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# History of Low-Income Taxpayer Clinics

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**HISTORY OF LOW-INCOME TAXPAYER CLINICS**

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- I. Introduction.....
- II. Chronological History of LITCs.....
  - A. The Experimental Phase - The 1970s.....
  - B. Initial Growth and Establishment Phase - 1980 to 1998.....
  - C. Explosive Growth and Maturity - 1998 to Present
- III. Parallel Movement in Representing the Poor.....
- IV. Support for LITCs.....
  - A. Tax Court.....
  - B. Congress.....
  - C. The ABA and Other Bar Associations.....
  - D. The IRS.....
- V. Impact of LITCs on Fairness to Taxpayers.....
- VI. Challenges.....
- VII. Conclusion.....

## I. Introduction<sup>1</sup>

Low-income Taxpayer Clinics<sup>2</sup> (LITCs) have grown significantly in number over the past fifteen years, thanks in large part to the creation of the federal matching grant in IRC 7526 as part of the Revenue Reform Act of 1998.<sup>3</sup> The growth was the hoped for result of the passage of IRC 7526, which was recognized as a tipping point for LITCs in an article by

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<sup>1</sup> The errors and omissions in this draft are those of the author. The author wishes to acknowledge the many contributions received in creating this draft starting with those who were on the panel discussing this topic at the ABA Tax Section meeting on September 25, 2010: United States Tax Court Chief Special Trial Judge Peter Panuthos; National Taxpayer Advocate Nina Olson; Director of the Janet Spragens Federal Tax Clinic at American University School of Law, Nancy Abramowitz; Director of the University of Minnesota School of Law Federal Tax Clinic, Kathryn Sedo; Director of the Quinnipiac School of Law Federal Tax Clinic, Toni Robinson. Many existing tax clinics have provided information concerning the creation of their clinics. My colleagues at Villanova Law School, Michael Mulrone and Les Book provided significant source documents and comments on the article. Former Commissioner Larry Gibbs provided significant insights into early clinic formation. Many others have helped to locate information included in this paper. Special thanks to my research assistants, Luigi Racanelli and Emily Stilwell, and the research librarian, Amy Spare.

<sup>2</sup> Interestingly, the Tax Section of the American Bar Association was initially called the "tax clinic." See Kirk J. Stark, "The Unfulfilled Tax Legacy of Justice Robert H. Jackson," 54 Tax L. Rev. 171, 173 (2001).

<sup>3</sup> IRC 7526(a) provides that "[t]he Secretary may, subject to the availability of appropriated funds, make grants to provide matching funds for the development, expansion, or continuation of qualified low-income taxpayer clinics."

Professor Les Book in 2001.<sup>4</sup> Behind the growth of LITCs, and their recognition as an important force not only in representing low-income taxpayers, but in establishing policy, is an almost forty-year history of this special type of clinic. The history of LITCs concerns not only people and clinics but also institutions.

This Article seeks to trace the history of LITCs from their origin to the present, the rise in LITCs in the academic clinical movement, and the interplay of LITCs and legal services organizations. The Article also seeks to show the role of the ABA Tax Section, the United States Tax Court, the IRS, and Congress in shaping the growth of LITCs. Section One of this Article will examine the chronological history of LITCs focusing on the early academic clinics and then the rise of non-academic clinics. This section will include a discussion of IRC 7526 and the administration of the grant it creates by the Internal Revenue Service. Section Two of this Article seeks to place the LITC movement in context with legal service organizations and with academic clinics. Section Three details parallel initiatives in representing low-income individuals. Section Four discusses parties whose support was crucial in creating and sustaining LITCs including the Tax Court, Congress, the ABA and

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<sup>4</sup> Book "Tax Clinics: Past the Tipping Point and to the Turning Point," Tax Notes, Vol. 92, No. 8 reprinted at 34 Exempt Org. Tax Rev. 27 (2001).

other bar associations, and the IRS. Section Five of the Article addresses the impact of tax clinics both on the fairness to individual taxpayers and on the tax system as a whole. Section Six briefly addresses some challenges facing LITCs in the years ahead and examines the structural bases for successful tax clinics. Finally, Section Seven concludes that clinics have made significant strides in providing coverage to low income taxpayers who previously fell outside the reach of legal representation. Many of the goals of the early LITC visionaries, however, remain unmet.

## **II. Chronological History of LITCs**

Tax Clinics, as we know them today, began in the 1970s as part of an academic movement to provide skills training to students and as part of the broader social movement to provide free or very low cost legal services to the poor.<sup>5</sup> Law schools were looking for platforms through which to teach practical skills to students because of growing criticism that their graduates entered the profession unprepared. Communities and the legal profession were looking for ways to protect the most vulnerable members of society from processes over which they could exert little control. As the broader movements for legal

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<sup>5</sup> For a more detailed discussion of the history of educational movement towards skills based training, see infra Section Two below. That section also contains a discussion of the legal services movement in the United States.

skills training and legal aid moved forward, it was natural that legal clinics providing assistance in tax matters should develop as well.<sup>6</sup>

#### A. The Experimental Phase - The 1970s

The IRS Office of Assistant Commissioner (Planning and Research) records the first tax clinic as existing at Harvard Law School.<sup>7</sup> The program there lasted eighteen months before being discontinued based on a perceived lack of benefit to either the school or the IRS.<sup>8</sup> Insufficient information exists about this early clinic at Harvard upon which to base judgment on its effectiveness or its similarity in content, format, and purpose to the tax clinics that developed later. In 1974, the first tax clinic that took root appeared at Hofstra University School of Law.<sup>9</sup> The description of the Hofstra clinic sounds very much like the description of a tax clinic at a law school

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<sup>6</sup> See Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan. Council on Legal Education for Professional Responsibility, Inc., Vol. X, No. 4, March 1978.

<sup>7</sup> INTERNAL REVENUE SERVICE, OFFICE OF THE ASSISTANT COMMISSIONER, REPORT ON LEGAL ASSISTANCE TEST PROGRAM 2 (1978) [hereinafter The Report] ("In 1968, a test program was established under which law students from the Harvard Law School were permitted to assist taxpayers undergoing an office audit in the Boston District. The law students were permitted to accompany taxpayers as a 'witness,' but not as the taxpayer's legal representative.").

<sup>8</sup> Id. at 2. Interestingly, this Report does not mention the benefit or lack of benefit to taxpayers as a basis for continuing or discontinuing the clinic.

<sup>9</sup> Id.

today - third year students acting as tax advisors for clients while supervised by an attorney serving as clinic director. The authorization from the New York Supreme Court however, describes them as advisors for "intermediate income" taxpayers instead of low-income taxpayers.<sup>10</sup> The Hofstra clinic<sup>11</sup> was officially created by an order of the Supreme Court of the State of New

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<sup>10</sup> Id. at 2. The authorization of the clinic to represent "intermediate taxpayers" presents interesting issues concerning the reason for that language. Did the clinic or the court think that there were insufficient law income taxpayers to form a client base for the clinic? The earned income tax credit had recently been created but was much less potent than it would become in the 1990s. For a discussion of the earned income tax going back to its inception, see Steve Holt, "The Earned Income Tax Credit at Age 30: What We Know" The Brookings Institute Research Brief, February 2006 and also Dennis Ventry, Jr. "The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit" in B. Meyer and D. Holtz-Eakin, Eds., "Making Work Pay: The Earned Income Tax Credit and Its Impact on America's Families," New York: Russell Sage Foundation. Even in the mid-1970s concern for intermediate taxpayers with a dispute which did not justify the expense of a lawyer may have driven this decision. See Senator Montoya concerns **discussed below at p. \_\_\_**.

<sup>11</sup> The Hofstra program was started by Stuart Filler who deserves special mention for his pioneering efforts in many aspects of tax clinics. Mr. Filler attended NYU Law School and had worked for the Office of Chief Counsel, IRS prior to starting the clinic at Hofstra. He pushed to permit his student to practice before the Tax Court, he made significant contact in the community in order to attract clients and he kept the clinic alive moving it from Hofstra to Bridgeport Law School from which it ultimately moved to Quinnipiac Law School where it continues to thrive. In addition to starting the first tax clinic to take root, Mr. Filler also took the first and, to date, only tax clinic case to the United States Supreme Court. See United States v. Bufferd, 506 U.S. 523 (1993). The Bufferd case raised a procedural issue concerning the statute of limitations that does not arise often in a low-income taxpayer practice - whether the statute of limitations ran from the filing date of an individual or corporate return for the shareholder of a Subchapter S corporation. Still, the fact that a low-income tax clinic handled the case to the Supreme Court was significant in itself.

York. It had authority to represent taxpayers in state proceedings but its authority to represent taxpayers before the IRS was initially unclear.<sup>12</sup>

The General Counsel of the Treasury Department<sup>13</sup> issued special orders to Hofstra and Columbia Law Schools in 1975 permitting third year students to practice before the Brooklyn District of the IRS for low and intermediate-income taxpayers.<sup>14</sup>

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<sup>12</sup> The Report, supra note 7 at 2.

<sup>13</sup> It is worth noting that having the General Counsel of the Treasury Department issue these orders indicates the high level of government scrutiny involved in this decision. The General Counsel is the legal advisor to the Secretary of the Treasury. The General Counsel supervised (and to a certain extent still supervises) the Chief Counsel, IRS. This decision occurred at department level rather than the agency level providing some insight into the serious consideration given to the decision to endorse the tax clinic experiment. This is not the only indication of the high level of attention these early clinics received. IRS Commissioner Jerome Kurtz personally visited the SMU clinic and personally wrote a letter on September 13, 1977, to Dean St. Antoine at University of Michigan Law School concerning the posting of notices describing the services of the Michigan clinic in the local IRS offices. This level of attention to a relatively minor matter demonstrates the level of concern and scrutiny given to these three initial clinics and the decision on whether the IRS would continue to support the clinical experiment.

<sup>14</sup> Letter from General Counsel Robert H. Mundheim to Steven D. Pepe, Associate Professor, Director, Clinical Law Program at the University of Michigan (Sept. 6, 1977); see also The Report, supra note 7 at 2 (reporting that Columbia Law School terminated its program after the spring semester 1976). Mr. Filler again deserves credit because he not only founded the law school clinic, he persuaded the IRS to recognize the clinic. Persuading the IRS to recognize the newly formed clinic would not have been easy. As discussed below, the novelty of clinics and the natural reluctance of employees at the IRS to embrace something new created opportunities for failure. Stuart Filler carried his clinic across this hurdle for which he merits additional recognition. The IRS also deserves credit for its willingness to embrace something new and its desire to assist low-income taxpayers.

At this point, the Director of Practice (now the Office of Professional Responsibility or OPR) became involved in monitoring student practice.<sup>15</sup> The tax clinic at Columbia Law School closed after one year; however, two new law school clinics arose almost immediately at Southern Methodist University (SMU) and Michigan. These two schools plus Hofstra formed the basis for the law school clinic experiment examined in The Report on Legal Assistance Test Program, December 1978 (hereinafter "The Report").

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<sup>15</sup> Id. The Director of Practice followed by OPR, its successor, oversaw student practice from the beginning of student practice until December 2012 when oversight moved to the National Taxpayer Advocate who, as discussed below, has had oversight responsibility for the IRC 7526 grant since 2003. Because of its longstanding oversight role, the Director of Practice and OPR significantly influenced the growth and development of tax clinics. The Director of Practice in 1975, Les Shapiro, became a strong advocate for clinics and another important figure in their ultimate success. He wrote a memorandum to the Assistant Commissioner (Planning and Research) dated August 30, 1978, that was incorporated into The Report. In the memorandum Mr. Shapiro stated "in addition to providing the students with a valuable learning tool, [the program] had the potential of benefiting the Internal Revenue Service and the public." It is clear from his letter that even in 1978, Mr. Shapiro had already engaged deeply with the then existing clinics by visiting the schools and nurturing the clinics. Shortly thereafter, he persuaded his friend, Leo Raskind, a tax professor at University of Minnesota Law School from which Mr. Shapiro had graduated, to assist in starting the tax clinic at University of Minnesota Law School in 1981. Kathryn Sedo, who has co-directed or directed the University of Minnesota Law School tax clinic from its inception to the present, remembers the assistance and the prodding of Mr. Shapiro in getting the tax clinic underway and helping to ensure its success. Jerry Borison, who founded the Denver Law School tax clinic shortly after the founding of the University of Minnesota Law School tax clinic, has similar memories of the support received from Les Shapiro. Michael Mulroney, who helped found the Villanova Law School tax clinic in 1991, also identified Les Shapiro as a critical person in the founding of the Villanova clinic. Like Stuart Filler, Les Shapiro emerges as a pivotal figure in the development of tax clinics.

The Report sought to analyze three clinical programs to determine whether the IRS should encourage and permit further clinics or seek to end the "experiment" of tax clinics. Before getting into the details of The Report with respect to these law schools, special note must be made of the Report's description of the event that might have triggered the high level interest at the Treasury Department of the new tax clinics. In the spring of 1976, Senator Montoya held field hearings to determine the types of problems experienced by taxpayers.<sup>16</sup> Senator Montoya sponsored a bill, pending at that time, which sought to create a pilot program under the Legal Services Corporation that would provide low-income taxpayers with free independent

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<sup>16</sup> In 1976 Senator Montoya was the chairman of the Appropriations Subcommittee on Treasury, Postal Service and General Government. He announced that his subcommittee would hold hearings examining IRS practices and procedures in four locations around the country in order to provide an extensive opportunity for comment. IRS Oversight: Congressional Hearings 288 (William V. Roth, Jr. ed., 1999) He noted that his subcommittee had held similar hearings in Washington in 1973 and 1974 resulting in the receipt by the subcommittee of thousands of letters from taxpayers suggesting the need for administrative changes at the IRS.

These hearings bring to mind the hearings held by Senator Roth in 1997 and 1998 that led to the 1998 Revenue Reform Act, the legislation creating the grant program for tax clinics. Practices and Procedures of the Internal Revenue Service: Hearings before the S. Comm. On Finance, 105th Cong. (Sept. 23-25, 1997)(Spotlighting alleged collection misdeeds by the IRS); IRS Oversight: Hearings Before the S. Comm. On Finance, 105th Cong. (April 28-30 and May 1, 1998)(Spotlighting alleged misdeeds by the IRS on criminal tax matters).

representation during an audit.<sup>17</sup> The Report describes Senator Montoya's concerns that taxpayers too often acquiesced to IRS

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<sup>17</sup> See The Report, supra note 7, at 3; see also Taxpayer Audit Disclosure Act of 1975 S. 136, 121 Cong. Rec. 391 (1975). The hearings and the proposed legislation create a critical point in tax clinic history since the possibility of joining Legal Services almost at the beginning of that organization and over two decades before the quasi-joinder occurs following the passage of IRC 7526 offers a window on what will happen and what might have happened. As discussed below in the section on Legal Services, the joinder of taxes with the other program areas of representation offered by Legal Services allows a broader spectrum of low-income representation than occurs without the tax piece. Had it happened at the time of Senator Montoya's proposed pilot program, the face of tax clinics would have changed dramatically. The Senator's proposed legislation suggests insight into the connection of tax to overall legal services to the poor and recognizes it over two decades before Congress ultimately decides to fund legal services for low-income taxpayers. See the discussion on Legal Services below at p. \_.

The legislation proposed by Senator Montoya dovetails a measure discussed in the 1977-1978 Report on the Committee on Small Taxpayer Program of the ABA Tax Section. 31 The Tax Lawyer 978 (1978). The ABA report stated "Another Committee activity, requiring substantial study by a special Subcommittee appointed for the purpose has been review of a proposal for the establishment of a so-called 'Taxpayer Assistance Center.' Originally formulated by the Administrative Conference of the United States and presently being recommended by the Section on Individual Rights and Responsibilities, this proposal is for the creation, either administratively or legislatively, of a federal body which would provide representation to low-income taxpayers in controversies with the Service. The effect would be to establish a sort of public defender system for taxpayers whose resources are insufficient to enable them to secure their own professional representation in disputes with the Service. The Committee will report the results of its study, with its recommendation for action, to the Council in advance of the May Meeting. The Section on Individual Rights and Responsibilities intends to bring its recommendation to the floor of the House of Delegates at the August meeting." The 1978-1979 Report of the Committee on Small Taxpayer Program reported that ABA House of Delegates defeated the proposal by the Section on Individual Rights and Responsibilities to create a federal body which would provide representation in its 1978 Annual Meeting. 32 The Tax Lawyer 932 (1979). The ABA Tax Section Council had voted on May 19, 1978, to approve the recommendation of its Committee on Small Taxpayer Program "that a government-funded program for audit assistance to low-income taxpayers be established..." 31 Tax Lawyer 925 (1978).

findings because the fees for representation would exceed the tax at issue.<sup>18</sup>

Senator Montoya's hearings included testimony from IRS Southwest Regional Commissioner Walter Coppinger.<sup>19</sup> Inspired by his participation in the hearings, Coppinger returned to his Dallas headquarters and began discussions with the Dean of the SMU Law School regarding the establishment of a tax clinic there to represent low-income taxpayers. The Southwest region not only convinced SMU to start a tax clinic but obtained authorization from the IRS National Office for a cooperative test program.<sup>20</sup>

A third IRS region became involved in working with a clinic in August 1976, when the University of Michigan Law School

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The concept of adding tax onto the issues covered by the Legal Services Corporation was also discussed by Stuart Filler in his testimony before the Oversight Subcommittee of the House Ways and Means Committee. Problems of Low-Income Taxpayers and Small Businesses with the Internal Revenue Service: Hearing Before the Subcomm. on Oversight of the Comm. on Ways and Means, H. Rep., 95th Cong., 1st Session 18 (1977). For further discussion of his testimony, see infra note [ ] and accompanying text.

<sup>18</sup> Id. at 3.

<sup>19</sup> Id. at 3.

<sup>20</sup> Id. at 3. The Report indicates that the SMU clinic did not start until spring semester 1977 because of funding issues. Interestingly, when it did get its funding in order, the SMU tax clinic obtained funding that has allowed it to continue as a clinic until the present and continue as one of the handful of clinics that does not accept grant funds under IRC 7526.

applied for recognition.<sup>21</sup> The Director of Practice approved Michigan's application in October 1976 and the IRS decided to thoroughly evaluate Hofstra, SMU, and Michigan before granting permission for other clinics to operate.<sup>22</sup>

The Report was based in large part on correspondence sent to Washington from the three regional commissioners in charge of the regions within which these pioneering clinics resided.<sup>23</sup> The Report sought to determine whether the clinical experiment should continue or should be abandoned.<sup>24</sup> The comments from the Northeast and Southwest regions were very positive, while the comment submitted by the Central region recommended ending the experiment at Michigan Law School primarily due to the "low

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<sup>21</sup> Id. at 3.

<sup>22</sup> Id. at 3.

<sup>23</sup> Memorandum from Regional Commissioner (Northeast) dated June 28, 1978; Memorandum from Regional Commissioner (Central) dated June 29, 1978; Memorandum from Regional Commissioner (Southwest) dated July 14, 1978.

<sup>24</sup> The Report describes the common features of the three law school tax clinics:

- Law students enrolled in the clinical programs receive credit hours toward their degrees...
- The students are generally in their third year of law school, and have taken one or more courses in Federal taxation
- The students are supervised by an experienced attorney... Enrollment must be limited to 12 students per semester.
- The clinics primarily serve taxpayers who are in the lower income brackets and who have "routine" tax problems.

See The Report, supra note 7.

activity level since the beginning of the program.”<sup>25</sup> Perhaps due to lack of support from the IRS or the small market demographics in which it was operating, the Michigan tax clinic did close a few years later while the other two clinics were able to continue successfully.<sup>26</sup>

With a few exceptions, The Report reads like a description of tax clinics existing in 2013.<sup>27</sup> The basics of clinic operation have changed little over the three decades since the 1978 Report, although the type of work has changed significantly.<sup>28</sup> Some of The Report’s observations are interesting, however, and deserve special mention. First, the amount of income of clients served by the clinics was not yet

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<sup>25</sup> See memo dated June 29, 1978, from Acting Regional Commissioner Billy Brown to the Deputy Commissioner.

<sup>26</sup> The University of Michigan Law School brought back its tax clinic in 2007, twenty-five years after closing it. The clinics at Hofstra and SMU have essentially survived to the present. Stuart Filler moved the Hofstra clinic to Bridgeport Law School and that law school later became Quinnipiac Law School which still maintains a tax clinic.

<sup>27</sup> For a detailed description of the three clinics, see “Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan” Volume X Council on Legal Education for Professional Responsibility, Inc. 1 (1978).

<sup>28</sup> Kathryn Sedo describes early work of tax clinics in a manner similar to the description of that work in The Report. It consisted almost entirely of representing taxpayers in office audits. Correspondent audits, the far more common type case in 2013, did not predominate at that time. Collection case work was non-existent in the early clinics even though it comprises a high percentage of tax clinic work in 2013.

set in the way that IRC 7526 has accomplished.<sup>29</sup> Early clinics took cases of individuals with income up to \$18,000.<sup>30</sup> The income level of clients was clearly something the early clinics were thinking about and discussing, but a consensus had not yet been achieved. Similarly, debate was still ongoing around the issue of the amount of tax at issue and whether that amount provided a barrier or ceiling with regard to the acceptance of cases.

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<sup>29</sup> IRC 7526 requires that 90% of the cases accepted by an LITC involve a taxpayer whose income is less than 250% of poverty as determined by the Bureau of Labor Statistics. The remaining 10% of cases can exceed this amount and there is no limitation in the statute of the amount by which the income of these clients can exceed the statute.

<sup>30</sup> "Hofstra's general student practice rule as promulgated by the Appellate Division of the New York Supreme Court, Second Judicial Department, permits representation of clients whose incomes fall below the Bureau of Labor Statistics' 'Lower Level of Income', which is currently \$10,500. However, an amendment was obtained for the tax program permitting use of the Bureau's 'Intermediate Level of Income', which is currently \$18,866 and has been increasing at the approximate rate of 7.5% annually." Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan" Council on Legal Education for Professional Responsibility, Inc., Volume X, No. 4, March 1978.

In 2013 dollars \$18,000 in 1978 would substantially exceed 250% of poverty for one person. The Report does not make clear how many people might be in a typical taxpayer's family in 1978. It is possible for a family to qualify in 2013 at a much higher dollar level if enough dependents exist. In 1978 the poverty level for a single male below the age of 65 was \$3,516. U.S. Census Bureau, Poverty Thresholds 1978, <http://www.census.gov/hhes/www/poverty/data/threshld/thresh78.html>.

The fact that Hofstra was allowed to take cases in the Intermediate level does not mean that most of its cases involved individuals with an income of this amount. While the New York Supreme Court order did not contain the specificity of IRC 7526, it can be seen as allowing some of the same flexibility.

Second, the issues presented in the cases vary significantly from the issues that would typically be found in a clinic in 2013. From the description of the work of initial clinics in The Report, the most common issues handled by the early clinics were substantiation of expenses on Schedules A and C.<sup>31</sup> No mention was made in the report of representing taxpayers with earned income tax issues,<sup>32</sup> innocent spouse relief,<sup>33</sup> discharge of indebtedness,<sup>34</sup> or collection.<sup>35</sup> The issues

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<sup>31</sup> The Report, supra note 7, at 8.

<sup>32</sup> The earned income credit existed in 1978 but had not yet transformed into a significant issue for low-income taxpayers. The effect of tax law and tax administration on clinic representation will be discussed in more detail below. In the 1976 Annual Report of the Commissioner of Internal Revenue the Taxpayer Assistance section of the report describes the major effort to make the public aware of the earned income tax credit. This report states that "[t]he Earned Income Credit was allowed to about 6 million taxpayers for a total of approximately \$1.2 billion, averaging out to some \$203 per taxpayer." It is easy to see from those numbers that Congress had not yet pegged the earned income credit as the largest anti-poverty program in the country. For a detailed discussion of the early earned income tax credit, see the articles by Steve Holt and Dennis Ventry, Jr., supra note 10.

<sup>33</sup> Innocent spouse relief existed in 1978 but was relatively new and relatively restricted in the circumstances to which it applied. The number of innocent spouse cases in 1978 would have been a small fraction of the number of cases existing after the 1998 changes to that statute because the 1998 changes added to the bases for relief. For an explanation of the shortcomings of the pre-1998 statute providing innocent spouse relief and the reason few of these cases existed at that time see Jerry Borison, "Innocent Spouse Relief: A Call for Legislative and Judicial Liberalization" 40 Tax Law. 819 (1987)(This article identified many of the needed changes which Congress would finally adopt a decade later).

<sup>34</sup> Discharge of indebtedness issues would have been much less common in 1978 than 2013 because the United States had not yet fully embraced credit and the significant downturn in the housing market was not present.

described by The Report as coming before clinics in 1978 reflected the types of issues that typically existed at that time based on the memory of the author.<sup>36</sup> It is also clear from The Report that most of the work of the three law school clinics involved representing taxpayers during the examination process and providing information on factual issues in order to substantiate claimed expenses.<sup>37</sup> As discussed further below, this type of work now represents only a small portion of the work of clinics because the IRS' increased reliance on automation has created more correspondence audits which, in turn, increases the likelihood that a taxpayer will contact the clinic later in the life of a case.

Third, The Report makes clear that the IRS engaged in different degrees of providing notice to taxpayers under audit of the existence of tax clinics.<sup>38</sup> In Dallas, the IRS affirmatively pushed taxpayers toward the SMU clinic by

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<sup>35</sup> The Report suggests that collection issues were beyond the scope of the students in the initial clinics.

<sup>36</sup> The author started with the Office of Chief Counsel in 1977. The typical Tax Court docket in 1978 contained precisely the type of cases described in The Report and the amount of collection work coming into Counsel was small compared to more recent decades.

<sup>37</sup> The Report, supra note 7, at 8.

<sup>38</sup> The Report, supra note 7, at 24.

providing notification about the clinic in a variety of ways.<sup>39</sup> The level of IRS involvement was markedly different between Dallas and the other two locations in which clinics existed.<sup>40</sup> In Dallas, the IRS appears to have assisted SMU in obtaining clients, while in Michigan, the lack of taxpayer notification appeared to have hampered the viability of the clinic.<sup>41</sup> Several remarks in The Report gave the impression that Stuart Filler succeeded in getting the local press to help the Hofstra clinic inform taxpayers of its existence.<sup>42</sup> The level of IRS

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<sup>39</sup> The Report, supra note 7, at 9 (quoting the Regional Commissioner's office stating, 'We (the IRS in Dallas) do actively refer taxpayers to the Clinic.'").

<sup>40</sup> In *Growing Pains*, supra note [ ], the author found:

Most of the growing pains associated with tax clinics derive from the need to publicize the tax clinic's services and to broaden the scope of representation. All of the programs have found it necessary to make special efforts to obtain clients. They have resorted to newspaper articles and publicity programs. SMU has been most successful because the Dallas District of the Service refers taxpayers to the Clinic. The other two clinics do not receive referrals from the Service.

Id. at 4.

<sup>41</sup> Id. at 4.

<sup>42</sup> Id. at 4. Stuart Filler not only sought and received press but he fought for his clinic in other ways. He asked the Tax Court to allow his students to participate. When denied, he brought a mandamus action in the Second Circuit seeking to have the Circuit Court order the Tax Court to allow student representation. See *Growing Pains*, supra note [ ], at 6. It is clear that he was an aggressive promoter of his clinic and for his clients. Stuart Filler serves the role of both having the vision to create these clinics and having the drive to push for implementation of those things necessary for it to succeed. He deserves significant credit for his role in bringing tax clinics into existence.

involvement with evolving tax clinics was a subject of discussion in The Report.<sup>43</sup> Generally, The Report viewed the assistance in Dallas as an experiment rather than a level of cooperation that would necessarily flow to all tax clinics. Perhaps one of the most surprising aspects of the cooperation was the extent to which the IRS, at least in New York, sought input from bar associations in deciding how much support to provide to the Hofstra tax clinic.<sup>44</sup>

The fourth noteworthy observation of The Report details how the Hofstra clinic sought permission for its students to

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<sup>43</sup> Id. at 24. The ABA Ad Hoc Committee To Review IRS Evaluations also discussed the subject of the appropriate level of IRS support for clinics in its report. The Ad Hoc committee identified this as "perhaps the most critical problem for any tax clinic in obtaining an adequate caseload." ABA Report at 9.

<sup>44</sup> Id. at 24. The IRS felt the need to contact local bar associations and the ABA as a part of its research into the appropriateness of allowing recognition for clinics. It seemed to have a genuine interest in not allowing clinic participation if the existence of the clinics would hinder or cause concern among the bar. Of the bar associations contacted by the IRS all but one were comfortable with having the IRS provide more notification to taxpayers. The Nassau County Bar Association in New York did not approve of the idea of IRS publication of clinic services citing many of the ideas that have hampered student participation over the years: "Four reasons were given by the Nassau County Bar Association for disapproval of the posting of signs in local IRS offices indicating the existence of student legal assistance: 1) Persons who earn up to \$18,500 are 'certainly not in the poverty area and could well afford hiring professional representation.' 2) IRS offers a tax service free to the public 'should they not choose to hire counsel or an accountant.' 3) Bar members doubt 'the ability of students to advise clients concerning these matters.' And 4) The bar noted that 'it appears that this activity may well involve the practice of law.'" Growing Pains at 6, n. 1.

represent taxpayers before the Tax Court.<sup>45</sup> Its request was denied.<sup>46</sup> Like the IRS, the Tax Court sought input from the bar.<sup>47</sup> The Tax Court also sought input from the IRS on this subject.<sup>48</sup> The IRS supported student participation in Tax Court cases while the bar, conversely, was less certain such participation was a good idea. Permission for students to

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<sup>45</sup> The Report, supra note 7, at 27. On January 10, 1977 the Hofstra Tax Clinic filed an application with the U.S. Tax Court, seeking permission for law students enrolled in the tax clinic program to represent taxpayers before the Court." The Court sought the views of the IRS and the ABA. The IRS, through the Chief Counsel, opposed the idea.

By the time of the report, however, the view of the IRS toward student practice had completely changed and it urged the Tax Court to permit students to appear joining in a similar appeal from subcommittees of the House Ways and Means Committee and the Appropriations Committee. Id. at 27-28.

<sup>46</sup> Id. at 27.

<sup>47</sup> The ABA Report of the Ad Hoc Committee to Review IRS Evaluations contains a section devoted to "Student Representation in the Tax Court." The section of the report contains lawyer language with a mild endorsement of student representation. The writers knew that the Tax Court did not want student representation - "In view of prior approaches to the Tax Court regarding a student practice rule, the question of law student participation in Tax Court proceedings seems at a standstill..." See ABA Report, at 10. With that knowledge, the authors provided the following guidance on student representation: "Based on the initial IRS experience, one might reasonably conclude that student representation of certain taxpayers, with appropriate faculty and clinical supervision, before the Tax Court might also be of assistance to the IRS, Regional Counsel, and the Tax Court, particularly in those cases where the taxpayer, through lack of understanding or inadvertence, has failed to avail himself or herself of the opportunities for administrative appeal and settlement."

<sup>48</sup> The Report, in its Summary of Recommendations, supported student participation: "IRS should encourage the Tax Court to grant an application from at least one of the tax clinics, perhaps Hofstra's, to permit its law students to practice before the Court for a test period of one or two years." Id. at 1.

practice before the Tax Court would not come until later. Even then, students were not admitted to practice before the Court but simply allowed to appear when accompanied by a member of the Tax Court bar who was first recognized before deferring to the student.<sup>49</sup>

Overall, the perception of the IRS and the ABA<sup>50</sup> towards the early tax clinics was very positive. Opportunities not only for student education, but also for the low-income taxpayers who would receive representation appeared promising. The Report tracked not only the issues handled by the clinics, but also the outcomes and time frames in which cases were resolved, finding the statistics encouraging.<sup>51</sup> The Report provides a comprehensive view of the early clinics. Another significant insight exists through the testimony of Stuart Filler, and

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<sup>49</sup> See generally, Tax Court Rules (containing no provision for student practice).

<sup>50</sup> The IRS consulted with the ABA concerning the three pioneer tax clinics and received an 11 page report dated October 31, 1978, from an Ad Hoc Committee To Review IRS Evaluations. The ABA report was transmitted to the IRS by letter from the ABA Chairman Lipman Redman dated November 20, 1978. The letter from the ABA made five points: 1) most ABA council members agreed with the ABA Ad Hoc committee report that the existing tax clinics should be continued and the program expanded; 2) the IRS should permit publicity of the clinic services "subject to the approval of the appropriate local bar groups;" 3) funding for the clinics should be independent of the IRS; 4) the ABA would be "pleased" to work with the IRS if a blueprint for clinics was to be built by the IRS; 5) the ABA takes no position on expansion of clinics into representation before the Tax Court (although the Ad Hoc committee report had commented on the inevitability of this development).

<sup>51</sup> The Report, supra note 7, at 6-8.

others, before the Subcommittee on Oversight of the House Committee on Ways and Means.<sup>52</sup> Stuart Filler's testimony not only provides great insight, but predicts the future of tax clinics and the law impacting low-income taxpayers.<sup>53</sup>

B. Initial Growth and Establishment Phase - 1980 to 1998

As with most of its pilot programs, the IRS, after studying the three law school clinics that opened in the mid-1970s, approved the concept of tax clinics and assigned the Director of Practice to review and monitor these clinics.<sup>54</sup> The acceptance

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<sup>52</sup> May 12, 1977, Serial 95-10 "Problems of Low-Income Taxpayers and Small Businesses with the Internal Revenue Service."

<sup>53</sup> In many ways, Stuart Filler's testimony sounds the same as testimony of the National Taxpayer Advocate 30 years later. His testimony focuses on three topics: 1) Complexity - he details the problems it causes for low-income taxpayers; 2) IRS employees as advocates for taxpayers - he challenges the belief that IRS employees always reach the correct result and challenges Congress to fund free representation of low-income taxpayers through the Legal Services Corporation; and 3) Convenience - he argues for office hours that allow low-income taxpayers to meet with the IRS without losing a day's wages. He expanded on these three themes with significant detail to support his observations. With respect to complexity he focused on the difficulty low-income individuals have in navigating the personal exemption section. He explains the then existing complexity of the code and, in many ways, presages the changes that will come to that code section in subsequent legislation attempting to resolve the complexity he identified. With respect to his recommendation to provide free tax assistance to low-income taxpayers through the Legal Service Corporation lawyers, he identifies training of those lawyers as a major issue. His identification of that issue was also predictive of a need that continues to exist with the entry of the LSC lawyers into tax work.

