



1-1-2005

Three Jeromes: A Tribute to Professor Jerome McCristal Culp, Jr.

Adrienne D. Davis

Follow this and additional works at: <http://digitalcommons.law.villanova.edu/vlr>



Part of the [Law and Society Commons](#)

Recommended Citation

Adrienne D. Davis, *Three Jeromes: A Tribute to Professor Jerome McCristal Culp, Jr.*, 50 Vill. L. Rev. 777 (2005).
Available at: <http://digitalcommons.law.villanova.edu/vlr/vol50/iss4/3>

This Tribute is brought to you for free and open access by Villanova University School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized administrator of Villanova University School of Law Digital Repository. For more information, please contact Benjamin.Carlson@law.villanova.edu.

THREE JEROMES: A TRIBUTE TO PROFESSOR
JEROME MCCRISTAL CULP, JR.

ADRIENNE D. DAVIS*

DRIVING to Philadelphia from North Carolina for this conference, I was emotionally wrung out by the thought of these remarks. This was a terrible semester for us in North Carolina, losing two guiding lights in distinct yet complementary constellations in our profession, Professors Jerome Culp and Marilyn Yarbrough. Yet, as I drove, reflecting on Jerome's work, I in fact found myself emotionally sustained. Initially, I heard the compositional voice formulating my comments, "There was the early Jerome, then there was Jerome's work on identity . . ." But then, I found myself mentally correcting my own verb tenses from past to present. And I was immensely comforted as I mused on the enormous stack of his articles I had left on my desk, realizing Jerome will always be with us through his passion, his politics, and his intellectual power.

Whatever our perspectival and methodological differences, one thing we can all agree on about Jerome as a scholar: the man was prolific. He published over twenty articles, plus book chapters and a book, all penned with eloquence and what we now recognize as quintessentially "Jeromesque" passion. He published in major symposia as well as the most prestigious law reviews. For those who do not know Jerome's work as well, and for those of us who do but are still taking in the volume of it, I thought I would offer three snapshots of Jerome's writing career, hoping to capture some aspects of his intellectual and political trajectory through the academic solar system.

The first snapshot surprised me: there, in 1987, leading a symposium on law and economics and judicial decision-making in Duke's faculty-edited journal, *Law & Contemporary Problems*, is what I have come to think of as Economic Jerome. Jerome had done graduate work in economics and directed Duke's John M. Olin Program in Law and Economics. This was one of his first large-scale legal projects. Jerome wrote the foreword and also a piece entitled *Judex Economicus*, in which he argued an anti-instrumentalist vision of economics and law.¹ Caution, deference—this was not his *métier*. But nor was he arrogant or rude. Rather, with what came to be typical fervor, Jerome took on Judge Richard Posner from within the law and economics discipline, laying waste to unstated assumptions, economic and legal, of the Chicago School.² Two things stand out from this

* Reef C. Ivey II Professor of Law, University of North Carolina School of Law.

1. Jerome Culp, *Foreword: Economists on the Bench*, 50 *LAW & CONTEMP. PROBS.* 1 (1987); Jerome Culp, *Judex Economicus*, 50 *LAW & CONTEMP. PROBS.* 95 (1987).

2. As Jerome Culp noted:

early piece: first, that Jerome's unrelenting passion was already cognizable, even when he was a baby law professor. In addition, while many of us remember Jerome primarily as a leading scholar in critical race theory, a careful reading of his work, especially his symposium piece on the 1991 Civil Rights Act, reveals an ongoing concern with economic justice and, from his quantitative training and mastery of markets, a deftness with legal economic discourse.³ Although efficiency remains the holy grail of law and economics, Jerome's was a powerful voice in the chorus calling to incorporate other norms—including justice—into the discipline.

The second portrait of Jerome was more familiar to me. One that might be thought of as Jerome the Founding Father, or Elder of the Tribe, the Jerome who was an architect of two of the primary branches of critical race theory and, relatedly, black legal scholarship. Founding Father Jerome's work initially takes on the "voice" debates of the early nineties. In a stunning number of articles published between 1991 and 1993, Jerome tackles the still perplexing and divisive question of a voice of color in legal scholarship.⁴ By distinguishing a "black voice," which all blacks, from Justice Clarence Thomas to Thomas Sowell to Randall Kennedy (then at the center of the maelstrom), have, from a "black perspective," which embodies the justice concerns and cultural backgrounds of the majority of the black community, Jerome's articles move away from essentialist stereotypes to intelligent discussions of political commitments and communities.⁵ He also lays claim to a distinctively black tradition that shaped so much of our contemporary legal landscape, while consciously avoiding defaulting into

