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Sonia K. Katyal

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## ENCOURAGING ENGAGED SCHOLARSHIP: PERSPECTIVES FROM AN ASSOCIATE DEAN FOR RESEARCH

Sonia K. Katyal\*

One of the most unforgettable pieces I have ever read on being a law professor was an article by Robert A. Williams, in a symposium on race for the Michigan Law Review entitled *Vampires Anonymous and Critical Race Praxis*.<sup>1</sup> It was published while I was still a law student, and to this day, it remains a powerful, provocative piece. In that article, Robert Williams, a leading figure in Native American law, describes his transition to law professor from being raised in a traditional Lumbee home, a home filled with stories of the past.<sup>2</sup> “For me, my upbringing meant that I had to endure probing questions at the family dinner table,” Williams writes, “asked by my elders, like, ‘Boy, what have you done for your people today?’”<sup>3</sup> Because Lumbee culture emphasizes acting for others, he explained, “each individual is responsible for making sure that he or she acquires the necessary skills and abilities for assuming that responsibility.”<sup>4</sup> For Williams, becoming a law professor seemed to be the best way to fulfill that obligation.<sup>5</sup> Yet, he writes, it was a painful journey, largely due to the inflexibility and rigidity of the culture of legal

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\* Associate Dean for Research and Joseph McLaughlin Professor of Law, Fordham Law School. Many thanks to Kathryn Abrams, Fabio Arcila, Lawrence Baca, Ann Joseph O’Connell, Angela Riley, Kristen Carpenter, Nestor Davidson, Neal Katyal, Mark Lemley, Lawrence Lessig, Catherine MacKinnon, Tracey Meares, Martha Nussbaum, Robert Williams, Eduardo Peñalver, Gerald Torres, and so many scholars who have influenced and inspired me. I am particularly indebted to Matthew Fletcher, whose body of scholarship (and suggestions) improved this article immensely, Sarah Jaramillo and Catherine Song, who provided tremendously valuable research assistance. This piece is dedicated to the memory of Dan Markel.

<sup>1</sup> Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741 (1996).

<sup>2</sup> *Id.* at 742-44.

<sup>3</sup> *Id.* at 743.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 743-44.

scholarship, and its failure to embrace real world commitments to justice, what Williams describes as a “Critical Race Practice.”<sup>6</sup>

Later in the article, Williams describes how, after getting tenure and moving to Arizona, he decided to take some time off from writing and instead serve others in his community, by doing things as varied as speaking to third and fourth graders, involving himself with community organizations, teaching non-law students, and coaching his daughter’s little league team.<sup>7</sup> “Some of the steps I took were insane, really, for a law professor who regarded himself as a serious scholar of fancy theory articles,” he observed.<sup>8</sup> Williams details how he started writing bar journal review and newsletter articles, encyclopedia-type publications, editing casebooks, applying for grants, and pursuing clinical projects, things he described would not have been regarded as “serious scholarship” by his law faculty peers.<sup>9</sup> “So what,” he concluded, “I was reaching more people—different types of people—with the message, and that’s what doing Critical Race Practice is all about in my mind.”<sup>10</sup>

I begin with Williams’ story because it remains foremost in my mind as one of the most insightful personal stories ever shared by a fellow law professor in a law journal. I continue to recommend it to others who have entered our profession—not because I think everyone will wholeheartedly agree with his perspective, but because he points out one of the most glaring failures in legal academia today: our romance with “serious” scholarship—the “top” law reviews, the “top” scholars in one’s field, the “top” law schools—has obscured the potential breadth and value of legal scholarship, overshadowing the impact of what legal scholarship can become.<sup>11</sup>

In making this observation, I do not mean to question the value of the “top” traditional law review publication. There are many benefits to publishing in a top law review, and I need not relist them here. Instead, I argue that as scholars, we need to broaden our value of other types of publications as well, and embrace other forms of nontraditional scholarship that has, as Williams pointed out, a real world impact and a broader audience than the typical law professor,

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<sup>6</sup> Williams, *supra* note 1, at 759.

<sup>7</sup> *Id.* at 760.

<sup>8</sup> *Id.* at 761.

<sup>9</sup> *Id.* at 761-62.

<sup>10</sup> *Id.* at 761.

<sup>11</sup> Williams, *supra* note 1, at 744-46, 750-51.

law student, or legal scholar. Doing so, I think, can vastly improve and extend the audience for legal scholarship, and bring more visibility to a law school community.

Today, there is little question that faculty scholarship is intimately related to the reputation of a law school, and also relatedly, to the law school rankings game.<sup>12</sup> Central to this reality are some emergent administrative positions—the position of Associate Dean for Research, for example—which carry important possibilities for a law school, both internally and externally, in terms of promoting attention to scholarship. Yet this position, which has only recently emerged in law schools over the last twenty years, is also one that is largely fluid and often determined by the relative institutional capabilities of the rest of the University administration, in addition to the larger landscape of legal education. Its very history is also somewhat unclear, as well: the position of an Associate Dean for Faculty Research emerged sometime around the late 1990s, when increased attention to rankings began to encourage law schools to create these positions.<sup>13</sup> These positions have increased over time; in 2006, one study reported that 21% of ABA-approved law schools had these positions; just a year later, the number increased to 30%.<sup>14</sup> The percentages have likely only grown since then.

However, because there is no precise one size fits all model for an Associate Dean, the fluidity of the position enables us to consider a range of variables that impact scholarly visibility, both internally within a law school community, and externally within the larger scholarly world. How can we, as Associate Deans, strive to support the productivity of faculty members in these shifting times? How can Associate Deans navigate complex social relations on faculties, where issues of gender, race, class, and other variables often abound? How can we draw attention to scholarly endeavors at a time when law schools are undergoing a massive transformation for the future? How can we ensure that legal scholarship remains relevant and important?<sup>15</sup> How can we value the many types of scholarly contributions that our faculty can make, without imposing a narrow view of

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<sup>12</sup> Richard Buckingham, Diane D'Angelo & Susan Vaughn, *Law School Rankings, Faculty Scholarship, and Associate Deans for Faculty Research*, SUFFOLK UNIV. SCH. RESEARCH PAPER SERIES, No. 07-23, 1, 2, 10 (2007), available at <http://ssrn.com/abstract=965032>.

<sup>13</sup> *Id.* at 20-23.

<sup>14</sup> *Id.* at 21-22.

<sup>15</sup> See generally, James Lindgren, *Fifty Ways to Promote Scholarship*, 49 J. LEGAL EDUC. 126 (1999).

what counts as “serious” scholarship?

