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## **Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success**

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**D R A F T**

As of August 17, 2021

Forthcoming in the *Rutgers Race and the Law Review*  
Symposium on Race & The Law: A Review on Building an Antiracist Curriculum and Law School  
To be held [April 12](#), [April 14](#), and [April 16](#), 2021  
Please do not cite until this article is in final form

## **Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success<sup>‡</sup>**

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Bekah Saidman-Krauss, Associate Dean for Admissions and Financial Aid  
Rebecca Schreiber, Director of Admissions and Financial Aid

### **Abstract**

Structural problems, such as institutional racism and bias, require structural solutions. White people in the legal academy are only now reckoning with the reality of systemic racism within our hallowed halls, an insidiousness that many People of Color in the legal academy have always known. Yes, racism and bias are pervasive in our teaching, learning, service, and leadership environments.

This article is one of three interdependent articles authored by Penn State Dickinson Law faculty and staff. 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: Amy Gaudion, “Exploring Race and Racism in the Law School Curriculum: an Administrator’s View on Adopting an Antiracist Curriculum;” and Dermot Groome, “Exploring Race and Racism in the Law School Curriculum: Educating Antiracist Lawyers.”

This reckoning is the result of the intersecting crises of a global pandemic, which is disproportionately impacting Black and Brown people; a full-throated social movement demanding racial equality following 2020’s cascade of murders of, among others, Ahmaud Arbery, Breonna Taylor, and George Floyd; and a presidential election in which voter suppression was on full display, and a then sitting president’s apocryphal untruths regarding the election process sped up the need to address systemic inequities hampering the legal academy’s ability to transform legal education to truly deliver on its vision to promote the rule of law and equal justice for all.

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<sup>‡</sup> This article is one of three interdependent articles authored by Penn State Dickinson Law faculty and staff. These articles are meant to be read together to chart the vision and implementation of the path toward building an Antiracist law school and providing a template for an Antiracist legal academy and legal profession.

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During these cataclysmic events, the faculty and staff of Penn State Dickinson Law exercised leadership by leaning into the hydra-headed economic, social, and political storm of 2020 to declare unanimously their intention to act and implement Antiracist teaching and learning methods at the law school. Faculty and Staff did not anticipate the resonance that these actions would have on colleagues—including students, staff, faculty, administrators, and alumni—in the legal academy.

Our positions as faculty and staff in the legal academy and as attorneys in the legal profession are inherently ones requiring us to exercise leadership. In the legal profession, the defining aspects of leadership are heightened by duty, accountability, and a sworn obligation to act equitably, transparently, and with integrity. It was integrity that motivated Penn State Dickinson Law faculty and staff to take such an unprecedented, yet necessary position against systemic racism and bias, not just for the institution but for the academy and for the profession.

Penn State Dickinson Law acknowledged its 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. In service to the ongoing commitment to eradicate racism and bias, Penn State Dickinson Law is immersed in the work of constructing an Antiracist law school.

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## I. Introduction

Penn State Dickinson Law has been leading with an Antiracist admissions philosophy and corresponding plans for implementation before the COVID-19 pandemic of 2020. Arguably, this approach to diversity, equity, and inclusion (DEI) was not identified explicitly as a vision priority for the law school until July 2019, when Dickinson Law welcomed Danielle M. Conway as the first Black Dean and first woman Dean in the law school's 186-year history. Dean Conway outlined four vision priorities to accomplish within her first five years at Dickinson Law. Vision priority number two calls upon the law school's administrators to move the needle substantially on DEI within the student body and among faculty and staff. While Admissions Team members were eager to embrace the worthy objective of Antiracist enrollment management, their efforts were aided by the cultural shift happening within the larger context of the Dickinson Law community. The three central elements integral to Antiracist enrollment management at Dickinson Law include: (1) embracing visionary leadership with clear prioritization of DEI goals; (2) utilizing data-driven recruitment and strategic resource allocation; and (3) explicitly articulating cultural shifts within the law school community (see Proposals 2 and 3) to prospective students.

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 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.

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## II. Embracing Visionary Leadership with Clear Prioritization of DEI Goals

### A. A View on Transformative Leadership

Leadership is dimensional, situational, and positional. It is a concept that is both abstract and pliable. It is also forged by internal, liminal, and external forces that, when exerted, move an object or a scenario in either expected or unexpected ways. It is the trusting and understanding of the self, the knowledge of the surrounding landscape, the prescience to see and evaluate what lies ahead, the courage to vision toward a sustainable future, the capacity to develop colleagues committed to serving the vision and the mission, the wisdom to learn from past successes and failures, the fortitude to adapt to changing circumstances, and the resilience to navigate through crucible experiences with humility that all work together to animate leadership.

Our positions as staff, faculty, and administrators in the legal academy and as attorneys in the legal profession are inherently ones requiring us to exercise leadership. Specifically, in the legal profession, the defining aspects of leadership are heightened by duty, accountability, and a sworn obligation to act equitably, transparently, and with integrity.<sup>1</sup> This is what is required of leaders in the legal profession and in the legal academy under “normal” circumstances.

It is that word normal that has been upended for members of society at different times in history up to this moment. For those First Peoples at the time of their first contact with settlers, normal was upended by conflict, conquest, and subordination. For those indentured and taken to far off places, normal was upended by servitude, poverty, and oppression. For those who were stolen from their homes and enslaved, normal was upended by bondage, torture, racism, and inhumanity. In this most recent era of the upending of normal, we continue to grapple with and suffer under the maladies cited above, while presently and viscerally experiencing intersecting cataclysmic events that

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<sup>1</sup> See ABA model Rules of Professional Conduct, Preamble and Scope, available at [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/) (last visited Mar. 4, 2021).

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are testing our leadership in society, generally, and in the legal academy and in the profession, specifically. The underbelly of the American capitalist democracy has exposed the prevalence of our nation’s complicity in propping up white supremacy, structural racism, and oppression and inequality. Discussing the landscape of racial inequality generally is a necessary predicate to understanding and appreciating the steps being taken by Penn State Dickinson Law to lead a movement inside and outside of the legal academy to embed systemic equity in American law teaching and learning in support of a sustainable democracy that gives true meaning to the ideal of “justice and liberty for all.”

The intersecting crises of a global pandemic, which is disproportionately impacting Black and Brown people;<sup>2</sup> a full-throated social movement demanding racial equality following 2020’s cascade of murders of, among others, Ahmaud Arbery, Breonna Taylor, and George Floyd;<sup>3</sup> and a presidential election in which voter suppression was on full display,<sup>4</sup> and a then sitting president’s apocryphal untruths regarding the election process sped up the need to address systemic inequities hampering the legal academy’s ability to transform legal education to truly deliver on its vision to promote the rule of law and equal justice for all.<sup>5</sup> But the legal academy and, frankly, the entire educational enterprise in this nation have failed to engage with the real history of our nation—a nation built on slavery, reinforced by law and by racism, and networked to perpetuate white hierarchy and privilege while simultaneously reproducing false racialized narratives and odious stereotypes to calcify social, political, and economic caste throughout American society.

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<sup>2</sup> See World Health Organization Director-General’s opening remarks at the media briefing on COVID-19 – 11 March 2020, available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020> (last visited Jan. 29, 2021).

<sup>3</sup> See Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020),

<https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

<sup>4</sup> See Vann R. Newkirk, II, *Voter Suppression is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>; Adam Hill, *The Voting Disaster Ahead: Intentional voter suppression and unintentional suppression of the vote will collide in November*, ATLANTIC (June 30, 2020), <https://www.theatlantic.com/politics/archive/2020/06/voter-suppression-novembers-looming-election-crisis/613408/>.

<sup>5</sup> See Jeffrey Toobin, *Protecting the Vote*, NEW YORKER (Sept. 28, 2020), <https://www.newyorker.com/magazine/2020/10/05/ending-trumps-assault-on-the-rule-of-law>.

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## **B. A Brief Contextual History of Race, Lawyer Formation, and the Legal Profession in America**

Lawyers were active in the founding of the American Republic,<sup>6</sup> a nation built on slavery;<sup>7</sup> as such, the profession of law and the legal academy have been and continue to be complicit in supporting and perpetuating systemic inequities. “In the colonial period and well into the 20th Century, law practice was exclusively a profession for white men.”<sup>8</sup> Slavery, slave codes, Jim Crow, lynching, the Nadir, antiblack racism, Jane Crow, and oppression permeated the fabric of American society, with the legal profession serving as the architect of the scaffolding of society. The oldest court in North America, the Commonwealth of Pennsylvania Supreme Court, was founded in 1684, and it, like subsequently established courts, regulated attorney admission to the bar.<sup>9</sup> In the 18<sup>th</sup> Century, the preferred method for preparing for law was acceptance to and attendance at one of the Inns of Court in England.<sup>10</sup> Those who could not afford to travel to England and study in the Inns stayed in the colonies and paid a fee for the privilege to apprentice with lawyers practicing in the colonies, in their judicial districts and counties.<sup>11</sup>

The apprenticeship model was, by definition, decentralized and instruction, focused on practical training, was far from uniform.<sup>12</sup> This decentralization led to lawyer protectionism and balkanization of the practice of law, with a multitude of restrictions affecting a practitioner’s admission to the bar.<sup>13</sup> Competing with the practical training

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<sup>6</sup> See Thomas G. Wilkinson, Jr. & Roger B. Meilton, *Supervising and Regulating the Practice of Law in The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017*, p. 73 (John J. Hare ed., The Pennsylvania State University Press, 2018).

<sup>7</sup> See John Hope Franklin, *From Slavery to Freedom*, pp. 194-95 (McGraw-Hill, 2011); see also John P. Kaminski, *A Necessary Evil?: Slavery and the Debate Over the Constitution*, p.4 (Madison House, 1995).

<sup>8</sup> See Thomas G. Wilkinson, Jr. & Roger B. Meilton, *Supervising and Regulating the Practice of Law in The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017*, p. 82 (John J. Hare ed., The Pennsylvania State University Press, 2018).

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*



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model represented by the apprenticeship model was the Harvard model that sought to professionalize legal education within the university and within the legal profession by deemphasizing the practical training of lawyers and underscoring the teaching of the science of law by scholars.<sup>14</sup> As this battle for primacy of law preparation waged, slavery, and its enforcement in law, kept enslaved and free Black men and women out of the profession; subordination and Jane Crow kept all women out of the profession.<sup>15</sup> In the 19<sup>th</sup> Century, except for a relatively small number, racism and oppression continued to deny to Black people and women the opportunity to apprentice into the profession, attend law school, and gain admission to the bar.<sup>16</sup>

Remarkably, Macon Bolling Allen secured a foothold into the legal profession by becoming the first African American to be admitted to practice law in the United States, with his admission to the Maine Bar in 1844.<sup>17</sup> His admission came only 24 years after Maine became a free state by enactment of the Missouri Compromise of

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<sup>14</sup> See Rayman L. Solomon, Law Schools in Dictionary of American History, available at Encyclopedia.com <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/law-schools> (last visited Feb. 27, 2021).

