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Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*

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I HAVE BEEN ASKED to talk about the obligation of scholarship, particularly in the context of balancing the demands of teaching and publishing with service to students and the community. Today I speak not only as a scholar, writer, and dean but also as an Osage and a Cherokee. Much of my academic career has been devoted to the field of Indian law.

There is one point I want to make at the very beginning of this talk. I believe, believe passionately, that serious scholarship is the duty, the privilege, and the obligation of all who choose to live in the academic community. I have Native American brothers and sisters, some are members of the bar and some are from other fields, whose contributions to the Indian law movement are far, far greater than mine will ever be. Many of these great contributors have never published a word. For them, it was not a question of balancing, but one of selection. They chose a different, but no less noble, path. They are performing in another arena. But for those of us who have chosen to labor in this vineyard, those who chose to become professors—to profess about the law—it is different. Balancing and balancing acts have always been a part of the academy, from its earliest medieval beginnings. No matter how hard the

* An Address to the Minority Law Faculty Conference, University of San Francisco, October 26, 1985.
task, scholarship is central to our vocation.

I must confess that I have a personal aversion to any sort of balancing or "balancing test." I am sure a legal psychiatrist like Andy Watson would be able, after long and complex sessions, to determine the psychological cause of my fear of balancing. Early in my legal life, as a first year law student, I became permanently unbalanced by a balancing test. That experience must have warped my legal psyche. My fear began in 1962, when Dick Spiedel, then young and seemingly innocent, was walking me down that primrose path of Contracts I, taking me step by step through the interests of the plaintiff, the interests of the defendant, the interests of society—suddenly he turned, threw open his trench coat, and exposed, before my innocent first-year eyes, the balancing test that did not balance. I trace my balancing impotence to that single, shocking incident of exposure to this socratic flasher.

The answer to the minority law professor balancing act is like the answer to the long forgotten details of Spiedel's first year contracts hypothetical. Some things just do not balance; they simply do not compute by any rational formula. I am sorry! One cannot take three parts public service, multiply it by one-and-a-half parts contribution to the university, subtract two negative civil disturbances, and factor that by the number of scholarly publications and frequent student conferences to come out with a properly balanced minority law professor. Like the old farmer telling the city slicker how to get to Toad Suck Ferry, "You can't get there from here." At the least, no other professor can tell you exactly how you personally could or should get there from here. Balancing is an intimate task, a peculiarly personal one. But to survive in the academy we all must address it.

Perhaps it is for these reasons that I have devoted so much of my life on the law school chautauqua circuit to attacking the balanced soul. I have called for "wild men and crazy women of the law," ready to stand up and make their viewpoints known, not for well-balanced or well-adjusted law professors. At this point, before I go too far, I feel I have an obligation to tell you, as they say in the vernacular, "Where I'm comin' from," or as Gunnar Myrdal more eloquently stated, "to articulate the value premises" upon which my arguments are based.

My own outlook on the academic world is similar to the views of Albert Einstein. In a letter to a German friend in 1903, Einstein
proclaimed, "I shall never complete my Ph.D. The whole comedy has become a bore to me. I am tired of this [Academic] circus."

I believe, and have always believed, that this strange world we call academia is nothing more, nor nothing less, than an intellectual theatre of the absurd, a gigantic medieval carnival, a great and significant comedy. But, do not get me wrong, this is not a criticism; this is high praise. It is the reason I have chosen to work—indeed, not just to work, but to live—in the academic circus.

We know that minorities in the academic circus are expected to be virtuoso performers, acrobatic high-wire walkers who can also juggle at the same time. It does not hurt if we can do all of this while riding a unicycle. In this address, I have taken on the task of professing about "balancing demands." Well, in the academic carnival, tasks do not align so neatly with the bearded lady and the sword swallow on one side and the fat lady and the geek chicken decapitator on the other. I expect that a truly balanced view is not possible, there is too much WASP logic in this illusion of balance. In our absurd carnival world there is no balance, only imbalance. It is all part of an ironic, kaleidoscopic whole. Each viewer sees the picture from a different angle and with a different perspective and proportion. Often for the minority law professor it all seems too absurd even to try to understand, and certainly too silly to provide the basis for a balanced life. It is a circus, and to survive, we must think of it in circus terms.

