

INVESTIGATING PANDEMIC EFFECTS ON LEGAL ACADEMIA

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INTRODUCTION

Even before the COVID-19 pandemic changed the landscape of the American workplace, challenges based on race, gender, and “raceXgender” (the combination of race and gender) were the norm in legal academia.¹ The “Pandemic Effects on Legal Academia” (PELA) project, now in the final stages of data collection, considers the ways in which the pandemic affects the retention and mental health of law faculty, and especially junior faculty, caregivers, faculty of color, women faculty, and women of color. Existing research has documented the extra service burdens many women of color carry both professionally and personally, from meeting with students and organizing committees on campus, to being the default parent and household manager at home.² “The toll of daily performance of *emotional labor* has been linked not only to broad ‘negative psychological outcomes,’ but also to depression and low job satisfaction, self-esteem, and overall health.”³ Scholars have labeled the negative health effects of workplace stress on legal academics of color as the Clyde Ferguson Syndrome, named for the Harvard Law professor who died young and perhaps in part because of the stressful work environment he endured.⁴ For women of color, these challenges and

1. See *infra* Part II.

2. See, e.g., MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 6 (2019).

3. *Id.* at 48 (emphasis added) (quoting Yeong-Gyeong Kim & Kyoung-Seok Kim, *A Literature Review of Emotional Labor and Emotional Labor Strategies*, 3 *UNIVERSAL J. MGMT.* 283, 285 (2015)). Emotional labor refers to “‘the management of feeling to create a publicly observable facial and bodily display,’ where women of color faculty regulate their true ‘emotions to comply with [workplace] norms.’” *Id.* at 47–48 (quoting ARLIE RUSSELL HOCHSCHILD, *THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING* 7 (1983)); see also Yeong-Gyeong Choi & Kyoung-Seok Kim, *A Literature Review of Emotional Labor and Emotional Labor Strategies*, 3 *UNIVERSAL J. MGMT.* 283, 289 (2015) (describing Hochschild’s concept of emotional labor).

4. See generally Roy L. Brooks, *Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?*, 20 *U. S.F. L. REV.* 419, 419–20 (1986) (noting that the untimely passing of revered Harvard Law professor Clarence Clyde Ferguson Jr. may have

the resulting mental health effects are exacerbated both by a presumption of incompetence working against them in the classroom⁵ and the expectation that they will continue working the second shift once they arrive home, often with partners and children waiting.⁶

COVID-19 has intensified these pressures in forceful ways. Women faculty have been expected to augment what were already substantial contributions to academic caretaking by crafting new policies, arranging online meetings with vulnerable students, and serving on an increasing number of committees. At the same time, schools and summer camps have been closed in many cities for much of the year—stymying opportunities for women, who are more likely to be caretakers of these now homebound children, to engage in focused research or scholarly writing.⁷

Other academic disciplines noted an immediate drop in the number of publication submissions by women as early as April 2020.⁸ In academia and other “up-or-out” fields—where junior scholars must prove themselves quickly or lose their jobs altogether—pandemic-related loss of productivity “can reverberate throughout [scholars’] careers.”⁹

Parallel drops in publications by women faculty are certainly occurring in legal academia, and institutions have begun discussing possible mitigating efforts.¹⁰ However, no empirical study has yet examined the extent of intersectional disparities in law review publishing or the negative effects on faculty more generally due to COVID-19. Along with the pandemic, other traumatic events from the past year—including George Floyd’s murder and the resulting protests, the 2020 election and the 2021 U.S. Capitol takeover,

been due, in part, to the negative health effects and pressures of being a professor of color, a strain shared by many other nontraditional faculty).

5. See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012) [hereinafter PRESUMED INCOMPETENT]; PRESUMED INCOMPETENT II: RACE, CLASS, POWER, AND RESISTANCE OF WOMEN IN ACADEMIA (Yolanda Flores Niemann et al. eds., 2020) [hereinafter PRESUMED INCOMPETENT II].

6. See generally ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* (1989).

7. See, e.g., Tovia Smith, *Coronavirus Crisis Interrupts Plan for Many Summer Camps*, NPR (May 15, 2020, 5:03 AM), <https://www.npr.org/2020/05/15/856594233/coronavirus-crisis-interrupts-plans-for-many-summer-camps> [<https://perma.cc/WP8Y-JJL2>] (discussing summer camp closings).

8. A recent publication in *Nature* notes that multiple recent research studies have shown that “across disciplines, women’s publishing rate has fallen relative to men’s amid the pandemic.” Giuliana Viglione, *Are Women Publishing Less During the Pandemic?: Here’s What the Data Say*, 581 NATURE 365, 365 (2020).

9. Noam Scheiber, *Pandemic Imperils Promotions for Women in Academia*, N.Y. TIMES (Oct. 6, 2020), <https://www.nytimes.com/2020/09/29/business/economy/pandemic-women-tenure.html?smid=tw-share> [<https://perma.cc/QS8E-GUR6>].

10. For instance, an open letter circulated in summer 2020 sought to make law journal editors and administrators, as well as tenure and promotion committees, aware of possible gender disparities and to consider mitigating efforts to avoid a drop in retention of women faculty. See *A Letter to Law Review Editors and Promotion and Tenure Committees at Law Schools*, FEMINIST L. PROFESSORS (July 17, 2020), <http://www.feministlawprofessors.com/2020/07/a-letter-to-law-review-editors-and-promotion-and-tenure-committees-at-law-schools/> [<https://perma.cc/H445-7SG7>]. This is discussed in greater detail below.

and the resumption of mass shootings involving people of color—will have outsize and disproportionate effects on those who are already vulnerable and marginalized.¹¹

As one example, a Native American law professor named Melissa, who participated in this author's previous empirical study on law faculty, realizes that "for many students I'm the first Native American they've ever met."¹² She works hard to create "a great relationship" with students by establishing that she is "the authority in the classroom" while conveying how important it is for professors "to care about" their students. She specifies, "I see myself as apprenticing them through my classes to go out and make a difference in the world. With the [first-year students] that [means] leading them by the hand through law school." In addition to this hands-on approach, Melissa carries extra service burdens because of her background, noting, "I get over-committee-ed because I am the Native Law faculty member in the state and on campus." As both a woman and a Native American, Melissa is in high demand for various service duties. She adds, "I work really well with our main diversity person [who] appoints me everywhere and so does the President and it's hard to say no to that." While she is committed to her students and university service, she also prioritizes time with her husband and her son. Melissa is grateful for the academic calendar: "[I have] the same breaks as my son, even though I may teach through them. I still have that time with him when he is off school." During the school year, she is even willing to occasionally "miss faculty meetings for his soccer games." She feels little guilt about it, recognizing, "I find myself missing more days from illness and being a lot more stressed [when I have] no breaks." So, to preserve her own physical and mental health, Melissa takes breaks.

This narrative from Melissa dates back to an interview conducted in 2013 as part of the Diversity in Legal Academia (DLA) study, before the COVID-19 crisis ravaged America. In addition to the physical symptoms of the virus, the crisis has wreaked havoc on the mental health of many individuals who have suffered the loss of loved ones or been pushed to the brink of their own mental stability. Legal academia is not immune from these challenges.

The PELA study investigates scholarly productivity rates by race, gender, and raceXgender from 2019 to 2022, a time frame encompassing productivity before, during, and hopefully after the pandemic, by examining authorship in a sample of law journals. The study also includes a qualitative component, drawing from interviews with law professors nationwide to

11. See Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/PK3N-UD4U>]; Mary Claire Jalonick, *Takeaways: What Hearings Have Revealed About Jan. 6 Failures*, AP NEWS (Mar. 4, 2021), <https://apnews.com/article/january-6-capitol-siege-hearings-takeaways-d51eb0e41299260a231648e5283e4349> [<https://perma.cc/4GSG-QAQH>]; Harmeet Kaur, *Fetishized, Sexualized and Marginalized, Asian Women Are Uniquely Vulnerable to Violence*, CNN (Mar. 17, 2021) <https://www.cnn.com/2021/03/17/us/asian-women-misogyny-spa-shootings-trnd/index.html> [<https://perma.cc/6TVV-PUSN>].

12. Full transcripts from interviews with study participants are on file with the author.

examine mental health and other consequences of institutional responses to these challenges. This Article provides an outline of the PELA study, including instructive literature, research questions, and hypotheses that guide this nascent project.

Part I introduces basic demographic information on law professors with a focus on race, gender, and raceXgender statistics. It also reviews data and methods from the DLA study, which lays a foundation for this new empirical project on challenges during the COVID-19 pandemic. Part II shares findings from DLA that are especially relevant to the mental health effects on law professors, particularly women of color and other vulnerable faculty. This part documents a baseline of raceXgender challenges facing traditional outsiders to legal academia, exposing how extra burdens, both at work and at home, lead to serious mental health consequences. Part III outlines the research questions, methods, and anticipated findings of the PELA study. The final part suggests preliminary solutions (as well as noting their limitations) that faculty, administrators, and others should begin employing to mitigate some of the expected raceXgender disparities. If not addressed, these disparities will result in a tragic decrease in diversity and the loss of particular scholarly voices across legal academia.