Answering these questions is not an easy task. Just as there are many different types of research and scholarship, there are many different roles for an Associate Dean for Research. Although there is some literature on the role of an Associate Dean for Research,<sup>16</sup> there is also very little in the way of addressing how such a position might be fruitful in reaching out to underrepresented groups in scholarly endeavors, or, in encouraging the sorts of engaged scholarship that Williams discussed.<sup>17</sup> And then there are the politics that surround racial, gender-related, or sexual minority representation in scholarship, and also the politics that surround other types of individuals who might also be considered less visible in terms of the roles they play regarding scholarly productivity—librarians, clinicians, students, administrators and other categories—who deserve greater support and encouragement in building a broad scholarly community.

As Associate Dean for Research at Fordham, and one of the small number of minority women who have held this position in law school academia,<sup>18</sup> I have been struck by how many of these issues

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<sup>16</sup> See generally, Joseph P. Tomain & Paul L. Caron, *The Associate Dean for Faculty Research Position: Encouraging and Promoting Scholarship*, 33 U. TOL. L. REV. 233 (2001); Dan Markel, *What Makes for a Good Associate Dean for Research?*, PRAWFSBLAWG (Jan. 21, 2009), <http://prawfsblawg.blogs.com/prawfsblawg/2009/01/what-makes-for-a-good-associate-dean-for-research.html>; D. Daniel Sokol, *Why a Good Associate Dean for Research is Worth His/Her Weight in Gold*, THE FACULTY LOUNGE (Jan. 18, 2009), <http://www.thefacultylounge.org/2009/01/why-a-good-associate-dean-for-research-is-worth-their-weight-in-gold.html>; Paul McGreal, *From The Desk of the Associate Dean*, THE FACULTY LOUNGE (Feb. 28, 2010), <http://www.thefacultylounge.org/2010/02/from-the-desk-of-the-associate-dean-22810.html>; Rick Garnett, *Goodbye to All That: Rotating out of the Associate Dean Job*, PRAWFSBLAWG (Apr. 16, 2013), <http://prawfsblawg.blogs.com/prawfsblawg/2013/04/goodbye-to-all-that-rotating-out-of-the-associate-dean-job.html>; Paul Caron, *Associate Deans for Faculty Research*, TAX PROF BLOG (Apr. 11, 2006), [http://taxprof.typepad.com/taxprof\\_blog/2006/04/associate\\_deans.html](http://taxprof.typepad.com/taxprof_blog/2006/04/associate_deans.html).

<sup>17</sup> Williams, *supra* note 1, at 761-65.

<sup>18</sup> Other women (minority and non-minority women) who have held this position or a comparable position are Raquel Aldana (Pacific McGeorge); Tonya Brito (Wisconsin); Margaret Chon (Seattle University School of Law); Kristen Carpenter (Colorado); Laura Gomez (UCLA); Sheila Foster (Fordham); Suzanne Kim (Rutgers); Katrina Kuh and Akilah Folami (Hofstra); Jacqueline Lipton and Jessie Hill (Case Western); Janai Nelson (St. John’s); Joelle Anne Moreno (Florida International University School of Law); Pauline Kim (Washington University School of Law); Anne Joseph O’Connell (Berkeley); Christine Farley (Washington College of Law); Laura Rosenbury (Washington University); Fionnuala Ni Aolain (Minnesota); Gowri Ramachandran (Southwestern); Lia Epperson (American University Washington College of Law); among others. Another person who has written about her experiences as Associate Dean for Faculty Development is Adrien Wing. See Adrien Katherine Wing, *Lessons From a Portrait: Keep Calm and Carry On*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, 356, 361 (Gabriella

can be indirectly tied to traditional, institutional questions about building a law school community. Here, questions about identity, seniority, productivity, and interdisciplinary scholarship emerge, often without clear answers. Indeed, also, identity politics—not just demographic identities, but institutional identities—affect so many of the range of questions that surround productivity and the way in which research is valued and embraced in a law school community. As I ended my first year in this position, I also began to see the importance of valuing a broad constellation of different types of scholarship—peer reviewed papers, clinical publications, books, reports, white papers, newsletters, blogs, and essays—in addition to the traditional mainstream law review publications. Mainstream law review publications, clearly, are an essential part of every law faculty in the country, and should be valued and encouraged, but an administration should also have a greater sense of the importance of other types of engaged scholarship.

## I. THE CONCEPT OF ENGAGED SCHOLARSHIP

What does “engaged scholarship” mean, to the average law professor? Catherine MacKinnon has described it as a tension between the two terms—“[e]ngagement pulls in one direction,” she writes, “scholarship in another.”<sup>19</sup> She continues, “[e]ngaged scholarship at its best is both grounded and theoretical, actively involved in the world of its subject matter, and for that reason, able to think about it in fresh ways.”<sup>20</sup> Others describe engaged scholarship similarly in terms of its relationship “to the law, legal system, or legal profession” and its impact on particular communities.<sup>21</sup> Another view, taken most recently, is that “engaged scholarship” is meant to embrace the current focus in practice-oriented teaching with “experi-

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Gutierrez y Muhs et al. eds., 2012) (noting her activities while serving in that position).

<sup>19</sup> Catharine A. MacKinnon, *Engaged Scholarship as Method and Vocation*, 22 YALE J.L. & FEMINISM 193, 193 (2010).

<sup>20</sup> *Id.* at 203.

<sup>21</sup> David Hricik & Victoria S. Salzmann, *Why There Should Be Fewer Articles like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761, 764 (2004); see also Robert Pitofsky, *Comment on Rebecca Eisenberg's "The Scholar as Advocate,"* 43 J. LEGAL EDUC. 412, 414 (1993) (discussing the widening gap between the legal academic world and the rest of the legal community in regard to faculty scholarship); and Rebecca S. Eisenberg, *The Scholar as Advocate*, 43 J. LEGAL EDUC. 391, 394-95 (1993) (discussing the effects of client interests on faculty scholarship).

ential education.”<sup>22</sup> For many, engaged scholarship is thus both prescriptive and doctrinal at the same time.<sup>23</sup>

This does not necessarily mean, however, that engaged scholarship jettisons a focus on theory entirely, but instead explores intersections between the two areas of theory and practice.<sup>24</sup> Consider, for example, this definition:

[I]t is the purpose of the scholarship that is key to engagement. “[L]egal scholarship, in whatever form,” must have as “its object influencing the direction of the law—ideally by moving judges, lawyers, legislators, and bureaucrats to rethink or reconsider a particular problem.” The goal of engaged scholarship is to influence or shape the law itself, rather than comment on its status. It brings the law to those who actually use it, and molds the way lawyers, judges, and other decision-makers make decisions, resolve disputes, or guide clients. Thus, if the scholarship is engaged, its form is irrelevant to the inquiry. Any form of writing can achieve engagement so long as it is meaningful to the target audience. If the writing’s purpose is to affect legal decision-making, the engagement is accomplished regardless of the vehicle employed.<sup>25</sup>

In other words, “engaged scholarship” does not need to be a replacement for “traditional scholarship.”<sup>26</sup> Rather, I would define the term to be intentionally fluid and path dependent on one’s area of expertise, and on how a law professor might define “engagement.” The

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<sup>22</sup> John R. Nolon et al., *Towards Engaged Scholarship*, 33 PACE L. REV. 821, 823-24 (2013).

