
UC DAVIS LAW REVIEW ONLINE

VOL. 55



MAY 2022

Together But Unequal: How the COVID-19 Pandemic Exacerbated the Inequities Harming Minority Law Students

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INTRODUCTION

In early March of 2020, the official number of coronavirus (“COVID-19”) cases worldwide surpassed 100,000, marking the start of one of the deadliest global pandemics.¹ COVID-19 cases have only increased since the initial surge, surpassing 481 million cases and over 65.8 million deaths worldwide in March 2022, two years since the outbreak.² In the United States, there have been over 79 million cases, and over 950,000 deaths, making this pandemic deadlier than the 1918 Flu.³ The outbreak of this deadly and highly contagious virus created new obstacles. Workplaces and schools transitioned to online learning; restaurants, malls, and shops restricted visitors; people relied more on delivery or takeout services; and national parks closed.⁴ Major public transportation systems implemented new regulations to keep people safe.⁵ All these changes impacted the lives of law students, particularly

¹ See *WHO Statement on Cases of COVID-19 Surpassing 100,000*, WORLD HEALTH ORG. (Mar. 7, 2020), <https://www.who.int/news/item/07-03-2020-who-statement-on-cases-of-covid-19-surpassing-100-000> [<https://perma.cc/4DW6-6WYS>].

² Daniel Wood, Stephanie Adeline, Ruth Talbot & Thomas Wilburn, *Coronavirus World Map: We’ve Now Passed the 400 Million Mark for Infections*, NAT’L PUB. RADIO, <https://www.npr.org/sections/goatsandsoda/2020/03/30/822491838/coronavirus-world-map-tracking-the-spread-of-the-outbreak> (last visited Mar. 11, 2022) [<https://perma.cc/Q7RS-M7VY>].

³ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last visited Feb. 19, 2022) [<https://perma.cc/CC77-BSH5>]; see *History of the 1918 Flu Pandemic*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/flu/pandemic-resources/1918-commendation/1918-pandemic-history.htm> (last visited Mar. 4, 2022) [<https://perma.cc/5TEM-YASX>].

⁴ See Cathy Li & Farah Lalani, *The COVID-19 Pandemic Has Changed Education Forever. This Is How*, WORLD ECON. F. (Apr. 29, 2020), <https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning/> [<https://perma.cc/98LQ-KRGD>]; Tamara Vehige Calise, Amelia Fox, Amanda Ryder & Laura Rios Ruggiero, *Overcoming Challenges Resulting From COVID-19: New York State’s Creating Healthy Schools and Communities Initiative*, 17 PREVENTING CHRONIC DISEASE, https://www.cdc.gov/pcd/issues/2020/20_0232.htm [<https://perma.cc/558A-EM79>]; Phil Wahba, *A Record 12,200 U.S. Stores Closed in 2020 as E-Commerce, Pandemic Changed Retail Forever*, FORTUNE (Jan. 7, 2021, 7:00 AM PST), <https://fortune.com/2021/01/07/record-store-closings-bankruptcy-2020/> [<https://perma.cc/3ZQN-4ER8>]; Melissa Wiley, *What the 10 Most Visited National Parks in the US Have Said About Their Plans to Reopen, from Opening in Phases to Implementing Social Distancing Guidelines*, BUS. INSIDER (May 21, 2020, 2:53 PM), <https://www.businessinsider.com/are-national-parks-open-covid-19-coronavirus-united-states-nps-2020-5> [<https://perma.cc/K8BU-4FC7>].

⁵ See, e.g., *BART Updates Related to the Coronavirus (COVID-19)*, BAY AREA RAPID TRANSIT, <https://bartable.bart.gov/featured/bart-updates-related-coronavirus-covid-19> (last updated Oct. 12, 2021) [<https://perma.cc/CL5N-C7R7>] (providing information on COVID-19 policies implemented by the Bay Area Rapid Transit District (“BART”), a

minority students, by contributing to continuous uncertainties regarding secure housing and future job placements.⁶ No change caused more difficulty for students than the transition to online learning. This unprecedented shift in how we learn has been difficult for new and continuing law students enrolled in traditional American law schools.⁷

Law school is a difficult endeavor with many barriers, such as the cost and preparation for the Law School Admissions Test (“LSAT”), cost of each individual application, and financing law school generally. Attending law school under normal conditions is a challenge because it is structured to favor students from the wealthy elite, or students with access to the best resources for success.⁸ First-generation students,⁹

public transportation agency); *MTA Service During the Coronavirus Pandemic*, METRO. TRANSIT AUTH., <https://new.mta.info/coronavirus> (last updated Jan. 11, 2022) [<https://perma.cc/V7LU-VYRS>] (providing guidelines for public transit by the Metro Transit Authority due to COVID-19).

⁶ See Sarah Schendel, *The Weight of 2020: Black Law Grads Are ‘Exhausted’ and ‘Anxious,’* AM. BAR ASS’N (May 10, 2021), <https://abaforlawstudents.com/2021/05/10/2020-black-law-grads-are-exhausted-and-anxious/> [<https://perma.cc/HB9X-X7VY>]; see also *How Law Schools Can Address Diversity Issues During COVID-19*, LAW SCH. ADMISSIONS COUNCIL (June 22, 2020), <https://www.lsac.org/blog/how-law-schools-can-address-diversity-issues-during-covid-19> [<https://perma.cc/MP22-XNPF>].

⁷ In this context, “traditional American law schools” refers to schools with accredited “JD programs consist[ing] of a full-time academic course-load spanning three years.” FAQ, THE ASS’N OF AM. L. SCHS., <https://www.aals.org/prospective-law-students/faqs/> (last visited Apr. 11, 2022) [<https://perma.cc/226C-93E6>]. For examples of the new challenges facing law students, see Kelsey J. Griffin, *Hundreds of Harvard Law Students Criticize Plans for Online Fall Semester*, THE CRIMSON (June 17, 2020), <https://www.thecrimson.com/article/2020/6/17/hls-online-fall-semester/> [<https://perma.cc/H7EP-2NLT>] (citing a petition signed by 400 Harvard Law students “highlight[ing] concerns with remote learning, including decreased career advising opportunities, difficulty connecting with peers and professors, and the inability of international students to qualify for work visas for the summer of 2021 without two semesters of in-person classes”); see also Karen Sloan, *Online or In Person? Law Schools Diverge in Fall Semester Plans*, LAW.COM (July 1, 2020), <https://www.law.com/2020/07/01/online-or-in-person-law-schools-diverge-in-fall-semester-plans/> [<https://perma.cc/LAG5-J99S>] (describing changes by law schools to adapt to online learning for the 2020 fall semester).

⁸ Jordan Rothman, *Wealthy Students Have a Much Easier Time Succeeding in Law School*, ABOVE THE LAW (Sept. 26, 2018, 9:58 AM), <https://abovethelaw.com/2018/09/wealthy-students-have-a-much-easier-time-succeeding-in-law-school/> [<https://perma.cc/6332-CE93>] (providing examples of resources wealthier students are able to access such as the ability to afford summer classes [historically uncovered by financial aid] as a GPA booster, ability to purchase hornbooks and other materials helpful to understanding legal material, and taking a summer seminar prior to law school).

⁹ While the definition of “first generation student” varies, generally first-generation students are students whose parents did not earn a college or university degree. See *Are You a First Generation Student?*, CTR. FOR FIRST-GENERATION STUDENT SUCCESS,

students who are Black, Indigenous, and people of color (“BIPOC”), low-income students, non-traditional students,¹⁰ undocumented students, and students with disabilities (who we will refer to collectively here as “Diverse students”), have all suffered at the hands of a system that has historically held them back.¹¹ An online environment exacerbates these historical and systemic inequities in law schools.¹² Efforts to “go back to normal” amidst the ongoing pandemic, use of letter grades, extensive law review write-on competitions, and harsh and rigorous law firm recruiting, especially the On Campus Interview (“OCI”) process, have only emphasized these barriers.

The first Part of this Article explores the pre-pandemic law school structure and the inequities faced by Diverse students. The second Part examines the effects of the ongoing pandemic and the current cultural and political climate on the law student experience. This discussion incorporates findings from a survey we conducted in 2021, in which we gathered anonymous feedback from law students across the country regarding their experiences with online learning.¹³ This Section also discusses students’ reactions to the current political and cultural climate, including the nation’s response to police brutality and the 2020 presidential election as additional factors affecting law students. Lastly, the third Part of this Article offers recommendations to law schools on how legal education can be more equitable during and beyond this global crisis.

I. THE LAW SCHOOL INSTITUTIONAL STRUCTURE

To assess how the pandemic has adversely affected Diverse students, it is important to look closely and honestly at the experiences of law

<https://firstgen.naspa.org/why-first-gen/students/are-you-a-first-generation-student> (last visited Apr. 11, 2022) [<https://perma.cc/6675-RVWN>].

¹⁰ The term “non-traditional student,” as applied to graduate students, refers to students who “have the following characteristics: being independent for financial aid purposes, having one or more dependents, being a single caregiver, not having a traditional high school diploma, delaying postsecondary enrollment, attending school part-time, and being employed full time.” *About ANTSHE*, ASS’N FOR NONTRADITIONAL STUDENTS IN HIGHER EDUC., <https://www.myantshe.org/about> (last visited Feb. 19, 2022) [<https://perma.cc/395Z-9DPD>].

¹¹ See Francesco Arreaga, *Law Schools Have a Moral and Social Responsibility to End Systemic Racism*, CALIF. L. REV. ONLINE (July 2020), <https://www.californialawreview.org/law-schools-systemic-racism> [<https://perma.cc/Z4NR-VYXG>] (discussing racist law school admissions policies in Part II, “Law Schools Have Enabled Systemic Racism”).

¹² See Schendel, *supra* note 6.

¹³ GRECIA OROZCO & KHRYSTAN NICOLE POLICARPIO, LAW SCHOOL STUDENT SURVEY REGARDING IMPACT OF COVID-19 (2021) (on file with authors) [*hereinafter* SURVEY].

school students, particularly BIPOC students, before the pandemic. From law school admissions to hiring, legal institutions reap the benefits of their gatekeeping role, while simultaneously touting their Diverse student populations, to the detriment of underrepresented students. Law schools will market their institutions as progressive and welcoming to Diverse students and the institutions benefit from this marketing.¹⁴ These benefits include, but are not limited to, higher law school rankings (which increase the number of prospective applicants), increased alumni donations, and increased state support (if the law school is public).¹⁵ However, Diverse students often come to find that once they arrive at their law school, it hardly resembles the marketing they were drawn to.

A. *Law School Admissions Have Numerous Structural Hurdles for Minority Law Students*

1. LSAT

The path to become a lawyer is difficult. First, most schools require a bachelor's degree and a GPA.¹⁶ Both of these elements pose possible financial barriers to obtaining a legal education.¹⁷ Most schools require students to take standardized tests known as the LSAT or the Graduate Record Examination, both of which cost around \$200.¹⁸ Additionally, students must purchase the Credential Assembly Service and Law School Report services from the Law School Admissions Council

¹⁴ See Kevin R. Johnson, *The Importance of Student and Faculty Diversity at Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1550, 1573 (2011). Dean Kevin R. Johnson of UC Davis School of Law explains that schools lack incentives to promote diversity that would benefit underrepresented students by virtue of letting them into law school. *Id.* at 1551, 1572-77. Because diversity is not a priority for the law school ranking systems currently in place, diversity within law schools suffers. *Id.*

¹⁵ See Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 266 (2006).

¹⁶ *Law School Admissions 101: Typical Law School Requirements & Prerequisites*, OHIO N. UNIV. PETTIT COLLEGE OF L., <https://law.onu.edu/news/law-school-admissions-101-typical-law-school-requirements-prerequisites> (last visited Apr. 11, 2022) [<https://perma.cc/P2AZ-L9VL>].

¹⁷ See George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA's Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 105-06 (2003).

¹⁸ *About the GRE Test*, PRINCETON REV., <https://www.princetonreview.com/grad/gre-information?ceid=tersh-nav-test-prep> [<https://perma.cc/Q9PM-PFTJ>]; *LSAT & CAS Fees*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/lsat/lsat-dates-deadlines-score-release-dates/lsat-cas-fees-and-refunds> (last visited Apr. 11, 2022) [<https://perma.cc/BBD8-YNG7>].

(“LSAC”) in order to prepare and send out law school applications to prospective schools. This costs an additional \$240.¹⁹ Although it is possible to obtain an LSAC waiver, doing so requires proof of parental income if a student is financially dependent or mixed-status (meaning family members have different citizenship statuses), and not all students have access to their parents’ income information or tax returns.²⁰ This can be especially difficult in households where one’s parents are without a valid or legal Form W-2 or Form 1040, including those who are paid in cash²¹ or use a fake Social Security Number.²²

A high score on the LSAT can help students get into top schools and students are often encouraged to retake the test in order to obtain a higher score.²³ Many commercial LSAT tutoring programs exist to help

¹⁹ *Id.*

²⁰ See 2020-2021 Verification of Nonfiling Form, LAW SCH. ADMISSIONS COUNCIL, https://www.lsac.org/sites/default/files/media/us-fee-waiver-verification-of-nonfiling-form-2020_ACCESSIBLE.pdf [<https://perma.cc/7CXP-D9VP>] (requiring parents’ federal tax information to obtain a fee waiver); see, e.g., Zenen Jaimes Pérez, *Removing Barriers to Higher Education for Undocumented Students*, CTR. FOR AM. PROGRESS 17, 23-24 (Dec. 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/UndocHigherEd-report2.pdf> [<https://perma.cc/S86R-B5TS>] (describing how undocumented student parents’ may be below the poverty line or paid under the table and that undocumented students are hesitant to submit documents or information that may reveal that they are undocumented). Given that tax documents or falsified documents may reveal a student’s status, undocumented students may be reluctant to begin the law school admissions process which asks for these documents.

