



SERVICE, SCHOLARSHIP, AND RADICAL CITATION PRACTICE[†]

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I. INTRODUCTION

2020 was marked by so many challenges, obstacles, and tragedies. In the wake of the COVID-19 pandemic and the Black Lives Matter (“BLM”)

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protests—which continue to highlight the severity and depth of racial injustice in the United States¹—we have witnessed a surge of interest in anti-racism.² Although numerous academic institutions have made public statements in support of racial equity and anti-racist efforts,³ the question remains: how much of this sentiment is merely performative allyship and how much is reflective of a true commitment to change?⁴

1. For examples of the disparate impact of the COVID-19 pandemic, see generally Ruqaiyah Yearby & Seema Mohapatra, *Systemic Racism, the Government's Pandemic Response, and Racial Inequities in COVID-19*, EMORY L.J. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3763532; Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL'Y, L., & ETHICS 122 (2020); Emily A. Benfer, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1 (2021), <https://link.springer.com/article/10.1007/s11524-020-00502-1#ref-CR75>; Aila Hoss, *COVID-19 and Tribes: The Structural Violence of Federal Indian Law*, 2 ARIZ. STATE L.J. ONLINE 162 (2020), <https://arizonastatelawjournal.org/wp-content/uploads/2020/11/Hoss-Final.pdf>; Aila Hoss & Heather Tanana, *Upholding Tribal Sovereignty and Promoting Tribal Public Health Capacity During the COVID-19 Pandemic*, in ASSESSING LEGAL RESPONSES TO COVID-19, at 77 (Scott Burris et al. eds. 2020), https://static1.squarespace.com/static/5956e16e6b8f5b8c45f1c216/t/5f445c11d10a1b0c4024a9c9/1598315537385/Chp10_COVIDPolicyPlaybook-Aug2020.pdf; Aila Hoss, *Tribes Are Public Health Authorities: Protecting Tribal Sovereignty in Times of Public Health Crisis* (Jan. 4, 2021) (unpublished manuscript), <https://static1.squarespace.com/static/5930883f17bffcfa9deb8d/t/5ff396bd9d513670e3c76471/1609799358131/Tribes+are+Public+Health+Authorities+FINAL.pdf>; Lindsay F. Wiley et al., *Health Reform Reconstruction* (Ga. State Univ. Coll. L. Working Paper, Paper No. 11, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3760086.

2. See generally Gene Demby, *Why Now, White People?*, NPR: CODE SWITCH (June 16, 2020, 11:55 PM), <https://www.npr.org/2020/06/16/878963732/why-now-white-people>; Jennifer D. Oliva, *Policing Opioid Use Disorder in a Pandemic*, U. CHI. L. REV. ONLINE (2020), <https://lawreviewblog.uchicago.edu/2020/11/16/covid-oliva/>.

3. For examples of anti-racist statements drafted by the ABA and various U.S. Law schools, see generally Hannah Hayes, *Law Schools Vow to Address Structural Racism*, A.B.A. (Sept. 25, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/september/law-schools-vow-address-structural-racism/>; *Anti-Racism and Anti-Bias Pledge*, UNIV. OF ARK., <https://law.uark.edu/antiracism/> (last visited Aug. 10, 2021); *Solidarity and Anti-Racism Statements*, WASH. & LEE UNIV. SCH. OF L., <https://law.wlu.edu/about-wandl-law/solidarity-statements> (last visited Aug. 10, 2021); Laura Ann Rosenbury, *UF Law's Roadmap for Racial Justice*, UNIV. OF FLA. (July 15, 2020), <https://www.law.ufl.edu/law-news/roadmap-for-racial-justice>.

4. See Alexis Hoag, *Derrick Bell's Interest Convergence and the Permanence of Racism: A Reflection on Resistance*, HARV. L. REV. BLOG (Aug. 24, 2020), <https://blog.harvardlawreview.org/derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance/> (noting that “it is now popular and financially advantageous to be anti-racist.”).

This essay is an exercise in personal optimism during these troubling times. Our nation is locked and divided, with many refusing to acknowledge the historical and present-day connections between race and inequality. Even within elite spaces, like legal academia, systems of subordination steeped in race, gender, sexual orientation, and class result in an *Unequal Profession*. The current entrenchment of white male dominance within law school hierarchy creates and perpetuates underclasses based on raceXgender⁵ and economic status, preventing the advancement, promotion, and equal treatment of many faculty and staff.⁶ Our existing system is inherently unjust and its continued presence in law schools is deeply troubling. We cannot train our students to pursue and uphold justice when we enable and tolerate structural injustice within our own institutions.

The time is ripe for much-needed structural changes within law schools. The combined pressures of the Covid-19 pandemic and the escalating racial injustice have only increased the burdens on students of color.⁷ The appalling anti-blackness displayed at Georgetown University Law Center in early 2021—where an adjunct stated that Black students perform poorly in the classroom⁸—merely reiterated the persistent racism directed toward Black students in white spaces.⁹ In

5. This term is used by Professor Meera Deo in reference to the intersection of Race and Gender identities in her book *Unequal Profession*. MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019).

6. See, e.g., *How Black Women Are Silenced in the Law School White Space*, ST. JOHN'S L. REV.: AUTHOR Q & A (Jan. 17, 2021), <https://stjohnslawreview.wordpress.com/2021/01/17/how-black-women-are-silenced-in-the-law-school-white-space/> (quoting Renee Nicole Allen on the raceXgender hierarchy in law schools, with specific reference to the dominant and subjugated groups: "In the law school white space, academic norms reproduce the same hierarchies and subjugation we see in broader culture—that is, white men, at the top of the race-gender hierarchy, define norms; Black women, at the bottom of the race-gender hierarchy, conform to the norms defined by white men.").

7. See Taled El-Sabawi & Madison Fields, *The Discounted Labor of BIPOC Students & Faculty*, 109 CAL. L. REV. ONLINE (forthcoming 2021) (manuscript at 2), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3810222 (examining "the burdens that are placed on BIPOC students and faculty as a result of the public and racialized violence and unrest that defined 2020 . . . make[s] more concrete the discounted labor involved with carrying these weights.").