<sup>23</sup> See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 42-43 (1992).

<sup>24</sup> See Nolon et al., *supra* note 22, at 841-43 (“Abstract, theory driven scholarship also engages the ‘real-world,’ even if at a different pace and over a different horizon, and the kinds of questions that engage traditional scholars are inevitably generated by law’s practical role in social ordering. Occupying a middle ground between theory and practice is an important part of what we have to offer as legal scholars (as well as teachers), even if we each choose to emphasize different ends of the spectrum at any given moment.”) (comments of Nestor Davidson).

<sup>25</sup> Hricik & Salzmann, *supra* note 21, at 765 (quoting Ronald J. Krotoszynski, Jr., *Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption*, 77 TEX. L. REV. 321, 327 (1998)).

<sup>26</sup> Nolon et al., *supra* note 22, at 847 (comments of Jill Gross).

underlying idea, here, is to capture scholarship that conceives of a broad notion (and purpose) of the audience for one's work, one that might move beyond other law professors or students and enlarges the pool of stakeholders in the process.<sup>27</sup> For some legal scholars, doing engaged scholarship might mean blending scholarship with service, or doing research or fieldwork that engages with a particular community;<sup>28</sup> it might mean taking an interdisciplinary approach that reaches a broader audience;<sup>29</sup> setting up a group blog on either a narrow or broad range of topics;<sup>30</sup> performing empirical work that tests key presumptions in the literature and makes policy prescriptions;<sup>31</sup> or it

<sup>27</sup> See, e.g., the work of Lawrence Lessig at Harvard, whose recent work is on corruption, and who founded the Mayday Political Action Committee. MAYDAY.US, <https://mayday.us/> (last visited Sept. 3, 2014); or the work of Joel Reidenberg, whose center at Fordham, the Center for Law and Information Policy, and whose research on student data privacy has attracted the attention of Congress. *CLIP Director Joel Reidenberg Testifies*, FORDHAM UNIVERSITY (June 26, 2014), <http://law.fordham.edu/center-on-law-and-information-policy/33547.htm>.

<sup>28</sup> Nolon et al., *supra* note 22, at 830; see also Tracey Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593, 1594-96 (2002) (noting her own work in the Chicago community); Andrew V. Papachristos et al., *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, 4 J. EMPIRICAL LEGAL STUDIES 223 (2007) (discussing research models designed to lessen neighborhood crime rates in Chicago).

<sup>29</sup> See generally the work of Martha Nussbaum, particularly *Human Rights and Human Capabilities*, 20 HARV. HUM. RTS. J. 21, 22-23 (2007) (noting the Human Development, and Capability Association of which she is the second President); and Martha Nussbaum, *Carr, Before and After: Power and Sex in Carr v. Allison Gas Turbine Division, General Motors Corp.*, 74 U. CHI. L. REV. 1831, 1831 (2007) (commenting on Judge Posner's opinion in *Carr v. Allison Gas Turbine Division*, 32 F.3d 1007 (7th Cir 1994)).

<sup>30</sup> See PRAWFSBLAWG, <http://prawfsblawg.blogs.com/>; CONCURRING OPINIONS, <http://www.concurringopinions.com/>; and a variety of other collective law professor blogs.

<sup>31</sup> See Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323 (1989) (noting how neglect of empirical research is impacting on scholarship, teaching, and law schools); Michael Heise, *The Importance of Being Empirical*, 26 PEPP. L. REV. 807, 808, 810-11 (1999) (discussing the reasons as to why there is very little empirical research in legal scholarship); Derek C. Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570, 581-82 (1983) (providing arguments concerning the importance of empirical research); Craig Allen Nard, *Empirical Legal Scholarship: Reestablishing a Dialogue Between the Academy and Profession*, 30 WAKE FOREST L. REV. 347, 349-50 (1995) (arguing that more empirical research should be conducted by law professors to bridge the gap between the abstractions of the law school classroom and the realities of legal practice); Daniel E. Ho & Larry Kramer, *Introduction: The Empirical Revolution in Law*, 65 STAN. L. REV. 1195 (2013) (discussing the development of empirical research in the law); Theodore Eisenberg, *The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns*, 2011 U. ILL. L. REV. 1713, 1715, 1719-20, 1722 (2011) (describing the origin of empirical legal studies, its relationship to other disciplines, and its impact); Shari Seidman Diamond & Pam Mueller, *Empirical Legal Scholarship in Law Reviews*, 6 ANN. REV. L. & SOC. SCI. 581 (2010) (recognizing that empirical legal scholarship has entered the mainstream of the legal academy).



might mean taking on leadership roles in organizations outside of the legal academy.<sup>32</sup> It might also mean thinking critically about the ways in which lawyers—our students, ourselves—are tasked with the responsibility of framing the narrative of one’s clients responsibly.<sup>33</sup> It might even “take the form of identifying and highlighting the stakes of legal and scholarly debates.”<sup>34</sup> Or it might mean writing theoretical pieces with real world prescriptive approaches and solutions.<sup>35</sup> One reason to embrace these differing approaches, it seems, is to maximize the real life impact that legal scholarship can have on current issues, in other words, to make legal scholarship more engaged in the world that it serves.<sup>36</sup>

Further, the idea of “engagement” might also suggest the need to grapple with an unfortunate reality: as legal academics, our influence may be waning before the Supreme Court.<sup>37</sup> In some of his previous remarks, Chief Justice Roberts once asserted that “there is a ‘disconnect’ between contemporary scholarship and the legal profession.”<sup>38</sup> Roberts said:

Pick up a copy of any law review that you see, and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th

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<sup>32</sup> See, e.g., Catherine Powell (left Fordham Law School for the Department of State); Kimberly Moore (left George Mason University to be a judge on the federal circuit); Neal Katyal (left Georgetown for the Department of Justice); Troy Paredes (left Washington University to lead the Securities and Exchange Commission); Kevin Washburn (left University of New Mexico for the Department of the Interior); Phil Weiser (left Colorado for the Department of Justice); Elizabeth Warren (left Harvard to join the Obama Administration, now Senator of Massachusetts); Elena Kagan (left Harvard for the Department of Justice, now the Supreme Court); Chai Feldblum (left Georgetown for the Equal Employment Opportunity Commission); Nestor Davidson (left Colorado for the Department of Housing and Urban Development); Harold Koh (left Yale for Department of State); Deborah Batts (left Fordham for District Court); Sherilyn Iffill (left Maryland for the National Association for the Advancement of Colored People, Legal Defense Foundation); Kathleen Sullivan (left Stanford for private practice); Zephyr Teachout (ran for Governor of the State of New York while teaching at Fordham); Tim Wu (ran for Lieutenant Governor of the State of New York while teaching at Columbia).

