Toward an Antiracist Clinical Community, Pedagogy, & Practice

Reflections from a Subcommittee of
Clinicians for Equity and Racial Justice of Harvard Law School*
2022

Table of Contents

---

* Clinicians for Equity and Racial Justice is a self-organized coalition of more than two dozen members of the Harvard Law School clinical community. CERJ is divided into subcommittees focused on issues of equity and racial justice in (1) hiring, retention and promotion of clinical employees; (2) prison divestment and issues related to policing; (3) clinical teaching and pedagogy; and (4) self-assessment of our clinics. It is this last subcommittee that is responsible for the authorship of this document. Members of the subcommittee include Destini Aguero, Kevin Costello, Jessica Fjeld, Betsy Gwin, Crisanne Hazen, Aminta Ossom, and Elizabeth Solar. Special thanks goes to third-year law student Natassia Velez, whose leadership, hard work, and insight vastly improved this work.

In the first half of 2020, the murders of Ahmaud Arbery, Breonna Taylor, George Floyd and too many other people of color shocked America's conscience. In the ensuing cultural reckoning over white supremacy, members of the Harvard Law School clinical community, like many others across the legal field, were determined to engage more intentionally in antiracist work. Clinicians for Equity and Racial Justice (CERJ) was organized toward that end. CERJ seeks to unite members of the Harvard Law School community in the promotion of antiracism in clinic structure, substantive work, and pedagogy, with the goal of serving both students and client communities better.[1] These reflections are intended to serve that goal, turning the focus inward to interrogate how the status quo of a clinic's structure, practices, and teaching methods might contribute to racial inequities in the learning environment and legal field. On the other hand, we also ask how law school clinics might embody antiracist values prospectively. Drawing both from examples within own clinical community and its history, as well as from a review of literature that similarly grapples with operationalizing antiracism in teaching and legal practice, our reflections can be one tool in the process of a law school clinic's ongoing self-improvement.

Part I reflects on the structure, design, practices and procedures of a clinic, incorporating inquiries about the larger institution in which it operates and the history from which its present form has emerged. Part II focuses on clinical pedagogy and the other qualitative elements, such as relationships, that impact a clinic's connection to antiracist values. [2] The Appendix offers a concise checklist of questions and topics covered by these reflections, intended as a shorthand for clinic decision-makers to review in their process of self-improvement.

---

[1] "An antiracist idea is any idea that suggests the racial groups are equals in all their apparent differences—that there is nothing right or wrong with any racial group. Antiracist ideas argue that racist policies are the cause of racial inequities.... No one becomes a racist or antiracist. We can only strive to be one or the other. We can unknowingly strive to be a racist. We can knowingly strive to be an antiracist. Like fighting an addiction, being an antiracist requires persistent self-awareness, constant self-criticism, and regular self examination." IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 22 (2019).

[2] Antiracist pedagogy and practice is distinct from the hallmarks of inclusive teaching and social justice teaching. While antiracist pedagogy and practice includes and builds upon inclusion and social justice, it also incorporates the historical foundation and subsequent legacy of racial bias, including how political, legal, and other institutions helped and continue to advance racial inequality. *See generally* M. Brielle Harbin, Amie Thurber, and Joe Bandy, *Teaching Race, Racism, and Racial Justice: Pedagogical Principles and Classroom Strategies for Course Instructors*, 4 Race & Pedagogy J. 1 (2019) (presenting antiracist teaching methods). This document focuses specifically on racial justice, while recognizing that racial privilege may also facilitate similar inquiries around gender, class, religion, ability, and other dimensions of marginalization in our society.

I. Examining Clinical Structure and Design

Robust self-examination of a law school clinic starts with an inward focus on its structure and design, including the institution in which it operates and the history from which it emerges. This part reflects on how a law school clinic can audit itself by considering structural challenges, leadership and decision-making, student engagement and experience, project and case selection, training, soliciting and implementing feedback, hiring and retention, and the clinic's public facing image.

A. Structural Challenges

The institutional structure within which the clinic is situated informs its present practices and shapes its options for change. In certain cases, the law school will offer resources that may be helpful, such as initiatives to support staff of color. At other times, structural issues present obstacles to antiracist practice. Operating under the umbrella of a larger institution means clinics have some control over how they pursue antiracist goals. However, that control is limited. Regardless, understanding the nature of these structural challenges provides critical context for antiracist reform, especially in changes aimed at improving student experience, and perception of clinical work in the communities in which clinics practice.

A key starting point for structural challenges relates to what self-assessment has already been accomplished. If the law school or university has previously conducted an audit or climate survey relating to racial equity, that will be a useful starting point. Clinics may consider, as an example, the Law Deans Antiracist Clearinghouse Project Auditing Report.[3] Lead by five Black female law school deans, this report covers a broad range of considerations for law school leaders to seek progress in improving the antiracist climate. "By creating a space for our collective voices as leaders of law schools to engage our institutions in the fight for justice and equality, we strive to focus our teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism."[4] Where there is institutional

---

[3] AMERICAN ASSOCIATION OF LAW SCHOOLS, LAW DEANS ANTIRACIST CLEARINGHOUSE PROJECT, https://www.aals.org/about/publications/antiracist-clearinghouse (last visited May 1, 2022). Lead by five Black female law school deans, the project evaluates law schools' overall progress on the following factors: 1) student and faculty demographics (including the composition of decision-making bodies); 2) antiracism in curriculum and pedagogy, 3) mental health resources, 4) recruitment policies for employment and extracurriculars, 5) bias in hiring and promotion, and 6) financial aid.

[4] *Id.*

investment to principles of antiracism at the highest levels, clinic self-assessment is facilitated organically.

Harvard University has recently engaged in a high profile reckoning with its own history of racial injustice.[5] It remains to be seen how the institution will spend the $100 million it has allocated to prospective measures intended to account for its past. Nevertheless, there is symbolic value in official acknowledgement of the direct and causal connection between today's pervasive, systemic racism and extensive historical roots of racial injustice. Understanding the full context of institutional self-reflection also raises the question of how past reform efforts have been received. Like other institutions, law schools may perceive internal expression of protest as criticism that threatens the school's public standing. Harvard's current reckoning follows decades of protest by students, faculty and staff against modern vestiges of historical racial injustice.[6] Knowing an institution's historical responses to protest helps a clinical community to understand how future reform efforts are likely to be perceived. Where policies are protested as having racist or inequitable implications, institutional defensiveness, punishment, or retaliation create an atmosphere in which antiracist work in the clinical community becomes far more difficult.[7] Conversely, where such concerns are met with transparent openness to reconsideration, affected students, faculty, and staff will be more supported in their own antiracist efforts.

A final structural consideration is the funding of clinical programs. Many clinics rely on external grant funding, sometimes called "soft money." In those circumstances, clinic leadership must consider fundraising obligations and may be unable to offer long-term, stable contracts when hiring staff. By contrast, where a clinic enjoys direct and robust institutional support, it facilitates the freedom to make thoughtful, long-term decisions in support of antiracism. By way of example, Harvard Law School faculty unanimously approved a 1979 proposal from Gary Bellow and Jeanne Charn to help create a legal services center in Boston in concert with Greater Boston Legal Services.[8] When funding from the federal Legal Services

---

[5] Kimberly Atkins Stohr, *After Revealing Hard Truths, Harvard's Next Tough Task: Defining Reparations*, BOSTON GLOBE (April 27, 2022); *see generally* Harvard & the Legacy of Slavery, https://legacyofslavery.harvard.edu/ (detailing Harvard's legacy of slavery).

[6] *See, e.g.*, Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51 (2002).

[7] Institutional defensiveness can surface in regulation of how stakeholders are permitted to protest, including policies concerning where students may post information, how public spaces may be utilized, or who is brought up on charges before administrative boards.

[8] *History*, WILMERHALE LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL, https://www.legalservicescenter.org/about-the-legal-services-center/history/ (last visited May 4, 2022).

Corporation ended, Harvard Law School eventually made the decision to support the center as its primary civil practice clinic.[9] Over the more than 40 year history of the Legal Services Center, innovation was made possible by strong institutional support in the form of faculty tenure and fundraising that facilitated the purchase and development of a permanent home.[10] In such an environment, the Center's antipoverty work flourished, with an opportunity to promote antiracist values in both clinical work and student teaching. Not all clinics will have the same level of institutional support and financial stability as a foundation.

B. Clinical Leadership

Considerations related to leadership and decision-making can have a monumental impact on efforts to work toward an antiracist clinic. As a default, power is vested in faculty, subordinating instructors, fellows, administrative staff, and students. Even where other groups may have some authority, much of the perceived power is wielded by faculty. The potential for antiracist reform is thus focused on clinical faculty.

Faculty are responsible for tasks such as hiring and firing, setting clinic policies, determining case selection and substantive work of the clinic, and assigning staff. Further, faculty possess opportunities to teach non-clinical courses, communicate directly with school administration, and have a voice on key decision-making committees. As a result, faculty may heavily influence decisions like whether to situate a clinic inside communities of color, whether to engage in systemic reform work or direct services, and whether attorneys/instructors are encouraged to make decisions *for* their clients rather than with them. Clinical faculty and to some extent, those with adjunct appointments to teach in the classroom, such as "Lecturer on Law" status at HLS, also benefit from having access to funds with which to secure resources, such as books, tools, and research assistance, for themselves and their clinics. Faculty in charge of clinics have a high degree of responsibility. Yet, the ratio of power relative to their responsibility far exceeds the same ratio for clinical staff.

Historical effects of structural racism are often reflected in the makeup of clinic leadership. For example, even accounting for some variability in formal status, between two-thirds and three-fourths of the current clinical faculty of Harvard Law School are white.[11] For that reason, many clinical decisions, including how clinics position themselves in support of or opposition to racist institutional policies, are made by a body composed of a supermajority of

---

[9] *Id.*

[10] CERJ Small Group Discussion with Jeanne Charn.

[11] *Clinical Faculty —The Mentoring Advantage*, HARVARD LAW SCHOOL, https://hls.harvard.edu/dept/clinical/clinical-faculty-the-mentoring-advantage/ (last visited May 4, 2022).

white people. Clinic leadership aware of their own racial privilege can help to mitigate its consequences on hierarchies and decision-making. While it may be more challenging, it is possible to progress toward antiracism in policymaking and workplace culture when power is concentrated with people who hold a lot of racial privilege.

Leadership invested in improving the antiracist environment of their clinics face issues related to communication, soliciting input, decision-making, staff professional development, and community building. While many of these reflections apply generally to the health of any well-functioning organization, antiracist reform is also facilitated in such an environment.

1. Communication

A fundamental step to sharing power in an organization is communication. The role of faculty at the top of the hierarchy allows them access to information related to institutional decision-making; with that access comes the choice to determine what to communicate to the rest of the clinical staff. When only one or two people hold information—whether it relates to staffing decisions, which work opportunities exist and to whom they are assigned, or what is happening on an institutional-level—it leaves other staff and students without the power to provide input or to self-advocate.

There may be some good reasons to limit the sharing of information, but it is nonetheless disempowering to the rest of the team, especially where information is limited more than necessary. Staff are left to speculate or "fill in the blanks" when they have limited information access, with consequent risk to morale and workplace efficiency. Staff may act on incorrect information, develop distrust of leaders and co-workers, and establish subgroups with other staff so that they can more openly share information and feelings.

Clinics interested in engaging in antiracist reform should consider how a lack of information-sharing maintains the traditional power structure of the racially dominant group. Clear, regular, and robust communication ensures that all staff have the knowledge to do their jobs and to position themselves for success. Where clinic design inhibits accountability, faculty should hold themselves accountable and invite feedback on communication.

2. Soliciting Input

Communication, while critical, is only the first step to breaking down the power dynamics that can disenfranchise clinical staff. After sharing information and opening lines of communication, clinical faculty should set up the infrastructure to obtain input from all individuals affected by the decision. This may come in the form of group meetings, one-to-one meetings, written communications, anonymous surveys, among other methods. Providing space to weigh in on the policies of the clinic or the direction of a project will bring in different kinds of expertise and lead to more thoughtful and better-considered choices. This practice also will likely create an environment where staff feel like valued and respected members of the team.

