

## Race and the Reference Librarian\*

Mary Whisner\*\*

*Ms. Whisner examines how race arises in the day-to-day work of law librarians, and discusses how law librarians can foster cultural competence and create more welcoming environments in diverse institutions.*

¶1 I'd like to accept Ronald Wheeler's invitation to talk about race.<sup>1</sup> Much writing on diversity in law librarianship starts with demographics—observing that the profession has a small proportion of people of color compared to the population at large—and then considers how to change the mismatch—suggesting ways to recruit, encourage, and retain more people from underrepresented groups. I have no quarrel with that enterprise, and I'm heartened by Wheeler's report of a salutary increase of people of color in law librarianship.<sup>2</sup> But I think there's room for more in the diversity discussion. I'd like to think about how race arises in our day-to-day work as law librarians, emphasizing that this includes those of us who are white. How can we improve our knowledge and skills? What is our role in fostering cultural competence? Can we help create a welcoming environment in our diverse institutions?

¶2 Race has been tremendously important in U.S. history and society and hence in U.S. law. Indeed, the founding documents of our government were shaped by the politics of slavery,<sup>3</sup> an institution that by 1787 was defined largely by race.<sup>4</sup> Four constitutional amendments have directly or indirectly addressed

---

\* © Mary Whisner, 2014. I am grateful to the following friends and colleagues who offered helpful suggestions: Bill Covington, Kellye Testy, Nancy Unger, Ron Wheeler, and Brenda Williams.

\*\* Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington.

1. Ronald Wheeler, *Let's Talk About Race*, 106 LAW LIBR. J. 267, 2014 LAW LIBR. J. 16.

2. Numbers are still small, but Ron points to improvement during his career. He sees "steady progress" toward increasing racial and ethnic diversity in AALL, *id.* at 270, ¶ 7, and points to an increase in academic law library directors of color from about a dozen in 2003 to about twenty-one today, *id.* at 272, ¶ 13.

3. Even the foundational case of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), was shaped by the politics of slavery because Jefferson's election in 1800 "depended on the additional electoral votes generated by the three-fifths clause, which added electoral college votes to a state's allocation by counting three-fifths of the state's disenfranchised slaves." Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 668–69 (2008) (citing GARRY WILLS, *NEGRO PRESIDENT: JEFFERSON AND THE SLAVE POWER* 2 (2005)).

4. "For the first century and a half or so of the British North American colonies, the fiction of race played little part in the origins and development of slavery; instead, that institution was the product of the unique vulnerability of Africans within a roiling Atlantic world of empire-building and

issues of race.<sup>5</sup> Among the handful of Supreme Court cases known to nonlawyers as well as to lawyers are some that wrestled with racial inequality.<sup>6</sup> And it is not just in constitutional law that race is important. Race looms large in criminal law and criminal procedure, from investigation through prosecution and trial to sentencing.<sup>7</sup> Consider racial profiling, police brutality, cross-racial identification, sentences for drug offenses, the school-to-prison pipeline, jury selection, the overrepresentation of African Americans and Hispanics in prison. There are also racial issues in most (perhaps all) areas of civil law, including immigration,<sup>8</sup> employment discrimination,<sup>9</sup> property,<sup>10</sup> torts,<sup>11</sup> education,<sup>12</sup> tax,<sup>13</sup> voting,<sup>14</sup> family law,<sup>15</sup> civil procedure,<sup>16</sup> health law,<sup>17</sup> bankruptcy,<sup>18</sup> and even intellectual prop-

profit-seeking. Not until the American Revolution did self-identified 'white' elites perceive the need to concoct ideas of racial difference; these elites understood that the exclusion of a whole group of native-born men from the body politic demanded an explanation, a rationalization." JACQUELINE JONES, *A DREADFUL DECEIT: THE MYTH OF RACE FROM THE COLONIAL ERA TO OBAMA'S AMERICA*, at xii (2013).

5. U.S. CONST. amend. XIII (abolishing slavery); amend. XIV (making all persons born in the United States—including former slaves—citizens, guaranteeing the equal protection of the laws, changing the formula for apportioning representatives); amend. XV (forbidding the denial of the vote based on race, color, or previous condition of servitude); amend. XXIV (outlawing poll taxes).

