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A Primer for New Civil Law Clinic Students

Steven K. Berenson*

I. INTRODUCTION

Welcome new law clinic students. You are about to embark on an adventure that is likely to differ significantly from most of your prior educational experiences. Though it can be tremendously rewarding, practicing law on behalf of actual clients can also be a jarring experience for new student-lawyers. Of course, it is the immediacy, authenticity, and demands of actual client representation that are the chief strength of clinical education, as well as its most significant distinguishing feature from classroom instruction in law. The many challenges that will arise in the course of your work on behalf of clients will likely be fresh and new. This phenomenon represents a further advantage of the clinical approach. In experiencing the unsettling feeling that often accompanies such new challenges, it may be comforting to realize that the issues you are confronting in fact arise within a long tradition and history, and that many of your predecessors have grappled with similar, if not identical issues. Indeed, a basic understanding of that tradition and history, along with a familiarity of some of the common issues that have arisen from them, may prove valuable as you struggle with your own variations on such issues. Thus, the purpose of this primer is to provide new law clinic students with such a background understanding of the roots that underlie their current clinic experience.

The focus of this primer is on “in-house” clinics, where supervision and review of students’ case work is conducted within the law school by law school teachers, as opposed to outside of the law school by practitioners.¹ This focus is not meant in any way to demean the value of “externship” clinics, where students work in law offices outside of the law school and are directly supervised by practicing attorneys, working in conjunction with law school teachers.² Externship clinics are of tremendous value, have a rich tradition and history of their own,³ and this author recommends that students experience both types of

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1. See *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992). See also Philip M. Genty, *Clients Don’t Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 273 n.1 (2000); Lee Dexter Schnasi, *Globalizing: Clinical Legal Education: Successful Under-Developed Country Experiences*, 6 T.M. COOLEY J. PRAC. & CLINICAL L. 129, 132 n.5 (2003).

2. Genty, *supra* note 1, at 273 n.1; Schnasi, *supra* note 1, at 132 n.5.

3. See, e.g., J.P. Oglivy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 158 (2002-2003).

clinics. Similarly, the focus of this primer is on civil legal aid and law school clinics rather than on representation of indigents in criminal cases. Again, no disrespect is intended regarding either the value of criminal clinics or the rich tradition and history that support such clinics and the representation of indigents in criminal cases generally.⁴ However, only so much of this story can be digested in a single serving. This primer will begin with a brief history of civil legal aid for poor people in America.⁵ It will then present an even briefer history of clinical legal education in America.⁶ Before concluding, this primer will review a series of common issues and concerns that have arisen from the often connected histories of civil legal aid and clinical legal education.⁷

II. A BRIEF HISTORY OF CIVIL LEGAL AID FOR POOR PEOPLE IN AMERICA

Most people identify the beginning of the delivery of free legal services to poor people in America with the year 1876, when the German Society of New York incorporated an entity “to render legal aid and assistance gratuitously to those of German birth who may appear worthy thereof, but who from poverty are unable to procure it.”⁸ In 1890, however, the organization amended its constitution to allow the delivery of legal services to all people, regardless of their national origin,⁹ and the organization became known simply as the New York Legal Aid Society.¹⁰ By this time, a similar organization, called the Bureau of Justice, was formed in Chicago with a similar mandate to provide legal assistance to needy people without regard to race, gender, or nationality.¹¹ Such organizations did not seek out particular types of cases or clients. Rather, the legal needs of those who sought their services determined their work.¹² These needs tended to cluster in the areas of domestic relations, wage disputes, and

4. As to the history of the provision of legal representation to indigent criminal defendants in America, see, e.g., Charles J. Ogletree, Jr. & Yoav Sapir, *Keeping Gideon's Promise: A Comparison of the American and Israeli Public Defender Experiences*, 29 N.Y.U. REV. L. & SOC. CHANGE 203, 205 (2004). For a review of law student representation in criminal cases, see, e.g., Steven Zeidman, *Sacrificial Lambs or the Chosen Few?: The Impact of Student Defenders on the Rights of the Accused*, 62 BROOK. L. REV. 853 (1996).

5. See *infra* Part II.

6. See *infra* Part III.

7. See *infra* Part IV.

8. EMERY A. BROWNELL, *LEGAL AID IN THE UNITED STATES: A STUDY OF THE AVAILABILITY OF LAWYERS' SERVICES FOR PERSONS UNABLE TO PAY FEES* 7 (1951) (quoting Deutscher Rechts-Schutz Verein, Constitution of 1877, Article I, p.2). See also MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* 11 (1993); Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY. J. PUB. INT. L. 11, 12 (2003); William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960s to the 1990s*, 17 ST. LOUIS U. PUB. L. REV. 241, 244 n.13 (1998).

9. BROWNELL, *supra* note 8, at 8.

10. Cantrell, *supra* note 8, at 12.

11. BROWNELL, *supra* note 8, at 7.

12. Cantrell, *supra* note 8, at 12.

contract disputes.¹³ For example, in New York Legal Aid's East Side branch around the turn of the century, the majority of cases involved unpaid wages by Lower East Side sweatshop owners to newly-immigrated workers.¹⁴

Over the next three decades, organizations similar to those in New York and Chicago began to crop up around the country. By 1919, forty-one such organizations existed in thirty-seven cities throughout the United States.¹⁵ Despite this growth, much work remained to be done to remedy the lack of access to justice by poor people in America. Indeed, in a seminal study of the delivery of legal services to poor people in America sponsored by the Carnegie Foundation in 1919, Boston attorney Reginald Heber Smith concluded that "the administration of American justice is not impartial, the rich and the poor do not stand on an equality before the law, [and] the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons."¹⁶ Among other criticisms, Smith noted the haphazard nature of the work of legal aid organizations.¹⁷ He suggested that legal aid organizations should focus more on efforts toward the broad reform of laws in the areas of family law, wage collection, and simplification of court procedures, rather than merely seeking positive results for individual clients in such cases.¹⁸

Despite Smith's work, the growth in civil legal aid to poor people in America over the next four decades was both episodic and largely localized. As to the former, two World Wars and the Great Depression understandably and greatly inhibited the growth of legal aid programs during those periods.¹⁹ Nonetheless, by the end of 1949, there were ninety-two legal aid offices engaged in civil legal work in the U.S., though seventeen of these were staffed solely by volunteer lawyers.²⁰ As to the latter point, each of these legal aid offices operated independently from those in other localities. While there had been, from 1911 forward, some form of national organization of legal aid providers,²¹ national coordination and cooperation remained limited.²² Moreover, while the increase in numbers of legal aid programs over this period may seem impressive on its own,

13. Quigley, *supra* note 8, at 244.

14. DAVIS, *supra* note 8, at 12-13.

15. BROWNELL, *supra* note 8, at 20.

16. REGINALD HEBER SMITH, JUSTICE AND THE POOR 8 (1919). *See also* DAVIS, *supra* note 8, at 16; Quigley, *supra* note 8, at 244.

17. SMITH, *supra* note 16, at 197.

18. *Id.* at 199, 241. *See also* BROWNELL, *supra* note 8, at 6-7; DAVIS, *supra* note 8, at 16; Quigley, *supra* note 8, at 244.

19. *See* BROWNELL, *supra* note 8, at 8; DAVIS, *supra* note 8, at 17.

20. BROWNELL, *supra* note 8, at 26.

21. *Id.* at 147 (describing the formation of the National Alliance of Legal Aid Societies and its successors).

22. *Id.* at 164. *See also* ALAN W. HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 3 (2003), http://www.clasp.org/publications/Legal_Aid_History.pdf (on file with the *McGeorge Law Review*).

such growth must be considered in a context of general population growth and rapidly expanding legal needs due to increases in the complexity of modern life.²³ Thus, in his history of legal aid in the United States, Emery Brownell concluded that, in fact, the ability of established legal aid organizations to meet the legal needs of the populations they served increased only marginally in the period from 1916 through 1947.²⁴

The next major expansion in the availability of legal services for poor people in America came in the early 1960s. This should not be surprising, given the broader social movements toward egalitarianism, civil rights, and social justice generally during that decade. In the first years of the decade, private foundations, such as the Ford Foundation, made resources available to support the delivery of legal services in the context of multiservice social agencies, which were far broader in scope than traditional legal aid programs.²⁵ Then in 1964, as part of President Johnson's "war on poverty," Congress passed the Economic Opportunity Act, which created the Office of Economic Opportunity (OEO).²⁶ Though the original Act contained no separate provision for funding legal services,²⁷ by the following year, a combination of support from the leadership of the OEO²⁸ and the American Bar Association (ABA),²⁹ along with the implicit support of the President and Congress, resulted in the creation of the OEO Legal Services Program (LSP).³⁰ That program is the direct precursor of today's federal Legal Services Corporation (LSC), which was established by Congress in 1974.³¹

The initial budget of the OEO LSP was \$25 million,³² and by the end of 1966 the program had provided 130 different grants.³³ Yet even at this early stage, those involved with the program debated how best to use the entity's limited

23. BROWNELL, *supra* note 8, at 31.

24. Brownell's conclusion was that "the ability of the established organizations to meet the full need in their communities had risen from fifty-one percent in 1916 to fifty-five percent in 1947." *Id.* at 33.