3. Decision-Making

Clinical leaders may consider making more use of consensus in decision-making. For some categories of decisions, like client intake in clinics that exercise discretion in which projects to take on, it may be possible to use a fully consensus-based process. This means that the whole group must agree for a decision to be made, and any one team member in opposition possesses a veto. In other instances, where a final decision rests with a clinic's leadership, a consensus-building model may be used. In such cases, everyone may not agree with a decision, but an open process facilitates information sharing, allows others to be heard and may help in achieving some buy-in by the staff. Whatever the process, transparency around decision-making is paramount, with explanations of what choices leaders are making and why being central to building an atmosphere of trust.

One decision-making model, suggested by the author of an antiracist blog that highlights areas of reform in the non-profit sector, suggests diffusing authority among a group. The model is called the "FINAL" decision-making process and envisions a structure where "whoever is closest to the issue area is the person who makes the decision, provided they do two things: Check in with people who will be affected by their decision, and check in with people who may have information and advice that might help them make the best decision."[12] An additional aspect of the concept is that "[s]upervisors…cannot override another team member's decision, if they have done the required due diligence; [they] can only provide advice and feedback.[13] This model shifts power and better utilizes the knowledge and experiences of those in many positions on the staff. Some of the benefits the blog author cites involve better decision-making, empowering those who traditionally have less authority, allowing staff to develop critical thinking skills; building relationships; and allowing supervisors to doing more coaching and support.[14] This model offers a promising model of decision-making that has applicability to clinics.

At least one clinic at HLS takes the time to train all staff, including non-lawyers, on the substance of the work. The clinic focuses on three distinct areas of law: civil public benefits, veterans benefits, and estate planning. By training everyone on the team in every practice area, the clinic ensures everyone has access to the information necessary to make meaningful and substantive contributions in team meetings, including clinic-wide decisions. Taking the step to make information accessible to every team member can have a significant impact on the power dynamics of a clinic without doing a full restructure of leadership. Whereas traditionally, only those in power with a certain degree or title had access to the information needed to make a clinic-wide decision, by removing that status barrier, the doors open for clinics to hear from multiple team members and perspectives. A flattened decision-making process may also be

---

[12] Vu, *Our Default Organizational Decision-making Model is Flawed. Here's an Awesome Alternative!*, NONPROFIT AF (Dec. 2, 2018), https://nonprofitaf.com/2018/12/our-default-organizational-decision-making-model-is-flawed-heres-an-awesome-alternative/#more-5582.

[13] *Id.*

[14] *Id.*

more beneficial for employees of color, for it blunts the impact of micromanagement and negative assumptions that often plague BIPOC employees.

4. Professional Development of Staff

Professional growth and development are another key aspect of leadership, especially inasmuch as it plays an important role in staff retention. A clinic should encourage all staff to think about their professional development goals and, where practicable, facilitate access to the training necessary to realize these goals. Good professional development practices ensure that every staff member has an opportunity for intellectual and professional advancement, with the chance to re-position themselves in the organization to take on a more strategic or authoritative role. Clinic leadership must take an active role in helping employees set these goals, but then to also make the training opportunities available and accessible.

5. Community-Building

Clinic leaders can take an active role in creating a sense of community within the clinic, as well as connecting the clinic staff and its work to the larger institution. A central tenet to community-building is providing a space so individuals can establish connections with their colleagues. Knowing the people with whom you work on an individual level will not only lead to a greater understanding of the value they bring, but also support broader cultural competency. In order to do this, clinics must create opportunities where individuals can share their skills and what they value. This can happen through team building events, or even adding an agenda item to a staff meeting highlighting a different team or individual to share what they are working on, how they are tackling an issue, or their view on opportunities where the clinic can grow. Facilitating this dialogue will demonstrate to the individuals within your clinic that their opinion, skills, and perspective are valued, and hopefully serve as an example for how teams within your clinic should regard each other on a regular basis.

Community-building is not just about the value your team members can bring to the clinic, but how the clinic supports each person as an individual. Each person has different life experiences and responsibilities, and as such, may require slightly different working environments. If a team member is consistently behind on a project, what is your clinic's first response? Is it to try to understand the underlying issue and provide support so that team member can find success? Is your clinic prioritizing the work-life balance of your team so they can proactively support each member's specific needs? And probably most importantly, do the members of your clinic feel they can express when they need support? A key component in creating a community is not only knowing its individuals, recognizing their value, and supporting them, but to create a space where each person feels they can ask for help. Being

part of a community that does this will likely increase the entire staff's sense of belonging and inclusion, and their commitment to the clinic.[15]

C. *Student Engagement and Experience*

Student engagement and a focus on student experiences are also crucial to antiracism in the clinical setting. Clinics should engage with students on a variety of levels that move beyond clinical teaching. Factors to reflect on include students in relationship to the whole institution, student recruitment, student selection, and student onboarding.

1. Students in the Context of the Institution as a Whole

The foundation of a clinic's engagement with its students begins with an understanding of their broader institutional environment. For example, clinics situated in law schools that are successful at recruiting and nurturing students of color will likely benefit from the diverse perspectives and lived experiences that these students bring into clinical practice. On the other hand, a breakdown in trust between law schools and law students is likely to permeate clinical seminars and supervision. While clinics do not usually play a role in setting institutional policies on financial aid, student mental health, student activism, and faculty hiring, a law school's approach to these issues will have knock-on effects on the composition and performance of students in clinics.

Accounting for the historical relationship between the institution and its students is a good starting point for this assessment. For decades, Harvard Law School students have fought for antiracist improvement. For example, 1970 was the first time in HLS history where more than a handful of Latine students were admitted.[16] Students pushed for increased diversity, with the Chicano Law Student Association and Third World Coalition recruited and advocated for more students of color. [17] Students also demanded course offerings that represented their

---

[15] *See e.g.*, Evelyn R. Carter, *Restructure Your Organization to Actually Advance Racial Justice*, HARVARD BUSINESS REVIEW (June 22, 2020), https://hbr.org/2020/06/restructure-your-organization-to-actually-advance-racial-justice.

[16] Herrera, *supra* note 6, at 53. "Latine" is used throughout this document as a gender-neutral term to reference a broad understanding of Latinidad and members thereof. Other terms include "Latinx," "Latino," and "Hispanic." There is no single preferred term and there is significant debate around preference based on factors such as demographics of the speaker, Spanish language conventions, and colonial ties to Spain. *See, e.g.*, Jerome Socolovsky, *BIPOC? Latinx? Here's How to Describe People Accurately*, NPR (Dec. 1, 2021) (providing a guide to usage of common identity-based terms).

[17] Herrera, *supra* note 6, at 60.

experiences, career paths, and communities. For instance, in 1970 the Third World Coalition organized a 14-week alternative civil rights course entitled: "Racism and the Law," taught by prominent law professors and attorneys of color, including Richard Delgado, Neil Gotanda, Linda Greene, Charles Lawrence and Mari Matsuda.[18] Contemporary efforts across affinity groups for students of color called for critical race theory and other courses that centered the experiences of BIPOC. Student demands have yielded some results, with multiple race-related courses offered in some academic years. In the 2021-2022 academic year, courses included critical race theory and courses centering the rights and experiences of Asian and Latine communities respectively.[19]

Demands by Harvard Law School students of color have not been limited to admissions and faculty. In 2014, a group called Students for Inclusion (SFI) formed, becoming the school's foremost advocates for racial justice and Black Lives Matter in the wake of the killings of Eric Garner and Michael Brown by police. Organizing events and publications, the student group shed light on the systemic racism experienced by students of color at HLS and made a range of demands on then-Dean Martha Minow related to diversity and inclusion. After the murder of George Floyd, students once again shared their experiences. Led by the Instagram account @blackatharvardlaw and the Black Law Students Association, students made demands for racial justice throughout 2020 and 2021.

Student activism did not come without cost; understanding the risk that accompanies protest is an important element of student engagement. Across generations, Harvard Law School student activists, primarily students of color, faced harsh consequences for using their legal training to fight injustices.[20] In 1992, students dubbed the "Griswold 9" staged a peaceful sit-in outside then-Dean Robert Clark's office. The students demanded that the dean apologize for racist comments he made to the *Wall Street Journal,* which had implied that students of color sought a more diverse faculty because they lacked a sense of belonging after being admitted to HLS through affirmative action. The student activists also wanted the law school to invite critical race theorist Derrick Bell to return to his position as HLS faculty.[21] The

---

[18] *Id.* at 64.

[19] *See* Course Catalog, HARVARD LAW SCHOOL, https://hls.harvard.edu/academics/curriculum/catalog/index.html (last visited Jan. 18, 2022).

[20] *See generally* Amanda T. Chan, *How to Suppress Speech: The Harvard Law School Playbook*, 78 NAT.L.GUILD REV. 53 (2021) (highlighting HLS administration's response to student activism).

[21] In March 1992, Dean Clark was quoted in the Wall Street Journal: "We have the highest percentage and absolute number of minority students of any of the top 20 law schools. At some level, [the students] are worrying about what role affirmative action played in getting them here. . . . The minority students need a sense of validation and encouragement, with the fundamental problem being a need for self-confidence that plays itself out as, 'Why doesn't Harvard Law School have more teachers who look like me? . . . In a sense, we're dealing here with one of

Griswold 9 were formally issued disciplinary charges by the Administrative Board, to be adjudicated at a hearing three days before the start of spring exams. After an emotional 11-hour hearing, the Administrative Board decided to give official warnings, to be removed from their student files upon graduation if no additional violations were issued.[22] The punitive use of the Administrative Board has a more recent past as well. In 2020, student activists who protested in favor of divesting from prisons were threatened with being unable to graduate. Similarly, students advocating for improved financial aid policies were put on mandatory leave in 2021. The threat of retribution for student activism has also driven some advocacy underground. For example, one major student-led event, Disorientation, operates in secrecy, with leadership kept unknown to the vast majority of the student body until the program occurs. In an environment where students are in regular institutional conflict around issues related to racial justice, engagement toward improving the student experience in clinical programs will be an uphill battle.

The challenge of working toward a more antiracist student experience remains. Clinics should review the support they are able to offer students in the long term. For example, where students do not come from a background of privilege and its attendant professional network, clinics can foster connections between students and practitioners. Clinics can partner with student organizations to build cohesive connections to work opportunities in their field of operation. Clinics can also make services available to students' own networks or encourage referrals to use clinic services. While these questions are important for all student engagement, they can have a profound impact for students of color.[23]

2. Student Recruitment

Student recruitment and selection should also be examined as part of the student experience. Clinics should carefully consider the process of student enrollment, including outreach. Clinics should examine how they interact with students who are not, or not yet, a part of the clinic. Clinics should consider holding events open to the general student body. It may be appropriate to conduct brief presentations in classes or student organization meetings

---

the symptoms of affirmative action. This means this debate could be a recurring theme through the 1990s or until we get to some equilibrium.'" L. Gordon Crovitz, *Rule of Law: Harvard Law School Finds its Counterrevolutionary*, WALL ST. J., Mar. 25, 1992, at A13. The students responded with posters: "The issue is discrimination, not self-confidence." Philip Lee, *The Griswold 9 and Student Activism for Faculty Diversity at Harvard Law School in the Early 1990s*, 27 HARV. J. RACIAL & ETHNIC JUSTICE 49, 65 (2011).

[22] Lee, *supra* note 21, at 80.

[23] Students of color are less likely to have a clinical instructor of the same race. They may also be entering an area of the law that is predominantly white and struggle to navigate a career in isolation. Furthermore, students of color disproportionately have non-clinical demands such as activism and yet may also face harsher consequences than their white counterparts. A comprehensive assessment explores these and other areas of historical and structural inequities.

that share a common area of law. Intentionally commencing long-term relationships with students is a key building block of student engagement.

