

2021 Law School Access to Justice Conference

Fighting Systemic Racism: Law School and Community Partnerships

1A. Fighting Systemic Racism from Within: The Law School Anti-Racist Consortium

Ellen Yaroshefsky: How can legal educators, as a community, be leaders in the profession and more generally in building an anti-racist culture? It's a relatively unique frame for a law school conference.

We had terrific panelists from around the country, the leaders in this work. And they started off by looking at the practices that embody white supremacy. And, of course, we know about high stake testing at both ends, whether it be the LSAT, the entrance requirements or the bar exam. We talked about the ways in which that needs to change.

We talked about the fact that people enter law school already framed by racial inequality, some of those issues Fareed Hayat raised. What do we do about the fact that people come from backgrounds already where there's a great deal of inequality?

There, the so-called objective set of rules that we teach in law school exclude other perspectives, and so we had great discussion about whose voices are actually heard within law school.

And the fact that in law school, we rarely talk about power - who racism affects, who actually has power within the law school.

There was a discussion of the sense of alienation generally in law school, but particularly for students of color there's a sense of alienation. And that we, as academics, come across as intellectually dishonest when we separate doctrine from context in which it was decided or framed.

Too many faculty teach cases as if they were not a historical moment, and we talked about the importance of changing that. With regard to student services, we recognize the essential

need for student services and the need to change the ways in which they're offered. So, students of color will say in surveys that they've never felt their identity so sharply as in law school. That, in fact, what happens [is that] we bring in students for diversity, but we don't deal with the issues that arise for them until there's a tangible harm that's experienced, whether it be the inability to pronounce their names, somehow talking about their hair, micro aggressions from peers and faculty, and that we need to do that earlier in the process. Students in surveys say it makes them just want to survive law school and then leave. And that we're not providing enough services, and we had breakout groups talking about what effective student services would look like.

We also talked about the choice of materials in classes that reflect racism. And that those materials, which you'll hear more about when Jarienn talks about particular curricular innovations, those materials actually translate into how law is practiced how judges decide, they infuse the entire profession and that we have got to start in law school by changing the ways in which we teach because that in fact will then affect practice, it will affect the judiciary, as well, so there were panels on what can be done, we talked about hiring we talked about training, we talked about changing curriculum and climate, creating an inclusive climate, obviously I don't have time in the seven minutes that I have to talk about each of these but I'll just point out some things which is hiring people of color. Law schools will always say we don't have enough, there aren't enough people of color that we can hire.

Well, the question is, what are the criteria that we're using, we need to reach out to practicing lawyers, perhaps we need to reach out to another base of lawyers in order to bring in people of color as faculty. Curriculum: don't just use cases use other materials use narratives use stories of resistance. Talk about who is welcome in law school. We need to create spaces, where people who are not people of privilege can succeed. And we have to look at what did they need, we have to listen to student voices and we shouldn't just be about making fixes but reimagining law school itself.

We understand that law embodies a view of how society sees itself. Some of the themes that were presented by the Community organizer on that plenary was we have to change the myth that law school is a meritocracy. It's not a meritocracy, it's not American meritocracy as an institution.

We have to be honest about law school and its relation to institutions of power. We have to educate ourselves it's not enough to just include issues of race, but we have to learn to teach in an anti-racist way. We have a responsibility not only to educate ourselves, but to educate our colleagues, our community of colleagues and, as I said before, we have to listen to our students.

So, after this two-day conference we have breakout groups by subject matter, breakout groups by the area of work that people did that were highly effective. We came up with a series of proposals.

And one of the consequences of that was of course schools took away some of these ideas and implemented them. But it is also true that we decided to form LSARC and we did, and some of the issues that remain. A key one was, how much should we focus on training the trainers right, and there are some people who believe that we should spend lots of our energy training our faculty, training our colleagues, and there are others who think they've tried that repeatedly and that there are many people who are just not trainable or don't want to be trained and that we shouldn't focus too much of our energy on doing that.

Obviously, it's not either/or. We are spending energy across institutions and learning how to train faculty but that that can't be the only focus. Fareed talked about various programs at orientation. We had an excellent program on orientation, where they looked at simulations at NYU that are used, and we want to be able to replicate that across law schools. I think that was highly effective, a simulation of implicit bias and some explicit

bias and how do you cope with that, and how can you be an ally in that circumstance.

Recruitment: we talked about pipeline programs, the importance of pipeline programs, and then the various curricular innovations that you will hear more about.

Ally ship is key. How do we ensure that people who are not people of color can be effective allies? And as Fareed pointed out, looking at issues for first generation law students.

So, I think I will stop there, but I want to end with this: everybody's exhausted. Students are exhausted, right, we keep relying upon students, asking them to give us more feedback. We're relying upon the same group of people who have fatigue about dealing with these issues and we have to understand that that's an underlying issue. That's part and parcel of the work that we're doing, that exhaustion is real.

But it's important to move forward. So that that's the intro of the history of LSARC and we're happy to talk more about that as we go forward in the discussion.

Declan.

Declan McPherson: Hi Ellen, thank you for the opportunity to speak. I'm so happy to be here. This is a bit of a full circle moment for me being that I was a student in 2016 attending this conference in the pro bono style and now having the opportunity to speak, it's truly a full circle moment.

