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Crafting a Scholarly Persona: A Panel Discussion

Ian Ayres

Panelist, William K. Townsend Professor of Law, Yale Law School

Paul H. Robinson

Panelist, Colin S. Diver Professor of Law, University of Pennsylvania Law School

Carol Sanger

Panelist, Barbara Aronstein Black Professor of Law, Columbia Law School

Kimberly Kessler Ferzan

Moderator, Professor of Law, Rutgers School of Law- Camden

Introduction

The following is a transcript from the Scholarship Section's panel at the Association of American Law Schools' annual conference, held in Washington, D.C., on January 5, 2007.¹ During this panel, three established scholars – Ian Ayres, Paul Robinson, and Carol Sanger – discussed their unique career decisions.

The three panelists have all achieved a substantial amount of success in their scholarly careers – no matter how one defines “success.” Professor Ayres is the William K. Townsend Professor at Yale Law School and a Professor at Yale's School of Management. He has published 8 books and over 100 articles on a wide range of topics. In the spring 2005, he published three books, Straightforward: How to Mobilize Heterosexual Support for Gay Rights (Princeton University Press 2005) (with Jennifer Gerarda Brown); Optional Law: The Structure of Legal Entitlements (University of Chicago Press 2005); and Insincere Promises: The Law of Misrepresented Intent (Yale University Press 2005) (with Gregory Klass), which won the 2006 Scribes book award "for the best work of legal scholarship published during the previous year." His two most

¹ The transcript has been edited, clarifying some discussions and omitting tangential comments, but the substance remains intact.

cited articles are *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 *Harvard Law Review* 817 (1991) and *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 *Yale Law Journal* 87 (1989) (with Robert Gertner). In 2006, he was elected to the American Academy of Arts and Sciences.

Professor Robinson, one of the world's leading scholars on criminal law, is the Colin S. Diver Professor of Law at the University of Pennsylvania Law School. He served as a federal prosecutor, as counsel for the U.S. Senate Subcommittee on Criminal Laws and Procedures, and as one of the original commissioners of the U.S. Sentencing Commission, where he was the lone dissenter to promulgation of what are the current federal sentencing guidelines. He has published scholarly articles in nearly every top law review, and among his dozen books are the standard lawyer's reference book on criminal law defenses, an internationally-known Oxford monograph on criminal law theory, a ground-breaking empirical study of the conflict between criminal law rules and lay intuitions of justice, a highly-regarded criminal law treatise, and a popular innovative case studies course book. His latest projects include a series of studies and articles with psychologists on the nature of human intuitions of justice and a commission by the UNDP [United Nations Development Programme] to draft a penal code for a small Islamic country.

Professor Sanger is the Barbara Aronstein Black Professor of Law at Columbia Law School. She teaches and writes in several fields, including Contracts, Family Law, and Feminist Jurisprudence. She earned her A.B. from Wellesley College and her J.D. from the University of Michigan. She received the Columbia University Presidential

Teaching Award in 2001. She has chaired the Association of American Law Schools' Sections on Family Law, Immigration Law, and Contracts. Professor Sanger co-edited Cases and Materials on Contracts (Foundation Press, 6th ed., 2001)(7th edition forthcoming 2008) with E. Allen Farnsworth and William Young, co-edited Gender and Rights (Ashgate/Dartmouth 2005) with Deborah Rhode, and edited Family Law Stories (Foundation Press, forthcoming 2007). She has published many book chapters and articles, including *Legislating in the Culture of Life* (in the *Columbia Law Review*), *Placing the Adoptive Self* (in *Nomos XLIV*), and *Separating from Children* (in the *Columbia Law Review*).

It is indisputable that all three of these scholars have reached the height of their profession. All three are chaired professors at top law schools. All three publish in the top journals and university presses. All three have the respect of their peers.

But despite their similar successes, these three scholars are quite different from one another. Their paths are quite different. Professor Ayres began at Northwestern; Professor Robinson at Rutgers School of Law- Camden; and Professor Sanger at Santa Clara.

All three have also forged different scholarly paths. Professor Ayres, both a lawyer and an economist, writes in a wide range of areas. He has authored articles on everything from discrimination in car sales to contract theory, from gay rights to gun control. There is hardly a field without an Ayres' footprint, and if some uncharted land still exists, he is bound to find it.

Professor Robinson, on the other hand, focuses squarely on criminal law, but he looks at it from every angle. Within this field, Robinson's work ranges from theoretical

analysis, to empirical studies of intuitions of justice, to a doctrinal treatise, to a casebook, to the practical drafting of criminal statutes. If there is a methodology left for Robinson to apply to the criminal law, he is bound to use it.

Professor Sanger's work focuses on relationships. She takes a social construct, puts it into historical perspective, critiques it through a feminist lens, and reveals how the law reinforces our presuppositions and how the law can change what we take for granted. If the law reinforces pernicious assumptions about our relationships, Professor Sanger is bound to expose them.

Because these three scholars have forged their own divergent paths to success, the discussion below offers a rare "behind the scenes" look at how they have become the successful scholars that they now are. It is hoped that the dialogue below will offer insight into their work and will inspire the work of others.

The Panel

Ferzan: Good morning, my name is Kim Ferzan. I'm from Rutgers School of Law in Camden. I'm your host today for the Section on Scholarship's program, "Crafting a Scholarly Persona," where I will ask three established scholars about their careers. Although these three people need no introduction, let me briefly introduce Professor Ian Ayres, who is the William K. Townsend Professor of Law at Yale Law School and a Professor at Yale's School of Management. Paul Robinson is the Colin S. Diver Professor at the University of Pennsylvania Law School. And Carol Sanger is the Barbara Aronstein Black Professor of Law at Columbia Law School.

Before beginning, I'd first like to first thank those folks from across the country who responded to my email requests and blog posts for suggested questions.

You will hear many of those questions today. Indeed, I received more suggestions than I actually have time to ask, but I thank you all for your contributions. And I especially want to thank our panelists for being willing to discuss their craft with us today.

So, Professor Ayres, what is it that you seek to achieve by writing?

Ayres: Well, I hope to influence policy makers. Just about everything I write has a legal reform aspect to it and a normative conclusion. Usually I fail.

(Audience laughs.)

Ferzan: Professor Robinson?

Robinson: Obviously, I'm interested in having that sort of influence, but to be honest, my motivation is much more personal. Usually what drives my research is a personal puzzle I see and trying to sort that puzzle out.

Ferzan: Professor Sanger?

Sanger: I think I have two things that I'm seeking to achieve. One is to reveal phenomenon that I think are out there and that are hard to see and so, that go unnoticed -- most of them involving aspects of women's lives. An article called "Girls and the Getaway," for example, is about the role of cars in rape cases.² And so it's that -- the thing that I think is obvious but unseen. And the other thing that I seek to achieve is good health because I write mostly out of anger and so I'm sure that each article reduces my bile level somewhat. And so there's that.

(Audience laughs.)

Ferzan: So when you say you write out of anger, Professor Sanger, what makes you angry and how does writing relieve that anger?

² Carol Sanger, *Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space*, 144 U. PA. L. REV. 705 (1995).

Sanger: Well, almost everything makes me angry these days.

(Audience laughs.)

I have a very wide span in recent years. I suppose it's the turn of an academic. I think it is part of our characters -- when we're upset we write about it. So, if I'm heartbroken I write about it. I don't write about heartbreak, but I find the thing, the emotional content of it. So since I write a lot about motherhood, which seems to me to be all around us and has good aspects and bad, it helps me. I think the idea is puzzling it out. To figure out the puzzle. To figure out why the thing is upsetting me is helpful. And it often takes a lot of work because you might have a hunch or an instinct about something. But we have to *prove* it. The nature of legal scholarship is such that you can't assert it; you have to prove it. And that's what takes the time.

Ferzan: Professor Ayres, to the extent that you talked about wanting to influence decision-makers, how much of that is your goal? And do you think -- I know you just mentioned that you think you largely fail -- but to what extent do you think you've been a success and how have you been a success?