8. Tahir Duckett, *Black Law Students Are Thriving at Places Like Georgetown, But There Still Aren't Enough of Them*, WASH. POST: OP. (Mar. 14, 2021, 3:22 PM), <https://www.washingtonpost.com/opinions/2021/03/14/black-law-students-georgetown-affirmative-action/>.

9. Similar incidents have been documented at other elite, East Coast institutions like the University of Pennsylvania's Law School. John N. Mitchell, *Penn Law Prof: U.S. "Will*

March 2021, the USNWR ranking system was forced to withdraw its poorly structured “diversity” rankings after purposefully excluding Asian American and multi-racial students from its analysis.¹⁰ This erasure of Asian Americans as people of color by institutional gatekeepers occurred against the backdrop of increased anti-Asian violence and sentiment.¹¹

Dismantling entrenched hierarchies is no small undertaking and demands political will, institutional resources, time, and dedication. Progress is possible if law schools embrace both anti-racism and intersectionality as guiding principles. Anti-racism requires proactive and sustained efforts to combat racism in all its forms—structural, institutional, interpersonal, and personal.¹² Intersectionality requires a recognition that interlinked and overlapping identities—such as race, gender, class, and LGBTQIA identities—can lead to multiple forms of oppression and subordination.¹³ When institutions subscribe to anti-racism and intersectionality as guiding principles, they acknowledge two central tenants necessary for comprehensive and substantive reforms. First, diversity, equity, and inclusion are inherently valuable and not mere marketing strategies. Second, it is impossible to pursue and promote justice in the absence of diversity, equity, and inclusion. Accordingly, law schools must work diligently to become more diverse, equitable, and inclusive spaces for students, staff, and faculty.

This essay focuses on two practical solutions to support faculty of color that can be implemented quickly and effectively at most law schools. First, institutions should accept that faculty of color engage in important hidden service work, often supporting students of color, other faculty, and

Be Better Off With . . . Fewer Nonwhites,” PHILA. TRIB. (July 19, 2019), https://www.phillytrib.com/news/local_news/penn-law-prof-u-s-will-be-better-off-with-fewer-nonwhites/article_df454ec3-2f13-5bd6-9936-6e56a2025c83.html.

10. Karen Sloan, *US News Makes Last-Minute Changes to Law School Rankings, Fueling Criticism and Concern*, LAW.COM (Mar. 25, 2021, 2:16 PM), <https://www.law.com/2021/03/25/us-news-makes-last-minute-changes-to-law-school-rankings-fueling-criticism-and-concern/?slreturn=20210330133438>.

11. See generally Anh Do, *Asian Americans Have Been Verbally and Physically Attacked, Shunned During Pandemic, Study Shows*, L.A. TIMES (Mar. 16, 2021), <https://www.latimes.com/california/story/2021-03-16/anti-asian-hate-pandemic>; Suzanne Nuyen, *Anti-Asian Attacks Rise During Pandemic. Read NPR's Stories on the Surge in Violence*, NPR (Mar. 17, 2021, 3:48 AM), <https://www.npr.org/2021/03/17/978055571/anti-asian-attacks-rise-during-pandemic-read-nprs-stories-on-the-surge-in-violence>.

12. See *Being Antiracist*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist> (last visited Aug. 10, 2021).

13. See RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 58–63, 177 (3d ed. 2017).

larger communities of color as well. As institutions benefit from this important but unrewarded labor, they must create mechanisms to appropriately document and credit these vital contributions. Second, these hidden service burdens come at a personal cost to faculty, often impacting scholarly productivity and more. Thus, institutions can and should explore opportunities to amplify existing scholarship and contributions of faculty of color.

II. INVISIBLE AND UNREWARDED SERVICE BURDENS

The standard package for a tenure-track law professor, and even some long-term contract faculty positions, generally involves a mix of teaching, scholarship, and service obligations.¹⁴ However, these three components are rarely weighted equally when used for promotion and other official employment purposes, with service lagging far behind the other two areas in importance.¹⁵ Most law schools narrowly define service obligations, limiting credited service to faculty committees or formal mentorship of students.¹⁶ Rarely does it encompass the plethora of community building, informal mentorship, and other types of service-work provided by faculty of color.¹⁷ Often this unseen and discounted service plays a valuable role for the institution by building student engagement and supporting vulnerable students.¹⁸ At best, some of this service is acknowledged but unrewarded in performance reviews. However, much remains “invisible” and uncounted when evaluating faculty for promotion, course reductions, or merit-based salary increases.¹⁹

Failure to recognize these contributions only adds to the existing structural barriers that discredit and devalue the work of faculty, especially along raceXgender lines. Much of this uncredited work involves supporting students. Empirical evidence indicates that the service work provided by faculty of color, and particularly women of color, results in greater student engagement and learning outcomes for all

14. DEO, *supra* note 5, at 81.

15. *See id.* at 60, 87–88.

16. *Id.* at 87–88 (noting invisible service by raceXgender faculty in university-wide service responsibilities, meeting with students, and care-taking for the “academic family”).

17. *Id.* at 59–60 (noting the care-taking responsibilities shouldered by raceXgender faculty, particularly to support women students and students of color).

18. *Id.* at 88.

19. *Id.* at 60.

students.²⁰ Students of color in particular rely heavily on faculty of color during law school for support and guidance. Disincentivizing or even punishing faculty engaged in this foundational work with students simply reinforces the existing systems of subordination, a complete antithesis of the aims of antiracist and intersectional ideologies.

A. *PoC Lunches—Creating Counter Space*

In my own time as a faculty member, I have first-hand experience of important invisible service that furthered anti-racist and intersectional ideologies by supporting vulnerable law students. In July 2016, I joined the tenure-line faculty at West Virginia University's College of Law ("WVU")²¹ as one of two women of color faculty members.²² I was also the only API²³ woman and the only naturalized citizen on the faculty.²⁴ Aside from adding numerical value to WVU's diversity statistics, my immigration history and my race are an integral part of my identity and development as a lawyer and teacher. I was eager to meet and support students of color at WVU, an incredibly visible minority in a predominantly white institution. Despite their visibility, WVU lacked significant numbers of API, Latinx, or Native students²⁵ to create affinity

20. Jakki Petzold, *Where Do Students Get Advice?*, LSSSE (Dec. 2, 2020), <https://lsse.indiana.edu/blog/where-do-students-get-advice/>; DEO, *supra* note 5, at 56.

