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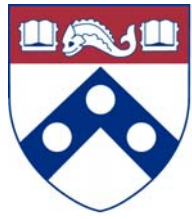


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CLINICAL LEGAL EDUCATION AT A GENERATIONAL CROSSROADS: X MARKS THE SPOT

PRAVEEN KOSURI*

Clinical legal education is at a crossroads. Three distinct generations with incredibly varied life experiences and expectations—Baby Boomer, Generation-X, and Millennial—will determine the path forward. The interactions among these three generations will be determinative of the future of clinical legal education. This essay discusses the current state of clinical legal education as created and led by the Baby Boomers who were typically movement lawyers from the 1960s and 1970s. Written from the perspective of a Gen-Xer, this essay charts his path to clinical legal education and challenges the norms of social justice and law reform as the primary drivers behind law school clinics. It goes on to argue for a greater ideological neutrality in determining the path forward and then articulates some of the challenges that impede Gen-X from fully engaging in the leadership and strategy of clinical legal education. Finally, it describes thoughts on teaching to the Millennials and ultimately bringing together all three generations to forge a unified path forward for clinical education.

I. INTRODUCTION

I attended my first Association of American Law Schools (“AALS”) Clinical Conference in 2008. I had just finished my third year of clinical teaching, so I didn’t feel like a total novice, but I also knew I wasn’t a seasoned veteran. I was excited to engage in a variety of discussions about clinical legal education and to exchange ideas with colleagues from different schools. Instead, I was struck by the implicit theme of generational differences in almost every discussion of which I was a part. I noticed that many of the discussions were dominated by senior clinicians in positions of leadership at their respective institutions. I wondered whether the motivations that drove them to careers in clinical legal education were the same as mine and how the world in which they grew up influenced their philosophy on

* Practice Associate Professor of Law at the University of Pennsylvania Law School and the Director of its Entrepreneurship Legal Clinic. I thank Minna Kotkin, Karla McKanders, Steve Reed, and Dean Rivkin—my co-conspirators in this venture to spark some conversation regarding the topics discussed herein—for their candor and thoughtfulness. I also thank Laurie Hauber, Jeff Leslie, and Victoria Phillips, who read early versions of this essay and provided me with valuable feedback.

clinical legal education. Having led the proliferation of law school clinics and having challenged the establishment to secure a permanent place for clinics in the traditional law school curriculum, I wondered whether that experience filters their entire world-view. I thought about what defines my generation and the generation behind me. A year later, at the 2009 AALS Clinical Conference, I participated in planning and conducting a concurrent session which provided a forum to discuss these issues.¹ We began the conversation there. This essay grew out of and is a continuation of that conversation.

Clinical legal education is at a crossroads at which there exists a confluence of three distinct generations—Baby Boomer, Generation-X, and Millennial. Comprised of faculty and students, these generations possess incredibly varied life experiences and expectations.² How these generations relate to each other will be determinative of the future of clinical legal education.³

The current leaders of clinical legal education are primarily from the Baby Boom generation. They share a commonality of experience that influences the underlying philosophy that girds modern clinical legal education.⁴ The design, scope, and status of modern day clinical programs is due in large part to these clinicians who were typically lawyers involved in the social and political movements of the 1960s and 1970s.⁵ They lived through and participated in an era of unprece-

¹ Minna J. Kotkin & Dean Hill Rivkin, *Clinical Legal Education at a Generational Crossroads: Reflections from Two Boomers*, 17 CLIN. L. REV. 197, 198 n.3 (2010) (describing the 2009 AALS concurrent session).

² In this essay, I refer to a “Baby Boomer” as someone born between 1946 and 1964, a “Generation Xer” between 1965 and 1976, and a “Millennial” between 1977 and 1990. This would mean that in 2010 a Baby Boomer would be between 46 and 64 years old; a Gen-Xer between 34 and 45; and, a Millennial between 19 and 33. See U.S. CENSUS BUREAU, GENERATION X SPEAKS OUT ON CIVIC ENGAGEMENT AND THE DECENNIAL CENSUS: AN ETHNOGRAPHIC APPROACH (2003), available at <http://www.census.gov/pred/www/rpts/Generation%20X%20Final%20Report.pdf>; Press Release, U.S. Census Bureau, Facts for Features: Special Edition: Oldest Baby Boomers Turn 60! (Jan. 3, 2006), available at <http://www.census.gov/newsroom/releases/pdf/cb06-ffse01-2.pdf>; Pew Research Center, Millennials: A Portrait of Generation Next, <http://pewresearch.org/millennials/> (last visited Sept. 15, 2010). It is also interesting to note that there is no scientific placement of these generational cutoff dates.

³ Throughout this essay I paint each generation as a monolith. By all means I know that they are not. However, when we talk about generations we have to generalize. And the characteristics, although not exclusive to each respective generation, do tend to describe the groups accurately in my opinion.

⁴ Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000) (describing the modern era of clinical legal education as beginning in the 1960s with the infusion of Ford Foundation money to select law schools to begin clinical programs and continuing into the 1970s with the development of a clinical teaching methodology); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998).

