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CONTEXT AND COLLABORATION:
FAMILY LAW INNOVATION AND
PROFESSIONAL AUTONOMY

Louise G. Trubek*

INTRODUCTION

REASSESSING how to provide and maintain legal services for low-income people is underway; the current framework was envisioned in the 1960s, revised in the 1970s and 1980s, and is no longer viable.¹ The largest system for legal services for the poor, the Legal Services Corporation ("LSC"), and a main source of funding for programs that serve the poor, Interest on Lawyer Trust Accounts ("IOLTA"), are under siege in Congress and the courts.² To respond to these funding cutbacks, traditional advocates for the poor, bar groups and LSC offices throughout the country, are downsizing, reorganizing, and seeking additional resources.³

In rethinking providing legal services for the poor, ensuring access for low-income families is the overriding need. Low-income families are the largest group left out of access to law; family law services now are the most needed yet the least available.⁴ The reasons for this situation are fourfold: Reduced LSC programs, complex family structures, archaic legal institutions, and significant changes in the welfare system. Cutbacks in funding and restrictions in LSC programs are forcing these programs to dramatically retrench.⁵ Family restructuring

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⁵ See Jeopardy Again, supra note 2.
is pervasive; the number of single parent-headed families is high.\textsuperscript{6} Complex family situations often result in increased need for legal interventions such as custody and child support determinations. Legal institutions have not been able to provide adequate protections for families in light of these shifts. Simplification of court procedures and uses of technology to create efficient, consumer-friendly systems have not emerged.\textsuperscript{7} Finally, welfare reform has disrupted systems that serve families; elimination of Aid to Families with Dependent Children ("AFDC") and accompanying confusion about Medicaid entitlement and child care benefits demonstrate deep gaps in anti-poverty programs.\textsuperscript{8}

Thus, as we assess how to meet the needs of low-income people, looking at family law services should be paramount. There are elements in the contemporary context that allow us to envision providing these services: Amplified public service by the bar and law schools, new social understandings and community organizations, and advances in technology.

The public service goal of lawyers' professionalism is long-standing. This goal can be divided into two parts: The duty to provide services to those who cannot afford to pay for them and the duty to support and improve laws and legal institutions.\textsuperscript{9} In the last decade, this public service obligation has been reinvigorated. There are extensive pro bono programs including efforts to implement mandatory pro bono in law schools and in legal practice.\textsuperscript{10} Law schools have well-defined clinical programs that provide a vast array of services for poor clients. Fellowship programs for post-graduate law students enable energetic new lawyers to provide services in a nonprofit agency.\textsuperscript{11} A notable change is the commitment of the organized bar to fight for funding for LSC. This is a significant departure from the 1960s and 1970s when bar associations opposed development and funding of the program. There are also new understandings of the way lawyers can provide services that incorporate considerations of race, community, and poverty. Communities can assess their needs and respond in particular, targeted manners using legal discourse and tools that respond in their

\begin{itemize}
  \item \textsuperscript{6} Editorial, \textit{Good News and Bad About Families}, Chi. Trib., June 7, 1998, at 22 (discussing the 1998 U.S. Census Data Report, which shows that 28% of families are headed by a single parent).
  \item \textsuperscript{7} See Cantril, \textit{supra} note 4, at 10.
  \item \textsuperscript{9} This public service obligation is contained in the preamble as well as rules of Model Rules of Professional Conduct. See Model Rules of Professional Conduct pml. §§ 1, 5, 12 (1998); \textit{id}. Rules 6.1, 6.2.
  \item \textsuperscript{10} See Jeremy Miller & Vallori Hard, \textit{Pro Bono: Historical Analysis and a Case Study}, 21 W. St. U. L. Rev. 483, 92 (1994).
  \item \textsuperscript{11} See Louise G. Trubek, \textit{Poverty Lawyering in a New Millennium}, 17 Yale L. & Pol'y Rev. 461 (1999) [hereinafter Trubek, \textit{Poverty Lawyering}].
\end{itemize}
Advances in technology allow delivery of services in new formats and with increased efficiency; internet access provides information and documents that can be shared within communities, states, and nationally. E-mail allows easy linkages between law offices working on similar issues and among lawyers, community groups, and other advocates.

In this contemporary context, practices are developing to respond to gaps in family law services. Understanding family law needs, these practices are using the opportunities of the new context to develop innovative systems. These systems explore a collaborative vision that challenges the professional value of autonomy. This Article highlights three of these practices, describing their particular origins, funding, and collaborative styles. It discusses how professional values influence the construction of the practices. Finally, it examines how legal institutions are responding to challenges presented by these practices, concluding with proposals to mediate between autonomy values and collaborative techniques.

