

MEMORANDUM

TO: Dean Rivkin and Marilyn Yarbrough
FROM: Dick Wirtz *DW*
DATE: January 3, 1989
SUBJECT: Clinic Suits Against the State:
Documentation on the 1981 Dispute



College of Law

Office of the
Associate Dean for
Academic Affairs
and Administration

A trip through the Law School's archives turns up these major documents from the 1981 dispute involving Clinic representation of clients suing the State of Tennessee, copies of which are attached:

- A. Beach Brogan's hostile memorandum of March 27, 1981, to Ed Boling and Jack Reese. He concludes: "any future policy, in my opinion, should preclude UT Clinic lawyers from bringing legal actions against the State."
- B. An excerpt from the minutes of the May 11, 1981, meeting of the Board of Trustees, noting the appointment of an Ad Hoc Committee to study the problem.
- C. The Clinic Advisory Committee's report on the issue to the law faculty, approved by the faculty on May 26.
- D. A July 13 letter from Jack to Attorney General William Leech, inviting Leech to state his position, with a letter from Leech in praise of the Legal Service Program attached. Our files do not indicate whether Leech replied.
- E. A memo from Jerry Black to Don Eastman arguing the Clinic's case rather nicely.
- F. A favorable letter from Jack Reese to Ed Boling dated July 27.
- G. Boling's unfavorable reply dated August 30.
- H. A document dated August 11 entitled Proposal Concerning UT Legal Clinic. Brogan sent a copy to Leech on August 14.
- I. An excerpt from the Board of Trustees meeting on September 25, 1981, indicating unanimous approval of the proposal.

Perhaps it would be worth asking Ken Penegar and Jack Reese if they have any specific record that in the course of the negotiations leading to the August 11 treaty, Brogan and Boling softened their position on suits against the State, or whether Leech ever contributed anything helpful.

Otherwise we are left with the treaty ratified by the Board in September, which, as I read it, is ambiguous on the crucial question. Paragraph 1.b provides that "until the [Legal Services Corporation] grant [to the Clinic and KLAS] expires,"

no suits of any significance shall be brought by the UT Legal Clinic on behalf of any litigant against the State of Tennessee, its agencies or instrumentalities or any state official acting in his official capacity.

Paragraph 3 provides:

Following expiration of the LSC grant, the College of Law will continue to operate a clinical educational program, subject to the official policies and procedures of the University as defined by the Board of Trustees.

(35)

contains the basic statements and the basic facts for the year past. He reported the following figures for 1980-81:

General Fund Expenditures	\$414 million
(an increase of approximately 12% caused by inflation)	

Funding Sources:

Student fees & services	\$ 40 million
State appropriations	125 million
Contracts, gifts, grants	95 million
Other sources (Sales, services, Federal appropriations, interest income)	32 million
Auxiliary enterprises	50 million
Hospitals	<u>73 million</u>

\$414 million

Mr. Baynes pointed out that the figures reflect a shifting of the source of support. The \$40 million from student fees represents a 17.6 percent increase above the previous year while the \$125 million in State appropriations represents a 2.5 percent increase.

Student Loan Funds	\$ 22,166,000
(Increase of \$1,600,000)	
Endowment Funds	25,800,000
(Increase of \$4,300,000)	
Life Income Funds	11,133,000
(Near same level as prior year)	
Plant Fund	expenditures of 37,000,000
Outstanding Indebtness	114,000,000
Annual Debt Service	8,600,000
(Provided by revenue sources)	
Investment in Physical Plant	548,000,000

Reports of Special Committees.

Ad Hoc Committee Concerning the UTK Legal Clinic--Mr. Tom Elam, Chairman. Mr. Elam reported that the Committee has established the authority of the Board of Trustees over

461

any program being conducted by The University of Tennessee. Mr. Elam explained that the current grant from the Legal Services Corporation to the UT Legal Clinic/Knoxville Legal Aid Society expires December 31, 1981 and there will be no further application for such grant by the University. He said he had been informed that the Knoxville Legal Aid Society will re-apply for the grant and take over this particular program. Mr. Tom Elam moved that the Board adopt the Committee's recommendation, as set forth in Exhibit 2 hereto. The motion was seconded by Mr. A. B. Long and unanimously carried.