<sup>15</sup> See Thomas G. Wilkinson, Jr. & Roger B. Meilton, Supervising and Regulating the Practice of Law in The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017, p. xx (John J. Hare ed., The Pennsylvania State University Press, 2018).

<sup>16</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xx (University of Pennsylvania Press, 1993).

<sup>17</sup> See *id.*; According to Professor J. Clay Smith, Jr., “the American black lawyer originated” in Maine. Practicing the fundamental principle of equality, Maine has the distinction of being the first state to admit the first black lawyer”—**Macon Bolling Allen**—to the bar. This was extraordinary leadership by Maine and its citizens because the admission of Macon B. Allen to the bar of the learned profession of the law in 1844 preceded the infamous United States Supreme Court decision in *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, authored by Chief Justice Roger Brooke Taney in 1857. As well, the decision to admit Macon B. Allen preceded the expansion of slavery in the southern and western states leading up to the Civil War.

Macon B. Allen’s admission to the bar was made possible by the sponsorship of **General Samuel Fessenden**. General Fessenden, born in Freyburg, Maine, was an attorney, a scholar, an American abolitionist, politician, and a militiaman elected to the rank major general. At the time, eligibility for admission to the bar rested on citizenship and the production of a certificate of good moral character. Because Macon B. Allen was a native of Indiana, he applied for admission by examination. With the support of Fessenden and the reliance on his own intellect and hard work, Macon B. Allen passed the examination and was admitted in 1844.



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1820, while Missouri entered the Union as a slave state.<sup>18</sup> Allen achieved this remarkable feat at a time when the overwhelming majority of Black people, four million out of 4.5 million, were constitutionally enslaved.<sup>19</sup> Throughout the 19th Century, most law schools taught few or no Black people, except at Historically Black law schools.<sup>20</sup> Howard University School of Law was established in 1869, with a mission to graduate Black lawyers who knew their responsibility was to “emancipate and to protect the interests of [B]lack people and to interpret the newly won rights of [B]lack citizens under the amended Constitution.”<sup>21</sup>

### **C. Race and the Regulation of Legal Education**

Nine years after the founding of Howard University School of Law, the American Bar Association (ABA) was founded in 1878.<sup>22</sup> The ABA founded the Association of American Law Schools (AALS) as an auxiliary organization in 1900.<sup>23</sup> Between 1890 and 1920, free standing law schools, many with part time evening programs enrolled Black, immigrant, and Jewish students.<sup>24</sup> This created new opportunities for members of marginalized communities to enter the legal profession. During this period of relative opportunity to access legal education, the ABA and the AALS pushed the Harvard model of professional legal instruction—emphasizing research and scholarship as the measure of a successful law school.<sup>25</sup> The Harvard model fit the ABA’s ambitions of increasing the prestige and power of the legal profession and, therefore, the two organizations adopted the Harvard model of legal education as the

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<sup>18</sup> See Missouri Enabling Act of March 6, 1820, [insert citation].

<sup>19</sup> See *id.*

<sup>20</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. 35 (University of Pennsylvania Press, 1993).

<sup>21</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. 43 (University of Pennsylvania Press, 1993).

<sup>22</sup> See *id.*; see also Gerard J. Clark, *Monopoly Power in Defense of the Status Quo: A Critique of the ABA’s Role in the Regulation of the American Legal Profession*, 45 *Suffolk Univ. L. Rev.* 1009, 1010 (2012).

<sup>23</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xxx (University of Pennsylvania Press, 1993).

<sup>24</sup> See *id.*

<sup>25</sup> See Rayman L. Solomon, *Law Schools in Dictionary of American History*, available at Encyclopedia.com <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/law-schools> (last visited Feb. 27, 2021).

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gold standard for admission to the bar. The ABA and the AALS worked together to become regulators of legal education and to set new standards requiring students admitted to law schools to have two years of college and two years of law school to qualify to sit for bar examinations; as well, the law school experience needed to fit the Harvard model, which required three years of graded instruction.<sup>26</sup>

The ABA did not cover in expressing its intent behind the new standards. The ABA saw its mission as “ridding society of the night schools to ensure competent public spirited and ethical lawyers.”<sup>27</sup> In addition, it expressed the intent to “keep certain segments of the population from using the legal profession to undermine the American way of life.”<sup>28</sup> Members of the ABA, influential in judicial, political, and social settings, implemented these policies in their respective states.<sup>29</sup> Without question, and even intentionally,<sup>30</sup> these new standards and policies adversely affected Black students and others similarly situated who sought to enter the legal profession.

To this very point, the ABA and the AALS generally excluded black people from their organizations until 1943.<sup>31</sup> Professor J. Clay Smith discussed the ABA’s official exclusion of Black lawyers from the association by giving voice to the “unspoken assumption at the time [] that Black lawyers would not be able to ‘advance the science of jurisprudence, promote the administration of justice . . . uphold the honor of the profession of law [or] encourage cordial intercourse among the members of the

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<sup>26</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xxx (University of Pennsylvania Press, 1993).

<sup>27</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xxx (University of Pennsylvania Press, 1993).

<sup>28</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xxx (University of Pennsylvania Press, 1993).

<sup>29</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. 545 (University of Pennsylvania Press, 1993).

<sup>30</sup> Academia is an edifice built on structural oppression and subordination. That said, academia has the resources to lead in confronting the prevalence of oppression and subordination, to lead on ameliorating these conditions through the development and promotion of colleagues navigating intersectional identities, and to lead on the rebuilding of our institutions using the blueprint of “systemic equity.”

<sup>31</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. xxx (University of Pennsylvania Press, 1993).

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American Bar.”<sup>32</sup> This meant that Black voices were absent from public debate about the legal profession, generally, and on legal education policy, specifically, before and after the formation of the ABA and the AALS, underscoring the dismally low numbers of Black lawyers in the legal profession and the near absence of black faculty at white law schools prior to 1925. Even after 1925, and pointedly after 1943 when the color bar was broken at the ABA, the data demonstrates that, among other minoritized groups, Black people are disproportionately underrepresented in the legal profession, in law school faculty ranks, and in the student body.<sup>33</sup>

#### **D. Antiracist Work in Legal Education**

White people in the legal academy are only now reckoning with the reality of systemic racism within our hallowed halls, an insidiousness that many People of Color in the legal academy have always known. Because of the complicity of the legal profession in providing the scaffolding for slavery, racial hierarchy, racism, and subordination to persist, leaders and members of the legal profession and the legal academy have a special obligation to acknowledge the systemic inequities in our teaching, learning, service, and leadership environments. With acknowledgement comes the obligation to be accountable. Acknowledgement and accountability in how we do law school will demonstrate the will of the members of our profession to rebuild on an Antiracist platform to truly realize the nobility of the legal profession and the commitment to equal justice for all.

Recently, I was discussing systems design with an academic from another institution. The academic said the following: “You must believe in the potential of systems design because you are a dean at a law school and your vision to transform legal education to become an Antiracist institution is an almost impossible undertaking. What makes you think you will succeed?” I explained to the academic that it was my sworn duty as a lawyer, as a leader, and as a servant of democracy and the American rule of law to challenge systems of oppression and inequality using the process and the substance I have learned as a leader to guarantee a better starting position for those that follow me

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<sup>32</sup> See J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, p. 541-546 (University of Pennsylvania Press, 1993).

<sup>33</sup> See 2020 ABA Profile of the Legal Profession; See also NALP, LSAC, and AccessLex.

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into the legal profession. What I left unsaid until now is that I have an obligation to those in my genealogy—Sojourner Truth, Macon Bolling Allen, Frederick Douglass, Harriet Tubman, Frances Ellen Watkins Harper, Mary Ann Shadd Carey, Nannie Helen Burroughs, Ida B. Wells, Charlotte E. Ray, Lutie A. Lytle, Anna Pauline (Pauli) Murray, Gwendolyn Conway, Savella Johnson, Marilyn Yarbrough, the Howard University School of Law community past, present, and future and so many unnamed Black lawyers and women lawyers—to emancipate the most vulnerable in our society and to extend the rights that come with humanity and citizenship in service to equal justice and the rule of law.

I am equally proud to be among colleagues at Penn State Dickinson Law who share my commitment to equal justice for all and were motivated to take an unprecedented, yet necessary stance against systemic racism and oppression, not just for our institution but for the academy and for our profession. At Penn State Dickinson Law, the faculty acknowledged its 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.<sup>34</sup> In service to our ongoing commitment to eradicate racism, bias, and oppression, Penn State Dickinson Law is immersed in the work of constructing an Antiracist law school.

But one does not just say let's be an Antiracist law school. As discussed above, leadership in building an Antiracist law school requires a vision, an understanding of the environment, a battle implementation plan, a socialization of the vision and the plan to dispersed leaders within the organization, a mechanism for assessing progress toward the goals and objectives that comprise the vision, and a sustained commitment to iterating and adapting the plan and the responses to various outcomes.

The work to build an Antiracist law school began well before I arrived to take on the deanship at Penn State Dickinson Law. From the strategic hiring of an expert to quickly build a sustainable pipeline program to increase diversity among the student cohort<sup>35</sup> to the development and articulation of four strategic, interdependent vision

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<sup>34</sup> See Penn State Dickinson Law Faculty, *Faculty Resolution*, PENN STATE DICKINSON LAW (June 2, 2020), <https://dickinsonlaw.psu.edu/sites/default/files/2020-06/faculty-resolution.pdf>.

<sup>35</sup> Penn State Dickinson Law hiring of Jeff Dodge and the partnership with CLEO.

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priorities<sup>36</sup> to be socialized throughout the organization—both vertical and horizontal—to the explicit demonstration of “leadership by doing” as opposed to “leadership by commanding,”<sup>37</sup> to the doubling down on the vision priorities in the face of chronic challenges as well as the onslaught of acute crises, to the nurturing of individuals, and to the revelation of my own vulnerabilities as a Black woman leader,<sup>38</sup> a strong collective emerged to act in a manner consistent with our stated values, which themselves were transformed by our belief in the concrete commitments we made to pursue the just aims of our vision priorities. The following is a more concrete discussion about Penn State Dickinson Law’s approach to building and sustaining an Antiracist law school by meeting the challenges and opportunities of diversity, equity, and inclusion head-on.

