

CHAPTER EXCERPTS FROM THE NEWLY RELEASED 4TH EDITION OF THE **RED BOOK**

Chapter 4: Racial Justice

by Tanya Asim Cooper, MA, JD, LLM, CWLS

NACC has published the fourth edition of *Child Welfare Law and Practice: Representing Children, Parents, and Agencies in Neglect, Abuse, and Dependency Cases (aka "the Red Book")*. As a preview for our members, what follows is an excerpt from a brand-new chapter to the Red Book — *Racial Justice*. **Order your copy of the new fourth edition Red Book!**



§ 4.4 • Strategies for Racial Justice

Because this system has perpetuated racial injustice for so long, many call for it to be dismantled and abolished. “Reforms don’t change the features of institutions, the missions, the systems of accountability[;] . . . reforms do not redistribute money or power; reforms are about programs.”¹ Abolitionists instead call for a radical reimagining of the system such that proper support would go directly into local communities and address root causes such as poverty, houselessness, and domestic violence.² Abolitionists look to the recent past during COVID-19 lockdowns, when fewer children were removed without harm, as proof that the child-protection-savior narrative perpetuates not wellbeing but fearmongering and destruction.³ Until current child protection systems are dismantled, attorneys must engage in color-conscious efforts that acknowledge the racial inequities the system creates and attempt to remedy them on individual and institutional levels.

§ 4.4.A. Individual Reforms

Take account of race. Everyone can perpetuate or disrupt racial bias, and awareness of the individual power to do so is key. Acknowledging the problem of racial injustice in child protection systems is one tangible, actionable thing everyone can do. Mandatory reporters, case-workers, lawyers, judges, CASAs, and GALs should question how race and caste inform their discretionary decisions about BIPOC families at each stage of a case and assume implicit bias.⁴ “Child [protection] system professionals guided by state policies and statutes are in a place of power to determine if parenting is appropriate or inappropriate. We have been neglectful in

¹ *Id.*

² *See id.*

³ *Id.*

⁴ *See Merritt, supra note 11, at 70* (“If racism and implicit bias is acknowledged and corrected across all aspects of the [system], parents will be less likely admonished for their well-intentioned parenting practices, particularly regarding child neglect.”); *Sankaran, supra note 77; Presler, supra note 75, at 763–64.*



acknowledging that such judgements come with implicit biases at all levels of service design and delivery.”⁵ To learn more about the role of race in our institution, consider these resources:

- *Race Equity Hub*, NAT'L ASS'N OF COUNSEL FOR CHILD., <https://naccchildlaw.org/race-equity-resource-hub/> (last visited Apr. 11, 2022).
- *Racial Equity Resources for Child Welfare Professionals*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/diverse-populations/racialequity/> (last visited Apr. 11, 2022).
- Krista Ellis, *Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners*, AM. BAR ASS'N (Dec. 17, 2019), https://qa.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/race-and-poverty-bias-in-the-child-welfare-system---strategies-f/.

Stay informed on the latest data and research on racial disparities, the root causes, and the evidence-based best practices to address them. With this data, system actors are much better equipped to address this unending problem in their local and legal communities and are much more likely to develop a reflective and reflexive racial justice practice. Here are some national resources to consider:

- *Children in Foster Care by Race and Hispanic Origin in the United States*, KIDS COUNT DATA CTR., ANNIE E. CASEY FOUND. (June 2021), <https://datacenter.kidscount.org/data/line/6246-children-in-foster-care-by-race-and-hispanic-origin?loc=1&loct=1#1/any/false/1729,37,871,870,573,869,36,868,867,133/asc/2638,2601,2600,2598,2603,2597,2602,1353/12993>.
- ROBERT B. HILL, CASEY-CSSP ALLIANCE FOR RACIAL EQUITY, SYNTHESIS OF RESEARCH ON DISPROPORTIONALITY IN CHILD WELFARE: AN UPDATE (2006), <https://www.aecf.org/resources/synthesis-of-research-on-disproportionality-in-child-welfare-an-update>.
- C. Puzanhera & M. Taylor, *Disproportionality Rates for Children of Color in Foster Care Dashboard*, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES (2020), http://ncjj.org/AFCARS/Disproportionality_Dashboard.aspx.
- *Disproportionality and Race Equity in Child Welfare*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 26, 2021), <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>.

§ 4.4.B. Institutional Reforms

Center BIPOC children's and parent's voices in their own cases. Listen to those individuals involved and most affected.⁶ Institutions reinforce caste hierarchies by ignoring and dimin-

⁵ Merritt, *supra* note 11, at 68.