I. THE POPULATION OF LAW PROFESSORS

The PELA study focuses on the mental health and long-term professional effects of COVID-19 on law faculty. One primary focus of this study is women of color, who were bearing the brunt of service work and other invisible labor both at work and at home long before the pandemic and who have since shouldered increasingly and impossibly heavy burdens. This population was marginalized in legal academia pre-COVID-19 and is at even greater risk for attrition now. Untenured faculty (including both pretenure and contract-based professors) and faculty members who are caregivers have also been particularly vulnerable during the pandemic. To get a clear picture of who is involved and what is at stake, we must start with the basic demographics of law faculty. Understanding the empirical data at the heart of this Article will also prove useful.

A. Law Faculty Statistics

While the Association of American Law Schools (AALS) has not released law faculty data in over a decade, the most recent information available suggests that just about 7 percent of all law teachers are women of color, 8 percent are men of color, and 24 percent are white women.¹³ Almost half of all law professors (46 percent) are white men, the largest share by far of any raceXgender group in legal academia.¹⁴ More recent statistics from the

13. For a reproduced table of law faculty by race and gender using AALS data, see Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7, 12 tbl.1 (2015).

14. *Id.*

American Bar Association (ABA) show similar race, gender, and raceXgender disparities among law faculty.¹⁵ These discrepancies are not unique to legal academia. Data from the National Association of Law Placement (NALP) reveal even more troubling trends in private practice. Diversity statistics in associate ranks are very similar to those in legal academia, and partner disparities are even more severe: 68 percent of partners are white men, 23 percent are white women, 6 percent are men of color, and shockingly, only 3 percent are women of color.¹⁶

Few academics have empirically studied law faculty in a formal and meaningful way. Research from past decades reveals challenges facing faculty of color including “discrimination in hiring and promotion, alienation among their colleagues, hostility from students, and a lack of support for their research.”¹⁷ Recent scholarship suggests many of these barriers remain. One project empirically investigates satisfaction among tenured law faculty.¹⁸ Due to the significant numbers of faculty of color and women faculty in the junior scholar ranks, tenure is understood to be “the crucial institutional process through which the legal academy could block or open the doors to gender and racial integration.”¹⁹ Previous research has demonstrated that these “traditional outsiders were leaving the law school tenure track in greater proportions than were white men.”²⁰ An empirical investigation of tenure satisfaction revealed that “over one-third of women professors of color (35 percent) believed that the tenure process was not fair. These differences were highly statistically significant.”²¹ Furthermore, “[w]hite men were most likely to find the tenure process easy.”²² Overall, the study uncovers a number of “negative themes” that have negative repercussions in terms of “implicit bias in the tenure process, and differential impacts on women and on scholars of color of the law school’s pretenure institutional structures and cultures.”²³ Two volumes of research and personal narratives have also documented how the presumption of incompetence works against women of

15. *Law School Faculty & Staff by Ethnicity and Gender*, AM. BAR ASS’N (2013), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_school_staff_gender_ethnicity.xlsx [<https://perma.cc/36GE-FTJN>].

16. NAT’L ASS’N FOR L. PLACEMENT, INC. 2019 REPORT ON DIVERSITY IN U.S. LAW FIRMS 11 tbl.1 (2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf [<https://perma.cc/J2BN-S6UM>]. As of 2019, associates in law firms are 42 percent white men, 32 percent white women, 11 percent men of color, and 14 percent women of color. *Id.*; Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 369 (2014).

17. Deo, *supra* note 16, at 369–70 (footnotes omitted) (citing Richard Delgado & Derrick Bell, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 357–63 (1989)).

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

19. *Id.* at 511.

20. *Id.* at 512.

21. *Id.* at 517.

22. *Id.* at 519.

23. *Id.* at 521–22.

color faculty in sometimes career-ending ways.²⁴ Challenges include outright discrimination,²⁵ being unwelcome on predominantly white campuses,²⁶ and externally imposed and survival-oriented silencing.²⁷ Additional research has exposed how even the acknowledgments included in authors' notes in law review submissions are used to perpetuate gender disparities in publishing.²⁸

B. Unequal Profession and RaceXgender Bias

The DLA project and its resulting book, *Unequal Profession: Race and Gender in Legal Academia*, builds on previous research by collecting and analyzing survey and interview data from almost one hundred law professors across the United States.²⁹ This groundbreaking empirical study examined intersectionality as the primary theoretical framework and specifically introduced and developed the concept of raceXgender bias—how the combination of these two particular identity characteristics create not just additive but compound effects in the personal and professional lives of women of color.³⁰

DLA began with a “seed” group of participants specifically chosen to be diverse among a number of domains, including race, ethnicity, region, tenure status, leadership status, school selectivity, school status (public versus private), and more. Participating professors completed an online survey that collected data about their backgrounds (e.g., previous employment), perspectives (e.g., overall satisfaction with their law teaching careers), and experiences (e.g., quality of interaction with colleagues from different backgrounds). The penultimate question on the survey asked faculty to nominate others to join the study.

Using a target sampling approach, participants were selected from among those nominees to ensure ongoing representation along all of the domains

24. PRESUMED INCOMPETENT, *supra* note 5; PRESUMED INCOMPETENT II, *supra* note 5.

25. Elvia R. Arriola, “No Hay Mal Que Por Bien No Venga”: A Journey to Healing as a Latina, Lesbian Law Professor, in PRESUMED INCOMPETENT, *supra* note 5, at 372, 374–75.

26. See generally Adrien Katherine Wing, *Lessons from a Portrait: Keep Calm and Carry On*, in PRESUMED INCOMPETENT, *supra* note 5, at 356.

27. Angela Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT, *supra* note 5, at 142, 148.

28. See generally William Nicholson Price II & Jonathan Tietz, *Acknowledgements as a Window into Legal Academia*, 98 WASH. U. L. REV. 307 (2020).

29. DEO, *supra* note 2, at 10 tbl.1. The study was limited to pretenure and tenured faculty teaching “podium” courses. The challenges revealed there and anticipated in this future work are likely even more pronounced for clinical, legal writing, library, academic support, and other faculty who teach students but without the security of position and other benefits generally afforded tenure-stream professors. See, e.g., Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 527 (2019). Many of these “pink ghetto” positions are filled by women, further exacerbating gender hierarchies in legal academia. *Id.* at 526.

30. The term “raceXgender” refers to “the compound effects often caused by holding multiple devalued identity characteristics, namely the intersection of race and gender.” DEO, *supra* note 2, at 8.

prioritized in the original seed group. Thus, if two Black women from the West Coast had already participated, no more would be invited to join, even if nominated. Instead, other nominees would be considered and Black women from the East Coast, the South, and the Midwest, as well as Asian Americans from all those regions and the West Coast, would be invited. Latina women from elite and access-oriented law schools were purposely included, along with pretenure and tenured faculty at public and private schools. Deans, associate deans, university-wide administrators, and those without any formal administrative positions joined. Because there is no available listing of law faculty in the United States—let alone statistics on race, ethnicity, and gender that would be essential for a study focused on intersectional bias—this methodological approach provided the best possible opportunity to collect representative data.

After completing the survey, each participant answered questions in an in-depth interview, yielding the qualitative data presented here in the form of quotes. The interviews covered details about the professors' career trajectories and personal challenges. These included questions about their formal educational backgrounds and entries into legal academia, mentorship experiences, interest in leadership, student and faculty diversity in legal education, interactions with colleagues and students, work/life balance, and sources of support.

Survey data were analyzed using Stata and Excel. ATLAS.ti coded and analyzed the qualitative data, identifying relevant themes from the interview protocol as well as through initial data collection. The survey instrument, interview protocol, and additional details about the methodological approach for the DLA study are included in the appendix of the book, *Unequal Profession*.³¹

The book, and a series of articles drawing from DLA data, also include greater details on some of the themes introduced in this Article, though most of the data presented here have not been published previously. One relevant article discusses both the presumption of incompetence working against women of color faculty in the classroom, as well as the extra student meetings many of these faculty take on.³² The same article introduced the service burdens placed on the shoulders of women faculty, while the book delved more deeply into theorizing these as academic caretaking duties.³³ Committee work and other formal service were discussed in an article about tenure and promotion as well as in a separate chapter in *Unequal Profession*.³⁴ The book also explores work/life balance—including the default parenting and community outreach many women of color are

31. *Id.* app.

32. See generally Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 992, 994 (2015).

33. *Id.* at 980–84, 990–93; see also DEO, *supra* note 2, at 35–54.