²¹ Cf. Anna Helhoski, *Filling Out the FAFSA: I Am a U.S. Citizen, but My Parents are Undocumented Immigrants*, NERDWALLET (Aug. 4, 2021), <https://www.nerdwallet.com/article/loans/student-loans/fafsa-guide-us-citizen-parents-undocumented> [<https://perma.cc/GXR7-5WCE>] (explaining that students filling out forms for federal student aid must go through different procedures if their parents are undocumented); Shawna Newman, *Can a Dependent Student File the FAFSA as Independent if the Student’s Parents Don’t File Federal Income Tax Returns?*, FASTWEB (July 22, 2020), <https://www.fastweb.com/financial-aid/articles/can-a-dependent-student-file-the-fafsa-as-independent-if-the-student-s-parents-don-t-file-federal-income-tax-returns> [<https://perma.cc/B34K-FKTD>] (explaining that completion of the Free Application for Federal Student Aid (“FAFSA”) is required for law students seeking federal loans to support themselves while attending law school, and the same FAFSA information used to determine eligibility for federal student aid is also required by LSAC when determining eligibility for law school application related fee waivers); Kat Tretina, *3 Obstacles That Can Affect Financial Aid for Immigrants*, STUDENT LOAN HERO (July 13, 2020), <https://studentloanhero.com/featured/financial-aid-for-immigrants-obstacles-affect/#tax> [<https://perma.cc/F58K-LT2C>].

²² See Alexia Fernández Campbell, *The Truth About Undocumented Immigrants and Taxes*, ATLANTIC (Sept. 12, 2016), <https://www.theatlantic.com/business/archive/2016/09/undocumented-immigrants-and-taxes/499604/> [<https://perma.cc/4LEZ-FPV6>].

²³ See, e.g., Jon Denning, *Should You Retake the LSAT?*, POWERSCORE (Aug. 23, 2021), <https://blog.powerscore.com/lsat/should-you-retake-the-lsat/> [<https://perma.cc/5DDT-KRLE>].

students understand and prepare for the LSAT.²⁴ While these programs are designed for students who need additional assistance with achieving a competitive score, they come at a considerable cost, ranging upwards of \$1,600.²⁵ This is an additional barrier for students who may not have the resources to afford a tutoring program. Though some programs offer income-based support or fee waivers, they are insufficient to cover the full range of students in need and can be stressful to obtain.²⁶ Taking into account this application process, and the fees associated with applying, the path to law school admission is expensive and unfeasible for students without the means to afford tutoring or costs associated with taking (or re-taking) the LSAT.²⁷

Additionally, many first-generation, BIPOC, and other Diverse applicants do not have relatives, peers, or friends who attended law school to guide them through the application process and towards things like fee waivers. Likewise, Diverse applicants may not be aware that there are opportunities to write diversity statements, which may

²⁴ See *Best Online LSAT Prep Classes*, COLLEGE CONSENSUS, <https://www.collegeconsensus.com/law/best-lsat-prep-courses/> (last visited Apr. 11, 2022) [<https://perma.cc/9A7A-T3G6>].

²⁵ See, e.g., BLUEPRINT PREP, <https://blueprintprep.com/lsat/live-online/courses> (last visited Apr. 11, 2022) [<https://perma.cc/7R9C-AGWL>]; KAPLAN, <https://www.kaptest.com/lsat> (last visited Apr. 11, 2022) [<https://perma.cc/KQL8-W9M6>]; POWERSCORE, <https://www.powerscore.com/lsat/courses/> (last visited Apr. 11, 2022) [<https://perma.cc/XL67-3U59>]; PRINCETON REV., <https://www.princetonreview.com/grad/lsat-honors-course?ceid=tersh-nav-test-prep> (last visited Apr. 11, 2022) [<https://perma.cc/E82M-UWB7>].

²⁶ See *Everyone Should Be Able To Get A Great LSAT Score*, BLUEPRINT PREP, <https://blueprintprep.com/lsat/about/financial-aid> (last visited Apr. 11, 2022) [<https://perma.cc/H2KZ-9MDT>] (advertising tuition reduction for live classes to first-time students that have received LSAC fee waivers); *Kaplan Tuition Assistance Program*, KAPLAN, <https://www.kaptest.com/tuitionassistance> (last visited Apr. 11, 2022) [<https://perma.cc/B6SF-9PHK>] (offering tuition assistance based on a combination of GPA and Estimated Family Contribution); see also *Khan Academy Announces Free LSAT Prep for All*, LAW SCH. ADMISSIONS COUNCIL (Feb. 28, 2017), <https://www.lsac.org/about/news/khan-academy-announces-free-lsat-prep-all> [<https://perma.cc/V8JD-4J3J>] (providing an alternative, tuition-free LSAT preparation tool featured by LSAC, but this program does not come with a 165+ score guarantee as some other paid commercial courses advertise).

²⁷ Michelle Kim Hall, *Use Fee Waivers to Cut Law School Application Costs*, U.S. NEWS & WORLD REP. (Mar. 5, 2018, 10:00 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/2018-03-05/use-fee-waivers-to-cut-law-school-application-costs> [<https://perma.cc/SM9L-7PMC>] (breaking down the costs of applying to law school and describing how an average law school application could cost up to \$400 without a fee waiver).

add depth to their applications.²⁸ These difficult beginnings for Diverse students set a rocky path to law school.

2. Law School Rankings

The LSAT cannot predict whether a student will have a successful law career.²⁹ In fact, some schools have discussed eliminating the LSAT requirement as a way to increase the chances of a diverse pool of applicants and a more diverse student body.³⁰ Yet as of 2019, sixty-two percent of law students in the United States were white.³¹ Dean Kevin R. Johnson of UC Davis School of Law explains that schools that try to prioritize diversity of race, socioeconomic status, and gender face hurdles because “current reward structures for law schools . . . do not reward schools that are truly committed to a diverse student body and faculty as concretely as they reward other outcomes.”³² For example, donors and alumni may donate more to schools who score well in law school rankings based on *U.S. News and World Report*, which does not consider student diversity in their rankings system, but rather, emphasizes LSAT scores and GPAs.³³ These donations often go to

²⁸ Gabriel Kuris, *Advice for Aspiring Lawyers About Diversity in Law School*, U.S. NEWS & WORLD REP. (May 18, 2020, 9:08 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/advice-for-aspiring-lawyers-about-diversity-in-law-school> [https://perma.cc/4FU7-MAAW].

²⁹ See Shepherd, *supra* note 17, at 130.

³⁰ See Sheryl Jackson, *Addressing Inequities Precipitated by the LSAT: Schools and Nonprofits Strive to Develop Solutions to African Americans' LSAT Struggles*, INSIGHT INTO DIVERSITY (June 29, 2018), <https://www.insightintodiversity.com/addressing-inequities-precipitated-by-the-lsat-schools-and-nonprofits-strive-to-develop-solutions-to-african-americans-lsat-struggles/> [https://perma.cc/HAT3-AWMN].

³¹ Gabriel Kuris, *What Underrepresented Law School Applicants Should Know*, U.S. NEWS & WORLD REP. (June 8, 2020, 9:48 AM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-underrepresented-law-school-applicants-should-know> [https://perma.cc/3SS2-7XX3].

³² Johnson, *supra* note 14, at 1573.

³³ See Wendy Espeland & Michael Sauder, *Rankings and Diversity*, 18 S. CAL. REV. L. & SOC. JUST. 587, 588 (2009). *U.S. News & World Report* implemented a new standalone ranking for diversity in its annual 2022 law school rankings. The “Most Diverse Law Schools” ranking “takes into account Black, Hispanic, Native American, and Native Hawaiian/Pacific Islander enrollment.” However, this ranking would not affect the main rankings, which would still be based upon prospective students’ LSAT scores and GPAs. Robert Morse, *2022 Best Grad Schools Rankings Coming March 30*, U.S. NEWS & WORLD REP. (Mar. 9, 2021, 7:00 AM), <https://www.usnews.com/education/blogs/college-rankings-blog/articles/2021-03-09/2022-best-graduate-schools-rankings-coming-march-30> [https://perma.cc/NA9H-93XR]; Staci Zaretsky, *New to the 2022 U.S. News Law School Rankings: Diversity*, ABOVE THE LAW (Mar. 10, 2021),

student scholarships, furthering the disparity between Diverse students and students with access to resources.³⁴

U.S. News rankings may also reduce incentives to promote diversity among law student bodies because the metrics focus on factors such as median LSAT scores as a “predominant measure of student selectivity.”³⁵ Prioritizing test scores inhibits law schools from “aggressively pursuing diversity among the student body” because Diverse students tend to score lower than white students.³⁶ Even when schools apply some form of affirmative action, they are not always successful in increasing the number of Diverse students.³⁷ Furthermore, schools that may have vigorously pursued Diverse students may still fail to prepare them for success in the long term, as measured by bar passage and legal employment rates.³⁸

The law school admissions process is less accessible to students of color and students of low socioeconomic status.³⁹ The current

<https://abovethelaw.com/2021/03/new-to-the-2022-u-s-news-law-school-rankings-diversity/> [https://perma.cc/JXU8-T9EV].

³⁴ See Johnson, *supra* note 14, at 1574 (explaining that students with higher LSAT scores — often the result of having more resources to purchase LSAT prep courses — receive more scholarship money).

³⁵ *Id.* at 1576; *Law School Rankings Complicate Diversity Efforts, Research Suggests*, LAW.COM, <https://www.law.com/almID/1202445313688/> (last visited Apr. 11, 2022) [https://perma.cc/RL96-ZDRD]; *The Weight of the LSAT in Law School Applications*, MANHATTAN REV., <https://www.manhattanreview.com/lsat-role-in-application/> (last visited Apr. 11, 2022) [https://perma.cc/Y8SK-QLJX] (also suggesting the weight of the LSAT is high compared to GPA).

³⁶ Johnson, *supra* note 14, at 1576; see also LAW.COM, *supra* note 35.

³⁷ Henry Ramsey, Jr., *Introduction to LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY*, at vi-vii (1998), <https://www.lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf> [https://perma.cc/27XA-S35R]; Shepherd, *supra* note 17, at 105.

³⁸ See Charles R. Calleros, *Patching Leaks in the Diversity Pipeline to Law School and the Bar*, 43 CAL. W. L. REV. 131, 133-35 (2006) (suggesting that placing all efforts on diverse admissions does not remedy the educational pipeline for minority students to enter law school as issues with diversity are linked to leaks in K-12 education); Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 NAT'L BLACK L.J. 63, 79, 82 (2004) (providing statistics for slowing Black law student graduation rates despite increased enrollment rates); Erin Thompson, *Law Schools Are Failing Students of Color*, NATION (June 5, 2018), <https://www.thenation.com/article/archive/law-schools-failing-students-color/>.

³⁹ Elizabeth Olson, *Combating Diversity Gap in Law: Start with Law Schools*, BLOOMBERG L. (Sept. 27, 2018, 1:28 PM), <https://news.bloomberglaw.com/business-and-practice/combating-diversity-gap-in-law-start-with-law-schools/> [https://perma.cc/J8X5-W776]; see also Valerie Fontaine, *Progress Report: Women and People of Color in Legal Education and the Legal Profession*, 6 HASTINGS WOMEN'S L.J. 27, 27-28 (1995).

admissions structure is designed to limit diversity and preserve legal education for a wealthier, whiter elite class.⁴⁰

B. Law Schools Continue to Uphold White Supremacy in the Classroom

Historically, the legal profession has intentionally excluded Black people, women, and other minorities.⁴¹ Today, public law schools are not explicitly allowed to discriminate by race, gender, sexual orientation, socioeconomic status, or disability status.⁴² However, the majority of law students are white⁴³ and the legal profession remains one of the least diverse fields.⁴⁴

After a grueling admissions process, the actual experience of law school is not any easier. Diverse students continue to experience hardships because most law schools do not do enough to eliminate

⁴⁰ See Arreaga, *supra* note 11; Sam Magavern, *Diversity in Law School Admissions*, 56 BENCH & BAR MINN. 47, 48 (1999). See generally Asher Price, *A Secret 1950s Strategy to Keep Out Black Students*, ATLANTIC (Sept. 19, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/how-ut-used-standardized-testing-to-slow-integration/597814/> [<https://perma.cc/6T2S-WQ4A>] (explaining how standardized testing kept out Black students from matriculating at University of Texas).

⁴¹ See J. CLAY SMITH JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 247, 294, 544, 671 (1993) (referencing the exclusion policy of Black lawyers in certain law schools, the American Bar Association, and juries); Arreaga, *supra* note 11; Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 281 (2014) (finding that women and minorities have “a history of being underrepresented in the legal workforce because of discriminatory forces from both inside and outside of the legal profession”); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 260, 264-65 (2010) (describing how Charles Hamilton Houston and Thurgood Marshall litigated *Pearson v. Murray* which challenged the exclusion of Black students from admission to University of Maryland Law School).

⁴² See Office of Civil Rights, *Know Your Rights*, U.S. DEPT. OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/know.html> [<https://perma.cc/FZS7-2UJ3>] (noting that public institutions or institutions receiving federal funding are not allowed to discriminate on the basis of race, color, and national origin, sex, disability, or age). *But see* Colleen Walsh, *Supreme Court to Hear Harvard Admissions Challenge*, HARV. GAZETTE (Jan. 24, 2022), <https://news.harvard.edu/gazette/story/2022/01/supreme-court-to-take-harvard-admissions-case/> [<https://perma.cc/DJ34-B7LV>] (reporting that the Supreme Court will hear *Students for Fair Admissions v. Harvard* in October 2022, which focuses on whether Harvard and other universities can continue to use race as a factor in their admissions processes). Because race-conscious admissions currently do not violate the Office of Civil Rights’ policy, an adverse decision in the *SSFA* case may hinder efforts to create diverse campus communities at Harvard and other universities.

⁴³ See *infra* Part I.A.2.

