Meera Deo:

Most people did not think about a job in law teaching, and yet we're waiting for them to come to us. They're probably not going to come to us in any meaningful numbers. If a law school is willing to open the door and then just hope somebody falls in the door, it's not going to happen, right? You kind of need to get out of your comfort zone and try things a little bit differently than you've been doing them or you're probably going to keep getting the same result that you've already gotten.

Melissa Murray:

Welcome back to Strict Scrutiny, your podcast about the Supreme Court and the legal culture that surrounds it. I'm Melissa Murray.

Leah Litman:

I'm Leah Litman.

Kate Shaw:

And I'm Kate Shaw.

Melissa Murray:

And we are thrilled to be joined today by Meera Deo, a law professor at Thomas Jefferson School of Law, and also the William H. Neukom Fellows Research Chair in Diversity and Law at the American Bar Foundation. Meera is also the author of Unequal Profession: Race and Gender in Legal Academia, which was published last year by the Stanford University Press. Unequal Profession is the first formal empirical investigation into the law faculty experience using a distinctly intersectional lens.

Melissa Murray:

In her study, Meera examines both the personal and professional lives of law faculty members and in doing so, she draws comparisons between the professional and personal experiences of women of color professors with white women, white men, and men of color faculty in order to explore how race and gender of individual legal academics affects not only their individual and collective experience, but legal education as a whole.

Melissa Murray:

As the book documents, race and gender intersect to create profound challenges for women of color law faculty members presenting unique challenges as well to the opportunities to improve educational and professional outcomes in legal education. The book is riveting and at many points really hits close to home, maybe too close to home. But in any event, we are really excited to tuck into it. So Meera, welcome to Strict Scrutiny.

Meera Deo:

Thank you for having me. I'm thrilled to be here.

Leah Litman:

So we wanted to start by talking about the book and the question of the racial and gender composition of the legal academy. So just as an empirical matter, Meera, what does the legal academy look like?

Meera Deo:

Well, just 7% of law professors are women of color, and by women of color I mean those who are Black, Asian-American, Latina, Native American, Middle Eastern or multiracial, and that's the smallest percentage of any racial or ethnic group. Men of color are a little bit higher at about 8% of law faculty and white women are almost a quarter of law professors. But if you do the math, that means that roughly half of all law professors today are white men. I'm sort of unclear about the data in some sense because the data I'm relying on are not current data. AALS, the membership organization of American law schools used to release data on law faculty, but they haven't done so in a number of years. And so we're not really relying on current data because we don't have data from the last couple of years. We're just using the best that we have.

Leah Litman:

But I mean, even if it's not precisely correct about the exact percentage or number of faculty, I think most people can understand just by looking around at the law faculties that exist that in fact there do continue to be an overwhelming number of law faculty who are white men and that the other groups who identify make up considerably smaller percentages of the legal academy.

Meera Deo:

If anything, actually that 7% might be slightly over-inclusive because it includes anyone who's working in any capacity as a law teacher. So it includes not just pre-tenure or tenured faculty, but legal writing faculty, whether they're tenured or not, library faculty, academic skills, but even adjunct professors and others who maybe aren't long-term involved in the school or don't have security at the school. And hopefully we'll talk more about folks who don't have as much security today as well.

Leah Litman:

Definitely. One thing we did want to talk a lot about is why the legal academy looks that way. So just what are the elements that kind of contribute to the legal academy having this makeup. In the book obviously you discuss both individual stories that reflect part of why the legal academy looks that way, but could you just generalize some of the contributing factors for our listeners that you identify in the book?

Meera Deo:

Yeah. There are a number of reasons why there aren't that many women of color in legal academia. Probably the first and foremost is just a lack of knowledge that this is a viable path. And in some ways that is because it's not a very open path for most people. There aren't a lot of law professors who are women of color today, and there were even fewer before. And so what that means is for current law professors, many of us didn't have anyone who looked like us as a law teacher throughout our career in law school when we were students. And so a lot of people don't recognize it as a path for them.

Meera Deo:

Most of the women in my study call themselves accidental law professors. They're not really on this purposeful path towards the profession when they're in law school as compared to a lot of the white men in my study who some of whom went to law school specifically to become law teachers. But the women of color went to law school primarily to practice public interest law or to hopefully get a big law job that would pay off their loans and help secure the financial resources for their extended families.

Meera Deo:

It really had never occurred to most of them to consider law teaching as a career. And frankly, others didn't really see them in that role either. So most of them did not have mentors in law school who approached them and said, "Hey, you should really think about law teaching." So it's a lot of a lack of understanding that this is a place where other people can belong. Partly because so many of us haven't seen others who look like us in the profession. And then of course there's also obviously bias as well in the hiring process and afterwards.

Leah Litman:

You mention the importance about people identifying the possibility of academia as a pathway. I entered law school thinking I was going to do direct services related to gender inequality. And it was actually Danielle Citron who appeared as a guest on our live show who suggested to me, you might want to think about being an academic, and so he kind of planted the idea in my mind. And I just met her because she was publishing with our law review and she wasn't even on the faculty at the time. But I think we did want to talk more about the dynamics you identify in the hiring process in particular and just unpack kind of what the hiring process look like. Kate, I know you were actually involved in the hiring process last year and I was the previous year. So maybe we can just share a little bit with our listeners about what the hiring process for legal academics looks like.

Kate Shaw:

Yeah. I mean, there's so many great things about the book, but one of the things that really resonated was this, how many of your subjects identify themselves as accidental law professors for whom like a chance encounter, the kind that Leah is describing, is really responsible for their initial entry into legal academia. And it is fascinating just how prevalent that kind of a narrative was. But yeah, to Leah's question, did you want to maybe, Meera, talk people through who don't really know, like what is the way that most law teachers end up sort of gaining entry into the profession sort of in the ordinary course. And then maybe we could talk about some of the barriers that that process entails.

Meera Deo:

Sure. AALS, which I mentioned a moment ago, arranges an opportunity for people to submit materials through them that they then distribute to law schools who are interested in hiring entry level faculty. And then the hiring committees, which the two of you and others can talk about as well, pour over those materials to select among the people who are interested to first have an interview with them usually in DC at a very complicated and confusing hotel according to many people in my study and others. And that's usually a 20 to 30 minute interview where you sort of share your goals, your priority. It's a little bit about your research and-

Melissa Murray:

It's a speed dating interview.

