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### An Introduction to “Critical Legal Research: The Next Wave”

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## AN INTRODUCTION TO “CRITICAL LEGAL RESEARCH: THE NEXT WAVE”

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This symposium continues and sustains the exchange of ideas initiated at a panel presentation offered at the 2021 American Association of Law Schools (“AALS”) Annual Meeting in January 2021. The panel was titled *Critical Legal Research: The Next Wave*,<sup>1</sup> and here we advance and extend that conversation with written contributions from the panelists.

The symposium and panel are outgrowths of truly organic collaboration that sprang from the passion for critical legal research felt by both the panel’s honorees—Professors Richard Delgado and Jean Stefancic—and an exceptional group of academic law librarian scholars—Yasmin Sokkar Harker, Julie Krishnaswami, Grace Lo, Nicholas Mignanelli, and Nicholas F. Stump. Indeed their passion for Critical Race Theory and its potential impact on the law—and also, necessarily, on legal research—has stood the test of time by maintaining its power and its appeal to all those who struggle against the oppressive forces that permeate and sustain our economic and social order. Thirty years after Delgado and Stefancic first exposed these radical ideas to the light of day, the torch has been passed to a new generation of lawyers, legal academics, law librarians, and scholars.

### BIOGRAPHICAL INTRODUCTION

I want to begin with a very personal story in the tradition of the honorees of the *Critical Legal Research: The Next Wave* panel discussion. The year is 1987, and the location is Ann Arbor, Michigan. After receiving my Bachelor of Arts in Accounting, I moved from my family home in Detroit to Ann Arbor to attend the University of Michigan Law School. Me! The black, gay man with the “Artist Formerly Known as Prince” haircut that cascaded downward over one of my eyes. Admittedly, I had quite a look.

Yet, I was ready to be inspired; to be intellectually challenged; to discover ways of interpreting and applying the law that made sense; to learn legal tools that I could apply to my experiences growing up in Detroit, to those of my

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<sup>1</sup> *AALS Open Source Program*, ASS’N AM. L. SCHS., [https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses\\_key=c00d4e33-ef02-4409-b610-af5b65258b9b](https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses_key=c00d4e33-ef02-4409-b610-af5b65258b9b) [https://perma.cc/QVA5-2X23] (last visited Mar. 30, 2021).

automotive-worker father and my clerical-worker mother, or to those of my grandparents, one a custodial worker and the other a chauffeur.

What I found was that nothing in law school seemed relevant to my life experiences. Indeed, everything in and outside of classes served to erase, invalidate, ignore, or dismiss all that I knew was real and truthful, even if ugly or oppressive. Black students told me, “You’re not Black . . . you’re gay!” Gay students told me, “You’re TOO out, don’t speak to us in the hallways.” I was on the verge of dropping out and leaving law school altogether.

Yet, I did return for my second year, and that year I took a course called Black Legal Scholarship taught by Professor Culp who was visiting that year from Howard University School of Law. In that class, we read Patricia Williams, and her words were transcendent. Suddenly, I felt less crazy. I felt SEEN. Finally, a legal scholar speaking the truth; my truth. From Patricia Williams, I moved on to Derrick Bell, Mari Matsuda, and the panel’s honorees Richard Delgado and Jean Stefancic. Fast forward thirty-four years, and here I am today with those early Crits<sup>2</sup>—Williams, Bell, Matsuda, Delgado, and Stefancic—continuing to influence my understanding of the law and its impact on everything and everyone.

So, quite literally, I owe my legal career to the panel’s honorees. If I were to call them my saviors, I would, in no way, be overstating the impact that Richard Delgado, Jean Stefancic, and their contemporaries—those legal scholars that spawned what was then called Critical Legal Studies—have had on my life.

#### INTRODUCTION OF RICHARD DELGADO AND JEAN STEFANCIC

So, I just want to say out loud that it is a bit of a setup for me to be given the task of introducing our honorees, these two fearless, profound, inspired, inspiring, thinkers, storytellers, scholars, visionaries, AND two people whom I count among my personal saviors. Yet here we are.

Professor Jean Stefancic is a Professor and Clement Research Affiliate at the University of Alabama School of Law, where she writes about civil rights, law reform, social change, and legal scholarship. She has written and co-authored over fifty articles and fifteen books, many with her husband Richard Delgado, with whom she shared writing residencies in Italy. Their book, *Critical White Studies: Looking Behind the Mirror*,<sup>3</sup> won a Gustavus Myers Outstanding Book Award, and *How Lawyers Lose Their Way*,<sup>4</sup> examines how law practice can stifle creativity. Before the University of Alabama, Stefancic taught at Seattle

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<sup>2</sup> See Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1287-95 (2011), for an historical account of early Race Crits, and Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991), for an historical account of the Critical Legal Studies movement.

<sup>3</sup> CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997).

<sup>4</sup> JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (2005).

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University School of Law, the University of Pittsburgh School of Law, and the University of Colorado Law School. During her five years at the University of Pittsburgh, she was a Research Professor of Law and a Derrick Bell Scholar, and while at the University of Colorado, she was affiliated with the Latino/a Research & Policy Center and served on the advisory committee of the Center of the American West.

