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EQUITY IN LEGAL EDUCATION

Meera E. Deo, J.D., Ph.D.*

The pandemic has brought to light myriad inequities, in legal education as elsewhere in society. Many of these barriers have existed for decades; while they have been exacerbated due to COVID, they will likely linger even as the pandemic subsides. This Article draws from both quantitative and qualitative data collected from students and faculty to reveal how the pandemic has heightened existing challenges in legal education, in particular ways and with distinctive effects on different populations. While inequities are a hallmark of legal education, the fissures and fault lines of these hierarchies have expanded during COVID. People of color, women, caregivers, those who are the first in their families to earn a college degree (“first-gen”), and others from backgrounds traditionally excluded from legal education are in particularly precarious positions due to the pandemic—though the inequities they face as law school students or professors have existed for decades. This Article reviews pre-existing challenges, introduces datasets used to test heightened disparities, and shares findings of increased

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burdens on students and faculty due to the pandemic. Given our amplified awareness of these problems and greater sensitivity to issues of diversity and inclusion, the Article concludes by proposing an equity-focused overhaul of legal education.

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I. INTRODUCTION

We have been struggling collectively through the pandemic since March 2020. The upheaval wreaked by COVID-19 is unlike anything most of us had experienced previously. Many participants in legal education are in privileged positions relative to others navigating these recent and ongoing challenges. Although all have at least undergraduate degrees and therefore relatively attractive employment options, law students and law professors alike share a pursuit of learning, thinking, and writing that inspires them to invest their time in legal education. Yet, looking

deeper within this privilege reveals that vulnerable populations of students and faculty have been struggling in unexpected and deeply troubling ways that existed pre-pandemic and have been exacerbated due to COVID. Law students, like others world-wide, have suffered through food insecurity, housing worries, and financial pressures; law professors, like other workers, have worried about losing their jobs, income, and childcare. Beyond these pressures to meet their basic needs are additional anxieties related to physical and mental health as well as academic and professional success. This Article highlights challenges facing law students and law faculty, recognizing the COVID Era not only as deeply traumatic but also a continuation of past inequities. Furthermore, attention to the barriers brought to light by COVID creates an opportunity to make long overdue transformational change in legal education, upending existing hierarchies and working towards greater equity in legal education.

This Article draws from both quantitative and qualitative data to reveal how the pandemic has exacerbated existing challenges in legal education, in particular ways and with distinctive effects on different populations. While inequities have been a hallmark of legal education for decades (perhaps since its founding), the fissures and fault lines of these hierarchies have expanded during COVID. People of color, women, caregivers, those who are the first in their families to earn a college degree (“first-gen”), and others from backgrounds that have traditionally been excluded from legal education are in particularly precarious positions due to the pandemic—though the inequities they face as law school students or professors have existed for decades. This Article reviews existing challenges, introduces datasets used to test heightened disparities, and shares findings of increased burdens due to the pandemic that have been and continue to be carried by particularly vulnerable populations of students and faculty. Given our heightened awareness of these problems and increased sensitivity to issues of diversity and inclusion, the Article concludes by proposing an equity-focused overhaul of legal education.

Part II reviews pre-pandemic research and challenges facing students and faculty from populations traditionally excluded from legal education. Part III introduces the two data

sets used in this Article: one exclusively quantitative and relying on data gathered from law students, the other primarily qualitative, comprised of law faculty participants. It also reviews synergies from the data sets, explaining how together they provide a more detailed and nuanced picture of challenges and opportunities in legal education. Part IV then delves into findings from the data, revealing ways in which students and faculty alike have struggled to meet their basic needs, safeguard their health, and maximize their academic and professional success. The Conclusion outlines a proposal for an equity-focused update to legal education that not only addresses challenges attributed to COVID, but also recognizes that many of these obstacles have existed for decades and will only be overcome with significant investment in systemic change.

II. PRE-PANDEMIC CHALLENGES

A growing body of scholarship has documented longstanding law student disparities based on race, gender, and other identity characteristics. There is less extensive but nevertheless robust research exploring how faculty from traditionally excluded populations also face barriers to success in legal academia. This Part briefly reviews the literature on pre-pandemic student challenges and faculty disparities, shedding light on how particular populations faced biases and barriers long before the COVID Era though they are garnering greater attention today. Overall, this literature indicates the need for change is long-overdue.

A. Longstanding Student Complications

Racial disparities in legal education are well documented with regard to students. For instance, a 2020 report drawing from a national sample of law students entitled *Diversity & Exclusion* reviewed various identity-based disparities that existed in legal education pre-pandemic, with a focus on how privilege shapes perspective.¹ As one example, the report reveals that while roughly one-third (32%) of white students see their schools as doing “very much” to support racial or ethnic diversity on campus, almost one-quarter (23%) of Black

1. MEERA E. DEO & CHAD CHRISTENSEN, LSSSE 2020 ANNUAL REPORT: DIVERSITY & EXCLUSION (2020).

students believe their schools are doing “very little” in this regard.² Furthermore, the report shares that more than one out of every five (21%) law student respondents who are Black, Latinx, or Native American note they “do not feel comfortable being [themselves]” at their law school, compared to just 12% of white respondents.³

In addition to this and other empirical research, scholars have voiced concerns about a range of other law school norms affecting students of color. Law Professor Shaun Ossei-Owusu argues that learning the law can be “intellectually violent” for students of color who are engaged in an educational process that highlights repeated injustices, while learning in an environment that equates law with justice and neutrality.⁴ He raises concerns about pedagogical and curricular priorities as well, including that some law faculty whitewash the law; in an attempt to avoid the messy complications of race, they instead espouse a race-blind system that ignores the realities students of color and their families have faced for decades or generations.⁵ Rather than avoiding the racial realities raised by much of legal doctrine, many others have communicated the importance of tying pedagogical effectiveness to real-world context in the law school classroom in order to maximize positive student outcomes.⁶ Over the past two years, conferences, workshops, and books have increasingly highlighted the myriad benefits and best practices for how and why to include racial and other identity- and justice-related context in the classroom.⁷

2. *Id.* at 7.

3. *Id.* at 5.

4. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA Journal (Oct. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent.

5. *Id.* at 3-5; see also Meera E. Deo, Maria Woodruff, & Rican Vue, *Paint by Number? How the Race & Gender of Law School Faculty Affect the First Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 218-24 (2010) (sharing students’ whitewashed classroom experiences even while learning foundational first-year cases that provide obvious opportunities for rich discussions of racial inequality, such as *People v. Goetz*, *Williams v. Walker-Thomas Furniture Co.*, and *Johnson v. M’Intosh*).

6. See Deo, Woodruff & Vue, *supra* note 5, at 231-33.

7. Conferences and other events and materials focused on infusing the 1L curriculum with race include *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects*, BOSTON UNIVERSITY SCHOOL OF LAW (2020); Teri A. McMurtry-Chubb,

This focus on disparities within diversity extends beyond race. Gender, first-gen status, socio-economic background, sexual orientation, and other characteristics also affect the law student experience. *The Cost of Women's Success* draws on data collected from a national sample of law students in 2019 to investigate gender gaps in legal education.⁸ That report reveals that women enter law school with lower LSAT scores, which affects their ability to receive competitive scholarships and awards at levels equal to their male classmates.⁹ Nevertheless, once enrolled in law school, women tend to outperform male students and overperform academically from what their LSAT scores suggest, earning slightly higher law school GPAs than male students.¹⁰ Women pay a steep price for this success. One cost is overwhelming debt. On average, women graduate from law school with more educational loans than men.¹¹ For instance, 19% of all women expect to graduate from law school with \$160,000 or more in educational debt, as compared to a smaller percentage (14%) of men.¹² There are physical, social, and emotional costs as well. Most women spend five hours or fewer per week exercising (74%) and engaging in social activities such as watching television, relaxing, or even partying (53%); a slight majority (51%) sleep on average fewer than five hours per night.¹³

There are also considerable effects based on what I have previously termed “raceXgender,” which considers how the

Strategies and Techniques for Integrating Diversity, Equity, and Inclusion into the Core Law Curriculum: A Comprehensive Guide to DEI Pedagogy, Course Planning, and Classroom Practice, WOLTERS KLUWER (2022); Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, Genevieve B. Tung, *Integrating Doctrine and Diversity: Inclusion and Equity in the Law School Classroom*, CAROLINA ACADEMIC PRESS (2021), <https://cap-press.com/books/isbn/9781531017019/Integrating-Doctrine-and-Diversity>; *Yearlong Series Examines Race in the Context of Subjects Foundational to First-Year Curriculum*, DUKE LAW (Nov. 20, 2020), <https://law.duke.edu/news/year-long-series-examines-race-context-subjects-foundational-first-year-curriculum>; see also Meera E. Deo, *Progress and Backlash in our Unequal Profession*, 51 SOUTHWESTERN L. REV. 310, 315-19 (2022).

8. See MEERA E. DEO & CHAD CHRISTENSEN, LSSSE 2019 ANNUAL REPORT: THE COST OF WOMEN'S SUCCESS (2019).

9. *Id.* at 7-8; AARON N. TAYLOR & CHAD CHRISTENSEN, LSSSE 2016 ANNUAL REPORT: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY, 9 (2016).

10. DEO & CHRISTENSEN, *supra* note 8, at 8.

11. *Id.* at 3.

12. *Id.* at 9.

13. *Id.* at 10.

intersectional identities of race and gender create compound disadvantage for women of color, particularly because they are not envisioned as the primary participants of legal education based on either their race or their gender.¹⁴ For instance, studies have revealed women of color have higher debt levels and lower scholarship awards than any other raceXgender group, with 16% of Latinas and 14% of Black women reporting that they will graduate with over \$200,000 in educational loans (compared to 12% of Latinx men and 7.3% of Black men).¹⁵ In addition to debt levels, women of color are less likely to have a strong sense of belonging at their law school, with likely effects on their academic and professional success.¹⁶ Women of color are more likely than men from their same racial backgrounds to note they do not feel part of the campus community.¹⁷ Furthermore, a full 26% of Black women—more than any other raceXgender group—believe their schools do “very little” to create an environment that is supportive of different racial/ethnic identities, compared to just 5.5% of white men.¹⁸

In addition to these race-, gender-, and raceXgender-based disparities, law students from other populations traditionally excluded from legal education also faced greater challenges even pre-pandemic. For instance, national law student survey data reveal that almost one-third of first-gen students (33%) reported in early 2020 that they did not feel valued by their law schools, compared to 25% of those with at least one parent who completed college.¹⁹ Similarly, 38% of

14. See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA*, 8 (2019). The term raceXgender “highlights the compound effects often caused by holding multiple devalued identity characteristics, namely the intersection of race and gender.” The interplay goes beyond additive effects, with the “X” representing “the multifactorial effects of race ‘times’ gender for women of color.” *Id.*

15. DEO & CHRISTENSEN, *supra*, note 8 at 3, 9; see also Aaron N. Taylor, *Robin Hood In Reverse: How Law School Scholarships Compound Inequality*, 47 *J. L. & EDUC.* 41 (2018); TAYLOR & CHRISTENSEN, *supra* note 9.

16. DEO & CHRISTENSEN, *supra* note 1, at 9; GEORGE D. KUH, JILLIAN KINZIE, JENNIFER A. BUCKLEY, BRIAN K. BRIDGES, & JOHN C. HAYEK, *WHAT MATTERS TO STUDENT SUCCESS: A REVIEW OF THE LITERATURE* (2006); Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 *J. LEGAL EDUC.* 455 (2020).

17. DEO & CHRISTENSEN, *supra* note 1 at 9.

18. *Id.* at 7.

19. *Id.* at 8.

students with the highest levels of educational debt (owing over \$200,000) did not feel valued by their institutions, as compared to 31% of those owing \$0-\$40,000 who felt their schools not only valued them, but *strongly* valued them.²⁰ Sexual orientation also matters in terms of belonging, engagement, and perceptions of diversity efforts on campus. While only 11% of heterosexual students reported they believed their schools did “very little” to avoid identity-based stigma, higher percentages of all other students believed the same, including 20% of gay students, 16% of lesbians, 15% of bisexual students, and 19% of those who identify as another sexual orientation.²¹

In sum, this literature reveals that even pre-pandemic there were significant differences in student experiences on campus depending on their privilege, not only based on race, but also gender, raceXgender, first-gen status, sexual orientation, and debt level. More privileged students are relatively satisfied with diversity efforts on campus, while more vulnerable students see these efforts as falling short. Beyond perception, additional identity-based disparities and a culture perpetuating the white male heterosexual norms of legal education also persist. These findings in and of themselves provide notice of barriers to success for students from vulnerable populations who began law school pre-pandemic. Although disparities have only deepened since, this literature sets the stage for the ongoing challenges associated with the pandemic and the immediate need to focus on issues of student equity.