21. I am using the abbreviation "WVU" to refer to the West Virginia University College of Law. Please note that this abbreviation is often used in reference to the University generally as opposed to the College of Law alone.

22. *2017 Standard 509 Information Report*, W. VA. UNIV., <https://www.law.wvu.edu/files/d/61d1a2a9-10f8-4c8b-9e38-c0e582d328da/std509infoforeport2017.pdf> (last visited Aug. 10, 2021) (noting five faculty members of color out of forty-three full-time faculty members).

23. API is a term used to "include all people of Asian, Asian American or Pacific Islander ancestry who trace their origins to the countries, states, jurisdictions and/or the diasporic communities of these geographic regions." *Census Data & API Identities*, ASIAN PACIFIC INST. ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/resources/census-data-api-identities/> (last visited Aug. 10, 2021).

24. As you can see from the 2016 ABA report, I increased the faculty of color by 20%. *Compare 2016 Standard 509 Information Report*, W. VA. UNIV., <https://www.law.wvu.edu/files/d/72ca99f1-aac5-41ef-a9a8-e376e5c335b0/std509infoforeport2016.pdf>, *with 2017 Standard 509 Information Report*, *supra* note 22. Although this lacks the level of granularity, I assure you I was one of two women of color and the only naturalized citizen when I joined the faculty in July 2016.

25. See data for WVU Law classes of 2017, 2018, and 2019 respectively: *2017 Standard 509 Information Report*, *supra* note 22; *2018 Standard 509 Information Report*, W. VA. UNIV., <https://www.law.wvu.edu/files/d/8fd06dba-7afe-4be5-9ad2-d3b193bee5c8/2018-aba-509-report.pdf> (last visited Aug. 10, 2021); *2019 Standard 509 Information Report*, W. VA.

groups—a common avenue to build community and support in law school. The Black Law Students Association (“BLSA”) was the only race-based affinity group during the majority of my time at WVU.

In an effort to connect with students, I organized an informal People of Color (“PoC”) lunch with the assistance of two other faculty members of color during my first month at WVU. The goal was to introduce myself as a faculty ally while creating an informal and welcoming space for all students of color. We reserved a conference room, ate barbecue, played cards, argued about college basketball, and started something far larger and more powerful than originally envisioned.

At the request of students, the PoC lunches became a monthly gathering, establishing an important “counter space” for students of color.²⁶ The lunches provided an important opportunity to connect with their peers, free of the white gaze and white norms. Students could joke, complain, and boast—without the censure or vigilance that comes naturally when you are navigating spaces as an “other.” The lunches were also an opportunity for students to connect with faculty of color, especially if our areas of expertise were unconnected to a student’s professional interests. Many students of color were recruited from outside West Virginia and hoped to return home. Unfortunately, the institution’s career services infrastructure was largely dedicated to in-state and regional resources. Faculty were able to leverage our own professional connections to help students network for career advice and externship opportunities.

The POC lunches helped make law school easier. Having a POC group organized at the school by students would have been helpful, but to know that it was organized and supported by faculty was even better because you knew that there was someone else besides other similarly situated students who had your back. It was therapy by way of a specific type of social interaction that otherwise would not have been possible anywhere else in the law school environment.

UNIV., <https://www.law.wvu.edu/files/d/7d8234f8-4ea7-4912-a751-97fda29e21ec/2019-aba-std-509-info-report.pdf> (last visited Aug. 10, 2021).

26. Meera E. Deo, *Two Sides of a Coin: Safe Space & Segregation in Race/Ethnic-Specific Law Student Organizations*, 42 WASH. U. J.L. & POL’Y 83, 87 (2013) (noting that counter spaces create a buffer for marginalized students, creating a safe space from the dominant norms and culture of an institution).

– Joshua Shreve ‘19²⁷

These lunches were also invaluable for professors of color. We needed this community and connection as much as our students. Despite our relative institutional privilege, we ourselves engaged in our fair share of code-switching²⁸ and navigating of white spaces. The PoC lunches became even more important for faculty and students after the 2016 elections. I shared my own grim story of a racist incident the night after the election. I grieved with two of my students who experienced deeply disrespectful and terrifying encounters. In this uncensored and secure space, we could finally give voice to our fears. We worried that someone’s casual bravado could transform into a verbal or even physical attack. We agonized over whether something was actually racist or whether we were overreacting.

Often times I felt like an interactive museum exhibit for my professional classmates to ask the most pernicious questions. With every time I changed my hair or wore something “ethnic,” a white professional classmate, professor, adjunct, or staff member made sure to comment. While this seems amiable on its face, it is actually a micro-aggression. My appearance does not need your acknowledgement, nor does it need your approval. At POC gatherings I did not need to figure out what to do with pseudo compliments; I had the opportunity to simply exist. I entered the room exasperated and left it feeling recharged.

– T’Keyah Nelms ‘19²⁹

The PoC lunches provided an important anti-racist space in a very troubling time. Yet the time, effort, and personal funds spent on these

27. Email from Joshua Shreve, Alumnus, WVU Law, to author (Jan. 21, 2021) (on file with author).

28. Courtney L. McCluney et al., *The Costs of Code-Switching*, HARV. BUS. REV. (Nov. 15, 2019), <https://hbr.org/2019/11/the-costs-of-codeswitching> (“Broadly, code-switching involves adjusting one’s style of speech, appearance, behavior, and expression in ways that will optimize the comfort of others in exchange for fair treatment, quality service, and employment opportunities.”).

29. Email from T’Keyah Nelms, Alumnus, WVU Law, to author (Jan. 12, 2021) (on file with author).

gatherings went completely uncounted for faculty promotion and performance review purposes.

