DÉJÀ VU ALL OVER AGAIN: REFLECTIONS ON FIFTY YEARS OF CLINICAL EDUCATION

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To study the phenomena of law in society without books is to sail an uncharted sea, while to study law without clients is not to go to sea at all.
- Charles Henderson Miller[1]

I. INTRODUCTION

When Charles Henderson Miller started the University of Tennessee (UT) Legal Clinic in 1947, he was building on a body of thought and experience several decades old. Although the UT Legal Clinic was only the second in-house legal clinic[2] in the nation,[3] the pioneering work and writing

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1. Founder of the University of Tennessee Legal Clinic and former Professor Emeritus, University of Tennessee College of Law.

2. For the purposes of this article, "in-house clinical program" is defined as a for-credit curricular offering in which law students represent "real clients" in "real situations"

of John Bradway, Reginald Heber Smith, Jerome Frank, Karl Llewellyn, and others provided a solid intellectual and pedagogical foundation.[4] And, although best characterized as extra-curricular activities, a number of law schools previously had established legal aid "clinics" staffed in part by students.[5]

In fact, Charlie had helped build the foundation for the UT Legal Clinic and the others that would follow. While working for and reading law with a juvenile court judge in North Carolina, he began to correspond with John Bradway.[6] When Bradway joined the Duke faculty, Charlie enrolled and helped establish the Duke clinical program in 1931.[7] Because he had read law before entering law school, Charlie was admitted to the bar upon

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under faculty supervision. *See Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992) (adopting similar definition). Interestingly, the 1959 Report of the American Association of Law Schools (AALS) Committee on Legal Aid Clinics identified the "very few [law schools which]—wisely or unwisely—consciously utilize the legal aid clinic as a means of formally teaching law." *Report of Committee on Legal Aid Clinics*, 1959 A.A.L.S. PROC. 122 [hereinafter 1959 A.A.L.S. PROC.]; *see also* Leon T. David, *The Clinical Lawyer-School: The Clinic*, 83 U. PA. L. REV. 1, 3-5 (1934) ("In a legal clinic the law student works for real clients upon real cases.").

3. Although the University of Southern California (USC) operated a six-week program in 1928, Duke established the first ongoing in-house program in 1931. *See* John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252, 253 (1929) [hereinafter Bradway, *The Beginning*]; John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905, 906 (1932) [hereinafter Bradway, *Less Thickly Populated*]. John S. Bradway was the creator of both programs, supported at USC and Duke by Dean Justin Miller. David, *supra* note 2, at 4 n.11. Duke eliminated its program in 1959. *See* 1959 A.A.L.S. PROC., *supra* note 2, at 122. The UT Legal Clinic, therefore, is the oldest continuously operating in-house program in the United States.

4. *See infra* notes 27-35 and accompanying text.

5. A number of law school legal aid programs started in the early 1900s. *See* David, *supra* note 2, at 35. And while such luminaries as Dean Wigmore enthusiastically recognized the educational potential of clinical material, a connection between law school curricula and legal aid programs never materialized. *Report of the Committee on Legal Aid Clinics*, 1948 A.A.L.S. HANDBOOK 188 (1949). In 1948, the AALS Committee on Legal Aid Clinics noted:

> [O]ur original belief that Legal Aid would provide sufficient material for a broad program of in-school clinical training was too optimistic. Lack of adequate raw material and failure to use properly even such material as is available are characteristics of law school Legal Aid programs. With few exceptions, they are clinics in name only.

Id.

6. Interview by Kate Bunker with Charles H. Miller, in Knoxville, Tenn. 5 (July 19, 1993) (transcript on file with author). The biographical information on Charles Miller is based on numerous personal conversations with Charlie before his death and on two interviews conducted by Professor Kate Bunker.

7. *Id.* at 5-6.

examination the following year.[8] As a result, he was able to appear in court on clinic cases during his third year.[9] Following his graduation from Duke in 1933, he continued to serve as an assistant in the clinic through 1946, when he left for Tennessee.[10]

The faculty and administration at Tennessee proved particularly receptive and supportive. Using the clinic model developed at Duke,[11] Professor Miller's program was immediately accepted as a vital part of the curriculum. During the first three years, nearly 200 students completed the required "Legal Aid Clinic" course under the direction of Charlie, one staff lawyer, and volunteers from the local bar.[12] A new law building, completed in 1950, included "spacious quarters especially adapted for the operation of a legal clinic."[13]

Over the next decade, the clinical movement continued to grow, albeit very slowly. By the late 1950s, five schools had established in-house programs.[14] In 1958, however, clinical education became the beneficiary of a new source of support and encouragement. The Ford Foundation, through the efforts of William Pincus, provided $800,000 to establish the National Council on Legal Clinics (NCLC) and to provide grants for experimental programs at selected law schools.[15] The NCLC was affiliated with the National Legal Aid and Defender Association (NLADA) in cooperation with the Amercian Bar Association (ABA) and Association of American Law Schools (AALS).[16] Charlie Miller served as a charter member of the eleven-

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8. *Id.* at 6.

9. *Id.* At the time, of course, there was no student practice rule.

10. *Id.* at 6-9. Charlie Miller left Duke in part because the future of the Duke clinical program was in doubt. *Id.* at 8. John Bradway was thinking of retiring, and the support of the faculty and dean was waning. *Id.* The Duke program was eliminated about ten years later. *See* 1959 A.A.L.S. PROC., *supra* note 2, at 122 n.8.

11. *See generally* JOHN S. BRADWAY, HOW TO ORGANIZE A LEGAL AID CLINIC (1938).

12. Charles H. Miller, The Legal Aid Clinic of the University of Tennessee 1 (April 14, 1950) (unpublished manuscript, on file with author); *see also* Interview by Kate Bunker, *supra* note 6, at 9.

13. Miller, The Legal Aid Clinic, *supra* note 12, at 1. The description continues: "The office suite consists of a large reception room, space for secretarial assistance, two interviewing offices, two offices for supervising staff and a large work space for students. Spacious built-in book shelves, cabinets and other appointments make it a well-equipped law office." *Id.*

14. The five schools were Duke University, Indiana University at Indianapolis, Southern Methodist University, the University of Tennessee, and the University of Texas. 1959 A.A.L.S. PROC., *supra* note 2, at 122.

15. Orison S. Marden, *CLEPR: Origins and Program*, *in* THE COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 3, 5 (1973) [hereinafter CLINICAL EDUCATION].