The strength of Posner's judicial perspective, indeed of all of law and economics models of judicial decisionmaking, is the simplicity of its assumptions. It is this simplicity which is most seductive to those jurists who are attempting to formulate a post-realist judicial tradition by adopting a law and economics approach. Posner's failure to understand his judicial role as regulator of a macroprocess is at the heart of the strength and weakness of his views and judicial opinions. He is likely to make assumptions about the judicial world which are not supported by known facts and to view his role as judge as simply one of a participant in a microeconomic system and not as regulator of macroeconomic judicial powers. Paradoxically, it is this assumption, that the judicial process should be viewed from a microeconomic perspective, that provides Posner with verifiable answers and confidence in asserting the superiority of wealth maximization rather than equity in his judicial decisionmaking.

Culp, *Judex Economicus*, *supra* note 1, at 100-01 (footnotes omitted); *see also* Culp, *Foreword*, *supra* note 1, at 12 (arguing that advocates of judicial economic reasoning may fail to provide "blueprint for costs" to make such reasoning meaningful).

3. Jerome McCristal Culp, Jr., *Neutrality, the Race Question, and the 1991 Civil Rights Act: The "Impossibility" of Permanent Reform*, 45 RUTGERS L. REV. 965 (1993) (arguing that judicial interpretation of Title VII would result in employment discrimination as permanent feature of national economic landscape).

4. *See infra* notes 5-9.

5. *See, e.g.*, Jerome McCristal Culp, Jr., *Voice, Perspective, Truth, and Justice: Race and the Mountain in the Legal Academy*, 38 LOY. L. REV. 61 (1992).

a black/white paradigm.⁶ In one exceptionally beautiful essay in the *Virginia Law Review*, Jerome discusses the varying racial role of autobiography, noting that “[t]here is a reason for this use of autobiography black writers. Black people feel the need to justify who they are and to describe where they come from as a part of the description of where they want to go.”⁷ In this essay, Jerome articulates “how to include humanistic concerns in legal discourse,” bravely using his own black, male body as example.⁸ In this and other work, Jerome conducts a sustained consideration of mainstream responses to black legal storytelling to expose the exclusionary politics underlying scholarly calls for neutrality and “a canon.”⁹

The second arc of Jerome’s star in critical race theory is his engagement with the state’s relationship to race: whether and to what extent the government has a generative or prohibitory role to play in racial identity and equality. He takes on in detail the doctrinal formations generated by Title VII in particular, but also, constitutional legal moments more generally, deconstructing them using a thick, finely ground racial lens. For instance, in his masterful account of the government stance towards race, *The Michael Jackson Pill*, he brings together several fictional black commentators in an imaginary setting of conferences and hearings to consider whether Massachusetts should compel people to take said pill, one that would make them white.¹⁰ He employs as his interlocutor Derrick Bell’s protagonist, Geneva Crenshaw, whom Jerome uses to interject gender into the conversations. This piece, published in 1994, also was one of his first

6. See, e.g., Jerome McCristal Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39 (1991).

7. Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 541 (1991) (footnote omitted); see also Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, “Blunders,” and Transformation in Outsider Narratives*, 82 VA. L. REV. 69 (1996) (exploring motivations and effects underlying resistance to black autobiography in legal scholarship).

8. Culp, *Autobiography*, *supra* note 7, at 544.

9. See also Jerome McCristal Culp, Jr., *Firing Legal Canons and Shooting Blanks: Finding a Neutral Way in the Law*, 10 ST. LOUIS U. PUB. L. REV. 185 (1991) (arguing importance of neutrality in post-realist world). “Efforts to establish canons that act like cannons are bound to failure. It is possible to require legal scholars to be consistent but not neutral.” *Id.* at 187; Jerome McCristal Culp, Jr., *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 DUKE L.J. 1095 (1992) (criticizing majority scholars for dismissing non-white scholarship and affirmative action in hiring without engaging or citing scholarship in dispute); Jerome McCristal Culp, Jr., *You Can Take Them to Water But You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, U. ILL. L. REV. 1021 (1992) (contrasting majority scholars’ reactions to books authored by two leading black legal scholars to demonstrate biases embedded in legal scholarship). Of particular note, Jerome offered a thoughtful response to Daniel Farber and Suzanna Sherry’s attacks on critical race theory, astonishing in their virulence. His reply suggested that collegial respect need not be sacrificed to rigorous engagement. Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637 (1999).

10. Jerome McCristal Culp, Jr., *The Michael Jackson Pill: Equality, Race, and Culture*, 92 MICH. L. REV. 2613 (1994).

to grapple in a sustained way with intersectionality and multiple oppressions, a topic to which he ultimately devoted significant thought and attention.