B. Informal Mentoring of Students

Empirical evidence demonstrates a significant percentage of students utilize informal networks and opportunities to seek advice and mentorship from faculty.³⁰ At WVU, faculty of color served as important but informal resources on career pathways, viable externships outside West Virginia, and even what classes would best prepare students for their desired legal careers. We wrote letters of recommendation, but also helped students strategize which professors or supervisors would serve as additional strong references. We reviewed fellowship applications and mooted job interviews. We helped students craft their plans and back-up plans for their legal careers. We, in many ways, tried to pay forward the mentorship and support we received as law students of color.

The students I supported are now public defenders, tax attorneys, and union-side labor lawyers. They were awarded prestigious fellowships and accepted to top-ranked LLM programs. Their success is a small but important part of dismantling systems that have consistently limited resources for PoC. Moreover, WVU and the legal profession have certainly benefited from my unrewarded labor. The institution's alumni list now includes successful young lawyers of color in a variety of legal fields. These stories will be used in admissions materials to solicit future applicants and eventually by the alumni development office to solicit money. Yet the only formal credit I, and other faculty of color, received was—nothing. This work was not listed in our employment files, along with our official service assignments. Thus, my official promotion file limited my service contributions to my role as a faculty advisor for BLSA.³¹

My situation is hardly unique and should not be attributed to public perceptions of the political leaning of West Virginia or Appalachia. Important but invisible service is a burden at all levels of tenure and at all institutions, perhaps best demonstrated by this tweet from Pulitzer prize-winning author, former United States Supreme Court clerk, and Yale Law Professor James Forman, Jr.:

30. Petzold, *supra* note 20; DEO, *supra* note 5, at 56.

31. As one of the handful of faculty of color, I served as one of the advisors to BLSA even though I am South Asian.

That feeling at the end of a grueling day when every [B]lack faculty member has been working overtime to support [B]lack students dealing with racism . . . and you run into some white colleagues after work and they seem unbothered and you realize: shit, they spent their day writing.³²

Empirical findings from the 2020 Law School Survey of Student Engagement (“LSSSE”) survey also supports the widespread need for more support for underrepresented students who are often marginalized according to race, gender, class, and sexual orientation.³³ The LSSSE data emphasizes that law school is truly a “White Space”³⁴ regardless of whether the institution is located in Appalachia³⁵ or Chocolate City.³⁶

Marginalized students subjected to the pressures of learning in a “White Space”³⁷ logically rely on faculty of color, both as power brokers within the institution and as survivors of the system. Ultimately, the issue is not the work we do but an institution’s continued refusal to credit us for these vital contributions.³⁸ Ignoring our work reinforces hierarchies on both the student and faculty levels that negatively impact people of color at both levels and beyond. For students, the existing system maintains problematic hierarchies by failing to fully acknowledge

32. James Forman, Jr. (@jformanjr), Twitter (May 10, 2018), <https://twitter.com/jformanjr/status/994769926262059012>; James Forman Jr., Yale Law School, <https://law.yale.edu/james-forman-jr> (last visited Aug. 10, 2021).

33. M.E. DEO & C. CHRISTENSEN, DIVERSITY & EXCLUSION 2020 ANNUAL SURVEY RESULTS 7–10 (2020), <https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf>.

34. See generally Julia Brodsky, *Panel Examines the “White Space” of the Legal World*, FORDHAM L. NEWS (Nov. 22, 2020), <https://news.law.fordham.edu/blog/2020/11/22/panel-examines-the-white-space-of-the-legal-world/>.

35. WVU is located in West Virginia, the only state completely located within the region designated as “Appalachia” and often associated with rural America, Trump Country, and a lack of racial diversity. Priya Baskaran, *The Economic Justice Imperative for Lawyers in Trump Country*, 7 TENN. J. RACE GENDER & SOC. JUST. 161, 166–67 (2018).

36. D.C. became the first majority-Black city in the United States in 1957 and was subsequently dubbed “the chocolate city” in homage to the racial demographics. See generally CHRIS MYERS ASCH & GEORGE DEREK MUSGROVE, CHOCOLATE CITY: A HISTORY OF RACE AND DEMOCRACY IN THE NATION’S CAPITAL (2017).

37. Defining “White Spaces” as “settings in which [B]lack people are typically absent, not expected, or marginalized when present” and thus often necessitating careful navigation by Black people. Elijah Anderson, *“The White Space,”* 1 SOCIO. RACE & ETHNICITY 10, 10 (2015).

38. DEO, *supra* note 5, at 166.

the support structures needed by students of color.³⁹ Many institutions only provide minimal investment and perfunctory solutions to student problems rather than supporting a more comprehensive approach based on student needs and empirical evidence.⁴⁰ Furthermore, by failing to credit faculty who fill existing gaps in institutional support systems, institutions reinforce a biased standard that credits the dominant, white male academic definition of “productivity” while devaluing the work of faculty of color.⁴¹ Faculty of color are punished for appearing “unproductive” because institutions in no way account for the important support functions they provide.⁴² Institutions undoubtedly benefit from our uncredited labor—including direct engagement with communities of color, developing alumni of color networks, and providing useful optics for admissions brochures and websites, etc.⁴³ Yet, institutions are content to reap the benefits without acknowledging the labor.⁴⁴

Other faculty and administrators might advise us to do less—*do not* volunteer, *do not* say yes—and guard our time more carefully. But these same faculty also benefit from our invisible service work. If law schools are committed to anti-racism and intersectionality, they must support faculty working to dismantle systems of subordination.⁴⁵ This can begin by recognizing those faculty members’ “informal” efforts to create counter space, supporting students of color, and other traditionally invisible service work—actual recognition, not a note that says, “Thanks for all you do.”

Law schools should include opportunities to document service in annual faculty review files. This may include greater opportunities for

39. See generally El-Sabawi & Fields, *supra* note 7. While some law faculty and administrators were proactive in identifying the struggles that their Black students faced and reached out to their students to determine the ways in which they could support them during these trying times, many law faculty and administrators did nothing. Many of the faculty members and administrators that did reach out to the affected students were predominately BIPOC faculty or faculty who are gendered women. *Id.* (manuscript at 3).

