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## Advocacy in Ideas: Legal Education and Social Movements

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## ADVOCACY IN IDEAS: LEGAL EDUCATION AND SOCIAL MOVEMENTS

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Moderated by OLATUNDE JOHNSON‡

Introduction by ELISE LOPEZ§

**Elise Lopez [EL]:** Thank you all for attending our conference. I want to thank the conference chairs and all of our Empowering Women of Color (EWOC) team for putting together this incredible event.

I hope you all are, and continue to be, inspired as I have been throughout the day. We have one more amazing panel, entitled *Advocacy in Ideas: Legal Education and Social Movements*. Our own professor Olatunde Johnson will be moderating. Please enjoy this culminating discussion.

**Olatunde Johnson [OJ]:** Thank you. Good afternoon, everyone. We are very excited about this last panel, which we hope will present an opportunity to bring a lot of

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the themes together from the day and reflect. I'm always happy to be at EWOC events. I remember the early days of EWOC—it was hatched out of a little bit of pain and despair, but it has become a place of leadership for our entire community. I remember those early meetings in Katherine Franke's house with some of the faculty around here participating in those early discussions. It's really been inspiring to see how the organization has grown. So, thank you for putting together this conference, and to all of you who have taken leadership in EWOC.

This panel is really an opportunity to explore the role of women of color in shaping ideas in the legal academy and in legal discourse more broadly. Everyone on this panel today is a professor and has joined legal academia, but what I think we really want to emphasize through this is that for many of us it begins in law school, where you can engage in shaping ideas through the writing that you do in your courses and in journals, in taking leadership positions in journals, and in organizing conferences like this. It may seem that in talking about the legal academy it's really a shift away from some of the discussions of particular substantive areas that we were just talking about—healthcare and healthcare disparities—but I think it's important for us to think about the issues that are often marginalized in legal academy and the role that women of color can play in bringing these issues into mainstream legal discourse, or in expanding what we think of as being the mainstream.

We have a wonderful panel here today to talk to us about shaping legal discourse, and they're going to talk about their own paths to legal academia. We'll talk about some of the opportunities as well as the general structural barriers and how one might begin to address these barriers. They'll also talk to you about their work, about their own journeys and methodology, and about how they've approached some of the questions we've been dealing with today.

I'm going to very briefly introduce the panelists. Our panelists all have formidable backgrounds and you should read their full bios, but I will just tell you they've all published fascinating, groundbreaking articles in top law reviews and in prominent journals. Their scholarship spans fields including constitutional law, international law, corporate law, family law, criminal law, civil rights law, and sociology. They've clerked, they've worked in fancy jobs in private practice, public interest, government, et cetera. I'm going to introduce the panelists briefly, then I'm going to throw out a general question that gives them an opportunity to talk about their paths to academia.

First, we have Solangel Maldonado. She's a Columbia Law graduate—and has also been sitting next to me all semester because she's teaching Family Law here—and she's a professor at Seton Hall Law School. Then we have Rachele Perkins, who's an Associate Professor of Law, and Associate Dean for Academic Affairs at George Mason Law School. And then we have Monica Bell, a Climenko Fellow & Lecturer on Law at Harvard Law School, and a PhD candidate in sociology at Harvard, and she'll be joining the faculty of some very lucky law school this fall. And then we have Professor Chantal Thomas, who's a Professor of Law at Cornell Law School. And Tanya Hernández, Professor of Law at Fordham Law School.

Let's start with you, Solangel. Can you talk about your path to legal academia? And if you want to, in that context, you can talk about some of the challenges that you might have overcome, and provide us with something we can follow up on in further discussion in terms of how we address some of these structural barriers and challenges.

**Solangel Maldonado [SM]:** I am delighted to be here. This has been a wonderful conference. My path to academia has not been entirely traditional. Although I graduated from Columbia and did a clerkship, I did not do everything that I should have done because I did not know what I was supposed to do. I realized in my first semester of law school that teaching was a great job. You get to think about the law, do research, and mentor students. What could be better? But I knew nothing about law teaching so I did not do everything that I should have done to prepare myself for the academic job market.

For example, I did not try out for law review. How was I supposed to know that membership on law review is really important for aspiring law professors? I did, however, join the *Columbia Journal of Gender and Law* because its mission aligned with my values and interests. I did not apply for clerkships during 2L year—the window when I was supposed to apply—because I did not know that clerking is something that you should do if you are thinking about academia. But Professor Carol Sanger, who had recently joined the Columbia faculty, organized a brown bag lunch for students considering law teaching. She pulled me aside after class one day and said, “I think you should come to this brown bag.” At the brown bag, I realized that there were all these opportunities that I should have been taking advantage of and had not. By then I was a 3L, but after that brown bag, I very quickly took certain actions—such as applying for a clerkship and developing a research agenda—to help prepare me for the teaching market.

