

MOVING BEYOND STATEMENTS AND GOOD INTENTIONS IN
U.S. LAW SCHOOLS

Angela Ommuachi-Willig

INTRODUCTION	692
I. THE CHALLENGES TO BECOMING ANTIRACIST INSTITUTIONS.....	699
II. BUILDING THE PATHWAY TO ANTIRACIST LAWYERING	709
CONCLUSION.....	714

MOVING BEYOND STATEMENTS AND GOOD INTENTIONS IN U.S. LAW SCHOOLS

*Angela Onwuachi-Willig**

INTRODUCTION

After former Minneapolis police officer Derek Chauvin murdered George Floyd, a forty-six year old Black¹ father, son, and partner, by kneeling on his neck for nine minutes and twenty-nine seconds in the middle of the street and afternoon on May 25, 2020,² the world erupted in protest against racialized

* Dean and Ryan Roth Gallo Professor of Law, Boston University School of Law. Thank you to my colleagues, Jonathan Feingold, Jasmine Gonzales Rose, Vinay Harpalani, Gary Lawson, David Seipp, and Jessica Silbey, for their excellent comments and suggestions. Special thanks goes to my husband, Jacob Willig-Onwuachi, and our children, Elijah, Bethany, and Solomon, for their constant love and support. I also offer my thanks to Interim Provost Ken Lutchen for research support.

1. Throughout this piece, I employ the more commonly followed practice today of capitalizing the term “Black” whether it is used as an adjective or noun. As Professor Kimberlé Crenshaw has explained, using the uppercase “B” reflects the “view that Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (citing Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 516 (1982) (asserting that “Black” cannot be reduced to “merely a color of skin pigmentation, but as a heritage, an experience, a cultural and personal identity, the meaning of which becomes specifically stigmatic and/or glorious and/or ordinary under specific social conditions”)); see also W.E.B. Du Bois, *That Capital “N,”* in 2 THE SEVENTH SON 12, 12–13 (Julius Lester ed., 1971) (contending that the “N” in the word “Negro” was always capitalized until defenders of slavery began to use the lowercase “n” as a marker of Blacks’ status as property and as an insult to Black people). Here, as elsewhere, I use the term “Blacks,” rather than the term “African-Americans,” when referring to the entire group of people who identify as part of the Black race in the United States because it is more inclusive. “For example, while the term ‘Blacks’ encompasses [B]lack permanent residents or other [B]lack noncitizens in the United States, the term ‘African Americans’ includes only those who are formally Americans, whether by birth or naturalization.” Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1488 n.5 (2013). I use the term “African-American” when researchers have used that term in their studies or people have used the term in their quotes. Further, I capitalize the word “White” when used as a noun. I find that “[i]t 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 between the two typologies.” 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).

2. Eric Levenson & Aaron Cooper, *Derek Chauvin Found Guilty of All Three Charges for Killing George Floyd*, CNN, <https://www.cnn.com/2021/04/20/us/derek-chauvin-trial-george-floyd-deliberations/index.html> [<https://perma.cc/VG6U-U8B4>] (Apr. 21, 2021, 12:13 PM); Eric Levenson, *Former Officer Kneels on George Floyd for 9 Minutes and 29 Seconds—Not the Infamous 8:46*, CNN, <https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/index.html> [<https://perma.cc/8ZF3-4QXP>] (Mar. 20, 2021, 6:27 AM). In the video, former officer Derek Chauvin kneels on George Floyd’s neck, with his hand in his pocket and a smirk on his face, leaving many watching with the impression that he viewed himself as being untouchable. Former NBA player and childhood friend of George Floyd, Stephen Jackson, described what he believed Chauvin’s stunning behavior to mean, stating:

police brutality and racism.³ Individuals around the globe expressed their horror and anger at the death of yet another Black person due to the use of excessive force by police officers.⁴ For example, Eric Clifford, the Chief of Police in Schenectady, New York, marched with protesters in his city after declaring that he did not condone Chauvin's actions and announcing that he believes that "Black Lives Matter."⁵ Additionally, floods of people, led mostly by Millennials and Gen Z-ers, overtook the streets in cities and towns across the nation, demanding a change to discriminatory policing practices and policies and insisting upon greater protection for the lives of Black and

You can't tell me, when that man [Chauvin] has his knee on my brother's neck—taking his life away, with his hand in his pocket—that that smirk on his face didn't say, 'I'm protected.' . . . [H]e knew he was gonna get away with it. You can't tell me that wasn't the look on his face.

Eric Woodyard, *Stephen Jackson, 'Twin' of George Floyd, Speaks at Rally After Police Officer Charged with Murder*, ESPN NEWS (May 29, 2020, 2:59 PM), https://www.espn.com/nba/story/_/id/29241854/stephen-jackson-twin-george-floyd-speaks-rally-police-officer-charged-murder [<https://perma.cc/2AAB-MP53>].

3. Jennifer Hassan & Siobhán O'Grady, *Anger Over George Floyd's Killing Ripples Far Beyond the United States*, WASH. POST (May 29, 2020, 2:20 PM), <https://www.washingtonpost.com/world/2020/05/29/world-reacts-george-floyd-minneapolis-protests/>.

4. *Id.*

5. Eric S. Clifford, *As Chief of Police, I Knelt for George Floyd to Show the People I Serve That Black Lives Matter*, NBC NEWS (June 2, 2020, 3:31 AM), <https://www.nbcnews.com/think/opinion/chief-police-i-knelt-george-floyd-show-people-i-serve-ncna1221466?cid=related> [<https://perma.cc/7LS4-N5DX>]. While Chief Clifford capitalized the words "Black Lives Matter" in his publication, he did not explicitly express support for the organization itself. *See id.*

Latinx⁶ people.⁷ According to Professor Karen Pita Loor, an expert on police protests, and Professor Jennifer Chudy, a political scientist, the racial equity protests during the summer of 2020 were distinct from past civil rights protests in part because they were highly multicultural and were, in many

6. Throughout this piece, I follow the more commonly used practice today of using the term “Latinx” to refer to individuals with ancestral or direct heritage in Latin America. *See, e.g.*, Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1455 *passim* (2022); Ediberto Román & Ernesto Sagás, *Rhetoric and the Creation of Hysteria*, 107 CORNELL L. REV. 188, 216 (2022); Jasmine B. Gonzales Rose, *Color-Blind but Not Color-Deaf: Accent Discrimination in Jury Selection*, 44 N.Y.U. REV. L. & SOC. CHANGE 309 *passim* (2020). I use the term “Latinx” instead of “Hispanic” because the term “Hispanic” is a reference to language, “referring to people from or with a heritage rooted in Spanish-speaking Latin American countries or Spain.” *Latine vs. Latinx: How and Why They’re Used*, DICTIONARY.COM (Sept. 26, 2022), <https://www.dictionary.com/e/latine-vs-latinx> [<https://perma.cc/H9YW-TZJ6>]; *see also* B.U. Ctr. for Antiracist Rsch., Comment Letter on Notice of Initial Proposals for Updating OMB’s Race and Ethnicity Statistical Standards 4 n.15 (Apr. 25, 2023), <https://www.bu.edu/antiracism-center/files/2023/04/2023.4.25-BU-CAR-Comment-on-Proposals-for-Updating-Race-and-Ethnicity-Statistical-Standards.pdf> [<https://perma.cc/G8N9-UKAZ>] (“The Center recognizes that the terms ‘Hispanic’ and ‘Latino’ are controversial and debated. ‘Hispanic’ has a colonial history. The term de-emphasizes Latino/a/e connection to the Americas and emphasizes Spanish heritage over Indigenous and African heritage. ‘Hispanic’ also excludes the population descended from Latin America who do not share Spanish as a heritage language, but who may have similar racialized experiences in the United States.”). Also, many people who identify as Latinx object to “grouping Latinx people together under the language of their colonizers.” Sophie Yarin, *If Hispanics Hate the Term ‘Latinx,’ Why Is It Still Used?*, B.U. TODAY (Oct. 7, 2022) (quoting author Sandra Cisneros in David Gonzalez, *Ideas & Trends: What’s the Problem with ‘Hispanic’? Just Ask a Latino*, N.Y. TIMES (Nov. 15, 1992), <https://nytimes.com/1992/11/15/weekinreview/ideas-trends-what-s-the-problem-with-hispanic-just-ask-a-latino.html> [<https://perma.cc/87PM-HZWM>]), <https://www.bu.edu/articles/2022/why-is-latinx-still-used-if-hispanics-hate-the-term> [<https://perma.cc/87PM-HZWM>] (“To say Hispanic means you’re so colonized you don’t even know for yourself, or someone who named you never bothered to ask what you call yourself. It’s a repulsive slave name.”). I also prefer to use the term “Latinx” because it is more “inclusive of [people from] countries where Spanish is not the most widely spoken language, such as Brazil.” *Latine vs. Latinx: How and Why They’re Used*, *supra*. Furthermore, I use the term “Latinx” instead of “Latino” and “Latina,” which are the masculine and feminine forms, respectively, of the word, to avoid gendered language when my intention is to be gender-inclusive and to be inclusive of individuals who do not identify as either a man or a woman. *See id.* Although the term “Latinx” has no Spanish pronunciation and another term growing in favor, “Latine,” has a Spanish pronunciation, I use the term “Latinx” instead of “Latine” because “Latinx” is the more commonly used term in legal scholarship at this time; thus, to my mind, it is more readily recognizable as an intentional use of a gender-neutral term. I use the term “Latinx” “here with [an] awareness that [it] may be imperfect.” *See* B.U. Ctr. for Antiracist Rsch., *supra*.

