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Danielle M. Conway

Penn State Dickinson Law, dzc5647@psu.edu

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ANTIRACIST LAWYERING IN PRACTICE BEGINS
WITH THE PRACTICE OF TEACHING AND LEARNING
ANTIRACISM IN LAW SCHOOL

Danielle M. Conway*

Abstract

I was honored by the invitation to deliver the 2021 Lee E. Teitelbaum keynote address. Dean Teitelbaum was a gentleman and a titan for justice. I am confident the antiracism work ongoing at the S.J. Quinney College of Law would have deeply resonated with him, especially knowing the challenges we are currently facing within and outside of legal education, the legal academy, and the legal profession. I am fortified in this work by Dean Elizabeth Kronk Warner's commitment to antiracism and associated diversity, equity, and inclusion work. Finally, I applaud the students who serve on the Utah Law Review for their vigilance in using the power of scholarship, convening, and discourse to generate knowledge and inspire action that will be meaningful to our teaching and learning communities as we tackle the perennial issue of systemic racial inequality and intersectional injustice.

This Essay is a call to action for legal education, the legal academy, and the legal profession in America to address the complicity of law and legal systems in scaffolding systemic racial inequality and intersectional injustice. The focus on legal education, the legal academy, and the legal profession is necessary for two reasons: first, throughout history, the law has been used to design a system that has and continues to advantage some and to oppress others in American society; and second, the special duty of those within the legal profession is to use the law as a tool to promote democracy and democratic ideals, not to diminish or dismantle them. As such, this Essay proposes the use of antiracism in teaching, learning, and practice to acknowledge the persistence of systemic racial inequality and intersectional injustice, to become competent in using pedagogy and practice to prepare methods of resisting systemic racial inequality and intersectional injustice, and to act to embed antiracism into our democratic institutions to promote systemic equity.

* © 2022 Danielle M. Conway. Dean and Donald J. Farage Professor of Law, Penn State Dickinson Law, and co-curator of the AALS Law Deans Antiracist Clearinghouse Project. In putting forth this Essay, I write solely in my capacity as a member of the Penn State Dickinson Law faculty. I thank my colleagues, Dean Angela Onwuachi-Willig, Boston University School of Law, and Dean Elizabeth Kronk Warner, University of Utah, S.J. Quinney College of Law, for partnering with me on several presentations and writing collaborations that inspired this Essay. I also thank *Utah Law Review* staff and editors Amander Fuller, Kaitlynn Morgan, Shannon Woulfe, and Victoria Countryman for shepherding this Essay through the publication process.

I. INTRODUCTION

Structural racism is a social framework in which policies, practices, customs, and norms are promulgated, adopted, and followed in our social, economic, legal, and political systems to produce and reinforce racial inequalities.¹ A feature of structural racism is that it routinely privileges white people while simultaneously disadvantaging people of color and people with intersectional identities, exacerbating harm to the latter. Systemic racism is the manifestation of structural racism that is embedded through law, legal systems, and law-adjacent institutions.² In this way, systemic racism depends on the existence of a legal architecture fortified by laws that reinforce inequality.³ Specifically, this inequality is based on the perpetuation of ascriptive discrimination. Ascriptive discrimination is the result of people being placed in a certain position within a stratification system or hierarchy because of qualities beyond their control, such as race, sex, class, religion, ethnicity, sexual orientation, disability, and residency.⁴

While systemic racial inequality is a focus of discussion to be addressed by antiracism teaching and learning in legal education and antiracist lawyering in the profession, it is critical to recognize that there are larger constellations of harms—oppression and subordination—in which racial inequality is encased. With this discussion, it becomes more visible how America’s system of laws is implicated and, at times, complicit in perpetuating inequalities. A system of inequality creates a fluidity of vulnerability, in which layers of intersecting identities move people and groups in or out of privilege and closer to or farther away from power because of these identities and the laws, norms, and customs that act to regulate them.

The legal academy, by virtue of its mission, has a special duty to promote democracy and democratic ideals.⁵ This special duty emanates from the

¹ See Rep. of the Hum. Rts. Council, at ¶ 9, U.N. Doc. A/HRC/47/53 (2021), <https://undocs.org/A/HRC/47/53> [perma.cc/XF6T-XUY4] (“[T]he concept of systemic racism against Africans and people of African descent, including as it relates to structural and institutional racism, is understood to be the operation of a complex, interrelated system of laws, policies, practices, and attitudes in State institutions, the private sector and social structures that, combined, result in direct or indirect, intentional or unintentional, de jure or de facto discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.”).

² See *id.*

³ See *id.*

⁴ PAUL GOWDER, *THE RULE OF LAW IN THE REAL WORLD* 40 (2016).

⁵ See MODEL RULES OF PROF. CONDUCT, Preamble: A Lawyer’s Responsibilities [1], [5], and [6] (AM. BAR ASS’N 2020) (“A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice[;] While it is a lawyer’s duty, when necessary, to challenge the rectitude of official action, it is also a lawyer’s duty to uphold legal process[;] and [a]s a public citizen, a lawyer should seek improvement of the law, access to the legal

responsibility to train the future members of the bench, bar, and academy—judges, lawyers, and law professors—all of whom take one or more oaths to support, uphold, and defend the U.S. Constitution, state constitutions, and the duties required by offices, courts, and clients. At the intersection of this country’s system of laws and its system of education is the institution of legal education administered by the legal academy and accredited by the Council of the American Bar Association Section on Legal Education and Admissions to the Bar.⁶ Though systemic racial inequality is embedded in America’s system of laws, the duties and responsibilities of legal education, the legal academy, and the legal profession are to engage in action, reflection, and transformative change that will give meaning to the democratic ideals of equality and justice. This work is not wishful; it is required if American democracy is to survive and flourish. The work ahead demands acknowledgment that the power relations within legal institutions, and especially law schools, tend to reinforce a culture—driven by incentive structures and peer pressure—of “dominant rituals and unspoken habits of thought that construct and then define the interpersonal, institutional and cognitive behaviors and beliefs of members of the educational community.”⁷ This culture bends toward the status quo, valuing white supremacist patriarchy.

This Essay contributes to the discussion about the importance of antiracism teaching and learning in legal education and the value this work has in facilitating engagement and adoption of antiracist lawyering acumen in practice. To begin the pedagogical process of antiracist lawyering, Part II of this Essay focuses the discussion on race and racism terminology. Part III discusses the legal academy’s duty to educate about antiracism. Part IV engages praxis to illustrate exactly why antiracist lawyering is an urgent necessity. To conclude, Part V invites readers to act by getting involved in numerous antiracism, anti-subordination, and anti-oppression initiatives being launched at law schools around the nation.

system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. 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.”); *2021–2022 Standards and Rules of Procedure for Approval of Law Schools*, AM. BAR ASS’N, Rule 205 (b), (d), Rule 206 (a), (b), Rule 301 (a), Rule 302 (c), and Rule 303 (a)(1), https://www.americanbar.org/groups/legal_education/resources/standards [<https://perma.cc/ST7F-NUQ3>] [hereinafter ABA, Legal Education and Admissions] (laying out, respectively, the rules for non-discrimination and equality of opportunity, diversity and inclusion, objectives of a program of legal education, learning outcomes, and curriculum).

⁶ ABA, Legal Education and Admissions, *supra* note 5, at v.

⁷ Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 519 (2007).

II. FOCUSING THE DISCUSSION ON RACE AND RACISM: TERMINOLOGY, REALITY, IDEOLOGY

Legal education, the legal academy, and the legal profession must acknowledge the existence of American racism in its many forms.⁸ New entrants to the legal profession as well as its existing members must become critical thinkers about race and racism and how the latter evolves, mutates, and transforms if antiracist lawyering is to be understood and undertaken. The critical study of race and racism does not command adherence to an ideology; instead, critical study requires members of the profession to engage in meaningful dialogue about how they are in the world and how they are with the world.⁹ The objective is to become more aware and more reflective of the social realities impacting others.

To track racism in America, history and social science are important, instructive disciplines that members of the legal profession should engage.¹⁰ By crossing interdisciplinary boundaries, members of the legal profession will learn that race is socially constructed, yet it has a social reality that, in turn, forms a social structure.¹¹ Social reality means after racial identities are ascribed, those identities are subject to real effects.¹² For example, the social reality in America demonstrates that this country's racialized social structure awards systemic privileges to whiteness, while simultaneously penalizing those outside of the sphere of whiteness.¹³

The social reality of race embedded in America's social structure—economic, political, legal—has produced this country's racial structure, which Professor Eduardo Bonilla-Silva has expressed as a racialized social system in which “the totality of the social relations and practices reproduces [and] reinforce[s] white privilege.”¹⁴ Finally, to protect the status quo of white privilege, racial ideology emerges.¹⁵ Racial ideology offers a racially-based framework for either the dominant, benefitted in-group to explain or justify the status quo, or the disadvantaged, out-group to challenge the status quo.¹⁶

This focusing discussion on race and racism is important to establish the baseline for acknowledgment of the root causes of systemic racial inequality. This approach establishes a foundation for further critical discussions about drawing on

⁸ See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* 2–8 (5th ed., 2018) (describing and theorizing Jim Crow racism, color-blind racism, symbolic racism, laissez-faire racism, and structural racism).

