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## Presumed Incompetent: Continuing the Conversation

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# *Presumed Incompetent:*

## *Continuing the Conversation (Part I)*

**Carmen G. González<sup>†</sup> and Angela P. Harris<sup>††</sup>**

On March 8, 2013, the *Berkeley Journal of Gender, Law & Justice* hosted a daylong symposium at the University of California, Berkeley, School of Law. The symposium featured more than forty speakers who were invited to celebrate and respond to *Presumed Incompetent: The Intersections of Race and Class for Women in Academia*.<sup>1</sup> *Presumed Incompetent* is an anthology that explores the experiences of women of color in higher education from a variety of perspectives: from first person narratives to qualitative empirical studies, from the humanities to the sciences to the professions, and from graduate students to faculty and administrators.

We solicited and edited the essays in *Presumed Incompetent* in order to name the obstacles that academic women of color encounter on the road to tenure and beyond, and to offer strategies to these women and their allies for eliminating these obstacles. While each of the thirty essays in *Presumed Incompetent* is unique, one of the book's central and unifying insights is that despite decades of efforts to increase faculty, staff, and student diversity, the *culture* of academia remains distinctly white, male, heterosexual, and middle- to upper-class. Faculty members whose identities differ from this unspoken and largely uncontested norm find themselves, to a greater or lesser degree, presumed incompetent as scholars, teachers, and participants in university governance.

Although *Presumed Incompetent* presents gripping firsthand accounts of the prejudice and discrimination female faculty of color face inside and outside of their workplaces, the book's overriding message is one of success, resilience, perseverance, and triumph in the face of daunting obstacles. In their essays, the

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†† Professor of Law, University of California, Davis School of Law. My thanks to all the amazing women and men who participated in the Berkeley symposium and shared their stories, research findings, and wisdom. Special thanks to the co-author of this Introduction, Carmen, without whose energy, organization, and insight the symposium would never have taken place.

1. PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012).

contributors to the book explain how they overcame barriers in their own personal and professional lives, offering examples of the creative pedagogy, innovative scholarship, and empowering alliances within and across identity groups that contributed to their successes. The final chapter of the book draws upon the collective wisdom of the book's four co-editors and more than forty contributors, to provide a series of specific recommendations for subverting the presumption of incompetence and creating a more equitable and inclusive campus environment. We hope that the book will be read by women of color and their allies, and especially by academic leaders, such as deans, provosts, and university presidents.

Soon after the book's publication, we realized that it would be only the tip of the iceberg of the *Presumed Incompetent* project. First, many women approached us during the solicitation process and told us their stories, but ultimately decided not to publish these stories for some of the nine distinct reasons discussed in the book's introduction.<sup>2</sup> Among these reasons was fear—fear of retaliation for airing their home institution's dirty laundry, fear of professional ridicule for producing a personal narrative rather than a conventional academic essay, and fear of criticism for disclosing the complicity of certain colleagues of color in the subordination of others.<sup>3</sup> The fact that so many stories were, and remain, untold only underscores the courage of the women who did come forward to contribute these stories, surveys, and interviews, thereby enriching our knowledge about the current state of higher education.

Second, after the book was published, we were inundated with phone calls and emails from women of color who sought our advice and assistance, invited us to present at conferences and workshops, and provided us with new insights into the plight of female faculty of color in the nation's colleges and universities. Although *Presumed Incompetent* is nearly six hundred pages long, much more remains to be written.

The Berkeley Law symposium responded to this need to continue the conversation. Using *Presumed Incompetent* as a springboard for a series of concurrent and plenary panels, poetry readings, and keynote addresses, symposium participants were invited to undertake three important inquiries. First, what themes of the book resonate (or do not resonate) within legal academia? Second, what is the relevance of the book's themes to public universities, especially those (such as the University of California, Berkeley) struggling with a "post-racial" mandate and state disinvestment in higher education? Third, how should colleges and universities best address "second generation" problems of diversity: retention, campus climate, and the full

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2. Angela P. Harris & Carmen G. González, *Introduction* to PRESUMED INCOMPETENT, *supra* note 1, at 10-13 (describing nine distinct reservations expressed by many women about contributing to *Presumed Incompetent*).