⁴⁴ Kuris, *supra* note 31.

systemic racism, ableism, and other forms of bias.⁴⁵ Additionally, the costs of attendance are exorbitant, often exceeding \$51,268 annually.⁴⁶ These costs are a form of financial racism because they exclude Diverse students who have, on average, lower incomes and less wealth than white students.⁴⁷

Law school is designed to help prepare students to think in a new manner, emphasizing that there is not always a simple answer.⁴⁸ The law is taught as case-based, where cases from as early as the colonial period are used to demonstrate historical and cultural context. In addition, professors use the Socratic method to foster a dialogue with students about class materials, cases, and hypothetical scenarios.⁴⁹ Students are asked to analyze and question both sides of a case, including those involving issues such as racism and sexism.⁵⁰ Discussions and debates of racial issues, even in the vacuum of a classroom, are emotionally draining to students as they call back to

⁴⁵ See e.g., *Racial Bias, Disparities and Oppression in the 1L Curriculum*, BOSTON UNIV. SCH. OF LAW (Dec. 12, 2019), <https://www.bu.edu/law/2019/12/12/racial-bias-disparities-and-oppression-in-the-1l-curriculum/> [<https://perma.cc/TUJ9-7EHY>] (providing an example of a symposium's attempts to remedy the failure of legal scholarship to address racial inequality and opinions from historically marginalized groups by discussing these disparities; while a decent first step, this attempt is not enough to actually address systemic racism in the law school setting); see also Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 145-46, 170 (2018) (showcasing situations in which law students of color experienced racism in the classroom); *id.* at 153-72 (explaining the steps that should be taken to mitigate the marginalization felt by students and faculty of color in law school); Tyler Ambrose, Zarinah Mustafa & Sherin Nassar, *Law Schools' Complicity on Racism Must Be Challenged*, APPEAL (June 24, 2020), <https://theappeal.org/law-schools-racism/> [<https://perma.cc/6CHZ-AWNS>] (explaining how law schools produce legal professionals who are uninformed on "issues of racism in the law").

⁴⁶ Ilana Kowarski, *See the Price, Payoff of Law School Before Enrolling*, U.S. NEWS & WORLD REP. (Mar. 31, 2021), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary> [<https://perma.cc/74Y2-R5PZ>].

⁴⁷ Shepherd, *supra* note 17, at 105.

⁴⁸ See Susan Landrum, *The Most Frustrating Phrase in Law School: "It Depends,"* LAW SCH. SUCCESS BLOG (Aug. 14, 2014, 8:00 AM), <https://lawschoolacademicsuccess.com/2014/08/14/the-most-frustrating-phrase-in-law-school-it-depends/> [<https://perma.cc/FR85-6RGG>].

⁴⁹ See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SCHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 48-51 (2007).

⁵⁰ See Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 781-82 (2018) (describing how cases which involve sexism and racism serve as a backdrop to first-year law school curriculums).

America's history of racism. And improperly navigated discussions of race diminish students' psychological safety and are therefore a form of violence or trauma.⁵¹ Students might be asked to consider whether both sides of the "separate but equal" debate were valid or if those who opposed the Civil Rights Act had strong arguments. Core curriculum cases involving race, such as *Plessy v. Ferguson*, *Brown v. Board of Education*, *Ashcroft v. Iqbal*, and *Johnson v. M'Intosh*, are often taught in a sterilized manner with a focus on neutrality.⁵² Treating subjects like racial discrimination as suitable or neutral topics for uncritical discussion can emotionally harm diverse students by enabling white students to defend arguments which perpetuate systemic racism.⁵³ As put by Professor Aaron N. Taylor at St. Louis University School of Law, "[Black] students live in a world where they have observed, if not experienced first-hand, the relevance of race in the provision and durability of rights and privileges. In the end, they often have to take the extra mental step of disassociating their life experiences from their efforts to appease their professors."⁵⁴

In some classrooms, professors prioritize free speech above limiting violence against diverse students. For example, some law professors and legal scholars, under the guises of accuracy and free speech, believe it is acceptable to use the N-word in the classroom. In 2018, Emory University Law Professor Paul Zwiwer defended the use of violent language, claiming it was not meant to offend, but to convey historical

⁵¹ See *id.* at 783-88.

⁵² See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (holding that the pleading standard, pursuant to federal civil procedure, requires a plausible cause of action based on facts where federal agents labeled the plaintiff as a person of "high interest" in the September 11th terrorist attacks); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (holding that racial discrimination in schools is unconstitutional); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (holding that "separate but equal" policies for racial discrimination were constitutional); *Johnson v. M'Intosh*, 21 U.S. 543 (1823) (holding the United States held title to Native American lands).

⁵³ See Darcy Meals, *Race Ought to Be a Through-Line in Core Law School Curriculum*, BEST PRACTICES LEGAL EDUC. BLOG (Dec. 7, 2020), <https://bestpracticeslegaled.com/2020/12/07/race-ought-to-be-a-through-line-in-core-law-school-curriculum/> [<https://perma.cc/7LPD-GBNP>] (explaining that race-avoidant teaching sends the message that "the law is neutral and operates equally for all"). See generally Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 2020 J. LEGAL EDUC. 780, 782-786.

⁵⁴ Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489, 510 (2019).

facts.⁵⁵ In June 2020, Stanford Law Professor Michael W. McConnell also came under fire for reading a quote with the N-word, suggesting that it was intended to “stoke racist opposition to ratification of the Constitution.”⁵⁶ Similarly, UCLA Law Professor Eugene Volokh used the N-word in his First Amendment Law classroom.⁵⁷ Despite backlash, Volokh justified his behavior saying, “[l]awyers have to deal with facts as they are, regardless of how unpleasant those facts may be.”⁵⁸ While Professor Matthew Stiegler, a lecturer in law at University of Pennsylvania School of Law, agrees that lawyers have to deal with unpleasant facts, he contends that attorneys still need to take care to not be offensive in “power-disparity contexts . . . with judges or subordinates, and [especially] in formal settings like court.”⁵⁹ As Professor Ruth A. Starkman of Stanford University describes, use of this violent language serves no pedagogical purpose as “[t]here is no moment where a brute historical or textual positivism is essential to learning.”⁶⁰ In fact, classrooms that focus on respect and civility lead to more effective learning.⁶¹ The use of racial slurs in the classroom does not advance any key component of a legal education.⁶² It is unnecessary and harmful, and felt even more acutely against the backdrop of events

⁵⁵ Colleen Flaherty, *Suspended for Using N-Word*, INSIDE HIGHER ED (Aug. 31, 2018), <https://www.insidehighered.com/news/2018/08/31/n-word-simply-be-avoided-or-emory-wrong-suspend-law-professor-who-used-it> [https://perma.cc/LM9L-YNGL].

⁵⁶ Nick Anderson, *A Stanford Law Professor Read a Quote with the N-Word to His Class, Stirring Outrage at the School*, WASH. POST (June 3, 2020), <https://www.washingtonpost.com/education/2020/06/03/stanford-law-professor-read-quote-with-n-word-his-class-stirring-outrage-school/> [https://perma.cc/38GT-6FTJ].

⁵⁷ Eugene Volokh, *UCLA Law Dean Apologizes for My Having Accurately Quoted the Word “[N-Word]” in Discussing a Case*, VOLOKH CONSPIRACY (Apr. 14, 2020, 5:14 PM), [https://reason.com/volokh/2020/04/14/ucla-law-dean-apologizes-for-my-having-accurately-quoted-the-word-\[n-word\]-in-discussing-a-case/](https://reason.com/volokh/2020/04/14/ucla-law-dean-apologizes-for-my-having-accurately-quoted-the-word-[n-word]-in-discussing-a-case/) [https://perma.cc/RJ93-232Y].

⁵⁸ *Id.*

⁵⁹ Matthew Stiegler (@MatthewStiegler), TWITTER (June 11, 2020, 12:56 PM), <https://twitter.com/MatthewStiegler/status/1271169566677360641> [https://perma.cc/2N2G-KZGV].

⁶⁰ Ruth A. Starkman, *Dropping the N-Word in College Classrooms*, INSIDE HIGHER ED (July 24, 2020), <https://www.insidehighered.com/views/2020/07/24/colleges-should-develop-guidelines-using-n-word-classes-opinion> [https://perma.cc/86QR-3MP4].

⁶¹ See MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, *WHAT THE BEST LAW TEACHERS DO* 81-86 (2013).

⁶² See Kathryn Rubino, *Prominent Law School Professor Drops the N-Word After Specifically Being Asked Not to Do So*, ABOVE THE LAW (Mar. 5, 2020, 1:20 PM), <https://abovethelaw.com/2020/03/prominent-law-school-professor-drops-the-n-word-after-specifically-being-asked-not-to-do-so/?rf=1> [https://perma.cc/X753-THTF].

like the Black Lives Matter protests in the summer of 2020, following the murders of George Floyd and Breonna Taylor by police.⁶³

Law schools further carry out violence against BIPOC students by employing professors who insist on using racist slurs, implicitly validating their ideas. For example, UCLA School of Law's dean committed to work with the school's Asian and Black Law Student Associations to address the harm created by Professor Volokh in an emailed statement.⁶⁴ The dean promised that the school's response would not end with that email, yet Professor Volokh is still teaching Advanced Constitutional Law, despite the criticisms he has drawn from Black law students.⁶⁵

Additionally, UC Davis School of Law perpetuated harm upon minority students inflicted by Professor Volokh. UC Davis School of Law boasts about ranking third among U.S. law schools for racial justice⁶⁶ and hosted a racial justice speaker series throughout 2020–21.⁶⁷ It also signed an anti-racism pledge in June 2020 during the Black

⁶³ Khaleda Rahman, *From George Floyd to Breonna Taylor, Remembering the Black People Killed by Police in 2020*, NEWSWEEK (Dec. 29, 2020, 12:14 PM EST), <https://www.newsweek.com/george-floyd-breonna-taylor-black-people-police-killed-1556285> [<https://perma.cc/PE34-SGUN>].

⁶⁴ Jennifer L. Mnookin, *April 14 Note on Diversity and Inclusion at UCLA Law*, UCLA L. (Apr. 14, 2020), <https://law.ucla.edu/news/april-14-note-diversity-and-inclusion-ucla-law> [<https://perma.cc/E8LY-NMUS>].

⁶⁵ *Id.*; *UCLA Law 201 - Constitutional Law II*, UCLA LAW (Feb. 8, 2021), <https://curriculum.law.ucla.edu/guide/InstructorCourse> [<https://perma.cc/CYQ6-6RBQ>].

⁶⁶ UC DAVIS SCH. OF L., <https://law.ucdavis.edu> (last visited Mar. 13, 2022) [<https://perma.cc/4EGZ-BZBX>]; see also *UC Davis School of Law Ranks Among Top 10 Most Diverse Law Schools*, UC DAVIS SCH. OF L. (Apr. 12, 2018), <https://law.ucdavis.edu/news/uc-davis-school-law-ranks-among-top-10-most-diverse-law-schools?id=8930#:~:text=The%20ranking%2C%20which%20appears%20in,and%2015%20percent%20are%20Asian> [<https://perma.cc/8NJM-FKT4>].

⁶⁷ One of the speakers for the Racial Justice Event Series was Sacramento Mayor Darrell Steinberg. See *Racial Justice Speaker Series 2020-2021*, UC DAVIS SCH. OF L. (Sept. 23, 2020) <https://law.ucdavis.edu/racial-justice-speaker-series/> [<https://perma.cc/58G3-L44J>]. Steinberg has been criticized for not “second guessing” the decisions made by Sacramento Police Officers in the murder of Stephon Clark, an unarmed Black man. See Nick Miller, *After Declining to ‘Second Guess’ Cops Who Killed Stephon Clark, Sacramento Mayor Calls Shooting ‘Just Plain Wrong’*, CAPRADIO (Mar. 25, 2018), <https://www.capradio.org/articles/2018/03/25/after-declining-to-second-guess-cops-who-killed-stephon-clark-sacramento-mayor-calls-shooting-just-plain-wrong/> [<https://perma.cc/6BXB-PB8U>] (citing Mayor Steinberg's comments after the shooting of Stephon Clark, in which he called the actions wrong but did not fully admonish his police department). Steinberg has also been criticized for Sacramento's response to the COVID-19 pandemic and the city's handling of homelessness. This is particularly poignant because Sacramento's Black community makes up eleven percent of the county's overall population, yet Black people make up twenty-eight percent of the county's homeless

Lives Matter protests in support of its Black Law Students Association.⁶⁸ Yet, its flagship journal published one of Volokh's latest articles for its Volume 54 Symposium Issue.⁶⁹ For a law school also known as "King Hall," after Dr. Martin Luther King, Jr., the *UC Davis Law Review's* decision to publish Professor Volokh's work stands in direct opposition to the law school's mission to support and promote diversity and public service. The Black Law Students Association at UCLA School of Law, supported by UC Davis School of Law's Black Law Students Association, wrote a letter denouncing Professor Volokh's stance.⁷⁰ In publishing Volokh in spite of this outcry, UC Davis School of Law has harmed its Black students and UCLA School of Law continues to harm its Black students by employing him.

These institutions priding themselves on racial justice initiatives reads as hypocritical at worst and disingenuous at best, considering both law schools and *UC Davis Law Review's* continued indulgence in Professor Eugene Volokh's work.⁷¹ While institutions across the nation are denouncing racism and police violence against Black people, these same institutions are allowing legal scholars to push harmful and racist ideologies, which in turn validates these ideologies. At the crux of the

population, and forty-five percent of homeless deaths are people of color as of 2019. See Sarah Mizes-Tan, *As Sacramento County Homeless Deaths Rise, African-Americans Are Overrepresented*, CAPRADIO (Aug. 5, 2020), <https://www.capradio.org/articles/2020/08/05/as-sacramento-county-homeless-deaths-rise-african-americans-are-overrepresented/> [<https://perma.cc/U7UX-X3VN>] (citing statistics from a report by the Sacramento Regional Coalition to End Homelessness).

⁶⁸ See Kevin R. Johnson, *Statement on Protests over Police Violence*, UC DAVIS SCH. OF L. DEAN'S BLOG (June 2, 2020), <https://law.ucdavis.edu/blogs/deans/posts/20200602-protests.html> [<https://perma.cc/7GFD-MJYM>].