Professor Richard Delgado teaches civil rights and Critical Race Theory at the University of Alabama School of Law where he holds the John J. Sparkman Chair of Law. Earlier, he taught at the University of Pittsburgh, the University of Colorado, and UCLA. He has written and co-authored numerous articles and books, many with his wife Jean Stefancic. He is a founder of the Critical Race Theory school of legal scholarship, and is also notable for his scholarship on hate speech and for introducing storytelling into legal scholarship. Delgado has authored more than 200 journal articles and twenty books, and his work has been praised or reviewed in *The Nation*, the *New Republic*, the *New York Times*, the *Washington Post*, and the *Wall Street Journal*. His books have won eight national book prizes, including six Gustavus Myers awards for an outstanding book on human rights in North America, the American Library Association's Outstanding Academic Book, and a Pulitzer Prize nomination. Professor Delgado's teaching and writing focus on race, the legal profession, and social change.

#### SUBJECT MATTER INTRODUCTION

Let me now briefly frame the discussion in this symposium with a few facts.

For those who may be unfamiliar with Critical Race Theory, I offer the following definition. The Critical Race Theory ("CRT") movement is a collection of activists and scholars engaged in studying and transforming the relationship among race, racism, and power. The movement considers many of the same issues that conventional civil rights and ethnic studies discourses take up but places them in a broader perspective that includes economics, history, setting, group and self-interest, and emotions and the unconscious. CRT questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.<sup>5</sup> Important scholars contributing to the theory include Patricia Williams, Derrick Bell, Richard Delgado, Kimberlé Williams Crenshaw, and Mari Matsuda.

What is the "triple helix dilemma" in legal research? In 1989, Delgado and Stefancic's article, "Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma," appeared in the *Stanford Law Review*.<sup>6</sup> The article described how the major classification systems most widely

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<sup>5</sup> See generally RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (3d ed. 2017).

<sup>6</sup> Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 *STAN. L. REV.* 207 (1989).

used to engage in legal research—the Library of Congress subject heading system, the *Index to Legal Periodicals*, and the West Digest System—all function as hegemonic forces that serve to reinforce the status quo and to impede any meaningful change.<sup>7</sup> It explained how these classification systems replicate preexisting ideas, thoughts, and approaches necessarily and by design.<sup>8</sup> By doing so the article posited that they stifle creativity and original thought, they obscure nuances, and they ensure that oppressive forces within the law are strengthened by rendering evolution or changes nearly impossible.<sup>9</sup>

In 2007, Delgado and Stefancic’s article, “Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited,” appeared in *Law Library Journal*.<sup>10</sup> In this article, they exposed how computer-assisted legal research and electronic searching pose many of the same constraints and merit many of the same criticisms attributed to their print predecessors.<sup>11</sup> Moreover, this later article pointed out that computers, the hoped-for savior from hegemony, only delivered more of the same.<sup>12</sup>

Oddly and wonderfully, in an all-things-come-full-circle sort of way, in 2011, I wrote the article, “Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research.”<sup>13</sup> In that article I critiqued what we now know as artificial intelligence and machine learning as applied to research algorithms like the one employed in WestlawNext.<sup>14</sup> I made many observations about WestlawNext which are similar or the same as those offered by Delgado and Stefancic.

#### INTRODUCTION OF THE SYMPOSIUM OF LAW LIBRARIANS

Our exciting symposium consists of professional academic law librarians all of whom are emerging critical information scholars. In the symposium, they offer their reflections on how Delgado and Stefancic’s “triple helix dilemma” has shaped their thinking and continues to be relevant to their writing and teaching. In addition, Delgado and Stefancic offer reflections on legal research through the eyes of their fictional character, Rodrigo Crenshaw.<sup>15</sup>

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<sup>7</sup> *Id.* at 209-16.

<sup>8</sup> *Id.* at 216-22.

<sup>9</sup> *Id.* at 222.

<sup>10</sup> Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 *LAW LIBR. J.* 307 (2007).

<sup>11</sup> *Id.* at 317-24.

<sup>12</sup> *Id.* at 324-28.

<sup>13</sup> Ronald E. Wheeler, *Does WestlawNext Really Change Everything? The Implications of WestlawNext on Legal Research*, 103 *LAW LIBR. J.* 359 (2011).

<sup>14</sup> *Id.* at 364-77.

<sup>15</sup> See Richard Delgado, *Rodrigo’s Chronicle*, 101 *YALE L.J.* 1357 (1992) (book review), for the first installment in their long-running “Rodrigo” series.

Nicholas F. Stump, *“Non-Reformist Reforms” in Radical Social Change: A Critical Legal Research Exploration*, 101 B.U. L. REV. ONLINE 6 (2021).

Yasmin Sokkar Harker, *Invisible Hands and the Triple (Quadruple?) Helix Dilemma: Helping Students Free Their Minds*, 101 B.U. L. REV. ONLINE 17 (2021).

Grace Lo, *Biases in Law Library Subject Headings*, 101 B.U. L. REV. ONLINE 26 (2021).

Julie Krishnaswami, *Using Principles of Critical Information Theory to Teach Progressive Approaches to Regulatory Research*, 101 B.U. L. REV. ONLINE 38 (2021).

Nicholas Mignanelli, *Prophets for an Algorithmic Age*, 101 B.U. L. REV. ONLINE 41 (2021).

Richard Delgado & Jean Stefancic, *Rodrigo’s Reappraisal*, 101 B.U. L. REV. ONLINE 48 (2021).