

DIVERSITY, EQUITY, AND INCLUSION AS AN INSTITUTIONAL IMPERATIVE

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INTRODUCTION

The police killing of George Floyd in 2020¹ sparked mass protests across the United States. Demands for the dismantling of systemic racism in the criminal justice system followed. Challenges to similar discriminatory structures in employment, housing, higher education, health care, voting, and a myriad of areas came as well.² Scholars for years have critically analyzed systemic racism without much of a public response. The public push for elimination of systemic racism thus is long overdue.

With the end of *de jure* segregation, higher education for years focused on enrolling a more diverse student body.³ Over time, universities moved beyond admissions and considered issues of diversity, equity, and inclusion (DEI), that is, the full integration of all students into the fabric of the institution.⁴ Because “[r]esearch has shown that diversity, equity and inclusion initiatives improve creativity, productivity and organizational performance,”⁵ the business world also has embraced DEI programs.

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1. See generally ROBERT SAMUELS & TOLUSE OLORUNNIPA, HIS NAME IS GEORGE FLOYD: ONE MAN’S LIFE AND THE STRUGGLE FOR RACIAL JUSTICE (2022) (recounting how systemic racism shaped the life of George Floyd).

2. Widespread gender disparities in U.S. society, including even in corporate law, also have been challenged. See, e.g., Afra Afsharipour et al., *Gender and the Social Structure of Exclusion in U.S. Corporate Law*, 90 U. CHI. L. REV. 1819, 1822 (2023) (“A growing collection of quantitative studies suggest that networks contribute to the underrepresentation of women often referred to as the ‘gender gap’ that arises from the lack of access to professional connections.”) (footnote omitted).

3. See generally Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean’s Perspective*, 96 IOWA L. REV. 1549 (2011) (offering arguments supporting the claim that student and faculty diversity is important to the quality of a legal education).

4. See, e.g., *Diversity, Equity, and Inclusion*, COLUM. L. SCH., <https://www.law.columbia.edu/community-life/diversity-equity-and-inclusion> (last visited Jan. 25, 2024).

5. Rita Men, *Workers Like It When Their Employers Talk About Diversity and Inclusion*, THE CONVERSATION (Aug. 30, 2023, 8:15 AM), <https://theconversation.com/workers-like-it-when-their-employers-talk-about-diversity-and-inclusion-208727>. See Chris Brummer & Leo E. Stine Jr., *Duty and Diversity*, 75 VAND. L. REV. 1 (2022) (analyzing DEI programs pursued in the business world).

My contribution to this symposium contends that a campus's racial climate will not improve absent a dedicated and sincere commitment and intentional action, not simply the creation of DEI offices, adding administrators, organizing programs, and constructing websites. Part I analyzes the emergence of DEI offices at universities in the United States. To bring forth constructive change, campus leaders at a minimum must be truly committed to fundamental and meaningful change. Although the Supreme Court now prohibits race-conscious affirmative action, Part II explains ways to continue to enroll diverse student bodies and make DEI efforts successful.

I. THE EMERGENCE OF DEI IN UNIVERSITIES AND LAW SCHOOLS

University presidents increasingly have assigned administrators and created offices with the responsibility of overseeing campus DEI efforts.⁶ As a result, DEI programming is now an ordinary part of the administrative structure of many, perhaps even most, colleges and universities. For similar reasons, implicit, or unconscious, bias training has taken root on college campuses as well as in workplaces. Employers justify DEI training on business grounds: “[A]cross the globe, in response to public outcry over racist incidents in the workplace and mounting evidence of the cost of employees’ feeling excluded, leaders are striving to make their companies more diverse, equitable, and inclusive. *Unconscious bias training has played a major role in their efforts.*”⁷

DEI efforts can be expected to bring forth conservative responses. The growing discussion of remedying systemic racism in U.S. society and the addition of DEI programming by many institutions has provoked resistance. Critics have made strident claims that the liberal “woke” and “cancel” cultures have overrun middle American values.⁸ That reaction has led to recent cutbacks to, or even elimination of, some college DEI programs. For example, “Florida Gov. Ron DeSantis in 2023 signed a bill banning public colleges and universities from spending money on Diversity, Equity, and Inclusion (DEI)...[.]”⁹

6. See Eugene T. Parker III, *Do Colleges Need a Chief Diversity Officer?*, INSIDE HIGHER ED (Aug. 19, 2020), <https://www.insidehighered.com/views/2020/08/20/chief-diversity-officers-play-vital-role-if-appropriately-positioned-and-supported>.

