

Fall 2019

The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty

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Recommended Citation

G. S. Hans, D. N. Archer, and et al., *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 *Clinical Law Review*. 127 (2019)

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Thu Feb 6 11:37:57 2020

Citations:

Bluebook 20th ed.

The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty, 26 Clinical L. Rev. 127 (2019).

ALWD 6th ed.

The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty, 26 Clinical L. Rev. 127 (2019).

APA 6th ed.

(2019). The diversity imperative revisited: Racial and gender inclusion in clinical law faculty. Clinical Law Review, 26(1), 127-146.

Chicago 7th ed.

, "The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty," Clinical Law Review 26, no. 1 (Fall 2019): 127-146

McGill Guide 9th ed.

, "The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty" (2019) 26:1 Clinical L Rev 127.

MLA 8th ed.

"The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty." Clinical Law Review, vol. 26, no. 1, Fall 2019, p. 127-146. HeinOnline.

OSCOLA 4th ed.

, 'The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty' (2019) 26 Clinical L Rev 127

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THE DIVERSITY IMPERATIVE REVISITED: RACIAL AND GENDER INCLUSION IN CLINICAL LAW FACULTY

CLEA COMMITTEE FOR FACULTY EQUITY AND INCLUSION*

INTRODUCTION

The demographics of clinical law faculties matter. As Professor Jon Dubin persuasively argued nearly twenty years ago in his article *Faculty Diversity as a Clinical Legal Education Imperative*, clinical faculty of color entering the legal academy in the 1980s and 1990s expanded the communities served by law school clinics and the lawyering methods used to serve clients in significant ways that enriched legal education and the profession.¹ They also broadened clinical scholarship to include deconstructions and reconstructions of clinical teaching, offered crucial role modeling and mentorship to students of color, and helped to elevate cross-cultural communication and multi-racial collaboration as core lawyering skills.²

Professor Dubin catalogued these contributions while pointing to data that showed that clinical faculties remained overwhelmingly White, and he urged law schools to recognize the urgency of diversifying clinical faculty. While there has been some research and scholarship devoted to the gender composition of clinical faculties,³ to our

* The Clinical Legal Education Association (CLEA) Committee for Faculty Equity and Inclusion members are Deborah Archer, Caitlin Barry, G.S. Hans, Derrick Howard, Alexis Karteron, Shobha Mahadev, and Jeff Selbin. We thank Angela Carter, the former Research and Policy Fellow in the Policy Advocacy Clinic at the University of California, Berkeley, School of Law, who conducted our initial data analysis and wrote the first draft of our findings, and we thank Olivia Layug Balbarin at the University of California, Berkeley, School of Law for her editorial assistance. We are enormously grateful to Meera Deo for her insight, and to Robert Kuehn for the extensive feedback he provided on earlier drafts and for his dedication to collecting and distributing data on clinical faculty through the Center for the Study of Applied Legal Education (CSALE), without which this report would not have been possible. Sameer Ashar co-chaired this CLEA committee in 2017–2018, provided the impetus for this report, and offered crucial feedback and development of the ideas presented here. Jack Lerner identified valuable existing resources designed to promote faculty diversity, and David Santacrose provided helpful guidance. We also thank participants at the 2019 AALS Conference on Clinical Legal Education who gave productive feedback on an earlier draft. Finally, Jon Dubin's work inspired much of this Essay, and we thank him for his commitment to these issues, his vital feedback on our findings and suggestions, and for urging our field to do better.

¹ Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445 (2000).

² *Id.* at 457.

³ Marjorie Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational*

knowledge, there has been no substantive reexamination of the importance of racial composition since Professor Dubin's article in 2000, nor any examination of clinical faculty diversity beyond race, ethnicity, and binary gender.⁴

The Clinical Legal Education Association (CLEA) created the Committee for Faculty Equity and Inclusion to draw attention to the crisis of diversity among clinical faculties, and to urge law schools to take proactive steps to remedy this longstanding failure. This Essay assesses what progress has been made since Professor Dubin's intervention and interrogates historical trends in the racial and gender composition of clinical faculty from 1980 to 2017, using existing data. We had hoped to analyze data on diversity beyond race and binary gender and at the intersection of various identities, but existing data only allow us to draw conclusions about limited racial categories and binary gender representation. And although Professor Dubin focused on race, we include data on gender as a point of comparison for historical trends in another important area of equity and inclusion.⁵

As demonstrated in the tables and discussion below, we found that there has been limited progress on racial and ethnic inclusion in clinical law faculties in the last 20 years. While the total percentage of people of color grew from 10% to 21% in this 30-year time period, the inclusion of Black, Latinx, and Indigenous faculty has been largely stagnant. Black clinical faculty members reached 7% of all clinical faculty in 1999 and have never exceeded that percentage. Latinx clinical faculty representation, at 5%, is the same as it was in 1981. Indigenous faculty have never constituted even 1%. Overall, White faculty continue to hold nearly 8 out of 10 clinical faculty positions.

With regard to gender, whereas women were underrepresented among clinical faculty in the 1980s, women now outnumber men in clinical faculty positions by nearly 2 to 1. Given that women remain underrepresented in law faculties as a whole, this seemingly positive development in the gender composition of clinical instructors nonetheless raises concerns about internal status inequities and the clustering of women faculty members in non-tenured positions with lower salaries and less job protection, including on clinical, legal research

Segregation by Gender Among Law Professors, 73 UMKC L. REV. 293, 295 (2004) (surveying scholarship that examines gender disparities in clinical, LRW, and librarian positions).

⁴ Dubin, *supra* note 1.

⁵ *Id.* at 447 n.8. We are cognizant of the ways in which separating data on race and gender, rather than viewing the intersection of both, minimizes or erases the experience of women of color, and address those concerns in our suggestion for future data collection below. See Meera E. Deo, *Intersectional Barriers to Tenure*, 51 U.C. DAVIS L. REV. 997, 1006-7 (2018); Carmen González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, FED. LAW., July 2014, at 48, 50-51.

and writing (LRW), and library faculties. Therefore, this trend may be a cautionary tale for the inclusion of other underrepresented groups moving forward.

