

# WISDOM, NOT NOISE: THE LAW PROFESSOR AS POLICY INFLUENCER

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## INTRODUCTION

Donald Trump's election as President of the United States has caused many academics from across the political spectrum to reconsider their research agendas, including whether and how they can play a larger and more direct role in policy debates.<sup>1</sup> For example, a Facebook<sup>2</sup> group titled the "11/9 Coalition" focused on the "protection of civil liberties and the rule of law,"<sup>3</sup> was launched by Hofstra Law Professor Irina Manta one day after the election and

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1. *See, e.g.*, Tarleton Gillespie & Hector Postigo, *At Culture Digitally, We're Thinking About Our Scholarship in the Harsh Light of This Week*, CULTURE DIGITALLY (Nov. 10, 2016), <http://culturedigitally.org/2016/11/at-culture-digitally-were-thinking-about-our-scholarship-in-the-harsh-light-of-this-week/> ("Yesterday was a surprising, difficult day for a lot of us. For many of us based in the U.S., amidst whatever political feelings we were having, it spurred us to think hard about our own work and research agendas, and how they should shift to face new political realities. So some of us spent the day thinking about what it is we do now and can do in the future.").

2. Social media itself is being heavily scrutinized due to the perceived prevalence of "fake news" stories that may have influenced the outcome. *See Mark Zuckerberg—Dead at 32—Denies Facebook Has Problem With Fake News*, THE SHOVEL (Nov. 17, 2016), <http://www.theshovel.com.au/2016/11/17/mark-zuckerburg-dead-at-32-denies-facebook-has-problem-with-fake-news/>. *See generally* David S. Levine, *The Social Layer of Freedom of Information Law*, 90 N.C. L. REV. 1687 (2012).

3. *Our Mission*, 11/9 COALITION, <http://119coalition.org/our-mission/> (last visited Dec. 18, 2016) (The "Mission Statement" says that it is "dedicated to holding public servants, including elected officials, to their obligations to preserve and defend the Constitution, without regard to their political affiliation . . . [and] stands at the ready to employ, in line with these values, both advocacy and legal action."). Disclosure: I was involved in the drafting of the 11/9 Coalition's Mission Statement, and I am involved in its activities.

counts many law professors among its over 11,600 members.<sup>4</sup> While difficult to quantify, it is likely that many of these academics may be operating in the policy space for the first time.

I welcome this reexamination. While there is a long history of law professors engaging in advocacy on matters of policy, the need for expertise within our policymaking arenas has never been greater. At the congressional level, Lorelei Kelly has documented the destruction of “shared expert knowledge capacity” over the past few decades.<sup>5</sup> She explains that:

Members of Congress and their staff do not lack access to information. Yet information backed by financial interests and high-decibel advocacy is disproportionately represented. Most importantly, they lack the institutional wisdom that can be built via a deliberate system that feeds broadly inclusive information through defined processes of review, context, comparison and evaluation of the implications for the nation as a whole. Concurrently, Congress also needs more expert judgment available to it during the policymaking process . . .<sup>6</sup>

State and local governments equally need the expert knowledge that academics can bring to the policymaking process.<sup>7</sup>

That said, such a pivot may be easier said than done for those who are not already involved. Academic research agendas are drawn with multiple factors in mind, from likelihood that scholarship will result in tangible benefits like compensation and promotion, to the more ephemeral aspects of influencing policy and serving justice that are the historic “callings” of the law.<sup>8</sup> To be sure, scholars like Stanley Fish have argued that professors should “stick to teaching.”<sup>9</sup> Other scholars, like Lawrence Lessig and

4. As of December 9, 2016.

5. Lorelei Kelly, *Congress’ Wicked Problem*, NEW AMERICA (Dec. 4, 2012), <https://www.newamerica.org/oti/policy-papers/congress-wicked-problem/>.

6. *Id.*

7. Frank Pasquale, *Synergy and Tradition: The Unity of Research, Service, and Teaching in Legal Education*, 40 J. LEGAL PROF. 25, 33–36 (2015). Frank Pasquale has recently noted, in the context of Congress’ recent consideration of hospital merger policy, that the “decades of expertise and unbiased, objective views [that] scholars bring to policymakers are invaluable to informed policy debates.” *Id.* at 36.