7. Francesca Gino & Katherine Coffman, *Unconscious Bias Training That Works*, HARV. BUS. REV. (Sept./Oct. 2021), <https://hbr.org/2021/09/unconscious-bias-training-that-works> (emphasis added). See Erica Jacqueline Licht, *5 Ways that College Campuses Benefit from Diversity, Equity and Inclusion Programs*, THE CONVERSATION (Sept. 12, 2023, 8:28 AM), <https://theconversation.com/5-ways-that-college-campuses-benefit-from-diversity-equity-and-inclusion-programs-208905>. See generally Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (analyzing the limited legal avenues to challenge unconscious racism).

8. See, e.g., VIVEK RAMASWAMY, *Woke, Inc.: Inside Corporate America's Social Justice Scam* (2021).

9. Leah Asmelash, *DEI Programs in Universities are Being Cut Across the Country: What Does this Mean for Higher Education?*, CNN (June 14, 2023, 11:01 AM), <https://www.cnn.com/2023/06/14/us/colleges-diversity-equity-inclusion-higher-education-ccc/index.html>. See Vinay Bhaskara, *DEI Is Under Attack at Colleges and Universities*, FORBES (July 7, 2023, 9:00AM), <https://www.forbes.com/sites/vinaybhaskara/2023/07/07/dei-is-under-attack-at-colleges-and->

The U.S. Supreme Court's 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*¹⁰ found race-conscious affirmative action to be unconstitutional and will make it more challenging for many colleges and universities to enroll diverse student bodies. At the same time, strident political challenges in some states to the teaching of Critical Race Theory (CRT) in public education,¹¹ which come at the same time that students demand more CRT in their courses,¹² may hinder efforts to ensure an antiracist curriculum on university campuses.¹³ At a minimum, the end of race-conscious admissions and the political attacks on CRT and other efforts at challenging systemic racism (including DEI programs), will provide ammunition for conservative forces to challenge virtually any program designed to improve the racial climates of colleges and universities.¹⁴

I fully support bona fide university DEI efforts. However, the jury is out as to whether the flurry of DEI initiatives as a whole represent a true commitment to equality by colleges and universities or, in some instances, pay little more than lip service to the demands of activists. One can imagine very different outcomes of DEI initiatives depending on the commitment of campus leaders, the leadership and personnel in place, available resources, and local circumstances. Due to the interaction of these and other factors, some DEI programs will succeed in moving the needle forward while others will fail. Lessons necessarily will be learned from the successes and failures.

One thing should not be open to serious dispute. Universities obviously should not create DEI offices, vice chancellors and deans, and programs simply to quell demands for equality. Campus leaders should aggressively work to promote substantive DEI improvements through planning (with concrete strategies and objective goals), programs, community discussions, budgetary allocations, and related measures.

In short, DEI offices and officers should not simply be tools utilized by university leaders to manage, if not silence, demands for justice. The highest levels of campus leadership must be committed to achieving substantive DEI results, which should be founded in community hopes and needs. The truly difficult challenges are determining how to ensure that DEI efforts in fact address true

universities/?sh=2a1527257dae. Conservatives also have challenged university and campus free speech policies and practices. See Karen Sloan, *Law Schools Faced a Free Speech Reckoning in 2022*, REUTERS (Dec. 21, 2022, 6:05 AM), <https://www.reuters.com/legal/legalindustry/law-schools-faced-free-speech-reckoning-2022-2022-12-21>.

10. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141 (2023).

11. See Danielle M. Conway, *The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education*, 66 ST. LOUIS L.J. 707, 712-13 (2023).

