



## LESSONS IN RACE AND RACISM IN THE LEGAL ACADEMY: NOTES ON PAULI MURRAY<sup>†</sup>

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Seventy-five years after Dr. Pauli Murray published *The Right to Equal Opportunity in Employment*,<sup>1</sup> we gather for a symposium issue, *Taking Our Space: Women of Color and Antiracism in Legal Academia*. Our Symposium builds on the important work of Professor Meera Deo, *Unequal Profession: Race and Gender in Legal Academia*, which investigates and identifies race and sex barriers and obstacles that undermine the success and advancement of women of color in the legal academy.<sup>2</sup>

Deo's book is groundbreaking in that it is the first formal effort to account for the broader-scale experiences of women of color in the legal academy. Using quantitative and qualitative methods, she investigates

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<sup>†</sup> Eds. Note: This essay is part of a *Rutgers University Law Review* Symposium entitled, *Taking Our Space: Women of Color and Antiracism in Legal Academia*. The Symposium features a collection of essays inspired by Meera E. Deo's *Unequal Profession: Race and Gender in Legal Academia* (2019) and was accompanied by a roundtable discussion with the authors held virtually in March 2021.

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1. Pauli Murray, *The Right to Equal Opportunity in Employment*, 33 CALIF. L. REV. 388 (1945).

2. MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019).

how the intersections of race and sex intersect in the lives of female faculty of color.<sup>3</sup> The findings are troubling, but perhaps not surprising, to the research subjects themselves. For example, Deo documents accounts of silencing, chauvinism, racism and sexism in hiring, micro and macro aggressions in colleague interactions, hostility in teaching, and other forms of antagonism such that thriving in the legal academy has become difficult for many of those whom she studied.<sup>4</sup> In sum, Professor Deo's persuasive account of the experiences endured by women of color in the academy should serve as an urgent clarion call.

This essay does not repeat Professor Deo's important work, but rather builds forward from the contributions of Pauli Murray and Meera Deo to consider lingering barriers to inclusion and belonging in the legal academy. Where Pauli Murray's scholarship and memoir offered a twentieth century accounting of sex- and race-based discrimination in the law and legal academy, Deo provides the contemporary analog, shining a direct light on the obstacles to full inclusion and belonging of women of color in the legal academy.

This brief essay lingers on Dr. Pauli Murray, recognizing her legacy. She was Black, female, and queer.<sup>5</sup> Drawing upon Dr. Murray's legacy, this essay seeks to level-set a conversation about intersectional bias and erasure. In doing so, it opens a conversation for grappling with truth and reconciliation within the legal profession and rendering visible Black women and girls crucial to our law stories. In level-setting, the essay urges reimagining a past with fewer barriers and obstacles to the advancement, inclusion, and belonging of Black women in the law and the legal academy.

Part I advances the mission of this brief essay, which is to render visible legal contributions of Dr. Pauli Murray to frame a conversation for deeper scholarly engagement and fill in the gap of law's omissions. As such, Part I offers an historic account, and Part II turns to contemporary challenges presented by the cultural and social conditions that shape how Black women navigate the academic space. It argues that one must consider a timeline broader than that offered by Professor Deo. An

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3. *Id.* at 7–8.

4. *See generally id.*

5. *What About Pauli Murray and Pronouns?*, PAULI MURRAY CTR. FOR HIST. & SOC. JUST., <https://www.paulimurraycenter.com/pronouns-pauli-murray> (last visited Aug. 2, 2021). In this essay, I reference the works of Dr. Pauli Murray, who "actively used the phrase 'he/she personality' in correspondence with family members during the early years of their life." *Id.* However, "[l]ater in journals, essays, letters and autobiographical works, [Dr. Murray] employed 'she/her/hers' pronouns." *Id.* This essay recognizes and adopts the pronouns Dr. Murray made in both personal and professional correspondences as "she/her/hers" in the decades that spanned her adult life.

antiracism platform in academia implicates graduate study, undergraduate matriculation, and even K-12 education. The essay then concludes.

