Integration & Transformation: Incorporating Critical Information and Literacy and Critical Legal Research into Advanced Legal Research Instruction

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INTRODUCTION

Legal research is not a separate and distinct endeavor from legal analysis and advocacy. These activities are inextricably intertwined in the practice of law. Few would suggest that advocacy includes the process of applying rules to situations in a vacuum without reference to context and consequences. Yet we often see this assumption about the legal research process. Many students presume that conducting legal research is a neutral endeavor, and that when done properly, it delivers the universe of relevant authorities to the researcher. This essay is about my experience integrating critical perspectives into an existing advanced legal research course to contextualize and critique both legal information and legal research tools and methods. It is a recounting of my efforts to help students see beyond the idea that legal information is objective content, and that research tools and methods are neutral and unbiased. I want my students to learn about the sources of legal information and to practice methods for accessing useful authorities. I also want them to explore the power relationships infused in both the information itself and in the consequences of its application. I believe that the process of grappling with these issues will make my students more thoughtful and intentional about the way they analyze legal information and can potentially transform their advocacy. This is by no means a blueprint for such an undertaking.
Instead, I offer this as one way in which an advanced legal research course can be reimagined to retain the essential lessons of traditional courses, while infusing those methods, strategies, and skills with critical perspectives that can change the way students think about and conduct legal research.

When I accepted the invitation to participate in a panel on this topic at the American Association of Law Libraries Annual Meeting in 2022, I was more excited to hear from my co-presenters than to present my own ideas. Both my comments on the panel and my reflections in this essay draw in part from the context provided by my colleague, Nicholas Mignanelli. His article, *Notes from a New Legal Research Pedagogy*, published in this symposium issue, recounts the history of the current model for legal research instruction in most American law schools.1 He challenges that model, proposing instead a pedagogy informed by critical legal theory, infused with critical information literacy, and balanced to include both time-honored approaches to legal research as well as critical legal research. I also draw from his earlier work, *Critical Legal Research: Who Needs It?*, and the theoretical foundations he explores in that piece.2 The methods I discuss in this piece are an outgrowth of that scholarly exploration and of the many other voices in this space; my own pedagogical exploration is best understood and applied with reference to theirs.3 Both the presentation and this Essay have provided an extraordinary opportunity to reflect on and share what I have learned about integrating critical perspectives into legal research instruction, to learn from my colleagues’ experiences, and to invite others into the exploration and conversation.

### What Are Critical Information Literacy and Critical Legal Research?

To more clearly explain my approach to re-imagining my course, I start from a set of descriptions and definitions of the information that I want to share with my students and the methods that I want to teach them.

First, I incorporate critical information literacy (CIL) into our conversations about legal information throughout the course. While there is no single definition of CIL, Drabinsky & Tewell provide a clear and concise description that I share with my students in order to be as transparent as possible.

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3. Some of the scholars working in this area include Richard Delgado & Jean Stefanovic, Yasmin Sokkar Harker, Julie Graves Krishnaswami, Nicholas Mignanelli, Nicholas Stump, and Ronald Wheeler.
about what I hope to achieve when we talk about legal information.4 “Critical information literacy (CIL) is a theory and practice that considers the socio-political dimensions of information and production of knowledge, and critiques the ways in which systems of power shape the creation, distribution, and reception of information.”5 I use the example of access to government information to engage my students with these concepts. I ask students to locate several primary authorities that should be available to the public, but they must do so without using any paid legal research platforms. I then ask them to consider the kinds of obstacles to access individuals without any legal education might face in finding the same documents. What about those without access to their own computer who may also have limited options for access to a public computer? How might these simple challenges impact access to justice?6 While I emphasize that the course will focus on identifying sources of legal information, discovering useful and relevant authorities, and using that information in legal analysis, I want students to understand that contextualizing and critiquing the information, its dissemination, and its use will be part of that exploration. Not only will it be part of our coursework, but as members of a profession which imbues its practitioners with the level of power granted to attorneys, it should become one of the lenses through which they view the law itself. Incorporating CIL is an intentional pedagogical approach to teaching a course centered on legal information, and it is important to me that this pedagogical choice is transparent. I want my students to see that I value this perspective and provide an opportunity for them to explore and challenge the theoretical framework underlying CIL.