⁹ See BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 14 (1994) (explaining philosophy of praxis to be “action and reflection upon the world in order to change it”).

¹⁰ See generally BONILLA-SILVA, *supra* note 8, at 10–13.

¹¹ See *id.* at 8.

¹² See *id.*

¹³ See *id.* at 9.

¹⁴ See *id.* at 8–9.

¹⁵ See *id.* at 9.

¹⁶ See *id.* at 10–13.

antiracism praxis to inform the duty to educate about antiracism in programs of legal education and the implementation of teaching and learning through engaged pedagogy.

III. THE LEGAL ACADEMY'S DUTY TO EDUCATE ABOUT ANTIRACISM

Historians, commentators, and advocates have identified as “the most explosive issue in American civilization: the historical centrality and complicity of law in upholding white supremacy (and concomitant hierarchies of gender, class, and sexual orientation).”¹⁷ In response, the legal academy, for its part, has a responsibility to deliver a program of legal education that acknowledges and acts to internalize an instantiation of democracy that meaningfully addresses systemic racial inequality. It is not sufficient for the legal academy to only denounce systemic racial inequality; instead, the legal academy must pair action with words. In addition, the action that is required cannot be performative; rather, the action must be in the form of vigorous resistance to rationalizing racism, sexism, anti-Semitism, nativism, heterosexism, classism, cisgenderism, and ableism.

In today's toxic political environment, law students, staff professionals, law professors, and administrators individually are forced to normalize the appeasement of far-right pundits, organizations, leaders, politicians, and their constituents, enough of whom complain that they are victimized by society, though their actions are intended to leverage systemic racial inequality and oppression for the purpose of

¹⁷ Cornel West, *Forward*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xi (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas eds., 1995). See W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA 1860–1880* 691 (1962) (“It was thus that finance and the power of wealth accomplished through the Supreme Court [which deprived the 14th and 15th Amendments of their strength by neutering the congressional enforcement provisions in *United States v. Reese* and *United States v. Cruikshank*] what it had not been able to do successfully through Congress.”); see also DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 11–13 (2004); ERIC FONER, *SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* xxxiii, xxvi, 6–8 (2019); M. Kelly Tillery, *Complicity*, 82 PHILA. L. 24, 24 (2019) (citing A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE IN THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD* ix (1978)) (reflecting on “how a legal system that proclaims ‘equal justice for all’ could simultaneously deny even a semblance of dignity to a 16-year-old boy who had committed no wrong” the opportunity to stay in a heated dormitory on the campus of Purdue University in 1944; the author shares further: “I became intensely eager to acquaint myself with the part the legal process played, to learn the lessons of racial history, to ascertain to what extent the law itself had created the mores of racial repression. Did the law merely perpetuate old biases and prejudices? Or had it been an instrument first in establishing and only later in attacking injustices based on color?”); see also THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619–1860* (Thomas A. Green & Hendrik Hartog eds., 1996).

maintaining dominance in power relations.¹⁸ This has been demonstrated by the attack on Critical Race Theory (“CRT”).¹⁹

The attacks on CRT are meant to create political unity in the far-right and are intended to push back against unified movements to eradicate structural, institutional, and systemic racism. As well, CRT is under attack because it creates a path for knowledge acquisition, especially within higher education institutions, about established facts that reasonably and rationally explain the durability of systemic racial inequality.²⁰ Moreover, pulling CRT out of higher education institutions and mischaracterizing it in mainstream political rhetoric to mobilize right-wing ideologues and their followers draws on the fictionalized boogeyman.²¹ This ever useful boogeyman stokes the power and demographic displacement fears of those identifying with the dominant white hierarchy.²² This side of America then becomes further entrenched in the anti-intellectual tradition, which has the effect of discrediting higher education institutions, the very places where new generations of learners go to practice and master critical thinking.²³

Disrupting the American legal system, so far as it perpetuates systemic racial and gendered inequality—including and especially how we teach, learn, and serve students in law schools across this nation—may be viewed as subversive. For those who would attempt to challenge this kind of subversiveness, I offer that in military service, soldiers are required to do two things when they are faced with what they believe to be an unlawful order: first, they are required to seek clarification (an act in itself); and second, if clarification is not forthcoming, soldiers are not to obey an unlawful order.²⁴ The analogy offers guidance to members of the legal profession, all of whom swear to uphold the American system of laws. Ascriptive discrimination is embedded in American democratic institutions, despite such discrimination being

¹⁸ See JASON STANLEY, *HOW FASCISM WORKS: THE POLITICS OF US AND THEM* 86, 89 (2018) (noting those who are accustomed to the benefits of hierarchy “can be easily led to view liberal equality as a source of victimization” because—according to rightist critics of liberalism—“by ignoring differences in power, liberalism makes dominant groups susceptible to having their privileged status overturned by forced, and therefore unjust, ‘power sharing’”).

¹⁹ For a more complete discussion of Critical Race Theory, see *infra* Section IV.B.

²⁰ See Danielle M. Conway, *The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education*, 66 ST. LOUIS U.L. REV. (forthcoming 2022).

²¹ See *id.*

²² *Id.*

²³ *Id.*

²⁴ See 10 U.S.C. § 890 (stating in an article entitled *Assaulting or Willfully Disobeying Superior Commissioned Officer*, that “[a]ny person subject to this chapter who willfully disobeys a lawful command of that person’s superior commissioned officer shall be punished. . . .”); see *id.* § 891; see Rod Powers, *What to Know About Obeying an Unlawful Military Order*, BALANCE CAREERS (Sept. 30, 2019), <https://www.thebalancecareers.com/military-orders-3332819> [<https://perma.cc/PRL6-QWP6>] (“These articles require the obedience of *lawful* orders. Not only should an unlawful order not be obeyed, obeying such an order can result in criminal prosecution. Military courts have long held that military members are accountable for their actions even while following orders.”).

anathema to the democratic ideal of equality. The existence of a social reality that permits the white supremacist patriarchy to penalize Black and brown people in the American system of laws captures the concerns presented by unlawful orders. While not carrying the military analogy through to the end, the military analogy offers a way to think about what it means to only denounce systemic racial inequality without committing action to disrupting it or claiming the status of “nonracist” without going the last mile to engage antiracism. Deciding not to go that last mile is action that demonstrates complicity in propping up an unjust system of laws. Professor Bonilla-Silva “urge[s] a personal and political movement away from claiming to be ‘nonracist’ to becoming ‘antiracist.’ Being an antiracist begins with understanding the institutional nature of racial matters and accepting that all actors in a racialized society are affected *materially* (receive benefits or disadvantages) and *ideologically* by the racial structure.”²⁵

It is the requirement to act to disrupt undemocratic and unjust laws, processes, and practices that compel law schools to engage antiracism. The necessity to engage antiracism in legal education stems from at least two interdependent mechanisms: first, legal architecture is built upon and scaffolded by systems of inequity that perpetuate racism and sexism; and second, America’s system of laws is premised on the maintenance of precedent and tradition. Thus, the very essence of teaching and learning the law is to reproduce structures and systems forged in racial and gendered hierarchies.

To pursue antiracism in legal education means to first acknowledge race, social reality, racialized social structures, and racial ideology. Next, antiracism requires learning about the forms of racism that are established to rationalize, explain, or justify the status quo. Finally, to practice antiracism means to act in ways that challenge and contest systemic racial inequality. The events of 2020 have demonstrated the complicity of law in propping up the white supremacist patriarchy, structural racism, subjugation, oppression, and inequality. Examples include Georgia’s voter suppression law signed by Governor Brian Kemp and Executive Order 13950—discussed in detail herein—signed by Donald Trump during the tail end of his holding the Office of the President, both measures spawning state and local legislative bills and actions modeled therefrom.²⁶ Discussing the landscape of

²⁵ BONILLA-SILVA, *supra* note 8, at 15 (emphasis in original).

