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Paula Galowitz

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Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship

Cover Page Footnote

Clinical Professor of Law, New York University School of Law. My thanks to Randy Hertz and Nancy Morawetz for their thoughtful comments.

COLLABORATION BETWEEN LAWYERS AND SOCIAL WORKERS: RE-EXAMINING THE NATURE AND POTENTIAL OF THE RELATIONSHIP

Paula Galowitz*

INTRODUCTION

THE impetus for this Article was a case handled this past year by the Civil Legal Services Clinic which I teach at New York University Law School. In the clinic, third-year students represent clients in a variety of cases, including housing, government benefits, immigration, guardianship planning for clients who are HIV positive, and education. The students, who work in pairs, select from the clinic's docket the kinds of cases on which they want to work. The two students in this particular case chose to work on a case for a client who was HIV positive.

This client was referred to us by a legal services office because he had a housing problem. He was living in public housing, the tenant of record had died, and the client was attempting to obtain succession rights to the apartment. The attorney who referred the case explained that the client was "a little difficult to work with." Although we consider a number of factors in our selection of cases (including whether the nature of the case allows students to exercise maximum responsibility as the client's attorney and whether the case involves substantial client contact), the ease of working with the client usually does not play a significant role in the determination.¹ Both of the students on this case had had substantial client interviewing experiences and therefore seemed to be prepared to deal with a client who might be uncooperative or difficult in some other way. After meeting with the client, the students quickly devoted themselves to helping him resolve his legal problems.

As sometimes happens, the client's legal issues were not limited to the housing problems he had discussed with the original lawyer. The client was about to lose his food stamps due to his immigration status and his telephone service was about to be cut off because of unpaid

* Clinical Professor of Law, New York University School of Law. My thanks to Randy Hertz and Nancy Morawetz for their thoughtful comments.

1. We do consider whether the client is competent and able to relate to the students. For discussions of the criteria that should affect the selection of cases in a clinical program and the design of a clinical program, see Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 *How. L.J.* 135 (1994), and Susan Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*, 42 *Wash. U. J. Urb. & Contemp. L.* 207 (1992).

bills. Through extensive advocacy, the students were able to significantly reduce his telephone bill and preserve his service, expedite his application for his own apartment in public housing, delay the hearing about his rights to succeed to the apartment in which he was living,² and uncover the reasons his food stamps were terminated and start the process for reinstating benefits.

At times, the client was cooperative and happy with the students' efforts. At other times, however, he was very angry, missed appointments, and often hung up during telephone conversations with the students. He was primarily angry about the unfairness of his situation,³ a feeling the students understood and with which they could empathize. Occasionally, his anger was unfocused and he would ramble.

The students discussed whether our client might need mental health assistance, either to help him work with us on the case or to aid him generally. The students and I searched the literature for guidance on when and how to get mental health assistance for clients, but we were unable to find anything that was helpful. The client became increasingly angry, upset, and more difficult to work with, and he ultimately threatened to commit suicide. After visiting the client at his home to ensure that he was not suicidal, we quickly obtained a referral to a social worker at a community agency and then worked with that social worker to assist the client.⁴ Ultimately, however, we concluded that we were in over our heads and we transferred the case back to the original lawyer.⁵

The clinic's experience in that case forced me to rethink the role of lawyers and their need to collaborate with mental health professionals

2. For a variety of legal reasons, his claims to succeed to the apartment were not strong.

3. For discussions of the deplorable conditions and unfair situations that indigent people regularly confront in the legal system, see Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 Hofstra L. Rev. 533 (1992); Stacy Brustin, *Expanding Our Vision of Legal Services Representation—The Hermanas Unidas Project*, 1 Am. U. J. Gender & L. 39 (1993); Leigh Goodmark, *Can Poverty Lawyers Play Well with Others? Including Legal Services in Integrated, School-Based Service Delivery Programs*, 4 Geo. J. on Fighting Poverty 243 (1997); Gerald P. López, *The Work We Know So Little About*, 42 Stan. L. Rev. 1 (1989); Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 Fordham Urb. L.J. 1123 (1995).

4. A number of other contacts with the client and other service providers ensued to assess his threat to commit suicide and whether we needed to contact emergency services.

5. The referral was made with great reluctance after many attempts to work with the client with the assistance of the social worker at the community agency. The client eventually refused to cooperate with the agency and would not speak with the students and the agency workers. The students and I were concerned that we were not able to assess his mental health without his interactions with the workers at the community agency and their assessment of his mental status. We felt that the mental health issues irreparably impaired our ability to assist him.

in some cases. As a social worker⁶ and a lawyer, I have given a great deal of thought to the relative similarities and differences between the two professions and the ways in which they intersect. In the clinic case, however, I confronted, more clearly than ever before, the question of where lawyering ends and social work begins. That is the subject I begin to explore in this Article. This Article examines the value of collaboration between lawyers and social workers⁷ in order to effectively serve the client.

The kinds of cases on which I will primarily focus in this Article are not those in which social work or other mental health professional assistance is directly related to the client's legal problem or the legal strategies for winning the case—for example, cases in which the central issue is the client's mental competency or ability to care for a child.⁸ The cases with which this Article is concerned are those in which a social worker can assist the lawyer in understanding or relating to the client, thereby assisting in the delivery of legal services to the client. What drove me to write this Article is the notion that, if a paper of this sort had been available to the students and I last year as we were struggling with our case, we might have had a clearer idea of when to seek mental health assistance. It might also have helped us deal with our distress over our inability to provide the client with what he needed.

