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Critical Collections: Bringing A Critical Eye to Law Library Collection Development

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ABSTRACT

Law schools throughout the United States are considering strategies to embed the concepts of antiracism, diversity, equity, and inclusion into legal education. How does the work of their law libraries intersect with this effort? One potential point of intersection is through law library collection development. This article offers an overview of strategies to both curate and bolster representation of diverse voices in an academic law library collection using the theories of critical legal information literacy and epistemic injustice.

You can tell a great deal about a library by looking at its collection, particularly what is prioritized and what voices are included. Relatedly, law professors and students are engaging throughout the U.S. in a long-term effort to embed antiracism, diversity, equity, and inclusion into legal education. The collection of their library can assist in this effort toward building not only a more just and equitable legal academy but society overall. This article will offer an overview of some strategies to both acquire, curate, and bolster representation of diverse voices in an academic law library collection.

G. Edward Evans and Stacey Greenwell write on collection development in the text *Academic Librarianship*:

Although good public services are essential, collections are the foundation of academic library services. We refer to collections broadly to include not only physical materials, such as books, journals, government publications, and audiovisual and unique special collections materials, but also the myriad types of online collections libraries organize and disseminate, such as journals, databases, digitized special collections, and data repositories. In a real sense, higher education is built on the knowledge of humankind contained within these collections, and almost all academics acknowledge the importance of the intellectual content of library collections.¹

Evans and Greenwell identify several distinct phases as particularly relevant to collection development, including analyzing user needs,

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¹G. Edward Evans & Stacey Greenwell, *Academic Librarianship* 193 (2018).

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collection development policies, standards for assessing the collection, fiscal concerns, and more.²

Law libraries have special considerations for their own collection development.³ Law libraries often collect primary law sources and secondary content (encyclopedias, treatises, hornbooks, etc.). When collecting these types of materials, the library must consider what proportion of their collection budget and physical space to allocate to print copies of resources versus collecting this content online. Furthermore, the patron population an academic law library caters to can also be quite diverse. For example, in addition to students and faculty, legal professionals and the general public may utilize an academic law library to meet their legal research needs. From a *pro se* litigant coming in for legal information on their divorce to a law professor trying to do an empirical analysis using law and economic data, the law library is there to hopefully assist. The law library collection, however, is not only made up of cases and statutes. Rather, law library collections help scholars and practitioners analyze and discuss complex policy and legal realities. One of those realities is racism and structural inequality. Dean Danielle Conway of Penn State Dickinson Law School explains that structural racism is the concept whereby policies, norms, and practices reinforce inequality.⁴ Dean Conway lays out what the legal academy should do to further the goals of antiracism:

To pursue antiracism in legal education means to first acknowledge race, social reality, racialized social structures, and racial ideology. Next, antiracism requires learning about the forms of racism that are established to rationalize, explain, or justify the status quo. Finally, to practice antiracism means to act in ways that challenge and contest systemic racial inequality. The events of 2020 have demonstrated the complicity of law in propping up the white supremacist patriarchy, structural racism, subjugation, oppression, and inequality.⁵

This work is not only relevant to law professors and law students, but also to the information professionals who support their work in the library. In my own work as a reference librarian who has “inclusivity initiatives” as a part of my portfolio, I aim to examine various strategies to elevate diverse voices. This can be accomplished in a number of areas, including instruction, outreach, and technical services—but also in collection development. Two concepts that have assisted my understanding of how to

²*Id.* at 198.

³Jacob Sayward, *Collection Development*, in INTRODUCTION TO LAW LIBRARIANSHIP ch. 11 (Zanada Joyner & Casandra M. Laskowski eds, 2021).

⁴See Danielle M. Conway, *Antiracist Lawyering in Practice Begins with the Practice of Teaching and Learning Antiracism in Law School*, 2022 UTAH L. REV. 723. DOI: 10.26054/0d-rq7x-pfw5

⁵*Id.* at 729.

assess collections for inclusivity have been critical legal information literacy and epistemicide.