I. Family Law Innovations and Techniques

Community groups, social service agencies, and progressive lawyers have noted the need for family law services in their work. They have constructed ways of meeting these needs that utilize their knowledge and resources. Each innovation resists traditional styles of delivering legal services. This resistance creates tensions within the program, forcing the practices to formulate techniques to resolve contradictions. An examination of these new practices reveals three innovative systems and their techniques: Multi-professional cooperation relies on internal controls, community education necessitates linking legal programs with local sites, and information networks require coalitions of committed lawyers, judges, and community leaders.

A. Multi-professional Cooperation

The Family Center is a nonprofit organization that was founded in 1992 by a social worker concerned with families where a parent had HIV or AIDS. The future of the children in these families was a motivating concern for the founder. She obtained federal Ryan White funding to set up the Family Center and assist these families with transitions caused by the illness and death of a parent, and initially pro-

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13. For a description of the use of Internet and e-mail in a program that provides legal services to older people, see Mark E. Doremus, Wisconsin's Elderlinks Initiative: Using Technology to Provide Legal Services to Older Persons, 32 Wake Forest L. Rev. 545, 546 (1997).
vided basic services such as help getting to appointments and filing welfare applications.

The founder soon identified the effect that legal institutions and instruments had on the status of these families; permanency planning and custody determinations are complex issues that drastically affect their well being. The founder realized that the families needed legal advice on powers of attorney, guardianship decisions, and other issues; she then explored several options. She had been impressed with the work of Legal Aid in developing new judicial documents that were proving useful to her clients, and experimented with developing an individual assistance program with Legal Aid. There were difficulties, however, in coordinating the needs of the clients with the scheduling requirements of Legal Aid. Utilizing a pro bono program was also explored, but pro bono lawyers often had difficulty working with particular clients or did not possess the needed expertise.

Eventually, a Family Center staff social worker who was a law school graduate began to provide legal assistance to the agency's clients. The agency then decided to set up a legal department within the organization itself. The legal services were expanded when an intern from a local law school, funded by a summer public interest fellowship, worked in the legal unit. She subsequently obtained a post-law school fellowship for a full-time position with the agency. The legal unit is now a major aspect of the agency. It is funded from the same sources as the family specialists' unit: The federal Ryan White program, other governmental programs, and charitable foundations. The agency does not receive LSC or IOLTA funding.

The lawyers and family specialists at the Family Center work closely in teams. This arrangement allows provision of comprehensive services but contains internal tensions. The agency has developed procedures for team cooperation and techniques for handling tensions that arise. A family specialist has the initial discussion with the client. Subsequently, when a lawyer has contact with the client and assumes a representational role, a retainer letter is signed by the client and the lawyer. The family specialist, however, expects ongoing involvement in the case, including sharing information with the lawyer. Additionally, the reporting duties of the lawyer and family specialists are different. A lawyer at the Family Center was concerned with confidentiality issues between the social workers and the lawyers. She also had concerns about the tension between the role of the lawyer and the

14. "Family specialists" refers to the social workers at the Family Center.
15. See Memorandum from the Family Center for Services and Research (n.d.) (on file with author) (describing the Center and its programs).
furtherance of the agency's mission. Family specialists have a duty to mandatorily report suspected child abuse to the state while lawyers do not. To deal with the tensions surrounding information sharing and reporting requirements, the Family Center has developed internal protocols, which provide guidance on how to deal with confidentiality among clients, lawyers, and social workers. The tension between the Family Center managers and lawyers involves their goals of organizational survival and advocacy for individual clients. Policy decisions and funding constraints give rise to conflicts over resource allocation. Lawyers continually negotiate around these issues to develop a working relationship among themselves, family specialists, and agency management.  

Confronting and struggling with issues of cooperation between lawyers and social workers encourages efforts to expand family law services. Cooperation leads to improving individual assistance for clients and to empowering relationships between professions and agencies. The Family Center represents one model where lawyers are employed by social service agencies; social workers can also be located in legal offices and law school clinics. Moreover, there are other multi-professional collaborations that have similar possibilities for improved service and advocacy. In the health field, lawyer-nurse cooperation has demonstrated important advances in providing health care for poor people: Enhanced outreach and enrollment programs and provision of culturally sensitive, quality service.

B. Community Education

The Center on Fathers, Families, and Public Policy ("CFFPP") was founded in 1995 with a mission "to help create a society where parents, both mothers and fathers, can support their children emotionally, financially and physically." CFFPP identifies low-income parents who have never married as their target group. The group provides technical assistance, training, and education through social service agencies and community agencies that serve families. CFFPP is

17. Telephone Interview with Sarah Orr, Esq., the Family Center for Services and Research (June 26, 1998).
19. See generally Trubek, Embedded Practices, supra note 1, at 419-27 (discussing "lay advocates" and non-lawyer employees).
staffed by social workers and policy analysts and funded through grants from national foundations.21

One of CFFPP's policy analysts is also a lawyer. Early on, she realized that it was essential to address the legal issues of CFFPP's clients: child support, paternity determinations, and custody and visitation decisions. The clients were having difficulty in achieving successful participation in the legal system. The lawyer observed that "in order for due process to work, the policy and practice [of the legal system] needed to be changed, or the clients needed lawyers."22 The funders initially doubted the need for a legal component for the group but eventually were convinced to fund a legal program.