12. See Karen Sloan, "This is the Civil Rights Movement of My Lifetime": Black Law Students Demand Action, LAW.COM (June 18, 2020, 3:40 PM), <https://www.law.com/2020/06/18/this-is-the-civil-rights-movement-of-my-lifetime-black-law-students-demand-action/>.

13. See *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> (last visited Jan. 25, 2024).

14. See Paul Caron, *Dorf: Does Diversity Have a Future in Legal Education?*, TAXPROF BLOG (Sept. 6, 2023), https://taxprof.typepad.com/taxprof_blog/2023/09/dorf-does-diversity-have-a-future-in-legal-education.html.

issues of diversity, equity, and inclusion that matter to the relevant communities, and secure true and lasting institutional change. The commitment must be for the long-term benefit of the community, rather than ad hoc, short-term bursts of energy by a single office or officer in response to problematic episodes, such as the controversy surrounding the violence in the Middle East. Time and results will tell whether universities are in fact truly committed to moving their institutions toward building a more welcoming community for all.

To formulate meaningful measures that improve the climates on campuses, consultations with faculty, students, staff, alumni, and community members are essential. Input from the different community groups will help to ensure that DEI efforts both (1) identify actual DEI concerns on the ground, and (2) are designed to respond effectively to those concerns. Meaningful consultation, coordination, and compromise can help to fashion DEI efforts that reap concrete institutional benefits.

A. *Affirmative Action and DEI*

Colleges and universities long have expressed a commitment to enrolling diverse student bodies. The Supreme Court's endorsement of the pursuit of diversity through race-conscious admissions in *Regents of the University of California v. Bakke*¹⁵ led many universities for more than a generation to rely on this rationale for their admissions criteria. As times changed, that institutional commitment naturally evolved into demands for the full integration of all students into the university community. To that end, recent years have seen a proliferation of diversity, equity, and inclusion offices and leaders on university campuses.

DEI offices can generate positive institutional outcomes. At a minimum, they place a spotlight on issues of belonging of critical importance to marginalized communities. DEI offices can also establish programming that promotes DEI and benefits the entire university community. DEI leaders can advocate for the incorporation of principles of diversity, equity, and inclusion in all aspects of university operations and faculty, student, staff, and community life. Such offices can receive student, faculty, staff, and alumni requests, concerns, and recommendations about DEI issues and help respond to them. The overall value of the modern DEI function should not be underestimated.

Some sympathetic commentators have been critical of the rise of DEI offices and functions on university campuses.¹⁶ They claim, among other things, that DEI programs can be used as devices that put little more than window-dressing on serious issues of diversity, equity, and inclusion. When used primarily as political tools in an attempt to subdue student and faculty demands for change, DEI offices may not do much to facilitate efforts to remedy serious campus climate issues and in fact may damage the DEI climate by appearing to respond to, but not actually address, DEI concerns.

15. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

16. *See, e.g.*, FRANK DOBBIN & ALEXANDRA KALEV, GETTING TO DIVERSITY! WHAT WORKS AND WHAT DOESN'T 16-18 (2022).

With the best of intentions, many law schools have enthusiastically joined the DEI bandwagon. A few schools had been committed to DEI principles before they became widely embraced while other schools without that history of commitment also created DEI offices. Some law schools appointed DEI officers.¹⁷ The increasing number of women and people of color becoming law school deans will likely influence future DEI commitments and outcomes in law schools.¹⁸

B. *DEI for Success*

Even when created with the best of intentions, DEI offices must have the budgetary and other support necessary to effectively address the issues. Unless fully supported by an administration with adequate resources, DEI efforts may not have much of a positive substantive impact. In addition, any DEI program, to be successful, must ensure that students, faculty, staff, alumni, and community members have a meaningful voice in DEI efforts. Input from the community must be secured to identify pressing DEI needs and policies.

In another issue of this University of Toledo Law Review Deans Symposium, I highlighted the importance of student input into major law school decisions.¹⁹ With appropriate input, DEI programming can respond to the true needs of the student community. Campus or law school climate surveys can assist in identifying issues needing attention. Faculty input is, of course, critical as well. Lack of diversity among law faculties remains an issue that many law schools are committed to changing. Some universities have required faculty candidates to submit statements about their contributions to diversity, which conservatives have challenged as a political litmus test.²⁰ In turn, the demographics of a faculty likely will influence its input on DEI issues. Central to all law school operations, the staff is deeply affected by a law school's culture and overall DEI approach. Alumni can offer valuable input, especially about their experiences as students, employment prospects of students, and the perceptions of the outside world of a school's climate.

