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Exploring Race and Racism in the Law School Curriculum: An Administrator's View on Adopting an Antiracist Curriculum

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EXPLORING RACE AND RACISM IN THE LAW SCHOOL CURRICULUM: AN ADMINISTRATOR'S VIEW ON ADOPTING AN ANTIRACIST CURRICULUM

Amy C. Gaudion[1*]

ABSTRACT

This article provides a candid assessment of the demanding, and rewarding, work that is required to put into action the written words of institutional support for implementing an Antiracist curriculum. This article starts by describing the two Penn State Dickinson Law faculty resolutions that committed the faculty to condemn racism and bias against our Black and Brown brothers and sisters, while committing to teach and learn according to Antiracist pedagogy and best practices. It then describes the resolve to become Antiracist teachers, discusses the investments in curricular policy and reform, and details the bureaucratic processes to accomplish the following: adding a first-year required course on the history of racism and the concept of equal protection of the laws in the United States; adding a J.D. degree requirement that every student take at least one course beyond the first year with subject matter focused on civil rights, equal protection, or social justice; adding a certificate program in Civil Rights, Equal Protection, and Social Justice; and encouraging faculty to re-envision their courses to identify opportunities to integrate discourse about racial equality. The article then explores the knotty but essential task of equipping faculty and staff with the tools needed to deliver an Antiracist curriculum. The law school initiated this task by launching a summer workshop series designed to conduct an honest assessment of the educational community's past failings while providing the resources needed to alter the law school's future course. To accomplish these objectives, the workshops embraced a model that encouraged risk taking, allowed for blunt feedback, and created plenty of space for mistakes. In closing, this article offers guidance on how to ensure a sustainable commitment to the delivery of an Antiracist curriculum, including the importance of sharing the implementation work with faculty committees and student organizations. The path from commitment to implementation has involved bumps

[1*] Associate Dean for Academic Affairs and Professor of Lawyering Skills, Penn State Dickinson Law. This essay has benefited from the feedback of my colleagues and fellow panelists at *Rutgers Race & the Law Review* Symposium on Race & The Law: A Review on Building an Antiracist Curriculum and Law School, including Danielle M. Conway, Rhasheda Douglas, Dermot Groome, Chrystin Ondersma, Brandon Paradise, Bekah Saidman-Krauss, and Rebecca Schreiber. It also was shaped by my conversations with those who generously spent time discussing with me the issues in this essay and providing feedback on drafts, including Sarah R. Conrad, Jeffrey Dodge, and Pamela Knowlton. Emily Kortright, Rebecka Bronkema, and Jeremy Garcia provided steady and able research assistance through the twists and turns of this project.

and curves, some anticipated and others unexpected. As the path continues, a guiding principle remains: to fulfil our responsibilities as legal educators uniquely positioned at "the nexus of power and understanding necessary for change."[2]

This article is one of three interdependent articles authored by Penn State Dickinson Law faculty and staff, and all three articles will be included in volume [x] of the *Rutgers Race & The Law Review*. These articles are meant to be read together to chart the vision and implementation for building an Antiracist law school and providing a template for an Antiracist legal academy and legal profession. The other two articles in the trilogy are: Danielle M. Conway, Rebekah Saidman-Krauss & Rebecca Schreiber, *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success*; and Dermot Groome, *Exploring Race and Racism in the Law School Curriculum: Educating Anti-Racist Lawyers*.

[2] Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L. J. 1, 9 (2015) [hereinafter Darling-Hammond & Holmquist].

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TABLE OF CONTENTS

Forthcoming in *Rutgers Race & the Law Review*
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INTRODUCTION

For far too long, law schools have been part of the architecture that enables and perpetuates racism, whether through action, inaction, or blind adherence to a hopeful but misguided understanding of the law as a neutral arbiter. Of course, there have been discrete moments and individual institutions that prove counter to this characterization.[3] Such exceptions should be celebrated; these exceptions, however, must be flipped to become the norm. A convergence of recent cataclysmic events, spanning the protests for racial justice during the summer of 2020 to the insurrection of the U.S. Capitol on January 6, 2021, provide an opportunity for law schools to engage in a full and candid accounting of their past failings and their future responsibilities to chart a different course. For years, scholars have offered compelling contributions demonstrating the need for this re-alignment and re-envisioning of legal education.[4] The need is well-documented and undisputed. The question is not *whether* law schools should engage in this re-alignment, but *how*. My task with this article is to start to answer that question from the perspective of an academic administrator, typically the associate dean for academic affairs. My hope is to do so in a way that

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[3] *See* Danielle M. Conway, Rebekah Saidman-Krauss, Rebecca Schreiber, *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success*, 21 RUTGERS RACE & THE L. REV. -- , p. 5-10 (forthcoming 2021) (providing contextual history of race, lawyer formation and the legal profession in America as well as an overview of race and regulation of legal education).

[4] For a sampling of the extensive scholarship on the need for reshaping our educational environments in the legal academy, see Jennifer Akamine Phillips, et. al, *Barriers and Strategies by White Faculty Who Incorporate Anti-Racist Pedagogy*, 3 RACE AND PEDAGOGY J. 1 (2019); Allison N. Ash, et. al, *Anti-Racism in Higher Education: A Model for Change*, 4 RACE AND PEDAGOGY J. 1 (2020); Colleen H. Clements & Erin Stutelberg, *Getting Read as Rad: Performances of "Nice White Lady" And Tensions in Teaching About White Supremacy, 17* J. OF CURRICULUM AND PEDAGOGY 135 (2020); M. Brielle Harbin, et. al, *Teaching Race, Racism, and Racial Justice: Pedagogical Principles and Classroom Strategies for Course Instructors*, 4 RACE AND PEDAGOGY J. 1 (2019); Kyoko Kishimoto, *Anti-racist Pedagogy: From Faculty's Self-reflection to Organizing Within and Beyond the Classroom*, 21 RACE ETHNICITY AND EDUC. 540 (2018); Eric C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL ED. 780 (2018); Katarzyna Olcoń, Rose M. Pulliam & Dorie J. Gilbert, *'Those Are the Things That We Need to Be Talking About': The Impact of Learning About the History of Racial Oppression During Ghana Study Abroad*, RACE ETHNICITY AND EDUC. (2019); Lori D. Patton, *Disrupting Postsecondary Prose: Toward a Critical Race Theory of Higher Education*, 51 URBAN EDUC. 315 (2016); Dian Squire, et. al, *Plantation Politics and Neoliberal Racism in Higher Education: A Framework for Reconstructing Anti-Racist Institutions*, 120 TEACHERS COLL. RECORD 1 (2018); Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1 (2020); Titichia M. Jackson, [please change to small caps: EMBRACING THE *NEW ACADEMIC SUCCESS*: HOW A GROWTH MINDSET AND COGNITIVE PSYCHOLOGY CAN ENHANCE PERFORMANCE IN A VIRTUAL SPACE (work in progress). For a guide to the extensive research conducted by "legal scholars on the issue of police brutality, systemic racism in our criminal justice system, and policy reform," visit the "Learning Phase" section of the *Law Deans Antiracist Clearinghouse Project,* ASSOCIATION OF AMERICAN LAW SCHOOLS, https://www.aals.org/antiracist-clearinghouse/#audit (last visited March 16, 2021).

provides an honest account of the hidden, unglamourous and at times gutsy administrative work required to accomplish this re-alignment and re-envisioning, and to offer a roadmap for those who take on this important project.

This article provides a frank assessment of the demanding and rewarding work that is required to put into action the written words of institutional support for implementing an Antiracist[5] curriculum. This article starts, in Part I, by describing the days following the murder of George Floyd, the call for action from Penn State Dickinson Law's Black Law Students Association, and the Penn State Dickinson Law faculty resolutions that committed us to teaching and learning according to Antiracist pedagogy and best practices. Part II describes the resolve to become Antiracist educators, outlines the investments in curricular policy and reform, and details the bureaucratic processes employed to accomplish the following curricular changes: adding a first-year required course on the history of racism and the concept of equal protection of the laws in the United States; adding a J.D. degree requirement that every student take at least one course beyond the first year with subject matter focused on civil rights, equal protection, or social justice; adding a certificate program in civil rights, equal protection, and social justice; and encouraging faculty to re-envision their courses to identify opportunities to integrate discourse about racism and racial equality. Part III explores the knotty but essential task of equipping faculty and staff with the tools needed to deliver an Antiracist curriculum. The law school initiated this task by launching a summer workshop series designed to conduct an honest assessment of the

[5] Debates abound as to what constitutes "Antiracist" pedagogy. As I note below, these are important debates that should continue. Moreover, I urge those engaged in this work to be mindful to not allow definitional debates to inhibit or delay the work of implementation. The two can and should progress in parallel. While acknowledging there is no single definition for the label "Antiracist" and that my own understanding of the concept of "Antiracist" pedagogy is evolving, I find common understanding with the description recently offered by Professor Jarvis R. Givens. In a June 2021 interview, Professor Givens described it as:

> "about teaching the history of racial inequality and the history of racism, to understand that it's about more than individual acts of racism. The idea is that students — and educators — should have a deep awareness of how racist ideas and practices have been fundamental in shaping our modern world. Students need to be able to have these discussions honestly so that new generations of students aren't just aware of this history, but can also acknowledge and comprehend how our actions can disrupt those historical patterns or reinforce them."

https://www.vox.com/policy-and-politics/22464746/critical-race-theory-anti-racism-jarvis-givens. *See also* Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), https://www.nytimes.com/article/what-is-critical-race-theory.html. Applying the concept in a legal education setting means that legal educators have a responsibility to provide opportunities for students to candidly examine the roles of race and racism in America, to explore the vestiges of slavery that remain, and to consider issues related to unequal application of U.S. law and the ways our legal system perpetuates historical inequalities.

educational community's past failings while providing the resources needed to alter the law school's future course. To accomplish these objectives, the workshops embraced a model that encouraged risk taking, allowed for blunt feedback, and created plenty of space for mistakes. In closing, Part IV offers guidance on how to ensure a sustainable commitment to the delivery of an Antiracist curriculum, including the importance of broadening the definition of legal educator to include law school staff, sharing the implementation work with faculty committees, and engaging student organizations while not burdening them with implementation tasks that unduly interfere with their responsibilities as students. The path from commitment to implementation has involved bumps and curves, some anticipated and others unexpected. As the path continues, a guiding principle remains: to fulfil our responsibilities as legal educators uniquely positioned at "the nexus of power and understanding necessary for change."[6]

I. PROMISING AN ANTIRACIST CURRICULUM: WORDS OF RESOLVE

On the morning of May 29, 2020, a few days after the May 25, 2020 killing of George Floyd by a white police officer, Dermot Groome, a faculty member at Dickinson Law sent an email to all faculty and staff about the impact of this event on our country, our institution, our students, and our colleagues. In it, he offered support to any and all who were suffering. This led to a flood of responses, with colleagues sharing their outrage, their pain, their fear, and their frustration. The responses and replies were devasting and heartbreaking. Yet the exchanges carried a hint of cathartic healing, and a sense of movement. Colleagues committed to holding themselves accountable for doing the work necessary to dismantle the structural systems of oppression that perpetuate racial inequity, for educating ourselves (and not relying on our colleagues from racially minoritized communities to provide that education), and for centering Black voices in our fields and disciplines. Similar exchanges were occurring at law schools across the country.