The Veterans Legal Clinic of Harvard Law School (VLC) provides an example. VLC has an established relationship with the Harvard Law Armed Forces Association, a student organization within the law school, but lacks the same ongoing connection with other student organizations and affinity groups. With many BIPOC veterans, establishing stronger relationships with students of color could boost recruitment and increase the clinic's capacity to serve. Students observe these clinical recruitment efforts and therefore outreach becomes a public presentation of clinic priorities. While clinics have limitations, it is important to be mindful of the message it sends when only certain classes and student organizations are chosen. If the clinic strives to be more inclusive, both internally and externally, it must think outside of the box of traditional avenues of recruitment.

Student affinity groups are a fruitful avenue to reach students of color or those who identify as members of a marginalized community. Each student joins an affinity group for their own individual reasons, and it must be stressed that not all students become members of an affinity group because they are interested in using their legal training to advocate for the communities with which they identify. Nevertheless, when affinity groups are absent from a clinic's recruitment strategy, each clinic should ask why. While there may not be an overt connection between your clinic or project and the promotion of racial equity and justice, raising awareness of that connection can become an action item in revising your clinic's public face as well as a meaningful step for students who are unaware of the lesser-known ways of advocating for racial equity and justice.

3. Student Selection

A clinic's process of selecting its students and matching them to appropriate projects can be a critical piece of promoting antiracism. Given that clinical students have direct relationships with clients and partners, their interactions will impact the individuals and communities served by the clinic. A 2017 *Clinical Law Review* article highlights the potential harm that could result from a mismatch between a student and a project. In that article, Deborah Archer, a clinical professor at New York University School of Law, grappled with the potential impact of enrolling into a civil rights clinic a student who harbored hostile views towards Black and Latine individuals. The student was interested in the clinic as a vehicle for learning technical skills and sharpening her policy positions through debate; however, Archer concluded that the student's views risked poisoning the educational environment and undermining the clinic's professional responsibility to its clients.[24] There is no universal

[24] *See* Deborah N. Archer, *Open to Justice: The Importance of Student Selection Decisions in Law School Clinics,* 24 CLINICAL L.REV. 1 (2017). Without prescribing a rubric for student selections more generally, Archer reasoned that a student's openness to understanding the nature of discrimination as experienced by marginalized people, as well as their legal needs, was a necessary attribute of a successful clinical experience. It was also necessary to fulfill legal duties to clients of color. *Id.*

formula for deciding whether a particular student's goals, attitudes, and interests align with a clinic's mission. In addition, clinics should take care to ensure they are not excluding students from clinical practices based on preconceived notions about students' political or other leanings. However, having a fulsome understanding of students' perspectives and openness to learn at the outset of their clinical experience can ensure that an appropriate match is made between student and project.

The Harvard Legal Aid Bureau (HLAB) offers a leading example.[25] Guided by its explicit goal of responding to systematic racial, social and economic inequalities, HLAB has in the past considered students' own values and goals as part of the process of student selection. During the application and review process, prospective members were asked during an oral interview to explain how they relate to HLAB's mission. When used, this process allows current members to evaluate whether prospective members' intentions actually align with HLAB's work, including its racial justice priorities. In addition to this interview, HLAB has affirmatively considered students' identities in its selection process.[26] This can prove beneficial to client work in several ways. First, having students who come from low-income communities, communities of color, and who speak the first languages of their clients has made those clients feel valued and understood. Second, having diverse membership has enabled HLAB to work with community partners that either explicitly or implicitly prefer the presence of those with shared identities in their organizing spaces. And third, HLAB's diverse membership has also reduced the extractive and voyeuristic potential of their work,[27] with the goal of reducing the harm that comes from "using [marginalized people's] lives and misfortunes as 'teaching tools'."[28] Clinics should assess how and when they are engaging with a student's experiences, with efforts continuing through the semester.

4. Student Onboarding

---

[25] HLAB is unique in the HLS clinical landscape. Founded in 1913, HLAB is a student run organization providing direct legal services to low-income people in the greater Boston area. While clinicians provide legal supervision, HLAB's governance is in the hands of the approximately 50 second and third year law students that make a two-year commitment to join its ranks. HLAB members are expected to devote at least 20 hours per week of clinical practice and related activities. *Harvard Legal Aid Bureau*, HARVARD LAW SCHOOL, https://hls.harvard.edu/dept/clinical/clinics/harvard-legal-aid-bureau/ (last visited May 4, 2022).

[26] Kiah Duggins, HLAB President, Clinical Equity and Racial Justice: HLAB's Approach, Nov. 29, 2020.

[27] *Id.*

[28] Archer, *supra* note 24.

Initial encounters with clinical students provide an early chance to signal interest in a student's background or identity.[29] They can also alert the clinic to areas where the clinic may need to take care *because* of students' background or identity. As an example, course instructors have used pre-class questionnaires to ask students about how they identify and if they have concerns about addressing any of the subjects that will be covered in class, or if there are subjects they feel particularly well-positioned and excited to tackle.[30] Such questionnaires could be adapted for use as part of a clinical orientation, enabling students to self-identify and to highlight aspects of the clinical experience that they have particular preferences or concerns about.

Clinic orientations also provide an opportunity to discuss shared values around which a clinical community is organized. The clinic's values may not align with students' learned ways of working.[31] For example, scholars have written about how practices embedded in the structure of professional environments in the United States closely align with the country's dominant, i.e. white, culture.[32] This creates two needs—the need to demystify the core values as they exist so that all students benefit from the same knowledge, and the need to evolve the core values and working methods to reflect a diversifying community. Clinic orientations are also potential forums to spark semester-long discussions on efforts to promote racial equality, reckon with the clinic's history, or have students recount *their own* values.[33]

---

[29] *See, e.g.,* "I Learn Best When" – Centering Student Voices, HILT Conference Event, https://www.youtube.com/watch?v=1XOmPSDUx-8 (where students noted that conversations aiming to understand where students are coming from activates their learning, as does efforts to empower students to share their lived experiences)[hereinafter I Learn Best].

[30] For instance, student survivors of sexual violence have used questionnaires like these to express apprehensions around addressing sexual assault in class. *See* Susan Brooks, Associate Dean, Drexel University, *'Building the Container' for Anti-Racist Learning Communities that Foster a Sense of Belonging*, Address Before the Northeastern Clinical Conference (Mar. 26, 2021); BECCA BASSETT, SHANDRA JONES & DANNY ROJAS, HARVARD NEXT GEN DIGITAL HANDOUT: TEACHING FOR STUDENT SUCCESS https://projects.iq.harvard.edu/files/nextgen/files/part-2-teaching-for-student-success-updated.pdf (recommending faculty send out welcome surveys asking students their motivations and for information that would help the faculty understand the student as a learner).

[31] *See Next-Gen Success = Harvard Success: Inclusive Practices for Supporting First-Gen, Low-Income Students In and Beyond the Classroom*, HARVARD INITIATIVE FOR LEARNING & TEACHING (Nov. 10, 2021), https://hilt.harvard.edu/news-and-events/events/next-gen-success-harvard-success-inclusive-practices-for-supporting-first-gen-lower-income-students-in-and-beyond-the-classroom/ (articulating the need to clarify what is meant by "participation").

[32] *See* Aysa Gray, *The Bias of 'Professionalism' Standards*, STANFORD SOCIAL INNOVATION REV. (June 4, 2019), https://ssir.org/articles/entry/the_bias_of_professionalism_standards.

[33] *See* Brooks, *supra* note 30.

D. *Project and Case Selection*

Perhaps no other single aspect of a clinic holds the potential to affect progress toward racial justice than the substance of the work in which it chooses to engage. The clinic's field of operation need not overtly involve racial justice in order for project and case selection to further antiracist principles. It is in the nature of systemic racism to pervade every corner of American and international legal regimes. No matter what the field, legal representation and advice provided by clinics can significantly impact individual clients' lives, build capacity for community organizations, and advance policies with antiracist implications. Decisions related to a clinic's projects, cases and resource allocation can either serve to re-entrench status quo power dynamics or move in the direction of equity.

HLAB again offers an example of starting from the goal of antiracism and working backward into project selection in its fields.[34] By setting priorities for each of its practice areas that focuses on the needs of communities of color, HLAB both promotes antiracist principles and facilitates client-centered casework.

E. *Training and Education on Diversity, Equity, and Inclusion*

Cultural competence and the ability to engage in a sophisticated way around issues of diversity, equity, and inclusion (DEI) are not always properly recognized as key professional skills. Moreover, when they are addressed, it is too often through the lens of identity, with colleagues who hold specific identities labeled as experts because of those identities alone, and called on to volunteer their time and energy to explain DEI issues to others. For clinics, the value of increasing cultural competence cannot be overstated considering the importance to client work and student supervision. For this reason, as part of a self-assessment of its antiracist practices, a clinic should evaluate the training it provides to staff and students on DEI.

The most effective way to do this is the resource intensive path of hiring a professional training organization. There are many such organizations; in selecting one to work with, clinics should consider the organization's training modalities and areas of particular expertise.[35] Many of these organizations are now overwhelmed by requests for their services in the wake of the post-2020 cultural reckoning on white supremacy. Some outfits have developed online courses that may offer more flexible and lower cost alternatives to live trainings. For example, the Initiative for a Representative First Amendment (IfRFA), a program housed at Harvard's Berkman Klein Center for Internet & Society, funds diverse law students' summer experiences at clinics around the country focused on free speech related issues. To better equip clinics to

[34] Duggins, *supra* note 26.

[35] For one extensive, and sortable, list of training organizations, curated by Mia Henry of Freedom Lifted, see https://app.awesome-table.com/-L3nAsXFCh_Z1riHKgn8/view.

support IfRFA fellows, the organization sponsored participation in a self-paced online DEI training from She+ Geeks Out, and clinicians reported having learned a great deal.

Training for clinical programs does not fit neatly into pre-made categories because clinics occupy an in-between space, part professional school, part workplace. Materials tailored to the particular circumstances of clinical legal education are thus highly valuable. In addition to workplace DEI issues, clinics may need to offer students, teachers, and staff support in evaluating their positionality with regard to the clinic's clients. For example, the Cyberlaw Clinic at HLS assigns materials focused on inclusive lawyering that clinicians at Yale and CUNY Law Schools developed called the Habits of Cross-Cultural Lawyering. These clinicians maintain a website that includes an overview of the curriculum, teaching exercises, and links to their journal articles on the subject.[36] Clinics should strive to create routine opportunities for clinical teams to reflect on how issues of difference, including racial difference, are arising in their work.

Another way to build skills is for clinics to encourage peer education programs that create a shared base of knowledge among clinic faculty, staff and students. These peer programs work across clinical positions to provide training and growth opportunities. For example, beginning in 2020, staff at Harvard's Center for Health Law and Policy Innovation (CHLPI) sought to increase their collective understanding of systemic racism in order to know how best to combat it in their organization. To this end, CHLPI clinicians and administrators started a staff reading group focused on raising the general level of awareness of systemic racism internally.[37] To coordinate their schedules and have manageable discussions, the staff divided into discussion groups of around five people each, which met privately on a monthly basis. While the reading groups were entirely voluntary, nearly all the staff participated, a fact attributed to the support of the program's leadership and by shared peer expectations of attendance. In addition to giving the staff a common language and insights around which to discuss the ways that race may be implicated in their work and institution, the reading group discussions also strengthened the sense of community among the staff. [38]

Clinical students can also be involved in peer-to-peer awareness-raising. Upper-level HLAB students, for example, have a practice of leading discussions with entering students about how different aspects of their identity might come to the fore in the course of

[36] Five Habits of Cross-Cultural Lawyering and More: Clinical Law Teaching Materials from Sue Bryant and Jean Koh Peters, https://fivehabitsandmore.law.yale.edu (last visited Apr. 25, 2022)

[37] CERJ Small Group Discussion with CHLPI.

[38] CERJ Small Group Discussion with CHLPI.

representing their clients.[39] Taking place before the semester begins, students self-select into groups aligning around a shared identity and then frankly discuss the opportunities and challenges that are likely to present themselves in connection with their backgrounds during their HLAB membership. Upper-level students draw on their own experiences and entering students are able to ask candid questions without a clinician present. This peer education, which occurs before students are introduced to clients, complements a larger training that focuses on the specific history of the communities HLAB serves and the role that race has played in that history, from redlining and racial segregation in Boston to the current-day local racial wealth gap.[40] Whatever form it comes in, clinics should assess whether they are creating opportunities and resources to train in cultural competency.

