Notes for a New Legal Research Pedagogy

Nicholas Mignanelli

Follow this and additional works at: https://huskiecommons.lib.niu.edu/niulr

Part of the Law Commons

Suggested Citation
Nicholas Mignanelli, Notes for a New Legal Research Pedagogy, 43 N. Ill. Univ. L. Rev. 265 (2023)
Notes for a New Legal Research Pedagogy

NICHOLAS MIGNANELLI*

Do societal power structures shape the organization of legal information? Do they embed biases in legal research tools? If so, how can the insights of critical legal theory assist us in contending with this phenomenon? An entire body of scholarly literature using the lenses of critical legal studies, feminist legal theory, and Critical Race Theory to examine legal information and the legal research process has grown up around answering these questions. However, the theories, methods, and strategies proffered by the scholars writing in this area are rarely taught in the legal research classroom.

I begin this Essay with a discussion of the place of the legal research course in the law school curriculum and the prevailing ideology that animates contemporary legal research pedagogy. Next, I provide an overview of the scholarly movements challenging this ideology, namely Critical Legal Research and critical legal information literacy, and recount my experience teaching a legal research course designed to convey the concepts they promote. Finally, I briefly attempt to map a new legal research pedagogy that emphasizes the context in which legal information is produced, organized, and disseminated and encourages law students to reimagine the legal research process as the creation of new legal knowledge.

INTRODUCTION: THE HICKS REMIX .................................................................266
CRITICAL LEGAL THEORY AND LEGAL INFORMATION: AN UNDERAPPRECIATED RELATION ......................................................... 270
THE COURSE .............................................................................................................275
CONCLUSION: TOWARD A NEW LEGAL RESEARCH PEDAGOGY ...............279

* Research Librarian and Lecturer in Legal Research, Yale Law School, New Haven, Connecticut. For their thoughtful comments, my thanks to Paula Hughes Mignanelli, Nicholas F. Stump, Michael Slinger, Michael Chiorazzi, and Ilan Dubler-Furman. For their gracious participation in this symposium, my thanks to Yasmin Sokkar Harker, Courtney Selby, Tanya Johnson, Therese A. Clarke Arado, and Matthew Timko. For her tireless efforts to make this symposium a success, my thanks to Audrey Tobyas.
“O sing to the Lord a new song”!

INTRODUCTION: THE HICKS REMIX

The legal research course is over a century old. As a law school subject, it predates administrative law, antitrust, federal income taxation, securities, labor law, family law, international law, environmental law, and alternative dispute resolution (ADR), among many others, as well as the advent of clinical legal education. It is several decades older than its sister subject legal writing. Yet in spite of its age and obvious importance, the place of the legal research course in the law school curriculum remains contested. While some law school faculties recognize the importance of legal research and require a standalone legal research course in the first year, the vast majority combine it with legal writing (often over the objections of legal writing instructors and law librarians alike) and/or periodically offer it as an upper-level elective under the misleading title “advanced legal research” (misleading because it is typically the law student’s introduction to the formal study of legal research, often taken after a summer of struggling with legal research assignments in an internship).

1. Psalm 96:1 (New Revised Standard Version). Reflecting on the emergence of critical race storytelling, Derrick Bell writes, “I and other minority teachers are encouraged, even inspired in our scholarly pioneering by the Old Testament’s reminder that neither the challenge we face nor its difficulty are new. Indeed, no fewer than three psalms begin by urging ‘O sing unto the Lord a new song’; as does Isaiah who admonishes: ‘Sing to the Lord a new song, his praise from the end of the earth.’” Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism 145-46 (1992) (quoting Psalms 96, 98, and 149, and Isaiah 42:10).


5. Id. at 36.

6. As Caroline Osborne writes in her survey of legal research programs, “Ninety-nine percent of respondents offer an advanced research class, but only nine percent of those responding mandate that their students take the course.” Caroline L. Osborne, The State of Legal Research Education: A Survey of First-Year Legal Research Programs, or “Why Johnny and Jane Cannot Research”, 108 Law Libr. J. 403, 414 (2016).
In 1915, Frederick C. Hicks offered the first modern legal research course at Columbia Law School, where he was serving as law librarian. Hicks’s “Legal Bibliography and the Use of Law Books” consisted of “[a] short series of lectures” on “English and American reports and legal literature, including a practical instruction in the use of reports, statutes, digests, citators, indexes, tables of cases, and compilations.” The six lectures or units in Hicks’s course consisted of the following: (1) introduction to legal research; (2) English law reports; (3) American law reports; (4) statutes; (5) digests; and (6) secondary sources, specifically treatises, encyclopedias, dictionaries, and periodicals. Following this series of lectures, Hicks formed weekly seminars that met “for the purpose of acquiring experience in the use of law books.”

