

Getting Out of Our Comfort Zones: Addressing Issues of Race in the LRW Classroom

LWI One-Day Conference
Northeastern University School of Law
in conjunction with the AALS LWRR Diversity Committee
December 3, 2020
Eastern Standard Time

At-A-Glance Schedule of Presentations

- 11 - 11:10 Greetings and Introduction
- 11:10-11:30 Hearing From All Voices: Student Perspectives Video
- 11:30-11:55 **Viewing Students Through a Wide Angle Lens: Embracing Diversity in the Legal Writing Classroom** - Amy Soled and Barbara Hoffman (Rutgers Law School)
- 12-00-12:25 **Making a Habit of Discussing Race** - Alison Mikkor (UC Irvine School of Law)
- 12:30-1:15 **Lunch Break and Virtual Coffee Chat** - breakout groups facilitated by Danielle Tully (Northeastern University School of Law), Eun Hee Han (Georgetown University Law Center), Margaret Hahn-DuPont (Northeastern University School of Law)
- 1:15-2:15 **Invited Speaker Panel** - Cindy Archer (UC Irvine School of Law), Tiffany Atkins (Elon University Law School), Leslie Culver (University of Utah School of Law), Nantiya Ruan (Sturm College of Law), Rachel Croskery-Roberts, moderator (UC Irvine School of Law)
- 2:15-2:40 **Black Ice and White Lies: Minding Our Words** - Jean Sbarge (Widener University School of Law)
- 2:45-2:55 Break
- 2:55-3:40 **Addressing Structural Racism: Teaching Exercises for the Legal Skills Classroom** - Elizabeth Bloom, Stephanie Hartung, and Deborah Johnson (Northeastern University School of Law)
- 3:45-4:10 **Forcing the Issue: An Example of Building Unavoidable Issues of Race Into the Memo Assignment** - Kathryn Naegeli Boling (Seattle University School of Law)
- 4:10-4:20 Break

- 4:20-4:45 **Words Matter: Teaching Persuasive Facts by Exploring the Rhetoric of Race in *United States v. Korematsu*** - Ann Ching (Arizona State University)
- 4:45-5:10 **Jailhouse Lawyers Assignment** - Amanda Elyse (Elon University School of Law)
- 5:10-5:55 **Confronting Norms in Legal Analysis and Storytelling** - Sherri Keene and Susan McMahon (Georgetown University Law Center)

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Full Schedule of Presentations

11 - 11:10 Greetings and Introduction

11:10-11:30 Hearing From All Voices: Student Perspectives Video

11:30-11:55 Viewing Students Through a Wide Angle Lens: Embracing Diversity in the Legal Writing Classroom - Amy Soled and Barbara Hoffman (Rutgers Law School)

The legal writing classroom is the ideal place to use culturally-proficient instruction to deconstruct marginalization and construct inclusion. As professors of relatively small first-year classes, we can embrace diversity and help students who feel like outsiders feel more like insiders. Our presentation will discuss ways in which legal writing professors can recognize their own implicit biases and build their students' self-esteem by encouraging students to embrace their unique backgrounds, backgrounds that will make them effective advocates.

12-00-12:25 Making a Habit of Discussing Race - Alison Mikkor (UC Irvine School of Law)

The "Five Habits for Cross Cultural Lawyering" are central to how I teach students to consider the impact of race on the law and legal problems. Developed by clinicians Sue Bryant and Jean Koh Peters, the Habits:

- Highlight that differences in personal experience and social identity mean that each individual lawyer, lawmaker, and client views and experiences the law differently.
- Identify implicit bias as a universal and professional challenge that lawyers must address to be effective.
- Provide concrete tools that a lawyer can use to identify and account for the impact of differences between themselves and others.

The presentation will explore these benefits and explain how I use the framework in my course.

12:30-1:15 **Lunch Break and Virtual Coffee Chat** - breakout groups facilitated by Danielle Tully (Northeastern University School of Law), Eun Hee Han (Georgetown University Law Center), Margaret Hahn-DuPont (Northeastern University School of Law)

1:15-2:15 Invited Speaker Panel - Cindy Archer (UC Irvine School of Law), Tiffany Atkins (Elon University Law School), Leslie Culver (University of Utah School of Law), Nantiya Ruan (Sturm College of Law), Rachel Croskery-Roberts, moderator (UC Irvine School of Law)

2:15-2:40 Black Ice and White Lies: Minding Our Words - Jean Sbarge (Widener University School of Law)

This presentation will show ways we can teach students to be mindful of common language that has racist origins or whose current use perpetuates white supremacy and/or marginalizes various groups of persons. We say “words are our sharpest tool” and “choose your words carefully,” so why not teach that minding the racial undertones or overtones, and other aspects, of our words is also important. Through small group and individual exercises, attendees will learn about common seemingly “innocuous” words and phrases, and will have exercises to teach students to avoid such language and be mindful of using inoffensive, inclusive language.

