

## **Incorporating Race into Your Legal Research Class\***

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*Ms. Dalton examines ways to incorporate a discussion of race into legal research courses, and suggests a number of hypotheticals to use in creating “teachable moments.”*

¶1 As head of reference and instructional services, one of my responsibilities is to share my instructional materials with our newer teaching librarians. For years, I have used the following asylum prompt as a homework assignment in my first-year legal research class.

Your firm’s new client, Muneer Ahmad, had a meeting with your supervising partner today, and you were allowed to sit in on the meeting to take notes. Mr. Ahmad is a citizen of a small country named Halassam. At present, Halassam is in the midst of a civil war. The government of Halassam is fighting an organized antigovernment rebel group for control of the country. Recently, both groups have stepped up recruitment efforts. Last month, two antigovernment rebels knocked on Mr. Ahmad’s door and asked him to pledge his allegiance to the group. Mr. Ahmad told the rebels that he was not interested in politics and declined to pick sides. The rebels beat Mr. Ahmad for his response and told Mr. Ahmad that he had one week to change his mind “or else.” After he spent a few days in the local hospital, recovering from his wounds, Mr. Ahmad returned to his home in the capital of Halassam, packed a bag, and fled the country. He landed on the shores of south Florida three days ago and seeks asylum in the United States.

The partner asks you to research the requirements for seeking asylum in the United States. The partner is particularly concerned with whether Mr. Ahmad’s refusal to choose sides between the government and the rebels is considered enough of a political opinion to earn asylum.<sup>1</sup>

¶2 This spring, one of our new librarians came to me, unsure whether she should use the asylum prompt in the wake of the travel ban signed by President Trump that same week. Understandably, many of our students were visibly disturbed and fearful that their family members could be deported. At the time, I told her that she should do whatever she felt comfortable with, but later I thought, “Why is it so difficult to talk about issues such as race, sexual orientation, religion, gender, and immigration status in the classroom?” and “How can we incorporate sensitive diversity issues into our legal research course?” These questions formed the basis of my idea for this column.

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1. This hypothetical was written by Loren Turner, a former colleague and now the Foreign and International Librarian at the University of Minnesota Law Library. The country in this hypothetical does not exist.

¶3 Our nation has been forced to address various diversity issues over the past five years. We have dealt with the senseless killing of unarmed African Americans at the hands of the police, racial gerrymandering, unequal pay for women, the unfair treatment of Muslims due to our fear of terrorism, and a campaign to build a wall to keep immigrants and refugees out of the United States. Citizens have led nationwide protests to express their frustration and outrage over these injustices, eerily reminding some of the Los Angeles riots in the 1990s.<sup>2</sup>

¶4 Over the years, the role of a law librarian has evolved to include the title lecturer or professor. Many of us teach first-year legal research, advanced legal research, and other specialized legal research classes. In the nation's current climate, I think we have a unique opportunity and obligation to help train students to become culturally competent legal researchers by incorporating research assignments that address many of the injustices described above. While I encourage you to incorporate all diversity topics into your research assignments, I chose to focus on race in this column for two reasons: (1) race is the most emotionally charged and polarizing diversity topic, and (2) race is the topic I believe educators are most hesitant to discuss in the classroom.

¶5 For decades, educators have tried to figure out what race means and how to “unravel the intertwining nature of race and education.”<sup>3</sup> Race is about much more than skin color. Race was created in the modern era as a way to divide people such that some benefit at the expense of others. The bias, inequalities, and consequences of race were developed and constructed by human beings, not by scientific law or genetics. One's perception about race is based on four constructs.<sup>4</sup>

1. Physical—People have constructed ideas, biases, and belief systems about others based on skin pigmentation. Many of these constructions are inaccurate, but nevertheless they exist. The physical construction of race varies from one society to the next. The physical construction of race in Europe, Asia, and even Africa differs from that in the United States.
2. Social—The social construction of race is linked to preferences, worldviews, and how groups of people perform. People categorize themselves and others based on a range of societal perspectives drawn from interpretations of history and law.
3. Legal—The U.S. legal system plays a huge role in the construct of race. Infamous cases such as *Plessy v. Ferguson*<sup>5</sup> and *Brown v. Board of Education*<sup>6</sup> have influenced and defined the construction of race in America.
4. Historical—Historical realities, such as Jim Crow laws, slavery, and racial discrimination, also shape the way people conceptualize race. The way we understand how people have been treated in a society based on the color of their skin shapes how we understand, talk about, and conceptualize race.<sup>7</sup>

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2. Laurence Ralph & Kerry Chance, *Legacies of Fear: From Rodney King's Beating to Trayvon Martin's Death*, 113 *TRANSITION* 137 (2014).

