

CLINICIANS REFLECT ON COVID-19: LESSONS LEARNED AND LOOKING BEYOND

AALS POLICY COMMITTEE*
CLEA COMMITTEE FOR EQUITY AND INCLUSION**

As a result of the unprecedented COVID-19 pandemic, clinical faculty had to abruptly adapt their clinical teaching and case supervision practices to adjust to the myriad restrictions brought on by the pandemic. This brought specialized challenges for clinicians who uniquely serve as both legal practitioners and law teachers in the law school setting. With little support and guidance, clinicians tackled never before seen difficulties in the uncharted waters of running a clinical law practice during a pandemic.

In this report, we review the responses of 220 clinicians to survey questions relating to how law clinics and clinicians were treated by their institutions as they navigated these changes. Were clinical courses treated differently than other courses? Were clinical faculty treated differently than other faculty? Were some clinical courses treated differently than others? Did clinical faculty and staff experience pressure by their institutions to teach in-person or hybrid courses?

In addition to summarizing the findings to these questions, this report examines the disparate impact of the COVID-19 pandemic on clinicians and sheds light on some of the distinct challenges they faced. The report concludes with a list of recommended actions that law schools may take to equip themselves to provide appropriate support for clinical faculty during inevitable future emergencies, emphasizing the importance of autonomy and discretion for clinicians; specialized attention for diverse and vulnerable clinicians; and the very serious ethical and legal obligations of clinical law practices.

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INTRODUCTION

In early March of 2020, the World Health Organization (WHO) declared the novel coronavirus (COVID-19) outbreak a global pandemic.¹ The reality of that declaration sank in when states and municipalities began to issue stay-at-home orders and limit moving about in cities, with exceptions for essential workers or essential tasks such as trips to grocery stores or pharmacies.² As universities and independent law schools closed their campuses and pivoted to delivering instruction virtually during stay-at-home orders, clinicians faced the strain of being forced to stay at home while remaining responsible to their students and clients.³ Clinicians' case-related and field-placement related duties continued despite the closure. Because of the need to represent and serve clients, clinicians needed to collect and address time-sensitive mail and other documents from clients, parties, and courts, to see clients in person when representation required it, and to appear in person in courts that required it. These obligations required clinicians to work with law school or university administration to maintain COVID-19 safe practices while continuing to fulfill their duty to represent clients. To do so, they required access to law school buildings and clinic spaces that were otherwise closed to the public and all law school personnel due to local bans on travel and moving about cities or towns. They also faced the need to see clients in person, to appear in courts as directed in their own jurisdiction, and to perform other essential work in the midst of a pandemic. Despite hopes that the initial shutdown in March would stem the pandemic, universities continued to hold classes online or in a hybrid format throughout the 2020-21 academic year, with few universities holding in-person classes because of the need for physical distancing and masks when gathering in person.

This report reviews the findings from a survey of clinical educators' experiences with COVID-19 in 2020, commissioned as a collaboration of the AALS Section of Clinical Legal Education Policy Committee and the Clinical Legal Education Association's Commit-

¹ *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19*, WORLD HEALTH ORGANIZATION (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>; Domenico Cucinotta et al., *WHO Declares COVID-19 a Pandemic*, 91 ACTA BIOMEDICA 157 (2020), <https://pubmed.ncbi.nlm.nih.gov/32191675/>.

² See, e.g., Executive Order, Office of the Mayor, City of Atlanta, Executive Order Number 2020-21, By the Mayor (Mar. 23, 2020), <https://www.atlantaga.gov/Home/ShowDocument?id=45508>.

³ See, e.g., *USG Moves to Online Instruction for Remainder of Semester, announced on Monday*, UNIVERSITY SYSTEM OF GEORGIA (Mar. 16, 2020), <https://www.usg.edu/coronavirus>.

tee on Faculty Equity and Inclusion. The committees designed the survey to assess the impact of the sudden restrictions, needs, and swift changes brought on by COVID-19 on clinics and clinical faculty. The goal was to identify any concerns or disparate impacts of COVID-19 on clinics and clinicians as compared to their non-clinical peers. For the purposes of the survey and this report, the terms clinicians, clinical courses, clinical faculty, and clinical staff encompass both clinic and externship teaching, administration, and operations. Where respondents referred specifically to externship-related issues, those comments are highlighted in our findings.

This report begins with an outline of the survey methodology, demographics, and findings. We summarize the comments and responses as to how clinical courses, clinical faculty, and clinical staff responded to changes in instruction and practice brought upon by the pandemic and we look closely at instances of differential treatment of these groups. The survey results make clear that clinicians and clinical courses were not treated differently or worse than doctrinal faculty and courses during the pandemic; however, the data also elicited some concerns. This report captures aspects of the experience of clinical teachers and staff that went well during the first seven months of the COVID-19 pandemic as well as concerns that arose primarily when the unique needs of clinical courses were not accommodated, or when clinicians were provided insufficient resources. We also offer recommendations for clinicians and clinical programs to strengthen their preparation and ensure equitable responses to future unforeseen challenges. These recommendations include highlighting clinicians' need for greater autonomy and discretion given their unique responsibilities, attention to ethical issues that require special attention, the importance of responding to the needs of diverse clinicians, and maintaining allegiance to principles of diversity, equity, and inclusion.

I. BACKGROUND

As educators and advocates for justice, clinicians have trained a critical eye on the justice system, the application of laws and policies, and the profession itself. Clinicians have a long history of examining the ways in which clinical teachers and clinics are positioned vis-à-vis other aspects of the law school curriculum, and the law school power structures.⁴ The survey that is the subject of this report was designed

⁴ BRYAN L. ADAMSON, BRADFORD COLBERT, KATHY HESSLER, KATHERINE R. KRUSE, ROBERT KUEHN, MARY HELEN McNEAL, CALVIN G. C. PANG & DAVID SANTACROCE, *THE STATUS OF CLINICAL FACULTY IN THE LEGAL ACADEMY: REPORT OF THE TASK FORCE ON THE STATUS OF CLINICIANS AND THE LEGAL ACADEMY* (2012); *BUILDING ON BEST PRACTICES—TRANSFORMING LEGAL EDUCATION IN A CHANGING*

to obtain a richer understanding of the circumstances that clinical educators faced in 2020 as the result of the COVID-19 pandemic. The survey emerged from a series of conversations among clinicians, beginning in the summer of 2020. In July of 2020, the Clinical Legal Education Association and the Association of American Law Schools sponsored a Virtual Clinical Conference.⁵ At the virtual clinical conference, during a meeting of the Clinicians of Color Committee, members raised the question of the existence of pandemic-related equity issues. As a result, the AALS Section on Clinical Legal Education asked the AALS Policy Committee, in partnership with CLEA's Committee for Faculty Equity and Inclusion, to explore these issues further.⁶ The AALS Clinicians of Color Committee members described a number of specific issues. First, some members expressed concern that some law schools required (either explicitly or through other forms of pressure) clinicians to offer their class in person while other courses in the curriculum were conducted remotely.⁷ Second, in situations where some of a law school's clinics were in-person and others remote, there was a concern that clinics taught by people of color were disproportionately offered in person while clinics taught by older, white faculty were being taught remotely.⁸ Of course, this concern was complicated by the need for vulnerable groups to take extra precautions.⁹ Finally, the committee members expressed a concern that clinicians who asked law schools to support the requirements of in-person lawyering (for example, immigration court requiring paper copies or wet signatures) may not have always considered the impact on support and administrative staff who were being required to come

WORLD 432-443 (Deborah Maranville, Lisa Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo-Lopez, eds., 2015).

⁵ See CLINICAL LEGAL EDUCATION ASSOCIATION, 2020 AALS/CLEA Virtual Clinical Conference Materials, Tuesday-Thursday, July 21-23, 2020, <https://www.cleaweb.org/2020aalsclea>.