⁵ Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical*

dented political and social unrest—protests, riots, assassinations, political scandal. From that era of turmoil the modern clinical legal education movement was born.⁶

Because they were involved in the formation and evolution of this movement and have always been its leaders, the Baby Boomers have had control over its structure and shape in a unique way. In fact, they were instrumental in the development of a clinical pedagogical method.⁷ They pioneered the use of video and simulations to better train law students about the real world of law practice.⁸ They introduced client-centered lawyering into the discourse, departing from the issue-centered analysis more often found in the traditional doctrinal law curriculum.⁹ It is for these and many other innovations that my colleague Steve Reed labels them the “Great Clinicians.”¹⁰

For newer clinicians of my generation who were not part of that movement (but reap many of its benefits) and have had different life experiences, the challenge is how to continue to push clinical legal education forward with the same innovative ethos as the Baby Boomers did even though we are constrained in ways that the Baby Boomers were not. The challenge for the current leaders is to figure out how to integrate this new generation of clinicians with these different life experiences and world-views into the dialogue regarding

Education, 64 TENN. L. REV. 939 (1997); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463 (1995); Leah Wortham, Dean Hill Rivkin, Philip Schrag, Roger Wolf, Elliott Milstein & Kandis Scott, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 341 (1987).

⁶ Barry et al., *supra* note 4; see also PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION (1998) (“Clinical education was born in the social ferment of the 1960s.”); Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 592 (1987) (describing that a focus in legal education during the 1960s and 1970s was professional responsibility, and the clinic became the primary vehicle to instill such values); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 (2004) (noting that early clinicians “observed the lack of practical involvement of the law schools in the rights revolution sweeping the courts and communities of America”); Stephen Wizner & Robert Solomon, *Law as Politics: A Response to Adam Babich*, 11 CLIN. L. REV. 473, 473 (2005) (referring to clinical education in the 1960s, “we believed that we were making a political decision - that lawyering on behalf of poor people meant representing the oppressed against entrenched interests, including the state”).

⁷ Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); Barry et al., *supra* note 4; Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING: WORKING PAPERS PREPARED FOR CLEPR NATIONAL CONFERENCE (1973).

⁸ Amsterdam, *supra* note 7, at 617.

⁹ DAVID A. BINDER & SUSAN PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977).

¹⁰ Stephen F. Reed, *Clinical Legal Education at a Generational Crossroads: A Self-Focused Self-Study of Self*, 17 CLIN. L. REV. 243, part I (2010).

the future of clinical legal education.¹¹ In my view, that dialogue should be characterized by a more explicit ideological neutrality. That is, a so called “social justice” or law reform agenda for clinical education should not be presumed but rather should be considered one type of clinical strategy designed to impart valuable lawyering lessons to a generation of students who have grown up in a very different era than that of the modern clinical founders. In the end, all three generations must forge a new path which unifies the competing world views in order to push clinical legal education forward.

In this essay I will articulate my personal story and my motivations for becoming a clinician. I will highlight some of the distinguishing features of my generation—Generation-X—and how those characteristics influence my paradigm of clinical legal education. I will then discuss my approach to teaching our students, who generally represent the third generation at the crossroads, the Millennials. I conclude with some observations for what each generation can do to foster a vibrant future for clinical legal education.

II. YOU MAY FIND YOURSELF IN A BEAUTIFUL HOUSE, WITH A BEAUTIFUL WIFE¹²

I never thought of myself as a public interest lawyer until I became a clinician—even though I began my legal career as a public defender. I think of myself as a public interest lawyer now, even though I run a transactional business clinic which draws much more upon my experiences as an investment banker and corporate lawyer in a private firm than any public interest experience I ever had.

One of the defining characteristics of my generation of clinicians is that, unlike the generation that preceded us,¹³ our backgrounds and experiences are incredibly diverse. We are public defenders, corporate lawyers, human rights lawyers, commercial litigators, civil rights lawyers, prosecutors, tax lawyers, social workers, immigration lawyers, and scholars (and often have been several of these). We are white, black, Latino, Asian, and South Asian. If we have a commonality, it comes more from MTV than from social movements or social networking. We grew up in the 1980s and became adults in the 1990s.

¹¹ This tension between Gen-X and Baby Boomer is not unique to law school clinics. See Tamara J. Erickson, *The Leaders We Need Now*, HARV. BUS. REV., May 2010, at 63 (describing similar tensions in the corporate world). But what is unique to clinical legal education is that the Baby Boomers did not experience their own transfer of power from a prior generation. They created and assumed leadership of the modern clinical movement from its outset.

¹² THE TALKING HEADS, *Once in a Lifetime*, on REMAIN IN THE LIGHT (Sire Records 1980).

¹³ *Supra* notes 4-6; see also *supra* note 1.