16. *Id.*

member council.[17] During the six years of its existence, from 1959 to 1965, NCLC made grants of $500,000 to nineteen law schools.[18]

The NCLC proved so successful that the Ford Foundation provided an additional $950,000 in 1965.[19] Changing its name to the Council on Education in Professional Responsibility (COEPR), then later to the Council on Legal Education for Professional Responsibility (CLEPR), the organization continued to receive Ford Foundation support.[20] By 1978, CLEPR had provided over $6,500,000 in grants to support clinical programs at more than 100 law schools.[21] Clinical education had arrived.

The rich history and tradition of clinical education just described, however, is virtually ignored. Most surveys of the history of clinical education begin with either the burst of expansion in the 1970s, the creation of CLEPR in the late 1960s, or, on rare occasion, with establishment of the NCLC in 1958.[22] Yet the unexamined history—from the vision of John Bradway, passed on to Charlie Miller and others, leading to the creation of the NCLC, CLEPR, and continuing to the present—is rich with ideas, insights, and experiences that can inform ongoing discussions of the form and function of clinical legal education.

Even a cursory review of the literature reveals that many of the issues being discussed today—the mission of clinical education, skills training, teaching professionalism, and service provision[23]—have been considered since the earliest days of clinical education.[24] While the ongoing debate of

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17. *Id.*

18. *Id.* NCLC grants required law schools to provide matching amounts of funds and services. *Id.* at 5-6.

19. *Id.* at 6.

20. *Id.* at 6-8.

21. John M. Ferren, *Prefatory Remarks*, 29 CLEV. ST. L. REV. 351, 352 (1980).

22. *See* Robert Condlin, *The Moral Failure of Clinical Education*, *in* THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS 332 (D. Luban ed., 1983) (The "clinical revolution started in the 1960s and 1970s."); Marc Feldman, *On the Margins of Clinical Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 608 (1985) (Phase one of the history of clinical education began in 1968.); Minna J. Kotkin, *The Violence Against Women Act Project: Teaching a New Generation of Public Interest Lawyers*, 4 J.L. & POL'Y 435, 446 (1996) (The modern era of clinical education began in the 1960s.); Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 589 (1987) (noting the "early stages of [clinical education] development during the 1960's").

23. *See, e.g.*, Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31 (1993).

24. For example, there is a current initiative to utilize a pervasive method of teaching professional responsibility. *See, e.g.*, DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (1994). Under the leadership of Howard Sacks, the NCLC sponsored a similar initiative in the late 1950s. *See* National Council on Legal Clinics, Report to the Ford Foundation for the Period January 1, 1961 - December 31, 1961 (on file with author). One result of that initiative was *Cases and Materials On Professional Responsibility and the Administration of Criminal Justice*, written by Professor Murray

such issues is itself valuable, prior experience and examination can add significantly to the present dialogue. In some instances, the situations confronted by the early pioneers were similar to those of today. In other ways, the early days were very different.[25] In both circumstances, full examination of the history of clinical teaching may lead to a better understanding of where clinical education has been and where it is going.

Clinical education is, in a sense, at a crossroads. The MacCrate Report,[26] changes in accreditation standards, and simply the passage of time have moved clinical education into the mainstream of legal education. But what does that mean? What is the role of clinical teaching within the legal academy? As clinicians struggle with these and other questions, examination of our complete history may provide insight and guidance. If nothing else, the examination may lead to a better understanding of who we are and what we do. This symposium, and this essay in particular, are attempts to start that process.

II. LESSONS FROM THE PAST

An understanding of early efforts to establish in-house clinical programs requires consideration of the impetus for those efforts. Three related, overlapping influences combined to create a perceived need for a change in legal education.

First, law schools replaced apprenticeships as the principal method of training lawyers.[27] Law schools, relying exclusively on the Langdell case method, however, were unable to assume completely the educational role of the apprenticeship system.[28]

> It is not that which is included in the curricula that occasions criticism; the complaint is rather that the educational process does not go far enough, in that no training is given in the common operations constituting the bulk of legal work nor in the technique of the law office.[29]

Schwartz and published by the NCLC in 1961.

25. For example, as Robert Condlin notes, the rapid growth of clinical education in the 1970s was driven primarily by money, with several ramifications. Condlin, *supra* note 22, at 332-33. Circumstances were very different in the 1930s, 1940s, and early 1950s.

26. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUC. AND PROF'L DEV.—AN EDUC. CONTINUUM (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

27. *See* John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 WASH. U. L.Q. 173, 176 (1939); George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 163 (1974).

28. JOHN S. BRADWAY, BASIC LEGAL AID CLINIC MATERIALS AND EXERCISES ON TAKING HOLD OF A CASE AT LAW 5 (1950).

29. David, *supra* note 2, at 2.

Members of the academy and the profession called for law schools to change in order to fill the void left by the demise of apprenticeships:

> Is there any sound reason why the law schools in this Association [ABA] should decline to accept their full mission from the law offices? Is there anything which really prevents our law school faculties, especially in this Association, from rendering the greatly needed service to the cause of substantial justice, and all without neglect of the teaching of the fundamentals of substantive law?[30]

The Legal Realists advocated a similar change.[31] Jerome Frank noted that "[s]omething important and of immense worth was given up when the legal apprentice system was abandoned as the basis of teaching in the leading American law schools."[32] But the criticism of Frank and others was not limited to the output of the law schools. The criticism went to the heart of the case method and the view of the law it reflected.[33] For the Realists, a full understanding of the law in operation required examination of the social and psychological forces affecting all components of the legal system.[34] The nascent clinical movement was the best and most available vehicle to bring legal education in line with this jurisprudential perspective.[35]

The legal aid "movement" was the third significant influence leading to the earliest clinical efforts. The first legal aid society was established in New York City in 1876.[36] Reflecting a recognition by some members of the profession that greater access to legal assistance was necessary, the movement continued to expand through the end of the century and into the early 1900s.[37] Legal educators, such as John Wigmore, quickly recognized the potential value of legal aid work to provide practical experience, provide service, and inculcate understanding of the legal needs of the underclass.[38] Legal aid clinics were established in association with several law schools,

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30. Charles M. Hepburn, *Law Schools and Legal Clinics*, 6 AM. L. SCH. REV. 245, 247 (1928).

31. *See, e.g.*, Jerome Frank, *Why Not a Clinical-Lawyer School*, 81 U. PA. L. REV. 907 (1933); George K. Gardner, *Why Not a Clinical-Lawyer School—Some Reflections*, 82 U. PA. L. REV. 785, 786 (1934).

32. Frank, *supra* note 31, at 913.

33. *See* Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 587-88 (1986).

