice.policy.net/jpreport> (last visited Aug. 4, 2003).

practitioners, and a Minnesota Supreme Court justice formed a Legal Scholarship for Equal Justice committee (LSEJ) to explore ways to link the work of professors and students to the equal justice issues faced by the bench and bar in our state.<sup>11</sup> Since then, LSEJ has become a formal project of the Minnesota Justice Foundation, a nonprofit group that works at the four Minnesota law schools to integrate public service into the law school experience.<sup>12</sup> So far, LSEJ has created an issues list, a class, and an annual symposium. The issues list contains topic descriptions and contact information for equal justice research-and-writing projects identified by practitioners or academics. Available at [www.lsej.org](http://www.lsej.org), the list can be used by professors and students searching for topics for law review articles, independent research projects, and term papers. The list also forms the basis for the new "Equal Justice: Advanced Research" class rotating through the four schools and described by Eric Janus in an article in this issue.<sup>13</sup>

To generate more ideas and inspiration for equal justice scholarship, LSEJ also instituted an annual symposium to bring national equal justice scholars together with local equal justice scholars and practitioners. In selecting our first keynote speaker, we turned to an obvious choice: James Liebman, whose careful, empirically based studies of the death penalty system and its failure rate have radically altered public debate and public policy.<sup>14</sup> After his address, reprinted in this issue,<sup>15</sup> he joined our local panel of three professors and one practitioner to address the interplay of scholarship and practice. The panel discussion does an excellent job in providing examples of how legal scholarship has helped equal justice advance in the past, what some of the barriers to equal justice are, and how those barriers can be overcome so that academics like Liebman, Magee, Balos, and Janus, along with practitioners like Thompson who have successfully bridged the gap between theory and practice, become the norm instead of exceptions. The following panelist comments were drawn from

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11. LEGAL SCHOLARSHIP FOR EQUAL JUSTICE, <http://www.lsej.org> (last visited July 31, 2003).

12. See MINNESOTA JUSTICE FOUNDATION, at <http://mjf.org> (last visited August 2, 2003).

13. Eric S. Janus, *Clinical Teaching at William Mitchell College of Law: Values, Pedagogy, and Perspective*, 30 WM. MITCHELL L. REV. 73 (2003).

14. Liebman, *supra* note 10.

15. James S. Liebman, *Towards a New Scholarship for Equal Justice*, 30 WM. MITCHELL L. REV. 273 (2003).

transcription of the event held at William Mitchell College of Law, St. Paul, Minnesota, on January 24, 2003. The panel participants reviewed this written form prior to publication.

#### MAGEE

The goal as I see it is to increase the production of, and the impact of, legal scholarship for equal justice. I think the last two years have made it painfully obvious that we who believe in equal justice need, at minimum, to be better organized and to coordinate our efforts a little better. We are fortunate to have this particular panel assembled. Each of the members of the panel has engaged in this important work and has developed important perspectives on legal scholarship for equal justice.

#### JANUS

Thank you Professor Magee. I found Professor Liebman's comments very inspirational and energizing. It leads me to a couple of thoughts.

He talked about ethics and neutrality versus advocacy. This called to mind an anecdote from the seminar I taught this past semester called Equal Justice: Advanced Research Seminar.<sup>16</sup> The seminar students worked in teams on actual issues that had been suggested by local practitioners practicing in the equal justice area. There was some hesitancy on the part of some of the lawyers about forwarding their topics to us, precisely because of the issue elucidated by Professor Liebman. A few of the lawyers weren't quite sure that they wanted to let their research topics into the hands of students who were going to do, in some sense, neutral scholarship rather than advocacy. As it happens, this concern was not a major impediment to our collecting a good set of legal research topics for the students to address.

About two-thirds of the way through the semester I got a worried e-mail from a couple of the students saying: "You know what? We've been researching our topic. We're afraid we can't come out the right way on it. We're afraid that there is no way that we can come out the way the advocates want this to come out. What should we do? Should we write up our unfavorable result, even though it will not help the cause of equal justice? Or, should

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16. See Janus, *supra* note 13, at 81-85.

we dump this topic and find another?” So, we got together and brainstormed. We talked about what the alternatives were, the absolute necessity of intellectual honesty in scholarship, and the relationship between objectivity and advocacy. After the discussion, the students decided, in a sense, to stick with the original topic. But they broadened their horizons: instead of simply focusing on the legal theory championed by the advocates, they asked more broadly how the equal justice interests underlying that theory might be served. The final paper critiqued the advocates’ legal theory but explored alternative approaches to achieving the same result. This scholarship maintained its objectivity and intellectual honesty, while simultaneously exhibiting an important kind of advocacy by struggling to find alternate pathways to the equal justice goal.

