Bibliography to the Conference on the Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues

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INTRODUCTION

This bibliography includes books; journal articles; bar association standards, reports, and studies; bar association ethics opinions; and conference and symposia materials on the subject areas being explored in the Conference. Works that squarely address more than one topic are listed under all appropriate topics, except those addressing more than three topics, which are listed in the “General Works” section at the end. Brief annotations appear for each item. Our research, which extends from the mid-1960s to the present, is thorough, but does not claim to be exhaustive.

I. RENDERING LEGAL ASSISTANCE TO SIMILARLY SITUATED INDIVIDUALS

ABA and State Bar Opinions


Board of Comm’rs on Grievances and Discipline, Supreme Court of Ohio, Opinion 89-25 (1989) (A Legal Aid Society May Send Cases They Cannot Accept Due to a Conflict of Interest to a Volunteer Lawyers’ Project Without Jeopardizing Their Right to Represent the Opposing Side in the Controversy).

Board of Prof’l Ethics, Iowa Supreme Court, Opinion 91-20 (1991) (Conflict—Legal Aid Office).

Board of Prof’l Responsibility, Supreme Court of Tenn., Opinion 93-F-130 (1993) (Ethical Guidance on Providing Each Indigent Party to a Mediated Domestic Agreement with Counsel, and/or Seeking Counsel for Both Sides of a Mediated Agreement).

Committee on Prof’l Ethics, Florida State Bar Ass’n, Opinion 92-1 (1992) (A Legal Services Organization May Not Represent Opposing Parties in a Case).

Ethics Advisory Opinion Comm., Utah State Bar, Opinion 107 (1992) (Is a Lawyer Subject to Disciplinary Action for Pursuing a Matter in Which He Has a Conflict of Interest . . . When the Lawyer Has Sought to Be Excused from the Court Appointment and the Court has Denied the Motion?).


Standing Comm. on Prof’l and Judicial Ethics, State Bar of Mich., Opinion RI-126 (1992) (A Lawyer May Not Represent Clients Adverse to the City Housing Authority in the State Courts . . . and the Lawyer Also Serves as an Elected member of a City Council which Employs the City Attorney).

Journal Articles


Sets up three dichotomies in legal services practice: impact litigation/client service; professional/personal; public/private.

How impact litigation can be at odds with the interests of individual clients. The article specifically addresses this issue as illustrated in school desegregation suits.


Issues in taking on representation of parents who have harmed their children, and in resolving conflict and confidentiality issues within a family.


Because the fiduciary relationship between lawyer and client demands loyalty to one's client, attorneys who represent legal aid clients should be subject to the same ethical obligations as members of the private bar. Moreover, this article argues that once a legal aid office steps in to provide legal assistance to the adversaries of conflicted clients, it must ensure that they receive legal representation. It examines several means of providing representation to conflicted indigents.


Analyzes Office of Economic Opportunity Legal Services Program; concludes that class action suits brought under the program have undermined the goal of providing legal services to the poor.


Because the growing demand for legal services has taxed an already overburdened system, the authors advocate reforms in public interest litigation that focus more on the needs of individual clients.


The ABA should adopt a workload standard for legal aid organizations similar to the standard for public defenders contained in the ABA Standards for Criminal Justice. Such a standard would provide guidance for legal aid organizations, but the organizations should apply this standard in a manner which does not interfere with the independent professional judgment of the individual staff attorney. In addition a workload standard would provide guidance for courts and disciplinary commissions in resolving ethical questions related to excessive caseload.


Attorneys in separate legal aid offices of a single legal aid corporation must be presumed to be colleagues in the practice of law, each seeking to advance the interests of all clients of the corporation.
Moreover, there must be presumed to be cooperation and communication between such attorneys, even if positioned in different offices. Where the interests of the two clients directly conflict, then the interests of one, or the other—or both—are jeopardized.


Benefits and difficulties of four alternatives: individual representation, representation as an intermediary, joint representation, and family representation.


A discussion of whether there are more or fewer moral and ethical challenges confronting the ABA now, years after the House of Delegates adopted the updated version of the Model Rules of Professional Conduct.


Challenges to ideas presented at the conference reported in this issue of the Fordham Law Review.


Examines conflicts between the themes of group participation and individual autonomy in the context of public interest lawyers' representation of groups.


Examination of the "client-centered practice" model, especially in situations where the attorney-client relationship is such that the attorney is given much deference by an economically, educationally, or otherwise disadvantaged client.


The last word in the debate between Ellmann and Morris in the UCLA Law Review.


Response to ABA-proposed standards, approved in February 1996.


Group-oriented case selection procedures currently employed by legal services offices do not violate the rights of individual poor cli-
ents. Group-oriented approaches to legal services recognize that
the poor have common interests and are subjected to class treat-
ment, a reality that suggests the desirability of group legal re-
responses. Moreover, the group-oriented legal strategies, particularly
class actions, are also consistent with legal services lawyer's ethical
and statutory obligations.

Steven H. Hobbs, Family Matters: Nonwaivable Conflicts of Interest in

Daniella Levine, To Assert Children's Legal Rights or Promote Chil-
dren's Needs: How to Attain Both Goals, 64 Fordham L. Rev. 2023
(1996).

Balancing questions of client competence, best interests of the child,
and political goals.

Randi Mandelbaum, Rules of Confidentiality When Representing Chil-
dren: The Need for a "Bright Line" Test, 64 Fordham L. Rev. 2053
(1996).

The relationship between impairment, competence, and
confidentiality.

Martha Matthews, Ten Thousand Tiny Clients: The Ethical Duty of
Representation in Children's Class-Action Cases, 64 Fordham L. Rev.
1435 (1996).

Issues in representing a large group of people with whom communi-
cation is problematic.

Nancy J. Moore, Conflicts of Interest in the Representation of Children,

Analyzes the many different ways in which children may be affected
by legal matters, and how the lawyer can resolve conflicts that arise
in these many contexts.

Nancy Morawetz, Bargaining, Class Representation, and Fairness, 54
Ohio St. L.J. 1 (1993).

This article seeks for class-action settlements "a norm of what it
means to be an adequate and fair representative in a context of dif-
fering class interests and complex distributional judgments."

Nancy Morawetz, Underinclusive Class Actions, 71 N.Y.U. L. Rev. 402
(1996).

John K. Morris, Power and Responsibility Among Lawyers and Cli-
ents: Comment on Ellmann's Lawyers and Clients, 34 U.C.L.A. L.

Critique of Ellmann's article in this issue of the UCLA Law
Review.

Russell G. Pearce, Family Values and Legal Ethics: Competing Ap-
proaches to Conflicts in Representing Spouses, 62 Fordham L. Rev.
1253 (1994).
Problems of joint representation, waiver, disclosure.


Addresses the ethical obligations of public interest lawyers to monitor and push forward the implementation phase of successful litigation against an institutional defendant.


Dealing with family members, guardians, judges, and the client.


A discussion of the types of conflicts which may arise in various types of class action suits, including typical public interest cases such as school desegregation, employment discrimination, and prison reform.


Using civil rights litigation as context, this article examines three models of decisionmaking when client group members disagree about goals and means, and proposes changes in procedural and ethical rules to encourage more productive decisionmaking in group litigation. Includes discussion of pro bono and public interest representation of groups.


Conflicts among parents, guardians, children, and their lawyers.


Disqualification of an entire legal services program in a given community from representing opposing parties to an action may eliminate that availability of the legal services for one of the parties, making it more difficult for the poor to obtain legal counsel in civil matters.


“What is the attorney’s duty of loyalty to a client when the client is a child?”

Heightened disclosure requirements at the initiation of all tribal representations is the first step towards ensuring that cultural differences, paternalism, and conflicts of interest in the attorney-client relationship do not result in judgments detrimental to the interests of the tribe. Improved communication, particularly early in the representation, would add integrity and respect to the attorney-client relationship in tribal litigation.

**Books and Other Monographs**


Chapter 10, by G. Bellow and J. Kettleson, of this ABA guide is entitled “Public Interest Ethics: Problems and Paradoxes.” Discusses ethical problems arising out of choices public interest lawyers make in deciding whom to represent and problems which arise out of the adversarial nature of most law suits.


A problem book to be used by students studying legal ethics, includes Problem 14: “Conflict in Public Interest Representation,” which concerns a public interest group accepting a case which might offend members of the group’s Board or present other conflicts of interest.


Presents a course on legal ethics touches on following topics: required pro bono service, paternalism of lawyers and representing multiple parties in class litigations.


Chapter 4, section C on “Counseling the Poor” presents three problems on the subject: (1) appropriate compensation when serving as appointed counsel, (2) group representation—exception for legal services, and (3) how the ethical rules hinder the representation of the poor.