Ayres: Well, not very much of a success, but there are a few small changes that I might have been able to help on, or hurt on. One, picking up on what Carol said, one has an interesting story. When I was young and teaching at Northwestern, I once badly dumped a significant other over the phone. And she was very upset at me and she demanded a face-to-face meeting -- which she heartily deserved. I was acting badly. I went to the meeting at the Tempo restaurant in Chicago and she stood me up. Which I was not mad at. I was trying to disassociate from the whole event. And I took out a piece of paper and after an hour and a half, I had basically written down a little model on

stock lock-ups. And that kind of ties the answer. I believe that article has influenced Delaware laws. But for this break-up that lock-up article might not have been written.

(Audience laughs.)

Robinson: Maybe we should arrange some more?

(Audience laughs.)

Ferzan: Professor Robinson, how much do you think that you influence actual decision-makers?

Robinson: Well, when any of us do theory we don't expect much right away. There is a serious delay. It's really diffused.

I do do a fair amount of direct criminal code drafting – direct attempts to influence real world policy.

I think we have to be fairly realistic about influence -- not only in our scholarship but when we get involved in the real world, thinking we're really on the front line changing things. The truth is it is a messy world out there. It is illogical. And unlike the world of our logical, smart colleagues that we see in the halls and at workshops, out there good arguments don't always win. I actually devote a fair amount of time overseas and in the United States talking with legislatures and helping to draft criminal codes. And the only thing that really keeps me sane is having very low expectations. My assumption going in is that we're going to do all this work and either nothing is going to happen or it will get so screwed up in the legislature that I won't necessarily want to be associated with it.

Has that turned me off from doing real world work? No, I still do it. Maybe hope springs eternal that you can make some little bit of difference.

Ferzan: So to some aspiring criminal law scholar, what would you say to them? Should they still aspire to go into this job or should they go do something else with their lives?

Robinson: I would suggest that even if they are serious scholars they ought to get involved in real world work. The single most educational experience I had as a younger scholar was when I was part of a negotiating session on the Hill. We were negotiating provisions of the Federal Criminal Code Reform Bill – S1437 – which ultimately passed the Senate. It didn't pass the House. But sitting in mark-up and hearing people argue about the provisions and seeing that, while good arguments didn't always carry the day, they often had some influence. And seeing how you really could -- if you thought about the interests of the people sitting at that table -- you really could construct ideas that, in the end, could get agreement, and could make things better.

I thought that was, intellectually, a wonderfully challenging exercise. So, even though that is an example of the frustrations -- the bill never got enacted, for decades we've still been struggling with federal criminal code reform – but it still was an enterprise worth doing for a young scholar.

Ferzan: Professor Sanger, how do you see success in influencing decision-makers?

Sanger: Well, I want to just go back to one thing you said. I don't think scholars should not go into teaching because they don't want to have years of work that come to nothing. They should just stay off the curriculum committee.

(Audience laughs.)

But as for my own work, I'm interested not in influencing judges so much as influencing legislators or people who vote for legislators.

So there is a sort of arrogance about all our work. We think we know something smart and if people would listen, the world would be so much different. And it's a necessary arrogance because if you don't think that, I guess we'd be doing a different job instead of this one. But, it's how you bring it about. And, so there are different methods. For example, Ian writes a lot of op-ed pieces.

I just wrote a very long and careful article that took me two years to puzzle through on infant safe haven legislation and its relation to the politics of abortion called *Legislating in the Culture of Life*.³ It's 57,000 words. That's too many. And then I got a call from the editor of a magazine called *Conscience*. It's the magazine of Catholics for Choice. And the editor and said, could I please make a 1500 word version of this? Which I did. And I figure that's a good audience.

I mean I believe in a kind of trickle down. You write; somebody reads it; somebody uses it. I believe you throw your work out there and it gets picked up. And that's what you hope for.

And there are ways of writing that make that easier to happen. So, for my money, I often write about hard subjects and try to do so in a disarming way. So, for example, I write about infanticide. You have to lead the reader in to think about that because that's a brutal subject. But there are ways of writing that are welcoming or that try to have the reader not be fearful to read what you're going to do. So that's just another technique.

One thing I never do is go on television because I always get cut! The other thing about television is that they know what they want you to say. So you really

³ Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753 (2006).

don't contribute. There are seven words that they want to come out of your mouth and they piece it together. So it's really not very influential at all.

Robinson: I totally agree with what Carol said. But you remember the O.J. Simpson trial? I was doing a series of comments each night for SportsCenter, a show I had never heard of before. Most of my neighbors knew that I was a "teacher or something." But the first night that I came back from being on SportsCenter, they were standing in the street outside my house to see me. So you really know what counts in this world for celebrity.

Ferzan: Professor Ayres, you write in a baffling number of areas. How do you create and manage your research agenda?

Ayres: I have a half-baked ideas list and I've had that since I was a second year law student. And I'm constantly subjecting my friends and family to hearing these ideas. I work on them by bouncing them off other people.

And, in some ways, I'm searching for the sound bite. I'm a fan of sound bites. It's one of the ways that I know I'm ready to write something is that I now can say something concrete in a few words about it. Because it's sometimes amorphous; I get a tingle that some idea is there. I'm constantly rearranging the order of what's the best idea I've got in the hopper. Moving them up and down. Some of them stay in there for awhile. Peter Siegelman had a room with me once and I'd be saying to him, "Now is this an op-ed piece?" "Is this enough to be an essay?" "Is it?" "How do you weigh this thing?" So, it's managing the half-baked idea and when it comes to writing, I pick the top of the pile and try to write it up.

Ferzan: Professor Robinson?

Robinson: My approach is really quite different. I'll write in a subject area that I'm interested in because it is a bit of a puzzle to me. Then I'll move on to a different subject area because it presents the next logical puzzle, not because it will produce something terribly important or useful to other people but rather because it's interesting to me. So, in some sense, I'm quite lazy. I'm just doing what I want to do.

I'm sure this answer will be surprising to some because it's not uncommon for me to write twelve or fifteen articles in an area and then to publish the book based on them, where they all seem to fit together nicely to make a coherent whole. For example, in criminal law theory, I have this book called *Structure and Function in Criminal Law* which integrates into a single whole a dozen articles or more with very little overlap.⁴ But the very coherent whole is not out of good planning. It is just an accidental by-product of the methodology. That is, I'll have a puzzle in one area and I'll sort that out for myself and move on to the next. The pieces put together only because I'm working through the entire area one puzzle at a time.

Ferzan: Professor Sanger?

Sanger: Well, the question was how do you manage your research agenda? I want to say that I began by managing it very badly. Which is, I thought the more things you said yes to, the more productive you'd be. The more conferences, the more symposia, the more essays. I said yes to everything. And, so for those who are still thinking that's a good idea, I want to suggest that it's exhausting and you never finish anything and you're anxious all the time. And I think it's a less good idea. So now I turn things down. And I try to sort out what are the most important things I want to be working on and choose selectively from those.

⁴ PAUL H. ROBINSON, *STRUCTURE AND FUNCTION IN CRIMINAL LAW* (1997).

[To Ayres] You mentioned the word “half-baked.” You said “half-baked” and I know some schools have what are called half-baked workshops where I think the terror of being a junior scholar, I hope, is reduced somewhat by the availability of more informal workshops where you can give papers that aren’t supposed to count for anything except developing your ideas. So we at Columbia have a 10/10 – ten pages or ten minutes -- that’s all you can present. And it’s for those early stages. I think those are very helpful. I try to do one of those, turn it into a conference paper, give a lunch talk, build it up. I also think it’s very helpful to have an organization around which you yearly anchor something and, so for me, it’s the Law and Society Association. I try to give a paper there every year and I know that by the next year that ought to be in print. So I use it as a marker sort of to keep advancing certain things.