### **III. Intentional Recruitment: Utilizing Data-Driven Recruitment and Strategic Resource Allocation**

Although it may be a temptation to view the lack of diversity, equity, and inclusion in legal education as a reflection of a lack of diversity in the applicant pool, this article argues that Antiracist admissions and financial aid policies are an essential component of enrolling, retaining, and graduating racially minoritized law students. As gatekeepers, law school admissions professionals must affirmatively enact practices that increase access for historically marginalized populations because diversity in the

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<sup>36</sup> Vision Priority Two is broadly aimed at increasing diversity among students, staff, faculty, and administrators, with a special emphasis on recruiting Black/African American men. See the 2020 ABA Profile of the Legal Profession.

<sup>37</sup> Provide a select list of my undertakings and contributions in support of the vision priorities; for example, see “Draft reports on racism, bias, community safety initiatives posted for review,” available at <https://news.psu.edu/story/640947/2020/12/03/administration/draft-reports-racism-bias-community-safety-initiatives-posted> (last visited Feb. 27, 2021); see also “Racism, bias, and community safety recommendations discussed during town hall, available at <https://news.psu.edu/story/641651/2020/12/09/administration/racism-bias-and-community-safety-recommendations-discussed> (last visited Feb. 27, 2021).

<sup>38</sup> See Conway, Onwuachi-Willig, Mutcherson, Holley-Walker, and Pratt, Law Deans Antiracist Clearinghouse Project, available at <https://www.aals.org/antiracist-clearinghouse/> (last visited Feb 27, 2021); see also “A Message from Penn State President Eric J. Barron, available at <https://news.psu.edu/story/622178/2020/06/03/president/message-penn-state-president-eric-j-barron> (last visited Feb. 27, 2021).

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classroom is critical to educational success for all students.<sup>39</sup> Eventually, the authors hope that the legal profession will begin to reflect the composition of our diverse society.

This article necessarily operates at the intersection of law and social sciences, building on research around barriers to higher education access, and drawing on best practices for the removal of those barriers.<sup>40</sup> The authors intend to operationalize the concept of diversity, equity, and inclusion in law school admissions and financial aid policies, to propose a path to eliminate the marginalization and subordination of students from racially and ethnically minoritized backgrounds,<sup>41</sup> and to redefine the law school experience as one of inclusivity.

Despite Dickinson Law's longstanding belief in promoting the values of diversity, equity, and inclusion, the law school's historic approach to recruitment and admissions was inadequate to consistently achieve a sufficiently diverse student body. Prior to Dean Conway's arrival and the subsequent rearticulation of our cultural commitments, discussed in section four of this paper, the Admissions team lacked the holistic support necessary to attract and yield diverse applicants. In conjunction with the admissions practices outlined here, these changes enabled Dickinson Law's team to significantly increase the composition of students of color in our most recent entering class as compared to prior years. Specifically, students of color constituted 44% of our fall 2020 entering class—more than doubling both the percentage and number of students of color in the previous year's entering class. This increase represented a record high achievement in Dickinson Law's history both in number of individual students and in percentage of the incoming class.

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<sup>39</sup> See Patricia Gurin, Eric L. Dey, Sylvia Hurtado, & Gerald Gurin, *DIVERSITY AND HIGHER EDUCATION: THEORY AND IMPACT ON EDUCATIONAL OUTCOMES*, 72 HARV. EDUC. REV. 330, 351, 358 (2002). Research at the University of Michigan concluded that structural diversity, informal interactional diversity, and classroom diversity had “robust effects on student educational outcomes for all groups of students,” with diversity experiences “consistently and meaningfully affect[ing] important learning and democracy outcomes of a college education.”

<sup>40</sup> See Cruz Reynoso & Cory Amron, *DIVERSITY IN LEGAL EDUCATION: A BROADER VIEW, A DEEPER COMMITMENT*, 52 J. LEGAL EDUC. 491 (2002).

<sup>41</sup> See Aaron N. Taylor, *THE MARGINALIZATION OF BLACK ASPIRING LAWYERS*, 13 FIU L. REV. 489 (2019).

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## A. Yielding a Diverse Student Body: Challenges

Achieving this success required both familiarity with and intentional response to the following challenges: (1) the number of students of color applying to law school as compared to their white peers; (2) the typical timing of applications submitted by students of color as compared to those submitted by white candidates; and (3) differences in Law School Admission Test (LSAT) performance between minoritized and white test-takers.

### i. Challenge One: Pool Volume Disparity by Race & Ethnicity

Multiyear data reflect that students of color apply to law school at lower rates than their white counterparts. The Law School Admission Council (LSAC) uses a maximum reporting approach, which “means that candidates may select multiple race/ethnicities,”<sup>42</sup> and “all selections are counted in each racial/ethnic group.”<sup>43</sup> For example, a student who identifies as Black/African American and Caucasian/white would be reported in both categories in the national data.<sup>44</sup> Because law schools must submit demographic data annually to the ABA to maintain accreditation, and the ABA reporting guidance requires that non-Hispanic individuals who select two or more racial identities are marked as “two or more races,” Dickinson Law utilizes a single reporting approach wherein each candidate is counted once.<sup>45</sup> Consequently, the data set metrics represented in our national and institutional charts (1 and 3, respectively) are divergent. Despite these differences in reporting approach, both national and institutional data show that minoritized applicants apply at lower rates than their white peers.

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<sup>42</sup> *Archive: 2017–2018 LSAT Takes by Race/Ethnicity & Sex*, L. SCH. ADMISSION COUNCIL (last visited Feb. 19, 2021), <https://www.lsac.org/archive-2017-2018-lsat-takers-raceethnicity-sex>.

<sup>43</sup> See *id.*

<sup>44</sup> Elizabeth Bodamer, Kimberly Dustman, Debra Langer, Mark Walzer, Gregory Camilli, & Ann Gallagher, *Understanding and Interpreting Law School Enrollment Data: A Focus on Race and Ethnicity*, L. SCH. ADMISSION COUNCIL RSCH. REP. SERIES (2020), <https://www.lsac.org/system/files/inline-files/RR-20-03.pdf>.

<sup>45</sup> *ABA questionnaire & application resources: Complete 2020 AQ instructions*, A.B.A. (last visited Mar. 4, 2021) [https://www.americanbar.org/groups/legal\\_education/resources/questionnaire/](https://www.americanbar.org/groups/legal_education/resources/questionnaire/).

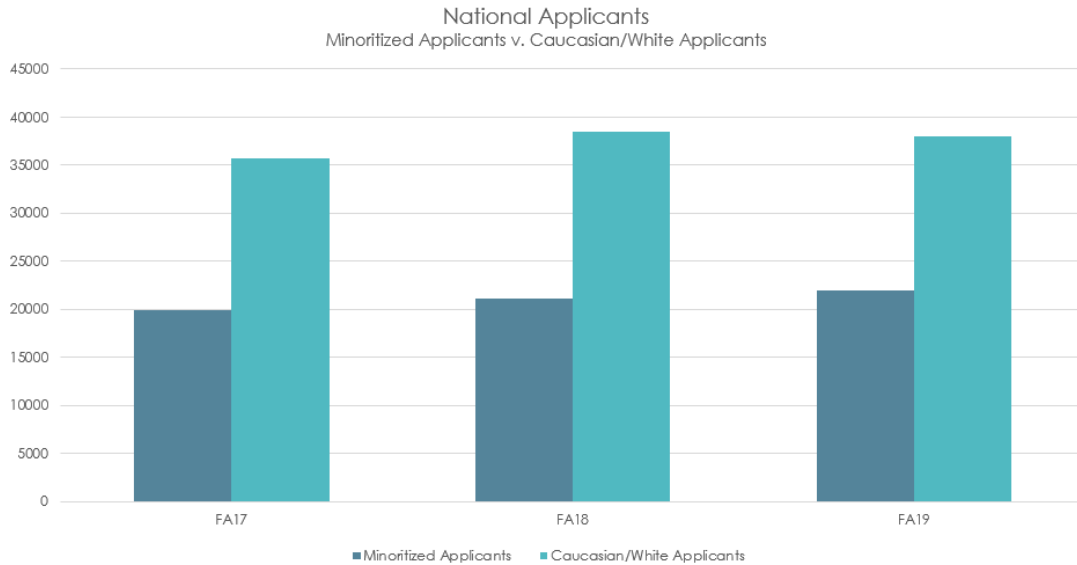


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**Chart 1**<sup>46</sup>



<sup>46</sup> *Applicants by Race/Ethnicity & Sex (2016-2019)*, L. SCH. ADMISSION COUNCIL, <https://report.lsac.org/View.aspx?Report=ApplicantsbyRaceEthnicitySex> (last visited on Mar. 5, 2021) (on file with author).

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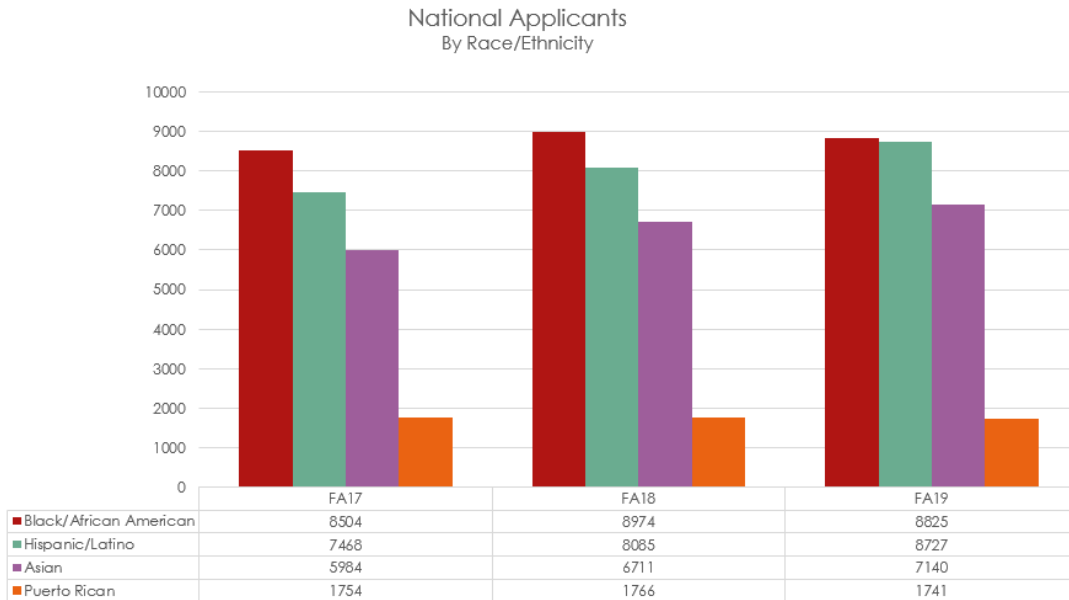
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**Chart 2**<sup>47</sup>



Dickinson Law has seen congruent trends in the racial and ethnic composition of the applicant pool. Despite increases in the percentage of applications from minoritized candidates, a significant disparity in volume persists between minoritized and white applicants.