From the ABA Center for Professional Responsibility, offers a new approach to problems of confidentiality in representing family members in child neglect cases in which the attorney discovers that one of his clients is abusing a child in the relationship.

**II. USE OF NONLAWYERS**

*ABA and State Bar Opinions*

Potential Clients, Initially Interviewed by Nonlawyer Staff, to Private
Attorneys Serving On A Volunteer Pro Bono Panel, and Still Repre-
sent a Party Adverse to Such Potential Client in the Same or Substan-
tially Related Matter).

Journal Articles

Annette R. Appell, Decontextualizing the Child Client: The Efficacy
of the Attorney-Client Model for Very Young Children, 64 Fordham L.

Proposes a model for representing “precapacitated” clients which
involves participation by social workers and others trained to work
with very young children.

Moses Apsan, Note, Assisting the Pro Se Litigant: Unauthorized Prac-
tice of Law or the Fulfillment of a Public Need?, 28 N.Y.L. Sch. L.
Rev. 691 (1983).

Provides a history of pro se litigation and an appraisal of the constitu-
tional underpinnings for the right of self-representation. A partic-
ular focus is self-help divorce.

Joaquin G. Avila, Legal Professionals and Unauthorized Practice, 8

A legal aid program employing trained legal paraprofessionals
under an attorney’s supervision may accommodate the dual goals of
providing both quality services and maximum access to the courts.

Louis M. Brown, The Authorized Role of the Legal Assistant, Unau-

Proposed course discusses differences between the routine mechan-
ics of the practice of law and the professional judgment of attorneys.

Ralph C. Cavanagh & Deborah L. Rhode, Project, The Unauthorized
Practice of Law and Pro Se Divorce: An Empirical Analysis, 86 Yale

A study of pro se litigants using self-help divorce kits or forms.
Compares results and mistakes of pro se plaintiffs with those made
by licensed attorneys in divorce actions in some Connecticut
counties.

Barlow F. Christensen, The Unauthorized Practice of Law: Do Good
Fences Really Make Good Neighbors—Or Even Good Sense?, 1980

Traces development of the unauthorized practice concept and ana-
lyzes its fundamental principles.

Barry M. Davis, On the Question of Negligence: The Paraprofessional,
In the case of the paraprofessional, licensure is an inhibiting device which is contrary to the ultimate goal of accessibility to legal services. Certification, use of common law and an optional licensure procedure offer viable alternatives to licensure.


Describes a program in which nonlawyer “benefit specialists” provide legal services for the elderly. Relevant portion addresses and dispels criticism that benefit specialists are participating in the unauthorized practice of law.


In answering all of the questions, staff should follow the general rules: (1) not to give information if they are uncertain of the correct answer, and (2) to treat all persons, and all parties to a controversy, in the same fashion.


Need to clarify skills required for the exercise of professional judgment and those required to effectively effectuate professional decisions. It is the level of decision-making which distinguishes professional judgment from the use of limited knowledge of law.


Assistance by group education and ethical implications.


Demonstration Projects should be undertaken in areas such as paralegal-to-attorney ratios and supervision methods, job rotation, leaves to perform special projects and grants to allow paralegals to further their education.


“[I]f advocacy is done on a goal and functional basis, rather than an exclusively task basis, there is no reason why some very important functions cannot be performed by nonlegal professionals.”

Law school clinical program experiment with limited-representation legal assistance model.


Attempt to identify and analyze the complex ethical and service questions which arise when attorneys and social workers collaborate on behalf of their clients, including client confidentiality, multi-party representation, etc.


Examines the historical background and doctrinal prohibition against the unauthorized practice of law. The author lays these precedents down against the need for affordable legal advice and the paucity of complaints about lay practitioners makes suggestions for use of non-lawyers in service delivery.


Arguments for permitting the use of paraprofessionals or legal practitioners to assist people who would not otherwise be able to afford an attorney.


A revised version of a report to the ABA Standing Committee on Delivery of Legal Services. Discusses some ethical questions which arise in pro se representation in divorce proceedings.


“This Article explores whether the rule against fee sharing with nonlawyers can or should be enforced against lawyers who agree to assign statutory legal fees to nonprofit public interest groups.”


Which activities constitute the practice of law; which should be confined to lawyers only.


Describes a program for Legal Service Assistants conducted by Columbia Law School and the College for Human Services. A small
section is devoted to ethical questions and the various sources of a non-lawyer's authority.


Examines ways that lawyers and clients are collaborating to create more effective advocacy for battered women, low-income entrepreneurs and nonprofit community-based organizations serving the poor as a result of changes in lawyering theory.


Employing the paralegal to discharge many tasks formerly performed by the lawyer must produce risks of liability for both the paralegals and the attorney who benefits from his services. These risks are fairly well defined, however, and generally should be controllable. If care is used and proper precautions are taken by both the paralegal and the lawyer, the danger of potential liability should not outweigh the benefits to the public and the legal profession that paralegals are capable of providing.


Argues that client confidentiality should not bar attorneys from using non-lawyer professionals to assist the client in matters related to the representation.

Books and Other Monographs


Concludes that increasing access to affordable assistance in law-related situations is an urgent goal of the legal profession and details many actions that can be taken to improve such access. Concludes that when adequate protections to the public are in place, nonlawyers can have an important role and each state should determine whether and how to regulate nonlawyer activity.


Chapter 14.1 discusses lay control of lawyers and fee-splitting with non-lawyers, and Chapter 15 discusses the unauthorized practice of law, in this book from the ABA Section of Law Practice Management.


This International Bar Association publication contains sections on the duty to represent the indigent, permitting persons or corporations to practice law, and delegating the practice of law to unqualified persons.

Results of a comprehensive survey which documents each state’s definition of the practice of law and provides an overview of each jurisdiction’s activity (or lack thereof) in the area of unauthorized practice of law. Also includes Model Rules for Advisory Opinions on the Unauthorized Practice of Law, adopted by the ABA in 1984.


Examines and gives guidance on: (1) Regulation of paralegals, certification, tort liability and malpractice insurance; (2) Attorney and paralegal ethics, including examination of codes for both groups from the paralegal perspective. Sets out codes of paralegal associations.

III. LIMITED LEGAL ASSISTANCE

ABA and State Bar Opinions

Board of Comm’rs on Grievances and Discipline, Supreme Court of Ohio, Opinion 90-11 (1990) (A Legal Services Attorney May Make an In-person Offer to Represent an Indigent Defendant Who Has Appeared in Court Without Representation).

Committee on Prof’l Ethics, Florida State Bar Ass’n, Opinion 81-9 (1982) (A Court-Appointed Attorney Who, at the Insistence of His Client and in Accordance with Approved Procedure, Commences an Appeal He Believes to be Frivolous May Not Thereafter Be Said to Have Acted Unethically in Commencing the Appeal).

Committee on Prof’l Ethics, New York State Bar Ass’n, Opinion 613 (1990) (Provision of Legal Services).

Ethics Advisory Comm., South Carolina Bar, Ethics Advisory Opinion 91-31 (1991) (Lawyer May Not Advance Money to Client to Pay the Cost of a Rental Car Prior to Settlement Since that Is Not a Cost of Litigation).


Professional Ethics Comm., Supreme Court of Tex., Opinion 421 (1985) ([Can] Interest Earned on Funds Held in Lawyers’ Trust Accounts for a Short Period of Time or Which Are Nominal in Amount [Be Used] to Provide Indigents with Representation in Civil Cases).

Standing Comm. on Prof'l and Judicial Ethics, State Bar of Mich., Opinion RI-14 (1989) (The Ethical Prohibition Against Attorneys Advancing Living or Medical Expenses to a Client Applies to Lawyers Employed by Legal Service Organizations).


**Journal Articles**


How to communicate the nature of the relationship when representing a child.


How to give a child client sufficient information to participate in decisionmaking, and to understand the parameters of the representation.


Proposes a new focus for legal services organizations, away from traditional adversary system solutions and toward education, layperson training and limited support roles for attorneys.


Analyzes the impact of the “ethic of care” (as described by Carol Gilligan and others) on legal ethics. Part III deals with lawyers’ choices of cases, Part IV with lawyer-client interactions, etc.


States should increase enforcement of violations of DR 7-104(A)(2) and Rule 4.3 in the context of negotiations between lawyers and unrepresented litigants. States should adopt additional disciplinary rules that will protect unrepresented parties forced to negotiate against lawyers. Courts must provide additional oversight to ensure that the rights of unrepresented litigants are protected. Finally, the profession must redouble its efforts to expand the provision of
counsel in civil proceedings in which lawyers oppose unrepresented parties.


