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IN SEARCH OF BEST PRACTICES ON GENDER EQUITY FOR
UNIVERSITY FACULTY: AN UPDATE

CONSTANCE Z. WAGNER*

INTRODUCTION

IT was my great pleasure to have appeared on a panel entitled “Solutions” at the 2019 Norman J. Shachoy Symposium at Villanova Law School, which focused on “Gender Equity in Law Schools.” My presentation was based on the premise that use of faculty task forces, and implementation of best practices developed to address the issues uncovered by such task forces, constituted one pathway for achieving gender equity for university faculty. I published an article in 2018 entitled, *Change from Within: Using Task Forces and Best Practices to Achieve Gender Equity for University Faculty*, in which I advocated for the use of such faculty task forces and best practices as institutional mechanisms to promote and to achieve gender equity for university faculty.¹ That article was based on my experience in leading a gender equity task force at my university and a literature search I conducted for best practices for achieving gender equity.

In reviewing that article in preparation for my presentation for the 2019 Shachoy Symposium, I reflected on the fact that my 2018 article did not sufficiently address the workplace challenges facing female university faculty of color. The sources I referenced did not highlight the barriers to advancement and the unwelcome climate experienced by such women faculty members. Similarly, the recommendations discussed in that prior article did not make the point that women of color may need different policy solutions and that the set of best practices in the literature I cited and that I myself advocated for might, for that reason, be viewed as incomplete.

It is time for me to revisit that topic and to address some of the literature on the particular problems facing women of color in the academy. This Symposium contribution is not intended to be a comprehensive review of the literature that was missing from my prior article, but to provide an update on several sources that I first learned about or that were published after the date of my 2018 article. Although I have no personal experience of living at the intersection of race, gender, and class as a university faculty member, I seek to educate myself to better understand the issues presented in the sources I will discuss. My conclusion is that future work on best practices for achieving gender equity must address issues of inter-

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1. Constance Z. Wagner, *Change from Within: Using Task Forces and Best Practices to Achieve Gender Equity for University Faculty*, 47 J.L. & EDUC. 295 (2018).

sectionality of race, gender, and class in order to be effective tools for change in the university setting.

This Article will proceed as follows. Part I will provide an overview of the best practices discussed in my 2018 article. Part II will examine the best practices recommended in three book length sources on women faculty of color in higher education that were not cited in my 2018 article. Part III will briefly update some of my earlier recommendations for best practices to incorporate the insights discussed in Part II. Part IV will conclude.

I. REVISITING MY EARLIER SURVEY OF SOURCES ON BEST PRACTICES

As I explained in my presentation at the 2019 Shachoy Symposium, my work on best practices stems from my experience leading a university-wide gender equity task force at Saint Louis University. That task force was a project of my university's Faculty Senate, and it was comprised of faculty representatives from each of the colleges and schools across the campus. Over a three-year period, I developed a structure and work plan for the task force based on research I conducted on the task force processes used at other universities. I then cochaired the task force work with another faculty member from the School of Medicine who had expertise in gender equity issues. During this time period, I also compiled a library of best practices research for achieving gender equity among university faculty. At the end of this three-year period, I worked with the university provost on implementing the task force recommendations over the course of another academic year.

Our work was supported by the university president, who issued a task force charge instructing us

(1) to investigate faculty perceptions of gender inequity, (2) to analyze data to determine if female faculty are treated equitably with respect to salary, recruitment and hiring, tenure and promotion, workload distribution, allocation of leadership responsibilities, and the opportunity to balance family and work responsibilities, and (3) to prepare a report with findings and conclusions, recommendations, and a plan of action to address gender inequities.²

The work product produced by this task force consisted of a series of empirical reports on the status of women within the university, including a demographics study of the status of women faculty, a gender pay equity report, and a climate survey on faculty perceptions of gender equity. In an omnibus report summarizing the results of these empirical studies, the task force leadership set forth a series of recommendations for improving the status of women faculty on our campus.

2. *Id.* at 338.

These recommendations were grounded in the best practices research that I detailed in my 2018 article. The best practices I advocated for in that article covered what I termed “areas of concern” in the gender equity literature. These areas of concern included the following: (1) university climate, (2) faculty salaries and gender pay equity, (3) recruitment and hiring, (4) tenure and promotion, (5) leadership roles, and (6) work–life issues.³ Among the best practices that I explored in that article were the following:

- (1) use of university climate surveys to assess whether female faculty members perceived gender inequity and lack of procedural fairness based on gender in their work lives;⁴
- (2) conduct of gender pay equity studies to determine whether there was a disparity in faculty salaries attributable to gender;⁵
- (3) development of guidelines on conducting an inclusive faculty recruitment process with the goal of achieving greater diversity, including educating hiring committees about the impact of implicit gender bias on decision-making regarding which candidates to recruit, interview, and hire, and the need to adopt policies and practices for how faculty searches are conducted to mitigate possible implicit gender bias;⁶
- (4) adopt changes to institutional practices that hinder women’s career advancement, including instituting uniform and transparent tenure and promotion standards, distributing teaching and service loads on an equitable basis, adopting mentoring programs for women faculty, and educating department chairs and other university leaders about gender schemas that negatively impact the evaluation of female faculty members and the assignment of workloads that are misaligned with criteria for promotion;⁷
- (5) encourage women to assume leadership roles by instituting leadership development programs and a support system that encourages women to become candidates for such positions;⁸ and
- (6) devise family-friendly policies, such as by offering flexibility in working arrangements to faculty, especially women faculty, in order to accommodate the need for better work–life balance.⁹

The best practices referred to in my 2018 article were drawn from the academic literature on university faculty that I had access to at the time I wrote the article. I viewed, and continue to view, those sources as both

3. *Id.* at 343–76.