25. See Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1672 (1995) [hereinafter Houseman, *Political Lessons*]. Among the now well-known organizations that received funding were New York's Mobilization for Youth (MFY), Action for Boston Community Development (ABCD), New Haven's Legal Assistance Association, and Washington D.C.'s United Planning Organization. *Id.*

26. *Id.* at 1673. See also Cantrell, *supra* note 8, at 17.

27. See HOUSEMAN & PERLE, *supra* note 22, at 7.

28. The late President Kennedy's brother-in-law Sargent Shriver was the first director of the OEO. *Id.*; Cantrell, *supra* note 8, at 17.

29. Alan Houseman, a legal aid lawyer in the 1960s and current Director of the Center for Law and Social Policy (CLASP) praises then ABA President and future Supreme Court Justice Lewis Powell and others for "progressive leadership" in garnering the support of the organized bar for federally funded legal services for the poor. Houseman, *Political Lessons*, *supra* note 25, at 1764.

30. *Id.* at 1673. See also HOUSEMAN & PERLE, *supra* note 22, at 7.

31. See Quigley, *supra* note 8, at 254.

32. HOUSEMAN & PERLE, *supra* note 22, at 11.

33. National Legal Aid and Defender Association, History of Civil Legal Aid, http://www.nlada.org/About/About_HistoryCivil (last visited Oct. 11, 2006) [hereinafter NLADA History] (on file with the *McGeorge Law Review*).

resources. Some advocated for the individual, client-by-client approach that had dominated earlier legal aid practice.³⁴ However, others argued that in order to maximize the impact of the program's effectiveness for its poor clients, broader efforts needed to be undertaken to reform the laws, programs, and procedures that contributed to the stubborn presence of poverty in America. Among the techniques advocated by the latter group was "test case," or "impact" litigation,³⁵ modeled on the National Association for the Advancement of Colored Persons (NAACP) Legal Defense Fund's campaign against segregated schools,³⁶ and the American Civil Liberties Union's (ACLU) law reform suits.³⁷ The latter group also advocated engaging in lobby activities to influence the content of legislation.³⁸ Some of the OEO LSP grants during this period went to fund "back up centers," which were exclusively focused on either conducting or supporting large-scale law reform suits, while local legal aid and "storefront" offices continued to handle the bulk of the individual cases funded by the program.³⁹ A third approach also emerged, which focused on organizing, educating, and empowering the client community served by the program.⁴⁰ Indeed, this debate regarding "individual service," "impact" representation, and "community lawyering" persists to this day,⁴¹ and will be discussed further in Part IV.A.

Not surprisingly, the more aggressive law reform efforts of the program resulted in a political backlash.⁴² Details of the various skirmishes are provided

34. See *supra* notes 12-14 and accompanying text. See also Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1562 (1995).

35. See DAVIS, *supra* note 8, at 33 (discussing the views of Ed Sparer, the original director of MFY's Legal Unit and an important figure in the development of legal services during this period); HOUSEMAN & PERLE, *supra* note 22, at 11 (discussing Earl Johnson, the second director of the OEO LSP).

36. See, e.g., JACK GREENBERG, *CRUSADERS IN THE COURTS* (1994); RICHARD KLUGER, *SIMPLE JUSTICE* (1975); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION 1925-1950* (1987).

37. See, e.g., SAMUEL WALKER, *IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU* (1990); Ruth B. Cowan, *Women's Rights Through Litigation: An Examination of the American Civil Liberties Union Women's Rights Project, 1971-1976*, 8 COLUM. HUM. RTS. L. REV. 373 (1976); Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207 (1976) (discussing both the ACLU and the NAACP).

38. See Quigley, *supra* note 8, at 246 n.27 (quoting the original OEO Guidelines for Legal Services Programs).

39. Cantrell, *supra* note 8, at 18; Houseman, *Political Lessons*, *supra* note 25, at 1683; HOUSEMAN & PERLE, *supra* note 22, at 11.

40. This approach was most closely identified with Jean and Edgar Cahn, two politically connected lawyers who were instrumental in the creation of the OEO LSP. See DAVIS, *supra* note 8, at 32. The Cahns articulated their approach in a seminal article entitled *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964). See also Cantrell, *supra* note 8, at 16-17.

41. See Feldman, *supra* note 34, at 1576-77. See also Gary Bellow & Jean Charn, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice*, 83 GEO. L.J. 1633, 1645-46 (1995); Houseman, *Political Lessons*, *supra* note 25, at 1677-78.

42. Cantrell, *supra* note 8, at 27; HOUSEMAN & PERLE, *supra* note 22, at 14; NLADA History, *supra* note 33; Quigley, *supra* note 8, at 248.

elsewhere⁴³ and go beyond the scope of this primer. The 1974 legislation that created the current federal LSC was the result of a compromise between supporters of legal services, who thought a more independent and centralized structure would insulate the existing OEO LSP from the types of local and political skirmishes that had hampered it in recent years,⁴⁴ and critics of the program, including President Nixon,⁴⁵ who wanted to place limits on the types of law reform activities recipients of funds under the program could engage in.⁴⁶ Despite this potentially troubling mix, the mid-to-late 1970s represented something of a high water mark for the federal legal services program, with its scope and funding achieving historic highs.⁴⁷

But the election of Ronald Reagan as President in 1980 ended the relatively good times for the legal services program.⁴⁸ Reagan himself had clashed with LSP recipient California Rural Legal Assistance while he was Governor of California,⁴⁹ and he carried a lasting bitterness toward the legal services program into his Presidency.⁵⁰ Though Reagan was unable to terminate the program entirely, his administration was able to hamper its effectiveness by significantly reducing its budget,⁵¹ imposing substantive restrictions on the work of the program,⁵² and appointing members to the LSC Board who were overtly hostile to the program.⁵³ These actions began an era of budget reductions and program restrictions that have plagued the LSC on and off to the present day.⁵⁴

43. Cantrell, *supra* note 8, at 27-29; HOUSEMAN & PERLE, *supra* note 22, at 14-16; Quigley, *supra* note 8, at 248-51.

44. Both as originally proposed, and as ultimately created, the LSC was to be an entity independent from, though funded by, the federal government, with its own governing board of directors. See HOUSEMAN & PERLE, *supra* note 22, at 17-20; NLADA History, *supra* note 33; Quigley, *supra* note 8, at 252-53.

45. Nixon had tried to eliminate the OEO LSP in 1973. HOUSEMAN & PERLE, *supra* note 22, at 16; NLADA History, *supra* note 33; Quigley, *supra* note 8, at 253.

46. HOUSEMAN & PERLE, *supra* note 22, at 17; Quigley, *supra* note 8, at 251-53.

47. HOUSEMAN & PERLE, *supra* note 22, at 22; Quigley, *supra* note 8, at 254-55.

48. HOUSEMAN & PERLE, *supra* note 22, at 27; NLADA History, *supra* note 33; Quigley, *supra* note 8, at 255.

49. HOUSEMAN & PERLE, *supra* note 22, at 15; NLADA History, *supra* note 33; Quigley, *supra* note 8, at 249-50.

50. Cantrell, *supra* note 8, at 29.

51. For example, the LSC budget appropriation was cut twenty-five percent, from \$321 million in fiscal year 1981 to \$241 million in fiscal year 1982. HOUSEMAN & PERLE, *supra* note 22, at 28. See also NLADA History, *supra* note 33; Quigley, *supra* note 8, at 257.

52. HOUSEMAN & PERLE, *supra* note 22, at 28; Quigley, *supra* note 8, at 258.

53. HOUSEMAN & PERLE, *supra* note 22, at 28-29; NLADA History, *supra* note 33.

54. For example, the fiscal year 2005 federal budget appropriation for LSC was approximately \$330 million dollars. See LEGAL SERVS. CORP., BUDGET REQUEST FOR FISCAL YEAR 2007 10, <http://www.lsc.gov/about/budget/FY07BReq.pdf> (on file with the *McGeorge Law Review*). However, in inflation adjusted dollars, that amount would have had to have been more than doubled (approximately \$687 million) to equal the purchasing power of the fiscal year 1981 appropriation. See LEGAL SERVS. CORP., DOCUMENTING THE JUST. GAP IN AM. 2 (2005), <http://www.lsc.gov/JusticeGap.pdf> (on file with the *McGeorge Law Review*). See also HOUSEMAN & PERLE, *supra* note 22, at 29-31 (discussing attacks on the program throughout the 1980s); Quigley, *supra* note 8, at 258-59.

