

CLINICS AT WISCONSIN: COMPREHENSIVE, IN-DEPTH PEDAGOGY AND BOTTOM-UP INNOVATION

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I. HISTORY

The University of Wisconsin (UW) Law School has been a pioneer in clinical education. Experiential education, involving actual legal advocacy and practice, started at Wisconsin in the 1970s before many U.S. law schools had even thought about what came to be called law school “clinics.”¹ These initial efforts developed out of the Law School’s commitment to innovations in criminal justice and its support of public interest law and administrative advocacy.

II. FOUNDING MOMENTS

Early projects were experimental semi-independent organizations loosely affiliated with the law school.² On the criminal justice side, the initial project was shaped by Professor Frank Remington, a national leader in criminal justice reform and scholarship who saw experiential learning as a natural part of criminal justice education and created a team of lawyers who worked with students on prisoner legal services and reform.³ On the civil side, the initial project was sparked by Dean George Bunn and Louise Trubek, who sought to develop public interest law in the state and train students primarily in administrative advocacy and legislative

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1. Louise Trubek, Clinical Professor Emerita, Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin’s Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with *Wisconsin Law Review*), https://www.youtube.com/watch?v=mTEII_QzO0M&t=88s [<https://perma.cc/3HSS-939B>].

2. *Id.*

3. *Id.*

interventions.⁴ They created the Center for Public Representation (CPR), an independent public interest law firm, and linked a Law School clinical component to it.⁵

These early clinical experiences benefited from the University's, state's, and nation's culture at the time. UW Law's "law in action" tradition encouraged "learning by doing," and the University's "Wisconsin Idea" of service—encapsulated in the slogan, "the boundaries of the campus are the boundaries of the state"—encouraged service-oriented learning.⁶ The Law School's deans saw clinics as a natural way to further both law in action and the Wisconsin Idea by providing legal outreach to citizens and clients.⁷ At the same time, the state government was progressive: participation of lawyers and law students was accepted as a way of improving the work of state and local government agencies.⁸

National institutions also supported the experiments at Wisconsin.⁹ Foundations and federal agencies saw law as a potential tool for social justice; there was support for reform and a view that lawyers should play a positive role.¹⁰ Public interest law firms were springing up on the East and West Coasts, supported by law firms and foundations; those firms served as a model for CPR.¹¹ The reform effort also included support for training lawyers in new subjects and roles: The American Bar Foundation and the Ford Foundation contributed to the support of the emerging criminal law clinics.¹² A few other schools also began to experiment with clinics.¹³

These local and national mobilizing structures gave the Wisconsin founders confidence that they could succeed. Frank Remington had strong connections in the foundation world and knew he could get money for experiments in education. Dean Bunn had followed the development of public interest clinics elsewhere, and Louise Trubek had experience founding two public interest law firms in Connecticut; they felt confident that they could benefit from the national trend.

While the criminal justice clinic and CPR were influenced by developments elsewhere, they took on some unique features. The early

4. Louise G. Trubek, *Social Justice Advocacy and Innovation: The Wisconsin Center for Public Representation 1974–Present*, 25 *GEO. J. ON POVERTY L. & POL'Y* 221, 224, 228 (2018) [hereinafter *Social Justice Advocacy and Innovation*].

5. *Id.*

6. Trubek, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. Trubek, *supra* note 1; *Social Justice Advocacy and Innovation*, *supra* note 4, at 249.

11. Trubek, *supra* note 1.

12. *Id.*

13. *Id.*

Wisconsin clinics were, at the same time, both part of the law school and independent law firms.¹⁴ Both were based in offices outside the physical plant of the law school.¹⁵ Funding came largely from foundations and other outside sources, not the Law School budget.¹⁶ While there was some participation of regular faculty, many of the supervisors were hired on a year-to-year basis as lecturers and had no regular or permanent university status.¹⁷ They saw themselves as public interest or criminal justice lawyers who also were educators.¹⁸ Frank Remington disliked the term “clinics” because of the narrow connotations he associated with it.¹⁹ He also preferred to see the staff as lawyers or the law-school equivalent of graduate students engaged in overseeing the work of these experiential probes into the world, not academics on a career track as educators.²⁰

