

Kansas State University Libraries

**New Prairie Press**

---

Adult Education Research Conference

2005 Conference Proceedings (Athens, GA)

---

## **Black and White Attorneys' Perspectives on Race, the Legal System, and Continuing Legal Education**

Lorenzo Bowman J.D., Ph.D.

*The University of Georgia, USA*

Follow this and additional works at: <https://newprairiepress.org/aerc>



Part of the [Adult and Continuing Education Administration Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial 4.0 License](#)

---

### **Recommended Citation**

Bowman, Lorenzo J.D., Ph.D. (2005). "Black and White Attorneys' Perspectives on Race, the Legal System, and Continuing Legal Education," *Adult Education Research Conference*. <https://newprairiepress.org/aerc/2005/papers/65>

This is brought to you for free and open access by the Conferences at New Prairie Press. It has been accepted for inclusion in Adult Education Research Conference by an authorized administrator of New Prairie Press. For more information, please contact [cads@k-state.edu](mailto:cads@k-state.edu).

# **Black and White Attorneys' Perspectives on Race, the Legal System, and Continuing Legal Education**

Lorenzo Bowman, J.D., Ph.D.  
The University of Georgia, USA  
[lorenzobowman@aol.com](mailto:lorenzobowman@aol.com)

**Abstract:** *This paper summarizes the findings of a qualitative study which sought to determine Black and White attorneys' perspectives on race, the legal system, and their level of support for the inclusion of race-related topics in continuing legal education (CLE). The White attorneys were supportive of the status quo. The Black attorneys agreed that CLE should address the issue of race and that the status quo was not acceptable.*

## **Purpose of the Study**

In order to confront the evils of racial bigotry effectively in the criminal justice system, lawyers must understand how racism is played out in the courtroom and in day-to-day practice. Despite statistics which overwhelmingly point to the fact that the American criminal justice system is highly discriminatory, practicing lawyers are not made aware of this reality in continuing legal education (CLE). Prior to this study, it was not known whether or not the members of the State Bar of Georgia would support the inclusion of race topics in CLE and it was not known whether such support would be based on the race of the attorney. Critical race theory (CRT) suggests that support for race-related CLE requirements would be based on the race of the attorney. The purpose of this study was to determine Georgia's attorneys' perspectives on race, the legal system, and continuing legal education.

## **Theoretical Framework**

This study is situated in critical race theory. Critical race theory maintains that racism is endemic to American life. Critical race theorists have two common interests: (a) understanding how a "regime of White supremacy and its subordination of people of color have been created and maintained in America" (Crenshaw, Gotanda, Peller, & Thomas, 1995, p. xiii) and (b) changing the bond that exists between law and racial power in the United States (Delgado, 2001). Critical race theorists maintain that because White and Black people experience race differently, the only way to understand the extent of the race problem in this country is to give "voice" to the race experiences of people of color. This will reveal a wide disparity in perceptions that can be partly attributed to the racial experiences of Black people and to the concept of Whiteness (Denevi, 2001) and White privilege (McIntosh, 1996) that White people in America enjoy.

Delgado (1995) has maintained that in allowing people of color to "name their own reality" critical race theorists infuse the viewpoint of the racially oppressed into their efforts to reconstruct a society that is burdened by racial hegemony. This study explored the assertion advanced by critical race theorists that Black people view race differently than the dominant culture. Specifically, critical race theory informed this study by providing the analytical lens that was used in discussing the findings.

## Research Design

The study addressed two major research questions:

1. How do Black and White attorneys view the role of race in the legal system?
2. How do Black and White attorneys view the efficacy of continuing legal education in addressing the role of race in the legal system?

The study used a purposive sample of fourteen Black and ten White attorneys who practiced law in either a small predominantly white city or a major metropolitan area with significant Black representation. The data were collected through the use of in-depth, semi-structured, face-to-face interviews. In order to protect the integrity of the study and to control for the race-of-interviewer effect (Schaeffer, 1980), all interviews were “same race” interviews. A White interviewer interviewed all White participants and a Black interviewer interviewed all Black participants. The resulting data were analyzed using the constant comparative method of data analysis.

## Findings and Conclusions

The major themes that emerged in response to research question 1 are summarized in Tables 1 and 2. Table 1 summarizes the White attorneys’ perspectives:

---

### Table 1: White Attorneys’ Perspectives

---

Theme 1: Racial inequality is pervasive in the legal system

Theme 2: Race influences sentencing and affects the interaction between the judiciary and Black attorneys

Theme 3: Black attorneys are victims of race-based exclusion at all levels in the profession

Theme 4: Black attorneys must locate their practices near Black clientele and near a diverse judiciary

---

Table 2 summarizes the Black attorneys’ perspectives:

---

### Table 2: Black Attorneys’ Perspectives

---

Theme 1: The judiciary, White attorneys, and jurors view Black attorneys as incompetent

Theme 2: Black attorneys are victims of race-based exclusion at all levels in the profession

Theme 3: Race influences sentencing and affects the interaction between the judiciary and Black attorneys

Theme 4: Black attorneys must locate their practices near Black clientele and near a diverse judiciary

Theme 5: Jurors consider race in their deliberations

---

The data revealed that almost all of the White attorneys recognized the pervasiveness of racism in the legal system. It was evident to the White attorneys that something was awry in the criminal justice system. The overarching observation made by the White attorneys in support of this theme was the assertion that Black men are targeted by the criminal justice system. Each of the White participants acknowledged a racial disparity in the criminal justice system even though most could not or did not expressly name the cause as blatant racism. One of the White attorneys noted:

I don't think there is any question that there is a certain bias built into the criminal system that young minorities are the ones that get caught with drugs and they are the ones who get jail time where you and I would probably get probation for the same type of offense.