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<sup>47</sup> *Id.*

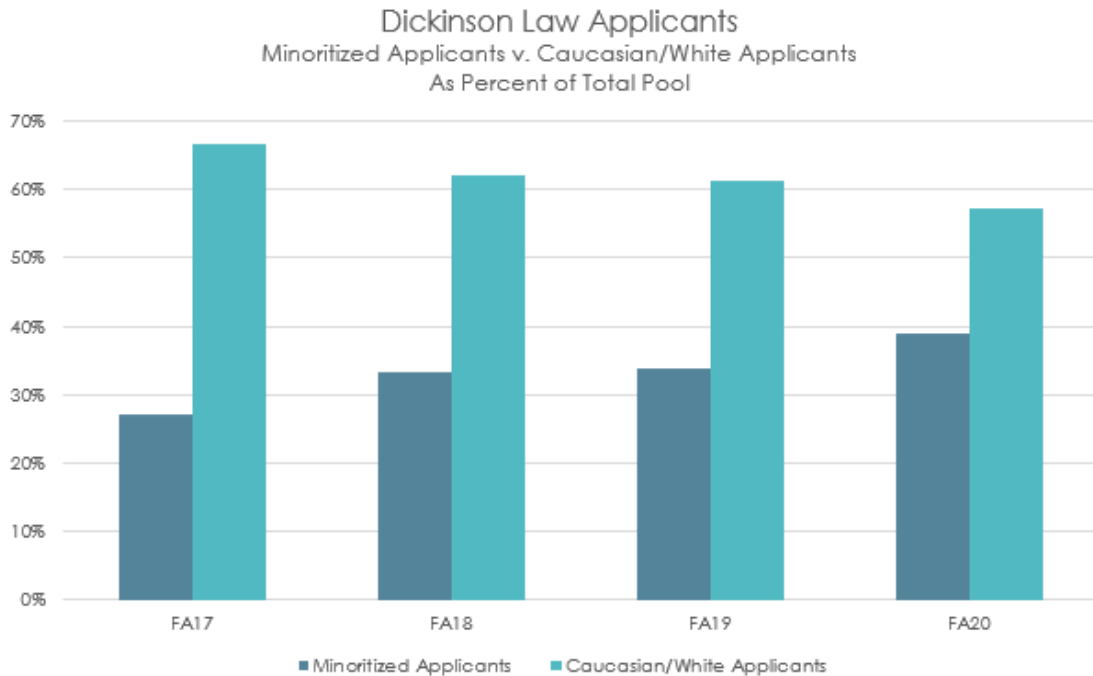
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Chart 3<sup>48</sup>

Moreover, among students of color, Black/African American students are admitted at significantly lower rates than both their white counterparts and other applicants of color. According to AccessLex's Legal Education Data Deck, Black/African American applicants are admitted at the lowest rate of any racial or ethnic subset of the applicant pool, with only 48% of Black applicants receiving admission to any law school in the 2019 admissions cycle.<sup>49</sup>

<sup>48</sup> Dickinson Law-specific data is on file with author.

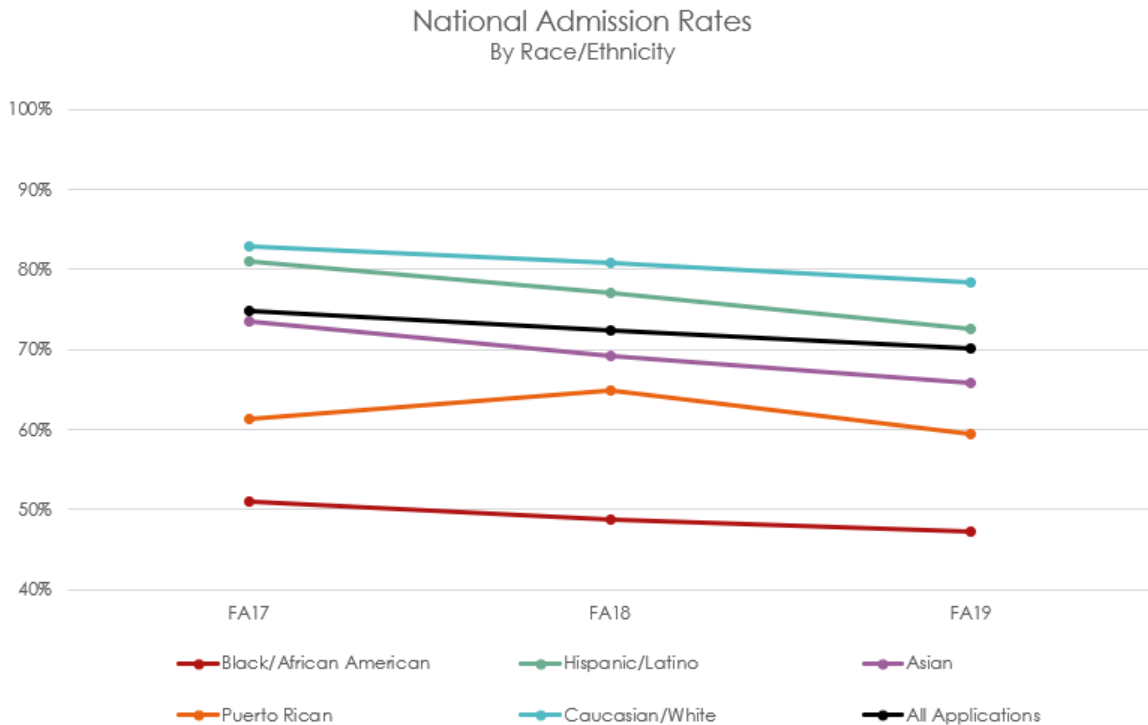
<sup>49</sup> *Legal Education Data Deck: Key Trends on Access, Affordability, and Value*, ACCESSLEX INST. (OCT. 27, 2020), <https://www.accesslex.org/research-and-data-tools-and-resources/legal-education-data-deck>.

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Chart 4<sup>50</sup>



In our collective efforts to diversify law school enrollment demographics (and the legal profession more generally), this trend is concerning—especially when considered alongside the reality that Black/African American applicants have comprised the largest pool of minoritized applicants over the past three cycles (see Chart 2 and Table 1). When viewed in tandem, these two data sets bely the notion that simply increasing the number of Black/African American law school candidates—absent an intentional approach to DEI in admissions and retention—will result in any meaningful change in Black/African American representation within law schools.

<sup>50</sup> *Applicants by Race/Ethnicity & Sex (2016-2019)*, L. SCH. ADMISSION COUNCIL, <https://report.lsac.org/View.aspx?Report=ApplicantsbyRaceEthnicitySex> (last visited on Mar. 5, 2021) (on file with author).

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**Table 1**<sup>51</sup>

**National Law School Applications and Offers of Admission by Admissions  
 Cycle:  
 By Race/Ethnicity**

Admissions Cycle	Black/African American	Hispanic/Latino	Asian	Puerto Rican
FA17 Applications	8504	7468	5984	1754
FA17 Admitted	4334	6055	4401	1074
FA17 Percent Admitted	51%	81%	74%	61%
FA18 Applications	8974	8085	6711	1766
FA18 Admitted	4376	6228	4641	1146
FA18 Percent Admitted	49%	77%	69%	65%
FA19 Applications	8825	8727	7140	1741
FA19 Admitted	4167	6336	4698	1034
FA19 Percent Admitted	47%	73%	66%	59%

**ii. Challenge Two: Timing of Applications by Race & Ethnicity**

Historic data reveals that students of color generally apply later in the cycle compared to their white peers. A four-year view of Dickinson Law’s historic data illustrates this point. In Chart 5, we consider the growth of each racial or ethnic subset of the total applicant pool for admissions cycles Fall 2020, Fall 2019, Fall 2018, Fall 2017. Percentages represent the growth of individual subsets of the pool, such that 40% in a given month and application cycle indicates that 40% of the total pool from that subset have applied by that benchmark. We selected November and February as our benchmark months. November allows us to capture those students who were prepared to apply during the academic year and prior to the holiday break influx that typically occurs in December. February represents the midpoint of Dickinson Law’s admissions cycle. As illustrated in Chart 5, the white applicant pool’s growth was significantly

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<sup>51</sup> *Id.*

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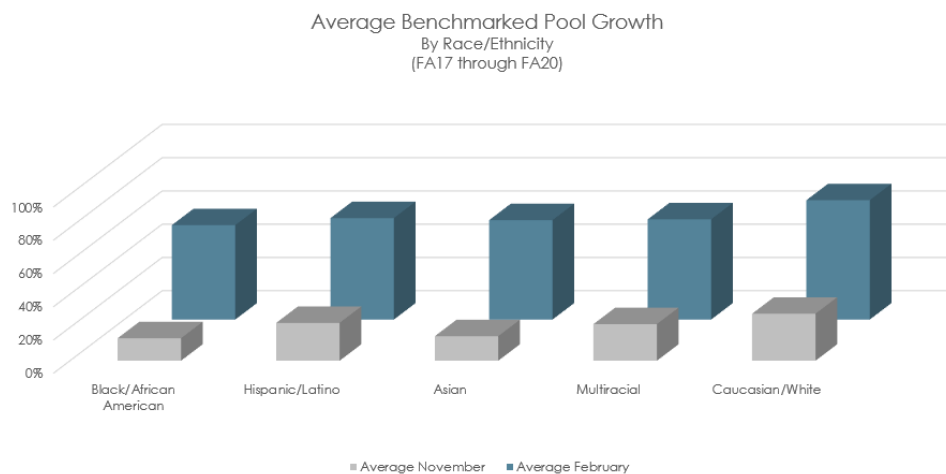
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ahead of the growth curve for Black/African American, Hispanic/Latino, Asian, and Multiracial students for the four admissions cycles represented.

**Chart 5**<sup>52</sup>



At the November benchmark, on average, the white applicant pool had reached 25% of its total growth. Compared to the minoritized applicant groups, the average white applicant pool at this time was between 5% and 14% ahead, with the greatest difference seen between average white (28%) and average Black/African American (14%) applicant subsets. Again, in February, average growth varied greatly, with white application growth at an average of 72% of its total pool. Differentials between the average white application pool and average minoritized pools ranged from 11% to 15%, with the greatest difference seen between white (72%) and Black/African American (57%) applicant subsets. Chart 6 illustrates the average percent difference between the white applicant and minoritized applicant subsets for the November and February benchmarks.

<sup>52</sup> Dickinson Law-specific data is on file with author.