Meera Deo:

Yes.

Leah Litman:

It's literally called the meat market, right?

Melissa Murray:

Yes.

Meera Deo:

Yeah. I'm presenting it in this sort of rosy neutral way or I'm attempting to at least, but most people necessarily-

Melissa Murray:

It is the fourth circle of hell.

Meera Deo:

Yeah.

Kate Shaw:

Melissa, you're saying, if you're a candidate, right? So you go and you have like a series of... both?

Melissa Murray:

No. Like I've been at the meat market probably seven times, only one of which was as a candidate. And it was horrific all of the time. It's like the anxiety is palpable. People running. And like as Meera says, the hotel is famously labyrinth in its set up. It's like Watership Down. You're running back and forth. Sometimes the elevator works, sometimes you scheduled interviews like back to back to back, especially in the heyday of hiring. I mean, it's slowed down a little bit in the last couple of years, but it was just a nightmare of getting around for the candidate. And then for the appointments committees, it's just this like revolving door of people coming in, pitching themselves to you and you've got to be as excited every single time that you see them, or you should be.

Meera Deo:

Of course because the goal of the 20 minute interview is to secure a full day campus visit. So that's when candidates for these tenure track positions are flown out to whatever schools they've been invited to potentially join and to try to spend a day and a half convincing them that they are the right person for the job. And of course spending that much time doing so many different things and navigating dinners and a job talk and a bunch of individual interviews as well as interviews with students, those are all fraught encounters individually and collectively.

Meera Deo:

And they raise a number of race times gender times class issues too. I had women in the study, for example, who said they had to max out their credit cards and they knew they would get reimbursed eventually by the school that was "flying them out". But they had to bear the brunt of those costs initially, and not everybody can afford to do that. The FAR form itself is a $500 endeavor just to be able to sign up to have your materials circulated.

Melissa Murray:

And then there's a whole thing about how you fill out that form that insiders know but if you're not hooked up, you might not know about how to do it properly in the first place. And then there are three

different distribution tranches. And if you're outside of the first one, you're really not going to be looked at at all. And so it's a waste of the $500 if you're not in that first distribution, but a lot of people don't know that. So there's all of this insider knowledge, I think, baked into the process, which you talk about Meera.

Meera Deo:

Absolutely one of the things that's really challenging for a lot of the women of color faculty is that they didn't see themselves on this path. Others didn't identify them as someone who should join legal academia. And so most of them don't have a lot of mentors to guide them on the process. And mentors of course are instrumental not just in understanding the basics but really in navigating what you've just identified Melissa, and that's the unwritten rules. So if you don't know what you're supposed to wear to the dinner the night before, you can't just Google that and figure out what to wear. One of the women in my sample said she filled out the FAR form and turned it in. And then she ultimately talked with a former professor of hers and he said, "Send me your FAR form so I could see it." And he looks at the form and he's like, "You don't put race and law as the first course you want to teach."

Meera Deo:

And the way the FAR form is written, there's a category of courses where you're supposed to write the courses that you're most interested in teaching. She took that at face value. She didn't know she was supposed to put standard first year courses like contracts or civil procedure or criminal law as the ones she was most interested in teaching. She had to learn that through the mentorship that she ultimately received. She didn't secure a tenure track job actually that first time, but that mentor really worked with her in the subsequent year and she secured a tenure track job the next year.

Melissa Murray:

How do you get that kind of insider knowledge? What are some of the ways, the pathways that people who are outside of those networks might get that if they don't actually have a formal mentor?

Meera Deo:

Leah, one of the things I loved about the example that you shared about that initial nugget of interest of your own to join legal academia is that it is sadly and surprisingly really common. It is actually the most common way that women tend to join legal academia. Kate, as you said, this chance encounter. It's often not somebody who's at your own school who might recognize something special in you and say, "You should be my colleague in the future." A lot of times it isn't anything formally arranged. There are, I think, more opportunities for that now. There are more regional conferences, for example, that include aspiring faculty members so that you have an opportunity just to understand the culture of legal academia a little bit. You are around other professors, you see them present their materials. You might have an opportunity to practice your job talk.

Meera Deo:

But if you don't have that, you're really at a disadvantage, especially given the number of faculty members today who are hired straight from things that are set up to launch them into their profession. We haven't talked directly although we've talked sort of around the elitism of the credentials of the profession. And as I mentioned, there isn't a lot of data on this that's shared openly. But Sarah Lawsky does compile and very transparently share data on entry-level hiring. And so we know from her data that roughly 50% of all new hires over the last three years, which I think qualifies as a trend, have had

doctoral degrees like a PhD in addition to a JD, and 83% had a fellowship before they secured a tenure track job.

Meera Deo:

And so a lot of these fellowships or VAPs, visiting assistant professorships, are created really for the purpose of helping an aspiring candidate understand what the process is going to be like, have the time to be able to sit down and write, teach and secure some hopefully decent student evaluations all to show prospective employers that you're not taking a "risk" by hiring this particular candidate.

Meera Deo:

And so the more these elite credentials become part of the norm, the harder it is for people who don't have the opportunity to pursue those paths to ultimately secure a tenure track job. And they seem really neutral. Like of course it seems great to be able to have a chance to practice being a professor as a fellow before you actually are a professor, but they have really serious race times gender implications because of course not everyone can secure a job and move their family to Wisconsin, for example, if you wanted.

Meera Deo:

If you were fortunate enough to get the Hastie Fellowship, you might not be able to move your partner and your kids to Wisconsin only to stay there for two years and then attempt to get a permanent job. And remember you're leaving most likely a pretty lucrative permanent position to take that two year temporary, relatively low paying job. So even for things that might seem neutral, I think we have to think really carefully about what we're signaling and who we're excluding with those criteria.

Melissa Murray:

I'll say about the VAPs. I did one of them. This is back in 2004 to 2006, so a really long time ago. And I know Leah did the Climenko at Harvard. I did the Associates at Law at Columbia. But when I did it, it was really not as well paid as they are today. I mean, I think today they are very clearly a living wage but when I did it, it was a program still very much in transition and it really only paid about $35,000 a year to live in New York city. And I think if I had not been married, I wouldn't have been able to do it at all. And I imagine even now when it's definitely a more generous salary, it may still be an impediment for those in the academy who are paying off school loans or supporting extended family, which is often I think the case for a number of people.

