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# ***AN EMPIRICAL ANALYSIS OF CLINICAL LEGAL EDUCATION AT MIDDLE AGE***

Robert R. Kuehn\* and David A. Santacroe\*\*

Modern clinical legal education has turned fifty. Much has been written on its development and history, both as a pedagogy and in relation to the broader enterprise of legal education. But there has been no longitudinal *empirical* analysis documenting that growth until now. By looking at a series of nationwide surveys starting in 2007 and comparing those results to surveys dating back to the 1970s, this article paints a factual picture of clinical legal education's progression from early adulthood to middle age.

By empirically analyzing fifty years of data on law clinic and field placement courses and faculty, this article seeks to inform the present and help those shaping its future. Part I provides an overview of many of the surveys that support this article. Using this data, Part II provides an empirical overview of law school clinical programs from the early 1970s to today. Part III examines those teaching law clinic and field placement courses, providing data on the nature of their jobs, rights, and responsibilities within the broader legal academy. Part IV takes a close empirical look at law clinic courses and their growth, size, structure, and content. Part V takes a similar look at field placement courses. This comprehensive empirical analysis shows clinical legal education's tremendous growth and evolution over the past five decades. It also provides educators with the data for a much-needed fact-based approach to deliberations on the role of clinical legal education in preparing students for the practice of law.

## **I. TRACKING CLINICAL LEGAL EDUCATION'S GROWTH**

In the late 1950s, only fifteen American Bar Association-approved law schools offered their students for-credit learning opportunities based on a "legal aid clinic model."<sup>1</sup> To address this dearth of opportunities, the National Council on Legal Clinics (NCLC) was created in 1959 with a Ford Foundation grant.<sup>2</sup> Over the next six years, NCLC gave nearly a half-million dollars to nineteen law schools to help further live-client law clinics.<sup>3</sup> Still, despite NCLC's efforts and ever-increasing calls for increased clinical opportunities, the vast majority of U.S. law students remained exclusively immersed in the Langdellian-based case method of learning.<sup>4</sup>

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\*\* Clinical Professor of Law, University of Michigan Law School. The author is the president and founder of CSALE. CSALE, upon which much of the survey data in this article is based, would not be possible without financial assistance from the Association of American Law Schools, Clinical Legal Education Association, Law School Admissions Council, law schools, and individual educators.

<sup>1</sup> Cleon H. Foust et al., *Report of Committee on Legal Aid Clinics*, 1959 ASSOC. AM. L. SCH. PROC. 121, 122 (1959).

<sup>2</sup> J.P. "Sandy" Ogilvy, *Celebrating CLEPR's 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 10–12 (2009).

<sup>3</sup> *Id.* at 11.

<sup>4</sup> Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 187 (2008).

As the 1960s progressed, the anti-poverty movement gained momentum.<sup>5</sup> Movement lawyers increasingly saw law students as capable foot soldiers in their struggle, and university students increasingly made demands for social engagement and relevance.<sup>6</sup> In exchange for student assistance, anti-poverty lawyers focused some of their time on helping the students learn the methodology and art of lawyering through supervised practice with live clients. Law schools increasingly bestowed credits for this student work, and the supervising lawyers slowly began to migrate from employment outside law schools to employment as faculty within law schools.<sup>7</sup>

In 1968, the potential societal and educational benefits of clinical legal education piqued the interest of the Ford Foundation. The foundation gave \$10 million over the next twelve years to promote clinical education in the legal academy.<sup>8</sup> With that gift, the Council on Legal Education for Professional Responsibility (CLEPR) was formed in 1969. CLEPR was founded upon the notion that:

Clinical work at the professional school level has important and unique educational, human, and social values for all the students and faculty—and the machinery of justice . . . . [O]nly clinical education effectively places the practitioners-to-be in the chaos of real life; sharpens their skills in this context; teaches them to triumph over emotional stress and tensions as professionals; heightens their appreciation of quality standards of practice; shows them what it is to be people-oriented; enables them to help the machinery of justice function better by their presence as lawyers in training; and, above all, exposes them to the complexities and demands of justice on the level at which it operates . . . . Ultimately, all students should have this experience in law school.<sup>9</sup>

CLEPR also made plain what it saw as the benefit of law clinics beyond the school campus:

So far as society is concerned it sorely needs the services which only law students and their professors can provide in the great mass of individual cases involving the “little man” . . . . It behooves legal educators and law students to learn that they will be great movers of social forces if they act forcefully and directly where their talents and position give them strategic influence . . . . Fighting for justice

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<sup>5</sup> LEON H. GINSBERG & JULIE MILLER-CRIBBS, UNDERSTANDING SOCIAL PROBLEMS, POLICIES, AND PROGRAMS 38–39 (2005); George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 173 (1974) (“The social change of the late 1960’s which proved to have the greatest impact on the development of clinical legal education stemmed from the awakening interest of the government in the conditions of the poor.”); PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 3 (1998).

<sup>6</sup> SCHRAG & MELTSNER, *supra* note 5, at 7–8, 10.

<sup>7</sup> *Id.* at 7–9.

<sup>8</sup> Roy T. Stuckey, Education for the Practice of Law: The Times They Are A-Changing, 75 Neb. L. Rev. 648, 649 (1996).

<sup>9</sup> William Pincus, *The President’s Report*, FIRST BIENNIAL REP. OF THE COUNCIL ON LEGAL EDUC. FOR PRO. RESP. (1970), reprinted in WILLIAM PINCUS, CLINICAL EDUCATION FOR LAW STUDENTS 29-30 (1980).

for an individual is essential for the individual and for the society if it is to continue to be a society worth living in.<sup>10</sup>

CLEPR's formation around these ideas was seminal to the development of clinical legal education. "CLEPR's original emphasis was on encouraging law schools to supplement the workforce of local legal services offices, but CLEPR later shifted its priorities to support for clinics housed and staffed directly by the schools."<sup>11</sup> Through 1978, CLEPR awarded 209 grants to 107 law schools to establish live-client clinics, effectively starting modern clinical legal education.<sup>12</sup> With CLEPR's grants and funding from 1978 to 1997 of \$87,134,000 million through the U.S. Department of Education's Title IX grant program,<sup>13</sup> clinical programs grew significantly, though the contours of this growth were only sporadically measured. In a 1978 CLEPR survey, among all law schools there were 172 "school operated and supervised" clinics and another fifty-seven that were housed in "non-school operated" law offices with on-site supervision by law school personnel.<sup>14</sup>

Several subsequent surveys focused on the status of field placement programs, also referred to as "externships." In 1982, Marc Stickgold conducted a survey of law schools about their field placement programs that included only brief questions on law clinics and simulation courses.<sup>15</sup> In 1992–1993, Robert Seibel and Linda Morton surveyed schools on their field placement programs, seeking information on their number, nature and teaching approaches.<sup>16</sup> In 2002–2003, Seibel also conducted an unpublished survey on field placement programs with Sandy Ogilvy that was designed to allow comparisons with the data collected in the earlier surveys by Stickgold and Seibel/Morton.<sup>17</sup> A final unpublished field placement survey was conducted from 2007 to 2009 by Sudeb Basu and Sandy Ogilvy to further examine the state of field placement programs.<sup>18</sup>

The first post-CLEPR survey of law clinics occurred in 1987 when the Association of American Law Schools Section on Clinical Legal Education (AALS Clinical Section) created a special committee "to examine a broad range of issues related to live-client, in-house clinical

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<sup>10</sup> *Id.* at 71-72.

<sup>11</sup> Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 191 n.29 (1989).

<sup>12</sup> Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 18–21 (2000) (describing CLEPR's role).

<sup>13</sup> *Id.* at 19.

<sup>14</sup> COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, *SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION 1977–1978* (1978).

<sup>15</sup> Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 N.M. L. REV. 287 (1989). Stickgold sent questionnaires to 172 schools and received information on field placement programs from seventy-three schools. *Id.* at 297–99.

<sup>16</sup> Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413 (1996). Seibel and Morton conducted their study by mailing surveys to 176 law school and also distributing surveys to clinical teachers at conferences. They received responses from sixty-eight schools (a 38% response rate) and information on ninety-eight externship courses. *Id.* at 422.

<sup>17</sup> J.P. Ogilvy & Robert F. Seibel, *Externship Demographics Redux* (The Cath. Univ. of Am., Working Paper No. 2007-13, 2007), <http://ssrn.com/abstract=1077551>. The survey was mailed to 195 law schools; 112 schools (57%) responded, providing information on 264 courses. *Id.* at 14–15, 18.

<sup>18</sup> Sudeb Basu & J.P. "Sandy" Ogilvy, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLINICAL L. REV. 1, 20 (2012), <http://ssrn.com/abstract=2038455>. The survey was extensive, collecting data from 190 of 200 ABA-approved law schools and 665 field placement courses. *Id.* at 2, 8.

education.”<sup>19</sup> The Committee on the Future of In-House Clinics soon decided it needed data to support its work and conducted a national survey of clinic programs.<sup>20</sup> The survey results were published in a 1991 report<sup>21</sup> and analyzed by committee member Marjorie Anne McDiarmid in *What’s Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*.<sup>22</sup> The survey results provided a detailed look at clinics—offerings, student demand, and enrollment size—and who, in a general way, was teaching in clinic programs.<sup>23</sup> At the time of the survey, 80% of approved law schools were offering at least one law clinic.<sup>24</sup> However, as the title to McDiarmid’s article makes clear, while clinic programs were growing, they, and those teaching in them, still tended to operate on the fringes of the legal academy in the proverbial, if not literal, basement.

The next in-depth study of law clinics took place two decades later, in 2007. In the midst of a growing debate over the proper place of clinical legal education and its teachers in the legal academy, the AALS Clinical Section decided to revisit the status of clinical education by appointing the Task Force on the Status of Clinicians and the Legal Academy.<sup>25</sup> The task force was charged with analyzing the various models used for the employment of persons teaching in law clinics and collecting data on the current status of clinic educators.<sup>26</sup> Out of the task force’s need for data grew the Center for the Study of Applied Legal Education (CSALE), an independent nonprofit developed by the authors. CSALE’s initial 2007 survey was larger in scope and more comprehensive than the 1987 AALS survey. Still, the CSALE survey was designed to replicate most of the 1987 questions, as well as those in earlier field placement surveys, to allow for longitudinal tracking.

CSALE has conducted its surveys of law clinic and field placement programs every three years since 2007. Much of the data that follows is from those five CSALE surveys and subsequent reports on the results.<sup>27</sup> The surveys are conducted online in two phases. CSALE solicits program-wide data from the person at each ABA-approved school with oversight responsibility for law clinics and field placement programs. This “master survey” is followed by a more granular “subs survey” sent to persons identified by the school in the master survey as teaching in their law

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<sup>19</sup> Robert Dinerstein, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 508 (1992).

<sup>20</sup> *Id.* at 509.

<sup>21</sup> *Id.*

<sup>22</sup> Marjorie Anne McDiarmid, *What’s Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y. L. SCH. L. REV. 239, 240-241 (1990).

<sup>23</sup> *Report of the Committee on the Future of In-House Clinic*, *supra* note 19, at 518–50.

<sup>24</sup> McDiarmid, *supra* note 22 at 242.

<sup>25</sup> Bryan L. Adamson et al., *Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention*, 62 J. LEGAL EDUC. 115 (2012).

<sup>26</sup> *Id.* at 115–16.

<sup>27</sup> DAVID A. SANTACROCE & ROBERT R. KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION: REPORT ON THE 2007–2008 SURVEY (2008); DAVID A. SANTACROCE & ROBERT R. KUEHN, THE 2010–11 SURVEY OF APPLIED LEGAL EDUCATION (2011); ROBERT R. KUEHN & DAVID A. SANTACROCE, 2013–14 SURVEY OF APPLIED LEGAL EDUCATION (2014); ROBERT R. KUEHN & DAVID A. SANTACROCE, 2016–17 SURVEY OF APPLIED LEGAL EDUCATION (2017); ROBERT R. KUEHN, MARGARET REUTER & DAVID A. SANTACROCE, 2019–20 SURVEY OF APPLIED LEGAL EDUCATION (2020) (reports referred to herein by earliest year of the survey, such as “the 2007 CSALE survey”).

clinic and field placement courses.<sup>28</sup> The surveys are comprehensive and have earned broad, representative participation—95% of schools and over 1300 law clinic and field placement teachers provided information for the 2019–2020 survey.<sup>29</sup> In addition to publicly available reports on the results of each survey, CSALE has prepared hundreds of customized data reports for use by law schools, legal educators, scholars, and regulatory bodies examining issues in legal education.

Much has happened in clinical legal education since CLEPR’s first survey in 1970.<sup>30</sup> American Bar Association (ABA) accreditation standards now require that schools provide “substantial opportunities to students” for law clinics or field placements.<sup>31</sup> The ABA also now closely regulates the content of clinic and field placements<sup>32</sup> and the terms and conditions of employment of those teaching those courses.<sup>33</sup> Today, all ABA-approved law schools offer a least one field placement course, and all but six also offer at least one law clinic.<sup>34</sup> Throughout this period of growth, clinical pedagogy, too, has continued to develop and mature.<sup>35</sup>

The remainder of this article provides, for the first time, an analysis of this growth over the past five decades in a comprehensive, data-driven manner. Where data over time suggests an important trend, we have tried to interpret these changes, while realizing not every difference in survey results has a reason that we can accurately explain. Also, surveys and reports unfortunately do not always cover the same issues or ask questions in the same manner, so some charts and graphs present a more robust picture of the past than others. Finally, in the interest of length, we have been selective in presenting available data. Those seeking additional information on law clinic and field placement programs should consult the numerous surveys and reports referenced in the footnotes.

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<sup>28</sup> Reports on the five surveys are available at <https://www.csale.org/#results>. The results of the five CSALE surveys are referred to in charts and graphs herein as “CSALE 2007,” “CSALE 2010,” “CSALE 2013,” “CSALE 2016,” and “CSALE 2019.”

<sup>29</sup> The survey is highly representative of ABA-approved law schools. Of the eight regions of the country used for classifying schools by geography, 100% of the schools in five of the regions participated in the 2019 CSALE survey, with 89%, 90%, and 93% participation from the other three regions. 2019 CSALE REPORT, *supra* note 27, at 3. All but one of the 147 top-ranked schools in the *U.S. News & World Report* annual ranking of law schools participated in the survey, with 83% participation from the remaining schools. *Id.* at 4–5.

<sup>30</sup> For a more complete retelling of the early history of clinical legal education, see Joy & Kuehn, *supra* note 4, at 184–88; Barry et al., *supra* note 12, at 5–22; Douglas A. Blaze, *Deja Vu All over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 941–45 (1997); George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 163–73 (1973). For an abbreviated chronology, NAT’L ARCHIVE OF CLINICAL LEGAL EDUC., *Timeline*, <https://www.law.edu/nacle/timeline.html> (last visited Aug. 10, 2021).

<sup>31</sup> SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *Standard* 303(b)(1) (2022–2023).

<sup>32</sup> *Id.* at *Standard* 304.

<sup>33</sup> *Id.* at *Standard*. 405. In 1984, the ABA adopted Accreditation Standard 405(e) stating that law schools *should* afford clinical faculty “a form of security of position reasonably similar to tenure.” In 1996, the ABA amended this regulation (by then recodified as 405(c)) by replacing the suggestive “*should*” afford with a declarative “*shall*.” Joy & Kuehn, *supra* note 4, at 212.

<sup>34</sup> Law clinic and field placement course data from 2021 law school annual reports at SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, *509 Required Disclosures*, [https://www.americanbar.org/groups/legal\\_education/resources/statistics](https://www.americanbar.org/groups/legal_education/resources/statistics).

<sup>35</sup> Barry et al., *supra* note 12, at 16–18.

## II. CLINICAL PROGRAMS OVERVIEW

This section explores the nature of law school clinical legal education programs, their oversight, program requirements, enrollment growth, and impact.

### A. Oversight

Oversight of law clinic and field placement programs has changed in significant ways over the past five decades. In short, the “clinic director” positions that schools originally created to oversee *only* all law clinics have evolved into clinical or experiential program director or associate dean positions with oversight responsibility for all law clinic *and* field placement courses. In addition, the number of “externship program director” positions with oversight of *only* all field placement courses has risen dramatically.

In the first CSALE survey in 2007, half of schools had one person responsible for the oversight of both law clinics and field placement courses, typically referred to as a clinical program director. By 2019, that figure was 58%. And among those with oversight of all clinic and field placement courses, the percentage with “dean” in their title more than doubled, increasing from 27% in 2007 to 60% in 2019. This rise of the clinical program deanship likely reflects the increasing number of law clinic and field placement courses and size of clinical faculties, with a concomitant increase in the complexity of designing and managing both.

Over half of faculty with oversight of all law clinics and field placement courses in the 2019 CSALE survey had the title of “experiential” dean, a title no person reported in 2007. This new title is due, in part, to the ABA’s use of the term “experiential” when adopting its new professional skills requirement in 2014, a signal that the position’s duties often extend beyond just oversight of clinic and field placement courses. In the 2019 CSALE survey, 63% percent of those responsible for oversight of all clinical education courses also had responsibility for other law school programs. The most common additional responsibility was oversight of simulation/practicum courses (for 61% of clinical/experiential deans/directors), followed by pro bono programs (36%), trial advocacy (34%), and legal writing/practice courses and moot court program (both 22%).

