

“How to Become a Full Time Law Professor”

Larry Catá Backer¹

Transcript of Remarks Delivered at the Panel Session, Panel 4G: How to Become a Full-Time Law Professor –A Workshop for Aspirants,² 4th National People of Color Scholarship Conference: “People of Color and the Future of Democracy” (22 March 2019), American University Washington College of Law, Washington, D.C.

-[Alfreda Robinson]: Larry, why don't we start with you to do sort of an overview.

- [Larry Catá Backer]: Okay, that's right, my task is actually an easy one, and a typical one for law faculty. I will give you a general picture and a framework, and then my colleagues here will hopefully critique me and pick it apart. And I will offer you some choices. I will start with the description of the traditional gateways to full time law teaching, and then move from the idea of wanting to join our ranks to the sorts of actions necessary to optimize your chances of success. I then describe what I call the gauntlet, the trials that face the candidate for law teaching positions. I end with what may be both necessary and few people's favorite experience—the AALS recruiting conference, sometimes fondly nicknamed the “meat (I call it the meet) market. And then at the end of all this, I hope you will come to some truth about the process and identify those of its aspects that might be somewhat problematic; but you'll get closer to a reality than you were before we started.

-So, with that in mind, we can begin. Oh, and by the way, my PowerPoints are littered with pictures.³ They serve several objectives. One is that it is late or you may be sleepy and so some of you might need visual diversion while I am babbling; but also if you like visual signaling, you might try to figure out how the pictures I put on my slides are related to the subject of the discussion and maybe why I included them. For example, the opening picture is, of course, from the Duomo in Florence. This is Moses and Peter, old law, new law. They speak to two distinct but related traditions of getting to a similar place. I do that is because we are in a time of transition, and there are a lot of old rules and old expectations and old ways of

¹ W. Richard and Mary Eshelman Faculty Scholar & Professor of Law and International Affairs, Pennsylvania State University. My thanks to Alfreda Robinson (George Washington University Law School) for organizing an amazing panel and to my co-panelists for their brilliant insights. This transcript has been edited for clarity but it is otherwise substantially as delivered, including its colloquialisms and its speaking styles. My task, toward which these remarks were delivered as to provide a description of Traditional Gateway To Full-Time Law Teaching and “how to most effectively prepare to be a candidate for full-time law teaching - especially as a person of color, and “how and when to apply to full-time positions, success in the AALS “meet/meat market.”

² Panel 4G: How to Become a Full-Time Law Professor –A Workshop for Aspirants, Room Y116 (Yuma 1stFloor). Expert panelists representing a range of full-time academic paths will discuss how to most effectively prepare to be a candidate for full-time law teaching -especially as a person of color, how to acquire and leverage pre-appointment teaching and scholarship, how and when to apply to full-time positions, success in the AALS “meet/meat market,” the types of full-time law teaching positions (traditional tenure-track, clinical, term/practitioner, legal research and writing, etc.) and how the day-to-day responsibilities and expectations vary, how to evaluate and select among various offers, and the prospects for lateral moves. There will be an opportunity to ask questions of the panelists following their presentations. Panelists included Larry Catá Backer (Penn State); Craig Konnoth (Colorado); Melinda Molina (Capital); Alfreda Robinson (GW) –moderator; and Anita Sinha (American).

³ The PowerPoints may be accessed at <https://lcbpsusenate.blogspot.com/2019/03/how-to-become-full-time-law-professor.html>. The PowerPoints may be downloaded here: : http://www.backerinlaw.com/Site/wp-content/uploads/2019/11/Backer_How-To-Succeed-NEPOC4.pptx.

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thinking about how this is done that you will get from old faculty members that may no longer actually apply in the era of the new covenant, that is the new way of looking at how to get you from where you are, to where we are, to where you want to get to. And with that I want to start.

So this is basically a description of the traditional gateway to full time law teaching, and, as you can tell, from the next PowerPoint slide, the underlying theme of my discussion here is a?

- [Male Student] Fork in the road.

- Oh my god, you’re going far. Right, we’re doing a fork in the road. And, really one of the first things that, and this follows you all the way through the process, you’ve got an initial decision to make, alright? And the initial decision touches on the fundamental approach you will take in getting from the idea of law teaching to its realization. And that decision, that fork in the road, can be described as two related but distinct paths. It really is one of a decision—are you going to follow the herd, or are you going to heed the voices in your own head? That is, are you going to conform to the expectations of those around you or are you going to be true to yourself.