Meera Deo:

And it is women of color who tend to accrue higher levels of debt from law school as well. So in my position as the director of LSSSE, the Law School Survey of Student Engagement, we've looked specifically at disparities based on race and gender and Black women have more debt than any other race times gender group. And so, what does that mean for who we're inviting to join us in this particular segment of the profession?

Kate Shaw:

There are other institutions, I'm going to sort of sing Cardozo's praises for a second because what we do at Cardozo is like just have a VAP one at a time and not even every year. And it actually is like a position that is paid, not that different from an entry-level law teaching position. You teach, you teach a good

amount. So that's the trade-off as opposed to just being very minimally compensated, but then not having tons of teaching responsibilities. But because there's only one VAP at a time, it tends to be a lot easier for the tenure track and tenure faculty to actually forge relationships. So I think law schools could think about sort of emulating that model because that's how I got into the position, the tenure track position at Cardozo.

Kate Shaw:

I actually did the meat market that you guys were just describing, which is why I was quiet about it. I've actually never been there all the way. I'm sharing our appointments committee via Zoom right now. But I was a VAP and I kind of stumbled into it. And then I wrote a paper and then they were like, well, do you want to just give a talk here? And I did. And then I switched over to the tenure track and got tenure a couple of years ago. Because I was the only VAP there I got close to people very quickly. And so I think that made a difference.

Kate Shaw:

But actually I want to sort of pause and take a step back. We plunged right into substance because it's so interesting, but I think I want to just ask Meera if you'll talk a little bit--the book is obviously what we're here to talk about. Will you just walk us through a little bit methodologically sort of how did you go about designing the study, identifying participants, just kind of... And I know you're a sociologist as well as a lawyer by training. So talk us through, if you would, how you designed and executed the study that resulted in the book.

Meera Deo:

Yes. Thank you for this opportunity. Often when I give talks to law faculty or practitioners, I sort of quickly go through the methods and jump ahead to the findings because people tend to be more interested in that. The findings are really interesting but the methods themselves are pretty innovative, so I'm happy to have a chance to share a little bit about them. A lot of people are familiar with snowball sampling, which is when you start with a seed group of people to join your study, and then you ask them to nominate others, and then you reach out to everyone who's nominated and then your sample grows just as a snowball would grow by more and more people joining and suggesting more and more people to also join.

Meera Deo:

What snowball sampling has been critiqued for is a potential for bias in the sample because if I started with the people who are here participating on this podcast, of course I could say a lot about women in legal academia, but if I wanted to talk about all lawyers, I would probably not start with three women who are law professors, right? I need to include some men. I need to include people who are practicing, not just academics.

Meera Deo:

And so similarly for my study I started with a seed group of people who were really diverse among a bunch of different domains. I looked at race and gender obviously, but I also looked at region of the country. I looked at selectivity of the law school. I wanted to be sure to include pre-tenure as well as tenured faculty and also to include leaders, formal administrative leaders like deans, vice deans, and vice chancellors for entire university systems as well as people who were not in a leadership position, and a number of other things.

Meera Deo:

And so I tracked these things and corrected for them as the sample progressed. And so if I had asked the three of you to join, for example, and you suggested a bunch of other people, probably a lot of people you would suggest would be legal academics. But once I had enough legal academics, I couldn't really accept anymore. And so for my purposes what that meant was if I had two Black women from the west coast who had already participated in the study, no matter how many people suggested another Black woman from the west coast, I wouldn't include her because I wanted to make sure I also had Black women from the South and from the east coast and from the Midwest as well as Latinas from top tier schools and access oriented schools or even Native Americans.

Meera Deo:

There's only 21 women who are Native American who are teaching law in the United States as a whole, 21 total. And six of them participated in my study. So I wanted to make sure I overrepresented particular groups so that I could actually say something meaningful about them as a group. I didn't want one or two people to have to represent everyone. And so it was a really painstaking process because I got a lot of suggestions for people to participate who I could not accept once the study started going because I wanted to make sure I really filled in all of these cells.

Meera Deo:

So it's almost like, I didn't do this exactly but it's almost as if I had a spreadsheet and there was a cell for every possible thing that I needed to include. And so if I had a couple people that already fit the bill for one particular area of these intersectional characteristics, then I didn't really want to talk to too many more because I wanted to make sure I had a range of perspectives included.

Melissa Murray:

Was the oversampling of certain groups intended maybe to provide those anecdotal data with some kind of anonymity given the low numbers, like for example of native women in the academy?

Meera Deo:

That certainly is one of the results. I mean, there are more... Of the category of women of color there are more Black women than any other race or ethnic group, right? So more women of color are Black than Asian-American or native American or any other group. But that didn't mean that I needed to include 30 Black women necessarily to get the full range of perspectives. Initially it was driven primarily by just what the best research method could be, and that was to make sure that I covered the range of experiences for all of the different groups. But it's absolutely true that anonymity and confidentiality were big concerns of mine too.

Meera Deo:

This hasn't come up yet but people ask about whether I included people with disabilities in the study, whether I was purposeful about including lesbians in the study or men who are gay. And I did do all of that. I just don't talk as openly about it in the contents of the book because as soon as I say a native American woman who teaches torts and is married; there's only 20, so we know who I'm talking about. And so I had to be very careful in how I share results. And frankly there are some things that I couldn't share in the book, some really poignant data points that I couldn't find a way to say openly without

risking the anonymity of the people who trusted me with their narratives. So, absolutely that was a concern of mine as well.

Melissa Murray:

So Meera, in the book you described many of the women of color law professors as accidental law professors and you explain why, but what happens once they actually get to the academy? What's the experience, I guess, of being a woman of color or a person of color in the academy? What's that like?

Meera Deo:

Well, there are a lot of challenges. The book sort of chronologically follows the career of a law professor. And so it starts with hiring and then it moves through all of the experiences that might happen. And I've thematically grouped those by interactions with colleagues, relationships with students, tenure and promotion, work-life balance, leadership, and then this sort of concluding chapter that looks broadly at support. And so there is a lot of focus, I think, today generally on recruiting and this is both for students as well as for faculty. And we forget I think sometimes how important that second piece is.

Meera Deo:

And that's what you're asking about, Melissa, the piece that we can think about as retention or that recently I've been thinking a lot about as inclusion. So, getting in the door is really just the first step. Sociologists think of structural diversity as referring to the numbers themselves. If we actually literally count, how many people do we have who are women or who are Black or who are women of color. But that doesn't necessarily directly lead to full inclusion.