Approaching the study and use of legal information from a critical perspective lends itself seamlessly to incorporating critical legal research (CLR) methods and strategies. The common critical lens allows me to draw lines between this critical understanding of information and the research methods developed to address the shortcomings of many traditional research practices. Again, I hope to clarify the work we will do in the course by offering definitions and descriptions of CLR and illuminating the ways in which it differs from traditional legal research methods. An excerpt from an article authored

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5. Emily Drabinski & Eamon Tewell, *Critical Information Literacy*, in *THE INTERNATIONAL ENCYCLOPEDIA OF MEDIA LITERACY* 258, 258 (Renee Hobbs & Paul Mihailidis eds., 2019), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1638&amp;context=gc_pubs [https://perma.cc/2XHR-2JC2]. The authors go on to note that “CIL is fundamentally concerned with how some forms of knowledge and not others are produced as true. Making knowledge is a political project, one that critical library educators seek to surface and make evident to all kinds of learners.” Id. at 260.

by Nicholas Stump works well to start the conversation about CLR with my students. “The first dimension of CLR is deconstructing the legal research regime. Central to this practice is the recognition that legal research tools are not normatively neutral, but instead insidiously reflect dominant societal interests along lines of class, race, gender, Indigenous status, and so forth . . . .” Consider the example from Kimberlé Crenshaw’s work used by Delgado and Stefancic in their call to integrate critical perspectives into legal research.

[C]onsider the situation of Black women wishing to sue for job discrimination directed against them as Black women. Attorneys searching for precedent will find a large body of case and statutory law under the headings “race discrimination” and “sex discrimination.” No category combines the two types of discrimination (although computer-assisted researchers can better approximate a cross-referencing system by combining the two categories in the same search). Because of the structure of the indexing systems, attorneys for Black women have filed suit under one category or the other, or sometimes both.

The result, Delgado and Stefancic argue, is a system that ignores the intersectional nature of discrimination against Black women. This requires advocates to proceed either under a theory of racial discrimination or gender discrimination, neither of which fully encompasses the experience of Black women facing discrimination. Critical legal research seeks to bridge gaps such as these by identifying areas in which legal classification schemes are not reflective of lived experience, then using interdisciplinary resource and novel legal analysis to push for “disaggregation of the current dichotomous classification scheme, creation of a more complex one, and reorganization of the relevant cases and statutes accordingly.”

10. Crenshaw, supra note 8, at 139-143.
11. Delgado & Stefancic, supra note 9, at 220.
This understanding of legal research tools and methods is received differently by different students. Some accept the premise and are eager to explore it, some voice skepticism but are still willing to engage, and others reject this view of legal research tools and methods. I remind my students that I welcome thinking critically about CLR, and that we will explore examples throughout the class that I believe make a compelling case for the utility of this approach. I also emphasize that the goal of introducing CLR is to provide them with an additional skill set for their legal research toolbox. As Stump notes, “The overarching crux of the modern critical legal research process is that attorneys ought to look beyond the deeply problematic ‘ready-made body of developed law,’ and should instead think ‘outside the box’ in ‘reinventing, modifying, flipping, and radically transforming legal doctrines and theories imaginatively.’”

While traditional research tools and methods may be appropriate for many legal research problems, they were created to reveal the most likely outcomes and provide pathways for attorneys to replicate successful arguments. There are moments in which justice demands an unorthodox approach to developing and advancing an argument. Contemporary research tools actually function to reduce opportunities to discover obscure ideas, homogenizing research results and diminishing the opportunity to find creative solutions among existing authorities. This is but one of the instances in which CLR strategies are indispensable.

These complementary ways of thinking about law and legal information serve as companion threads woven throughout the semester. CIL describes legal information as a social construct; connects legal information to the people and institutions that produce and publish it; and engages students in a process of problem-posing about who produces legal information and who benefits from it. This enables students to develop a critical consciousness about legal information, which will in turn move them beyond a paradigm of lawyers working within current legal systems to realize their potential as advocates for social justice.


In a similar vein, CLR illuminates the non-neutral essence of contemporary legal research classifications and methods and offers alternative strategies designed to offset or overcome those biases and shortcomings in reform-focused lawyering.

WHY THIS? WHY NOW?

In defining my terms in the previous section, I have begun to answer the questions posed here. However, there were several factors motivating me to make this change to the way I teach legal research. Law students typically arrive in my classroom looking for the most efficient and effective ways to find the legal rules or “right answers” for the legal problems they encounter. Indeed, many research textbooks identify this search for the governing rules as the very definition of legal research.15 I have always emphasized early in my classes that traditional legal research may occasionally yield the “right answers,” but far more often there are only compelling arguments to be crafted in the absence of binding primary authority. Introducing students to the difference between locating information that is connected to a legal problem and effectively evaluating and analyzing that information to create persuasive arguments is an essential part of my approach to teaching. However, showing students this distinction is not enough to help them become critical thinkers and excellent legal researchers.