Not surprisingly, during the same period that schools were creating new positions to oversee the entire clinical program, the number of schools with a single person with oversight of *only* all law clinics decreased from 56% in the 2007 CSALE survey to 33% in 2019. Many of these positions no doubt migrated to experiential or clinical director or deanships with oversight of both clinics and externships.

Oversight of *only* externship programs, however, increased dramatically during the same period. In 2007, approximately 35% of schools in the CSALE survey had an individual responsible for oversight of *all* field placement programs. By 2019, this number had risen to 64%. This increase likely reflects both the growth of field placement course offerings and increased awareness by schools of the importance and complexity of field placement programs.

## B. Program Requirements

Some schools limit the number of credits students can earn in law clinic or field placement classes, while others require or guarantee a clinical experience. Limits on credits are in addition to the restriction in ABA Accreditation Standard 311(a) on non-classroom units that applies to field placements and other study outside the classroom, but not to clinics.<sup>36</sup> Still, slightly over one-third of schools in the 2019 CSALE survey limited the number of clinic credits a student may apply toward graduation requirements (a decrease from 53% in 2007), with the most common limit twelve clinic credits. In 2019, 62% of schools limited the number of field placement credits, a decrease from 71% in the 2017 survey and 80% in 2013, with the most common limit again twelve credits. The gradually decreased limits on credits suggest an increasing acceptance by schools of the role of clinical courses in a student's legal education and increased deference to the decisions of students on which courses are best for their education.

Until 2014, the ABA limited participation in field placement courses to students who had completed at least one year of their degree requirements. Even after this restriction was lifted, only 3% of schools in the 2019 CSALE survey permitted first-year students to enroll in a field placement course. Schools similarly restrict law clinic enrollment to second-year and later students, with only 4% of schools permitting first-year students to participate in a clinic.

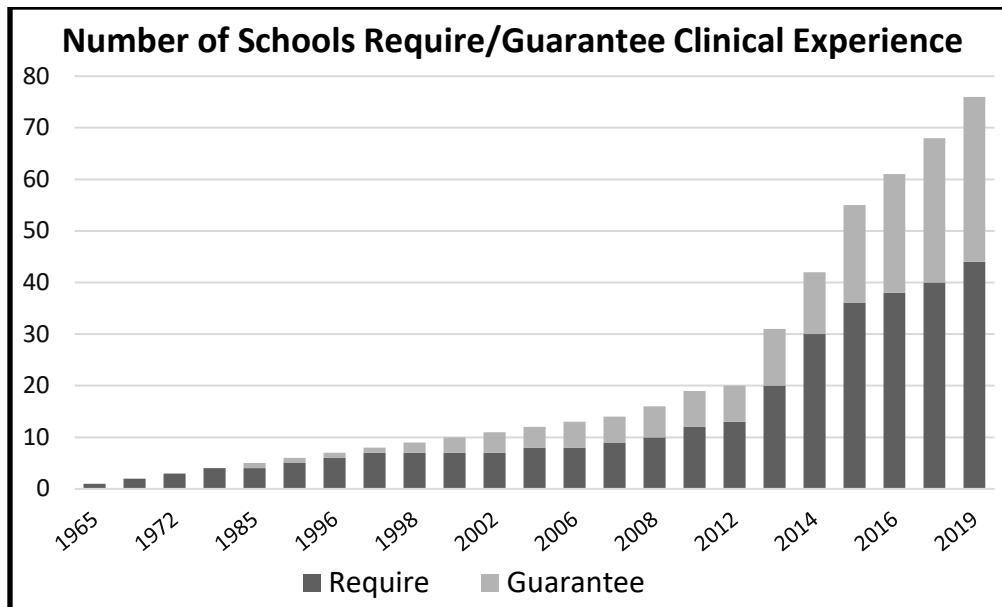
The number of schools requiring or guaranteeing students a law clinic or externship experience has risen substantially. In 1987, just 4% of schools offered “all students some type of clinical experience,” with the term “clinical” at the time encompassing only law clinics.<sup>37</sup> Twenty years later, in 2007, just shy of 5% of schools required students to enroll in a clinic *or* field placement before graduation. By 2019, that number had risen to 22%, with an additional 16% of schools guaranteeing their students a clinic *or* field placement experience, as shown in the graph below.

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<sup>36</sup> ABA STANDARDS 2022, *supra* note 31, at *Standard* 311(a) & Interpretation 311-1(b). The ABA requires that a student earn sixty-four of the ABA minimum eighty-three total credit hours required for graduation in “courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.” *Id.* at *Standard*. 311(a). At schools with a graduation requirement of eighty-three credits, this rule effectively limits to nineteen the total number of credits a student can earn in field placements and co-curricular activities like law review, moot court, and trial competitions. Some schools go beyond this ABA limit and further restrict the total number of credits a student may earn in a clinic or field placement courses. CSALE 2019, *supra* note 28, at 15-16

<sup>37</sup> McDiarmid, *supra* note 22, at 281.





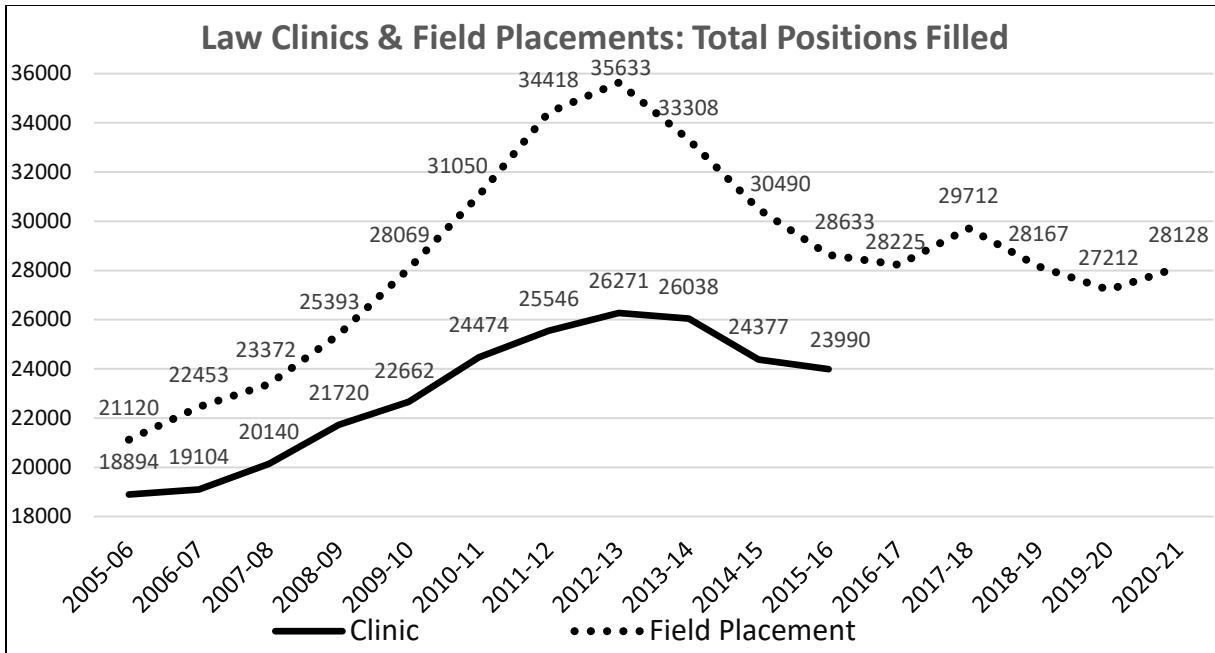
The number of schools requiring or guaranteeing a clinical experience rose substantially after 2012, perhaps spurred by decreased law school enrollments and efforts of schools to attract more applicants. The increase also coincides with the ABA’s adoption of a six-credit experiential training requirement for all J.D. graduates.

In the 2019 CSALE survey, approximately one-quarter of schools required or guaranteed a clinical experience. Fifteen percent required a clinic, a significant increase from just 2% in 2007. However, during this period the number of schools requiring a field placement did not change, remaining at 2%. Most schools with a requirement express no preference between clinics and field placements, requiring students to enroll in one or the other before graduation.

### C. Enrollment Growth

As the chart below makes clear, the total number of J.D. students enrolled in law clinics and field placement courses has increased dramatically over the past decade.<sup>38</sup> There was, however, an eventual decrease that coincided with the contraction of law school enrollment starting in 2013, with field placement course enrollment down 20% and clinics down 9% in the three years after their peaks.

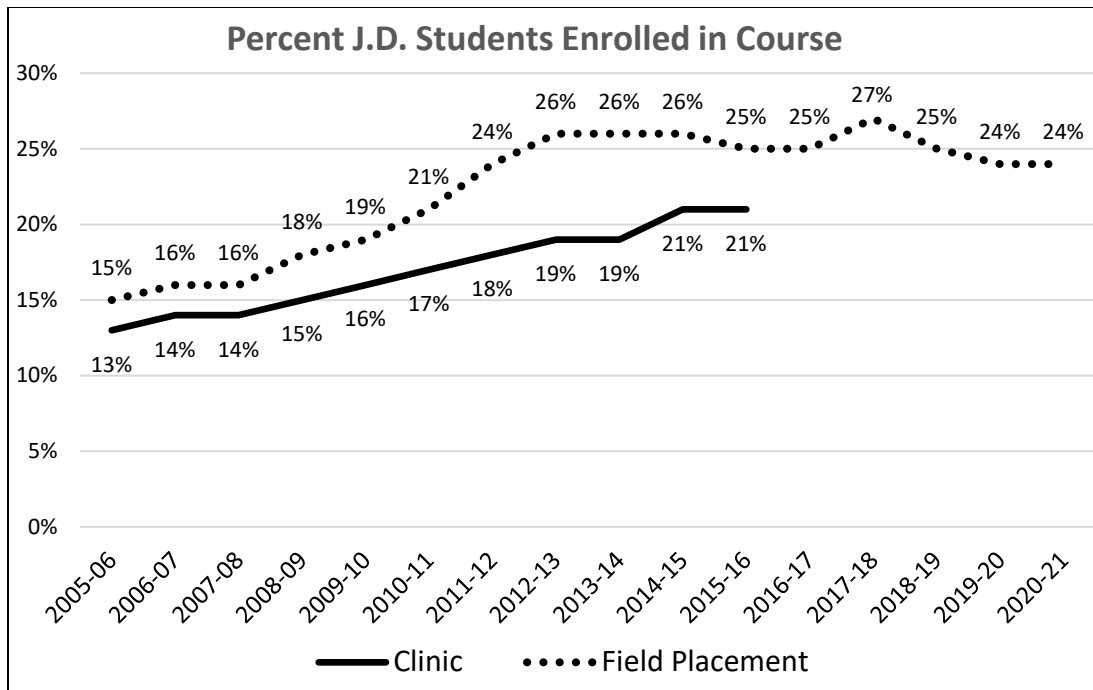
<sup>38</sup> Law clinic and field placement enrollment data from *ABA Required Disclosures*, *supra* note 34.



Since at least from 2005 to 2016, yearly student enrollment in field placement courses has exceeded enrollment in clinics. During the height of law school enrollment, in 2012–2013, field placement exceeded law clinic course enrollments by as much as 40%, and by 19% in the last year that the ABA required schools to report clinic enrollment.

Because the total number of enrolled J.D. students has fluctuated significantly over the past two decades, the number of students enrolled in a clinic or field placement course each year does not tell the full story. Dividing the annual total positions-filled number by overall law school enrollment provides a more accurate picture of participation as a percentage of all J.D. students that year. The graph below shows growth in the percentage of students participating in a clinic or field placement course over the decade from 2005–2006 to 2015–2016.<sup>39</sup> Annual clinic participation increased from 13% of students in academic year 2005–2006 to 21% in 2015–2016, an increase of approximately 60%, while field placement participation rose from 15% to 25% of students, a 67% increase. Despite this significant growth, enrollment in field placement courses has been relatively unchanged since 2013.

<sup>39</sup> *ABA Required Disclosures*, *supra* note 34 (course participation data); LAW SCHOOL TRANSPARENCY DATA DASHBOARD, *Law School Enrollment*, <https://data.lawschooltransparency.com/enrollment/all> (last visited Aug. 4, 2021) (J.D. enrollment data). Basu and Ogilvy’s 2007–2009 survey similarly reported that 19% of full-time students enrolled in an externship course each academic year. Basu & Ogilvy, *supra* note 18, at 6. Note that the ABA stopped requiring schools to report actual law clinic enrollment as of 2016 and now requires only the self-reporting of “available” slots in clinics.



Notably, despite growth in the percentage of students enrolled since 2005, by 2019 still only half of J.D. students graduated with a field placement experience and half with a law clinic experience, as shown below. (Some students take both types of courses and would be, in a sense, counted twice.)

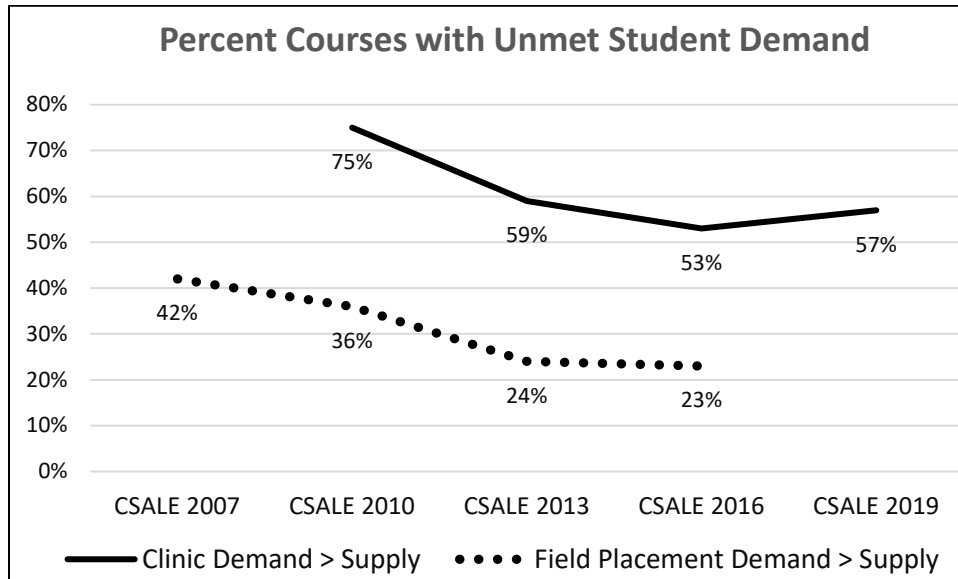
| <i>Median Participate Before Graduate</i> | <i>CSALE 2007</i> | <i>CSALE 2010</i> | <i>CSALE 2013</i> | <i>CSALE 2016</i> | <i>CSALE 2019</i> |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| Field Placement                           | 26-30%            | 31-35%            | 51-55%            | 51-55%            | 50%               |
| Law Clinic                                | 26-30%            | 31-35%            | 41-45%            | 46-50%            | 50%               |

In the 2019 CSALE survey, approximately 85% of students graduated with at least a law clinic *or* field placement practice experience, an increase from 71% to 75% in the 2013–2014 survey. Even among this 85%, many graduated with just two credits or fewer in a clinical course, out of the ABA required minimum of eighty-three total credits.<sup>40</sup> In contrast to law schools, other professional schools require students to spend one-quarter to one-half of their education in clinical practice settings.<sup>41</sup>

<sup>40</sup> In the 2019 CSALE survey, 20% of law clinic and 38% of field placement courses awarded two credits or fewer for the student’s hands-on legal work.

<sup>41</sup> Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. L. REV. 1, app. A (2014) (documenting requirements for various professional schools).

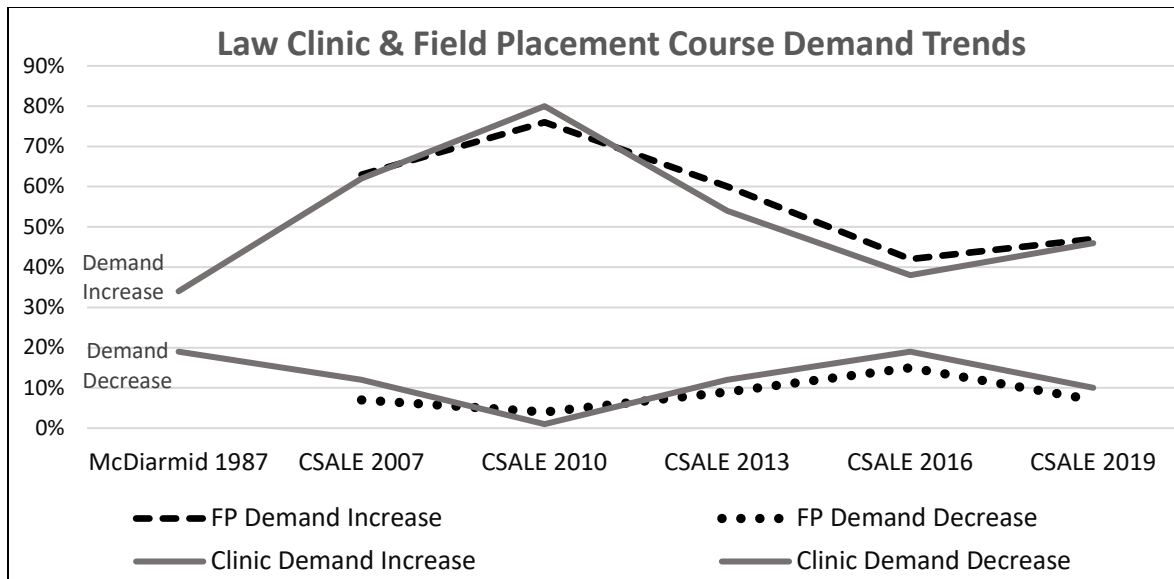
While clinic and field placement participation has risen over the past fifteen years, schools are still far short of meeting student demand for clinical courses. Based on 2019 CSALE data, over half of clinic courses and approximately one-quarter of field placement courses are oversubscribed. This is in spite of an ABA requirement that schools “provide substantial opportunities” for students to enroll in law clinics or field placements.<sup>42</sup> More effort is needed by schools to ensure students obtain the clinical training they desire and—as repeated surveys show—they need.<sup>43</sup>



Like enrollments, student demand for slots in clinics and field placements has shown an up-and-down pattern over time. The graph below shows the percentage of courses with increased demand for both types of clinical experience rising until 2010, followed by a decline, and then small increase in 2019.

