Presumed Incompetent:

Important Lessons for University Leaders on the Professional Lives of Women Faculty of Color

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Academics have long known that the experiences of women faculty members of color differ in important respects from those of any other faculty members.1 Adding significantly to that body of knowledge, Presumed Incompetent: The Intersections of Race and Class for Women in Academia, in a collection of essays of different voices, offers important lessons for scholars, university administrators and leaders, faculty members, and, for that matter, students interested in the experiences of women of color in academia. People of good faith who want to “do the right thing” may find it difficult to read the unsettling stories and pleas for empathy, internalize the lessons as based on common occurrences rather than outlier experiences, and consider how to address and redress the issues. Still, we as a collective have the obligation and responsibility to think about what might be done to improve the day-to-day lives of the next generation of women faculty of color.

To that end, this review essay directs attention to one chapter of the volume, a chapter that offers invaluable commentary and perspective on the other chapters and provides many lessons for university leaders hoping to make a positive difference. This is terrain where one might expect two minority law school deans (and faculty members) to feel most comfortable. In addition, as people of color with real life experience with these issues, we hope to provide

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insights that help university leaders to better appreciate, grapple with, and attempt to effectively address the concerns of women faculty of color.

In Lessons from the Experiences of Women of Color Working in Academia, Professor Yolanda Flores Niemann ably distills valuable lessons from the preceding chapters of the book (p. 446). She cogently analyzes, synthesizes, and elaborates upon the lessons from the experiences of the diverse group of women faculty of color, who offer different perspectives on the challenges that they have encountered in academia. In this essay, we by necessity narrow our focus to just a few of Professor Flores Niemann’s many insights. In so doing, our hope is to highlight, and to expand upon, ten important lessons from her rich chapter. Building on these lessons, we offer relevant experiences both as minority faculty members ourselves and as law school deans.

The pursuit of equity for women of color faculty members obviously requires consideration of a wide array of academic personnel matters and issues of general university and faculty governance. This short essay, of course, cannot do justice to the analysis of those issues in their entirety. What we instead hope to do is to briefly explain how and why a university leader should be sensitive to the possible diversity consequences of just about every decision that he or she makes and should take preliminary steps toward establishing a process that can improve the experiences of faculty members of color.

As discussed in this review essay, devotion to a transparent process of decision-making has proven critically important to our success and happiness, as well as to that of many other influential university leaders. In addition, awareness, sensitivity, and commitment are important ingredients to any process aimed at ensuring that the academic workplace is fair, safe, and hospitable to all faculty members. The next steps for academic leaders include concrete and practical action on a variety of fronts.

We currently live in a time of considerable tumult in American law schools, with falling numbers of applications, a challenging legal job market, and rising tuitions. Many of the same trends are evident in higher education generally. The pressing concern in the minds of many university leaders involves financial viability, which unquestionably deserves attention. Concerns with the diversity of faculties and student bodies, as well as the experiences of minorities in academia, are secondary at best for most university leaders and not nearly as high a current priority as one would hope.

The crisis mentality about the economic trends at many universities makes it all the more important to take to heart the lessons of Presumed Incompetent. We collectively must strive to avoid allowing the turbulent times in modern academia to drown out the voices of women faculty members of color and

2. See generally BRIAN Z. TAMANHA, FAILING LAW SCHOOLS (2012) (contending that modern American law schools are founded on an unsustainable economic model).
ultimately distract us from the goals of diversity and social justice in academia.

I. “Students Carry Overt and Covert Racist Attitudes and Biases” (p. 465)

At most universities, student teaching evaluations are a critical component of the evaluation of teaching for tenure and promotion. Administrators must understand that the views expressed in the evaluations of women of color are likely to be tainted by the students’ views about these teachers, which are influenced by their race and gender. The students, as products of a racially stratified society, cannot help but to hold, to some degree, consciously or unconsciously, such attitudes and biases. It is that realization that leads Professor Flores Niemann to recommend that administrators “[k]eep in mind that students’ teaching evaluations may reflect their biases more than the competencies of their instructor” (p. 466) (emphasis added). In other words, teaching evaluations of women of color should not be considered in isolation from prevailing societal attitudes and biases about race and gender.

Blind reliance on student teaching evaluations will have disparate impacts on faculty of color and women. That understanding is particularly important for administrators in professional schools and the social sciences because “[w]hen women of color teach topics related to social justice—especially about racially and sexually underrepresented groups in the US—some, if not most, white students will meet their message with resentment” (p. 465). Being aware of this well-known (at least among minorities) phenomenon about teaching evaluations will enable academic leaders to more accurately and fairly assess the performance of women of color in the classroom.

