Celebrating CLEPR’s 40th Anniversary: The Early Development of the Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools

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CELEBRATING CLEPR's 40TH ANNIVERSARY: THE EARLY DEVELOPMENT OF CLINICAL LEGAL EDUCATION AND LEGAL ETHICS INSTRUCTION IN U.S. LAW SCHOOLS

J. P. "Sandy" Ogilvy*

This article introduces the essays, articles, and remarks celebrating the fortieth anniversary of the establishment of the Council on Legal Education for Professional Responsibility (CLEPR). The Section on Professional Responsibility and Section on Clinical Legal Education of the Association of American Law Schools (AALS) jointly sponsored a half-day program at the 2009 AALS Annual Meeting in San Diego, California, in recognition of the fortieth anniversary of CLEPR and the one hundredth anniversary of the promulgation of the American Bar Association Canons of Professional Ethics, the ABA's first effort at establishing a private law of lawyering to govern its members. After the program, the AALS Section on Clinical Legal Education, the Clinical Legal Education Association, and the ABA Section of Legal Education & Admissions to the Bar held a reception and dinner recognizing and celebrating the contributions of CLEPR and its predecessor organizations in creating the modern clinical education movement and fostering the teaching of professional responsibility. The introduction also provides the reader with short histories of clinical legal education and the teaching of professional responsibility in American law schools, providing context for the materials that follow in this issue.

On January 7, 2009, the Section on Professional Responsibility and Section on Clinical Legal Education of the Association of American Law Schools (AALS) jointly sponsored a half-day program at the AALS Annual Meeting in San Diego, California, in recognition that 2008 was the fortieth anniversary of the establishment of the Council on Legal Education for Professional Responsibility (CLEPR) and the one hundredth anniversary of the promulgation of the American Bar Association (ABA) Canons of Professional Ethics, the ABA's first ef-

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fort at establishing a private law of lawyering to govern its members.\(^1\)
The two panel sessions of the afternoon program included a look back on the history of the clinical legal education movement and on professional responsibility teaching, with particular emphasis on CLEPR.

In the evening after the program, a reception and dinner were held to recognize and celebrate the contributions of CLEPR and its predecessor organizations in creating the modern clinical education movement and fostering the teaching of professional responsibility.\(^2\)

The highlights of the evening were presentations honoring William Pincus, CLEPR's president, and the Honorable Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit, former Dean of the University of Southern California (USC) School of Law (1967-80) and member of the CLEPR Board of Directors (1973-80). Judge Nelson was Dean at USC when the school "rediscovered" clinical legal education. During her tenure as dean at USC, Earl Johnson, Jr., the first director of the Legal Services Program of the U.S. Office of Economic Opportunity (precursor to the Legal Services Corporation), Gary Bellow, Bea Moulton, Denny Curtis, and other pioneers of clinical legal education created and taught in the clinical program.\(^3\)

This issue of the *Clinical Law Review* collects most of the presentations (some in expanded form) from the afternoon program and evening celebration.

It is fitting that the Professional Responsibility and Clinical Sections of the AALS joined forces to recognize these two milestones. Questions about the proper content and methods for teaching legal ethics and professional responsibility to law students have been entwined with questions about the scope and pedagogy of clinical legal education for more than four decades. In this brief introduction to the materials from the program and celebration that are collected in this issue, I want to provide the reader with short histories of clinical legal education and the teaching of professional responsibility in American law schools to provide some additional context for what you will read.

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\(^1\) The planning committee for the joint, half-day program at the 2009 AALS Annual Meeting was chaired by Professor Peter Joy (Washington University in St. Louis) and included Professors Susan Carle (American), Jeanne Charn (Harvard), Kimberly O'Leary (T. M. Cooley), Michele Pistone (Villanova), Irma Russell (Tulsa) and David Santacroce (Michigan).

\(^2\) The CLEPR fortieth anniversary celebration was planned by a committee comprised of delegates from the AALS Section on Clinical Legal Education, the Clinical Legal Education Association, and the ABA Section of Legal Education and Admissions to the Bar. The committee was chaired by Professor David Santacroce (Michigan) and included Professors Jeanne Charn (Harvard), Lisa Kloppenberg (Dayton), Mary Lynch (Albany), Sandy Ogilvy (Catholic), Calvin Pang (Hawaii'), Michael Pinard (Maryland), Randy Hertz (NYU), Michele Pistone (Villanova), and Ms. Becky Stretch (ABA).

\(^3\) Dorothy W. Nelson, Transcript of Oral History Interview 1-3 (Jun. 12, 2008) (on file with author).
within this issue.

I. EARLY CLINICAL LEGAL EDUCATION

In the United States, until the end of the 19th century, lawyers were educated through self-directed reading of legal texts, through apprenticeship in a law office, or through a combination of both means of training.\textsuperscript{4} However, even in the early years of the republic, there were schools where one could receive some training in the law. In 1779, Jefferson reorganized William and Mary College, his alma mater, and established a “school of law” as one of the six faculties of the college. Each faculty consisted of a single professorship, which was termed a school. The faculty chair in the school of “Law and Police” was filled by “Jefferson’s law teacher and fellow revisor of the Virginia statutes, Chancellor George Wythe.”\textsuperscript{5}

According to one commentator, this school, which continued its existence until 1861 (the law school at William and Mary was revived in 1920), exerted its greatest influence on legal education through the publication, in 1803, of St. George Tucker’s annotated edition of Blackstone’s \textit{Commentaries}: “Tucker’s work fixed the Blackstone tradition in this country, and by ostensibly compressing all legal knowledge within the covers of a single book, undoubtedly discouraged the organization of law schools elsewhere. It made the apprenticeship method of teaching law practicable and sufficient.”\textsuperscript{6}

