STATEMENT OF

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BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON FAILURE TO RECOVER: THE STATE OF HOUSING MARKETS, MORTGAGE SERVICING PRACTICES, AND FORECLOSURES

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Mr. Chairman, Ranking Member Cummings, Mr. Towns and committee members, the Federal Housing Finance Agency (FHFA) appreciates this opportunity to participate in this field hearing on a pressing matter of local and national consequence—handling of defaulted and foreclosed properties. Brooklyn and New York City have not been immune to the impact of the housing crisis and the opportunity to meet here with you and with local government and civic leaders is important for FHFA.

I. Federal Housing Finance Agency

The Federal Housing Finance Agency oversees Fannie Mae, Freddie Mac and the Federal Home Loan Banks. These firms collectively have nearly $6 trillion in mortgage-related business. Fannie Mae and Freddie Mac have been placed into conservatorships and are run as going concerns for the limited purposes as set forth in federal statute.

The secondary market infrastructure they represent has been the topic of great discussion, but the focus today is on efforts to assist homeowners. That has been a more active area for Fannie Mae and Freddie Mac (the Enterprises) than the Federal Home Loan Banks given the role of the Enterprises as credit guarantors.

II. Enterprise Actions on Foreclosure Prevention

FHFA has been active in supporting loss mitigation efforts by the Enterprises as they operate in conservatorships with the support of taxpayers. Key to those efforts have been initiatives to avoid foreclosure and the loss of homes. Additionally, Enterprise efforts have focused increasingly on the inventory of foreclosed properties and the pressure these units place on markets. While Enterprise portfolios are performing better than those of large national banks, the Enterprises and FHFA remain vigilant in pursuing foreclosure prevention devices.

1. Loan Modifications. The Enterprises have been leading the effort on foreclosure prevention since they entered conservatorships. On a nationwide basis, Fannie Mae and Freddie Mac own or guarantee 60 percent of the mortgages outstanding, but they account for a much lower proportion of seriously delinquent loans, roughly 29 percent. While the Enterprises take a leadership role in foreclosure prevention, similar actions from the holders of the other 70 percent of seriously delinquent loans are crucial to a successful outcome.

The Enterprises account for about half of all Home Affordable Modification Program (HAMP) permanent modifications. Data from the Office of the Comptroller of the Currency (OCC) show that in the two years ending in the third quarter of 2011, modifications on Fannie Mae and Freddie Mac loans accounted for 40 percent of all loan modifications. Between HAMP modifications and their own proprietary loan modifications, Fannie Mae and Freddie Mac have completed over one million loan modifications since the fourth quarter of 2008. These modifications typically lowered borrower payments by substantial amounts and have yielded positive results for homeowners.

The performance of Enterprise modified loans has improved relative to Enterprise loan modifications before HAMP was fully implemented and is better relative to contemporaneous modifications of Federal Housing Administration (FHA) or Veterans' Administration (VA) loans and loans held by private investors. For Enterprise loans modified throughout 2010, fewer than 20 percent of the loans had missed two or more payments after nine months.

Some observers have cited declines in the number of loan modifications completed by Fannie Mae and Freddie Mac over the past year or so as evidence of a lack of support for foreclosure prevention. In fact, this trend is applicable to all investors in mortgages as illustrated by the OCC's report. The quarterly number of loan modifications peaked in the second and third quarters of 2010 for all investors in mortgages. A contributing factor to this trend may be that the initial backlog of eligible borrowers in 2009 has been addressed to some extent.

2. Moving Up the Time Frame for Assistance—Servicing Alignment Initiative. The Servicing Alignment Initiative (SAI), crafted by Fannie Mae and Freddie Mac under FHFA direction, established new borrower communication requirements for servicers to ensure that borrower outreach occurs at the earliest stage of delinquency, when foreclosure prevention measures are most effective. Furthermore, under SAI, Fannie Mae and Freddie Mac made clear that servicers are expected to evaluate borrowers for the full range of loss mitigation options simultaneously. This allows the borrower and servicer to pursue and lock in an alternative to foreclosure as quickly as possible. Servicers are obligated to collect information from borrowers and assess their eligibility for a modification well before a loan is referred for foreclosure, and foreclosure referrals may only occur after an independent review of the case to ensure that the borrower was, in fact, considered for an alternative to foreclosure.