After my clerkship, I went to a firm and I was very lucky because I had only been there a few months when I got a call from Seton Hall Law School asking me to interview for a teaching position before I even began my job search. How did they know that I was interested in teaching? Well, I had a network of great mentors who knew that I was planning to go on the teaching market in a few years. Those mentors told Seton Hall about me and helped me prepare for the day-long interview. The rest is history.

I will talk more about my work later, but my interests lie at the intersection of race, gender, and family law—that is my passion. I love researching and writing in this area but it presents challenges. I want to preface my next statement by saying that I have been blessed to teach at an institution that has been very supportive and has been invested in my success. But as the first person in my family to go to college and law school, I faced hurdles in college and law school that my peers from other backgrounds did not. Then, when I joined academia, not understanding the politics of navigating academia as a woman, as a woman of color, and as a first-generation college graduate, meant that I made many mistakes along the way.

The second challenge is the result of choosing to write in the areas of race, gender, and family law, areas that are still undervalued in the academy. We have seen scholarship refer to family law as the pink ghetto, and when you add gender and race to it, you realize this work is not valued nearly as much as scholarship in other areas. So that has been challenging.

The final challenge is that, although I've been teaching for fifteen years, I am still aware that as a woman, and as a woman of color walking into the classroom, there are negative assumptions that will be made about me. I want to plug a book that was written by academics a couple of years ago, *Presumed Incompetent*,<sup>1</sup> which addresses how women of color in academia are presumed to be less qualified and less competent to do the work that we do.

These are some of the challenges. I'll talk about how to overcome them later.

**OJ:** Next we have, Rachelle.

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1 PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Carmen G. González et al. eds., 2012).

**Rachelle Perkins [RP]:** So, our paths were a little similar, except I went through all of law school not realizing that I wanted to be a professor. I was focused on my tax courses and pursuing a job in that field. After law school, I was able to land a great job at a big firm doing corporate tax, and was just as happy as I could be. Similarly to Solangel with Professor Sanger, Professor Schizer dropped a bug in my ear and said, “This is something I think you would be really good at.” But at the time I was happy with my job and not sure academia was something I wanted to pursue.

After quite a few years of practicing, I ultimately came to realize that there was a certain amount of intellectual curiosity that I had about some of the very interesting work that I was doing that was not being fully satisfied in the law firm environment. There were topics I really wanted to explore further, but there wasn’t really the opportunity to do so.

Thankfully, I was able to transition out of practice by coming here to Columbia as a transactional studies fellow for two years, and it gave me the opportunity to really focus on some of the issues that I had been thinking about while I was practicing, write a publishable article, and get immersed in the academic environment. This fellowship opportunity was invaluable in terms of both my ability to ultimately get an academic job and in making me realize that being a law professor was what I wanted to do with my career.

In terms of the area of law that I was in, I faced a different challenge as a woman of color because tax law is not a very diverse field. Achieving success and establishing a network of mentors meant that I would have to cultivate relationships with people who did not look like me.

**OJ:** Monica Bell.

**Monica Bell [MB]:** I’m Monica Bell, and I am from South Carolina, so some of the images from the movie were interesting because those are a lot of the places where my family is from and places where I grew up. Similarly to some of what we’ve talked about the panel, I’m a first-generation college student and I went to college in South Carolina at a liberal arts school. When I went to law school, it was my first time being in a setting that was anything like the places that you’re in now.

I sort of showed up, I was excited to be there, and I had no idea what I didn’t know. I was just kind of doing my thing. I hadn’t thought about academia at all

until I had a professor pretty early on in law school who's a woman of color and who was my contracts professor. She said at the end of the semester, "Oh, have you ever thought about academia?" And then went on this long spiel about how amazing being a law professor is. That was my first time even thinking about it, but she talked about writing, and she said, "You seem like you write well." And I thought, I love writing, I always have.

I started to think about that in part because, too, I was curious about what I would do with law. I realized pretty early on in law school that a lot of traditional practice didn't seem that appealing to me, so there was this thought that I don't really know that I like where this is going. Exposure to this whole new potential opportunity made me start thinking about academia and from that point, which was the second semester of law school, I started trying to read up on different theories that seemed to be important in legal academia. I started writing immediately. But it wasn't that instrumental, it was just to see whether I could do it, and whether it just felt right. It started to help me make sense of why I was even at law school.