The work of another group of students anticipated the scholarly approach espoused by Professor Liebman. Their topic concerned understanding how the system of traffic fines and license suspensions can lead to a spiral into poverty. A central part of the students’ work product was identifying and describing the approach utilized in a small Minnesota city. They focused on a practical approach to the problem that appeared to be working better than other approaches. They did not seek the perfect—but unattainable—solution. Rather, they identified a good solution, and one that other jurisdictions could implement. This good solution sets a benchmark for other jurisdictions to attain, and perhaps surpass.

Referring to my own work, I feel that my scholarship, public service, and advocacy relate to each other in a kind of circle of stimulation. My work in advocacy and my work with advocates stimulates my scholarship, which then stimulates me in terms of doing advocacy. I hope that my work also is useful to advocates, whose work then stimulates my further scholarship. One of the things I’d like to talk about during this session is how to invigorate that connection between people in the academy and people in practice, and what kinds of work that legal scholars do can be most effective in informing legal advocacy.

#### BALOS

First let me say I’m pleased to be here to participate in this panel on a topic that, I’ll just admit, I don’t feel objective or neutral about, which is equal justice. I want to make a few remarks

which I think were touched on by Professor Liebman's presentation. I think that it's relatively rare for scholarship, as we traditionally talk about it in the academy, to have a measurable effect outside of academia. I think we can count on one hand those articles that have really changed the law and the way certain areas of the law are practiced and, of course, one well-known example of this is Catharine MacKinnon's theory of sexual harassment as a form of sex discrimination, which was adopted by the EEO regulations and then ultimately adopted by the U.S. Supreme Court. There are others, but as a general matter, it's not typical for scholarship, as we traditionally define it, to have the kind of impact on the law in practice that we're talking about here.

My own experience in dealing with issues of violence against women, which is the area that I specialize in, is that my work with advocacy and grass-roots groups tends to be more in the legislative arena than in strictly, narrowly defined scholarship. It might involve consulting on public policy, drafting legislation, testifying before legislative bodies, and similar kinds of activity. So, I would encourage people to think about the issue of legal scholarship more broadly to include legislative reform, public policy issues, and to think of law faculty as a resource on these projects as well.

The way I think about scholarship arises out of my work with advocacy and community groups, so that when I do write law review articles, generally I'm addressing an issue that has come out of that work. One example of this is the work I did a number of years ago helping to draft the statute that creates a civil cause of action for persons used in prostitution to sue for the harm that they experience. This grew out of the work that I did with a colleague, with law students, and with grass-roots advocacy groups. The public policy, legislative reform work we did then gave rise to an article that I co-authored.

I hope I'm advancing the goal of equality and justice in my more traditional scholarship by changing the perspective about certain issues we confront around violence against women; that the theory then advances the practice so that when an issue arises, we think about it in a different way. Let me give you one example of this. A number of years ago, I co-authored an article on acquaintance rape, and, very briefly, the theory advanced was that rather than the usual perspective that acquaintance rape was more difficult to prosecute because the parties knew each other, we should be looking at this from the perspective of trust. That is,

importing the notion of a fiduciary duty in civil law, we argued that if two parties know each other, there is a relationship of trust between them, and therefore, a higher duty on the perpetrator's part to make sure he has received consent. Now I know that some prosecutors used that idea in their closing arguments after this article came out, although I have to admit, whether it made a difference in the ultimate outcome of these cases, I don't know.

Let me just make some comments about why there are these barriers to better communication and better collaboration between academia and practice. Professor Liebman touched upon this in his remarks. There is long-standing tension between the role of law school as a center for practice and a professional school versus its role as an academic center. For example, publishing an article in a practice-oriented journal in most law schools is not going to increase your chances for tenure. Even once you obtain tenure, there's always another ring to grab for, whether it's being appointed to a chair or obtaining the respect of your colleagues. The measure of worthiness, if you will, in academia is scholarship, and scholarship rather narrowly defined. There are numerous hierarchies about where you publish. Service is supposed to be a factor in tenure review, but I doubt that anyone has ever been denied tenure for not doing enough service.