⁶⁹ See Eugene Volokh, *What Cheap Speech Has Done: (Greater) Equality and Its Discontents*, 54 UC DAVIS L. REV. 2303 (2021); *Statement by the Undersigned Editors and Members of Volume 54*, 54 UC DAVIS L. REV. 2301, 2301-02 (2021).

⁷⁰ Email from Alexis Logan, President, UC Davis Black L. Student Ass'n, to UC Davis Law Classes of 2020, 2021, and 2022 (Apr. 23, 2020, 5:16 PST) (on file with authors) ("In support of University of California, Los Angeles School of Law (UCLA) and University of Oregon School of Law (UO) Black Law Students Association (BLSA) chapters, UC Davis BLSA is spreading awareness on the following two issues: Please take a moment to look at UCLA's website to read about how Professor Volokh used the n-word during his Constitutional Law II class and on his blog. After, please read UO BLSA's demand letter that addressed Professor Shurtz wearing blackface and the school's failure to apply appropriate disciplinary action. Both actions were done at the expense of Black students' mental health and wellbeing. No student should be subjected to such blatant mistreatment. UC Davis BLSA stands in solidarity with both BLSA chapters."); see also UCLA BLSA (@BLSAUCLA), TWITTER (Apr. 18, 2020, 5:53 PM), <https://twitter.com/BLSAUCLA/status/1251675261227147267?s=20&t=xFNSyrCQjALqMREhvSxlQg> [<https://perma.cc/7EDK-6AVK>].

⁷¹ See *supra* notes 69–70 and accompanying text.

issue is balancing what has developed as First Amendment protections based on academic freedom with the real and palpable harm of Diverse students. Legal institutions are tasked with the balancing act of creating a more equitable legal profession and allowing the espousal of ideas that perpetuate the same inequities they purport to fight. Another example comes from Georgetown University School of Law (“GULC”), which extended an employment contract to Ilya Shapiro who, in the wake of Justice Steven Breyer’s retirement announcement at the Supreme Court, made anti-Black comments about the potential of a Black woman supreme court justice.⁷² Georgetown’s Black Law Students Association called for a revocation of Shapiro’s employment offer with a petition of over 1,000 student signatures in solidarity. In turn, GULC put Shapiro on administrative leave.⁷³ However, this is not the exact response called upon by the school’s Black Law Students Association. Should Shapiro resume his employment contract with GULC, this would be just one more recent example of law schools continuing to reinforce white supremacist rhetoric on their campuses.

In addition to overlooking and condoning harmful faculty pedagogy, law schools reinforce the difficulties that Diverse students face through competitive ranking systems. Typically, law schools foster a competitive environment by using a bell-curve grading system,⁷⁴ which allows for a limited number of students to obtain high marks (A+, A, or A-) and a majority of students to obtain grades in the B range.⁷⁵ Many prospective employers look at student transcripts when determining who to hire and⁷⁶ many job postings are only really available to students ranked in

⁷² Nadine El-Bawab, *Lecturer Suspended After Comments About Biden’s Supreme Court Selection*, ABC NEWS (Feb. 1, 2022, 2:31 PM), <https://abcnews.go.com/US/lecturer-suspended-comments-bidens-supreme-court-selection/story?id=82599414> [https://perma.cc/2TWT-LQCS] (referring to Tweets made by Professor Shapiro indicating that his Justice nomination preference, Sri Srinivasan, “doesn’t fit into the latest intersectionality hierarchy so we’ll get lesser black woman”).

⁷³ *Id.*

⁷⁴ See Rebecca Feldman, *The Law School Bell-curve: Explained*, MEDIUM (July 21, 2020), <https://medium.com/@rfeldma8/the-law-school-bell-curve-explained-cd19d5ebf140> [https://perma.cc/3URU-V45L].

⁷⁵ *Id.*

⁷⁶ See *Are 1L Grades Really that Important in Law School*, JD ADVISING, <https://jdadvising.com/are-1l-grades-really-that-important-in-law-school/> (last visited Mar. 13, 2022) [https://perma.cc/7KVA-9SWZ]; Stephanie Francis Ward, *Hiring Decisions Based on First-year Grades Miss ‘Exceptional Students,’ According to New Paper*, ABA J. (Mar. 24, 2021 11:07 AM CDT), <https://www.abajournal.com/news/article/hiring-decisions-based-on-first-year-grades-miss-exceptional-students-according-to-paper> [https://perma.cc/XS6D-GX8B] (explaining that judges and law firms continue to

the top third of their class.⁷⁷ This heavily burdens students hoping to find high-earning or prestigious employment. Additionally, many firms and clerkships value student involvement in law review, which may require a student to have high grades or to compete in a write-on competition.⁷⁸ Lastly, grades, first-year grades in particular, are highly correlated with the amount of scholarship money that students receive.⁷⁹ Students with conditional scholarships can only retain them if they maintain a high grade point average.⁸⁰ Similarly, some law schools offer additional scholarship money based on a student's class rank or GPA.⁸¹ These funding realities, where students are competing for grades, scholarships, and jobs, create a volatile environment. For BIPOC, low-income, and other Diverse students, it may be crucial to obtain additional scholarship money to remain in school or a high paying position upon graduating to pay off student debt.⁸² For undocumented students, these scholarships are necessary because they are ineligible for federal financial aid.⁸³ This current legal funding and grading system may help to explain why only two percent of big law firm partners are Black, 2.80 percent are Latinx, and 4.08 percent are

hire students based on first-year grades despite evidence that they are missing other qualified candidates by focusing only on first-year grades).

⁷⁷ See *Are 1L Grades Really that Important in Law School*, *supra* note 76.

⁷⁸ See Michelle Fabio, *What Is a Law Review and How Is It Important?*, THOUGHTCO (Feb. 21, 2019), <https://www.thoughtco.com/what-is-law-review-2154872> [<https://perma.cc/8NNX-4A99>] (“[S]ome law reviews offer invitations to participate [in the write-on competition] based solely on first-year grades, while other schools use a combination of grades and write-on competition results to select members.”); see also Dexter Samida, Comment, *The Value of Law Review Membership*, 71 U. CHI. L. REV. 1721, 1722 (2004).

⁷⁹ See Don Macaulay, *Can 1L Grades Impact How Much I Pay for Law School?*, BARBRI L. PREVIEW, <https://lawpreview.barbri.com/1l-grades-impact-law-school-cost/> (last updated Dec. 22, 2020) [<https://perma.cc/XR28-GPYM>] (“Many [first-year] scholarships are ‘conditional’ — making them contingent on you maintaining a certain GPA or class rank during the 1L year. . . . [A]fter 1L grades are released in June law schools will sometimes award significant scholarships to top students that reduces their tuition during the second and third year.”).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See Scott Jaschik, *Study: Law School Aid Likely To Go to White Students*, INSIDE HIGHER ED. (Feb. 9, 2017), <https://www.insidehighered.com/quicktakes/2017/02/09/study-law-school-aid-likely-go-white-students> [<https://perma.cc/JTK6-PP3M>].

⁸³ *Many Non-U.S. Citizens Qualify for Federal Student Aid*, FED. STUDENT AID, <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens#:~:text=Undocumented%20students%2C%20including%20DACA%20recipients,in%20addition%20to%20private%20scholarships> (last visited Feb. 19, 2022) [<https://perma.cc/3V3A-8WQ8>].

Asian.⁸⁴ People of color are also underrepresented at the associate level where only 5.10 percent are Black, 5.64 percent are Latinx, and 12.12 percent are Asian.⁸⁵ These numbers are significantly lower for women whose identities intersect with these demographics.⁸⁶

Judicial clerkships are also highly sought after by recent graduates. Again, white graduates are overrepresented across all judicial clerkships, “especially at the federal level where white graduates obtained over 79% of all federal clerkships, despite making up only 67% of the class [of 2019] overall.”⁸⁷

High tuition costs, racist pedagogy and rhetoric, administrative inaction, and competitive class ranking systems continue to serve as barriers to Diverse students and result in disparate learning and achievement.

C. *Minority Law School Graduates Continue to Face Structural Barriers and Microaggressions Throughout Their Legal Careers*

Additional barriers exist for Diverse and underrepresented law school graduates. The bar exam is an obstacle for all recent graduates, particularly for those who are Diverse.⁸⁸ When the bar exam was first deployed sixty-years ago, it purported to test a student’s minimum competency to practice law at the completion of their education.⁸⁹ It was also intended to limit competition in the legal field by reducing the number of lawyers that could enter practice.⁹⁰ There is no evidence-based definition of minimum competence,⁹¹ and it is questionable

⁸⁴ NAT’L ASS’N FOR L. PLACEMENT, 2020 REPORT ON DIVERSITY IN U.S. LAW FIRMS 17 tbl.2 (2020), https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf [<https://perma.cc/3WVE-DZF8>].

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Racial/Ethnic Representation of Class of 2019 Judicial Clerks*, NALP (Feb. 2021), <https://www.nalp.org/0221research> [<https://perma.cc/9HP9-N36E>].

⁸⁸ See Christina Shu Jien Chong, *Battling Biases: How Can Diverse Students Overcome Test Bias on the Multistate Bar Examination*, 18 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 31, 37-39 (2018).

⁸⁹ See Joseph Marino, *Ask the Professor: Why Do We Need the Bar Exam Anyway?*, ABOVE THE LAW (Feb. 26, 2015, 3:59 PM), <https://abovethelaw.com/2015/02/ask-the-professor-why-do-we-need-the-bar-exam-anyway/> [<https://perma.cc/2KD4-3XJS>].

⁹⁰ George Leef, *True or False: We Need the Bar Exam to Ensure Lawyer Competence*, FORBES (Apr. 22, 2015, 12:00 PM EDT), <https://www.forbes.com/sites/georgeleef/2015/04/22/true-or-false-we-need-the-bar-exam-to-ensure-lawyer-competence/?sh=5bb6110d631f> [<https://perma.cc/3953-LKJQ>].

⁹¹ See DEBORAH JONES MERRITT & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM

whether the bar exam can truly test for minimum competency. Accordingly, the bar exam as it stands tests a person's ability to take the exam, and not necessarily the ability to practice law.

Most students find it necessary to supplement their bar study by purchasing a bar exam preparation course.⁹² These courses range in cost from \$1,000 to \$4,000 dollars.⁹³ Regardless of the course, all recommend students spend roughly 400 hours studying for the exam, approximately two months at forty to fifty hours per week.⁹⁴ On average, Black law graduates have greater difficulty passing the bar than white law graduates.⁹⁵ A study done by LSAC in 1998 shows that 38.6 percent of Black students failed to pass the bar exam the first time, while the failure rate was 8.07 percent for white students.⁹⁶ Other sources suggest that Black and first-generation students may lack the financial means to completely dedicate their time to bar study.⁹⁷ Many are required to work while preparing to take the bar, taking away from the 400 hours of recommended study.

COMPETENCE 5 (2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf [<https://perma.cc/CM7B-XBKT>].

⁹² *Best Bar Prep Courses for 2022: Who Needs a Bar Prep Course*, TEST-GUIDE, <https://www.test-guide.com/best-bar-prep-courses.html#whoneeds> (last visited Feb. 18, 2022) [<https://perma.cc/2GKB-S75B>].

⁹³ Kenneth W. Boyd, *Bar Exam Costs and Fees*, CPA ACCT. INST. FOR SUCCESS (Feb. 18, 2022), <https://www.ais-cpa.com/bar-exam-costs-and-fees/> [<https://perma.cc/GK5L-G8TF>].

⁹⁴ Julie Leichtman, *Studying for the Bar Exam*, QUIMBEE (Feb. 8, 2022), <https://www.quimbee.com/resources/studying-for-the-bar-exam#:~:text=maintain%20your%20focus,-,How%20Long%20Does%20It%20Take%20to%20Prepare%20for%20the%20Bar,to%2050%20hours%20per%20week> [<https://perma.cc/926G-Z279>].

⁹⁵ Nareissa Smith, *Factors Affecting Bar Passage Among Law Students: The REAL Connection Between Race and Bar Passage*, AFRICAN AM. ATT'Y NETWORK (May 15, 2018), <https://aaattorneynetwork.com/factors-affecting-bar-passage-among-law-students-the-real-connection-between-race-and-bar-passage/> [<https://perma.cc/4578-H9V8>].

⁹⁶ LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 27 (1998), <https://www.lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf> [<https://perma.cc/FGY2-WSLC>]. It is important to note that this LSAC study is twenty-four years old and LSAC has not published any studies surveying similar data since 1998. More current data is needed to explore whether this phenomenon has changed over the past two decades.

⁹⁷ See Joseline Jean-Louis Hardrick, *The Bar Exam is a Barrier to Access for Legal Services and Access to Justice for Many*, ABOVE THE LAW (Dec. 2, 2021, 5:03 PM), <https://abovethelaw.com/2021/12/the-bar-exam-is-a-barrier-to-access-for-legal-services-and-access-to-justice-for-many/> [<https://perma.cc/P948-U8Y2>]; Sarah J. Schendel, *Legal Profession Can't Leave Black Graduates Behind*, BLOOMBERG (May 10, 2021, 1:00AM), <https://news.bloomberglaw.com/us-law-week/legal-profession-cant-leave-black-graduates-behind> [<https://perma.cc/77LJ-3ZYE>].

