

UFELAW

Center for the Study of Race and Race Relations

FREDRIC G. LEVIN COLLEGE OF LAW • FALL 2011



Kathryn Russell-Brown

LETTER FROM THE DIRECTOR

Thing 1 One afternoon, as we walked through the mall, my children discussed an incident at school. My daughter was sharing a story with her brother. My ears perked up when she commented, “The White girl said...” immediately followed by, “Then the Black girl said...” I felt myself cringe, just slightly. Race! Did someone say something about race? I found myself glancing about to see if any passersby had overheard. Somehow it felt as if my kids had violated some rule of racial etiquette — one I obviously had not taught them — not to mention race in public. I was having a Du Boisian double consciousness moment, and it was not comfortable.¹ My reaction bothered me and gave me pause.

Thing 2 In June, NPR aired a piece, “That’s Racist! How a Serious Accusation Became a Commonplace Quip.”² The upshot of the story is that the expression, “That’s racist!” is used by some young people, comedians and in sitcoms as a punch line. As a retort to someone who asks whether a new classmate is Asian; to someone who separates their laundry into darks and whites; or as a response when a teacher gives out homework. It’s a new twist on the accusation of being “PC.” A few comments and questions. One,

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CSRRR 2011 Spring Lecture *Harvard’s Ogletree Gives CSRRR’s 8th Spring Lecture*

By Nicole Safker (3L)

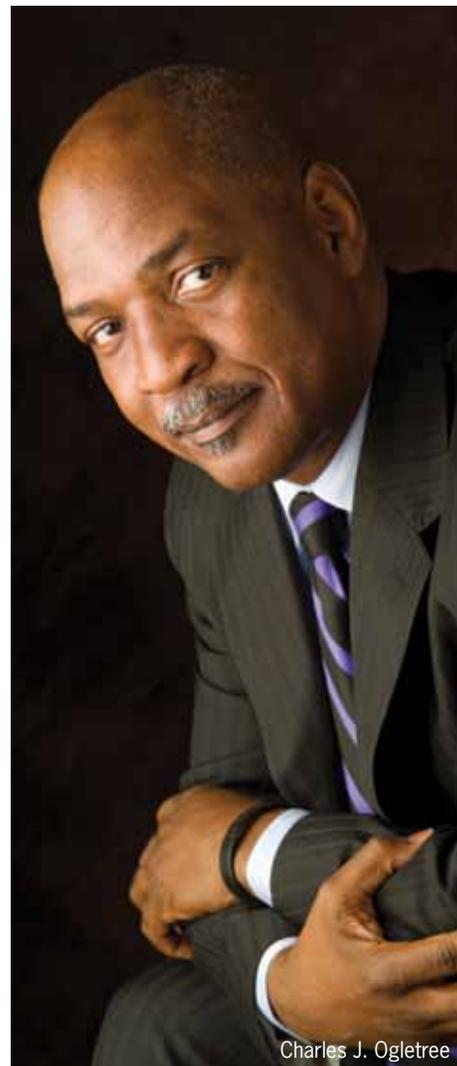
People do not normally expect to be arrested on their front porch on suspicion of burglarizing their own home.

But that is precisely what happened to a prominent African-American Harvard law professor in 2009.

Henry Louis Gates, Jr. was arrested for disorderly conduct on the porch of his Cambridge, Massachusetts, home after a confrontation with a police officer. The police officer had responded to a dispatch call made after a woman observed two men attempting to force a door open. The two men were Gates and his driver, and they were struggling to open the door because of a faulty lock.

The case raised issues at the intersections of race and class. Gates’ situation also casts serious doubt on the notion of America as a post-racial society.

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Charles J. Ogletree

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Upcoming Events Spring 2012

January, 2012

Journal of Law & Public Policy

Special issue on race, with contributions by CSRRR affiliates and other scholars.

February, 2012

Panel on JLPP special issue, *Are We in a Post-Racial America?* How do trends in race, human rights and justice demonstrate that America is or is not a post-racial society? Join us for a panel discussion and open forum where contributors to the *Journal of Law & Public Policy* special issue on race will discuss the current status of race in America.

March 21, 2012

CSRRR Spring Lecture

Lecture by Al Brophy, Reef C. Ivey II, Professor of Law at the University of North Carolina. Professor Brophy writes at the intersections of race, history, and property law. He is the author of *Reconstructing the Dreamland: The Tulsa Riot of 1921, Race, Reparations, Reconciliation*.

Please check the Center website: www.law.ufl.edu/centers/csrrr for details.

Spring Lecture, continued from page 1

It is the validity of that assumption — that Americans are treated the same regardless of the color of their skin — that served as the focal point for a talk in March by Professor Charles J. Ogletree of Harvard University. Ogletree was invited to UF's Levin College of Law to give the CSRRR's 8th annual Spring Lecture.

Faculty, staff and community members packed into the Chesterfield Smith Ceremonial Classroom to hear Ogletree's unique perspective. His lecture was titled, "Are We in a Post-Racial Society? Race in America Today."

Not only has Ogletree made a name for himself as a prominent legal theorist, criminal defense attorney and an influential champion of civil rights, he has written and lectured widely on issues of racial profiling, capital punishment, reparations and juvenile justice. He is the Jesse Climenko Professor of Law and the director of the Charles Hamilton Houston Institute for Race and Justice at Harvard.