34. *See id.* at 588-89.

35. The ideas resonated with the early clinicians like Bradway and Miller. *See, e.g.*, BRADWAY, *supra* note 28, at 4-5 ("[The] purpose of the instruction is to provide the student with an understanding of the social and economic setting in which rules of law operate.").

36. *See* Reginald H. Smith & John S. Bradway, *Legal Aid and the Bar*, 27 TENN. L. REV. 223, 224 (1927).

37. JOHN S. BRADWAY, THE BAR AND PUBLIC RELATIONS 69-79 (1934).

38. *See, e.g.*, John Wigmore, *The Legal Clinic: What it Does for the Law Student*, 124 ANNALS AM. ACAD. POL. & SOC. SCI. 130 (1926).

including Harvard, Yale, Minnesota, Northwestern, and Cincinnati.[39] John Bradway, however, took the concept one significant step further; he moved the legal aid clinic into the teaching curriculum of the law school.[40]

While each of these influences combined to form the impetus for the development of the first clinical programs at USC, Duke, and, ultimately, Tennessee, these programs, once established, adopted an educational mission reflective of, but independent from, those influences.[41]

III. THE MISSION OF CLINICAL EDUCATION

> You've got to be careful if you don't know where you are going, because you might not get there.
>
> -Yogi Berra

From the outset the principal purpose of the first clinics was education. As Bradway wrote in 1939, "[t]he legal aid clinic is a device to improve legal education in the United States, with objectives in the field of practical training and public service."[42] The goal was to replace the apprenticeship by providing "practical experience."[43] So, the "initial teaching technique employed was borrowed, naturally enough, from the traditional idea of law apprenticeship."[44] The students "learned by doing."[45] Experiential learning had come to legal education.

Bradway, however, realized almost immediately "the novel possibilities" presented by the clinical method.[46] In 1930, he described three phases in the development of his pedagogy.

> The significance of the course in the law school field has been the subject of successive stages of development in the mind of the writer. As first projected it appeared to be a practical course in practice as distinguished from theoretical or moot court work in the practice field. Then as the work was started it became clear that the student in each case was having experience in using the rules of law, substantive and administrative, which were taught in many different courses in law school; consequently the course seemed to the writer to take on aspects of a synthesis of the law school work by which the rules of law, instead of being segregated into various definite classifications, were centered around the particular problem

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39. John S. Bradway, *The Nature of a Legal Aid Clinic*, 3 S. CAL. L. REV. 173, 174 (1930).

40. *See* Bradway, *The Beginning*, *supra* note 3, at 252-53.

41. *See generally* Sheldon D. Elliot, *Legal Aid Clinic Versus Legal Aid Society*, 8 AM. L. SCH. REV. 410 (1936).

42. Bradway, *supra* note 27, at 173.

43. Bradway, *The Beginning*, *supra* note 3, at 252.

44. BRADWAY, *supra* note 28, at 6.

45. *Id.*

46. *Id.* at 1.

> presented by the particular client. Turning then to the question of the problem of the individual client, it became apparent that the students were learning that, in many cases, the individual client's problems were not exclusively legal. This tended to make the course a vehicle by which the student could broaden his horizon—looking at the field of law as one form of social control and determining how to correlate it with the work done in the fields of the other social sciences.[47]

Bradway expanded on this some years later based on his Duke experience. In the first days of clinical teaching, the object of the course could be expressed in terms of "cultural and practical goals."[48] The cultural goal was to expose students to the "class" of legal aid clients; the practical goal was to "supplement orthodox instruction" by applying substantive knowledge to a real problem of a real client.

> However, over the years the words *cultural* and *practical* have seemed to us to deserve less emphasis than two other words—*different* and *method.* At present it appears that modern legal aid clinic instruction should not be merely an extension of a traditional substantive law course but different. That difference may be expressed in the word *method.*[49]

The change in how the clinical pioneers viewed their mission represented a critical step in the development of clinical pedagogy. Bradway and others recognized that a clinic is not simply a mechanism to achieve particular educational goals; it is a pedagogical method.[50]

> The clinic is a method of approaching law as a whole rather than a section of either its substantive or procedural aspects. It offers a study of a most complicated mental process. One certainly may teach the practice of law through the clinical method. Given enough material, one may also teach any field of substantive law by the same method.[51]

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47. John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320, 320-21 (1930).

48. BRADWAY, *supra* note 28, at 1.

49. *Id.* at 3-4.

50. Gary Bellow developed and further explained the importance of this point in 1973. *See* Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology, in* CLINICAL EDUCATION, *supra* note 15, at 374. *See also* Stephen F. Befort, *Musings on a Clinical Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619, 624-25 (1991).

51. John S. Bradway, *The Legal Aid Clinic as an Educational Device*, 7 AM. L. SCH. REV. 1153, 1155 (1934). "The clinic, then, is not strictly speaking a course. It is classifiable with other methods of instruction such as the seminar, the research, the lecture, and the case methods." *Id.* at 1156.

The clinical course "differs from other methods of instruction in approach, in method, and in material or content."[52]

The definition of clinic as a method allowed clinical education to progress beyond the idea that clinical education is simply a mechanism for providing practical experience. Clinical education could no longer be viewed, at least by those involved in its development, as simply a replacement for the apprenticeship system.[53] Bradway, of course, recognized that clinical teaching, like any other method, achieved some educational objectives better than others.[54] Determining the most effective use of the method would take time and experience.[55] "But even now the method is a relief to the student bored by the three-year struggle to brief cases."[56]

IV. PEDAGOGICAL OBJECTIVES

Both John Bradway and Charlie Miller recognized that, as a method, clinical education does not have an inherent, pre-determined set of goals.[57] The challenge then, as now, is determining those objectives that can most effectively be achieved for any particular program. Moreover, selection of educational objectives is fluid, changing with time and audience.[58]

In 1934, Bradway identified five "primary objectives" of the clinical method of instruction.[59] First, the student receives practical experience, "bridg[ing] the gap between the theory of law school and the practice of the profession."[60] In other words, the clinical experience served as a replacement for the apprenticeship system. But, Bradway noted, the remaining four

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52. John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469, 472 (1934).

53. *Id.*

54. Bradway, *supra* note 51, at 1156.

55. *Id.*

56. *Id.*

57. *See* Befort, *supra* note 50, at 625.