To encourage loan modifications, the Enterprises offer substantial incentive payments to servicers to motivate them to meet the aggressive timelines for offering loan modifications, be they HAMP or Enterprise standard modifications. The payments cover costs for engaging in more borrower outreach, such as "door-knocking" and other face-to-face techniques. The SAI improvements represent a highly targeted approach, the goal of which is to refocus the servicer resources and attention on moving all borrowers into alternatives to foreclosure, quickly, efficiently and aggressively.

Furthermore, under the SAI, the Fannie Mae standard modification program was adopted by Freddie Mac, again, to ensure that borrowers had easy access to a simple and straightforward modification option. The Treasury Department acknowledged the benefit of this approach, creating a Tier 2 program under the HAMP that is modeled on the Enterprise program. Data reflects that more borrowers benefited from Enterprise modification programs than from HAMP, so the HAMP program change should likewise assist more households access a modification.

3. Home Affordable Refinance Program (HARP). Fannie Mae and Freddie Mac are at the forefront of refinance activity for current borrowers. Since April 1, 2009, the Enterprises have completed more than 10 million refinances, accounting for 63 percent of refinance originations over that period. With respect to underwater borrowers, Fannie Mae and Freddie Mac account for less than half of underwater borrowers compared to their 60 percent share of total mortgages serviced. However, Fannie Mae and Freddie Mac are the only institutions that currently operate a large-scale refinancing program for underwater borrowers. Since the inception of the Home Affordable Refinance Program (HARP), the Enterprises have completed over one million refinances. Further, since inception of HARP, Fannie Mae and Freddie Mac have completed 1.9 million streamlined refinances that expedited the refinance process for borrowers.

HARP was designed in 2009 to allow borrowers with loans backed by Fannie Mae and Freddie Mac, whose loan-to-value (LTV) ratios had increased as a result of declining home values, a refinancing option that did not require new or additional mortgage insurance coverage. In October 2011, FHFA announced a set of changes to HARP meant to enhance access to the program.

The original program allows lenders to qualify borrowers using a very streamlined underwriting process, relying on the borrower's payment history as an indication of capacity and willingness to repay the new loan. While this streamlined underwriting approach is available for most borrowers with loans backed by Fannie Mae and Freddie Mac, those with the highest LTV ratios stand to benefit most because they have fewer or no other refinance options available to them. HARP focuses on these borrowers with home LTV ratios greater than 80 percent.

To enhance further borrower participation in the program, FHFA and the Enterprises engaged with market participants to assess and streamline program operations. The research showed that a variety of operational and risk mitigation measures put in place by program participants to control for and limit a transfer of risk from one party to another could be revised. By working through the issues with a cross-section of market participants, FHFA and the Enterprises were able to create an environment where all parties were willing to accept some degree of risk and to streamline program requirements and operations in a way that was mutually beneficial.

In the end, the set of policy changes announced by FHFA in October of last year were fairly simple– a) extend the program sunset date to December 31, 2013, to provide lenders with more time to execute against the more liberal program terms; b) provide lenders with additional relief from representations and warranties to provide comfort that the Enterprises would not pursue repurchases for defects in original loan files; c) transmit property value data to lenders to use when originating the new loans, limiting the need for appraisals; d) reduce the loan-level pricing adjustments for all borrowers and eliminate them altogether for borrowers who choose mortgage terms of 20 years or less, a product option that reduces risk to the Enterprises and helps a borrower build equity faster; and e) remove the loan-to-value cap, previously set at 125 percent. The program modifications took effect on December 1, 2011 for those lenders who were able to update and implement quickly; for most in the industry, including the Enterprises, implementation will continue through the next few months.

In exchange for these program changes, lenders and mortgage insurance companies agreed to remove their own restrictions and overlays, to offer the program in a manner that is consistent with the parameters set out by the Enterprises. This agreement across the industry was unprecedented and the participation and support of the industry is most valuable. Already many of the largest lenders are seeing tremendous borrower interest and an increase in HARP volume in the upcoming reports is expected.