Meera Deo:

In fact, in my book it's pretty clear that even as numbers have increased, there really hasn't been as much towards inclusion. Some of the challenges that existed for women faculty who started teaching 20 and 30 and 40 years ago are still happening for junior faculty, for example, today. So, there is a presumption of incompetence. That's one of the strongest themes that comes through and that is from students as well as from faculty colleagues.

Meera Deo:

One of the most common examples that occurred in the book from white women faculty as well as women of color is the silencing and mansplaining and what was a new term for me, "he-peating" that happens at faculty meetings. And I love the term because it is exactly as you might expect from the title. I have a woman in the sample named Carla, for example, who says, "I've counted over 10 times on the faculty where I've said something and no one has responded. And then a male colleague repeats it and another man says, 'Good idea.'" That's he-peating.

Meera Deo:

And white women and women of color alike talked about how common that was and specifically how often it happened during faculty meetings. In mind that's really about just sort of basic respect. Recognizing that your women colleagues are your equals at least perhaps, that they are qualified to be there, that they are experienced, that they have a lot to offer, and valuing them for the work that they're doing.

Meera Deo:

In the classroom, this comes through in terms of ways in which students push back against some of their women professors. They challenge their authority, they test them to see if they really know their stuff. And then they have some confidence in writing either cruel or not helpful and certainly racial and gender-based comments in student evaluations as well. And the evaluations for women of color specifically tend to include a lot of personal characteristics, a lot of focus on physical appearance of the professor and a lot of inappropriate comments.

Meera Deo:

Things like a woman named Natalie, a multiracial woman in my study who remembered comments that said, "Why doesn't she wear her wedding ring? Is she trying to tease us?" So her students are interpreting her as flirting with them. Another woman, an Asian-American woman who said, "I have comments that say I flip my hair over my shoulder too much. But I'm not a coquettish person. I really don't know how to flirt." Like she was astounded that this had come up. And then actual just offensive comments too like a Black woman who had a comment that said, "She's Black, enough said." Or another that said, "I know we have to have affirmative action, but do we have to have this woman?"

Meera Deo:

I mean, I'm rattling these off to you off the top of my head because there are so many of them. I don't even have to look these up in the book. They're just so common among the women in the sample. And the white men in the samples certainly don't get any of that.

Melissa Murray:

Well, it also I think shapes the way you are in the classroom. I know I certainly thought about this a lot early on in my career. Like for example when I taught criminal law, there are so many race and gender issues that I really wanted to surface in a really substantive way and I worry that as a Black woman in the classroom, I was already perceived as being hyper receptive to race and gender critiques anyway. And so if I actually incorporated this in a more robust way, all I would get on my teaching evaluation is all she does is talk about race and gender. And so to the extent that these are some of the conversations we're having right now, I mean, it's really interesting how much your perception of what the students will do will shape some of that. And some of that is borne out by the way students respond in the teaching evaluations.

Meera Deo:

And that they have really serious implications.

Melissa Murray:

Yes

Meera Deo:

The most common reason given for tenure or promotion denials from women in my study are based on teaching evaluations. And these are sometimes from evaluations that have a lot of the negative comments that I just mentioned. Sometimes they're from evaluations that are as Alicia, a Latina in my study said, her dean told her that her evaluations were in his words 'a bit polarized', and that was

enough for her to not get a promotion. Even though she had really high scores, she won teacher of the year the next year, it was this horrible, ironic thing.

Meera Deo:

And because she didn't really trust her colleagues because she didn't feel like she had their support, she endured a lot of really serious mental health consequences too because she didn't feel like she could confide in anyone at her school. She went through this process of what she felt was like legitimately satisfying the requirements to earn tenure and yet being denied tenure. And she still had to show up every day with a smile on her face, teach her classes, be around these same people who had denied her.

Meera Deo:

As you can imagine, a lot of people cried during these interviews. It was really emotional, really difficult to talk about these challenges because these are women who are giving so much, who have really achieved more than they even thought they could achieve. They, like I said, never thought that this would be a job for them when they were in law school. And then once they're in these positions, even when they feel like they're succeeding when they've met the requirements as they're written down, they are still sometimes thwarted from success.

Melissa Murray:

What happens if you're very good at teaching? Do the teaching evaluations ever help you succeed wildly or are you still then sort of held to the scholarship standard? I mean, I can see how they harm you, but do they ever help you?

Meera Deo:

I think they can help. I think being an excellent teacher is helpful and there are certain schools where that is really valued, but it will never take the place, I think, anywhere of scholarship. We haven't talked that much about service yet either. And one of the women in my study said she had a mentor who told her directly, "Nobody doesn't get tenure because of service." And yet women tend to provide significantly more service than everybody else. You kind of get a reputation for service work, and so students tend to flock to you.

Meera Deo:

I mean, before I did this faculty study, I'd worked for a number of years on empirical research on legal education from the student perspective. I'm still doing that now with LSSSE, but I had done that in other research projects previously and I discovered there in empirical research with students that it was kind of different than I expected frankly. I thought, okay well, all the Black students are going to go to the Black professors. They're going to feel like, "Oh, there's a professor who shares my background or who understands me, and so I'll go see her." And that absolutely is true, but what's interesting is that that woman then gets a reputation for being available and accessible and it turns out all students go to her.

Meera Deo:

And so in the empirical research I did with students, I found early on that students from all backgrounds tend to gravitate towards women faculty members, towards faculty of color, and especially towards women of color faculty because they're on campus more, they're available more, they will make time for students. If a student can't meet during office hours, often they will set aside another time to meet with

them. And so once you start doing that, other people find out about it and students have a lot of needs. So if that load is not shared equally, then certain people, and it tends to be women of color as well as white women, end up carrying more of that load.

Kate Shaw:

And that has obviously very serious implications for how much time is available to pursue scholarship, which is the most important single criteria in promotion and tenure decisions. And there are only so many hours in a day, in a week, especially if you have family responsibilities. And so it's an understandable impulse to be available, but it also can have really deleterious consequences for career advancement as you identify.

Melissa Murray:

And it's not counted. It doesn't count the same way.

Kate Shaw:

I think that every institution, I will say for what it's worth there's, I think every institution values service differently. There's no way that it ever is as important as scholarship and as teaching.