40. DEO, *supra* note 5, at 58–60 (noting the ways in which underrepresented faculty improve learning outcomes through greater classroom engagement for all students).

41. *Id.* at 58, 87.

42. *Id.* at 57–60.

43. See *id.* at 88 (noting how “extra service benefits the institution greatly while potentially hindering individual faculty whose contributions go unrewarded”).

44. Kimberly M. Mutcherson, *Foreward* to DEO & CHRISTENSEN, *supra* note 33, at 4 (noting the importance of ensuring “that my law school and all law schools are as hospitable and open as their glossy brochures imply”).

45. See generally El-Sabawi & Fields, *supra* note 7.

faculty self-reporting and opportunities to incorporate letters of support from students or community members. In conjunction with documentation, law schools must create clear guidelines for assessment and promotion that account for—and reward—informal service contributions. Such guidelines should be directed toward Associate Deans and Faculty Committees, ensuring they appropriately value and incorporate informal service into their assessments of faculty performance. Such interim measures can serve as practical and accessible options to acknowledge and credit faculty for invisible service. However, institutions must ultimately recalibrate their values to fully account for the importance of service work in promoting the anti-racist and intersectional mission of the institution.

III. SCHOLARSHIP PROMOTION & CRITICAL LEGAL RESEARCH

Scholarship is considered the currency of the realm when it comes to most legal academic positions,⁴⁶ impacting tenure, promotion, and merit-based pay increases.⁴⁷ Even non-tenure track faculty positions often use scholarship as one criterion in making determinations about contract renewal or promotion.⁴⁸ Despite the emphasis on scholarship, there is little institutional analysis surrounding the structural forces that effect scholarly productivity. Sadly, many women of color (“WoC”) encounter barriers that impact both their ability to write and the legal academy’s evaluation of their scholarship, resulting in unfair and negative assessments of their productivity and scholarly contributions. Although there are numerous barriers that can negatively impact scholarship, this essay focuses on three dominant factors. First, WoC are labeled as less productive scholars than white, male peers of a similar rank. Second, the

46. Caprice L. Roberts, *Unpopular Opinions on Legal Scholarship*, 50 LOY. U. CHI. L.J. 365, 366 (2018). See generally John F.T. Murray, *Publish and Perish—By Suffocation*, 27 J. LEGAL EDUC. 566 (1975).

47. DEO, *supra* note 5, at 60.

48. For example, professors teaching in experiential education spaces, like clinical law programs, are often of mixed status. According to a recent survey, even the majority of these professors note that scholarship is either required or beneficial for their positions. See Robert R. Kuehn et al., CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2019–20 SURVEY OF APPLIED LEGAL EDUCATION 61 (2020), https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f8e46e59e39d4dc82e70a54_Report%20on%202019-20%20CSALE%20Survey.10.19.20.pdf (“Over 31% of respondents are required to produce scholarship as part of their job For 49%, scholarship is beneficial to their position but not required.”).

focus of our scholarship is often undervalued as “identity-related” content as opposed to true legal scholarship.⁴⁹ Finally, there is a persistent problem of WoC failing to be properly cited for our work, leading to our erasure within key discourses and adding to the false narrative that our work is not generative. The combination of these institutional forces depresses our scholarly output and devalues our contributions, negatively impacting our academic standing, potential for recognition, promotion, and overall job security.

A. *Time is NOT on Your Side*

The first and most obvious barrier faced by many WoC is the sheer volume of formal and informal demands on our time. As documented in Meera Deo’s empirical work, the outsized service burdens placed on WoC often lead to negative consequences for scholarly productivity.⁵⁰ WoC have less time to write, creating a scholarly productivity discrepancy when compared to white, male scholars of similar rank. This leads to a perception of WoC scholars as “less productive” as there is no examination of the structural forces causing the disparity. The conversation centers on scholarly output as “productivity,” ascribing less worth to WoC who appear unproductive under these heavily skewed metrics. WoC must therefore rely on placement and visibility of their existing scholarship to demonstrate their scholarly mettle. However, this too can prove difficult because of entrenched hierarchies within the legal academy and legal research databases. Placement and visibility are intertwined with reputational assessment by other academics and “there is plenty of evidence that citation counts and peer review are impacted by race.”⁵¹ Add to this gender and institutional position and you will find “the game is stacked against people who are of diverse races, classes, genders, and titles, and curricula.”⁵²

49. DEO, *supra* note 5, at 89.

50. Meera E. Deo, *Intersectional Barriers to Tenure*, 51 U.C. DAVIS L. REV. 997, 1020–21(2018).

51. Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh My!): Behind the Curtains of the Law Professor’s Search for Meaning*, 50 LOY. U. CHI. L.J. 327, 342 (2018).

52. *Id.* at 356 (emphasis omitted).

B. The Legal Scholarship Hegemony

Legal scholarship is subject to an epistemological hierarchy that often devalues the scholarly contributions of WoC. “[N]ormative legal scholarship, the traditional format for law review articles, tends to be valued above identity-based work,” much to the detriment of numerous WoC scholars researching the “interaction of law with race, gender, sexual orientation, socioeconomic status, and other identity-related areas.”⁵³ These hegemonies are then replicated in commercial research databases and other tools, further devaluing the scholarly contributions of WoC. As illustrated in greater detail below, scholars writing at the intersection of law and identity or articles committed to law reform are often de-prioritized by legal search databases. Although presented often as “neutral,” legal research tools—namely, commercial legal databases—in fact “reflect dominant societal interests along lines of class, race, gender, Indigenous status, and so forth—i.e., or the fundamental values of white patriarchal capitalism.”⁵⁴ These biases exist because publishers, editors, and librarians structured the information in a manner more “economically, politically, and/or personally expedient or essential.”⁵⁵ This structural bias is then recreated and reinforced by students mistakenly equating the number of “positive” results or correlation with West Headnotes as evidence of a comprehensive search.⁵⁶ Additionally, new, novel, and radical ideas championed by WoC are often pushed lower in search results, which favor more centrist and established positions.