As Ellen said, I am no longer a student, but I'm here to offer the student perspective. I was a student during a time of great change and possibly during the impetus of the movement; I was a student during the incident involving Michael Brown, the decision to indict the officer involved in that, and the Eric Garner incident as well. So, these events shaped my experience and I also took the time to speak to a few students who are very involved in LSARC, so I hope I can offer an accurate depiction of their perspectives.

Generally, it can be compromised in three different categories, their needs and their wants. Speaking on the administration first, the classroom second, and third, speaking about the overall student body.

Discussing the administration first.

Chief amongst the desires of the students is that law schools, be a little bit more proactive rather than reactive in their response to certain social justice issues. As Ellen said, we oftentimes go toward the same students for events, we seek out the same leaders and they're tired. By taking the approach of being more proactive, it allows the students to be heard. It allows them to recognize that their law school sees not only their experience, but also their pain. And so, the desire is there for them to be more proactive, even implementing something as small as a rapid response team. Because at the end of the day, we all are aware of these issues, we all are aware of these incidents that happened, and law schools can take the duty of preparing a statement. And not just a famous statement to quote unquote speak to the moment but preparing a statement that truly speaks to the student body, to the heart of the issue. And not just delivering lip service in a sense, to the issue or to the students, just to say that they did something.

Secondly, the students did express that there's a need for greater diversity in programming on our law school campuses. Oftentimes diversity is looked at as a recommendation and not a requirement and we all know the importance of representation, whether it be as a young student, whether it be as a child in grade school or as a law school student.

There is a greater need to see more representation, to see more people of color on our campuses speaking. And personally, as an alumnus of a law school, I would speak for others and be more than glad to have the opportunity to serve as a more diverse alternative.

And finally, regarding administration.

The students have expressed the need for the administration to continually converse with the student body don't just survey or pull at a moment or when something happens, but more so, keep the conversation going. Continually gauge the temperature of your student body and where they are [in order] to be able to correctly address issues as they take place. And they have to analyze, where's the pushback? Where is the feedback that you're getting from what areas that they tackle and actively tackle?

And, as I said before, don't just deliver lip service but actually implement steps towards accomplishing a goal set forth and also to, on a lesser note, provide international students with resources.

Now, the system of gauging students' temperature continually also now leads into the classroom, and this is probably one of the areas that are the most concerned not only to LSARC but to overall experience.

Professors in the classroom can be a bit better referees for the classroom discourse and I think that all of us can attest to the fact that, chief amongst the needs to be addressed in the classroom, is the need to address diverse issues in the course material. Personally, I remember, there was a time in a criminal law class that I've taken. Now normally as a first-year student you're just anticipating the dread of being cold called on any particular day and your name being called but this particular day in the reading, there was a unit focused on the statistics of black men being affected by the criminal justice system.

And that day I, personally, I was ready, I was ready to speak on whatever the professor raised, the cases discussed, and we went through the entire class. And it wasn't discussed, it wasn't addressed, and I personally did not feel heard in that moment. Here it is, I'm finally presented with something that relates to me directly, knowing that, as a student and seeing the statistics of African American men incarcerated, knowing that, had anything else gone on in my life, that it could have been me.

And we didn't address it in class.

This is not a problem that has existed when I was a student five years ago it's still happening now. And so, there's a need to address different issues that speak on diverse problems like in evidence and, as I was speaking to the students in evidence classes.

Speaking on flight with guilt and the racial connotations of that and property classes: speaking on restrictive covenants that took place following the end of slavery and also the great migration, and also speaking in wills classes on how property is divided up and the lack of generational wealth in black and brown communities.

And also there's a need in the classroom for professors to be a little bit more culturally sensitive in their age, culturally sensitive in things that are brought up in class.

Plainly speaking, some things are a little bit outdated, and they need updating. But also speaking about cultural sensitivity is the overall classroom discourse that happens amongst students. And the need was expressed to have what is often referred to as community agreements to set the tone of discourse in the classroom. Often times, as we've all on this call experienced, there's that one guy who thinks that he's playing devil's advocate and is really doing more harm than good in the classroom and says something that is probably a little bit culturally insensitive in the classroom. And there is a wanted desire to impose the rules of engagement in any classroom discourse because, while the legal profession may be adversarial as students, it doesn't happen; we don't have to engage in an adversarial process in the classroom when we're all learning. And that other needs expressed in the classroom for... chiefly.

And reflecting on now the student body.

There are things that happen amongst the student body that, often times, the administration doesn't know about. So, there is a need for—and we've discussed this within LSARC overall — implicit bias training at orientation to set the tone of what the law school experience will be.

Personally, I've been affected by this being that I was in my final year elected to be class speaker at graduation.

And how we did it at my school is done by election. And word got back to me that some students that did not look like me did not want to vote for me, because “all I would discuss is race.” And at a time of Eric Garner and Michael Brown and the start of the Black Lives Matter movement, to hear something like that, it affected me greatly. It affected the student body and my friend. And just to know that these same people would now go on to become prosecutors and defense attorneys having this bias, it's something that needs to be rooted out and needed to be rooted out at the inception at orientation, and that is one goal that the students have expressed.