And I just want to say that I would kill to be on SportsCenter. I think that’s a terrific audience.

(Audience laughs.)

It’s exactly the kind of non-law person that you could get to think a little bit differently about something.

Ferzan: [To Sanger] Which article of yours would you want to talk about on SportsCenter?

(Audience laughs.)

Sanger: Ian says cars. Yes, cars would probably get me the furthest on SportsCenter.⁵

⁵ See Sanger, *supra* note 2.

Ferzan: How do you generate efficiencies in your work? How do you take one idea and build it into one paper that leads to the next? And similarly how do you generate efficiencies between teaching and scholarship? Professor Ayres?

Ayres: Well, I don't have that many articles that link one to another. I sometimes just republish the same idea over and over, but they don't really build. I either go off on something else or not.

With regard to teaching, it's just paying attention to what the students say. In the early years, I used to co-author with students where I would give them ideas. But as I get older and I'm slowing down, I just take student ideas and I will have their ideas be the center of a piece that we work on together. Or they'll say something in a paper or in class and so that will sometimes set me off. If I get a good tingle from it, away we go.

Ferzan: [To Ayres] Well, let me follow up with you on two things you've said. First of all, you mentioned republishing the same idea over and over. And certainly you see value in doing that. When you say that, I take it these are for different audiences and the like. Can you explain that?

Ayres: Sure. So, by far and away, the idea that I've republished the most times—embarrassingly in seven or eight different venues, different audiences—Jennifer Brown and I had this idea that we should move from non-discrimination policies with regard to gay rights to non-discrimination promises.⁶ And Jennifer and I created a certification

⁶ E.g., IAN AYRES AND JENNIFER GERARDA BROWN, STRAIGHTFORWARD: HOW TO MOBILIZE HETEROSEXUAL SUPPORT FOR GAY RIGHTS (2005); Ian Ayres and Jennifer Gerarda Brown, *Mark(et)ing Nondiscrimination: Privatizing ENDA with a Certification Mark*, 104 MICH. L. REV. 1639 (2006); Ian Ayres and Jennifer Gerarda Brown, *Privatizing Gay Rights with Non-discrimination Promises Instead of Policies*, THE ECONOMIST'S VOICE, Vol. 2: No. 2, <http://www.bepress.com/ev/vol2/iss2/art11> (2005); Ian Ayres and Jennifer Gerarda Brown, *Straight, Not Narrow: How Straight Couples Can Support Gay Marriage*, NEW HAVEN ADVOCATE (June 16, 2005).

mark. Any employer in the country can go to fairemploymentmark.org and if they promise not to discriminate on the basis of sexual orientation, we will give them a license to use this certification mark. This is an idea that we've gone out and tried to flog this idea to many different audiences to try to get employers to actually do this. So Jennifer and I did a piece in Michigan on it, and we did a piece in Corporate Counsel Digest, and we did a piece in the BE Press Economist Voice. I did a piece for the Yale Alumni magazine on it. Oh, new thoughts appear to you as you work on this but this is not so much of a building as what other audience can I try to jam this onto.

Ferzan: And you mentioned also that your teaching leads to co-authorship opportunities. You coauthor a significant number of articles. How do these collaborations come about?

Ayres: Sure. And let me just say, one other thing on the last question first, consulting has given rise to ideas as well. I'm an expert witness as an economist. I've gotten five or six nice pieces out of that. You know, you're working on a real world problem, and besides getting paid well, you sometimes learn something.

On the co-authorships, there are lots of different models. I've worked it different ways where I do most of the writing, or almost none of the writing. I've done it places where most of the ideas come from me, or virtually none of the ideas come from me. But as far as the source of this, I sometimes coauthor with people that know about a special field that I don't know about. Jennifer Brown knows a lot more about gay rights

than I do. Barry Adler and I wrote a bankruptcy piece.⁷ He brings the bankruptcy detail to it. Kathy Baker and I write on reckless sex.⁸ So there's the expertise coauthor.

The last model I'd mention is just friends and family. Coauthoring, writing -- to me, this is the window to my soul. And if you're around me, I'm always talking about it. It's very natural. It's a way of cementing friends and family, and, indeed, in about two or three weeks, I'm going to coauthor a peer review journal article with my nine-year-old and my twelve-year-old. I set out, and we spent a lot of time learning statistics, and now Henry and Anna and I are going to be in the *Journal of the American Statistical Association Chance*.⁹ And this is the cat's pajamas. This is the best acceptance I've had in years.

Ferzan: That's wonderful.

Professor Robinson, can you speak to the efficiencies in your work and how your teaching relates to your scholarship?

Robinson: Well, regarding the efficiencies in developing one article into a number of different articles, I tend not to do that. It is a fine thing to do but, remember, when the motivation comes from your solving the puzzle, as is my case, once you've solved the puzzle you need to move on. You've lost your motivation.

As to teaching, teaching is an interesting activity for me but I'm not a natural teacher. I have difficulty trying to put myself in the place of young law students and remembering what they know and what they don't. So it is an activity that I have to

⁷ Barry E. Adler & Ian Ayres, *A Dilution Mechanism for Valuing Corporations in Bankruptcy*, 111 YALE L.J. 83 (2001).

⁸ Ian Ayres & Katharine Baker, *A Separate Crime of Reckless Sex*, 72 U. CHI. L. REV. 599 (2005).

⁹ Ian Ayres, Antonia Ayres-Brown & Henry Ayres-Brown, *Seeing Significance: Is the 95% Probability Range Easier to Perceive?*, CHANCE (forthcoming 2007).

work at quite a bit. I take pride in my teaching, and I think we all have important obligations there. But I have to really work at it. And what that has meant for me is that I spend a lot of time thinking -- and actually writing -- about pedagogy itself. I've done a number of course books.¹⁰ I've really spent time *thinking* about how to do it because, as I say, I don't think I have a natural talent or temperament or personality for it.

As far as affecting my scholarship, I think there is real value in teaching. First, students say the craziest things. The fact that they don't know much sometimes is a real advantage. They come out with ideas that anybody who knows the subject would think were idiotic or bizarre. And sometimes there's a tremendous amount of insight in their crazy ideas. Every time I teach introductory criminal law I come away with some insight that I didn't have.

Also I think teaching provides a certain discipline, especially in the introductory course. It forces you through every subject, even those subjects that you think are boring. And that's pretty useful, not only in making sure that you're tuned up on everything, but also in giving you a chance to rethink that boring area again and maybe you'll stumble on something interesting.

This is similar to my view of doing conference papers. I used to not write for conferences because I had my own research agenda and that's what I was interested in. Conferences were a waste of time -- they usually wanted me to talk about something boring or that I'd probably already written about. But it has happened pretty regularly

¹⁰ PAUL H. ROBINSON, *CRIMINAL LAW: CASE STUDIES & CONTROVERSIES* (2d ed. forthcoming Aspen 2008) (1st ed. 2005); PAUL H. ROBINSON, *CRIMINAL LAW CASE STUDIES* (3d ed. West Group 2007) (2d ed. 2002; 1st ed. 2000); PAUL H. ROBINSON, *FUNDAMENTALS OF CRIMINAL LAW* (2d ed. Little, Brown & Co. 1995) (1st ed. 1988).

that somebody has invited me to do a conference paper, and either in the process of doing the paper or going to the conference, something interesting came up. So, I go back and forth on this. But for younger scholars, I think doing conferences papers is useful even on subjects that you may not have an interest in.

Ferzan: Professor Sanger?

Sanger: On the relation of teaching and scholarship. I teach in two areas, contracts and family law. Here's an example. Last year, I read an op-ed piece by a woman who is married to a prisoner. And I thought in family law, there's very little about prisoners' families in family law, very little. And I'm working up a section on it and I'll probably write something on it. But what helped me write on it was I came upon a sound bite which was "family disenfranchisement." So that helped me, and then I went to a conference and I wrote a little paper on that. So it's having a multiple benefit. I have an idea. It's going to improve my teaching. It's going to improve family law. I have the sound bite for when I want to go on the road with it. And I'm really interested in it. So that's how I generate efficiencies.