<sup>54</sup> The Report, supra note 7, at 29 concludes:

The test experience is persuasive that law school tax clinics provide useful benefits to the taxpayers they serve, provide valuable experience to the law students enrolled in the program, and cause no administrative problems for IRS.

of the concept did not mean that a large number of tax clinics would immediately emerge. In fact, growth was quite slow. The Report noted that "other than the three law schools involved in the program, only a few others have expressed interest in initiating similar tax clinics. Their major problem may be in obtaining funds to initiate and operate such programs."<sup>55</sup> The question of funding constantly impacts the creation and continuation of clinics. The Report considered whether the IRS should fund tax clinics and decided that the "IRS should not seek appropriations to fund law school tax clinics, which should remain independent of any IRS funding controls."<sup>56</sup>

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Indeed, tax clinic representation of taxpayers in many instances results in the disposition of the cases with less staff time. IRS benefits most when such participation begins before the taxpayer appears for the audit.

The Report contains the summary of the recommendations and concludes that the "IRS should welcome the continuation of the tax law clinics at the three law schools, and welcome establishment of similar clinics at other law schools." The Report, supra note 7, at 1; see also Background Report, Taxpayer Education Programs, at 4 (1987).

<sup>55</sup> Id. at 29.

<sup>56</sup> Id. at 1. The issue of IRS funding controls presages a fight currently taking place between the Treasury Inspector General for Tax Administration (TIGTA) and the National Taxpayer Advocate (NTA). See "The Taxpayer Advocate Service Can More Effectively Ensure Low-income Taxpayer Clinics are Appropriately Using Grant Funds" a report of the Treasury Inspector General for Tax Administration dated July 19, 2011, Reference Number: 2011-10-067. This issue is discussed further in the challenges portion of Section Five of this paper. It is a serious issue relating to the amount of control the IRS, in its role as grant administrator, should exercise over the clinics. See also "Progress Has Been Made but Further Improvements Are Needed in the Administration of the Low-income Tax Clinic Grant Program" a report of the Treasury Inspector General for Tax Administration dated September

Another factor that may have impacted the growth of clinics was the early model of the types of cases to be handled by the clinics and the shift of IRS resources in the 1980s from historical patterns of preceding decades. The types of cases handled by the original three clinics were principally office audit examinations.<sup>57</sup> The early clinics were able to get involved in their client's case during this opening phase. The students principally aided taxpayers in gathering and presenting substantiation.<sup>58</sup> The 1980s saw the rise of tax shelters in the examination division and a shift from examining low-income taxpayers in office audit settings to correspondence audits.<sup>59</sup>

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21, 2005, Reference Number: 2005-10-129 and "Improvements Are Needed in the Oversight and Administration of the Low-Income Taxpayer Clinic Program" a report of the Treasury Inspector General for Tax Administration dated May 2003, Reference Number 2003-40-125.

<sup>57</sup> The Report, supra note 7, at 8.

<sup>58</sup> Id.

<sup>59</sup> See GAO-99-48 IRS Audits: Weaknesses in Selecting and Conducting Correspondence Audits, March 31, 1999. This report focuses on correspondence audits between 1992 and 1997. It provides significant detail on the process and the number of cases audited using this process - the majority of cases audited by the IRS. It also shows the types of cases audited using the process the majority of which were earned income tax credit cases. See GAO-98-128 for a comparison of correspondence audits with other types of audits based on 1992 data. It shows the high likelihood of taxpayer default in these audits, the much lower costs of these audits per dollar assessed and the much lower percentage of dollars collected. Nothing in the report provides a surprise but the report does validate much of what low-income taxpayer clinicians have observed about this process. The shift to correspondence examinations noted in the GAO reports in the 1990s shifted into high gear in the following decade. See blog post on this issue by National Taxpayer Advocate Nina Olson at <http://www.taxpayeradvocate.irs.gov/Blog/are-irs-correspondence-audits-really-less-burdensome-for-taxpayers> and <http://www.taxpayeradvocate.irs.gov/Blog/Whats-an-Audit-Anyway>.

Tax Shelter cases, of course, did not involve low-income taxpayers and the shift to correspondence audits cut the referrals and the ties to local offices. One reason for the slow growth of tax clinics during this period may have been ebb in cases to fuel the original model and the failure to shift to other types of cases in which low-income taxpayers had issues.<sup>60</sup> Of course, funding for a clinic presented problems for a clinic then as now.<sup>61</sup>

Because of funds available through the Department of Education,<sup>62</sup> LITCs grew during the 1980s from three at the

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See also Treasury Inspector General for Tax Administration Report "Significant Tax Issues are often not Addressed during Correspondence Audits of Sole Proprietors, February 24, 2010, Ref. No. 2010-30-024. See also GAO-13-151 IRS Could Significantly Increase Revenues by Better Targeting Enforcement Resources, December 5, 2012 (Updating information on the number and impact of EITC examinations).

<sup>60</sup> One detailed insight into the types of cases handled by a typical clinic during this period can be found in the article written by John Ellis Price, "Interactive Learning Through the Use of Student Federal Tax Clinics" Vol. 13 Journal of Accounting Education 413 (1995). Mr. Price writes about the tax clinic run through the accounting program at University of North Texas. With the precision of an accountant, he provides a detailed list of numbers and types of cases handled by this clinic during the years 1991 and 1992. See Table 2. The clinic handled exclusively audit type cases with itemized deductions and Schedule C deductions arising most frequently followed by dependency exemptions, filing status and rental income/expenses. This table also shows the average amounts at issue, average time spent per case and other data that updates some of the statistics gathered and commented upon in The Report.

<sup>61</sup> Report at p. 17.

<sup>62</sup> Office of Education, Law School Clinical Experience Program, Closing Date for Receipt of Applications for Fiscal Year 1978, 43 Federal Register 10635 (1978)(announcing grant funds for clinics at accredited law schools) and Department of Education, Law School Clinical Experience Program: Inviting Applications for New Awards for Fiscal

beginning of the decade to seventeen by its end.<sup>63</sup> All seventeen clinics were academic and almost all were in law schools.<sup>64</sup>

While not remarkable growth, this steady increase showed that the LITC movement had settled in and, with the infusion of funds from the Department of Education, would survive. A certain routine had developed with the IRS and with the Tax Court. Clinic students received recognition in both venues. While not widespread, LITCs achieved a certain normalcy and, perhaps, complacency.

The seventeen clinics in existence in 1990 shrank slightly to sixteen at the time of passage of IRC 7526 in 1998.<sup>65</sup>

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Year 1993, 57 Federal Register 61402 (1992)(announcing grant funds for clinics at accredited law schools) These announcements mark the first and last such announcements located in the Federal Register on this subject.

<sup>63</sup> Director of Practice list dated August 21, 1990.

<sup>64</sup> Id.

<sup>65</sup> The director of practice maintained a list of clinics dated August 21, 1990. That list included the following clinics: Akron School of Law; Boston University School of Law; Bridgeport University School of Law; Delaware Law School, Widener University; Denver College of Law; Loyola University of Chicago School of Law; Loyola University of New Orleans School of Law; Minnesota School of Law; William Mitchell College of Law; Nebraska-Lincoln College of Law; New Mexico School of Law; North Texas College of Business Administration; Robert Morris College; Southern Methodist University School of Law; Texas (Austin) School of Law; Washington College of Law at the American University; and Wisconsin-Milwaukee School of Business Administration. (At least one clinic existed that was not on this list - Cardozo Law School. Cardozo had a tax clinic at least as early as 1988. Jim Lewis, the founder of that clinic, litigated Patterson v. Commissioner, T.C. Memo 1989-193 with clinic students. That case was affirmed by the Second Circuit in an unpublished order. Thereafter, on April 20, 1990, Lewis, as the Director of the "Student Tax Clinic" at Cardozo filed a cert. petition which was not granted. Had it been granted, it would have

Comparing the two lists, nine clinics existed in both 1990 and 1998. Eight of the clinics that existed in 1990, all academic, ceased to exist by 1998 and seven new clinics arose to take their place. By 1998, three of the clinics were not academic clinics. Only two of the original clinics, Hofstra (which had moved to Bridgeport Law School by 1990 and Quinnipiac College of Law by 1998) and SMU continued to exist by 1998. The growth of tax clinics predicted in The Report had clearly not occurred.

After the three founding clinics discussed above, the next clinic appears to have been founded at the University of Minnesota Law School in 1981. The clinic at Minnesota resulted from the friendship between Les Shapiro, the IRS Director of Practice, whose office oversaw the approval process for clinics, and Leo Raskin, a tax professor at the University of Minnesota Law School.<sup>66</sup> The current director of this clinic, Kathryn Sedo,

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been the first tax clinic case accepted by the Supreme Court. See e-mail dated September 10, 2012 to author from Carlton Smith, the current director of the Cardozo clinic).

Compare the 1990 list with the existing clinics in 1998 per Nina Olson, "Low-income Taxpayer Clinics: The Means to a Fairer Tax System" 12 The Community Tax Law Report 21 (1998): Benjamin N. Cardozo School of Law; Denver College of Law; Georgia State College of Law; Loyola (Chicago) School of Law; Loyola (New Orleans) School of Law; Minnesota Law School; New Mexico School of Law; Nebraska School of Law; Quinnipiac College of Law; Rutgers School of Law; Southern Methodist University School of Law; Villanova School of Law; Washington College of Law at the American University; Chicago Tax Law Assistance Project; District of Columbia Center for Public Interest Tax Law; and The Community Tax Law Project.

<sup>66</sup> Conversation with Kathryn Sedo, University of Minnesota Law School, in [location] (Aug. 16, 2012). This article will not focus on Les

deserves recognition as the longest serving LITC director, having started work with that clinic at its inception. She not only continues to serve as a clinic director, but also continues to serve as a leader in the tax clinic movement.<sup>67</sup> Shortly after the creation of the clinic at the University of Minnesota, Denver Law School created a tax clinic headed by Jerry Borison. Like Kathryn, Jerry served as clinic director for an extended period of time, and he led the community.<sup>68</sup>

To the extent that clinics had become complacent and satisfied with their status quo, that situation changed dramatically as two new clinicians came on the scene who would change LITCs forever, Janet Spragens and Nina Olson. Janet

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Shapiro but his contribution to the growth of LITCs deserves recognition. He served as the IRS director of practice for over two decades. Because of support of LITCs, they did not face obstacles that might have existed from within the IRS had he not pushed them as an enthusiastic supporter. See also e-mail dated August 9, 2012 from Jerry Borison commenting on the importance of the support of Les Shapiro.

<sup>67</sup> Kathryn served as the chair of the Low-income Taxpayer Committee from August, 2009 through July 2011. Prior to that she was a vice chair of that committee. In addition to her bar leadership positions, she has served as a leader on issues facing the community through comments and litigation.

<sup>68</sup> According to Susan Morgenstern, who heads the LITC for the Cleveland Legal Aid Society, Jerry Borison served as a mentor to many new clinicians particularly during the explosive growth period for new clinics after 1998. He was the chair of the Low-income Taxpayer Committee from August 1991 through July 1993. Perhaps more important than his individual mentoring role was his service as the lead editor of the first three editions of a book published by the ABA, Effectively Representing Your Client before the IRS, used by most LITCs use as their primary reference tool.

Spragens arrived first with the opening of the tax clinic at American University in 1990.<sup>69</sup> She joined the faculty at American University's Washington College of Law in 1973 as its only full time female faculty member.<sup>70</sup> In 1990, she decided to start a tax clinic. Perhaps because of her experience as a lawyer and a teacher prior to becoming a clinician, she immediately saw issues facing tax clinics that other clinicians were not seeing.<sup>71</sup> She began to push for recognition of LITCs and her efforts led her to team up with another new clinician, Nina Olson.<sup>72</sup>

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<sup>69</sup> Joe Holley, Law Professor Set Up Tax Clinic to Aid Poor, WASHINGTON POST, Feb. 22, 2006, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/21/AR2006022101813.html>.

<sup>70</sup> Id.

<sup>71</sup> Janet Spragens wrote frequently to address the impact of the tax law and tax administration on low-income taxpayers. Through her writing she sought to influence and to advocate on behalf of this community. Her writings include: "Solving the Problem of Misleading Deficiency Notices" Letter to the Editor, 84 Tax Notes 1551 (articles on this subject September 10, 1999)(with Nancy Abramowitz); "Better Representation in Tax Court S Calendar Cases" (exchange of letters with Hon. Peter Panuthos, Chief Special Trial Judge, United States Tax Court) reprinted in Tax Notes (February 1996); "Alimony and Child Support are not Indistinguishable," Letter to the Editor, Tax Notes (April 15, 1995); "Tax Clinics: The New Face of Legal Services" (with Nina Olson) 88 Tax Notes 1525 (September 15, 2000); "IRS Modernization and Low-income Taxpayer" (with Nancy Abramowitz), 53 Administrative Law Review 701 (2001); "Student Tax Clinics" 81 Tax Notes 129 (October 5, 1998); and Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate," 73 Tax Notes 353 (October 21, 1996).

<sup>72</sup> See acceptance speech of Professor Leslie Book on behalf of Janet Spragens on the occasion of the awarding of the ABA Tax Section Pro Bono Award to her. 25 ABA Section of Taxation News Quarterly 22 (2006) for a discussion of the many qualities she brought to the LITC community.

Nina Olson owned her own tax planning and preparation firm in Chapel Hill, North Carolina from 1975 to 1991.<sup>73</sup> She decided to pursue a law degree and obtained one at North Carolina Central School of Law.<sup>74</sup> After obtaining her law degree, she decided to pursue an LLM in Tax from Georgetown Law School and commuted to classes from North Carolina while maintaining her practice.<sup>75</sup> As she looked for ways to perform pro bono work as a lawyer, she came to the realization that low-income taxpayers existed but opportunities to serve them were difficult to find.<sup>76</sup> She decided to start an LITC in Richmond, Virginia, the Community Tax Law Project (CTLP), organizing tax lawyers to provide pro bono services. CTLP became the first LITC not based in an academic institution. Because CTLP did not follow the academic model of previous LITCs, she had to climb many of the same hills that Stuart Filler climbed 15 years earlier. She had to convince the IRS and the Tax Court to recognize CTLP and to

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<sup>73</sup> [www.taxpayeradvocate.irs.gov/Media-Resources/National-Taxpayer-Advocate-Bio](http://www.taxpayeradvocate.irs.gov/Media-Resources/National-Taxpayer-Advocate-Bio) last viewed on August 6, 2012.

<sup>74</sup> Id.

<sup>75</sup> Personal knowledge of author who was one of her professors at Georgetown during her pursuit of the LLM degree.

<sup>76</sup> See Mark Trumbull, Tax Day: 1040 Reasons You Should Know Nina Olson, CHRISTIAN SCIENCE MONITOR, Apr. 12, 2012, available at: <http://www.csmonitor.com/USA/2012/0412/Tax-day-1040-reasons-you-should-know-Nina-Olson>.

"promote" its services in the same way done for academic clinics.<sup>77</sup>

Because CTLP did not have funds from an educational institution, it constantly battled to find funding to support its activities. This struggle for funds may have assisted in forming her opinions of the need for federal funding.<sup>78</sup>

While Janet Spragens and Nina Olson developed their skills as clinic directors and began their collaborative efforts on broader issues concerning LITCs, the IRS faced increased scrutiny for its actions *vis-à-vis* individual taxpayers—particularly with respect to the collection of taxes. In 1988, Congress passed the first taxpayer bill of rights.<sup>79</sup> In 1996, Congress passed the second taxpayer bill of rights legislation.<sup>80</sup>

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<sup>77</sup> Personal knowledge of author who was the District Counsel of the Internal Revenue Service in Richmond, Virginia, at the time of the founding of CTLP and who participated with Nina Olson in meetings with the IRS District Director in Richmond concerning access of CTLP and who participated in conferences with the Tax Court concerning notification to taxpayers of the services of CTLP.

<sup>78</sup> Her struggle for funds and success in obtaining them and bringing attention to tax as an area of need also caused her gain recognition from the bar. In 1999 both the Virginia State Bar and the Richmond Bar Association awarded her their public interest lawyer of the year awards. See Nina Olson Named U.S. Taxpayer Advocate, 40 Virginia Lawyer Magazine, Feb. 2001, available at: [www.vsb.org/docs/valawyer magazine/feb01olson.pdf](http://www.vsb.org/docs/valawyer magazine/feb01olson.pdf).

<sup>79</sup> Taxpayer Bill of Rights 1, Pub. L. No. 100-647.

<sup>80</sup> Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, available at: <http://www.irs.gov/pub/irs-utl/tbor2.pdf>.

Congress created a National Commission on Restructuring the IRS in 1995 in an effort to improve the IRS.<sup>81</sup> The Ways and Means Committee of the House of Representatives held hearings to consider the recommendations of this Commission.<sup>82</sup> The Senate held numerous hearings, many of which sought to sensationalize the problems with the tax system and to create strong need for

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<sup>81</sup> Pub. L. No. 104-52 section 637, 109 Stat. 468, 509 (1995).

<sup>82</sup> Report of the National Commission on Restructuring the Internal Revenue Service: Hearing before the House Ways and Means Committee, 105th Cong. (June 25, 1997). The report of the Restructuring Commission led directly to the adoption of grant funds for low-income taxpayer clinics and Janet Spragens' testimony led directly to the idea of creating the grant funds. The report was divided into eight sections. Section 7, entitled "Taxpayer Rights" contained four specific areas of proposals and then a fifth area entitled "Other Taxpayer Rights Proposals." The proposals from this fifth section are contained in Appendix 1 of the Commission's report. The report introduces them by stating "Restoration of public confidence in the IRS must begin with Congress through legislation promotion fair and impartial tax administration which focuses on preventing problems before they occur." Restructuring Report at P. 54.

Appendix 1 also contains the following proposal "*Seed money for clinics representing low-income taxpayers*: The proposal would authorize the IRS to establish a program to support the creation of clinics representing low-income taxpayers. By establishing a program for awarding grants to endow such clinics, this proposal would help to ensure that low-income taxpayers involved in controversies with the IRS could obtain representation. This program also will conduct outreach and education to populations that do not speak English as a first language." Restructuring Report at Appendix p. 49. In further describing tax clinics the appendix provides "The purpose of the tax clinics is twofold: to provide representation for low-income taxpayers and perform outreach to certain populations... The Commission believes the work of the clinics will benefit the IRS. By providing representation and counseling, the clinics will eliminate many frivolous cases. The clinics will also help ensure that actions brought are only for meritorious issues and are done in a professional manner - thereby minimizing the burden for the courts and the IRS..." Restructuring Report at Appendix p. 52.

change.<sup>83</sup> In the summer of 1998, Congress voted overwhelmingly to restructure and reform the IRS.<sup>84</sup> Included in the Restructuring and Reform Act of 1998 (hereinafter RRA 98) legislation was an authorization for \$6 million matching grants to low-income taxpayer clinics (LITCs).<sup>85</sup>

During this time, Nina Olson and Janet Spragens managed to testify before the Restructuring Commission and Congressional committees.<sup>86</sup> In their testimony, they hammered home the link

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<sup>83</sup> Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. On Finance, 105th Cong. (Sept. 23-25, 1997) (Spotlighting alleged collection misdeeds by the IRS); IRS Restructuring Hearings Before the S. Comm. On Finance, 105<sup>th</sup> Cong. (Jan. 28, 1998); IRS Oversight: Hearings Before the S. Comm. On Finance, 105<sup>th</sup> Cong. (April 28-30 and May 1, 1998) (Spotlighting alleged misdeeds by the IRS on criminal tax matters).

<sup>84</sup> Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 690 (1998)(the legislation is best known as RRA 98).

<sup>85</sup> See Section 3601 of RRA 98. Section 3601 was codified at IRC 7526. This section directly arose from the 1997 recommendation by the National Commission on Restructuring the IRS.

<sup>86</sup> Janet Spragens testified before the Restructuring Commission on February 26, 1997, as one of three individuals in the "Taxpayer Representative" category. Restructuring Report at p. 95. Nina Olson is listed as one of the "Individuals Who Met With the Commission." Restructuring Report at p. 99. Nancy Abramowitz describes the testimony of Janet Spragens putting forth the idea of funding clinics as coming in response to a question from the Commission on how the system could best respond to the needs of low-income taxpayers. Nancy S. Abramowitz, "Professor Janet Spragens: In Memory of a Friend, In Celebration of an Idea" 56 American University Law Review 1124 (2007). Her testimony was also described in Volume 183 Journal of Accountancy 24 (May 1997) which quoted her as saying "Provisions in the tax code intended to help low-income taxpayers lose their significance when the population for whom they were intended is faced with an administrative and judicial system they cannot deal with."

On September 26, 1997, Nina Olson testified before the Subcommittee on Oversight of the House Committee on Ways and Means at a hearing on the

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Recommendations of the National Commission on Restructuring the IRS on Taxpayer Protections and Rights. Her testimony covered many issues presented by the Restructuring Commission's proposals but gave greatest attention to the need for tax clinics and the need for funding for such clinics. "It would seem that low-income tax clinics are an obvious solution to the problems described above. Yet universities are struggling to find funding for an enterprise that not only provides its students with valuable practical experience and instill in them a professional commitment to community involvement but also offers substantial assistance to taxpayers and the tax system... It is in the government's interest to ensure that taxpayers are adequately represented, regardless of their income level. Despite initial misgivings about students and private sector attorneys engaging in protracted disputes and wasting government resources, IRS employees at all levels now recognize the contribution clinics make to the smooth administration of the tax law."

Nina Olson also testified before the Senate Finance Committee and submitted written remarks to that committee. Hearings before the Comm. on Finance, United States Senate, 105th Cong., 2d Sess. on H.R. 2676: Testimony at 124-126; Prepared Statement at 329-336; Responses to written questions from Committee Chair William Y. Roth at 336-340. Her testimony focused on problems low-income taxpayers have contending with the IRS Collection Division; however, she spoke briefly, and somewhat humorously, about the need for funding for low-income taxpayer clinics: "All of the problems I have discussed today would be less frequent for low-income taxpayers if they had access to representation. There should be at least one clinic in every state and in some states two or more, given their diverse populations and size. In light of this, I ask that you increase the funding for these programs to \$5 million [from \$3 million in the proposed legislation] - no, \$10 million. Let us make a real commitment to this population. No matter how warm and fuzzy we make the IRS, there will always be a need for representation." Id. at 126.

In her Prepared Statement Nina Olson addressed many of the substantive provisions of the legislation including collection, earned income credit examinations, offers in compromise, wage levies, burden of proof, innocent spouse relief and attorneys' fees award awards before ending with four paragraphs on low-income taxpayer clinics. Regarding the clinics she stated "I view Section 361 as the single most helpful provision of TBOR3. All of the problems discussed above will be lessened if not eliminated when low-income taxpayers are able to obtain representation. The provision of federal funding on a matching grant basis is an appropriate incentive for the establishment of clinics." Id. at 335.

In her Responses to written questions from Senator Roth, Nina Olson answered the second question which asked if low-income taxpayers were targeted for audit by the IRS. Her response stated "The single most effective tool to combat targeting (intentional or unintentional) of

between the 1995 Work to Welfare legislation and the need for Congressional funding of tax clinics in order to provide representation for low-income taxpayers now entering the tax system.<sup>87</sup> They carefully explained the importance of LITCs in an era when tax had become the primary form of delivering benefits to low-income individuals.<sup>88</sup>

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low-income and disadvantaged taxpayers is access to representation. Representation levels the playing field in audits, collections and litigation." Id. at 336.

<sup>87</sup> The Welfare to Work legislation greatly expanded the earned income tax credit in an effort to provide incentives to the individuals coming back to work whose salaries were low and needed supplementation in order to make it worthwhile for individuals to go back to work. Nina Olson specifically made reference to the welfare to work provisions in her Prepared Statement submitted to the Senate Finance Committee: "I am concerned, however, that one of the factors given special consideration in the awarding of grants is the level of service to individuals for whom English is a second language. I would add to this category a second targeted population, namely participants in welfare-to-work programs. These individuals are being thrown into the workforce without appropriate training in the matter of tax responsibilities and without access to representation. As a result, they are sure to face problems in a few years arising from dependency exemption claims and EIC audits." Id. at 335; see also Janet Spragens, Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate" TAX NOTES (Oct. 21, 1996).

<sup>88</sup> Their testimony did not stop with convincing Congress to provide funds for low-income taxpayer clinics. They sought other changes that would impact low-income taxpayers. One example of the "other changes" is the change to the offer in compromise provisions. Nina Olson testified that IRC 7122 did not adequately protect low-income taxpayers because of the IRS administrative position requiring a minimum amount of payment for an offer in compromise. Prepared Statement submitted to the Senate Finance Committee at 332-333. As a result of her testimony, Congress amended IRC 7122 to add a section directing the IRS not to discriminate against low-income taxpayers by considering the amount of the offer. IRC 7122(d)(3)(A). This type of substantive law change reflects another important aspect of the work of Nina Olson and Janet Spragens. Prior to their efforts to influence substantive tax laws impacting low-income taxpayers, clinics were focused on the individual cases before them. This groundbreaking work

Nina Olson and Janet Spragens created a new role for LITCs through their shared vision and their combined efforts. No longer were LITCs a minor player in the tax world serving discreet communities in random pockets of the United States where a clinic happened to exist. Now, with Congressional recognition of the importance of LITCs in representing low-income taxpayers, a new mandate created the possibility of an LITC in every state and every major population community. Nina Olson and Janet Spragens linking of the welfare to work legislation coupled with the timing of the major overhaul of the IRS in 1998 provided a gateway for low-income taxpayer clinics to connect with other poverty law programs rather than to operate outside those programs. Finally, Senator Montoya's vision for merging representation of low-income taxpayers with other federal poverty law programs and the proposals of the ABA's Section on Individual Rights and Responsibilities and the Tax Section became a reality.<sup>89</sup>

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caused low-income taxpayer representatives to achieve the same types of success attained by early legal services attorneys on broader issues. In part, their success resulted from their use of the ABA Tax Section as a springboard for making recommendations. In larger part, their success sprang from their vision and desire to represent low income taxpayers in a manner that had not previously existed.

<sup>89</sup> See supra note 17 and accompanying text.

### C. Explosive Growth and Maturity - 1998 to Present

With the passage of IRC 7526 and the creation of the grants to federal tax clinics, the clinics took off rapidly. "In the first year [in which grant applications were available], the IRS received 43 grant applications and approved 34 grants totaling approximately \$1.46 million. [So, in one year the number of LITCs doubled.] In the second year, the IRS received 88 grant applications and approved 81 grants totaling approximately \$5 million. [Again, the number of LITCs doubled from the preceding year.] Last year [1991], the IRS received 141 grant applications and approved 102 applications covering a full \$6 million authorized under section 7526."<sup>90</sup>

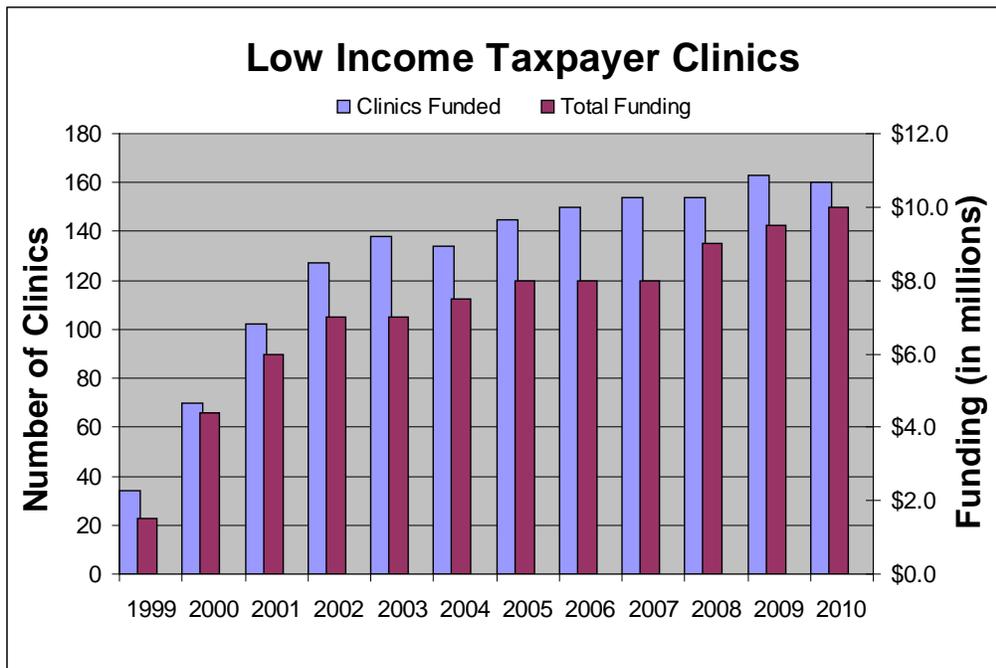
The chart below shows the number of clinics and the amount of funding for clinics during the first twelve years following the passage of IRC 7526.<sup>91</sup> The number of clinics seems to have

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<sup>90</sup> Statement of Leslie Book, Assistant Professor of Law, and Director, Federal Tax Clinic, Villanova University School of Law, Villanova, Pennsylvania in testimony before the Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, One Hundred Seventh Congress, First Session, July 12, 2001.

<sup>91</sup> The chart reflects the LITCs receiving funds pursuant to IRC 7526. Not all clinics receive funds pursuant to the statute. Some clinics obtain their own funding. Two notable academic clinics that operate without grant funding are Southern Methodist University Law School and Cardozo Law School. The benefit to the LITCs that do not receive funds is freedom. These clinics need not follow the formula of the statute in the types of cases they take and they need not take the time to fill out of the grant request forms. Cardozo director, Carl Smith, has emerged as a leader in the community in several issues facing low-income taxpayers. In 2012, two academic clinics that previously accepted grant funds, Valparaiso Law School and Albany Law

finally leveled off around 160 while the amount of funds has slowly grown.<sup>92</sup> The grant funds essentially created ten times the number of LITCs within ten years of its passage. The story of LITCs in the post-1998 era, however, involves more than mere growth in numbers.



The leaders prior to 1998, Nina Olson and Janet Spragens, continued to lead in the period immediate after passage of IRC 7526. Janet Spragens established a conference at Washington Law

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School, decided to forego future grant funds in order to gain more freedom.

<sup>92</sup> The number of funded clinics dipped slightly in subsequent years. For 2013 only 145 clinics received funding. In part, this dip appears aimed at focusing on giving the smaller number of clinics higher grant amounts to assist in their viability.

School at American University. Through this conference she sought to educate the new and existing clinicians on issues impacting low-income taxpayers.<sup>93</sup> Nina Olson's clinic, CTLP, continued to publish a quarterly newsletter, The Community Tax Law Report, to keep clinicians informed and to teach them about recurring issues.<sup>94</sup> Both were involved in testimony before Congress, discussed below, to increase the amount of the grant, but changes came.

The Secretary of the Treasury appointed Nina Olson the second National Taxpayer Advocate.<sup>95</sup> She assumed this position in January, 2001.<sup>96</sup> Because the NTA has responsibility to make recommendations concerning needed law changes, Nina Olson's experience with low-income taxpayers informs her performance of

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<sup>93</sup> "Professor Janet Spragens organized six Annual Workshops for Low-income Taxpayer Clinics held each May from 2000 through 2005. These workshops were cosponsored by American University Washington College of Law and the American Bar Association Section on Taxation." Nancy Abramowitz, "Thinking About Conflicting Gravitational Pulls LITCS: The Academy and the IRS" 56 Am. L. Rev. 1127, 1127 n. 1 (2007).

<sup>94</sup> CTLP started the newsletter in 1996. See Prepared Statement of Nina E. Olson to the Senate Finance Committee on H.R. 2676, p. 330 "IRS Restructuring. The newsletter continued until 2004. E-mail correspondence with CTPL Director Elaine Javonovich, August 9, 2012. The newsletter helped to bring the LITC community together by providing articles on procedural and substantive issues facing low-income taxpayers as well as advice on how to obtain grant funds or set up a clinic.

<sup>95</sup> Internal Revenue Service Information Release 2001-6, January 12, 2001, <http://www.irs.gov/pub/irs-news/ir-01-06.pdf>.

<sup>96</sup> For a discussion of her first eleven years as the NTA and some personal background leading up to her selection for that position, see Trumbull, supra note [ ].

the NTA position.<sup>97</sup> In many respects she remains a leader of the LITC movement, but that leadership clearly comes from a different position now than that of clinic director.<sup>98</sup>

Janet Spragens continued to lead the LITC community until her untimely death in 2006.<sup>99</sup> Because of her remarkable leadership of this community for over 15 years, the ABA named its annual pro bono award after her.<sup>100</sup> Washington Law School at

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<sup>97</sup> IRC 7803(c) sets out the duties of the office of National Taxpayer Advocate. Subparagraph (2)(A) of the statute sets out four duties of the position: (1) assist taxpayers in resolving problems with the IRS; (2) identify problem areas taxpayers have in dealing with the IRS; (3) propose changes in administration to alleviate those problems and (4) identify legislative changes to alleviate or mitigate those problems.

Having someone with Nina Olson's background in the position of NTA charged to recommend administrative and legislative changes to problems encountered by taxpayers somewhat reduces the need for the taxpayer assistance center described below in the Challenges section of this paper; however, even with her background and skills and the charge given by Congress for this position, an independent taxpayer assistance center providing direct support to LITCs and policy support for low-income taxpayer issues remains a need.

<sup>98</sup> Congressman Amo Houghton, Chairman of the Ways and Means Subcommittee on Oversight acknowledged her leadership position in the LITC world in his opening remarks of the subcommittee's hearing on July 12, 2001.p. 4.

<sup>99</sup> She died on February 19, 2006. See Holley, supra note [ ]. Accepting the 2006 ABA Pro Bono Award for Janet Spragens, her colleague and friend, Professor Les Book, gave an excellent summary of her importance to the tax community: "Janet is a pioneer; she is a woman whose work touches and will continue to touch thousands of people in ways that are both far-reaching and immediate. Janet is the rare academic who not only criticizes, but who offers solutions. She is among an even rarer group who not only offers solutions but who has the wherewithal, persistence and skills to help Congress legislate and the IRS implement those solutions." 25 ABA Section of Taxation Newsquarterly 22 (2006).