F. *Soliciting and Implementing Feedback*

Clinics should critically examine how they solicit and implement feedback from students and clients. Honest feedback can increase a clinic's understanding of how effective its efforts to promote racial equity really are. It may be difficult to obtain feedback that frankly communicates a clinic's shortcomings considering uneven power dynamics and the nature of discussions on racial inclusion. Those asked for feedback may not trust that their answers will be heard in an affirming and non-defensive way. However, the act of seeking feedback specifically on racial equity helps to signal that a clinic is committed to these issues.[41] Clinics should assess how frequently feedback is solicited, the level of honesty and openness invited, and the points of contact appropriate to provide feedback.

Seeking feedback early and often normalizes evaluation and takes pressure off any one invitation for such feedback. This could be especially helpful for feedback on racial inclusion, which students may be reluctant to give. For example, one inclusive practice recommended for the classroom setting is the practice of conducting an "early semester check-in," which is a low-stakes anonymous survey given a few weeks after the beginning of a course.[42] The check-in empowers students to give first impressions of the experience and enables instructors to both share a summary of that feedback with students and to communicate how the feedback

---

[39] Duggins, *supra* note 26.

[40] *Id.*

[41] *See* Alexi Freeman, *Don't Hire Me as a Token: Best Practices for Recruiting and Supporting Diverse Externs*, 72 S.C. L REV. 357 (2021). Providing space for students to provide feedback also aids students in learning how to engage in meaningful conversations on racial justice in a professional environment.

[42] *See Key Moves,* The Derek Bok Center for Teaching and Learning, https://bokcenter.harvard.edu/inclusive-moves (last visited Apr. 25, 2022).

might be put into action, thereby demonstrating its value.[43] In the clinical setting, written evaluations at preset intervals serve a similar role.

In addition to these more formal settings, clinicians could also consider asking for feedback on the learning environment through informal and continuous channels including regular office hours and open-ended surveys. Routine opportunities for two-way communication, such as standing and mandatory office hours, are likely to draw students from marginalized communities more than opportunities that are by appointment.[44] Confidential surveys can also enable spontaneous and unfiltered feedback.[45]

G. *Hiring and Retention*

Issues related to the hiring and retention of clinical faculty and staff are at the heart of promoting antiracist principles. Twin concerns related to institutional policies and clinic specific policies are at issue.

At the institutional level, reform efforts must account for any history of controversial hiring practices. At Harvard Law School, years of protest preceded Derrick Bell's appointment in 1971 as the school's first Black tenured professor. Following Professor Bell's appointment, ongoing protest to diversify the faculty further fell on deaf ears, with the HLS administration claiming a lack of qualified candidates.[46] Nearly two decades after Professor Bell's appointment, the HLS tenured faculty included only three Black men and no Black women. With little change on the horizon, Professor Bell took the protest into his own hands with an unpaid leave of absence in 1990. Students across identities continued to demand reform,

---

[43] Instructors can also use this opportunity to be transparent about aspects of the feedback that they are unable to put into practice. *Id.*

[44] A longitudinal study of eight low-income, first-generation students of color conducted by Harvard doctoral student Becca Spindel Bassett concluded that a combination of socialization, stereotype threat, and imposter syndrome caused reluctance to proactively reach out to authority figures. Establishing routine, universal opportunities for feedback was found to help overcome these barriers. Becca Spindel Bassett, *Big Enough to Bother Them? When Low-Income, First-Generation Students Seek Help from Support Programs*, 62 J. COLLEGE STUDENT DEV. 19 (2021).

[45] *Id.*; *see* Shandra Jones, Becca Bassett & Danny Rojas, Harvard Next Gen Digital Handout: Actionable Interventions, https://projects.iq.harvard.edu/files/nextgen/files/part-3-actionable-interventions-updated.pdf (last visited Apr. 25, 2022).

[46] In the spring of 1982, students submitted a list of about 30 Black lawyers who students believed were qualified to teach at HLS. Herrera, *supra* note 6, at 60.

including the Griswold 9 incident described above.[47] It was not until 1998 that HLS appointed a Black woman to its tenured faculty, hiring civil rights advocate Lani Guinier away from her tenured professorship at University of Pennsylvania Law School. Similar firsts for other communities of color did not occur until the 2010's or have yet to occur. For example, Jeannie Suk Gersen became the first Asian American woman to achieve tenure in 2010 and there are no tenured or tenure-track Latinas at HLS as of 2022.

Institutional policies on clinical classifications also affect hiring and retention practices. Individuals vested with the responsibility to represent clients and teach students under the aegis of the law school are subject to a wide range of classifications. Some schools include clinicians alongside doctrinal faculty, within a single-track promotion process. This may afford clinicians who advance more decision-making power while also negatively impacting some candidates of color because of the necessary qualifications for promotion.[48] Alternatively, some law schools use a separate track for clinical teachers, which may afford additional opportunities to hire and retain attorneys with valuable professional expertise but less interest in traditional scholarship. However, these roles may also disempower clinicians, leaving them with less influence and limited ability to impact institutional policy even after years of service. The difference between tracks becomes more pronounced when considering demographics. Instructors of color have a significant pattern of being concentrated in tracks and roles that lack decision-making power.[49]

Issues of hiring and retention within the clinic's purview are also central to antiracism. Clinics should proactively assess efforts to attract and retain clinicians and clinical staff of color in an intentional and sustained fashion, including addressing past successes and failures in hiring. Clinics may also explore how hiring efforts reflect concerns of communities of color. For example, in the 1990s the Harvard Legal Services Center learned that candidates of color

---

[47] Student protest also resulted in a class strike and the filing of an employment discrimination lawsuit in 1990. Lee, *supra* 21, at 55. Among other things, the Complaint alleged: "1. HLS's unofficial faculty hiring criteria worked against women and minorities in the hiring process; 2. alleged harm to the students in the form of being denied the social, educational, and professional benefits of an integrated faculty; 3. alleged that the lack of diverse faculty denied equal and adequate opportunity, perpetuated badges of inferiority, and fostered insensitivity and intolerance." *Id.* at 56.

[48] *See, e.g.*, Victor Ray, *The Racial Politics of Citation*, INSIDE HIGHER ED (Apr. 27, 2018), https://www.insidehighered.com/advice/2018/04/27/racial-exclusions-scholarly-citations-opinion.

[49] *See* Liz Keys, Ragini Shah, and Anita Sinha, *Addressing Racism Within our Institutions*, Discussion Session at Assoc. of Am. L. Schools Clinical Legal Education Assoc. Conference (June 21, 2020) [hereinafter Addressing Racism].

questioned whether posted job openings were genuinely open to the public, believing the roles to be actually reserved for internal candidates.[50]

It is also useful for clinics to examine their own candidate recruitment. The metrics for hiring are not uniform across schools, and entry into the field often comes through public interest sub-fields or informal networks from which practitioners of color are already systemically excluded.[51] Clinics may also account for other potential obstacles to hiring that occur throughout a candidate's career. For example, low rates of clinic enrollment among students of color mean those students are not as exposed to the work that clinics do, or to the potential of a career path in clinical teaching.[52] Furthermore, clinical teaching may not be economically viable for practitioners of color paying off high student loan debts, especially where candidates must obtain multiple graduate degrees, invest time and money into writing legal scholarship, or contend with low starting salaries.[53] Location of a clinic in a rural or homogenous community where a clinician of color would face difficulty integrating may make the prospect of relocation unattractive. Moreover, longevity in the field is often achieved by persisting in temporary or short-term positions and by moving to new cities to pursue opportunities at different institutions, creating financial and familial instability that few can afford to overcome. Further, biases in the selection process can disadvantage candidates of color.[54]

Clinics can aim to reduce these obstacles by, for example, demystifying the pathways to clinical employment, mentoring promising students and practitioners who could serve as clinical teachers, and conducting extensive, intentional outreach.[55] To prepare for recruitment processes, clinics should revisit hiring policies and provide implicit bias trainings for selection committees.[56] Harvard University, for example, offers a range of resources under its "Inclusive

---

[50] CERJ Small Group Discussion with Jeanne Charn.

[51] Addressing Racism, *supra* note 49.

[52] *Id.*

[53] *Id.* One participant cautioned against "credentialism" that equates to looking at White markers of success. *Id.*

[54] *Id.*

[55] *Id.* (proposing outreach to clinic students, affinity groups, bar associations, legal services programs and served communities).

[56] Addressing Racism, *supra* note 49.

Hiring Initiative" that can aid this process.[57] Those committees might choose to reward "non-traditional" credentials, thereby enabling candidates with underappreciated achievements to succeed.[58] Moreover, increasing the salary of entry-level posts and building stability into clinical positions would make these positions more accessible to candidates of color.[59] One participant at the 2020 AALS/CLEA clinical conference went further, suggesting that selection committees frankly acknowledge when search processes have fallen short, for example, when it becomes apparent that a final pool of applicants is not diverse enough.[60]

While it is true that recruiting a diverse faculty and staff provides multiple reciprocal benefits to students and clients, once hired, these benefits should also be balanced against the needs of those faculty and staff. For example, for clinicians of color, the burdens of ensuring that the mentoring needs of non-white students are met can run counter to clinicians' own career advancement. The same could be said of the labor undertaken by faculty and staff of color to ensure that institutional resources and practices are equitable and that service work is carried out.[61] Instructors of color must uniquely grapple with the need to provoke discomfort as part of the learning process, while knowing that this provocation could elicit negative assumptions and reactions when the topic is about race.[62] After acknowledging that faculty of color undertake an unequal share of service work at their law school, the faculty of

---

[57] *Inclusive Hiring Initiative,* Harvard Information for Employees, https://hr.harvard.edu/inclusive-hiring-initiative (last visited Apr. 25, 2022).

[58] There are numerous other strategies and practices that can create more equitable hiring and a more diverse applicant pool. *See, e.g.*, Vu, *Crappy Hiring Practices That Need to Die, and Some Ones We Need to Adopt,* NONPROFIT AF (Feb. 20, 2022), https://nonprofitaf.com/2022/02/crappy-hiring-practices-that-need-to-die-and-some-new-ones-we-need-to-adopt.

[59] Addressing Racism, *supra* note 49.

[60] *Id.*

[61] *See* Cecily Banks & Laurie Barron, *Auditing our Externships for Antiracism*, AALS; Black Faculty and Faculty of Color at CUNY Law, Statement and Demand for Action to Create an Anti-Racist Campus (June 30, 2020), https://www.law.cuny.edu/newsroom_post/statement-from-black-faculty-of-color [hereinafter Demand at CUNY Law].

[62] *See, e.g.*, Anita Chikkatur, *Challenging Oppression in Moderation? Student Feedback in Diversity Courses*, *in* TRANSFORMING THE ACADEMY: FACULTY PERSPECTIVES ON DIVERSITY AND PEDAGOGY (Sarah Willie-LeBreton, ed., 2016) (grappling with an impulse to self-censor to avoid the disorientation and resistance that accompany discussions about race); Dela Kusi-Appouh, *Is There a Silver Lining? The Experiences of a Black Female Teaching Assistant*, *in* TRANSFORMING THE ACADEMY: FACULTY PERSPECTIVES ON DIVERSITY AND PEDAGOGY (Sarah Willie-LeBreton, ed., 2016) (using her experience in a race & public policy course to illustrate the feedback faculty of color receive when teaching material on systemic inequality that challenges student assumptions).

color of CUNY Law School recommended that the school explicitly count this work as indicators of good performance when making decisions about hiring, promotions, tenure processes and committee assignments.[63] Clinics could similarly choose to account for this additional labor in recruitment and performance evaluation processes. Such an overt step is key to the issue of retention.[64] Unclear expectations, failure to diversify the norms around which the clinic is organized and experiences of tokenization or alienation can hinder belonging.[65] While the initial hiring of a diverse clinical faculty and staff is necessary to improving a clinic's antiracist practice, only the long-term retention of people of color will be sufficient in the long run.