Part II of a two-part series in Clearinghouse Review, this deals with overcoming problems in choosing alternatives to litigation in representing poor people.


Proposes that attorneys or paralegals provide classroom instruction in which legal problems common to the community are addressed and explained as a means of educating prospective pro se litigants. In part, discusses ethical issues raised by this proposal.


Demonstration Projects should be undertaken in areas such as paralegal-to-attorney ratios and supervision methods, job rotation, leaves to perform special projects and grants to allow paralegals to further their education.


Questions of decisionmaking in the representation of children.


Professional responsibility issues involved in the unbundling of legal services—i.e., “breaking them down into discrete tasks and allowing the client to choose a lawyer's representation for only some of the tasks”—using elderly clients as an example.


Law school clinical program experiment with limited-representation legal assistance model.


Proposes several alternatives to traditional attorney-client relationships, such as hotlines, community education, volunteer paralegal assistance and emergency assistance programs, to deliver legal services to the low-income elderly.

Unbundling meets the public’s demand for increased availability of legal services in a user-friendly environment at low cost. By modifying its emphasis from courtroom advocacy to adaptable dispute resolution, family lawyers are responding to actual legal needs as they evolve in society.


The client needs to understand that if you do not give the lawyer all the information needed, you are not going to have a good outcome. And the lawyer has to be sure to cover all the questions that needed to be asked in order to give good legal advice.


Who should make which decisions in child protective proceedings.


Describes the benefits and problems of ADR in resolving a variety of legal disputes common among low-income persons, and advocates increased use of ADR to provide better and cheaper legal services.


"Discretionary lawyering" in emergency situations.

**Books and Other Monographs**


Chapter 4, Section c, on "Counseling the Poor," presents three problems: (1) appropriate compensation when serving as appointed counsel, (2) exception for legal services in group representation, and (3) how the ethical rules hinder the representation of the poor.


An attempt to assist the bar and courts in developing innovative programs to assist pro se divorce litigants.
IV. CLIENT/MATTER/CASE SELECTION

ABA and State Bar Opinions


ABA Comm. on Ethics and Professional Responsibility, Formal Op. 96-399 (1996) (Ethical Obligations of Lawyers Whose Employers Receive Funds from the Legal Services Corporation to Their Existing and Future Clients When Such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions).

Board of Comm’rs on Grievances and Discipline, Supreme Court of Ohio, Opinion 88-3 (1988) (Providing the Communication Does Not Contain a False, Fraudulent, Misleading, or Deceptive Statement or Claim, a Legal Aid Lawyer May Ethically Solicit Indigent Clients Known to Need Legal Representation Through Direct Mail Solicitation Only).

Board of Prof’l Responsibility, Supreme Court of Tenn., Opinion 93-F-130 (1993) (Ethical Guidance on Providing Each Indigent Party to a Mediated Domestic Agreement with Counsel, and/or Seeking Counsel for Both Sides of a Mediated Agreement).

Committee on Prof’l Ethics, Florida State Bar Ass’n, Opinion 81-9 (1982) (A Court-Appointed Attorney Who, at the Insistence of His Client and in Accordance with Approved Procedure, Commences an Appeal He Believes to be Frivolous May Not Thereafter Be Said to Have Acted Unethically in Commencing the Appeal).

Committee on Prof’l Ethics, Florida State Bar Ass’n, Opinion 92-1 (1992) (A Legal Services Organization May Not Represent Opposing Parties in a Case).

Committee on Prof’l Ethics, Florida State Bar Ass’n, Opinion 96-1 (1996) (An Attorney May Not Unconditionally Agree to Be Responsible for the Costs Associated with the Client’s Litigation).

Committee on Prof’l Ethics, New York State Bar Ass’n, Opinion 681 (1996) (Withdrawal of Assigned Counsel; Confidences and Secrets of Client).

Journal Articles

Gary Bellow, Legal Aid in the United States, 14 Clearinghouse Rev. 337 (1980).
Addresses problems for the 1980s: Political support, the strains of practice and the trend toward insularity.


Occasional willingness to grant legitimacy to the client's emotional concerns, as well as stress on professional identity, marks women lawyers' style of lawyering in rendering legal assistance to the poor.


Issues in taking on representation of parents who have harmed their children, and in resolving conflict and confidentiality issues within a family.


Analysis of distribution of legal services to, and access rights of, the poor. Ethical issues discussed include allocation of resources, decisionmaking authority, and evaluation of services.


The moral dilemma of accepting or rejecting a legal representation based on the lawyer's beliefs, and the effects of such decisions on those who depend on legal services.


Recommends new provision DR 7-111 Client Under Disability: (a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability of for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (b) A lawyer may take protective action with respect to a client or seek the appointment of a guardian, only when the lawyer reasonably believes the client cannot adequately act in the client's own interest.


Should a lawyer advise elderly clients regarding protection of assets in order to qualify for Medicaid?


Section III.A.5 of the article specifically addresses client-centered counseling as an ethical argument under the ABA Model Code and
Model Rules; in addition, the underlying assumption of the article is that this debate is a professional ethical one.


Analyzes the impact of the “ethic of care” (as described by Carol Gilligan and others) on legal ethics. Part III deals with lawyers’ choices of cases, Part IV with lawyer-client interactions, etc.


Response to ABA-proposed standards approved in February, 1996.


The absolute discretion to choose clients is limited, but only in exceptional cases, i.e., a client whose need for his particular capabilities and who could not otherwise find counsel.


The most plausible and effective solution would be for Congress to reaffirm the model set out by the 1974 LSC Act. As a matter of sound policy and legislative interpretation, the original intent of the Act should be implemented. This would ensure a system of legal services that does not preclude indigent clients from taking advantage of all legal remedies available to clients who can afford to retain private counsel.


Urges that low income clients be given (1) an honest appraisal of the likelihood of success; (2) prompt disclosure of alternative ways to resolve a matter; (3) an explanation that clients make all key decisions, including settlement terms; (4) use of economical support services; (5) copies of all court documents and letters produced or received; and (6) an explanation that a client who is not satisfied with a lawyer’s work can dismiss the lawyer and file a state disciplinary complaint.


Negotiation of the terms of the lawyer-client relationship is an essential function of legal interviewing and counseling.

Analysis of the relationship between the social reform movement and legal services programs. Ethical concerns in this relationship are access to legal services and adequacy of representation.


Proposals for fulfilling the legal needs of low-income persons that are not currently being met, including, among other ideas, more innovative education, alternative funding, and mandatory pro bono.


Discusses ethical aspects of the difficult choice faced by legal service and public defender practitioners between giving adequate services to a few or some service to all who seek help. Proposes targeting institutions whose illegal acts cause harm and focusing on community organizations.


The problem of limited resources as it relates to legal services organizations with narrow definitions of qualifying clients and cases. Addresses question of who decides and the scope of representation.


Addresses the issue of whether the attorney or the client makes the decisions.


The “dichotomy between autonomy and welfare” is particularly acute when a lawyer and elderly client participate in decisionmaking.


Suggests “facilitative lawyering” as a model for preserving client autonomy in the attorney-client relationship, while working for social change. Differentiates this model from “client-centered lawyering” and the “collaborative” model.


Paramount concerns of the attorney-client relationship in Neighborhood Legal Services Projects.

Discusses the relative importance of the client's wishes, ideology, institutional concerns, external pressures and personal considerations in determining how legal services attorneys allocate their time.


Explores child development research to recommend how judges should determine when a child can make decisions regarding legal status.


Deals with issues of spiritual and culture differences in Native Americans.


Conflicts, confidentiality, loyalty, and competence issues arise when fiduciaries are the decisionmakers for the representation.


Part of "Ethics in Government and the Legal Profession" Symposium.


Choosing advocates for children.


Determining the scope of the representation.


Methods of caseload allocation and standards for adequate representation of poor people where need far exceeds demand.


Effective lawyers cannot avoid making judgments in terms of their own values and influencing their clients to adopt those judgments.


There is a large category of cases involving legal decisions, where, given the circumstances in which the decisions must be made, we
have no criteria of autonomy entirely independent of our criteria of best interests.


When should the lawyer responsible for drafting and other aspects of representation also be the decisionmaking fiduciary?


Argues that the presumption of prejudice in conflict principles serves to unnecessarily deny the legal services client access to the only available source of representation.


Although this article primarily addresses questions of disability and diminished mental capacity in any context, it assumes that these questions will arise most frequently in representation of low-income persons.


Ethical allocation of time and resources among clients of lawyers in legal services organizations.