3. H. RICHARD MILNER IV, *RAC(E)ING TO CLASS: CONFRONTING POVERTY AND RACE IN SCHOOLS AND CLASSROOMS* 8 (2015).

4. *Id.*

5. 163 U.S. 537 (1896).

6. 347 U.S. 483 (1954).

7. MILNER, *supra* note 3, at 8–9.

¶6 Furthermore, the discussion of race is not only about people of color. White is a racial category as well, and it is important to critically examine whiteness or white privilege just as we examine the experiences of nonwhite people.<sup>8</sup>

### Race and Education

¶7 When in a diverse group, many of us tend to avoid the topic of race for fear of discomfort, hostility, and embarrassment.<sup>9</sup> This “code of silence” reflects our society’s denial that cultural factors such as racism and whiteness exist. The history of racism in the United States is both “intensively intellectual and an extremely emotional issue triggering deep feelings about identity and self-worth.”<sup>10</sup> White Americans feel guilt and even shame about the inhumane treatment of minorities. Many Whites acknowledge that white privilege exists, but they are unsure what to do about it. Meanwhile, people of color face subtle or obvious racial projections daily and have to deal with how other cultural groups “question their worth and judge them to be less qualified.”<sup>11</sup> With these conflicting emotions, it is easy to understand why we avoid conversations about race.<sup>12</sup>

¶8 In Western academic tradition, emotions are held to be “irrational and unnecessary for intellectual pursuits.”<sup>13</sup> Faculty are trained to focus on cognitive processes and not emotions in the classroom. Faculty are experts in subject matter, but many lack intercultural competence. Due to the “inextricable emotional dimension of race”, faculty hesitate to discuss race, not wanting to reveal their lack of knowledge on the topic and expose their vulnerability.<sup>14</sup>

¶9 In 2014, I attended a faculty brownbag discussion hosted by University of Florida (UF) College of Law’s Diversity and Community Relations Committee. There professors openly discussed their fears and hesitation to talk about race, and shared techniques for discussing race in the classroom. Having graduated from a Historically Black College and University (HBCU), where race is discussed on a daily basis, I found it eye-opening to hear White law professors share their hesitations to talk about race. Professors expressed some common fears: fear of not being politically correct, fear of being judged and deemed prejudiced, fear a student may say something offensive, fear the only minority student in the class would feel compelled to defend his or her race, fear students would feel guilt or anger, or fear students would withdraw.

¶10 While I understand their concerns, I think we (including myself) are underestimating the willingness that students have to learn about race and how our legal system impacts the lives of people of color. More importantly, students recognize when professors ignore the “elephant” in the classroom. In 2015 and 2016, I served on UF College of Law’s Diversity and Community Relations Committee. Both years, the Committee organized a program called “Comm(unity) Amidst Diversity:

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8. *Id.* at 9.

9. GALE YOUNG, DEALING WITH DIFFICULT CLASSROOM DIALOGUE 349 (2003).

10. *Id.*

11. *Id.*

12. *Id.* at 349–50.

13. *Id.* at 350.

14. *Id.*

Sharing Our Experiences at Levin,” open to all students as a forum to discuss diversity barriers that exist at UF Law.