Part I describes the value of collaborations⁹ between lawyers and social workers and the many important functions they fulfill, particularly in the legal services context. Part II examines the reasons why such collaborations tend to be rare and why even the occasional collaboration sometimes proves to be ineffective. The discussion in this part examines the attributes of the two professions that may inhibit or impair collaborations. Part III explores remedies that members of these professions can employ to rectify the impediments to effective

6. I have an M.S.W. and worked as a social worker before and during law school. I have frequently felt that my current role as a clinical teacher draws on my training in both social work and law.

7. The mental health professional need not be a social worker. It is my impression and experience, however, that social workers are the predominant mental health professionals with whom lawyers for the indigent work.

8. Examples include cases in which the testimony of a social worker is necessary to convince the court or the decision maker that a neglected or abused child could safely be returned to the parent in a foster care case, and the report or testimony of a social worker—or that of another mental health professional—to assist a client receive disability benefits based on a psychiatric disability.

9. Collaboration has been defined as a process that “involves shared decision making by fellow collaborators . . . [and] makes maximum use of the experiences and knowledge that each collaborator brings to the joint work.” Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 Vt. L. Rev. 459, 460 (1993). The collaborative process has been characterized as one in which “the workers have joint responsibility for carrying out agreed-upon action.” Marie Weil, *Research on Issues in Collaboration Between Social Workers and Lawyers*, 56 Soc. Serv. Rev. 393, 395 (1982).

collaboration and to lay the groundwork for true interprofessional cooperation.

I. SOCIAL WORKERS AND LAWYERS: THE VALUE OF COLLABORATION

There are many ways in which mental health professionals can assist lawyers and their clients. Social workers¹⁰ can be useful in interviewing, evaluation, crisis intervention, short-term casework, negotiation, and referral. As a result of social workers' training and education, they are better equipped than lawyers to provide services such as crisis intervention, evaluation of clients' needs, referrals to appropriate agencies, and direct casework.¹¹ With respect to evaluation, a social worker's training in assessing personality and mental status "contributes significantly to the lawyer's appraisal of the facts."¹²

Social workers also can be effective trainers and collaborators in what has been called "the human arts of lawyering."¹³ As Carrie Menkel-Meadow has observed:

To the extent that most lawyers spend most of their time with people there is insufficient attention given to the arts (and science) of interacting with others. . . . [L]awyers must learn how to "feel with"

10. In this Article, the term "social worker" refers to those who have a master's degree in social work (M.S.W.).

11. See Lisa A. Stanger, *Conflicts Between Attorneys and Social Workers Representing Children in Delinquency Proceedings*, 65 *Fordham L. Rev.* 1123, 1133, 1135 (1996).

When the lawyer and social worker function together effectively, the child client is more likely to receive appropriate social services that allow the court to choose less restrictive alternatives at disposition. In addition, a multi-disciplinary approach to delinquency proceedings results in the early intervention that is necessary to prevent criminal behavior from carrying over into adulthood. Thus, attorneys and social workers should operate as a team to provide both legal and social service assistance to alleged delinquents.

Id. at 1135 (footnotes omitted).

12. James L. Scherer, *How Social Workers Help Lawyers*, 21 *Soc. Work* 279, 280 (1976), quoted in Jean Koh Peters, *Concrete Strategies for Managing Ethically-Based Conflicts Between Children's Lawyers and Consulting Social Workers Who Serve the Same Client*, *Ky. Children's Rts. J.*, Mar. 1991, at 15, 25 n.9.

It is important to distinguish between a social work assessment and a mental health intervention. A social work assessment is a psycho-social evaluation of the client's strengths and weaknesses, and outlines appropriate interventions based on those strengths and weaknesses—for example, need for, and means to obtain, day care or therapeutic intervention. A social work assessment is based on the results of a "mental status exam (accounting for one's orientation to person, place, time, situation, mood and affect, content of thought, and perception); the ability to comprehend abstract ideas and make reasoned judgments; a history of mental illness that might affect current judgment; and the client's recent and remote memory." Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 *Fordham Urb. L.J.* 533, 560-61 (1997) (footnotes omitted).

13. Gary S. Goodpaster, *The Human Arts of Lawyering: Interviewing and Counseling*, 27 *J. Legal Educ.* 5, 5 (1975).

others. . . . “[E]mpathy training” is an essential part of the client-lawyer relationship . . . [that] can be taught and learned. . . . [It is] a willingness to truly apprehend the reality of the other (be it client or administrative bureaucrat or opposing counsel); not just to understand instrumentally how to move, persuade or affect that person, but to understand what meaning the interaction has for that person in a caring and existential sense. The lawyer who hopes to effectuate a successful transaction or settle a lawsuit or amend an administrative regulation needs to understand what the goals and feelings of the other are, if only to effectuate the needs and goals of the client (the “instrumental” justification for affective learning). I prefer to take this a step beyond the instrumental to suggest that the good lawyer needs to understand, from a human point of view, what the other wants to happen in the world (the “humanist” justification for affective learning).¹⁴

Empathy training is a critical part of social work education and an area in which social workers can assist lawyers.

