

Villanova University Charles Widger School of Law

From the Selected Works of T. Keith Fogg

Fall 2013

Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics

T. Keith Fogg



Available at: https://works.bepress.com/t_keith_fogg/1/

Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics

KEITH FOGG*

ABSTRACT

In 1974, Stuart Filler created the first low-income taxpayer clinic at Hofstra Law School. Shortly thereafter, similar clinics sprang up at Southern Methodist University and Michigan law schools. Each clinic wanted permission for the students to practice before the Service and the Tax Court. Both the Service and the Tax Court struggled with the issue of student representation. The Service issued a report in 1978 embracing the idea of student clinics. That report serves as a critical historical document observing and analyzing the work and possibilities of tax clinics.

Despite the growth in the law school clinical movement during the 1970s and 1980s, by 1990 only about ten law school tax clinics existed. About that time, Janet Spragens started a tax clinic at American University and shortly thereafter Nina Olson started the first nonacademic low-income taxpayer clinic in Richmond, Virginia. These two clinic directors became a dynamic team pushing for changes in tax clinics. Their leadership received a boost with the Clinton administration's welfare legislation, which placed the tax code front and center for delivery of social benefits and the substantial tax reform legislation passed in 1998.

Janet Spragens and Nina Olson convinced Congress to include several provisions in the 1998 legislation that favorably impacted low-income taxpayers. Most important among the changes for tax clinics was the passage of Code

*Professor, Villanova School of Law; College of William and Mary, B.A., 1974; University of Richmond School of Law, J.D., 1977; College of William and Mary School of Law, LL.M. (Taxation), 1982. The errors and omissions in this Article are those of the author. The author gratefully acknowledges the many contributions received in creating this Article starting with those who were on the panel discussing this topic at the ABA Tax Section meeting on September 25, 2010: United States Tax Court Chief Special Trial Judge Peter Panuthos; National Taxpayer Advocate Nina Olson; Director of the Janet Spragens Federal Tax Clinic at American University School of Law, Nancy Abramowitz; Director of the University of Minnesota School of Law Federal Tax Clinic, Kathryn Sedo; Director of the Quinnipiac School of Law Federal Tax Clinic, Toni Robinson. Many existing tax clinics have provided information concerning the creation of their clinics. My colleagues at Villanova Law School, Michael Mulrone and Les Book, provided significant source documents and comments on this Article. Former Commissioner Larry Gibbs provided significant insights into early clinic formation. Many others have helped to locate information included in this Article. Special thanks to my research assistants, Luigi Racanelli and Emily Stilwell, and the research librarian, Amy Spare.

section 7526 creating grant funds for tax clinics of up to \$100,000. In 1998, 16 low-income taxpayer clinics existed. Today, almost ten times that number exist as a direct result of the grant funds.

This Article traces the history of tax clinics and the forces that shaped that history. Decisions by the Service, the Tax Section of the American Bar Association (ABA Tax Section), the Tax Court, and Congress had enormous impact on how and why clinics developed as they did. This Article also looks at the movement of the clinics from 17 years as entities solely ensconced in academic institutions to entities primarily located in offices of legal services organizations. It concludes with a look at the challenges for clinics as they move forward.

I. Introduction

Low-income Taxpayer Clinics¹ (LITCs) have grown significantly in number over the past 15 years, thanks in large part to the creation of the federal matching grant in section 7526 as part of the Revenue Reform Act of 1998.² The growth was the hoped-for result of the passage of section 7526, which was recognized as a tipping point for LITCs in an article by Professor Les Book in 2001.³ Behind the growth of LITCs, and their recognition as an important force not only in representing low-income taxpayers, but also in establishing policy, is an almost 40-year history of this special type of clinic. The history of LITCs concerns not only people and clinics but also institutions.

This Article traces the history of LITCs from their origin to the present, the rise in LITCs in the academic clinical movement, and the interplay of LITCs and legal services organizations. This Article also seeks to show the role of the ABA Tax Section, the United States Tax Court, the Service, and Congress in shaping the growth of LITCs. Part II of this Article examines the chronological history of LITCs, focusing on the early academic clinics and then the rise of nonacademic clinics. This Part includes a discussion of section 7526 and the administration of the grant it authorizes the Service to award. Part III of this Article places the LTC movement in context with legal service organizations and with academic clinics. Part IV details parallel initiatives in representing low-income individuals. Part V discusses parties whose support was crucial in creating and sustaining LITCs, including the Tax Court, Congress, the ABA and other bar associations, and the Service. Part VI addresses the impact of tax clinics both on the fairness to individual taxpayers and on the tax system as a whole. Part VII briefly addresses some challenges facing LITCs in the years ahead and examines the structural bases for successful tax

¹Interestingly, the ABA Section of Taxation was initially called the “tax clinic.” Kirk J. Stark, *The Unfulfilled Tax Legacy of Justice Robert H. Jackson*, 54 TAX L. REV. 171, 173 (2001).

²I.R.C. § 7526(a) provides that “[t]he Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified low-income taxpayer clinics.”

³Leslie Book, *Tax Clinics: Past the Tipping Point and to the Turning Point*, 92 TAX NOTES (TA) 1089, 1092-93 (Aug. 20, 2001).

clinics. Finally, Part VIII concludes that clinics have made significant strides in providing coverage to low-income taxpayers who previously fell outside the reach of legal representation. Many of the goals of the early LITC visionaries, however, remain unmet.

II. Chronological History of LITCs

Tax clinics, as we know them today, began in the 1970s as part of an academic movement to provide skills training to students and as part of the broader social movement to provide free or very low cost legal services to the poor.⁴ Law schools were looking for platforms through which to teach practical skills to students because of growing criticism that their graduates entered the profession with inadequate practical skills.⁵ Communities and the legal profession were looking for ways to protect the most vulnerable members of society from processes over which they could exert little control.⁶ As the broader movements for legal skills training and legal aid moved forward, it was natural that legal clinics providing assistance in tax matters should develop as well.⁷

A. *The Experimental Phase – The 1970s*

The Internal Revenue Service Office of Assistant Commissioner (Planning and Research) records the first tax clinic as existing at Harvard Law School.⁸ Harvard's program lasted 18 months before being discontinued based on a perceived lack of benefit to either the school or the Service.⁹ Insufficient information exists about this early clinic at Harvard upon which to base judgment on its effectiveness or its similarity in content, format, and purpose to the tax clinics that developed later. In 1974, the first tax clinic that took root appeared at Hofstra University School of Law.¹⁰ The description of the Hofstra clinic sounds very much like the description of a tax clinic at a law school today—third-year students acting as tax advisors for clients while supervised

⁴ See discussion *infra* Part III for a more detailed discussion of the history of educational movement towards skills-based training. Part III also contains a discussion of the legal services movement in the United States.

⁵ See *Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan*, 10 COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., 43, 43-44 (no. 4, 1978).

⁶ Karen V. Kole, *Specialized vs. General Clinical Legal Education: Or, Problems with Being a Brain Surgeon After a Family Practice Internship*, 3 LOY. CONSUMER L. REP. 126, 128 (Summer 1991).

⁷ See *Growing Pains*, *supra* note 5, at 43-44.

⁸ INTERNAL REVENUE SERVICE, OFFICE OF THE ASSISTANT COMMISSIONER, REPORT ON LEGAL ASSISTANCE TEST PROGRAM 2 (1978) [hereinafter *The Report*]. "In 1968, a test program was established under which law students from the Harvard Law School were permitted to assist taxpayers undergoing an office audit in the Boston District. The law students were permitted to accompany taxpayers as a 'witness,' but not as the taxpayer's legal representative." *Id.*

⁹ *Id.* Interestingly, The Report does not mention the benefit or lack of benefit to taxpayers as a basis for continuing or discontinuing the clinic.

¹⁰ See *id.*

by an attorney serving as clinic director. The authorization from the New York Supreme Court however, describes them as advisors for “intermediate income” taxpayers instead of low-income taxpayers.¹¹ The Hofstra clinic¹² was officially created by an order of the Supreme Court of the State of New York. It had authority to represent taxpayers in state proceedings but its authority to represent taxpayers before the Service was initially unclear.¹³

The General Counsel of the Treasury Department¹⁴ issued special orders to Hofstra and Columbia Law Schools in 1975 permitting third-year students to practice before the Brooklyn District of the Service for low and intermedi-

¹¹ *Id.* The authorization of the clinic to represent “intermediate taxpayers” presents interesting issues concerning the reason for that language. Did the clinic or the court think that there were insufficient low-income taxpayers to form a client base for the clinic? The earned income tax credit had recently been created but was much less potent than it would become in the 1990s. For a discussion of the earned income tax going back to its inception, see Steve Holt, *The Earned Income Tax Credit at Age 30: What We Know*, THE BROOKINGS INSTITUTE 2-3 (Feb. 2006), http://www.brookings.edu/-/media/research/files/reports/2006/2/childrenfamilies%20holt/20060209_holt.pdf; Dennis Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit*, in MAKING WORK PAY: THE EARNED INCOME TAX CREDIT AND ITS IMPACT ON AMERICA'S FAMILIES 15-66 (Bruce D. Meyer & Douglas Holtz-Eakin eds., 2001). Even in the mid-1970s concern for intermediate taxpayers with a dispute that did not justify the expense of a lawyer may have driven this decision. See The Report, *supra* note 8, at 3; see also *infra* text accompanying note 21 (discussing Senator Montoya's concerns).

¹² The Hofstra program was started by Stuart Filler who deserves special mention for his pioneering efforts in many aspects of tax clinics. Mr. Filler attended NYU Law School and had worked for the Office of Chief Counsel at the Service prior to starting the clinic at Hofstra. He pushed to permit his students to practice before the Tax Court, made significant contact in the community in order to attract clients, and kept the clinic alive: moving it from Hofstra to Bridgeport Law School from which it ultimately moved to Quinnipiac Law School, where it continues to thrive. In addition to starting the first tax clinic to take root, Mr. Filler also took the first and, to date, only tax clinic case to the United States Supreme Court. See *Bufferd v. Commissioner*, 506 U.S. 523, 524 (1993). The *Bufferd* case raised a procedural issue concerning the statute of limitations that does not arise often in a low-income taxpayer practice: whether the statute of limitations ran from the filing date of an individual or corporate return for the shareholder of a Subchapter S corporation. *Id.* Still, the fact that a low-income taxpayer clinic handled the case to the Supreme Court was significant in itself.

¹³ The Report, *supra* note 8, at 2.

¹⁴ It is worth noting that having the General Counsel of the Treasury Department issue these orders indicates the high level of government scrutiny involved in this decision. The General Counsel is the legal advisor to the Secretary of the Treasury. The General Counsel supervised (and to a certain extent still supervises) the Chief Counsel of the Service. This decision occurred at department level rather than the agency level providing some insight into the serious consideration given to the decision to endorse the tax clinic experiment. This is not the only indication of the high level of attention these early clinics received. Service Commissioner Jerome Kurtz personally visited the SMU clinic and personally wrote a letter on September 13, 1977, to Dean St. Antoine at University of Michigan Law School concerning the posting of notices describing the services of the Michigan clinic in the local Service offices. This level of attention to a relatively minor matter demonstrates the level of concern and scrutiny given to these three initial clinics and the decision on whether the Service would continue to support the clinical experiment.

ate-income taxpayers.¹⁵ At this point, the Director of Practice (now the Office of Professional Responsibility or OPR) became involved in monitoring student practice.¹⁶ The tax clinic at Columbia Law School closed after one year;¹⁷ however, two new law school clinics arose almost immediately at Southern Methodist University (SMU) and the University of Michigan.¹⁸ These two schools plus Hofstra formed the basis for the law school clinic experiment examined in the Report on Legal Assistance Test Program, December 1978 (the Report).¹⁹

The Report sought to analyze three clinical programs to determine whether the Service should encourage and permit further clinics or seek to end the

¹⁵Letter from General Counsel Robert H. Mundheim to Steven D. Pepe, Associate Professor, Director, Clinical Law Program at the University of Michigan (Sept. 6, 1977); *see also* The Report, *supra* note 8, at 2 (reporting that Columbia Law School terminated its program after the Spring Semester 1976). Mr. Filler again deserves credit because he not only founded the law school clinic, but he also persuaded the Service to recognize the clinic. Persuading the Service to recognize the newly formed clinic would not have been easy. As discussed below, the novelty of clinics and the natural reluctance of employees at the Service to embrace something new created opportunities for failure. Stuart Filler carried his clinic across this hurdle for which he merits additional recognition. The Service also deserves credit for its willingness to embrace something new and its desire to assist low-income taxpayers.

¹⁶*Id.* The Director of Practice followed by OPR, its successor, oversaw student practice from the beginning of student practice until December 2012 when oversight moved to the National Taxpayer Advocate who, as discussed below, has had oversight responsibility for the section 7526 grant since 2003. Because of its longstanding oversight role, the Director of Practice and OPR significantly influenced the growth and development of tax clinics. The Director of Practice in 1975, Les Shapiro, became a strong advocate for clinics and another important figure in their ultimate success. He wrote a memorandum to the Assistant Commissioner (Planning and Research) dated August 30, 1978, that was incorporated into The Report. Memorandum from Leslie Shapiro, Dir. of Practice, Office of the Sec'y, to Anita F. Alpern, Assistant Comm'r (Planning and Research), Internal Revenue Serv. (Aug. 30, 1978), *in* The Report, *supra* note 8, at attachment 3. In the memorandum, Mr. Shapiro stated that "in addition to providing the students with a valuable learning tool, [the program] had the potential of benefiting the Internal Revenue Service and the public." *Id.* It is clear from his letter that even in 1978, Mr. Shapiro had already engaged deeply with the then existing clinics by visiting the schools and nurturing the clinics. Shortly thereafter, he persuaded his friend, Leo Raskind, a tax professor at University of Minnesota Law School (from which Mr. Shapiro had graduated), to assist in starting the tax clinic at University of Minnesota Law School in 1981. Kathryn Sedo, who has co-directed or directed the University of Minnesota Law School tax clinic from its inception to the present, remembers the assistance and the prodding of Mr. Shapiro in getting the tax clinic underway and helping to ensure its success. Jerry Borison, who founded the Denver Law School tax clinic shortly after the founding of the University of Minnesota Law School tax clinic, has similar memories of the support received from Les Shapiro. E-mail from Jerry Borison to author (Aug. 9, 2012) (on file with author). Michael Mulroney, who helped found the Villanova Law School tax clinic in 1991, also identified Les Shapiro as a critical person in the founding of the Villanova clinic. Like Stuart Filler, Les Shapiro emerges as a pivotal figure in the development of tax clinics.

¹⁷Memorandum from Leslie Shapiro to Anita F. Alpern, *supra* note 16, at 1.

¹⁸*Id.*

¹⁹*See* The Report, *supra* note 8, at 2-3.

“experiment” of tax clinics.²⁰ Before getting into the details of the Report with respect to these law schools, special note must be made of the Report’s description of the event that might have triggered the Treasury Department’s high-level interest in the new tax clinics. In the spring of 1976, Senator Montoya held field hearings to determine the types of problems experienced by taxpayers.²¹ Senator Montoya sponsored a bill, pending at that time, which sought to create a pilot program under the Legal Services Corporation that would provide low-income taxpayers with free, independent representation

²⁰*Id.* at 1-3.

²¹In 1976 Senator Montoya was the Chairman of the Appropriations Subcommittee on Treasury, Postal Service and General Government. He announced that his subcommittee would hold hearings examining the practices and procedures of the Service in four locations around the country in order to provide an extensive opportunity for comment. *See IRS OVERSIGHT: CONGRESSIONAL HEARINGS* 288 (William V. Roth, Jr. ed., 1999). He noted that his subcommittee had held similar hearings in Washington in 1973 and 1974 resulting in the receipt by the subcommittee of thousands of letters from taxpayers suggesting the need for administrative changes at the Service.

These hearings bring to mind the hearings held by Senator Roth in 1997 and 1998 that led to the 1998 Revenue Reform Act, the legislation creating the grant program for tax clinics. *Practices and Procedures of the Internal Revenue Service: Hearings before the S. Comm. On Finance*, 105th Cong. (Sept. 23-25, 1997) (spotlighting alleged collection misdeeds by the Service); *IRS Oversight: Hearings Before the S. Comm. On Finance*, 105th Cong. 2, 5, 22, 52-53 (April 28-30 and May 1, 1998) (spotlighting alleged misdeeds by the Service on criminal tax matters).

during an audit.²² The Report describes Senator Montoya's concerns that taxpayers too often acquiesced to Service findings because the fees for representation would exceed the tax at issue.²³

Senator Montoya's hearings included testimony from Service Southwest Regional Commissioner Walter Copping.²⁴ Inspired by his participation in the hearings, Copping returned to his Dallas headquarters and began discussions with the Dean of the SMU Law School regarding the establish-

²² See The Report, *supra* note 8, at 3; see also Taxpayer Audit Disclosure Act of 1975, S. 136, 121 Cong. Rec. 391 (1975). The hearings and the proposed legislation create a critical point in tax clinic history since the possibility of joining Legal Services, almost at the beginning of that organization and over two decades before the quasi-joinder occurs following the passage of Code section 7526, offers a window on what will happen and what might have happened. As discussed *infra* Part III on Legal Services, the joinder of taxes with the other program areas of representation offered by Legal Services allows a broader spectrum of low-income representation than occurs without the tax piece. Had it happened at the time of Senator Montoya's proposed pilot program, the face of tax clinics would have changed dramatically. The Senator's proposed legislation suggests insight into the connection of tax to overall legal services to the poor and recognizes it over two decades before Congress ultimately decides to fund legal services for low-income taxpayers. See the discussion *infra* Part III.

The legislation proposed by Senator Montoya dovetails a measure discussed in the 1977-1978 Report on the Committee on Small Taxpayer Program of the ABA Tax Section. 31 TAX LAW. 978, 978-79 (1978). The ABA report stated:

Another Committee activity, requiring substantial study by a special Subcommittee appointed for the purpose, has been review of a proposal for the establishment of a so-called "Taxpayer Assistance Center." Originally formulated by the Administrative Conference of the United States and presently being recommended by the Section on Individual Rights and Responsibilities, this proposal is for the creation, either administratively or legislatively, of a federal body which would provide representation to low-income taxpayers in controversies with the Service. The effect would be to establish a sort of public defender system for taxpayers whose resources are insufficient to enable them to secure their own professional representation in disputes with the Service. The Committee will report the results of its study, with its recommendation for action, to the Council in advance of the May Meeting. The Section on Individual Rights and Responsibilities intends to bring its recommendation to the floor of the House of Delegates at the August meeting.

Id. The 1978-1979 Report of the Committee on Small Taxpayer Program reported that ABA House of Delegates defeated the proposal by the Section on Individual Rights and Responsibilities to create a federal body which would provide representation in its 1978 Annual Meeting. 32 TAX LAW. 931, 933 (1979). The ABA Tax Section Council had voted on May 19, 1978, to approve the recommendation of its Committee on Small Taxpayer Program "that a government-funded program for audit assistance to low-income taxpayers be established" 31 TAX LAW. 925, 925 (1978).

The concept of adding tax onto the issues covered by the Legal Services Corporation was also discussed by Stuart Filler in his testimony before the Oversight Subcommittee of the House Ways and Means Committee. *Problems of Low-Income Taxpayers and Small Businesses with the Internal Revenue Service: Hearing Before the Subcomm. on Oversight of the Comm. on Ways and Means, H. Rep.*, 95th Cong., 1st Session 18 (1977). For further discussion of his testimony, see *infra* note 61 and accompanying text.

²³ The Report, *supra* note 8, at 3.

²⁴ *Id.*

ment of a tax clinic there to represent low-income taxpayers.²⁵ The Southwest region not only convinced SMU to start a tax clinic but obtained authorization from the Service's National Office for a cooperative test program.²⁶

A third Service region became involved in working with a clinic in August 1976, when the University of Michigan Law School applied for recognition.²⁷ The Director of Practice approved Michigan's application in October 1976, and the Service decided to thoroughly evaluate Hofstra, SMU, and Michigan before granting permission for other clinics to operate.²⁸

The Report was based in large part on correspondence sent to Washington from the three regional commissioners in charge of the regions within which these pioneering clinics resided.²⁹ The Report sought to determine whether the clinical experiment should continue or be abandoned.³⁰ The comments from the Northeast and Southwest regions were very positive, while the comment submitted by the Central region recommended ending the experiment at Michigan Law School primarily due to the "low activity level since the beginning of the program."³¹ Perhaps due to lack of support from the Service or the small market demographics in which it was operating, the Michigan tax clinic did close a few years later while the other two clinics were able to continue successfully.³²

²⁵ *Id.*

²⁶ *Id.* The Report indicates that the SMU clinic did not start until Spring Semester 1977 because of funding issues. Interestingly, when it did get its funding in order, the SMU tax clinic obtained funding that has allowed it to continue as a clinic until the present and continue as one of the handful of clinics that does not accept grant funds under Code section 7526.

²⁷ *See id.*

²⁸ *See id.*

²⁹ Memorandum from W.T. Coppinger, Regional Commissioner (Southwest) to the IRS Deputy Commissioner (July 14, 1978) (on file with author); Memorandum from Billy Brown, Regional Commissioner (Central) to the IRS Deputy Commissioner (June 29, 1978) (on file with author); Memorandum from H.J. Bodkin, Regional Commissioner (Northeast) to the IRS Deputy Commissioner (June 28, 1978) (on file with author).

³⁰ The Report describes the common features of the three law school tax clinics:

- Law students enrolled in the clinical programs receive credit hours toward their degrees
- The students are generally in their third year of law school, and have taken one or more courses in Federal taxation.
- The students are supervised by an experienced attorney [E]nrollment in the tax clinic program is limited to about 12 students per semester.
- The clinics primarily serve taxpayers who are in the lower income brackets and who have "routine" tax problems

See The Report, *supra* note 8, at 4.

³¹ *See* Memorandum from Billy J. Brown, Acting Regional Commissioner (Central Region) to the IRS Deputy Commissioner (June 29, 1978) (on file with author).

³² The University of Michigan Law School brought back its tax clinic in 2007, 25 years after closing it. The clinics at Hofstra and SMU have essentially survived to the present. Stuart Filler moved the Hofstra clinic to Bridgeport Law School and that law school later became Quinnipiac Law School which still maintains a tax clinic.