Now, here's the problem. At the time that I was doing all of this random writing, I didn't have a lot of guidance on writing things. I didn't seek out mentors; I never went to anyone's office hours, although people seemed to like me personally. I didn't know what I wanted to focus on, and I felt that that meant that I shouldn't engage with them. There was about half of law school where I was just kind of there doing my thing and not too worried about it. And then I realized in the second half of law school that other people had mastered a way of engaging that I hadn't thought about. In terms of building relationships for clerkship applications; in terms of building relationships around writing. There was a thing at the law school in terms of getting writing awards and things like that, but in order to get those, you had to have a professor nominate you. Because I was just kind of doing my own thing, no one ever knew what I was engaged in. This is all to say, for me, one of the things that has been really important is to learn how to seek mentorship and guidance. I've done that pretty late, and I didn't do it at all in law school. So that's something that I had to figure out.

I have one final point, and that's the subject matter. I study criminal justice, I use law and sociology methods, I focus on issues of poverty and race and gender—I always have, and that's not going to change. There was a period of time in which I was worried about that, because I was told by people who were concerned, "You need to find something that people want to hire you to do." What I think we have



to do is be the very best at what we're passionate about, but it took me a while to get there.

**OJ:** Thank you. Professor Thomas.

**Chantal Thomas [CT]:** Thanks so much, and thanks to the organizers for putting this event on and for inviting me to be part of it. It's been so inspiring.

So how did I wind up in the job that I have now, and that I'm very fortunate to have? It's so interesting to be in this discussion and hear other people's stories. I've never actually connected the dots, but mine was in some ways quite similar to stories that other folks have already told, in that it was a little bit accidental. I didn't necessarily start out thinking of myself as somebody who was going to go into the academy, and I also didn't know about the things that you're supposed to do in order to chart that path.

As somebody with no other lawyers in my family—nobody had taken this path before—I didn't know that things like fellowships and clerkships were typical components of professional formation for aspiring academics. I didn't know you're supposed to apply for law review for similar reasons and wound up applying for law review because a good friend of mine was applying and encouraged me to as well. So, I happened to apply, and I happened to get on.

In that context, I began to discover my interest in digging down beneath layers of exposition into a deeper analysis of legal argument and reasoning; burrowing into particular forms of legal research and thinking about the ideas that were generating scholarship at the time. We were fortunate to publish fantastic scholarly works. But still, I didn't think of myself as somebody who could be a professor. Perhaps being a person of color and a second-generation immigrant contributed to why, when I graduated, I thought I needed to go and get a good job with a good salary, and that was really as far as I was thinking. But it turned out that, at the firm, I found myself feeling a little bit limited and somewhat frustrated.

The intellectual reason for the frustration was that I was unable to dig deeply into the reasoning supporting our legal practice. I was doing transactional work—I was always interested in issues of global economy and I still work on those issues now—and we would get these deals, but I would have one teeny, tiny little piece as a junior associate, and I would want to know the bigger picture. So, I'd steal into

the library on my off hours to try to understand the larger framework in which the deal was unfolding. And so, I started to think about maybe teaching on the side as a way to get my fix, you know, my theory fix and my idea fix. I applied to teach at Fordham Law School as an adjunct, and it was the hiring committee chair who invited me to apply for a full-time position, and that is how I very luckily wound up getting my first teaching job.

It was very much an unusual path and not necessarily an intentional one, and I think that that speaks to lots of issues. It speaks to how we see ourselves, how the institution sees us, and who we see in institutions in legal education. When I was a law student at Harvard, there were black women on the faculty, and that had been a major controversy. I started the year after Derrick Bell had resigned in protest from the Harvard Law faculty because it had not hired a black woman. Now, of course, there are several brilliant black women on that faculty. But that lack of direct role modeling may also have played a role.

For all these reasons, I think these kinds of conversations are key in bringing to people's attention who might be interested in these sorts of things, not only what to do to get a teaching gig, but also what helps sustain you once you do. Definitely, I would second and third what others on this panel have said in terms of seeking out relationships and mentorships. That was something that the speakers this morning also emphasized—so it's hard to overemphasize how important it is to look for people who can advise you, and who can protect you in various ways, including from mistakes you might otherwise make for lack of experience. And sometimes these mentors will look like you, and sometimes they won't but will be likeminded in some way. I think this is especially important to emphasize for women of color because, due to their relative professional underrepresentation, they may feel inhibited in connecting with senior colleagues or they may not naturally gravitate to building relationships that could be crucial. This is not to generalize without recognizing individual variations and nuances, but rather to point to particular sites of potential vulnerability. It is important to be mindful that building these kinds of informal professional relationships may involve a relative disadvantage that you may have to work actively to counteract.

In my case, one thing I did was sort of gravitate towards likeminded folks. Intellectually, I was somebody who had a kind of a critical sensibility about international economic issues, and it took me a while to find my scholarly kindred spirits. And so another part of what sustains you academically is to gravitate towards

people who see the world in the way that you do and build those communities as well, and those may or may not overlap with your other support systems and nurturing relationships that you hopefully also can create. So, seeking out mentors, but also fellow travelers, and creating your community, creating allies of various kinds—these are the kinds of things that will sustain you going forward.

