

## CLEANING UP OUR OWN HOUSES: CREATING ANTI-RACIST CLINICAL PROGRAMS

ANNE D. GORDON\*

*A formidable body of research and scholarship describes the unique difficulties faced by various minoritized groups within our law schools. Women, people of color, those with disabilities, LGBTQ+ people, and all those outside, overlapping, or in-between have powerfully described how their turn through legal academia was marked by discrimination, disconnection, and isolation. Law school has been described as a “white space,” and can also be viewed through the lens of white supremacy: a way to uphold and perpetuate a system of racial hierarchy. Clinics have largely been spared from these critiques and are often held up as solutions to the problems of our wider institutions. Clinicians can be lulled into thinking we are immune from such critiques, given our historic and often outsider status within our institutions, as well as our mission to increase access to justice and serve our communities.*

*Yet the fact remains that law school is oppressive for students and faculty from historically excluded populations, particularly racial minorities. And clinics are part of law school; we may unintentionally support the same oppressions or even actively reinforce them. To avoid this, we must critically examine our own shortcomings and make deliberate steps to “clean up our own houses” so we can do better by our students and schools. This article is an effort to guide clinics in that process of self-evaluation, to begin to see the many ways that we may be perpetuating racism unconsciously within our own programs and offer concrete suggestions for how to change.*

### INTRODUCTION

Clinicians are used to facing down injustice. Whether by fighting mass incarceration, deportations, or environmental destruction, we are well-acquainted with the forces of oppression and have committed to creating change. When it comes to looking at how our own schools

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\* Clinical Professor of Law and Director of Externships, Duke Law School. Thank you to Chipu Nyambuya, Alexi Freeman, Gautam Hans, Vida Johnson, Binny Miller, Carla Laroche, Elizabeth Chen, Kate Elengold, Barb Fedders, Andrew Foster, Thomas Williams, Kathryn Sabbeth, and Peggy Nicholson for their comments and insights on earlier drafts. Thanks also to my helpful research assistant Hunter Dickerson. Thanks to my dad for always being willing to read my work, and to my partner and kids, who inspire me every day to be (and do) better.

and programs also may be perpetuating racism, however, the inquiry may be more complicated. We may be too quick to cast aspersions onto the “old school” methodologies and histories of the rest of the school while avoiding critique of our own clinics and programs. Sometimes, we even perpetuate racial hierarchies in how we operate, unconsciously (or consciously) preferring the status quo to more substantive change. The title of this article comes from a sentiment I have heard repeated over the past few years at clinical conferences, primarily among clinicians of color: if we want anti-racist law schools, we must “clean up our own houses,” or make change in our own clinics, first.

Law schools (not to mention the law itself) have their foundations in white supremacy.<sup>1</sup> How we teach, what we teach, and what kind of culture we build with each incoming 1L class all have roots in upholding racial (and other concomitant) hierarchies,<sup>2</sup> whether through preserving outmoded teaching methodologies, maintaining inequitable hiring practices, or indoctrinating students about what “can” and “can’t” be done to change society through the law. Fortunately, organizations, like individuals, can evolve to become anti-racist.<sup>3</sup> But it takes focused and sustained effort.

Clinics do not counter this culture simply by serving under-served populations or having a comparatively more progressive faculty. Clinics are part of law schools, and we cannot excuse ourselves from the implications of that association. A true commitment to anti-racism means taking an unvarnished look at ourselves and our programs, our support of diverse faculty, and what (and how) we teach our students. Oppressive systems, including white supremacy culture,<sup>4</sup> arise in subtle ways, and can be even more subtle in organizations made up of people that think their progressive values or social justice work insulate them from having to examine their own contributions to racism and oppression.<sup>5</sup> That subtlety can also make it difficult to objectively

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<sup>1</sup> See *infra* Section I.A.

<sup>2</sup> See Danielle M. Conway, *Antiracist Lawyering in Practice Begins with the Practice of Teaching and Learning Antiracism in Law School*, 3 UTAH L. REV. (forthcoming).

<sup>3</sup> See IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 18-20 (2019) (“An antiracist policy is any measure that produces or sustains racial equity between racial groups . . . an antiracist idea is any idea that suggests the racial groups are equals in all their apparent differences . . . Antiracism is a powerful collection of antiracist policies that lead to racial equity and are substantiated by antiracist ideas.”).

<sup>4</sup> “White supremacy culture is the widespread ideology baked into the beliefs, values, norms, and standards of our groups (many if not most of them), our communities, our towns, our states, our nation, teaching us both overtly and covertly that whiteness holds value, whiteness is value.” See Tema Okun, *What is White Supremacy Culture?*, <https://www.whitesupremacyculture.info/what-is-it.html>.

<sup>5</sup> See Anne D. Gordon, *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Inclusive, Effective Feedback*, 27 CLIN. L. REV. 195, 209 (2021).

evaluate our own programs when thinking about where we can make change. Too often, we seize upon short-term or one-off ideas like Diversity, Equity, and Inclusion (DEI) trainings or discussion groups, without taking the time, effort, and discomfort necessary to evaluate our programs and institutions writ large. Simply bringing in more diverse faculty or incorporating diversity language into official statements will not lead to substantive change; we must make institutional commitments to incorporating strategies for diversity – including culture shifts – throughout our schools.<sup>6</sup> Anti-racism cannot exist only at the student-facing level of our clinical programs: how can we create inclusive classrooms that cultivate belonging if our faculty meetings do not do the same? How can we discuss creating the next generation of lawyer-leaders of color if we are not doing our best to cultivate such leaders in our own ranks? And how can we measure our students against goals we set for them if we refuse to do the same for ourselves? This work is difficult, uncomfortable, and time-consuming; it is critical, however, if we are interested in true – not merely performative – change.

The first Part of this article outlines the problem behind this call to action; it details how law schools – including their legal clinics – operate as racially oppressive environments for students and faculty alike. Drawing on the work of scholars such as Bennett Capers and Tema Okun, it points out some of the ways that law schools continue to operate not only as a space for white people, but where white supremacy is baked into the culture and consciousness of everything taught there. This is true both inside the clinical environment and outside it.

The next Part is a call to action for clinics to “clean up our own houses” so that we may more effectively serve our students, our fellow faculty, and our law school communities. It describes why clinics are ideally situated to be anti-racist even within racist institutions, due to the comparative advantage in the clinical teaching environment. It then encourages readers to make the best use of this advantage (and avoid further oppression of faculty, staff, and students) by evaluating and implementing anti-racist practices. This Part also discusses how clinics are ideally situated to be of service to our schools in implementing ABA Standard 303(c) on providing training and education to law students on bias, cross-cultural competency, and racism.

The final Part is implementation: concrete steps for moving to-

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<sup>6</sup> See Bryan M. Brayboy, *The Implementation of Diversity in Predominantly White Colleges and Universities*, 34 J. BLACK STUD. 72, 72–86 (2003); see also Deborah N. Archer, *Stuck on Simple: The Challenge of Moving Beyond Diversity to Inclusion*, HUFFPOST (Sept. 14, 2015), [https://www.huffpost.com/entry/moving-beyond-diversity\\_b\\_8129482](https://www.huffpost.com/entry/moving-beyond-diversity_b_8129482).

ward anti-racism in our own programs, including developing anti-racist mission statements and strategic plans, and articulating the “whys” and “hows” of making specific changes based on research and best practices from public- and private-sector sources. It then suggests four primary categories for change and encourages clinical programs to develop their own plans based on their own institutional priorities, constraints, and realities. These categories are not meant to be exclusive; they should be the starting point for a deeper conversation about institutional change. Each of the categories includes elements that can be implemented by individual clinicians without the requirement of larger program-level change; changing ourselves, after all, is a critical part of the journey toward anti-racism.<sup>7</sup> Finally, there is an Appendix of sample anti-racist goals and outcomes so readers can begin to visualize what such implementation might look like.

A note on the terms used in this paper. First, “clinician,” “professor,” and “faculty.” These terms are meant to encompass everyone who teaches in our clinical, externship, and legal writing programs, regardless of whether they have official faculty status; these descriptors are meant to be a catch-all, although many readers will fall outside these formal categories. Second, this paper will refer to a “clinical program” differently than “a clinic,” the former meant to encompass multiple clinics under the umbrella of the same institution, and the latter as an individual subject-matter clinic (such as a criminal defense clinic or an immigration clinic). Realizing that not all programs operate within this paradigm, the suggestions are general enough to be applicable to multiple structures. Similarly, there are vast differences among clinical programs in our schools. Clinical faculty vary in status (including staff attorneys, those on term-limited contracts, those with tenure or clinical tenure, etc.), funding (soft money vs. hard money) and degree of integration into the broader faculty (including governance power and teaching requirements). The degree of autonomy and power to make change may depend very much on where a given reader falls in these categories. Our schools also vary in the geographic region we serve, the student body we recruit, and our graduates’ career prospects. While it would be impossible to acknowledge all these variables in a single paper, it is my goal to include something useful for everyone.

One final note: as a white clinician, I want to acknowledge the decades of work that have been done by academics of color in examining racism in law school. My goal in writing this paper is not to restate or amplify their concerns; their work speaks for itself. My con-

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<sup>7</sup> See Palma J. Strand, *We Are All on the Journey: Transforming Antagonistic Spaces in Law School Classrooms*, 67 J. LEGAL EDUC. 176, 180 (2017).

tribution is to import their concerns to the realm of clinical teaching, and to propose concrete solutions for clinicians looking to make change. These solutions come from years of DEI work I have done as part of community organizations, as well as my experience doing strategic planning and organizational development at non-profits. This article is meant not to be the be-all and end-all of anti-racism work in law school, but rather an effort to see the work through a clinical lens and encourage the kind of reflection and reimagining that is critical to the kind of change we wish to see.

## I. WHITENESS AT LAW SCHOOL

Law school can be oppressive. Clinical faculty are already well aware of the toll it takes on students, with its relentless competition, all-consuming schoolwork, crushing debt, and pressure to find a post-graduate job. After all, it took the same toll on many of us. Law student mental health is poor starting from the very first year of law school,<sup>8</sup> and a growing body of scholarship and teaching pedagogy is focused on how to stave off (or at least ameliorate) this reality.<sup>9</sup> But scholars both inside and outside the legal academy have also viewed the culture and systems of law school through different lenses, including law school as white spaces, and places of white supremacy.<sup>10</sup> The oppressive nature of law school not only affects our students; it affects our faculty as well.

### A. Law School as White Space<sup>11</sup>

Law school is overwhelmingly white. Even looking at the student body at most law schools reveals the truth of the statistics, namely that

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<sup>8</sup> See Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004).

<sup>9</sup> It is also the focus of the AALS Section on Balance in Legal Education, a collection of ABA resources, and the topic of courses at law schools. See, e.g., *Substance Abuse & Mental Health Toolkit for Law School Students and Those Who Care About Them*, ABA, STUDENT DIVISION AND ABA COMMISSION ON LAWYER ASSISTANCE PROGRAMS (COLAP), <https://docs.google.com/document/d/1Q-2gorCHI4HhwBzihKJI4KR79d0e-AdHicUuX5xXKT/edit>. See also Dan Bowling's "Well-Being and the Law" course at Duke: <https://law.duke.edu/academics/course/779> (last visited Sept. 4, 2022).

<sup>10</sup> See, e.g., Dean Spade, *For Those Considering Law School*, 6 UNBOUND: HARV. J. LEGAL LEFT 111 (2010); see also Rudolph Alexander & Sharon E. Moore, *The Benefits, Challenges, and Strategies of African American Faculty Teaching at Predominantly White Institutions*, 12 J. AFR. AM. STUD. 4, 11 (2008) (finding that "African American faculty work in a hegemonic, narcissistic environment created by White men and designed for their self-interest"); see also Conway, *supra* note 2, at 3 (stating that "[law school] culture bends toward the status quo, valuing white supremacist patriarchy.").

<sup>11</sup> Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 1, 17 (2021).

Black people make up just 7.83% of law students.<sup>12</sup> The numbers for Native American law students are even more discouraging.<sup>13</sup> These numbers tell only part of the story, however. As one recent study revealed, the Black and Hispanic students enrolled in law schools are disproportionately enrolled in lower-ranked schools.<sup>14</sup> While such schools serve a critical role in expanding access to the legal profession for both their graduates and the clients they serve, it is notable that elite schools (feeders to other elite institutions) are still largely white.<sup>15</sup>

Law school faculties are still overwhelmingly white, as well. Though the numbers are growing, in the 2020 annual Center for the Study of Applied Legal Education (CSALE) and Society of American Law Teachers (SALT) reports, 21% of full-time law faculty were identified by their schools as “minority.”<sup>16</sup> Even within clinical teaching, 77% of primarily law clinic instructors and 83% of primarily field

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<sup>12</sup> See ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, 1L ENROLLMENT BY GENDER & RACE/ETHNICITY (AGGREGATE) (2019–2021), [https://www.americanbar.org/groups/legal\\_education/resources/statistics/](https://www.americanbar.org/groups/legal_education/resources/statistics/) (last visited Sept. 4, 2022); U.S. CENSUS BUREAU, POPULATION ESTIMATES, JULY 1 2021 (V2021), (2021), <https://www.census.gov/quickfacts/fact/table/US/PST045221>. In 2021, the 1L class at Harvard had only 46 Black students out of a class of 563. See ABA Required Disclosures – Compilation – All Schools Data – JD Enrollment and Ethnicity, ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR (2021), <https://www.abarequireddisclosures.org/Disclosure509.aspx> (last visited Sept. 2, 2022). This article capitalizes Black when used in a racial, ethnic, or cultural sense, conveying an essential and shared sense of history, identity, and community (just as the terms Asian, Hispanic, and Native American are also capitalized). This is consistent with an increasing number of news organizations and style guides. See, e.g., Mike Laws, *Why We Capitalize ‘Black’ (and Not ‘White’)*, COLUM. JOURNALISM REV. (June 16, 2020), <https://www.cjr.org/analysis/capital-b-black-styleguide.php>; *Explaining AP Style on Black and white*, AP NEWS (July 20, 2020), <https://apnews.com/article/9105661462>.

<sup>13</sup> LSAC statistics show that American Indian and Alaska Native applicants made up only 0.7% of students admitted to American Bar Association-approved law schools in 2021. See *Diversity in the US Population & the Pipeline to Legal Careers*, L. SCH. ADMISSION COUNCIL (2021), <https://report.lsac.org/View.aspx?Report=DiversityPopulationandPipeline> (last visited Sept. 4, 2022).

<sup>14</sup> See Capers, *supra* note 11, at 24 (citing Miranda Li, Phillip Yao, and Goodwin Liu, *Who’s Going to Law School*, AM. BAR FOUND. (2020), [https://www.americanbarfoundation.org/uploads/cms/documents/who\\_is\\_going\\_to\\_law\\_school\\_policy\\_brief.pdf](https://www.americanbarfoundation.org/uploads/cms/documents/who_is_going_to_law_school_policy_brief.pdf)). This study analyzed two sets of JD enrollment data (one from ABA and the other from LSAC). It also found that women are disproportionately enrolled at lower-ranked schools.

<sup>15</sup> The federal judiciary, for example, is made up of over 80% white people. Danielle Root, Grace Oyenubi, Jake Faleschini, *Building a More Inclusive Federal Judiciary*, CTR. FOR AM. PROG. (Oct. 3, 2019), <https://www.americanprogress.org/article/building-inclusive-federal-judiciary/> (citing *Biographical Directory of Article III Federal Judges, 1789-present: Advanced Search Criteria*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/search/advanced-search>).

<sup>16</sup> Robert Kuehn, *Shifting Law School Demographics*, A PLACE TO DISCUSS BEST PRAC. FOR LEGAL EDUC. (Jan. 5, 2022), [https://bestpracticeslegaled.com/2022/01/05/clinical-legal-education-by-the-numbers/?utm\\_source=Feedburner&utm\\_medium=Email](https://bestpracticeslegaled.com/2022/01/05/clinical-legal-education-by-the-numbers/?utm_source=Feedburner&utm_medium=Email).

placement teachers are white.<sup>17</sup> Clinicians are also less diverse than law students: 34% of students were identified as “minority” in the 2020 ABA annual reports.<sup>18</sup>

As a corollary to law schools’ demographic problems, several scholars have persuasively argued that law school is a “white space,” in everything from admissions policies to pedagogy; even architecture plays a role.<sup>19</sup> When policies and practices in law school mirror the racial hierarchies of the outside world, students can come to see the law (and the law school) as an instrument of oppression.<sup>20</sup> Bennett Capers, who has been writing in this space for decades, discusses the concept of how law schools teach “white letter law,” societal and normative laws that stand side by side with and often undergird black letter law but, as if inscribed in “white ink on white paper,” remain invisible to the naked eye.<sup>21</sup> Professor Shaun Ossei-Owusu at Penn Law wrote in the ABA Law Journal that “the learning of the law – particularly for racial minorities – can be intellectually violent” where casebooks and legal authorities are silent on issues of race.<sup>22</sup>

This silence, however, can speak volumes. As a law student during the killings of Eric Garner, Michael Brown, and Tamir Rice, Taifha Baker described her experience of reckoning with her own law school’s silence: “We are dedicating our lives to endorsing and respecting the rule of law, which has often been used to reinforce the systematic oppression of the racial and socio-economic communities we belong to.”<sup>23</sup> She describes deans and other administrative leaders failing to acknowledge this pain and its connection to legal study, syllabi failing to include race and class in analyzing the law, and professors failing to use inclusive teaching practices such as responding to offensive remarks in class.<sup>24</sup> She also describes explicit discrimination

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Erika K. Wilson, *Monopolizing Whiteness*, 134 HARV L. REV. 2382 (2021); see also Capers, *supra* note 11 (noting that law schools are also “masculinist,” ableist, and Christian, even at historically Black institutions due to what and how they teach, including the “neutrality” of the law).

<sup>20</sup> Peter Goodrich & Linda G. Mills, *The Law of White Spaces: Race, Culture, and Legal Education*, 51 J. LEGAL EDUC. 15, 19 (2001).

<sup>21</sup> Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9, 19 (2006).

<sup>22</sup> Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA JOURNAL (Oct. 15, 2020), [https://www.abajournal.com/voice/article/for\\_minority\\_law\\_students\\_learning\\_the\\_law\\_can\\_be\\_intellectually\\_violent](https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent).

<sup>23</sup> Taifha N Baker, *How Top Law Schools Can Resuscitate an Inclusive Climate for Minority And Low-Income Law Students*, 2 GEO. J. L. & MOD. CRIT. RACE PERSP. 124, 124 (2017).