As Stacy Etheredge notes, the lecture component of Hicks’s course was “meant to be chiefly bibliographical and historical in nature” because he “thought it important to begin by tracing the development of law books, from their early beginnings in England to the contemporaneous ones being published in the United States.” The seminar component, on the other hand, was “organized around a different method of teaching altogether.” In his weekly seminars, “Hicks would first outline a specific problem and then discuss what legal aids he would use to solve it.” Following this demonstration, Hicks “would give the students their own problems, each a different one, and then send them off to the library to solve them. The students would then return to class with the books they had used, in order to show their problem-solving process to the rest of the class.”

Hicks’s course was enormously popular with students and met with the approval of Dean Harlan F. Stone. The course soon became required, and law librarians continue to teach legal research in Columbia’s first-year curriculum to this day. In 1921, in recognition of his pioneering work in legal research instruction, the Columbia law faculty named Hicks associate

---

7. Frederick C. Hicks, Instruction in Legal Bibliography at Columbia University Law School, 9 LAW LIBR. J. 121 (1916).
8. Id. at 121.
9. Id. at 122.
11. Id. at 359–61.
12. Id. at 359–61.
13. Id. at 359–61.
14. Id. at 359–61.
15. Etheredge, supra note 11, at 361.
professor of legal bibliography. In 1928, Hicks accepted an appointment at Yale Law School, where he spent the rest of his career as a professor of law and law librarian.

In hopes of convincing librarians at other law schools to offer a legal research course, Hicks published two Law Library Journal articles based upon his experiences and wrote one of the earliest legal research textbooks: Materials and Methods of Legal Research. As a legal research professor reading about Hicks’s legal bibliography course for the first time, I was struck by the many ways in which his course is my course. The core content, although somewhat altered to account for technological changes, remains the same. The basic course structure of lecture, demonstration, and practice problems, in that order, is nearly uniform in legal research courses at law schools across the country.

In terms of stature, Hicks is the Christopher Columbus Langdell of legal research. Yet, unlike the positivist Langdell who believed that “law is science and should be taught as such,” Hicks was a legal realist who variously described legal research as an “art,” “the summation of all those processes by which legal material is found, digested, arranged, tested and compared; and so used as to extend the bounds of present knowledge,” and “the inquiry and investigation necessary to be made by legislators, judges, lawyers, and legal writers in the performance of their functions.” Concerning the scope of materials involved, Hicks even went so far as to claim that “the word legal is not restrictive as to subject matter, but descriptive of the agents and the purposes of the inquires involved.”

---

19. Id. at 138.
20. Hicks, supra note 7; Frederick C. Hicks, The Teaching of Legal Bibliography, 11 Law Libr. J. 1 (1918).
21. Frederick C. Hicks, Materials and Methods of Legal Research with Bibliographical Manual (1923).
22. This was also the impression of two of my mentors. See Michael Chiorazzi & Shaun Esposito, Commentaries on Hicks’ Teaching Legal Bibliography: With an Addendum by Robert Berring, 28 Legal Reference Services Q. 9 (2009).
23. For instance, law reports, digests, and citators are typically taught together as “case law research” today, and English reports no longer receive the attention they deserve in most legal research classrooms.
25. Hicks, supra note 21, at 29.
26. Id.
27. Frederick C. Hicks, Materials and Methods of Legal Research 1 (2d ed. 1933).
28. Id. This approach to legal information can also be observed in the structure of the Hicks Classification System. See generally, John L. Moreland, Organized for Service: The Hicks Classification System and the Evolution of Law School Curriculum, 114 Law Libr. J. 305 (2022).
for objective truth deduced from legal sources through a quasi-scientific process, nor even the search for law as “pre-existing and given, something that can be found in the library” (or on a legal research platform for that matter).