-That is not a simple or one off choice, but involves a set of decisions that you have to tale at every stage in the process of becoming a law teacher and eventually a producer and disseminator of knowledge.

Eventually, you are “gonna wanna” get, whichever way you go, you’re “gonna wanna” get to the point where you’re heeding the voices in your head. From my point of view that may be sad if the only voices in your head are what you hear from the herd, but that’s okay too. There are a lot of people who built successful careers that way. Following the herd is the conventional and safe way. It minimizes risk, but it sometimes may require some dissonance between these voices in your head and the stuff that you wind up saying and writing, and much of what I’m going to be talking about is going to be about following the herd. The reason for that is simple—the herd is powerful together and everyone knows what is expected and conforms to expectations and the path to success is well marked—and policed. So now I’m moving you from the fork in the road to the decision to follow the herd. Law faculty in this respect may be like a bunch of antelope on the savanna, and there’s this herd you wanna join, and you’re sitting out here, your task is to come and join ’em, and that may mean that, you’re gonna have to do what it takes to do that. You are going to have to be an antelope—but what if you are a zebra? Or a rhino? Or more problematically (for the herd), a jaguar?

-And that takes us back to the other choice—the voices in your head. So, on the other hand, the reason you’re here, and what we wanna cultivate, is precisely the voices in your head, which may be voices that will annoy, irritate, and eventually, perhaps, transform those who have come before you as well as the wider public. We want you to be a jaguar, or a rhino, but if the field is only full of antelope, and that is who you must join, choosing to be something else right off the bat may require you to pay a price, and sometimes too great a price. That is, the voices in your head may well frighten the antelope. Maybe save them for after tenure. Yet even then to follow the voices in your head may mean that you will be in the company of one, perhaps for a long time. Does a tree falling in the woods make a sound if there is no one there to hear it? That may mean compromise, but it is better if you make those consciously in pursuit of

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your goals. At the same time, legal academia has a growing number of herds. So just keep that in mind as we’re going through this.

—We understand this and we acknowledge it, and so we move from idea to action. And that takes us to the next slide—“From Idea to Action.” Here I want to spend just a little time speaking about , as our panel description says, “how to most effectively prepare to be a candidate for full-time law teaching—especially as a person of color.” To get us going I note the picture I posted. This is from a manga series that I really like. It shows a kid (you) getting kicked in the head on one side and getting punched with a ball on the other. This is your initiation. You are the guys in the middle. We’re kind of on the sides. It looks like it hurts, and yet it is really not as bleak as it looks. As in all of these stories, you wind up surviving, but this is sort of where we’re at. And the trick is to survive but in a way that then prepares you to thrive in the legal academic environment. So, we answer the first question—how does one most effectively prepare to be a candidate for full-time law teaching, especially as a person of color?

-First thing up, is actually, the most important thing, and the rest of it can slip away, and that first thing is *mentoring*. Your ability to find, use, and leverage your mentors will make a tremendous amount of difference. Who are these potential mentors? There are a tremendous number of us here in this room and at this conference; there are any number of organizations, from bar organizations, universities, the people of color organizations. We are the ones who can help transmit, translate and help you in making the choices, at least by giving you the sense of what the risk, reward, and consequences are. Mentoring is critically important in preparing for law hiring, but it is even more important once you join our ranks. You can’t do this by yourself. You use to be able to, back in the old days which seem like a thousand years ago to me now, that was rough but possible. It’s no longer really possible.

-Second thing, you need to *know your communities*, and this goes back to the fork in the road. You need to know your community, and sometimes that means that you have to be careful, and again, this is a blunt session, so I’m gonna be blunt, and hope y’all tear this apart if you disagree. You need to know the community, and that means you need to know what kind of political choices you can express, what kind of political choices you can express discreetly, and what kind of political choices may burn you at any kind of stake, hot pot, or some other device of someone’s choosing. What community you’re joining, that is what makes or breaks you. You have to be very aware. Careful is the wrong word, you have to be very aware about the choices you make, and how you want to go about doing that (here mentors can be quite useful).