Diverse students who have disabilities face additional barriers in taking the bar exam.⁹⁸ The State Bar of California exercises a high level of scrutiny when students request bar exam accommodations.⁹⁹ It typically requires students to prove their disability with a review of all accommodations received in prior exams and provide supporting documentation from a physician, which may require an invasive interview on how the disability affects the student, interviews with parents or spouses, IQ tests, psychological tests, and neuropsychological tests.¹⁰⁰

The most common accommodation granted to bar-takers is more time to take the exam.¹⁰¹ In 2016, a woman with disabilities sued the New York Board of Bar Examiners, arguing that they violated Title II of the Americans with Disabilities Act by not providing extra time.¹⁰² She asserted that they failed to accommodate her requests for her debilitating panic disorder, causing her to fail the exam twice before she passed the third time after obtaining double time.¹⁰³ However, for some, additional time is not enough to meet their needs. For example, a student in Florida was denied an accommodation request that the Florida Board of Bar Examiners average her scores on parts A and B as they would for applicants who are able to take both parts during the same administration.¹⁰⁴ The Board held that the only accommodation owed was more time.¹⁰⁵ This situation in Florida occurred in 1998, but these types of problems persist. These institutional challenges are especially difficult for students who have disabilities and identify as BIPOC as they face cumulative barriers to becoming an attorney in both access to financial resources as well as accommodating resources. With

⁹⁸ See Jane Easter Bahls, *Challenging the Bar Exam on Hidden Disabilities*, 27 STUDENT LAW. 21, 21 (1999) <https://heinonline.org/HOL/LandingPage?handle=hein.journals/studlyr27&div=46&id=&page=>; Emin Gharibian, *California Bar Exam Accommodations: 9 Questions Bar Applicants Have About Academic Accommodations*, VERDUGO PSYCH. ASSOCS., <https://verdugopsych.com/california-bar-exam-accommodations-9-questions-bar-applicants-have-about-academic-accommodations/> [<https://perma.cc/LB3V-89YW>].

⁹⁹ See *California Bar Exam Accommodations: What You Need to Know*, HEALTHY MIND SACRAMENTO PSYCH. SERVS. INC., <https://healthymindsacramento.com/2020/10/12/california-bar-exam-accommodations/> (last visited Apr. 22, 2022) [<https://perma.cc/K2R8-NULR>].

¹⁰⁰ *Id.*; See *Testing Accommodations*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Attorneys/Legal-Specialization/Becoming-a-Certified-Specialist/Exam-Information/Testing-Accommodations> (last visited Apr. 22, 2022) [<https://perma.cc/U6E3-8WTP>].

¹⁰¹ See Gharibian, *supra* note 98.

¹⁰² *T.W. v. New York State Bd. of L. Exam'rs*, 996 F.3d 87, 90 (2d Cir. 2021).

¹⁰³ *Id.*

¹⁰⁴ *Florida Bd. of Bar Exa'rs re S.G.*, 707 So. 2d 323, 324 (Fla. 1998).

¹⁰⁵ See *id.*

the added layer of the ongoing pandemic, some students had to risk their lives and take the bar exam in person in order to receive the additional time accommodation they needed.¹⁰⁶

Beyond the bar exam, BIPOC students continue to face overt and subtle discrimination in their legal careers that their white peers do not experience.¹⁰⁷ The legal profession is not diverse; for example, in a diversity study conducted at 232 law firms, women of color and Black women made up 8.57 percent and 1.73 percent of the attorneys, respectively.¹⁰⁸ In another study conducted by the American Bar Association, women of color reported the greatest level of bias in the legal workplace.¹⁰⁹ In that study, sixty-three percent of women of color reported having to go “above and beyond” to get the recognition given to other colleagues, sixty-seven percent reported being held to higher standards than colleagues, and around half reported having unequal access to high-quality assignments.¹¹⁰ Firms may encourage associates to assimilate to the firm’s culture, which can be an additional cost barrier for Diverse attorneys, particularly Black women, who may have to pay for hair treatment and well-tailored attire in order to fit in.¹¹¹

There are further gender and racial biases at play in a courtroom for litigators.¹¹² Oral advocacy is often taught in law school from a white male perspective, influencing our common argument styles and

¹⁰⁶ See Sahil Venkatesan, *Changes to California Bar Exam Present Additional Hurdles for Graduates with Disabilities*, STAN. DAILY (Aug. 19, 2020, 7:35 PM), <https://www.stanforddaily.com/2020/08/19/changes-to-california-bar-exam-present-additional-hurdles-for-graduates-with-disabilities/> [<https://perma.cc/QFP3-VSQY>].

¹⁰⁷ See generally Dylan Jackson, *Why They Left: Black Lawyers on Why Big Law Can’t Keep Them Around*, AM. LAW. (Aug. 24, 2020), <https://www.law.com/americanlawyer/2020/08/24/why-they-left-black-lawyers-on-why-big-law-cant-keep-them-around/?slreturn=20210109002448> [<https://perma.cc/4A3S-LXT9>] (discussing how law firm culture does not support BIPOC attorneys, which causes a high rate of turnover).

¹⁰⁸ Tsedale M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer”*, HARV. BUS. REV. (Aug. 7, 2019), <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer> [<https://perma.cc/CUW7-UZW2>].

¹⁰⁹ Joan C. Williams, *New Study Finds Gender and Racial Bias Endemic in Legal Profession*, AM. BAR ASS’N (Sept. 6, 2018), <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-professi/> [<https://perma.cc/9RNV-KWH7>].

¹¹⁰ *Id.*

¹¹¹ Melaku, *supra* note 108.

¹¹² See generally Mairi N. Morrison, *May It Please Whose Court: How Moot Court Perpetuates Gender Bias in the Real World of Practice*, 6 UCLA WOMEN’S L.J. 49 (1995) (discussing rampant gender bias in the courtroom through various lenses, including dress style, attractiveness, and the perception of the female body in the courtroom).

personal appearance before a judge.¹¹³ Students are taught to be loud, linear, dispassionate, and imposing — an often-difficult stance to take if you are not a white man.¹¹⁴ Women with other rhetorical styles run the risk of not being taken seriously in a courtroom.¹¹⁵ The challenges that Diverse attorneys and law students face are only exacerbated today by the ongoing pandemic.

II. THE PANDEMIC AND ITS DISPARATE IMPACT ON MINORITY STUDENTS ACROSS THE COUNTRY

According to the Centers for Disease Control and Prevention, people of color are at a higher risk of infection, hospitalization, and death as compared to their white counterparts.¹¹⁶ Black, Latinx, and Indigenous populations are 2.4-3.1 times more likely to be hospitalized with COVID-19, and 1.7-2.7 times as likely to die.¹¹⁷ Additional factors that contribute to higher risks for people of color are “socioeconomic status, access to healthcare,” and occupational exposure to the virus.¹¹⁸ This data is a reflection of the unique challenges facing people of color and low income individuals. These existing hurdles related to socioeconomic status and access to resources are among the obstacles Diverse students face prior to law school, which compound the inequities Diverse law students face when navigating additional inequities within law school today.

The ongoing global pandemic and the current cultural and political climate place additional burdens on Diverse students.¹¹⁹ A number of stressors have developed in the wake of the pandemic. School-related issues, such as access to adequate technology, dedicated space for study, and financial stability have been particularly debilitating for Diverse

¹¹³ *See id.* at 54-55.

¹¹⁴ *Id.*

¹¹⁵ *See id.*

¹¹⁶ *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity> (last updated Feb. 1, 2022) [<https://perma.cc/X7FN-TZPZ>].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See generally* OFF. FOR C.R., EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA’S STUDENTS 1 (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf> [<https://perma.cc/8GJK-6CPL>] (discussing the burdens shouldered by K-12 students of color due to the COVID-19 pandemic).

students.¹²⁰ Non-school related issues, such as police violence and the contentious political landscape, have further disenfranchised Diverse law students.¹²¹

To capture and describe how law students experience these inequities today, we conducted an informal survey to gather data about the barriers in legal education during the pandemic in the Spring of 2020. We asked questions about living arrangements, housing, financial security, identity, mental and physical health, and academic support. Our survey was conducted over one month, from January 3 to January 29, 2021. We solicited students to share their thoughts and experiences anonymously and surveyed a random sample of ninety-two students from different law schools throughout the country over the internet. This approach allowed us to evaluate self-reported variables, as the participants reported their own thoughts, feelings, and fears regarding in-person schooling at the height of the pandemic. Of the total students surveyed, 98.9 percent self-identified as full-time students while 1.1 percent identified as part-time students. Approximately sixty-one percent of students identified themselves as a part of the class of 2022, twenty-one percent as the class of 2023, and eighteen percent as the class of 2021. While the survey was limited to responses by students in the United States, we gathered a diverse range of responses that reflects opinions from the West Coast at 59% (35), the East Coast at 23% (14), the Midwest at 12% (4), and the American South at 5% (3).

We coded our data based on numerous factors, particularly focused on if they were attending law school in-person prior to the pandemic, if they had a known disability, whether they or a loved one developed COVID, and whether their financial situations changed due to the pandemic. We also had survey respondents rank their priorities before and after the pandemic, including academics, social life/community building, child care, physical and mental health & wellness, and food and financial security. Finally, we also provided space for personal testimony to contextualize each individual's response.

¹²⁰ See, e.g., Ilana Arougheti, *Powering Down: Low-income Students are Struggling to Plug into Remote Classes*, DAILY NW. (Oct. 15, 2020), <https://dailynorthwestern.com/2020/10/15/campus/academic/powering-down-low-income-students-are-struggling-to-plug-into-remote-classes/> [https://perma.cc/RAJ2-WRKS].

¹²¹ See The Learning Network, *What Students Are Saying About the George Floyd Protests*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/learning/what-students-are-saying-about-the-george-floyd-protests.html> [https://perma.cc/4Q7M-36TN]; *Mapping Police Violence*, CAMPAIGN ZERO, <https://mappingpoliceviolence.org/> (last updated Jan. 20, 2022) [https://perma.cc/W8QZ-YYKX] (finding that 1,134 persons were killed by American police in 2021).

Though we acknowledge the limitations of this survey and methodology, we believe it allowed us to represent contemporary student viewpoints not reflected elsewhere by taking a practical rather than academic approach in order to gather data quickly. Our purpose was to hear directly from students in an unfiltered way. The responses were candid and provide insight into what law school students faced at the start of the pandemic.¹²²

A. *Inequities Exacerbated by the Pandemic Within the Law School and Legal Community*

To better understand the experiences of current law students, it is important to look at how the law school structure has changed because of the pandemic. Traditional American law schools were built to support in-school learning, so in the wake of the emergency shift to online learning, diverse law students were left with more obstacles than before.

As the first few cases of COVID-19 were reported in the United States, law school administrators were confronted with the reality of navigating a global pandemic.¹²³ While schools were grappling with the transition to online learning, students were attempting to adjust to learning from home. Switching to an online environment posed a challenge for many diverse students, particularly those from low-income backgrounds who may have dependents, live with family, or lack adequate space.¹²⁴

Several surveyed students who are also parents had to navigate online learning simultaneously for themselves and for their children.¹²⁵ Online learning disadvantages student parents and those without access to a separate area for studying.¹²⁶ For example, one student-parent reported having to quarantine from her daughter who tested positive for COVID-19. Nearly every student-parent reported childcare and balancing their studies as a main obstacle to online learning, followed by issues with technology, internet, or Zoom.

For students living together as roommates, this can prove especially difficult. Some survey respondents shared a communal workspace and had classes at the same times as their roommates, which added to the

¹²² OROZCO & POLICARPIO, *supra* note 13.

¹²³ See Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1, 5-7 (Dec. 2020).

¹²⁴ OROZCO & POLICARPIO, *supra* note 13.

¹²⁵ *Id.*

¹²⁶ *Id.*

stress of online learning.¹²⁷ If one student had to unmute for an unexpected cold call (used in the Socratic method of teaching, popular in law school), their roommate's lecture could be overheard and would cause unnecessary disturbances for the class. Another student noted that their internet dropped as they were on a cold call, which caused anxiety about how the drop might affect their grade.¹²⁸ This additional stressor was a product of the emergency switch to online learning.

During exam time, all students had to find quiet areas to take exams or study. One student reported that they had to take their exam in the bathroom — the only place in their entire home which was quiet enough to take an exam.¹²⁹ This awkward arrangement puts the student at a disadvantage over those taking an exam in a non-shared bedroom, home office, or study. Where in-person instruction requires students to test in the same environmental conditions, testing from a bathroom is a substantial difference from taking an exam in the privacy of another room, such as a home office. One individual wrote, "The lack of access to a devoted study space really crippled my ability to focus and feel like I was adequately preparing."

Some students could not justify the continued cost of living near their law school when classes were online.¹³⁰ As such, they returned home, where they were subject to shared spaces and less privacy. Students at home reported that family members would interrupt them during class time or exams, unfamiliar with the unspoken customs of attending a lecture or unable to understand how such interruptions impaired learning and learning outcomes.¹³¹ Interruptions during class lectures was a common theme among respondents — whether it was a loved one entering a workspace, unstable internet or a lack of internet access, or other difficulties.

This led to another challenge Diverse students had to navigate — adequate access to technology. A common theme among respondents was lack of stable access to internet. Students reported having poor internet and would lose internet during power blackouts. Another student reported that if any of their roommates had different classes at the same time, or if they were in the same class but the professor required everyone to have their camera on, then their internet would go out almost immediately. Another reported that the power often went out in their apartment building, due to tenants constantly tripping the

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

breaker, which would take the internet out as well. Students who lived with other students or working professionals were forced to share internet bandwidth, which would often result in dropped connections.¹³² Oftentimes, students would have to request recordings of these lectures, which could come with a myriad of obstacles such as requiring doctor's notes or documentation of the death of an immediate family member, and if approved, students had to spend additional time re-watching them.¹³³ Interrupted live lectures due to internet failure and re-watching lectures put students, specifically lower-performing students, at a disadvantage.¹³⁴

In addition to their regular law school responsibilities, many students found themselves in caretaker roles.¹³⁵ As the pandemic surged, some students were caring for loved ones who were exposed to or tested positive for COVID-19, or infected themselves. One student who tested positive for COVID-19 during their exam period reported that the only accommodation they were given was a two-day grace period for taking their final.¹³⁶ Other students who have tested positive for COVID-19 shared similar experiences regarding lack of support from their law schools.¹³⁷ Another student shared that, while their professors were

¹³² See Arougheti, *supra* note 120.