A. Words of Commitment: Penn State Dickinson Law Faculty Resolution (June 2, 2020).

Around 4:00 p.m. on that same afternoon of the faculty and staff email thread, the Chair of the Faculty, Michael Mogill, suggested that the faculty consider preparing a resolution for unanimous approval. The resolution should condemn, in the strongest possible language the actions and policies that led to George Floyd's killing. In addition, the resolution should articulate how our faculty should stand as one in support of our students, staff, fellow faculty, and their families who are persons of color. Others quickly seconded this idea. There was however hesitancy as to who

[6] Darling-Hammond & Holmquist, *supra* note 2, at 9.

should draft the resolution. Some colleagues expressed concern about white voices taking space away from Black and Brown voices, and some articulated an inability to find the proper words to put on paper. While everyone supported the concept, and many volunteered to be part of a group writing project, no one volunteered to lead it. While this hesitancy[7] may be understandable, it was also problematic and may have derailed the effort.

As the afternoon turned toward evening, and after several difficult but revealing telephone conversations, a recognition of the moment's power emerged in alignment with a renewed understanding of our responsibilities as lawyers and legal educators. Faculty Chair Michael Mogill, also a senior member of the faculty, took up the drafting task. He spent the weekend drafting, seeking feedback from a small group. On Tuesday, June 2, 2020, he presented the resolution to the full faculty over email, at which point the resolution was adopted by a unanimous vote of the Dickinson Law faculty. The text of the resolution is provided below:

> WHEREAS, the faculty recognizes the ongoing, systemic and perpetual racial and societal injustices in this country, which have been passed on from generation to generation; and
>
> WHEREAS, the faculty recognizes that these injustices have existed since the original sin of slavery and been furthered by Jim Crow laws and the unequal treatment of Black Americans in our judicial system; and
>
> WHEREAS, the faculty especially notes and is appalled by the numerous killings that have been committed against Black Americans under the color of law; and
>
> WHEREAS, the faculty recognizes the lack of accountability for these injustices; and
>
> WHEREAS, the faculty recognizes the senseless brutality being committed by those employed to serve and protect who are operating under a pattern, practice and culture fostering unequal treatment; and

[7] See CELESTE HEADLEE, SPEAKING OF RACE: WHY EVERYBODY NEEDS TO TALK ABOUT RACISM – AND HOW TO DO IT (2021), at 36 (describing how hesitancy of white people to enter into conversations about race impacts the workplace).

WHEREAS, the faculty recognizes the need to have uncomfortable talks and real, honest and transparent conversations directed towards addressing these injustices; and

WHEREAS, the faculty recognizes and feels the sadness, anger, outrage, frustration, pain and grieving caused by extrajudicial killings; and

WHEREAS, the faculty recognizes the need to understand how so many feel helpless, frustrated, invisible, and disillusioned, resulting in constant fears for their personal safety and leading to bearing psychological and emotional scars; and

WHEREAS, the faculty recognizes that racism is an incessant malady and a scourge to an otherwise organized, civilized society; and

WHEREAS, the faculty recognizes that systemic discrimination and unjust racial inequities continue to appall and to plague our nation; and

WHEREAS, the faculty recognizes that we should not accept apathy, indifference or silence to such ongoing violence and inequities, which otherwise allows hatred, prejudice and intolerance to fester and grow; and

WHEREAS, the faculty recognizes the need to engage in peaceful protest and constructive acts to make a meaningful difference towards societal change; and

WHEREAS, the faculty recognizes that we have an obligation to fight ignorance and intolerance, model inclusivity, and embrace our differences and the power that diversity represents; and

WHEREAS, the faculty recognizes the need to stand with our Black brothers and sisters as effective allies; and

WHEREAS, the faculty recognizes the need to stand in ongoing support of our students, staff, fellow faculty, and their families who are persons of color:

NOW, THEREFORE, BE IT RESOLVED that the faculty acknowledges that racism is an affliction that we must never enable but should all be active antiracists in taking responsibility to condemn and

> to end, that we need to identify and challenge systemic prejudice wherever it exists, that we are all accountable for doing the work necessary for policy changes that dismantle structural systems of oppression that perpetuate racial inequities in our society, that we will strive to be better listeners and supporters of those who are the victims of racism, that we will never rest until every American feels safe, free and accepted in our country, and that we will continuously abide by the goal of providing respect and equal treatment to all in upholding the rule of law.
>
> BE IT FURTHER RESOLVED, this resolution be preserved in the records and minutes of the Dickinson Law Faculty and prominently displayed on the Dickinson Law website.
>
> Adopted this 2nd day of June, 2020, by the unanimous vote of Penn State Dickinson Law. [8]

While the resolution – putting words on paper - was only an initial step, it was course-altering one. It formalized in writing the faculty's commitment to a chart a new path.

B. Student Leadership: Statement and A Call to Action of the Penn State Dickinson Law Black Law Students Association (May 31, 2020).

As is so often the way in institutions of higher education, we learn from and are led by our students. Over the weekend, while our faculty considered the call for a resolution, our students were also working. On May 31, 2020, the Black Law Students Association of Penn State Dickinson Law posted a "Statement and A Call to Action"[9] on its Instagram account. The post is provided below:

[8] *Dickinson Law Faculty Will Not Remain Silent in the Face of Brutality,* PENN STATE DICKINSON LAW (June 2, 2020) [hereinafter *Dickinson Law Faculty Resolution 1*], https://dickinsonlaw.psu.edu/dickinson-law-faculty-will-not-remain-silent-face-brutality.

[9] *Statement and A Call to Action,* BLACK LAW STUDENTS ASSOCIATION OF PENN STATE DICKINSON LAW (May 31, 2020),

The statement and call to action were followed by a second page which listed the names of Black and Brown people who had died at the hands of the police in the United States, and concluded with the request to "Say Their Names."

C. Centering Our Resolve: Penn State Dickinson Law Faculty Resolution – Race and Our Educational Mission (June 18, 2020).

In the following days, we centered our efforts and conversations around these two statements – one from faculty and one from students. As the transition from words to action got underway, our faculty recognized that the June 2 resolution was only an initial step, albeit an important framing exercise. The faculty felt a further resolution was needed to operationalize our resolve, and to more precisely set forth our commitments. On June 18, 2020, our faculty passed a second resolution, this one entitled "Race and Our Educational Mission." The text of the second resolution is provided below:

RECALLING, that on June 2, 2020, the faculty of Penn State Dickinson Law unanimously adopted a resolution recognizing "the ongoing, systemic and perpetual

racial and societal injustices in this country, which have been passed on from generation to generation;" and committed itself to "continuously abide by the goal of providing respect and equal treatment to all in upholding the rule of law;" and

RECALLING, that in December 2012, the faculty adopted, as one of its core principles, a commitment "to improve global understanding and the lives and well being of our students and the world in which they will live;" and

RECOGNIZING, that as a law faculty, Penn State Dickinson Law has a unique opportunity and important responsibility to combat racism and inequality through its educational mission.

The faculty of Penn State Dickinson Law herein resolves to incorporate more opportunities for students to learn about and discuss racism and inequality in the curriculum. The faculty further resolves to develop and require students to participate in co□ curricular programs that instill in students an abiding appreciation of, and eagerness to defend, the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and to cultivate within students, a principled, enduring commitment to work for true equality in our society over the course of their careers.

Further, to fully implement this resolution, the faculty shall require the Diversity Committee or other committee designated by the Dean:

1. to develop and present an annual plan for the implementation of this resolution at the second faculty meeting of each academic year;

2. to present a written report before the last faculty meeting of the academic year, summarizing the curricular and co□ curricular activities undertaken that year and assessing their effectiveness; and

3. to conduct a detailed study evaluating the implementation of this resolution every five years, commencing at the end of the 2024□ 25 academic year.

This resolution shall remain in effect until such time that the faculty deems, by resolution, that it is no longer necessary.

Adopted this 18th day of June, 2020, by the unanimous vote of Penn State Dickinson Law.[10]

With the resolutions in place, our focused shifted to the task of demonstrating resolve by putting into action our words of commitment. To do so faithfully, it was necessary to be precise in articulating what our students asked of us, and equally precise about what we promised in response. Our students asked us to: "provide measures and opportunities to acknowledge and discuss the injustices that go on in the U.S. and biases that occur within the law school community", to consider curricular reforms, to implement faculty training, to establish pro bono initiatives. Significantly, our students offered to aid the faculty and administration in facilitating and planning a better way ahead. And in response, we promised, in our June 2, 2020 and June 18, 2020 resolutions to: "engage in peaceful protests and constructive acts to make a meaningful difference towards societal change"; "stand with our Black brothers and sisters as effective allies"; "be active antiracists"; "accountable for doing the work necessary for policy changes"; "strive to be better listeners and supporters"; "incorporate more opportunities for students to learn about and discuss racism and inequality in the curriculum."[11]

On paper and through our words of commitment, the Penn State Dickinson Law faculty and staff acknowledged an "obligation to embrace leadership that promotes equality and justice for all as well as the special obligation to train the next generation of leaders to do more and to do better."[12] We promised to become Antiracist educators, and committed that promise in writing. The next step would require translating the words of commitment into concrete actions.

II. BUILDING AN ANTIRACIST CURRICULUM: FROM WORDS TO ACTION

This section describe the law school's initial efforts to craft actions in support of its words of resolve and commitment. It begins by identifying the law school's investments in curricular policy and reform, and its efforts to create Antiracist curricular touchpoints, both fixed and fluid, across the three years. It then goes on to detail the bureaucratic processes necessary to accomplish the curricular changes, and role of administrators, particularly the associate dean for academic affairs, in these

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[10] *Race and Our Educational Mission*, PENN STATE DICKINSON LAW (June 18, 2020) [hereinafter *Dickinson Law Faculty Resolution 2*], https://dickinsonlaw.psu.edu/sites/default/files/2020-07/Race-and-Our-Educational-Mission.pdf (Last visited Sept. 22, 2021).