We were raised in an era of nuclear proliferation yet saw the fall of the Soviet Union and the Berlin Wall as young adults. Many of us were latch-key kids, which cultivated in us a unique level of independence. This may have spurred our desire for optionality.¹⁴ Some say we are guardedly skeptical about most things.¹⁵ Yet many of us acquired a sense of giving back and wanting to make the world a better place similar to that of the Baby Boomers. However, the place that social mission holds in a clinic and the hierarchy of goals we have may differ from that of our predecessors. Even our beliefs about our place within the academy may be influenced by our generation.

A. *You May Ask Yourself, 'How Did I Get Here?'*¹⁶

I didn't go to law school to become a public interest lawyer. I'm not sure that I even knew what one was. In fact, I didn't know much about lawyers or the law at all. My parents were first-generation immigrants from an ethnic community that did not have an already established presence in the United States. I don't remember even meeting a lawyer until college, much less one that shared my ancestry. I studied history and philosophy in college because those subjects interested me, not because I wanted to go to law school. I went to law school because I didn't want to look for a job.

It was 1991 and the economy was poor. When I was in my last semester of college I wrote a paper about what was important to me and what I wanted to do with my life. It was for a religion class that was cross-listed with philosophy. What I remember about it was that we read a lot of books that depressed me—novels like *Ordinary People*, *The Chosen*, and *The Color Purple*, but also books like *The Present Age* and *The Road Less Traveled*.¹⁷ What I took away from them was that life was hard. Not my life, but the lives of many other people. My life, on the other hand, had been very easy up until that point.

To make it even easier, I decided to go to law school in my hometown.¹⁸ When it came time to figure out what I was going to do during my first summer, I kept thinking back to that religion class and that paper. What I realized in writing that paper was that my life had

¹⁴ See Erickson, *supra* note 11.

¹⁵ U.S. CENSUS BUREAU, GENERATION X SPEAKS OUT, *supra* note 2.

¹⁶ The Talking Heads, *supra* note 12.

¹⁷ The course was called *Ethical Issues in the Life Cycle* and was taught by a phenomenal professor named Thomas McCullough at Duke University. I can't remember all of the books we read but all of them were consistent in making me think that life was difficult. JUDITH GUEST, ORDINARY PEOPLE (1982); SOREN KIERKEGAARD, THE PRESENT AGE (1949); M. SCOTT PECK, THE ROAD LESS TRAVELED (1978); CHAIM POTOK, THE CHOSEN (1967); ALICE WALKER, THE COLOR PURPLE (1982).

¹⁸ I attended Washington University School of Law in St. Louis, Missouri.

been remarkably blessed. It seemed that using those blessings for purely materialistic success (which is what I had been programmed to seek from seventh grade on) was a misplaced goal. I wanted to do something with my life that would make a difference in the lives of people who were less fortunate than I. My desire to do good did not come from witnessing civil rights abuses or war protests. It was not the result of a cultural revolution or a war on poverty. It came from that college course and a gnawing discomfort with the world of privilege in which I was raised.¹⁹ But oddly, this desire to help people was not driven by public interest but rather self-interest.

My conception of lawyers was entirely based on what I had seen on television and in film. I knew about *To Kill a Mockingbird*²⁰ and Atticus Finch, but mine was the era of *L.A. Law*²¹ and Arnie Becker. Through the on-campus interview process for my first year summer, I discovered the public defender. I had no desire to be a trial attorney. I did not crave attention or enjoy public speaking. But I liked criminal law and was attracted to being the underdog and using my education to stand up for people that most others would rather write-off. What I discovered, in addition, was that I loved the competitive aspect of it. I second-chaired a murder trial during my first summer and I was hooked.²² I knew that being a public defender was what I wanted to do after I graduated.

I never took a clinic in law school. In fact, at that time clinics at my school were predominantly of the externship model, not in-house. Nor did I pursue a public interest career more broadly. My education consisted of many traditional doctrinal courses and an externship with the U.S. Attorney's office (just to see what the other side was like). In other words, I didn't decide that I wanted to be a "do-gooder" in whatever venue I could secure a job and then proceed to investigate all the opportunities. I knew that I only wanted to be a public defender.

¹⁹ My parents were both physicians who had emigrated from India in the 1960s. Though first-generation Americans, they were successful in realizing the "American dream" by the time I finished elementary school. I attended a private high school, college, law school, and business school. Most of my friends came from the same economic background as me though culturally we were quite different.

²⁰ HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

²¹ *L.A. Law* (NBC television broadcast 1986-1994).

²² When I say that I "second-chaired" the trial, it was not in the practicing lawyer sense. I did not yet comply with the student practice rule (I was, after all, only a 1L summer student), but I helped prepare for every aspect of the trial, was the only other person sitting at defense counsel table with the lead attorney and our client, and took copious notes of everything that was going on. I even passed a few notes to the lead attorney myself.

I was a PD for over five years.²³ Ironically, I never thought of this work as public interest. I knew that I was helping my individual clients, but I was not driven by any overt social mission. It was much more existential for me. I was not out to reform the criminal justice system or to make new law. I only wanted to represent my clients as best I could and hopefully convince them to make choices that would prevent them from being my clients again.