Our findings give us both a degree of understanding of the challenge and a basis for further work in this area. Acknowledging the limitations of existing data, we offer recommendations for future data collection that would recognize more inclusive identities and backgrounds. The data collected and distributed through the Center for the Study of Applied Legal Education (CSALE) is an invaluable resource, and we hope that clinicians will build on CSALE's important work by expanding the information gathered and the methods used for future data collection. We suggest that future research assess job satisfaction and sustainability of faculty positions for people from historically disadvantaged groups to ensure that we are not just providing access to clinical law faculties, but also offering equitable and supportive working environments. New research will be crucial to developing a more meaningful understanding of inequities among clinical faculty, and to assessing equity and inclusion beyond descriptive representation. We then conclude with a discussion of best practices for inclusive clinical faculty hiring and suggestions for future initiatives that may make the profession more accessible.

Looking back on Professor Dubin's arguments, we are disheartened by the lack of subsequent scholarship on clinical faculty diversity, particularly with regard to racial and ethnic representation. We are concerned that it reflects a degree of complacency with structural racism at our own institutions and a failure to recognize the dissonance between the values we promote in our lawyering and our participation in maintaining barriers to the profession. We can only guess as to the causes for this silence, which may be rooted in institutional dynamics, status inequities, and hierarchical hiring processes. It is nonetheless troubling. As clinical law faculty members, we must take responsibility for expanding access to the profession and address the barriers to inclusion in our own field. We hope this Essay will disrupt that complacency and revive Professor Dubin's arguments for a diversity imperative, which are even more resonant in the current moment.

I. BACKGROUND

Law continues to be one of the least diverse professions.⁶ In 2018, despite decades of research on best practices for breaking down barriers

⁶ *Labor Force Statistics from the Current Population Survey, Household Data Averages*, BUREAU LAB. STAT. (Jan. 18, 2019) [hereinafter *Labor Force Statistics*], <https://www.bls.gov/cps/cpsaat11.htm>.

ers, 88% of lawyers identified as White and 62% identified as men.⁷ Law school admissions have improved in recent decades, but Black, Latinx, and Indigenous students continue to be underrepresented. Although over 11% of the population and 10% of recent college graduates identified as Black, only 8.5% of recent law school graduates were Black, and Black lawyers constitute only 5.5% of the profession.⁸ Students of color also drop out of law school at higher rates than White students. In 2018, 30% of first year law students identified as non-White, but 44% of students who left after the first year were students of color.⁹

A host of factors create ongoing barriers to inclusion in legal education, including the lack of accessible high-quality educational opportunities that prepare students of color for law school, racially discriminatory “standardized” testing, the undermining of affirmative action in higher education, and racial bias among faculty and in campus climates.¹⁰ Students of color who do graduate often encounter bias in hiring, along with work environments hostile to people of color and limited opportunities for advancement.¹¹

Although the data regarding women in the profession are more positive, women also face barriers to becoming and succeeding as lawyers. Women now outnumber men in law school enrollment, but women law students are concentrated in lower-ranked law schools,

⁷ *Id.*; A.B.A., A CURRENT GLANCE AT WOMEN IN THE LAW 2 (2019), https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf.

⁸ *Diversity in the US Population & the Pipeline to Legal Careers*, L. SCH. ADMISSIONS COUNCIL [hereinafter *Diversity & the Pipeline to Legal Careers*], <https://www.lsac.org/data-research/data/diversity-us-population-pipeline-legal-careers> (last visited June 30, 2019); *Bachelor's Degrees Conferred by Postsecondary Institutions, by Race/Ethnicity and Sex of Student: Selected Years, 1976-77 through 2016-17*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/digest/d18/tables/dt18_322.20.asp [hereinafter *Postsecondary Bachelor's Degrees by Race/Ethnicity and Sex of Student*] (last visited July 18, 2019) (focusing on 2016–2017 data).

⁹ *Diversity & the Pipeline to Legal Careers*, *supra* note 8; Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students Are Disproportionately Represented in Attrition Figures*, ACCESSLEX (Sept. 18, 2018), <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures>.

¹⁰ Aaron Taylor, *For Diversity: Let's Talk Less About Pipelines and More About Why Blacks Are Not Admitted*, NAT'L JURIST (Aug. 7, 2017), <http://www.nationaljurist.com/national-jurist-magazine/diversity-lets-talk-less-about-pipelines-and-more-about-why-blacks-are-not>; see Floyd Weatherspoon, *The Status of African American Males in the Legal Profession: A Pipeline of Institutional Roadblocks and Barriers*, 80 MISS. L.J. 259 (2010); Mary Smith, *For Native American Attorneys, NNABA Groundbreaking Study Reveals Devastating Lack of Inclusion in the Legal Profession at Large*, FED. LAW., Apr. 2015, at 73, http://www.fedbar.org/Resources_1/Federal-Lawyer-Magazine/2015/April/Features/For-Native-American-Attorneys-Groundbreaking-NNABA-Study-Reveals-Devastating-Lack-of-Inclusion-in-t.aspx?FT=.pdf.

¹¹ A.B.A., YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION 8 (2018).

and women lawyers constitute only 38% of the profession.¹² Women continue to encounter gender bias in legal education, the hiring market, and the workplace.¹³ Women lawyers of color in particular face workplace discrimination resulting in lower compensation for equal work, along with a culture of micro-aggressions that undermine their job performance, such as assignments to administrative tasks, restrictive expectations of gender performance, and being mistaken for custodial or administrative staff.¹⁴

The racial and gender composition of law school faculties, in turn, reflect the barriers to the profession and diminish the ability of law schools to attract and retain students from marginalized backgrounds. In 2018, 8 out of 10 full-time law professors were White and 55% identified as men.¹⁵ The ABA last published data on the intersection of race and gender in 2013, at which time 83% of tenured faculty were White, 57% were White men, and only 7% were women of color.¹⁶

Increasing the diversity of law faculty is a core component in moving towards equity in the profession. Legal scholars have extensively catalogued the myriad benefits of an inclusive faculty for students, the academic environment, and the profession, as it exposes students and colleagues to a broader array of academic perspectives, scholarship, teaching styles, and life experiences.¹⁷ Given the role of law in maintaining systemic subordination of oppressed groups, the representation of faculty from subordinated groups is necessary for a meaningful dialogue about the possibilities and limits of law and justice.¹⁸

¹² DEBORAH MERRITT & KYLE MCENTEE, RESEARCH SUMMARY, THE LEAKY PIPELINE FOR WOMEN ENTERING THE PROFESSION (2016), https://www.istradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf.

¹³ A.B.A., *supra* note 11, at 8.

¹⁴ *Id.* at 7-8.