W.H. Auden, in his introduction to The Star Thrower, a posthumously published collection of Loren Eiseley’s essays, describes wonderful circuses and carnivals of present Latin America. Auden compares the “spirit of the carnival” to the stirring of mankind:

Carnival celebrates the unity of our human race as mortal creatures, who come into this world and depart from it without our consent, who must eat, drink, defecate, belch, and break wind in order to live, and procreate if our species is to survive. Our feelings about this are ambiguous. The Carnival solution of this ambiguity is to laugh, for laughter is simultaneously a protest and an acceptance. During Carnival, all social distinctions are

1. This was a sentiment often expressed in one form or another at this time in his life. For example, in expressing his decision to abandon the quest for a Ph.D., Einstein wrote "the whole comedy has become a bore to me." B. HOFFMAN, ALBERT EINSTEIN: CREATOR AND REBEL 41, 55 (1972).
suspended, even that of sex. Young men dress up as girls, young girls as boys. The escape from social personality is symbolized by the wearing of masks. The oddity of the human animal expresses itself through the grotesque—false noses, huge bellies and buttocks, farcical imitations of childbirth and copulation. The protest element in laughter takes the form of mock aggression: people pelt each other with small, harmless objects, draw cardboard daggers, and abuse each other verbally.

Carnival in its traditional forms is not for all of us. It is hard for us to enjoy crowds and loud noises. But even introverted intellectuals can share the Carnival experience if they are prepared to forget their dignity.²

It seems to me that much of what we as minority law professors are asked to do in this carnival, this academic circus, is to put on great masks and false penises while we juggle in one side show or another. As my good friend Sam Deloria of the Indian Law Center at the University of New Mexico likes to say, “Well, I’m off to do my Indian Mau Mau Act” or “this one calls for Indian playing whiteman before large foundation.” For those of you who have not already guessed, I am presently costumed as a “mixed-blood Indian posing as an intellectual dean in Brooks Brothers suit.” I don’t think I like this costume as much as my more familiar role as “Doctor Strickland, Indian jewelry-clad law professor, on the spring humanities circuit.”

Of course, minority professors often forget that we are not alone in this loud, noisy inexplicable circus. Our non-minority colleagues are carnivalers, also masked and padded. There are “concerned liberal humanitarians in ACLU capes,” “rednecks disguised as affirmative action officers,” and “uncertain and frightened boys in dean’s capes.” When we realize that these too are only costumes, we can relax, walk into the costume closet, and pick the academic circus robe that fits us, the one in which we can be truly comfortable. For much of what we are doing, much of the balancing act, is simply an act of self-definition, of selecting our own circus costume and announcing our act to the ringmaster.

To me the first, and most important, step in “balancing” is self-analysis. Know thyself! Who are you? What are your

strengths? What are your weaknesses? What is it that you can do better than anyone else—anyone else in the world? What do you want to have accomplished by the time the great celestial bread truck strikes you down as you step off the curb of this earthly life?

For the minority law professor the answer to that question of definition is the beginning of the answer to the balancing question. I began to see this when I was in graduate school in the late 1960’s and yet another of the tragedies of that era had descended upon us. On a beautiful Monday afternoon in early May, I was seated in a wonderful, marvelously popular course called, ironically, “nineteenth century legal thought.” At the beginning of the class Cal Woodard announced that that day we would discuss James Fitzjames Stephens and nineteenth century criminal law reform. One of the young men in the class rose and impassionedly pleaded, “Professor Woodard, how can a sensitive man like you talk about Fitzjames Stephens when the world is collapsing?”

Cal, who is truly a gentle man, looked up from his tattered notes which were written on the back of uncancelled checks, unshopped grocery lists, and the margin of the London Economist, and replied, ever so gently, but with the firmness of someone who knows what Carlyle called “his duty and destiny”:

I decided a long time ago that what little contribution I might make would come from trying to know about how nineteenth century man tried to solve the persisting legal problems of all mankind. To do this I had to decide not to open my study door for every fortnightly crisis. However, if any of you know more about our current crisis than what you read in this morning’s New York Times or Washington Post or more than you heard on that Walter Cronkite special last night, I’ll be happy to dismiss class and we’ll talk about it. I personally know nothing about this firsthand, so if there are no further comments, back to James Fitzjames Stephens.³

Our ultimate task in balancing is knowing which of the fortnightly crises really matter because some matter, and matter mightily. However, I cannot imagine that there are many occasions when having a black, Chicano, or Indian viewpoint on the Univer-

³. Lecture given by Cal Woodard. Recalled and reconstructed from memory by Rennard Strickland.
sity Traffic Appeals Board will make a difference in the broader streams of life’s issues. Too often, the minority professor is a member of the committee only for show, so precious research time is wasted while the professor is on display at an irrelevant sideshow.