⁶ Email from Deborah Archer, then Chair of the AALS Section on Clinical Legal Education Policy Committee, to members of the committee (July 28, 2020)(on file with the authors).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* According to the CDC, people at risk for severe illness from COVID-19 include older adults, people with medical conditions, and pregnant or recently pregnant people. *Different Groups of People*, CDC (Apr. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>. The survey addressed this concern by asking a broad question to participants about whether they were members of a group that has been identified as particularly vulnerable or high risk for experiencing complications from COVID-19. The survey did not specify the definition of "vulnerable" or "high risk." Some respondents answered a simple yes or no to this question without further comment. Those who added comments indicated that their response was based a variety of factors such as age and medical conditions.

in to work in person and who are disproportionately people of color.¹⁰

Our review of the survey findings led us to conclude that a minority of clinicians were required to offer their class and to attend to clinic matters in person. The second concern, that clinics taught by people of color were disproportionately required to be taught in person, was not borne out by the data. The third concern, that law schools or clinicians failed to consider the impact on support staff, was not explicitly reflected in the responses. Nonetheless, the survey not only provided useful information, but also raised additional issues that should be investigated further. For example, although it is documented that a majority of clinicians are female, the ways in which COVID-19 may have disproportionately affected female clinicians is beyond the scope of this report as well as the survey itself, and deeper investigation could reveal opportunities for advocacy to ameliorate disparities.¹¹ Moreover, while students are central to the work of clinicians, neither the survey nor this report addresses the ways COVID-19 impacted students.¹²

II. METHOD

Given that clinicians are typically engaged in multiple activities simultaneously, including seminar teaching, student supervision, client representation, and academic and other forms of research, and that their time is limited, especially during the pandemic, the survey entitled “Survey: Clinics and Pandemic Teaching” was distributed directly to clinicians in the media most likely to reach them. In October 2020, AALS Section on Clinical Legal Education Chair Wendy Bach posted to the LAWCLINIC listserv and the LEXTERN listserv a notice of the survey together with a link to the survey itself.¹³ While these media are followed by most clinicians, the respondents were limited to those clinicians that follow listserv discussions. As a result, and because the survey was voluntary, the perspectives of some clinicians may not be included.

The survey asked respondents what kind of course they taught

¹⁰ *Id.*

¹¹ For a survey and discussion on the global impact of COVID-19 on female academics generally, see T. Murat Yildirim & Hande Eslen-Ziya, *The Differential Impact of Covid-19 on the Work Conditions of Women and Men Academics during the Lockdown*, 28 *GENDER, WORK, & ORGANIZATION* 243 (2020).

¹² For reports on a survey of black law school graduates in 2020, see Sarah J. Schendel, *Listen! Amplifying the Experiences of Black Law School Graduates in 2020*, *NEBRASKA L. REV.* (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=377076.

¹³ The survey is available at https://docs.google.com/forms/d/e/1FAIpQLScx-YwYwKCJSASzqgSURjrTbhFIW03z81ntiype8-rHL0txa_g/viewform (last visited Apr. 26, 2021).

(law clinic, field placement, or other); their institutional affiliation (optional); whether they were a member of a group identified as particularly vulnerable or high risk for experiencing complications of COVID-19; their status (non-tenure long-term contract, tenure-track, tenured, fellow, adjunct, or other); their racial identity; number of years in teaching (1-3, 3-7, more than 7); whether clinical courses were treated differently from other courses in the curriculum as the result of pandemic restrictions; whether clinical faculty were treated differently; whether their clinical course was treated differently from other clinical courses; how clinic staff were impacted and what their institution had done to address the impact; and finally, whether they felt pressured, explicitly or implicitly, to teach a clinical course in person or hybrid. 220 people responded to the survey, identifying 103 schools. The survey responses were aggregated to reach our findings.

III. FINDINGS

In this section, we highlight key findings from the analysis of the data. Figures 1 through 5 reflect the demographics and other characteristics of the respondents. Of those responding, 81% taught law clinics, and 16% taught externship or field placement courses.¹⁴ Thirty-two percent of respondents identified as being a member of a group that has been identified as particularly vulnerable or high risk for experiencing complications from COVID-19. Sixty-one percent of respondents were not so identified, and 6% did not answer. Of those responding, 41% were non-tenure track long-term contract employees, 27% were tenured employees, 11% were tenure-track employees, 3% were adjunct employees, and 19% identified as “other.” The racial identity of respondents was 63% white/non-Hispanic/Caucasian, 12% Black/African American, 10% Asian, 3% Hispanic, 9% other, and 3% did not respond. Sixty percent of respondents had taught for more than 7 years, 20% had taught for 3-7 years, and 20% had taught for 1-3 years.

¹⁴ See Appendix A for a list of the institutional affiliations of respondents.

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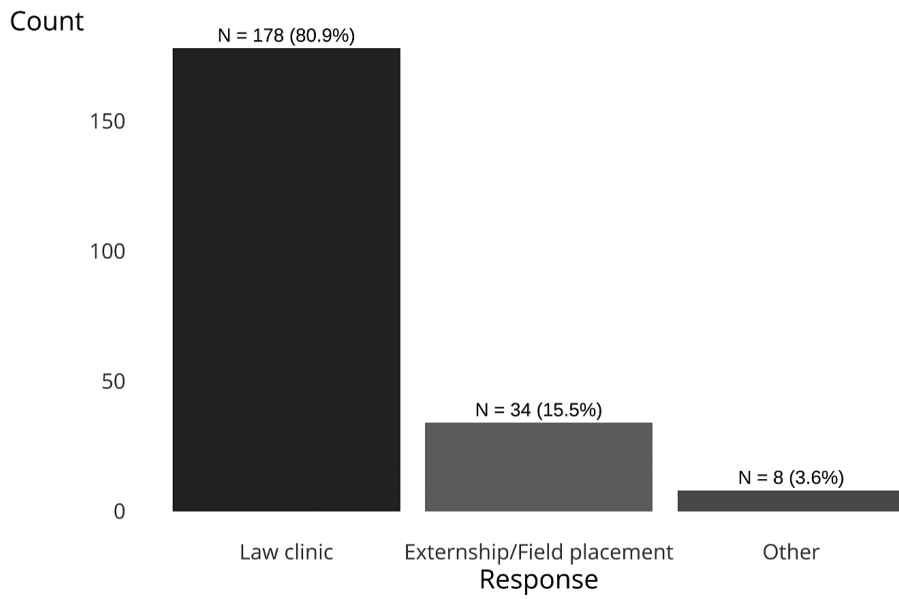