¹⁵ According to the ABA, in 2018 there were 9,663 total full-time law faculty employed at ABA accredited institutions and 1,981 fulltime faculty of color (the ABA uses the term "Minority."). *ABA 2018 Faculty Resources*, A.B.A. (June 29, 2019), at <http://www.aba.requireddisclosures.org/Disclosure509.aspx> (numbers compiled from a report generated at this website).

¹⁶ *Law School Faculty & Staff by Ethnicity and Gender*, A.B.A. (2013), https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/ (last visited July 20, 2019).

¹⁷ Kevin Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549, 1550, 1558 (2011); Antoinette Sedillo Lopez, *Latinas in Legal Education Through the Doors of Opportunity: Assimilation, Marginalization, Cooption or Transformation?*, 13 AM. U. J. GENDER SOC. POL'Y & L. 109 (2005); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807, 1831 (1993).

¹⁸ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Dubin, *supra* note 1, at 456.

Student achievement is also directly impacted by faculty demographics. A more diverse faculty helps to lessen stereotype threat, where implicit bias against a stereotyped group influences the classroom environment and assessment of student work.¹⁹ Consequently, women and people of color perform better in classes taught by more diverse faculty.²⁰ The value of role modeling and mentoring cannot be overstated, including career networking, access to research assistant positions, letters of recommendation, and other important factors that contribute to securing quality employment. Beyond law school, the skills that students develop engaging with diverse faculty and classmates are essential in preparing them to be responsible professionals.²¹

The imperative for law schools to address their failure to hire and retain faculty members of color includes clinical faculty. In advocating for the urgency of diversifying clinical faculty, we are not arguing that equity and inclusion on clinical faculties is more pressing than on law faculties generally, particularly as we are concerned that law schools will concentrate faculty of color in non-tenured positions, as has been the case with women faculty. We also share concerns that any emphasis on the unique contributions of faculty from marginalized backgrounds will create essentializing expectations for those faculty to present a unitary life experience or to focus on topics or scholarship related to their identity.²² We do contend, however, that clinical faculty diversity matters in particular ways that merit consideration.

Clinical faculty members comprise roughly 10% of full-time law faculties²³ and play a dual role in mentoring and modeling a professional path for law students as both practitioners and academics. Particularly for students who are intimidated by the elite nature of academic hiring, clinical faculty from diverse backgrounds may open law students' ambitions to a broader range of careers. Clinical faculty drive innovations in the pedagogy of lawyering skills, and a diverse

¹⁹ Christopher Birdsall et al., *Stereotype Threat, Role Models, and Demographic Mismatch in an Elite Professional School Setting* 19 (AccessLex Inst. Research Paper No. 18-08, 2018), <https://ssrn.com/abstract=3210628>; Jane Pedergast, *Diversity Matters: Race, Gender & Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 26 (2003).

²⁰ Birdsall et al., *supra* note 19, at 4.

²¹ Johnson, *supra* note 17, at 1553; Hing, *supra* note 17, at 1815.

²² Dubin, *supra* note 1, at 446.

²³ In 2018, the ABA reported a total of 9,963 full time law faculty. The 2017 CSALE survey elicited responses from 1,121 clinical faculty, thirteen percent of whom reported their status as part-time, which would bring the total of full-time clinical faculty to 968. *ABA 2018 Faculty Resources*, *supra* note 15; DAVID A. SANTACROCE ET AL., CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., *THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION* (2017) [hereinafter CSALE 2017].

faculty will broaden that pedagogy in both theory and practice.²⁴ Inclusive faculty expose students to multi-racial and cross-cultural collaboration among professionals—not just in lawyer-client relationships. The people, groups, and communities served by clinical programs are largely dictated by faculty members, whose referral networks and organizational relationships will shape the clinic docket.²⁵ A more inclusive faculty would expand clinic service, build stronger relationships of trust with the communities served, and expose students to a broader array of issues and lawyering practices.

We view inclusion and equity among clinical faculties as particularly important given clinical legal education's historical grounding in promoting social justice.²⁶ Professor Dubin, in responding to the 1999 data showing that only 12.9% of clinicians were non-White and 69% of law schools had no clinicians of color at all, argued that diversity was an imperative for the future of clinical legal education. He emphasized the crucial role that clinical faculty of color would play as mentors and role models as “students struggle to acquire a sense of professional identity and survival skills in a discriminatory legal system” and argued that the legal academy's failure to embrace diversity among faculty reflected a failure to fully recognize the impact of race on the law.²⁷ Although clinical pedagogy has broadened in its scope and mission,²⁸ we believe clinicians continue to bear a responsibility to create internal practices that reflect the commitment to the racial and economic equity we promote in our teaching and lawyering.

II. METHODS

Using existing data, we describe changes in the race and gender composition of clinical faculty from 1980 to 2017. Pre-2000 data come from surveys conducted by the Society of American Law Teachers (SALT) in 1980–81 and 1986–87²⁹ and the Association of American Law Schools (AALS) in 1998–99.³⁰ Findings after 2000 rely on four

²⁴ Margaret M. Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 64 (2000).

²⁵ Adrienne Jennings Lockie, *Encouraging Reflection and Involving Students in the Decision to Begin Representation*, 16 *CLINICAL L. REV.* 357, 362 (2010).

²⁶ See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 *CLINICAL L. REV.* 360 (2008); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 *SMU L. REV.* 1461 (1998).

²⁷ Dubin, *supra* note 1 at 448, 477.

²⁸ See Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 *B.C. J.L. & SOC. JUST.* 331 (2012).

²⁹ Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 *U. PA. L. REV.* 537 (1988).

³⁰ Dubin, *supra* note 1; Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 *J. LEGAL EDUC.* 1 (2000).

surveys administered by the Center for the Study of Applied Legal Education in 2007–08, 2010–11, 2013–14, and 2016–17.³¹

It is important to note that surveys from different eras were administered to slightly different groups of schools. For example, CSALE administered surveys to all ABA accredited law schools except those in Puerto Rico, while other surveys were administered to AALS member schools, and the results from any survey only include information from those schools that responded. The 1981 and 1987 data gathered by Richard Chused is based on a SALT survey administered to AALS member schools which elicited responses from 85% of the existing member institutions at that time, but in his data analysis, Professor Chused chose to exclude the four institutions that he considered “minority-operated” in order to focus on racial representation at majority-White institutions.³²

Findings from the data are thus limited, as there may be variables between the groups that received surveys, and the people who responded to surveys may differ in unknowable ways from people who did not respond. Therefore, the percentages we report may not be fully representative of all clinical faculty members in any era. Given these limitations, we debated whether to make direct comparisons. We concluded that the groups surveyed are similar enough to justify observations of overall trends. Furthermore, the exclusion of four “minority-operated” schools from Professor Chused’s data analysis—which therefore likely undercounted the percentages of clinical faculty members of color in 1981 and 1987—only strengthens our conclusion that progress has been slow.