¹³³ See, e.g., Emmy M. Cho, *Students Push for Changes to 'Stringent' Class Recording Policy*, HARV. CRIMSON (Feb. 26, 2021), <https://www.thecrimson.com/article/2021/2/26/harvard-law-school-recording-policy-criticism/> [<https://perma.cc/EUL5-3CZ5>] (discussing the difficulty in obtaining access to class recordings due to Harvard Law School's recording policy). Students who might try to make their own class recordings could violate the professor's copyright. See, e.g., *Guidance on UC Davis Instructor Copyright*, UC DAVIS LIBR. <https://www.library.ucdavis.edu/service/scholarly-communications/instructor-copyright/> (last visited Apr. 22, 2022) (providing sample language for professors' syllabi: "You may not reproduce, distribute or display (post/upload) lecture notes or recordings or course materials in any other way — whether or not a fee is charged — without my express prior written consent. You also may not allow others to do so.")

¹³⁴ Darryl Horn, *Recorded Lectures Are Not for Everyone: Lower-Performing Students Benefit from Attending Live Lectures*, 46 OPTOMETRIC EDUC. 1 (2020), <https://journal.opted.org/article/recorded-lectures-are-not-for-everyone-lower-performing-students-benefit-from-attending-live-lectures/> [<https://perma.cc/KKB7-SB29>]. But see Ashley A. Smith, Michael Burke & Larry Gordon, *How the Pandemic Changed Higher Education in California*, EDSOURCE (Mar. 17, 2021), <https://edsource.org/2021/how-the-pandemic-changed-higher-education-in-california/651334> [<https://perma.cc/U95A-KK7P>] (discussing the advantages of recorded lectures for students with physical disabilities and ADHD).

¹³⁵ Britany Gatewood & Emily McDonald, *Pandemic, Pandemonium, and Plight for Graduate Students*, 48 AM. SOCIO. ASS'N 1, 9 (2020).

¹³⁶ OROZCO & POLICARPIO, *supra* note 13.

¹³⁷ *Id.*

sympathetic, there was not much they could do other than to avoid calling on the individual during class.¹³⁸

Many of these students worried about worsening symptoms, trips to the emergency room, and infecting others.¹³⁹ This stress was an additional mental and physical load to bear. While law schools shared messages about mental health, they simultaneously carried on with legal education as usual.¹⁴⁰ Classes continued apace, with little pause for those who were suffering the worst of the pandemic.

Diverse students are at a higher risk of being exposed to or infected with COVID-19. Our anecdotal survey data indicates that Diverse students are less likely to have support and resources to succeed in law school.¹⁴¹ They are also more likely to live with family during the pandemic.¹⁴² All these factors serve to widen the inequity gaps between Diverse and white students. Further, students who are caregivers are disproportionately affected by the pandemic¹⁴³ and their personal load outside of law school is usually greater than that of other students. Many Diverse law students reported being caretakers or holding part-time positions in order to fund their education, which further contributed to their exposure to COVID-19. Those who were laid off or lost financial income due to COVID reported impacted access to resources, such as food and adequate health care.¹⁴⁴

These issues triggered a student response across the country that resulted in a number of changes for Spring 2020.¹⁴⁵ Law schools that

¹³⁸ *Id.*

¹³⁹ *See id.*

¹⁴⁰ *See, e.g., Academic Year 2020-21 FAQs*, U. OF TEX. AT AUSTIN SCH. OF L., <https://law.utexas.edu/student-affairs/fall-2020-faqs/#Academics-and-Classes-8> (last visited Apr. 17, 2022) [<https://perma.cc/W2N4-AQUM>] (“Coursework will be graded according to usual Law School policies.”); Tarlton Law Library, *Health, Wellness, & Mindfulness Resources for UT Law Students*, U. OF TEX. AT AUSTIN SCH. OF L., <https://tarlton.law.utexas.edu/wellness/mental-health> (last updated Oct. 12, 2021, 8:07 AM) [<https://perma.cc/URP5-UCU7>].

¹⁴¹ *See* OROZCO & POLICARPIO, *supra* note 13.

¹⁴² *Id.*

¹⁴³ *See* Bruce Horovitz, *Five Million Student Caregivers Need More Resources and Flexibility from Schools*, AARP (Sept. 30, 2020), <https://www.aarp.org/caregiving/life-balance/info-2020/student-caregivers-need-support.html> [<https://perma.cc/W4RJ-SU89>].

¹⁴⁴ *See* OROZCO & POLICARPIO, *supra* note 13.

¹⁴⁵ Student advocates across the United States petitioned their respective law schools for changes to the grading curriculum during the spring of 2020 after many stay-at-home orders had been implemented. The following letters are of note, as they all demanded grades to be adjusted to some form of Pass/No Pass (“P/NP”) system to address the uncertainty and inequity caused by the growing COVID-19 pandemic. *See, e.g.,* José Ramon Garcia Madrid, *We Urge Compassion: An Open Letter to Dean of the*

typically had letter grading considered a number of alternatives in order to lighten the burden on their most vulnerable students.¹⁴⁶ Of law schools that went public with their grading changes, 131 instituted a “pass/no pass” grading system and thirty-seven instituted a “pass/no pass” option, which allowed students to change from letter grades to “pass/no pass” after grades were released. Eight schools provided similar grading systems to the first two, and three schools had no changes.¹⁴⁷ The data here is self-reported by students attending these institutions.

University of Colorado Law School Jim Anaya, MEDIUM (Mar. 19, 2020), <https://medium.com/@maricailegal/an-open-letter-to-dean-of-the-university-of-colorado-law-school-jim-anaya-bc0f818dcbba> [https://perma.cc/H8BZ-N9LB]; Jess Miers, *Opinion: Law Schools Should Switch to Pass/Fail During COVID-19 Shift*, ABA FOR L. STUDENTS (Mar. 27, 2020), <https://abaforlawstudents.com/2020/03/27/opinion-law-schools-should-switch-to-pass-fail-covid-19/> [https://perma.cc/FA7E-75JV] (citing a letter sent to Santa Clara Law faculty urging grades to be changed to P/NP); Letter from Danielle Elliott & Ariel Flores Mena, Students, UC Berkeley School of Law, to Erwin Chemerinsky, Dean, UC Berkeley School of Law (Mar. 2020), <https://docs.google.com/document/d/1lmt7aHjbgShv3TkljPpqERhn7rOhBHUHtVMAGb0mXVg/edit?usp=sharing> [https://perma.cc/R5XT-EQ93] (asking for a P/NP grading system for Spring 2020); Letter from Students, Univ. of Chicago Law School, to Thomas J. Miles, Dean, Univ. of Chicago Law School (Mar. 18, 2020), https://docs.google.com/document/d/1pfRorYljgrwgc4Bz7tdJbmBk9iAQ7qV11DJvWtt0Gmw/edit?fbclid=IwAR088vQwcIxx9kthqXzsb7a_vngifv0K4rLG21xoEuG4BjBjYzmAfx_FZw5A (requesting a satisfactory/unsatisfactory grading system); Email from Student Organizations and Students, Harvard Law School, to Deans, Harvard Law School (Mar. 19, 2020), https://docs.google.com/document/d/1Tzk0Hb_q_LavVyu-bwA4XAZFkQa-bVuGL2WTEgWaSzE/mobilebasic?fbclid=IwAR1DbjWagNUvvnEOHeAXBFn3GhdkVTCvgU7kQo_QozYVgSEDrMkrFm69SCo [https://perma.cc/2SAP-CFKF]; see also Letter from Khrystan Nicole Policarpio, Student, UC Davis School of Law, to Kevin Johnson, Dean, UC Davis School of Law (Mar. 19, 2020), https://docs.google.com/document/d/1qbfHGPgc8_g0OyJlSYGz8rExhsWaRXQtaUuhrXuzgQ/edit [https://perma.cc/HV4Z-BNU2] (petitioning for a shift to P/NP grading for Spring 2020 at UC Davis School of Law).

¹⁴⁶ Debra Cassens Weiss, *Several Top Law Schools Adopt Pass-Fail Grading Plans After Going Online*, ABAJ. (Mar. 19, 2020, 1:34 PM CDT), <https://www.abajournal.com/news/article/several-top-law-schools-adopt-pass-fail-grading-plans-after-going-online> [https://perma.cc/T5AH-4563].

¹⁴⁷ *Law School Grade Change Table*, GOOGLE DOCS, <https://docs.google.com/spreadsheets/d/11ku0ey3csUcmrTizUtMLXiuV0QnFDmJh6BMyKUPHKKE/edit#gid=0> (last visited Mar. 5, 2021) [https://perma.cc/27DW-DRG2] (quoting data from *Complete List of Grading Changes: Corona Spring 2020*, REDDIT, https://www.reddit.com/r/LawSchool/comments/fjp4kt/complete_list_of_grading_changes_corona_spring/ (last updated Mar. 16, 2020) [https://perma.cc/LFT7-KH4E] (compiling public information on law schools’ grading systems during the COVID-19 pandemic)).

While these options were not ideal, many students felt that they were more equitable than continuing with regular grading.¹⁴⁸ However, other students, particularly those not attending top ranked schools, felt that the lack of letter grades might prevent them from being viewed as competitive job candidates.¹⁴⁹ By Fall 2020, a number of schools returned to letter grading, while some adopted a single “pass/no pass” option, which allows students to change one letter grade to a “pass/no pass” credit.¹⁵⁰ However, students who opted for this “pass/no pass” credit in lieu of a letter grade ran the risk of being perceived negatively.¹⁵¹ Diverse students are left to navigate this difficult choice, while shouldering more responsibilities than their classmates. Given that many law school classes remain graded on a curve, it follows that the students most likely to succeed in the current circumstances are the

¹⁴⁸ See, e.g., Miers, *supra* note 145 (citing a letter signed by 200+ students at Santa Clara Law urging for P/NP grading).

¹⁴⁹ See Kathryn Rubino, *Elite Law Schools Move to Pass/Fail System Over COVID-19 Disruptions. But Will That Hurt Students?*, ABOVE THE LAW (Mar. 19, 2020), <https://abovethelaw.com/2020/03/elite-law-schools-move-to-pass-fail-system-over-covid-19-disruptions-but-will-that-hurt-students/> [<https://perma.cc/VNS8-MB7L>].

¹⁵⁰ See, e.g., *Fall 2020 Critical Grading Policy Update*, CUNY SCH. OF L. (Dec. 15, 2020), https://www.law.cuny.edu/newsroom_post/fall-2020-critical-grading-policy-update/ [<https://perma.cc/3WHK-5DQU>]; *Fall 2020 Modifications to the Pass/Fail Option Due to COVID-19*, GEO. L., <https://www.law.georgetown.edu/academics/academic-resources/registrar/academic-honors/fall-2020-modifications-to-the-pass-fail-option-due-to-covid-19/> (last visited Apr. 17, 2022) [<https://perma.cc/RB2S-CJKY>]; *Grading Policy for Fall 2020*, UNIV. OF HAW. SCH. OF L., <https://www.law.hawaii.edu/grading-policy-fall-2020> (last visited Apr. 17, 2022) [<https://perma.cc/M3ZJ-F554>]; *Fall 2020 Yale Law School Grading Policy Approved by the Faculty on July 29, 2020*, YALE L. SCH., https://law.yale.edu/sites/default/files/area/department/registrar/document/fall_2020_grading_policy.pdf (last visited Apr. 17, 2022) [<https://perma.cc/YQ76-UF57>]; *Grading Policy – Fall 2020*, UNIV. OF ARIZ. SCH. OF L. (Sept. 23, 2020), <https://law.arizona.edu/news/2020/09/grading-policy-fall-2020> [<https://perma.cc/YK3Y-9E4C>].

¹⁵¹ Teresa Watanabe, *A's for All? Pass/Fail? Colleges Grapple with Grading Fairness During Coronavirus*, L.A. TIMES (Mar. 27, 2020), <https://www.latimes.com/california/story/2020-03-27/grades-vs-pass-fail-colleges-grapple-with-student-demands-to-change-grading-during-coronavirus> [<https://perma.cc/8N7P-EC4X>] (quoting Dean Erwin Chemerinsky, of UC Berkeley School of Law: “I worried that students who were most likely to get high grades would opt for that and then credit would be perceived as a mediocre grade. . . . This would put pressure on students to retain grades and undermine what [Berkeley Law is] trying to accomplish.”); see OROZCO & POLICARPIO, *supra* note 13.

same students who are likely to have support and resources during in-person instruction.¹⁵²

The universal “pass/no pass” grading system, where all students are graded the same and equally, seems to be one of the few truly equitable avenues that law school administrators have explored that supports students who are struggling the most. Students have also advocated for universal pass, also known as “UP.”¹⁵³ This method would allow all students to pass, regardless of hardship or access to resources, whereas a Pass/No Pass grading system still allows for students to fail a course. As Yale’s student newspaper explained:

Arguments in favor of universal pass center on the idea that campus is an equalizer. Living away from campus inherently gives some students — those with consistent access to the internet and a stable home life — an advantage, advocates argue. A universal pass system would help level that playing field, at least in terms of grading, proponents say.¹⁵⁴

Unfortunately, not a single law school has adopted this grading system.

For first-year law students beginning in Fall 2020, online learning has been especially difficult. The in-person, human interaction of law school has been hard to recreate online. Students have struggled to develop meaningful connections with their classmates or upper-level students. Many reported feeling isolated and alone.¹⁵⁵ While second- and third-year students had the benefit of knowing their peers in some capacity before online learning, first-year students have found it difficult to meet classmates, form study groups, or develop friendships. While this difficulty has been acknowledged by some law school administrations, the onus to create social connections and make first-year students feel welcome ultimately fell to student groups and affinity organizations. This added to the burdens of second- and third-year

¹⁵² See OFF. FOR C.R., *supra* note 119, at 13-22 (discussing struggles faced by Diverse K-12 students). Diverse K-12 students who struggle will be the same law students who struggle under similar circumstances.

¹⁵³ Matt Kristoffersen, *Students Call for “Universal Pass”*, YALE DAILY NEWS (Mar. 18, 2020, 4:38 PM), <https://yaledailynews.com/blog/2020/03/18/students-call-for-universal-pass/> [<https://perma.cc/AJS2-HKW5>]; No Fail Yale (@NoFailYale), TWITTER (Mar. 18, 2020, 7:14 PM), <https://twitter.com/NoFailYale/status/1240461554463670274> [<https://perma.cc/JD35-79ZX>].