6. The prime example is *Brown v. Board of Education*, 347 U.S. 483 (1954). I think many non-lawyers would also recognize *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Plessy v. Ferguson*, 163 U.S. 537 (1896); and *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

7. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

8. See, e.g., Kevin R. Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 LAW & CONTEMP. PROBS. 1 (2009).

9. See, e.g., *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081, 1085 (7th Cir. 1984) ("When Congress enacted the Civil Rights Act of 1964 it was primarily concerned with race discrimination. 'Sex as a basis of discrimination was added as a floor amendment one day before the House approved Title VII, without prior hearing or debate.' This sex amendment was the gambit of a congressman seeking to scuttle adoption of the Civil Rights Act. The ploy failed and sex discrimination was abruptly added to the statute's prohibition against race discrimination.") (citations omitted).

10. See, e.g., Keith Aoki, *No Right to Own? The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37 (1998); Derrick Bell, *Racism: A Major Source of Property and Wealth Inequality in America*, 34 IND. L. REV. 1261 (2001); Sylvia Law, *White Privilege and Affirmative Action*, 32 AKRON L. REV. 603, 608–14 (1999) (discussing why Minnesota, the Dakotas, and Montana homesteads were settled by white European immigrants, not blacks).

11. See, e.g., MARTHA CHAMALLAS & JENNIFER B. WRIGGINS, *THE MEASURE OF INJURY: RACE, GENDER, AND TORT LAW* (2010).

12. See, e.g., RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975).

13. See, e.g., Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790 (2007).

14. See, e.g., E. Earl Parson & Monique McLaughlin, *The Persistence of Racial Bias in Voting: Voter ID, the New Battleground for Pretextual Race Neutrality*, 8 J.L. SOC'Y 75 (2007).

15. See, e.g., Katie Eyer, *Constitutional Colorblindness and the Family*, 162 U. PA. L. REV. 537 (2014).

16. See Kevin R. Johnson, *Integrating Racial Justice into the Civil Procedure Survey Course*, 54 J. LEGAL EDUC. 242 (2004).

17. See, e.g., Erik Lillquist & Charles A. Sullivan, *The Law and Genetics of Racial Profiling in Medicine*, 39 HARV. C.R.-C.L. L. REV. 391 (2004); Kimani Paul-Emile, *Patients' Racial Preferences and the Medical Culture of Accommodation*, 60 UCLA L. REV. 462 (2012); Ron J. Whitener, *Research in Native American Communities in the Genetics Age: Can the Federal Data Sharing Statute of General Applicability and Tribal Control of Research Be Reconciled?*, 15 J. TECH. L. & POL'Y 217 (2010).

18. See, e.g., A. Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725 (2004).

erty.<sup>19</sup> As specialists in legal information, we have a responsibility to be aware of these issues. Those of us in academia should also have some sense of the discussions in law reviews and books. We should have heard of “critical race theory,”<sup>20</sup> “implicit bias,”<sup>21</sup> “white privilege,”<sup>22</sup> and the notion that race is socially constructed, not an immutable biological category.<sup>23</sup>

¶3 And we should remember that it’s not all black and white. While pondering the different perspectives held by African Americans and European Americans,<sup>24</sup> we might also think about the varied experiences of people within those groups. For instance, a Somali refugee, an immigrant from Barbados, a Chicagoan whose grandparents were part of the Great Migration, and a rural Mississippian living near where her enslaved ancestors lived might all be seen as “black”—but their dramatically different life experiences caution against ready generalizations. And an Orthodox Jew in New York City, an Irish Catholic from Boston, and a Norwegian American fishing for salmon in Alaska have very different lives and perspectives, despite all being termed “white.”<sup>25</sup> And then there are all the other shades included within “people of color.” The term “Asian Americans” encompasses people whose ancestry is Chinese, Japanese, Korean, Thai, Vietnamese, and so on—plus South Asians, from the diverse communities within India, Pakistan, and Sri Lanka. Asia is

19. See, e.g., K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER SOC. POL’Y & L. 365 (2008).

20. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2d ed. 2012); Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215 (2002).