B. Faculty Adversity Before COVID

The few existing pre-pandemic studies of law faculty document that they also have long encountered race-, gender-, raceXgender-, and other identity-based inequities. In 2013, a group of scholars from various disciplines published their personal observations on race, class, and gender in academia in the first volume of *Presumed Incompetent*.²² That collection of essays confirmed the ways in which traditional outsiders to

20. *Id.*

21. *Id.* at 10.

22. See PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, and Angela P. Harris, eds. 2012).

the elite spaces of academia continue to be viewed as “others” even after gaining entry to the profession.²³ Various chapters considered ongoing gender-based discrimination, racial exclusion, and intersectional biases that stymie opportunities for those who were never intended to be included in the rarified academic realm.²⁴ That collection demonstrates how women of color, among others, remain on the margins in academia through biased student evaluations,²⁵ silencing from colleagues,²⁶ and expected adherence to other constricting white male norms.²⁷ A second volume of *Presumed Incompetent* further examined instances of ongoing raceXgender biases in academia, including hostility from faculty colleagues,²⁸ mechanisms for support,²⁹ and pathways to success in the face of adversity.³⁰

23. Angela P. Harris & Carmen G. González, *Introduction*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 1, 1-14 (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, and Angela P. Harris, eds, 2012).

24. Angela Mae Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 20, 20-28 (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, & Angela P. Harris, eds, 2012); Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of “Doing” Gender and Race in the Classroom*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 164, 164-85 (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, & Angela P. Harris, eds, 2012); Linda Trinh Võ, *Navigating the Academic Terrain: The Racial and Gender Politics of Elusive Belonging*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 93, 93-112 (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, & Angela P. Harris, eds, 2012).

25. Lazos, *supra* note 24, at 164-85.

26. Angela Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 142, 142-51 (Gabriella Gutiérrez y Muhs, Yolanda Flores Neimann, Carmen G. González, & Angela P. Harris, eds, 2012).

27. Angela Mae Kupenda, *supra* note 24, at 20-28.

28. Lolita Buckner Inniss, *The Lucky Law Professor and the Eucatastrophic Moment*, in PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 23, 23-32 (Yolanda Flores Neimann, Gabriella Gutiérrez y Muhs & Carmen G. González eds., 2020).

29. Meera E. Deo, *Securing Support in our Unequal Profession*, in PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 300, 300-12 (Yolanda Flores Neimann, Gabriella Gutiérrez y Muhs & Carmen G. González, 2020).

30. Jacquelyn Bridgeman, *Still I Rise*, in PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA 13, 13-22 (Yolanda Flores Neimann, Gabriella Gutiérrez y Muhs & Carmen G. González eds., 2020).

In 2019, Stanford University Press published *Unequal Profession: Race and Gender in Legal Academia*.³¹ That book shares results from my national empirical study of law faculty, which collected survey and interview data from almost 100 law professors around the United States.³² Though I could not have anticipated the pandemic and its associated challenges when data collection was ongoing or even when the book was published, findings from the study serve as a baseline for understanding faculty disparities pre-COVID and provide an opportunity for comparison and contrast to pandemic-related realities.³³ *Unequal Profession* revealed patterns of racism in student evaluations, gender discrimination working against women in faculty meetings, and raceXgender biases stymying women of color at all stages of the profession—from hiring to tenure and other forms of advancement.³⁴

Among other challenges, the book reveals how women from all backgrounds experience silencing, “hepeating,” and mansplaining in faculty meetings,³⁵ as well as pushback from students in the classroom and on anonymous course evaluations.³⁶ Many women of color turn down leadership opportunities, internalizing their colleagues’ beliefs that they do not belong in administration.³⁷ Work/life balance is virtually impossible to achieve as women of color in particular take on greater service duties at work while simultaneously handling more on the home front.³⁸ Overall, the book “reveals

31. DEO, *supra* note 14.

32. *See id.*

33. Meera E. Deo, *Pandemic Pressures on Faculty*, 170 U. PA. L. REV. ONLINE 127 (2022).

34. *See* DEO, *supra* note 14.

35. *Id.* at 43–50. The term “hepeating” was coined to refer to instances “when a man simply repeats what a woman has already said, claiming and accepting credit for her original thoughts and words.” *Id.* at 45; *see* Lindsay Dodgson, Men are Getting the Credit for Women’s Work through Something Called ‘Hepeating’—here’s what it means, BUSINESS INSIDER (Mar. 8, 2018), <https://www.businessinsider.com/what-is-hepeating-2017-9>.

36. *Id.* at 39–50, 60–72; *see also* Meera E. Deo, *The Ugly Truth about Legal Academia*, 80 BROOK. L. REV. 943, 993 (2015) (noting how “female faculty, particularly female faculty of color, endure a disproportionate share of classroom challenges from students”); *Id.* at 999 (“Some students leave equally egregious comments on teaching evaluations, especially when commenting on female law faculty of color.”).

37. DEO, *supra* note 14, at 101–09; *see also* Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441 (2015).

38. DEO, *supra* note 14, at 119–31.

how intersectionality can result in oppression and differences in experiences.”³⁹

Methodologically, the book purposefully centers the experience of women of color—a group that has been traditionally excluded from legal academia and is even today held at the peripheries.⁴⁰ As others have written, “By offering systematic narratives that start from the perspective of those forced to the margins, Deo allows them to have new power against others who have traditionally refused to acknowledge their value.”⁴¹ Furthermore, the focus on structural constraints means the book project, like the study animating this Article, “is not just an account of individual experience of inequality, but it also casts light on the creation of larger institutional norms that cement epistemic injustice and violence within the law more generally.”⁴² The structural barriers revealed in the book cry out for responsive systemic solutions; an equity-focused update to legal education should be one of those.

In their groundbreaking research of tenured faculty, Katherine Barnes and Elizabeth Mertz similarly reveal ongoing gender biases throughout legal academia.⁴³ The authors of that comprehensive empirical study found lower percentages of women faculty than men report satisfaction with the tenure process; they also note that women of color face a particularly bleak experience earning tenure on account of various forms of bias.⁴⁴ They further found that increasing “numeric parity” (the number of women or professors of color on the law faculty) did not improve their overall experience, concluding that “despite significant progress toward more [numerical] diversity, women and scholars of color face continued difficulties.”⁴⁵ The authors confirm ongoing gender disparities in the legal academy for tenured faculty in more

39. Kathryn Birks Harvey, *Book Review: Unequal Profession: Race and Gender in Legal Academia* by Meera E. Deo, 55 L. & SOC’Y REV. 372 (2021).

40. For more on the methods used for that book project, see DEO, *supra* note 14.

41. Swethaa S. Ballakrishnen & Sarah B. Lawsky, *Law, Legal Socializations, and Epistemic Injustice*, 47 LAW & SOCIAL INQ. 1026, 1030 (2022).

42. *Id.* at 1037.

43. Katherine Y. Barnes & Elizabeth Mertz, *Is It Fair? Law Professors’ Perceptions of Tenure*, 61 J. LEGAL EDUC. 511 (2012).

44. *Id.* at 514-17.

45. *Id.* at 512.

recent pre-pandemic research, citing “institutional structure and implicit cultural bias” as primary causes of the lack of respect women faculty have endured.⁴⁶ This body of knowledge builds on Professor Mertz’s long investment in exposing gender- and other identity-based hierarchies in legal education, including the ways in which women of color faculty are “Canaries in the Mines of the U.S. Legal Academy,”—those who suffer through the consequences of a toxic environment even before it is detectable to others.⁴⁷ Again, all the disparities revealed in these studies were documented pre-pandemic.

Recent research on legal education also illuminates other existing hierarchies in legal academia. More and more scholars have recognized and resisted the ways that so-called “Pink Ghetto” positions in legal academia—referencing clinical, legal writing, library, academic support, and bar preparation positions, among others—have lower status, pay, and opportunities for faculty governance.⁴⁸ Some authors focus attention on the gendered expectation that women faculty prioritize less-valued service work over scholarship, at the risk of their own professional success.⁴⁹ Others conduct empirical analyses to investigate identity-based biases in unexpected places, such as the Acknowledgements (or “star footnote”) section of a law review article.⁵⁰ A brave few choose the radical path of educating law students about existing hierarchies in

46. Katherine Y. Barnes & Elizabeth Mertz, *Law School Climates: Job Satisfaction Among Tenured U.S. Law Professors*, 43 L. & SOC. INQ’Y 441 (2018).

47. Elizabeth Mertz, *Canaries in the Mines of the U.S. Legal Academy*, in POWER, LEGAL EDUCATION, AND LAW SCHOOL CULTURES 263, 263-93 (Meera E. Deo, Mindie Lazarus-Black & Elizabeth Mertz eds., 2020).

48. Renee Nicole Allen et al., *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 527 (2019); Rachel E. Lopez, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS U. L. REV. 101, 104-05 (2021).

49. Ederlina Co, *Weathering Invisible Labor*, 51 SW. L. REV. 258, 261-64 (2022); Priya Baskaran, *Service, Scholarship, and Radical Citation Practice*, 73 RUTGERS U. L. REV. 891, 895, 902-05 (2021); DeShun Harris, *Cultural Modesty in the Academy: A Trait Exploited and Penalized Through Service*, 51 SW. L. REV. 275 (2022).

50. Keerthana Nunna, W. Nicholson Price, & Jonathan Tietz, *Hierarchy, Race & Gender in Legal Scholarly Networks*, 75 STAN. L. REV. (forthcoming 2023) (including an extensive review of existing literature on race and gender bias in legal academia).

legal education, including among the law faculty ranks, to the students' "surprise" and "horror."⁵¹

In addition to gender-based disparities in legal academia, there are race-based challenges specific to various groups. For instance, new scholarship has begun investigating how Asian American faculty are particularly invisible and vulnerable in legal academia. Professors Shruti Rana and Cyra Choudhury share how Asian American faculty "must navigate the paradox of simultaneous invisibility and visibility while battling against the labels and stereotypes it perpetuates," with resulting consequences not only for these marginalized individuals themselves, but for "the legal academy and the profession as a whole."⁵² Professors Rosa Kim and Katrina Lee connect current challenges in the Asian American community to the long history of battling discrimination in the United States, marked diversity within what is seen as a monolithic community, and recent increases in hate crimes.⁵³ Despite a long history of community engagement with the law and legal processes, they note, "the Asian American experience is nearly absent from law school curricula, and law schools are largely ill-equipped to address challenges facing Asian Americans."⁵⁴ Additionally, Professor Renee Allen has written extensively about how Black women faculty have been "directly and indirectly harmed by incidents of academic terror."⁵⁵ She concludes after an assessment of deans' statements and faculty resolutions in the wake of George Floyd's murder and Black Lives Matter protests that "institutions that seek to be antiracist must evaluate sources and systems of racist power," and go far beyond what their words assert.⁵⁶ Words alone can

51. Alexa Chew & Rachel Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works* 100 NEB. L. REV. 887, 896-97 (2022).

52. Cyra Akila Choudhury & Shruti Rana, *Addressing Asian (In)Visibility in the Academy*, 51 SW. L. REV. 287, 288 (2022).

53. Rosa Kim & Katrina Lee, *Asian American Inclusion in Legal Academia*, 2022 MICH. ST. L. REV. F., <https://www.michiganstatelawreview.org/vol-2021-2022/2022/3/28/asian-american-inclusion-in-legal-academia>.

54. *Id.*

55. Renee Nicole Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM. & MARY J. RACE, GENDER & SOC. JUST. 1 (forthcoming 2022); see also Lua Yuille, *The Watcher's Paradox: Bearing Witness/Racial Voyeurism*, 51 SW. L. REV. 218 (2022); Taleed El-Sabawi & Madison Fields, *The Discounted Labor of BIPOC Students & Faculty*, 12 CAL. L. REV. ONLINE 17, 20 (2021).

56. *Id.*

satisfy calls for symbolic progress.⁵⁷ But to transcend identity capitalism or a “woke” picture of diversity to achieve real transformational change requires action that goes beyond words.⁵⁸

Together, this body of scholarship reveals how race, gender, and raceXgender biases have been prevalent throughout legal education, with particular populations facing unique circumstances and challenges whether considering students or faculty, barriers based on race or gender (or a combination of the two), and even looking within particular racial groups.⁵⁹ Recent research makes clear that these issues of hierarchy, status, and discrimination are not new or individual, but systemic injustices built into the very foundations of legal education.⁶⁰

Ongoing biases were well documented before COVID, as this literature review makes clear. Now, the pandemic has brought greater attention to many of these barriers, compelling more administrators, faculty, and students to recognize and work to ameliorate them. Although these challenges have existed and persisted in legal education perhaps from its founding, they have been exacerbated due to COVID and, without concerted efforts to ameliorate or eradicate them, could persist long after. Because we now have more data documenting ongoing challenges and suggesting methods to overcome them, we can draw on these findings as we work to achieve greater equity in legal education.