**OJ:** Professor Hernández. Thank you.

**Tanya Hernández [TH]:** I feared that, being at the very end, I would end up repeating a lot of information, but it turns out, in listening to everyone, that I'm the only one on the panel who entered academia in the generic, traditional way. I'll just tell you briefly what that means, and then I'll circle back to the origins of the story. That means that there is what is called, affectionately, a "meat market," where the Association of American Law Schools, annually, in November, herds hundreds of applicants through for twenty-minute screening interviews. I got my entry-level job through that national job fair process.

That isn't an easy thing to do, because I was coming from a position as a lawyer working in direct legal services, which isn't a natural jumping point to academia. I wasn't doing high constitutional theory, I wasn't at some think tank, or anything like that. I was just helping regular people with their benefit issues, housing issues, and family law issues. But I was doing it for the HIV unit at Brooklyn Legal Services, and so all my clients were HIV-positive or had full-blown AIDS. The funding for my staff line was for an emergency wills person, so I became a trust and wills lawyer in the legal services context.

As a trust and wills lawyer, I had an authentic interest in teaching trust and wills. And I didn't realize that that was sort of like a golden ticket. So, I didn't have a mentor, I didn't have people at my law school saying, "Oh, this is the one that you want to hire," I did not have anybody like that. I was just a generic person—I mean, still, with a pedigree from an Ivy League institution, but I didn't have someone buzzing my name out there. I was just some person off the street looking for a job.

But having had a couple of years' experience doing trust and wills work, and saying I wanted to teach trust and wills, I didn't realize the doors that that would open. That's how I got my first job, and every lateral position I've had since then has been: in large measure because "she wants to teach trust and wills." Indeed,

I remember part of the woman of color interesting experience that I had on the market was when I was interviewing at one law school. One of the interviewers said, “You truly want to teach trust and wills?” I said, “Well, yes, I’ve been professionally doing this for the last couple of years. Why would you ask?” He said, “Oh, because, you know, some people put that down there as a strategic move.” He questioned my sincerity. And I ran into him five or six years later—I didn’t end up teaching at his institution—at a conference, and he apologized to me and said, “You know, you really were sincere, and I didn’t really trust that that was the case.”

How did I develop my interest in law teaching? I went to law school knowing that what I wanted to do was to help people, but also that I wanted to write about their stories. I heard somehow, in doing the search for law schools, that Yale Law School was the place to go if you wanted to be a law professor. That they were a factory for churning out law professors. I don’t quite know where I heard that, I had no one to give me real information. But in any case, that’s what I had heard. And so, I was fortunate enough to talk my way in the door, and I get there, and what I discover is that I, again, have another golden ticket that I didn’t realize.

At the time, a number of other institutions had people in their faculty who were part of the flourishing of Critical Race Theory. With Critical Race Theory, the voices of people of color were central, and their stories were the main agenda. To both put their stories in the center, and to make their stories matter. And for me, that’s why I was there. But I didn’t know anything about Critical Race Theory until I showed up at the door, so it was fortuitous.

My interest in teaching has been based on this dual agenda all along. That is, to be connected to the authentic stories of people who are experiencing them on the ground, and then try to make them matter through what I write. And I had that benefit right in law school—as part of my trajectory to go into law teaching—when I went on and did law review. My Note was based on my summer research experience both at what was then called the Puerto Rican Legal Defense Fund, which is now called Latino Justice, when the organization was doing a lot of work on hate crimes, racially-motivated violence, and the problem with prosecutors in not wanting to prosecute these crimes, or at least not as hate crimes.<sup>2</sup>

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2 Tanya Katerí Hernández, Note, *Bias Crimes: Unconscious Racism in the Prosecution of “Racially Motivated Violence,”* 99 YALE L.J. 845 (1990).

That same summer, back then there was the luxury of “splitting summers,” where you could spend half the summer doing one job and the other half of the summer doing another job. So, I split with a District Attorney’s Office. This permitted me to interview the Assistant District Attorneys about racially-motivated violence. I put the insights from my two summer work experiences together, and had their interviews in my Note, along with the stories of the people who were the victims of racially-motivated violence. I got a lot of good feedback for doing that Note, and it reinforced my interest in being a Critical Race Theory scholar-activist.

So, what I will close with is that you’ve heard here some of the challenges of what it means to be a woman of color in academia. I want to talk a little bit, about what one can do or what one should tap into in order to make it a really thriving and glorious experience. And that’s being in fellowship with others. That can mean any number of things. I was really benefited by the fact that, as I was beginning my scholarly career, I was invited to join a small group of faculty within the New York City area that would host small writing group meetings in their homes. And so, I got to be part of a group of people of color, and our allies, talking about ideas, talking about experiences in the classroom, helping one another, giving each other advice.