The collaborative approach also comports with some aspects of the “ethic of care,”¹⁵ which has been defined as “subjective, particularistic and contextual and emphasizes responsiveness and responsibility in relationships with others . . . [and it] values relationships and connectedness over autonomy.”¹⁶ The ethic of care has been applied to the lawyer-client relationship and to counseling as a way to produce solutions that are more creative and better tailored to clients’ problems; it is also seen as a way to resolve the “problem solving” dilemma, in which “the lawyer is tempted, in his role as expert problem solver, to

14. Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—of Skills, Legal Science and Being a Human Being*, 69 Wash. L. Rev. 593, 619-20 (1994) (footnotes omitted). Menkel-Meadow also comments that the client-centered approach of David A. Binder, Paul Bergman, and Susan C. Price, see David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (1991), “pays insufficient attention to the emotive aspects both of the client’s intra-psychic process in decision making and to the complex relationship between lawyer and client, which we now know may vary a great deal depending on the social distance between client and lawyer and other factors.” Menkel-Meadow, *supra*, at 607 n.61.

15. Theresa Glennon, *Lawyers and Caring: Building and Ethic of Care into Professional Responsibility*, 43 Hastings L.J. 1175, 1175 (1992) (quoting Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* 63 (1982)); see also Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 Geo. L.J. 2665, 2665-66 (1993) (stating that the ethic of care focuses on “connections between people” and is a form of moral reasoning).

16. Paul J. Zwier & Dr. Ann B. Hamric, *The Ethics of Care and Reimagining the Lawyer/Client Relationship*, 22 J. Contemp. L. 383, 387 (1996) (footnotes omitted). “In contrast to the care perspective, the justice perspective values impartial application of abstract, universal principles and emphasizes individual rights and equality in making moral judgments.” *Id.* The concept of the ethic of care originated in feminist writings and moral psychology—for example, the works of Beauchamp & Childress and Carol Gilligan, among others. See *id.* at 383 n.2 (citing Beauchamp & Childress, *Principle of Biomedical Ethics* (4th ed. 1994), and Carol Gilligan, *In a Different Voice* (1982)).

over-step his boundaries and impinges on the client's autonomy; or the client, in his role as autonomous rights seeker, impinges on the moral integrity of the lawyer."¹⁷ The role of the "care provider/legal counselor is more of a facilitator of the discussion, or a consensus builder, rather than a problem solver. . . . The possible solutions are the kind of solutions that nurses, social workers, or wise family friends might suggest. They are the kind of solutions proposed by someone who 'cares.'"¹⁸

A potentially fruitful area for collaboration between lawyers and social workers is for social workers to train lawyers in effective interviewing and counseling techniques.¹⁹ Law schools generally do not offer much instruction in counseling clients, a very important aspect of practice. Consultation with social workers can help fill that gap.²⁰

A very significant though frequently overlooked reason for collaboration is to help share and ease the lawyer's burden.²¹ Collaborative arrangements can help reduce the stress that lawyers often experience. Not only can social workers assist lawyers to represent clients more effectively (and thereby alleviate some of the burden), but they can also help lawyers deal with their feelings about their clients and their practice. As Susan Bryant observed, "[c]ollaborative arrangements . . . promote social support in the work environment which, in turn, can reduce stress."²²

17. *Id.* at 388. The "ethic of care" concept has been applied in professional responsibility to include 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." Glennon, *supra* note 15, at 1175. Theresa Glennon taught a civil procedure course in the Legal Theory and Practice program at the University of Maryland School of Law that placed first-year students in the role of counsel for a family in a special education or school discipline matter, and also assigned those students to a project in the area of education law. Students were encouraged to provide emotional support to each other and to share their responses about providing legal services to indigent persons. *See id.* at 1179-81.

18. Zwiery & Hamric, *supra* note 16, at 402, 407.

19. One of the recommendations for practice guidelines in interviewing and counseling for lawyers for children was that "lawyer[s] should be trained, and take the time to establish rapport with the child client." *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *Fordham L. Rev.* 1301, 1303 (1996). The recommendations also included that law schools "should mandate training in legal interviewing, counseling, and negotiation skills." *Id.* at 1306. Moreover, "[a] lawyer . . . has an obligation to become educated about the role of cultures, race, ethnicity, and class in the choices that a child client might make." *Id.* at 1313.

20. *See* Peters, *supra* note 12, at 18-19.

21. "[S]ocial worker and attorney collaborations are not only useful for resolving the client's legal and psychosocial problems; they often help ease some of the professional's personal burden of this particular type of practice. Social workers are often helpful in dealing with the complex feelings that both clients and attorneys experience." Retkin et al., *supra* note 12, at 549.

22. Bryant, *supra* note 9, at 470. The author was primarily discussing collaboration among lawyers and law students but it is equally applicable to other areas of collaboration.

Interestingly, there is a significant body of social work literature that addresses the topic of social workers working together with lawyers,²³ but there is a paucity of such scholarship by lawyers and legal academics. Most of the legal scholarship on the topic that does exist tends to focus on social workers working with lawyers in the child representation context.²⁴ This is not surprising, given that lawyers often view Family Court cases as presenting problems that are "social work" in nature rather than legal. There is, however, some legal scholarship that addresses collaboration between lawyers and social workers in other areas, such as in cases of elderly clients or clients with HIV.²⁵

