

Casebooks & Materials:

1. Brown, CRITICAL RACE THEORY: CASES, MATERIALS AND PROBLEMS (required)
2. Delgado and Stefancic, CRITICAL RACE THEORY: AN INTRODUCTION (required)
3. Yamamoto, Chon, Izumi, Kang and Wu, RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (required, including chapter 8, available for free download at: <<http://www1.law.ucla.edu/~kang/racerrightsreparation/>>)
4. Additional cases and materials (required if listed in the assigned readings below; to be distributed in class or through the TWEN site)

Goals:

This course addresses law and its relationship to racial justice. Race is one of the fundamental axes of social injustice in the U.S. The legal system operates to create, reinforce and mask racial injustice. Yet law simultaneously provides practical tools to further social justice values. This course should help you develop a deeper grasp of the role law plays in constructing and sustaining “race” and “racism.” This understanding will enable you, as lawyers committed to social justice, to hold our legal system accountable to its stated values of due process of law and equal protection of the laws.

Of course, race is not the only category through which unjust power relations are formed. We cannot grasp the full extent of racism without analyzing how it intersects with other “isms” to create larger structures of social oppression. In our discussions, we will need to address other forms of social injustice, such as discrimination based on gender, class, sexual orientation, disability, etc. However, we will always return our focus to unlearning racism, which is so complex that to become an anti-racist is a lifelong learning process.

We will be collapsing the study of racism with the study of how racism interfaces with law. In studying race and law, we will operate on five basic premises:*

- The primary goal of this class is analyzing racism (see previous paragraph): how it operates to affect us all; how we are socialized to think, feel and act in racist and pro-racist ways; and finally, how to confront, resist, and change it through personal choices and through legal strategies.
- Although we all need to understand the impact of a racist society on us as individuals and in our professional legal work, there are some distinct and important differences between the experiences of Whites and those of people of color.

* Adapted from Derman-Sparks and Phillips, Teaching and Learning Anti-Racism: A Developmental Approach (1997).

- People can transform unwanted racist and pro-racist attitudes and behavior into anti-racist choices.
- Learning to be anti-racist is difficult, anxiety-producing and painful. It requires learning and change at many levels. We will attempt to create a nurturing environment for this growth, and explore strategies for change both at the individual level and at legal system level.
- Becoming anti-racist is worth the struggle on a personal level because it is a form of liberating growth. It is worth the struggle on a societal level because it contributes to social justice. And as legal professionals, we can influence racial justice through legal actions.

A secondary goal of this class is to build connections and coalitions across different racial groups with shared social justice goals, e.g., between African American heterosexual men and European American lesbian activists, with a greater understanding of how race can (but does not have to) operate to divide us from each other. Due to time constraints, we will focus often on the experience of one particular racial group (Asian Americans). However, this focus should provide us with a springboard for discussion of similarities and differences among the experiences of other racial groups.

As Dr. Martin Luther King, Jr. stated, our overall goal should be to elicit “creative tension,” without which we cannot unlearn some of the insidious lessons that all of us have been taught about race. One of the biggest defense mechanisms that intelligent people have towards racial issues is to intellectualize these issues rather than to embrace the creative tension they evoke. Gut level responses are an inevitable part of the progression to true understanding about our shared dilemma. Students in this class have shared very personal stories, and many have even cried. Unlike many other law classes, this class depends very much on students’ recognition and acceptance of emotional dynamics. You should approach this class with the awareness that it will challenge you deeply on many different levels.

By the end of the semester, you should have some basic information and tools that will allow you to

- communicate more effectively with colleagues, clients and other justice system stakeholders who have different racial experiences than yours;
- recognize issues of race that underlie our legal, political and social institutions;
- analyze the racial content of seemingly race-neutral laws and actions; and
- be better equipped to work towards achieving racial justice, in your capacities as lawyers as well as a citizens who want to make a difference.