Administrators wanting to avail themselves of the latest research about bias in student teaching evaluations of women of color will find it in Presumed Incompetent. Professor Sylvia R. Lazos’s chapter, Are Student Teaching Evaluations Holding Back Women and Minorities?, begins with the premise that teaching is the most scrutinized aspect of the professoriate’s work in modern higher education, especially in these days of increasing demands for university accountability and learning outcomes assessment (p. 164). Professor Lazos comprehensively examines the social science research on student evaluations and concludes that evaluations are by necessity subjective. In her view, although evaluations claim to assess student learning, “[e]valuations may not be measuring teaching effectiveness as much as they are capturing students’ subjective reactions at the moment that they are being polled, and their opinions reflect their feelings and thoughts about a range of things: whether they like the professor, [and] whether their expectations about the course were met . . . .” (p. 165) (emphasis added).

Professor Lazos’s analysis is based on the psychological and sociological “literature that establishes with robust empiricism that gender and race influence the way women and minorities are viewed in the classroom” (p. 166) (emphasis
added). She further contends that “[u]nconscious bias, stereotypes, and assumptions about role appropriateness are the subjective parameters that students unconsciously carry in their heads and use to shape the way they perceive their women and minority professors” (p. 166).  

Professor Lazos concludes the chapter by making specific recommendations to women and minority professors about how to negotiate the negative stereotypes that many students hold (p. 185). Moreover, she calls for academic leaders to institute systemic changes to account for the factors that negatively affect women and minority teachers in the classroom (p. 185). Professor Lazos urges institutions of higher learning to seek to ensure the existence of a level playing field for minority and women professors by analyzing the role of bias in student evaluations and by properly utilizing (and not unduly relying upon) student evaluations in teaching assessment (p. 185). In her estimation, administrators who fail to do so will ethically fail the professoriate, the students, and the institution (p. 185).

Peer evaluation by professors in our experience can be a most helpful supplement to student evaluations of teaching. University professors best know the difficulties and challenges of university teaching and therefore can judge teaching in ways that students simply are not able to do. Although not without its own potential for bias, peer evaluations can give faculty and universities important information when they are judging teaching effectiveness for academic promotion decisions.

II. “DO NOT TURN PEOPLE OF COLOR INTO MASCOTS” (P. 474)

It should be no surprise that women of color, like all minority faculty members and university administrators, desire—indeed, deserve—to be treated fairly and with dignity and respect. Even though it seems obvious that university leaders should strive to treat all faculty, students, and alumni of all races equally and respectfully, they unfortunately do not always do so. As Presumed Incompetent aptly documents in chapter after chapter, women of color in particular experience differential treatment by university leaders, faculty, and students of the campus community. In their eyes, they experience nothing less than a hostile working environment.

Universities understandably may take pride in the successful hiring of minority faculty members. That, of course, does not mean that minorities should effectively be put on pedestals for white colleagues and administrators to admire as something akin to trophies of an institution’s diversity success. Nor should

minority faculty be conferred with “special” employment obligations and responsibilities that are not generally imposed on non-minority faculty and administrators.

Nobody enjoys being put on display and asked to publicly perform their racial identity for institutional enjoyment. Women of color unquestionably should not be forced to “perform” their identity\(^5\) for others to observe, appreciate, and take pride in their (and their institution’s) racial sensibilities. Such a role is little different from that played by African Americans in the popular minstrel show of yesteryear.

Specifically, in introducing the section of the book on tenure and promotion, Deena J. González states that the essays convey “the message that [women of color] remain wary of tokenism” (p. 334) (emphasis added).\(^5\) Such an assertion seems to be a diplomatic understatement. “Tokenism” obviously lacks many favorable connotations. No faculty member wants to be made to feel like the token minority or woman on a faculty and a representative of his or her race and gender at the institution. To treat a minority faculty member as representing his or her race and gender—as if a faculty were the equivalent of Noah’s Ark—is nothing less than unfair, disrespectful, uncomfortable, and demeaning.

