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In Memoriam: Clinton Bamberger

FIRE FOR JUSTICE

MICHAEL A. MILLEMANN

The words that leap from the memorials are “Giant,” “Icon,” “Hero,” “Pioneer,” “Beloved,” and “Legend.” Clinton was all these things.

I met Clinton in 1969. I had just graduated from Georgetown Law Center and was starting my career as a Reginald Heber Smith Fellow. To those in my legal generation, this was a prestigious fellowship and the great first job. Over 100 of us were placed in legal services programs across the country. I was assigned to Baltimore.

In 1969 I attended a “Reggie” Conference at which Clinton spoke and I met him for the first time. He was, at this first meeting, the way he was with everyone he first met: gracious, interested in them, and welcoming.

The Reggie program was Clinton’s brainchild. It was a part of the national civil legal services program that Clinton, as the first director of the Office of Economic Opportunity’s legal services program, was creating. His original deputy at OEO was Earl Johnson, who later became an appellate court judge in California. Johnson recalls that “Clinton had a mission. He wanted to not only expand legal aid, but to change it—quite dramatically. He wanted to turn it into an affirmative force for restructuring the law to make it fairer for the poor. And Clinton wasn’t shy about stating that goal.”¹

No, no one ever accused Clinton of being shy.

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1. E-mail from Earl Johnson to author (sent as part of the Bamberger family’s celebration of Clinton’s life at the University of Maryland-Carey School of Law on March 11, 2017). In designing the national legal services program, Clinton received important assistance from his National Advisory Committee:

A key to ensuring the [support] of the organized bar was the agreement by [Sargent] Shriver [Director of OEO] to create a National Advisory Committee, which included leaders of the bar, along with client representatives and others knowledgeable about civil legal assistance. The National Advisory Committee included a number of people who were to play critical roles in the future of the federal legal services program, including John Robb, a private attorney in Albuquerque, New Mexico; Bill McCalpin; Gary Bellow, an attorney at California Rural Legal Assistance and later a professor at Harvard Law School; Jerry Shestack, future President of the ABA; and Jean Cahn.

ALAN W. HOUSEMAN & LINDA PERLE, CTR. FOR LAW & SOC. POLICY (CLASP), SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 16 (Dec. 2013), <http://www.clasp.org/resources-and-publications/publication-1/Securing-Equal-Justice-for-All-2013-Revision.pdf>.

We in Baltimore, and Reggie's across the country, brought successful law reform cases to implement Clinton's vision. The Reggie's included C. Christopher Brown and Roger Wolf in D.C., who later would become long-time faculty members at UM Law. They worked under the tutelage of the incomparable Florence Riesman, a peer and partner of Clinton's, who, like Clinton, has inspired many generations of legal aid lawyers. Susan Leviton, who would become another outstanding UM Law professor, joined us at the Legal Aid Bureau a few years later.

Our collective lawsuits provided class-based relief from pervasively discriminatory practices to tens of thousands of poor people and began to bring the poor within the Rule of Law.

Clinton's vision, and the law reform successes of legal aid lawyers all around the country, generated controversy and at times bitter opposition, including from local bar associations wedded to the status quo no matter how damaging it was to the poor.² Clinton envisioned this opposition and made a brilliant structural change in the governance of legal services programs to undercut it. He insisted that community representatives have one-third of the seats on the boards of local legal services grantees. Justice Johnson remembers, "When the ABA president and several other bar leaders on the National Advisory Committee objected to the proposed requirement," Clinton stood his ground.³

This proved to be decisive in Baltimore, as well as elsewhere. In Baltimore, the Board of the Legal Aid Bureau split down the middle about the new direction. There were twenty-eight board members, fourteen members appointed by the City bar association and three judges that they elected, and eleven community representatives.⁴ The lawyer/judge faction opposed program expansion and tried to reject OEO funding for it, opposed law reform litigation and group representation, and attacked the director, Joseph Matera, for implementing Clinton's expansion and law reform strategies.⁵ Matera was a great executive director and a fearless leader. This was, to put it too politely, not the finest hour of the bar.⁶

The new, Clinton-required community board members saved the new initiatives and our ability to effectively represent our clients. They came from across Baltimore City and included community leaders from East and West

2. The ABA, however, was supportive of the developing national legal services program and this was critically important.

3. Johnson, *supra* note 1.

4. BALTIMORE SUN, Dec. 13, 1969.

5. THE AFRO (Baltimore), Dec. 27, 1969.

6. The membership of the City bar association was required to approve any Bureau expansion, and eventually it did over the objections of most of the association's representatives on the board.