<sup>24</sup> See *id.* at 140 (citing Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L.J. 1 (2015) (detailing eleven teaching habits

from her white and wealthy classmates.<sup>25</sup>

Many others have noted the implicit message contained in who gets honored in an institution, and who gets left out.<sup>26</sup> Capers notes that at his law school:

I felt like I was a Black person in a white space. Some of this had to do with the portraits of white men – the former law school deans – that lined the main corridor of the law school and that hung down in lecture rooms, portraits that stared down at me like sentinels guarding entry to knowledge and the gates of the profession . . . even the names [of the classrooms and study rooms] *sounded* white.<sup>27</sup>

As Lani Guinier noted in her book *Becoming Gentlemen*, it was hard to find her voice in a room surrounded by “the traditional larger-than-life portraits of white men . . . portraits that seemed to speak louder than I ever could.”<sup>28</sup> She later adds that the portraits had “captured and frozen in time the alienation from class, race, and gender privilege we had felt as students . . . reminding us that silence was the price of admission.”<sup>29</sup> Several years ago, Yale Law School developed a project to honor the then-six women out of 74 portraits that adorn its halls.<sup>30</sup> One woman has since been added to the gallery.<sup>31</sup>

The existence of white space does not necessarily mean that faculty and other students are outwardly antagonistic, although this certainly happens as well.<sup>32</sup> Hostile spaces, rather, may arise in the disconnect between one’s environment and the proper functioning of

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that can create an inclusive learning climate)).

<sup>25</sup> *Id.* at 139.

<sup>26</sup> See *id.* at 26 (citing *Commonwealth v. Shipp*, No. FE-2020-8, 2020 WL 7638843, at \*1 (Va. Cir. Ct. Dec. 20, 2020)) (stating that “[p]ortraits may serve as unintended but implicit symbols that suggest the courtroom may be a place historically administered by whites for whites, and that others are thus of lesser standing in the dispensing of justice.”).

<sup>27</sup> Capers, *supra* note 11, at 7 (emphasis in original).

<sup>28</sup> LANI GUINIER, MICHELLE FINE, & JANE BALIN, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* 85–86 (1997).

<sup>29</sup> *Id.*

<sup>30</sup> *Portraits Project*, YALE L. WOMEN, <https://ylw.yale.edu/portraits-project/>. All but one of the six women, Eleanor Holmes Norton, were white.

<sup>31</sup> Pauli Murray was added in 2018. *Law School Unveils Pauli Murray ’65 JSD Portrait*, YLS TODAY–NEWS (November 14, 2018), <https://law.yale.edu/yls-today/news/law-school-unveils-pauli-murray-65-jsd-portrait>.

<sup>32</sup> See Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 *BROOK. L. REV.* 943 (2015); see also Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 *CHARLESTON L. REV.* 209 (2017); see also DOROTHY H. EVENSEN & CARLA D. PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS IN THE LEGAL PROFESSION* 55 (2011); see also Jonathan P. Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 *BERKELEY J. AFR.-AM. L. & POL’Y.* 71, 114 (2013) (stating that students of color are far more likely to be victims of a racially hostile incident, and the effects of such incidents are far more severe).



some individuals within it.<sup>33</sup> It may well be that faculty and administration are not intentionally confirming stereotypes or generating negative messages about students of color or women. But lack of intent does not mean that such stereotypes and negative messages are not present; perception is reality.<sup>34</sup>

Capers's article, *Law School as White Space*, reimagines what a law school might look like if not designed around the architecture, pedagogy, curriculum, and demographics (faculty and student) of a typical law school. He imagines classes taught by some of the most intellectually curious faculty in the world, unbound by traditional notions of black-letter law, Socratic-method teaching, foundational texts, and division from the community in which the school sits.<sup>35</sup> One of the components of his reimagined law school was a "Criminal Systems" course that was so revolutionary it had "even a clinical component."<sup>36</sup> This paper aims to make use of that revolutionary potential, and make a proposal for a practical set of tools that clinical programs can use to make significant change toward being anti-racist spaces. Capers recognizes the power of clinical education to create a law school unbound by whiteness; in order realize this vision, however, clinics must first engage in critical self-reflection on their own role in implementing (or impeding) anti-racism.

### B. *Law Schools as White Supremacy Culture*<sup>37</sup>

Many of the characteristics described by Capers, Baker, Guinier, Ossei-Owusu, and others appear in what many activists, academics, and equity trainers call "white supremacy culture." This term was coined by Tema Okun, a widely influential thinker and trainer; her original work on the topic was published in 1999, but it holds continuing relevance in academic and activist spaces.<sup>38</sup> White supremacy culture is the widespread ideology that whiteness holds value; this is baked into the beliefs, values, norms, and standards of our culture and

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<sup>33</sup> See Strand, *supra* note 7, at 199.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 54.

<sup>37</sup> Tema Okun, *White Supremacy Culture—Still Here* (May 2021), [https://www.dismantlingracism.org/uploads/4/3/5/7/43579015/white\\_supremacy\\_culture\\_-\\_still\\_here.pdf](https://www.dismantlingracism.org/uploads/4/3/5/7/43579015/white_supremacy_culture_-_still_here.pdf).

<sup>38</sup> Okun's work is referenced widely by organizations from the National Education Association (<https://www.nea.org/resource-library/white-supremacy-culture-resources>) to the National Resource Center on Domestic Violence (<https://vawnet.org/material/characteristics-white-supremacy-culture>) to an organization of Quakers in the Western US (<https://westernfriend.org/media/characteristics-white-supremacy-culture>), and is the basis for countless equity trainings.

political institutions.<sup>39</sup> It is not meant to describe all white *people*; rather, it describes the norms of white middle-class and owning-class culture, a culture all Americans are required to navigate regardless of their multiple identities (including non-middle-class white people).<sup>40</sup> It is also not meant to limit the discussion to race, although race is a foundational component.<sup>41</sup> Another way to look at white supremacy culture is through the lens of power: the norms and assumptions of the dominant caste that are reproduced and reinforced in places of power such as law schools. Because in the United States power has been concentrated in white middle- and upper-class society, such norms have taken on a racial valence.

The characteristics of this culture include:

**Perfectionism:** The conditioned belief and attitude that someone must be perfect, that there is only one right way to do things, and that an “objective” standard sets the bar and demands conformance to it. This is not the same as excellence, working hard, and living up to one’s potential; it is a recognition that the rules for what is “perfect” are often created with a certain set of ideals that derive from the powerful trying to keep power. Perfectionism leaves no room for making mistakes, questioning paradigms, or listening to alternate viewpoints. This element is also about who decides what is “perfect,” and who this standard is wielded against to reinforce power.

**“Qualified”:** The assumption that only white people are qualified to change the world, and that they know how best to do it. White people move through the world with assumed qualifications and can operate in a “race-neutral” environment while people from historically excluded groups have to prove (and re-prove) their qualifications.

**Either/Or Thinking:** The cultural assumption that there is only one right way to do things; relationships are reduced into either/or, yes or no, and right or wrong, in ways that reinforce power and reject nuance. The classic framework of “your loss is my gain, and your gain is my loss” is an example of Either/Or Thinking.

**Quantity Over Quality:** These characteristics explore our cultural assumption that the goal is always to be/do/get more and be/do/get bigger. This leads to an emphasis on what we can “objectively” measure – how well we are doing at being/doing/getting more – as more valuable than the quality of our relationships. This

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<sup>39</sup> See Okun, *White Supremacy Culture – Still Here*, *supra* note 37, at 4.

<sup>40</sup> *Id.*

<sup>41</sup> White supremacy culture is inextricably linked to all other oppressions - capitalism, sexism, class and gender oppression, ableism, ageism, and Christian hegemony - these and more are all interconnected and infect everything with and without our awareness. Tema Okun, *White Supremacy Culture Characteristics*, WHITE SUPREMACY CULTURE, <https://www.whitesupremacyculture.info/characteristics.html>.

includes valuing those who have “progressed” over those who “have not” – where progress is measured in degrees, grades, money, power, status, and material belongings.

**Worship of the Written Word:** This characteristic explores our cultural habit of honoring only what is written (and only what is written to a narrow standard), even when what is written is full of misinformation and lies. Worship of the written word includes erasure of the wide range of ways we communicate with each other. This is not the same as an ability to write well; rather, it is how white supremacy culture requires things to be written down, within a strict set of rules, including what makes that knowledge “legitimate” in the first place; such focus is one of many ways to erase and control information, culture, wisdom, knowing, insight, and intuition.

**Individualism:** This characteristic looks at our cultural assumption that individualism is our cultural story – that we can make it on our own (or should), without help, while pulling ourselves up “by our own bootstraps.” Our cultural attachment to individualism leads to a toxic denial of our essential interdependence and the reality that we are all in this together. This shows up in refusing to work with others for fear of being “weighed down,” valuing competition over cooperation, and by white people refusing to acknowledge being a part of a cultural construct that privileges whiteness (instead insisting that they as individuals are immune from such constructs).

**Defensiveness and Denial:** Defensiveness and denial reflect our cultural aversion to truth-telling, particularly when speaking truth to power. This includes responding to new or challenging ideas with objections or criticism, making it very difficult to raise these ideas. One example of how this presents is when white people spend energy defending against charges of racism instead of engaging in critical reflection on how racism might actually be happening.

**Right to Comfort, Fear of Conflict, and Power Hoarding:** These characteristics focus on our cultural assumption that those with formal and informal power have a right to comfort, which means an intolerance of conflict, particularly open conflict. This assumption supports the tendency to blame the person or group causing discomfort or conflict rather than addressing the issues being named. This characteristic is closely linked to Defensiveness and Denial.

**Urgency:** A constant sense of urgency reflects our cultural habit of applying a sense of urgency to our everyday lives in ways that perpetuate power imbalance while disconnecting us from our need to breathe and pause and reflect. Making everything urgent makes it difficult to take time to be inclusive, encourage democratic and/or thoughtful decision-making (possibly using other modes of decision-making that require more time), to think and act long-term, and/or to consider consequences of whatever action we take.

### *C. How Law Schools Encourage White Supremacy Culture*

These characteristics manifest in our own law school cultures in many ways, including what and how we teach our students, and the culture we create when we pass on our own judgments about “how the law works.” It is easy to think of how we do so.

**Perfectionism:** Law students think they must be perfect – any deviation from this invites self-doubt and recriminations from professors and colleagues. Students are not encouraged to develop growth mindsets; rather, they are punished for making mistakes, sorted into categories of who is likely to succeed and who is not, and who is worthy of attention from faculty and fellow students. Law school encourages perfectionism by giving students limited opportunities to perform and demanding quality (narrowly defined) in limited ways; basing an entire semester’s grade on a single timed end-of-semester exam with no opportunity to earn additional credit. Perfectionism also manifests when students are told that they must look/dress/style their hair/speak in a certain way.

**“Qualified”:** This manifests in faculty and students from historically excluded groups getting questioned about their qualifications to be in law school, while white faculty and students have assumed qualifications and can operate in a “race-neutral” environment. Among the faculty, scholarship workshops can be used as an excuse to cut down others’ ideas and question their qualifications; hiring decisions are made by people prioritizing credentials from primarily white and elite institutions without recognizing the quality of other degrees, self-taught knowledge, and lived experience.

**Either/Or Thinking:** Law students are told that there is only one right way to take an exam, do legal writing, or practice law; professors may use case books that lack background information and historical information that could provide a more nuanced view of how the law is made (or ignore such information where presented). Either/Or is also present in a strict grading curve, where only a certain number of people can succeed, regardless of how many students demonstrate proficiency in the material; this sets up competition between students and the (justified) feeling that one person cannot gain without another losing.

**Quantity Over Quality:** Law schools encourage this kind of thinking by telling students (explicitly or implicitly) that law students should do nothing but work during their three years at law school; that the quantity of their work (including on journals, in pro bono projects and student organizations, being research assistants, etc.) is more important than non-resume-building quality of life measures such as relationships, pets, hobbies, and rest. The emphasis on first-year starting salaries is an example of this, where students compare salaries and bonuses instead of comparing billable hours requirements, family-leave policies, diversity statistics, or

other quality-of-life indicators.

**Worship of the Written Word:** This characteristic shows up in our attitude toward the law, what can be changed and what cannot, an unquestioning deference to precedent, and the failure to question how rules are written within a framework of oppression of women, people of color, immigrants, LGBTQ+ people, and more. We enshrine the written word by teaching students to write in a way that is inaccessible to non-lawyers or failing to question why much of our law still exists behind paywalls.<sup>42</sup>

**Individualism:** Law schools perpetuate individualism by requiring class work to be done on an individual basis, failing to assign group work or recognize group effort, failing to evaluate students on skills like listening, cooperating, and working together, and not recognizing that students from historically excluded groups may labor under the weight of biased expectations and perceptions. Individualism leads some faculty to deny that the structure of our institutions disadvantages some members of our student body and our own faculty members, believing those who are truly worthy will rise above it and succeed on their own. Individualism also leads to schools failing to recognize barriers faced by students without a background or familial connection to the legal profession, and not giving them the support they need to succeed.

**Defensiveness and Denial:** Defensiveness shows up when students criticize the institution; professors and administrators can become defensive, denying the problem (perhaps highlighting how others have succeeded despite the alleged barriers), and blaming students for not being able to succeed in the law school environment. Defensiveness also manifests when students call out individual professors for problematic behaviors and are told that the professor's intentions (rather than their actions) are the only thing that matters or deny that the student should have any issue at all (such as a refusal to give students warnings before presenting potentially disturbing material in class). Schools encourage this defensiveness by not offering training to faculty and administrators on fostering productive dialogues (including hard conversations) with students.

**Right to Comfort, Fear of Conflict, and Power Hoarding:** Professors may push back against legitimate student grievances under the guise of "professionalism," forcing students to communicate in a way that makes professors and institutions comfortable. This is not an indictment of the entire concept of professionalism, but rather a critique of how such a concept is wielded to stifle students' self-advocacy (instead of an opportunity to teach students to

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<sup>42</sup> This has changed somewhat in recent years with court websites publishing cases, the Cornell library publishing statutes, and Google Scholar, but high-quality searching is still concentrated in paid services such as Westlaw.

be more effective advocates). Such “professionalism standards” can deny students’ ability to advocate for themselves using creative tactics, cabin “acceptable” student behavior in a way that preserves power, and lead to schools’ inaction on important issues (preferring to wait until students graduate rather than solve potentially uncomfortable issues). Students get the message that they can and should be advocates for their clients, but not for themselves. This characteristic also manifests in punishing students for calling out individual professors for problematic behaviors and scolding them for being unprofessional rather than thanking them for highlighting an opportunity to increase equity. It also manifests in white faculty hoarding recognition and leadership opportunities instead of encouraging the next generation of faculty leaders.

**Urgency:** This characteristic is emblematic in much of law school, where students get the message that they must always be achieving, nothing can wait, and sleep is a luxury they cannot afford. This means that students are not given the time and space to explore their thoughts and feelings about the material they’re learning, engage in authentic inquiry outside the bounds of the syllabus, or take the time to ensure that they understand rather than moving to the next assignment (or 100 pages of reading). A constant sense of urgency also means that students are unable to pause and reflect on their values as they enter the next stage of their lives, think about the long-term consequences and opportunities for their career paths, take time for the things that make them feel human such as relationships, hobbies, and creative pursuits, or simply stop to take a break.

These characteristics are interwoven with each other, and cross over in a number of ways. For example, the model of a “good professional” presented in law school is often someone who is perfectionistic and individualistic, knows their way is the right way because they are the “expert,” complies with and requires a certain kind of writing or precedent, defends against criticism, and cultivates a sense of urgency at all times, always prioritizing work.<sup>43</sup>

Another framework for white supremacy culture describes it as relying on three pillars: Scarcity, Loss of Self, and Fear.<sup>44</sup> An environment of scarcity causes participants to question whether they are good enough and whether there is enough for all; it divides them into “sink-

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<sup>43</sup> Okun, *supra* note 4. As Tema Okun notes, a law student in one of her workshops noted that “the [white supremacy culture] list represents all the characteristics taught by law schools as essential to success in the profession”; see also Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 591-615 (1982) (stating that law school pedagogy, course content, and structure reproduce the economic and social hierarchy of America).

<sup>44</sup> Cristina R. Chapman, *Wisdom from Cristina Rivera Chapman*, WHITE SUPREMACY CULTURE, <https://www.whitesupremacyculture.info/characteristics.html>.

ers” and “swimmers.” Again, it is easy to see how this translates to law school: competition for jobs (and the message that success is available only through a select few private sector or prestigious fellowship positions) and the grading curve (that pits students against each other quite directly) both encourage this environment of scarcity. Another characteristic is Loss of Self. When scholars talk about law school culture-shock and the necessity of learning a “new language,” much of this language involves sublimating critical perspectives.<sup>45</sup> And then of course the culture of fear: fear of getting bad grades, fear of not getting a job, fear of looking stupid in class, fear of not being able to pay back student loans, and fear of looking like (and being) a failure.

One response to these critiques is that such characteristics are endemic to the law as a whole; law school is simply responding to (and preparing students for) this reality. Clinical faculty must be willing to help students see beyond this paradigm, however, encouraging them to critique the world as it is while inspiring them to struggle for change. Our answer to white supremacy culture cannot – must not – be to perpetuate it.

White supremacy affects law students in ways that are well-documented. Black and Hispanic students report feeling race-based separation and conflict on campus, and are less likely to report feeling a part of campus life.<sup>46</sup> Minoritized<sup>47</sup> students can feel tokenized, marginalized, and stereotyped by both colleagues and professors.<sup>48</sup> They can experience stereotype threat, the social-psychological impact on a person facing negative stereotypes, typically manifesting in heightened stress.<sup>49</sup> The stress that accompanies being in this kind of learning environment can lead to reduced well-being, lower perform-

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<sup>45</sup> See Spade, *supra* note 10, at 114 (stating that “[l]aw school is like a language immersion program, but one in which the language you are learning is the language of rationalizing white supremacy, settler colonialism, patriarchy and capitalism”).

<sup>46</sup> See Walter R. Allen & Daniel Solorzano, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237, 292-3 (2001); see also Darling-Hammond & Holmquist, *supra* note 24; see also Feingold & Souza, *supra* note 32 (outlining the experience for minority students and explaining how bias and exclusion make law school more difficult for minority students); see also Carliss N. Chatman & Najarian R. Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISC. 2, 13-14 (2021) (including narratives from BIPOC students describing their experiences in law school).

<sup>47</sup> I use “minoritized” rather than “minority,” and “historically excluded” rather than “under represented” in this paper to highlight that the low number of Black, Indigenous, Hispanic, disabled, LGBTQ+, low-income, and other groups in law school is the result of a pattern of exclusion of these groups from legal spaces, not a naturally occurring phenomenon.