Other law schools were created, including, in 1784, Litchfield Law School, in Litchfield, Connecticut, described as “essentially a specialized and elaborated law office”; Benjamin Franklin’s College of Philadelphia, in 1790, which merged with the University of Pennsylvania; and Transylvania University in Lexington, Kentucky, in 1799.\textsuperscript{7} But the first school of law created in this country to continue in uninterrupted existence was Harvard Law School, which was inaugurated in 1817.\textsuperscript{8}

In 1860 there were twenty-one law schools operating, but few, if any, resembled what we think of when we consider law schools of today.\textsuperscript{9} In 1870, Christopher Columbus Langdell was appointed Dean

\textsuperscript{5} \textsc{Alfred Zantzinger Reed}, \textit{Training for the Public Profession} 116 (1921).
\textsuperscript{7} Reed, \textit{supra} note 5, at 128.
\textsuperscript{8} Harvard Law School, \textit{Our History}, http://www.law.harvard.edu/about/history.html.
\textsuperscript{9} See Reed, \textit{supra} note 5, at 171.
of Harvard Law School. He is generally given credit for originating the case method of legal instruction, which was to revolutionize the study of law in law schools, and which dominates much of law teaching today.\textsuperscript{10}

However, even after the Langdellian revolution was underway, local courts and the lawyers who practiced before them continued to control admission to practice.\textsuperscript{11} It was not until well into the 20th century that graduation from law school and passage of a bar examination by itself qualified a person to practice law.

Perhaps, in part, because of some continuing requirements for law office study, the university law schools were not compelled to supplement their theoretical training with practical training.\textsuperscript{12} Even so, a law club at the University of Pennsylvania established a legal aid dispensary as early as 1893. In 1904, the University of Denver's dispensary opened. In 1913, Harvard established the Harvard Legal Aid Bureau and the University of Minnesota required obligatory service by all students in the office of the Legal Aid Society.\textsuperscript{13}

In 1928, the University of Southern California established an experimental, six-week clinical program under the guidance of John Bradway. Bradway went on to establish the Legal Aid Clinic at Duke University, which is regarded as the first full-fledged in-house clinical program.\textsuperscript{14}

The interest in clinical education in the late twenties and the thirties, which included Bradway's scholarship and pioneering work at USC and Duke and Jerome Frank's article in the University of Pennsylvania Law Review, Why Not a Clinical Lawyer School?,\textsuperscript{15} never took off. In 1947, the University of Tennessee became only the second law school to create an on-going, in-house clinical program. This program remains the longest continually established program in the country. By the 1950s there were only about twenty-eight law schools offering some form clinical program based on a legal aid model.\textsuperscript{16}

\textsuperscript{10} See Albert James Harno, Legal Education in the United States 53 (1953).
\textsuperscript{11} See Reed, \textit{supra} note 5, at 68-78.
\textsuperscript{12} That explanation is not entirely satisfactory, however, since by 1921, most jurisdictions allowed, but did not require, an applicant to substitute attendance at law school for most, if not all, of the prescribed period of study. See Reed, \textit{supra} note 5, at 257.
\textsuperscript{13} See Alfred Zantzinger Reed, Present-Day Law Schools in the United States and Canada 217 (1928).
\textsuperscript{14} See John S. Bradway, The Beginning of the Legal Clinic of the University of Southern California, 2 S. Cal. L. Rev. 252 (1929); John S. Bradway, The Classroom Aspects of Legal Aid Clinic Work, 8 Brook. L. Rev. 373 (1939); John S. Bradway, Legal Aid Clinic as a Law School Course, 3 S. Cal. L. Rev. 320 (1929-1930).
\textsuperscript{15} Jerome N. Frank, Why Not a Clinical Lawyer School?, 81 U. Pa. L. Rev. 907 (1933).
\textsuperscript{16} Quintin Johnstone, Law School Legal Aid Clinics, 3 J. Legal Educ. 535 (1951).
II. Early Law School Instruction in Legal Ethics

During the time of the early experiments in clinical legal education, instruction in legal ethics grew more rapidly, spawned, perhaps, by the adoption of the codes and canons of ethics by the ABA and state and local bar associations.\(^{17}\)

Although the ABA was founded on August 21, 1878,\(^ {18}\) commentators have noted that the "ABA functioned as little more than a social club" for the first decades of its existence.\(^ {19}\) It was not until 1908 that the ABA published its first code of behavior for its members, the Canons of Professional Ethics.\(^ {20}\) The Canons, principally, were concerned with professional deportment, and before long they were regarded as "inadequate as a comprehensive statement of professional responsibility."\(^ {21}\) However, it was not until 1969 that a new code of conduct was published after a Special Committee on Evaluation of Ethical Standards reported in 1965 to the ABA House of Delegates that the Canons were in need of substantial revision in part because there were "important areas involving the conduct of lawyers that are either only partially covered in or totally omitted from the Canons... and [c]hanged and changing conditions in our legal system and urbanized society require new statements of professional principles."\(^ {22}\)

Teaching legal ethics in law schools can be traced at least to 1851, when Judge George Sharswood, after being elected Professor of Law for three years in the Law Department of the University of Pennsylvania beginning in 1850, delivered his introductory lecture in Sep-


\(^{20}\) The Canons of Professional Ethics were based on the earlier Alabama State Bar Association Code of Ethics, which was adopted in 1887. Both the Alabama Code and the ABA Canons were heavily influenced by the lectures delivered by Professor and Judge George Sharswood at the University of Pennsylvania Law School beginning in 1854. See GEORGE SHARSWOOD, A COMPEND OF LECTURES ON THE AIMS AND DUTIES OF THE PROFESSION OF LAW (1854). Sharswood republished the lectures in An Essay on Professional Ethics, 2d ed. (1860). Moliterno says that the Alabama Code was drawn largely from Sharswood's lectures and David Hoffman's Fifty Resolutions in Regard to Professional Deportment. Moliterno, supra note 17, at 86 (citing HENRY S. DRINKER, LEGAL ETHICS 23 (1953)).


