



## The University of Tennessee

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### M E M O R A N D U M

TO: President Edward J. Boling  
Chancellor Jack E. Reese

FROM: Beauchamp E. Brogan, General Counsel

DATE: March 27, 1981

SUBJECT: UT Legal Clinic, College of Law

On December 12, 1980, the Legal Services Corporation approved a grant to the UT Legal Clinic/Knoxville Legal Aid Society in the amount of \$585,041 for the period January 1, 1981 through December 31, 1981. The grant application was signed by the Chairman of the Board of the Knoxville Legal Aid Society and by the Director of the UT Legal Clinic and Dr. Carl Thomas, Dean for Research of the Knoxville campus.

The contract was never approved by a University Vice President and was not processed for either legal or fiscal review and approval prior to or after the award was made. Neither has the grant been ratified by the UT Board.

Among the "Assurances Given by Applicant as Conditions for Approval of Grant" by the Legal Services Corporation are the following:

. Applicant hereby assures and certifies that:

1. It will comply with the Legal Services Corporation Act of 1974 as amended, and the rules and regulations, policies, guidelines, instructions, and other directives issued by the Legal Services Corporation thereunder.
2. It has the legal authority to apply for and receive the grant.
8. It will not change its bylaws or board structure without prior written approval from the Corporation.
11. Any delegate agency or organization that undertakes responsibility for any part of the approved program will be bound by these assurances.

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For the reasons herein stated, it is my opinion that the University cannot legally accept the grant under the stated conditions and that insofar as the University is concerned, the contract is void.

I

The Legal Services Corporation was established by Congress in 1974 by § 1003 of the Legal Services Corporation Act, 42 U.S.C. § 2996b. The goals of the Legal Services Corporation are not to provide funds for educational use but are "for the purpose of providing financial support for legal assistance in noncriminal [civil] proceedings or matters to persons financially unable to afford legal assistance" 42 U.S.C. § 2996a,b; 45 C.F.R. § 1601.1 (Oct. 1, 1979).

Partly because of its structure, The University of Tennessee does not qualify as a "recipient" of funds under the Legal Services Corporation Act. 45 C.F.R. 1607.3 (Oct. 1, 1979) provides, in pertinent part:

- (a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests and characteristics of the eligible clients in the area served.
- (b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a State in which a recipient is to provide legal assistance, who are supportive of the purposes of the act and have interest in, and knowledge of, the delivery of quality legal services to the poor.
- (c) The attorney shall be selected from, or designated by, appropriate Bar Associations and other groups, including, but not limited to, law schools, civil rights or antipoverty organizations, and organizations of eligible clients.
- (d) At least one-third of a governing body shall be, when selected, eligible clients.

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- (e) The members who are eligible clients shall be selected from, or designated by, a variety of appropriate groups including, but not limited to, client and neighborhood associations and organizations.
- (f) The remaining members of a governing body, whatever the method of selection, shall be individuals interested in and supportive of legal services to the poor.
- (g) No category of governing board membership shall be dominated by persons serving as the representatives of a single association, group or organization.
- (h) Members of a governing body may be selected by appointment, election, or other means. The method of selection and composition shall be subject to approval by the Corporation (Emphasis added).

Such governing body must meet at least 4 times each year; its functions are:

A governing body shall establish and enforce broad policies governing the operation of a recipient, but shall not interfere with any attorney's professional responsibilities to clients. [45 C.F.R. 1607.4(b), Oct. 1, 1979].

The Knoxville Legal Aid Society is a qualified recipient. It was established in 1965 for the purpose of, inter alia:

1. Operating a legal aid society with all of the powers which normally appertain to said societies.
2. Giving relief to the poor, the distressed and underprivileged by securing legal justice and protecting legal rights.
3. Defending human, civil and property rights secured by law.
4. Employment of attorneys and others to carry out the purposes of the society.

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Without any written contract, or formal agreement, the UT Legal Clinic and the Knoxville Legal Aid Society have an "arrangement" whereby they make joint application for the funds in question. The funds are channeled directly to UT, and the UT Legal Clinic provides the legal services called for by the grant in lieu of the Knoxville Legal Aid Society. As hereinafter shown, the UT Legal Clinic, with the approval of the Law School Faculty and the Board of the Knoxville Legal Aid Society, opened in 1979 a branch office in Maryville, Tennessee to serve eligible clients in Sevier, Blount and Loudon Counties.

It is the Board of Directors of the Knoxville Legal Aid Society<sup>1</sup>, not the UT Board, which governs this joint operation and sets policy and procedures for administering the grant. For example, the Knoxville Legal Aid Society determines who shall receive assistance, who shall be sued, adopts policies governing appeals to appellate courts, and determines whether and when attorney fees are sought. In short, the 25-member Board of Directors of the Knoxville Legal Aid Society determines and sets all policies required by the Legal Services Corporation and its rules and regulations to be established by the "governing body" (45 C.F.R. 1607.4(b) Oct. 1, 1979). In their amended answer to interrogatories propounded to the UT Legal Clinic by the Attorney General in the recent "fee" case, the UT Clinic lawyers made this point crystal clear.

