tation about her claim and copies of her income tax returns. These interviews, always conducted with the faculty supervisor present, lasted at least an hour.

All the students had extensive experience in interviewing. First, in the initial telephone conversations, they have to quickly elicit salient facts to make a rough judgment about whether this might be a possible client. Students also have the experience of gathering and organising the complicated facts necessary to understand the client's case. In short, students have to learn what lawyers do - the often tedious and exacting work of compiling a case through documentary evidence and understanding the complexities of the transactions involved.

Students had varied writing experiences. Most students drafted a statement of claim. Each statement of claim went through several drafts and was edited both by the faculty supervisor and by an adjunct securities teacher. In preparation for drafting the statement of claim, students researched and drafted memoranda on the relevant legal issues in their cases, which the faculty supervisor critiqued. Students also gained experience in drafting letters to prospective clients about the strengths and weaknesses of their claims.

Given the small number of clients the clinic has represented and the few monetary benefits it has gained for them, it is difficult to speculate about whether the clinic has yet demonstrated that it can provide significant benefits to the securities arbitration process. Much of the clinic's work has been to provide assistance to investors that have not resulted in the filing of arbitration claims. It has provided investors' education services: reviewing account statements, reading and explaining customer's agreements, explaining margin rules. In some instances, the students have acted as an intermediary between the customer and the broker to figure out why the losses in the investor's account occurred. In some cases, a student has been able to resolve the dispute through a settlement satisfactory to both the broker and customer. While the customers may be disappointed that the law does not provide a remedy for their loss, many have thanked the students for taking the time to investigate and explain the situation to them.

Faculty diversity as a clinical legal education imperative

J Dubin

51 *Hastings L J*, March 2000, pp 445-477

While much has been written about the composition of law and university faculties, the value of faculty diversity in university and traditional law school education settlings and proposals for reform, scant attention has been paid to the composition of the increasingly significant cadre of law professors engaging in clinical teaching and scholarship and the educational and social consequences of the demographic distribution of clinical faculty positions. The problem of identifying, confronting and dealing with issues of diversity and difference with respect to clients and students occurs with such frequency in clinical scholarship and in discussions at clinical conferences as to be part of the clinical education 'canon'.

In 1997, the AALS Special Commission on Meeting the Challenges of Diversity in an Academic Democracy convened and developed a series of papers around issues of law school diversity. The Commission distinguished between two types of diversity issues: 'First generation' issues – those of access to enrolment and employment in law schools; and 'Second generation' issues: the reception by law schools of students and faculty who belong to groups that have traditionally been excluded from legal education. While the Commission focused primarily on analysis of the second-generation issues, members noted that the first generation access issues are still prevalent.

The progress toward access and inclusion of faculty of colour in clinical education must be placed in context of progress in the academy generally. The percentage of total faculty of colour in the academy has risen from 3.9% in 1980-81, to 5.4% in 1986-87 to 13.2% in 1997-98. At the same time, the percentage of the subcategory of clinical faculty of colour started out higher but has experienced slower and less steady growth in the 1990s from 5.4% in 1980-81, to 7.5% in 1986-87 to 12.9% in 1998-99.

Although by 1998-99 virtually every ABA accredited law school had some course known as a 'clinic' and thus some clinical faculty, 110 (69%) law schools have no clinicians of colour on the faculty, 41 (25.5%) have only one, and only 9 (5.5%) have reported more than one clinician of colour. Thus, while one might debate the significance of the progress and continuous movement toward diversity in clinical legal education, one cannot seriously suggest that we have even minimally transcended basic diversity access issues when nearly 70% of all law schools still have no clinicians of colour.

There are two broad rationales behind the creation and employment of diversity and affirmative action programs generally and for students and faculty at American law schools more specifically: a compensatory rationale designed to serve as a corrective for past injustice and exclusions; and an instrumental or functional approach which seeks to secure future-oriented benefits, such as the educational value of a diverse faculty and student body and the external benefits that flow from the professional success of an individual to other members of the group.

The value of faculty diversity to the depth and breadth of evolving clinical pedagogy, clinical scholarship and lawyering theory is significant. Thus it is not surprising that with the growth in the population of clinicians of colour, clinical programs have increasingly focused on new underserved populations, or on different ways of serving and teaching about serving underserved groups. Another concrete example of the influence of clinical faculty of colour is the emergence of multicultural lawyering theory and instruction as an important element of the continuum of professional competency instruction and of clinical education.