With a few exceptions, the Report reads like a description of tax clinics existing in 2013.³³ The basics of clinic operation have changed little over the three decades since the 1978 Report, although the type of work has changed significantly.³⁴ Some of the Report's observations are interesting, however, and deserve special mention. First, the amount of income of clients served by the clinics was not yet set in the way that section 7526 has accomplished.³⁵ Early clinics took cases of individuals with income up to \$18,000.³⁶ The income level of clients was clearly something the early clinics were thinking about and discussing, but a consensus had not yet been achieved. Similarly, debate was still ongoing around the amount of tax at issue and whether that amount provided a barrier or ceiling with regard to the acceptance of cases.³⁷

Second, the issues presented in the cases vary significantly from the issues that would typically be found in a clinic in 2013. From the description of the work of initial clinics in the Report, the most common issues handled

³³For a detailed description of the three clinics, see *Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan*, 10 COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., 43, 43-47 (no. 4, 1978).

³⁴Kathryn Sedo describes the early work of tax clinics in a manner similar to the description of that work in The Report. It consisted almost entirely of representing taxpayers in office audits. Correspondent audits, the far more common type case in 2013, did not predominate at that time. Collection case work was nonexistent in the early clinics even though it comprises a high percentage of tax clinic work in 2013. Conversation with Kathryn Sedo, University of Minnesota Law School (Aug. 16, 2012); The Report, *supra* note 8.

³⁵Code section 7526 requires that 90% of the cases accepted by an LTC involve a taxpayer whose income is less than 250% of poverty as determined by the Bureau of Labor Statistics. The remaining 10% of cases can exceed this amount and there is no limitation in the statute of the amount by which the income of these clients can exceed the statute. See I.R.C. § 7526(b)(1)(B)(i).

³⁶*Growing Pains*, *supra* note 7, at 44.

Hofstra's general student practice rule as promulgated by the Appellate Division of the New York Supreme Court, Second Judicial Department, permits representation of clients whose incomes fall below the Bureau of Labor Statistics' 'Lower Level of Income', which is currently \$10,500. However, an amendment was obtained for the tax program permitting use of the Bureau's 'Intermediate Level of Income', which is currently \$18,866 and has been increasing at the approximate rate of 7.5% annually.

Id. In 2013 dollars \$18,000 in 1978 would substantially exceed 250% of poverty for one person. The Report does not make clear how many people might be in a typical taxpayer's family in 1978. The Report, *supra* note 8. It is possible for a family to qualify in 2013 at a much higher dollar level if enough dependents exist. In 1978 the poverty level for a single male below the age of 65 was \$3,516. U.S. CENSUS BUREAU, last accessed Nov. 10, 2013, *Poverty Thresholds 1978*, <http://www.census.gov/hhes/www/poverty/data/threshld/thresh78.html>.

The fact that Hofstra was allowed to take cases in the Intermediate level does not mean that most of its cases involved individuals with an income of this amount. While the New York Supreme Court order did not contain the specificity of Code section 7526, it can be seen as allowing some of the same flexibility.

³⁷See *Growing Pains*, *supra* note 5, at 45. "All three programs provide representation to persons who may be considered middle-income The Michigan program has no income limit on its clients and represents taxpayers whose proposed federal tax deficiency does not exceed \$2,000. The SMU program has neither an income nor an amount in controversy limit." *Id.*

by the early clinics were substantiation of expenses on Schedules A and C.³⁸ No mention was made in the Report of representing taxpayers with earned income tax issues,³⁹ innocent spouse relief,⁴⁰ discharge of indebtedness,⁴¹ or collection.⁴² The issues described by the Report as coming before clinics in 1978 reflected the types of issues that typically existed at that time based on the memory of the author.⁴³ It is also clear from the Report that most of the work of the three law school clinics involved representing taxpayers during the examination process and providing information on factual issues in order to substantiate claimed expenses.⁴⁴ As discussed further below, this type of work now represents only a small portion of the work of clinics because the Service's increased reliance on automation has created more correspondence audits which, in turn, increases the likelihood that a taxpayer will contact the clinic later in the life of a case.

Third, the Report makes clear that the Service engaged in different degrees of providing notice to taxpayers under audit of the existence of tax clinics.⁴⁵ In Dallas, the Service affirmatively pushed taxpayers toward the SMU clinic

³⁸ See The Report, *supra* note 8, at 8.

³⁹ The earned income credit existed in 1978 but had not yet transformed into a significant issue for low-income taxpayers. The effect of tax law and tax administration on clinic representation will be discussed in more detail below. In the 1976 Annual Report of the Commissioner of Internal Revenue, the Taxpayer Assistance section of the report describes the major effort to make the public aware of the earned income tax credit. This report states that "[t]he Earned Income Credit was allowed to about 6 million taxpayers for a total of approximately \$1.2 billion, averaging out to some \$203 per taxpayer." COMMISSIONER OF INTERNAL REVENUE, ANN. REP. 1976, at 7, <http://www.irs.gov/pub/irs-soi/76dbfullar.pdf>. It is easy to see from those numbers that Congress had not yet pegged the earned income credit as the largest anti-poverty program in the country. The Report, *supra* note 8, at 1-5. For a detailed discussion of the early earned income tax credit, see Holt, *supra* note 11; Ventry, Jr., *supra* note 11.

⁴⁰ The Report, *supra* note 8, at 8. Innocent spouse relief existed in 1978 but was relatively new and relatively restricted in the circumstances to which it applied. The number of innocent spouse cases in 1978 would have been a small fraction of the number of cases existing after the 1998 changes to that statute because the 1998 changes added to the bases for relief. For an explanation of the shortcomings of the pre-1998 statute providing innocent spouse relief and the reason few of these cases existed at that time, see Jerome Borison, *Innocent Spouse Relief: A Call for Legislative and Judicial Liberalization*, 40 TAX LAW. 819, 823 (1987) (identifying many of the needed changes, which Congress would finally adopt a decade later).

⁴¹ The Report, *supra* note 8, at 8. Discharge of indebtedness issues would have been much less common in 1978 than 2013 because the United States had not yet fully embraced credit and the significant downturn in the housing market was not present. See, e.g., Monica D. Armstrong, *From the Great Depression to the Current Housing Crisis: What Code Section 108 Tells Us About Congress's Response to Economic Crisis*, 26 AKRON TAX J. 69, 92-95 (2011).

⁴² The Report, *supra* note 8, at 8. The Report suggests that collection issues were beyond the scope of the students in the initial clinics. *Id.* at 4, 8.

⁴³ *Id.* at 8. The author started with the Office of Chief Counsel in 1977. The typical Tax Court docket in 1978 contained precisely the type of cases described in The Report and the amount of collection work coming into Counsel was small compared to more recent decades.

⁴⁴ *Id.*

⁴⁵ *Id.* at 24.

by providing notification about the clinic in a variety of ways.⁴⁶ The level of Service involvement was markedly different between Dallas and the other two locations in which clinics existed.⁴⁷ In Dallas, the Service appears to have assisted SMU in obtaining clients, while in Michigan, the lack of taxpayer notification appeared to have hampered the viability of the clinic.⁴⁸ Several remarks in the Report gave the impression that Stuart Filler succeeded in getting the local press to help the Hofstra clinic inform taxpayers of its existence.⁴⁹ The level of Service involvement with evolving tax clinics was a subject of discussion in the Report.⁵⁰ Generally, the Report viewed the assistance in Dallas as an experiment rather than a level of cooperation that would necessarily flow to all tax clinics.⁵¹ Perhaps one of the most surprising aspects of the cooperation was the extent to which the Service, at least in New York,

⁴⁶*Id.* at 9 (quoting the Regional Commissioner's office stating, "We [the Service in Dallas] do actively refer taxpayers to the Clinic.").

⁴⁷In *Growing Pains*, *supra* note 7, at 46, the author found:

Most of the growing pains associated with tax clinics derive from the need to publicize the tax clinic's services and to broaden the scope of representation. All of the programs have found it necessary to make special efforts to obtain clients. They have resorted to newspaper articles and publicity programs. SMU has been most successful because the Dallas District of the Service refers taxpayers to the Clinic. The other two clinics do not receive referrals from the Service.

⁴⁸*Id.*

⁴⁹*Id.* at 46. Stuart Filler not only sought and received press but he fought for his clinic in other ways. He asked the Tax Court to allow his students to participate. When denied, he brought a mandamus action in the Second Circuit seeking to have the Circuit Court order the Tax Court to allow student representation. *See id.* at 47-48. It is clear that he was an aggressive promoter of his clinic and for his clients. Stuart Filler serves the role of both having the vision to create these clinics and having the drive to push for implementation of those things necessary for it to succeed. He deserves significant credit for his role in bringing tax clinics into existence.

⁵⁰The Report, *supra* note 8, at 24-25. The ABA Ad Hoc Committee To Review IRS Evaluations also discussed the subject of the appropriate level of Service support for clinics in its report. The Ad Hoc committee identified this as "perhaps the most critical problem for any tax clinic in obtaining an adequate caseload." Report from Ad Hoc Committee To Review IRS Evaluations to the Council of the Section of Taxation (Oct. 31, 1978), in The Report, *supra* note 8, at attachment 4.

⁵¹The Report, *supra* note 8, at 24-26.

sought input from bar associations in deciding how much support to provide the Hofstra tax clinic.⁵²

The fourth noteworthy observation of the Report details how the Hofstra clinic sought permission for its students to represent taxpayers before the Tax Court.⁵³ Its request was denied.⁵⁴ Like the Service, the Tax Court sought input from the bar.⁵⁵ The Tax Court also sought input from the Service on

⁵²*Id.* at 24. The Service felt the need to contact local bar associations and the ABA as a part of its research into the appropriateness of allowing recognition for clinics. It seemed to have a genuine interest in not allowing clinic participation if the existence of the clinics would hinder or cause concern among the bar. *See id.* Of the bar associations contacted by the Service all but one were comfortable with having the Service provide more notification to taxpayers. *See Growing Pains, supra* note 5, at 47. The Nassau County Bar Association in New York did not approve of the idea of Service publication of clinic services citing many of the ideas that have hampered student participation over the years:

Four reasons were given by the Nassau County Bar Association for disapproval of the posting of signs in local IRS offices indicating the existence of student legal assistance: 1) Persons who earn up to \$18,500 are “certainly not in the poverty area and could well afford hiring professional representation.” . . . 2) IRS offers a tax service free to the public “should they not choose to hire counsel or an accountant.” . . . 3) Bar members doubt “the ability of students to advise clients concerning these [extremely intricate tax] matters.” . . . 4) The bar noted that “it appears that this activity may well involve the practice of law.”

Id. at 48 n.1.

⁵³The Report, *supra* note 8, at 27. “On January 10, 1977, the Hofstra Tax Clinic filed an application with the U.S. Tax Court, seeking permission for law students enrolled in the tax clinic program to represent taxpayers before the Court.” The Court sought the views of the Service and the ABA. *Id.* The Service, through the Chief Counsel, opposed the idea. *Id.*

By the time of The Report, however, the view of the Service toward student practice had completely changed and it urged the Tax Court to permit students to appear joining in a similar appeal from subcommittees of the House Ways and Means Committee and the Appropriations Committee. *See id.* at 27-28.

⁵⁴*See id.* at 27 (noting that, as of September 1978, none of the petitions prepared by the law school tax clinics had resulted in appearances before the Tax Court).

⁵⁵*Id.* The ABA Report of the Ad Hoc Committee To Review IRS Evaluations contains a section devoted to “Student Representation in the Tax Court.” Report from the Ad Hoc Committee To Review IRS Evaluations, *supra* note 50, at 10. The section of the report contains lawyer language with a mild endorsement of student representation. *Id.* The writers knew that the Tax Court did not want student representation: “In view of prior approaches to the Tax Court regarding a student practice rule, the question of law student participation in Tax Court proceedings seems at a standstill . . .” *Id.* With that knowledge, the authors provided the following guidance on student representation:

Based on the initial IRS experience, one might reasonably conclude that student representation of certain taxpayers, with appropriate faculty and clinical supervision, before the Tax Court might also be of assistance to the IRS, Regional Counsel, and the Tax Court, particularly in those cases where the taxpayer, through lack of understanding or inadvertence, has failed to avail himself or herself of the opportunities for administrative appeal and settlement.

Id.

this subject.⁵⁶ The Service supported student participation in Tax Court cases while the bar, conversely, was less certain such participation was a good idea. Permission for students to practice before the Tax Court would not come until later. Even then, students were not admitted to practice before the Court but simply allowed to appear when accompanied by a member of the Tax Court bar who was first recognized before deferring to the student.⁵⁷

Overall, the Service and the ABA's reactions to the early tax clinics were very positive.⁵⁸ Opportunities not only for student education, but also for the low-income taxpayers who would receive representation, appeared promising. The Report tracked not only the issues handled by the clinics, but also the outcomes and time frames in which cases were resolved, finding the statistics encouraging.⁵⁹ The Report provides a comprehensive view of the early clinics. Another significant insight exists through the testimony of Stuart Filler, and others, before the Subcommittee on Oversight of the House Committee on Ways and Means.⁶⁰ Stuart Filler's testimony not only provides great

⁵⁶The Report, *supra* note 8, at 27. The Report, in its Summary of Recommendations, supported student participation: "IRS should encourage the Tax Court to grant an application from at least one of the tax clinics, perhaps Hofstra, to permit its law students to practice before the Court for a test period of one or two years." *Id.* at 1.

⁵⁷*See generally*, U.S. TAX COURT, TAX COURT RULES R. 24(a)(4) (2012), <http://www.ustax-court.gov/rules/rules.pdf> (expressly prohibiting law students from entering an appearance in a case, being recognized as counsel in a case, or signing a pleading or other document filed with the Tax Court).

⁵⁸Report from the Ad Hoc Committee To Review IRS Evaluations, *supra* note 50, at 7. The Service consulted with the ABA concerning the three pioneer tax clinics and received an 11 page report dated October 31, 1978, from an Ad Hoc Committee To Review IRS Evaluations. *Id.* The ABA report was transmitted to the Service by letter from the ABA Chairman Lipman Redman dated November 20, 1978. Letter from Lipman Redman, ABA Chairman, to Ross J. Summers, IRS, Research & Operations, Analysis Division (Nov. 20, 1978), *in* The Report, *supra* note 8. The letter from the ABA made five points: (1) most ABA council members agreed with the ABA Ad Hoc committee report that the existing tax clinics should be continued and the program expanded; (2) the Service should permit publicity of the clinic services "subject to the approval of the appropriate local bar groups;" (3) funding for the clinics should be independent of the Service; (4) the ABA would be "pleased" to work with the Service if a blueprint for clinics was to be built by the Service; (5) the ABA takes no position on expansion of clinics into representation before the Tax Court (although the Ad Hoc committee report had commented on the inevitability of this development). *Id.*

⁵⁹The Report, *supra* note 8, at 6-8.

⁶⁰*Problems of Low-Income Taxpayers and Small Businesses with the Internal Revenue Service: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means, 95th Cong. 23 (1977) (statement of Stuart Filler).*

insight, but predicts the future of tax clinics and the law impacting low-income taxpayers.⁶¹

B. *Initial Growth and Establishment Phase – 1980 to 1998*

As with most of its pilot programs, the Service, after studying the three law school clinics that opened in the mid-1970s, approved the concept of tax clinics and assigned the Director of Practice to review and monitor these clinics.⁶² The acceptance of the concept did not mean that a large number of tax clinics would immediately emerge. In fact, growth was quite slow. The Report noted that “other than the three law schools involved in the program, only a few others have expressed interest in initiating similar tax clinics. Their major problem may be in obtaining funds to initiate and operate such programs.”⁶³ The question of funding constantly impacts the creation and continuation of clinics. The Report considered whether the Service should fund tax clinics

⁶¹ *Id.* In many ways, Stuart Filler’s testimony sounds the same as testimony of the National Taxpayer Advocate 30 years later. His testimony focuses on three topics: 1) Complexity. He details the problems it causes for low-income taxpayers, *id.* at 12-13, 15-17; 2) Service employees as advocates for taxpayers. He challenges the belief that Service employees always reach the correct result and challenges Congress to fund free representation of low-income taxpayers through the Legal Services Corporation, *id.* at 13-14, 17-18; and 3) Convenience. He argues for office hours that allow low-income taxpayers to meet with the Service without losing a day’s wages. *Id.* at 14-15, 18-19. He expands on these three themes with significant detail to support his observations. With respect to complexity he focuses on the difficulty low-income individuals have in navigating the personal exemption section. *Id.* at 15. He explains the then existing complexity of the Code and, in many ways, presages the changes that will come to that Code section in subsequent legislation attempting to resolve the complexity he identified. *Id.* at 16-17. With respect to his recommendation to provide free tax assistance to low-income taxpayers through the Legal Service Corporation lawyers, he identifies training of those lawyers as a major issue. *Id.* at 18. His identification of that issue was also predictive of a need that continues to exist with the entry of the LSC lawyers into tax work.

⁶² The Report, *supra* note 8, at 29 concludes:

The test experience is persuasive that law school tax clinics provide useful benefits to the taxpayers they serve, provide valuable experience to the law students enrolled in the program, and cause no administrative problems for IRS. Indeed, tax clinic representation of taxpayers in many instances results in the disposition of the cases with less staff time. IRS benefits most when such participation begins before the taxpayer appears for the audit.

The Report contains the summary of the recommendations and concludes that the “IRS should welcome the continuation of the tax law clinics at the three law schools, and welcome establishment of similar clinics at other law schools.” The Report, *supra* note 8, at 1; *see also* Background Report, Taxpayer Education Programs, at 4 (1987).

⁶³ The Report, *supra* note 8, at 29.

and decided that the “IRS should not seek appropriations to fund law school tax clinics, which should remain independent of any IRS funding controls.”⁶⁴

Another factor that may have impacted the growth of clinics was the early model of the types of cases to be handled by the clinics and the shift of Service resources in the 1980s from historical patterns of preceding decades. The types of cases handled by the original three clinics were principally office audit examinations.⁶⁵ The early clinics were able to get involved in their clients’ cases during this opening phase. The students principally aided taxpayers in gathering and presenting substantiation.⁶⁶ The 1980s saw the rise of tax shelters in the examination division and a shift from examining low-income taxpayers in office audit settings to correspondence audits.⁶⁷ Tax shelter cases,

⁶⁴ *Id.* at 1. The issue of Service funding controls presages a fight currently taking place between the Treasury Inspector General for Tax Administration (TIGTA) and the National Taxpayer Advocate (NTA). See TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, REF. NO. 2011-10-067, THE TAXPAYER ADVOCATE SERVICE CAN MORE EFFECTIVELY ENSURE LOW-INCOME TAXPAYER CLINICS ARE APPROPRIATELY USING GRANT FUNDS (July 19, 2011). This issue is discussed further in the challenges portion of Part Five of this Article. It is a serious issue relating to the amount of control the Service, in its role as grant administrator, should exercise over the clinics. See also TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, REF. NO. 2005-10-129, PROGRESS HAS BEEN MADE BUT FURTHER IMPROVEMENTS ARE NEEDED IN THE ADMINISTRATION OF THE LOW-INCOME TAX CLINIC GRANT PROGRAM (Sept. 21, 2005); TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, REF. NO. 2003-40-125, IMPROVEMENTS ARE NEEDED IN THE OVERSIGHT AND ADMINISTRATION OF THE LOW-INCOME TAXPAYER CLINIC PROGRAM (May 2003).

⁶⁵ The Report, *supra* note 8, at 8.

⁶⁶ See *id.*

⁶⁷ See U.S. GENERAL ACCOUNTING OFFICE, GAO-99-48, IRS AUDITS: WEAKNESSES IN SELECTING AND CONDUCTING CORRESPONDENCE AUDITS 1, 3 (Mar. 31, 1999). This report focuses on correspondence audits between 1992 and 1997. It provides significant detail on the process and the number of cases audited using this process—the majority of cases audited by the Service. It also shows the types of cases audited using the process the majority of which were earned income tax credit cases. See U.S. GENERAL ACCOUNTING OFFICE, GAO-98-128, TAX ADMINISTRATION: IRS MEASURES COULD PROVIDE A MORE BALANCED PICTURE OF AUDIT RESULTS AND COSTS 8-10 (June 1998) for a comparison of correspondence audits with other types of audits based on 1992 data. It shows the high likelihood of taxpayer default in these audits, the much lower costs of these audits per dollar assessed and the much lower percentage of dollars collected. See *id.* Nothing in the report provides a surprise, but the report does validate much of what low-income taxpayer clinicians have observed about this process. The shift to correspondence examinations noted in the GAO reports in the 1990s shifted into high gear in the following decade. See Nina Olson, *Are IRS Correspondence Audits Really Less Burdensome for Taxpayers?*, TAXPAYER ADVOCATE SERVICE, last accessed Nov. 10, 2013, <http://www.taxpayeradvocate.irs.gov/Blog/are-irs-correspondence-audits-really-less-burdensome-for-taxpayers>; see also Nina Olson, *What’s an Audit, Anyway?*, TAXPAYER ADVOCATE SERVICE, last accessed Nov. 10, 2013, <http://www.taxpayeradvocate.irs.gov/Blog/Whats-an-Audit-Anyway>; see also TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION Ref. No. 2010-30-024, SIGNIFICANT TAX ISSUES ARE OFTEN NOT ADDRESSED DURING CORRESPONDENCE AUDITS OF SOLE PROPRIETORS (Feb. 24, 2010); U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-13-151, TAX GAP: IRS COULD SIGNIFICANTLY INCREASE REVENUES BY BETTER TARGETING ENFORCEMENT RESOURCES (Dec. 2012) (updating information on the number and impact of EITC examinations).

of course, did not involve low-income taxpayers, and the shift to correspondence audits cut referrals and ties to local offices. One reason for the slow growth of tax clinics during this period may have been the ebb in cases to fuel the original model and failure to shift to other types of cases in which low-income taxpayers had issues.⁶⁸ Of course, funding presented problems for a clinic then as now.⁶⁹

Because of funds available through the Department of Education,⁷⁰ LITCs grew during the 1980s from three at the beginning of the decade to 17 by its end.⁷¹ All 17 clinics were academic and almost all were in law schools.⁷² While not remarkable growth, this steady increase showed that the LTC movement had settled in and, with the infusion of funds from the Department of Education, would survive. A certain routine had developed with the Service and with the Tax Court. Clinic students received recognition in both venues. While not widespread, LITCs achieved a certain normalcy and, perhaps, complacency.

⁶⁸For a detailed insight into the types of cases handled by a typical clinic during this period, see John Ellis Price, *Interactive Learning Through the Use of Student Federal Tax Clinics*, 13 J. ACCOUNTING EDUC. 413, 418-19 (1995). Mr. Price writes about the tax clinic run through the accounting program at University of North Texas. *Id.* With the precision of an accountant, he provides a detailed list of numbers and types of cases handled by this clinic during the years 1991 and 1992. *See id.* The clinic handled exclusively audit type cases with itemized deductions and Schedule C deductions arising most frequently followed by dependency exemptions, filing status and rental income/expenses. *See id.* at 418. This table also shows the average amounts at issue, average time spent per case and other data that updates some of the statistics gathered and commented upon in The Report. *See id.*

⁶⁹The Report, *supra* note 8, at 17.