²⁶ See Michael Waldman, *Georgia’s Voter Suppression Law*, BRENNAN CTR. FOR JUST. (Mar. 31, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-voter-suppression-law> [<https://perma.cc/9XH5-3TL6>] (reporting that the Georgia Omnibus Law signed into law in March 2021 enforces Republican will to restrict ballot access, particularly in urban and suburban communities, disproportionately impacting voting in Black communities, imposing strict new identification requirements for absentee ballots, banning mobile voting, and penalizing through criminal sanctions the offering of food or water to people in long lines waiting their turn to vote in an election); see also Nick Corasaniti & Reid J. Epstein, *What Georgia’s Voting Law Really Does*, N.Y. TIMES (Aug. 18, 2021), <https://www.nytimes.com/2021/04/02/us/politics/georgia-voting-law-annotated.html> [<https://perma.cc/GNJ2-RTMA>]. For a detailed discussion of Executive Order 13950, see *infra* Section IV.B.

subordination and oppression, generally, and racial inequality specifically, are necessary predicates to understanding and appreciating the steps that can be taken to move organizations—especially law schools and the legal profession—from edifices of structural inequity to organizations transforming along the lines of systemic equity.

There are several elements to consider before implementing antiracism in a program of legal education. Leadership on antiracism is the first constitutive element of this work. Developing an approach for antiracist knowledge acquisition and implementation is the second constitutive element. Establishing a sustainability plan for antiracist programming is the final constitutive element.

A. Leadership on Antiracism

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.

This definition is ubiquitous for me. It is tailored to my leadership identity and style. Whatever leadership definition one employs, a constant thread that must be visible is the conviction to what one has envisioned. While it is not impossible to advance antiracism in a program of legal education, it is certain that leadership on antiracism with a vision that is performative will create challenges in reaching the objective. Having an authentic commitment to implementing antiracism in a program of legal education depends on the level of buy-in from those within a law school community.

I am fortunate and proud to be among colleagues at Penn State Dickinson Law who share my commitment to equal justice for all. My colleagues took 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.²⁷ But one cannot 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, an implementation plan, a socialization of the vision and the plan to leadership team members within the organization, a mechanism for assessing progress toward the

²⁷ See *Faculty Resolution*, PENN STATE DICKINSON L. (June 2, 2020), <https://dickinson.law.psu.edu/sites/default/files/2020-06/faculty-resolution.pdf> [https://perma.cc/3D6R-3S97].

goals and objectives that comprise the vision, and a sustained commitment to iterating and adapting the plan and the responses to various outcomes.

At Penn State Dickinson Law, the work to build an antiracist law school has been leveraged by developing and articulating four strategic, interdependent vision priorities²⁸ that have been socialized throughout the organization—both vertical and horizontal—to the explicit demonstration of “leadership by doing,” as opposed to “leadership by commanding,”²⁹ 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.³⁰ From this leadership milieu, a strong collective emerged to act consistently with our stated values in furtherance of building an antiracist law school.

B. Antiracist Knowledge Acquisition and Implementation Strategies

A systems design approach to building an antiracist law school focuses on embedding systemic equity into American law teaching and learning in support of sustainable democratic institutions.³¹ Specifically, this systems design approach requires looking at each function of the law school—admissions, financial aid,

²⁸ 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 *Five Year Strategic Plan 2021–2026*, AM. BAR ASS’N, https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/governance/strategic-plan.pdf [<https://perma.cc/LZX3-EBXT>] (last visited Feb. 23, 2022).

²⁹ *Draft Reports on Racism, Bias, Community Safety Initiatives Posted for Review*, PENN STATE NEWS (Dec. 3, 2020), <https://news.psu.edu/story/640947/2020/12/03/administration/draft-reports-racism-bias-community-safety-initiatives-posted> [<https://perma.cc/2EYZ-PGYR>]; see also *Racism, Bias, and Community Safety Recommendations Discussed during Town Hall*, PENN STATE NEWS (Dec. 9, 2020), <https://news.psu.edu/story/641651/2020/12/09/administration/racism-bias-and-community-safety-recommendations-discussed> [<https://perma.cc/6298-5LVH>].

³⁰ See Danielle M. Conway, Angela Onwuachi-Willig, Kim Mutcherson, Danielle Holley-Walker & Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, ASS’N AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> [<https://perma.cc/4YPD-YJ6A>] (last visited Feb. 7, 2022); see also *A Message from Penn State President Eric J. Barron*, PENN STATE NEWS (June 3, 2020), <https://news.psu.edu/story/622178/2020/06/03/president/message-penn-state-president-eric-j-barron> [<https://perma.cc/ZGS2-RMX6>].

³¹ I arrived at this approach after years of working experience with systems design in the procurement space. I was pleased, however, to read the following assessment from the U.N. High Commissioner: “Systemic racism needs a systemic response . . . [and] [s]tates should seize opportunities to advance the anti-racism agenda[.]” Rep. of Hum. Rts. Council, *supra* note 1, at ¶¶ 19–23. The High Commissioner stated further: “States should adopt a systemic approach to combating racial discrimination through the adoption and monitoring of whole-of-government and whole-of-society responses that are contained in comprehensive and adequately resourced national and regional action plans and that include, where necessary, special measures to secure for disadvantaged groups, notably African and people of African descent, the full and equal enjoyment of human rights.” *Id.* at ¶ 19.

curriculum, teaching and learning, and career services, to name a few—to identify inequities and to act to eliminate them.

The meta framework for the systems design approach relies on critically examining law schools by their constituent parts—or, more aptly, their functions—to identify embedded inequities. Once embedded inequities are revealed within a function, the next step is to deploy a systems design rubric to transform one or more functions of the organization. Systems design for law is defined as “a hands-on, user-focused way to relentlessly and incrementally innovate, sympathize, humanize, solve problems, and resolve issues.”³² Systems design “is fundamentally user-centered; experimental; responsive; intentional; and tolerant of failure.”³³

To begin the systems design process, the designer engages the concept of empathy to learn about the audience for whom the design is meant.³⁴ Next, the designer defines the challenge, which requires constructing a point of view that is based on user needs and insights.³⁵ Third, the designer engages in ideation to brainstorm potential creative solutions.³⁶ Fourth, the designer builds a prototype that represents one or more of the ideas and then shares the prototype with others.³⁷ Finally, the designer tests the solution by returning to the original user group to demonstrate the solution and receive feedback.³⁸

Because I recommend a systems-based approach to achieving systemic racial equity in legal education through the use of praxis-informed antiracism, I am not wedded to a linear framework for implementation. In contrast, an iterative approach to antiracism allows for various entry points into a process of immersion and knowledge acquisition. Within this iterative cycle, members of the profession can delve critically into substantive dialectical discourses using recursive methods to practice the incorporation of antiracism into legal education and lawyering.

C. Establishing an Antiracism Sustainability Plan

Effective leadership can be measured by sustainability of vision priorities and succession planning that ensures that those who take over the leadership role have plans that are accessible in both literal and the figurative senses. Leaders in the organization can develop antiracism sustainability plans within existing or new strategic plans. Another option is to develop a stand-alone sustainability plan that draws on antiracism resolutions and assessment reports. Still another option for sustainability planning developed at Penn State Dickinson Law has been captured in

³² See Marshall Lichty, *Design Thinking for Lawyers*, LAWYERIST (Oct. 18, 2019), <https://lawyerist.com/news-articles/design-thinking-for-lawyers/> [https://perma.cc/87LQ-AUJ2].

³³ *See id.*

³⁴ *See id.*

³⁵ *See id.*

³⁶ *See id.*

³⁷ *See id.*

³⁸ *See id.*

three interdependent law review articles drafted by staff and faculty.³⁹ These articles served as the basis for an accepted proposal for an eight- to ten-volume University of California Press Book Series. One of the volumes in the book series will include a template for producing and maintaining an antiracism sustainability plan.

IV. ANTIRACIST LAWYERING IN PRACTICE

A systems design approach also has benefits for building an antiracist legal profession. This approach has the potential to leverage the special duty required of lawyers, which is to uphold and defend the democratic ideals of equality, realism, and commitment to the rule of law.⁴⁰ The systems design approach has similar application when used within each function of the legal profession—recruitment, formation of the lawyer’s professional identity, supervision, mentorship and sponsorship, development of subject matter expertise, client relationships and business development, retention and promotion, leadership development, and succession planning—to identify inequities and to act to eliminate them.