In short, the various constituencies can provide incredibly useful input into a university's DEI approach and programming. As is the case for all academic matters, reconciling different needs and recommendations for reform is a formidable task of the university administration. For law schools, that task is a challenging one, but on a more limited scale than at the university level.

17. See, e.g., Clara Turnage, *Law School Names Inaugural Diversity, Equity and Inclusion Officer*, UNIV. OF MISS. COLL. OF LIBERAL ARTS (Feb. 2, 2023), <https://libarts.olemiss.edu/law-school-names-inaugural-diversity-equity-and-inclusion-officer/>.

18. See Stephanie Francis Ward, *Diversity Increases with Law School Deans, According to New AALS Study*, ABA J. (Apr. 4, 2022, 11:01 PM), <https://www.abajournal.com/web/article/diversity-increases-with-law-school-deans-according-to-aals-study>.

19. See Kevin R. Johnson, *The Forgotten Constituency?: Law School Deans and Students*, 42 U. TOL. L. REV. 637 (2011).

20. See Brian Soucek, *Diversity Statements*, 55 U.C. DAVIS L. REV. 1989 (2022).

As Dean, I initially resisted adding a DEI dean or any similar position dedicated primarily to DEI work at UC Davis School of Law.²¹ Although a supporter of DEI efforts, my thinking was that principles of diversity, equity, and inclusion should be fully integrated into the fabric of each and every leader and office at the law school. That remains my view. However, I later decided to create a position devoted to DEI because it signals the importance to faculty, students, staff, and alumni of addressing DEI issues, and the institutional commitment that it represents. To those ends, I appointed a person to coordinate the law school's DEI activities.²² Such a position sends a clear message to the law school community about the importance of DEI issues. It also allows community members to know the place to go to register a DEI concern. At the same time, the existence of a DEI officer and office will not necessarily satisfy the school's desired DEI goals. Commitment to change by the leadership and the entire institution, resources, and hard work also are necessary.

In addition to a DEI leader, I created a DEI advisory committee of students, faculty, staff, and alumni and announced a series of DEI initiatives.²³ Meeting regularly under the direction of our DEI officer, the advisory committee discusses DEI issues, makes recommendations on possible DEI efforts, and prepares an annual report on DEI matters that is made available to the entire law school community. The committee has proven helpful in identifying existing and emerging DEI issues and has made recommendations on how the law school should respond to various concerns. UC Davis Law also added a website with DEI information and resources for the community.²⁴

Programming can also promote community dialogue on DEI issues. One initiative at UC Davis School of Law designed to promote such a dialogue on racial justice issues is the Racial Justice Speaker Series, started in 2020, not long after the killing of George Floyd.²⁵

II. THE NEED FOR A TRUE SUBSTANTIVE COMMITMENT TO DEI

To avoid being mere symbols, administrators must ensure that DEI offices and leaders have the real ability to bring about meaningful and lasting change. Clear support from the leadership is crucial to ensuring that the community has confidence that DEI efforts are a true priority of the school. To those ends, DEI

21. For a summary of recent DEI efforts at UC Davis School of Law, see Kevin R. Johnson, *The Future of Diversity in Legal Education*, UC DAVIS SCH. OF L. FAC. BLOG (Mar. 30, 2023, 1:02 PM), <https://facultyblog.law.ucdavis.edu/post/the-future-of-diversity-in-legal-education.aspx> (reposting from *The Bench*, American Inn of Court publication).

22. See Alexis Elston, *Director of Diversity and Student Life: Diversity, Equity, and Inclusion*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/people/alexis-elston> (last visited Jan. 25, 2024).

23. See Carla Meyer, *UC Davis Law Moves Forward on Key DEI Initiatives*, UC DAVIS SCH. OF L. (July 18, 2022), <https://law.ucdavis.edu/news/uc-davis-law-moves-forward-two-key-dei-initiatives>.