57. Symbolic progress does not create real change, but instead provides the illusion of progress while maintaining the status quo. DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* 15-32 (1992).

58. See generally, NANCY LEONG, *IDENTITY CAPITALISTS* (2021); Meera E. Deo, *Book Review: Identity Capitalists*, 56 L. & SOC'Y REV. 311 (2022).

59. Meera E. Deo, *Better than BIPOC*, 41 MINN. J. OF L. & Ineq. (forthcoming 2023).

60.

In Spring, 1989, law professors Derrick Bell and Richard Delgado published an article [that] reported on an informal investigation into the professional lives of law faculty of color, with a focus on descriptive analysis of specific topic areas. They found that law faculty of color in the mid-1980s faced ‘discrimination in hiring and promotion, alienation among their colleagues, hostility from students, and a lack of support.’

Deo, *supra* note 36, at 948-49 citing Richard Delgado and Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989). Their dismal conclusions did not lead to significant normative change in the intervening thirty-plus years.

III. SYNERGIES BETWEEN RELEVANT DATASETS

New data from multiple sources are especially helpful in responding to the ongoing challenges facing law students and law faculty that have been revealed in prior research. This Article draws from two sources of data: the Law School Survey of Student Engagement (LSSSE) and the Pandemic Effects on Legal Academia (PELA) project.⁶¹ The two datasets presented in this Part provide the foundation for the findings discussed in detail in Part III. Together, they provide an opportunity for understanding problems facing two distinct populations in legal education (students and faculty), using two different methodological approaches (quantitative and qualitative), allowing for both a deep dive into each population and meaningful comparisons between both groups. Each dataset is introduced below, followed by a brief discussion of how together they yield a particularly robust perspective on existing hierarchies in legal education.

A. LSSSE Data

LSSSE (pronounced “LESS-see”), based at Indiana University, Bloomington, has been conducting an annual survey of law students since 2004.⁶² The survey covers a variety of topics ranging from student satisfaction with a host of law school offerings to levels of engagement with various experiences and opportunities.⁶³ In addition to the core survey, LSSSE offers participating schools “Topical Survey Modules,” which are short sets of questions centered around a particular theme.⁶⁴ Along with the core survey, findings from two modules are featured in this Article: *Coping with COVID* and *Experiences with Online Learning*.⁶⁵ In addition to sharing raw data and institution-specific findings with each school that partners with LSSSE to better understand their own student populations, LSSSE also releases its own materials drawing

61. See generally Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467 (2021).

62. More information about LSSSE is available at <https://lssse.indiana.edu/who-we-are/#about>.

63. The copyrighted LSSSE survey instrument is available to review online at <https://lssse.indiana.edu/about-lssse-surveys/>.

64. The copyrighted LSSSE Topical Survey Module instruments are available to review online at <https://lssse.indiana.edu/topical-survey-modules/>.

65. *Id.*

from national aggregate data.⁶⁶ LSSSE staff publish findings to document and influence trends in legal education in diverse outlets, from blog posts⁶⁷ to reports,⁶⁸ as well as through formal academic scholarship.⁶⁹ Because the data are publicly available, LSSSE also partners with individual scholars to enhance their scholarship on the full spectrum of topics involving legal education, including diversity within the Black community,⁷⁰ belonging on law school campuses,⁷¹ and inclusive admissions practices.⁷² The 2021 Annual Report, *The COVID Crisis in Legal Education*, provides significant inspiration for this Article as does other data collected from law student participants in the core LSSSE survey and Topical Survey Modules administered in spring 2021.⁷³ The LSSSE results shared in this Article are quantitative in nature, presented as percentages of students from various backgrounds (race, gender, first-gen status, etc.) responding to survey questions, both standing alone and in comparison with others.⁷⁴

66. More on “What We Do” at LSSSE is available at <https://lssse.indiana.edu/what-we-do/>.

67. Blog, LSSSE, <https://lssse.indiana.edu/category/blog/> (last visited Sept. 18, 2022).

68. The full repository of LSSSE Annual Results is available free of charge online at <https://lssse.indiana.edu/annual-results/>.

69. Meera E. Deo, *The End of Affirmative Action*, 100 N.C. L. REV. 237, 256-57 (2021); Deo, *supra* note 59; *see generally*, Aaron N. Taylor, *Robinhood in Reverse*, 47 J. LAW. & EDUC. 41 (2018); *see generally*, Chad Christensen, *Preparing Law Students to be Successful Lawyers*, 69 J. LEGAL EDUC. 502 (2020).

70. *See generally*, Kevin D. Brown & Kenneth G. Dau-Schmidt, *Racial and Ethnic Ancestry of the Nation’s Black Law Students: An Analysis of Data from the LSSSE Survey*, 22 BERKELEY J. AFRICAN AM. L. & POL’Y, 1 (2022).

71. Elizabeth Bodamer, *Do I Belong Here?*, 69 J. LEGAL EDUC. 455, 467-77 (2020).

72. Anahid Gharkhanian, Natalie Rodriguez, & Elizabeth Brown, “*More than the Numbers*”: *Empirical Evidence of an Innovative Approach to Admission*, 107 MINN. L. REV. (forthcoming 2022-2023). A comprehensive list of scholarship drawing on LSSSE data is available at: <https://lssse.indiana.edu/scholarship/>.

73. *See* MEERA E. DEO, JACQUELYN PETZOLD, AND CHAD CHRISTENSEN, LSSSE 2021 ANNUAL REPORT: THE COVID CRISIS IN LEGAL EDUCATION (2021).

74. The LSSSE survey also collects comments from students, which could serve as qualitative data. The 2021 Annual Report relied on these comments for the Foreword, sharing student challenges during COVID in their own voices. *See id.*

B. The PELA Study

The PELA study also documents challenges in legal education, with a focus on particularly vulnerable populations of law faculty during the pandemic. In Academic Year 2020-2021, I personally collected survey and interview data from thirty-five law professors around the country with a purposeful target sample methodology to ensure inclusion of a broad range of perspectives.⁷⁵ There was an emphasis on collecting data from faculty who were especially affected by COVID due to their being caregivers, women of color, white women, or untenured faculty (including both pre-tenure professors and contract-based faculty).⁷⁶ Each of these groups faces particular challenges during COVID, including caring for others when structures for caregiving have all but disappeared,⁷⁷ navigating gender bias in academia,⁷⁸ resisting raceXgender bias at work,⁷⁹ and finding pathways forward in academic positions that have less security, pay, and prestige than tenure-track roles.⁸⁰

Though not a random sample of U.S. law professors, the data provide a robust snapshot of the experiences of law faculty during the first year of the COVID era.⁸¹ The relatively small sample size was necessary given the urgency of data collection within the given time as the virus, responsive measures, therapies, and restrictions changed rapidly throughout the year.⁸² Furthermore, by the conclusion of data collection the

75. For more details on the methods used, see Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 *FORDHAM L. REV.* 2467, 1471-73 (2021).

76. *Id.* at 2468, 2487.

77. As sociologist Jessica Calarco puts it, “Other countries have safety nets. The U.S. has mothers.” Rickey Gard Diamond, *Other Countries Have Safety Nets. The U.S. Has Mothers*, MS. (Mar. 1, 2021), <https://msmagazine.com/2021/03/01/marshall-plan-for-moms-feminist-coronavirus-mothers>. Her research backs up this claim, see Jessica McCrory Calarco, Emily Meanwell, Elizabeth M. Anderson, & Amelia S. Knopf, *By Default: How Mothers in Different-Sex Dual-Earner Couples Account for Inequalities in Pandemic Parenting*, 7 *SOCIUS* 1 (2020).

78. See *infra* I.B. for more on gender bias in legal academia.

79. See *infra* I.B. for research on raceXgender bias in law teaching.

80. Allen et al., *supra* note 48, at 538-49; Rachel Lopez, *Unentitled: The Power of Designation in the Legal Academy*, 73 *RUTGERS U. L. REV.* 101, 103-06 (2021).

81. “Although targeted snowball samples such as this are not ‘representative’ in the same way as random samples can be, they are a crucial method to reach vulnerable populations who might not respond to more generic calls for participants.” Ballakrishnen & Lawsky, *supra* note 41, at 1026, 28, n.2.

82. There were rapid changes to COVID and societal responses throughout 2020-2021, the time when data collection was ongoing for the PELA project.

interviews themselves suggested the study had reached “saturation” (the point at which patterns were repeating and readily identifiable in the data), which is an established social science method for closing an empirical study of this nature.⁸³ The quantitative data were analyzed using Excel and Qualtrics while coding and analysis of the qualitative data relied on emerging theme analysis, where review of the data suggests categories and themes for further analysis and investigation.⁸⁴

Previously published preliminary findings of PELA data reveal that these vulnerable populations of faculty have been managing a range of increased pressures since the start of the pandemic—including expectations of greater service work, less time for scholarship, and negative mental health effects.⁸⁵ Formal analyses of the PELA data presented in Part III of this Article showcase the qualitative data. These are presented in the form of quotes which have been distilled from transcripts of interviews highlighting patterns in the data centered around particular themes. The quantitative (i.e., survey) data are used primarily to frame the qualitative results, which are the heart of the PELA study and the faculty findings presented in this Article. The conclusions provide both significant insights into challenges facing faculty during the pandemic and a basis for considering solutions to ameliorate ongoing barriers that have been heightened during COVID. Findings in this Section draw from the qualitative data collected through the PELA study, presented in the form of quotes from multiple participants distilled from interviews and identified as patterns through formal coding and data analysis. Although pseudonyms are used throughout Part III to protect the anonymity of research participants, the words presented come directly from faculty struggling in various ways through the pandemic.⁸⁶

83. ASHLEY T. RUBIN, *ROCKING QUALITATIVE SOCIAL SCIENCE: AN IRREVERENT GUIDE TO RIGOROUS RESEARCH*, 147-53 (2021).

84. BARNEY G. GLASER & ANSELM L. STRAUSS, *DISCOVERY OF GROUNDED THEORY: STRATEGIES FOR QUALITATIVE RESEARCH* (2006); JOHN CRESWELL, *RESEARCH DESIGN: QUALITATIVE & QUANTITATIVE APPROACHES* (5th ed. 2018); ROBERT EMERSON, *CONTEMPORARY FIELD RESEARCH PERSPECTIVES AND FORMULATIONS* (2001).

85. For more on these particular findings from the PELA study, *see Deo, supra* note 33, at 127, 132-37.

86. This Article draws from original empirical research conducted through the PELA study, as well as from LSSSE. There are no citations for the

C. Synergies Between LSSSE and PELA

Working together, LSSSE and PELA—the two datasets that animate this Article—provide significant support for not only one another, but also the findings on student and faculty challenges and potential solutions to overcome documented barriers. There are three particular ways in which the two datasets work together to create a product that is greater than the sum of its parts. First, they allow for in-depth analysis. Each dataset reveals barriers facing separate but critical populations in legal education—law students as well as law faculty.⁸⁷ Second, together the datasets allow for meaningful comparison between different groups. Reviewing both sets of data together allows the researcher and the reader to catalog similarities between pandemic-related difficulties facing both students and faculty—providing for comparison and contrast between various populations in each group. Third, reviewing both the LSSSE and PELA data allow for mixed-method “triangulation” of the data. That is, together the datasets provide opportunities to consider how both quantitative and qualitative data as well as student and faculty data work together to present a more holistic picture of the challenges facing diverse populations in legal education, rather than considering any one perspective alone.⁸⁸ It is especially instructive and rare that both datasets were in active data collection and are being coded and analyzed during the COVID

quantitative or qualitative PELA data shared or for some of the LSSSE data because these findings are presented here for the first time based on original data analysis, not drawn from other published sources. Requirements from IRB protocols and the protection of human research subjects state that all transcripts will remain on file with the author while dissemination of the data is ongoing. They will not be shared with others or released to the public to maintain the confidentiality and anonymity of research participants.

87. If there were any similar empirical studies of law school staff, those data would have been included here to provide an even more holistic picture of challenges in legal education. One useful new study surveys staff working on issues of diversity, equity, and inclusion (“DEI staff”), determining the individuals in those roles need greater support, resources, and buy-in from faculty and administrators. Belinda Dantley & Lisa Sonia Taylor, *The Bottom Line: Law Schools Need to Get Serious About the Work of Diversity, Equity, & Inclusion*, SAINT LOUIS UNIVERSITY SCHOOL OF LAW (2022), <https://www.slu.edu/law/news/pdfs/dei-professionals-survey.pdf>.