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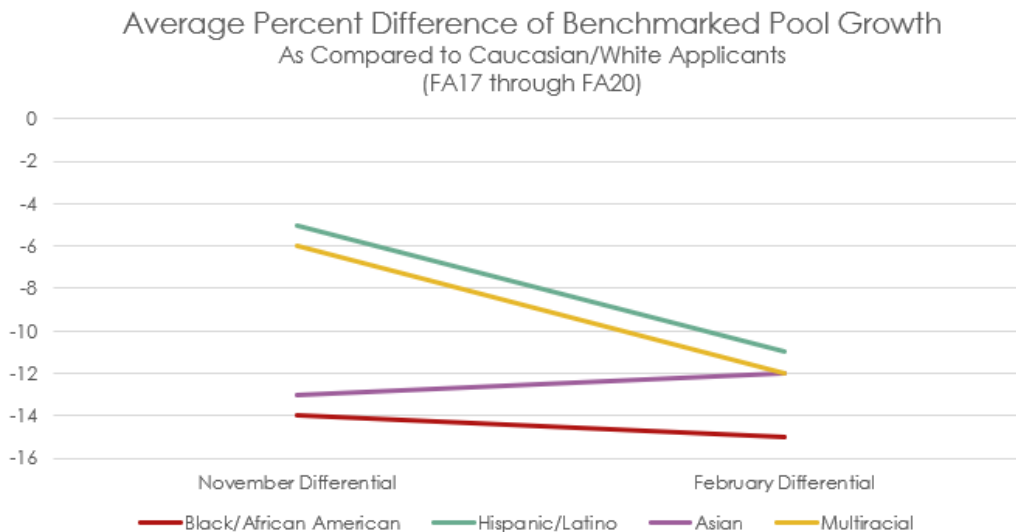
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**Chart 6**<sup>53</sup>



### iii. Challenge Three: LSAT Performance by Race & Ethnicity

Of particular concern is the “marginalization and exclusion in the admission process” of aspiring Black/African American law students, as described by Taylor.<sup>54</sup> With an average LSAT score of 142 for Black test-takers—as compared to an average score of 153 for white and Asian test-takers—<sup>55</sup> Law schools often extol their holistic review of applications, but national data suggest that our current definition of “holistic review” harbors inequities. It is imperative that admissions professionals contemplate this statistic and candidly consider if LSAT scores continue to play an outsized role in their law school’s admissions process—especially when reviewing the admissibility of students from minoritized backgrounds. For the purposes of this paper, we are identifying the disparity in LSAT scores as an ongoing challenge in law school admissions.

<sup>53</sup> *Id.*

<sup>54</sup> Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 494 (2019).

<sup>55</sup> See *id.*



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Others have written extensively about this phenomenon, and some have proposed solutions. For example, in his 2001 California Law Review Comment, William Kidder explores race-based disparities in LSAC performance.<sup>56</sup> Kidder replicates the UGPA-matching procedure developed in Joseph Gannon’s 1981 study on race and LSAT performance and concludes that “the continued emphasis on the LSAT acts as an artificial barrier for students of color aspiring to enter the profession.”<sup>57</sup> Kidder, Taylor, and others have studied the racial stratification of LSAT performance and the way that this standardized test disadvantages minority applicants. Their research provides a comprehensive examination of this important topic.

To combat these challenges, Dickinson Law’s Admissions team made several intentional shifts in recruitment, admission, and yield efforts in the Fall 2020 application cycle. These efforts were bolstered by the law school’s new leadership and its rearticulation of a cultural commitment to diversity, equity, and inclusion; indeed, we believe that these admissions efforts would have proven less successful if any layer of the institution’s approach had been neglected.

## **B. Yielding a Diverse Study Body: Strategic Solutions**

Despite the challenges outlined above, Dickinson Law doubled the percentage—and significantly increased the number—of students of color in our fall 2020 entering class. Doing so required the Admissions team to employ a layered strategy that included reevaluating our commitment to holistic review of applications, augmenting LSAT applications with GRE applications,<sup>58</sup> and examining our scholarship allocation practices with an eye toward increasing equity. Because each of these solutions approaches the previously identified challenges from different angles, Dickinson Law

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<sup>56</sup> William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*, 89 CAL. L. REV. 1055 (2001).

<sup>57</sup> *Id.* at 1123.

<sup>58</sup> Dickinson Law has adopted a valid and reliable admissions test pursuant to ABA Standard 503. *See* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021, at 33 (AM. BAR ASS’N 2020), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter5.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter5.pdf).

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was able to optimize our success by utilizing these strategies in tandem. And the importance of articulating the cultural shifts within the Dickinson Law community to prospective students (discussed in section four) cannot be understated.

**i. Strategic Solution: Commitment to Holistic Review of Applications**

In the Fall 2020 cycle, we reinvigorated our commitment to holistic review of files, clearly defining for our team the aspects of each application that should be given equal weight to that traditionally placed on the Law School Admissions Test (LSAT) score and undergraduate grade point average (uGPA). Our team was empowered to consider out-of-classroom experiences, especially those that gave the applicant a chance to move beyond theory and into real-world application. Paid work can teach as many life lessons as unpaid internships, and a dearth of extracurricular activities may be seen in a different light when an applicant's socioeconomic background is taken into consideration. Although substantive and detailed letters of recommendation can play an important role in holistic review, we also reminded ourselves consider the context of a student's background and circumstances when letters of recommendation fail to adhere to the norms and conventions to which we are accustomed. For example, an ineffective letter of recommendation may be the result of a first-generation student's lack of proper guidance when selecting recommenders. Reviewing an LSAT writing sample can illuminate an applicant's ability to construct a logical, well-crafted argument under immense pressure, but our team likewise considered the strength of the required and optional statements in the application. Crucially, we strove to consider an applicant's successes—academic, professional, and personal—relative to the personal challenges they have faced.

**ii. Strategic Solution: Augmenting LSAT Applications with GRE Applications**

As a potential avenue to increase access to legal education among underserved and underrepresented individuals, Dickinson Law expanded the pool of eligible candidates to include individuals who have taken the GRE. Although the majority of Dickinson Law's 2020 entering class applied, were admitted, and matriculated using the LSAT,

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expanding our pool to include GRE test-takers provides an additional way to ensure we are attracting the widest possible pool of potential applicants.

In particular, accepting the GRE as an alternative to the LSAT makes applying to law school more viable for some students from lower socioeconomic backgrounds, especially if they have already taken the GRE or are planning to pursue a joint degree program that would require the GRE. Accepting the GRE in addition to the LSAT allows students considering multiple educational programs to finance the costs of preparing for and taking only one standardized entrance exam rather than two.

Although the two tests are comparably priced at around \$200 per exam,<sup>59</sup> many students struggle to afford the numerous expenses associated with applying to law school. Both LSAC and ETS offer voucher programs with a range of services for students with the greatest financial need.<sup>60</sup> LSAC's new two-tiered fee waiver program was developed "to assist applicants of varying economic circumstances in receiving fee waiver benefits."<sup>61</sup> ETS's voucher program is available to individuals who can demonstrate financial need, those who are unemployed and receiving unemployment compensation, and for national programs that work with underrepresented groups.<sup>62</sup>

Although the standard registration fee for the LSAT totals \$200 per test,<sup>63</sup> LSAC has approved a total of 6,342 fee waiver requests during the July 2019 to June 2020 application cycle, which was equal to 11% of all law school applicants who applied

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<sup>59</sup> *Fees for GRE® Tests and Related Services*, EDUC. TESTING SERV., [https://www.ets.org/gre/revised\\_general/about/fees/](https://www.ets.org/gre/revised_general/about/fees/) (last visited Mar. 2, 2021); *LSAT & CAS Fees and Refunds*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat/lsat-dates-deadlines-score-release-dates/lsat-cas-fees-and-refunds> (last visited Mar. 2, 2021).

<sup>60</sup> *GRE Fee Reduction Program*, EDUC. TESTING SERV., <https://www.ets.org/gre/subject/about/fees/reduction/> (last visited Mar. 2, 2021); *Fee Waivers for the LSAT & Credential Assembly Service (CAS)*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat/lsat-dates-deadlines-score-release-dates/lsat-cas-fees/fee-waivers-lsat-credential-assembly> (last visited July 15, 2021).

<sup>61</sup> *Fee Waivers for the LSAT & Credential Assembly Service (CAS)*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat/lsat-dates-deadlines-score-release-dates/lsat-cas-fees/fee-waivers-lsat-credential-assembly> (last visited July 15, 2021).

<sup>62</sup> *GRE Fee Reduction Program*, EDUC. TESTING SERV., <https://www.ets.org/gre/subject/about/fees/reduction/> (last visited Mar. 2, 2021).

<sup>63</sup> *LSAT & CAS Fees and Refunds*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat/lsat-dates-deadlines-score-release-dates/lsat-cas-fees-and-refunds> (last visited Mar. 2, 2021).

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using an LSAT score.<sup>64</sup> Nearly three-quarters of candidates who received LSAC fee waivers were students of color.<sup>65</sup> More than 2,000 Black/African American candidates were approved for fee waivers in the 2019-2020 application cycle, a number equal to 24% of all African American applicants.<sup>66</sup>

**Table 2<sup>67</sup>**

**LSAC Fee Waivers for 2019-2020 Application Cycle, by Race/Ethnicity**

Race/Ethnicity	Number of Approved Fee Waivers	Percentage of Total Approved Fee Waivers
Black or African American	2,027	32.0%
Caucasian/White	1,504	23.7%
Hispanic/Latino	1,088	17.2%
Two or More	901	14.2%
Asian	394	6.2%
Not Indicated	294	4.6%
Puerto Rican	88	1.4%
American Indian or Alaska Native	39	0.6%
Native Hawaiian or Other Pacific Islander	7	0.1%
Total	6,342	100.0%

<sup>64</sup> *Fee Waivers Approved, 2020 Admission Cycle*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/fee-waivers-approved-2020-admission-cycle> (last visited on Aug. 6, 2021); *YTD US Applicants from Region/State of Permanent Residence*, L. SCH. ADMISSION COUNCIL, <https://report.lsac.org/VolumeSummary.aspx> (last visited on Aug. 6, 2021).

<sup>65</sup> *Fee Waivers Approved, 2020 Admission Cycle*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/fee-waivers-approved-2020-admission-cycle> (last visited on Aug. 6, 2021).

<sup>66</sup> *Fee Waivers Approved, 2020 Admission Cycle*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/fee-waivers-approved-2020-admission-cycle> (last visited on Aug. 6, 2021) (on file with author); *YTD US Applicants from Region/State of Permanent Residence*, L. SCH. ADMISSION COUNCIL, <https://report.lsac.org/VolumeSummary.aspx> (last visited on Aug. 6, 2021).

<sup>67</sup> *Fee Waivers Approved, 2020 Admission Cycle*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/data-research/data/fee-waivers-approved-2020-admission-cycle> (last visited on Aug. 6, 2021).