\(^{22}\) See Id. at 4 (quoting the ABA Special Committee on Evaluation of Ethical Standards to the ABA House of Delegates in February, 1965).
tember 1851. He published his Essay on Professional Ethics in 1854.23

A survey of instruction in professional ethics in 1914 found that of the 81 law schools reporting data, 57 provided instruction in legal ethics by one or more talks or lectures, 5 schools provided instruction in legal ethics as part of another course, and 16 schools reported offering "merely incidental" instruction.24 Of the 57 schools reporting instruction by specific lecture, 10 indicated that talks or lectures were given "sometimes" or "occasionally" or that the number "varies." Of the 47 reporting a specific number of hours devoted to ethics talks or lectures, the average number of hours was 7.7, with a range of 1 to 20, and a median of 7 hours.25 Until 1917, most courses in professional ethics used as textbooks the codes of various state and local bar associations, the ABA Canons of Professional Ethics, the book by George Sharswood,26 or books by George Warevelle,27 Gleason Archer,28 and C. La Rue Munson.29 In 1917 George P. Costigan Jr., Northwestern University Law School, published the first modern casebook on legal ethics.30 The text contained ten chapters and an appendix. Other than the first chapter, which surveyed the history and organization of the legal profession in England and in the United States, the focus of the book was on "making law students acquainted with high standards of professional conduct, and of informing them

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23 See Anonymous, Memorial, in George Sharswood, An Essay on Professional Ethics 5 (1907). Of the eighty-one schools represented in the survey of instruction in professional ethics conducted by Jesse H. Bond (University of Idaho) in 1914, eighteen indicated they had provided specific courses in legal ethics for eight or fewer years; only one school reported having a course for more than twenty years. This result led Bond to conclude "that these courses have been established since the beginning of the general code movement, and especially since the movement for a code of ethics became prominent in the American Bar Association." Jesse H. Bond, Present Instruction in Professional Ethics in Law Schools, 4 AM. L. SCH. REV. 40, 45 (1915).

24 Bond, supra note 23, at 41.

25 Id. at 43.

26 See Sharswood, supra note 20.


30 George P. Costigan Jr., Cases and Other Authorities on Legal Ethics (1917). The Costigan text joined twenty-nine other casebooks in the American Casebook Series published by West Publishing Company. Id. at v - vi. Costigan said the book was "not a typical casebook; it is a reading book, which contains cases as part of its readings, or it is a casebook which contains readings." George P. Costigan Jr., The Teaching of Legal Ethics, 4 AM. L. SCH. REV. 290, 294 (1917).
sufficiently of objectionable professional practices which they would be likely, if unwarned, to indulge in, unthinkingly.”\(^{31}\) He described the contents of the second edition, published in 1933, in much the same terms, as a “book of source materials on the history, traditions, etiquette and ethical standards of the Legal Profession in England and in the United States . . . .”\(^{32}\)

Law professors, individual lawyers, and bar associations recognized the responsibility of law schools to instruct students in legal ethics soon after the Canons of Professional Ethics were published.\(^{33}\) The dissatisfaction of the organized bar with the law schools’ response to this responsibility was expressed as well. As early as 1928, a committee of the ABA urged the AALS to appoint a special committee with whom the ABA committee might confer regarding “requiring a course in legal ethics.”\(^{34}\) The AALS Special Committee was created and met once with its counterpart from the ABA and sent a questionnaire to all law schools in the United States and Canada to ascertain “what is now being done in the matter of teaching professional ethics and to elicit opinion as to its worthwhileness.”\(^{35}\) At the 1928 Annual Meeting of the AALS, the chair of the AALS Special Committee, acting for himself rather than for the Committee, moved “that it is the sense of [the AALS] that a course in legal ethics should be required for graduation in all law schools.”\(^{36}\) After some discussion, the motion was put to a vote and lost.\(^{37}\) It was not until 1974 that the ABA wrote a requirement for a course in legal ethics into the accreditation standards for law schools.\(^{38}\)

\(^{31}\) Costigan, \textit{Teaching of Legal Ethics}, supra note 30, at 291.

\(^{32}\) \textit{Costigan, supra note 30.}

\(^{33}\) See \textit{e.g.}, Robert E. Mathews, \textit{Professional Responsibility Past Concern but Today’s Urgency}, in 1977 \textit{National Conference on Teaching Professional Responsibility} 725 (Stuart C. Goldberg ed., 1977) (citing Floyd R. Mechem, \textit{The Opportunities and Responsibilities of American Law Schools}, \textit{5 Mich. L. Rev.} 344, 352-353 (1907) (”The ethics of the profession must also look to the law school for their inspiration and support.”)).


\(^{35}\) \textit{Id.} at 436.