Ayres: Can I throw in one thing? Something that I think is true of Carol's work and is what I look for when trying to pick topics myself. If I have an idea that when I pitch it to somebody, they come back to me with their own anecdote. When I wrote on taxi cab tipping, everybody responds with their own story of tipping the cab driver.¹¹ And to me, if you get that kind of a feedback from your audience where they want to tell their story in response to yours, it's a very good sign that you have a good topic.

¹¹ Ian Ayres, Frederick E. Vars, Nassar Zakariya, *Essay, To Insure Prejudice: Racial Disparities in Taxicab Tipping*, 114 YALE L.J. 1613 (2005).

Ferzan: One other thing scholars struggle with is the balance between research and writing. How much time to spend researching? How much time to spend writing? To switch things up, Professor Sanger do you want to start?

Sanger: My problem isn't the balance between research and writing. It's the problem of stopping writing. And recognizing that every sentence doesn't have to be absolutely perfect. I've really changed how I write now and sort of blast through a draft as best as I can even realizing that verb back on page seven wasn't quite right. And then, after completing a draft, I go back and fix it. I think that junior scholars in particular get stuck on perfection. But once you've given up perfection and only want something that's pretty good, that was a very big step for writing faster.

And giving yourself a tight deadline is another technique. I gave myself two months this summer to write a Law Stories chapter on Baby M.¹² And this is in contracts. So I gave myself one month to read and one month to write. And lo and behold, because I knew it couldn't be more than twenty-five pages, I did it. I loved it. I had fun. And I thought, "What have I been doing for the last twenty years?" This was very good product. And now I think the law reviews reducing the number of pages is a very good thing for all of us and for our readers.

Ferzan: And would you recommend that one month of reading and one month of writing balance to someone starting out?

Sanger: Well, I cheated a little bit. I know the Baby M case inside and out. During the one month of reading, I was trying to figure out why this market got started in

¹² Carol Sanger, *Developing Markets in Baby-Making: In the Matter of Baby M*, 29 HARVARD J. LAW & GENDER 2007; reprinted in CONTRACT LAW STORIES (Douglas Baird, ed., Foundation Press, 2007)

New Jersey in 1984. So I had a very specific topic. It wasn't about the case at all. It was about the background of the case. So no, I don't think a month is enough to do anything deeply thoughtful and original. Although others may. But I think that's why you have some ideas on the back burner of your brain all the time and they come forward slowly. So, no.

This is another question: what counts as productive? I know many people, including myself – it's good to say this publicly – if I write one, good solid piece a year I'm very happy. And maybe a shorter essay on something else. Other people write more. And all I can say is try not to marry them. My own view.

(Audience laughs.)

Robinson: My wife's view too.

Sanger: So, I think that what counts as productive is also another issue of how far you go. And another thing is that more of us are turning to books now. Maybe later, maybe when you're a more senior scholar you can turn to books. There's an audience that we usually leave in the dust – people who actually read books. And not law books. Ian, I was very encouraged when I went to your web site and saw all about jacket covers and thought: this can be done. I just haven't been thinking in that way and that's an audience I would like to reach. Smart people.

Ferzan: Professor Robinson, can you comment on the balance between research and writing?

Robinson: I think the rules are obviously different for junior and senior faculty. I think junior faculty really do have to spend a lot more time researching, and senior faculty already have a lot of what they need in their heads.

For senior faculty there is not so much research to be done, but turning it over in your mind enough to know what you want to say. That's still different from the writing. The most successful articles for me, the articles that I think are in the end the tightest, the best, the ones I'm most proud of, are articles that have been kicking around in my head for a long time. Sometimes not because I've made a conscious decision that I'm not ready to write but just because I've been juggling projects and it's been back there and I've been trying to get time to get it. But my brain has been cranking on it for months. And I'll finally get to sit down and write it. And it will just come straight out. I'll write it in two weeks. To me, usually that's a great sign that I've got exactly what I want to say -- it just comes gushing out.

It's hard to translate that into a lesson for younger scholars. I would just say work away at it and write when you think you're ready. I do think it is true that there is a tendency of younger scholars sometimes to wait too long to write. And I think that for some, that's because writing is hard. And doing that extra research and thinking about it that extra couple of weeks is just work avoidance. Sometimes it's not your tenure committee that's telling you, it's your good friend who sees the symptoms and says you really have to bite the bullet and do the hard work.

Ferzan: Professor Ayres?

Ayres: I try to write a thousand words a day and I fail miserably at that. But I'm incredibly insecure and I start becoming filled with self-loathing if a number of days builds up and I haven't gotten out my thousand words. The other side is I try to write these thousand words between 8:30 and 12 in the morning. And the good news is if I do get my thousand words done, I just feel great the rest of the day. And I find myself able

to turn off at noon, go have lunch and then do the rest of my life, including a little bit of thinking about what the next thousand words are going to be.

But I'm not always in that writing mode. I start off with the free form file where I don't try to impose much order on it. I'm just trying to get any ideas on the topic in. I'm searching for the sound bite. I then outline. And I try to impose order on it and say, "What's the syllogism that's going to convince the people that my thesis is true?" And I then, when I get into the thousand words a day, I write over my outline. And, if I've done my work, I've really done about two-thirds of the hard thinking before I even start writing because that outline gets more and more detailed.

And I leave some of the research to be done. There's lots of gaps in my first draft of research to be filled in. And I hire research assistants and I say explicitly part of your job is to sometimes literally stand over my shoulder and make me fill in these gaps that I don't like filling.

Ferzan: So, Professor Ayres, how often would you say you're in your "one thousand words a day" regime?

Ayres: It must not be massively often, you know, that would be over 300,000 words a year, and if a law review article is 25 or 30,000 words that would be ten law review articles a year. And I'm only at five articles. I think I'm at five or six or something like that.

Ferzan: So there's hope for the rest of us?

Ayres: Well, write two articles. You know, there are different views on how many articles one should write, but two is just phenomenal. You can do very well in the academy.

Ferzan: Let's talk a little bit about how other people perceive your work. So, to what extent have there been misreadings of your work? And are there patterns in the gaps between how people understand what you're saying and what you actually mean to be saying? Moreover, do you see that as a success or a failure that your work detaches from what you intended it to be? Professor Robinson?

Robinson: I think I'm probably idiosyncratic when it comes to misreadings. I just move on. I know this annoys a lot of people, and they certainly puzzle about it. And I don't recommend it to younger scholars. But I feel, for the most part, let all those folks debate things for themselves. I go on to other things. Part of that is a certain selfishness and part of it is just being practical.

On the selfish side, as I said before, what's driving me is solving the puzzle. I've solved it. If they want to argue about it, they can argue about it, and I'll come back to it later.

On the practical side, I know my own limitations. That period of time, right after I've been struggling with the puzzle and I've figured it out, that's not the best time for me to be open to other people's ideas. I do much better if I walk away from it and come back later when I have more distance from it. And can be more objective. That's just me. As Clint Eastwood says, a good man knows his limitations. Well, that's one of mine.

If you look at my record, that's the pattern. When I was a student I wrote an article to which George Fletcher wrote a response.¹³ It was fifteen years later that I

¹³ Paul H. Robinson, *A Theory of Justification: Societal Harm as a Prerequisite for Criminal Liability*, 23 U.C.L.A. L. REV. 266 (1975); George P. Fletcher, *The Right Deed for the Wrong Reason: A Reply to Mr. Robinson*, 23 U.C.L.A. L. REV. 293 (1975).

came back and explained why George was wrong, or mostly wrong.¹⁴ So it's not like it's off the table completely. But, I usually don't follow up and engage in debate.

But, as I said, I don't actually recommend that for most people. I think a better strategy, especially to get people to talk about your work, is to encourage and participate and push debate about your work.