¶11 At the beginning of the program, we asked students to form groups and share their own experiences dealing with diversity at the law school. After the small-group discussions, we reconvened and students shared what they thought was missing in the discussion about diversity issues in the classroom. One of the comments I heard repeatedly was that students wanted to talk about race and valued its importance. Students mentioned reading cases in which racial injustices were clearly looming, but shared that their professors did not discuss these in class. When professors ignore or deny that racial issues exist, they communicate that students’ knowledge and experiences about race are not worth academic attention.<sup>15</sup>

¶12 As instructors, it is our responsibility to train students to be “conversant with and understand the nuanced ways” racial issues affect what they do as lawyers.<sup>16</sup> For students to gain intellectual depth and breadth of the law, they need to explore how the application of diversity issues limits legal doctrines, and how legal doctrines undermine the purpose of the law.<sup>17</sup> It is important that we openly talk about “the power that societal stereotypes have in shaping legal arguments or outcome.”<sup>18</sup> The more comfortable students are with talking about diversity issues, the better advocates they will be for their clients.<sup>19</sup>

### Race and Legal Research

¶13 Race has played an important role in U.S. history and law.<sup>20</sup> Racial issues do not only arise in criminal and constitutional law, but they permeate most (if not all) areas of law.<sup>21</sup> I agree with Mary Whisner: “[We law librarians] have a responsibility to be aware of [racial] issues.”<sup>22</sup> Many academic law librarians, who work at law schools with student-edited journals, centers, courses, and seminars about race and the law, may routinely be asked to provide traditional research services to students and faculty on various racial issues. Some librarians have also contributed to blogs and created research guides on the topic of race.<sup>23</sup>

¶14 As I was sitting at that brownbag years ago, I was wondering “Should I incorporate race in my legal research course?” and “If so, how?” After some thought, the answer to the first question is yes. Research skills are key to the success of a lawyer, so we can play a critical role in training students to be ethical, culturally competent legal researchers. We need to design a legal research curriculum that challenges students’ perceptions and helps them understand how the construction and application of certain laws are racially discriminatory. Ronald Wheeler said it

15. *Id.* at 350.

16. Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 542 (1996).

17. *Id.* at 544.

18. *Id.* at 548.

19. *Id.* at 554.

20. Mary Whisner, *Race and the Reference Librarian*, 106 LAW LIBR. J. 625, 625–27, 2014 LAW LIBR. J. 34, ¶ 2.

21. Ronald Wheeler, *Michael Brown, Eric Garner, and Law Librarianship*, 107 LAW LIBR. J. 467, 472, 2015 LAW LIBR. J. 22, ¶ 12.

22. Whisner, *supra* note 20, at 627, ¶ 2.

23. *Id.* at 632, ¶¶ 8–9.

best: “Showing an interest in racial justice and issues of race helps to break down barriers, expose as false perceived misunderstandings, and shed light on commonly held perceptions of a race-infused reality.”<sup>24</sup> Choosing to incorporate race in your class will also make students of color feel more welcomed and understood, and it will “unmask the truth that even those of us who are white can have a common understanding of how race impacts us all daily.”<sup>25</sup>

¶15 As for the second question, I do think there are ways that we can incorporate race in our lectures, hypotheticals, and classroom discussions. When I discuss the process of generating search terms, I make it a point to remind students that African Americans and Latinos have not always been called by those names. Throughout society, we have changed the terms we use to identify minority groups in a quest to be “politically correct.” If race is a pertinent element of a legal issue, I tell my students to be mindful and include all synonyms (yes, you may even have to type in the word “Negro”) for a particular minority group to ensure the search yields cases from the 1940s and 2000s.

¶16 I also incorporate race in my “Expand and Update Your Research” lecture. I use *Loving v. Virginia*<sup>26</sup> as a nod to “love week” in February. I do not require students to read the case, but I do give them a brief synopsis, and we look at the thousands of cases that have cited *Loving v. Virginia*. I explain that even though *Loving v. Virginia* is about interracial marriage, lawyers have used the language from the case to advocate for the legalization of same-sex marriage.<sup>27</sup> Then I show them how to use the search filters to narrow by jurisdiction, relevancy, and keyword searches.

¶17 Another opportunity to incorporate race into the classroom is through in-class exercises and homework assignments. Below are three hypotheticals that I plan to use this year in my advanced legal research course.