Counterintuitively, the greatest blows to the program may have been struck during the Clinton administration rather than during the Republican administrations of the 1980s.⁵⁵ Though the LSC budget appropriation reached an all time high of \$415 million in fiscal year 1995, the budget appropriation was reduced to \$278 million for fiscal year 1996.⁵⁶ Moreover, the most extensive set of restrictions on the activities of the program in its history was enacted at this time as well. Some of these restrictions narrowed the range of cases that could be handled by programs receiving LSC funds. For example, such programs were precluded from participating in redistricting and abortion cases or advancing attorneys' fees claims.⁵⁷ Additionally, the restrictions narrowed the range of clients who could be represented by LSC funded programs. Lawyers in such programs were precluded from representing prisoners, many immigrants, and public housing residents facing eviction based on drug-related charges.⁵⁸ Moreover, LSC recipient lawyers were precluded from engaging in certain types of activities, including class action representation; training for political activities such as boycotts, picketing, or strikes; lobbying; and challenging the validity federal or state welfare laws in the course of representing individual clients in welfare cases.⁵⁹ Though program recipients launched legal challenges against many of the restrictions,⁶⁰ the U.S. Supreme Court struck down only the prohibition on challenging the validity of welfare laws (on First Amendment grounds) in *Legal Services Corporation v. Velazquez*.⁶¹ Many legal services providers subdivided their programs into separate entities, made up of one that received LSC funds and therefore could only engage in individual case representation within the parameters set forth by the restrictions, and one that utilized no LSC money and could therefore engage in the kinds of work or serve the categories of clients prohibited by the restrictions.⁶²

One positive development to result from the restrictions that affected the federal legal services program during the 1980s and 1990s was the rise of additional or alternative sources of funding and programs to support the delivery of legal services to poor people. One such common source came from Interest on Lawyer Trust Account (IOLTA) programs. Pursuant to such programs, lawyers are required by applicable state bar authorities to keep client funds in interest bearing accounts, with the interest to be used to fund legal services programs for poor people.⁶³ Initially, such programs were challenged by conservative public

55. Though in fairness, many of these efforts originated in the House of Representatives following Newt Gingrich's ascension to the Speaker position in 1994. HOUSEMAN & PERLE, *supra* note 22, at 34.

56. Quigley, *supra* note 8, at 259-261.

57. *Id.* at 261.

58. HOUSEMAN & PERLE, *supra* note 22, at 34-35; Quigley, *supra* note 8, at 261.

59. HOUSEMAN & PERLE, *supra* note 22, at 35; Quigley, *supra* note 8, at 261.

60. See HOUSEMAN & PERLE, *supra* note 22, at 37.

61. 531 U.S. 533 (2001). See also HOUSEMAN & PERLE, *supra* note 22, at 38.

62. See Cantrell, *supra* note 8, at 30-31; HOUSEMAN & PERLE, *supra* note 22, at 37-39.

63. HOUSEMAN & PERLE, *supra* note 22, at 32.

interest groups on grounds of the Fifth Amendment's takings clause. After protracted court battles, the U.S. Supreme Court ultimately ruled that the takings clause does not require individual lawyers to return IOLTA funds to their clients and permits state bar entities to use such funds for the provision of legal services.⁶⁴ Despite this victory, IOLTA programs have been hampered in recent years by low interest rates and higher administrative fees charged by banks.⁶⁵

In addition to IOLTA programs, a wide range of programs supported by bar associations, state "access to justice" commissions, law schools, and private foundations, have stepped into the breach created by retrenchments in funding to and restrictions on the practice of federally funded legal services programs.⁶⁶ As a result, the present federal LSC budget only represents an approximate one-third of the total sum of money from all sources spent on the delivery of legal services to poor people in America each year.⁶⁷ Since 1995, the LSC has required statewide coordination programs in an effort to harmonize the work of this wide range of legal services providers at the individual state level.⁶⁸

Despite this vast array of legal services providers for the poor, the overall amount of legal services available still falls far short of meeting the needs of the poor for legal services. The most recent national assessment of the legal needs of the poor was the ABA's 1994 Comprehensive Legal Needs Study.⁶⁹ This study determined that approximately eighty percent of poor Americans do not have the assistance of an attorney when they are faced with a serious situation where the aid of an attorney might make a difference.⁷⁰ Subsequent surveys at the state level have reached similar results,⁷¹ and experts in the field attest to the continuing validity of the results of the ABA Study.⁷²

Along with other reasons, this gap between the legal needs of the poor and available legal resources has led to a great expansion in the number of self-represented litigants in our nation's various court systems.⁷³ In an effort to address the burdens created by this increase in self-representation, and in their

64. See *Brown v. Wash. Legal Found.*, 538 U.S. 216 (2003).

65. HOUSEMAN & PERLE, *supra* note 22, at 41.

66. *Id.* at 39.

67. See *id.* at 41.

68. *Id.* at 39.

69. See AM. BAR ASS'N, LEGAL NEEDS AND CIVIL JUST.: A SURVEY OF AMS. (1994), <http://www.abanet.org/legalservices/downloads/sclaid/legalneedstudy.pdf> (on file with the *McGeorge Law Review*). See also Steven K. Berenson, *A Cloak for the Bare: In Support of Allowing Prospective Malpractice Liability Waivers in Certain Pro Bono Cases*, 29 J. LEGAL PROF. 1, 15 (2005); Linda F. Smith, *The Potential of Pro Bono*, 72 UMKC L. REV. 447, 450 (2004).

70. See LEGAL SERVS. CORP., SERVING THE CIVIL LEGAL NEEDS OF LOW INCOME AMERICANS: A SPECIAL REPORT TO CONGRESS 13 (2000).

71. See Smith, *supra* note 69, at 450 n.23.

72. See Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1785 n.1 (2001). See also LSC, *Documenting the Justice Gap*, *supra* note 54, at 2-3.

73. See, e.g., Steven K. Berenson, *A Family Law Residency Program?: A Modest Proposal in Response to the Burdens Created by Self-Represented Litigants in Family Court*, 33 RUTGERS L.J. 105, 107 (2001).

typical manner of trying to squeeze maximum benefit out of limited resources, legal services providers have begun offering a variety of forms of limited legal assistance to poor people. These limited legal assistance programs are designed to provide help and support to such people who, nonetheless, will continue to represent themselves with regard to their particular legal needs. Such assistance can take a wide variety of forms including self-help classes, telephone hotlines, and assistance in preparing standard court forms and other legal documents.⁷⁴ In fact, it seems that the fastest area of growth in legal services programs in the new century has been the proliferation of limited legal assistance programs.⁷⁵

III. AN EVEN BRIEFER HISTORY OF CLINICAL LEGAL EDUCATION IN AMERICA

Perhaps not surprisingly, there is a rough correlation between important dates in the development of civil legal aid in America and important dates in the development of clinical legal education. For example, just as the origins of the modern legal aid office can be traced to the founding of the New York Legal Aid Society in the late Nineteenth Century, most historians locate the first law school clinical program in a “legal dispensary” operated by students at the University of Pennsylvania School of Law in 1893.⁷⁶ Over the next couple of decades, similar programs were initiated at a variety of law schools.⁷⁷ The programs shared the characteristics of being voluntary, student-run, non-credit offerings,⁷⁸ and are often described as providing outlets for students who were tired of the confines of the classroom and the case method associated with Harvard Law School Dean Christopher Columbus Langdell.⁷⁹

74. *Id.* at 131.

75. See Robert Bickel, *Limited Legal Services: Is it Worth It?*, 39 COLUM. J.L. & SOC. PROBS. 331, 339 (2006).

76. See Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1103 (1997); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 467 (1995) [hereinafter Quigley, *Introduction*].

77. Law schools with similar projects included those at Cincinnati, Denver, George Washington, Harvard, Minnesota, Northwestern, Tennessee, and Yale Universities. See MacCrate, *supra* note 76, at 1103; Quigley, *Introduction*, *supra* note 76, at 467. See also Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEXAS L. REV. 815, 815 n.1 (2004).

78. See Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 6 (2000); Douglas A. Blaze, *Déjà vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 940 (1997); Quigley, *Introduction*, *supra* note 76, at 467.