4. Real Estate Owned Initiative. At the other end of the foreclosure process is addressing real estate owned following foreclosures. A backlog of these properties can affect the housing market. The Enterprises are evaluating alternative methods for selling Real Estate Owned (REO) in ways that produce value for taxpayers and contribute to improved housing market stability. FHFA has announced the first transaction in its REO Initiative pilot program. This transaction includes approximately 2,500 properties, divided into eight sub-pools by geographic area. Information on the initial group of properties in each location is available on FHFA's web site.

Prequalified investors submit applications to demonstrate their financial capacity, relevant market experience, and specific plans for purchasing pools of foreclosed properties with the requirement to rent the purchased properties for a specified number of years. Future transactions will also be targeted to these types of markets, where the supply of homes for sale is greater than the demand from homebuyers and where demand for rental housing is strong. The pilot is not intended to be a national bulk sale program. This is a targeted effort focused on markets with a large number of foreclosed properties and where local market conditions suggest a possible benefit from this approach.

The number of properties available for sale by Fannie Mae and Freddie Mac represents only a fraction of the total supply that depresses home values in certain affected markets. The existing retail sales strategy at both companies works well for moving properties into the hands of new owner-occupants at close to market values. However, the REO Initiative tests to see if the broader set of market conditions can be assisted with pilot programs that could serve as models to be replicated by other market players and in differing market environments.

In addition to this pilot work, which focuses on moving groups of properties, both companies are looking for ways to enhance their existing retail sales strategies, re-examining the programs available for homebuyers and for small investors. The Enterprise retail execution has been very successful to date. FHFA's primary goal will continue to be selling properties first to homebuyers who will use them as their primary residences or non-profits that include homes in mission-oriented activities. FHFA also seeks to enhance the opportunity for smaller-scale investors to bid on properties and obtain financing, should initial efforts to market the properties to owner-occupants fail.

5. Actions in New York. The regulated entities have been active here in New York. Let me detail just a few of their efforts to support homeowners and to avoid foreclosures.

The Federal Home Loan Bank of New York works to support the financial institutions that serve Brooklyn communities. Brooklyn itself is home to seven bank members and 32 bank members operate 163 branches here in Brooklyn. The New York Bank has supported first time homebuyers through its First Home Club, which provides down payment and closing costs assistance through a matching program for those with incomes at below 80% of the median. Participants must complete homeownership counseling with local counselors. Over 133 new homeowners have come through the program and foreclosures on program loans are at a low .54%. The New York Home Loan Bank's Affordable Housing Program has been very active in Kings County with grants creating or preserving 2446 affordable homes and generating an estimated $521 million in total development funds for neighborhoods across Brooklyn. One of these grants in 2009 was to Concern for

Independent Living, a program that included conversion of a vacant lot into a 65 unit supportive housing residence.

Fannie Mae and Freddie Mac have been steady supporters of the New York City housing market and have made strong foreclosure prevention efforts. Since 2009, over 60,000 modifications have occurred in the metropolitan area, with several thousands of these here in Brooklyn. Short sales or deed in lieu transactions have been in the range of 5500 during this time period, again helping to avoid foreclosures. Freddie Mac refinanced 160,000 loans since 2009 with 9500 being made in Brooklyn. Fannie Mae refinanced 385,000 mortgages in the New York area, with 23,000 being in Brooklyn. Freddie Mac has been active in borrower outreach programs, participating from 2007 through March of this year in over sixty consumer events, two military events and fifteen industry events to educate and assist homeowners, military personnel and industry professionals on working with foreclosure avoidance programs. Fannie Mae's First Look Program provides potential owner-occupants and non-profits an exclusive 15 day period to bid and purchase foreclosed properties before they are made available to investors. The Enterprise has worked with Restoring Urban Homes in the five boroughs to maintain affordable housing for working class families.

As to multifamily housing, Fannie Mae has some $2.4 billion in funding for almost 57,000 units in Brooklyn with the vast majority, 85 percent, providing housing for borrowers at or below the 80 percent area median income; the 2012 transaction for 55 Pierrepont provided 189 units for families at or below 60 percent of area median income. Fannie Mae works with the NYC Department of Housing Preservation and Development to monitor the physical and financial health of multifamily units and to assure proper maintenance. Fannie Mae and Freddie Mac have participated in the Treasury Department's New Issue Bond Program that helps provide financing for new construction and housing preservation. In Brooklyn, the Enterprises helped provide financing for development by the NYC Housing Development Corporation, adding or preserving 1065 rental housing units since 2010. These include Gateway Elton Street and Navy Green RI, the Green Avenue Senior Citizens, CABS Housing and Kent Village.