8. Walter P. Armstrong, Jr., *The Law as a Calling*, 1 STUDENT LAW. J. 3, 3 (1955) (“Essentially, the five functions of the lawyer are to be a wise counselor, to be a wise advocate, to work toward the improvement of the profession, to answer the call of public office if it should come, and, even if the call should not come, to lead public opinion.”).

9. Andy Guess, *Fish to Profs: Stick to Teaching*, INSIDE HIGHER ED (July 1, 2008), <https://www.insidehighered.com/news/2008/07/01/fish> (Professors “can (legitimately) do two things: (1) introduce students to bodies of knowledge and traditions of inquiry that had not previously been part of their experience; and (2) equip those same students with the analytical skills—of argument, statistical modeling, laboratory procedure—that will enable them to move

Pamela Samuelson, have made advocacy and policy involvement a *modus operandi*.<sup>10</sup> In a time when we question the very assumptions made about our profession, country, and democracy,<sup>11</sup> it is natural for the introspective scholar to consider whether his or her abilities—and the privilege of being compensated to research and write—should be devoted to more immediate concerns.

A deeper concern is whether we are at a point in policymaking where facts don't matter. Hannah Arendt explained that “[w]hat convinces masses are not facts, and not even invented facts, but only the consistency of the system of which they are presumably part.”<sup>12</sup> To be sure, facts have always been at risk in the face of deliberate systemic political maneuvering;<sup>13</sup> the outcome of a policy debate can be plotted in advance, regardless of the merits of the arguments. In our looming era where the President-elect is an active (and seemingly reckless) “Tweeter”<sup>14</sup> and “post-truth” is the Oxford Dictionaries’ 2016 “Word of the Year,”<sup>15</sup> how should truth-seeking legal academics respond?

confidently within those traditions and to engage in independent research after a course is over.”).

10. Scott Wong, *Lessig on 2016: 'I'm in'*, THE HILL (Sept. 6, 2015, 3:15 PM), <http://thehill.com/blogs/ballot-box/presidential-races/252868-lessig-on-2016-im-in> (Lessig quoted as saying that “This stalemate, partisan platform of American politics in Washington right now doesn't work . . . And we have to find a way to elevate the debate to focus on the changes that would actually get us a government that could work again, that is not captured by the tiniest fraction of the 1 percent who fund campaigns and make it impossible for our government.”); *About Us*, AUTHORS ALLIANCE <http://www.authorsalliance.org/about/> (last visited Dec. 28, 2016) (Samuelson founded the “Authors Alliance,” an advocacy organization designed to “further the public interest in facilitating widespread access to works of authorship by assisting and representing authors who want to disseminate knowledge and products of the imagination broadly.”).

11. Fareed Zakaria, *America's Democracy Has Become Illiberal*, WASH. POST (Dec. 29, 2016), [https://www.washingtonpost.com/opinions/america-is-becoming-a-land-of-less-liberty/2016/12/29/2a91744c-ce09-11e6-a747-d03044780a02\\_story.html?utm\\_term=.b541c6c99d19](https://www.washingtonpost.com/opinions/america-is-becoming-a-land-of-less-liberty/2016/12/29/2a91744c-ce09-11e6-a747-d03044780a02_story.html?utm_term=.b541c6c99d19) (“Alexander Hamilton felt that ministers, lawyers and other professionals would be the ‘impartial arbiters’ of American democracy, ensuring that rather than narrow, special interests, the society and its government would focus on the national interest. . . . Guilds and other professional associations have lost nearly all moral authority and have become highly competitive and insecure organizations, whose members do not—and probably cannot—afford to act in ways that serve the public interest.”).

12. HANNAH ARENDT, *TOTALITARIANISM: PART THREE OF THE ORIGINS OF TOTALITARIANISM* 49 (1968).

13. See Matthew Chapman, *House GOP Appallingly Votes to Conceal Cost of Obamacare Repeal to Taxpayers*, SHAREBLUE (Jan. 5, 2017), <http://shareblue.com/house-gop-appallingly-votes-to-conceal-cost-of-obamacare-repeal-to-taxpayers/> (“[T]he new Republican rules package specifically instructs the CBO *not* to say how much it would cost to repeal Obamacare.”).

14. President-elect Donald J. Trump (@realDonaldTrump), TWITTER, <https://twitter.com/realdonaldtrump> (last visited Dec. 28, 2016).