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The recent partnership between LSAC and Khan Academy resulting in free LSAT preparation resources has helped to mitigate the financial barriers typically associated with commercial test preparation programs.<sup>68</sup> For the past several years, Khan Academy has also provided instructional videos for GRE preparation at no cost to students.<sup>69</sup>

It is crucial that pre-law advisors, career counselors, and law school admissions professionals widely share information on the voucher programs available through LSAC and ETS because, as Taylor notes, “[l]ack of money can force applicants to limit the number of schools to which they apply or delay applications until sufficient funds are acquired.”<sup>70</sup> Application decisions are the responsibility of individual applicants, Taylor continues, but such decisions “are nonetheless influenced by factors that disproportionately disadvantage some applicants, especially Black applicants.”<sup>71</sup>

Building a diverse and inclusive legal profession demands that we welcome law students from a wide variety of backgrounds and experiences. LSAC has taken steps to increase accessibility in recent years, but for many years, the LSAT was offered only four times per calendar year. Starting with the 2018 admissions cycle, LSAC began to increase test administrations to provide greater flexibility to candidates—six testing opportunities in the 2018 cycle,<sup>72</sup> seven in the 2019 cycle,<sup>73</sup> and nine test administrations in the most recent cycle in 2020.<sup>74</sup>

Until the COVID-19 pandemic, test administrations were held in-person at authorized testing locations. This required test-takers to travel to a testing site, sometimes many miles from their homes. In addition to travel costs, a test-taker could incur overnight hotel, meal, and other incidental expenses for each LSAT administration. With the

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<sup>68</sup> *Official LSAT Prep*, KHAN ACAD., <https://www.khanacademy.org/prep/lsat> (last visited Jan. 15, 2021).

<sup>69</sup> *Khan Academy Instructional Videos: Free Preparation for the GRE® Quantitative Reasoning Measure*, EDUC. TESTING

SERV., [https://www.ets.org/gre/revise/general/prepare/khan\\_academy](https://www.ets.org/gre/revise/general/prepare/khan_academy) (last visited Mar. 2, 2021).

<sup>70</sup> Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 499 (2019).

<sup>71</sup> *Id.*

<sup>72</sup> Ross Rinehart, *New LSAT Dates for 2018*, BLUEPRINT (Dec. 27, 2017), <https://blog.blueprintprep.com/lsat/new-lsat-dates-for-2018/>.

<sup>73</sup> See *id.*

<sup>74</sup> *LSAT Dates*, L. SCH. ADMISSION COUNCIL, 1,1 (2018), <https://www.lsac.org/sites/default/files/media/future-lsat-dates.pdf>.

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exception of the summer administrations, tests were held on Saturdays—unless applicants could provide documented proof of Saturday Sabbath observation from their religious cleric.<sup>75</sup> Individuals with substantial caretaking responsibilities or rigid employment schedules may have found the LSAT’s administration schedule to be at odds with the demands of their lives. While LSAC offered some alternate testing options, accessing special circumstance waivers may have proven insurmountable to some candidates. In practice, the limitations in frequency, location, and timing of LSAT administrations likely caused the test to be inaccessible to some prospective applicants. In contrast, the in-person GRE historically had been administered more frequently and, in more locations, providing test takers with more flexibility.

In response to the COVID-19 pandemic, both ETS and LSAC have created home testing options for individuals with access to technology that meets basic requirements. The LSAT-Flex allows candidates to take a proctored version of the test from home, using their personal technology or a loaner device provided by LSAC at no cost.<sup>76</sup> The first LSAT-Flex was administered in May 2020, and thus far, it has been made available with the same frequency anticipated for the traditional LSAT prior to the pandemic—that is, nine times in the most recent application cycle.<sup>77</sup> In addition, each of these nine online LSAT administration spans 2-4 days so that test takers can select a time that fits their schedule. In effect, the LSAT has gone from being offered only 4 dates per year at specific times and places in 2018 to being offered 9 times per year with flexible dates,<sup>78</sup> times, and locations, dramatically expanding the options for test takers. LSAC announced on February 2021 that they would continue to provide an online LSAT for another year, through June 2022.<sup>79</sup> The GRE’s General Test at Home is similarly proctored online using personal technology, is now available “around the clock, seven

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<sup>75</sup> *Saturday Sabbath Observers Testing Policy*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat/taking-lsat/sabbath-observers> (last visited Mar. 2, 2021).

<sup>76</sup> *About the LSAT-Flex*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/update-coronavirus-and-lsat/lsat-flex> (last visited Mar. 2, 2021).

<sup>77</sup> See *id.*

<sup>78</sup> The combination of 9 administrations and flexible dates has resulted in the LSAT being available to candidates on 20 to 25 days per year.

<sup>79</sup> *What is the LSAT?*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/lsat> (last visited July 15, 2021).

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days a week,” and can be scheduled as little as 24 hours in advance.<sup>80</sup> Although home testing has eliminated some barriers, such as the need to travel to testing locations, it may have introduced new barriers such as lack of access to technology and a stable internet connection.

Under President Kellye Testy’s leadership, LSAC recognized that online testing could create equity and access issues that might disproportionately affect marginalized candidates.<sup>81</sup> In response, the organization took concrete steps to address these potential inequities from the very first administration of the LSAT-Flex.<sup>82</sup> Specifically, LSAC understood that some test takers might not have access to a computer.<sup>83</sup> For these test takers, LSAC has made loaner laptops available free of charge, which they ship directly to the applicant.<sup>84</sup> The organization also anticipated that some applicants might not have a quiet and appropriate place in which to take the test or reliable internet service.<sup>85</sup> For these test takers, LSAC has offered financial reimbursement for hotel charges.<sup>86</sup> For the period May 2020 through June 2021, LSAC loaned laptops to test takers nearly 4,000 times and reimbursed the cost of more than 2,000 hotel rooms.<sup>87</sup> With over one-third of test takers assisted identifying as Black/African American, and over half identifying as one or more racial or ethnic minority, the diversity of those assisted underscores the importance of these proactive steps.<sup>88</sup>

Barriers to admissions tests required for law school entry persist, but nonetheless, expanded testing options can increase equity and access to the legal profession.

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<sup>80</sup> *GRE General Test at Home*, EDUC. TESTING SERV. (last visited Mar. 2, 2021), <https://www.ets.org/s/cv/gre/at-home/>.

<sup>81</sup> Kellye Testy, *Starting Law School Amid a Pandemic: The Incoming Class of 2020*, LAW:FULLY (Dec. 18, 2020), <https://www.lzac.org/blog/starting-law-school-amid-pandemic-incoming-class-2020>.

<sup>82</sup> *About the LSAT-Flex*, L. SCH. ADMISSION COUNCIL, <https://www.lzac.org/update-coronavirus-and-lsat/lzat-flex> (last visited July 16, 2021).

<sup>83</sup> *Id.* (acknowledging that some candidates “do not have the necessary computer equipment or other necessary hardware” to take the remote LSAT).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* (recognizing that “some candidates may not have access to a quiet or private room in which to take a remotely proctored test”).

<sup>86</sup> *Online Testing Assistance, May 2020 through June 2021*, L. SCH. ADMISSION COUNCIL, <https://www.lzac.org/data-research/data/online-testing-assistance-may-2020-through-june-2021>, (last visited August 6, 2021).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*



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### iii. Strategic Solution: Increasing Equity in Scholarship Allocation

In his 2014 article, *Reimagining Merit as Achievement*, Aaron Taylor explores the prejudiced origins of standardized testing in the United States and he submits that their ubiquity is based on convenience.<sup>89</sup> Taylor emphasizes the use of standardized testing as a proxy for intelligence, though such tests actually measure an individual's preparation for higher education. He concludes, "misuse [of standardized tests] fosters the association of test scores with innate intelligence and, thus, merit[.]" and he notes that the misuse of such tests serves as "a powerful means of preserving the prevailing power structure."<sup>90</sup> LSAC agrees, urging that the LSAT be used in conjunction with other admission criteria, as it "does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success."<sup>91</sup> It is imperative, therefore, that law schools do not conflate an LSAT score with the degree to which a student is meritorious, i.e., the level of Merit Scholarship aid for which they should qualify.

Admissions professionals utilize institutional Merit Scholarships a recruitment tool to incentivize enrollment. To understand the impact of our scholarship awarding on admitted student yield, we conducted a thorough examination of scholarship offers and enrollment outcomes. Our primary focus was to identify disparities in awarding that may have manifested based on differences in average LSAT score by racial/ethnic group. As previously noted, the average LSAT score for Black/African American LSAT test-takers in 2016-2017 was 142, representing an 11-point difference from the average score for Caucasian/white test-takers, which was 153.<sup>92</sup> GRE scores have a similar and persistent gap between the average score for Black/African American GRE test takers and Caucasian/white GRE test takers.<sup>93</sup> Our assessment revealed a variation in the average amount of institutional scholarship support offered to

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<sup>89</sup> Aaron N. Taylor, *Reimagining Merit as Achievement*, 44 N.M. L. REV. 1 (2014).

<sup>90</sup> *Id.* at 25.

<sup>91</sup> *Cautionary Policies Concerning LSAT® Scores and Related Services*, L. SCH. ADMISSION COUNCIL (July 2014), <https://www.lsac.org/about/lscac-policies/cautionary-policies-concerning-lsat-scores-and-related-services>.

<sup>92</sup> Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 490 (2019).

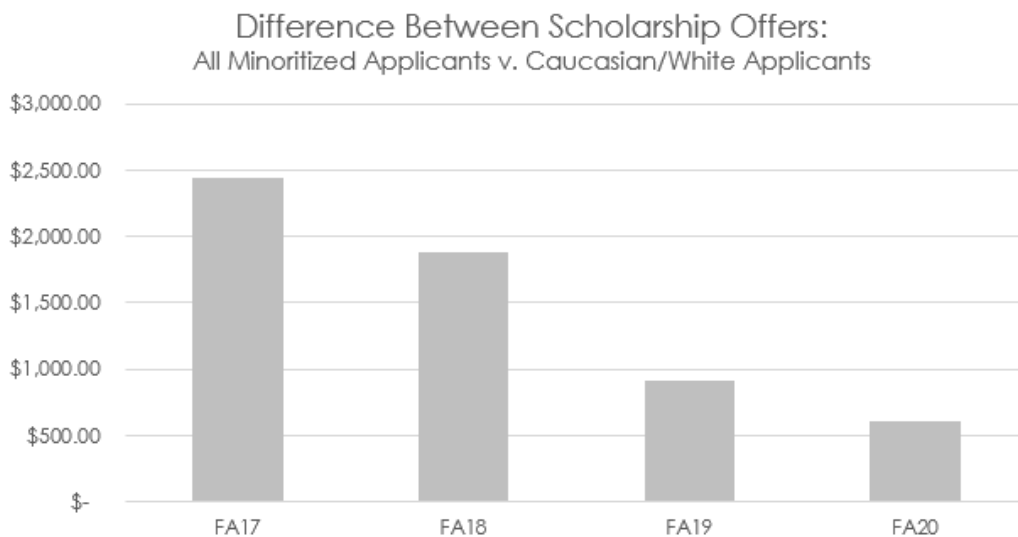
<sup>93</sup> A Snapshot of the Individuals Who Took the GRE General Test: July 2014–June 2019, EDUC. TESTING SERV., at 7 (2020), [https://www.ets.org/s/gre/pdf/snapshot\\_test\\_taker\\_data\\_2019.pdf](https://www.ets.org/s/gre/pdf/snapshot_test_taker_data_2019.pdf).

