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3-2019

Developing a Culturally Competent Legal Research Curriculum

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Citations:

Bluebook 21st ed.

Shamika Dalton & Clanitra Stewart NejdI, Developing a Culturally Competent Legal Research Curriculum, 23 AALL Spectrum 18 (2019).

ALWD 6th ed.

Dalton, S.; NejdI, C. ., Developing a culturally competent legal research curriculum, 23(4) AALL Spectrum 18 (2019).

APA 7th ed.

Dalton, S., & NejdI, C. (2019). Developing culturally competent legal research curriculum. AALL Spectrum, 23(4), 18-21.

Chicago 17th ed.

Shamika Dalton; Clanitra Stewart NejdI, "Developing a Culturally Competent Legal Research Curriculum," AALL Spectrum 23, no. 4 (March/April 2019): 18-21

McGill Guide 9th ed.

Shamika Dalton & Clanitra Stewart NejdI, "Developing a Culturally Competent Legal Research Curriculum" (2019) 23:4 AALL Spectrum 18.

AGLC 4th ed.

Shamika Dalton and Clanitra Stewart NejdI, 'Developing a Culturally Competent Legal Research Curriculum' (2019) 23(4) AALL Spectrum 18.

MLA 8th ed.

Dalton, Shamika, and Clanitra Stewart NejdI. "Developing a Culturally Competent Legal Research Curriculum." AALL Spectrum, vol. 23, no. 4, March/April 2019, p. 18-21. HeinOnline.

OSCOLA 4th ed.

Shamika Dalton and Clanitra Stewart NejdI, 'Developing a Culturally Competent Legal Research Curriculum' (2019) 23 AALL Spectrum 18

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DEVELOPING A CULTURALLY COMPETENT LEGAL RESEARCH CURRICULUM

Best practices for weaving cultural competency topics, including diversity, into your lectures, assignments, and classroom discussions.

BY SHAMIKA DALTON &
CLANITRA STEWART NEJDL

With all the information that a legal research instructor must impart to law students—and given the limited amount of time they have to do so—it is understandable that there might be hesitancy to undertake anything that might complicate the legal research classroom. There is one concept, however, that legal research instructors should be working to integrate into their law school classes despite the additional effort required: cultural competence. The law students we teach today will be expected to be the culturally competent lawyers of the future. While the idea of using the law school classroom to help students become culturally competent is not new, academic law librarians continue to wrestle with whether legal research instruction should be used for this purpose, and if so, how to begin.



What Is Cultural Competence?

Although there are many ideas about what constitutes cultural competence, its key aspects include the ability to recognize one's own potential biases, embrace diversity, and successfully serve others. Cultural competence goes beyond racial and ethnic diversity to include differences in religion, gender, social values, and other characteristics. A useful discussion of the evolving definitions of cultural competence is available at the Georgetown University Center for Child & Human Development's National Center for Cultural Competence website at bit.ly/MA19Georgetown.

Lawyers Must Be Culturally Competent

A review of the American Bar Association's (ABA) requirements and guidelines makes it clear that cultural competence is a critical skill for lawyers and that many of the skills and considerations needed for cultural competence are also requirements for being a successful lawyer. Further, these requirements and guidelines tie the creation of culturally competent lawyers directly to the law school curriculum. For example, the ABA's Model Rules of Professional Conduct (available at bit.ly/MA19ABA) exist to "assur[e] the highest standards of professional competence and ethical

conduct." Of those rules, three are of specific interest here: Rule 1.1, Rule 1.3, and Rule 2.1.

Rule 1.1 (Competence) states that "a lawyer shall provide competent representation to a client." It further states that "[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment Two to Rule 1.1 states in part that "[p]erhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge." Comment Five further explains that to competently handle a legal matter, the attorney must be able to "inquir[e] into and analy[ze] ... the factual and legal elements of the problem, and [use] methods and procedures meeting the standards of competent practitioners." The comment further notes that "adequate preparation" is also required.

Rule 1.3 (Diligence) requires attorneys to represent their clients with "reasonable diligence and promptness." Comment One to Rule 1.3 indicates that such diligence and promptness includes "act[ing] with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Perhaps most relevant is Rule 2.1 (Advisor), which states that "a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation," while Comment Two to Rule 2.1 specifies that "[i]t is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice."

Each of the aforementioned Rules encompasses aspects of competent and ethical lawyering beyond a mere knowledge of legal skills. The ability to be thorough, diligent, prepared, and fully able to ascertain both the types of legal issues involved in a case and their related moral, economic, social, and political considerations, requires a legal

education that encourages and assists law students in recognizing the diversity of thought, circumstances, and cultures that they may encounter when working with clients. Put simply, it requires legal education that teaches students to be culturally competent.

If there were any doubt that creating culturally competent students is part of a law school's curricular responsibility, the ABA Standards and Rules of Procedure for Approval of Law Schools explicitly express the role that law schools are to have in promoting cultural competence in their students. (Learn more at bit.ly/MA19Standards.) Standard 302, for example, tasks law schools with creating "learning outcomes that shall, at a minimum, include

competency in ... [the] professional skills needed for competent and ethical participation as a member of the legal profession."

In Interpretation 302-1 to Standard 302, the ABA goes further by declaring that cultural competency may be included in those professional skills.