A. National Standardization and Local Partial Integration into the Law School Curriculum and Governance

In the 1990s, UW Law’s clinics changed dramatically. Nationally, clinics became more securely embedded into law school curriculum.²¹ The ABA and AALS issued standards to be met by all law schools and encouraged funding for clinics.²² Clinicians organized into national associations that stressed their essential role in teaching and service.²³

Despite the success of embedding the clinics in the curriculum, clinicians’ status in school governance and remuneration remained contested. Individual law schools varied in how clinicians participated in research funding, voted on faculty hires, and enjoyed eligibility for faculty perks. Some offered a degree of integration and equality, while others kept clinicians in subordinate positions. Wisconsin clinics were part of the

14. *Id.*

15. *Id.*

16. *Id.*; see also Steve Meili, James H. Binger Professor in Clinical L. & Assoc. Professor of L., Univ. of Minn. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin’s Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with Wisconsin Law Review), https://www.youtube.com/watch?v=mTEII_QzO0M&t=88s [<https://perma.cc/3HSS-939B>].

17. Trubek, *supra* note 1.

18. *Id.*

19. Keith Findley, Professor of L., Univ. of Wis. L. Sch., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin’s Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with Wisconsin Law Review), https://www.youtube.com/watch?v=mTEII_QzO0M&t=88s [<https://perma.cc/3HSS-939B>].

20. *Id.*

21. *Social Justice Advocacy and Innovation*, *supra* note 4, at 244.

22. *Id.* at 227–28, 246.

23. See, e.g., *id.* at 241–42.

partial integration. At the symposium, Kate Kruse and Steve Meili discussed how the Wisconsin clinics' relationship to the larger clinical community changed dramatically over this period of time.²⁴ Kruse remembers:

In 1990 . . . the people in the Remington Center pretty much weren't [well positioned in the larger national clinical community]. We didn't really go to very many clinical conferences. We didn't know that much about what clinical education was like at other law schools. And so we really were—most of us, many of us—most of us were graduates of University of Wisconsin. So our conception of clinical education was also shaped by our experience as students. So we didn't have a lot of exposure to clinical education elsewhere. So there was this sort of isolation from the rest of the national clinic community. . . . [T]hen by 2001, though, we were better connected. We were, like I said, longer term. We were more invested. And through that, we were also traveling more, going to conferences, making connections with other people in the larger clinical community, and viewing ourselves as part of this profession of clinical teachers, clinical professors that other schools had, and we had them, too.²⁵

These developments had complex effects on the clinics at Wisconsin. The clinicians gained some status as career educators within the Law School and felt they were part of a national endeavor. But, at the same time, as they were drawn closer to the Law School, they lost some of the autonomy that they previously had. While they were full-scale lawyers outside of the Law School, within it they were put in a separate and secondary track that maintained a gap between themselves and the doctrinal faculty.²⁶

B. Distinctive Aspects of the Wisconsin Clinical Tradition

Clinical education has long been recognized by the legal academy for its value in adding a skills-based component to the curriculum. Clinics at Wisconsin never accepted that conception: they saw clinics as more than

24. Kate Kruse, Vice Dean for Acad. & Fac. Affs. & Professor of L., Mitchell Hamline Sch. of L., Panel Discussion at the *Wisconsin Law Review* Symposium: Wisconsin's Intellectual History and Traditions (Oct. 23, 2020) (transcript on file with Wisconsin Law Review), https://www.youtube.com/watch?v=mTEII_QzO0M&t=88s [<https://perma.cc/3HSS-939B>]; Meili, *supra* note 16.