Integrating basic principles of information literacy has always been part of the development of my legal research instruction. Today’s law students exist in an information ecosystem where access to information is plentiful. Between the open web and the proliferation of databases offering countless research resources, retrieving potentially relevant search results is relatively easy. The struggle for our students is filtering through seemingly endless search results to find the best resources for the legal problem at hand.16 The information literacy skills required to evaluate, select, and use information for advocacy are, for me, some of the most important skills I can give my students. Like any discipline, scholarly and practical work in the field of information literacy has continued to evolve. The Association of College & Research Libraries (ACRL) was still fourteen years away from adopting the Framework for Information Literacy for Higher Education when I taught my first legal research course.17 After its adoption, it would be another four years,

15. Mignanelli, supra note 1.
until 2020, that I began engaging with both the literature of CLR and this new information literacy framework as part of rethinking the way I teach.

For many of us, the summer of 2020 was a watershed moment, not because of the pandemic, but because of the brutal murder of George Floyd. Make no mistake, there was a genuine need for CIL and CLR in our legal research instruction long before this event. Yet the galvanizing effect of this murder and the subsequent public outcry made this need abundantly clear. Law students called more loudly than ever for curricular opportunities to engage in reform-focused legal education. They called for honest conversations about race in the classroom. And they called for their faculty members, in particular, to be accountable and engaged. Many law school faculty members and administrators began engaging in institutional and self-reflection, asking how our individual and collective decisions were contributing to the power imbalances resulting from structural racism, sexism, and classism. I was among them.

My teaching had always been detailed and rigorous, and I believe that students left my class better prepared for practice. But my focus had been on research methods and strategies that helped students predict likely outcomes, identify existing alternatives, and select the most relevant and authoritative sources for legal problems. These are all essential lessons for law students, but the tools our students need don’t end there. I hadn’t been serving my students who worked in reform-focused practices. I hadn’t been meeting the needs of my students who chose career paths devoted to changes in both law and policy. The research tools and strategies that best serve legal reform efforts are not necessarily the same as those we use to identify most-likely outcomes or apply existing legal arguments to new facts. I had missed too many opportunities to help my students think critically about legal problems and to envision new solutions.

My decision to integrate CIL and CLR into my existing research course was made to give my students an opportunity to “thoughtfully analyze the characteristics and nature of the problem at hand in order to develop the most appropriate technique for solving the problem, given one’s understanding of the strengths and weaknesses of the various tools and resources at hand.”18 I wanted to encourage all of my students, not just those who planned to focus on social justice, to think about the structure of law and of legal systems, including the power inherent in the systems and the way that power gets exercised. As Krishnaswami writes in her article on using a critical lens for teaching regulatory research, I wanted to empower my students in new ways. “Awareness of the political, social, and cultural ramifications of information flow can arm a law student with the ability to use these materials ethically and in the service of vulnerable populations as well as construct paradigm-

shifting arguments based on new sources of primary and secondary authority.”

**WHY THIS WAY?**

As I explored teaching advanced legal research in a way that included critical perspectives, I discovered Nicholas Mignanelli’s stand-alone elective legal research course created for aspiring social justice and movement lawyers. The course, offered at the University of Miami School of Law, focused on critical approaches to conducting legal research, critical legal scholarship, and emerging legal research technologies and their shortcomings. There are several advantages to offering such a stand-alone course. Students electing to take the course may already be familiar with critical legal studies or may otherwise have explored social justice issues through a critical lens. Those who haven’t are still likely to be receptive to the theories and methods presented due to their commitment to social justice and legal reform. Another important advantage is the ability to take a deep dive into critical legal studies and the critical lens more broadly.

When I began to consider the ways in which I could deliver CIL and CLR to my students, I had to acknowledge a significant obstacle; I could not prepare both an advanced legal research course and a brand-new offering on legal research for social justice lawyering. I did not have the time and energy necessary to develop a high-quality new offering while also teaching an upper-level research course and overseeing the law library. Moreover, the librarians on my team and I were already committed to teaching multiple sections of a required 2L legal research course. As a comparatively small team, we simply didn’t have the bandwidth to create and deliver a new stand-alone course. Integrating CIL and CLR into my existing advanced legal research course meant that I was able to provide at least some introduction to research through the critical lens to interested students, even if I wasn’t in a position to offer a class devoted exclusively to CLR and legal research for movement lawyering.