3. *Id.* at 11-12.

intellectual, social, and political inclusion of women of color? We were mindful of posing these questions at a time when academia is being pushed toward a neoliberal agenda of market-driven, corporate-friendly policies and practices, and when law schools are struggling against significant declines in student enrollment. Despite these challenges, our symposium participants responded with humor, insight, commitment, and ringing calls for change. We were all the more delighted by the willingness of the *Berkeley Journal of Gender, Law & Justice* and the *Seattle Journal for Social Justice* to dedicate issues to publishing a selection of pieces generated in response to the symposium's themes and presentations.

As joint editors of these companion symposium issues, we are struck once again by the urgency of telling these stories. At stake for individual female academics of color who find themselves "presumed incompetent" is not just their professional success, but also their physical and mental health. Too many women develop serious physical ailments, become mentally ill, or drop out of academia as a consequence of battling bias in their academic careers. For example, several women who contacted us after the publication of *Presumed Incompetent* reported debilitating strokes, heart attacks, miscarriages, cancer, and psychological breakdowns triggered, at least in part, by workplace abuse.<sup>4</sup> These stories are consistent with the voluminous literature on the ways in which exposure to racism increases the risks of mental and physical ailments such as hypertension, cardiovascular disease, heart disease, and depression.<sup>5</sup> As epidemiologist Nancy Krieger explains, we "incorporate biologically . . . our social experiences and express this embodiment in population patterns of health, disease, and well-being."<sup>6</sup> For this reason alone it is essential to share resistance

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4. In two of these cases, according to our informants, the universities in question refused to make reasonable workplace accommodations after the women became disabled, and instead initiated proceedings to terminate the women from employment. Sadly, these stories do not appear to be anomalies. Weeks after suffering two severe strokes caused by complications from lupus, historian Chana Kai Lee, a tenured African-American professor at the University of Georgia, was forced to resume teaching large lecture classes in order to keep her job, even though she "was left with disabled speech and diminished physical capacities," and despite letters from her physician explaining the severity of her disabilities. MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 43-44 (2011).
  5. See, e.g., David R. Williams & Selina A. Mohammed, *Discrimination and Racial Disparities in Health: Evidence and Needed Research*, 32 J. BEHAV. MED. 20 (2009) (reviewing and critiquing empirical research on the impact of racial discrimination on health); Elizabeth Brondolo et al., *Coping with Racism: A Selective Review of the Literature and a Theoretical and Methodological Critique*, 32 J. BEHAV. MED. 64 (2009) (describing the ways in which racism is a mental and physical health stressor and identifying issues in the study of coping mechanisms employed by individuals); Beverly Y. Araújo & Luisa N. Borrell, *Understanding the Link Between Discrimination, Mental Health Outcomes, and Life Chances Among Latinos*, 28 HISP. J. BEHAV. SCI. 245 (2006) (reviewing and critiquing empirical evidence that links perceived discrimination to health outcomes in the Latino community).
  6. Nancy Krieger, *Embodying Inequality: A Review of Concepts, Measures, and Methods for Studying Health Consequences of Discrimination*, 29 INT'L J. HEALTH SERVS. 295, 296

and self-care strategies again and again—mindful that each strategy could be a lifeline.

There is a second urgency in telling these stories. Women who are successful in academia are often subtly pressured to distance themselves from those who are having difficulties. Indeed, the advice that we sometimes give one another—“never let them see you sweat”; “you need to be twice as good as they are”—encourages women to be silent about their struggles, and leaves those in trouble feeling isolated, unworthy, and afraid. When we were editing *Presumed Incompetent*, several women would not contribute essays, section introductions, or even back-cover blurbs to the book for fear—to put it bluntly—of being associated with “losers.” One of the lessons of *Presumed Incompetent* and of the symposium, however, is that some extremely successful female academics of color faced formidable obstacles at earlier stages of their careers, including denigration of their abilities, hostility from students and faculty, and denial of tenure. Several women who contacted us after *Presumed Incompetent* was published reported that they summoned the courage to appeal their denials of tenure only after learning that luminaries in their field had faced and overcome similar challenges. It is therefore essential to let a new generation of women know that they are not alone.