Ogletree first discussed the issue of a post-racial America in the context of his mentorship of both President Barack Obama and First Lady Michelle Obama, when they were students (not during the same period) at the Harvard Law School.

"(President Obama) had a vision that everyone has a voice in government," Ogletree said. "That same idea that everyone's voice counts; that became part of his legend."

The year 2008 was a turning point for social and political relations in America. But, Ogletree said, Obama's election prompted the birth of a risky argument — furthered by politicians, law-makers and citizens alike — that since Americans now have a black president, "we have overcome the vestiges of the past, and now we're in a post-racial America," and this new America can now safely abolish hard-fought protections and benefits intended to help place minorities on equal ground — such as the Voting Rights Act.

Ogletree says that President Obama also espouses the ideal of a post-racial society, but for a different reason. "It's amazing to see how race becomes a conundrum that undermines most of what he hopes to do because his campaign was based on (the idea that) race doesn't matter," Ogletree said.

Ogletree combined the experience of Gates with a discussion of the possibility of a post-racial society in his most recent book, *The Presumption of Guilt: The Arrest of Henry Louis Gates, Jr. and Race, Class and Crime in America* (2010, Palgrave Macmillan).

After the talk, Ogletree met with students and others and signed copies of his book.

CSRRR Director Katheryn Russell-Brown said the objective of the Spring Lecture is to "celebrate and recognize scholarship that focuses unblinkingly on race." She said that through Ogletree's diverse body of work, "he shows not just that race matters, but how and for whom and why all of us should care."

Russell-Brown said everyone involved was pleased with the turnout, which was the largest of any CSRRR spring lecture. The ability of Ogletree to speak to many different audiences and appeal to many different points of view was a main reason for the event's success, she said.

"Professor Ogletree has the deep respect of his colleagues, students, friends and family and it's a high compliment to say that someone speaks truth to power. It's appropriate to say that he also speaks the truth powerfully, both to those in power and to those less than powerful," Russell-Brown said.



2011 Evan J. Yegelwel Fellow Shana Kalil

Shana Kalil (3L) is from Boca Raton, Florida. A 2009 graduate of the University of Florida, with a bachelor's degree in Jewish Studies and English, she is interested in criminal law and civil rights. Shana will take her legal studies abroad to Tel Aviv University this fall. In addition to her academic work, she is a board member of OutLaw, the LGBT and Ally Law Student Association.

"Growing up in Boca Raton, I had strong ties to the Jewish community. I am grateful to the Anti-Defamation League (ADL) for allowing me to return to my hometown and channel these interests into the legal and civil rights arena. Hopefully, my work this summer with the ADL will be the foundation for a lifelong career in *tikun olam* (making the world a better place)," Shana says. The Evan Yegelwel Fellowship award permits one UF Law student to participate in a summer fellowship program at the ADL's Florida Regional Office in Boca Raton. A generous gift from UF Law alumnus Evan Yegelwel, who graduated in 1980, has made this Fellowship possible. Mr. Yegelwel is a partner in the Jacksonville, Florida, law firm of Terrell Hogan Ellis Yegelwel, P.A. The Yegelwel Fellowship is in its fifth year.

The New Jim Crow, Book Talk

By Alyssa Cameron (UFL'11)

On Sept. 15, 2010, students, faculty and community members came together for a discussion of *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, by Professor Michelle Alexander, Ohio State University Moritz College of Law. The discussion was in anticipation of Alexander's Sept. 22, 2010, lecture at the Levin College of Law.

Alexander's book examines the state of race and racial justice in the United States and concludes that the racial caste system, that existed during the pre-civil rights era, is still in place. Alexander observes that even though the U.S. has elected its first black president, many young black men remain disadvantaged in major U.S. cities because they are labeled as felons or are already behind bars. The criminal justice system — while maintaining an outward stance of colorblindness — serves as a modern means of racial control.

Professor Nancy Dowd, director of the Center on Children and Families, and Professor Katheryn Russell-Brown, CSRRR director, organized the event with the goal of having "informed conversations about these important topics," Russell-Brown said. "We, as faculty, are no more knowledgeable or insightful than you, as students," Dowd said. "We are all trying to find our way together in examining these important issues. It was a profound experience to read this book."

At the book discussion, Adessa Barker ('11) noted the differences between the new and old Jim Crow. "It's subtle. Once you get the stamp of 'convict,' it affects your whole life, and puts your family into a downward spiral."

The New Jim Crow calls for a reevaluation of the current system and seeks to bring the issue of mass incarceration to the forefront of a new movement for racial justice in the United States.



Congratulations to the Winners of the 2011 CSRRR Course Development Grant Competition

The CSRRR Course Development Grant is intended to fund the development and teaching of courses that substantially address issues of race and/or race relations.



Luis A. Caraballo-Burgos completed his bachelor's degree in political science at the University of Central Florida in 2006, focusing on international relations. He went on to complete a master's degree at the University of Florida's Center for Latin American Studies in 2010, concentrating in crime, law and governance in the Caribbean. He is currently pursuing a doctoral degree in sociology at the University of Florida specializing in race and ethnicity in the U.S. and around the globe. His research emphasizes issues of Latino identity, black and brown social movements, Caribbean political culture, and Hip-Hop as a cultural representation of cross-ethnic collaborative processes. This fall Luis is teaching an upper-level, undergraduate course, *The Sociology of Race in Hip-Hop*. The course will allow students an opportunity to analyze and interpret the phenomenon commonly known as Hip-Hop, through the lens of critical race theory. Students will focus on understanding the historical, economic, political, and social realities that created the culture of Hip-Hop to better understand how Hip-Hop has affected and continues to affect different societies.