### Hypothetical Example # 1—Employment Discrimination

Assume that you just started working at an employment law firm in Jacksonville, Florida. Tyrone Bennett, a thirty-two-year-old African American male, comes into your office for a consultation with you and your boss. Mr. Bennett has worked in the kitchen of a local restaurant for the past five years. He worked his way up from dishwasher to line cook to sous chef. At age of twenty-one, Mr. Bennett had to stop shaving his facial hair due to a medical condition called *pseudofolliculitis barbae*, which causes severe shaving bumps.<sup>28</sup> When he works at the restaurant, he wears a sanitary beard cover.

Recently, the head chef position at the restaurant became vacant, and Mr. Bennett was promoted to that position. On his first day as head chef, Mr. Bennett’s supervisor explained that the new position required him to deal directly with the customers, so he would have to maintain a clean-shaven face, which meant he could not have any visible facial hair. Mr. Bennett informed his supervisor that he could not shave his face due to a medical condition, but he promised to keep his beard well groomed. When Mr. Bennett arrived at work the next day, he was told that he no longer qualified for the head chef position, and if he wanted to stay with the restaurant, he would have to go back to working as a sous chef.

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24. Wheeler, *supra* note 21, at 472, ¶ 13.

25. *Id.* at 473.

26. 388 U.S. 1 (1967).

27. See, e.g., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

28. *Facts About Race/Color Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, <https://www.eeoc.gov/eeoc/publications/fs-race.cfm> [https://perma.cc/63YU-MJJ9].

Mr. Bennett is at your office to find out what his rights are and whether he can sue the restaurant. Your boss has never heard of this medical condition, so she wants you to (1) conduct some background research on the medical condition, and (2) determine if Mr. Bennett has a cause of action against his employer.

¶18 I plan to use this hypothetical during my “Secondary Sources Week.” Students will start by using the traditional subject-specific secondary sources to help them answer this legal question, but they should not just stop there. This hypothetical requires students to conduct “creative research”<sup>29</sup> outside of the traditional legal resources to learn more about Mr. Bennett’s medical condition. Students should learn that this condition disproportionately affects African American men.<sup>30</sup> My hope is that they will find case law to support a cause of action for employment discrimination.

### Hypothetical Example # 2—Jury Selection

Assume that you work as a law clerk for Janet Stevenson, an appeals attorney in Tampa, Florida. Janet’s client, Carlos Garcia, was tried by a jury and convicted of robbery and assault. Janet is working on his appeal and wants to challenge his conviction on the grounds that the trial court erred in denying Mr. Garcia’s challenge to the state’s preemptory strike of two jurors: Ms. Martinez, a Hispanic female, and Mr. Lee, an Asian American male.

When the objection was made during jury selection, the defense asked why both jurors were dismissed. The prosecutor explained that he used a preemptory strike for Ms. Martinez because she failed to disclose that she was a victim of sexual assault fifteen years ago. He used a preemptory strike to dismiss Mr. Lee due to his thick accent. The trial court found that both strikes were race-neutral and upheld both preemptory strikes. Ultimately, the jury seated for Mr. Garcia’s trial consisted of no minority jurors. Janet wants you to research (1) the standard (or basis) required for a preemptory challenge, (2) how courts “test” for such challenge, (3) examples of what courts deem to be “race-neutral” strikes, and (4) the likelihood that Mr. Garcia will win the challenge on appeal.

¶19 I plan to use this hypothetical during my first week of case law research. Jury selection (or voir dire) is a critical part of the trial process. A defendant’s fate is in the hands of the jury. I think students will be surprised to learn how courts interpret a jury of “peers” and how preemptory strikes can disadvantage racially diverse defendants. This issue also has some gender implications.<sup>31</sup>

### Hypothetical Example # 3—Criminal Law

Assume that you are a law clerk for the State Attorney’s Office in Miami-Dade County, Florida. You have a case with the following facts: On March 10, 2017, at approximately 11 p.m., Shanaya Jenkins, a seventeen-year-old resident of affluent Coral Gables, Florida, was walking home from a FSU vs. UM rivalry game party a few blocks away. On her way, she realized that she misplaced her house keys. She thought, “Oh no.” The last thing Ms. Jenkins wanted to do was call her mother and tell her that she lost her second set of house keys this year. Then she remembered that her brother kept his bedroom window slightly ajar during the spring and summer months.

