

**Alyson A. Grine and Emily Coward**

# **Raising Issues of Race in North Carolina Criminal Cases**

2014



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# Preface

When we began considering this project in 2011, we had a broad sense of what we wanted to cover. We believed it important to provide North Carolina court actors with a comprehensive, reliable, and accessible resource on the ways in which issues of race may arise in criminal proceedings, from the beginning of a case to its conclusion, and how best to address them. Little did we realize the depth, breadth, and complexity of the issues, legal and social, that we had undertaken to address. After nearly three years of work, we are excited to release this first-ever reference manual, in North Carolina or elsewhere, devoted to these issues. We hope that the manual will aid defenders, court officials, law enforcement officers, and others who work so hard to uphold the integrity of our criminal justice system and keep it free from improper influences.

This manual would not have been possible without the support and assistance of many people. First and foremost, we wish to express gratitude to the Z. Smith Reynolds Foundation for its generous financial support of this project. Thanks go to the members of the manual's Advisory Board: Tye Hunter, former Executive Director of the Center for Death Penalty Litigation; Breana Smith Jeter, Attorney with Moore & Van Allen and former Assistant Public Defender for Mecklenburg County; Mary Pollard, Executive Director of North Carolina Prisoner Legal Services, Inc.; Richard Rosen, UNC School of Law Professor Emeritus; and James E. Williams Jr., Public Defender for Orange and Chatham Counties. They volunteered their time to review each chapter, offered their insights into the theory and practice of criminal defense, and endured long meetings to see this project to its conclusion. John Rubin, Albert Coates Professor of Public Law and Government at the UNC School of Government, supported the development of this manual, reviewing multiple drafts of each chapter and providing input on the content and presentation. Christopher Tyner, a research attorney at the School of Government, made important contributions to the research and writing of this manual. We also want to thank the many attorneys who responded to our questions and shared their insights and experiences with us as we wrote this manual. Special recognition also goes to the Office of Indigent Defense Services and the School of Government for supporting this manual. Their collaboration on this and other education projects has enhanced the resources available to indigent defense attorneys and the service they are able to provide their clients. Finally, thanks go to the members of the Publications, Marketing and Communications, and Information Technology Divisions of the School of Government for their assistance in designing and producing the manual.

A word about terminology: When it comes to descriptions of an individual's race or ethnicity, a myriad of viewpoints exists regarding language usage. For example, the terms "Latino" and "Hispanic" are often used interchangeably, but research suggests that these terms are not widely embraced by those they aim to describe.<sup>1</sup> While both terms receive their fair share of criticism, this manual will use the term "Latino" instead of "Hispanic" whenever

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<sup>1</sup> See, e.g., PAUL TAYLOR ET AL., PEW HISPANIC CENTER, [WHEN LABELS DON'T FIT: HISPANICS AND THEIR VIEWS OF IDENTITY](#) (2012) (finding that a majority of Hispanics or Latinos identify with their family's country of origin rather than with pan-ethnic labels).

possible. This choice reflects both our sense that the term “Latino” is generally viewed as a more inclusive term than “Hispanic” and our understanding that the term “Hispanic” was coined by the U.S. Census Bureau and did not originate from within the culture.<sup>2</sup> When discussing studies, the terms for racial and ethnic categories conform to the terms used in the studies described. So, for example, if a researcher refers to “Hispanics” rather than “Latinos,” this manual will do the same. The terms “White” and “Black” are capitalized, as they refer to cultural groups and therefore will be treated as proper nouns.<sup>3</sup> The terms “Black” and “African American” will be used interchangeably, though “Black” is the preferred term as it is more inclusive.<sup>4</sup> “African American” will not be hyphenated to avoid any derogatory implications associated with “hyphenated Americans.”<sup>5</sup>

This manual, current through September 2014, is a reference in the School’s Indigent Defense Manual Series, available at <http://defendermanuals.sog.unc.edu>. Although the manuals are aimed at helping indigent defenders do their jobs effectively, we also hope they provide a useful, reliable review of the law for everyone working in the court system.

Any errors in the manual are our own. Comments and suggestions are welcome. They may be sent to Alyson Grine at the School of Government, CB #3330, Knapp-Sanders Building, The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27599-3330. She can also be reached by telephone at (919) 966-4248 or by e-mail at [agrine@sog.unc.edu](mailto:agrine@sog.unc.edu).

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Fall 2014*

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<sup>2</sup> “Latino” refers to people of Latin American descent, while “Hispanic” refers to people of Spanish-speaking origin.

<sup>3</sup> See, e.g., Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (arguing that “Blacks, like Asians [and] Latinos, . . . constitute a specific cultural group and, as such, require denotation as a proper noun”).

<sup>4</sup> Alex M. Johnson, Jr., *Defending the Use of Quotas in Affirmative Action: Attacking Racism in the Nineties*, 1992 U. ILL. L. REV. 1043, 1044 n.4 (1992) (“It is more convenient to invoke the terminological differentiation between black and white than say, between African-American and Northern European-American, which would be necessary to maintain semantic symmetry . . .”).

<sup>5</sup> See Patricia T. O’Conner & Stewart Kellerman, [Hyphenated Americans](#), GRAMMARPHOBIA (Jan..27, 2012) (blog post explaining that dictionaries and style guides differ on the question of hyphenating terms such as African American and cautioning that hyphenation has been suggestive of bias).