Meera Deo:

And there are lots of different ways it could be counted, right? You could consider having a one unit reduction in your teaching load because you're meeting with students for 10 hours a week, or one of the people in my study is at a school where they get a bonus for a really excellent placement for a law review article. And she said, "How come the service work I do doesn't get compensated in the same way that a placement at Yale Law Journal is compensated," right? So if I get $1,000 bonus-

Kate Shaw:

They get paid extra money for placements? That's amazing.

Meera Deo:

Yup. And so she feels like, well, we know the money is there because you're showing what you value. And of course every school is going to value a placement in Yale Law Journal. But if we also value service, then there might be ways that we can reward or recognize that work as well, especially because it is really useful for the institution. So many of the people in my study talked about the students who are crying in their office, who are afraid they can't make it, who are worried that they'll have to drop out of law school. So think about what the school gets every time a woman convinces her student that that student can make it. That she can stay in school, that she is going to succeed, that she's going to graduate, that she'll really be an attorney at some point. That's good for the school, that's good for the profession.

Melissa Murray:

Part of it is the service stuff is really I think maybe not explicitly understood in this way but it is treated as housekeeping. And when you think about it in those terms, it is unsurprising that it's women and women of color predominantly who are doing this kind of labor. And it's also not surprising why it's usually not terribly well compensated.

Meera Deo:

In the book I write about it as academic caretaking. That's the term that I use, and it relates to service work for students in a way that students sometimes see their women of color, especially faculty, as other mothers, right? That they expect some nurturing and some emotional support in a way that they really would not expect from other professors. But the academic caretaking extends way beyond students. It also includes how a lot of times women are expected to organize meetings, send out the doodle poll, write the first draft of whatever new policy we're doing, figure out how to use Zoom, right? All the things that so many of us have been doing this year especially that shows how deeply valuable the academic caretaking is. And that is performed largely by women and also not just uncompensated but in a lot of ways invisible work.

Leah Litman:

Melissa mentioned in the outset that so much of this hits so close to home and I just kind of want to amplify a few things you said and what is probably going to devolve into an angry rant.

Meera Deo:

Fair warning.

Leah Litman:

Just yeah, fair warning/apologies to our listeners. But perhaps one of the reasons why women end up doing what you call the academic caretaking responsibilities is that for whatever reason, be it like how we were socialized and just expect people to be, we excuse men from behaving with basic social niceties or social graces and we just say like, well, that's the hallmark of a genius, right? Like, yeah, they basically can't interact with other human beings, but it's great to have them on the faculty because they produce amazing scholarship. But what that does is it means that person is basically never going to have to teach first year classes. They're not going to do any significant amount of institutional service. And they're also not going to do student facing service because they cannot be expected to interact with other people in ways that comport with, again, basic social niceties. Melissa, you look like you want to jump in.

Melissa Murray:

Yeah, no, no. Because it's not just the A-whole factor that plays into it, it is like... I'm thinking of the composition of first year classes and who teaches them, there has been such an interest in making sure that students have a "diverse experience in the classroom". That means that women, women of color, people of color are going to be in the first year of class. Because there are so few of us, we then wind up taking these enormous classes whereas some of our counterpart faculty are teaching these really sort of bespoke seminars. And so at the holidays you're grading like 120 exams and your colleague who taught law and the philosophy of my own book is like basically reading five papers.

Melissa Murray:

I mean, so that's another way in which it gets amplified. And then you put on top of it the desire for diversity or at least the appearance of it means that you always have to have a woman or a person of color on the appointments committee. I mean, that's how someone winds up being at AALS at the meat market seven years running. And because you have to have it, and if you don't have a diverse faculty, there are only a certain number of people that you can add to those committee service roles who can

take that on so you have the sort of appearance of diversity. I'm just literally having PTSD talking about this.

Meera Deo:

There is a Latina in my study who recounted her being called back from what was a promised research leave for the fall because she was appointed the head of this prominent committee. And I asked her if it was a compliment, right? If she felt proud to be the chair and she said, "I've been doing this long enough to not take that as a compliment. It means somebody needs to stay and clean the house and it's going to be you." So imagine this Latina law professor who is basically put in a position where she feels like she needs to clean up the mess of other people and that's why she's put into this role.

Meera Deo:

And like you said, people are put into this role over and over. And that's why you're on those committees every year. You're not on the committee where there isn't much to do both because we need your face to be broadly visible so people know that you're here at the school and that we support you by putting you on this committee, and because we know you're going to be a team player and do the work. And so based on both of those reasons, we're going to make sure you're on those committees all the time.

Leah Litman:

But it also might mean that even when you're on the committees, people don't listen to you. Why? Because you have been drained by all these service obligations, including student facing service obligations and other academic caretaking responsibilities. You do other things and then people perceive you as not producing the same kind of scholarship or engage in the same kind of scholarly enterprise. And so even if you're on the appointments committee or personnel committee, it's like, well, we're still going to listen to that dude who doesn't do any service, isn't on the committee, but we've just designated as a resident genius and he's going to be the one that has more sway in the faculty meeting either because that is the roles we have kind of assigned to people just over the course of a few years or because we treat men who behave badly as just these geniuses.

Meera Deo:

So that in this context has come up in my research a lot in the hiring process. It came up a few different times actually. And so there are all of these really great examples where people see this happening on their faculty when they're contemplating prospective hires. Aisha, one of the women in my study says her colleagues... This is what she says. "They give alibis to the deficiencies of white people but look for holes in a person of color's record to keep her down." And then if you don't know what that means, very helpfully I have Vivian, another woman in the study who gives us an actual example.

Meera Deo:

And remember, these are not women who are together in a room talking about it. They're just on their own bringing up the same exact type of experience. Vivian says that her colleagues, here's her quote, reconstruct reality to explain why the white guy hasn't written as much as opposed to the African-American candidate. I see completely different narratives, like "Oh, he's been so busy developing his economic theories," for the white candidate, as opposed to, "I don't think he's capable to do the level of work," for the African-American candidate. It's exactly what you're talking about, Leah, that you sort of

reconstruct reality to fit the existing narrative that you're comfortable with. And then you sort of fit people into those boxes.