One unexpected benefit to the model I have chosen is that my students have a broad array of professional interests. Most of my students have not

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20. I am aware of only one other legal research course focused on the use of critical legal research for social justice legal practice. Tanya Johnson, one of the co-presenters on the panel, teaches a course at the University of Connecticut modeled on the one created by Mignanelli.

21. My library team has 4 full-time librarians (including me) and 3 full-time staff members, and each of them is extraordinary. I feel incredibly lucky to work with such a wonderful group of people.
selected the advanced research course with the express intent of learning research through a critical lens, and the discussions that have grown out of our exploration of these ideas have enhanced the classroom experience. For the past two years, I have been fortunate to engage this material with aspiring immigration, bankruptcy, corporate in-house counsel, and securities lawyers. Each of these students has contributed to a conversation that is arguably more robust because they approached it from very different personal and professional perspectives.

There are also drawbacks to teaching the course in the way I do. I’m not able to incorporate critical perspectives into everything we cover. I spend one class session covering transactional research resources, including matter maps, checklists, drafting guidance, precedents, and business intelligence. Aside from reminding students that each platform’s algorithms may yield different results based on the way they are constructed, I haven’t integrated CIL or CLR in this session. The same is true for my class on cost-effective research practices and for the session on tools for organizing research results. I have also elected not to add an in-depth examination of critical legal studies. I introduce students to the existence of critical legal theory and provide resources for further exploration. Though our interaction with this material is brief, the introduction is a valuable one for those whose career path may include social justice and reform-focused work.

**Adding a New Class Session to Introduce CIL & CLR**

I began by devoting one, two-hour class session to the discussion of CIL & CLR. I selected the second class of the semester to introduce CIL and CLR and required the students to read Nicholas Mignanelli’s *Critical Legal Research: Who Needs it?* Each time I have taught the course, I have invited another member of the faculty to join me for the conversation to provide their

22. The class session on cost-effective research strategies is a place that is ripe for development of additional material to integrate critical perspectives. In future iterations of the course, I hope to touch on the consequences of centralizing legal research resources in the hands of a very few legal publishers who control both the cost of access and the data derived from their market position. This is also an opportunity to explore new research tools being developed by those in access to justice initiatives.

23. Adding content to a course necessitates removing, reducing, or reworking some other material previously covered. In this course, I reduced the amount of legal analytics material I covered and reworked the coverage of legal technology so that half the content, including classification schemes and algorithms, was discussed in class 2 after reading the Mignanelli article. The other half, including public interest machine learning initiatives and brief analyzer tools, was combined with the remaining legal analytics and offered in the 11th week of the semester.

24. Mignanelli, supra note 2.
own insights and perspectives. For students who are skeptical of the usefulness of the material, hearing another professor, perhaps one whom they already respect and trust, talk about their own use of the critical lens has been incredibly beneficial. For students who are eager to learn more about critical legal theory and its outgrowths, seeing other professors who are part of the discussion can be affirming.

My teaching mantra for this class session, and for most of the subsequent discussion of CIL and CLR in the class, is “ask, don’t tell.” The first hour of discussion is driven by a series of question prompts. Because it is still early in the semester, I use anonymous polling to ask introductory questions that can be followed by conversation. I begin by asking students to identify their undergraduate majors. I then ask: What kinds of research they performed as undergraduates? What types of essays or papers did they write? What types of authorities were considered most persuasive? What types of theoretical frameworks were they asked to use? Then we discuss how their experience of legal research has been similar or different.

One concept that has arisen in each conversation is the voice of the authors cited in their undergraduate work. We compare this to the voice or perspective of the legal authorities we rely on. Do judges have a perspective from which they write? Are judicial opinions objective statements of law, or are they written in the voice of the judge? Do legislators and regulators have perspectives or agendas? Should we think about authorship when we think about primary legal authorities? How do we engage in meaning-making as we read and apply the law? Though the discussion is different each time, this is an example of how we begin to tease out the ideas within CIL and CLR.

We then move to a discussion of law reform and the critical lens. Returning to the anonymous poll, I ask students to share an issue they believe is ripe for legal reform. As they do this, I am careful to note that my ideas about areas of law in need of reform may be different from theirs, but the strategies and tools used to seek reform are effective regardless of the substantive area in which an advocate is seeking change. Again, we take at least one topic that has been submitted by multiple students for discussion. I ask the students to reflect on research strategies useful for law reform advocacy that were discussed in the reading. How might traditional legal research authorities and strategies hamper their ability to contemplate novel approaches.