FIGURE 1: TYPE OF COURSE TAUGHT

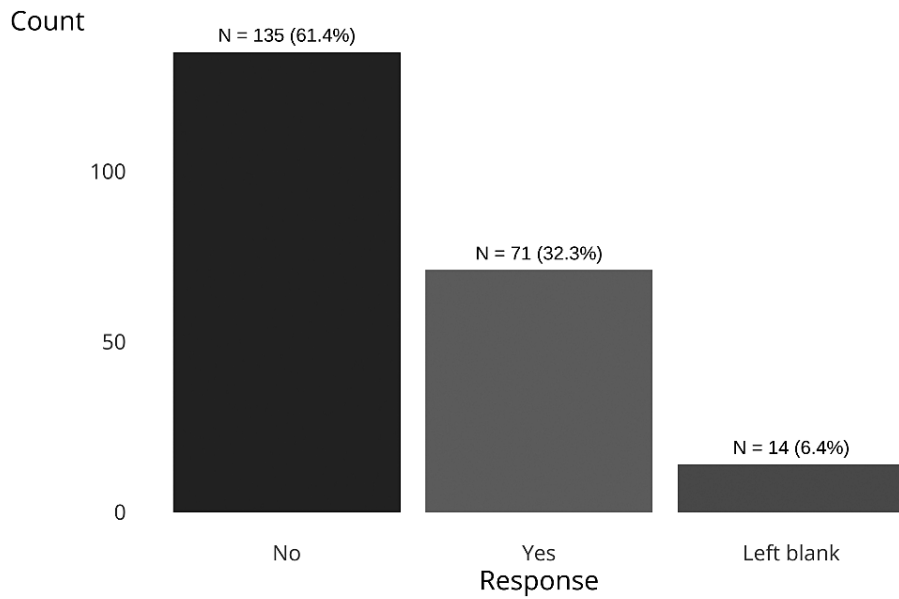


FIGURE 2: RESPONDENT IDENTIFIED AS VULNERABLE

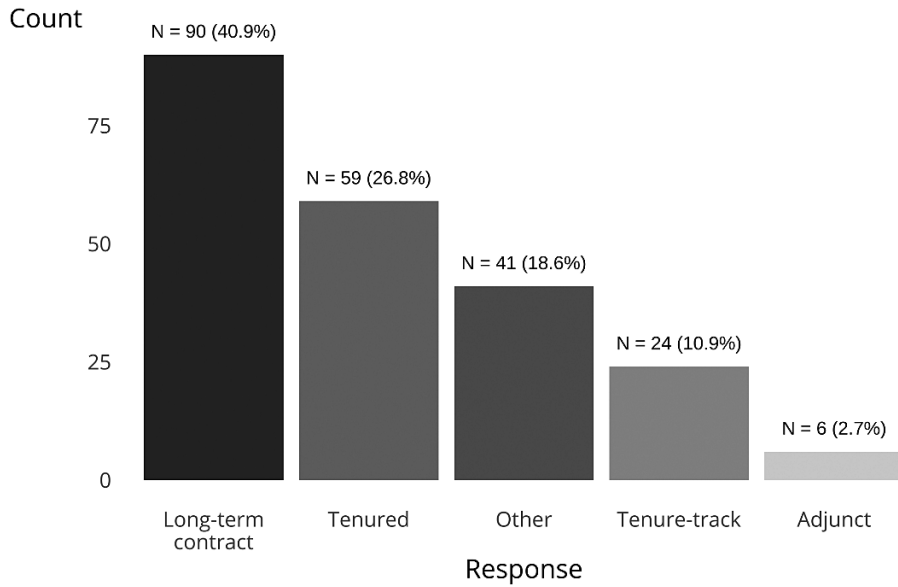


FIGURE 3: RESPONDENT STATUS

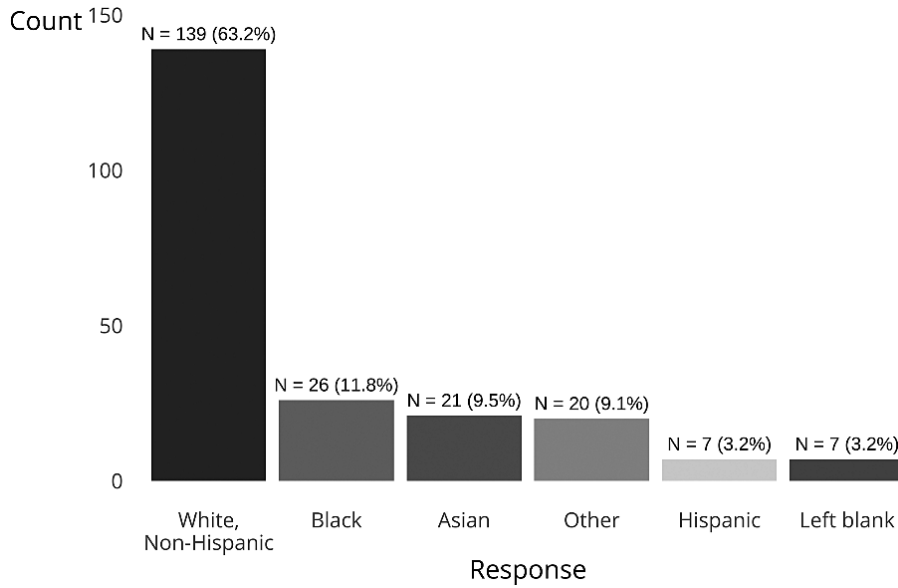


FIGURE 4: RESPONDENT RACE

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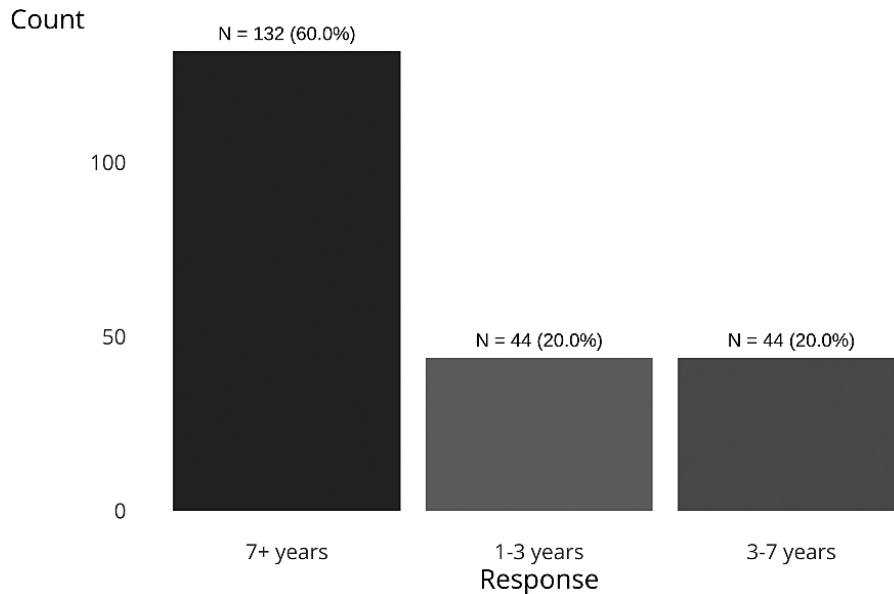


FIGURE 5: HOW LONG RESPONDENT TAUGHT CLINICAL COURSE

Figures 6 through 9 show the responses to the following narrative questions:

- At your institution, were clinical courses treated differently than other courses with regard to pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? If so, how?
- At your institution, were clinical faculty treated differently than other faculty with regard to pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? If so, how?
- Was your clinical course treated differently than other clinical courses at your institution? If so, please describe how and your understanding of the basis for that distinction?
- Have you felt pressured by your institution or colleagues, either explicitly or implicitly, to teach your clinical course in person or in a hybrid model? If so, please describe how you felt pressured?¹⁵

In response to the first question regarding whether there were differences in the treatment of clinical courses and other courses, 66% of participants answered “no,” 14% responded “yes,” and 20% responded “other.” In response to the second question as to whether there was differential treatment of clinical faculty versus other faculty, 5% of respondents answered “yes,” 79% of respondents answered “no,” and 16% gave no answer. In response to the third question listed above, 83% of respondents indicated that their institution did

¹⁵ See Appendix B for a copy of the survey issued to respondents.

not treat their clinical course differently than other clinical courses, 2% responded that there were differences in treatment of clinical courses, and 15% responded “other.” In response to the last question, relating to whether clinical faculty felt pressure to teach in person or hybrid, only 3% answered “yes,” 72% answered “no,” and 25% answered “other.”