And finally, as far as the student body is concerned, we need—and this is more speaking to admissions—we need more voices of color in our classroom, we need more students of color in in our classrooms and in admissions. Oftentimes it has been expressed that many students feel like “I'll just do my time and get out” because they don't feel like they have voice. But if you have that unified body of students, more voices give them the power to feel like they can speak up
I know personally, I have a group of classmates and upperclassmen who are instrumental, and just us being able to speak up about the issues that affected us just because we knew that there was strength in numbers.

Now, all that I've said is not to rebuke law schools in any way, as you will hear a little bit later on in our presentation. There are programs and initiatives that have been implemented at different schools that are working positively, but this is just to highlight the fact that a lot more work needs to be done.

At the end of the day, our goal in academia should not just be to have students pass the bar at the end of their three years but to produce better lawyers and better citizens who are more culturally aware or more socially sensitive. And we have to remember that, as I stated before, that student becomes the prosecutor, that student becomes the defense attorney, that student becomes a law firm partner and a judge that decides people's fate. So, we have to attack any bias at the root, the root being law schools.

And I believe that, by creating, and that is the goal of LSARC: to produce not only better lawyers but better citizens, overall. And if we can, you know, touch the future from this perspective and create an anti-racist environment in our law schools, then I believe we will be one step closer to fighting systemic racism. And with that, Ellen, I will turn it back over to you.

Ellen Yaroshefsky: Great thanks so much Declan.

And this is a question for you and for anybody else on the panel, but during LSARC when we talk about orientation, we talked about implicit bias, but we recognize one-off implicit bias trainings may be nice but they're not particularly effective. That it has to be an ongoing process throughout law school, starting with orientation, and my question to you, or to others, is: what programs, maybe David, this is your part, have been most effective from the student perspective of actually moving things forward? Is it creating cohorts within law school so that people feel supported, and the students of color don't always feel like it's up to them to raise these issues, creating administrative bodies to work with them on other issues?

Declan, do you want to take that on?

Declan McPherson: Yes, I can, and particularly as far as the general program, I would leave that to David because I know he's done the work on this. But one point that was raised by students that I spoke with is to implement 10 hours not in a particular year but have law schools do 10 hours with a social justice organization that's pro bono work and that, in a way, will put them right in the

trenches of the work that needs to be done. And, hopefully, will weed out or begin the process of weeding out any particular implicit bias.

Ellen Yaroshefsky: David, this is a good segue to you. I suppose you know; do you want to answer that question before you move into your presentation, or as part of your presentation?

David Simson: Right yeah, I can talk about it a little bit. I don't want to - I don't think I want to speak for students and assume that I know what students think is the most effective.

From what I've heard, and what I've talked to students about, and what I've read as part of my research, is that, like the plenary discussed, it has to be sort of a comprehensive approach, right? Implicit bias training can be part of that, as part of orientation, but it includes the kinds of things that Declan was also talking about having greater representation in the student body, on the faculty, which might flow into how classroom discussions take place, whether you're excluded or included in that nature, whether you have access to student organizations that support you. And where there is a critical mass to support institutional change, whether there's an institutional mechanism to actually address the administration, I think all of those are combined and each one in separation might be ineffective, in part because I think one of the insights that scholars like Deborah Archer and others provide us with is that, because it's systemic [and] because it's structural, all these things are connected to each other, so if you only address one aspect., efforts will probably fall flat. And so, one of the things—and maybe this is a good transition to my presentation—I just want to briefly note [that] I'm not quite a student anymore; I'm a fellow, I'm an acting Assistant Professor of Lawyering at NYU, so I teach in the first-year lawyering program and it's been a real privilege to be part of LSARC.

While I'm in New York, one of the things that LSARC wanted to do, and we mentioned this in the plenary, is to really look at what have law schools done. You know, take stock of the efforts that law schools have done as part of our goal of ensuring that

we are a resource for making anti-racism a central commitment in law school and in the work that law schools do.

So as part of what we wanted to do is to take stock of where law schools are, what they've done, especially in response to the racial reckoning of the events of last summer, and the commitments that were made. [For example,] "at the time, what have law schools said, especially in publicly available information on their efforts, where do they stand. What are their commitments?" so that we can take that and then start to enable dialogue and start to take in what individual schools are doing and then put that on the table as a starting point for collaboration and communication about shared knowledge building and then also additional commitments moving forward.

So, this is what we did, and this is part of the preparation that we did for the Dean's Roundtable that Fareed mentioned that is coming up later this month, where some of the law school deans in the New York City area will have that conversation.

And so we'll have that conversation about what have they done, what were some of the stumbling blocks, what are some of the things that are still outstanding in the future. And I just wanted to take a couple of minutes to give a few concrete examples of what we found, examples of different anti-racism efforts that we've seen in our research that we think are effective starting points, effective baselines from which additional work moving forward can be made. As many of my co-panelists noted, this has to be an ongoing and a permanent process; we cannot just expect that a single effort or a single program will solve the problem. The problem is much too big, as the keynote speaker Deborah Archer made so tangibly clear, I think.