58. For example, Charlie Miller's articulation of objectives for the Tennessee program varied slightly depending on his intended audience. *See, e.g.*, Charles H. Miller, *Legal Clinics and the Bar*, 20 TENN. L. REV. 1, 2 (1947) (practical training and meeting public service obligation of the bar); Kenneth L. Penegar et al., A Proposal to the Department of Welfare of the State of Tennessee to Extend Legal Services to Families in Poverty in East Tennessee (Aug. 4, 1972) (unpublished manuscript, on file with author) (describing provision of service to poor).

59. *See* Bradway, *supra* note 52, at 469-72. Several years later, he collapsed the five objectives into three: (1) to impart certain routine information needed for practice, (2) to train students in the skills, techniques, and sound mental processes needed in practice, and (3) to develop a perspective on the practice of law. *See* BRADWAY, *supra* note 11, at 66.

60. Bradway, *supra* note 52, at 470.

objectives clearly distinguish clinical education from "the apprenticeship of an earlier era of legal education."[61]

Second, the clinic experience provides a forum for the student to synthesize through application the substantive and procedural law learned elsewhere in the curriculum.[62] In the process, students refine their analytical skills and see the connection between different areas of the law.[63] "[T]he seamless web quality of the law is brought forcibly to mind."[64]

Third, "the clinical student has the opportunity to study the client as a whole in relation to [society] as a whole."[65] Reflecting the connection to Legal Realism, Bradway noted: "This introduces a distinctly new element —the human [element]. Not only the *legal* problems of the client but all his problems—social, economic and otherwise—should pass in review."[66] Achievement of this objective necessarily requires interaction with and involvement of other disciplines "such as medicine, social work, or religion, or by a combination of several of the social or physical sciences."[67]

Fourth, clinical education exposes students to the concept of professionalism.[68] Or, as articulated by Bradway, "legal etiquette as contrasted with legal ethics . . . which are characteristic of the best practitioners."[69]

Bradway's fifth objective is as much a criticism of the case method as it is a discrete goal. In the clinic, the student is given the opportunity to take a case from the beginning to the end and plan strategically.[70] In the process the student learns "to think constructively as well as analytically—to *act* creatively as a lawyer in addition to *thinking* like a judge or legal scholar."[71]

Charlie Miller, twenty-five years after starting the Tennessee program, identified four categories of objectives served by clinical education: (1) skills training, (2) provision of legal services, (3) education about society, and (4) development of professional responsibility.[72] Perhaps reflecting his involvement with the NCLC, Charlie believed that clinical education was most effective when it focused on the fourth objective—development of professional responsibility.[73]

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61. *Id.* at 472.
62. *Id.* at 470.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.* at 571.
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. Charles H. Miller, Living Professional Responsibility: Clinical Approach 4 (1973) (unpublished manuscript, on file with author).
73. *Id.* at 8.

Clinical programs should, according to Charlie, provide skills training and recognize it as part of the mission.[74] The acquisition of skills is valuable,[75] but only secondary to the development of professional responsibility.[76] The difference between the two "is roughly comparable to the difference between the carpenter's ability to hammer a nail or level a board, and, on the other hand, the architect's capacity to design and supervise the construction of a building which is suitable to the needs of his client."[77]

With regard to the provision of service, as discussed further below, Charlie concluded that it was a valuable benefit of any clinical program.[78] Due to the inherent tension between education and service, however, legal education "can provide only peripheral support" in the provision of legal services.[79]

Similarly, Charlie believed that clinical programs are poor vehicles for truly "educat[ing] law students about the society."[80] In marked contrast, if not conflict, with his reliance on experiential learning in general, he wrote:

> It's hardly possible for the law student to get more than an exposure to the "world of the poor" during the time he is in a clinical program. One suspects that the vast literature on the sociology and economics of poverty would be a far more effective mechanism for providing law students with an understanding of the structural or systemic explanations of poverty in the United States than the processing of from ten to thirty individual cases though accompanied by seminars.[81]

He believed, however, that the experience could help inculcate a professional concern for the needs of the under-represented poor resulting in active involvement in law reform and efforts to achieve equal access to the legal system.[82]

For Charlie, fostering the development of professional responsibility was the primary goal of clinical education.[83] But he defined professional responsibility very broadly:

> Central to this sense of professional responsibility is the lawyer's concept of himself and his role in the legal process. We think that students who

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74. *Id.* at 5.

75. *Id.*

76. *Id.* "[S]uffice [it] to say that we would feel very little justification for our continued existence if we believed that our primary accomplishments were to teach law students 'how to do it.'" *Id.*

77. *Id.*

78. *Id.* at 6-7.

79. *Id.* at 6.

80. *Id.* at 7.

81. *Id.*

82. *Id.*

83. *Id.* at 8.

> complete our program will be more sensitive to the need for providing effective representation in the unpopular cause and to the client, individual or group, which lacks sufficient financial resources to gain access to the legal system.[84]

The professional responsibility to be developed in the clinic also includes an understanding of: (1) the service nature of the profession, (2) the lawyer's roles in the legal system and society, (3) the need to engage in law reform efforts, (4) an understanding of the public and private decision-making systems, and (5) the obligation to help the public understand and respect the legal system.[85] The goal is to help the student develop into "a concerned practitioner; not only for his client, but for his profession, the public, and as an individual lawyer, a concern for the total administration of justice. . . . He has observed and lives the 'responsibilities' of a lawyer."[86]

As Professor Befort has commented, no clinical program can accomplish all or even most of the possible educational goals.[87] The key is to identify those best suited to the clinical method.[88] Further study of the early efforts to the same end may be useful and enlightening.

V. SERVICE OBJECTIVE

Using real clients and cases for education has obvious service implications. The proper balance between meeting educational objectives and serving clients has been discussed since the earliest days of clinical education.[89] While some argue that the debate has been resolved,[90] the issue continues appropriately to receive attention.[91]

The clinical pioneers' method for addressing the inherent tension between service and education deserves attention for several reasons. First, the earliest clinical programs were an outgrowth of the legal aid movement.[92] Bradway, Miller, and others were deeply involved in the movement before and after they moved into academia.[93] How their roots influenced

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84. *Id.*

85. *Id.* at 7-16.

86. *Id.* at 6.

87. *See* Befort, *supra* note 50, at 625.

88. *Id.*

89. *See, e.g.*, Elliot, *supra* note 41, at 410 (noting that the clinic strives to serve both client and student with equally divided emphasis).

90. *See* Befort, *supra* note 50, at 624.

91. *See, e.g.*, Kotkin, *supra* note 22, at 446-52; Tarr, *supra* note 23, at 33.

92. *See supra* notes 36-41 and accompanying text.