Systems design has been used successfully in mediation and dispute resolution practices. As such, the knowledge of these disciplines is readily transferable and provides even greater potential for achieving meaningful outcomes for acknowledging, addressing, and acting to eliminate subordination and oppression in the profession.⁴¹ But even with the requisite skill set—let us call this capacity—there still remains the necessity of demonstrating the will to confront the complexities associated with acknowledging systemic racial inequality as well as the painful reckoning associated with the reality of the complicity of law in perpetuating it. That said, strengthening the legal profession’s resolve to tackle systemic racial inequality

³⁹ The following three interdependent articles authored by Penn State Dickinson Law faculty and staff 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 first article in the interdependent trilogy is Danielle M. Conway, Bekah Saidman-Krauss & Rebecca Schreiber, *Building an Antiracist Law School: Inclusivity in Admissions and Retention of Diverse Students—Leadership Determines DEI Success*, 23 RUTGERS RACE & L. REV. 1 (2021); the second article is Amy Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator’s View on Adopting an Antiracist Curriculum*, 23 RUTGERS RACE & L. REV. 131 (2021); and the third article is Dermot Groome, *Exploring Race and Racism in the Law School Curriculum: Educating Antiracist Lawyers*, 23 RUTGERS RACE & L. REV. 65 (2021). 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. See generally MEERA DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA (2019). Yes, racism and bias are pervasive in our teaching, learning, service, and leadership environments.

⁴⁰ See MODEL RULES OF PRO. CONDUCT (AM. BAR ASS’N 2020).

⁴¹ See generally LISA BLOMGREN AMSLER, JANET K. MARTINEZ & STEPHANIE E. SMITH, DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT (2020) (explaining dispute system design and how it can be used in many contexts to resolve conflict and deliver justice).

presents one of the best opportunities to strengthen democracy, the lifeblood of which depends on the existence of equality. Lawyers not only have a unique skill set to make the vision of systemic racial equity a reality, but I propose that lawyers have a special duty to do so.

Regarding the lawyer's special duty, I lean on concepts that I have learned and practiced in the Government Contract Law field. The concepts I speak of are called general responsibility determinations and affirmative determinations of responsibility. General responsibility determinations measure contractors' capacity and willingness to perform work specified in solicitations' scopes of work. When there is complex work to be done, the contracting agency may require contractors to meet a higher standard of responsibility called "affirmative determinations of responsibility."⁴²

Translating this requirement to the context of the citizen and the lawyer, all citizens have a general duty to promote the rule of law and the democracy it supports, but the lawyer—by virtue of training and experience—has a special and affirmative duty to promote the rule of law, especially on behalf of the most vulnerable members of our society. This means that there is an extra layer of responsibility for the lawyer. If there is an extra layer of responsibility on the lawyer, then there is, by definition, an extra layer of responsibility on the legal profession and the legal academy to recognize and then eliminate systemic racial inequality. I will continue with examples from the Government Contract Law field because recent events have provided an opportunity to center the interrogation of race and racial inequality in the procurement-related space and this, in turn, informs how to approach antiracist lawyering.

I studied and then challenged anti-affirmative action sentiment in the federal contracting space in articles I wrote over two decades ago.⁴³ I discussed the purpose and history of federal affirmative action programs through the drawing of common threads between and among dissenting opinions of Supreme Court Justices in *Adarand Constructors v. Peña*.⁴⁴ The common threads among those dissenting opinions were, first, the explicit recognition of the disproportionate exclusion of Blacks and other minoritized people from federal contracting opportunities; second, the position that Congress has the authority to actively end discrimination and to counteract its lingering effects; and third, that racial inequality—practiced through

⁴² Examples of this might be the requirement to remove dangerous materials like asbestos or lead onsite before commencing a construction remediation project. When the scope of work requires special skills, it is reasonable to require a higher showing of responsibility.

⁴³ See Danielle Conway-Jones & Christopher Leon Jones Jr., *Department of Defense Procurement Practices After Adarand: What Lies Ahead for the Largest Purchaser of Goods and Services and Its Base of Small Disadvantaged Business Contractors*, 39 HOW. L.J. 391 (1995); Danielle Conway-Jones, *The Perpetuation of Privilege and Anti-Affirmative Action Sentiment in Rice v. Cayetano*, 3 ASIAN-PACIFIC L. & POL'Y J. 371 (2002).

⁴⁴ 515 U.S. 200 (1995).

bias, caste, and white hierarchy—maintains a system of barriers to equal opportunity.⁴⁵

In this discussion, I want to challenge the notion that because former President Trump’s Executive Order 13950, titled “Combating Race and Sex Stereotyping,”⁴⁶ was revoked by President Biden’s Executive Order 13985, titled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,”⁴⁷ there is nothing further to discuss nor is there a remaining threat from the content and purpose of Executive Order 13950. More importantly, I want to use this Executive Order to present a case study on how to identify white supremacist ideology in law and then discuss what actions law students and lawyers should take to contest it.

Executive Order 13950’s banning of words that critiqued structural racism was dangerous because it was blatantly undemocratic. The order represented a codification of the use of state power to silence oppositional voices. Revocation of the order did not ameliorate the harm that it produced; instead, it served as added fuel on an incendiary political, economic, and social powder keg of conflict in the nation. Through the order, former President Trump placed racist and antiracist speech on the same level, intentionally ignoring his duty as a public servant to adhere to the Fourteenth Amendment as well as the First Amendment. If one is to engage in antiracist lawyering, one must admit when a public official has flagrantly disregarded the law and abused power entrusted by all of the governed. To remain neutral demonstrates an act supporting racist policies, practices, customs, and ideals. Dr. Ibram Kendi explains that one cannot be neutral; one is either racist or antiracist.⁴⁸ By placing racist and antiracist speech on the same level, one is not exercising the antiracist muscle. The impact of this is to attempt to protect both, but this is a fallacy where white supremacy is the default status quo, and any racist idea that is expressed, in this case through Executive Order 13950, becomes the dominant discourse for American society.

⁴⁵ See *Pena*, 515 U.S. 200; see also Conway-Jones & Jones Jr., *supra* note 43, at 397–98 (citing *Adarand Constructors v. Pena*, 515 U.S. 200 (1995) (Ginsberg, J., dissenting)); see also Conway-Jones, *supra* note 43.

⁴⁶ Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 28, 2020).

⁴⁷ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

⁴⁸ See, e.g., Vanessa Williams, *For Ibram Kendi, Being ‘Not Racist’ Doesn’t Cut It. He Insists that We, and He, Be ‘Antiracist.’* WASH. POST (Aug. 23, 2019), <https://www.washingtonpost.com/nation/2019/08/23/ibram-kendi-being-not-racist-doesnt-cut-it-he-insists-that-we-he-be-antiracist/> [<https://perma.cc/B5UR-CSAZ>].

A. *Executive Order 11246 and Suggestions on Practicing Antiracist Lawyering*⁴⁹

Antiracist lawyering does not require suspending the use of existing skill sets such as comprehensive research and critical thinking. In fact, antiracist praxis leverages these skills as complementary to the acquisition of knowledge about the synthesis of history and the social reality of white supremacist ideology on law construction. Using a systems design approach to formulate critical questions about the purpose and effect of statutes, rules, and orders on racialized beings is essentially one additional step in an already familiar analytic process. Thus, suspending what you think you know or have internalized about affirmative action policies when presented with a procurement-related research question in the form of an executive order initiates a process of independent learning about the societal and political landscapes in existence at the time. Today's dynamic search engine technology places public history at the lawyer's fingertips. Furthermore, developing research questions with a critical lens could fairly quickly point to relevant intersections of the law and history of affirmative action policies and the Civil Rights Movement between the 1930s and the 1960s.

Developing context-driven legal and factual questions would yield the following history of presidential executive orders intended to recognize the civil rights of Black people. In 1941, President Franklin Delano Roosevelt responded to protests that Black people were being excluded from war production factory jobs with Executive Order 8802, which made discrimination based on race, color, creed, and national origin in the federal government and in the defense industries unlawful.⁵⁰ He extended this prohibition to all government contractors with Executive Order 9346.⁵¹ President Dwight D. Eisenhower further extended this non-discrimination policy by requiring agency heads to obtain compliance from their contractors and subcontractors and directed coordination through the President's Committee on Government Contracts.⁵²

President John F. Kennedy embarked on a journey to discover how, in the midst of the Civil Rights Movement, the executive branch of the federal government could address racial inequality.⁵³ With regard to public procurement contracting, President Kennedy issued Executive Order 10925, which gave federal contracting agencies the authority to institute procedures against federal contractors who violated their Equal Employment Opportunity (EEO) obligations, including contract cancellation, debarment from future contracts, and other sanctions.⁵⁴ Executive Order 10925 also created the President's Committee on Equal Employment Opportunity, which became the Equal Employment Opportunity Committee after the passage of the

⁴⁹ See generally *History of Executive Order 11246*, OFF. OF FED. CONT. COMPLIANCE PROGRAMS, <https://www.dol.gov/agencies/ofccp/about/executive-order-11246-history> [https://perma.cc/9D5T-AFVN] (last visited Feb. 18, 2022).

⁵⁰ Exec. Order No. 8802, 6 Fed. Reg. 3109 (June 25, 1941).

⁵¹ Exec. Order No. 9346, 8 Fed. Reg. 7183 (May 27, 1943).