Like all good public defenders, I burnt out. If I had entered clinical teaching at this point in my career I don't think anyone would have found it at all unusual. In fact, they may have found it quite unremarkable. But this is where my path took an unusual turn. It was 1999 and I kept reading about people my age who were making millions of dollars by putting "dot-com" after an idea. I knew nothing of that world. I studied history and philosophy in college. I figured the best place to learn about what these young tycoons were doing was business school, so I decided to go.²⁴ There, I studied accounting, finance, and strategy. It was all so new to me and so far removed from the world of the big-city criminal justice system that I loved it. I was a novelty in business school having come from a world of drugs, robbery, and murder that appeared so different from the worlds of many of my classmates who worked in corporate America.²⁵

After finishing business school, I took a job with a big New York investment bank to learn as much about business in as short a time as possible. They say one year working as an investment banker is equivalent to three years working in any other job. I worked hard and learned a lot—about the corporate world, finance, and especially how different it all was from government. The events of September 11th occurred shortly after I began. Not only did I witness the devastation on television, as the world did, but I had friends and colleagues that were directly affected. It made me think again about that religion class in college and how difficult life can be. It also reignited my desire to do something with my own life that helped people.

I did not know what I wanted to be or what I wanted to do. I knew that big, public corporations were not my favorite clients. I also learned about a whole segment of lawyers that practiced a very different type of law than I had—corporate and transactional law. Surprisingly, I also learned that very few of them knew anything about

²³ I worked for the Cook County Public Defender's Office in Chicago, Illinois.

²⁴ I attended the University of Chicago Graduate School of Business (now called the Booth School of Business).

²⁵ With the subsequent criminal prosecutions of Enron's Ken Lay, Tyco's Dennis Kozlowski, WorldCom's Bernard Ebbers, and finally the technology investment banker Frank Quattrone (from the investment bank that I worked for), it turned out we were not from such different worlds after all.

business and that clients seemed very frustrated by this. I thought, “I can do that better,” so I left banking to return to the law.²⁶

I went to work for a boutique firm that serviced mostly privately-held businesses. I was able to utilize my business education as well as my law degree. For the most part I had more contact with owners and decision-makers at businesses rather than mid-level executives. I enjoyed having a direct impact on my clients. As a former investment banker, I again was a novelty, this time amongst my lawyer colleagues. Some lawyers make the jump to investment banking, but very few ever come back to the law. I put to use all of my observations from the client side to make sure that my clients would not have the same criticisms of me that my investment banking clients had for some of their lawyers.

B. Into the Blue Again After the Money's Gone²⁷

Despite the more direct influence on my clients, I still had an itch to do something that was more socially redeeming. I had taught in small doses over the years—street law, high school mock trial, Junior Achievement, the Constitutional Rights Foundation. I found it to be incredibly rewarding but never thought to do it full-time. However, I craved a more sophisticated audience and began looking for opportunities at law schools. Having been a trial lawyer for more than five years, I figured that teaching trial skills would be something that I was good at and would satisfy my lingering urge for the courtroom. Through luck and perseverance, I obtained a job as an adjunct professor teaching trial advocacy at Northwestern University School of Law. What I found was that my three hours a week at Northwestern was the part of my week that I looked forward to the most. I felt energized by seeing the world (a world that I had burnt out on) through the fresh eyes of my students. The passion that I had at the beginning of my career returned. I knew that I wanted to teach.

I began to investigate other opportunities to enter the legal educator world, and discovered clinical legal education. What I discovered, however, did not increase my desire to be a clinician. I spoke to a friend who was a clinical instructor at a great school who made less than I did as a public defender and had to find her own funding each year—not something I had any desire to do. At her recommendation,

²⁶ I am not implying that all the attorneys whom I observed while an investment banker did not understand business. In fact, I also worked with a few that had just as firm a grasp on the business principles that were guiding a transaction as any investment banker. But what struck me was the number of attorneys that did not display this understanding even though they were senior advisors on multi-million (and sometimes billion) dollar transactions.

²⁷ The Talking Heads, *supra* note 12.

I registered for the law clinic listserv.²⁸ I began following some of the conversations and slowly began to learn about this brave new world. I spoke to another mentor who related his path as a former legal services attorney to that of tenured law professor at a top ten school even though he was primarily clinical. Though his story was inspirational, he also told me that it could never happen that way today. I thought about teaching trial advocacy full-time at another school or continuing to be an adjunct professor in other courses.

About a year later, someone sent me a posting for a position at the small-business clinic at the University of Chicago Law School.²⁹ At this point in my life, I had not thought much about how I could use my background and experience in a public interest way. My initial reaction to the job description was that it would allow me to use both my law degree and business degree. Though it was a clinical job in a transactional clinic with a well-defined mission, what jumped out at me was the opportunity to teach a seminar. I thought about how one could integrate business concepts into a law school course. My mind raced about the potential to bring JDs and MBAs together in the same classroom. I was thinking about pedagogy in and of itself, not as it fit within the clinical context. I also thought about the potential clients. I knew that this clinic would focus on people who did not have traditional access to lawyers, accountants, or other business advisors. Just like when I was a public defender, I focused on how I could affect their individual lives but not on transforming communities or creating policy. I took the job. That was five years ago.