Although I cannot give you a mathematical balancing formula, I can make four general observations which I hope will help make your personal balancing decision easier.

First: You must determine what matters to you, what counts to you. There is time to do what matters. You must simply decide what is important. It is the ultimate “cop-out” to say “I don’t have time.” Rather you must select among alternatives. There is not time to do everything you are asked to do. There is time to do what you decide to do. It is a far greater service to do a few things well than many things haphazardly. Few are asked to do more than the minority law faculty member. And as we divide time among more and more projects, less and less is done well.

I hope you will not be offended if I give you some very simple, but very hard statistics. There are sixty seconds in a minute, sixty minutes in an hour, twenty-four hours in a day, seven days in a week, and fifty-two weeks in a year. The average life expectancy for a woman is 76.5 years and for a man is 68.7 years. Our time to do anything is thus severely limited.

At the heart of all of this is the need to take control of one’s own time, one’s own life, and one’s own career. I am afraid most of us are what the Cherokee artist Joan Hill has called “Children of the Elements,” people whose lives are not planned, not thought out, but are only lived by the expediency of the moment. As Sir Claude observed in T.S. Eliot’s The Confidential Clerk: “If you haven’t the strength to impose your own terms upon life, you must accept the terms it offers you.”

The great novelist Ralph Ellison long struggled with this balancing question and with the error of taking one’s direction from others rather than oneself. In the opening chapter of his prizewinning novel The Invisible Man, Ellison remembers:

All my life I had been looking for something, and everywhere I turned someone tried to tell me what it was. I accepted their answers too, though they were often in contradiction and even self-contradictory. I was naive. I was looking for myself and

asking everyone except myself questions which I, and only I, could answer. It took me a long time and much painful boomeranging of my expectations to achieve a realization everyone else appears to have been born with: That I am nobody but myself.  

Second: It is foolish to think that one person can do, or must do, everything. It is time some of us stood up and said, "sorry, I don't do windows." I cannot be a model teacher, an effective, dynamic minority counselor, an understanding community human relations director, a riot control leader, a respected role model, and a Pulitzer prizewinning scholar all at the same time. "Mr. Law School Administrator, this is exactly what you are asking of me."

The great American Indian artist Fritz Scholder has a whimsical painting called "Super Indian with Super Dog" that says it all. The minority faculty member cannot do it all or be it all. We cannot be perpetual Super Indian, ready to strip off our outer three-piece suit and don our Superman, anti-Krypton flying cape ready to miraculously solve all problems that plague minorities.

In the field of Indian law, the field I know best, we have somehow divided the labor into parcels that are more work than any single person or group could do. These parcels of excessive work are distributed among a number of Indian lawyers, Indian law professors, and Indian legal organizations. For example, New Mexico's Indian Law Center runs our law scholarship program and Indian paralegal training sessions, the Native American Rights Fund handles litigation, the Indian Lawyers Training Program publishes the Indian Law Reporter, and the University of Oklahoma publishes The Indian Law Review. In addition, the Tulsa Center for Study of Indian Law, History, and Policy uses their great library collections for treaty and historical research on contemporary policy; the Newberry Library in Chicago maintains a top research facility; and the Indian Judges Association provides a forum for Native American Judges. You get the idea.

A number of these groups are non-law school related because they function best outside of the academic world. Their contribution has been and continues to be a great one. Much of the very best work is done by attorneys who have no connections to law schools or teaching. These are minority lawyers who by their

choice of career do not have the opportunity and obligation of serious scholarly productivity. But many of us come together to work on crucial projects, such as the consortium which revised Felix Cohen's *Handbook of Federal Indian Law*. That group consisted of seventeen scholars from twelve institutions and a number of practicing attorneys all supported by funds from four private foundations.