Bringing these two trajectories of writing about identity—"voice" and prohibitory versus generative visions of addressing race—into convergence is Jerome's commitment to expose the false promise and artificial pedigree of color blindness. Of critical race theorists, he was one of the most adept and unflinching in interrogating liberal discourses of race. His scholarship is replete with thoughtful readings of judicial opinions, scholarly articles, and key moments in political and popular culture. Exploring racial moments ranging from legal scholarship¹¹ to the anniversary of the *Brown* decision¹² to trials of the police officers who brutalized Rodney King¹³ to Woody Allen's movies,¹⁴ he deconstructs the equation of racial justice with color blindness¹⁵ and the growing unspeakability of racism in contemporary American culture.¹⁶

Most recently, and perhaps most intriguingly, a new, third, Jerome emerges, one whose primary interest is in the intersection of race with other forms of oppression and other intellectual formations, most notably Latino Critical Theory and Queer Theory. While this portrait was still very much one in progress when Jerome died, I am tempted to label it Jerome the Phoenix, for, unlike some of his cohort, who retired after the bitter identity wars of the nineties, or kept jousting with the same ghosts, Jerome moved forward, rising from the ashes of battles rigorously and elegantly fought, many but not all won, to take on new and necessary struggles. The dominant attribute of this portrait is the presence of others in the picture, and, in a testament to Jerome's generosity, in the foreground. Most notable among his collaborations, he and his intellectual comrade Bob Chang wrote several germinal pieces together, of particular note, *Nothing and Everything: Race, Romer & Gay/Lesbian/Bisexual Rights*, which brilliantly shows the architecture of Justice Harlan's dissent in *Plessy v. Ferguson* to demonstrate an emergent sexuality-blind rubric in *Romer v. Evans*.¹⁷ He also of-

11. For sources addressing the issue, see *supra* note 9.

12. See generally Jerome M. Culp, Jr., *Black People in White Face: Assimilation, Culture, and the Brown Case*, 36 WM. & MARY L. REV. 665 (1995).

13. See generally Jerome McCristal Culp, Jr., *Notes from California: Rodney King and the Race Question*, 70 DENV. U. L. REV. 199 (1993).

14. See generally Jerome McCristal Culp, Jr., *The Woody Allen Blues: "Identity Politics," Race, and the Law*, 51 FLA. L. REV. 511 (1999).

15. See generally Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162 (1994).

16. See Jerome McCristal Culp, Jr., *Water Buffalo and Diversity: Naming Names and Reclaiming the Racial Discourse*, 26 CONN. L. REV. 209 (1993).

17. See generally Robert S. Chang & Jerome McCristal Culp, Jr., *Nothing and Everything: Race, Romer, and (Gay/Lesbian/Bisexual) Rights*, 6 WM. & MARY BILL RTS. J. 229 (1997) (analyzing Court's decision as finding protections for homosexuals despite sexuality); see also Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485 (2002) (discussing effects of intersectionality and

ferred one of the most simultaneously self-reflective and incisive engagements generated by the troubling question of the role of black scholars in debates about the politics of race and Latino identity. In the *Seventh Aspect of Self-Hatred* he argued:

The seventh aspect of self-hatred is my description of society's support for people to reject our race, reject our sexual orientation, and reject our gender. This seventh aspect of self-hatred is a sister of the fear of opposing the status quo. . . . By getting racial minorities and sexual minorities to help enforce their own oppression through the seventh aspect of self-hatred, the cost of enforcing these oppressions are minimized, perhaps making possible what otherwise would be an unsupportable system.¹⁸

Jerome was rightly and righteously proud of his role in LatCrit, the cultural and the intellectual movement.¹⁹ He contributed to meetings and resulting conferences his immense academic prowess; he also nurtured the movement and took on many of its junior members as his personal protégés and mentees. His embrace of more nuanced and fluid notions of identity and community is reflected in the Yale conference he co-organized and subsequently published with Professors Angela Harris and Frank Valdes in *Crossroads, Directions, and a New Critical Race Theory*.²⁰

Reflected in each of these three Jeromes is the man who penned the words. I was struck by how the Jerome in all three portraits did not believe in sacred cows and shibboleths. Recountings of exchanges with his white colleagues, particularly at Duke, populated his work. Careful readings of these encounters demonstrates that Jerome took seriously the obligation to perform his politics within his own institution while simultaneously manifesting deep care and respect for his colleagues, in the end embracing a position of sustained critical tension, exhausting and yet fulfilling to him.²¹ He was generous to other scholars, even when subjecting their

effort of post-intersectionality scholars to advance practices of antistatutory activity); Robert S. Chang & Jerome M. Culp, Jr., *Business as Usual? Brown and the Continuing Conundrum of Race in America*, 2004 U. ILL. L. REV. 1181 (2004) (discussing lack of real strides with conquering racial disparity since *Brown v. Board of Education*).