[11] *Dickinson Law Faculty Resolution 1*, *supra* note 9, at 1; *Dickinson Law Faculty Resolution 2*, *supra* note 12, at 1.

[12] Conway et al., *supra* note 3, at [xx] (providing description of the law school's visioning process and the actions leading up to the faculty resolutions in June 2020).

projects. This section concludes with a proposal for building a sustainable architecture for these curricular efforts.

A. Identifying Curricular Touchpoints for Engaging Students.

In the days following the faculty resolutions on Antiracist teaching, the faculty and staff considered a number of ways to satisfy its commitment to "engage in . . . constructive acts to make a meaningful difference towards societal change"; "be active antiracists"; "incorporate more opportunities for students to learn about and discuss racism and inequality in the curriculum." We quickly identified the need to establish Antiracist curricular touchpoints across the phases of legal education.

The table below summarizes three formal touchpoints and one less structured but equally impactful touchpoint in designing an Antiracist curriculum. For purposes of this article, the four touchpoints are differentiated. In practice, however, they are iterative, supporting and building upon one another, and providing materials and content for multiples uses and applications. The sections that follow provide descriptions of each touchpoint.

Curricular Touchpoint	Year/Degree	Required or Elective?	Description
First-Year Course: *Race & Equal Protection of the Laws*	1L	Required	This is a required course evaluated on a credit/no credit basis, offered across the first year, in eight sessions (four each semester). It is coordinated by a single faculty member, however, faculty, staff, and students contribute and teach components of the eight sessions.
J.D. Degree Requirement: Students must take one course beyond the first-year required courses, designated as	2L & 3L	Required	Students complete this degree requirement through satisfactory completion (earning a grade of at least C) of one course from a list of upper level courses

having subject matter focused on civil rights, equal protection, or social justice.			approved by the faculty for this purpose.
Certificate Program: Civil Rights, Equal Protection, and Social Justice Certificate	2L, 3L & LLM	Elective	Students have the option of pursuing a certificate in this substantive area; to earn the certificate, a student must complete 15 credits of core and elective coursework and maintain a 3.0 GPA in the courses.
Smaller Touchpoints: All courses, all programs	1L, 2L, 3L, LL.M., M.L.S., S.J.D.	Elective	Faculty and staff identify opportunities to integrate discourse about race, racism, equal protection, civil rights and social justice into their lesson plans, assessments, and scenarios.

1. First-Year Course: Race & Equal Protection of the Laws..[13]

As part of the second faculty resolution, passed on June 18, 2020, the faculty agreed to offer a program to first-year students in the 2020-2021 academic year on the history of racism in the United States and the evolution of the concept of equal protection in the laws of the United States. The initial plan proposed offering these sessions as a required program, but not a formal course. Due to a number of factors stemming from the pandemic and an evolving acknowledgement of our commitments as Antiracist educators, the faculty endorsed making the program a required one-credit course on a temporary basis for the 2020-2021 academic year. The faculty tasked the

[13] Professor Dermot Groome is the originator and faculty leader for this course, and his article in this volume of the *Rutgers Race & The Law Review* provides an in-depth description of the course's objective and methodology, as well as a review of the lessons learned from its inaugural offering. Dermot Groome, *Exploring Race and Racism in the Law School Curriculum: Educating Anti-Racist Lawyers*, 21 RUTGERS RACE & THE L. REV. --- (2021).

Curriculum Committee with considering whether to make the course a permanent addition. On March 3, 2021, after a proposal to that effect, the faculty voted to make the *Race & Equal Protection of the Laws* course a permanent part of the first-year curriculum.

The course's primary learning objective is "to work collaboratively as a law school community to better understand the relationship between the law and persistent inequality in the United States and to develop our responses as individual lawyers to it."[14] The course is designed as a year-long course which consists of eight two-hour evening sessions. Each session focuses on a particular theme. The themes are selected to examine "how the law has facilitated structural racism during our history; how it has been used to combat racism; where it has failed to ensure equality." In its first year, the themes included the following: (i) Slavery: Historical and Modern Privilegia; (ii) Criminal Justice System; (iii) Capitalism and Commercial Law; (iv) Housing; (v) Health Care; (vi) Education; (vii) Our Democracy; and (viii) Using the Law for Change.[15] Plans for next year's *Race & Equal Protection of the Laws* course are underway, and will explore new themes while adhering to the objective of providing a forum for the study of the relationship between the law and persistent inequality in the United States.

In sum, this course serves as the touchstone for the first year of legal study, and the entry point for many students to grapple with – often for the very first time - the complicated history of racism in the United States. It provide students with a foundation for understanding structural racism and the failings and triumphs of legal efforts to provide equal protection. It serves as the launch pad for their later study of the concepts of social justice, equal protection, and civil rights, in required courses and through elective programs. The course also provides faculty and staff an opportunity to immerse themselves in Antiracist teaching, and a way to identify connections with their programs, scholarship, and other courses.

2. J.D. Degree Requirement: One Upper-Level Course on Civil Rights, Equal Protection, or Social Justice.

The next step was to create a curricular path for upper-level law students to continue their engagement with and study of racism and inequality. As part of the June 18, 2020 Faculty Resolution, the Dickinson Law faculty charged an Ad Hoc Committee with considering and proposing additional curricular reforms. By July 1,

[14] Syllabus for Race and Equal Protection of the Laws (Aug. x, 2020) (on file with the author).
[15] A review of the inaugural offering of the Race and Equal Protection of the Law course is available on the following website: https://dickinsonlaw.psu.edu/race-and-the-equal-protection-of-the-laws. This site includes two videos featuring student, faculty and staff perspectives on the course, links to the faculty resolutions, as well as other information about Penn State's Dickinson Law Antiracist curricular efforts.

2020, the committee returned with several proposals, including the addition of a J.D. degree requirement that every student take at least one course beyond the first year with subject matter focused on civil rights, equal protection, or social justice. Students must earn a grade of at least C in the course for it to satisfy the degree requirement. Students may select from a list of courses designated by the faculty as fulfilling the requirement. Courses currently listed include: *Constitutional Law II, Civil Liberties Litigation, Criminal Procedure, First Amendment Law, Human Rights Law Seminar, Immigration Law, Information Privacy Law, Law of Individuals with Disabilities, Poverty Law, Protection of Individual Rights under State Constitutions Seminar, Race, Racism and American Law*, and *Sexuality & Gender Law*. This list was anticipated to be fluid, and expected to evolve. Indeed, one of the benefits of the curricular reform discussions was to inspire faculty to propose new course offerings in the areas of civil rights, equal protection, and social justice.

In developing these proposed actions, the committee was intentional about balancing the need for present reform with the feasibility of implementing reform that could become effective upon the start of the 2020-2021 academic year. In addition, the faculty agreed that the curricular options should provide increased exposure to the concepts of systemic racism and equal protection while also widening the curricular lens to include topics at the intersection of equity, civil rights, and social justice. Finally, the faculty was cognizant of deploying reforms that would also retain a degree of student choice and flexibility. To ensure the faculty remains focused on the commitments it made in the faculty resolutions, each year the curriculum committee is tasked with reviewing and revising the list of courses that satisfy the J.D. graduation requirement.[16]

3. Certificate Program: Civil Rights, Equal Protection & Social Justice.

The final formal touchpoint for building an Antiracist curriculum was to offer additional capstone and specialized opportunities for students. The mechanism to do so was to create a new certificate program in civil rights, equal protection, and social justice. To earn this certificate, students must: (i) complete a minimum of 15 credits by taking core and elective courses (see list below); and (ii) earn a cumulative GPA of 3.0 or higher in the certificate courses. The core, or required, courses are *Constitutional Law II* and *Criminal Procedure*. Students may satisfy the remaining credits by selecting from the following list of elective courses: *Civil Liberties Litigation, First Amendment Law, Human Rights Law Seminar, Immigration Law, Information Privacy Law, Law of Individuals*

[16] For a list of other approaches to questions of how and who designates courses that meet such requirements, see Oyin Adedoyin, *Race on Campus: Who Chooses Which Courses Satisfy Race-and-Ethnicity Requirements?*, CHRONICLE OF HIGHER ED. (Nov. 2, 2021), https://www.chronicle.com/newsletter/race-on-campus/2021-11-02?cid2=gen_login_refresh&cid=gen_sign_in

with Disabilities, Poverty Law, Protection of Individual Rights under State Constitutions Seminar, Race, Racism and American Law, and *Sexuality & Gender Law*. To provide flexibility and interdisciplinary opportunities, students may, with the approval of the certificate faculty advisor, include a graduate-level non-law course, an internship, a semester in practice placement, a clinical placement, or a one-time law school course. As noted above, the commitment to becoming Antiracist educators is not a static process but an evolving and continuous one. Thus, each year the curriculum committee is tasked with reviewing and revising the list of courses that satisfy the certificate's requirements.

4. Smaller Touchpoints: Lesson Plans, Assessments & Activities.

The formal touchpoints provide the architectural frame for an Antiracist curriculum, however, the reach and impact of these efforts is truly reflected in the smaller[17] teaching spaces. As part of the visioning process and the implementation plan, faculty and staff were encouraged to look for localized opportunities in their courses to engage in acknowledgement and deconstruction. These smaller touchpoints may include pointing out examples of systemic racism in a court opinion or legal doctrine[18], explaining how the modern asset-backed securities system had its origins in slavery[19], incorporating reading materials that highlight the racial aspects of a court decision left unaddressed by the textbook[20], or taking time to explain the social justice context driving a piece of legislation.[21] They also include designing and selecting

[17] *See generally* JAMES M. LANG, SMALL TEACHING: SMALL TEACHING: EVERYDAY LESSONS FROM THE SCIENCE OF LEARNING (2016). Dr. Shakoor Ward, Professional Development Coordinator in the Affirmative Action Office at Penn State University, presented a program to faculty and staff titled "Challenging Ourselves in Crucial Moments" on November 4, 2021. During the program, he discussed the importance of faculty approachability and unscheduled but impactful interactions in creating an inclusive and supportive learning environment.

[18] A colleague at Penn State Dickinson Law uses two cases, both involving defendants who were part of the Montgomery bus boycott in 1955-56, to explore how race impacts judicial opinion writing. In the exercise, he walks through the two opinions, noting the use of language and framing of the issue, and asks his students to consider what role the defendant's race and/or the judge's view of the civil rights movement may have played in the decisions.