34. DEO, *supra* note 2, at 79–98. See generally Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441 (2015).

expected to and do perform—as well as sources of support, individual strategies, and structural solutions.³⁵

II. THE BEFORE TIMES

Challenges based on raceXgender plagued legal academia long before COVID-19. *Unequal Profession* documents the silencing, mansplaining, and *hepeating* that characterize many of the interactions women faculty have with colleagues, the presumption of incompetence working against them in the classroom, and other forms of intersectional bias throughout their career trajectories.³⁶ This Article focuses on particular preexisting challenges at work and at home that have been exacerbated during the COVID-19 pandemic, recognizing that these intensifying pressures have dire consequences for women faculty, untenured professors, and those with caregiving responsibilities at all stages of the profession.

A. At Work

1. Student Meetings

Many women faculty forge fabulous connections with their students. One unintended consequence is that they can become overburdened by student meetings.³⁷ Students from all backgrounds tend to seek out women professors, and especially women of color, because they are known to be more accessible and available than their colleagues.³⁸ Jane, a multiracial professor who participated in the DLA study, started her law teaching career by purposefully trying to make herself “more available”: “I would have brown bag lunches if anyone wanted to come and chat about whatever it was, they could come and join me for lunch.” Now, after many years of teaching law, she guards her time more carefully. As an example, she notes that she encourages students to come to her set office hours rather than setting other appointment times to talk about class material. However, she is quick to point out that “if someone has a personal issue that they need to talk about I would always set a private meeting for that purpose.” Even when Jane strives to protect her time, she is nevertheless willing to prioritize her students’ needs, which include not only learning the material she teaches but also meeting with her individually to share personal problems.

35. DEO, *supra* note 2, at 119–38.

36. Hepeating refers to “when a man simply repeats what a woman has already said, claiming and accepting credit for her original thoughts and words.” *Id.* at 45 (citing Lindsay Dodgson, *Men Are Getting Credit for Women’s Work Through Something Called ‘Hepeating’—Here’s What It Means*, BUS. INSIDER (Sept. 26, 2017), <https://www.businessinsider.com/what-is-hepeating-2017-9> [<https://perma.cc/EW97-5LCS>]).

37. *Id.* at 58–60; Deo, *supra* note 32, at 990–93. Again, it is important to recognize that those teaching legal writing, clinics, academic support, and related courses likely have even greater student obligations to student service than the “podium” faculty whose experiences are shared here.

38. Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT’L BLACK L.J. 71, 87 (2010).

Students seek out women of color professors not only to discuss course material but also for personal support. As Haley, a multiracial professor, notes, it is relatively common that “students would come into my office and cry.” Some want to discuss anxieties about their performance in law school. Haley says students “feel comfortable [with me] and they seek my help” negotiating their own past traumas because Haley presents a comprehensive criminal law course, while some of her men colleagues “don’t cover rape, sexual assault, or domestic violence.” Haley’s willingness to introduce these topics in class make her more approachable for students who want to share their own experiences but are reluctant to engage in this way with other professors.

2. Committee Service

Many women of color are placed on committees because of their identities, regardless of their preferences or the repercussions. Their identities drive their placements on committees, including those involving student admissions and faculty appointments, where their backgrounds can be highlighted externally beyond the law school. Diversity committees are especially common as required service obligations for women of color faculty.

Melissa, whose narrative introduced this Article, is proud that she has “been the diversity person the entire time” she has been teaching at her school, though there have been challenges. In her current position as chair of the diversity committee, she has “taken the lead” on responding to charges from external regulators that her school must “change the environment and the climate” for students of color and women students. This has made her “the lightning rod for everyone’s negative view on diversity. So, the last few years have been a little tough.” What is especially challenging is that she must navigate colleagues who think diversity issues are overblown as well as students who report that “it’s much worse” than what has been publicized.

Most women faculty are expected to perform additional service work, both at the law school level and university-wide. For instance, an Asian American named Helen brought to her dean’s attention that the law school website “has like zero information on diversity and whether [the school] as an institution even care[s] about it.” His response was not to instruct the communications staff or others to make necessary changes but to respond to Helen that she should “go for it” and make whatever changes she saw fit on her own time. In his mind, not only noticing the deficiency but also personally improving the web content fit into Helen’s duties as chair of the diversity committee, so he decided it should “not really [be] considered extra service work.”

3. Academic Caretaking

In addition to meeting with students and serving on formal committees, women faculty also carry additional caretaking responsibilities on campus and in the larger academic community. Elaine, a senior Asian American scholar, has served on the executive committee of a prominent national

academic association, as chair of an AALS section, associate dean at her law school, and an original organizer of a national identity-based organization. She sees her level of service as in line with other research findings showing that “women faculty perform more service than male faculty in academia,” especially duties that serve the institution and academia directly; in this way, women bear a majority of the responsibility for “taking care of the academic family.”³⁹ Susan, a Black woman who is an administrator and faculty member, is direct about the nontraditional and nonacademic service work she has performed over the years, noting: “There’s nothing that’s outside my job description, so you know, if the toilet’s clogged I’ll go and find the plunger and I’ll work with the maintenance staff to get it fixed.”

Often, faculty who are men place these expectations squarely on the shoulders of their women colleagues. Abigail, a senior white scholar, “noticed there were some really implicit assumptions about the way women faculty would work here in the law school.” As an example, she remembers that if “we had a meeting and we needed a note-taker, there would be the turning of all eyes to whichever woman was in the room and she would become the note-taker.” These caretaking challenges are not limited to women’s professional lives.

B. At Home

In addition to the extra responsibilities that women carry in the workplace, most also shoulder a greater share of the burdens at home, from cooking meals to being the default parent.⁴⁰ While domestic duties can affect their ability to attain professional success, women who struggle through and achieve success do so at the risk of their health.

1. Lessons from Law School

Recent data from the Law School Survey of Student Engagement (LSSSE) reveal that women enter law school with lower LSAT scores than men, which likely account for lower scholarships for women than men within every racial and ethnic group.⁴¹ Women do, however, boast higher undergraduate grade

39. See Cassandra M. Guarino and Victor M. H. Borden, *Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?*, 58 RSCH. HIGHER EDUC. 672 (2017); see also Brooks, *supra* note 4, at 420; Deo, *supra* note 32, at 980–84, 990–93.

40. In a two-parent household, the default parent is the one who has primary responsibility “for the emotional, physical and logistical needs of the children.” M. Blazoned, *The Default Parent*, HUFFINGTON POST (Oct. 28, 2014, 5:13 PM), http://www.huffingtonpost.com/m-blazoned/the-default-parent_b_6031128.html [https://perma.cc/6EGX-PCHC]. For other research on women performing more household duties, see HOCHSCHILD, *supra* note 6; SUSAN WALZER, THINKING ABOUT THE BABY: GENDER AND TRANSITIONS INTO PARENTHOOD (1998).

41. MEERA E. DEO & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2019 ANNUAL REPORT: THE COST OF WOMEN’S SUCCESS 7–8 (2019), <https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-AnnualSurvey-Gender-Final.pdf> [https://perma.cc/N4DL-4R7M]. For more on scholarship inequality, see AARON N. TAYLOR & CHAD CHRISTENSEN, IND. UNIV. CTR. FOR POSTSECONDARY RSCH., LSSSE 2016 ANNUAL REPORT: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUALITY (2017),

point averages than men.⁴² Once in law school, women continue to slightly outperform men academically.⁴³ What might account for this success?

Women's academic achievements come at a significant cost. LSSSE data show that the majority (53 percent) of women law students (compared to 38 percent of men) spend five or fewer hours per week engaged in social activities of any kind, including watching television, relaxing, or even partying.⁴⁴ Downtime is critical to relieve mental pressure; additionally, social events during law school often include informal networking. Furthermore, a full three-quarters (74 percent) of women exercise at most five hours per week, which could have repercussions on their physical health.⁴⁵ Perhaps most troubling, just over half of all women law students (51 percent) are chronically sleep deprived, sleeping an average of only five or fewer hours per night.⁴⁶ Forging these habits in law school could create long-lasting physical and mental health effects in the profession.

2. Work/Life Balance

Even before COVID-19 erased the line between work and home, most women faculty struggled to juggle their personal and professional responsibilities. When asked about their work/life balance in interviews, many DLA participants responded in a similar fashion to a multiracial professor named Grace: "I don't have balance." When asked how she balances her administrative position, her faculty role, and her personal life, a Black professor and administrator named Michelle responded, "Not very well, unfortunately." She feels she is working "pretty much like two full-time jobs" between continuing her duties as a professor while excelling in her administrative role, which is "just very, very hard." Michelle sees friends occasionally, though "not as much as I would like."

A Latina professor named Marisol is blunt about her disappointment in her similar lack of balance, stating, "I mean, I don't have kids and I don't have a husband, so you'd think that I'd be able to do all this stuff. [But] I have a horrible work/life balance, horrible, horrible, horrible." All of the women referenced in this section do not have children and lament their lack of balance—perhaps, as Marisol notes, because "in academia you have this wonderful, flexible schedule [so] you just end up blurring the lines [so that] you work at home, you work on Saturdays, you work on Sundays, you're just never not working."