My route to clinical education thus was not linear. Nor does it reflect the path of so many of my colleagues. Though I was a public defender, I did not go directly from that job to a job in clinical legal education. I was not a legal services lawyer or a civil rights lawyer. I did not champion causes like juvenile justice or human rights. I came as a business lawyer who loves to teach. The public interest, interestingly, came next.

III. YOU MAY SAY TO YOURSELF, 'THIS IS NOT MY BEAUTIFUL HOUSE, THIS IS NOT MY BEAUTIFUL WIFE'³⁰

When I began teaching as a clinical instructor at the University of Chicago Law School, I was surrounded by outstanding colleagues, all of whom not only thought of themselves as public interest lawyers, but

²⁸ The listserv—Law Clinicians Discussion List—can be found at <http://lists.washlaw.edu/mailman/listinfo/lawclinic> and requires subscription.

²⁹ The name of the clinic was the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School.

³⁰ The Talking Heads, *supra* note 12.

also marketed themselves that way. From them I learned of the impact that one could have on not only students and clients but also on communities and policies.

Clinical legal education has always included words like “poverty” and “indigency,”³¹ but rarely words like “business” and “profit.” As a clinician in a small-business clinic, often an outlier in the clinical community, the challenge was to convince others that I could in fact have the same public interest impact practicing transactional work that they could as a litigator or advocate.³² Moreover, while I personally adopted that public service goal, I questioned whether it should be pressed upon my students. Were they there to further my mission (they of course had no part in deciding what it should be) or were they there to acquire skills? In the end, the public interest goal would be attained either way as long as the students did their jobs well. I couldn’t help but think about my public defender experience when thinking about this question. I also realized that a student’s embrace of a mission in no way reflects the likelihood that they will pursue a life of public interest going forward (or vice versa). Again, I had only to look to myself for an example.³³ Finally, I asked myself whether my job was even to promote public interest careers over other career alternatives. Everyone’s life is different. We highlight that to our students everyday in teaching them to deal with clients who are often from very different worlds than our own. Why should I treat them any differently with regard to their own lives and careers?

I also began to learn the history of clinical legal education.³⁴ I heard stories of battles fought long ago—battles not only about the direction of clinical legal education, but for its existence. I saw the wounds and scars of those fights in the eyes and words of its warriors during conversations about resources and curriculum. Those warriors are today’s clinical leaders. It is to them that we owe much. We all benefit from those many battles in law schools all across the country. Those battles are what defined the clinical movement as much as any social mission did. They also define that generation of clinicians, the Baby Boomers. They see the world of legal education through that prism of all the past battles fought. My generation, however, cannot

³¹ See *supra* notes 4-6; see also, e.g., Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 356 (2008); Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333, 337 (2009).

³² I am currently working on an article describing how a transactional clinic can engage in impact work—Praveen Kosuri, “Impact”—*It’s Not Just for Litigation Anymore: Creating Impact Through a Transactional Clinic*.

³³ See also Reed, *supra* note 10, at 244-48.

³⁴ *Supra* notes 4-6.

see the world that way. We did not fight those battles nor suffer those wounds.

At the 2009 AALS Clinical Conference (the very same one in which we held our concurrent session on generational differences), there was a town hall session conducted by the AALS Section on Clinical Education's Task Force on Status of Clinicians and the Legal Academy where I had the chance to observe, firsthand, the differing priorities and approaches of representatives of all three distinct generations—Baby Boomers, Gen-Xers, and Millennials. The Task Force was comprised of eight outstanding clinicians who had worked hard on this effort of analyzing the status issues of clinicians and recommending changes to the AALS and ABA. All eight members were Baby Boomers.³⁵ With the exception of two people, the participants in the town hall discussion were also Baby Boomers.³⁶ This highlighted the generational differences to me in a very visible way. In many ways the issue of status for clinical faculty is a logical and natural outgrowth from the clinical movement of the 1960s and 1970s. It is the next battle to be fought. In that sense, it makes perfect sense to me that it would be the Baby Boomers leading the charge. But ironically, this issue will impact my generation and those that come after me much more than it will the Baby Boomers. Why was Gen-X silent during this conversation? Was it that we did not know enough about these issues to participate in the discussion? Was it that we didn't care about these issues? Was it that we willingly defer to the Baby Boomers to fight these battles because they are the warriors, not us? Or was it that we did not think our opinions would be taken seriously? This is a commentary on both the Baby Boomers and Gen-Xers. The Baby Boomers were part of a movement—a movement in clinical legal education. The battles waged in different law schools across the country were part of the same war. For Gen-Xers, we entered clinical teaching after most of the battlefields had been cleared and treaties signed. We came into clinical legal education without a movement. Sometimes that difference seems to hinder our progress.