Do not think it is easy to get that many Indian groups together. There is an old joke oft told at Indian gatherings, I think it is told about other minority groups as well. Two men are walking along the beach, each is carrying a bucket of long-legged sea crabs. The crabs in one bucket are crawling everywhere, and some are even climbing out of the bucket. In the other bucket the crabs are all in place. When asked why his crabs stayed put, the second man replied, "I selected only Indian crabs. They are so busy fighting amongst themselves that they don't have time to look beyond the bucket. If one starts to pull himself up out of the bucket, the others turn on him and pull him back down."

Third: As a minority faculty member you have an obligation to let others know what your plans, goals, objectives, and dreams might be. There is far too little communication between minority and non-minority faculty members. There is too often a great minority paranoia which assumes the worst; we think everyone, all deans, administrators, and tenured colleagues, are out to get us. My experience has generally been the opposite. But you have to talk with your school's administrators, get your objectives defined, find out what is needed and wanted, what is tolerable and intolerable. If other minorities are like Indians in any way, they put off talking about bad things, unpleasant things. But you must talk it out; you must get it straight. Know where you have to go and how long you have to get there! Set your standards high and start now. If you write only one page a day, at the end of one year you will have a 365 page book, or nine forty-page articles.

If it is a situation where you are not getting a fair shake, talk about that too. We say it so often that it must be true: Minority faculty members do not give each other the support we need. Too often we act as if we are alone, and if we only look at individual law schools, too often we are alone. It is on this point that our

THE ACADEMIC CIRCUS

AALS section and conferences like this one must be prepared to act—to scream and shout! The crimes I have seen committed in the name of tenure, academic freedom, and scholarly standards are legion. The chances of these crimes occurring are significantly reduced if we have defined ourselves and our goals, if we have discussed them with our colleagues—minority and non-minority. I hope all of the faculty members at Southern Illinois University understand that publication is a crucial part of their preparation to teach and that scholarship is the obligation of the tenured and the untenured, the minority and the non-minority, alike.

**Fourth:** Not everything relating to minorities must be done by minorities. Let us look again at my field of Indian law. Three of the most important events of Indian law in the last fifty years came from the vision of non-Indians. The massive *Handbook of Federal Indian Law*,7 which literally revolutionized the conception of the role of law in Indian policy, was the product of Felix Cohen, a first-generation American Jew. The American Indian Law Scholarship Program, the stimulus behind the training of more than one thousand Native American lawyers, was the dream of Fred Hart, a first-generation Irishman. Another example is the Native American Rights Fund, the phenomenally successful litigation arm of the modern Indian law movement. The Fund was founded, according to Thelma Stiffarm, an outspoken, candid Indian lawyer, by “white boy, Ivy League, preppies.”

Nevertheless, there are things which only a minority faculty member can do. It is for these that we must make time. There is a minority viewpoint which only someone who has experienced it can express, share, or defend. This is particularly true when dealing with our minority law students. We matter here, and matter mightily.

**Finally:** We must remember that being a law professor is not an easy job. But, we chose this demanding vocation. The circus and the way of its performers has never been an easy life. We marvel at the balancing act of the high-wire acrobats not because they are commonplace, not because what they do is easy, but because so few men and women can walk that tight rope. Circus people say you cannot finish in second place on a tight rope. We should remember that. We have enough second-rate white faculty members

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7. *Id.*
who produce little or no scholarship without adding second-rate minority professors who produce equally shoddy or incomplete work. Believe me, I do not advocate for second-rate Indians, blacks, or Chicanos to match the second rate white professors. Too many people already think of us in that way, without us proving them right. It is a sad but true fact that when a minority faculty member fails, it is not he or she alone who perish. Our colleagues who will follow us will have to bear the stigma of "we hired an Indian once, but it just didn't work out." When one of us perish, all of us perish.