23. See, e.g., José B. Ashford et al., *Advocacy by Social Workers in the Public Defender's Office*, 32 Soc. Work 199, 199-203 (1987) (discussing social workers' roles in the Public Defender's office); Preston N. Barton II & Bridget Byrne, *Social Work Services in a Legal Aid Setting*, 56 Soc. Casework 226 (1975) (discussing the use of the common goals and values of the two professions to develop an integrated approach to socio-legal problems); Franklin B. Fogelson, *How Social Workers Perceive Lawyers*, 51 Soc. Casework 95, 95-100 (1970) (explaining that, in order to make legal services available to social work clients, social workers must understand the law and its limitations); Harriet L. Goldberg, *Social Work and Law*, 7 Children 167 (1960) ("Among social workers and lawyers there is a high regard for the dignity and worth of people Both professions exist to help people, and they recognize that every case differs in some respects from every other. Thus, they share the concept of individualization and its application in daily practice."); James L. Scherer, *How Social Workers Help Lawyers*, 21 Soc. Work 279, 280 (1976) (arguing that successful lawyer-social worker collaborations can occur only if lawyers recognize that social workers can help them); Audrey D. Smith, *The Social Worker in the Legal Aid Setting: A Study of Interprofessional Relationships*, 44 Soc. Serv. Rev. 155, 155-68 (1970) (detailing a study of lawyer-social worker relationships at the Chicago Legal Aid Bureau and determining that the most important service of the social workers was evaluating and then making suggestions about the desirability of the legal services that clients requested); Weil, *supra* note 9, at 397-400 (finding that attitudes toward collaboration between lawyers and social workers were more positive when social workers had received training in court-related work).

24. See, e.g., Frank P. Cervone & Linda M. Mauro, *Ethics, Cultures, and Professions in the Representation of Children*, 64 Fordham L. Rev. 1975, 1975 (1996) (discussing recommendations of the Fordham Conference on Ethical Issues in the Legal Representation of Children that lawyers cooperate with other professions, including social workers, when needed to assist a lawyer's relationship with a child client). But see Sia Arnason et al., *The Successful Marriage of Law and Social Work*, 23 Clearinghouse Rev. 450 (1989) (exploring, from the social worker's perspective, the interplay between law and social work when working with elderly clients); Heather B. Craige & William G. Saur, *The Contribution of Social Workers to Legal Services Programs*, 14 Clearinghouse Rev. 1267 (1981) (advocating the increased hiring of social workers for legal services programs).

25. See, e.g., Goodmark, *supra* note 3, at 243 (detailing the use of social workers and other professionals in an integrated service delivery model in a school setting); Retkin et al., *supra* note 12, at 536-65 (examining the roles, responsibilities, and legal and ethical requirements of a social worker-attorney team in the context of HIV clients); Heather A. Wydra, Note, *Keeping Secrets Within the Team: Maintaining Client Confidentiality While Offering Interdisciplinary Services to the Elderly Client*, 62 Fordham L. Rev. 1517, 1517 (1994) (discussing problems of confidentiality that may arise in interdisciplinary collaboration in the context of elder law).

The need for lawyer-social worker collaboration is particularly likely to arise in legal services and public defender cases.²⁶ Indigent clients have a variety of problems that contribute to or affect their legal situations, and these problems often require services beyond the expertise of lawyers.²⁷ Lawyers can spend much of their time trying to resolve non-legal problems that are inextricably intertwined with legal issues.²⁸ As stated by one commentator, “[t]he needs of low-income individuals and families often transcend legal categories. To meet [these needs], lawyers must work cooperatively with other service professionals.”²⁹

The concept of having social workers on the staff of a legal services office is far from novel. One of the original models for provision of legal services in the 1960s³⁰ involved the placement of such a program within a multi-service social service agency, premised on a belief that legal services could be part of an anti-poverty program.³¹ Since the

26. The relationship between law and social work is certainly not new. As early as 1917, Mary Richmond, a key architect of modern social work, acknowledged the role of legal authorities in assisting her in formulating parts of her conceptual framework of casework. “The very structure from which Mary Richmond drew her theoretical base could trace its roots from that landmark legislation, the Elizabethan Poor Law, which was a declaration of the legal rights of the poor.” Fogelson, *supra* note 23, at 96.

27. As observed in an article on social work and law, “[t]he interface between the professions of social work and law is of considerable significance due to the vulnerability of many of the consumers of social services, who require legal assistance or are otherwise forced to become involved in the legal system.” Betty Sancier, *Observations: Social Work and the Law*, Prac. Dig., Fall 1984, at 3, 3.

28. See Memorandum from Jessica Brodey, student intern, Legal Aid Society of the District of Columbia, to Chris Herrling, Deputy Director, Legal Aid Society of the District of Columbia 1 (July 19, 1996) (on file with the *Fordham Law Review*) [hereinafter Brodey Memo].

29. Goodmark, *supra* note 3, at 262.

30. “As a practical matter, poverty law did not exist before 1965.” Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 Geo. L.J. 1669, 1671 (1995).

31. See *id.* at 1672. Four such programs were funded, each in a different city—New York City (Mobilization for Youth, known as “MFY”), New Haven (Legal Assistance Association), Washington, D.C. (United Planning Organization), and Boston (Action for Boston Community Development). See *id.*

There were three different models of legal services funded in the 1960s as part of the Office of Economic Opportunity (OEO) War on Poverty. In one model, the lawyer was part of a team of professionals, including social workers, who provided social, educational, and legal services. See Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 Mich. L. Rev. 1401, 1405-06 (1995) (reviewing Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (1993)). This model was based on the view that “cultural poverty causes economic poverty.” *Id.* at 1406 (internal quotation marks omitted). In the second model, developed by Edgar and Jean Cahn, lawyers were a resource for the community, working to make government more responsive to poor people’s needs. See *id.* The third model, developed by Ed Sparer and Elizabeth Wickenden, called for the planning and filing of test cases to obtain judicial determinations of “a constitutional right to a subsistence income.” *Id.*

beginning of the legal services movement,³² lawyers and social workers have worked together to address the legal needs of their clients.³³