The costs and fees from this case will be paid to the Knoxville Legal Aid Society, Inc. (hereinafter KLAS), by law the governing Board of the Recipient in the Knox County area of funds from the Federal Legal Services Corporation. 42 U.S.C. § 2996(f)(c). KLAS is an independent, non-profit corporation established pursuant to the laws of Tennessee. The KLAS Board is constituted as specified by the Act creating the Federal Legal Services Corporation. 42 U.S.C. § 2996(f)(c). By law, the KLAS Board "shall establish and enforce broad policies governing the operation of [a Legal Services Corporation] recipient, but shall not interfere with any attorney's professional responsibilities to clients." 45 C.F.R. § 1607.4(b). The KLAS Board is also required to receive and account for all federal and non-federal funds used to provide legal assistance to low-income individuals in the Knox County area. 42 U.S.C. § 2996(i)(c).

KLAS and The University of Tennessee Legal Clinic jointly apply for funding from the Federal Legal Services Corporation. In the grant application, the University

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1. This Board is composed of 25-members chosen from the service area.

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binds itself to comply with the Act creating the Federal Legal Services Corporation. Pursuant to its responsibilities, KLAS passes supervisory resolutions relating to the programs and policies of the Legal Clinic and meets at regular intervals to review the activities of the Legal Clinic.

The funds received in this and similar cases are used by KLAS to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel. The funds from this case will be deposited in a special account administered solely by KLAS. These funds will not be subject to the control or supervision of The University of Tennessee (Emphasis added, Ans. to Interrogatory No. 5).

Such an arrangement is illegal. The University cannot legally "bind" itself to comply with the requirements of the Legal Services Corporation and its rules and regulations in the manner stated. By law, the Board of Trustees of The University of Tennessee is the only "governing body" of the University and of its "constituent parts". T.C.A. § 49-3301; Fain v. College of Law of The University of Tennessee, 552 S.W. 2d 752 (1977). Neither the UT administration, nor the Board itself, can contract away the Board's power of governance. The consequences of continuing to accept funds under this grant, over which the UT Board is claimed to have no control, are obvious.

## II

Even if the "arrangement" could somehow be legalized to place the governance of the legal services program in question under the UT Board, the program, as it now exists, is ultra vires as to UT.

The University has broad statutory authority to institute and conduct educational programs, and the University, without question, has authority to operate a Legal Clinic in furtherance of its educational mission. The University may also accept proper grants to fund its programs. The University, however, lacks statutory authority to conduct programs unrelated to its statutory mandates. The operation of the legal services program in question, to the extent it is operated solely for the purpose of providing services to eligible clients under the rules and regulations of the Legal Services Corporation, purposes stated in the Charter of the Knoxville Legal Aid Society, is beyond UT's statutory authority. Such services are customarily furnished by legal services groups. The University may not, in my opinion, take over the role of the Knoxville Legal Aid Society and perform the functions stated in its Charter in its place and stead (See page 3, infra).

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For the purpose of carrying out the grant in question, the program is admittedly divided into (1) clinical education and (2) community service. The joint grant application requesting 1981 funding contains the following narrative under "Program Organization":

The University of Tennessee Legal Clinic/Knoxville Legal Aid Society is divided into clinical education and service delivery components. The education component operates a large clinical program designed to provide senior law students with clinical experience in a supervised setting through providing legal services to indigent persons in Knox County. Students receive training in a variety of criminal, civil and economic development contexts. Students and their supervisors in the Civil and Economic Development Clinics represent individual and organizations clients in areas in which a responsive legal aid program would be involved. Close supervision of students providing services to clients insures productive learning feedback while at the same time assuring clients that they are getting high quality legal representation.<sup>2</sup>

Although many clients are represented by the clinical education programs, a majority of clients are represented by other staff who have no formal involvement with educational units. These staff members are located at our Community Office in Knoxville, Tennessee, and a new office that has been established in Maryville, Tennessee. Each of these offices is staffed with lawyers, paralegals and secretaries. The Knox County Office is the larger of the two and has seven lawyers, five paralegals and four supporting clerical workers. The office contains family law, senior citizens, housing, consumer, and public benefits speciality units. The Blount County Office opened in January of 1979. It has four attorneys, two paralegals, and three clerical support staff.

The program also has an institutional unit representing the legal interests of eligible community groups at its University Office. The staff of this unit consists of one-and-one half attorneys, a full-time paralegal, and a partial secretary.

The program has instituted a number of methods to establish outreach to our clients. There is an outreach program for senior citizens at the John T. O'Connor Center for Senior Citizens located in Knox County. Ads have been placed in a

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2. Although this portion of the program is educational, the Legal Services Corporation will not fund strictly educational programs, since education is not its mission.