The metaphor that I think of is that of modern clinical legal edu-

³⁵ See BRYAN L. ADAMSON, CALVIN PANG, BRADFORD COLBERT, KATHY HESSLER, KATHERINE KRUSE, ROBERT KUEHN, MARY HELEN McNEAL & DAVID SANTACROCE, AALS SECTION ON CLINICAL EDUCATION'S TASK FORCE ON THE STATUS OF CLINICIANS AND THE LEGAL ACAD., REPORT AND RECOMMENDATIONS ON THE STATUS OF CLINICAL FACULTY IN THE ACADEMY (2010), available at [http://www.abanet.org/legaled/committees/Standards Review documents/AALS June 2010 Task Force Report on Status of Clinical Faculty in the Legal Academy.pdf](http://www.abanet.org/legaled/committees/Standards%20Review%20documents/AALS%20June%202010%20Task%20Force%20Report%20on%20Status%20of%20Clinical%20Faculty%20in%20the%20Legal%20Academy.pdf).

³⁶ Interestingly, the two non-Baby Boomers were of the Millennial generation and raised questions involving the status and treatment of clinical fellows (something that didn't exist when most Baby Boomers entered the field).

cation as a house that was built by the Baby Boomers. Not only did they clear the land and build the house, but they also designed it, furnished it, and maintained it. The house naturally reflects the influences of the period in which it was designed and constructed. I, on the other hand, have just been invited to live in the house. "Make yourself at home," I am told. After settling in, I notice some things that might need some attention. The house seems a bit crowded. After all, it was built for a much smaller family and maybe to exist only temporarily, but now it houses many more people and is treated like a permanent structure. I suggest adding on to the house. My colleagues (who built the house) point out that any additions will attract the attention of the neighbors (the traditional law school faculty) and may require zoning and approvals (not to mention, money). Instead, they tell me that we would be better off shoring up the existing structure. I notice that the faucets in the house are old and leaking, so I suggest changing them (that can't cost that much). "Why would you want to change the faucets?" say my colleagues. "You have no idea what it took to get those faucets. We operated on a water pump in the back yard for years. Now we have six sinks with faucets. You have no idea how fortunate you are." Even the neighborhood in which the house was built has changed. It is no longer on the outskirts of town, but firmly within its urban center. The house was provincial in its design and built to entertain close friends in very informal and casual settings. I ask whether we have thought about renovating the house so that we might undertake more formal entertaining to larger groups of guests. "You might renovate, but what happens if the new guests don't come and we alienate our old friends? We tried this years ago and it was a disaster. But please, feel free to paint your room."

This illustrates one of the challenges between the Baby Boomers and newer generations. Too often discussions involving the evolution and future of clinical legal education are hindered by the attachment of the architects to what they have built. It is not only our views on public interest and status that may differ but also our perspectives on: interaction with the podium faculty; how (or whether) to market to students; marketing what our students do to the outside world; the best use of clinical space or in many instances how new space should be configured; what we should be teaching our students; and, credit and time allocations for a clinic. Often the dialogue resembles that of parent and child. Both sides think their approach is not only valid, but better. The reality is that change will come. The question is how to manage it. The house will continue to need repair and renovation. The different generations must work together to discuss what changes need to be made and to prioritize them.

All clinicians have an obligation to look critically at what we do and how we do it. It is not acceptable to simply adopt that which has been handed to us as the optimal way of doing things or to operate in isolated silos. The leaders of clinical programs today share a commonality that bonded them in a way that is unique. They bear the wounds and scars of many battles fought to achieve the status of clinics today. Yet, for clinicians of my generation, those battle scars impart no pain. They are not ours. Our challenge is to figure out how to keep pushing the ball forward both institutionally (read “politically”) and pedagogically. It is a question of philosophy and strategy. We must know the history and respect the accomplishments of the Baby Boomers, but at the same time, we must embrace change and alternative approaches. The same concept applies to my generation and its integration of the Millennials. Ultimately, we must ensure that whatever we do benefits our students.

IV. YOU MAY ASK YOURSELF, ‘AM I RIGHT? AM I WRONG?’³⁷

Too often the discussion of Millennials migrates toward changing technology.³⁸ Certainly the technological revolution is part of the Millennial story. It is just as much a part of them as the civil rights movement is part of the Baby Boomers and MTV is part of my generation. But it is not technology that sets them apart. Sure, students instant-message jokes about us to each other during class, but we used to pass paper notes. They play online poker on their laptops. We used to play catch-phrase bingo. Technology always changes yet everyone adapts. Even my 73-year-old Dad uses e-mail and my 68-year-old Mom is on Facebook.

The characteristics that define the Millennials are open to some debate.³⁹ For purposes of this essay, the description that resonates with my experience is that of a generation that grew up sheltered (both literally and figuratively) with very structured lives. Because of this, they are not particularly spontaneous or introspective. At the same time, they are optimistic, practical, and generous. They are used to diversity, enjoy collaborative activities, and are confident in their

³⁷ The Talking Heads, *supra* note 12.

³⁸ DON TAPSCOTT, *GROWN UP DIGITAL: HOW THE NET GENERATION IS CHANGING YOUR WORLD* (2008); Eliza Krigman, *Millennials Defined by Technology Use*, NATIONAL JOURNAL.COM, Feb. 25, 2010, http://www.nationaljournal.com/njonline/no_20100225_3691.php.