<sup>33</sup> See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 472 (1976).

<sup>34</sup> Nolon et al., *supra* note 22, at 873 (comments of Chris Serkin).

<sup>35</sup> *Id.* at 869 (comments of Kalyani Robbins).

<sup>36</sup> See Neal Kumar Katyal, *Hamdan v. Rumsfeld: The Legal Academy Goes to Practice*, 120 HARV. L. REV. 65, 123 (2006).

<sup>37</sup> See Hricik & Salzmann, *supra* note 21, at 778 (noting that fewer than three percent of the sources the Supreme Court cited during the 2003-04 term were law review articles).

<sup>38</sup> See Nolon et al., *supra* note 22, at 850.

Century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar.<sup>39</sup>

So, the question then arises: what sorts of writing are helpful to the bar? And relatedly, should the question of audience and influence—what is helpful to the bar—be a singular metric of value in assessing the contributions of legal scholarship?

Let's return, for a moment, to the field of American Indian law as an interesting case study on engaged scholarship. One of the most central figures in the birth of federal Indian law, Felix Cohen, the author of the landmark *Handbook of Federal Indian Law*,<sup>40</sup> was himself both a practicing government lawyer at the Departments of Justice and Interior, and an outstanding legal philosopher and academic who later taught at Yale Law School, the City College of New York, and Rutgers Law School.<sup>41</sup> Since the publication of his works, which formed the foundation for much of modern Federal Indian Law, the development of the field has been populated by prominent practitioners who later became influential academics; David Getches, for example, helped found the Native American Rights Fund (NARF), and later went on to become Dean at University of Colorado Law School.<sup>42</sup> Other early architects of the field became enormously influential scholars as well. According to a study by Matthew Fletcher, American Indian legal scholarship, virtually nonexistent in the 1950s, was extremely influential on the courts during the 1960s and 1970s.<sup>43</sup> In fact, as Fletcher writes, the pieces with the greatest impact—by early scholars in the field—were notable, both because of

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<sup>39</sup> *Id.*

<sup>40</sup> FELIX S. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* (1982 ed.) (1942); FELIX COHEN, *ETHICAL SYSTEMS AND LEGAL IDEALS: AN ESSAY ON THE FOUNDATIONS OF LEGAL CRITICISM* (Greenwood Press) (1976); FELIX S. COHEN, *THE LEGAL CONSCIENCE, SELECTED PAPERS OF FELIX S. COHEN* (Lucy Kramer Cohen ed., Yale University Press 1960). Additionally, Cohen authored one of the most influential legal theory articles of all time, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809 (1935).

<sup>41</sup> DALIA TSUK MITCHELL, *ARCHITECT OF JUSTICE: FELIX S. COHEN AND THE FOUNDING OF AMERICAN LEGAL PLURALISM* (2007); Kevin K. Washburn, *Felix Cohen, Anti-Semitism and American Indian Law*, 33 AM. INDIAN L. REV. 583 (2009).

<sup>42</sup> See Kristen A. Carpenter & Eli Wald, *Lawyering for Groups: The Case of American Indian Tribal Attorneys*, 81 FORDHAM L. REV. 3085, 3105 (2013).

<sup>43</sup> See Matthew L.M. Fletcher, *American Indian Legal Scholarship and the Courts: Heeding Frickey's Call*, 4 CAL. L. REV. CIR. 1, 1 (2013). Fletcher lists the following scholars: Reid Chambers, Monroe Price, Carole Goldberg, Charles Wilkinson, David Getches, and Rennard Strickland.

their top placements in the law reviews, and also because they had a significant influence in the courts.<sup>44</sup> Since the 1980s, even though the field of scholarship has vastly increased with the passage of time, Fletcher points out that Indian law scholarship has had “almost no influence” on the Supreme Court and subsequently, tribal interests have lost significantly at rates that Fletcher describes as “unprecedented.”<sup>45</sup>

To address—and reverse—this trend, the late Philip Frickey, a leader in so many fields of law, but also American Indian law, called for a complete overhaul of the way that legal scholars were writing.<sup>46</sup> Rather than repeat doctrinal critiques of previous Supreme Court jurisprudence, which had largely failed to influence the Court, Frickey called for more empirical, practical, pragmatic work, work that could encourage the Court to have a greater recognition of the real-world realities for the Native American community.<sup>47</sup> “A grounded appreciation for federal Indian law is also likely to make greater sense out of claims for tribal independence by situating them not in a supposedly quaint, little-understood cultural backwater, but in a vibrant world view and culture that are actually explicable to the broader community,” he wrote.<sup>48</sup> He described this approach as a “new realism,” and explained, further (referencing one of Felix Cohen’s most famous articles):

First, it should recognize that tribal advocates cannot rely on transcendental nonsense—like an abstract formulation about the nature and extent of tribal sovereignty—to defeat federal judicial expectations about tribal behavior. Second, writing in the field needs to work toward a functional jurisprudence, in which objective, scholarly work interrogates the law and life on the ground, to make transcendental nonsense more difficult to deploy for anyone on any side of a dispute,

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<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 1, 7. Fletcher does point out, however, that Indian law scholarship remains influential in the lower courts. *Id.* at 14.

<sup>46</sup> *Id.* at 1.

<sup>47</sup> See Fletcher, *supra* note 43, at 7-8 (citing Philip P. Frickey, *Transcending Transcendental Nonsense Toward a New Realism in Federal Indian Law*, 38 CONN. L. REV. 649, 651 (2006) and citing FRANK POMMERSHEIM, BRAID OF FEATHERS 7-56 (1995)).