<https://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE-2016-Annual-Report.pdf>
[<https://perma.cc/8YHZ-CGY3>].

42. DEO & CHRISTENSEN, *supra* note 41, at 8; Christopher J. Ryan Jr., *Paying for Law School: Law Student Loan Indebtedness and Career Choices*, 2021 U. ILL. L. REV. 97, 133 n.168.

43. DEO & CHRISTENSEN, *supra* note 41, at 6–8.

44. *Id.* at 10.

45. *Id.* A full 60 percent of men also report exercising five or fewer hours per week. *Id.*

46. *Id.* 43 percent of men also sleep five or fewer hours per night. *Id.*

3. Default Parenting

An Asian American professor named Surya recalls: “[B]efore we had kids, [my partner] and I used to work on the weekends, and stay at the office until 8pm. I mean, we used to work all the time.” Now that she has young children at home, she feels even more imbalanced. “[I want] to get home by 6, and unless I have to, unless I have a deadline, I don’t work on the weekends because you’re with your kids.” Because there is “nobody like a dedicated full-time housewife kind of person or househusband” in her family, this means “part of your workday is still figuring out laundry, groceries, kids’ afterschool activities, and their schedules, their homework. You can’t fit all of that in just 6 to 10pm at night. Some of that creeps into your daytime.” While Surya would love to “have the full 9 to 5 just working on [scholarship],” she instead spends some of that time default parenting. Surya’s husband is helpful—as are many of the men partners of participants in the DLA study—though, she notes, “I for sure do more.” This is in large part because in addition to doing her share of assigned parenting work, Surya carries the *mental load*:

So, everything has to be in my head of what needs to be done and on what schedule and what’s happening when, and then I tell [my husband] what to do. So, I think that makes it a little easier on him. He just gets the task done when I tell him to do it, but I have to know what are the 50 tasks that have to be done this week.

She uses employment terms to specify: “I’m more like the manager, and he is the employee.” Zahra, a Middle Eastern professor, thinks that work/life balance “is like the question of every woman’s life, especially with kids.” Her personal solution is to “rely on a lot of help from friends [and] babysitters,” though she also notes, “[G]enerally, I’m able to take my kids to school and pick them up and be there for them given this job. But there are stressful times, and periods where it’s difficult.”

Women faculty who have children, like working women everywhere, tend to be the default parent at home.⁴⁷ This starts for many at the birth of their first child. Carolina, a Latina professor and administrator, is at an institution that does not “have a maternity leave policy for faculty.” She shares that “when I had my first child, my last class was Friday and I gave birth Monday.” When her second child was born early, she had “about a month left in the semester.” A colleague covered her classes for the first two weeks, and then, Carolina says, “I came back and I finished the semester two weeks after [my second child] was born. As I look back, I wonder, ‘God, how’d I do it?’”

47. DEO, *supra* note 2, at 125. While DLA data show this is true of heterosexual couples, same-sex couples included in the sample share the load more equally. *Id.*

4. Community Service

In addition to contributing significant amounts of household labor and childcare hours, many women of color also prioritize community service. Michelle, who is both a faculty member and administrator, is also involved in the local community. While she gets “an immense amount of satisfaction” from this engagement, it leaves her with little free time: “[I]t’s like, ‘Oh, I have to go to a board meeting,’ as opposed to, ‘I’m going to go do yoga.’” She also provides financial assistance to extended family members who rely on her support. Michelle knows she is overextended, stating, “[I]t’s something I’m very aware of and working on but it’s the plight of the woman professional.” Jennifer, a Native American law professor, also integrates community work into her life. Rather than take on pro bono clients, she says, “I’ll speak at a local rally in the capitol or something. I’ll go out or be picketing or talking [to] newspaper editors about getting better articles or issues about Native American women.” She is proud of the advocacy work she does and her contributions to her community and society more generally, but she has no down time.

C. Repercussions

1. Resulting Intersectional Challenges

While many women faculty recognize the importance of their roles as mentors and supporters of their students, it is not only emotionally taxing to have students crying in the office but also takes away time that could otherwise be spent on teaching, scholarship, or other pursuits. Ironically, much of the extra service work women perform involves *invisible labor*, critical work that benefits the institution, which administrators and others rarely recognize or reward. Stacey, a Black professor, knows that women faculty “get overworked.” “We get asked to do too much without recognition,” and a lot of that is “invisible work, too,” that her colleagues do not even notice. For example, Stacey notes that none of her “male colleagues have people coming into their office crying,” a common phenomenon for her that “gets exhausting. [And] it’s the kind of thing that can prevent someone from sitting down and doing the writing” that leads to published scholarship, which is the expected avenue for advancement in academia.

Sometimes, women of color are called to service because there are few others from their identity backgrounds on campus, so the expectation is that they will step in. When Susan started working at her law school, she notes, “I was the only African American female faculty member.” Her unique position inspired her to step into roles she knew would likely otherwise be filled by white faculty whose personal experiences could not inform the position the way hers could; though her institution was happy to oblige, she paid a personal cost. She recalls:

I wanted to be involved, [but by serving on] appointments and admissions and every [other] important committee in the law school . . . I was being

inundated with so much service work that it was disrupting my productivity in the area of scholarship, it was disrupting my ability to dedicate time to teaching.

Tenure creates extra obligations; Susan reports the following from the year she earned tenure: “[M]y dean asked me to serve as associate dean, because I had served on every committee by that point.” Susan says, “I knew admissions inside and out, I knew appointments, I knew career services, I knew just about every aspect of the law school.” She also built a reputation as “someone who had worked well on committees,” compared to “some colleagues who abhor committee work and you can tell when they’re there that they don’t want to be there and they’re not going to do their fair share of work.” Serving as associate dean again meant “[taking] you away from teaching, and away from scholarship even more.” The dean appreciated her performing these additional duties, but Susan was rarely acknowledged for her labor.

2. Mental Health Effects

Beyond exhaustion and invisibility, negative mental health consequences resulting from raceXgender biases are perhaps the most troubling effects that women of color faculty face. The Clyde Ferguson Syndrome—where the challenging workplace environment produces real and measurable negative health consequences—is in full effect in legal academia.⁴⁸ Over one-third of the women of color participants initiated conversations about “stress,” “trauma,” and even “PTSD” that were not directly prompted by any interview questions. For many, this begins at the hiring process. Emma, a multiracial law professor, notes that “the experience at the job market was very stressful and hectic” in spite of what she felt was “a lot of mentorship” from her own former law professors and others. She and her husband were on the academic job market during the same year at slightly different times and in completely different disciplines. Because they “basically had to find two academic jobs in the same [region]” and Emma’s discipline began the process earlier, she secured a number of offers first, and then her husband “subsequently worked with those [schools] and got offers.” Their “two-part process” produced double the stress because each depended on the other’s efforts to secure a position. Zahra admits “there are stressful times, and periods where it is difficult” and recalls that “especially the first year was really, really hard,” juggling work and young children.

Working the second shift at home therefore exacerbates mental health effects for women and especially women of color faculty.⁴⁹ June, a Black professor, is aware that law teaching “is obviously a very difficult area where people break down.” She notes, “we die at younger ages because of the stress; even as a professor you have more stress than a white person,” as the

48. See generally Brooks, *supra* note 4.

49. HOCHSCHILD, *supra* note 6.

Clyde Ferguson Syndrome suggests.⁵⁰ For June, this included “all these little kids, and then the husband left, and so I had nannies.” Raising her children without a partner, with paid help, also drained her finances. She notes that “at one point I was paying one-third of my take-home [salary] to my live-in nanny; meanwhile I was in the office after hours with the kids because I could only pay her but so much and I could only have her work but so much.”

Kayla, a Black professor in her first year of teaching, ties her levels of “heightened stress” directly to the work she does with students, especially marginalized students. She notes, “If I encounter someone in the hallway, it’s usually, ‘Hey, how are you? Let’s talk,’ [which leads to] an in-depth engagement, not just ‘Hey, everything is fine.’” She purposefully engages in “a real kind of reaching out.” Because “students are definitely reaching out to me in greater numbers, there is a burden associated with being one or two or three women of color or African American women on my faculty.” This is heightened by ongoing challenges in legal education related to “enrollment, financial strain, increasing cost of law school, etc.” Students from all backgrounds and even those who are not in her classes seek Kayla out: “[N]ow that word is out that I am accessible I’ve definitely had more demands on my time from students who are both in my class and [those] who would like me to formally and informally mentor them.” Kayla seeks to help students succeed, and notes, “As a woman of color, I certainly wonder who will suffer, if it’s student of color, or faculty members of color who are disproportionately impacted in some way by the changes in the academy.” Being acutely “aware of that . . . has added to my stress as a first-year professor for sure.”