2:45-2:55 Break

2:55-3:40 Addressing Structural Racism: Teaching Exercises for the Legal Skills Classroom - Elizabeth Bloom, Stephanie Hartung, and Deborah Johnson (Northeastern University School of Law)

In the year 2020, high-profile incidents of anti-Black police violence and the starkly disparate impacts of the Covid-19 pandemic on communities of color have brought the realities of structural racism to the forefront of public discourse and propelled a renewed call for social justice. Now more than ever, practicing law requires a sophisticated understanding of the systems of oppression within the legal system that have operated both to create and perpetuate racial disparities in the United States for centuries. In this presentation, we will share a series of concrete assignments and in-class exercises that teach students how to meaningfully address the realities of structural racism, with an emphasis on institutional and cultural white supremacy and its impact on Black and Brown people and communities.

3:45-4:10 Forcing the Issue: An Example of Building Unavoidable Issues of Race Into the Memo Assignment - Kathryn Naegeli Boling (Seattle University School of Law)

This presentation focuses on a memo assignment to first-year students inspired by student calls for more social justice issues in memo assignments and Teri McMurtry-Chubb’s article “The Practical Implications of Unexamined Assumptions*: Disrupting Flawed Legal Arguments to Advance the Cause of Justice.” The problem involves the federal entrapment defense and a White defendant who was induced to graffiti a federal courthouse at a Black Lives Matter protest by a Black undercover agent who had infiltrated his way into the local BLM chapter. The sole legal issue was whether there was sufficient evidence that the defendant was “predisposed” to commit the crime before the government’s inducement. I encouraged the students to explore the ways that the parties would use the issues of race surrounding the fact

pattern to frame arguments. We discussed how it was in the Government's interest to take a "colorblind" approach, and how that was often the case for large institutions when pitted against individuals. For the defendant, however, it was important to raise issues of race in the context of their analysis of both the first and fifth factors of predisposition. Overall, I was very happy with the students' engagement with the problem and the opportunities it presented to teach many aspects of memo-writing quite deeply while also making issues of race unavoidable.

4:10-4:20 Break

4:20-4:45 Words Matter: Teaching Persuasive Facts by Exploring the Rhetoric of Race in *United States v. Korematsu* - Ann Ching (Arizona State University)

Teaching basic advocacy skills provides a natural opening for discussing race in the context of legal writing. In this presentation, I will describe a persuasive facts assignment I created using excerpts from *United States v. Korematsu*, the 1944 U.S. Supreme Court decision that upheld the constitutionality of World War II Japanese internment camps. Comparing the language of the majority and dissenting opinions instructs students in techniques like framing and word choice, while also providing an invaluable lesson on the power of words to both reinforce and repudiate systemic racial discrimination.

4:45-5:10 Jailhouse Lawyers Assignment - Amanda Elyse (Elon University School of Law)

Each year, I assign my 1L legal writing students to read the book *Jailhouse Lawyers: Prisoners Defending Prisoners v. the USA* by Mumia Abu-Jamal. As an introduction to the assignment, we discuss that we are reading the book so that we may hear directly from people who are the most impacted by the criminal legal system, and so that we may experience a piece of writing that is a break from the traditional law school readings that are by and for lawyers and judges. Additionally, we discuss the importance of creating space for voices—including especially black voices—that have something to say about the legal system without requiring that the person have a list of academic credentials. At the end of the term, the students complete a reflective writing assignment about the book, and this year that assignment has become to write a letter to Mumia Abu-Jamal. They get to choose whether they want to actually mail the letter to him, but regardless, the letter is an opportunity for them to write about the legal system in a way that breaks through the walls that are often put around legal education and to encourage them to think about the value of corresponding with people in prison. Each year, the experience of reading the book transforms how many of my students think about the legal system and builds a new foundation for them in their 1L year, and it has inspired multiple students to decide to pursue doing clemency work because of the stories that Mumia tells.

5:10-5:55 Confronting Norms in Legal Analysis and Storytelling - Sherri Keene and Susan McMahon (Georgetown University Law Center)

Race and power dynamics are embedded in our laws, but law professors too often treat the law as neutral. We will discuss how legal writing professors can confront

this fiction of neutrality. Sue will address how the failure to acknowledge inequity in legal analysis leads to the replication of injustice. She offers techniques to help students see latent power imbalances and tools for upending the status quo. Sherri will talk about seemingly neutral legal standards that invite some narratives while excluding others. Rather than follow the courts' lead, she suggests ways to bring unacknowledged narratives into our teaching.