Grading:

1. Individual Papers (not graded but required): During the first third of the class, you will prepare and post to the TWEN site a short (two to three pages doubled spaced) essay once a week. The exact details are specified in the assignments below. A total of five papers (ten to fifteen pages) will be required. I will read them and make comments, but not grade them.
2. Expert Panel Facilitation (50%): During the last third of class, you will lead a class with three or four other students. Each member of the expert panel lead class discussion for approximately fifteen minutes. I will pass out more specific directions and evaluation criteria at the appropriate time.
3. Final Case Paper (50%): After you are done with your expert panel, you will prepare a five page (double spaced) paper on the topic of your panel, which includes all the materials assigned for that class. You will analyze these materials using the concepts we have discussed in the first half of class (e.g., color-blindness, interest convergence, idealist v. realist views of racism, oppression, individual v. structural discrimination, etc.). Your paper should take into account important points that were discussed in class as well as within your expert panel conferences. It should demonstrate your integration of theoretical concepts with the specific issues raised by the materials. It is due no later than two weeks after your expert panel.
4. Attendance (bump up or down): Class attendance and participation is very important in a class such as this. If your attendance falls below a minimum acceptable level, then your grade will be affected accordingly. More than five unexcused absences will result in a lowering of your grade.
5. Class Participation (ungraded and very complex – please read the following carefully): I will not evaluate class participation. However, because of the emotional and social dynamics of the class, you may need to:
 - Give each other space to make mistakes. People *will* make statements that will be considered racist or insensitive. Try to call attention to what is being said with an “I” statement, e.g., “I felt that John/Jane Doe’s statement was racist because [fill in the blank]. Avoid *ad hominem* or *feminem* attacks. Focus on the statement rather than the person. We have all internalized racism and gently need to be made aware of it when it bubbles up. There will be different degrees of awareness of racism in the class, ranging from high (usually, but not always correlated with being a member of racial minority group) to clueless. Be tolerant of the different paths that people take to understanding this complex phenomenon.

- Conversely, speak up when you feel attacked. Let others know that a statement directed toward you made you feel uncomfortable, e.g., “I feel like statement X is an attack on me because [fill in the blank].” Don’t wait for the teacher or other students to pick up on negative dynamics.
- Not talk when you should be listening. Generally, we don’t do enough in law school to teach listening skills. In a class like this, it will be especially important to listen and truly *hear* what your classmates are saying. I often find that people in the agent (privileged) racial group will dominate the conversation even when it is important for them to learn from those in the target (subordinate) racial groups. Please monitor yourself and practice listening (which includes *not* speaking when you are feeling reactive).
- Conversely, talk when you would rather not. People in the target (subordinate) racial groups often do not want to talk in this class for many reasons including (1) they are not used to having a forum for sharing their perspectives; (2) they are tired of not being heard; (3) they are afraid of exposing their anger and the underlying pain. If you find that you are censoring yourself for one of these reasons, please consider making a statement even though it may be an effort for you to make it. This class is an opportunity for everyone to learn about things that people usually do not talk about.
- React calmly even when you feel defensive. Whether you are a member of the privileged or subordinate racial group, there will be moments in the class when you feel attacked. Take a deep breath, count to ten and remember that we want to create a safe learning environment. Safe doesn’t mean comfortable, but it does mean that we do not attack each other out of defensive feelings.
- Conversely, react emotionally even when others may be giving you the signal to be “rational.” You are taught in law school to be logical, cool and non-emotional when you share your views. Racism is mostly emotional and so the typical law school pedagogy will not result in deep insights. Feel your feelings, share them when appropriate (either in class or on the TWEN site or with friends or privately). You will react emotionally - the question is whether you will share these feelings with others in the class. Sometimes it will be productive for you to do that; other times, it will be better if you talk with close friends or family instead.

In other words, for every rule, there is an exception. But be intuitive and above all else, be open to other views, forgiving of others’ mistakes and ready to learn.

Office Hours:

My fall 2005 office hours are MTTH 10:00-11:00. If you need to reach me outside of my office hours, please schedule an appointment by e-mail. My assistant is Phyllis Brazier, whose desk is right outside the fourth floor faculty elevator. Please do NOT call or knock during the hour before class, unless it is a true emergency. Should you need to contact me for any reason, the most effective method is by e-mail.

Assignments:

B = Brown, CRITICAL RACE THEORY: CASES, MATERIALS AND PROBLEMS

DS = Delgado and Stefancic, CRITICAL RACE THEORY: AN INTRODUCTION

YCIKW = Yamamoto, Chon, Izumi, Kang and Wu, RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT

Note: there may be some changes to this syllabus; I will announce them in class. Also, the work is quite intense in the first few weeks – make sure to give yourself enough time to post readings to TWEN for others in your small group, and to read the posts by other members of your small group BEFORE class.

