

2019

Tribute to Judith Lipton

Bryan L. Adamson

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Bryan L. Adamson, *Tribute to Judith Lipton*, 70 Case W. Res. L. Rev. 239 (2019)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol70/iss2/3>

This Tribute is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

The editors of the *Case Western Reserve Law Review* respectfully dedicate this issue to Professor Judith Lipton.

Bryan L. Adamson[†]

TRIBUTE TO JUDITH LIPTON

In her remarks at the Milton A. Kramer Law Clinic Center's dedication ceremony in 2000, Judy Lipton opened by stressing that, for clinicians, pedagogy and lawyering center the client narrative, the client story in our legal representation. Then, in her measured, natural, and captivating style, she proceeded to tell the story of the Clinic's beginnings and its centrality to both the educational mission of Case Western Reserve Law and the School's service to the surrounding community. It was a thoughtful, inspiring presentation that I have not forgotten.

So, as Judy would counsel, I will start by telling a story. I joined the Case Western Reserve Law faculty as a clinician in 1995, and, for a time, I co-taught with Judy in the Criminal Law Clinic. There is one particular client that she and her clinic students represented who I still remember today. That client was an African-American lesbian woman who was in distress after a particularly intense argument with her live-in partner. At some time during or shortly after the quarrel, the client began to have suicidal thoughts and called the local suicide hotline. The social worker on the other end engaged the client for some time, but became so concerned about the client actually inflicting self-harm that he (secretly) called 911 (calling in secret is routine when, in the social worker's judgment, real harm is likely to ensue).

Police officers arrived at the client's home and knocked on her front door. The client answered. By the time they arrived, however, the client had concluded her conversation with the hotline social worker and was feeling better; she told the officers as much. The police officers asked to enter her home. The client—who had a discomfiting history with the local police that left her wary and distrustful—reiterated that she and her partner were fine, and refused (as was her right). The officers then issued her a citation . . . for inciting panic.

Even though it was not my case, and the clinic workers were not my students, I recall it because the faculty discussed it in our weekly case rounds. It sticks with me to this day because it was beset with so many of the issues that—beyond the importance of client stories to competent representation—we and our students often had to unpack, including professional-ethics issues and the deeply troubling experiences of the marginalized in our law enforcement and legal institutions.

[†] Professor of Law, Seattle University School of Law.

The absurd, disturbing outcome of that client's experience, *viz.*, that a citizen—once suicidal, now fine—would be criminally charged for causing two law enforcement officers to check on her well-being, was fundamentally unfathomable. Judy's intelligent and holistic approach to the case was something to emulate. She was intent on ensuring that her students used that as a point to reflect upon and inform the legal representation. Judy ensured that her students understood that the client's story was about much more than the client's relationship with her partner and what happened that day. She compelled them to ask about the client's experience in her community and how her jaundiced, fearful views of local police informed that day's encounter. In doing so, Judy was able to facilitate rich conversations with her students to help them better appreciate the ways in which race, class, and gender (to say nothing of sexual orientation) are the lenses through which our clients experience their encounters with law enforcement and the criminal justice system; to get them to understand that those traits are almost always a factor in how their clients are perceived by the agents working in those systems.

Finally, the case also surfaced important lessons on comparative ethics: how attorneys' obligations to their clients are, in vital ways, different from social workers' obligations to theirs, and how sometimes those obligations can compete in the same case. Judy's keen understanding of both legal and social work pedagogies allowed her to teach her students about the interplay between those professions and the ethical issues triggered when attorneys and social workers have competing obligations to the same client. That latter point explains Judy's approach to teaching and lawyering, a persistent demand that an ethos of humanity be an indispensable part of our work. I am fairly sure that her training—first as a nurse and a social worker, then as a first-rate lawyer—is responsible for her deft ability to integrate legal and social-work education; I am certain it was Judy's modest upbringing—as the daughter of a Holocaust survivor—that caused the ethos of compassion and care to be shut in her bones.

Judy was at the forefront of the integration of social work pedagogy into the art and science of lawyering. Upon arriving at Case Western Reserve in 1983, Judy had already obtained her Master's Degree in Social Work, and had a joint appointment with the Mandel School. She was instrumental in setting up Case Western Reserve's first-of-its-kind joint degree program of Juris Doctor/Masters of Science in Social Administration (Masters in Social Work). By integrating social work pedagogy into clinical legal education, Judy created significant experiences for her family-law and clinic students, which especially redounded outcomes for clinic clients.

Judy has long understood the value that social work adds to legal representation. She “truly apprehend[s] the reality of the other [e.g. the client]; not just to understand instrumentally how to move, persuade or affect that person, but to understand what meaning the interaction

has for that person in a caring and existential sense.”¹ Judy recognized long ago that the ethic of care in the attorney’s relationship with and counseling of the client produces solutions that are more creative and better tailored to each client, making those solutions ultimately more satisfying to the client. Simultaneously, that approach counsels against the tendency of lawyers, with our “problem solving” paradigm, to overstep boundaries and impinge upon client autonomy.

Importantly, Judy enabled her students to inquire about and examine the roles that race, gender, and homophobia played in the police-client interaction. The centering of the client—her story, experiences, and goals—in shaping the strategy and approach to the legal representation was paramount. At the same time, the respect for client decision-making autonomy was shaped and balanced in a way that did not compromise the students’ moral or ethical integrity. That centering of the client’s positionality best ensured that the case outcome was, most importantly, satisfactory to the client.