21. See, e.g., MARZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013) (general audience book by the two social psychologists who developed the implicit association test); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias*, 94 CALIF. L. REV. 945 (2006); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012).

22. “‘White privilege’ refers to the myriad of social advantages, benefits, and courtesies that come with being a member of the dominant race.” DELGADO & STEFANCIC, *supra* note 20, at 87.

23. See, e.g., *Statement on “Race,”* AM. ANTHRO. ASS’N (May 17, 1998), <http://www.aaanet.org/stmts/racepp.htm> (“In the United States both scholars and the general public have been conditioned to viewing human races as natural and separate divisions within the human species based on visible physical differences. With the vast expansion of scientific knowledge in this century, however, it has become clear that human populations are not unambiguous, clearly demarcated, biologically distinct groups. . . . [T]here is greater variation within “racial” groups than between them.”).

Other important concepts include “microaggressions,” see, e.g., Daniel Solórzano et al., *Keeping Race in Place: Racial Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO-LATINO L. REV. 15, 16–17 (2002), and “stereotype threat,” see CLAUDE STEELE, *WHISTLING VIVALDI: AND OTHER CLUES TO HOW STEREOTYPES AFFECT US* (2010).

24. See, e.g., ANDREA CAUMONT, PEW RESEARCH CENTER, *KING’S DREAM REMAINS AN ELUSIVE GOAL; MANY AMERICANS SEE RACIAL DISPARITIES* (2013), available at [http://www.pewsocialtrends.org/files/2013/08/final\\_full\\_report\\_racial\\_disparities.pdf](http://www.pewsocialtrends.org/files/2013/08/final_full_report_racial_disparities.pdf).

25. Today they are all considered to be of the same race, “white,” but earlier in U.S. history, they would have been seen as different races. See, e.g., Bruce Baum, *On the History of American Whiteness*, 39 REV. AM. HIST. 488, 491 (2011) (reviewing NELL IRVIN PAINTER, *THE HISTORY OF WHITE PEOPLE* (2010)) (“Emerson’s views typified the prevailing Anglo-Saxon view that some European peoples were not full-fledged white people. They were thought to be inferior white races compared to the superior white race (variously called Saxon, Anglo-Saxon, Teutonic, Nordic, and Aryan from the mid-nineteenth to the early twentieth centuries). Emerson and other mid-nineteenth-century Anglo-Saxon race chauvinists were chiefly concerned about Irish ‘Celts’; their ‘Nordicist’ and eugenicist successors focused on the next great wave of immigrants of 1880 to 1920—Eastern European Jews, Italians, and Greeks, among others . . .”).

a big continent with many cultures. And, as with any other American, an Asian American or a Hispanic<sup>26</sup> American might be a new immigrant or the child of a family that has been in the United States for a century or more. A Native American might have grown up in a big city or a sparsely populated reservation; and life in the Navajo Nation (occupying 27,000 square miles in Utah, Arizona, and New Mexico)<sup>27</sup> is not the same as life in the Bois Forte Band of Ojibwe in Northern Minnesota.<sup>28</sup> Individuals' racial identities may be complex, involving connections with more than one racial or ethnic group.<sup>29</sup> Moreover, racial identities interact with gender, class, sexuality, religion, and class.<sup>30</sup> And some people prefer not to identify with any race.<sup>31</sup>

¶4 Some of us work at law schools with courses in critical race theory, LatCrit theory, or the like, but those schools are in the minority.<sup>32</sup> Some schools go beyond a single course to offering a concentration<sup>33</sup> or centers<sup>34</sup> dedicated to issues of race.

26. I went back and forth between "Hispanic" and "Latino/Latina." I decided to follow the usage of the Hispanic National Bar Association, <http://www.hnba.com> (last visited Feb. 15, 2015), rather than the Latina/o Bar Association of Washington, <http://www.lbaw.org/> (last visited Feb. 15, 2015). I mean no offense to people who prefer the label I did not use.

27. See NAVAJO NATION GOV'T, <http://www.navajo-nsn.gov/history.htm> (last visited Feb. 15, 2015).

28. See *A Brief Summary of Bois Forte History*, BOIS FORTE BAND OF CHIPPEWA, <http://www.boisforte.com/history.htm> (last visited Feb. 15, 2015).