<sup>48</sup> See Darling-Hammond & Holmquist, *supra* note 24.

<sup>49</sup> See Claude M. Steele, Steven J. Spencer & Joshua Aronson, *Contending with Group Image: The Psychology of Stereotype and Social Identity Threat*, 34 ADV. EXP. SOC. PSYCHOL. 379 (2002). This stress can affect a student’s performance.

ance, and less opportunity for students from historically excluded groups, particularly Black students.<sup>50</sup> White supremacy culture not only disadvantages students of color, however; structures and cultures that prize “one right way” and “either-or thinking” can create a hostile environment for other groups that fall outside “the norm” such as LGBTQ+ students.<sup>51</sup> Women, particularly women of color, are more likely to report feeling isolated or alienated in law school, with half reporting feeling discriminated against based on their race or gender.<sup>52</sup>

The weight is borne differently by different students, in ways that are often invisible. Scholars describing the racial “unevenness” of law school describe disadvantage as a spectrum; at one end lie obvious forms of overt and invidious racial discrimination, while at the other end, racial unevenness arises from environmental factors and institutional culture independent from any identifiable perpetrator.<sup>53</sup> These race-dependent burdens can arise even in institutions and communities that expressly promote racial diversity and condemn overt racial discrimination, which most of our institutions do.<sup>54</sup>

#### D. How Law Professors Experience White Supremacy Culture

White supremacy culture in law school also appears in the experiences of faculty. It does this in two ways: in the lack of diversity among the faculty, and in the experience of faculty of color in law school. The first is the more visible: most top law schools still exhibit a noticeable lack of faculty diversity.<sup>55</sup> But even where a serious ef-

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<sup>50</sup> See Katherine Y. Barnes, *Is Affirmative Action Responsible for the Achievement Gap Between Black and White Law Students?* 101 NW. U. L. REV. 1759, 1760 (2007).

<sup>51</sup> Kelly Strader et al., *An Assessment of the Law School Climate for GLBT Students*, 58 J. LEGAL EDUC. 214, 214-44 (2008) (reviewing the ways in which law schools can be an inhospitable place for LGBTQ+ students, namely through overt discrimination, thoughtlessness, and/or neglect on the part of various faculty among the law schools).

<sup>52</sup> See NALP FOUND. L. CAREER RES. EDUC. & CTR. FOR WOMEN L., *Women of Color: A Study of Law School Experiences*, (2020), <https://utexas.app.box.com/s/ci6qyzkl4af323xj8gikjw8gfzulqww0> (finding women of color were less satisfied with their law school experiences than their white cohorts and rated race relations at their schools less positively than even their male peers of color and that 38 percent of Black women consider leaving law school altogether).

<sup>53</sup> Unevenness refers to benefits and burdens that have nothing to do with an individual’s inherent ability, talent, or hustle. Rather, unevenness describes the presence of particular burdens that uniquely tax certain individuals in a given setting; other members of the community do not face these burdens. See Feingold & Souza, *supra* note 32, at 72.

<sup>54</sup> *Id.*

<sup>55</sup> See *No Progress over the Past Seven Years in the Number of Black Students or Black Faculty at the Nation’s Highest-Ranked Law Schools*, 51 J. BLACK HIGHER EDUC. 12, 12–14 (2006); see also Deo, *The Ugly Truth About Legal Academia*, *supra* note 32, at 943; see also Ediberto Roman & Christopher B. Carbot, *Freeriders and Diversity in the Legal Academy: A New Dirty Dozen List?*, 83 INDIANA L.J. 4, 1235 (2008) (explaining that in



fort is made to diversify the faculty ranks, experiences of faculty from historically excluded groups are often poor.<sup>56</sup> Faculty of color and faculty with lower socio-economic status report a negative experience in their schools.<sup>57</sup> Professors from minoritized groups feel silenced, tokenized, and marginalized through both explicit discrimination and subtle bias by white students, colleagues, and administrators.<sup>58</sup> White faculty harbor racist beliefs even when reporting otherwise.<sup>59</sup> Faculty with intersecting marginalized identities such as race, class, gender, sexuality, and ability, among others, face a complex set of social inequalities, particularly women of color.<sup>60</sup> Female teachers of color also experience harassment by their own students.<sup>61</sup> Even where a school prioritizes efforts to be more inclusive, law faculty of color often bear a disproportionate share of that work, compromising their opportunities elsewhere in the institution.<sup>62</sup>

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2008, Latina law professors compiled a Dirty Dozen list, which was a list of the top twelve law schools, in areas with high Latina populations, that did not include a single Latina among the law school faculty).

<sup>56</sup> Historically Black institutions are differently situated as Black faculty from those institutions tend to have significantly different experiences than those at predominantly white schools. See Douglas A. Guiffrida, *Othermothering as a Framework for Understanding African American Students' Definitions of Student-Centered Faculty*, 76 J. HIGHER EDUC. 701, 701-03 (2005).

<sup>57</sup> See Meera E. Deo, *Looking Forward to Diversity in Law Schools*, 29 BERKELEY J. GENDER L. JUST. 352 (2014); see also MEEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019); see also Elizabeth M. Lee, "Where People Like Me Don't Belong": *Faculty Members from Low-Socioeconomic-Status Backgrounds*, 90 AM. SOCIO. ASS'N 197 (2017).

<sup>58</sup> See Goodrich & Mills, *supra* note 20; see also Chavella T. Pittman, *Racial Microaggressions: The Narratives of African American Faculty at a Predominantly White University*, 81 J. NEGRO EDUC. 82 (2012); see also Victor Essien, *Visible and Invisible Barriers to the Incorporation of Faculty of Color in Predominantly White Law Schools*, 34 J. BLACK STUD. 63 (2003); see also Yolanda F. Niemann, *The Making of a Token: A Case Study of Stereotype Threat, Stigma, Racism, and Tokenism in Academe*, 20 FRONTIERS: J. WOMEN STUD. 111 (1999); see also Peter C. Alexander, *Silent Screams from Within the Academy: Let My People Grow*, 59 OHIO ST. L. J. 1311, 1328-29 (1998) (stating that minority professors are forced to deal with issues of "aloneness, lack of support, and fear by a dug-in majority that often views minorities as necessary affirmative action hires or diversity or token appointments" and that many of these issues are not adequately addressed because of a lack of dialogue among minority professors and law school administrators).

<sup>59</sup> See Rebecca F. Gleditsch & Justin A. Berg, *Racial Attitudes of University Faculty Members: Does Interracial Contact Matter?*, 39 HUMBOLDT J. SOC. RELS. 104 (2017).

<sup>60</sup> See Lori Walkington, *How Far Have We Really Come? Black Women Faculty and Graduate Students' Experiences in Higher Education*, 39 HUMBOLDT J. SOC. RELS. 51 (2017); see also Debra A. Harley, *Maids of Academe: African American Women Faculty at Predominately White Institutions*, 12 J. AFR. AM. STUD. 19 (2008).

<sup>61</sup> See Cruz Reynoso & Cory Amron, *Diversity in Legal Education: A Broader View, A Deeper Commitment*, 52 J. LEGAL EDUC. 491 (2002).

<sup>62</sup> See Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 164 (2018) (citing Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 525-26 (2012)) (finding that women and people of color report higher levels of committee work and service);

Due to their small numbers as well as bias and stereotypes about their demographic group, professors of color face a number of institutional and interpersonal barriers to connection and belonging at their institutions, among them tokenism and isolation.<sup>63</sup> Tokenism is the feeling that one represents one's race, and/or the heightened visibility of being in an ethnically or racially unbalanced situation: simply the perception of being outside "the norm."<sup>64</sup> They may also experience social isolation (self-imposed or otherwise), psychological discomfort, and the perpetual self-monitoring and hyper-vigilance that can lead to poor emotional and spiritual well-being.<sup>65</sup> They may face outright hostile behavior by white faculty members, or more subtle forms of discrimination such as being discouraged from seeking tenure, or not being supported in the face of hostility from students.<sup>66</sup> Others have described the law school environment as one of "academic terror," citing a long history of racial discrimination, bullying, collective cultural trauma, and structural violence.<sup>67</sup>

Faculty of color also suffer implicit and explicit racism from white students, which can result in poorer course evaluations for faculty of color.<sup>68</sup> This can be the result of "either-or thinking," where law students think there is only one way to teach or learn and punish law

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see also Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 352 (1989) (finding that respondents in study of 106 professors reported "inordinate burdens of committee responsibility and student counseling" and felt pressured to champion issues of diversity and inclusion); see also Deo, *The Ugly Truth About Legal Academia*, *supra* note 32, at 992 (stating that disparate levels of service and student interactions can be burdensome and "overwhelming" for women professors and professors of color).

<sup>63</sup> See Essien, *supra* note 58, at 67; see also Paul H. Barber et al., *Systemic Racism in Higher Education*, 369 SCIENCE 1440, 1440-1441 (Sep. 18, 2020), <https://www.science.org/doi/10.1126/science.abd7140>.

<sup>64</sup> See Linda S. Greene, *From Tokenism to Emancipatory Politics: The Conferences and Meetings of Law Professors of Color*, 5 MICH. J. RACE & L. 161 (1999).

<sup>65</sup> See Alexander & Moore, *supra* note 10, at 6.

<sup>66</sup> See LeRoy Pernell, *Deans of Color Speak Out: Unique Voice in a Unique Role*, 20 B.C. THIRD WORLD L.J. 43, 49 (2000); see also Winston P. Nagan, *Dean Kromans's Diversity Narrative: Liberal Education Ideology Versus Social Justice?*, 52 FLA L. REV. 897, 898 (2000); see also Pamela Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1105, 1106 (1999-2000); see also Boles, *Seeking Inclusion*, *supra* note 32, at 231.

<sup>67</sup> Renee N. Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM. & MARY J. RACE, GENDER & SOC. JUST. (forthcoming 2023).

<sup>68</sup> See Gregory S. Parks, *Race, Cognitive Biases, and The Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039, 1070 (2018); see also Boles, *Seeking Inclusion*, *supra* note 32, at 228 (stating that professors of color (and anyone who triggers the presumption of incompetence) face an added challenge to overcome – not always recognized by their colleagues – in negotiating a retention process that relies heavily on biased student evaluations) (citing PRESUMED INCOMPETENT: THE INTERSECTION OF RACE AND CLASS FOR WOMEN IN ACADEMIA 359 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González, & Angela P. Harris eds., 2012)).

professors who teach (or look) outside of the (whiter) mold. Such racially biased evaluations can influence school leadership and committees, amplifying the effects of student racism across a faculty member's entire career in hiring, promotion, retention, and/or tenure.

Even in a "neutral, merit-based" system, Black faculty may still be discriminated against in pay and merit raises, taking a toll on their well-being and/or forcing them to leave their institutions.<sup>69</sup> They may feel forced to take on responsibilities that do not receive formal support or recognition from their institutions, including serving as advisors to student affinity groups, serving on committees, event hosting for diversity and equity initiatives, and serving as the de facto adviser to students from historically excluded groups.<sup>70</sup> Yet professors of color may feel the need to serve in these roles to prove their commitment and competence (or their qualifications, in the framework of white supremacy culture) in a manner that white professors do not. They may also feel personally motivated to take on these responsibilities where they feel students of color are not otherwise supported in their institutions.

White supremacy culture also manifests in the persistence of the law school caste structure.<sup>71</sup> Some clinicians are out of status, have little power, no mechanism for raising their voices in their schools, and limited academic freedom.<sup>72</sup> In schools where clinicians are ineligible for tenure,<sup>73</sup> they receive less status and institutional recognition even as they carry a disproportionate share of the teaching and service loads, develop the strongest relationships with students, and run the programs for which a school receives high rankings and accolades, thus bringing in prospective students and donors.<sup>74</sup> As one scholar has noted, because many doctrinal faculty find it difficult to teach legal writing, clinics, other skills courses, or academic support courses, they assume that no one can teach these courses while also producing

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<sup>69</sup> See Alexander & Moore, *supra* note 10, at 7.

<sup>70</sup> *Id.* at 8.

<sup>71</sup> See Darby Dickerson, *President's Message: Abolish the Academic Caste System*, ASS'N AM. L. SCH. (2020), <https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system/>.

<sup>72</sup> This is true especially at schools in the crosshairs of the anti-Critical Race Theory mania sweeping parts of the country in 2022.

<sup>73</sup> Only 16% of respondents to the 2019-2020 CSALE survey had tenure; an additional 5% were on a tenure track. Robert R. Kuehn, Margaret Reuter & David A. Santacrose, *2019-20 Survey of Applied Legal Education*, CTR. FOR STUD. APPLIED LEGAL EDUC. (CSALE) 54 (2020), [https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457f6d9c25cc6c1457af4\\_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/628457f6d9c25cc6c1457af4_Report%20on%202019-20%20CSALE%20Survey.Rev.5.2022.pdf).

<sup>74</sup> See *id.*; see also Melissa Hart, *The More Things Change . . . : Exploring Solutions to Persisting Discrimination in Legal Academia*, 31 COLUM. J. GENDER & L. 1 (2015); see also Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLIN. L. REV. 287 (2019).

scholarship.<sup>75</sup> To provide these essential courses to students, therefore, schools can create positions with very heavy teaching loads and no time or support for scholarship; subsequently justifying the low pay and status of these positions because the teachers do not publish.<sup>76</sup> Where professors of color are much more concentrated in teaching roles, the caste system can reproduce race-based hierarchies.<sup>77</sup>

### E. Clinics as White Spaces

Our clinics are also white spaces. Looking at our faculty diversity statistics, nearly 8 in 10 clinical faculty members are white; Black, Hispanic, and Indigenous faculty numbers lag behind.<sup>78</sup> This on par with the percentage of fulltime law professors of color across the legal academy.<sup>79</sup> Only 9% of clinical faculty are Black.<sup>80</sup> While it is possible for white faculty to create anti-racist classrooms, diverse faculty are necessary (but not sufficient) to have a truly anti-racist program. A high-quality clinical learning environment gives students the courage to leave their comfort zones; be open-minded, receptive, and responsive to new information and cultural expectations; remain flexible in the face of changing circumstances; and be spontaneous in adapting to unexpected developments.<sup>81</sup> This can be harder for students of color who do not feel safe with their clinical faculty, and impedes the kind of self-exploration and creative thinking necessary for high-quality experiential learning.

For students of color, being in close contact with a white faculty member who is not anti-racist can be discouraging, as the faculty member lacks an understanding of and appreciation for the student's experience in law school.<sup>82</sup> This could cause such students to opt not to develop a personal relationship with the faculty member, missing out on critical feedback, mentoring, and skills training that could prove essential to their education.<sup>83</sup> Another example is where a

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<sup>75</sup> See Sara Ochs, *Imposter Syndrome & The Law School Caste System*, U. LOUISVILLE SCH. L. LEGAL STUD. RSCH. PAPER SERIES, No. 2021-10 (forthcoming 2022).

<sup>76</sup> *Id.*

<sup>77</sup> See Dickerson, *supra* note 71.

<sup>78</sup> CLEA Comm. For Fac. Equity & Inclusion, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLIN. L. REV. 127, 135 (2019).

<sup>79</sup> *Id.*

<sup>80</sup> Kuehn et al., *2019-20 Survey of Applied Legal Education*, *supra* note 73. Also, according to CSALE, fewer than 1% of clinical faculty are genderqueer/non-binary. *Id.*

<sup>81</sup> See Margaret M. Barry, A. Rachel Camp, Margaret E. Johnson, Catherine F. Klein & Lisa V. Martin, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401, 444 (2012).

<sup>82</sup> Moreover, a professor who is outwardly biased can be actively destructive to a student's learning. See Gordon, *supra* note 5, at 223.

<sup>83</sup> See *id.* at 224 (citing Nancy E. Dowd, *Black Boys Matter: Developmental Equality*, 45 HOFSTRA L. REV. 1 (2016)); see also Geoffrey L. Cohen & Claude M. Steele, *A Barrier of*

faculty member's bias causes awkwardness and stress around a student; when the student picks up on that behavior, the student may decide the stress of the interaction is not worth the potential benefits.<sup>84</sup> This is particularly insidious in the clinical environment, where opportunities to develop close relationships between students and faculty form an integral part of our pedagogy (and may be missing in other parts of the law school).

Then there is the issue of problematic clinic seminar spaces. When faculty ignore opportunities to address or counteract problematic behavior by fellow students, clients, or even other faculty members (intentional or not), it speaks volumes to our students about who belongs in the legal profession, and whose voices matter.<sup>85</sup> The common example of this is when a student says something problematic in class. As Tahifa Baker describes:

I personally felt alienated in my clinical seminar. My wealthy, white clinic classmate repeatedly used the term “welfare queen” to describe the low-income woman he represented in the clinic. My other classmates were also obviously bothered by his use of the term because whenever he said it, they all cringed. I was personally insulted because my mother struggled to make ends meet for me and my three sisters while receiving public welfare benefits. I could have personally assured him that there is no royalty in welfare, but I did not. No one else in the clinic, not even the Clinic Director, confronted him.<sup>86</sup>

Resources abound about how to manage classroom conflict and address problematic behavior in class; one answer to this can lie in establishing a culture of openness, communication, vulnerability, and excitement for “teachable moments” – before any negative interaction happens.<sup>87</sup> Faculty can do this by encouraging students to tell their

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*Mistrust: How Negative Stereotypes Affect Cross-Race Mentoring*, in IMPROVING ACADEMIC ACHIEVEMENT: IMPACT OF PSYCHOLOGICAL FACTORS ON EDUCATION 303, 311-312 (Joshua Aronson ed., 2002).

<sup>84</sup> See Gordon, *supra* note 5, at 195.

<sup>85</sup> See Strand, *supra* note 7, at 178; see also Bonny L. Tavares, *Changing the Construct: Promoting Cross-Cultural Conversations in the Law School Classroom*, 67 J. LEGAL EDUC. 211, 223 (2017) (When a professor avoids discussion of obvious cross-cultural issues in class, students may feel shortchanged and resentful.).

<sup>86</sup> Baker, *supra* note 23, at 140.

<sup>87</sup> See, e.g., Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 799-800 (2018) (describing how “self-disclosure” aids in building the authenticity needed for racialized conversations); see also Boles, *The Culturally Proficient Law Professor*, *supra* note 62, at 157–158; see also Tasha Souza et al., *Transforming Conflict in the Classroom: Best Practices for Facilitating Difficult Dialogues and Creating an Inclusive Communication Climate*, in TRANSFORMING CONFLICT THROUGH COMMUNICATION IN PERSONAL TO WORKING RELATIONSHIPS (PEACE AND CONFLICT STUDIES) 373-95 (Peter M. Kellett & Thomas G. Matyók eds., 2016).

own stories as a frame for their perspectives and responses, urging them to “call in” each other and the faculty member, and exhibiting our own vulnerability by engaging in a real-time evaluation of our own responses, especially where those responses are less than ideal. Other techniques include learning faces and names of students, soliciting volunteers instead of cold-calling around sensitive topics, and responding to offensive remarks in real-time in class.<sup>88</sup> Sometimes the situation requires a revisiting of the problematic interaction; faculty must be willing to do this both one-on-one and in class.