4. *Id.* at 346–47.

5. *Id.* at 349–54.

6. *Id.* at 355–58.

7. *Id.* at 362–63.

8. *Id.* at 365–70.

9. *Id.* at 373–76.

authoritative and well-informed. However, the sources I consulted did not focus on issues arising from the intersectionality of race, gender, and class. The term “intersectionality” has been attributed to Columbia Law School professor Kimberlé Crenshaw, who is known as both a feminist and a critical race scholar.¹⁰ Intersectionality has been described by Professor Crenshaw as “a method and a disposition, a heuristic and analytical tool,” which recognizes that individuals can be disadvantaged by multiple sources of oppressions, such as their race, gender, class, sexuality, disability, nationality, or other social categories.¹¹ Intersectionality theory can lead us to conclude that the differences among women faculty can be significant, and this will impact the adoption of best practices in this arena.

Many of the best practices I discussed in my earlier article may also have relevance for female faculty of color or other faculty with overlapping identities. However, recognizing that I did not include intersectionality viewpoints and a more nuanced analysis based on that approach, I now turn to additional sources of best practices that I hope will fill this gap in my earlier work.

II. SURVEYING RECENT SOURCES ON BEST PRACTICES TO ADDRESS ISSUES OF INTERSECTIONALITY

The sources that I will highlight in this Part II are three book length explorations of the intersection of race, gender, and class among academics in the United States. Rather than presenting book reviews of these sources, I will discuss each of these works in turns, primarily as a source of best practices for achieving gender equity for women of color. I will not critique or even comment on the methodology or conclusions reached by these authors, but instead will focus on the recommendations of the authors of these works for redressing the dire situation that often confronts university faculty who experience discrimination, a hostile work environment, or other problems due to intersectionality.

The first of these sources focuses exclusively on the intersection between race and gender among law faculty. It is a 2019 book by Meera Deo entitled *Unequal Profession: Race and Gender in the Legal Academy (Unequal Profession)*, and is based on an empirical investigation she conducted called the Diversity in Legal Academia (DLA) project.¹² Professor of Law Deo describes her project as “the first systematic multimethod analysis of

10. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1 U. CHI. L.F. 139 (1989).

11. Devon W. Carbado, Kimberlé Williams Crenshaw, Vickie M. Mays & Barbara Tomlinson, *Intersectionality: Mapping the Movements of a Theory*, 10 DU BOIS REV. 303, 303 (2013); see Sumi Cho, Kimberlé Williams Crenshaw, & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 SIGNS 785 (2013).

12. MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN THE LEGAL ACADEMY* (2019).

the law faculty experience to utilize an intersectional lens in investigating the personal and professional lives of law faculty from assistant professor through Dean emeritus.”¹³

The second and third sources are books that explore the phenomenon that women faculty of color in U.S. universities are frequently “presumed incompetent” as scholars, teachers, and participants in academic governance. These volumes are comprised of personal narratives and qualitative empirical studies by a large number of university faculty members, approximately thirty per volume, from a variety of academic disciplines, including law, education, English, media studies and journalism, modern languages, political science, psychology, and sociology, among others. These sources are a 2012 book edited by Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González, and Angela P. Harris entitled, *Presumed Incompetent: The Intersection of Race and Class for Women in Academia (Presumed Incompetent I)*¹⁴ and a 2020 book edited by Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs, and Carmen G. González (with a foreword by Angela P. Harris) entitled, *Presumed Incompetent II: Race, Class, Power, and Resistance of Women in Academia (Presumed Incompetent II)*.¹⁵

The publisher described *Presumed Incompetent I* as exposing “the daunting challenges faced by academic women of color as they navigate the often hostile terrain of higher education.”¹⁶ The publisher described *Presumed Incompetent II* as naming

formidable obstacles and systemic biases that all women faculty—from diverse intersectional and transnational identities and from tenure track, terminal contract, and administrative positions—encounter in their higher education careers. [The authors] . . . provide practical, specific, and insightful guidance to fight back, prevail, and thrive in challenging work environments.¹⁷

13. *Id.* at 9.

14. PRESUMED INCOMPETENT: THE INTERSECTION OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González, & Angela P. Harris eds., Univ. Press of Colo. & Utah State Univ. Press 2012) [hereinafter PRESUMED INCOMPETENT I].

15. PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA (Yolanda Flores Niemann, Gabrielle Gutiérrez y Muhs, & Carmen G. González eds. (with a foreword by Angela P. Harris), Univ. Press of Colo. & Utah State Univ. Press 2020) [hereinafter PRESUMED INCOMPETENT II].

16. Press Release, University Press of Colorado & Utah State University Press, Presumed Incompetent I Publication Announcement, <https://upcolorado.com/utah-state-university-press/item/2338-presumed-incompetent> [https://perma.cc/CA3N-GKMM] (last visited Oct. 19, 2020).

17. Press Release, University Press of Colorado & Utah State University Press, Presumed Incompetent II Publication Announcement, <https://upcolorado.com/utah-state-university-press/item/3794-presumed-incompetent-ii> [https://perma.cc/LR42-KSSP] (last visited Oct. 19, 2020).