Baltimore, as well as Larry Gibson, a faculty member at UM Law, and Judge Joseph Howard, on the then Supreme Bench. (The latter two were selected by the community, not by the bar association.) The community representatives, with a few of the other board members, formed the narrow majority necessary to adopt the new approach and support Matera.⁷

I was told during the Board dispute about the new direction and about Matera that if it went the wrong way, and Matera was fired, I was going to be pulled out of Baltimore and reassigned to a legal aid program in Bridgeport, Connecticut. In this real sense, Clinton's community board members kept me in Maryland and enabled me to make my journey to UM Law.

What every Reggie, and all who later worked with or for Clinton, knew, beyond any doubt, was that if we tried to do the right thing, no matter what the consequences, Clinton Bamberger would always have our backs. In this way, Clinton preserved our ability to practice ethically and helped to preserve the essential integrity of legal aid programs.

In just a few years, Clinton and his small staff made extraordinary progress in expanding legal services to the poor and adding the law reform component to the representation. Alan Houseman, a long-time legal services leader, describes this:

[W]ithin nine months of taking office, Clint and his staff had completed the Herculean task of funding 130 OEO legal services programs. In the end, despite their initial misgivings, the OEO legal services program obtained the support of many local and state bar associations. . . . By 1968, 260 OEO [legal services] programs were operating in every state except North Dakota, where the governor had vetoed the grants.⁸

Earl Johnson sums it up this way:

The Legal Services Program would never have succeeded without Clinton's bold vision, his oratorical skills in articulating that vision, and his courage in facing down those who tried to kill the program at its birth. He is among a handful of legal aid heroes in our country, including Reginald Heber Smith.⁹

7. We also had the key support of Lalit Gadhia, the Associate Director of the City's Community Action Agency, who helped to make decisions about how to distribute OEO funds within the City and who channeled substantial OEO grants to the Legal Aid Bureau.

8. Alan W. Houseman, *Clinton Bamberger Dies: The Loss of an Icon*, NATIONAL EQUAL JUSTICE LIBRARY, GEORGETOWN LAW LIBRARY (Feb. 17, 2017), <https://blogs.commons.georgetown.edu/righton/2017/02/17/clinton-bamberger-dies-the-loss-of-an-icon/>.

9. Johnson, *supra* note 1. Reginald Heber Smith was the managing director of Hale & Dorr for over three decades and an early twentieth century legal aid visionary and leader. See THE FREE DICTIONARY BY FARLEX, *Smith, Reginald Heber*, <http://encyclopedia2.thefreedictionary.com/Smith%2c+Reginald+Heber> (last visited Mar. 19, 2018).

In 1975, Clinton became Executive Vice-President of the new national Legal Services Corporation, and he helped shape the plan to expand legal services into every county in the United States.

Clinton was the dean at Catholic University's law school in the early 1970s, a time when many of his legal services protégées were moving into legal education and transforming it by creating clinical programs. Law schools then, no matter what their pedigrees, had what might be called somnolent dimensions, "of a kind likely to induce sleep."¹⁰ (This line is for Clinton, with my not-quite-lapsed Catholic belief in eternal life. I think I hear one of his distinctive belly laughs.)