<sup>42</sup> ABA STANDARDS 2022, *supra* note 31, at *Standard*. 303(b)(1).

<sup>43</sup> See Robert R. Kuehn, *Universal Clinical Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL’Y 89, 92–95 (2017) (documenting surveys and reports showing the need for increased training in lawyering skills and the value of clinical courses).



The ABA’s 2014 adoption of a new six-credit experiential training requirement,<sup>44</sup> which some thought likely to spur interest in clinic and field placement courses, does not appear to have had a significant effect since its implementation in 2018–2019. Schools overall have not reported increases in the supply or demand for clinic or field placement slots. Slots in clinics were available to 27% of J.D. students in 2017–2018 and still only 27% by 2020–2021; actual field placement enrollment decreased from 27% of students in 2017–2018 to 24% in 2020–2021.<sup>45</sup>

The major challenges to clinical programs from the 2019 CSALE survey are set out in the table below. An insufficient number of clinical faculty, along with other demands on instructor time, have been among the most significant challenges across all CSALE surveys. It is encouraging that insufficient support from the school’s administration or from nonclinical faculty is generally not a major challenge to the operation of today’s clinical programs. This is in contrast with a 1987 survey in which lack of support from other faculty was among the two greatest challenges law clinic programs then faced.<sup>46</sup>

<sup>44</sup> ABA STANDARDS 2022, *supra* note 31, at *Standard* 303(a)(3) (2021–2022).

<sup>45</sup> Law clinic and field placement enrollment and available slots data from *ABA Required Disclosures*, *supra* note 34. See also Robert R. Kuehn, *Implementation of the ABA’s New Experiential Training Requirement: More Whimper Than Bang*, 29 CLINICAL LEGAL EDUC. ASS’N NEWSLETTER 10 (2021) (reporting on data in law school annual reports on number of seats available in law clinics and number of field placement positions actually filled). Allison Korn and Laila Hlass found in a 2018 survey of clinical program directors/deans that 68% indicated their schools had expanded or enhanced their upper-level experiential coursework in light of the new ABA requirement. Allison Korn & Laila L. Hlass, *Assessing the Experiential (R)evolution*, 65 VILL. L. REV. 713, 731 (2020). However, the authors noted that this was a reported increase in courses, not in available slots to students in those courses. *Id.* at 732.

<sup>46</sup> McDiarmid, *supra* note 22, at 266.

| <b>Major Challenges</b>                         | <b>Percent of Schools Reporting</b> |                    |
|---|-------------------------------------|--------------------|
|   | <b>Field Placements</b>             | <b>Law Clinics</b> |
| Other demands on clinical faculty's time        | 45%                                 | 53%                |
| Insufficient administrative support             | 37%                                 | 22%                |
| Insufficient number of faculty                  | 35%                                 | 22%                |
| Insufficient faculty status                     | 24%                                 | 33%                |
| Insufficient hard money (tuition dollars, etc.) | 21%                                 | 53%                |
| Insufficient student demand                     | 10%                                 | 2%                 |
| Insufficient support from nonclinical faculty   | 8%                                  | 10%                |
| Insufficient support from administration        | 7%                                  | 7%                 |
| Insufficient physical/office space              | 2%                                  | 20%                |

#### *D. Impact*

In the aggregate, each year law clinics and field placement programs serve thousands of clients, providing millions of hours' and hundreds of millions of dollars' worth of free legal assistance to individuals, governmental agencies, and nonprofit organizations.<sup>47</sup>

In the most recently available ABA data on enrollment in law clinics, 23,990 students provided legal services through clinics during the 2015–2016 academic year.<sup>48</sup> Using a typical number of fieldwork credits per term from the 2019 CSALE survey (3.5) and the ABA minimum number of required hours/credit (42.5), the average clinic student worked 149 hours during the term on fieldwork.<sup>49</sup> Thus, even discounting the time of clinic teachers, law clinic students provided over 3 million hours of free legal assistance in 2015–2016.<sup>50</sup> If student time were valued at \$100 per hour, a not atypical law firm charge to clients for law student work,<sup>51</sup> students alone

<sup>47</sup> Respondents estimated that their law clinics served over 100,000 clients during the 2018–2019 academic year.

<sup>48</sup> *ABA Required Disclosures*, *supra* note 34.

<sup>49</sup> In the survey, 49% of clinics with fixed academic credits awarded three or fewer, while the remainder awarded four or more.

<sup>50</sup> Very few law clinics charge a fee for their services or provide assistance to for-profit organizations. With only 10% of clinics in 2019 reporting a decrease in student demand for their course, the hours of free legal assistance provided during the 2019–2020 academic year likely also exceeded 3.5 million.

<sup>51</sup> CosmoLex, *How Much Should Our Law Firm Bill for Paralegal Work?*, <https://www.cosmolex.com/resource-center/running-a-law-office/how-much-should-our-law-firm-bill-for-paralegal-work> (last visited Oct. 7, 2021) (concluding after reviewing regions of the country and sizes of law firms that typical billing rates for paralegals fall between \$100 and \$200 per hour, although most fall in the median of that range); *see also* CLIO, 2021 LEGAL TRENDS REPORT 63, <https://www.clio.com/wp-content/uploads/2021/08/2021-Legal-Trends-Report-Oct-26.pdf> (finding that

provided over \$300 million in free annual assistance.<sup>52</sup>

Students in field placement courses similarly provide an impressive amount of free legal assistance to individuals, governmental agencies, and nonprofit organizations, though a significant minority of courses also place students with for-profit organizations and law firms. During the 2019–2020 academic year, 27,543 students participated in a field placement course for a typical number of fieldwork credits of 2.5 per term.<sup>53</sup> Again using the ABA minimum number of hours per credit (42.5), field placement students provided over 3 million hours of free legal assistance in 2019–2020, with a dollar value of \$300 million.

The sections that follow take a closer look at changes in those who teach in clinical programs and at the size and content of their law clinic and field placement courses.

### III. CLINICAL FACULTY

Clinical faculties have changed considerably over the past four decades in size, demographics, status, compensation, governance rights, hiring/promotion/retention practices, and additional responsibilities. These changes have been driven, in part, by the increasing student interest in law clinic and field placement opportunities, advocacy by clinical educators, and changing ABA accreditation standards on coursework and faculty status.

#### A. Size

In 1987, the average number of law clinic faculty at schools that had at least one clinic was slightly over four.<sup>54</sup> In the 2010 CSALE survey, schools reported a median number of teachers, now including those who teach field placement courses, of nine. By the 2019 CSALE survey, the median had risen to twelve law clinic and field placement teachers per school.

This growth in the number of faculty teaching law clinics and field placement courses parallels the growth of law faculties generally. In 1987, student-faculty ratios for law school courses ranged from 18.8:1 (for schools with total J.D. enrollment under 300) to 30:1 (for schools with enrollment above 1099).<sup>55</sup> By 2007, those ratios had declined approximately 50% to 12.5:1 for schools under 300 students and 15.9:1 for the largest schools. Ratios have continued to decline, with 2017 student-faculty schoolwide ratios at ten schools lower than even the 8:1 ratio often recommended for law clinics,<sup>56</sup> a ratio criticized by some as too expensive.

With the move toward more faculty, schools have shown increasing use of part-time instructors for clinical courses. In the 2019 CSALE survey, 35% of those teaching in a law clinic

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law firms charge clients \$100-\$200 per hour for paralegal work).

<sup>52</sup> Robert R. Kuehn, *The Economic Value of Law Clinic Legal Assistance*, 30(2) CLINICAL LEGAL EDUC. ASS'N NEWSLETTER 1 (2022).

<sup>53</sup> In the 2019 CSALE survey, the most common numbers of academic credits per term for the fieldwork component of a field placement course were two (38% of courses), three (29%), and four (9%).

<sup>54</sup> McDiarmid, *supra* note 22, at 252.

<sup>55</sup> SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, *Student Faculty Ratio*, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/student\\_faculty\\_ratio.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/student_faculty_ratio.authcheckdam.pdf) (last visited July 5, 2021).

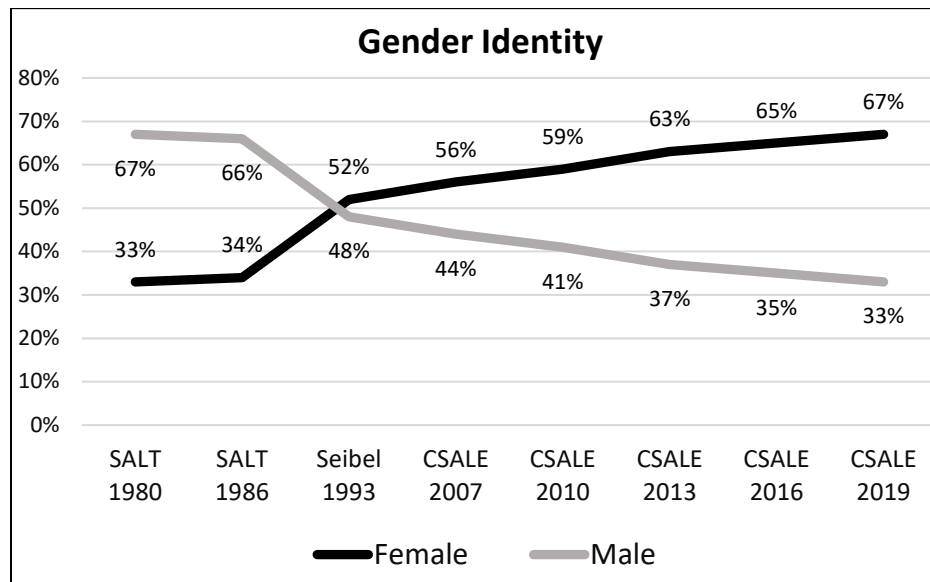
<sup>56</sup> See PUBLICLEGAL, *2017 Raw Data Law School Rankings*, <https://www.ilrg.com/rankings/law/2017/2/desc/SFRatio> (last visited Jan. 10, 2022).

or field placement were employed part time by the school, an increase from 28% in 2016, 22% in 2013, and 18% in 2010. It is not clear from the data whether part-time instructors are replacing full-time faculty or being used to expand clinical course offerings at a school.

The number of years of prior law practice for those entering clinical teaching has not changed since 2007. Over the five CSALE surveys, the median number of years of prior practice has remained at six to ten years. Excluding those hired into temporary fellow positions, in the 2019 CSALE survey, the median number of years of prior experience for those having taught three years or fewer in a law clinic or field placement course was eight years. The length of clinical teaching experience among clinical teachers also has not changed across CSALE surveys: The median has consistently been six to ten years, with between 35% and 40% having taught for five years or less.

### B. Demographics

Two-thirds of clinical teachers identified as female (cis or trans) in the 2019 CSALE survey. The graph below reflects a trend of increasingly female law clinic and externship faculty beginning in the late 1980s/early 1990s and continuing through all five CSALE surveys.<sup>57</sup>



Newer clinical teachers in 2019 were even more predominantly female—73% of those having taught three years or less were female. Within clinical teaching areas, those who primarily taught field placement courses were more predominantly female than those who primarily taught in a law clinic—82% of field placement teachers were female compared with 65% of clinic teachers.

<sup>57</sup> See also Elizabeth D. Katz et al., *Women in U.S. Law Schools, 1948–2021*, at 23–24 (2022), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4194210](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4194210) (reporting, since the 1990s, women have been two to three times more likely to occupy the lower status teaching positions of instructors, clinical professors, adjuncts, lecturers, librarians, legal writing professors, and teaching fellows).



By comparison, 47% of all full-time law teachers were identified as female in the 2020 law school ABA annual reports.<sup>58</sup> The ABA results include the predominantly female clinical and legal research and writing faculty.<sup>59</sup> If clinical (67% female) and legal writing (70% female) faculty are removed from the ABA totals, women constitute fewer than 38% of full-time nonclinical/nonlegal writing faculty at ABA law schools.<sup>60</sup> In contrast, 54% of J.D. students in 2020–2021 were female, compared with 47% in 2010, 48% in 2000, 43% in 1990, and 34% in 1980.<sup>61</sup>

The percentages of full-time clinical teachers by race and ethnicity are reported in the table below and indicate growth in the percentage of nonwhite clinical teachers over the past four decades.<sup>62</sup>

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<sup>58</sup> ABA Required Disclosures, *supra* note 34. For fall 2020, schools reported 4340 full-time female and 4985 male faculty.

<sup>59</sup> ALWD/LWI LEGAL WRITING SURVEY, 2019–2020—REPORT OF THE INSTITUTIONAL SURVEY 68 (reporting that 70% of full-time legal research and writing faculty identified as female), <https://www.alwd.org/images/resources/ALWDLWI2019-20InstitutionalSurveyReport.pdf> (last visited Aug. 22, 2021). The latest ALWD/LWI survey identified 937 full-time LRW faculty at the 169 schools that responded to the survey. E-mail from Ted Becker, Director, Legal Practice Program, University of Michigan Law School, to Robert Kuehn (July 8, 2021) (sharing response data from 2019–2020 ALWD/LWI survey).

<sup>60</sup> Robert R. Kuehn, *Shifting Law School Faculty Demographics*, 30(1) CLINICAL LEGAL EDUC. ASS’N 9 (2021–2022).. The 2020 ABA annual reports identified 4399 female and 4986 male full-time faculty (five reported as “other”). Removing 1157 female clinical teachers (67% of the 1727 full-time clinical faculty reported by the 95% of schools that participated in the CSALE survey) and 649 female legal research and writing teachers (70% of the 927 full-time LRW faculty at the 169 of 203 ABA schools that participated in the 2019–2020 ALWD/LWI Legal Writing Survey) results in 2593 full-time female nonclinical/nonlegal writing faculty. Further removing 848 male faculty identified in the CSALE and ALWD/LWI surveys results in 38.5% full-time nonclinical/nonlegal writing female faculty. If the missing 5% of schools in the CSALE survey and 17% in the ALWD/LWI survey are accounted for, 37% of 2020 full-time nonclinical/nonlegal writing faculty identified as female. *See also* Katz et al., *supra* note 57 at figs. 2 & A4 (estimating 39% of 2011 non-lower status faculty identified as female).

<sup>61</sup> Am. Bar Ass’n, Data from the Annual Questionnaire—ABA Approved Law School Enrollment and Degrees Awarded Data,

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/enrollment\\_degrees\\_awarded.xls](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.xls). In 1980, one-third of law students and only 14% of law teachers identified as female. *Id.*; Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PENN. L. REV. 537, 557 tbl.2 (1988).

<sup>62</sup> CSALE surveys now use the ABA categories of race/ethnicity and incorporate the U.S. Census protocol allowing respondents to select more than one category.

| <b>Race/Ethnicity</b>                | <b>SALT<br/>1980<sup>63</sup></b> | <b>SALT<br/>1986</b> | <b>AALS<br/>1998<sup>64</sup></b> | <b>CSALE<br/>2007</b> | <b>CSALE<br/>2010</b> | <b>CSALE<br/>2013</b> | <b>CSALE<br/>2016</b> | <b>CSALE<br/>2019</b> |
|--------------------------------------|-----------------------------------|----------------------|-----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| American Indian/<br>Alaska Native    |                                   |                      | 1%                                | < 1%                  | < 1%                  | < 1%                  | < 1%                  | 1%                    |
| Asian                                |                                   |                      | 2%                                | 5%                    | 5%                    | 5%                    | 6%                    | 8%                    |
| Black/African<br>American            | 4%                                | 5%                   | 7%                                | 5%                    | 5%                    | 5%                    | 7%                    | 9%                    |
| Latino/Hispanic                      | 1%                                | 2%                   | 3%                                | 2%                    | 2%                    | 3%                    | 5%                    | 6%                    |
| Native Hawaiian/<br>Pacific Islander |                                   |                      |                                   | 0%                    | < 1%                  | 0%                    | < 1%                  | < 1%                  |
| White                                | 95%                               | 92%                  | 87%                               | 87%                   | 84%                   | 84%                   | 79%                   | 78%                   |
| Two or more<br>races                 |                                   |                      | < 1%                              |                       |                       |                       | 3%                    | 3%                    |
| Other                                | 0%                                | 1%                   |                                   | 1%                    | 3%                    | 2%                    |                       |                       |

Among newer clinical teachers of three years or less, the percentage who are white in the 2020 CSALE survey was slightly lower, at 76%. Within clinical teaching, 77% of primarily law clinic instructors and 83% of primarily field placement teachers are white.