Another area where clinics can reproduce white supremacy culture is where they fail to situate anti-racist work in the context of the law school (and legal education) as a whole. For example, where clinics confine discussions of race, class, and privilege into discussions of how we interact with our clients, we miss opportunities to extrapolate those very same constraints to the larger legal and social paradigm – including law school itself.<sup>89</sup> Finally, most law professors teaching clinical and client-skills courses, like other law faculty, have not been exposed in a structured way to culturally proficient lawyering skills.<sup>90</sup> Thus, law professors teaching legal clinics and skills courses are in danger of attempting to pass along skills they may not themselves possess, made all the more evident by close encounters with the many systems of oppression that our clients struggle against on a daily basis. More insidious, clinical faculty may pass along client representation skills that perpetuate racially biased practices or promote a “savior mentality” about the work.<sup>91</sup>

In the externships/field placement realm, schools must be willing to consider whether they promote white supremacy culture with rules around paid externships.<sup>92</sup> Disallowing pay risks communicating three things: first, it can signal to students that the school is insensitive to their debt, assuming students will not have a problem paying back their (often substantial) loans. Second, it could set up a dynamic of legal services as philanthropy and saviorism, instead of solidarity and

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<sup>88</sup> Baker, *supra* note 23, at 148-49.

<sup>89</sup> See Boles, *Seeking Inclusion*, *supra* note 32, at 237 (“While client representation is a critical goal of bringing a cultural proficiency paradigm to legal education, development of client representation skills should be part of a larger cultural proficiency paradigm.”).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* (citing the example of Professor Clark Cunningham, who tells the story of representing his client in a way that contributed to the client’s silencing and oppression); Clark D. Cunningham, *Lawyer as Translator Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1299 (1992).

<sup>92</sup> An increasing number of government placements will soon be offering paid internship and externship placements, thanks to a White House memo discouraging the existence of unpaid (and by implication, exploitative) internships. See Exec. Order No. 14,035 (2021).

mutual aid. Third, disallowing pay may create barriers to participation if a placement requires taking on additional costs such as transportation and/or housing in an area with a high cost of living. Allowing pay, however, can make it difficult for unpaid government and non-profit placements to compete with paid private sector placements. While there are reasons for and against permitting paid externships that are beyond the scope of this article, it is worth considering whether a payment policy reproduces oppressive hierarchies.

Clinicians can also promote elements of white supremacy culture by echoing some of the characteristics of the larger law school, including demanding perfection and punishing mistakes; treating students differently based on the capabilities we pre-judge them to have and then allowing confirmation bias to reinforce those judgments;<sup>93</sup> requiring students to think, write, or practice in only one way; failing to assign group work or recognize group effort; not recognizing that students from historically excluded groups may labor under the weight of biased expectations and perceptions of their group; becoming defensive when students call for changes in the clinical program; and imparting a false sense of urgency on clinic assignments unrelated to actual time-sensitive client work. Clinical programs can also perpetuate white supremacy among their faculties by failing to hire and retain faculty of color; failing to recognize the unique burdens of faculty of color and provide support and resources to counteract them; failing to train colleagues in anti-racism practices, and hoarding power in the hands of more senior faculty instead of making room for newer clinicians to take the reins. Each of these elements and more will be addressed in Part III, below, when discussing suggestions for creating an anti-racist clinical program.

## II. CLINICS AS A FOCAL POINT FOR CHANGE

As outlined above, our law school structures (and even foundational principles of law, such as precedent) are designed to be resistant to change. Individuals in dominant groups will not relinquish their positions of power, preference, and advantage voluntarily; only constructive and affirmative measures can bring about change.<sup>94</sup> Clinics can be instrumental in this effort, however. Clinicians are uniquely situated to make change, both in our own programs and in our institutions writ large. We are already doing great work: clinicians struggle for social justice in our communities; work with diverse students, clients,

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<sup>93</sup> See Gordon, *supra* note 5, at 204.

<sup>94</sup> See Conway, *supra* note 2, at 2; see also Essien, *supra* note 58, at 69.

and colleagues; and care deeply about racial and gender justice. This does not mean, however, that our clinics and programs are free from racism. In fact, our work may make us even less likely to properly assess our individual behavior, as we may style ourselves as “the good ones.”<sup>95</sup>

Clinicians may have this reputation among our doctrinal colleagues, as well, who may see us as more progressive and therefore less likely to need (or give) support to the rest of the faculty on issues of race, class, and oppression.<sup>96</sup> This is a mistake for two reasons. First, of course, is that clinicians still have a lot to learn; no program that exists within a law school is immune from white supremacy culture. The second reason is that by leaving clinics out of the discussion, the rest of the institution misses opportunities to learn from clinicians and to develop a school-wide plan that takes into account every aspect of the curriculum. Leaving clinicians out of the discussion risks depriving clinicians of critical learning, and depriving the rest of the school of clinicians’ knowledge and expertise.<sup>97</sup> The development and implementation of an anti-racist curriculum should be a shared endeavor between clinical and doctrinal faculty, engaging students, faculty and staff in the planning, design, implementation, and assessment processes.<sup>98</sup> We must all be aware of the unique insights, but also burdens, borne by clinical faculty in attempting to make our law schools anti-racist. This Part is an effort to encourage clinics to examine our own programs so that we may better aid the critical discussion of how we can change our institutions.

Clinics are a necessary (and ideal) locus of change for several reasons. First, clinical pedagogy revolves around elements such as teamwork, creative thinking, and quality over quantity; all of these are

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<sup>95</sup> See LAYLA F. SAAD, *ME AND WHITE SUPREMACY* 67–68 (2020) (defining “white exceptionalism” as the belief that you, as a person holding white privilege, are exempt from the effects, benefits, and conditioning of white supremacy and therefore that the work of antiracism does not really apply to you; white exceptionalism is what convinces you that you don’t *really* need to do the work, because you are “one of the good ones.”).

<sup>96</sup> See e.g., Rutgers Race and the Law Review’s 2021 Symposium entitled “Building an Anti-Racist Law School and Curriculum,” which had almost no discussion of anti-racism specifically tailored to clinics, and often had panels with no clinic representation. I highlight this symposium not to criticize this event, but to highlight how institutions may think that clinical programs are “ahead of the curve” and may miss out on opportunities for collaboration. Symposium, *Race & The Law: A Review on Building an Anti-Racist Curriculum and Law School*, RUTGERS RACE & L. REV. (2021), [https://events.law.rutgers.edu/#!view/event/date/20210412/event\\_id/1094](https://events.law.rutgers.edu/#!view/event/date/20210412/event_id/1094).

<sup>97</sup> Or, at worst, doctrinal faculty could feel they should “outsource” these discussions to the clinics, who can be closer to students than doctrinal faculty may be.

<sup>98</sup> Amy C. Gaudion, *Exploring Race and Racism in the Law School Curriculum: An Administrator’s View on Adopting an Antiracist Curriculum*, RUTGERS RACE & L. REV. (forthcoming 2022).



antidotes to the white supremacy cultural norms described in Part I. Clinicians also pride ourselves on our connection with our students. When we use this connection toward anti-racist goals, we can show our students that diversity and equity have a place in the practice of law.

Second, an anti-racist environment is essential where students and faculty represent people of color and work in diverse environments. Cultural competence is widely acknowledged as an essential lawyering skill.<sup>99</sup> ABA Standard 303(c) now mandates that law schools “shall provide” education to law students on bias, cross-cultural competency, and racism as a pre- or co-requisite to a clinical or field placement course.<sup>100</sup> Anti-racist awareness and skill-building can be read into this requirement. By virtue of being in the legal world, our students may also experience racism from judges, court personnel, other attorneys, and even clients; it is incumbent on us to give students the tools to understand how to identify and react to such incidents when they happen.

Third, many clinicians are already motivated to change business-as-usual. The founding goals of clinical legal education were to provide law students the opportunity to learn the skills necessary to practice law and provide quality legal services to the poor.<sup>101</sup> While clinics engage in justice education in different ways and among different client populations, a common denominator for many clinics is a commitment to the difficult work of empowering subordinated people and/or promoting projects that challenge and change system norms.<sup>102</sup> Clinical faculty also drive innovations in the pedagogy of lawyering skills. Many clinical faculty members are already on the vanguard of anti-racist teaching pedagogy, incorporating Critical Race Theory into their syllabi and teaching students to explore their own personal bias in representing clinic clients.<sup>103</sup> And in many legal clinics, students

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<sup>99</sup> Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001) (describing the Five Habits of cross-cultural lawyering that have been widely adopted as seminal components of clinical pedagogy); Ederlina Co, *Teaching Cultural Competence as a Fundamental Lawyering Skill*, 23 LEGAL WRITING: J. LEGAL WRITING INST. 4, 4 (2019).

<sup>100</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 303(c) (2022).

<sup>101</sup> See Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 424 (2019). This dynamic may have shifted somewhat in recent years and will require a concerted effort to keep clinics as social justice spaces. See Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CAL. L. REV. 201, 204 (2016).

<sup>102</sup> See Claire P. Donohue, *Client, Self, Systems: A Framework for Integrated Skills-Justice Education*, 29 GEO. J. LEGAL ETHICS 439 (2016).

<sup>103</sup> See Boles, *Seeking Inclusion*, *supra* note 32, at 236 (citing Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 231

are taught to know themselves, their clients, and the context of the clients' legal problems before deciding how they might then operate zealously and ethically to meet their client's goals. This is the perfect context in which to learn about systems of oppression and the ways those systems affect everyone engaged in the practice of law.

Fourth, the decentralized structure of governance and emphasis on innovative thinking in many of our clinics make those clinics an ideal site for change.<sup>104</sup> Clinical faculty may be more easily persuaded to collective action on behalf of their programs and their colleagues from historically marginalized groups (present and future). While it can be difficult for professors from these groups to speak up individually when faced with a barrier to inclusion and belonging on their faculties, speaking as a group may ameliorate some of the sanctions that attend attempts to rock the boat.<sup>105</sup> Each clinical program has its own structure; some are more hierarchical, some more collaborative – but where the program has a degree of autonomy from the rest of the faculty, it may be able to implement more innovative ideas. This is true within individual clinics, as well – because many clinics are relatively autonomous in terms of their syllabi and pedagogy, individual clinicians can make change even where the clinical program as a whole may have to move more slowly.

Fifth, clinicians play a critical role in mentoring and modeling a professional path for law students as both practitioners and academics.<sup>106</sup> Particularly for students who are intimidated by the elite nature of the legal job market, clinical faculty from diverse backgrounds may open law students' ambitions to a broader range of careers. Anti-racist 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 the faculty members, whose referral networks and organizational relationships will shape the clinic docket. A more diverse faculty can expand clinic service, build stronger relationships of trust with the communities served, and expose students to a broader array of issues and lawyering practices.<sup>107</sup> Clinics are also spaces where students grapple with their own sense of themselves and the role of a lawyer; anti-racist faculty can help students walk through

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(2002)); *see also* clinics that are explicitly anti-racist, such as Erika Wilson's Critical Race Lawyering Civil Rights Clinic at the University of North Carolina-Chapel Hill, and Deborah Archer's Civil Rights Clinic at NYU.

<sup>104</sup> Clinics within a more hierarchical law school (or clinical program) may have to rely on advocacy from strong directors.

<sup>105</sup> *See* Essien, *supra* note 58, at 69.

<sup>106</sup> *See* CLEA Comm. For Fac. Equity & Inclusion, *supra* note 78, at 132.

<sup>107</sup> *See id.*, at 133.

deep questions of morality, ethics, and the implications of working within racist systems and with clients who may not have experience with traditional legal frameworks but who nonetheless have control over their own cases (and lives).<sup>108</sup>

Finally, our work reverberates around the curriculum and brings benefits to our law schools at large. According to CSALE, 55% of clinical faculty taught a doctrinal/podium course(s) over the last three years, and 30% taught a simulation/skills course.<sup>109</sup> By “cleaning up our own houses,” this work benefits not only our own clinical programs but students in non-clinical classes as well. Our voices are also important to the governance of our institutions; 71% of clinical faculty have the right to vote on at least some items in larger faculty meetings, and an additional 19% are permitted to attend such meetings even where they cannot vote.<sup>110</sup> Our anti-racist knowledge and skill-building can lead to benefits throughout our institutions, including playing a critical role in helping our schools implement the new ABA requirement to provide education to law students on bias, cross-cultural competency, and racism.<sup>111</sup>

### III. MAKING THE CHANGE

Having discussed why it is incumbent upon clinical programs to make change for the benefit of their students, their clients, and their institutions, I now offer a series of suggestions for how to do so. Building off work in my own clinical and externship program, as well as community equity and strategic planning work and my own research interests, I have developed a plan of action that can serve as a starting point for turning a critical eye on ourselves and our clinical programs. By identifying anti-racist goals, clinics can articulate strategy and action steps. Without these elements, we can find ourselves spending time and money on trainings, initiatives, or policy changes that seem disconnected from the clinic’s strategic priorities, leaving the program no farther along than it was (or worse, with a frustrated and demotivated faculty). It also means that the clinic could be neglecting the hard work in favor of easily available remedies that feel more comfortable – exactly the kind of remedies that have failed thus far to produce meaningful change.

My process has two different stages: coming together around mis-

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<sup>108</sup> See Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decision in Law School Clinics*, 24 CLIN. L. REV. 301 (2017).

<sup>109</sup> Kuehn et al., *2019-20 Survey of Applied Legal Education*, *supra* note 73, at 61.

<sup>110</sup> *Id.* at 58. According to CSALE, only 26% of clinical faculty are entitled to vote on all matters at faculty meetings.

<sup>111</sup> See ABA Standard 303(c), *supra* note 100.

sion, and building a strategy based on articulable goals. These goals could come from a number of different places, but I offer four: 1) Recruitment, Retention, and Promotion of Faculty and Staff; 2) Anti-Racist Awareness and Skill-Building; 3) Systems and Policies; and 4) Measurement and Accountability. These categories address many aspects of the clinical environment, from our own policies and procedures, to faculty support, to interactions with our students. It would be impossible to address all these factors at once, however; individual clinics and clinicians should modify these factors and prioritize their goals to fit the culture, priorities, and constraints in their own clinics and institutional environments. My hope is that these suggestions can provide a starting point for a critical conversation and a concrete way to reimagine clinics as anti-racist.

#### A. *Create an Anti-Racist Mission Statement*

The first step in realizing an anti-racist clinical program vision is to articulate a mission statement – both for internal stakeholders such as faculty and students, but also to communicate that mission to the wider institution, clients, and (where applicable) program or clinic funders. This statement could stand alone or reference a whole-program mission statement; the important element is that the statement represents an articulated vision of anti-racism for the program that can be used to articulate a strategic plan.

In virtually every other field of both nonprofit and for-profit endeavor, including the practice of law, it is common knowledge that a mission statement is necessary for success.<sup>112</sup> Law schools, too, are increasingly designing mission statements.<sup>113</sup> Researchers have found that larger academic programs, too, are most effective when they possess a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure.<sup>114</sup> The advantages of a mission statement can be substantial, including developing a clear

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<sup>112</sup> *Id.* at 297. While several of the best practices cited in this Section are meant to address an entire law school academic program, they can easily be applied to a clinic; if an entire diverse law school curriculum can come together around shared goals for its students, surely an experiential education program can do the same.

<sup>113</sup> See Paul Caron, *Table of U.S. Law School Mission Statements (2019 & 2021)*; 58 *Schools Lack Explicit Mission Statements*, TaxProf Blog (Nov. 24, 2021), [https://tax-prof.typepad.com/taxprof\\_blog/2021/11/table-of-us-law-school-mission-statements-2019-2021-58-schools-lack-explicit-mission-statements.html](https://tax-prof.typepad.com/taxprof_blog/2021/11/table-of-us-law-school-mission-statements-2019-2021-58-schools-lack-explicit-mission-statements.html); Gordon T. Butler, *The Law School Mission Statement: A Survival Guide for the Twenty-First Century*, 50 J. LEGAL EDUC. 240, 240 (2000).

<sup>114</sup> See Irene Scharf & Vanessa Merton, “*Your Mission, Should You Choose to Accept It . . .*”: *Taking Law School Mission Statements Seriously*, 56 WASHBURN L.J. 289, 289 (2017) (citing GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 3-4 (2000)).

sense of purpose, facilitating decision-making, enhancing communication among faculty, aiding institutional evaluation and measurement, and clarifying marketing strategy.<sup>115</sup> Even the act of designing a mission statement can improve the organization by bringing people together around shared goals.<sup>116</sup>

Plenty of resources exist on “how to write a mission statement”; I will not reproduce them here. Many suggest addressing at least three key concepts, however: (1) purpose; (2) program or methodology; and (3) values, or premises and beliefs.<sup>117</sup> Having an anti-racism mission statement acknowledges the assumptions and inequalities upon which so much of our legal system is based and sets a tone for inclusive classroom learning. It is also an excellent way to communicate to students, faculty, prospective hires, and others about the culture of the clinical program.

There is no single model for this kind of mission statement; clinical programs operate differently and may be more or less siloed or coordinated based on clinic leadership models. Statements could be clinic-level, acknowledging the vision and priorities of a given clinic and director, or program-wide, articulating the vision of the clinical program as a whole. The mission (or missions) need not remain static; the effort to develop a mission statement and to focus direction is a constant and necessary effort, continually updating based on new opportunities and innovation.

A note on values statements: some clinical programs may also choose to have a statement of values to accompany their anti-racism mission statements. The exercise of determining shared values can be an excellent way to come together across clinics regardless of practice area; even starting a discussion about values is important, as it can identify commonalities and differences between clinics and perhaps individual faculty members. An interesting exercise would be to ask individual clinics to identify the values that guide their work and come together to examine where the overlaps are. Where there are significant differences in the values that guide individual clinics’ (and clinicians’) work, this could be an opportunity to identify how to honor those differences and/or how to bring them together to create a more cohesive program.

### *B. Create a Strategic Plan*

After articulating a mission, the program should then develop a

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<sup>115</sup> *Id.* at 297 (citing John C. Scott, *The Mission of the University: Medieval to Postmodern Transformations*, 77 J. HIGHER EDUC. 1 (2006)).

<sup>116</sup> *See id.* at 300.