79. Of course, prior to development of the case method by Langdell and others, see Barry, Dubin & Joy, *supra* note 78, at 5 n.7, all legal education was clinical – in the form of apprenticeships in which aspiring lawyers learned the law in the offices of practicing lawyers. See Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 510 (2003); Quigley, *Introduction*, *supra* note 76, at 465. The case method was viewed by proponents as a more rigorous alternative to the sometimes uneven results of training by apprenticeship. Carey, *supra*, at 511. Though the case method achieved dominance by the beginning of the Twentieth Century, the conflict between the proponents of the case method and those of more practice-oriented training never died out entirely. See Joy,

The first for-credit, law school clinical programs that approximated the model used presently by in-house clinical programs appeared in the late 1920s and early 1930s.⁸⁰ John Bradway initiated these programs, the first being a six-week experimental program at the University of Southern California law school,⁸¹ and the second being a similar but larger scale program that Bradway was invited to set up at Duke University following the success of his first such program.⁸² Bradway had earlier been a legal aid lawyer in Philadelphia.⁸³ He had also collaborated with Reginald Heber Smith in writing an early history of legal aid representation in the United States on behalf of the U.S. Bureau of Labor Statistics.⁸⁴ Bradway's past further cemented the link between legal aid and clinical legal education.

In addition to his groundbreaking work in setting up law school clinical programs, Bradway was a prolific writer, and his articles from this era laid an early foundation for the intellectual development of the clinical legal education movement.⁸⁵ This foundation also received a boost from within the legal realist movement.⁸⁶ In particular, Yale Law School Professor Jerome Frank, who served

supra note 77, at 818-19; Quigley, *Introduction*, *supra* note 76, at 466 n.14.

80. Two important interim developments were the publication of William Rowe's article, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11 ILL. L. REV. 591 (1917), and the publication of a study by Alfred Z. Reed, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921), that was funded by the Carnegie Foundation for the Advancement of Teaching. See Barry, Dubin & Joy, *supra* note 78, at 6-8. The "Reed Report," among other conclusions, called for increased practice skills training in law school. *Id.* at 7-8.

81. See MacCrate, *supra* note 76, at 1104.

82. *Id.*

83. See John M. Lindsey, *John Saeger Bradway—The Tireless Pioneer of Clinical Education*, 4 OKLA. CITY U. L. REV. 1, 4 (1979); MacCrate, *supra* note 76, at 1102.

84. See MacCrate, *supra* note 76, at 1102 n.18 (citing U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. No. 398 (1926)).

85. See, e.g., John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); John S. Bradway, *The Nature of a Legal Aid Clinic*, 3 S. CAL. L. REV. 173 (1930); John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320 (1930); John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905 (1932); John S. Bradway, *Legal Aid Clinic: Training for the Art of Law Practice*, 7 ST. JOHN'S L. REV. 236 (1932); John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469 (1933); John S. Bradway, *Clinical Preparation for Admission to the Bar*, 8 TEMP. L.Q. 185 (1933); John S. Bradway, *The Legal Aid Clinic as an Educational Device*, 7 AM. L. SCH. REV. 1153 (1934); John S. Bradway, *The Classroom Aspects of the Legal Aid Clinic*, 8 BROOK. L. REV. 373 (1939); John S. Bradway, *The Objectives of Legal Clinic Work*, 24 WASH. U. L.Q. 173 (1939); John S. Bradway, *Education for Law Practice: Students Can Be Given Clinical Experience*, 34 A.B.A. J. 103 (1948); John S. Bradway, "Case Presentation" and the Legal Aid Clinic, 1 J. LEGAL EDUC. 280 (1948).

86. A thorough discussion of legal realism lies beyond the scope of this primer. Moreover, the term belies easy definition. See MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY 169 (1992). At a minimum though, Legal Realism challenged the prevailing view propounded by Langdell and others that law was a science, and that legal rules could be deduced from appellate cases through the use of logic and reason. See Robert J. Cottrol, *Justice Advanced: Comments on William Nelson's Brown v. Board of Education and the Jurisprudence of Legal Realism*, 48 ST. LOUIS U. L.J. 839, 842-43 (2004). Rather, Legal Realists focused more on the influence of things such as social science, public policy, and judicial personalities on the development of the law. *Id.* For much more detailed and searching analyses of Legal Realism, see Horwitz, *supra*, at 169; LAURA KALMAN, LEGAL REALISM AT YALE 1927-1960 (1986).

as General Counsel to the Agricultural Adjustment Administration and Chairman of the Securities and Exchange Commission under President Franklin Delano Roosevelt and as a Judge on the U.S. Court of Appeals for the Second Circuit,⁸⁷ was a noted advocate on behalf of clinical legal education.⁸⁸ Indeed, Frank's article *Why Not a Clinical Law School?*⁸⁹ is frequently-cited to this day in discussions of clinical legal education.⁹⁰

Despite this strong intellectual foundation, the growth of law school clinics was slow until the 1960s. Isolated clinical programs took root at various schools, such as the full service, in-house clinic started at the University of Tennessee in 1947 by Charles Miller, a former student in Bradway's clinic at Duke.⁹¹ Still, by the late 1950s, only a handful of in-house programs existed throughout the country.⁹²

As had been the case with the growth in the 1960s of legal aid programs, a combination of the "zeitgeist" of the 1960s,⁹³ along with the financial support of entities such as the Ford Foundation,⁹⁴ led to an exponential growth in law school clinical programs during that decade. In 1958, the Ford Foundation provided a grant of \$800,000 to the National Legal Aid and Defender Association (NLADA) to establish a National Council on Legal Clinics (NCLC) to provide grants to law schools to establish clinical legal education programs.⁹⁵ This manner of providing resources to law schools through NLADA provided additional enhancement to the already existing connections between legal aid programs and clinical legal education.

The Ford Foundation was pleased enough with its initial foray into clinical legal education that it provided an additional \$950,000 in funds in 1965.⁹⁶ This time, the money went to a successor entity of NCLC called the Council on Education in Professional Responsibility, which was later renamed the Council on Legal Education for Professional Responsibility (CLEPR).⁹⁷ The acronym CLEPR became well known in clinical legal education circles and, indeed, an important part of the movement's lore.⁹⁸ By the time it concluded its existence in 1978,

87. See ROBERT JEROME GLENNON, *ICONOCLAST AS REFORMER: JEROME FRANK'S IMPACT ON AMERICAN LAW* 25-35 (1985).

88. *Id.* at 62.

89. 81 U. PA. L. REV. 907 (1933).

90. See, e.g., Barry, Dubin & Joy, *supra* note 78, at 8 n.22; Blaze, *supra* note 78, at 944; Carey, *supra* note 79, at 513; MacCrate, *supra* note 76, at 1105; Quigley, *Introduction*, *supra* note 76, at 468-69.

91. See Blaze, *supra* note 78, at 940-41; MacCrate, *supra* note 76, at 1106.

92. Blaze, *supra* note 78, at 941 & n.14. See also Barry, Dubin & Joy, *supra* note 78, at 10.

93. Barry, Dubin & Joy, *supra* note 78, at 12. See also PHILIP G. SCHRAG & MICHAEL MELTSNER, *REFLECTIONS ON CLINICAL LEGAL EDUCATION* 3 (1998) ("Clinical legal education was born in the social ferment of the 1960s.")

94. See Joy, *supra* note 77, at 821.

95. Blaze, *supra* note 78, at 941-42; MacCrate, *supra* note 76, at 1108.

96. Blaze, *supra* note 78, at 942; MacCrate, *supra* note 76, at 1109.

97. Blaze, *supra* note 78, at 942; Carey, *supra* note 79, at 515; MacCrate, *supra* note 76, at 1109.

98. See, e.g., Michael Meltner & Philip G. Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976).

CLEPR had provided more than \$6,500,000 in grants to more than 100 law schools.⁹⁹ At this juncture, clinical legal education was firmly rooted throughout the legal academy.¹⁰⁰

The fast pace in the growth of clinical legal education in the two decades following the Ford Foundation's initial grants has continued since that time. Indeed, the breadth and range of clinical legal education programs offered at American law schools is astounding. Consistent with clinical legal education's connections to legal aid in the early 1960s, the focus of most of the clinical education programs developed at that time was in the same areas where most legal aid offices focused their attention then: landlord-tenant issues, domestic relations matters, and public assistance cases. This continued to be the case into the 1970s. Some clinics also mirrored the focus on "impact litigation" at this time, in areas such as civil rights, consumer rights, environmental rights, and poverty rights.¹⁰¹ However, at present, the subject matter of clinical course offerings has expanded to encompass nearly the entire range of legal practice areas. Law schools presently offer clinics in fields including alternative dispute resolution, criminal prosecution and defense, securities arbitration, community economic development, health law and policy, and U.S. Supreme Court litigation.¹⁰² A small number of schools have even experimented with commercial, fee-for-service clinics.¹⁰³ The range of externship programs offered by law schools has grown exponentially alongside the expansion of in-house clinical course offerings. Moreover, externship pedagogy has matured into a deep and sophisticated discipline, as has been the case with the pedagogy of in-house clinical teaching.¹⁰⁴