29. The way the government counts race is in flux. See Jens Manuel Krogstad & D'Vera Cohn, *U.S. Census Looking at Big Changes in How It Asks About Race and Ethnicity*, FACTANK: NEWS IN THE NUMBERS (Mar. 14, 2014), <http://www.pewresearch.org/fact-tank/2014/03/14/u-s-census-looking-at-big-changes-in-how-it-asks-about-race-and-ethnicity/>. "As many as 6.2% of census respondents selected only 'some other race' in the 2010 census, the vast majority of whom were Hispanic." *Id.*

30. "Intersectionality" means the examination of race, sex, class, national origin, and sexual orientation, and how their combination plays out in various settings." DELGADO & STEFANCIC, *supra* note 20, at 57.

31. See, e.g., Camille Gear Rich, *Decline to State: Diversity Talk and the American Law Student*, 18 S. CAL. REV. L. & SOC. JUST. 539 (2009) (discussing students who, for various reasons, "decline to state" their race on law school applications); see also, e.g., Tony Ruiz, *The World: Please, Stop Promoting the Question "What Race Are You?" in Any Capacity*, CHANGE.ORG, <http://www.change.org/p/the-world-please-stop-promoting-the-question-what-race-are-you-in-any-capacity> (last visited Feb. 15, 2015). I visited Change.org after a patron told me that he had started a petition to ask the U.S. Equal Employment Opportunity Commission not to require employers to create racial data; I didn't find his petition, but I did find this one, as well as other petitions that give glimpses of people's concerns.

32. In 2002, Cheryl Harris reported, "Courses in CRT have proliferated at many American law schools"—but the proliferation was "over twenty" schools. Harris, *supra* note 20, at 1216 & n.3. Even if the course offerings have grown in recent years, I assume the number hasn't, say, quintupled.

33. See *id.* (describing UCLA Law's concentration in critical race studies); see also *Critical Race Studies*, UCLA LAW, <https://www.law.ucla.edu/centers/social-policy/critical-race-studies/about/> (last visited Feb. 15, 2015).

34. See Kim Forde-Mazrui, *Learning Law Through the Lens of Race*, 21 J.L. & POL. 1 (2005) (discussion of value of studying race, by the first director of the Center for the Study of Race and Law at the University of Virginia); see also *Center for the Study of Race and Law*, UNIV. OF VA. SCH. OF LAW, <http://www.law.virginia.edu/html/academics/race/mission.htm> (last visited Feb. 15, 2015). Other centers include *Aoki Center for Critical Race and Nation Studies*, UC DAVIS SCH. OF LAW, <https://law.ucdavis.edu/centers/critical-race/> (last visited Feb. 15, 2015); *Center on Law, Equality and Race*, UC IRVINE SCH. OF LAW, <http://www.law.uci.edu/academics/centers/clear/> (last visited Feb. 15, 2015); *Rocky Mountain Collective on Race, Place & Law*, UNIV. OF DENVER STURM COLL. OF LAW, <http://www.law.du.edu/index.php/rocky-mountain-collective-on-race-place> (last visited Feb. 15, 2015); *Duke Center on Law, Race*

A few dozen schools host student-edited journals on race and the law, such as the *Berkeley Journal of African-American Law & Policy* and the *Journal of Gender, Race & Justice* from the University of Iowa.<sup>35</sup> Reference librarians at institutions with such courses, research centers, or journals will doubtless get more questions about race and the law than others, but the issues are so important and pervasive that they could arise anywhere. Even if a school doesn't have a seminar on race and the law, students in other seminars, from criminal justice to tax policy, could pursue those issues. And students can write notes and comments about racial issues for general law reviews or journals focused on business law, technology law, or anything else, not just for those focused on race, poverty, or social justice.