15. Post-truth is defined as “relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief.” Amy B. Wang, *'Post-truth' Named 2016 Word of*

This essay offers some initial thoughts and strategies for the neophyte but budding law professor-policy influencer that has not (in my estimation, very appropriately) given up on the power of facts, data, and evidence.<sup>16</sup> I draw on many years of experience, having been the first volunteer New York State Field Director for The Concord Coalition,<sup>17</sup> a legislative aide in the New York State Assembly for Assemblywoman Sandy Galef,<sup>18</sup> and an assistant corporation counsel for the City of New York. Since entering academia in 2005, I've led academic efforts to oppose the Stop Online Piracy Act<sup>19</sup> (successfully)<sup>20</sup> and the Defend Trade Secrets Act<sup>21</sup> (unsuccessfully);<sup>22</sup> advocated for more open and accountable

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*the Year by Oxford Dictionaries*, WASH. POST (Nov. 16, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/11/16/post-truth-named-2016-word-of-the-year-by-oxford-dictionaries/>. Note: I am far from convinced that we are at this point as a society; the law and the courts remain hardly “post-truth.” I tend to agree with Glenn Kessler, who noted that “it’s a facile way to describe basic human behavior since the first words were spoken . . . People have always been swayed by emotions and personal beliefs.” *Id.* Indeed, a former Trump elector has apparently resigned based upon factual information provided from a variety of sources. See Christopher Suprun, *Why I Will Not Cast My Electoral Vote for Donald Trump*, N.Y. TIMES (Dec. 5, 2016), [http://www.nytimes.com/2016/12/05/opinion/why-i-will-not-cast-my-electoral-vote-for-donald-trump.html?\\_r=0](http://www.nytimes.com/2016/12/05/opinion/why-i-will-not-cast-my-electoral-vote-for-donald-trump.html?_r=0) (An Electoral College member who decided to resign, rather than vote for Trump, explained his reasoning: “We have reports that Mr. Trump’s organization has business dealings in Argentina, Bahrain, Taiwan and elsewhere. Mr. Trump could be impeached in his first year given his dismissive responses to financial conflicts of interest.”).

16. Of course, there are many issues raised here that are worthy of much longer treatment. For example: What exact tactics to use? How to influence elected officials? How can one acquire the necessary skills? In this article, however, I put those (and many other) questions aside to offer immediate practical advice. A longer treatment is in its early stages.

17. *History*, THE CONCORD COALITION, <http://www.concordcoalition.org/history> (last visited Dec. 28, 2016).

18. *Biography*, ASSEMBLYWOMAN SANDY GALEF, <http://nyassembly.gov/mem/Sandy-Galef/bio/> (last visited Dec. 28, 2016). Galef has been known as a “good government” advocate since her entry into the Assembly.

19. Devin Coldewey, *Stanford Law Review: SOPA Unconstitutional, Would Break the Internet*, TECH CRUNCH (Dec. 19, 2011), <https://techcrunch.com/2011/12/19/stanford-law-review-sopa-unconstitutional-and-would-break-the-internet/>.

20. To be sure, I’m not taking sole (or even significant) credit for any policy outcomes discussed in this article—far from it; any advocacy effort is multi-layered and complex. My purpose here is merely to highlight how an academic may operate in this space.

21. *5 Things to Know About The Defend Trade Secrets Act*, KIRKLAND & ELLIS LLP (Apr. 27, 2016), <https://www.kirkland.com/sitecontent.cfm?contentID=230&itemID=12136>.

22. Clifford R. Atlas, Peter R. Bulmer & Erik J. Winton, *Defend Trade Secrets Act Becomes Law, Opening Federal Courts to Aggrieved Companies*, JACKSON LEWIS (May 12, 2016), <http://www.jacksonlewis.com/publication/defend-trade-secrets-act-becomes-law-opening-federal-courts-aggrieved-companies>.

negotiation processes in the Trans-Pacific Partnership Agreement<sup>23</sup> and other international agreements;<sup>24</sup> advised the North Carolina Mining and Energy Commission's Protection of Trade Secrets and Proprietary Information Study Group on how trade secret law should be tailored for meaningful public access to hydraulic fracturing trade secrets,<sup>25</sup> about which I've also advocated;<sup>26</sup> and have spoken, taught, and written extensively on intellectual property and technology policymaking and law for policymakers, legislative and executive branch staffers, elected officials, academic colleagues, and the public.<sup>27</sup> I also host a show on Stanford University radio called *Hearsay Culture*, where I've interviewed over 250 scholars and technologists, precisely as a way to build interdisciplinary public knowledge for policy improvement.<sup>28</sup> Importantly, I have worked in a non-partisan manner with Republicans, Democrats, and independents, and offer this advice to academics throughout our political spectrum.