Critical legal information literacy can be defined as analyzing the context in which information was created, considering who it benefits, and applying the insights of critical theory broadly to the assessment of information.⁶ Applying this concept to collection development, one can begin by assessing where gaps exist in the collection. To identify these gaps, the library collection development team could first analyze the state of the current collection at their institution and compare it with bibliographies that are inclusive lists of materials. This could mean tracking specific book awards for scholarly monographs on inclusive scholarship or conducting outreach to patrons to solicit specific feedback in this area.⁷

Legal researchers who are interested in practicing critical legal research need to be able to analyze a legal issue and ascertain the full context or story of the problem they are researching. This might necessitate the legal researcher to read widely and work toward a concept known as citation justice—that is, citation practice which does not overlook minorities and instead engages with all scholarship on a topic.⁸ Scholars who emphasize citation justice are attempting to confront citation inequities where, for example, women of color are not cited for their work.⁹ A law librarian could do quite a bit to help with this, from conducting information literacy workshops to engaging in ethical citation practice themselves. But the information-literate law librarian who is doing the collection development at the law library should also be asking themselves: How is my library's collection helping advance the goals of citation equity? Faculty and students have more difficulty accessing materials that their library does not collect. Therefore, it is important to consider citational diversity and justice in the development of the law library collection so that our patrons can do their work.¹⁰

⁶See Latia Ward, *A Librarian's Experience Teaching Critical Information Literacy*, 41 *Legal Ref. Servs. Q.* 52 (2022). DOI: 10.1080/0270319X.2022.2089808. See also Yasmin Sokkar Harker, *Critical Legal Information Literacy: Legal Information as a Social Construct*, in *Information Literacy and Social Justice: Radical Professional Praxis* 205 & 206 (Lua Gregory & Shana Higgins eds, 2013).

⁷See *Diversity, Equity, Inclusion, and Belonging in Library Collections Toolkit—NELLCO Law Library Consortium, Inc.*, <https://www.nellco.org/page/deibtoolkit> (last visited Feb 25, 2023).

⁸See Diana Kwon, *The Rise of Citational Justice: How Scholars Are Making References Fairer*, 603 *Nature* 568 (Mar. 2022).

⁹See generally <https://www.citeblackwomenscollective.org/> (last visited Nov 15, 2022).

¹⁰Citational justice is defined as the "act of citing authors based on identity to uplift marginalized voices with the knowledge that citation is used as a form of power in a patriarchal society based on white supremacy." See Shaunda Vasudev, *Research Guides: Diversity, Equity, and Inclusion in Research: Home*, <https://lib.guides.umd.edu/ResearchEquity/home> (last visited Feb 25, 2023). See also Barbara Garcia-Powell & Fred Bonner, *#BlackCitesMatter: Foregrounding a Citational Justice Movement*, *Diverse: Issues In Higher Education* (2022), <https://www.diverseeducation.com/opinion/article/15297041/blackcitesmatter-foregrounding-a-citational-justice-movement> (last visited Feb 25, 2023).

The second useful framework for assessing information gaps is epistemicide and epistemic injustice. Epistemicide is defined as “the killing, silencing, annihilation, or devaluing of a way of knowing.”¹¹ When epistemicide impacts individuals or a group, it can be understood as an epistemic injustice. Epistemic injustice is defined as “the type of harm done that impedes recognizing a person’s capacity as someone who is able to know or have knowledge on their own.”¹² One illustration of an epistemic injustice is from Kathryn M. Stanchi’s article on how legal writing pedagogy can marginalize outsider perspectives.¹³ Stanchi states:

Legal writing pedagogy contributes to the muting of outsider voices in the law because it teaches law as a language, and thereby both reflects and perpetuates the biases in legal language and reasoning. Indeed, because of the degree of cultural and ideological bias contained in the language of law, legal writing’s effectiveness in teaching that language is directly proportional to its effectiveness in muting outsider voices: the better legal writing is at teaching the language of law, the more effective it is at muting those individuals whose voices are not included in the language of the law, and the more effective legal writing is at ensuring that those voices will continue not to be heard in the legal context. In this way, legal writing pedagogy results in the consequences predicted by muting theory: individual voices of subdominant/outsider group members are silenced or devalued, the creation of subdominant/outsider models or languages are suppressed and discouraged, and if created, are devalued. Therefore, the experiences and realities of subdominant/outsider groups are rendered invisible.¹⁴

Helping students understand epistemic harms is helpful in the sense that it can inform how an epistemic intervention could be created to address the issue. For example, historically excluded students who are given no vehicle to critique the law in their legal writing might be experiencing a curricular injustice. As law professors aim to avoid these types of harms going forward, they have attempted to develop curricular interventions.¹⁵ Taking contracts as an example, say a professor is trying to incorporate anti-racism into their contracts course. How would they go about doing that? One potential resource is Professor Chaumtoli Huq’s

¹¹See Beth Patin, et al., *Interrupting Epistemicide: A Practical Framework for Naming, Identifying, and Ending epistemic Injustice In The Information Professions*, 72 J Assoc Inf Sci Technol 1,306 (2021).