7. *See* Karen J. Pita Loor, “Hey, Hey! Ho, Ho! These Mass Arrests Have Got to Go!”: *The Expressive Fourth Amendment Argument*, 28 WM. & MARY J. WOMEN & L. 5, 8 (2021) (detailing that “the George Floyd protests have been remarkably racially diverse” but noting that the protests received aggressive responses from law enforcement because they were “perceived” as “Black movements”); Jennifer Chudy, *Many Whites Are Protesting with Black Lives Matter. How Far Will Their Support Go?*, WASH. POST (June 15, 2020, 7:00 AM), <https://www.washingtonpost.com/politics/2020/06/15/many-whites-are-protesting-with-black-lives-matter-how-far-will-their-support-go/> (asserting that “white Americans are protesting in droves in cities, suburbs and rural areas” and that “[p]reliminary data suggest white protesters make up a majority of the crowds in some majority-minority cities”); *see also* Daniel Payne, *White America: Awakened?*, POLITICO (May 25, 2021, 5:00 AM), <https://www.politico.com/news/2021/05/25/white-people-racial-justice-activism-george-floyd-490545> (“Protests for racial justice also picked up more white participants than before, according to researchers, creating a far more diverse group of protesters.”); Tyrone Beason, *‘Something Is Not Right.’ George Floyd Protests Push White Americans to Think About Their Privilege*, L.A. TIMES (June 28, 2020, 6:00 AM), <https://www.latimes.com/politics/story/2020-06-28/white-voters-racism-reckoning-george-floyd-killing> [<https://perma.cc/9Y3E-VRRJ>] (discussing how the murder of George Floyd created a new racial consciousness among some white people and including comments from several white protesters).

cities, majority-white.⁸ In fact, numerous media outlets highlighted the racial diversity of the protesters during the summer of 2020. For instance, one *New York Times* article proclaimed that “large numbers of white and highly educated people” were not only joining protests against police brutality and racism, but also were “going through a wave of self-examination, buying books about racism, talking to black friends, and arguing within their own families.”⁹ Similarly, a CNN article declared that the “George Floyd police brutality protests are different,” contending that, “[w]here BLM [Black Lives Matter] was for years unutterable among swaths of the White population, today protests erupt not only in cities with vibrant Black communities (Detroit, Baltimore, Atlanta, et al) but also the largely White enclaves of Prairie Village, Kansas, Northfield, Minnesota, Pullman, Washington, and notably, Portland, Oregon.”¹⁰ Even world leaders chimed in against racialized police brutality and racism following the horrific murder of George Floyd, expressing their anger and dismay.¹¹ For example, Michelle Bachelet, High Commissioner for Human Rights at the United Nations and former president of Chile, called for immediate action by the United States government and pleaded for a stop to the killings of Black people by the police and by private citizens acting in a quasi-police role, such as a neighborhood watch position.¹²

Along with calls and demands from individuals and groups of protesters came statements of support and antiracism statements from businesses across the country.¹³ For example, soon after the tragic murder of George Floyd, the multinational corporation Nike issued a video recording that played off of its famous tagline “Just do it.”¹⁴ The recording articulated these lines:

For once, Don't Do It.
Don't pretend there's not a problem in America.

8. See Pita Loor, *supra* note 7; Beason, *supra* note 7.

9. Amy Harmon & Sabrina Tavernise, *One Big Difference About George Floyd Protests: Many White Faces*, N.Y. TIMES (June 17, 2020), <https://www.nytimes.com/2020/06/12/us/george-floyd-white-protesters.html> (noting that during the weekend of June 6, Whites comprised 65% of the protesters in Washington, D.C., 61% of the protesters in New York City, and 53% of the protesters in Los Angeles); see also Angela Onwuachi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817, 822–25 (2021) (providing examples of how witnessing the murder of George Floyd on tape inspired more white people to desire taking action against racialized police brutality and racism).

10. Elliott C. McLaughlin, *George Floyd's Death Ignited a Racial Reckoning That Shows No Signs of Slowing Down*, CNN, <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html> [<https://perma.cc/82HQ-W89Y>] (Aug. 9, 2020, 11:31 AM).

11. See Hassan & O'Grady, *supra* note 3.

12. *Id.*

13. See Gillian Friedman, *Here's What Companies Are Promising to Do to Fight Racism*, N.Y. TIMES (Aug. 23, 2020), <https://www.nytimes.com/article/companies-racism-george-floyd-protests.html>.

14. See *American Companies Take an Anti-Racism Stand En Masse Amid Countrywide Riots and Protests in the US*, OFFICECHAI (June 3, 2020) [hereinafter *American Companies Take an Anti-Racism Stand*], <https://officechai.com/news/american-companies-take-an-anti-racism-stand-on-social-media/> [<https://perma.cc/8DCW-AYB4>]. Interestingly, in the title of its article, OfficeChai not only uses the word “riots” to describe the mostly peaceful protests that began after the tragic murder of George Floyd but also listed the word “riots” in its title before the word “protests.” See *id.*

Don't turn your back on racism.
Don't accept innocent lives being taken from us.
Don't make any more excuses.
Don't think this doesn't affect you.¹⁵

Similarly, megacorporation Amazon offered a statement against racialized police brutality and in support of Black people soon after the murder of George Floyd by posting the following on its Twitter account:

The inequitable and brutal treatment of Black people in our country must stop.

Together we stand in solidarity with the Black community – our employees, customers, and partners – in the fight against systemic racism and injustice.¹⁶

In response to corporation statements came criticisms from the public about the inconsistency between several companies' public statements and their own actions as employers and donors to causes. For instance, Professor Sherri Williams, an expert on race and media, proclaimed, "How genuine is this desire for change? A lot of these issues faced by African-Americans have been taking place for decades and these companies have usually been silent. Some of those businesses have more posts about black people than black people working for them."¹⁷ Others called for companies to put their money where their mouth is and donate to organizations like Black Lives Matter.¹⁸ Indeed, a *Vox* news article reported that consumers were "repeating the mantra 'open your purse' to these corporate platitudes and vague statements of solidarity."¹⁹ *Colorlines*, after examining eighty-eight statements from Fortune 100 companies, declared that "big business" did not say "much" in their antiracism statements, as none of them even mentioned their company's own equity problems.²⁰ In short, following the spate of antiracism statements from companies after the tragic killings of Black people like George Floyd,

15. *Id.*

16. *American Companies Take an Anti-Racism Stand*, *supra* note 14.

17. Fernando Duarte, *Black Lives Matter: Do Companies Really Support the Cause?*, BBC (June 12, 2020, 7:00 AM), <https://www.bbc.com/worklife/article/20200612-black-lives-matter-do-companies-really-support-the-cause> [<https://perma.cc/F74T-EDCR>].

18. *See id.*; Terry Nguyen, *Consumers Don't Care About Corporate Solidarity. They Want Donations.*, VOX (June 3, 2020, 1:00 PM), <https://www.vox.com/the-goods/2020/6/3/21279292/blackoutuesday-brands-solidarity-donations> [<https://perma.cc/52XS-JQJY>].

19. Nguyen, *supra* note 18.

20. Sonia Weiser, *What Big Business Said in All Those Anti-Racism Statements: Not Much, Says Our Analysis*, COLORLINES (Oct. 8, 2020), <https://www.colorlines.com/articles/what-big-business-said-all-those-anti-racism-statements-not-much-says-our-analysis> [<https://perma.cc/6N8J-EN6R>].