**Books and Other Monographs**


Chapter 10, by Gary Bellow and Jeanne Kettleson, is on “Public Interest Ethics: Problems and Paradoxes.” Discusses ethical problems arising out of choices public interest lawyers make in deciding whom to represent and problems which arise out of the adversarial nature of most lawsuits.


A volume of problems for law student study, includes Problem 28: “The Economics of Legal Services for Indigent Clients,” which concerns who gets represented and for what issues.

**V. Influence of Third Parties on the Lawyer-Client Relationship**

**ABA and State Bar Opinions**


ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1395 (Whether Members of Board of Legal Services Program Can Represent Parties Adverse to Clients Represented by Program Staff Attorneys).

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 345 (1979) (Reconsideration of Informal Opinion 1395; Whether Members of Board of Legal Services Program Can Represent Parties Adverse to Clients Represented by Program Staff Attorneys).


ABA Comm. on Ethics and Professional Responsibility, Formal Op. 96-399 (1996) (Ethical Obligations of Lawyers Whose Employers Receive Funds from the Legal Services Corporation to Their Existing and Future Clients When Such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions).

Committee on Prof'l Ethics, New York State Bar Ass'n, Opinion 489 (1978) (Neither Lawyer-member of Legal Service Organization's Board of Directors nor any Lawyers Associated with His Firm May Represent Adverse Party in Suit Brought by Organization's Indigent Client).

Ethics Comm., Mississippi State Bar Ass'n, Opinion 101 (1985) (Client Confidences and Secrets: Legal Services Attorney May Not Reveal Client Confidences or Secrets to Auditors from Legal Service Corporation).


Standing Comm. on Prof'l and Judicial Ethics, State Bar of Mich., Opinion RI-126 (1992) (A Lawyer May Not Represent Clients Adverse to the City Housing Authority in the State Courts . . . and the Lawyer Also Serves as an Elected member of a City Council Which Employs the City Attorney).
Journal Articles


Argues that LSC is manned by ideological vigilantes who owe their allegiance not to a client . . . but only a concept of social reform.


How impact litigation can be at odds with the interests of individual clients. The article specifically addresses this issue as illustrated in school desegregation suits.


Analyzes conflicts problems particular to legal services for low-income people, such as representing more than one family in domestic relations matters, attorneys in the same office representing opposite sides of a dispute, policies of an agency's Board, client consent.


Analysis of distribution of legal services to, and access rights of, the poor. Ethical issues discussed include allocation of resources, decisionmaking authority, and evaluation of services.


Examines the conflict between IRS rules for public interest law firms that support litigation for the public good and legal ethics rules that support client autonomy.


Refutes charges that LSC is a redistributive political instrument for activist lawyers rather than a poor people's program and that it is insufficient describing possible effects of funding and authorization attacks by the Reagan administration.


Argues that the LSC needs to be sheltered from political interference based on the history of the OEO Legal Services Program and LSC Act developments.


Third-party funding and professional interaction with non-legal experts need not create ethical problems so long as the lawyer maintains his independent judgment for the sole benefit of the client.

“This essay examines the ethical issues associated with public interest litigation, particularly in the area of attorneys' fees, and discusses the need for reform.”


“This Article suggests some ground rules for discussing the public good and the good of identifiable third parties with clients. These rules should reduce the manipulation of clients by lawyers, which currently characterizes many attorney-client relationships.”


In a situation where attorneys' fees are available under statute but a lawyer is barred by the restrictions from seeking fees, what are the ethical difficulties for the legal service lawyer.


Argues for the need for independence for the LSC.


The ethical issues raised are whether neighborhood law offices contravene restrictions on law intermediaries and unauthorized practice of law by a corporation, and whether they encourage illegal solicitation, unwarranted encouragement of litigation and promotion of the commercialization of the legal profession.


“This Article explores whether the rule against fee sharing with nonlawyers can or should be enforced against lawyers who agree to assign statutory legal fees to nonprofit public interest groups.”


An early examination of issues in delivering legal services to poor people, including conflicts between lawyers and social workers trying to help the same client, and confidentiality and conflicts concerns with government reporting requirements.

*Books and Other Monographs*

Marjorie Girth, Poor People's Lawyers (1976).
Access issues, restrictions, funding and reporting requirements of government-funded legal services programs.


Chapter 14.1 discusses lay control of lawyers and fee-splitting with non-lawyers, and Chapter 15 discusses the unauthorized practice of law, in this ABA Section on Law Practice Management book.


This International Bar Association book contains sections on the duty to represent the indigent, permitting persons or corporations to practice law, and delegating the practice of law to unqualified persons.


A problem book to be used by students studying legal ethics, includes Problem 14: “Conflict in Public Interest Representation,” which concerns a public interest group accepting a case which might offend members of the group’s Board or present other conflicts of interest.

VI. REPRESENTATION BY PRIVATE PRACTITIONERS

ABA and State Bar Opinions


Advisory Comm. on Judicial Ethics, New York State Unified Court Sys., Opinion 90-73 (1990) (A Judge’s Solicitation of Lawyers for Voluntary Pro Bono Representation of the Poor Is Permissible, Except that the Judge Should Avoid any Appearance of Coercing Attorneys to Participate).

Committee on Prof’l Ethics, New York State Bar Ass’n, Opinion 489 (1978) (Neither Lawyer-Member of Legal Service Organization’s Board of Directors nor any Lawyers Associated with His Firm May Represent Adverse Party in Suit Brought by Organization’s Indigent Client).

Committee on Prof’l Ethics, New York State Bar Ass’n, Opinion 534 (1981) (Former Legal Aid Staff Attorney May Represent Persons Previously Served by Him Under Certain Circumstances).

Committee on Prof’l Ethics, New York State Bar Ass’n, Opinion 551 (1983) (Assigned Counsel: Acceptance of Unrelated Fee-generating Matters for Same Client).


Journal Articles


"[The program] asks that you act like an attorney and go do attorney things for no other reason than to help someone in need. I have found the rewards small, but very gratifying indeed."


A well-structured statewide program to raise the awareness of the poor about the numerous existing alternative dispute resolution programs together with a system of positive incentives to Florida bar members who fulfill the bar's aspirational goal to render meaningful legal representation to the poor, would be more successful than a program that relies on hope, peer-pressure, and punishment to assure compliance.


"This Note will review the history of mandatory pro bono, discuss the ongoing ABA trend towards mandatory pro bono, and present constitutional and public policy arguments against a system of mandatory pro bono for civil indigents."


Author argues that the ultimate burden of alleviating the legal crisis rests with the entire public.

Study examined the relationship surrounding pro bono performance and three groups of variables: (1) firm performance (pro bono work had a negative effect); (2) organizational structure (no effect); and (3) minority membership (negative effect).


Coombs proposes a new form of mandatory pro bono legal services in which lawyers would be required to provide either 20 hours per year service or their equivalent earnings to a client base of poor people or organizations serving predominantly poor people.


As long as the power of the judiciary to compel an attorney to provide services to the poor remains undefined, the concept of mandatory pro bono remains a bark without a bite. State and federal courts are on their own; if they choose to impose a mandatory plan as part of the admission requirement to practice law, the door is wide open for challenge that such conscription violates the individual lawyer's constitutional rights.


"A more desirable alternative to mandatory pro bono, in my view, is an increase in public funding of civil legal assistance for the poor and a deregulation of the marketplace for services that would provide more low-cost alternatives."


Action by the Supreme Court of Florida imposing mandatory participation in IOTA wherein client trust funds are pooled to generate interest to be used to provide legal services to the poor by all Florida attorneys would result in increased funding of these programs and would put an end to "compensating balances" relationship between attorney and their banks.


In June, 1971 the first associate from Bingham, Dana & Gould took up his assignment at Boston Legal Assistance Project (BLAP). Since then seven other associates from the firm have helped with consumer and bankruptcy cases.

Describes use of volunteer retired attorneys to assist programs for the elderly poor. Discusses ways to assist programs which use senior attorneys in meeting the ethical obligations necessary in the licensed practice of law.


The purpose of this article is to provide an overview of the efforts being made to address the civil legal needs of the indigent with the hope that it will increase awareness of this issue and inspire more lawyers to contribute their services pro bono.


If the profession wants to provide a measure of social justice to the poor, mandatory pro bono, as we are envisioning it now, will not accomplish this goal. We cannot lull ourselves into feeling good about support for mandatory programs when we know that realistically they are too narrowly constructed to accomplish social justice.


Suggests that political misconceptions and failure of advocates to evaluate the effectiveness of different kinds of mandatory pro bono programs contribute to the lack of support for such efforts.