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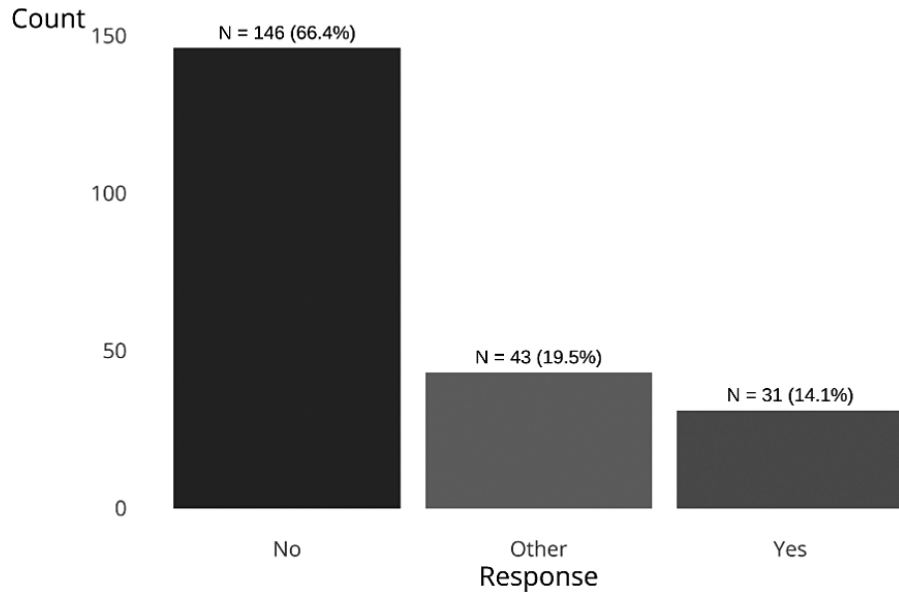


FIGURE 6: CLINICAL COURSE TREATED DIFFERENTLY THAN OTHER COURSES

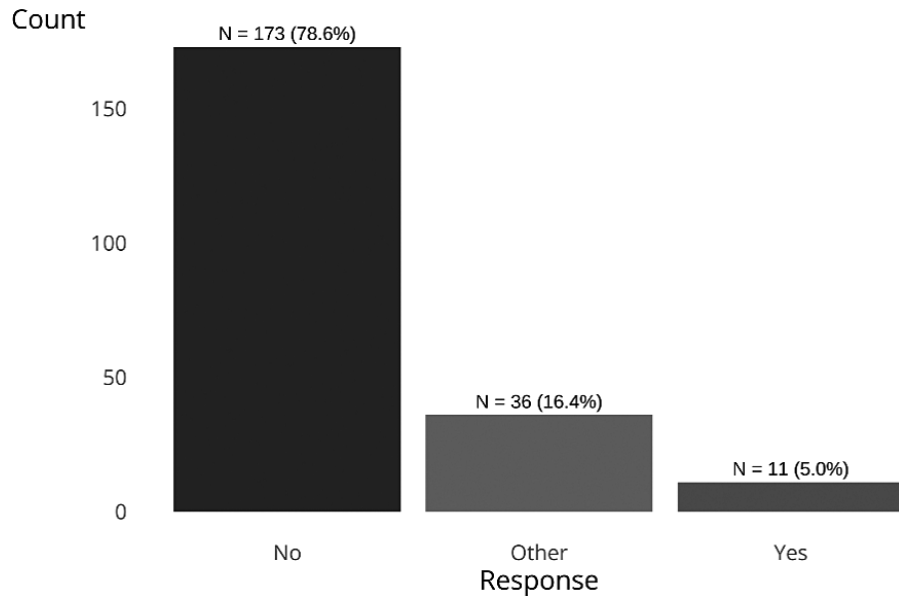


FIGURE 7: CLINICAL FACULTY TREATED DIFFERENTLY THAN OTHER FACULTY

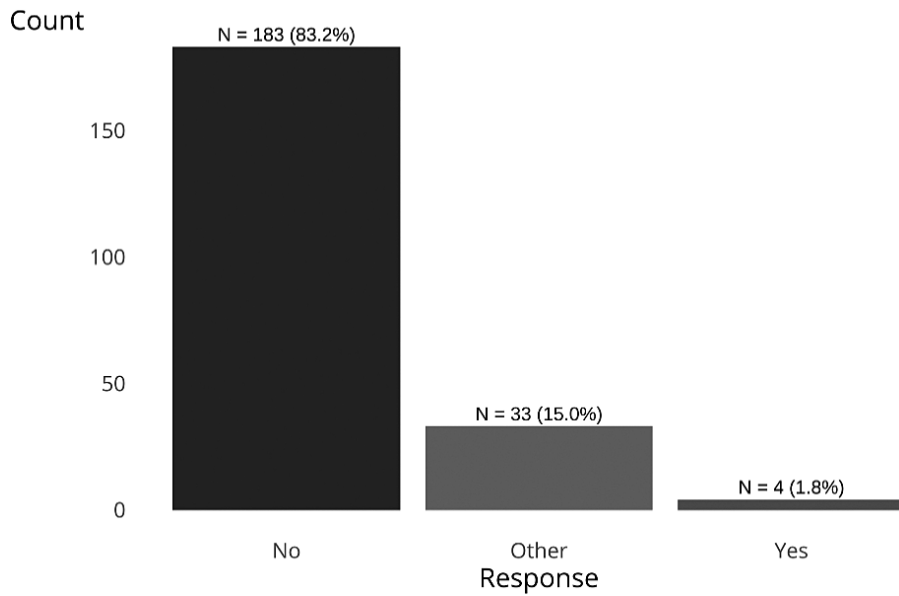


FIGURE 8: RESPONDENT'S CLINICAL COURSE TREATED DIFFERENTLY THAN OTHER COURSES

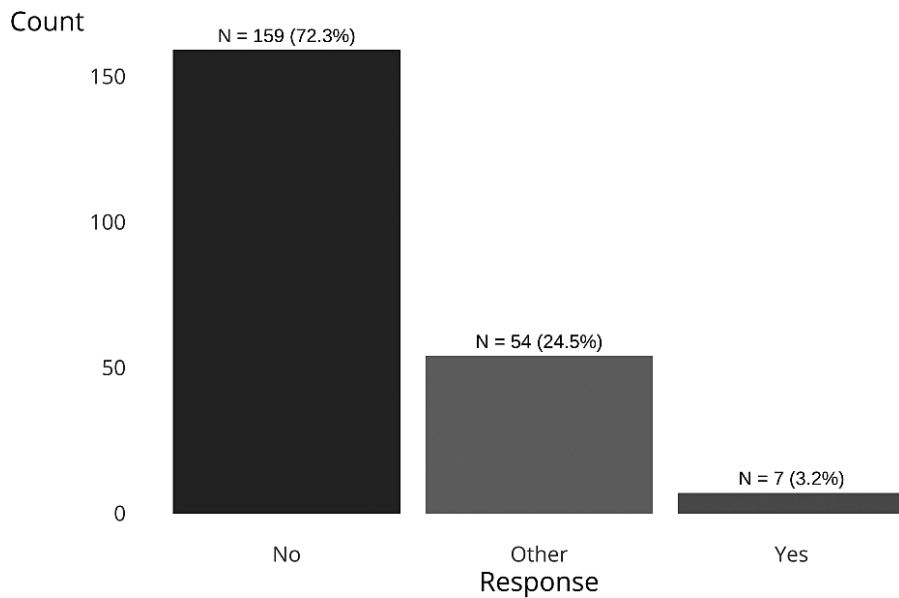


FIGURE 9: RESPONDENT FELT PRESSURE TO TEACH CLINICAL COURSE IN HYBRID OR IN-PERSON FORMAT

- A. *Most clinical courses were not treated much differently than other courses, and when there was different treatment, it was mostly a result of the needs presented by client work.*

Amid vast changes brought on by school closures and the shift to online education, the data indicate largely that institutions did not treat clinical courses much differently than other courses with regard to requirements during the pandemic. When asked whether the law school treated clinical courses differently from other courses with regard to pandemic restrictions or the provision of in-person, hybrid, or remote teaching, 66% of participants answered “no,” 14% responded “yes,” and 19% responded “other.”¹⁶ When law schools treated clinical courses differently than other courses, it was primarily due to the law school administration’s recognition of the nature of clinical work and law practice. Many clinicians believed their institutions gave them flexibility and discretion to craft their courses and to make decisions about how their courses were run. Clinic faculty were allowed to teach in-person, in some cases when other faculty were not, for a variety of reasons. For some, institutions allowed in-person teaching due to smaller class size. Others cited the need for in-person access to ensure adequate representation of clients. Several commenters noted that clinic faculty and students accessed the law school building and clinic space to conduct clinic work and meet with clients, even when their institution otherwise barred access to the law school to other students, faculty, or visitors.