The data also revealed that a significant number of the Black attorneys believed that race frequently impacted jury behavior and often times resulted in jury nullification. Jury nullification occurs when Black jurors refuse to convict a Black defendant even in the face of compelling evidence because of a desire to rebel against what is perceived as a racist criminal justice system. One of the Black attorneys noted:

it also brings about jury nullification . . . you get an all Black jury, a White judge, a White court reporter, a White baliff, all White police officers testifying, and you've got a White DA and here you got this Black defendant . . . and everything becomes suspicious with Black Jurors . . .

As tables 1 and 2 indicate, there were significant surface similarities in the themes identified for the two racial groups. Both the White and Black attorneys recognized the existence of racial problems within the profession. Many of the Black attorneys gave specific examples of experiences that they had with the judiciary, fellow attorneys, and clients in which race was a primary factor. The apparent surface similarity is superficial at best.

The White attorneys spoke to the themes from a distant perspective, as if they were onlookers to the problem. The Black attorneys always talked about direct personal experiences. For example, in discussing issues surrounding theme 4, the White attorneys recognized that White clients seek out White attorneys for legal services and that in predominantly White communities, this places Black attorneys at a significant disadvantage. Similarly, White attorneys seem to recognize that issues such as discrimination in housing and the criminal justice system also would affect a Black attorney's decision as to where to locate his or her law practice. However, these White attorneys addressed this issue through experiences that had been related to them by fellow Black attorneys.

By contrast, the Black attorneys addressed the issue experientially. The Black attorneys gave personal stories that demonstrated the existence of racial isolation in predominately White locales. The White attorneys relied on hearsay, and in some cases personal observations. The Black attorneys were passionate in their discussion of this issue of racial isolation and saw it as so significant that some vowed to never practice outside of a metropolitan area unless the racial climate in those outside practice areas became more tolerable. The luxury of being able to emotionally detach oneself from racism in society is White privilege (Ross, 1990). Thus, while White and Black attorneys addressed topics that did lend themselves to be grouped together into identically entitled themes, they arrived at these topics in a very different manner, and as such these topics had fundamentally different meanings to the two groups.

The major themes that emerged in response to research question 2 are listed below in tables 3 and 4. Table 3 below summarizes White attorneys' views of CLE:

---

Table 3: White Attorneys' Views of CLE

---

Theme 1: The bar is silent on race with regard to CLE offerings

Theme 2: White attorneys were seemingly supportive of both the status quo and limited change in the current CLE approach

Theme 3: The current approach and format for CLE has gross inadequacies especially with regard to its ability to address the issue of race

Theme 4: The White attorneys were reluctant to step outside of the boundaries of the current format

---

Table 4 below summarizes Black attorneys' views of CLE:

---

Table 4: Black Attorneys' Views of CLE

---

Theme 1: CLE should address the issue of race; the status quo is not acceptable

Theme 2: Consciousness raising through CLE is an acceptable start

Theme 3: The bar should start by including more Black attorneys as CLE presenters as a tool to tear at racial stereotypes

Theme 4: Mandated race awareness CLE is acceptable

---

The responses to research question two revealed the greatest degree of difference between the Black and White attorney participants. While both White and Black attorneys acknowledged that CLE had not addressed race, they did not agree on whether or not it was absolutely imperative that CLE start addressing race in the future. The White attorneys seemed to support the status quo. While the White attorneys saw the usefulness in addressing the issue of race because of its significance to the practice of law, they questioned the efficacy in addressing the issue through CLE. Many of the White attorneys concluded that the issue doesn't fit, given the current CLE approach. The White attorneys seemed reluctant to challenge the current CLE approach. One of the White attorneys noted:

So, I think it would be hard to run a CLE program where you are dealing with some of these difficult issues. People don't go to CLE to deal with stuff like that. They go to get updates on the law and find new ways of dealing with certain types of things. It's not what people expect to deal with.

The Black attorneys spoke with a decided sense of urgency regarding the need of CLE to address the issue of race in the profession. The Black attorneys were much more confrontational in addressing the CLE issue. Several of the Black attorneys said that the issue must be addressed in CLE because of its relevance to the profession. The Black attorneys were realistic in their expectations of the outcome from a CLE experience in which race is to be addressed. The Black attorneys were contented with consciousness-raising as an objective. They thought that such an objective would at least be a start toward eliminating the current atmosphere of silence. One of the Black attorneys opined that "I think awareness is the first step." The importance of such awareness was addressed by another one of the Black attorneys who noted that:

. . I'm not sure if I'm just dreaming, but would hope that when a person becomes more sensitive to it, they are more responsive to issues as they arise and that it would help in basic communication, and effectiveness in the practice of law.