24. See *Diversity, Equity, and Inclusion at King Hall*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/academics/dei> (last visited Jan. 25, 2024).

25. See *Racial Justice Speaker Series 2023-2024*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/Racial-Justice-Speaker-Series/2023-2024> (last visited Jan. 25, 2024).

offices must have the budget and authority to bring about substantive improvements. Budgets reflect the institution's commitment to DEI. The smaller the budget, the more likely a DEI office will be unable to bring about meaningful change.

A. The End of Race-Conscious Admissions and Alternatives for the Future

The end of race-conscious affirmative action brought about by the Supreme Court's 2023 decision requires colleges and universities to double down on, not abandon, DEI efforts. Even without race-conscious affirmative action, all is not lost for colleges and universities truly dedicated to diversity in their student bodies. Universities should not surrender hope for enrolling and supporting a diverse student body if they truly believe in its importance to the education of all students.

In the aftermath of the Supreme Court's decision ending race-conscious admissions, law schools are re-evaluating admissions, including what they solicit in personal statements in applications as well as other aspects of admission criteria and processes.²⁶ Those changes, in turn, will likely receive considerable public scrutiny and should be carefully crafted and implemented to ensure integrity as well as compliance with all laws and regulations.

In a statement to the UC Davis law school community immediately after the Supreme Court's decision ending the consideration of race in admissions,²⁷ I identified areas for consideration by law schools, including revisiting admissions criteria and procedures, evaluating the use of standardized tests, and the investigation of programs to increase the number of law school applicants from diverse backgrounds. Some schools, like UC Davis, already have race-neutral pipeline programs that produce applicants of diverse backgrounds. The Law School Admissions Council has generously provided financial support for some programs.²⁸

1. Proposition 209

Public colleges and universities in some states, including California, have not considered race in admissions for more than twenty-five years. In the wake of the Supreme Court's latest pronouncement, colleges and universities across the nation can look to the experiments in those states in planning for the color-blind, race-neutral admissions future. Several states took steps that allowed for a rebound in

26. See Karen Sloan, *Law Schools' Admission Essays Revamped After Supreme Court Affirmative Action Ruling*, REUTERS (Aug. 23, 2023, 2:36 PM), <https://www.reuters.com/legal/government/law-schools-admission-essays-revamped-after-supreme-court-affirmative-action-2023-08-23/>.

27. See *Statement From Dean Johnson About Supreme Court Affirmative Action Ruling*, UC DAVIS SCH. OF L. (June 29, 2023), <https://law.ucdavis.edu/aoki-blog/statement-dean-johnson-about-supreme-court-affirmative-action-ruling>.

28. See *LSAC Prelaw Undergraduate Scholars (PLUS) Programs*, L. SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/discover-law/diversity-law-school/prelaw-undergraduate-scholars-plus-programs> (last visited Jan. 25, 2024).

initial drops in the enrollment of students of color after the end of race-conscious admissions in those states.²⁹

Consider the responses of colleges and universities in California to the law ending affirmative action in the state. Passed by the California voters in 1996, Proposition 209 banned the consideration of race in admissions by public colleges and universities in the Golden State.³⁰ The proposition provides that “[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”³¹ In response to Proposition 209, UC Davis School of Law changed its admissions criteria to bar the consideration of race but, among other things, emphasized full review of the entire application and expressly allowed consideration of individual disadvantages overcome, immigration status, and language abilities.

2. *The King Hall Outreach Program*

UC Davis Law also created a no-cost, race-neutral pipeline program, the King Hall Outreach Program (KHOP),³² for first-generation college students and those from economically disadvantaged backgrounds. Designed to make participants more competitive in the law school admissions process, KHOP offers prospective law students writing and Law School Admissions Test training and admissions counseling from admissions professionals. It allows students to meet KHOP alumni and the Dean of the School of Law. Students hear from a lawyer and have a session with a financial aid professional to learn about financing a legal education. Students also visit a local courthouse, meet with a judge in a local court, and visit a law firm to learn about private practice.