Although racial, ethnic, and gender representation are important, lack of additional data further limits our ability to describe other forms of diversity among clinical faculty members or to analyze trends at the intersection of race and gender. The data also does not allow us to identify variations among schools, including which schools have no clinical faculty members of color and which have more significant representation. Finally, with existing data we cannot draw even simple correlations about the relationship between racial and gender identity and access to important internal status and perquisites, such as title,

³¹ DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUCATION, REPORT ON THE 2007-2008 SURVEY (2008) [hereinafter CSALE 2008]; DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION (2011) [hereinafter CSALE 2011]; DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUCATION, 2013-14 SURVEY OF APPLIED LEGAL EDUCATION (2014) [hereinafter CSALE 2014]; CSALE 2017, *supra* note 23.

³² Chused, *supra* note 29, at 556.

pay, or security of employment, and we do not have data on the demographics of clinic directors.

III. FINDINGS

The data indicate that the percentage of people of color on clinical law faculties has increased slowly from the 1980s (9%),³³ to the 1990s (13%),³⁴ to the most recent data in 2017 (just over 20%) and is now on par with the percentage of fulltime law professors of color across the legal academy.³⁵ While the increase is positive, the situation remains that nearly 8 in 10 clinical faculty members are White, and Black, Latinx, and Indigenous faculty members continue to be underrepresented.³⁶ Women, too, were underrepresented in the 1980s (33-34%), but the percentage of women on clinical law faculties has increased significantly in recent decades, reaching 50% sometime in the late-1990s³⁷ and exceeding 60% since 2011.³⁸

A. Black, Latinx, and Indigenous Faculty Members Continue to Be Significantly Underrepresented Among Clinical Law Teachers

Figures 1 and 1.A present over-time change in the percentage of full-time clinical faculty members between 1980 and 2017 by racial self-identification. Surveys conducted prior to 2000 only included categories for White, Black/African American and Latinx/Hispanic. Later surveys added categories for Asian American, Indigenous/Native American, Mixed-Race, and Other. Figure 1 includes White faculty; Figure 1.A allows closer examination of non-White racial categories, excluding American Indian, Alaska Native, Native Hawaiian, Pacific Islander, and two or more races/other, which for all or most of the timeframe were below 1% (the underlying numbers for all categories are in Table 1).

³³ *Id.* at 555.

³⁴ Dubin, *supra* note 1, at 448.

³⁵ CSALE 2017, *supra* note 23; *ABA 2018 Faculty Resources*, *supra* note 15.

³⁶ CSALE 2017, *supra* note 23.

³⁷ Angel, *supra* note 30.

³⁸ CSALE 2011, *supra* note 31; CSALE 2014, *supra* note 31; CSALE 2017, *supra* note 23.

FIGURE 1: PERCENTAGE CLINICAL FACULTY MEMBERS BY RACE/ETHNICITY, 1980-2017³⁹

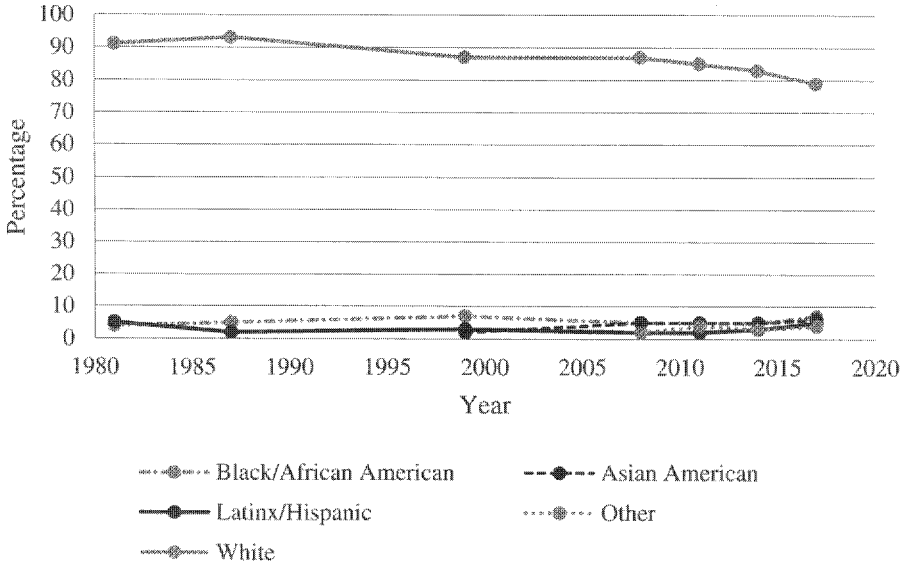
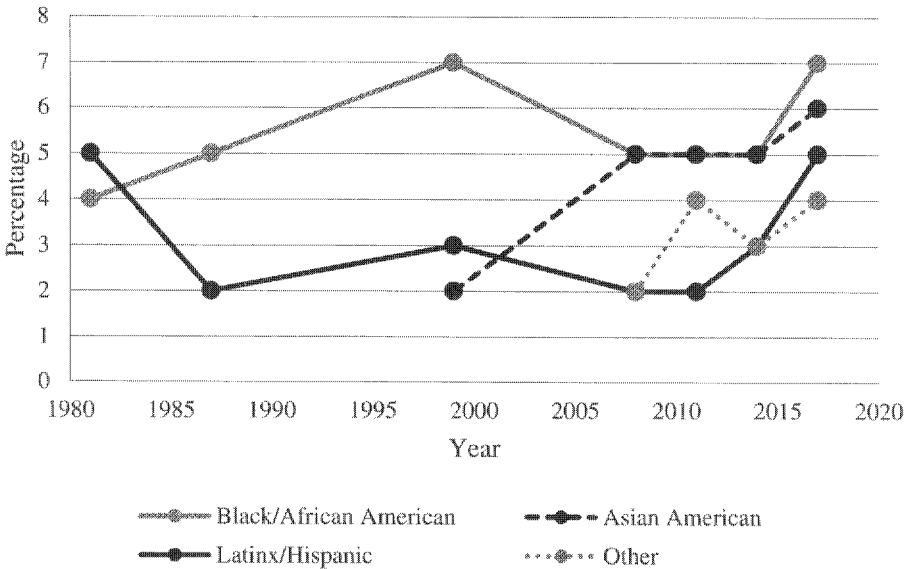


FIGURE 1.A: PERCENTAGE BLACK, LATINX, AND ASIAN AMERICAN CLINICAL FACULTY MEMBERS BY RACE/ETHNICITY, 1980-2017⁴⁰



³⁹ In graphical presentations of data, summary statistics are noted as connected to the later year; for instance, results from the 1980-1981 survey administration are presented as reflecting 1981 values.