[19] In Race and Equal Protection of the Laws, Session #2: Capitalism, Professor Mohamed Badissy explains how today's asset-backed financial system has its origins in the slave-backed mortgages of the 1700 and 1800s (notes on file with the author).

[20] A Penn State Dickinson Law colleague includes photos in her class slides that depict the historical context of a particular court decision, and then spends time discussing how those images influence or alter the students' understanding of the opinion that was provided in the textbook without that context. Another colleague includes brief biographical background on the judges writing key opinions discussed in her class; her goal is two-fold: (i) to remind students that judges are human and not god-like in their powers of analysis and writing; and (ii) to visually and orally highlight the work of judges from historically marginalized or minoritized communities.

[21] An oft-described example of this approach is to use the passage of the Civil Rights Act to explore an effort to correct systemic racism. See e.g., Matthew T. Witt, *Never Post-Racial: the Persistence of the Dual State*, 20 Public Integrity 329 (2018). A less familiar example is to discuss the history of the

assessments in an inclusive manner, by thinking through the impacts of word choice, topic selection, scenario design, and submission guidelines on students from diverse and often intersecting[22] backgrounds and communities.[23] Other examples involve asking students in a clinical program to prepare a reflective writing assignment that considers whether the clinical work they are engaged in has an impact on eliminating racism as a social determinant of health, and requiring students to complete one of the implicit association tests provided by Harvard University's on-going Project Implicit[24] study.

One example warrants deeper explanation because of its ability to merge Antiracist pedagogy, inclusive teaching principles, professional identity formation, and writing and oral presentation skills. an attorney profile assignment in the second

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enactment of the Posse Comitatus Act ("PCA"). While the PCA is commonly credited with setting the expectation that the military is prohibited from involvement in domestic law enforcement activities, the legislative history reveals a more complicated story involving Reconstruction, voting rights, and enforcement of the 13th, 14th and 15th Amendments. *See* WILLIAM C. BANKS, SOLDIERS ON THE HOMEFRONT: THE DOMESTIC ROLE OF THE AMERICAN MILITARY (2016).

[22] As described by my colleagues in their companion article, "Dickinson Law has historically defined diversity broadly, to include racially and ethnically minoritized communities, women, individuals with disabilities, students of nontraditional graduate school age, members of the LGBTQ community, individuals from rural and under resourced communities, veterans, and any other individuals who have experienced marginalization or subordination in educational settings. While we aim to craft a student body that represents multitudes of these— often intersecting—identities, this paper focuses specifically on our ability to recruit, enroll, and retain racially and ethnically minoritized students." Conway, et al., supra note 3, at 2.

[23] Chris Gamrat, *Inclusive Teaching and Course Design*, EDUCASE REV. (Feb. 6, 2020), available at https://er.educause.edu/blogs/2020/2/inclusive-teaching-and-course ("When creating scenarios for projects, quizzes, and exams, consider including diverse names and more than one gender in the scenarios. Also, consider the context of your scenarios and try to avoid stereotyping."); Viji Sathy and Kelly A. Hogan, *Want to Reach All of Your Students? Here's How to Make Your Teaching More Inclusive*, CHRONICLE OF HIGHER EDUC. (July 22, 2019), available at https://www.chronicle.com/interactives/20190719_inclusive_teaching; ALICIA L. MOORE AND MOLLY DESHAIES, SLAVERY BY ANOTHER NAME: TEN TIPS FOR FACILITATING CLASSROOM DISCUSSIONS ON SENSITIVE TOPICS (2012), available at https://bento.cdn.pbs.org/hostedbento-prod/filer_public/SBAN/Images/Classrooms/Ten%20Tips%20for%20Facilitating%20Classroom%20Discussions%20on%20Sensitive%20Topics_Final.pdf. The following sources are particularly useful for those re-thinking word choice in assessments, class hypotheticals, and scenarios, as well as one's own writing and language: Courtney Seiter, *An Incomplete Guide to Inclusive Language for Startups and Tech*, BUFFER BLOG (Jun. 6, 2018), available at https://buffer.com/resources/inclusive-language-tech/; AUSTRALIA DEPT. OF EDUC., INCLUSIVE LANGUAGE GUIDELINES (2011) (hereinafter ADE LANGUAGE GUIDELINES), available at https://publicdocumentcentre.education.tas.gov.au/Documents/Guidelines-for-Inclusive-Language.pdf.

[24] PROJECT IMPLICIT, https://implicit.harvard.edu/implicit (last visited March 16, 2021); *see also* Aysa Gray, *The Bias of Professionalism Standards*, STAN. SOC. INNOVATION REV. (Jun. 4, 2019), available at https://ssir.org/articles/entry/the_bias_of_professionalism_standards.

semester of the first-year legal writing and analysis course. The assignment's learning objectives include: developing and honing oral advocacy and public speaking skills; preparing a visual aid; and engaging in reflective writing that asks students to think intentionally about their goals for their legal education and their views on the role of lawyers in society. The assignment includes three components: an oral presentation; a slide; and a written reflective essay. The requirements for each component are provided below:

> *Oral Presentation*: include a short description of the attorney's life and work, and an explanation as to why the student finds the attorney courageous or inspirational.
>
> *Slide*: include a photo/image of the attorney and an appropriate amount of text to guide and support the presentation.
>
> *Reflective Writing Essay*: 1-2 pages and include two sections, with the first section providing a brief description of the attorney's biography, work, and impact, and the second section providing an explanation as to why the student finds the attorney courageous inspiring. In explaining why they find the attorney inspiring, students should consider their legal education and career goals, as well as their views on the role of lawyers in a democratic society.

The assignment can be considered part of the professionalism and participation grade, and evaluated for good faith and timely compliance with the instructions, or as a graded assignment.

The student presentations of the attorney profile occur at the start of each class session, with one or two students presenting during each class. There is certainly some instructor-time lost in committing to this assignment, however, the benefits far outweigh any lost time. In addition to the learning objectives outlined above, the assignment accomplishes several impactful purposes that support development of an Antiracist curriculum and the growth of Antiracist lawyers. First, it gives first-year students, who may have been disappointed by their first-semester grades or academic performance, an opportunity to remember why they came to law school and a space to reconnect with their larger educational and career aspirations. Second, it provides an opportunity for students to shine in ways not assessed by traditional examination or Socratic method contexts. Third, the attorney profiles feature lawyers of all races, gender expressions, and other less visible communities and backgrounds. These profiles offer concrete examples – to the entire class – of diversity in the legal profession, and counter the parade of white, male, cisgender role models that legal education too often portrays as the lawyer template. Fourth, the

exercise provides an effective way to decenter the instructor[25] and flip the power dynamic in the classroom. Finally, the profiles reveal something about the student's hopes and aspirations, providing an opportunity for teacher-student connection that is often difficult to achieve in the more formal uniform assignments.

The takeaway here is that the tools and mechanisms, even smaller teaching moments, that legal educators use can have tremendous impacts. Said more bluntly, "what professors are doing matters."[26] Professors Darling-Hammond and Holmquist note that "[c]lassroom management and demeanor can have real impacts on whether students are empowered to realize their potential, or spurred to silently buckle under fears of confirming stereotypes."[27] Legal educators "have the power to adjust the practices employed in law school classrooms, which can significantly impact the experiences of students from different backgrounds."[28] For those interested in these smaller touchpoints and more discrete assignments, a rich array of resources exists.[29]

The speed with which the faculty put in place these curricular reforms, over a five-week period during the summer months, is admirable, but also revealing. It was as if we all understood the need for adapting an Antiracist educational posture, and we already had a solid sense of the component parts of an Antiracist curriculum. We lacked, however, the vision and impetus to acknowledge our individual obligations as

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[25] Professor Efraín Marimón, Assistant Teaching Professor of Education in the Penn State College of Education, Director of the Restorative Justice Initiative, and Director of the Social Justice Fellowship, gave a presentation on creating inclusive learning spaces as part of Penn State Dickinson Law Summer 2021 Teaching Workshop Series: Becoming Inclusive Educators (Jun. 16, 2021). This workshop's learning objectives included: (i) to deepen our understanding of the challenges facing our diverse body of students, particularly our historically minoritized students, and the characteristics and adverse impacts of non-inclusive educational settings; (ii) to grow as educators, particularly in our roles as effective moderators and facilitators of group discussions; and (iii) to highlight lessons learned and examples from the past year where colleagues have designed lesson plans, programs, or events focused on creating inclusive learning spaces.

[26] Darling & Holmquist, supra note 2, at 8.

[27] *Id.*

[28] *Id.* at 9.

[29] Gamrat, *supra* note 19; *Inclusive Classroom Climate*, YALE POORVU CTR. FOR TEACHING AND LEARNING, https://poorvucenter.yale.edu/ClassClimates (hereinafter *Inclusive Classroom Climate*) (last visited March 16, 2021); Beckie Supiano, *Traditional Teaching May Deepen Inequality. Can a Different Approach Fix It?,* CHRONICLE OF HIGHER EDUC. (May 6, 2018), https://www.chronicle.com/article/traditional-teaching-may-deepen-inequality-can-a-different-approach-fix-it/ ("Teaching inclusively means embracing student diversity in all forms — race, ethnicity, gender, disability, socioeconomic background, ideology, even personality traits like introversion — as an asset. It means designing and teaching courses in ways that foster talent in all students, but especially those who come from groups traditionally underrepresented in higher education.").

legal educators to implement such change. Although too long in coming, the events of May 25, 2020 and visionary leadership[30] moved us into implementation mode.

B. **Embracing Bureaucracy to Accomplish Change: Ad Hoc Committees, Draft Proposals, Difficult Conversations, and A Whole Bunch of Extra Meetings**.

There is no way around this next point. After the powerful and moving words have been written, and the symmetry and grace of the curricular vision has been elegantly framed, it is time to embrace the burdens and tediousness of faculty governance processes and ad hoc committees, draft proposals and wordsmithing arguments, and administrative bureaucracy. In short, it is time to attend a lot - and I mean a lot - of meetings.