Diedre F. Houchen began her doctoral studies in 2010, through a University of Florida Alumni Fellowship in the School of Teaching and Learning (College of Education). Diedre completed both her master's degree in education and her bachelor's degree in family, youth, and community sciences at UF. Prior to her doctoral studies, she worked as a middle and high school reading and English teacher and as a youth development program coordinator at non-profit organizations in African-American and Caribbean communities. Her research interests are black education, critical race theory, and the intersection of education and social justice. She anticipates continuing her work within African-American and Afro-Caribbean communities after attaining her doctorate. Diedre is teaching an upper level undergraduate course, *Race and Education*. The course will examine the history of race in America and its implications for human potential, social status, and educational attainment.



Robert Perdue completed his bachelor's degree in history and his master's degree in sociology from Virginia Tech. In 2008, he accepted an Alumni Fellowship to study environmental sociology in the doctoral program at UF. Robert's research focuses on the social and ecological impacts of our current energy processes. His dissertation addresses the networks of social movements attempting to end surface mining of coal in Appalachia. He envisions this research as a part of a larger research agenda that seeks to understand how communities facing injustices due to energy extraction are forging transnational alliances for change. Of particular interest is how these groups negotiate racial, cultural and geographical differences in their search for a more benign energy future. After completing his doctorate, Robert intends to teach and conduct research in Appalachia. This fall Robert is teaching an upper level, undergraduate course, *Energy, Race, and Justice*, which builds on the environmental justice framework. Around the globe, people of color disproportionately bear the externalities of our current energy processes, from extraction, to production, to combustion to waste disposal. The aim of the course is to unpack the complex matrices of power, race and class that create these environmental and social injustices.

An Evening With the Dues



More than 40 years ago, Patricia Stephens Due was arrested for refusing to leave a whites-only lunch counter in Tallahassee, FL.

She and other protesters were the first to choose jail time instead of paying a fine. They spent 49 days behind bars. Stephens Due spoke at the University of Florida on Feb. 16 about that experience, as well as subsequent arrests, being tear-gassed by police, and other battles in the Civil Rights Movement.

"I know we've been through a lot, but we can't let up, because the struggle continues," she said.

Stephens Due and her husband, civil rights attorney John Due, spoke to more than 220 people at UF's Pugh Hall about their role as civil rights pioneers. The event was organized by the UF Center for the Study of Race and Race Relations and the Samuel Proctor Oral History Program.

Stephens Due was a Florida A&M University (FAMU) student in February 1960 when she was arrested during a sit-in at a Tallahassee Woolworth's. She remembered joining thousands of FAMU students who protested the arrests, only to be blinded by tear gas from police.

"I couldn't see, but I could hear the screams of the students," she said.

At the talk, Stephens Due proudly listed subsequent arrests in civil rights protests in Miami, Ocala and St. Petersburg — as well as at the World's Fair in New York (in 1964), protesting an exhibit that portrayed Florida as paradise.

"We went there to let them know that it wasn't," she said.

John Due was also a trailblazer in the fight for civil rights. He was living in the North when he saw that students at FAMU and other historically black colleges in the

South were leading the way through sit-ins at lunch counters.

"I said I wanted to be part of that process," he said.

He became a FAMU law student and participated in freedom rides that pushed for integration in interstate transportation. He was a co-defendant in a case in which the U.S. Supreme Court ordered that no state could interfere with non-violent protesters exercising their freedom of speech. He would later pass the bar and argue civil rights cases himself.

The Dues married in 1963 and have three daughters. Stephens Due and one of her daughters, Tananarive, co-wrote the book *Freedom in the Family: A Mother-Daughter Memoir of the Fight for Civil Rights* [One World, 2003].

In his talk at UF, John Due disputed the idea that the U.S. is now a post-racial society. Students today don't need to follow the same path as those in the civil rights movement, he said, but they need to work similarly hard in continuing its work.

"You have to do the same for your grandchildren," he said. "It's not over."

Edited version of February 17, 2011 *Gainesville Sun* article by Nathan Crabbe. Reprinted with permission.

A few words from the

2010 Course Development Grantees

Justin Coran, "The CSRRR course grant allowed me to teach a topic ("Cultural Competency within Health Care") that is not well represented at the undergrad or graduate level. Since the initial course last fall, I have received several requests from students to teach it again who were not able to get into the first iteration of the course. Now it is on the course schedule for two more semesters. Upon taking the course, some students have developed such a keen interest in the topic material that they are now conducting undergraduate research projects and writing honors theses about race and culture within health care. This grant has led to an incredible teaching experience for both myself and my students."

Larissa Gata, "The grant allowed me to develop and implement an undergraduate course where students can discuss various environment-related issues that affect different minority groups not only in the U.S., but also across the globe. Personally, the grant gave me the opportunity to impart a rich literature in sociology on environmental justice and inequality."