Ferzan: So let's say that a young criminal law scholar disagrees with something that you've recently published, when would you recommend that somebody talk to you about your work? Should they talk to you when you publish something on SSRN before it's accepted? Should they send you an email? Post something on a blog? Put something in print? Or wait five or ten years until you're ready to revisit it?

(Audience laughs.)

Robinson: Well, there are always exceptions for people who are fun to talk to.

Well, we know that the five to ten year thing works. The rule for me is that if I actually see somebody face to face, I'm always ready for an interesting conversation. What I'm not good at is actually taking time out from my writing schedule. And I have the same [schedule as Ayres] -- I'm a morning person. Basically, 7 to 11 I'm just gone, out of touch. And taking time out from my own writing to devote to somebody else's misreading of an article, I just can't do it. I can't justify it. But if I run into somebody and they want to talk about the stuff, boy, I'm there. So I guess the tip is, let's have lunch.

Ferzan: What are you doing next Wednesday at noon?

(Audience laughs.)

¹⁴ Paul H. Robinson, *Competing Theories of Justification: Deeds vs. Reasons*, in A.T.H. SMITH & A. SIMESTER, EDS., *HARM AND CULPABILITY* 45-70 (1996).

Professor Sanger?

Sanger: One of the consequences of this panel for me is I'm going to change my schedule and stop lounging around in the morning reading the paper and crack down.

(Audience laughs.)

Well, the question was the misreading of one's work and I have two views on this. One is I don't know what a misreading is. Maybe this is a postmodern view but you write it, someone reads it. They understand it to mean something and then they get angry or they respond.

And I think in a way scholarship is like your children. You do the best with it as you can and when you send them out the door God knows what's going to happen. And what they're going to do, or how they're going to be understood. And you have to work hard before you send it out, but once you do you hope for the best and you take your lumps. But sometimes you don't want to be misread but you do want to be in the tumble. That's the point of writing. You want to stir things up.

But there's one area where I'm very conscious of not having written for fear of, not having been misread, but having been misused. And it's only this year that I've decided that I'm going to overcome this. I wanted to write a book on abortion for a long time. And it's an area that is so fraught by politics, so if I think abortion should be legal, there is a real risk in acknowledging that something dies in an abortion. You don't have to call it a murder but something dies. It's very hard to say that because you don't want to be sort of co-opted – “see, all along they knew it was murder.” So that's a kind of intentional misreading perhaps. I've decided that I now have it in my head well enough that I can write this thing and I'm willing to risk that misreading. It's not a

misreading perhaps but a use for a political purpose and I feel old enough and brave enough to do it.

Ferzan: If you could start your scholarly career over again, what would you do differently and why? Professor Sanger?

Sanger: Well, I would seek out more people more quickly. I wouldn't think that I was on display and being judged all the time and I would bring bad ideas to people. So some of the things we've talked about before. I began my scholarly life working in much too much isolation. I was very lucky that people from other schools pulled me into their intellectual community and networks. I was thinking there is a Stephen Sondheim song - - it can make a person crazy -- and that's what I think working in isolation does. And it's very important not to do that. So that's one thing, get out there more.

The other thing I would do is I would have a little more fun. I'm in a reading group now with other "senior feminists" --what we're called at Columbia. One's from history. One's from anthropology. It is all different disciplines. And I noticed how much they love their work. I mean they love the medieval thing they're studying. And I've been thinking a lot about this in the last year. I think that we, law professors, have power to change things and that puts a different stake on the nature of the work we do. And if you're involved in legal reform, that can't ever be entirely fun or pleasurable. But I'm looking for a topic, probably a historical one that I'll just love working on instead of thinking it's important for a reason of reform or changing how people think in a political way.

Ferzan: Now when you talk about getting out there, certainly there are going to be those scholars who are afraid. "What if my half-baked ideas aren't any good? I want to

do all my research and do all my thinking before I start talking to people.” What would you say to them having written in isolation for awhile?

Sanger: Well, I’d say buck up and just do it. And there are places that are safe. So if you go to, in my field, Law and Society, that’s an enormously safe place to display your work. If there are enough untenured people on your faculty, they should be encouraged to form a group where they can present to each other. That’s safe. There’s surely one or two generous people on a faculty who will be safe to go to so it doesn’t come back later to haunt you because you’ve given a half-baked presentation. So it’s bravery; it’s generosity by more senior people. It’s being astute about who you go to I suppose. And you can look for people outside your institution. I think that’s often a good way to go about it.

Ferzan: Professor Robinson, what would you do differently?

Robinson: I think that’s a great question. There probably are some little things. I can’t really think of any big things. But I would say this. I would not want to have known then what I know now. Because there are some enormous personal sacrifices that come with really devoting yourself to scholarship as much as some of us do. I think it’s better to be ignorant of that at the start. There is a certain protective value that comes from the ignorance, because you might otherwise have made some different decisions.

Ferzan: Professor Ayres?

Ayres: Two things. I would have deleted Minesweeper from my computer a lot earlier. (Audience laughs.) There was a summer at University of Illinois when I was visiting that I’ve just completely – it’s so embarrassing – just a complete summer of Minesweeper.

(Audience laughs.)

And, secondly, I would accept a lot fewer solicited offers to write. Carol said something like this. When I was young, I would just accept anything. I did a piece on the Seventh Amendment to the Constitution. I did a response to a piece that included a nine-page sentence. I would do anything back then. So, I think that if you just threw away all of the solicited writing I've done in my life, the world would be no worse.

Ferzan: Professor Sanger?

Sanger: I thought of one other thing. You asked what we would've done differently then. But I've also started to do something differently now, which is, we get in the bad habit of thinking the piece isn't good enough. "I've got to wait. I've got to do more research." Then, someone said to me about six months ago, "Give yourself tenure." So I said, "What?" They said, "You have tenure." And the message wasn't "be lazy." It was "be confident." And that's something I've taken to heart. I shouldn't be timid about my work or about the progress of it. So there is this shift. You may have tenure but you still act as though everybody is looking for your mistakes. So that's the more senior version of how to keep reforming how you work.

Ferzan: Well we couldn't say we modeled this after Inside the Actor's Studio without doing some of the famous Bernard Pivot questionnaire that James Lipton uses at the end. So, Professor Sanger, what is your favorite word?

Sanger: My favorite swear word?

Ferzan: If you'd like. Tell us your favorite swear word.

Sanger: My favorite swear word, which is what I'll say is cholera, which is a Ukranian word. It's sort of a way you put a pox on someone. And so it's a lovely way to do it without them knowing.

Ferzan: Professor Robinson, what's your favorite sound?

Robinson: My favorite sound and my least favorite sound are actually the same. I programmed my cell phone ring to bring nature into my busy life -- it's the sound of birds. And it's beautiful. [Plays the sounds of birds chirping from his cellphone.] It's really wonderful at the office. The problem is, I was driving to work the first day after I did this, and I have a convertible and it was spring time. The birds started chirping for real and I kept reaching for my cell phone. So my attempt bring nature into my office backfired. I now just have the office in nature.

Ferzan: Professor Ayres, what turns you on creatively, spiritually or emotionally?

Ayres: Intellectual perversity.

Ferzan: Could you explain?

Ayres: I love flipping things around. Matter of fact, I think a surprising amount of good scholarship comes from people flipping things around. "Ask not what your country can do for you. Ask what you can do for your country." Lots of academic ideas. Lots of product ideas. I love perverse flips.

Ferzan: Professor Sanger, what profession, other than your own, would you most like to attempt?

Sanger: Historian. Editor. And movie star.

Ferzan: Professor Robinson, what profession other than your own, would you least like to attempt?

Robinson: Well, probably anything other than what I do. I have the best job in the world. I can't imagine doing anything else.

As for what I'd most like to do, my answer depends on whether you get the talent to go along with the job you want. If this is a game where you can make yourself into a new person, I guess I'd be a composer. But if I'm stuck with my current talents, yeah, what I do is the only thing I would or could do.