H. *Public Face*

Clinics should assess how they present themselves to the public. Choices made – intentional or otherwise – in crafting the public-facing image of a clinical programs can have a significant impact. The power of public face is aptly illustrated in the recent history of Harvard Law School. In 2015, students mobilized to remove the HLS shield from use. The efforts were modeled after the South African "Rhodes Must Fall" campaign, with a focus to shed symbols of colonization and slavery. The original shield, adopted in 1936, was the family crest of the person to fund the first professorship of law: Isaac Royall Jr. Royall was a slaveowner responsible for the brutal torture and murder of 88 enslaved persons in Antigua in the mid-1730s.[66] In November 2015, the campaign published an open letter demanding that HLS change its shield. Shortly thereafter, an anonymous person or group defaced the portraits of Black faculty members in Wasserstein Hall with black tape. Although a Dean-formed committee recommended that the shield be retired in 2016, [67] it was not until fall 2021 when a new shield went into use.[68] Another effort to change the public face of HLS occurred in the 2015-2016 school year. A group of student organizers called Reclaim made a series of demands to improve diversity and inclusion, and occupied a central lounge in the main law

---

[63] *See* Demand at CUNY Law, *supra* note 61.

[64] *Id.* (citing lack of recognition and microaggressions from colleagues, the profession and the broader society).

[65] Addressing Racism, *supra* note 49.

[66] *See generally* DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY (2015).

[67] RECOMMENDATION TO THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE ON THE SHIELD APPROVED FOR THE LAW SCHOOL (March 3, 2016), https://today.law.harvard.edu/wp-content/uploads/2016/03/Shield-Committee-Report.pdf.

[68] HLS News Staff, *Harvard Law School Unveils New Shield,* HARVARD LAW TODAY (Aug. 27, 2021), https://today.law.harvard.edu/harvard-law-school-unveils-new-shield/.

school building. Renaming the area Belinda Hall after Belinda Sutton, a woman enslaved by Isaac Royall who successfully received reparations, the students used the space to self-educate and discuss ways to contextualize legal education with a social justice lens.[69] These recent efforts underscore the importance of institutional public image as a *sine qua non* on the path toward implementing antiracist principles.

Clinical programs pursuing antiracist reform should consider the full breadth of its public face, bearing in mind the perspectives of the intended audience. Elements to consider include physical location, visual images on websites and in hard copy materials, language(s) on websites and hard copy materials, and public presentations.

1. Physical Location

One starting point for a clinic's public face is its physical location. The history of the Harvard Law School Legal Services Center (LSC) provides an example. When establishing the LSC, its founders sought a physical location away from the HLS campus and in close proximity to communities they wished to serve. The LSC intentionally "mapped" the institutions where community members gathered, places like health clinics and community centers, in order to be present in spaces where they could hear about the kinds of services that the community actually needed. [70] In addition to presence in the community, faculty and staff of color facilitated the LSC's case development since potential clients sought guidance from those faculty and staff about the program and its legitimacy before committing to working with the Center. [71]

2. Visual Images

Visual representation is another core part of assessing a clinic's image. For example, displaying photographs in the clinic's space of predominantly white people communicates that it is not a place where people of color are included. This observation has been previously made

---

[69] Reclaim Harvard Law issued the following statement: "Since the law school refuses to provide adequate institutional support for an office of diversity and inclusion, hire critical race theorists, promote staff of color in the workplace to management positions in their due course, provide adequate contextualization in curricula, educate its professors, its staff, and its students around cultural competency, take the steps that are necessary to accord adequate and equal dignity to marginalized students and staff, Reclaim Harvard Law aims to provide that space at the law school. Reclaim assumes the burden of educating ourselves and others in spite of this institution and not because of it. Reclaim Harvard Law, *A Message from Reclaim Harvard Law*, The Harvard Law Record (Apr. 1, 2016).

[70] CERJ Small Group Discussion with Jeanne Charn.

[71] CERJ Small Group Discussion with Jeanne Charn.

in relation to wider law school campuses that display, for example, historical images of past deans and faculty to the exclusion of present community members,[72] but it applies equally to the physical spaces of in-house clinics that are present on those campuses. Clinics should make intentional choices about visual representations in their spaces. Choosing to display predominately visually diverse colleagues and students may misrepresent or tokenize, leading to feelings of exclusion. Clinics should also explore the visual cues for abstract concepts for professionalism. For example, whether the use of bold colors in an office is deterred or whether shared spaces consider different viewpoints of comfort and accommodate a range of body sizes and abilities.

3. Language

In addition to visual representations, clinics should analyze the language they use. Language is a key component in connecting communities and promoting inclusion. Clinics should ensure accessibility by making services available in the language of the community to be served. In addition, clinics should make arrangements to be accessible where necessary in other languages – including American Sign Language – through the use of a professional interpreter.[73]

Diction matters too. *A Progressive's Style Guide*, by Hanna Thomas and Anna Hirsch, provides some grounding principles with which to critically assess the language clinics use to discuss and describe their work, clients, staff and students.[74] While language is ever-evolving, guides like this can assist by acting as a foundation for what language to avoid and which language is generally preferred (e.g. person-first language, such as avoiding the noun "elderly" with a preference for "older people"). Clinicians may establish internal guidelines and further the use of the preferred terminology and language that reflects diverse perspectives and identities.

4. Public Communications

Clinics auditing their public image should review every outward facing method of communication, including websites, email signatures, public programming (including speaker identities), and clinic outreach, promotion and recruitment materials. Each communication represents an opportunity for the clinic to wear its principles on its sleeve. Looking at the

---

[72] *See* Addressing Racism, *supra* note 49.

[73] *See* Alicia Alvarez, Susan Bennett, Louise Howells, & Hannah Lieberman, *Teaching and Practicing Community Development Poverty Law: Lawyers and Clients As Trusted Neighborhood Problem Solvers*, 23 CLINICAL L. REV. 577, 603 (2017) (recounting the use of a telephonic language interpretation service in the delivery of legal services to client community).

[74] HANNAH THOMAS & ANNA HIRSCH, A PROGRESSIVE'S STYLE GUIDE (2016).

clinic's public face with a critical and keen eye can be daunting, but it is one of the most crucial action items a clinic can take on. The language used, the communities supported, and the ideals advanced are an important bridge to the intended audience. Communities of color will feel seen and respected. Groups supporting oppressive movements will not be met with silence. The legal community will be used to lift up communities of color, bring awareness to injustices, disparities, and long-held white supremacy beliefs, and will amplify voices that have been silenced for far too long.

Mission statements can be an important way of signaling your commitment to racial justice and equity. For example, HLAB's mission statement communicates its prioritization of racial justice by stating that, in addition to training students and providing civil legal aid, HLAB "responds to the systemic racial, social and economic inequalities that are the causes and consequences of poverty."[75] Similarly, CHLPI unequivocally notes that "black lives matter" on the *front page* of its website.[76] CHILPI's mission statement further acknowledges that systemic racism has deep roots, even in organizations whose larger mission is to address issues of disparity and poverty.

To avoid the risk of settling for mere performance, clinics should address the expectations created by these statements. Will your clinic live up to these expectations? While it is a significant step to embrace an anti-oppression mission and perhaps even more significant to recognize the role white supremacy has played in the creation of traditional values within the legal community, putting that mission into practice is crucial. It also takes time. Clinics should question whether they are acknowledging action steps and where the clinic is on the spectrum of growth. Throughout this process, transparency is key.

II. Examining Clinical Pedagogy and Interpersonal Relationships Through an Antiracist Lens

The clinician's role in teaching and training law students warrants significant attention in the process of antiracist reform in clinical communities. The development of an antiracist clinical pedagogy requires the clinician to look both inward – toward their own teaching methods – and outward – toward the professional landscape that their students will face. The benefits of deep individual reflection and self-education on the part of the clinician will extend

---

[75] Duggins, *supra* note 26; Harvard Legal Aid Bureau, *supra* note 25.

[76] The message reads: "Black Lives Matter: As individuals and as an organization, we at CHLPI pledge to reflect on our role in supporting, exacerbating, and failing to meaningfully question and address systemic racism. The CHLPI team pledges to recognize our role in the current model, and do better. Read our statement on racial justice here." *See* Center for Health Law and Policy Innovation, HARVARD LAW SCHOOL, https://www.chlpi.org/ (last visited Apr. 25, 2022).

to all students—BIPOC students included—as they recognize the impact of white supremacy on the law, their clients, and themselves.[77] Equitable learning environments will give all participants the opportunity to reach their full individual potential. Delivering antiracist pedagogy will further prepare students with the tools that they need to rebuild legal and social systems through policies of equity and inclusion. This section offers practical techniques and recommendations to animate the clinician-student relationship toward these goals.

A. Understand the Clinician-Student Relationship

Clinicians and law faculty need to acknowledge and intentionally bring into the classroom the ways in which race and racist structures guide the experiences of both students and clinicians. Biases and privileges that clinicians bring into the classroom can interfere with the trust and honesty that make for a strong student-teacher relationship and allow students to grow. To leave those dynamics unaddressed will only further damage that connection.

Inherent in the relationship between the student and clinician are the usual power dynamics at play in nearly all student-teacher dyads. There is the typical hierarchy in which the teacher has the power to hand out a grade, thus ultimately judging the student. Yet in that student and clinician relationship is another power dynamic unique to the clinical environment, that of a boss-employee. Here the "boss" is also providing feedback and a critique on a wide range of professional skills including legal writing, oral advocacy, dress, and client interactions. Professional skills implicate aspects of personhood that go beyond academic ability. They touch on culture and class with standards that are driven largely by the history, culture, and norms of white people.[78] While the dynamics of the employee-employer relationship are familiar to many, they become more fraught and require more attention when the teacher-employer is white and the student-employee is a student of color. Clinicians should take time to educate themselves about these various dynamics and the role of white cultural dominance in both the employment and education setting, particularly as it relates to the messages around "professionalism." Clinicians may be implicitly or explicitly sending messages about what constitutes professional dress or appearance in an effort to ensure that students adhere to "tradition" or "standards" that have no effect on the quality of their work or client outcomes. Messages that only hair that has been straightened, a suit in black/navy/gray, wearing hosiery, or ideas about how a suit "fits" without appreciating different sizing, are all examples of how clinicians may be reinforcing racist messages.

---

[77] An important first step in the process of reforming clinical pedagogy is self-reflection toward reaching a point where the clinic is willing to change the status quo. *See* I Learn Best, *supra* note 29 (where a student expressed gratitude that a professor removed a seemingly benign economics reading assignment from the syllabus given that it was written by an author who held white supremacist views).

[78] *See* Gray, *supra* note 32.

Clinicians should go a step further and discuss all of these ideas with their students, acknowledging their own privilege, and making an effort to not only break down some of the structures built into traditional roles, but to create new ones—structures that elevate the student and their backgrounds and experiences to a place of value.

The clinician-student relationship is also at the forefront in discussions of grading and evaluation. The racial justice implications of a clinic's grading and evaluation methodologies are therefore an important area for critical self-reflection.[79] Like other law school evaluation metrics, default measures used by clinics have the potential to unfairly reward individuals from privileged backgrounds, reinforcing power structures within the status quo. Any student who comes from a family of lawyers, who may have been exposed to the professional vernacular of legal practice, or who has prior work experience in the field may enjoy hidden advantages in a clinic's evaluation method, unless those elements are accounted for. Conversely, where a clinic is engaged in poverty work, students from disadvantaged backgrounds may have both an easier learning curve to connect with their clients, as well as greater potential to offer meaningful insight into the legal and factual puzzles raised in their cases. Whatever the relationship between the prior lived experiences of students and the assigned clinical work,[80] the clinic's grading methodology should take account of these dynamics to ensure that student evaluations accurately reflect the work performed during the semester, rather than perpetuate preexisting inequities. The elements that make for effective clinical grading and evaluation methods overall – transparency, awareness of the inherently subjective nature of clinical evaluation, and open, two-way communication – are each important in crafting policies that account for racial justice.