In the 2020 ABA annual reports, 21% of full-time law faculty were identified by their schools as “minority,” similar to the percentage of nonwhite clinical teachers in the most recent CSALE survey.<sup>65</sup> Similar to the gender divide, the racial/ethnic diversity of law faculty is lower than that of their students: 34% of students were identified in 2020 as minority, an increase from 24% in 2010, 21% in 2000, 14% in 1990, and 9% in 1980.<sup>66</sup>

### C. Status

Security of position for clinical teachers has been a source of ongoing debate within the

<sup>63</sup> Chused, *supra* note 61, at 556, tbl.1. Professor Chused excluded data from “minority operated” law schools, thus understating the percentage of nonwhite clinical faculty at all law schools.

<sup>64</sup> Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445, 449 n.14 (2000) (reporting on entries in a self-reported database assembled by the AALS Clinical Section treasurer). A 1993–1994 survey of clinical teachers similarly found that 90.4% were white. Robert F. Seibel, *Do Deans Discriminate?: An Examination of Lower Salaries Paid to Women Clinical Teachers*, 6 UCLA WOMEN’S L.J. 541, 553 (1996).

<sup>65</sup> ABA Required Disclosures, *supra* note 34. Approximately 13% of full-time legal research and writing faculty are nonwhite. ALWD/LWI SURVEY, *supra* note 59, at 69.

<sup>66</sup> Am. Bar Ass’n, From 2013 Annual Questionnaire—ABA Approved 1st Year JD and Minority Enrollment, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_jd\\_enrollment\\_1yr\\_total\\_minority.xls](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_jd_enrollment_1yr_total_minority.xls). In 1980, only 9% of students and 4% of faculty were identified as nonwhite. *Id.*

legal academy since the 1970s.<sup>67</sup> In 1984, the ABA adopted Accreditation Standard 405(e) stating that law schools “should” afford full-time clinical faculty “a form of security of position reasonably similar to tenure.”<sup>68</sup> In 1996, the ABA strengthened the standard (recodified as 405(c)) by replacing the suggestive “should” with the mandatory “shall,” subject to some notable exceptions.<sup>69</sup>

Security of position “reasonably similar to tenure” can be met through a separate tenure track (sometimes referred to as “clinical tenure” or “programmatic tenure”) or a renewable long-term contract (of at least five years that is presumptively renewable or has other arrangements sufficient to ensure academic freedom).<sup>70</sup> However, schools are not required to provide all law clinic and field placement teachers with these positions: A school may have a limited number of fixed, short-term appointments if the clinical program is “predominantly staffed” by full-time faculty members with tenure or long-term contracts.<sup>71</sup>

The table below shows the employment status of clinical teachers since 1980. It reflects a decline in the percentage of clinical faculty with tenure of any type (traditional or clinical/programmatic) — only one-third of current law clinic and externship teachers have tenure or are on tenure track.

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<sup>67</sup> Joy & Kuehn, *supra* note 4, at 188–94. For a detailed chronology of the struggle for security of position for clinical teachers, see Roy Stuckey, *Power and Politics in the Founding Era of Clinical Legal Education* (2021), <https://repository.library.georgetown.edu/handle/10822/1062764>.

<sup>68</sup> SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, AM. BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS *Standard*. 405(e) & iii (1988).

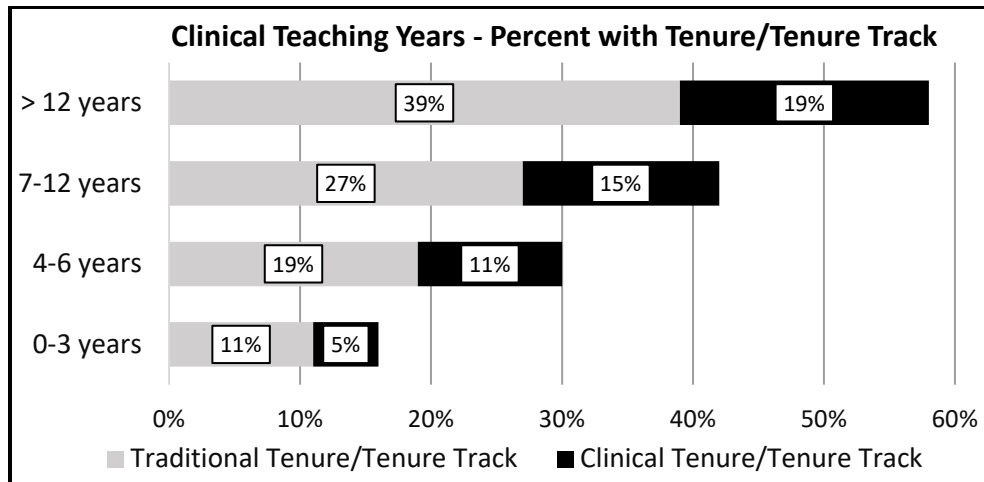
<sup>69</sup> SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, AM. BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS *Standard* 405(c) (1996). The standard “does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.”

<sup>70</sup> ABA STANDARDS 2022, *supra* note 31, at *Standard* 405(c) & Interpretation 405–06 (2020–2021). The long-term contract process usually mimics the traditional tenure-track model. The clinical teacher starts on one or a series of short-term contracts, progressing to a tenure like review under the applicable promotion standard to a long-term contract that is presumptively renewable.

<sup>71</sup> *Id.*, at *Standard* 405(c).

| <b>Employment Status</b>                   | <b>SALT 1980<sup>72</sup></b> | <b>SALT 1986</b> | <b>AALS 1998<sup>73</sup></b> | <b>CSALE 2007</b> | <b>CSALE 2010</b> | <b>CSALE 2013</b> | <b>CSALE 2016</b> | <b>CSALE 2019</b> |
|--|-------------------------------|------------------|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Contract Appointment                       | 60%                           | 53%              | 51%                           | 46%               | 52%               | 54%               | 53%               | 50%               |
| Tenured/Tenure Track (traditional)         | 40%                           | 47%              | 45%                           | 27%               | 26%               | 27%               | 25%               | 21%               |
| Clinical Tenured/<br>Clinical Tenure Track |                               |                  | 4%                            | 13%               | 9%                | 8%                | 10%               | 12%               |
| Adjunct                                    |                               |                  |                               | 1%                | 2%                | 1%                | 2%                |                   |
| Nonadjunct At Will                         |                               |                  |                               | 3%                | 4%                | 3%                |                   |                   |
| Fellow                                     |                               |                  |                               | 2%                | 7%                | 4%                | 3%                | 5%                |
| Administrator w/ or<br>w/out Faculty Title |                               |                  |                               |                   |                   |                   | 5%                | 6%                |
| Other                                      |                               |                  | 4%                            | 8%                | 5%                | 3%                | 4%                | 6%                |

The trend appears to be continuing, as new clinical faculty are increasingly not being hired into tenure-track positions (traditional or clinical), as seen in the graph below from the 2019 CSALE survey.



In 2019, only 16% of law clinic and field placement teachers (excluding fellows) who had been teaching three years or less were on either a traditional or clinical tenure track. Yet 58% of those who had been teaching more than twelve years were tenured/tenure track. Today, just as

<sup>72</sup> Chused, *supra* note 61, at 542 n.29.

<sup>73</sup> In the 1998–1999 AALS Clinical Section database, 32% of clinical teachers had tenure, 11% were on tenure track, 4% had clinical tenure, 19% were on long-term contracts, 31% were on short-term contracts, and 4% had undisclosed employment status. Dubin, *supra* note 64, 449 n.14 & 451 n.25. An ABA database similarly showed that 46% of clinical teachers in 1998 were in traditional tenure or tenure-track positions. Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 328 (2000) (relying on ABA data in Martina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 4 (2000)

many clinical teachers are on long-term, presumptively renewable contracts (33%) as are on any type of tenure/tenure track.<sup>74</sup> By contrast, in the first CSALE survey in 2007, almost twice as many clinical teachers were on a type of tenure/tenure track (40%) as were on long-term, presumptively renewable contracts (22%). There has been a clear trend of schools to hire new clinical faculty on long-term contracts rather than on a tenure track. This nontenure hiring pattern for new clinical teachers contrasts with law school hiring of entry-level “podium” faculty, overwhelmingly hired on the traditional tenure track.

The disparate treatment in tenure appointments is most pronounced at schools higher in *U.S. News* law school rankings. Among schools with at least half of their clinical faculty in tenure/tenure-track positions as reported in the 2019 CSALE survey, only one school ranked in the top twenty-five primarily appoints its clinical faculty to traditional tenure-track positions. In contrast, over 36% of the fifty lowest-ranked schools offer traditional tenure status to their clinical faculty.

| <b><i>U.S. News<br/>School Rank</i></b> | <b><i>Percent Schools Offering Clinical Faculty</i></b> |                               |
|---|---|-------------------------------|
|   | <b><i>Traditional Tenure</i></b>                        | <b><i>Clinical Tenure</i></b> |
| 1-25                                    | 5%  | 20%                           |
| 1-50                                    | 12%   | 15%                           |
| Lowest 50                               | 36%   | 4%                            |

In addition to these differences between schools, there are significant differences in the employment status of types of clinical teachers within schools. The table below, from the 2019 CSALE survey, shows that field placement teachers are less likely to be tenured/tenure track (24% vs. 36%) or long-term, presumptively renewable contract/contract track (25% vs. 38%) than law clinic teachers.<sup>75</sup> Most strikingly, field placement teachers are fourteen times more likely to be administrators (rather than in primarily teaching positions) and nine times more likely to be without faculty status than law clinic teachers.

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<sup>74</sup> In the 2019 CSALE survey, 27% of full-time clinical teachers were on a presumptively renewable, long-term contract and 6% on a probationary contract leading to a renewable long-term contract. Twenty-seven percent of full-time legal research and writing teachers are on some form of tenure/tenure track, and 36% are on long-term, presumptively renewable contracts. E-mail from Ted Becker, *supra* note 59.

<sup>75</sup> To address overlap, respondents who indicated they taught in both a clinic and field placement course were categorized by their predominant clinical teaching position. Respondents who indicated they directed both types of courses were not included in the chart. A similar approach was used with calculations below regarding compensation.

| <b>Employment Status</b>                                       | <b>Law Clinic</b> | <b>Field Placement</b> |
|--|-------------------|------------------------|
| Tenured/Tenure Track (traditional)                             | 23%               | 16%                    |
| Clinical Tenured/Tenure Track                                  | 13%               | 8%                     |
| Long-Term Presumptively Renewable Contract                     | 32%               | 21%                    |
| Short-Term Probationary Contract Leading to Long-Term Contract | 6%                | 4%                     |
| Other Short-Term Contract                                      | 16%               | 12%                    |
| Fellow   | 6%                | 2%                     |
| Administrator with Faculty Status                              | 1%                | 19%                    |
| Administrator without Faculty Status                           | 1%                | 9%                     |
| Other Employment Term  | 1%                | 2%                     |

The status of clinical teachers by gender is illustrated below. In a 1993–1994 survey of clinical teachers by Professor Robert Seibel, female teachers were significantly less likely to be in tenure/tenure track positions.<sup>76</sup> However, in the 2016 and 2019 CSALE surveys, there is little difference by gender in the percentage of those on a contract appointment, be it a short-term contract or long-term one with a presumption of renewability. There are, however, gender differences in other employment positions—male clinical teachers are more likely to be tenured/tenure track, while female clinical teachers are more likely to primarily have administrative positions at their school.

| <b>Employment Status</b>                  | <b>Seibel 1993</b> |             | <b>CSALE 2016</b> |             | <b>CSALE 2019</b> |             |
|---|--------------------|-------------|-------------------|-------------|-------------------|-------------|
|   | <b>Female</b>      | <b>Male</b> | <b>Female</b>     | <b>Male</b> | <b>Female</b>     | <b>Male</b> |
| Contract Appointment                      | 59%                | 46%         | 54%               | 52%         | 55%               | 55%         |
| Tenured/Tenure Track (traditional)        | 42%                | 54%         | 25%               | 27%         | 23%               | 27%         |
| Clinical Tenured/Tenure Track             |                    |             | 9%                | 13%         | 12%               | 14%         |
| Administrator (w/ or w/out faculty title) |                    |             | 6%                | 3%          | 8%                | 4%          |
| Other Employment Term                     |                    |             | 6%                | 6%          | 2%                | <1%         |

The status of full-time clinical teachers by race/ethnicity is shown below. In the most recent CSALE surveys, there were only small differences between white and nonwhite clinical teachers

<sup>76</sup> Seibel, *supra* note 64, at 547. The survey did not differentiate between traditional tenure and clinical tenure.

in the percentages on a contract appointment or tenured/tenure-track position.

| <b>Employment Status</b>                  | <b>AALS 1998<sup>77</sup></b> |                 | <b>CSALE 2016</b> |                 | <b>CSALE 2019</b> |                 |
|---|-------------------------------|-----------------|-------------------|-----------------|-------------------|-----------------|
|   | <b>White</b>                  | <b>Nonwhite</b> | <b>White</b>      | <b>Nonwhite</b> | <b>White</b>      | <b>Nonwhite</b> |
| Contract Appointment                      | 49%                           | 50%             | 54%               | 51%             | 56%               | 56%             |
| Tenured/Tenure Track (traditional)        | 43%                           | 45%             | 25%               | 27%             | 23%               | 24%             |
| Clinical Tenured/Tenure Track             | 4%                            | 3%              | 10%               | 12%             | 13%               | 11%             |
| Administrator (w/ or w/out faculty title) |                               |                 | 4%                | 4%              | 7%                | 7%              |
| Other Employment Term                     |                               |                 | 6%                | 6%              | 2%                | <1%             |

#### D. Compensation

The sources of funding and salaries for clinical teachers vary. The three basic categories of funding for clinical teachers are: “hard money”—tuition dollars, endowment income, or, at a public institution, state subsidies; “soft money”—grants or other external funding; and a mix of “hard” and “soft” money. Across CSALE surveys between 2007 and 2019, 76%–82% of full-time law clinic teachers (excluding fellows) were funded by hard money.<sup>78</sup>

In 1987, approximately 15% of law clinic teachers were funded by “external grants.”<sup>79</sup> In the 2019 CSALE survey, that number dropped to 9%, though an additional 15% reported that they were funded by a mix of law school and external funding. Focusing on just those teaching in a law clinic three years or fewer (excluding fellows), in 2019 over 40% were either on soft (24%) or a mix of hard/soft funding (17%), demonstrating an increased reliance by newer law clinic faculty on some level of soft funding.<sup>80</sup>

Excluding fellows, the base salary for 64% of clinical teachers in the 2019 CSALE survey covered a twelve-month period, an increase from 58% in the 2013 and 2016 surveys. The base salary for 30% covered a nine-month period, a small decrease from approximately one-third in the last two surveys. For those whose base salary covers less than a twelve-month period, 75% in the most recent CSALE survey could apply for a summer salary supplement, an increase from 70% in the 2017 survey. Where summer funding is available, the median amount as a percentage of the teacher’s base annual salary is 10%, unchanged from prior surveys.

<sup>77</sup> Dubin, *supra* note 64, at 451 n.25.

<sup>78</sup> To compare with the 1987 survey, only funding for law clinic teachers is reported. Very few field placement teachers (3%) are funded by grants or other external funding.

<sup>79</sup> McDiarmid, *supra* note 22, at 252.

<sup>80</sup> Thirty-two percent of those teaching four to six years were on soft or mixed funding, 27% of those teaching seven to nine years, and 14% of those teaching ten years or more.

Salaries for law clinic and externship instructors can vary greatly by years of teaching, employment status, region of country, and the public/private status of the school.<sup>81</sup> The table below displays the twenty-fifth-percentile, median, and seventy-fifth-percentile annual salaries for full-time instructors from over 1000 respondents to the 2019 CSALE survey (excluding fellows).

| <b>Instructors</b>                    | <b>Annual Salary</b>   |                   |                        |
|---------------------------------------|------------------------|-------------------|------------------------|
|                                       | <b>25th percentile</b> | <b>Median</b>     | <b>75th Percentile</b> |
| Law Clinic <u>and</u> Field Placement | \$90,000-99,999        | \$115,000-124,999 | \$145,000-154,999      |
| Teaching 3 Years or Less              | \$70,000-79,999        | \$85,000-94,999   | \$110,000-119,999      |
| Law Clinic                            | \$90,000-99,999        | \$120,000-129,999 | \$150,000-159,999      |
| Field Placement                       | \$80,000-89,999        | \$100,000-109,000 | \$125,000-134,999      |

Salaries for clinical faculty are on average lower than those for podium teachers. The table below compares the salaries of the two-thirds of law clinic and externship faculty not on traditional tenure/tenure track with the salaries of podium faculty at similar points in their careers.<sup>82</sup> Clinical faculty are paid, on average, over \$30,000 less annually than their podium colleagues at similar career milestones. Even when salaries of clinical faculty with traditional or clinical tenure/tenure track are included in the calculations, clinical faculty on average make over \$20,000 less than their comparable podium colleagues.

| <b>Instructors</b>                                  | <b>Median Annual Salary</b>                 |   |  |
|---|---|---|--|
|   | <b>3 years or less<br/>(Asst Professor)</b> | <b>4-6 years<br/>(Pre-Tenure<br/>Assoc Professor)</b> | <b>&gt;6 years<br/>(Tenured<br/>Professor)</b> |
| Law Clinic & Externship<br>(nontenure/tenure track) | \$80,000-90,000                             | \$85,000-95,000                                       | \$105,000-115,000                              |
| Podium/Doctrinal                                    | \$108,000                                   | \$129,400   | \$148,100                                      |

<sup>81</sup> For example, median salaries in the 2019 CSALE survey ranged from \$100,000 to \$109,999 for schools in the Southwest and South Central regions of the country to \$145,000 to \$154,999 for New York City and Long Island schools. 2019 CSALE REPORT, *supra* note 27, at 5, tbl. 44.