⁶ *Id.* at 64.



ishing BIPOC voices, and “it is vital to validate their experiences of oppression, discrimination, and racism.”⁷ To really listen and learn from BIPOC families, experts recommend that individuals develop culturally humble, responsive practices.⁸ BIPOC families explain, however, that individuals can never, by themselves, be truly culturally competent, so system actors need to partner with BIPOC families on this strategy.⁹ Research suggests considering other paradigms that prioritize parents’ perceptions and allow for a shared power dynamic¹⁰ — for example, partnering with Native families to learn how to recognize informal kinship networks common to them and existing programs that recruit ICWA-compliant foster families. “Recruitment requires the recognition and elimination of social and economic barriers for Native households to become a foster family in ways that speak to the necessity of mutual aid in cultivating safe and affirming homes for all Native families.”¹¹ To learn more, consider these resources:

- CTR. FOR ADVANCED STUD. IN CHILD WELFARE, SCH. OF SOC. WORK UNIV. OF MINN., CULTURALLY RESPONSIVE CHILD WELFARE PRACTICE (2015), <http://cascw.umn.edu/wp-content/uploads/2015/03/CW360-Winter2015.pdf>.
- *Facing Race in Child Welfare*, RISE (2014), https://www.risemagazine.org/wp-content/uploads/2015/08/Rise_issue_27-facing-race.pdf.
- FAM. JUST. INITIATIVE, ATTRIBUTE 3: DIVERSITY AND INCLUSION/CULTURAL HUMILITY (2020), <https://15ucklg5c821brpl4dycpk15-wpengine.netdna-ssl.com/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute3-1.pdf>.

Take race out of the equation with color-blind removals. Blind removal meetings convene a committee of professionals to decide whether children from a particular family should be removed by focusing on what occurred, family strengths, and relevant history—without knowing the family’s race, address, or other demographics.¹² Designed to address bias at the investigation/removal stage of a case, research has shown that this strategy can reduce removal of Black children from their families.¹³ Even system experts disagreed “nearly 50% of the time when given a hypothetical about whether a child should be taken from his parents.”¹⁴

7 *Id.* (noting the “great deal of variation” in how families respond to service delivery, regardless of whether their participation is voluntary or mandated).

8 See Lisa Aronson Fontes, *Considering Culture in Child Abuse and Neglect Practice: Tips for Attorneys*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 151, 156 (Nat’l Ass’n of Counsel for Child. ed., 3d. ed. 2016) (defining cultural competence as “the ability to understand world views, experiences, and needs of people from other cultures and adapt our work accordingly,” which requires self-knowledge, humility, and constant learning). We have to “give up the ‘color blind’ notion that treating everyone exactly the same is fair” and instead realize each individual and family has its own strengths, weaknesses, habits, and preferences that we must adapt to learn from to be “fair.” *Id.* at 156.

9 See generally Symposium, *supra* note 16.

10 Merritt, *supra* note 11, at 70 (writing “rather than leaning into an authoritative mindset that often comes with unbalanced power dynamics”).

11 Beardall et al., *supra* note 14, at 571–72; Albert et al., *supra* note 55, at 885 (describing how tribal customary adoptions have allowed tribes to prevent parental rights from being terminated and maintain contact and connections between children and parents).

12 See Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, TED TALK, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>; see also Pryce et al., *supra* note 40, at 59.

13 Pryce et al., *supra* note 40, at 59 (tracking progress over five years—from 55.5% of Black children removed from their homes down to 29%).

14 Sankaran, *supra* note 77 (linking study).



This strategy has its critics,¹⁵ but officials in jurisdictions that have implemented these pilot programs see a decline in BIPOC children removals and find that the practice has improved casework.¹⁶ To learn more about this strategy, consider these resources:

- SOC. WORK EDUC. CONSORTIUM, UNIV. OF ALBANY, RACE EQUITY: NASSAU AND ONONDAGA COUNTY REPORT (2016), <https://www.nassaucountyny.gov/DocumentCenter/View/18095/FINAL-OCFS-Report-Race-Equity-2016>.
- Jessica Pryce, *To Transform Child Welfare, Take Race Out of the Equation*, TED TALK, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=ykLj-Hc28o4>.