-The third thing is *writing*. And we’ve already mentioned this, you’ve heard this, all day, you are, in this community, what you write. It used to be, that you were assessed on what we think you’re going to be capable of writing in the future, and that we’re gonna make a judgment about your capabilities for that. But that day has come and gone, alright? So you are what you write, you are your portfolio of written work, and a lot of what you need to be thinking about is what you are now working on to produce the sort of writing that those who you want to get excited about hiring you might read. In a sense, it’s the ultimate performance that you have, and your ultimate presentation, is what you put on paper. Again, the

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expectation isn't that you're going to be something that we expect 20 years from now, but rather the expectation is that you can demonstrate what you are now, and to do that in your writing. That's what is going to be used as the touchstone of assessment, and that forms the presumptions about you, and your professional trajectory.

-The fourth thing is related to writing, and that is the *choice of a field of law* in which you believe you want to work. Choosing a field becomes important, for all of you, in that, of course, it produces the stereotypes and presumptions against which things like your writing and suitability for a job can be measured. We had the wonderful talk at lunch about stereotyping and implicit bias. Sometimes implicit biases are bad, when we're using it to place people and react, with respect to gender, race, ethnicity and the like, but these implicit biases and stereotypes and assumptions will also come from out of what you choose to write, and what you choose to say. And so, as you write, understand that implicitly, you are choosing a field, if you start writing something about tax, and then you go into a meeting and say, “yeah, yeah, you know, I really love the idea of doing work in family law,” people are going to hear a dissonance, unless you can, because you understand this, you're able to talk the connection. You can't just fail to make that connection without some cost to you, the randomness becomes a problem. Worse, of course, is your work does not nicely fit within a particular conventional field—you then become a member of the so-called “hard to place” set and that can be a powerful disincentive to hire you—though not always. Do you have to choose a field? No, the more you sound like you understand what you're doing, which involves a passion for a particular aspect of what it is you want to get to, the more solid you're likely to sound, especially for people who don't know you, and who're relying on maybe one or half an article. This is again going to, who you are.

-That brings me more generally to the fifth point—*stereotyping, or typecasting*, or presumptions based on what others expect you should be doing or acting. Stereotyping is especially a problem for faculty of color. It's been a problem for women, but a problem for faculty of color as well, and you'll see this. This is, the implicit bias actually becomes quite explicit when you have enough interviews, or you have enough conversations. Be aware of it, and it comes out in a variety of ways. It comes out with respect to teaching. It comes out with respect to scholarship. It comes out, most perniciously, with respect to character, black males in particular. There is a bumpy road for a while. And the expectations, what you're going to do, who you're going to be, be aware that, and one of the things you use your mentor for is to learn how to deal with these things in ways that avoid you becoming physical, and then having you got to jail, because you just punched someone out. And that's not cool, and it shows bad character, so you can't do that. But there are ways of dealing, and, believe me, they may be hard, but they can work anyway. There are ways of dealing with this stuff, but you have to be aware, you're always aware, no matter from the beginning through the end, you're always aware, it's always there, and you have to be prepared to deal with it in context, especially as you're coming up.

The last couple things. The value of these kinds of things have shifted, and sometimes, shifted dramatically, over the course of the years. So the sixth thing to think about is *the value of an LLM*, the LLM used to be the royal road. You go to these factories of schools that I won't name, you get your LLM,

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and now you can go on the mean market and you’re cool, now everyone’s got an LLM, no one cares as much anymore. The flavor of the month now is PhDs. You go, you get a PhD, and now you become more interesting to hiring committees. The value of the PhD is not just those three letters, but also now you got yourself a writing, and if you’re lucky, you got yourself a big writing, and then a couple of little writings, so you’re just a little writing machine, and you got yourself a field, so that’s all cool and people love you, that is the flavor of the month, especially, probably, the decade, especially if you’re going into the normative teaching. Yet there is a long term consequence that troubles me, the way this flavor of the month problematizes, for me anyway, problematizes the value of practice. The old road used to be, you graduate, you spend a year going into a law firm, or into government, you eke out something that looks like a paper, or something you think may someday be a paper (we don’t, but it’s close enough), and then, off you go to the races, and then you start writing. Increasingly, what I’d been noticing, is that *tremendous focus on practice and practice experiences produces functional stratification*. Increasingly the old path is now rerouted into a pipeline from practice to clinics, rather than to traditional tenure line slots. And that is something that troubles me tremendously, but you begin to see it all over the place, and to the extent what you’re offering is practice experience, you have to understand that and then mold yourself to be able to meet that explicit bias when they see a substantial practice portfolio, first thing they’re going to talk about is, “oh, yeah yeah yeah, let’s reroute you to clinics, you can deal with the lawyers, blah blah blah. But we got no space for you in the normative stuff because we have Joe PhD over here, who’s written a thesis.” And that’s, for me, that’s not cool, but that’s where it is. This is not to put down clinical and other aspects of teaching in Law Schools, but it is to put down the tendency to create ghettos of privilege based on dubious characteristics. So that is perfectly OK if clinical teaching and research is your thing, but the assumption for the moment here is that you are looking for entry into the traditional and conventional substantive slots.