⁴⁰ See *id.*

Table 1 presents the underlying percentages reflected in Figures 1 and 1.A by racial and ethnic subcategories (with more subcategories available in the CSALE data post-2000).

TABLE 1: PERCENTAGE CLINICAL FACULTY MEMBERS BY RACE/ETHNICITY, 1980-2017

| Race/Origin | 1981 | 1987 | 1999 | 2008 | 2011 | 2014 | 2017 |
|--|------|------|------|------|------|------|------|
| American Indian/Alaska Native | | | 1 | <1 | < 1 | < 1 | < 1 |
| Asian American | | | 2 | 5 | 5 | 5 | 6 |
| Black/African American | 4 | 5 | 7 | 5 | 5 | 5 | 7 |
| Latinx/Hispanic | 5 | 2 | 3 | 2 | 2 | 3 | 5 |
| Native Hawaiian/Other Pacific Islander | | | | 0 | < 1 | 0 | < 1 |
| White | 91 | 93 | 87 | 87 | 84 | 84 | 79 |
| Two or more races/Other ⁴¹ | | | <1 | 1 | 3 | 2 | 3 |

Overall, the representation of full-time clinical faculty members of color increased at a slow pace during the 36-year period for which we have data (1981–2017) from approximately 9% to just over 20% of all clinical faculty members (with a corresponding drop in White clinical faculty members from just over 90% to just under 80%). With the limitations noted above, these data suggest that the overall percentage of clinical faculty members of color has roughly doubled during this period, but still remains far lower than the percentage of people of color among recent law graduates (39%) or in the U.S. population (38%).⁴²

The overall numbers also mask important differences in subcategories of people of color. The percentage of Black clinical faculty rose from 4% to 7% between 1981 and 1999, but then dropped to 5% before rising slightly to 7% again in 2017. The current representation of Black clinical faculty remains below the percentage of Black ten-

⁴¹ While we recognize the importance of making multiracial identities visible, we are concerned that the labeling of this category inhibits a more accurate assessment of the representation of other racial categories. We hope future data will allow respondents to select more than one racial identity. See KIM PARKER ET AL., *Ch. 2: Counting Multiracial Americans*, in MULTIRACIAL IN AMERICA: PROUD, DIVERSE AND GROWING IN NUMBERS (2015), <https://www.pewsocialtrends.org/2015/06/11/chapter-2-counting-multiracial-americans/>.

⁴² *Diversity & the Pipeline to Legal Careers*, supra note 8; *QuickFacts, United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045218> (last visited July 20, 2019). We include the percentage of the U.S. population who identify as Latinx/Hispanic, which the census categorized as an ethnicity, not a race, forcing respondents to choose a separate racial category. As a result, more than seventy percent of Latinx/Hispanic respondents did not choose a racial category. D’Vera Cohn, *Seeking Better Data on Hispanics, Census Bureau May Change How It Asks About Race*, PEW RES. CTR. (Apr. 20, 2017), <https://www.pewresearch.org/fact-tank/2017/04/20/seeking-better-data-on-hispanics-census-bureau-may-change-how-it-asks-about-race/>.

ured law professors (8.5%), recent law graduates (8.5%), college graduates (10%), percentage of the U.S. population (11.2%), and the U.S. workforce (12.3%).⁴³

The percentage of Latinx clinical faculty members decreased from 5% to 2% from 1981 to 2008, then rose from 2008 to 2017 back to 5%. The representation of Latinx clinical faculty members is far below the percentage of recent Latinx law graduates (11.9%), college graduates (12.8%), percentage of the U.S. population (18.6%) and U.S. workforce (17.3%), although it actually exceeds the problematically low percentage of Latinx tenured law faculty (4.1%).⁴⁴

The percentage of Asian-American clinical faculty members (all subcategories included) increased from 2% to 6% between 1999 and 2017, reflecting more progress towards inclusion than other groups, although Asian-American faculty only make up 3.3% of tenured faculty, and the lack of further disaggregation between Asian-American subgroups may hide important inequities, particularly with regard to Southeast Asian faculty members.⁴⁵

Indigenous peoples (including American Indian and Alaskan Native) did not constitute 1% in any survey year, despite constituting 1.7% of the U.S. population.⁴⁶

B. Women Faculty Members Constitute Almost Two-thirds of Clinical Law Teachers

Figure 2 presents over-time change in the percentage of full-time clinical faculty members between 1980 and 2017 who self-identified as men or women.

⁴³ *Diversity & the Pipeline to Legal Careers*, *supra* note 8; *Postsecondary Bachelor's Degrees by Race/Ethnicity and Sex of Student*, *supra* note 8; *QuickFacts, United States*, *supra* note 42; *Labor Force Statistics*, *supra* note 6.

⁴⁴ *Diversity & the Pipeline to Legal Careers*, *supra* note 8; *Postsecondary Bachelor's Degrees by Race/Ethnicity and Sex of Student*, *supra* note 8; *QuickFacts, United States*, *supra* note 42; *Labor Force Statistics*, *supra* note 6; *Law School Faculty and Staff by Ethnicity and Gender*, *supra* note 16.

⁴⁵ While the data reflected in the surveys on clinical faculty who identified as Asian American (6%) slightly exceeds the percentage of the U.S. population (5.6%), the percentage of practicing attorneys who identified as Asian American (4.9%) is below the census data, indicating that Asian-American law students still face systemic barriers to accessing the profession. We hope that future data will disaggregate the Asian-American category to allow for a more substantive examination of the status of Asian-American clinical faculty. See Karthick Ramakrishnan & Janelle Wong, *Ethnicity Data Is Critical to Address the Diverse Needs of Asian Americans and Pacific Islanders*, AAPI DATA (Jan. 28, 2018), <http://aapidata.com/blog/ethnicity-data-is-critical/>.