It was quite formative for me to have that experience, and that continued to grow with the Northeast Corridor Collective of Black Women Law Professors, across the Northeast Corridor, the Amtrak line, where black women, law professors like myself and others, would come together and share each other’s work. The first hour would be us just chatting over coffee, and that’s where we got to share with each other what was going on in the classroom.

Then the other remaining hour would be dissecting one another’s work, peeling it apart, to make it better, and to fulfill the agendas that we wanted to fulfill. In academia there are moments where you can feel quite isolated, you can feel that you are being targeted in ways that are unfair, and all of those experiences and intuitions are accurate, as the book *Presumed Incompetent* documents.<sup>3</sup> But at the same time, there are venues in which to address that sense of isolation, and part of it is in being able to seek out the fellowship of others with experience.

**OJ:** Thank you all for that. I see a lot of similarities, actually, in the stories, even though

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3 PRESUMED INCOMPETENT, *supra* note 1.

some of the particular paths are different, and, obviously, your subject areas are different. I hope, for those of you who are considering academia, that you took note of some of the steps that people take. It begins in law school with writing, and there was a lot of talk about mentoring, and fellowship and building community. Some of the practical paths include fellowships, adjunct teaching, PhD programs, and other kinds of routes.

We've come a long way from the time when there were no women of color, for example, at Harvard Law School, before the days of the Northeast People of Color Legal Scholarship Conference. So, I think that we have to emphasize that we've made a lot of progress, and a lot of the structures and pathways are there to give people support in a way that might not have been when some of you started. But I did want to invite maybe one or two of you to say something about whether there are things that law schools should be doing differently, either in terms of legal education, or mentoring, support systems, to address issues of underrepresentation. Does anyone want to speak to that?

**SM:** I'm happy to start. I have made no secret of this at different institutions, but there's some research that shows that students of color are less likely to seek out faculty for mentoring, for a whole host of reasons. It is always fascinating to me when students come to my office and say, "I'm so sorry to bother you." Well, no, you're not bothering me. That's my job.

I think we need to do a better job of reaching out to those students—of all backgrounds—who we think would be great for this academic path. I'm always interested in getting more of us into academia because I do think we have many different perspectives that everyone should be exposed to.

This means that if I have a few students who I think would be really good teachers, scholars, and mentors, I see it as my responsibility to pull them aside and say, "Hey, you should stop by my office," or "Let's have coffee, and have a conversation about what are you doing, what your curriculum looks like for the next year and a half. Are you doing law review? Are you applying for a clerkship? You better apply for a clerkship. You better try out for law review. You better do that moot court or mock trial." I think it's our job as teachers to reach out as opposed to waiting for students to come to us. Had Carol Sanger not tapped me on the shoulder, I'm sure I would not be doing what I love to do. So, I think we need to be more proactive.

One more thing: there are many organizations, like the National People of Color Conference (which only meets once every five years), the annual *regional* People of Color Conferences, the Latina & Latino Critical Legal Theory Conference, and CAPALF (the Conference of Asian Pacific American Law Faculty) that welcome law students. Last year, the Northeast People of Color Legal Scholarship Conference had a panel with law students, which was great. So, I would encourage you, if you are interested in academia, to reach out to us, and to participate in these conferences. It's a great way to get mentoring. I actually began participating in these conferences way back in 1999 before I started teaching, and the faculty I met there mentored me then and still do so today.

**OJ:** Anyone else want to address the question?

**RP:** I just want to share a similar but slightly different take. I think it's great to mentor students who feel like I can provide a safe space to ask questions on any number of topics relating to law school and their careers. It's important that I can be a resource for them and make sure they are thriving and on the right path. However, to the extent they are not in my field of tax law, I always want to make sure they know that they also have to make sure they are establishing these mentor relationships with professors in their chosen fields because, ultimately, those professors may be able to help them the most.

I think it's important to encourage people to really take the time—even if it's not someone who looks like you—to find someone who's doing what you want to do, and make sure that you aren't just a face in the crowd and make those connections. If Professor Schizer hadn't mentored me back in law school, I don't know that I would be in academia today either. It is also about finding and following through with the people that you look up to on a professional level, and make sure you're making those connections as well.

**OJ:** I wanted to shift gears and pick up on something that Monica Bell suggested about how you find your area that you're going to do research in, and how you approach questions such as methodology. For some of you, your work is very connected to issues that we've been talking about today involving race and gender, but for some of you, it isn't, right?

I was just curious if you could say more about both how you came to your own work, but also some of those tensions that are sometimes strategic, right? A lot

of people say, for example, that you should stay away from questions of race and gender; others of you are expected to do work in that area when you don't have any particular interest in framing issues in that way. I'm interested in how you've navigated that, if this question is at all resonant with you. Who wants to jump in here?