Leah Litman:

Yeah. And like the number of times you see criteria such as well, yes, the work doesn't persuade me or the work is wrong, but it raises an interesting or provocative question or is ambitious and that is used to explain why overwhelmingly white men are these academic geniuses. But gosh knows if any woman or woman of color wrote an article that people were going to say, "That's wrong," they would be viewed as deficient. And that just the number of times I have heard the phrase, "Well, if he says the work is good, it's good," I would be a billionaire. And the idea that we just like a sign, this function of determining who are good academics and who shows promise to a handful of white men is just excruciatingly maddening every single time.

Meera Deo:

But there's also generally a devaluing of scholarship that is not traditional, normative, non identity-based work. So if you're doing anything that sort of deviates from the norm, from what the majority of your colleagues might be doing, depending on who you are I think sometimes it'll be seen as brilliant, but for women of color faculty or candidates, it's generally seen as not good enough. Like someone who said in my study I write on diversity issues and somehow that's seen as not scholarly, right? People think of it as personal and so then it somehow can't be professional too.

Melissa Murray:

You're talking about a lot of this in the recruitment process, but it occurs to me that, and I think your study bears this out. For the women, the people of color who experience this, like this stuff stays with them well past the period of recruitment and introduction to a faculty. And I think it probably has an impact on retention. People hold these hurts for a long, long time. And I think if they are given an opportunity to leave a faculty, it's not like they put these injuries in a box. Like this is part of what they think about when they think about starting fresh at a new place.

Meera Deo:

Absolutely. I think it is a challenge because the lateral hiring process is even more vague and confusing and virtually impossible to navigate than the entry level process. And so for women of color, even for those who are successful who do get those articles placed in really high-level journals and who are excellent teachers and provide a lot of service, most women of color find it really difficult to obtain a lateral hire anywhere. I'm not talking just about jumping from a more access oriented school straight to an elite school, just moving around at all because the lateral process is so network dependent.

Meera Deo:

It's so focused on who you know and who is where and who's going to be willing to go to bat for you that most women of color, even if they do manage to get hired on to a faculty, achieve tenure with their colleagues, they still might not be able to get as much success in terms of being able to move to different schools and be leaders at their schools or leaders throughout the university campus because they often don't have that level of mentorship or allyship or sponsorship that could really propel them to the next level.

Kate Shaw:

Okay. If we could shift gears just for a minute. We've been talking about law professors in a pretty homogenous way, primarily about tenure track professors. But as you said at the outset, within the academy there are lots of academic positions that are different from that: clinicians, legal research and writing professors, adjunct professors. Can we talk for a couple of minutes about how those folks fit into the picture? Do you see the same kinds of intersectional dynamics at play or are there other kinds of dynamics at work?

Meera Deo:

There are a lot of dynamics at work and some of them are really similar. The study itself focused only on pre-tenure and tenured faculty, and so did not include colleagues who are legal writing faculty, clinicians, library faculty, academic support, all of the people who frankly tend to have the most number of hours and touches and spend the most amount of time with students and are really working on building students' skills. The research that has been done on law faculty up until the point that I started my study really had separated out what are sometimes called podium faculty from other faculty.

Meera Deo:

And so it was also complicated to figure out how I could include legal writing faculty and clinicians, for example, because at a lot of schools those are tenured or tenure track positions whereas at other schools they're not. Sometimes they're contract positions. Sometimes they change year to year. Sometimes they're adjuncts. And it just started to get really messy. But I do have a lot to say about their experiences generally, especially in the time that I have been sharing the data that I collected because so many of these experiences have resonated with faculty members who are not tenured or tenure track or who might be tenured but are legal writing faculty or library faculty or other.

Meera Deo:

And so often faculty members in these positions are seen as second class citizens or feel themselves that that's how others perceive them. It's a reasonable assumption because many of them are not eligible for tenure or for any kind of security of position. Even at schools where virtually every other faculty member is able to have more say in what happens and be more involved in faculty governance, often clinical faculty and legal writing faculty and others are not invited to vote at faculty meetings. Sometimes they're not invited to attend faculty meetings. Many of them have annual contracts and so they really never know until six months before whether they might have a job at all the following year.

Meera Deo:

The irony is that they're often counted for purposes of diversity statistics for schools overall. And so that's part of why the numbers for women for example are higher than they otherwise would be. There are a lot of women who are concentrated in these lower status but essential positions. And like I said to start, the low status itself is ironic because these are the people who are actually teaching our students how to be lawyers. I think personally I'm an excellent teacher. I love civpro and I'm very enthusiastic about teaching it. But it's not the same as helping students, sitting down with them and drafting a motion to dismiss.

Meera Deo:

I try to have my students practice doing that, but I'm not doing it in the same way that a legal writing professor is doing it. We don't even give them the respect of the title, right? At a lot of schools they're not even called a professor even though clearly they're doing the work. And so the experience I think for

a lot of legal writing, clinical, library, academic support faculty is at least as challenging because they're dealing with many of the same issues in terms of race and gender that I raise in the book. And on top of that is layered this additional status concern where they're not really treated as equals. So, the de-valuing that is happening to women of color is just doubled down for faculty who are in these positions that other people don't respect in the first place.

Melissa Murray:

I want to just ask another question about the composition of committees. Like as you say, women are doing this kind of service work yet the numbers don't seem to be moving. What does that mean? Like what's going on in the hiring process that makes this such an intractable problem?

Meera Deo:

I think part of what's difficult is that even though women are put on committees, I don't think that at most schools women are put on committees just for face value. I think their colleagues do value their perspectives, but it may not be that everybody on every committee values that perspective. And so one of the questions I asked the participants in my interview study was whether they feel like they have a voice at their school, what it takes to get into a position of power at their school. And most of the women of color do not feel like they are in a position of power. I mean, think of the woman, the Latina professor that I mentioned earlier. She's tasked with chairing this committee, but she knows that she doesn't really have power in that committee. Her role, even as the chair, is just to help clean up.

Meera Deo:

It's one of the things that I've been concerned about. I'm getting a little bit less concerned now, but I'm sure you're all aware that there's been a significant increase in the number of women of color who have stepped into formal administrative leadership positions and especially an increasing number of Black women deans. And I am very excited to see that change and also a little bit nervous about what that change might signal in terms of a potential for the feminization of the profession and whether that the expectations of the position of dean could change from being a visionary to being someone who's tasked with more kind of menial job responsibilities.