<sup>48</sup> Philip P. Frickey, *Transcending Transcendental Nonsense Toward a New Realism in Federal Indian Law*, 38 CONN. L. REV. 649, 651 (2006).

but especially by the Supreme Court . . . .<sup>49</sup>

He further described “realism” in the following terms:

If doctrine is at least as subject to evolution here as in other fields of law, scholarship should aspire to explain and prescribe Indian law where . . . it counts—on the ground. What actually happens on Indian reservations concerning the creation, evolution, and implementation of law is a subject about which the broader legal community has few conceptions, and most of those are probably inaccurate. If, as legal realism suggests, the law that counts is the law in action, and the law in action should be measured by a bottom-up consequential calculus rather than some top-down consistency with abstract doctrine, the legal community cannot hope to understand, much less appreciate, federal Indian law without a much better sense of grounded reality.<sup>50</sup>

As Fletcher describes in moving detail, the following year, Frickey hosted a conference at Boalt, where he invited a group of junior (and senior) scholars in the field, calling for a shift away from doctrinal writing, and towards “more grounded, more empirical engagement.”<sup>51</sup> In his last address on the topic, Frickey referred to this approach as “pragmatic instrumentalism,”<sup>52</sup> and concluded that:

[T]he scholarly enterprise in law cannot simply be bound up with law reform. Whatever the law is at a given time, the goal of the scholarly enterprise must be, at least in part, to transcend doctrinal issues and try to help legal institutions better understand the nature, effects, and limits of law.<sup>53</sup>

At all points, Frickey’s focus—“the law in action in Indian country, the law on the ground”—was also tempered with a powerful call for a

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<sup>49</sup> *Id.* at 660 (directly referencing Cohen’s article, *Transcendental Nonsense and the Functional Approach*, *supra* note 40).

<sup>50</sup> *Id.* at 650-51.

<sup>51</sup> Philip P. Frickey, *Address at University of Kansas Conference on Tribal Law and Institutions, February 2, 2008: Tribal Law, Tribal Context, and the Federal Courts*, 18 KAN. J.L. & PUB. POL’Y 24, 32 (2008); *see also* Fletcher, *supra* note 43, at 8 n.50.

<sup>52</sup> Frickey, *supra* note 51, at 32.

<sup>53</sup> *Id.*

commitment to objectivity, by comparing the normative frameworks Indian law scholars were committed to with real world evidence to actively challenge their assumptions.<sup>54</sup>

In a follow up piece, Fletcher does a masterful job of gently showing that indeed, contrary to Frickey's observations, contemporary Indian law scholars *were* writing about the law on the ground by focusing on tribal court practice, economic and governmental policies, and their real-world effects.<sup>55</sup> The difference, however, was this: the real-world solutions, encapsulated in the literature Fletcher mentions, came from tribes themselves, not from Congress or litigation.<sup>56</sup> And the crisis of influence (or, rather, the absence of it) that informed Frickey's call for a new realism, Fletcher argues, can be partially attributed to an important variable: the law review market.<sup>57</sup> As he explains, because law faculties tend to discourage practical scholarship, "[l]egal scholars wishing to publish in the best reviews, and acquire the most influence and improve their reputations, are therefore strongly discouraged from publishing the very work that would be the most useful to Indian country."<sup>58</sup> Legal scholars themselves, Fletcher argued, often failed to view (and therefore discuss) a problem comprehensively because they are so often removed from the real-world realities involving tribal governance.<sup>59</sup> The best articles for Indian country, Fletcher explained, are articles that are practical, narrow and deep; those that examine a problem and then propose an Indigenous solution.<sup>60</sup> Yet those types of articles, however, are also the ones that are "all but doomed" to receive a poor placement in the law review market, Fletcher predicts, because they are too detailed and pragmatic to capture the law review editor's attention.<sup>61</sup> According to Fletcher, the articles that do get top placements are usually broad and shallow—lumping tribes and solutions together.<sup>62</sup> "That kind of work generalizes about Indian country, making it easier for the courts and others to generalize about Indian country,"

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<sup>54</sup> Fletcher, *supra* note 43, at 9 (summarizing Frickey).

<sup>55</sup> *Id.* at 10.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 14-15.

<sup>59</sup> Fletcher, *supra* note 43, at 15.

<sup>60</sup> *Id.* at 16-17.

<sup>61</sup> *Id.* at 17.

<sup>62</sup> *Id.*

he writes.<sup>63</sup>

While I find these arguments deeply persuasive, I am also struck by another trend that operates in a different direction, but one that offers us a different facet to contemplate regarding impactful scholarship. At the same time that Fletcher noted the waning influence of legal scholarship on the Supreme Court, he also documented another path of influence emerging: perhaps in this area of law, more than most others, Indian law scholars have played key roles in the formation of internal governance systems through the emergence of American Indian tribal law,<sup>64</sup> and, in turn, tribes have had tremendous influence on the path and development of Indian law scholarship as a result. Many, many Indian law professors serve as judges for various tribes;<sup>65</sup> others are actively involved in litigation within tribal, federal and state courts;<sup>66</sup> and still others have played key roles in the international arena.<sup>67</sup> Indeed, given the comparable size of the field in le-

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<sup>63</sup> *Id.*

<sup>64</sup> See Fletcher, *supra* note 43, at 6 (citing Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Indian Tribal Courts*, 22 AM. INDIAN L. REV. 285 (1998) and Frank Pommersheim, *Tribal Court Jurisprudence: A Snapshot from the Field*, 21 VT. L. REV. 7 (1996)).

<sup>65</sup> Robert Anderson, Wenona Singel, Matthew Fletcher, Frank Pommersheim, John LaVelle, Robert J. Miller, Robert Clinton, Angela Riley, and Stacy Leeds, among others, all serve as tribal court judges. See, e.g., Frank Pommersheim, *Amicus Briefs in Indian Law: The Case of Plains Commerce Bank v. Long Family Land and Cattle Co.*, 56 S.D. L. REV. 86, 107 (2011) (“Both decisions of the tribal trial court [B.J. Jones] and court of appeals [Frank Pommersheim] were written by law professors with a recognized expertise in the field of Indian law. In fact, as stated above, Justice Ginsburg in her dissent quoted approvingly from the opinion of the Cheyenne River Sioux Tribal Court of Appeals—a historical first in Indian law jurisprudence before the bar of the United States Supreme Court.”). For other examples of opinions, see *Carey v. Victories Casino*, No. A-004-0606, 2008 WL 6969253 (Tribal App. Ct. of the Little Traverse Bands of Odawa Indians, May 5, 2008) (Shepard, C.J., Singel, J.); *In re Village Authority to Remove Tribal Council Representatives*, No. 2008-AP-0001, 2010 WL 8973158 (Hopi App. Ct. 2010) (Atencio, J., Berman, J., and Clinton, J.); *Jones v. Santee Tribal Council et al.* (Santee Sioux Nation Sup. Ct. 2013), available at <http://turtletalk.files.wordpress.com/2013/05/16dec2013-opinion-13-01-jones-v-sntc.pdf> (last visited July 31, 2014) (with panel including Matthew L.M. Fletcher and John LaVelle).