Thus, it was many of Clinton's troops from the War on Poverty who led the reform of legal education. Some of the initial clinical programs were funded by the Ford Foundation, through its Council on Legal Education and Professional Responsibility.¹¹ Others were law-school funded. We became clinical legal education professors, but only after early opposition from, and then grudging acceptance by many faculties of law schools, similar to the opposition we faced from local bar associations and local and national politicians in implementing Clinton's vision of an expanded legal services program that made law reform an important part of legal aid.¹²

As dean, Clinton was a clinical education pioneer. He hired Roger Wolf to develop and run Catholic's clinical law program. Roger says:

Catholic University was not known as a progressive or innovative law school at the time, so Clinton set out to transform it into a leader in the field of Clinical Law. One of the first things he did was apply for a grant and with the money purchase a building to house our clinical law office. The building we purchased was directly within the community from which many of our clients would come. He then helped navigate through the curriculum committee a "clinical semester" in which students could take a full semester of classes focused on substantive subjects relating to issues con-

10. *Somnolent*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/somnolent> (last visited Mar. 19, 2018).

11. See, e.g., Robert MacCrate, *Educating a Changing Legal Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1111 (1997).

12. I do not mean to minimize the critical importance of providing individual legal services to the poor, the bread and butter services of legal aid programs then and now. My heroes and heroines were the lawyers at the Legal Aid Bureau who began their days with waiting rooms filled with fifty or more people (and families) seeking legal help. I think particularly of Margaret Pecora and Mary Ellen T. Rinehardt, who handled the Bureau's huge domestic/family law docket. (Rinehardt later became an outstanding Maryland district court judge.)

fronting the poor and the under-represented as well as actually representing clients in Court or before administrative agencies under the supervision of faculty in the clinical law office.¹³

Clinton talked less about his experiences as dean, and much more about his experiences as a clinical teacher and legal services lawyer from 1979 to 1982 at the Legal Services Institute in Boston. The Institute was affiliated with Harvard and Northeastern law schools and was a unique initiative to develop a new way of training future legal aid lawyers. Clinton was deeply influenced by the extraordinary lawyer/teachers there, including Gary Bellow,¹⁴ Jeanne Charn,¹⁵ and James Rowan.¹⁶ He learned there a wonderful model of education through service that he brought to UM Law.

In 1982, we brought Clinton to UM Law as our first clinical director. He gave our clinics enhanced national respect and credibility. Our clinics at the time were scattered in several different sites outside the school and operated functionally as solo law firms. Clinton brought the outposts into the law school, creating a single law office with specialties.

Clinton's own practice focused on lead paint poisoning and the use of landlord-tenant law to prevent it. In one of his many important cases, he established that children need not first be poisoned to justify placing a tenant's rent in escrow, where it would stay until the lead was abated.¹⁷ In a decade of clinical courses, he and his students did many more things to protect children from the awful and permanent injuries of lead poisoning.

There was another Clinton Bamberger who many of us knew little about. Peter Quint describes his *international* leadership:

In addition to Clinton's marvelous achievements here in the United States, he was a towering figure in the field of legal aid and legal services abroad. Even under the old regime in South Africa, Clinton established close relations between our Law School and oppositionist legal services circles at the Legal Resources Center. And after President Mandela was elected in South Africa, and former oppositionist lawyers assumed important roles –

13. Email from Roger Wolf to author (sent as part of the Bamberger family's celebration of Clinton's life at the University of Maryland-Carey School of Law on March 11, 2017).

14. Bellow was a national leader of both civil legal services for the poor and clinical education. See GARY BELLOW (1935-2000) A MEMORIAL OF MEMORIES, <http://www.garybellow.org/> (last visited Mar. 19, 2018).

15. Charn is a senior lecturer at Harvard Law School, and in 2014 won the William Pincus Award for Outstanding Service and Commitment to Clinical Legal Education, presented by the Association of American Law Schools. *Faculty Profiles: Jeanne Charn*, HARV. LAW SCHOOL, <http://hls.harvard.edu/faculty/directory/10152/Charn/courses> (last visited Mar. 19, 2018).

16. Rowan is a professor and director of the clinical law programs at Northeastern University School of Law. *Faculty Directory: James V. Rowan*, NORTHEASTERN UNIV. SCHOOL OF LAW, <http://www.northeastern.edu/law/faculty/directory/rowan.html> (last visited Mar. 19, 2018).