⁷⁰See DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION, LAW SCHOOL CLINICAL EXPERIENCE PROGRAM: CLOSING DATE FOR RECEIPT OF APPLICATIONS FOR FISCAL YEAR 1978, 43 Fed. Reg. 10635 (1978) (announcing grant funds for clinics at accredited law schools); DEPARTMENT OF EDUCATION, LAW SCHOOL CLINICAL EXPERIENCE PROGRAM; INVITING APPLICATIONS FOR NEW AWARDS FOR FISCAL YEAR (FY) 1993, 57 Fed. Reg. 61402 (1992) (announcing grant funds for clinics at accredited law schools). These announcements mark the first and last such announcements located in the Federal Register on this subject.

⁷¹List of current tax clinic participants, IRS, Office of Director of Practice (Aug. 21, 1990) (on file with author).

⁷²*Id.*

The 17 clinics in existence in 1990 shrank slightly to 16 by the time of passage of section 7526 in 1998.⁷³ A comparison of the two lists shows that nine clinics existed in both 1990 and 1998. Eight of the clinics that existed in 1990, all academic, ceased to exist by 1998 and seven new clinics arose to take their place.⁷⁴ By 1998, three of the clinics were not academic clinics.⁷⁵ Only two of the original clinics, Hofstra (which had moved to Bridgeport Law School by 1990 and Quinnipiac College of Law by 1998) and SMU, continued to exist by 1998.⁷⁶ The growth of tax clinics predicted in the Report had clearly not occurred.

After the three founding clinics discussed above, the next clinic appears to have been founded at the University of Minnesota Law School in 1981.⁷⁷ The Minnesota clinic resulted from the friendship between Les Shapiro, the Service Director of Practice, whose office oversaw the approval process for clinics, and Leo Raskin, a tax professor at the University of Minnesota Law

⁷³The Director of Practice maintained a list of clinics, dated August 21, 1990. *Id.* That list included the following clinics: Akron School of Law; Boston University School of Law; Bridgeport University School of Law; Delaware Law School, Widener University; Denver College of Law; Loyola University of Chicago School of Law; Loyola University of New Orleans School of Law; Minnesota School of Law; William Mitchell College of Law; Nebraska-Lincoln College of Law; New Mexico School of Law; North Texas College of Business Administration; Robert Morris College; Southern Methodist University School of Law; Texas (Austin) School of Law; Washington College of Law at the American University; and Wisconsin-Milwaukee School of Business Administration. At least one clinic existed that was not on this list—Cardozo Law School. Cardozo had a tax clinic at least as early as 1988, which was discontinued in Spring 2013. Jim Lewis, the founder of that clinic, litigated *Patterson v. Commissioner*, 57 T.C.M. (CCH) 248, 249, 1989 T.C.M. (PH) ¶ 89,193, at 948, with clinic students. That case was affirmed by the Second Circuit in an unpublished order. Thereafter, on April 20, 1990, Lewis, as the Director of the “Student Tax Clinic” at Cardozo filed a cert. petition which was not granted. See e-mail from Carlton Smith, former Director of the Cardozo clinic, to author (Sept. 10, 2012) (on file with author). Had cert been granted, *Patterson* would have been the first tax clinic case accepted by the Supreme Court.

Compare list of current tax clinic participants (Aug. 21, 1990), *supra*, with Nina Olson, *Low Income Taxpayer Clinics: The Means to a Fairer Tax System*, 3 COMMUNITY TAX L. REP. 12, 21 (1998) (listing the following clinics: Benjamin N. Cardozo School of Law; Denver College of Law; Georgia State College of Law; Loyola (Chicago) School of Law; Loyola (New Orleans) School of Law; Minnesota Law School; New Mexico School of Law; Nebraska School of Law; Quinnipiac College of Law; Rutgers School of Law; Southern Methodist University School of Law; Villanova School of Law; Washington College of Law at the American University; Chicago Tax Law Assistance Project; District of Columbia Center for Public Interest Tax Law; and The Community Tax Law Project).

⁷⁴Compare list of current tax clinic participants (Aug. 21, 1990), *supra* note 73, with Olson, *supra* note 73.

⁷⁵*Id.*

⁷⁶See Olson, *supra* note 73.

⁷⁷See *Course Details: Ronald M. Mankoff Tax Clinic*, UNIVERSITY OF MINNESOTA LAW SCHOOL, last accessed Sept. 22, 2013, <http://www.law.umn.edu/current/alphabetical-course-list/details.html?courseNumber=7950>.

School.⁷⁸ The current director of this clinic, Kathryn Sedo, deserves recognition as the longest serving LITC director, having started work with that clinic at its inception.⁷⁹ She not only continues to serve as a clinic director, but also continues to serve as a leader in the tax clinic movement.⁸⁰ Shortly after the creation of the clinic at the University of Minnesota, Denver Law School created a tax clinic headed by Jerry Borison.⁸¹ Like Kathryn, Jerry served as clinic director for an extended period of time, and he led the community.⁸²

To the extent that clinics had become complacent and satisfied with their status quo, that situation changed dramatically as two new clinicians came on the scene who would change LITCs forever, Janet Spragens and Nina Olson. Janet Spragens arrived first with the opening of the tax clinic at American University in 1990.⁸³ She joined the faculty at American University Washington College of Law in 1973 as its only full time female faculty member.⁸⁴ In 1990, she decided to start a tax clinic. Perhaps because of her experience as a lawyer and a teacher prior to becoming a clinician, she immediately saw issues

⁷⁸ Conversation with Kathryn Sedo, University of Minnesota Law School (Aug. 16, 2012). This Article will not focus on Les Shapiro, but his contribution to the growth of LITCs deserves recognition. He served as the IRS Director of Practice for over two decades. Because of support of LITCs, they did not face obstacles that might have existed from within the Service had he not pushed them as an enthusiastic supporter. *See also* e-mail from Jerry Borison, Professor, University of Denver, Sturm College of Law, to author (Aug. 9, 2012) (on file with author) (commenting on the importance of the support of Les Shapiro).

⁷⁹ *See Kathryn Sedo, Professor of Clinical Instruction, University of Minnesota Law School*, AMERICAN BAR ASSOCIATION, last accessed Oct. 5, 2013, http://www.americanbar.org/content/dam/aba/administrative/taxation/eNews_May_2012_KathrynSedo.authcheckdam.pdf.

⁸⁰ Kathryn Sedo served as the Chair of the Low-Income Taxpayer Committee from August, 2009, through July 2011. Prior to that she was a vice chair of that committee. In addition to her bar leadership positions, she has served as a leader on issues facing the community through comments and litigation.

⁸¹ *Cf.* list of current tax clinic participants (Aug. 21, 1990), *supra* note 73.

⁸² According to Susan Morgenstern, who heads the LITC for the Cleveland Legal Aid Society, Jerry Borison served as a mentor to many new clinicians particularly during the explosive growth period for new clinics after 1998. He was the chair of the Low-income Taxpayer Committee from 1993 to 1995. *See* e-mail from Janet In, Counsel to ABA Tax Section, to author (Aug. 8, 2012) (on file with author) (listing the chairmen of the Low-income Taxpayer Committee in chronological order). Perhaps more important than Jerry Borison's individual mentoring role was his service as the lead editor of the first three editions of a book published by the ABA and used by most LITCs as their primary reference tool. *See, e.g.*, JEROME BORISON, EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS (2000).

⁸³ Joe Holley, *Janet Spragens, 62; Law Professor Set Up Tax Clinic to Aid Poor*, WASHINGTON POST, Feb. 22, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/21/AR2006022101813.html>.

⁸⁴ *Id.*

facing tax clinics that other clinicians were not seeing.⁸⁵ She began to push for recognition of LITCs and her efforts led her to team up with another new clinician, Nina Olson.⁸⁶

Nina Olson owned her own tax planning and preparation firm in Chapel Hill, North Carolina, from 1975 to 1991.⁸⁷ She decided to pursue a law degree and obtained one at North Carolina Central School of Law.⁸⁸ After obtaining her law degree, she decided to pursue an LL.M. in Taxation from Georgetown University Law Center and commuted to classes from North Carolina while maintaining her practice.⁸⁹ As she looked for ways to perform pro bono work as a lawyer, she came to the realization that low-income taxpayers existed, but opportunities to serve them were difficult to find.⁹⁰ Olson decided to start an LTC in Richmond, Virginia, the Community Tax Law Project (CTLTP), organizing tax lawyers to provide pro bono services.⁹¹ CTLTP became the first LTC not based in an academic institution. Because CTLTP did not follow the academic model of previous LITCs, she had to climb many of the same hills that Stuart Filler climbed 15 years earlier. She had to con-

⁸⁵ Janet Spragens wrote frequently to address the impact of the tax law and tax administration on low-income taxpayers. Through her writing she sought to influence and to advocate on behalf of this community. Her writings include: Nancy Abramowitz & Janet Spragens, *Multiple Notices for Multi-Year Audits Cause Problems, Attorneys Say*, 1999 TAX NOTES TODAY (TA) 160-20 (Sept. 13, 1999); Exchange of letters with Hon. Peter Panuthos, Chief Special Trial Judge, United States Tax Court (Oct. 31, 1995–Nov. 22, 1995) in *Better Representation in Tax Court S Calendar Cases*, 70 TAX NOTES (TA) 1285, 1285 (Feb. 26, 1996); Janet Spragens, *Student Tax Clinics*, 81 TAX NOTES (TA) 129, 130 (Oct. 5, 1998); Janet Spragens, *Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate*, 73 TAX NOTES (TA) 353, 354 (Oct. 21, 1996); Janet Spragens & Nancy Abramowitz, *IRS Modernization and Low-income Taxpayers*, 53 ADMIN. L. REV. 701, 706-07 (2001); Janet Spragens & Nina E. Olson, *Tax Clinics: The New Face of Legal Services*, 88 TAX NOTES (TA) 1525, 1525-26 (Sept. 15, 2000); see Janet Spragens, Letter to the Editor, *Alimony and Child Support are not Indistinguishable*, 66 TAX NOTES (TA) 2031, 2031 (Mar. 27, 1995).

⁸⁶ See Leslie Book, Professor, Villanova School of Law, Address on behalf of Janet Spragens on the Occasion of the Awarding of the ABA Tax Section Pro Bono Award to her in ABA SECTION OF TAXATION NEWS QUARTERLY, Spring 2006, at 22 (discussing the many qualities that Spragen brought to the LTC community).

⁸⁷ *National Taxpayer Advocate Bio: Nina E. Olson*, TAXPAYER ADVOCATE SERVICE, last accessed Sept. 22, 2013, www.taxpayeradvocate.irs.gov/Media-Resources/National-Taxpayer-Advocate-Bio.

⁸⁸ *Id.*

⁸⁹ Personal knowledge of the author, one of Nina Olson's professors at Georgetown University Law Center during her pursuit of the LL.M. degree.

⁹⁰ See Mark Trumbull, *Tax Day: 1040 reasons you should know Nina Olson*, CHRISTIAN SCIENCE MONITOR, Apr. 12, 2012, <http://www.csmonitor.com/USA/2012/0412/Tax-day-1040-reasons-you-should-know-Nina-Olson>.

⁹¹ See *id.*

vince the Service and the Tax Court to recognize CTLP and to “promote” its services in the same way done for academic clinics.⁹²

Because CTLP did not have funds from an educational institution, it constantly battled to find funding to support its activities. This struggle for funds may have assisted in forming Olson’s opinions on the need for federal funding.⁹³

While Janet Spragens and Nina Olson developed their skills as clinic directors and began their collaborative efforts on broader issues concerning LITCs, the Service faced increased scrutiny for its actions *vis-à-vis* individual taxpayers—particularly with respect to the collection of taxes. In 1988, Congress passed the first taxpayer bill of rights.⁹⁴ In 1996, Congress passed the second taxpayer bill of rights legislation.⁹⁵

Congress created a National Commission on Restructuring the Service in 1995 in an effort to improve the Service.⁹⁶ The Ways and Means Committee of the House of Representatives held hearings to consider the rec-

⁹²Personal knowledge of author, who was the District Counsel of the Internal Revenue Service in Richmond, Virginia, at the time of the founding of CTLP and who participated with Nina Olson in meetings with the IRS District Director in Richmond concerning access of CTLP and who participated in conferences with the Tax Court concerning notification to taxpayers of the services of CTLP.

⁹³Nina Olson’s struggle for funds and success in obtaining them and bringing attention to tax as an area of need also caused her to gain recognition from the bar. In 1999 both the Virginia State Bar and the Richmond Bar Association awarded her their Public Interest Lawyer of the Year awards. See *Nina Olson Named U.S. Taxpayer Advocate*, VIRGINIA LAWYER MAGAZINE, Feb. 2001, at 40, <http://www.vsb.org/docs/valawyer magazine/feb01olson.pdf>.

⁹⁴Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647 §§ 6227-6235, 102 Stat. 3342, 3731 (1988).

⁹⁵Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, 1452 (1996).

⁹⁶Pub. L. No. 104-52 § 637, 109 Stat. 468, 509 (1995).

ommendations of this Commission.⁹⁷ The Senate held numerous hearings, many of which sought to sensationalize the problems with the tax system and to declare the strong need for change.⁹⁸ In the summer of 1998, Congress voted overwhelmingly to restructure and reform the Service.⁹⁹ Included in the Restructuring and Reform Act of 1998 (RRA 98) was an authorization for \$6.0 million in matching grants to low-income taxpayer clinics (LITCs).¹⁰⁰

⁹⁷ *Report of the National Commission on Restructuring the Internal Revenue Service: Hearing before the Subcommittee on Oversight of the Committee on Ways and Means of the House of Representatives*, 105th Cong. 3 (July 24, 1997). The report of the Restructuring Commission led directly to the adoption of grant funds for low-income taxpayer clinics and Janet Spragens' testimony led directly to the idea of creating the grant funds. The report was divided into eight sections. NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE, A VISION FOR A NEW IRS 2 (1997) [hereinafter *Restructuring Report*]. Section 7, entitled "Taxpayer Rights" contained four specific areas of proposals and then a fifth area entitled "Other Taxpayer Rights Proposals." *Id.* The proposals from this fifth section are contained in Appendix 1 of the Commission's report. The report introduces them by stating "Restoration of public confidence in the IRS must begin with Congress through legislation promoting fair and impartial tax administration which focuses on preventing problems before they occur." *Id.* at 54.

Appendix 1 also contains the following proposal:

Seed money for clinics representing low-income taxpayers: The proposal would authorize the IRS to establish a program to support the creation of clinics representing low-income taxpayers. By establishing a program for awarding grants to endow such clinics, this proposal would help to ensure that low-income taxpayers involved in controversies with the IRS could obtain representation. This program also will conduct outreach and education to populations that do not speak English as a first language.

Id. at 49. In further describing tax clinics Appendix 1 provides:

The purpose of the tax clinics is twofold: to provide representation for low-income taxpayers and perform outreach to certain populations

The Commission believes the work of the clinics will benefit the IRS. By providing representation and counseling, the clinics will eliminate many frivolous cases. The clinics will also help ensure that actions brought are only for meritorious issues and are done in a professional manner – thereby minimizing the burden for the courts and the IRS

Id. at 52.

⁹⁸ *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Finance*, 105th Cong. 1, 11 (1997) (Opening Statement of Sen. William V. Roth, Jr., Chairman, S. Comm. on Finance; Opening Statement of Sen. Daniel Patrick Moynihan, Member, S. Comm. on Finance) (spotlighting alleged collection misdeeds by the IRS); *IRS Restructuring: Hearings Before the S. Comm. on Finance*, 105th Cong. 2 (1998) (Opening Statement of Sen. Trent Lott, Member, S. Comm. on Finance); *IRS Oversight: Hearings Before the S. Comm. on Finance*, 105th Cong. 48 (1998) (Statement of Robert E. Davis, Attorney, Dallas, TX) (spotlighting alleged misdeeds by the IRS on criminal tax matters).

⁹⁹ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 689 (the legislation is best known as RRA 98).

¹⁰⁰ *See id.* § 3601 at 774-75 (this section directly arose from the 1997 recommendation by the National Commission on Restructuring the IRS).

During this time, Nina Olson and Janet Spragens managed to testify before the Restructuring Commission and Congressional committees.¹⁰¹ In their testimony, they hammered home the link between the 1995 Work to Welfare legislation and the need for Congressional funding of tax clinics in order to provide representation for low-income taxpayers now entering the tax sys-

¹⁰¹ Janet Spragens testified before the Restructuring Commission on February 26, 1997, as one of three individuals in the "Taxpayer Representative" category. Restructuring Report, *supra* note 97, at 95. Nina Olson is listed as one of the "Individuals Who Met With the Commission." *Id.* at 99. Nancy Abramowitz describes the testimony of Janet Spragens putting forth the idea of funding clinics as coming in response to a question from the Commission on how the system could best respond to the needs of low-income taxpayers. Nancy S. Abramowitz, *Professor Janet Spragens: In Memory of a Friend, In Celebration of an Idea*, 56 AM. U. L. REV. 1123, 1123-24 (2007). Her testimony was also described in *Witnesses want simpler code and better taxpayer rights*, 183 J. ACCOUNTANCY (May 1997) at 24, which quoted her as saying "Provisions in the tax code intended to help low-income taxpayers lose their significance when the population for whom they were intended is faced with an administrative and judicial system they cannot deal with."

On September 26, 1997, Nina Olson testified before the Subcommittee on Oversight of the House Committee on Ways and Means at a hearing on the Recommendations of the National Commission on Restructuring the IRS on Taxpayer Protections and Rights. Her testimony covered many issues presented by the Restructuring Commission's proposals but gave greatest attention to the need for tax clinics and the need for funding for such clinics. *Taxpayer Rights: Written Comment and Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 105th Cong. 145 (1997).

It would seem that low-income tax clinics are an obvious solution to the problems described above. Yet universities are struggling to find funding for an enterprise that not only provides its students with valuable practical experience and instills in them a professional commitment to community involvement but also offers substantial assistance to taxpayers and the tax system . . . [I]t is in the government's interest to ensure that taxpayers are adequately represented, regardless of their income level. Despite initial misgivings about students and private sector attorneys engaging in protracted disputes and wasting government resources, IRS employees at all levels now recognize the contribution clinics make to the smooth administration of the tax law.

Id. at 150 (Statement of Nina E. Olson, Executive Director, The Community Tax Law Project, Richmond, Virginia).

Nina Olson also testified before the Senate Finance Committee and submitted written remarks to that committee. *Hearings before the Comm. on Finance, United States Senate, 105th Cong., 2d Sess. on H.R. 2676*, 105th Cong. 124-26 (1998) (Testimony of Nina E. Olson, Executive Director, Community Tax Law Project), 329-36 (Prepared Statement of Nina E. Olson), 336-40 (Responses questions from Senator Roth). Her testimony focused on problems low-income taxpayers have contending with the IRS Collection Division; however, she spoke briefly, and somewhat humorously, about the need for funding for low-income taxpayer clinics:

All of the problems I have discussed today would be less frequent for low-income taxpayers if they had access to representation. There should be at least one clinic in every state and in some states two or more, given their diverse populations and size. In light of this, I ask that you increase the funding for these programs to \$5 million [from \$3 million in the proposed legislation] – no, \$10 million. Let us make a real commitment to this population. No matter how warm and fuzzy we make the IRS, there will always be a need for representation.

tem.¹⁰² They carefully explained the importance of LITCs in an era when tax had become the primary form of delivering benefits to low-income individuals.¹⁰³

Nina Olson and Janet Spragens created a new role for LITCs through their shared vision and their combined efforts. No longer were LITCs a minor

Id. at 126.

In her Prepared Statement Nina Olson addressed many of the substantive provisions of the legislation including collection, earned income credit examinations, offers in compromise, wage levies, burden of proof, innocent spouse relief and attorneys' fees award awards before ending with four paragraphs on low-income taxpayer clinics. Regarding the clinics she stated:

I view Section 361 as the single most helpful provision of TBOR3. All of the problems discussed above will be lessened if not eliminated when low-income taxpayers are able to obtain representation. The provision of federal funding on a matching grant basis is an appropriate incentive for the establishment of clinics.

Id. at 335.

In her responses to written questions from Senator Roth, Nina Olson answered the second question, which asked if low-income taxpayers were targeted for audits by the Service. Her response stated that "[t]he single most effective tool to combat targeting (intentional or unintentional) of low-income and disadvantaged taxpayers is access to representation. Representation levels the playing field in audits, collections and litigation." *Id.* at 336.

¹⁰²The Welfare to Work legislation greatly expanded the earned income tax credit in an effort to provide incentives to the individuals coming back to work whose salaries were low and needed supplementation in order to make it worthwhile for individuals to go back to work. Nina Olson specifically made reference to the welfare-to-work provisions in her Prepared Statement submitted to the Senate Finance Committee:

I am concerned, however, that one of the factors given special consideration in the awarding of grants is the level of service to individuals for whom English is a second language. I would add to this category a second targeted population, namely participants in welfare-to-work programs. These individuals are being thrown into the workforce without appropriate training in the matter of tax responsibilities and without access to representation. As a result, they are sure to face problems in a few years arising from dependency exemption claims and EIC audits.

Id. at 335; see also Janet Spragens, *Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate*, 73 TAX NOTES (TA) 353 (Oct. 21, 1996).

¹⁰³Their testimony did not stop with convincing Congress to provide funds for low-income taxpayer clinics. They sought other changes that would impact low-income taxpayers. One example of the "other changes" is the change to the offer in compromise provisions. Nina Olson testified that Code section 7122 did not adequately protect low-income taxpayers because of the Service administrative position requiring a minimum amount of payment for an offer in compromise. *IRS Restructuring: Hearing on H.R. 2676 Before the S. Finance Comm.*, 105th Cong. 332-33 (1998) (statement of Nina E. Olson, Executive Director, Community Tax Law Project). As a result of her testimony, Congress amended Code section 7122 to add a section directing the Service not to discriminate against low-income taxpayers by considering the amount of the offer. I.R.C. § 7122(d)(3)(A). This type of substantive law change reflects another important aspect of the work of Nina Olson and Janet Spragens. Prior to their efforts to influence substantive tax laws impacting low-income taxpayers, clinics were focused on the individual cases before them. This groundbreaking work caused low-income taxpayer representatives to achieve the same types of success attained by early legal services attorneys on broader issues. In part, their success resulted from their use of the ABA Tax Section as a springboard for making recommendations. In larger part, their success sprang from their vision and desire to represent low-income taxpayers in a manner that had not previously existed.

player in the tax world serving discreet communities in random pockets of the United States where a clinic happened to exist. Now, with Congressional recognition of the importance of LITCs in representing low-income taxpayers, a new mandate created the possibility of an LTC in every state and every major community. Nina Olson's and Janet Spragens's linking of the welfare to work legislation coupled with the timing of the major overhaul of the Service in 1998 provided a gateway for low-income taxpayer clinics to connect with other poverty law programs rather than operate outside those programs. Finally, Senator Montoya's vision for merging representation of low-income taxpayers with other federal poverty law programs and the proposals of the ABA's Section on Individual Rights and Responsibilities and the Tax Section became a reality.¹⁰⁴

C. *Explosive Growth and Maturity – 1998 to Present*

With the passage of section 7526 and the creation of the grants to federal tax clinics, the clinics took off rapidly.