Beyond the above-described growth, clinical legal education has, over time, assumed a much more central role within the overall course of study in U.S. law schools. Many schools have incorporated training in a variety of legal practice skills into the first year curriculum, if not live-client work itself.¹⁰⁵ Other schools offer progressions or continua of clinical and skills courses over the final two years of law school¹⁰⁶ or teach clinical skills and values "pervasively" throughout the curriculum.¹⁰⁷ What seems clear is that few students today will graduate law school without any exposure at all to the skills, values, and contexts that shape the actual practice of law, as was too often the case in the past.¹⁰⁸

99. Blaze, *supra* note 78, at 942.

100. *Id.*

101. See Barry, Dubin & Joy, *supra* note 78, at 13.

102. See Carey, *supra* note 79, at 528.

103. See Gary Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLINICAL L. REV. 425, 437-38 (1994). See also Martin Guggenheim, *Fee Generating Clinics: Can We Bear the Costs?*, 1 CLINICAL L. REV. 677 (1994).

104. See, e.g., Barry, Dubin & Joy, *supra* note 78, at 16-18.

105. See *id.* at 41-44.

106. See *id.* at 44-46; Laser, *supra* note 103, at 425; MacCrate, *supra* note 76, at 1114.

107. See Barry, Dubin & Joy, *supra* note 78, at 46-49.

108. See *id.* at 32.

IV. CORRESPONDING AND DIVERGING “BIG PICTURE” ISSUES THAT
EMERGE FROM LEGAL AID AND CLINICAL LEGAL
EDUCATION’S COMMON ANCESTRY

As a result of their intertwined and overlapping histories, many of the primary issues that arose and continue to present themselves in the legal aid context have analogues in the clinical legal education context. Though sometimes the issues appear somewhat differently in each context, and sometimes they diverge altogether, the connections are sufficient to warrant common discussion. Therefore, the following section discusses five such major issues in each context. The issues discussed are: a) individual versus impact representation; b) quality versus quantity of services; c) political interference; d) resource limitations; and e) professional status.

A. *Individual Versus Impact Representation*

The origins of the “individual v. impact” debate in the legal aid context were discussed in Part II of this primer.¹⁰⁹ By the late 1960s, at least among the leading figures in the legal aid movement, it appears that sentiment was running in favor of the impact litigation approach.¹¹⁰ This focus on “test case” litigation yielded many encouraging results. For example, though no legal aid staff attorney had taken a case to the U.S. Supreme Court prior to 1967, between 1967 and 1972, legal services program staff lawyers presented 219 cases to the high Court, 136 of which were decided on the merits, resulting in seventy-three victories for the legal services lawyers and their clients.¹¹¹ Among the most noteworthy of these victories were *King v. Smith*,¹¹² which recognized federal court jurisdiction over cases involving state welfare benefits; *Shapiro v. Thompson*,¹¹³ which struck down state welfare residency requirements as violating the federal constitutional right to travel; and *Goldberg v. Kelly*,¹¹⁴ which found that the due process clause requires a pre-termination hearing prior to discontinuation of welfare benefits.¹¹⁵

However, the legal services program’s impact litigation strategy led to defeats as well as victories. For example, just a month after deciding *Goldberg v.*

109. See *supra* notes 34-40 and accompanying text.

110. See Cantrell, *supra* note 8, at 17-18; HOUSEMAN & PERLE, *supra* note 22, at 11-12; Quigley, *supra* note 8, at 245-48.

111. Quigley, *supra* note 8, at 250 & n.57 (citing EARL JOHNSON, JR., JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM 189 (1978)).

112. 392 U.S. 309, 311-13 (1968).

113. 394 U.S. 618, 629-30, 641-42 (1969).

114. 397 U.S. 254, 263-64 (1970).

115. See DAVIS, *supra* note 8, at 60-68 (discussing *King v. Smith*); 77-80 (discussing *Shapiro v. Thompson*); 99-118 (discussing *Goldberg v. Kelly*). See also Cantrell, *supra* note 8, at 19-23; HOUSEMAN & PERLE, *supra* note 22, at 13; Quigley, *supra* note 8, at 250-51.

Kelly, the Court handed down its decision in *Dandridge v. Williams*,¹¹⁶ finding it permissible for a state to set its maximum welfare grant at a level below the federally-determined “standard of need” for a family of a given size.¹¹⁷ In the end, the Court never went nearly so far as to recognize a Constitutional “right to live,” or a guaranteed minimum income for all persons, as had been the goal of Ed Sparer and many of the other architects of the legal services program’s impact litigation strategy.¹¹⁸

As discussed previously, the legal services program’s successes in impact cases led to a political backlash that resulted in both funding cuts and substantive restrictions that have made it much more difficult for legal services lawyers to pursue impact litigation in recent decades.¹¹⁹ Additionally, questions have been raised about the efficacy of impact litigation generally. For example, despite the fact that the NAACP Legal Defense Fund’s campaign against segregated schools is often held out as the paradigmatic impact litigation campaign,¹²⁰ more than two decades after the Supreme Court’s decision in *Brown v. Board of Education*,¹²¹ legal scholar and former NAACP lawyer Derrick Bell questioned whether the NAACP lawyers’ absolute commitment to desegregation compromised their clients’ legitimate interests in improved school quality for African-American children.¹²² Moreover, even as legal commentators recently celebrated *Brown*’s fiftieth anniversary, most had to acknowledge the stubborn persistence of segregated schools throughout that period.¹²³ In addition to the mixed records of desegregation and welfare reform litigation,¹²⁴ impact litigation campaigns in a variety of areas, including prison and mental health institutional reform, housing, health care, and child welfare, have yielded a similar mix of apparent legal victories with limited improvement in conditions on the ground.¹²⁵

The above-described limitations regarding impact litigation have led to at least some movement in the legal services community toward the kind of focused-individual case or community-oriented lawyering perspective that was

116. 397 U.S. 471 (1970).

117. See DAVIS, *supra* note 8, at 129-32; Cantrell, *supra* note 8, at 23-24.

118. DAVIS, *supra* note 8, at 37-38, 142-45; Cantrell, *supra* note 8, at 24.

119. See *supra* notes 42-46 and accompanying text.

120. See *supra* note 36 and accompanying text.

121. 347 U.S. 483 (1954).

122. See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

123. See, e.g., Sheryll D. Cashin, *American Public Schools Fifty Years After Brown: A Separate and Unequal Reality*, 47 HOW. L.J. 341, 352 (2004); Joe R. Feagin & Bernice McNair Barnett, *Success and Failure: How Systemic Racism Trumped the Brown v. Board of Education Decision*, 2004 U. ILL. L. REV. 1099; Jack B. Weinstein, *Brown v. Board of Education After 50 Years*, 26 CARDOZO L. REV. 289, 292-94 (2004).

124. See *supra* notes 111-118 and accompanying text.

125. See generally GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1993). Cf. Peter Margulies, *The New Class Action Jurisprudence and Public Interest Law*, 25 N.Y.U. REV. L. & SOC. CHANGE 487 (1999) [hereinafter Margulies, *Public Interest Law*].

discussed above.¹²⁶ However, lawyers' efforts in this regard have also been subject to a withering critique, this time from academics within clinical legal education. Such academics have accused anti-poverty lawyers of dominating their clients and privileging the lawyers' own goals and perspectives at the expense of the subordinated communities they purport to serve.¹²⁷ Though these critics do not despair of the possibility of a genuine community-oriented law practice, they note the substantial challenges presented to achieving that goal, and the substantial changes that must be made in the prevailing practices of anti-poverty lawyers to do so.¹²⁸ Perhaps the combined critiques of and challenges presented by impact and community-oriented litigation should lead legal services lawyers back in the direction of individual case representation.¹²⁹ However, challenges in that regard will be discussed in the next section.

Though the so-called individual versus impact debate has not played as dominant a role in the law school clinic context as it has in the legal services context, law school clinics and their advocates have, nonetheless, paid significant attention to the question of the appropriate form of representation to pursue in such clinics. Given most modern clinics' origin in the legal aid offices of the late 1950s and early 1960s,¹³⁰ it is not surprising that the initial focus and ultimately the "default" approach of such clinics has been individual representation. Moreover, individual representation cases present pedagogical advantages as well. The advantages of an individual representation case are that it offers a student the greatest possibility of seeing a case from start to finish over the course of the student's time in the clinic, and it gives the student a sense of "ownership" over cases that results from the student being competent to handle most, if not all, of the lawyering tasks required by the case.¹³¹

However, law school clinics undeniably have a social justice mission, as well as a mission to educate students.¹³² To the extent that one views impact litigation as better suited to improving the conditions of larger numbers of poor clients,¹³³

126. See *supra* note 40 and accompanying text.

127. See, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING* (1992); Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567 (1993); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990). See also Cantrell, *supra* note 8, at 31; Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 951-54 (1992).

128. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2131-34 (1991); Lopez, *supra* note 127, at 28; White, *supra* note 127, at 52.

129. For a thoughtful analysis that rejects the classic individual versus impact dichotomy, see Peter Margulies, *Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate*, 3 MICH. J. GENDER & L. 493 (1996) [hereinafter, Margulies, *Political Lawyering*]. See also Feldman, *supra* note 34, at 1537-39 (questioning the individual versus impact distinction).

130. See *supra* notes 95-100 and accompanying text.

131. See, e.g., Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLINICAL L. REV. 545, 549 (1996).

132. See, e.g., Jon C. Dubin, *Clinic Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998).

133. See *supra* note 35 and accompanying text.

one is also likely to view such cases as better serving law school clinics' social justice mission than individual case representation. Moreover, larger scale cases may better engage both clinic students and faculty than smaller scale ones, due to the relative complexity of the issues involved and the quality of opposing counsel.¹³⁴ On the other hand, larger scale cases may strain clinic resources in a variety of ways,¹³⁵ may result in a shift in case work and responsibility from students to faculty,¹³⁶ and may involve the clinic in political controversy.¹³⁷

Given the growth in clinical legal education,¹³⁸ it is increasingly possible for both clinic students and faculty to avoid having to resolve the individual versus impact question.¹³⁹ Many law schools offer a wide range of clinics, giving students the ability to choose among clinics focusing on individual or impact cases as they see fit. Moreover, the individual versus impact question is beside the point in the fast growing range of transactional clinics available at law schools. However, at least some clinic students and faculty must still face the question in the context in which they work. Therefore, clinic student familiarity with the questions and trade-offs involved remains valuable.

B. *Quality Versus Quantity*

As the above-described history makes clear,¹⁴⁰ and as will be discussed further below,¹⁴¹ resource limitations have always been an issue for legal aid practitioners, and have generated much discussion of the best approach to take to deal with such limitations. Indeed, the just-discussed individual versus impact debate represents one form that the discussion of how to stretch limited resources has taken. However, even within the individual representation context, given that poor people's needs for legal representation has always greatly outstripped the available supply,¹⁴² there has always been pressure on legal aid providers to try to stretch their limited resources to serve a greater number of eligible clients. The

134. See Reingold, *supra* note 131, at 568. Note that Reingold distinguishes between "easy" and "hard" cases, rather than individual and impact cases. *Id.* at 546-47. However, the categories obviously overlap.

135. See *id.* at 565, 569.

136. See *id.* at 569.

137. See *id.* at 565-66. See also *infra* at Part IV.C.

138. See *infra* Part IV.D.

139. For a more detailed analysis of this question in the law school clinic context, compare Reingold, *supra* note 131, with James C. May, *Hard Cases From Easy Cases Grow: In Defense of the Fact- And Law-Intensive Administrative Law Case*, 32 J. MARSHALL L. REV. 87 (1998). See also David F. Chavkin, *Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLINICAL L. REV. 245, 262 (2003); Antoinette Sedillo Lopez, *Learning Though Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 318 (2001); Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from my Clinic Sabbatical*, 9 CLINICAL L. REV. 879 (2003).

140. See *supra* Part II.

141. See *infra* Part IV.D.

142. See *supra* notes 69-72 and accompanying text.

above-discussed trend toward limited task legal representation¹⁴³ presents the most recent version of this phenomenon.

It should not be surprising that a decision to provide more limited assistance to a greater number of persons, as opposed to a higher level of assistance to a smaller number of persons, often presents a trade-off between the quantity of and the quality of legal representation.¹⁴⁴ Though the current trend toward limited legal assistance perhaps represents a vote in favor of quantity of representation over quality of representation, critics of limited legal assistance for poor people have recently begun to question whether such services provide even a minimal qualitative level of assistance that would justify the provision of services in such a form. For example, Robert Bickel has argued that the difficult circumstances of many of the clients of legal aid providers makes it impossible for such clients to make use of, and successfully follow up on, the limited services provided to them through limited legal assistance programs.¹⁴⁵ Therefore, he concludes that overall access to justice for poor persons would actually be increased by providing full service legal representation to a smaller number of clients, rather than providing limited assistance that is often of little ultimate benefit to its recipients.¹⁴⁶

Given that clinical legal education often tracks the legal services movement, it was foreseeable that a number of law school clinics would follow the trend toward providing limited legal assistance.¹⁴⁷ As a result, such clinics present the same quality versus quantity trade-offs that were discussed above in the legal aid context.¹⁴⁸ Additionally, the quality versus quantity issue has long been present in clinical legal education in the form of questions regarding student caseloads. On the one hand, some advocate limiting clinic student workloads to an extremely small number of cases.¹⁴⁹ This allows students to take all the time and make whatever efforts are necessary to handle their cases properly. This is viewed as enhancing student learning as well as ensuring adequate representation for clients. On the other hand, some suggest that artificially low case loads fail to give students a realistic sense of the pressures of actual legal practice, whether in a legal services or private practice context, and therefore fail to compel students

143. See *supra* notes 73-75 and accompanying text.

144. For a more in depth discussion of the issues presented by, and trade-offs required by resource limitations in the legal aid context, compare Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 *FORDHAM L. REV.* 2475 (1999), with Justine A. Dunlap, *I Don't Want to Play God: A Response to Professor Tremblay*, 67 *FORDHAM L. REV.* 2601 (1999).

145. See Bickel, *supra* note 75, at 332-33.

146. *Id.* at 374.

147. See, e.g., Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 *FORDHAM L. REV.* 1879 (1999); Mary Helen McNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 *CLINICAL L. REV.* 341 (2001).

148. See *supra* notes 141-144 and accompanying text. See also Barry, *supra* note 147, at 1889; McNeal, *supra* note 147, at 353-56.

149. See, e.g., Chavkin, *supra* note 139, at 265-66; Philip G. Schrag, *Constructing a Clinic*, 3 *CLINICAL L. REV.* 175, 181 (1996).

to develop the time and case management skills necessary to succeed in modern law practice.¹⁵⁰ Presently, most clinics operate somewhere in the middle of this spectrum, providing students with enough cases to simulate “real world” pressures, while at the same time not overwhelming students or forcing them to take shortcuts in representation that will result in the development of bad habits for the students and poor representation for the clients.¹⁵¹ Nonetheless, clinic students should be aware of the various ways in which the quality versus quantity issue plays out in the clinic context.

C. Political Interference

As the above-described history of legal aid points out, at least since the late 1960s, when the legal aid program became more ambitious in terms of both its size and the objectives of its litigation strategies, a political backlash has resulted in severe limitations on the program’s budget as well as substantive restrictions on the scope of legal services practice.¹⁵² Given the overlapping objectives between law school clinics and the legal services program, it should not be surprising that the work of law school clinics has engendered political opposition as well.¹⁵³ As a prelude to their excellent critique of political interference in law school clinics from a legal ethics perspective, Professors Robert Kuehn and Peter Joy go into detail in laying out a history of high profile attacks on the independence of law school clinics.¹⁵⁴ Though this history will not be recounted here, two recent confrontations bear particular mention.

In the mid-1990s, Tulane University Law School’s Environmental Clinic undertook to represent a group of low-income residents who opposed the siting of a Shintech chemical plant in their predominantly minority inhabited community in Louisiana.¹⁵⁵ Though the clinic had previously clashed with public officials regarding its activities,¹⁵⁶ the backlash against the clinic from the State’s Governor and other business interests resulting from the Shintech matter was unprecedented in both its fury and the degree of national attention it received. Among other actions, the Governor threatened to revoke the University’s tax-

150. Cf. Jeanne Charn, *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75, 93 (2003) (discussing relatively heavy caseloads of clinic students at Harvard’s Hale and Dorr Legal Services Center).

151. See, e.g., Melissa L. Breger, Gina M. Calabrese & Theresa A. Hughes, *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 334 & n.158 (2003).

152. See *supra* notes 42-62 and accompanying text.

153. See generally Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 1971 (2003); Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, 11 J.C. & U.L. 179 (1984).

154. See Kuehn & Joy, *supra* note 153, at 1976-1992.

155. *Id.* at 1983. For a more detailed discussion of the confrontation involving the Tulane Environmental Clinic, see the account of its then-director, Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL’Y 33 (2000).