88. See JOHN W. CRESWELL & VICKI L. PLANO CLARK, *DESIGNING AND CONDUCTING MIXED METHODS RESEARCH* 62 (1st ed. 2006); ABBAS TASHAKKORI & CHARLES TEDDLIE, *MIXED METHODOLOGY: COMBINING QUALITATIVE AND QUANTITATIVE APPROACHES* 18 (1998).

Era, as this gives us a clear perspective on challenges in legal education while the pandemic was and is still ongoing.

IV. ESCALATING INEQUITIES FOR STUDENTS AND FACULTY

Data from LSSSE and PELA reveal that students and faculty alike have faced increased pressures due to the pandemic. Some have struggled to meet even their basic needs. Others have weathered notable declines in their physical and mental health. Most have navigated extra hurdles to meet their academic and professional obligations. This Part reviews findings from LSSSE as well as PELA to explore the heightened challenges facing both students and professors due to COVID.

Before thematically and systematically investigating student and faculty challenges, it is instructive to consider how the PELA survey findings frame the interview results analyzed and shared below. The quantitative results from LSSSE reveal broad patterns in national aggregate data. PELA findings highlight the qualitative findings in the form of quotes from law faculty participants, though survey data are helpful in framing their challenges. For instance, only 40% of professors in the PELA sample agree they have “received [adequate] institutional support” during COVID. Over one-quarter (26%) have taken pay cuts or are working on reduced salaries—despite working more and working harder, as documented below. Additionally, one-third (34%) of PELA respondents are at institutions that have eliminated various benefits traditionally associated with an academic career, including financial support for research assistants and teaching assistants, summer stipends or other research support, sabbaticals or leave policies, and compensation for overload teaching (though many were expected to teach extra courses). As I have written previously, because of the pandemic law professors are “doing much more, with much less.”⁸⁹ Given the increased workload and decreased support, it is perhaps unsurprising that a staggering 43% of all PELA participants indicate that they have considered leaving academia.⁹⁰ With

89. Deo, *supra* note 33, at 135.

90. At least two of the thirty-five PELA participants—both of whom are women and caregivers who held non-tenure-track positions—have left law teaching already, signaling the significance of centering people from these particular backgrounds in this research.

an understanding of these troubling quantitative analyses from the PELA study, we can now turn to consider student and faculty experiences during COVID.

A. *The Struggle to Satisfy Basic Needs*

Law students and law faculty have been struggling throughout the pandemic. Some of the most troubling findings about ongoing challenges relate to how vulnerable populations from both groups have labored to meet their basic needs.

1. *Student Burdens*

Quantitative data collected from law student participants of the LSSSE core survey and Topical Survey Modules—especially those focused on *Coping with COVID* and *Experiences with Online Learning*—reveal the extent of student strain. Meeting basic needs is a challenge for many law students, and particularly for those from already vulnerable populations, including students of color, women students, women of color students, and first-gen students.⁹¹ While LSSSE data reveal that students from traditionally excluded populations are more likely to encounter heightened barriers as they strive to meet their basic needs, COVID created extra challenges for virtually all students.⁹² The LSSSE survey data presented here highlight the significant percentages of students facing basic-needs challenges during the pandemic.

Perhaps the most troubling statistic involving basic needs is that 43% of all law student respondents noted an increase in food insecurity due to COVID. Using a five-point Likert scale, the LSSSE survey asked students to respond to the following question: “As a result of the COVID-19 pandemic, to what extent, if any, has your concern about the following increased? Having enough food.” The pervasiveness of food insecurity suggests it existed even pre-pandemic. Furthermore, the high percentage referencing all students masks the racial disparity within, as *over half* of all Black (55%), Latinx (57%), and Asian

91. The LSSSE survey defines “first-gen” students as those who are the first in their immediate families to earn a college degree; non-first-gen students are those with at least one parent who completed college.

92. Gabriel Kuris, *The Impact of the Coronavirus on Legal Education*, U.S. NEWS (June 14, 2021), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/the-impact-of-the-coronavirus-on-legal-education>.

American (52%) respondents acknowledge the first year of the pandemic brought with it increased concerns about whether they had enough food to eat (Table 1). Students also have increased concerns about housing loss, with over one-quarter (29%) noting they are more worried about eviction due to the pandemic, again with notable racial disparities.⁹³

In addition to food insecurity, almost two-thirds (63%) of students who completed the LSSSE survey note increased concerns about their ability to pay their bills. Again, there are both gender- and race-based disparities, with 67% of women students and 71% of Latinx students, 68% of Black students, 67% of multiracial students, and 64% of Asian American students noting increased financial concerns (compared to 57% of men and 60% of white students) (Table 2). Furthermore, over half (52%) of law students in the LSSSE survey reveal that the pandemic interfered specifically with their “ability to pay for law school and living expenses.”⁹⁴ There are again notable disparities based on race: 24% of white respondents have significant concerns about paying for law school compared to higher percentages of students of color—including 30% of Asian American students, 35% of Black students, and a shocking 45% of Latinx students (Table 3). These increased worries follow logically from the higher debt levels carried by students of color.⁹⁵

Table 1. Increased Food Insecurity, by raceXgender (LSSSE, 2021)

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	39%	53%	52%	42%	56%	35%	62%	63%	67%	65%
Very little	30%	33%	26%	28%	16%	33%	24%	24%	27%	15%
Some	12%	7%	11%	15%	25%	17%	10%	9%	6%	13%
Quite a bit	12%	3%	6%	6%	0%	9%	3%	3%	0%	3%
Very much	6%	3%	6%	9%	3%	6%	1%	2%	0%	4%

93. DEO, PETZOLD, & CHRISTENSEN, *supra* note 73. Racial disparities include that 37% of Black students, 36% of Latinx students, and 33% of Asian American students were more worried about eviction due to COVID as compared to 25% of whites. *Id.*

94. COPING WITH COVID TOPICAL MODULE (2021), INDIANA UNIVERSITY (2020), https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE_COVID_Module.pdf.

95. DEO & CHRISTENSEN, *supra* note 8.

Table 2. Increased Concern about Paying Bills, by raceXgender (LSSSE, 2021)

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	35%	33%	39%	30%	48%	19%	45%	37%	40%	29%
Very little	27%	31%	30%	20%	13%	15%	23%	23%	28%	20%
Some	24%	19%	15%	20%	23%	20%	19%	22%	21%	24%
Quite a bit	9%	9%	7%	9%	7%	15%	9%	9%	6%	15%
Very much	6%	9%	9%	21%	10%	32%	5%	10%	4%	13%

Table 3. Increased Concern about Paying for Law School, by Race (LSSSE, 2021)

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	18%	18%	29%	18%	19%	13%	29%	26%	33%	25%
Very little	12%	25%	15%	24%	29%	13%	27%	26%	17%	14%
Some	32%	32%	31%	20%	16%	27%	25%	22%	29%	26%
Quite a bit	15%	10%	12%	20%	16%	16%	11%	14%	15%	19%
Very much	24%	15%	14%	20%	19%	32%	8%	12%	6%	16%

Beyond racial, gender, and raceXgender disparities, there are also inconsistencies based on other student background characteristics. Like students of color, first-gen students are deeply concerned about their ability to pay for law school and living expenses, including 21% who express “very much” concern about this issue; conversely, only 11% of students who have at least one parent with a college degree have similar worries (Table 4).

Table 4. Increased Concern about Paying for Law School, by First-Gen (LSSSE, 2021)

	Non-first-gen	First-gen
Not at all	27%	20%
Very little	25%	18%
Some	23%	27%
Quite a bit	14%	14%
Very much	11%	21%

Unsurprisingly, debt also affects how concerned students are about paying for law school during COVID. Those who expect to graduate without any educational debt whatsoever are least likely to be worried about law school expenses, with over half (52%) admitting their concern has increased “not at

all” (Table 5). Conversely, 24% of those owing between \$160,000-200,000 (and a disturbing 32% of those who expect to owe over \$200,000 upon graduation) note their concerns about paying for law school have increased “very much” due to COVID. The correlation between first-gen students and those with high debt levels, and with students of color, is also notable.⁹⁶

Table 5. Increased Concern About Paying for Law School, by Debt (LSSE 2021)

	\$0	1-20K	20,001-40K	40-60K	60-80K	80-100K	100-120K	120-140K	140-160K	160-180K	180-200K	>200K
Not at all	52%	30%	18%	21%	19%	27%	12%	16%	11%	21%	13%	11%
Very little	25%	23%	32%	29%	28%	16%	27%	21%	18%	21%	13%	8%
Some	13%	30%	28%	27%	27%	23%	31%	24%	24%	28%	24%	30%
Quite a bit	5%	10%	16%	9%	13%	17%	17%	23%	24%	10%	26%	19%
Very much	5%	9%	6%	14%	13%	17%	15%	16%	23%	21%	24%	32%

96. Jakki Petzold, *First Generation College Students Bear More Law School Debt*, LSSSE (June 14, 2022), <https://lssse.indiana.edu/blog/first-generation-college-students-bear-more-law-school-debt/>.

In these various ways, students have been struggling during COVID to meet their basic needs. Vulnerable populations in particular have labored to find enough food, meet their financial obligations, and pay for law school and related expenses.

2. Faculty Trials

While faculty who participated in PELA interviews did not discuss suffering from food insecurity, both housing worries and financial concerns do plague professors, particularly those in already precarious positions. In addition, many professors face challenges meeting other basic needs, in particular those related to finding safe and reliable childcare.

Housing has been a huge problem for some faculty, as for many students. It was particularly challenging for faculty who moved during the first year of the pandemic to begin new academic positions as tenure-track or visiting professors. An Assistant Professor named Alice moved across the country to begin her first tenure-track law faculty position in summer 2020, navigating myriad challenges in the midst of the pandemic and associated lockdowns in cities across the country. Alice and her husband “just rented, sight unseen” in their new city because they “were really worried about not getting a place.” She notes that they could not first arrive in town and then secure living arrangements because they immediately “needed a place to quarantine. It’s not that easy to just find a hotel [when moving] with a toddler and a dog.” Initially, their plans were different; she says, “We had planned to fly out to find a house in the spring, but obviously that didn’t happen,” because COVID shut things down in March 2020. Instead, she notes, “We ended up actually bidding for this rental house, [offering] higher than the rent, just so we could secure it.” She realizes that doing that was “kind of ridiculous,” but felt she had no choice, remembering, “We were pretty desperate.”

Nicole, a single parent and tenured law professor, similarly moved to a new state with three children during the early days of the pandemic. She and her children had lived in their previous home “for maybe three or four years,” so it took considerable effort for her, with help from extended family (but not from movers, whom she was not comfortable inviting into her home in 2020), “to do all of the packing with three children

who were still in school and still had to have all of their stuff out.” She admits, “So, that was awful.” After packing, there were more challenges: “Then we drove up with a U-Haul and kids, three kids and a cat, and it’s COVID so there’s no eating anywhere, there’s no way to stop the whole way so you stay at hotels, but you can’t really go to restaurants or anything. So, that was just a nightmare experience.”

Financial worries also plague many faculty members. Professors in contract-based positions are particularly concerned about performing at the expected levels without tenure, as they have little job security ensuring they will be kept on to teach for future years at their institution.⁹⁷ Similarly, pre-tenure faculty worry that a lack of scholarly productivity means they might be shown the door, given the importance of publishing to faculty advancement.⁹⁸ As discussed below, professional success carries extra pressures for these professors. Additionally, those who are the primary or sole earners in their households, as well as those contributing financially to the stability of extended family, are especially troubled by finances.

Cristobal, a Clinical Professor, notes that he was “stressed at the beginning” of the pandemic “because we didn’t know [about] the enrollment at schools and if they will have to cut faculty.” Alexis, a woman of color professor who teaches Legal Writing in a contract position, notes, “I’m the primary earner in my family.” She felt tremendous pressure to perform at a high level so her contract would be renewed, telling herself, “Alexis, you cannot lose your job. You have to be perfect. You have to do more. When you go for your evaluation, you have to have more on the page because you need to stay and you want to get promoted.” An untenured professor named Ariana similarly says, “I really stressed in the beginning about what would happen if I lost my job because I didn’t know how [COVID] was going to impact universities, how it’s going to impact teaching.” She wondered:

97. Many contract-based faculty are on one-year contracts that are not automatically renewed at the conclusion of each term. Thus, every year they run the risk of losing their jobs if their performance is not stellar, student enrollment dips, or institutional finances are prioritized elsewhere.