Transparency in the clinical grading and evaluation process is of cardinal importance. Starting with its initial communication with students, the clinic should spell out clear and

---

[79] The authors are most familiar with the system of grading and evaluation of Harvard Law School. Since 2009, Harvard Law School has used a system that reflects student performance in a course or clinic by awarding grades of Honors, Pass, Low Pass, or Fail, with an additional grading level of "Dean's Scholar Prize" in recognition of outstanding performance. *See* Harvard Law School Handbook of Academic Policies, 2021-2022 at 34, https://perma.cc/KCL7-HUHW. Since that time, Harvard Law School has also used a recommended, unpublished grading curve applicable only to courses with greater than 30 students. *See The Unpublished Curve, Explained*, THE HARVARD LAW RECORD (Jan. 13, 2012), https://perma.cc/W5AT-QN8Z. Most clinics at Harvard Law School have a smaller enrollment per semester than 30 students, and so are not subject to the recommended, unpublished grading curve. Most clinics at Harvard Law School employ some combination of formal grading, as described above, and written evaluation of student performance.

[80] An extensive body of literature exists offering insight into the challenges of teaching lawyers how to effectively perform their work across cultural divides. *See, e.g.,* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers,* 9 CLINICAL L. REV. 33 (2002).

specific elements on which students will be evaluated. What skill-based criteria are most important to the grading process? How does the clinic's evaluation process place weight on student effort, especially when it is not accompanied by project goals being met? In what way does the student evaluation consider growth throughout the course of the semester, or reflect the ability to learn from mistakes? Orientation materials should be forthright about the inherent limitations of grading clinical student performance. Some legal skills are more easily measured than others. Graders have the difficult task of balancing factors like quantity of work output against less objective measures of quality. Subjectivity remains in any performance-based evaluation rubric.[81] If the rubric communicates to students that they will be evaluated on "effectively laying out a case plan," what does the word "effective" mean in that context? Are examples provided? Does effectiveness turn only on a certain case outcome, or are other definitions of success worthy of reward? Using rubrics that focus on particular skills, e.g., turning in assignments by a deadline, or communicating about a delay, or growth in identified areas, e.g., incorporating feedback into written drafts, can be a way to combat the subjectivity of ill-defined criteria called "professionalism." Because it is never possible to distill evaluation criteria to wholly objective measures, communication and feedback, in both directions, plays a critical role. From the student's perspective, consistent and ongoing feedback supports skill development, allows for growth, and creates fair expectations. From the clinician's perspective, robust communication helps to identify our own blind spots, and creates critical context for grading and evaluation. Transparency and communication are the best tools that clinicians have to fight against subjectivity – and the inherent biases that accompany it – in student grading and evaluation.

B. Examine the Student-Student Relationship

Peer relationships among law students reflect back community belonging just as much as relationships with faculty and staff do. These relationships can be sources of frustration, uncertainty, pain and anxiety. For example, students may be paired with a clinical partner who has previously questioned their intelligence or practiced racial exclusion for social events during the school year.[82] A 2017 note written by then-JD student Taifha N. Baker captures students' perceptions of being outnumbered by classmates with diverging viewpoints and

---

[81] "However, the drawback, as in all performance based grading, is inherent subjectivity." Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 CLINICAL L. REV. 359, 388 (1998); Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLINICAL L. REV. 299, 304 (1997).

[82] *See*, *e.g.*, Black @ Harvard Law School Instagram (recounting microaggressions, class interventions based on racial stereotypes, exclusion from study groups and general feelings of isolation during law school); Taifha N. Baker, *How Top Law Schools Can Resuscitate An Inclusive Climate for Minority And Low-Income Law Students*, 9 GEORGETOWN J. L. & MOD. CRITICAL RACE PERSP. 123 (2017) (recounting the concerns of students of color, who mention alienation from their classmates and limited solidarity between students of different backgrounds); Brooks, *supra* note 30 (describing student hesitation to work with certain other students).

experiences at the nation's top law schools, including Harvard Law School.[83] She also recounts the demotivation that can result from hearing classmates assign stereotypes to racialized communities unchallenged.[84] The clinical learning environment, in particular, can be a fraught space given students enter it with a diversity of experiences and competences and are pushed to perform professionally and navigate the intersecting challenges of practice. Clinical pedagogy is largely premised on the idea that learning and growth result from being challenged to see the world from a different perspective.[85] However, there is a risk that such learning could come at the expense of student wellbeing if relationships and practice in the clinic reinforce the unequal power dynamics present in and outside of law school. This may occur if one perspective is normative and another is "other" or if some students are not willing to transform their thinking.[86] Students may also avoid clinical spaces if they suspect that they will be burdened with emotional labor in those environments, or tasked with educating their peers about race.[87]

In addition to developing pedagogy that raises students' awareness of themselves and their positionality, clinicians should expressly discuss the role that students themselves play in creating an inclusive learning environment, and in fostering equitable teams. Learning cross-cultural skills and building solidarity with teammates is a goal of the clinical experience, and will serve students as they enter the legal profession. Moreover, clinicians should equip themselves to navigate the inevitable disagreements, misunderstandings, and outright offenses that result from working in diverse teams.[88] This would avoid circumstances in which students are left to shoulder the burden of such encounters alone. As one example of a useful technique that clinicians might use to build skills in resolving such conflicts, Dr. Howard Stevenson of the University of Pennsylvania has developed a strengths-based technique to deescalate the stress people feel in such situations so that they are better able to access their

[83] Baker, *supra* note 82.

[84] *Id.*

[85] *See* Archer, *supra* note 24 (describing the use of "disorienting moments" as teaching tools).

[86] *Id.*

[87] *See* Addressing Racism, *supra* note 49.

[88] *See* Brooks, *supra* note 30.

problem-solving skills.[89] Another technique, recommended to faculty by Harvard University's Derek Bok Center for Teaching and Learning, focuses on stabilizing emotions immediately after a difficult moment, then offering opportunities to clarify and learn from that moment. The Bok Center's approach incorporates private check-ins with relevant students—or the entire class—after the moment has passed.[90] The Center also recommends that instructors intervene to indicate when student comments cross the line of acceptability.[91] A student panelist at "I Learn Best When" suggested a similar approach when reflecting on effectively managing harmful statements in class.[92] These guidelines are transferrable to the clinical setting. Other approaches may draw on different strategies, including mediation, organizational psychology, or conflict resolution techniques.

C. Recognize and Understand Common Inhibitors to Student Performance.[93]

To create a truly equitable learning space, educators must recognize that their students may be starting their legal education from different positions, and walking through the halls of the law school with myriad inhibitors to their success. These inequities and burdens can affect a student's ability to succeed in law school. Some of the many negative forces include stereotype threat, chronic stress, racial trauma, tokenization, lack of relatable mentors, microaggressions, and imposter syndrome. While a comprehensive catalog is beyond the scope of this reflection, engaging in antiracist teaching requires one to undertake a general study of how these phenomena require students of color and other marginalized students to overcome additional barriers in order to achieve at the rate of their white peers.

---

[89] Howard C. Stevenson, *How to Resolve Racially Stressful Situations,* TED TALKS (Oct. 2017), https://www.ted.com/talks/howard_c_stevenson_how_to_resolve_racially_stressful_situations?language=en

[90] *Navigating Difficult Moments,* The Derek Bok Center for Teaching and Learning, https://bokcenter.harvard.edu/navigating-difficult-moments (last visited Apr. 25, 2022).

[91] *Id.*

[92] *See* I Learn Best, *supra* note 29.

[93] This section is informed by the scholarship of Paula J. Manning, *Word to the Wise: Feedback Intervention to Moderate the Effects of Stereotype Threat and Attributional Ambiguity on Law Students*, 18 U. MD. L.J. RACE RELIG. GENDER & CLASS 99 (2018), http://digitalcommons.law.umaryland.edu/rrgc/vol18/iss1/20; Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 LA RAZA L.J. 1 (2015); and Anne Gordon, *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Effective*, (2021), https://ssrn.com/abstract=3777546; G. L., Cohen, et al., *The Mentor's Dilemma: Providing Critical Feedback Across the Racial Divide,* 25 Personality & Social Psych. Bulletin 1302 (1999).

One significant barrier is the impact of "stereotype threat." Defined by Claude M. Steele and Joshua Aronson, a "stereotype threat" places one "at risk of confirming, as self-characteristic, a negative stereotype about one's group."[94] For instance, a student of color may feel apprehensive about clarifying a doctrinal point with an instructor, fearing that showing confusion would amplify the perception that the student does not belong at law school. These feelings can impact one's academic performance because it forces those in the stereotyped group to worry about how their performance is being perceived rather than just on performing the task before them. In more prolonged cases, stereotype threat can lead to students "to protectively disidentify with academic achievement in school and related intellectual domains."[95] Students may choose to sit out particular conversations or to forgo participation in opportunities that are white-dominated or intellectually rigorous out of fear that they will be perceived as inferior to their peers.

Other judgments that rest on a person's identity, including tokenization, e.g., requiring one student to represent an entire race or even all people of color, and imposter syndrome, i.e., one's sense of being unqualified as compared to peers, can increase the cognitive burden that students must shoulder. A 2013 study by Sean Darling-Hammond shows that "low-income, minority, and female students are experiencing law school differently than wealthy, White, and male students."[96] Generally, "[c]lassroom management and demeanor can have real impacts on whether students are empowered to realize their potential, or spurred to silently buckle under fears of confirming stereotypes."[97] In the clinical setting, student awareness of factors like the number of clinical classmates sharing their identities can contribute to how a student interprets their place and potential in that environment. Other more subtle indicators of success and belonging, such as the distribution of lucrative assignments and awards to white students, can send messages to students of color that they are unlikely to achieve the same status or be given the same opportunities.[98]

---

[94] C.M. Steele & J. Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69. J PERS. SOC. PSYCHOL. 797 (1995).

[95] *Id.*

[96] Darling-Hammond & Homquist, *supra* note 93, at 12.

[97] *Id.*

[98] *See, e.g.*, Interview with Harvard Law School alumna (cautioning against "golden clinical student syndrome," where clinicians noticeably invest in a select few overachievers); Addressing Racism, *supra* note 49 (raising students' questioning of case assignments).

Clinicians play an important role in addressing some of the common inhibitors to student performance. Clinicians can dispel the power of stereotypes in the classroom by "mak[ing] clear that students will be seen as individuals, that they will be held to high standards, and that they are expected to meet those standards."[99] Clinicians can also ensure that they are clearly communicating those standards, providing a warm and open relationship between the student and the teacher, and intentionally incorporating issues of race into the curriculum in order to reduce the impact that these identity threats can have on student performance.[100] Also critical to successful classroom management is the creation of a space that recognizes and values students as individuals. Clinicians can do this by making themselves conscious of the different backgrounds and experiences students bring with them; instructors can appreciate that students are wrestling with difficult ideas and that they may unintentionally make offensive comments, but to give them the benefit of the doubt; and finally, clinicians should allow students who feel harmed to communicate their feelings.[101]

Regular feedback can also be transformative for students. Feedback is a key component of the learning experience in clinical education, as it provides students with one of the rare opportunities to critically examine their own practice, including for example, how their legal skills, interactions with clients or court personnel, and even their personalities impact their work. Delivering feedback is also a critical component of antiracism pedagogy, requiring attention that an instructor be aware of their behavior, implicit biases, and other perceptions about race. Students may also receive feedback in different ways based on their lived experiences. For example, students of color may perceive feedback from an instructor to be based in racial bias due to the racism they experienced in their earlier education. Such a perception may inhibit the ability of the student to find value in or absorb the feedback. At the same time, teachers may be withholding critical feedback out of fear that the student may perceive it to be racist. However, the onus is on instructors to deliver feedback that demonstrates to students "that their abilities and 'belonging' are assumed rather than doubted."[102] Critical feedback can be delivered by "combining the invocation of high standards with the assurance of students' capacity to reach those standards."[103] By establishing that high expectations that are general and individual, the student may understand their capacity for excellent clinical work and thus be motivated.[104] As noted above in discussion of grading and

---

[99] Darling-Hammond & Homquist, *supra* note 93, at 17-18.

