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UNIVERSITY OF TENNESSEE  
COLLEGE OF LAW

Date May 22, 1981

MEMORANDUM

TO: The Faculty of the College of Law  
FROM: The Clinic Advisory Committee  
SUBJECT: Review of Clinic Operations

In 1978, after investigation, the Clinic Advisory Committee concluded and reported to the Law College faculty that the alliance among the University, the Legal Services Corporation (L.S.C.), and numerous other funding sources directly advanced the teaching mission of the Law College. In the Committee's words:

"[T]hese multiple funding arrangements, which the past and present Directors have cultivated, significantly augment the resources available to the teaching Clinic. A teaching Clinic funded solely by the only source that imposes no service obligations -- the University of Tennessee -- would be a pale shadow of the teaching Clinic we now have."

The intervening three years have supplied no grounds to modify that judgment. Now as then, the Law College clinical instruction program is directly aided, financially and otherwise, by Legal Services Corporation and other funding sources that, like L.S.C., impose service obligations as a grant condition. The full extent of that aid is revealed by a summary review of the Clinic's history, its current structure and its current operations.

1. History

The Clinic was established in 1947 by Professor Charles H. Miller who came to this law school from Duke University for that purpose. At its founding, the Clinic was one of two university law school clinics in the country. Professor Miller was assisted part-time by one practicing attorney whose principal duties included court appearances in cases prepared by students, who could not then appear in court. Most cases involved divorce or other civil, family-related, services rendered to those who could not afford retained counsel. Instruction in the Clinic was an elective course and, then as now, one much favored by students. The Clinic continued in this form into the early 1960's, when a second part-time attorney began assisting with certain criminal defense matters. By 1963, students could appear in court, and in that year the clinic course was made a mandatory part of each law student's instruction.

In the mid-1960's the Clinic began receiving federal funds from the Legal Services Program of the Office of Economic Opportunity (O.E.O.) and, shortly thereafter, from the Law Enforcement Assistance Administration of the Department of Justice (L.E.A.A.). These funds were conditioned, respectively, upon the delivery of civil and criminal case representation to indigent clients in Knox County. The O.E.O. funds were further conditioned on community participation in the oversight of the legal services program.

In 1969 a second tenure-track professor joined Professor Miller in the clinic. By 1970 they were assisted by six staff attorneys, several of whom were employed full-time. In that year, the Clinic budget totaled about \$100,000, roughly 25% of which was contributed by the University. Federal funding paid the salaries of the staff attorneys and much of the Clinic overhead expense. By 1973 the Clinic had grown, coincident with a substantial growth in the entire Law College, to four tenure rank professors and nine staff attorneys, most of the latter employed full-time. The staff attorneys' pay was still grant funded. The Clinic had become the primary supplier of civil and criminal legal services to the indigent of Knox County. It had also become a teaching program of very considerable size. The law school had grown to nearly 700 students -- from fewer than 200 in the years 1952-1957 -- and the clinic course was still required of each student. The result was less than ideal. Students and staff members assumed responsibility for cases well in excess of those needed for teaching purposes, and the conflict of teaching goals and service goals tended to hamper both the teaching and the service missions. As this Committee reported to the faculty in 1974:

"[T]he caseload of the individual student in the clinic . . . is too high. In addition, the caseload lacks sufficient variety. The law school has not assumed the Knoxville Bar's whole obligation to serve the legal needs of [the indigent]

of this community. . . . No student should be assigned a case [that] does not have specific educational value for the student."

The mid-1970's were a period of rapid change. In 1974-1975, the Clinic courses (civil and criminal) were again made entirely elective and student enrollment declined, though the courses remained quite popular. In 1975, Professor Miller retired and a new Director, Professor Becker, was appointed. The total budget in that year was about \$300,000, of which about one-third was University funds. Meanwhile, Congress had created the Legal Services Corporation to succeed O.E.O.'s Legal Services Program. Between 1975 and 1980, Congress steadily increased L.S.C. funding for the purpose of making legal services available to all who qualified throughout the country. The U.T. Clinic, like all L.S.C. grantees, expanded in response to the Congressional mandate. In 1977, the L.S.C. grant totaled \$125,000. In 1978 L.S.C. funding more than doubled. The increase was used to improve service in Knox County and to expand services for the first time to eligible people in Blount, Loudon and Sevier Counties. The decision to expand service to three additional counties was closely considered and approved by formal vote of both the law faculty and the Knoxville Legal Aid Society (K.L.A.S.) board, the community oversight body that succeeded the O.E.O. oversight group. The decision of the board may be attributed in good measure to the members' belief that the existing organization was strong enough to bear expansion without harm, and with possible benefits, to the delivery of services in Knox County. The bases of the law faculty's decision were less

certain but the debate revealed these considerations in favor of expansion:

- Acceptance of the substantial educational benefits associated with L.S.C. funds implied an obligation of the Law College to support the service mission of the Clinic where consistent with educational goals;
- L.S.C. believed that our program was the one best able to undertake service in those counties, and urged us to do so; and
- A rural service program would add a new dimension that could become a base for specialized clinical instruction.

Considerations militating against the expansion included these:

- Assumption by the Director of additional administrative duties would reduce the time available for him to teach; and
- The Criminal Clinic was, at that time, in some disarray and needed priority of attention.

In 1978, following experimentation with several small offices in outlying Knoxville communities, a Clinic office was opened in downtown Knoxville and another in Maryville. In 1978, major funding sources supported the Clinic in these amounts:

Legal Services Corporation	\$331,000
University of Tennessee	193,000
Dept. of Health, Educ. & Welfare	120,000
L.E.A.A.	108,000

In 1979, Professor Becker resigned as director. The search for a successor consumed two years. In January 1981, Professor Jerry Black was appointed Director. During the period of search the Clinic continued to grow slowly, but did not otherwise change in its basic structure or program.

Today, the U.T. Legal Clinic is widely regarded as outstanding. Its founder, Professor Miller, has been honored by the Society of American Law Teachers for his pioneering work in the field. The Clinic has received major financial support from the Council on Legal Education for Professional Responsibility, an organization that has sponsored the expansion of clinical legal education. Professor Rivkin co-chairs the Section on Clinical Legal Education of the Association of American Law Schools. Increasingly, American law schools are adopting, or expanding, clinical programs, in part because of the growing consensus among law faculties and accrediting authorities that such programs make essential contributions to thorough legal education. Clinical programs teach counselling and litigation skills that cannot easily be taught in the traditional mode. Moreover, the legal clinic is an excellent setting in which to address and analyze important issues of professional responsibility and ethical practice. Our Clinic is widely used as a model by those at schools just now developing their clinical programs.

## 2. Current Structure

At present the Clinic operates three offices: a teaching office at the Law College and service offices in downtown Knoxville and in Maryville. The teaching office is staffed by the director, who is a tenured Law College faculty member, two additional such faculty members (there is now one vacancy on the civil clinic faculty) and five staff attorney instructors. The

civil clinic is currently conducted by the Director, one Clinic professor and three staff attorneys. The civil clinic admits at least 32 students each quarter, each student provides service to clients under close supervision and handles about seven to ten matters per quarter. The cases are drawn from the general case intake as required for instructional purposes. The criminal clinic -- which receives no L.S.C. funds -- is conducted by a tenured professor and two staff attorneys, all of whom supervise students who are representing criminally accused indigent persons. The criminal clinic admits about 16 students per quarter. At present staffing levels, closely supervised clinical instruction is available before graduation to every student who desires it. Any significant reduction in clinic resources would seriously jeopardize either our high level of instructional quality or the availability of clinical instruction, or both.

The total Clinic budget this year, by funding source is:

<u>Source</u>	<u>Percent</u>	<u>Amount</u>
Legal Services Corp.	62.0	\$620,000
University of Tennessee	22.0	216,000
Dept. H.E.W.	13.0	125,000
Knox County Office of Aging	1.5	14,000
Miscellaneous	<u>1.5</u>	<u>12,000</u>
Total		\$987,000

In the coming year, if the University office operates at its current staffing level, expenditures at that office will approximate \$375,000, about one-third of the total Clinic budget. That will be about \$150,000 more than the sum budgeted by the University for Clinic operations, and much of the \$150,000 will be

furnished out of L.S.C. grant funds. L.S.C. grant funds are assured at present levels through December 31, 1981. The level of funding thereafter cannot be predicted with any confidence. Legislation reauthorizing L.S.C. has been introduced and there is bipartisan support in both houses of Congress for reauthorization and for continued funding, but funding is likely to be at a reduced level.