Third, it is urgent that administrators and policymakers hear these stories because of the light they shed on the project of institutional inclusion. “Diversity” has become a mantra in American universities. Yet, the addition of “diversity” to a university’s mission statement does not guarantee that students, faculty, and staff from different backgrounds will actually learn from one another, respect one another, or build a community. In order to make the promise of diversity a reality, those who shape faculty working conditions must learn from the individual and collective strategies that women of color use to survive and thrive in the academic workplace.

Finally, telling these stories is urgent because the tribulations faced by women of color in academia are not solely their own. The traditional tenure track itself is disappearing as American colleges and universities face pressure to provide academic credentials to more students at lower cost, and to adopt a corporate model in which education is defined by the production of quantifiable “deliverables.” The vulnerability of female faculty of color may foreshadow the vulnerability of all but the most elite professors, as teaching is increasingly done by faculty who lack job security, benefits, and a living wage—yet are held responsible for “adding value” to their students. In this sense, women academics of color may be the canaries in the academic coal mine. The conversation spurred by *Presumed Incompetent* therefore may be instructive as the nation debates how to reshape higher education.<sup>7</sup>

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(1999).

7. See generally LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE,*

From the early twentieth century to the present, education has been at the forefront of civil rights struggles in the United States. While these struggles have succeeded in increasing the number of students of color who have access to higher education, female faculty of color remain woefully underrepresented in America's colleges and universities.<sup>8</sup> This underrepresentation impoverishes the educational experiences of all students because it narrows the variety of perspectives and voices presented in the classroom. We hope that the publication of *Presumed Incompetent* and the *Berkeley Journal of Gender, Law & Justice* symposium issue will provide women of color and their allies, academic leaders, students, lawyers, judges, and social justice activists with the tools to begin to dismantle the structural barriers encountered by women of color in the academic workplace. In solidarity with these actors, we envision a college and university education appropriate for a multicultural and increasingly globalized twenty-first century—an education devoted to ending unjust hierarchies of all kinds.

The pieces included in the *Berkeley Journal of Gender, Law & Justice* symposium issue reflect the exhilarating breadth and depth of our March conversations—from Wang Ping's passionate, sometimes anguished poetry to Eleanor Swift's crisp and lawyerly description of her historic tenure battle, which opened the door for other female Berkeley faculty members facing sex discrimination by introducing a new review process dubbed the "Swift settlement." Yet despite their diversity, interesting rhymes and resonances link the contributions. For example, at the end of her essay, Swift remembers her discussions with Professor Sally Fairfax, who as Faculty Adviser to the Chancellor on the Status of Women and Title IX officer for the Berkeley campus had found a pattern of sex discrimination in tenure cases at Berkeley Law. Fairfax was barred by confidentiality concerns from speaking freely with Swift. Swift recalls, "If we touched on a topic that was off-limits, Professor Fairfax would deflect it with her own catch phrase: 'Three swans are flying over the rice fields.'" <sup>9</sup> This evocative image links Swift's journey with the "wings of 7 billion hearts" that Wang describes flying "from sea to shining sea," <sup>10</sup> and with the spread wings of Angelique EagleWoman, whose essay concludes with the desire to see the next generation in turn spread its wings. <sup>11</sup>

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RESISTING POWER, TRANSFORMING DEMOCRACY (2002) (explaining how the plight of people of color in American society often serves as a warning about toxic social conditions that affect all Americans).

8. See Harris & González, *supra* note 2, at 2-3 (citing to MIKYUNG RYU, AMERICAN COUNCIL ON EDUCATION, MINORITIES IN HIGHER EDUCATION: TWENTY-FOURTH STATUS REPORT (2010)).
9. Eleanor Swift, *Better Than Going to Court? Resolving a Claim of Discrimination Through a University's Internal Grievance Process*, 29 BERKELEY J. GENDER L. & JUST. 337, 350 (2014).
10. Wang Ping, *Who Killed Soek-Fang Sim*, 29 BERKELEY J. GENDER L. & JUST. 308, 309 (2014).
11. Angelique Townsend EagleWoman, *Balancing Between Two Worlds: A Dakota Woman's Reflections on Being a Law Professor*, 29 BERKELEY J. GENDER L. & JUST. 250, 274 (2014).