The assigned materials are organized into three major parts. The first part focuses on vocabulary and concepts that I have found helpful in understanding racism. The second part is an intensive case study of one particular group's experience with racism, that is, Japanese Americans and their internment during World War II as well as their movement for reparations. The third part could be called an anti-racist revisit to the first year curriculum. We will be studying each of the first year subjects through the lens of critical race theory. It is in this third and final part that you will lead the class in expert panels, which also will be the basis of your final papers.

Week 1 (8/23 and 8/25)

Day	Reading Assignment	Writing Assignment
T	<p>Anti-subordination/Anti-oppression; Identity; Racial Justice</p> <ul style="list-style-type: none"> - TWEN, Strategic Interventions for Anti-Oppression - Log onto TWEN by noon Wednesday, August 24 to determine small group memberships and to post your racial identity essay to your small group forum. 	<p>Bring to class:</p> <ul style="list-style-type: none"> - Last page (human figure) with agent/target memberships and make sure to leave it with me by the end of class <p>Have Prepared:</p> <ul style="list-style-type: none"> - A draft ready to post on the TWEN site of: <ul style="list-style-type: none"> - Required Paper I: Racial Identity essay (2-3 pages) - Make sure to post your Racial Identity essay on TWEN before noon Wednesday
TH	<p>Racial Identity</p> <ul style="list-style-type: none"> - Read Racial Identity essays by others in your small group before class (this means you need access to TWEN sometime after Wednesday noon and before class Thursday) - read Tim Wise's essay, <i>No Such Place as Safe</i>, at http://www.zmag.org/sustainers/content/2004-07/23wise.cfm (linked to TWEN site under Web Links) - Prepare to discuss essays, along these structured questions: <ol style="list-style-type: none"> 1) Are you clear about your racial identity? Why or why not? 2) Who/what were the most significant influences in the establishment of your racial identity? 3) What feelings did you experience while writing this essay? 	<ul style="list-style-type: none"> - Class Reaction I (optional post to TWEN after class): 4) What patterns, themes or issues emerged from the group discussion regarding your racial experiences?

Week 2 (8/30 and 9/1)

Day	Reading Assignment	Writing Assignment
T	<p>Concepts of Race; Whiteness as a Race; White Privilege</p> <ul style="list-style-type: none"> - B 27-39 - DS 74-80 (note Glossary of Terms on 141-56) - TWEN, Peggy McIntosh, White Privilege and Male Privilege - YCIKW 57-61 (Ozawa v. U.S.) 	<ul style="list-style-type: none"> - list three privileges you experience as a member of an agent group (if you consider yourself to be non-White, then pick a social identity other than race) - list three oppressions as a member of a target group (if you consider yourself to be White, then pick a social identity other than race) - Required Paper II: Privilege and Oppression essay (2-3 pages): discuss whether your experience being an agent/target (in categories other than race) help you to understand your experience being in an agent/target racial group and where they may mislead you about the nature of racism. - post Privilege and Oppression Essay to TWEN by noon Wednesday
TH	<p>Concepts of Racism I: Agent/Target Groups</p> <ul style="list-style-type: none"> - DS 56-64 - Read Privilege and Oppression essays by others in your small group. This means you will need access to TWEN sometime between noon Wednesday and class today. - Prepare to discuss essays, along these structured questions: <ol style="list-style-type: none"> 1) What are the implications of white privilege? 2) Can non-Whites, such as Asian Americans, be White? Why or why not? 3) Can Whites choose to be non-White? Why or why not? 	<ul style="list-style-type: none"> - Class Reaction II (optional post to TWEN after class): 4) What patterns, themes or issues emerged from the group discussion regarding your racial experiences?