But some of the steps that we started that might be good starting points are some of the following. And one of the things that we believe is important in helping law schools address effectively the issue of antiracism at their institutions is to take the process of taking stock seriously

Declan mentioned before that one of the goals has to be involvement with students, right? Having a conversation with the student body in general about what the needs are, what the problems are that need addressing, and creating institutional pathways to do this effectively and so making sure that the process of identifying problems and solving them is inclusive and involves students is a thing that we think is really important, and that law schools should look into.

And one example of a school where we think that worked effectively or that was done effectively at least as an initial matter was, for example, St. John's law school after George Floyd's murder last year.

St. John's had a so-called dialogue day event that was actually initiated by student organizations at St. John's: the Coalition for Social Justice which is a student group. There, as well as the Black Law Students Association in collaboration with the Ron Brown Center of Civil Rights, reached out to the administration to say "we need to take stock, we need to do something, we need to listen to the community about what we do from here, what the issues are that we need to address in the law school and how we are going to do it, and we want to be a part of that in building up these concrete action steps.

So, there was an event, with almost 300 people, where student organizations each provided one to two concrete action steps that administration could, and should, take in their opinion.

And, in general, discussing the problems in the last call environment that they saw and that then provided the basis for broader anti-racism initiatives and a strategy moving forward that included, for example, a racial justice teaching.

This past April, it included organizing the faculty workshop around racial justice topics, expanding the admissions office staff to focus on supporting students of color from marginalized communities, and also developing a process by which student organizations hold each other accountable on making progress each in their own sphere of making the law

school a more anti-racist place, having more racial justice programming across the board and so on.

What we also think is important as part of this initiative was that it actually institutionalized an exchange between students and administration to make it permanent and ongoing to provide momentum and accountability, so St. John's created a Dean's Advisory Council, which includes about 20 student leaders who meet with the Dean each Semester to discuss diversity and inclusion topics. So, making the process permanent, providing a space that requires administration to engage, to provide students with a forum to bring these issues to bear, we think is really important because it enables precisely what Declan mentioned, which is to constantly gauge the temperature, to constantly work on solutions.

And to be connected with the student body this student advisory council has one Ls, two Ls and three Ls on it, which we think is important as well. Another example of stock taking in a somewhat different way is Fordham law school, which actually committed itself to doing a formal climate study of the racial climate at the law school, which is led by special committee in the law school and commissioned an outside expert to actually do this study. And in conjunction with this, Fordham also launched it means student advisory council that meets regularly with the Dean, to help the school identify issues and implement change. So that the work of at Fordham, for example, included initiatives to increase equity in the representation on journals, which is also an issue that I've heard a lot from students about and creating a new SBA position with the folks in diversity and inclusion.

This is a lot of detail, but I wanted to be concrete on what it might mean, what Declan said, and what some schools have done to constantly gauge to include pathways for ongoing conversation between the student body and law school administrations to make change and to create the kinds of steps that are necessary to make law schools more anti-racist.

I'll give a couple of other two small examples before I turn it over to Jarienn.

In addition to institutionalizing the process of students to engage with the administration, we also think that it's important to institutionalize the commitment to anti-racism at institutional level. One example that we saw that we thought was effective in this regard as an initial step was what Columbia, the host institution of this conference has done by creating an Anti-racism Steering Committee last year that both developed an anti-racism agenda and plan and was in charge of overseeing its implementation. That included senior administrators, the Dean ex officio faculty as well as student representatives, so it really communicated a tangible commitment of the institution to making change, as well as to accountability. And just this past month Columbia announced that this will continue next year with a slightly different organizational setup but with an even more explicit charge to continue the process of implementing the anti-racism agenda.

And the last thing that I want to briefly talk about is efforts to be transparent about anti-racism initiatives at law schools.

We think it's important that information about goals, steps taken, and implementation status is available to the public, to students, so that continued discourse takes place. And one of the examples that we saw that we thought was really effective was again Fordham law school, which has a separate section on its anti-racism plan on its website that breaks out into different categories the initiatives that the school has planned as well as implementation status from "plan" to "in progress" to "implemented" of each initiative and how it has been done. So, we think that this kind of transparency is critical to providing accountability and ensuring momentum moving forward by providing a basis for ongoing conversations.

So., a separate area that I didn't touch on at all, but that a lot of schools [are] also thinking about is curriculum and thinking about courses. Declan spoke to this as well, the plenary spoke to it as well and LSARC has been heavily engaged in helping

schools and faculty think through what an anti-racist teaching approach might look like, and I think Jarienn will talk in more detail about that thing.

Ellen Yaroshefsky: And she will. Thank you, David, but before she does that, let me just say David has done remarkable work for LSARC in creating these amazing charts. He's gone through every single law school, every statement that they've made that's on our website and created a great chart for us that we will use in preparation for the Dean's Roundtable on June 25th. You're all, by the way, welcome to come to that.

You can email us and we'll be happy to include you on the list of invites. Eventually, David, we're going to post your wonderful charts so that people can see them, and I will just tell all of you, we also have a Google drive that we can share with you. That Google drive has many resources that exist in other places around the country. For instance, Stanford created an excellent resource last year for teaching anti-racism. We have a number of other resources, including most of the videos and some of the audios of the panels of teaching that Jarienn's going to talk about so for those of you interested in hearing from our amazing faculty that we gathered who talked about how to teach from a critical race perspective, we invite you to just, in the chat, give us your email, and then we will send that to you as well. So Jarienn.