<sup>82</sup> Clinical salaries are from the 2019–2020 CSALE survey (excluding fellows). Podium teacher assistant, associate, and tenured professor salaries are from the 2018–2019 SALT Salary Survey, SALT EQUALIZER (Nov. 2019), <https://www.saltlaw.org/wp-content/uploads/2015/03/SALT-salary-survey-2019-final-draft.pdf> (last visited Aug. 11, 2021). To match the SALT survey, the clinical salaries were drawn only from the list of seventy-nine schools reported in the SALT survey.



### E. Governance Rights

Most clinical faculty do not have the same right to participate in faculty governance as podium faculty, who overwhelmingly have traditional tenure and thereby vote on all matters brought to the faculty for deliberation. The ABA requires law schools to “afford to full-time clinical faculty members participation in faculty meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members.”<sup>83</sup> In practice, as the chart below demonstrates, this “reasonably similar” is frequently quite different: Only about one-quarter of full-time law clinic and field placement teachers (excluding fellows and adjuncts) are permitted to fully participate in faculty meeting deliberations. Another quarter either cannot even attend or cannot vote at faculty meetings. Since the first CSALE survey in 2007, there has been a decline in the percentage of clinical faculty with full voting rights. This is likely a reflection of the decline in the portion of clinical faculty with traditional tenure.

| <b>Faculty Meeting Participation</b>                            | <b>Percent of Respondents Permitted to Participate</b> |                   |                   |                   |                   |
|---|--|-------------------|-------------------|-------------------|-------------------|
|   | <b>CSALE 2007</b>                                      | <b>CSALE 2010</b> | <b>CSALE 2013</b> | <b>CSALE 2016</b> | <b>CSALE 2019</b> |
| Vote: All matters   | 37%  | 40%               | 31%               | 28%               | 27%               |
| Vote: All except podium faculty hiring, promotion and/or tenure | 39%  | 33%               | 38%               | 44%               | 45%               |
| Vote: Administrative matters only                               | 3%   | 1%                | 2%                | 4%                | 2%                |
| Not vote but can generally attend meetings                      | 16%  | 16%               | 22%               | 18%               | 18%               |
| Not permitted to attend meetings                                | 5%   | 10%               | 7%                | 6%                | 7%                |

As with employment status, there were differences in faculty meeting participation rights between law clinic and field placement teachers in the 2019 CSALE survey. Over one-third of field placement and one-fifth of law clinic teachers either are not permitted to attend or cannot vote at faculty meetings. Recall that a disproportionate number of field placement teachers are administrators, many without faculty status.

<sup>83</sup> ABA STANDARDS 2022, *supra* note 31, at Interpretation 405–8.

| <b>Faculty Meeting Participation</b>                               | <b>Law Clinic</b> | <b>Field Placement</b> |
|--|-------------------|------------------------|
| Vote: All matters  | 28%               | 29%                    |
| Vote: All except classroom faculty hiring, promotion and/or tenure | 48%               | 34%                    |
| Vote: Administrative matters only                                  | 2%                | 3%                     |
| Not vote but can generally attend meetings                         | 15%               | 24%                    |
| Not permitted to attend meetings                                   | 6%                | 10%                    |

A majority of clinical faculty are also denied full participation in law school committees. The chart below from the 2019 CSALE survey displays various committees and the percentage of clinical respondents entitled to participate in and vote on such committees. The survey shows that 17% of full-time clinical faculty (excluding fellows) cannot participate in or cannot vote on any faculty committee.

| <b>Committee Type</b>  | <b>Percent Permitted to Participate in and Vote</b> |
|--|---|
| Clinical faculty hiring and promotion                        | 78%   |
| Career services/placement                                    | 75%   |
| Curriculum/academic standards                                | 74%   |
| Admissions/financial aid                                     | 72%   |
| Budgeting  | 65%   |
| Classroom/doctrinal faculty hiring, promotion, and/or tenure | 45%   |
| Can participate on some but not vote                         | 8%  |
| Cannot participate or cannot vote on any                     | 9%  |

#### F. *Hiring, Promotion, and Retention Practices*

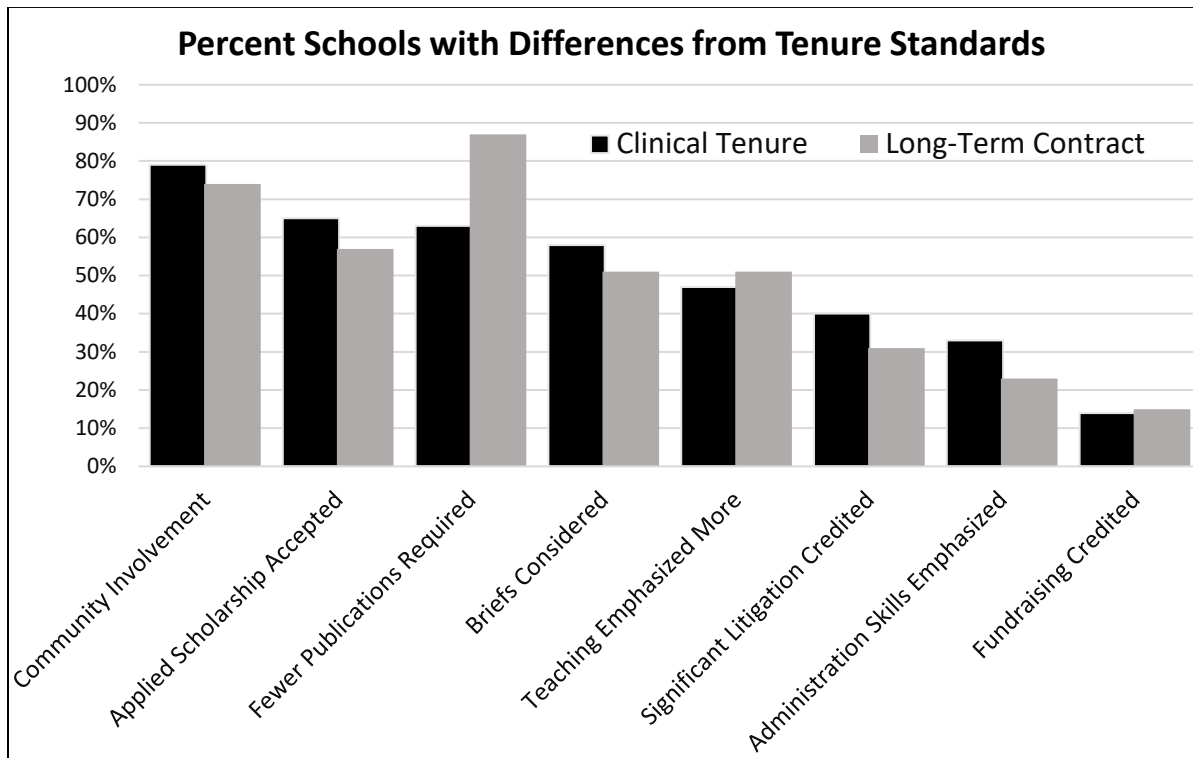
In meeting the 1996 ABA requirement to provide a form of security of position to clinical faculty that is reasonably similar to tenure,<sup>84</sup> 22% of schools in the 2019 CSALE survey reported having a clinical tenure track and 67% a long-term contract track available for hiring law clinic or field placement teachers. The methods used by schools for hiring new clinical teachers on those tracks are similar, with about two-thirds of schools hiring through a faculty vote after a committee

<sup>84</sup> ABA STANDARDS 2022, *supra* note 31, at *Standard* 405(c).

recommendation, 15%-20% by a faculty vote without a committee recommendation, 10%-15% through a decision by the dean, and 10% by other methods.

In 1987, 34% of schools reported having no written standards for the promotion of clinical faculty or they were under development.<sup>85</sup> Today, ABA accreditation standards require that schools “have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position,”<sup>86</sup> which should include “criteria for retention, promotion, and security of employment of full-time clinical faculty.”<sup>87</sup> In the 2019 CSALE survey, 82% of schools reported having written standards for the promotion, tenure, or retention of law clinic or field placement course instructors, the remainder apparently without standards specifically for clinical teachers.

Where there are differences in promotion, tenure, or retention standards between clinical and podium faculty, they can be substantial. The chart below from the 2019 CSALE survey compares the standards for clinical teachers on a clinical tenure or long-term contract track with the standards for podium faculty on the traditional tenure track. At most schools, the standards for both clinical teaching tracks show greater acceptance of community involvement and applied scholarship and lesser publication requirements than the traditional tenure standards. The greatest difference between clinical tenure and long-term contract standards is the requirement for fewer publications by long-term contract candidates.



<sup>85</sup> McDiarmid, *supra* note 22, at 271, fig. 23.

<sup>86</sup> ABA STANDARDS 2022, *supra* note 31, at Interpretation 405-3.

<sup>87</sup> *Id.* at Interpretation 405-7.

Thirty-two percent of clinical faculty (excluding fellows) were required to produce scholarship as part of their job in the 2019 CSALE survey, compared with 38% in the 2016 survey, 42% in the 2013 survey, and 48% in the 2010 and 2007 surveys. This decline likely reflects the increased reliance by schools on contractual appointments noted above. For 48% of respondents in the 2019 survey, scholarship is beneficial to their position but not required, while for 20% scholarship is neither required nor beneficial.

In 2019, of those who are required to produce scholarship, 94% were able to obtain financial support for research assistance, a level similar to those reported in earlier CSALE surveys going back to 2007. Where scholarship is not required but beneficial, 73% of respondents in the 2019 CSALE survey can obtain research funds. Only 27% of current clinical faculty required to produce scholarship have their teaching/supervision obligations reduced (excluding summers) for scholarship.

A requirement for scholarship, and assistance in meeting that requirement, is in large measure related to the clinical teacher’s employment status, as the chart below from the last CSALE survey illustrates. Only 10% of teachers on long-term contracts are required to produce scholarship and, even when required, are only one-third as likely as tenure/tenure track faculty to be given teaching relief to meet that requirement.

| <b><i>Employment Status</i></b> | <b><i>Scholarship a Job Requirement</i></b> | <b><i>Financial Support When It's Required</i></b> | <b><i>Teaching Reduced When It's Required</i></b> |
|---------------------------------|---|--|---|
| Tenure/Tenure Track             | 92%   | 94%  | 33%   |
| Clinical Tenure/Track           | 33%   | 88%  | 21%   |
| Long-Term Contract/Track        | 10%   | 87%  | 11%   |
| All Others Contract             | 5%  | 82%  | 0%  |

*G. Additional Responsibilities*

Most clinical teachers spend a significant part of their working day on law school duties other than teaching their clinic or field placement course(s). Eighty-nine percent of clinic directors in the 2019 CSALE survey who were full-time law school employees had responsibilities in addition to their clinic teaching. The percentages of time clinic directors spent on average on their various law school responsibilities were:

| <b><i>Law Clinic Director Responsibilities</i></b>                      | <b><i>Percent of Time Spent</i></b> |
|---|-------------------------------------|
| Teach law clinic course(s)  | 54%                                 |
| Teach other skills/simulation course(s)                                 | 6%                                  |
| Teach nonskills courses (e.g., doctrinal/podium)                        | 10%                                 |
| Manage program (e.g., trial advocacy, pro bono, experiential education) | 11%                                 |
| Research and scholarship  | 9%                                  |
| Other (e.g., school committees)   | 10%                                 |

Similarly, in the 2019 survey, 89% of field placement directors or persons primarily responsible for the course had responsibilities in addition to their field placement course. Their time, on average, was divided among the following:

| <b><i>Field Placement Director Responsibilities</i></b>                  | <b><i>Percent of Time Spent</i></b> |
|--|-------------------------------------|
| Teach field placement course(s)  | 28%                                 |
| Teach other skills/simulation course(s)                                  | 17%                                 |
| Teach nonskills courses (e.g., doctrinal/podium)                         | 12%                                 |
| Manage programs (e.g., trial advocacy, pro bono, experiential education) | 21%                                 |
| Research and scholarship   | 7%                                  |
| Work in student or career services offices                               | 4%                                  |
| Other (e.g., school committees)  | 12%                                 |

While clinic directors spend slightly more than one-half of their time teaching the clinic, field placement directors, on average, spend only about one-quarter of their time teaching the externship course.<sup>88</sup> Compared with clinic directors, field placement directors spend three times more of their workdays teaching skills/simulation courses and twice as much time managing other school programs.

Schools generally permit both clinic and field placement teachers to teach additional nonclinical courses. In the 2019 CSALE survey, only 11% of clinical teachers were precluded, whether by rule or practice, by their school from also teaching podium courses (namely courses

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<sup>88</sup> In 1992, field placement teachers at schools with enrollments of 1000 students or fewer spent an average of 26% of their “teaching time” on the course, while those at larger schools spent an average of 44% of their time. Seibel & Morton, *supra* note 16, at 426.

other than applied practice skills courses). This percentage has shown little change from prior CSALE surveys. Of those permitted to teach other classes in 2019, 55% taught one or more doctrinal/podium courses over the prior three years (same as prior surveys), averaging three courses during that time period.

Of those who taught a doctrinal/podium course in 2019, 22% were relieved of their clinical teaching obligations (fully or partially) while teaching the course and 25% received additional compensation, findings similar to those in prior CSALE surveys. Fifty-four percent neither were relieved of their clinical teaching obligations nor received any additional compensation for teaching a doctrinal/podium course.

Only 8% of respondents in the 2019 CSALE survey were precluded from teaching simulation/skills courses, up from 4% in the two prior surveys. Of those permitted to teach, 30% taught a simulation/skills course over the prior three years (compared with 37% in 2016–2017 and 27% in 2013–2014), averaging three courses during that period.

Of those who taught a simulation/skills course, 17% were relieved (fully or partially) of their clinical teaching obligations while teaching the course and 28% received additional compensation, percentages similar to those in the last CSALE survey. Fifty-three percent neither were relieved of their clinical teaching obligations nor received any additional compensation for teaching the simulation/skills course.

Thus, there has been little change in how schools handle additional teaching responsibilities by clinical teachers. Although schools overwhelmingly permit their clinical teachers to teach a doctrinal/podium or simulation/skills course in addition to their clinical teaching, most clinical teachers do not receive compensation or relief from their clinical teaching obligations when taking on this additional nonclinical teaching load.

The next section provides data on the evolving nature of law clinic courses over the past five decades.

#### **IV. LAW CLINIC DESIGN AND OPERATION**

Law clinic courses have also changed over the past five decades in subject matter, enrollment, credits and grading, classroom instruction, and challenges. In particular, there has been significant growth in the number and type of clinics and continuing evolution in their design and operation.

##### *A. Subject Matter*

Law clinics have been offered to students in some form since as early as the 1920s.<sup>89</sup> However, as of 1970, fewer than one-third of schools offered clinics, and many so-called clinics were more like internships, in which students worked at off-site legal offices, often for no academic

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<sup>89</sup> Barry et al., *supra* note 12, at 8 (noting the work of John Bradway and Jerome Frank on clinical legal education methodology in the 1920s through 1940s).

credit.<sup>90</sup> Due in large measure to the CLEPR and federal government grants described in Part I, by 1982 76% of schools offered in-house law clinics.<sup>91</sup> Two decades later, the ABA reported that 83.5% of schools were offering clinics, with an average of three per school and “dramatic increases in the number of schools offering specialized, nonlitigation clinics.”<sup>92</sup> Today, all but seven law schools offer students the opportunity to enroll in a clinic before graduation,<sup>93</sup> with over 1500 total clinics reported in the 2019 CSALE survey, an average of seven per school.<sup>94</sup>

During this period of growth, the substantive focus of clinics has changed dramatically. In 1987, 37% of schools with clinics offered only one clinic, and its focus was typically “general civil practice.”<sup>95</sup> One-quarter of schools reported having two clinics, most “frequently offer[ing] a civil and criminal practice experience.”<sup>96</sup> The 1987 data on the focus of clinics at schools offering more than two clinics is not available. What can be gleaned from the available data is that the majority of clinic offerings beyond “general civil” and “general criminal” practice were clustered around housing, consumer, civil rights, and other matters that were common practice areas among legal service providers.