\(^{36}\) Professor Herschel Whitfield Arant, chair of the Special Committee, had argued that his correspondence with several members of the ABA Committee showed him that “they have the decided conviction that a course in legal ethics should be required for graduation in all law schools.” He also stated that “a decided majority of the answers [to the Special Committee’s questionnaire] that came back were to the effect that legal ethics should be required.” \textit{Id.} at 458-59.

\(^{37}\) \textit{Id.}

\(^{38}\) \textit{Section of Legal Educ. And Admissions to the Bar, Am. Bar Ass’n, Standards for the Approval of Law Schools, Standard 302(a)(iii)(1974); the current standard is 302(a)(5). “(a) A law school shall require that each student receive substantial instruction in: . . . (5) the history, goals, structure, values, rules and responsibilities of the}
About the same time, both the organized bar and the law schools started to move seriously from talking about teaching legal ethics in the narrow sense of instruction in an understanding of the Canons of Professional Ethics to a recognition that a lawyer, as a professional, owed a duty to the public generally to improve the administration of justice and to perform as a civic leader. This shift in attitude roughly paralleled the rise of the legal realist critique of law and legal institutions. This movement led eventually, in 1952, to the creation, by the American Bar Association and the Association of American Law Schools, of the Joint Conference on Professional Responsibility.40

In 1958, the Joint Conference published its “statement of the lawyer’s responsibilities, set in the context of the adversary system.”41 The statement assumed that “in modern society the legal profession may be said to perform three major services . . . [the lawyer as] advocate and counselor . . . the lawyer as one who designs a framework that will give form and direction to collaborative effort, [and] the lawyer’s obligations of public service . . . .”42 The public service opportunities and obligations include being a trustee “for the integrity of those fundamental processes of government and self-government upon which the successful functioning of our society depends.” The lawyer has “an affirmative duty to help shape the growth and development of public attitudes toward fair procedures and due process.”43 In addition, the statement recognized the obligation of lawyers to make legal services available to all by providing adequate representation for those unable to pay the usual fees, to appear in court on behalf of clients whose causes are in disfavor with the general public, to concern themselves with the reform and improvement of the law, and to act as good citizens by accepting the duty of leadership on broad issues of social policy where the lawyer’s training and experience can be especially helpful.44

Professor James Moliterno has argued that the Joint Conference Report “may have provided the consensus about the values central to professional responsibility that was [previously] lacking” inasmuch as

39 See, e.g., Bernard C. Gavit, Legal Ethics and the Law Schools, 18 A.B.A. J. 326 (1932); Moliterno, supra note 17, at 88 (“The realists sought to replace ethics with professional ethics designed to inculcate values and a conception of ‘the law as a public profession charged with inescapable social responsibilities.’”).


41 Id. at 1159.

42 Id. at 1160.

43 Id. at 1162, 1216.

44 Id. at 1217.
after that report "the emphasis shifted to the problem of how to teach professional responsibility, and away from a theoretical concern with the nature of professional responsibility."45

With this shift in emphasis came calls for the law schools to encourage experimentation in the delivery of instruction in professional responsibility.46 One of the experiments waiting in the wings was clinical legal education, and it was at this juncture that several forces came together to press law school legal clinics as one method for instruction in professional responsibility; out of this came the modern clinical movement.47

III. THE BIRTH OF MODERN CLINICAL LEGAL EDUCATION

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. Brownell saw it as an opportunity to get some bright young people into legal aid offices where they could lend a hand with some of the cases and be introduced to the work of the legal aid offices. He also appreciated the prestige that NLADA could obtain from being

45 Moliterno, supra note 17, at 90.

46 The AALS Committee on Education for Professional Responsibility conducted a survey of ethics teaching at the conclusion of a Ford Foundation-funded Conference on the Education of Lawyers for their Public Responsibilities, held at the University of Colorado, August 16-23, 1956 (the Conference was to become known as Boulder I). The Committee published its findings in 1958 and concluded its report by writing:

This Committee believes that its inquiry has shown that in our law schools today there is a widespread interest in the subject matter of professional ethics and responsibility, that there is a growing awareness that the methods and materials that have proved so successful in the rest of the curriculum must be supplemented here by special modifications adjusted to the meeting of different student attitudes and to the pervasive need of communicating a perception of ethical values.

See Caleb Foote et al., Report of the Committee on Education for Professional Responsibility, in 1958 HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS AND PROCEEDINGS OF THE TWENTY-SIXTH ANNUAL MEETING 169, 177-78. The Committee recommended "devising ways of stimulating still further experimentation in both method and subject matter," including cooperative programs with members of the practicing bar and introducing problems of lawyer conduct into substantive subject matter courses, that is, other than courses in practice and pleading. Id.

47 This role for legal clinics was not new. Nellie MacNamara, in an address before the Round Table on Legal Aid Clinics of the AALS in December 1934, argued that legal clinics should supplement the special courses on legal ethics. Nellie MacNamara, Teaching Ethics by the Clinical Method, 8 AM. L. SCH. REV. 241 (1935). John Bradway similarly suggested that law school clinics be a part of teaching of legal ethics. John S. Bradway, Making Ethical Lawyers—Some Practical Proposals for Achieving the Goal, 24 GEO. L. J. 345 (1935-1936).
associated with a significant grant from the Ford Foundation. Pincus had something more in mind. He saw the grant as “some little beginning to see [if] it was possible to enrich law school education [and] bring it outside the strictures of just the classroom.” He wanted to encourage law schools to expose law students to clients while in law school just as medical schools exposed medical students to patients as part of medical school education. Later, for Pincus, it “became a crusade to really change legal education.”