Jarienn James: Thank you Ellen for letting everyone know that I'm just here to give a brief synopsis of what was covered during these sessions, and they can happily go to our Google drive for details.

So, like was mentioned I'm Jarienn James the Justice Program Coordinator at New York Law School.

At the LSARC conference last year, what stood out to me was the fact that a lot of professors were baffled as to how to incorporate race into their courses. So, what we did was say, you know, well, since people are baffled let's bring professors, to show them how it was done. As Fareed mentioned in the plenary, we were very deliberate in the professors that we

brought. We tried to bring a diverse group of professors. We did not only bring black professors or professors of color to come and present. What we did was, we got professors with various years of experience, we got professors who were trying it for like the first time or professors who recently tried it after they took stock of themselves and wanted to see how they can incorporate it. So, we asked them to come and share how it went for them after they took stock of themselves.

And to share with us their method and their way of doing so and we also had the professors of course who've been doing this for years, and this was a breeze to just come and say, "hey guys, this is how we do it."

So, it was meant to be done in terms of a community format where everybody would feel welcome. The bottom line was, if you really are willing and are committed to learning how to do this, or you're really interested, you can, and this is how you can do it.

And I want to say thank you so much to Professor Nina Chernoff, because she was the lead organizer for all of these sessions and I'm also going to thank David for his copious notes for most of these sessions.

I will share on civil procedure contracts and property sessions. So, the civil procedure session was led by Professor Portia Pedro from Boston university. Professor Portia Pedro blew my mind. She assigns the Walker and City of Birmingham case and the Letter from a Birmingham Jail. She tries to get students to question the justness of courts, talks about a choice between complying with a temporary restraining order. Is it a futile effort to achieve change through the courts and the decision to march? She uses MLK's letter, and I confirmed with her, she really asked the students to consider what if that Letter from a Birmingham Jail was written by President Trump? She wants them to think.

When civil litigation and procedural rules are unfair to the point that you no longer choose to follow them and are prepared to

deal with the consequences., would civil disobedience be merited from a different ideological viewpoint? She doesn't want the students to argue about it, but she just really wants to point it out and have them consider it.

So, the goal is to have the students always question whether the law is just, and the possibility that it might not be in the client's best interest to follow the law.

So, like I said, I was mind blown.

So, for property we had Professor Jamila Jefferson-Jones from the University of Missouri Kansas School of Law. She starts with a bundle of sticks discussion she lets students know, yes, we all have a role to play, we all have our various backgrounds and yes, we're supposed to work together.

But she guides students into recognizing that property law is essentially stolen land developed by stolen people.

She introduces student authors like Bethany Berger. She challenges the central myths of American property law: that property law came into American wilderness and was only given "order" by white settlers.

She assigns cases like Johnson and MacIntosh, McGirt and Oklahoma, Sharp and Murphy, to discuss the interactions and the intersections of different communities and the impact of property law on this.

And then, finally, we had our contract session with Professor Abbye Atkinson from UC Berkeley and Professor Susan Block-Lieb from Fordham.

Professor Atkinson said that the goal is not to be an expert, but to develop and instill critical thinking in students on how race has functioned in the doctrine.

She refers to the case of Mary Clark from the Indiana Supreme Court in 1821. That case in itself raises issues like indentured servitude specific performance bargaining power.

Professor Lieb, she said she uses the historical approach. She tries to link constitutional law and contracts. She refers to the peonage case Bailey against Alabama that discusses whether the terms of the contract based on Alabama's Jim Crow system at the time was unconstitutional under the 13th amendment . . . also raises the issue of colorblindness. I think it was raised by Oliver Wendell Holmes.

So, after the presentations, professors come, they share "this is what I'm doing, this is what is work. I've got the feedback from my students; what are the concerns? Oh, pushback from the students and that issue of balancing silence versus framing it as a 10-minute interlude or a 10-minute interlude on race, you know? "I'm going to teach this topic let's make sure I cover race." And it's like a checklist. Or really integrating it into the class. We understood these concerns but, like my wonderful co panelists have said, this has been a long time coming.

The time is not now, the time has passed.

It should have been already, and we are behind in law schools, so, while there are some concerns about pushback from students—I remember when I was a student one person turned and told me when my black professor was trying to implement race into this course, "Oh, this feels like a history lesson,"—well, it has to be history because it's still not present in your mind as you're operating right now. So, I don't make any apologies for it, but let me calm down.

And let me just say that the time is now, we have to make a change, we have to make every effort to have anti-racist law schools with anti-racist curriculum, producing students who are eager to walk with an anti-racist mindset to represent their clients effectively and fully aware of their various backgrounds.

Thank you very much.

Ellen Yaroshefsky: So well-said Jarienn, so passionate.

My job, by the way, was to follow up and talk about evidence and I'll just do that for a few minutes, because we are so proud that Nina Chernoff got the best people around the country to come to LSARC and to present. And it's incredible if you get a chance to see any of these videos.

You should see one of them, the evidence one. Jasmine Gonzalez Rose teaches at BU and she talked about how she uses critical race in teaching evidence starting with the idea that you've got to gain student trust, you've got to listen to all voices not just anti-racist ones.