Much had changed by 2002. At that point, the ABA found that 84% of schools were offering clinics, with the most common a general civil clinic (56% of schools), criminal prosecution/defense (53%), and family law (48%).<sup>97</sup> These three types of clinics had also been the most common a decade earlier in 1992. What did change between 1992 and 2002 were “dramatic increases in the number of law schools offering specialized, non-litigation clinics”—transactional clinics rose by 400% and alternative dispute resolution (ADR) clinics by over 200%.<sup>98</sup> Yet still, by 2002, only 20% of schools offered a transactional clinic and only 24%, an alternative dispute resolution clinic.<sup>99</sup>

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<sup>90</sup> COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, SURVEY OF CLINICAL AND OTHER EXTRA-CLASSROOM EXPERIENCES IN LAW SCHOOLS 1970–1971, 409–81 (1971) (reporting forty-eight clinics at 146 law schools). About 30% of the reported clinical programs in the 1970s were not law clinics but what were referred to as “farm-out” placements, or what today are known as field placements or externships. Stickgold, *supra* note 15, at 297 (citing to 1970 CLEPR report). By the end of the 1950s, thirty-five law schools had some form of legal aid clinic, but only thirteen were located within the school, and in only fifteen were students able to receive academic credit for their clinic work. Barry et al., *supra* note 12, at 10 (citing AALS PROCEEDINGS 121, 121 (1959)).

<sup>91</sup> Stickgold, *supra* note 15, at 298. The number of faculty spending more than 25% of their time on a law clinic course was on average four. *Id.* at 300–01.

<sup>92</sup> AM. BAR ASS’N, A SURVEY OF LAW SCHOOL CURRICULA: 1992–2002, at 34 (2004). The 2010 ABA curricula study similarly found that 84% of schools offered in-house clinics and 29% offered off-site clinics. AM. BAR ASS’N, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, at 76 (2012).

<sup>93</sup> *ABA Required Disclosures*, *supra* note 34 (reporting number of schools with no slots in law clinics available to their students during the 2019–2020 academic year).

<sup>94</sup> A review by Professor Julie Lawton at DePaul College of Law similarly found that schools offered a total of 1590 law clinics (unpublished 2016 survey on file with authors).

<sup>95</sup> *Report of the Committee on the Future of In-House Clinic*, *supra* note 19, at 532 (number of clinics calculated from survey data set on file with authors).

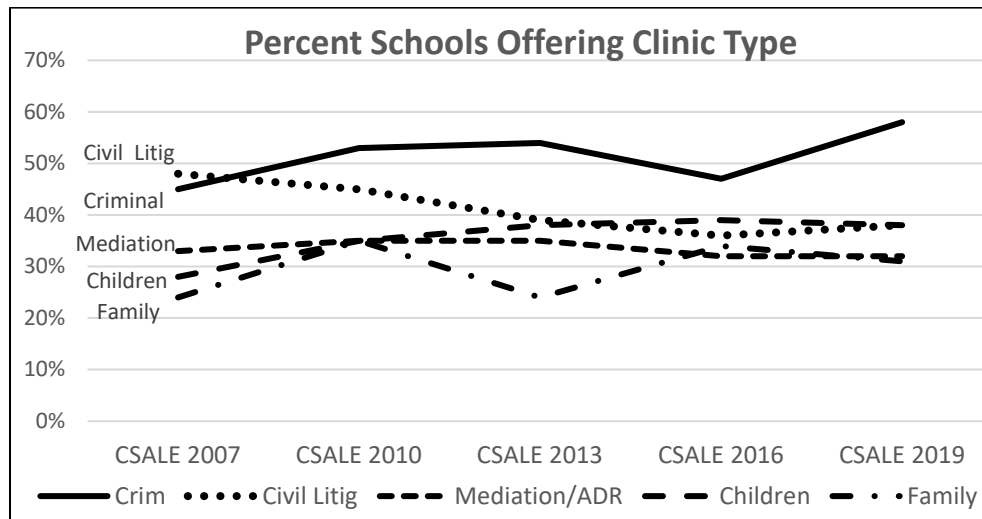
<sup>96</sup> *Id.* Another 12% of schools had three clinics, with the balance of schools (26%) offering four or more.

<sup>97</sup> SURVEY OF LAW SCHOOL CURRICULA, *supra* note 92, at 34.

<sup>98</sup> *Id.* at 35.

<sup>99</sup> *Id.*

In 2007, CSALE began tracking the focus of clinics in more detail. The graph below shows the most common clinics schools offered in 2007 and their popularity across later CSALE surveys.



The order of the five most common topical focus in 2007 has changed little over time. Criminal defense clinics remain the most common, followed by general civil litigation, children and the law, mediation/ADR, and family law. However, excluding criminal defense clinics, the percentage of schools offering these types of clinics has remained somewhat flat since 2007. There has, however, been one notable change—the percentage of schools offering general civil litigation clinics dropped from 48% to 38%, as they were likely reshaped and rebranded with a narrower, more specialized subject matter focus.

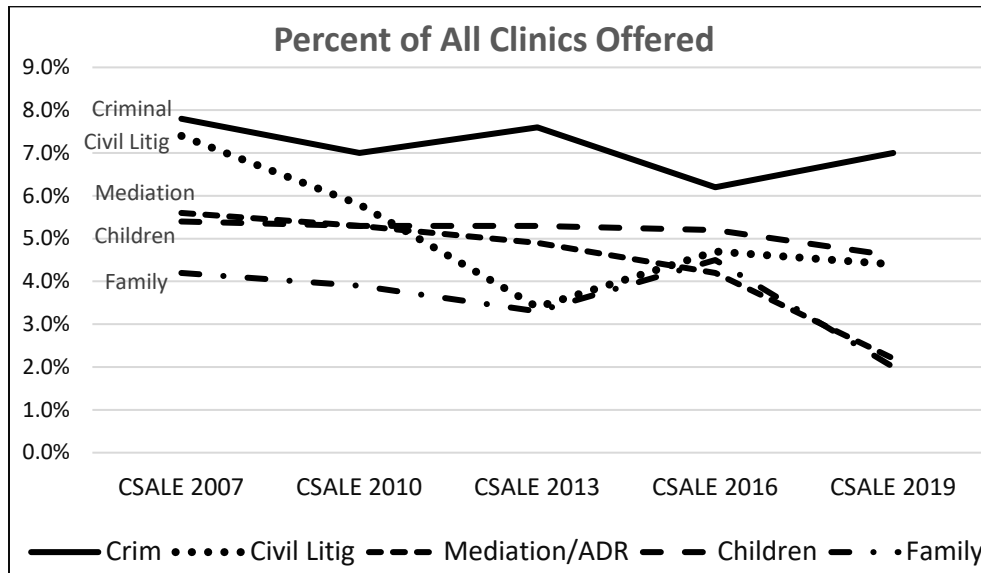
Instead of an increase in the number of schools offering clinics in more traditional legal services areas, much of the growth has been in more emergent areas. The percentage of schools offering immigration clinics more than doubled between 2007 and 2019 (30% to 66%) and by 2019 had supplanted criminal defense as the most common clinic. Intellectual property clinics more than tripled (11% to 37%) during this twelve-year period. Tracking began on transactional-focused entrepreneur/small business clinics only in 2016, but they are now the fifth-most-popular type of clinic, tied with intellectual property clinics and ahead of mediation/ADR and family law clinics. In short, the most recent growth of clinics has increasingly been in nonlitigation areas of practice.

Despite this growth in nonlitigation clinics, law clinics remain predominantly focused on litigation or dispute resolution. In the 2019 CSALE survey, schools reported that 62% percent of the work in their clinics was focused on litigation/dispute resolution, 19% was primarily transactional, 9% primarily legislative or policy work, and 6% primarily regulatory.

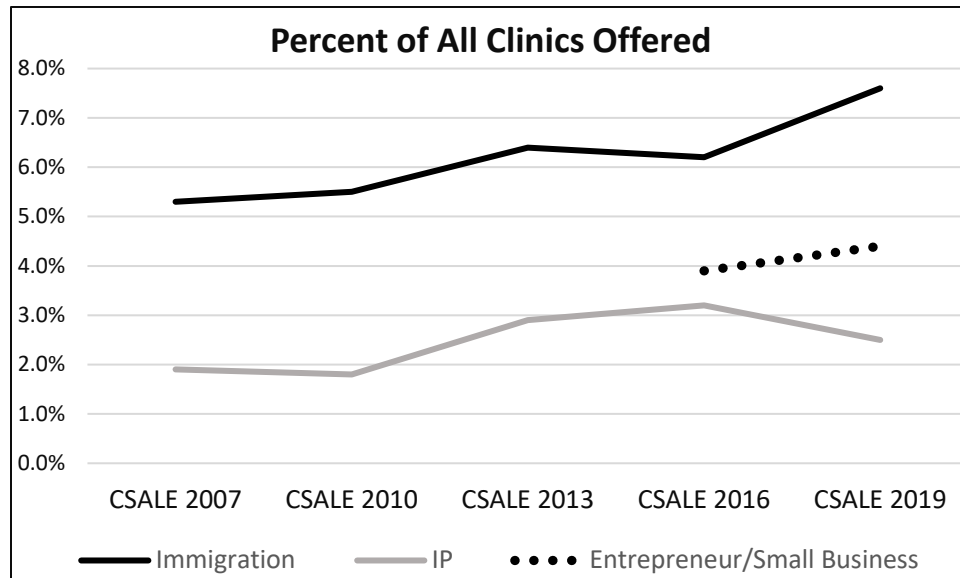
Another way to identify where growth has been occurring is to consider the percentage of all clinics nationally with a similar substantive focus. This analysis better portrays the growth in context and shows how schools are allocating students into various practice areas and, to some extent, about the student demand that drives them. So, for example, as the chart below shows, while the percentage of schools offering criminal defense clinics increased from 45% to 58%



between 2007 and 2019, the number of criminal clinics as a percentage of all clinics offered actually dropped slightly. The same decline is true for the other historical favorites.



The flip side of these declines is the growth in immigration and transactional clinics, shown below, reflecting the increased interest of schools and their students in these practice areas.



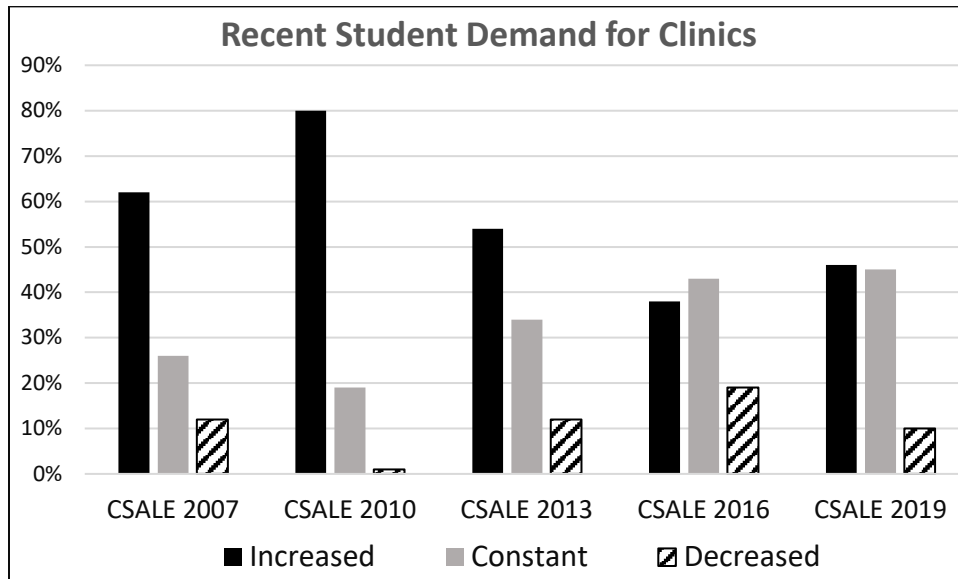
### B. Enrollment

As illustrated in Part II, enrollment in clinics rose steadily for a decade from the mid-2000s before flattening out. Yet even if enrollment growth has recently slowed, repeated CSALE surveys have shown that over half of law clinics remain oversubscribed.<sup>100</sup> Whether students who are shut

<sup>100</sup> See *supra* note 42 and accompanying text.

out of a particular clinic are able to enroll in another clinic, or a field placement course instead, or miss out entirely on the opportunity for a clinical experience is not known.

A similar flattening can be seen in the chart below: Schools in CSALE surveys were asked if recent student demand for their clinics had increased, remained constant, or decreased over the prior three years. Demand for clinics has slowed since its peak in 2010. With the growth in the number of clinics and seats available for students, the number of clinics reporting increased demand has decreased. None of this is surprising, as demand is not inexhaustible. Still, in 2019, 46% of clinics reported increased demand.



When schools in the 2019 CSALE survey were asked to explain the reasons for any increase, the most common were: students believe clinics improve skills (at 75% of the schools); students believe clinics improve marketability (60%); increased interest in areas of practice offered by clinics (60%); increased support and promotion by school (45%); new ABA experiential requirement (40%); and other faculty promoting clinics/encouraging students to enroll (33%). Interestingly, 40% of respondents believed that the relatively new ABA experiential requirement had spurred increased demand. However, as noted earlier, ABA annual reports show no impact on the availability of law clinic slots.<sup>101</sup>

For schools reporting a decrease, the most common reasons were: smaller student body (74% of the schools); students believe their time should be spent on bar subject courses (68%); time commitment too high (53%); lack of support and promotion by school (26%); students do not believe clinics improve marketability (21%); lack of interest in areas of practice offered by clinics (21%); and other faculty discourage students from taking (16%).

The percentage of clinics that have a pre- or co-requisite has changed marginally since 2007, hovering between 55% and 60% in recent surveys but reflecting an increase from roughly

<sup>101</sup> See *supra* notes 44–45 and accompanying text.

50% in 2007.<sup>102</sup> There has, however, been a noticeable change in what clinics are requiring. In the 2019 CSALE survey, 47% of clinics with prerequisites required a course in ethics/professional responsibility, double the number in 2007. Evidence has also been increasingly required as a requisite, increasing from 27% in 2007 to 38% in the 2019 CSALE survey. Finally, given the increased specialization of clinics, it is not surprising that clinics with a pre- or co-requisite of a course in the substantive area of the clinic's practice has increased from 25% in 2007 to 40% in 2019.

The number of students a law clinic can enroll, how many terms students are enrolled for, the student-teacher ratio, and the number of credit hours awarded are all interdependent. Put simply, a clinic teacher would no doubt think differently about a 12:1 student-teacher ratio in a three-credit clinic than in a seven-credit one. Similarly, a school might prefer a three-credit, one-semester clinic to a one- or even two-semester, seven-credit clinic to allow it to offer more students a clinic opportunity. These interrelated considerations play out below.

There has been a significant change in average clinic size over the years. In 1987, the average size was twenty-four students.<sup>103</sup> By 2019, the median and most common size dropped to eight students, no doubt tied, in part, to the increased specialization of clinics discussed above.

There has, however, been little change in student-teacher ratios. In 1987, 54% of clinics had a student-teacher ratio between 8:1 and 10:1.<sup>104</sup> Over the course of the five CSALE surveys, the median and most common student-teacher ratio for both the classroom and casework component of clinics was 8:1, with approximately half of clinics in the 8:1-to-10:1 range. The two-thirds drop in typical clinic size to eight students and the steady 8:1 student-teacher ratio since 1987 suggest that more faculty are teaching clinics alone rather than in teams, a reversal from the common practice in 1987. While contraction in clinic size has facilitated increased specialization among clinics, it can present challenges to the continuing pedagogical development of clinic faculty who increasingly teach students alone.

In 1987, 38% of clinics required enrollment for two semesters, with the balance requiring just one.<sup>105</sup> Thirty years later in the 2019 CSALE survey, just 19% of clinics required two semesters, a movement likely driven, in part, by efforts to address increasing student demand. Put another way, some of the growth in clinic availability has resulted in fewer, more immersive two-semester clinic experiences.

Finally, CSALE surveys reveal that an increasing number of clinics permit students to enroll for one or more additional terms beyond the mandatory initial term. In 2007, nearly 52% of

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<sup>102</sup> In the 1987 AALS survey about 20% of clinics had prerequisite requirements, with trial advocacy the most common. McDiarmid, *supra* note 22, at 290.

<sup>103</sup> *Id.*, at 256.

<sup>104</sup> *Id.*, at 254. Stickgold's 1982 survey found that the average student-faculty ratio for in-house clinics was 13:1. Stickgold, *supra* note 15, at 301.

<sup>105</sup> *Report of the Committee on the Future of the In-House Clinic*, *supra* note 19, at 521.

clinics allowed repeat enrollment. By 2019, 63% permitted additional terms, typically for three credits (38% of clinics), two credits (29%), or four (19%).<sup>106</sup>

### C. Credits and Grading

Little has changed in terms of the credit hours offered in clinics. In all five CSALE surveys since 2007, the median total credit hours awarded for the combined casework and classroom components has been five, with two credits for the classroom component and three credits for the fieldwork. Seven percent of clinics awarded ten or more credits per term.

Approximately 80% of clinic students in recent CSALE surveys received a fixed number of academic credits for their casework, rather than a variable number based on the amount of time spent on their clinic work. Where the number of credits was fixed, the median and most common number of fixed casework credits across CSALE surveys has been three (approximately 30% of courses), followed by two and four credits (each approximately 20-25%). In the 2019 CSALE survey, 6% of courses awarded eight or more fixed credits, an increase from 4%-5% in prior surveys.

Where the credits for casework are variable, the most frequent *minimum* numbers of credits a student could receive in 2019 were two per term (27% of clinics), three per term (22%), four per term (20%), and one (19%). The most frequent *maximum* numbers of variable credits a student could receive were six per term (31% of clinics), four per term (22%), and five (18%). While 18% of clinics allowed students to receive over six variable credits, 20% allowed their students to earn as few as one credit for their work in representing clients.