Breonna Taylor,²¹ and Rayshard Brooks,²² the public lambasted many of these businesses for what Professor Nancy Leong calls “identity capitalism”—“an effort to gain the social status associated with diversity without doing any of the difficult work to make substantive racial progress a reality.”²³ Indeed, Professor Leong herself labelled Nike an identity capitalist corporation based on its actions in launching an advertising campaign featuring former San Francisco 49ers quarterback Colin Kaepernick (who has been shut out of the NFL since 2017 because of his protest against racialized police brutality).²⁴ As Professor Leong explained, as a result of using Kaepernick’s image in its advertisements, Nike benefitted from major sales to those “who [were] inspired by [his] protest” as well as from an all-time high stock price just one month after the Kaepernick campaign—all while its co-founder and major shareholder, Phil Knight, donated “nearly \$2 million to . . . candidates during the 2018 campaign cycle” who were opposed to the policing reforms that Kaepernick was advocating for.²⁵

Just a year following the George Floyd protests and the flurry of corporate statements against racism, reporters were already highlighting how only a small fraction of the resources that corporations had pledged to give to support Black communities and fight racism were grants from which the corporations would not themselves make a profit.²⁶ Specifically, they highlighted that only \$4.2 billion out of a pledged \$49.5 billion were grants as

21. Breonna Taylor was shot and killed by the Louisville police as she slept during a botched police raid based on a no-knock warrant. See Richard A. Oppel Jr. et al., *What to Know About the Breonna Taylor's Death*, N.Y. TIMES (Dec. 13, 2023), <https://www.nytimes.com/article/breonna-taylor-police.html>. After she was shot multiples times, she received no medical attention for twenty minutes thereafter. Tessa Duvall & Darcy Costello, *Breonna Taylor was Briefly Alive After Police Shot Her. But No One Tried to Treat Her*, COURIER J., <https://www.courier-journal.com/story/news/crime/2020/07/17/breonna-taylor-lay-untouched-20-minutes-after-being-shot-records/5389881002/> [<https://perma.cc/77AY-4EU2>] (Mar. 13, 2021, 12:06 PM). An EMT who dreamed of a career in healthcare, Breonna Taylor was twenty-six years old. Oppel Jr. et al., *supra*.

22. Rayshard Brooks, a twenty-seven-year-old father, husband, and son, was shot in the back and killed by former Officer Garrett Rolfe after someone called the police on him after he fell asleep in a Wendy’s drive-through. See Aimee Ortiz, *What to Know About the Death of Rayshard Brooks*, N.Y. TIMES (Nov. 21, 2021), <https://www.nytimes.com/article/rayshard-brooks-what-we-know.html>. Reverend Dr. Raphael G. Warnock, then the senior pastor at Ebenezer Baptist Church (where Dr. Martin Luther King, Jr. preached) and now U.S. Senator for the State of Georgia, said the following about Rayshard Brooks: “He was running from a system that makes slaves out of people . . . This is much bigger than the police. This is about a whole system that cries out for renewal and reform.” *Id.*

23. NANCY LEONG, *IDENTITY CAPITALISTS: THE POWERFUL INSIDERS WHO EXPLOIT DIVERSITY TO MAINTAIN INEQUALITY* 7 (2021).

24. *Id.* at 32.

25. *Id.*

26. Tracy Jan et al., *Corporate America’s \$50 Billion Promise: A Post Analysis of Racial Justice Pledges After George Floyd’s Death Reveals the Limits of Corporate Power to Effect Change*, WASH. POST (Aug. 24, 2021, 7:03 PM), <https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/>; see also Marco Quiroz-Gutierrez, *American Companies Pledged \$50 Billion to Black Communities. Most of It Hasn’t Materialized*, FORTUNE (May 6, 2021, 1:35 PM), <https://fortune.com/2021/05/06/us-companies-black-communities-money-50-billion/> [<https://perma.cc/WJ2Q-HWX4>].

opposed to programs designed to result in profits for the companies.²⁷ They further made clear that only a miniscule amount of that \$4.2 billion in grants—\$70 million—actually went to organizations, and that only \$1.7 billion of the remaining 90% of the pledged \$49.5 million had actually been disbursed as promised.²⁸

Just as many businesses and companies produced and released antiracism statements, so too did institutions of higher education, particularly law schools and law school deans. In fact, the Association of American Law School’s “Law Deans Antiracist Clearinghouse Project,” which was initiated by five Black women law deans—Danielle Conway, Dean of Penn State Dickinson Law; Danielle Holley-Walker, then the Dean of Howard Law School and now President of Mount Holyoke College; Kim Mutcherson, now Dean Emerita at Rutgers Law School; Angela Onwuachi-Willig, Dean of Boston University School of Law; and Carla Pratt, then the Dean of Washburn University School of Law²⁹—houses all the summer 2020 statements against police brutality and racism that law school deans made following George Floyd’s murder as well as the antiracism pledges that several law school faculties adopted soon thereafter.³⁰ The publication of these antiracism pronouncements has left open questions about the actions and work that law schools with real commitments to antiracism can and should be taking to rid society of racism in all of its forms.³¹

This Article seeks to answer these questions about how law school leaders might help to cultivate antiracist cultures within their law schools, among their students, and across the legal profession, even in the face of a growing national backlash against antiracism, diversity, equity, and inclusion.³² Part I first establishes why it is important for law schools to “provide [an] education to law students on bias, cross-cultural competency, and racism,” as the American Bar Association (ABA) requires, and to train future lawyers who have the abilities to combat racism.³³ In so doing, Part I defines key terms such as

27. *Id.*

28. *Id.*

29. Carla Pratt now serves as the Ada Lois Sipuel Fisher Chair in Civil Rights, Race, and Justice in her home state at the University of Oklahoma College of Law. *Carla D. Pratt*, UNIV. OF OKLA. COLL. OF L., <https://www.law.ou.edu/directory/carla-d-pratt> [<https://perma.cc/2DHH-6NZP>].

30. See *Law Deans Antiracist Clearinghouse Project*, ASS’N OF AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> [<https://perma.cc/GJ6Q-WWUY>] (curated by Danielle M. Conway, Danielle Holley-Walker, Kim Mutcherson, Angela Onwuachi-Willig, and Carla Pratt).

31. Related questions arise in relation to antisemitism, which scholars and activists have examined as a form of racism across the globe. See, e.g., Nira Yuval-Davis, *Antisemitism Is a Form of Racism—Or Is It?*, 0 SOCIOLOGY, no. 0, 2023, at 1 (arguing that “antisemitism should be seen as a form of racism” when “contextualised and analysed within an encompassing de-centered non-Eurocentric definition of racism”).

32. See Janice Gassam Asare, *The History of DEI Resistance in America*, FORBES (July 13, 2023, 8:24 PM), <https://www.forbes.com/sites/janicegassam/2023/07/13/the-history-of-dei-resistance-in-america/?sh=6b9a28692451> (discussing the cyclical nature of resistance to racial progress).

33. 2023-2024 *Standards and Rules of Procedure for Approval of Law Schools*, ABA, https://www.americanbar.org/groups/legal_education/resources/standards/; Michelle Weyenberg, *ABA*

“racism” and “antiracism,” detailing and explicating various forms of racism in our society. Part I also discusses the obstacles and challenges that law schools, and the legal profession generally, face in developing effective strategies and cultures to combat racism within law schools, the legal profession, and society as a whole. Part II then sets forth suggestions for policies, practices, rules, and actions that law schools and other legal institutions—such as law firms, legal organizations, government offices, and public interest organizations—can take to build an antiracist and more inclusive legal profession and culture.

I. THE CHALLENGES TO BECOMING ANTRACIST INSTITUTIONS

Adopting an antiracist approach to understanding the law and its power, and to practicing law, is important because lawyers and the law play a critical role in society.³⁴ Lawyers, who represent individuals, organizations, businesses, and corporations in varying lawsuits and deals, are among the most influential problem solvers and policymakers in the nation.³⁵ Lawyers also represent a diverse array of clients, including individuals, tribes, local and state governments, the federal government, and the public interest, all with the goals of promoting truth and justice and protecting the rule of law.³⁶ In performing all these tasks, lawyers have a serious responsibility to understand and embrace the full diversity of life experiences and backgrounds of the people—the people whose lives will be shaped by the laws and policies that they create and enact and by the governments they run.³⁷

Passes Revisions to Accreditation Standards, NAT'L JURIST (Apr. 5, 2022, 10:00 AM), <https://nationaljurist.com/national-jurist/news/aba-passes-revisions-to-accreditation-standards/> [https://perma.cc/DD3C-QZ4N] (noting that the amendments “passed with a 348 to 17 vote,” asserting that “[t]aking center stage [was] Standard 303,” and detailing that that revised standard “added a new requirement that law schools provide education about bias, cross-cultural competency and racism at the start of law school and at least once before graduation”—a “requirement [that] could be met through new student orientation programs, lectures, courses and other educational experiences that incorporate the topics”).

34. See Leah Teague, *Growing Number of Leadership Programs and Courses Supports Professional Identity Formation*, 62 SANTA CLARA L. REV. 149, 152 (2022) (stating that “lawyers have answered the call to service and played critical leadership roles in both the public and private sectors” and that “lawyers continue to be leaders—serving as heads of organizations, governmental agencies, businesses, and nonprofit entities of all sizes”).