¹²*Id.* at 1,307.

¹³See Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 Dickinson L. Rev. 7 (1998).

¹⁴*Id.* at 20.

¹⁵See generally INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION & EQUITY IN THE LAW SCHOOL CLASSROOM (Nicole Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppens, Anna Russell & Genevieve Tung, eds, 2021).

article on incorporating racial capitalism into first-year contracts.¹⁶ Taking that example to a further extension, what if a professor wanted to incorporate a feminist legal-studies perspective in their criminal law course? Or focus on queer theory during their constitutional law class? Thinking through these types of scenarios is important for law librarians, because many law schools have faculty and students researching the law from an intersectional and critical perspective. What materials exist to support them in this scholarship in your law library's collection? What can be done to ensure that those materials have epistemic agency, where they are promoted and known about by your patrons?¹⁷

The example below is a walkthrough of a particular current-events context, potential epistemic injustice and critical legal information literacy-related considerations, a potential impact on the law library collection, and strategies to maximize patron utilization of the material:

EXAMPLE

Context: During her senate confirmation hearing, Justice Ketanji Brown Jackson evoked Judge Constance Baker Motley, stating that she “proudly stand[s] on Judge Motley’s shoulders.” Judge Motley was nominated to the federal judiciary by President Lyndon B. Johnson in 1966 and became the first African American woman federal judge.¹⁸

Epistemic injustice considerations: Only 2% of U.S. federal judges have been African American women in the history of the country.¹⁹ This could be thought of as a participatory injustice where structural racism and misogyny have prevented qualified women of color from serving as federal judges over time.

Critical legal information literacy considerations: Patrons who want to research race and the law should have access to the appropriate sources to conduct a thorough analysis of the historical context.

Law library collection considerations: The law library should consider procuring and promoting a new biography on Motley titled *Civil Rights Queen: Constance*

¹⁶See Chaumtoli Huq, *Integrating a Racial Capitalism Framework Into First-Year Contracts: A Pathway to Anti-Capitalist Lawyering*, 35 J. Civ. R. & Econ. Dev. 181 (2022).

¹⁷Epistemic agency is discussed in *Supra* note 10 Patin at 1,307 and refers to an individual's ability to advance their own knowledge or understanding. This question of finding resources at the intersection of traditional law school classes and various offshoots of critical theory inspired me to create a critical legal information literacy resource finder at Cornell Law Library. See <https://guides.library.cornell.edu/criticalpedagogy>.

¹⁸Bry'onna Mention, *Celebrating Constance Baker Motley on Ketanji Brown Jackson's First Day On The Supreme Court*, *Essence*, <https://www.essence.com/news/constance-baker-motley-kbj-scotus/> (last visited Nov. 15, 2022).

¹⁹John Gramlich, *Black Women Account for a Small Fraction of the Federal Judges Who Have Served to Date* (Feb. 2, 2022), <https://www.pewresearch.org/fact-tank/2022/02/02/black-women-account-for-a-small-fraction-of-the-federal-judges-who-have-served-to-date/>.

Baker Motley and the Struggle for Equality by Tomiko Brown-Nagin. While collecting the text would not reverse the participatory injustice that has occurred over time, it can prevent a curricular injustice from occurring where this history is not discussed or researched.

Strategies to maximize the text's epistemic agency in the collection: Recommend the title to patrons whose research interest cover race, gender, and federal courts. Consider hosting a book-club discussion in future months on the text. Consider adding to race and the law or feminist legal studies-oriented library resource guides. Consider having a library display to highlight the text.

The above example is one way to potentially sketch out a thought process on how to create epistemic interventions through the law library collection. This could be done on a regular basis and with a myriad of topic areas to ensure a wide scope of issues are being considered when assessing how representative a collection is. There are many other ways to seek patron feedback and assess how your collection is or is not meeting their needs. For example, when acquiring and curating materials for a specific community of users, what outreach efforts will help ensure we are collecting the right materials? And how are they involved in the utilization and promotion of these materials? Perhaps student affinity groups could curate their own library displays in partnership with the library on inclusive topics. There are no shortage of unique and creative ways to conduct outreach in this space. While no school is ever going to have a perfect collection, by assessing who our patrons are, what their work in the diversity, equity, and inclusion space looks like, and thinking through collaboratively what their needs are to make their scholarship possible, we can help ensure our collections remain critical to the success of any law school.