**TH:** For me, the choices about what I write have always been following just whatever my passion is. Sometimes that meant that I was taking risks, but I took them anyway. I'll give you an example. When someone is on the job market to get a teaching job, part of the hiring ritual that follows the initial screening interview is to be brought back to the campus, so that the candidate can present their specific research ideas.

At that time, I was researching and writing about the debate that was then going on—and still somewhat is—regarding adding a multiracial racial category onto the census. That might sound very cut and dry, you know, administrative issues, or what have you, but when you talk about people's racial identity, you talk about racial mixture, you talk about racial intimacy, that can be very controversial and contested. And so, someone said to me that's not the very smart thing to go on the market with. Talk about your trust and wills work instead.

So, I took a chance. Some people really hated it, and I suppose those are the people that didn't call me back. But, if you're not your authentic self on the hiring "date," then what's it going to be like when you get institutionally "married"? I wanted them to know what they were going to be getting and I've continued to do that ever since. And sometimes that has meant that I've had to educate myself and gather a skill set that I did not walk into the law school building with. So, for instance, I became very passionate and very perturbed about some intuitions I had regarding sexual harassment and women of color. My own listening to the voices of women of color led me to believe, even though I had no proof empirically, that they were not being treated the same way within the legal system regarding their sexual harassment complaints.

Because I didn't have any documentary evidence, I then started to go to special classes to be trained in how to empirically research this. I had already been a sociology major, so I knew something about empirics, but I learned to do the empirical work myself to be able to then talk about it as a legal scholar. For me, what has been so phenomenal about just listening to my own intuition, following



my passions, listening to voices that are otherwise marginalized, is that then there's a feedback loop as far as your ability to try to be helpful.

And so, long story short, part of the research and what I discovered—doing a survey, doing interviews, et cetera, working in conjunction with a sexual harassment hotline in the New York City area—was that—from the sample which seemed to be suggestive of the general population—women of color were reporting their experiences of violence in the workplace and sexual abuse, but they were not internally reporting their complaints. They were not talking to a supervisor, they were not talking to the Human Resources (HR) department, they were going straight to the Equal Employment Opportunities Commission (EEOC). In contrast, the white women in the sample would go to the HR department.

But there's a significant legal consequence of that particular pattern. Because of some Supreme Court decisions that had come down, this meant that women of color were less protected.<sup>4</sup> Why? Because with the attempt to try to, through vicarious liability, get the employer to pay for the sexually hostile work environment that they're condoning in the workplace, the new rule under the Supreme Court was that you had to report internally. And if you didn't report internally first—meaning through the workplace—then you were foregoing your ability to obtain vicarious liability, and that's where the actual compensation is.

After I did that research and wrote about it, put it in an article, I sent all of that to all the women's organizations that I had been pulling research from, to be in conversation with them. To let them know, look, you need to let your constituents who reach out to you know about this racial divide, and the ways in which law does not mean the same thing to these different populations, and that even their sexual harassment experiences are not being accounted for in the same way.

**OJ:** That is a great example, because you talked about building from your own passions, but also learning new skills, in this case, empirical skills. And then, on the question about how you connect to social movements, I thought that you weaved that in very nicely. This is always a conflict. If your research is generated by some advocacy agenda, that's often talked about very skeptically in the legal establishment. But there was a way in which you could take the work that you did, and an intuition

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<sup>4</sup> Burlington Industries v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 742 (1998).

that you had, formalize it, but also share it with a broader community. I wanted to invite Professor Thomas, soon-to-be Professor Bell, to say anything on this front, if you wanted to, on developing a scholarly agenda. Then we'll have some chance for questions.

**CT:** The relationship between advocacy and social movements and ideas is one that strikes home, I think, for many of us who are academics and people of color. Because certainly a major reason many of us go to law school is that we're interested in social justice, and our experiences as persons of color and as women enhance that sensibility. There can be a sense of guilt that, when you go into the ivory tower, you're removing yourself a little bit and perhaps not being true to that mission.

But it is possible to be faithful to both types of missions. You can be, certainly, involved in policy in academia, whether as a form of professional service or pro bono work, or by incorporating experiential learning and clinical dimensions into teaching, and so on. As an academic, you can also mobilize a form of change that is perhaps more indirect and more long-term, but nevertheless may play an important role in creating space for new ideas that then can support advocacy and social movements.