93. In fact, prior to joining the faculty at USC, John Bradway was Chief Counsel for the Philadelphia Legal Aid Bureau. He also worked with Reginald Heber Smith to advocate for the development of legal aid programs. *See, e.g.*, Smith & Bradway, *supra* note 36, at

their clinical programs is illuminating. Second, over the past fifty years the UT Legal Clinic has responded to numerous initiatives that were, at least in part, service- and law reform-related. For example, the "professional responsibility" initiative advocated by NCLC and CLEPR included a provision of legal services to the poor.[94] Finally, and similarly, funding sources can significantly affect programmatic objectives. Programs must be responsive to financial support from service-driven entities like the United States Office of Economic Opportunity (OEO).[95]

An examination of the first clinical programs reveals that despite strong ties from the outset, service assumed a secondary role to educational objectives. "A legal clinic must be distinguished from a legal aid society. Both aid indigent clients by giving legal service, but while such work is the primary function of the legal aid office, legal education is the main task of a legal clinic."[96] As noted above, John Bradway did not even include service expressly as one of the "primary objectives" of clinical education.[97]

It is also important to recognize that an altruistic desire to provide legal services to the poor was not the only reason that the early clinics served exclusively indigent clients. For example, Bradway frequently called for the support of legal aid work as an opportunity to improve the public perception of the legal profession.[98] Clinics, he believed, helped address the bar's need for increased effectiveness in its public relations work.[99] Bradway also advocated legal aid work as necessary to protect against "encroachment on the domain of the lawyer" by lay agencies and to stave off efforts at external regulation of the profession.[100]

But avoiding competition with the bar was the most important external limitation on the client base of early clinical programs. Both the Duke and Tennessee programs experienced stiff resistance from the bar until the issue of potential financial cooperation was resolved.[101] In fact, in 1948 Charlie

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232-34.

94. *See* Howard R. Sacks, *Education for Professional Responsibility in the Law Schools*, 1965 PROC.: THE ASHEVILLE CONF. OF LAW SCH. DEANS ON EDUC. FOR PROF. RESP. 4 [hereinafter 1965 PROC.] (Professional responsibility "includes . . . insuring that adequate legal services are provided for the indigent, the unpopular, and indeed for every individual or group that needs them.").

95. *See* Michael Rauh, *Remarks*, 1965 PROC., *supra* note 94, at 9. ("A goal of OEO is to provide comprehensive legal services to the poor with support of the local legal and interested community—one element of which is the law school.").

96. David, *supra* note 2, at 3.

97. *See supra* notes 46-51 and accompanying text.

98. *See* BRADWAY, *supra* note 37, at 104.

99. Bradway, *supra* note 27, at 192; *see also* Woodrow Patterson, *The Legal Aid Clinic—Benefits to Lawyers, to Students, and to Indigents*, 21 TEX. L. REV. 423 (1943).

100. Bradway, *supra* note 27, at 175.

101. *See* Bradway, *Less Thickly Populated*, *supra* note 3, at 908-09. To deal with the resistance at Duke:

Miller had to appear before a special committee of the Tennessee Bar Association formed to "investigate the operations of the legal aid clinic of the University of Tennessee."[102] The committee was specifically interested in cases in which the client, although of modest means, might have been able to pay a fee.[103]

While not articulated as a *primary* objective, however, service and equal access to justice have always been an implicit part of most clinical programs. For both Miller and Bradway, public service, broadly defined, was at the heart of their work. The programs sought to advance "public service" in two ways: (1) by directly serving clients and (2) by producing a "well rounded [person] prepared to render public service."[104]

For Miller, the service role had two dimensions: (1) to resolve the legal problems of clients who were indigent, and (2) to educate the poor about "their rights and responsibilities under the law" and "to inform them of how they can use lawyers to resolve their problems both individually and communitywise."[105]

> Legal reform, therefore, is also one of our great responsibilities. Legal reform can take the form of attacking how the law is administered, how procedures are followed within the courts, and the inadequacies of the law as it relates to particular situations. Varied elements of reform should be studied and should be brought about through clinical operations.[106]

Through exposure to both dimensions of the service role, students hopefully "develop a professional concern that will result in study and active participation in law reform and an assumption of professional responsibility for the delivery of legal service to all persons."[107]

The UT Legal Clinic has been a very significant service provider during its fifty-year history. For many years, the Clinic served as the primary

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> It was agreed [between the school and the Durham Bar Association] that if any case arose where a fee could be paid the applicant would be referred at once to the bar generally . . . . Finally, a definite invitation was extended to each lawyer to come out to the University to inspect the work of the clinic and to take to his own office any case he found in which he thought the clinic should not continue its work, provided only that he would agree to give the same quality of service in the case . . . .

Id. at 909.

102. *See generally Proceedings of the Sixty-Eighth Annual Session of the Bar Association of Tennessee*, 21 TENN. L. REV. 83 (1949).

103. For example, one case of concern involved a man alleged to have made $60 a week. The client, it turned out, was actually his wife, who was disabled and received $30 a week from her husband. *Id.* at 91-92.

104. Bradway, *supra* note 51, at 1157.

105. Memorandum from Charles H. Miller to Legal Clinic Staff 2 (July 19, 1972) (on file with author).

106. *Id.*

107. Miller, *supra* note 72, at 7.

provider of legal services for indigent clients in a four-county area in East Tennessee,[108] supported at various times by OEO and later by Legal Services Corporation (LSC) funding.[109] During much of the same time, the Clinic served as the primary resource for indigent criminal defendants in Knox County.[110] As a result, the tension between service and education has at times been acute.[111]

Although the Tennessee program became heavily involved in provision of direct service, education remained the primary mission, in theory if not always in reality. Charlie Miller believed that legal education could provide only "peripheral support" to the effort to make legal services available to everyone for several reasons.[112] First, the primary objective of law schools must be to provide *legal education* while the legal profession bears ultimate responsibility for *service*.[113]

> While law schools with increasing frequency, and in our opinion justifiably, have responded to the need for service, it is important, conceptually, of the law school that community service fall within the proper scope of law school *educational* activity to the extent that service affords demonstrably sound, pedagogic opportunities for the *education* of law students.[114]

Second, the resources of law schools are insufficient to meet the need for legal services "even if all law students and faculty [are] conscripted to these ends."[115] Third, it is cheaper to provide legal services through other means.[116] "[T]he present allocation of attorneys in our clinical program is devised to provide maximum potential for communication between students and clinical staff, despite the fact that such communication may be incompatible with the least costly disposition of large numbers of civil and criminal cases."[117] Finally, the cost-benefit analysis for a clinical program is far different from that of a legal services office.[118]

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108. *See* Julia Hardin, *Polishing the Lamp of Justice: A History of Legal Education at the University of Tennessee, 1890-1990*, 57 TENN. L. REV. 145, 193 (1990).