And you need to learn to navigate that discussion. That is not easy because many of our professors are afraid; they are afraid of saying the wrong thing. And we have to cope with that. We have to figure out how to train them to do that. But so, she talked to us specifically about "so, how do you do that?" Well, one of the things she starts with is on her syllabus. She tells them: one of your exam questions will be how evidence law will have a disparate impact on subordinated populations. So, it's not just about race; students can write about any other subordinated population.

And that's why she starts the course that way, and in doing so I think she provides an opening for students to be able to talk about a wide range of subordinated peoples and structures and learning to navigate that kind of a discussion.

She went through what she calls the Seven Ps, and of course I don't have time to talk about that, but they're Power, Purpose Privilege, Property, Pervasiveness, Permanence and Perspective.

And the last one is perspective: people of color's perspectives being heard. You know, a simple example of how she does this is when she's talking about evidence rules. For instance, the rule of impeachment. With misdemeanor convictions, right, I mean there's a disparate impact upon people of color because people

of color are arrested and prosecuted at different rates than what white people are and so she raises that kind of a question, as she talks about each of these rules, and so, whether it's flight, the rule on flight, you know, who does that rule serve, right? It's institutionalized white racist reality that the police or the white people believe what they did at least the police are there to protect the public so, why would an innocent person flee, right? Certainly, that's not the perspective of people of color and hopefully these days it's also not the perspective of very many white cultures, but it is a way that we engage in that kind of a discussion, so I will say no more at this point because we want to leave some time for discussion.

But it was remarkable to start thinking about teaching evidence in ways that you're actually engaging in a conversation with students about each of these issues and doing exactly what Jarienn says we ought to be doing in law school. Okay.

So, we have much more to share. We've given you sort of the bullet points of the work that we've been doing for a year, but we're very interested in engaging with you and hearing many questions that you may have. So please, in the chat, are there any questions?

Mark Niles:

So, there aren't any questions, yet in the chat so I'm going to ask a question to give folks time to come up with stuff.

You can either put your question in the chat or use the raise hand feature. Probably easier to do in the chat, but if you want to do the raise hand, I'll try to make that work.

What I wanted to ask you all: A lot of what you talked about—I've been in this profession for a little more than 20 years—and a lot of what you talk about is challenging and not so easy to do. And so it's remarkable, all the advancements already happened, but I feel like the most challenging thing, and the most delicate thing is what a couple of you mentioned in terms of the exhaustion of students and I think that was mentioned in the earlier panel also.

And I think it's a very delicate balance to try to allow students to lead on these issues, but also not to push everything off on the students. So, the inclination might be to do initiatives from the administration and let students know about it so as to avoid sort of dumping on them. But then you're not putting them in the position of being the leaders and the orchestrators. But then, if you go to them and say "okay, what is it you need/wanted to do?" that's when you're sort of putting so much on them and they already have so much to do. And I know it's a difficult question, but does anybody have any insights on how to balance that out, and how you provide students with enough space, but also allow students to be the leaders?

Ellen Yaroshefsky: Great question Mark.

Jarienn, you have your hand up, right?

Jarienn James: And I think the exhaustion—thanks Ellen—I think the exhaustion comes from the fact that the administration is asking the questions and they're not ready to do it.

So, if the administration is asking the questions to do something, I think that will help with the exhaustion. But I see Fareed is there, so I'll let Fareed develop but that's just the one thing I wanted to point out.

Fareed Hayat: I would also say, I think we have a wonderful example of what to do: go in and talk to students about what their reaction was. And primarily because we said we are not calling on our three L students who have been involved throughout the year to come and participate in this panel, in the middle of bar studying.

And I think that's a fundamental example of, like, how, yes, we still want student voices, and we should be responsive to it, and both Declan and David have engaged the students' perspective, but right now their bar studying is priority and we're not going to put our objectives of this panel or anything else over them accomplishing their individual goals. And I think that kind of balance of, like, keeping them up front, but at the same time protecting their interests as well.

Mark Niles: David, could you give a quick response, I actually have a few questions. I want to get to all them so maybe just a couple minutes on this one? That would be great Thank you.

David Simson: I'll be very brief.

I think part of that is also part of what we've seen in our research term. What law schools are doing is to broaden the resources available to students who are interested in this kind of thing, and that could take various forms. One of the amazing things that happened at St. John's, for example, at student initiatives, is that the Coalition for Social Justice actually pulled in all other student organizations and made them accountable and pushed them to be involved in the anti-racist growth of the law school. And if you have all student organizations participating, that reduces, I think, the pressure on any one student organization, whether that be LSARC or CSJ or any other student organization, to take all of the heavy lifting on themselves. But I think it also does require the administration and I think we talked about this in the prior panel to not just say that there's a willingness to do it, but to actually take on some of the work to assign people with institutional walls and accountability mechanisms to do that.

Columbia has done some of that here, for example, from what we've seen, so I think broadening who thinks of themselves as involved in this project to eventually include everyone, both in administration and in the student body, [and] I think maybe alumni as well; you know, Declan is so wonderfully involved in everything that we do. That cannot be an oversight either because alumni have such great insight on how to make this system work better and maybe some more steam power than students who are only there for three years, as well, so I think I'll stop there, but I think broadening the scope of who thinks of this is their responsibility is crucial as well.