⁵² See *History of Executive Order 11246*, *supra* note 49.

⁵³ See *id.*

⁵⁴ Exec. Order No. 10925, 26 Fed. Reg. 1977 (Mar. 8, 1961).

Civil Rights Act of 1964.⁵⁵ Executive Order 10925 directed federal contractors to make special efforts to ensure that workers be hired and receive equal opportunity.⁵⁶

Following passage of the Civil Rights Act of 1964⁵⁷ and the Voting Rights Act of 1965,⁵⁸ President Lyndon B. Johnson significantly expanded affirmative action programs to include an array of initiatives like special recruiting and hiring goals designed to help racially minoritized people and women become full participants in America's economic structure.⁵⁹ Specifically, President Johnson significantly expanded affirmative action programs by requiring contractors who conducted business with the federal government to adopt affirmative action plans for all their operations, including goals and timetables for increased hiring of minoritized people.⁶⁰

Arguably considered a watershed moment for government acknowledgment of and investment in racial equality, President Johnson signed one of the most important executive orders in modern presidential history, Executive Order 11246. This order stated the policy of the Federal Government was to provide equal opportunity in Federal employment for all qualified people, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency; and, further stated the policy that equal opportunity applies to every aspect of Federal employment policy and practice.⁶¹ Executive Order 11246 made the Secretary of Labor responsible for administering the order's non-discrimination and affirmative action provisions.⁶²

The Philadelphia Plan, implemented by President Richard Nixon in 1969, was another important advancement for equal employment opportunity:

[The Philadelphia Plan] required minimum levels of minority participation on federal construction projects in Philadelphia and three other cities. These efforts culminated in virtually all federal contractors adopting affirmative action plans during the following year. The agency initially charged with the responsibility for implementing and enforcing the affirmative action plans mandated by the executive branch was the Office of Federal Contract Compliance Programs. . . .⁶³

⁵⁵ See Exec. Order No. 9346, 8 Fed. Reg. 7183 (May 27, 1943).

⁵⁶ Exec. Order No. 10925, 26 Fed. Reg. 1977 (Mar. 8, 1961).

⁵⁷ Civil Rights Act of 1964, 88 Pub. L. 352, 78 Stat. 241 (1964).

⁵⁸ Voting Rights Act of 1965, 89 Pub. L. 110, 79 Stat. 437 (1965).

⁵⁹ See Exec. Order No. 9346, 8 Fed. Reg. 7183 (May 27, 1943).

⁶⁰ See *id.*

⁶¹ Exec. Order No. 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

⁶² *Id.*

⁶³ See Conway-Jones & Jones Jr., *supra* note 43, at 392 (citing Holly Idelson, *A Thirty Year Experiment*, 53 CONG. Q. 1579 (1995)).

As a result of the Roosevelt, Eisenhower, Kennedy, Johnson, and Nixon administrations, the Department of Defense and other federal agencies started to establish affirmative action plans and structures to further the objective of guaranteeing civil rights and employment opportunities for Black people. Today, Executive Order 11246—as amended and further strengthened over the years by Executive Orders 13665⁶⁴ and 13672⁶⁵ signed by President Barack Obama, promoting equal pay for women and prohibiting federal contractors and subcontractors from discriminating against LGBTQ employees and applicants—remains a major safeguard in protecting the rights of workers employed by federal contractors to remain free from discrimination on the basis of their race, color, religion, sex, sexual orientation, gender identity, or national origin and opening the doors of opportunity through its affirmative action provisions. A relatively quick search would yield this knowledge. As well, the practice of critical thinking and reflection would develop the understanding that these presidential executive orders attempted gradual expansion of civil rights. It is through a comparison between the gradual expansion of civil rights in these executive orders and the banning of antiracist speech through Executive Order 13950 that one can begin the process of critical questioning using antiracism as a lens.

The history of systemic barriers to equal opportunity, racial inequality, gender inequality, caste, and oppression of minoritized or subordinated groups were recognized in the executive orders preceding Executive Order 13950. The former orders revealed the nonexistence of a perfect and level playing field in America, and it laid bare that oppressed and subordinated groups were excluded from the sphere of protection of civil rights in education, voting, employment, housing, healthcare, jury service, and transportation. Critical research confirms modern-day retrenchment in protecting civil rights of marginalized and subordinated people made possible by new tools to achieve ascriptive discrimination, notably color-blind jurisprudence, which has rolled back the hard-fought progress of civil rights advocates.

B. Executive Order 13950 Targets Critical Race Theory and Antiracist Speech

Color-blind racism, the distortion of antiracism, and white national victimhood feature prominently in Executive Order 13950. I contend that antiracist lawyering through praxis, critical research and thinking, and the will to engage law and history would reveal the incoherent and repugnant features of Executive Order 13950. With the antiracist lawyering case study work done in sub-part A, the next step in the case study is to deconstruct Executive Order 13950.

President Trump's Executive Order 13950 created a fallacious syllogism that goes like this: teaching about race, racism, and white privilege is a divisive concept

⁶⁴ Exec. Order No. 13665, 79 Fed. Reg. 20,749 (Apr. 11, 2014).

⁶⁵ Exec. Order No. 13672, 79 Fed. Reg. 42,971 (July 21, 2014).

that is propaganda, which is un-American; therefore, CRT,⁶⁶ which teaches about race, racism, and white privilege in America is a divisive concept that is propaganda, which is un-American.

In fact, CRT emphasizes counter-narrative storytelling, racial realism, and activist/change-oriented praxis. Emerging from the work of Civil Rights-era legal scholars and social activists, CRT takes as a starting point the assertion that racism is deeply embedded in the fabric of U.S.-based social institutions like higher education.⁶⁷ For scholars and activists working in this tradition, racism is recognized as a structural and systemic problem, not just an interpersonal one, and, as a result, change efforts require critical analysis of taken-for-granted policies, practices, and institutional norms through the amplifying of minoritized voices and experiences that speak back to and counter dominant narratives.⁶⁸ CRT also recognizes that racism is entangled with other forms of oppression (particularly capitalism, sexism, settler colonialism, and hyper-nationalism).⁶⁹ Liberation requires challenging multiple systems simultaneously.⁷⁰ While resistance to this framework in the current socio-political moment is palpable, the CRT lens is uniquely equipped to help focus attention on racial inequities and opportunities for redress.

CRT is not a diversity and inclusion “training.”⁷¹ Instead, it is a practice of interrogating race and racism in society.⁷² Moreover, it is a malleable method of inquiry to identify inequality and develop responses that center points of view of minoritized people to provide essential insights into the nature of the legal system and its impact on people of color.⁷³ CRT emerged in the legal academy and spread

⁶⁶ The ultimate objective of Executive Order 13950 is to attack higher education institutions because this is where knowledge of CRT is generated. Conservative strategies to maintain racial hierarchy and white supremacy are shifting and changing at extreme speeds, which requires new, innovative, and disruptive ways of engaging with struggle, contestation, and resistance to continue the teaching and learning of antiracism, anti-subordination, and anti-oppression. CRT is a target because, among other reasons, it has proven successful in matching the speed at which conservative strategies propagate transformations that allow dominant forces to maintain power and control within American society.

⁶⁷ See generally West, *supra* note 17, at xi; Press Release, Jim Greif, ASS’N AM. L. SCHS., Statement by AALS on Efforts to Ban the Use or Teaching of Critical Race Theory (Aug. 3, 2021), <https://www.aals.ortgh/aals-newsroom/statement-on-critical-race-theorh/> [<https://perma.cc/4HFX-C9LU>] [hereinafter Statement by AALS].

⁶⁸ See also Statement by AALS, *supra* note 67.

⁶⁹ See Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 832–43 (2021) (providing a comprehensive summary of Critical Race Theory and its founders).

⁷⁰ See *id.*

⁷¹ See Janel George, *A Lesson on Critical Race Theory*, 46 HUM. RIGHTS MAG. (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/ [<https://perma.cc/D45Q-JL3K>] (providing a comprehensive exposition of Critical Race Theory and its nexus to segregation in education).