17. See *Fishkind Realty v. Sampson*, 306 Md. 269 (1986).

like Clinton's friend Arthur Chaskalson, former head of the Legal Resources Center who became the first President of the South African Constitutional Court—Clinton was very greatly esteemed in the highest legal circles of the new South Africa. As we look back on Clinton's wonderful achievements, I think it is very important to remember and honor his great international work.¹⁸

Geoff Budlender was a constitutional lawyer in South Africa who was a co-founder of the Legal Resources Centre, the center of resistance to apartheid, a Department head in the Mandela Administration, and judge of the High Court in Johannesburg and Cape Town. He affirms what Peter Quint says:

Clinton was a wise, generous, thoughtful friend and teacher. He made a large contribution to the cause of justice in South Africa. We all learnt from him – about public interest law, about legal aid, about clinical teaching, about the power and the limits of the law and its institutions - and about justice. You will find his fingerprints on some of the most significant and worthwhile parts of our legal landscape. Countless South African lawyers and judges were his friends, and were the beneficiaries of his and Katharine's boundless hospitality. Clinton Bamberger was a great human being. We are all blessed to have had him in our lives.¹⁹

Clinton's prior colleagues from his law firm, Piper and Marbury, feel the same way. Donald McPherson, a Piper and Marbury and then DLA Piper lawyer, and a strong supporter of our clinical law program, says:

Clinton was a hero because he essentially could do anything related to law, including corporate litigation, heading a law school, inventing a government legal service agency, heading law school legal clinics, mentoring students and young lawyers, advising experienced lawyers, and undertaking many varied life adventures, all while being optimistic, bright-spirited, calm, imaginative, thoughtful, and generous. Clinton, my hero. I admire and love you.²⁰

This piece could include a litany of other quotes from admirers and lengthy discussions of Clinton's winning argument in the *Brady* case (one of

18. Email from Peter Quint to author (sent as part of the Bamberger family's celebration of Clinton's life at the University of Maryland-Carey School of Law on March 11, 2017).

19. Email from Geoff Budlender to author (sent as part of the Bamberger family's celebration of Clinton's life at the University of Maryland-Carey School of Law on March 11, 2017).

20. Email from Donald McPherson to author (sent as part of the Bamberger family's celebration of Clinton's life at the University of Maryland-Carey School of Law on March 11, 2017). In 1976, Piper and Marbury and the law school jointly created a new clinic, called The Legal Services Clinic, located on Paca Street near the Lexington Market. The firm, with the leadership of Don McPherson, and the school maintained this nationally distinctive clinic for over a decade.

the Supreme Court's most important criminal law decisions),²¹ or how he almost won the Democratic primary for Maryland Attorney General (15,000 votes),²² or of many other of his lifetime of great accomplishments. A quote from Stephen H. Sachs, a former U.S. Attorney and Attorney General in Maryland, summarizes much of what I valued about Clinton:

Justice Holmes once promised that one could "live greatly in the law." Clinton Bamberger's life in the law redeemed that promise many times over.

Clinton personified the law's generous, enabling, ennobling face. The sermon that he preached—the call to arms that inspired generations of young lawyers—was that it was the law that could serve those in society's shadows: that it could, for example, remove barriers to employment and decent housing; that it could insure that a disabled child receive an appropriate public education; that it could guarantee that an accused received a fair trial on a level playing field; that it could guarantee that we can love, and marry, whom we wish. In other words, that equal justice under law was not an empty phrase.

Perhaps Clinton's overarching accomplishment was the dignity he insisted upon for the fight on behalf of the poor, the marginalized, and the forgotten. The legal services lawyers for whom Clinton Bamberger was the Founding Father, are no longer mendicants begging "alms for the poor." They are law enforcers.

In my nearly sixty years at the Bar I have not known, or learned about, any lawyer who made me prouder to be a lawyer than did Clinton Bamberger.²³

Clinton's career was fueled by his fire for justice and outrage at injustice. His legacy will include these wonderful motivations for practicing law and his demonstration of the ways in which you can and must combine idealism and pragmatism to achieve justice. These qualities are vital today in an era of metastasizing government-sponsored injustices. If we respond to these injustices with Clinton's outrage and channeled pragmatic idealism, we will make Clinton's a living legacy and honor his extraordinary life.