Ad Hoc Committee for the Study of Post-Service Appointments of University Chancellors and Vice Presidents in the University System--Mr. Buford J. Goldstein, Chairman. Dr. Boling introduced the report by explaining that most universities have a policy for Chancellors and Vice Presidents who wish to work on post-service appointments.

Mr. Goldstein stated that the purpose of the plan is to allow the University to continue to benefit from the abilities and experience of those who have served for an extended period in upper level administrative positions after they leave such positions, as set forth in Exhibit 3 hereto. He continued by explaining that individuals who have served The University of Tennessee as President, Chancellor, and/or Vice President for at least ten years are eligible for such appointments. The selection will be on the recommendation of the President of the University and will be a recommendation to the Board of Trustees for approval. Mr. Goldstein stated that the employment conditions mandate that the professor will be appointed with tenure at the campus assigned, with appointments being on an academic year basis. Salary funds will be provided from non-tax dollars he noted. Mr. Goldstein continued by noting that each professor will be furnished with appropriate office space and secretarial and support services by the campus on which he serves. Mr. Goldstein then made a motion that the Board approve the recommendation on post-service faculty appointments. The motion was seconded by Mr. James A. Haslam II and approved unanimously.

Resolution Honoring Mr. Wayne Fisher. Mr. Tom Elam recognized Mr. and Mrs. Wayne Fisher and read the following resolution:

WHEREAS, Thomas Wayne Fisher was born at Sharon, Tennessee, on December 28, 1906; and

WHEREAS, he enrolled at The University of Tennessee, where he received the Bachelor of Science degree in Commerce in 1930; and

PROPOSAL CONCERNING UT LEGAL CLINIC

August 11, 1981

1. The current grant from the Legal Services Corporation to the UT Legal Clinic/Knoxville Legal Aid Society expires December 31, 1981. It is recommended that the status quo be maintained until the grant expires subject to the following conditions, as expressed by Mr. Harry W. Laughlin at the June 18, 1981, meeting:
 - a. The UT Board has final and ultimate authority over all activities of the University, including the College of Law, the grant conditions notwithstanding. The Dean of the College of Law has administrative responsibility for all activities of the College of Law, and all personnel, including Clinic attorneys. The Chancellor of the Knoxville campus and the University President have full responsibility for the College of Law and its Legal Clinic, as set forth in the University By-laws.
 - b. In conducting the Legal Services Program, no suits of significance shall be brought by the UT Legal Clinic on behalf of any litigant against the State of Tennessee, its agencies or instrumentalities or any state official acting in his official capacity.
2. The University of Tennessee will not apply for future funding by the Legal Services Corporation. However, a number of factors require that the University develop a responsible transition plan. These factors include: the expectation of law students that courses in legal clinic work already scheduled for the spring semester of the current academic year will be available (these courses are supported by LSC funding); teaching staff in the Clinic supported by LSC funding have the expectation, assuming adequate and continued LSC funding, that their appointments will run through June 30, 1982; the Knoxville Bar Association and the Knoxville Legal Aid Society have asked for and unquestionably need time to develop plans and mechanisms for providing legal services to the indigent of the Knoxville Service Area.

Consequently, it is proposed that the Knoxville Legal Aid Society apply for future LSC grants and that, upon such funding occurs, the Legal Services Program in question be conducted by the Knoxville Legal Aid Society effective January 1, 1982. The University proposes to contract with the Knoxville Legal Aid Society whereby the UT Legal Clinic will continue to operate at least the clinical educational component of the program in question. In any event, the University will work with the legal community of Knoxville to make the transition of responsibility for legal services to the indigent as orderly as possible.

3. Following expiration of the LSC grant, the College of Law will continue to operate a clinical educational program, subject to the official policies and procedures of the University as defined by the Board of Trustees.
4. In the interest of increased understanding of the activities of the UT Legal Clinic, the Dean of the College of Law will provide to the Chancellor and the President an annual report on the activities of the Clinic for the preceding year.
5. The University administration expresses confidence in the leadership, faculty and staff of the College of law and the Legal Clinic and pledges its support in the continuing effort to maintain and achieve new levels of excellence in legal and clinical education.