The discussions that Pincus and Brownell had led to a grant proposal to the Ford Foundation by the NLADA and the creation of the National Council on Legal Clinics (NCLC). The Ford Foundation authorized a seven-year project and awarded NLADA $800,000 to be administered by NCLC, a group that included representatives from NLADA, the ABA, and the AALS. Howard Sacks took a leave from Northwestern University School of Law to serve as Administrator of the Professional Responsibility Project of the NCLC. Emery Brownell served as Director of NCLC until his death in 1961, and Sacks was appointed to replace him.

The founding board of directors of NCLC was drawn from the leadership of the ABA and legal education. Its chairman was Orison Marden, President of the Bar of the City of New York. Joining him was a “blue-ribbon panel” of lawyers and legal educators, including William Avery, Chairman of Sidley and Austin in Chicago; Charles Miller, who founded the Clinic at Tennessee; Maynard Toll, chairman of the management committee of O’Melveny & Myers in Los Angeles; Theodore Voorhees, Washington DC Lawyer and Professor at Catholic University Law School; William Gossett, General Counsel of General Motors Corporation and former ABA President; Whitney North Seymour, managing partner of Simpson Thacher & Bartlett in New York and former ABA President; Edward Levi, Dean of the University of Chicago Law School and later University Provost and President; Russell Niles, Dean of NYU Law School and later Chancellor of NYU and Marlin Volz, Dean of the University of Missouri – Kansas City School of Law.

49 Id. at 25.
50 Id.
53 Id. at 5.
As organized, NCLC sought to place primary emphasis on the development of clinical and internship training in professional responsibility. NCLC conceived of professional responsibility training as not limited to questions of legal ethics, but rather it was “defined to include the duty to engage in collective action and co-operation with other professions and community institutions where the interests of client or community require such action.”\textsuperscript{54} The term “professional responsibility” was thought to include developing in the lawyer an “understanding of the role of . . . social institutions such as the family court, the youth board and the modern social agency.”\textsuperscript{55} Professional responsibility included the “lawyer’s obligation to aid in law reform; to secure adequate representation of the indigent in both civil and criminal cases; to participate in the work of the organized Bar; and to act as a guardian of the principle of due process . . . . It also included the responsibility of the lawyer for community service” . . . and “the responsibility of the lawyer for participation in public affairs . . .”\textsuperscript{56}

During the six years of its existence (1959-65), NCLC made grants totaling about $500,000 to nineteen law schools to create or expand clinical programs.\textsuperscript{57} In addition to law school grants for clinics and externships, NCLC made grants totaling $150,000 for the preparation of teaching materials.\textsuperscript{58} Some of the materials receiving support from NCLC included legal ethics casebooks by Professors Vern Countryman\textsuperscript{59} and Murray Schwartz\textsuperscript{60} and other materials for teaching professional responsibility.\textsuperscript{61} NCLC also produced a film featuring

\textsuperscript{54} Sacks, \textit{supra} note 51, at 1110.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Marden, \textit{supra} note 52, at 5. “The original grants supported a variety of clinical experiences for law students: as law clerks in legal aid clinics; as interns in juvenile and family courts; in observation or participation in the work of mental hospitals, social agencies, police departments and correctional institutions . . . internships with a trial judge for all members of the senior class of one law school; internships with rural lawyers in North and South Dakota . . .” \textit{Id.} at 6. \textit{See also} National Council on Legal Clinics, \textit{Education for Professional Responsibility in the Law School: Preliminary Reports on Seven Experimental Projects} (1962).
\textsuperscript{58} Marden, \textit{supra} note 52, at 6.
\textsuperscript{59} \textsc{Vern Countryman, The Lawyer in Modern Society} (1962).
\textsuperscript{60} \textsc{Murray L. Schwartz, Cases and Materials on Professional Responsibility and the Administration of Criminal Justice} (1961).
\textsuperscript{61} \textit{See} \textsc{Walter F. Murphy and C. Herman Pritchett, Courts, Judges, and Politics: An Introduction to the Judicial Process} (1962); National Council on Legal Clinics, \textit{Problem Case on Professional Responsibilities of the Advocate} (1962); National Council on Legal Clinics, \textit{In the Matter of Hoffman A. Sharswood, a Member of the State Bar} (1963); National Council on Legal Clinics and Northwestern University School of Law, \textit{Moot Court Problem on Unauthorized Practice of the Law} (1963); \textsc{T. A. Smedley, Professional Responsibility Problems in Family Law} (1963); \textsc{Robert J. Levy, Selected Materials on Family Law: Custody, the Unwed Mother, Adoption, Parental Neglect} (1964); \textsc{Robert Elden Mathews, Problems Illustrative of the Responsi-
Justice Felix Frankfurter.\textsuperscript{62}

In the spring of 1965, the Ford Foundation received a favorable evaluation of NCLC from its reviewers and discussions were initiated with the Ford Foundation to renew the grant. Bill Pincus, the program officer at the Ford Foundation responsible for the grant application, was not entirely satisfied with the work of NCLC. He wanted the second grant to make more of an impact on legal education. He said that the board of NCLC “were not reformers, but they believed in the value of [NCLC's work] and that it should be kept going.”\textsuperscript{63} Pincus, on the other hand, “saw it as the opening wedge to really change the law schools.”\textsuperscript{64} However, Pincus was not the administrator of NCLC and, after the renewal grant was made, had little influence on the program. He insisted, however, that the renewal grant be made to the AALS, because he wanted a change in legal education and not just further assistance to legal aid programs.\textsuperscript{65} Ultimately, the AALS agreed to be the grantee, but it insisted on changing the name of the program by removing “clinics” from the title. Pincus resisted this move because he saw it as a step backward from the original NCLC focus on clinical education.\textsuperscript{66} To win the approval of the AALS as grantee, Pincus gave way on the name change and in 1965 the Ford Foundation made a grant of $950,000, plus the balance of the funds remaining from the original grant to NCLC, to continue the work for a five-year term. The project was renamed the Council on Education in Professional Responsibility (COEPR).\textsuperscript{67}