Many commenters shared that there were some restrictions in place for the granting of in-person access. In some cases, students obtained clearance to do in-person activities and in some instances, faculty members were required to be present. Some clinics had to develop safety plans for in-person work. Some students were required to sign a waiver before coming to campus. In some cases, the law school deemed clinic work “essential.”¹⁷ One commenter noted that his status as clinical teacher facilitated the designation as an essential

¹⁶ In response to this question, most commenters grouped externships and clinics in their responses. One response only addressed externships and, in that instance, instructors taught all externship seminars remotely, but students’ placements varied between remote, hybrid, and in-person. One commenter differentiated between externships and clinics, sharing that the law school permitted externship instructors to teach in person while clinical instructors were not.

¹⁷ Whether or not a lawyer is considered essential during the pandemic varied from state to state. See Joshua Lenon, *Are Lawyers Essential Workers in Your State?*, CLIO, <https://www.clio.com/blog/lawyers-essential-services/>. See also Lyle Moran, *Law Firms are Considered Essential Businesses in Some States Amid the Coronavirus*, ABA JOURNAL (Mar. 26, 2020), <https://www.abajournal.com/web/article/lawyers-considered-essential-workers-in-some-states-amid-coronavirus>.

worker and he was able to work in person when the rest of the university involuntarily went online. Another indicated that their law school deemed travel to see clients or attend hearings “essential” and not subject to a ban on local or other travel at the time. One school allowed all clinic work, on and off campus, deeming it “essential,” but also required those working in the clinic to follow all public health protocols including COVID-19 testing.

Though most commenters felt that they received flexibility and discretion to adapt their course given the unique nature of law practice, some commenters shared that students and faculty faced restrictions to access to the law school building and clinic space to conduct clinic work. One commenter responded that there were more restrictions for clinics than for doctrinal courses, limiting students’ ability to complete their casework. In one instance, faculty could conduct in-person casework, but students were restricted from doing so and faculty had to go to campus or court to do it. One commenter reported that although clinic students received permission to access the building, the requirements were so onerous that almost no students did it. One commenter expressed concern about the lack of guidance given to the “ethical dilemmas presented by the sudden shift to remote client representation.” One commenter shared that some clients were extremely uncomfortable with telephone and video conversations. At one school, clinic students could not work in person in the clinics, but externship students worked in person at their field placements. One commenter noted that the law school did not allow students on campus but permitted faculty. As a result, clinic faculty had to perform duties that students normally would.

B. There were some differences in treatment of clinical courses based on factors such as class size and practice area.

For the most part, clinicians reported that there were no differences between requirements for clinical courses and other courses at their institution during the pandemic. When asked about differences between courses, 83% of respondents indicated that their institution did not treat their clinical course differently than other clinical courses, 2% responded that their institution treated clinical courses differently, and 15% responded “other.” When asked to describe the basis for any distinction, commenters cited that the nature of law practice and client responsibilities accounted for differences in treatment between clinics. Commenters linked some differences to class size. In some cases, law schools encouraged, required, or “pressured,” instructors to teach smaller classes in person.

At one school, criminal clinics received more leeway than civil

clinics because criminal court appearances were necessary. One commenter shared that their clinic was one of the few clinics that regularly appeared in court, and therefore, they had more to juggle with ongoing cases. One commenter discussed how they shifted their clinic law practice by handling only matters with remote hearings. A commenter whose clinic was project-based did not engage in activities that they considered “essential,” and therefore, the law school expected clinical instructors to operate the clinic virtually.

Some clinics also reported that their law schools made exceptions to school-wide restrictions for their clinics. For example, some law schools excluded clinics from the mandatory recording requirement of all virtual classes, due to the confidential nature of discussion, and some clinics received access to their office to meet with clients as needed for representation. The data reflect that clinic faculty and students received a wide range of protective gear when present on campus. A few commenters mentioned that schools provided protective gear, including personal protective equipment (PPE), masks, and sneeze guards for in-person meetings in the clinic space. One commenter noted that strict protection protocols were in place for in-person work and meetings.

As with the previous question, while most commenters expressed that they received discretion to run their courses safely, some commenters expressed concerns. At one school, a commenter reported that clinicians uniformly did not have much say in decisions about how much interaction they had with clients and other persons involved in cases. One clinician reported that circumstances forced him to withdraw from a case despite concerns that withdrawal would be unethical because the school was concerned about resources.¹⁸ One clinician shared that the law school approved their request for online teaching,

¹⁸ The commenter did not elaborate on which resources were lacking. The National Center for State Courts (NCSC) contains a variety of links to state court COVID-19 websites and virtual hearing resources and guides. See *Coronavirus and the Courts*, NCSC, <https://www.ncsc.org/newsroom/public-health-emergency> (last visited Aug. 11, 2021). The American Bar Association (ABA) responded to the COVID-19 pandemic by adopting a resolution that urged federal, state, local, territorial and tribal governments to 1) utilize virtual or remote court proceedings established as a result of the pandemic; 2) form committees to establish or review the use of virtual or remote court proceedings and make recommendations for procedures and best practices; 3) ensure that virtual or remote court proceedings guarantee equal access and meet standards of fundamental fairness and due process; 4) provide advance notice of proceedings and ensure full and meaningful public access to virtual proceedings while protecting privacy; 5) reintroduce in-person court options as soon as safely feasible, and 6) study the impacts of virtual or remote court procedures and take steps to make changes if such studies suggest a prejudicial effect or disparate impact on case outcomes. See AM. BAR ASS'N, HOUSE OF DELEGATES RESOLUTION 117, https://www.americanbar.org/news/reporter_resources/annual-meeting-2020/house-of-delegates-resolutions/117/ (last visited Aug. 11, 2021).

but they were unsure why other clinician colleagues' requests were not approved.

C. Most clinical faculty reported that there was no difference in the treatment of clinical faculty, and those who reported differences cited the need for in-person client work. Some experienced significant challenges, including difficulty with teaching experiential courses virtually and lack of guidance, resources, and compensation.

By and large, most clinical faculty responded that clinical faculty were not treated differently than other faculty with regard to pandemic restrictions or with requirements to teach in person, hybrid, or remotely. When asked, "At your institution, were clinical faculty treated differently than other faculty with regard to pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching?", 5% of respondents answered "yes," 79% of respondents answered "no," and 16% gave no answer.¹⁹ The comments echoed some of the comments to the prior question, though the themes were slightly different. Several commenters noted that clinicians had more flexibility, broader options, and more autonomy. The most common rationale cited for why clinical faculty received differential treatment was to allow building access for work associated with the nature of law practice, including clinic and case work, client meetings, court appearances, and in-person office hours. Some commenters explained that when given the option, they elected in-person instruction due to the nature of the clinic work.

Clinical faculty expressed several challenges in response to this question. Some commenters addressed the general difficulties with facilitating experiential learning online and expressed that teaching online made experiential teaching difficult. One commenter noted that their school asked clinical faculty on 9-month contracts to supervise law students during the summer, so students had summer employment paid for by the school. In this case, and others, the law school did not compensate clinical faculty for this work, but doctrinal faculty automatically received summer pay. There were some differences in individual treatment of clinic faculty. A few commenters mentioned that their law schools allowed high-risk clinicians to teach remotely. One commenter who was a person of color believed a white male col-

¹⁹ A few commenters voiced some distinctions between clinic and externship instructors in their responses. One commenter discussed the need for "externship clinicians" to develop consistent protocols and brought up the unique requirement of externship faculty to coordinate with outside placements for remote work and socially distanced in-person work. One commenter shared that externship seminars were online, but students had the option to work in person at their placements.

league felt pressure to teach in person. One commenter expressed frustration at the lack of guidance for faculty on the sudden shift to remote practice and the need to find solutions with little in the way of resources and in the face of university restrictions on technology and budget.