Ferzan: Professor Ayres, if heaven exists, what would you like to hear God say when you arrive at the pearly gates?

Ayres: I forgive you.

(Audience laughs.)

Ferzan: Let's take some questions from the audience. Yes? (Inaudible audience question)

So, the question is -- could you define what good scholarship is?

Ayres: One thing is that it has to be more than just interesting. Interesting should not be a black box where you know it when you see it. To me, it has to be consequential. And it should have -- I do see a place for aesthetics and aesthetic writing -- but in the legal academy dominantly I think good scholarship should have a normative thesis at some point, or ultimately be tied to developing a normative thesis in future work.

Robinson: Internally it has to be consistent and well reasoned, and it has to be consequential. It has to contribute something important.

Sanger: I would just add that if it helps to think of what bad scholarship is I have been reading a lot of tenure reviews. And I'll be reading an article on something in family law, say -- I'm making this up -- something on teenage curfews. Suddenly in the

middle of an interesting empirical study of teenage curfews, there is a section on Hegel. And I think, “why is Hegel...what is...I don’t know anything about Hegel. Why is Hegel here?” Or Locke, or whoever it is. And I usually write to the committee and say I assume this person did this because they have to show they know something theoretical. And that they have to reach to a higher point. And so that is, for my money, bad scholarship but often there is a pressure to do it. And I think we ought to be more careful about that and focused. One doesn’t have to show you’re a renaissance person in every piece. It’s very detrimental to people’s scholarship.

(inaudible audience question)

Ferzan: So the question was: How do you balance teaching with scholarship, particularly when you have a high teaching load?

Ayres: Well, I’ve sadly been blessed with a low teaching load throughout my career. When I was untenured, I, frankly, would always try to build up capital of good feelings with my students. And sometimes when a deadline was bearing down on me, I would use it up, some bit of it. And I would sometimes come in and frankly apologize that I hadn’t been able to put in quite the number of hours that I wanted to in preparing for class. So I was also trying to be transparent when I was cutting back on some of my prep.

Robinson: We’re probably not the people to answer that question because we haven’t had that. I know it’s a challenge. One answer may be to try to get something educational out of your teaching, some of the things I talked about earlier. Other, more practical solutions, may be to try to control the scheduling. If you tend to write more in the

morning, get your classes scheduled in the afternoon. I don't think there is an easy answer.

Sanger: I was in that trench for a long time. And it is a terribly difficult problem of how you take responsibility for your teaching especially if the 12 units, if that's what you're talking about, translates into four courses and for the first several years are different preparations. And so, rather than build goodwill with students, building goodwill with Deans. Now with the teaching market such that people come into teaching now with at least one published piece, the whole thing has escalated. And I think Deans or faculties are more aware of the tremendous pressure to publish. I run a program at Columbia for our graduates who are interested in teaching. And when they get offers they want to know what they can negotiate. Salary? And I say no, they're treating you fairly with salary almost always. What you try to negotiate is your course package so that you're writing in areas that you're teaching. Then, at least you're thinking about the thing that you want to be writing about. And I think appointments committees should be sensitive to this and encourage the administration to be aware of how hard it is for junior scholars –to do everything possible to make that easier. Even if it sometimes means teaching the same course twice. There are small techniques for doing it.

But you're exactly right. It's a very big problem. And I suddenly noticed when I got more prolific. It was when I had more time and was on top of my subjects better. And you had fewer of them. And especially with the seminar, when you can organize – the seminar in many schools is a luxury – but you can organize a seminar around the very thing you're working at. And I'm aware of how extraordinarily lucky one is to be able to do.

Robinson: Let me mention one other idea. Teaching that extra course may not be a burden on your scholarly life because of the number of hours, but one of the reasons it's so disruptive is it cuts out big chunks of time that you need for writing. And maybe one alternative is to spend the school year, when you're teaching, doing all those things in preparation for writing that you can do in little pieces, like the research, trying to outline your ideas, trying to work through your arguments. And then set yourself an ambitious research agenda for holiday break and the summer, so that things start off fast when you get the big blocks of time you need to write.

Sanger: Just to say one more thing. Some of us have families and, that's another little dent on one's scholarship. Most law women I know, all their children are born in the spring or the summer. Or one tries. But I think that that is something all of us ought to be thinking about – the scholarship-family divide -- which might be bigger than the scholarship-research divide. And thinking where the pressures are on faculty at different points in their life.

Ferzan: Yes? (inaudible audience question). Tips on working with research assistants.

Sanger: I often hire several research assistants to do the same assignment because you get back very uneven results. And someone always has a crisis. I don't always tell them that's what I'm doing at the outset. But that's one that I've found very useful if you can afford to do that because it's like a little discussion group. That's just one quick one.

Robinson: I use research assistants quite a bit and it actually takes a bit of experience to figure out in a half-hour or hour interview whether they're going to pan out or not. They themselves don't even know whether this kind of work is going to be work that they

like or not. So my basic approach is to give them assignments early on that will let me find out what they can and can't do and how quickly they will move along. And sometimes it's just a wonderful, wonderful experience. It's like having a coauthor. It's like having a colleague to talk things through with. It's just wonderful. But sometimes it's more work than it is worth and you have to cut your losses. I think the trick is to be able to spot early on who to hire and what kind of assignments to give and how much to rely on them.

Ayres: I recommend having contact with them once every seven or ten days. If you give them too big an assignment, come back in three months, that's a higher risk than if you have some check-in. And I also try to find out what they're good at. Sometimes I have them write memos – short memos usually not more than ten pages, often a five page memo on a particular issue. Sometimes I have them fill specific gaps in an article. I always have them line edit my stuff. If you can find a good line editor, keep them happy. That's a very valued trait for me. And then, I try to also mix up the menial with the less menial work a bit. I often will have a hair-brained idea – go find out. Oh, I just emailed a research assistant – go find out who came up with the idea at Movieco of having childcare at Movieco theaters. And I view that as a little bit of sugar to go with some of the drudgery that I foist upon them.

Sanger: One thing about finding a coauthor. I think there is the other approach which is I often don't want students spending their time perfecting their sentences. So I say what I'm really interested in is the data that you find. So you can staple a card to it or highlight what you think is the most important part. But I want the original source and

not their interpretation of it. So often I don't have them write a memo at all. I want to use their time to my advantage.

Robinson: I just have a minor point. When you find somebody who is good, or has the potential to be good, it really doesn't take much to make it a wonderful experience for them, which will redound to your benefit. Involve them more in the article. Have them feel like it's a challenge for them. For a lot of these students, they have a lot of creative juices and a lot of energy which you can tap without a lot of effort. It really doesn't take too much for you to involve them. So I would say, when you find somebody you like, invest in them.

(Inaudible audience question)

Ferzan: Perhaps we can even broaden that. What are your views on blogging, attending conferences, writing op-eds, doing things other than the more traditional scholarship? How do you see the budget of your time?

Sanger: I don't blog and I'd like to hear why you blog [to Ayres].

Ayres: I blog because there are some ideas....oh, so I have failed op-eds. That's one reason I blog. After six different newspapers say no, at least some people get to see it. And secondly, there are even ideas that aren't op-ed things. I'll have an email or a dispute with my father-in-law and I will just write that up as a blog thing. I'll just take out his name. It is also a way for me to procrastinate though. If I'm not hitting my thousand words and I'm starting to feel disappointed, at least I can get out two or three hundred words, or sometimes five hundred words on a blog. And it's been professionally valuable for me. Through the blog, Instapundit picked up the Reckless Sex article and when Instapundit takes it, it's gone. And some other idea, the New York Times Year in

Ideas called me because they saw it in Balkinization where I blog. So those two hits by themselves were extremely valuable. Most of my blog nobody comments on. I don't get anything. But I find it a valuable issue.