Ellen Yaroshefsky: Mark, can I just add one point? It's not only who thinks about it but it's also the training people to be allies, right? And so that's a really important piece of the work that's been done in various

places so that students of color have gotten together, you know, with white students to figure out how white students can actually support the work that they're doing so the burden doesn't always fall upon students of color.

Mark Niles: Okay thanks everybody. There are a couple questions in the chat. I want to try to get to all of them if I can.

First one: What suggestions do you have to empower anti-racist students, faculty, and alumni and disenfranchised ... decision makers within legal academia who have proven to be obstacles to anti-racist goals over the last year?

And that's a question that I might have asked. But that's the first one. I think that's a great one. How do you deal with entrenched, sort of, structures and institutions that are not supportive of this work? I know it's a big question, but does anybody have any sort of initial quick ideas?

Fareed, your hand is up. Is it still up from last time, or...?

Fareed Hayat: Oh, it was but I would say [that] we don't have to change their minds.

I believe it's enough of us who have the interest of anti-racism and equality and justice in mind and are willing work to work towards it, especially in a place like here in New York. So those who are racist and who will maintain racism and would like to support white supremacy, let them have at it. Appreciate them identifying themselves, and let's focus on building without them.

Ellen Yaroshefsky: So, as I said in the beginning of my remarks that that was one of the key questions that we dealt with in LSARC: there are some people who believe, just leave them alone, you can't even train people and we shouldn't focus on training. I think Fareed's right; we can train some people; there are some people who are capable of change, who want to change, and then there are people who will never change. I mean, this goes to the overall sense of tenure, what tenure means, how we're going to hire

new people. And institutions have to bring in new faculty and new faculty of color and figuring out how to hire people who aren't just traditional academics.

Mark Niles: Okay I've got another really excellent question and I'd love to hear folks' perspectives on this myself, because it affects my own teaching.

Do you think cases like Dred Scott should be taught and, if so, how?

Jarienn James: For it not to be taught is just unacceptable.

Ellen Yaroshefsky: Well, it's got to be, absolutely.

I think we would all agree; it has to be taught, Mark. And Mark, you probably have the best idea of how to teach it, I mean one of the things...

Mark Niles: I teach it, I'm not sure I have the best idea how to teach it, but I know I teach it.

Ellen Yaroshefsky: Well, you know, one of the questions asked is, what if you have one or two students of color and a class when you're teaching Dred Scott, does that put a burden on them, or what do you do about it, and do you include, you know, narratives? Do you include articles about racism? I mean, that's one of the suggestions that I think people on the Conn Law panel made when they were talking about it, right?

David, you have great notes about the panel. I went through them before this and one of the things they said is use materials other than the case because it has to be contextualized in order to understand what that case is about.

Fareed Hayat: I also suggest this: it does an amazing job at identifying that this was not a human personal truth. Even here in America, there is a dissent that is very articulate to show that that is wrong. And I think it gives students an opportunity to

understand that the law is really on who voted which way, you know, it's not that, you know, that this is a universal truth.

It is that they had more votes on that particular occasion, and I think the evolution from Dred Scott is very important, so if we're talking about changing the law, like developing approaches to change the law, really largely building on credible arguments that the dissent articulated in cases like that in other cases, so I don't say go away from it at all.

Mark Niles:

David, let me say one thing and then I'll go to you and my own experience, both as a law student as a law professor.

My Conn Law professor was actually a great local law professor. When he taught Korematsu, he taught it just like any other case, went through it as a subset of due process case, and then he didn't understand why, particularly the Asian American students, found that that was completely, sort of, lacking and insufficient in terms of addressing the issue.

I remember, I was in his office for another reason at some point, right after that.

And, to his credit, and I think, of very much a good faith, he could understand. He was like well, what happened? I taught this case, and everyone seems so upset and what I said was, there are people in this classroom for whom this case is literally, was a transformative and defining feature in their lives; it was a historical moment for a population of people that maybe you don't understand because you don't come from that community.

You have to acknowledge that in teaching and can't teach a case like Dred Scott without putting it in historical perspective. And Jarienn, you talked about when you were in class someone's like "oh, there's another history lesson." And Jarienn, you said it exactly right: you need a history lesson. Can't teach a class like that, or a case like that, without acknowledging the role it played in history.

And that's one thing you have to do, regardless. Maybe you're just spending five minutes on the case cause it's not that important to what you're doing. But it's too important, historically, and too important for too many people in the room—and really to everybody it should be important—for you not to acknowledge that reality, and that's at least one way to approach it. I don't claim to know how to teach cases like that, but that's the kind of thing I think about when I do.

David, go ahead, I'm sorry.

David Simson:

No worries at all. I'll be very brief, but I think I want to say something very briefly to before; how do you empower anti-racist actors and disempower entrenched power centers? I think one question is to ask, where's the money going? Which centers are getting the money? Where are the fellowships going? What are they being distributed for? And to really ask: is this providing leadership on anti-racism issues? And I think that puts a lot of pressure on leadership.

I mean, I feel so privileged to work for an organization like LSARC with the leaders like Jarienn and Ellen and Fareed who really hold all of us, accountable and push forward. And I think law school leaders need to do the same and put their money where their mouth is. I think earlier we mentioned that in the talk, and I think Fareed did as well.