Fund and ensure high-quality, multidisciplinary family defense lawyering. “[F]ully fund lawyers who can hold child welfare agencies to account—and assure that only children who really are at imminent risk of serious harm enter foster care.”¹⁷ This essential strategy is critical at all stages of the process, especially before children are removed.¹⁸ Family defenders must insist on due process at all critical stages and challenge vague legal standards.¹⁹ The Family Justice Initiative²⁰ is developing an Anti-Racist Lawyering Toolkit for the child protection field. For an analogous resource in the delinquency field, consider Racial Justice for Youth: A Toolkit for Defender.²¹ For resources on this strategy, consider:

- Sheri Freemont, *Gold Standard Lawyering for Child Welfare System-Involved Families: Anti-Racism, Compassion, and Humility*, GUARDIAN, Winter 2020, https://naccchildlaw.org/wp-content/uploads/2023/03/guardian_2020_v42n04_r6_winter.pdf.

Limit removing children in “neglect cases.” To reduce racial disparities immediately, many recommend not removing children in cases arising from neglect, a proxy for poverty.²² “Conflating abuse and poverty-framed-as-neglect allowed policymakers to avoid addressing deeply entrenched structural, economic, and racial inequities affecting children’s wellbeing.”²³ For more on this strategy, consider this resource:

- Jerry Milner & David Kelly, *It’s Time to Stop Confusing Poverty with Neglect*, IMPRINT (Jan. 17, 2020), <https://imprintnews.org/child-welfare-2/time-for-child-welfare-system-to-stop-confusing-poverty-with-neglect/40222>.

¹⁵ See Jeremy Loudonback, *Color-Blind Ambition*, IMPRINT (Apr. 1, 2021), <https://imprintnews.org/los-angeles/color-blind-ambition-removals/52958> (summarizing the criticism: the research methodology; that it is not radical enough; and the declines in Black children’s removals were not steady or consistent).

¹⁶ *Id.*

¹⁷ Sankaran, *supra* note 77.

¹⁸ *Id.* See generally Symposium, *supra* note 16.

¹⁹ See *Family Defense Lawyering*, *supra* note 72.

²⁰ FAM. JUST. INITIATIVE, <https://familyjusticeinitiative.org/> (last visited Apr. 11, 2022).

²¹ *Racial Justice for Youth: A Toolkit for Defenders*, JUV. JUST. INITIATIVE, <https://www.defendracialjustice.org/> (last visited Apr. 11, 2022).

²² Edwards, *supra* note 36, at 63 (“[T]he overwhelming volume of maltreatment cases involve neglect, which is subject to tremendous discretion in identification and classification.”); Burton et al., *supra* note 50, at 645.

²³ Burton & Montauban, *supra* note 50, at 667.



Change the narrative about BIPOC families. “Despite numerous reforms, the family policing system has not changed its punitive ideology or racist impact.”²⁴ Practitioners must heed this call from BIPOC parents: “Build with us and exist in principled struggle. We do not expect this to be linear or simple, it will be uncomfortable, there will be contradictions, mistakes, and need for deeper learning. There will be setbacks, harm, and indecision. However, there is no better time than now.”²⁵ Start with these resources:

- RASHAD ROBINSON & NICOLE SUSSNER RODGERS, CHANGING THE NARRATIVE ABOUT BLACK FAMILIES (2020), https://colorofchange.org/wp-content/uploads/2020/10/20_FamilyStory_RaceGuide_vo8.pdf.
- Symposium, *Strengthened Bonds Abolishing the Child Welfare System and Re-Envisioning Child Well Being*, 11 COLUM. J. RACE & L. 421 (2021), <https://journals.library.columbia.edu/index.php/cjrl/issue/view/789/188>.

Racial inequities in family separation and regulation do not have to be the status quo.²⁶ “Ultimately, an anti-racist future envisions a child welfare agency that achieves racial equity by keeping families together rather than separating them.”²⁷ Until then, individuals can reduce these inequities, starting with their own awareness of the problem, the research, potential solutions, and individual roles in each of these. ■

24 Roberts, *supra* note 15, at 463.

25 Albert, *supra* note 55, at 894.

26 See Dettlaff, *supra* note 3, at 6.

27 *Id.* at 7.

ABOUT THE AUTHOR:



Tanya Asim Cooper, M.A., J.D., L.L.M., CWLS, represented children, parents, foster parents, and relative caregivers in trials and appeals. She is a certified Child Welfare Law Specialist and clinical law professor. She researches racial inequities in child abuse and neglect, domestic violence, human trafficking, and sexual violence. She has authored *Racial Bias in American Foster Care: The National Debate*, *Race is Evidence of Parenting in America: Another Civil Rights Story*, and *We Shall Overcome: Stories of Bias in Foster Care* (forthcoming).