The other thing you asked to expand on is op-eds. Those are just what Carol said. Those are often therapy to me when I'm annoyed by something. And I really recommend paying attention to what bugs you, especially as you're walking around. There are a couple of single toilet bathrooms down the hall from me -- each one has a sex designation to it. And that has bugged me as being a violation of Title VII and I've finally cured myself or worked out the therapy by writing about it.

Robinson: I would say that these are three very different things, so my reaction is different for each. The reason to do the op-ed pieces is just to have an influence. And for me that translates into don't bother doing it unless you're going to do it for the *New York Times*, *Wall Street Journal*, *Washington Post*, maybe *LA Times*. But if it's a regional paper, I don't think it's worth the time that could be spent on your more scholarly writing. The only reason to do it is just to have the influence.

The conferences are a different matter. It's a smaller audience but it can be educational for you. Sometimes it is a greater investment in time, although writing a good op-ed piece is a real talent and can sometimes take a long time.

Blogs....when the world changes I guess I'll start blogging. But to me it's in the Minesweeper category. It's a small audience because it's only other bloggers, unless the piece takes off. I just don't find it useful. It's more people arguing rather than thinking things through carefully. I can get more out of my research assistants and my colleagues than I can from blogs.

Sanger: I want to say something about op-eds. I think it's worth publishing an op-ed in any newspaper you can. There's a newspaper on Long Island called *Newsday* that has a very big distributorship. It also has...you can get the syndicates. *San Jose Mercury News*, when I lived out there. I think that it's a very good audience. It brings you attention and you never know what leads to what and who's reading it. Very few people get into the *New York Times*. It can be very frustrating. The other thing is if you know an issue is coming up, and you call the op-ed editor, there are ways to make it happen. And you say "The Supreme Court is deciding this case in three months. Here is my take on it. I have a piece. If you put this in your bin, (whatever they call it), your file cabinet, then it's ready to go." Don't you wonder how the person has written this perfectly wonderful article on the miraculous day the thing happened? Well they wrote it several months earlier and then tinkered with the end. And you can do that too. You just have to develop a network within the local newspaper.

Ferzan: Yes? (inaudible audience question) Advice on overcoming blocks and imperfections?

Sanger: You just have to not hold yourself to this high standard of perfection. You know how when you think you have a terrible class and you say that was the worst class I've ever had? And then in the elevator a student says that was such a great class. And so I think that we have to be a little more forgiving of ourselves and think we have the talent. Perfectionism is a big problem. One thing is as you get older you get less perfect in every sort of way. And so you just get used to it. But probably one's writing gets better and easier. Where does perfectionism get you except stopping your work? So I think that we're all used to being A students and what we would count as a B+ is

probably very very good in the real world...in the world we travel in. So that's the best I can say. More self forgiveness.

Robinson: I don't have that problem, so I can't answer. I always have the next idea, or the next couple of ideas, pushing the current paper out the door.

Ayres: There's a great novelist called Kent Haruff and he writes about the plains states. And after I've read two or three, everything he's written, maybe four novels, then the *New York Times* had this profile on him where he said he writes by going down into a coal room in the basement. And he writes on a manual typewriter and he blindfolds himself. Because it's a way he overcomes his perfectionism because he can't literally see what he has typed. When he gets a whole page he sometimes misses a few lines because the paper falls out and he keeps typing. I've never gone that far but I do sometimes blow through hard parts of the article that aren't writing themselves and just tell the story; you've got to get through. Sometimes put a corridor around it and come back to it later. But anyway, no magic words for you.

Sanger: Ian, you said that you try to write a thousand words a day. So, Hemingway said he tried to write the number of words that were his good fighting weight which turned out to be 160. So sometimes I just say I'll take the Hemingway approach and then once you get 160 you can go a little bit further and you're still ahead of the goal you set. So there are ways of doing it.

Ferzan: Yes? (inaudible audience question) So the question was the use of the words "right" and "wrong," -- do they refer to the actual finding of truth or to the potency of one's argument?

Sanger: It's a puzzling question. I'm trying to think of a meeting where somebody said, "This work is absolutely wrong." I think the point is we try never to get to that stage. Another way to come at that is to talk to people ahead of time so they can tell you it's wrong fast. Whatever the wrong is.

Ferzan: On this question, do you see yourselves as finding truth? Is it that there is a correct answer out there that you have found, where if someone else has a different answer, perhaps it can be interesting and a good article but it is, at the end of day, incorrect or wrong? Or are right and wrong just about quality of argument?

Ayres: Well, it depends on the piece. Sometimes definitely yes, trying to find truth. Sometimes it's truth conditional on the assumptions of an algebraic model and either you've solved correctly for X or you haven't. Whether that's interesting in the real world depends on your assumptions. When I crunch statistical data sets for quantitative articles, I'm trying to find *a* truth within the data. It's not universal truth but it's even trying to be a contribution to our knowledge about the way the world is. So, yeah, I'm trying to find truth. I'm not always sure about it. There's more tentative and speculative ideas. But, yes, we're all in the truth business.

Sanger: I think of my work as trying to reveal things. I don't know if revelation is truth. But just to go back to this cars piece,¹⁵ I got very interested in cases where women were raped because they'd gotten into a car with a man. And so I got interested in the gendered conceptions of space. So I wrote this piece where it turned out that the car, in the early days of the car, had been considered like a boudoir. It was considered like a homey space so if you got into a car over time you were getting into a bedroom. And I'm crunching it now to almost nonsensical. But it's truthful. It's a piece of history. It's not

¹⁵ See Sanger, *supra* note 2.

wrong. People might agree with it and say there's another issue you're missing. But I think it contributes. Revelation is the word I would add in addition to truth. Have you gotten someone to see something differently than they did? And they may. To me that is a satisfactory goal.

Robinson: To me it depends on the article.

Ferzan: Yes? (inaudible audience question). So the question was people's perspectives on law school editing. And a further question is to what extent should scholars aspire to place in their articles these top law reviews as opposed to peer review journals and the like? What should determine placement? At least in criminal law there has been a movement toward more peer review journals. Is that the way that we're going? Or are we going to continue to deal with second and third year editors and what should we do about that? And, Professor Sanger, I know you've written a piece about editing, so let's begin with you.

Sanger: Talk about getting angry. I wrote a piece called *Editing* in Georgetown Law Journal because I just lost it.¹⁶ I wasted two whole months learning everything there was about editing because of one of these experiences. And I remember for a couple of years Georgetown Law Journal used to staple my piece as a handout when they accepted an article. They would include my article to show how they didn't do those bad things. You know the world is never better off because of a parenthetical. You might take a look at it because you can have vicarious venting through that.

Robinson: I actually haven't had these sort of problems and I've published in most top law journals. I think it may be a function of that particular board. There are different approaches taken by different boards, even different boards at the same journal in

¹⁶ Carol Sanger, *Editing*, 82 GEO. L.J. 513 (1993)

different years. So it's very hard to generalize. But I haven't had that much of a problem. I do think that you sometimes have to have a discussion with the editors about what their proper role is.

But certainly for young scholars, I wouldn't go in assuming that it's going to be a problem. It really might not be. Most of the board members I know are sensitive to the issue. And, in fact, I've had articles accepted and in the initial conversation they volunteer, "Well, we just want to tell you up front that we're not going to fool with the language a lot." I love the phrase, "we want to keep your voice." I really love that. Don't assume that it's always going to be a problem.

There is this other issue, of peer review versus student journal and, you tend to have fewer problems with peer review. A lot of people would prefer a peer review system. And there are good reasons to. But it's usually because of the selection criteria difference rather than the editing difference.

On the selection issue, would the world be better off if we had article selections made only by peers as opposed to students? I think that's a complicated question. I think there are some virtues to having a bunch of very smart law students who don't have a dog in the fight making a judgment about what gets published. They aren't part of the consensus of common wisdom that has built up in a field. And I personally have benefited from that fact. Especially when I was a young scholar, I published articles that seemed pretty weird to my colleagues. But I made the case and they seemed just fine to the student editors – and now are accepted as the common wisdom. So I think the peer review versus the student selection criteria is a complicated issue.

