

Practicing Reference . . .

Race and the Reference Librarian

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issues of race.⁵ Among the handful of Supreme Court cases known to nonlawyers as well as to lawyers are some that wrestled with racial inequality. 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. 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, employment discrimination,⁹ property,¹⁰ torts,¹¹ education,¹² tax,¹³ voting,¹⁴ family law,¹⁵ civil procedure,⁶ health law,⁷ bankruptcy,¹⁸ and even intellectual property law,

erty.¹⁹ 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,” “implicit bias,”²¹ “white privilege,”²² and the notion that race is socially constructed, not an immutable biological category.²³

¶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, might also think about the varied experiences of people within those groups. For

a big continent with many cultures. And, as with any other American, an Asian American or a Hispanic 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

A few dozen schools host student-edited journals on race and the law, such as the Berkeley Journal of African-American Law & Policy, the Journal of Gender, Race & Justice from the University of Iowa, and Reference librarians at institutions with

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? To raise that issue, McCleskey's attorneys went outside strictly legal research, bringing in a statistical analysis by social scientists. 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 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. 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. 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*, *THE 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. Eitherskv

¶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. 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.

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

¶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*, CONNAGHER LAW LIBR., UNIV. OF WASH. SCH. OF LAW, <https://lib.law.washington.edu/content/guides/race/> (last updated Oct. 10, 2013).

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