KHOP currently runs twice a year, with fifteen to thirty students in each cohort. Recent classes have included a diverse group of students. KHOP students in recent years came from UC Berkeley, UCLA, Sacramento State, San Francisco State, Santa Clara, UC Merced, California State University Long Beach, UC Santa Barbara, and Cal State Northridge, as well as the University of Washington and Georgetown. 99% of KHOP alumni have graduated from a four-year institution; 41% are enrolled in or graduated from a law school. Fifteen KHOP alumni are enrolled at UC Davis School of Law. Other KHOP alumni currently attend law

29. See Teresa Watanabe, *UC Admits Record Number of California First Year Students for Fall 2023, Led by Latinos*, L.A. TIMES (Aug. 8, 2023, 9:29 AM), <https://www.latimes.com/california/story/2023-08-08/uc-admits-record-number-of-california-first-year-students-led-by-latinos>.

30. *Proposition 209: Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities*, LEGIS. ANALYST’S OFF. (Nov. 1996), https://lao.ca.gov/ballot/1996/prop209_11_1996.html. See Girardeau A. Spann, *Proposition 209*, 47 DUKE L.J. 187 (1997). California voters in 2020 rejected an initiative that would have repealed Propositions 209. See Michael Powell & Ilana Marcus, *The Failed Affirmative Action Campaign that Shook Democrats*, N.Y. TIMES (June 11, 2023), <https://www.nytimes.com/2023/06/11/us/supreme-court-affirmative-action.html>.

31. *California Proposition 209*, DIGIT. HIST. (2021), https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=4099.

32. See *King Hall Outreach Program (KHOP)*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/admissions/outreach/KHOP> (last visited Jan. 25, 2024).

schools across the country including Yale, UC Berkeley, University of Virginia, Brooklyn, McGeorge, New York, Santa Clara, Southwestern, SMU, UC Irvine, UCLA, Michigan, and the University of San Francisco.

Other pipeline programs also exist. For example, funded by the California Legislature, California LAW Pathways is open to students attending community college and follows them through four-year universities and law schools.³³ Importantly, community colleges in California are much more economically and otherwise diverse than many universities and law schools. California LAW Pathways offers students programs, mentorship, and law school visits in an effort to encourage students to pursue law school.

Efforts other than pipeline programs can show an institutional commitment to enrolling student bodies that reflect the general population. Outreach to potential applicants is another possibility to help ensure diversity among applicants. First generation programs can help those students succeed in law school. For example, the UC Davis Law First Generation Advocates Program provides support through informational sessions, individual mentors, and related programming to first generation students.³⁴

B. *Outside Resistance Versus Student Demands*

In some circumstances, students have been ahead of university leaders on the DEI curve. Student demands for more, and even mandatory, CRT courses in the law school curriculum are indirect demands for response to racial justice and DEI concerns. Some schools have responded through requirements that students take a racial justice course and training in order to graduate.³⁵ The political pushback against CRT may make it more difficult in some states to integrate issues of race into university and law school curricula.

At UC Davis, faculty, with student support, in 2023 added as a graduation requirement that students take a class that touches on racial justice.³⁶ Faculty, students, and staff also are provided implicit bias and related training. The “community read” is a law school-wide discussion of books and films touching on DEI themes, including criminal justice reform and affordable housing.³⁷ In addition, the law school’s Aoki Center on Critical Race and Nation Studies

33. See *Building a Diversity Pipeline into the Law*, CAL. L. PATHWAYS, <https://calawpathways.org/> (last visited Jan. 25, 2024).

34. See *First Generation Advocates*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/students/first-generation-advocates> (last visited Jan. 25, 2024).

35. See, e.g., Andrew Cohen, *Moving Forward: Faculty Approves Race and Law Course Requirement in Order to Graduate*, BERKELEY L. (Feb. 18, 2022), <https://www.law.berkeley.edu/article/faculty-approves-race-and-law-course-requirement/>.

36. See Carla Meyer, *UC Davis Law Moves Forward on Key DEI Initiatives*, UC DAVIS SCH. OF L. (July 18, 2022), <https://law.ucdavis.edu/news/uc-davis-law-moves-forward-two-key-dei-initiatives>.