### I. REVISITING THEORIES ON INEQUALITY

In 1945, decades before Justice Ruth Bader Ginsburg joined the American Civil Liberties Union (“ACLU”) and began litigating cases to dismantle sex inequality, Dr. Pauli Murray wrote, “[t]he interest in freedom from discrimination in employment is part of the broader interest in freely disposing of one’s labor.”<sup>6</sup> Even though “various state and federal courts [had] been profuse in their verbal homage to the idea that the right to work is an inalienable and natural right,” Dr. Murray realized that it was “within the protection of the Fifth and Fourteenth Amendments” that claims involving race and sex discrimination in employment should be argued.<sup>7</sup>

Cases that would successfully challenge sex-based discrimination were decades away. Nevertheless, she wrote “[d]iscrimination based upon sex” was a matter for law to contend with even though “no attempt has been made at exhaustive research or treatment of this special problem.”<sup>8</sup> Today, this seems relatively straightforward and perhaps even obvious. However, keep in mind, Dr. Murray’s article, applying an equal protection line of argument, preceded *Frontiero v. Richardson*,<sup>9</sup> *Reed v. Reed*,<sup>10</sup> *Craig v. Boren*,<sup>11</sup> and *Califano v. Goldfarb*,<sup>12</sup> among other foundational cases, striking down sex-based discriminatory laws.

Dr. Murray’s pathbreaking article, which appeared in the *California Law Review*, offered a crucial framework for identifying, understanding, and dismantling sex inequality in the workplace. Twenty years prior to the enactment of the 1964 Civil Rights Act, Dr. Murray’s scholarship was

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6. Murray, *supra* note 1, at 388; *Tribute: The Legacy of Ruth Bader Ginsburg and WRP Staff*, ACLU, <https://www.aclu.org/other/tribute-legacy-ruth-bader-ginsburg-and-wrp-staff> (last visited June 17, 2021).

7. Murray, *supra* note 1, at 388.

8. *Id.* at 389 n.8 (emphasis omitted).

9. 411 U.S. 677, 688–91 (1973) (sustaining an equal protection challenge to a federal law providing male members of the armed forces an automatic dependency allowance for their wives while denying the same for female service members).

10. 404 U.S. 71, 76 (1971) (holding that when naming an administrator of an estate, men and women cannot be treated differently).

11. 429 U.S. 190, 204 (1976) (finding that sex does not represent “a legitimate, accurate proxy for the regulation of drinking and driving”).

12. 430 U.S. 199, 208–09 (1977) (plurality opinion) (pointing out that “female insureds receiv[ing] less protection for their spouses solely because of their sex” was a discriminatory violation of the Fifth Amendment’s equal protection guarantee).

undeniably groundbreaking. Neither Title VII nor Title IX existed in the law as of yet. Her critically insightful work constructed the foundation and applied the lexicon that would be used in later briefs written by Ruth Bader Ginsburg and adopted into Supreme Court jurisprudence.<sup>13</sup> However, even the most engaged students and professors of feminist jurisprudence, civil rights law, and critical race theory would be forgiven for unfamiliarity with Dr. Murray's name and legacy, or little or no engagement with her scholarship. *But why is that?*

Dr. Murray's invisibility to broader legal cannons and movements cannot be attributed to a lack of transformative impact, grave errors in scholarship or execution of law, or lack of sophistication. She was incredibly well-read, graduated first in her class at Howard University Law School, and by all accounts was persistent.<sup>14</sup> Her contributions to law and subsequent invisibility cannot be attributed to a notion that she simply failed to inspire and engage—she was a close friend of Eleanor Roosevelt and instrumental in including women into the 1964 Civil Rights Act.<sup>15</sup> As she explained, “being outside of the government, and [able to] present an argument as a victim of both race and sex discrimination, I was asked to prepare a ‘Memorandum in Support of Retaining the Amendment to H.R. 7152 (Equal Employment Opportunity) to Prohibit Discrimination in Employment Because of Sex.’”<sup>16</sup> Murray’s strongly worded memo pointed to “the historical interrelatedness of the movements for civil rights and women’s rights and the tragic consequences in United States history of ignoring the interrelatedness of all human rights.”<sup>17</sup> She wrote this important memo while studying at Yale University for her doctorate.<sup>18</sup>

Perhaps Murray’s invisibility in law and the legal academy reflects the manner in which legal and other academic institutions managed and maintained hierarchies, demanding the hiddenness of dynamic women—especially Black women. Some would argue this continues presently.