<sup>117</sup> *See id.* at 305.

strategic plan. This does not have to be a program-wide strategic plan (although that would likely be a useful process, too); instead, it should focus on goals for anti-racism that are simultaneously compelling enough to inspire change and specific enough to inform resource allocation. This could be a list of desired outcomes on a 1-3-5 year timeline, or an articulated plan for achieving a certain (limited) number of goals. The clinic should be able to articulate a goal (what the clinic will do differently, or what faculty will think or do differently), and steps for achieving those goals.

Such strategic plans are valuable not only for what is included; they are also excellent to draw attention away from what is NOT included. It would be impossible for any clinical program to devote significant resources to changing dozens of factors at once. For one, it may not be possible (for example, institutional constraints may mean a clinic cannot re-design its hiring process). Second, there is simply not time to concentrate on everything and do it all well. Third, some of the factors are dependent on each other; given any one program's institutional challenges and opportunities, it may be more strategic to concentrate on one category before another. Finally, there are likely policies or practices that are critical to anti-racism in your school that are not in my list below. My suggestions, therefore, should be seen more as a menu of options than a prescription. I would argue that any effective plan should have elements from each of the four categories, but it is not necessary, or even wise, to try to do everything all at once. My advice is to pick a few items from the list, devote real time and energy to making them happen, celebrate your success, and then move onto the next.

This can be a tricky process; for faculty committed to countering anti-racism in all elements of a clinical program, it can be difficult to acknowledge that not everything can be done all at once. The focus and accountability that come from having those difficult discussions, however, can lead to a stronger strategy toward the (more limited) goal. Once articulated, the strategic plan can and should be relied upon when making curricular choices; hiring or promoting faculty and staff; approving new clinics; evaluating clinics and faculty in annual reviews; or making administrative decisions such as recruitment, outreach, and allocation of resources.

So, for example, if one of the articulated goals is "Clinic faculty are anti-racist in teaching interactions with students," one of the outcomes could be "Clinic faculty use bias-mitigation practices in feedback and evaluation of students."<sup>118</sup> From there, the plan could

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<sup>118</sup> Other outcomes could be "Clinical faculty use inclusive language in class and in one-on-one meetings," "Clinical faculty are able to normalize discussions about race in class,"

include elements such as: 1) Faculty will review resources on bias and feedback,<sup>119</sup> 2) Directors will host a training on bias and feedback, 3) Clinic faculty will meet monthly with small groups to discuss implementation of skills learned during the training, 4) Faculty will survey themselves and their students at the mid-point and end-point of every semester to measure progress toward the goal, and 5) Faculty will have a year-end group session to evaluate the goal and decide whether to continue working toward the goal or move on to another goal. This may look intimidating; it is a lot of energy put toward just one goal (out of the several dozen I highlight below). That is the idea; making a dedicated strategy for achieving a few articulated goals is the only way clinics will see real change in knowledge and behavior.

### *C. Suggested Areas for Anti-Racist Change in Clinical Programs*

Having advocated for creating a mission and a strategic plan, this next Section is meant to offer suggestions for areas that clinics might look to find areas for improvement. There are four categories here: 1) Anti-Racist Recruitment, Retention, and Promotion of Faculty and Staff; 2) Anti-Racist Awareness and Skill-Building; 3) Anti-Racist Systems and Policies; and 4) Measurement and Accountability. For clinics looking to engage in one of these four categories, I have included resources on the “why” and “how” to evaluate and change one’s program in that area. I have also included an Appendix to help visualize what a set of goals and outcomes could look like in an anti-racism strategic plan.<sup>120</sup> Careful readers will note that none of these categories deals directly with client-facing clinic work: recruiting and onboarding clients, selecting cases, designing a course of skill- and knowledge-building, and helping students deal with racist interactions with clients, judges, and court personnel. This is because each clinical program, not to mention clinic, is unique in the way it recruits and serves clients, practices law or policy advocacy, teaches interviewing and counseling, practices client-centered lawyering, and more. Each of these elements is critical in serving our clients and communities, however, and deserves a place in any clinical program’s anti-racism mission. The four categories below, and the details therein, are intended to be a starting point for the strategic planning process.

#### *1. Anti-Racist Recruitment, Retention, and Promotion of Faculty and Staff*

The first element pertains to faculty and staff, the people who

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or “Clinic faculty are able to productively address racial tension in seminar.”

<sup>119</sup> See, e.g., Gordon, *supra* note 5.

<sup>120</sup> See *infra* Appendix I.

make up our programs. For clinical programs that have the flexibility to change their recruiting and hiring practices, anti-racist practices in this realm are crucial, because an institution's racial composition affects the racial norm, sets students' expectations for diversity in the legal profession, and helps define the culture of an institution. Racial demographics also directly affect students' perception of racial unevenness, and as a consequence, their experiences.<sup>121</sup> Clinics therefore require a diverse faculty and staff; not just demographically, but also diversity of life experience, perspective, and skills.<sup>122</sup> Yet barriers remain to achieving this vision of diversity. There are several strategies that clinics can use to ensure more diversity among faculty and staff while creating the kind of anti-racist environment that will encourage people of color to thrive (and stay). Diversity in hiring is a necessary, but not sufficient condition to changing this; law schools must also develop efforts to retain and support people after they arrive.<sup>123</sup> Faculty from historically excluded groups who teach at predominantly white institutions face physical, psychological, emotional, spiritual, social, and legal challenges.<sup>124</sup> Our clinics must therefore create a climate of belonging, nurturing, and support.

*a. Recruiting Diverse Faculty*

Recruiting members of historically excluded groups to both faculty and staff roles requires deliberate outreach and a commitment to promoting a broader range of qualifications than simply elite educational credentials (given the barriers to entry into those elite institutions for non-white individuals). There are pedagogical reasons as well as institutional/cultural reasons to make change here.<sup>125</sup> A more diverse faculty helps to lessen stereotype threat for our students of color, where implicit bias against a stereotyped group influences the classroom environment and teachers' assessment of student work.<sup>126</sup>

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<sup>121</sup> See Feingold & Souza, *supra* note 32, at 84.

<sup>122</sup> See CLEA Comm. For Fac. Equity & Inclusion, *supra* note 78, at 131.

<sup>123</sup> See Bridget T. Kelly, Joy G. Gayles & Cobretti D. Williams, *Recruitment without Retention: A Critical Case of Black Faculty Unrest*, 86 J. NEGRO EDUC. 305, 310 (2017) (stating that Black faculty at predominantly white institutions reported being recruited heavily, then having to prove they were qualified to be faculty, and then having no institutional support in place to retain them).

<sup>124</sup> See Alexander & Moore, *supra* note 10, at 4.

<sup>125</sup> See J Clifton Fleming Jr., *Thoughts about Pursuing Diversity in Legal Education for Pedagogical Rather than Political or Compensatory Reasons: A Review Essay on Stephen L. Carter's "Reflections of an Affirmative Action Baby"*, 36 HOW. L.J. 291 (1993).

<sup>126</sup> See CLEA Comm. For Fac. Equity & Inclusion, *supra* note 78, at 132 (finding that women and people of color perform better in classes taught by more diverse faculty); see also Ronald G. Ehrenberg, Daniel D. Goldhaber & Dominic J. Brewer, *Do Teachers' Race, Gender, and Ethnicity Matter? Evidence from the National Education Longitudinal Study of 1988*, 48 INDUS. LAB. RELS. REV. 547 (1995).



Having a more diverse faculty also helps to lessen the stereotype threat faced by the faculty themselves, as majority colleagues have more interactions with colleagues of color and behave in a less biased way toward them.<sup>127</sup> Yet barriers remain to recruiting diverse faculty members. One common institutional justification for the lack of diversity on the faculty is that qualified applicants are “difficult to find.”<sup>128</sup> The secrecy surrounding faculty hiring decisions makes it difficult to evaluate these claims for their truth in any given search.<sup>129</sup> Inclusive hiring in clinics therefore requires real effort on the part of hiring faculty from start (crafting a job description) to finish (personal follow-up with candidates from historically excluded groups).

*b. Outreach and Recruitment*

Clinics concentrating on this element should follow best practices for diverse recruitment techniques from both inside and outside the law teaching world. The CLEA Committee for Faculty Equity and Inclusion has a number of strategies for increasing diversity in clinical hiring, among them resisting the motivation to treat clinical hiring like doctrinal hiring (with its increasing reliance on prior teaching experience and publications, post-graduate fellowships, and elite credentials, which reproduce the same barriers to inclusion faced by the rest of the law faculty).<sup>130</sup> The AALS, too, has several strategies to encourage diverse hiring, including recruiting through non-traditional avenues by searching state, local, and federal government agencies; working with affinity bar groups to find good candidates; seeking faculty candidates through workshops and programs such as the regional BIPOC legal scholarship conferences, legal writing institutes, and clinical conferences; and accessing existing academic structures such as teaching fellowships, LL.M. programs, Visiting Assistant Professor programs, and PhD programs.<sup>131</sup> Both CLEA & AALS stress the importance of di-

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<sup>127</sup> See Gordon, *supra* note 5, at 229.

<sup>128</sup> Alexander & Moore, *supra* note 10, at 8 (citing Yolanda F. Niemann, *The Psychology of Tokenism: Psychological Realities of Faculty of Color*, in HANDBOOK OF RACIAL AND ETHNIC MINORITY PSYCHOLOGY (G. Bernal et al. eds., 2003) and Ivy Kennelly et al., *The Historical Context of Gender, Race & Class in the Academic Labor Market*, 6 INTERDISC. ISS. ON RACE GENDER & CLASS 125 (1999)).

<sup>129</sup> See Carliss Chatman & Najarian Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISC. 2, 8 (2021).

<sup>130</sup> See CLEA Comm. For Fac. Equity & Inclusion, *supra* note 78, at 141–145; see also Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN'S L. REV. 171, 191 (2013) (stating that “[a] hiring practice that uses academic pedigree as a litmus test to acceptability is a veritable recipe for socioeconomic discrimination”).

<sup>131</sup> See AALS Handbook: Statement of Good Practices - Recruitment & Retention of Minority Law Faculty Members, ASS'N AM. L. SCH. <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members/>; see also Kellye Y. Testy, *Best Practices for*

verse hiring committees (without at the same time overburdening faculty members of color), data collection, and accountability measures.

The important message from these experts is that inclusive hiring relies on outreach and recruitment; by the time candidates arrive on campus to interview, the opportunity to hire stellar diverse candidates may already have been lost. For example, women consistently undersell themselves, feeling that unless they meet all of the job qualifications, they shouldn't bother applying.<sup>132</sup> In clinical teaching, it can be difficult to communicate what the qualifications of the job are because clinics are so different from one another, and there are so many ways to succeed.<sup>133</sup> It is therefore imperative that hiring committees perform affirmative outreach and craft job descriptions that detail the qualifications necessary to fulfill the duties of the job.<sup>134</sup> Committees should be wary of over-relying on the clinical teaching fellowship pipeline; the barriers to entry of those programs (including the ability to live for years on an under-market salary) mean that they may not result in a diverse pool of graduates.<sup>135</sup>

An important part of outreach is articulating the clinic's anti-racist values during the job recruitment process. Clinics should also identify, encourage, and intentionally develop opportunities for promotion among people from historically excluded groups in their own ranks. Members of these groups may need more encouragement to promote themselves as leaders, without which the roles can continue to be filled by people who already feel comfortable in leadership roles or feel entitled to leadership positions. Instead, identify potential leaders early and encourage them to build skills that will lead to professional advancement.<sup>136</sup>

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*Hiring and Retaining A Diverse Law Faculty*, 96 IOWA L. REV. 1707 (2011); see also Daryl G. Smith, C. Turner, Nana Osei-Kofi & Sandra Richards, *Interrupting the Usual: Successful Strategies for Hiring Diverse Faculty*, 75 J. HIGHER EDUC. 133 (2004). Other suggestions include the Clinicians of Color listserv and subgroup, state bar committees, alumni groups from your institution and other local schools (especially historically Black institutions), and the AALS Minority Group listserv.

<sup>132</sup> Tara S. Mohr, *Why Women Don't Apply for Jobs Unless They're 100% Qualified*, HARV. BUS. REV. (Aug. 25, 2014), <https://hbr.org/2014/08/why-women-dont-apply-for-jobs-unless-theyre-100-qualified>.

<sup>133</sup> Some clinicians are experts in teaching, others in scholarship; some are tireless community advocates, others are influential policy wonks; some craft amazing briefs, others work with coalitions.

<sup>134</sup> The hiring team should thereafter evaluate the candidates only on those qualifications.

<sup>135</sup> See Gautam S. Hans, *Clinical Fellowships, Faculty Hiring, and Community Values*, 27 CLIN. L. REV. 253 (2021). While some fellowships do offer a living wage, many do not, closing off those opportunities to all but the most privileged applicants.

<sup>136</sup> There is a tension here, however – the more leadership roles a faculty member takes

Clinics should be careful about ruling out candidates because their recommendations are not as strong as they could be; studies have shown that faculty recommendation letters can themselves be biased.<sup>137</sup> Letters written for men can have more “standout descriptors,” such as “the most gifted,” “best qualified,” or “rising star,” than those written for women.<sup>138</sup> Similarly, letters for men can emphasize research while those for women emphasize teaching.<sup>139</sup> These differential recommendation letters can make a big difference when, for example, hiring faculty rely heavily on recommendations from their colleagues and peers at other institutions.

These preliminary outreach and recruitment steps are necessary because it is not easy for a clinic to simply announce a failed search and start again; clients need services, students need supervision, and supervising attorneys have obligations under ethics and state bar rules that may not be able to wait another six months to re-start a search process. A failed search may result in hiring more adjunct and short-term contract faculty without security of position and could create even more work for directors forced to train a rotating cast of staff attorneys. Best practices require putting in the up-front work to guard against a failed search in the first place.

### c. Candidate Review

As a part of the candidate review process, one goal could be to ensure that committee members are aware of and take steps to mitigate their biases, both explicit and implicit. Being anti-racist in a hiring process means that each member of the committee should read resources about unconscious bias and be on notice for potentially biased behavior (phrases like “she doesn’t fit with the culture of the clinic” or “I’m having a hard time seeing him in the role” are indicators of potential bias). Faculty hiring committees could invest in a training to learn how unconscious bias manifests in hiring – but at the very least every committee should have a discussion about identifying

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on, the more they may be asked to do that takes them away from other potentially fruitful activities like scholarship; faculty of color and their mentors should be mindful about which leadership opportunities to take on and their opportunity costs.

<sup>137</sup> See Gordon, *supra* note 5, at 216 (detailing studies showing that women and men receive differential feedback in the form of faculty recommendation letters).

<sup>138</sup> See *id.* (citing Toni Schmader, Jessica Whitehead & Vicki H. Wysocki, *A Linguistic Comparison of Letters of Recommendation for Male and Female Chemistry and Biochemistry Job Applicants*, 57 *SEX ROLES* 509 (2007)), <https://link.springer.com/article/10.1007/s11199-007-9291-4>).

<sup>139</sup> See *id.* (citing Juan M. Madera et al., *Gender and Letters of Recommendation for Academics: Agentic and Communal Differences*, 94 *J. APPLIED PSYCH.* 1591 (2009)); see also Francs Trix & Carolyn Psenka, *Exploring the Color of Glass: Letters of Recommendation for Female and Male Medical Faculty*, 14 *DISCOURSE & SOC’Y* 191 (2003).

and mitigating bias.<sup>140</sup> Ensure that biased notions of who “looks like a law professor” do not enter into determinations of who would be a great fit for the job.<sup>141</sup>

Another practical suggestion for reducing bias in the hiring process is to have a set number of questions and ask each candidate the same question; this avoids unstructured conversations that could leave room for factors unconnected to the job to appear and influence decision-making (such as where a candidate grew up, or even protected factors such as a candidate’s religion or family status).<sup>142</sup> Another technique is to ask candidates to take a work sample test – this is useful in comparing applicants and can be an effective predictor of future job performance. Here is an example: in my most recent hiring committee for a new clinic director, I suggested a role-play exercise where the candidates talked to a “student” who was shirking her responsibility to her teammates and insisting that she would get the work done on her own schedule. Seeing how each candidate responded to this situation was truly illuminating; the committee (and other faculty who attended the interviews) were able to see the candidates’ ability to balance directive vs. non-directive teaching, see the candidates’ communication styles, and allowed the candidates to showcase their expertise in working with students and managing teamwork dynamics.<sup>143</sup> Other ways to de-bias the interview process include mitigating bias before and during the interview; even short-term measures such as ensuring that participants are comfortable, well-rested, and fed have a measurable effect on debiasing decision-making.<sup>144</sup>

Ensure that the interview process is accessible to all potential candidates. This includes everything from the schedule to the accessi-

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<sup>140</sup> For starters, faculty could review my article about mitigating bias in feedback and evaluations; while written to address feedback in the classroom, many of the lessons and mitigation techniques would easily apply to hiring. *See generally* Gordon, *supra* note 5.

<sup>141</sup> Aysa Gray, *The Bias of ‘Professionalism’ Standards*, STAN. SOC. INNOVATION REV. (June 4, 2019) (citing Okun, *White Supremacy Culture*, *supra* note 37) [https://ssir.org/articles/entry/the\\_bias\\_of\\_professionalism\\_standards](https://ssir.org/articles/entry/the_bias_of_professionalism_standards).

<sup>142</sup> *See* Alicia Medina, *How to Make the Faculty Hiring Process More Equitable and Effective*, DUKE OFF. FOR FAC. ADVANCEMENT (Jan. 5, 2021) (providing suggestions that include being explicit about the role of bias at the start of search proceedings, and establishing built-in “bias checks” throughout the process); *see also* Higdon, *supra* note 130, at 185 (stating that “[p]revailing standards of excellence in performance, and thus distributive criteria tracing to those standards, are tilted to promote characteristically upper and middle class perspectives, tastes, or interests”).

<sup>143</sup> Incidentally, the exercise also showed the doctrinal faculty in attendance the importance of clinical teaching pedagogy; they came away with a better understanding of how our teaching methodologies affect our students’ learning.