Because CFFPP has a national mission, the group decided to initiate a demonstration project in several states. The demonstration project is a three-tiered approach. First, a curriculum on legal protections for fragile families is developed by combining the knowledge of a local attorney and of an education specialist. Then the curriculum material is taught to the social service/community agency workers and their clients with the goal of enabling the clients and workers to deal with the legal system. The third step is to provide attorney assistance where the agencies or clients cannot adequately handle an issue. After exploring pro bono and retained counsel as models for their attorney assistance, CFFPP decided on an arrangement with a for-profit national prepaid plan. When the client is in need of attorney assistance, the client pays seventeen dollars a month to consult a knowledgeable local lawyer.

CFFPP explored using local pro bono attorneys and law students to develop its curricula but decided on retaining local attorneys and educational experts. It also discussed utilizing pro bono attorneys or law school clinics to provide assistance to its agencies' clients. The founders had unsatisfactory experiences with pro bono programs in other situations, however, and suggested a prepaid plan as an alternative. CFFPP does not anticipate ethical difficulties with pro se activity of the clients or with community workers assisting the clients in their court or agency appearances. The lawyer at CFFPP is uncomfortable about the fit between nonprofit client-based groups and legal services provided by a for-profit national firm. She is willing to experiment, however, with this form of lawyer assistance.

One aspect of CFFPP work is its relationship to central city communities. The project has concentrated on issues of families with out-of-wedlock children as a particular aspect of family law that develops from low-employment, high-crime communities. The program seeks to remedy the legal issues by directly providing services aimed at this

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particular set of concerns. After identifying the need for assistance for never-married parents, it developed a lawyering system to directly respond to that need.\textsuperscript{23}

Educating community agencies about laws and legal institutions is an approach to effective service to low income families.\textsuperscript{24} Practices can create strong community programs by bringing together isolated groups. CFFPP is developing local programs in different communities across the country linked through technical assistance. CFFPP uses local lawyers to develop its educational curricula, thus ensuring their information is accurate for particular jurisdictions.

C. Information Networks

The Wisconsin Ad Hoc Coalition on Family Law Matters ("Coalition") is a network of practices and organizations formed in 1997 to enable statewide access for all people seeking family law services. The Coalition consists of two types of organizations: those that directly provide services to clients and those that seek structural changes to make client services more cost-effective and efficient. The Coalition meets regularly, providing support for members by developing strategies, sharing information, and conducting coordinated fundraising.

The groups in the Coalition that provide direct services are local court-based assistance centers and law firms that provide task-divided services, dubbed "unbundling." The assistance centers have different origins; they were developed by librarians, a bar association, and a judge. The assistance centers based in law libraries provide family legal forms and information. One library, in a large city, in addition to providing legal forms, has arrangements with a local minority Bar Association and an anti-domestic violence organization to provide pro bono services to families. Another assistance center, based in a small city court house and staffed by a paralegal, was funded by the State Bar of Wisconsin as a model project to increase services for people using the court without an attorney. A third assistance center, initiated by a judge in a rural county, is linked to community groups such as labor unions and fraternal organizations. This assistance center utilizes pro bono services of local lawyers and the local LSC funded office. Law firms that have developed unbundled systems also participate in the Coalition. They provide legal forms and instructions on court procedures; often the clients complete forms and make court appearances on their own.

Two Coalition organizations, a law school-based clinic and a Supreme Court Forms Approval Committee, seek structural changes

\textsuperscript{23} This project demonstrates one response to John Calmore's call for lawyering at the intersection of races, community, and poverty. See Calmore, supra note 12, at +2.

\textsuperscript{24} For a discussion of other practices that are utilizing community legal education, see Trubek, Poverty Lawyering, supra note 11, at 461.
to strengthen the ability of groups and lawyers to provide direct services. These groups are working on standardizing legal forms and providing accessible information. The law school clinic obtained funding from the State Bar Association to create fellowships that support law students staffing the Coalition. The fellows research ethics issues, assist in forms development, locate local and national groups working on family law delivery, and provide information on funding opportunities. The Chair of the Supreme Court Committee is participating in the meetings of the Coalition. The Supreme Court Committee, based on a recommendation of the State Bar Commission on Delivery of Legal Services, considered the development of pro se forms in family law matters.