¶5 Of course, any of us would help a user who asked where to locate information about civil rights laws<sup>36</sup> or race-based challenges in jury selection.<sup>37</sup> Finding the "race" in law is straightforward in these instances: it's right there in the statute<sup>38</sup> and the case headnotes.<sup>39</sup> But racial issues are not always so clear. For instance, appellate decisions reviewing criminal convictions might never mention the races of the defendant or the victim (let alone the judge, prosecutor, defense attorney, jurors, and witnesses). And yet race could have been salient. For example, in *McClesky v. State*,<sup>40</sup> the Georgia Supreme Court did not mention race, and yet the issue during

---

*and Politics*, DUKE LAW, <http://web.law.duke.edu/lrp/> (last visited Feb. 15, 2015); *Center for the Study of Race & Race Relations*, LEVIN COLL. OF LAW, UNIV. OF FLA., <http://www.law.ufl.edu/academics/centers/csrll/> (last visited Feb. 15, 2015); *Charles Hamilton Houston Center for Race & Justice*, HARV. LAW SCH., <http://www.charleshamiltonhouston.org/> (last visited Feb. 15, 2015); *Program in Race, Law & History*, UNIV. OF MICH. LAW, <http://www.law.umich.edu/centersandprograms/racelawhistory/> (last visited Feb. 15, 2015); *Racial Justice Project*, N.Y. LAW SCH., <http://www.racialjusticeproject.com/> (last visited Feb. 15, 2015); *Center for Civil Rights*, UNC SCH. OF LAW, <http://www.law.unc.edu/centers/civilrights/> (last visited Feb. 15, 2015); *Fred T. Korematsu Center for Law and Equality*, SEATTLE UNIV. SCH. OF LAW, <http://www.law.seattleu.edu/centers-and-institutes/korematsu-center/about-the-center> (last visited Feb. 15, 2015) ("work is focused on understanding the relationship between law and categories of race, ethnicity, gender, sexuality, class, and disability, especially with regard to their intersections"); *Ronald H. Brown Center for Civil Rights and Economic Development*, ST. JOHN'S UNIV. SCH. OF LAW, <http://www.stjohns.edu/law/ronald-h-brown-center-civil-rights-and-economic-development> (last visited Feb. 15, 2015). Some centers are at parent universities rather than law schools—e.g., *Center for the Study of Race, Politics, and Culture*, UNIV. OF CHI., <http://csrpc.uchicago.edu/> (last visited Feb. 15, 2015); *Institute on Race and Justice*, NORTHEASTERN UNIV., <http://www.northeastern.edu/irj/> (last visited Feb. 15, 2015); *Kirwan Institute for the Study of Race and Ethnicity*, OHIO STATE UNIV., <http://kirwaninstitute.osu.edu> (last visited Feb. 15, 2015).

35. A search in *Law Journals: Submissions and Ranking 2006–2013*, WASH. & LEE UNIV. SCH. OF LAW, <http://lawlib.wlu.edu/LJ/>, for U.S. journals listed under "Minority, Race and Ethnic Issues" yields forty journals, some of which are not specifically about race. Search conducted Aug. 24, 2014.

36. E.g., Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 28 and 42 U.S.C. (2012)).

37. See, e.g., *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny.

38. E.g., 42 U.S.C. § 2000a (2012) (codifying § 201 of the Civil Rights Act of 1964) ("All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.")

39. E.g., *Batson v. Kentucky*, 106 S. Ct. 1712, 1712 (1986) (first West headnote) ("A state denies a black defendant equal protection when it puts him on trial before a jury from which members of his race have been purposely excluded.")

40. 263 S.E.2d 146 (Ga. 1980). This opinion spells the defendant's name "McClesky," but later opinions spell it "McCleskey." I learned the hard way that searching for "mcclesky" does not turn up the news stories I wanted about "McCleskey"!

later habeas corpus review was profoundly racial: was McCleskey's death sentence suspect because, statistically, black men (like him) convicted of killing whites (like his victim) in Georgia were much more likely to be sentenced to death than defendants in cases with any other racial combination of perpetrator and victim?<sup>41</sup> To raise that issue, McCleskey's attorneys went outside strictly legal research, bringing in a statistical analysis by social scientists.<sup>42</sup> They saw a need to go beyond the record of McCleskey's trial—and the statutes and rules governing the conduct of the trial—to see a bigger picture. Like an appellate case that doesn't mention the race of the parties, the Anti-Drug Abuse Act of 1986<sup>43</sup> says nothing about punishing blacks more heavily than whites, but that's what was accomplished by the huge differential between sentences for "cocaine base" (crack cocaine) and cocaine because of the racial identities of the predominate users of each type of cocaine.<sup>44</sup> The rulings about discovery in lead paint litigation cases would not be seen as race-related unless you knew that the children at the greatest risk for elevated levels of lead are children of color.<sup>45</sup> So searching for the "race" in many legal contexts calls for creative research. As is generally true, starting with secondary sources will save a lot of time if someone else has pulled together the primary sources and drawn a line to connect the dots.