D. Staff and clinic operations were impacted by pandemic restrictions with staff experiencing increased responsibility and loss of community, while clinic offices swiftly migrated clinic operations and technology for virtual work.

When asked “How have clinic staff been impacted by pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? What has your institution done to address the impact?” responses reflect that commenters defined staff differently. Many responses indicated that respondents considered themselves staff and many commenters responded in the first person to this question. Some responses specifically addressed non-teaching clinic personnel. Most comments focused on the second part of the question relating to what institutions did to address the impact and discussed topics, such as the process of migrating clinic operations and incorporating technology, increased workload, staff working from home and/or rotating in the office, support from administration and concerns about the loss of collegiality and community.

Law school clinics vary in how they structure clinic operations and incorporate technology. Clinicians found it easier to transition to remote work when the operating systems within their clinics were already set up to allow for off-site access. One example is the use of cloud-based case management systems that made it easier to access case files from home. Cloud-based case management systems such as Clio allowed clinic faculty, staff, and students to access client information, case records, documents, schedules and time-keeping mechanisms from one software system accessed remotely. When clinic operations did not include cloud-based systems prior to the pandemic, staff needed to access paper files in their offices. Law schools responded to this concern by developing reservation systems that required advanced notice and limited the number of people in the clinic space at the same time. Some clinic programs needed to purchase programs such as eFax and Adobe to continue their clinic work in a remote setting. The pandemic was the impetus for redesigning clinic operations in law schools. For the first time, some clinics transitioned to using paperless files. Despite the transition to electronic files, handling incoming mail was a common theme in clinics across the country and required staff to collect mail onsite, scan and distribute to the

appropriate person by e-mail. Clinics used a designated person to handle mail or rotated the task among clinic staff.

The circumstances imposed by the pandemic caused some clinic staff to re-evaluate their perspectives on incorporating technology in their day-to-day operations. Staff who were previously resistant to using technology to do their work started embracing features such as cloud storage and videoconferencing. It is unclear whether perceived lack of necessity or other factors drove prior reluctance to use technology. Even when institutions provided additional help with using zoom and teaching online, clinicians experienced feelings of anxiety and depression associated with the new restrictions and change. One assumption is that the speed and involuntary nature of changes were difficult for staff to adjust to. Faculty who were less comfortable with Zoom and other platforms relied on other clinic staff and increased support from information technology (IT) to troubleshoot issues with equipment and software.

Survey responses were consistent in describing an increased workload during the pandemic. Commenters attributed the increased workload to changes in running clinic remotely and student limitations. Many clinicians had a steep learning curve and needed to learn how to teach remotely as they were doing it. For some instructors, it was not apparent that anyone was prepared to provide trainings on running clinical programs remotely. Prior to the pandemic, there were few (if any) guides on operating law school clinics remotely. Clinicians rose to the occasion and wrote the handbook on the job. Faculty teaching hybrid classes relied on zoom assistants, plexiglass dividers, stickers to assist with social distancing, wipes, and personal protective equipment (PPE) provided by the school. Many clinicians spent the summer of 2020 researching and attending workshops on teaching remotely and specifically teaching clinic remotely. Professor Michelle Pistone offered a series titled the *Top 5 Tips for Teaching Law Online* during the Clinical Legal Education Association's spring conference and over the summer.²⁰ Some clinics changed their case selection to respond to the need for legal resources addressing COVID-19.

²⁰ *Top 5 Tips for Teaching Law Online*, AALS (June 3, 2020), <https://www.aals.org/sections/list/technology-law-and-legal-education/2020techwebinar-top-online-teaching-tips/>; Michele Pistone, *Bootcamp: Designing Your Online Law Course*, EVENTBRITE, <https://www.eventbrite.com/e/bootcamp-designing-your-online-law-course-tickets-112833931326#> (last visited Aug. 8, 2021).

E. Most respondents responded that they did not feel pressure to teach in person, but a significant number of respondents noted that they felt increased internal pressure and stress related to the nature of their work in their decisions to teach in person.

When asked “Have you felt pressured by your institution or colleagues, either explicitly or implicitly, to teach your clinical course in-person or in a hybrid model? If so, please describe how you felt pressured?” Only 3% answered “yes,” 72% answered “no,” and 25% answered “other.” With few commenters answering yes, clinical faculty rarely felt pressured to teach their clinic course in person or in a hybrid model. Even though the majority of survey respondents did not feel pressured, the quarter answering “other” leave us with undeniable impressions. Based on the survey responses, some institutions presumed that clinicians should teach in person if feasible.²¹ Instead of a preference-based standard, some faculty needed to request personal or medical accommodations in order to teach remotely.²² On the other hand, law schools allowed many students to choose between in-person and remote instruction without any explanation.

Respondents in the “other” category clarified that some pressure to teach in person was internal or based on the nature of the work. Overall, instructors agree that students have a better clinic experience in-person. At times, this acknowledgement was at odds with staff and community health. One school that initially pressured faculty to continue teaching in person changed course when infection rates of COVID-19 increased. When instructors did feel comfortable teaching in person, some institutions restricted their ability or childcare challenges made it difficult. Looking forward, the law school should consider setting objective standards for determining when and how they should exempt instructors from teaching in person.

IV. RECOMMENDATIONS

Clinical faculty have a unique role in the law school space. We are simultaneously teachers and practitioners. We supervise law students in the representation of actual clients and hold the critical responsibility of serving clients and running a law practice from within the confines of the law school. As practitioners, we are subject to the ethical obligations of the legal practice and the lawyer-client relationship, such as competence and client confidentiality, and are required

²¹ One commenter stated, “There is a drive at our institution to do as much in person as possible.”

²² Another commentator was required to teach in person because they were not in a high-risk group.

to provide adequate supervision of students. At the same time, clinicians are often also reaching for equity and non-disparate treatment in the law school space.²³

The sudden shift to virtual practice brought many unique challenges for clinical faculty. The stark reality is that another pandemic or emergency is possible and clinical faculty and law schools must be prepared for this prospect.²⁴ In this section, we summarize a set of recommendations and best practices to support clinical faculty and to plan for the possibility of future emergencies.

A. *Clinicians must be given autonomy and discretion to manage shifts in their law practice in the face of an emergency.*

It is, resoundingly, a good sign that most clinical faculty were provided support, flexibility, and discretion to manage their work and their access to campus as needed during the pandemic. It demonstrates that law school administrations recognize the professional obligations of clinical faculty, whose jobs and professional duties differ from others in the law school.

Though prevalent, such discretion and flexibility was not entirely universal. Not only did some clinicians face rigid rules, but some also felt lost and lacked guidance on how to proceed with minimal resources and support. In addition, some clinical faculty experienced discretion, but were also faced with increased workload and responsibilities as a result of the shift to remote work.

Given the significant responsibility of clinicians and their obligations to clients, law schools must provide clinical faculty with support and meaningful guidance. Clinical teachers are most knowledgeable of their respective practice areas, client communities, and students' experiential learning goals. They should be supported in their decisions about how best to serve clients and support student learning.

At the same time, clinicians should never be expected to just figure it out by themselves. The law school should provide resources on general safety protocols applicable to the clinic setting, online tools for experiential courses, and safety equipment and gear as needed. Clinic directors and experiential deans may well serve as advocates for the experiential faculty within the law school and the university communities.