Discusses how the ABA Model Rules provide guidance on when collecting legal fees is appropriate in the pro bono context, and why fee collection should be encouraged.


Grafting a public interest program onto a relatively traditional firm brings its problems. To decide whether a proposed case is in the "public interest" is a difficult, if not impossible task, particularly when the decision to accept a case must be taken before its full impact is clear. Important, available cases are not numerous, and may clash with the interests of paying clients. Lawyers may be too busy or uninterested to work on a case, or may fear that public interest work will be frowned on.

Discusses duty of the profession to provide representation to those who cannot afford to pay; how to improve upon the current system of delivering legal services.


For many years the legislative and judicial branches have fostered a good Samaritan approach to legal assistance for the indigent. This approach has had little impact on the indigent population at large and is responsible for the legal community's perception that work on behalf of the indigent is a charity instead of a responsibility. In a decade that has seen exploding indigent populations and waning financial support for legal assistance programs, the federal judiciary can no longer permit Congress to stifle its ability to mandate indigent representation.


The author makes a case for mandatory pro bono in civil matters, using policy, constitutional, philosophical and historical arguments.


Discusses the delivery of legal services in Texas and the pro bono obligation.


Discusses "whether mandatory pro bono opponents correctly assert that mandatory pro bono will paradoxically lead to a violation of attorneys' ethical obligations."


Proposes a hybrid system for delivery of legal services to low-income persons, combining elements of both judicare and legal services staff attorney delivery systems.


Experience at the Neighborhood Legal Assistance Center suggests that the manner in which legal services are rendered on behalf of poor clients may be determinative of the benefits derived from legal representation not only by the clients but also by those expending resources to serve the poor.

Argues that lawyers should perform pro bono representation solely because of ethical aspirations of the profession and not because of any enforceable obligation by the organized bar or government entities.

Peter S. Smith & John E. Kratz, Jr., Legal Services for the Poor—Meeting the Ethical Commitment, 7 Harv. C.R.-C.L. L. Rev. 509 (1972).

For two and one-half years, a private firm devoted a portion of its resources to the full-time practice of poverty law. Concerns addressed include staffing, separation from the firm, and position conflicts.


Examines the degree to which positional conflicts of interest—taking a position for one client at odds with a position one has taken on behalf of other clients—impact the distribution of pro bono legal services. Positional conflicts deter lawyers not only from taking pro bono work in certain morally and politically charged fields of practice, but also from taking work in their particular areas of expertise.


The Marerro Committee plan contains enough flexibility and choice to overcome the major arguments against a mandatory pro bono plan. At the same time, the plan can achieve a significant increase in legal representation for the poor.


The only restriction on participation is that in cases where major litigation is being undertaken, the firm’s managing partner is consulted so that experienced litigators can provide assistance.

Books and Other Monographs


An American Bar Foundation study of the private bar’s organized efforts to deliver legal services to the poor.

Barlow F. Christensen, Group Legal Services (Tentative Draft 1967).

American Bar Foundation Report. Reviews different types of groups offering legal services to the poor and the ethical rules regulating their activities.

A short book of recommendations for the profession. Among the recommendations: (1) Increased participation in pro bono activities and (2) Encouraging innovative methods which simplify and make less expensive the rendering of legal services.


A Brookings Institute book that addresses all issues affecting law firm pro bono programs, notably, public service ethical obligations of the profession and financial support and conflicting interests.

Legal Services Corp., Involving Private Attorneys in the Delivery of Legal Services to the Poor: Models and Methods (1982).

Produced by the federally-funded Legal Services Corporation to encourage pro bono involvement, this report includes information on limited legal assistance projects and issues, as well as ethical and organizational issues in pro bono representation.


This International Bar Association book contains sections on the duty to represent the indigent, permitting persons or corporations to practice law, and delegating practice of law to unqualified persons.


State Bar of Montana CLE seminar program materials, May 25, 1990 and October 25, 1991, Butte, Montana. Seminars included much material on legal ethics and legal assistance to the poor, including integrating pro bono into a successful law practice, an introduction to the Montana State Bar pro bono program and working with low income clients.


An L.L.M. Thesis from Harvard Law School which explores the moral and ethical aspects of providing legal services to the indigent.


From the Florida Bar Association's Continuing Legal Education Committee and the Public Interest Law Section, Tallahassee, 1994.


Presents a course on legal ethics touches on following topics: required pro bono service, paternalism of lawyers, and representing multiple parties in class litigations.

Chapter 9, "The Lawyer's Obligations Regarding Pro Bono Activities," gives a general description of ethical issues involved in practicing in the public interest, including some of the ethical issues of representing people of limited means.


"The report seeks to define a variety of public interest roles for lawyers, and addresses the question of the organized bar's responsibility to foster public interest participation by its members."

Special Comm. on the Lawyer's Pro Bono Obligations, Association of the Bar of the City of New York, Toward a Mandatory Contribution of Public Service Practice by Every Lawyer (1980).

"This publication of the Special Committee's report, together with the critiques by other committees, thus collects in one place what we believe to be the principal arguments in favor of and in opposition to the imposition of a mandatory pro bono requirement on individual lawyers."


Chapter VI, on "Pro Bono Publico," is an indictment of the Massachusetts Bar Association and others for failure to assist legal services to the poor. Discusses attempts by certain bar associations to hinder free legal services to the poor. Includes problems and suggestions for future of pro bono service.

VII. REPRESENTATION WITHIN LAW SCHOOL SETTINGS

Journal Articles


For those involved in clinical education, developing and refining creative solutions to the vicious cycle of deterioration in urban ghettos should be a priority. Skirting the edge to slap band-aids on isolated manifestations ignores the problems.


"The three paradigms identified in this article can inform the choices an externship clinician makes in working with students to resolve real-case ethics issues."


Addresses how a school's special mission to train public interest lawyers is implemented in the design and teaching choices of the
An essential element is that students learn how to empower clients by using a client-centered approach.


Conscientious clinic teachers should attempt to balance client expectations, student competency, and the interest of the client and others in minimizing delay, financial costs, and emotional discomfort.


Examines the differences in language and meaning which may affect the representation of a client possessing a different ethnic or socio-economic background from students and professors in a clinical law school setting.


Descriptions of an introductory course offering in ethics in public interest law, and an advanced seminar in ethics and public interest law. Both the format and the major issues covered in the course are included.


Teaching ethical negotiation skills and providing a process of reasoning which allows students to confront and resolve ethical problems.


"The Legal Theory and Practice (LTP) program at the University of Maryland School of Law was founded on the idea that it is every lawyer's professional responsibility to provide legal services to people living in poverty. To make this idea both meaningful and persuasive to my students, I have reconceived professional responsibility to incorporate an 'ethic of care.' This ethic of care includes the ideas that students' professional lives are connected to the lives of those who live in poverty and that, by working for and with people living in poverty, students can create relationships with clients and colleagues that are rewarding and sustaining."


Focuses on the school as an access point; deals with conflicts of interest among parents, children, and school authorities.

Analyzes the application of the traditional attorney-client privileges doctrine to classroom discussions of clinic clients' problems and proposes changes to Arizona's student practice rules to protect the student-client relationship.


"In this article, I explore the way in which race neutral training of interviewing and counseling skills may actually lead to continued marginalization of clients of color . . . I suggest combining client-centered counseling skills with a module I call Cross-Cultural Lawyer and Student Self-Awareness Training to enable us to take advantage of interdisciplinary work to broaden our ability to teach effective interviewing and counseling skills."


Analyzes the benefits to legal education of small business and community economic development clinics, concluding that these clinics provide a better opportunity than do traditional clinics for students to struggle with the ramifications of different models of attorney-client relationships and attorneys' professional roles.


Newly licensed lawyers will benefit from familiarity and experience with the teaching role of the lawyer as they seek to meet the needs of their clients.


A model for decisionmaking in ethical issues in legal practice, as illustrated by four actual cases from a law school clinical program in a civil legal services setting.


Offers a model of hybrid ethics teaching in the clinical setting focused on developing good judgment, by combining practice with critical reflection on practical experiences.


Extensive article devoted to externships; it differentiates between "practice supervised" programs, in which students' work is supervised by lawyers at their place of work, and "case supervised" programs, in which there is supervision of actual case work by the law
school faculty. Ethical concerns of the latter type of program are discussed; the author sees great potential for the “practice supervised” model.


Law school clinical program experiment with limited-representation legal assistance model.


Sets out goals for better integration of the teaching of ethics concerns in law school clinical programs.


Focuses on who makes ethical decisions in a clinical setting—students or supervising teachers—concluding that better decisions are made using a pluralistic model of analysis.