Meanwhile, Officer James Coffey, a rookie to the Coral Gables Police Department, was patrolling Ms. Jenkins’s neighborhood. Officer Coffey observed Ms. Jenkins walking to the backside of a home. He made a U-turn. Officer Coffey called for backup and told the

29. Whisner, *supra* note 20, at 630.

30. You could also create a hypothetical that involves discrimination against persons with sickle cell anemia, a medical condition that predominately affects African Americans.

31. WILLIAM M. HICKS, TRIAL HANDBOOK FOR FLORIDA LAWYERS § 8:3 (3d ed. 2016).

dispatcher that he observed a suspicious person walking with their hands hidden inside a black UM hoodie about to burglarize a home. He did not want to spook the “burglar,” so he did not turn on his police lights or blast his sirens as he approached the house again. Officer Coffey saw Ms. Jenkins trying to lift the window up. Officer Coffey yelled for Ms. Jenkins to freeze, but Ms. Jenkins did not hear him because she was listening to music on her brand new Beats headphones. Officer Coffey yelled again, “It’s the police. Freeze or I’ll shoot.” Ms. Jenkins got the window open and began to climb in. Officer Coffey shot Ms. Jenkins three times, twice in the lower back and once in the right leg. Ms. Jenkins fell forward inside the window. Officer Coffey grabbed Ms. Jenkins and pulled her to the ground. He checked for a pulse. No pulse. He called into his radio for an ambulance. When the ambulance arrived, it was too late. Ms. Jenkins was dead.

About thirty minutes after the shooting, Ms. Jenkins’s mom approached her home and noticed all of the crime scene tape. She jumped out of her car and ran up to a group of officers. After officers asked her a few questions, they realized that Ms. Jenkins was her seventeen-year-old daughter. Officer Coffey was put on administrative leave with pay. The local community was outraged. The State Prosecutor wants to know whether the state has enough to charge Officer Coffey with murder, manslaughter, or a lesser crime.

¶20 I plan to use a different strategy to approach race with this hypothetical in my second week of case law research. The facts do not include Ms. Jenkins’s or Officer Coffey’s race. When I review the assignment, I will pose the following questions: Did you consider the race of Ms. Jenkins or Officer Coffey? Would your legal argument change if Ms. Jenkins was African American and Officer Coffey was White? What if Ms. Jenkins was White and Officer Coffey was Latino? I suspect that many students did not consider race because the facts do not disclose this. This teaching moment will show students that they must be mindful of potential social factors that could exist when they are conducting legal research.

¶21 You can make other small changes to your existing hypotheticals to make them multicultural. The issue of race may not change the legal outcome, but it will make the hypotheticals more practical and train students to think about the possible racial implications. Here are two suggestions:

- Use ethnic names such as Rhonda, Juanita, Enrique, Safiya, and Chang in your hypotheticals instead of the typical race-neutral “Jack and Jill.” Students are going to represent clients from all racial groups, so our hypotheticals should reflect this reality. Use the same guideline for naming attorneys, firms, and judges.
- Identify the race of the client in your hypotheticals. We cannot leave it up to the student to visualize what their clients look like because many of them will envision a client who looks like them and conforms to their social norms. Including the race of the client will make students mindful that their client’s race could be a social factor to explore.

¶22 When students and faculty collectively decide to talk about race and discuss its intricacies, growth becomes more and more visible.<sup>32</sup> The growth is not just for the White students and faculty.<sup>33</sup> My experience and perspective as an African American woman is different from that of a Latino woman or even another African American woman. Opportunities are abundant for us to learn from each other. As

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32. *Id.*

33. *Id.* at 551.

legal research instructors, we should not be afraid to create legal research hypotheticals that require students to research and analyze how laws impact social forces such as race, class, gender, sexual orientation, disability, and religion. I hope that you will consider incorporating race into your next legal research course. Feel free to use the hypotheticals that I provided or collaborate with your colleagues to create your own.