Meera Deo:

I hope that doesn't happen and from what I've seen this year from many of the women of color and the Black women deans especially with the Antiracist Clearinghouse and other initiatives, I see that they are stepping into their power and drawing more power collectively by relying on one another. I hope that I was nervous about that for no reason and there is really going to be significant change. But in general I would say that the reason that even when you have maybe one woman of color on a hiring committee, the reason we're not seeing change is because she usually doesn't have that much power.

Meera Deo:

And it's not like most law schools have a critical mass of women of color faculty, right? And even if you did, it's not like everyone can be on every committee. So the power, I think, that we could wield is somewhat diluted because we're split into these different groups. To the extent that schools really are committed to making change, I think then we'll start to see some change. So, just putting one woman on a committee is probably not going to do it.

Kate Shaw:

Right. And in terms of the substantive change I will say, this is something that we've talked about a lot, the fixation on some of the elite credentials that the hiring process ordinarily entails is part of the problem, right? And some of the credentials in particular, so think about appellate clerkships like as--or a PhD, right? That those are hugely important kind of resume items at the entry level appointments point. And that as we've talked about, there is a huge under-representation of women of color, people of color in general at the appellate clerkship level. I'm not sure about the PhD numbers. Are they low too?

Melissa Murray:

Also low, also low.

Kate Shaw:

So I think that unwillingness to expand your vision of what an entry-level law professor might look like, not just on the grounds of race and gender, but in terms of background and experience is really important. And some of these we see, some of the professors at the very top law schools, some of these top federal judges really go to bat for their preferred candidates at the entry level market. And those preferred candidates tend to be white guys, right? So like that is a real problem. So no matter what the committee looks like, if everyone is getting hounded by the same recommendations and if the sort of vision of a law professor hasn't been fundamentally changed, the committee composition is not going to do the trick.

Leah Litman:

I think in addition to the diluted power and the fact that we might not afford women and women of color the same deference that we do men, I wanted to link this fact that the diversity on committees has not generated more diverse faculty to something that you talked about earlier, Meera, which was the law professor who had to keep teaching her class and putting on a smile to her students even while her faculty had voted to deny her tenure; because I think that sometimes the job market process and job selection process can be an opportunity where people feel the chance to prove themselves to their colleagues. And they do it at the expense of people who are perceived as having less power.

Leah Litman:

Just as anecdotes, when I was on the job market, I had people tell me I was cute as a button and that I had a sweet, nice smile. Half of the comments came from women. And it was extremely odd and most of these comments came in the course of providing criticisms of my work. Like you have this sweet smile but you are saying these things about federalism. And it was just I did not know what to do. It was super odd. And I think that just the incentives for women and women of color and faculty of color to constantly prove themselves to their colleagues and act a certain way create all sorts of perverse incentives.

Leah Litman:

You mentioned Meera the fantastic work that some of the Black women law deans are doing in launching the Antiracist Clearinghouse and other initiatives, and in response to the events of last summer, a number of law schools are trying to think more deeply about the way that identity issues are covered in the curriculum and the way that they surface in faculty hiring. Perhaps in a more optimistic note, what are some of the lessons of unequal profession that can help faculties as they try to figure this out, both in the classroom and in the composition of their faculties?

Meera Deo:

The concluding chapter in the book is really focused on the way forward. And I bring up there both individual strategies as well as structural solutions. And the individual strategies are things that you can do yourself to improve your own situation or to help your colleagues. Things that you don't have to wait for somebody else to fix but that you yourself can do right away. For hiring for example, we've spent a lot of time today talking about the challenges with the FAR form and the formal hiring process. Maybe don't rely on that process or don't rely exclusively on that process.

Meera Deo:

I mean, I've been telling people lately pretty directly and bluntly, if you keep doing things the way that you've always done them, you're probably going to keep getting the same result. And so if you're coming to me because you want to get a different result, you're probably going to have to do things differently. So, what can you do? Well, you can go to a local bar association event. Maybe they're on Zoom now because you can't go in person, but they're still happy hours and speaker events and other things that are happening and you can chat up somebody there and find out if they might be willing to apply, right?

Meera Deo:

Most people did not think about a job in law teaching, and yet we're waiting for them to come to us. They're probably not going to come to us in any meaningful numbers. Or another person in my study was hired. She did not go on the formal market. She was already living in a metropolitan city and a local law school reached out to her and said, "Hey, we saw that you published something a couple of years ago. Have you ever thought about being an academic?" And she had never thought about it before but because she got that call, she started thinking about it and that's ultimately the school where she ended up. She did not go on the formal market. She did not leave the city where she had already been living.

Meera Deo:

But these things are happening because people are reaching out. So if a law school is willing to open the door and then just hope somebody falls in the door, it's not going to happen. You kind of need to get out of your comfort zone and try things a little bit differently than you've been doing them or you're probably going to keep getting the same result that you've already gotten.

Meera Deo:

Other individual things that people can do are just to be aware of who's carrying different types of loads. If you think back to last year or whenever we are all on campus, if you notice that your colleague down the hall always had a line of students out the door and you were maybe a little relieved that you had more time to get your scholarship done, I mean, that's a signal that she's carrying more of that load.

Meera Deo:

We can't make students go to different faculty members. In a very equitable way students are going to seek out the people that they want to see. But if you're aware that that's happening, you can bring it to somebody else's attention. You can help your school recognize that maybe you can reward that work or recognize that work or that maybe you should be on a heavy hitting committee if she's doing all of that extra work instead. And then structurally, these are all systemic issues. So as much as individuals can try

to fight against them, there need to be some structural solutions built in as well. And so I think this is more about a focus on inclusion rather than simply on diversity.

Meera Deo:

We have thought a lot about how do we get people in the door but if they're miserable as colleagues, they're not going to want to stay. This is why I think in part the retention for women of color faculty is lower than it is for others. It is really hard to get a lateral position but it's not that hard to leave and go back to practice, especially since many of the women felt much more respected when they were in practice. If the client appreciated their work product, they were appreciated more or less and they made a lot more money than they're making as law professors. So I think if we want to avoid that happening, we need to put some structures in place to really find ways to support the women of color who are our colleagues in law faculties.

Leah Litman:

So maybe we can do a quick round-robin of our favorite parts/aha moments of the book. Who wants to start?

Kate Shaw:

I loved the citation to the woman who you talked to who had actually counted the number of he-peating offenses that had occurred in faculty meetings because it was so prevalent. I loved that. The combination of the sort of individual and the structural set of observations and also prescriptions was just like a really wonderful, it's like a very gripping... Obviously it's an academic study, but it's an unbelievably readable book. You sort of pick it up and then just kind of read it straight through. So I think that's extraordinarily well done.