The nearly universal response of law schools largely affording cli-

²³ See Jennifer Lee Koh, *Reflections on Elitism after the Closing of a Clinic: Pedagogy, Justice, and Scholarship*, 26 CLIN. L. REV. 263 (2019).

²⁴ See Jeffrey R. Baker, Christine E. Cerniglia, Davida Finger, Luz Herrera & JoNel Newman, *In Times of Chaos: Creating Blueprints for Law School Responses to Natural Disasters* 80 LA. L. REV. 421, 486 (2020).

nicians discretion and flexibility is strong support for future advocacy, either on an individual or wide-scale basis. The autonomy and discretion granted to clinics during the pandemic backs the idea that clinicians have ethical responsibilities to clients and there are features of clinic work that are fundamentally different from other courses in the law school. Therefore, clinics deserve certain protections and exceptions to rules that might apply more broadly to law teachers.

B. Law schools should pay special attention to the ethical obligations required for legal practice.

Clinical professors have professional commitments that go beyond teaching. Clinicians have obligations to not only students and colleagues, but also an ethical mandate to clients that they cannot easily discharge despite law school policies.²⁵ The rules of professional conduct still apply to law school clinicians during the pandemic and are likely to apply in future crises.²⁶ These duties include competence, confidentiality, diligence and supervision to name a few.²⁷ The pandemic prompted revisions to the Rules of Professional Conduct in response to the inequities and challenges highlighted during this difficult time period. In 2020, the American Bar Association (ABA) amended Rule 1.8(e) which limited a lawyer's ability to give financial assistance or gifts to a client. Under the "humanitarian exception," a lawyer providing pro bono representation through legal services or a law school clinic may provide modest gifts to clients for food, rent, transportation and other basic living expenses.²⁸

According to the survey, the fact that judges held court hearings remotely made it easier for many clinicians to work from home while still fulfilling their client obligations. Survey results revealed that in some cases, clinicians were able to purchase more home office equipment than the rest of the faculty because they were running law offices. This type of acknowledgement was very meaningful to the clinical community. Without it, clinicians who are also licensed attorneys, would face out-of-pocket expenses and possible ethical viola-

²⁵ For example, the Model Rules of Professional Conduct provide that "a lawyer shall act with reasonable diligence and promptness in representing a client." MODEL RULES OF PROF'L CONDUCT r. 1.3 (AM. BAR ASS'N 2020).

²⁶ Roberta Tepper, *Ethics in the Time of COVID*, AM. BAR ASS'N LAW PRACTICE MAGAZINE (Jan. 1, 2021), https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2021/jf21/teppersupport/.

²⁷ MODEL RULES OF PROF'L CONDUCT r. 1.1, 1.6, 1.3, 5.1 and 5.3 (AM. BAR ASS'N 2020).

²⁸ Cristina D. Lockwood, *'The Presence of Justice': A Call to Expand the Humanitarian Exception in ABA Model Rule of Professional Conduct Rule 1.8(e)*, NOTRE DAME J. L. ETHICS & PUB. POL. (forthcoming), <https://ssrn.com/abstract=3801696>, citing MODEL RULES OF PROF'L CONDUCT r. 1.8(e)(3) (AM. BAR ASS'N 2020).

tions. Law schools should devote time and resources to making sure their clinical programs are prepared to continue operating effectively in the event of circumstances that require remote work. One example is to consider investing in legal case management software such as Rocket Matter, Clio or MyCase.²⁹ These software systems would allow professors and student attorneys to access client files from home, reducing the need to enter campus buildings to access legal documents. In addition, all needed documents should be stored in secure cloud-based storage systems. The survey revealed that some law schools provided personal protection equipment (PPE) for clients. However, a few commenters discussed how and whether they were able to accommodate clients who did not have access to technology. This is an area for ongoing research in public interest law and clinical legal education.

Law schools should look to national standards in planning for future emergencies and ensuring that their clinic systems are well-positioned to respond adequately. Additionally, clinic faculty should participate in forums where these decisions are made to ensure that their unique perspectives are taken into consideration.

C. It is crucial for clinicians to share information, especially during moments of crises.

One of the ways in which clinical legal education may be unique is the degree to which clinicians collaborate within and across institutions. It is common for clinicians to share their experiences with teaching, clinic design, seminar design, casework, and research. Clinicians engage in this practice as part of their own reflection, through teaching rounds, online and in-person, at conferences, via committees and small groups, and among colleagues. Exploring how COVID-19 impacted clinic operations, both through informal channels as well as more formal channels such as this survey is critical to our collective understanding of the impact of the pandemic on clinicians and their staff, and our ability to use that information to improve and strengthen our programs.

D. Diverse clinicians and clinicians who are vulnerable should be provided heightened support.

It is well known that there is a crisis of diversity among clinical faculties,³⁰ and it must not go without saying that there is, therefore,

²⁹ Nicole Black, *The Latest on Legal Document Management Software*, ABA JOURNAL (Apr. 27, 2020), <https://www.abajournal.com/web/report/the-latest-on-legal-document-management-software>.

³⁰ CLEA Committee for Faculty Equity & Inclusion, *The Diversity Imperative Revis-*

an increased need to check in with and support clinicians of color, new clinicians, non-tenure track clinicians, and other vulnerable groups during crises, such as the COVID-19 pandemic. In our study, 25% respondents self-reported as persons of color, 20% as teaching for 3 years or less, and 41% as non-tenure track long-term contract employees. The study did not track other potentially important characteristics such as gender, parental status, physical and mental disabilities, or age.

Thirty-two percent of respondents identified as being a member of a group that has been identified as particularly vulnerable or high-risk for experiencing complications from COVID-19. Commenters described a multitude of factors that made them vulnerable, including advanced age, medical conditions such as diabetes and asthma, blood type, and race.³¹ Though most commenters responded that schools were supportive of individuals who were vulnerable due to their health conditions, some commenters reported that they were required to teach in person despite their vulnerable status. One clinical faculty member who was vulnerable due to a health condition had to take on additional responsibilities because students were not allowed to be present on campus.

During times of such intensity as a global pandemic, which often come with urgent professional demands, such as the subsequent sudden need to shift to virtual practice and teaching, it is increasingly important to support clinicians who are new to the profession, clinicians of color, non-tenured clinicians, and clinicians who are vulnerable due to their health condition or other reasons.³² During the pandemic, experiential faculty dealt with the added stresses of legal practice during ongoing health and economic crises. And further, clinicians work very closely with students. Because of these close relationships, clinicians often took on the additional role of support for

ited: Racial and Gender Inclusion in Clinical Law Faculty, 26 *CLIN. L. REV.* 127 (2019).

³¹ One commenter mentioned that they were high risk because they were African American. It should not be overlooked that COVID-19 has taken a devastating toll on the African American community's health and well-being. See J. E. Wright & C. C. Merritt *Social Equity and COVID-19: The Case of African Americans*, 80 *PUB. ADMIN. REV.* 820 (2020).

³² For example, the transition to remote work disproportionately impacted female lawyers with children and lawyers of color. Women were more likely to experience disruptions to work due to personal obligations and feeling overwhelmed by their responsibilities. In a recent ABA study, 47% of lawyers of color said they feel at least some stress on account of their race or ethnicity and only 7% of white lawyers reported feeling stress at work because of their race. Amanda Robert, *How Should the Legal Profession Navigate a Post-COVID-19 World? ABA Group has Recommendations*, *ABA JOURNAL* (Apr. 26, 2021), <https://www.abajournal.com/web/report/abas-practice-forward-group-explores-effect-of-covid-19-future-of-profession-in-new-survey>.

students who struggled for various reasons during the pandemic.³³ This makes it especially important to support clinicians who are vulnerable for a multitude of reasons. Law schools should think preemptively about steps that can be taken to support groups who may need additional support and track outcomes for these individuals in moments of crises.

E. Law schools and clinics should develop emergency action plans that incorporate principles of diversity, inclusion, and equity.