While Hicks created the basic pattern of legal research pedagogy in his course and textbook, his outlook on what legal research is at its core was abandoned by his successors, as a short survey of the major legal research textbooks on the market today demonstrates. For instance, Kent C. Olson, Aaron S. Kirschenfeld, and Ingrid Mattson’s Principles of Legal Research defines legal research as “the ability to identify the rules that govern a situation.” Similarly, Olson’s Legal Research in a Nutshell (my own favorite legal research textbook) describes legal research as “the process of identifying the legal rules that govern an activity.” Another popular textbook, Amy E. Sloan’s Basic Legal Research, states that “[r]esearching the law means finding the rules that govern conduct in our society.” And although J.D.S. Armstrong, Christopher A. Knott, and R. Martin Witt’s Where the Law Is: An Introduction to Advanced Legal Research does not provide a formal definition of legal research, it does imply that legal research is closely related to the reader’s responsibility to “[be] as sure as possible about what the law is not, as well as what the law is, on any particular subject.”

The gulf between Hicks’s definition of legal research and the definitions offered by contemporary legal research textbooks suggests that, while the American legal academy has been undergoing a gradual paradigm shift from

29. Steven M. Barkan, Deconstructing Legal Research: A Law Librarian’s Commentary on Critical Legal Studies, 79 LAW LIBR. J. 617, 620 (1987). I hasten to add that a comparison of Hicks’s definition of legal research to the definitions offered by contemporary legal research textbooks was first undertaken by Steven M. Barkan in the above article examining legal research from a critical legal studies perspective. Interestingly, of all the legal research textbooks I reviewed, the only one that provided a definition of legal research similar to Hicks’s was the one co-written by Barkan. Barkan, Barbara A. Bintliff, and Mary Whisner’s Fundamentals of Legal Research, which has not been revised since 2015, defines legal research as “the process of identifying and retrieving the law-related information necessary to support legal decision-making” and explains that “[l]egal research is as much art as science.”


legal realism to critical legal theory, legal research pedagogy has reverted to a vulgar legal positivism. But legal research pedagogy is one thing and scholarship examining legal research is quite another. In fact, an entire body of scholarly literature applying the insights of critical legal theory to legal information and the legal research process exists just beneath the surface of legal research instruction, and its development closely parallels the history of critical legal theory itself.

CRITICAL LEGAL THEORY AND LEGAL INFORMATION: AN UNDERAPPRECIATED RELATION

From the very beginning, critical legal scholars were intrigued by legal information. In 1979, Duncan Kennedy, whose name is now synonymous with critical legal studies (CLS), published an article deconstructing Blackstone’s Commentaries on the Laws of England. In a section entitled “Mechanisms of Denial: (b) Categorical Schemes,” Kennedy writes that, while “[t] is impossible to think about the legal system without [them],” “all [categorical] schemes are lies” that systematically “cabin and distort our immediate experience.” In 1985, feminist legal scholar and postmodern feminist Mary Joe Frug published a damning critique of an arrangement of legal information, namely the widely-used contracts casebook Contracts: Cases and Comments. Employing the lens of reader-response criticism, Frug interrogates the casebook’s “contrived” and “authoritarian” neutrality by demonstrating how decisions about selection and arrangement serve to alienate female readers and embolden chauvinist readers by “support[ing] [an] ideology of gender” that privileges men and male-associated characteristics and activities over women and female-associated characteristics and activities.

In the late 1980s, law librarians joined their doctrinal colleagues in engaging critical legal theory. The 79th Annual Meeting of the American Association of Law Libraries (AALL) held in July 1986 featured a program

34. See Note, “Round and Round the Bramble Bush”: From Legal Realism to Critical Legal Scholarship, 95 HARV. L. REV. 1669 (1982).
36. Id. at 214–16.
38. Id. at 1075.
39. For a contemporary critical perspective on bias in casebooks, see Kathy Fletcher, Casebooks, Bias, and Information Literacy—Do Law Librarians Have a Duty? 40 LEGAL REFERENCE SERVS Q. 184 (2021).

In 1987, Steven M. Barkan published an article applying the insights of CLS to legal research. That same year, Robert C. Berring, building on Kennedy’s work, published an article suggesting that the West Digest System had sustained the myth of the common law and reshaped American law in its own image.

In 1988, Virginia Wise published an article advising law librarians on how to support CLS scholarship and urging them to “shake off the shackles of [the] Uniform System of Citation and be part of a counter-hegemonic enclave.”