Historically, social workers have played a variety of roles and have provided a range of services to lawyers for indigent clients.³⁴ An article by two social workers published almost twenty years ago in a journal for legal services lawyers set forth the following inventory of contributions that social workers can make to legal services programs:

1. Clinical services.³⁵
2. Crisis intervention.³⁶
3. Psycho-social assessment.³⁷

32. For a history of legal services, see, for example, Houseman, *supra* note 30, at 1669-85, which noted that the Office of Economic Opportunity created a unique and effective structure for delivery of legal services, and Earl Johnson, Jr., *Justice and Reform: The Formative Years of the American Legal Services Program 1-102* (1978), which discussed the governmental role in legal assistance to the poor and the development of the Legal Services Program. According to Houseman, there are five critical elements of legal services: acceptance of responsibility to all poor people as a "client community"; right of clients to control decisions about solutions to their problems through participation on the board of the legal services office; redress of past inadequacies in legal rights of poor people through reform of law and practice; responsiveness to legal need instead of to demand; and use of the full range of advocacy tools that private attorneys can employ, such as legislative advocacy and rule drafting. See Houseman, *supra* note 30, at 1684-85.

33. See Craig & Saur, *supra* note 24, at 1268. The New Haven experiment used social worker-lawyer teams in neighborhood law offices to "diagnose, refer, and coordinate" the legal problems of the poor. *Id.* (quoting Johnson, *supra* note 32, at 22).

34. At the time that José Nazario, a social worker at Mobilization for Youth in New York City, wrote an article about the uses of social workers at that organization, there were twelve attorneys and seven social workers working in the program. According to Mr. Nazario, the work of a social worker in a legal setting includes "counseling, arranging services for families, preparation of home evaluations, presentation of reports to the court, and appearances as a witness in the hearing." José Nazario, *Confronting the System: How Social Workers Can Challenge—and Change—the Laws*, Prac. Dig., Fall 1984, at 4, 5.

35. See Craig & Saur, *supra* note 24, at 1268 ("[D]irect treatment-oriented services to individuals, families and groups in order to enhance their problem-solving capacities and social functioning, build personal relationships and establish links between people and resource systems.").

36. See *id.*

[Crisis intervention] is a well-established clinical method for managing emotional reactions to loss or threats of loss. Legal services clients are often deeply upset when they seek help, as their legal problems typically involve significant loss or threat to survival [i.e., loss of apartment]. . . .

Without the availability of a skilled social worker, the emotional and social aspects of a case might be ignored; more likely, they will be handled (or mishandled) by an attorney with no training in crisis intervention. Legal services clients in crisis are better served if the psychosocial as well as the legal aspects of their problems are addressed by skilled professionals. Attorneys benefit from the presence of an in-house social worker by having more time to concentrate on legal issues. In addition, they are less likely to experience the frustration that comes with encountering repeated crises for which they have neither the time nor the training to respond adequately.

Id.

37. See *id.* at 1268-69.

4. Advocacy.³⁸
5. Working with community groups.³⁹
6. Community development.⁴⁰
7. Preventive legal education.⁴¹
8. Liaison work with other agencies.⁴²
9. Community analysis.⁴³
10. Social policy analysis.⁴⁴
11. Administrative services—program administration.⁴⁵
12. Staff training.⁴⁶

The authors, who expressed the hope that their identification of social work services would increase the hiring of social workers by legal services programs, emphasized that social workers and lawyers have certain central goals and values in common:

The social work profession has traditionally been identified with service to poor people in an agency setting, and throughout its history has maintained a dual focus on promoting social reform and facilitating the adjustment of the individual to existing situations.

[S]tudy of a client's emotional and social situation . . . typically involves in-depth interviews with the client, relevant family members and individuals from the social environment and the review of medical, psychiatric and social work reports from other agencies . . . Problems in the areas of family and juvenile law, for example, rarely present clear-cut legal issues.

Id.

38. *See id.* at 1269 (stating that social workers can help clients obtain benefits from social welfare systems inasmuch as "[s]ocial workers have proven to be particularly effective at informal advocacy, when the 'other side' is another social worker").

39. *See id.* ("Skilled community-oriented social workers are not only able to identify natural community networks and develop viable issue-oriented groups, but they can also analyze community problems from a broad perspective and develop strategies for social change which will have an impact on whole communities.").

40. *See id.*

Community development involves the building of issue-oriented groups which work for changes in the social, economic and political structures of the community. Skills in community development are useful in a variety of activities in which legal services programs are involved such as facilitating lay advocacy groups, developing client advisory councils, and bringing together clients with similar problems for community legal education and to testify at public hearings.

Id.

41. *See id.* (observing that, as nonlawyers, social workers may find it easier to write community education materials).

42. *See id.*

43. *See id.* at 1270 (noting that social workers can assess community needs and analyze community problems).

44. *See id.* ("[A] specialized area of social work practice in which proposed legislation and regulations in the area of social welfare, including health, mental health, education, family services and public benefits, are studied for their probable effects on low-income people.").

45. *See id.* ("[S]uch nonlegal aspects of program management as staff training and development, strategic planning and priority setting, personnel and grievance concerns, alternative service delivery systems, and program evaluation.").

46. *See id.* at 1271 (stating that social workers can train legal services staff in interviewing and crisis intervention skills).