Another link that connects Wang's soaring poetry with the reflections from law professors that make up the bulk of these symposium pieces is the significance of the body and its connection to the mind. Academia is, notoriously, a haven for those who live in their heads and ignore their bodies—like James Joyce's Mr. Duffy, who "lived at a little distance from his body."<sup>12</sup> As several contributors make clear, however, the presumption of incompetence may take a serious toll on the faculty woman of color's body, even while she strives in good academic fashion to ignore it. Wang's harrowing poem, "The Cost of Speaking Truth," provides a litany of the physical consequences both of speaking up and of keeping silent in the face of harassment. From irritable bowel syndrome to cancer, these nagging maladies and chronic diseases rob life of joy and ultimately contribute to premature death.<sup>13</sup> Wang elaborates on this theme of body-mind connection in a poem for her colleague Soek-Fang Sim, which electrified the audience when read aloud at the symposium. Joining phrases from "America the Beautiful" with a description of the harassment Sim faced and its impact on her body and spirit, Wang grieves for this fellow scholar who was a successful teacher and researcher, yet failed to pass her third-year review and died soon after of breast cancer.<sup>14</sup> Elvia Arriola, one of the original contributors to *Presumed Incompetent*, similarly calls attention to the mind-body connection in her account of her tenure battle at the University of Texas School of Law. Arriola notes that workaholic and perfectionism may become a refuge for those who are presumed incompetent, yet she stresses that the two are a "deadly combination."<sup>15</sup> In describing her own failure to respond appropriately to the discovery of fibroid tumors in her uterus, she warns junior scholars of the perils of saying "yes" and taking on more responsibilities than a human body can bear.

Wang and Arriola perceptively trace the pressures of academic culture and social subordination that bear down on the individual body-mind. Both authors also prescribe community as the antidote to this social sickness, and the importance of community is another theme that weaves together these symposium pieces. Arriola names intimacy, friendship, and the community found in national organizations, as well as the solidarity she found in recovery groups, as central to her healing. She urges junior scholars to connect with other faculty members and to create a network of friends outside the academic milieu. Wang argues that there are reasons for speaking out despite the physical and psychological costs because "[i]t's the essence of being alive, our hallmark, our plan de vidas."<sup>16</sup> Angelique EagleWoman also writes about the importance of community, describing how she takes strength and support from a nationwide

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12. JAMES JOYCE, *A Painful Case*, in DUBLINERS 77 (Wordsworth Eds. 1993) (1914).

13. Wang Ping, *The Cost of Speaking*, 29 BERKELEY J. GENDER L. & JUST. 316, 317 (2014).

14. Ping, *supra* note 10, at 310.

15. Elvia R. Arriola, *It's Not Over: Empowering the Different Voice in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 320, 329 (2014).

16. Ping, *supra* note 13, at 318.

community of Native law teachers, and from a deep spiritual faith that keeps her “walking forward in a positive manner.”<sup>17</sup> Above all, EagleWoman communicates the sense that her success and achievements are not personal to her but shared by her community.

This symposium issue is rich with individual insights as well as common themes.

*Reflections on “Presumed Incompetent”* provides the reader with a glimpse of the rich and wide-ranging conversation that transpired on March 8, 2013. In this semi-transcribed version of the conference’s plenary panel, four of the original *Presumed Incompetent* authors—Angela Mae Kupenda, Angela Onwuachi-Willig, Stephanie Wildman, and Adrien Wing—revisit their contributions to the book. Maritza Reyes then engages the four in a series of provocative questions—about silence, regret, mentorship, the “torture model,”<sup>18</sup> and life after tenure—before taking audience questions and offering a series of closing remarks. The sparkling exchanges these questions elicit are impossible to summarize; they should be read and savored. However, one striking remark Reyes makes in her conclusion must be underscored: she frames the harassment that women faculty of color often experience as “bullying.” Reyes reminds us that a range of hostile interactions among children and teenagers that were once dismissed as “kids being kids” are now increasingly understood as physical and mental abuse that must be challenged and prevented. She calls our attention to the new legal literature on “workplace bullying,” and urges academics to develop a code for solidarity in the face of oppression that will “once and for all, to name, face, and confront the wrongdoing that is done to many in the academy, especially to the most vulnerable.”<sup>19</sup>

