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By Jeanne Charn and Jeff Selbin

The Common Roots of Legal Services and Clinical Education

Forty years ago, the new Office of Economic Opportunity (OEO) legal services program and clinical legal education were intertwined and interdependent. The first generation of clinical faculty included prominent public defenders and legal services attorneys. Legal services leaders and clinicians shared goals, commitments and experience in anti-poverty lawyering. Modern clinical legal education traces its roots to the Ford Foundation-financed Council on Legal Education for Professional Responsibility (CLEPR). In the decade before it launched CLEPR, the Ford Foundation piloted anti-poverty programs, including innovative neighborhood legal services projects. Ford’s grant strategies produced a body of experience and research that shaped the Johnson Administration’s “War on Poverty” in general and the OEO’s federally funded legal services program in particular.

In creating CLEPR, the Ford Foundation’s goal was to draw the resources and prestige of law schools and the energy and commitment of 1960s law students into the new OEO legal services effort. CLEPR’s premise was that clinicians and their law school-based service centers would introduce law students to anti-poverty law practice, build skills and begin the process of inculcating a professional identity that would inspire many law graduates to pursue legal services careers. CLEPR was equally committed to having students learn through direct assistance to needy clients, resulting in a substantial service dividend in under-represented communities.

By the mid-1970s, the clinical and legal services movements began to diverge. Over the next twenty-five years, conservatives sought sharp curtailment and outright elimination of the federal legal services program. Legal services providers and their supporters were, of necessity, pre-occupied with program integrity and survival. On the legal education side, having invested $12 million to secure a toehold for clinical education in the law schools, CLEPR was winding down its funding. Law schools worried about unrest in the 1960s had been willing to add curricular programs that offered students “relevance” and a constructive outlet for anger and protest. For a variety of reasons, however, many law schools remained reluctant to incorporate fully the clinics and their (largely) adjunct staff into the traditional curriculum and faculty. While the legal services community was withering under relentless external attacks, clinicians were fighting to secure their programs and positions within the legal academy.

II. Unfinished Agendas

After decades of struggle, legal services has proven itself a durable institution with increasingly strong state and local support and prospects for continuing, even increasing, bi-partisan support at the federal level. Similarly, clinical education has achieved an important measure of security within law schools. Significantly, both movements now have sufficient stability to focus on unfinished substantive agendas that often have been overshadowed by institutional battles.

A. The Unfinished Legal Services Agenda

The vast majority of poor and near-poor people today continues to have no meaningful access to legal advice and assistance. What the Legal Services Corporation (LSC) defines as the “justice gap” remains more a chasm than a readily bridgeable shortfall. By all accounts, LSC deals with only a small fraction of the legal
needs of the very poor, and people at twice (or more) of the federal poverty level have similar needs and few options for help. Whether viewed in process terms as an access to justice agenda or in substantive terms as an anti-poverty strategy, the impact of legal services to the poor continues to lag well behind its aspirations.

Equally striking is the realization that forty years of legal services funding has yielded relatively few answers in terms of how best to serve clients. We know something about the unmet legal needs of low and moderate income people, yet have only minimal data on the substance and quality of service clients receive. Since the 1970s, no major funder has undertaken even the most rudimentary quantitative or qualitative study of the functioning of the program, e.g.: 1) to survey routinely client satisfaction; 2) to collect data on unit costs, service impact, or legal outcomes; or 3) to develop validated indicators of service quality. It seems unlikely that the Congress, state legislatures, the courts or other funders will provide adequate resources to close the justice gap absent reliable evidence of: 1) the quality and cost-effectiveness of service modes; 2) the nature of benefits delivered to clients; and 3) the unit costs of expanding to and maintaining a full service delivery system.