In the first year [in which grant applications were available], the IRS received 43 grant applications and approved 34 grants totaling approximately \$1.46 million. [So, in one year the number of LITCs doubled.] In the second year, the IRS received 88 grant applications and approved 81 grants totaling approximately \$5 million. [Again, the number of LITCs doubled from the preceding year.] Last year [2001], the IRS received 141 grant applications and approved 102 applications covering a full \$6 million authorized under section 7526.¹⁰⁵

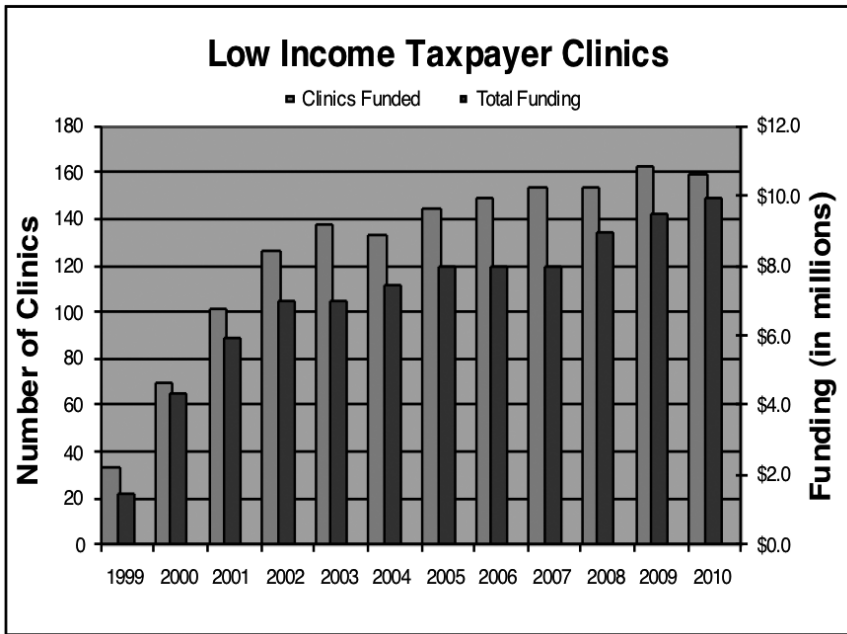
The chart below shows the number of clinics and the amount of funding for clinics during the first 12 years following the passage of section 7526.¹⁰⁶ The number of clinics seems to have finally leveled off around 160 while the amount of funds has slowly grown.¹⁰⁷ The grant funds essentially created ten

¹⁰⁴ See *supra* note 21 and accompanying text.

¹⁰⁵ *Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 107th Cong. 44 (2001) (statement of Leslie Book, Federal Tax Clinic, Villanova University School of Law).

¹⁰⁶ The chart reflects the LITCs receiving funds pursuant to the Code section 7526. Not all clinics receive funds pursuant to the statute. Some clinics obtain their own funding. Two notable academic clinics that operate without grant funding are Southern Methodist University Law School and Cardozo Law School (discontinued in Spring 2013). The benefit to the LITCs that do not receive funds is freedom. See I.R.C. § 7526. These clinics need not follow the formula of the statute in the types of cases they take and they need not take the time to fill out the grant request forms. Former Cardozo director, Carl Smith, has emerged as a leader in the community in several issues facing low-income taxpayers. In 2012, two academic clinics that previously accepted grant funds, Valparaiso Law School and Albany Law School, decided to forego future grant funds in order to gain more freedom.

¹⁰⁷ The number of funded clinics dipped slightly in subsequent years. For 2013, only 145 clinics received funding. In part, this dip appears aimed at focusing on giving the smaller number of clinics higher grant amounts to assist in their viability.



times the number of LITCs within ten years. The story of LITCs in the post-1998 era, however, involves more than mere growth in numbers.

The leaders prior to 1998, Nina Olson and Janet Spragens, continued to lead in the period immediate after passage of section 7526. Janet Spragens established a conference at American University Washington College of Law.¹⁰⁸ Through this conference, she sought to educate the new and existing clinicians on issues impacting low-income taxpayers.¹⁰⁹ Nina Olson's clinic, CTLP, continued to publish a quarterly newsletter, *The Community Tax Law Report*, to keep clinicians informed and to teach them about recurring

¹⁰⁸ See generally Nancy S. Abramowitz, *Thinking About Conflicting Gravitational Pulls LITCs: The Academy and the IRS*, 56 AM U. L. REV. 1127, 1128-29 (2007).

¹⁰⁹ "Professor Janet Spragens organized six Annual Workshops for Low Income Taxpayer Clinics held each May from 2000 through 2005. These workshops were cosponsored by American University Washington College of Law and the American Bar Association Section on Taxation." *Id.* at 1127 n.1.

issues.¹¹⁰ Both were involved in testimony before Congress, discussed below, to increase the amount of the grant, but changes came.¹¹¹

The Secretary of the Treasury appointed Nina Olson the second National Taxpayer Advocate (NTA).¹¹² She assumed this position in January 2001.¹¹³ Because the NTA has responsibility to make recommendations concerning needed changes to the law, Nina Olson's experience with low-income taxpayers informs her performance of the NTA position.¹¹⁴ In many respects she remains a leader of the LITC movement, but that leadership clearly comes from a different position now than that of clinic director.¹¹⁵

¹¹⁰CTLP started the newsletter in 1996. *Newsletter*, THE COMMUNITY TAX LAW PROJECT, <http://www.ctlp.org/newsletter.html>; see *IRS Restructuring: Hearing on H.R. 2676 Before the S. Finance Comm.*, 105th Cong. 330 (1998) (statement of Nina E. Olson, Executive Director, Community Tax Law Project). The newsletter continued until 2005. E-mail correspondence with CTPL Director Elaine Javonovich (Aug. 9, 2012) (on file with author). The newsletter helped to bring the LITC community together by providing articles on procedural and substantive issues facing low-income taxpayers as well as advice on how to obtain grant funds or set up a clinic.

¹¹¹See *Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 107th Cong. 2 (2001).

¹¹²*Internal Revenue Service Information Release 2001-6*, INTERNAL REVENUE SERVICE, Jan. 12, 2001, <http://www.irs.gov/pub/irs-news/ir-01-06.pdf>.

¹¹³For a discussion of her first eleven years as the NTA and some personal background leading up to her selection for that position, see *supra* note 89.

¹¹⁴Code section 7803(c) sets out the duties of the office of National Taxpayer Advocate. Subparagraph (2)(A) of the statute sets out four duties of the position: (1) assist taxpayers in resolving problems with the Service; (2) identify problem areas taxpayers have in dealing with the Service; (3) propose changes in administration to alleviate those problems; and (4) identify legislative changes to alleviate or mitigate those problems.

Having someone with Nina Olson's background in the position of NTA charged to recommend administrative and legislative changes to problems encountered by taxpayers somewhat reduces the need for the taxpayer assistance center described *infra* Part VII; however, even with her background and skills and the charge given by Congress for this position, an independent taxpayer assistance center providing direct support to LITCs and policy support for low-income taxpayer issues remains a need.

¹¹⁵Congressman Amo Houghton, Chairman of the Ways and Means Subcommittee on Oversight, acknowledged Nina Olson's leadership position in the LITC world in his opening remarks of the subcommittee's hearing on July 12, 2001. *Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 107th Cong. 4 (2001) (statement of Rep. Amo Houghton, Chairman, S. Comm. on Oversight).

Janet Spragens continued to lead the LITC community until her untimely death in 2006.¹¹⁶ Because of her remarkable leadership of this community for over 15 years, the ABA Tax Section named its annual pro bono award after her.¹¹⁷ American University Washington College of Law named its tax clinic after her as well.¹¹⁸ Her leadership before legislators and administrators as well as her writing on behalf of low-income taxpayers left large leadership shoes to be filled.¹¹⁹

One of the early issues facing the resurgent LITC community after the passage of section 7526 was the success of the grant program. So many applicants sought grant funds that the initial amount of funding quickly became inadequate. Either the individual grants would be so diluted as additional clinics came into the system that the grants might not sustain the existing clinics or additional clinics might have to do without grant funds. Clinicians used the opportunity of a hearing before the House Ways and Means Oversight Com-

¹¹⁶She died on February 19, 2006. *See supra* note 83. Accepting the 2006 ABA Pro Bono Award for Janet Spragens, her colleague and friend, Professor Leslie Book, gave an excellent summary of her importance to the tax community:

Janet is a pioneer; she is a woman whose work touches and will continue to touch thousands of people in ways that are both far-reaching and immediate. Janet is the rare academic who not only criticizes, but who offers solutions. She is among an even rarer group who not only offers solutions but who has the wherewithal, persistence and skills to help Congress legislate and the IRS implement those solutions.

Leslie Book, Professor, Villanova School of Law, Address on behalf of Janet Spragens on the Occasion of the Awarding of the ABA Tax Section Pro Bono Award to her *in* ABA SECTION OF TAXATION NEWS QUARTERLY, Spring 2006, at 22.

¹¹⁷*Pro Bono Award: 2013 Janet Spragens Pro Bono Award – Request for Nominations*, AMERICAN BAR ASSOCIATION, last accessed Aug. 6, 2012, www.americanbar.org/groups/taxation/awards/probono.html:

At the Section's 2007 Midyear Meeting, Council approved changing the name of the Pro Bono Award to the Janet Spragens Pro Bono Award, in honor of the late American University (AU) Law Professor who greatly contributed to ensuring that low-income taxpayers receive pro bono representation in tax controversy matters. Spragens developed the Federal Tax Clinic at AU, and was instrumental in helping achieve federal funding for non-profit low-income taxpayer clinics nationwide.

¹¹⁸*Clinical Program: Janet R. Spragens Federal Tax Clinic*, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, last accessed Sept. 22, 2013, www.wcl.american.edu/clinical/federal.cfm.

¹¹⁹In 2005, she held her sixth, and last, conference on low-income tax issues at American University. She also testified for the fourth time before the IRS Oversight Board on February 1, 2005. *Hearing on Leverage Before the IRS Oversight Bd.* (Feb. 1, 2005) (statement of Janet Spragens, Professor of Law, American University, Washington College of Law), http://www.treasury.gov/irsob/meetings/2-01-05/statement_spragens.pdf. Her testimony contains an impassioned plea for the Service to use its modernization effort to assist taxpayers rather than to create more mechanized processes for moving cases with no personal involvement. *Id.* She sets out her vision for the role of LITCs in the tax system as a way to obtain orderly administration of taxes. *Id.* She once again does an excellent job advocating for low-income taxpayers and explaining the need for LITCs. Her written statement provides an excellent insight into the state of the LITC community in 2005. *Id.*

mittee to address the problem.¹²⁰ The stated focus of the hearing was that “Congress will review the Taxpayer Advocate report in order to assess the mission and priorities for the upcoming year. The hearing will also address the functioning and funding of the Low-Income Taxpayer Clinic program.”¹²¹ Oral testimony at the hearing was by invitation; however, printed material was also accepted.¹²²

Nina Olson’s testimony focused on issues concerning the National Taxpayer Advocate’s office and the particular needs of that office as the Service struggled to adjust to the changes made by the 1998 legislation. Most of the clinicians who spoke focused on describing the work of low-income taxpayer clinics. Les Book and Janet Spragens focused on the funding.¹²³ As the chart above indicates, Congress did listen again and has gradually increased the funding, although not yet to the recommended \$15.0 million level.¹²⁴

Oversight of the grant program has impacted LITCs. Initially, oversight of the grant program was placed with the Internal Revenue Service Assistant Commissioner (Wage and Income).¹²⁵ In 2003, oversight of the grant pro-

¹²⁰ *Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 107th Cong. 37, 48 (July 12, 2001).

¹²¹ *Id.* at 2.

¹²² *Id.* at iii. Those invited to testify were Nina Olson, the National Taxpayer Advocate; Leslie Book, Federal Tax Clinic, Villanova Law School; Alan H. Cohen, Low-Income Taxpayer Clinic, Ithaca College; Jeffrey S. Gold, Community Tax Aid, Inc.; Timothy B. Heavenner, Community Tax Law Project; Dixon R. Rich, Jr., Low-Income Taxpayer Clinic, University of Pittsburgh School of Law; and Janet Spragens, Federal Tax Clinic, Washington College of Law, American University. *Id.* The oral and written testimony of these individuals provides an excellent snapshot of LITCs in 2001 and some description of their history. This oversight hearing provides one of the richest sources of information on the LTC program at its most explosive moment of growth.

¹²³ *Id.* at 44-45, 53.

[L]argely because of the success and remarkable growth of the LTC program . . . the IRS has been placed in a very difficult situation that will only get worse. . . . According to the IRS, of the 102 organizations awarded funding for 2001, almost 50 percent of those organizations would have received additional funding if the \$6 million authorization cap [in section 7526(c)(1)] were higher and more appropriated funds were available. Moreover, according to the IRS, in 2001, the \$6 million funding limitation prevented eight otherwise qualifying organizations from receiving any funding at all.

Id. at 44. He went on to recommend that Congress increase the total available grant funds to \$15.0 million. *Id.* at 42. Janet Spragens echoed his call for an increase in the funds:

The only problem today that exists in this extremely successful program is that it is running out of money; and as other Members of the panel have said, the statutory cap, which is now \$6 million in section 7526, badly needs to be adjusted upward; and we are suggesting a cap of \$15 million.

Id. at 53. Tim Heavenner, Executive Director of the Community Tax Law Project, also echoed the suggestion of \$15.0 million. *Id.* at 52.

¹²⁴ *Supra* note 107.

¹²⁵ *Cf. Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 107th Cong. 44, 45 (July 12, 2001).

gram was moved to the National Taxpayer Advocate.¹²⁶ The oversight has not always been harmonious and caused some discomfort between former allies Nina Olson and Janet Spragens over the issue of the purpose of academic clinics and the goal of teaching, writing, and advocating within the community versus handling the maximum number of cases.¹²⁷ Oversight has also created friction between the NTA and the Treasury Inspector General for Tax Administration (TIGTA) because TIGTA seeks greater oversight of grant programs.¹²⁸ The NTA's office has made significant changes to the required grant reports over the past few years, creating varied paths to obtaining grant funds.¹²⁹

The most remarkable change after the establishment of the grant concerns the makeup of LITCs.¹³⁰ Prior to the establishment of CTLP in 1992, the first 18 years of LITCs involved only academic clinics.¹³¹ By 1998, three of the 17 clinics were independent with the remaining clinics coming from academia. That changed dramatically in 1999 as the first grants were issued.¹³² Starting that year, academic and independent clinics grew but legal services organizations entered the mix and overtook the other types of clinics combined.¹³³ This change in the mix of types of clinics created a change in the makeup of the LTC community. While academic clinics continue to provide

¹²⁶ Cf. NAT'L TAXPAYER ADVOC., 2014 NAT'L TAXPAYER ADVOC. FISCAL YEAR OBJECTIVES REP. TO CONGRESS at 110, <http://www.taxpayeradvocate.irs.gov/userfiles/file/FullReport/Fiscal-Year-2014-Objectives-Report-to-Congress.pdf>.

¹²⁷ See Abramowitz, *supra* note 108, at 1128-30. Perhaps this characterization overstates the dispute, but the article reflects clear discomfort by the author with the direction of the grant program at the IRS and its criteria for awarding grant funds. See *id.* The article points out that academic clinics were the norm at the time of the creation of the grant, yet the grant administrators were ignoring or giving little credit to academic clinics for the work they do in educating and writing. *Id.* at 1135-37. Grant funding relied too much on case processing.

¹²⁸ See TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, REF. NO. 2011-10-067, THE TAXPAYER ADVOCATE SERVICE CAN MORE EFFECTIVELY ENSURE LOW-INCOME TAXPAYER CLINICS ARE APPROPRIATELY USING GRANT FUNDS (July 19, 2011). Perhaps the most interesting part of the report is the response from the NTA. She takes a very firm position concerning the confidentiality of the case files in the LITCs and declines to consider their review absent direction from Congress. *Id.* at 19.

¹²⁹ Compare TAXPAYER ADVOCATE SERVICE, LOW INCOME TAXPAYER CLINIC: 2009 GRANT APPLICATION, Appendix A (2009), with TAXPAYER ADVOCATE SERVICE, LOW INCOME TAXPAYER CLINIC: 2011 GRANT APPLICATION, Appendix A (2011) (showing the criteria the NTA finds important in determining whether and how much to grant). Looking at the list of grant recipients over the years, it is clear that factors distinguish which applicants succeed and the amount of grant a successful applicant receives.

¹³⁰ See *infra* Appendix A.

¹³¹ Leslie Book, *Tax Clinics: Past the Tipping Point and to the Turning Point*, 92 TAX NOTES (TA) 1089 (Aug. 20, 2001).

¹³² See *id.* (discussing the benefits LITCs derive when housed in a legal services organization).

¹³³ See *infra* Appendix A. By 2011, almost 70 LITCs existed in legal services organizations. That number of LITCs exceeds the combined number of academic and independent LITCs handling tax controversy work. Legal Services is described in some detail below. These organizations exist throughout the United States; however, not every legal services organization has sought an LTC — about 65-70 out of 130.

leadership in organizations such as the ABA Tax Section and in writing and teaching on low-income taxpayer issues, legal services organizations bring to the community a vision of broader issues impacting low-income taxpayers. Legal services organizations have the ability to link issues across practice lines. Academic and independent clinics encounter structural difficulties making these broader links because their practice focuses solely on tax issues.

The presence of independent clinics and legal services organizations brought issues of training to the community of LITC practitioners since many individuals charged with running LITCs did not have a background in tax. Unlike almost all of the directors of the pre-1998 clinics who were tax teachers and tax practitioners, the new clinicians came from a variety of backgrounds. As the grant money became available, community and legal service organizations that saw the need for taxes to serve their clients sought and received grants without having lawyers whose background provided them with the ability to comfortably step into tax representation. The Senate considered this issue in its version of section 7526, which allowed for the establishment of one or more assistance centers with the grant funds.¹³⁴ That provision dropped out of the proposed legislation during the conference process leaving new clinicians without a natural source of training and often with no mentor in their organization having a tax background. Several programs have stepped in to fill this breach but the lack of a system of training for clinicians, often situated in an office by themselves, remains a challenge and receives some discussion below.

Though transcendent leaders like Janet Spragens and Nina Olson have not emerged from the LITC ranks in the post-1998 era, several individuals have distinguished themselves and deserve mention. Robert Nadler emerged as a leader on the innocent spouse issue.¹³⁵ The innocent spouse provision changed dramatically in the 1998 legislation that also created the grant for LITCs.¹³⁶ Figuring out the contours of the new legislation and the best approaches to administrative requests and to litigation required knowledge often difficult to achieve on a case-by-case basis. Robert Nadler retired from the Office of Chief Counsel, after working there over three decades, and joined the staff of the legal services LITC in his hometown of Nashville, the Legal Aid Society of Middle Tennessee and the Cumberlands.¹³⁷ He prepared an extensive manual on innocent spouse issues that he distributed for free to LITCs and later turned the manual into a book published by the ABA Tax Section.¹³⁸

¹³⁴H.R. REP. NO. 105-599, at 303 (1998) (Conf. Rep.).

¹³⁵*Cf.* ROBERT B. NADLER, A PRACTITIONER'S GUIDE TO INNOCENT SPOUSE RELIEF: PROVEN STRATEGIES FOR WINNING SECTION 6015 TAX CASES (2011).

¹³⁶H.R. REP. NO. 105-599, at 249-251, 303 (1998) (Conf. Rep.).

¹³⁷*Our Lawyers – Nashville Office*, LEGAL AID SOCIETY OF MIDDLE TENNESSEE AND THE CUMBERLANDS, last accessed Sept. 22, 2013, www.las.org/our_lawyers/nashville.

¹³⁸ROBERT B. NADLER, THE INNOCENT SPOUSE MANUAL, REPRESENTING TAXPAYERS IN INNOCENT SPOUSE CASES (self published); ROBERT B. NADLER, A PRACTITIONER'S GUIDE TO INNOCENT SPOUSE RELIEF (2010).

He, along with Paul Kohlhoff, a professor at Valparaiso University School of Law and director of the LITC there, successfully challenged the regulation adopted by the Service with respect to the equitable provision of the innocent spouse law, setting in motion perhaps the greatest coordinated litigation effort of the LITC movement.¹³⁹

While Robert Nadler and Paul Kohlhoff led the innocent spouse litigation with the Tax Court victory in *Lantz*,¹⁴⁰ Professor Carl Smith, former clinic Director at Cardozo Law School, picked up the charge and coordinated clinicians around the country as they pressed this issue.¹⁴¹ His use of the internet to keep everyone informed and coordinate responses as well as to pass out arguments and theories as they emerged brought the LITC community together in a way not previously accomplished. While the Service continued to win the issue in the Circuit courts, it eventually conceded the issue in Notice 2011-70 thanks to the coordinated effort by the LITC community.¹⁴² Carl Smith, a prolific writer and thinker, has continued to use the successful

¹³⁹ *Lantz v. Commissioner*, 132 T.C. 131 (2009), rev'd, 607 F.3d 479 (7th Cir. 2010). The Tax Court held in *Lantz* that the regulations under section 6015(f), which limited individuals claiming innocent spouse relief for equitable reasons to those filing claims within two years of the first collection activity on the account, were invalid. The government appealed this decision to the Seventh Circuit which reversed; however, the decision of the Tax Court essentially set up a challenge in every case where the notice of determination was received denying relief due to this regulation.

¹⁴⁰ *Id.*

¹⁴¹ Leslie Book, *In Honor of Carlton Smith – Co-Recipient of the 2013 Janet R. Spragens Pro Bono Award*, ABA SECTION OF TAXATION NEWSQUARTERLY, Spring 2013, at 21.