III. Needed Review— State and Local Regulation of Defaults and Foreclosures

Clearly, states and localities face significant challenges from the housing crisis—homeowners losing their homes, erosion of the tax base and resulting curtailment of local services and, in many areas, blighted neighborhoods. The response to this has been a rash of local laws and ordinances that while intended to assist homeowners, result in unintended consequences and fail, in many instances, to achieve their goals. In short, many state laws that stretch out the period for legitimate foreclosures—after every effort is made to avoid foreclosure and to keep homeowners in their homes—result in no added benefit for the homeowner and produce harm to the housing finance system and to neighborhoods.

It would be very valuable for states and localities to pause in their passage of rules that may create impediments to smooth foreclosures and to review the balance between homeowner protections and the movement to efficient and professionally-undertaken foreclosures. Simply permitting homeowners to stay in their homes for five or six hundred days or longer while not paying their mortgages, costs neighborhoods, costs lenders and, ultimately, costs taxpayers and future borrowers.

1. State and Local Actions. Fundamentally, real estate law remains local in nature. There are exceptions where federal statutes exist, but much of the time state laws address defaults on mortgages and the foreclosure process.

Two concepts are central to foreclosures— mortgage or deed of trust and judicial or non-judicial state processes. In a deed of trust, the homeowner agrees to the right of a creditor to act against the property and this predominates in non-judicial states. With a mortgage, the creditor must proceed against the property and this usually requires a judicial process.

Laws vary in non-judicial states and in judicial states. In judicial foreclosure states, the variances may be larger as each judge (even judges in the same jurisdiction) may determine to interpret the terms of state law and of procedural rules differently.

In non-judicial foreclosure states, the actual time period from foreclosure referral to foreclosure sale (assuming the four month default period already has passed) averages nationally somewhere over 250 days; in judicial foreclosure states, the time period is closer to 350 days. After foreclosure, the servicer must sell the home, which can add another four to six months to the process if no eviction is required. In short, foreclosures may represent nearly five hundred days of losses and, in some states, the numbers are higher, dramatically higher— well over a 1000 days in some situations. During all of this time, a homeowner may provide no payments to the creditor and no payments of other housing-related obligations. In the case of the Enterprises, losses flow to the taxpayer.

Most servicers do not act on foreclosure until after a homeowner is 120 days in default. Under the Servicing Alignment Initiative mentioned earlier, servicers of Enterprise loans must demonstrate efforts to assist troubled borrowers in the first 120 days and, after that point, must have those efforts independently reviewed within the servicer's organization before a loan may be referred for foreclosure. Once the foreclosure process begins, the Enterprises require the servicer to continue to provide an opportunity to cure; this aligns with the preferred option of servicers and lenders to keep the homeowner in the home. In the end, there must be some likelihood that the homeowner can renew meeting their obligations, if necessary with a loan modification or to avoid foreclosure through a short sale or other avoidance of a foreclosure; if not, then foreclosure is appropriate.

Core state laws on foreclosure center on the process of moving title to a property from a homeowner to another party who has a claim on the property, such as a mortgagee or other lienholder, including a city. At the end of process, the home in almost all instances is sold. Throughout the process, homeowners are protected against improper actions by lienholders and, in some states, even have the right to redeem properties if they can pay off outstanding debts after foreclosure is completed.

State and local officials have been very active in adding to or amending laws related to foreclosures or servicing of mortgages. By one estimate, since 2009, state legislators have introduced over 550 bills in the servicing arena; other estimates run higher. For example, state legislatures have considered bills that would create new or higher foreclosure-filing fees, extend foreclosure timelines, require registration of mortgage assignments and mandate foreclosure mediation. Legislation in these areas can have detrimental consequences for the mortgage finance system, housing markets and for borrowers.