Law librarian engagement with critical legal theory culminated in the 1989 publication of Richard Delgado and Jean Stefancic’s “Why Do We Tell the Same Stories? Law Reform, Critical Librarianship, and the Triple Helix Dilemma.” Delgado and Stefancic, now known as two of the foremost authorities on Critical Race Theory (CRT), were then a professor of law at the University of Wisconsin and a librarian at the University of San Francisco Law Library, respectively.

In their first of many scholarly collaborations, Delgado and Stefancic present a systematic theory about how the traditional tools of legal research, namely the Library of Congress Subject Headings, legal periodical indexes, and the West Digest System, “function rather like molecular biology’s double helix” to “replicate preexisting ideas, thoughts, and approaches.”

In light of the inherent structural determinism of legal information, Delgado and Stefancic argue that further reform “require[s] disaggregation of the current dichotomous, classification scheme, creation of a more complex one, and reorganization of the relevant cases and statutes accordingly.” To contend with the triple helix dilemma, they recommend (1) looking to “divergent individuals” and (2) closely examining legal categories for greater insight into “the very conceptual framework we have been wielding in

40. See 86 AALL-F2 CRITICAL LEGAL STUDIES: OUT OF HARVARD AND INTO THE STREETS, AALL 79TH ANNUAL MEETING (Glendale, Cal.: Mobiltape Co. 1986).
41. Barkan, supra note 29.
45. Id. at 207.
47. Id.
48. Id. at 222–23 (Delgado and Stefancic define “divergent individuals” as “thinkers whose life experiences have differed markedly from those of their contemporaries” and whose ideas “offer the possibility of legal transformation and growth”).
scrutinizing and interpreting our societal order,” so as to “turn that system on its side and ask what is missing.”

In a 1992 article, Jill Anne Farmer examined the legal research process through the lens of poststructuralism. Defining poststructuralism as a rejection of “master narratives and foundational claims that purport to be based on science, objectivity, neutrality, and scholarly disinterestedness” and an “analytical shift” from the “literary (or cultural) product” as “work” to the “literary (or cultural) product” as “text,” Farmer concludes that the emphasis on citation to that which came before is just as responsible for the self-replicating nature of legal research as classification systems.

To “help alleviate some of the conceptual lock on legal information,” Farmer encourages law librarians to teach their patrons that “what they are able to find is not equivalent to a whole universe of information or even a random subset, but rather to that particular universe found economically, politically, and/or personally expedient or essential to publishers, editors, and librarians,” as well as “the importance of different conceptual frameworks and how to analyze information packaging and content in these terms.” Farmer also suggests that law librarians “go beyond the usual collection policies to acquire nonlegal material that reflects on social, political, and cultural theory.”

In a 2007 article, Delgado and Stefancic revisited their earlier work to evaluate whether keyword searching allows researchers to overcome the triple helix dilemma. They conclude that “[c]omputer-assisted legal research may in fact impede the search for new legal ideas, slow the pace of law reform, and make the legal system less, not more, just.” According to Delgado and Stefancic, this is because of the way computerized research affects the researcher:

On the user’s side, computer searching can mire the researcher in a sea of facts. It can suppress browsing and analogical reasoning, while giving the impression that one is freer, more creative than one really is. The reason behind many of these limitations is the same. The very categorical structure that limited paper-and-pencil searching, building in a bias for the status quo, appears in a new form—the

49. *Id.* at 224.
51. *Id.* at 402–03.
52. *Id.* at 403.
54. *Id.* at 310.
straightjacket of conventional categories now limits the questions one may ask the computer and the searches one may devise.\textsuperscript{55}

To combat these problematic tendencies, Delgado and Stefancic recommend that “when searching for a new legal remedy, [researchers] should turn [their] computers off.”\textsuperscript{56} Accordingly,

[ ]

lawyers interested in representing clients who (unlike corporations) do not find a ready-made body of developed law in their favor need to spend time with the computer shut down, mulling over what an ideal legal world would look like from the client’s perspective. Such lawyers need to practice thinking “outside the box,” reinventing, modifying, flipping, and radically transforming legal doctrines and theories imaginatively and in brainstorming sessions with other reformist lawyers.\textsuperscript{57}

This is because “[a] computer is good at showing you what is” but “cannot show you what might be.”\textsuperscript{58} Believing that it can, Delgado and Stefancic warn, “is an abdication of one’s responsibility as a lawyer and an agent of change.”\textsuperscript{59}