To scratch the surface of Dr. Murray’s legal training and academic career is to understand her stellar intellect while also acknowledging a deeper and troubling history of invisibility and hostility in the legal academic space. Consider, for example, how Dr. Murray penned the book,

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13. Philippa Strum, *Pauli Murray’s Indelible Mark on the Fight for Equal Rights*, ACLU (June 24, 2020), <https://www.aclu.org/issues/womens-rights/pauli-murrays-indelible-mark-fight-equal-rights>.

14. *Id.*

15. See PAULI MURRAY, SONG IN A WEARY THROAT: AN AMERICAN PILGRIMAGE 189–97, 355–58 (1987) [hereinafter MURRAY, WEARY THROAT].

16. *Id.* at 356.

17. *Id.* at 356–57.

18. *Id.* at 355–56.

*States' Laws on Race and Color*,<sup>19</sup> which Justice Thurgood Marshall hailed as the “bible” of the civil rights movement.<sup>20</sup> Its copious detailing of Jim Crow segregation laws provides an archive, laying bare state-sponsored segregationist laws ranging from barring Black people and white people from playing billiards, checkers, or chess together to equally harmful housing and accommodation segregation laws.<sup>21</sup> Even though law schools spend little time educating students about them, such laws shaped Jim Crow. This work is critical and timely—still today a blueprint for constitutional law, race and the law, feminist jurisprudence, and critical race theory, among other courses—yet obscure to most academics.

Dr. Murray is also credited with laying the foundation for the litigation approach taken up in *Brown v. Board of Education*<sup>22</sup> and the subsequent cases undoing Jim Crow “separate but equal” laws, as well as pioneering sex equality strategies at the ACLU—frameworks later adopted by Ruth Bader Ginsburg.<sup>23</sup> In her third year at Howard Law School, she wrote a seminar paper, *Should the Civil Rights Cases and Plessy v. Ferguson Be Overruled?*, that was later shared among the lawyers who framed and argued the case.<sup>24</sup> Murray’s clever legal strategies—even as a law student—and overlooked accomplishments fit alongside the conversations engaged by this symposium, namely the invisibility of talented women of color in the academy. It is worth acknowledging that Pauli Murray spent her first year at Howard Law School being shunned, ignored, and treated with hostility by her male classmates and professors.<sup>25</sup>

Precisely because she navigated spaces such as Howard—a historically Black law school—the intersection of sex and race discrimination became irrefutably clear. This intersectional discrimination she described as “Jane Crow.”<sup>26</sup> She recognized that Black women experienced dual discrimination because of their sex and their race.<sup>27</sup> For her, these were not lofty academic observations—or at least not exclusively. That is, Dr. Murray’s scholarship, pioneering legal advocacy, and teaching were informed not only by the dangerous legal

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19. PAULI MURRAY, STATES' LAWS ON RACE AND COLOR (1951) [hereinafter MURRAY, STATES' LAWS].

20. See MURRAY, WEARY THROAT, *supra* note 15, at 289.

21. See, e.g., MURRAY, STATES' LAWS, *supra* note 19, at 77, 89.

22. 347 U.S. 483 (1954).

23. Strum, *supra* note 13.

24. *Id.*; Justine Durrell, *Pauli Murray – A Wise Warrior* (Feb. 27, 2018), <https://justinedurrell.net/pauli-murray-a-wise-warrior/>.

25. Strum, *supra* note 13.

26. Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965).