Week 3 (9/6 and 9/8)

Day	Reading Assignment	Writing Assignment
T	Comparing Race-ism to Other “Isms;” Noticing Privilege - Stephanie Wildman, Privilege Revealed: How Invisible Preference Undermines America (excerpts to be handed out in class the week before)	- Class Reaction III (optional post to TWEN after class): Respond to disagreements you have with other reading reactions in your small group or to class discussions. Consider <i>why</i> you disagree: what assumptions underlie your conclusions? What assumptions underlie the conclusions of those you disagree with?
TH	Histories of Race and Racism: the Consistency of White Supremacy - DS 67-74, 81-97 - YCJKW 31-40 - post Reading Reaction I to TWEN site by Friday.	- Required Reading Reaction I (2-3 pp.): list <ol style="list-style-type: none">1) three ideas or facts in the readings that most challenge your views2) three ideas or facts in the readings that you agree with the most3) three patterns or themes in the readings

Week 4 (9/13 and 9/15)

Day	Reading Assignment	Writing Assignment
T	<p>Asian Americans as a Case Study of Historical Racism</p> <ul style="list-style-type: none"> - Read the Reading Reactions I by others in your small group before class. This means you will need access to TWEN sometime between Friday and class today. - YCJKW 57-78 (review <i>Ozawa</i>; read <i>Thind</i> and <i>Wong Kim Ark</i>) 	<ul style="list-style-type: none"> - Class Reaction IV (optional post to TWEN after class): Respond to disagreements you have with other reading reactions in your small group or to class discussions. Consider <i>why</i> you disagree: what assumptions underlie your conclusions? What assumptions underlie the conclusions of those you disagree with?
TH	<p>Concepts of Racism II: Institutional and Structural Racism</p> <ul style="list-style-type: none"> - DS 1-46 -TWEN, Pincus, Discrimination Comes in Many Forms: Individual, Institutional, and Structural - Eric Dyson, Is Bill Cosby Right? (Or Has the Black Middle Class Lost Its Mind?) (excerpt to be handed out in class the week before) -TWEN, Young, Five Faces of Oppression (optional) 	<p>Required Reading Reaction II (2-3 pp.): list</p> <ol style="list-style-type: none"> 1) three ideas or facts in the readings that most challenge your views 2) three ideas or facts in the readings that you agree with the most 3) three patterns or themes in the readings <ul style="list-style-type: none"> - post Reading Reaction II on TWEN before Friday

Week 5 (9/20 and 9/22)

Day	Reading Assignment	Writing Assignment
T	<p>Institutional and Structural Racism: the Role of Law</p> <ul style="list-style-type: none"> - Read the Reading Reactions II by others in your small group. This means you will need access to TWEN sometime between Friday and class today. - B 12-27 - YCJKW 4-13 - TWEN, Amnesty International, Threat and Humiliation: Racial Profiling, National Security and Human Rights in the United States Executive Summary, available at: http://www.amnestyusa.org/racial_profiling/report/ 	<ul style="list-style-type: none"> - Class Reactions V (optional post to TWEN after class): <p>Respond to disagreements you have with other reading reactions in your small group or to class discussions. Consider <i>why</i> you disagree: what assumptions underlie your conclusions? What assumptions underlie the conclusions of those you disagree with?</p>
TH	<p>Asian Americans as a Case Study of Institutional and Structural Racism: the Japanese American Internment</p> <ul style="list-style-type: none"> - YCJKW 181-243 	<ul style="list-style-type: none"> - Required Reading Reaction III (2-3 pp.): list <ol style="list-style-type: none"> 1)three ideas or facts in the readings that most challenge your views 2)three ideas or facts in the readings that you agree with the most 3)three patterns or themes in the readings - post Reading Reaction III on TWEN before Friday
Weeks 6-15	<p>Make sure to sign up for an expert panel (A through F) on the TWEN site by Week 6.</p> <p>Begin to work with the other people on your expert panel.</p> <p>Minimum reading assignments are listed below. Feel free to add readings for your expert panel day via the TWEN site.</p>	<ul style="list-style-type: none"> - Class Reactions VI-? <p>(optional posts to TWEN after class):</p> <p>Continue to respond to disagreements you have with other reading reactions in your small group or to class discussions. Consider <i>why</i> you disagree: what assumptions underlie your conclusions? What assumptions underlie the conclusions of those you disagree with?</p>

Week 6 (9/27 and 9/29)

Day	Reading Assignment	Writing Assignment
T	Institutional and Structural Racism: Small Group Discussion - Read the Reading Reactions III and IV by others in your small group before class. This means you will need access to TWEN sometime between Friday and class today.	- Class Reaction IV (optional post to TWEN after class): What patterns, themes or issues emerged from the small group discussion regarding institutional and structural racism?
TH	The Promise and Pitfalls of Law: Anti-Asian Laws and Equal Protection I - YCIKW 78-92	Meet with your expert panel group and begin to plan your presentation.