25. I am grateful to Professors Rachel H. Smith and Renee Nicole Allen for engaging with me and with my students in exploring this material.

26. I use Poll Everywhere throughout the semester to enhance engagement. For this class session, I use word clouds to help identify more common answers and typically start discussion with one of those more common responses.

27. Students in the Advanced Legal Research course have all completed their first year of law school, and many have worked in legal placements where they were required to conduct research. This gives the students an opportunity to compare research experiences.
or alternative remedies? What research methods might expand the universe of valuable ideas and solutions?

Next, we delve into a discussion of the second part of Mignanelli’s article, *The Question Concerning Technology*. It provides a thoughtful and succinct discussion of the role of machine learning and algorithms in delivering search results on legal research platforms. For many students, this reading is their first opportunity to think about the ways these mathematical formulas control the universe of resources their searches yield. To make this new information more tangible, we use a Family Medical Leave Act retaliation hypothetical to work through a hands-on exercise based on the Nevelow-Mart study published in 2017. Students are divided into three groups, each of which is assigned only one research platform to use. Each group runs the same natural language search for cases within the same jurisdiction. Then we compare the top ten results in each platform. Students are consistently surprised to discover both the small amount of overlap among the results and the large number of completely unique results on each platform. This gives us an opportunity to explore the subjective idea of relevance in legal authorities and the complexity of reducing relevance to a mathematical formula. Finally, we construct and execute a Boolean search in each platform tailored to yield only cases that meet a strict set of criteria. Most students expect their Boolean searches to yield significantly greater uniformity in the results on each of the platforms, given that Boolean operators purport to allow users to exert greater control over a search. Despite some increased similarity in the results, students still discover differences in both the cases retrieved and the relevance ranking of those cases. After comparing the results, we discuss how algorithmic bias, information classification systems, individual decisions about language, and the relevance of various concepts can alter both the results they retrieve and the way they analyze those results.

We wrap up the session with a set of five goals for the students to consider along with a list of resources for further exploration. The goals, written collaboratively with Professor Rachel H. Smith, are intended to set the stage for continued reference to and reflection on the material introduced in this class session.

28. Mignanelli, supra note 2, at 15.
30. I have been using Google Scholar, Lexis, and Westlaw for the platforms. I plan to include Bloomberg and Fastcase in the next iteration of the class.
Reframe legal issues when there is a call for novel remedies or legal reform (consider a critical lens; think in an interdisciplinary fashion).

Unplug and think (stop typing and start thinking)- individually and collaboratively.

Adopt/develop a healthy dose of skepticism about claims of objectivity and neutrality – particularly at the intersection of law and technology/ research and technology.

Don’t fall into the trap of thinking that your inability to find “the answer” is a personal failure. Think instead of the limitations of the available tools. Then consider alternatives.

Think critically about all of the information, processes, and ideas we explore in the rest of the class.

THREADING CIL & CLR INTO THE FABRIC OF THE COURSE

With the foundation of our initial session on CLR and CIL in place, I reviewed the coverage of the course to identify moments throughout the semester where it would be productive to emphasize CIL inquiries and practice CLR methods to reinforce the lessons from the second class. One approach that has worked particularly well involves weaving questions into my slides that ask students to think from a critical perspective. I use questions such as:

(1) Who controls the creation and availability of this information?; (2) Whose voices are the loudest in this area of law making or application?; (3) Whose voices are excluded?; (4) What are the shortcomings of traditional research practices that are predictive? (5) How might a reform-focused advocate conduct research differently?; (6) How would someone working from a critical perspective view this tool or process?; and (7) What might they critique about the tool itself or the way it is expected to be used?

I hope to strike a balance between the kind of traditional legal research instruction that has long produced confident and competent researchers, and the questions and critiques of CIL and CLR. I try to emphasize the utility of many of the tools and processes even as we critique them. The West Digest System, discussed by Delgado & Stefancic as a classification system

32. Reflecting on this question was most effective when using examples where the application of existing jurisprudence led to a result perceived by the students as unjust.

33. The first two questions focus on CIL and are drawn from one of the six frames identified in Framework For Information Literacy For Higher Education, supra note 17. The last four questions arise out of our exploration of CLR.