<sup>144</sup> *See* Gordon, *supra* note 5, at 235.

bility of the interview rooms.<sup>145</sup> A 12-hour day with no time for rest (or bathroom breaks) makes it difficult if not impossible for candidates with disabilities to perform up to their best, nor is it a necessary test of performance; few law professors' days involve 12 hours of continuous teaching and advising. In this way, we have much to learn from hiring during COVID-19; law professors with disabilities report that the process was more inclusive than pre-pandemic fly-outs.<sup>146</sup>

Finally, committees should debias their evaluation process by using rubrics.<sup>147</sup> Ensure that each element of the rubric is essential to the job, and that extraneous factors do not result in "bonus points" that have nothing to do with the job for which the person is being hired. For example, is law review publication history a part of the job, and if not, does it belong in the evaluation process at all? How many points are given to academic credentials vs. experience supervising students vs. excellence in legal practice? This can be a difficult conversation, as different members of the committee may feel differently about the assigned weight of each factor. Variability, however, leaves room for bias.<sup>148</sup>

The next step after creating a rubric is to do an equity audit of your rubric. Review the stated markers of success to ensure they do not elevate skills and attributes that reproduce stereotypes and hierarchies. For example, ensure that the rubric does not promote ideals of the teaching profession that are masculine and male-centric, or white-centric, which can lead to biased view of performance and capabilities.<sup>149</sup> For example, a Black woman candidate may receive a more negative reaction to a "tough but fair" approach to students than a white woman, based on a biased perception of aggressiveness in Black women and the white supremacist ideal of shying away from conflict. Relatedly, Professors Eric Uhlmann and Geoffrey Cohen have highlighted a phenomenon referred to as "constructing criteria,"<sup>150</sup> which

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<sup>145</sup> See Katie Eyer, Kaaryn S. Gustafson, Katherine MacFarlane, Katherine Perez, Robin M. Powell & Michael E. Waterstone, *The Forgotten Demographic: Law Professors with Disabilities in Legal Academia*, ASS'N AM. L. SCH. 2022 ANN. MEETING (2022).

<sup>146</sup> *Id.*

<sup>147</sup> See, e.g., *Mitigate Bias in Hiring With a Simple Rubric*, MGMT. CTR. (Apr. 15, 2018), <https://www.managementcenter.org/article/mitigate-bias-in-hiring-with-a-simple-rubric/>; see also Iris Bohnet, *How to Take the Bias Out of Interviews*, HARV. BUS. REV. (Apr. 18, 2016) [https://hbr.org/2016/04/how-to-take-the-bias-out-of-interviews?referral=03759&cm\\_vc=RR\\_item\\_page.bottom](https://hbr.org/2016/04/how-to-take-the-bias-out-of-interviews?referral=03759&cm_vc=RR_item_page.bottom) (advocating for performance tests instead of unstructured interviews). The role-play described above would be an example of a performance test.

<sup>148</sup> See Gordon, *supra* note 5, at 237.

<sup>149</sup> See Laura L. Bierema, *Women's Leadership: Troubling Notions of the "Ideal" (Male) Leader*, 18 ADVANS. DEVING. HUM. RES. 119 (2016).

<sup>150</sup> Eric L. Uhlmann & Geoffrey L. Cohen, *Constructed Criteria: Redefining Merit to Justify Discrimination*, 16 PSYCH. SCI. 474 (2005).

explores how men and women face discrimination as a result of expectations about what a “traditional role” is for either gender. Their study concluded that participants defined their notions of what it took to do a job in a way tailored to the credentials of the individual they wanted to hire.<sup>151</sup>

*d. Internal Promotions and Shared Leadership*

One excellent way to encourage faculty of color to stay and thrive is for clinic leadership to develop a promotion and succession plan that includes a commitment to fostering junior faculty to move into leadership positions in the clinic and the law school. The clearest way to achieve this nurturing environment is to have clearly enunciated rules as part of the promotion or tenure process, and rules that discourage use of informal criteria as a basis for granting promotion.<sup>152</sup> These published rules should be a part of the faculty handbook, and each faculty member should be advised by the Experiential Skills director what is expected of them at each level of promotion.<sup>153</sup> There should be a frank and honest, but constructive, appraisal of each faculty member annually so they may receive advice on how well or how poorly they are progressing toward promotion.<sup>154</sup> If the institution applies different weights to scholarship, teaching, and community service, the published rules should make this clear.<sup>155</sup> This will also help junior faculty decide where to spend their time as they are evaluating various steps on their path to leadership, mitigating the tension between the “grunt work” that comes from leadership with the more potentially “lucrative” (in law school currency) activities such as scholarship. This is especially important for clinicians, who may feel pressure (either personal or institutional) to serve more clients, while their future leadership depends on things such as teaching doctrinal classes, scholarship, or participation in AALS/CLEA. Those in charge of promotions must also consider the role of race and gender in teaching evaluations and be willing to consider other methods of evaluating teaching beyond student evaluations.

One model to mitigate these tensions is a shared leadership model. At least one scholar has identified the benefits of shared leadership as a pedagogical tool for students;<sup>156</sup> the same benefits apply to

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<sup>151</sup> *Id.*

<sup>152</sup> See Albert T. Quick & Kent D. Lollis, *Retention of Minority Professors: Dealing with the Failure to Presume Competence*, 10 ST. LOUIS U. PUB. L. REV. 361, 369 (1991).

<sup>153</sup> *Id.*; see also DEO, UNEQUAL PROFESSION, *supra* note 57, at 79 (describing the prevalence of “unwritten rules” about tenure and advancement).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> See Paul Radvany, *Experiential Leadership: Teaching Collaboration Through a*

developing clinic leadership.<sup>157</sup> There are many benefits to a shared leadership model. One is that leading a clinical program can be a big job, especially if faculty are also trying to manage their own client-facing, student-facing, and scholarship responsibilities.<sup>158</sup> Sharing leadership can free up time so faculty can more ably balance these competing concerns while developing their leadership capability. Shared leadership can also mean more psychological safety for the co-leaders, leading to more comfort in presenting new ideas and proposing innovative solutions, and moving outside of their comfort zones to build new skills without opening themselves up to attack if they make mistakes.<sup>159</sup> This is particularly important if faculty of color feel hesitant to take on leadership roles because of a fear of being judged more harshly than white colleagues. Finally, sharing leadership can also lend the clinical program a more deep and diverse institutional leadership. Law firms, educational institutions, and private industry have also identified the benefits of shared leadership as a way to foster up-and-coming talent, be more strategic in their innovation and management, and ensure that new employees are comfortable taking on leadership roles.<sup>160</sup> When done explicitly, developing a pipeline of diverse faculty will also encourage them to stay, knowing they are making progress in their careers. This factor goes hand-in-hand with mentorship, discussed further in Section III.C.3, below.

## 2. *Anti-Racist Awareness and Skill-Building*

Creating an anti-racist clinic will involve more than recruiting and nurturing a diverse slate of faculty; such measures are necessary but not sufficient. Another way to build an anti-racist clinic is to devote time, energy, and resources for clinicians to interrogate their own and their institution's racism and other kinds of oppression and bias; engage in reviews of their teaching and course design; and ensure that

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*Shared Leadership Model*, 27 CLIN. L. REV. 309 (2021).

<sup>157</sup> As of the most recent CSALE survey, 58% percent of schools have a single individual with oversight responsibility for all law clinics and field placement courses at the school (i.e., the clinical education program). Kuehn et al., *2019-20 Survey of Applied Legal Education*, *supra* note 73.

<sup>158</sup> In addition to family and community responsibilities and self-care; *see* Section III.C.3. on enabling faculty of color to thrive.

<sup>159</sup> *See* Radvany, *supra* note 156, at 343 (citing Soo J. Han, Yunsoo Lee & Michael Beyerlein, *Developing Team Creativity: The Influence of Psychological Safety and Relation-Oriented Shared Leadership*, 32 PERFOR. IMPROV. Q. 159, 176 (2019)).

<sup>160</sup> *See* Cheryl Cran, *The Future of Work in the Legal Profession: What Firm Leaders Need to Know About Working with Their Young Talent*, 43 L. PRAC. 38, 40 (2017); Elizabeth M. Holcombe & Adrianna J. Kezar, *The Whys and Hows of Shared Leadership in Higher Education*, HIGHER EDUC. TODAY (May 10, 2017), <https://www.higheredtoday.org/2017/05/10/whys-hows-shared-leadership-higher-education>.

BIPOC students are being taught and treated equitably.<sup>161</sup> A program could do this by training faculty on interrogating their own cultural proficiency and normalizing discussion about oppression of all kinds: racism, misogyny, ableism, homophobia, LGBTQ+ discrimination, and more.

Making progress in this area requires a programmatic commitment to recognizing and naming the construction of whiteness (the racial norm), social reality, racialized social structures, and racial ideology,<sup>162</sup> and how these affect the work of the clinic both inside and outside the law school. This is no easy or straightforward task. For clinicians looking for a framework for self-evaluation, Anastasia Boles provides a four-step program in her article *The Culturally Proficient Law Professor: Beginning the Journey*, an “inside out” approach to move from what she calls “cultural destructiveness” to cultural proficiency.<sup>163</sup> In the classroom, a starting point for the conversation could be the white supremacy culture framework outlined above. Another excellent starting point is Peggy McIntosh’s *White Privilege: Unpacking the Invisible Knapsack*, and its law school corollary.<sup>164</sup> Faculty may also use in-class introduction exercises that encourage students to name race as part of their identities and recognize how this may show up in their interactions with colleagues and clients.

Clinicians must be willing to talk about whiteness, as well as color. This is important for our students of color, as silencing questions of race can leave them feeling disconnected from much of the rest of the law school curriculum, as well as from the realities of legal practice itself.<sup>165</sup> But it is also important in the context of client-centered lawyering. There is always more to a client’s legal situation than the technical legal matter, and clinical faculty concerned not only about teaching legal skills but about teaching justice should recognize the opportunity to teach those contextual concerns, barriers, and realities. We must prepare our diverse student bodies to contend with the reality of white spaces in the context of their representation of their clients: in courtrooms, prisons, schools, hospitals, businesses, and all the other places where our clinics practice, and where such oppression

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<sup>161</sup> See Lain, *supra* note 87, at 792.

<sup>162</sup> See Goodrich & Mills, *supra* note 20, at 21; see also Conway, *supra* note 2, at 4.

<sup>163</sup> Boles, *The Culturally Proficient Law Professor*, *supra* note 62, at 150 (2018).

<sup>164</sup> Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, WOMEN’S INT’L LEAGUE PEACE & FREEDOM (1989), [https://psychology.umbc.edu/files/2016/10/White-Privilege\\_McIntosh-1989.pdf](https://psychology.umbc.edu/files/2016/10/White-Privilege_McIntosh-1989.pdf). An excellent law school corollary to this list can be found in Stacey Brustin and Carmia Caesar’s chapter on bias in the legal profession, in ALEXANDER SCHERR ET AL., *LEARNING FROM PRACTICE* 173-174 (2016).

<sup>165</sup> See Christine Z. Cruz, *Four Questions on Critical Race Praxis: Lessons from Two Young Lives in Indian Country*, 73 *FORDHAM L. REV.* 2133, 2140 (2005).



has a very real effect on the day-to-day realities of our clients.<sup>166</sup> Culturally conscious clinicians can place clients and students within a larger community and assist in understanding the barriers faced by each.<sup>167</sup> Encouraging students to see from multiple perspectives also enables them to develop effective arguments on behalf of their clients.<sup>168</sup> This improves students' analytical skill.<sup>169</sup> A student who brings legal knowledge to an analysis may be sufficient to adequately represent an individual in our adversarial legal system, but knowledge of racist systems allows a student to move toward a deeper understanding of the client's place in a larger justice context.<sup>170</sup> Moreover, a stronger sense of multiple cultural perspectives will better prepare students for legal careers that are more likely than ever before to include international work.

Making often-unspoken norms visible will likely be subject to resistance, as it presents "an overwhelming challenge to the institution, the law professors, and the law student body alike."<sup>171</sup> The law of white spaces operates on several premises, including "the silent assertion of the superiority of the norm," which includes "the silencing of questions of race as in any sense pertinent to knowledge, or teaching, of law."<sup>172</sup> The dominant majority may feel threatened by consciousness of white privilege.<sup>173</sup> Yet understanding the culture of "those who perceive themselves to be without color or unaffected by discrimination" is critical for students of color, who must operate within, and interact with, the dominant structures; it is also important for white

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<sup>166</sup> See Margaret E. Montoya & Melissa Harrison, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Spaces*, 6 COLUM. J. GENDER & L. 387 (1996) (analyzing the lawyer's difficult task of re/representing the Other); see also Cruz, *supra* note 165, at 2143 (explaining that consciousness of race and culture requires the practitioner to place the individual within a larger community and consciousness of space, whether white or brown, and assists in understanding the barriers that may be encountered and must be addressed in the representation).

<sup>167</sup> See Cruz, *supra* note 165, at 2143; see also Tavares, *supra* note 85, at 215 (stating that ". . . effective representation of a client from a different culture should include being wise to the prejudices and biases of others that may affect how a client has been or will likely be treated").

<sup>168</sup> See Tavares, *supra* note 85, at 215.

<sup>169</sup> *Id.*; see also Archer, *Political Lawyering*, *supra* note 101, at 428 (stating that lawyers engaged in individual representation, strategic litigation, legislative advocacy, community organizing, public education, direct action, and other forms of advocacy must use their work to facilitate a constant dialogue between the community, courts, government agencies, and legislatures at the local, state, and national levels).

<sup>170</sup> See Archer, *Political Lawyering*, *supra* note 101, at 411.

<sup>171</sup> Cruz, *supra* note 165, at 2138; Feingold & Souza, *supra* note 32, at 112 (reporting on a survey that revealed that white students proceed through law school without ever consciously thinking about their own whiteness, unlike the majority of students of color who feel marked by their racial identity).

<sup>172</sup> Goodrich & Mills, *supra* note 20, at 17-18.

<sup>173</sup> *Id.* at 19.

students, who should understand how their whiteness impacts their representation (especially where they work with clients of color).<sup>174</sup>

This article does not purport to argue that clinics must adopt one way to teach these important issues, but some kind of critical framework is likely necessary to offer students a more fulsome picture of how their clients' lives are situated in our system of laws. Clinics have been engaging in critical theory for years, whether by teaching through the lens of critical race theory, rebellious lawyering, culturally responsive teaching, client-centered lawyering, and/or feminist legal theory.<sup>175</sup> Given the explicit commitment (and sometimes, requirement) of many clinics to address access to justice issues, clinical faculty must give students a broader viewpoint and context for the issues their clients face. We cannot expect students to do this on their own, especially students from historically advantaged groups; only by creating anti-racist spaces and delivering anti-racist instruction can we expect law students to deliver anti-racist legal services to clients.<sup>176</sup> Where students *do* possess the knowledge and awareness of how racist systems affect their work, leaving out such discussions makes clinicians at best seem out of touch, and at worst contributing to those very systems.

In 2022, one cannot discuss teaching critical theory without acknowledging that some schools will labor under more constraints due to bans on teaching critical race theory (CRT);<sup>177</sup> a given faculty member's security of position may play a role in the calculation of how explicitly to situate discussions in critical models. Even in states banning CRT, however, state bars will often have mandated that in order to practice, students must be providing legal services to those who cannot otherwise afford them;<sup>178</sup> situating the conversation within the state bar rule may provide a justification for discussing why access to justice initiatives are necessary in the first place.<sup>179</sup> Such discussions

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<sup>174</sup> *Id.* at 17.

<sup>175</sup> See Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 J. GENDER SOC. POL'Y. & L. 161 (2005); see also Erika Wilson's Critical Race Lawyering Civil Rights Clinic at the University of North Carolina-Chapel Hill.

<sup>176</sup> Boles, *Seeking Inclusion*, *supra* note 32, at 216.

<sup>177</sup> See, e.g., S.B. 2290, 112th Gen. Assemb. Reg. Sess. (Tenn. 2022); see also H.B. 2670 112th Gen. Assemb. Reg. Sess. (Tenn. 2022) ("As enacted, prohibits a public institution of higher education from taking certain actions with regard to divisive concepts and the ideologies or political viewpoints of students and employees."); see also H. J. 1211, 89th Gen. Assemb. Reg. Sess. (Iowa 2021); see also H.B. 7, 124th Gen. Assemb. Reg. Sess. (Fla. 2022).

<sup>178</sup> While some suspect this was simply an effort to foreclose competition for the private bar, this is likely not stated in the rules; it is therefore reasonable to discuss such rules within the context of access to justice.

<sup>179</sup> See various state bar student practice rules adopted to provide legal services for those unable to afford them (See, e.g., Tenn. Sup. Ct. Rule 7, § 10.03. Law Student Practice

are also required under the ABA's Rule 303(c), which mandates that law schools "shall provide" education to law students on bias, cross-cultural competency, and racism as a pre- or co-requisite to a clinical or field placement course.<sup>180</sup>

Naming the realities of privilege and oppression is also a pedagogical tool. Acknowledging who our students are (and the systems that affect their work and life) is how we as faculty respect them; creating space for this dialogue is also an excellent way to create an open and inclusive learning environment.<sup>181</sup> When professors normalize discussions of difference (and their attending hierarchies), it bespeaks a level of comfort or dexterity in navigating social difference that lets students know they will not carry the entire responsibility of dealing with race, gender, or other social signifiers in classroom interactions.<sup>182</sup> Students may choose to help carry that weight, but they should not be assigned that task ("Student X, please inform the class about this issue relating to your group") or be forced to choose between the issue not being presented at all (nonrecognition by the professor) or their assuming full responsibility for doing so (by raising the issue themselves).<sup>183</sup>

There are two additional benefits to these discussions. First, encouraging our students to situate their clients' issues in the context of structural racism gives students a more fulsome perspective on their clients' lived reality. This may enable more creative, empathetic, and competent representation, particularly where a student's lived experience differs markedly from their client's.

Second, they provide an entrée to discuss anti-Black bias in the legal profession writ large. Law students need only to do a cursory Google search to see that the world they are entering is also a white space: according to NALP's 2020 Diversity Survey, fewer than 5% of associates are Black, and fewer than 2% of the equity partners.<sup>184</sup> The percentage of associates who are Black women in 2020 stands at 3.04%, equating to an increase of just one-tenth of a percentage point

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(2022), <https://www.tncourts.gov/rules/supreme-court/7>; see also e.g., Iowa Ct. Rule 31.15 - Permitted Practice by Law Students (2012), <https://www.legis.iowa.gov/docs/ACO/CR/LINC/12-31-2012.chapter.31.pdf>; see also e.g., Fla. Ct. Rule Chapter 11. Rules Governing the Law School Practice Program (2021), [https://www-media.floridabar.org/uploads/2020/09/Ch-11-2021\\_03-SEP-RRTFB-9-3-2020.pdf](https://www-media.floridabar.org/uploads/2020/09/Ch-11-2021_03-SEP-RRTFB-9-3-2020.pdf).

<sup>180</sup> See ABA Standard 303(c), *supra* note 100.

<sup>181</sup> Strand *supra* note 7, at 181; Antoinette Sedillo Lopez. *Beyond Best Practices for Legal Education: Reflections on Cultural Awareness—Exploring the Issues in Creating a Law School and Classroom Culture*, 38 WILLIAM MITCHELL L. REV. 5 (2012).