35. See Laura Stein, *Reflection on Lawyers as Leaders*, 69 STAN. L. REV. 1841, 1841 (2017) (noting that “lawyers help solve problems and create advantage for individuals, families, businesses, governments, and organizations in numerous important ways” and that they “have long used the law to make a real difference, to matter, and to help”); Leah Witcher Jackson Teague, *Lawyers as Leaders: Community Engagement and Leadership Benefits All*, 81 TEX. B.J. 88, 88 (2018) (asserting that “[n]o other profession accounts for more leaders in every aspect of society”).

36. See Danielle Conway, Elizabeth Kronk Warner, & Angela Onwuachi-Willig, *Antiracist Lawyering: How All Attorneys Can Build a Racial-Justice-Centered Practice*, Outline for Practising Law Institute Training 1 (2022) (unpublished manuscript) (on file with author).

37. See Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 142–46 (2014) (explaining what cultural competence, why it is a necessary competency for lawyers, and what it can help lawyers accomplish in their practice); see generally Bill

These days, leaders are increasingly emphasizing the importance of having an antiracist approach to learning and practicing the law.³⁸ For instance, the Law Firm Antiracist Alliance has asserted that “[l]awyers and law firms are uniquely positioned to analyze and advocate to change laws and policies that encourage, perpetuate or allow racial injustice.”³⁹ Additionally, the Practising Law Institute has now sponsored two different, widely attended seminars on antiracism that were presented by Deans Angela Onwuachi-Willig of Boston University School of Law, Danielle Conway of Penn State Dickinson Law, and Elizabeth Kronk Warner of the University of Utah S.J. Quinney College of Law.⁴⁰ Antiracist projects and enterprises are also emerging within law schools. For instance, Dean Conway has created the Antiracist Development Institute at Penn State Dickinson Law that is centered around systems design.⁴¹ Additionally, Dean Angela Onwuachi-Willig launched a cohort scholarship program that is designed to educate and train the next generation of antiracist lawyers and leaders in the legal profession, ASPIRE, which stands for Antiracist Scholars for Progress, Innovation, and Racial Equity.⁴² In explaining the importance of such a program in law, Dean Onwuachi-Willig proclaimed:

Law [touches, shapes, and] influences every major racial problem and inequity in our society. For our society to move forward and remedy [racial problems and inequities], the next generation of lawyers not only need[s] to understand how law has, in some instances, helped create and facilitate those very problems and inequities, but also need[s] to develop tools and strategies for using the law to correct for [those inequities and problems]. . . . Part of that work involves understanding and considering the experiences of the full diversity of individuals whom they will encounter as [their] clients, colleagues, and community members. Part of that work is understanding how past and current traumas can shape and influence attorney-client relationships, workplace or team relationships, and even overall trust in the legal system, and part of that work is understanding that one can engage in antiracist lawyering

Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer's Duty to Work for the Common Good*, 47 STAN. L. REV. 901 (1995) (arguing that lawyers need to actively work to promote and advance racial harmony).

38. See, e.g., Kiisha Morrow & Brenna DeVaney, *Why Now? Year One of the Law Firm Antiracism Alliance*, REUTERS (Aug. 10, 2021, 2:22 PM), <https://www.reuters.com/legal/legalindustry/why-now-year-one-law-firm-antiracism-alliance-2021-08-10/>.

39. *About Us*, L. FIRM ANTIRACISM ALL., <https://www.lawfirmantiracismalliance.org/lfa charter/Home> [<https://perma.cc/A5SY-V5LU>].

40. See, e.g., *Antiracist Lawyering: How All Attorneys Can Build a Racial-Justice-Centered Practice*, PRACTISING L. INST., <https://www.pli.edu/programs/antiracist-lawyering-how-all-attorneys-can-build-a-racial-justice-centered-practice?t=live> [<https://perma.cc/V9ZU-48UK>].

41. Danielle M. Conway, *Antiracist Lawyering in Practice Begins with the Practice of Teaching and Learning Antiracism in Law School*, 2022 UTAH L. REV. 723, 723 (2022).

42. Lauren Eckenroth, *Initiative to Train a New Generation of Antiracist Lawyers*, B.U. SCH. OF L.: THE REC. (Oct. 6, 2021), <https://www.bu.edu/law/record/articles/2021/initiative-trains-new-antiracist-lawyers/> [<https://perma.cc/4ENS-4ZCK>].

in all fields and practices, whether they are in a corporate law firm or a public interest organization.⁴³

Indeed, it seems that these days every lawyer, every individual, and every institution is seeking to identify themselves as antiracist. Yet, when one further examines the reality underneath the asserted claims and commitments of some institutions and individuals, one may see some hollowness in their claims, not because the people or the institutions have ill intentions or motives, but instead because they do not understand and have not grappled with the myriad ways that racism functions in our society and have not really studied what it would mean for them, for others, for the legal profession, and for society to become truly antiracist.

In fact, many people do not see or understand racism as being anything beyond the narrow definition of prejudice and discrimination motivated by hate or animus; as a result, they ignore the harmful structural and implicit dimensions of racism.⁴⁴ Indeed, many people view racism solely as individualized, attitudinal racism—what Professor Eduardo Bonilla-Silva calls Jim Crow racism, which is an overtly racist ideology that contends that the “social standing [of people of color is] the result of their biological and moral inferiority.”⁴⁵

But in our post-Civil-Rights era, when it comes to individualized racism, the majority of people we encounter are not Jim Crow racists.⁴⁶ Individualized racism today tends to be more subtle, and it is less likely to appear or occur in the form of outright racism.⁴⁷ It is more likely to be what Bonilla-Silva calls “colorblind racism”⁴⁸ or what Professor Ian Haney Lopez calls “commonsense racism.”⁴⁹ Such forms of racism center around a racial ideology whereby individuals rationalize racial disparities and inequities as being the result of “market dynamics,” “naturally occurring phenomena,” and the imputed cultural limitations of particular racial groups.⁵⁰ In these more subtle forms of individualized racism, racial stereotypes, myths, and inequalities are presumed to be “natural,” meaning the individuals engaged in these rationalizations view any racial inequities and disadvantages as being just what they are: widely

43. *Id.*

44. Linda Chavers, *What Too Many White People Still Don't Understand About Racism*, BOSTON GLOBE, <https://www.bostonglobe.com/2020/06/09/magazine/what-too-many-white-people-still-dont-understand-about-racism/> (June 9, 2020, 2:25 PM) (noting that to many white people, “racists are Klan members or old relatives to be tolerated over the holidays”).

45. See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 2, 25 (2003).

46. See *id.* at 3. See generally Alfieri & Onwuachi-Willig, *supra* note 1, at 1484; DEVON W. CARBADO & MITU GULATI, *ACTING WHITE? RETHINKING RACE IN “POST-RACIAL” AMERICA* (2013).

47. BONILLA-SILVA, *supra* note 45, at 25.

48. BONILLA-SILVA, *supra* note 45, at 25.

49. IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* 118–19, 127–30 (2009).

50. See BONILLA-SILVA, *supra* note 45, at 2.

known, widely recognized, and not needing any further explanation.⁵¹ Consider statements like the following: “Residential areas are segregated not because of racism, but instead because people’s desires to live near others whom they perceive as being like them.” Or consider this statement that may hit closer to home: “We would hire more Black attorneys, but there just aren’t any qualified applicants out there.” In neither instance is the speaker accounting for the structural factors that have created the societal conditions and outcomes, nor is the speaker questioning the very measures of merit used to determine qualification or worthiness. Rather, in each situation, the speaker assumes that, if there is not direct hate against a particular racial group, there is no racism present.

As Bonilla-Silva explains, forms of racism like colorblind racism and commonsense racism “otherize” more softly.⁵² For instance, instead of proclaiming that interracial marriage is wrong on a “straight racial basis,”⁵³ colorblind or commonsense racists instead raise questions about the challenges that multiracial children will face or the extra burdens that can come with interracial marriage.⁵⁴

Other forms of individualized racism present even more complicated circumstances. For instance, implicit bias is a form of racism that many people are not even aware they hold or carry.⁵⁵ Implicit bias is present when individuals have a preference for or an aversion to an individual or a group or category of people without an awareness of those preferences and aversions.⁵⁶ The Perception Institute asserts that implicit bias exists when “we have attitudes towards people or associate stereotypes with them without our conscious knowledge,” for example, associating blackness with criminality without consciously being aware of the association one is making.⁵⁷

Another less obvious form of individualized racism is what Robyn DiAngelo terms “nice racism.”⁵⁸ As she explains it, nice racism consists of the

51. *Id.* at 36–37.

52. *Id.* at 3.