A. *Richard Delgado, Minority Law Professors' Lives: The Bell-Delgado Survey (1989)*

Before discussing best practices drawn from these three book sources, I would like to mention a source cited by commentators as influential in this field. This work, considered one of the earliest empirical studies on challenges facing minority law professors, is a 1989 law review article by Richard Delgado (with an introduction by Derrick Bell) entitled, *Minority Law Professors' Lives: The Bell-Delgado Survey*.¹⁸ It should be noted that this article is about challenges facing minority law professors, not the topic of university faculty gender equity specifically. This article reported the results of a survey sent to faculty members listed in a directory prepared by the American Association of Law Schools Section on Minorities and interviews conducted with over fifty minority law professors following such survey. The topics covered included “relationships with colleagues and students, committee assignments, workload, job stress, and other aspects of a professor’s life.”¹⁹ The results reported work environments described as “racist or subtly racist,” crushing loads of committee work and student counseling, and levels of job stress that were “severe or nearly intolerable.”²⁰

While the majority of this article was devoted to presenting the empirical evidence and the author’s conclusions, the article briefly discusses solutions to some of the conditions described. Professor Delgado notes that, while the professors in the survey did not sense that law schools were taking steps to address these issues, recognition of the scope of the problems faced by minority law professors was a necessary first step in the search for constructive responses.²¹ In a brief footnote at the end of the article, he lists the following systemic changes that law schools could adopt to improve the work lives of minority law professors: appointing professors of color in greater numbers, restructuring the workload of minority professors to alleviate the stress that contributes to high attrition, including minority professors in informal information networks, lessening excessive committee work assigned to minority law professors, reinforcing the credibility of minority professors with their students and being sensitive to issues of racism in course evaluations, and refraining from categorizing minority law professors as experts solely in the area of minority affairs.²² While his list is very brief and does not provide specific guidance on best practices, some of the themes of Professor Delgado’s article later surface in the three books mentioned in this article, which were published many

18. Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989).

19. *Id.* at 352.

20. *Id.* at 352–53.

21. *Id.* at 369.

22. *Id.* at 369 n.42.

years after such article appeared. As will be detailed, such books treat these themes in much more expansive fashion.

B. *Meera E. Deo*, *Unequal Profession: Race and Gender in the Legal Academy* (2019)

Professor Deo uses an empirical approach, which she calls the Diversity in Legal Academia (DLA) project, in her book analyzing the problems confronting women of color as they enter and pursue a career in law teaching. In her introduction, she first notes that “[w]omen of color remain statistically underrepresented in legal academia today.”²³ She then points out that there are few published studies investigating how race and gender impacted the law faculty experience.²⁴

To remedy this gap in the literature, she uses both quantitative and qualitative data drawn from online surveys and in-person interviews with ninety-three law faculty members. Sixty-three of these faculty members were “women of color professors, including African American, Latina, Asian American, Middle Eastern, Native American, and multiracial women.”²⁵ Professor Deo states that these faculty members “reflected diversity in a number of domains, including race/ethnicity, age, tenure status, leadership status, public vs. private institution, selectivity of institution, and region.”²⁶ The remaining thirty faculty members consisted of “a comparative sample of thirty white women, white men, and men of color.”²⁷ According to the author, the use of comparative analysis with this second sample allowed for investigation of racial bias, gender bias, and intersectional raceXgender bias.²⁸

Applying this approach to her data set, Professor Deo divides her presentation into six chapters arranged to follow the chronological progression of the career of a law school professor. These stages consist of entry into the profession, interactions with colleagues, interactions with students, promotion and tenure, leadership opportunities, and work–life balance. In all these career stages, Professor Deo concludes, the women of color in her sample experienced challenges and barriers to their success and advancement that were unique and not shared by their faculty colleagues who comprised the comparative sample.

In addition to identifying these challenges and barriers for women law faculty of color, Professor Deo also offers commentary on possible solutions in a concluding chapter. In her conclusion, Professor Deo first notes that women law faculty of color draw emotional support and strength to overcome obstacles from numerous sources outside of the le-

23. DEO, *supra* note 12, at 4.

24. *Id.*

25. *Id.* at 171.

26. *Id.* at 172.

27. *Id.* at 171.

28. *Id.*

gal academy, including family members such as partners, parents and children, close friends, outside mentors (often developed through professional associations and academic conferences), and church families.²⁹ She then makes recommendations for remedying the discrimination and injustice she identifies in her study, which she separates into two parts: individual strategies and structural solutions.³⁰

Under the heading of “Individual Strategies Maximizing Success,” Professor Deo notes the strategy of emphasizing diligent class preparation and proving expertise by using past experience in the legal profession in order to avoid the presumption of incompetence that women of color encounter in the classroom.³¹ Using mentorship to learn the ropes, from whatever sources it is offered, and then mentoring others is another suggested strategy to facilitate career advancement. A final set of individual strategies includes taking time for self-care and keeping larger goals and the big picture in mind.³²

In the category of structural solutions, Professor Deo places the following actions. First, cultivate allies in the law school’s administrative offices who will acknowledge problems of gender discrimination and address them.³³ Such allies should also “appreciate the many ways in which women of color are instrumental and beneficial to the institution, and create ‘institutional accountability for fixing gender service imbalances’” as well as “educat[ing] their full faculty on the challenges facing women of color in the classroom.”³⁴ Professor Deo notes that one route to recruiting such allies “who understand the experiences of women of color is to propel them to these positions.”³⁵

Second, “stock the pipeline, to prepare greater numbers of nontraditional students for careers in legal academia.”³⁶ This could be accomplished by increased mentoring of students and early stage lawyers, perhaps creating an academic training track in law schools, and increasing leadership diversity by “‘focus[ing] on creating an environment that feels fair and equitable,’ especially to nontraditional faculty.”³⁷

Third, “think outside of the box” in recruitment practices, such as by expanding the definition of merit beyond standard categories such as elite

29. *Id.* at 140–47.