#### I. PERSONAL CONSIDERATIONS: SHOULD I DO THIS?

While scholars in the general sense may want to be involved in policy advocacy, each one needs to decide if it is right for them. It would seem that the current uncertain state of national and international affairs provides enough motivation for scholars to turn their attention to public policy, no questions asked. Nonetheless, before an academic makes significant career-focus changes, a careful personal assessment is necessary, both for a clear decision and for success.

Assuming that you are on the fence, and/or are seeking tenure, your position in the academic hierarchy must be weighed. Traditionally, law review articles have been the most important criteria for promotion and tenure;<sup>29</sup> while law review articles are

23. David S. Levine, *The Most Important Trade Agreement That We Know Nothing About*, SLATE (July 30, 2012, 6:16 AM), [http://www.slate.com/articles/technology/future\\_tense/2012/07/trans\\_pacific\\_partnership\\_agreement\\_tpp\\_could\\_radically\\_alter\\_intellectual\\_property\\_law.html](http://www.slate.com/articles/technology/future_tense/2012/07/trans_pacific_partnership_agreement_tpp_could_radically_alter_intellectual_property_law.html).

24. See David S. Levine, GOOGLE SCHOLAR <https://scholar.google.com/citations?user=Y9tVrU8AAAAJ&hl=en> (last visited Dec. 28, 2016). I also spoke at several TPP negotiating rounds.

25. *Study Group Members*, N.C. MINING AND ENERGY COMMISSION (last visited Dec. 28, 2016), <http://portal.ncdenr.org/web/mining-and-energy-commission/study-group-assignments>.

26. Law Professors, Comment Letter on Alaska Oil and Gas Conservation Commission's Proposed Hydraulic Fracturing Regulations Providing for Public Disclosure of Information (Apr. 1, 2013), <http://doa.alaska.gov/ogc/frac/fracomment/HF28.pdf>.

27. See David S. Levine, GOOGLE SCHOLAR <https://scholar.google.com/citations?user=Y9tVrU8AAAAJ&hl=en> (last visited Dec. 28, 2016).

28. HEARSAY CULTURE, <http://www.hearsayculture.com> (last visited Dec. 28, 2016).

29. Nancy Levit, *Scholarship Advice for New Law Professors in the Electronic Age*, 16 WIDENER L.J. 947, 948 (2007) ("Professors just joining the

part of the advocate's toolset, effective policy advocacy can take you well away from the time needed to research, write, and place law review articles. Importantly, in recent years, doctrinal and policy articles have taken a backseat to theoretical interdisciplinary scholarship in hiring, promotion, and tenure.<sup>30</sup> Especially if you are pressed with other commitments in the classroom and on committees, extensive movement away from law review articles, especially of the theoretical variety, can have significant consequences at schools where advocacy is not valued. Thus, it is essential to understand your institution's promotion and tenure expectations.

On the other hand, effective policy advocacy can directly benefit an academic's scholarship and teaching, precisely because it demands in-depth knowledge of the relevant subject matter. Authenticity and authority in written analysis can be especially influential on the policymakers that you seek to influence. In my experience, students appreciate when their professors share experiences advocating and advising regarding the very laws and policies being discussed in class. Moreover, building a network of knowledgeable contacts in your field of study can enhance your scholarship, as well as your reputation and effectiveness when the time comes to influence policymaking decisions. In fact, if you are drawn by free and open inquiry, policy advocacy can be exhilarating, even when you sense that you are not encountering equal exhilaration amongst those with whom you are working.

Unfortunately, it should be noted that the risks of policy advocacy could move beyond the classroom (where policy influence can also take root as new generations of thinkers are trained). Especially if you are untenured,<sup>31</sup> or working at a public

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legal academy may feel caught in a time of transition between promotion and tenure rules based on traditional methods of publication and contemporary electronic and interdisciplinary possibilities for publication.”).