I'll draw a connection with my own research in the area of anti-trafficking policy that relates to the address given earlier today by Nia Weeks,<sup>5</sup> describing her advocacy for sex workers, helping them to obtain the treatment that they deserve from public health institutions and the legal system. In my own work I have, in collaboration with other scholars, investigated a problem we have called governance feminism.<sup>6</sup> One of the questions that we have asked is how feminists, who are mobilizing policy changes to help women, may in some cases support policies that create unintended consequences and that actually wind up harming vulnerable women. An example is the question of how sex work is conceptualized. Some feminists have argued that all sex work is necessarily so deeply oppressive that it must be seen as a form of slavery and therefore of human trafficking. One of the questions that the working group on governance feminism has asked is whether

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5 June Cross et al., *Women of Color and Health: Issues and Solutions*, 36 COLUM. J. GENDER & L. 21 (2018).

6 See, e.g., Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335 (2006).

thinking about sex work in an abolitionist frame—thinking about it as essentially a form of slavery that women need to be liberated from—collapses the space for women in those spaces who need forms of social support and protection that are entirely separate from a criminal prosecution frame that would accompany seeing all sex work as slavery. Those alternate forms of protection might be about harm reduction, rather than a prosecutorial approach—ways of protecting workers from abuse and exploitation along the same lines that they should be protected in any other form of work.

I can connect our work on governance feminism to what Weeks was talking about in describing how sex workers are constantly struggling against that conception, that there's no space for choice in their lives, even if it's very constrained choice. In other words, people who are marginalized, and who are economically in distress, might be making choices that are suboptimal or even harmful. But if we automatically deem all of those people to be victims of trafficking, then we potentially narrow the space that's there for them to be able to find empowerment. And this is not to say that the abolitionist frame is never relevant, but rather to critique a broad-brush approach that might apply that frame in every case, and may do so in the name of a noble conception of women as a group, but perhaps in ways that might end up harming or further constraining actual women in their individual lives. By articulating this critique, my colleagues and I have tried to create more conceptual and policy space for the endeavors of folks like Weeks and her colleagues. We scholars have also gotten together with advocates from time to time and worked a little bit around some of these policy issues, for example by raising questions that have gone, among other places, to the State Department in their anti-trafficking focus. The State Department publishes an annual trafficking in persons report and we've asked questions that are informed by this critical perspective.

So, that would be one explicit example. In other ways, my own particular research, at times, is less explicitly addressing issues of race or gender, but I think inevitably my experience as a woman of color informs my research. As somebody whose family was from a developing country, I'm interested in how institutions and laws at the international level structure global economic inequality. So when I think about how the global economy is created, I'm thinking about it from a critical perspective that's informed by my own experience coming from a family that came from a poor country; that has a critical hunch that there are some deeply-rooted injustices that are really built into the system of the global economy.

Another example of research that I'm doing at the moment in the global economy space that does take on questions of race relations is a project on the global trade in cotton, and how international trade rules now structure it.<sup>7</sup> One of the controversies that has arisen in this context is that the United States is the world's largest exporter of cotton, even though it is not the most efficient producer. A number of countries in West Africa have cotton industries whose producers are much more efficient than their counterparts in the United States, but they are undersold by U.S. farmers because U.S. farmers receive governmental subsidies. So while African cotton farmers are more competitive producers, their governments don't have the money to subsidize them so that they can sell cotton on the international market for an even cheaper price.

How did all of this come about? Well, cotton production in West Africa was cultivated by industrialists in the United Kingdom and in the United States during the Civil War to generate an alternative source of cotton, because their sources of cotton from the South in the United States were shut down. They needed cotton in order to fuel textile production. Textiles were the early source of industrialization. The history of slavery in the United States is very directly connected to the larger emergence of industrialization in our contemporary global economy. But that's a story that is not typically presented. U.S. chattel slavery is often conceptualized as a backward, premodern institution, as opposed to having been fundamentally connected to contemporary capitalism.

When the war ended, slavery became illegal. All of a sudden, without forced labor it became much more expensive to produce cotton in the United States. And that is when the United States devised a system of subsidies. The subsidies were designed to support white farmers in producing cotton at a competitive price. The choice was to have African labor under slavery forcibly producing cotton at a very competitive price or, once labor stopped being free, to pay subsidies to white farmers. Only a few years ago, African American farmers in the South settled a class action lawsuit against the U.S. Department of Agriculture for denying subsidies to African American farmers that had been for generations been given to white farmers.<sup>8</sup>

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7 Chantal Thomas, *International Trade and African Heritage: The Cotton Story*, 31 TEMP. INT'L & COMP. L.J. 225 (2017).

8 In re Black Farmers Discrimination Litig., 856 F. Supp. 2d 1 (D.D.C. Oct. 27, 2011) (approving settlement agreement for claims not resolved in *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999)).

Connecting the U.S. cotton story back to the global cotton story, we now can see a global economy in which African farmers are shut out of international markets because their governments can't afford to pay them subsidies to produce cotton competitively, and where those same very subsidies are also excluding African American farmers in the United States. In other words, both African and African American farmers are being harmed by U.S. cotton subsidies, and one way or another both of these harms connect to the history of chattel slavery. So that's a way in which something like cotton in the global economy right now doesn't have race written all over it but it's deeply interconnected with race and politics.