<sup>182</sup> *Id.* at 205.

<sup>183</sup> *Id.*

<sup>184</sup> 2020 NALP Diversity Report, NAT'L ASS'N FOR L. PLACEMENT (2021), [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf).

over an 11-year period.<sup>185</sup> Less than 4% of all partners are women of color across all firm sizes and most jurisdictions.<sup>186</sup> And Black women and Hispanic women each continued to represent less than 1% of all partners in U.S. law firms.<sup>187</sup> If experiential and skills faculty wish to prepare students for the world of legal practice, we must also prepare students from all backgrounds for these realities, give them ways to combat on-the-job harassment and discrimination, and encourage them to develop plans for succeeding in the white (and white supremacist) space of legal practice.<sup>188</sup>

*a. Training Faculty to Normalize Conversations About Race*

To give faculty the background, vocabulary, and resources to teach students about these larger contexts of oppression (as well as to interrogate their own privilege, power, and teaching), clinics can encourage trainings for faculty and staff. Such trainings could focus on creating awareness around race and racism, fostering dialogues around race, building an anti-racist vocabulary, or best practices for classroom management. An important goal of any of these topics is to normalize conversation about race in the classroom.<sup>189</sup> Such training could start from the time a new clinician joins the faculty.

There are many resources for trainings and interventions that have proven effective in expanding awareness among faculty about bias and structural racism.<sup>190</sup> This could be implicit bias training but does not have to be. One research-proven intervention that researchers have found to be effective was an eight-week program that featured a bias education and training program likening the expression of biases to a habit; providing information linking implicit bias to discriminatory behaviors across a wide range of settings (e.g., interpersonal, employment, health); and describing how to apply a variety of bias reduction strategies in daily life.<sup>191</sup> Other trainings concentrate

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Stevie Leahy, *Fostering Equity and Inclusion Across the Gender Spectrum in the Law School Classroom*, 65 VILL. L. REV. 1105, 1114 (2020) (noting that “[l]egal educators are well-positioned to model inclusive practices that will carry over into the legal field years beyond the classroom”).

<sup>189</sup> See Kimberlé W. Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33 (1994); see also Anibal Rosario-Lebrón, *If These Blackboards Could Talk: The Crit Classroom*, 9 CHARLESTON L. REV. 305 (2015).

<sup>190</sup> See Gordon, *supra* note 5, at 227.

<sup>191</sup> *Id.* (citing Patricia G. Devine et al., *Long-term reduction in implicit race bias: A prejudice habit-breaking intervention*, 48 J. EXP. SOC. PSYCHOL. 1267–1278 (2012)); see also ABA LITIGATION SECTION, *Implicit Bias Initiative*, <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias>, (includes videos, facilitator resources, and a

on encouraging faculty to recognize social identities, increasing knowledge about barriers to learning, improving attitudes about students, and inspiring faculty to adopt teaching strategies that support equitable and inclusive learning environments.<sup>192</sup>

For clinics moving beyond awareness and toward implementation, there are also many excellent articles and books on identifying opportunities to discuss race in class and conducting effective classroom conversations about race.<sup>193</sup> One kind of training could build off the research showing that faculty who demonstrate attunement (ability to understand the varying lived experiences of the students), authenticity (acknowledgment that they are cultural beings with biases and privileges), and power-sharing (use of the professor's own power to evenly distribute class time to varying perspectives) generate the most effective class dialogues about race.<sup>194</sup> These are teaching methodologies that can and should be taught in spaces such as clinical teaching meetings and conferences.

Clinics also could conduct skill-building workshops and trainings on developing anti-racist and anti-bias vocabulary and practices in interactions with colleagues, clients, and students. Clinic faculty should have a common vocabulary around anti-racism and be willing to engage around the topic.<sup>195</sup> This will also help them collaborate with each other around shared anti-racist goals.

Clinicians also could examine classroom-level practices to ensure that they are using best practices for course design, syllabus creation, teaching, feedback, and evaluation. This can be as simple as auditing syllabi to ensure representation of diverse voices in the course content, but can also include re-designing the entire clinical course (from syllabus to case selection) to ensure both an equitable learning envi-

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“toolbox” for self-study).

<sup>192</sup> See Erin S. O’Leary, Casey Shapiro, Shannon Toma, Hannah Whang Sayson, Marc Levis-Fitzgerald, Tracy Johnson & Victoria L. Sork, *Creating Inclusive Classrooms by Engaging STEM Faculty in Culturally Responsive Teaching Workshops*, 7 INT’L. J. STEM EDUC. 32 (2020) (discussing their “Inclusive Excellence Workshop” success at changing attitudes, increasing knowledge, and motivating action to change teaching practices).

<sup>193</sup> See, e.g., DANIELLE STEWART, MARTHA CALDWELL, & DIETRA HAWKINS, FACILITATING CONVERSATIONS ABOUT RACE IN THE CLASSROOM (2022); KRISTLE COBRAN, THE BRAVE EDUCATOR: HONEST CONVERSATIONS ABOUT NAVIGATING RACE IN THE CLASSROOM (2019); Susan Ayres, *Inside the Master’s Gates: Resources and Tools to Dismantle Racism and Sexism in Higher Education*, 21 J. L. SOCIETY 20, 21 (2021).

<sup>194</sup> See Lain, *supra* note 87, at 792 (asking professors to devote adequate time to conversations about race, so that students have the ability to learn through the experience by analyzing different perceptions with a recognition that allowing for racialized interactions to be fully deconstructed can promote learning in other areas of the class).

<sup>195</sup> See Ossei-Owusu, *supra* note 21 (explaining that “[i]f students are presented with the option of well-intentioned but poorly actualized discussions about race or no conversation at all, I suspect that the results are mixed”).

ronment and critical anti-oppression education.<sup>196</sup> Any re-evaluation, however, must start with an internal and honest self-assessment of teaching practices and outcomes, crucial for educators who may not have considered the inclusion of students outside traditional categories.<sup>197</sup> This self-assessment means questioning our previously held beliefs, opening ourselves up to making personal belief changes, and dedicating ourselves to teaching all students who make up various types of learning environments.

Whatever the focus, any training must have clear objectives about what attendees should know or be able to do by the end of the training session, and they must remain laser-focused on those goals. A good training is the start – not the end – of the work; the work is not the workshop. A good training will leave participants with a better understanding of the work that needs to be done, and an actionable list of things to do to pick up where the workshop leaves off. If the ultimate goal is change in practice, an accountability structure is key. This could be done by a clinic director with a management role, or if that does not apply, setting up accountability partners among faculty can help with follow-through (say, emailing each other on a set schedule once a month to check if everyone is using the practices they learned at the training).

#### *b. Inclusive Classrooms*

Another focus of an anti-racist clinic plan could be to encourage teaching practices that create an environment of inclusion and belonging to create space where all students can thrive. There are many resources on how to do this, starting with syllabus design.<sup>198</sup> Excellent

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<sup>196</sup> See Laveria Hutchison & Leah McAlister-Shields, *Culturally Responsive Teaching: Its Application in Higher Education Environments*, 10 EDUC. SCIENCES 124 (2020).

<sup>197</sup> See e.g., Darling-Hammond & Holmquist, *supra* note 24 (providing many techniques that are applicable to teaching across the law school curriculum even though it does not specifically discuss clinical teaching); see also Boles, *The Culturally Proficient Law Professor*, *supra* note 62, at 164 (2018); see also Rhonda V. Magee, *The Way of ColorInsight: Understanding Race and Law Effectively Through Mindfulness-Based ColorInsight Practices*, 8 GEO. J. L. & MOD. CRITICAL RACE PERSP. 251 (2016).

<sup>198</sup> See e.g., *Create an Inclusive and Equitable Course*, DUKE LEARNING INNOVATION, <https://learninginnovation.duke.edu/resources/art-and-science-of-teaching/creating-an-inclusive-and-equitable-course/>; see also e.g., *Inclusive Course Design*, DEREK BOK CTR. FOR TEACHING & LEARNING, <https://bokcenter.harvard.edu/inclusive-course-design>. Cornell University has an easy-to-use rubric to evaluate syllabi and suggest areas for improvement; *Peer Observation of Teaching–Syllabus Rubric*, CORNELL U. CTR. TEACHING INNOV., <https://ceils.ucla.edu/wp-content/uploads/sites/2/2017/12/Syllabus-Evaluation-Rubric-Cornell-University-1.pdf>; see also *Guide to Syllabus Design*, B.U. CTR. FOR TEACHING & LEARNING (Nov. 2021), <https://www.bu.edu/ctl/syllabus-design/>; see also *Inclusive Syllabus Design*, U. MASS. AMHERST CTR. FOR TEACHING & LEARNING, (including videos, worksheets, and templates about inclusive syllabi), <https://www.umass.edu/ctl/resources/deepdives/inclusive-syllabus-design>.

resources already exist for creating inclusive classroom syllabi; best practices include articulating inclusive classroom norms, being transparent about goals and methods, and sharing information about how to access campus services. Educators should be aware of terminology changes around race, gender, ability, and more, and take stock of classroom phrases that could alienate students.<sup>199</sup> Another way to create inclusive, anti-racist learning spaces is to intentionally create “microinclusions” in our classrooms – teaching practices that not only counter microaggressions, but that affirmatively create a learning environment of belonging in which historically marginalized and other students can thrive.<sup>200</sup> For example, identifying and naming the race, class and gender dynamics at play when discussing the rules that clinic clients are navigating: what assumptions are made about the parties’ socio-economic status, their sexuality, their age, their immigration status? Having these discussions frequently normalizes them, making them both salient and approachable instead of “red-flag” topics that put the class on high alert.<sup>201</sup> Finally, clinicians should use bias mitigation practices in feedback and assessment of students.<sup>202</sup>

One way to encourage inclusive classrooms is to audit one’s syllabi and physical spaces. Studies have shown that visual representations in the classroom environment can affect learning and comprehension and contribute to feelings of inclusion or alienation.<sup>203</sup> This suggests that images of role models that share salient characteristics, such as gender, may rebut assumptions of group inferiority that undermine confidence and performance. We as clinical faculty must keep in mind these factors in communicating to our students who belongs in the clinical space, and in our syllabi, when designing our courses. One goal could be to ensure that guest speakers and the authors of texts represent a diverse population, as well.<sup>204</sup> Even something as simple as seeing a diversity of photos represented in the institution instead of a portrait gallery of white men can make a mean-

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<sup>199</sup> Strand, *supra* note 7, at 177; *see also* Baker, *supra* note 23, at 148.

<sup>200</sup> Strand, *supra* note 7, at 184.

<sup>201</sup> *Id.*

<sup>202</sup> Gordon, *supra* note 5, at 226.

<sup>203</sup> *See* Jessica J. Good et al., *The Effects of Gender Stereotypic and Counter-Stereotypic Textbook Images on Science Performance*, 150 J. SOC. PSYCH. 132 (2010) (female students had higher comprehension after viewing counter-stereotypic images (women scientists) than after viewing stereotypic images (men scientists)); Vicky E. Dorworth & Marie Henry, *Optical Illusions: The Visual Representation of Blacks and Women in Introductory Criminal Justice Textbooks*, 3 J. CRIM. JUST. EDUC. 251 (1992); *see also* *The Portraits Project*, YALE L. WOMEN (2015), <https://ylw.yale.edu/wp-content/uploads/2015/08/2015-YLW-Portraits-Project.pdf>.

<sup>204</sup> Some professors include authors’ photos in their syllabi to showcase the diversity of scholarship and expertise in that practice area.

ingful difference.<sup>205</sup>

*c. Student Outreach*

Another goal could be to reach out deliberately to students from historically excluded groups to recruit for clinics and communicate the clinic mission statement. This includes presentations to affinity groups, building relationships with diverse student leaders through shared projects and committees, cultivating mentorships, and working with career services and other departments to emphasize the benefits of clinical education to students from across the law school student body.

Such efforts can reap pedagogical as well as equity benefits. Toward the former, a successful clinical experience is as much about who we teach as what or how we teach.<sup>206</sup> The experiences, perspectives, and attitudes of the students are critical components of any clinical program, including the educational experience of the other students participating in the program and the quality of representation afforded to clients of that clinic.<sup>207</sup> Creating an anti-racist clinic means “freeing the voices of students with diverse perspectives,” and enriching the classroom discussion by including “the perspectives of female students, students of color,” LGBTQ+ students, religious minorities, students with disabilities, students of various national origins, and others.<sup>208</sup> Toward the latter point, for white faculty, interracial contact with students and/or colleagues from minoritized groups reduces cross-cultural stress, leading to better teaching and learning.<sup>209</sup>

*3. Anti-Racist Systems and Policies*

Creating an anti-racist clinic also means examining our internal systems and policies, and their connection to our culture, so that people of color will want to join (and stay in) the clinic space. With inclusive, accountable systems and policies that “walk the walk,” clinics can foster a culture of inquiry, commitment, and accountability to anti-racist goals. Some important ways to do this are to take the clinic’s or

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<sup>205</sup> See Adrien K. Wing, *Lessons from a Portrait: Keep Calm and Carry On*, CHRON. HIGHER ED. (Oct. 29, 2012) (available at <https://www.chronicle.com/article/lessons-from-a-faculty-portrait-keep-calm-and-carry-on/>) (describing the change from how a hallway that had been communicating “intruder alert” had changed to feature twenty women and seven people of color, including two Asians and one Latino).

<sup>206</sup> See Archer, *Open to Justice*, *supra* note 108.

<sup>207</sup> Tavares, *supra* note 85, at 216.

<sup>208</sup> *Id.*

<sup>209</sup> See Gordon, *supra* note 5, at 229-31 (cross-cultural interaction lessens the stress that can lead to faculty giving worse feedback and more stilted interactions with their students, interfering with teachers’ teaching ability and their students’ learning).



program's anti-racist mission statement and integrate it into the culture of the clinics, develop proactive policies that address issues as they come up, and foster growth for faculty from historically excluded groups.

As stated above, developing a mission statement is one of the first steps in an evaluation process. The challenge then becomes how to use the statement to cement an anti-racist culture in the clinic or program. One way to do this is to engage in a regular process of acknowledging and recommitting to the mission statement and its underlying values. Staff change, faculty come and go, and students graduate. To avoid the clinic mission statement being confined to a drawer (or, more likely, a splash-page on a website), faculty should take the time regularly to read and reflect on it. In this way, the mission statement can stay front-of-mind in the daily decision-making that cumulatively defines a clinic program and determines its future.<sup>210</sup>

Onboarding is central in making missions meaningful: "Although the appointments committee cannot control how the mission is presented in the catalog or the web page for other audiences, it should communicate the real mission to prospective faculty members in a forceful and intentional manner."<sup>211</sup> New clinicians and staff will then be brought into this culture from the beginning, connecting the mission with its policies around fostering and mentoring faculty while creating an anti-racist and safe environment for faculty, staff, and students.

Developing and strengthening anti-racist culture and systems goes beyond a mission statement, however. Clinics cannot teach anti-racist lawyering without being anti-racist themselves, and a clinic's internal policies contribute to this culture and provide mechanisms for addressing issues as they come up. One goal in this area would be to have regular procedures for performance evaluations of faculty, including two-way performance feedback discussions.<sup>212</sup> In this way, faculty and directors get the chance to speak about issues that might be coming up in their work, their teaching, or their interactions with each other; this keeps issues from getting ignored (or silenced), and addresses them in a non-confrontational way.<sup>213</sup> An anti-racist clinic

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<sup>210</sup> A clinic orientation, a beginning-of-year introduction, or a graduation event would all be great opportunities to do this.

<sup>211</sup> See Scharf & Merton, *supra* note 114, at 317. It may also be advisable to repeat this process for the school's other anti-discrimination initiatives, as well.

<sup>212</sup> See *id.* at 315.

<sup>213</sup> Clinic directors should think carefully about the weight given to student evaluations in faculty assessments, given that multiple researchers have documented how teaching evaluations are biased against women faculty as a whole and women faculty of color in

should also develop transparent policies for addressing conflict, tension, and hurtful behavior, including a grievance process for when issues arise. This must be done before a flare-up, before any policies or practices feel personal to whomever is involved in the conflict. As a group, the clinic must decide how to address these moments, when/where to address them (in meetings, through a specific committee, one on one), what restorative practices might be used to repair relationships, and who will take the lead on addressing issues. When a faculty or staff member leaves, they should be encouraged to take an exit survey to diagnose problems, such as evaluating working conditions, relationships with colleagues and students, and anti-racist practices such as commitment to the clinic mission statement.<sup>214</sup>

Another worthy goal is to assess whether faculty of color are being given the resources and ability to thrive, and to adopt policies to further this goal. One critical component of encouraging faculty to thrive is carving out time, space, and resources for networking.<sup>215</sup> Networking is crucial for academic survival, and can provide social, political, spiritual and financial support (the latter where networking leads to more funds for program development and development of consultancies and other job-related ventures that may result in financial remuneration).<sup>216</sup> It also provides space for fellow faculty of color to share experiences, strategize, and air grievances, and empowers faculty of color both individually and as a group.<sup>217</sup> Particularly in institutions where there is little representation, it is critical to offer additional stipends and time to attend conferences and other forums that are attended by a critical mass of BIPOC faculty.<sup>218</sup> Remember it is not enough to encourage these opportunities; faculty must be also given the resources (i.e. funding) to take advantage of them, and should be encouraged to develop their skills in a multiplicity of areas.<sup>219</sup>

Clinics can also implement a mentoring plan for faculty of color.<sup>220</sup> Mentoring facilitates recruitment, retention, and advance-

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particular. See Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7 (2015); see also Dennis Ridley & Jennifer Collins, *A Suggested Evaluation Metric Instrument for Faculty Members at Colleges and Universities*, 10 INT'L. J. EDUC. RESEARCH 97 (2015); Gregory S. Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, 51 U.C. DAVIS L. REV. 1039 (2018).

<sup>214</sup> See e.g., Robert A. Giacalone, Carol Jurkiewicz, Stephen B. Knouse, *Exit Surveys as Assessments of Organizational Ethicality*, 32 PUB. PERSONNEL MGMT. 397 (2003).

<sup>215</sup> See Greene, *supra* note 64.

<sup>216</sup> See Alexander & Moore, *supra* note 10, at 12.

<sup>217</sup> See Smith, *supra* note 66, at 1125.

<sup>218</sup> See Essien, *supra* note 58, at 70; see also Alexander & Moore, *supra* note 10, at 12.

<sup>219</sup> See Alexander & Moore, *supra* note 10, at 12.