To better illustrate this scenario, consider a junior WoC scholar writing in an emerging area of the law. Computer search results are often unhelpful when assessing or promoting new ideas.⁵⁷ New terms or concepts may lead to fewer “hits” in a traditional search engine.⁵⁸ This in

53. DEO, *supra* note 5, at 89.

54. Nicholas Stump, *Critical Legal Research and Contemporary Crises: Climate Change, COVID-19, and the Mass Black Lives Matter Uprising*, UNBOUND: HARV. J. LEGAL LEFT (forthcoming 2021) (manuscript at 4), <https://ssrn.com/abstract=3689064>.

55. Jill Anne Farmer, *A Poststructuralist Analysis of the Legal Research Process*, 85 L. LIBR. J. 391, 402 (1993).

56. See Nicholas Mignanelli, *Critical Legal Research: Who Needs It?*, 112 LAW LIBR. J. 327, 338 (2020). Note that *much* Critical Legal Research work has focused on the homogenizing influence of the West digest and topic and key number system. Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 LAW LIBR. J. 307, 309–10 (2007).

57. Delgado & Stefancic, *supra* note 56, at 318, 324.

58. *Id.* at 324.

turn can make the article or concept appear less valid than a heavily-cited, “traditional” perspective rising to the top of the search results.⁵⁹ Additionally, students often erroneously assume the first results are the “right results” without questioning the gaps or limitations of the system. CLR tells students to dig deeper and utilize different processes to find the “right” scholarship for their research objectives.⁶⁰ After all, “a computer is good at showing you what is” but “cannot show you what might be.”⁶¹ This negative impact is also present for scholars writing in interdisciplinary fields or committed to using more equitable and respectful language.⁶²

C. *The Politics of Citation*

Within the academy, we have been both hyper-visible and invisible. We are hyper-visible every time we are called to serve on 50 million committees and render our services constantly and without protest . . . We are invisible in that our ideas are often stolen, appropriated, and misused at our expense.

—Professor Christen Smith⁶³

In 2017, Professor Christen A. Smith created “Cite Black Women” to “promote critical dialogue about the erasure of [B]lack women from mainstream citational practices in academic spaces, public discourse, and the everyday.”⁶⁴ The movement was galvanized by Professor Smith’s own experience of erasure in 2017 when another scholar co-opted Professor Smith’s work without attribution both in their own published work and in a presentation at a professional conference.

59. Mignanelli, *supra* note 56, at 338–40. See generally Nicholas F. Stump, *Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia*, 23 AM. U. J. GENDER, SOC. POL’Y & L. 573 (2015).

60. See Stump, *supra* note 59, at 619–20.

61. Delgado & Stefancic, *supra* note 56, at 328.

62. For example, more of well-cited articles use the term “Ex-felon” or “Ex-Offender” over the term “Returning Citizen” in reference to formerly incarcerated individuals.

63. Cite Black Women, *We Are the Cite Black Women Collective*, SOUNDCLOUD, at 2:22 (2019), <https://soundcloud.com/user-211649525/season-1-episode-0-we-are-the-cite-black-women-collective>.

64. *Id.* at 3:20.

When I saw the words that I had painstakingly labored over projected onto the screen with no reference to or acknowledgement of the birthing process I went through to produce them—and as a note I used to wake up at 3 o'clock every morning for the year after my youngest son was born to write my book—I was devastated and livid. I was deeply hurt by the brazen disregard for me and my work. But I was also incensed at the fact that there was really nothing I could do or say about it that would not be damaging to my academic career.⁶⁵

The Cite Black Women movement works to combat erasure and challenge epistemological hierarchies that have devalued and silenced the intellectual contributions of Black women. Cite Black Women centers the voices and intellectual contributions of Black women within academia, and in doing so, forces critical reflection regarding “who academic and journalistic institutions consider to be contributors to the landscape of intellectual ideas.”⁶⁶ Cite Black Women “engage[s] in a radical praxis of citation”—framing citation as respect and encouraging other academics to critically reflect on whether they incorporate Black women in their own citation and teaching practices.⁶⁷

Recognizing and valuing the contributions of Black women in the intellectual cannon is vital to creating a just society. The nature of Black women’s subordination along multiple sites of oppression⁶⁸—race, gender, class, etc.—means the liberation of Black women is inherently intersectional and therefore works “toward building a stronger movement for women’s liberation that represents the interests of *all* women.”⁶⁹ Thus, the contributions of Black women in the academy,

65. Cite Black Women, *Centering and Celebrating Black Women in Sociology*, SOUNDCLOUD, at 12:56 (Aug. 19, 2020), <https://soundcloud.com/user-211649525/s1e9-centering-and-celebrating>.

66. Annette Joseph-Gabriel, *#Citeblackwomen: Reshaping the Practice of Citation in the Digital Sphere*, CITE BLACK WOMEN (Jan. 3, 2019), <https://www.citeblackwomenscollective.org/our-blog/citeblackwomen-reshaping-the-practice-of-citation-in-the-digital-sphere-annette-joseph-gabriel>.

67. CITE BLACK WOMEN, <https://www.citeblackwomenscollective.org/> (last visited Apr. 4, 2021).

68. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140.

69. Sharon Smith, *Black Feminism and Intersectionality*, 91 INT’L SOCIALIST REV. (Winter 2013–14), <https://isreview.org/issue/91/black-feminism-and-intersectionality>.

public discourse, and activism should be seen, heard, read, valued, and CITED.

We can and should apply the guiding principles of the Cite Black Women movement to all WoC within the legal academy. Far too many WoC scholars in this sector have experienced devaluation and even erasure of their scholarly contributions. For us, law review submission season means our Twitter feeds are rife with Social Science Research Network (“SSRN”) links and congratulatory messages, with occasional “buck-up” notes for those still waiting on placements. Meanwhile, our direct messages and groups chats are full of a more infuriating and tragic occurrence—namely other WoC expressing frustrations at failing to be cited and seeking advice on next steps.