In *It’s Not Over: Empowering the Different Voice in Legal Academia*, Elvia Arriola, who told the story of her horrific experience on the tenure track at the University of Texas School of Law in *Presumed Incompetent*, now offers additional reflections and advice as a “senior professor” looking back at her career. Arriola’s central message has to do with taking care of oneself as the key to individual and collective flourishing. With sadness, she describes her own “self-sabotage” in placing her job over her health,<sup>20</sup> and she advises junior faculty to be much more mindful in taking care of themselves. Keeping a journal, recognizing that “it’s all political,” and being honest with oneself about one’s commitment to the job are some of the strategies Arriola recommends for surviving a possibly hostile environment. Taking care of oneself also requires

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17. EagleWoman, *supra* note 11, at 271.

18. Maritza Reyes et al., *Reflections on Presumed Incompetent: The Intersections of Race and Class for Women in Academia Symposium—The Plenary Panel*, 29 BERKELEY J. GENDER L. & JUST. 195, 205 (2014) (describing the presumption of incompetence as “a form of torture . . . a slow killing of sorts—the type that occurs as a result of the slight everyday negation and microaggressions felt by [female faculty of color] on the job.”).

19. *Id.* at 249.

20. Arriola, *supra* note 15, at 327, 329.



making and sustaining connections with others. Indeed, Arriola sees networks of support as not only central to self-care, but as a way to establish and maintain the solidarity necessary for social change. Warning that an anti-progressive backlash is underway both in academia and beyond, she ends the essay by calling for “coalition with broader movements to preserve our right to be here and to stay here.”<sup>21</sup>

Angela Mae Kupenda, whose *Presumed Incompetent* essay *Facing Down the Spooks* is a funny and scary highlight of the book, also contributes an original piece to this symposium issue. In her essay, *Challenging Presumed (Im)Morality: A Personal Narrative*, Kupenda adds a new dimension to the concept of presumed incompetence by showing that in many institutions dominated by white people, whiteness is not only associated with competence but also with morality. The presumed immorality of black people and the presumed moral inferiority of their culture and communities are of particular importance in the South, where Kupenda lives and teaches, and where conservative Christianity is a powerful social force. As in her *Presumed Incompetent* essay, Kupenda insightfully demonstrates how the presumption of incompetence can function in paradoxical ways. The idea that “black immorality [is] the major reason for white flight when blacks move into a neighborhood, and why many whites may not want to go to school with, live next door to, or even work for a black person” releases whites from feeling any responsibility for social change, and justifies a general moral revulsion for black people.<sup>22</sup> Yet, paradoxically, the white people with whom Kupenda deals are drawn to her personally. They actively seek Kupenda’s complicity in their anti-black attitudes and reassurance that they are not racist, assuming that she shares their moral judgments of “ghetto” black people. Kupenda shows that the presumption of incompetence in academic spaces sometimes rests on even more deeply seated racist assumptions about blackness and personal worth.

Like Kupenda, Angelique EagleWoman often finds herself serving as a translator. In her essay, *Balancing Between Two Worlds: A Dakota Woman’s Reflections on Being a Law Professor*, EagleWoman describes her journey from a childhood as “the family genius/eccentric/geek/responsible one”<sup>23</sup> (she reports reading Vine Deloria, Jr.’s classic book, *Custer Died For Your Sins*, at the age of ten!) to becoming a law professor at the University of Idaho. Commitment to the Native community, as reflected in her name (“Good Eagle Woman Who Cares About/Takes Care of the People”), stoked her academic ambitions, but also kept her grounded and resilient in the face of discouragement, especially as an undergraduate at Stanford University. Despite her participation in strong Native programs and organizations at Stanford, EagleWoman considered dropping out

21. *Id.* at 335.