53. *Id.*

54. *Id.*

55. See Paul Gowder, *Racial Classification and Ascriptive Injury*, 98 WASH. U. L. REV. 325, 339–48 (2014); Jonathan Feingold & Karen Lorang, *Defusing Implicit Bias*, 59 UCLA L. REV. DISCOURSE 210, 220–23 (2012).

56. *Implicit Bias*, PERCEPTION INST., <https://perception.org/research/implicit-bias/> [https://perma.cc/KLW5-DY8Y].

57. *Id.* One way that implicit bias may manifest itself is through racial microaggressions, though microaggressions may also be purposeful. Professor Derald Wing Sue and his colleagues define racial microaggressions as “brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults” and potentially have a harmful or unpleasant psychological impact on the target person or group. Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271, 271 (2007). These exchanges are so pervasive and automatic in daily conversations that they are often dismissed and glossed over as being innocent and innocuous. See *id.*

58. See ROBIN DIANGELO, NICE RACISM: HOW WHITE PEOPLE PERPETUATE RACIAL HARM 17–18 (2021).

“common moves” that well-meaning white individuals engage in that unwittingly reinforce racism and protect the status quo in society.⁵⁹ Nice racism, she says, causes and perpetuates “daily forms of racial harm” for people of color.⁶⁰ Examples of nice racism include, among many others, (1) “credentialing,” which is when the person makes assertions that are designed to establish they are not racist such as “My best friend or partner is Black,” “I don’t see color,” “I am a minority myself,” “I adopted children of color,” “I have supported civil rights my whole life,” “I was the only white person in my school”; and (2) objectifying, which is when white people “overemphasize the race of BIPOC people,” for example, constantly asking questions related to race or asking people of color to speak on behalf of their group.⁶¹

The type of racism that most people in the United States lack deep knowledge and understanding about, however, is structural racism. Professor Khiara Bridges defines structural racism as “the macrolevel systems, social forces, institutions, ideologies, and processes that interact with one another to generate and reinforce inequities among racial and ethnic groups.”⁶²

Structural racism is the social structure in which adopted and enacted policies, practices, cultures, and other norms both produce and reinforce racial inequalities.⁶³ It is racial bias that is literally built into and across institutions and society—a system of policies, practices, cultural representations, and norms that systemically privilege white people and that routinely disadvantage people of color.⁶⁴ In most cases, the effects of structural racism are cumulative, with destructive compounded effects.⁶⁵

To be sure, structural racism can be the result of explicit racism. Consider poll taxes, which were deliberately designed to keep Black people from exercising their right to vote. Often, however, structural racism has produced and produces racially unequal and inequitable consequences without knowing

59. *Id.* at 58.

60. *Id.*

61. *Id.* at 58–59, 64–65.

62. Khiara M. Bridges, *Excavating Race-Based Disadvantage Among Class-Privileged People of Color*, 53 HARV. C.R.-C.L. L. REV. 65, 90 n.92 (2018) (quoting Gilbert C. Gee & Chandra L. Ford, *Structural Racism and Health Inequities: Old Issues, New Directions*, 8 DU BOIS REV. 115, 116 (2011) (citation omitted)); see also Renee Nicole Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM. & MARY J. RACE, GENDER & SOC. JUST. 599, 611–15 (2023) (discussing structural racism in academia).

63. See BONILLA SILVA, *supra* note 45, at 8–9.

64. See Paula A. Braveman et al., *Systemic and Structural Racism: Definitions, Examples, Health Damages, and Approaches to Dismantling*, 41 HEALTH AFFAIRS 171, 171 (2022) (“Systemic and structural racism are forms of racism that are pervasively and deeply embedded in systems, laws, written or unwritten policies, and entrenched practices and beliefs that produce, condone, and perpetuate widespread unfair treatment and oppression of people of color, with adverse health consequences. Examples include residential segregation, unfair lending practices and other barriers to home ownership and accumulating wealth, schools’ dependence on local property taxes, environmental injustice, biased policing and sentencing of men and boys of color, and voter suppression policies.”).

65. See Robert Westley, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, 19 B.C. THIRD WORLD L. J. 429, 439 (1998) (“Because racism, in addition to its psychological aspects, is a structural feature of the U.S. political economy, it produces intergenerational effects.”).

intention. This Article uses the term “knowing” because structural racism tends to be invisible to those who benefit from it the most, meaning Whites, and may even be invisible to those who are disadvantaged by it, for example, Blacks, because it is simply a feature of the social, economic, and political systems that we exist in.

For white people, structural racism tends to result in what Barbara Flagg, a white critical race theorist, calls the “transparency phenomenon.”⁶⁶ It enables white people to think of themselves as “raceless” and to think of other people, people of color in particular, as those who have a race; this thinking in turn facilitates actions in which Whites continue to build and maintain structures such as laws, rules, policies, and practices around their experiences and then to define those structures as objective and neutral, without any recognition of the very way that these laws, rules, policies, and practices will work to disadvantage those whose experiences are not accounted for in the model. As Professor Flagg famously wrote, “to be white is not to think about it.”⁶⁷ To be a person of color, particularly to be Black, in the United States means that one constantly has to think about race.⁶⁸ As W.E.B. Du Bois explained about double consciousness, when one is a person of color, one has to not only understand themselves but also understand very much how others see them.⁶⁹ As a result, people of color find themselves constantly engaged in performances of their racial identities in predominantly white workspaces, and they engage in these performances to protect themselves from discrimination. Often, such performances require people of color to engage in comfort strategies to make white people—who often do not feel comfortable talking about race, who may not even feel comfortable around people of color who speak about and think about race, and who may not want their worldview or their sense of the world disturbed—feel comfortable.⁷⁰

All that said, what does it mean to be antiracist? Boston University Professor Dr. Ibram Kendi, who runs the university’s one-of-a-kind Center for Antiracist Research and who wrote the book *How To Be An Antiracist*, has defined the term.⁷¹ Much like Dr. Martin Luther King, Jr., Professor Kendi

66. Barbara J. Flagg, “*Was Blind, But Now I See*”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 957 (1993); see also Angela Onwuachi-Willig, Case Comment, *Roberts’s Revisions: A Narratological Reading of the Affirmative Action Cases*, 137 HARV. L. REV. 192, 194 (2023) (discussing the transparency phenomenon).

67. Flagg, *supra* note 66, at 969.

68. See Taja-Nia Y. Henderson & Jamila Jefferson-Jones, #*LivingWhileBlack: Blackness as Nuisance*, 69 AMER. UNIV. L. REV. 863 (2020) (detailing a small set of the types of everyday thinking and incidents that require defensive consciousness about race by Black people, for example).

69. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 5 (Modern Library ed., Random House, Inc. 1996) (1953).

70. See DEVON W. CARBADO & MITU GULATI, ACTING WHITE? RETHINKING RACE IN “POST-RACIAL” AMERICA 1–21 (2013); see also Alfieri & Onwuachi-Willig, *supra* note 1, at 1513–14 (discussing comfort strategies).

71. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 13, 24 (2019).

views silence and inaction as one of the biggest facilitators of racism in all its forms.⁷² In the eyes of Dr. King and Professor Kendi, silence and inaction toward racism are not neutral because they enable racism to thrive.⁷³ According to Professor Kendi, one is either racist or antiracist.⁷⁴ Furthermore, as he explains, every individual “can be a racist one minute and an antiracist the next. What we say about race, what we do about race, in each moment, determines *what—not who*—we are.”⁷⁵ With that in mind, Professor Kendi asserts that a racist is “someone who is supporting a racist policy by their actions or inaction or expressing a racist idea” and that an antiracist is “someone who is supporting an antiracist policy by their actions or expressing an antiracist idea.”⁷⁶ A racist, he says, “believes problems are rooted in groups of people,” while an antiracist “locates the roots of problems in power and policies.”⁷⁷ A racist “allows racial inequities to persevere,” while an antiracist “confronts racial inequities.”⁷⁸

According to Professor Kendi, “[t]o be a racist is to constantly redefine racist in a way that exonerates one’s changing policies, ideas, and personhood,”⁷⁹ and racist policies include “any measure that produces or sustains racial inequity between racial groups,” while antiracist policies include “any measure that produces or sustains racial equity between racial groups.”⁸⁰ Furthermore, Professor Kendi asserts, a “racist idea is any idea that suggests one racial group is inferior or superior to another racial group in any way. Racist ideas argue that the inferiorities and superiorities of racial groups explain racial inequities in society.”⁸¹

So, what does it mean to be “antiracist” in the legal profession? How does one build an antiracist profession? As a dean, I have to admit that, far more often than I would like, I find that trying to train antiracist lawyers, create an antiracist culture and institution, and build an antiracist profession is like trying to turn water into wine—meaning, on most days, it seems like developing an antiracist culture will require a miracle.