Ethical and professionalism barriers are a constant topic at Coalition meetings. Judges are concerned with the reaction of the organized bar to “official” efforts to assist pro se litigants or to develop nonlawyer systems whether using paralegals, librarians, or websites. Elected judges can be particularly concerned with bar attitudes. In addition, court personnel such as commissioners and clerks traditionally have been hostile to assisting unrepresented people, since it may result in both an increase in workload and exposure to liability for unauthorized practice. The rural assistance center recently requested an ethics review from the State Bar ethics committee because of a pro bono attorney’s concern about confidentiality and conflicts issues in the way the program operated. The assistance center funded by the State Bar and staffed by a paralegal operated for one year; that program has since ceased operations. The major reason for the failure was a refusal by the judges and local lawyers to take responsibility for a project that challenged their exclusive control in delivering legal services. Law firms providing unbundled services were shocked when information on the recent furor over ethical concerns about unbundling was distributed at Coalition meetings. Several lawyer members of the Coalition, who use systems of task division between lawyer and client, have carefully written client retainer letters that clearly state the agreement to divide up responsibility. Often legal form writing, if undertaken at all, is done by isolated lawyers or judges; once the forms are developed, the information is not shared with other practices or the community. The isolation of the practices and lack of funding are reasons for the lack of sharing model documents. Coalition members are also exploring the creation of standardized court forms with accompanying instructions to be available to the public through libraries and websites. The obstacle to

courts making forms available is fear of ethical violations, such as unauthorized practice of law, and complaints of potential overwork by court personnel.

Simplification is crucial to the efficient delivery of services; without it, it is very difficult to provide centralized assistance. In Wisconsin, there are no mandatory forms, and there is county-by-county variation in court procedures based on decisions by court commissioners and judges. The State Bar realizes the barriers to centralized and alternative delivery systems caused by the plethora of forms and procedures. It is opposing the rule proposed by a judges' group to mandate court forms. The Bar specifically bases its opposition on the ability of mandatory forms to encourage non-lawyer assistance to clients.

Groups seeking reform of legal structures, such as the Coalition, have difficulty procuring long-standing commitment from mainstream judges, bar associations, or large funders. They may come together, as the Coalition did, based on an official initiative, but may become marginalized when the bar or funders fail to maintain commitment and interest. In Wisconsin, groups spoke out in public hearings throughout the state in the proceedings of the Wisconsin Commission on Delivery of Legal Services to Low and Moderate Income People ("Commission"). Many complained about their inability to provide usable information to their clients. The Commission listened to these remarks and created several pilot projects including two that became part of the Coalition. The Commission, however, subsequently was unable to continue providing support and alliances for Coalition projects; there was little tie-in to law school teaching, rule enforcement, or community involvement. As one Bar official stated to a reporter, it is a long, difficult process.

An abiding concern for the Coalition, as well as for the Family Center and CFFPP, is compliance with professional responsibility requirements. The practices develop techniques for managing the intersection between the innovative provision of services and traditional values of professionalism. The techniques have limits, however, that jeopardize practice effectiveness. Development of internal protocols is time consuming and requires commitment of resources by underfunded practices. Combining legal education with backup legal

27. See Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, 9 L. & Soc'y Rev. 95, 144-51 (1974) (discussing the importance of court reforms in allowing the have-nots to succeed and the resistance of lawyers, including public interest lawyers, to pursue this goal).


assistance is difficult where assurance of substantial funding is lacking. Finally, organizing information coalitions for court access is precarious without long range commitments from participants. The continued viability of the practices requires interaction with and commitment from embedded institutions with longevity and resources. This approach has been termed "scaling up."31

II. Collaboration: Autonomy and Public Service

The innovations demonstrated by the three practices share an emphasis on collaboration. Collaboration is three-fold: Among professionals, between law firms and community groups, and between lawyers and clients.32 The Family Center employs lawyers and social workers who work in tandem to assist clients. CFFPP uses educational curricula to enable lawyers to assist clients dealing with legal institutions. The Coalition unites law firms utilizing sliding scale and unbundling systems with libraries and community groups to advance simplification of family law forms and procedures. The innovations show how lawyers who collaborate with other professionals, agencies, and clients seek to maintain autonomy while providing essential services to families.

These collaborative practices belie the traditional law firm model, which depicts the lawyer as autonomous actor.33 Lawyers' independence can provide a bulwark against government and private trampling of personal rights and assist in the development of a civil society.34 The value of lawyers' autonomy is a keystone of professionalism and underlies the justification for the Model Rules of Professional Conduct ("MRPC").35 The MRPC provide specific disciplinary standards whose enforcement mandates lawyer autonomy.36 The MRPC operationalize this concept of autonomy through rules that

33. An effort to rethink the autonomy of the lawyer with the goal of encouraging more collaborative relationships is a major theme in the Use on Nonlawyers and the Rendering Legal Assistance to Similarly Situated Persons Recommendations, which includes a lengthy discussion on the significance of collaboration. See Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons, 67 Fordham L. Rev. 1751, Recommendations 25-46, at 1759-74 (1999) [hereinafter Recommendations].
36. See supra notes 29-33 and accompanying text.
prohibit non-lawyer partners, restrict decision making on legal matters by nonlawyers, and limit solicitation of business by lawyers. In addition, there are sections that prohibit assisting unauthorized practice. They also require competence of lawyers, a concept which can be used to question unbundling practices. Confidentiality of lawyer-client communications can also be brought into question by multi-professional collaborations.