⁴⁶ TINA NORRIS ET AL., *THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010*, U.S. CENSUS BUREAU (2012), <https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010br-10.pdf>.

FIGURE 2: PERCENTAGE CLINICAL FACULTY MEMBERS BY GENDER (MEN/WOMEN), 1980-2017

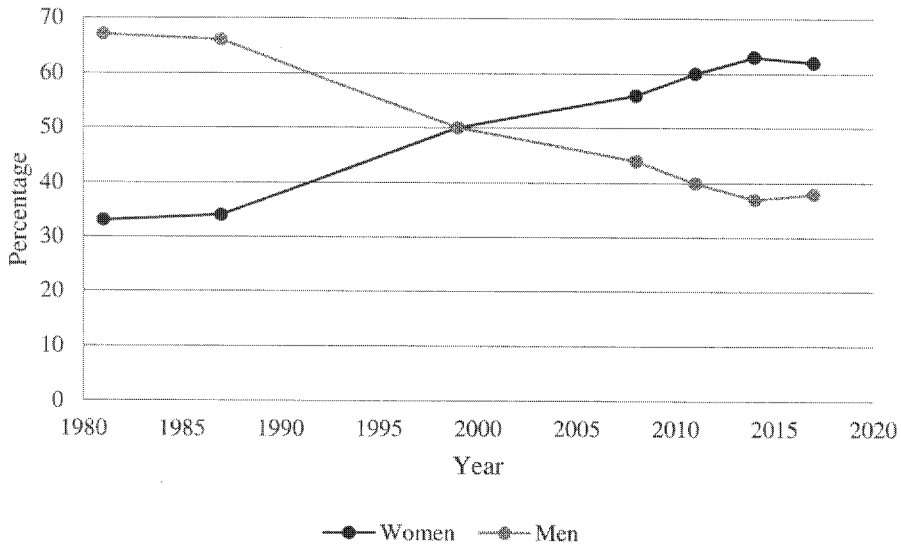


Table 2 presents the underlying percentages reflected in Figure 2 by category (women/men).

TABLE 2: PERCENTAGE CLINICAL FACULTY MEMBERS BY GENDER (MEN/WOMEN), 1980-2017

| Gender | 1981 | 1987 | 1999 | 2008 | 2011 | 2014 | 2017 |
|--------|------|------|------|------|------|------|------|
| Women | 33 | 34 | 50 | 56 | 60 | 63 | 62 |
| Men | 67 | 66 | 50 | 44 | 40 | 37 | 38 |

While the percentage of clinical faculty members who were men exceeded the percentage of clinical faculty members who were women by roughly 2 to 1 throughout the 1980s, the percentage of women clinical faculty members increased substantially thereafter.⁴⁷ By 1999, approximately one-half of clinical faculty members were women, a proportion that approached two-thirds by 2014, followed by a slight decrease between 2014 and 2017.

IV. RECOMMENDATIONS

Given the limitations we identified in the existing data, we offer suggestions for future inquiries that may surface a deeper understanding of the demographics of clinical faculty and the barriers to inclu-

⁴⁷ Data limitations prevent us from observing the exact year that this occurred.

sion, as well as our reflections and recommendations for improving hiring practices.

A. *Future Data Collection*

Our findings indicate persistent inequity with regard to under-represented racial and ethnic groups on clinical law faculties over the last thirty years. The recent increase in the hiring of clinical faculty of color since 2010 may merit particular focus for future inquiry into whether schools that have successfully improved the racial composition of their faculties offer lessons that may be replicated elsewhere.

At the same time, this recent increase in hiring of clinical faculty of color coincides with the decline of tenure-track positions and the expansion of contract statuses and adjunct teaching, which raises concerns that recent hires will not benefit from the same access to resources as other faculty.⁴⁸ The trajectory of women law professors bears out this trend, as there is considerable evidence that women are clustered in lower-status and lower-paid positions—such as non-tenure-line clinical teaching, librarian, and LRW positions—in relation to men on law school faculties.⁴⁹ The current percentage of women clinical faculty members exceeds the percentage of women law professors generally by nearly 20%.

While the percentage of clinical faculty members of color is currently consistent with the representation among law faculties broadly, efforts to promote racial inclusion should acknowledge the potential to replicate this trend by clustering faculty of color in less prestigious positions and perpetuating internal structural inequity. Future data collection should include information on the status of clinical faculty members broken down by identity categories to allow examination of internal status differences.

Future data should also broaden the categories of surveyed identities beyond race and binary gender categories to include disability,

⁴⁸ See González, *supra* note 5, at 1–2 (“Many proposals to respond to shrinking tuition revenues, rising costs, and declining government investment in higher education—such as abolishing the tenure requirement for American Bar Association (ABA) accreditation, increasing the proportion of courses taught by non-tenure-track faculty, and reducing the amount of credit hours required for the award of a J.D. degree—may close the door to tenure-track employment just as students of color are graduating from law school in significant numbers. Indeed, the plight of women of color may foreshadow the vulnerability of faculty in all but the most elite law schools, as legal education is restructured in response to challenging economic times.”).

⁴⁹ Chused, *supra* note 29; Robert F. Seibel, *Do Deans Discriminate?: An Examination of Lower Salaries Paid to Women Clinical Teachers*, 62 UCLA WOMEN’S L.J. 541 (1996); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997); Angel, *supra* note 30.

immigration status, transgender and gender non-conforming identities, first-generation graduates, and other categories of individuals that have historically faced barriers to the legal profession. The intersection of identities, particularly with regard to race and gender, would also be crucial to future inquiries. As Professor Meera Deo observes in her recent research, women faculty of color face particular challenges in legal academia.⁵⁰ Measuring the intersection of marginalized identities may provide a more accurate and nuanced understanding of how structural inequity is functioning among clinical faculty.

As Professor Dubin persuasively argued, the breakdown of clinical faculty inclusion within individual law schools should also be measured to encourage schools not to tokenize or isolate faculty from marginalized backgrounds into a “society of one,”⁵¹ which undermines the sustainability of faculty positions. Current data do not allow us to examine the demographic breakdown for individual law schools, which may reveal schools that have no faculty of color, and others that have larger percentages and may offer replicable models.