³⁹ See TAPSCOTT, *supra* note 38; Nicole J. Borges, R. Stephen Manuel, Carol L. Elam & Bonnie J. Jones, *Comparing Millennial and Generation X Medical Students at One Medical School*, 81 ACADEMIC MED. 571 (2006); Kanna Hudson, *Marketing to and Managing the Millennial Generation*, Pacific Northwest Apprenticeship Symposium 2009, *available at* <http://www.millennialgeneration.org/>.

abilities. They embrace education as a necessary means to an end but desire a constant stream of feedback and are in a hurry for success.⁴⁰ Unlike previous generations, their loyalty is reserved for their friends and family and not institutions or jobs or even movements. It is these students who currently populate our law schools.

Clinical legal education is no longer at the periphery of law school curriculums but rather firmly at its core.⁴¹ Every accredited law school has some sort of clinical program with many making a decided shift in focus to create more of these opportunities for students.⁴² With that comes a different paradigm for what clinical legal education offers and to whom. Whereas law school clinics were once a haven for those students seeking a career in public interest or to do some good before graduating, we are now catering to all students. This heightens the significance of the Millennials' characteristics.

The house that the Baby Boomers built had the luxury of being designed to highlight public interest. Missions could be overt and many clinics selected students based on their adoption of or affinity for the mission. Those students, even if from different generations, share a commonality which does not necessarily require much adjustment by the teacher. The disciples have found the church, so to speak.

Today, all students are looking to the clinics to provide them with real-life, practical, and professional skills. There will inherently be more students in our presence who simply do not care about any underlying social mission which the clinics employ. They want someone to show them what it means to be a lawyer, not just a public interest lawyer.⁴³

I think about that when I think about the public interest philoso-

⁴⁰ Jeanne C. Meister & Karie Willyard, *Mentoring Millennials*, HARV. BUS. REV., May 2010, at 69.

⁴¹ Erwin Chermerinsky, *Why Not Clinical Education?*, 16 CLIN. L. REV. 35 (2009).

⁴² Scott Jaschik, *Overhauling Law School's Third Year*, INSIDE HIGHER ED, Mar. 12, 2008, <http://www.insidehighered.com/news/2008/03/12/thirdyear> (describing the introduction of an experiential third year at Washington & Lee School of Law); Amanda Becker, *Q&A: Georgetown Law Center's New Dean Discusses School's Steps to Help Students in Time of Law Firm Cutbacks*, WASH. POST, Aug. 23, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/20/AR2010082005131.html> (last visited Sept. 6, 2010) ("We'll be focusing on experiential learning, externships and increasing opportunities in those areas."); Press Release, Stanford Law Sch., A "3D" JD: Stanford Law School Announces New Model for Legal Education (Nov. 28, 2006), <http://www.law.stanford.edu/news/pr/47/> ("The clinical program is being expanded and transformed in order to teach students how to work with clients and colleagues, how to address the ethical dilemmas that arise in practice, and how to apply legal concepts taught hypothetically or in the abstract in the classroom to a real world, client representation situation. . . . Most important, not only is the law school expanding the number and range of its clinical courses, but it is developing a 'clinical rotation' where students take only a clinic during a particular quarter—with no competing exams or classes.").

⁴³ See Reed, *supra* note 10, parts VI and VII.

phy that girds my clinic. I now direct the Entrepreneurship Legal Clinic (the “ELC”) at Penn Law School. I like to think of myself as engaging in “economic development” work yet I do not use those words in the title of the clinic. My hope is that we can help revitalize economically distressed areas by helping to bring locally owned businesses back to them. I don’t think that I need to abandon that desire, but I keep it in the background. This may appear to be purely semantics but it makes a difference in the number of students that we attract to our clinic. “Entrepreneurship” is a sexy word. It is used not only in economic development parlance⁴⁴ but also by Fortune 500 companies and venture-capital financed enterprises.⁴⁵ My hope is that our name attracts students who are interested in either conception of “entrepreneurship.”⁴⁶

Once students have actually enrolled in the ELC, I try to customize the clinical experience for each of them. For many of the Millennials, this is what they have been accustomed to their entire lives—individualized attention and support. I try to make them think about their careers rather than just about their first jobs. I want them to take ownership over their lives—to be entrepreneurial. To do this, I don’t tell them what to do or how to do it. I want them to struggle a bit—something very few people have ever let them do. Inevitably this results in making many students uncomfortable. But once they figure out that they can be creative and strategic in their representation of their clients, the dialogue of ideas begins to freely flow. It is also when I see the imprint of the clinic’s mission—a mission that is wielded by client selection more than by an overt pedagogy. If a student represents her client well, she will have learned, understood, and embraced all of the intricacies of his situation. The economic realities of the inner-city, the barriers to accessible resources (whether they be to lawyers or accountants or bankers or a plethora of other advisors), the complexities of navigating the morass of governmental regula-

⁴⁴ See, e.g., Gustav F. Papanek, *The Development of Entrepreneurship*, 52 AM. ECON. REV. 2 (May 1962) (“Discussion of economic development . . . has recently shifted to the key role of decision-making innovators, particularly in industry—in a word, entrepreneurs.”); Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487 (1995) (“In a market economy, the principal means of creating and accumulating wealth is business ownership.”).