30. *See id.* at 139–69.

31. *See id.* at 148–52.

32. *See id.* at 152–58.

33. *See id.* at 158–60.

34. *Id.* at 159–60 (quoting Colleen Flaherty, *Study Finds Female Professors Outperform Men in Service—To Their Possible Professional Detriment*, INSIDE HIGHER ED (Apr. 12, 2017), <https://www.insidehighered.com/news/2017/04/12/study-finds-female-professors-outperform-men-service-their-possible-professional> [https://perma.cc/HBZ8-MCGH]).

35. *Id.* at 160.

36. *Id.* at 158, 160.

37. *Id.* at 162 (quoting DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE* (2014)).

educational credentials, prestigious clerkships and the like, and by onboarding several faculty of color to form a cohort instead of engaging in tokenism.³⁸ Similarly, thinking outside of the box can assist with retention practices, such as by recognizing that student evaluations are often biased and therefore are flawed tools for tenure and promotion decisions that perhaps should be eliminated or downplayed and instead replaced by peer teaching evaluations.³⁹ Rethinking service obligations and their place in tenure and promotion decisions, such as by rewarding such service the same way that scholarship is rewarded, is another way that thinking outside of the box can facilitate retention.⁴⁰

Fourth and finally, law schools must confront their own institutional biases and implicit biases and take aggressive action to recruit and retain women of color as faculty members and leaders.⁴¹

It is this latter category of recommendations that corresponds most closely to the concept of best practices that I have encountered in other literature on university faculty gender equity. These recommendations will be most helpful to law school faculty and administrators who choose to take heed of Professor Deo's carefully detailed observations.

C. *Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González, and Angela P. Harris, Presumed Incompetent: The Intersection of Race and Class for Women in Academia (2012)*

Presumed Incompetent I, in contrast to *Unequal Profession*, is a collection of thirty essays by university faculty that, in the words of two of the editors, “examine the ways that higher education reflects and reproduces—yet also sometimes subverts—the social hierarchies that pervade American society, including race, gender, class, and sexuality.”⁴² These editors reflect on the fact that one of the defining “national myths” of our country is “the belief in meritocracy and the narrative of upward mobility through hard work and self-sacrifice.”⁴³ Yet, higher education, which is an essential pathway to economic success, is full of inequities, including those that confront university faculty who are women of color. As these editors point out, such women, although working in positions of “undeniable privilege,” are nevertheless “entrenched in byzantine patterns of race, gender, and class hierarchy that confound popular narratives about meritocracy. . . . [F]aculty at institutions of higher education are immersed in

38. *See id.* at 163–64.

39. *Id.* at 164.

40. *Id.* at 165.

41. *See id.* at 165–69.

42. Angela P. Harris & Carmen G. González, *Introduction to PRESUMED INCOMPETENT I*, *supra* note 14, at 1.

43. *Id.*

the daunting inequities and painful struggles taking place throughout an increasingly multicultural America.”⁴⁴

The editors of this volume note that the problems for women of color begin with their numerical underrepresentation, but that such statistics tell only part of the story. For that reason, the editors choose to focus “on personal stories and qualitative empirical data, such as surveys and interviews,” as a way to understand the experiences of women of color in academia.⁴⁵ As the title suggests, women of color “find themselves, to a greater or lesser degree, ‘presumed incompetent’ by students, colleagues, and administrators [because they differ from the demographic and cultural norm, which is] distinctly white, heterosexual, and middle- and upper-middle-class.”⁴⁶

The essays set forth in *Presumed Incompetent I* are organized into five sections based on recurrent themes and issues encountered by women of color in their roles as university faculty members, namely general campus climate, faculty–student relationships, networks of allies, social class in academia, and tenure and promotion. Within these broad categories, the authors, who are drawn from a wide swathe of universities and academic disciplines (including law), present their professional experiences using deeply personal narrative accounts in some cases, while other authors focus on empirical and statistical data as well.

Some authors choose to supplement their contributions with suggestions for dealing with and overcoming systemic racism or sexism on a personal level, while other authors made proposals for institutional change. In the category of strategies that individuals can undertake, several authors focus on the importance for women faculty of color of developing support systems among a faculty cohort sharing similar backgrounds, cultures, and experiences, as well as seeking out and relying on the advice and assistance of mentors, a step considered essential for career advancement by these authors.⁴⁷ Other contributors suggest finding “allies” among those with “insider status” due to their holding “positions of authority and leadership within previously male-dominated institutions.”⁴⁸ Such allies within the institution could “push to make higher education more inclusive, more innovative, and more valuable.”⁴⁹ Such allies have been described as “insider women with outsider values” who can transform the world of academia by “hold[ing] on to our outsider values when we get inside, making spaces to bring in others who are on the margins or still

44. *Id.* at 2.

45. *Id.* at 3.

46. *Id.*

47. See, e.g., Sherrée Wilson, *They Forgot Mammy Had a Brain*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 74–77; Francisca de la Riva-Holly, *Igualadas*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 296–97.

48. See, e.g., Nancy Cantor, *Introduction to Part III: Networks of Allies*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 223.