25. Kruse, *supra* note 24.

26. *Id.*

that, instead, offering a comprehensive, in-depth form of legal education. Clinical pioneers who created the foundational clinics like Frank Remington, followed by Walter Dickey—both tenured faculty members—along with Louise Trubek at CPR, disliked the pure “skills model.”²⁷ To this day, Walter Dickey resists even calling the projects “clinics.”²⁸ The founders did not like the connotations that clinics were just about skills because they saw experiential education as much more than skills.²⁹

Wisconsin clinicians have been more apt to ascribe to Professor Anthony Amsterdam’s view of legal pedagogy. Amsterdam observed that the traditional law school curriculum, particularly prior to the emergence of rigorous clinical programs, was too narrow because it failed to teach “methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as case reading and doctrinal analysis are foundations for practical skills and for much else.”³⁰ Clinical education can fill that void, Amsterdam wrote, by teaching things like fact development, problem-solving, “[h]ypothesis formulation and testing in information acquisition,” and “[d]ecisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts.”³¹ According to Amsterdam, clinical education thereby engages students in learning in ways that are “no less conceptual or academically rigorous than case reading and doctrinal analysis.”³²

Wisconsin clinicians have accepted this view of legal pedagogy, where clinical education engages students in learning in ways that are no less conceptual or academically rigorous than case reading and doctrinal analysis. The clinics at Wisconsin have been designed to meet the broad and deep learning objectives outlined by Amsterdam. We have done this in two ways: immersion with a broad view of substantive law and policy related to individual cases and innovation and experimentation in delivery methods from the bottom up.

Wisconsin’s clinics have long embraced “immersion” experiences, in which students enroll both for a large number of credits—often full-time over the summer after the 1L year (accompanied, uniquely, by a stipend to financially enable students to participate)—and commit to spending multiple semesters in the clinic, often a full year or more.³³ This allows the

27. Findley, *supra* note 19.

28. *Id.*

29. *Id.*

30. Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 612 (1984).

31. *Id.* at 614–15.

32. *Id.* at 615.

33. See, e.g., Keith A. Findley, *The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education*, 13 CLINICAL L. REV. 231, 268–69, 269 n.141 (2006) [hereinafter *The Pedagogy of Innocence*].

students to take ownership of their cases and thereby learn to make conceptually and academically rigorous inquiries and decisions. As an example, in 1998, Wisconsin created just the third Innocence Project in the nation³⁴ (there are now nearly 60 in the U.S.³⁵), and pioneered a model for other innocence clinics. The model involves full-time summer work and a full-year commitment that enables students to gain the intellectually rich experience of guiding investigations and litigation strategy of large-scale cases over time. Without immersion, the size of innocence cases would pose almost insurmountable challenges to effective clinical pedagogy.³⁶ Immersion also allows for in-depth engagement with ethical issues. At the symposium, Steve Meili pointed out that his Wisconsin clinic cases utilized three methodologies: legislative activity, administrative agency participation, and litigation skills.³⁷ Kate Kruse discussed how she used individual cases to enforce law on the books that led to enforceable rights and empowered the less well-off.³⁸ Kruse discussed how she and her students litigated family law cases all over the state and learned how different the law in action is from the law on the books.³⁹ They saw that results varied with which locality or court you were in; Kruse used these variations as teachable moments.⁴⁰

The second element of the distinctive Wisconsin tradition is the emphasis on innovation and experimentation from the bottom up. The clinic founders had that vision, and it has enabled the clinics to tackle new issues as they appear over time. Steve Meili described setting up a unique consumer law clinic: funding from an alum made it possible to create an original model subsequently adapted nationally.⁴¹ Keith Findley described how the Wisconsin Innocence Project adapted national models using the Wisconsin immersion method.⁴² Kate Kruse discussed how the mass incarceration of the 1990s led to a reformatting of the earlier legal aid approach.⁴³ In this way, while the detachment of the early clinics from the Law School came at a cost of status and participation in governance for clinical faculty, it had a benefit in creating the freedom for clinicians to innovate.

34. Findley, *supra* note 19.

35. *Id.*

36. See *The Pedagogy of Innocence*, *supra* note 33, at 268–69.

37. Steve Meili noted that ethical issues in fee shifting that create a conflict between the interests of the cause and the interests of the client become clear to the students over the extended and intense experience of a case. Meili, *supra* note 16.