Legal services attorneys share the goal of enhancing the lives of poor people through the provision of direct services to individuals and groups of poor people and through the modification of socio-legal systems in society.⁴⁷

The need for collaboration between lawyers and social workers is not, of course, dependent upon a particular model of legal services or a particular vision of practice. A quick survey of the primary models⁴⁸ will help provide a broader context for the discussion of collaboration between lawyers and social workers.⁴⁹

Marc Feldman envisions a lawyer as an agent of social change, with the legal service program as a catalyst for changing the political economy.⁵⁰ Edgar Cahn has a conception of Time Dollars, a fee-for-service arrangement in which clients obtain legal services in exchange for time spent helping others. Cahn's approach has the goal of modifying the relationship that traditionally exists between legal services lawyers and clients "from one of dependency and implicit subordination, to one of reciprocity and mutuality."⁵¹

Under Alan Houseman's vision, legal services would "focus its work on helping the economically deprived to effectively marshal and increase the resources, services, and opportunities available to benefit

47. *Id.* at 1267 (footnotes omitted).

48. *See, e.g.*, Edgar S. Cahn, *Reinventing Poverty Law*, 103 Yale L.J. 2133, 2144-54 (1994) (discussing the use of "Time Dollars" by poor clients to pay for legal services); Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 Geo. L.J. 1529, 1621-32 (1995) (advancing a model that a lawyer should be an agent of social change through the legal services program); Houseman, *supra* note 30, at 1706-09 (advocating a vision in which the legal services program focuses on helping economically deprived communities solve the problems they face); Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. Rev. 1101, 1130-34 (1990) (discussing the idea that a community-based model might diminish the tensions inherent in legal services practice).

49. *See infra* Part II.

50. *See* Feldman, *supra* note 48, at 1621-32. In Alan Houseman's response to Feldman, Houseman critiques Feldman's vision as resting on a flawed view of what can be achieved in the courts, agencies and legislatures; on a view that will deter funding from the government and foundations; and on a "notion that legal services lawyers should lead the charge [which] reinforces lawyer domination and does little or nothing to empower the poor to assert their own rights and interests." Houseman, *supra* note 30, at 1705.

Paul Tremblay suggests that legal services lawyers should consider the interests of the client community in selecting cases. *See* Tremblay, *supra* note 48, at 1129-49.

51. Cahn, *supra* note 48, at 2151. Cahn and others have suggested that there is a crisis in poverty law. *See, e.g.*, Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. Rev. L. & Soc. Change 659, 660-63 (1987-88) [hereinafter Alfieri, *Antinomies of Poverty law*] (asserting that there is a need for a recasting of our conceptual and methodological understanding of poverty law); Cahn, *supra* note 48, at 2134 (stating that there is a fundamental need to reinvent poverty law). Two of the criticisms of recent poverty law practice are that lawyers fail to appreciate the need for grassroots organizing and that "the traditional relationships between poverty lawyers and their clients contribute to the disempowerment of poor clients and thereby bolster the status quo." Diller, *supra* note 31, at 1425 (footnote omitted).

them," a vision that is "client-centered and client-driven" and utilizes "skills of people from a variety of different disciplines and develop[s] interdisciplinary and holistic approaches to advocacy."⁵²

As Houseman notes:

Many legal staff members view legal services as a social services program that provides necessary help but has no real political content; it is a job to be done as best as one can within the "helping" framework. Others view legal services as an advocate to enhance and protect the interests of the poor: to some it means using lawyers in courts and before legislative and administrative bodies to achieve social and economic justice for poor persons; still others view legal services as a means to empower the poor to act on their own behalf and help change their lives and the conditions under which they live and work.

Even among those who see legal services in terms of empowerment and social change, there are widely divergent views about how best to achieve meaningful impact on the lives of the poor. Some favor policy advocacy; others favor affirmative litigation; still others see work on individual cases focused on clear targets as equally important and having significant and lasting impact.⁵³

For those who view legal services as coming within the "helping" framework, the value of collaborating with social workers is self-evident. For those who envision legal services as empowering and advocate political lawyering,⁵⁴ collaboration with social workers is equally essential.⁵⁵

II. FACTORS THAT MAY PREVENT OR IMPAIR EFFECTIVE COLLABORATION OF LAWYERS AND SOCIAL WORKERS

As someone trained in both the professions of social work and law, I have often wondered why there is not more collaboration between lawyers and mental health professionals. I think that there are many complex reasons for this, including difficulties in knowing when and how to collaborate, ethical concerns about differing standards of confidentiality, perceptions of the role of professionals in the other field,

52. Houseman, *supra* note 30, at 1706-07.

53. *Id.* at 1689.

54. Martha Minow notes:

[P]olitical lawyering involves deliberate efforts to use law to change society or to alter allocations of power.

Political lawyers use litigation, legislation, mass media, and social science research, assessing the consequences of each particular approach by reference to long-term visions of freedom, equality, and solidarity. Political lawyers are partners, for the long haul, with clients and client communities in struggles for social justice.

Martha Minow, *Political Lawyering: An Introduction*, 31 Harv. C.R.-C.L. L. Rev. 287, 289 (1996) (footnotes omitted).

55. See *infra* Part II.

and views of the nature of the professions.⁵⁶ To the extent that the lack of collaboration stems from a limited understanding of the other profession, the roots of this problem can be found in the training lawyers receive and the methods of practice they employ. The following discussion will explore each of these factors.