49. *Id.*

outside.”⁵⁰ These could be white colleagues as well as faculty of color.⁵¹ Law professor Adrien K. Wing provides a series of lessons that she has used in her professional life “to keep calm and carry on.”⁵² These lessons, which could well serve as a blueprint for career success for any university faculty member, included producing a tenure and promotion file that well exceeds the minimum standards; continuing to be a productive scholar even after achieving tenure; innovating in the classroom and challenging students to move outside their comfort zone; participating in service activities both within and outside of one’s home institution; seeking out mentoring but also serving as a mentor for faculty of color; taking care of oneself; and acknowledging the support of colleagues, family, and friends.⁵³

Regarding the means to effect much-needed institutional change, there are multiple proposals sprinkled throughout *Presumed Incompetent I*. These include eliminating or deemphasizing student evaluations as a basis for tenure and promotion decisions because it has been noted that women faculty of color may receive low ratings that do not correspond to their actual teaching ability; counting service activities, which are often disproportionately assigned to women faculty of color, toward tenure and promotion; and offering women faculty of color leadership opportunities and promoting such women to positions of authority like department head or dean.⁵⁴ I noted that the most comprehensive and direct approach to both mechanisms for institutional change as well as individual strategies was contained in the last chapter entitled, “Lessons from the Experiences of Women of Color Working in Academia,” which was written by Yolanda Flores Niemann, one of the volume’s editors.⁵⁵ This chapter contains several dozen detailed suggestions with commentary that are organized into five categories, roughly corresponding to the parts of the book, namely general campus climate; faculty/student relations; social class, tokenism, and the search process; tenure and promotion; and networks of allies and mentors.⁵⁶ Professor Niemann further subdivides each category into

50. *Id.*

51. See Stephanie A. Shields, *Waking up to Privilege: Intersectionality and Opportunity*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 29–39; Dean Spade, *Notes Toward Racial and Gender Justice Ally Practice in Legal Academia*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 186–97.

52. See Adrien Katherine Wing, *Lessons from a Portrait*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 362–71.

53. *Id.*

54. See Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities? The Perils of “Doing” Gender and Race in the Classroom*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 164–85; Linda Trinh Võ, *Navigating the Academic Terrain: The Racial and Gender Politics of Elusive Belonging*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 106–08.

55. See Yolanda Flores Niemann, *Lessons from the Experiences of Women Working in Academia*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 446–504.

56. *Id.* at 452.

“Recommendations for Administrators” and “Recommendations for Women of Color and Allies.”

There is much to work with here for someone looking to glean best practices for achieving gender equity. It would not do justice to Professor Niemann’s work to try to present a comprehensive summary of such best practices, so I will focus on some high-level themes that should be reflected and built upon in any institution seeking to implement a program of such best practices.

First, Professor Niemann highlights the importance of recognizing the distinct challenges for faculty that are presented by intersectionality and advocates for universities to create a culture of respect in which “[p]ersons with the greatest formal power and authority have an ethical obligation and moral responsibility to be particularly sensitive to their treatment of persons with less power.”⁵⁷ Moreover, she advocates for a color-conscious approach, arguing that color blindness is “not only unrealistic; it denies the experiential realities of people of color and stymies productive discussions about how persons can genuinely get to know one another across racial/ethnic/national group identities.”⁵⁸ She recommends that faculty steer clear of references to “women and people of color” or “women and minorities” and instead speak of “white women, men of color, and women of color,” rejecting an essentialist notion that “makes women of color invisible while defining white women as the de facto norm.”⁵⁹ Such changes are not possible unless faculty are educated to understand the significance of intersectionality, to confront their own implicit biases, and to consciously reject stereotyping and the treatment of women of color as tokens.⁶⁰

Second, Professor Niemann emphasizes the importance of support networks for women faculty of color. These can be both informal arrangements and formal institutional frameworks. Social networks “counter isolation and create circles of safety and camaraderie” for faculty members, which in turn generates institutional benefits by aiding retention and facilitating interdisciplinary work.⁶¹ Professor Niemann states that “[e]ffective mentorship is critical to the success of women of color” but suggests that institutions establish formal mentorship training programs and assign only trained mentors because “[m]ost people are not experienced in mentoring, in general, and especially not across demographic lines of ethnicity/race, social class, or sexual orientation.”⁶² Allies are also needed in addition to mentors, and university leaders should also step into this role.⁶³ Allies are those insiders who can advance the interests of under-

57. *Id.* at 453.

58. *Id.*

59. *Id.* at 459.

60. *See id.* at 473, 474, 482.

61. *Id.* at 495, 496.

62. *Id.* at 485.

63. *See id.* at 494.

represented groups, and they should understand intersectionality and “embrace this battle to respect persons” across boundaries.⁶⁴ White faculty colleagues, especially white women faculty members, can be mentors and allies.⁶⁵ As Professor Cantor notes:

We have both a moral and a practical obligation to recognize—not deny—that other group-based markings—race, sexual orientation, class, and disability—are at work among women. It’s both difficult and important that women who are white—the relatively privileged ones who have been the primary beneficiaries of feminism—perceive, acknowledge, and then act against the additional forms of discrimination experienced by women of color without feeling defensive.⁶⁶

Institutional changes might be in order too, especially those that change the campus climate regarding underrepresented groups. Modeling that diversity is important by appointing members of underrepresented groups to the university leadership team and developing an action-oriented diversity plan are some examples.⁶⁷ Because women of color are frequently not groomed for administrative positions, establishing leadership development programs and opportunities is another useful suggestion.⁶⁸ Another welcome addition would be a dean of faculty charged with oversight of equity issues and reporting to the president and provost. Having an advocate in a position with the authority of an academic dean and located outside the faculty member’s reporting structure is more powerful than a diversity officer in addressing job satisfaction issues such as unequal salary structure, inequitable work distribution, recruitment, and retention issues.⁶⁹ Adopting formal grievance procedures that afford a fair opportunity for a faculty member to win a case and developing a faculty review team to evaluate complaints and make recommendations to administrators are also useful steps.⁷⁰

Third, institutional leadership should understand the distinction between equity and equality and recognize that the need for equity considerations may outweigh arguments for equality. Professor Niemann cites some examples, such as performance evaluations that are inequitable because higher levels of service are demanded for some faculty members, but those faculty members are expected to produce the same number of publications as others who perform minimal service for the institution and

64. *Id.* at 494.