Let me share another story from my own experience returning to legislation: the civil cause of action for harms caused by prostitution. When this legislation passed the Minnesota Legislature, there were less-than-enthusiastic congratulations from the law school. However, a few years later when an article about the legislation—the process entailed in developing it and analyzing it—was published in the *New York University Law Review*, then the law school was quite pleased. What conclusion are we to draw from this? It seems that writing about legislation was more valued than actually participating in its drafting and passage. Perhaps that's inevitable in an academic setting. (To be fair, I think part of that reaction had to do with the fact that this particular project dealt with prostitution.)

I do think that there are ways to enhance the usefulness of legal scholarship. There are informal, networking links between faculty and the community, and I think that's key. Maybe one of the things we can discuss today is how we might want to formalize those links. Communicating to the community about the scholarship that we are engaged in, in an accessible way through

symposia like this, through meetings, even through press releases is another method for legal academics to make known that they are resources not only in the narrow, traditional terms of scholarship, but also in terms of legislation and public policy work, and that might broaden the opportunities for both of us to engage in work that advances the equal justice agenda.

THOMPSON

Well, I'm a practitioner and I love academics. They've been a great help in my work. I work as Litigation Director at Mid-Minnesota Legal Assistance, of which the Minneapolis Legal Aid Society is a part, and we represent poor people on civil legal matters. Frequently over the years we have been involved in either major lawsuits or major projects addressing structural issues that disadvantage poor people. Let me give you briefly just four examples of where we have been able to call upon the academic community to enhance our ability to achieve our goals. Nearly a decade ago, we had a group of clients who decided to file a class-action lawsuit challenging patterns of racial segregation in public housing in Minneapolis. There were some very important legal articles addressing various legal theories that helped us to put together that case, and that was really critical. But not only that, when we got to the stage in the case where we were trying to figure out how to resolve the very difficult issues of undoing these patterns of racial segregation, we discovered a whole host of social science research out there—quite a few articles—and they provided a huge benefit in allowing us to identify the most effective ways to address these deep-seeded problems.

A second example came during the mid-'90s. There had been a debate in the legislature for several years in a row about fair housing bills, which we had been involved in drafting, which were designed to broaden the location of affordable housing throughout the metropolitan area. A big debate ensued about suburbs and exclusionary zoning practices, but it was based on relatively little hard data. We decided it would be useful to get a handle on what was really going on in these communities if we were going to push this sort of legislation. So we were able to go out and recruit ten law students, and then got the help of a couple of professors at the Center for Urban and Regional Affairs at the Humphrey Institute. We had the students do a detailed analysis of zoning ordinances and land use practices in ten different cities, and then the

professors wrote a report based on the student research, and it became an important part of the debate.

More recently, we have been focusing, along with several other organizations, on a law called “The Minnesota Land Use Planning Act” which requires that every city in the metropolitan area plan for its share of the regional need for low- and moderate-income housing. We had some suspicions that this law was not being widely followed throughout the metropolitan area, shocking though that may be, but again, there was no clear data out there to answer those questions. Again, we called upon the resources of The Center for Urban and Regional Affairs. They used a number of students and produced a very detailed report, which clearly documented widespread disregard of this law throughout the metropolitan area.

Finally, I would mention a class action lawsuit we brought over state welfare programs. A few years back, the legislature became alarmed at the prospect of low-income people moving into Minnesota for higher welfare benefits. As a result, they enacted a law which said that if you came into Minnesota from another state, for the first year your welfare benefits were limited to the level of the state from where you came. You just get Mississippi’s level of welfare benefits, not Minnesota’s level. We had clients who were very disturbed about this and wanted to challenge it. It clearly implicated constitutional theories—in particular, the right to travel freely between one state and another. It turns out there was a great deal of very useful academic literature that helped us with legal theories. In addition, there was a critical factual issue that developed in this litigation, which was: if Minnesota pays higher welfare benefits, will poor people move to Minnesota because of those higher benefits? We were able to locate a professor who had studied that question, whom we used as an expert witness. His evidence was critical in enabling us to debunk the so-called “welfare magnet” theory.

We’ve had a number of very useful experiences, and so when I have a case that raises these sorts of issues, I don’t hesitate to look to academia for help.

LIEBMAN

One question this symposium raises is how to create new and different kinds of interaction between law schools and innovative practitioners. We sit here at William Mitchell College of Law, one

of the four law schools in Minnesota that have all joined together in a consortia to facilitate public-interest-oriented scholarship. I wonder if there isn't some way to expand that idea to encompass consortium of public interest practitioners convened under the auspices of law schools.