-The seventh point touches on *the value of VAPs*, as a means of entry to the profession. Someone really ought to do a statistical study on the value of VAPs. The universities that run VAP programs will tell you their success rate is a 1000 percent. The universities that don’t will tell you that the rate of success is closer to 0. Sometimes, to the extent you use it smart, it can be very useful. To the extent that you use it only so that you could put the V, A, and P on your resume, maybe less so. But still VAPS and of course other pipeline programs may in the right cases prove quite powerful ways of getting your foot in the door.

--That gets us to the next PowerPoint slide that I use to talk about what I call the “gauntlet.” The picture on this slide makes the point quite well I think. One of my favorite early cartoons is Betty Boop, especially when the action in the cartoon is set to the music of Cab Calloway. This one is from the 20s, this, of course, is Betty Boop as the red hot lady, a lady who knows what is up, and surrounded by an annoying groups of demons sent to try her patience. But she has to get through them to get where she needs to go. And that takes us to the question: how to apply for full-time positions?

-And again, we go back to the big bang point from the last slide--How’s your writing? To be able to come to an interview position without any writing is a death sentence. No one will say anything, everyone’s going to be very nice, they’re going to be very encouraging, you’ll never get a job. Your writing is key. So, when do you apply for a job? When you feel that you have a portfolio, by a portfolio I don’t mean a

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150 articles, I mean one, maybe, and one on the way, minimum, that you can use to provide the evidence they need for the key things hiring people (and your future colleagues) consider: “Can you write, are you committed? Are you enthusiastic, is this something that really motivates you? What can I tell about how you write? What can I tell about how you teach from how you write?” That’s what you’re looking at. Equally important, is the research plan extending through tenure. Everyone is going to ask you this. It will go something like this: “Right, okay, this is very nice, you wrote this article, so what are you going to do five years from now? How is this connected to what you’re gonna do?” You have to follow through, no one’s gonna check up on you five years from now, but you’re gonna have to come up with something that, again, goes to enthusiasm, you thought about this, you’re committed, this is like the truth and on earth for you guys, and you have a plan. And then people will spend time talking to you about that. A little teaching doesn’t hurt, but it’s not necessary. To the extent that some of you are adjuncts, adjuncting is good. You can talk about teaching theory, which is sometimes useful, to the extent you don’t it is not interview death, but increasingly, it doesn’t hurt, and at some point it will hurt when you don’t. And again, the trajectories in field expectations are going to be different, depending on where you’re gonna go and what you are interesting in doing. Some schools emphasize teaching more than others. Take your cue from that.

-I also mention two additional points. *One is the issue of staleness.* How long can you be out of the academy before you’re viewed as stale? I went on the teaching market eight years after I graduated, and I can tell you that everyone thought that I could never write, I could not teach, and that the only reason I want to do this was to retire from practice because I was a lazy, or fill in the blank, or because I was incapable of doing anything else, and that I viewed the academy as a kind of glorified welfare program. So, the staleness issue counts, and again, now it’s a combination of staleness and shunting off to the “practice-clinical” area because of a presumption, unearned, that this is all you are good for. So if you’re out for eight years in practice, the word clinical is going to be stamped on your forehead, and you’re gonna have to do a lot of work disabuse some people of that stubborn stereotyping, depending on what you’re doing, so, think about staleness, and then the other issue is mobility.