156. See Kuehn & Joy, *supra* note 153, at 1982-83.

exempt status and to deny Tulane students access to money from the state's education trust fund.¹⁵⁷ In the end, the Governor and the State Attorney General were able to persuade the Louisiana Supreme Court to amend the State's law student practice rule to restrict the practices of law clinics in that state,¹⁵⁸ in much the same manner that opponents of the legal services program were able to impose regulations limiting the scope of representation available through such programs.¹⁵⁹ Given the importance of law student practice rules to the growth and development of clinical legal education,¹⁶⁰ the restrictions imposed on law student practice by the Louisiana Supreme Court were chilling, particularly in light of efforts by opponents of law school clinics to import similar changes to other jurisdictions.¹⁶¹ Though federal and state courts in Louisiana ultimately upheld the restrictions on law student practice imposed there,¹⁶² as of this time, other states have not followed Louisiana in imposing significant new restrictions on law student practice.¹⁶³

Even more recently, in late 2003, the University of North Dakota's legal clinic came under attack for its involvement in representing a group of plaintiffs who sought the removal of a display of the Ten Commandments from city-owned land.¹⁶⁴ Though the law school's interim Dean supported the clinic's actions,¹⁶⁵ alumni, members of the public, and legislators who opposed the suit significantly pressured the law school and the university. Indeed, one State Representative sought an opinion from the State Attorney General that it was improper for the state-funded clinic to sue a public entity.¹⁶⁶ The Attorney General determined that the clinic's involvement in the suit was proper.¹⁶⁷ Though the Ten Commandments suit was dismissed in 2005, an opponent of the suit personally sued the clinic's director for the clinic's refusal to represent him in an ill-intentioned "copycat" suit seeking removal of a "lady justice" statue from a county courthouse.¹⁶⁸ As of this writing the suit remains pending.¹⁶⁹

157. *Id.* at 1983.

158. *Id.* at 1984.

159. *See id.* at 2030.

160. *See, e.g., Carey, supra* note 79, at 516; Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 267-68 (1999).

161. Kuehn & Joy, *supra* note 153, at 1985.

162. *Id.* at 1984 n.61.

163. *Id.* at 1985.

164. David Dodds, *Law School Won't Stop Involvement in Federal Case: UND Dean Stands by Clinic in Face of Possible Attorney General Opinion*, GRAND FORKS HERALD (N.D.), Aug. 27, 2003, at A1. Similar challenges recently were decided by the U.S. Supreme Court in *McCreary County v. ACLU of Ky.*, 545 U.S. 844 (2005) and *Van Orden v. Perry*, 545 U.S. 677 (2005).

165. *See Dodds, supra* note 164, at A1.

166. David Dodds, *UND Law Clinic Can Aid Clients v. Fargo: Attorney General's Opinion Affirms School's Right to Take on "Ten Commandments" Suit*, GRAND FORKS HERALD (N.D.), Sept. 27, 2003, at A1.

167. *Id.* *See also* 2003 N.D. Op. Att'y Gen. L-42, <http://www.ag.state.nd.us/Opinions/2003/Letter/2003-L-42.pdf> (on file with the *McGeorge Law Review*).

168. Steven Lubet, *Thou Shalt Not . . .*, THE AM. LAWYER ONLINE, July 1, 2006, <http://www.law.com/jsp/tal/PubArticleTAL.jsp?hubtype=inside&id=1151571922483> (on file with the *McGeorge Law Review*).

Clinics at public law schools, such as that of the University of North Dakota, are particularly vulnerable to political interference because they may be dependent for their funding on the very public officials whose actions may be challenged by the clinic.¹⁷⁰ However, public controversy and political interference are possible in virtually any legal clinic setting, and student attorneys should be prepared for such possibilities.¹⁷¹

D. Resource Limitations

The strict resource limitations that have plagued the legal services program from its inception, and the difficult consequences that have resulted, were discussed earlier.¹⁷² By contrast, the growth in clinical legal education programs over the past few decades has been impressive. As mentioned earlier, the handful of clinical programs that existed in the United States in the late 1950s¹⁷³ have grown exponentially in the intervening years. Now almost all of the 190 ABA approved law schools have at least one clinic, and many of them have multiple clinics.¹⁷⁴ Additionally, the vast majority of faculty hiring by law schools in recent decades has been in the areas of clinical legal education and other legal skills training.¹⁷⁵

A major boon to clinical legal education occurred in the early 1990s with the publication of the ABA's "MacCrate Report."¹⁷⁶ The Report was a much anticipated and subsequently much discussed assessment by a "blue ribbon" ABA task force of the state of legal education in America.¹⁷⁷ Though the Report's detailed findings lie beyond the scope of this primer, among other conclusions, the Report contended that law schools needed to do more to develop in their students the fundamental lawyering skills and values the students would need in

169. *Id.* See also *Wishnatsky v. Rovner*, 433 F.3d 608 (8th Cir. 2006).

170. See *Kuehn & Joy*, *supra* note 153, at 1990.

171. While a recent essay suggests the possibility of an "apolitical law school clinic," see Adam Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447 (2005), many would contend that whenever students provide legal representation to poor and disadvantaged clients, the work has an inherently political component. See, e.g., Stephen Wizner & Robert Solomon, *Law as Politics: A Response to Adam Babich*, 11 CLINICAL L. REV. 473 (2005).

172. See *supra* note 54 and accompanying text.

173. See *supra* note 92 and accompanying text.

174. See, e.g., *Joy*, *supra* note 77, at 824 & n.40.

175. See, e.g., Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 7-10 (2000); Steven K. Berenson, *Institutional Professionalism for Lawyers: Realizing the Virtues of Civic Professionalism*, 109 W. VA. L. REV. 67, 82 n.115 (2006).

176. AM. BAR ASS'N, MACCRATE REPORT: LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT (1992), <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter MACCRATE REPORT] (on file with the *McGeorge Law Review*).

177. For more recent assessments of the MacCrate Report and its subsequent impact, see, e.g., Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Symposium, *The MacCrate Report: 10 Years After*, 23 PACE L. REV. 513 (2003) (containing numerous articles discussing the MacCrate Report).

order to practice law effectively following graduation.¹⁷⁸ Perhaps not surprisingly, one of the means touted by the Report for improving education in these areas was additional clinical legal education.¹⁷⁹ Indeed, one scholar described the Report as the “Magna Carta for clinicians.”¹⁸⁰ In any event, it is indisputable that law schools increased their clinical offerings in response to the Report.¹⁸¹ Moreover, the Report led to subsequent changes in the ABA’s law school accreditation standards that put additional pressure on law schools to provide more practice-oriented and clinical offerings.¹⁸²

It is tempting to conclude from the past three decades of contrasting growth in clinical education and the retraction of legal services over the same period that the period has been one of largess for clinical legal education compared to one of privation for civil legal services. However, before that conclusion can be drawn, one must look more closely at the somewhat precarious financial situation that characterizes clinical legal education. Despite the above-described growth in clinical legal education, it is still the case that the overwhelming majority of American legal education takes place in the traditional classroom setting, and a relatively small proportion of overall law school budgets are used to fund clinical programs.¹⁸³ Moreover, critics constantly point to the relatively high cost of in-house clinical programs versus traditional law school classes.¹⁸⁴ Some have relied on such cost assessments to go so far as to predict the demise of, or at least a retrenchment of, in-house clinics in the near future.¹⁸⁵ Given rapid increases in the overall cost of legal education in recent years, and the corresponding increase in graduating student debt loads,¹⁸⁶ it is hard to imagine that law schools will

178. See, e.g., Engler, *supra* note 177, at 113; Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade*, 23 PACE L. REV. 519, 519 (2003); Russell G. Pearce, *MacCrate’s Missed Opportunity: The MacCrate Report’s Failure to Advance Professional Values*, 23 PACE L. REV. 575, 575 (2003).

179. See, e.g., Engler, *supra* note 177, at 114 & n.21 (quoting the MacCrate Report, *supra* note 176, at 238).

180. Gary A. Munneke, *Opening Remarks*, 23 PACE L. REV. 515, 516 (2003).

181. *Id.* at 515. See also Kevin J. Wilson, *Introductory Remarks*, 23 PACE L. REV. 513, 513 (2003).

182. See, e.g., Engler, *supra* note 177, at 111; Ann Juergens, *Rosalie Wahl’s Vision for Legal Education: Clinics at the Heart*, 30 WM. MITCHELL L. REV. 9, 30-32 (2003). Presently, among other provisions, the ABA’s Standards for Approval of Law Schools require law schools to “offer substantial opportunities for . . . live-client or other real-life practice experiences . . .” Am. Bar Ass’n, Standards for Approval of Law Schools, Standard 302(b)(1), <http://www.abanet.org/legaled/standards/chapter3.html> (last visited Mar. 16, 2007) (on file with the *McGeorge Law Review*).