Finally, future research should use other methods to better understand the experiences of women and clinical faculty members from marginalized groups, including the campus climate and specific institutional practices that disadvantage marginalized group members.⁵² For example, students may be less likely to respect supervisors of color, which would impact course evaluations and job satisfaction and sustainability, and standards for hiring and promotion may continue to privilege the perspectives and priorities of White cisgender men.⁵³ More qualitative studies of the experiences of clinical faculty members may surface these more complicated dynamics, which are important barriers to further faculty inclusion.

B. Best Practices for Inclusive Clinical Hiring

If we seek to make clinical law faculties more inclusive and equitable, we must address barriers to inclusion within the clinical hiring process, which is becoming increasingly reliant on prior teaching experience and publications, post-graduate fellowships, and elite credentials, following the trends in doctrinal hiring. Over the last three years, as reported by Professor Sarah Lawsky in an ongoing series on

⁵⁰ MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019).

⁵¹ Dubin, *supra* note 1, at 451.

⁵² See DEO, *supra* note 50.

⁵³ GABRIELLA GUTIÉRREZ Y MUHS, YOLANDA FLORES NIEMANN, CARMEN G. GONZÁLEZ & ANGELA P. HARRIS, *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* (2012).

PrawfsBlawg, the percentage of entry-level clinical hires who had completed a clinical fellowship prior to being hired as a clinical faculty measured 77% in 2017 (10/13), 75% in 2018 (9/12), and 71% in 2019 (5/7).⁵⁴

Clinical fellowships and prior teaching experience have much to commend them as training and research opportunities for future clinical faculty members. However, they also create obstacles for aspiring clinical teachers, particularly for candidates with fewer economic resources. Because fellowships are short-term appointments at salaries far lower than those for promotion-track faculty members, and given the geographic mobility that they frequently require from applicants, they can reinforce the homogeneity demonstrated by the data above. A tacit expectation that future clinicians should be open to move from City A to City B in order to take a short-term appointment at a modest salary, and then to City C to hopefully become a promotion-track clinician, will likely prevent those without social or financial capital from even considering such a path.⁵⁵ In addition, aspiring clinicians with heavy debt loads, young families, or geographic needs may not be able to commit to a few years in a fellowship for the hope that a more stable clinical position will materialize in the future.

When considering applicants for clinical positions, schools should consider to what degree specific credentials are available to those from marginalized backgrounds, and how to ensure that “the ideal applicant” does not necessitate a set of credentials that creates obstacles for diverse candidates, preventing them from even pursuing clinical careers. Schools should also consider, prior to posting positions, how to ensure that those job advertisements reach a diverse applicant pool. Professor Dubin suggested a “freeze period” following hiring authorization, during which a school would both conduct outreach and work to develop hiring processes that were inclusive and equitable.⁵⁶ Hiring committees could also establish the hiring and evaluative criteria they will employ to evaluate candidates and their outreach plans proactively prior to conducting a search, rather than rushing to respond to

⁵⁴ Sarah Lawsky, Entry Level Hiring 2019, <https://bit.ly/entrylevel2019> (last visited July 24, 2019); Sarah Lawsky, Entry Level Hiring 2018, <https://goo.gl/PpmHzK> (last visited July 24, 2019); Sarah Lawsky, Entry Level Hiring 2017, <https://goo.gl/oIcFh0> (last visited July 24, 2019). This dataset has limitations, of course, but may be illustrative in demonstrating the rise of clinical fellowships as preferred credentials for aspiring promotion-track clinicians.

⁵⁵ The precarity-exacerbating effects of unpaid internships is roughly analogous to the argument being made here about clinical fellowships. See Leslie Regan Shade & Jenna Jacobson, *Hungry for the Job: Gender, Unpaid Internships, and the Creative Industries*, 63 Soc. REV. 188 (2015); Pauline Leonard, Susan Halford & Katie Bruce, ‘The New Degree?’ *Constructing Internships in the Third Sector*, 50 Soc. 383 (2015).

⁵⁶ Dubin, *supra* note 1, at 474.

unexpected vacancies or new funding opportunities. Professor Dubin noted that the antidiscrimination principles that clinical law faculty may hold do not always prevent them from making biased hiring decisions, particularly when it comes to credentials.⁵⁷ Developing criteria on the fly during the interview process increases the likelihood that hiring committees will default to traditional academic hiring standards.

In crafting hiring criteria, schools should avail themselves of the multiple resources that have been developed to promote inclusivity in law school hiring.⁵⁸ Such resources include guidelines from experts in fields beyond law;⁵⁹ university-specific resources;⁶⁰ and broader resources discussing implicit bias and other issues that may inhibit inclusive hiring.⁶¹ Although clearly not definitive, we have distilled some best practices here:

- establishing hiring committees with diverse members;
- internally and externally committing to increase inclusivity in candidate pools and clinical appointments, which may signal to candidates that inclusivity is valued at that school;
- beginning the hiring process early and investing time and effort in seeking out and recruiting candidates outside of traditional law school hiring avenues;
- expanding searches through outreach to affinity bar associations and conferences focused on diverse communities;
- clearly communicating that faculty will have flexibility to cultivate their own clinical dockets;
- ensuring that evaluative criteria are not biased in favor of privileged candidates, and do not assess candidates based on access to job market coaching or other elite preparation for academic hiring;
- waiting to select candidates for interviews until the hiring committee has completed significant outreach and not assuming that the early applicants should be prioritized;
- tracking the number of applicants who self-identify as members of diverse communities over time in order to determine the relative

⁵⁷ *Id.* at 462.

⁵⁸ See, e.g., AM. ASS'N OF LAW SCHS., AALS HANDBOOK: STATEMENT OF GOOD PRACTICES: RECRUITMENT AND RETENTION OF MINORITY LAW FACULTY MEMBERS (2012), <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members/>; DEO, *supra* note 50.

⁵⁹ See, e.g., Lauren A. Rivera, *When Two Bodies Are (Not) a Problem: Gender and Relationship Status Discrimination in Academic Hiring*, 82 AM. SOC. REV. 1111 (2017).

⁶⁰ See, e.g., UNIV. OF CAL. OFFICE OF GEN. COUNSEL, GUIDELINES FOR ADDRESSING RACE AND GENDER EQUITY IN ACADEMIC PROGRAMS IN COMPLIANCE WITH PROPOSITION 209 (2015), https://www.ucop.edu/general-counsel/_files/guidelines-equity.pdf.

⁶¹ See, e.g., Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010).

success or failure of diversity initiatives;

- regularly assessing the institutional climate to ensure job stability and opportunities for advancement for diverse clinicians that will attract future candidates; and

- building a pipeline by encouraging promising clinical students and practicing attorneys from diverse backgrounds to consider clinical teaching careers and maintaining mentorship relationships.