Discussing the role of law school clinical programs in developing lawyer strategies that emphasize non-litigation approaches to public interest law and problem solving.


While not directly focused on the major issues of the Conference, this is an important article on the broad subject of supervision in the clinical education context.


Examines several ways in which legal education typically “constructs” clients. This is followed by a review of efforts by legal scholars to reshape the realm of the client, tracing these efforts from creation of live-client clinics through the development of “client-centered lawyering” to the emergence of “theoretics of practice.”


Addresses issue of tension between the clinical law teacher’s educational obligations to students and professional obligations to clients. Sets forth the results of a study exploring clinicians’ views on directiveness and client service, and comparing “directive” and “nondirective” supervisors.

"[A]n edited transcript of a session at the 1995 Annual Meeting of the Association of American Law Schools, held in New Orleans, Louisiana, January 7, 1995. The meeting was a joint plenary session of the AALS Section on Professional Responsibility and the Section on Clinical Legal Education. The meeting was planned and the role plays were written by Professors Margaret Martin Barry and Lisa Lerman of The Catholic University of America and Professor Homer La Rue of Howard University . . . . In developing the three role plays presented in this program, the planners selected issues that raise ethical or professional dilemmas for the law teachers as well as for their students."


Part of a symposium on poverty law scholarship, advocates new approaches to law school clinics and community-based advocacy coalitions.


Includes discussion of the adequacy of student representation, with attention to such factors as the nature of the case and client and degree of supervision. Brief treatment of ethical issues that arise such as conflicts of interest, client confidences, etc.

Books and Other Monographs


Barlow F. Christensen, Group Legal Services (Tentative Draft 1967).

American Bar Foundation Report. Reviews different types of groups offering legal services to the poor and the ethical rules regulating their activities.

Clinical Education for the Law Student; Legal Education in a Service Setting (1973).

A collection of working papers prepared for a conference sponsored by the Council on Legal Education for Professional Responsibility, many of which are grouped under the heading "professional responsibility" and deal broadly with the student-lawyer and his relationship with his client or with society.
Clinical Education for the Law Student (1973).

Companion volume to the book of working papers described above, this collection of essays summarizes the conference proceedings. While a number of relevant issues were raised, they are given brief consideration here.


"These readings and materials—articles, case histories, commentaries, sample pleadings and class exercises—are intended primarily for the use of law students participating in clinical law programs and in non-clinical courses and seminars dealing with advocacy and public interest law."


This American Bar Center National Council on Legal Clinics Report discusses seven programs set up to teach professional responsibility. Describes programs which involve students in working with legal clients often in civil areas such as mental health, family law, estate law as well as criminal law.

VIII. ASSESSMENT OF SYSTEMS FOR DELIVERING LEGAL SERVICES

Journal Articles


A postmodern jurisprudential approach to client representation in poverty law practice. Part of a symposium at Georgetown Law School on “Critical Theories and Legal Ethics.”


“It is time, therefore, to map out the details of a fair and affordable delivery system, one that has built-in restraints on the client in the form of copayment requirements and legal merit tests, restraints on the providers in terms of fee limitations and a return to the professional principle of doing only what is legally best and most efficient for the individual client . . . .”


Analysis of distribution of legal services to, and access rights of, the poor. Ethical issues discussed include allocation of resources, decision-making authority, and evaluation of services.

Lawyers need to look beyond traditional litigation and instead work in concert with their clients to find alternative solutions to the problems of homelessness.


Using Florida as a model, the author sets out a plan to provide citizens living in poverty resources that will enable them to obtain legal representation and full access to the civil justice system.


Examination of the “client-centered practice” model, especially in situations where the attorney-client relationship is such that the attorney is given much deference by an economically, educationally, or otherwise disadvantaged client.


The last word in the debate between Ellmann and Morris in the UCLA Law Review.


Suggests that the provision of legal services is only one of several alternatives for the delivery of “legality”, and that more evaluation of alternative methods is needed.


Providing simple and accessible public forums, private sector tribunals, aggressive champions, more competent and organized parties as well as various forms of augmented legal services is the responsibility of the legal profession.


Addresses issues such as client communication, fairness, and candor in the delivery of legal services in emergency situations, where there is little time to prepare or to make decisions.


“This Article analyzes ways to further client-centered legal representation of clients with mental disabilities . . . . Section V suggests some roles for disability organizations in improving disability law practice.”

While not specific to the public interest law context, this article addresses ethical aspects of lawyers who lend money to poor clients.


“This essay examines the ethical issues associated with public interest litigation, particularly in the area of attorneys’ fees, and discusses the need for reform.”


Examination of recommendations regarding psychological, cultural, and social studies used by lawyers when representing children.


Can we devise a group legal services system that can provide previously under-represented groups with representation that will give them a sense of support as well as the chance to participate in the social definition of rights and remedies?


A report on the differences between conception and execution of negotiation processes derived from a direct observation study of cases in the UCLA mediation clinic. Suggests that through greater visibility of dispute resolution processes, “we may be able to educate and then regulate lawyers to produce wise, efficient and amicable solutions to legal problems.”


Defines some important terms and concepts in the application of care for others in lawyering, points out how our present ethical rules and professional culture hinder such human impulses, and considers what conditions would foster a more caring and altruistic climate.


“This paper examines and tests some of the claims about the professional autonomy of attorneys working in a ‘bureaucratic’ environment . . . . Developing an adaptive strategy to avoid sociological ambivalence, attorneys see themselves as individual service providers, ‘personalizing’ the justice they deliver.”

Critique of Ellmann’s article in this issue of the *UCLA Law Review*.


Family law practitioners and scholars must acknowledge that the traditional system is not meeting the needs of an increasing number who turn to that system for help.


Although most of this article is about other issues in poverty law and public interest/pro bono work, there are sections on clients versus constituencies, as well as independence and accountability.

Jeffrey Selbin & Mark Del Monte, *A Waiting Room of Their Own: The Family Care Network as a Model for Gender-Specific Legal Services to Women with HIV*, 5 Duke J. Gender L. & Pol’y 103 (1988).

“The legal community can and should better serve women with HIV, and this Article describes a model for doing so.”


Methods of caseload allocation and standards for adequate representation of poor people where need far exceeds demand.


A preliminary critique of poverty law practice as to the harm or good it does to its disadvantaged clients.


Examines ways that lawyers and clients are collaborating to create more effective advocacy for battered women, low-income entrepreneurs, and nonprofit community-based organizations serving the poor as a result of changes in lawyering theory.

*Books and Other Monographs*


“[T]he first broad review in ten years of the legal services delivery system. It assessed the current state of the art for providing legal services and began the process of developing an ambitious agenda for improving the delivery of legal services.”


Chapter on "Ethical Conflicts Representing People With Questionable Capacity" includes discussions of access to legal services, conflicts, confidentiality, and other aspects of representing low-income people of reduced mental capacity.


An LL.M. thesis at UCLA Law School.


Presents a course on legal ethics and touches on the following topics: required pro bono service, paternalism of lawyers, and representing multiple parties in class litigations.


Provides a general discussion and examples from literature of the belief that lawyers as a profession belong to the class of "gentlemen" and how this belief may get in the way of a lawyer's representation of a client.


Discusses problems of the "Lawyer as Guru," including the ones listed in the book listed immediately above in a more concise version.

IX. THEORETICS OF PRACTICE

Journal Articles


Proposes a model for representing "precapacitated" clients which involves participation by social workers and others trained to work with very young children.

Critiques the dominant traditions of poverty law: direct service litigation (individual client representation) and law reform litigation (fashioned broadly to modify institutional policies and practices). Believes that poverty cannot be remedied by these traditions and argues that empowering the poor should be the political object of poverty law.


Lawyers working for or with subordinated people in impoverished communities need to learn where they stand. This means learning from the people who live in those communities: it means learning that lawyers stand divided from the communities they represent.


A major essay on client narrative, a theory claiming that poverty lawyers interpret client stories to suit their own goals, beliefs, expectations, etc. It provides suggestions for reconstructing poverty law practice by letting clients speak for themselves.


Reprinted in a book of the same title using a storytelling analysis to convey his concepts of legal ethics as it applies to the social aspect of legal services to the poor.


A review and commentary on the book *Rebellious Lawyering* by Gerald López and the concepts therein.


“I represent “bad mothers” because I need the truths they tell me concerning our common culture. They tell truths by exposing to me our likeness and our differences. I see myself reflected in them sometimes, recognizing in their gestures and their attitudes variations of ones familiar to me because they are my own.”


Suppose a few poverty law scholars broadened their sense of narrative from the stories of individuals to the stories of groups, institutions, and collections of lawyers and sought to explore with them the record and sense they have made of their practice.