There are, of course, major benefits to the service program from these expenditures at the University office. These include the administrative services of the Director and his administrative assistant, the University's accounting, disbursing and auditing services, the client services rendered by students under supervision of faculty and staff attorneys, and client services rendered directly by faculty and staff attorneys. Less tangible benefits to the service program include the available reservoir of expertise comprised by the Clinic and the Law College faculty, and the value, however great or slight it may be, of having an excellent and prestigious University legal clinic intensively concerned with the theory and practice of lawyer education in a Legal Services setting. Allowing fully for these reciprocal advantages, however, it appears as clear now as it was three years ago that the teaching Clinic is financially a net beneficiary of the exchange.

Important non-financial benefits also accrue to the teaching program because the Legal Services setting is a good teaching milieu. As this Committee reported in 1978:



"We do not hold . . . the view sometimes expressed that cases involving indigents, tried in the courts of Knox County, are inappropriate teaching vehicles. While a teaching law office engaged in, e.g., blue-chip antitrust litigation or real estate development would offer our students a different experience, it would not necessarily be a better one, for several reasons:

1. The craft of the excellent lawyer should be visible in the work of clinic staff, and thus available to students as a model, in either circumstance. Indeed, the discernible contrast between our own standard of excellence and the lower standard often seen in the handling of indigents' affairs in inferior courts may have its own pedagogical value.

2. The disclosure to students that components of the legal system approach a state of chronic dysfunction, and exploration with them of alternatives, is both worthwhile as a matter of education and necessary as a matter of professional responsibility.

3. The disparate impact of legal rules on members of differing economic and social classes is a legitimate subject for study in law school."

In addition, the availability of a steady flow of relatively simple cases has obvious pedagogical value.

Finally, the cooperative relationship between educational and service components has made possible a highly satisfactory caseload control system. As this Committee also reported in 1978:

"The case assignment system and caseload management procedures seem, on balance, excellent. In contrast to the status reported by this committee in 1974, no case is assigned a student until attention is given to whether that case is appropriate for that student in light of his or her experience at the time of

assignment. No longer must the students and instructors race to handle a volume of cases imposed by external demands for representation. This change in case assignment is an advance of the first importance. It creates a milieu in which detailed supervision is possible. The change has resulted from the establishment of a separate office confined in function to the delivery of legal services."  
(Emphasis added.)

### 3. Current Operations

The Clinic accepted its first O.E.O. grant more than 15 years ago and has, since then, operated under diverse lines of authority. The original O.E.O. grants required "community participation" in program supervision, and a community board performed that function. A similar requirement obtains today and the Knoxville Legal Aid Society board, composed of lawyer and client community members, receives L.S.C. funds and transfers them to the University, which provides the funded services. The result is a pragmatic accommodation: 1) the instructional program of the Clinic is determined through the governance mechanisms of the Law College, subject to University-wide procedures; 2) academic personnel matters -- appointment, tenure, promotion -- are determined pursuant to standing University procedures, and 3) the program of service to clients is determined by the Clinic staff and Knoxville Legal Aid Society board through mechanisms that comply with L.S.C. regulations, subject to University concurrence. In each of these three areas, concurrence of all participants -- K.L.A.S., L.S.C., the University, and Law College faculty -- is the reality. The necessity of concurrence resides not in formal,

but in practical, relationships. Both L.S.C. and the University have the option in any year to end the partnership. This fact has fostered the current relationship in which each participant acts with due regard for the interests of the other. It has produced, over 15 years' time, the generally cooperative and progressive course of events here reported.

The first major test of these cooperative arrangements occurred this winter when the Clinic, after successfully suing a Tennessee state agency in a constitutional rights matter, sought from the State an award of attorneys' fees payable under federal law. The suit was brought and won primarily through the work of staff attorneys from the downtown office who had no teaching obligations and whose salaries were paid from L.S.C. grant funds. In comparable situations involving Legal Services programs in other Tennessee cities such fees, when awarded, have been routinely paid by the State.