As a result of these changes, various types of delays and problems have emerged in the foreclosure process, including the following:

-- differences between judicial and non-judicial states, differences between judicial states, differences between non-judicial states and even differences within a state (as well as use of bankruptcy filings) raise problems for carrying out foreclosures;

-- states have added new procedures, such as mediation programs, in many cases without appropriate safeguards that mandate good faith participation and maintaining the overall foreclosure timeline should mediation fail; such mediation programs appear to ignore the accelerated efforts to provide homeowners relief provided by the Servicing Alignment Initiative;

-- states have additional types of priority liens that must be paid out of any foreclosure sale to a state or locality and thereby affect the return to the lender and investor; these additions are not prospective to mortgages made after enactment, but apply to existing mortgages, thereby altering the contract returns that investors and lenders relied upon at the time of their credit extension or investment;

-- state and localities have expanded their vacant property ordinances with new requirements and fees that encumber and delay foreclosures as well as add to the costs borne by investors and lenders and, in many cases, other taxpayers; and,

-- states have added bonding and other requirements and charges to undertake foreclosures that are far in excess of any benefits provided to the lender or investors.

In sum, both the substance of laws and the volume and layering of legal requirements contribute to the problems for orderly and less costly foreclosures.

Some examples are in order.

In the area of mediation, Washington, D.C. has provided a mediation program prior to foreclosure that can extend up to 132 days; it involves two 120 minute mediation sessions over that time frame. If a homeowner was considered for modifications or short sale, the value of the mediation, including its costs, is questionable as to any different outcome.

Similarly, New York requires settlement conferences for foreclosures to proceed. Because of frequent postponements, each with an average 45 day time frame, these conferences have added to delays that may approach six months or a year. In some instances, the conferences have proceeded over such a long time that information brought forward by borrowers is simply stale and the process must begin again. Where conferences have been completed, the backlog of cases and limited judicial resources are creating delays in obtaining Orders of Reference and Judgments of Foreclosure and Sale. In part, these problems reflect that many state-mandated requirements, such as mediation, may lack adequate processes, procedures and staffing. On February 14, 2012, the Chief Judge of the State of New York, the Honorable Jonathan Lippman, who supports settlement conferences, reported reforms were underway to reform the process with "no more excuses, no more delays" and that this would "improve the outcomes for lenders as well as borrowers."

In the area of new charges, Chicago, Illinois has an ordinance creating a $500 registration fee for vacant properties for which mortgagees do not have the right of ownership. Thus, the mortgagee could face legal liabilities to a returning homeowner and a registration fee that is in reality a tax.

In the area of bonding, Worchester, Massachusetts has an ordinance requiring a $5,000 bond be posted at the time of a foreclosure to assure property maintenance. If the property is maintained by the servicer, then the bond is returned, minus an administrative charge, anticipated to be a $500 fee, used to fund expenses for inspecting "other such buildings." Albany has an ordinance to require a minimum $10,000 bond for vacant buildings.

In the area of priority liens, the state of Nevada has adopted a law that increased the required advancement of unpaid homeowner association fees by a mortgagee from six months to nine months. Added to the law, however, was a priority lien for "fees." This means that legal fees to collect unpaid dues from a homeowner would be placed upon the mortgagee even if no dues were recovered and the legal fees exceeded unpaid dues.

In the area of extraneous charges, news reports described the Southern Nevada Water Authority as floating the idea of placing a lien on all foreclosed properties to collect an infrastructure fee for water hookups; a purchaser would have to pay the back fees to maintain water service.

In the area of timelines and delays, according to RealtyTrac's 2011 year-end foreclosure report, the average foreclosure process in New York has increased 37 percent from the third quarter of 2010 to the fourth quarter of 2011. The process took an average of 1019 days to complete, the longest of any state. This does not include the time a property is in default or the time required to sell a property that has concluded foreclosure; that can easily add another 240 days. These delays, as noted below, may not benefit homeowners, but do increase costs for all borrowers and for cities and neighbors having to deal with vacant or poorly maintained properties.

2. Few Benefits to Homeowners from Extended Foreclosures. As noted earlier, it is in the interest of all parties, including lenders and investors, that homeowners remain in their homes and meet their obligations. Likewise, state and local governments and neighbors benefit from foreclosure avoidance. However, foreclosure delays— after full efforts have been made to modify loans or move to a foreclosure alternative such as a short sale or deed in lieu (as permitted by law)— simply add to the cost for neighborhoods and communities and losses to lenders and investors. State directed delays in such circumstances harm the very groups that are intended as beneficiaries. The cost of credit will increase if creditors cannot act on their collateral. Again, once a bona fide and robust effort is made to avoid foreclosure, then foreclosure must be undertaken and undertaken as provided by law.