That same intelligence and thoughtfulness also informed her leadership as a colleague and clinic co-director (along with Ken Margolis) during a particularly challenging time for law schools and clinical legal education.

Nineteen ninety-five was an interesting time to become a clinician. Case Western Reserve, like other law schools nationally, was having difficult, complex conversations regarding the employment status of clinical faculty within the institution. At that time, most law schools did not confer traditional tenure-track or tenure status upon those hired as clinicians. Instead, schools predominately offered clinical tenure-track,² long-term contracts (e.g., five- or seven-year terms), or short-term contracts (e.g., for one- to three-year terms).³ While those employment models did not always carry mandatory scholarship-production requirements, they offered less position security (e.g., termination decisions could be solely decanal), voting rights, salary, and other perquisites.

At this juncture, a bit of historical context on the place of clinical legal education in the law schools might be helpful. In the earliest parts

-
1. Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 *FORDHAM L. REV.* 2123, 2126–28 (1999).
 2. Clinical-tenure status models create a system of tenure uniquely tailored to clinical faculty. Bryan L. Adamson et al., *Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention*, 62 *J. LEGAL EDUC.* 115, 127–28 (2012).
 3. Clinical fellowships are a variation on short-term contracts, generally designed to expand the number of clinical course seats available to students, provide clinic case coverage, and/or to provide experiential opportunities for fellows interested in entering the teaching market. *Id.* at 131.

of the twentieth century, the Langdellian model of law-school teaching was firmly entrenched, the pedagogical foundations laid by teaching about and through appellate cases. In the 1920s, legal scholars such as Karl Llewellyn, Jerome Frank, and John Bradway were recommending that law schools create legal clinics staffed by full-time law teachers who would focus on teaching students “the true relationship between the contents of upper-court opinions and the work of practicing lawyers and courts.”⁴ While those progenitors emphasized the development of professional judgment, there were those like Arch Cantrell in the 1950s who envisioned clinics as places to train students in the basic skills of practice.

Even as clinical legal education took serious hold in the academy in the 1960s—when demands by students for social relevance in the law school curriculum led to the growth of clinical programs—clinics took on a more explicit social-justice mission in their work and student education. The clinician’s status within law schools, however, was still highly contingent, and certainly a coherent clinical pedagogy had yet to be developed. The latter began to germinate in earnest in the 1980s. It was during that time that Judy and others came to clinical teaching, with the distinctive experience in legal services and social-justice advocacy that provided the foundations for emerging pedagogical frameworks that would serve the dual purposes of training students to be competent, capable attorneys while providing vital legal services to those who might otherwise go without. Thus, I arrived during a time in which intentional, robust consideration of the role and status of clinical faculty began to take hold, with a growing chorus of faculty convinced that law schools, in the hiring, promotion, and retention of clinical faculty, should be regarded more equitably and recognize the responsibilities, pedagogical methodologies, and value clinicians brought to the educational enterprise.

By the 1980s, and certainly by 1995, legal education had come a long way from the legal realists of the 1920s, but there was still debate regarding how law schools viewed and valued clinical legal educators and clinical education, particularly compared to the status and security of position conferred upon “doctrinal,” or “podium” faculty. Conversations were fraught with implicit and explicit references to comparative intellectual superiority/inferiority, competing visions of law schools as either citadels dedicated to the production of knowledge or a high-priced trade school; bloc voting that would result in clinical “capture” of the institution, and the economic consequences of status equity.

There were other inter- and intra-program concerns that stymied the development of workable solutions. Legal-writing faculty abided by their well-founded concerns about being viewed as second-class citizens

4. Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1317 (1947).

in the institution. Clinicians themselves were not of one mind as to whether a unitary system of hiring, promotion, and retention was the right solution. Alternative models that approximated tenure-track were attractive to some, while other clinicians—highly regarded and with a satisfying level of security the long-term-contract model offered—rightfully saw little reason to place themselves in an uncertain system, especially when the idea of grand-parenting in longer-serving clinicians was not an option.

For us at Case Western Reserve, Judy played an indispensable role in navigating this politically, and practically tense debate. She saw the unitary tenure model growing across the nation and was a strong voice in favor of Case Western Reserve adopting it. At the same time, she recognized that the unitary model was not for or accepted by everyone. Ultimately, through Judy's efforts and the efforts of other colleagues, Case Western Reserve settled upon a unitary model with an opt-in provision for vested faculty. It was a victory for the entire school and a testament to the respect Judy commands as a faculty member, as a leader, and as a forthright institutional citizen.

Judy retires as the Associate Dean for Experiential Education and with the Honorable Blanche E. Krupansky and Frank W. Vargo, Jr. Professor in Criminal Law Chair. It is no exaggeration to say that without Judy, Case Western Reserve's clinical program would not be as well-regarded as it is today, both at Case Western Reserve and throughout the legal academy. From the clients and students who have benefitted from her lawyering and teaching, to faculty like me, who benefitted from her collegiality, Judy, with her unyielding grace and kindness, has left an enduring impact. She has blessed me, however, with more. Few people have been as important in my professional and personal life as she. I could scarcely envision having a better counselor, champion, or friend.