183. See Barry, Dubin & Joy, *supra* note 78, at 23-26.

184. Much of this cost differential is attributed to the relatively low student-faculty ratios required in in-house clinics. Indeed, it has been recommended that in-house clinics operate with a student-faculty ratio of no greater than the 8-10 to 1 range. See, e.g., *id.* at 27; MACCRATE REPORT, *supra* note 176, at 250; *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 552 (1992).

185. See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 194 (1993); Arthur B. LaFrance, *Clinical Education in the Year 2010*, 37 J. LEGAL EDUC. 352, 355 (1987); James E. Moliterno, *On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010*, 46 J. LEGAL EDUC. 67, 70 (1996).

186. See, e.g., Berenson, *supra* note 175, at 83 (citing ABA COMM’N ON LOAN REPAYMENT AND

continue to increase significantly funding for clinical legal education in the near future.¹⁸⁷

Given the expansion in the number and scope of law school clinics, along with the above-described funding limitations, it may well be the case that clinicians and their students will find themselves in competition with an increasing number of colleagues for increasingly smaller slices of a fixed pie of resources. Thus, while clinical legal education as a whole has enjoyed growth, individual clinics have indeed experienced resource constraints that differ from those experienced by legal services providers only in degree, but not in kind. Moreover, individual clinicians increasingly find their own human capital resources stretched thin by competing commitments to their cases, their students, publication requirements, law school committee work, and other service projects.¹⁸⁸ Thus, clinical law students are unlikely to be able to avoid entirely the type of resource constraints that have been endemic to anti-poverty law practice throughout its history.

E. Professional Status

It has always been the case that legal aid practitioners have enjoyed relatively low status within the bar as a whole.¹⁸⁹ Sociologists of the legal profession have demonstrated that the greatest status divide within the profession is between those lawyers who serve entities, such as business organizations, and those who serve individual clients, with the former being accorded significantly higher prestige than the latter.¹⁹⁰ However, even within the less prestigious category of lawyers who serve individual clients, there are further hierarchies of prestige based upon the relative affluence of the individual client.¹⁹¹ Not surprisingly, legal aid lawyers, who by definition serve clients who are unable to afford private counsel, fare relatively poorly within these prestige hierarchies.¹⁹²

FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 16 (2003), <http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf> (on file with the *McGeorge Law Review*)).

187. *But see* Barry, Dubin & Joy, *supra* note 78, at 26-30 (discussing potential new funding sources for law school clinics).

188. *See, e.g.*, Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 1001 (2004).

189. *See, e.g.*, JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* 91 (1985); Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 *UCLA L. REV.* 474, 515 (1985); Feldman, *supra* note 34, at 1593.

190. *See* HEINZ & LAUMANN, *supra* note 190, at 92-93.

191. *Id.* at 93.

192. *Id.* at 91.

There were additional status hierarchies within the legal aid movement as well, along the lines of the individual versus impact distinction discussed above.¹⁹³ Because impact work was viewed by many as being more intellectually challenging than individual case representation, higher status was accorded to legal aid lawyers who worked on impact cases than to those who worked on individual cases.¹⁹⁴ However, the above-cited sociological research suggests that in many instances, this notion that certain legal work is more intellectually challenging than other work is, in fact, simply a proxy for the question of the social standing of the client represented.¹⁹⁵ And individual case representation involves more direct contact with poor individuals than impact representation, where lawyers represent amorphous “classes” of people and often have limited, if any, contact with individual clients.¹⁹⁶

With the current restrictions placed on the ability of legal aid lawyers to do law reform work,¹⁹⁷ most present impact litigation takes place outside of the traditional legal aid office. Such cases are often handled by public interest litigators, such as the ACLU, the NAACP Legal Defense Fund, and the Washington Legal Foundation, or by private law firms engaged in *pro bono* representation, such firms having adequate resources to cover the high expenses generated by impact cases, or by collaborations with public interest litigators.¹⁹⁸ Attorneys within these organizations clearly enjoy greater professional prestige than legal aid lawyers. Thus, in addition to operating within severe resource constraints,¹⁹⁹ often with heavy caseloads,²⁰⁰ under poor working conditions,²⁰¹ and pursuant to relatively low salaries,²⁰² legal aid lawyers must also contend with professional status issues.

Clinical legal education and educators faced similar status issues as they entered the legal academy. Early clinics were often housed separately from the rest of the law school.²⁰³ Early clinicians lacked faculty status and correspondingly lacked job security and governance rights within their institutions.²⁰⁴ Many were forced to raise whatever funds were needed to operate their

193. See *supra* Part IV.A.

194. See DAVIS, *supra* note 8, at 99-100; Margulies, *Public Interest Law*, *supra* note 125, at 505.

195. See HEINZ & LAUMANN, *supra* note 190, at 127.

196. See Margulies, *Public Interest Law*, *supra* note 125, at 505-06. See also Bell, *supra* note 122, at 490-92; Margulies, *Political Lawyering*, *supra* note 129, at 510-11.

197. See *supra* notes 58-59 and accompanying text.

198. See, e.g., Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. Rev. 1, 25-27, 46-47 (2004).

199. See *supra* Part IV.C.

200. See Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 598 (1994); Quigley, *supra* note 8, at 264.

201. See Abel, *supra* note 190, at 513 n.234.

202. *Id.* See also Patricia R. Kaplan, *Comments of Patricia R. Kaplan*, 24 QUINNIPIAC L. REV. 585 (2006).

203. See, e.g., Wizner & Aiken, *supra* note 189, at 999.

204. *Id.*

programs.²⁰⁵ Certainly, there has been much improvement in these conditions in recent decades.²⁰⁶ Indeed, at many law schools, clinics and clinicians have achieved parity with doctrinal courses and faculty in terms of measures such as status, salary, and security.²⁰⁷ On the other hand, conditions for clinics and clinicians at some schools remain remarkably similar to those that prevailed during the 1960s and 1970s. And there are law schools that represent just about every conceivable point on the continuum between these two poles.

Given this history of relative subordinate status for clinical legal education within the academy, as well as the above-discussed issues regarding the prestige of poverty law work generally,²⁰⁸ it should not be surprising that some current clinic students will face questions regarding the value of their participation in the clinical legal education enterprise. While clinic students will no doubt conclude in relatively short order that the work performed in law school clinics can be as complex, challenging, and rewarding as any legal work that can be performed,²⁰⁹ they should be prepared to deal with such questions.

V. CONCLUSION

Given their brevity, it may be the case that the above histories and discussions represent a gross oversimplification of a very complicated reality. Indeed, in response to the cutbacks and restrictions discussed above, the present public interest law movement, an umbrella term which encompasses both civil legal aid, law school clinics, and more, has morphed into an extremely complex array of alliances involving public lawyers and private practitioners, government and non-government entities, federal, state, and local authorities, and combined public and private foundation funding. For those interested, a number of scholars are doing important work in attempting to describe and analyze this field.²¹⁰ However, for present purposes, it seemed that delving too far into the complexities of the present might obscure some of the important points to arise from the past.

205. *Id.*

206. *See id.* at 1001-02. *See also* Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 381, 385-87 (1994).

207. *See, e.g.*, Barry, Dubin & Joy, *supra* note 78, at 30-32.

208. *See supra* notes 191-194 and accompanying text.

209. *See, e.g.*, Reingold, *supra* note 131, at 568.

210. *See, e.g.*, Cummings, *supra* note 199; Scott L. Cummings & Ingrid V. Eagly, *After Public Interest Law*, 100 NW. U. L. REV. 1251 (2006); Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 N.C. L. REV. 1591 (2006); Louise G. Trubek, *Crossing Boundaries: Legal Education and the Challenge of the "New Public Interest Law,"* 2005 WIS. L. REV. 455. *See also* Laura Beny, *A Comment on Nielson's and Albiston's Sample Selection, Methodology, and Implications for the "Have-Nots,"* 84 N.C. L. REV. 1623 (2006).

As stated at the outset, the unsettling feeling that comes from representing actual clients on actual cases is both the chief learning benefit as well as the primary source of discomfort in in-house clinical legal education. Hopefully, this primer can serve as something of a reference point as you navigate your way through the many issues and challenges that you will confront in your work in the clinic. Moreover, it is hoped that the sources referred to herein can provide more detailed assistance to those wishing to inquire further. In any event, bear in mind that the work you do in the clinic will later become part of the rich tradition and history that is described above. Good luck on your journey.

* * *