⁷² *Id.*

⁷³ See *id.*

to other fields of scholarship.⁷⁴ It critiques how the social construction of race and institutionalized racism perpetuate a racial caste system that relegates people of color to the bottom tiers.⁷⁵ CRT also recognizes that race intersects with other identities, including sexuality, gender identity, and others.⁷⁶ CRT recognizes that racism is not a bygone relic of the past.⁷⁷ Instead, it acknowledges that the legacy of slavery, segregation, and the imposition of second-class citizenship on Black Americans and other people of color continue to permeate the social fabric of this nation.⁷⁸

Returning to Executive Order 13950, Section One erroneously defined CRT as a “malign ideology” that undermines the “inherent equality of every individual” in America.⁷⁹ To counter the “ideology,” Executive Order 13950’s purpose was to prohibit the promotion of certain “divisive concepts” in diversity trainings funded by federal grant funds and appropriations.⁸⁰ Section Two purported to define terms such as “divisive concepts,” “race or sex stereotyping,” “race or sex scapegoating,” all for the purpose of prohibiting “race or sex stereotyping or scapegoating in the Federal workforce or in the Uniformed Services.”⁸¹ Section Three directed the Department of Defense to cease teaching, instructing, or training service members to believe any of the divisive concepts identified in Section Two.⁸²

Importantly, Section Four required that all government contracts include certain express provisions that instructed the contractor that “[it] shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating.”⁸³ If a contractor was found non-compliant with the provisions, the penalty could be the cancellation, suspension, or termination of the contract, in whole or in part, as well as the potential for the contractor to be ineligible for further government contracts.⁸⁴ Moreover,

⁷⁴ See generally West, *supra* note 17, at xi; see also Statement by AALS, *supra* note 67.

⁷⁵ See West, *supra* note 17, at xi.

⁷⁶ See *id.*

⁷⁷ See *id.*

⁷⁸ See *id.*

⁷⁹ Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020); see also Amanda M. Brahm, *The Latest on EO 13950: The Fate of Workplace Diversity Training May Rest on the Election*, CARLTON FIELDS (Nov. 2, 2020), <https://www.carltonfields.com/insights/publications/2020/the-latest-on-eo-13950-fate-of-workplace-diversity> [<https://perma.cc/2GA2-8ET5>]; Jessica Guynn, *President Joe Biden Rescinds Donald Trump Ban on Diversity Training About Systemic Racism*, USA TODAY (Jan. 26, 2021), <https://www.usatoday.com/story/money/2021/01/20/biden-executive-order-overturms-trump-diversity-training-ban/4236891001/> [<https://perma.cc/SZT9-VVBD>]; Fabiola Cineas, *Critical Race Theory, and Trump’s War on It, Explained*, VOX (Sept. 24, 2020), <https://www.vox.com/2020/9/24/21451220/critical-race-theory-diversity-training-trump> [<https://perma.cc/4NXF-LZTG>].

⁸⁰ Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 22, 2020).

these provisions and clauses flowed down to subcontractors.⁸⁵ Section Five directed heads of agencies to review grant programs and identify programs for which the agency could require grantees receiving such grants to certify that the grantees would not use federal funds to promote certain divisive concepts identified in Section Two.⁸⁶ Agency heads were further required to submit reports to the Office of Management and Budget (OMB), which listed programs that would be subject to restrictions imposed by Executive Order 13950.⁸⁷

To implement Executive Order 13950, the OMB director issued a memorandum for the heads of executive departments and agencies that was titled “Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All.”⁸⁸ The September 28th memorandum provided guidance to federal agencies in reviewing all 2020 trainings related to diversity and inclusion for the purpose of determining whether those trainings taught, advocated, or promoted the divisive concepts identified in Section Two of the Executive Order.⁸⁹ The September 28th memorandum also identified and suggested keywords for agency heads to use to identify prohibited trainings.⁹⁰ These keywords included terms such as critical race theory, white privilege, intersectionality, systemic racism, positionality, racial humility, and unconscious bias.⁹¹ The memorandum also instructed agencies to identify grantees, regardless of programs, against whom the Section Five condition could lawfully be imposed.⁹²

The Department of Labor, Office of Federal Contract Compliance Programs (“OFCCP”) posted a list of frequently asked questions regarding Executive Order 13950 on its website. The frequently asked questions (FAQ) website advised that the executive order set forth the policy of the United States not to promote race or sex stereotyping or scapegoating and prohibited federal contractors from inculcating such views in their employees in workplace diversity and inclusion trainings.⁹³ One FAQ question asked: Does Executive Order 13950 prohibit unconscious bias or implicit bias training? The response was that unconscious or implicit bias training was prohibited to the extent it taught or implied that an individual, by virtue of their race, sex, and or national origin, was racist, sexist, oppressive, or biased, whether

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See Russell T. Vought, Off. Mgmt. & Budget, Memorandum for the Heads of Executive Departments and Agencies, Ending Employee Trainings that Use Divisive Propaganda to Undermine the Principle of Fair and Equal Treatment for All (Sept. 28, 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/09/M-20-37.pdf> [<https://perma.cc/2JHU-9RE4>] (last visited Feb. 6, 2022).

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ *See id.*

⁹² *See id.*

⁹³ *Executive Order 13950 – Combating Race and Sex Stereotyping FAQ*, U.S. DEP’T LAB., <https://web.archive.org/web/20210105073552/https://www.dol.gov/agencies/ofccp/faqs/executive-order-13950> [<https://perma.cc/W48C-HLUU>] (last visited Feb. 19, 2022).

consciously or unconsciously. The response went on to state that training was not prohibited if it was designed to inform workers or foster discussion about preconceptions or opinions or stereotypes that people, regardless of their race or sex, may have regarding people who are different, which could influence a worker's conduct or speech and be perceived by others as offensive.⁹⁴ Another FAQ question asked: How can I file a complaint alleging unlawful training programs? The response included a telephone hotline for reporting race and sex stereotyping and scapegoating as well as an email address where complaints could be submitted.⁹⁵

Deconstructing the provisions of the executive order did not need to be extensive in order to discern the incoherence and repugnance of its content. That said, a decision to dismiss the order as fallacious is not the same as taking an antiracist stance on the policy. The decision not to interrogate or contest Executive Order 13950 is at its core an action in support of the dominant white hierarchy that results in a reinforcement of the status quo where whiteness is privileged and those oppressed continue to be disadvantaged.

*C. Interrogating Race and Racism in Executive Order 13950 to Practice
Antiracist Lawyering*

Litigation and judicial decision making represent important opportunities to engage antiracist lawyering. These spaces of contestation are ripe for formulating antiracist legal strategies, arguments, and policies.

In *Santa Cruz Lesbian & Gay Community Center v. Trump*,⁹⁶ a number of nonprofit organizations and consultants serving the LGBTQ community sought a nationwide injunction to halt the enforcement of Executive Order 13950. Plaintiffs provided training and advocacy to healthcare providers, local government agencies, local businesses, and employees about systemic bias, racism, anti-LGBTQ bias, white privilege, implicit bias, and intersectionality.⁹⁷ These trainings represented

⁹⁴ *Id.*

⁹⁵ *Id.*; Press Release, Off. Fed. Cont. Compliance Programs, U.S. Department of Labor Launches Hotline to Combat Race and Sex Stereotyping by Federal Contractors (Sept. 28, 2020), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20200928-0> [<https://perma.cc/DQ4C-SN6H>].

⁹⁶ *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 527–28 (N.D. Cal. 2020).

⁹⁷ *Id.* at 531–33. Plaintiffs' nonprofit work, which included a variety of services to LGBT communities, was dependent upon pass-through federal funding that supported outreach and services to prevent the sexual exploitation of LGBTQ members. *Id.* The trainings covered issues related to systemic racism and intersectionality as well as structural racism, sexism, and anti-LGBTQ bias. *Id.* One plaintiff's federally funded grant, in fact, required it to acknowledge, address, and combat systemic racism in healthcare services and public health programming. *Id.* In the opinion of the nonprofit director, it would be impossible to conduct trainings without using concepts such as intersectionality, unconscious bias, or systemic racism. *Id.* Specifically, one grant required proof of annual cultural humility trainings for staff. *Id.* As a healthcare provider, the training to staff incorporated concepts

fundamental aspects of plaintiffs' respective missions, which included breaking down barriers faced by underserved communities in receiving healthcare.⁹⁸ Specifically, plaintiffs asserted that the penalties imposed for violating the executive order would chill the plaintiffs from engaging in such trainings for fear of lost contracts or funding.⁹⁹ Plaintiffs further contended that the chilling effect of the executive order was exacerbated by its vagueness because plaintiffs did not know which of their activities would be prohibited.¹⁰⁰ Because of this uncertainty, plaintiffs alleged they were justifiably fearful of conducting any activities that might threaten their direct or indirect federal funding despite the centrality of these activities to their missions and their ability to serve vulnerable and marginalized communities.¹⁰¹ Plaintiffs sued, challenging the constitutionality of Executive Order 13950, which they contended "unlawfully labeled much of their work as 'anti-American propaganda.'"¹⁰²

Executive Order 13950 reached beyond the plaintiffs by also prohibiting the United States uniformed services, federal agencies, and federal contractors from teaching about white privilege and implicit bias.¹⁰³ The order labeled those trainings and speech "divisive concepts" in the workplace.¹⁰⁴ The order also directed agency heads to identify grant programs that could be conditioned on a grantee's certification that it would not use federal funds to promote divisive concepts.¹⁰⁵ Taken together, the prohibitions not only impacted plaintiffs but also impacted speech at higher education institutions.