The practices' collaborative arrangements challenge the view that a lawyer's autonomy stems from narrow rules that enforce a lawyer-dominated model. The practices, for the most part, are aware of this challenge. They struggle to create techniques that allow them to provide collaborative services while remaining within the confines of the MRPC. The Family Center developed internal procedural protocols so the obligations of both lawyers and social workers are respected without intruding on clients' rights. The agency's director and lawyers negotiate on a daily basis to reconcile organizational demands and client needs. The lawyer at CFFPP, however, is uncomfortable about using legal services provided by a for-profit national firm. She senses that the mission of the national firm may conflict with the community focus of the local groups that she advises. The Coalition was formed in part to figure out how to handle anticipated violation accusations. Coalition lawyers use retainer letters that clearly differentiate the roles and responsibilities of the lawyer and the client. The Coalition is urging form simplification (with accompanying instructions) and the development of community information centers to allow lawyers and nonlawyers to competently assist clients.

Overcoming the limitations requires "scaling up" of the practices. This engages the practices with the traditional institutions that construct and implement professionalism: bar associations, law schools, and courts. These institutions reinterpret professionalism values through their committee recommendations, rule violation decisions, litigation administration, and teaching curricula. The practices attempt to negotiate between their understanding of the need for collaboration and their desire to maintain lawyers' autonomy. The techniques they use are creative and imaginative, but are limited in scope. Techniques used by family law practitioners offer important insights that should be incorporated into the evolution of professionalism by the traditional institutions. Workplace adaptations to ethical

38. See id. Rule 5.6.
41. See Model Rules of Professional Conduct Rule 1.1.
42. See White, supra note 31, at 828.
rules and concepts are an important element in updating and preserving ethical goals.43

The traditional institutions that construct professionalism are aware of the tensions between innovations and existing ethical rules and concepts. They are developing methods to mediate between the innovations that challenge autonomy and the legitimacy of traditional values. Methods for fostering innovations include safe spaces within the bar, expanded roles for law schools, support from the courts, and integrative funding.

A. Safe Spaces Within the Bar

The practices realize that they must contend with code restrictions that are enforced by the disciplinary system of the bar. One way to deal with potential code violations is to repress the sense that there is an ethical issue that requires analysis; CFFPP assumes that its system of nonlawyer and pro se advocacy will not be challenged.44 Avoidance of ethical issues is also reflected in lawyers' refusal to deal with official ethics structures out of fear that these groups will provide conservative and impractical information. The advice given to the members of the Coalition when ethical considerations were raised is "Don't ask for advice from the bar information systems."45 Avoidance leads to a gap between written rules and actual practice. This gap can isolate the practices and cause stress within individuals and organizations. Avoidance also limits available information for law students, community groups, and funders in providing access for clients.

Creating safe spaces within the bar where practices can seek advice and validation converts avoidance into dialogue. There are existing models: American Bar Association ("ABA") committees, formal evaluations, and registration systems. These models are intended to meet legal needs of clients through assessment of practice innovations. They look at the ethical issues of the practices in the context of providing access rather than scrutinizing the issues rule by rule. The ABA Committee on Legal Services, whose mission is to assist access to justice, studied the burgeoning advice hotlines as part of its oversight of legal service programs.46 Based on its study, the Committee

44. See Telephone Interview with Senior Policy Analyst, Center for Fathers, Families and Public Policy, supra note 22.
45. Minutes of Coalition, supra note 26.
submitted a proposal clarifying the ethical status of hotlines to Ethics 2000, an ABA Commission studying the MRPC with the goal of recommending modifications to agencies that enforce the rules. Creating internal documents for use in practice and external forms for public use are crucial for cost-effective access. Bar groups and disciplinary panels can assist in internal forms development and dissemination. Sample protocols and retainer letters could be distributed by appropriate ABA and other bar groups.

Formal evaluations of innovative systems can also be valuable. Herbert Kritzer compared nonlawyer advocates in administrative tribunals with lawyer representatives; his study revealed strengths and weaknesses in both systems and discussed recommendations for reforms. This type of evaluation identifies and legitimates cost-effective and efficacious innovations in practice. The ABA could create a special fund to pay for such evaluations.