New and Noteworthy Books

All descriptions are from the publishers

The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America

Khalil Gibran Muhammad
Harvard University Press (2010)

Lynch mobs, chain gangs, and popular views of black southern criminals that defined the Jim Crow South are well known. We know less about the role of the urban North in shaping views of race and crime in American society. The idea of black criminality was crucial to the making of modern urban America, as were African Americans' own ideas about race and crime. Chronicling the emergence of deeply embedded notions of black people as a dangerous race of criminals by explicit contrast to working-class whites and European immigrants, this fascinating book reveals the influence such ideas have had on urban development and social policies.

Critical Race Realism: Intersections of Psychology, Race, and Law

Gregory S. Parks, Shayne Jones, W. Jonathan Cardé (Eds.)
New Press (2010)

Building on the field of critical race theory, which took a theoretical approach to questions of race and the law, *Critical Race Realism* offers a practical look at the way racial bias plays out at every level of the legal system, from witness identification and jury selection to prosecutorial behavior, defense decisions, and the way expert witnesses are regarded. Using cutting-edge research from across the social sciences and, in particular, new understandings from psychology of the way prejudice functions in the brain, this new book — the first overview of the topic — includes many of the seminal writings to date along with newly commissioned pieces filling in gaps in the literature.

The End of the Pipeline: A Journey of Recognition for African Americans Entering the Legal Profession

Dorothy Evensen, Carla D. Pratt (Eds.)
Carolina Academic Press (2011)

How have some African-American attorneys, recently admitted to the bar, successfully navigated what research suggests is a very precarious pipeline to the legal profession? The response to this question entailed a journey that spanned some three years, more than 50 informants, and a dozen or so researchers and scholars who study the intersections of education, race, and efforts to achieve social equity. The resulting work generalizes from the stories collected and constructs a substantive theory of success built around a phenomenon called "working recognition." This concept describes both the recognition experienced in various forms by our study's participants and the recognition they transformed into strategic activities aimed at overcoming academic, economic, and social obstacles encountered in their personal pipelines. We found that it was through such activity that they ultimately attained recognition as lawyers and entered the profession of law.

Illegal: Life and Death in Arizona's Immigration War Zone

Terry Greene Sterling
Lyons Press (2010)

Arizona's violent border is the busiest gateway for illegal immigration in America, making Arizona Ground Zero for the immigration debate. No state is as hostile to the undocumented, and no city is as unwelcoming as Phoenix. Yet Phoenix is home to thousands who live in the shadows, where civil rights are neglected and lives are lost.

Illegal sheds light on the invisible immigrants who persevere despite kidnappings and drug wars, an ongoing recession, and laws barring them from working, learning, and driving. By profiling these undocumented people, and those — such as notorious Sheriff Joe Arpaio — who persecute them, author Terry Greene Sterling courageously reveals the changing face of immigration in America and gives new insight into a divisive national crisis.

Is Marriage for White People?: How the African American Marriage Decline Affects Everyone

Ralph Richard Banks
Dutton (2011)

During the past half century, African Americans have become the most unmarried people in our nation. More than two out of every three black women are unmarried, and they are more than twice as likely as white women never to marry. The racial gap in marriage extends beyond the poor. Affluent and college educated African Americans are also less likely to marry or stay married than their white counterparts. That harms black children and adults, and imperils the growth and stability of the black middle class. The culmination of a decade of research by a distinguished Stanford law professor, *Is Marriage for White People?* melds scholarly theory and data with the poignant stories shared by black women throughout the nation. This unforgettable book is essential reading for anyone who wants to understand the shifting terrain of intimacy in American society.

The Latino/a Condition: A Critical Reader, Second Edition

Jean Stefancic, Richard Delgado (Eds.)
NYU Press (2010)

In the last 45 years, immigration reform has brought tens of millions of new immigrants from Latin American countries to the United States. Since critical race theory pioneers Richard Delgado and Jean Stefancic compiled the first edition of *The Latino/a Condition* in 1998, the population has continued to grow exponentially, while scholarship on Latinos/as has grown just as quickly. The second edition of *The Latino/a Condition* brings together a wide range of new and classic Latino and Latina voices from the fields of law, sociology, history, media studies, and politics.

More than Just Race: Being Black and Poor in the Inner City

William Julius Wilson
W.W. Norton & Co. (2010)

In this timely and provocative contribution to the American discourse on race, William Julius Wilson applies an exciting new analytic framework to three politically fraught social problems: the persistence of the inner-city ghetto, the plight of low-skilled black males, and the fragmentation of the African-American family. Though the discussion of racial inequality is typically ideologically polarized, Wilson dares to consider both institutional and cultural factors as causes of the persistence of racial inequality. He reaches the controversial conclusion that while structural and cultural forces are inextricably linked, public policy can change the racial status quo only by reforming the institutions that reinforce it.

The Perils of Federalism: Race, Poverty, and the Politics of Crime Control

Lisa L. Miller
Oxford University Press (2010)

Much of the existing research on race and crime focuses on the manipulation of crime by political elites or the racially biased nature of crime policy. In contrast, Lisa L. Miller here specifically focuses on political and socio-legal institutions and actors that drive these developments and their relationship to the politics of race and poverty; in particular, the degree to which

citizens at most risk of victimization — primarily racial minorities and the poor — play a role in the development of political responses to crime and violence. Ultimately, *The Perils of Federalism* challenges the conventional wisdom about the advantages of federalization and explains the key disadvantages that local communities face in trying to change policy.