Major emphasis is placed on the training and recruitment of legal paraprofessionals; to this end, evaluation of field research findings and recommendations of preferred models consisting of different configuration of significant variables, legislative and systemic strategies, and suggestions for training and monitoring techniques and institutions are presented.


How to communicate the nature of the relationship when representing a child.


“I begin, in Part I, by examining some of the new legal theories of narrative. In Part II, I consider inconsistent stories on four different levels, using a composite of clients to construct one particular client’s stories. In Part III, I discuss how conventional legal ethics as well as how two critiques of legal ethics, the client-centered and the moral lawyering, would address these inconsistencies. I then discuss how a feminist perspective, drawing on postmodernism and ethnography, provides additional insights. In Part IV, I apply these insights to various dilemmas inherent in the process of reconstructing legal ethics.”


The need for collaboration between lawyers, social workers, and other professionals trained in dealing with children.


We must talk specifically about the kind of community we would fashion and how the rules, laws, and rituals defining the roles we adopt can be mutually empowering and facilitative of a community of equals.


“Throughout this foreword, I contend that the epistemology, normativity, and foundationalism of a postmodern “Ethic of Service” is well suited for the public interest lawyer-client relationship.”

Rejects the paternalistic and manipulative practices commonly used in interviewing and counseling children.


Argues that legal discourse suppresses and forcibly shapes poor people's stories.


Examines the differences in language and meaning which may affect the representation of a client possessing a different ethnic or socio-economic background from students and professors in a clinical law school setting.


A model for representing children based on the differences between children and adults, and on the ethical definition of “impairment” in the Model Rules.


On the issue of control and decisionmaking in the attorney-client relationship, this article reviews the major literature on the subject of client narrative and theoretics of practice.


Where the role of the facilitator-attorney is to contribute important assistance, the assistance cannot be provided in a way that creates client dependency. The facilitator-lawyer is more like a corporate counsel, performing important supportive tasks, but leaving the client intact.


It is the responsibility of both scholars and the legal profession to take a broad and imaginative approach to the problem of legal services: to be aware of the wide (and sometimes conflicting) range of interests involved in concrete disputes and, more generally, in the institutions of our society.


Examines several ways in which legal education typically “constructs” clients. This is followed by a review of efforts by legal
scholars to reshape the realm of the client, tracing these efforts from creation of live-client clinics through the development of “client-centered lawyering” to the emergence of “theoretics of practice.”


“Professor Southworth, in her review essay . . . faults [Gerald] López for failing to provide a complete and accurate picture of both the process and the substance of lawyering for the poor. She contends that López’s model misses the ways in which lawyers can facilitate clients’ assertion of control, and under-emphasizes the skills lawyers can and should offer to clients. Southworth describes a broad range of activities that lawyers are performing for poor clients today, including counseling and transactional work for community organizations and small businesses.”


Examines the degree to which positional conflicts of interest—taking a position for one client at odds with position one has taken on behalf of other clients—impact the distribution of pro bono legal services. Positional conflicts deter lawyers not only from taking pro bono work in certain morally and politically charged fields of practice, but also from taking work in their particular areas of expertise.


Theory of morally activist lawyering in the legal services/law school clinic environment.


Considers the theory of “rebellious lawyering,” which empowers clients, and the institutional problems faced by practitioners in the legal services community who favor this approach.


“Critical lawyering” seeks empowerment of oppressed groups and transformation of society toward greater justice through delivery of legal services.


Ideological and funding issues in supporting programs that provide legal representation to subordinated people.


Third annual professional lecture at Montana Law School. Addresses moral and philosophical issues in doing public interest work.

Discusses the transformation of lawyering into a process that cedes to clients the “power to speak for themselves”; a process that politicizes a particular moral view of advocacy.


“Empowerment through litigation”: How advocates in welfare litigation can use the legal system to educate and mobilize, not just represent.


In their impatience to theorize their own practice, lawyer-theorists like Professor Alfieri risk usurping from poor people and their advocates the power to name the very forms of violence that pose formidable barriers to their empowerment.


We must still listen when others speak to us, and be moved. We must still seek to hear in the words of others not just negotiations of power, but appeals to our most difficult memories and deepest emotions.


When socially subordinate groups gain formal access to legal rituals, they are often perceived and indeed may feel compelled to speak in ways that invite dominant speakers to dismiss or devalue what they say.

Books and Other Monographs


Discusses an alternative, political theory of representing low-income clients. Addresses moral issues and professional ethics throughout.

X. General Works

Journal Articles

A critique of Mark Feldman's article in this issue of the Georgetown Law Journal.


Seminal article in the area, which explores ethical concerns in public interest lawyering, including unrepresented and underrepresented clients, disadvantaged clients, and disadvantaged adversaries. Also compares to profession in general.


Report of a study conducted by a group of Yale law students using in-depth interviews of more than 30 lawyers representing a broad spectrum of public interest practice. Section III discusses "Clients, Constituencies and the Independent Lawyer."

Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 Case W. Res. L. Rev. 531 (1994)

In personal plight situations (e.g., a criminal charge, a personal injury, or threatened loss of employment or property) a layperson faces legal "trouble," often for the first time. An important interest must be placed in the hands of a professional who is familiar with what the lay person perceives as the intricate and fearful mysteries of the law. Finding a lawyer, putting oneself in the lawyer's hands, communicating with this strange being—all of this to the client may be difficult and frightening and involves an uncomfortable loss of control.


Reflections on the Legal Services Corporation, including funding issues, possible pursuit of alternate methods of delivering legal services, conflicts between the lawyer's political goals, and the individual client's interests.


Book review of *Brutal Need* by Martha Davis. Addresses issues such as tension between group and individual goals in impact litigation, ethical dilemmas in decisionmaking, and restrictions imposed by government funding.


A discussion of whether there are more or fewer moral and ethical challenges confronting the ABA now, years after the House of Delegates adopted the updated version of the Model Rules of Professional Conduct.

A lengthy critique of David Luban’s book, *Lawyers and Justice: An Ethical Study*, with particular focus on three of its themes: the demand for moral limits on the contours of the standard lawyering role, the call for obligatory pro bono work, and the endorsement of the political role of the people’s lawyer.


An argument for reform of legal education, stressing the need for clinical teaching and, in that context, the ethical issues of lawyering competencies, commitment to professional responsibilities, and ethical practice of law with respect to clients of all income levels.


A critical view of legal services lawyers, whom the author criticizes for failing in several ethical arenas, including client communication, adequate representation, and conflicts in group representation.


“Hopefully, the advent of a neighborhood-based legal services system will aid in revamping outmoded legal procedures generally and in encouraging more widespread use of group practice for those well above the poverty line but too poor to afford effective and continuing legal representation.”


A critique of Mark Feldman’s article in this issue of the Georgetown Law Journal.


Discussion of proposed revisions to the ABA Code of Professional Responsibility. Urges changes in Canons 2, 3, and 7 as they relate to pro bono obligations, legal assistance from non-lawyers, and zealous advocacy where the opposing party is unrepresented.

An early description and analysis of federally-funded community legal services organizations, this note devotes separate sections to discussions of ethics issues and use of students in law school clinics.


Overview of the Legal Services Corporation Act of 1974, Pub. L. No. 93-355. Ethical issues are part of the structure and intent of the Act; e.g., restrictions on use of funds and attorney political activities; client eligibility requirements.


Summary of the history of legal aid to the poor in the United States and the developing political opposition to certain types of legal advocacy on behalf of poor people.


Addresses the ethical obligations of public interest lawyers to monitor and push forward the implementation phase of successful litigation against an institutional defendant.


Funding legal services and the impact on choice of clients, cases, and on the goal of law reform versus the goal of equal access to justice.

Jan Ellen Rein, Clients with Destructive and Socially Harmful Choices—What's an Attorney to Do?: Within and Beyond the Competency Construct, 62 Fordham L. Rev. 1101 (1994).

Examination of Model Rules that govern a lawyer's choices, particularly as they apply to representation of elderly clients.


Bibliography of written and audio-visual materials for legal ethics courses and curricular integration projects. A few of these materials present ethical concerns in public interest law.


How to weigh potential harm to a client based on his/her own behavior against respect for the client's freedom, particularly in the context of representing children.

Explores (1) lawyer advertising, (2) attachment of the attorney-client relationship, (3) extent to which a lawyer may support his/her client's cause, and (4) lay advocates and the unauthorized practice of law.


Lawyers' roles in representing low-income clients in non-adversarial contexts.


A study of lawyer-client relationships in legal services organizations, law school clinics, grass-roots organizations, and small firms.