Registration requirements for innovative practices should be explored. CFFPP is utilizing a prepaid legal services structure as a vehicle to provide cost-effective legal services. These prepaid programs were developed in the 1970s as a structural reform in legal service delivery. The registration system was developed to answer ethics concerns raised in that period. A group and prepaid plan registration system was created in Wisconsin by a Supreme Court Rule to establish a procedure for consumer and lawyer complaints on possible ethics violations and as a forum for overseeing these nontraditional systems. Under Wisconsin Supreme Court rules, plans must register with the Bar and are subject to review by a Bar committee. Group and prepaid plans regulated are both nonprofit and for-profit; the number of plans has increased over the years and provides accessible service for many. Registration systems should be examined as a model for encouraging controversial new practices.

47. See id.; see also Recommendations, supra note 33, Recommendations 47–64, at 1774-78 (“Limited Legal Assistance”). These Recommendations propose specific definitions in the Model Rules to encourage the use of limited legal assistance within the current ethics framework; they also propose a further study on the application of these proposed principles to particular methodologies such as hotlines, web sites, form pleadings, and pro se clinics. See id.

48. The importance of evaluation in developing innovative legal services is evidenced in an elaborate set of proposals to enhance and expand assessments. See Recommendations, supra note 33, Recommendations 119–40, at 1796-1800.


51. See Wis. Sup. Ct. R. 11.06. For an interesting discussion on the developments under the Wisconsin rule, see Thomas M. Domer, Expanding Your Practice Using Group and Prepaid Legal Services, Wis. Law., Nov. 1989, at 10.

52. See White, supra note 31, at 823-24.
B. Expanded Roles for Law Schools

The practices demonstrate the influence of the expanded public service role of law schools; they are created by lawyers influenced by their law school experience and sustained by law school resources. Programs to promote the service duty have developed in law schools over the past decade through curricular reform and funded fellowships. The fast-growing number of pro bono projects in law schools reflects a general expansion of formal pro bono programs; over 130,000 lawyers participate in programs organized by the Bar and LSC. Clinical programs have been created in almost every law school; many provide service for low-income people. Ethics teaching in law schools is becoming more mainstream and is influencing legal practice. Bryant Garth observed that a most notable change over the past decade in the competence of the bar is an increase in knowledge of ethics rules. Finally, the development of summer public interest fellowships and post-law school fellowships funded by law firms and foundations is a significant accomplishment.

Innovative practices make good use of public service opportunities provided by law schools. The Family Center has an attorney who started working there on a summer fellowship and was able to obtain a two year public interest fellowship to continue to work at the agency after graduation. Both the Family Center and CFFPP legal programs were initiated by law school graduates dedicated to assisting families who, while working in policy or social work capacities, realized that their law school knowledge and experience could be utilized. Both their commitment to families and skills development were enhanced by law school clinical experiences. The Coalition utilized State Bar funded law school clinical students and fellows to provide support with organization and with research and writing. Law schools, therefore, are crucial to maintaining and expanding innovative practices through their support of public service programs and information about alternative delivery systems.

53. Recommendations on representation within law school settings provide an ambitious and clear statement on the importance of law schools both as socializers of law students in their professional roles and as providers of legal services. See Recommendations, supra note 33, Recommendations 108–18, at 1790-96.

54. See Telephone Interview with Tammy Taylor, Director of Special Projects, The Pro Bono Institute (Sept. 15, 1998) (discussing a study of the number of lawyers involved in pro bono projects); see also Deborah L. Rhode, Cultures of Commitment: Pro Bono for Lawyers and Law Students, 67 Fordham L. Rev. 2415, 2435 (1999) (reflecting the enthusiastic commitment to expanded pro bono).


57. See id.
Ideally, programs in law schools can serve as sources of information on current practices for law school staff and students. They have potential for reciprocity; law schools teach public service to encourage the work, and the practices inform law schools of how public service is working in the field. To achieve this goal, law students should learn about the organizational complexities of innovative practices and understand possibilities for adapting legal ethics in the context of historical and political changes. For example, the importance of courts in allowing access through their procedures and provision of information is inadequately emphasized in discussions of the public service duty; students often are unaware of group and prepaid service plans and their complex rules and structures. Much clinical instruction and ethics teaching is divorced from discussion about the organization and structure of legal practice. Curricula should begin to reflect the current context of innovative practices by including entrepreneurial and managerial aspects of law practice; expanding training in fundraising, management, and technology skills enables students to fund, create, and maintain practices.

Fellowship programs are a new law school public service offering. Law firms, foundations, and law students provide funding for summer and post-graduate law fellows who are placed in practices that assist low-income people. Fellows independently seek these placements and often discover innovative practices for which they provide resources. These fellowship programs have expanded over the past several years; the record of fellows in pursuing public interest careers is exemplary. In many cases these fellowships are tied into loan forgiveness programs which assist law students in pursuing public interest careers despite sometimes staggering student loans. More attention should be paid to these fellowship programs through expanding the number available and encouraging career services to promote them as legiti-

58. A few clinics are involving law students in innovative practices. For example, the Maryland clinic is providing pro-se representation in divorce cases in a court advice-center. The clinic is providing an evaluation of its experience to the court with suggestions for reform. See Michael Milleman et al., Rethinking the Full-Service Legal Representational Mode: A Maryland Experiment, 31 Clearinghouse Rev. 1178, 1180-86 (1997).