¹⁴² Notice 2011-70, 2011-32 I.R.B. 135.

technique created for the innocent spouse cases to keep the LITC community informed about other issues and cases of general interest.¹⁴³

The ABA Tax Section recognized the efforts of Carl Smith by awarding him, along with Mark Moreau, who is discussed below, the 2013 Janet Spragens Award for outstanding pro bono service.¹⁴⁴ Professor Les Book, in describing Carl Smith, wrote:

Carl has over the course of his years as a clinician demonstrated an ongoing, sustained, energetic and creative commitment to the interests of lower-income and underrepresented taxpayers. He has done so not only in his direct representation of clients and training of students, but in his efforts drafting amicus briefs, writing articles, and coordinating litigation on high impact and meaningful cases.¹⁴⁵

Professor Les Book, who headed the tax clinic at Villanova Law School from 1999 to 2008, led the community by publishing articles that brought

¹⁴³ Carl Smith has written extensively on procedural and substantive issues impacting low-income taxpayers. See Eric L. Green & Carlton M. Smith, *Recent Tax Court Innocent Spouse Rulings Under Code Sec. 6015(f) Have Made Code Sec. 6015(b) and (c) Virtually Superfluous*, 11 J. TAX PRAC. & PROC. 29 (Aug.-Sept. 2009); Carlton M. Smith, *DOJ Argues No Equitable Tolling Ever in Tax*, 137 TAX NOTES (TA) 897 (Nov. 19, 2012); Carlton M. Smith, *Cracks Appear in the Code's 'Jurisdictional' Time Provisions*, 137 TAX NOTES (TA) 511 (Oct. 29, 2012); Carlton M. Smith & Edward Stein, *Dealing With DOMA: Federal Non-Recognition Complicates State Income Taxation of Same-Sex Relationships*, 24 COLUM. J. GENDER & L. 29 (2012); Carlton M. Smith, *Tax Court Should Reject Twombly/Iqbal Plausibility Pleading*, 136 TAX NOTES (TA) 835 (Aug. 13, 2012); David Gray Carlson & Carlton M. Smith, *New York Tax Warrants: In the Strange World of Deemed Judgments*, 75 ALB. L. REV. 671 (2011-2012); Carlton M. Smith, *The Tax Court Keeps Growing Its Collection Due Process Powers*, 133 TAX NOTES (TA) 859 (Nov. 14, 2011); Carlton M. Smith, *The Service Abandons Two-Year Limit to File for Equitable Innocent Spouse Relief*, 31 ABA SECTION OF TAXATION NEWSQUARTERLY 1 (Fall 2011); Carlton M. Smith, *Innocent Spouse: Let's Bury that 'Inequitable' Revenue Procedure*, 131 TAX NOTES (TA) 1165 (Jun. 13, 2011); Carlton M. Smith, *Friedland: Did the Tax Court Blow Its Whistleblower Jurisdiction?*, 131 TAX NOTES (TA) 843 (May 23, 2011); Carlton M. Smith & Keith Fogg, *Tax Court Collection Due Process Cases Take Too Long*, 130 TAX NOTES (TA) 403 (Jan. 24, 2011); Carlton M. Smith, *Equitably Tolling Innocent Spouse and Collection Due Process Periods*, 126 TAX NOTES (TA) 1106 (Mar. 1, 2010); Carlton M. Smith, *Does Collections Due Process Violate the Appointments Clause?*, 126 TAX NOTES (TA) 777 (Feb. 8, 2010); Carlton M. Smith & Keith Fogg, *Collection Due Process Hearings Should Be Expedited*, 125 TAX NOTES (TA) 919 (Nov. 23, 2009) (co-author with Keith Fogg); Carlton M. Smith, *Let the Poor Sue for a Refund Without Full Payment*, 125 TAX NOTES (TA) 131 (Oct. 5, 2009); Carlton M. Smith, *How Can One Argue 'It's Not My Joint Return' in Tax Court?*, 124 TAX NOTES (TA) 1266 (Sept. 21, 2009); Carlton M. Smith, *Does the Tax Court's Use of Its Golsen Rule in Unappealable Small Tax Cases Hurt the Poor?*, 11 J. TAX PRAC. & PROC. 35 (Feb.-Mar. 2009); Carlton M. Smith, *Settlement Officers Shouldn't Hold Collection Due Process Hearings*, 121 TAX NOTES (TA) 609 (Nov. 3, 2008); Carlton M. Smith, *Does the Failure to Appoint Collection Due Process Hearing Officers Violate the Constitution's Appointments Clause?*, 10 J. TAX PRAC. & PROC. 35 (Oct.-Nov. 2008); Carlton M. Smith, *IRS Collection Financial Standards Changes Bring Relief to the Poor*, 117 TAX NOTES (TA) 879 (Nov. 26, 2007).

¹⁴⁴ Book, *supra* note 141.

¹⁴⁵ See e-mail from Leslie Book, Professor, Villanova Law School, to ABA (Oct. 29, 2012) (on file with author).

attention to the problems with the earned income tax credit and with the provisions governing determination of a dependent.¹⁴⁶ Through his efforts and those of others in the LITC community, the Code provisions concerning these issues were changed in 2004 to employ a more logical test, which is easier for the Service to administer and for practitioners and taxpayers to navigate.¹⁴⁷

Mark Moreau at the Southeast Louisiana Legal Services, who entered the LITC community immediately after the passage of section 7526, saw the need for information as the LITC community grew and self-published *Tax Practice for Legal Services and Pro Bono Attorneys*, which he provided at no cost to all clinics.¹⁴⁸ Mark Moreau and his clinic also became experts in representing low-income taxpayers in the face of disaster as a result of Hurricane Katrina.¹⁴⁹ He used his expertise to provide tremendous service to his clients for which his organization received special recognition from the American Bar Association in 2012.¹⁵⁰ He also used his expertise to author a chapter on disaster-related tax issues in *Effectively Representing Your Client before the IRS*.¹⁵¹ His effective leadership in producing the training manual and in lead-

¹⁴⁶ See Leslie Book, *A New Paradigm for IRS Guidance: Ensuring Input and Enhancing Participation*, 12 FLA. TAX REV. 517 (2012); Leslie Book, *Refund Anticipation Loans and the Tax Gap*, 20 STAN. L. & POL'Y REV. 85 (2009); Leslie Book, *Freakonomics and the Tax Gap: An Applied Perspective*, 56 AM. U. L. REV. 1163 (2007); Leslie Book, *Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System*, 2006 WIS. L. REV. 1103 (2006); Leslie Book, *The Poor and Tax Compliance: One Size Does Not Fit All*, 51 U. KAN. L. REV. 1145 (2003); Leslie Book, *The IRS's EITC Compliance Regime: Taxpayers Caught in the Net*, 81 OR. L. REV. 351 (2002).

¹⁴⁷ See Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, § 201, 118 Stat. 1166 (2004). Professor Elizabeth Maresca, who runs the LITC at Fordham Law School, testified before the Oversight Committee of the House Committee of Ways and Means on June 15, 2004 in support of the changes to create a uniform definition of qualifying child. *Simplification of the Tax System: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 108th Cong. (2004) (statement of Elizabeth Maresca, Associate Clinical Professor, Fordham University School of Law).

¹⁴⁸ Mark Moreau, *Tax Law for Legal Services and Pro Bono Attorneys*, SOUTHEAST LOUISIANA LEGAL SERVICES, Mar. 27, 2012, <http://www.slls.org/documents/446501tax%20law%20manual%20LITC%20version%202012.pdf>.

¹⁴⁹ *Low Income Taxpayer Clinics*, TAXPAYER ADVOCATE SERVICE, last accessed Sept. 16, 2013, www.taxpayeradvocate.irs.gov/Tax-Professionals/Low-Income-Taxpayer-Clinics.

¹⁵⁰ The award given to Southeast Louisiana Legal Services came from the overall ABA and not just the Tax Section. Francine Lipman, *In Celebration of Mark Moreau—Co-Recipient of the 2013 Janet R. Spragens Pro Bono Award*, ABA SECTION OF TAXATION NEWSQUARTERLY, Spring 2013, at 20. It was the 2012 Hodson Award. *Id.* The Hodson Award honors an outstanding government or public sector law office. *Hodson Award*, AMERICAN BAR ASSOCIATION, last accessed Sept. 22, 2013, http://www.americanbar.org/groups/government_public/awards/hodson_award.html. It was given to recognize the continued efforts to provide legal assistance to low-income residents affected by Hurricane Katrina and the Deepwater Horizon oil spill. Lipman, at 20.

¹⁵¹ Mark Moreau, *Assisting Victims of Disasters*, in *EFFECTIVELY REPRESENTING YOUR CLIENT BEFORE THE IRS*, AMERICAN BAR ASSOCIATION (2011).

ing in an emerging area of client need demonstrated the kind of talent that entered the LITC community with the influx of legal services attorneys.

The ABA Tax Section named Mark Moreau the joint recipient of the 2013 Janet Spragens Award for pro bono service to low-income taxpayers.¹⁵² Susan Morgenstern, the director of the LITC at the Cleveland Legal Aid Society provided the following description of Mark Moreau:

Mark pioneered the inclusion of tax as a legal services practice area. Historically, tax had not been perceived as an issue for poverty law attorneys. Mark forged ahead nonetheless and deepened expertise in this community [H]e wrote a tax practice manual for legal services and pro bono attorneys which has been a singular resource for these attorneys Mark is a contributing author to the ABA's tax practice treatise, *Effectively Representing Your Client Before the Service*. He wrote the new chapter, *Tax Issues in Disasters*.¹⁵³

The award also highlights his significant, and continuing, contributions to assist those impacted by Katrina and the Gulf oil spill.

Professor Diana Leyden, director of the clinic at University of Connecticut, which also entered the LITC community in 1999 immediately after the passage of section 7526, has provided leadership to the community through her service with the ABA Tax Section, her tax clinic textbook, and her engaging qualities. In selecting her to receive the ABA Tax Section Pro Bono award in 2005, that organization recognized her overall organization skills and the energy she brought to the community. She serves as a frequent speaker and leader on emerging issues in the LITC community.¹⁵⁴

As the community expanded during this period from a relatively small group of scholars having primarily tax backgrounds to a diverse group with a multiplicity of backgrounds, it became harder for any one person to lead. The community also continued to have Nina Olson providing leadership on a number of issues facing low-income taxpayers. Still, the LITC movement now reaches every state and has matured in a way that would have been almost impossible to envision 20 years ago before Janet Spragens went before the Restructuring Commission and casually mentioned that federal funding would change the community. To capture the changes of the LITC movement, an Appendix showing the makeup and numbers of LITCs is included with this Article.¹⁵⁵ The comments of clinicians who responded to my informal survey provide a helpful glimpse at the diversity and strength of the com-

¹⁵²Lipman, *supra* note 150, at 20.

¹⁵³E-mail from Susan Morgenstern, Senior Attorney, The Legal Aid Soc'y of Cleveland, to author (Oct. 31, 2012) (on file with author).

¹⁵⁴See, e.g., *Customer Service Needs of Taxpayers: Panel Before the I.R.S. Oversight Bd.* (Feb. 8, 2006) (statement of Diana Leyden, Assoc. Clinical Professor of Law, Univ. of Conn. Sch. of Law). In her presentation before the IRS Oversight Board, she addresses the concerns of low-income taxpayers as customers of the IRS. *Id.* at 2. The insight she displays in this presentation is representative of the advocacy she brings to the LITC community.

¹⁵⁵Appendix A, *infra*, traces the number and make up of tax clinics from 1999 to 2012.

munity in 2012.¹⁵⁶ They also provide a strong statement on the importance of the grant to sustain the LTC movement.

IV. Parallel Movements in Representing the Poor

The preceding Part focuses on the chronology of major events in the LTC movement and on significant individual participants in that movement. This Part focuses on two parallel movements, legal services and academic clinics. Understanding these parallel movements allows a better understanding of the history of LTCs. The discussion of legal services precedes the discussion of academic clinics.

A. Legal Services

Prior to 1964, delivery of legal services to the poor fell to local bar groups and individual attorneys providing pro bono or locally-subsidized service.¹⁵⁷ In 1964, as a part of President Johnson's War on Poverty, Congress passed the Economic Opportunity Act.¹⁵⁸ That Act created the Office of Economic Opportunity (OEO) through which federal money became available to provide legal services to the poor.¹⁵⁹

The OEO funded poverty law firms working for private nonprofit entities in local offices around the country.¹⁶⁰ These programs were not uniformly

¹⁵⁶ A complete compilation of survey responses is available with the online version of this issue at http://www.americanbar.org/groups/taxation/publications/tax_lawyer_home/13fal.html. The survey responses discuss how individual tax clinics began and why.

¹⁵⁷ See generally Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, CENTER FOR LAW AND SOCIAL POLICY (2007). Three books provide significant insight into the provision of legal services to the poor prior to 1964 and the introduction of significant federal funds in an effort to address the needs. The first book, published in 1919, is *Justice and the Poor* by Reginald Heber Smith. Smith, a recent Harvard Law graduate at the time of the publication, was hired out of school by the Boston Legal Aid Society. He was so appalled at the level of legal service to the poor in the United States he wrote a stirring book on the inequalities, which caught the attention of the bar. See REGINALD HEBER SMITH, *JUSTICE AND THE POOR* 8 (1919).

The second book, *Legal Aid in the United States* by Emery A. Brownell, traces the history of legal aid in the United States since its beginning in New York City in 1876. EMERY A. BROWNELL, *LEGAL AID IN THE UNITED STATES* (1951). The bulk of the book is an analysis of the state of legal aid in the United States in 1949. See *id.* at 25. The book contains a very detailed account of the state of legal aid with plenty of empirical data. See generally *id.* at 25.

The third book, *Justice and Reform: The Formative Years of the OEO Legal Services Program* by Earl Johnson, Jr., primarily focuses on the post-1964 actions of the Legal Services Program of the Office of Economic Opportunity, which he headed; however, its first chapter is an excellent history of legal assistance to the poor in America prior to 1964. EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM* 3-4 (1974).

¹⁵⁸ Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (1964).

¹⁵⁹ HOUSEMAN & PERLE, *supra* note 157, at 7.

¹⁶⁰ *Id.* at 9. Location of the programs was not evenly distributed across the country with areas in the South and Southwest receiving less coverage. *Id.*

popular because of their aggressive litigation policies.¹⁶¹ The programs quickly became inundated with requests for services. The Director of OEO's legal branch decided to set law reform for the poor as the agency's chief goal rather than setting a goal of representing as many individuals as possible.¹⁶² This decision significantly influenced the type of cases the OEO lawyers accepted. It also led to the development of national legal advocacy centers that could support broad law reform litigation.¹⁶³ The national legal advocacy centers provided both training and case support.¹⁶⁴

The legal services attorneys quickly won major victories in the courts.¹⁶⁵ They also played critical roles in federal, state, and local legislation.¹⁶⁶ Being a part of the Office of Economic Opportunity did not ideally suit the attorneys pursuing litigation and policy change, or the administrators with sometimes conflicting program goals.¹⁶⁷ To address these concerns, the idea of an independent entity from which to run the legal service emerged.¹⁶⁸ Legislation to create an independent entity first passed in 1971, but many political considerations delayed final passage until 1974.¹⁶⁹ This legislation created a nonprofit corporation located in Washington, D.C., the Legal Services Corporation (LSC), through which funding for legal services throughout the country would run, removing the administration of the program from the Executive branch of the government.¹⁷⁰

The establishment of LSC sparked the creation of legal services offices throughout the United States and the establishment of national support centers on the core issues of a poverty law practice.¹⁷¹ The success resulting from the establishment of the OEO in 1965 and the independence derived through the 1974 law creating LSC sparked a heyday of legal services programs that lasted into the early 1980s when politics pared back the program.¹⁷² The elec-

¹⁶¹ *Id.* at 9-10.

¹⁶² *Id.* at 11.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 11-12.

¹⁶⁵ *Goldberg v. Kelley*, 397 U.S. 254 (1970) (transforming the use of due process by extending use to termination of welfare benefits); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (ensuring welfare recipients benefits were not arbitrarily denied); *King v. Smith*, 392 U.S. 309 (1968) (providing remedies against administrators of welfare programs); see *HOUSEMAN & PERLE*, *supra* note 157 at 20-21 (discussing important victories).

¹⁶⁶ *HOUSEMAN & PERLE*, *supra* note 157, at 13.

¹⁶⁷ See generally *id.* at 14-16.

¹⁶⁸ *Id.* at 19.

¹⁶⁹ *Id.* at 19-22. On July 25, 1974, President Nixon signed into law the Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378, 42 U.S.C. 2996. See *id.* at 22.

¹⁷⁰ *Id.* at 22-23.

¹⁷¹ *Id.* at 26. The core issues of a poverty law practice include: public benefits, housing, economic and social welfare, and consumer law.

¹⁷² *Id.* at 29-33. The success of legal services may also have caused Senator Montoya to think about adding taxes to the list of services performed by legal services when he proposed funding for pilot programs to make that happen back in 1976. 122 Cong. Rec. 1469 (1976) (statement of Sen. Montoya).

tion of Ronald Reagan in 1980 led to restrictions on activity and on funding. This stopped LSC's growth and set in motion a struggle for survival that continues today.¹⁷³

Neither the poverty law offices established by the OEO nor the legal services offices established by LSC serviced individuals with tax problems, in large part because of the view that tax issues were not poverty law issues but rather issues concerning the rich.¹⁷⁴ While tax issues may have been of marginal interest to the poor at the outset of these programs, the Clinton-era passage of the Welfare to Work law and the expansion of the earned income tax credit (EITC) changed that dramatically.¹⁷⁵

The passage of section 7526 and the creation of the grant funds for LITCs led to the infusion of tax as a practice area for legal services offices.¹⁷⁶ In 1998, when section 7526 passed, no LSC field office had a tax component.¹⁷⁷ Almost all LITCs were in academic settings,¹⁷⁸ with three stand-alone LITCs led by Nina Olson's Community Tax Law Project.¹⁷⁹ The grant funds changed that immediately. In 1999, the first LSC funded programs created LITCs.¹⁸⁰ By 2012, a near majority of LITCs existed in LSC-funded programs¹⁸¹ and

¹⁷³ See, e.g., John A. Dooley, III, *Legal Services in the 1990s in CIVIL JUSTICE: AN AGENDA FOR THE 1990s*, at 221-40 (Esther F. Lardent ed., 1991) (discussing the difficulties legal services faced under the Reagan administration). "Presumably, a 'kinder and gentler nation' will mean that the eight year war on the Federal legal services program by the Executive branch of the United States government will eventually stop . . ." *Id.* at 221.

¹⁷⁴ The marriage of tax law and poverty law becomes clear after the passage of the Welfare to Work legislation in 1995 and is well discussed in Janet Spragens, *Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate?*, 73 TAX NOTES (TA) 353, 353-54 (Oct. 21, 1996). While concerns existed about the need to assist low-income taxpayers as far back as 1974, as indicated by the start of the tax clinic at Hofstra and by Senator Montoya's proposed legislation adding tax to legal services organizations, the discussion in the 1978 Service report of the types of issues handled by the early clinics suggests that low-income individuals had tax problems but those problems were not tied in any specific way to the delivery of benefits to the poor as occurred after 1995.

¹⁷⁵ See *id.*; see also Ventry, Jr., *supra* note 11.

¹⁷⁶ See Janet Spragens & Nina Olson, *Tax Clinics: The New Face of Legal Services*, 88 TAX NOTES (TA) 1525, 1525, 1527 (Sept. 15, 2000).

¹⁷⁷ See Nina Olson, *Low Income Taxpayer Clinics: The Means to a Fairer Tax System*, 3 COMMUNITY TAX L. REP. 12, 21 (1998) (discussing the clinics in existence in 1998, which included 13 academic and three independent clinics).

¹⁷⁸ *Id.* See the article for a list of the then existing academic clinics.

¹⁷⁹ *Id.* The three independent clinics were: 1) Community Tax Law Project; 2) Chicago Tax Law Assistance Project; and 3) District of Columbia Center for Public Interest Tax Law.

¹⁸⁰ See *infra* Appendix A which contains a list of all of the types of clinics for each year after establishment of the grant including 1999. Comparing that list with the clinics existing in 1998, the first LSC clinics appear where none existed previously.

¹⁸¹ See *infra* Appendix A which contains a list of all of the types of clinics for each year after establishment of the grant including 2012. Appendix A, *infra*, contains a breakdown of the types of clinics with the classification academic, independent or LSC.

a majority of LSC field offices had an LITC.¹⁸² Since the passage of section 7526, approximately 20 academic tax clinics opened as compared to over 60 LSC-funded programs.¹⁸³

Long steeped in the tradition of holistic representation, legal services programs bore witness to the massive overhaul of the traditional welfare programs that had supported generations of families and clients. Congress directed the states to implement “welfare to work” programs, and directed the states to limit the amount of time an individual could receive benefits to 36-60 months over a lifetime.¹⁸⁴ Tax return filing obligations welcomed individuals entering the workforce, and with this obligation came the development of the “poverty tax” practice area for legal services attorneys.

Simultaneously, legal services programs began to diversify their funding bases and the section 7526 funding facilitated the development of this new practice area. In the development of this Article, all LITCs received a survey seeking to gather information about the origins of each clinic. Responses from the LITCs located in legal services organizations show twin interests, holism and funding needs, as the bases for their creation.¹⁸⁵ Without the grant funds, few, if any, tax programs would exist in legal services organizations.

Adding LSC lawyers to the LITC community brought in a group with deep roots in poverty law and experience in fields outside of taxation.¹⁸⁶ The expertise outside of tax law that these attorneys possess and the overall case-load of their offices allow legal services’ attorneys to mine the dockets in their offices to identify the tax issues in cases that at first blush do not appear to be tax cases, such as foreclosures, public benefits’ reduction or termination, and divorce. The issues raised by LSC attorneys looking at traditional poverty law cases with a tax angle assisted lawyers from academic and independent LITCs in recognizing issues of conjunction between tax and other areas of client

¹⁸² Compare the total number of LSC clinics in Appendix A *infra*, for 2012 with the total number of LSC offices in the United States. “LSC distributes more than 90 percent of its total funding to 134 independent nonprofit legal aid programs with more than 800 offices.” *Fact Sheet on the Legal Services Corporation*, LEGAL SERVICES CORPORATION, last accessed Sept. 14, 2013, <http://www.lsc.gov/about/what-is-lsc>.

¹⁸³ See *infra* Appendix A and compare the number of academic programs in 2012 with the 13 in existence in 1998. Also compare the number of LSC funded programs in 2012 with zero that existed in 1998.

¹⁸⁴ See Spragens, *supra* note 102.

¹⁸⁵ See *supra* note 156.