98. Meera E. Deo, *Intersectional Barriers to Tenure*, 51 U.C. DAVIS L. REV. 997, 999 (2018); Barnes & Mertz, *supra* note 43.

“What’s going to happen to me as an untenured, brand new faculty member?” I was super, super stressed about like, “Am I gonna have a pay cut?” Like, “What is going to happen?” That was really stressful for me because I earn more than my husband. We moved here to [this city and] it took him like seven or eight months to find a job and when he found a job it was earning significantly less than he was earning [where we lived before].

Ariana notes that she is responsible financially not only for her immediate household, but also supports extended family, saying, “So there’s a lot of financial stress on me as far as like, our unit, but then, also because I tend to help my mom out whenever she needs help or assistance, whether it’s groceries or bills or those sorts of things.” Because Ariana is a primary resource for her mother, “the one that she turns to for that help,” she feels additional financial pressure to maintain her position on the faculty because extended family rely on her too.

An untenured white professor named Olivia also has “additional family responsibilities” beyond herself and her partner. One of her siblings works in a position that is “a little bit unstable,” so Olivia notes, “I have sometimes helped her financially, since she had to take a pay cut and be on a freeze and it’s not clear how long she will still have this job if [COVID] goes on much longer.” Similarly, a tenured professor of color named Fay states, “Our families actually rely on us for financial support. So, while [COVID] has been going on, I’ve been sending money to my Mom. My husband’s been sending money to his Mom.” While some professors can rely on their own parents or extended family to help with down payments, cover unanticipated expenses, or provide a cushion of financial support, many others—especially faculty of color—are the ones providing that support to others.⁹⁹ Fay continues, “We don’t have the safety net that other people have. We *are* the safety net for other households.”

Law professors do have employment options outside of academia, as most graduated from elite law schools and many worked in the private sector or in other highly selective

99. For more data on faculty of color providing financial support to extended family, see DEO, *supra* note 14, at 129-31; Deo, *supra* note 59.

positions before securing their current faculty appointment.¹⁰⁰ It is perhaps not surprising that, as indicated earlier, 43% of PELA respondents have considered leaving legal academia to pursue or return to alternate careers. Yet, a transition out of legal academia and into legal practice is rarely an immediate alternative, as it can take months to find new employment, if it is available at all. As a woman of color on the tenure-track notes, “I’m not like independently wealthy,” so, although she would sometimes like to, she says she is not in a position to say, “‘You can truly take this job and shove it!’” While a tenured woman of color professor named Jean admits, “I’ve had days when I actually asked my husband if I could quit my job,” she knows that doing so is not financially feasible for her family. So, she remains a professor despite the challenges.

In addition to housing concerns and financial worries, childcare is a third area where faculty have struggled to meet basic needs throughout the pandemic. Of course, the challenge to find childcare merges with financial stress in troubling ways. Amelia, a contract-based professor, says, “I joked with one of my Associate Deans, ‘Well, we just went touring a Montessori school for my daughter, so sign me up for every overage class to teach for like the next sixteen years!’” Childcare costs were high pre-pandemic but have skyrocketed since.¹⁰¹ For contract-based faculty, who tend to have less income and less job security than tenure-track and tenured professors, meeting this basic need has been even more difficult during COVID.¹⁰² Amelia continues, “I’m the primary

100. For more on the pathway to the profession, including the hyper-credentials and elite background of most law professors, see DEO, *supra* note 14, at 13-22.

101. The costs of childcare have risen exponentially during the pandemic, for those who can even find caregivers. See Jane Thier, *The Cost of Childcare has Risen by 4% During the Pandemic with Families Spending up to 20% of their Salaries*, FORTUNE (Jan. 28, 2022, 6:51 AM), <https://fortune.com/2022/01/28/the-cost-of-child-care-in-the-us-is-rising/>.

102. There are significant pay disparities between tenure-track and non-tenure-track faculty, with lower pay for clinical, legal writing, and library faculty, among others. See Robert Kuehn, *The Disparate Treatment of Clinical Law Faculty*, BEST PRACTICES FOR LEGAL EDUC. (Jan. 4, 2021), <https://bestpracticeslegaled.com/2021/01/04/the-disparate-treatment-of-clinical-law-faculty/>; Amy H. Soled, *Legal Writing Professors, Salary Disparities, and the Impossibility of “Improved Status”*, 24 LEGAL WRITING JOURNAL (Mar. 1, 2020), <https://www.legalwritingjournal.org/article/26014-legal-writing-professors-salary-disparities-and-the-impossibility-of-improved-status>; Joe Fore, *Academic Law Librarians Are Paid 47% Less Than Their Faculty Counterparts*, RIPS L.

breadwinner and I sign up to teach every additional class I can and for every writing grant I can.” This is how she covers the cost of childcare.

Even when the costs are high, childcare remains uncertain and precarious. One professor who moved cross-country for her first faculty position, notes that she and her husband “ended up making a splurge to get an au pair” after relocating. That has “become much harder this year because of COVID and also the visa ban that has essentially dried up the supply of au pairs. So, to get an au pair, you have to pay double and we decided to do that.” She reasons, “[F]or health and safety, it is good to have someone who lives with us, instead of traveling back and forth,” which would have increased the family’s risk of exposure to COVID at a time when no vaccines or treatments were available in the United States.¹⁰³ However, their au pair ended her contract early and returned to her home abroad (as many au pairs did at the time), leaving this particular PELA participant in the lurch to care for a toddler with help from her partner, who also works full time from home.¹⁰⁴

Sara, a woman of color faculty member on a five-year-contract, notes, “We’re dipping into our savings and just like spending tons of money to have childcare—to have *less* care than we had before—and then spending a ton *more* because things are constantly falling through.” Recently, her toddler “got a runny nose,” forcing Sara to “leave work and take her to the doctor to get this note” confirming she does not have COVID; despite testing negative for COVID, her toddler “can’t go back until symptoms are resolved,” meaning until she no longer has a cold. Because their regular backup caregiver is “stuck in Texas” (as travel also has become unpredictable),

LIBRARIANM BLOG (Feb. 4, 2020), <https://ripslawlibrarian.wordpress.com/2022/02/04/academic-law-librarians-are-paid-47-less-than-their-faculty-counterparts/#:~:text=Librarians%20make%20about%2018%25%20less,a%20%E2%80%9CProfessor%20of%20Law.%E2%80%9D>).

103. The vaccine was not available even to medical professionals until December 2020. Sharon LaFraniere, Katie Thomas & Noah Weiland, *F.D.A. Advisory Panel Gives Green Light to Pfizer Vaccine*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/health/covid-vaccine-pfizer-fda.html>.

104. Jordan Salama, *The Great Au Pair Rush*, N.Y. TIMES (July 25, 2022), <https://www.nytimes.com/2020/07/25/business/the-great-au-pair-rush.html> (reporting on multiple incidents of au pairs leaving homes where they had been providing childcare and leaving those parents in the lurch, as happened to this particular PELA participant).

Sara had to arrange “three different caretakers [to] come in this week, which is also more exposure than we normally have.”¹⁰⁵ She worries not only about the health consequences, even though “they’re masked and everything,” but also about how it takes her “a ton of time to orient people and figure things out, sending dozens and dozens of texts to different people I’ve worked with in emergency babysitter situations” just to set up childcare.¹⁰⁶ All of this takes a toll.

The basic needs struggles of students and faculty differ, but vulnerable populations from each group have faced heightened challenges due to COVID. Whether managing food insecurity, housing concerns, financial pressures, or childcare dilemmas, faculty and students alike recognize how disparities related to their basic needs that existed before the pandemic have now deepened due to COVID.

B. Mental Health Strain

While mental health is a core basic need, it is separated here for additional emphasis, as LSSSE and PELA findings reveal that both students and faculty have been navigating significant increases in mental and emotional trauma due to the pandemic. Past research has confirmed that the process of law school learning can be emotionally taxing for students as well as faculty engaging in the profession of teaching law, leading to increased anxiety, depression, and even potentially untimely death for those whose presence is largely unanticipated and unwelcome in the white straight cis-gendered male normative law school space.¹⁰⁷ This Section

105. Julie Besonen, *I Should Have Known Better: ravel Planning in Uncertain Times*, N.Y. TIMES (May 13, 2021), <https://www.nytimes.com/2021/05/13/travel/travel-planning-pandemic.html> (noting travel disruptions and general unpredictability due to COVID).

106. While this section notes how childcare responsibilities intensified pressures on faculty, it is important to recognize that some students are also parents; thus, some of the caregiving burdens faculty have been carrying through COVID have also plagued students. For more on the need to support student parents, see Tina Cheuk, *Pregnant and Parenting Students Belonging and Thriving Framework* (2022), <https://sites.google.com/view/tinacheuk/home>.

107. For empirical data on law student increases in stress pre-pandemic, see Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 112-15 (2002). For more on pressures facing faculty of color, that could lead to physical and mental health trauma, see Roy L. Brooks, *Life*

reveals results showing that it has been especially difficult for students and faculty who come from backgrounds that are traditional outsiders to legal education to navigate the expected stress of legal education along with the compound pressures of the pandemic. Furthermore, people of color, women, and other marginalized groups have been facing additional stressors since the start of the pandemic due to George Floyd's murder, increasing anti-Asian hate crimes, election chaos, the United States Capitol insurrection, increasing gun violence, a retrenchment of women's rights, anti-trans legislation, Supreme Court rollbacks of established rights, and other forms of identity-based trauma.¹⁰⁸ Together, these have contributed to significant negative mental health effects for students and faculty alike.

1. Student Anxieties

Students' mental health has suffered throughout COVID.¹⁰⁹ The vast majority (85%) of students in the LSSSE sample collected in spring 2021 report anxiety that interferes with their daily functioning. A full 87% suffer depression that interferes with daily life, including one-third (32%) who report it does so "very much." Women are more likely than men to

After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?, 20 U.S.F. L. REV. 419, 419 (1986).

108. See, e.g., Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>; Mary Clare Jalonick, *Takeaways: What Hearings Have Revealed About Jan. 6 Failures*, AP (Mar. 4, 2021), <https://apnews.com/article/january-6-capitol-siege-hearings-takeaways-d51eb0e41299260a231648e5283e4349>; Harmeet Kaur, *Fetishized, Sexualized and Marginalized, Asian Women Are Uniquely Vulnerable to Violence*, CNN (Mar. 17, 2021, 8:22 PM), <https://www.cnn.com/2021/03/17/us/asian-women-misogyny-spa-shootings-trnd/index.html>; *Anti-Transgender Legislation Spreads Nationwide, Bills Targeting Transgender Children Surge*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/unprecedented-onslaught-of-state-legislation-targeting-transgender-american>; Kermit Roosevelt III, *The Supreme Court Has Been Engaged in a Rollback of Rights. Abortion Would Just Be the Latest*, TIME (May 16, 2022, 2:05 PM), <https://time.com/6176168/supreme-court-overturned-rights-history/>. There are also other identity-based traumas affecting law faculty from various backgrounds.

109. There are also physical health effects, including "worsening physical health," and "increased concerns about their own health and safety." Meera E. Deo, *A CRT Assessment of Law Student Needs*, TEACHERS COLLEGE RECORD (forthcoming 2023).

report high levels of anxiety and depression, as shown in Tables 6 and 7.

**Table 6. Increased Anxiety, by Gender
(LSSSE, 2021)**

	Men	Women
Not at all	19%	8%
Very little	15%	9%
Some	25%	24%
Quite a bit	20%	21%
Very much	21%	39%

**Table 7. Increased Depression, by Gender
(LSSSE, 2021)**

	Men	Women
Not at all	20%	12%
Very little	17%	14%
Some	27%	25%
Quite a bit	18%	18%
Very much	19%	31%

In addition to specific concerns about anxiety and depression, many students have reached their mental limits in other ways. Students are lonelier than ever during the pandemic, with few avenues for social interaction or emotional connection with others.¹¹⁰ A full 69% of LSSSE respondents report that COVID caused at least “some” increase in loneliness; additionally, almost half of all law students in the LSSSE sample (45%) note they suffer significant increases in loneliness, again with heightened gender effects (see Table 8). Given pre-pandemic research documenting existing gender biases, the ongoing and deepening disparities are troubling though not surprising. A full 91% of LSSSE respondents note at least “some” increase in mental or emotional exhaustion due

110. Heather K. Gerken, *Will Legal Education Change Post 2020?*, 119 MICH. L. REV. 1059, 1062 (2021) (“The pandemic has not allowed for random hallway conversations, lunchtime gossip sessions, late-night debates, and many other forms of peer-to-peer interactions that deepen learning outside the classroom and help shape students’ personal and professional outlook.”).

to COVID, including a disturbing 49% who say it increased “very much.” There are also gender disparities, with over half (57%) of women respondents reporting “very much” mental or emotional exhaustion, compared to one-third (35%) of men. Furthermore, when considering raceXgender implications, higher percentages of women than men from the same racial background face the highest level of mental or emotional exhaustion (See Table 9). Again, based on pre-pandemic literature highlighting increased burdens for women of color law students as compared to those who are white women, white men, and men of color, these findings are disturbing though not unexpected.