**MB:** In terms of developing my research agenda, I went to law school to do social justice work and I had to find some type of way that gelled with my particular talents. I had to find a way to do that, and at the time that I went to Yale Law School it was different from when Professor Hernández went. There was no Critical Race Theory. And so, the first paper I wrote was actually trying to reason through that.

What I did have was a sense of curiosity that I wasn't really going to let the environment stifle—I'm not sure if I totally assessed it correctly, but I felt the environment was stifling to my particular interests—and I still tried to maintain curiosity. If there's anything you're worried about, just keep going at it. Don't let the devaluation of certain people's types of knowledge and ways of being in the world stop you if this is what you truly want to pursue.

**OJ:** Thank you. So, let's open it up for some questions.

**Audience:** First off, thank you so much for not only sharing your experiences, but also how you've navigated legal academia. So, I am a 1L here at Columbia, and I came into law school with a bit of work experience and life experience. One of the research questions I consider is how state actors continue to police immigrant communities through institutionalized objectives, like DUI checkpoints or police officers in high schools, and how this continues to create divides within policing and immigrant communities. One question that I've run up against is how—and a lot of that, I think, is centered in community narrative—you all have balanced both the quantitative aspect of your work with the understanding that hierarchies within academia and legal academia are very much skewed towards quantitative research.

**MB:** I'll say something about that. I'm a trained sociologist. I knew how to do quantitative methods, but I focused on qualitative methods. I think one of the most important

things is just to clearly articulate what you're doing. So, sometimes I think when people say "qualitative" they think that means there are no systematic aspects to it. Part of my justification for seeking a PhD in sociology was to develop a set of tools that I knew would be maybe not unassailable, but so I could speak intelligently about what I was doing, and then what you need quantitative research to do.

I think that building networks, maintaining dialogues, is important. Because the things we find in policymaking is that public narratives are really, really important. To focus on that value instead of just saying, "Well, I don't have a regression so it's meaningless." If you adopt that mentality, then you're giving in to that in a way that I actually don't think you have to.

**OJ:** Anyone else want to speak to that?

**TH:** I agree completely with the value of qualitative research, and I would offer up that oftentimes some of my best critical engagement is because I'm drawing from the storytelling of the people who work in NGOs, both domestically and internationally. A large part of my work is doing comparative race analysis, so I'm looking at countries in Latin America and their race struggles, and how they compare and contrast with those in the United States. There's not that much empirics with regards to people of Afro descent within Latin America, because there's a preference to ignore that they exist.

The only way to really talk about it is to not be devastated by the fact that you don't have lots of census data, or next to none, and to instead have confidence in the ways in which you can amass a great deal of information from the interviews and the ethnographic work that is being done. All of that is really quite helpful and useful, I think, and persuasive. I did a book on racial subordination in Latin America<sup>9</sup> in order to educate a United States audience about it, but now it's been translated into Spanish, it's been translated into Portuguese, it's used by NGOs, internationally, in Latin America, and some of my biggest readership is in China, interestingly enough.

**OJ:** I will leave it at that, since we actually are five minutes over time, but I also want to give people a chance to say any final words or anything that I forgot. And if anyone

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9 TANYA KATERÍ HERNÁNDEZ, *RACIAL SUBORDINATION IN LATIN AMERICA: THE ROLE OF THE STATE, CUSTOMARY LAW, AND THE NEW CIVIL RIGHTS RESPONSE* (2012).

knows whether or not we still have the Affordable Care Act, since the vote was at 3:30, you're welcome to pipe in on that, and I won't fault you for multitasking. [Laughter.]

**CT:** I think one of the main themes that comes out of this is just to be advocates for yourselves. Dare to see yourself in places where your passion takes you—this group is such a wonderful resource in helping young students do just that.

**OJ:** Thank you. Those are beautiful final words. In the first part you were really emphasizing mentoring. The word that kept coming up was curiosity and passion, so I think we should take that to be our closing theme. I know that not everyone here thinks of themselves as someone who would want to be an academic, but you all have a role to play even in law school and legal practice connecting to the world of ideas, and you should see yourselves in that way.

One of the things that we did not touch on is the ability to write shorter pieces, blogs, things that frame the legal discourse in different ways, as well as the activities that you are doing. I am not going to suggest that Twitter is the most scholarly thing that you can do, but maybe that even has a role in framing debate. More broadly, some of the themes of mentoring, building community, and connecting people to help nurture your passion and curiosity, I think, apply no matter what we do in life. I hope you take those themes forward.

Thank you all very much, thank you to EWOC, and I'm going to turn it over to Elise Lopez. Thank you to our panelists.