¹⁸⁶ Susan Morgenstern, *Reformer*, in CAREERS IN TAX LAW: PERSPECTIVES ON THE TAX PROFESSION AND WHAT IT HOLDS FOR YOU 229-230 (John Gamino, Robb A. Longman & Matthew R. Sontag eds., 2009).

need.¹⁸⁷ By essentially merging tax into LSC organizations, section 7526 has fulfilled the vision of Senator Montoya that tax is necessary for effective legal service to the poor, and demonstrated the tipping point merging poverty law and tax discussed by Professor Book.¹⁸⁸ This merger of tax law with poverty law brings to the clients served many benefits that did not exist when tax stood outside the poverty law community.

The post-1998 movement of tax clinics away from the academic model and towards LSC-funded programs and independent clinics also had the equally important benefit of involving the larger community of tax professionals in issues concerning low-income taxpayers.¹⁸⁹ Section 7526 encouraged clinics to seek volunteers in order to meet the matching requirement.¹⁹⁰ While the ABA Tax Section established the predecessor to the current Pro Bono and Tax Clinic Committee back in 1976,¹⁹¹ prior to the proliferation of nonacademic tax clinics, no structured outlets for pro bono tax work and education on the issues facing low-income taxpayers existed for tax professionals. With the greater community of tax professionals involved, issues regarding legislation,

¹⁸⁷ Janet Spragens & Nina Olson, *Tax Clinics: The New Face of Legal Services*, 2000 TAX NOTES TODAY (TA) 181-101 (Sept. 18, 2000). This is seen in some of the practice areas where LSC clinics have taken the lead such as domestic violence, innocent spouse and identity theft. Because LSC clinics exist within a law firm that has a large poverty law practice, they receive referrals in practice areas not normal for “stand alone” LITCs. Individuals suffering the effects of domestic violence may not think about the tax issues presented by their circumstance. LSC attorneys practicing in the same office as attorneys representing victims of domestic violence educate their colleagues who then make referrals of the clients coming through the domestic violence portion of the clinic. It is not a coincidence that Bob Nadler, working for an LSC in Tennessee, is the person who developed the handbook on innocent spouse issues. See ROBERT B. NADLER, “A PRACTITIONER’S GUIDE TO INNOCENT SPOUSE RELIEF” (ABA 2010). This was possible because of the volume of these issues presented in a LTC housed within an LSC office rather than a stand-alone LTC. Similarly, it is not a coincidence that Susan Morgenstern from the Legal Aid Society in Cleveland became the leader in the community on the tax issues involving domestic violence.

¹⁸⁸ See Book, *supra* note 3, at 1089-90.

¹⁸⁹ One of the major reasons Nina Olson started the Community Tax Law Project, the first nonacademic tax clinic, was her failed attempt to find an organized means to engage in pro bono work as a new tax lawyer. Trumbull, *supra* note 90.

¹⁹⁰ See, e.g., I.R.S. Publication 3319 (Rev. 5-2012) (2013), at 26-27. Pro bono panels are discussed at almost every LTC annual conference. Because the time of the volunteering tax professional gets valued and counts toward the match necessary to obtain the Code section 7526 grant, these panels hold high importance for any LTC that does not have its own source of funding. The benefit provided by the pro bono panels to the overall program stems both from the impact on the grant and the connection with the local practitioner community. These panels provide an opportunity for tax professionals unaccustomed to handling tax controversy matters to gain experience in this aspect of the practice while using their tax knowledge to assist others.

¹⁹¹ E-mail from Janet In, Counsel to ABA Tax Section, to author (Aug. 8, 2012) (on file with author). The annual reports show that the early work of the Small Taxpayer Program, as the first Tax Section committee addressing these issues was called, focused on Volunteer Income Taxpayer Assistance and not on controversy work. See *Committee Report*, 30 TAX LAW. 847, 895 (1976-1977) (describing the first year of the new committee).

regulation and administration, in addition to controversy, become easier for low-income taxpayer advocates to pursue.

Injecting LITCs into LSC programs has not come without some difficulties. Because LSC attorneys staffing the newly formed LITCs did not generally come from tax practice backgrounds, many lacked essential tax knowledge. Additionally, LSC attorneys handling tax matters often have no colleagues in their office also handling tax, including a lack of tax knowledge at the supervisory level. Since Congress eliminated the provision in the Senate version of section 7526 that would have allowed use of grant funds to create a national assistance center or a national training program on tax, many of these attorneys struggle as they learn tax concepts and many learn those concepts only in the narrow construct of low-income tax cases without an appreciation for how tax issues of low-income taxpayers might fit into the broader picture of tax law. So, they had to find mentors from remote offices. Programs and materials provided by the ABA Tax Section and the National Taxpayer Advocate's office filled in some of the gap, but a more cohesive system of training and support would significantly assist these lawyers as they represent low-income taxpayers.¹⁹²

The grant funds have gone a long way toward the fulfillment of the vision that both Senator Montoya and Professor Stuart Filler had during the 1970s of placing tax law within the LSC. While the merger of tax and LSC programs does not exist in every location, it exists within most LSC offices. Having LSC attorneys become low-income taxpayer clinicians has benefited not only the specific taxpayers they serve but also the population of low-income taxpayers in general as LSC attorneys pushed for rights on issues not previously identified by permitting coverage of a much higher percentage of low-income taxpayers.

B. *Academic Clinics*

In contrast to the convergence of LSC-funded programs and LITCs, which involved initially separate tracks eventually merging, the paths of academic clinics and LITCs have not grown much closer. Still, it is important to examine the role of LITCs within the academic community because those LITCs hold the history as well as the potential for leadership. The passage of section

¹⁹²ABA programming was generally out of the financial reach of LSC attorneys because of the cost of membership, travel, and conference fees. To remedy that problem, the ABA Tax Section co-sponsored the low-cost workshops initially by Janet Spragens at American University. These are specifically designed to address issues facing practitioners who represent low-income taxpayers. After the death of Janet Spragens, the ABA continued the workshops eventually holding them twice a year: in May immediately prior to the ABA annual meeting in Washington and in December immediately prior to the LTC annual conference. A nominal fee is charged for these workshops so that the fee itself does not create a barrier to attendance. The ABA also provided a complimentary copy of the book it publishes on low-income taxpayer representation, *Effectively Representing Your Client before the IRS*, to each LTC receiving the grant under Code section 7526.

7526 did increase the number of academic LITCs, which correspondingly increased the interaction between LTC academic clinics and other academic clinics.¹⁹³

As described in much detail above, LITCs began in academic clinics.¹⁹⁴ Since LITCs were formed, and for their first 18 years existed entirely in academic clinics, the basic structure of LITCs drew from academic clinics and the academic clinical model.¹⁹⁵ Because LITCs started and existed so long in academic institutions, their development, in ways not always obvious, continues to retain influences from this source even though in 2013 academic tax clinics constitute less than 25% of the overall number of LITCs.¹⁹⁶

Some early academic tax clinics resulted from Department of Education grants but many, if not most, were funded by their institutions. The pre-1998 pressures on performance came from their academic institutions, which emphasized teaching as an equal or greater component than service to low-income taxpayers. These clinics strove not to serve the greatest numbers of taxpayers but to effectively train prospective lawyers. The conflict between the academic clinic cultural influence on LITCs and the post-1998 ascendance in the LTC community of LSC and independent tax clinics eventually came to a head through grant office goals.¹⁹⁷

Academic tax clinics came into existence after the start of the academic clinical movement.¹⁹⁸ Legal education in the United States initially drew primarily

¹⁹³In 1998, there were 182 ABA approved law schools in the United States. *ABA-Approved Law Schools by Year*, AMERICAN BAR ASSOCIATION, last accessed Jan. 18, 2013, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/by_year_approved.html. Almost all law schools by that point had some form of clinical programming. In 1998 13 academic law school LTC programs existed meaning approximately seven percent of law school clinical programs included the experience of a tax clinic. Nina Olson, *Low Income Taxpayer Clinics: The Means to a Fairer Tax System*, 3 COMMUNITY TAX L. REP. 12, 21 (1998). In 2012, there were 202 law schools essentially all of which had some form of clinical program. *ABA-Approved Law Schools by Year*, *supra*. In 2012 approximately 35 academic law school LTC programs existed meaning approximately 17% of law school clinical programs included the experience of a tax clinic. *Infra* Appendix A. Contrast these numbers with zero percent of LSC funded offices which had a tax clinic component in 1998 while over 60% of LSC funded programs had a tax clinic component in 2012.

The dramatic difference in the percentage of offices with a tax clinic comparing LSC funded offices with academic clinics demonstrates how the paths have differed following the passage of Code section 7526. The numerical differences led to other differences as well. Tax clinics can feed off of and provide support to many other clinics because of the penetration of tax into almost every corner of the law. The failure of Code section 7526 to trigger the same growth in academic tax clinics that it has in LSC tax clinics contributes to the lack of integration of tax clinics into the overall academic clinical community.

¹⁹⁴See The Report *supra* note 8, at 2-3.

¹⁹⁵For a general discussion of law school clinical programs and their goals, see J.P. "Sandy" Ogilvy, *Celebrating the 40th Anniversary of CLEPR*, 16 CLINICAL L. REV. 1, 19 (2009).

¹⁹⁶See *infra* Appendix A.

¹⁹⁷See Abramowitz, *supra* note 108, at 1129.

¹⁹⁸Compare The Report, *supra* note 8, at 2-3 (discussing the 1974 start of academic tax clinics), with Ogilvy, *supra* note 195, at 9, 11 (discussing the start of the academic clinical model).

from the apprentice model.¹⁹⁹ It evolved into an almost exclusively classroom model, but some schools did have clinics to assist in training students.²⁰⁰

It was in 1958 that William Pincus, then a program officer with the Ford Foundation in New York, and Emory Brownell, the Executive Director of the National Legal Aid and Defender Association (NLADA) hatched the idea of a grant from Ford to NLADA to encourage law schools to get law students to participate in legal aid clinics.²⁰¹

This idea led to the creation of the National Council for Legal Clinics (NCLC).²⁰² The NCLC issued grants of \$500,000 to 19 law schools from 1959 to 1965.²⁰³ While the delivery mechanism changed and the ABA and the American Association of Law Schools (AALS) became more involved, the Ford Foundation funded grants through 1980 by which time “nearly every law school in the country had at least one clinical course and many had substantially more.”²⁰⁴ The growth of law school clinics closely followed the creation of the Office of Economic Opportunity and the Legal Services Corporation.²⁰⁵ Many of the early academic clinics used LSC as the model for serving the poor while teaching law school students.²⁰⁶ Many of the early clinicians moved into academics from LSC positions.²⁰⁷

As the community of LITCs grew following the passage of section 7526, the grant office began applying grant criteria based on productivity.²⁰⁸ This basis for making grant decisions did not favor the academic clinical model and, arguably, did not align with Congressional goals in passing section 7526 since its passage sprang from the recommendation of an academic clinician at a time when almost all LITCs followed the academic model.²⁰⁹ The grant

¹⁹⁹ Ogilvy, *supra* note 195, at 3.

²⁰⁰ John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320, 322-23 (1930); Jerome N. Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907, 917 (1933); Quintin Johnstone, *Law School Legal Aid Clinics*, 3 J. LEGAL EDUC. 535, 535 (1951); Ogilvy, *supra* note 195, at 4.

²⁰¹ Ogilvy, *supra* note 195, at 9.

²⁰² *Id.* at 10.

²⁰³ *Id.* at 11.

²⁰⁴ *Id.* at 15.

²⁰⁵ See generally HOUSEMAN & PERLE, *supra* note 157 at 7-9, 19-27 (discussing the creation of OEO and LSC). See also Michael A. Mogill, *Professing Pro Bono: To Walk the Talk*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 5, 27 (2001).

²⁰⁶ Mogill, *supra* note 205, at 27.

²⁰⁷ *Id.*

²⁰⁸ See generally INTERNAL REVENUE OFFICE, PUBLICATION 3319: LITC: LOW INCOME TAX-PAYER CLINICS 2014 GRANT APPLICATION, <http://www.irs.gov/pub/irs-pdf/p3319.pdf>. See also Abramowitz, *supra* note 108.

²⁰⁹ Abramowitz, *supra* note 108. The argument concerning Congressional goals is the thesis of Nancy Abramowitz’s article.

office's emphasis on productivity may have suppressed additional growth of academic LITCs which, by nature, needed to emphasize teaching.²¹⁰

Perhaps in response to concerns raised by academic clinicians such as Nancy Abramowitz or to concerns raised by the Treasury Inspector General or other concerns, in 2009 the Service grant office embarked on a process of modifying the performance criteria used in selecting grant recipients.²¹¹ The review of performance criteria added additional categories, including such things as writing and speaking that recognize traditional academic pursuits.²¹² The changes to the performance criteria may, over time, impact the growth of academic LITCs. The departure from the grant in 2012 of two long time LTC academic programs does not suggest that the changes in the reporting requirements have tilted the model toward one in which academic LITCs will grow significantly.

Law school tax clinicians should seek leadership roles in the American Association of Law Schools (AALS) or in the Clinical Legal Education Association (CLEA.) The absence of leadership positions in these organizations diminishes the opportunities for networking within the academic clinical community and demonstrating to that community the benefits of tax clinics. Just as the addition of tax clinics created synergy for LSC offices, tax clinics create synergistic opportunities with other law school clinics when they cluster with other law school clinics, yet few law schools choose to open tax clinics.

Law school tax clinicians have produced very little scholarship.²¹³ Many law school tax clinicians direct their clinics as adjunct faculty or as faculty on

²¹⁰ Grant reporting creates another suppressing factor. The grant office receives pressure from the Treasury Inspector General who has oversight responsibility for the Service grant office. The substantial reporting requirements factor into the decisions of academic clinics, which may have alternative funding sources, to continue or initiate grant participation. Two academic clinics, Albany Law School and Valparaiso Law School, withdrew from the Service grant program in 2012 precisely for the reason of the burden of grant reporting. See e-mail from Debbie Kearns, Albany Law School, & Paul Kohlhoff, Valparaiso Law School, to author (Sept. 30, 2013) (on file with author).

²¹¹ The author has e-mails on file setting up the task force to review performance criteria. The author served as a member of the task force.

²¹² See Publication 3319, *supra* note 190. Publication 3319 provides the annual reporting requirements for clinics. The grant office uses the responses received from clinics to the required reporting requirements in deciding whether to fund a clinic and, if funded, how much funding to provide. Compare the reporting criteria in Publication 3319 from 2009 to 2013 to trace the arc of the changes in performance criteria.

²¹³ See Spragen, *supra* note 85; Book, *supra* note 146; Smith, *supra* note 143 (detailing the scholarship of Janet Spragens, Leslie Book and Carlton Smith). Outside of these individuals, the scholarship by academic tax clinicians is quite thin.

long-term contracts that have no expectation of scholarship.²¹⁴ Tax clinicians who are not on the tenure track do not generally have an institutional expectation of or support for scholarship. For these tax clinicians, who constitute the majority, producing scholarship presents significant challenges. Yet, without scholarship law school clinicians have difficulty presenting ideas that will lead the LITC community and produce meaningful changes.

The ABA Tax Section represents one area in which law school tax clinicians have provided leadership. The Low-Income Taxpayer Committee of the ABA dates back to 1976.²¹⁵ The leadership of this committee includes many law school tax clinicians.²¹⁶ The engagement of law school tax clinicians within the ABA may have caused them to shun the broader law school clinic forum offered by the Clinical Section of the AALS or by CLEA.

Despite the low level of overall scholarship and the failure to engage with the AALS and CLEA, law school tax clinicians have provided significant leadership to the LITC community. Stuart Filler provided leadership in founding tax clinics, establishing the role of students to litigate at the Tax Court, and

²¹⁴ See Daphne Eviatar, *Clinical Anxiety: Rebellious Lawyers are Shaking up Law School Clinics*, LEGAL AFFAIRS (Nov.-Dec. 2002), http://www.legalaffairs.org/issues/November-December-2002/review_eviatar_novdec2002.msp (discussing the historical use of long term contracts for clinicians); see also *ABA Standards and Procedures for Approval of Law Schools 2013-2014*, at 34-36, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf (containing the ABA Standards for Approved Law Schools regarding treatment of clinical employees).

²¹⁵ E-mail from Janet In, Counsel to ABA Tax Section, to author (Aug. 8, 2012) (on file with author).

²¹⁶ *Id.* The name of the committee changed four times over the years of its existence: 1976 – Small Taxpayer Program; 1981 – Low-income Taxpayer Problems; 1991 – Low-income Taxpayers; 2012 – Pro Bono and Tax Clinic. *Id.* The Committee Chairs throughout the history of the committee are as follows: Thomas A. Troyer 1976-1978 – Caplin and Drysdale, Washington, DC; Lawrence A. Gibbs 1978-1980 – Miller and Chevelier, Washington, DC (former IRS Commissioner and Acting Chief Counsel); Richard Fisher 1980-1982; J. Leigh Griffith 1982-1985 – Waller Law, Nashville, TN; Deborah H. Schenk 1985-1987 – Professor, New York University Law School; Frederick L. Ballard 1987-1989 – Ballard and Spahr, Washington, DC; Henry J. Lischer, Jr. 1989-1991 – Professor, Southern Methodist University Law School; Thomas Greg Collins 1991-1993 – McCarter and English, Boston, MA; Jerome Borison 1993-1995 – Director of the Tax Clinic at Denver Law School; Karen V. Kole 1995-1997 – Director of the Tax Clinic at Loyola (Chicago) Law School and later at Valparaiso Law School; Janet R. Spragens 1997-1999 – Director of the Tax Clinic at American University Washington College of Law; Nina E. Olson 1999-2001 – Community Tax Law Project, Richmond, VA (National Taxpayer Advocate); Leslie Book 2001-2003 – Director of the Tax Clinic at Villanova Law School; Diana Leyden 2003-2005 – Director of the Tax Clinic at University of Connecticut Law School; Elizabeth Jeanne Atkinson 2005-2007 – LeClair Ryan, Virginia Beach, VA; Joseph Schimmel 2007-2009; Kathryn J. Sedo 2009-2011 – Director of the Tax Clinic at University of Minnesota Law School; Keith Fogg 2011-2013 – Director of the Tax Clinic at Villanova Law School. *Id.* “The Committee on Small Taxpayer Programs was established by the section in 1976 to explore means by which the Section and its members might ease the burdens of compliance with the federal tax system for low-income taxpayers.” *Report of the Committee on Small Taxpayer Program*, 30 TAX LAW. 895, 895 (1977-1978).

taking a clinic case to the Supreme Court. Janet Spragens provided leadership not only in creating the grant program but also in creating the educational programs at American University Washington College of Law following passage of section 7526. Jerry Borison provided leadership in writing and editing *Effectively Representing Your Client Before the IRS*, in starting and hosting the LITC listserv, and mentoring many new clinicians. The writings of Les Book on the earned income tax credit and other issues facing the low-income taxpayers helped lead the community through scholarship. The intellectual and organizing leadership of Carl Smith provided leadership to the community during the challenge to the earned income tax credit. Because this group generally has more available resources and more knowledge of tax issues, it bears a leadership responsibility not imposed on independent and LSC clinicians. Finding a way to continue to lead is important for the academic tax clinicians.

V. Support for LITCs

The success of LITCs results from the support received from many sectors. This Article focuses on four sectors: the Tax Court, Congress, the ABA and other bar associations, and the Service.

A. Tax Court

The Tax Court did not rush to embrace either the student model of clinics that developed in the mid-1970s or the freestanding model of clinics initiated by the Community Tax Law Project (CTLTP) in 1992.²¹⁷ Stuart Filler made an early application to the Court when he started the Hofstra clinic, seeking the Tax Court's permission to allow students to represent taxpayers before the Tax Court "on a basis comparable to that of its practice before the Federal District Court for the Eastern District of New York."²¹⁸ The Tax Court sought input from the ABA Tax Section on this application.²¹⁹ The Committee on Small Taxpayer Assistance on May 18, 1977, produced a report later adopted

²¹⁷With respect to the Hofstra application, an extensive and interesting discussion appears in *Growing Pains*, *supra* note 7, at 5-6. With respect to CTLTP, see the written remarks of Nina Olson to the Senate Finance Committee which state that "in January, 1996, CTLTP became the first independent nonprofit clinic to enter into an agreement with the United States Tax Court, whereby letters from CTLTP are included in trial notices to pro se petitioners." *IRS Restructuring: Hearing on H.R. 2676 and S.1096 Before the S. Finance Committee*, 105th Cong. 330 (1998) (statement of Nina E. Olson, Executive Director, The Community Tax Law Project). These remarks must be coupled with the knowledge that CTLTP began in 1992 and Nina Olson began seeking a Tax Court agreement almost immediately thereafter. Contrast the speed of the granting of the agreement with CTLTP with the granting of an agreement to Villanova Law School on September 1, 1992, within one year after the opening of that clinic. CTLTP and the Villanova Law School clinic were opened within one year of each other. The delay in granting the agreement to CTLTP stemmed from concern that the tax bar would object to sending out notice to taxpayers of pro bono representation by attorneys rather than students.

²¹⁸See *Growing Pains*, *supra* note 5, at 47.

²¹⁹*Id.*

by the ABA Tax Section, which did not support student practice.²²⁰ The Tax Court met with the Committee on Small Taxpayer Assistance and by letter of November 21, 1977, declined to allow students from Hofstra to practice before it.²²¹ Hofstra appealed to the United States Court of Appeals for the Second Circuit to which the Tax Court objected.²²²

The IRS Advisory Committee to the Commissioner discussed the issue of student representation before the Tax Court in its meeting on March 14, 1978, and reached the conclusion that students should be allowed to practice before the Tax Court;²²³ however:

Congressman Sam M Gibbons, Chairman of the Subcommittee on Oversight of the House Ways and Means Committee, in a March 8, 1978 letter to Jerome Kurtz, Commissioner of the Service, strongly took issue with the role of the Tax Section of the ABA in securing the negative decision on Hofstra's petition.²²⁴

Eventually, the Tax Court allowed student representation but the interplay here not only highlights the early concerns about tax clinics, but also the institutional roles that will be discussed in this Part.

Once the Tax Court allowed student representation, it also began sending out notices to its petitioners alerting them to the opportunity for student representation. This became an important source of referrals for LITCs. The Court's practice of sending out notice to *pro se* petitioners alerting them to the potential for assistance from student-run clinics was not initially extended to the new type of clinic created by Nina Olson in 1992 because of concerns about a backlash from the bar.²²⁵ Eventually, the Tax Court worked its way through the policy implications of providing notice to petitioners about a tax clinic staffed by attorneys rather than students and it decided that sending notice about nonacademic clinics was permissible.²²⁶

The Tax Court also permitted a project, initiated by Karen Hawkins and the tax bar in San Francisco, to permit and announce the availability of pro bono tax lawyers who would provide consultation with unrepresented taxpayer-

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.* at 48.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Cf.* The Report, *supra* note 8, at 27 (demonstrating the Tax Court's consideration of the views of the ABA Tax Section on whether law students participating in tax clinics should be able to represent taxpayers in court).