-*The second is the issue of mobility.* How bad do you want this job? If y’all are New York City people, for example, are you willing to spend, 4 or 5 or 6 or more years in North Dakota? The snow is really pretty, and if you like the cold, it’s really cold, but that’s the question. Are you willing to do that, how much are you willing not to get a teaching job and do this round of applications two, or three, or four times, because you cannot bring yourself to leave the tri-state area. That becomes a critical issue, because, for a lot of folks, that makes all the difference in the world. For me, I was in Southern California and loving it. I wound up in Tulsa, Oklahoma. I never regretted it, great town and environment, lovely people, but that required a bit of time to wrap my head around this. Never regretted, but you’re gonna have to face these. True enough; for some people, it’s impossible to move—you gotta respect that. You may have family or other compelling situations, we all understand. But where it is merely a vanity thing, again, you really gotta think about it.

—That bring me to my last PowerPoint slide—“There’s No Business Like Show Business” and working toward success in the AALS Meet/(Meet) Market. Here you have a bunch of smiling people dressed up in

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costume trying to entertain us with a display of their talents. One of my favorite horrible movies, every once in a while, I watch these so I can throw it up against our living reality. But in this movie the singing is actually not bad, and like us here now, there’s no business like show business. Like the PowerPoint slide this last bit is my big showstopper, shows you how things have changed over the course of the last thousand years. Success in the meat (meet) market.

-First, *appearances matter*. We’ve all been raised with the idea that, appearances don’t matter, we’ll see through character, and all of that. Worry about what you wear—everything sends a signal, and you want to signal that you are worth hiring. I find most people, even those on search committees need to have their eyes examined—they sometimes can’t see so well, especially when looking at (or through) people of color (the stereotype and expectations-presumption thing again). So help them see the “you” worth hiring. Don’t be offended about this, from red carpet dress reviews to all kinds of other events, our culture places a high value on what you wear to signal who you seem to be—so be proactive about that. Most people require help in seeing character, and so, since you’re looking for something, you might as well be as helpful as you can. There are choices to be made here, which means you’re going to be talking to your mentors. A lot.

-Second, in selling yourself *enthusiasm matters*, I cannot tell you how many interviews I’ve done, where people are scared to death and they sit, and they don’t want to make a mistake, and then they leave, and everyone says, oh my god, that person is just messy, or sad, or unprepared or something else that is not positive. They’ll think (and sometimes say) something like that person will never be able to survive a class of 70 people. . . . and then say “next” and you are forgotten. You gotta be able to show yourself, your inner self, even if you have to practice. You have to be able to show enthusiasm, you have to be able to sell yourself, but not sell yourself in obnoxious way. Try to avoid the “oooooh my god, here I am, I’ve just spent six months with Jesus or some other name droppable figure, and now I’ve come back down and I just, you know, am doing you a favor by sitting in this room with you all” thing. There are variations, and people have actually, in some interviews I’ve been in, have come very close to that. It doesn’t sell well to people listening (unless of course they are that type). But you have to be enthusiastic, you have to be able to sell yourself.

-The third point is that you should be careful about what you say. *People can tell when you're talking about something you don't know anything about*. And for faculty members, that is honey to a pooh bear. That is just honey to a big fat and hungry pooh bear. And some people have no self-control on these committees, and you know what happens? You come out unhappy, because they just have a field day, and usually the chair of the committee is going to kick back for five minutes or so, and watch you just get yourself...

- [Male Student] Roasted.

- So be careful. If you don’t know something, say, wow, this is really cool, and the best way with dealing with it is saying something like “I don’t know much about this. Can you tell me what motivates you to ask

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this question, maybe we can talk about it and see what there is here.” Turn these things around if you can, right? Make it as positive as you can, and it is OK to admit that there are a lot of things you don’t know. And of course, as you get older, it really is true, the more you know, the less you know, and now I can tell you sometimes I wake up and think I know nothing. But I’m more willing to say I know nothing in a very up front and matter of fact way than I was before when I was just starting and I thought it was a complete mark of failure. But be assured. . . . it ain’t.