<sup>220</sup> See Kelly, et al., *supra* note 123, at 314 (stating that “ensuring that Black faculty can

ment of faculty; socializes protégés into an academic culture; increases collegiality, relationship-building and networking among protégés and mentors; increases productivity among both protégés and mentors; and promotes professional growth and career development for protégés and mentors as well as increased productivity and organizational stability.<sup>221</sup> In addition, good professional mentors can help by providing feedback on work, making introductions to others in the field who can develop collaborative interests, and provide information on how to navigate the institution (including the formal and informal aspects of tenure and promotion). It is particularly important to develop effective mentoring relationships for faculty of color, ideally with people who share the experience of being minoritized; while relationships with white mentors and white faculty can be productive, they can also fail to provide the emotional, cultural, and personal support protégés desire.<sup>222</sup>

The best academic mentoring programs have clearly stated purposes and goals; support from faculty and leadership; evaluation for continuous improvement; adequate resources; inclusive design that instills mentoring as a cultural value and core institutional responsibility; alignment with organizational goals and objectives; intentional strategies for matching pairs on the basis of professional compatibility; and orientations for both mentors and mentees concerning the dynamics of mentoring.<sup>223</sup> Mentoring should be given institutional support and funding, it should be part of faculty performance evaluations, and such work should be recognized and appreciated by leadership.<sup>224</sup>

Institutions can struggle to retain faculty of color because of the pressure that falls on such faculty as soon as they walk in the door. They may be expected to “right the ship” in creating a more equitable program, by sitting on committees, or becoming a liaison to the larger faculty or institution. They may be expected to be a critical mentor to

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cultivate mentors and sponsors within their program, department, and university is a part of what it means to create an environment in which faculty can thrive in the academy”).

<sup>221</sup> See Joselynn Fountain & Kathryn E. Newcomer, *Developing and Sustaining Effective Faculty Mentoring Programs*, 22 J. PUB. AFFAIRS EDUC. 483, 485 (2016). The most significant effects were found among faculty from historically excluded groups and women, who found mentoring useful for improving their skills and planning their academic careers. *Id.*

<sup>222</sup> Linda C. Tillman, *Mentoring African American Faculty in Predominantly White Institutions*, 42 RSCH. HIGHER EDUC. 295, 317 (2001).

<sup>223</sup> See *id.* at 322 (concluding that new, untenured faculty should be paired with mentors who are willing to serve as mentors, who are willing and committed to their professional growth and development, and who have expertise in guiding faculty to promotion (through previous experience and/or training)).

<sup>224</sup> This is especially true where a clinic brings on a faculty member without previous clinical teaching experience.

students, or to take on a client population that had been underserved in the past, all while also trying to excel in the traditional ways that law professors are expected to succeed. One way to prevent this unequal pressure is to engage in cluster hiring, bringing on multiple newer (and ideally more diverse) faculty at the same time.<sup>225</sup>

Clinics can also develop a plan for self-care for faculty of color, in all its spiritual, emotional, and physical manifestations.<sup>226</sup> As stated above, the stress of being part of a minority takes its toll in a multitude of ways, and creating space for such faculty to practice self-care will help them cope with the stress and decreased well-being of being minoritized in a majority institution.<sup>227</sup> Clinics can develop policies to encourage faculty of color to maintain a healthy work-life balance, facilitate family commitments, and engage in self-care. Caroline Sotello Viernes Turner, whose scholarship concentrates on cultivating diverse faculty, proposes a four-step strategy of promoting healthy work/family balance that acknowledges and accommodates conflicts of commitment for Black women faculty.<sup>228</sup> First, departments must identify and acknowledge institutional norms and policies that place, for example, Black women faculty at a disadvantage resulting from family or community commitments. Once identified, departments can then develop and promote new policies that support, not punish, community and family involvement. Departments should then include women of color in identifying these problems and possible solutions. Finally, departments must examine family-friendly initiatives used throughout the public and private sector and bring those ideas to the clinic environment.<sup>229</sup>

Clinics could adopt a plan to orient faculty toward relevant institutional and legal employment discrimination provisions; this is basic information that such faculty should know that would prepare them to contest racial discrimination legally. This includes acquainting new faculty with laws such as the Civil Rights Acts of 1964 and 1991 and the timeliness requirements for filing lawsuits under these provisions, as well as institutional non-discrimination statements; this includes the right to request documents and ask questions that could provide the

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<sup>225</sup> *Advancing Equity for Clinical Faculty of Color: Recruitment, Retention, and Support*, ASS'N AM. L. SCH. 2022 ANN. MEETING (2022).

<sup>226</sup> See Alexander & Moore, *supra* note 10, at 13–15.

<sup>227</sup> See Smith, *supra* note 66, at 1130–1131 (describing advice from her professional mentor, which included meditation, music, stress-management techniques, and writing, and explaining her need to leave campus to write, to a space “where who I am and who I want to be is recognized, respected, and affirmed”).

<sup>228</sup> Caroline S. Turner, *Women of Color in Academe: Living with Multiple Marginality*, 73 J. HIGHER EDUC. 74, 86 (2002).

<sup>229</sup> See *id.* Such policies would, of course, benefit all faculty who struggle with balance.

basis for a future discrimination suit.<sup>230</sup>

Just as important as cultivating mentorships and skills among the junior faculty is senior faculty making room for junior faculty to thrive. Clinics should do this by ensuring that senior faculty do not hoard opportunity for recognition, leadership, and skill-building, instead making space for others to develop as clinicians, professionals, and leaders.<sup>231</sup>

#### 4. Measurement and Accountability

One critical way to ensure that a clinic makes progress toward a more anti-racist environment is to ensure that it measures progress toward its goals. Just as in the business and non-profit world, a way to measure and be accountable to goals is critical to success.<sup>232</sup> The old maxim, “what gets measured, gets done” certainly applies here. Clinics could implement climate surveys of faculty, staff, students, and clients, and faculty-wide accountability processes that enable the program to self-audit and build goals toward a better clinic.<sup>233</sup> An infrastructure for accountability is a critical piece to building an anti-racist program.<sup>234</sup>

There are two aspects to accountability: responsible entities and mechanisms.<sup>235</sup> Accountability mechanisms ensure the delivery matches the promise and creates tools for addressing failings.<sup>236</sup> Responsible entities provide institutional knowledge and a coordination point for information sharing and distribution.<sup>237</sup> Accountability mechanisms come in a variety of types and formats, and responsible entities can be exclusive or shared undertakings.<sup>238</sup> Clinics can take advantage of pre-existing committee and governance structures to in-

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<sup>230</sup> See Alexander & Moore, *supra* note 10, at 14. For example, in Ohio, the law gives any citizen the right to acquire many public documents, including faculty evaluations and salaries. *Id.*

<sup>231</sup> Essien, *supra* note 58, at 68 (detailing various ways that faculty of color are undermined in their professional advancement).

<sup>232</sup> See Scharf & Merton, *supra* note 114, at 297.

<sup>233</sup> These surveys should be designed by experts in the field; the way that questions are asked, their order, and their number all matter in achieving actionable data. Duke Law School recently engaged in a climate survey to canvas students on diversity broadly, including race, ethnicity, religion, sexual orientation, gender identity, ideological viewpoint, socioeconomic status, veteran status, and ability status, *available at* <https://law.duke.edu/news/pdf/Student-Survey-Results.pdf>.

<sup>234</sup> Gaudion, *supra* note 98, at 35. While Dean Gaudion did not explicitly address clinics in her prescription for creating an anti-racist curriculum, her recommendations can be implemented on the clinical program level, with buy-in from the Experiential Dean or Clinic Director, the heads of individual clinics, and other clinic faculty and staff.

<sup>235</sup> *Id.* at 35.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

corporate accountability mechanisms; many clinics already have committees on creating anti-racist classroom spaces, and accountability can and should be a part of their goal. Clinic Directors, of course, can also institute anti-racist goals into annual assessments. For example, a committee charge might include preparing an annual plan for the implementation of anti-racist curricular and co-curricular initiatives at the start of the academic year; providing a mid-year update on the status of the initiatives; and preparing an end-of-year report summarizing the initiatives and other activities undertaken that year and assessing their effectiveness.<sup>239</sup> Directors can then use the end-of-year report to honestly assess the curricular achievements and failures, and as a launch pad for identifying objectives to include in the annual report for the upcoming academic year.<sup>240</sup> These accountability mechanisms also could include less frequent but more comprehensive auditing opportunities. For example, the committee could conduct a detailed study, every three or five years, evaluating the clinic's implementation of its anti-racist curricular plan. The type of audit or assessment device used is not critical; what is essential is to engage in continuous assessment and to have the willingness to evolve.<sup>241</sup>

To measure progress toward achieving demographic diversity in a clinical program, one could track the demographic composition of faculty, student, and client populations in the clinics, including any change in demographics of these groups over time. This will allow the clinic to evaluate its outreach to diverse students, outreach and retention of diverse faculty, and service to diverse client populations. Through confidential surveys and/or one on one interviews with client and community partners, clinics should also assess the quality of service delivery, engagement with the community, and anti-racist goals. This is not unlike a 360-degree review in the corporate and non-profit world; all stakeholders should have the chance to evaluate the clinic, faculty, and staff. Such review should also happen internally; clinics should implement confidential climate and/or engagement surveys and/or one on one interviews with faculty and staff, depending on the size of the clinical program, and engage in ongoing assessments of faculty commitments to antiracist experiential programs and teaching. Students, too, should assess the quality of teaching, learning, and com-

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<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> See *id.*; see also Nene Molefi, Julie O'Mara, & Alan Richter, *The Global Diversity, Equity & Inclusion Benchmarks*, CTR. FOR GLOB. INCLUSION, (2021), <https://dileaders.com/gdeib/#:~:text=112%20Expert%20Panellists%2C%20to%20help,any%20size%20to%20use%20them> (including a wealth of information and suggestions for how to promote diversity, equity and inclusion, how to measure progress towards those goals, and what those goals should look like).

mitment to anti-racist goals. This should be done beyond the confines of the end-of-year evaluations, which are often standardized across the curriculum and not particularly relevant to measuring inclusive, un-biased teaching practices and anti-racist goals.<sup>242</sup> Clinics should regularly measure their progress toward their anti-racist goals, perhaps in conjunction with the yearly mission statement review, and recommit; feedback from various stakeholders inside and outside the law school should be part of this evaluation. And finally, clinic leadership should proactively engage faculty in assessments of their teaching, syllabi, and evaluation metrics to ensure each clinic's commitment to anti-racism and other equity principles; the leadership should also be evaluated on their ability to do this.

Not all this is possible with a decentralized clinic structure; some clinics, directors, and law schools may be more amenable to attempts to measure their commitment to change. But for the reticent, clinical program leadership can encourage faculty to see these measurements as motivation, not mandates. Accountability toward group-identified outcomes will allow clinics to celebrate their accomplishments and confidently maintain practices that work. When goals are not being met, clinics can take the opportunity to modify a course or program, retool teaching methods, or alter the clinic's curriculum. Leadership should emphasize that assessment is not a process by which faculty gets punished; rather, it is an opportunity to identify growth areas and lend more support toward increasing knowledge and skill. That is, the goal is not just to assess a particular faculty member, course, or program, but to assess the clinical curriculum. This will work best when the entire clinical faculty is involved in identifying the mission (of both individual clinics and the clinical program as a whole), as well as articulating learning outcomes and developing the processes by which they measure those outcomes. In nonhierarchical programs, assessment can be primarily in the hands of the individual clinics rather than leadership so that faculty are the ones who gather data, analyze, and interpret results, and act in response; the accountability measures can concentrate more on progress toward goals than in meeting (or failing) to meet expectations.

## CONCLUSION

Clinics have an essential role to play in subverting white supremacy culture in our law schools. Doing so is an essential endeavor not only to improve our work with students and clients, but

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<sup>242</sup> Such evaluations may also invite more honest feedback because the stakes are lower for the professor outside the context of the official class evaluations.

also to ensure an anti-racist work environment for our colleagues. The task can seem overwhelming; fighting the dominant paradigm is always an uphill battle. Clinical leadership and faculty can make meaningful progress toward creating anti-racist clinics by breaking the task into concrete steps: developing a mission statement, articulating a strategic plan, and concentrating on discrete goals. By “cleaning up our own houses,” clinics can be resources to our students, our schools, our legal communities, and our collective struggle to create a more just and equitable world.



Fall 2022]

*Cleaning Up Our Own Houses*

105

## APPENDIX I

## SAMPLE ANTI-RACIST GOALS AND OUTCOMES

Some sample goals and outcomes are included below. For the sake of brevity, I have included only four sample goals and a handful of sample outcomes; this is not an exhaustive list of possible ant-racist goals or outcomes. Again, making change is not one-size fits all, and trying to do everything at once is likely not possible (or advisable). Clinic directors and individual clinicians should feel free to choose what works for them, prioritize accordingly, delete what does not make it onto a one-year (or a five-year) plan, and work within the culture, priorities, and constraints in their own clinics and institutional environments. My goal is simply to provide a starting point for moving toward greater equity (and particularly anti-racism) for those motivated to change their own clinics.

<b>Anti-Racist Recruitment, Retention, and Promotion of Faculty and Staff</b>
<b>Sample Goals</b>
Clinical program’s recruiting practices conform with anti-racist best practices and produce a well-qualified, diverse applicant pool.
Clinical faculty are racially diverse.
Clinical program promotes faculty of color to leadership positions.
Clinical faculty of color feel a sense of belonging in the program and institution.
<b>Sample Outcomes</b>
Clinic has a policy that for every open faculty and staff position, faculty will recruit candidates from historically excluded groups, <sup>243</sup> and will perform affirmative outreach to candidates from diverse demographic groups before interviewing any candidates for open positions.
Job descriptions use inclusive language and include only the qualifications necessary to fulfill the duties of the job; candidates are informed of the clinic mission statement, institutional non-discrimination statement, and Equal Opportunity Statement.
Job descriptions clearly define roles and expectations. Ensure all jobs (especially ones that often get overlooked and then pushed to faculty of color, such as clinic administration or student communication) are included and accounted for and assigned.
Clinic promotes jobs and careers on platforms, publications, professional organizations, and groups whose target audiences are members of impacted communities and historically excluded populations.
Clinic uses bias mitigation practices to review resumes, interview, and select candidates.
Clinic leadership has a succession plan that includes a commitment to fostering faculty of color to move into leadership positions in the clinic and the law school, and a clear set of guidelines for how one advances within the clinic and the institution.

<sup>243</sup> For this benchmark framework, historically excluded groups means Black, Hispanic, Asian American, Indigenous and Native, Arab and Middle Eastern (“people of color”), women, gender nonbinary, LGBTQ+ individuals, first-generation professionals, those with few socio-economic resources, and people with disabilities.

<b>Anti-Racist Awareness and Relationships</b>
<b>Sample Goals</b>
Clinic faculty are aware of the roots of structural racism and how they manifest in the issues their clients and students face.
Clinic faculty are anti-racist in teaching interactions with students.
Clinic faculty use inclusive syllabi.
Clinic faculty evince skill and comfort in discussing race in class.
<b>Sample Outcomes</b>
Clinic holds trainings for faculty and staff on the roots of individual, cultural, and institutional oppression and conducts skill-building on using anti-racist and anti-bias vocabulary and practices in interactions with colleagues, clients, and students.
Clinic provides faculty and staff with resources for education and training that give space to learn and do the work of interrogating their privilege, power, oppression, and bias, and how they may affect impacted communities, employees, clients, the law school, and each other.
Clinic leadership models the clinic’s anti-racist commitment, norms, values, and practices, including inclusive leadership character traits and a proactive commitment to ensuring all faculty have the knowledge and skill to practice anti-racism.
Clinic faculty use bias-mitigation practices in feedback and evaluation of students.
Clinics audit their syllabi, course design, and evaluation rubrics to ensure inclusive learning that acknowledges the experiences, world views and identities of all people and that engages all students in active and meaningful learning with a sense of belonging and well-being.
Clinicians use teaching practices that create an environment of inclusion and belonging to create space where all students can thrive.
Clinics make a deliberate effort to host guest speakers and use written work that includes representation from historically excluded groups.
Clinics discuss and/or prepare students to combat anti-Black racism in the legal profession generally.
Clinics make a deliberate effort to reach out to students from historically excluded groups to recruit for clinics and communicate the clinic mission statement.

<b>Anti-Racist Systems and Policies</b>
Clinic's internal grievance procedures promote anti-racism.
Professional mentorships for faculty of color are encouraged and supported.
Faculty adopt the anti-racist mission of the clinical program.
Clinic policies promote self-care for faculty of color and other historically excluded groups.
<b>Sample Outcomes</b>
Clinic has a mission statement that includes a commitment to anti-racism and bias of all kinds.
Clinic faculty re-commits to the mission statement annually, as well as other institutional anti-discrimination policies.
Clinic has an onboarding practice for new employees that includes an introduction to the mission statement.
Clinic has regular procedures for performance evaluations of faculty, including two-way performance feedback discussions.
Clinic has a transparent grievance process for both faculty and students, and a restorative inclusion process for resolving conflicts and repairing harm.
Clinic has a mentoring practice to invest in faculty and staff professional development.
Clinic has policies to encourage faculty to maintain a healthy work-life balance, facilitate family commitments, and engage in self-care.
Senior faculty share opportunities for recognition, leadership, and skill-building, making space for others to develop as clinicians, professionals, and leaders.
Leadership implements exit surveys for faculty and staff who leave the clinic, to help capture the factors contributing to people's decisions to leave.

Fall 2022]

*Cleaning Up Our Own Houses*

109

<b>Anti-Racist Measurement and Accountability</b>
<b>Sample Goals</b>
Faculty performance evaluations include metrics pertaining to anti-racism.
Client voices are considered in measuring progress toward anti-racist goals.
Student voices are considered in measuring progress toward anti-racist goals.
Clinic leadership knows demographics of participants at all levels of the clinical program and adopts policies to increase diversity.
<b>Sample Outcomes</b>
Clinics track the demographic composition of faculty, student, and client populations in the clinics, including change in demographics of these groups over time.
Through confidential climate and/or engagement surveys and/or one-on-one interviews with faculty and staff, clinic leadership assesses faculty commitments to antiracist experiential programs and teaching.
Through confidential surveys and/or one on one interviews with client and community partners, clinics assess quality of service delivery, engagement with community, and anti-racist goals.
Through confidential surveys and/or one on one interviews with students, clinics assess the quality of clinic teaching and learning, with specific attention to anti-racist teaching and unbiased student interaction.
Clinic regularly measures progress toward its anti-racist goals, including its mission statement, reports results to faculty members, and has a mechanism for inviting and incorporating feedback.
Clinic leadership engages faculty in assessments of their teaching, syllabi, and evaluation metrics to ensure each clinic's commitment to anti-racism and other equity principles.