<sup>100</sup> American Bar Association, Pro Bono Award: 2013 Janet Spragens Pro Bono Award - Request for Nominations,

American University named its tax clinic after her as well.<sup>101</sup>

Her leadership before legislators and administrators as well as her writing on behalf of low-income taxpayers left large leadership shoes to be filled.<sup>102</sup>

One of the early issues facing the resurgent LITC community after the passage of IRC 7526 was the success of the grant program. So many applicants sought grant funds that the initial amount of funding quickly became inadequate. Either the individual grants would be so diluted as additional clinics came into the system that the grants might not sustain the existing clinics or additional clinics might have to do without grant

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[www.americanbar.org/groups/taxation/awards/probono.html](http://www.americanbar.org/groups/taxation/awards/probono.html), last visited on August 6, 2012 "At the Section's 2007 Midyear Meeting, Council approved changing the name of the Pro Bono Award to the Janet Spragens Pro Bono Award, in honor of the late American University (AU) Law Professor who greatly contributed to ensuring that low-income taxpayers receive pro bono representation in tax controversy matters. Spragens developed the Federal Tax Clinic at AU, and was instrumental in helping achieve federal funding for non-profit low-income taxpayer clinics nationwide."

<sup>101</sup> American University Washington College of Law, Clinical Program: Janet R. Spragens Federal Tax Clinic, [www.wcl.american.edu/clinical/federal.cfm](http://www.wcl.american.edu/clinical/federal.cfm).

<sup>102</sup> In 2005 she held her sixth, and last, conference on low-income tax issues at American University. She also testified for the fourth time before the IRS Oversight Board on February 1, 2005. Her testimony contains an impassioned plea for the IRS to use its modernization effort to assist taxpayers rather than to create more mechanized processes for moving cases with no personal involvement. She sets out her vision for the role of LITCs in the tax system as a way to obtain orderly administration of taxes. She once again does an excellent job advocating for low-income taxpayers and explaining the need for LITCs. Her written statement provides an excellent insight into the state of the LITC community in 2005. See Statement of Janet Spragens before the IRS Oversight Board, February 1, 2005.

funds. Clinicians used the opportunity of a hearing before the House Ways and Means Oversight Committee to address the problem.<sup>103</sup> The stated focus of the hearing was that "Congress will review the Taxpayer Advocate report in order to assess the mission and priorities for the upcoming year. The hearing will also address the functioning and funding of the Low-Income Taxpayer Clinic program."<sup>104</sup> Oral testimony at the hearing was by invitation; however, printed material was also accepted.<sup>105</sup>

Nina Olson's testimony focused on issues concerning the National Taxpayer Advocate's office and the particular needs of that office as the IRS struggled to adjust to the changes made by the 1998 legislation. Most of the clinicians who spoke focused on describing the work of low-income tax clinics. Les Book and Janet Spragens focused on the funding.<sup>106</sup> As the chart

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<sup>103</sup> Hearing before the Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, 107th Cong., July 12, 2001, Serial No. 107-32.

<sup>104</sup> Id. at 2.

<sup>105</sup> Id. Those invited to testify were Nina Olson, the National Taxpayer Advocate; Leslie Book, Federal Tax Clinic, Villanova Law School; Alan H. Cohen, Low-Income Taxpayer Clinic, Ithaca College; Community Tax Aid, Inc., Jeffrey S. Gold; Community Tax Law Project, Timothy B. Heavener; Dixon R. Rich, Jr., Low-Income Taxpayer Clinic, University of Pittsburgh School of Law; and Janet Spragens, Federal Tax Clinic, Washington College of Law, American University. The oral and written testimony of these individuals provides an excellent snapshot of LITCs in 2001 and some description of their history. This oversight hearing provides one of the richest sources of information on the LITC program at its most explosive moment of growth.

<sup>106</sup> Book at p. 42 "Largely because of the success and remarkable growth of the LITC program the IRS has been placed in a very difficult

above indicates, Congress did listen again and has gradually increased the funding although not yet to the recommended \$15 million level.

Oversight of the grant program has impacted LITCs. Initially, oversight of the grant program was placed with the Assistant Commissioner (Wage and Income). In 2003, oversight of the grant program was moved to the National Taxpayer Advocate. The oversight has not always been harmonious and caused some discomfort between former allies Nina Olson and Janet Spragens over the issue of the purpose of academic clinics and the goal of teaching, writing, and advocating within the community versus handling the maximum number of cases.<sup>107</sup> Oversight has also

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situation that I believe will only get worse. According to the IRS, of the 102 organizations which received funding for 2001, almost 50 percent of those organizations would have received additional funding if the \$6 million authorization cap in section 7526(c)(1) were higher and more appropriated funds were made available. Moreover, according to the IRS in 2001, the \$6 million funding limitation prevented eight otherwise qualifying organizations from receiving any funding at all." He went on to recommend that Congress increase the total available grant funds to \$15 million.

Janet Spragens echoed his call for an increase in the funds. "The only problem today that exists in this extremely successful program is that it is running out of money; and as other Members of the panel have said, the statutory cap, which is now \$6 million in section 7526, badly needs to be adjusted upward; and we are suggesting a cap of \$15 million." P.53.

Tim Heavner of the Community Tax Law Project also echoed the suggestion of \$15 million. P.50.

<sup>107</sup> Nancy S. Abramowitz, "Thinking About Conflicting Gravitational Pulls, LITCs: The Academy and the IRS," 56 AM. U. L. REV. 1127 (2007). Perhaps this characterization overstates the dispute but the article reflects clear discomfort by the author with the direction of the

created friction between the NTA and the Treasury Inspector General for Tax Administration (TIGTA) because TIGTA seeks greater oversight of grant programs.<sup>108</sup> The NTA's office has made significant changes to the required grant reports over the past few years, creating varied paths to obtaining grant funds.<sup>109</sup>

The most remarkable change after the establishment of the grant concerns the makeup of LITCs.<sup>110</sup> Prior to the establishment of CTLP in 1992, the first eighteen years of LITCs involved only academic clinics.<sup>111</sup> By 1998, three of the seventeen clinics were independent with the remaining clinics

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grant program at the IRS and its criteria for awarding grant funds. The article points out that academic clinics were the norm at the time of the creation of the grant yet the grant administrators were ignoring or giving little credit to academic clinics for the work they do in educating and writing. Grant funding relied too much on case processing.

<sup>108</sup> See "The Taxpayer Advocate Service Can More Effectively Ensure Low-income Taxpayer Clinics are Appropriately Using Grant Funds" a report of the Treasury Inspector General for Tax Administration dated July 19, 2011, Reference Number: 2011-10-067. Perhaps the most interesting part of the report is the response from the NTA. She takes a very firm position concerning the confidentiality of the case files in the LITCs and declines to consider their review absent direction from Congress.

<sup>109</sup> Compare Publication 3319 for years 2008 through 2012 to obtain an idea of the criteria the NTA finds important in determining whether and how much to grant. Looking at the list of grant recipients over the years, it is clear that factors distinguish which applicants succeed and the amount of grant a successful applicant receives.

<sup>110</sup> See Appendix 2.

<sup>111</sup> See Les Book "Tax Clinics: Past the Tipping Point and to the Turning Point," Tax Notes, Vol. 92, No. 8 reprinted at 34 Exempt Org. Tax Rev. 27 (2001).

coming from academia. That changed dramatically in 1999 as the first grants were issued.<sup>112</sup> Starting that year, academic and independent clinics grew but legal services organizations entered the mix and overtook the other types of clinics combined.<sup>113</sup> This change in the mix of types of clinics created a change in the makeup of the LITC community. While academic clinics continue to provide leadership in organizations such as the ABA and in writing and teaching on low-income taxpayer issues, legal services organizations bring to the community a vision of broader issues impacting low-income taxpayers. Legal services organizations have the ability to link issues across practice lines. Academic and independent clinics encounter structural difficulties making these broader links because their practice focuses solely on tax issues.

The presence of independent clinics and legal services organizations brought issues of training to the community of LITC practitioners since many individuals charged with running LITCs did not have a background in tax. Unlike almost all of the directors of the pre-1998 clinics who were tax teachers and

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<sup>112</sup> See "Tipping Point" for Book's discussion of the benefits LITCs derive when housed in a legal services organization.

<sup>113</sup> See Appendix 1. By 2011 almost 70 LITCs existed in legal services organizations. That number of LITCs exceeds the combined number of academic and independent LITCs handling tax controversy work. Legal Services is described in some detail below. These organizations exist throughout the United States; however, not every legal services organization has sought an LITC - about 65-70 out of 130.

tax practitioners, the new clinicians came from a variety of backgrounds. As the grant money became available, community and legal service organizations that saw the need for taxes to serve their clients sought and received grants without having lawyers whose background provided them with the ability to comfortably step into tax representation. The Senate considered this issue in its version of IRC 7526 which allowed for the establishment of one or more assistance centers with the grant funds.<sup>114</sup> That provision fell off during the conference process leaving new clinicians without a natural source of training and often with no mentor in their organization having a tax background. Several programs have stepped in to fill this breach but the lack of a system of training for clinicians, often situated in an office by themselves, remains a challenge and receives some discussion below.

Though transcendent leaders like Janet Spragens and Nina Olson have not emerged from the LITC ranks in the post-1998 era, several individuals have distinguished themselves and deserve mention. Robert Nadler emerged as a leader on the innocent spouse issue. The innocent spouse provision changed dramatically in the 1998 legislation that also created the grant for LITCs. Figuring out the contours of the new legislation and

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<sup>114</sup> H.R. Rep. No. 105-599, at 303 (1998)(Conf. Rep.).

the best approaches to administrative requests and to litigation required knowledge often difficult to achieve on a case by case basis. Robert Nadler retired from the Office of Chief Counsel, IRS after working there over three decades and joined the staff of the legal services LITC in his hometown of Nashville, the Legal Aid Society of Middle Tennessee and the Cumberland. He prepared an extensive manual on innocent spouse issues which he distributed for free to LITCs and later turned the manual into a book published by the ABA.<sup>115</sup> He, along with Paul Kohlhoff, a professor at Valparaiso University School of Law and director of the LITC there, successfully challenged the regulation adopted by the IRS with respect to the equitable provision of the innocent spouse law setting in motion perhaps the greatest coordinated litigating effort of the LITC movement.<sup>116</sup>

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<sup>115</sup> Robert B. Nadler, "The Innocent Spouse Manual, Representing Taxpayers in Innocent Spouse Cases" (self published); Robert B. Nadler, "A Practitioner's Guide to Innocent Spouse Relief" (ABA 2010).

Lantz v. Commissioner, 132 T.C. 131 (2009), rev'd, 607 F.3d 479 (7<sup>th</sup> Cir. 2010). The Tax Court held in Lantz that the regulation under IRC 6015(f) limiting individuals claiming innocent spouse relief for equitable reasons to those filing claims within two years of the first collection activity on the account were invalid. The government appealed this decision to the Seventh Circuit which reversed; however, the decision of the Tax Court essentially set up a challenge in every case where the notice of determination was received denying relief due to this regulation.

<sup>116</sup> Lantz v. Commissioner, 132 T.C. 131 (2009), rev'd, 607 F.3d 479 (7<sup>th</sup> Cir. 2010). The Tax Court held in Lantz that the regulation under IRC 6015(f) limiting individuals claiming innocent spouse relief for equitable reasons to those filing claims within two years of the first collection activity on the account were invalid. The government appealed this decision to the Seventh Circuit which reversed; however,

While Robert Nadler and Paul Kohlhoff led the innocent spouse litigation with the Tax Court victory in Lantz, Professor Carl Smith at Cardozo Law School picked up the charge and coordinated clinicians around the country as they pressed this issue. His use of the internet to keep everyone informed and coordinate responses as well as to pass out arguments and theories as they emerged brought the LITC community together in a way not previously accomplished. While the IRS continued to win the issue in the Circuit courts, it eventually conceded the issue in Notice 2011-70 thanks to the coordinated effort by the LITC community. Carl Smith, a prolific writer and thinker, has continued to use the successful technique created for the innocent spouse cases to keep the LITC community informed about other issues and cases of general interest.<sup>117</sup>

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the decision of the Tax Court essentially set up a challenge in every case where the notice of determination was received denying relief due to this regulation.

<sup>117</sup> The writings on procedural and substantive issues impacting low income taxpayers by Carl Smith include: "DOJ Argues No Equitable Tolling Ever in Tax", 137 Tax Notes (Nov. 19, 2012); "Cracks Appear in the Code's 'Jurisdictional' Time Provisions", 137 Tax Notes 511 (Oct. 29, 2012); "Dealing With DOMA: Federal Non-Recognition Complicates State Income Taxation of Same-Sex Relationships", 24 Columbia Journal of Gender and Law 29 (2012) (co-author with Edward Stein); "Tax Court Should Reject *Twombly/Iqbal* Plausibility Pleading", 136 Tax Notes 835 (Aug. 13, 2012); "Tax Warrants in New York: In the Strange World of Deemed Judgments", 75 Albany L. Rev. 671 (2011/2012) (co-author with David Carlson); "The Tax Court Keeps Growing Its Collection Due Process Powers", 133 Tax Notes 859 (Nov. 14, 2011); "The Service Abandons Two-Year Limit to File for Equitable Innocent Spouse Relief", Vol. 31, No. 1 ABA Section of Taxation News Quarterly

The ABA Tax Section recognized the efforts of Carl Smith by awarding him, along with Mark Moreau who is discussed below, the 2013 Janet Spragens Award for outstanding pro bono service. Professor Les Book, in describing Carl Smith, wrote "Carl has over the course of his years as a clinician demonstrated an ongoing, sustained, energetic and creative commitment to the interests of lower-income and underrepresented taxpayers. He has done so not only in his direct representation of clients and training of students, but in his efforts drafting amicus briefs,

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1 (Fall 2011); "Innocent Spouse: Let's Bury that 'Inequitable' Revenue Procedure", 131 Tax Notes 1165 (Jun. 13, 2011); "Friedland: Did the Tax Court Blow Its Whistleblower Jurisdiction?", 131 Tax Notes 843 (May 23, 2011); "Tax Court Collection Due Process Cases Take Too Long", 130 Tax Notes 403 (Jan. 24, 2011) (co-author with T. Keith Fogg); "Equitably Tolling Innocent Spouse and Collection Due Process Periods", 126 Tax Notes 1106 (Mar. 1, 2010); "Does Collections Due Process Violate the Appointments Clause?", 126 Tax Notes 777 (Feb. 8, 2010); "Collection Due Process Hearings Should Be Expedited", 126 Tax Notes 919 (Nov. 23, 2009) (co-author with T. Keith Fogg); "Let the Poor Sue for a Refund Without Full Payment", 125 Tax Notes 131 (Oct. 5, 2009); "How Can One Argue 'It's Not My Joint Return' in Tax Court?", 124 Tax Notes 1266 (Sept. 21, 2009); "Recent Innocent Spouse Rulings Under Code Sec. 6015(f) Have Made Code Sec. 6015(b) and (c) Virtually Superfluous", Vol. 11, No. 4 J. Tax Practice & Procedure 37 (Aug.-Sept. 2009) (co-author with Eric L. Green); "Does the Tax Court's Use of Its Golsen Rule in Unappealable Small Tax Cases Hurt the Poor?", Vol. 11, No. 1 J. Tax Practice & Procedure 35 (Feb.-Mar. 2009); "Settlement Officers Shouldn't Hold Collection Due Process Hearings", 121 Tax Notes 609 (Nov. 3, 2008); "Does The Failure to Appoint Collection Due Process Hearing Officers Violate the Constitution's Appointments Clause?", Vol. 10, No. 5 J. Tax Practice & Procedure 35 (Oct.-Nov. 2008); "IRS Collection Financial Standards Changes Bring Relief to the Poor", 117 Tax Notes 879 (Nov. 26, 2007).

writing articles, and coordinating litigation on high impact and meaningful cases."<sup>118</sup>

Professor Les Book, who headed the tax clinic at Villanova Law School from 1999-2008, led the community by publishing articles that brought attention to the problems with the earned income tax credit and with the provisions governing determination of a dependent.<sup>119</sup> Through his efforts and those of others in the LITC community, the provisions in the Internal Revenue Code concerning these issues were changed in 2004 to a more logical test which is easier for the IRS to administer and for practitioners and taxpayers to navigate.<sup>120</sup>

Mark Moreau at the Southeast Louisiana Legal Services, who entered the LITC community immediately after the passage of IRC 7526, saw the need for information as the LITC community grew

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<sup>118</sup> E-mail message on file with the author.

<sup>119</sup>See, Les Book, "A New Paradigm for IRS Guidance: Ensuring Input and Enhancing Participation," 12 Fla. Tax Rev. 517 (2012); Les Book, "Refund Anticipation Loans and the Tax Gap," 20 Stan. L. & Pol'y Rev. 85 (2009); Les Book, "Freakonomics and the Tax Gap: An Applied Perspective," 56 Am. U. L. Rev. 1163 (2007); Les Book, "Preventing the Hybrid from Backfiring: Delivery of Benefits to the Working Poor Through the Tax System," Wis. L. Rev. 1103 (2006); Les Book, "The Poor and Tax Compliance: One Size Does Not Fit All," 51 U. Kan. L. Rev. 1145 (2003); Les Book, "The IRS's Compliance Regime: Taxpayers Caught in the Net," 81 Or. L. Rev. 351 (2002).

<sup>120</sup> Section 201 of the Working Families Tax Relief Act of 2004, Pub. L.108-311. Professor Elizabeth Maresca, who runs the LITC at Fordham Law School, testified before the Oversight Committee of the House Committee of Ways and Means on June 15, 2004, Serial No. 108-68, p. 12, in support of the changes to create a uniform definition of qualifying child.

and self-published "Tax Practice for Legal Services and Pro Bono Attorneys" which he provided at no cost to all clinics. He and his clinic also became experts in representing low-income taxpayers in the face of disaster as a result of Hurricane Katrina. He used his expertise to provide tremendous service to his clients for which his organization received special recognition from the American Bar Association in 2012.<sup>121</sup> He also used his expertise to author a chapter in "Effectively Representing Your Client before the IRS" on tax issues facing disaster issues. His effective leadership in producing the training manual and in leading in an emerging area of client need demonstrated the kind of talent that entered the LITC community with the influx of legal services attorneys.

The ABA Tax section named Mark Moreau the joint recipient of the 2013 Janet Spragens Award for pro bono service to low-income taxpayers. Susan Morgenstern, the director of the LITC at the Cleveland Legal Aid Society provided the following description of Mark Moreau: "Mark pioneered the inclusion of tax as a legal services practice area. Historically, tax had not

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<sup>121</sup> The award given to Southeast Louisiana Legal Services came from the overall ABA and not just the Tax Section. It was the 2012 Hodson Award. The Hodson Award honors an outstanding government or public sector law office. It was given to recognize the continued efforts to provide legal assistance to low-income residents affected by Hurricane Katrina and the Deepwater Horizon oil spill.

been perceived as an issue for poverty law attorneys. Mark forged ahead nonetheless and deepened expertise in this community... [H]e wrote a tax practice manual for legal services and pro bono attorneys which has been a singular resource for these attorneys... Mark is a contributing author to the ABA's tax practice treatise, *Effectively Representing Your Client Before the IRS*. He wrote the new chapter, *Tax Issues in Disasters*.<sup>122</sup> The nomination also highlights his significant, and continuing, contributions to assist those impacted by Katrina and the Gulf oil spill.

Professor Diana Leyden, director of the clinic at University of Connecticut, which also entered the LITC community in 1999 immediately after the passage of IRC 7526, has provided leadership to the community through her service with the ABA Tax Section, her tax clinic textbook, and her engaging qualities. In selecting her to receive ABA Tax Section Pro Bono award in 2005, that organization recognized her overall organization skills and the energy she brought to the community. She serves as a frequent speaker and leader on emerging issues in the LITC community.<sup>123</sup>

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<sup>122</sup> E-mail from Susan Morgenstern on file with the author.

<sup>123</sup> See e.g. Statement of Diana Leyden, Associate Clinical Professor of Law, University of Connecticut School of Law Tax clinic before the IRS Oversight Board, February 8, 2006. In her presentation before the IRS Oversight Board she addressed the concerns of low-income taxpayers as customers of the IRS. The insight she displays in this presentation is representative of the advocacy she brings to the LITC community.

As the community expanded during this period from a relatively small group of scholars having primarily tax backgrounds to a diverse group with a multiplicity of backgrounds, it became harder for any one person to lead. The community also continued to have Nina Olson providing leadership on a number of issues facing low-income taxpayers. Still, the LITC movement now reaches every state and has matured in a way that would have been almost impossible to envision twenty years ago before Janet Spragens went before the Restructuring Commission and casually mentioned that federal funding would change the community. To capture the change and to capture the divergent views of the community, two appendices are included with this article.<sup>124</sup> The comments, in Appendix 1, of the clinicians who responded to my informal survey provide a helpful glimpse at the diversity and strength of the community in 2012. They also provide a strong state on the importance of the grant to sustain the LITC movement.

### **III. Parallel Movements in Representing the Poor**

The preceding section focuses on the chronology of major events in the LITC movement and on significant individual participants in that movement. This section focuses on two parallel movements, legal services and academic clinics.

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<sup>124</sup> Appendix 1 provides a collection of responses from tax clinics regarding when they began and why. Appendix 2 traces the number and make up of tax clinics from 1999 to 2011.

Understanding these parallel movements allows a better understanding of the history of LITCs. The discussion of legal services precedes the discussion of academic clinics.

#### A. Legal Services

Prior to 1964, delivery of legal services to the poor fell to local bar groups and individual attorneys providing pro bono or locally-subsidized service.<sup>125</sup> In 1964, as a part of President Johnson's War on Poverty, Congress passed the Economic Opportunity Act.<sup>126</sup> That Act created the Office of Economic

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<sup>125</sup> See generally, Alan W. Houseman & Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, Center for Law and Social Policy, 3 (2007); Three books provide significant insight into the provision of legal services to the poor prior to 1964 and the introduction of significant federal funds in an effort to address the needs. The first book, published in 1916, is *Justice and the Poor* by Reginald Heber Smith. Smith, a recent Harvard Law graduate at the time of the publication, was hired out of school by the Boston Legal Aid Society. He was so appalled at the level of legal service to the poor in the United State he wrote stirring book on the inequalities which caught the attention of the bar.

The second book, *Legal Aid in the United States* by A. Brownell, traces the history of legal aid in the United States since its beginning in New York City in 1876. The bulk of the book is an analysis of the state of legal aid in the United States in 1949. The book contains a very detailed account of the state of legal aid with plenty of empirical data.

The third book, *Justice and Reform* by Earl Johnson, Jr., primarily focuses on the post-1964 actions of the Office of Economic Activity, which he head; however, its first chapter is an excellent history of legal assistance to the poor in America prior to 1964.

<sup>126</sup> Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (1964).

Opportunity through which federal money became available to provide legal services to the poor.<sup>127</sup>

The Office of Economic Opportunity (OEO) funded poverty law firms working for private non-profit entities in local offices around the country.<sup>128</sup> These programs were not uniformly popular because of their aggressive litigation policies.<sup>129</sup> The programs quickly became inundated with requests for services. The director of OEO's legal branch, the Office of Economic Opportunity, decided to set law reform for the poor as the agency's chief goal rather than setting a goal of representing as many individuals as possible.<sup>130</sup> This decision significantly influenced the type of cases the OEO lawyers accepted. It also led to the development of national legal advocacy centers that could support broad law reform litigation.<sup>131</sup> The national legal advocacy centers provided both training and case support.<sup>132</sup>

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<sup>127</sup> Securing Equal Justice at p. 7.

<sup>128</sup> Securing Equal Justice at p. 9. Location of the programs was not evenly distributed across the country with areas in the South and Southwest receiving less coverage.

<sup>129</sup> Id. at 9-10.

<sup>130</sup> Id. at 10.

<sup>131</sup> Id.

<sup>132</sup> Id. at 11.

The legal services attorneys quickly won major victories in the courts.<sup>133</sup> They also played critical roles in federal, state, and local legislation.<sup>134</sup> Being a part of the Office of Economic Opportunity did not ideally suit the attorneys pursuing litigation and policy change or the administrators with sometimes conflicting program goals.<sup>135</sup> To address these concerns, the idea of an independent entity from which to run the legal service emerged.<sup>136</sup> Legislation to create an independent entity first passed in 1971 but many political considerations delayed final passage until 1974.<sup>137</sup> This legislation created a non-profit corporation located in Washington, D.C., the Legal Services Corporation (LSC), through which funding for legal services throughout the country would

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<sup>133</sup> Shapiro v. Thompson, 394 U.S. 638 (1969)(ensuring welfare recipients benefits were not arbitrarily denied); Goldberg v. Kelley, 397 U.S. 254 (1970)(transformation of use of due process by extending use to termination of welfare benefits); King v. Smith, 392 U.S. 309 (1968)(providing remedies against administrators of welfare programs); see discussion of important victories on pp. 20-21 of Securing Equal Justice for All.

<sup>134</sup> Securing Equal Justice at p. 13.

<sup>135</sup> Id. at \_\_\_

<sup>136</sup> Id. at 19.

<sup>137</sup> Id. at 22. On July 25, 1974, President Nixon signed into law the Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378, 42, U.S.C. 2996.

run, moving the administration of the program from the executive branch of the government.<sup>138</sup>

The establishment of LSC sparked the creation of legal services offices throughout the United States and the establishment of national support centers on the core issues of a poverty law practice.<sup>139</sup> The success resulting from the establishment of the Office of Economic Opportunity in 1965 and the independence derived through the 1974 law creating LSC sparked a heyday of legal services programs that lasted into the early 1980s when politics pared back the program.<sup>140</sup> The election of Ronald Reagan in 1980 led to restrictions on activity and on funding. This stopped LSC's growth and set in motion a struggle for survival that continues today.<sup>141</sup>

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<sup>138</sup> Securing Equal Justice at p. 22.

<sup>139</sup> Id. at p. 26 (Core issues of a poverty law practice - public benefits; housing; economic and social welfare; and consumer law.)

<sup>140</sup> Id. at pp. 29-33. The success of legal services may also have caused Senator Montoya to think about adding taxes to the list of services performed by legal services when he proposed funding for pilot programs to make that happen back in 1976. 122 Cong. Rec. 1469 (1976).

<sup>141</sup> See e.g., John A. Dooley, III, "Legal Services in the 1990s" in Civil Justice: An Agenda for the 1990s, Papers of the American Bar Association National Conference on Access to Justice in the 1990s, New Orleans, Louisiana, June 9-11, 1989, Esther F. Lardent, Editor. (Discussing the difficulties legal services faced under the Reagan administration: "Presumably, a 'kinder and gentler nation' will mean that the eight year war on the Federal legal services program by the Executive branch of the United States government will eventually stop..." p. 221)

Neither the poverty law offices established by the Office of Economic Opportunity nor the legal services offices established by LSC serviced individuals with tax problems, in large part because of the view that tax issues were not poverty law issues but rather issues concerning the rich.<sup>142</sup> While tax issues may have been of marginal interest to the poor at the outset of these programs, the Clinton era passage of the Welfare to Work law and the expansion of the earned income tax credit (EITC) changed that dramatically.<sup>143</sup>

The passage of 7526 and the creation of the grant funds for LITCs led to the infusion of tax as a practice area for legal services offices.<sup>144</sup> In 1998, when 7526 passed, no LSC field office had a tax component.<sup>145</sup> Almost all LITCs were in academic

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<sup>142</sup> The marriage of tax law and poverty law becomes clear after the passage of the Welfare to Work legislation in 1995 and is well discussed in Janet Spragens, "Welfare Reform and Tax Counseling: Overlooked Part of the Welfare Debate" Tax Notes October 21, 1996. While concerns existed about the need to assist low-income taxpayers as far back as 1974 as indicated by the start of the tax clinic at Hofstra and by Senator Montoya's proposed legislation adding tax to legal services organizations, the discussion in the 1978 IRS report of the types of issues handled by the early clinics suggests that low-income individuals had tax problems but those problems were not tied in any specific way to the delivery of benefits to the poor as occurred after 1995.

<sup>143</sup> See Janet Spragens, "Welfare Reform and Tax Counseling." See also Dennis Ventry, "The Collision of Tax and Welfare Politics: The Political History of the Earned income Tax Credit."

<sup>144</sup> Janet Spragens and Nina Olson, "Tax clinics the New Face of Legal Services," 88 Tax Notes 1525 (Sept. 15, 2000).

<sup>145</sup> See Nina Olson, "Low Income Taxpayer Clinics: The Means to a Fairer Tax System," 12 Community Tax Law Report 21 (1998)(listing all

settings<sup>146</sup> with three standalone LITCs led by Nina Olson's Community Tax Law Project.<sup>147</sup> The grant funds changed that immediately. In 1999, the first LSC funded programs created LITCs.<sup>148</sup> By 2012 a near majority of LITCs existed in LSC-funded programs<sup>149</sup> and a majority of LSC field offices had an LITC.<sup>150</sup> Since the passage of IRC 7526, approximately 20 academic tax clinics opened as compared to over 60 LSC-funded programs.<sup>151</sup>

Long steeped in the tradition of holistic representation, legal services programs bore witness to the massive overhaul of

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clinics in existence in 1998 which included 13 academic and three independent clinics).

<sup>146</sup> Id. See the article for a list of the then existing academic clinics.

<sup>147</sup> Id. The three independent clinics were: 1) Community Tax Law Project; 2) Chicago Tax Law Assistance Project; and 3) District of Columbia Center for Public Interest Tax Law.

<sup>148</sup> See Appendix 2 which contains a list of all of the clinics for each year after establishment of the grant including 1999. Comparing that list with the clinics existing in 1998, the first LSC clinics appear where none existed previously.

<sup>149</sup> See Appendix 2 which contains a list of all of the clinics for each year after establishment of the grant including 2012. Appendix 2 contains a breakdown of the types of clinics with the classification academic, independent or LSC.

<sup>150</sup> Compare the total number of LSC clinics in Appendix 2 for 2012 with the total number of LSC offices in the United States. "LSC distributes more than 90 percent of its total funding to 134 independent nonprofit legal aid programs with more than 800 offices" Fact Sheet on the Legal Service Corporation, Legal Service Corporation (January 18, 2013, <http://www.lsc.gov/about/what-is-lsc>).

<sup>151</sup> See Appendix 2 and compare the number of academic programs in 2012 with the 13 in existence in 1998. Also compare the number of LSC funded programs in 2012 with zero that existed in 1998.

the traditional welfare programs that had supported generations of families and clients. Congress directed the states to implement "welfare to work" programs, and directed the states to limit the amount of time an individual could receive benefits to 36-60 months over a lifetime.<sup>152</sup> Tax return filing obligations welcomed individuals entering the workforce, and with this obligation came the development of the "poverty tax" practice area for legal services attorneys.

Simultaneously, legal services programs began to diversify their funding bases and the IRC 7526 funding facilitated the development of this new practice area. In the development of this article, all LITCs received a survey seeking to gather information about the origins of each clinic. Responses from the LITCs located in legal services organizations show twin interests - holism and funding needs - as the bases for their creation.<sup>153</sup> Without the grant funds, few, if any, tax programs would exist in legal services organizations.

Adding LSC lawyers to the LITC community brought in a group with deep roots in poverty law and experience in fields outside of taxation.<sup>154</sup> The expertise outside of tax law that these

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<sup>152</sup> See Janet Spragens, "Welfare Reform and Tax Counseling."

<sup>153</sup> See Appendix 1.

<sup>154</sup> Susan Morgenstern, Reformer, in *Careers in Tax Law: Perspectives on the Tax Profession and What it Holds for You*, 229-230 (John Gamino, Robb A. Longman & Matthew R. Sontag ed., 2009).

attorneys possess and the overall caseload of their offices allows legal services' attorneys to mine the dockets in their offices to identify the tax issues in cases that at first blush do not appear to be tax cases, such as foreclosures, public benefits' reduction or termination, and divorce. The issues raised by LSC attorneys looking at traditional poverty law cases with a tax angle, assisted lawyers from academic and independent LITCs in recognizing issues of conjunction between tax and other areas of client need.<sup>155</sup> By essentially merging tax into LSC organizations, IRC 7526 has fulfilled the vision of Senator Montoya that tax is necessary for effective legal service to the poor, and demonstrated the tipping point merging poverty law and

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<sup>155</sup> Janet Spragens and Nina Olson, *Tax Clinics: The New Face of Legal Services*, *Tax Notes Today*, September 18, 2000. This is seen in some of the practice areas where LSC clinics have taken the lead such as domestic violence, innocent spouse and identity theft. Because LSC clinics exist within a law firm that has a large poverty law practice, they receive referrals in practice areas not normal for "stand alone" LITCs. Individuals suffering the effects of domestic violence may not think about the tax issues presented by their circumstance. LSC attorneys practicing in the same office as attorneys representing victims of domestic violence educate their colleagues who then make referrals of the clients coming through the domestic violence portion of the clinic. It is not a coincidence that Bob Nadler working for an LSC in Tennessee is the person who developed the handbook on innocent spouse issues. See Robert B. Nadler, "A Practitioner's Guide to Innocent Spouse Relief" (ABA 2010). This was possible because of the volume of these issues presented in an LITC housed within an LSC office rather than a stand-alone LITC. Similarly, it is not a coincidence that Susan Morgenstern from the Legal Aid Society in Cleveland became the leader in the community on the tax issues involving domestic violence.

tax discussed by Professor Book.<sup>156</sup> This merger of tax law with poverty law brings to the clients served many benefits that did not exist when tax stood outside the poverty law community.

The post-1998 movement of tax clinics away from the academic model and towards LSC-funded programs, and independent clinics, also had the equally important benefit of involving the larger community of tax professionals in issues concerning low-income taxpayers.<sup>157</sup> IRC 7526 encouraged clinics to seek volunteers in order to meet the matching requirement.<sup>158</sup> While the ABA Tax Section established the predecessor to the current Pro Bono and Tax Clinic Committee back in 1976,<sup>159</sup> prior to the

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<sup>156</sup> See Les Book, "Tax Clinics: Past the Tipping Point and to the Turning Point," Tax notes Vol. 92, No. 8 reprinted at 34 Exempt Org. Tax Review 27 (2001).

<sup>157</sup> One of the major reasons Nina Olson started the Community Tax Law Project, the first non-academic tax clinic, was her failed attempt to find an organized means to engage in pro bono work as a new tax lawyer. Mark Trumbl, "Tax Day: 1040 Reasons You Should Know Nina Olson" Christian Science Monitor April 12, 2011.