[100] *Id.* at 18.

[101] *Id.* at 33.

[102] Cohen, *supra* note 93, at 1303.

[103] *Id.* at 1304.

[104] *Id*. at 1304, 1313-1314.

evaluation, instructors should be transparent and provide clear steps for students to improve their performance.

Finally, everyday social injustice serves as a significant inhibitor to student performance. Whether the police killings of Black people, violence against Asian Americans, or the rise of white supremacy as a political movement, social injustice impacts communities of color by destabilizing their belief in the law and a universal quest for justice. The effects can be especially profound for students of color who have chosen a career in the law despite its use as a tool of injustice. Students experience a constant tension between the "real world" of news and social media and their legal education. Clinicians should bring these conversations into the clinic, to recognize and name this tension felt by students of color—for the benefit of all students—and to work together with students to identify successful coping strategies. By acknowledging ongoing events and their impact, instructors can spark discussions about race and the law, ethics, vicarious trauma and the role of lawyers in combating white supremacy.[105]

D. Value the Student's Lived Experience as a Form of Expertise That Guides the Student-Clinician and the Student-Client Relationships.

In academia generally, and certainly in legal academia, there is an epistemological hierarchy that fails to recognize the importance of personal or lived experiences. Often the role that a lawyer's personal identities play in the interpretation of the law and client interactions is ignored as a non-factor that doesn't contribute to—and may even inhibit—the sterile evaluation of a legal issue. But attempting to separate out, or discount, the ways in which individual identities impact legal and fact analysis ignores a valuable source of information. Many students will have direct experiences of unjust social ills such as discrimination, racism, and systemic oppression; to put it simply, these experiences—as with all lived experiences—will inevitably come into client relationships, relationships with other legal actors, and into legal analysis generally. Clinicians must work to both acknowledge themselves, and then educate their students about, the role that one's lived experiences plays in each of these arenas, and to help them harness those experiences as a positive tool for justice.

At the same time, clinicians should proactively consider how to invite the contributions of those experiences in the classroom. Giving students the freedom to share how the issues with which the clinic is grappling impacts them, or otherwise informs their consideration of the topic, can bring valuable insight to the rest of the class, and can even be a form of reflective practice and learning for the student who has chosen to share. These are insights that have the potential to provide listeners with concrete and vivid impacts of racism, poverty, and other inequities. Yet, there is a risk that giving students this opportunity without limits can have

---

[105] Baker's research captures the alienation felt by many students when such events are ignored, or when cases are discussed without addressing how the law particularly affects racialized students and their communities. *See* Baker, *supra* note 82, at 138-139. *See also* I Learn Best, *supra* note 29 (where Harvard students from different disciplines discussed appreciating and desiring opportunities to apply an equity lens to their subject matter).

unintended consequences. Of course, there is the risk that one or two students in the room may begin to "own" the experience of others who may share a similar background but who may not be as vocal; i.e., that the story of one becomes the story of all. There is also a risk that in not moderating or setting boundaries for these ideas, students' learning goals may be lost as conversations take new turns and the focus of the class becomes more about personal and individualized experiences and less about the original course content. Finally, there may be a risk that some students will feel inhibited to respond if they feel that they don't themselves have an "equivalent" experience to legitimize their opinion. Ultimately, it is up to the instructor to consider the role that lived experiences and personal narratives will play in the class, and to be intentional about outlining any structure of guideposts that will govern the conversation.

E. Train Students to Recognize and Confront Systemic Racism as the Next Generation of Legal Professionals

To fully realize the notions of "justice" and "equity," students must examine the role of racism and racist systems baked into all aspects of social and legal structures. In its most general form, Critical Legal Studies excavates the role of racial injustice and other systemic inequities in legal doctrine and practice. Students require a general grounding in issues raised by the critical legal studies movement to understand how legal doctrine and the legal systems they are working in are stacked against their clients and how social issues impact the law. Treating the law as a neutral entity, and a lawyer's role as requiring the same neutrality towards cases and clients, perpetuates the ability of the white and privileged to exert social and legal dominance over BIPOC and other marginalized groups. In our courts every day clinicians bear witness to the treatment of their students of color who are mistaken for defendants and generally treated with significantly less respect than their white classmates. Clinicians must prepare their students for the realities of the racist world in which they will practice, but in a way that will give them some skills of self-protection.

Clinicians need to understand the balance of recognizing and giving space for students to struggle with the realities of their own lived experience, but also their role in helping the communities they are working in to self-actualize. It is critical that we first allow students to bring their own experiences and perspectives to the work, but also to value them in the same ways in which we value legal doctrine or other canons that encode our history of white racial dominance. Doing so will ultimately provide a richer set of knowledge and understanding with which to approach the work and solve some of these seemingly intractable problems.

F. Assess and Reassess Your Syllabus Through an Antiracist Self-Audit

Conducting a full antiracist audit of your syllabus requires attention to both the written statements you convey around the expectations and standards to which you aspire to hold yourself and the class, as well as the substantive readings and materials assigned.

Auditing your clinical syllabus for white supremacist culture, history, and legal standards also requires a fine attention to every reading and lesson.[106] Beyond the removal of particular content, instructors should be affirmatively teaching Critical Race Theory and applying this lens to all assignments and discussions. Another method, used in legal education more generally, is applying an "anti-disciplinary lens," expanding assigned content beyond judicial decisions and looking more closely at how social structures and politics inform those decisions in the first place.[107] Julia Hernandez notes that "[a]nti-disciplinarity applied in the context of transforming legal education and praxis asks law professors to question the extent to which our siloed focus on the discipline and sub-disciplines of law and reigning academic protocols have stalled meaningful change and innovation within law schools" with consequences for all students, especially those students of color.[108] She proposes that "studying the political origins of law and de-centering judicial opinions, decolonizing syllabi, and teaching history stand to transform legal education to meet the demands of rebellious law praxis for racial and economic justice."[109] This requires looking outside of casebooks and the typical selection of texts, to a more curated list.[110] Relevant sources may include recent news articles, opinion pieces, white papers, and other advocacy documents that demonstrate the ways in which white supremacist policies play out on the ground.

Hernandez also calls upon faculty to "center and build out authoritative interpretive communities"--those who know how the law functions in relation to disempowered communities-- to work with and within communities from which politically marginalized students and clients come.[111] Clinical teachers may hold client meetings in or attend community events within these communities for the purpose of putting the problems of the clinic's clients in a broader context for all students, and particularly for privileged students, and intentionally connect clinical work and students' roles to systemic problems.

However, Hernandez suggests that it may be equally important for the law schools to examine their own students and the communities in which they sit.[112] This may shed some

---

[106] There are multiple tools online. One such example is the University of Southern California Center for Urban Education's Syllabus Review Guide, found online at https://cue-equitytools.usc.edu/.

[107] Julia Hernandez, *Lawyering Close to Home*, 27 CLINICAL L. REV. 131, 161 (2020).

[108] *Id.*

[109] *Id*

[110] *Id.* at 162.

[111] *Id.* at 145.

[112] *Id.* at 163-164.

understanding on how their students' backgrounds impact their academic development, to learn more about "the potential synergies or disconnections between students, lawyers, and their communities."[113] Upon building this understanding of how the students sit in relation to their clients and communities in which they lawyer, clinicians should take further steps to abandon old modes of lawyering wherein the lawyer holds the power over the client (and student) by holding closely the tools and knowledge needed to solve a problem. Instead, clinicians can work to break down traditional roles and power dynamics by sharing knowledge and decision-making power with those most affected by the policies of the dominant culture.[114]

Finally, Hernandez tells us to "un-level aspirations."[115] Students of color may have less exposure to different modes of lawyering based on past experiences, but also may be more driven into a single mode of clinical education. Students may feel that they are called to use their education to remedy the immediate needs and problems of disempowered groups, as they are both closer to the problems and have the knowledge, skills, and trust to navigate relationships with those in the community. Thus Hernandez suggests that clinical programs work to provide individual students with a greater variety of opportunities to help even out the field of knowledge and experience among all students. Clinical programs on the whole can offer students a larger set of clinical lawyering experiences to understand the full context of legal, social, and political forces at play in legal problems.[116] This practice means delivering legal services to clients in ways other than through direct representation in courts that perpetuate oppression and injustice, and attacking problems in a multi-disciplinary and multi-strategic manner.

G. Teach Justice, Fairness, and Morality.

Clinicians should strive to teach justice, fairness, and morality.[117] As stated above, law schools focus on teaching those skills that require practitioners to drain the emotion from analysis. Law schools elevate and reward those who can navigate legal problem-solving without influence from their personal identities. Yet, the law is not neutral. Clinicians have an opportunity to point out where unfairness and injustice live and fester as the result of biased

---

[113] *Id.*

[114] GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE 66 (1992).

[115] Hernandez, *supra* note 107.

[116] LÓPEZ, *supra* note 114, at 165-166.

[117] Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 CLINICAL L. REV. 1, 4 (1997).

laws and policies, and to demonstrate that lawyers can and should push back on these laws and assist in dismantling systems; however, the development of these skills—indeed, recognizing the injustice in the first place—must be taught. We must focus on educating students about privilege, power, and how everyday injustices—not just the injustices that appear in casebooks and courtrooms—undermine the lives of people of color, and what lawyers can do to take action.[118] Jeena Shah tells us that "helping students understand how to practice in a way that is accountable to the community, effective, and sustainable requires beginning with how the world operates and how it can be transformed."[119]

Conclusion

These reflections are not authored by a group of experts in antiracism. Rather, members of the CERJ subcommittee seek to be conscientious, humble learners engaged in self-education necessary to our own work. Recognizing that a singular set of best practices is impossible, these reflections are offered as a starting point for like-minded law school clinicians seeking more intentional engagement with the issues of racism and equity that pervade our field. Through structure, design, teaching, and relationships, clinicians can fundamentally alter the posture of clinics for the better. It will be easier when it is done together. The process toward an antiracist clinical community may be long, but it is worthwhile.

---

[118] *Id.*

[119] Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 CLINICAL L. REV. 775, 815 (2017).

Appendix A
Clinic Self-Audit Checklist

EXAMINING CLINICAL STRUCTURE AND DESIGN

Structural Challenges for Review and Consideration

- What is your institution's history with movements (e.g. civil rights, social justice, antiracist)?
- Which obstacles did those before face while making change throughout the history of your institution?
- How does the clinic's relationship with the law school administration support or interfere with antiracist values?
- Has your law school or the larger institution performed any data collection or self-examination on upholding antiracist values?
- Does your law school offer resources that support antiracist initiatives?
- Has the clinic sought guidance and support from a school-wide diversity, equity, and inclusion officer?
- Who currently holds the most influential roles with the most decision-making power?
    - What communities are they from? What intersectional identities do they have?
- How does your clinic's funding mechanism and relationship with its funders impact practicing antiracist values?
- How does your clinic's antiracist mission impact and influence the larger law school community?

Leadership and Decision-making

- Does your clinic have a hierarchy when it comes to decision-making?
- What decisions are made by the various roles in your clinic (e.g. faculty, instructors, administrative staff, students)?
- Which decisions are made by faculty alone?
- Who has the opportunities to participate in the larger institutional decisions (e.g. committees)?
- Who in your clinic has access to funds? Who is more easily able to secure resources such as Research Assistants and books?
- Based on your response to the above inquiries:
    - Does decision-making power rest with many or a few individuals?
    - Do those individuals have increased access to funds / resources?
    - What forms of privilege do those individuals possess (e.g. race, gender, ability, socioeconomic status)?

Communication

- Who has access to information on institutional decision-making?
- Who has access to information on clinical decision-making?
- How is information communicated to clinical staff (e.g. in staff meetings)?
    - Is information communicated to every member of clinical staff?
- Are clinical leaders communicating with others clearly, regularly, and fully?