Faculty diversity and the inclusion of both 'insider' and 'outsider' perspectives in the collaborative clinical firm enhance the learning environment for lessons of

multiculturalism, as they are not only a focus of discussion in a given class or case but can be reinforced through a constant dialogue among multiple participants. Diversity can also serve a prophylactic function of protecting against discrimination. This includes protection from discrimination in the institutional or academic environment as well as protection against discrimination in the legal system at large. Non-discrimination is a skill or value of the profession. Faculty diversity is also central to the goals of non-discrimination and non-discrimination instruction.

Faculty of colour deserve important social roles within a law school and university. In the clinical teaching context, faculty diversity is also important to serve the unique professional development needs of students who will likely confront invidious discrimination in the legal system. Faculty that have confronted marginalisation, stereotyping, and dignitary assaults as lawyers can draw on these experiences to mentor and model lawyering against personal subordination to students.

Below are some suggestions and recommendations for commencing a process to address the lack of clinical faculty diversity in the vast majority of American law schools. First, because denial is often a major obstacle to recovery, the academy as a whole and clinical faculty must unambiguously and openly acknowledge that there is a problem. Second, the academy should urge vigorous enforcement of AALS Bylaw section 6-4c, which provides that '[a] member school shall seek to have a faculty, staff and student body which are diverse with respect to race, colour and sex.' Faculty participating on site inspection teams for accreditation reviews should ensure that this standard is applied and enforced with respect to clinical diversity. Third, pursuant to AALS Bylaw section 6-4c, member schools should be encouraged to adopt diversity plans, describing the steps they are taking and plan to take to produce diversity throughout their ranks, including their clinical programs, within specified time periods.

Fourth, law schools should consider the adoption of fellowship and graduate law programs, which take affirmative steps to provide entry-level experience and exposure to potential clinical faculty of colour. Fifth, the AALS Clinical Section and Minority Section should sponsor a joint session designed to promote the entry of lawyers of colour into the clinical teaching field by providing opportunities for information exchange, mentoring, advice and informal networking. Seventh, the AALS Clinical Section's Clinical Directors' Conference should sponsor sessions on creating and managing diversity in clinical programs and on increasing diversity in clinical managerial positions.

Unwritten laws and customs, local legal cultures and clinical legal education

A Seielstad

6 *Clinical L Rev*, Fall 2000, pp127-216

Informed by a law school education that emphasises the litigation process and the study of the written law, including certain areas of substantive law derived from written judicial opinions and the formal written rules that govern the litigation process, most students have come to expect certain things about American legal systems and what it means to represent clients within these systems. Upon entering the law clinic, for instance, the majority of students can hardly wait to get into court, however brief or unimportant the appearance. While some genuinely look forward to their first court appearance, even those for whom the prospect of appearing in court is one of trepidation fully expect their cases to culminate in a hearing or trial before a judicial tribunal.

As the clinical semester progresses, though, and students begin appearing before the local judicial tribunals on behalf of clients, many of these students experience a fundamental crisis - a clash between what they expected the practice of law to be like and what they find the actual practice to be like. In addition to realising how nebulous and evasive the factual truth can often be, many students are genuinely shocked by the extent to which unwritten rules and local customs – including relationship, power dynamics and shared understanding between certain participants in the legal process – play a role in American judicial systems. This is particularly the case if the students have not been adequately prepared in advance for the reality of law in action.

The challenges posed by local legal culture and its unwritten rules and preferred forms of practice may be especially acute for outsider practitioners, particularly those who represent individuals or organisations naturally excluded from access to unwritten rules, customs, and other shared understanding about how the legal system works in reality. Depending on the values, motives and characteristics of their members, local legal cultures can be exclusive associations, their unwritten rules often elusive and discriminatory. Although capable of acquiring the force of law through consistent and regular application and enforcement over time, such rules may challenge fundamental rights, benefits and processes that may be guaranteed by constitutional and statutory sources of law as well as other written rules. And some people may be more disproportionately impacted by the unwritten rules than others.

Even where written codes, rules, precedent and other sources of positive law purport to prescribe the way in which a dispute will be adjudicated or otherwise resolved, unwritten rules and customs are an important component of both substantive and procedural law and in some contexts within the United States even more important than the written law. Ascertaining unwritten laws and local legal culture and then advocating effectively for clients within a legal system that is governed by them requires the practitioner to use skills and realise values – even thinking and reasoning processes – different from the ones typically addressed in law school and different even from those recommended for emphasis in law school curricula by the American Bar Association and legal scholars who have written about the appropriate scope of law school education. Finally, clinical law teachers can and should play