34. 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, 208, 214-215 (1989); Richard Delgado & Jean Stefancic, Why Do We Ask the Same Questions- The
designed to replicate existing legal systems and structures, is an incredibly useful tool and one I encourage students to use. At its inception, the American Digest System was considered a revolutionary tool for identifying relevant case law. Even as the amount of case law increased exponentially, researchers were able to use this topical classification system to find cases discussing similar legal issues. My goal in asking students to critique this system is to encourage them to understand the strengths of the tool, while also recognizing its shortcomings. I want students to supplement their Digest research with alternative methods that may deliver opinions they might not otherwise discover using the Digest System alone.

Another step in transforming my course through the integration of CIL and CLR has been creating, and often borrowing, new or revamped in-class exercises. I have been particularly interested in exercises that teach a traditional legal research method or strategy while also asking the students to examine the process through a critical lens. Some of the exercises, such as the Nevelow Mart algorithmic bias exercise described earlier, come directly from legal scholarship. Others come from the experiences of my colleagues.

Consider the following examples.

Ask students to write a headnote for a specific point of law in a case. Select a version of the case without editorial enhancements and identify a page or paragraph from which the students should draw the point of law they are summarizing. Have students compare their headnotes and discuss the differences in their articulation of the point of law. Ask them to compare their word choices and the narrowness or breadth of their summaries. Discuss the ways in which editorial enhancements may influence the way a researcher understands an opinion, or whether they decide to read the full opinion at all. Consider reviewing the headnotes created for the same point of law by editors on legal research platforms as well. This exercise is an excellent way to introduce students to the function of headnotes in the editorial enhancements to case law, while at the same time using a critical lens to demonstrate the subjective nature of the tool.

A useful exercise for exploring algorithmic bias focuses on the concept of relevance. Ask students to describe how they would create a relevance ranking if they were building a research platform. Challenge them to define relevance in their own words. What kinds of things would be most important in determining relevance? Consider using the Fastcase Relevance

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Customization tool to encourage students to think about how to determine whether a document is relevant to a given inquiry.\(^{37}\) This is also an excellent opportunity to revisit the Nevelow Mart article used in the class session introducing CIL & CLR.\(^{38}\) Nevelow Mart encourages the reader to consider the way search results are ranked in various platforms by posing the question, “[h]ow is relevance evaluated?”\(^{39}\) For an even deeper dive into various types of relevance used in the development of algorithms for legal research platforms, it may be useful to explore the work of scholars such as Marc van Opjinen and Cristiana Santos.\(^{40}\)

Another discussion exercise focused on CIL involves asking students to reflect on bias in the writing and editing of casebooks. The foundation for the exercise is found in Kathleen D. Fletcher’s article, *Casebooks, Bias, and Information Literacy – Do Law Librarians Have a Duty?*\(^{41}\) In this piece, Fletcher reviews the treatment of individual cases across several casebooks, identifying the varied ways in which different authors edit the cases and identify the relevant facts to introduce students to the legal rules they are used to exemplify. She also reflects on the earlier work of Mary Joe Frug, who used a feminist lens to explore the choices made in the inclusion/exclusion of cases and the editing of those cases in a contracts casebook.\(^{42}\) Fletcher concludes that these editorial choices are, in fact, a type of bias.\(^{43}\)

The significance of this conclusion lies in the way in which students experience casebooks—not as individual author’s perceptions and articulations of the law, but as objective statements of the legal rules they are learning. Fletcher argues that law librarians are well positioned, and in fact have a duty to help their students develop information literacy. In her view, drawing back the veil on the subjectivity and bias inherent in the creation of the materials used to teach law students can give students an opportunity to think critically about all legal information, including the casebooks they are assigned.\(^{44}\) Consider having students read the entire article before class or using excerpts of the article in class to generate discussion about evaluating and analyzing different types of legal information through a critical lens.

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38. *Nevelow Mart supra note 29.*
39. *Id. at 391.*
43. Fletcher, *supra* note 41, at 196.
44. Fletcher, *supra* note 41, at 197.
REVISITING EXISTING COURSE CONTENT THROUGH A CRITICAL LENS

When I embarked on the journey of transforming this course, one of my first concerns was whether I would be able to develop new research exercises and examples that would teach traditional legal research strategies and methods, yet also provide an opportunity to reflect critically on those same skills and tools. There are problems I have used for years that offer unique teaching and learning moments, and I was afraid I would lose those if I changed my course material. Before I created new hypotheticals and exercises in areas where I wanted to integrate a critical perspective, I revisited my teaching materials from years past. I asked myself the same types of questions I planned to ask my students, focusing on both the substantive law used in my examples and the legal research learning objectives I wanted to meet. As I thought through my existing materials, it became clear that the critical lens was something that could be applied to many of the examples I already used by focusing on the substantive law, the research tools I taught, or both.