While critics of CRT and feminist legal theory Daniel A. Farber and Suzanna Sherry mock the triple helix dilemma in their 1997 book Beyond All Reason: The Radical Assault on Truth in American Law,\textsuperscript{60} it became an important contribution to law library literature and, later on, served as the foundation for two distinct but allied intellectual movements: Critical Legal Research (CLR) and critical legal information literacy. “Critical Legal Research,” coined by Nicholas F. Stump in 2015, refers to efforts to unify and synthesize the various attempts to apply the insights of critical legal theory to the legal research process.\textsuperscript{61} In several articles, Stump crafts a loose framework of CLR methods and strategies for movement lawyers and others engaged in the project of law reform, and gives this framework practical

\textsuperscript{55} Id. at 318.
\textsuperscript{56} Id. at 328.
\textsuperscript{57} Id.
\textsuperscript{58} Delgado & Stefancic, supra note 53, at 328.
\textsuperscript{59} Id.
\textsuperscript{60} See Daniel A. Farber and Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in American Law 28 (1997).
application in the struggle for environmental justice in Appalachia.\textsuperscript{62} These methods and strategies include but are not limited to: internalizing critical insights, using a concept-based approach to legal research, relying on alternative legal resources, expanding the scope of one’s research to include theoretical and multidisciplinary scholarly sources, and engaging in “unplugged brainstorming.”\textsuperscript{63}

My own contribution to the literature has been building upon Stump’s CLR framework and Susan Nevelow Mart’s work on algorithmic bias in legal research platforms\textsuperscript{64} to criticize the tendencies of so-called “AI-powered” legal research and law practice technologies to (1) conceal the legal research process and (2) further entrench the biases of society’s dominant interests.\textsuperscript{65} To take power back from our “algorithmic overlords,” I propose that law librarians should begin engaging in algorithmic activism, creating transgressive and archeological bibliographies, and promoting unplugged brainstorming.\textsuperscript{66}

Critical legal information literacy, the other intellectual movement that stems from Delgado and Stefancic’s theory of the triple helix dilemma, is focused on developing critical approaches to legal research pedagogy. Whereas legal information literacy is traditionally concerned with teaching law students how to identify quality legal information, those who subscribe to critical legal information literacy strive to teach law students to interrogate legal information by learning about the processes and power structures that shape it.

In this vein, Yasmin Sokkar Harker conceptualizes legal information “as a social construct produced and published by people,”\textsuperscript{67} i.e., access providers, organizers, and creators, in order to “encourage students to develop a critical consciousness about legal information and help them realize their potential to advocate for justice and change current legal systems.”\textsuperscript{68} Similarly, but focusing on administrative law research, Julie Krishnaswami proposes

\begin{thebibliography}{99}


\bibitem{67} See Mignanelli, \textit{Critical Legal Research}, supra note 65, at 340–43.


\end{thebibliography}
using critical information theory—a discipline that explores the relationship between culture and information—as the basis for teaching regulatory research. 69 Specifically, Krishnaswami suggests “[t]eaching students how to research regulations in the context of the complexities surrounding rulemaking, the behaviors of agency actors and stakeholders, and access to regulatory information” so as to “push students to see stories, perspectives, actors, and relationships otherwise obscured, thereby helping them construct novel arguments.” 70

While these various theories, ideas, and proposals might seem divergent given the wide array of approaches, their authors and adherents are united in their drive to use the insights of critical legal theory to disrupt the vulgar positivism and “point-and-click” pedagogy 71 that have come to dominate legal research. Nowhere was this sense of unity clearer than at the 2021 Annual Meeting of the American Association of American Law Schools (AALS), which included a program reflecting on the legacy of the triple helix dilemma theory and featuring Richard Delgado and Jean Stefancic alongside several of the emerging critical legal information scholars referenced above. 72

THE COURSE

In May 2020, I had just finished teaching advanced legal research for the first time at the University of Miami School of Law. That spring was the semester of the COVID-19 shutdowns, when law school courses that had begun in robust lecture hall discussions ended in awkward Zoom meetings. 73


70. Id. at 202.

71. Whenever I decry “point-and-click” pedagogy, I am asked to explain what I mean. The clearest example that I can think of is that of a reference librarian who, as a justification for why she did not need a J.D. to teach legal research, told a conference program audience: “I’m not teaching [law students] a subject. I’m teaching them about databases.” Rachel Evans, No JD? No Problem: AALL Annual Conference Review, 40 ALL-SIS NEWSLETTER 16 (2020), https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1078&context=law_lib_artchop [https://perma.cc/6JWH-W3VY]. My feelings about the need for instructional law librarians to possess law degrees aside, it is hard to imagine Hicks saying of his legal bibliography course: “I’m not teaching my students a subject. I’m just teaching them about books.”