Punishing Race: A Continuing American Dilemma

Michael Tonry
Oxford University Press (2011)

How can it be, in a nation that elected Barack Obama, that one third of African-American males born in 2001 will spend time in a state or federal prison, and that black men are seven times likelier than white men to be in prison? Blacks are much more likely than whites to be stopped by the police, arrested, prosecuted, convicted, and imprisoned, and are much less likely to have confidence in justice system officials, especially the police. In *Punishing Race*, Michael Tonry demonstrates that these patterns result not from racial differences in crime or drug use, but primarily from drug and crime control policies that disproportionately affect black Americans. These policies in turn stem from a lack of white empathy for black people, and from racial stereotypes and resentments provoked partly by the Republican Southern Strategy of using coded “law and order” appeals to race to gain support from white voters.

Reasoning from Race: Feminism, Law, and the Civil Rights Revolution

Serena Mayeri
Harvard University Press (2011)

Informed in 1944 that she was “not of the sex” entitled to be admitted to Harvard Law School, African American activist Pauli Murray confronted the injustice she called “Jane Crow.” Mayeri uncovers the history of an often misunderstood connection at the heart of American antidiscrimination law. Her study details how a tumultuous political and legal climate transformed the links between race and sex equality, civil rights and feminism. Battles over employment discrimination, school segregation, reproductive freedom, affirmative action, and constitutional change reveal the promise and peril of reasoning from race — and offer a vivid picture of Pauli Murray, Ruth Bader Ginsburg, and others who defined feminists’ agenda.

Reversing Field: Examining Commercialization, Labor, Gender, and Race in 21st Century Sports Law

andré douglas cummings, Anne Marie Lofaso (Eds.)
West Virginia University Press, (2010)

Reversing Field invites students, professionals, and enthusiasts of sport — whether law, management and marketing, or the game itself — to explore the legal issues and regulations surrounding collegiate and professional athletics in the United States. This theoretical and methodological interrogation of sports law openly addresses race, labor, gender, and the commercialization of sports, while offering solutions to the disruptions that threaten its very foundation during an era of increased media scrutiny and consumerism.

What Comes Naturally: Miscegenation Law and the Making of Race in America

Peggy Pascoe
Oxford University Press (2010)

What Comes Naturally traces the origins, spread, and demise of miscegenation laws in the United States — laws that banned interracial marriage and sex, and which were enacted and applied not just in the South but throughout most of the country. Beginning in the Reconstruction era, when the term miscegenation first was coined, Peggy Pascoe traces the creation of a racial hierarchy that bolstered white supremacy and banned the marriage of whites to Chinese, Japanese, Filipinos, and American Indians, as well as the marriage of whites to blacks. *What Comes Naturally* transcends older interpretations of bans on interracial marriage as a southern story in black and white to offer a stunning account of the national scope and multiracial breadth of America’s tragic history of miscegenation laws.



7 Questions for

Professor Juan Perea

In fall 2011, Professor Perea will join the faculty of the Loyola University Chicago School of Law.

Juan Perea is one of the country's leading scholars on race and the law. He was the Cone, Wagner, Nugent, Johnson, Hazouri & Roth Professor of Law at the Levin College of Law of the University of Florida, where he taught for twenty years. He has been a visiting professor at Harvard Law School, Boston College Law School, University of Colorado Law School, and was the Distinguished Reuschlein Visiting Professor at Villanova University School of Law. His articles have been published in the Harvard Law Review, California Law Review, NYU Law Review, UCLA Law Review, and Minnesota Law Review, among others. He is the author of Race and Races: Cases and Resources for a Diverse America (2d ed., Thomson/West, 2007) (lead author) and Latinos and the Law (Thomson/West, 2008) (co-author). He is the editor of and contributor to Immigrants Out! The New Nativism and the Anti-Immigrant Impulse in the United States (NYU Press, 1997). Professor Perea is an elected member of the American Law Institute. He received his J.D. magna cum laude from Boston College Law School. His academic honors include membership in Phi Beta Kappa, Phi Kappa Phi and the Order of the Coif. After law school, he clerked for the Hon. Bruce M. Selya of the United States Court of Appeals for the First Circuit. He practiced law with Ropes & Gray and with the National Labor Relations Board, Region One, both in Boston. He teaches Constitutional Law, Employment Law, Professional Responsibility, Critical Theory seminar, and Race and Race Relations.

1. Why study race?

Because it is really the study of “us,” the study of our individual identities and of the terms and conditions under which each of us belongs to the national collective. The terms of belonging vary dramatically according to skin color, phenotype and ancestry, among many other variables. It is fascinating to study these different terms of belonging and the reasons why different terms exist for many of us. To study race, for me, is to study different identities and the history and development of these identities. Everyone has a race.

And race matters today, as it always has. The study of race can help develop judgment about whether law is just or fair, and it also develops a kind of cultural and legal literacy useful in our increasingly diverse society.

2. How do you incorporate race into your teaching?

I teach classes and seminars on race and critical theory. In both subjects, race is always on the table, one way or the other. There is a whole legal history and jurisprudence of race, amply documented

in U.S. Supreme Court and other court decisions, statutes, and legislative history. Many people would be surprised to learn the huge extent of the available legal materials. The materials of law provide an ample basis for discussing race and the relationship between the two.