109. *See id.*

110. *Faculty Profile: Charles H. Miller*, ALUMNI HEADNOTES (University of Tennessee College of Law), Spring/Summer 1975, at 1.

111. Finally, in 1981, the UT Legal Clinic and local bar established the Knoxville Legal Aid Society (KLAS) as an independent entity. Although KLAS was created in 1966, it was functionally indistinguishable from the Clinic. Creation of the statewide public defender system also alleviated some of the demand on the Clinic to provide service. *See infra* notes 157-60 and accompanying text.

112. Miller, *supra* note 72, at 6.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 6-7.

118. *Id.* at 7.

> What may be an efficient utilization of manpower to satisfy the *educational* objectives of a legal clinic may be highly inefficient from the perspective of a *service* office, the objective of which is to provide effective service for as many clients as possible at as little cost per case as possible.[119]

For Charlie, education was always first, but service was an inherent and appropriate byproduct that greatly enhanced pedagogical objectives of developing a true professional. He firmly believed that the two outputs of clinical legal education, service and education, can complement rather than compete with each other.[120]

VI. PROGRAM DESIGN

Even a cursory review of John Bradway's description of the clinical programs at Duke and USC is revealing—the basic design of a litigation-based clinical program has not changed significantly in the past seventy years.[121] Perhaps this should not be surprising. Virtually all the schools that created clinics in the 1940s and 1950s used the Duke model.[122] Tennessee is an obvious example. NCLC and CLEPR encouraged use of the same design, modified slightly to reflect the interest of those organizations in professional responsibility. The schools involved in the clinical explosion of the '60s and '70s presumably followed the CLEPR lead.

Charlie Miller, as Bradway's protégé, imported the basic Duke design to the UT Legal Clinic.[123] Miller, however, adapted the model to Tennessee's specific needs.[124] He determined that after graduation most Tennessee students engaged in general practice alone or in small firms in small to medium-size communities.[125] Consequently, he selected cases to give students exposure to a broad range of legal issues and lawyering experiences. As a result, he believed that students would be better prepared to handle the variety of cases most would confront in practice.[126] Charlie also used the clinic to help students establish professional relationships with lawyers in the community in which they intended to practice. Charlie would contact a lawyer in that community and offer the assistance of the student on

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119. *Id.*

120. For a similar perspective see generally Earl Johnson, Jr., *Education Versus Service: Three Variations on a Theme*, *in* CLINICAL EDUCATION, *supra* note 15, at 414.

121. *See* BRADWAY, *supra* note 28; BRADWAY, THE DUKE UNIVERSITY LEGAL AID CLINIC HANDBOOK (1954) [hereinafter BRADWAY, HANDBOOK]; Bradway, *The Beginning*, *supra* note 3; BRADWAY, *supra* note 11.

122. Many of the NCLC grant applications are on file with the author, including some commentary on the proposals by Howard Sacks, NCLC Administrator.

123. Interview by Kate Bunker, *supra* note 6, at 3.

124. *Id.*

125. *Id.* at 5.

126. *Id.* at 8-10.

specific tasks, usually drafting trial memoranda or appellate briefs.[127] In the process, the student gained experience and entry into the legal profession in a particular community.[128]

Charlie also tried to integrate other disciplines into the work of the clinic. He hoped to achieve the pedagogical objective of teaching students to deal with the whole client—to recognize and to address the legal, social, and economic dimensions of the client's problems.[129] His first efforts were modest. The Home Economics Department agreed to provide debt and financial management counseling to clinic clients.[130] He established a relationship between the clinic and the College of Social Work, ultimately having a social worker on staff and serving as a field placement for masters-level social work students.[131]

Each effort, however, met with only limited and short-lived success. One reason is that both ethical and practical issues make integration of lawyering with other professional disciplines extremely difficult. For example, the lawyer-client relationship is significantly different from a social worker-client relationship and both are governed by different ethical schemes. In addition, the program was faced with the inevitable periods of resource scarcity. Securing permanent funding for interdisciplinary efforts proved difficult. "Soft money" provided most of the financial support. As a result, in times of budget cutbacks, the "non-legal" parts of the program invariably suffered first.

VII. SUPERVISION

When he established the Duke clinic in 1931, John Bradway first turned to the apprenticeship experience for guidance.[132] But "[l]iterature marshaling the topics which a law apprentice learned in a law office was not of great size. There was only a group of biographical sketches written long after the event."[133] So Bradway and Miller turned to practicing lawyers with a wide range of experience "to give them ideas."[134] In the end, however, they simply "proceeded cautiously along the road of trial and error."[135]

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127. *Id.* at 5-6.

128. *Id.*

129. *See supra* notes 51-52 and accompanying text.

130. Charlie described this arrangement to the author at one of many lunchtime dicussions before he passed away.

131. The Clinic has a similar arrangement with the College of Social Work in the 1990s, funded in part by the U.S. Department of Education Title IX program.

132. BRADWAY, HANDBOOK, *supra* note 121, at 5.

133. *Id.*

134. *Id.*

135. *Id.*

In the process, Bradway identified "four levels of teaching" or supervision.[136] First, the instructor *tells the student* the "basic orderly professional method."[137] For example, the student is told—by lecture, printed material, and conferences—how to interview, how to plan a "campaign at law," or how to conduct a negotiation.[138] Second, the instuctor *shows the student* how to use the information provided through *telling*.[139] Through classroom demonstrations, small group drills, and individual conferences the student should learn that the information is to be *used*, not merely *known*.[140] Third, but only after sufficient progress is made in levels one and two, the instructor *supervises* the student's handling of a real case for a real client.[141] At the fourth and final level, the instructor *relaxes the supervision*.[142] "As the student gains professional self-confidence and a sense of professional responsibility, we allow him more and more latitude."[143]

The pedagogy of case supervision has progressed significantly since the 1930s.[144] Bradway wrote prolifically about clinical education generally, but never explored directly the process or content of supervision. He did, however, recognize that education in a clinical setting involves both experiential learning and learning by modeling.[145] His four-level approach, however, reflects a rigid hierarchical relationship between faculty and student. Bradway relegates learning by modeling to the classroom through faculty demonstrations of simulated cases.[146] Learning in the context of clients and cases appears to be exclusively experiential. The faculty member simply observes and critiques the student without significant involvement in the matter.[147]

Yet, students can learn by both methods when handling a case. Working collaboratively on a matter with a supervisor provides opportunities for modeling and experiential learning. In an effort to reinforce the notions that the case is the student's and that the student-client relationship is crucial, we sacrifice rich educational opportunities.