¹⁵⁴ *Id.*

¹⁵⁵ See OROZCO & POLICARPIO, *supra* note 13; Advocates for Equity, *Law School Student Voices*, UNIV. OF SAN DIEGO SCH. OF L., <https://sites.google.com/view/advocatesforstudentequity/student-stories/usd-law-school-students> (last visited Apr. 17, 2022) [<https://perma.cc/EJ47-ZZVX>].

students, many of whom were dealing with difficulties associated with the pandemic. These obstacles have added to the significant burdens that Diverse students carry. The added challenge of performing during a global pandemic has raised issues that schools and students were ill-prepared to navigate.

Unfortunately, even as the nation approaches the third year of the COVID-19 pandemic, equitable solutions remain minimal. In Fall 2021, many universities returned to full in-person instruction with vaccine and booster requirements for students and faculty, as well as mask mandates for indoor activities — but not all.¹⁵⁶ As of July 29, 2021, for example, none of the ten law schools in Texas required the COVID-19 vaccine.¹⁵⁷ What then does equity look like when immunocompromised individuals are unable to get the vaccine for health reasons, but are simultaneously more susceptible to severe consequences if they contract COVID? How are they able to attend in-person instruction — with a barrier requirement in place or without a modest guarantee of avoiding exposure?

The answer is decided on a case-by-case basis at each institution. Some students were offered the option to take a term off and delay graduation.¹⁵⁸ Others lobby their professors or administration for some kind of accommodation but this doesn't always result in a full time course load. By rendering a student less than full-time, the student often has to pay additional fees or take on fees equivalent to full-time but with

¹⁵⁶ 2021-2022 COVID-19 Information, HARV. L. SCH., <https://hls.harvard.edu/covid/> (last visited Apr. 17, 2022) [<https://perma.cc/3842-YGXF>]; COVID-19 Community Updates, UC HASTINGS L., <https://www.uchastings.edu/chancellordean/covid-19-community-updates/> (last visited Apr. 17, 2022) [<https://perma.cc/6NBJ-MJL7>]; Yale Law School COVID-19 Information, YALE L. SCH., <https://law.yale.edu/yls-today/media-inquiries/office-public-affairs/yale-law-school-covid-19-information> (last visited Apr. 17, 2022) [<https://perma.cc/EV48-QULF>]; COVID-19 Updates, UNIV. OF TEX. SYS., <https://www.utsystem.edu/sites/covid-19/ut-system-administration-resource> (last visited Apr. 17, 2022) [<https://perma.cc/XPF5-6F4P>].

¹⁵⁷ See supra 156, COVID-19 Updates, Univ. of Tex. Sys.

¹⁵⁸ See, e.g., Fall 2020-21 Options: Frequently Asked Questions, BERKELEY LAW, <https://www.law.berkeley.edu/academics/llm/traditional-llm/fall-2020-21-options-faqs/> (last visited Apr. 17, 2022) [<https://perma.cc/36C6-HGSQ>]; see also Updated Guidance for Interruptions of Study Related to Coronavirus (COVID-19), FED. STUDENT AID (May 15, 2020), <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-05-15/updated-guidance-interruptions-study-related-coronavirus-covid-19-updated-june-16-2020> [<https://perma.cc/HR2C-58L2>] (“[F]or all leaves of absence granted as the result of COVID-19 related circumstances, an institution may approve, and students may begin, a leave of absence prior to submitting a written request for an LOA For example, an institution offering a program for which distance education is not a viable option may decide to suspend the program on a temporary basis placing all students on approved LOAs. The institution would then solicit LOA requests from those students.”)

a longer stay in the degree program. As more specialists say that the COVID-19 will always be an epidemic and not an endemic disease, law school programs will need to shift to protect new and current students.¹⁵⁹ While an endemic virus or disease will spread slowly over a period of time, typically over years, an epidemic virus or disease will see rapid increases over a period of days or months. To protect their most vulnerable community members, law schools will need to prepare effectively for rapid shifts based on how and when the COVID-19 variants spread.

In late Fall 2021, the scientists in South Africa identified a new strain of COVID-19, the Omicron variant. The Omicron variant, coupled with the dominant Delta variant, swept the globe. Within a month, Omicron became the dominant strain globally. This caused widespread concern and forced universities across the nation to return to remote instruction for the first few weeks of the spring/winter period.¹⁶⁰ Following this remote period, law schools returned to in-person instruction.

As of February 2022, U.S. COVID deaths hit 900,000 with approximately 76 million cases throughout the nation.¹⁶¹ At the same time, law students pushed back against university policies requiring the

¹⁵⁹ Chloe Taylor, *Covid Will Always Be an Epidemic Virus – Not an Endemic One, Scientist Warns*, MSNBC (Feb. 2, 2022, 8:17 AM EST), <https://www.cnn.com/2022/02/02/covid-will-never-become-an-endemic-virus-scientist-warns.html> [https://perma.cc/KWT9-PEER].

¹⁶⁰ See, e.g., Paul Caron, *Omicron Forces Law Schools to Change Spring Semester Plans: Stay Home Get Booster Shot*, TAXPROF BLOG (Dec. 23, 2021), https://taxprof.typepad.com/taxprof_blog/2021/12/omicron-forces-law-schools-to-change-spring-semester-plans-stay-home-get-booster-shot.html [https://perma.cc/S6Q7-L9DG]; Joe Killian, *UNC Law School Students Push for Remote Instruction as State Faces COVID Numbers*, PULSE (Jan. 5, 2022), <https://pulse.ncpolicywatch.org/2022/01/05/unc-law-school-students-push-for-remote-instruction-as-state-faces-covid-numbers> [https://perma.cc/2ZPT-BKEP]; Karen Sloan, *Stay Home, Get Boosted, Law Schools Tell Students During New Virus Phase*, REUTERS (Dec. 22, 2021, 10:59 AM PST), <https://www.reuters.com/legal/government/stay-home-get-boosted-law-schools-tell-students-during-new-virus-phase-2021-12-22/> [https://perma.cc/F4CT-WQ8V].

¹⁶¹ *Canada Truck Protest Widens; Hong Kong Hits Record: Virus Update*, BLOOMBERG (Feb. 4, 2022, 2:57 PM PST), <https://www.bloomberg.com/news/articles/2022-02-04/u-s-passes-900-000-deaths-as-omicron-takes-over-virus-update> [https://perma.cc/E3M8-XJFZ]; Cedric Sam, Nic Querolo, Demtrios Pogkas, Chloe Whitaker, Paul Murray, Marie Patino, Sybilla Gross, Katrina Lewis, Donald Moore, Jack Pitcher, Elizabeth Rembert, Max Reyes, Olivia Rockeman, Maria Elena Vizcaino & Emma Court, *Tracking the Spread of the Coronavirus Outbreak in the U.S.*, BLOOMBERG, <https://www.bloomberg.com/graphics/2020-united-states-coronavirus-outbreak/> (last visited Apr. 17, 2022) [https://perma.cc/2DJ4-8KR].

return to in-person learning.¹⁶² Students at the University of California, Los Angeles (“UCLA”) drafted a petition with over 1,300 signatures to demand that the school provide more flexibility for students to choose between in-person classes and remote alternatives.¹⁶³ UC Davis, similarly, had a petition of over 400 signatures demanding the same flexibility.¹⁶⁴ Other UCs participated in sit-ins or walk-outs to protest the return to in-person learning.¹⁶⁵ The student activism seen today is still reflective of the issues that have been identified at the start of the pandemic that continue to persist today; those of which include lack of accessibility to disabled and chronically ill students who run a higher risk of complications due to COVID exposure. Returning to “normal” (pre-pandemic) has remained elusive.

While there is research done on the pedagogical effectiveness of in-person learning, there must be an acknowledgement that these are unusual circumstances and students are now balancing their health and safety alongside academics and personal priorities. In an ever-changing world, and as states are shifting to an endemic stage of the COVID-19 era, the legal field must meet the moment. With the potential for future health and natural disasters, there seems to be little assurance from law school administrations, or the legal field in general, that there is movement toward a more equitable profession. It is precisely moments like these, these pivotal times in history, that the silence is felt the most.

B. Inequities Compounding Inequities from Beyond Law School

Though there are many internal factors within the law school structure that adversely affect students, there are just as many external factors at play. While universities and institutions attempted to push an idea of normalcy — business as usual — students were struggling with the cultural and political context surrounding their experience in law school. On May 25th, 2020, George Floyd was murdered by police, with a knee on his neck for over eight minutes because he had allegedly

¹⁶² See Teresa Watanabe, *UCLA Students Stage Sit-In, Demand Online Options as UC In-Person Return Sparks Division*, L.A. TIMES (Jan. 31, 2022), <https://www.latimes.com/california/story/2022-01-31/uc-riven-over-in-person-vs-online-classes-amid-omicron> [<https://perma.cc/PPS5-93FV>] [hereinafter *UCLA Students Stage Sit-In*].

¹⁶³ *Id.*

¹⁶⁴ *Hybrid Learning Petition Letter – King Hall*, GOOGLE DOCS, https://docs.google.com/document/d/17PvrFcQC6G3E7huDhb7tvacEJ0E6zIt_yAcZOqa-n78/edit (last edited Feb. 14, 2022) [<https://perma.cc/7WKD-6X8M>].

¹⁶⁵ Watanabe, *supra* note 162.

purchased cigarettes with a counterfeit twenty-dollar bill.¹⁶⁶ In response to his murder, peaceful protests against police violence took place all across the country.¹⁶⁷ BIPOC students were left to reason with how the legal field they are preparing to enter supports the institution that is harming and killing Black people. Black law students were particularly and uniquely affected by the murder. They watched as their very humanity was and continues to be debated by police and politicians, while simultaneously engaging in the rigorous academia of legal training — the very same field that has been used to devalue their worth.¹⁶⁸

This external burden bled into an internal issue. At UC Davis School of Law, for example, the law review write-on competition took place during the same week as George Floyd's murder. In the midst of this national uprising and global pandemic, rising second-year Black law students were forced to complete write-on assignments and begin their remote summer internships. As one of the prestigious pillars of the law school experience, law review membership can open doors for those who are able to get through the write-on competition process.¹⁶⁹ Black law students were forced to confront another death in their community at the hands of law enforcement, while also being expected to perform at the highest level to compete for a spot on law review, one of the most prestigious and enduring institutions within the legal field. It was here where law schools failed to meet the moment.

As the summer bore on, students were forced to adopt a sense of “normalcy,” despite the tear gas, rubber bullets, and violence bearing

¹⁶⁶ Evan Hill, Ainara Tiefenthaler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> (last updated Jan. 24, 2022) [https://perma.cc/8FU3-4L87].

¹⁶⁷ *Interactive Map: Protests in Wake of George Floyd Killing Touch All 50 States*, IPSOS (June 9, 2020), <https://www.ipsos.com/en-us/knowledge/society/Protests-in-the-wake-of-George-Floyd-killing-touch-all-50-states> [https://perma.cc/46XR-MGUR].

¹⁶⁸ See Imani Perry, *Voter Suppression Carries Slavery's Three-Fifths Clause into the Present*, GUARDIAN (Jan. 31, 2019, 2:00 AM EST), <https://www.theguardian.com/commentisfree/2019/jan/31/voter-suppression-african-american-james-madison-slavery> [https://perma.cc/4GRG-X2P9]. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 78-81 (2017) (discussing the history of *de jure* segregation of Black persons in the United States through restrictive covenants, as well as laws dictating whether Black individuals could purchase and keep purchased property).

¹⁶⁹ See Menachem Wecker, *Law Review Leads to Legal Jobs, Recruiters Say*, U.S. NEWS & WORLD REP. (Jan. 19, 2012, 9:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/01/19/law-review-leads-to-legal-jobs-recruiters-say> [https://perma.cc/W4XN-VGM4].

down on peaceful protestors. Many law students were actively engaged in activism and protests against police violence.¹⁷⁰ Still, students were expected to be professionals in their summer placements, operating as if everything were “normal.” While law school administrations put out statements of solidarity as an acknowledgement of the discourse taking place across the nation,¹⁷¹ students were to continue as usual. Institutions of particular note are UCLA School of Law and UC Davis School of Law. Both universities released statements regarding the protests against police violence, but the effect fell short given their lack of responsiveness to students’ concerns regarding harmful practices pertaining to race.¹⁷²

Ineffective administration responses also had an impact on student responses. For example, ultimately, only one Black law student successfully wrote-on to UC Davis’s Law Review in Summer 2020.¹⁷³ The following year, not a single Black law student attempted the write-on. As of Spring 2022, there remains only one Black law student on UC Davis’s Law Review — a product of continued diversity issues. Fewer than five Latinx individuals and one Native American individual serve on UC Davis’s Law Review.¹⁷⁴ This calls into question the law school’s true understanding and empathy for Diverse law students and also raises concerns of gatekeeping. Despite law school administrations voicing support for Diverse students, prestigious organizations such as law review remain woefully homogenous. There seems to be a disconnect between what is said, and the actual support in place for Diverse students to break into these elite organizations. Student leadership also played a part. Rather than providing targeted support to the individuals impacted by the demonstrations, student leaders chose instead to utilize a more “one size fits all” approach, following in the footsteps of the administration that guides it. Law reviews or other prestigious on-campus organizations would benefit from more support

¹⁷⁰ See, e.g., *No Justice. No Peace.*, GARGOYLE (Sept. 17, 2020), <https://gargoyle.law.wisc.edu/2020/09/17/no-justice-no-peace/> [<https://perma.cc/7UDG-QFUV>] (describing protests by students at Marquette and University of Wisconsin law schools); see also OROZCO & POLICARPIO, *supra* note 13.

¹⁷¹ *Law Firm & Law School Responses to the Black Lives Matter Movement*, VAULT (June 10, 2020), <https://www.vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/law-firm-law-school-responses-to-the-black-lives-matter-movement> [<https://perma.cc/QX5Z-62TN>] (compiling excerpts from public responses to the protests by law firms and law schools).