73. See Amanda Robert, Coronavirus and Law Schools: Numerous Schools Canceling In-Person Classes, A.B.A. J., (Mar. 11, 2020, 10:15 AM CDT), https://
May 2020 was also the month Derek Chauvin murdered George Floyd, and protesters took to the streets of American cities to demand an end to police brutality.\textsuperscript{74}

To cope with the pandemic, I moved in with family living just outside of Okeechobee, Florida, a rural community located at the northernmost point of Lake Okeechobee. The wellspring of the Everglades, Lake Okeechobee is a vast expanse of water and grass dotted with palm trees.\textsuperscript{75} It is the home of egrets, herons, spoonbills, turtles, and countless alligators. It is also a historically significant place: the site of both the Battle of Okeechobee (a major engagement of the Second Seminole War in which the Seminole people prevailed over American forces led by future President Zachary Taylor)\textsuperscript{76} and the Okeechobee Hurricane of 1928 (one of the deadliest hurricanes on record, the Okeechobee Hurricane disproportionately killed migrant farm workers, the vast majority of whom were Black; while the bodies of white victims were buried in cemeteries, the bodies of Black victims were placed in mass graves or burned).\textsuperscript{77}

The economic engine of the region has long been agriculture, especially sugar production. As Zora Neale Hurston wrote of the lake in her 1937 novel Their Eyes Were Watching God: “Big Lake Okeechobee, big beans, big cane, big weeds, big everything . . . Ground so rich that everything went wild.”\textsuperscript{78} In recent years, the gradual decline of the sugar industry has been as disastrous for the lakeside communities that lie between Okeechobee and Clewiston\textsuperscript{79} as the sugar industry has been for the Everglades.\textsuperscript{80}

Walking along the shore of Lake Okeechobee one day, it occurred to me that Okeechobee—both the beautiful big lake and the charming small
town that sits at the edge of it—cannot be properly understood without some knowledge of the forces that have shaped it. Indeed, a greater appreciation for Okeechobee requires an understanding of the context in which it came to be what it is. Likewise, I thought—drawing an analogy that only a law librarian could—a greater appreciation for legal research systems, which appear so seamless to the researcher, requires knowledge of the contexts in which they were developed and the way subterranean forces shape outputs and, consequently, legal outcomes. I began to think about the disservice we do our students when we lead them to believe that legal research is a neutral process insulated from societal power structures, and how intolerable this practice seems in an era of pandemic, racial uprisings, and economic devastation.

Thinking of ways to obstruct this practice, I decided to pitch a “critical legal research course” designed to show my students “what is not seen,” to paraphrase the French economist Frédéric Bastiat. Excited by the prospect, I drafted a syllabus. I called the course “(Re)Searching for Justice,” and I penned the following description:

This is a short research course designed for aspiring movement lawyers and students interested in social justice issues. Topics covered include the legal research process and its limitations, critical approaches to conducting legal research, critical legal scholarship and how to find it, and emerging legal research technologies and their shortcomings.

I sent the syllabus to Associate Dean for Information Services Mike Chiorazzi. Mike is a leading thinker in law librarianship and an open-minded person, but I wondered what he would think about such an unorthodox and seemingly abstract legal research course. To my relief, Mike liked the idea and shared it with the law school administration. The administration felt that the course was responsive to student demands for more coursework examining social inequality and issues of racial and economic injustice. (Re)Searching for Justice was approved for the Fall 2020 term.