A. Ethical Issues

The relationship between lawyer and client differs in important respects from the relationship between mental health professional and patient. Moreover, each profession has developed its own specialized standards of confidentiality, ethics, and legal obligations.⁵⁷ As Jean Koh Peters stated in an article exploring the professional conflicts between lawyers and consulting social workers, "due to the distinct ethical mandates of the two professions . . . legal and social work practitioners must expect conflict and tension in cooperating to represent a common client."⁵⁸

Confidentiality is a core value for both professions. Because legal and mental health professions have different standards for privilege and confidentiality,⁵⁹ however, potential conflicts can arise when determining the range and degree of confidentiality owed to the client. For lawyers, confidentiality derives from the common law attorney-client privilege, which protects confidential communications, including advice, opinions, and information transmitted, developed, or gathered in furtherance of the attorney-client relationship.⁶⁰ Confidentiality requires that lawyers not knowingly reveal their clients' confidences or secrets to anyone outside of the relationship.⁶¹ Confidentiality covers not only the lawyer who was told the information by the client but

56. Some have suggested that the lack of collaboration may be due to psychological pre-conditions: lawyers and social workers might tend to operate out of different hemispheres in the brain (lawyers from the left side and social workers from the right side). See Judith Alphonso Lau, *Lawyers vs. Social Workers: Is Cerebral Hemisphericity the Culprit?*, 62 *Child Welfare* 21, 27-28 (1983).

57. See Brodey Memo, *supra* note 28, at 2.

58. Peters, *supra* note 12, at 15 (addressing and suggesting strategies for dealing with professional conflicts with consulting social workers hired or retained by a law firm, although, as suggested by the author, the strategies could apply to inter-agency situations where each professional is employed by a separate agency).

59. "[C]onfidentiality restricts the professional's ability to disclose while a privilege restricts the states right to compel disclosures." Gerard F. Glynn, *Multidisciplinary Representation of Children: Conflicts over Disclosures of Client Communications*, 27 *J. Marshall L. Rev.* 617, 626 (1994). The attorney-client privilege prevents the disclosure of evidence in litigation; confidentiality is an "overall ethical obligation." Retkin et al., *supra* note 12, at 552.

60. See New York Code of Professional Responsibility Canon 4 (1998); *id.* DR 4-101.

61. Confidences include all information protected by the attorney-client privilege while secrets include all other information gathered through the professional relationship that the client wishes to remain private or that could be embarrassing or detrimental to the client if disclosed. See *id.* DR 4-101. Lawyers can be forced to reveal secrets in judicial proceedings, but not confidences. See N.Y. C.P.L.R. 4503(a) (Mc-

also others working in the law office, as well as all employees and associates of the lawyer, including law students, support staff, and other nonlawyers working on the case.

It has been suggested that the confidentiality provisions of the Model Rules and the Code interfere with an interdisciplinary approach, since interdisciplinary teams need to share information and the Model Rules and Code generally prohibit the disclosure of confidential client information.⁶² Under the current ethical standards, "true multiprofessional offices remain beyond the range of feasibility, despite the fundamental appeal of the concept of holistic problem solving centers."⁶³

Social workers have their own self-imposed standard of confidentiality through the Code of Ethics of the National Association of Social Workers ("NASW Code of Ethics").⁶⁴ Under that Code, social workers must respect their clients' privacy and maintain the confidentiality

Kinney 1997); New York Code of Professional Responsibility DR 4-101(c)(2) & cmt. (1998).

62. See Wydra, *supra* note 25, at 1519.

63. *Id.* at 1533 (quoting Gary A. Munneke, *Dances with Nonlawyers: A New Perspective on Law Firm Diversification*, 61 Fordham L. Rev. 559, 573 (1992)). Heather A. Wydra suggests modifying the confidentiality provisions to create an exception for interdisciplinary communications and to allow for the creation of lawyer-nonlawyer partnerships. See *id.* at 1537-41.

64. See National Ass'n of Soc. Workers, Code of Ethics (1996) [hereinafter NASW Code of Ethics]. Ethical Standard 1.07 (Privacy and Confidentiality) provides, in relevant part:

- (c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person or when laws or regulations require disclosure without a client's consent. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.
- (d) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.
- (e) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

Id. Ethical Standard 1.07. Most mental health professionals have ethical standards, including ones relating to confidentiality. See, e.g., *Jaffee v. Redmond*, 518 U.S. 1, 13 n.12 (1996) (stating that a therapist must disclose the relevant confidentiality limits (citing American Counseling Ass'n, Code of Ethics and Standards of Practice A.3.a (1995); American Psychological Ass'n, Ethical Principles of Psychologists and Code

of all information obtained during professional services. These confidentiality obligations have a statutory basis in federal and often state law. In the federal arena, the Supreme Court's decision in *Jaffee v. Redmond*⁶⁵ recognized that a privilege attaches to the relationship that social workers and mental health professionals form with their clients.⁶⁶ Issues still remain, however, as to the extent of the privilege and what limitations the state may impose on the privilege.⁶⁷

Confidentiality issues often arise most dramatically as a result of child welfare laws that mandate disclosure of instances of abuse or maltreatment of children to the appropriate child welfare agency.⁶⁸ In New York, for example, the Social Services Law requires that a variety of categories of professionals "report or cause a report to be made . . . when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child," or when they have reasons to know of such abuse or maltreatment because "the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child."⁶⁹ Because lawyers are not included in the statutory list of professionals, the attorney-client privi-

of Conduct, Standard 5.01 (1992); National Fed'n of Societies for Clinical Soc. Work, Code of Ethics V(a) (1988)).

65. 518 U.S. 1.

66. *See id.* at 15. Confidential communications between a licensed psychotherapist and patient in the course of diagnosis or treatment are privileged under Rule 501 of the Federal Rules of Evidence and the privilege extends to confidential communications made to a licensed social worker in the course of psychotherapy. *See id.* In extending the privilege to social workers, the Supreme Court noted that "social workers provide a significant amount of mental health treatment. . . . Their clients often include the poor and those of modest means who could not afford the assistance of a psychiatrist or psychologist . . . but whose counseling sessions serve the same public goals." *Id.* at 15-16 (footnote omitted).