Soliciting Input from Staff

- What is the clinic's current process for soliciting input from staff?
- Do your clinical leaders invite feedback on their communication style and frequency?
- Do clinical staff members have the opportunity to meet one-on-one with clinical leadership?
- Do clinical staff members have the opportunity to participate in group meetings?
- Do clinical staff members have the opportunity to participate in anonymous surveys?
- Do clinical staff members have the opportunity to weigh in on clinic policies and direction?

Decision-Making

- How does your clinic arrive at final decisions?
    - Is there one person with final decision-making authority? Who?
    - Does your clinic use a consensus model in final decision-making (i.e. categories of decisions where the whole team must agree)?
    - How is input and information from the clinic incorporated when making the final decision?
- What is your decision-making process generally?
    - How are clinical team members or staff involved in the process?
        - Does your clinic use a consensus model?
    - If some members are not involved in decision-making, why not?
- What are the barriers or limitations to giving all team members access to knowledge or information necessary to make clinic-wide decisions?
    - How can those barriers be eliminated or diminished?
- What methods does your clinic use to promote transparency in the decision-making process?
    - Does clinic leadership explain decisions and their reasoning?

Professional Development of Staff

- Does your clinic encourage staff to examine their personal professional development goals?
- What concrete tools are available to enable staff to advance in their chosen field or develop in new areas of expertise?
- Do staff members have the opportunity to showcase their individual skills?

Community Building

- Does your clinic prioritize internal community connection?
- Are staff members given the opportunity to share their skills and personal values with their colleagues?
- Does your clinic offer opportunities or events that allow the staff members to make deeper connections across teams?
- Does your clinic create an environment where staff members feel they have a work-life balance?
- Do staff members feel supported when they experience a personal crisis?

Student Engagement and Experience

- Examine the relationship your clinic has with students outside of the clinic.
    - Are clinical events open to the general student body?
    - Has the clinic partnered with student organizations to sponsor events or market resources?
    - Can students use the clinic and staff as a resource if they are not enrolled? For themselves or for their family?
- Does your student outreach reflect your clinic's mission statement and priorities?
- What efforts does the clinic undertake to recruit/outreach/ promote clinic selection and registration from larger body of eligible students?
    - Has the clinic connected with student affinity groups or other organized loci of activity for students of color?
- Have you investigated the perspectives and interests of incoming clinical students and match students with appropriate projects?
    - Does your clinic have students fill out a pre-class questionnaire asking how the student identifies and if there are any concerning subjects that may be discussed in class, or any subjects they would like to be covered in class?
- Does the clinic conduct an onboarding process that makes safety & inclusion a priority and takes steps to socialize the values and culture that it wishes to promote?
- Does your clinic conduct ongoing formal or informal assessments of the student experience throughout the semester?
- Do instructors maintain relationships with clinical students and support their efforts to achieve their goals and access new opportunities?
- Does the relationship between staff members and students make intentional space to discuss issues of racial justice?
- Does the clinic conduct ongoing internal trainings or rounds sessions with students to promote these values?
- What steps does the clinic take to acknowledge that the racial reality of white people in the U.S. is very different from the racial reality of Black people and other people of color?

- What does the clinic and its supervisors do as an intentional component of student supervision to facilitate dialogue about diversity, equity and inclusion issues?
- What measures are in place to evaluate a student's performance in connection with navigating issues of diversity, equity and inclusion?

Project and Case Selection

- What macro-level factors does the clinic take into account to shape its portfolio of work?
    - Does it consider the implications of who, or which communities, get access to the clinic's resources?
- What micro-level factors does the clinic take into account to shape the clinic's docket of individual cases and clients?
- If the clinic distinguishes clients by race, ethnicity, and other identities, how are clients referenced to students and other constituencies (e.g., are they assigned cultural stereotypes as shorthand, or otherwise described as "other")?
- Does clinic consider what implications the micro / macro work choices it makes have on the broader community from which its clients are drawn?
- How does the clinic deal with tension that may arise between needs and goals of individual clients and the implications of a client's choices on the larger community?

Training and Education on Diversity, Equity and Inclusion

- What measures does the clinic undertake to train new staff members on issues of cultural competency and/or antiracism – both for their own practice and for the purposes of training law students?
- What regular and ongoing measures does the clinic undertake to train its existing staff on issues of cultural competency and/or antiracism – both for their own practice and for the purposes of training law students?
- Does the clinic employ a method to prompt staff members to ask themselves what experiences they have had with race, privilege and power that filter their perception of society? Or prompt inquiries about what overlapping privilege they have?

Soliciting and Implementing Feedback

- How does your clinic generate feedback from students (e.g. reflection papers, anonymous survey, exit interview)?
- When, how often, and in what form does your clinic gather feedback from students?
    - To whom are students are asked to give feedback?
- What methods are used for evaluating the experience specifically of people of color with the clinic (e.g. students, clients, staff, other external parties)?

Hiring & Retention

- How are your clinic's internal hiring processes impacted by the larger institution?
    - Are clinical candidates placed on separate tracks than doctrinal faculty?
    - What are the necessary qualifications for hiring? For promotions?
    - How do the qualifications impact candidates of color?
        - Is there a disparately negative impact?
    - How does your clinic and law school value professional expertise versus scholastic experience?
- What steps, if any, has the law school undertaken to demonstrate a commitment to racial diversity in clinical hiring and retention?
    - What impact do those steps, or lack thereof, have on clinical agency?
- What steps has the clinic undertaken to exhibit commitment to promoting racial diversity in clinical hiring and retention?
- Where is the clinic advertising its job postings to increase the chances of a more diverse audience (e.g. affinity bar associations, local newspapers, Indeed)?
- How does the clinic assess its current hiring and retention atmosphere?
    - Are exit interviews or anonymous surveys used?
- How are staff members empowered to speak out against racial inequity within the clinical setting?
- What steps does your clinic take to practice antiracist values in the hiring and retention of external parties (e.g. contractors, service providers)?

Public Face

- What effect does the clinic's physical location have on what clients it can serve?
    - Does the clinic undertake any measures to mitigate limitations related to the clinic's physical location?
- How does the clinic's relationship with its community partners support or hinder its values related to diversity, equity and inclusion?
- What visual representations are on the clinic's website, marketing materials, office walls?
    - Is the representation genuine or does it tokenize marginalized groups?
    - What other efforts does the clinic undertake to consciously or unconsciously shape the "marketing" of the clinic's work (to students, to the larger community for an awareness or educational purpose)?
- Does the clinic use language of inclusion to refer to groups or communities, that recognizes the preferred terms of a particular community?
- What public-facing information does the clinic publish regarding its approach to issues of racial justice and how the clinic incorporates that work into its larger goals?
- Does the clinic's mission statement explicitly acknowledge that racism is everyone's problem—and that the clinic takes responsibility for intentionally working to fight against it?

EXAMINING CLINICAL PEDAGOGY AND INTERPERSONAL RELATIONSHIPS THROUGH AN ANTIRACIST LENS

- Have you read current literature, essays, articles, books on how to engage in antiracist pedagogy in education and specifically in law school clinical and classroom settings?
- Does the syllabus contain a statement of welcoming or inclusion?
- Has the clinic reviewed the syllabus materials for representation of diverse authors and pieces that focus expressly on issues of racial justice?
- Does the seminar have classroom policies and practices to ensure that all students and perspectives are encouraged to be heard?
- Does the clinic acknowledge the trauma of national and other events (like police killings of people of color) on students of color?

Understand the Clinician-Student Relationship

- Do you engage in self-reflection?
- Have you examined your own identity and position relative to your students?
- Have you identified the biases and privileges you're bringing into the classroom?
- Have you examined how your positionality and individual biases and privileges may impact students?
- Have you taken action steps to create an equitable learning environment?
- Have you thought about the dynamics of supervising and mentoring students with respect to inherent hierarchy unique to the clinical setting, that of boss-employee?
- Have you thought about and educated yourself about the various dynamics and the role of white culture dominance in both the employment and education setting, particularly as it relates to the messages around "professionalism?"
- Have you had discussions with students as a way to break down some of the structures built into those traditional roles and as a way to build new structures that elevate all students, including their lived experiences that may or may not inform their approach to their clinical work?

Grading

- Are you clear and specific with students about how they are being evaluated with clear expectations that allow all students to succeed? Do your grading criteria use subjective terms, and if so, how are you explaining those terms to students?
- If your rubric says, "effectively lays out a case plan," what does "effective" mean to you and is that communicated to the students with clear examples?
- Have you shared this grading rubric with the students and reviewed it with your students at the beginning of the semester?
- Have you thought about how your grading structure may be rewarding students for social privileges with which they entered the course?

- Have you conveyed the relative weights of the various course assignments and components being graded?
- How often do you provide informal and ongoing feedback to your students?
- Are you breaking down a task and giving incremental feedback, instead of grading only the final product?
    - Are students aware of how they are doing throughout a project or semester and where they have the opportunity to grow before formal grade?
- How often do you provide formalized, structured, written feedback to your students?
- Is your presumption that a student receives a higher grade unless their performance dictates otherwise? Or that a student gets an average grade, unless they show a higher level of performance than their peers?

Examine the Student-Student Relationship

- Have you taken advantage of any resources available at your institution to assist with cross-cultural skill building and learning?
- How have you incorporated lessons learned from your institution's resources to foster equitable teams, teach cross-cultural skills, and build solidarity among students?
- Have you considered training in learning and building cross-cultural skills?
- Have you considered developing specific exercises that address navigating inevitable disagreements, misunderstanding, and outright offenses that result from working in diverse teams?
- Have you expressly discussed the role that students themselves play in creating an inclusive learning environment?

Recognize and Understand Some of the Common Inhibitors to Student Performance

- Have you engaged in study around barriers to student performance, like stereotype threats, chronic stress, racial trauma, tokenization, lack of relatable mentors, microaggressions, and imposter syndrome?
- Have you examined how you provide feedback to your students in a way that considers the barriers discussed?
- Have you learned the names and faces of all of your students?

Value the Student's Lived Experience as a Form of Expertise that Guides the Student-Clinician and the Student-Client Relationships

- Have you created a teaching space that values student individuality and varied lived experiences? Have you been transparent in your pedagogical values?
- Do you ask students to share their backgrounds, motivations, and concerns that they may have about clinic work or legal study?

Train Students to Recognize and Confront Systemic Racism as the Next Generation of Legal Professionals

- Have you examined and discussed with students how systemic racism affects the systems and structures your students are working in?
- Have you educated yourself and your students about the role that one's lived experiences may play in understanding or not understanding the dynamics at play in individual or systemic work?
- Have you thought about how lived experiences may be a tool for social change?

Assess and Reassess Your Syllabus Through an Antiracist Self-Audit

- Have you included a statement in your syllabus about your intention to create an inclusive, antiracist classroom (may include examples about standards that you hold yourself to and statements about student should treat one another and approach difficult conversation)?
- How do you signal to students that all perspectives are encouraged and welcomed?
    - Have you provided different ways that students may meet your class participation requirements including softening some of the language from "shall" to "are welcome" to participate as a signal to students from all backgrounds who may not be comfortable speaking up or challenging their peers?
- Are you familiar with Critical Race Theory? Are you open to discussing its impact on your clinical work with your students?
- Have you considered teaching from an "anti-disciplinary lens" which includes expanding out from judicial decisions and examining more closely how social structures and politics inform those decisions in the first place?
- Do you include sources beyond textbooks to include recent news articles, opinion pieces, white papers, and other advocacy documents that demonstrate the ways in which white supremacist policies play out in the ground, in your clinical work?

Teach Justice, Fairness, and Morality

- Do you consider it part of your work to teach justice, fairness, and morality? If not, why not? If yes, what tools are you developing to support your teaching skills?
- Do you point out to students where unfairness and injustice live and fester and demonstrate that lawyers can and should push back on these policies and laws?
- Are you transparent with your students that you are teaching them skills that you hope they will use to dismantle injustices based on white supremacist values?
- Do you see it as your role to help students understand how everyday injustices – not just the injustices that appear in casebooks and courtrooms-undermine the lives of people of color, and what lawyers can do to take action?