The new board of directors of COEPR was composed of three members nominated by the ABA, three nominated by NLADA, four nominated by the AALS, and four at large members. Seven of the

\begin{itemize}
\item \textsuperscript{62} 16mm film: Hon. Felix Frankfurter and Professor Paul A. Fruend, \textit{The Lawyer's Place in Our Society} (produced by National Council on Legal Clinics in association with Theodor Granik), 1964 (on file with the University of Missouri – Columbia library and Washington State University library).
\item \textsuperscript{63} Pincus, \textit{supra} note 48, at 27.
\item \textsuperscript{64} \textit{Id.} In the May, 1967 American Bar Association Journal, Pincus wrote:
Service to the public should be the primary concern of the law schools and the profession: the cheapest and best service possible, . . . [and] one third of the law school curriculum should be devoted for credit to field or clinical experience under close supervision by a new kind of professor—a counterpart of the clinical professor in medicine. Only thus will legal education be sure of a lifeline through which it may keep in touch with the changing society it must serve. This clinical experience should include operation of legal services as well as other experiences relevant to the lawyer.
\item \textsuperscript{65} Pincus, \textit{supra} note 48, at 27.
\item \textsuperscript{66} \textit{Id.} at 29.
\item \textsuperscript{67} Marden, \textit{supra} note 52, at 6-7.
\end{itemize}
original NCLC board retained seats on the COEPR board and Howard Sacks continued as Executive Director on a part-time basis.\textsuperscript{68}

COEPR operated from 1965 until June 1968 and made grants totaling approximately $290,000 to twenty-one law schools. "Half of these grants were for summer internships . . . [and] the remaining grants were for clinical programs conducted during the regular school year."\textsuperscript{69} Approximately $24,000 in grants were made for teaching materials and field research. The AALS received $25,000 for a conference on teaching professional responsibility in the law schools, and $23,300 was made available to non-law school organizations for experimental clinical programs.\textsuperscript{70}

In 1967, Howard Sacks, who was making the transition to become Dean of Connecticut Law School, informed the COEPR board that he would not be able to be a full-time dean and also direct COEPR; the board needed to find a replacement for Sacks as director. Edward Levi, a member of the COEPR board and former dean of the University of Chicago Law School (1950-62), approached McGeorge Bundy, president of the Ford Foundation, with a proposal. According to Bill Pincus's recollection, Levi told Bundy that the project was now in its second stage. COEPR had the money to move forward, but it did not have a person to run the organization. Levi asked Bundy to give COEPR "Bill Pincus and the money to really create a whole new structure and do this thing properly."\textsuperscript{71} Bundy agreed.

Bill Pincus first learned that he had been "optioned" to COEPR when he received a phone call from Edward Levi asking him, "how about you leaving the Ford Foundation and becoming head of COEPR?"\textsuperscript{72} Pincus was nonplussed. He told Levi, "Ed, everything else aside, I can't even discuss this with you, because I'm on the staff of the Ford Foundation. I cannot be lobbying for a job based on a grant that I just recommended. It's not ethical."\textsuperscript{73} Levi responded:

Oh, relax, I already spoke about this to the higher-ups and specifically with McGeorge Bundy. Everybody knows about it except you. And there's no conflict of interest. He [Bundy] said it's perfectly alright if you want to do it. It's your decision. That's what they told me. So I am now asking you.\textsuperscript{74}

Bill immediately went to Bundy who confirmed everything that Levi had told Pincus. Bill told Bundy that he would accept the posi-

\textsuperscript{68} Id. at 7.
\textsuperscript{69} Id.
\textsuperscript{70} Id.
\textsuperscript{71} Pincus, supra note 48, at 31.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 31-32.
tion if he could be assured of three things: an independent institution with its own board of directors responsible for how the money is spent, enough money, and enough time to try to make a difference in legal education. Bundy agreed, and in June 1968, the Ford Foundation announced a grant to the Council on Legal Education for Professional Responsibility. The initial grant was for a five-year period with a promise of support for a second five-year period at its expiration. The Foundation made $6 million available immediately.\(^7\)

Six members of the COEPR board continued to serve on the newly established CLEPR board and twelve new members were added. Pincus rented a small office near the Ford Foundation headquarters in Manhattan and set about to create a grant-making institution that would set in motion the modern clinical legal education movement.

The administrative structure and costs of CLEPR, for the most part, were modest. In the beginning, CLEPR operated with Pincus, as President; Betty Fisher, as corporate secretary; and Peter deL. Swords, as treasurer. As needed, CLEPR would hire consultants to assist Pincus and Swords in reviewing grant applications and overseeing the grants.

Although the criteria for the grants to law schools evolved over time, from the beginning Pincus and the board agreed on several points. Most grants would be small, in the range of $50,000 a year; limited, usually for two years; and the grantee schools would be obligated to pay a small portion of the costs of the program in the first year of the grant and up to half of the costs in the second year of the grant, with the understanding that the school would absorb all of the costs of the program going forward.\(^6\)

The first nine CLEPR grants, totaling $757,000, were awarded in January 1969, about six months after the creation of CLEPR. The first grant was to Duke University and North Carolina College at Durham for a jointly-sponsored project to fund summer internships with private practitioners and prosecutors for ten Duke law students and five from North Carolina College.\(^7\)

Harvard Law School, also one of the first nine grantees, received

\(^7\) Marden, supra note 52, at 8.