There are also students who challenge Kayla in class, including some students who are “combative at the outset.” This presumption of incompetence creates extra strain on Kayla as a new faculty member laboring to navigate the norms of legal academia in her first tenure-track position.⁵¹ Marisol manages the presumption of incompetence from colleagues as well, not only students.⁵² She is tired of “the bullshit” that accompanies her job as an assistant professor, including: “backbiting and people crying in the hallway [because of colleagues] saying stupid stuff in faculty meetings which had nothing to do with the person’s abilities, but more like, ‘OK, let’s make something up and see if other people believe it.’” All of this, for Marisol, is “just tiring,” and though she tries to not “lose sleep over it,” she knows that for many of her colleagues of color, their colleagues’ rejection and the possible professional failure it represents is “the end all, be all.”

When considering the mental health effects of legal academia on law faculty, front and center are the barriers of promotion, tenure, and contract renewal. Tenure is an especially stressful time largely because it is an

50. See generally Brooks, *supra* note 4.

51. Meera E. Deo, *The Paradox of Faculty-Student Interactions*, 68 J. LEGAL EDUC. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730244 [<https://perma.cc/9MPD-47NP>].

52. See *supra* note 5.

“important gateway to professional success and stability,” determining whether a professor has secured lifetime employment or must quickly find another job (or even career).⁵³ It is especially anxiety-producing for women of color faculty. Alicia, a Latina who notes she was a “reluctant academic,” is still “just stunned at how wasteful [academia] is of time and resources.” For promotion specifically, she has seen that “the subjectivity of the criteria by which people are evaluated not only creates unnecessary stress and anxiety, but actually drives people out of the profession who shouldn’t be driven out.” For Alicia, the raceXgender effect on retention “has been hugely disappointing.”

There are also real health implications for women of color who choose silence to safeguard their “survival in academia.”⁵⁴ Haley is also acutely aware of how the tenure process is likely “stressful for everyone.” But at a school like hers that “doesn’t really have tenure standards,” there are extra burdens for women of color junior faculty. Because tenure “felt very discretionary,” Haley felt pressured to “keep my mouth shut.” The year Haley applied for tenure coincided with a highly problematic racialized event at her school that became the subject of national news. While some of her colleagues shared her outrage at the circumstances, she notes, “[O]ne of my colleagues sent a note around to faculty saying, ‘This wasn’t offensive. I don’t know why anyone should be offended. And I think conversations about this should stop.’” When Haley responded and noted the racial implications of his message, she recalls getting “four phone calls at home within ten minutes after I sent it out, two of them saying, ‘Well, I hope this doesn’t affect your tenure [vote].’” Adding to the stress, she knew, “My file doesn’t look like other people’s because I had a book manuscript rather than a whole bunch of articles and I do interdisciplinary work.” She stood out but not necessarily in a good way. Though she ultimately received the tenure she had earned, the process was especially stressful because her scholarship was not like the others’ and she could not hold her tongue.

Lola, a Latina law professor, also endured a challenging process but suffered a more difficult outcome when she was denied promotion, allegedly based on “polarized” teaching evaluations. From her perspective, the denial was due to “informal criteria,” namely “who likes you and who doesn’t.” While going through the process and even after learning about the failed outcome, she notes “[N]o one at school knew the pain and the betrayal I was feeling.” Not only did she have no one to commiserate with on campus, but it was also “incredibly exhausting to come to work every day and pretend like nothing was wrong.” Instead, Lola “really had to rely on my family and close friends for that relief of the stress and disappointment and all of that,” keeping on a mask of impassivity on campus.

June voices appreciation for promotion, saying, “[t]enure freed me to really do whatever I felt like doing or writing,” however, she knows that for others “unfortunately, they get tenure and are so traumatized by the process,

53. Barnes & Mertz, *supra* note 18, at 511.

54. See Onwuachi-Willig, *supra* note 27, at 148.

they don't write anymore." Patrice, a Black woman faculty member, says the following occurred as a result of the tenure process: "I have post-traumatic stress disorder." At her institution there are "these white guys on the faculty who are hostile to race work," which has complicated her entire trajectory. "That was tricky because I wanted to be able to do the work I wanted to do, but I also wanted tenure." In her first few years in the academy, she says, "I wouldn't present [my scholarship] in its early form" to her colleagues—though she was expected to do so. She engaged in this "act omission" because at that stage, she needed "critiques [that are] constructive to help you get to the next point," and she knew that "their critiques were to shut it down and steer you in a different direction." Here, the presumption of incompetence her colleagues applied to Patrice resulted in her purposeful silencing and disengagement to preserve her own ability to succeed in the profession.⁵⁵ To avoid that negativity, and "in an effort to be true to myself and just to sleep at night I felt like I had to just stay in my head with it, which is also just very difficult and not particularly fulfilling as a place to be as an academic." Patrice appreciates that navigating hostile colleagues while writing on issues of race "taught me the skills to sort of do that dance, but the road is hard." She suffered through it.

Though a Native American professor named Erin is now at an institution where she is comfortable, she recalls, "I've had places in my career where I was absolutely miserable. I actually have PTSD syndrome because of the amount of stress. I still have nightmares on a regular basis." She has shared her struggles with friends and colleagues at other schools and learned "the more women of color I talk to the more I hear that's almost the norm rather than something that is unusual." Her anecdotal evidence shows how widespread the Clyde Ferguson Syndrome may be.⁵⁶ Erin knows people wonder "if you are in that intense of a situation so much so that it's causing physical problems for you and there's no end in sight, well, why would you continue to subject yourself to that?" But she thinks most faculty do not see a way out; in her case, she notes, "I think I just got lucky and there was an end in sight and I was able to get out" by making a lateral move to a more supportive institution. In spite of this past personal trauma and the ongoing physical and mental health repercussions, she believes, "I've been fortunate and I think not everybody is."

Carla, a Latina professor, has remained at the same institution for many years despite ongoing raceXgender challenges and little reward for her uncompensated extra labor. Recently, she was called back from a leave that she had negotiated "two-and-a-half-years in advance" just weeks before it was to begin, when an administrator called and "said, 'You can't go on research leave, you have to chair the committee.'" She did not see the assignment of a leadership role as a compliment; rather, she notes, "I've been in this long enough to know that [it actually] means someone needs to stay and clean the house [and] it's going to be you." Nevertheless, she did not

55. *See id.*

56. *See generally* Brooks, *supra* note 4.

push back. Instead, “I dealt with it with my ordinary strategy, which was to say, ‘Okay.’” Over the years, Carla has always acquiesced to every demand: “[I]f someone said, ‘Teach that,’ I taught that. If someone said, ‘You’ll teach at 8am,’ I taught at 8am. If someone said, ‘You teach summer school,’ I taught summer school.” She took this route because a “woman of color on my faculty who is very, very well-credentialed said no early on and got pegged as not a team player,” even though Carla did not see her that way. As a result, “the gossip storm was furious” about this other woman of color and she “almost did not get tenure.” Carla was therefore constantly concerned about “the price of saying no.” That ongoing concern and drive of Carla feeling like “I had to survive” meant that she “had to take in these requests and [also] produce quality work” in terms of her scholarship. Imagine the stress and anxiety Carla has lived with, doing this for over two decades.

III. INTENSIFYING PRESSURES UNDER COVID-19

The raceXgender challenges facing women at work and at home, as well as their resulting repercussions, have been well documented in the DLA data. As of 2019, we could have assumed that those challenges would likely continue into the foreseeable future, absent detailed and sustained efforts to mitigate them. However, we could not have anticipated how a global pandemic would intensify those pressures and cause even more serious effects regarding the mental health and long-term professional trajectory of women of color faculty. The PELA study investigates the extent of those effects and how institutional support might mitigate those challenges for vulnerable faculty.

A. Changing Circumstances

On March 11, 2020, over one hundred colleges and universities closed their campuses, forcing students and faculty alike to scramble to adjust to online learning.⁵⁷ While this created complications for millions of individuals, changing circumstances at work and at home have led to unique challenges for already vulnerable women faculty that also affect mental health.

1. Gender Disparities in Other Disciplines

While anticipated results of findings for this new empirical study will be discussed below, changing circumstances during the COVID-19 pandemic already include preliminary reports of gender disparities in other fields. As early as six weeks into “widespread self-quarantine, editors of academic journals ha[d] started noticing a trend: Women—who inevitably shoulder a greater share of family responsibilities—seem[ed] to be submitting fewer

57. “Several statewide systems and more than 100 colleges and universities now have announced campus closures or moved in-person classes online.” *Pandemic Triggers Chaos*, INSIDE HIGHER ED (Mar. 12, 2020), <https://www.insidehighered.com/news/2020/03/12/coronavirus-news-updates-wed-march-11> [<https://perma.cc/QT5A-YLTF>].

papers.”⁵⁸ Another prominent study concluded that just ten weeks after most universities moved online, “although the total research productivity increased by 35 percent, female academics’ productivity dropped by 13.9 percent relative to that of male academics.”⁵⁹ Other studies have similarly confirmed that women academics have not been submitting scholarship in equal numbers to their men colleagues, due to increases in childcare responsibilities and other COVID-related reasons.⁶⁰ Nothing about the academic discipline of law makes it so unusual that we might expect different outcomes from what other fields have already experienced and what is anticipated in the coming months and years—especially given the other changing circumstances discussed in this section.