38. Kruse, *supra* note 24.

39. *Id.*

40. *Id.*

41. Meili, *supra* note 16.

42. Findley, *supra* note 19.

43. Kruse, *supra* note 24.

C. Current Innovative Projects: Mass Incarceration Reform and LIFT
Dane

Two Essays written for this symposium discuss current innovative clinical offerings. Both describe how the projects are built on the shoulders of the early Wisconsin clinics, allowing for experimentation with social and political strategies and dramatic new technology. Renagh O’Leary’s Article, *Early Release Advocacy in the Age of Mass Incarceration*,⁴⁴ describes how the Legal Assistance for Incarcerated People (LAIP) clinic, one of Wisconsin’s original criminal clinics, is now engaging in the national movement to end mass incarceration. Her Essay notes that LAIP started when the number of people in prison was small and sentencing was more flexible, but that the program has had to adapt as the carceral situation changed.⁴⁵ In the 1990s, local and national legislation resulted in huge numbers of people being incarcerated, particularly those from minority populations.⁴⁶ LAIP has adapted new approaches aided by a dramatic shift in societal attitudes toward reducing incarceration. One technique being used is early release. She describes how her early release clinic presents opportunities to explore innovations such as narrative-driven and mitigation-intensive strategies. These strategies result not only in release for the clients, but also in educating students and judges about the real limits of prison.⁴⁷

Sarah Davis, Marsha Mansfield, Kelsey Mullins, Sachin Gupte, and Mitch write about technology-mediated legal services in *LIFT as “The Fourth Moment” in Wisconsin Legal Education for Social Justice*.⁴⁸ Legal Interventions for Transforming Dane (LIFT Dane) is a collaboration of the Law School’s Economic Justice Institute (EJI), UW Center for Patient Partnerships, and community organizations to develop a technology application that streamlines legal services, facilitates self-help, and reduces lawyer workload.⁴⁹ The vision is to link individual client assistance with systems change.⁵⁰ It reflects national efforts to reform civil justice using technology and to also expand the role of non-lawyers, helping to transform the civil justice system.⁵¹ LIFT Dane’s hybrid, semi-autonomous-organization form and imaginative fundraising builds on

44. Renagh O’Leary, *Early Release Advocacy in the Age of Mass Incarceration*, 2021 WIS. L. REV. 447.

45. *Id.* at 449–53.

46. *Id.* at 451–52.

47. *Id.* at 455–56.

48. See generally Sarah Davis, Marsha Mansfield, Kelsey Mullins, Sachin Gupte & Mitch, *LIFT as “The Fourth Moment” in Wisconsin Clinical Legal Education for Social Justice*, 2021 WIS. L. REV. 417.

49. *Id.* at 418.

50. *Id.*

51. *Id.*

strategies from the early days of EJI's predecessor, CPR, and the Wisconsin commitment to innovation and experimentation.⁵²

D. Conclusion: Looking Ahead

Perhaps the most important legacy of the Wisconsin clinics is this notion of innovation from the bottom up. Frank Remington viewed the LAIP program as his laboratory. Clinical instructors (supervising attorneys) were akin to graduate students or postdocs in a lab, and the clinics had tremendous freedom to experiment and create.⁵³ The University took a very hands-off approach; it largely let the founders do what they wanted with the clinic because the clinics were seen as their projects.⁵⁴

This autonomy facilitated innovation but, at the same time, meant that integrating these quasi-outsiders into the mainstream Law School community was difficult. As clinicians moved into the Law School building and onto its budget, and as they professionalized their career positions, they initially met some resistance. Gradually, clinical faculty have achieved enhanced professionalization, better standing in the Law School community, and greater participation in governance.

The consequence, of course, was that the Law School has more of a stake and more of a say in the clinics. This helps ensure fidelity to the Law School's mission and standards but could also stifle innovation. The challenge moving forward is to continue to strive for the best mix of accountability and innovation, looking for ways to best to accommodate the tension between giving the clinics the freedom to innovate while at the same time making them full partners within the Law School and University.⁵⁵

52. *Id.*

53. Findley, *supra* note 19.

54. *Id.*

55. *Id.*