22. Angela Mae Kupenda, *Challenging Presumed (Im)Morality: A Personal Narrative*, 29 BERKELEY J. GENDER L. & JUST. 295, 299 (2014).

23. EagleWoman, *supra* note 11, at 251.

every quarter—less because she was personally “presumed incompetent” than because of the pervasive lack of recognition and respect for indigenous governance in the white-dominated academic world. EagleWoman points out, for example, that she was directed toward anthropology rather than political science for her proposed thesis on tribal judicial systems. Nevertheless, the story she offers is one of success; as an academic rising to the rank of full professor, she now finds herself with compassion not only for her Native students, but also for her working-class and minority students who similarly find themselves strangers in a strange land. EagleWoman ends her essay with triumph and gratitude that she can now encourage the next generation of Indian people to spread their wings.

Lorraine Bannai’s essay, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, looks beyond the tenure track to give voice to women who, she poignantly observes, saw no forum in which they could share their thoughts—“not within their schools, the larger community of faculty of color, or even in the larger Legal Writing community.”<sup>24</sup> The women she speaks of—women of color who teach Legal Writing—are a minority within a minority. Bannai explains, “As faculty who teach Legal Writing, they often work with limited or no job security; they are paid much less than others on the faculty; they are excluded in many ways from full citizenship within their institutions; and they are relatively powerless to protect, much less advance, themselves.”<sup>25</sup> Women of color who teach Legal Writing, she concludes, are subject to a “triple threat,” a convergence of disfavored race, gender, and faculty status. Bannai does us all an important service when she ends her essay with a challenge: “If we are truly committed to challenging hierarchies built on stereotype and assumptions, rather than ability and value, we should question the structures and practices that diminish the experiences of women of color who teach Legal Writing.”<sup>26</sup>

Meera Deo’s essay, *Looking Forward to Diversity in Legal Academia*, similarly takes the *Presumed Incompetent* project a step further. Deo proposes a study, the Diversity in Legal Academia (DLA) project, which will investigate the unique burdens and benefits of being a female law professor of color using mixed quantitative and qualitative methods. Deo notes that we know far less than we should about race and gender diversity on American law school faculties. For unknown reasons, the Association of American Law Schools (AALS) stopped providing demographic data concerning law faculty in 2009; meanwhile, research on diversity in law schools tends to focus on the experiences of students, rather than faculty members.<sup>27</sup> Deo’s research project is therefore

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24. Lorraine K. Bannai, *Challenged X 3: The Stories of Women of Color Who Teach Legal Writing*, 29 BERKELEY J. GENDER L. & JUST. 275, 277 (2014).

25. *Id.* at 278.

26. *Id.* at 294.

27. See Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 356 (2014).

sorely needed. Moreover, in keeping with the aims of *Presumed Incompetent*, Deo plans to investigate the distinctive strengths as well as the deficits of being a female law professor of color. As she observes, the DLA project will provide us with the understanding necessary to make structural change in legal academia—which is, in turn, essential to achieving the dream of equality.