One of the most successful areas in which I transformed the content by integrating CIL & CLR is the segment on statutory authority, including the legislative process and legislative history research. The Indian Child Welfare Act of 1978 (ICWA) has long been a staple of my classroom for exploring legislative history. The legislation’s stated aim is:

> to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

To better understand this policy statement, we contextualize the Act by exploring some of the injustices that led to its passage. While I have always

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47. Because class time is limited, I focus primarily on the history of Indian boarding schools in the United States as an example of the harm resulting from the systematic breakup of Indian families prior to the enactment of ICWA. See Boarding School Healing, NATIVE AMERICAN RIGHTS FUND, https://narf.org/category/boarding-school-healing/ [https://perma.cc/W6EA-N3ZM] (last visited Oct. 16, 2022). See also Truth and Healing Commission
included a summary of this information when working with ICWA, I have done so by sharing excerpts from post-passage legal and social science scholarship. This time, I chose to use the words and writings of Native Americans, centering those perspectives and experiences. After some discussion of the potential utility of CLR in this problem, we then break into small groups and search for interdisciplinary scholarship published before the enactment of ICWA that could have been used to argue for the preferences and priorities in child custody later codified in the act. I ask students to pay particular attention to the kinds of authorities, including oral histories and anecdotal stories, used in interdisciplinary work on the topic. Though this is an imperfect example, due in no small part to the retrospective nature of the research, it still provides students an opportunity to think about and discuss how CLR methods could be useful in spaces where existing legal authority would continue to reproduce unjust outcomes.

48. This is something I should have been doing from the start, but surfacing and addressing my own shortcomings has been an important part of this journey. See generally id.

49. I also take this opportunity to remind students that conducting research using only legal research platforms does not afford them access to what Dan Dabney termed "the world of thinkable thoughts." See Robert C. Berring, Legal Research and the World of Thinkable Thoughts, 2 J. APP. PRAC. & PROCESS 305, 318 n. 13 (2000). Legal research platforms have classification tools that organize legal information into categories with specific types of connections. They also typically exclude interdisciplinary resources, narrowing the range of ideas to which students have access. Yet the platforms’ marketing materials give the illusion that researchers are engaging in the most comprehensive research possible when using them. In this way, the platforms are actually contributing to the obfuscation of the fact that legal researchers are not engaged with the world of thinkable thoughts when they conduct traditional legal research.

50. At the time of writing, the constitutionality of ICWA’s placement preferences for Indian children is currently before the U.S. Supreme Court in Brackeen v. Haaland, No. 21-380 (Sup. Ct. filed Sept. 3, 2021). Though I did not delve into the substantive arguments related to the challenge in my course, some elements of the way I use this example in the future may change depending on the outcome of the case.
Another opportunity to revisit existing course content using a critical lens is described by Julie Krishnaswami in her book chapter *Critical Information Theory: A New Foundation for Teaching Regulatory Research*. She identifies regulatory research as a natural vehicle for integrating critical perspectives, arguing that “regulatory research has the potential to situate students in a practice-oriented context while simultaneously allowing them to think about institutions and how they work.” In later reflection during a symposium entitled *Critical Legal Research and Contemporary Crises*, she expands on this assertion, maintaining that regulatory research taught from the perspective of critical information theory is a pathway for the consideration of (1) regulatory transparency, (2) agency accountability, (3) due process and fundamental fairness in the context of agency adjudication and rulemaking, (4) private-public partnerships, and (5) agency expertise and discretion. Underlying these questions are concerns about how government works, which entities have power, and which entities are privileged by the modern administrative state. Put simply, what and whose interests are at play.

Her approach to this area of research goes far beyond the mechanics of locating administrative legal materials, and instead reflects exactly the kind of inquiry encouraged in one of the frames from the ACRL *Framework For Information Literacy For Higher Education: Authority is Constructed and Contextual*.

One exercise Krishnaswami recommends is asking students to approach regulatory research “with the eye of the stakeholder who is trying to subvert the regulation.” This thought exercise is a perfect context for considering the reform-focused methods of CLR urged by Mignanelli and Stump throughout their scholarship. Additionally, the complexity and lack of

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52. Id. at 183.
54. *Framework For Information Literacy For Higher Education*, supra note 17, at 1, 7.
56. Mignanelli, supra notes 1 and 2; Stump supra note 7.
uniformity of administrative agency documents and processes can serve as an opportunity to ask students to reflect on ways that an interested individual working outside the structures of an agency or other government body might experience the machine of the administrative state. When students can combine their growing understanding of administrative process and authority with a critical lens that challenges them to evaluate not only the substantive law, but also the power inherent in the making and dissemination of agency information, they become better and more creative advocates in this space.