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local newspaper which is directly oriented toward the poor community. Advertising placards have been placed on local buses in Knox County. Direct telephone lines to our Maryville Office have been established for Loudon and Sevier Counties. Offices have also been opened in these communities and are open on specified days each week. Nonambulatory and nonmobile clients are served through the program by making arrangements to have staff visit such clients in their homes. An attorney/paralegal is presently visiting area nursing homes to visit nonambulatory/institutionalized elderly. We also do outreach by appearing on television and radio shows and through other types of media presentations, such as law fairs, when opportunities for such involvement present themselves. Staff members have made frequent talks to elderly citizen groups concerning legal matters of interest to the elderly. The program has recently met with several community-based poor peoples' groups to discuss new ways to assist group members who have legal problems.

Under "Significant Changes in Program", the following statement is made:

There have been several significant changes in the program this year. Branch offices were opened in Sevier and Loudon County completing implementation of the expansion office. The institutional unit has been staffed and has been meeting with various low-income community groups to ascertain and research their legal needs. Although there has been a great deal of discussion by the Knoxville Legal Aid Society Board concerning whether it is appropriate for the program to engage in impact/class action litigation and what additional input the Board should have concerning such cases, the program has been increasing its impact litigation activity (Emphasis added).

The grant application for 1978 funding sought, and the UT Legal Clinic/ Knoxville Legal Aid Society were granted, \$154,798 to provide "services in Blount, Loudon and Sevier Counties". The Legal Services Corporation stated that such funds were "to expand the availability of legal services to the client population of previously unserved areas." Indeed, the grant application stated:

The proposed expansion area would include the counties of Loudon, Sevier and Blount. As can be readily seen from the enclosed maps, all three are contiguous to Knox County. They are predominantly rural and semi-rural in population makeup. The largest town in the three counties is Maryville, which is located in Blount. Our expansion office would be located there, and we would cover the other counties on a circuit-riding basis. There are no unique client groups in these areas which are dissimilar to those already being served in Knox County. There is a great deal of population movement among the four counties

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and aside from the new areas being more rural, we do not envision our having any serious problems adapting to the new client population.

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Our expansion efforts have been coordinated with the other legal services programs in the State, as well as the proposed Tennessee Rural Legal Services program. There will be no overlapping or duplication by our going into these counties.

At this juncture none of the respective bar associations or any other groups have been contacted. As I previously explained in a telephone conversation with Bucky and Michael, this proposal is highly tentative and must initially clear with the Board and the Law School first (Emphasis added).

The Knoxville Legal Aid Society Board approved the expansion program on February 28, 1978; the Law School Faculty approved it May 7, 1978. The UT Board was not involved.

In awarding funds for the expansion, the Legal Services Corporation stated:

Prior to the expenditure of any funds awarded to Blount, Loudon and Sevier counties the recipient shall submit for approval to the Legal Services Corporation's Atlanta Regional Office a plan for the provision of such services. This plan shall be developed at the consultation with the widest possible variety of individuals and groups interested in providing quality legal services to the low income community of those counties.

The grant applications point clearly to the UT Legal Clinic's ties, and obligations, to the Board of Directors of the Knoxville Legal Aid Society and to the community service features of the program, a unique arrangement for a law school. In this regard, I am advised by the Law School acting dean that UT, with the exception of the Antioch School of Law, is the only University in the United States to receive funding from the Legal Services Corporation to operate a legal services program. Last year Congress appropriated in excess of \$300,000,000 to fund its legal services programs.



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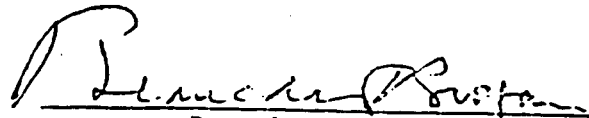
III

For the foregoing reasons, the University should move without delay to end the "arrangement" with the Knoxville Legal Aid Society and turn the Legal Services program in question over to such Society, where it rightly belongs. The Society would then be free to sue and counsel whomever it pleases without involving the good name of The University of Tennessee. The University, if it so desires, may contract with the Legal Aid Society to provide enumerated services, under the governance of the UT Board.

In the operation of the Legal Clinic for the sole purpose of education, under the policies and auspices of the UT Board, a clearly-defined policy concerning suits against the State and requests for attorney fees should be developed. In this connection, it is noteworthy that in accepting Title XX grants from the State, through the State Department of Human Services, the UT Legal Clinic agrees not to represent clients against the State. The UT Clinic, however, sues the State from funds received from the Legal Services Corporation, an incongruous situation to say the least.

Also, the UT Legal Clinic receives in excess of \$200,000 annually from the State to operate the Clinic. In addition, the Clinic receives other state grants, and the Law College receives from the State in excess of \$1,500,000 for other Law School activities.

All faculty and clinic attorneys are UT employees and are paid by the State, regardless of the source of the funds. There is an inherent conflict of interest for UT Law School attorneys on the State payroll to bring lawsuits against the State. Accordingly, any future policy, in my opinion, should preclude UT Clinic lawyers from bringing legal actions against the State.

  
Beauchamp E. Brogan

BEB:lrw

cc: Members of the Board of Trustees  
Dr. Joseph E. Johnson  
Dr. Andrew J. Kozar  
Mr. Emerson H. Fly  
Mr. Brodie Baynes