**Table 8. Increase in Loneliness, by Gender
(LSSSE, 2021)**

	Men	Women
Not at all	22%	14%
Very little	16%	12%
Some	24%	24%
Quite a bit	18%	20%
Very much	21%	30%

**Table 9. Increase in Mental or Emotional Exhaustion,
by raceXgender (LSSSE, 2021)**

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	6%	7%	8%	3%	7%	2%	9%	1%	17%	3%
Very little	12%	2%	2%	3%	3%	0%	8%	3%	11%	0%
Some	18%	18%	24%	13%	26%	13%	24%	13%	15%	17%
Quite a bit	27%	32%	28%	28%	10%	27%	26%	23%	32%	26%
Very much	38%	42%	39%	54%	55%	58%	33%	60%	26%	55%

Data from LSSSE reveal that students are more lonely, depressed, anxious, and exhausted than they had been before COVID. Legal education was infamous even pre-pandemic for causing significant mental strain on students, particularly those from backgrounds traditionally excluded from the legal

profession.¹¹¹ Now that the pandemic has brought increased attention to these predicaments, we must do more to support students from different backgrounds through their mental health challenges.

2. Faculty Stress

Faculty, like students, have been struggling with their mental health throughout the pandemic. Many participants in the PELA study share that a deep sense of loneliness has overtaken them since the start of the pandemic; others suffer from anxiety and depression. Even those who are not necessarily navigating mental health trauma note that they are not as alert, engaged, or active—what some call “languishing.”¹¹²

While parents have been overwhelmed with increased time spent on childcare responsibilities, especially in the early days of the pandemic, they nevertheless are incredibly lonely. Alice, who moved cross-country for her new job, has only met a few of her new colleagues and very few students in person. Due to COVID precautions, her family has not had an opportunity to engage socially in their community or neighborhood. Because of this, Alice mentions, “I was just telling my husband the other day that I do feel an increased sense of loneliness, just from the lack of interaction with people.” Alice feels fortunate to have her husband as a strong source of daily support.

Single people living alone through COVID had much less, especially in the first year of the pandemic. A tenured white professor named Amy says, “I only leave the house for doctors’ appointments.” Due to pandemic safety concerns, she rarely has anyone inside her home, noting, “I have women that clean my house for me every other week. This sounds ridiculous in mentioning it: it’s sometimes the only human interaction—live interaction—in a week.” Although she has cultivated strong friendships and has a close relationship with her family, she has not seen any of them in person for many months. Amy mentions, “My family lives far away, so I don’t see any family. I don’t have any close friends in town. Most of my friends live

111. Krieger, *supra* note 107, at 113-15.

112. Adam Grant, *There’s a Name for the Blah You’re Feeling: It’s Called Languishing*, N.Y. TIMES (Dec. 3, 2021), <https://www.nytimes.com/2021/04/19/well/mind/covid-mental-health-languishing.html>.

elsewhere.” Because of this, she notes, “[I]t’s been a period of just deep isolation and loneliness.” Similarly, Ariana says the first year of the pandemic was particularly “stressful, depressing, lonely, isolating, especially as one of the few people of color at a predominantly white institution where you’re brand new and you don’t know anyone and you haven’t formed a community.” It reached a point where she wondered whether to stay or leave academia altogether, noting, “Sometimes I feel like, ‘Why am I doing this? Why am I sacrificing all of this? Is it worth it?’ I don’t know.”

Beyond the loneliness, many faculty have suffered through depression and anxiety, just as their students have. Ariana notes this specifically, stating, “I’ve definitely been depressed, anxious.” Sometimes, the anxiety has physical manifestations. She continues, “I’m losing hair, which you can see me trying to comb it over. I’ve gained weight. It’s not good.” She wistfully remembers her former pre-pandemic self, telling me during our interview, “If you go on the website, there is a very glamorous picture of what I was before all of this. That is not me. I do not feel like that anymore.” She recognizes at least theoretically the importance of self-care, adding, “I need some time taking care of myself.” But she has not found the time. Olivia also mentions that she now has “some physical manifestations of stress, anxiety.” She has “developed a persistent cough [which] is apparently an anxiety, stress-related function, it has nothing to do with [physical exposure to] COVID.” Paulette, a pre-tenure professor of color similarly recalls how stress and anxiety resulted in negative physical effects, stating, “I felt like I was literally sinking, full of anxiety, physiological effects, like my heart literally tightening up.” Depression was debilitating for many professors, as it was for some students. A white tenure-track professor named Ben says, “COVID influenced my mental health. I do think I was much more sad, and I didn’t have a good mood because of COVID.” He acknowledges the impact went further than a bad mood, stating, “I was depressed. I do have a therapist, and that’s the first time in my life that I had a therapist.”

Often, the negative mental health effects worsen due to pressure from work. Daniel, a white tenure-track faculty member recalls the early days of COVID as “very stressful. I remember being very depressed, very anxious about it, almost unable to do regular daily functions because of that. That was

in the first month or two.” He worried about numerous things fully outside of his control, “just anxiety over the situation. How we’re going to get out of it, whether the vaccine is going to be effective, whether we will be able to be in person again, whether my students are okay.” He recalls the beginning of the pandemic and its associated lockdown were particularly difficult for him, though there have been lingering effects, noting, “Definitely it’s been a huge impact on my mental health.” While he has improved, he is not yet back to his pre-pandemic self, saying, “Anxiety is always there, low-level anxiety.” The pressure he feels has been heightened due to ongoing expectations of workplace performance, especially because he is an untenured professor with the associated pressures to prove himself by producing scholarship to keep his job.¹¹³ These worries lead to negative self-talk, such as, “Are you going to be prepared? You’re not going to be ready. You’re going to mess up somehow. You’re not going to place your article.” He looks forward to travel becoming safer, which will ease some of his anxiety, noting, “Once this semester ends, I may be able to travel and finally see my family. I haven’t seen them in more than a year.”

Lila, a tenured woman of color professor and administrator is similarly plagued by concerns about whether she will be able to continue the high level of scholarly productivity she has always been known for on her campus as well as nationally, especially because of increased service duties at work and extra childcare responsibilities at home.¹¹⁴ She notes, “I worry the scholarship I really care about, I’m not able to do at the same level that I was doing. And that I think I will get judged. And that brings up a lot of anxiety.” She admits, “I get very little sleep. And no rest. I want to make an

113. As discussed in greater detail in Section C.2 as well as in Deo, *supra* note 98, and Barnes & Mertz, *supra* note 43, pre-tenure professors face significant stress and anxiety on the path to tenure, with the knowledge that those who do not earn tenure will be out of a job.

114. For more PELA findings on increased service duties on campus during COVID, see Deo, *supra* note 33 (finding that women of color, caregivers, and both untenured and contract-based faculty have been engaged in significantly more service work throughout the pandemic, higher even than the extra service load many of these professors had carried pre-pandemic). For more PELA findings on increased childcare responsibilities, especially for women of color faculty, see Meera E. Deo, *Pandemic Parenting* (in progress – on file with author) (revealing that women of color, white women, and untenured professors have been more likely to have significantly increased childcare responsibilities during COVID).

impact and I don't know if I will. And I feel like I'm putting in all this effort into the administrative stuff but that's not going to matter at the end of the day," particularly in terms of what is valued at her institution.¹¹⁵

With the pandemic as a distressing backdrop, rampant racial trauma has also dominated the everyday lives of many faculty of color since 2020. Some PELA participants spoke directly about the ways in which George Floyd's murder, increased hate crimes against Asian Americans, the Capitol insurrection, and other instances of undeniable violent racism created additional stressors for them. For instance, a Black tenure-track professor named Renee recognizes "the psychological impact of that, of George Floyd, of Breonna Taylor. Black people dying at the hands of the police is awful. I'm thinking about my children, especially my oldest child, [a] Black boy who likes to walk around in hoodies." Ironically, she feels he is safer now at home during a deadly pandemic than he otherwise would be while out and about. Renee says, "It's interestingly with COVID that he's at home, and he's actually a homebody so he has left his house much less than any of the rest of us. And so, in a way, I've been able to kind of keep him safe." That gives Renee one less thing to worry about.

Anxiety, depression, loneliness, and pressure have characterized the law student and law faculty experience throughout COVID. While these challenges existed pre-pandemic, especially for women of color and others with less engagement and power on campus, they have been significantly exacerbated since the pandemic began and will continue long after without immediate intervention.

C. Constraints on Academic and Professional Success

As the mental health data reveal, students and faculty alike have been plagued by worries about whether they can perform at the expected high levels that characterize their elite roles. The penalty for not doing so is disastrous. After all, most students are paying a premium and forgoing other opportunities to enroll in law school in order to learn, graduate, and enter the legal profession.¹¹⁶ Their "job" during law school

115. Administration can also be a form of undervalued service. See DEO, *supra* note 14.

116. Alexis Gravely, *Impact of Student Loan Debt on Young Lawyers*, INSIDE HIGHER ED. (Sept. 23, 2021), <https://www.insidehighered.com/news/2021/09/23/>

is to engage with the assigned course material, master its content, and pass (ideally, excel on) exams in order to graduate and secure a well-paying and satisfying job on the path toward a stable career.¹¹⁷ Faculty are similarly in high pressured environments. This is especially true for untenured professors, whether they are pre-tenure scholars who are expected to publish scholarship roughly annually in order to advance to tenure, or contract-based faculty who risk losing their jobs altogether if their performance levels dip over the course of even one year.¹¹⁸ Thus, success throughout their time in legal education is critical for students and faculty alike. Yet both groups have been struggling to perform during the pandemic, with potentially catastrophic results not only for themselves but for legal education and the legal profession if they choose to pursue other viable options instead of remaining in legal education.

1. Student Determination to Succeed

Almost all law students (90% of the LSSSE sample) report their concentration has suffered because of the pandemic. This statistic had marked gender effects with 94% of women noting an increase in their inability to concentrate as compared to 86% of men (Table 10). There are also raceXgender effects revealed in Table 10, as higher percentages of women students than men within each racial group report they have trouble concentrating (for instance, 39% of Black women compared to 15% of Black men, and 50% of Latinas compared to 34% of Latinx men note their inability to concentrate has increased “very much”). Likely in part due to this difficulty with concentration as well as the food, financial, housing, and mental health insecurity detailed earlier, students recognize the pandemic hampers their academic success. A full 79% of student respondents note that COVID has interfered with at

aba-report-shows-impact-law-school-debt-young-lawyers; Llana Kowarski, *Law School Benefits Versus Price: The Numbers*, US NEWS (Mar. 30, 2022, 8:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary>.

117. Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School?*, 53 J. Legal Educ. 48 (2003); *What You Can Expect from Your Law School Experience*, LSAC (2022), <https://www.lsac.org/discover-law/what-you-can-expect-your-law-school-experience#:~:text=There%20is%20an%20adage%20that,the%20power%20of%20total%20recall>.

118. Deo, *supra* note 98; Barnes & Mertz, *supra* note 43.

least some of their ability to succeed as a student (Table 11). The data also reveal marked gender effects, race effects, and raceXgender effects. For instance, 74% of men and 82% of women note a negative impact on academic success due to the pandemic. Additionally, higher percentages of students of color note “very much” decline in their academic performance (including 23% of Black students, 27% of Asian Americans, and 29% of Latinx students) as compared to white students (18%).

Table 10. Increase in Inability to Concentrate, by raceXgender (LSSE, 2021)

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	12%	12%	15%	9%	16%	5%	13%	4%	21%	9%
Very little	15%	7%	9%	8%	6%	9%	10%	7%	8%	4%
Some	21%	21%	39%	23%	22%	9%	25%	22%	25%	23%
Quite a bit	27%	26%	22%	22%	22%	27%	25%	27%	27%	22%
Very much	27%	35%	15%	39%	34%	50%	27%	40%	19%	42%

Table 11. COVID Interfered with Academic Success, by raceXgender (LSSSE, 2021)

	Asian American		Black		Latinx		White		Multiracial	
	men	women	men	women	men	women	men	women	men	women
Not at all	9%	5%	9%	5%	7%	7%	7%	4%	10%	3%
Very little	12%	18%	11%	17%	7%	9%	21%	14%	20%	9%
Some	21%	31%	40%	26%	36%	18%	34%	40%	41%	38%
Quite a bit	24%	23%	23%	28%	26%	36%	23%	22%	20%	27%
Very much	35%	23%	17%	25%	26%	29%	16%	20%	8%	24%

For law students, college graduates who have given up other potentially lucrative job offers (or even careers) or opportunities for study in other graduate or professional fields, the consequences of not living up to their academic potential can be devastating. Some will drop out of law school altogether, maintaining debt but never entering the legal profession.¹¹⁹ Others will continue through legal education, in the hopes that administrators and policymakers will better

119. Rob Wiederstein, *2020 Law School Attrition Rates Part I*, ROB WIEDERSTEIN (May 12, 2021), <https://www.robwiederstein.org/2021/05/12/2020-law-school-attrition-rates/>.

meet their needs and support them as they strive to maximize their academic success and become productive members of the legal practice community.