60. There is little material that describes the working of new types of law firms such as for-profit franchise, and prepaid plans. Interesting discussions can be found in Carroll Seron, Managing Entrepreneurial Legal Services: The Transformation of Small-Firm Practice, in Lawyers' Ideals/Lawyers' Practices, supra note 43, at 63, 63-94, and Jerry Van Hoy, Selling and Processing Law: Legal Work at Franchise Law Firms, 29 L. & Soc'y Rev. 703, 715-22 (1995).

61. See Trubek, Poverty Lawyering, supra note 11, at 7-8.

62. See id. at 8.
mate post-law-school jobs. Linking the programs to a wider variety of practices, such as for-profit programs, court reform initiatives, and social service placements, would allow fellows to further encourage innovations.

C. Support from Courts

Improving legal institutions, especially courts, is essential for practices to provide continuing cost-effective services to their clients, yet is often an ignored aspect of the public service obligation. Courts have been reluctant to expand their purview to services for low-income people. This reluctance stems from a discomfort in dealing with unrepresented litigants in a court system that is geared toward lawyers. Many family law matters, such as divorce, permanency planning, and paternity decisions, require court action, but courts cannot be accessed. The practices demonstrate the difficulty of reforming courts. The Coalition was created in part to make courts more accessible. It is facing the closing of one of its members, a court-based information center, due to lack of local court support. The Coalition also has experienced the failure of its efforts to create uniform pro se forms by the Supreme Court Forms Committee's refusal to validate pro se forms, citing lack of time and fear of involving court officials in client assistance.

Courts, however, are increasingly realizing that their inability to provide efficient and effective services for low income people may weaken their authority. Community groups, media, and bar associations should challenge judges to take the lead in assisting people to access courts. The victims' rights movement is an example of a disadvantaged group challenging courts' abilities to provide services and equity for their needs. The courts have responded through the development of victims services programs placed within the courthouses. Chief Justice Shirley S. Abrahamson of the Supreme Court of Wisconsin is demonstrating a commitment to further exploring ways to achieve access to courts and family law needs despite setbacks. In her

63. See Model Rules of Professional Conduct pmbl. (1998); see also Recommendations, supra note 33, Recommendations 1–24, at 1751-59 (emphasizing the responsibility to improve legal institutions).

64. Another argument that can be made for lack of court interest is that legitimation of the independent judiciary has been tied to servicing corporate and financial interests in their litigation goals. Courts may perceive interest in low-income people as challenging this hard-fought legitimation. See Terence C. Halliday & Bruce G. Caruthers, Making the Courts Safe for the Powerful: The Commercial Stimulus for Judicial Autonomy in Reforms of the United States' Bankruptcy Law, in Lawyers and the Rise of Western Political Liberalism, supra note 34, at 265, 265-303.

65. See Jona Goldschmidt et al., Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers 5 (1998). Courts have been challenged to ensure "that those appearing before them who cannot afford lawyers obtain fairness and justice in court proceedings." Recommendations, supra note 33, Recommendation 26, at 1760.
"State of the Judiciary Address 1998," the Chief Justice acknowledged both the increasing number and complexity of cases affecting families and the difficulties in meeting the needs of unrepresented litigants. She indicated that she is committed to addressing these challenges. Some courts have opened themselves to pro se clients using court assistance centers, available forms, and websites. The Coalition is working with the Supreme Court Committee on Forms as a vehicle for creating and legitimating standard forms. The assistance center founded by the rural judge is attempting to make his court responsive to the legal needs in his community. The Coalition is actively encouraging libraries, law schools, courts, and community groups to provide internet access to family law forms as part of their provision of services.

D. Integrative Funding

In redesigning a delivery system for poor people, attention must be paid to specific client groups and how services can meet their needs. The disparate public service programs now in place under the aegis of the bar, law schools, and courts can be focused on programs aimed at families. The development of legal services targeted to families is occurring simultaneously with increased social awareness of families' needs. The practices providing family legal services demonstrate ways that cost-effective legal services are possible: alliances among professionals, courts and communities working together, and technology linkages. New welfare-to-work initiatives see families as key to successful work programs; there is substantial concern among welfare-to-work advocates about family legal problems as barriers.