And about the teaching, I think, you know, Kendall Thomason and Gina Shaw in different capacities at LSARC events talked about, I think, how it's important how you contextualize a particular case. What are you using it to teach? Right? Like, what's the purpose of you raising this case? If the purpose of you raising the case is to show a counter-narrative to constitutional law has been not just linear progress from a bad past to a perfect present, but actually a legal system in which structural racism is entrenched. Then, you know, Dred Scott doesn't appear out of nowhere and it actually starts to make much more sense than to just give it to students and say "here's what the Supreme Court said at a particular point in time. Do with it what you wish." So, I think that's what I would say.

Jarienn James: So, we know, I know, I know, you want to rush to the next two questions, but just very quickly.

Mark Niles: Yeah, sure sorry.

Jarienn James: One. In terms of the Dred Scott case, I think whenever you're teaching this case you have to frame it as to why people see that they're still fighting to be recognized as human; why they're fighting for their humanity to be recognized. And why, and I mean I could picture this in a criminal law class, why was it so necessary—well not criminal law, but Fareed will know which course exactly, but anyway—why, why is it that the prosecutor took the time to bring George Floyd's family? And it wasn't just for sympathy from the jury, but it was established this man was human. And when he was crying for his mother that he was human. And we are still fighting that narrative today because of what happened in Dred Scott, so you always have to find a way to link it to the present. It's not just something of the distant past; it still lurks today.

And then the other question about the disenfranchising. The issue there is in most places and, as Martin Luther King had said, it's not just about the racist person; it's about the moderate person who thinks that they're doing enough, and they really aren't aware that they're not pushing an anti-racist agenda. So, the way to make a moderate person recognize that they're not being anti-racist is to show them just how moderate they're being and understanding that to be anti-racist in this moment—I hope it's not a moment, but a movement—but really, it is to be revolutionary as somebody else was saying earlier.

Mark Niles: So, there are two more questions. We've got a little over two minutes. I'm going to read them both and see if anybody wants to say anything about either of them. They're fantastic questions, so I'm not going to pick between them, they're both too good.

So first: Accountability and transparency are so important to this work. Have you considered any kind of score card rating of law schools that goes beyond perhaps what U.S. News and World Report does?

And then the second question, basically, is: This kind of work, in addition to putting pressure on students, puts so much pressure on faculty and staff. Do you think schools can be successful in this work without a full-time person to help navigate these works and goals – which, I assume means a full-time diversity and inclusion person, is what they're talking about.

So, anything about some sort of ranking of schools or assessment of schools, based on these issues and/or the importance of having, like, a designated full-time diversity and inclusion anti-racism person in the institution.

Anybody just jump on out if you want to say anything about either.

Declan McPherson: Mark, I can actually speak to the second question. And that was a need that was expressed by students –that there is, due to the lack of communication, there needs to be a point-person that is directly in charge of these efforts, even when you think about it. You have students for three years and momentum shifts with different classes. One group of student leaders in one year might be more effective than others. But if you have someone that is continually committed to the work, the momentum stays the same and can even grow higher. So, I do believe that, to echo students' sentiments, that a full-time diversity person is needed at law school.

Ellen Yaroshefsky: I echo that it has to be institutional, and it won't be institutional unless the school actually commits to either having a person or a group of people at the school who want to take that.

We wanted to leave you, though I know we only have a minute, with the idea that Fareed talked about during the plenary, which is about helping students pass the bar exam.

We're going to propose, and its sort of a radical suggestion, that law schools work together. Some schools have more money than others and there ought to be a way that the schools work together, maybe in conjunction with some of the organizations or law firms, that exist in the city to provide money, so that no one has to work during the time they're taking the bar exam. That ought to be a baseline. It's a way in which we can assure that we will have first time passage rates by students of color, so I wanted to leave us with that as well.

Mark Niles: And Ellen let me add that maybe also some funding or some free bar prep support, so I think there's a huge, there's data out there that bar prep classes, not surprisingly, are worth the huge amount of money people pay for them, and maybe providing scholarships for those, or some sort of alternative, to those that are just as effective could also make a big difference, too. So, I would just add that as something that schools could work together to try to do, if they weren't too competitive.

Ellen Yaroshefsky: Let's hope we get there. We're going to propose it to the deans. In terms of accountability, David has started doing this fabulous chart. I think at some point we may suggest some kind of a better accountability and transparency mechanism, but we are not there yet. Hopefully we'll get there before U.S. News does.

Mark Niles: Yeah, well if you do it at all you'll get there before us.

Okay folks, that was great. Thank you. We actually stopped almost exactly on time.

We had wonderful participation - 60 folks, which is great for a session like this. Great questions and thanks to all the panelists. You all did a great job. It was a pleasure for me to sit to the side and enjoy what you did, so thanks very much.

Ellen Yaroshefsky: And please send us your email if you want to be included in our June 2015 Roundtable and/or on our mailing list generally.

Mark Niles: Yeah, you can send it to Ellen or me at Hofstra or anybody that was on the panel that you recognize. We're happy to get back to you and provide you with whatever connections you need.

Thank you.

Ellen Yaroshefsky: Thanks a lot. Bye folks.