2. Faculty Pressure to Publish or Perish

Faculty in precarious positions are also stymied on their path to professional success due to the pandemic. Many professors in the PELA sample report that they are now spending more time on teaching and service, and less time on scholarship. The interview data reveal why.

Data from LSSSE indicate that an impressive 93% of law students appreciate ways in which their professors showed “care and concern for students” during the first year of the pandemic.¹²⁰ Law students also report positive relationships with both faculty and fellow students, at levels similar to those reported pre-pandemic.¹²¹ Already published work drawing from PELA data confirm that faculty of color, female faculty, and others in precarious positions (including pre-tenure and contract-based faculty) are performing significantly more service during COVID than they had previously, and more than their colleagues do.¹²² This Section also considers ways in which professors from particular populations retool and

120. LSSSE data show that 93% of students surveyed in 2020 reported that their professors showed them “care and concern.” DEO, PETZOLD, & CHRISTENSEN, *supra* note 73.

121. LSSSE data collected from law students in 2021 reveal that 72% of student reported positive relationships with faculty and 73% reported positive relationships with classmates; furthermore, students’ overall satisfaction rate remained a surprisingly high 78%; all of these 2021 statistics are relatively constant when considering the previous three years. *Id.* Similarly, in 2022, 71-72% of students report positive relationships with faculty and 77% report satisfaction with their overall law school education. JACQUELINE PETZOLD, MEERA E. DEO, CHAD CHRISTENSEN, LSSSE 2022 ANNUAL REPORT: SUCCESS WITH ONLINE EDUCATION (2022), <https://lsse.indiana.edu/wp-content/uploads/2022/10/Success-with-Online-Education-Final-10.26.22.pdf>. Yet, students often missed the “intangibles” of legal education that result from interactions with classmates and professors; for instance, they were less likely to talk with faculty and other advisors about career plans, meet with professors to discuss course material, or work with faculty on activities beyond coursework. Deo, *supra* note 109.

122. Deo, *supra* note 33 (finding that women of color, caregivers, and both untenured and contract-based faculty have been engaged in significantly more service work throughout the pandemic, higher even than the extra service load many of these professors had carried pre-pandemic). Note, women of color faculty as well as white women also spent significantly more time on caregiving (Deo, *supra* note 114) further decreasing time available for scholarship.

revamp their courses for online education—spending many more hours on teaching and service than they had before. The considerable attention given to service and teaching takes time away from scholarship, adding to inability of these faculty to be as productive with their research—though scholarship is the most important metric for advancement and security in academia.¹²³ Ironically, though institutions shifted their focus to demand excellent teaching as professors pivoted to online education, the expectation that faculty publish at roughly equal rates as pre-pandemic remains.

Many institutions have demanded that faculty focus their attention on students during the pandemic. Marco, a tenured professor, says, “The expectation is that you will be able to deal with Zoom and Canvas and online learning. So, we’ve been expected to learn how to teach online and interact online.” Jean notes that her institution “closed down and started teaching remotely on March 16, [2020]. At that time, we were expected to pivot on a dime, and be prepared.” While support would have been welcome, she says, “We were given no resources. We were just told, ‘Here’s Zoom. Figure out how to do your class on Zoom by Monday.’” That lack of teaching support continued through the fall 2020 and spring 2021 semesters, though Jean specifies, “That said, my job expectations have basically not changed. I am still expected to participate on committees, I am still expected to write, I am still expected to teach and deliver a high-quality legal education to our students.” In addition, Jean notes that she faced “intense pressure not only to rework my classes so they worked better online, but to do everything and anything to appease the students so they did not drop out, especially in the first six to eight weeks of classes.” Even when problems arose that Jean raised with higher ups, the administration was adamant she prioritize student needs over everything else. She explains, “No matter what the students did, the answer was basically, ‘Be as responsive and kind as possible to whatever their concerns are because we’re in a pandemic and we can’t afford to lose any seats.’” In this way, Jean’s administrators prioritized the school’s finances and ranking—as every student who left in the first two months equaled

123. Barnes & Mertz, *supra* note 43; Deo, *supra* note 98.

money lost and potentially a drop in rankings—over the needs of the faculty.

Ariana had a similar experience in terms of administration ranking student demands above all else in the first year of COVID. She explains that her administration was focused on “getting students in the seat and students prefer live classes. It’s down to the student experience [and] students want to have the in-person experience. So, to the extent that we can give that to them, I think it just comes down to filling in seats.” Schools thus pressured some faculty to teach in person and everyone else to prioritize retooling courses for online learning; Ariana notes although her administration is not providing much support to faculty, “I still think that they’re expecting excellence with regard to teaching.”

The pressure to be in person was particularly heavy on those without the security of tenure—professors who could not resist this demand without risking their jobs. Zoe, a contract-based professor and librarian, says the problem was not simply, “You may have never used Zoom and now you have to teach your class on it,” but also that “in order to do it well, you need to completely change the delivery method of your instruction. So, you don’t need to just do your class online and learn technology, you need to fundamentally change the class you’re doing for online learning, or in our case, hybrid learning.” Doing both—changing the format and the content—she notes “is a tremendous change, an increase in what’s expected of you.” Not all professors mastered this, though there were significant accommodations for tenured professors, often at the expense of contract-based faculty. In addition to her regular duties, Zoe was asked to fill in for Information Technology (IT) staff by helping tenured professors who were unwilling to learn Zoom; she also served as a COVID tester, since librarians were expected to be on campus even during the height of the pandemic surges. Many others in contract-based positions were also expected to teach in person, even at institutions where tenured and tenure-track doctrinal faculty taught from home. Again, because students supposedly preferred to meet in person, some administrators were willing to send in Legal Writing, Clinical, Library, Academic Support,

Bar Prep, or other contingent faculty to meet that need, keeping tenured faculty safe and secure.¹²⁴

Other professors teach at institutions that did not insist they appear in person or demand they cater to the students every preference. Yet many faculty decided on their own to prioritize student learning in a new format, even above their own scholarship and other responsibilities. A pre-tenure professor of color named Renee recalls a colleague told her, “You can be a less excellent teacher so that you could spend more time on your writing.” Renee disagreed: “I just felt like, you know, students are putting a lot of money and time into this and we should be putting a lot of money and time into this. It’s not okay to tell me that, ‘Oh, you shouldn’t be as good of a teacher, so that you can write.’” She chooses to prioritize teaching, though it comes at the expense of her scholarly productivity.

A white tenured professor named Ted similarly states, “Teaching, if I’m being honest, is my number one priority.” Kyle, a tenured professor of color agrees, noting, “I would say that I focus most on teaching because I’m just trying to do my level best to give [students] the best experience possible with Zoom law school. So, I spend probably the bulk of my time on that.” Almost all junior scholars, scholars of color, and women scholars in the PELA study note that they spend significantly more time on teaching now than they had previously. Rose, a woman of color professor, says, “I’ve had to do a lot more work,” especially because she tries “to get the classes to be perfect.” With Zoom school, “you have to present the material in a different way online and maybe do some things that are a little different than you might in a face-to-face class. It’s a lot easier to explain stuff in a face-to-face class.” As a result, Rose works harder: “I do feel like I’m putting in more hours, many more hours, to get the same things done.” She also recognizes the benefits of being a tenured professor in this situation, noting, “I’m somebody with tenure. I can’t imagine people who don’t have tenure, I can’t imagine what they’re doing. But yes, just a lot more hours at the job.” Despite her privilege, she recognizes the struggle.

124. More details on hierarchies in legal academia due to COVID are explored in Meera E. Deo, *Disrupting Legal Education* (in progress – on file with author).

Neel is one of those pre-tenure professors Rose is concerned about. He also spends considerable time on class preparation, noting, “I would say, three of the seven days of the week [last term] were really devoted to making sure teaching was going well, either because I was teaching or just amending my notes and learning from them.” Daniel, also pre-tenure, calculates, “I spend around six hours or five hours preparing for a single class.” This is true even though he is teaching courses he has taught before. He adds, “I’m already quite familiar with the material so it’s not anything new for me, but still I have to revise my slides, make sure that everything’s accurate, make sure that the Supreme Court did not overrule what I’m teaching.” The format has changed too. He not only teaches via Zoom, but also records asynchronous lectures, which adds an additional time component to his schedule: “Every class is an hour and fifteen [minutes]. And I have one live session, and then a recorded session which I also have to prep for.”

With all that time spent on teaching, as well as a documented increase in childcare responsibilities at home and service duties on campus, women faculty have even less time to devote to scholarship.¹²⁵ Most law schools assess faculty applying for tenure according to three specific and well-established criteria. As Fred, a pre-tenure scholar of color, notes: “They look at scholarship, teaching, and service”—in that order. Though all are listed as criteria for assessment, scholarship, teaching, and service are not weighted equally.¹²⁶ Most institutions value scholarship above all else, not only for tenure and promotion, but also when determining financial bonuses, allocating summer funding, or otherwise deciding which faculty to publicly applaud.¹²⁷ As Alexis notes, “The people who get the accolades at our law school, who get written about on the website, who get the raises and promotions, are the people who publish in the top journals.” Sometimes, even when scholarship is not officially required for renewal or promotion, it is nevertheless an unofficial but critical part of the assessment. Cristobal, a Legal Writing professor on a

125. Deo, *supra* note 114; Deo, *supra* note 33.

126. For more on the unequal assessment of scholarship, teaching, and service for tenure and promotion purposes, see DEO, *supra* note 14, at 81-83, 85-90; Deo, *supra* note 98; Barnes & Mertz, *supra* note 43.

127. DEO, *supra* note 14.

renewable contract, notes that “in the contract itself, [scholarship is] not required, but it’s part of the evaluation even though it’s not in the policy.” Teaching tends to be important as well—and for all the reasons given above regarding retention of students during COVID, especially important during the pandemic.

Various forms of service are supposedly valued institutionally, though not all service is treated equally. In particular, formal committee work, such as student mentoring, serving as faculty advisors for student groups, supervising student notes, and other forms of internal service are often appreciated as critical to the functioning of the law school as well as the larger university campus at law schools that are so affiliated.¹²⁸ Administrators tend to say they value all types of service, though many professors consider this simply lip service. As Paulette notes, “The students and the mentoring and the service they say is valued, but it isn’t.” Because there is little institutional reward or recognition, she continues, “a lot of people don’t pull their weight on it.” Paulette’s observations track what other empirical data and research has revealed: “[I]t’s usually the women who pull most of the weight with that, in my perspective. Women of color, yes. I could say faculty of color, but not really. Because the men, I don’t feel like they’re doing as much.” The PELA data confirm this.

Given the increases in teaching and the heightened service load many women carry, little time remains for the high-value production of scholarship. Oliva notes:

I just can’t do scholarship. In between teaching an eighty-person class and a twenty-person class that is new, for the first time, that I was made to teach pre-tenure, and doing all of that online and responding to student needs, I just physically don’t have time to do any scholarship.

Not only is she pressed for time, but the intellectual engagement required for high level scholarship is much more difficult to sustain when the day is full of competing tasks. Olivia notes, “The few hours that I have a day, I’m so burnt out I can’t possibly write anything that is coherent, you know, much less quality scholarship.”

128. For more on the importance of service, see DEO, *supra* note 14, at 87-88 (2019); see also Co, *supra* note 49; Baskaran, *supra* note 49; Harris, *supra* note 49.

A tenure-track professor named Arthur explains the process for developing research. He notes, “The production of scholarship I think requires a particular process that needs space, time and ability.” He worries that in the COVID Era in particular, many faculty “frankly just don’t have the resources to get help and to make it all work.” Teaching will get done. He says, “You will always remember class because class requires an audience and you have to prepare for the audience. There’s very clear tasks that you have to get done on a given day and time for the class.” Scholarship, on the other hand, requires more time to complete and yet has fewer fixed deadlines. Thus, he adds, “the research and the writing can be something that gets put off and the time or the ability to engage isn’t necessarily always present because of all the things that are filling that time.”