Pursuant to Executive Order 13950, the OMB issued a memorandum for the heads of executive departments and agencies advising that all federal agencies stop using taxpayer dollars to fund divisive un-American propaganda training.¹⁰⁶ The memorandum also directed agencies to identify all contracts or other agency spending related to any training on critical race theory, white privilege, or any other training or propaganda effort that taught or suggested that the United States is an inherently racist or evil country, or that any race or ethnicity is inherently racist or evil.¹⁰⁷ The memorandum directed agencies to identify all available avenues within the law to cancel any such contracts and to divert federal dollars away from the un-American propaganda training sessions.¹⁰⁸

such as cultural humility, identifying interpersonal and institutional bias, and internalized oppression in order to deepen the empathy of staff for the individuals served by the healthcare institution. *Id.*

⁹⁸ Santa Cruz Lesbian & Gay Cmty. Ctr., 508 F. Supp. 3d at 531–33.

⁹⁹ *Id.* at 534.

¹⁰⁰ *Id.* at 543.

¹⁰¹ *Id.* at 534.

¹⁰² *Id.* at 528.

¹⁰³ See Exec. Order No. 13950, 85 Fed. Reg. 60,683 (Sept. 28, 2020).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Vought, *supra* note 88; Guynn, *supra* note 79; Cineas, *supra* note 79.

¹⁰⁷ See Vought, *supra* note 88.

¹⁰⁸ See *id.*

Plaintiffs' complaint stated two claims: first, that the executive order violated plaintiffs' rights under the free speech clause of the First Amendment because Executive Order 13950 impermissibly chilled the exercise of the plaintiffs' constitutionally protected speech based on the content and viewpoint of their speech; and second, plaintiffs asserted that the executive order violated plaintiffs' rights under the due process clause of the Fifth Amendment and was void for vagueness because it infringed on plaintiffs' constitutionally protected right to free speech and provided inadequate notice of the conduct it purported to prohibit.¹⁰⁹ Pursuant to both claims, plaintiffs challenged the executive order and any agency action seeking to implement it both facially and as applied to them.¹¹⁰

An amicus brief was filed by eight institutions of higher education in support of plaintiffs' suit and motion for preliminary injunctive relief.¹¹¹ Pending litigation of plaintiffs' claims, the eight institutions asserted that they conducted critical research that was funded by federal grants and contracts and that Executive Order 13950 jeopardized that federally supported work by placing universities in an untenable position to choose between refraining from protected and important speech on the one hand and risking loss of grant funds and debarment from future federal contracts and other sanctions on the other hand.¹¹²

Defendants contended that plaintiffs lacked standing to challenge the executive order, that plaintiffs could not show injury in fact, and that the plaintiffs could not establish a likelihood of success on the merits of their claims.¹¹³ Defendants contended that even if plaintiffs could demonstrate standing, injury in fact, and likelihood of success on the merits, its motion for injunctive relief should be limited to the parties before the court rather than issuing a nationwide injunction.¹¹⁴

The court concluded that plaintiffs had established the three *Lujan* requirements¹¹⁵ for constitutional standing: specifically, (1) plaintiffs demonstrated an injury in fact by showing the realistic danger of the enforcement of sections four and five against all federal contractors and grantees as evidenced by the establishment of a telephone hotline for reporting race stereotyping and scapegoating; (2) plaintiffs intended to perform their mission of offering internal and external trainings that arguably promoted the divisive concepts prohibited by sections four and five; and (3) all of the plaintiffs were federal contractors or federal

¹⁰⁹ See Complaint at 47–49, *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521 (N.D. Cal. 2020) (No. 20-cv-07741-BLF).

¹¹⁰ *Id.* at 45.

¹¹¹ See Brief of Eight Institutions of Higher Education as Amici Curiae in Support of Plaintiffs' Motion for Preliminary Injunction, *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521 (N.D. Cal. 2020) (No. 20-cv-07741-BLF) [hereinafter Brief of Amici Eight Institutions].

¹¹² See *id.* at 4.

¹¹³ See Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction at 5, *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521 (N.D. Cal. 2020) (No. 20-cv-07741-BLF).

¹¹⁴ See *id.*

¹¹⁵ See generally *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

grantees subject to enforcement of sections four and five.¹¹⁶ The court concluded that plaintiffs satisfied the injury in fact requirement for constitutional standing as they established a realistic danger of sustaining a direct injury as a result of the executive order's operation or enforcement, that the threatened injury arose from sections four and five of the executive order, and the threatened injury stemming from enforcement of the executive order was redressable by injunctive relief precluding such enforcement.¹¹⁷

Turning next to the question of likelihood of success on their First Amendment claim, the plaintiffs alleged that Executive Order 13950 violated their rights under the free speech clause of the First Amendment because it impermissibly chilled the exercise of constitutionally protected speech based on content and viewpoint.¹¹⁸ The court concluded, based in part on a matter of public concern, that the government's interest was outweighed by the effect of the impermissible reach of the executive order on plaintiffs' freedom to deliver the diversity training and advocacy that they deemed necessary to train their own employees and the service providers in the communities in which they worked using funds unrelated to the federal contract.¹¹⁹

With respect to plaintiffs' First Amendment claim grounded in section five of Executive Order 13950, the court concluded that the government could not condition grant funding on a speech restriction that was outside the confines of the grant program.¹²⁰ Conditioning federal grants in this manner would clearly constitute a content-based restriction on protected speech.¹²¹ The sweep of the condition went beyond barring workplace training promoting the divisive concepts, to barring any promotion of the divisive concepts "not" using federal funds.¹²² The amici eight institutions of higher education provided additional perspective on the impact of section five. Notably, the eight institutions put forward that federal funding was crucial to university research, providing over 60% of these institutions' research budgets, and that federal funding had yielded groundbreaking work on healthcare, supercomputing, psychology, artificial intelligence, and products used by the United States military.¹²³ They stated that most of that funding had little or nothing to do with the divisive concepts the executive order targeted; however, the restrictions described by section five appeared to require universities accepting federal grants to suspend promotion of those divisive concepts delivered through teaching, training, and discussion.¹²⁴

The eight institutions persuasively argued that scholars needed to be able to give voice to, and indeed endorse, opposing views in order for intellectual progress to occur. The court stated that requiring federal grantees to certify that they would

¹¹⁶ Santa Cruz Lesbian & Gay Cmty. Ctr., 508 F. Supp. 3d at 536–40.

¹¹⁷ *Id.*

¹¹⁸ See Complaint, Santa Cruz Lesbian & Gay Cmty., 508 F. Supp. 3d at 521.

¹¹⁹ Santa Cruz Lesbian & Gay Cmty. Ctr., 508 F. Supp. 3d at 521.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Brief of Amici Eight Institutions, *supra* note 111, at 4.

¹²⁴ *Id.*

not use grant funds to promote concepts the government considered divisive, even when the grant program was wholly unrelated to such concepts, was a violation of the grantees' free speech rights.¹²⁵ Section five authorized as a condition of federal funding a speech restriction that by its nature could not be confined within the scope of the government program. The executive order and the OMB memo left no doubt that identifying grant programs to which section five would be imposed was merely the first step in actually imposing the condition on as many grant programs as possible. Accordingly, the court concluded that plaintiffs had shown a likelihood of success on their First Amendment claim grounded in section five.¹²⁶

As to plaintiffs' second claim arguing a violation of due process, the court determined that the executive order was so vague that it was impossible for the plaintiffs to determine what conduct would be prohibited.¹²⁷ The court stated that no such guardrails existed to give notice as to what conduct was prohibited and would invite arbitrary enforcement; thus, plaintiffs demonstrated a likelihood of success on their due process claim challenging sections four and five as void for vagueness.¹²⁸ As well, the court found that plaintiffs had established a likelihood of irreparable harm, absent issuance of injunctive relief, as demonstrated by more than a mere existence of a colorable First Amendment claim and the lost opportunities and income as a result of others' understanding of the effect of the executive order, specifically the canceling of diversity and equity training across the nation.¹²⁹ With respect to issuing a nationwide injunction, the court noted that permitting plaintiffs to provide training regarding divisive concepts or to promote those concepts would do plaintiffs little good if their sources of employment and funding remained subject to the executive order. Thus, the court concluded that a nationwide injunction was warranted.¹³⁰

In this case study, the first exercise of antiracist lawyering was providing representation to plaintiffs. The second exercise of antiracist lawyering was the filing of an amicus brief by the eight higher education institutions. With respect to the higher education institutions, they could have sat on the sidelines to wait for the court's decision, an arguably nonracist approach that would have continued to benefit the status quo. Instead, the eight higher education institutions chose to take an antiracist posture. These are acts of interrogation and contestation that engage the work of eliminating systemic racial inequality.