In some of the research I've been doing in public education, and in some of the research I've been privy to in, for example, the environmental field, it has turned out that there is a ton of really innovative practice taking place among practitioners who don't even think of themselves as doing anything new or interesting, and certainly don't think of themselves as part of a movement defined by similar innovations. So far as the practitioners are concerned, they are just doing what they do every day, subject to the expected idiosyncrasies of any given case or project. But when they are asked to describe those idiosyncrasies, it turns out that a whole pattern of changes becomes visible. And when a number of practitioners engage in this same type of conversation together, they begin to see that the pattern is not itself an idiosyncrasy of the work each one happens to be doing, and instead suggests a new turn in that type of public interest work as a whole.

Environmental lawyers may think, for example, that a consensual effort among a variety of stakeholders to develop a regulatory regime in regard to a particular habitat that in effect substitutes for a variety of local, state, and federal regulations is simply the odd way that a particular lawsuit or threatened action came to be settled. When they realize, however, that more and more of their practice is going in that direction, and when they hear the same from other practitioners, they may realize that this is something bigger; an alternative way of resolving environmental disputes or even an alternative way of regulating habitats. They may also come to realize that a problem they encountered in pursuing these new approaches—for example, who should be invited to participate in the process—arises with some frequency and in a variety of forms. If that is the case, then those practitioners have a lot to learn by analyzing their own response to the problem and those of other practitioners. There is a lot to learn, that is, from seeing all their actions as relevant to a larger, more general issue, and not merely an idiosyncratic adjustment they happened to make in a particular case in the process of settling it.

Although productive and useful, this kind of reflection on an

individual's practice, and on how that practice jibes with the work of others in the same public interest field, is very unlikely to happen spontaneously. Because there is likely to be only one public interest operation in a particular field in any given locale, the existing opportunities for these kinds of conversations are very limited. And professional conferences understandably tend to focus on particular kinds of cases, legal issues, and procedures rather than overall trends and shifts in practice. It seems to me that educational institutions, particularly law schools that pride themselves on training highly reflective practitioners, should take on the role of providing forums for discovering innovative trends, linking up innovators, and assisting them in thinking through legal and procedural issues their innovations raise.

Hosting these kinds of interactions in our law schools would, I think, be a good supplement to the process suggested by Professor Balos and others whereby legal scholars make themselves available to facilitate the achievement of more specific and targeted goals that public interest advocates self-consciously set for themselves in ongoing cases. Doing so also connects with the proposal in my talk to think about practitioners as themselves a subject of research, in addition to thinking about their particular cases and legal issues they face as the subject of public-interest-focused legal research and writing. There is no better way to evaluate whether conclusions we're reaching about trends in public interest practice and in public problem-solving are valid or reasonable than to ask practitioners whether they accurately reflect what they do and see. Nor is this an entirely academic endeavor. These kinds of discussions often generate projects through which law scholars and students can provide invaluable assistance to practitioners who may not have the time or breadth of perspective needed to take a step their work warrants. The groups of folks I have been working with at Columbia and elsewhere have been asked, for example, to suggest remedial plans that might be ordered in school-reform litigation and to develop methods that school district administrators can use to identify the schools at which reform plans they have devised have been most fully implemented and that researchers can simultaneously use to determine whether real implementation of those reforms is associated with improvements in student outcomes.

## BALOS

I'm just going to add one other thing to that. While I agree there is great value in interaction, there is another practical suggestion that we could consider. For example, I belong to a listserv that is focused on issues of domestic violence. The members of the listserv are academics, practitioners, and advocates. Arising out of that listserv, people share issues that they're working on or particular problems if they're writing a brief and they want help. A whole range of topics—including public policy issues, specific litigation issues, and legislative issues—are discussed on this listserv. This listserv happens to be based on a particular topic area, but it is a collaboration of academics, practitioners, and advocates. We could think about trying to form that kind of more formalized communication among those of us who are interested in collaborating on equal justice issues. It might not be focused on a particular substantive area, but more broadly, to facilitate that kind of exchange, even if we aren't actually in the same room together.