30. Erwin Chemerinsky, *Why Write?*, 107 MICH. L. REV. 881, 885 (2009) (“In the past two decades, elite law schools have emphasized theoretical, interdisciplinary scholarship. This is reflected in their entry-level hiring. A significant percentage of those now hired to teach at elite institutions have their PhD in other disciplines. This emphasis is also reflected in lateral hiring. A faculty member trying to move to an elite law school is more likely to attract attention and receive offers if he or she is engaged in theoretical, interdisciplinary work. Additionally, simply perusing the table of contents of law reviews—from elite and non-elite institutions—it is obvious that there are a significant number of abstract articles being published that are unlikely to be useful to judges or lawyers.”).

31. Steven Greenhouse, *Cornell Professor Fights a Slander Suit*, N.Y. TIMES (Apr. 1, 1998), <http://www.nytimes.com/1998/04/01/us/cornell-professor-fights-a-slander-suit.html> (“Dr. Bronfenbrenner says she was shocked not just by the suit and its demand for at least \$225,000 in damages but also by Beverly’s demand, in the pretrial discovery process, that she turn over details on years of research. ‘I’m very frightened and outraged by this, because it represents a real attack on scholars like myself from taking part in public debates,’ said Dr.

university,<sup>32</sup> a politically controversial public position could make you a target for speech-related retaliation.<sup>33</sup> While this may be unavoidable in some circumstances, framing your work as “informing policymakers,” rather than pure “advocacy” or lobbying, might help avoid these risks.<sup>34</sup>

Additionally, you need to consider your level of risk aversion. Getting involved in policy debates does not guarantee a positive outcome, and may antagonize some. The time put in may not lead to tangible policy outcomes, particularly in the short-term. Others may steal your ideas, or use your ideas without citation. Academics who get involved in policy work are often criticized for not knowing what happens in “the real-world.” Can you handle the criticism and being ignored, rejected, or worse?<sup>35</sup> For your own mental well-being, you’d be best served to respond to such reactions in the way that *The Godfather’s* Michael Corleone might advise: “It’s not personal, Sonny. It’s strictly business.”<sup>36</sup> Is that in your nature?

Moreover, the nature of political discussion is such that you may not get much of a reaction, despite a well-reasoned and well-researched argument. Impacting policy can be arduous, diffuse, and even undetectable in many instances. But, while SSRN download

Bronfenbrenner, a 43-year-old untenured professor who teaches courses on union organizing.”).

32. Marisa Bakker, *Gene Nichol at Center of Attention*, DAILY TARHEEL (Mar. 3, 2015, 12:26 AM), <http://www.dailytarheel.com/article/2015/03/professor-gene-nichol-says-politics-caused-the-poverty-centers-closing> (“Nichol firmly believes that it was his political opposition to the state’s government that led to the center’s closure, citing direct threats from the legislature. He said he considered the board’s decision a form of censorship and a violation of the First Amendment and academic freedom.”).

33. Of course, this can happen to any professor, and the threats can be very serious. See UCI Professor Awarded 2016 John Maddox Prize for Standing Up for Science, UCI News (Nov. 17, 2016), <https://news.uci.edu/faculty/uci-professor-awarded-2016-john-maddox-prize-for-standing-up-for-science/> (“‘Standing up for psychological science in general and research on memory in particular has brought a good deal of antagonism my way,’ Loftus said. ‘Receiving this award helps to erase the pain of insults, death threats and lawsuits.’”); Lawrence Lessig, *So I’ve Had My First ‘Zero-Carbon-Footprint-You’ Threat*, LESSIG BLOG, V2, <http://lessig.tumblr.com/post/154270017017/so-ive-had-my-first-zero-carbon-footprint-you> (last visited Dec. 28, 2016) (Lessig received a veiled death threat for his public work on behalf of “faithless electors.”).

34. See *Mission Statement*, SCHOLARS STRATEGY NETWORK, <http://www.scholarsstrategynetwork.org/what-scholars-strategy-network> (last visited Dec. 28, 2016) (“The Scholars Strategy Network seeks to improve public policy and strengthen democracy by organizing scholars working in America’s colleges and universities, and connecting scholars and their research to policymakers, citizens associations, and the media.”).