<sup>66</sup> The Tribal Supreme Court Project of NARF/NCAI is a great example of law professors involved in litigation strategy, as well as brief writing. See TRIBAL SUPREME COURT PROJECT, NATIVE AMERICAN RIGHTS FUND, <http://sct.narf.org/index.html> (last visited Nov. 2, 2014); see also the work of Robert Anderson, Sarah Krakoff, Matthew Fletcher, Colette Routel and Kristen Carpenter, who have authored a long list of amici briefs. See, e.g., Brief of Professors of Indian Law as Amici Curiae in Support of Respondents et al., *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013) (No. 12-399), 2013 WL 1225771.

<sup>67</sup> See the work of James Anaya, who served as the Former Special Rapporteur on the Rights of Indigenous Peoples, JAMES ANAYA, <http://unsr.jamesanaya.org> (last visited Nov. 2, 2014), and Angela Riley, *Faculty Profile of Angela Riley*, UCLA LAW, <https://www.law>

gal academia (as compared to, say, tort law), it is worth noting that these sorts of vibrant partnerships have existed for as long as the field of American Indian law has existed. In the 1970s, for example, the national conference on Indian law, otherwise known as the Federal Indian Bar conference, was organized by leading practitioners in the area who were already straddling roles in practice and academia.<sup>68</sup> Forty years later, this conference is still a masterful example of partnership between practitioners and scholars; the practitioners, according to Fletcher, rely on scholars to organize the conference and to generate needed secondary research, thus allowing partnerships to flourish as a result.<sup>69</sup>

In mentioning American Indian law as a case study, I do not mean to suggest that these sorts of partnerships between lawyers, legal scholars, and communities are not flourishing in other areas of law, as well. Of course they are. Consider Catherine MacKinnon as an example: her brand of “engaged scholarship” was described by the international law scholar Jose Alvarez as having “taught us the meaning of international law’s silences.”<sup>70</sup> MacKinnon’s feminist critique has led to the mainstreaming of gender considerations in places like the United Nations and World Bank.<sup>71</sup> Her work alongside other feminist organizations led to changes in the international criminal court and other venues which now considers rape to be a war crime.<sup>72</sup> That is just one recent example of her influence. Even as a Yale Law student, in 1977, MacKinnon’s writings articulated the legal theory that sexual harassment is a form of sex discrimination, an argument that the Supreme Court later embraced.<sup>73</sup> Another example of en-

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ucla.edu/faculty/faculty-profiles/angela-r-riley/ (last visited Nov. 2, 2014), who serves as Co-Chair for the United Nations—Indigenous Peoples’ Partnership Policy Board.

<sup>68</sup> For example, for several years, Lawrence R. Baca (formerly a lawyer for the Department of Justice) and Kevin Gover (a practicing lawyer who later became a law professor at the University of Arizona, and who now heads up the Smithsonian Museum of the American Indian) organized the conference, integrating a number of prominent law professors in the program. See, e.g., Lawrence R. Baca, *Ignore the Man Behind the Curtain: A Brief History of Thirty Years of the Indian Law Conference*, 52 FED. LAW. 4 (2005).

<sup>69</sup> E-mail from Matthew Fletcher (July 29, 2014) (on file with author); see also Lawrence R. Baca, *35 Years of The FBA Indian Law Conference*, 57 FED. LAW. 3 (2010); Baca, *Ignore The Man Behind The Curtain*, *supra* note 68, at 4; and Lawrence R. Baca, *Thirty Years of Federal Indian Law*, 52 FED. LAW. 28, 28 (2005).

<sup>70</sup> José E. Alvarez, *MacKinnon’s Engaged Scholarship*, 46 TULSA L. REV. 25, 25 (2010).

<sup>71</sup> *Id.* at 28.

<sup>72</sup> *Id.* at 29.

<sup>73</sup> Tyler Kingkade, *How a Title IX Harassment Case at Yale in 1980 Set the Stage for Today’s Sexual Assault Activism*, HUFFINGTON POST (June 10, 2014, 1:15 PM), <http://>

gaged scholarship is Mark Lemley, one of the most cited intellectual property scholars in history, whose prolific articles appear in highly theoretical law reviews, but which also address empirical and litigation-oriented issues.<sup>74</sup> Those are just two examples, and there are countless others, as well, who deserve mention.

But what I think is so instrumental about these examples is the way in which the question of scholarship brings us back to the question asked of Robert Williams—What have you done for your people?—suggesting the value of asking this same question of every other law professor, however variedly they may choose to answer this question.

## II. METHODS OF SCHOLARLY ENGAGEMENT

The story told by Williams, Frickey, and Fletcher offers us many cautionary lessons about the real-life results of having a too-narrow view of what counts as “valuable” legal scholarship.<sup>75</sup> Perhaps Frickey’s idea of a “new realism” should be applied to a much broader class of scholarship than Indian law generally, to take greater stock of what kinds of research would be useful to the courts and other stakeholders and decision makers, and for law school administrators to seriously value and encourage that sort of research.<sup>76</sup> There are multiple stories of legal academics receiving advice to refrain from publishing scholarship that is “too practical” or that (gasp!) “garner[ed] attention from agencies or legislators.”<sup>77</sup> At the same time, law review editors themselves might need to broaden their view of what counts as valuable scholarship.<sup>78</sup> As Fletcher’s comments aptly demonstrate, law reviews are often part of the problem, rather than the solution, in valuing engaged scholarship of the kind Frickey wrote about.<sup>79</sup>

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[www.huffingtonpost.com/2014/06/10/title-ix-yale-catherine-mackinnon\\_n\\_5462140.html](http://www.huffingtonpost.com/2014/06/10/title-ix-yale-catherine-mackinnon_n_5462140.html).

<sup>74</sup> Hricik & Salzmann, *supra* note 21, at 765.

<sup>75</sup> See Fletcher, *supra* note 43; see also Williams, Jr., *supra* note 1.

<sup>76</sup> Fletcher, *supra* note 43, at 8-11.

<sup>77</sup> See Nolon et al., *supra* note 22, at 829 (quoting Diana Connolly).