At Penn State Dickinson Law, we created three ad hoc committees to engage in work over the summer months, held six teaching workshops over the summer months, and attended a whole bunch of meetings over the summer months. The work continued into the fall semester and the academic year. It was in addition to our regular teaching, service and scholarship responsibilities, and on top of our efforts to create a meaningful educational community in a remote learning setting during a health pandemic. It is difficult to quantify the amount of time invested in proposal drafting efforts, workshop preparation, workshop attendance, meeting planning, meeting attendance, post-meeting analysis, difficult group conversations, awkward one-on-one conversations, and lengthy email exchanges. The time commitment, however, is a necessary part of the task of building an Antiracist curriculum. Do not ignore the time commitment. Do not deny it. Acknowledge and embrace the investment of time and energy that is required, and recognize the personal and institutional growth and sense of shared purpose that comes from the intensity of the bureaucratic effort.

III. DELIVERING AN ANTIRACIST CURRICULUM: EQUIPPING FACULTY & STAFF

Promises of change have little worth if those making the promises do not have the ability to deliver. It quickly became apparent that while the words of the faculty resolutions were sincere and the curricular design was solid, there was some work to be done in meeting the promise of becoming Antiracist educators. As articulated by Deans Danielle Conway, Danielle Holley-Walker, Kim Mutcherson, Angela Onwuachi-Willig, and Carla Pratt, the process of becoming Antiracist educators is a phased and iterative exercise, and the first two phases involve listening and learning.[31]

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[30] Conway, et al., supra note 3, at 1-5.
[31] Law Deans' Antiracist Clearinghouse Project, ASS'N AM. L. SCHOOLS, https://www.aals.org/antiracist-clearinghouse/#audit (last visited March 16, 2021).

As administrators, we contribute to this effort by creating the space, time, and medium for listening and learning. We also take care of the tedious and unglamorous but equally important scheduling, logistics and technical tasks associated with ensuring our colleagues have the space, time and means to engage in this work. This section describes mechanisms for equipping faculty and staff colleagues with the tools needed to deliver an Antiracist curriculum.

A. Develop Clear-Eyed Workshops that Require Candid Accounting, Embrace Risk, and Allow for Growth.

In late May and early June, in my role as associate dean for academic affairs, I convened a group of faculty and staff into an ad hoc committee (yes, another one) to develop topics and identify presenters for a Summer 2020 Teaching Workshop Series for Faculty and Staff. The vision was to offer a workshop series that merged three teaching objectives: identifying and honing best practices for teaching in a remote learning environment; building and sustaining inclusive classrooms; and incorporating the study of racial justice and equality into the fabric of our curriculum. The series was designed to be fluid in structure and content, and to benefit from continuous and on-going feedback. The workshops were designed to be interactive and to provide substantial time for Q&A and discussion.

A table summarizing the Summer 2020 workshop sessions is provided below:

Topic
#1 **Building the Hybrid Class Session and Exploring Flipped Classes**[32] This workshop provided an overview on the neuroscience of learning, a summary of the "Top 5" principles of online, flipped and hybrid classrooms, and a class simulation to demonstrate these learning models.
#2

[32] The materials for this workshop included: Steven I. Friedland, *Neuroscience and Online Learning,* CALICON 2020 (Jun. 3, 2020), http://2020.calicon.org/pandemic/sessions/neuroscience-and-online-learning; *Helping With Student Focus & Motivation in the Remote Classroom, Part 3: Limiting New Technologies to Reduce Extrinsic Cognitive Load*, L. RES. PEDAGOGY, https://www.legalresearchpedagogy.com/2020/06/helping-with-student-focus-motivation_10.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+LegalResearchPedagogy+%28Legal+Research+Pedagogy%29 (Parts I and 2 of this blog post series are available at the end of this post); Jacqueline D. Lipton, *Distance Legal Education: Lessons from the *Virtual* Classroom*, 60 IDEA (forthcoming Spring 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491427.

Building the Study of Racial Justice and Equality into the Curriculum[33]

This session used the Penn State Dickinson Law Faculty Resolutions a launch pad, and discussed how to put action to our words through teaching. The program provided examples of classroom exercises, suggested ways to create and modify formative assessments to incorporate the national discourse on racial justice, equal protection and equity, and discussed how to build assessments that message inclusivity.

#3
Building an Inclusive Space for Community Dialogue in a Legal Education Setting[34]

This workshop built upon Workshop #2, and continued to consider how to follow the words of our faculty resolutions with concrete actions through teaching. This workshop focused on the responsibilities of legal educators to create inclusive spaces and to model community dialogue.

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[33] The materials for this workshop included: Spencer Rand, *Social Justice as a Professional Duty: Effectively Meeting Law Student Demand for Social Justice by Teaching Social Justice as a Professional Competency*, 87 U. CIN. L. REV. 77 (2018), available at https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1255&context=uclr; Beth McMurtrie, *We Can't Ignore this Issue': How to Talk with Students About Racism*, CHRONICLE OF HIGHER EDUC. (June 18, 2020), https://www.chronicle.com/article/We-Can-t-Ignore-This/249001; Jesse Wegman, *We Are a Part of the Problem They Protest',* N.Y. TIMES (June 16, 2020), https://www.nytimes.com/2020/06/16/opinion/state-supreme-courts-racial-justice.html; *Teaching Black Lives Matter*, BROWARD COLLEGE LIBRARIES, https://libguides.broward.edu/blacklivesmatter/teaching#s-lg-box-8484830 (a database of racial disparities statistics, lesson plans, and other teaching materials); *Antiracist Clearinghouse Project*, *supra* note 27; Yang v. Hardin, 37 F.3d 282 (7th Cir. 1994); Walker v. City of Birmingham, 388 U.S. 307 (1967).

[34] The materials for this workshop included: *Implicit Association,* PROJECT IMPLICIT, https://implicit.harvard.edu/implicit (last visited March 16, 2021); TED, *Verna Myers: How to Overcome Our Biases? Walk Boldly Toward Them*, YOUTUBE (Dec. 15 2014), https://www.youtube.com/watch?v=uYyvbgINZkQ&feature=emb_title; Viji Sathy & Kelly A. Hogan, *Want to Reach All of Your Students? Here's How to Make Your Teaching More Inclusive*, CHRONICLE OF HIGHER EDUC. (July 22, 2019), available at https://www.chronicle.com/interactives/20190719_inclusive_teaching. Chris Gamrat, *supra* note 19; Seiter, *supra* note 19; Gray, *supra* note 20; Darling-Hammond & Holmquist, *supra* note 2, at 1–17; 64–67; *PSU Diversity, Equity & Inclusion Resources,* PENN STATE, https://pennstateoffice365.sharepoint.com/sites/DiversityEquityandInclusionResources (last visited March 16, 2021); *PSU Educational Equity*, PENN STATE, http://equity.psu.edu/ (last visited March 16, 2021); *LGBTQ+ Information for Faculty and Staff*, PENN STATE STUDENT AFFAIRS, https://studentaffairs.psu.edu/campus-community-diversity/lgbtq-community/lgbtq-information-faculty-and-staff (last visited March 16, 2021); ADE LANGUAGE GUIDELINES, *supra* note [xx]; *Inclusive Classroom Climate, supra* note [xx].

#4
Zoom-ing into the Future[35]

This workshop offered enhanced guidance on the remote teaching topics and formats introduced in Workshop #1, and provided demos of additional teaching technologies designed to enhance both remote and in-residence instruction, including: Zoom Break-Out Rooms, NearPod, Kaltura, CALI, random student selector app, YouTube & "the art of video sharing", ED Puzzle, Jamboard, and others.

#5
Using Formative Assessments to Merge Three Teaching Objectives: Honing Remote Teaching Best Practices + Building an Inclusive Classroom + Incorporating Racial Justice and Equality into the Curriculum[36]

This workshop gathered insights from our collective lessons learned from the Spring 2020 semester, and shared ideas for utilizing online formative and summative assessments, paying particular attention to the unique needs of our hybrid learning model for the Fall 2020 semester. In addition, this workshop built

[35] The materials for this workshop included: Sathy & Hogan, *supra* note 19; *Zoom Learning Path: For Hosts,* PENN STATE INFO. TECH., https://itld.psu.edu/learning-path/zoom-learning-path-hosts (last visited March 16, 2021); *Zoom: Questioning Strategies to Increase Engagement,* PENN STATE INFO. TECH., https://itld.psu.edu/training/zoom-questioning-strategies-increase-engagement (last visited March 16, 2021); *Syllabus Language for Online Courses,* https://docs.google.com/document/d/1ADvraUFcKgnrSdLCzafIfhFSEbOIsT-fTT5cjTkQVLE/edit.

[36] The materials for this workshop included: *Summer Webinar Series: Using Technology to Assist in Providing Meaningful Feedback*, ASS'N OF AM. L. SCHOOLS (June 24, 2020) [part of the AALS Section of Technology's Summer 2020 Webinar Series], available at https://www.aals.org/sections/list/technology-law-and-legal-education/2020techwebinar-tech-assist-providing-feedback/; Sahar Aziz, *Book Review: Stamped from the Beginning – The Definitive History of Racist Ideas in America by Ibram X. Kendi,* RACE AND THE L. PROF BLOG, (July 23, 2020), https://lawprofessors.typepad.com/racelawprof/2020/07/book-review-stamped-from-the-beginning.html; Nina A. Kohn, *Teaching Law Online: A Guide for Faculty*, J. OF LEGAL EDUC. (forthcoming 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3648536; Sathy & Hogan, *supra* note 19;
21-Day Racial Equity Habit Building Challenge, AMERICA & MOORE, https://www.eddiemoorejr.com/21daychallenge (last visited March 16, 2021); *Syllabus: 21-Day Racial Equity Habit-Building Challenge,* AM. BAR ASS'N, https://www.americanbar.org/groups/labor_law/membership/equal_opportunity (last visited March 16, 2021); *Section of Technology, Law & Legal Education,* ASS'N OF AM. LAW SCHOOLS (Aug. 17, 2016), https://www.aals.org/sections/list/technology-law-and-legal-education/; SALT, *Anti-Racism Frameworks into Core Law School Classes*, SALTLAW.ORG (July 30, 3:00 PM), https://www.saltlaw.org/salt-virtual-series-social-justice-in-action/.

on the discussions from Workshops #2 and #3, and provided additional examples of assessments that incorporate the national discourse on racial justice and equality and that created opportunities for students to practice the lawyer's role as a leader of inclusive community dialogue.

#6
An Open Discussion with Our Faculty Committees and Working Groups: Drawing Connections + Planning for the Year Ahead

This final workshop was designed to transition the ad hoc efforts into the more formal committee and governance structures. Committee and working group chairs (i) previewed their plans, programs, and ideas for the year ahead, and (ii) where appropriate, discussed how the work in the year ahead connects with or builds on the topics covered and questions raised in the summer workshops. The chairs of the following committees participated: Diversity and Educational Equity Working Group, Faculty Development Committee, Ad Hoc Committee on Race and Equal Protection of the Laws Program, 1L Faculty Working Group, and Wellness Committee.