¹⁷² See *supra* notes 66–69, and 72.

¹⁷³ Email from Anonymous Student, UC Davis School of Law, to author (on file with author).

¹⁷⁴ *Id.*

and guidance from their law school administrations in creating pathways into these organizations for Diverse students. For example, Diverse students have historically had difficulty in attaining competitive grades.¹⁷⁵ Having a grade or GPA requirement as part of the write-on can be a barrier to these Diverse students.¹⁷⁶ Eliminating a grade requirement is an equitable step that the law administration can actively instate or advocate for regarding law review membership.¹⁷⁷ Concrete interventions, such as this, can help create a culture of targeted support for Diverse students.

While there is some progress, for example, Harvard Law Review just elected a First-Generation Latina as its Editor-in-Chief, and the University of Texas Law Review elected their first Black Editor-in-Chief, there is no guarantee that the system itself is shifting to be more inclusive.¹⁷⁸

In the autumn of 2020, after a tumultuous and heavily covered presidential election, Diverse students were subjected to post-Election Day fallout. Former President Trump manufactured unsubstantiated claims about the integrity of the election, inciting uproars that culminated in the storming of the Capitol.¹⁷⁹ These insurrectionists were largely supportive of or involved in white supremacist propaganda.¹⁸⁰ The events left Diverse law students at a crossroads, unable to divorce the happenings in the political sphere from their current circumstances. They were learning about the law of the land while at the same time dealing with the dehumanization of their very identity. Students reported feeling stressed over the election and

¹⁷⁵ Deborah J. Merritt, *The White Bias in Legal Education*, Law School Café (July 16, 2015), <https://www.lawschoolcafe.org/2015/07/16/the-white-bias-in-legal-education/>.

¹⁷⁶ See Paul Willison, *Rethinking the Writing Competition: Developing Diversity Policies on Law Journals After FASORP I and II*, 71, 372-383 CASE W. RESV. LAW REV. 351 (2020).

¹⁷⁷ See *id.*

¹⁷⁸ *Harvard Law Review Elects Priscila Coronado '23 as Its 136th President*, HARV. L. TODAY (Feb. 2, 2022), <https://today.law.harvard.edu/harvard-law-review-elects-priscila-coronado-23-as-its-136th-president/> [<https://perma.cc/Z54Z-TK2H>]; *Texas Law Review Selects First Black Editor-in-Chief*, 2L Jason Onyediri, U. TEXAS SCH. OF L (Feb. 15, 2022), <https://law.utexas.edu/news/2022/02/15/texas-law-review-elects-first-black-editor-in-chief-2l-jason-onyediri/> [<https://perma.cc/L426-E4W8>].

¹⁷⁹ Michael Waldman, *Trump's Big Lie Led to Insurrection*, BRENNAN CTR. FOR JUST. (Jan. 12, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/trumps-big-lie-led-insurrection> [<https://perma.cc/T9SG-JA9X>].

¹⁸⁰ See Bill McCarthy, *Tucker Carlson's False Claim Downplaying Roles of White Supremacists at Capitol Riot*, POLITIFACT (Feb. 23, 2021), <https://api.politifact.com/factchecks/2021/feb/23/tucker-carlson/tucker-carlsons-false-claim-downplaying-role-white/> [<https://perma.cc/TC4A-2NL9>].

subsequent coverage, and some reported tensions with family members or loved ones during this time.¹⁸¹

While law school administrators may have been sympathetic, there was not much output in terms of substantive support. Students of color watched as Senator Josh Hawley supported the insurrectionists, implicitly validating the viewpoint of white supremacy.¹⁸² Integral to the legal profession, perhaps unrightfully so, is the idea that law school graduates, particularly those from elite law schools, are some of the brightest and intelligent legal minds of our time. To watch as a Yale Law School graduate and current U.S. Senator support views and push legislation that erase the history of the United States is nothing short of alarming.¹⁸³

As Diverse students navigated an already hostile environment, made worse by the current pandemic, Law school administrations' diversity and equity initiatives are not meeting the level of need within their own halls.¹⁸⁴ Diverse students are given empty platitudes about mental health while the very field they hope to enter offers constant and consistent reminders that they do not belong there. The mental and physical loads placed on Diverse law students are enormous and cannot be completely covered in this Article. Yet these students are expected to learn and produce at the same rate as if they were in-person and life was "business as usual." But as discussed, "business as usual" is not without harm or hurt. As Diverse law students suffer the brunt of the COVID-19 pandemic, a return to normal does not pose a "lesser evil" but rather one in a different form. Diverse students continue to experience inequity.

Despite the two years, numerous grading considerations, and significant student activism, little to no change has been made. As seen with ongoing student activism, students still want and need law schools

¹⁸¹ OROZCO & POLICARPIO, *supra* note 13.

¹⁸² See Jamil Smith, *White Entitlement, On Parade*, ROLLING STONE (Jan. 7, 2021, 3:53 PM EST) <https://www.rollingstone.com/politics/political-commentary/trump-mob-capitol-attack-jamil-1110820/> [<https://perma.cc/62JE-4L5M>].

¹⁸³ *Biography*, JOSH HAWLEY: U.S. SENATOR FOR MO., <https://www.hawley.senate.gov/biography> [<https://perma.cc/8YQJ-7ZS3>]; see Jennifer Bendery, *GOP Senator Who Egged On Insurrectionists Introduces Bill About Loving America*, HUFFPOST (July 26, 2021, 1:48 PM EDT), https://www.huffpost.com/entry/josh-hawley-insurrection-critical-race-theory_n_60fed63ae4b05ff8cfeb045f [<https://perma.cc/9W3B-9F87>].

¹⁸⁴ Leonard M. Baynes, *Five Steps Law School Deans Can Take to Improve Diversity and Inclusion*, ABA J. (Nov. 12, 2020, 3:57 PM CST), <https://www.abajournal.com/voice/article/5-steps-law-school-deans-can-take-to-improve-diversity-and-inclusion> [<https://perma.cc/WU2F-KE5Q>].

to adapt to reflect the needs of all students and not just the structurally favored few.¹⁸⁵

III. FINAL THOUGHTS

With all these issues at play, how can law school administrations do better to serve the most vulnerable of their student populations? While many schools have implemented diversity trainings and diversity, equity, and inclusion (“DEI”) initiatives, these do not rise to the needs of Diverse law students.¹⁸⁶ Professor Courtney Wright, an associate professor at the University of Tennessee, Knoxville, does consultant and conflict work with organizations and education professionals to manage difficult interactions communicating across cultural differences. She writes, “By working on DEI initiatives without repairing those relationships, you are more like an agitator than ally. Just as agitators have infiltrated peaceful protests to incite violence, there are agitators who claim space in DEI regimes while (un)intentionally working against diverse faculty.”¹⁸⁷ This same principle can apply to Diverse students. While the legal profession continues to be competitive, it is important to reassess how practices that keep Diverse attorneys out of the legal field continue to survive and thrive. After a year of navigating a global pandemic, law school administrators should take an honest assessment of their efforts and implement immediate changes to support Diverse students. Now.

There are a number of ways to bring equity to the legal field, some of which we have explored, and many of which have been advocated for throughout the years.

- In the short term, we encourage law schools to create a hybrid-learning program, tailored to fit the needs of their student community. As we have seen throughout the pandemic, there is no one-size-fits-all given the current state of affairs.¹⁸⁸

¹⁸⁵ *Hybrid Learning Petition Letter supra* note 164.

¹⁸⁶ See Allison E. Laffey and Allison Ng, *Diversity and Inclusion in the Law: Challenges and Initiatives*, AM. BAR ASS’N (May 2, 2018), <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2018/diversity-and-inclusion-in-the-law-challenges-and-initiatives/> [<https://perma.cc/W9CM-8F53>].

¹⁸⁷ *Id.*

¹⁸⁸ See Connor Thompson, *A Structural Critique of Law School*, ARK. J. OF SOC. CHANGE & PUB. SERV. (Oct. 15, 2020), <https://ualr.edu/socialchange/2020/10/15/a-structural-critique-of-law-school/> [<https://perma.cc/94GH-UKBS>] (remarking that the author hopes “to see a system of legal pedagogy that permits each student to thrive on his or her own terms, rather than assume a uniform standard” rather than “reward[]

- Support abolishing the bar exam immediately. As discussed, the bar exam is an inaccurate measure of modern-day legal practice. In its current form, the bar exam emphasizes memorization over understanding of legal doctrine.¹⁸⁹ It requires split-second decision-making, which could result in sanctions or malpractice if used in the real world, and fails to test actual lawyering skills.¹⁹⁰
- Eliminate the use of letter grading or GPAs. Letter grading furthers meritocracy, awarding the best opportunities to those who earn the highest grades. This system relies on the assumption that every student has equal access to the same resources.¹⁹¹ While some students can dedicate entire days/evenings to studying and practicing legal theory, others worry about finances, part-time work or caretaking responsibilities. Access to tutoring and supplemental material also plays a part in disadvantaging diverse students.¹⁹² This creates an unlevel playing field, rewarding students for attaining high grades rather than supporting those who may be working their hardest in addition to juggling other responsibilities. Eliminating letter grades, with a simple “pass/no pass” option, may remedy this issue and alleviate the stressors faced by the most vulnerable students.
- Law schools must actively be anti-racist. The legal profession relies heavily on meritocracy and rankings. The coveted *U.S. News and World Report* rankings speak to this. But if legal institutions such as Yale Law School can produce senators such as Joshua David Hawley, it begs the question: what do these institutions stand for? Organizations such as the Federalist Society, often considered a pinnacle of elitism and a key factor for

narrow skills that have historically been dominated by white, male, privileged people . . . at the exclusion of others”).

¹⁸⁹ Andrea Curcio, Eileen Kaufman, Margalynne Armstrong, Carol Chomsky, Robert Dinerstein, Phoebe Haddon, Joan Harwoth, Beverly Moran, Natsu Saito, Michael Rooke-Ley & Paula Johnson, *Society of American Law Teachers: Statement on the Bar Exam*, 52 J. LEGAL EDUC. 446, 447 (2002).

¹⁹⁰ Jessica Williams, *Abolish the Bar Exam*, CAL. L. REV. BLOG (Oct. 2020) <https://www.californialawreview.org/abolish-the-bar-exam/> [https://perma.cc/4PVR-ANR4].

¹⁹¹ See Matt Kristofferson *supra* note 153; see also OROZCO & POLICARPIO, *supra* note 13; Advocates for Equity, *Law School Student Voices*, UNIV. OF SAN DIEGO SCH. OF L *supra* note 155.

¹⁹² See Rothman, *supra* note 8.

a number of judicial appointments,¹⁹³ feature speakers who support and espouse white supremacist ideals.¹⁹⁴ This is not a coincidence. Hiding behind the guise of freedom of speech is lazy at best and giving a platform to racist and hateful arguments is tantamount to violence and speaks volumes to minority students.

- Reduce the cost of tuition. Based on the national average, tuition for a legal education has gone up nearly \$30,000 in the past thirty-five years.¹⁹⁵ Adjusting for inflation, law schools should cost about \$4,700, a mere \$2,000 more than in 1985.¹⁹⁶ Financing a legal education remains one of the biggest hurdles for underrepresented and Diverse students.¹⁹⁷ Law schools should consider tuition remission or tuition refunds for students who had to pay the full cost of tuition while attending school online.

But above all else, listen to students. Ultimately, the question remains, for who does this current system work? Due to the nature of law degree programs, they are often short, anywhere between three to four years. While students can identify issues that impact them directly, it often is not enough to make widescale/lasting change. In the alternative, school administrations would benefit from having an active role in engaging the student body. Too often it is left to students to conduct surveys asking about the well-being of their peers or to continue to push for equitable change. Law school administrations should take active roles to learn about their student communities and take note of what students

¹⁹³ See Lawrence Baum & Neal Devins, *The Federalist Society Majority*, SLATE (July 6, 2018, 2:01 PM), <https://slate.com/news-and-politics/2018/07/the-federalist-society-will-soon-have-a-5-4-stranglehold-on-the-supreme-court.html> [https://perma.cc/SM5H-PKZ2]; *How the Federalist Society Changed the Supreme Court Vetting Process*, NISKANEN CTR. (Aug. 1, 2018), <https://www.niskanencenter.org/how-the-federalist-society-changed-the-supreme-court-vetting-process/> [https://perma.cc/P6VL-4EAT]; Patricia Vest, *The Federalist Society Is More Relevant Now than Ever According to Politics Professor Amanda Hollis-Brusky*, POMONA COLL. (Sept. 20, 2019), <https://www.pomona.edu/news/2019/09/20-federalist-society-more-relevant-now-ever-according-politics-professor-amanda-hollis-brusky> [https://perma.cc/U3JM-F96G].

¹⁹⁴ Heidi Beirich, *Invited White Nationalist to Speak to Federalist Society Friday*, S. POVERTY L. CTR. (Feb. 3, 2011), <https://www.splcenter.org/hatewatch/2011/02/03/invited-white-nationalist-speak-federalist-society-friday> [https://perma.cc/3AZZ-8SM6].

¹⁹⁵ *Law School Costs*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/costs/tuition/> (last visited Mar. 5, 2021) [https://perma.cc/KFA6-STKX] (pulling data and statistics from the American Bar Association from 1985 to 2013). LST has calculated data from 2014 to present using data individual schools have reported to the ABA. *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ See Shepherd, *supra* note 17, at 146-48.

say would best assist them during times of crisis as well as under “normal” circumstances. A commitment to learn about students and carefully considering the needs of each class is the first step to help fill structural gaps. Students should not be in the position of creating mutual aids to support the gaps where the law school falls short.

Though these solutions do not get to the root of the inequities that Diverse students face, they are a starting point. Many have been advocating for these changes for years. The pandemic has shed light on the fragility of gains made by Diverse students, and it is imperative that law schools across the nation act swiftly and immediately to rectify the harms Diverse students are facing.