## JANUS

Let me take a first cut at defining legal scholarship for equal justice. To me, the most important part of the question is how legal scholarship can be *forequal* justice rather than (merely) *about* it: in other words, how can scholarship bridge the gap between theory and practice? How can it be both useful and, at the same time, have the critical or theoretical stance that makes it “scholarship” rather than a “practice guide”? It seems to me I've seen equal justice scholarship bridge this gap in at least three different ways. First, sometimes an article comes to stand for a brand new idea, a new and different way of thinking about some aspect of the law. It is not the details of the work, but the new paradigm it states, that makes the difference. One of the things that I aim to do in what I write, at least sometimes, is to change the question that's being asked.

A second way that I think this scholarship can be of practical help is by being a compilation of the legal and other authorities.

Thirdly, I view one of my goals in my scholarship as translating, or being a bridge between social science and law. A fair amount of the work I've done has been interdisciplinary. I've worked with psychologists on a number of different projects, and some of it has

involved original empirical research, but a lot of it has really involved taking the social science and behavioral science and putting it into a legal framework. A key thing that equal justice scholarship can do is bridge or frame the communication between two disciplines.

Finally, I don't think we can ignore a topic that has been mentioned when we're talking about what legal scholarship for equal justice means, and that is how it gets communicated, and in what format. This is one of the topics that we focused on in our course last semester. We read some exemplars of scholarship that have made a difference, such as Professor Liebman's work. And together with the students we asked: "What was it about how this work is communicated that has allowed it to make a difference?" We might ask ourselves: "How often do law schools treat the scholarship of their faculty as if it mattered in the real world?" In a medical school, if somebody publishes an article reporting on some research that he or she has done, it's often an occasion for a press release. The research is treated as if it really does advance knowledge in some way that matters. Yet, in law schools we almost never do that. We almost never treat our work as if it has some impact in the real world, and maybe we should start thinking about much more creative and aggressive ways of disseminating the knowledge that we have generated.

#### BALOS

I would echo what Eric said, certainly about the communication issue. I don't have a definition, but I do think that the notation of objectivity is problematic. One of the things that critical theory tells us to consider is that when something seems the most natural is when you should question it the most; then to apply that critical analysis to whatever your particular topic is and to ask the question: "Who benefits from that?" So, for me, it's an application of a particular kind of analysis to a problem. To echo what Eric said: Ask a different question. To repeat what I said: Shift the perspective. My own view is that scholarship, in fact, does involve values, and we ought to recognize that and, in pursuit of scholarship, ask the question about who's benefiting and who isn't.

#### MAGEE

I just thought, Tim Thompson, that I would ask you a couple

of questions. How can legal scholarship be most useful to practitioners? You mentioned a couple of your interactions with legal scholars, but how else can you imagine legal scholarship being of use to you in practice?

THOMPSON

Well, two things come to mind. One is, maybe some system could be established where we could more easily identify people who are doing work in areas relevant to our work. As it is now, my experience has mostly been with people I already knew about—a word-of-mouth kind of thing—but perhaps there is a more organized way to do that. The other thing that occurs to me is, as practitioners, we're all very good at going out and finding law review articles on a specific subject when we have a case in front of us, but we don't usually take the time to survey the articles that are written regularly which might give us some new ideas or some new approaches for future cases. If there were some sort of digest of law review articles as they are published that are relevant to legal services work, I think that could prove very useful.

LIEBMAN

I was appointed by our law school dean to head a committee to think about ways of expanding the curriculum to be more sympathetic to the kinds of intensive, practice- and practitioner-focused research seminars I've mentioned where students can work with faculty on their own actual research. At Columbia now, there's a project looking at the employment discrimination area. In addition, I have a project called New Forms of Public Interest Advocacy that I teach with my colleague Chuck Sabel. There's another one that's focused on criminal justice. This doesn't have to be equal rights focused. There is also an intensive course at Columbia called "Deals" that involves students in designing creative cutting-edge business deals.

The committee decided that the worst thing we could do was issue a report or make a proposal calling for more such projects, because it might make other members of the faculty nervous. Some might see these kinds of courses as a threat to traditional large-class law school courses, or worry that these courses would increase their load of students as other members of the faculty devote more of their teaching hours to teaching only relatively

small numbers of students in more intensive ways. Others might worry about losing the good students to such intensive classes. Therefore, the institutional aspects of this are difficult. We decided to let things develop slowly and organically, to let such courses develop according to faculty and student interest, then let pressures to build from students in their role as consumers of what's interesting.