Unfortunately, women of color—and minorities generally—are often made to feel precisely like tokens on a faculty, in part because there are so few on many, indeed most, faculties.\(^7\) They often are directly or indirectly asked to provide the “minority” prospective on an issue at faculty meetings or impromptu gatherings, from lunchroom tables to everyday conversations with their non-minority colleagues. Minority faculty members often are asked directly or indirectly to educate whites about minority “culture,” students, faculty, problems, and concerns. They often find themselves handling whatever sensitive “minority problem” an institution might be facing, such as an issue with a minority student group or with minority critics of the school.\(^8\)

Moreover, the salience of race in academia for a minority faculty member can be all-encompassing, even touching on what many might characterize as “personal” interactions with colleagues. Our friend and colleague, the late Keith Aoki,\(^9\) once told of a well-meaning liberal white colleague who liked to have a

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9. See Anupam Chander & Madhavi Sunder, Foreword: Occupying Our Hearts, 45 U.C. DAVIS L. REV. 1585 (2012) (collecting papers celebrating the life and scholarship of
racial “sidekick,” something akin to the Lone Ranger’s Tonto and the Green Hornet’s Kato,10 at his side in the law school and at academic conferences. Professor Aoki felt that this colleague sought to have a minority faculty member be identified as something akin to his own personal “racial mascot.”11 Having a faculty sidekick of color ostensibly afforded the white colleague legitimacy among people of color and the appearance of racial “coolness” and liberality among his colleagues. It is hard to imagine why a minority faculty member would want to play this kind of demeaning role for the so-called liberal white colleague.

Irritated with being asked to be a racial mascot, Professor Aoki steadfastly resisted. He felt that he was being treated as a token—a kind of commodity of color—by the white colleague, even through something as mundane as seeking to spend time with him in public. Professor Aoki simply did not want to play the role of the liberal white professor’s racial sidekick. This seemingly ordinary experience, which we believe is more common than some initially might think, demonstrates starkly just how different the experiences of people of color can be in the academy from those of their white counterparts.

A person of great principle, Professor Aoki later left a chaired faculty position at a law school in the Pacific Northwest in protest over the treatment of a minority dean candidate. He believed that the candidate, a leading national scholar, had been “presumed incompetent”—and demeaned and disrespected—when it came to development, having been asked point blank by the university president if he thought he could raise money from conservative white alumni. Although the president eventually offered the candidate the deanship, he declined. Professor Aoki left the school to join the faculty where the dean candidate taught; that candidate later went on to serve with distinction (and considerable development success) as dean at that school.

In a most memorable story in Presumed Incompetent, Professor Angela Mae Kupenda tells of differential treatment in a grotesque personal interaction with a faculty colleague, which included the following comment (and implied threat) directed at her: “You must trust us more if you want to succeed here; there are no spooks behind the door!” (p. 20) (emphasis added). There is so much wrong with this statement that it is truly difficult to know where to begin. In an interaction with a woman of color, we see inexplicable bluntness and
insensitivity and the invocation of a word in speaking with an African American that taps into the sordid history of racism in American society. Rather than gentility, sensibility, and respect, we see a veiled threat about a woman of color’s academic future voiced in problematic, arguably racist terms by someone with real and perceived power over her.

III. “UNDERSTAND THE DIFFERENT TYPES OF EXPERIENCES AND NEEDS OF MEMBERS OF UNITED STATES UNDERREPRESENTED GROUPS AND FOREIGN-BORN NATIONALS ON YOUR CAMPUS” (P. 493)

It is of utmost importance that academic administrators become familiar with the different experiences and needs of women of color and underrepresented faculty members in higher education. In fact, this is the project for which Presumed Incompetent is ideally suited. A cursory review of the titles of the chapters provides evidence and alludes to the first-hand insights born from the experiences of these women as they brave often previously uncharted academic waters. Take, for example, Facing Down the Spooks (pp. 20-8), They Forgot Mammy Had a Brain (pp. 65-77), A Prostitute, a Servant, and a Customer-Service Representative: A Latina in Academia (pp. 40-9), and Free At Last! No More Performance Anxieties in the Academy ‘cause Stepin Fetchit Has Left the Building (pp. 408-20). These chapters make it crystal clear that the academic lives of women of color and underrepresented minorities differ dramatically from those of other faculty members. Thus, academic administrators who read this volume will have intimate access to the harsh daily realities that these scholars of color experience.

It is necessary here to offer a cautionary note about the differences in the experiences of foreign nationals in the American academic world from those of domestic minority faculty members. Foreign scholars, who may often be lumped together with women of color and underrepresented groups in the U.S. in the eyes of university administrators and faculty members, “typically have very different ideals, values, expectations, and needs” than what we refer to as domestic minorities (p. 493). Professor Flores Niemann indeed cautions that “[f]oreign nationals may not see themselves as people of color nor believe that others see them as people of color” (p. 493). Importantly, they often may come from the most privileged socioeconomic classes of their native countries.