The reasons why such work is difficult are many. For one thing, it is very hard to train antiracist lawyers and build an antiracist profession when legal doctrine itself frequently facilitates racism. Though law purports to be neutral,

72. *See id.* at 9. Dr. King once proclaimed, “In the end, we will not remember the words of our enemies, but the silence of our friends.” *Podcasts, TEACHDIFFERENT*, <https://teachdifferent.com/podcast/in-the-end-we-will-not-remember-the-words-of-our-enemies-but-the-silence-of-our-friends-teach-different-with-dr-martin-luther-king-jr-loyalty/> [https://perma.cc/BLZ8-5TX6].

73. *See id.*

74. *See id.*

75. *Id.* at 10 (emphasis added).

76. *Id.* at 22–23.

77. *Id.* at 9.

78. *Id.*

79. *Id.* at 17.

80. *Id.* at 18.

81. *Id.* at 20.

it frequently is not; as a result, it frequently reifies and reinforces, rather than challenges, deconstructs, and eliminates, racism and racial subordination.⁸² Using part of Professor Kendi's definition of antiracism, law then frequently allows racial inequities to persevere. Furthermore, even when it tries to confront racial inequities,⁸³ legal doctrine does so from the perspective of its authors, many of whom are white and have lived their lives viewing themselves as raceless.⁸⁴ As a result, legal doctrine rarely locates the roots of problems in power and policies.⁸⁵ Indeed, it often ignores the problem and places the blame on individuals, or it simply ignores the problem. Think *Washington v. Davis*.⁸⁶ Think *McCleskey v. Kemp*.⁸⁷

Additionally, it is difficult to build an antiracist profession because law schools so often fail to follow the advice of the Law School Admissions Council, which advises schools not to over-rely on the LSAT,⁸⁸ which can be a helpful tool during the admissions process. And, it is difficult because, almost always, the failure of law schools to heed this advice from the Law School Admissions Council is understandably motivated by another structure, the *U.S. News and World Report Rankings*, which includes law schools' median LSAT scores as part of its rankings formula.⁸⁹ This focus and over-reliance on the LSAT have, in turn, resulted in a system of "merit"-based, as opposed to need-

82. See Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUDIES 33, 46 (1994) ("First, the legal framework under which many cases arise often determines whose perspectives are relevant and whose are not. For a number of reasons discussed above, minority perspectives are often excluded and dominant perspectives are privileged in the legal inquiry. Moreover, dominant perspectives are not identified or associated with any characteristics; the perspective is nameless. Most debilitating for minorities, however, is that while dominant perspectives are granted the protection of apparent objectivity, minority perspectives are identified as such and viewed as subjective and biased. As a result, legal concepts, claims, and categories that value minority perspectives are sometimes viewed as suspect or biased.")

83. See *id.* at 18.

84. See Flagg, *supra* note 66, at 957.

85. See Crenshaw, *supra* note 82, at 46.

86. *Washington v. Davis*, 426 U.S. 229 (1976). For critiques of *Washington v. Davis*, see Angela Onwuachi-Willig, *From Loving v. Virginia to Washington v. Davis: The Erosion of the Supreme Court's Equal Protection Intent Analysis*, 25 VA. J. SOC. POL'Y & L. 303, 306–13 (2018), and Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 318–28, 369–78 (1987).

87. *McCleskey v. Kemp*, 481 U.S. 279 (1987). For critiques of *McCleskey v. Kemp*, see Mario L. Barnes & Erwin Chemerinsky, *What Can Brown Do for You?: Addressing McCleskey v. Kemp as a Flawed Standard for Measuring the Constitutionally Significant Risk of Race Bias*, 112 NW. L. REV. 1293, 1295–1320 (2018) and Paul Butler, *Equal Protection and White Supremacy*, 112 NW. L. REV. 1457, 1458–64 (2018).

88. L. SCH. ADMISSIONS COUNCIL, CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES (2014), https://www.lsac.org/sites/default/files/media/lsat-score-cautionary-policies_0.pdf [<https://perma.cc/R54Q-NL6M>] ("Do not use the LSAT score as a sole criterion for admission. The LSAT should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient. Those who set admission policies and criteria should always keep in mind the fact that the LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success.")

89. Robert Morse et al., *Methodology: 2022 Best Law Schools Rankings*, U.S. NEWS (March 29, 2021), https://www.usnews.com/media/ai/2022_Law.pdf.

based, aid at law schools that helps to widen, rather than close, racial wealth disparities.

Furthermore, it is hard to build an antiracist profession because law schools, and the universities that encompass many of them, are often not race neutral, even as they strive to be more inclusive and, to some extent, antiracist. In fact, it is difficult to become a faculty member, one of the very people who create, develop, and maintain a law school's culture, practices, and policies for law schools, unless law school actually worked for you. Because so many of the people who are making all of the institutional decisions for schools (faculty) are people for whom law school really worked (and was meant to work for), it is often very difficult for them to see and understand the flaws in some of legal education's traditions and practices.

Additionally, building an antiracist law school and profession can be difficult because most law faculties are not racially diverse, which often shapes the ways in which students are taught the law. As Professor Shaun Ossei-Owusu of Penn Law has argued, this means that far too many students of color are asked to repeatedly learn the law in what could be described as an "intellectually violent" manner.⁹⁰ Because so many faculty use what Professor Kimberlé Crenshaw calls a perspectiveless pedagogy in teaching law students how to think like a lawyer, some students, particularly students of color, are asked to assume away their existence and realities as they learn the law.⁹¹ Describing the harms of such implicit expectation, Professor Crenshaw wrote:

While it seems relatively straightforward that objects, issues, and other phenomena are interpreted from the vantage point of the observer, many law classes are conducted as though it is possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view. . . . When this expectation is combined with the fact that what is understood as objective or neutral is often the embodiment of a white middle-class world view, minority students are placed in a difficult situation. To assume the air of perspectivelessness that is expected in the classroom, minority students must participate in the discussion as though they were not African-American or Latino, but colorless legal analysts. The consequence of adopting this colorless mode is that when the discussion involves racial minorities, minority students are expected to stand apart from their history, their identity, and sometimes their own immediate circumstances and discuss issues without making reference to the reality that the 'they' or 'them' being discussed is from their perspective 'we' or 'us.'"⁹²

90. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA JOURNAL (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [<https://perma.cc/WDG6-BNAC>].

91. See Kimberlé W. Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L. J. 1, 2 (1988).

92. *Id.* at 2–3.

Of course, not every professor needs to reject perspectiveless pedagogy. Professors have the freedom to embrace perspectiveless pedagogies, but a law school that only or even primarily embraces such pedagogies is unlikely to be inclusive enough to produce an antiracist climate. As Professor Crenshaw points out, the students most likely to be and feel excluded in a culture mired in perspectiveless pedagogies are students of color.

It also is hard to build an antiracist profession because law firms critique law schools for not producing practice-ready law graduates and proclaim a desire to have practice-ready, emotionally intelligent, and resilient new graduates from law schools—graduates who have demonstrated grit—but then continue to limit the very law schools from which they will hire, leaving out many that have very racially diverse populations.⁹³ And, building an antiracist institution and culture is difficult because law firms continue to employ grade cut-off scores, including cut-offs based on school ranking; continue to rely primarily on grades and not so much on clinical experience or proven practice ability through summer internship work in their hiring; and too often ignore the grit of a student who really had to scrap their way to law school, not to mention through law school.⁹⁴ In the end, such practices by law firms allow students with high GPAs but no emotional intelligence or grit to enter the doors of law firms while they close their doors to students with average or even below average grades with proven legal skills, emotional intelligence, and amazing resilience and grit. As Jim Leipold, the Executive Director of NALP asserted, “numbers also tell stories.”⁹⁵ And, those stories that Leipold has told of the 12%–19% gap in the rate that Black law school graduates secure first jobs in private practice compared to white, Asian, and Latinx graduates should, as Jim, said, haunt us.⁹⁶ The fact that Black lawyers comprise less than 2% of law firm partners, that Black women and Latina lawyers each comprise less than 1% of law firm partners, Latinx lawyers comprise less than 3% of law firm partners, and that Asians comprise less than 4% of law firm partners despite comprising over 12% of the associate population should also be of great concern.⁹⁷

93. Karen Sloan, *Is Big Law's Addiction to Elite Schools Hobbling Diversity Efforts?*, REUTERS (Oct. 18, 2021, 1:14 PM), <https://www.reuters.com/legal/legalindustry/is-big-laws-addiction-t-14-hobbling-diversity-efforts-2021-10-18/> [https://perma.cc/3NPW-BRCG].