In addition to the required teaching for faculty, a typical day for associate deans and those in similar leadership roles is filled with administrative duties. Lila, a full professor and administrator of color, is up every day at 5:00 A.M. to work on scholarship. Despite blocking out the first two hours of her day for research time, she notes, “Sometimes I’m not able to because I just am overloaded with administrative work.” When she is able to focus on research, she often prioritizes smaller projects that she knows she can tackle and complete, rather than the full-length academic articles that are expected and applauded on most campuses, including her own. She mentions:

[There’s this] paper that I’ve been working on for a while. I’m still working on it! Because I just haven’t had any time this past year to think deeply. And so I’ve been able to get the smaller projects done. The book chapters, and this and that, but a big project like this? I’m just so behind. And it’s painful to me how far behind I am and the fact that I don’t have four hours straight to sit and think, and to read.

Lila does not have time given her many responsibilities at home and work during COVID to devote to the large project she expected to finish a year ago. But she worries her capacity for intellectual engagement is also being sacrificed to her administrative role, noting, “I feel like I don’t have the energy for creativity and I don’t have the time for it. And so I can just like do, do, do, [various tasks], but I can’t think big thoughts right now. And that is really hard.”

Similarly, an administrator named Elizabeth is disappointed to admit, “I didn’t write a thing that summer [2020]. My summer was all logistics.” She served on the university’s COVID Task Force, which included “a group of faculty and administrators who were dealing with the day-to-day stuff.” Because most of her colleagues struggled with the online teaching format in spring 2020, she says, “I ended up running for our faculty a summer class on physically-distanced hybrid and online teaching.” She laughingly mentioned in her PELA interview, “I had never done any of those things before.” Nevertheless, she continues:

I basically told the faculty, ‘I’m going to read all the books and I’m going to go to all the trainings and my goal is not to stand up here as an expert, but it is to synthesize all the material, so that you don’t have to read all the books and you don’t have to go to all the trainings.’

Because it was all new to Elizabeth as well, ingesting this novel information and then sharing it with her colleagues through weekly trainings took considerable effort as well as time. Nevertheless, she says, “I did that once a week through most of the summer and that took a lot of time to read all the books and go to other trainings.” She remembers that individual faculty members contacted her frequently even in early summer expressing that they were “so concerned with what they would teach, how they would teach, how it would work.” And yet for the administrators, “it’s like we couldn’t even think about that ‘til August. I didn’t get to think about my own class until a week before it started. That was the least of what we were trying to juggle.” With teaching on the back-burner due to administrative duties, research disappeared altogether from her priority list. Elizabeth notes, “When service or administrative stuff is roughly 70% of my life, I cannot do all three [scholarship, teaching, and service]. So, I’m lucky that I have that privilege to just let scholarship go.” She has this privilege because she is already tenured. In fact, she noted during her interview, “I remember a conversation I had yesterday with one of my colleagues, and he said, ‘So, what are you working on now?’ And I was like, ‘Oh my God, nothing.’ In the last two years, I’d published four articles. I have nothing going right now.” Her scholarship has suffered because her time is consumed by service.

V. CONCLUSION: TOWARDS AN EQUITY-FOCUSED MODEL

As these new empirical findings coupled with pre-pandemic literature reveal, an intervention in legal education is long overdue. COVID has heightened disparities to such disturbing levels that we can no longer ignore them. Many of these challenges existed pre-pandemic and they will continue into the post-pandemic world if we leave them unchecked.

What could the future of legal education include? A recent symposium (of which I was a co-convener) invited scholars from around the nation and the world to join together to reimagine legal academia as a place that respects and supports caregivers, including the work they do on campus and at home.¹²⁹ These sorts of gatherings and opportunities to reinvent a more equitable future are critical first steps on the path to creating a more just and fair system of legal education as well as improving the legal profession.¹³⁰

If we are to work toward equity, we must first understand and embrace it. Any student who has completed a course on Civil Procedure can explain a common understanding of equity as it relates to law, because the term is often first introduced in that space.¹³¹ American civil courts adopting English common law differentiate between legal remedies (i.e., monetary damages) and equitable relief (which “typically refers to injunctions, specific performance, or vacatur,”) applying the latter “when a legal remedy is insufficient or inadequate.”¹³² Beyond this historical understanding, legal scholarship has considered ways to pursue equity both inside and outside the civil system.¹³³ Thus equity’s roots in justice and fairness are evident.

129. Professors Cyra Choudhury, Shruti Rana, and I convened the first and second COVID Care Crisis Symposia in January 2021 and June 2022. More information, including a list of participating scholars, is available at <https://hls.indiana.edu/covid-symposium/index.html>.

130. *Penn State Dickinson Law Announces Plans for Antiracist Development Institute*, PA. STATE UNIV. (Nov. 24, 2021), <https://dickinsonlaw.psu.edu/dickinson-law-announces-antiracist-development-institute>.

131. See generally JACK H. RIEDENTHAL ET AL., *CIVIL PROCEDURE: CASES AND MATERIALS* (13th ed. 2022).

132. *Equity*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/equity>; Samuel L. Bray, *A Student’s Guide to the Meanings of ‘Equity’*, OPEN SCI. FRAMEWORK (Jul. 20, 2016) <https://osf.io/sabev>.

133. Maggie Blackhawk, *Equity Outside the Courts*, 120 COLUM. L. REV. 2037 (2020); Caprice L. Roberts, *Remedies, Equity & Erie*, 52 AKRON L. REV. 493

In more common parlance, equity involves “justice according to natural law or right,” and specifically “freedom from bias or favoritism.”¹³⁴ A more detailed explanation notes that equity brings to mind a “situation in which everyone is treated fairly according to their needs,” which not only raises the justice concerns of the first definition but also recognizes that different people have different needs.¹³⁵ When we consider equity in regards to groups we can think also about group (not just individual) needs, such that equity for various groups requires us to first understand and then to respond to their various and specific needs. To achieve an equitable outcome, each group should receive what they need.

In addition to these stand-alone definitions, we can also better understand equity by contrasting it with its close and more famous cousin, equality. “While equality suggests that all people should get the same thing, equity demands that each person gets what is fair.”¹³⁶ For decades, policymakers have focused on equality rather than equity, resulting in a misconception that justice is served when everyone is treated the same.¹³⁷ Yet equality in process or treatment does not always produce reasonable outcomes, particularly when the populations seeking remediation or accommodation are different in significant ways from those benefitting from maintaining the status quo. Treating different people or groups the *same* though they are situated *differently* is not always just.

Take one prominent but controversial example: Should parental leave policies apply equally (meaning in the same fashion) to men and women? Studies have shown that fathers are more likely to take parental leave months after a child’s birth when the baby is already sleeping through the night and other full-time care arrangements have been made.¹³⁸

(2018); Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417 (2017).

134. *Equity*, MERRIAM-WEBSTER (2022), <https://www.merriam-webster.com/dictionary/equity>.

135. *Equity*, CAMBRIDGE UNIV. PRESS (2022), <https://dictionary.cambridge.org/us/dictionary/english/equity>.

136. Deo, *supra* note 69, at 276.

137. See, e.g., Reva B. Siegel, *Equality Divided*, 127 HARV. L. REV. 1 (2013).

138. Justin Wolfers, *A Family-Friendly Policy That’s Friendliest to Male Professors*, N.Y. TIMES (Jun. 24, 2016), <https://www.nytimes.com/2016/06/26/business/tenure-extension-policies-that-put-women-at-a-disadvantage.html#:~:>

Compare this to mothers who tend to take leave immediately after giving birth; most women require time to recover physically after childbirth and they also perform more hands-on childrearing in those early months.¹³⁹ It is not surprising then that men who are professors tend to use at least part of their time on parental leave working on scholarship in order to augment their research portfolio, leaving women who take family leave to actually care for a child even further behind.¹⁴⁰ This paradox is the direct result of equality, an unjust outcome based on a process of treating everyone the same. What could we accomplish in terms of justice, fairness, and advancement for women by applying equity principles to parental leave instead? How could we treat women *differently*, in recognition of how their experiences as parents (mothers) differ from those of men (fathers), that could better serve our deeper goals of justice and fairness?

I have written previously that equity must be coupled with diversity and inclusion, as it “goes beyond the numerical underpinnings of structural diversity to consider the more profound and powerful goals of justice and fairness.”¹⁴¹ I have noted as well the imperative to apply an equity model not only to the hot-button issue of admissions, but to the rest of legal education—both coupling diversity with inclusion and equity as well as merging recruitment with retention.¹⁴² This Article advocates for administrators, professors, and policymakers to apply this concept even more broadly, considering the ways different groups have different needs and referencing the divergent experiences of faculty from various backgrounds as well as those of students. Others also have suggested changes to legal education that would reduce hierarchies and promote

text=They%20found%20that%20men%20who,the%20output%20of%20female%20economists (adoptive parents are not even considered).

139. Women often need time to physically recover from childbirth. See Jacqueline Fawcett & Lorraine Tulman, *Recovery from Childbirth: Looking Back 6 Months After Delivery*, NAT'L LIBRARY OF MED. (Jul.-Sep. 1991), <https://pubmed.ncbi.nlm.nih.gov/1885344/> (revealing that one-quarter of women studied did not feel physically recovered from childbirth even six months after delivery and almost half found those first six months “more difficult than anticipated”).

140. Wolfers, *supra* note 138.

141. Deo, *supra* note 69, at 276.

142. *Id.* at 279.

integrity.¹⁴³ This is how we model striving for greater equity. And how we create an equity-focused model for legal education.

The primary purpose of this publication is to empirically document how the pandemic has led to deepening disparities related to basic needs, mental health, and academic and professional success for different populations in legal education. Various themes on improving the student and the faculty experience run throughout the Article. Among other suggestions, administrators, faculty, and policymakers should work together to explode existing status hierarchies in legal academia, rethink tenure and promotion policies to place greater value on service work, recognize that students from different backgrounds have different support needs, and appreciate how the intersection of raceXgender creates unique barriers for non-traditional students and faculty alike.

One of my own current research projects delves more deeply into ways in which caregivers have been neglected throughout the pandemic, precisely when society has relied on them more than ever to care for their own families, communities, co-workers, and students.¹⁴⁴ Another proposes a framework built on the equity-focused model presented here as a way to “disrupt” legal education.¹⁴⁵ That piece addresses hierarchies directly, proposing we use this time of COVID in which we are reinventing teaching and managing other seismic shifts to contemplate a reinvention of legal education as a whole, centering diversity, equity, and inclusion to achieve better outcomes for all populations. We should end the

143. See, e.g., Darby Dickerson, *2020 AALS Presidential Address*, ASS'N OF AM. L. SCH. (Jan. 4, 2020), <https://www.aals.org/about/publications/newsletters/aals-news-winter-2020/2020-aals-presidential-address/>; Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS L. REV. 923 (2021); Alexa Chew & Rachel Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works*, 100 NEB. L. REV. (2021); L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 UTAH L. REV. 837 (2022); Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 469 (2004); Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41 (2010).

144. Deo, *supra* note 114.

145. Deo, *supra* note 124. Here, “disrupt” means “to cause significant change in an industry or market by means of innovation,” with targeted diversity, equity, and inclusion projects as the principal innovation. *Disrupt*, OXFORD LEARNER'S DICTIONARIES (2023), <https://www.oxfordlearnersdictionaries.com/us/definition/english/disrupt?q=disrupt>.

arbitrary title, status, and pay disparities that differentiate between types of law teachers. We should also combat the raceXgender (and other intersectional) biases that plague women of color and other non-traditional participants in legal education, whether they are students or faculty.¹⁴⁶

My previous scholarship has noted the importance of tying diversity with equity and inclusion to improve not only recruitment of law students and law faculty but also retention.¹⁴⁷ We must take account of difference, rather than catering to the white male, straight, cis-gendered norm in order for legal education and the legal profession to be more equitable on multiple fronts. We have increasing volumes of research documenting how race-, gender-, and raceXgender-based disparities that existed pre-pandemic have been exacerbated since.¹⁴⁸ My own scholarship has proposed both administrative and legislative solutions to these challenges.¹⁴⁹ This Article ties together these various strands of previous and ongoing research with a rich body of emerging student and faculty data in order to invite further discussion on the future of legal education, a future that celebrates not only diversity and inclusion, but also equity, where together we create a space where those traditionally excluded instead are welcomed for their unique contributions and made to believe they fully belong.

146. *Id.*

147. *See generally* Deo, *supra* note 69.

148. Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63 (2011); DEO, PETZOLD, & CHRISTENSEN, *supra* note 73; DEO, *supra* note 14; Deo, *supra* note 36.

149. Deo, *supra* note 109.