<sup>78</sup> See John G. Browning, *Fixing Law Reviews*, INSIDE HIGHER ED (Nov. 19, 2012), <http://www.insidehighered.com/views/2012/11/19/essay-criticizing-law-reviews-and-offering-some-reform-ideas>; Richard A. Posner, *The Future of Student-Edited Law Review*, 47 STAN. L. REV. 1131 (1995); Richard Brust, *The High Bench vs. The Ivory Tower*, ABA JOURNAL (Feb. 1, 2012), [http://www.abajournal.com/magazine/article/the\\_high\\_bench\\_vs.\\_the\\_ivory\\_tower/](http://www.abajournal.com/magazine/article/the_high_bench_vs._the_ivory_tower/).

<sup>79</sup> Fletcher, *supra* note 43, at 14.



Further, as Fletcher's gentle epilogue to Frickey's call demonstrates, part of the problem with generalizing about the lack of influence of a body of scholarship is that we might suffer from the very myopia that we critique.<sup>80</sup> As Ruth Gordon has insightfully written, "many of us spend our professional lives contesting hierarchy and exclusion—whether on the basis of race, gender or class—but when it comes to academia—and I would suggest especially legal academia—we appear to have finally found a hierarchy we can believe in."<sup>81</sup> While she was referring specifically to our romance with rankings and standings in the law school community, I think her observations could profitably extend to a variety of issues regarding how institutions function and the dissection of areas of influence within them. For example, focusing solely on the question of how scholarship can influence the Supreme Court means that we might miss the range of ways in which scholarship has facilitated flourishing partnerships between law and non-law audiences—as Fletcher describes, between scholars, activists, citizens, and tribal governments.<sup>82</sup> Similarly, focusing on the "top" law reviews might miss the broader audience that exists for law articles generally, especially from a wide range of advocates. Further, complaints about the waning influence of law review articles before the Supreme Court might overlook, as a parallel source of inspiration, federal, state, and international courts, which might cite to law reviews more often.<sup>83</sup> And it might also miss the fact that law clerks, on every level and in every court, may have been exposed to legal scholarship and critical thinking through reading law review articles while in law school; their experiences might inform the recommendations they make to a judge—but those works may never be cited or recognized.

These lessons on engaged scholarship go to the heart of the question of visibility of legal scholarship. They suggest that we may need to adjust our lenses regarding how conceptions of value regarding scholarship are modeled, adapted, and transformed by the law re-

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<sup>80</sup> *Id.* at 14-17.

<sup>81</sup> Ruth Gordon, *On Community in the Midst of Hierarchy (and Hierarchy in the Midst of Community)*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA*, *supra* note 18, at 326-27.

<sup>82</sup> Fletcher, *supra* note 43, at 16.

<sup>83</sup> See, e.g., Larry Catá Backer, *Measuring the Penetration of Outsider Scholarship into the Courts: Indifference, Hostility, Engagement*, 33 U.C. DAVIS L. REV. 1173, 1173-74 (1999) (noting that critical or outsider scholarship was cited more in state courts than federal).

view market. In other words, an Associate Dean can—and must—recognize the importance of “playing the law review game,” but should not lose sight of the importance of recognizing the necessity for critiques of our system. Empirical research, Frickey’s “pragmatic instrumentalism,” might be necessary for influence in the courts, but influence beyond the courts—and outside of the law review market—can be equally valuable and lasting, as well.<sup>84</sup>

The task, I think, of an Associate Dean, is how to balance and embrace all of these different variables in a time of tremendous change for law schools generally. Just as the previous section focused on the topic of defining “engaged scholarship” in building law school visibility, it is also important to consider how scholars, themselves, can actively create a community of engagement, and the kinds of things that an Associate Dean for Research can do to facilitate building this community. The following section summarizes some different variables which I found helpful to think about as an Associate Dean for Research, but they are by no means conclusive or comprehensive—they are simply points for consideration in building an engaged scholarly community.

#### **A. Building a Scholarly Community by Chipping Away at the Ivory Tower**

Perhaps one of the most important tasks of an Associate Dean is to bring faculty together under the common goal of producing scholarship. Of course, an Associate Dean should work closely with the law journals at his or her particular school to highlight the work of colleagues, and ensure that they are spotlighted when symposium or book review opportunities emerge. But engagement in scholarship is a broad goal that implicates everyone—faculty, staff, students, and the local community. Towards this end, an Associate Dean should find ways to bring a faculty together under the aegis of scholarship, but also to enlarge the size of that scholarly community by considering ways to actively bring in other parts of the law school community—students, clinicians, alums, the surrounding community, and others. For example, one idea might be to institute a regular speaker series for students that spotlights the research projects of faculty members, in order to replicate the close mentoring that many faculty

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<sup>84</sup> Fletcher, *supra* note 43, at 8.

receive during law school. Evidence suggests that “students are interested in being more involved with academic scholarship, but do not have the opportunity to do so.”<sup>85</sup> Brown bag lunches, expanding funding for student research assistants, and actively enlisting partnerships with the law school journals are ways to broaden the size of the scholarly community, and bring greater visibility to the work of the faculty. Why not invite students to more workshops? Why not set up opportunities for notes and comments writers to showcase their work to their peers? Why not set up a faculty-wide blog and spotlight research done by faculty and others in the law school community? Why not invite more staff to scholarly events? Why not set up a system whereby guest speakers in classes are showcased to more faculty and students? Why not set up courses for students who want to become legal academics? Why not create lists of “friends of the law school” who are prominent lawyers in the area and invite them to more talks and conferences? By finding ways to blur the line between faculty and non-faculty at law schools, and by finding ways to broaden the audience for faculty scholarship, law schools can actively build a broader community.

### **B. Mentoring Others as a Widespread Practice**

Perhaps one of the most important aspects of the work of an Associate Dean is to provide mentoring and leadership for junior scholars. Much of this work, of course, is straightforward: reading and commenting upon drafts, sharing conference and award information, and facilitating submissions to law reviews. However, this project can also involve broader aspects of mentoring as well: for example, at Fordham, our librarian, Sarah Jaramillo, set up a web resource that collected instructional information for our faculty on the process of sending out law review articles—everything from selecting a topic, to drafting cover letters, to advice on expediting. We realized that a web site was needed after noting that the systems of submission had changed in the last few years. Another aspect of an Associate Dean position could involve serving as an active resource for visiting faculty to ensure that they become acclimated to the particular culture of a law school.