\(^6\) Pincus, supra note 48, at 50.

\(^7\) CLEPR Announces Its First Nine Grants, Newsletter (Council on Legal Education for Professional Responsibility, New York, N.Y.), Jan. 1969, at 1, 2. The other recipients of the first grants included the Center for Law and Social Policy in Washington, D.C., the Consortium of Universities of the Washington Metropolitan Areas (for the D.C. Law Students in Court Program, Inc.), Harvard University, Northwestern University, Rutgers-Camden University, the University of South Carolina, the University of Utah, and the University of Wisconsin. Id.
$175,000 over three years for five graduate fellowships per year to train clinical professors.\textsuperscript{78} The Harvard Clinical Fellows program was begun by John Ferren, now a senior judge on the D.C. Court of Appeals. Gary Bellow, who had been hired by Dean Dorothy Nelson at the University of Southern California Law School, left USC in 1970 to take over the program at Harvard when Ferren returned to private practice with Hogan & Hartson in Washington, D.C., to start a community service department at the firm.\textsuperscript{79}

The grants to North Carolina College and Harvard Law School shed light on Pincus's strategy for insinuating clinical legal education into American legal education. Pincus was very egalitarian; he wanted assure that there were clinical programs in every law school in the country, so he funded proposals from some schools even though the proposals were not as strong as he would have liked. At the same time, he recognized that schools like Harvard and Yale commanded respect in legal education, so he sought to fund programs at these institutions, believing that if Harvard and Yale had clinics, the other lesser-ranked schools would be more willing to consider creating clinics as well.\textsuperscript{80} Notably, University of Chicago Law School, where Levi (the man who hand-picked Bill Pincus to lead CLEPR) had been Dean and later University Provost and President, never received a CLEPR grant, because the school refused to award course credit for clinical work, and Pincus would not budge on that criterion.\textsuperscript{81}

The strategy worked. By the time that CLEPR closed its doors in 1980, nearly every law school in the country had at least one clinical course and many had substantially more. Not all of the programs, or even a substantial majority in 1980, met the criteria for a good clinical program that Pincus had tried to foster. He defined clinical as "lawyer-client experience, under law school supervision, for credit."\textsuperscript{82} Although most schools did award course credit for participation in clinical courses, many were "farmout" programs with little or no direct supervision by law faculty.

In addition to making grants to law schools to start or expand clinical programs, CLEPR pursued two other activities intended to spread the word about the value and viability of clinical education. First, CLEPR published a Newsletter that was circulated to nearly 6000 persons including law teachers and members of the bench and

\textsuperscript{78} Id. at 4.
\textsuperscript{79} John Ferren, Transcript of Oral History Interview 8 (Oct. 30, 2008) (on file with author).
\textsuperscript{80} Lester Brickman, Transcript of Oral History Interview 8 (Jul. 9, 2008) (on file with author).
\textsuperscript{81} Pincus, supra note 48, at 30.
\textsuperscript{82} Id. at 6.
bar. Through the Newsletter, CLEPR made grant announcements and solicited new proposals for grants from the law schools. The Newsletter also featured reports on workshops and conferences sponsored by CLEPR, descriptions of clinical programs and courses, and news and features about issues important to the new clinical community. Second, and arguably more important to the development of the clinical movement, was CLEPR's sponsorship of workshops and conferences.

Early in its existence, CLEPR began inviting small groups of clinical teachers to CLEPR headquarters in New York to "provide a forum wherein current thought and practice related to clinical legal education can be presented, analyzed and possibly developed into general theories for consideration by legal educators." The first workshop was held on October 6-7, 1969, and brought together James Bailey of Boston University, John Ferren of Harvard, Joseph Harbaugh of Connecticut, Robert Oliphant of Minnesota, Robert Spangenberg of Action for Boston Community Development, and Harry Subin of NYU.

In addition to the small workshops, CLEPR sponsored several large national conferences on clinical legal education. The first, in 1973, at Buck Hill Falls, Pennsylvania, attracted about two hundred participants. Before the conference, CLEPR had solicited working papers to be used as a starting point for discussions by the participants. The essays were collected in a book, *Clinical Education for the Law Student*, which was distributed to the participants before the conference. One of the working papers, now regarded as a seminal paper in legal pedagogy, "On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology," by Gary Bellow, set out an idea of what should be taught in a clinic that was radically different from what many others were claiming.

The workshops and conferences were part of CLEPR's overall strategy to empower clinical teachers. Peter Rubino, President of the Practising Law Institute, who was a CLEPR program officer and treasurer from 1971 through the end of the program, remembered the early workshops as "kind of therapy sessions" in which clinical teachers could "bolster each other talking about how the dean didn't support them or the faculty was after them... while the workshops may

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84 Id.
have had a theme, underlying it was the fact that clinical teachers had a chance to get together.\textsuperscript{87}

In 1977, CLEPR made a grant to the AALS to hold the first national clinical teachers' conferences that the AALS ever sponsored. The grant, secured by Gary Barnhizer at Cleveland State Law School, enabled the AALS to organize clinical conferences in Cleveland, Ohio, in 1977, in Washington, D.C., in 1978, and in Snowmass, Aspen, Colorado, in 1979. Starting with the 1977 conference, the AALS has sponsored a clinical conference or workshop every year. These conferences and workshops and the regional conferences, such as the Mid-West Clinical Conference, are the direct descendents of the early CLEPR workshops and can be credited with creating the strong community of clinical teachers that exists today.\textsuperscript{88}

By the end of the first, five-year grant period, CLEPR had succeeded in encouraging most law schools to start or expand a clinical course or program. By the close of 1972, CLEPR had made 116 grants totaling more than $4,000,000 at more than 90 of the then-existing ABA-approved law schools.\textsuperscript{89} Coming out of the Buck Hill Falls Conference in 1973, there was a measure of agreement that clinical legal education was now an established part of American legal education but that work remained to be done.