The experiences of one of the co-authors of this review essay are instructive on this point. As a first year undergraduate student at an Ivy League school, recently arrived from Puerto Rico to live on the mainland United States for the first time, the young person heard this question posed by a classmate: “Are you black or white?” The response given, “Neither, I am Puerto Rican,” was factually correct. It, however, failed to fully appreciate what the question was getting at when it comes to the issues of race in the United States. The question really was “Are you a person of color?” Having just recently arrived from the island of Puerto Rico, where the racial distinctions are not as defined as
they are on the mainland because the majority of residents on the island identify based on their Puerto Rican ancestry, the recipient of the question did not fully appreciate the nuances and deeper meaning of the question. One can expect foreign scholars to have similar gaps in knowledge about racial and gender challenges, as well as the history of discrimination, in the United States. It is after living for many years in the United States, where race may often prove to be outcome-determinative, that such a question can be understood in its proper historical, political, social, and economic context. Thus, administrators whose faculties include foreign nationals need to be aware of these differences as well and not treat domestic and foreign people of color as identical.

IV. “DO NOT ASSUME THAT PEOPLE OF COLOR SUPPORT OTHER PEOPLE OF COLOR” (P. 494)

The most paranoid view among academics is that a faculty member should not trust anyone. Although we do not necessarily agree with this extreme view, it is important not to stereotype people, including faculty members and administrators of color, in thinking about whether they will offer support to a faculty member of color.

Professors Angela Harris and Carmen González thoughtfully caution against making assumptions about people of color’s support of other faculty members of color (pp. 1-12). One simply should not assume that one faculty member of color will support another one. Some minority faculty members do not want competition and will do everything they can to remain the one and only “good” minority on a faculty.¹² This, of course, demonstrates that one should be cautious about making assumptions based on one’s race and gender.

Our combined experiences have been that some of the harshest critics of minority faculty candidates and professors in the legal academy are minority faculty members. At times, those minority scholars seem to relish, rather than to resist, providing negative feedback about minority faculty candidates and faculty members. Unfortunately, the overly critical side of academia can rub off on minority scholars as they assimilate into academia.

Like others in the academy, people of color can view themselves as gatekeepers into the professoriate. Those gatekeepers’ harsh evaluations can be afforded untoward, sometimes almost complete, deference by white colleagues. Those harsh evaluations are often readily and eagerly embraced by non-minority colleagues, who assume that such judgments are not tainted by impermissible factors, namely race and gender. “Look, even this Latino says that this Latina’s scholarship is weak,” is one possible response by a non-minority faculty member to a negative appraisal by a Latino of a Latina.

¹². See PAUL M. BARRETT, THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA (1999) (recounting a story of discrimination against an African American attorney at a law firm who, in his estimation, failed to convince the firm that he was a “good Black”).
Indeed, the comments of faculty of color that are critical of minority colleagues ordinarily are offered greater weight by white faculty members than they would receive from non-minority colleagues. The same is true with respect to extramural letters submitted by people of color reviewing the scholarship of minority faculty members. Minority critics alone can be the death knell of a minority candidacy.

Not surprisingly, the solid evaluation of a woman of color by a person of that same background often will be discounted by white colleagues. It is commonplace to discount a minority faculty member’s endorsement of a minority faculty member’s record, with the often-unstated assumption being that a minority member is likely to be biased in favor of another minority faculty member. This assumption also underlies the great deference given to a negative appraisal of a minority faculty member’s record by another minority faculty member: that is, it is contrary to the natural (and assumed) racial bias. In stark contrast, the views of non-minority faculty are not generally discounted or diminished in evaluating the records of white faculty members. Put simply, there is no general assumption of racial bias by whites in favor of whites.

V. “NUMBERS MATTER” (P. 479)

It is undisputedly the case that there are very small numbers of women of color and other historically underrepresented groups among the faculty ranks in U.S. higher education. Professor Flores Niemann acknowledges that “numbers matter” in the professional lives of women of color and their allies. In making this assertion, she makes a call to action for women of color and their allies to become involved in faculty and other searches in order to try to ensure that the numbers grow over time.

Numbers definitely matter. Without a critical mass of women of color and other historically underrepresented groups on faculties, it is entirely possible that “the one” will become “the none.”

For nearly a decade, one of the co-authors was the only Latina/o faculty member at a Midwestern public law school. Despite the co-author’s persistent efforts to encourage the recruitment of another Latina/o on the faculty, the school was not successful in doing so. Since the co-author left the school, the faculty at the Midwestern law school has been without any Latino or Latina on the faculty for more than three years.

The perils of being the only minority faculty member should not be overlooked. Professor Flores Niemann asks that women of color and their allies “remember that the challenges you are experiencing are not about you; they are about the situation” (p. 479). Besides highlighting the situational risks of being the only minority, or one of very few, on a faculty, Professor Flores Niemann

also reviews research documenting the adverse psychological impacts on the faculty member who feels that he or she is a token on a faculty.