The White attorneys hid behind the current format of CLE as a restrictive device that doesn't allow for the change necessary to adequately address race. A viable explanation for this resistance to change is that change in the current approach would threaten the livelihood of the vast majority of White attorneys. Indeed, White criminal attorneys have created and maintained successful criminal law practices even though the criminal justice system is inherently biased and discriminatory against people of color. Thus, to some extent, White attorneys depend on the continued existence of a biased and discriminatory criminal justice system for their career success. To advocate radical and sweeping change would be to threaten this very livelihood. These White attorneys were only willing to push for change to the extent that it would advance and/or protect their own self-interests. Bell (1992) has called this the interest convergence principle in critical race theory. This principle asserts that White people will promote racial advance for Blacks only when they also promote White self-interest. This explains the seemingly inaction of the White attorneys after openly acknowledging the problem of race in the profession. White attorneys will only support sweeping change when there is an interest for them that will be advanced through such changes. Else, they have no motivation to support such changes especially since they benefit from racial oppression as the holders of White privilege. Bell (1992) noted that the framers of the U.S. Constitution chose the rewards of property over justice, and that similarly, White people, including White attorneys, will not support policies that may threaten White social status.

### **Implications**

The failure of the legal profession to address racism in CLE is partly related to the continued reliance on a functionalist approach in program planning. This approach places emphasis on technical knowledge and expertise in the practice. This approach has become a shield behind which White members of the bar now hide. It provides an excuse for why race cannot be addressed since the primary purpose of CLE under this approach is to offer programs which hone technical expertise and maintain a minimum level of technical competency. Under the present functionalist approach, it would be inappropriate to address issues such as race because it is not readily apparent that doing so would enhance technical expertise and knowledge. Program planners of CLE should shift from a functionalist, system-supporting approach to one that would allow them to respond to the complexities in the practice of law and to one that specifically addresses issues such as race. This would require a paradigm shift to the critical approach as espoused by Cervero (1988). Such a paradigm shift would allow program planners in continuing legal education to embrace anti-racist education tactics in its planning and delivery.

It is my belief that the impact of race on the practice of law is so significant that anti-racist education is needed in order to change the current culture in the profession which is supportive of the status quo. Anti-racist education is designed to rupture the status quo; it grounds itself in the lived experiences of the oppressed and uses the "voice" of the oppressed in communicating the existence of racial problems to the dominant culture (Dei, 1996). It should

be noted that such a paradigm shift would not mean that the current CLE substantive topics would not be addressed. All of the current topics would continue to be addressed; however, race would become the context in which each topic is addressed. For example, in discussing the topic of driving under the influence (DUI) defense in a CLE offering, the format would be restructured to address the impact of race on the defense strategy. In addressing the impact of race, the CLE planners would look to attorneys of color to speak directly to the issue based on their past personal and professional experiences.

This study also suggests that program planners should not treat an entire profession as a monolithic group in assessing the impact of race on professional practice. In order to determine what the significant race issues are, it is necessary to solicit input from professionals of color separately from the White professionals because the lived reality of racial experiences is very different from the perceived reality of White professionals as this study has shown.

### References

- Bell, D. (1987). *And we are not saved: The elusive quest for racial justice*. New York: Basic Books.
- Bell, D. (1992). *Faces at the bottom of the well*. New York: Basic Books.
- Bell, D. (1995). Who's afraid of critical race theory. *University of Illinois Law Review*. 1995:901.
- Cervero, R. M., (1988). *Effective continuing education for professionals*. San Francisco: Jossey-Bass.
- Crenshaw, K., Gotanda, N., Peller, G., & Thomas, K. (1995). Introduction. In K. Crenshaw, N. Gotanda, G. Peller, & K. Thomas (Eds.) *Critical race theory: The key writings that formed the movement*. New York: Free Press.
- Dei, G. (1996). *Anti-racism education theory and practice: Foundations of practice*. New York: Harper & Row.
- Delgado, R. and Stefancic, J. (2001). *Critical race theory: The cutting edge*. Philadelphia: Temple U.
- Delgado, R. (Ed.) (1995). *Critical Race Theory: The cutting edge*. Philadelphia: Temple University Press.
- Denvi, E. (2001). Whiteness. *Independent School*. 61 (1), pp. 100-109.
- McIntosh, P. (1996). White privilege and male privilege: A personal account of coming to see correspondences through work in women's studies. In Delgado, R., and Stefancic, J. (Eds) *Critical White Studies: Looking behind the mirror*. Philadelphia: Temple University Press.
- Ross, T. (1990). Innocence and affirmative action, 43 VAND. L. REV. 297, 299-300.
- Schaeffer, N. (1980). Evaluating race-of-interviewer effects in a national survey. *Sociological Methods and Research*, 8, 400-419.