<sup>158</sup> See e.g., IRS Pub. 3319 for 2013 (rev. 5-2012) at pp. 26-27. Pro bono panels are discussed at almost every LITC annual conference. Because the time of the volunteering tax professional gets valued and counts toward the match necessary to obtain the IRC 7526 grant, these panels hold high importance for any LITC that does not have its own source of funding. The benefit provided by the pro bono panels to the overall program stems both from the impact on the grant and the connection with the local practitioner community. These panels provide an opportunity for tax professionals unaccustomed to handling tax controversy matters to gain experience in this aspect of the practice while using their tax knowledge to assist others.

<sup>159</sup> E-mail dated August 8, 2012 from Janet In, Counsel to ABA Tax Section. The annual reports show that the early work of the Small Taxpayer Program, as the first Tax Section committee addressing these issues was called, focused on Volunteer Income Taxpayer Assistance and

proliferation of non-academic tax clinics no structured outlets for pro bono tax work and education on the issues facing low-income taxpayers existed for tax professionals. With the greater community of tax professionals involved, issues regarding legislation, regulation and administration, in addition to controversy, become easier for low-income taxpayer advocates to pursue.

Injecting LITCs into LSC programs has not come without some difficulties. Because LSC attorneys staffing the newly formed LITCs did not generally come from tax practice backgrounds, many lacked essential tax knowledge. Additionally, LSC attorneys handling tax matters often have no colleagues in their office also handling tax, including a lack of tax knowledge at the supervisory level. Since Congress eliminated the provision in the Senate version of IRC 7526 that would have allowed use of grant funds to create a national assistance center or a national training program on tax, many of these attorneys struggle as they learn tax concepts and many learn those concepts only in the narrow construct of low-income tax cases without an appreciation for how tax issues of low-income taxpayers might fit into the broader picture of tax law. So, they had to find mentors from remote offices. Programs and materials provided by

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not on controversy work. See 30 The Tax Lawyer 895 (Committee Report for 1976-1977 the first year of the new committee).

the ABA Tax Section and the National Taxpayer Advocate's office filled in some of the gap but a more cohesive system of training and support would significantly assist these lawyers as they represent low-income taxpayers.<sup>160</sup>

The grant funds have gone a long way toward the fulfillment of the vision that both Senator Montoya and Professor Stuart Filler had during the 1970s of placing tax law within the LSC. While the merger of tax and LSC programs does not exist in every location, it exists within most LSC offices. Having LSC attorneys become low-income taxpayer clinicians has benefited not only the specific taxpayers they serve but also the population of low-income taxpayers in general as LSC attorneys pushed for rights on issues not previously identified by permitting coverage of a much higher percentage of low-income taxpayers.

#### B. Academic Clinics

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<sup>160</sup> ABA programming was generally out of the financial reach of LSC attorneys because of the cost of membership, travel and conference fees. To remedy that problem, the ABA Tax Section co-sponsored the low cost workshops initially by Janet Spragens at American University. These are specifically designed to address issues facing practitioners who represent low income taxpayers. After the death of Janet Spragens, the ABA continued the workshops eventually holding them twice a year - in May immediately prior to the ABA annual meeting in Washington and in December immediately prior to the LITC annual conference. A nominal fee is charged for these workshops in order that the fee itself does not create a barrier to attendance. The ABA also decided to provide a complimentary copy of the book it publishes on low income taxpayer representation, "Effectively Representing Your Client before the IRS," available to each LITC receiving the grant under IRC 7526.

While the paths of LSC-funded programs and LITCs involves lines that initially followed separate tracks before merging or substantially merging, the paths of academic clinics and LITCs involve lines that have not grown much closer. Still, it is important to examine the role of LITCs within the academic community because those LITCs hold the history as well as the potential for leadership. The passage of IRC 7526 did increase the number of LITC academic clinics which correspondingly increased the interaction between LITC academic clinics and other academic clinics.<sup>161</sup>

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<sup>161</sup> In 1998 there were 182 ABA approved law schools in the United States. ABA-Approved Law Schools by Year, American Bar Association (January 18, 2013), [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_school\\_s/by\\_year\\_approved.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_school_s/by_year_approved.html). Almost all law schools by that point had some form of clinical programming. In 1998 thirteen academic law school LITC programs existed meaning approximately 7% of law school clinical programs included the experience of a tax clinic. Nina Olson, "Low Income Taxpayer Clinics: The Means to a Fairer Tax System," Community Tax Law Report 21 (1998). In 2012 there were 202 law schools essentially all of which had some form of clinical program. ABA-Approved Law Schools by Year, American Bar Association (January 18, 2013), [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_school\\_s/by\\_year\\_approved.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_school_s/by_year_approved.html). In 2012 approximately thirty five academic law school LITC programs existed meaning approximately 17% of law school clinical programs included the experience of a tax clinic. Appendix 2. Contrast these numbers with 0% of LSC funded offices which had a tax clinic component in 1998 while over 60% of LSC funded programs had a tax clinic component in 2012.

The dramatic difference in the percentage of offices with a tax clinic comparing LSC funded offices with academic clinics demonstrates how the paths have differed following the passage of IRC 7526. The numerical differences lead to other differences as well. Tax Clinics can feed off of and provide support to many other clinics because of the penetration of tax into almost every corner of the law. The failure of IRC 7526 to trigger the same growth in academic tax clinics

As described in much detail above, LITCs began in academic clinics.<sup>162</sup> Since LITCs were formed and for their first 18 years existed entirely in academic clinics, the basic structure of LITCs drew from academic clinics and the academic clinical model.<sup>163</sup> Because LITCs started and existed so long in academic institutions, their development, in ways not always obvious, continues to retain influences from this source even though academic tax clinics in 2013 constitute less than 25% of the overall number of LITCs.<sup>164</sup>

Some early academic tax clinics resulted from Department of Education grants but many, if not most, were funded by their institutions. The pre-1998 pressures on performance came from their academic institutions which emphasized teaching as an equal or greater component than service to low income taxpayers. These clinics strove not to serve the greatest numbers of taxpayers but to effectively train prospective lawyers. The academic clinic cultural influence on LITCs and the post-1998

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that it has in LSC tax clinics contributes to the lack of integration into the overall academic clinical community.

<sup>162</sup> See the Report and discussion supra at [ ]

<sup>163</sup> For a general discussion of law school clinical programs and their goals see J.P. "Sandy" Ogilvy, "Celebrating the 40<sup>th</sup> Anniversary of CLEPR," 16 Clinical L. Rev. 1 (2009).

<sup>164</sup> See Appendix 2.

ascendancy in the LITC community of LSC and independent tax clinics eventually came to a head through grant office goals.<sup>165</sup>

Academic tax clinics came into existence after the start of the academic clinical movement.<sup>166</sup> Legal education in the United States initially drew primarily from the apprentice model.<sup>167</sup> It evolved into an almost exclusively classroom model but some schools did have clinics to assist in training students.<sup>168</sup> "It was in 1958 that William Pincus, then a program officer with the Ford Foundation in New York, and Emory Brownell, the Executive Director of the National Legal Aid and Defender Association (NLADA) hatched the idea of a grant from Ford to NLADA to encourage law schools to get law students to participate in legal aid clinics."<sup>169</sup> This idea led to the creation of the National Council for Legal Clinics (NCLC).<sup>170</sup> The NCLC issued

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<sup>165</sup> See Nancy Abramowitz, "Thinking About Conflicting Gravitational Pulls, LITCs: The Academy and the IRS," 56 Am. U.L. Rev. 1127 (2007).

<sup>166</sup> Compare the 1974 start of academic tax clinics as detailed in the Report with the start of the academic clinical model as detailed in J.P. "Sandy" Ogilvy, "Celebrating the 40<sup>th</sup> Anniversary of CLEPR," 16 Clinical L. Rev. 1 (2009).

<sup>167</sup> Ogilvy at pp. 3-4.

<sup>168</sup> Ogilvy at 4; Quintin Johnstone, *Law School Legal Aid Clinics*, 3 J. Legal Educ. 535 (1951); Jerome N. Frank, *Why Not a Clinical Lawyer School?*, 81 U. Pa. L. Rev. 907 (1933); John S. Dradway, *Legal Aid Clinic as a Law School Course*, 3 S. Cal. L. Rev. 320 (1929-1930).

<sup>169</sup> Ogilvy at 9.

<sup>170</sup> Id. at 10.

grants of \$500,000 to nineteen law schools from 1959 to 1965.<sup>171</sup> While the delivery mechanism changed and the ABA and the American Association of Law Schools (AALS) became more involved, the Ford Foundation funded grants through 1980 by which time "nearly every law school in the country had at least one clinical course and many had substantially more."<sup>172</sup> The growth of law school clinics closely followed the creation of the Office of Equal Opportunity and the Legal Services Corporation.<sup>173</sup> Many of the early academic clinics used LSC as the model for serving the poor while teaching law school students.<sup>174</sup> Many of the early clinicians moved into academics from LSC positions.<sup>175</sup> As the community of LITCs grew following the passage of IRC 7526, the grant office began applying grant criteria based on productivity.<sup>176</sup> This basis for making grant decisions did not favor the academic clinical model and, arguably, did not align with Congressional goals in passing IRC

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<sup>171</sup> Id. at 11.

<sup>172</sup> Id. at 15.

<sup>173</sup> See generally *Securing Equal Justice for All* and its discussion of the creation of OEO and LSC and compare that with the discussion of academicSee also Michael A. Mogill, *Professing Pro Bono: To Walk the Talk*, 15 *Notre Dame J.L. Ethics & Pub. Pol'y* 5, 27 (2001)

<sup>174</sup> Mogill, *Professing Pro Bono*

<sup>175</sup> Id.

<sup>176</sup> See generally Publication 3319 and see the discussion on this point in the Abramowitz article.

7526 since its passage sprang from the recommendation of an academic clinician at a time when almost all LITCs followed the academic model.<sup>177</sup> The grant office emphasis on productivity may have suppressed additional growth of academic LITCs which, by nature, needed to emphasize teaching.<sup>178</sup>

Perhaps in response to concerns raised by academic clinicians such as Nancy Abramowitz or to concerns raised by the Treasury Inspector General or other concerns, in 2009 the IRS grant office embarked on a process of modifying the performance criteria used in selecting grant recipients.<sup>179</sup> The review of performance criteria added additional categories, including such things as writing and speaking that recognize traditional academic pursuits.<sup>180</sup> The changes to the performance criteria

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<sup>177</sup> Abramowitz. The argument concerning Congressional goals is the thesis of Nancy Abramowitz's article.

<sup>178</sup> Grant reporting creates another suppressing factor. The grant office receives pressure from the Treasury Inspector General who has oversight responsibility for the IRS grant office. The substantial reporting requirements factor into the decisions of academic clinics, which may have alternative funding sources, to continue or initiate grant participation. Two academic clinics, Albany Law School and Valparaiso Law School, withdrew from the IRS grant program in 2012 precisely for the reason of the burden of grant reporting. E-mail messages on file with author from Debbie Kearns at Albany Law School and Paul Kohlhoff at Valparaiso Law School.

<sup>179</sup> The author has e-mails on file setting up the task force to review performance criteria. The author served as a member of the task force.

<sup>180</sup> Publication 3319 provides the annual reporting requirements for clinics. The grant office uses the responses received from clinics to the required reporting requirements in deciding whether to fund a clinic and, if funded, how much funding to provide. Compare the

may, over time, impact the growth of academic LITCs. The departure from the grant in 2012 of two long time LITC academic programs does not suggest that the changes in the reporting requirements have tilted the model toward one in which academic LITCs will grow significantly.

Law school tax clinicians should seek leadership roles in the American Association of Law School (AALS) or in the Clinical Legal Education Association (CLEA.) The absence of leadership positions in these organizations diminishes the opportunities for networking within the academic clinical community and demonstrating to that community the benefits of tax clinics. Just as the addition of tax clinics created synergy for LSC offices, tax clinics create synergistic opportunities with other law school clinics when they cluster with other law school clinics yet few law schools choose to open tax clinics.

Law school tax clinicians have produced very little scholarship.<sup>181</sup> Many law school tax clinicians direct their clinics as adjunct faculty or on long-term contracts that have no expectation of scholarship.<sup>182</sup> Tax clinicians who are not on

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reporting criteria in Publication 3319 from 2009 to 2013 to trace the arc of the changes in performance criteria.

<sup>181</sup> See footnotes [ ] above detailing the scholarship of Janet Spragens, Les Book and Carlton Smith. Outside of these individuals, the scholarship by academic tax clinicians is quite thin.

<sup>182</sup> See <http://www.legalaffairs.org/printerfriendly.msp?id=277> (Discussing the historical use of long term contracts for clinicians.) See also

the tenure track do not generally have an institutional expectation of and support for scholarship. For these tax clinicians, who constitute the majority, producing scholarship presents significant challenges. Yet, without scholarship law school clinicians have difficulty presenting ideas that will lead the LITC community and produce meaningful changes.

The ABA Tax Section represents one area in which law school tax clinicians have provided leadership. The Low-Income Taxpayer Committee of the ABA dates back to 1976.<sup>183</sup> The leadership of this committee includes many law school tax clinicians.<sup>184</sup> The engagement of law school tax clinicians

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[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CFUQFjAH&url=http%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fmigrated%2Flegaled%2Fstandards%2F20072008StandardsWebContent%2FChapter\\_4.pdf&ei=MKr1UM7XI6SF0QHb-4HIAQ&usg=AFQjCNFdYNbElm1Ug8IIdv-Y4erpC7hgZA&bvm=bv.41018144,d.dmQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&ved=0CFUQFjAH&url=http%3A%2F%2Fwww.americanbar.org%2Fcontent%2Fdam%2Faba%2Fmigrated%2Flegaled%2Fstandards%2F20072008StandardsWebContent%2FChapter_4.pdf&ei=MKr1UM7XI6SF0QHb-4HIAQ&usg=AFQjCNFdYNbElm1Ug8IIdv-Y4erpC7hgZA&bvm=bv.41018144,d.dmQ) (Containing the ABA Standards for Approved Law Schools regarding treatment of clinical employees.)

<sup>183</sup> E-mail dated August 8, 2012 from Janet In, Counsel to ABA Tax Section.

<sup>184</sup> Id. The name of the committee changed four times over the years of its existence: 1976 - Small Taxpayer Program; 1981 - Low-income Taxpayer Problems; 1991 - Low-income Taxpayers; 2012 - Pro Bono and Tax Clinic. The Committee Chairs throughout the history of the committee are as follows: Thomas A. Troyer 1976-1978 - Caplin and Drysdale, Washington, DC; Lawrence A. Gibbs 1978-1980 - Miller and Chevelier, Washington, DC (former IRS Commissioner and Acting Chief Counsel); Richard Fisher 1980-1982; J. Leigh Griffith 1982-1985 - Waller Law, Nashville, TN; Deborah H. Schenk 1985-1987 - Professor, New York University Law School; Frederick L. Ballard 1987-1989 - Ballard and Spahr, Washington, DC; Henry J. Lischer, Jr. 1989-1991 - Professor, Southern Methodist University Law School; Thomas Greg Collins 1991-1993 - McCarter and English, Boston, MA; Jerome Borison 1993-1995 - Director of the Tax Clinic at Denver Law School; Karen V. Kole 1995-1997 - Director of the Tax Clinic at Loyola (Chicago) Law School and later at Valparaiso Law School; Janet R. Spragens 1997-1999 - Director of the Tax Clinic at American University Washington College of Law; Nina E. Olson 1999-2001 - Community Tax Law Project, Richmond

within the ABA may have caused them to shun the broader law school clinic forum offered by the Clinical Section of the AALS or by CLEA.

Despite the low level of overall scholarship and the failure to engage with the AALS and CLEA, law school tax clinicians have provided significant leadership to the LITC community. Stuart Filler provided leadership in founding tax clinics, establishing the role of students to litigate at the Tax Court, and taking a clinic case to the Supreme Court. Janet Spragens provided leadership not only in creating the grant program but in creating the educational programs at American Law School following passage of IRC 7526. Jerry Borison provided leadership in writing and editing "Effectively Representing Your Client before the IRS", in starting and hosting the LITC listserv, and mentoring many new clinicians. The writings of Les Book on the earned income tax credit and other issues facing the low-income taxpayers helped lead the community through

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VA (National Taxpayer Advocate); Leslie Book 2001-2003 - Director of the Tax Clinic at Villanova Law School; Diana Leyden 2003-2005 - Director of the Tax Clinic at University of Connecticut Law School; Elizabeth Jeanne Atkinson 2005-2007 - LeClair Ryan, Virginia Beach, VA; Joseph Schimmel 2007-2009; Kathryn J. Sedo 2009-2011 - Director of the Tax Clinic at University of Minnesota Law School; Keith Fogg 2011-2013 - Director of the Tax Clinic at Villanova Law School. "The Committee on Small Taxpayer Programs was established by the section in 1976 to explore means by which the Section and its members might ease the burdens of compliance with the federal tax system for low-income taxpayers." Report of the Committee on Small Taxpayer Program for 1976-1977, 56 Tax Lawyer 895 (1977).

scholarship. The intellectual and organizing leadership of Carl Smith provided leadership to the community during the challenge to the earned income tax credit. Because this group generally has more available resources and more knowledge of tax issues, it bears leadership responsibility that independent and LSC clinicians do not have. Finding a way to continue to lead is important for the academic tax clinicians.

#### **IV. Support for LITCs**

The success of LITCs results from the support received from many sectors. This Article focuses on four sectors: the Tax Court, Congress, the ABA and other bar associations, and the IRS.

##### **A. Tax Court**

The Tax Court did not rush to embrace either the student model of clinics that developed in the mid-1970s or the free standing model of clinics initiated by the Community Tax Law Project (CTLP) in 1992.<sup>185</sup> Stuart Filler made an early

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<sup>185</sup> With respect to the Hofstra application an extensive and interesting discussion appears in the article "Growing Pains in Law School Tax Clinics: A Report on the Experience of Hofstra, Southern Methodist and Michigan" Volume X Council on Legal Education for Professional Responsibility, Inc. pp. 5-6. With respect to CTLP see the written remarks of Nina Olson to the Senate Finance Committee which state that "In January, 1996, CTLP became the first independent nonprofit clinic to enter into an agreement with the United States Tax Court, whereby letters from CTLP are included in trial notices to pro se petitioners ...." Hearings before the Committee on Finance, United States Senate, One Hundred Fifth Congress, Second Session on H.R. 2676 (IRS Restructuring) p. 330 (1998). These remarks must be coupled with the knowledge that CTLP began in 1992 and Nina Olson began seeking a Tax Court agreement almost immediately thereafter. Contrast the speed of the granting of the agreement with CTLP with the granting of an agreement to Villanova Law School on September 1, 1992, within one

application to the Court when he started the Hofstra clinic seeking the Tax Court's permission to allow students to represent taxpayers before the Tax Court "on a basis comparable to that of its practice before the Federal District Court for the Eastern District of New York."<sup>186</sup> The Tax Court sought input from the ABA Tax Section on this application.<sup>187</sup> The Committee on Small Taxpayer Assistance on May 18, 1977, produced a report later adopted by the ABA Tax Section, which did not support student practice.<sup>188</sup> The Tax Court met with the Committee on Small Taxpayer Assistance and by letter of November 21, 1977, declined to allow students from Hofstra to practice before it.<sup>189</sup> Hofstra appealed to the United States Court of Appeals for the Second Circuit to which the Tax Court objected.<sup>190</sup>

The IRS Advisory Committee to the Commissioner discussed the issue of student representation before the Tax Court in its meeting on March 14, 1978, and reached the conclusion that

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year after the opening of that clinic. CTLP and the Villanova Law School clinic were opened within one year of each other. The delay in granting the agreement to CTLP stemmed from concern that the tax bar would object to sending out notice to taxpayers of pro bono representation by attorneys rather than students.

<sup>186</sup> See "Growing Pains," supra note [ ], at 5.

<sup>187</sup> Id.

<sup>188</sup> Id.

<sup>189</sup> Id.

<sup>190</sup> Id. at 6.

students should be allowed to practice before the Tax Court;<sup>191</sup> however, "Congressman Sam M Gibbons, Chairman of the Subcommittee on Oversight of the House Ways and Means Committee, in a March 8, 1978 letter to Jerome Kurtz, Commissioner of the IRS, strongly took issue with the role of the Tax Section of the ABA in securing the negative decision on Hofstra's petition."<sup>192</sup> Eventually, the Tax Court allowed student representation but the interplay here not only highlights the early concerns about tax clinics, but also the institutional roles that will be discussed in this section.

Once the Tax Court allowed student representation, it also began sending out notices to its petitioners alerting them to the opportunity for student representation. This became an important source of referrals for LITCs. The Court's practice of sending out notice to pro se petitioners alerting them to the potential for assistance from student-run clinics was not initially extended to the new type of clinic created by Nina Olson in 1992 because of concerns about a backlash from the bar. Eventually, the Tax Court worked its way through the policy implications of providing notice to petitioners about a tax clinic staffed by attorneys rather than students and it decided

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<sup>191</sup> Id.

<sup>192</sup> Id.

that sending notice about non-academic clinics was permissible.<sup>193</sup>

The Tax Court also permitted a project, initiated by Karen Hawkins and the tax bar in San Francisco, to permit and announce the availability of pro bono tax lawyers who would provide consultation with unrepresented taxpayers at calendar call.<sup>194</sup> This project began before 1998 and has slowly spread during the years to cover a significant number of calendar call locations. The efforts of Elizabeth Copeland working with the Texas bar in 2007 and 2008 greatly increased the success and spread of this program.<sup>195</sup> The ABA, state bar associations, and LITCs have worked to make this program a success. The combination of the stuffer notices sent by the Tax Court to unrepresented

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<sup>193</sup> See discussion in footnote 159 supra.

<sup>194</sup> See Robert McKenzie, Karen Hawkins: 2004 Pro Bono Attorney of the Year, American Bar Association News Quarterly, May 8, 2004 (Discussing the important role Karen Hawkins played in establishing this program.) See also [http://www.americanbar.org/content/dam/aba/publishing/section\\_enewsletter/hawkins.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/section_enewsletter/hawkins.authcheckdam.pdf). (interview of Karen Hawkins by ABA Tax Section Student eNews in 2009 discussing her role in establishing the calendar call program)

<sup>195</sup> Elizabeth Copeland received the ABA Janet R. Spragens Pro Bono award in 2009 in recognition for her work in organizing calendar call programs throughout the state of Texas and assisting other state and local bars in organizing such programs. In 2012 Frank Agostino was recognized by the ABA with the Janet R. Spragens Pro Bono award for similar work in New York City. Calendar call programs provide the unrepresented taxpayer with a last chance to consult with counsel before trial and provide a significant service to the taxpayers and the Court. Many LITCs have calendar call programs and many of these programs, like those in Texas and New York City, are run by the tax bar.

petitioners at the outset of a case with the calendar call programs means that pro se individuals filing a petition in Tax Court have the opportunity for full or partial representation in most Tax Court cases. In a Court where approximately 70% of the petitioners file pro se, the effort of the Tax Court to work with LITCs and the tax bar to provide legal assistance represents a real success story for LITCs.

The 1980s and 1990s also ushered in many changes to the Tax Court docket. A Congressional change on the qualifying amount for small tax cases resulted in a large numbers of cases involving low-income taxpayers.<sup>196</sup> The qualifying amount for small tax cases went from \$1,500 in tax dollars at issue per year in the mid-1970s to \$10,000 by the early 1980s to \$50,000 in 1998.<sup>197</sup> The significant expansion of the earned income tax credit in the 1990s, coupled with the requirement that the IRS examine a relatively high proportion of those returns, created

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<sup>196</sup> Federal-State Tax Collection Act of 1972, Pub. L. No. 92-152, 86 Stat. 944-45 (1972)(changing dollar amount for small tax cases found in IRC 7463 from \$1,000 to \$1,500); An Act to Amend the Internal Revenue Code of 1954 to Reduce Income Taxes and for Other Purposes, Pub. L. No. 95-600, 92 Stat.2763 (changing amount from \$1,500 to \$5,000); Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (1984)(changing amount from \$5,000 to \$10,000); Internal Revenue System Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998)(changing amount from \$10,000 to \$50,000); see also Consolidated Appropriations- FY 2001, Pub. L. No. 106-554, 114 Stat. 2763 (2000). For a general discussion of the small tax case procedure, see William C. Whitfield, *The Small-Case Procedure of the United States Tax Court: A Small Claims Court That Works*, American Bar Foundation Research Journal 797 (1984).

<sup>197</sup> Id.

an explosion in low-income taxpayers filing Tax Court petitions.<sup>198</sup> Not long after the wave of earned income tax credit cases began to flow at a high level, Congress introduced more low-income taxpayers into the Tax Court docket with the creation of collection due process proceedings in 1998.<sup>199</sup>

A high percentage of cases involving low-income taxpayers use the small tax case procedures of the Tax Court. For decades, this procedure did not result in publication of the opinion of the Court.<sup>200</sup> As a result, a body of law began developing in Summary Opinions; however, the opinions issued in small cases essentially remained unavailable to the public. The Tax Court eventually reacted to this by publishing Summary Opinions even

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<sup>198</sup> See Steve Holt, "The Earned Income Tax Credit at Age 30: What We Know" The Brookings Institute Research Brief, February 2006 and also Dennis Ventry, Jr. "The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit" in B. Meyer and D. Holtz-Eakin, Eds., "Making Work Pay: The Earned Income Tax Credit and Its Impact on America's Families," New York: Russell Sage Foundation.

<sup>199</sup> IRC 6330. Each year the National Taxpayer Advocate produces a list of the 10 most litigated issues. Following that list from year to year provides an excellent insight into the makeup of the docket of the Tax Court. Consistently, the most litigated issues focus on issues where low-income taxpayers have large numbers of cases. While just being poor does not mean a taxpayer will use the CDP process, many low income taxpayers have collections problems and do use this process. The creation of CDP opened the Tax Court doors for these low income taxpayers to obtain collection relief.

<sup>200</sup> The Court produced a written opinion which went only to the parties in the case - the specific taxpayer and the IRS. During this period the docket of the Tax Court was open for public inspection only by physically going to the Tax Court building in Washington, D.C. as the Tax Court had not yet begun to post its docket online. A party interested in researching the Tax Court's opinions produced using the small case procedure faced an arduous if not impossible task.

though the opinions continue to have no precedential value.<sup>201</sup> The opening up of these opinions to the public allows practitioners representing low-income taxpayers to see the thinking of the Tax Court on numerous issues that previously had almost no published cases. This represented a significant step in assisting low-income taxpayers and clinics.

In recent years the Tax Court's attention to low-income taxpayers and to clinics has accelerated. In 2009, the Tax Court significantly expanded its website with the creation of a section entirely devoted to pro se petitioners, a large number of whom are low-income taxpayers. Through the changes to this website, the Tax Court made overt efforts to provide assistance to those most in need of help in navigating the judicial system. The Tax Court also reached out to the LITC community by inviting

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<sup>201</sup> See [http://www.ustaxcourt.gov/taxpayer\\_info\\_after.htm](http://www.ustaxcourt.gov/taxpayer_info_after.htm) (Description from Tax Court website providing "Summary Opinion - A Summary Opinion is issued in an S case. A Summary Opinion cannot be relied on as precedent, and the decision cannot be appealed.) See also IRC 7463(a) describing cases involving \$50,000 or less and providing in part "A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460." Summary opinions are not published by the Government Printing Office but beginning on January 1, 2001, the Tax Court began publishing Summary Opinions on its web site. Based on the statistics compiled by the Tax Court from the annual submissions by clinics with an agreement with the Court, in 2009 clinicians consulted with 1,911 petitioners and formally entered an appearance in 881 of those cases; in 2010 clinicians consulted with 2,725 petitioners and formally entered an appearance in 876 cases; and in 2011 clinicians consulted with 2,495 petitioners and formally entered an opinion in 788 cases.

clinicians to an annual dinner during which the judges highlight changes in the Tax Court rules and procedures impacting low-income taxpayers. Additionally, the Tax Court expanded its Inn of Courts to include clinicians. The commitment of the Tax Court to ensure that low-income taxpayers receive a fair hearing has made a difference to LITCs and their clients.<sup>202</sup>

Chief Special Trial Judge Panuthos has long championed the rights of low-income taxpayers and worked with the ABA and other practitioners groups to insure these rights. For example, he redesigned the form petition to eliminate areas of confusion for pro se petitioners and carefully scrutinized the Court's website to create easy to understand explanations of the process of trying a Tax Court case. **On March 23, 2012**, the Tax Court recognized his efforts on behalf of low-income taxpayers by awarding him the J. Edgar Murdock Award.<sup>203</sup> The actions of recent Tax Court leaders demonstrate how far the Court has come since its initial concerns about student practice before the

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<sup>202</sup> Chief Judge John Colvin deserves much credit for his efforts to ensure that clinicians were included in the Tax Court's activities. He initiated the annual dinners for clinicians and specifically reached out to clinicians to include them in the Tax Court Inn of Court. He also looked for rule changes that would assist pro se taxpayers in navigating the Court's system. With Judge Panuthos he began attending the annual LITC meeting and the ABA Tax Section committee meetings of the Low Income Taxpayer Committee.

<sup>203</sup> Press Release, United States Tax Court, Chief Special Trial Judge Peter J. Panuthos received the J. Edgar Murdock Award for distinguished service to the United States Tax Court (March 26, 2012)

Court. By providing strong support for LITCs, the Tax Court has created an environment that treats all taxpayers fairly. By creating rules and procedures that encourage LITCs to represent the pro se petitioners, the Tax Court gives low-income taxpayers the opportunity to prove their case. The Court has also demonstrated a willingness to listen to LITCs in order to improve its process.<sup>204</sup>

#### B. Congress

The establishment of the grant in 1998 created the single most important Congressional impact on LITCs.<sup>205</sup> The responses from the clinics on the impact of the grant show the importance of the grant to their very existence.<sup>206</sup> While Senator Montoya broached the issue of providing funds for a tax component of the Legal Service Corporation back in 1976, almost no discussion of funding seems to have occurred from that time until Janet Spragens and Nina Olson began pushing the idea to the

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<sup>204</sup> Each year in February LITCs go through the process of renewing their agreement with the Court to receive recognition as an LITC in stuffer notices for specific jurisdictions. In this process the Court has the LITCs fill out a short form expressing their willingness to participate and to abide by the Court rules. One of the small number of entries on the annual agreement form solicits ideas on how the Court can better assist the low income taxpayers coming before it. That type of proactive effort to identify issues demonstrates the Court's efforts to work with LITCs and to listen to them.

<sup>205</sup> Pub. L. 105-206 section 3601(a)

<sup>206</sup> See Appendix 1.

Restructuring Commission and to Congress as it passed the 1998 legislation reorganizing the IRS.

Since creating IRC 7526, Congress has made no amendments to it. During a period of fiscal austerity, Congress has continued to fund LITCs and to increase that funding over the years from the initial \$2 million per year to the current level at approximately \$9 million per year.<sup>207</sup> At a time of significant scrutiny of the federal budget, Congress has allowed this program to flourish. Each year it receives an annual report from the National Taxpayer Advocate which contains some discussion of the LITCs and their use of the grant funds.<sup>208</sup> The House Subcommittee on Oversight of the Committee of Ways and Means heard testimony in 2001 which included comments from clinicians about the level of funding but has otherwise expressed little interest in evaluating or closely scrutinizing its decision to create a grant program for LITCs.<sup>209</sup>

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<sup>207</sup> Press Release, Internal Revenue service, Low Income Taxpayer Clinic Grant Recipients Announced (Feb. 17, 2012) (The release stated that the IRS awarded over \$9 million in matching grants to LITCs for the 2012 grant cycle.)

<sup>208</sup> The 2007, 2009 and 2011 National Taxpayer Advocate Annual Reports contain useful information about LITCs in general and about funding. See [http://www.irs.gov/pub/irs-utl/arc\\_2007\\_vol\\_1\\_cover\\_msps.pdf](http://www.irs.gov/pub/irs-utl/arc_2007_vol_1_cover_msps.pdf) (2007 report); [http://www.irs.gov/pub/irs-utl/1\\_09\\_tas\\_arc\\_vol\\_1\\_preface\\_toc\\_msp.pdf](http://www.irs.gov/pub/irs-utl/1_09_tas_arc_vol_1_preface_toc_msp.pdf) (2009 report); [http://www.taxpayeradvocate.irs.gov/userfiles/file/2011\\_ARC\\_Preface\\_TOC.pdf](http://www.taxpayeradvocate.irs.gov/userfiles/file/2011_ARC_Preface_TOC.pdf) (2011 report).

<sup>209</sup> Hearing before the Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, One Hundred Seventh Congress,

The continued support of the grant by Congress allows clinics to exist in their current numbers.<sup>210</sup> While a relatively silent partner, the support of Congress for LITCs remains the most important factor in their growth over the past fourteen years and, for most LITCs, in their continued existence.

C. The ABA and Other Bar Associations

Almost from the time Stuart Filler started the first LITC, the ABA has played a role in shaping and, generally, supporting LITCs. Both the Tax Court and the IRS looked to the ABA for guidance in their decision-making concerning tax clinics. In a letter dated July 29, 1977, Don Harris, Chairman of the Tax Section of the ABA, responds to a June 22 [1977] letter from IRS Commissioner Jerome Kurtz on the issue of the posting of notices in IRS offices informing taxpayers of the availability of services from the University of Michigan tax clinic. The ABA response approves the posting of such notices. It also cautioned that the IRS should use appropriate disclaimers making clear that the IRS did not endorse any clinic. The ABA also

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July 12 2001, Serial No. 107-32. See discussion supra at ft nts [ ] . Contrast the level of scrutiny of the LITC grant receives with the attention paid to the funding of LSC. [find some Congressional activity on this funding during the last decade or so] While the funding levels between the two programs differ significantly (\$300 million versus \$11 million) the quiet, non-partisan consensus that seems to exist around the LITC grant stands in stark contrast to the LSC funding.