Over the final two funding cycles (1974-75 and 1976-77), CLEPR sought to improve the clinical programs it had fostered rather than to encourage more schools to join the parade. Grants were made to expand the kinds of cases and clientele served by clinics, to address the scarcity of trained clinical teachers, and for programs that exposed more first-year students to clinical education. Grants were given to aid the development of new kinds of teaching materials, including videotapes, a simulation manual, and computerized problems for use in pre-clinical programs. In addition, CLEPR sought to encourage schools with existing clinical programs to raise the status of their clinical programs closer to parity with traditional courses in the curriculum by making some grants for general operating expenses, capital improvements, and to establish parity between clinical and academic salaries. Pincus wanted clinical faculty to be viewed as equals with other faculty in the law schools. He did not want clinical faculty to be "second class citizens," and parity in salaries and facilities was a measure of the status that schools should be encouraged to provide to

\textsuperscript{87} Peter Rubino, Transcript of Oral History Interview 6 (May 27, 2008) (on file with author).

\textsuperscript{88} Milstein, supra note 86, at 22.

\textsuperscript{89} Marden, supra note 52, at 9.
With the approach of the end of the ten-year Ford Foundation grant, CLEPR planned a final major conference. This was held October 24-27, 1979, at the Sonesta Beach Resort in Key Biscayne, Florida. Elliott Milstein remembers that while there were many clinical teachers in attendance, the majority of the presentations were given by "the enemies of clinical education." Then, on one morning of the conference, Bill Pincus convened a meeting of clinical teachers at which he referred to recent amendments to the authorization legislation for Title XI of the Higher Education Act, which had just recently started providing some federal funding for clinical programs. According to Milstein, Pincus admonished the clinical teachers in attendance: "See!," he said, "you see what they're trying to do? They're trying to steal your money. They want to give this money for trial practice programs. They want to give the money for legal writing programs. They don't want the money to go to you guys. And if you don't get organized, you're dead!"

The impassioned plea by Pincus had the apparently desired effect. Later in the conference a meeting of clinical teachers was called. At the meeting, the group, later to be known as the Key Biscayne Group (KBG), concluded that they needed to start developing a strategy for developing some power by the clinical education community and finding some ways to influence the events that were affecting their lives as academics. A smaller group volunteered to become a coordinating group for the larger Key Biscayne Group to work together to draft a set of goals and strategies. The smaller group, which became known as the Gang of Eight, consisted of Peter Smith (Maryland), Roy Stuckey (South Carolina), Joe Harbaugh (then at Temple), David Barnhizer (Cleveland State), Rod Jones (Southwestern), Gary Palm (Chicago), and Elliott Milstein (American). Later in 1979, with the help from a sympathetic ABA leader, the Gang of Eight met at the Yale Club in Manhattan and crafted a document that crystallized the goals of the nascent clinical movement and some strategies for achieving them. But that is a whole other story.

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91 Pincus always sited the conferences and board meetings in places that the blue-ribbon board members would want to be in so that they could use the board meeting as a little vacation, since they received no remuneration for serving. See Pincus, supra note 48, at 64.
92 Milstein, supra note 86, at 35.
93 Id.
IV. THE LEGACY OF CLEPR

A significant legacy of CLEPR is the phenomenal growth in the number of clinical programs, in the diversity of clinical offerings, and in the maturation of clinical pedagogy. Another legacy of CLEPR and its predecessor organizations has to be the growth and maturation of clinical legal education globally. CLEPR influenced the development and growth of clinical legal education by providing seed money to programs in Canada, Ceylon, and Uganda during the life of the organization, and currently hundreds of American clinical teachers are consulting with and training clinical colleagues in scores of countries throughout the world. Some of these U.S.-bred clinicians were initially hired by law schools with CLEPR funding and others are the direct descendents of the clinical teachers brought into the law schools by the grant-making prowess of CLEPR. In addition, the Ford Foundation, whose grant created and enabled the work of CLEPR, has been one of the most significant providers of support to emerging clinics in other parts of the world, although it no longer funds domestic clinical legal education.

The goal that Bill Pincus set out for CLEPR, the radical reorganization of the legal education curriculum, has not come to pass, however. It is not even true, as Pincus observed, that “law schools, in order to graduate a student, require a clinical experience,” let alone devote the entire third year of legal education to experienced-based instruction. As Pincus noted in his oral history interview, “[CLEPR] made an enormous contribution [to reforming legal education]; we made a big start, but we didn’t finish the revolution.

As the pieces in this issue by Dean Chemerinsky and Professor Rhode so elegantly argue, the clinical legal education and professional responsibility pioneers’ vision of a model of legal education that prepares law school graduates to enter the profession adequately prepared as novice practitioners has yet to be realized. But with an ap-
preciation for the work that preceded ours, we can pledge to ourselves, our students, and their future clients that we will not rest until the revolution has been won.