On the doctrinal side, law schools have created a small number of specific programs and fellowships to offer mentorship and preparation for the academic teaching market for candidates of color, including fellowship programs such as Harvard Law School's Reginald F. Lewis Fellowship,⁶² the University of Wisconsin Law School's William H. Hastie Fellowship,⁶³ and the University of Chicago Law School's Earl B. Dickerson Fellowship.⁶⁴ Duke Law School hosts the Culp Colloquium, a program designed to promote diversity in legal education by offering guidance, feedback, and mentoring to aspiring diverse law faculty members.⁶⁵ To our knowledge, no corollary program exists for clinical law faculty candidates from diverse backgrounds. The creation of stable programs and positions specifically for diverse aspiring clinicians may help candidates achieve success on the teaching market—rather than solely relying upon the existing fellowship structures.

Professor Dubin also suggested that professional organizations like AALS and CLEA develop programming to make the clinical teaching job market more transparent and accessible and regularly host information sessions for interested candidates without fellowships.⁶⁶ AALS has recently created a repository for resources on “Becoming a Law Teacher,”⁶⁷ designed for doctrinal faculty, and plans to create similar resources for aspiring clinical faculty.⁶⁸ We applaud this

⁶² *Reginald F. Lewis Fellowship for Law Teaching*, HARV. L. SCHOOL, <https://hls.harvard.edu/dept/academics/fellowships/the-reginald-f-lewis-fellowships-for-law-teaching/> (last visited July 28, 2019).

⁶³ *William H. Hastie Fellowship Program*, U. WIS.-MADISON L. SCHOOL, https://law.wisc.edu/grad/fellow_hastie.html (last visited July 22, 2019).

⁶⁴ See Jessica Erickson, *Interview with Professor Adam Chilton from the University of Chicago Law School on the Harry A. Bigelow Teaching Fellowships*, PRAWFSBLAWG (June 7, 2019, 8:41 AM), <https://prawnsblawg.blogs.com/prawnsblawg/2019/06/interview-with-professor-adam-chilton-from-the-university-of-chicago-law-school-on-the-harry-a-bigel.html>.

⁶⁵ *Culp Colloquium*, DUKE L., <https://law.duke.edu/clrp/culpcolloquium/> (last visited July 22, 2019).

⁶⁶ Dubin, *supra* note 1, at 475. CLEA and AALS regularly offer programming for new clinicians, including at the AALS Annual Conference on Clinical Legal Education and the CLEA New Clinicians Conference. These programs generally benefit those who already have a law school affiliation, as they are tied to AALS events.

⁶⁷ *Becoming a Law Teacher*, AM. ASS'N L. SCH., <https://teach.aals.org> (last visited July 28, 2019).

⁶⁸ Jessica Erickson, *New AALS Website on Becoming a Law Professor*, PRAWFSBLAWG

development and encourage AALS to prioritize candidates from historically underrepresented backgrounds when developing the materials for aspiring clinicians. We encourage professional organizations to take responsibility for such programming rather than placing the burden on affinity committees, although those committees may be invaluable sources of advice on how to structure and advertise programming to reach diverse audiences.

Because clinical deans and program directors have significant authority in developing new clinics, authorizing clinical faculty positions, and hiring new faculty—arguably, more than most other analogous doctrinal faculty, even at the administrative level—diversification of those administrative roles could improve the hiring and environment for clinical faculty of color. Law schools with associate deans, assistant deans, and directors of clinical programming or experiential education should diversify those leadership ranks, ideally by including a range of diverse candidates in the pool of potential faculty approached for leadership positions. Professor Dubin observed that, in 1999, only 4.5% of non-minority operated law school clinical directors were people of color.⁶⁹ As discussed above, data on the current demographics for clinic directors would help illuminate whether that figure has improved in the intervening two decades.

Law faculties must also commit to encouraging and supporting clinicians from marginalized backgrounds, not just during the hiring process, but also through retention and promotion. The challenges that faculty of color face throughout their academic careers have been well-documented.⁷⁰ Professor Dubin encouraged a consideration of the difference between access and engagement and warned of the perils of isolating faculty of color, which can undermine the sustainability of a faculty position and prevent advancement or drive faculty out of the academy.⁷¹ Promoting inclusivity and equity among clinical law faculty should not become a lower priority when a school has succeeded in hiring more diverse clinical faculty members; equity and inclusion must be institutionalized to ensure on-going progress, guard against backsliding, and communicate to faculty from diverse backgrounds that they are respected colleagues, not tokens.

CONCLUSION

There are many reasons, most of which were extant at the time of

(July 27, 2019, 6:52 PM), <https://prawnsblawg.blogs.com/prawnsblawg/2019/07/new-aals-web-site-on-becoming-a-law-professor.html>.

⁶⁹ Dubin, *supra* note 1, at 451.

⁷⁰ See, e.g., DEO, *supra* note 50, at 79–81.

⁷¹ Dubin, *supra* note 1, at 451.

Professor Dubin's article, that the goal of inclusive and equitable faculties remains an imperative for clinical legal education. An inclusive faculty is vital to the teaching and service mission of clinical education, plays a key role in student recruitment, retention, academic achievement and professional development, and enhances the viewpoints that will influence clinic dockets, scholarship, and pedagogy. We have identified a need for more data to better understand the present demographics and experiences of diverse clinical faculty, building off the strong foundation of data collection that CSALE has built, and a need for explicit recruitment initiatives and more intentional hiring and retention practices to further diversify clinical faculties.

Many of these suggestions were raised by Professor Dubin twenty years ago, but little progress has been made in achieving the goals he articulated. We reflect on those goals in the current political climate, when many marginalized groups are the targets of escalated racialized violence and intentionally divisive and traumatizing public rhetoric. Political attacks upon communities of color are not new, but they are at a renewed level of intensity in American life and in our legal system. Attacks upon the rule of law itself, as well as the intellectual goals of the university, are at an unprecedented pitch. The responsibility of our institutions to recruit, support, promote, and take leadership from members of marginalized groups has never been more acute. Professor Dubin cautioned us that "denial is often a major obstacle to recovery."⁷² As clinical law faculty, it remains our moral obligation to face the depth and complexity of systemic injustice within our own profession and to take it upon ourselves to shift our institutional cultures toward a more equitable future.

⁷² *Id.* at 473.