2. More Academic Caretaking

In order for campuses to rapidly respond to COVID-19, many implemented new policies at the school and campus levels.⁶¹ These changes required faculty to send Doodle polls to schedule online meetings; set meeting agendas; distribute primers and manage the basics of how to use Zoom, WebEx, Microsoft Teams; and draft, edit, and present policies to the faculty.⁶² These are academic caretaking responsibilities that women faculty tend to spend more time on than their men colleagues, even before the pandemic.⁶³

3. More Student Service

While faculty were debating and implementing new policies, law school classes moved online. This meant that students were no longer as reachable as they had been when everyone was on campus. Before the COVID-19 pandemic, as documented in the DLA data, many women of color faculty members shared that they would purposefully go out of their way to find students in a student lounge, common area, or in other places students tended

58. Caroline Kirchner, *Women Academics Seem to Be Submitting Fewer Papers During Coronavirus. ‘Never Seen Anything Like It,’ Says One Editor.*, THE LILY (Apr. 24, 2020), <https://www.thelily.com/women-academics-seem-to-be-submitting-fewer-papers-during-coronavirus-never-seen-anything-like-it-says-one-editor> [<https://perma.cc/V69J-V35Z>].

59. Ruomeng Cui et al., *Gender Inequality in Research Productivity During the COVID-19 Pandemic 1* (Harvard Bus. Sch., Working Paper No. 20-129, 2021) (on file with author).

60. See Viglione, *supra* note 8.

61. There have also been efforts in state legislatures to address the dynamic changes necessitated by COVID-19. See Andrew Smalley, *Higher Education Responses to Coronavirus (COVID-19)*, NAT’L CONF. OF STATE LEGISLATURES (Dec. 28, 2020), <https://www.ncsl.org/research/education/higher-education-responses-to-coronavirus-covid-19.aspx> [<https://perma.cc/ZJ2A-2LPC>].

62. For example, dozens of law schools released statements in the wake of the murder of George Floyd, supporting Black Lives Matter and condemning police violence in the Black community. See *Law Firm & Law School Responses to the Black Lives Matter Movement*, VAULT (June 11, 2020), <https://www.vault.com/blogs/vaults-law-blog-legal-careers-and-industry-news/law-firm-law-school-responses-to-the-black-lives-matter-movement> [<https://perma.cc/K77W-A24C>].

63. See generally DEO, *supra* note 2; *supra* Part II.

to congregate. In part, this is how women of color law professors built relationships with students and fostered their reputation for being available and accessible. With classes online, there are few opportunities to happen upon students in a seemingly accidental way, to easily reach out to students in a space where they are comfortable, or even for students to simply stop by a professor's office to say hello (and perhaps stay awhile). Women participants in the DLA study previously engaged in those outreach efforts and still seek to engage with students. However, current opportunities for engagement are complicated and time-consuming, with most courses online, fewer opportunities to meet spontaneously, and more outreach and planning necessary to arrange meetings, among other barriers.⁶⁴ Faculty feel more pressure to step in as students have greater needs and anxieties; yet vulnerable faculty themselves—whether caregivers, women of color, or untenured professors—have less time to devote to their work and more pressure to perform.

4. Worsening Student Evaluations

Although professors may be doing more than ever before to reach students and engage with them over course material and personal challenges, faculty members are often not recognized for the work they put in. Student evaluations have been recognized as problematic for being imperfect measures of teaching that promote broader racial and gender biases, as we saw from Lola's experience above. The pandemic provides an opportunity for negative teaching evaluations to run amok, as they are among the only times students are asked to reflect and report on their law student experience during the COVID-19 pandemic and women faculty tend to be easy targets for students to air anonymous grievances about the institution more generally.⁶⁵

5. More Default Parenting

Soon after colleges and universities closed in mid-March, elementary, middle, and high schools also began closing.⁶⁶ Millions of children stayed home from March through June 2020, when they would normally be

64. See Jessica Erickson, *Connections and Community in Distanced Classrooms*, LSSSE (Jan. 4, 2021), <https://lsse.indiana.edu/blog/guest-post-connections-and-community-in-distanced-classrooms> [<https://perma.cc/WM6U-HNSJ>]; DeShun Harris, *Student-Faculty Interactions: A Closer Look at the Office Hour*, LSSSE (June 18, 2020), <https://lsse.indiana.edu/blog/guest-post-student-faculty-interactions-a-closer-look-at-the-office-hour/> [<https://perma.cc/US9T-MA3J>].

65. See generally DEO, *supra* note 2; Deo, *supra* note 13.

66. By March 16, *U.S. News & World Report* reported, “[s]chool is closed for more than half of all children in the U.S. in response to the rapid spread of coronavirus,” and many remained closed for the rest of the academic year and into fall 2020. See Lauren Camera, *Coronavirus Closes Schools for Half of All Kids in the U.S., Now What?*, U.S. NEWS & WORLD REP. (Mar. 16, 2020), <https://www.usnews.com/news/education-news/articles/2020-03-16/whats-next-as-coronavirus-closes-schools-for-half-of-all-kids-in-the-us> [<https://perma.cc/LUQ9-ZC3K>].

spending seven to twelve hours at school or in other care programs while parents worked.⁶⁷ When those options became unavailable due to the COVID-19 pandemic, the default parent picked up the slack. Usually, the default parent is a woman.

In addition to schools closing, summer camps were also closed in many cities and states throughout the summer of 2020.⁶⁸ In many districts, children were home for more than six months or over a year, with little opportunity for outside care at all.⁶⁹ Grandparents, nannies, babysitters, and even licensed daycare centers that helped with childcare before COVID-19 often could no longer assist due to concerns about spreading the virus.⁷⁰ Again, that left the default parent to pick up the slack.

The default parent is also who children generally seek for assistance with any problem. They are the ones who kiss the boo-boos and schedule the doctor's appointments, who arrange playdates and communicate with teachers. All of those things became more complicated during the COVID-19 pandemic when the emotional needs of children rose alongside the anxiety associated with living during a global pandemic. Further, doctor's appointments became complex arrangements with questions about whether to go, the screening process, and mask requirements. Playdates and classrooms both moved to Zoom, requiring ongoing facilitating and supervision in many cases. While women academics were already carrying greater responsibilities for caretaking at home before COVID-19, home life became more complicated and more labor intensive after March 2020.

6. More Community Caretaking

Community needs also grew along with increasing family responsibilities. While women of color already invested greatly in their communities,⁷¹ those responsibilities grew during the COVID-19 pandemic. Many were concerned about elderly neighbors and offered to help with grocery pickup

67. Research shows that “75 percent of women with school-age children now work;” meaning that millions of children, who attend school for an average of six-and-a-half hours per day while their parents work eight hours or more, attend on-site, after-school programs or are cared for by “nannies or other private-child-care options.” Kara Voght, *Why Does the School Day End Two Hours Before the Workday?*, ATLANTIC (Sept. 5, 2018), <https://www.theatlantic.com/family/archive/2018/09/school-day-parents/569401> [<https://perma.cc/NT7E-GNS8>].

68. Smith, *supra* note 7.

69. For instance, Southern California remained almost entirely shut down for six months of 2020. See Hayley Munguia, *More Uncertainty Looms as Southern California Marks 6 Months of Coronavirus Closures*, ORANGE CNTY. REG. (Sept. 19, 2020), <https://www.ocregister.com/2020/09/18/more-uncertainty-looms-as-southern-california-marks-6-months-of-coronavirus-closures/> [<https://perma.cc/6F45-7PPA>].

70. Because of underlying health conditions and age as risk factors, “for many grandparents, the safest choice is to not be the grandkids’ caregiver.” Katherine Harmon Courage, *Day Care, Grandparent, Pod, or Nanny?: How to Manage the Risks of Pandemic Child Care*, NPR (Aug. 21, 2020), <https://www.npr.org/sections/health-shots/2020/08/21/902613282/daycare-grandparent-pod-or-nanny-how-to-manage-the-risks-of-pandemic-child-care> [<https://perma.cc/WZG8-UVDK>].

71. DEO, *supra* note 2, at 131.

or other errands.⁷² Extended family members needed more help, initially as millions of Americans lost their jobs and income and later when many sought to navigate the technological maze of scheduling vaccine appointments.⁷³ Community was also at the forefront for communities of color when mass protests erupted in June 2020. Millions of Americans protested ongoing police and vigilante violence targeting Black Americans.⁷⁴ Participating in and processing these incidents required time and mental energy, further taking women of color faculty away from writing projects and leisure time.