When the Clinic's claim for fees was brought to the attention of the Tennessee Attorney General, he raised the question of the legality under state law of the payment of money from one state agency -- the defendant -- to another -- the Clinic -- outside the legislative appropriations process. The Attorney General's concern was communicated to members of the University administration and the administration urged the Law College to withdraw the request for fees. The acting dean of the Law College and acting director of the Clinic were reluctant to direct the attorneys of record to change their position in a

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pending case, not wishing to risk invasion of the attorney-client relationship, a matter of ethical concern.<sup>1</sup> While the divergent views within the University were being explored, the board of the Knoxville Legal Aid Society became informed of the matter and asserted its interest in a matter related to the delivery of services to clients by non-teaching lawyers in a community office. Attorney General William Leech personally visited both the law faculty and the board of K.L.A.S. in an effort to resolve the dispute. Ultimately, the attorneys for the parties reached a settlement understanding that was satisfactory to all who were interested: an agreed sum that included no compensation for attorneys paid from University funds, as distinguished from L.S.C. funds, was sought in the name of the Knoxville Legal Aid Society, rather than in the name of the University of Tennessee Legal Clinic, the money to be used by the K.L.A.S. board solely for the benefit of the service program. On March 30, 1981, the federal district judge at Knoxville approved the fee award.

Throughout these events the Law College and Legal Clinic officers and faculty acknowledged, and indeed emphasized the point, that the University has a legitimate interest in the

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<sup>1</sup> The concern arose from several disciplinary rules of the Tennessee Code of Professional Responsibility, Rule 38, Rules Tenn. Sup. Court, including this one:

5-107(B). A lawyer shall not permit a person who . . . employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.

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prospective question of what kinds of cases will be undertaken by Clinic students and lawyers. Manifestly, the K.L.A.S. board also has a legitimate interest in that question because it must see, among other things, that the purposes of the L.S.C. grant are fulfilled. The attached recommendation for a policy governing the acceptance and handling of future cases in which fees may be claimable from the State is designed to accommodate the interests of the University, the K.L.A.S. board, the attorneys employed in the Clinic, the other members of the Law College faculty, and the class of clients intended to be served by L.S.C. grant funds. It discourages the bringing of such cases by Clinic lawyers in deference to the interests of the University. It leaves open the possibility that such cases will be brought by them when other representation is unavailable, in deference to the interests of the client population. It does not utterly forbid, though it restricts to highly exigent cases, all claims for fees<sup>2</sup> in such cases, in deference to the bedrock principle that "a lawyer should exercise independent professional judgment on behalf of a client" (Canon 5, Tennessee Code of Professional Responsibility).

The committee concluded that this modification in current operating policy is a healthy adjustment in the complex but highly productive alliance between the Clinic, the University and

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<sup>2</sup> The proposal provides for the payment of such fees to the K.L.A.S. board. Pending amendments to the Legal Services Authorization Act would, if adopted, require payment of such fees directly to L.S.C.

Legal Services Corporation. The committee concluded that no other adjustments are now warranted. Major changes in L.S.C. funding levels are possible and would, of course, require substantial further study.

Student Members of the Committee:

Carl Patrick  
Elma Rodgers

Faculty Members of the Committee:

Jerry Black  
Martha Black  
Forrest Lacey  
John Sebert  
Toxey Sewell  
Patrick Hardin,  
Chair

## RECOMMENDED POLICY

The following procedures will apply to every matter which may lead to suit against the government, or any division or department, of the State of Tennessee in which the recovery of attorneys' fees by a prevailing plaintiff is provided for in federal law:

1. The matter will be referred to the private bar as a fee-generating matter.

2. If the referral is refused, the Director will attempt to secure non-Clinic counsel for the client by the following, among other appropriate measures:

- a. Requesting individual members of the bar to take the case, or

- b. Requesting other Legal Services Corporation programs to take the case.

3. If the procedures undertaken pursuant to paragraph 2 do not result in non-Clinic representation, and if the interests of the client or client class require that fees be demanded, then, as a last resort, the Director will so notify the Dean of the Law College and Chairperson of the K.L.A.S. board, and the case will be regularly handled and demand for fees will be made.

4. Suits requesting the award of attorneys' fees from the defendant will be brought in the name of the Knoxville Legal Aid Society and fees, if awarded, will be payable to the Society for the benefit of the Society.

5. In any matter covered by this procedure, suit shall not ordinarily be commenced by the Clinic until good-faith negotiations between the responsible attorney and representatives of the defendant officer or agency have been undertaken.