B. The Unfinished Clinical Agenda

While clinical education’s place in the legal academy remains a work in progress, nationwide more than 1,000 clinicians currently offer instruction and supervision to law students in a wide and growing number of substantive fields, most of which complement legal services priorities. At the same time, success on the institutionalization agenda has generated significant, if unintended, programmatic counter-pressures. The improved status of many clinicians in law schools and the attendant demands in exchange for these perquisites — most notably to produce scholarship, to assume administrative duties and to justify their place in the academy — have resulted in a narrowing of service goals over time. Thus, even as they have grown in number and size, clinics appear to be serving fewer clients and doing so in practice settings that are increasingly attenuated from low-income communities.

While clinicians have produced scholarship relevant to legal services — including case studies that describe, critique and promote delivery models; a relatively recent emphasis on collaboration, community lawyering and empowerment; and an extensive focus on the power dynamics of the lawyer-client relationship, especially in the poverty law setting — there remains a substantial knowledge and data gap about the service and learning functions of the clinics themselves. For example, there is no readily accessible, current data on the actual: 1) staffing of clinics; 2) student/supervisor ratios; 3) student caseloads; or 4) numbers and types of cases completed in clinics.4 There also is no outcome or other data on the casework itself and there has been little empirical research of clinics from a service delivery or outcome effectiveness perspective.

Finally, only a handful of law schools require that every student undertake a mentored and critically reflective clinical practice course. Law students may learn how to “think like lawyers” but every meaningful analysis of legal education has concluded that law schools do not prepare their graduates sufficiently to practice like lawyers.5 Only big firms, big government and a few large public defender or legal aid offices have the resources to structure rich professional development programs for recent law school graduates. Relatively few such graduates — mostly at elite schools — are in a position to take advantage of these opportunities. Inattention to the transition from law school to practice creates serious problems for resource-strapped legal services and for the solo and small firm private bar that provides two-thirds of the service the poor receive and almost all of the service received by the near poor. Low salaries and high debt deter new lawyers from legal services careers, but their concerns about the adequacy of post-graduate practice learning and professional development are significant obstacles as well. For all of these reasons, legal services providers and funders have a direct stake in the strength and effectiveness of clinical legal education.

III. Re-connecting Clinics and Legal Services

Opportunities now exist for substantial progress on the unfinished agendas of legal services and clinical education, and both movements would benefit from a renewal of our historic connections, collaboration and synergies.
education, and both movements would benefit from a renewal of our historic connections, collaboration and synergies. From the legal services perspective, the groundwork for expansion has been laid by LSC’s success in maintaining consistent, bi-partisan support at the federal level. The commitment of governors, legislatures, mayors and state court leaders to substantial expansion is evidenced by the fact that two-thirds of the $1 billion annual investment in civil legal assistance comes from state and local sources. Further, the American Bar Association is a leader in the “Civil Gideon” movement, an effort to guarantee legal assistance for anyone faced with significant legal problems but without means to pay for assistance.

As resources for legal services expand, the need for objective data and evidence of the effective use of funds also will increase. Unlike the much larger and more generous legal services programs in peer countries, the United States does not have a developed, independent legal services research capacity. Eventually, legal services here can and should develop such a capacity. In the meantime, clinics are in a position to fill at least part of the void.

Some clinicians and clinical programs are already heavily involved in legal services delivery issues. They participate in service delivery innovations such as court-based self-help centers, advice hotlines, unbundled legal services, alternative dispute resolution, and the restorative and therapeutic justice movements. Some clinics serve moderate as well as low-income clients and have experimented with client co-payments. Many clinics have embraced the role of technology in law practice and some have state-of-the-art case management and data systems. A few have converted completely to on-line case files and record keeping.

Law school clinics, particularly community-based law school clinics, are in a unique position to contribute to the unfinished agendas of legal services and clinical education. Because most law school clinics operate free from onerous legislative restrictions on LSC and receive reasonably stable funding from law schools, they have greater freedom to experiment with service approaches and substantive areas of practice. Because most clinics are situated in large research universities, they have access to the resources and expertise needed to produce credible data and study designs. Like good teaching hospitals in relation to health care for the poor, law school clinics can be sites of research relevant to critical questions confronting the legal services and access to justice community, including at least three interrelated lines of inquiry: 1) developing and testing service delivery models; 2) providing access to researchers interested in the relationship of law and legal services to conditions of poverty and disadvantage; and 3) making comparative assessments of differing methods for teaching in and about practice.