D. Reflecting on the Practice of Antiracist Lawyering

Antiracist lawyering in *Santa Cruz Lesbian & Gay Community Center v. Trump* showed lawyers, clients, and interested parties contesting Executive Order 13950. Below are examples of legal advice not explicitly supporting Executive Order

¹²⁵ *Santa Cruz Lesbian & Gay Cmty. Ctr.*, 508 F. Supp. 3d at 543.

¹²⁶ *Id.*

¹²⁷ *Id.* at 545.

¹²⁸ *Id.* at 544.

¹²⁹ *Id.* at 545–46.

¹³⁰ *Id.* at 550.

13950, yet still reinforcing the status quo by the application of color-blind racism, adherence to color-blind jurisprudence, or exercise of purported neutrality that guarantees the perpetuation of systemic racial inequality. The examples below are actual responses by lawyers to the issuance and the implementation of Executive Order 13950.

In the first example, the lawyer approached the executive order from the position that its language was neutral and objective, recognizing the OFCCP's authority to investigate complaints and enforce compliance. The general advice follows:

Given that the OFCCP has the authority to begin investigating complaints and enforcing compliance with EO 13950 over the coming weeks, it is key that Federal contractors and subcontractors fully conform to all enumerated EO requirements should they wish to avoid potentially severe sanctions for noncompliance.¹³¹

In the second example, the lawyer's general advice to federal contractor clients about Executive Order 13950, again purporting neutrality and ignoring historical context, follows:

Thus, due to the effective date and severity of consequences for non-compliance, it is critical that Federal contractors and subcontractors closely monitor whether they have executed a federal contract, subcontract, or purchase order on or after November 21, 2020. If they have, they must immediately ensure full compliance with EO 13950, particularly given the following statement published on the OFCCP's FAQ page, which we discussed in greater detail here: Once Executive Order 13950 becomes effective in federal contracts, OFCCP will begin enforcing it. Contractors found in violation may have their contracts canceled, terminated, or suspended in whole or in part. The contractor may

¹³¹ See Dismas Locaria, *New Executive Order Seeks to Impose Additional Requirements, with Severe Consequences, on Federal Government Contractors, Subcontractors, and Grant Recipients*, VENABLE (Sept. 24, 2020), <https://www.venable.com/insights/publications/2020/12/eo-13950-update-effective-for-now-and-the> [<https://perma.cc/956L-9LLU>]; Jennifer L. Curry, *Executive Order Requires Federal Contractors to End Implicit Bias Training or Face Sanctions*, BAKER DONELSON (Oct. 1, 2020), <https://www.bakerdonelson.com/executive-order-requires-federal-contractors-to-end-implicit-bias-training-or-face-sanctions> [<https://perma.cc/9F78-ERCQ>]. The interesting thing about the first two examples is that the advice published online has changed from September 2020 to December 2020, which renders the quoted advice even more problematic. One interpretation of the change is that the lawyers may have recognized the problematic aspects of Executive Order 13950 and decided to update their advice. Another interpretation is that the lawyers shifted their perspectives for political convenience. A third interpretation is that the lawyers providing online advice may take the position that their roles are only to advise their clients about the current state of the law.

also be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order 11246.

In addition, the FAQ page, among other sources, again confirms the close link between the two executive orders, explaining that the OFCCP will investigate EO 13950 complaints consistent with the enforcement methods used for EO 11246.¹³²

The third example represents a partner's and an associate's advice delivered on a webinar. This advice is delivered in the form of an admonition, which provides:

I contextualize definitions within recent events. . . . Read the executive order, see what Scalia and OFCCP have said. . . . Implicit and unconscious bias is one thing that this EO is particularly concerned with. . . . you should just probably avoid any implicit or unconscious bias training just particularly because these definitions are so broad, so try to stay away from anything that could arguably be divisive concepts during discussions or during actual training materials¹³³

Executive Order 13950 necessitated entering the public procurement space to engage in a discussion about the practice of antiracist lawyering. Public procurement is a practice discipline heavily influenced by public law, history, elaborate regulatory frameworks, socioeconomic policy, customs, and norms. Moreover, it has been a discipline that has historically been leveraged by presidents to launch their vision of leadership and democratic governance, especially through strategic use of the power of executive orders. Due, in part, to the elaborate regulatory framework, public procurement is also quite specialized, which renders it virtually inaccessible to the general public. At times, this characteristic allows for wholesale shifts in policy and practice that are difficult to navigate. This alone places even more responsibility on lawyers to develop antiracist research, client counseling, and problem-solving methods.

In the context of Executive Order 13950, training lawyers to be antiracist means encouraging comprehensive research. The kinds of questions that should be asked and researched by lawyers in this space are as follows:

¹³² See Locaria, *supra* note 131; see also Curry, *supra* note 131.

¹³³ See Diz Locaria and Krista Nunez, *Combating Race and Sex Stereotyping: How Does Executive Order 13950 Affect You?*, VENABLE (Oct. 22, 2020), <https://www.venable.com/insights/events/2020/10/combating-race-and-sex-stereotyping> [<https://perma.cc/8XKY-66FL>].

What is Critical Race Theory?

Why is Critical Race Theory the target of the executive order?

What are the legal implications associated with restricting Critical Race Theory; diversity, equity, and inclusion; and implicit/unconscious bias?

Counseling clients is the lawyer's obligation, and counseling clients well balances the investment in the clients' interests with the investment in building long-term trust relationships with clients. The lawyer is obligated to inform clients with relevant, reliable information and advice. Clients are not served well by regurgitating substance, in this case, the mere recitation of the provisions of the executive order. Instead, clients are served by counseling that considers the following:

How is the executive order consistent/inconsistent with equal employment opportunity law, regulations, and policy?

How is the executive order consistent/inconsistent with affirmative action law, regulations, and policy?

How will the executive order impact supplier and prospective supplier relationships?

Is the executive order sustainable within the market or industry in which clients operate?

Finally, and most important, clients seek legal, business, and planning advice from lawyers with the view to problem-solving for the short-, medium-, and long-term. Clients appreciate the significance of building and maintaining relationships. As well, clients seek new opportunities to generate revenue and to make a profit. Accordingly, effective lawyering requires knowledge, creativity, and transparency in moving clients' interests and challenges to places of positive resolution. While standing alone as one client attempting to respond to Executive Order 13950 may not be the most effective problem-solving strategy, what follows are questions that would help to find collective solutions for clients:

What associations—National Contract Management Association, American Bar Association Government Contract Law Section, National Association of State Procurement Officials, U.S. Chamber of Commerce—could clients engage collectively with to direct an industry response?

What coalition advocacy exists to challenge the OFCCP and its informant hotline?

Integrity, fairness, and justice are core values of the legal profession. These values are the hallmark of good lawyering. The principles that undergird these values guide the work of the lawyer, and adherence to these principles is vital to recognizing and protecting the civil rights of all people. In a country plagued by systemic racial inequality, antiracist legal education and lawyering are essential to protecting the rights of the governed, the essence of our democracy, and the integrity and longevity of the legal profession.¹³⁴

V. CONCLUSION

Law and legal structures in America are not neutral on issues of race and racism. Law education, the legal academy, and the legal profession have a responsibility to acknowledge, reflect, and then act on this truth. Those in society whom lawyers represent and the U.S. Constitution to which lawyers swear an oath to uphold and defend deserve and demand the highest level of integrity in protecting and promoting equality. Protecting and promoting equality for all demands that lawyers understand how race and racism operate in our society, because race and racism figure so very prominently in constructing and reinforcing the hierarchies that determine the power relationship between those within the sphere of whiteness and those outside of it.

To help build the muscle to disrupt systemic racial inequality, oppression, and subordination, I have agreed to edit a collaborative, eight- to ten-volume book series titled, “Building an Antiracist Law School, Legal Academy, and Legal Profession,” which will support the launch of the Antiracist Development Institute at Penn State Dickinson Law. This Essay serves as an invitation for collaborators inside and outside of the legal profession to act by joining in the production of this work. I invite you to take the “Antiracist Book Series Involvement Survey”¹³⁵ and join in practicing antiracism.

¹³⁴ See Eduardo R.C. Capulong, Andrew King-Ries & Monte Mills, *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3, 3 (2021).

¹³⁵ “Building an Antiracist Law School, Legal Academy, and Legal Profession” Book Series Survey, PENN STATE DICKINSON LAW, https://pennstate.qualtrics.com/jfe/form/SV_eDREEGp52VuVtve [<https://perma.cc/X4DE-NFD8>] (last visited Mar. 14, 2022).