Adapted from Brief in Support of the Reauthorization and Continued Funding of the LSC (1981), this article reviews the history, ethical issues, and needs of government-funded legal services for the poor.


Proceedings of a conference at Fordham Law School. Many of the articles discuss ethical issues when older clients are also low-income persons.


Proceedings of a conference at Fordham Law School. Many of the articles discuss ethical issues when children or families are low-income persons.


A forum which addresses the issue of equal access to legal services from a Canadian point of view.


This article, a reprint of a work published separately by the University of Wisconsin-Madison Institute for Legal Studies in 1993, surveys the history of the interaction between legal education and
services for the poor in America. It assesses this long-standing relationship, traces its evolution, and analyzes the effect of tensions within the academic legal community of poverty law.


"The hallmark of an effective poor people's practice is that the lawyer does not do anything for his clients that they can do or be taught to do for themselves. The standards of success for a poor people's lawyer are how well he can recognize all the things his clients can do with a little of his help, and how well he can teach them to do more."

**Books and Other Monographs**


The most current edition of ABA standards in the area; deals with many basic ethical issue (funding, confidentiality, conflicts of interest, monitoring, and evaluation of programs).

Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means (1996).

New standards adopted February 1996.


The Consortium sets out 11 “Agenda Items” for providing legal services to low-income persons. "Considerations,” including many ethical issues, are discussed for each agenda item.


An American Bar Foundation study of the problems of legal services, including funding, adequacy of lawyers’ skills in meeting the needs of low income persons, group versus individual representation conflicts, use of nonlawyers.


An account of lawyers' activities and roles in the representation of poor people in the “first wave” of the modern welfare rights movement. Ethical problems are part of the general narrative.
James L. Gattuso, New Ways to Provide Legal Services to the Poor (1986).

This analyst report in the Heritage Foundation's "Backgrounder" series, in discussing innovations in funding and organization, touches on basic ethical considerations.


A paper discussing the studies of civil legal services programs done to date, and proposing areas for further research. Such research touching on ethical issues include: changes in bureaucratic and administrative organization, involvement of the private bar, alternative dispute resolution, use of paralegals, and political goals.


Examines influences on and attitudes of poverty lawyers. Highlights pressures on the attorney-client relationship stemming from lawyers' individual political beliefs, sources of funding and oversight, organizational goals, group versus individual needs.


Analysis of legal services organizations; ethical problems include political and social agendas of the funding source or board; individual attorneys' limitations of skill, time, and resources; conflict between community groups and clients' needs.


Training materials, including ethical considerations, from a 1991 State Bar of New Mexico Continuing Legal Education course on legal issues affecting homeless clients.

Legal Services to the Poor: The Dream, the Reality, the Future (1992).

Proceedings of a symposium co-sponsored by the Texas Young Lawyers Association, Texas Bar Foundation, Lyndon Baines Johnson Library, and Lyndon B. Johnson School of Public Affairs.


Several articles address ethical issues, including: "Private sector innovations in the delivery of low-cost legal services," "Paralegals," "Program monitoring," "Evaluating legal services," "Local concerns about competition."


Discusses an alternative, political theory of representing low-income clients. Addresses moral issues and professional ethics throughout.


Published by the Center for Philosophy and Public Policy, this course provides an overall look at the problems associated with professional ethics and moral responsibility in the provision of legal services to the less fortunate.


An international library of essays in law and legal theory which deal with the personal responsibility of a lawyer to his client as well as the professional and moral aspects.


A study in public philosophy dealing with the moral obligations of lawyers to their clients as well as the moral value and failures of clinical legal education.

David Luban, Lawyers and Justice: An Ethical Study (1988).

Part IV of this book is devoted to “The People’s Lawyer and Democratic Ideals.” Chapter 14 discusses the ethical dilemmas of client control and Chapter 15 is devoted to a discussion of Class Conflicts within the subject of Client Control. Study sponsored by the Institute of Philosophy and Public Policy at Princeton.

John R. Lund, American Bar Ass’n, Lawyers on Line: Ethical Perspectives in the Use of Telecomputer Communication (1986).

Containing a chapter on Legal Telecomputer Networking as it may affect lawyers for the poor; now dated since it was published 12 years ago.

F. Raymond Marks, The Lawyer, the Public and Professional Responsibility (1972).

Chapter 10, “The Individual Lawyer and the Quest for a New Professional Role,” examines (1) the lawyer as a citizen in the community; (2) the lawyer as responder to the needs and demands of his clients; (3) the lawyer as affected by his institutions; and (4) the public interest lawyer affecting his firm and his profession.

New York State Bar Ass’n Comm. on Legal Educ. and Admission to the Bar, Law Student Legal Ethics Award (1993).

Contains papers from various New York law schools. Includes articles on: a model program for mandatory pro bono services; syndicated litigation; potential ethics violations arising from students seeking employment with government agencies against whom they
litigated in law school clinical programs; problems representing children.


Published by the Center for Arkansas Legal Services in Little Rock.

Public Interest Practice and Fee Awards (Herbert B. Newberg ed., 1980).

Chapter 11, "The Promotion of Access to Legal Services: Historical Background" by Charles P. Kindregan, is a review of changes to the restrictions on champerty, maintenance, solicitation, advertising, and specialty designation which have widened access to legal services for underrepresented persons.


American Bar Association looseleaf.


A casebook with studies in professional integrity and morality and its dispositions. Explores how far a lawyer's responsibility extends.


A collection of essays on the scope of "cause lawyering": boundaries, challenges to traditional attorney-client relationships, and other issues. Some essays concern legal services in countries other than the United States.

World Wide Web Sites


Founded in 1968 with the assistance of Justice Arthur Goldberg, CLASP focuses on access to civil legal assistance for low-income families and family policy projects such as welfare reform, workforce development, childcare, child support enforcement, and reproductive health issues. The staff of eight lawyers and six policy analysts provides support for Legal Services Corporation-funded legal aid offices, provides training and technical assistance to advocates, and produces publications, newsletters, and updates on policy developments. The web page provides information about CLASP's activities and a list of publications including much of the text of those publications. CLASP also provides information about their many telephone audio conferences in which experts and practitioners discuss specific topics.

"Since 1978, the Center has provided national leadership and vision in developing and interpreting standards and scholarly resources in legal ethics, professional regulation, professionalism and client protection mechanisms. Its devotion to assuring the highest standards of conduct by lawyers and judges and to enhancing the profession's role in serving and protecting the public interest is underscored by its vigilance to meet the challenges of an evolving society."


The site includes press releases and information on new developments in "access to justice" issues, as well as pages on IOLTA, lawyer advertising, lawyer malpractice, lawyer referral, legal aid, military legal assistance, affordable legal services, prepaid legal services, pro bono, and specialization.


A legal consulting organization maintains this site, which offers links to articles, rules, and information relating to ethics issues. Although its focus is legal ethics as it relates to the Internet, its links to state ethics sites and association and law school sites are valuable gateways to information on concerns in the representation of low-income persons.


Part of the Legal Information Institute at Cornell Law School, this digital library contains both the codes or rules setting standards for the professional conduct of lawyers and commentary on the law governing lawyers, organized on a state by state basis. Searchable by topic as well as by state.


The site is billed as the "Poverty Law Research Center." The site includes publications, discussion groups, current news, and links to other related sites.


The NLADA web site includes information on both civil and criminal defense services, training and conferences, publications, current news, government relations, and links to other sites of interest to members.

This site is “an on-line meeting place, information source, and connection mechanism for lawyers and other advocates involved in efforts to provide civil legal assistance to low-income people.” Includes discussion and documentation on the future of legal services, an online national hotline directory, and web pages for the “Project for the Future of Equal Justice,” a joint initiative of the National Legal Aid and Defender Association and the Center for Law and Social Policy. Its mission is to “strengthen and expand the provision of civil legal assistance to low-income people through the collaborative efforts of a community of advocates that includes legal services programs, the private bar, social service and community organizations, law schools, courts, advocacy groups at the state and national levels, and poor people as advocates for themselves.” It has materials on training for equal justice advocates; emerging areas of need for low-income clients and strategies to address changing needs; development of innovative services to provide low-income people with the information and assistance they need to resolve their civil legal problems; and development of resources and funding at national and state levels.


This organization, which “works with and on the behalf of poor people to ensure that adequate income support—public funding provided on the basis of need—is available whenever and to the extent necessary to meet basic needs and foster healthy human and family development,” has pages on its web site devoted to the “Low Income Networking and Communications Project (LINC)” and “Project Fair Play,” two programs that reflect the Center’s commitment to protecting the legal rights of low income people.
APPENDIX

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Notes & Observations