<sup>210</sup> See Appendix 1.

recommended against the IRS handing out clinic flyers to individual taxpayers. The letter references a meeting on April 26 [1977] which appears to have occurred between the IRS and the ABA for the purpose of discussing tax clinics. The holding of such a meeting and the sending of a letter from the IRS Commissioner demonstrates the high level of importance granted to the views of the ABA on the subject of tax clinics.<sup>211</sup>

The Tax Court's consideration of student representation by early clinics also highlights the importance of the ABA with respect to the development of LITCs. Just like the IRS, the Tax Court sought the views of the ABA.<sup>212</sup> The ABA recommended against allowing the students to participate.<sup>213</sup> Judges from the Tax Court and members of the ABA Tax Section Committee on Small Taxpayer Assistance held a meeting to discuss the issue.<sup>214</sup> Thereafter, the Tax Court denied Hofstra's request for student

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<sup>211</sup> One reason for contact with the ABA is the concern that creating a tax clinic would take money away from practicing lawyers as clients flocked to the free tax services. While this concern was debated repeatedly, most lawyers seemed to realize that the types of cases handled by the clinics were cases in which the taxpayer would not consult a fee based attorney. Getting the buy in of the ABA, however, avoided Congressional concerns the IRS might otherwise have faced if one or more lawyers complained about the IRS decision.

<sup>212</sup> "Growing Pains" at p. 5.

<sup>213</sup> Id.

<sup>214</sup> Id.

representation.<sup>215</sup> As with the IRS, the Tax Court showed much interest in, and deference to, the views of the ABA.

It is impossible to overlook the positive recommendations made by the ABA with respect to those early clinics.<sup>216</sup> The October 31, 1978, Report of the Ad Hoc Committee To Review IRS Evaluations determined that the quality of the student representation was good and that expanding the program "could make a significant contribution to the representation of taxpayers in controversies where the amount in dispute is relatively small."<sup>217</sup> The report noted the need for clinics to have an adequate referral mechanism, pointing out the differences between SMU, where the IRS made significant efforts to advertise the services of the clinics, and Michigan, where it did not. It concluded on a very positive note stating "Whether or not law student representation at the Tax Court level is desirable, it seems clear that the potential impact of student

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<sup>215</sup> Id.

<sup>216</sup> The letter dated November 20, 1978, transmitting the report is generally favorable, as is the report, but contains typical cautionary language such as "subject to the approval of the appropriate local bar groups, adequate attention should be given to the matter of publicity in the continuing and any new programs." (After acknowledging that publicity was critical to the success of the clinics this sentence was rather lukewarm.) Similarly on the topic of the use of law students in Tax Court the letter stated "Here too, the matter is subject to further consideration and the reference in the report is not intended to, and indeed makes clear that it does not, suggest a position of the Committee or obviously of the Section in this regard."

<sup>217</sup> This ABA report was included as a part of the package by the IRS in its Report on Legal Assistance Test Program.

representation in administrative proceedings and appeals makes it desirable for the Section of Taxation to encourage the IRS to expand its present program to permit students through law school clinics to represent taxpayers in the audit and appeals process."<sup>218</sup>

The early support from the ABA greatly aided the success of the early tax clinics. Without this support the tax clinic movement may have stopped almost as soon as it started.

One of the most important roles the ABA has played in the low-income taxpayer clinic movement has been its service as an official voice from which clinics and service to low-income taxpayers could be promoted. Professor Book points to Janet Spragens at American University and Nina Olson at the Community Tax Law Project as the two "mavens" who lead the process to obtain the grant funding for clinics in the 1998 legislation

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<sup>218</sup> The report was signed by Larry Gibbs as Chairman of the Small Taxpayer Program Committee and Richard Stark as Chairman of the Ad Hoc Committee. Larry Gibbs would go on to become the IRS Commissioner several years later placing in that position someone familiar with and favorably disposed to clinic representation of low-income taxpayers. The fact that the Tax Section of the ABA had a Small Taxpayer Program Committee as far back as 1976 points to the fact that the Tax Section was paying some attention to the needs of low-income taxpayers at that time. The Small Taxpayer Program Committee produced an annual report which was published in *The Tax Lawyer* each year as a part of the publication of the annual reports of all committees of the Tax Section. These annual reports show that the biggest issue facing the new committee was supporting the IRS Volunteer Income Tax Assistance (VITA) program. See 30 *The Tax Lawyer* 895 (Committee Report for 1976-1977 the first year of the new committee); 31 *The Tax Lawyer* 978 (1977-1978); 32 *The Tax Lawyer* 931 (1978-1979); 33 *The Tax Lawyer* 661 (1979-1980); 34 *The Tax Lawyer* No. 4 (1980-1981).

that obviously changed the number and the face of low-income tax clinics.<sup>219</sup> A part of the success of Janet Spragens and Nina Olson was their use of the ABA and its committees as a basis for support of their ideas. They used the processes of change available through the structure of the ABA to ensure that their ideas were heard and carried weight.

In their article "Tax Clinics: The New Face of Legal Services," Janet Spragens and Nina Olson acknowledge the critical role of the ABA in the tax clinic movement: "the American Bar Association Section of Taxation has also been a steady and important support of the LITC movement. One of the section's contributions to the clinical movement is sponsorship, through its Committee on Low-income Taxpayers, of a treatise about to be published, entitled Effectively Representing Your Client Before the New IRS. Edited by Professor Jerome Borison of the University of Denver School of Law, this publication contains the collective wisdom of the most experienced tax controversy lawyers in the United States today and was written to be a handbook for LITCs as well as other practitioners. Further, the section has testified on multiple occasions in

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<sup>219</sup> Professor Les Book, Tax Clinics: Past the Tipping Point and to the Turning Point, 34 Exempt Org. Tax Rev. 27 (2001) ft. nt. 3. He picked the work "mavens" from the book by Malcolm Gladwell, The Tipping Point. "Mavens, from the Yiddish, are people who have accumulated lots of knowledge. He equated Janet Spragens and Nina Olson as having the characteristics of salesmen, connectors and mavens necessary to lead the successful legislative effort.

favor of LITC funding legislation, has underwritten an annual workshop (in partnership with American University) on tax clinics, has sponsored a NAPIL fellow to work on ESL issues at the Community Tax Law Project, and has provided seed money for a Low-income Tax Clinic Resource Center."<sup>220</sup>

One of the tangible pieces of support from the ABA came during the year after passage of RRA 98 when it became clear just how important the matching grant of IRC 7526 was to the growth of LITCs. In a letter dated June 25, 1999, Stefan Tucker, then the Chair of the ABA Section on Taxation, wrote to The Chairman of the House Appropriations Committee and its Ranking Member urging Congress to appropriate more money for the matching grants. He specifically requested that the first year's appropriation of \$2 million be increased to \$4 million noting "[t]he American Bar Association Section of Taxation has a long history of supporting low-income taxpayer clinics. The Section has worked with the clinics for over 10 years through its Committee on Low-income Taxpayers, and has testified in favor of the funding provision both before the Restructuring Commission and the Congress."<sup>221</sup>

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<sup>220</sup> Tax Notes Today, September 18, 2000.

<sup>221</sup> July 22, 1999, Tax Notes Today.

Support from the ABA also took the form of hosting a listserv available to all clinicians.<sup>222</sup> Through the listserv hosted by the ABA, members of the LITC community can quickly find the answers to questions that might otherwise go unanswered. The listserv makes it possible for a clinician working in essentially a solo practitioner capacity to connect with others in the same legal community.

In recent years the ABA hired a Pro Bono Staff Attorney who serves as a resource to the Low-income Taxpayer committee and to the LITC community.<sup>223</sup> It has also created the Pro Bono Fellowship through which it sponsors two fellows each year for two-year fellowships in an effort to assist underserved communities and to promote new ideas for serving the low-income taxpayer community.<sup>224</sup> In 2011, the Tax Section started a

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<sup>222</sup> The listserv started in Denver by Jerry Borison as an e-mail list to allow the small number of clinics existing at that time to keep in touch. As technology improved and as the number of clinics mushroomed, the information exchange that started as an e-mail list evolved into a listserv. The ABA took over responsibility for hosting the listserv around 1999. E-mail message from Jerry Borison to Keith Fogg dated August 8, 2012.

<sup>223</sup> The ABA Tax Section's commitment to pro bono work increased with the hiring of a full time staff attorney in 2007 to assist the pro bono and low income taxpayer committees with education and advocacy.

<sup>224</sup> The first two fellows were selected in 2008: Vijay Raghavan who worked with Prairie States Legal Services in Illinois and Laura Newland who worked with the AARP. The second two fellows were selected in 2009: Doug Smith who has founded the Central PA Tax Help and Katie Tolliver who worked with the Legal Aid Society of Middle Tennessee and the Cumberlands. Katie specifically works with the Appalachian Community Partnership for Tax Advocacy which is a new approach to working with low-income taxpayers. The third set of

program to provide scholarships to non-academic clinicians to allow them to attend Tax Section meetings. Without financial assistance, attendance at the meetings is almost impossible for legal services clinicians and clinicians at independent clinics because budgets at their organizations contain insufficient funds to cover the cost. Through the scholarships, five at each meeting, the Tax Section has significantly increased participation and interest from a group of attorneys previously left out of the organized bar. By bringing this new group of clinicians into the ABA and getting them involved in projects assisting low-income taxpayers from a broader perspective, these clinicians benefit individually and the bar benefits from the insights of this group of practitioners.

The ABA has significantly contributed to the LITC community. It has done so since the time of the first tax clinics. By consistently supporting the idea of tax clinics for more than three decades, the ABA has served as a source of strength and

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fellows was selected in 2010: Sean Norton with Pine Tree Legal Service in Maine and Anna Tavis with South Brooklyn Legal Service where she focuses on assisting Russian immigrants. The fourth set of fellows was selected in 2011: Anna Lopez with the University of Washington Tax Clinic reaching out to the quickly growing Hispanic community in the state of Washington and Jane Zhao with the Center for Economic Progress in Chicago. All eight of the fellows seek to move and expand the legal services available to low-income taxpayers in places and in ways that would not be possible with this grant. The next challenge for the ABA Tax Section with respect to the fellows concerns the process of transitioning them into full time positions of service to the low income taxpayer community once the fellowship ends.

institutional acceptance. Without its support, LITCs could not have achieved the success they have enjoyed.<sup>225</sup>

#### D. The IRS

As The Report demonstrates, the IRS became involved with low-income tax clinics from their beginning. The Report reflects the attitudes of the IRS concerning low-income tax clinics that has continued to exist even to the present. Most of the executives and front line employees at the IRS see the clinics as a positive addition to the tax field because they generally assist taxpayers in reaching the right answer in ways the IRS cannot.<sup>226</sup> The IRS has taken many actions to assist LITCs and the clients they serve. Even though the IRS has generally supported LITCs, its policies during the same period have increased the need for LITCs by increasing mechanization of the handling of tax cases and building a system of tax administration too difficult for many low-income taxpayers to navigate.<sup>227</sup>

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<sup>225</sup> This segment has focused on the ABA but other bar association played an important role as well. The Virginia Bar Foundation provided critical support to the Community Tax Law Project at a time when other foundations refused grant funding. The tax sections of the Texas, Florida, California; Maryland; Colorado and New York County bar associations have worked to coordinate pro bono assistance at Tax Court calendars. The growth of bar efforts for low income taxpayers has, in many ways, mirrored the growth of LITCs - as it should.

<sup>226</sup> See e.g. the responses of the Regional Commissioners from the Northeast and Southwest.

<sup>227</sup> Many examples of increased mechanization and reduced exercise of judgment could be cited to support this observation but one currently

Taken as a whole, The Report provides a positive endorsement of LITCs. The IRS office in Dallas, Texas went quite far in its efforts to promote the services provided at SMU.<sup>228</sup> That same type of support exists throughout the IRS at different locations and at different times but generally, the IRS has positively helped the LITC movement as it grew over the years. Les Shapiro serves as an example of longstanding support from the IRS on an institutional and individual level with his efforts to promote clinics from his position providing their oversight.<sup>229</sup>

The greatest support to LITCs from the IRS has come from the National Taxpayer Advocate's office. Having a former LITC director as the NTA provides quite a benefit to the LITC community. Nina Olson knows the challenges facing LITCs and their clients. She supports additional funds for clinics and she supports many initiatives impacting low income taxpayers.<sup>230</sup> Through her annual reports to Congress she gives voice to issues

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under discussion is the almost automatic filing of the notice of federal tax lien once the taxpayer's liability reaches \$5,000. The National Taxpayer Advocate has written extensively about this practice in her annual report and elsewhere. This practice serves as an example of how a decision implemented in a bureaucracy in which almost everyone defaults to the norm creates significant problems for individuals attempting to explain how the filing of the notice of federal tax lien will benefit neither the individual nor the IRS.

<sup>228</sup> See the Report at footnote 20 (p. 11)

<sup>229</sup> See discussion supra at [ ].

<sup>230</sup> See footnote [210], supra.

effecting both LITCs and their clients. The offices of the local taxpayer advocates provide significant support to LITCs as part of their mission to assist taxpayers in hardship situations.

Perhaps her oversight role offers the biggest challenge facing the NTA and her relationship with LITCs. Beginning in 2003, the role of administering the IRC 7526 grant funds moved from the Wage and Investment function to the NTA. While the NTA's office supports LITCs and uses the grant funds in an effort to create additional LITCs in areas of greatest need, this role also puts the NTA in the position of reviewing the performance of the LITCs. In that role she has managed to make everyone somewhat unhappy, which may signal that the level of review stands at the right place. Nancy Abramowitz wrote about the emphasis placed in the reviews on quantity of work by an LITC and how that failed to recognize the role of academic clinics in the formation of the grant.<sup>231</sup> TIGTA has issued three reports complaining that the NTA's office fails to perform sufficient oversight reviews by failing to get into file review and other more invasive forms of review.<sup>232</sup>

In 2009, the NTA created a task force drawn from a variety of LITCs in order to devise performance measures that might

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<sup>231</sup> Nancy Abramowitz, "Thinking About Conflicting Gravitational Pulls LITCS: The Academy and the IRS" 56 Am. L. Rev. 1127 (2007).

<sup>232</sup> See discussion *supra* at footnote [ ]

satisfy those being reviewed as well as those providing oversight of the review itself, TIGTA. The NTA largely adopted the performance measures recommended by this group and incorporated the new measures into Publication 3319 for 2012 and 2013. These measures provide a variety of ways to show that an LITC deserves continued funding. The process of review still involves choices that will not leave everyone pleased but offers more opportunities for success than simply processing a high number of cases. The willingness of the NTA to include the clinics in the process of selecting the performance measures demonstrates the desire to work together to make the program a success.

The Office of Chief Counsel, IRS provides support to LITCs in the way it works with LITCs around the country to resolve disputes in Tax Court. While relationships between an individual LITC and a local office may not always operate smoothly, Chief Counsel's Office as a whole has provided assistance to LITCs to enable low-income taxpayers to receive appropriate representation. Additionally, Chief Counsel's Office regularly provides speakers for formal training sessions and demonstrates a willingness to assist in informal training situations. The Commissioner's office has consciously reached out to the LITC community. Commissioner Shulman attended two LITC conferences during his tenure, during which he both spoke

to the community and listened to it. In March and May, 2012, Deputy Commissioner Steve Miller brought representatives from the LITC community to IRS headquarters to meet with him and his staff to assist in developing more workable forms and guidance in innocent spouse situations.<sup>233</sup>

The NTA has embraced LITCs as helpful partners in finding the right answer to the issues raised in the cases of the low-income taxpayers they represent. The NTA's office actively listens to LITCs to find ways to improve the system of tax administration. Part of its listening stems from the role of the NTA as a systemic observer with responsibility to report proposed systemic changes to Congress in the annual report each year, but the role of listening and acting upon suggestions from LITCs goes beyond the items gathered for the report to Congress.<sup>234</sup>

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<sup>233</sup> Keith Fogg, Low Income taxpayer Clinicians Meet with service Representatives, ABA Section of Taxation NewsQuarterly, Vol. 31, No. 4, p. 16 (Summer 2012).

<sup>234</sup> The NTA has a system for reporting systemic issues. The role of the NTA in systemic advocacy and the role of LITCs in identifying and providing input necessary to the success of this system is symbiotic. One of the successes of IRC 7526 rests in this relationship. The best clinicians consistently look at their cases with an eye on how the problems in their cases stem from systemic issues rather than something specific to that case. These clinicians then work with the NTA and her systemic advocacy system to fix problems. Fixing problems in this manner has much greater significance than winning a case or convincing a collection officer to take an offer in compromise. When it works correctly, this system operates as a true partnership with direct and significant benefits to the IRS, to low income taxpayers and to the tax system as a whole.

## V. Impact of LITCs on Fairness to Taxpayers

LITCs impact the tax system in several ways that positively affect fairness to low-income taxpayers as well as to the system as a whole. The issue of fairness has several components. First, LITCs affect the perception of fairness that low-income taxpayers feel. In many cases in which clinics step forward to represent low-income taxpayers, the clinic finds the client totally lost and confused in the process. In that state of confusion the client has little or no trust in the IRS and interprets every action by the IRS as an effort to obtain an advantage. This perception exists whether or not the government has taken the correct legal position in the case. LITCs play an important role in explaining the system and the law to their clients in a neutral way. This allows most clients to come out of their experience with the IRS feeling that the system treated them fairly rather than feeling as though the system took advantage of them. In this role, LITCs very much aid the IRS by making it easier to resolve cases, making the resolution more amicable, and promoting the perception of fairness in the tax system.

Second, LITCs provide advice to client to assist them from having future problems with the IRS. Even in those situations in which the LITC cannot achieve 'victory' for the client in the initial matter, the LITC can explain to the client how to avoid

the problem in the future. This future advice function is another part of the perception of fairness because now low-income taxpayers have access to legal assistance to aid in tax planning whereas previously none existed. The educational and advisory function of LITCs as they work with their clients represents a key element to the overall fair treatment and the perception of fair treatment of low-income taxpayers.

Third, LITCs provide individuals with professional legal advocacy, promoting fairness in the application of the tax laws that cannot exist in an adversarial system without that representation. While the IRS and Tax Court judges seek to enforce the tax laws in a fair and legally correct manner, our adversarial system of justice fails regularly when used by an unrepresented party. When one party to that system constantly appears unrepresented, the system can fail. The representational work of assisting specific low-income taxpayers also has a beneficial impact on the system. IRS employees receive education on issues that they might not have previously appreciated and the taxpayer receives the benefit of a competent advocate.

Fourth, LITCs advocate for system change in addition to their advocacy for individual clients. By making system suggestions through the NTA, working with the ABA to comment on legislation or proposed regulations, or writing articles that

influence outcomes, LITCs have a voice in the system for issues impacting low-income taxpayers where no voice previously existed.<sup>235</sup>

Making the tax system fairer for low-income taxpayers also benefits the tax system as a whole. If one party in the tax system feels disenfranchised, that party becomes more likely to take steps to evade taxes in some fashion, thereby placing more pressure on other parts of the system. To the extent that the tax system responds better to the needs of low-income taxpayers, their compliance level should increase, making the whole system work more effectively.

## **VI. Challenges**

LITCs have grown tenfold since the creation of the matching grant, yet the population remains underserved.<sup>236</sup> Many clinics fail to obtain a matching grant of a sufficient amount to sustain all of the activities they would like to pursue.<sup>237</sup>

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<sup>235</sup> In addition to these examples that focus on comments, LITCs can also have an impact through litigation. The coordinated litigation on concerning the regulations promulgated under 6015(f) highlighted the problems created by that regulation. Even though the LITCs did not ultimately prevail in the circuit court, their litigation spurred the IRS to withdraw the regulation and reexamine its policy. See Notice 2011-70, July 25, 2011 (IRS withdraws regulation establishing 2 year rule for IRC 6015(f) cases) and Notice 2012-8, January 5, 2012 (IRS proposes new standards for innocent spouse equitable cases.)

<sup>236</sup> Based on the existence of 16 LITCs in 1998, as discussed in Nina Olson's article *supra* at [ ] and the number of clinics existing in 2011, approximately 160 per the list of IRC 7526 grant recipients.

<sup>237</sup> Following the list of grant recipients from year to year allows one to trace the ebb and flow of new clinics and those that no longer

LITCs also vary significantly in the experience level of the attorneys and other workers who manage them. Some clinics are staffed by attorneys with decades of tax experience who know the system well and can provide relatively sophisticated guidance to their clients, while other clinics are staffed by attorneys who are relatively new to federal taxes and who have little or no immediate support to which they can turn for guidance.

The lack of experience of many of the LITC clinicians and the absence of other attorneys knowledgeable about tax issues in their immediate office able to serve as mentors leaves many LITC clinicians at a disadvantage in gaining the experience necessary to best represent their clients. The Senate sought to address this shortcoming in its version of 7526 in which it allowed the use of grant funds to establish a technical support center.<sup>238</sup> Nina Olson and Janet Spragens made an initial attempt to fill this gap with annual training programs at American University

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exist. Discussions with clinics that cease to exist about the reason for dissolution almost always revolve around lack of funds.

It is worth noting that LSC funds do not require a match. The grant from Congress to those programs comes without string. Cite statute. Because of reductions in LSC funding over the years, those programs have sought outside funds which, in effect, may equal or exceed the match required by 7526 in order to maintain staffing levels. Still, the grant itself does not require matching the way 7526 does. The distinction between the two types of funding does not appear to justify the difference in funding prerequisites.

<sup>238</sup> H.R. Rep. No. 105-599, at 303 (1998)(Conf. Rep.).

and the attempt by CTLP to create an assistance center.<sup>239</sup> Since neither a training center nor a resource center exists for tax, providing the necessary resources for new attorneys and ongoing training for experienced attorneys remains a challenge for tax clinics.

Integration of tax clinicians with the tax bar presents challenges. The ABA Tax Section is the principal place for commenting on legislation and guidance regarding federal tax issues. Active participation in the ABA Tax Section often requires an ability to travel to its meetings, yet the travel budgets of most LITC clinicians do not allow it. As mentioned above, the ABA Tax Section started a program in 2011 to provide scholarships to its meetings to allow a limited number of LITC clinicians to attend. This has helped to link the tax clinic community with the people and programs of the established tax bar.<sup>240</sup>

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<sup>239</sup> Nancy S. Abramowitz, "Professor Janet Spragens: In Memory of a Friend, In Celebration of an Idea" 56 *American University Law Review* 1124 (2007)(Discussing Janet Spragens' programs at American University Law School started after the creation of IRC 7526 in an effort to train the newly minted tax lawyers in the legal clinics that were springing up at a rapid pace.); Janet Spragens and Nina Olson, *Tax Clinics: The New Face of Legal Services*, 88 *Tax Notes* 1525 (Sept. 15, 2000)(Discussing the fact that the ABA "has provided seed money for a Low-Income Tax Clinic Resource Center" at the Community Tax Law Project.)

<sup>240</sup> One great example of a chance to make a difference in the policy world occurred in May 2012 when 12 representatives of low-income taxpayers had the opportunity to meet with the Deputy Commissioner, IRS and the NTA to discuss issues impacting low-income taxpayers as the IRS prepared its forms for innocent spouse and return preparer due

The LITC community needs some visionary leaders to keep pushing it forward. Stuart Filler was a visionary leader. He pushed his ideas at every level and gained a foothold for LITCs. As Stuart Filler's leadership in starting tax clinics receded, Janet Spragens and Nina Olson stepped up and took over leadership of this movement. Nina Olson established a new model for tax clinics. Janet Spragens saw the importance of tax clinics in serving the poor in the post-1995 world of welfare to work. Together they joined forces to convince Congress of the need to provide funds to serve the growing number of low-income taxpayers. They nurtured the new clinics arising in the post-1998 era. Unfortunately, Janet passed away and Nina Olson moved on to a role as the NTA which places her in a potentially helping but removed position *vis-à-vis* LITCs. The LITC community needs new leaders of the type it has had in the past to help it move to the next phase of its existence. If the LITC community simply seeks to maintain status quo, it will eventually lose sight of its goal to assist taxpayers in need and focus on its own existence.

Some clinics, particularly the academic clinics, have relatively strong financial support, while other clinics operate on very thin budgets. The grant funds provided by IRC 7526

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diligence. See T. Keith Fogg, *Low Income Taxpayer Clinicians Meet with Service Representatives*, ABA Section of Taxation NewsQuarterly, Vol 31, No.4, p. 16 Summer 2012.

cannot equalize these funding differences and certainly cannot equalize the experience differences between the various clinics. The listserv provides a significant source of community within the LITCs; however, the group needs more cohesion. Some LITCs join together for monthly conferences and use these groupings to provide mentoring and support networks across geographical distances. More of this type of connectivity needs to occur to assist the clinicians in supporting one another and providing backup for each other in times of need. The annual conference of LITCs might be used to build and support these bonds so that the group feels cohesive rather than isolated.

The group needs to set goals so it can achieve those goals. It needs to engage in measuring mechanisms to determine what goals to set and what efforts to make in order to meet the established goals. The Pro Bono and Tax Clinic committee of the ABA Tax Section has set a goal of getting notification to every pro se taxpayer filing a petition in Tax Court that an LITC exists that could provide assistance if the taxpayer qualifies. The committee also set a complementary goal of finding lawyers to attend every Tax Court calendar call. These goals may, however, be quite modest or misguided compared to what should be done for the low-income taxpayer community. Can the community work better and at a national level with the pro bono tax preparation community lead by VITA and AARP to establish a

cleaner handoff of cases when the tax preparers encounter a taxpayer with controversy issues? Can the community work better with the IRS to provide notification to taxpayers under audit or under the threat of collection to get notification to those taxpayers of the existence of a local LITC office? This kind of goal setting and research is also the natural function of an assistance center. Can the community set a goal of creating a viable assistance center to take leadership in identification of taxpayer needs?

Another major challenge is the role of the IRS in administering the grant funds. At present, a disagreement exists between the TIGTA and the NTA. TIGTA wants the NTA, as the person responsible for overseeing the distribution of grant funds and oversight of their proper use, to check the taxpayer files in determining whether grant funds were properly used.<sup>241</sup> The NTA strongly opposes such an intrusion into case files because of the confidentiality issues.<sup>242</sup> The issue has far reaching implications concerning the ability of clinics accepting grant funds to keep their client information confidential and to avoid even the perception of control by the

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<sup>241</sup> See "The Taxpayer Advocate Service Can More Effectively Ensure Low-income Taxpayer Clinics are Appropriately Using Grant Funds" a report of the Treasury Inspector General for Tax Administration dated July 19, 2011, Reference Number: 2011-10-067.

<sup>242</sup> Id. at p. 16 (Nina Olson response, by memo dated June 13, 2011, to TIGTA report)

IRS who is the party opponent in these cases. A parallel, and perhaps more direct, concern exists in LSC area. The General Accountability Office (GAO) has criticized LSC headquarters office for its oversight of the funds it administers.<sup>243</sup> At least in the LSC context, the party reviewing the files is not the party opponent. Still, there exist concerns about confidentiality. To the extent that LITCs exist in over 50% of local legal services offices, the oversight by LSC is another concern for many tax clinicians. The intrusiveness of LSC review derives from Congressional mandate in its creating statutes.<sup>244</sup> The NTA seeks similar Congressional guidance before giving in to the demands of TIGTA to intrude into case file information as part of grant administration.<sup>245</sup>

## **VII. Conclusion**

In the 39 years since Stuart Filler began his experiment at Hofstra, LITCs have grown from one small clinic to a significant player in the tax field. They provide representation each year to thousands of taxpayers and play a role in the shaping of tax

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<sup>243</sup> See GAO-08-37, *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight*, May 22, 2008.

<sup>244</sup> Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (1974)

<sup>245</sup> See Nina Olson's memorandum in response dated June 13, 2011 in "The Taxpayer Advocate Service Can More Effectively Ensure Low-income Taxpayer Clinics are Appropriately Using Grant Funds" a report of the Treasury Inspector General for Tax Administration dated July 19, 2011, Reference Number: 2011-10-067

law through their systemic advocacy. It would be difficult today for many to imagine a Tax Court calendar in which none of the low-income taxpayers received representation; however, such a scene is still possible in a few areas of the country. LITCs need to look to best practices among themselves to improve individual clinic performance. They need to find better ways to share knowledge and resources in order to improve overall performance. Finally, they need to continue to effectively represent their clients on both individual and systemic issues in order to insure that the tax system, which has embraced low-income taxpayers for purposes of delivering welfare benefits, continues to operate in a manner which is fair to all. Leaders such as Stuart Filler, Janet Spragens, and Nina Olson have moved the representation of low-income taxpayers from something that did not exist to a system where many receive significant services. Now clinics need to find ways to consolidate their gains and expand to assist individuals currently lacking representation as well as to increase their presence in the tax system on a policy making level.

## Appendix I

This Appendix includes responses to a survey sent to all LITC's in the United States. Although responses were requested of all clinics, only 24% of all clinics gave a response. Below is a compilation of the responses received in alphabetical order.

### **Advocates for Basic Legal Equality, Inc. (ABLE)**

- Founded in 1970, yet it did not receive its first LITC grant until 2003.
- Address: 525 Jefferson Avenue, Suite 300, Toledo, OH 43604 (until 2009, located at 520 Madison Avenue, Suite 740, Toledo, OH 43604)
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - In 2003, ABLE received funding for both a controversy clinic and an ESL clinic. Dating back to the 1980's ABLE had done tax work for migrant farmworkers and immigrant workers, addressing worker classification and scrambled income issues. The ESL clinic has operated continuously through the ABLE Migrant Farmworker and Immigration project since 2003. Its coverage, like that of the ABLE Farmworker program, always has been statewide.
  - The controversy clinic initially began with a focus only on the Toledo area. However, beginning in 2004, ABLE merged with other legal services programs to cover 30 and then 32 counties throughout Northwest and West Central Ohio. The LITC expanded to follow suit. The LITC operated by the Legal Aid Society of Dayton ceased operations in 2004, as that agency was absorbed by ABLE and Legal Aid of Western Ohio (LAWO). LAWO receives funding from the Legal Service Corporation (LSC); ABLE does not.
  - The controversy grant has shifted back and forth between ABLE and its sister agency, Legal Aid of Western Ohio (LAWO), since 2008, with Dianne Mantel and then Mary Ellen Heben serving as clinic directors for LAWO. In 2011, ABLE was funded only as an ESL clinic. However, because LAWO cannot represent undocumented taxpayers, both agencies now receive funding for controversy clinics.
- Why it started?
  - The clinic started out of a desire to “follow the money” in government benefits programs. In the aftermath of welfare reform, it became clear that the most beneficial cash assistance program for our clients was the Earned Income Tax Credit. This, combined with the foresight and urging of LITC pioneer Susan Morgenstern in Cleveland, encouraged ABLE Development Director Bev Nathan and Senior Attorney David Koeninger to pursue a grant for the first ABLE LITC.

- Who has worked for the LITC over its life?
  - David Koeninger has been the project director for the ABLE LITC every year since 2003. Arturo Ortiz, a paralegal in the ABLE Migrant Farmworker and Immigration project, has coordinated the ESL outreach in each of those years as well. As noted above, some of the controversy work has been delegated to and then spun off to LAWO and Project Directors Dianne Mantel and Mary Ellen Heben, with paralegal Maria Zapiecki providing significant assistance and support.
- Has IRS funding had an impact on the existence or program reach?
  - The ABLE LITC would not have existed without IRS funding. That being said, they always have struggled with the matching funds requirements, particularly before LSC funds could be used as match.

### **Albany Law Clinic and Justice Center**

- Founded in January 2001
- Address: 80 New Scotland Avenue, Albany, NY 12208
- Why it started?
  - Albany Law School has a long history of providing access to justice. At the time of the initial grant application in 2000, Albany Law School's Law Clinic and Justice Center had almost twenty years of experience in providing direct legal representation to low income clients through five specialty clinics. Prior to the initial grant application, Albany Law students had also assisted over 300 individuals in preparing their income tax returns through the VITA program. The addition of the LITC to Albany Law's clinical program was a natural fit given Albany Law's established clinical program, tax curriculum, commitment to pro bono and the unmet legal needs of taxpayers in the Capital District area.
- Who has worked for the LITC over its life?
  - January 2001 – July 2003: Professor Harold Dubroff, Professor of Law/Director/Supervising Attorney
  - July 2003 – 2004: David Pratt, Professor of Law/Director/Supervising Attorney
  - 2004 – 2008: Jeffrey Pearlman, Visiting Clinical Instructor/Supervising Attorney
  - 2004 - 2008: Professor David Pratt, Professor of Law/Consulting Attorney
  - June 2008 – Present: Deborah S. Kearns, Assistant Clinical Professor of Law/Supervising Attorney
- Are there any interesting stories about this LITC?
  - Albany Law's LITC held a national conference entitled "Taxpayer Advocacy: Addressing Systematic Tensions during Tight Budget Times"

on October 8, 2010 at Albany Law School. In collaboration with the Government Law Center and Professor Danshera Cords of Albany Law, we attracted government officials on the state and federal level, as well as practitioners and academics, to discuss the tensions between revenue collection and taxpayer rights. Nina Olson, National Taxpayer Advocate, gave the keynote address. The conference was podcast with national participation and was reported in BNA. Specific topics addressed at the conference included what it takes to start a successful taxpayer advocate office as well to maintain an established office, the struggles associated with being a state tax commissioner and an advocate, and the tensions that accompany the creation of a taxpayer rights advocate office.

- Has IRS funding had an impact on the existence or program reach?
  - Albany Law's LITC has received funding from the IRS since January 2001. Historically, the LITC was grant dependent and the existence of the clinic depended on IRS funding. In the eleven years that the LITC has been in existence, it has served approximately 500 taxpayers as in-house clients and has referred and provided technical assistance to hundreds more. The LITC has educated more than 180 students. The education provided in the LITC goes beyond the substantive law and the skills training. It has exposed now practicing lawyers and future leaders to the issues facing low-income individuals, which we hope will have a systemic impact beyond the individual clients served while in the LITC.
  - It should be noted that beginning January 2013, the LITC will operate without accepting funds from the IRS. It is expected that Albany Law will continue to provide representation to low income taxpayers and remain active in the national LITC community
- Beyond providing funding, has the IRS assisted in promoting the services offered by your clinic?
  - Yes. The local Taxpayer Advocate Service has assisted in promoting the services of Albany Law's LITC. We receive a significant amount of our referrals from TAS and work closely with them to resolve taxpayer issues.
- What factors do you think have helped your clinic succeed?
  - The National Taxpayer Advocate's support and the support of the national LITC community have been integral to the success of Albany Law's LITC. Nina Olson has been an inspiration to all of us who have worked with her over the past eleven years. She came to Albany Law to hold a Town Hall meeting on April 28, 2009 and also participated in the Taxpayer Advocacy Conference hosted by Albany Law in October 2008. Her presence at Albany Law energized the local and national communities and inspired all of those that have met her. The LITC program office has

also been a source of constant support to Albany Law's LITC through the information provided through the tool kit and at the annual conference. Of course, we would be remiss if we did not mention the specific efforts of LITC liaison, Sandra Ramirez, who is always quick to respond and a pleasure to work with.