21. *Brady v. Maryland*, 373 U.S. 83 (1963) (establishing the principle that prosecutors must turn over to defense counsel exculpatory evidence).

22. Doug Donovan & Jacques Kelly, *E. Clinton Bamberger Jr., Pioneer in Legal Aid for Poor*, BALTIMORE SUN (Feb. 13, 2017), <http://www.baltimoresun.com/news/obituaries/bs-md-ob-clinton-bamberger-20170213-story.html>.

23. Email from Stephen H. Sachs to author (sent as part of the Bamberger family's celebration of Clinton's life at the University of Maryland-Carey School of Law on March 11, 2017).

CLINTON BAMBERGER

MICHAEL KELLY

Clinton joined the faculty of the law school as the head of our clinical education program in the closing years of my time as dean. Our friendship went back many years. When I arrived in Baltimore in the late sixties, Clinton Bamberger was a well-known and respected figure, something of a senior statesman of liberal politics and law. We met and saw each other periodically. Clinton was a warm and gregarious person who with his wife, Katharine, maintained a huge circle of friends. We were not close, but certainly good friends.

As he settled into his new role at the clinic, he would sit down periodically with me in my office with a list of suggestions about what the law school should be doing. He was worth listening to. I was getting advice from a former law school dean, a participant in the pioneering Harvard Law School legal aid and clinical teaching office in a neighborhood in Boston, Dorchester, led by the legendary Gary Bellow and Jeanne Charn, and the first national leader, essentially the founder, of the national movement to support civil legal services begun in the Office of Economic Opportunity (“OEO”).

Clinton was invariably thoughtful, always courteous and articulate about telling me what to do even though I (and perhaps he) knew that the school had enough on its plate that probably no more than one out of half dozen of his suggestions were likely to be implemented. I got many visits from Clinton along these lines. So I came over time—if I may be forgiven for jettisoning the conventions of an eulogy—to consider Clinton something of a pain in the ass. I came to think that, as uncharitable as it was, my characterization of Clinton captured something crucial about his relentlessness, his chronic dissatisfaction with the status quo, and the radical moves in his extraordinary career journey from Baltimore to Washington D.C., to Boston, and back to Baltimore, not to mention South Africa and scores of other countries that he helped to explore and design how best to provide legal services for poor people. Clinton was passionate and only rarely abrasive (when it came to treatment of downtrodden people). He had little patience for small talk, and a genuine appetite for large talk, whether relating to Baltimore or the nation or rampant injustice to people of all kinds, anywhere.¹

One aspect of Clinton’s life is rarely mentioned in the many eulogies and memorials and tributes to him. He was a serious Roman Catholic, a

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1. He, by the way, was particularly scathing in his criticism of footnotes in law reviews—a kind of law far removed from the welfare of people.

graduate of Loyola College in Baltimore and Georgetown Law School and dean of Catholic University Law School. He and Katharine were for many years stalwarts of Corpus Christi parish in Baltimore's Bolton Hill neighborhood. He had many friends who were priests. It was a priest friend who introduced him to a needy client in prison that led to the famous *Brady* case² he argued before the Supreme Court that established the principle that prosecutors have an obligation to turn over exculpatory material to defense attorneys. He was no less critical of his religion than other institutions of contemporary life. He particularly chafed at the politicization, specifically what he felt was the "Reaganization," of the American Catholic hierarchy. He had so many times expressed that he had "had it" with the hierarchy.

The best sense I can give of the orientation of Clinton's religious faith may be the instructions he must have given to direct donations in his honor or memory to Viva House. Viva House is a soup kitchen in a modest row house on Mount Street in West Baltimore long associated with the Catholic Worker movement. Catholic Worker is primarily known for its extraordinary founder, Dorothy Day, its active opposition to war personified by the Berrigan brothers and its support for impoverished people.

2. *Brady v. Maryland*, 373 U.S. 83 (1963).