3. Can you suggest a book for “beginners”?

I recommend *Lies My Teacher Told Me*, by sociologist James Loewen, *Past Imperfect*, by historian Peter Charles Hoffer, and law professor Derrick Bell's *And We Are*

Not Saved. Lies My Teacher Told Me is a pithy, well-documented critique of high school history texts that demonstrates how issues and evidence of racial struggle and social struggle generally are systematically ignored in textbooks. Remarkably, exactly the same critiques hold true for many law and legal history textbooks. The first section of Hoffer's book, *Past Imperfect*, contains a brief history of historiography, or history-writing. Hoffer documents the long-lived production and existence of "consensus history." Such history was intended to — and continues to — promote national unity from a majoritarian point of view. Most mainstream, popular historical writing fits in the category of "consensus history." What this means is that most popular historical writing is basically "feel-good" history for many. Such history often excludes minority points of view and the facets of truth that different points of view can provide. The point I derive from these two books is that one can read and study history books and yet not learn much about racial history, despite its centrality in our history. To learn about race, one must dig deeper. Derrick Bell's *And We Are Not Saved* is a superb, insightful collection of stories about the history and dynamics of race relations.

4. What book or article caused you to think about race in a new way?

Wow. There are so many. Thomas Kuhn's *The Structure of Scientific Revolutions* was a revelation for me because of his exposition of the non-linear, chaotic nature of scientific discovery and innovation and the contrast between that reality and the orderly, linear presentation of scientific progress in textbooks. Kuhn fleshed out well the theory and properties of paradigms.

At the time, during the mid-1990s, I was trying to figure out why Latinos didn't count in conversations about race. I realized that much race-thinking and

scholarship was caught in a paradigm that counted only black and white as races, and others as afterthoughts. And I realized that, for the sake of a linear civil rights narrative, enormous amounts of history had been largely ignored. For example, few people realized that Latinos experienced segregated schools and public facilities throughout the Southwest and sought remedies in the courts. I thought the best way to address the ignored history of many people of color was to write a book that presented and explored their histories and made those histories accessible to law students. That was the impetus behind my *Race & Races* book (with Delgado, Harris, Stefancic, & Wildman).

5. What's the best part of your job?

I love learning, so for me the best part is studying, thinking and writing about what I learn. I try to shine a light on often-ignored history of race and racism. By writing about such history, I try to help readers understand the scope of past and present racial injustice. I also love teaching and the exchange of energy, questions and knowledge with my students.

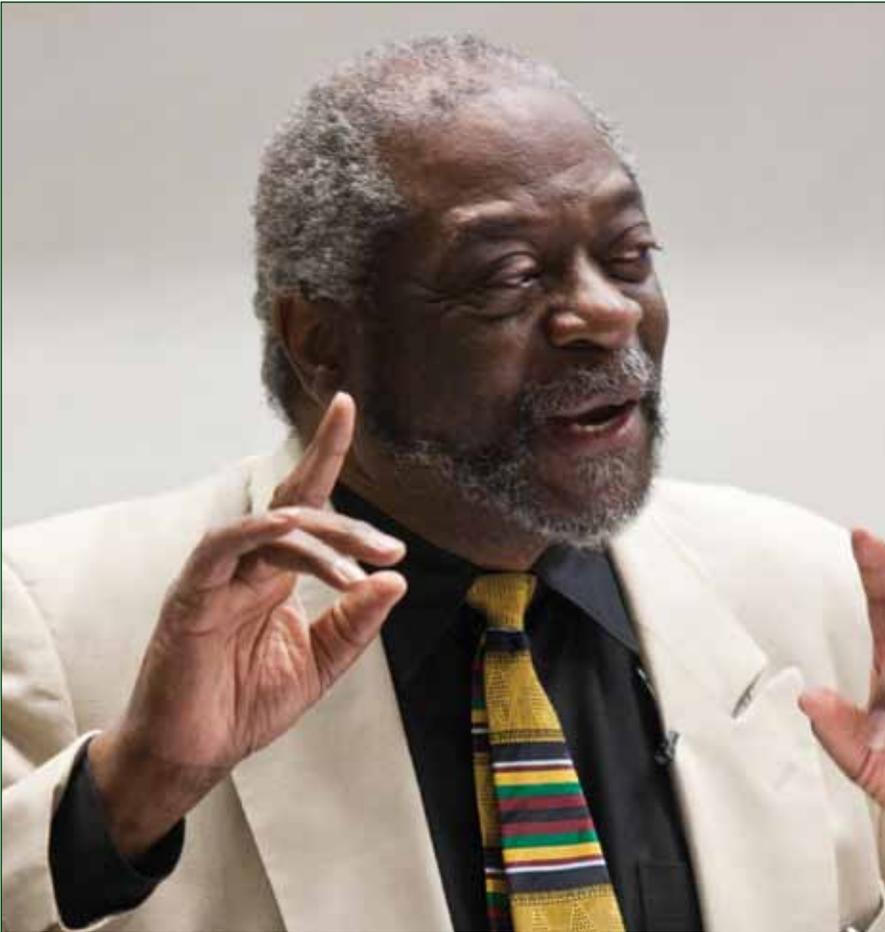
6. What are you reading now?