- The national LITC community has been another source of invaluable support. The LITC list-serve and the opportunity to get involved in the ABA Tax LITP Committee has provided a network of like-minded professionals to support the work in Albany Law's LITC.
- We have also been involved with the statewide LITC community and attend quarterly meetings at Harlem Legal Aid.
- Do you feel that the clinic has succeeded in promoting practical legal education? How so?
  - Yes, for sure. Albany Law School's clinical legal education program provides students the opportunity to develop and refine their problem-solving expertise through the application of legal doctrine and theory to the dynamics of individual client representation. The LITC curriculum is designed to provide students with this opportunity through the representation of taxpayers who have disputes with the IRS in both administrative and judicial proceedings. Students gain relevant experience in tax practice and procedure including jurisdiction, statutes of limitations involved in personal income tax controversies, and alternative assessment strategies. A major focus of the LITC is to provide students with the skills necessary to exercise professional judgment in the representation of clients and in interactions with the legal system and colleagues. Throughout the course of the semester, students are expected to critically analyze the law, recognize and deal with ambiguity in the law, apply relevant legal theory and doctrine in client interviewing and counseling, communicate effectively with all parties in orally and in writing, and exercise professional judgment in all stages of representation. The supervised practice of law affords the LITC students the unique opportunity to develop overall competencies through continuous assessment, feedback and self-reflection.

### **Bentley Low Income Taxpayer Clinic**

- Founded in 2000
- Address: 175 Forest Street, Waltham, MA 02452
- Why it started?
  - The clinic started when grants became available. Bentley University was one of the leading service-learning programs and this fit into the aspects

and ideals of the program. The service-learning department reached out to Mark Nixon, because he was a tax professor for the law school, and they jointly developed a proposal and then received a grant.

- Who has worked for the LITC over its life?
  - Mark Nixon has been the only professor consistently working for the clinic throughout the entire program, from inception to the present.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic would not exist without IRS funding. The clinic has no funding from any individual or corporations; it is all from the IRS.
- How has the clinic promoted practical legal education?
  - Students in the clinic are enrolled in a course called “Practicum in LITC.” It is taught by two professors, and enrolls between six and seven students per semester, including the summer. Students receive one-on-one attention, and the class has the lowest student-to-professor ratio in the school. The students work with real money, real people, and real cases.

#### **California Polytechnic Institute Low Income Taxpayer Clinic**

- Founded in 2010
- Address: P.O. Box 14508, San Luis Obispo, CA 93406
- Why it started?
  - We are one of the few academic LITC's located within a business school. Our students are primarily senior Accounting students and graduate students in Tax. We were founded in 2010 by former IRS Attorney Eddy Quijano to fill a need in our area.
- Who has worked for the LITC over its life?
  - Eddy Quijano was the first Executive Director followed by Rusty Roy. Lisa Sperow is the current Executive Director. Cal Poly also has a separate VITA program which we can refer our clients to if they need assistance in preparing tax returns.
- Are there any interesting stories about the clinic?
  - Success stories include: A Spanish-speaking woman who lost her home to foreclosure and was facing a \$25,000 tax liability. After representing her, she received a \$700 refund. We also had another client who was the victim of predatory lending. He was earning \$10,000/year and went from a \$27,000 tax liability to a \$750 refund.
- Has IRS funding had an impact on the existence or program reach?
  - The IRS grant is key to our existence. Without it, I do not believe we would have adequate support from the University to exist.

#### **Cardozo School of Law Tax Clinic**

- Founded in mid-1980's
- Address: 55 Fifth Avenue, New York, New York 10003
- Why it started?
  - The clinic was, for over a decade, the first and only tax clinic in New York City. James Lewis founded the clinic by first doing pro bono work by showing up at Tax Court calendar calls and taking cases for students. Mr. Lewis headed the clinic for over ten years. Eventually, the clinic expanded to do work that was not in court, including representing taxpayers at the IRS administrative level and before the New York State taxing authorities.
- Who has worked for the LITC over its life?
  - James Lewis was director, until he passed away in the mid-1990's. One of his students, Hedy Forspan, took over as director. Ms. Forspan passed away, unexpectedly, in 2001. Thereafter, for a few semesters, various professors and adjuncts sustained the clinic. In January 2003, Carlton M. Smith took over as the third major director of the clinic.
- Are there any interesting stories about the clinic?
  - In 1989, the clinic litigated *Patterson v. Commissioner*, T.C. Memo. 1989-193. This was a case about a man who was married and, because of his religious beliefs, was not allowed to divorce. He argued that the marriage penalty he had to pay by filing married versus filing separately was unconstitutional under the Free Exercise Clause of the First Amendment. He lost his case in Tax Court and the Second Circuit. He petitioned for certiorari. Although the petition was denied, this most likely was the first tax clinic to ever file a paper in the Supreme Court of the United States.
  - Mr. Lewis took an innocent spouse case under 6013(e) (the 1984 version) in *Hayman v. Commissioner*, 992 F.2d 1256 (2d Cir. 1993). The case involved deficiencies for tax shelter deductions. While Mr. Lewis lost the case in the Tax Court and Second Circuit, he did at least get the Second Circuit to adopt the Ninth Circuit's more taxpayer-friendly price test for deduction cases – i.e., whether "a reasonably prudent taxpayer in her position" would not have had reason to question the legitimacy of the deduction.
- Has IRS funding had an impact on the existence or program reach?
  - This clinic had been operating for over a decade before LITC funding became available. The school decided that applying for federal funding and subjecting the clinic to federal rules regarding the clients they could represent was not in the communities' best interest.

### **Central Pennsylvania Federal Tax Clinic**

- Founded January 4, 2010

- Address: 601 South Queen Street, P.O. Box 599, Lancaster, PA 17608
- Why it started?
  - Started because of an interest in helping low-income taxpayers. Central Pennsylvania was recognized by the LITC program as an area that was underserved in this regard, and the clinic started as a response to this problem.
- Were there obstacles to overcome in starting the clinic?
  - The biggest obstacle was trying to find an organization willing to add the tax clinic as a new program and to be the IRS-TAS grant applicant. The clinic was turned down by Dickinson School of Law, Widener School of Law, Franklin & Marshall College, PathStone, and MidPenn Legal Services. Ultimately, the Community Action Program of Lancaster County agreed to provide partial support for a period of two years. Now, in year three, for better or worse, the tax clinic is completely independent.
- Who has worked for the LITC over its life?
  - One attorney (Douglas A. Smith), several law student volunteers, and several volunteer attorneys serving on the pro bono panel.
- Are there any interesting stories about the clinic?
  - There are a number of interesting client-specific stories, but two common themes. First is the pattern of clients appearing at the clinic door, clutching a levy notice and anxiously explaining that their wages are being garnished and they are about to be evicted from their apartment or their car is about to be repossessed. To date, evictions and repossessions have been avoided. The second is the manner in which clients aim to show their appreciation for the assistance provided. One client made a donation in the name of the tax clinic to the local homeless shelter. Another client, who, after his tax matter was resolved, became a car salesman, offered his employee discount on any new car purchase. This offer was declined, but appreciated. Another client, after the matter of his identity theft was resolved, used his tax refund to travel to Puerto Rico to see his ailing mother and, upon his return, showed his appreciation by offering a bottle of rum. This offer was also declined, but appreciated.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding is essential to the operation and survival of this tax clinic. It constitutes 97 percent of the clinic's funding. Without this funding, the clinic would cease operations immediately.

#### **Central Vermont Low-Income Tax Clinic**

- Founded in 2003
- Address: 195 US Route 302-Berlin, Barre, Vermont 05641

- Why it started?
  - The clinic was started to enhance their existing tax program of VITA. Taxpayers were coming in for help with prior year tax returns, letters from the IRS, and other related matters. Subsequently, the LITC was formed.
- Were there obstacles to overcome in starting the clinic?
  - An obstacle of the clinic was the formation of a pro bono panel.
- Who has worked for the LITC over its life?
  - The original director of the clinic, David Lester, has since retired. The clinic is currently run by Deidra J. Thurston, an original counselor and Carol Flint, the current director.
- Are there any interesting stories about the clinic?
  - An interesting story from the clinic is of a taxpayer who was operating a daycare out of her home. She received subsidy dollars for the food program associated with the daycare. An issue arose with a tax return that she had timely filed. The taxpayer had tried unsuccessfully to resolve the issue with the IRS. She was referred to Deidra J. Thurston. At that time, the IRS had levied her subsidy dollars to pay the alleged tax debt. This left the taxpayer with no money to buy food. The stress and frustration this caused the taxpayer was immeasurable. Ms. Thurston was able to prove to the IRS that the taxpayer did not owe the tax debt and I was able to get the levy released and the dollars refunded to her. This was one of the original cases Ms. Thurston had upon joining the clinic. The reward of satisfaction in knowing that she had helped a person in need, and that she made a difference in a fellow human beings life, left Ms. Thurston with a thirst for helping others in tax controversy.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic receives a grant from the IRS. The grant has absolutely had an impact on the existence and reach of the program. When dollars are limited, it restricts the program's time and advancement. It still amazes Ms. Thurston, after being at the clinic for eight and a half years, that people are still learning that there is help out there with the "system." They do not have to navigate solo. Ms. Thurston is of the opinion that people are more likely to respond, and to work on their tax issues if there is "a shoulder to lean on/a comrade to work with." It is frightening to taxpayers to address the IRS. Ms. Thurston teaches her clients that the IRS is workable.

### **Chapman Tax Law Clinic**

- Founded in 1997
- Address: 1 University Drive, Orange, CA 92866

- The clinic moved to Chapman in 1997 from Western State where it had been operating since 1987.
- Why it started?
  - The clinic started in the late 1980's when there was a movement in legal education to give students real practical experience while still in law school. Firms had been complaining that students graduated without practical skills.
- Who has worked for the LITC over its life?
  - George Willis and Frank Doti have worked at the clinic over its life.
- Are there any interesting stories about the clinic?
  - An interesting fact about the clinic is that before the IRS had grants, this was the only Tax Court clinic west of Denver.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic receives grants that have increased their case volume and number of clients they serve. Due to the nature of the LITC population it has also changed the nature of the cases they see.

#### **Chinese Newcomers Service Center (CNSC)**

- Founded in 2005
- Address: 777 Stockton Street, Suite 104, San Francisco, CA 94108
- Why it started?
  - The clinic was started because CNSC had VITA programs for over 32 years, and CNSC became known for its tax service. Clients came back to CNSC for tax service other than tax filing services, even after the tax season. Additionally, new immigrants and limited English-speaking clients were referring their friends and families to CNSC for free tax help.
  - CNSC had over fifty volunteers for tax programs. Some of their volunteers not only wanted to continue to learn more about tax but they want to join the tax profession. This provided an avenue for the clinic to grow.
- Were there obstacles to overcome in starting the clinic?
  - The initial obstacles the clinic encountered were recruiting tax attorneys for the representation cases. Although CNSC did not have many cases that needed representation in Tax Court, the clinic had a difficult time recruiting a tax attorney when the clinic started up the LITC program in 2005. Currently, they will refer their clients who need representation in Tax Court to another LITC in the Bay Area.
- Who has worked for the LITC over its life?
  - Henry Hu (Enroll Agent), Henry Chin (RTRP), and Gilbert Quan, a retired CPA, have volunteered at the clinic since it started in 2005.

- Alex Ng, former program director, responsible for managing the LITC, worked for the clinic from 2005 to 2011.
- Are there any interesting stories about the clinic?
  - During clinic workshops there are always new, Chinese immigrants who ask if they will be put in jail if they have a problem with their taxes. The reason they ask is because this can happen in Mainland China.
  - A housewife attended a series of LITC workshops during her leisure time, and she eventually became an outstanding tax preparer. She now helps Chinese Newcomers VITA program, and has been helping since 2006. In fact, the clinic has successfully recruited about four to five volunteers from the clients of LITC programs.
  - The clinic has helped one client to reduce his tax debt from about \$100,000 to about \$3,000.
  - One of the clinic's volunteers speaks over six Chinese dialects (Cantonese, Mandarin, TaiSha, MinNam, FuJin, XiChua) and she is willing to help out the tax workshop if needed.
- Has IRS funding had an impact on the existence or program reach?
  - Without the support from the IRS federal funding, the clinic could not operate. Similar to many non-profit organizations in the United States, the clinic is suffering a deep funding cut from the city to the federal level. However, thankful for its funding, the clinic is supported financially and is able to continue to launch ESL educational activities, as well as recruiting a pro-bono panel for representing clients. In addition, as the clinic is funded under the dollar-to-dollar matching systems, some of the donors, especially the board of directors, are motivated to donate to CNSC so that the clinic can be expanded gradually.
  - In fact, even though CNSC has a group of volunteers to help out the LITC program, the clinic has many expenses that need support from the IRS funding such as office supplies, outreach expenses, refreshments for workshops, and staff for administrative assistance.

### **Community Action Project, Tulsa County**

- Founded in October 2007
- Address: 4606 South Garnett, Suite 100, Tulsa, OK 74146
- Why it started?
  - Community Action Project of Tulsa County (CAP) is a comprehensive anti-poverty agency that has provided supportive services to low-income families in the Tulsa area for more than 30 years. Its free tax preparation service is now one of the largest in the country.
  - CAP began its current tax program in 1995 after realizing that the EITC could provide the largest single sum of money that many low-income

families would receive each year, and that the money provided a golden opportunity for low-income families to purchase a home. Many of CAP's clients found the rules governing income taxes and tax credits too complex. In response, CAP organized volunteers, trained through the IRS Volunteers Income Tax Assistance (VITA) program, to assist clients with filing tax returns.

- Who has worked for the LITC over its life?
  - Pam Smith from CAP's human resources department initially spent time coordinating the VITA volunteers, before moving into a full-time position as EITC and volunteer manager in 2001.
  - Dick Jackson, a retired aerospace manufacturing employee with no accounting background, was a founding volunteer at the VITA sites, continually providing suggestions for improvement to the program over the years. Mr. Jackson volunteers more than 400 hours each season.
  - Ed Weikel came to CAP through a church-centered volunteer recruitment effort shortly before he was due for retirement. He enjoyed the program so much that he took his full 4-week vacation to work at the tax site every day in February. Now retired, he comes back every year and works tirelessly.
- Are there any interesting stories about the clinic?
  - In the clinic's first year, volunteers helped 1,200 taxpayers, mostly existing CAP clients, file their tax returns at one tax site. The next year, CAP partnered with the Bank of Oklahoma to open a second site at the bank's location on the north side, where many low-income families reside. This partnership provided stability and the number of clients served doubled in size. With more partners in the third year, the program mushroomed, even with little marketing.
  - CAP became the Tulsa area's designated Head Start grantee in 1998 and, as a result, began to orient its services around young children and families. This resulted in changes in the tax program, giving priority to families who qualify for and can claim the EITC and Child Tax Credit over single filers. For some years, CAP's VITA program had used an appointment service to schedule taxpayers. CAP implemented a change in their voice recording, asking taxpayers who call for an appointment if they have dependents. Those who do are scheduled for appointments with tax preparers early in the season, while single taxpayers without dependents are scheduled for March. As a result, the program has increased the number of EITC families served and decreased the number of single filers. Since making this strategic change, the first week of March (when the single filers begin) is now the third-busiest week of the filing season.

- CAP also supports a growing multi-cultural community with a large percentage of Spanish speaking clients. CAP is a certified IRS acceptance agent and helps clients with controversy cases, along with filing Individual Taxpayer Identification Numbers (ITINs) for over 1,400 clients and educating them about taxpayer rights and responsibilities.
- CAP was one of the first programs to work with Doorway to Dreams (D2D Fund) to experiment with allowing taxpayers to split their refund between two or more bank accounts. The pilot demonstrated that clients would split their refunds, given the opportunity and asked the right questions. A follow-up study showed that clients go to the tax site with few ideas about how to use their refunds other than paying bills, and therefore are open to savings opportunities.
- When refund splitting was made universally available in 2007, 153 of the nationwide total of 1,400 taxpayers who split their refunds were clients of CAP. Smith attributes their success to knowing how to ask the client if they want to split their refund—and their tax preparers being used to the option.
- In 2007, CAP participated in a pilot program to see if taxpayers would purchase savings bonds with part of their refunds. It offered savings bonds at a site where clients have a wider range of income assets. With D2D offering to contribute \$10 if taxpayers paid \$40 in this pilot project, 134 clients bought 216 savings bonds, many for children or grandchildren. Of those participants, CAP found that clients had an average refund of \$3,000 and invested an average of \$121 in bonds. The minimum priced bond was \$50 and the maximum they could purchase was \$250, with no limit on the number of bonds per client.
- Many low-income people do not have bank accounts but rely on fee-based neighborhood check cashers for financial transactions. CAP's partner, the Bank of Oklahoma, allows CAP clients to cash their tax refund checks for only \$2, even if they have not opened an account at the bank, thereby saving them untold dollars in check cashing fees over the years.
- Through the Oklahoma Higher Learning Application Process (OHLAP), the state of Oklahoma offers free college tuition at a state-operated college or university for children from families earning \$50,000 or less. Families have to sign up while children are in 8<sup>th</sup>, 9<sup>th</sup>, or 10<sup>th</sup> grades, and students have to achieve a grade point average of 2.5 throughout high school, stay out of trouble, and have good attendance. While many agencies recruit families for the OHLAP program from public schools, CAP helped 275 tax program families take this step to secure their children's future.

- CAP has developed an innovative approach to collecting intake data at their tax sites. Most programs use the IRS-designed intake form to collect information from taxpayers about their income, filing status, and special circumstances. CAP has developed web-based intake software that uses an interview and a logic tree to not only collect data but also to determine filing status. Next year, the application will also determine dependency status. Filing status and dependency status are key factors in determining a taxpayer's correct tax return and refund, and taxpayers often do not understand the rules regulating them. Initially, Smith had intake staff interview the clients and complete the form, but she shifted that task to the tax preparer in the second year after finding that the preparer is in the best position to ensure that client answers are correct. The preparer then helps process an accurate return and can provide counseling on how clients can improve their refunds for next year.
- An additional benefit, the computerized intake sheet, provides constant daily totals of returns prepared. With real-time data on the number of clients at each site, Smith can adjust staffing as needed. "If only we could merge the intake data with tax data from TaxWise, we would have a perfect product," she says.
- According to Smith, the highlight of last season was the season itself! CAP went into it with several setbacks. They lost 1 tax site from a partner that needed to lease out the space used for the site to a business. They had to find a new provider for their appointment service, and they lost some funding. During a training week in January, the entire city was shut down due to ice. Still, even with two fewer sites, the program actually prepared more tax returns with less capacity.
- CAP's program is one of the largest of its kind in the country, and the model has been replicated in more than 75 cities throughout the U.S.
- During the January-April 2007 tax filing season, CAP served 14,672 taxpayers and returned more than \$23 million in refunds to working families—among them were 5,600 clients who received federal EITC refunds of \$9 million and almost another half million dollars in state EITC. Using the Oklahoma economic multiplier of just over 2, the estimated overall economic impact in Tulsa exceeded \$47 million. The average client household annual income was \$17,614 and the average refund per client was \$1,415, which represented approximately 10% of the client's household income.
- According to a study by the Brookings Institution, CAP is serving over 13.5% of low-income EITC-eligible taxpayers in the city of Tulsa and

almost 10% in the county. Nationally, most programs serve 5-10% of the low-income market, so CAP is exceptional.

- CAP's EITC program has gained national recognition. The IRS has recognized CAP's efforts as among the most innovative and successful in the country and is helping other communities replicate Tulsa's EITC Program. CAP's program was featured in an issue of the Annie E. Casey Foundation magazine, "AdvoCasey," as a model program benefiting kids and families. The Annie E. Casey Foundation also funded the creation of a video highlighting CAP's EITC program.
- Volunteers are the key to the program's success. A nucleus of 80 volunteers has worked with the program for 5-7 years—some of them since 1995. While she makes recruitment presentations each year at various organizations, Smith says volunteers are often the best recruiters, bringing in friends and co-workers. As a result, she can usually count on 150 trained volunteers to staff her tax sites each year.
- With so many returning volunteers, Smith offers them their own tier of training, beginning in November. Using last season's TaxWise, the returning volunteers work with a set of IRS-approved taxpayer problems specific to low-income families. Most volunteers are grateful for this gradual re-introduction to the tax law issues and software.
- The quality of tax preparation at VITA sites has been an issue since the Treasury Inspector General for Taxpayer Administration (TIGTA) reported in 2005 that only 33% of VITA tax returns were completed accurately. After failing a TIGTA audit in the past, Smith placed more emphasis on quality. When CAP's VITA site was audited 3 times by TIGTA during the 2007 filing season, they passed each time. Smith attributes part of the improvement to the computerized intake system; no longer do they accept the client's statement of their filing status, but they determine it through the intake interview.

#### **Community Legal Aid Service's Low Income Taxpayer Clinic**

- Founded in 2000
- Address: 50 South Main Street, Suite 800, Akron, OH 44308
- Has IRS funding had an impact on the existence or program reach?
  - If there were no funding for the LITC, they would not be operating. The clinic used to handle a more diverse caseload but due to lack of funding, they have cut back on the types of cases they are able to handle. The funding has prevented the clinic from being shut down.

#### **Community Legal Services of Mid-Florida, Inc. LITC**

- Founded between 2000 and 2001

- Address: 122 East Colonial Drive, Suite 200, Orlando, FL 32801
- Why it started?
  - The program started offering tax services due to the need to educate others on how to get money into the pockets of the struggling low-income.
- Who has worked for the LITC over its life?
  - The clinic has had five directors over its life. There has been one outreach advocate throughout the entire existence of the clinic, Sandra Piquet. She is in charge of the ESL portion of the grant.
- Are there any interesting stories about the clinic?
  - Sandra Piquet has built a name for herself in the local community. She's known as the "motorcycle tax lady," because she travels to her outreach events, very often, by motorcycle. She has been with the LITC the longest and people recognize her throughout the twelve county service area.
- Has IRS funding had an impact on the existence or program reach?
  - The funding from the IRS has allowed the clinic to maintain the program. It has been especially critical in the last few years with all of the federal budget cuts that have been affecting their program.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The IRS has provided assistance in promoting the clinic by having posters and brochures in the lobby of the local taxpayer assistance centers.
  - The clinic is also close with their LTA. Annually they visit the local congressional offices with their LTA to inform them of the services they provide and how constituents can reach them for assistance.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - The clinic has many different substantive law units (family, public benefits, housing, etc.). If the tax service learns that their client has another problem, they are referred to another unit. For instance, if a taxpayer comes to them with a levy, but they see they also have a child support garnishment, they would refer them to the family law unit. Each unit has different qualifications, and because the tax unit has higher income limits than many of their other units, sometimes they do not qualify for the other services. In that case, they make referrals elsewhere.

### **Community Tax Aid of NYC**

- Founded in 1969
- Address: P.O. Box 1040, New York, NY 10025
- Why it started?
  - The oldest free tax preparation organization in the country. It was organized in 1969 when two young attorneys, Jeffrey Gold and Sheldon

Barasch, saw that the 1969 Tax Act was going to make the law so complicated that lower-income taxpayers would have a hard time filling out their forms correctly. So they organized CTA and began operating in 1970. Ever since, CTA has operated out of several sites throughout four of the five boroughs in New York City. It is an independent, self-governing, all-volunteer organization. The volunteers are frequently accounting and tax students. They have operated out of community centers, churches, and offices of state assemblymen or city council members. This past tax season, CTA prepared returns for more than 1,200 taxpayers.

- Are there any interesting stories about the clinic?
  - In 1975, the Mayor of New York presented a certificate recognizing CTA as one of twelve outstanding volunteer organizations in New York City. In 1987, and again in 1994, the New York State Society of CPA's presented an award to CTA in recognition of community service.
  - Beginning in 2002, the clinic started a special program to assist members of Fountain House, an organization helping those diagnosed as mentally ill; this program takes place every Sunday during tax season.
  - During the 2010 season, they operated out of ten locations: two in Brooklyn, two in the Bronx, two in Queens, and four (including Fountain House) in Manhattan.
- Who has worked for the LITC over its life?
  - In the early 1980s, Jeff Gold moved to Washington DC and started a similar organization there, which is now operating as a VITA site. Sheldon Barasch is still active in CTA, and manages frequently at one or more of their sites. Another former volunteer moved to Boston and started a similar organization in that city. Other people who have been active for many years include Constance Clausen and James K. Schiller (both since the 1970s), and Emil Gomez, the current Chairman, and Judith Russell, currently president.
- Has IRS funding had an impact on the existence or program reach?
  - They do not receive funding from the IRS, but they do receive contributions from some private organizations.

### **The Community Tax Law Project**

- Founded in December 1992
- Address: 5206 Markel Road, Suite 100-B, Richmond, VA 23230
- Who has worked for the LITC over its life?
  - Nina Olson, currently IRS National Taxpayer Advocate
  - Anita Soucy, formerly Associate Tax Legislative Counsel in the Office of Tax Policy, Treasury Dept.; and currently Principal with Deloitte

- Are there any interesting stories about the clinic?
  - The clinic received a \$1,000,000, anonymous donation in 2006-2007, with the stipulation that half the funds be allocated to other low-income taxpayer clinics. The clinic designed a grant program for this purpose and in 2007-2008 awarded \$500,000 to 20 exceptional low-income taxpayer clinics nationwide.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding has had a tremendous impact on the success of the clinic's programs. The clinic is an independent nonprofit with a primary mission of providing controversy assistance and education to low-income taxpayers. It has been and continues to be difficult to convey this singular mission to foundations and individual donors. For this reason, IRS funding is integral to carrying out CTLP's programs.

### **Conexion Americas LITC Clinic**

- Founded in 2006
- Address: 800 18<sup>th</sup> Avenue South, Suite A, Nashville, TN 37203
- Why it started?
  - There is a lot of information needed among the Hispanic population due to the language barrier and difficulty getting access to resources. The clinic is an ESL clinic only.
- Were there obstacles to overcome in starting the clinic?
  - An obstacle of the clinic is that some of the immigrants still have issues with their immigration. Therefore, it is hard to build trust in the community. Once trust is built, it is easier to get their clients to participate in their workshops without fear regarding contact with other governmental agencies.
- Who has worked for the LITC over its life?
  - Many current members of the clinic have been part of the program over the last six years.
- Are there any interesting stories about the clinic?
  - The clinic is proud that they are the only organization conducting tax workshops in Spanish to communities of Mid-Tennessee. After six years of service, they are recognized as a great resource.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic receives funding from the IRS that is crucial for the permanency of their program. Those funds are matched with other resources of funding in their organization.

### **ECDC Enterprise Development Group**

- Founded in January 2010

- Address: 901 South Highland Street, Arlington, VA 22204
- Why it started?
  - Started to help many of their immigrants, refugees, and asylee clients who came to have their taxes done and had issues with the IRS.
- Were there obstacles to overcome in starting the clinic?
  - The main obstacles that they have encountered are the need for more lawyers, accountants, or enrolled agents to work for the program.
- Who has worked for the LITC over its life?
  - Roman Corpuz has presided over the life cycle of the program. He started the program even before the organization received any grants. He is now the clinic director. Shilpa Patel is currently the qualified tax expert.
  - The IRS helps promote the clinic. Most clients who call the clinic find their names in the list of LITC's on the IRS's website, which is an added benefit if you are a grant recipient.

### **Federal Tax Clinic, University of Washington School of Law**

- Founded in 2000
- Address: William H. Gates Hall, Box 353020, Seattle, WA 98195
- Why it started?
  - The clinic was started to provide experiential learning to tax students at the University of Washington. The University of Washington has a long history of clinical education (more than thirty years) and it has an LL.M. program in Taxation. The clinic was started to merge the law school's focus on public service and experiential learning with its demonstrated strength in tax law. The availability of grant funds was also a factor in the clinic's birth.
- Who has worked for the LITC over its life?
  - Scott Schumacher was the founding director of the clinic, and he has remained the director of the clinic. The clinic is staffed by twelve students; six JD students and six LL.M. students. In June of 2009, the clinic hired John Clynch as staff attorney.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic would probably not exist without grant funding. Nina Olson and others have been wise in having the funding be continual, rather than just seed money. Maintaining a cadre of experienced clinic directors is key to the success of the LITC program

### **Gonzaga Tax Law Clinic**

- Founded in 2001
- Address: PO Box 3528, 721 North Cincinnati Street, Spokane, WA 99220
- Why it started?
  - The legal clinic started in 1975; they already had a very well-developed clinical program before the grants became available from the IRS for the tax clinic.

- Who has worked for the LITC over its life?
  - The first director was Charles Hammer. Jennifer A. Gellner has been the director since 2008.
- Has IRS funding had an impact on the existence or program reach?
  - The tax clinic would not exist without IRS funding. The clinic is only allowed matching items from the university – if the grant funds go away, the tax clinic will go away.
- Are there any interesting stories about the clinic?
  - Their first trip to help at the Tax Court Calendar in Anchorage, Alaska at the request of the Seattle IRS Office of Counsel resulted in a Tax Court win for the clinic: *Ken Ryan, Inc. v. Commissioner*, T.C. Summary Opinion 2010-18.
  - One of their destitute clients had their first offer in compromise for one dollar accepted, which the director paid, and she was so happy that she later paid back her one dollar and donated one dollar for us to help another taxpayer in desperate circumstances.
  - The IRS had taken over \$25,000 in home sale proceeds from an elderly client. Once the clinic was able to obtain a refund of the full amount – because the liability was not correct – the client had lost capacity and did not know they had obtained the refund. The guardian ensured that the refund went toward the client’s care.

**HIV/AIDS Legal Services Alliance, Inc. (HALSA)**

- Founded in 1997
- Address: 3550 Wilshire Boulevard, Suite 750, Los Angeles, CA 90010
- Why it started?
  - The clinic began in February 1997, and at that time, there was only one medicine approved to help control HIV. Therefore, complying with one's tax responsibilities was not a high priority. At that time, HIV/AIDS was not as manageable as it is today.
  - Regarding tax issues, there was a great need to address non-compliance issues as well as balances owed for past filings. After meeting with the APLA legal director, Lawrence C. Goldstein was allowed to start volunteering tax services by assisting clients. In a short time, the word spread, and Mr. Goldstein was operating five days a week. He started working closely with the local IRS office and also developed a working relationship with the Franchise Tax Board of the State of California. The need for this service was unending. Clients would show up with piles of unopened envelopes from both the IRS and FTB.
- Who has worked for the LITC over its life?
  - Lawrence C. Goldstein has operated this clinic since 1997 to the present.

- Are there any interesting stories about the clinic?
  - One interesting case was when the IRS assessed a client several hundred thousand dollars based upon a keypunch error on a 1099. The client had the original 1099, and when the IRS keyed in the amount, the transcript indicated income in the millions of dollars. The client had not filed for seven years, received a 90-day notice that was ignored, and with the assistance of the Taxpayer Advocate Service, this matter was eventually resolved. All returns were filed, and CNC status obtained. Permission was obtained to accept the case since the matter exceeded the \$50,000 LITC grant limit, but it was clear that this was a mistake and not a valid assessment.
  - Another major case involved married taxpayers (both HIV+) with one child (HIV-); they were being denied the EITC. They sent in what they believed were the proper documents for the audit year, and the audit was closed out but not in their favor. After requesting audit reconsideration, and after learning that the IRS expanded the audit to two more years, the clinic prevailed, and the taxpayers received \$14,000 plus interest that allowed them to purchase a car as well as make repairs to the plumbing in their apartment.
- Has IRS funding had an impact on the existence or program reach?
  - After operating for several years, the clinic learned about the LITC grant and applied for it. The clinic was approved for the grant because it would be serving an underserved population. Today the clinic is the only LITC in the metropolitan Los Angeles area. Although its mission is to serve HIV+ persons in LA County, the clinic also receives many telephone calls from non-HIV taxpayers. The clinic assists all callers by granting them telephone consultations. No one is turned away. Without this funding, there would be no clinic in the second largest city in the United States, metropolitan Los Angeles, to serve both HIV and non-HIV taxpayers.

### **IIT Chicago-Kent College of Law Low Income Taxpayer Clinic**

- Founded in 1998
- Address: 565 West Adams Street, Suite 600, Chicago, Illinois 60661
- Why it started?
  - The predecessor clinic, The Tax Dispute Litigation program, was created in 1990, and was initially funded by a three-year grant from the U.S. Department of Education. Under the supervision of an experienced tax controversy attorney, this program utilized student interns to represent taxpayers with disputes pending before the IRS and the U.S. Tax Court.

- The LITC was started because the Department of Education grants were no longer available, and the popularity and effectiveness of the predecessor clinic justified its continued existence.
- Who has worked for the LITC over its life?
  - Professor Gerald Brown was the first clinic supervisor, from 1990 through 1994. He was followed by Professor Nancy Livingston, who supervised the clinic through 1999. Professor Wendy Abbott supervised from 1999 through the summer of 2000. Since that time, Professor Jon Decatorsmith has been the clinic's supervising professor.
- Has IRS funding had an impact on the existence or program reach?
  - The LITC would not exist without federal funding.

### **Indiana Legal Services, Inc.**

- Founded in 2006
- Address: 214 South College Avenue, Bloomington, IN 47404
- Why it started?
  - This LITC is part of a full services LSC-funded legal aid office. The office initially agreed to host a VITA site as part of a community-wide EITC campaign. That is how they learned about the existence of the LITC program. They had never handled any tax controversies, and had no idea about the range of tax problems low-income people might face, but they felt that there might be some clients they could help.
- Were there obstacles to overcome in starting the clinic?
  - An initial obstacle for the clinic was the lack of tax expertise and experience.
- Who has worked for the LITC over its life?
  - Over the years, Jamie Andree has been the director and quality tax expert. Anne Ward has been the QBA. Jeff Gold was the staff attorney until June 2011. Matt Koeberlein has been the staff attorney since June 2011.
- Are there any interesting stories about the clinic?
  - The LITC is statewide and is housed in one branch office of an LSC-funded program that is also statewide. Even though the staff is relatively small, they have been training lawyers in their other branch offices to handle tax cases under the LITC staff's supervision so that they can assist virtually everyone who calls with a tax problem.
- Has IRS funding had an impact on the existence or program reach?
  - Although ILS turns down many prospective clients with other kinds of legal problems (e.g. family, housing, benefits, consumer) because of limited resources, they almost never reject an eligible client with a federal tax problem because of the LITC grant. Tax controversies don't have to

compete with other legal problems for their LSC or other, non-LITC resources.