27. *Id.* at 233.

record established by legislatures and courts that instituted and maintained discriminatory laws against women of color but also by personal, social experiences.<sup>28</sup>

## II. PIPELINES OF DISCRIMINATION

Reared in the Jim Crow South, Dr. Murray understood the cruelties of racism in an intimate way.<sup>29</sup> She attended segregated, under-funded schools.<sup>30</sup> She experienced the terrors of Jim Crow violence, recalling the first harrowing experience at the age of nine, when traveling in the South with her aunt.<sup>31</sup> She writes,

We were the only passengers in the Jim Crow car, and riding alone after that unspoken threat made us so fearful that we sat tense through the night, not daring to sleep and jerking our heads around each time the conductor opened the car door behind us. The incident awakened my dread of lynchings, and I was learning the dangers of straying, however innocently, across a treacherous line into a hostile world.<sup>32</sup>

This would not be the last of the terrors triggered by journeying south.

In fact, she was arrested Easter weekend in Virginia, having violated a Jim Crow, “separate but equal” segregation policy that relegated Black people to sit at the rear of the bus, as well as another code, and asked why she and her friend were being discriminated against.<sup>33</sup> The charge, as she explained, was “disorderly conduct and creating a public disturbance,” because “we had exposed the injustice of the Jim Crow system and must be punished for our effrontery.”<sup>34</sup> Over a decade later, Rosa Parks would engage in a similar act of nonviolent, civil disobedience by refusing to surrender her seat on a Montgomery, Alabama bus. Parks, a civil rights activist, prepared for her moment, while Pauli Murray—equally committed to racial justice—had not.

Like Dr. Murray, for the scholars contributing to this symposium, their experiences are informed by personal and professional academic

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28. Strum, *supra* note 13.

29. PAULI MURRAY, PROUD SHOES: THE STORY OF AN AMERICAN FAMILY, at xiv (Beacon Press 1999) (1956).

30. *Id.* at 270.

31. MURRAY, WEARY THROAT, *supra* note 15, at 37–39 (“I found myself surrounded by a circle of white faces, all regarding me intently and turning to look at one another. . . . I was too frightened to scream; I stood frozen with terror . . . ”).

32. *Id.* at 39.

33. *Id.* at 140–42.

34. *Id.* at 142.

journeys and personal experiences. They speak to the intertwining of the professional and personal. Their accounts invite a deep reflection on what is and what is not a safe space. If law schools can be or become the petri dishes of implicit, explicit, and/or complicit sexism and racism, what hope is there for other legal institutions?

Dr. Murray understood American discrimination in its various crude and invidious forms, including in the academy. For this symposium, I find it important to recognize that the continuum of intersectional discrimination and racism may take shape in a pipeline from K-12 education<sup>35</sup> and undergraduate studies<sup>36</sup> and into the profession.

For example, Dr. Murray protested the University of North Carolina's policy barring the enrollment of Black students such as herself.<sup>37</sup> She applied and was predictably denied admission because of segregationist policies, despite stellar academic credentials.<sup>38</sup> In her memoir, *Song In A Weary Throat*, she includes a transcription of the letter denying her admission:

Dear Miss Murray:

I write to state that I am not authorized to grant you admission to our Graduate School. Under the laws of North Carolina, and under the resolutions of the Board of Trustees of the University of North Carolina, members of your race are not admitted to the University. It has long been the social policy of the State to maintain separate schools for the whites and Negroes.<sup>39</sup>

She wrote letters, condemning this discrimination and expressing her discontent to both President Franklin Delano Roosevelt and Eleanor Roosevelt, the First Lady.<sup>40</sup> Long before *Brown v. Board of Education*, Dr. Murray believed it was the province of the federal government to

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35. Jaquira Diaz, *The School-to-Prison Pipeline is Getting Worse for Black and Brown Girls*, GUARDIAN (Mar. 14, 2019, 2:00 PM), <https://www.theguardian.com/commentisfree/2019/mar/14/black-brown-girls-school-prison-crime-jaquira-diaz> ("In the United States, [B]lack and Latinx girls are disproportionately punished, criminalized and even physically assaulted in their schools by their teachers, administrators and school police officers . . . for infractions such as . . . showing . . . emotions . . .").