---

41. *McCleskey v. Kemp*, 481 U.S. 279 (1987) (upholding the sentence because the statistical analysis did not show discriminatory purpose by any decision maker in McCleskey's case). The Supreme Court later rejected McCleskey's second habeas challenge to his conviction as untimely. *McCleskey v. Zant*, 499 U.S. 467 (1991). He was executed in September 1991. Opinions on the judicial process varied. *Compare* Editorial, *Warren McCleskey Is Dead*, N.Y. TIMES, Sept. 29, 1991, at E16 ("Some supporters of the death penalty are outraged that Mr. McCleskey lived so long, surviving through the ingenuity of writ-writing lawyers. But many other Americans are more interested in sure justice than in certain death."), *with* Editorial, ATLANTA J.-CONST., Sept. 25, 1991, at A14, 1991 WLNR 3582614 ("It may not be the system that is at fault in allowing such things to go on. Rather it may be abuse of the system by individual lawyers and justices. Either way, 13 years and 20 appeals is just too much.")

42. The study, commonly termed "the Baldus study," was published as DAVID C. BALDUS, GEORGE WOODWORTH & CHARLES A. PULASKI, JR., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990). *See also, e.g.*, Samuel R. Gross, *David Baldus and the Legacy of McCleskey v. Kemp*, 97 IOWA L. REV. 905 (2012).

43. Pub. L. No. 99-570, 100 Stat. 3207 (1986).

44. *See, e.g.*, David A. Sklansky, Essay, *Cocaine, Race, and Equal Protection*, 47 STAN. L. REV. 1283, 1289 (1995) ("From October 1991 through September 1992, more than 91 percent of all federal crack defendants were black; only 3 percent were white. During this same period, by way of contrast, blacks accounted for only slightly over 27 percent of federal prosecutions for powder cocaine and 28 percent of federal prosecutions generally; 32 percent of the powder cocaine defendants, and more than 45 percent of all federal defendants, were white. The particularly harsh federal penalties for trafficking in crack cocaine thus have a particularly disproportionate impact on black defendants.") (footnote omitted).

The disparity was reduced—from 100:1 to 18:1—by the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. Some advocates urge that the disparity should be eliminated altogether. *E.g.*, *Fair Sentencing Act*, ACLU, <https://www.aclu.org/fair-sentencing-act> (last visited Feb. 15, 2015); Douglas A. Berman, *AG Holder's Speech at "Dream March" Stresses Fairness and "Equal Justice" (. . . as Federal Crack Prisoners Keep Waiting)*, SENTENCING L. & POL'Y (Aug. 24, 2013, 1:16 PM), [http://sentencing.typepad.com/sentencing\\_law\\_and\\_policy/2013/08/ag-holders-speech-at-dream-march-stresses-fairness-and-equal-justice-as-federal-crack-prisoners-keep.html](http://sentencing.typepad.com/sentencing_law_and_policy/2013/08/ag-holders-speech-at-dream-march-stresses-fairness-and-equal-justice-as-federal-crack-prisoners-keep.html).

45. CHAMALLAS & WRIGGINS, *supra* note 11, at 139 (citing study finding that sixty percent of affected children are African American and sixteen percent Hispanic).

¶6 Not all of our work is simply reacting to someone else's questions, and we can incorporate race ourselves. When we read on our own—to keep up with legal developments, to be ready for potential questions, and to offer current awareness service to our patrons—we can include works on race and the law. And we can also include racial issues in the examples we use in class, in our research guides, in our blog posts, and in our displays. Why? Racial issues are interesting and important.<sup>46</sup> Using the examples communicates that the library is a place where people can learn about these issues. Maybe more questions will come in once people see the potential.