Nowhere in Presumed Incompetent is the damage to a woman of color faculty member more evident than in Professor Elvia Arriola’s telling chapter “No hay mal que por bien no venga”: A Journey to Healing as Latina, Lesbian Law Professor (p. 372). The Spanish phrase translated to English means, “You can find something good coming out of something bad eventually.” In this chapter, Professor Arriola discusses her painful denial of tenure at a leading American law school and her long and ultimately successful effort to re-establish her professional career.

Professor Arriola’s brave story comes from the heart-felt desire to “explain the process of healing from the emotional wounds that came from the battle to keep my job as a law teacher and a feminist lesbian Latina scholar” (p. 373). She documents “what it felt like to be presumed incompetent and unable to qualify for a tenured post at a flagship state-university law school”; she thoughtfully describes “the way I internalized just enough of the unfair attitudes held by a few former colleagues to delay my career progress as a law professor” (p. 373).

Unfortunately, as Presumed Incompetent documents, Professor Arriola’s troubling story is not unique in legal academia. Thus, it is evident that numbers do matter, and that preventing “the ones” from becoming “the nones” is one goal that we as deans endorse and encourage other university administrators to pursue.

Administrators and faculty members should make efforts to accompany and support women of color in their journeys so that they can overcome racially-based obstacles to their success. The faculty member also must take steps to ensure survival. Here, again, the insights of Professor Arriola prove instructive and hopeful: “I could not succeed as a teacher, a scholar, an activist, a writer, a mentor until I accepted the reality and consequences of having been rejected as a qualified tenure candidate and – despite that rejection – accepted and learned to love deeply myself and the work I do as a law teacher and scholar” (pp. 373-374).

As deans of law schools, it must be our aim to treat all law faculty members equitably, with civility, dignity, and respect. This is the case for faculty members of all backgrounds, whether there are few or many of them in the building. But such treatment is especially important for women of color and other historically underrepresented faculty members in the professoriate. They need the support of deans and other campus leaders if they are to succeed in academia. Consequently, deans and campus leaders committed to diversity must provide necessary moral and other support to minority and women faculty.

VI. “WHEN ADDRESSING CHANGE, PICK YOUR BATTLES” (P. 490)

This salutary recommendation by Professor Flores Niemann is followed by an additional statement to center the reader: “Focus on what is in your power to
challenge, change or address” (p. 490). Although there may be arguments for trying to challenge, change, or address matters that are not in the power of the individual faculty member, our collective experience with academic survival militate strongly in favor of making careful decisions in choosing which battles to fight.

An initial question in deciding to pursue an issue is whether the issue is ripe. What is it that has happened that concerns women of color faculty members and faculty members from historically underrepresented communities? Do matters need to develop further before I register a complaint with the administration? Is additional information required? No faculty member wants to “cry wolf” to the department chair or dean and not have the facts quite right. At least one of the co-authors of this essay has had the experience of a woman of color faculty member coming to the dean with a complaint; upon investigation, the facts were not at all as the faculty member had represented them.

Furthermore, no faculty member has the personal stamina or political capital to attempt to vindicate every perceived wrong or injustice. To do so would result in a loss of credibility. Instead, all faculty members want to be taken seriously by their colleagues and peers. Thus, it is imperative to speak wisely, thoughtfully, and reasonably—despite the seeming unfairness of any particular situation.

Unfortunately, the academic landscape is littered with the shells of previously active and engaged women of color and underrepresented faculty members who have “checked out” because of what might be characterized as battle fatigue. We do not mean to place blame on these faculty members. In fact, it is a shame that their issues were not addressed with the compassion and care they deserved. Still, there are alternatives for women of color and their allies so that they do not have to take up every cause that they believe needs redress. For example, allies may be enlisted to take up the cause. Allies must be identified and causes handed over to them. This is a form of support women of color in academia truly need; as Professor Flores Niemann baldly asserts, “[Y]ou need support” (p. 490). At the end of the day, her final prescription is the one we believe makes the most sense: “[R]emember you have to focus on your work to be successful” (p. 490).

VII. “MAKE TENURE AND PROMOTION POLICIES AS TRANSPARENT AS POSSIBLE” (P. 480)

As law school deans, our experience has been that, whenever possible, transparency in decision-making has concretely positive impacts on the morale of all relevant constituencies. Open and reasoned decisions, with the possibility for meaningful input before an important decision is made, generate respect, confidence, and legitimacy in the ultimate decisions, as well as university leaders, among whom are faculty members and administrators. Faculty members generally feel better about decisions—and are more likely to accept decisions
with which they disagree—made after an inclusive and open decision-making process. They are also more likely to trust university leaders who make decisions in this way.