Another aspect of Bradway's supervisory scheme deserves comment. The scheme assumes a decreasing supervisory presence as the student's

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136. *Id.* at 9.
137. *Id.*
138. *Id.*
139. *Id.* at 10.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *See, e.g.*, Ann Shalleck, *Case Supervision in Context: From a Case to a Vision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-1994).
145. *See supra* notes 136-43 and accompanying text.
146. *See supra* note 140 and accompanying text.
147. BRADWAY, HANDBOOK, *supra* note 121, at 10.

experience level increases—Bradway labels it *relaxed supervision.*[148] The assumption is that providing more latitude and freedom enhances the process of learning by experience. Supervision is front-end loaded. It may be, however, that the educational opportunities actually increase as student experience increases. For example, once a student achieves some basic competencies, the instructor may have far greater success exploring more difficult and subtle issues with the student.

VIII. THE PLACE OF CLINICAL EDUCATION WITHIN THE LAW SCHOOL

In considering the role or place of clinical education within the law school, at least two issues arise: (1) the position of clinical education within the curriculum, and (2) the status of clinical faculty.

A. Curriculum

From the outset, the UT Legal Clinic was an integral part of the Tennessee curriculum. In hiring Charlie Miller, the UT College of Law made a significant statement—one-sixth of the teaching faculty (i.e. Charlie Miller) would be devoted exclusively to clinical teaching.[149] The clinic course was required and, even though the student body was relatively small, nearly 200 students participated in the clinic in its first three years.[150] Within three years the college had constructed a new building with "spacious quarters especially adapted for the operation of a legal clinic."[151]

The Tennessee faculty not only accepted the Clinic, it embraced it. As the Associate Dean commented in 1974: "The Law School Clinic, at the University of Tennessee or elsewhere, is not a luxury. It is an essential, valid and integral part of any curriculum."[152] This attitude and support continue to the present. A recent curricular initiative, spurred in part by alumni interest in the Clinic, has created a special concentration in advocacy built around the clinical programs.[153]

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148. *See id.* at 100.

149. It is somewhat difficult to pinpoint the exact number of full-time teaching faculty at Tennessee in 1947. In 1944, there were six, including the dean. Henry Witham, *The History of the College of Law of the University of Tennessee*, 21 TENN. L. REV. 364, 365 (1950). By 1950, there were nine. *Id.* at 366. A new librarian was one of the nine. *See* Hardin, *supra* note 108.

150. Charles H. Miller, The Legal Aid Clinic of the University of Tennessee 1 (Apr. 14, 1950) (unpublished manuscript, on file with author).

151. *Id.* at 10.

152. Memorandum from Fredrich H. Thomforde, Associate Dean to the Clinic Advisory Committee 1 (Apr. 11, 1974) (on file with author).

153. *See generally* Richard S. Wirtz and Jerry P. Black, Jr., *Training Advocates for the Future: The Clinic as the Capstone*, 64 TENN. L. REV. 1011 (1997).

This level of acceptance and overt support has allowed the Clinic to flourish and, on occasion, even to survive. For example, demand for the Clinic in the mid-to-late 1980s, for a variety of reasons, was low. The response of the law school faculty, however, was not to reallocate resources away from the Clinic. Instead, the faculty examined the situation to determine the best way to revitalize the program.

Because the program has not suffered from constant faculty debates over the place and legitimacy of clinical education, Clinic faculty have been more free to focus on their responsibilities with limited diversion. Too often this is not the case.[154] Debates over resource allocation, of course, have occurred and have involved clinical programs. The debate, however, has not treated clinical education differently from other curricular programs. And the continued existence of the Clinic has never been seriously in doubt. This faculty commitment is a reflection of both the passage of time and a recognition of the validity of, if not necessity for, clinical education. As other programs continue to mature in terms of longevity, the Tennessee experience suggests that some of the more rancorous debates may die down or, hopefully, cease.

B. Faculty Status

The first clinician at Tennessee, Charlie Miller, was hired as a full professor.[155] Only one "type" of faculty existed. Over time, however, "staff" as opposed to "faculty" were added to assist with the clinic teaching.[156] As the clinic grew in response to an increase in the size of the student body, service demands, and funding availability, some instructors were hired without faculty status. At one point, the UT Legal Clinic had a total staff of forty-one, only a handful of whom had "regular" faculty status.[157]

The factors leading to the situation in which people perform virtually the same job with different status is illustrative. From almost the beginning, the clinic was a required course.[158] Yet, only a few faculty positions were available from the university. To effectively teach the twenty-three students enrolled in the fall 1947 semester, an attorney was hired on a part-time basis.[159] A few members of the local bar also assisted on a volunteer

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154. *See* Tarr, *supra* note 23, at 42-43.

155. Hardin, *supra* note 108, at 173.

156. Charles H. Miller, *Report of the Legal Aid Clinic of the University of Tennessee*, 20 TENN. L. REV. 514, 515 (1948) (Robert T. Mann was hired as the first part-time staff attorney.).

157. *See* Hardin, *supra* note 108, at 193.

158. *Id.* at 179.

159. *Id.* at 172-73.

basis.[160] As the student body continued to grow and demand for services increased, virtually all additions to the staff were local attorneys hired on a part-time basis as "clinic assistants."[161]

While building the Clinic through reliance on "clinic assistants," however, Charlie Miller advocated for integration of clinic staff "into the academic structure of the Law School."[162] The first step was to secure faculty status as "instructors" for the staff.[163] This change, however, did not accomplish the full integration Charlie envisioned. Instead the surge in funding in the late 1960s and early 1970s exacerbated the disjunction between "regular faculty" and "clinic staff." Faced with a rapidly expanding student body,[164] ever increasing demand for services, limited internal resources, and the availability of significant amounts of "soft" external funding through CLEPR, OEO, and LSC,[165] it is difficult to fault the decision to go forward with expansion without forcing the issue of academic status.