In a recent study by the National Bureau of Economic Research, authors from the Federal Reserve Bank of Atlanta, the Federal Reserve Bank of Boston and the Massachusetts Institute of Technology Department of Urban Studies reviewed various foreclosure regimes and the outcomes for homeowners. For the most part, the study found that the result of many of the laws aimed to protect borrowers from foreclosure was delay in, but not prevention of, foreclosures. The delays contribute to an overhang in the market without borrowers finding relief during these excessive delay periods. Many borrowers neither cure their deficiency nor gain relief, but simply remain in delinquency for greater lengths of time. A key finding of the study was that most parties able to cure or benefit from loss mitigation do so in the first 60 to 90 days of delinquency, which has been the focus of FHFA and the Enterprises. Laws and ordinances that add to the overhang of properties simply depress values for other homeowners and increases losses for creditors and investors.

Clearly, every effort should be made to help homeowners stay in their homes. State actions that increase costs, create new liabilities for mortgagees and delay foreclosures where most borrowers are unable to cure do not benefit the majority of homeowners. At the same time, should a borrower be treated improperly, the law has always provided protection for them for fraud or deceptive practices. Adding new charges before and during foreclosures, new procedures that fuel delays and otherwise encumber foreclosures in the long run will only increase costs for everyone.

IV. Summary

The Federal Housing Finance Agency has as its central mission the administration of the conservatorships of Fannie Mae and Freddie Mac in line with the statutory mandate of conserving assets and protecting taxpayers while assisting the housing market. To that end, the Agency has worked and continues to work to maintain a cost-effective environment at the Enterprises and to effectively oversee the operations of the Enterprises and the Federal Home Loan Banks. At the same time, the Agency continues to work with the Enterprises to deploy effective tools to assist homeowners and support the housing market.

There is value in states considering carefully actions taken to address the foreclosure crisis in light of new federal programs and in light of unintended consequences of some of these actions. FHFA stands ready to work with the states and localities on positive steps that maintain homeowner protections while not adversely affecting housing finance.

Alfred M. Pollard

Alfred Pollard serves as General Counsel at the Federal Housing Finance Agency (FHFA).

Supervising the Office of General Counsel includes work on regulatory matters affecting the housing government-sponsored enterprises— Fannie Mae and Freddie Mac and the twelve Federal Home Loan Banks, on in-house legal issues and on relationships with other government agencies, Congress and the Administration. Major issues for the legal department include federal regulation of the government sponsored enterprises in the areas of capital, corporate governance, internal controls, affordable housing and accounting as well as legal developments affecting mortgage markets and legal representation of FHFA in major litigation. Pollard has worked on a major interagency report on mortgage backed securities markets and currently serves on the President's Financial Fraud Enforcement Task Force and the Justice Department's Bank Fraud Working Group and Mortgage Fraud Working Group. He has had a leadership role in major investigations and enforcement actions and the 2008 conservatorships imposed on Fannie Mae and Freddie Mac.

Alfred Pollard has served as Senior Director, Legislative Affairs at the Financial Services Roundtable, a CEO-level trade group for the nation's largest financial institutions, and as Director of Government Relations for the Savings and Community Bankers of America. For twelve years, Pollard was Senior Vice President and Director of the Washington office for Security Pacific Corporation and, briefly, for Bank of America. Pollard worked on the staff of two United States Senators and served as general counsel for a national trade association.

Alfred Pollard holds a B.A. (with honors; Phi Beta Kappa) and a J.D. from the University of North Carolina— Chapel Hill, and a Ph.D in Foreign Affairs from the University of Virginia.

Pollard is lead author on a two-volume text on banking law, *Banking Law in the United States* **(Juris Publishing) and is author of numerous journal articles. He has testified before Congress on such diverse matters as environmental liability for secured parties, privacy, electronic signatures and mortgage fraud and appeared on national media.**

Pollard serves as Adjunct Faculty to the Georgetown University School of Business, focusing on business law, and served as Adjunct Faculty to the University of Virginia School of Law, where he taught a seminar on law in society.