A contribution by two law school deans who are also faculty of color exemplifies the value of continuing the *Presumed Incompetent* conversation. In “*Presumed Incompetent*”: *Important Lessons for University Leaders on the Professional Lives of Women Faculty of Color*, Dean Kevin Johnson of the University of California, Davis, School of Law and Dean María Pabón López of Loyola University of New Orleans College of Law offer their reflections, as faculty members and as administrators, on the final chapter of the book. This final chapter, written by Yvonne Flores Niemann (herself a senior vice provost at the University of North Texas), offers advice to graduate students, faculty before and after tenure, and university administrators. Johnson and López focus on lessons for administrators. Some of the actions they recommend, such as choosing your battles, making the tenure process as transparent as possible, and not approaching senior management with a problem unless also armed with a clear and specific solution, require no special understanding of subordination. Other recommended actions, however, require sophistication, sensitivity, an understanding of racial privilege and institutional bias, and a principled commitment to equity. The authors underscore that the work of undoing institutional inequality is often arduous and unrewarded. Johnson and López, for instance, observe that the law school dean committed to faculty diversity often must push back against his or her own faculty’s desire to hire former Supreme Court clerks because the number of such persons who are people of color is infinitesimal.<sup>28</sup> The law school dean committed to faculty diversity must push for people of color to be recruited for administrative positions, despite the danger that they will be treated as sham candidates who have been included only to make the pool appear attractively broad and deep.<sup>29</sup> The law school dean committed to faculty diversity must put faculty of color forward to serve on important committees, without setting them up to function as “tokens” or figureheads with no real voice.<sup>30</sup> Above all, the law school dean committed to faculty diversity must understand the dynamics of institutional racism—from the danger of evaluating teaching based only on student reports, to the need of faculty women of color to have mentors and allies, to the cultural differences between U.S.-born faculty of color and faculty recruited from abroad, to the

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28. María Pabón López & Kevin R. Johnson, *Presumed Incompetent: Important Lessons for University Leaders on the Professional Lives of Women Faculty of Color* 29 BERKELEY J. GENDER L. & JUST. 388, 401 (2014).

29. *Id.* at 403.

30. *See id.* at 392 (discussing the problem of tokenism).

reality that, as they put it bluntly, “numbers matter.”<sup>31</sup> Aware that maintaining a diverse faculty means success not just in recruitment but also in retention, Johnson and López observe, “Without a critical mass of women of color and other historically underrepresented groups on faculties, it is entirely possible that ‘the one’ will become ‘the none.’”<sup>32</sup>

Professor Swift’s essay, although it describes a settlement that took place in 1989, complements Johnson and López’s piece. As she observes, very little has happened since her historic battle with the University of California, Berkeley, to improve the resolution of faculty grievances on the nation’s college and university campuses; “[p]rivate academic institutions in particular rarely seem to provide an internal grievance process in any form.”<sup>33</sup> Yet, her story, she hopes, provides resources for administrators who, like Johnson and López, seek to build inclusive institutions of higher education. Swift notes three elements of her successful bid for tenure despite the sex discrimination rampant in her department: an independent, faculty-run privilege and tenure committee empowered to make decisions in grievance cases; an independent faculty “watchdog” endowed with the resources to gather and analyze campus-wide data about hiring and promotion decisions and driven by an anti-discrimination mission; and a “comparative review” procedure that permitted her research and teaching to be compared to the research and teaching of men in Swift’s age cohort who had already been awarded tenure at the School of Law.<sup>34</sup> The “comparative review” process allowed the reviewers to see how the department *actually* evaluated candidates across a run of tenure decisions, rather than being limited to the question of whether Swift’s work met the department’s abstract standard of excellence. It is shocking, though not surprising, that other campuses have been slow to adopt the kinds of procedural and institutional innovations that Swift and her advocates were able to use. Her willingness to closely analyze and reflect on her experience—and, as she notes, the fact that she was not required to sign a confidentiality agreement—provides a valuable opportunity for forward-minded administrators to rethink their internal grievance mechanisms in the interest of the redress and prevention of poor tenure decisions.

We end this introduction where we began: on a note of urgency. There is much work yet to be done, and much danger that academia will regress rather than progress in these times of economic hardship and uncertainty about the mission of higher education. Yet, we take heart from the brilliant women and men who took part in the symposium and who are represented in this collection of essays. These essays, like the conversations at the symposium, combine intellect and heart in dazzling ways. Wang Ping puts it eloquently: “If the law

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31. *Id.* at 396-97.

32. *Id.* at 396.

33. Swift, *supra* note 9, at 337.

34. *Id.* at 337-38.

won't speak justice/We'll sing it with our poetry."<sup>35</sup> As editors of *Presumed Incompetent*, we would like to thank the *Berkeley Journal of Gender, Law & Justice*, the *Seattle Journal for Social Justice*, and the participants in the March 8, 2013 *Presumed Incompetent* symposium for joining with us to continue this important conversation.

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35. Ping, *supra* note 10, at 309.