Cultural Competence in Legal Research Classes

If you consider the American Association of Law Libraries (AALL) Core Competencies of Law Librarianship—particularly the need for law librarians to "understan[d] the social, political, economic, and technological context in which the legal system exists" (Competency 1.5),

"[e]xhibi[t] an understanding of the importance of a multidisciplinary and cross-functional approach to programs and projects within the organization" (Competency 1.11), and "[d]esig[n] curricula and teach[ing] to meet the educational needs of users ..." (Competency 7.4)—the legal research instructor (as an academic, teaching librarian) is well positioned to address issues of implicit bias, diversity, and cultural competence in their classroom. (Access AALL's Core Competencies at bit.ly/AALLCompetencies.) When these Competencies are coupled with the ABA guidelines previously discussed, the argument could be made that the legal research instructor not only should incorporate discussions and assignments that will promote cultural competency into their classrooms, but they also have a duty to do so.

Implementation

You may ask yourself: How can I incorporate race (and other diversity issues) into my course? We suggest that you start by making small changes and increase your incorporation of these topics as you become more comfortable with them. Here are some suggestions of ways to incorporate diversity topics into your lectures, assignments, and classroom discussions.

Lectures

When we discuss the process of generating search terms and synonyms, we encourage students to create a list of synonyms to ensure that they capture a comprehensive sample of cases. This is a great opportunity to have a discussion about the evolution of terms used to refer to certain groups of people. Throughout society, for example, the terms used to identify African Americans have changed in a quest to be politically correct. If one's race is a pertinent element of a legal issue, students have to be mindful and include the necessary synonyms for a particular minority group. Students need to understand that they may have to consider terms that they would never say out loud to ensure the search yields cases from the 1900s and 2000s.



HELPFUL RESOURCES

"Diverse Interactions: Addressing Race and Implicit Bias in Legal Research Instruction," available at bit.ly/MA19Dalton.

"Diversity, Equity, and Inclusion Practices in the Law School Classroom," University of Oregon, available at bit.ly/MA19Diversity.

"Incorporating Race in Your Legal Research Class," *Law Library Journal* 109, no. 4 (Fall 2017): 703-710, available at bit.ly/LLJF17Dalton.

"Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching," *Willamette Law Review* 32, no. 3 (1996), 541-575.

"This Really Happened: Incorporating Legal News Items and Current Events into Legal Research Courses," *Legal Writing* 30, no 2 (Fall 2017): 45-49, available at bit.ly/MA19Legalwriting.

Pointers for Addressing Race & Diversity in Legal Research Instruction

- Draft hypotheticals that indicate implicit bias may be an issue relevant to the legal issue at hand.
- Ask students about assumptions they have made about the parties in certain hypotheticals (e.g., race, gender, etc.).
- Generate conversations to help students understand how biases (prosecutorial, judicial, jury, eyewitness, etc.) in the legal system can adversely impact clients who belong to underrepresented groups.
- Create research assignments that require students to find older cases that may include terms that are not culturally sensitive.

Assignments

Start by making small changes to your existing hypotheticals to make them multicultural. Consider using ethnic and gender-forward names or identifying the client's race, gender, and sexual orientation in your hypotheticals. If we leave it up to students to imagine who their clients are, naturally they will visualize clients who look like them. When issue-spotting, students should be trained to consider one's identity and to understand how the application of certain laws could adversely impact diverse populations. For docket-related assignments, consider having students track down briefs from *Obergefell v. Hodges*. When covering administrative law and the powers of the President, students could research President Trump's three immigration-related executive orders. We have created three race-related hypotheticals (available at bit.ly/MA19Dalton) to give you a starting point.

As your comfort level increases, you can start creating new hypotheticals based on areas of law that involve historically disadvantaged diverse populations, such as education, housing, employment discrimination, jury selection, sentencing, gerrymandering/voter suppression, and the interpretation of "imminent fear" and probable cause. If you need inspiration for hypothetical

topics, visit online news articles, legal blogs (i.e., *SCOTUS* or *Jurist*), the *ABA Journal*, or websites for administrative agencies such as the Equal Employment Opportunity Commission and Office of Civil Rights. When you create new hypotheticals, please consider sharing them in the Research Instruction & Patron Services Special Interest Section Teaching Toolkit.

Classroom Discussions

Discussing sensitive topics in the classroom can be frightening, but if you have a plan and an agenda, you can be successful. In your syllabus, inform students that they will be working through hypotheticals that may require research and class discussions about sensitive topics. When discussing sensitive topics in the classroom, it is important that you lay down some ground rules. This will ensure that the discussion is constructive and not destructive. Ground rules can include: (1) Respect others' rights to hold opinions and beliefs that differ from your own. When you disagree, challenge the idea, not the individual; (2) Be courteous. Inflammatory language will not be tolerated; (3) Support your statements with evidence and provide a rationale for your points; and (4) Recognize that we are all still learning. Be willing to change your perspective and make space for others to

do the same. Setting classroom conduct guidelines will help clarify expectations and foster an environment of mutual respect and collaborative inquiry.

Looking Ahead

Legal research and cultural competence are two critical skills for lawyers in our world today. As teaching librarians, we should incorporate some of the issues plaguing our nation into our legal research curriculum. We have a great opportunity to train students to think about cultural competence from the beginning to the end of the legal research process. We hope that this article provides you with leverage to advocate to your administrators for cultural competence in your legal research curriculum and provides suggestions to help you get started. ■

READ

Gail A Partin and Sally H. Wise's article "Hitting the Mark? AALL Legal Research Competencies: From Classroom to Practice," in the March/April 2016 issue of *AALL Spectrum* at bit.ly/MA16Mark.

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