Sometimes the error appears innocuous but still has deleterious effects on the WoC scholar. Another scholar writes a paper that builds on ideas or arguments made in a WoC’s earlier piece. This new article places well but completely fails to cite the WoC. The previously written article was never uncovered by a preemption check conducted by journal staff, or the author’s dutiful research assistant during his summer research. Now the new article is out in the twitterverse getting likes and SSRN downloads by the dozens—or worse, it may even be published. There is no benefit and no attribution to the WoC who certainly holds some claim in the intellectual chain of title. Of course, there are more egregious and disturbing examples, where another scholar has knowingly engaged in academic erasure. Perhaps the WoC’s paper was presented at a faculty workshop or featured in a reading list or subject-specific index. Do not believe me? Ask a WoC at your institution whether she or someone in her network has experienced this academic disrespect. Her answers may astound you.

The only thing more depressing than the act of erasure is the lack of accountability by infringing authors. Many WoC have attempted frank and honest conversations with other academics only to be rebuffed or dismissed. The outcome of these discussions is entirely dependent on the constitution and integrity of the other scholar. Some WoC are awarded attribution in the eleventh hour, prior to publication or even in a post-publication acknowledgement. Some WoC have resorted to legal action, asserting their copyright and using cease and desist letters to force the matter to a meaningful resolution. Still, many more WoC are forced to live with the infuriating knowledge that their work has been used, and despite their best efforts, the offending author will not rectify the error. I would be remiss if I failed to emphasize that the erasure of WoC is an

equal opportunity offense. The stories shared by WoC academics in our support circles include incidents where male scholars of color, white women scholars, and even other WoC scholars have engaged in the damaging practice of intellectual theft and erasure. As Professor Wendy Greene once said “Skinfolk are not Kinfolk.”⁷⁰

The consequences for WoC are both professionally and personally devastating as the combination of structural barriers devalues our intellectual contributions and threatens our jobs. Perhaps most galling, the legal academy—as an institution and as individual callous academics—is complicit in silencing WoC. It erases our voices by erasing our very words. As WoC, we jealously guard the small cache of hours reserved for our monthly writing. This pathetically small allotment is scraped together from spare moments—between care-taking responsibilities; scheduled around class preparation or photo shoots for university marketing materials designed to showcase the very few WoC on faculty; squeezed in between official service obligations and unofficial ones, the latter being both time consuming and emotionally depleting as we work to support vulnerable students. These hours come at great personal cost, a burden borne by individual WoC, but also by our families. To then have that work uncredited and erased is personally demoralizing.

D. A Path Forward: Radical Citation Practice and Critical Legal Research

The central tenet of the radical citation practice espoused by the Cite Black Women movement is incorporating the intellectual contributions of Black women into scholarship, research, teaching, and public discourse. As teachers, scholars, and administrators, we can explore opportunities to apply radical citation practice within the legal academy and support the work of all WoC. We can use radical citation practice to combat inaccurate narratives surrounding scholarly output and productivity for WoC by amplifying our existing work. Intentionally incorporating WoC into our work, syllabi, and research also counters hegemonic norms that devalue our contributions and even erase our work

70. Professor Greene made this comment during the 2020 Association of American Law Schools Workshop for Pretenured Law School Teachers of Color on January 4, 2020. See ASS'N AM. L. SCHS., 2020 ANNUAL MEETING: PILLARS OF DEMOCRACY, LAW, REPRESENTATION, & KNOWLEDGE 61 (2020), https://am.aals.org/wp-content/uploads/sites/4/2020/01/am2020_mainProgram-1.pdf.

from the academic cannon. I urge both scholars and law schools to implement radical citation practice by taking two initial steps. First, individual law professors can engage in radical citation in our own scholarship and in the classroom. Second, law schools can champion structural solutions that properly amplify and credit the scholarly contributions of WoC.

In the words of Dr. Patricia Collins, “another pattern of suppression lies in paying lip service to the need for diversity, but changing little about one’s own practice.”⁷¹ To prevent tokenism and erasure, individual law professors must engage in radical citation practice in our scholarship, teaching, and advocacy efforts. The brilliant Professor Renee Hatcher has always encouraged those of us in her circle to cite at least five WoC in everything we write—be it long-form law review article or blog post. As professors, we should extend this principal beyond our own individual writing and editing processes, training our research assistants to think critically about diversity in their own research process. This provides an important opportunity for discussions with law students on the structural barriers and intellectual erasure of WoC, training students to be more thoughtful researchers now and always. We must encourage students to critically examine whom they are including and excluding in their own background research, whether they are relying too heavily on online research, whether they are incorporating any tailored or targeted indexes, and—most importantly—why they are making these choices. We can bring this same mindset to our classes as we design our syllabi and reading lists. As Professors and curators of knowledge, who are we recognizing as meritorious contributors to the academic cannon? What perspectives and voices are we amplifying? Conversely, who are we excluding, muting, or erasing, and why?

In addition to the actions of individual faculty, law schools need to pursue structural solutions to promote radical citation practice and combat the erasure of WoC. One such solution is for law schools to elevate and amplify the existing scholarship of WoC and other underrepresented faculty by embracing Critical Legal Research (“CLR”) in their curriculum. CLR works to counteract the existing biases in legal research methodologies and technologies that can reinforce hegemonic norms⁷²

71. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 6 (2d ed. 2000).