-The fourth point does not need much explaining—*be honest but ambiguous*. Don’t fall into the temptation of telling the hiring committee what you think they want to hear—especially if you are going to have to walk that back at the on campus interview or more awkwardly in negotiating discussions with the dean of the school that may be interested in hiring you. But that does not mean you have to be brutally honest or commit to particular things right off the bat. Try to avoid things like “I despise faculty meetings; the thought of interdisciplinary research makes me physically ill, and the like.” It is OK to say something like “I am really interested in teaching tax, but of course I would consider contracts”—if that is true. It is also OK to say something like “property law is fascinating but I could not really do it justice and the effort would detract from my concentration of my research that point to teaching business law for better synergy.” You get the idea.

-The fifth point needs a little emphasis: *be flexible, but don't appear clueless*. No one likes you to come into an interview, saying, I have no idea. Oh, what do you want to teach? I have no idea. What do you wanna ultimately research? Well, I wrote this, but I really have no idea, and I’m really flexible. Yeah, you can be flexible, but if you’re too flexible, you’re a flake. And no one likes flakes. I mean, they do like flakes, but not to pay them.

-The sixth point is important but underemphasized: *make connections*. At the last meeting, some of you went to the law review panel discussion, and many have attended a number of other panels. Each is a great venue for making connections. Use every opportunity, whether you get a job or not to make friends. You never know when that will pay off, and I can tell you that from experience. I’ve just opened myself to being nice, I made friends with people who thought I just forgettable, and with others I had no real connection other than having a nice talk and three or four years later, I get a call, and the connection blossoms; “things change, and I’d misjudged, I had you in mind, and blah blah blah,” and vice versa. And all of a sudden you find yourself with both a conscious and unconscious network. Use every one of these opportunities to make friends. This is especially true of committees, even those where you do not progress beyond the AALS interview. You have no idea how many of you don’t know the politics of the committee. You have no idea how many friends you’ve managed to make on that committee. You have no idea how many people will remember you. And they will remember you, two, three, or four years from now, and then may reach out, either after you get your job or before. So make connections.

-The seventh point looks to the issue of the offer you may get: *serious versus look see*. Be careful about that. Sometimes there is what from the outside might be something like bait and switch moves. You interview for a tenure slot and you get a call, “we ran out or there is some funding problem, can you come

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Transcript of Remarks Delivered at the Panel Session, Panel 4G: How to Become a Full-Time Law Professor –A Workshop for Aspirants,¹ 4th National People of Color Scholarship Conference: “People of Color and the Future of Democracy” (22 March 2019), American University Washington College of Law, Washington, D.C.

temporarily and maybe we can switch you to a tenure position.” Or the other variant, “you can come for a year and then we will decide whether we will keep you and in what type of slot.” Sometimes institutions bank on the desperation of candidates. Just be careful and use your mentors and connections to work through this.

-And the eighth and last thing, because I’ve talked way too much, is the problem of *padding in interview schedules*. Especially for people of color, you’ve gotta be careful. We live in an age of statistics, and frankly, all of us, are statistical fodder. Everyone wants to pad their interview schedule with black, brown, female, et cetera, faces so that they can tick off their statistics to their EEOC office, but they’re really just wasting your time and, we all know who some of the bad actors are, and some of the other actors, you just have to be careful. So a lot of times, especially for the meat market, you think, oh my god, I got 28 interviews. Talk to the people who call you to make sure that the thing is real, because if you start, and this is what always happens, so, you’ll get 28 at the top 30s, you say, ah, I’m just going to all these people, because I’m bound to get one of those, but if 90 percent of them are padding, and you blew off the folks at universities in the middle or lower tiers, because you said, “oh, no, I got 28 interviews in the top 30 school, it’s gonna be all cool,” and then it turns out you got nothing, *you got played*. And I’m being very honest, sorry, and of course, no school does this, right, no school does this, this is horrible, and I know I will be told (and it is no doubt true. . . .) I’m having this fever dream of insanity which is just not correct, and so I apologize for anyone who’s hearing this who’s offended because I know I’m just not seeing things clearly or from their point of view (and lots of irony here folks). Still, so just, think about that, be very careful with your interview schedule. There are good people out there; but institutions run on statistics, on metrics, and you want to avoid being reduced to a data point. Talk to your mentors. . . . and listen. I’ve seen more than one person of color, just tank the interviews, because they weren’t strategic about what interviews they accepted and which interviews they did.

-So just be careful with that. With that, I’m done, and now, you’re gonna get real knowledge.