Grading of both the clinic classroom and casework has changed over time. In 2007, 63% of clinics had a mandatory letter or number grade for classroom clinical work, rising to 73% by 2019. In turn, the percentage of clinics that use mandatory pass/fail grading for classroom performance dropped from 30% in 2007 to 21% in 2019. Where classroom grading is by letter/number, 32% graded on a curve in 2019, similar to what was reported in prior CSALE surveys.<sup>107</sup>

The grading methodology for the casework component of clinics has undergone a similar movement away from pass/fail—60% issued letter/number grades for casework in 2007, a number that rose to nearly 70% in 2019. Thirty-two percent of letter/number grades were on a curve, a percentage that has remained fairly constant across CSALE surveys. As with classroom grading, about two-thirds of clinics apply a curve used in other low-enrollment courses, while approximately 20% apply the curve used by the school for all courses.

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<sup>106</sup> The median percentage of students taking a clinic for an additional term(s) in the 2019 survey was 20%, an increase from 15% in 2013.

<sup>107</sup> Where graded on a curve, two-thirds of clinics had a curve similar to or the same as the curve used in other low-enrollment courses, while approximately one-quarter applied a curve similar to or the same as that used by the school for all courses (the remainder using a curve that differs in some way from the low-enrollment or normal law school curve).

#### D. *Classroom Instruction*

In 1987, 89% of clinics reported having a classroom component as part of the curriculum.<sup>108</sup> Today, ABA Accreditation Standard 304(b)(5) requires that every clinic must provide a classroom instructional component to meet the definition of a law clinic under Standard 304(c), with 40% of clinics in the 2019 CSALE survey awarding two credits for the classroom component and one-third awarding one credit. The content of this classroom component among competing demands for this limited classroom time is often a challenge for clinic teachers.

The CSALE surveys probe into classroom content by providing clinic teachers with seven categories of classroom subject coverage. Almost every clinic (94%) now devotes some classroom time to skills instruction, case discussion/rounds (90%), and substantive law (89%). On the other hand, 30% of clinics spend no classroom time on procedural law/rules, and 25% spend no time on simulation, a decrease in class time of 5% from the first CSALE survey in 2007.

Across CSALE surveys, the average allocations of class time to different subjects have barely changed, with no category varying by more than a few percentage points over the past three surveys. In the 2019 survey, on average 23% of class time was spent on skills instruction; 21% on case discussion/rounds; 20% on substantive law; 13% on simulation; 10% on procedural law/rules; and 9% on ethics/professional responsibility.

#### E. *Challenges*

Both the 1987 AALS survey and CSALE surveys asked schools to identify major challenges to their law clinic program. As the chart below shows, much has changed over the past three decades. Notably, some challenges faced in 1987 had largely dissipated by 2019: Lack of support from nonclinical faculty was down from 46% to 10%, and the challenge of student demand for clinic seats was down from 32% to 12%. The primary current challenges stem from how schools allocate resources, with more than half of programs identifying funding and other job-related demands on clinical faculty time as major challenges and, for one-third of programs, insufficient faculty status.

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<sup>108</sup> McDiarmid, *supra* note 22, at 247.

| <b>Major Challenges to Clinics</b>          | <b>Percent of Schools Reporting</b> |                       |                       |
|---|-------------------------------------|-----------------------|-----------------------|
|   | <b>McDiarmid<br/>1987</b>           | <b>CSALE<br/>2016</b> | <b>CSALE<br/>2019</b> |
| Other demands on faculty's time             |                                     | 46%                   | 53%                   |
| Insufficient hard money                     | 47%                                 | 56%                   | 53%                   |
| Insufficient faculty status                 |                                     | 24%                   | 33%                   |
| Insufficient administrative support         | 12%                                 | 29%                   | 22%                   |
| Insufficient number of clinical faculty     |                                     | 26%                   | 22%                   |
| Insufficient physical/office space          | 20%                                 | 18%                   | 20%                   |
| Insufficient student demand                 | 32%                                 | 11%                   | 12%                   |
| Insufficient support of nonclinical faculty | 46%                                 | 14%                   | 10%                   |
| Insufficient support from administration    | 14%                                 | 11%                   | 7%                    |

The next section documents a similar evolution in field placement programs over the past five decades.

## V. FIELD PLACEMENT DESIGN AND OPERATION

Field placement programs, like law clinics, have changed significantly in subject matter, enrollment, credits, fieldwork, classroom/reflection component, and challenges since the 1970s. These changes were driven in part by the increasing interest of students in field placement opportunities and expanded ABA requirements.

### A. Subject Matter

The availability of field placement courses for students has grown greatly over the past five decades, as illustrated in the graph below showing the percentage of schools that had some form of field placement course.

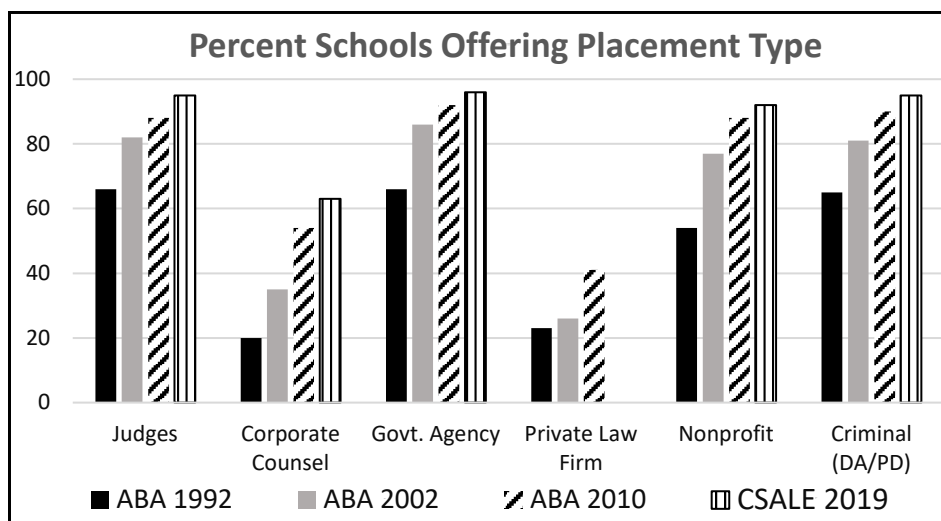
The availability of field placement courses for students has grown greatly over the past five decades—from only 43% of law schools in 1970 with some form of field placement course<sup>109</sup> to

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<sup>109</sup> See Ogilvy & Seibel, *supra* note 17, at 9 (citing COUNCIL OF LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, SURVEY OF CLINICAL AND OTHER EXTRA-CLASSROOM EXPERIENCES IN LAW SCHOOLS 1970–1971, 409–18 (1971)) (reporting 63 law schools with externships); THE FACULTY LOUNGE, *Historical Data: Total Number of Law Schools and Students, 1964–2012*, <https://www.thefacultylounge.org/2013/02/historical-data-total-number-of-law-students-1964-2012.html> (last visited July 26, 2021) (reporting 146 law schools in 1970).

66% of schools in 1979,<sup>110</sup> 75% in 1982,<sup>111</sup> 85% in 1992,<sup>112</sup> 97% in 2002,<sup>113</sup> and 100% of schools since the beginning of CSALE surveys in 2007.

Within this enormous growth in the availability of field placement courses, judicial, governmental, nonprofit, and criminal (public defender and prosecution) have traditionally been the most common types of externship placements offered to students. The percentage of schools offering these popular placements has increased substantially since 1992, as seen in the chart below.<sup>114</sup> There also have been noticeable increases in placements with for-profit corporate counsel and law firm offices, with the percentage of schools offering placements with corporate offices tripling and law firms doubling since 1992.<sup>115</sup>



<sup>110</sup> Stickgold, *supra* note 15, at 297 (reporting results of a 1979 report by the Council on Legal Education for Professional Responsibility).

<sup>111</sup> *Id.* at 298. Yet, on average, schools had fewer than one faculty member committing more than one-quarter of their working time to the courses. Also, the average student-teacher ratio for field placement programs was 72:1. *Id.* at 301.

<sup>112</sup> Seibel & Morton, *supra* note 16, at 422. Seibel and Morton note that their finding of 85% of schools with at least one externship course was similar to the 1992 ABA MacCrata Report's finding of 84% of schools with an externship program. *Id.* (citing AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 253 (1992) (hereinafter MACCRATE REPORT)). While 85% of schools had at least one field placement course, at 26% of the schools the faculty member received no teaching credit for their field placement work. Seibel & Morton, *supra* note 16, at 435-36.

<sup>113</sup> A SURVEY OF LAW SCHOOL CURRICULA, *supra* note 92, at 35 (reporting percentage of all schools in survey, not only those offering externship courses); see also Ogilvy & Seibel, *supra* note 17, at 15–16 (reporting 98% of 186 ABA-accredited schools in 2003 offered at least one externship course).

<sup>114</sup> ABA data is from the 2002 and 2010 ABA surveys of law school curricula. See AM. BAR ASS'N, A SURVEY OF LAW SCHOOL CURRICULA: 1992–2002, *supra* note 92; AM. BAR ASS'N, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, *supra* note 92. Seibel and Morton's 1992 survey found that 40% of field placement courses were general in nature (students placed in civil, criminal, public and private practices), 21.4% were judicial, 14.3% government agency, 12.2% criminal, 9.2% legal aid/legal services, and 3.1% other. Seibel & Morton, *supra* note 16, at 424.

<sup>115</sup> Similar to the growth of specialized law clinics noted in Part IV, 80% of the course names reported by schools in Basu and Ogilvy's 2007 survey of field placement programs suggested a specific subject matter or setting, compared with 59% in their 2002 survey. Basu & Ogilvy, *supra* note 18, at 12.

Since 2016, CSALE surveys have asked about the types of legal activities engaged in by the offices in which students are placed. In the 2019 survey, every school offered students placements in litigation/dispute resolution-focused offices, with transactional placements offered at 89% of schools, regulatory at 83% of schools, and legislative/policy placements at 82%. The percentage of schools offering nonlitigation/dispute resolution placements in 2019 increased slightly since the 2016 survey as more schools recognized the need to offer students a greater variety of placement experiences.<sup>116</sup>

Looking at the practice settings in which students were placed in 2019, litigation/dispute resolution experiences predominate—61% of students were placed in offices with primarily a litigation/dispute resolution focus; 18% in transactional-focused offices; 11% in regulatory offices; and 11% in legislative or policy office settings. At many schools, nonlitigation options are sparse. In 2019, 20% of schools placed 5% or fewer of their field placement students in transactional settings, around 40% of schools placed 5% or fewer in regulatory settings, and 45% placed 5% or fewer in legislative/policy practice settings.

Until 2016, the ABA prohibited students in field placements from receiving compensation in addition to academic credit. With that prohibition removed, 18% of schools in the 2019 CSALE survey allowed students to receive compensation in addition to credit (beyond reimbursement for out-of-pocket expenses incurred from working at the office), up from 10% in the 2016 survey.<sup>117</sup> Another 18% of schools allowed compensation but with conditions or limits, also an increase from 10% in the 2016 CSALE survey. In 2019, of the schools that allowed compensation but only with conditions or limits, 74% allowed compensation provided it was from a source other than the externship site/office (e.g., fellowship or stipend), while 37% limited compensation to certain types of placement offices (e.g., only government or nonprofit).

## B. Enrollment

As shown in Part II, enrollment in field placement courses rose steadily from the mid-2000s, peaked in 2013, and then flattened until slightly decreasing since 2018.<sup>118</sup> The 40% increase in enrollment from 2011 to 2013 coincided with a downturn in law graduate employment opportunities and may have resulted from the perceptions of students that externships aid in finding

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<sup>116</sup> From 2016 to 2019, the percentage of schools offering students transactional placements increased from 84% to 89%, and regulatory/legislative from 78% to 82%-83%.

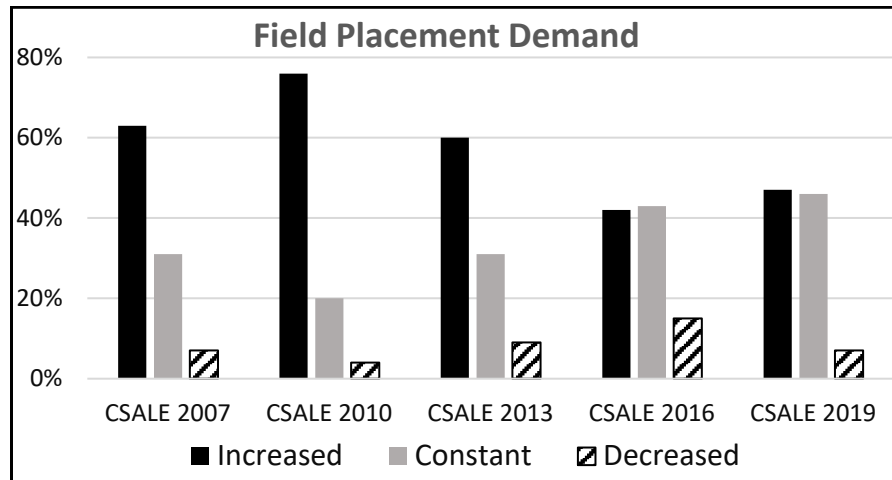
<sup>117</sup> A 2018 survey by the Clinical Legal Education Association (CLEA) found a similar percentage of schools (33.77%) allowed some form of paid externships, either directly by the office where the students was placed or indirectly in the form of a fellowship, grant, or stipend from a source other than the externship site. CLEA Externship Committee Report: Survey of Schools on Payment of Students in For-Credit Externships 4 (2018), <https://www.cleaweb.org/resources/Documents/CLEA.PaidExternships.SurveyReportFINAL.10-9-18.pdf> (last visited July 27, 2021). A follow-up CLEA survey in 2020 reported that 40.6% of schools allowed some form of compensation, but only 33% directly from the host office through an hourly or lump-sum salary. CLEA Externship Committee Report: Survey of Schools on Payment of Students in For-Credit Externships 4-5, 9 (2020), <https://www.dropbox.com/s/fggbjf13rhg4arf/CLEA%20Paid%20Externships%20Survey%20Report.10-20-20.FINAL.pdf?dl=0> (last visited July 27, 2021).

<sup>118</sup> See *supra* notes 38–39 and accompanying text.



jobs. Again, the flattening of enrollment after 2013 occurred despite the implementation of the ABA’s new six-credit experiential training requirement.

A similar flattening can be seen in the below graph: Schools in the CSALE surveys were asked if overall student demand for their courses had increased, remained constant, or decreased since the survey three years prior.



Schools reporting an increase in demand for field placement slots in 2019 explained that the most common reasons for the increase were: students believe courses improve marketability (at 80% of the schools); students believe field placements improve skills (70%); new ABA six-credit experiential requirement (50%); increased interest in substantive areas of practice within field placements offered (44%); and increased support and promotion by school (43%). Over all CSALE surveys, the most common reasons given for increased demand have been the beliefs that field placements improve marketability and skills.

Among schools reporting a decrease, the most common reasons given in 2019 were: students believe their time should be spent on bar subject courses (at 64% of the schools); smaller student body (55%); other faculty discourage students from enrolling in field placement courses (27%); and lack of interest in areas of practice with the field placements offered (18%). Although the earliest CSALE surveys reported lack of support from the school and other faculty as the most common reasons for decreased enrollment, in the 2017 and 2019 surveys a smaller student body and belief that time should be spent on bar courses were the most common.

Schools are increasingly not requiring students to have pre- or co-requisite coursework to enroll in field placement courses: 51% of courses in the 2010 and 2013 required prerequisites but only 31% in 2019. This decrease may be due to an increasing diversity of placement types within courses, making prerequisites less practical, or an effort to give students greater enrollment choices.

Where there is a requisite, the most common are courses in ethics/professional responsibility (52% of courses in the 2019 CSALE survey); evidence (38%); a substantive area of practice (35%); criminal procedure (34%); skills/simulations (22%); and civil procedure (12%).

Across all CSALE surveys, ethics/professionalism, evidence, and a substantive course have been the most common requisites.

The most common enrollments per term in the 2013, 2016, and 2017 CSALE surveys were six to fifteen students (with class ranges of six to ten and eleven to fifteen).<sup>119</sup> Sixteen percent of field placement courses have enrollments of more than thirty students. A 1982 survey, while not reporting enrollment ranges, found that the average student-faculty ratio of field placement courses was 72:1.<sup>120</sup>

### C. Credits

Some field placement courses combine the fieldwork and classroom/reflection components into a single course,<sup>121</sup> while others split those components into two separate courses in the school's course catalog/directory.<sup>122</sup>

In 2019, the median number of credits a student received per term for the *combined* fieldwork and classroom/reflection components of a field placement course was four,<sup>123</sup> the same number found in a 2007–2009 survey by Basu and Ogilvy.<sup>124</sup> Where the field placement course addressed the ABA classroom/reflection requirement through a scheduled class, the most common numbers of credits in the 2019 CSALE survey for just the classroom component were one (57% of courses), two (35%), and three or more (11%). These percentages are largely unchanged from surveys in 1992, 2002, and 2007–2009 showing most classroom instruction was for one to two hours or credits per week.<sup>125</sup>

In the 2019 CSALE survey, 19% of courses awarded more than six credits, similar to what was reported in a 2002 survey but representing an increase from 16% in a 1992 survey.<sup>126</sup> Eleven percent of courses awarded ten or more credits, with over half of schools now offering their students the opportunity to enroll nearly full time in at least one field placement course.<sup>127</sup>

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<sup>119</sup> The median enrollment in field placement courses in 1992 was eleven to twenty students, with 18.1% of courses enrolling twenty-one to forty students and 10.2% enrolling more than forty. Seibel & Morton, *supra* note 16, at 424–25.