The clinics where we have worked — the University of California, Berkeley’s East Bay Community Law Center (EBCLC) and Harvard Law School’s WilmerHale Legal Services Center — are large community-based service centers where staff and clinical students work on hundreds of client matters each year in addition to myriad activities with, for example, community health centers, community development corporations, tenant groups, affordable housing developers, social service agencies, the courts and other community-based organizations (CBOs). Our clinics have data on thousands of completed matters that we are beginning to research and analyze. One example of our preliminary efforts to test whether services have the desired benefits for clients come from the EBCLC “Clean Slate” Clinic that assists clients who want to expunge criminal records in order to improve employment and housing opportunities. EBCLC has conducted initial focus groups and will follow the clients served to determine whether the predicted benefits accrue. A similar project at the WilmerHale Center is examining whether clients who avoided foreclosure with Center help are able to retain their housing subsequent to completion of their cases. As these examples suggest, we understand these community-based clinical education and service centers as “lab offices” with overlapping educational, service and research missions relevant to the larger legal services community and its efforts to expand and improve access to civil advice and assistance.

Legal services will benefit from such an agenda because research will be increasingly important as funding increases and service approaches proliferate.
Research produced from university-based clinics will have legitimacy due to the rigor and objectivity required by the academy. Further, legal services will not have to devote the resources needed, for example, to carry out a study that sheds light on the comparative advantages of hotline versus in-person advice services. Finally, it may be advantageous for clinics to develop and pilot innovations that might be politically sensitive. For example, clinics might work on approaches to quality assurance. Approaches initiated and validated in university-based clinics could be adapted for use in legal services offices with much less concern that results would be misunderstood or inappropriately used. From the outset, clinics’ research goals can take into account and prioritize providers’ needs.

Finally, there are numerous benefits to clinical legal education from a research agenda focused on legal services delivery, anti-poverty lawyering and improved clinical teaching methods. Such a program arises directly from, informs and guides revision of practices and teaching methods in the clinic; it models for our students inquiry as a routine of practice; and it provides an evidence basis for service protocols. Clinic research should complement the research and scholarship of non-clinical faculty colleagues leading to productive and interesting collaborations.

IV. Next Steps

The time for a renewed partnership between legal services and law school clinics has never been more ripe with possibilities. In addition to the institutionalization of clinics and their ability to leverage the research potential of their larger campuses, there are a number of encouraging trends that legal services and clinics can build upon. Universities and community groups across the country are forming collaborative ventures to reinvigorate community services efforts generally and anti-poverty efforts in particular. Sister professions – including medicine and social work – are in the midst of evidence-based movements which can inform our thinking and action.

More specifically, under the auspices of the Association of American Law Schools (AALS) Section on Clinical Legal Education’s Bellow Scholar Committee and Harvard Law School’s Bellow-Sacks Access to Civil Legal Services Project, a small group of clinicians with a strong interest in legal services have begun working together on this common agenda. We recently met at the University of Maryland, home to a robust law school clinic serving low-income communities in Baltimore, to discuss the practical opportunities and obstacles to engage clinicians in this effort. Among other things, we are exploring the creation of both a working group and a website to post examples of work of interest to the two communities.

There will, as always, be many challenges ahead. Time, money and expertise will never be in sufficient supply, but the resources are in place and the timing seems right to begin to make real progress.

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4 Recently launched, the Center for the Study of Applied Legal Education (CSALE) is “dedicated to the empirical study of applied legal education and the promotion of related scholarship. CSALE’s initial focus is a long-term longitudinal study that will capture significant aspects of the growth and development of applied legal education, its diverse substantive foci, its methodologies, its instructors, and its integration into the American legal academy” (www.csale.org/).