65. *See id.* at 494, 497.

66. Nancy Cantor, *Introduction to Part III: Networks of Allies*, in PRESUMED INCOMPETENT I, *supra* note 14, at 222.

67. Yolanda Flores Niemann, *Lessons from the Experiences of Women Working in Academia*, in PRESUMED INCOMPETENT I, *supra* note 14, at 454–55.

68. *Id.* at 495–96.

69. *Id.* at 454–55.

70. *Id.* at 486.

the community.⁷¹ This issue is noted in several essays throughout *Presumed Incompetent I*.⁷² Another example is the inequity of expecting a woman who took family leave and stopped the tenure clock to have more publications than a faculty member who went through the tenure process on the standard schedule.⁷³ There is value in faculty members making an argument for equitable treatment in connection with tenure and promotion reviews, if they have taken on extraordinary teaching assignments or a disproportionate burden of service assignments, or have other family obligations, that would justify a departure from standard expectations. However, it is suggested that they seek administrative approval in advance and keep adequate documentation if planning to do so.⁷⁴

D. *Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs, and Carmen G. González (with a foreword by Angela P. Harris), Presumed Incompetent II: Race, Class, Power, and Resistance of Women in Academia (2020)*

In 2020, eight years after the publication of *Presumed Incompetent I*, the editors of that volume published a second volume, *Presumed Incompetent II*. Like the first volume, this publication documents the challenges and barriers confronting university faculty who are women of color, and also sets forth “a gold mine of tactics and strategies for disrupting institutional practices that harm academic Women of Color, and a wealth of advice on self-care throughout the process.”⁷⁵ As Professor of Law Angela P. Harris explains in her foreword, “[t]o be a Women of Color in academia is, too often, to be presumed incompetent. Yet in academia as in other spaces, Women of Color continue to rise, exercising their creativity and expressing their joy[] [i]n the face of academia’s unspoken norm to be silent about one’s vulnerability”⁷⁶ She notes that this volume continued the conversation of the first book and came at a historical moment that is fraught with new threats for such women due to the rise of white nationalism and the denigration of liberal values of pluralism and tolerance.⁷⁷

Like its predecessor volume, *Presumed Incompetent II* is comprised of approximately thirty essays by academics and is organized into sections by themes: tenure and promotion; academic leadership; social class; bullying, white fragility, and microaggressions; and activism, resistance, and public engagement. Some of the topics covered echo those discussed in the ear-

71. *Id.* at 483.

72. *See, e.g.*, Adrien Katherine Wing, *Lessons from a Portrait*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 357.

73. Yolanda Flores Niemann, *Lessons from the Experiences of Women Working in Academia*, in *PRESUMED INCOMPETENT I*, *supra* note 14, at 483.

74. *Id.* at 491.

75. Angela P. Harris, *Foreword: Presumed Incompetent in the Era of “Diversity,”* in *PRESUMED INCOMPETENT II*, *supra* note 15, at x.

76. *Id.*

77. *Id.* at ix.

lier volume, such as the underrepresentation of women of color on U.S. university faculties, including at the rank of full professor; the inequitable distribution of service assignments, which fall disproportionately on women of color; the inequitable distribution of teaching assignments; the dearth of women of color in academic leadership positions; race and gender bias in the evaluation of teaching and scholarship; lack of mentoring for tenure and promotion; and failure to implement family-friendly policies.⁷⁸ However, this volume breaks new ground by exploring darker themes that were not touched on or were not as prominent in *Presumed Incompetent I*. These include discussions of “toxic environments that include bullying, sexual harassment, microaggressions, trolling, gaslighting, shaming, stalking, abuse of power, and misuse of and/or disregard for policies and processes.”⁷⁹ Especially disturbing are accounts of the psychological and physical health impacts of hostile work environments that have been linked to such work situations.⁸⁰

In my opinion, the most powerful aspect of *Presumed Incompetent II* was the inclusion of those distressing stories that document the incredible human toll, and even death, that can result from what the editors term “the dehumanizing tenure process and the sometimes careless and biased judgments and decisions of department chairs, deans, colleagues, and other high-level administrators.”⁸¹ There are several essays that touch on these topics, such as the one by Professor of Law Adrien K. Wing, in which she discusses “spirit injury,” i.e., the emotional and psychological damages that faculty members may experience in their jobs, and in which she lists African-American faculty members by name who have died prematurely, speculating that perhaps some of their deaths were linked to the spirit injuries they suffered due to their work in academia.⁸² Professor Susie E. Nam (a pseudonym) recounts the “death by academia” of one of her faculty colleagues, whose underlying mental health and substance abuse issues were exacerbated by mistreatment by university administrators, leading to a suicide.⁸³ Other authors draw from their own personal experiences, such as Professor Julia H. Chang and Professor Jamiella Brooks, who share their work struggles while dealing with miscarriage and childbirth, respectively, and health issues that were related to the stress of the academic workplace.⁸⁴

78. Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs, & Carmen G. González, *Introduction to PRESUMED INCOMPETENT II*, *supra* note 15, at 3–4, 7.

79. *Id.* at 6.