In Summer 2021, we offered the workshop series again. The objectives for the second iteration were to build on the work of the 2020 summer workshop series and to adopt and embrace a growth mindset as legal educators. As such, the theme of the 2021 series was "becoming" – becoming more inclusive educators for all of our students, becoming more effective moderators and facilitators of discussions involving challenging subject matter, and becoming more dynamic mentors and guides for our students as they enter the legal profession and take on the responsibilities of being lawyers.[37]

Several features of the summer workshop series are noteworthy. First, the workshops were designed for faculty, staff, and administrators. For the reasons

[37] See Memorandum: Summer 2021 Teaching Workshop Series for Faculty and Staff (on file with author). The 2021 series included three workshops, one of which was a full-day workshop scheduled for the week before the start of the fall semester. The topics reflected the theme of "becoming":

#1 - Becoming Inclusive Educators
#2 - Becoming Effective and Inclusive Facilitators
#3 - Adopting a Growth Mindset as Educators and Preparing for the Year Ahead

Session #3 included a keynote address by Professor Meera E. Deo, author of UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA, and panels on: Evaluating Our Effectiveness as Teachers; Building Effective and Inclusive Assessments; Structuring Office Hours & Advising Opportunities to Support Our Students; and Creating Impactful Student Writing Projects.

discussed below[38], it was critical to involve the entire spectrum of legal educators in the equipping process.

Second, each workshop involved pre-workshop materials (readings, videos, and discussion questions), which were circulated and posted to a shared learning platform by the associate dean on the Friday before the date of the workshop session. This required researching, selecting, synthesizing, and sharing reading and other materials; the workshop leads were responsible for gathering the materials, and the associate dean sent gentle reminders when needed. This aspect takes time, lots of time. However, it serves a critical filtering and synthesizing function, and it is much appreciated by colleagues.

Third, the workshop sessions were recorded[39], and the videos and materials for each workshop were posted on a shared platform that all faculty and staff could access. This allowed faculty and staff to access the information if they were unable to attend the workshop, or to return to the recording if they wanted to re-consider or explore a topic further. In addition, it created a repository of teaching materials and ideas.

A fourth and final noteworthy aspect of the workshops was the intentional focus on creating a forum for honest assessment of our educational community's past failings while providing the resources needed to alter the law school's future course. As legal educators, we needed to reckon with the legacy of legal education as an enabler of racism, and with our institution's faults and failings, and with our own deficiencies. To accomplish this accounting, the workshops embraced a model that fostered risk taking, encouraged blunt feedback, created plenty of space for mistakes, and offered avenues for growth.

A more concrete example may be helpful. Most associate deans, whether for academic affairs or student services, have received complaints from students and colleagues about faculty or staff conduct that was racist, sexist, bigoted, or insensitive. Stories of such conduct may be discussed in individual meetings with affected students and faculty, or whispered about in hallways, or obliquely referenced in larger fora. They rarely, however, receive formal public acknowledgement. In our effort to conduct a candid audit, we decided to acknowledge and embrace these failings as opportunities

[38] See infra, at – (recommending broader definition of legal educator).
[39] As we reviewed feedback on the initial workshop series and planned for the 2021 summer series, several colleagues suggested that we reconsider the recording of the sessions. The feedback we received was that creating a record (even if accessible only by other colleagues) may inhibit frank discussion and may prevent colleagues from sharing the very questions and experiences that the workshop is designed to elicit and use as oophoritis for growth. As such, we have modified the recording aspect for the 2021 series to eliminate any recording of interactive exercises or components.

for engagement and growth. We labeled them "Inclusivity Challenges at Dickinson Law" and described the incidents as explicitly as possible without using individual, department, or course names, and we put them on a slide. And then we read each incident on that slide aloud and slowly. And then we sat for a bit in the silence and discomfort.[40] As noted by Aysa Gray, if the process of looking at ourselves in the mirror is "done honestly" it "won't be comfortable"[41] (and it wasn't). It will, however, lead to growth.

B. Create a Sustainable Model for the Future.

Let's be blunt. By the third workshop, I could almost hear the collective groan that went up when my email with the upcoming workshop materials reached my colleagues' inbox. There are two takeaways from this. First, your associate dean (or organizing colleague) needs to have a thick skin, and to keep their sights on the longer term goal. Many of the implementation tasks are messy, logistically challenging, and often unappreciated. This is important work and it takes sustained focus, and the passage of time. Second, invite others to be the planners and luminaries of the workshop. The associate dean can continue to serve in the coordinator role, because the time commitment tends to scare off many a well-intentioned faculty or staff colleague. However, the associate dean need not be the presenter for each session. Indeed, I highly recommend against that approach, for the sanity of your associate dean and the patience of your faculty and staff.

To create a sustainable model, that effectively deploys the bureaucratic, faculty governance, and faculty committee processes in support of Antiracist curricular efforts, be mindful of the "tax" on colleagues from racially and ethnically minoritized and marginalized communities. This tax is well-described and documented in the literature.[42] In 1994, Amado Padilla coined the label "cultural taxation" to describe "situations … imposed … by the administration, which assume that we are best suited for specific tasks because of our race/ethnicity or our presumed knowledge of cultural differences."[43] Almost 30 years later, an Above the Law post by Lawprofblog describes the barriers minority faculty continue to encounter in stark

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[40] See infra, note 64.
[41] Gray, *supra* note 20.
[42] *See e.g.*, MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA (2019); Carliss Chatman & Najarian Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISC. 2 (2021); Lawprofblawg & Darren Bush, *The Most Important Law Review Article You'll Never Read: A Hilarious (in the Footnotes) Yet Serious (in the Text) Discussion of Law Reviews and Law Professors*, 50 LOYOLA U. CHICAGO L. J. -- (2018); Amado M. Padilla, *Ethnic Minority Scholars, Research and Mentoring: Current and Future Issues*, EDUCATIONAL RESEARCHER (May 1994), https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1023.1075&rep=rep1&type=pdf.
[43] Padilla, *supra* note 37, at 26.

terms: "The extra service. The extra teaching. The tax on their status that often deprives them of the opportunities that white faculty have to write and research."[44]

It also is important to be aware of the "privilege payoff," which tends to benefit white, male colleagues, while furthering the adverse impacts of the "tax" on colleagues from racially and ethnically minoritized and marginalized communities. The Chronicle of Higher Education offered the following description of this payoff: "If minorities carry an invisible burden, those who hold dominant identities in the academy, exempted from such diversity work, find themselves getting ahead."[45] The article goes on to describe the challenge of inequitable service-related workloads, noting that "some professors are disengaged from these issues altogether. Realizing their careers depend on their success in publishing, obtaining grants, and research productivity, they leave the mentoring, sponsoring, and developmental nurturing to their largely minority, female, queer, and non-tenure-track peers."[46]

The implementation of an Antiracist curriculum is a community-wide project. It will not succeed if responsibility for its implementation rests solely on the shoulders of faculty and staff from racially and ethnically minoritized groups. Excellent resources exist offering ways to ameliorate the "tax" and "privilege" problems[47], however, there is no formula for striking the appropriate balance in every instance. Rather, law schools should acknowledge these burdens, create mechanisms that accurately reflect where the service responsibilities fall, and then adjust those responsibilities as necessary through recalibration efforts in the implementation process.

There are a number of ways to spread the responsibility and caretaking work involved in delivering an Antiracist curriculum. Specific mechanisms for sharing the curriculum and programming workload - with faculty and administrative colleagues, through committees, and with students - are discussed in further detail in Section V below. The important take away is to recognize the need for shared responsibilities and to develop a model that provides it.

V. NOURISHING AN ANTIRACIST CURRICULUM:

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44 Lawprofblawg, *Stopping Racism in Law Schools: A First Step*, ABOVE THE LAW (March 16, 2021), https://abovethelaw.com/2021/03/stopping-racism-in-law-schools-a-first-step/.

45 Richard Reddick, *Want to Combat the 'Privilege Payoff'? Here's How*, CHRONICLE OF HIGHER ED. (May 10, 2021), https://www.chronicle.com/article/want-to-combat-the-privilege-payoff-heres-how?cid2=gen_login_refresh&cid=gen_sign_in.

46 *Id.*

47 Kerry Ann O'Meara, Audrey Jaeger, Joya Misra, Courtney Lennartz, Alexandra Kuvaeva, *Undoing disparities in faculty workloads: A randomized trial experiment*, PLOS ONE, Dec. 19, 2018, at 1, 10 ; Richard Reddick & Katie Ortego Pritchett, *"I Don't Want to Work in a World of Whiteness:" White Faculty and Their Mentoring Relationships with Black Students*, 8 J. OF THE PROFESSORIATE 54, 76 (2016).

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LESSONS LEARNED AND THE WORK AHEAD

It goes without saying that there is much work to be done in achieving a truly Antiracist posture, work to be done in our nation, in our institutions, and in ourselves. As noted by one of my colleagues, it "is a process of knowledge acquisition, leadership, and sustained commitment to action."[48] There is no one method or particular approach to building an Antiracist educational community. In closing, this article offers guidance on how to continue the important work that is underway and how to create a sustainable commitment to the delivery of an Antiracist curriculum. The path from commitment to implementation has involved bumps and curves, some anticipated and others unexpected. The recommendations offered below are by no means an exhaustive list. Nor do they provide guarantees of success. They do, however, build on our experiences at Penn State Dickinson Law over the past year, and hopefully offer a course of action for those starting out on this path.

A. Broaden the Definition of Legal Educators to Include Staff in the Antiracist Curricular Mission.

This is not and cannot be a faculty-only enterprise. We should be intentional about using the term "legal educators" in a manner that includes full-time faculty, adjunct faculty, administrators, and staff. Each group has an important role to play in educating our law students. Indeed, our students may come into contact with our staff and administrative colleagues more frequently than they do with our faculty colleagues. An effective associate dean for academic affairs recognizes the importance of partnering with colleagues in the offices of admissions, alumni, career services, development, facilities, information technology, and student services. These partnerships become all the more essential when the task is to build a sustainable Antiracist curriculum. Occasionally (and possibly more frequently than we care to admit), the most impactful teachable moments occur outside the classroom walls. Indeed, anecdotal findings suggest that law school staff tend to participate more frequently in training and certification programs, and attend more comprehensive training and certification programs, than their faculty colleagues, particularly in the areas of implicit bias; diversity, equity, and inclusion; identity formation, and intersectionality.[49] To nourish an Antiracist curriculum, the associate dean needs to be intentional in identifying areas of collaboration for faculty, staff, and administrators, and to look beyond the classroom for Antiracist teaching moments.