Transparency also allows for the receipt of valuable input from the various university constituencies and ultimately leads to better decisions that are viewed as legitimate and can be implemented smoothly, effectively, and efficiently. Such input, which a campus leader unquestionably needs, can be lacking if the leadership makes the decision without the appropriate consultation.

We have found that transparency in decisions that directly affect faculty members of all backgrounds is especially important. In certain respects the ultimate “conspiracy theorists,” faculty members often have deeply-ingrained skepticism about the dean and his or her motives, as well as about university administrators and their motives. Indeed, rightly or not, some faculty members early in their careers embrace an adversarial approach in all dealings with deans and administrators, as well as, at times, senior faculty members. Such concerns and fears are at their zenith when it comes to important faculty academic personnel decisions, including tenure and promotion.

As Beth Boyd makes clear, tenure for a faculty member is always a challenging and inherently political process (pp. 277, 279-80). Like all voters, faculty members vote for a variety of reasons, some more legitimate and publically defensible than others. This is especially true with respect to voting on the promotion of faculty members of color, many of whom may not initially know the express and implicit rules of academia. All faculty members, but particularly women of color, must somehow learn the stated and unstated rules for success at a particular institution. Importantly, each institution is different in salient respects because, to repeat the well-worn maxim, “all politics is local.”

Mentors can teach minority faculty members important rules for success at a specific university. Consider an example: teaching and service can be critical to women of color’s emotional and professional survival in academia. However, attention to teaching and service at the expense of scholarship can undermine a candidate’s tenure application and render the award of tenure less likely, especially at research universities. At those universities, whether stated or not, scholarship often is the critical determinant for tenure; stellar service and teaching records ordinarily will not replace scholarship in the academic personnel process. Importantly, scholarship has been afforded increasing weight at law schools and research universities in tenure and promotion decisions in recent years.

Mentors are critically important to help women of color faculty members navigate the often-treacherous path to tenure, promotion, and academic

16. See TAMANAH, supra note 2, at 44-45.
survival. Mentors also can provide much-needed emotional support. Mentorship responsibilities should be spread out among the faculty at an institution. Put differently, minority faculty members should not be assigned the role of mentoring all minority faculty members, a burden that is difficult to shoulder while still engaging in scholarship and effective teaching.

VIII. “Conduct Searches that Will Yield a Pool of Faculty of Color” (p. 475)

When the issue regularly comes up, deans and faculty, as well as university administrators in general, often defensively and reflexively lament the challenges in adding diversity to faculties. They often blame the “pool problem” in their specific fields for the difficulty in hiring diverse faculty members and university leaders. It is, however, the very same administrators and faculty who define who is sufficiently “qualified” to be included in the hiring pool. To blame the size of the pool that the decision-makers themselves created seems curious, to say the least.

We recognize that limited representation of minorities, particularly women of color, in hiring pools can make a search challenging. The truth of the matter, however, is that university leaders do not concretely reward deans for achieving diversity in the hiring of faculty members, and deans therefore often lack concrete incentives for pushing diversity as a goal. Other indicia of success, such as improved U.S. News & World Report rankings, increased development and grant receipts, and the like, are much more likely in the ordinary course to be acknowledged and rewarded by high-level university administrators.

Like most employees, deans and chairs strive to impress their superiors and respond to concrete reward structures, such as positive job performance evaluations, reappointment, more resources for the school (including, but not limited to, faculty positions), support for facilities and programs, and other tangible rewards. Our experience is that diversity in faculty hiring ordinarily results in kind words, if that, and little more from deans and high-level university administrators.

As is well-recognized, reward structures are critically important to the achievement of goals at the modern American university. If properly incentivized, deans obviously can play central roles in monitoring progress in faculty hiring by departments and taking steps to ensure retention of faculty members of color.

At the most fundamental level, it is a simple truth that only a diverse pool

19. See Johnson, supra note 6, at 1573-77 (2011) (noting how U.S. News & World Report rankings of law schools fail to account for the racial and other diversity of a law school’s student body or faculty).
of faculty candidates can possibly result in a diverse outcome. At the same time, the creation and maintenance of a diverse pool of candidates throughout the faculty hiring process requires vigilance, attention, and dedication by the search committees, as well as deans who are responsible for monitoring the searches. The same is true for searches for university leaders. Moreover, the retention of minority faculty is critically important, with deans and department chairs playing central roles in that function.