Kate Shaw:

Transparency is sort of one of the themes I think we haven't really talked about, but something that sort of occurred to me a few times. Like we don't always talk about things like salaries, the specific teaching load we carry. There are a lot of these kinds of one-off deals that happen between deans and powerful faculty members and that they're just, I think that all of us just need to sort of do more to speak openly about the kinds of arrangements that we hear about.

Kate Shaw:

I didn't know that some law schools give bonuses for particular article placement and I always, you hear through the grapevine that some like older male faculty member has negotiated some teaching relief because of a lateral offer that he has secured from somewhere else. So I just think that a culture of silence is pretty prevalent in law schools and I feel like there are tons of examples of it that permeate the book and that that's something that we can all easily resist if we are just committed to surfacing these dynamics when we become aware of them.

Melissa Murray:

I don't have a particular favorite moment in part because I mean, the whole book really spoke to me in a really visceral way. I mean, there were these moments of both roses and thorns. And so I will say one of the thornier parts was that as I read it, so much of the experiences that were documented just resonated with me like these same things that happened to me. I will say, I've had a very successful

career. I love being a law professor. But yes, I have often been mistaken for the other Black woman on my faculty even though we look nothing alike or people have mansplained or he-peated or put forth their own expertise ahead of mine even though mine is actually in the field in question.

Melissa Murray:

Part of it is just this idea it doesn't matter where you are, what part of the academy, where you are in your career. It's just endemic and that part is just really depressing. The rose is for me though is that I have relied so much on my career on the kind of sorority of other women of color like you Meera, people like Angela Onwuachi-Willig. And we have all just lifted each other up and supported each other and in a way provided a kind of shadow privatized network of support that really filled in for what we weren't getting at our home institutions and that part was so important for me and I think for everyone else.

Melissa Murray:

You pay it forward, but paying it forward is also part of the burden that you take on for yourself. I mean, there are these ways in which you take, but then the giving back is also part of the price that you're paying just for being in the space where you're apparently not supposed to be.

Leah Litman:

I think my favorite moment has come out in some of the book clubs that I've done this summer. There have been a series of book clubs, some organized by Michigan faculty members where we've had students and faculty at Michigan and elsewhere reading the book and then discussing it. And my favorite parts are when the students will share something along the lines of, well, I didn't realize that when I was asking you to do all of these things I was detracting from your ability to do the kind of work that would lead your colleagues to respect you and give you more of a voice in the institution. And I think getting students to understand that we do want to help and support them, but if you are continually asking the same people who happen to be women and faculty of color to do all of the student facing service and advocacy, like that is part of the problem.

Melissa Murray:

All right. This is all to say that this book is so rich and so rewarding and absolutely terrific and well worth the time of anyone who picks it up to read it. But Meera, you are not resting on your laurels. So can you tell us a little bit about what you're currently at work on?

Meera Deo:

Yes. My current project as the Neukom chair at the ABF builds on the book to investigate how race times gender challenges have intensified under COVID-19. I think everyone who's participating in this conversation can experience this in one way or another, or maybe many ways. The extra pressures that women are facing at work include this extra service work because we're not meeting with students. We can't just walk into a hallway or the student lounge and find them anymore. And so we have all of these extra meetings with students, a lot more academic caretaking because we're scheduling more meetings or revising new policies. All of these have increased since March since our classes moved online.

Meera Deo:

And of course the other thing that happened in March is that schools closed. Many schools remained closed for the whole spring. A lot of camps remained closed for the whole summer. My kids are still doing online school from home right now. In my example for just as one data point, my two kids have been home with me since, for six months now my husband is an essential worker and still going into work, so it's me and two kids at home. And I still have the same full-time job that I had before trying to get everything done.

Meera Deo:

And so I think for a lot of women academics because schools are closed, camps are closed, not only our children but the elderly in our communities need our help more and we tend to be the ones who provide that assistance. At the same time our pressures have increased at work. It's like a panini instead of a sandwich. Everything has just intensified and pressurized.

Meera Deo:

And so, what's going to be the result? One of my concerns is that women scholars won't be submitting as much for publication this year. A lot of people devote the summer to writing time since there is usually less service work and no teaching. But I know in peer review fields there has been a drop off in women-authored publications. Actually that started right away in April. And so as far as I know, no one has looked into this for law journals. And so that's one thing that I'm planning to investigate the ways in which there may be gender disparities with regard to publishing, especially as women scholars are pressurized in these really difficult ways.

Meera Deo:

One person who reached out to me as a result of her awareness that I was starting to do this research, the three of you might know and your listeners might know about a letter that was circulated earlier in the summer to encourage law reviews to think about what it might mean if they don't have women submitting scholarship or to be flexible in how they receive scholarship by women this summer because of all of these pressures. And somebody responded to me when she found out that I was working on this letter and what she said really stuck with me and it's part of why I'm adding an interview component to this study as well.

Meera Deo:

She is a junior faculty member with children at a law school and she said, "If you just look at the publishing rates, if you just look at what I was able to do, it looks fine. I actually got my article done. But what you're missing is the cost of getting that article done." We don't know if her marriage is on the rocks. We don't know how much her kids were eating out all summer. We don't know the other challenges that she faced in order to get that one publication out to satisfy what she felt were the demands of her colleagues as a junior scholar.

Meera Deo:

And so I am really interested to see what the numbers are for women authors in law reviews. But that's not really going to tell us the whole story. And so that's why I'm adding this interview component to get a sense of what the numbers might be hiding. What's missing if we just look at what's published is the cost of what went into getting that article out.

Leah Litman:

Alrighty. This has been a really great discussion and we are so sorry that we can't keep going although there is certainly more grist for the mill. Unequal Profession is available on Amazon and other online booksellers and from Stanford University Press's website, which is currently running a promotion where the book is 30% off and there is free shipping if you use the code S20XASA-FM. Meera, thank you so much for joining us and thanks to all of our listeners with a special shout out to our Glow subscribers who make the show possible. If you'd like to go the extra mile to support the podcast, you can do so at glow.fm/strictscrutiny. As always, we're grateful to our wonderful producer, Melody Rowell, and Eddie Cooper, who does our music. Stay safe everyone, and talk soon. (singing).