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admitted students based on racial or ethnic identity, as shown in Chart 7. Seeing this variation borne out in the data analysis helped our team to adjust our awarding approach. We realized we had relied more on quantitative aspects of our holistic review than qualitative measures to determine the amount of scholarship offered to admitted students. From FA17 to FA20, we have significantly closed the gap between the average institutional scholarship offered to students from minoritized racial/ethnic groups and Caucasian/white students. To achieve this outcome, we placed greater emphasis on the aspects of holistic review (described above in Strategic Solution: Commitment to Holistic Review of Applications) when allocating scholarships.

**Chart 7**<sup>94</sup>



\*Values represent the difference between average scholarship offers to caucasian/white applicants and applicants of all minoritized racial or ethnic groups. In each case, offers to caucasian/white applicants were higher.

From FA17 to FA20, Dickinson Law incrementally diminished the institutional scholarship disparity between Caucasian/white and minoritized students. Chart 8 shows the percentage change for average total scholarship offered to minoritized and Caucasian/white admitted students, broken down by percentage decrease or increase

<sup>94</sup> Dickinson Law-specific data is on file with author.

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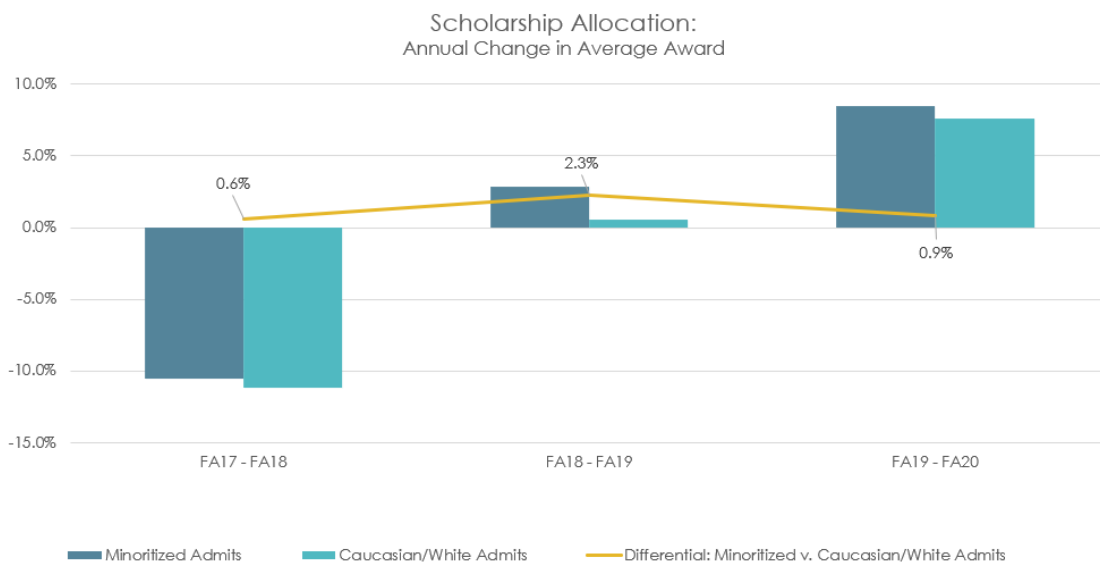
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for each group between FA17 and FA20. As the chart illustrates, the average scholarship offer decreased for both groups from the FA17 cycle to the FA18 cycle, but this decrease was 0.6% less for the minoritized admitted students as compared to their Caucasian/white peers. Average scholarship offers increased for both groups from the FA18 cycle to the FA19 cycle, with minoritized admitted students seeing an increase that was 2.3% higher than the increase experienced by their Caucasian/white peers. Similarly, between the FA19 cycle and FA20 cycle, both groups saw increases to average scholarship offers, with minoritized admitted students experiencing an increase that was 0.9% higher than Caucasian/white admitted students. Reframing our scholarship awarding approach to place greater emphasis qualitative aspects of our holistic application review helped Dickinson Law diminish its scholarship offer disparity beginning primarily in the FA19 admissions cycle, but efforts to equalize scholarship awarding between Caucasian/white and minoritized students are not singularly successful. Significantly, in FA18 and FA19, despite increases in the aid awarded to minoritized candidates, enrollment from this group decreased.

**Chart 8**<sup>95</sup>



<sup>95</sup> *Id.*

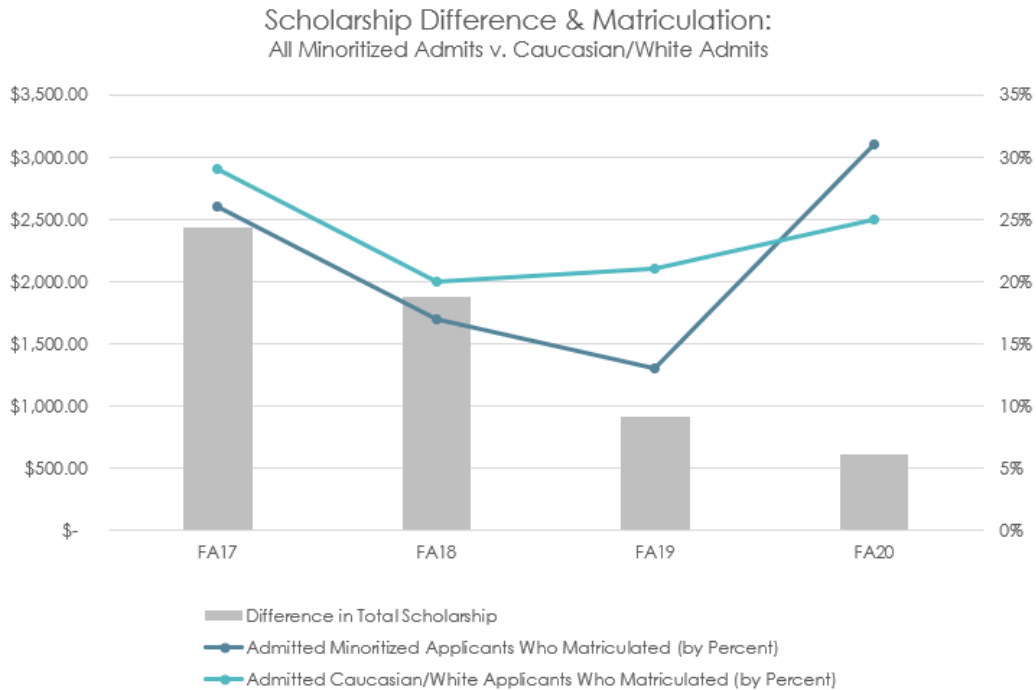
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As illustrated in Chart 9, in FA20 the scholarship disparity was at a 4-cycle record low. In the same cycle, we experienced a 4-cycle record high matriculation of racially minoritized candidates. We believe this outcome was possible not solely based on improved parity in scholarship awarding, but thanks to the multi-faceted approach to recruitment, admission, student support, and community culture that is described herein.

**Chart 9**<sup>96</sup>



### C. Impact of Diversity, Equity, and Inclusion Strategy

In FA20, we recalibrated and refined our existing practices to promote greater diversity within our law school community and the legal profession. Utilizing the strategic solutions discussed above during the FA20 recruitment cycle, Dickinson Law seated one of the most racially and ethnically diverse classes in its history.

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<sup>96</sup> *Id.*

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**Chart 10**<sup>97</sup>



As shown in Application to Matriculation Rates (Chart 11) the FA17, FA18, and FA19 admissions cycles reflect similar patterns, with the yield rate for Caucasian/white students consistently exceeding the yield rate for students of color. The data for the fall 2020 cycle, however, reflects the outcomes from our layered approach, which included rearticulating our commitment to holistic review of applications, augmenting LSAT applications with GRE applications, and examining our scholarship allocation practices with an eye toward increased equity. As a result, in FA20, the yield rate among racially minoritized applicants outpaced the yield rate for Caucasian/white applicants. Application to Matriculation Rates: Detail by Race/Ethnicity (Chart 12) takes a closer look at the yield rates among and between multiple racial and ethnic groups. The cultural shift described in the subsequent section likely contributed to increased applicant interest, yield, and retention, particularly among students of color.