36. Seanna Leath & Tabbye Chavous, *Black Women's Experiences of Campus Racial Climate and Stigma at Predominantly White Institutions: Insights from a Comparative and Within-Group Approach for STEM and Non-STEM Majors*, 87 J. NEGRO EDU. 125, 125 (2018).

37. MURRAY, WEARY THROAT, *supra* note 15, at 115.

38. *Id.*

39. *Id.* (quoting the letter from Dean W.W. Pierson denying her admission).

40. *Id.* at 189–91.

oppose racial discrimination in education. Her entreaties received a tepid response by the President.<sup>41</sup>

My goal here is not to minimize intersectional racism and sexism in the legal academy. Rather, it is to suggest that racial discrimination in *education* has a long arc. To graph the timeline allows a deeper exploration of the American race problem. In doing so, we learn the more heroic feats of female graduate students, especially those of color, whose endurance and tenacity are commendable. Simply put, racism in education was not solved or resolved by *Brown v. Board of Education*.

Indeed, we should all be shocked and outraged by cases like that of a five-year-old Chicago girl handcuffed and forgotten about near a dark stairwell over a concern that she had a special candy treat in her lunch.<sup>42</sup> Equally disturbing, the forced strip search of 12-year-old Black and Brown girls at a Binghamton, New York middle school.<sup>43</sup> Troublingly, it seems America has grown numb to the pain inflicted on and experienced by Black girls and women.

Even more deeply disappointing were Dr. Murray's experiences on the sex and race borderlines. During her first year of law school matriculation at Howard University Law School, she was shunned, treated with contempt by both the Black male professors and students, and her intellectual contributions were ignored.<sup>44</sup> She was the only woman in her class.<sup>45</sup> As became apparent to her, Black unity in the legal academy suffered under the oppressive collective weight of sexism, patriarchal conceptions, stereotypes, and stigmas related to a woman's sophistication of thought. At Howard University Law School, this was no exception. Of all places, she was ignored her entire first year by professors each time she raised her hand.

By Dr. Murray's second year in law school, having earned the highest grades in her class, professors began to take notice and consider her contributions. As well they should have, because Murray's insightful antidiscrimination analyses, including the key seminar paper, were instrumental in fighting race and sex discrimination laws at the

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41. *Id.*

42. David Boroff, *Chicago Girl, 6 Handcuffed Under Stairs at School for More Than an Hour*, N.Y. DAILY NEWS (Aug. 11, 2016), <https://www.nydailynews.com/news/national/chicago-girl-6-handcuffed-stairs-school-security-guard-article-1.2747642>.

43. Erik Ortiz, *Four Girls at N.Y. Middle School Subjected to 'Dehumanizing' Strip Search, Lawsuit Says*, NBC NEWS (Apr. 30, 2019, 5:30 PM), <https://www.nbcnews.com/news/us-news/four-girls-n-y-middle-school-subjected-dehumanizing-strip-search-n1000321>.

44. Strum, *supra* note 13.

45. *Id.*

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American Civil Liberties Union, where Ruth Bader Ginsburg would later work.<sup>46</sup>

### III. CONCLUSION

In *The Right to Equal Opportunity in Employment*, Dr. Murray deliberated on the problem of race and discrimination in the work environment.<sup>47</sup> She was acutely aware of the problem of the color line in America and in the academy. According to Murray, the right to work is more than a legal fiction or term of art. Simply put, “the essential elements of the interest in equal opportunity in employment are (1) the right to get a job, (2) the right to keep a job, [and] (3) the right to progress on a job, without arbitrary discrimination.”<sup>48</sup> This remains an important charge in our society.

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46. *Id.*

47. Murray, *supra* note 1.

48. *Id.* at 389.