The students who enrolled were an even mix of 2Ls and 3Ls, most of them aspiring movement lawyers. In light of the pandemic and in order to accommodate all of the students who wanted to take the course, I decided to run it asynchronously in a series of three units divided into six modules. Each module consisted of reading assignments, a prerecorded lecture (sometimes

81. See FRÉDÉRIC BASTIAT, THAT WHICH IS SEEN, AND THAT WHICH IS NOT SEEN (1850). Here I am reminded of Sokkar Harker’s use of Adam Smith’s “invisible hand” metaphor to describe the way human choices shape legal information without the researcher’s knowledge. See Yasmin Sokkar Harker, Invisible Hands and the Triple (Quadruple?) Helix Dilemma: Helping Students Free Their Minds, 101 B.U. L. REV. ONLINE 17 (2021).
accompanied by shorter tutorials), and an assessment, such as a research assignment or quiz.

The first unit of the course dealt with the legal research process itself. In module one, we reviewed the traditional legal research process. This served as an opportunity to reinforce what students learned when law librarians visited their first-year writing courses and emphasize the socially constructedness of legal information along the lines suggested by Sokkar Harker. In module two, we worked through a deconstruction of the traditional legal research process by reading and discussing Richard Delgado and Jean Stefancic’s articles on the triple helix dilemma.82 Having deconstructed the legal research process, we moved on to a reconstruction of sorts in the third module. We read and discussed Stump’s articles proposing that movement attorneys supplement the traditional legal research process with CLR methods and strategies.83 This included a guest lecture by Stump.

One important CLR strategy is expanding the scope of one’s research to include theoretical and multidisciplinary scholarly sources. Accordingly, the next unit of the course focused on critical legal scholarship and how to find it. In the first module of this this unit, I introduced students to critical legal theory, explaining how this intellectual phenomenon took place in three distinct waves: CLS, feminist legal theory, and CRT. I assigned students the literature summarizing, exemplifying, and criticizing these movements. In the second module of this unit, I taught students how to locate critical legal scholarship, acquainting them with the wide array of feminist and race law journals published at law schools and the scholarly monographs found in the treatise collections of academic law libraries. I stressed that these resources were rich with novel legal theories just waiting to be tried by reform-minded lawyers.

The third and final unit of this course consisted of modules on emerging legal research and law practice technologies. In it, I taught students the basics of evaluating the claims made by the vendors of so-called “AI-powered” legal research tools. Students learned about the problem of algorithmic bias by reading excerpts from the works of Cathy O’Neil84 and Ruha Benjamin.85 We then worked through an exercise, first developed by Mart,86 in which students discover how the same search terms retrieve unique results across different legal research platforms. The objective of this exercise is to show students that even new and emerging legal research and law practice technologies are

82. See Delgado & Stefancic, Why Do We Tell the Same Stories?, supra note 44; Delgado & Stefancic, Why Do We Ask the Same Questions?, supra note 53.
83. Stump, Following New Lights, supra note 62; Stump, Mountain Resistance, supra note 62.
86. Mart, supra note 64, at 421–22.
created by human hands and are, consequently, embedded with human biases.

CONCLUSION: TOWARD A NEW LEGAL RESEARCH PEDAGOGY

During the course, I wrote two blog posts about it for the Research, Instruction & Patron Services Special Interest Section of the American Association of Law Libraries. In these posts, I encourage other legal research professors to consider running similar courses at their law schools and offer to share my materials and experiences. While a number of individuals expressed curiosity, only a handful attempted to run their own courses. Today, I am often asked about “that course” I taught at the University of Miami and whether I feel it was a success. I usually explain that, while I received positive feedback from my students and encouragement from my colleagues, (Re)Searching for Justice ultimately failed to do what I hoped it would: jumpstart a new legal research pedagogy.

But what would this new legal research pedagogy look like? It would begin with a return to Hicks’s definition of legal research, dispensing with the contemporary overemphasis on the search for rules. Furthermore, it would mean re-envisioning legal research as a creative process in which “the legal research universe [is] a labyrinth of texts that contains the possibilities for new arrangements where [law students] can mine databases, peruse stacks, and examine categorical schemes for connections and patterns, and ultimately, the creation of new patterns.” Accordingly, “the objective of legal research” would become “[making] the creation of new [legal] knowledge possible at its most fundamental level.”

As abstract as this might sound, it would never mean doing away with teaching so-called “practical” legal research content but rather contextualizing it. This context would include explanations about the historical development of legal research tools, explication of the complex processes surrounding the creation and dissemination of legal information, and reflection upon the insights offered by critical legal information scholars. In this regard, legal research professors have no shortage of new song sheets. All that they need do is begin singing.


89. Id. (internal quotation marks omitted).