⁴⁵ See, e.g., Victor Fleischer, *Urban Entrepreneurship and the Promise of For Profit Philanthropy*, 30 W. NEW ENG. L. REV. 93 (2007) (bridging the discussion of entrepreneurship in the economic development setting with that in the technology and venture-capital setting); Richard Florida & Martin Kenney, *Venture Capital and High Technology Entrepreneurship*, 3 J. BUS. VENTURING 301 (1988).

⁴⁶ It is important to note that we do not interview or select our students in the ELC. They are assigned to us through a lottery system by the Law School’s registrar’s office. In this respect, we are truly getting a cross-section of law students interested in transactional work.

tion—all of these things not only will have been discussed with students, but also experienced by them in representing their clients. Whether they think of it as public interest lawyering or pure lawyering is up to them. The experience remains the same.

It is interesting to note that the two Gen-Xers in this conglomerate piece are both faculty in transactional clinics.⁴⁷ I have no doubt that plays some part in our somewhat nontraditional views. Transactional clinics are still one of the newer kids on the block in terms of clinical legal education. Because of this, we are probably less tethered to the past because we did not emerge from the fervor of the civil rights era. Additionally, there is often only one transactional clinic at a school, which necessitates being more things to more students. A traditional litigation project can afford to have a more refined focus because there may be several other clinics with varying missions for students to choose from.

I do think the dynamics and history of transactional clinics contribute to my philosophy but I do not think they void it. Even Millennial Karla McKanders, acknowledges seeing more non-public interest oriented students in her Advocacy Clinic.⁴⁸ The question is whether we will adjust to accommodate a broader spectrum of philosophies in our teaching.

V. MY GOD! . . . WHAT HAVE I DONE?⁴⁹

My generation—Generation-X—is in a unique position. We are the bridge between the past and the future, yet a minority between the generations on either side of us.⁵⁰ We have learned from the Baby Boomers and have a duty to impart what we have learned to the Millennials. But in the interim we have a duty to become more involved in shaping the future of clinical legal education. In that arena, our diversity of experience may be our Achilles heel. Though we all bring our own innovativeness and passion to our individual clinics, we must integrate ourselves into the governing discourse. In order to do so, we cannot be afraid to voice our opinions even if they may be different from our predecessors. If we continue to simply tend to our own rooms, we risk giving up many of the gains that were obtained through many years of struggle.

The Baby Boomers must play their part as well. They had the blessing and the curse of entering clinical legal education when very

⁴⁷ See Reed, *supra* note 10.

⁴⁸ Karla Mari McKanders, *Clinical Legal Education at a Generational Crossroads: Shades of Gray*, 17 CLIN. L. REV. 223, part IV (2010).

⁴⁹ The Talking Heads, *supra* note 12.

⁵⁰ Erickson, *supra* note 11, at 64.

little fabric had been woven. They were able to shape it and develop it as they saw fit. In many ways the fabric was antithetical to traditional law school curriculums. The Baby Boomers were the challengers to the incumbent. In 2010, they have become the incumbent themselves. And it is much harder to critique what you have, in fact, built. The Baby Boomers must recapture some of that challenger ethos and cultivate intellectually honest discussion about the future of clinical legal education from all of its participants. As the gatekeepers, they are in the unique position to do this.

And as the next steps to solidify clinical education are taken by the Baby Boomers and Gen-Xers, the Millennials bring a new world forward. The professional legal market has finally begun to adapt to a changing reality. New law graduates are expected, more than ever, to hit the ground running. Clients are refusing to pay for the training of young lawyers, some even negotiating language that reinforces that into retainer agreements.⁵¹ Though this may be better for consumers in the long term, it is traumatic and unnerving for our students in the short term. Law clinics are fundamental to providing law students with the tools that they need to succeed as lawyers. This mandates that clinicians look at everything that we do critically and openly. Voicing the needs and desires of the changing marketplace will fall disproportionately on the Millennials.

The Baby Boomers fought long and hard and ultimately successfully for the place of clinics in the law school curriculum. The next battle will be how to entrench that place and expand clinical offerings to the entire student body. That fight, though begun by the Baby Boomers, will likely be finished by Gen-Xers. But as our Millennial students increasingly become our colleagues there will be new battles. The strategies and conventions that were successful in the past may not be suitable for the future. Together, we have the opportunity to forge a new, more integrated movement. The design of that movement should be conceived without bias for or against an ideological past. It will allow us to build the best structure to continue to educate our students for the realities of the world that they will encounter and expand the presence of clinical legal education.

⁵¹ Nate Raymond, *Clients Grow Cool to the Support of Dwindling Summer Classes*, N.Y. L.J., June 8, 2010, available at <http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=1202461074366&hblogin=1&loginloop=oo>.