94. Karen Sloan, *ABA Says Law Firms Should Look Beyond Grades, Class Rank to Boost Associate Diversity*, REUTERS (Aug. 7, 2023, 6:14 PM), <https://www.reuters.com/legal/legalindustry/aba-says-law-firms-should-look-beyond-grades-class-rank-boost-associate-2023-08-07/> [https://perma.cc/9RHV-ZANC] (“The ABA’s House of Delegates — its policymaking body — adopted a resolution urging firms to consider a wider range of factors when recruiting law students. Those factors include legal research and writing skills; pro bono work and community service; participation in extracurricular activities; personal qualities such as teamwork and resilience; and background and unique experiences.”).

95. James G. Leipold, *Truth and Reconciliation in the Legal Profession*, NALP (Oct. 2020), https://www.nalp.org/truth_and_reconciliation [https://perma.cc/L8EP-RDA2].

96. *Id.*

97. *Id.*

It is hard to build an antiracist profession because the legal profession remains 85% white and among the least diverse professions in the nation.⁹⁸ And, it is hard because all states except for Wisconsin,⁹⁹ New Hampshire,¹⁰⁰ and, most recently, Oregon and Washington,¹⁰¹ use the bar as the only means for admission into the legal profession.

II. BUILDING THE PATHWAY TO ANTIRACIST LAWYERING

So, how can law schools make these miracles of becoming antiracist and training generations of antiracist lawyers realities? How can they make the legal profession antiracist when there is so much to overcome? Art historian Bernard Berenson once proclaimed, “Miracles happen to those who believe in them.”¹⁰² In addition to believing that such miracles need to be pulled off, law schools also have to believe that they actually can be achieved.

Making such miracles a reality requires, as Jim Leipold suggested, that lawyers stop telling a progress narrative that is simply not true.¹⁰³ As Jim spelled out during the end of his term as the director for NALP, it is not true that “the legal profession has a fundamental commitment to diversity, equity, and inclusion, and that [we,] despite setbacks and hurdles, . . . [have] made slow and steady progress toward being a profession that is more inclusive of women and people of color.”¹⁰⁴

Creating this miracle of an antiracist profession requires deep engagement and commitment by all those who attest to their desire for an antiracist profession. It requires not seeing oneself and one’s experiences as the norm,

98. *Law By the Numbers: New ABA Profile of the Legal Profession*, ABA (2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/08/profile-of-the-profession-report/> [hereinafter *ABA Survey*]; Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015, 8:25 AM), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>.

99. *Admission to the Practice of Law in Wisconsin*, WIS. CT. SYS., <https://www.wicourts.gov/services/attorney/bar.htm> [https://perma.cc/VT5H-MSWR] (discussing “diploma privilege”).

100. *NH Bar Admissions*, N.H. JUD. BRANCH, <https://www.courts.nh.gov/lawyers/nh-bar-admissions> [https://perma.cc/8NSL-29FS].

101. *No Bar Exam Required to Practice Law in Oregon Starting Next Year*, LEGAL.IO (Nov. 8, 2023), <https://www.legal.io/articles/5450956/No-Bar-Exam-Required-to-Practice-Law-in-Oregon-Starting-Next-Year> [https://perma.cc/VWN5-P48D]; Carleen Johnson, *Washington State Supreme Court: Passing the Bar No Longer Required to Be a Lawyer*, CENTER SQUARE (March 21, 2004, 9:53 AM), <https://www.courts.wa.gov/content/publicupload/eclips/2024%2003%2022%20Washington%20state%20Supreme%20Court%20Passing%20the%20bar%20no%20longer%20required%20to%20be%20a%20lawyer.pdf>.

102. Alexandra Perloff-Giles, *Art Scholar Bequeaths Villa to Harvard*, HARV. CRIMSON (June 1, 2009), <https://www.thecrimson.com/article/2009/6/1/art-scholar-bequeaths-villa-to-harvard/> [https://perma.cc/BE4R-M59W].

103. Leipold, *supra* note 95.

104. *Id.*

even if and when one's group, intersectional and otherwise, is considered to be the invisible norm. It requires rethinking institutional policies, practices, and norms and assessing whether they allow racial inequities to persevere or whether they confront inequities. It requires law schools to create change where they can, even though it can be incredibly difficult to make changes in some areas. For instance, it is hard to push back against the motivations created by *U.S. News* all by oneself, without harming one's own students and diminishing their opportunities. But, in cases where change is more readily possible, law schools should push in that direction.

So, how is change created? Some excellent examples of how to move forward come directly from current law school communities, like the community at Boston University School of Law.

First, law schools must play the long-term game for the profession. They have to create pipeline programs, or, as the late Professor Michael Olivas would say, "rivers," that demonstrate to marginalized students, including students of color and first-generation students, that there is a place for them in law schools.¹⁰⁵ Two years ago, the Association of American Law Schools released research results that showed that the majority of current law students, 55%, began to consider a career in law when they were in middle school and high school.¹⁰⁶ For some groups of color, for example, Blacks, that percentage was even higher—68%.¹⁰⁷ Given such foundations, there is no reason why Blacks should comprise only 5% of all attorneys,¹⁰⁸ but 33% of the prison population,¹⁰⁹ when Blacks constitute 12% of the population in the United States.¹¹⁰ In essence, law schools need to begin to feed the interests of different students groups like those of students of color in law—to nurture it from middle school all the way to law school by providing introductions to law as a substantive matter, offering free or low-cost LSAT or GRE preparation, and ensuring long-term, committed mentors in law.¹¹¹ The Law School Admissions Council (LSAC), under the leadership of Kellye Testy, already engaged in antiracist work when it recognized the problem of limited access to expensive LSAT prep courses for students of color and low-income students and then collaborated with the Khan Academy to create a high quality, free LSAT prep

105. Michael A. Olivas, *Law School Admissions After Grutter: Student Bodies, Pipeline Theory, and the River*, 55 J.L. EDUC. 16, 17 (2005).

106. *Highlights from Before the JD: Undergraduate Views on Law School*, ASS'N OF AM. L. SCHS. 3 (2017).

107. *Id.*

108. *ABA Survey*, *supra* note 98, at 4.

109. *Blacks, Hispanics Make Up Larger Shares of Prisoners than of U.S. Population*, PEW RSCH. CTR. (May 6, 2020), https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/ft_20-05-05_imprisonmentrates_2a/ [<https://perma.cc/9LTQ-Y93M>].

110. *Id.*

111. See generally Catherine E. Smith, *Seven Principles: Increasing Access to Law School Among Students of Color*, 96 IOWA L. REV. 1677 (2011); Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549, 1573–1577 (2011).

course that, from what we can see, has had a major impact.¹¹² And, for organizations that provide grants for pipeline or river programs, including the LSAC and Access Lex, law schools should be encouraging and pushing them to play this long-term pipeline or river game by extending applications for grants to law schools who want to begin pipeline programs at the middle school and high school level. Such programs should not only be at the college level.

As an individual matter, leaders of law schools, particularly law school deans, need to study the history of racism in this country, know and understand the depth of racial wealth disparities in this country, understand how they came to be and why they persist, and look under the cover of the education that is offered at their school and the climate under which their students are studying the law. Law schools cannot say that students have equitable access to the education they offer without such examinations. Law schools need to interrogate the education they are providing to their students, and they need to offer voluntary training for any faculty who want to examine their own teaching practices and knowledge and learn more about inclusive pedagogies. In all, law schools must create a climate in which students feel they can at least tell institutional leaders what they are experiencing, and law schools must strive to create a climate that enables students, faculty, and staff to be their authentic selves.

Similarly, law schools need to interrogate the faculty hiring process, particularly the criteria they rely on in hiring faculty. They should engage in discussions about the criteria they have used in past searches, and they should provide voluntary trainings that can help faculty to understand their own biases and the manner in which such biases so often creep into the hiring process. Along with that, law schools must consider every single candidate's record of inclusion, defined broadly to not only include records of inclusion around race, ethnicity, gender, sexuality, socioeconomic class, disability, religion, and gender identity, but also around political perspectives and thought. As they hire candidates, law schools must make it clear that antiracism, diversity, inclusion, and equity work is not only the responsibility of groups like people of color and women, but of everyone committed to the goal regardless of their race, gender, sexuality, and more. Law schools also should incorporate a faculty member's record of inclusion, broadly defined, in their merit evaluations each year.