35. As an unnamed friendly congressional staffer told me before a meeting, I “didn’t count” because I’m not a “lobbyist.” Whether that mentality changes going forward remains to be seen, but I hope that it does.

36. *THE GODFATHER* (Paramount Pictures 1972).

statistics<sup>37</sup> and Google Scholar citation indices<sup>38</sup> are compelling evidence of scholarly influence, they may not be as concrete, fulfilling, or impactful as attempting to influence policy outcomes on issues to which you've devoted your time and energy.

## II. PREREQUISITES

Assuming that you've made the decision to focus in a policy area as a full-time academic, you would be well-advised to position yourself as an unbiased expert, free from the perception (or reality) of influence on your recommendations. Indeed, this is what disciplined and ethical academics bring to the table: the ability to examine an issue from a neutral perspective. Particularly as an academic, your ability to "speak truth to power" will be directly proportional to your ability to remain within the academic camp, as opposed to lobbyist or activist camps.<sup>39</sup> Thus, it is important to adhere to some basic guidelines so as to play your role in the most effective manner.

In early 2016, several intellectual property law academics penned a short article titled *Open Letter on Ethical Norms in Intellectual Property Scholarship*.<sup>40</sup> The letter does an excellent job laying out certain basic norms when writing scholarship, although they are easily portable to policy advocacy. At its core, the letter suggests the following three overarching standards:

The first is transparency: members of the academic community should disclose any monetary or related inducements that might have the potential to influence scholarly research or create the perception that scholarly research has been unduly influenced. The second is to reduce the potential for overt or subconscious bias to affect scholarly research. Members of the academic community should seek wherever possible to minimize or eliminate outside influences that might inject bias or the appearance of bias into research. The third is to facilitate replicability and examination of existing work by

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37. *Frequently Asked Questions*, SSRN, <https://www.ssrn.com/en/index.cfm/ssrn-faq/#download> (last visited Dec. 28, 2016).

38. *Google Scholar Citations*, GOOGLE SCHOLAR, <https://scholar.google.com/intl/en/scholar/citations.html#overview> (last visited Dec. 28, 2016).

39. This is not meant as a criticism of those different roles; rather, those positions seem qualitatively different than the neutral, a-political expert role most fitting an academic in the policy sphere. On a personal level, I have purposely avoided strategy or tactics coordination with advocacy and civil society groups—even with those whom I agree—so as to eliminate even the perception that my academic work is motivated by anything other than neutral, unbiased, and objective analyses of desirable policy outcomes.

40. Robin Feldman et al., *Open Letter on Ethical Norms in Intellectual Property Scholarship*, 29 HARV. J. L. & TECH. 339 (2016) (Note: I was one of the signatories to the letter, but not an author.).

requiring, to the fullest extent possible, the disclosure of its underlying data.<sup>41</sup>

Regardless of the issue or position taken, academics would be well-served to adhere to these standards. Indeed, when academics blur the lines between their academic and paid writing, the damage to the credibility and influence of all academics is at risk, the profession suffers, and the loss for society immeasurable.<sup>42</sup> Thus, professors would be well-advised to not only adhere to these standards in their own work, but also to seek and promote the expertise of those that adhere to these standards.

### III. CONTEXT MATTERS: FORMAT AND SITUATIONAL AWARENESS

If you've made the choice to enter the policy realm, picking your issue can be a challenge. It is essential to attempt—as much as is possible—to determine the status of the issue that you'd like to address as that will determine how best to contribute to the policy debate. Is there a proposed rule or legislation, or are discussions merely happening? What legislative and executive entities are involved in the debate? Who are the major players, elected officials, and private entities involved? Do you want to join a chorus of support or opposition, or do you want to fill a perceived void in a discussion? Where are the knowledge gaps? Identifying key staff—and the interests served by various positions—will be essential as you explore your options.

To that end, if your choice is between opposition and amendment, choose carefully. In the current political environment, “opposition” is more easily characterized as “unwillingness to

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41. *Id.* at 346–47 (In sum, the letter calls for several steps: research disclosure, general personal disclosure, institutional disclosure, no *quid pro quo*, no prior approval, data disclosure and replication, and collegiality and open inquiry).