<sup>120</sup> Stickgold, *supra* note 15, at 301.

<sup>121</sup> The ABA requires that a field placement course provide “substantial lawyering experience” and “a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.” ABA STANDARDS 2022, *supra* note 31, at Std. 304(d), 304(a)(5). The substantial lawyering experience part of the course is referred to herein as the “fieldwork” component and the required ongoing, contemporaneous, faculty-guided reflection the “classroom/reflection” component.

<sup>122</sup> In the 2019 CSALE survey, 61% of field placement courses combined the fieldwork and classroom/reflection components into a single course, while 39% treated the fieldwork and classroom/reflection components as separate courses. This question was not asked in prior CSALE surveys.

<sup>123</sup> Where the credits received are variable based on the number of hours worked by the student, respondents were asked to choose the most common number of credits students receive in the course.

<sup>124</sup> Basu & Ogilvy, *supra* note 18, at 8.

<sup>125</sup> Seibel & Morton, *supra* note 16, at 431; Ogilvy & Seibel, *supra* note 17, at 27–28; Basu & Ogilvy, *supra* note 18, at 15–16.

<sup>126</sup> See Ogilvy & Seibel, *supra* note 17, at 19 (reporting 21% of courses with seven or more credits in their 2002 survey and 16% in a 1992 survey by Seibel and Morton).

<sup>127</sup> Ogilvy and Seibel's 2002 survey reported 6% of schools awarded eleven or more credits; Basu and Ogilvy's 2007–

Credits for the fieldwork component can be fixed, with all students receiving the same number of credits, or variable, based on the chosen number of hours a student spends on the fieldwork. Since the mid-2000s, there has been a shift toward offering students more credit options, with the percentage of courses offering variable credits increasing from 37% in 2007 to over 50% in the 2013–2019 CSALE surveys.<sup>128</sup>

ABA accreditation standards require that credit granted for a field placement course “shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.”<sup>129</sup> Surveys in 1992, 2002, and 2007–2009 found that the average number of fieldwork hours required per week per academic credit was about four.<sup>130</sup> In 2014, the ABA amended its rules for determination of classroom credit hours to require at least forty-two and a half hours of total in-class instruction and out-of-class student work per credit and at least an equivalent number for law clinic and field placement courses.<sup>131</sup> Not surprisingly, then, in the 2019 CSALE survey the most common periods schools now require a student to work per each academic credit were forty-two and a half hours (23% of courses), followed by fifty hours and forty-five hours (both 18%), fifty-five to sixty hours (14%), and more than sixty hours (12%).

#### D. *Fieldwork*

Field placement faculty, in conjunction with the person supervising the student at the placement site, have developed a number of approaches to assure the educational quality of the student’s lawyering experience.<sup>132</sup> To monitor the student’s activities in the field and comply with ABA requirements on minimum hours of work per credit, over 94% of field placement courses in the 2019 CSALE survey required students to report their fieldwork hours in time logs.<sup>133</sup>

Beginning in 1992, the ABA required periodic on-site visits for field placement courses that awarded six or more academic credits, and later expanded the requirement to apply to all courses with four or more credits.<sup>134</sup> In 2014 that changed to require only regular contact with the

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2009 survey reported 8% with eleven or more. Basu & Ogilvy, *supra* note 18, at 8–9 (reporting revised data for the 2002 survey).

<sup>128</sup> Where the number of credits for fieldwork is variable, the most common *minimum* numbers of credits in the 2019 CSALE survey were two per term (40% of variable courses), one per term (23%), and three per term (22%). The most common *maximum* numbers of variable credits were five per term (19%), followed by two per term, four per term, and twelve per term (each in 17% of variable courses). Where the number of fieldwork credits was fixed, the most common numbers awarded were two per term (38% of courses), three per term (29%), and four per term (9%).

<sup>129</sup> ABA STANDARDS 2022, *supra* note 31, at Std. 304(e).

<sup>130</sup> Ogilvy & Seibel, *supra* note 17, at 22–23; Basu & Ogilvy, *supra* note 18, at 13.

<sup>131</sup> ABA STANDARDS 2022, *supra* note 31, at Std. 310(b) & Interpretation 310–1.

<sup>132</sup> *See id.*, at Std. 304(d)(ii) (requiring a field placement course provide substantial lawyering experience that includes methods to assure the educational quality of the experience for the student).

<sup>133</sup> Fifty-eight percent required time reporting weekly, 16% biweekly, and 11% at the end of the term. Of those requiring time reporting, 53% required that logs be reviewed or approved by the on-site supervisor, similar to the percentages in the two prior surveys.

<sup>134</sup> Effective in 1992, ABA Accreditation Standards stated a preference for on-site visits by full-time faculty during each field placement; a contemporaneous classroom component in courses awarding six credits or fewer; and a requirement for a classroom and visits if more than six credits are awarded. Seibel & Morton, *supra* note 16, at 440–41 (summarizing SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS FOR

site supervisor through in-person visits “or other methods of communication that will assure the quality of the student educational experience.”<sup>135</sup> Despite the softening, visits are still common, as 75% of courses in the 2019 CSALE survey reported using site visits of varying frequency, an increase from 61% in a 2002 survey and 68% in 2007.<sup>136</sup>

Almost all field placement courses require students to write some type of journal or other document and reflect on their fieldwork activities. In the 2019 CSALE survey, 95% of courses, whether including a classroom component or not, required a reflective writing/journal. In the 2013 and 2016 CSALE surveys, 85% of courses required at least a journal. This represents a significant increase from 2002, when a survey found 66% of courses required journals, and 1992, when a survey reported 45% with a journal requirement.<sup>137</sup>

The ABA requires that fieldwork be evaluated by a faculty member. In 83% of courses in the 2019 CSALE survey, students received a mandatory pass/fail grade for their fieldwork; in 12%, a mandatory letter or number grade; in 3%, a mixed pass/fail and letter/number grade; and in 1%, the option of a pass/fail or letter/number grade—similar to the percentages in the two prior CSALE surveys.<sup>138</sup> The prevalence of grading with a letter/number has decreased since 2002 and 2007, when approximately one-quarter of courses required a letter/number grade.<sup>139</sup>

#### E. Classroom/Reflection Component

Most field placement courses meet the ABA requirement for “a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection” through a classroom component (i.e., related seminar).<sup>140</sup> As the graph below illustrates, the percentage of field placement courses with an associated classroom component has increased substantially since the 1980s. This growth is likely driven, in part, by efforts of the ABA

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APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Std. 306 (1993)). The number of credits triggering periodic visits was later lowered to four. *See* SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013-14, Std. 305(e)(5) (2013).

<sup>135</sup> ABA STANDARDS 2022, *supra* note 31, at Std. 304(d)(ii).

<sup>136</sup> Where visits were done, in 31% of courses generally visits are made to sites irregularly/occasionally, in 25% visits are made in semesters when a student is placed at the office, in 15% visits are limited to new host offices, in 13% visits are made yearly, and in 8% visits are made each term.

A 2002 survey by Ogilvy and Seibel reported that 61% of field placement courses used site visits to evaluate the offices where students externed. Ogilvy & Seibel, *supra* note 17, at 41. Basu and Ogilvy’s 2007 survey found that 68% of field placement courses used site visits to evaluate placements. Basu & Ogilvy, *supra* note 18, at 27. Marc Stickgold’s 1982 survey included a series of questions on the type and degree of contact between the faculty member and the field supervisor. Stickgold, *supra* note 15, at 301–04.

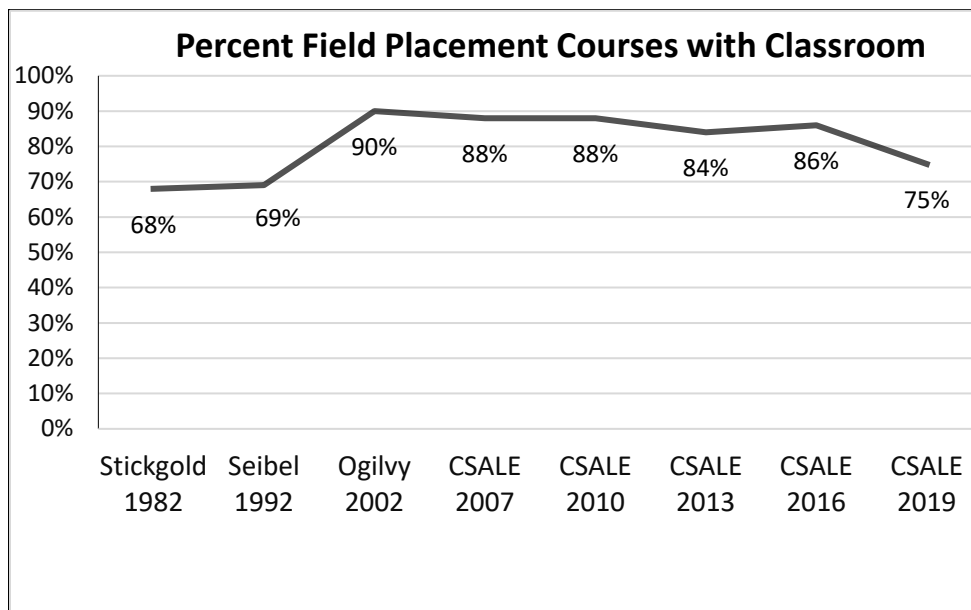
<sup>137</sup> Ogilvy & Seibel, *supra* note 17, at 34; Seibel & Morton, *supra* note 16, at 435 n.50. Note that the earlier surveys, unlike the 2019 CSALE survey, asked only about journals and not other types of reflective writing by students about their fieldwork experiences.

<sup>138</sup> While the percentage of courses using letter/number grades for fieldwork has remained steady, a decreasing number of those courses are graded on a curve, down from 41% in 2010 to just 12% in the 2019 CSALE survey.

<sup>139</sup> Basu & Ogilvy, *supra* note 18, at 22.

<sup>140</sup> ABA STANDARDS 2022, *supra* note 31, at Std. 304(a)(5). Before abolishing the requirement in 2004, the ABA required a classroom component if the course awarded six or more credits. *See* SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Std. 305(e)(5) (2004–05).

beginning in 1986 to have field placement courses include a classroom component.<sup>141</sup> Similarly, the decrease since 2002 may be in part from a 2005 change to accreditation standards that permitted courses to use other means of guided reflection in addition to a classroom component. There is no obvious explanation, however, for the significantly decreased use of classroom instruction between the 2016 and 2019 CSALE surveys.



Turning to the classroom content, in the 2019 CSALE survey, 80% of courses devoted some portion of time to fieldwork discussion/rounds, 77% addressed ethics/professional responsibility, 67% addressed professional identity, 62% included skills instruction, and 59% included career development. In contrast, 64% of courses spent no class time on procedural law/rules, 59% spent no time on simulations, and 58% spent no time on substantive law. Although comparisons with earlier surveys are difficult because of the use of different categories, there has been an increase in the percentage of field placement classes that include reflection on placements/case rounds from less than 50% in 1992, to 68% in 2002, 77% in 2007, and 80% in 2019.<sup>142</sup> Classroom focus on career development likewise has increased from just 33% of courses in 2002, to 49% in 2007, and 59% in 2019, perhaps a reflection of the challenging job market

<sup>141</sup> Interpretation 2 of ABA Accreditation Standard 306, adopted in 1986, required the accreditation committee to consider whether the field placement had a classroom component when evaluating the course. Stickgold, *supra* note 15, at 296 n.49. In 1992, the ABA went further and stated that a contemporaneous classroom component was preferred in field placements where a field instructor was responsible for direct supervision of students. Seibel & Morton, *supra* note 16, at 440–41. Starting in 2003, the ABA required a contemporaneous classroom component or tutorial taught by a faculty member if a field placement course awarded six or more credits. See Basu & Ogilvy, *supra* note 18, at 14 (explaining 2003 and 2005 changes to accreditation standards). A change effective in 2005 lowered the credit requirement to four from six credits but allowed “other means of guided reflection” in addition to the classroom or tutorial component. Current ABA standards do not require a classroom or tutorial regardless of the number of credits but merely require every field placement course to provide “a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.” ABA STANDARDS 2022, *supra* note 31, at Standard 304(a)(5).

<sup>142</sup> See Basu & Ogilvy, *supra* note 18, at 17; 2019 CSALE Report, *supra* note 27, at 47.

students faced over the past decade.<sup>143</sup>

The greatest amount of classroom time in the 2019 CSALE survey was devoted to fieldwork discussion/rounds (21% of total classroom time), followed by professional identity formation (15%), ethics/professional responsibility (12%), skills instruction (12%), substantive law (8%), career development (8%), simulations (6%), and procedural law/rules (5%). While substantive and procedural law combined took up only 13% of classroom time in 2019, in a 2002 field placement survey the two subjects took up the most time of any activity, at 35%.<sup>144</sup>

The most common classroom grading method in CSALE surveys has been mandatory pass/fail, at around 50%. In contrast, Basu and Ogilvy observed that the percentage of courses using pass/fail grades was around 60% in its surveys from 1992, 2002, and 2007–2009, although their survey questions on grading differ somewhat from CSALE's.<sup>145</sup> Both percentages are considerably less than those in fieldwork grading, for which 83% of courses use pass/fail.

Where students are graded with letters or numbers, only 29% of the 2019 CSALE field placement courses graded the classroom component on a curve, compared with 47% in 2016–2017 and 43% in 2013–2014.<sup>146</sup>

#### F. *Challenges*

The chart below shows the major challenges school field placement programs have faced over the past decade. The top three challenges have consistently been other demands on the field placement teacher's time, insufficient administrative support, and an insufficient number of field placement faculty. The problems posed by other demands can also be seen later in the faculty section, where field placement teachers were found to spend only about one-quarter of their time on the course. Sufficient administrative support can be especially problematic in larger field placement programs, given the need to keep track of large numbers of student placements and the time sheets, journals, etc., associated with the course. It is also notable that lack of support from nonclinical faculty is much less of an issue than it was in past surveys.

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<sup>143</sup> See Basu & Ogilvy, *supra* note 18, at 17; 2019 CSALE Report, *supra* note 27, at 47.

<sup>144</sup> Ogilvy & Seibel, *supra* note 17, at 30. The 2002 Ogilvy and Seibel and 2007–2009 Basu and Ogilvy surveys also included questions on the teaching methods used in the classroom component (e.g., lecture/discussion, student presentations) and the types of course materials (e.g., published text, compiled materials). Between the two surveys, there was an increase in the use of student presentations (58% to 67%) and student facilitation (19% to 37%), with little or no change in the use of lecture/discussion (95% to 94%) and guest speakers (52% to 55%). Basu & Ogilvy, *supra* note 18, at 18–19.

<sup>145</sup> Basu & Ogilvy, *supra* note 18, at 21–22. Basu & Ogilvy found in 2007–2009 that 41% of courses used a letter/number grade, a proportion 7% lower than the CSALE survey found a few years later. The 1992 survey by Seibel and Morton combined the classroom and fieldwork components and acknowledged that classroom component courses were more likely to award grades. Seibel & Morton, *supra* note 16, at 434.

<sup>146</sup> Where graded on a curve, 72% have a curve similar to or the same as the curve used by the school in other low-enrollment courses and 28% apply a curve similar to or the same as that used by the school for all courses.

| <b>Major Challenges</b>                     | <b>Percent of Schools Reporting</b> |                       |                       |
|---|-------------------------------------|-----------------------|-----------------------|
|   | <b>CSALE<br/>2013</b>               | <b>CSALE<br/>2016</b> | <b>CSALE<br/>2019</b> |
| Other demands on faculty's time             | 47%                                 | 42%                   | 45%                   |
| Insufficient administrative support         | 36%                                 | 44%                   | 37%                   |
| Insufficient number of clinical faculty     | 52%                                 | 36%                   | 35%                   |
| Insufficient faculty status                 |                                     | 24%                   | 24%                   |
| Insufficient hard money                     | 23%                                 | 22%                   | 21%                   |
| Insufficient student demand                 | 10%                                 | 12%                   | 10%                   |
| Insufficient support of nonclinical faculty | 14%                                 | 10%                   | 8%                    |
| Insufficient support from administration    | 10%                                 | 10%                   | 7%                    |
| Insufficient physical/office space          | 12%                                 | 8%                    | 2%                    |

## CONCLUSION

This comprehensive empirical analysis of modern clinical legal education shows its tremendous growth and evolution over the past five decades. The impetus for this study was the lack of data in discussions about the proper role of law clinics and externships in preparing law students for the practice of law. This study provides a fact-based foundation for these discussions and reveals gains in, among other things, the availability of clinical courses and job security for those who teach them. Those advances are a testament to the legions of clinical educators who, over the decades, worked hard at their craft and at enhancing the role of clinical education within the legal academy. Yet the data also shows there is still much work to be done, especially in making law clinic and field placement experiences available for all students and in further improving the status of clinical teachers. While there may be disagreement about where clinical legal education should go next, the factual analysis presented herein should drive those conversations. Unlike a personal sense or anecdotal account of history, the data herein is not subject to the vicissitudes of time and bends less readily to agendas.