Simultaneously, law schools must find ways to provide different affinity group students the support they desire and need. In particular, law schools need to help students whom the schools know have weaker access to mentors than their majority peers by linking them with mentors and sponsors who can help them learn how to network and even negotiate their identities in their schools

112. See *Adoption of Free LSAT Prep from Khan Academy and LSAC Is Growing Rapidly*, LSAC (Feb. 27, 2019), <https://www.lsac.org/about/news/adoption-free-lsat-prep-khan-academy-and-lsac-growing-rapidly> [<https://perma.cc/ZS9F-B4AB>].

and workplaces. For example, at BU Law, we collaborated with two Black alumni, Robin Walker and Jamie Whitney, during my first year to create a program called “In Real Law.”¹¹³ “In Real Law” provides attorney mentors and substantive programming about thriving in law school and in the workplace for students of color, LGBTQIA+-identified students, first-generation students, and, frankly, any other students who are interested.¹¹⁴ Because “In Real Law” was such a huge hit with the students in its first year, the law school was able to secure law firm funding to extend it to students at two other area law schools, Boston College Law School and Northeastern University School of Law.¹¹⁵ Here, the hope is that a larger, multi-school community will help us build a more diverse community of lawyers in Boston because it shows students the possibilities of the larger community that can form when they become lawyers in the city.¹¹⁶

Finally, law schools need to carefully consider the ways in which they reinforce inequities within their hallways and beyond. For example, at BU Law, we have tried hard to step back and take a look at all the ways we were unknowingly reinforcing inequality.

In response, we have begun a number of programs that begin to address structures that feed existing disparities and inequalities. For instance, because judicial internships were unpaid and did not qualify for public interest grants at the school, we began to offer students the opportunity to apply for one of up to fifteen Judicial Internship stipends, now thirty to forty-five stipends, and we initially did so on a demonstrated need basis.¹¹⁷ Before then, because such internships were unpaid and did not qualify for public interest grants, only students who came from families with the resources to support them over the summer could take advantage of these opportunities.

Similarly, as we noticed students of low means who had carefully budgeted themselves to survive throughout the school year begin to stress about having to purchase an expensive suit for receptions and interviews, we began to offer students the opportunity to apply for one of up to twenty-five grants of \$500 on a demonstrated need basis to purchase a suit or suits for job interviews.¹¹⁸

Steps toward building an antiracist culture can also involve actions related to increasing class and race diversity among judicial law clerks. After all, judicial

113. See *In Real Law (IRL)*, B.U. SCH. L., <https://www.bu.edu/law/2019/09/25/in-real-law/#:~:text=In%20Real%20Law%20%28IRL%29%20IRL%20is%20a%20BU,group%20of%20highly%20successful%20attorneys%20practicing%20in%20Boston> [https://perma.cc/4Y4L-S35U].

114. *Id.*

115. Bill Ibelle, *One Way to Level the Playing Field*, RECORD (June 1, 2020), <https://www.bu.edu/law/record/articles/2020/in-real-law-level-the-playing-field/> [https://perma.cc/7WGU-QFKG].

116. *Id.*

117. *Judicial Internships*, BU SCH. L., <https://www.bu.edu/law/current-students/career-development/judicial-internships-2/>.

118. *Id.*

clerkships carry incredible prestige. They launch lawyers' careers. Yet, unlike with firm interviews where firms pay for candidates to fly out and wine and dine them during such callback interviews, students have to find a way to fund their own travel expenses—hotels, airfare, ground transportation—to interview for clerkships.¹¹⁹ These financial burdens mean that some students take themselves out of the running for these valuable positions, or they severely limit their chances of getting a clerkship by applying only locally because they cannot afford to fund the travel for any clerkship interviews they receive. The same applies for government and public interest jobs. At BU Law, we created a Clerkships and Public Interest/Government Interview Travel Fund to assist with these expenses.¹²⁰ Plain and simple, students should not have to take themselves out of the running for a clerkship due to a lack of resources.

Additionally, at BU Law, we have developed an emergency grant (not loan) funding process for students to apply for help, and we devised a casebook checkout system to allow students to check out casebooks for an entire semester instead of just a few hours.¹²¹ We also offer any faculty interested in creating their course materials/course “casebook” a summer grant to support the time and energy that they would spend in producing these materials over the summer. After all, nothing could deprive a student of equitable access to education more than not having access to the materials to learn in the course.

Finally, with full acknowledgment of how hard it is to not offer mostly “merit” based aid in law school due to external pressures, legal educators must consider having a separate pool of need-based aid that is on top of merit aid. Except for Harvard,¹²² Yale,¹²³ and Stanford,¹²⁴ which offer only need-based aid, law schools tend to provide only or mostly merit aid, which only helps to further existing wealth inequities, which are very much racialized. At BU Law, we have a small sum of need-based aid to offer our students,¹²⁵ and we have been working steadily to grow that pot of money.

119. See *What Do I Need to Know About Clerkship Interviews?*, CORNELL L. SCH., <https://community.lawschool.cornell.edu/careers/judicial-clerkships/clerkship-advice/what-do-i-need-to-know-about-clerkship-interviews/> [https://perma.cc/M4C6-4G8G].

120. *Public Service Funding Summer Information Packet 2023*, B.U. (2023), <https://www.bu.edu/law/files/2023/01/Public-Service-Summer-Funding-Applicant-Packet-2023-2.pdf> [https://perma.cc/D2RK-EGQC].

121. *Life's Emergencies*, B.U., <https://www.bu.edu/dos/lifes-emergencies/> [https://perma.cc/HG94-U2PR].

122. *Determination of Financial Need*, HARV. L. SCH., <https://hls.harvard.edu/dept/sfs/financial-aid-policy-overview/determination-of-financial-need/> [https://perma.cc/9ERZ-U8CE].

123. *Financial Aid Support*, YALE L. SCH., <https://law.yale.edu/admissions/financial-aid> [https://perma.cc/E4FN-4VMY].

124. *JD Financial Support*, STANFORD L. SCH., <https://law.stanford.edu/apply/tuition-financial-aid/jd-financial-support/> [https://perma.cc/M2ZM-2DLK].

125. *Need-Based Scholarships*, B.U. SCH. L., <https://www.bu.edu/law/about/offices/financial-aid/scholarships/alumni-scholarships/> [https://perma.cc/5JL4-9DB6].

Equally important, other legal institutions like law firms, in-house counsel offices, and state supreme courts have to engage in critical, antiracist examinations of their own policies, works, and environments. For example, law firms could begin to rethink the standards they apply in hiring, and law firm partners could push themselves to consider, each time that they are evaluating an associate's work, how bias may be affecting that evaluation. Law firm partners could also stop to consider what it must be like to walk into a building, sometimes of hundreds of attorneys, every day and not see or work with anyone who looks like you; identifies as gay, lesbian, bisexual, or transgender; or knows no other lawyers than the professors who taught them; to use emotional energy to engage in strategies to make those around you feel comfortable in your presence; and to perhaps not be drawn in as a mentee because you do not remind the partner of himself—the word “himself” purposefully used. Ideally, general counsel of companies that farm work out to law firms would follow, in some ways, the lead of the general counsel who have tried to push firms to diversify their workforces.¹²⁶

Finally, state supreme courts and those in charge of admissions to the practicing bar in all the states need to consider whether the bar confronts racial inequities or enables them to persevere. The very roots of the bar examination were about exclusion—excluding those on the margins.¹²⁷ Disparities in bar examination passage persist, and the current bar examination has not been shown to predict who will be a good attorney or who will not violate disciplinary rules. State supreme courts should consider adopting a form of diploma privilege like the state of Wisconsin, like New Hampshire's Daniel Webster Scholar Program, or like Oregon's and Washington's new programs.¹²⁸

CONCLUSION

Inspirational speaker and author Catherine Pulsifer once stated, “Miracles happen every day[.] [Y]ou just have to look for them[.] [T]hey are there.”¹²⁹ Every day, within their hallways, law schools experience miracles from their students and from the staff and faculty who support and teach them. Each year, through big and small actions, law schools witness the existence of simple miracles, collaborations, and positive actions, actions that I could not have imagined when I was a law student. But as Jim Leipold asserted, the stories we

126. Phillip Bantz, *Coca-Cola General Counsel Says Diversity Efforts Aren't Working, Unveils New Guidelines*, LAW.COM (Jan. 28, 2021, 11:15 AM), <https://www.law.com/corpcounsel/2021/01/28/coca-cola-general-counsel-says-diversity-efforts-arent-working-unveils-new-guidelines/> [https://perma.cc/P9UK-YSFF].

127. See Carla D. Pratt, *Radical Reformation: Diverse Pathways to Attorney Licensure Will Yield a More Diverse Profession*, 23 RUTGERS RACE & L. REV. 177, 182–83 (2021).

128. See *infra* notes 99–101 and accompanying text.

129. 50 *Miracle Quotes About Life That Will Inspire You*, BLISS QUOTE, (Oct. 14, 2023), <https://www.blissquote.com/2020/02/miracle-quotes.html> [https://perma.cc/BAC3-MBXN].

tell ourselves matter.¹³⁰ Before we can become a truly antiracist legal profession, we have to rewrite our stories, and this time, the stories have to be inclusive. They have to be true. Most of all, they must be bold, and they go beyond statements and good intentions.

130. Leipold, *supra* note 95.