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[48] Conway et al., *supra* note 3, at 38.

[49] Of course, a quantitative count of trainings attended or certifications acquired does not provide a conclusive assessment. However, the point here is to recognize what this data may indicate about touchpoints for adopting an Antiracist pedagogy across the law school building. In addition, it may provide helpful information and transparency as a law school attempts to measures its process toward its goals.

Below are two examples of how law schools have operationalized this concept. The Minority Student Program (MSP) at Rutgers Law School is an example of how legal educators, inside and outside the classroom, implement the work of Antiracist teaching in a way that supports law students while also impacting the legal profession. The MSP was founded "after the 1967 uprisings that shook a number of American cities, including Newark" with the goal of "[r]ecognizing the need for a meaningful response to the immense social and legal challenges of our nation and Newark in particular."[50] According to the program's website, "the MSP has been instrumental in advancing our commitment to provide access to legal education to those historically under-represented in the legal profession, namely, people who have faced racial and ethnic discrimination, socioeconomic challenges, educational disadvantages, and lack of resources." It accomplishes these objectives through a mix of activities and programs inside the classroom, in extra-curricular programs, and beyond the walls of the law school. These include: legal skills development, academic support, alumni mentoring and networking, internships, and other opportunities to connect with and impact the legal profession.[51]

A second example can be found in the programs offered by other administrative offices in the law school. For example, Dickinson Law's Office of Student Services, in partnership with student groups and other administrative offices, provided speakers and programs across the academic year in honor of various heritage and history months, recognition days, and current events. Below is a sampling:

- Black History Month: Derrick Johnson, President and CEO of the NAACP, presented "Make Black History Month All Year Long"[52]

- Women's History Month: Jasmine Rand, Attorney to the Trayvon Martin and Michael Brown Families and International Legal Team Member to the George Floyd Family, presented "Oppression of Equality: Being the Only Women in the Room"[53]

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[50] Rutgers Law School, *Minority Student Program Today,* https://law.rutgers.edu/minority-student-program-today (last visited Oct. 25, 2021).
[51] *Id.*.
[52] Dean Dodge, *Keynote Speaker for Black History Month: Derrick Johnson, President and CEO of the NAACP*, DICKINSON LAW ANNOUNCEMENTS (Jan. 8, 2021), https://sites.psu.edu/dickinsonlaw/2021/01/28/keynote-speaker-for-black-history-month-derrick-johnson-president-and-ceo-of-the-naacp/.
[53] Dean Dodge, *Save the Date: Women's History Month Programming in March*, DICKINSON LAW ANNOUNCEMENTS (Feb. 22, 2021), https://sites.psu.edu/dickinsonlaw/2021/02/22/save-the-date-womens-history-month-programming-in-march/.

- Women's History Month: Michelle A. Travis, Professor of Law at the University of San Francisco School of Law, presented "Gender Equity and Work/Family Integration in a Post-Pandemic World"[54]

- Asian American and Pacific Islander Heritage Month: Rose Cuison-Villazor, Vice Dean, Professor and Chancellor's Social Justice Scholar at Rutgers Law School, presented "'#StopAsianHate': Asian Americans, Pacific Islanders and the Legacy of Resilience Against Violence and Discrimination"[55]

- Native American Heritage Month: Angelique EagleWoman, Professor of Law and Co-Director, Native American Law and Sovereignty Institute, Mitchell Hamline School of Law, presented "Tribal Nations and U.S. Treaties: The Rule of Law, The Supremacy Clause, and Permanent Homelands"[56]

- Hispanic Heritage Month: "Voices of Latinx Dickinson Law Alums"[57]

- Remembrance and Moment of Solidarity for Black Lives (featuring speakers from the faculty, student body, alumni and community)[58]

- How to Survive and Grow as a Law School Parent Right Now, featuring Lauren Smith Brody, author and creator of *The Fifth Trimester* (offered in partnership with the University of San Diego

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[54] Dean Dodge, *Save the Date: Women's History Month Programming in March*, DICKINSON LAW ANNOUNCEMENTS (Feb. 22, 2021), https://sites.psu.edu/dickinsonlaw/2021/02/22/save-the-date-womens-history-month-programming-in-march/.
[55] Dean Dodge, "*#StopAsianHate*': *Asian Americans, Pacific Islanders and the Legacy of Resilience Against Violence and Discrimination*" *Lecture on April 19,* DICKINSON LAW ANNOUNCEMENTS (Apr. 10, 2021), https://sites.psu.edu/dickinsonlaw/2021/04/10/racismisavirus-asian-americans-pacific-islanders-and-the-legacy-of-resilience-against-violence-and-discrimination-lecture-on-april-19/.
[56] Dean Dodge, *Native American Heritage Month Keynote Speaker Prof. Angelique EagleWoman on Nov. 5,* DICKINSON LAW ANNOUNCEMENTS (Oct. 30, 2020), https://sites.psu.edu/dickinsonlaw/2020/10/30/native-american-heritage-month-keynote-speaker-pr-of-angelique-eaglewoman-on-nov-5/.
[57] Dean Dodge, *Today at 12:30 p.m. ET "Voices of Latinx Dickinson Law Alums: A Celebration of Hispanic Heritage Month,* DICKINSON LAW ANNOUNCEMENTS (Oct. 7, 2020), https://sites.psu.edu/dickinsonlaw/2020/10/07/today-at-1230-pm-et-voices-of-latinx-dickinson-law-alums-a-celebration-of-hispanic-heritage-month/.
[58] Dean Dodge, *TODAY: Remembrance and Moment of Solidarity for Black Lives,* DICKINSON LAW ANNOUNCEMENTS (Apr. 20, 2021), https://sites.psu.edu/dickinsonlaw/2021/04/20/today-remembrance-and-moment-of-solidarity-for-black-lives/.

School of Law, Fordham Law School, and other partner institutions)[59]

- Constitution Day Address: Ibram X. Kendi, Andrew W. Mellon Professor in the Humanities at Boston University and Director and Founder of the Center for Antiracist Research, presented "How to Be an Antiracist"[60]

- American Bar Association and Law Library of Congress 19th Amendment Exhibit at Dickinson Law[61]

- National Coming Out Day, Stand Up Comedy by Liz Glazer[62]

These events provide opportunities to hear and understand the stories of others, and in that function, they support two of the initial phases in the process of becoming Antiracist educators: listening and learning.[63] Various administrative offices at law schools, including those engaged in student services, career services, admissions, and diversity, equity, and inclusion, provide similar programming throughout the academic year. Providing such programming is not a novel or new recommendation. The focus here is to encourage law schools to be *intentional* about recognizing these extra-curricular programs as important components in the adoption of Antiracist curriculum, and the creation and maintenance of an Antiracist educational community.[64]

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[59] *This Friday: How to Survive and Grow as a Law School Parent Right Now,* DICKINSON LAW ANNOUNCEMENTS (Mar. 15, 2021), https://sites.psu.edu/dickinsonlaw/2021/03/15/this-friday-how-to-survive-and-grow-as-a-law-school-parent-right-now/.
[60] Dean Dodge, *Today: Celebrate Constitution Day,* DICKINSON LAW ANNOUNCEMENTS (Sept. 16, 2020), https://sites.psu.edu/dickinsonlaw/2020/09/16/today-celebrate-constitution-day/.
[61] *Id.*
[62] *Third Thursday This Week: Stand Up Comedy by Liz Glazer.* DICKINSON LAW ANNOUNCEMENTS (Oct. 11, 2020), https://sites.psu.edu/dickinsonlaw/2020/10/11/third-thursday-this-week-stand-up-comedy-by-liz-glazer/.
[63] *Law Deans Antiracist Clearinghouse Project,* THE ASSOCIATION OF AMERICAN LAW SCHOOLS https://www.aals.org/antiracist-clearinghouse/.
[64] Of course, curriculum development is only one component, working in concert with others, in the larger project of building an Antiracist law school. This larger project, and the admissions component, are explored in a companion article prepared by Danielle Conway, Rebekah Saidman-Krauss and Rebecca Schreiber. See Conway et al., *supra* note [xx], at [xx] ("The knowledge acquisition of systemic inequity and its adverse impacts on the community have been approached from various vectors including, but not limited to: (1) faculty and staff teaching and learning together as a distinct constituency prior to receiving new community members, (2) explicit assignments and charges to committees comprised of students, staff, faculty, and administrators to evaluate and audit the functions of the institution to develop baselines to measure institutional progress toward a cultural shift in Antiracist teaching and learning; and (3) intentional engagement in Antiracist teaching and

B. Utilize the Committee Structure and Annual Charges to Expand Antiracist Teaching Programs Across the Academic Year.

The time and energy required to support and grow an Antiracist curriculum cannot be borne by one individual or even one department. It is a shared enterprise. There are numerous ways to disperse these responsibilities across the law school, and this section offers examples that build on existing faculty governance and committee structures. The takeaway here is to utilize annual charges to faculty and staff committees and working groups to expand opportunities for Antiracist teaching and curriculum development programs across the entire academic year.

At the general level, consider including with the annual committee assignments memorandum a charge to all faculty and staff, reminding them of the law school's commitment to provide an Antiracist curriculum. For example:

> The faculty of Penn State Dickinson Law herein resolves to incorporate more opportunities for students to learn about and discuss racism and inequality in the curriculum. The faculty further resolves to develop and require students to participate in co-curricular programs that instill in students an abiding appreciation of, and eagerness to defend, the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and to cultivate within students, a principled, enduring commitment to work for true equality in our society over the course of their careers.[65]

At the more focused level, include discrete tasks and responsibilities relating to the implementation of an Antiracist curriculum as charges to individual committees. For example, the charge to the curriculum committee might include: developing new courses and programs designed to embrace inclusive teaching practices and Antiracist pedagogy; cataloging or mapping the Antiracist curricular touchpoints and learning objectives of each course; revising the course proposal form to include Antiracist learning objectives; and reviewing the list of courses that count toward a particular certificate or graduation requirement. The charge to committees focused on diversity, equity and inclusion may involve: preparing an annual implementation plan at the start of each academic year and then presenting a written end of year report that summarizes curricular and co-curricular activities

learning through investments in DEI pipeline programs, like CLEO, the required year-long "Race and Equal Protection of the Laws" 1L course, and the new, program enhancing social justice certificate.")