7. A Climate of Racial Fear

Summer 2020 witnessed perhaps the largest mass protests in U.S. history, a result of outrage in response to ongoing state-sanctioned violence against Black Americans.⁷⁵ The public attention finally given to the constant climate of fear in the Black community brought some relief, but it also resulted in extra time and energy focused on personal involvement and community support.

Further, since March 2020, the United States has also experienced a dramatic increase in racist hate incidents against Asian Americans by those blaming them for the spread of COVID-19.⁷⁶ In March 2021, the targeted killing of six Asian American women at Asian American-owned businesses near Atlanta highlighted ongoing ways in which raceXgender intersect with pandemic effects.⁷⁷ The media, academics, and advocates made immediate connections between these hate crimes and references by politicians and others to “the China virus” or “Kung Flu”;⁷⁸ many also tied attacks to a long history of Chinese exclusion, Japanese American internment, and other anti-

72. News articles have reported on healthy young people picking up needed supplies for elderly neighbors. See, e.g., Talia Kaplan, *Young NYC Residents Helping Elderly Neighbors by Offering to Buy Groceries, Medicine Amid Coronavirus Outbreak*, FOX NEWS (Mar. 17, 2020), <https://www.foxnews.com/media/new-york-city-woman-helps-groceries-coronavirus-neighbors> [<https://perma.cc/4KWM-Y4E6>].

73. As of late September 2020, “[h]alf of adults who say they lost a job due to the coronavirus outbreak [remained] unemployed”; as a result, “many Americans continue to face deep financial hardship.” Kim Parker et al., *Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest*, PEW RSCH. CTR. (Sept. 24, 2020), <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/> [<https://perma.cc/BH85-EWS4>].

74. See Buchanan et al., *supra* note 11.

75. *Id.*

76. Stop AAPI Hate released a report in August 2020 showing increases in hate crimes against Asian Americans and Pacific Islanders since the start of COVID-19 shutdowns. STOP AAPI HATE ET AL., STOP AAPI HATE NATIONAL REPORT 3.19.20–8.5.20 (2020) http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/STOP_AAPI_Hate_National_Report_3.19-8.5.2020.pdf [<https://perma.cc/C6PY-QJQQ>].

77. *Atlanta Spa Shootings, Live Updates: Suspect Had Visited Targeted Spas Before, Police Say*, N.Y. TIMES, <https://www.nytimes.com/live/2021/03/18/us/atlanta-shootings-massage-spa> [<https://perma.cc/A42Z-WZSJ>] (last visited Apr. 14, 2021).

78. Hannah Miao, *Lawmakers Call for Change in Covid Rhetoric Amid Rise in Violence Against Asian Americans*, CNBC (Mar. 18, 2021, 6:32 PM), <https://www.cnbc.com/2021/03/18/lawmakers-call-for-change-in-covid-rhetoric-amid-violence-against-asian-americans.html> [<https://perma.cc/AEB5-LKJK>].

Asian sentiment.⁷⁹ Hate crimes against people of Asian descent increased in 2020—though there were fewer hate crimes as a whole that year.⁸⁰ Furthermore, Asian American women were twice as likely to be targeted as Asian American men—again, underscoring raceXgender effects specifically related to the hypersexualization of Asian and Asian American women in particular.⁸¹ Many Asian Americans chose to stay home not only to slow the spread of COVID-19 but also to avoid being in situations where they could face verbal harassment or physical attacks based on their actual or mistaken identity.⁸²

The 2020 presidential election and 2021 Capitol attack also placed heightened stress on people of color who were often direct targets of President Donald Trump’s rhetoric and policies.⁸³ Accordingly, women of color faculty living in this climate of fear had less time and mental capacity to work on scholarship, take breaks, or enjoy leisure time with family and friends.

Collectively, these changing circumstances created a challenging environment for women of color to focus their primary attention on professional obligations, especially scholarship. The increase in work obligations coinciding with an increase in domestic duties—while simultaneously managing a climate of raceXgender anxiety—raises a number of questions about the personal and professional effects of the COVID-19 pandemic on vulnerable populations in legal academia.

B. Research Questions

There are a range of relevant topics to consider when studying how responses to COVID-19 have affected law faculty. Four particular areas of study are presented here, drawn directly from the changing circumstances outlined earlier. Research questions for the PELA study include the following:

79. See Kaur, *supra* note 11.

80. Kimmy Yam, *Anti-Asian Hate Crimes Increased By Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says*, NBC NEWS (Mar. 9, 2021, 3:37 PM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264> [https://perma.cc/W446-BEQV] (revealing that “while [hate] crimes in 2020 decreased overall by 7 percent, those targeting Asian people rose by nearly 150 percent”).

81. Meera E. Deo, *Why BIPOC Fails*, 108 VA. L. REV. ONLINE (forthcoming 2022).

82. Sabrina Tavernise & Richard A. Oppel Jr., *Spit on, Yelled at, Attacked: Chinese-Americans Fear for Their Safety*, N.Y. TIMES (June 2, 2020), <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html> [https://perma.cc/6VNA-NV4Q].

83. See Greg Miller, *Allegations of Racism Have Marked Trump’s Presidency and Become Key Issue as Election Nears*, WASH. POST (Sept. 23, 2020), https://www.washingtonpost.com/national-security/trump-race-record/2020/09/23/332b0b68-f10f-11ea-b796-2dd09962649c_story.html [https://perma.cc/N5BK-2Z6J]; see also William H. Frey, *Exit Polls Show Both Familiar and New Voting Blocs Sealed Biden’s Win*, BROOKINGS INST. (Nov. 12, 2020), <https://www.brookings.edu/research/2020-exit-polls-show-a-scrambling-of-democrats-and-republicans-traditional-bases/> [https://perma.cc/QLX8-Y4GG].

(1) How, if at all, have changing circumstances as a result of the COVID-19 pandemic affected gender disparities in law journal publication rates?

(2) How, if at all, have changing circumstances as a result of the COVID-19 pandemic affected raceXgender disparities in law journal publication rates?

(3) How, if at all, have changing circumstances as a result of the COVID-19 pandemic affected the mental health of women law faculty and other vulnerable populations?

(4) How, if at all, have changing circumstances as a result of the COVID-19 pandemic affected the professional trajectory of women law faculty and other vulnerable populations?

C. Analytical Approach

The PELA project utilizes innovative methods to determine scholarly productivity, mental health effects, and long-term retention rates for women law faculty overall and women of color specifically as well as other vulnerable populations in legal academia. This part reviews details of this methodology for research questions related to scholarly productivity, mental health effects, and the long-term trajectory of faculty. PELA received formal approval for Institutional Review Board (IRB) exemption in August 2020.⁸⁴

1. Scholarly Productivity

One stream of this research project will investigate gender and raceXgender disparities in scholarly productivity. To do this, authors of articles published at various times will be compared to one another to determine gender differences and, if possible, raceXgender differences. There are four likely publication windows: articles published between January and June 2019, January and June 2020, January and June 2021, and January and June 2022. This process will begin by collecting all articles from a sample of law journals publishing new scholarly articles during all four of these windows. Author recognition, a review of online biographical information, and additional research (including direct contact with authors, if needed), will determine how many and what percentage of published authors in each window are women as well as women of color. Comparing the different years will yield potential disparities.

2. Mental Health Effects

In Fall 2020, the principal investigator of this study (and author of this Article) began conducting semistructured target sample interviews with law professors. These interviews continued throughout the 2020–2021 academic year. One priority for the sample was junior scholars, as they are more likely

84. The PELA study official IRB exemption, indicating this research is appropriate for human research subjects, is on file with the author.

to need publications to survive and thrive at this early point in their careers without the safety net of tenure to protect them from the repercussions of a lack of scholarly productivity. Caregivers are also prioritized, as are non-tenure-track (contract-based) faculty, who generally have little security in their positions. Scholars who are not tenured are also more likely to have young children at home—thus feeling the impact of both the “at work” and “at home” crunch under COVID-19. Participants are drawn from a variety of racial/ethnic backgrounds and consist of tenured, tenure-track, and contract-based faculty (including doctrinal, legal writing, clinical, academic support, bar preparation, and library faculty) at a range of elite and access-oriented schools, from private and public schools across the United States.

3. Faculty Retention

Measuring faculty retention trends over time will depend on AALS or another governing body making data on law faculty available. Assuming we have baseline and ongoing data on basic demographics including race, gender, raceXgender, and faculty status, the PELA project will evaluate changes over time to investigate possible disparities in faculty retention that have been documented in years past.⁸⁵

D. Anticipated Findings

The PELA project builds on findings published in *Unequal Profession* and elsewhere that reveal the extra burdens women of color faculty have carried at work and at home, even before the pandemic began.⁸⁶ The target sampling approach and analytical analyses explained earlier in this Article regarding data presented in *Unequal Profession* serve as the methodological basis for the PELA study—including target sampling, Stata analysis, and coding using ATLAS.ti. The anticipated findings presented here draw from that earlier work, synthesizing it with the changing personal and professional circumstances initiated by COVID-19. The sense of deep pressure, anxiety, and trauma experienced by women of color before COVID-19 is exacerbated under current and ongoing conditions that further negatively impact their mental health. The PELA study will investigate the extent of these challenges and their effects on legal academia more broadly.