²²⁶ See *supra* text accompanying note 191.

ers at calendar call.²²⁷ This project began before 1998 and has slowly spread during the years to cover a significant number of calendar call locations. The efforts of Elizabeth Copeland working with the Texas bar in 2007 and 2008 greatly increased the success and spread of this program.²²⁸ The ABA, state bar associations, and LITCs have worked to make this program a success. The combination of the stuffer notices sent by the Tax Court to unrepresented petitioners at the outset of a case with the calendar call programs means that *pro se* individuals filing a petition in Tax Court have the opportunity for full or partial representation in most Tax Court cases. In a Court where approximately 70% of the petitioners file *pro se*, the effort of the Tax Court to work with LITCs and the tax bar to provide legal assistance represents a real success story for LITCs.

The 1980s and 1990s also ushered in many changes to the Tax Court docket. A Congressional change on the qualifying amount for small tax cases resulted in a large numbers of cases involving low-income taxpayers.²²⁹ The qualifying amount for small tax cases went from \$1,500 in tax dollars at issue per year in the mid-1970s to \$10,000 by the early 1980s to \$50,000 in 1998.²³⁰ The significant expansion of the earned income tax credit in the 1990s, coupled with the requirement that the Service examine a relatively high proportion of those returns, created an explosion in low-income taxpayers filing Tax Court petitions.²³¹ Not long after the wave of earned income tax credit cases began to flow at a high level, Congress introduced more low-

²²⁷ See Robert E. McKenzie, *Karen Hawkins: 2004 Pro Bono Attorney of the Year*, ABA SECTION OF TAXATION NEWSQUARTERLY, Summer 2004, at 23 (discussing the important role Karen Hawkins played in establishing this program); see also *A.B.A. Tax Section eNews: Karen Hawkins*, AMERICAN BAR ASSOCIATION, last accessed Sept. 15, 2013, http://www.american-bar.org/content/dam/aba/publishing/section_enewsletter/hawkins.authcheckdam.pdf (discussing her role in establishing the calendar call program).

²²⁸ Elizabeth Copeland received the ABA Janet R. Spragens Pro Bono award in 2009 in recognition for her work in organizing calendar call programs throughout the state of Texas and assisting other state and local bars in organizing such programs. In 2012 Frank Agostino was recognized by the ABA with the Janet R. Spragens Pro Bono award for similar work in New York City. Calendar call programs provide the unrepresented taxpayer with a last chance to consult with counsel before trial and provide a significant service to the taxpayers and the Court. Many LITCs have calendar call programs while many of these programs, like those in Texas and New York City, are run by the tax bar.

²²⁹ See generally William C. Whitfield, *The Small-Case Procedure of the United States Tax Court: A Small Claims Court That Works*, 9 AM. B. FOUND. RES. J. 797, 798 n.6 (1984).

²³⁰ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3103, 112 Stat. 685 (1998) (changing the size of cases allowed from \$10,000 to \$50,000); Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 461(a), 98 Stat. 494 (1984) (changing the jurisdictional limit amount from \$5,000 to \$10,000); Revenue Act of 1978, Pub. L. No. 95-600, § 502(a), 92 Stat. 2763 (1978) (changing the amount of small tax cases allowed from \$1,500 to \$5,000); Federal-State Tax Collection Act of 1972, Pub. L. No. 92-152, 86 Stat. 944-45 (1972) (changing the dollar amount for small tax cases found in Code section 7463 from \$1,000 to \$1,500); see also Consolidated Appropriations-FY 2001, Pub. L. No. 106-554, § 313(c)(3), 114 Stat. 2763 (2000).

²³¹ See Holt, *supra* note 11; see also Ventry, Jr., *supra* note 11.

income taxpayers into the Tax Court docket with the creation of collection due process proceedings in 1998.²³²

A high percentage of cases involving low-income taxpayers use the small tax case procedures of the Tax Court. For decades, this procedure did not result in publication of the opinion of the court.²³³ As a result, a body of law began developing in summary opinions; however, the opinions issued in small cases essentially remained unavailable to the public. The Tax Court eventually reacted to this by publishing summary opinions even though the opinions continue to have no precedential value.²³⁴ The opening up of these opinions to the public allows practitioners representing low-income taxpayers to see the thinking of the Tax Court on numerous issues that previously had almost no published cases. This represented a significant step in assisting low-income taxpayers and clinics.

In recent years, the Tax Court's attention to low-income taxpayers and to clinics has accelerated. In 2009, the Tax Court significantly expanded its website with the creation of a section entirely devoted to *pro se* petitioners, a large number of whom are low-income taxpayers.²³⁵ Through the changes to this website, the Tax Court made overt efforts to provide assistance to those most in need of help in navigating the judicial system. The Tax Court also reached out to the LITC community by inviting clinicians to an annual dinner dur-

²³²I.R.C. § 6330. Each year the NTA produces a list of the ten most litigated issues. Following that list from year to year provides an excellent insight into the makeup of the docket of the Tax Court. Consistently, the most litigated issues focus on issues where low-income taxpayers have large numbers of cases. While just being poor does not mean a taxpayer will use the CDP process, many low-income taxpayers have collections problems and do use this process. The creation of CDP opened the Tax Court doors for these low-income taxpayers to obtain collection relief.

²³³The Court produced a written opinion which went only to the parties in the case—the specific taxpayer and the Service. During this period the docket of the Tax Court was open for public inspection only by physically going to the Tax Court building in Washington, D.C. as the Tax Court had not yet begun to post its docket online. A party interested in researching the Tax Court's opinions produced using the small case procedure faced an arduous if not impossible task.

²³⁴See *Taxpayer Information: After Trial*, U.S. TAX COURT, Oct. 18, 2011, http://www.ustax-court.gov/taxpayer_info_after.htm. “Summary Opinion - A Summary Opinion is issued in an S case. A Summary Opinion cannot be relied on as precedent, and the decision cannot be appealed.” *Id.*; see also I.R.C. § 7463(a) (describing cases involving \$50,000 or less and providing in part “[a] decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.”). Summary opinions are not published by the Government Printing Office, but beginning on January 1, 2001, the Tax Court began publishing summary opinions on its website. Based on the statistics compiled by the Tax Court from the annual submissions by clinics with an agreement with the Court, in 2009, clinicians consulted with 1,911 petitioners and formally entered an appearance in 881 of those cases; in 2010 clinicians consulted with 2,725 petitioners and formally entered an appearance in 876 cases; and in 2011 clinicians consulted with 2,495 petitioners and formally entered an opinion in 788 cases.

²³⁵*Taxpayer Information: Starting a Case*, U.S. TAX COURT, Aug. 3, 2012, http://www.ustax-court.gov/taxpayer_info_start.htm (containing a section for *pro se* taxpayers).

ing which the judges highlight changes in the Tax Court rules and procedures impacting low-income taxpayers. Additionally, the Tax Court expanded its Inn of Courts to include clinicians. The commitment of the Tax Court to ensure that low-income taxpayers receive a fair hearing has made a difference to LITCs and their clients.²³⁶

Chief Special Trial Judge Panuthos has long championed the rights of low-income taxpayers and worked with the ABA and other practitioners' groups to insure these rights.²³⁷ For example, he redesigned the form petition to eliminate areas of confusion for *pro se* petitioners and carefully scrutinized the court's website to create easy-to-understand explanations of the process of trying a Tax Court case. On March 23, 2012, the Tax Court recognized his efforts on behalf of low-income taxpayers by awarding him the J. Edgar Murdock Award.²³⁸ The actions of recent Tax Court leaders demonstrate how far the court has come since its initial concerns about student practice before the court. By providing strong support for LITCs, the Tax Court has created an environment that treats all taxpayers fairly. By creating rules and procedures that encourage LITCs to represent the *pro se* petitioners, the Tax Court gives low-income taxpayers the opportunity to prove their case. The court has also demonstrated a willingness to listen to LITCs in order to improve its process.²³⁹

B. Congress

The establishment of the grant in 1998 created the single most important Congressional impact on LITCs.²⁴⁰ The responses from the clinics on the impact of the grant show the importance of the grant to their very existence.²⁴¹ While Senator Montoya broached the issue of providing funds for a tax com-

²³⁶ Chief Judge John Colvin deserves much credit for his efforts to ensure that clinicians were included in the Tax Court's activities. He initiated the annual dinners for clinicians and specifically reached out to clinicians to include them in the Tax Court Inn of Court. He also looked for rule changes that would assist *pro se* taxpayers in navigating the Court's system. With Judge Panuthos he began attending the annual LTC meeting and the ABA Tax Section committee meetings of the Low Income Taxpayer Committee.

²³⁷ See Peter Panuthos, *Update to Pro Bono and Tax Clinic Committee*, AMERICAN BAR ASSOCIATION, May 11, 2013, http://meetings.abanet.org/meeting/tax/MAY13/media/pbtc_update_outline.pdf.

²³⁸ *Press Release*, U.S. TAX COURT, Mar. 26, 2012, <http://www.ustaxcourt.gov/press/032612.pdf>.

²³⁹ Each year, in February, LITCs go through the process of renewing their agreement with the Court to receive recognition as an LTC in stuffer notices for specific jurisdictions. In this process the Court has the LITCs fill out a short form expressing their willingness to participate and to abide by the Court rules. One of the small number of entries on the annual agreement form solicits ideas on how the Court can better assist the low-income taxpayers coming before it. That type of proactive effort to identify issues demonstrates the Court's efforts to work with LITCs and to listen to them.

²⁴⁰ Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3601(a), 112 Stat. 685, 774-76.

²⁴¹ See *supra* note 156.

ponent of the Legal Service Corporation back in 1976, almost no discussion of funding seems to have occurred from that time until Janet Spragens and Nina Olson began pushing the idea to the Restructuring Commission and to Congress as it passed the 1998 legislation reorganizing the Service.

Since creating section 7526, Congress has made no amendments to it. During a period of fiscal austerity, Congress has continued to fund LITCs and to increase that funding over the years from the initial \$2.0 million per year to the current level at approximately \$9.0 million per year.²⁴² At a time of significant scrutiny of the federal budget, Congress has allowed this program to flourish. Each year it receives an annual report from the NTA which contains some discussion of the LITCs and their use of the grant funds.²⁴³ The House Subcommittee on Oversight of the Committee of Ways and Means heard testimony in 2001, which included comments from clinicians about the level of funding but has otherwise expressed little interest in evaluating or closely scrutinizing its decision to create a grant program for LITCs.²⁴⁴

The continued support of the grant by Congress allows clinics to exist in their current numbers.²⁴⁵ While a relatively silent partner, the support of Congress for LITCs remains the most important factor in their growth over the past 14 years and, for most LITCs, in their continued existence.

²⁴²*Low Income Taxpayer Clinic Grant Recipients Announced*, INTERNAL REVENUE SERVICE, Feb. 17, 2012, <http://www.irs.gov/uac/Low-Income-Taxpayer-Clinic-Grant-Recipients-Announced-2> (stating that the Service awarded over \$9.0 million in matching grants to LITCs for the 2012 grant cycle).

²⁴³The 2011, 2009 and 2007 National Taxpayer Advocate Annual Reports contain useful information about LITCs, in general, and about funding. See 2011 NAT'L TAXPAYER ADVOC. ANN. REP. TO CONGRESS vol. 1, at 480-82, 692 n.84, Dec. 31, 2011, <http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS%20TAS%20ARC%202011%20VOL%201.pdf>; 2009 NAT'L TAXPAYER ADVOC. ANN. REP. TO CONGRESS vol. 1, at 116-17, 119, Dec. 31, 2009, http://www.irs.gov/pub/irs-utl/1_09_tas_arc_vol_1_preface_toc_msp.pdf; 2007 NAT'L TAXPAYER ADVOC. ANN. REP. TO CONGRESS vol. 1, at 231-32, 469, 551-53, Dec. 31, 2007, http://www.irs.gov/pub/irs-utl/arc_2007_vol_1_cover_msps.pdf.

²⁴⁴*Taxpayer Advocate Report and Low-Income Taxpayer Clinics: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 107th Cong. 34-35, 42, 44-45, 52-55, 58-59, 61 (2001) (statements of Alan H. Cohen, Director, Low-Income Taxpayer Clinic, Ithaca College; Leslie Book, Assistant Professor of Law, and Director, Federal Tax Clinic, Villanova University School of Law; Timothy B. Heavener, Executive Director, Community Tax Law Project; Janet Spragens, Professor of Law, and Director, Federal Tax Clinic, Washington College of Law, American University; Jeffrey S. Gold, Chairman, Community Tax Aid, Inc.); see *supra* notes 120-125 and accompanying text. Contrast the level of scrutiny the LITC grant receives with the attention paid to the funding of LSC. See also *Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. 21-24 (2008) (statement of Kenneth F. Boehm, Chairman, National Legal and Policy Center). While the funding levels between the two programs differ significantly (\$300.0 million versus \$11.0 million), the quiet, non-partisan consensus that seems to exist around the LITC grant stands in stark contrast to the LSC funding. See Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6 div. B, tit. 4, 127 Stat. 198, 267-68.

²⁴⁵See *supra* note 156.

C. *The ABA and Other Bar Associations*

Almost from the time Stuart Filler started the first LITC, the ABA has played a role in shaping and, generally, supporting LITCs. Both the Tax Court and the Service looked to the ABA for guidance in their decision-making concerning tax clinics. In a letter dated July 29, 1977, Don Harris, Chairman of the ABA Tax Section, responds to a June 22, 1977, letter from Service Commissioner Jerome Kurtz on the issue of the posting of notices in Service offices informing taxpayers of the availability of services from the University of Michigan tax clinic.²⁴⁶ The ABA response approves the posting of such notices.²⁴⁷ It also cautioned that the Service should use appropriate disclaimers making clear that the Service did not endorse any clinic.²⁴⁸ The ABA also recommended against the Service handing out clinic flyers to individual taxpayers.²⁴⁹ The letter references a meeting on April 26,²⁵⁰ which appears to have occurred between the Service and the ABA for the purpose of discussing tax clinics. The holding of such a meeting and the sending of a letter from the Service Commissioner demonstrates the high level of importance granted to the views of the ABA on the subject of tax clinics.²⁵¹

The Tax Court's consideration of student representation by early clinics also highlights the importance of the ABA with respect to the development of LITCs. Just like the Service, the Tax Court sought the views of the ABA.²⁵² The ABA recommended against allowing the students to participate.²⁵³ Judges from the Tax Court and members of the ABA Tax Section Committee on Small Taxpayer Assistance held a meeting to discuss the issue.²⁵⁴ Thereafter, the Tax Court denied Hofstra's request for student representation.²⁵⁵ As with the Service, the Tax Court showed much interest in, and deference to, the views of the ABA.

²⁴⁶ Letter from Don Harris, Chairman, ABA Tax Section, to Jerome Kurtz, Service Commissioner (July 29, 1977) (on file with the author).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.* From the context of the correspondence, the author assumes that the meeting between the ABA representatives and representatives of the Service took place in 1977.

²⁵¹ One reason for contact with the ABA is the concern that creating a tax clinic would take money away from practicing lawyers as clients flocked to the free tax services. While this concern was debated repeatedly, most lawyers seemed to realize that the types of cases handled by the clinics were cases in which the taxpayer would not consult a fee-based attorney. Getting the buy-in of the ABA, however, avoided Congressional concerns the Service might otherwise have faced if one or more lawyers complained about the Service's decision.

²⁵² *Growing Pains*, *supra* note 5, at 47.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

It is impossible to overlook the positive recommendations made by the ABA with respect to those early clinics.²⁵⁶ The October 31, 1978, Report of the Ad Hoc Committee To Review IRS Evaluations determined that the quality of the student representation was good and that expanding the program “could make a significant contribution to the representation of taxpayers in controversies where the amount in dispute is relatively small.”²⁵⁷ The report noted the need for clinics to have an adequate referral mechanism, pointing out the differences between SMU, where the Service made significant efforts to advertise the services of the clinics, and Michigan, where it did not. It concluded on a very positive note, stating:

Whether or not law student representation at the Tax Court level is desirable, it seems clear that the potential impact of student representation in administrative proceedings and appeals makes it desirable for the Section of Taxation to encourage the IRS to expand its present program to permit students through law school clinics to represent taxpayers in the audit and appeals process.²⁵⁸

The early support from the ABA greatly aided the success of the early tax clinics. Without this support, the tax clinic movement may have stopped almost as soon as it started.

²⁵⁶The letter dated November 20, 1978, transmitting the report is generally favorable, as is the report, but contains typical cautionary language such as “subject to approval of the appropriate local bar groups, adequate attention should be given to the matter of publicity in the continuing and any new programs” (after acknowledging that publicity was critical to the success of the clinics this sentence was rather lukewarm). Letter from Lipman Redman, ABA Chairman, to Ross J. Summers, IRS, Research & Operations, Analysis Division (Oct. 31, 1978), *in* The Report, *supra* note 8. Similarly on the topic of the use of law students in Tax Court the letter stated “Here too, the matter is subject to further consideration and the reference in the report is not intended to, and indeed makes clear that it does not, suggest a position of the Committee or obviously of the Section in this regard.” *Id.*

²⁵⁷Report from Ad Hoc Committee To Review IRS Evaluations to the Council of the Section of Taxation 8 (Oct. 31, 1978), *in* The Report, *supra* note 8, at attachment 4. This ABA report was included as a part of the package by the Service in its Report on Legal Assistance Test Program.

²⁵⁸*Id.* at 10. The Report from the Ad Hoc Committee was signed by Larry Gibbs as Chairman of the Small Taxpayer Program Committee and Richard Stark as Chairman of the Ad Hoc Committee. *Id.* at 11. Larry Gibbs would go on to become the Service Commissioner several years later, placing in that position someone familiar with and favorably disposed to clinic representation of low-income taxpayers. The fact that the ABA Tax Section had a Small Taxpayer Program Committee as far back as 1976 points to the fact that the Tax Section was paying some attention to the needs of low-income taxpayers at that time. The Small Taxpayer Program Committee produced an annual report which was published in *The Tax Lawyer* each year as a part of the publication of the annual reports of all committees of the Tax Section. These annual reports show that the biggest issue facing the new committee was supporting the Service Volunteer Income Tax Assistance (VITA) program. *See* 34 *Tax Law.* 931, 931-32 (Summer 1981); 33 *Tax Law.* 661, 661-62 (Winter 1980); 32 *Tax Law.* 931, 931-33 (Summer 1979); 31 *Tax Law.* 978, 978-79 (Summer 1978); 30 *Tax Law.* 895, 895-96 (Summer 1977) (containing the Committee Report for 1976-1977 the first year of the new committee).

One of the most important roles the ABA Tax Section has played in the low-income taxpayer clinic movement has been its service as an official voice to promote clinics and service to low-income taxpayers. Professor Book points to Janet Spragens at American University and Nina Olson at the Community Tax Law Project as the two “mavens” who lead the process to obtain the grant funding for clinics in the 1998 legislation that obviously changed the number and the face of low-income taxpayer clinics.²⁵⁹ A part of the success of Janet Spragens and Nina Olson was their use of the ABA Tax Section and its committees as a basis for support of their ideas. They used the processes of change available through the structure of the ABA to ensure that their ideas were heard and carried weight.

In their article *Tax Clinics: The New Face of Legal Services*, Janet Spragens and Nina Olson acknowledge the critical role of the ABA in the tax clinic movement:

[T]he American Bar Association Section of Taxation has also been a steady and important support of the LITC movement. One of the section’s contributions to the clinical movement is sponsorship, through its Committee on Low-income Taxpayers, of a treatise about to be published, entitled *Effectively Representing Your Client Before the New IRS*. Edited by Professor Jerome Borison of the University of Denver School of Law, this publication contains the collective wisdom of the most experienced tax controversy lawyers in the United States today and was written to be a handbook for LITCs as well as other practitioners. Further, the section has testified on multiple occasions in favor of LITC funding legislation, has underwritten an annual workshop (in partnership with American University) on tax clinics, has sponsored a NAPIL fellow to work on ESL issues at the Community Tax Law Project, and has provided seed money for a Low-income Tax Clinic Resource Center.²⁶⁰

One of the tangible pieces of support from the ABA came during the year after passage of RRA 98 when it became clear just how important the matching grant of section 7526 was to the growth of LITCs. In a letter dated June 25, 1999, Stefan Tucker, then the Chair of the ABA Section on Taxation, wrote to the Chairman of the House Appropriations Committee and its Ranking Member urging Congress to appropriate more money for the matching grants. He specifically requested that the first year’s appropriation of \$2.0 million be increased to \$4.0 million noting:

The American Bar Association Section of Taxation has a long history of supporting low-income taxpayer clinics. The Section has worked with the clin-

²⁵⁹ Book, *supra* note 3, at 1089 n.3. He picked the word “mavens” from the book by Malcolm Gladwell, *The Tipping Point*. “Mavens, from the Yiddish, are people who have accumulated lots of knowledge.” *Id.* He equated Janet Spragens and Nina Olson as having the characteristics of salesmen, connectors and mavens necessary to lead the successful legislative effort. *Id.*

²⁶⁰ *Tax Clinics: The New Face of Legal Services*, 2000 TAX NOTES TODAY 181-101, ¶12 (Sept. 18, 2000).

ics for over 10 years through its Committee on Low-income Taxpayers, and has testified in favor of the funding provision both before the Restructuring Commission and the Congress.²⁶¹

Support from the ABA Tax Section also took the form of hosting a listserv available to all clinicians.²⁶² Through the listserv hosted by the ABA, members of the LITC community can quickly find the answers to questions that might otherwise go unanswered. The listserv makes it possible for a clinician working in essentially a solo practitioner capacity to connect with others in the same legal community.

In recent years the ABA Tax Section hired a Pro Bono Staff Attorney who serves as a resource to the Low-income Taxpayer committee and to the LITC community.²⁶³ It has also created the Public Interest Fellowship through which it sponsors two fellows each year for two-year fellowships in an effort to assist underserved communities and to promote new ideas for serving the low-income taxpayer community.²⁶⁴ In 2011, the ABA Tax Section started a program to provide scholarships to nonacademic clinicians to allow them to attend Tax Section meetings.²⁶⁵ Without financial assistance, attendance at the meetings is almost impossible for legal services clinicians and clinicians

²⁶¹ *Low-Income Taxpayer Clinic Program Needs More Money, Says ABA Tax Section*, 1999 TAX NOTES TODAY 140-37, ¶3 (July 22, 1999).