72. CLR is defined as “several distinct approaches to applying the insights of critical legal theory to the legal research process” and an attempt to “expose how external power

and thus devalue the contributions of underrepresented faculty.⁷³ Of equal note, CLR also supports the larger scholarly objectives of underrepresented faculty—advocating for law reform and broader social change.⁷⁴

CLR can elevate the work of scholars of color by teaching students to think—and thus structure their research—in a more thoughtful and comprehensive manner.⁷⁵ CLR frameworks help students explore and evaluate underlying arguments rather than rely on skewed search results that reinforce traditional hegemonies, often to the detriment of faculty of color. CLR also supports anti-racist and intersectional efforts by elevating critical thinking and uncovering opportunities for law reform and broader social change. Law faculty often focus their academic research in areas ripe for law reform, and faculty of color are no exception. CLR scholars, including Richard Delgado and Jean Stefancic, have noted the chilling effect of traditional search tools on promoting law reform.⁷⁶

By training students in CLR, we dramatically increase the number of judges, lawyers, and legal academics that can access the scholarship of underrepresented faculty. All three categories rely on student law clerks or research assistants to help assemble background research and information. Increasing access to more comprehensive research and intentionally including the voices of underrepresented groups is important in combatting hegemonic forces and promoting law reform. Moreover, by training students early in CLR, we ensure future members of the bar, bench, legal academy, and political class are committed to pursuing justice through law and policy.⁷⁷ Teaching our students to think and research critically will have long-term positive impact in combatting structural injustice, the very objective of anti-racist and intersectional

structures shape the organization of legal information and embed biases in the tools of legal information retrieval.” Mignanelli, *supra* note 56, at 327–28; Nicholas Mignanelli, *Legal Research and Its Discontents: A Bibliographic Essay on Critical Approaches to Legal Research*, 113 *LAW LIBR. J.* (forthcoming 2021) (manuscript at 41–42).

73. DEO, *supra* note 5, at 89.

74. 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, 216–25 (1989).

75. “[T]he tendency of AI-powered legal research tools to conceal the research process stifles analogical reasoning and, thus, creativity.” Mignanelli, *supra* note 56, at 342.

76. Delgado & Stefancic, *supra* note 56, at 325–28.

77. The Clinical Program at American University’s Washington College of Law is pursuing the use of CLR in training clinic students with this very aim in mind. The program is working closely with libraries, including outside experts in CLR like Nicholas Mignanelli.

ideologies.⁷⁸ From a practical perspective, CLR is not a burdensome curricular innovation. For example, legal research professors at Yale Law School,⁷⁹ CUNY Law School,⁸⁰ and the University of Miami⁸¹ already encourage the integration of CLR into their legal research courses.

IV. CONCLUSION

We need a radical reframing of the values espoused within the law and the legal academy to usher in much-needed cultural change and structural reforms. First, institutions must acknowledge that diversity and equity are intrinsically important and valuable. This requires dismantling the predominant practice of assigning value based on the preferences of the white, elite, male majority.⁸² The failure of “majority” values in securing equality have been repeatedly demonstrated throughout American history, perhaps most famously by Professor Derrick Bell. In his Theory of Interest Convergence, Professor Bell deftly outlines the practical dangers of viewing racial equality as a commodity for white culture rather than a right demanded and due to Black people.⁸³ The rights of Black people, when tied to the benefits for white populations, inevitably fall short of equality.⁸⁴

78. “Praxis is therefore crucial to CLR, which involves explorations of theory-applications in real-world practices.” Stump, *supra* note 54 (manuscript at 4).

79. See generally Julie Krishnaswami, *Critical Information Theory: A New Foundation for Teaching Regulatory Research*, in THE BOULDER STATEMENTS ON LEGAL RESEARCH EDUCATION: THE INTERSECTION OF INTELLECTUAL AND PRACTICAL SKILLS 175 (Susan Nevelow Mart ed., 2014).

80. See Yasmin Sokkar Harker, *Legal Information for Social Justice: The New ACRL Framework and Critical Information Literacy*, 2 LEGAL INFO. REV. 19, 19–20 (2016–17).

81. Professor Nicholas Mignanelli created a “(Re)Searching Social Justice” course designed to support students interested in movement lawyering & social justice. Nicholas Mignanelli, *The Case for a Social Justice Research Course?*, RIPS L. LIBR. BLOG (Aug. 31, 2020), <https://ripslawlibrarian.wordpress.com/2020/08/31/the-case-for-a-social-justice-research-course/>.

82. COLLINS, *supra* note 71, at 5 (noting the “web of economy, polity, and ideology” used to “suppress the ideas of Black women intellectuals and to protect elite White male interests and worldviews”).

83. See Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 522–28 (1980). In his Theory of Interest Convergence, Professor Bell uses a historical lens to demonstrate that the civil rights of Black Americans have only advanced when these positions converge with the interests of the white power structure. *Id.* at 523. Thus, equality and civil rights have been stymied because they are restricted by the preferences and interests of racial hegemonic forces. *Id.* at 529–33.

84. See *id.* at 523, 525.

Professor Bell's criticism remains painfully relevant in the modern era.⁸⁵ The hegemonic forces that create and perpetuate the dominance of certain groups—namely white men with class privilege⁸⁶—have evolved along with global capital markets. While, at best, outright racism and gender discrimination are viewed with disfavor, diversity is largely valued only as a commodity for consumption.⁸⁷ In her seminal article on multicultural lawyering, Professor Carwina Weng emphasizes the dangers of valuing diversity as a marketable good helping “white students compete in a global marketplace rather than because it helps to redress past and ongoing discrimination.”⁸⁸ Among the dangers that stem from the commodity approach is a failure to redress the systemic issues that create structural injustice.⁸⁹ When we fail to value diversity, we tacitly admit that equality is not worth protecting or pursuing unless it also benefits the majority. This analysis extends to race, gender, class, sexual orientation, and the intersection of these various identities.⁹⁰

In order to usher in these much-needed changes in the legal academy, law schools must embrace anti-racism and intersectionality. Institutions must clearly establish that diversity and equity are inherently valuable and necessary for a just society. Diversity should not be framed as desirable because it meets the aims of the majority or provides business or branding benefits to the institution. Law schools must also work to implement their values, scrutinizing and revising their policies to comport with these central tenets. Common structural barriers that inhibit the success of diverse faculty, staff, and students should be removed and replaced—not simply modified or justified, as has long been the practice of law schools. This requires a commitment to both long-term reforms and the incremental measures discussed in this essay.

85. See Hoag, *supra* note 4.

86. COLLINS, *supra* note 71, at 5.

87. See Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 370 (2005).

88. *Id.*

89. *Id.* at 370–71.

90. DELGADO & JEAN STEFANCIC, *supra* note 13, at 58–59.