I think this same point can be generalized to law schools as a whole. There is a lot more competition now among law schools for students. Law schools are finding it necessary to promote themselves and work harder to recruit the best students. The kind of intensive courses I've been discussing, focused on what's innovative in the actual practice of law and what's effective in improving the lives of poor and minority citizens, are attractive to many prospective law students. It seems to me, therefore, that a far-sighted law school, or consortium of them, such as the four here in Minnesota, might institute a broader program of such courses as a way of attracting students. Many law schools, mine included, probably aren't ready to take a concerted step in that direction. But the kind of work we're discussing is good stuff. It's interesting stuff. It responds in a conscientious way to pressures from the bar to make law school more relevant to actual practice. And so I expect more of this sort of thing will crop up on a spot basis in particular law schools and that a few institutions might try to pursue it more systematically.

MAGEE

Are you finding, Professor Balos and Professor Janus, what Professor Liebman spoke about and that it is that the newer faculty members, the younger faculty members, are very interested in tying their work to something practical?

BALOS

I would say that it's hard to generalize. I think some younger faculty are and some aren't. I do think that there is a renewed interest in empirical work, and I think that's a very positive sign. There also are other sorts of initiatives bubbling in society about these kinds of issues. For example, the University of Minnesota now is very concerned about what it's calling civic engagement. That has to do with the university's relationship to the community,

and—not only with the law school, but the university in general—how do we facilitate engagement and exchange between the academic institution and the community that it exists in? So, I think there are additional institutional tensions and pressures that are moving the university at least, and the law school as part of that, in that direction.

#### JANUS

Well, I think that a place like William Mitchell comes at this from a different direction. Our history has always been connecting with the profession, and if anything, we've valued that, but then I think there is a pressure that we need to cope with and calibrate about how do we fit into the national hierarchy, and there's no question about it that, at least up to this point, practitioner-oriented approaches to scholarship aren't the ones that are most prestigious or that move you up the *U.S. News & World Report* list. So, I think that we've got a struggle here to maintain our connection and our vision about connection to the profession while still moving to increase the quality and quantity of the scholarship. And, one thing I would like to mention is that an organization that I'm in, The Society for American Law Teachers, is (along with a lot of other people) very concerned about the pressures that the *U.S. News & World Report* list does exert on law schools, and how much power, in a sense, they have to shape who gets into law school and what law schools do. One thing we could think about is: does that have an adverse impact on scholarship of the sort that we're talking about, and if so, is there something that could be done about it?

#### MAGEE

Is that it, Professor Janus, that legal scholars might resist empirical work merely because it's not appreciated by the deans and maybe not recognized by *U.S. News & World Report*? Or is there a benefit to being outside of the numbers in our exploration? I will ask Tim to step in here because I'm wondering what it is really that practitioners are looking for. Are they looking for that survey, that doctrinal survey when they look at law review articles? Those of you who have looked at it, did you want a comprehensive statement of the law in the area? Are you looking for empirical research, and if you're looking for that, would you come to a legal scholar for that

or are you looking for a new conceptual framework, a new argument?

THOMPSON

Well, on that last topic, I'd say all of the above. We're looking for all those things, depending on the case or problem we're dealing with. One gray area is if it's objective, fact-based scholarship, when is it of a legal nature and when is it more of a social science nature? Some of the work that we have engaged academics to do has social science aspects, but it requires a kind of analytical ability that you associate with legal work. So, maybe other people have thoughts on where you draw the line there, on what is appropriate for law professors and what is appropriate for social science professors.

MAGEE

I think I see myself a little differently. I see myself as trying to amplify the voices of a movement of people. I don't particularly see it as a focus on practice. I often see myself as coming in at the point that practice is frustrated in addressing a concern. Such was my work with the St. Paul Police Department as we tried to work on solutions to race-based policing and racial profiling. I knew the law in the area was not going to address the problem. The Supreme Court had developed jurisprudence that permitted most of what we saw, so we had to achieve it in another way, and my goal was to talk about the limits of the law, but also be conscious of it as we tried to push beyond where the law was. That's where I often find my scholarship. Then, also, to legitimize the voices of people—why the law is resistant to their demands because sometimes people find it demoralizing that the law is not reacting in the way that they imagined and can step in and say, "There's a reason for that. Here's where the law has taken off into a different direction." I remember the piece I wrote called "The Myth of the Good Cop." I was arguing that embedded in the law is the myth of the good cop. So, if you're an African-American male who suffers under the presumption of guilt, you will always be on the defensive and really never be able to overcome that presumption of good that a cop has when he testifies against you. So, that way, I'm hoping to again speak the voices of people who are not practitioners but are being impacted by the law.