Ayres: There is always a moment in academic dinner parties where they turn to saying how bankrupt law review editing is and I sign off on that and have many of my own horror stories. I've found on average though that the editing has made my writing better even though I'm not sure it was worth the cost, the pain to get it better. And I think with a lot of variance, I think the law review market has the right sign on the quality of their acceptance. With a lot of errors, but at least probabilistically, there is a positive correlation between the quality of the journal and the quality of the article that they are accepting. The thing that I'd throw in is that we normally compare law review to peer review writing but I'd like to put on the table university press as another corner. They get too much of a pass. And I'm not doing this from sour grapes. I've published in a lot of good university presses. Even though they send it out for review, it's the editor at the university press who has tremendous control over whether the article is going to be published. And by what right do these editors get to make these decisions? At least a second or third year law student has written a note and knows something about this. Many of these university press people....what have they done that gives them a right to judge whether we get our books published or not? And university presses are great compared to law reviews where they don't edit you heavily but the line editors are by and large very sparse. And they're sometimes just ignoramuses. I've published a piece in some fancy book with some fancy university press and had to have a little argument with them about whether "to free ride" should be changed to "ride freely."

(Audience laughs.)

Sanger: I think you actually have more power than you think with law review editors. You just say this is how I want it and you don't have to pussy foot around. I just

learned that lesson. And I'm an old lady. What was I so scared about? So, I just said, "That's how I want it." And they said, "Okay." The other thing, Ian, at the top law reviews, what percentage of the acceptances are reserved for their own faculty? 50 or 60%?

Ayres: No, I actually did a study on, a quantitative study on citation rights and it's closer to a third of the articles at Yale, Harvard and Stanford that are internal.

Sanger: I was thinking of a couple of other schools.

Ayres: Well I only have data on the top three. What I can tell you though, on citations, there is a great story here. Tenured authors do pretty well. People who publish in the top three journals in their first three years of teaching – they get tons of citations. What really hurts is the internal articles by people who are one or two years away from the tenure decision. Those are the tenure pieces that they feel they have to publish no matter what. And nobody cites to those. They tend to be crappy.

Robinson: I don't think any of these reviews have a policy where they're going to set aside a number of articles for in-house.

Sanger: Yes they do.

Robinson: Well, okay, I haven't heard that they do. I do think it is natural, of course, if some student has been in some professor's class and thinks well of her....

Sanger: Oh, okay.

Robinson: ...is certainly going to be more open to being persuaded that this is a great article of some importance.

Sanger: Well maybe a practice if not a policy.

Ferzan: Yes? (inaudible audience question) So the question was can you talk about idea generation, particularly early in your career and how you picked the topics you actually decided to write on from among those ideas?

Robinson: I think there are two parts to this. One is: What's the process by which you generate ideas? And the other is: What kind of research agenda do you set? One's the smaller picture, one's the bigger picture.

On the bigger picture, I've always just been guided by what's of interest to me. And I'd actually recommend that for young scholars. Not that they necessarily have some great sense of what the market wants but rather because if it's interesting and important to you that will provide the energy, concentration, and the devotion that will make it happen. You'll do a better job. I think you have to have something that you're excited about.

The actual process of generating that great idea is a different issue, a really interesting one. I wish somebody would do some social psych study on this. For a lot of us this is our business. We get invited to a conference and they expect some brilliant idea at the conference, and you've got three weeks to come up with a brilliant idea. You actually do learn a lot of tricks to doing it, and sometimes it's just exposing yourself to a lot of interesting, stimulating material. And part of it is the way you live your life. That is, I think to be successful you can't turn your mind off. You have to always have it ticking. Whether you're preparing for class or something else. I would say the majority of my "ah-ha" moments are in the shower, running, or lying in bed, either going to sleep or waking up. But I'm setting myself up to have those ideas by adopting a lifestyle where my brain is always twisting.

Sanger: I would just say that if you're a con law scholar, your first piece should not be on the Fourteenth Amendment – your theory of equal protection. Someone should guide you. I've seen those pieces. So there is some sort of sense of, not decorum, but your space in the universe at that moment. So I think starting small, starting focused and starting with what gets you upset. There is a reason you're upset about something. And that's what you want to focus on.

Ayres: Sometimes I play this necessities child game where I – and I did this when I was just starting to teach – I'd force myself to read all the articles in the top law reviews. And I'd give myself a half-hour to come up with a response to them. And I found that to be broadening. Another thing that is an embarrassing self-plug is I wrote a book on how to be creative with Barry Nalebuff called *Why Not?*¹⁷ And this is a book that literally was in bookstores next to *Who Moved My Cheese?* This is the zenith of my career. But it includes four tools on how to be creative, and even though this is mostly a business book, a lot of my ideas have come from an application of applying these tools. Things like -- take an existing solution and force yourself to flip it around, and you can often generate some very cool ideas. There is a chapter on probably thirty or forty legal ideas that grow out of using these business rules of creativity.

Ferzan: Yes? (inaudible audience question) So the question was advice for clinicians -- if you aspire to reach broader audiences outside of clinical faculty, how is it best that you will achieve change? Getting your ideas out there?

Robinson: What comes to mind is really two sorts of scholarship. Obviously, there is scholarship about clinical practice, clinical pedagogy. That's fairly obvious. Of course,

¹⁷ BARRY NALEBUFF & IAN AYRES, *WHY NOT? HOW TO USE EVERYDAY INGENUITY TO SOLVE PROBLEMS BIG AND SMALL* (2003).

your audience there is clinicians so that's a little limiting. The other thing that I've seen and almost done, which I think you probably already know about, is this coauthoring business. There are a lot of non-clinical scholars whose projects would benefit from having somebody with real world experience. Certainly in criminal justice issues you need to know a lot of the details about exactly how things work down at the courthouse, which you probably don't know. I spent a year as a federal prosecutor and learned enough to realize that litigation was a world unto itself. Being a good advocate was a science and an art. I now know enough to know how much I didn't know.

So there are certainly those opportunities. But it's funny, we haven't developed a tradition where scholars take advantage of clinicians. I'm not quite sure why. Maybe clinicians could help that out.

Sanger: In the paper I mentioned that I'm starting on prisoners and their families, all the scholarship – more than half of the scholarship I've found, and there is not much – is done by clinicians. So I find it hugely helpful, if the first part of your question was is it useful? Yes, because these are people who have worked with families and prisoners. And I was surprised to find this. But that's who was writing about this. Thanks.

Robinson: Let me say one other thing. Obviously a lot of us are doing a lot more empirical work. Clinicians have a special perspective that would help in designing this empirical work. Part of constructing a study that will have influence with decision-makers in the real world is to have a study that was designed knowing how the real world works. So oddly, it could be that the rise of empirical scholarship is something that can increase opportunities for clinicians.

Ayres: So I when I was nearing the end of my education, I was trying to figure out whether to be a law professor or an economics professor, and it was quite clearly the time that I spent in the legal clinics and the TRO project for battered women that made me want to go toward being a law professor. It goes back to the first question here, that most of our scholarship is not going to influence the world. I looked at economists and I said there are a small number of economists that have massive impact but most economists' scholarship have no impact on the world. Most law professors' scholarship has no impact on the world. But at least from a law professor's perch, I thought I could do some clinical work and have a small impact that way. So what I think is important is to continue to show to students that their actions can have small impact. For me, I got a guy out of Danbury two weeks early on a ten year sentence. Not a big impact but it was something. And that was more than I thought my economic writing would have.

But a second type of thing that I think has been happening more and more with clinics is writing the investigative report that sets out what's going on in human rights in this place. Just a white paper on a particular issue can sometimes have as much impact as impact litigation.

Ferzan: I want to thank all three panelists for contributing their time and energy and sharing a little part of themselves with us today.