80. *See id.* at 5.

81. *Id.* at 5.

82. *See* Adrien K. Wing, *And Still We Rise*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 223–32.

83. *See* Susie E. Nam, *Making Visible the Dead Bodies in the Room: Women of Color/QPOC in Academia*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 171–79.

84. *See, e.g.*, Julia H. Chang, *Spectacular Bodies: Racism, Pregnancy, and the Code of Silence in Academe*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 259–68; Jamiella

Many of the essays in *Presumed Incompetent II*, such as the ones cited above, are heartbreaking to read. Yet, in spite of the difficult nature of this material, the volume struck a hopeful note when the authors described strategies they have used, in the words of the editors, to “fight back.” Many of these efforts were ones undertaken by individuals to address their own personal situations, such as “filing a complaint regarding a hostile work environment . . . ; using social media to create a supportive online community; . . . healing from racial battle fatigue by talking openly in safe spaces; appealing tenure denial; . . . and filing (and winning) sex discrimination and retaliation lawsuits.”⁸⁵

Unlike *Presumed Incompetent I*, there is no summary chapter in *Presumed Incompetent II* listing suggested remedies for the institutional deficiencies identified by the authors. However, some authors went beyond discussing personal responses to what they encountered and addressed systemic changes that universities should implement. Two essays in particular seemed to encapsulate some needed reform proposals. Professors Desdama Rios and Kim A. Case, writing about the need “for harnessing critical intersectional class consciousness to transform institutional policies, training, and advocacy to promote Women of Color and working-class women faculty . . . in higher education,” proposed a series of institutional reforms aimed at doing just that.⁸⁶ These included encouraging and valuing the use of intersectional diversity, equity, and inclusion considerations in faculty evaluations; taking steps to heighten awareness among search committee members and those charged with conducting faculty reviews about privilege, implicit bias, student evaluation bias, and faculty experiences of stereotype threat; and taking steps to recognize “invisible labor” and make it both visible and recognized. In her essay, Professor Meera Deo, echoing her suggestions in *Unequal Profession*, discusses the need for developing a more supportive work environment for faculty of color.⁸⁷ While personal support networks developed by faculty members may be helpful to them, she emphasizes that these individual strategies are insufficient and that “overcoming structural challenges requires structural support.”⁸⁸ She suggests improving policies on parental leave for birth, adoption, and other urgent family matters; publicly recognizing and rewarding service, both for tenure and promotion purposes and perhaps also in the form of financial rewards; asking administrators to educate the full faculty on challenges facing female faculty members,

Brooks, *Academia is Violence: Generatives from a First-Generation, Low-Income PhD Mother of Color*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 143–52.

85. Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs, & Carmen G. González, *Introduction*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 9.

86. Desdama Rios & Kim A. Case, *Unlikely Alliances from Appalachia to East L.A.*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 139–40.

87. See Meera E. Deo, *Securing Support in an Unequal Profession*, in *PRESUMED INCOMPETENT II*, *supra* note 15, at 300–12.

88. *Id.* at 308.

including the presumption of incompetence, and to undertake other initiatives supportive of diversity and inclusion; and acting more purposefully to hire women of color and to treat all job candidates equitably with an awareness of implicit bias and the determination to maintain meaningful diversity.⁸⁹

III. UPDATING BEST PRACTICES RECOMMENDATIONS

All three of the books I have mentioned in Part II—*Unequal Profession*, *Presumed Incompetent I*, and *Presumed Incompetent II*—contain a wealth of further insights that I am unable to explore in greater depth due to the length of this article. I view these volumes as the most comprehensive works I have seen in book form on the issues confronting university faculty who are women of color. I would assign them as required reading for university faculty and administrators who are searching to implement best practices for gender equity in their home institutions.

After reviewing this literature, I believe that there are gaps in my earlier catalog of best practices contained in my 2018 article entitled *Change from Within: Using Task Forces and Best Practices to Achieve Gender Equity for University Faculty*. The sources I consulted in connection with my 2018 article did not include a focus on intersectionality issues. However, the challenges and barriers to advancement that currently exist for women faculty of color must be acknowledged and addressed in the context of best practices if universities are to make progress on faculty gender equity. Here is a brief list of updated best practices recommendations based on the literature discussed in Part II.

A. *Campus Climate*

It is a recommended best practice for universities to conduct periodic climate surveys that include both standardized and free response questions about equity in order to assess whether women faculty are experiencing discriminatory attitudes and behaviors in the workplace and whether they are satisfied with their jobs, topics that impact faculty productivity and retention.⁹⁰ The results of such surveys can be used to develop programs and policies to address problems that are identified.⁹¹ Such surveys are frequently used at both public and private universities.⁹²

Women of color may experience the campus climate in a negative fashion due to lack of support from other faculty and administrators, as well as hostile interactions with students. Such women may feel more isolated than their peers if they have experienced “tokenism.” Their perceptions may not be the same as those of white women or either white men or men of color. It is important for universities conducting such surveys to

89. *Id.* 308–10.

90. Wagner, *supra* note 1, at 344–46.

91. *Id.* at 346.

92. *Id.* at 344.

collect demographic information about respondents and sort faculty data by gender and race/ethnicity in order to construct and implement policies and practices that address the perceptions of this faculty group.

B. *Recruitment and Hiring*

Numerous commentators have remarked that women of color, as well as men of color, are underrepresented in the academy. Many have argued that the gender and race/ethnicity composition of university faculties should reflect that of the student population in such institutions.