Another thing that an Associate Dean for Research can do,

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<sup>85</sup> Nolon et al., *supra* note 22, at 826.

that is especially valuable, is helping junior scholars figure out their specific pathway—their specific niche—in designing and choosing future projects from their research agenda, to maximize their scholarly impact. Here, searching for prizes, contests, symposia and calls for papers can be an especially useful tool. Or setting up panels on a variety of topics—“how to raise one’s profile,” for example, featuring faculty who blog or who are especially visible in mainstream media, or a panel on book publishing or fellowship opportunities are easy ways to communicate information to the faculty and draw attention to successful scholars. It might also involve taking part in a pipelining program—for students or future law professors—and offering to read and discuss their work. These projects need not be limited just to faculty. In one account, Michelle Bryan Mudd describes how a student’s interest in the controversial sale of a municipality’s water supply to an international private equity investment company led to the creation of a highly publicized (and influential) student blog on the issue that became a collaboration between the School of Law and the School of Journalism.<sup>86</sup>

### C. Employing Distributive Considerations in Supporting Research Visibility

Obviously, central to the role of any University administrator is the responsibility of navigating sometimes difficult minefields regarding the internal demographics of a specific law school. This often means that Associate Deans are expected to be mindful regarding the gender, race, class, seniority, disability, sexual orientation, and other related characteristics of their faculty members in pursuing an agenda.<sup>87</sup>

Here, one of the most formidable opportunities for an Associate Dean for Research is to plan events to draw attention to the work of her faculty while being mindful of the goal of encouraging a broad cross section of representation and visibility. We, as scholars, do not perform our work in a vacuum, and sometimes it is the task of an Associate Dean for Research to help bring attention to underrepresented faculty members (and here I am referring not just to demographic

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<sup>86</sup> Nolon et al., *supra* note 22, at 826-27.

<sup>87</sup> See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 18 (discussing the issues that women of color (among other groups) face in academia).

minorities, but also the landscape of other members of the scholarly community who may deserve greater mention, like clinicians, librarians, and students), particularly because a system focused on law review publications often misses a broader scholarly landscape of multiple types of projects. Planning events for faculty, therefore, is one way to bring visibility to faculty members within and outside of a law school community. Sometimes, these events can take the form of full-fledged symposia—other times, informal panel presentations or workshops. This does not mean, of course, that an Associate Dean should jettison a significant focus on top-placing law reviews (and celebrating the authors who write articles for them), but rather include other types of scholarship in her cheerleading efforts.

Moreover, Associate Deans must be acutely aware of the importance of facilitating diversity in all means—demographic as well as ideological diversity—in drawing attention to scholarly projects and agendas. Many junior scholars, women, and people of color (among others, of course) often report feeling intimidated or worried about presenting their work; an Associate Dean should take steps to create a congenial environment for colleagues to speak freely and supportively. At the same time, an Associate Dean must be mindful of the particular experiences that many minorities face in academia: many minorities report facing extra service and mentoring obligations (formal or informal) to students or committees, and an Associate Dean for Research should try to be mindful of the importance of preserving the faculty member's ability to spend time on research and writing.<sup>88</sup>

In addition, Associate Deans can be especially instrumental in drawing attention to and facilitating different types of diversity. For example, one of the activities that an Associate Dean may choose to engage in involves setting up panel presentations on different topics—like panels on blogging, book publishing, or community and media outreach. Here, an Associate Dean should be especially mindful of the benefits of including a wide range of scholars—and a wide range of scholarship—on these sorts of panels, particularly by encouraging senior scholars to participate on panels with junior scholars, law review article authors with book and blog authors, etc. Fur-

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<sup>88</sup> See Yolanda Flores Niemann, *Lessons from the Experiences of Women of Color Working in Academia*, in PRESUMED INCOMPETENT, *supra* note 18, at 481 (noting that department heads have a particular responsibility to protect junior faculty from extra service obligations).

ther, drawing attention to the work of junior scholars on panels and other events is a particularly powerful way to boost the morale of pre-tenured colleagues; similarly, including their work along with other senior colleagues can also help bridge the divide between junior and senior scholars. In addition, however, having panels on different types of engaged scholarship can be especially useful in bringing visibility and a sense of appreciation to the various types of work that legal scholars may be involved in.

#### **D. Facilitating Partnerships Outside of Law Schools**

Another key goal of an effective Associate Dean for Research might be to facilitate greater collaboration and partnerships between faculty and other constituencies. This overall goal might take a number of different forms, such as: setting up collaborative groups among faculty—humanities, business, or other areas of the arts and sciences—throughout the university; helping to set up introductions between empirical researchers and faculty; setting up greater opportunities for clinical scholars to partner with others on the law faculty; and introducing the work of scholars to relevant nongovernment and government agencies which might benefit from hearing about their work. This means that a substantial part of an Associate Dean's position involves focusing on outreach—outreach to members of the faculty to read, assess and support their work; outreach to members of the wider university community to introduce the work of her faculty; and outreach to the wider legal community of organizations which might be interested in hearing more about the work of the faculty. Admittedly, this is a very difficult task, but it is a powerful way to bring greater visibility to a law school community.

#### **E. Advocating for Research at Every Level**

Finally, a significant part of the Associate Dean's position in this new era is going to involve advocating for funding for research in order to recognize the continuing importance of scholarship in an era of great change for law schools. One project pursued at Fordham, then, was to look seriously at what motivated our top-producing scholars to write, and to keep producing. Our Scholarship Committee interviewed our most productive faculty about how they select projects, and the motivations that keep them engaged in research and writing, and prepared a report that they circulated to the faculty.

Part of the work of an Associate Dean, then, today, is to describe the continuing relevance of scholarly projects by demonstrating their impact on the surrounding legal world. This means, of course, figuring out creative ways to recognize the work of productive scholars by instituting programs like rotating chairs, prizes for top scholarly articles, and offering supplemental funding for top publications. But this also means encouraging those on our faculties who may be less inclined to write—to start writing, and to keep writing. One way to do this is by requiring individuals who receive summer funding to present the results of their work at a workshop or panel designed to showcase ideas. Another way could involve asking faculty for monthly reports on their activities that could be collected into a faculty memo that collects and highlights the work that the faculty performs. Not only does this work lead to greater visibility of research and research-related activities, but it also helps to facilitate a culture of sharing work, projects and ideas with one another.

### III. CONCLUSION

Catherine MacKinnon observed, “[f]or the engaged scholar to talk about engaged scholarship is something of a contradiction in terms. A scholarship that is engaged is a scholarship of doing it, rather than talking about doing it: scholarship as action.”<sup>89</sup> Although there are a variety of ways in which scholarship can be engaged, the task of an Associate Dean for Research is to find methods to broaden the law school community, increase its visibility and vibrance, while maintaining a healthy commitment to innovation, inclusion and self-critique.

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<sup>89</sup> MacKinnon, *supra* note 19, at 193.