Specifically, law deans are positioned to play pivotal roles in the law faculty appointments process. Besides emphasizing the importance of diversity, deans may offer an institutional memory to the process that faculty members may understandably lack. For example, law school appointment committees ordinarily are attracted like metal to a magnet to faculty candidates who clerked for U.S. Supreme Court Justices. Such clerkships are an impressive qualification, and one that is fiercely competed over by ambitious law schools pursuing faculty candidates. The problem when it comes to diversity, however, is that the cohort of Supreme Court clerks is perhaps the least diverse cohort of all faculty candidates. It appears, for example, that a mere handful of clerks in the Court’s history have been of Mexican ancestry. Thus, to focus on former Supreme Court clerks over all else in a law faculty search is to target an extremely homogeneous pool. If successful, a faculty search focused on Supreme Court clerks will likely result in a hire that will not add diversity to the faculty.

Deans are in a position to ensure that searches do not focus unduly on qualifications and credentials that fundamentally at the outset defeat the goal of diversity.

Both in the search process and as faculty members, women of color are often made to feel like commodities, with their racial identity serving important institutional functions while they likely encounter a seemingly hostile workplace with faculty and students precisely because of that identity (pp. 152, 158). Such feelings of commodification in the search process understandably may chase minority candidates away. For example, it is not unheard of for a chair or search committee chair to expressly tell a candidate that the school is searching for a minority candidate or may obtain an extra faculty position from the university for a “diversity hire.” That occurred to one of the co-authors, who also wrote about his feeling of racial commodification in the appointments process at a law school as a person of color of mixed ancestry: during an interview, he was brazenly asked by a senior faculty member a pointed question that cut to the core

20. See id. at 1559.
22. See, e.g., JOHNSON, supra note 13, at 124-25.
of his racial identity—“how did you get to be Mexican?” 23

Once in academia, faculty members of color often face different expectations than other faculty members. They, for example, are often asked to serve on faculty search committees. This adds to the minority faculty members’ overall workload. Moreover, as Professor Flores Niemann points out, women of color faculty members cannot be expected to be the only ones on a search committee seeking to fulfill the committee’s diversity mission in hiring (p. 474). When placed on committees, they often feel that that is precisely their role and why they were appointed to the committee. Placed in that uncomfortable position, a faculty member of color often feels compelled to promote candidates of color and may be the only committee member to do so. They can be left “holding the bag” if and when, contrary to their hopes, the search fails to produce a diverse outcome. Indeed, to add insult to injury, the dean and other search committee members may invoke the minority faculty member’s role in the process as legitimizing a non-diverse outcome.

As we have emphasized previously, 24 leadership by the dean and senior faculty members is necessary and essential to faculty searches that result in the hiring of minority and women faculty members. Diversity at all stages of the process is necessary if there is any hope for a diverse outcome. University leaders can help create the necessary incentives for deans to spend the time and energy to pursue such goals and strategies.

IX. “AVOID SHAM SEARCHES” (P. 477)

It is an all-too-common practice for college and university presidents to have high level searches for deans and other top administrators that are in actuality shams, with an inside candidate already tapped for the post or an outsider with the inside track (perhaps because of a previous relationship with a top campus administrator). It is one thing for the campus leader to be up front about his or her support for a candidate at the outset of the search. It is quite another to have a stealth candidate who will likely get the nod from campus leadership regardless of the recommendation of the search committee and the input of the various campus constituencies.

University leaders often seek the imprimatur of legitimacy that comes with the appearance of an open national search, with the promise that the best person for the job will ultimately be selected for the position. Campus leaders should be circumspect and careful about attempting to influence, much less dictate, the outcomes of such a search. This should be the rule even if the leader at the outset has a preferred candidate in the pool.

Similarly, an administrator should be careful not to implicitly promise a job in advance of the search to a candidate as part of an effort to convince him or her

23. See id. at 122.
to join the pool. Such promises are made to be broken. One truly never can be certain how a candidate will fare in the interview process and whether the candidate ultimately will be the best “fit” of all the candidates for the institution. University leaders have been known to be surprised by the reaction, negative or positive, to a candidate on a campus.

The sham search, with search committees of faculty and other campus leaders assembled to conduct what they believe to be a good faith national search but not aware (or at least not fully) that the deck is in fact stacked, can have seriously adverse political and related consequences for the university leadership. Such a search can result in serious distrust and suspicion of campus leaders among faculty and other campus leaders. Members of the search committees are the most likely to be offended and alienated. Who wants to participate in the equivalent of a game of academic charades—especially one that requires a commitment of a considerable amount of time and effort? Candidates and committee members often feel as if they were deceived—or even worse, used—if they take the process seriously only to later feel as if the outcome in fact was predetermined at the outset.