²⁶² The listserv started in Denver by Jerry Borison as an e-mail list to allow the small number of clinics existing at that time to keep in touch. As technology improved and as the number of clinics mushroomed, the information exchange that started as an e-mail list evolved into a listserv. The ABA took over responsibility for hosting the listserv around 1999. E-mail from Jerry Borison to author (Aug. 8, 2012) (on file with author).

²⁶³ The ABA Tax Section's commitment to pro bono work increased with the hiring of a full time staff attorney in 2007 to assist the pro bono and low-income taxpayer committees with education and advocacy.

²⁶⁴ See, e.g., *American Bar Association Tax Section Announces Two Young Lawyers as Public Service Fellows*, AMERICAN BAR ASSOCIATION, Dec. 15, 2008, <http://www.americanbar.org/content/dam/aba/migrated/tax/probono/pubservicewinners.authcheckdam.pdf>. The first two fellows were selected in 2008: Vijay Raghavan who worked with Prairie States Legal Services in Illinois and Laura Newland who worked with the AARP. *Id.* The second two fellows were selected in 2009: Doug Smith who founded the Central PA Tax Help and Katie Tolliver who worked with the Legal Aid Society of Middle Tennessee and the Cumberlands. Katie Tolliver specifically worked with the Appalachian Community Partnership for Tax Advocacy which is a new approach to working with low-income taxpayers. The third set of fellows was selected in 2010: Sean Norton with Pine Tree Legal Service in Maine and Anna Tavis with South Brooklyn Legal Service where she focuses on assisting Russian immigrants. The fourth set of fellows was selected in 2011: Anna Lopez with the University of Washington Tax Clinic reaching out to the quickly growing Hispanic community in the state of Washington and Jane Zhao with the Center for Economic Progress in Chicago. All eight of the fellows seek to move and expand the legal services available to low-income taxpayers in places and in ways that would not be possible without this grant. The next challenge for the ABA Tax Section with respect to the fellows concerns the process of transitioning them into full time positions of service to the low-income taxpayer community once the fellowship ends.

²⁶⁵ Keith Fogg, *Low-Income Taxpayer Clinicians Meet with Service Representatives*, 31 ABA SEC. OF TAX'N NEWSQUARTERLY, Summer 2012, at 16.

at independent clinics because budgets at their organizations contain insufficient funds to cover the cost. Through the scholarships, five at each meeting, the Tax Section has significantly increased participation and interest from a group of attorneys previously left out of the organized bar. By bringing this new group of clinicians into the ABA and getting them involved in projects assisting low-income taxpayers from a broader perspective, these clinicians benefit individually and the bar benefits from the insights of this group of practitioners.

The ABA Tax Section has significantly contributed to the LITC community. It has done so since the time of the first tax clinics. By consistently supporting the idea of tax clinics for more than three decades, the ABA has served as a source of strength and institutional acceptance. Without its support, LITCs could not have achieved the success they have enjoyed.²⁶⁶

D. *The Service*

As the Report demonstrates, the Service became involved with low-income taxpayer clinics from their beginning. The Report reflects the attitudes of the Service concerning low-income taxpayer clinics that has continued to exist even to the present. Most of the executives and front-line employees at the Service see the clinics as a positive addition to the tax field because they generally assist taxpayers in reaching the right answer in ways the Service cannot.²⁶⁷ The Service has taken many actions to assist LITCs and the clients they serve. Even though the Service has generally supported LITCs, its policies during the same period have increased the need for LITCs by increasing mechanization of the handling of tax cases and building a system of tax administration too difficult for many low-income taxpayers to navigate.²⁶⁸

Taken as a whole, the Report provides a positive endorsement of LITCs. The Service office in Dallas, Texas went quite far in its efforts to promote the

²⁶⁶This Part focuses on the ABA but other bar associations played important roles as well. The Virginia Bar Foundation provided critical support to the Community Tax Law Project at a time when other foundations refused grant funding. The tax sections of the Texas, Florida, California, Maryland, Colorado, and New York County bar associations have worked to coordinate pro bono assistance at Tax Court calendars. The growth of bar efforts for low-income taxpayers has, in many ways, mirrored the growth of LITCs—as it should.

²⁶⁷See, e.g., The Report, *supra* 8, at 6, 13 (containing the responses of the Regional Commissioners from the North-Atlantic and Southwest regions).

²⁶⁸Many examples of increased mechanization and reduced exercise of judgment could be cited to support this observation, but one currently under discussion is the almost automatic filing of the notice of federal tax lien once the taxpayer's liability reaches \$5,000. The National Taxpayer Advocate has written extensively about this practice in her annual report and elsewhere. See e.g., NAT'L TAXPAYER ADVOC., 2012 NAT'L TAXPAYER ADVOC. ANN. REP. TO CONGRESS vol. 1, at 291-93, <http://www.taxpayeradvocate.irs.gov/userfiles/file/Full-Report/Volume-1.pdf>. This practice serves as an example of how a decision implemented in a bureaucracy in which almost everyone defaults to the norm creates significant problems for individuals attempting to explain how the filing of the notice of federal tax lien will benefit neither the individual nor the Service.

services provided at SMU.²⁶⁹ That same type of support exists throughout the Service at different locations and at different times, but generally the Service has positively helped the LITC movement as it grew over the years. Les Shapiro serves as an example of longstanding support from the Service on an institutional and individual level with his efforts to promote clinics from his position providing their oversight.²⁷⁰

The greatest support to LITCs from the Service has come from the NTA's office. Having a former LITC director as the NTA provides quite a benefit to the LITC community. Nina Olson knows the challenges facing LITCs and their clients. She supports additional funds for clinics and many initiatives impacting low-income taxpayers.²⁷¹ Through her annual reports to Congress, she gives voice to issues affecting both LITCs and their clients. The offices of the local taxpayer advocates provide significant support to LITCs as part of their mission to assist taxpayers in hardship situations.

Perhaps her oversight role offers the biggest challenge facing the NTA and her relationship with LITCs. Beginning in 2003, the role of administering the section 7526 grant funds moved from the Wage and Investment function to the NTA. While the NTA's office supports LITCs and uses the grant funds in an effort to create additional LITCs in areas of greatest need, this role also puts the NTA in the position of reviewing the performance of the LITCs. In that role she has managed to make everyone somewhat unhappy, which may signal that the level of review stands at the right place. Nancy Abramowitz wrote about the emphasis placed in the reviews on quantity of work by an LITC and how that failed to recognize the role of academic clinics in the formation of the grant.²⁷² TIGTA has issued three reports complaining that the NTA's office fails to perform sufficient oversight reviews by failing to get into file review and other more invasive forms of review.²⁷³

In 2009, the NTA created a task force drawn from a variety of LITCs in order to devise performance measures that might satisfy those being reviewed as well as those providing oversight of the review itself, TIGTA.²⁷⁴ The NTA largely adopted the performance measures recommended by this group and incorporated the new measures into Publication 3319 for 2012 and 2013.²⁷⁵ These measures provide a variety of ways to show that an LITC deserves continued funding. The process of review still involves choices that will not leave everyone pleased but offers more opportunities for success than simply

²⁶⁹The Report, *supra* note 8, at 6.

²⁷⁰See *supra* text accompanying note 16.

²⁷¹See *supra* note 101.

²⁷²Abramowitz, *supra* note 108, at 1136.

²⁷³See TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, 2011 REPORT, *supra* note 64, at 5-6; 2005 REPORT, *supra* note 64; 2003 REPORT, *supra* note 64, at 6.

²⁷⁴See *supra* text accompanying note 64.

²⁷⁵2013 *Low Income Taxpayer Clinics Grant Application Package and Guidelines*, 2012 TAX NOTES TODAY 97-45 (May 18, 2012); 2012 *Low Income Taxpayer Clinics Grant Application Package and Guidelines*, 2011 TAX NOTES TODAY 180-66 (Sep. 16, 2011).

processing a high number of cases. The willingness of the NTA to include the clinics in the process of selecting the performance measures demonstrates the desire to work together to make the program a success.

The Office of Chief Counsel provides support to LITCs in the way it works with LITCs around the country to resolve disputes in Tax Court. While relationships between an individual LTC and a local office may not always operate smoothly, the Chief Counsel's Office as a whole has provided assistance to LITCs to enable low-income taxpayers to receive appropriate representation. Additionally, the Chief Counsel's Office regularly provides speakers for formal training sessions and demonstrates a willingness to assist in informal training situations. The Commissioner's office has consciously reached out to the LTC community. Commissioner Shulman attended two LTC conferences during his tenure, during which he both spoke to the community and listened to it. In March and May, 2012, Deputy Commissioner Steve Miller brought representatives from the LTC community to Service headquarters to meet with him and his staff to assist in developing more workable forms and guidance in innocent spouse situations.²⁷⁶

The NTA has embraced LITCs as helpful partners in finding the right answer to the issues raised in the cases of the low-income taxpayers they represent. The NTA's office actively listens to LITCs to find ways to improve the system of tax administration. Part of its listening stems from the role of the NTA as a systemic observer with responsibility to annually report proposed systemic changes to Congress, but the role of listening and acting upon suggestions from LITCs goes beyond the items gathered for the report to Congress.²⁷⁷

VI. Impact of LITCs on Fairness to Taxpayers

LITCs impact the tax system in several ways that positively affect fairness to low-income taxpayers as well as to the system as a whole. The issue of fairness has several components. First, LITCs affect the perception of fairness by low-income taxpayers. In many cases in which clinics step forward to represent low-income taxpayers, the clinic finds the client totally lost and confused in the process. In that state of confusion, the client has little or no trust in the Service and interprets every action by the Service as an effort to obtain an

²⁷⁶Keith Fogg, *Low Income taxpayer Clinicians Meet with Service Representatives*, ABA SECTION OF TAXATION NEWSQUARTERLY, Summer 2012, at 16.

²⁷⁷The NTA has a system for reporting systemic issues. The role of the NTA in systemic advocacy and the role of LITCs in identifying and providing input necessary to the success of this system is symbiotic. One of the successes of section 7526 rests in this relationship. The best clinicians consistently look at their cases with an eye on how the problems in their cases stem from systemic issues rather than something specific to that case. These clinicians then work with the NTA and her systemic advocacy system to fix problems. Fixing problems in this manner has much greater significance than winning a case or convincing a collection officer to take an offer in compromise. When it works correctly, this system operates as a true partnership with direct and significant benefits to the Service, to low-income taxpayers and to the tax system as a whole.

advantage. This perception exists whether or not the government has taken the correct legal position in the case. LITCs play an important role in explaining the system and the law to their clients in a neutral way. This allows most clients to come out of their experience with the Service feeling that the system treated them fairly rather than feeling as though the system took advantage of them. In this role, LITCs very much aid the Service by making it easier to resolve cases, making the resolution more amicable, and promoting the perception of fairness in the tax system.

Second, LITCs provide advice to clients to prevent them from having future problems with the Service. Even in those situations in which the LTC cannot achieve “victory” for the client in the initial matter, the LTC can explain to the client how to avoid the problem in the future. This future advice function is another part of the perception of fairness because now low-income taxpayers have access to legal assistance to aid in tax planning whereas previously none existed. The educational and advisory function of LITCs as they work with their clients represents a key element to the overall fair treatment and the perception of fair treatment of low-income taxpayers.

Third, LITCs provide individuals with professional legal advocacy, promoting fairness in the application of the tax laws that cannot exist in an adversarial system without that representation. While the Service and Tax Court judges seek to enforce the tax laws in a fair and legally correct manner, our adversarial system of justice fails regularly when used by an unrepresented party. When one party to that system constantly appears unrepresented, the system can fail. The representational work of assisting specific low-income taxpayers also has a beneficial impact on the system. Service employees receive education on issues that they might not have previously appreciated and the taxpayer receives the benefit of a competent advocate.

Fourth, LITCs advocate for system change in addition to their advocacy for individual clients. By making system suggestions through the NTA, working with the ABA to comment on legislation or proposed regulations, or writing articles that influence outcomes, LITCs have a voice in the system for issues impacting low-income taxpayers where no voice previously existed.²⁷⁸

Making the tax system fairer for low-income taxpayers also benefits the tax system as a whole. If one party in the tax system feels disenfranchised, that party becomes more likely to take steps to evade taxes in some fashion, thereby placing more pressure on other parts of the system. To the extent that the tax system responds better to the needs of low-income taxpayers, their compliance level should increase, making the whole system work more effectively.

²⁷⁸In addition to these examples that focus on comments, LITCs can also have an impact through litigation. The coordinated litigation on concerning the regulations promulgated under section 6015(f) highlighted the problems created by that regulation. Even though the LITCs did not ultimately prevail in the circuit courts, their litigation spurred the Service to withdraw the regulation and reexamine its policy. *See* Notice 2012-8, 2012-1 C.B. 309 (the Service proposes new standards for innocent spouse equitable cases); Notice 2011-70, 2011-2 C.B. 135 (the Service withdraws regulation establishing two-year rule for section 6015(f) cases).

VII. Challenges

LITCs have grown tenfold since the creation of the matching grant, yet the population remains underserved.²⁷⁹ Many clinics fail to obtain a matching grant of a sufficient amount to sustain all of the activities they would like to pursue.²⁸⁰ LITCs also vary significantly in the experience level of the attorneys and other workers who manage them. Some clinics are staffed by attorneys with decades of tax experience who know the system well and can provide relatively sophisticated guidance to their clients, while other clinics are staffed by attorneys who are relatively new to federal taxes and who have little or no immediate support to which they can turn for guidance.

The lack of experience of many of the LTC clinicians and the absence of other attorneys knowledgeable about tax issues in their immediate office able to serve as mentors leaves many LTC clinicians at a disadvantage in gaining the experience necessary to provide the best representation to their clients. The Senate sought to address this shortcoming in its version of 7526 in which it allowed the use of grant funds to establish a technical support center.²⁸¹ Nina Olson and Janet Spragens made an initial attempt to fill this gap with annual training programs at American University and the attempt by CTLP to create an assistance center.²⁸² Since neither a training center nor a resource center exists for tax, providing the necessary resources for new attorneys and ongoing training for experienced attorneys remains a challenge for tax clinics.

Integration of tax clinicians with the tax bar presents challenges. The ABA Tax Section is the principal place for commenting on legislation and guidance regarding federal tax issues. Active participation in the ABA Tax Section often requires an ability to travel to its meetings, yet the travel budgets of most LTC clinicians do not allow it. As mentioned above, the ABA Tax Section

²⁷⁹Based on the existence of 16 LITCs in 1998, as discussed in Nina Olson's article, Olson, *supra* note 177, and the number of clinics existing in 2011, approximately 160 per the list of section 7526 grant recipients.

²⁸⁰Following the list of grant recipients from year to year allows one to trace the ebb and flow of new clinics and those that no longer exist. Discussions with clinics that cease to exist about the reason for dissolution almost always revolve around lack of funds.

It is worth noting that LSC funds do not require a match. 42 U.S.C. § 2996i (2010). The grant from Congress to those programs comes without strings attached. *Id.* Because of reductions in LSC funding over the years, those programs have sought outside funds, which, in effect, may equal or exceed the match required by section 7526 in order to maintain staffing levels. Still, the grant itself does not require matching the way section 7526 does. The distinction between the two types of funding does not appear to justify the difference in funding prerequisites.

²⁸¹H.R. REP. NO. 105-599, at 303 (1998) (Conf. Rep.).

²⁸²Nancy S. Abramowitz, *Professor Janet Spragens: In Memory of a Friend, In Celebration of an Idea*, 56 AM. U. L. REV. 1124 (2007) (discussing Janet Spragens' programs at American University Law School started after the creation of section 7526 in an effort to train the newly minted tax lawyers in the legal clinics that were springing up at a rapid pace); Janet Spragens and Nina Olson, *Tax Clinics: The New Face of Legal Services*, 88 TAX NOTES (TA) 1525, 1527 (Sept. 15, 2000) (discussing the fact that the ABA "has provided seed money for a Low-Income Tax Clinic Resource Center" at the Community Tax Law Project).

started a program in 2011 to provide scholarships to its meetings to allow a limited number of LITC clinicians to attend. This has helped to link the tax clinic community with the people and programs of the established tax bar.²⁸³

The LITC community needs some visionary leaders to keep pushing it forward. Stuart Filler was a visionary leader. He pushed his ideas at every level and gained a foothold for LITCs. As Stuart Filler's leadership in starting tax clinics receded, Janet Spragens and Nina Olson stepped up and took over leadership of this movement. Nina Olson established a new model for tax clinics. Janet Spragens saw the importance of tax clinics in serving the poor in the post-1995 world of welfare to work. Together they joined forces to convince Congress of the need to provide funds to serve the growing number of low-income taxpayers. They nurtured the new clinics arising in the post-1998 era. Unfortunately, Janet passed away and Nina Olson moved on to a role as the NTA, which places her in a potentially helping but removed position *vis-à-vis* LITCs. The LITC community needs new leaders of the type it has had in the past to help it move to the next phase of its existence. If the LITC community simply seeks to maintain status quo, it will eventually lose sight of its goal to assist taxpayers in need and focus on its own existence.

Some clinics, particularly the academic clinics, have relatively strong financial support, while other clinics operate on very thin budgets. The grant funds provided by section 7526 cannot equalize these funding differences and certainly cannot equalize the experience differences between the various clinics. The listserv provides a significant source of community within the LITCs; however, the group needs more cohesion. Some LITCs meet telephonically for monthly conferences and use these groupings to provide mentoring and support networks across geographical distances. More of this type of connectivity needs to occur to assist the clinicians in supporting one another and providing backup for each other in times of need. The annual conference of LITCs might be used to build and support these bonds so that the group feels cohesive rather than isolated.

The group needs to set goals so it can achieve those goals. It needs to engage in measuring mechanisms to determine what goals to set and what efforts to make in order to meet the established goals. The Pro Bono and Tax Clinic committee of the ABA Tax Section has set a goal of getting notifications to every *pro se* taxpayer filing a petition in Tax Court that an LITC exists that could provide assistance if the taxpayer qualifies. The committee also set a complementary goal of finding lawyers to attend every Tax Court calendar call. These goals may, however, be quite modest or misguided compared to what should be done for the low-income taxpayer community. Can the com-

²⁸³ One great example of a chance to make a difference in the policy world occurred in May 2012 when 12 representatives of low-income taxpayers had the opportunity to meet with the Deputy Commissioner of the Service and the NTA to discuss issues impacting low-income taxpayers as the Service prepared its forms for innocent spouse and return preparer due diligence. See Fogg, *supra* note 265 at 16.

munity work better and at a national level with the pro bono tax preparation community lead by VITA and AARP to establish a cleaner handoff of cases when the tax preparers encounter a taxpayer with controversial issues? Can the community work better with the Service to provide notification to taxpayers under audit or under the threat of collection to get notification to those taxpayers of the existence of a local LITC office? This kind of goal setting and research is also the natural function of an assistance center. Can the community set a goal of creating a viable assistance center to take leadership in identification of taxpayer needs?

Another major challenge is the role of the Service in administering the grant funds. At present, a disagreement exists between the TIGTA and the NTA. TIGTA wants the NTA, as the person responsible for overseeing the distribution of grant funds and oversight of their proper use, to check the taxpayer files in determining whether grant funds were properly used.²⁸⁴ The NTA strongly opposes such an intrusion into case files because of the confidentiality issues.²⁸⁵ The issue has far reaching implications concerning the ability of clinics accepting grant funds to keep their client information confidential and to avoid even the perception of control by the Service who is the party opponent in these cases. A parallel, and perhaps more direct, concern exists in LSC area. The General Accountability Office (GAO) has criticized LSC headquarters office for its oversight of the funds it administers.²⁸⁶ At least in the LSC context, the party reviewing the files is not the party opponent. Still, there exist concerns about confidentiality. To the extent that LITCs exist in over 50% of local legal services offices, the oversight by LSC is another concern for many tax clinicians. The intrusiveness of LSC review derives from Congressional mandate in its creating statutes.²⁸⁷ The NTA seeks similar Congressional guidance before giving in to the demands of TIGTA to intrude into case file information as part of grant administration.²⁸⁸

VIII. Conclusion

In the 39 years since Stuart Filler began his experiment at Hofstra, LITCs have grown from one small clinic to a significant player in the tax field. They provide representation each year to thousands of taxpayers and play a role in the shaping of tax law through their systemic advocacy. It would be difficult today for many to imagine a Tax Court calendar in which none of the low-income taxpayers received representation; however, such a scene is still

²⁸⁴ See TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, 2011 REPORT, *supra* note 64 at 5-6.

²⁸⁵ See *id.* at 16 (Nina Olson response, by memo dated June 13, 2011, to 2011 REPORT).

²⁸⁶ See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, LEGAL SERVICES CORPORATION: IMPROVED INTERNAL CONTROLS NEEDED IN GRANTS MANAGEMENT AND OVERSIGHT, 14, May 22, 2008, <http://www.oig.lsc.gov/gov/GAO-08-37.pdf>.

²⁸⁷ Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 *et. seq.* (2006 & Supp. 2011).

²⁸⁸ See Nina Olson's memorandum in response dated June 13, 2011 in 2011 REPORT, *supra* note 64, at 19.

possible in a few areas of the country. LITCs need to look to best practices among themselves to improve individual clinic performance. They need to find better ways to share knowledge and resources to improve overall performance. Finally, they need to continue to effectively represent their clients on both individual and systemic issues to insure that the tax system, which has embraced low-income taxpayers for purposes of delivering welfare benefits, continues to operate in a manner that is fair to all. Leaders such as Stuart Filler, Janet Spragens, and Nina Olson have moved the representation of low-income taxpayers from something that did not exist to a system where many receive significant services. Now clinics need to find ways to consolidate their gains and expand to assist individuals currently lacking representation as well as to increase their presence in the tax system on a policy making level.

Appendix A

Clinic Grants by Year	Total Grant Awards	Controversy/ESL/Both	Academic	LSC	Independent
1999	34	C = 22, ESL = 4 Both = 8	22	12	N/A
2000	70		31	39	
2001	102		36	34	24
2002	125		39	40	38
2003	137		37	49	43
2004	125		36	46	42
2005	146	C = 34, ESL = 31, Both = 81	37	LS/I Combined: 109	
2006	153	C = 38, ESL = 31 Both = 84	33	LS/I Combined: 120	
2007	154	C = 50 , ESL = 21 Both = 83	43	LS/I Combined: 111	
2008	155	C = 45, ESL = 21, Both = 89	47	41	66
2009	162	C = 47, ESL = 19 Both = 96	42	66	54
2010	160	C = 44, ESL = 16, Both = 100	44	61	55
2011	165	C = 53, ESL = 16, Both = 96	44	61	60
2012	154	C = 48, ESL = 21, Both = 85	41	65	48