Best practices in this area have focused on developing guidelines for conducting an inclusive faculty recruitment process, including educating hiring committees about how implicit gender bias may exclude female candidates from the candidate pool and adopting policies and practices for faculty searches to mitigate such bias.⁹³ Such best practices should also consider the impact of implicit bias and stereotyping related to the race/ethnicity of female candidates for faculty positions. Particular attention should be paid to changing hiring practices that exclude candidates whose backgrounds and work experiences do not exactly replicate those of white candidates. Universities should demonstrate their commitment to diversity at the highest level by making recruitment and hiring of women of color an institutional priority. Creating an inclusive work environment may point in the direction of hiring a cohort of diverse candidates rather than engaging in what some authors have called “tokenism” in the hiring process.

C. *Career Advancement (Including Tenure and Promotion)*

Women represent a smaller percentage of full-time faculty with tenure and of full-time faculty with the rank of full professor.⁹⁴ This fact has been attributed to a failure to prioritize diversity in faculty hiring practices and barriers in the tenure and promotion processes.⁹⁵ Some of the factors that contribute to this phenomenon include lack of clarity about tenure and promotion standards and failure to apply them consistently across candidates; heavy teaching and service workloads for female faculty who should be devoting their time to scholarship, which is the coin of the realm in the academy; lack of support and mentoring from chairs and faculty colleagues; implicit biases at the individual and institutional levels; and lack of family-friendly workplace policies.⁹⁶

As discussed in Part II, women of color may be especially impacted by these factors due to intersectionality issues, and therefore, specific institutional reforms should be implemented to address their challenges. My 2018 article set forth a comprehensive list of best practices that cover many

93. *Id.* at 356.

94. *Id.* at 358–59.

95. *Id.* at 359.

96. *Id.*

of the same proposals for institutional reform. However, I believe my earlier list should be updated to incorporate a focus on intersectionality issues. For example, university administrators and faculty should be educated to recognize that women of color may experience a double disadvantage due to implicit race/ethnicity biases, in addition to implicit gender biases. Tenure and promotion standards should be clarified, standardized, and applied uniformly for all faculty members. Women of color should not be assigned burdensome service and teaching loads that interfere with their scholarly productivity. In any case, exceptional teaching, advising, and other service responsibilities should be recognized and count toward tenure and promotion decisions. Mentoring programs designed for women of color should be implemented, and trained faculty mentors should be assigned to work with such faculty toward tenure and promotion. Finally, as with other faculty members who have to interrupt their academic careers due to such family events as births, adoptions, and family illnesses, universities should offer paid leave and stop the clock policies. Faculty members should be allowed to use such policies without fear of reprisal and without having to produce additional scholarship due to the period of the leave.

D. *Leadership*

Women are largely missing from the most senior ranks of college and university administrators, such as president and provost, and from university governing boards, and they also are underrepresented in lower administrative positions, including dean, department head, and committee chair.⁹⁷ The lack of women of color in leadership positions is frequently noted in the sources discussed in Part II above.

The absence of women in leadership positions is not due to a shortage of qualified candidates, but is attributable to other factors such as lack of opportunity, mentoring, and training.⁹⁸ Women of color may be especially susceptible to lack of opportunity due to the existence of race/ethnicity implicit biases in addition to gender implicit biases. The lack of mentorship and leadership training opportunities, and the possible barriers to accessing informal networks that can lead to leadership opportunities, also may interfere with women of color attaining these positions.

Best practices to increase the number of women serving in leadership roles often focus on leadership training programs for women, and some universities have developed such programs.⁹⁹ Other universities that have not done so should consider implementing such programs, while paying particular attention to recruiting women of color as participants. Additional best practices suggested in the sources discussed in Part II include

97. *Id.* at 364.

98. *Id.*

99. *Id.* at 356.

offering informal training opportunities to women of color and actively recruiting and appointing women of color to leadership positions.

E. *Family-Friendly Policies*

The literature on best practices for gender equity includes frequent discussions of the need for faculty to achieve work–life balance.¹⁰⁰ Both female and male faculty members may experience difficulties achieving such balance, but the issue is particularly acute for women because they may have children while seeking to attain tenure and promotion and are likely to take on more family responsibilities than men.¹⁰¹ In my 2018 article, I discussed many of the best practices that have been developed in this area, but the ones that are highlighted in the sources in Part II relate to the availability of family leave, the tolling of the tenure clock, and not penalizing faculty for using such policies. Institutional support for women’s physical and mental health were also mentioned in the Part II sources.

This brief update of my earlier work on best practices for achieving gender equity includes only some of the most significant actions that are needed to address the challenges and barriers faced by women faculty of color. It is not a comprehensive list of actions that should be taken to advance gender equity for such faculty members. For that, I refer university faculty and administrators to the very detailed discussion of these issues contained in *Unequal Profession*, *Presumed Incompetent I*, and *Presumed Incompetent II*.

CONCLUSION

I would like to conclude this Article by expressing my thanks to the faculty organizers and the sponsors of the 2019 Shachoy Symposium at Villanova Law School. In particular, I am grateful to Professor Jennifer O’Hare for extending me an invitation to participate and for her helpful guidance. It was an honor to have been asked to present my research and my views on gender equity for university faculty at this wonderful event.

I am also grateful to the authors and editors of the books I have discussed in this Article. They have introduced me to gender equity issues for women of color that I had not focused on in my research previously. I have learned much from this exercise and hope that others reading this article will feel the same. Gender equity for university faculty has not yet been achieved, but the writers who have shared their insights through these books have given us guideposts to help lead us in the right direction as we embark on this important work.

100. *Id.* at 370–76.

101. *Id.* at 371.