37. See *1L Barbecue, Implicit Bias Training, Community Read Highlight Class of 2025 Intro Week*, UC DAVIS SCH. OF L. (Aug. 11, 2022), <https://law.ucdavis.edu/news/1l-barbecue-implicit-bias-training-community-read-highlight-class-2025-intro-week>.

provides events on social justice issues,³⁸ including an annual series of critical perspectives on the first-year classes.³⁹

A related contemporary development warrants comment. Students have pressed law schools to make public statements on current events that often touch on DEI concerns. The George Floyd killing is an example of the type of incident that many would claim requires a university and law school response.⁴⁰ Another contemporary example that led me as dean to issue a statement was the Supreme Court's 2023 affirmative action decision.⁴¹ Besides having a lasting impact on university admissions and thus on a school's student body, the decision may discourage students of color from applying to colleges and universities. To avoid a dip in minority applicants, schools must act to show that the doors continue to remain open to all.

The accreditor of law schools, the American Bar Association (ABA), has nudged law schools on faculty and student diversity as well as in providing an antiracist curriculum and training.⁴² Consequently, diversity in faculty and student bodies, as well as the curriculum, are subject to review in the accreditation process.⁴³ Law schools take seriously matters that risk ABA accreditation and today appear to pay more attention to diversity issues than in the past.

In sum, although many observers are disappointed by the Supreme Court's affirmative action decision, it need, and should, not end the efforts to diversify our universities and law schools. Nor should it end efforts that seek to improve school climates for all. The decision instead should prod law schools, colleges, and universities to reconsider their admissions schemes, processes, and criteria. This is no less than an ideal historical moment to review admissions criteria, outreach, and procedures and do what lawfully can be done to enroll diverse student bodies and integrate all students into the university community.

CONCLUSION

Despite conservative resistance, a university's commitment to DEI is laudable. However, to produce results, that commitment must be true, principled, and adequately supported by the highest levels of campus leadership through resources and moral authority. Absent dedicated administrators with a budget and

38. See *Welcome to the Aoki Center for Critical Race and Nation Studies*, UC DAVIS SCH. OF L., <https://law.ucdavis.edu/academics/centers/aoki-center> (last visited Jan. 25, 2024).

39. See *Aoki Fall '23 Critical Perspectives on 1L Courses Lineup*, UC DAVIS SCH. OF L.: BLOG, <https://law.ucdavis.edu/aoki-blog/aoki-fall-23-critical-perspectives-1l-courses-lineup> (last visited Jan. 25, 2024).

40. See Kimberly Mutcherson, *Taking Our Space: Women of Color and Antiracism in Legal Academia*, 73 RUTGERS UNIV. L. REV. 869, 876 (2021) (noting that the deans of almost every U.S. law school issued a public statement about the tragic death of George Floyd).

41. See *Statement From Dean Johnson*, *supra* text accompanying note 27.

42. See Karen Sloan, *U.S. Law Students to Receive Anti-Bias Training After ABA Passes New Rule*, REUTERS (Feb. 14, 2022, 2:25 PM), <https://www.reuters.com/legal/legalindustry/us-law-students-receive-anti-bias-training-after-aba-passes-new-rule-2022-02-14/>.

43. See, e.g., Stephanie Francis Ward, *1 of 3 Law Schools Dinged for Diversity Standards Demonstrates Compliance*, ABA J. (Aug. 30, 2023, 11:47 AM), <https://www.abajournal.com/web/article/one-of-three-law-schools-dinged-for-diversity-standard-demonstrates-compliance>.

identified goals that move an institution forward, DEI offices will not accomplish much in furthering the cause of diversity, equity, and inclusion. Perhaps most importantly, the communities directly affected must be part of a deliberative process to identify DEI issues and possible changes.

DEI efforts are much-needed for universities and law schools, as well as businesses and other institutions. This is especially the case in the wake of the Supreme Court's 2023 decision ending affirmative action in university admissions. The challenge facing higher education will be to implement lawful and constructive DEI programming.