Too often minority faculty members sell their potential short. We accept their stereotype that minority professors are incapable of producing first-rate scholarship and then we prove them correct by writing nothing at all. It is far easier to talk about how busy we are, about the great demands on our time, about unfairness, and about our academic burdens than it is to write books and articles. I had an old debate coach who talked about the bridge playing, coffee drinking, cigarette smoking student union generals; they planned great battles and devised brilliant military strategies, but they never won a war because they never went out to the battlefield. Being a good law professor is hard work and there is no way we can balance that to make it easy. As Barbara Tuchman warns us in her wonderful book, Practicing History: "Research is endlessly seductive; writing is hard work."8

In conclusion, I would like to return to our circus, to the carnival analogy, and pose some questions and ask you to make a few value judgments. We are, after all, in an academic, and I stress the word, academic, circus. There are many circuses in life but we have chosen to be law professors, we perform in an academic circus. We must choose our circus costumes from the university wardrobe mistress. We define our life's role in the context of the university, of the university's function. This means that we must ask ourselves questions such as: How does the university educational goal relate to my own personal life goal, to minority needs, or to great social issues? In what ways do my published works relate to the broader goals of the legal profession? What is my present, or proposed, scholarly activity likely to contribute to law students, to university students, to minority students? In what way

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does the law school fit, or can it be made to fit, into the social, economic, and political needs of minorities? Once we are settled in, and we are recognized circus performers, we may also need to ask how might the circus, indeed the whole academy itself, be reformed.

I hope we can discuss these questions and similar ones in the plenary session and from those discussions a statement will emerge that we can all agree upon. As I indicated earlier, my own feeling is that balance is not impossible to achieve as long as you know what you want to achieve. After all, what Emerson noted is still true, "the scholar loses not one hour the man lives."

I have a very dear friend at a great Midwestern university who has struggled with his minority role and now describes himself as "a faculty sequin." "Whenever they need a little sparkle," he says, "they move me over here, and when it gets a little dowdy over here, they move me again. But every now and then I've got to be sent back to the shop for some new glitter."

Minority faculty are too often satisfied to be sequins. You know there is nothing more threadbare than an old Sadie Thompson sequined party dress that has been used and abused. Growing up in Muskogee, Oklahoma, I well remember the red sequined dancing girls performing their seedy stripteases at the county fair.

If we, as minority faculty members do not have anything more to offer than the sequined sparkle of our minority status, then we are simply academic whores—and not very high priced ones—selling our black, Indian, Chicano, or Orientalness to the highest bidder. We do not really even service our tricks.

A decade ago I spoke to a similar minority law teachers conference in Chicago, addressing the specific details of these same issues, especially the importance of high standards and of scholarly productivity. Today, I have tried to speak more generally because I no longer believe there is a single, detailed, technical, or step-by-step way to balance one's career or life. I can think of nothing more tragic than one who has selected a vocation with a central element, an element he or she is unwilling, or unable, to undertake. Scholarship, I believe, is the central element of our vocation. This must be equally true for the minority and the non-minority law professors.

The great circus performers, the real stars, stand out because they command the center ring. Whether they are in a forgotten
sideshow playing the tank towns of East Texas, or at Ringling Brothers Barnum and Bailey in Madison Square Garden, they are a presence. Too often minority law professors stand back and allow themselves to be relegated to the sideshow. Do not let this happen! Create a performance, a role, an act that itself demands the center ring. In our business, you can demand the center ring only when your work, articles, books, and essays compel recognition. You must say something that matters.

We owe this not only to ourselves, but also to those who struggled to get us where we are. In my own case, I think of Osages and Cherokees in tight shoes and stiff collars, sitting in cramped classrooms at Indian boarding schools, listening to a strange language and working sums with foreign figures when their hearts wanted to race with the wind. If I perish, they too have perished. I will have surrendered the rare opportunity which was only made possible through their sacrifices.

I would like to close with an admonition for you as you undertake your own individual balancing act. In making your plans, do not think small, do not allow yourself to be confined to the narrow, provincial confines of one institution, or to too small of a dream. Do not be relegated to the back ring, to a second-rate sideshow. Do not let others use their stereotypes to limit your vision. Seize the center ring as your own. It belongs to us just as much as it belongs to anyone else.

When the great architect Daniel Burnham, the man called in to help redesign Chicago, was walking along the lake, he described his magnificent schemes and outlined his vision of a new Chicago. Burnham, dreamer and builder of a great turn-of-the-century skyline, warned “make no small plans, for they have not the power to move men’s minds.”