On a related note, search committees must be attentive to avoid the inclusion of diverse candidates in the pool who in reality have no chance of landing the position. Committees may at times experience pressure to have a diverse pool. Such commodification and a feeling by a minority candidate of being used by the institution to add diversity to the pool is not likely to contribute to good feelings about the university. After a search in which they are not successful, minorities may be left feeling that they were only among the finalists only to add the appearance of diversity to, and perceived legitimacy, of the search.

As John Dovidio suggests, women of color can add diversity as a “twofer”—both as a woman and a person of color—to a hiring pool even if they are not serious candidates to the committee or the university (pp. 113-14). Such diversity offers legitimacy to a process that ostensibly is committed to diversity and can make the search in certain respects a sham. Unfortunately, our experience is that it is all too common for minorities and women to be named as finalists in a national search that looks diverse, even when the diverse candidate (or candidates) in the pool does not have much chance of being selected for the position.

We understand that we are calling here for a delicate balance. We advocate a diverse list of finalists and understand that a diverse outcome is impossible without one. At the same time, finalists who truly have a legitimate chance at being selected for the position should be the rule. Otherwise, the appearance of an open search seeking diversity is nothing less than a sham goal of the search.
X. “WHEN MEETING WITH ADMINISTRATORS, PRESENT SPECIFIC SOLUTIONS TO YOUR CONCERNS” (P. 463)

Professor Flores Niemann lists this common sense recommendation for women of color and, for that matter, all faculty members. We believe that a word about the necessity of building academic alliances is warranted before addressing the key proposition of attempting to formulate and offer specific solutions to legitimate concerns.

The dictionary definition of ally is “one that is associated with another as a helper.” The word comes from the Latin allocare, to bind. It is clear that being bound to others within an association to help is essential to survival in academia—hence the need for allies.

To help foster the desired diversity goals, locating allies and forming alliances are crucial for professors of color and women to begin early in their academic careers. It should be a deliberate process, starting from identifying potential allies, to find common issues of interest and personal and professional connections. Conversations with would-be allies must be undertaken, so that they understand the daily lives and the context in which faculty members of color and women navigate the often turbulent waters of academia. Finally, allies have to be trusted and trustworthy so that their word is their bond.

One of the authors of this essay recalls her formative experiences as a law student. She and a white female ally as third year law students started a petition campaign among the law student body at a top national law school to add diversity to a dean search committee. The committee as initially announced had no people of color and only one woman professor (and not even a law professor at that, but from another professional school on campus).

Our concern at the time was that such a dean search committee did not adequately represent the diversity of the law school community, nor did it include members likely to appreciate the challenges of women in the legal profession. We raised our concerns with the outgoing dean, who indicated he could not do anything about the search that would facilitate the selection of his successor. After collecting a substantial number of signatures, we were able to obtain a meeting with the university president to present the petitions. We specifically asked that the committee better represent the diversity of the law school community and of women in particular. The president listened and we were happily surprised with the result.

Our proposed solution to the concern with the committee lacking diverse voices was quite specific: to add to the diversity of the committee. That suggestion came to fruition when an African American law student was appointed and ultimately served with distinction on the committee. The dean search committee was transformed into a more representative group and one that

possessed a degree of legitimacy that it lacked at the outset when it had no representation of people of color and included only one woman.

This simple law school experience with activism exemplifies the importance of both finding an ally (in this case, the two students had been friends since their first year in law school and had spent many hours discussing the topic of diversity and women in the legal profession) and of asking the campus administration for a specific, concrete solution to a problem. These strategies can prove invaluable for women of color, and others, in academia.

**CONCLUSION**

*Presumed Incompetent* offers a thoughtful, yet troubled and troubling, set of commentaries on the status of women faculty of color in academia. Although some voices decided to silence themselves because of possible repercussions, the book’s chapters nonetheless offer a litany of painful stories from the women of color who have lived those experiences (pp. 10-14, 142). Work has been done and the prospects for women of color have improved significantly over time. Still, much remains to be done to eliminate racial and gender bias in the academy.

In allowing the voices of women of color to be heard, *Presumed Incompetent* offers important lessons about the challenges, travails, and distinctive experiences of women of color faculty members. Administrators who truly want to recruit and retain diverse faculty members must be sensitive to the issues raised by the book. In this review essay, we hopefully offer food for thought about strategies for changing and improving that treatment, including transforming the assumptions about women of color among scholars, administrators, and students. These lessons require constant vigilance, attention, and affirmative action in order to try to achieve equal treatment of women of color in the academic workplace.