With a significant increase in the sheer volume of academic caretaking required, empirical data will reveal the extent to which women have been overloaded with service duties since March 2020, with continuing obligations past spring, through summer and fall, and continuing through spring and summer 2021 (and perhaps beyond). Empirical data will flesh out details of how women are performing the additional academic caretaking

85. See COMM. ON THE RECRUITMENT & RETENTION OF MINORITY L. TCHRS., ASS'N OF AM. L. SCHS., *THE RACIAL GAP IN THE PROMOTION TO TENURE OF LAW PROFESSORS* 3 (2005) (on file with author).

86. DEO, *supra* note 2, at 119–31, 980–84, 990–93.

duties of organizing meetings, drafting new policies, writing Zoom manuals and other guides for effective online teaching, and more.

Women have been sharing best practices related to student interactions and engagement because they often initiate these in the classroom and beyond. Starting in March 2020, women faculty have been joining Zoom classes earlier than they normally would walk into their classrooms, staying later, and organizing separate meeting times with students online. Because students cannot casually walk back to professors' offices with them after class, women professors are taking time to find ways to still reach students. That, of course, takes time. Empirical data will reveal how much time women have invested in these endeavors, to the benefit of their students and institutions, as well as the cost of these interactions in terms of their lack of scholarly productivity.

At the same time, for most parents, someone other than the usual daytime caregiver has been providing significant childcare at home, as schools, daycare centers, nannies, and babysitters become unavailable. Because, as other research has shown, women faculty tend to be the default parent, this increase in parenting responsibilities has fallen largely to women.⁸⁷ While there has not yet been a formal empirical study of law faculty showing this to be the case, many reliable outlets have demonstrated the significant caretaking burdens that women have been bearing throughout the COVID-19 pandemic.⁸⁸

Furthermore, most faculty devote substantial amounts of time to scholarship every summer—a time when professors are usually relieved of regular service work and teaching obligations. However, summer 2020 was filled with extra service burdens *and* extra childcare burdens that prevented many women of color from having the time and mental energy to devote to writing. It is unclear without empirical data how much time and energy extra childcare burdens caused and whether or to what extent they created added gender disparities in submissions or publishing, as well as mental health effects related to lack of sleep, added stress, and greater personal and professional pressures.

The climate of fear pervading American society likely also contributed to a more difficult writing environment for scholars, especially women faculty of color. For many Black Americans—as well as other people of color in the United States, people of African descent around the diaspora, and thousands of other conscientious people throughout the world—the protests and their underlying reasons undoubtedly created additional stress. The anxiety of bringing to the forefront concerns about whether you, your children, your partner, or other loved ones could be the victim of arbitrary race-based police

87. *Id.* at 124–29.

88. An empirical study of Stanford University faculty found that 50 percent of women spend over four extra hours per day as the principal caregiver for children due to COVID-19, compared to 33 percent of men. FAC. WOMEN'S F. STEERING COMM., COVID-19 FACULTY SURVEY 12 (2020), https://facultydevelopment.stanford.edu/sites/g/files/sbiybj9996/f/fwf_covid-19_survey_results_and_discussion_as_presented_december_10_2020.reduced_0.pdf [<https://perma.cc/D46B-7MUF>].

or civilian violence certainly prevented many academics of color from engaging in various daily tasks, let alone focusing on producing scholarship. The rise in hate incidents against Asian Americans also prevented many scholars of color and their loved ones from spending whatever free hours could be found on scholarly research.⁸⁹

Editors from peer review journals in other academic disciplines have already noted gender disparities in submissions, which will lead to publishing disparities.⁹⁰ For law journals, an increase in the number of editors in chief who are women could mean greater sensitivity to the problem of gender disparities and even an affirmative preference for women authors that could mitigate disparities.⁹¹ A large number of law journals have also selected their first Black editor in chief, again potentially leading to more awareness of issues of diversity—which could mean prioritizing authors from diverse backgrounds as well as more diverse types of scholarship.⁹² Greater national attention to the issue—in the form of news articles, scholarly works, and even the circulated letter urging law reviews and administrators to be flexible and accommodating regarding submissions—could also somewhat mitigate some of these issues.⁹³

NEXT STEPS

This Article lays the foundation for an empirical study of the effects of the COVID-19 pandemic on diversity in legal academia. In addition to adding new challenges, the pandemic has intensified preexisting pressures that have created gender and other disparities for years. Other fields have noted, for instance, a decline in the number of women submitting solo-authored articles for publication in peer review journals.⁹⁴ There are parallels with legal academia and law journal submissions, though no empirical study has yet investigated the extent of these challenges. The pandemic is also producing negative mental health effects on vulnerable faculty—especially caregivers,

89. A recent report by Stop AAPI Hate sharing findings on hate crimes statistics from March 2020 through early August 2020 reveals a significant increase in targeting of Asian Americans. STOP AAPI HATE ET AL., *supra* note 76.

90. *See supra* notes 58–59.

91. Erin Spencer, *First All-Women Class of Top Law Journal Editors Leaves Behind a Byline and Legacy*, FORBES (Feb. 11, 2020), <https://www.forbes.com/sites/erinspencer1/2020/02/11/first-all-women-class-of-top-law-journal-editors-leaves-behind-a-byline-and-legacy/#13b1910f758e> [<https://perma.cc/P28T-BBBT>].

92. Karen Sloan, *A Record Number of Black Students Take the Reins at Flagship Law Journals*, LAW.COM (Mar. 18, 2021, 10:18 AM), <https://www.law.com/2021/03/18/a-record-number-of-black-students-take-the-reins-at-top-law-journals/> [<https://perma.cc/P28T-BBBT>].

93. *See A Letter to Law Review Editors and Promotion and Tenure Committees at Law Schools*, *supra* note 10; *see also* Caroline Kitchener, *Female Professors Have Less Time to Research in the Pandemic. It Could Force Them out of Academia, Experts Say.*, THE LILY (Apr. 5, 2021), <https://www.thelily.com/female-professors-have-less-time-to-research-in-the-pandemic-it-could-force-them-out-of-academia-experts-say/> [<https://perma.cc/M2TF-VEWG>].

94. *See* Cui et al., *supra* note 59, at 1 (“female researchers’ productivity dropped significantly relative to that of male researchers”).

untentured faculty, and women of color—though the extent of this struggle is also as yet unstudied and unknown.

Drawing from the literature review, theoretical framework, research questions, and analytical approach suggested in this Article, PELA undertakes to better understand diversity disparities in legal academia caused by the COVID-19 pandemic. More suggestions can already be implemented to ameliorate some anticipated findings from PELA. In August 2020, a group of legal academics circulated an open letter stating the case for greater flexibility for submissions by women authors in the summer 2020 law journal submission cycle and beyond. The letter also called on administrators, among others, to be aware of how ongoing gender and raceXgender challenges could affect white women and women of color in the legal academy and to find workarounds to avoid a drop in retention rates by gender. Some of the suggestions contained there and elsewhere include:

(1) taking note of possible gender disparities in law journal submission rates and actively working to equalize them through increased acceptance of women authors;

(2) accepting law journal submissions from women that may be different from others—shorter than the average law journal article, with rough citation formats, or even material that is incomplete or imperfectly written—with the knowledge that the ideas are solid, and with added time, the authors will fill in details to further support their scholarship;

(3) recognizing the extra service work performed by women faculty in 2020 and 2021 (and long before) with extra compensation, teaching trade-offs, service reductions, or other changes in expectations or offered rewards;

(4) suspending the tenure or promotion clock by a year or longer (or giving faculty the option to delay without penalty) so that women faculty have an opportunity to pursue writing projects they anticipated finalizing in 2020–2021 but had to delay because of increased responsibilities due to the COVID-19 pandemic; and

(5) listening to vulnerable faculty about their actual needs and responding appropriately to offer institutional support to women at a time when there is little government or other aid available.

While the suggestions presented here could be helpful, there are also limitations such that nuanced attention even to solutions are needed. Extending the tenure clock would delay salary increases in some instances with lifetime consequences. If those with caregiving responsibilities are compared with faculty without children or elderly parents—even if both groups are given tenure extensions—there may be no solace in an extra year or two. Additional proposals for ameliorating gender disparities as well as their limitations will become evident through data collection and the analytical process, as well as by reviewing additional literature that becomes available through 2021. Empirical data from the PELA study itself will guide the way toward understanding challenges facing women—especially women of color—law faculty and crafting appropriate responses to ensure they and other vulnerable populations survive and thrive in legal academia.