### **Iowa Legal Aid's Low-Income Taxpayer Clinic**

- Founded in 2000
- Address: 1111 9<sup>th</sup> Street, Suite 230, Des Moines, IA 50314
- Why it started?
  - Iowa Legal Aid started providing information to clients about the EITC in the late 1990's. When Iowa Legal Aid found out about the LITC funding, it seemed an excellent way to expand outreach on this important issue. Initially, in-house staff conducted outreach and education and Iowa Legal Aid utilized its pre-existing Volunteer Lawyer's Project to help serve taxpayers with tax controversies.
  - The clinic serves residents of all ninety-nine counties in Iowa through ten regional offices.
- Who has worked for the LITC over its life?
  - Tamara Borland has worked as the LITC project manager since 2003. Prior to that, she conducted some outreach on the EITC as a family law attorney in the 1990's. She supervised the work of the Cedar Rapids Regional Office's first tax advocate from 2000 to 2002.
- Are there any interesting stories about the clinic?
  - The LITC has worked steadily to demonstrate to staff the importance of assisting low-income persons with tax issues. Iowa Legal Aid has increased the staff's overall confidence and knowledge of basic tax law issues.
  - Iowa Legal Aid's model for service delivery is a little different from many programs in that each of the ten regional offices has a staff member that acts as a tax advocate. All staff advocates are provided with some basic tax training to help with tax issue spotting.
- Has IRS funding had an impact on the existence or program reach?
  - Iowa Legal Aid has been a recipient of IRS funds from the LITC's inception. Without the funding, Iowa Legal Aid would not likely have been able to move beyond the informal outreach it was conducting prior to the receipt of the grant. The ESL portion of the grant really helped Iowa Legal Aid expand services to immigrant populations in Iowa and identify partners to serve this population. Tax controversy funding has helped Iowa Legal Aid to provide a fuller range of service to clients helping address tax problems that may have otherwise hindered a family from achieving financial stability.

### **Janet R. Spragens Federal Tax Clinic**

- Founded in 1990
- Address: American University Washington College of Law, 4801 Massachusetts Avenue Northwest, Washington, DC 20016
- Why it started?
  - Professor Janet Spragens was influenced by the strength of the school's clinic program, and thought a tax component would add great value to the school and the community.
- Who has worked for the LITC over its life?
  - Prof. Janet Spragens (1990 - 2005)
  - Prof. Nancy Abramowitz (1996 - Present)
  - Prof. Robin Westbrook (2006 - 2010)
  - Prof. Shelly Cole (2010 - Present)

### **JC Vision and Associates**

- Founded in 2002
- Address: 135 East ML King Jr. Drive, Suite G, Hinesville, GA 31313
- Why it started?
  - The clinic started as an ESL clinic, which is where the funding came from. They have a large Hispanic population, and many people didn't know they had to pay taxes. JC Vision was started to help this population.
- Were there obstacles to overcome in starting the clinic?
  - Some obstacles were community perception, city council, and the community council.

### **The Legal Advice and Referral Center LITC Program**

- Founded in 2004
- Address: 48 South Main Street, Concord, NH 03301
- Why it started?
  - Started the tax clinic because the LITC program fit with their mission to serve people of low and moderate income.
- Who has worked for the LITC over its life?
  - The original director was Wayne Croteau. Jeff Goodrich assisted with the outreach efforts from approximately 2006 until the present. Since 2009, Jeff Goodrich has acted as the clinic director and Filippa Viola was hired approximately 12 months ago as the multi-lingual outreach educator.
- Are there any interesting stories about the clinic?
  - The clinic is an ESL-only program and has often been required to give workshops in two languages simultaneously.
- Has IRS funding had an impact on the existence or program reach?
  - The program might not exist if not for the IRS grant which enables them to target those areas of the state where the highest concentration of

immigrants reside through the presentation of workshops on tax and financial literacy. Because all services are free of charge, they depend on the IRS grant to provide them with the financial resources to adequately meet the demand for their services statewide.

### **Legal Aid of North West Texas**

- Founded in the mid-90's
- Address: 1515 Main Street, Dallas, TX 75201
- Why it started?
  - Started due to the need for tax services in Texas for fraud and identity theft.
- Who has worked for the LITC over its life?
  - Over the years Patty Rangel and Joanie Belma, the current director of the clinic headquartered in Fort Worth, have worked at the clinic.
- Are there any interesting stories about the clinic?
  - The clinic successfully got a great grandmother a \$30,000 refund after her husband died and they hadn't filed for several years.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding allows the clinic to do a lot of outreach in the community. The clinic is also able to give walk-in service.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - Many clients come to the clinic seeking guidance on more issues than mere tax. The most common areas of overlap with the tax clinic are divorce, bankruptcy, and identify theft.

### **Legal Aid Services of Oregon**

- Founded between 1999 and 2000
- Address: 921 Southwest Washington, Suite 570, Portland, OR 9750
- Why it started?
  - Legal Aid, in general, serves the low-income. The clinic was earmarked for Native Americans and farmworkers. Even before LITC, clients were in the tax system and were coming into the office with IRS notices. They actually started doing tax cases before LITC status started. When it did start the clinic immediately applied.
- Were there obstacles to overcome in starting the clinic?
  - The clinic receives both controversy and ESL cases. It had always done a lot of outreach in the community. One obstacle for the clinic is that a lot of people don't necessarily feel as if they need a lawyer when they get an IRS notice.
- Has IRS funding had an impact on the existence or program reach?

- The clinic receives IRS funding, and couldn't do all they do without it.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The clinic has great assistance from the taxpayer advocate service. The people who administer the grants at the IRS are a resource to the clinic. They are on call for questions and conduct a client-friendly approach in funding grants.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - Clients of the tax clinic are served by other services the clinic offers such as employment, family, and bankruptcy.

### **Legal Aid Society of Cleveland**

- Founded in 2001
- Address: 1223 West Sixth Street, Cleveland, Ohio 44113
- Why it started?
  - The clinic was started in response to the drastic curtailment of welfare benefits. The initial application discussed the nexus between welfare termination and accessing refundable tax credits.
- Who has worked for the LITC over its life?
  - Over the life of the clinic, Susan Morgenstern has worked for the clinic.
- Are there any interesting stories about the clinic?
  - When the clinic started, they thought that the practice would be focused on the EITC. Instead they have learned that tax practice is all about the economy. They deal with foreclosures, car repossessions, loss of employment, worker classification, and domestic violence. In response, they formed a service to provide year-round tax return preparation for free. They also formed a group of legal service tax lawyers to discuss cases and issues. It includes representatives from approximately ten states and meets monthly by phone.
- Has IRS funding had an impact on the existence or program reach?
  - Without IRS funding, they would likely not be handling any tax cases or tax issues.

### **Legal Aid Society of Middle Tennessee and the Cumberland Tennessee Taxpayer Project**

- Founded in October 1997
- Address: 226 Broadway, Suite B, Oak Ridge, Tennessee 37830
- Why it started?
  - In 1997, before receiving the LITC grant, Mary M. Gillum worked with Rural Legal Services' AmeriCorps staff to identify tax issues that prevented low-income families and domestic violence victims from

becoming financially independent. During this time, welfare reform increased the number of low-wage workers and earned income tax credit claims. The legal services program spearheaded a “Make Work Pay” campaign,” aimed at encouraging participation in the programs that help stabilize low-wage working families. The “Make Work Pay” campaign was a partnership with its Department of Human Services’ funded Food Stamp Education Project and legal services general staff.

- The tax clinic began operating a LITC with a grant from the IRS in 1999/2000. In January 2002, Rural Legal Services joined with two other legal aid providers, including the Legal Aid Society of Middle Tennessee, to form the Legal Aid Society of Middle Tennessee and the Cumberland. As the only LITC program in Tennessee offering representation on IRS controversies in Tennessee’s 95 counties from 1999 through 2008, the Project made its services available to taxpayers statewide. The program still provides services to 91 of Tennessee’s 95 counties, serving as a model on how a statewide tax clinic can operate.
- Mary Gillum, Tennessee Taxpayer Project Coordinator and Staff Attorney, has been a leader in the LITC community since the LITC clinic began in 2000. She is often sought out to provide training and guidance to new clinics and at the request of the Taxpayer Advocate provided training to IRS employees. Ms. Gillum also was counsel for *Vinatieri v. Commissioner*, in which the Tax Court ruled that it was not necessary to have all income tax returns filed to stop a levy.
- Who has worked for the LITC over its life?
  - The LITC project began implementation with the hiring of Mary Michelle Gillum – an accountant, attorney, adult education specialist, and native of the Appalachian coalfields – as the LITC coordinator and staff attorney. She was initially funded in part with a two-year, fully funded fellowship from the National Association for Public Interest Law (now Equal Justice Works).
  - The LITC immediately started litigating cases in the United States Tax Court, primarily due to an intensive training and materials offered by Nina Olsen, founder of the nonprofit Community Tax Law Project.
  - In September 2000, the LITC hired Paula Trujillo to work as its bilingual outreach advocate. Ms. Trujillo is licensed as an attorney in Peru and is fluent in Spanish. With Ms. Trujillo’s assistance, the Project quickly obtained an ESL client base of 38%. Although Tennessee has one of the fastest growing Hispanic populations, its ESL population represents less than four percent of the total population. The Project’s current ESL client base demonstrates the remarkable effectiveness of the Project’s focused ESL outreach and education efforts.

- During 2001, the Project met with leaders of the University of Tennessee College of Law Legal Clinic and implemented a second phase of the Project's development – establishing a tax component at the legal clinic. Beginning in January 2001, the law school faculty supported the Project by accepting referrals and supervising student interns who represent low-income taxpayers with controversies. The law school's involvement has expanded to providing on-site field placement students who act as student attorneys within the tax clinic in exchange for course credit.
- In April 2002, the LITC hired Robert Nadler to work in Nashville as a staff attorney with the tax clinic. As a CPA, adjunct professor of tax law at the Vanderbilt University and Nashville Schools of Law, and a 30-year veteran with the IRS District Counsel's office, Mr. Nadler's valuable expertise enabled the Project to increase the quantity and complexity of accepted tax cases. Mr. Nadler has a deep commitment to share his knowledge and expertise with the LITC community and fulfills this commitment by co-counseling with other LITC programs on complex cases involving systemic issues impacting low-income taxpayers. He has written newsletters providing guidance to low-income taxpayer advocates.
- Are there any interesting stories about the clinic?
  - The LITC has worked deliberately to strengthen and support the LITC movement throughout the country. It has provided technical assistance to a majority of the other LITC's in the country, including start-up clinics and established organizations.
  - The LITC produced a monthly newsletter, *Low Income Taxpayer Practice*, sent by email to more than 150 advocates throughout the country on practice, advice, and developments in the law.
  - In 2011, the ABA Section of Taxation published LITC Attorney Robert Nadler's *A Practitioner's Guide to Innocent Spouse Relief Cases, Proven Strategies for Winning Section 6015 Tax Cases*.
  - The LITC also published five CD's developed by Ms. Gillum that it regularly makes available to LITC programs on the following topics: Cancellation of Debt Income; How to Represent Clients at a Collection Due Process Hearing; How to Stop Federal Income Tax Levies and Place Accounts in Currently Not Collectible Status; Innocent Spouse Relief; and Earned Income Tax Credit.
  - The LITC has written, in English and Spanish, some of the most effective community education materials in the nation, and made them available to all LITC's and other advocates.
  - The LITC offers a model for how a tax clinic can work effectively within a legal aid organization, in a coordinated effort to help low-wage workers understand and meet their rights and responsibilities as taxpayers.
  - At the request of the National Taxpayer Advocate, the LITC has assisted in over six trainings of IRS Earned Income Tax Credit and Offer in Compromise Examiners. It is currently participating in a Virtual Service

Delivery Pilot Project, testing the benefits of providing face-to-face CDP hearings to taxpayers.

- The ABA Section of Taxation has posted the LITC's training materials on its website. The Project has published both individual comments and a joint comment with the ABA Section of Taxation Low Income Taxpayer Committee in response to IRS Notice 2012-8, revising the innocent spouse equitable relief guidelines.
- Currently, the Project is serving on an advisory committee to the IRS Deputy Director, publishing comments on revised IRS Forms and systemic issues.
- During the past twelve years of operation, the Project has produced more than \$14,663,498.69 in actual benefits (refunds collected and taxes abated) for low-income taxpayers.
- In an effort to leverage grant funds, the Project recruited an 80-member pro bono panel, established a partnership with local law schools, entered into Memorandums of Understanding with Tennessee's other legal aid programs, and trained LAS attorneys to assist with controversy representation and ESL outreach and education.
- The clinic engages in systemic advocacy that acts as a catalyst to improve the administration and fairness of the federal income tax laws for all taxpayers and especially low-income and ESL taxpayers. As counsel in the *Lantz, Marlow, and Vinatieri* cases, the Project's advocacy has left an indelible mark on the innocent spouse and collection landscapes. The clinic has sought to support the IRS's LITC Mission of ensuring fairness and integrity of the tax system.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - As a full service legal services office, the legal aid program represents low-income clients in a wide range of legal problems, many with a federal income tax component. It is a regional law firm that gives free legal aid to people who have nowhere else to turn. It handles a variety of civil legal issues, including, but not limited to, consumer, health, housing, education, family, federal income tax, public benefits, consumer, and employment law.
- Has IRS funding had an impact on the existence or program reach?
  - IRS LITC funding has enabled the tax clinic to operate for over thirteen years.

**The Legal Aid Society of Milwaukee, Inc., "TACS" The Taxpayer, Advocacy and Counseling Service**

- Founded in 2001
- Address: 521 North 8<sup>th</sup> Street, Milwaukee, WI 53233

- Why it started?
  - In fall of 2000, someone from the Center for Economic Progress did a presentation at the Society's annual CLE. The presentation was on the EITC and its impact on the working poor. Wisconsin has a state EITC as well. At that time there were no other low income tax clinics that were providing assistance in Wisconsin. As Milwaukee has the largest percentage of low-income workers, it was apparent that there was a substantial need for this type of assistance. The Society learned of the grant program at the CLE event. They submitted for the grant and were accepted for the following grant cycle (2001).
- Are there any interesting stories about the clinic?
  - A humorous story about the clinic happened during the initial CLE on the EITC. Some of the attorneys got the impression that a person could claim their pet and get a tax credit. They thought this wasn't a bad deal, because many of them had numerous pets. That perception was quickly dashed.
  - A success story about the clinic is when a client came in with an ID theft case last year and by the time she came into the clinic office she owed the IRS over \$20,000 in taxes. She had been making payments on the taxes even though she did not owe them. In addition, they had seized her refunds for the past several years. When she stopped making payments, they threatened to levy her. The clinic was able to get new 1099's issued for the client with -0- income for the tax years in question. They then requested audit reconsideration and contacted the ID theft unit. The IRS agreed that the client did not owe the taxes and subsequently issued a refund check for the client for \$10,000.
- Who has worked for the LITC over its life?
  - Philip J. Rosenkranz has been the Director since the program's inception.
- Has IRS funding had an impact on the existence or program reach?
  - Without the funding from the IRS, the Society would not be able to continue tax controversy assistance. As a non-profit, their organization runs a fairly lean program. As other types of funding have discontinued the Society has had to shift employees to other programs that are getting funding. The funding allows the Society to have a specific program dedicated to tax controversy assistance.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The Walk in Center in Milwaukee carries brochures describing the clinic services. In addition, the IRS provides a list of clinics for certain types of notices (e.g. levies and CDP).
- Are clients who come for tax assistance served by any other legal service programs that you offer?

- One of the things that works in the clinic's favor is the target client community was already being served by the Society for other legal issues.
- The clinic is one of America's oldest public-interest law firms. It was founded in 1916 with the unique charter "to do all things necessary for the prevention of injustice." Each year, the Society provides free legal services to more than 8,000 low-income individuals across a broad range of issues in civil, family, juvenile, and mental disability law. On behalf of the poor, the Society acts as a private attorney general in class action and major impact cases that challenge abusive conduct by large corporations or government entities.

### **Legal Services of Greater Miami**

- Founded in October of 1999
- Address: 3000 Biscayne Boulevard, Suite 500, Miami, FL 33137
- Why it started?
  - Started when welfare reform began because many more of their low-income clients were working and they began to come to them for assistance with income tax problems. Also with the expansion of the EITC program, many more people required legal assistance concerning this important government benefit. As a full service legal services program, it was necessary for them to develop the expertise and secure funding to allow them to provide legal representation in this important area.
- Who has worked for the LITC over its life?
  - The program had a strong start because Nina Olsen came to Miami and intensively worked with their staff to both guide them in administratively establishing the clinic and training them in this new area of law.
  - A number of staff attorneys, a number of whom were also CPA's, have worked at the LITC. They also have a pro bono component to their project, with a number of highly dedicated private attorneys on their volunteer panel.
- Are there any interesting stories about the clinic?
  - As a result of their advocacy, they have educated hundreds of ESL and non-ESL individuals about their tax rights and responsibilities, and have assisted hundreds of clients in receiving refunds that they have been denied or helped them avoid making unnecessary tax payments. Miami is home to many new immigrants who are completely unfamiliar with the United States' voluntary income tax system. The most basic concepts of the tax system are foreign to them. As a result of the clinic's advocacy and education, they have helped smooth many new immigrants' transition

to life in the United States and helped them properly comply with a very important civic duty.

- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - As a full service legal services office, the clinic represents low-income clients in a wide range of legal problems, many with a federal income tax component. For example, they have a very large mortgage foreclosure practice (ranked 10th in the nation for residential foreclosures). Many foreclosure cases have complex tax implications. As a result of the tax expertise they have developed in the past eleven years, the clinic is able to provide its foreclosure clients with the full range of advice and representation necessary to resolve their housing problems.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding enabled them to establish and maintain their tax clinic for the past eleven years.

#### **Lewis and Clark**

- Founded in April of 2000
- Address: 10015 Southwest Terwilliger Boulevard, Portland, OR 97219
- Who has worked for the LITC over its life?
  - Jan Pierce is Director.
- Why it started?
  - Started when one of the tax professors found out that the IRS was giving grants and they applied for a grant.
- Were there obstacles to overcome in starting the clinic?
  - An initial obstacle of the clinic was getting clients. The clinic started advertising through the Oregon bar, through IRS handouts, and the appeals division. And the Tax Court started sending flyers to pro se petitioners.
  - The best advertisement is people who have taken the clinic in school. Last summer they had 28 people on the waiting list.
- Has IRS funding had an impact on the existence or program reach?
  - The grant program was instrumental in getting the school to start the tax clinic.

#### **Low Income Taxpayer Clinic at the Legal Aid Society, Inc.**

- Founded in 2000
- Address: 416 West Muhammad Ali Boulevard, Suite 300, Louisville, KY 40202
- Why it started?
  - The Legal Aid Society had a history of representing taxpayers even before receiving LITC funding. When funding became available, it made sense for the office to apply for funding to fully meet the client demand.

- Were there obstacles to overcome in starting the clinic?
  - Some challenges for the clinic include learning the various deadlines for the grant reports and learning what administrative avenues are available to taxpayers to resolve their tax problems.
- Who has worked for the LITC over its life?
  - Doug Magee was the clinic director from 2000 to 2006. Mary Cartwright was the qualified tax expert from 2000 to 2006.
  - Jeff Been has been the clinic director from 2006 to the present. John Young has been the qualified tax expert since 2006.
- Are there any interesting stories about the clinic?
  - The LITC at the Legal Aid Society has done significant outreach to the African immigrant community in Louisville. Louisville has two strong refugee resettlement agencies, which has brought over many people from Sudan, Somalia, and Liberia. The LITC reached out to these communities and as a result and has been able to help several refugees to resolve their tax issues.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding has allowed the clinic to dedicate a full-time staff person to representing taxpayers. It has also allowed them to dedicate time to educating taxpayers in Louisville and the surrounding counties about tax law.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The Legal Aid Society is a well-established organization in Kentucky. Clients are directed to them through outreach efforts or because they know to call Legal Aid if they have a legal problem.

**Loyola University, Chicago School of Law, Federal Tax Clinic**

- Founded in 1987
- Address: Water Tower Campus, 25 East Pearson Street, Suite 1005, Chicago, IL 60611
- Why it started?
  - Established as a response to the needs of low-income taxpayers in the Chicago area. The clinic was one of only a handful in the country and the first of its kind in Chicago. Since its inception, it has served hundreds of taxpayers by assisting them to resolve federal tax matters involving significant amounts in controversy.
- Has IRS funding had an impact on the existence or program reach?
  - Since 1999, the clinic has applied for each year and has been successful in having been awarded a federal grant to assist with the funding. This grant

enables the clinic to operate five days a week throughout the entire calendar year and to be staffed by more than one attorney.

- How has the clinic promoted practical legal education?
  - The clinic's purpose is to educate law students in the practice of federal tax law and to provide a needed service to low-income taxpayers. The clinic does not charge a fee for its services and generally gives the students their first experience in providing pro bono services to the less fortunate in the community.
  - The clinic provides an opportunity for students to practice lawyering skills that include client interviewing, client counseling, issue identification, problem solving, evidence recognition and procurement, legal writing, how to deal with ethical situations, and settlement negotiations.
  - The clinic's proven success and dependability have resulted in a system that permits student representatives the opportunity to effectively and efficiently resolve clients' federal tax controversies. The clinic has enjoyed a stellar reputation both with the IRS and with the community.
  - Each semester, the clinic works on forty to fifty client cases. All facets of tax law practice are integrated in a curriculum of both classroom study and legal practice wherein the students, under the supervision of the directors, are assigned to act as the representatives of the clients who are engaged in a tax controversy with the IRS. These clients provide a wide variety of tax controversies. Each student enjoys the experience of representing at least five clients during a semester.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The clinic operates as a law office. Clients come to the clinic through referrals from private attorneys, the American and Illinois Bar Associations, various social service agencies, the Internal Revenue Service, and previous clients.
- Are there any interesting stories about the clinic?
  - In 2011, to expand the Low Income Tax Clinic's ability to meet the needs of its clients, a Pro Bono Panel was established under the clinic's direction and supervision. The panel is made up of practicing attorneys, some alumni of the Loyola University Law School, who would like to gain experience in federal tax matters, as well as to assist individuals who, otherwise, cannot afford legal representation. Panel attorneys are offered, on a volunteer basis, the opportunity to represent a taxpayer either before the IRS and/or the US Tax Court. The client taxpayer is referred to the attorney after the initial screening is performed by the clinic.
- Who has worked for the LITC over its life?

- Richard Witkowski, Pro Bono Panel Coordinator and an attorney with more than 35 years of experience, is responsible for the supervision of the cases assigned to members of the panel as well as for providing guidance and assistance to the panel members on an as-needed basis.
- Michael Novy, Director, and Daniel Pavlik, Assistant Director, who are attorneys with more than 35 years of experience each in dealing with federal income tax controversies, are responsible for supervising the clinic. Through their leadership and example the students are given a model of how to conduct themselves in a law office setting.

### **Memphis Area Legal Services Low Income Taxpayer Clinic**

- Founded in 2009
- Address: 109 North Main, Suite 200, Claridge House Building, Memphis, TN 38103
- Why it started?
  - Supervising attorney Linda Seely wanted to start the clinic. Taylor Berger completed and submitted the grant application, and works for the clinic pro bono.
- Were there obstacles to overcome in starting the clinic?
  - Initially, the clinic struggled with making sure that clinic staff would have the ability to be self-sufficient in making sure that the reporting and grant application would be submitted accurately each year.
- Who has worked for the LITC over its life?
  - Directors Taylor Berger and Linda Seely. Anidra Lomax has worked as the QTE since the clinic began in 2009. Janese Perry has worked as the financial administrator since the clinic began.
- Are there any interesting stories about the clinic?
  - The staff attorney working with the clinic, Anidra Lomax, was chosen to work with the LITC after competing with eight other law students during a semester long tax and small business clinic at the University of Memphis. The students were told that whoever received the highest grade in the class would be offered an employment position with Memphis Area Legal Services as their tax attorney. The competition was somewhat like “American Idol.”
- Has IRS funding had an impact on the existence or program reach?
  - The funding from the IRS has enabled the LITC to exist, as there would be no funds available to pay the staff attorney who is responsible for the daily activities of the clinic.
- How has the clinic promoted practical legal education?
  - This is not an academic clinic; however, the clinic does participate in the University of Memphis’ tax externship. In this capacity, the clinic assists student attorneys by showing them how to develop appropriate attorney-client relationships and how to apply the research skills they learned in law school to real life situations.

### **Michigan State University College of Law**

- Founded in January 2000
- Address: 541 East Grand River Avenue, East Lansing, MI 48823
- Why it started?
  - Started because Professor Alvin Storrs (who passed away in 2010) knew of the need for a clinic that would provide no-cost services to indigent taxpayers, and took the necessary steps to obtain grant funding to start this work. Throughout the existence of the clinic, he was an unflagging influence. During the first semester, he helped in providing hands-on consultation, and later became a member of the clinic's pro bono panel.
- Who has worked for the LITC over its life?
  - Michele LaForest Halloran was the clinic's first director (she arrived in August 2000). She has been the director since that time, and has also had the privilege of working with several fellows in the clinic: Allison Ernst, Joshua Wease, Andrew Campbell, Naima Manley, and Bridgette Austin.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding has been critical to allowing the clinic to provide far-reaching controversy services to people within Michigan. Although initially the clinic served only people in Ingham, Clinton, and Eaton counties, they have since broadened their service area to include all parts of Michigan that are not served by other tax clinics. They will serve people in Western and Northern Michigan as well as in the Upper Peninsula.

### **Missouri State Low Income Taxpayer Clinic**

- Founded in 2001
- Address: School of Accountancy, Missouri State University, 901 S. National Avenue, Springfield, Missouri
- Why it started?
  - The clinic was started because the local IRS was concerned about the very large number of non-filers (including both tax protesters and non-tax protesters) they were encountering in southwest Missouri. After 9/11, they were contacted by international student offices at a number of colleges and universities in their area; they were concerned that their international students had not been filing required tax returns or forms. After talking with their federal legislators about these problems, the clinic applied for the LITC grant to work with the non-filers in southwest Missouri. The clinic worked with both residents and non-residents.
- Who has worked for the LITC over its life?
  - Sandra Byrd, CPA, PhD, has been the only director of the clinic throughout the entire program, from inception to the present. The clinic is

staffed with students in the Masters of Accountancy program. Kerri Tassin, CPA, MTax, JD, is taking over as director of the clinic in January 2013.

- Has IRS funding had an impact on the existence or program reach?
  - The clinic would not exist without IRS funding. The clinic funding comes from the IRS and the University.
- How has the clinic promoted practical legal education?
  - The clinic is in the School of Accountancy. Students in the clinic are enrolled in a service-learning course called “Public Service Taxes.” There are approximately 30 Masters of Accountancy students who take the class each spring semester. There are also two to three Graduate Assistants who work in the clinic and who do not receive academic credit. The clinic is open year-round, except for university holidays.
  - The clinic supports the public affairs mission of the university by not only having service-learning students provide assistance to some of their most vulnerable citizens, but also by exposing their students to individuals and events that drive public policy. The students have an opportunity to extend assistance in the betterment of the community – a process that fosters greater awareness and personal growth while meeting the university’s public affairs mission.
  - Students in this program not only learn tax law, but they also have the opportunity to learn and interact with other members of the local professional community and appreciate the need for lifetime learning.

#### **Neighborhood Christian Legal Clinic**

- Founded in 2002
- Address: 3333 North Meridian Street, Indianapolis, IN 46239
- Who has worked for the LITC over its life?
  - Abby Kuzma was the LITC director from inception through April 2009.
  - Dee Dee Gowan started in 2005 as the qualified tax expert and became the LITC director in April 2009.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic would not exist without funding from the IRS.

#### **Nihonmachi Legal Outreach**

- Founded in 2009
- Address: 1121 Mission Street, San Francisco, CA 94103
- Why it started?
  - Started as a non-profit legal service, trafficking domestic relationships. Many of the clients were having tax issues and family law issues. The

major tax problems of clients were with low-income, undocumented aliens.

- Were there obstacles to overcome in starting the clinic?
  - At first, the grant was difficult to obtain from the IRS. Once approved, the clinic started to more aggressively search for issues. There were lots of panels making it a difficult time to do tax work.
- Are there any interesting stories about the clinic?
  - Most of their clients do not speak English.
- Has IRS funding had an impact on the existence or program reach?
  - It allows the clinic to take more cases, but they have done most of the work regardless of the funding given by the IRS. The legal outreach also receives money from the state bar.

**Pathstone Corporation (previously Rural Opportunities, Inc.)**

- Founded in New York in 2006
- Address: 400 East Avenue, Rochester, NY 14607
- Why it started?
  - The clinic was previously Rural Opportunities, Inc. When they began, they were serving very low-income, primarily migrant seasonal farmworkers, who had tax issues. Their primary client base is Hispanic.
- Were there obstacles to overcome in starting the clinic?
  - Initial obstacles of the clinic were developing a pro bono panel. The clinic partnered with legal services and brought everyone together to form a pro bono group. Another obstacle was working with a client population with language difficulties. It was hard to build a bond of trust with the language barrier.
  - At first, demand outsized the number of people in the office.
- Has IRS funding had an impact on the existence or program reach?
  - Without IRS funding, the clinic would not exist.

**Philip C. Cook Low-Income Taxpayer Clinic**

- Founded in 1992
- Address: 140 Decatur Street, Atlanta, Georgia 30303
- Were there obstacles to overcome in starting the clinic?
  - The obstacles in starting the clinic involved budgetary problems, course approval, develop relationships with clients, staffing the clinic, and getting cases.
- Has IRS funding had an impact on the existence or program reach?
  - The IRS funding has had a major impact on reaching clients.
- How has the clinic promoted practical legal education?

- The clinic has taught students how to conduct themselves in a small law firm environment. It has trained them in areas of fact gathering, document preparation, file maintenance, negotiation, and sensitivity to ethical issues.

### **Prairie State Legal Services**

- Founded in February of 2009
- Address: 303 North Main Street, Suite 600, Rockford, IL 61101
- Why it started?
  - Started after receiving a grant through the ABA. It was recognized as an IRS grant. They started operating as an LITC grant in their 2<sup>nd</sup> year.
- Are there any interesting stories about the clinic?
  - The culture of the clinic is a close-knit group of people nationwide. They have a relatively low number of people that provide their services, and they stay well-connected with each other.
  - The clinic has had several cases where their clients had owed the IRS very large amounts of money. The clinic was able to get their clients a refund, when the client owed a large amount of money. One example was when a client owed \$25,000; the clinic was able to help in getting the client a \$1,200 refund.
- Has the IRS assisted in promoting the services offered by your clinic?
  - The clinic covers thirty-six counties, all in Northern Illinois. IRS funding made their networking extensive throughout this area.

### **Rhode Island Tax Clinic**

- Founded in 1998
- Address: 620 Potters Ave, Providence, RI 02907
- Why it started?
  - The clinic started when the IRS Restructuring and Reform Act went into effect in the late 1990's and they solicited for start-up clinics through a funding program.
- Who has worked for the LITC over its life?
  - A prominent tax attorney, Harold Accaro, started Rhode Island Tax Clinic. He, along with a former IRS agent, Barbara Ackaway, EA, spent the first three years building the foundation. In late 2001, Mr. Accaro retired and Mrs. Ackaway asked James Lombardi, a former IRS agent and practicing tax attorney, if he would be interested in taking over as executive director. Mr. Lombardi agreed to do so as a pro bono attorney. Eleven years later, he still provides all services as the executive director, at no charge. Mrs. Ackaway also asked April Lombardi to take over all administrative functions. About one year later, attorney Anne Moniz was

hired to take over the caseload. To this day, Mr. Lombardi, Mrs. Lombardi, and Mr. Moniz run Rhode Island Tax Clinic together.

- Has IRS funding had an impact on the existence or program reach?
  - The program depends on the funding from the IRS. They are not affiliated with any other organizations so the funding pays all the rent, salaries, and other expenses through the IRS grant and a few other smaller grants.

### **Rutgers Federal Tax Clinic**

- Founded in 1995
- Why it started?
  - Started with funding from the U.S. Department of Education's clinical legal experience grant program. Two students suggested starting a tax clinic and wrote up the original proposal.
- Who has worked for the LITC over its life?
  - Director Sandy Freund

### **Santa Clara University School of Law Low Income Taxpayer Clinic**

- Founded in late Fall 2011
- Why it started?
  - Our LITC received its grant for 2012 and opened its doors for clients and enrolled students January 2012. It was established to serve the low-income population in the South Bay area (San Jose is about 45 miles south of San Francisco), Santa Clara country, and the surrounding counties. It was also started to offer law students practical and professional skills development through the representation of low-income taxpayers before the IRS and/or Tax Court.
- Who has worked for the LITC over its life?
  - Caroline Tso Chen was hired as the LITC's first Director and QTE. She teaches the seminar class currently with supervising the enrolled students in the LITC course. She also teaches an upper-level Tax & Procedure class.
  - Erika Henderson is the LITC's QBA.
  - Amanda Sparks was one of the first LITC student attorneys and is currently the LITC's first graduate fellow.
- Are there any interesting stories about the clinic?
  - The first semester of the LITC began in January 2012. Since that time, we have had several successes, but most notable are the ones listed below.
  - Married taxpayers are medical couriers and worked for several courier companies who reimbursed them less than the federal standard mileage rate for 2009. They filed a Form 2106 claiming unreimbursed business expenses and reported said amount on their Schedule A. IRS denied the

deduction. Taxpayers came to the Tax Clinic after receiving our information from the Tax Court's stuffer notice. Students were able to use taxpayer's paystubs and detailed contemporaneous mileage logs to not only substantiate the unreimbursed mileage reported on the Schedule A, but additional mileage. Students put together a written submission with substantiating documents to the Appeals Officer, who conceded the deficiency.