42. See Shira Poliak, *'Inside Job' Prompts New Look at Conflict of Interest Policy*, COLUMBIA SPECTATOR (Apr. 13, 2011, 4:22 AM), <http://columbiaspectator.com/news/2011/04/13/%E2%80%98inside-job-prompts-new-look-con%EF%AC%82ict-interest-policy> (“Inside Job,” which won Best Documentary at the Academy Awards in February, explores the causes of the economic meltdown and criticizes Hubbard and other leading economists for failing to forecast the economic collapse. The film alleges that prominent academics are often paid to consult for companies, creating conflicts of interest. The movie claims that without knowing who is funding economists, the public cannot trust their research or policy recommendations.”); Jesse Eisinger & Justin Elliott, *These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers*, PROPUBLICA (Nov. 16, 2016), <https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers> (“[A] ProPublica examination of several marquee deals found that economists sometimes salt away inconvenient data in footnotes and suppress negative findings, stretching the standards of intellectual honesty to promote their clients’ interests. . . . In contrast to their scholarship, the economists’ paid work for corporations rests almost entirely out of the public eye.”).

discuss” or “radical,” even if false. Given that academics do not have interest groups backing them directly (and if they do, then they may be perceived as something other than a neutral expert and authority), your ability to influence outcomes will rest largely on the ability for others to ignore you. Therefore, a very deliberate strategy choice between opposition and amendment—the latter, viewed as more engaging—must be made early in the process.

Presumably, you will attempt influence in an area where your expertise is already developed. That said, one of the great privileges of being an academic is the relative space afforded to develop expertise. Thus, consider whether there is a knowledge hole that you might fill by virtue of your time and expertise and how best to share your knowledge.

Finally, it is critical to consider the format of your involvement.<sup>43</sup> While law review articles are the academic’s coin of the realm, busy staffers and elected officials may not have time to review lengthy work. Consider using phone calls, blog posts, podcasts, white papers, essays, open sign-on letters, and social media engagement (including forming your own “action pods”)<sup>44</sup> as ways to reach those who have proverbial stacks of paper on their desks, with minimal sorting mechanisms. Don’t be noise; be wisdom.

#### CONCLUSION

Few activities can be more rewarding than attempting to improve society. Regardless of the side that you’re on, legal academics can bring knowledge, respect for data and evidence, and logical rigor and debate to a political process that can lack such structure. This article offers some initial thoughts for legal academics considering how they can make free and open inquiry a policymaking norm, and in the process, advocate for what they deem fair and just.

But beyond personal rewards, existing imbalances in our knowledge environment, especially in lobbying and policy advocacy, arguably create a *duty* for law professors to ensure that underfunded and diffuse public interests have a meaningful say in policy debate.<sup>45</sup> It is among the moral obligations of academics—

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43. See generally David S. Levine, *The Social Layer of Freedom of Information Law*, 90 N.C. L. REV. 1687 (2012).

44. While I encourage all academics, of any political stripe, to become more engaged in policy debate, those concerned about the recent Presidential election have unsurprisingly been most active since the election. See, e.g., *Inspire Friends*, WHAT DO I DO ABOUT TRUMP?, <http://whatdoidoabouttrump.com/action-pods/> (last visited Jan. 7, 2017) (describing “action pods” as “a group of friends that help each other get active on issues that matter. Pod members meet regularly (every 4-8 weeks) to help each other learn about the issues, identify ways to get involved, and stay engaged and motivated.”).

45. See generally Frank A. Pasquale III, *Privacy, Autonomy, and Internet Platforms*, in PRIVACY IN THE MODERN AGE: THE SEARCH FOR SOLUTIONS 165

who have the privilege to be paid to read, think, and write for the sole purpose of advancing human knowledge—to offer clarity with regard to the likely outcomes of policy proposals, and to propose new initiatives. Thus, law professors can play a major part of the bulwark against captured policymaking and/or organized chaos, now and in the future. By applying your skills to the very core of our democracy, you will find that the benefits achieved were worth your time. Your children, your profession, and future generations may thank you—and even if they don't, you will know that you made contributions at a critical time to the continued preservation and advancement of, and respect for, knowledge and evidence.

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(Marc Rotenberg et al. eds., 2015) (describing the public knowledge imbalance created by corporate social science); David S. Levine, *Secrecy and Unaccountability: Trade Secrets in Our Public Infrastructure*, 59 FLA. L. REV. (2007).