¶7 Showing an interest in issues of racial justice could help law students of color feel a little more welcome in a law school where most of the students, most of the faculty, and all the portraits on the walls are white.<sup>47</sup> Many students of color are alienated “by discussions that focus on problems, interests and values that either minorities do not share or that obscure or overlook issues that are particularly relevant to minorities.”<sup>48</sup> Seeing blog posts or displays about issues affecting communities of color could help these students—as well as students of all races who come to law school passionate about public interest work and find that their first-year courses don't necessarily address the issues they care about. *International Shoe*, landowners' duties to guests, and the mailbox rule can seem remote from the social issues that attracted students to law school. Issues that are important to them may not be addressed in class.

¶8 Some years ago, my law school's diversity committee (which includes students, faculty, and staff with a variety of racial, sexual, and gender identities) asked reference to compile a list of readings about diversity issues in standard first-year courses. Students who felt that those themes were missing from class<sup>49</sup> wanted help finding material to read on their own or in groups; of course, the reading list could also be used by faculty who want to address the issues in class.<sup>50</sup> That wasn't the last time we were asked to put together a guide on race-related issues in law. When our dean was part of a task force on race in the criminal justice system, she asked for a

---

46. See, e.g., Armstrong & Wildman, *supra* note 3, at 661 (2008) (“Racial justice and whiteness must be analyzed as part of legal education because of their central influence on life in the United States, its legal system, and the practice of law.”).

47. This is *not* to say that issues of racial justice are only important to people of color. On the contrary, those of us who are white need to learn about and address the many ways that our race affects our positions in society and our perspectives on the law. All “students should graduate and become lawyers prepared to face the racial justice issues that pervade daily life in the United States.” *Id.* at 671.

48. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 44 (1994).

49. See, e.g., Walter R. Allen & Daniel Solorzano, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237, 279 (2001) (“Students noted that their classroom curriculum omitted or distorted issues of race and gender.”).

50. The list is now a collection of lists. Mary Whisner, *Diversity Readings Related to First-Year Courses*, GALLAGHER LAW LIBR., UNIV. OF WASH. SCH. OF LAW, <https://lib.law.washington.edu/content/guides/Diversity1L> (last updated Sept. 22, 2014), links to guides on Civil Procedure, Constitutional Law (Structures of Government), Contracts, Criminal Law, Property, and Torts. A guide on diversity issues related to the Legal Writing, Analysis, and Research course is in progress.

guide.<sup>51</sup> Later when she hosted a conference on promoting diversity in law school leadership, she did again.<sup>52</sup> On our own, the library created a guide and wrote several blog posts for the law school's Diversity Week.<sup>53</sup>

¶9 In a way, these efforts seem very small. A skilled and committed professor can have a much greater and deeper impact on students' engagement with racial justice than any number of blog posts and research guides. But blog posts and research guides are what we do. And they do contribute. A blog post about Japanese American internment during World War II or a display of new books about race in the criminal justice system let students and others know that the issues are out there and that we have resources to explore them further—even if the students are too busy to pick up one of the books. And when a student does have a research interest, it will certainly be helpful to have easy access to relevant materials.

¶10 As law librarians, we can and should educate ourselves about racial issues in the law and share that information with others. The complexity of issues may seem overwhelming—but it also offers the rich potential for lifelong learning and growth. And we all can learn.

---

51. Mary Whisner, *Race in the Criminal Justice System*, GALLAGHER LAW LIBR., UNIV. OF WASH. SCH. OF LAW, <https://lib.law.washington.edu/content/guides/racecrim> (last updated Oct. 10, 2013).

52. Mary Whisner, *Promoting Diversity in Law School Leadership*, GALLAGHER LAW LIBR., UNIV. OF WASH. SCH. OF LAW, <https://lib.law.washington.edu/content/guides/deans> (last updated Sept. 22, 2013).

53. Mary Whisner, *Diversity in the Legal Profession*, GALLAGHER LAW LIBR., UNIV. OF WASH. SCH. OF LAW, <https://lib.law.washington.edu/content/guides/lawyer-diversity> (Feb. 21, 2014); *Minority Bar Associations*, GALLAGHER BLOGS (FEB. 28, 2014), <http://gallagherlawlibrary.blogspot.com/search/label/Diversity%20Week>.