- Married taxpayers are undocumented workers who had a friend help them purchase a home in 2007. Their Schedule A deductions were disallowed for 2007, 2008, and 2009. They paid the mortgage, but each 1098-INT was issued to their friend because his name and SSN appeared on the purchase documents and the deed. He would give it to them each year after he received it. At no time did he deduct the mortgage interest for the taxpayers' home. They also paid all of the property taxes, but again the name of the friend was on the property tax bill. The students interviewed the friend and prepared an affidavit from his statement; they reviewed all of the bank statements and tracked all the canceled checks for the property taxes and the mortgage payments. They contacted the taxpayer's employers to verify his employment; they put together numerous utility bills and school records showing the address as the taxpayer's home. They researched and found Tax Court cases where the court ruled that although taxpayers were not the legal owners of record, they were in fact beneficial owners entitled to the mortgage interest deduction because they paid for all bills as if they were the legal owners. After the submission of the legal memorandum and substantiating documents, during a telephonic conference with Appeals, the IRS conceded the adjustments. (This was done twice, 2008 and 2009, and through an audit reconsideration in 2007). Currently, we are working to correct an unpostable error where the taxpayers' 2011 refund was frozen and applied to their 2007 tax liability, but is incorrect because they do not have any tax liability.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - The LITC is located in a building with three other clinics that offer legal services for immigration, consumer law and employment law (workers' rights). The LITC, itself, does not offer any other legal services, although tax clinic clients can approach those clinics for assistance. The LITC has served a workers' rights clinic client.
- Has IRS funding had an impact on the existence or program reach?
  - SCU Law School intended to open a Tax Clinic, regardless of funding; however the funding has been instrumental in the continuation of the

program as a regularly offered course & clinic to law school students interested in tax law and practical experience.

### **South Carolina Legal Services**

- Founded in 1999
- Address: 701 South Main Street, Greenville, SC 29601
- Why it started?
  - Many of the clinics LSC clients were experiencing IRS issues. Their attorneys were taking cases under other grants and their board of directors and administration believed the LITC grant would be beneficial to their citizens by allowing their agency to hire additional employees dedicated to assisting taxpayers with IRS issues.
- Who has worked for the LITC over its life?
  - Kirby Mitchell, Esq., Michael van Landingham, Esq., Dr. Roger Watkins, Jada Charley, Esq., Fredrik Pfeil, Esq., Angela Myers, Esq., Tene Staley, Thomas Bruce, Esq., and Angela Perez have worked for the clinic throughout its life.
- Are there any interesting stories about the clinic?
  - In 2002, all legal services corporations in the state of South Carolina merged into their current organization. One of the four previous LSC's was an LITC grantee. The merger expanded the reach of their LITC to encompass the entire state of South Carolina.

### **South Central Kansas Low Income Taxpayer Clinic at Cerebral Palsy Research Foundation (CPRF)**

- Founded in 2006
- Address: 5111 E. 21<sup>st</sup> Street North, Wichita, KS 67208
- Why it started?
  - The clinic started as a result of grant funding becoming available and the hiring of William Mickel, a tax attorney, as program director. South Central Kansas Low Income Taxpayer Clinic is unique in that it is hosted by a disability organization. The clinic serves a substantial number of taxpayers with disabilities (i.e. physical, blindness, hearing impaired, etc.). The clinic has found that taxpayers with disabilities tend to have more problems in dealing with the IRS than non-disabled taxpayers. In its early years, the program director worked with student volunteers from Wichita State University who were supervised by an accounting professor. The clinic received a private grant from the Community Tax Law Project in 2007 and 2008 to provide expanded statewide services, particularly in the southwest Kansas area. William Mickel continues to lead the clinic and is looking to expand its community and statewide focus by recruiting additional CPA's and attorneys for its pro bono panel in the upcoming years.

- Who has worked for the LITC over its life?
  - William Mickel has been the only director/attorney since its founding in 2006.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic would not exist without IRS funding. The clinic has been fortunate to receive some funding for its cost match responsibilities from various companies, private grant funding, and in kind marketing & referral assistance from other disability and community organizations, and pro bono attorney/CPA volunteer time.
- How has the clinic promoted practical legal education?
  - The clinic conducted ten teleconferencing events, to its network of community partners and pro bono attorneys/CPA's to locations around the state of Kansas, about various tax issues affecting low-income taxpayers and taxpayers with disabilities. The clinic continues to work with the local bar association and CPA Society in planning and conducting continuing education events about low-income taxpayer issues (including disability tax issues).

### **Southeast Louisiana Legal Services**

- Founded in 2000
- 1010 Common Street, Suite 1400A, New Orleans, LA 70112
- Why it started?
  - Our LITC was founded as an outgrowth of our representation of a taxpayer in an Earned Income Credit case in Tax Court. She was a single mom holding down three part-time minimum wage jobs. She faced foreclosure on her home and tax liability of \$10,000 – more than her annual income. Her estranged husband wrongly took EIC and IRS wrongly denied her. Our client submitted her proof of EIC entitlement three times – the documents were sufficient proof, but IRS wrongly denied all three times.
- Who has worked for the LITC over its life?
  - Mark Moraeu (current)
  - Kathy Roux
  - John Parchman (now with Chief Counsel Office)
  - Ardis Agosto (now LA Taxpayer Advocate)
  - Jennifer Gomez (now with Ropes & Gray)
  - Tetus Lin
  - Steve Primeaux (current)
  - Jacqueline Childers (current)
  - Michael McGuire (current)
  - David Hansen (current and former IRS Appeals Officer)

- John Keding (now with Judiciary Commission)
- Are there any interesting stories about the clinic?
  - The clinic has dealt with tax issues generated by Hurricane Katrina and the BP Oil disaster.
  - The clinic, with Neal McBride (legal services director of our team) spoke at several national conferences for legal aid directors on importance of legal aid programs handling tax cases.
  - See story about first EIC case. Shortly thereafter, Moreau was called for jury duty for a month and began writing a guide to tax law for legal aid attorneys and soon discovered that the reform legislation in the late 1990s created powerful rights and remedies for taxpayers and that tax law was now an area where legal aid attorneys could make an impact.
  - Our housing attorneys won a large case against housing authority, which resulted in refund payments to 400 tenants. Despite our advice to the HA that refunds were non-taxable, the HA issued 1099s to 400 tenants. We worked with taxpayer advocate to reverse this systematically.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - Yes – clients are referred to our non-tax law attorneys for other help and vice versa (for example, domestic violence victims who come in for innocent spouse, Section 8, or public housing tenants with identity theft). Our LITC has enriched our non-tax law practice areas – those attorneys can better serve their clients by getting tax advice in family, consumer, bankruptcy, disaster assistance, employment, foreclosure, etc.
- Has IRS funding had an impact on the existence or program reach?
  - Yes, absolutely. It was the seed funding, and increases in LITC funding that allowed us to expand to a full-time staff attorney and serve clients statewide. The existence of a staff attorney has allowed us to leverage six full-time pro bono fellows over the last five years. Also, but *not* with LITC funding, our tax practice now includes local and state tax issues – LITC inspired this!

### **Southern Methodist University Law School Federal Tax Clinic**

- Founded 1975 – the second LITC in the country
- Address: 3315 Daniel Avenue, Dallas TX
- Why it started, who has worked there, and what is its source of funding?
  - Sam Miller started the SMU Tax Clinic, working with Hank Lischer, a tax professor at SMU. They saw the need for providing assistance to taxpayers. In 1976, Walt Coppinger was the then Regional Commissioner for the Southwest Region of the IRS, and he was located in Dallas, Texas. Walt was interested in seeing if the IRS and the SMU Tax Clinic could work together in some manner to address the growing problem of rising

backlogs of IRS cases attributable in part to IRS proposed audit adjustments for low-income taxpayers. However, IRS Examination personnel in Dallas and elsewhere in Texas and around the country for the most part, as well as some Appeals personnel and some IRS executives, were concerned about the idea, in part because they believed the tax clinics might create even more work because law students would contest tax issues that should be conceded. Larry Gibbs, who was the second chairperson of the ABA committee overseeing low-income taxpayer issues and who went on to become the IRS Commissioner, worked with Walter Coppinger and the SMU tax clinic to make it possible for the IRS to refer cases to the tax clinic.

- For many years, Larry Jones has run the tax clinic at SMU. In addition to being one of the oldest tax clinics, it is also one of the few that has not taken grant funds. By foregoing the grant funds, SMU has greater flexibility on the cases it takes and fewer reporting obligations.

### **St Thomas University Law School Low Income Tax Clinic**

- Founded August 1, 2000
- Address: 16401 Northwest 37<sup>th</sup> Avenue, Miami Gardens, FL 33054
- Why it started?
  - The clinic ran a VITA site at their law school and the IRS suggested that they also start a low-income tax clinic and they sought an executive director. Larry C. Fedro retired from the IRS in April 2000 and applied for the job and started August 1, 2000. He teaches tax procedure and runs the tax clinic.
- Who has worked for the LITC over its life?
  - Larry C. Fedro has run the clinic since its inception, and has been the only employee of the clinic.
- The clinic receives referrals from the following:
  - Put Something Back, Legal Aid of Miami.
  - Broward County Legal Aid.
  - Tax Court. The clinic's stuffer letter is sent to all "S" petitioners to the Tax Court and they sometimes represent these taxpayers.
  - Clinical referrals. They also have an immigration clinic at the Law School and receive referrals from them. Their law school has ten associated clinics.
- Has IRS funding had an impact on the existence or program reach?
  - The funding is now so low for each clinic that the legal aid services and law schools have to increasingly fund the tax clinics. Therefore, they do not seek IRS funding.

### **Syracuse University College of Law Low Income Taxpayer Clinic**

- Founded in the Fall of 2002
- Address: Office of Clinical Legal Education, Box 6543, Syracuse, NY, 13217

- Founded because some people at Syracuse University heard about the availability of LITC grant funding, looked into the program, and applied.
- Originally had Co-Directors: Robert G. Nassau and Sherman F. Levey. Mr. Levey left in 2006. Rob Nassau remains Director.
- The clinic would not likely have been founded without IRS funding.

#### **Texas Tech University Law School**

- Founded in September 2000
- Address: 1802 Hartford, Lubbock, TX 79409
- Why it started?
  - Marilyn Phelan had heard about a new type of funding for LITC and so she started the curriculum and hired a part time clinic director.
  - The Law School was very supportive in starting the clinic.
- Who has worked for the LITC over its life?
  - Donald Williams, Professor Marilyn Phelan, and Vaughn James have worked at the clinic over its lifetime.

#### **University of Connecticut School of Law Tax Clinic**

- Founded in 1999
- Address: 65 Elizabeth Street, Hartford, CT 06105
- Why it started?
  - Started as a direct result of receiving an LITC grant. The director, an alumna of the law school, Diana Leyden, was very anxious to start a clinical program in tax at the school. She had relocated back to Connecticut in 1997 and was concerned that there was not enough skills based training for law students who wanted to concentrate in tax. The school, being a public school, did not have funds to start another clinic. In the past, the school had relied on federal grants to create new clinical programs. Thus, there was a fortuitous alignment of her desire to start a clinic and the LITC grant program that provided the tipping point.
- Who has worked for the LITC over its life?
  - Director Diana Leyden has been with the clinic from day one. Over the years, she has gotten sporadic help from a few practitioners who worked as adjuncts in semesters that were oversubscribed. In the more recent years, the clinic has been fortunate to have a former student, Jeffrey Griffin, petition his firm, Ropes and Gray, to do pro bono work. Mr. Griffin also received a grant to be a co-teacher in the clinic. For the year 2011-12, a retired IRS attorney, Richard Cummings, worked as an adjunct and co-taught and co-supervised students.
- Are there any interesting stories about the clinic?

- Over its years, they have been cognizant of the need to litigate issues involving social justice. As an academic clinic, it is well-positioned to litigate cases through district courts and courts of appeals on issues that affect many taxpayers who cannot afford counsel. While the clinic has unfortunately been unsuccessful in the three cases discussed below, they believe that the issues were all very close and were cases that had, and continue to have, an adverse impact on low-income taxpayers.
- One of the first cases the clinic litigated, up to the Court of Appeals of the Second Circuit, involved refunds of the EIC when a tax return was never filed. While ultimately unsuccessful, *Israel v. U.S.* 356 F.3d 221 (2004), the clinic challenged the position of the IRS that EIC's, that were due with respect to a tax year for which a taxpayer had not filed, were subject to the same limitations for refunds under section 6511. The argument was that the EIC is not paid until a taxpayer actually files a tax return claiming the refund. The Second Circuit, however, determined that it was deemed paid like a withholding.
- In another case, *Morales v. Commissioner of Internal Revenue*, Docket No. 008844-07 L, the clinic argued that the failure of the IRS to exclude the value of a car from reasonable collection potential in an OIC was an abuse of discretion when the taxpayer could show that the car was used to earn income. Unfortunately, due to the application of a refund by the time the case was to be argued at the Second Circuit, the amount in issue had been paid and; therefore, the issue was moot. However, the clinic has always been a strong advocate of flexibility in this area to determine reasonable collection potential.
- In a third case, *Keohane v. U.S.*, 669 F.3d 325 (DC Cir. 2012), the clinic enlisted the help of Skadden Arps to litigate a case in the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit. This case involved the denial of a claim for damages under section 7433. The taxpayer, a U.S. citizen, contacted the director of the clinic by email while he was living in Malaysia. This was a very interesting case because all of the contact and correspondence had to be conducted by email and telephone; the taxpayer did not have an address in the U.S., and ultimately when the clinic determined that the IRS was taking a position that the clinic determined was unauthorized collection, they had to determine where they could bring the case. The only venue was in the U.S. Courts in D.C. That is how the clinic got the DC office of Skadden Arps involved. Again, unsuccessful, but the clinic was able to draw attention to two very important problems: the IRS takes aggressive positions with respect to levying more than 15% of social security

payments and the court's incorrect interpretation of the statute of limitations for bringing an action under 7433. The director has an article that will be published on this issue in the near future.

- Finally, the clinic has been very active in pursuing offers in compromise for clients who have fixed income. In two cases, the clinic successfully negotiated \$5 offers. The clinic has come to be known as submitting the "White Binder" offers. The clinic submits offers which are contained in white 3-ring binders. They are often very well-documented and have been told anecdotally that when they come in, the IRS often think that it will be a case that will be quickly resolved.
- Has IRS funding had an impact on the existence or program reach?
  - Without the funding, the clinic would never have been started. Without continued funding, they would probably cease to exist.

### **University of Denver Low Income Taxpayer Clinic**

- Founded in 1984
- Address: 2255 East Evans Avenue, Denver, CO 80208
- Why it started?
  - The clinic actually started prior to 1984. At that time, one of the professors was assisting low-income taxpayers on his own through the law school. However, in 1984, Professor Jerome Borison began the clinic as a course for students in the law school. At first, Professor Borison taught this as an overload with about three or four students each taking it for 3 semester hours per semester. Later, when IRS funding became available, the clinic became part of his course load and the number of students was increased to six to eight.
- Who has worked for the LITC over its life?
  - Professor Borison was the director from 1984 until June 2007. Since then, the clinic has been run out of the Graduate Tax Program at the University of Denver by a variety of directors.
- Are there any interesting stories about the clinic?
  - The clinic was the third or fourth educational clinic established. We had to overcome a lot of initial resistance from the local bar who were afraid we'd be taking away much of their business and from the IRS who was concerned that represented taxpayers would slow down the system. Along with the great assistance of Leslie Shapiro, the director of the Office of Professional Responsibility at Treasury, we were able to overcome these issues and many more to set the stage for the acceptance of clinics nationwide.
  - Professor Jerome Borison was chair of the Low Income Taxpayer Committee of the ABA Section of Taxation. While chair, he petitioned

the Section to create a manual for use by clinic directors who were “new to the game,” as many new clinics were being established due to IRS funding with attorneys and others without previous IRS controversy experience. Professor Borison received the approval and became the editor and contributing author of “Representing Your Client Before the ‘New’ IRS.”

- Has IRS funding had an impact on the existence or program reach?
  - It is unclear whether the clinic would exist without IRS funding. The clinic has no funding from any individual or corporations; it is all from the University and the IRS.
- How has the clinic promoted practical legal education?
  - Students in the clinic are enrolled in a course called “Low Income Taxpayer Clinic.” It is taught by a professor and enrolls between six and seven students per semester, including the summer.

#### **University of Michigan Low Income Taxpayer Clinic**

- Original clinic operated from 1976 to 1982; re-launched in January 2007
- Address: 2078 South Hall, 701 South State Street, Ann Arbor, MI 48109
- Why it started?
  - Doug Kahn began our first tax clinic in the fall term of 1976 with a 2-credit clinic taught by Charles (Chuck) Ladd (a private JD/CPA in town who still maintains a solo practice, and with whom I was fairly recently the co-chair of the Taxation Section of the Washtenaw County Bar Association). The clinic was limited to six students who worked in teams of two, and only took matters where the amount in controversy was less than \$1,000. The amount in controversy figure was set in part due to not wanting to take work away from private practitioners. By the fall term of 1980, the amount had risen to \$2,000. One interesting thing Chuck did was to videotape the clinicians interviewing clients (mock ones, really -- clients from Chuck's private practice whose issues had already been resolved), then have the interviews analyzed by Andrew Watson, a psychiatrist with a joint psychiatry/law appointment at the University.
- Who has worked for the LITC over its life?
  - Chuck Ladd continued to teach the clinic through the winter term of 1979. Guy Palmer then took over, and taught through winter term 1981. Fall term 1981 through winter term 1982, the clinic was taught by Larry J. Ferguson of Ferguson & Widmayer, P.C. It appears that winter 1982 was the original clinic's final term. Doug and Larry both report that it was shut down because of the difficulty in finding clients. Apparently it was hard to get the IRS to agree to post notices in their waiting room about the clinic's availability. For other publicity, Doug would periodically instigate

an article in the local newspaper -- this would generate some new clients each time, but not enough to sustain the clinic. Jay Kennedy, now at Warner Norcross & Judd, LLP, is also an alumnus of the original tax clinic.

- With the leadership of David Hasen (now at Santa Clara), UMLS decide to apply for an LITC grant in the summer of 2006, to re-launch the tax clinic in January 2007. We started with doing just controversy, and now do both controversy and ESL. Nicole Appleberry has been the Director since 2007.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - UMLS has quite a number of other clinics, most of whom have referred clients to us (including the Human Trafficking Clinic, the General Clinic, the Family Law Project (which does divorce work where there is domestic violence), and the Pediatric Advocacy Initiative (which does poverty law work in a medical-legal collaborative environment). We've referred our clients to them as well (particularly the General Clinic and the Family Law Project).
- Has IRS funding had an impact on the existence or program reach?
  - The IRS funding has definitely made a difference and potentially eased the decisional burden of re-starting a tax clinic.

### **University of Minnesota Tax Clinic**

- Founded in 1981
- Address: 229 19th Avenue South, 190 Mondale Hall, Minneapolis, MN 55455
- Why it started?
  - Founded when one of the university tax professors, Leo Raskind, heard about other tax clinics and came to the clinic director suggesting a tax clinic.
- Were there obstacles to overcome in starting the clinic?
  - An obstacle the clinic faced was that none of the supervisors in the clinic had done tax practice before, so they had to learn tax procedure and law.
- Who has worked for the LITC over its life?
  - Jon Hopeman and Kathryn Sedo have worked at the clinic since the founding.
- Has IRS funding had an impact on the existence or program reach?
  - Before receiving grant funding, the clinic had fewer students and cases. It did almost no collection work. It focused on audits, appeals, and tax court. After receiving the grant funding, the clinic was able to accommodate more students and clients. It also has a strong focus on collection work.

- How has the clinic promoted practical legal education?
  - Being an academic clinic, it is their view that clinical work allows students to learn procedure, fact gathering, and effective presentation of facts. The students are able to build on interviewing, counseling, and negotiation. Before working in the clinic, students are introduced to these skills through a simulation course.

### **University of New Mexico LITC**

- Founded in 2005
- Address: MSC11 6070, 1 University of New Mexico, Albuquerque, NM 87131
- Why it started?
  - The history of the University of New Mexico LITC stretches back to 1980, when Law Professors Bill MacPherson and Hugh Muir conducted a sporadic tax clinic as part of the larger, mandatory, multi-section UNM Clinical Law Programs. Ever since those early days, advocacy on behalf of low-income taxpayers has been an integral part of the larger clinical law program, which began in May of 1970, and is now the seventh-ranked clinical law program in the U.S.
  - Early in 2005, Professor Antoinette Sedilla-Lopez, who was at that time the Associate Dean for Clinical Affairs, received a call from U.S. Senator Jeff Bingaman, urging her to apply for a taxpayer advocate service grant. The initial half-year grant was received for June through December of that year. At about the same time, under the leadership of the law school Dean, Suellyn Scarnecchia, the tax clinic became part of what is known today as the Business and Tax Clinic, an economic development access to the economic justice component of the clinical law programs, in which students are responsible for a mixture of tax and business cases. The law school was grateful for the opportunity not only to serve low-income taxpayers but also to train more tax lawyers in a state that badly needed this capacity building.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - The third milestone in the LITC's formation was passed in the fall of 2009, with the hiring of a part-time qualified tax expert. With this addition, the representation of low-income taxpayers in tax controversy matters entered a new phase of enhanced operation.
  - As part of its mission to serve low-income taxpayers, the UNM Clinical Law Programs embraced a multitude of legal disciplines, from family law to immigration to juvenile justice. Almost from the inception of the Clinical Law Programs, its leaders have recognized the economic

disruption caused by even a small controversy with the IRS – particularly when competent counsel does not represent taxpayers.

- Were there obstacles to overcome in starting the clinic?
  - The first challenge was increasing community awareness of the services offered by the LITC. A second challenge was finding a qualified tax expert in a very poor state where tax practice is not yet fully developed – and then determining the contours of the collaboration between the QTE and the full-time tenured faculty.
- Who has worked for the LITC over its life?
  - Early on, various members of the full-time, tenured faculty taught in the clinic. The faculty members include Bill McPherson, Hugh Muir, Scott Taylor, Nathalie Martin, Alfred Mathewson, and Sergio Pareja. More recently, highly qualified attorneys with decades of experience in private practice, industry, the IRS, and New Mexico taxation, became qualified tax experts under the LITC grant. These individuals include Adjunct Professors Mary Leto Pareja, Pamela Herndon, and Grace Allison.
- How has the clinic promoted practical legal education?
  - As part of their clinical law experience, LITC students conduct intake interviews, write business letters and legal memos, and communicate with their QTE, their clients, and the IRS. All forms of communication are critiqued by the QTE, with special attention to ease of understanding, transparency, and organization. Students are continually reminded that they are speaking to an audience or writing for a reader, whether it be the client, the IRS, or the next clinical law student assigned to the case.
  - Collaboration at the clinic begins with an understanding that the client and the clinical law student are a team, working together to achieve a mutual goal.
  - The clinic environment, complete with circular workstations and electronic whiteboards, encourages collaboration among students – not only within the LITC but also across clinical sections.
  - The heart of practical law practice is problem solving through analysis. For this reason, students are required to identify the core issues in each of their cases in a weekly summary, and to present an appropriate weekly action plan. The result is sharpened focus, increased energy, and, for many students, a realization that issues evolve over time, often necessitating a change in plan.
- Are clients who come for tax assistance served by any other legal service programs that you offer?
  - Students have collaborated with their peers on the tax aspects of immigration proceedings. Because LITC students are familiar with the

work of the entire clinical program, their clients are routinely referred to other clinical law sections for their divorces, their guardianships or their probate matters. Having broad expertise in a variety of legal disciplines helps serve their clients, and turns their students into accomplished advocates who take a holistic approach to practice.

- The clinic's favorite stories illustrate the synergies that can occur when an LITC is housed in a well-developed and diverse clinical program. For example, in the spring of 2012, one of their LITC students wrote a widely circulated memo about the benefits of using Form 8332 to settle disputes about the dependency exemption in a divorce. This memo is now available to all clinic students and their clients. Since all students at UNM must pass a clinic in order to matriculate, the effects of this memo are far-reaching.
- Are there any interesting stories about the clinic?
  - The tax clinic has had many individual victories. These include elimination of a \$7,000 deficiency involving the EITC for a single mother of two; acceptance of a \$300 offer in compromise for a client with a devastating medical condition; and over \$5,000 of reduced tax liability in three very recent innocent spouse cases.
- Has IRS funding had an impact on the existence or program reach?
  - IRS funding enabled them to hire highly qualified part-time qualified tax experts. The funding has also allowed them to expand their reach throughout the state; they are helping taxpayers in Las Cruces, Moriarity, Pie Town, Alamogordo, Albuquerque, and Santa Fe.
  - The LITC provides valuable experience in communication, collaboration, and analysis. This is wrapped in a values-based curriculum that emphasizes ethics and cross-cultural compassion.
  - The LITC grant has enabled the UNM Clinical Law Programs to encourage students to practice tax law in New Mexico, and to provide services to large numbers of New Mexicans in disputes that are overwhelming to them. These essential services are not available widely in the state, making them valuable to the community.

### **Valparaiso University School of Law Tax Clinic**

- Founded in 2000
- Address: Heritage Hall, 510 Freeman Street, Valparaiso, IN 46383
- Why it started?
  - Karen Kole, an applicant for a clinical position at the law school, proposed the tax clinic to the faculty.
- Who has worked for the LITC over its life?

- Professor Karen Kole and Professor Paul Kohlhoff have worked at the clinic since it was founded.
- Are there any interesting stories about the clinic?
  - An interesting fact about the clinic is that it was co-counsel in the case *Lantz v. Commissioner*, which resulted in the abandonment by the IRS of the 2-year time limit for equitable innocent spouse claims.
- Has IRS funding had an impact on the existence or program reach?
  - The clinic has received IRS funding since 2000.
- How has the clinic promoted practical legal education?
  - Being an academic clinic, it is their view that the cases they handle for low-income taxpayers provide an exceptional learning experience for students. The cases present messy facts, complicated law, difficult clients, and a complex bureaucracy as the opponent.

**Vermont Low Income Taxpayer Project; Vermont Legal Aid, Inc.**

- Founded in January of 2005
- Address: 264 North Winooski Avenue, Burlington, VT 05402
- Why it started?
  - The Vermont Legal Aid heard about IRS LITC grant program and decided to apply. They felt IRS controversy work would further their longstanding goals of fighting poverty and helping people assert legal rights that they could not otherwise vindicate. Vermont Legal Aid had never done tax work before. They relied very heavily on Mary Gillum of the Tennessee Taxpayer Project. She graciously offered advice and gave substantive trainings during their first few years.
- Were there obstacles to overcome in starting the clinic?
  - The 100% match required by the grant is the biggest challenge. They are in a rural area, where most private attorneys do not make much more than legal aid attorneys. They have not been able to convince many private attorneys to donate their time.
  - Another big challenge was (is) getting tax returns prepared for non-filers. They struggled to find pro bono or low-cost tax preparation. Most of their VITA/TCE sites do not offer help out of season, or out of scope. Because they had no one on staff with a tax background, they were not able to do the returns themselves.
  - It was frustrating not being able to sue the IRS in some cases.
- Who has worked for the LITC over its life?
  - Karen L. Richards has been the project director. Rachel Batterson, Jean Murray, & Christine Speidel have served as staff attorneys.
- Are there any interesting stories about the clinic?

- It has been starting to see how many people from their historical client population (poor, elderly, disabled) have IRS problems. It became clear that there was an enormous unmet need for tax help and tax education.
- The IRS grant has had a positive impact on their other legal services work. Tax law ties in to so many other legal areas including domestic relations, foreclosures, and (soon in a bigger way) health care. LITC staff share knowledge, and conduct trainings, so that all VT Legal Aid advocates can spot common tax issues.
- Has IRS funding had an impact on the existence or program reach?
  - The tax clinic would almost certainly not exist without IRS funding. In the nonprofit legal services environment, competition for dollars is fierce. There are many more people with legal problems than they can help. The LITC funding is very important to ensure that this work continues.

### **Villanova Law School Federal Tax Clinic**

- Founded in 1991
- Address: 299 N. Spring Mill Rd., Villanova, PA 19087
- Why it started?
  - The law school saw a need for students to get the opportunity to represent “real” taxpayers. Because of the LLM program in tax at Villanova Law School, a tax clinic created a nice fit.
- Who has worked for the LITC over its life?
  - Michael Mulroney and Marc Schoenfeld founded the clinic. In 2000, Les Book became the clinic director. In 2008, Les Book became the director of the LLM program and Keith Fogg became the clinic director. Linda Vines has served as the assistant clinic director since January 2003. The clinic has been blessed with two outstanding administrators during its existence – Ann McGarrigle and Bernadette DiPasquale. Ann McGarrigle tells the story of the early years of the clinic when it was reaching out into the community to find taxpayers with need of assistance. The clinic publicized its services in church bulletins. One person who came into the clinic mentioned that she had gone to church with her tax problems weighing on her mind only to see the mention of the Villanova Tax Clinic and know that God had answered her prayers. Ann does not remember if the clinic won that case.
- How has the clinic promoted practical legal education?
  - There are typically ten students enrolled per semester in the clinic class and several advanced students to assist in handling cases. During the summer, the clinic usually has three to five students working with the assistant clinic director to handle the cases. The Villanova Tax Clinic covers each of the six Tax Court calendars held in Philadelphia each year.

It also seeks to educate other clinicians. In 2007, it held the first Tax Court Litigation training class, which it opened up to any LITC advocate at a nominal cost and it has continued to hold this class in subsequent years. The Villanova Tax Clinic also seeks to promote legal issues facing low-income taxpayers through the writing of Les Book and Keith Fogg.

- Has the IRS funding made a difference?
  - The tax clinic at Villanova Law School was one of the 16 tax clinics that pre-dated the grant. It would probably continue to exist without the grant; however, the grant allows it to handle more cases than would be possible on a more limited budget.

### **Washington & Lee University School of Law Tax Clinic**

- Founded in 2008
- Address: Sydney Lewis Hall 307, Lexington, VA 24450
- Why it started?
  - Started because the law school had long discussed an expansion of its clinical programs. They already had several clinics that were litigation-focused, so the idea of adding a clinic that dealt more with administrative law and client counseling was very attractive. While they are a small school (total size is approx. 450 students), they typically have a significant number of students who are interested in tax law.
- Who has worked for the LITC over its life?
  - Michelle Lyon Drumbl has been the director since it was founded. For one year she had the assistance of a recent graduate, Erica Knott, who is also serving as interim director for fall 2012.
- How has the clinic promoted practical legal education?
  - There are typically eight students enrolled per semester and two during the summer.
- Has IRS funding had an impact on the existence or program reach?
  - When the clinic was proposed to the law school, the federal grant program was as a selling point on how to defray costs, given how expensive clinics are. It was a valuable selling point to the faculty.

### **Western North Carolina Low Income Taxpayer Clinic (run by Legal Services of Southern Piedmont)**

- Founded in 2002
- Address: 1431 Elizabeth Avenue, Charlotte, NC 28204
- Why it started?
  - Started because there was no existing legal service in tax matters in North Carolina at the time.
- Were there obstacles to overcome in starting the clinic?

- Funding was an initial obstacle.
- Who has worked for the LITC over its life?
  - Kenneth Schorr was the director for the first year of the clinic. Kamilah Exum is currently an assistant examiner at the Federal Reserve Bank of Chicago and served as the director of the clinic from November 2003 until November 2007. Since then Arthur Bartlett has served as clinic director. Soreé Finley also works in the Clinic.
- Are there any interesting stories about the clinic?
  - An interesting story is about a client to who was sent a bill from the IRS when a perpetrator of the equity skimming fraud reported the payoff of her mortgage to the IRS. The clinic successfully got the IRS to release its claim and got her a judgment of almost \$100,000 against the perpetrator of the fraud.
  - The clinic serves low-income individuals and ESL taxpayers in the thirty-eight western most counties of North Carolina, from Davidson County in the east to Cherokee County on the Tennessee and Georgia borders in the west. They serve Surry, Yadkin, Davie, Davidson, Rowan, Cabarrus, Stanly, Union, Mecklenburg, Iredell, Alleghany, Ashe, Wilkes, Watauga, Alexander, Caldwell, Catawba, Lincoln, Gaston, Cleveland, Burke, Avery, Rutherford, Polk, Henderson, Buncombe, McDowell, Mitchell, Yancey, Madison, Transylvania, Haywood, Jackson, Swain, Macon, Graham, Clay, and Cherokee Counties.
  - In addition to these counties, in July of 2008, they began assisting taxpayers from the counties formerly served by Duke Law School's Tax Clinic. During 2009, they expanded their activities again and began assisting pro se United States Tax Court litigants throughout the state.
- How has the clinic promoted practical legal education?
  - More recently, they have strengthened the mentoring and training element of their practice by supervising law students as they work client cases before the IRS, in accordance with Special Appearance Authorizations from the Office of Professional Responsibility.

### **Wisconsin Judicare's Low-Income Taxpayer Clinic**

- Founded in 2006
- Address: PO Box 6100, Wausau, WI 54402
- Why it started?
  - The clinic was started when Wisconsin Judicare was approached by the local taxpayer advocate.
- Who has worked for the LITC over its life?
  - Rosemary Elbert was instrumental in getting the LITC off the ground. Kimberly Haas began working in 2006 as the QTE.

- Has IRS funding had an impact on the existence or program reach?
  - Without funding from the IRS, the LITC would not exist.

Clinic Grants by Year	Total Grant Awards	Controversy/ESL/Both	Academic	LSC	Independent	Notes
1999	34	C = 22, ESL = 4 Both = 8	22	12	N/A	
2000	70		31	39		
2001	102		36	34	24	
2002	125		39	40	38	
2003	137		37	49	43	
2004	125		36	46	42	
2005	146	C = 34, ESL = 31, Both = 81	37	LS/I Combined: 109		
2006	153	C = 38, ESL = 31 Both = 84	33	LS/I Combined: 120		
2007	154	C = 50, ESL = 21 Both = 83	43	LS/I Combined: 111		
2008	155	C = 45, ESL = 21, Both = 89	47	41	66	
2009	162	C = 47, ESL = 19 Both = 96	42	66	54	
2010	160	C = 44, ESL = 16, Both = 100	44	61	55	
2011	165	C = 53, ESL = 16, Both = 96	44	61	60	
2012	154	C = 48, ESL = 21, Both = 85	41	65	48	