Another of Krishnaswami’s exercises asks students to examine public comments to proposed regulations with the dual purpose of learning to locate agency documents and critically examining agency processes that must balance disparate interests. She suggests using the example of food safety regulation in meat production for this problem. Students can begin to understand the interests implicated in this area of regulation by thinking broadly about the stakeholders and their desires and about both the scientific and political context of specific regulations. Was there a public health incident that started this regulatory process? Who was impacted by the actions or inactions of government actors that led to the incident? Do the interests and desires of the public and business entities appear to be equally served in the proposed regulation, or is one side advantaged? Does the final rule reflect the concerns voiced during the comment process? Answering these types of questions gives students an opportunity to engage with the agency’s processes as well as the types of regulatory documents created through those processes.

This exercise also lends itself to a discussion about the costs and benefits of contemporary rulemaking, which takes place in an almost exclusively online space and is sometimes referred to as e-rulemaking. Finding the relevant documents for the exercise is best accomplished by using various government sites on the open web. Using these free public tools can provide an opportunity discuss the significant variability of the content and quality of information made available by various government entities. Krishnaswami suggests asking students to “think critically about the barrier to public participation in the rule making and the availability of regulatory information” more broadly.

WHAT COMES NEXT?

I have taught my Advanced Legal Research course integrating CIL & CLR twice. As I prepare to teach it again, I have spent time reflecting on the

57. Krishnaswami, supra note 51, at 199.
58. Id.
59. Id. at 200.
choices I have made in transforming my course through the integration of CIL & CLR. I believe that the inclusion of critical perspectives is both consistent with the professional standards for librarianship and a service to my students. But I am also keenly aware that I have only begun to embark on my own journey of evaluating my teaching and learning from others who are doing the same. For those of us engaged in this conversation, the obvious question is what comes next?

Continued collaboration with others who are committed to including this lens is essential as we strive to create the best learning experiences for our students. For me, integration of the critical lens into an otherwise traditional advanced legal research class means that I can maintain solid instruction in the research skills and strategies expected by employers, while adding essential information literacy skills and reform-focused research strategies to my students’ skill sets. Yet I know that this model is but one approach to providing students with the benefits of viewing legal issues through a critical lens. I hope to engage in more work with faculty teaching doctrinal courses and other skills courses to discover the natural pedagogical connections between critical legal theory and critically informed skills instruction.

I am also excited about the collaborative development of new legal research exercises that teach both traditional research skills and tools while also offering space for CIL and CLR. Law librarians and legal writing faculty have long shared teaching tools that offer excellent opportunities to impart valuable lessons in both legal research and analysis. The Legal Writing Institute has an exceptional teaching bank containing syllabi, assessments, rubrics, and many other teaching materials. The American Association of Law Libraries has multiple special interest sections (SIS) that offer teaching resource banks, including both the Academic Law Libraries SIS Sourcebook for Teaching Legal Research and the Research Instruction and Patron Services SIS Legal Research Teach-In Toolkits. Since these resources are organized to help users locate specific types of materials, why shouldn’t we add a category for critical perspectives? While this essay has offered glimpses into a small selection of exercises and examples, it is only a reflection of my limited experience. Imagine a space in which everyone using the critical lens in legal education could share teaching tools. This is just one possible outgrowth of collaboration.

Finally, I think we need to solicit feedback from our graduates. While it may be too soon to tell for my current students, I hope to eventually be able

to ask whether the inclusion of critical perspectives and skills has been useful in their careers. Have they found CIL and its reflection on power and purpose in legal information beneficial as they engage in legal analysis and advocacy? Have those in reform-focused advocacy and policy development found CLR methods helpful? Even more broadly, has thinking with a critical perspective influenced the way they perceive and engage with legal problems? If these are our goals as teachers, soliciting this feedback from our alumni should be part of our own evaluation of the efficacy of our work.

I want to close with a message of heartfelt gratitude to my colleagues who have engaged with me in reflection on my teaching, development of my course, preparation for this summer’s panel discussion, and creation of this essay. Each step is one I would have taken on my own, but doing this work in such good company has made the journey thus far more meaningful, more joyful, and more fruitful. I look forward to walking the road ahead with you.