Charlie continued to advocate quietly for a uniform academic status within the Clinic and the law school as a whole,[166] and the faculty was not wholly unresponsive. In 1974, Associate Dean Fredrich Thomforde wrote that the Clinic "is not a luxury" and "is *not* a pseudo-educational experience."[167] He stated further that the failure of some faculty to recognize these two points results in *"hiring rigidity* and *hiring timidity*."[168] Hiring rigidity is manifested by an unwillingness to devote more than a token number of faculty positions to clinical teaching.[169] Hiring timidity is manifested by a fear that the clinicians hired might want to become "regular faculty."[170]

Rigidity and timidity in hiring instill "program retardation" by forcing clinicians to "legitimize their existence on the faculty" by teaching "standard" courses, which diverts important time and intellectual energy from the clinical component of the curriculum.[171] The "attitudinal limita-

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160. Interview by Kate Bunker, *supra* note 6, at 4.

161. Annual Report of the Department of the Legal Clinic 7 (1970-1971) [hereinafter Annual Report] (on file with author).

162. Memorandum from Charles H. Miller to Kenneth L. Penegar, Dean 3 (November 7, 1972) (on file with author).

163. *Id.*

164. *See* Hardin, *supra* note 108, at 179. The student body peaked at 726 in 1972. *Id.*

165. *See* Annual Report, *supra* note 161, at 8-10 (detailing grants awarded to the Legal Clinic).

166. *See* Memorandum from Charles H. Miller to Kenneth L. Penegar, *supra* note 162, at 3.

167. *Id.* at 1.

168. *Id.* at 1-2.

169. *Id.* at 1.

170. *Id.*

171. *Id.*

tions" also result in "curricular rigidity" manifested by unnecessary rules limiting the number of hours a student can devote to clinical courses.[172] The attitude further causes "financial rigidity;" clinicians are forced to obtain external funding or forego particular programs.[173] "We are in fear that we might have to 'take over' a Clinic program or salaries for supporting services. We might as well suggest that the 'standard' faculty be required to go outside to get their money."[174] Thomforde concluded:

> This is not to suggest that an attitudinal change will solve all problems of clinical education, nor will attitudinal changes solve all problems of legal education in general; but it is an essential starting point. Neither is it a minimalization of the value of the standard or traditional approach to legal education. It is nothing more and certainly nothing less than the recognition that legal education has two different but equally legitimate, valuable and complementary components.[175]

While the change in attitude sought by Thomforde may not have wholly prevailed, significant moves were made in the right direction. When the Tennessee faculty, as a whole, increased dramatically from fourteen to twenty-eight in the early-to-mid 1970s,[176] one-third of the new faculty members were clinicians.[177] Resource limitations and service commitments limited a complete change to unified faculty status.

The opportunity, unfortunately and fortunately, arose in 1981. The Board of Trustees of the University forced the Clinic to separate from the Knoxville Legal Aid Society (previously the two had been a single entity) over a controversy arising from a suit against the state on behalf of prison inmates.[178] After the separation, primary responsibility for service fell to the Legal Aid Society, while responsibility for education remained with the Clinic.[179]

While the decision had some negative ramifications,[180] the allocation of responsibility between the two reconstituted entities also had positive dimensions. The mission of the Clinic once again focused primarily on education. In 1984, soon after the change, the faculty adopted a unified tenure standard and clinical faculty were placed on tenure track.[181]

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172. *Id.* at 2.

173. *Id.*

174. *Id.* at 3.

175. *Id.*

176. *See* Hardin, *supra* note 108, at 183.

177. The new clinicians were Professors LeClercq, Gobert, Anderson, Black, Rivkin, and Becker.

178. *See* Hardin, *supra* note 108, at 193.

179. *Id.*

180. For example, the Clinic cannot handle significant litigation against the State of Tennessee.

181. Hardin, *supra* note 108, at 193.

While the transition that followed was at times difficult, the outcome has been positive. The Clinic at Tennessee receives strong support from the faculty as a whole. While debates over the amount of faculty resources to devote to clinical education will (and should) doubtlessly continue, the faculty no longer debates the legitimacy of clinical education or the status of faculty engaged in clinical teaching.[182]

IX. THE CONNECTION BETWEEN THE LAW SCHOOL AND THE BAR

The first step in the development of the UT Legal Clinic was the creation of an advisory committee of faculty and members of the local bar.[183] A major purpose, of course, was to defuse opposition to the program by the bar.[184] But the committee also reflected an important benefit, and perhaps goal, of clinical education—serving as a bridge connecting law schools and the profession.

When John Bradway started the Duke program, dissatisfaction with legal education at the time reflected a perceived gap between practice and academia.[185] Law school faculties were comprised, it was argued, by individuals with little or no practice experience and little or no interest in the practice of law.[186] Bradway, however, believed that clinical education was the result of the best of both worlds—the thoughtful creativity of the scholar and technical skill of the practitioner.[187] The clinic, according to Bradway, can and should serve as a connection between the two. "It would be a pity if in practice a gap should develop between the scholar and the lawyer. There is already too much social distance between the law teacher and the practitioner."[188]

The gap between practice and the academy still exists. In fact, some argue that it has widened significantly.[189] Clinical education remains uniquely situated, with a foot in each world, to help address the problem. Too often, however, our own efforts to find a comfortable place in the academy get in the way. Yet, serving as a catalyst for greater connections between the profession and law schools is an important role and one

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182. Some faculty may still draw distinctions between clinicians and non-clinicians. Those distinctions, however, are not overt. Moreover, there are no institutional distinctions.

183. Interview by Kate Bunker, *supra* note 6, at 9. In fact, Charlie Miller asked that such a committee be formed before he agreed to interview for a faculty position. *Id.*

184. *See supra* notes 101-03 and accompanying text.

185. *See supra* notes 29-35 and accompanying text.

186. *See* Frank, *supra* note 31, at 909.

187. *See* Bradway, *supra* note 52, at 474

188. Bradway, *supra* note 51, at 1159.

189. *See, e.g.*, Harry Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

clinicians should take very seriously. Legal education should be "a joint enterprise with . . . beneficial results for all."[190]

X. CONCLUSION

Ongoing discussion about the mission, methodology, and role of clinical education is essential to its vitality and continued success. The early history of clinical legal education has much to offer the discussion. The ideas, insights, and experiences of John Bradway, Charlie Miller, and others, can help guide our work. Too often, however, the discussion starts from scratch rather than building on what has gone before. Hopefully this symposium will serve as a catalyst for further examination of the rich history of clinical education.

The earliest clinical pioneers should also serve as an inspiration to all of us. Without their vision and perseverance, legal education today would be far different, and much poorer. After an hour or two of talking about the Duke and Tennessee programs, Charlie Miller concluded the discussion by saying: "[W]e were mighty proud of what we did."[191] So are we.

190. Miller, *supra* note 58, at 8.

191. Interview by Kate Bunker, *supra* note 6, at 11.