Because of its limited focus, the survey did not ask specifically about Emergency Action Plans. In early March 2020, in anticipation of potential interruptions to clinics as the result of COVID-19, the Executive Committee of the AALS Section on Clinical Legal Education notified the subscribers to the clinic listserv that resources and policy materials for clinics and clinical programs could be uploaded and were available via a link.³⁴ Discussions about a multitude of issues appeared on the clinic listserv. Posters engaged in conversations about grading, confidential video conference meetings, and mail procedures. Many clinicians also discussed formalizing continuity plans for clinical programs in the event of a disaster or other unplanned significant event.³⁵ Some universities require departments to create such plans as a matter of course. While continuity planning was not necessarily mentioned in survey responses, such advance planning may nevertheless influence ways that both clinic and law school administrations govern themselves in the face of extraordinary circumstances in the future. Critically, those plans may either reinforce or disrupt the potential for disparities in impact from extraordinary circumstances like COVID-19. We recommend that schools that do not have a continuity plan consider developing one, taking into account equity, lessons from the survey, and experiences from COVID-19. Likewise, we recommend that schools that have an existing plan revisit it from a lens of equity, diversity, and inclusion to ensure that diverse and vulnerable clinicians and staff who would be affected by prospective plans or policies will be treated equitably.

³³ See *infra* note 39 and accompanying text.

³⁴ Email from Wendy Bach, AALS Section on Clinical Legal Education Chair (Mar. 7, 2020) (on file with the authors). The link to COVID-19 Experiential Learning Policy Resources is found at *Covid 19 Experiential Learning Policy Resources*, <https://www.dropbox.com/sh/9j738n5vxrdcoof/AACH3qMVnF9BMy3Iwx4W7VALa?dl=0> (last visited Aug. 8, 2021).

³⁵ See *id.* for examples.

F. During emergencies, it is critical that clinicians receive support from the law school community.

Clinicians benefited from law school support in receiving the flexibility to offer hybrid and remote classes, understanding the ethical obligations of clinicians but also in providing the resources necessary to meet those obligations. Conversely, the factors that added stress during this time were the lack of resources, failure to communicate emergency plans, and maintaining a sense of community after law schools pivoted to remote learning.

Clinic respondents reported feeling supported when their institutions provided the equipment needed to run a remote clinic. Fortunately, many law schools provided faculty and staff with computers, printers, facsimile, remote printing accounts, and off-site mailing options. Faculty and students were able to use on-line telephone programs such as Google Voice that avoids the need to rely on personal home and cell phones. It was helpful that law schools provided all students with Zoom or comparable accounts for class and clinic work. However, some clinicians expressed frustration with getting the equipment they needed to work from home. Law school and/or university bureaucracies can add to the frustration of those working in clinical programs when schools fail to provide access to the resources they need to perform their work. Based on the results of the survey indicating not all clinic staff have access to remote office equipment, law schools can prepare for future crises, personal emergencies and changing faculty/student expectations by proactively evaluating the need for updated technology, remote equipment, training and support in using it.

During state shutdowns, clinicians also felt supported when their Deans and other administrators insisted on maintaining access to buildings for clinic faculty. In the future, it is important that law school administrators remain informed on the role of clinics in their school and advance experiential interests in preparing for and responding to emergencies. Clinicians should proactively address these issues and revisit them on a regular basis to ensure that the law school community remains well informed through changes in administration. Legal education, both doctrinal and experiential, has traditionally relied upon in-person instruction.³⁶ However, scholars predict that virtual learning, hybrid instruction and legal practice are likely here to

³⁶ Lucy J. Johnston-Walsh & Alison Lintal, *Tele-Lawyer and The Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics after the Pandemic*, AKRON L. REV. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3223678.

stay.³⁷ The extent of the COVID-19 pandemic was unprecedented; however, the need to upgrade pedagogy and educational tools should not be unforeseeable, especially in the clinical context. Modern attorneys will find that virtual practice is a necessary legal skill and our experiential training should reflect this reality.³⁸

The clinical community within law schools tends to be close knit with small class sizes and frequent engagement between students and instructors outside of the classroom. The pandemic impacted many relationships within the clinical community. Clinical teachers experienced changes in the relationships with each other, their students, clients and the community at large. Survey respondents explained that both students and staff needed emotional support.³⁹ While schools attempted to create a sense of community online, it was noted that the “loss of internal clinic community cannot be mimicked in any online or virtual environment.” In an effort to reduce student and staff travel, many law schools shortened their semesters. The lack of sufficient breaks and transitional social interactions had a negative effect on students and anecdotally, staff.

G. There are additional areas of study that should be investigated.

This study is revealing, but there are additional areas that the clinical community should be explore. There is no survey data on the specific impact on parents, women, and other diverse and potentially vulnerable lawyers. There is a potential to explore clinicians’ experiences after the date of the final response of this survey in October 2020. There is also a question of how often students relied on experiential faculty for support for their personal crises during the pandemic. Finally, only 15% of survey respondents were externship supervisors, indicating the need for future research and scholarship regarding how the pandemic impacted externship and field placement supervisors.

CONCLUSION

While our hope is that the world will not face another pandemic or other disaster, experience tells us that we cannot know what the future holds. As practicing attorneys and role-models for our students, we have an ethical responsibility to ensure that clinics are operating efficiently with adequate consideration for emergencies. This

³⁷ *Id.*

³⁸ *Id.*

³⁹ Commenter shared “In addition to the general anxiety and isolation folks are feeling, our students are struggling more, leading to more acute emotional support of our students in general.”

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requires acknowledgement from law school administrations of the unique role of clinics and the critical importance of this responsibility, as well as an examination of the sufficiency of clinic resources and the establishment of best practices for incorporating technology and emergency management.

We should also take what we can learn from our experiences in 2020 and 2021 so that we are better equipped to address and interrupt the potential for inequities in clinical education when responding to external events. The results of the survey were both encouraging and motivating. Individual clinicians and programs collectively should reflect on their own responses and their institution's responses to the COVID-19 pandemic and consider the ways in which these responses were effective, as well as the ways in which these responses could be improved to support equity and the attorney-client relationship.

APPENDIX A

CLEA COMMITTEE FOR FACULTY EQUITY AND INCLUSION AND
THE POLICY COMMITTEE OF THE AALS SECTION ON
CLINICAL EDUCATION SURVEY: CLINICS AND
PANDEMIC TEACHING

Survey: Clinics and Pandemic Teaching

Through this survey, the CLEA Committee for Faculty Equity and Inclusion and the Policy Committee of the AALS Section on Clinical Education hope to gather information regarding how institutions treated clinics in responding to the pandemic, and whether there were disparities in how clinical faculty and clinics were treated across the institution and within clinical programs. We appreciate your participation.

What type of clinical course do you teach?

- Law clinic
- Externship or field placement
- Other: _____

What is your institutional affiliation? (optional)

Your answer _____

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Are you a member of a group that has been identified as particularly vulnerable or high risk for experiencing complications from COVID-19?

Your answer _____

What is your status?

Non-tenure long-term contract

Tenure-track

Tenured

Fellow

Adjunct

Other: _____

What is your racial identity?

Your answer _____

How long have you been teaching your clinical course?

1-3 years

3-7 years

More than 7 years

At your institution, were clinical courses treated differently than other courses with regard to pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? If so, how?

Your answer _____

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At your institution, were clinical faculty treated differently than other faculty with regard to pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? If so, how?

Your answer

Was your clinical course treated differently than other clinical courses at your institution? If so, please describe how and your understanding of the basis for that distinction?

Your answer

How have clinic staff been impacted by pandemic restrictions or the provision of in-person, hybrid, or remote-only teaching? What has your institution done to address the impact?

Your answer

Have you felt pressured by your institution or colleagues, either explicitly or implicitly, to teach your clinical course in-person or in a hybrid model? If so, please describe how you felt pressured?

Your answer

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