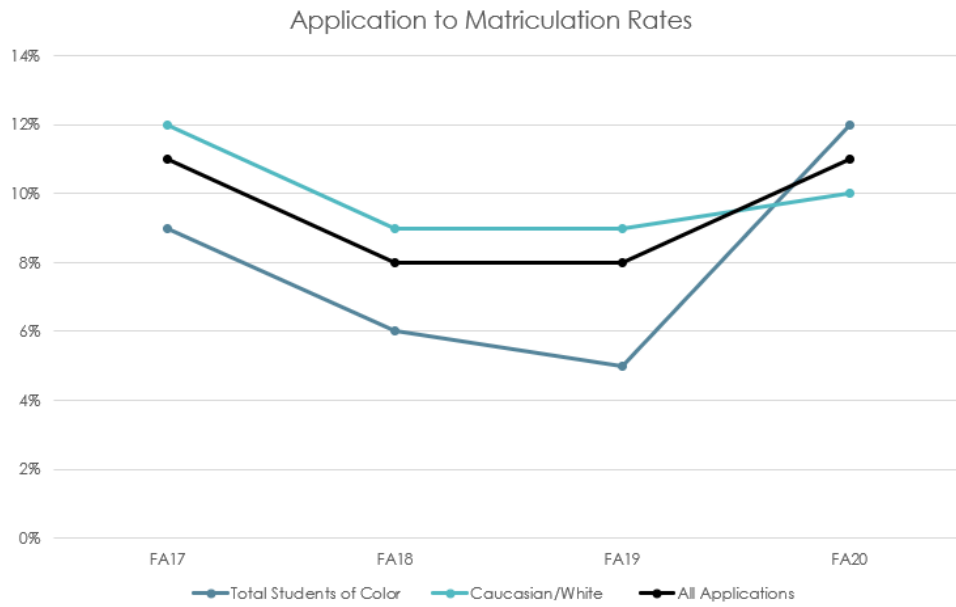
<sup>97</sup> *Id.*

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**Chart 11**<sup>98</sup>



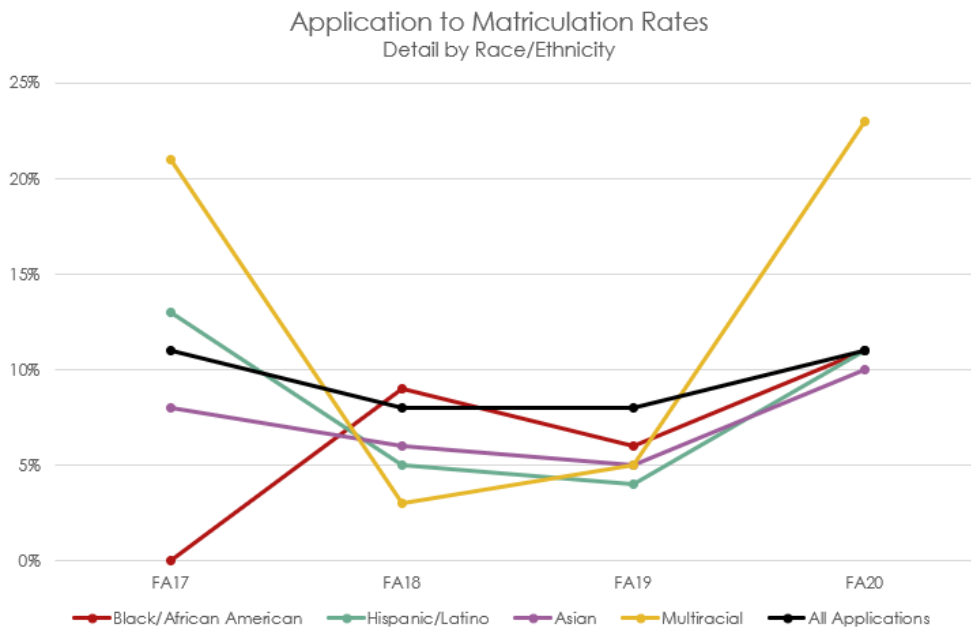
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<sup>98</sup> *Id.*

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**Chart 12**<sup>99</sup>



#### IV. Explicitly Articulating Cultural Shifts within the Law School Community to Prospective Students

A famous saying comes to mind when thinking about how to accomplish a large, complicated task such as articulating, and then implementing, a cultural shift in an institution that is part of a larger, more complex system. That saying features a call and response: How do you eat an elephant? One bite at a time. As well, when taking on an opponent, the wisdom of Sun Tzu is instructive.

If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for

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<sup>99</sup> *Id.*



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every victory gained you will also suffer a defeat. If you know neither  
the enemy nor yourself, you will succumb to every battle.<sup>100</sup>

The large, complicated task at hand is building an Antiracist law school, while at the same time communicating to prospective students that this work is being done in earnest, will be ongoing, and participation in this work will inure to them as beneficiaries and proponents of this work during their tenure in law school and later as lawyers in the legal profession. Simply stated, the opponent of this work is systemic inequality. Accordingly, *knowledge, leadership, and action* are the tools that are required to articulate and implement a successful cultural shift within and outside of legal education and the legal profession to, among others, prospective students.

The wisdom that it takes to first know an enemy before centering yourself is critical. This gives the knowledge that you obtain a level of objectivity as well as breath and scope of how that enemy harms others before focusing on how you, and those similarly situated to you, are harmed. This expands your knowledge beyond yourself and insists that you look to the vulnerabilities of others in assessing your opponent's impact on the community, of which you are a part. By viewing systemic inequity from the position of the community, in this case a community of prospective students, you are more apt to frame collective responses to an opponent's actions. With a knowledge of self, especially as part of a community, you can anchor your experiences alongside the experiences of others in the community. Thus, the knowledge prong in opposing systemic inequity in service to prospective students is centered on the cohort of prospective students as new members to the community.

The approach to the work ongoing at Penn State Dickinson Law has been to, first, know and acknowledge that systemic inequity is an opponent that must be studied, deconstructed, and then challenged. 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

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<sup>100</sup> Sun Tzu, *The Art of War*, p. 15 (Black & White Classics, 2014).

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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 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.

Second, asymmetric leadership, meaning leadership from all sides, is required to respond to complex problems and challenges. Systemic inequity is both problematic and challenging, calling for responses to be dynamic and decisive. A cultural shift in a community occurs when leadership is responsive to the existence of a challenge and then adapts systems to address that challenge. Two important aspects of sound and responsive leadership are communication and accountability. Communication is multidirectional and multilayered; thus, Penn State Dickinson Law has intentionally transformed on to an asymmetric communications platform, meaning that communications come from various locations on the platform but are fed into one reporting and evaluation system. At times, communications are repetitive and redundant, but this intermodal approach to communications helps to keep leadership informed about new and existing challenges and focused on delivering a decisive response.

Accountability is a critical function of leadership and requires a commitment to transparency, integrity, and reason. To address systemic inequity, leadership must be willing to have processes and approaches open for review and audit. As well, the most difficult part of accountability is the capacity to engage conflict when necessary. Leadership must remain open to explaining and reexplaining “the why” for the decision to engage a culture shift. Instead of viewing these explications as tedious, it might be helpful to view them as recursive teaching and learning, lending to refinement of the purpose and the message for the culture shift . . . a response and challenge to the opponent that is systemic inequity.

Finally, decisive action is required to demonstrate the resolve to challenge systemic inequity. To a prospective student, and to those external to the organization, actions speak louder than words. Decisive action in the context of implementing a cultural

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shift to systemic equity does not mean the absence of fear about whether your purpose is understood or whether your objectives will be accomplished; instead, decisive action means that you have acquired knowledge, evaluated plans and alternatives based on that knowledge, engaged in consultative processes, and assessed the risks of your decision on the community you are serving. Under such a framework, not taking that decisive action, which aligns with your institution's values and what you have communicated to internal and external constituencies would, in fact, be an unexpected outcome to those prospective students who have internalized your communications and relied upon them in making their respective decisions about joining your law school community.

## V. Conclusion

There are numerous approaches to building an Antiracist law school, with no particular approach being completely dispositive. Instead, building an Antiracist law school is a process of knowledge acquisition, leadership, and sustained commitment to action.

The approach adopted by Penn State Dickinson Law is a “whole of organization” or systems design approach to building an Antiracist law school. Using the systems design approach, the law school team of students, staff, faculty, and administrators is engaged in deconstructing the architecture of the law school into modules and components—administrative and teaching and learning functions—and assessing to what extent these modules and functions are meeting or missing the mark according to an adaptive Antiracist rubric.

As this article demonstrates, the law school is meeting and exceeding DEI benchmarks in admissions. In addition, the law school is meeting and exceeding DEI benchmarks in the recruitment of faculty. Specifically, from 2017 until now, the law school has increased its overall racial and ethnic diversity<sup>101</sup> within the faculty ranks from 12% to

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<sup>101</sup> Pulling data from ABA 509 disclosure statements allows only a narrow definition of diversity, because the disclosures measure only minoritized status. This approach is narrower than the diversity approach used in admissions.

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26%.<sup>102</sup> Using the same vision priorities and the same Antiracist rubric used for admissions, the law school has articulated a process based on acknowledgement, leadership, and commitment to action in its administration of the appointments process.

It must be disclosed that the law school has only made modest gains in the recruitment of racially and ethnically diverse staff colleagues. From 2017 until now, that law school has increased its overall diversity throughout the staff ranks from 5% to 11%. While this is a doubling of the percentage, a deeper dive into the data reveals areas of concern. The data shows that our staff ranks are greater than our faculty ranks by raw numbers: 42 staff in 2017 and 38 staff in 2021 versus 25 faculty in 2017 and 27 faculty in 2021. As a larger population, the staff ranks expose the acuteness of the dearth of racial and ethnic diversity--two of 42 staff of color in 2017 and four of 38 staff of color in 2021--in the frontline positions at the law school. These numbers also reflect, unfortunately, that the modest percentage increase in the racial and ethnic diversity within the staff ranks is partly attributable to attrition. As such, the law school will need to adapt its approach to staff recruitment and hiring to reassess the path forward to achieving DEI in the staff functions of the organization.

This article is the first of three written by staff, faculty, and administrators at Penn State Dickinson Law, each interdependently discussing the implementation of Antiracist teaching and learning at the law school. To fully comprehend the Penn State Dickinson Law process to build an Antiracist law school, it is highly recommended to read the trilogy of works together. Accordingly, after reading this article, the authors suggest reading “Exploring Race and Racism in the Law School

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<sup>102</sup> Penn State Dickinson Law’s success in more than doubling the percentage of colleagues of color joining the faculty is a lengthier discussion for another law review article. But I will say that, like the circumstances described in the Race on Campus article that follows, Penn State Dickinson Law did not have a special allotment of funds or endowment to underwrite the transformation of faculty diversity. Rather, the law school took a holistic approach to defining the environment that it wanted to see and assessed the need to enhance. In addition, leadership and commitment to recruit and retain diverse faculty colleagues are essential components to success. See generally Sarah Brown, Race on Campus: How One Campus Nearly Doubled Its Black Faculty, available at <https://www.chronicle.com/newsletter/race-on-campus/2021-03-02>, The Chronicle of Higher Education, Mar. 2, 2021 (discussing the University of North Carolina at Greensboro’s success between 2015 and 2020 in diversifying the faculty).

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Curriculum: An Administrator’s View,”<sup>103</sup> and then “Exploring Race and Racism in the Law School Curriculum: Educating Antiracist Lawyers.”<sup>104</sup>

In closing, Penn State Dickinson Law acknowledges its 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. In service to our ongoing commitment to eradicate racism and bias, Penn State Dickinson Law is immersed in the work of constructing an Antiracist law school. Our guiding principle remains: to fulfil our responsibilities as legal educators uniquely positioned at “the nexus of power and understanding the necessity for change.” Specifically, as educators, we must recognize our unique opportunity and important responsibility to combat racism in our educational mission. We must do more than transfer legal knowledge and skills to our students. We must cultivate within them, a principled, enduring commitment to work for true equality over the course of their careers. To do this we must reconsider not only what we teach, but how we teach it. Onward, the movement continues.

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<sup>103</sup> Amy Gaudion, Exploring Race and Racism in the Law School Curriculum: An Administrator’s View, [citation].

<sup>104</sup> Dermot Groome, Exploring Race and Racism in the Law School Curriculum: Educating Antiracist Lawyers, [citation].