[65] For the 2020-2021 academic year, Dickinson Law included the full text of the relevant faculty resolutions at the start of the committee assignment memorandum as a way to reaffirm its commitments. It plans to continue to do so for the foreseeable future.

undertaken in the past year and measures or assesses their effectiveness; providing one training per semester on implicit bias; hosting a faculty, staff, and student book club focused on social justice literature; sharing ideas for assignments or classroom activities designed to identify and deconstruct examples of institutional racism. The charge to committees focused on teaching and faculty development could include: designing workshops on inclusive teaching practices and learning environments; organizing workshops for junior scholars in critical legal theory studies; and creating works-in-progress events for scholars of Antiracist pedagogy.

C. Involve Students Leaders Without Burdening Them.

In its "Statement and A Call to Action", the Black Law Students Association of Penn State Dickinson Law asked the school to "provide measures and opportunities to acknowledge and discuss the injustices that go on in the U.S. and biases that occur within the law school community."[66] The students offered to facilitate discussions and work with the faculty and administration on planning. As we started to develop a way forward, my initial instinct was to involve our Black students and our students of color in every phase of the planning and implementation. A few days later, one of my colleagues sent me an email with link to an Instagram post labeled "To My White Friends: Guilt, Shame, Embarrassment."[67] It caused me to reevaluate the role we were asking our student leaders to play in this effort. Students from racially and ethnically marginalized and minoritized groups often come to law school carrying a tremendous weight, a weight resulting from generations of institutional racism, embedded biases, and caste-system[68] expectations. And then we (their teachers and mentors) pile on to that weight by asking them to lead in tumultuous times, to come up with ideas and solutions to systemic racism in our institutions, and to help us address our own failings. To save ourselves from feelings of discomfort and distress as educators, we too often shift the responsibility for problem identification and action in our law schools to our students of color, and particularly to our Black students. This is not fair, and it must stop. The development and implementation of an Antiracist curriculum should be a shared endeavor, engaging students, faculty and staff in the planning, design, implementation, and assessment processes. We must, however, be thoughtful about gathering student input, creative about providing avenues for student engagement, and intentional about where the responsibilities lie. There is no magic formula for striking the appropriate balance, but awareness of the potential burden is essential.

D. Develop the Infrastructure for Accountability.

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[66] Dickinson Law BLSA (@dickinsonlawblsa), INSTAGRAM (May 31, 2020), https://www.instagram.com/p/CA3ACBypEV4/?utm_source=ig_web_copy_link.
[67] Brandon Kyle Goodman (@brandonkgood), INSTAGRAM (June 2, 2020), https://www.instagram.com/tv/CA8zJQWDYWx/?igshid=7motq7lk5hil.
[68] ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS (2020)

As the curricular design fell into place, the need to create an infrastructure for accountability became evident. There are two aspects to accountability: responsible entities and mechanisms. Accountability mechanisms ensure the delivered good matches the promised good and creates tools for addressing failings or deviations from the initial objectives. Responsible entities provide institutional knowledge and a coordination point for information sharing and distribution. Accountability mechanisms come in a variety of types and formats, and responsible entities can be exclusive or shared undertakings. As noted above, existing committee and staff governance structures may provide a simple way to incorporate accountability mechanisms. These can be in the shape of annual assessment systems. For example, a committee charge might include preparing an annual plan for the implementation of Antiracist curricular and co-curricular initiatives at the start academic year; providing a mid-year update on the status of the initiatives; and preparing an end-of-year report summarizing the initiatives and other activities undertaken that year and assessing their effectiveness. These accountability mechanisms also could include less frequent but more comprehensive auditing opportunities. For example, an ad hoc committee could be appointed to conduct a detailed study, every three or five years, evaluating the law school's implementation of its Antiracist curricular plan.

E. **Recalibrate as Needed**.

One of the challenges associated with this work, this project of creating and sustaining an Antiracist curriculum, is to find the learning sweet spot, the place where we bring students to the edge of discomfort and we encourage them to question and to reconsider - and possibly to abandon - what they thought they knew.[69] Of course, that sweet spot is fragile and it moves as the students move through the phases of acknowledgment, and understanding. The learning sweet spot is not unique to

[69] See Boler, M. (1999) *Feeling power: emotions and education.* New York, Routledge (describing "pedagogy of discomfort"). Utilizing a "pedagogy of discomfort" allows educators and students to distill engrained beliefs, values and ways of thinking in an effort to unpack how both educators and students have come to view the world. *See e.g.*, Boler, M. (1999) *Feeling power: emotions and education.* New York, Routledge; Boler, M. & Zembylas, M. (2003) Discomforting truths: the emotional terrain of understanding differences, in: P. Tryfonas (Ed.) *Pedagogies of difference: rethinking education for social justice.* New York, Routledge; Coulter, S., Campbell, J., Duffy, Joe & Reilly, I (2013) Enabling Social Work Students to Deal with the Consequences of Political Conflict: Engaging with Victim/Survivor Service Users and a 'Pedagogy of Discomfort'. Social work Education – the International Journal. Vol 32 (4) 439-452; Zembylas, M. & Boler, M. (2002) On the spirit of patriotism: challenges of a 'pedagogy of discomfort', *Teachers College Record Online.* Available online at: http://www.tcrecord.org/ Content.asp?ContentID = 11007; Zembylas, M & McGlynn, C (2012) Discomforting pedagogies: Emotional tensions, ethical dilemmas and transformative possibilities. *British Educational Research Journal.* Volume 38 (1) pp. 41–59.

students; the Antiracist education of the faculty and staff also takes time, focus, and constant re-evaluation. As such, the ability to recalibrate is critical to these endeavors.

An important aspect to recalibrating is to acknowledge on-going and evolving debates about the contours and outlines of Antiracist pedagogy. As noted above,[70] the need to re-align and re-envision legal education is well-documented and undisputed. The question this essay attempts to answer is not *whether* law schools should engage in this re-alignment, but *how* best to accomplish this task. Part of the "how" task involves considering what constitutes Antiracist pedagogy. These definitional debates are occurring inside[71] and outside the legal academy, and have filtered into the national media in the past year.[72] These are important discussions and should continue. In many ways, these debates are similar to curricular debates that occur regularly in all educational settings, and can be particularly caustic among law school curriculum committees. The point is not to declare the debate over, or to set in finite terms and for infinity the definition of a particular concept; rather (and it seems almost too obvious to state this) the goal is to engage in rigorous and informed discussion and reflection, and to allow room for evolved thinking and conceptual development. While law schools should continue to engage in these conversations, a note of caution is warranted: do not let the definitional debates unduly delay implementation of an Antiracist curriculum. As noted above, becoming Antiracist educators is an iterative and gradual journey. The curricular processes should be viewed through a similar lens, such that perfect agreement is not necessary to start the journey.

There are a number of ways to build re-calibration into the Antiracist curriculum implementation plan.[73] It can be incorporated from the outset by creating annual auditing mechanisms, as described in the section above. For example, pair an annual plan that sets expectations and measurable objectives for the year ahead with an end-of-year report that evaluates progress toward those objectives. Use the end-of-

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[70] *See supra*, p. --, n. --.

[71] *See* Symposium on Race & The Law: A Review on Building an Antiracist Curriculum and Law School (hosted by *Rutgers Race & the Law Review*, April 12, 14 & 16, 2021), https://www.rutgersracelawreview.org/symposium.

[72] *See* Jarvis R. Givens, *What's Missing from the Discourse about Anti-Racist Teaching*, THE ATLANTIC (May 21, 2021), https://www.theatlantic.com/ideas/archive/2021/05/whats-missing-from-the-discourse-about-anti-racist-teaching/618947/ (noting that current debate in media misunderstands and irresponsibly clumps together "anti-racist teaching, critical race theory, ethnic studies, and anything else involving the systematic study of race and racism" into "one heap of race-talk mumbo jumbo"); *See also* Sean Illing, *Is there an uncontroversial way to teach America's racist history?*, VOX (June 11, 2021, 8:30 AM), https://www.vox.com/policy-and-politics/22464746/critical-race-theory-anti-racism-jarvis-givens ("The main issue is that it's not clear what these concepts mean, as tends to happen when ideas (à la postmodernism) escape the confines of academia and enter the political and cultural discourse.").

[73] *See Antiracist Clearinghouse, supra* note 4, at 8-10 (describing "audit reporting" and "iterative" phases of becoming Antiracist legal educators).

year report to honestly assess the curricular achievements and failures, and as a launch pad for identifying objectives to be included in the annual report for the upcoming academic year. The type of audit or assessment device used is not critical; what is essential is to engage in continuous assessment, and be willing to evolve.

In these efforts, be prepared to re-calibrate, to move forward, then backwards a bit, then sideways, and then forward again. This is not a linear process, nor a check the box exercise. It requires vigilance, and a willingness to continuously identify, describe, and dismantle racism.[74]

CONCLUSION

In closing, I share the following provision from the Preamble to the ABA Model Rules of Professional Conduct:

> As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession ... In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

As legal educators, we must instill in our students that sense of duty to the rule of the law and give them concrete examples of how lawyers further the public's understanding of our constitutional democracy, as navigators of complicated legal frameworks, as advocates for access, and as conduits for improvement of the law. To do so, law schools must remind students of the fragility of our system of government, and the reliance it places on all citizens. Upon walking out of Independence Hall in 1787, an onlooker supposedly asked Benjamin Franklin what form of government have you given us, to which he famously replied "a Republic, if you can keep it."[75]

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[74] IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 10 (2019) ("The only way to undo racism is to consistently identify it and describe it—and then dismantle it.").
[75] *See* Gillian Brockell, *'A Republic, if You Can Keep it': Did Ben Franklin Really Say Impeachment Day's Favorite Quote*, WASH. POST (Dec. 18, 2019, 6:36 PM), https://www.washingtonpost.com/history/2019/12/18/republic-if-you-can-keep-it-did-ben-franklin-really-say-impeachment-days-favorite-quote/ (providing background on origins of Franklin's quote).

As noted at the outset of this article, legal educators are uniquely positioned at "the nexus of power and understanding necessary for change."[76] It is our responsibility to equip our students with the tools needed to "keep" the republic. It is equally our responsibility to instill in our students an understanding of the role lawyers play in honestly assessing the law, in calling out its failings, and most importantly in seeking to correct them. To do this effectively, legal educators must embrace an Antiracist curriculum and pedagogy, and the administrators among us must do all we can to lay the groundwork for that embrace.

[76] Darling-Hammond & Holmquist, *supra* note 2, at 9.