I'm reading George Van Cleve's *A Slaveholders' Union*, about the proslavery Constitution and its origins (something we don't tell the truth about too often in law school). I'm writing a book review of this book that will appear next spring in the *Michigan Law Review*. I'm also reading Barbara Ehrenreich's *Bright-Sided: How the Relentless Promotion of Positive Thinking Has Undermined America*, about our culture's fairly relentless urge to positive thinking, which can lead to drastic underestimation of the potential negative consequences of behavior. Positive thinking and attitude are helpful and important, but it's also important to be realistic.

7. What's your take on how the legal academy is doing with regard to incorporating race into the curriculum (what grade would you give it)?

I think one of the great gifts of diversity in the academy has been to spur new knowledge production, much of which has shown up in scholarship and courses on race. In contrast to 20 years ago, there are many more courses and seminars on race, which give students a genuine opportunity to engage with the subject. More law textbooks are including relevant material on racial history or current racial issues, which is important. More teachers are routinely supplementing books with their own materials, to provide a fuller understanding of the difference that race makes in their subjects. These are all very salutary developments.

In the main, however, I think race is still deemed a sort of subsidiary or marginal subject of less importance than many other subjects. It is really quite the opposite. As scholars such as Paul Finkelman, Sandy Levinson, Derrick Bell and others have ably shown, slavery and race lie at the very foundations of many doctrinal areas, including property, constitutional law, taxation, federalism and criminal law. This makes perfect sense since slavery was a central part of American society, and its management a central part of American law, from its beginnings until abolition and beyond. We should explore, not ignore, how race and law influence each other.



Pulitzer Prize-winning Reporter Visits UF, Details Soweto Uprising

By Nicole Safker (3L)

Thirty-five years ago, a group of black students in Soweto, a large settlement outside of Johannesburg, South Africa, left their classrooms and gathered in the streets to protest yet another oppressive government directive. During this time, the apartheid government was requiring half of all school subjects be taught in Afrikaans, a language viewed as the native tongue of the oppressors.

Black students — who had already been forced out of Johannesburg and into Soweto to live in substandard conditions — finally had enough. By the end of the overwhelmingly peaceful student demonstrations, more than 500 black schoolchildren had been killed by white government soldiers.

Les Payne, a Pulitzer Prize-winning journalist, caught wind of the uprising and knew he had to be there to bring home the stories of the students and their struggle.

One problem: Payne was black. As a black man, he essentially had the same limited rights as the protesting students themselves under the apartheid regime.

On April 11, faculty and other members of the University of Florida community gathered in Pugh Hall to hear Payne detail his experience covering the Soweto Uprising as an “honorary white person,” a status the government gave him so he could speak to and interview government officials and otherwise move freely about the country.

During apartheid, blacks, who made up 87 percent of South Africa’s population, were given 13 percent of the worst land in South Africa. The minority of white European descendants, who held power, enjoyed free reign and the spoils of the country.

Payne, through favors and good luck, made it through the visa process and was allowed into South Africa. When he got there, he met resistance despite his government status being “white.”

Payne described the events of the uprising and the public outcry that resulted from his coverage of the events. White South Africans asked, “Should we be killing children simply because they don’t want to learn our language?” Payne said, “The answer from the police was ‘yes’ and they continued firing.” The international community looked on in disbelief.

In addition to the stories and photos he sent home to *Newsday*, Payne embarked on a project to help those in Soweto whose children and other loved ones were missing. He also sought to calculate the number of people killed during the uprising. Since the government forbade the hospitals from gathering records of shootings related to the uprising — many government-inflicted bullet wounds were recorded as “abscesses” during this time — Payne and a colleague visited Sowetan morticians and later government offices to examine death records under a pretense. Through his extensive search, he calculated that more than 600 people were killed by the apartheid regime.

Payne said his motivation for covering the events was not to win another Pulitzer Prize; but that it was most important for him to help the “families in Soweto — parents searching for their children.”

Payne is traveling around the country speaking to commemorate the 35th anniversary of the 1976 Soweto uprising. Over the course of his long career, Payne served as *Newsday*’s associate editor, local and national reporter, foreign correspondent, and columnist. He also served as *Newsday*’s New York editor, and under his editorship his news staff won every major journalism award, including six Pulitzer Prizes and a bevy of other honors and distinctions.

Payne’s visit to UF was co-sponsored by the Levin College of Law, the Center for the Study of Race and Race Relations, the Center for African Studies, the College of Journalism and Communications and the Center for Humanities and the Public Sphere.

Mission Statement

The CSRRR is committed to de-stigmatizing race in America. With the objective of fostering communities of dialogue, the Center embraces historically and empirically based thinking, talking, teaching and writing on race. To this end, the Center creates and supports programs designed to enhance race-related curriculum development for faculty, staff and students in collegiate and professional schools. Of the six U.S. law schools with race centers, the CSRRR is uniquely focused on curriculum development.