18. Jerome McCristal Culp, Jr., *Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 FLA. L. REV. 425, 427-28 (2003).

19. See generally Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479 (1997).

20. CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002); see also Jerome M. Culp, Jr. et al., *Subject Unrest*, 55 STAN. L. REV. 2435 (2003) (in replying to symposium featuring reviews of their book, distinguishing critical race theory and liberal anti-discrimination project through three uses of "the subject": discrimination versus subordination as subject of analysis; objective versus subjective accounts of world; and extent to which identity itself is seen as subject of analysis, i.e., production of subject).

21. See, e.g., Jerome McCristal Culp, Jr., *Diversity, Multiculturalism, and Affirmative Action: Duke, the NAS, and Apartheid*, 41 DEPAUL L. REV. 1141 (1992).

work to unrelenting critique. Jerome remained remarkably open to interrogating and rethinking old positions, even if it meant giving up scholarly privilege or center stage.

There is a fuzzier snapshot out there on the horizon, too, one slowly coming into focus for me. Taking seriously his own injunctions to autobiography, Jerome was tackling new genres in writing and scholarship to consider love, intimacy, and transgression. I did not fully understand the thrust of his new work at the time. But now, I think, I do. As I look back, Jerome and I spent hours discussing all things wonderful and strange about our lives: the passion and pain of our work; the girls on *Sex & the City*; the boys on *Queer Eye for the Straight Guy*; how our dear families of origin grounded us in a rich black tradition of love and laughter and support; how our families of choice had encouraged us to grow spiritually and culturally; his hopes and dreams for his nieces and nephews and Rachel Harris who he loved like a daughter; the wonders and irritations of teaching and students who both challenged and enriched us; our close yet tumultuous relationships with our colleagues and the profession. As I thought about this mishmash of stuff, this melee of seemingly random thoughts and dishing, I realized, finally, that Jerome talked incessantly about love. He never gave up on the power of love in its many incarnations: not just romantic fairy tales; but also political passion; and Christ-like agape; and that loving people and institutions does not always mean making them like you, sometimes it means loving them enough to help them be better. Because I realize now that Jerome's new work reflected his belief in the transformative power of love. Walter Dellinger concluded his remarks at Jerome's memorial service at Duke with poignancy: "Oh, how he fought." I would add, "Oh, how he loved."

Which brings me to my final thought. An appropriate place to end is to say that Jerome did not isolate himself within an ivory tower. Although one of our most prolific writers, Jerome would be the first to urge us not to privilege written texts as the sine qua non of academic success. I suspect he would be at least as proud looking around this room with so many of his protégés in attendance and thriving as he would be of the stack of his articles on my desk. Jerome took his obligations as mentor incredibly seriously. I would see him at conferences and critical race theory events, typically surrounded by folks: he was either listening intently; telling a great story; giving soft-spoken yet incredibly wise counsel; or laughing that big belly-laugh. Like so many of us who started teaching in the early nineties, I was always drawn to Jerome as a guiding star—he was an immensely comforting person. And he left a big Jerome-size hole in the wall of an exclusive, elitist legal academy through which many of us followed more easily. He modeled powerful and incisive intellect and humility; pull no punches politics and incredible graciousness and compassion; leadership for fledgling intellectual movements and an at times troubled profession; and an almost egoless generosity. He was comforting, he listened, he took us seriously, he gently chastised us with his humor, and he supported our

every intellectual and political step and misstep. At the beginning, that was the Jerome I first encountered from my seat in the audience; the Jerome I grew to know, often from my perch in the conference-hotel coffee shop or bar; and the Jerome I came to love, the comforting voice on the other end of the phone and the gentle yet persistent editor. At the end, I will always remember the drafts of my work he asked me to bring by his house in October, a couple of months after his kidney transplant. Through that fall and winter, they sat on his dining room table, as he moved back and forth between doctors in Durham and Pittsburgh, in and out of hospitals, finally to the hospital bed he had brought to his home. I thought about taking the articles home, to tell Jerome that reading them was utterly unnecessary under the circumstances, but, somehow, those drafts sitting there, kept us both up, and reflected my own hopes for one more round with Jerome.

As long as we are here, staying true to Jerome's academic norms and intellectual values, he will always be here, not just in ground-breaking texts, but in institution-shattering bodies. We, the third, fourth, fifth generations of RaceCrits, FemCrits, LatCrits and QueerCrits are Jerome's legacy, too.