Integrative funding initiatives at local, state, or national levels can produce incentives for encouraging and embedding innovative practices. The potential for expansion of family law services depends on efforts of concerned advocates and legal institutions in seeking reforms and resources. The bar, law schools, and courts are attempting

67. See id.
68. The Maricopa, Arizona, example has received substantial attention. See Jeffrey A. Kuhn, A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium, 32 Fam. L.Q. 67, 82 (1998).
69. Lucie White raises the issue of revisiting the foundational premises of 1960s era legal services. See Lucie White, Specially Tailored Legal Services for Low-Income Persons in the Age of Wealth Inequality: Pragmatism or Capitulation?, 67 Fordham L. Rev. 2573, 2573 (1999). She proposes developing tailored legal services programs that reflect the particular needs of certain groups; the proposal discussed in this section is one approach. See id.; see also Calmore, supra note 12, at 1929 (addressing issues of family poverty).
to mediate professional autonomy with the innovative collaborations; they are confronting the family law needs within their own institutions. A funding program for family law could be proposed by these groups in conjunction with the practices, community groups, and existing legal service providers.

There are models of groups who successfully procured specialized funding for legal services: The elderly, mentally and physically disabled, and battered women. These funding programs were secured through a combination of sympathetic views of the clients, lobbying by those with concerns for the group, and proposals for tailored delivery systems. The development of a public understanding of sexual assault and domestic violence was the precursor to the enactment of legislation providing legal protections for battered women. The social shift in attitudes toward the disabled over the last twenty years along with a targeted and effective lobbying campaign by consumer and community groups, led to enactment of funding for legal services for persons with disabilities. Funding for legal needs of the elderly was specifically tied to outreach and education systems necessary to secure access to legal services. The programs to fund legal services for battered women were specifically tied to the community institutions such as shelters and support groups for battered women. It was the existence of these community institutions that persuaded legislators to provide funding for legal services for these groups.

These successful models demonstrate the ability of a targeted program aimed at a specific client group to obtain funding and in turn foster collaborative methods. A similar initiative for family law services would emerge initially from a document outlining social needs of families and tailored legal services to meet those needs.

Likely re-
Context and Collaboration

Recipients of funding for family law services include LSC offices, social service agencies, courts, individual practitioners and law firms, and law school clinics. Potential for development of a specialized funding stream for family services and projects is demonstrated by a recent Wisconsin program funded through welfare-to-work grants available under welfare reform legislation. The local Legal Services office received a substantial contract to provide legal services to assist women seeking jobs where there are legal obstacles such as housing and debt issues and to assist noncustodial parents who are referred from Family Court. The funding agency understood the link between family law access and the ability to work.

Conclusion

The practices reveal the importance of collaborative systems in providing legal services for families. They demonstrate remarkable energy, community connections, and intelligent strategies; they are also fragile, isolated, and vulnerable. Individuals and groups within law schools, bar associations, and courts are fighting to use the power and influence of these institutions to remove obstacles and expand resources for the practices. These legal institutions haltingly respond to practices' challenge of rules and procedures that restrict development of collaborative innovations. The costs paid for the positive results, however, are high; enormous resources are expended to create fragile programs often at risk. It is appropriate now to assess and evaluate client needs, actual practices, and formal and informal professionalism barriers. The promise displayed by innovative lawyers and community organizations can be validated and encouraged by confronting embedded legal institutions and reexamining values of autonomy and public service.

Effective legal services for poor families are linked to professional values. As Michael Grossberg stated in his article on the creation of legal aid in the early twentieth century, "The politics of professionalism involves struggles among professionals and between professionals program, see Sharon M. Dietrich et al., Welfare Advocacy: Tactics for a New Era, 31 Clearinghouse Rev. 419 (1998). For an example of a discussion document followed by alliances to enact an innovative system for legal assistance, see Project for the Future of Equal Justice, supra note 3.


See Memorandum from Helen Kelley, Private Industry Council of Milwaukee County (Nov. 11, 1998) (on file with author).

For similar points of view see David Luban, Lawyers and Justice: An Ethical Study 293 (1988); Gordon & Simon, supra note 59, at 237-39. There are alternative proposals to revamp professionalism with the goal of increasing access. These proposals include adopting a business paradigm and abandoning the professional ideology. See Russell G. Pearce, The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar, 70 N.Y.U. L. Rev. 1229 (1995).
and lay people over the scope and authority of a profession. American legal aid is the result of one such struggle.\textsuperscript{81} The current debate on how to provide legal services and define professional values reflects Grossberg's assessment. The continuity of this struggle indicates that professional values must be aggressively reassessed and reinterpreted by individuals and institutions within the contemporary context.\textsuperscript{82}

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\textsuperscript{81} Michael Grossberg, \textit{The Politics of Professionalism: The Creation of Legal Aid and the Strains of Political Liberalism in America, 1900-1930, in Lawyers and the Rise of Western Political Liberalism, supra note 34, at 305, 305.}
\textsuperscript{82} For a discussion of the political and contextual development of professionalism, see Theodore Schneyer, \textit{Professionalism as Politics: The Making of a Modern Legal Ethics Code, in Lawyers' Ideals/Lawyers' Practices, supra note 43, at 95, 95-143.}
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