Vision

The Center for the Study of Race and Race Relations (CSRRR) is an academic research and resource center. The Center's mission will be met through the work of various groups engaged in a wide range of activities. This work includes:

- Producing, supporting and highlighting race-related scholarship within and beyond the UF community;
- Gathering, analyzing and sharing historical and contemporary knowledge about race and race relations;
- Developing and supporting — through teaching, research, writing and workshops — race-related curricula for collegiate and professional schools;
- Fostering non-stigmatizing ways of discussing issues of race and ethnicity, including African Americans, Latino/as, American Indians, Asian Americans and Whites.

Letter from the Director, continued from page 1

when did racism become funny — and who's laughing? Two, I'm struck by the insidiousness of this expression. It takes the guts right out of any race talk. It seems like a cruel debater's trick, one where the very nature of the comment — "That's racist!" — silences talk about the subject. The already skittish would not dare risk an actual conversation about race or racism. "That's racist!" works as a taunt and provides ample reason to keep your mouth shut rather than chance insult or being insulted. Three, the expression suggests a conflation, confusion, or perhaps carelessness about race. Maybe disdain is more accurate. Four, what's the best response to "That's racist!"? (Is a lecture required?) Ultimately, this is really a question about how and when we talk about race. This takes me back to the mall.

Thing 3 I listened to my kids discuss the rest of the incident. As we headed to the food court, I asked, "What did you think about what happened between the White girl and the Black girl?" Over smoothies, as people walked by, we had an open and lengthy discussion about the incident. All of this brings to mind Justice Harry Blackmun's comment in *Bakke*, about race-based affirmative action, "In order to get beyond racism, we must first take account of race. There is no other way."³

We hope you enjoy this newsletter. It features some wonderful articles about how race matters. The children are watching and listening. Please join us in our work.

1 W.E.B. Du Bois (1965) *The Souls of Black Folk: In Three Negro Classics* (1965).

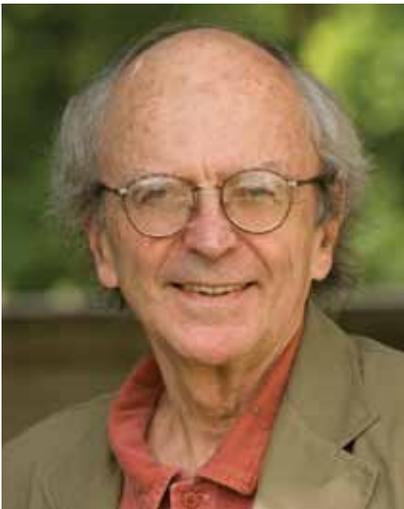
2 <http://www.npr.org/blogs/monkeysee/2011/06/27/137451481/thats-racist-how-a-serious-accusation-became-a-commonplace-quip>

3 *Regents of the University of California v. Bakke*, 438 U.S. 265, 407 (1978).

Invitation

*Please join us in our efforts
to identify and address difficult but
important
race-related issues.*

*We welcome your
questions and comments at
csrrr@law.ufl.edu.*



In Memory of Professor David C. Baldus

David C. Baldus, the Joseph B. Tye Professor of Law at the University of Iowa, died peacefully at home June 13, 2011, after a lengthy battle with cancer.

Professor Baldus was an outstanding scholar, a beloved teacher, and a powerful voice for justice. He pioneered the use of statistical

methods in legal research, and he was a world-renowned expert in the administration of the death penalty in the United States. He continued this important work until just days before his death, leaving instructions for its completion when his health deteriorated suddenly. David Baldus died as he lived, with grace, quiet dignity and great courage.

Professor Baldus joined the law faculty at the University of Iowa College of Law in 1969, after earning an LLM degree from the Yale Law School that year. He had previously earned a bachelor's degree from Dartmouth College in 1957, a master's degree from the University of Pittsburgh in 1962, and his juris doctorate from the Yale Law School in 1964.

Early in his academic career, well ahead of his peers, Professor Baldus became convinced that proof in court of many factual assertions, especially those relating to race discrimination, required a mastery of empirical methods. Although not formally trained as a statistician, Professor Baldus brought a powerful intellect and his

characteristic energy to the task. The work that followed confronted the weightiest problems of the day: detecting and quantifying the effects of race and other discrimination in American society with a focus on racial discrimination in capital punishment. Through exhaustive empirical research, Professor Baldus was able to document the ways in which the application of the death penalty varied with the race of the victim or the perpetrator. His work informed his students, empowered the civil rights and death penalty Bar, and inspired the legal scholars who followed him.

Professor Baldus was repeatedly recognized and honored for his academic work. He was a respected member of the American Law Institute, the American Society of Criminology, and the Law and Society Association. He was the recipient of grants from numerous agencies, including the National Science Foundation Law and Social Science Program, the State Justice Institute (with colleagues J. Gittler and J. McQueen), and the Nebraska Crime Commission.

Professor Baldus devoted himself not only to writing on the issues about which he felt so passionately, but to pursuing justice actively in the courts as well. He was a consultant or expert witness in major capital punishment cases, including *McCleskey v. Kemp*, which resulted in a decision by the United States Supreme Court in 1987 and *Ashmus v. Martel*, currently pending in Federal District Court in California. He served as a consultant to the Delaware Supreme Court, the South Dakota Supreme Court, the National Center for State Courts, and as a Special Master to the New Jersey Supreme Court, in their reviews of proportionality and the death penalty.

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<http://blogs.law.uiowa.edu/news/?p=1904>

Photo taken by Tom Langdon – University of Iowa, College of Law.