Week 7 (10/4 and 10/6)

Day	Reading Assignment	Writing Assignment
T	Promise and Pitfalls: The Internment Cases I - YCIKW 95-132	Meet with your expert panel group and begin to plan your presentation.
TH	Promise and Pitfalls: The Internment Cases II - YCIKW 133-66	None.

Week 8 (10/11 and 10/13)

Day	Reading Assignment	Writing Assignment
T	Promise and Pitfalls: Anti-Asian Laws and Equal Protection II - YCIKW 248-74	None.
TH	Promise and Pitfalls: Redress and Reparations - YCIKW 275-330; 341-45; 358-87	None.

Week 9 (10/18 and 10/20)

Day	Reading Assignment	Writing Assignment
T	Promise and Pitfalls: Lessons for Other Groups - YCIKW 421-76	None.
TH	Promise and Pitfalls: Lessons for Other Groups - TWEN, Chon and Arzt, Walking While Muslim - YCIKW, Chapter 8 pp. 48-88 (optional)	None.

Week 10 (10/25 and 10/27)

Day	Reading Assignment	Writing Assignment
T	This time is allocated for you to meet with your expert panels.	None.
TH	The Equality Principle in American Law - TWEN, <i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896); <i>Brown v. Board of Education</i> , 347 U.S. 483 (1954)	None.

Week 11 (11/1 and 11/3)

Day	Reading Assignment	Writing Assignment
T	Affirmative Action as a Case Study of Institutional and Structural Discrimination - TWEN, <i>Sweatt v. Painter</i> , 339 U.S. 629 (1950); <i>Grutter v. Bollinger</i> , 123 S.Ct. 2325 (2003)	None.
TH	Affirmative Action as a Case Study, continued - B 40-97	None.

Week 12 (11/8 and 11/10)

Day	Reading Assignment	Writing Assignment
T	Panel A: Critical Race Theory and Torts - B 98-137 - If you are NOT on the expert panel for this class, check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment.	- If you are on the expert panel for this class, each of you should post on the TWEN site by Saturday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.
TH	Panel B: Critical Race Theory and Contracts - B 138-77 - If you are NOT on the expert panel for this class, check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment.	- If you are on the expert panel for this class, each of you should post on the TWEN site by Monday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.

Week 13 (11/15 and 11/17)

T	<p>Expert Panel C: Critical Race Theory and Criminal Procedure</p> <ul style="list-style-type: none"> - B 176-234 - If you are NOT on the expert panel for this class, check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment. 	<ul style="list-style-type: none"> - If you are on the expert panel for this class, each of you should post on the TWEN site by Saturday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.
TH	<p>Expert Panel D: Critical Race Theory and Criminal Law and Sentencing</p> <ul style="list-style-type: none"> - B 235-78 - If you are NOT on the expert panel for this class, check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment. 	<ul style="list-style-type: none"> - If you are on the expert panel for this class, each of you should post on the TWEN site by Monday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.

Week 14 (11/22)

Day	Reading Assignment	Writing Assignment
T	Expert Panel E: Critical Race Theory and Property - B 279-311 - If you are NOT on the expert panel for this class , check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment.	- If you are on the expert panel for this class , each of you should post on the TWEN site: by Saturday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.
TH	No class (Thanksgiving)	None.

Week 15 (11/29 and 12/1)

Day	Reading Assignment	Writing Assignment
T	Expert Panel F: Critical Race Theory and Civil Procedure - B 312-48 - If you are NOT on the expert panel for this class , check the TWEN site for the questions that the expert panel wants you to consider about the reading assignment.	- If you are on the expert panel for this class , each of you should post on the TWEN site by Saturday before the class ONE question that you want the class to consider and discuss during class. You should also begin to work on your final paper, which is due two weeks from this date.
TH	Final Day of Class.	No Assignment

Final papers are due no later than two weeks after you expert panel presentation. Please give them to my assistant, Phyllis Brazier, on the 4th floor of the faculty offices.