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Teaching about Race and Family Law: Introduction

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Introduction

JESSICA DIXON WEAVER* & LISA F. GRUMET**

Over the last two years, lawmakers or other public officials in forty-two states across America have proposed legislation or pursued other actions with the goal of restricting or limiting how teachers discuss racism, sexism, and other issues of systemic inequality in the classroom. The American Bar Association (ABA) took a bold and necessary step in the opposite direction. In February 2022, the ABA approved new law school accreditation standards requiring that law schools “provide education to law students on bias, cross-cultural competency, and racism.” In fact, Standard 303(c) of the ABA Standards and Rules of Procedure for Approval of Law Schools sets forth that law schools must provide two opportunities for students to learn specifically about these topics, at the beginning of law school and at least once again before graduation. It further pushes law schools to ensure that students who enroll in law clinics and field placements must complete the second educational occasion “before, concurrently with, or as part of their enrollment in clinical or field placement courses.” This new requirement will challenge law schools to enhance or add more courses on race and the law to their curricula, and it will also push legal educators to educate themselves on how to incorporate the impact of bias and racism into existing courses where these issues have been sidelined or not included at all.

This volume, *Teaching About Race and Family Law*, comes at just the right time. The articles in this issue address several different ways to combat bias and promote racial justice in the family law context through education of current and future family law practitioners. Two of our authors discuss how they have incorporated discussion of race, bias, and cross-cultural competency into their family law classes, and include examples of cases and materials for others to consider. Additionally, three family law attorneys address how to confront bias and racism in the family court system, with a particular focus on mediation.

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First, in *Would You Make It to the Future? Teaching Race in an Assisted Reproductive Technologies and the Law Classroom*, Professor Sonia Gipson Rankin discusses the thought-provoking ways in which she challenges her Family Law and Assisted Reproductive Technology (ART) and the Law classes to consider “the race, gender, sexual orientation, and class implications in every facet of ART.” Her article reviews how she explores these issues with her students through case studies, class discussion, and reflective essay assignments. The case studies include instances in which mistakes in the ART process were discovered when the child’s race was different than the parent(s) had expected—or desired. One of these cases involved “a mother who sued because the race of the child she had through a donor sperm error led to what she described as unwanted difficulties in her life because she had to interact in a new racial community.” Professor Rankin also shows how she incorporates cultural competency into her learning outcomes and assessments, and includes her learning outcomes and reflection rubric as an appendix to the article.

Second, in *Un-Erasing American Indians and the Indian Child Welfare Act from Family Law*, Professor Neoshia R. Roemer discusses addressing bias against Native Americans through incorporating the Indian Child Welfare Act (ICWA) into family law classes. Her article counters past media coverage that has favored white foster or adoptive parents challenging ICWA, and provides detailed discussion of the legal and policy significance of the statute while addressing common misconceptions. Furthermore, Professor Roemer provides specific recommendations, including guidance for course materials and for how to frame discussions of discrimination. For example, when she teaches the landmark 1920s U.S. Supreme Court cases *Meyer v. Nebraska* and *Pierce v. Society of Sisters*—cases that are often cited as key decisions concerning parental rights with respect to their children’s education—she asks her students to consider whether these choices were in fact available in the 1920s for parents of Black children in all states, given rampant segregation and discrimination, or for parents of Native American children, at a time when many Native American children were removed from their families and sent to boarding schools.

Additionally, in their article *Black Families Overlooked, Misunderstood, and Underserved in the Family Courts*, Michigan attorneys Jenae’ Anderson, Zenell Brown, and Viola King draw on their collective practice experience to discuss ways for courts to confront systemic racism and enhance justice for Black families in family courts. They discuss the role of state and local judicial administrators in combating implicit bias through education, protocols, and research, and in promoting access to the justice system at a time when courts are increasingly using virtual technology that is not equally

available to everyone. Furthermore, they call for developing inclusive family mediation training curricula, expanding access to mediation, and enhancing diversity in the mediation profession. Concerning mediation training curricula, they discuss a Michigan program that “introduced a wide range of topics and roles including the dynamics of mediating cases with parents who had not been married to each other, handling the emotional challenges of paternity disputes, coordinating parenting time when a party has children with multiple partners, and establishing child support when parties are at poverty levels.”

Finally, this issue also features one of the winners of the 2021 Family Law Section Howard C. Schwab Memorial Essay competition. In 2021, Matthew Holman wrote about Constitutional issues presented by a then-pending bill in the Alabama legislature that would criminalize providing puberty blockers or other gender-affirming medical care to transgender youth. In 2022, a version of this bill was enacted into law. The law was partly enjoined by a federal district judge and litigation is ongoing. Holman’s article, which has been updated to reflect these developments, discusses the Alabama law and concludes that its provisions violate the Equal Protection and Substantive Due Process Clauses of the Fourteenth Amendment.

Ultimately, the normative curriculum taught by law schools must address the realities faced by clients and lawyers alike in the real world. Teaching about race and the impact of racism on family law—or any area of law—requires analysis of caselaw in a more inclusive way, exposing students to the cultural background of diverse populations, and critically exploring whether what we teach and how we teach it needs to evolve. We hope you enjoy this issue, and that it provides an opportunity to engage with the challenging issues raised by the authors and with the goals of promoting equity and justice in our profession.