67. Historically, social workers have been accorded less respect and fewer legal protections than psychiatrists and psychologists. *See id.* at 16 n.16. This is slowly changing as there is an increasing recognition that all approaches to mental health care are important and that a large percentage of the public receives mental health assistance from social workers. *See id.* at 15-16.

68. These potential conflicts in the child welfare context highlight the differences that can arise in other areas.

69. N.Y. Soc. Serv. Law § 413(1) (McKinney 1992). The categories of professionals are:

any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official; social services worker; day care center worker; provider of family or group family day care; employee or volunteer in a residential care facility defined in subdivision seven of section four hundred twelve of this chapter or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant district

lege is not abrogated and lawyers are not required to report even when they have reason to believe that a client committed an act of child abuse. Moreover, the ethical codes probably bar lawyers from making such a report. The New York Code of Professional Responsibility, like other state codes, requires a lawyer to zealously represent a client within the bounds of the law,⁷⁰ and prohibits lawyers from using "information acquired in the course of the representation of a client to the disadvantage of the client."⁷¹

Many legal services and clinical programs take the position that social workers and social work students who participate in the program's legal representation of clients come under the rubric of law office personnel and therefore are bound by attorney-client rules of confidentiality.⁷² Employees of a lawyer generally are subject to the same professional and ethical constraints as the lawyer (including the duty to refrain from reporting suspicions of child abuse). The New York Code of Professional Responsibility, like other state codes, provides that a "lawyer shall exercise reasonable care to prevent his or her employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client."⁷³ Accordingly, employees of a lawyer, including social workers or social work students, are bound by the attorney's professional rules of confidentiality. This rule reflects a practical consideration. If employees were not covered by the confidentiality protections, lawyers could not draw on their assistance in representing a client. Thus, for example, lawyers would not seek the assistance of social workers in instances of suspected child abuse.

The ethical issues become more complicated when the lawyer is an employee of a social services agency or some other organization that is not a law firm. A recent decision of the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York discussed this issue.⁷⁴ A lawyer employed by a social services agency that provides a broad range of services to minor clients (in-

attorney; investigator employed in the office of a district attorney; or other law enforcement official.

Id.

70. See New York Code of Professional Responsibility EC 7-1 (1998).

71. *Id.* EC 4-5.

72. For example, clinics at Northwestern Law School and New York University School of Law follow this approach. Other schools, however, take the view that social work students are mandated reporters even when working with an attorney on a civil matter; clients are informed of this when the client begins working with the social work student and is required to sign a "Contract of Confidentiality" which explains the circumstances under which confidential information must be reported. See E-mail from Andrew Reese, University of Maryland Law Clinic, to the Clinical Listserv (June 11, 1996) (on file with the *Fordham Law Review*).

73. New York Code of Professional Responsibility DR 4-101(D) (1998).

74. See Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 1997-2 (1997) [hereinafter Formal Op. 1997-2], available in N.Y. L.J., Aug. 21, 1997, at 7.

cluding health, mental health, educational, and legal services) had requested an opinion on how to fulfill her obligations of confidentiality under the New York Code of Professional Responsibility in light of the reporting obligations of Social Services Law section 413 that apply to other agency employees. Setting forth the applicable general principles of ethical conduct (including that the lawyer must provide independent, zealous, and competent representation and must maintain the client's confidences),⁷⁵ the opinion emphasized that a lawyer cannot allow an agency employer to regulate her professional judgment in representing her clients.⁷⁶ As to the issue of whether a lawyer may report suspected incidents of child abuse without the client's consent, the opinion concluded that the lawyer is required to comply with the client's decision unless an exception to the general duty of confidentiality applies.⁷⁷ With respect to the question of whether the lawyer may disclose the information to others within her own agency, the opinion decided that these are questions of law and did not resolve the matter.⁷⁸

75. See New York Code of Professional Responsibility Canon 4 (1998) ("A Lawyer Should Preserve the Confidences and Secrets of a Client"); *id.* Canon 5 ("A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client"); *id.* Canon 6 ("A Lawyer Should Represent a Client Competently"); *id.* Canon 7 ("A Lawyer Should Represent a Client Zealously Within the Bounds of the Law").

76. See Formal Op. 1997-2, *supra* note 74; *cf.* New York Code of Professional Responsibility DR 5-107(B) (1998) ("A lawyer shall not permit a person who . . . employs, or pays the lawyer to render legal service for another to direct or regulate his or her professional judgment in rendering such legal services.").

77. See Formal Op. 1997-2, *supra* note 74. According to the opinion, there are three exceptions. The first is that the disclosure may be made if required by law. See *id.* The opinion states that even though Social Services Law section 413 does not include lawyers among those who are required to report cases of child abuse or maltreatment, it is an issue of law beyond the Committee's jurisdiction as to whether lawyers must generally report suspicions of child abuse or maltreatment under Social Services Law section 413, or whether lawyers employed by a social services agency must do so. See *id.* The second exception is if the disclosure is necessary to save the client's life. See *id.* The opinion states that "[a]lthough DR 4-101(c) does not explicitly so provide, we believe that a lawyer has latitude to report information concerning child abuse or mistreatment in the rare case in which the lawyer honestly concludes, after full consideration, that disclosure is necessary to save the client from being killed or maimed." *Id.* The third exception is client incapacity; generally, minors twelve or older are capable of making a reasoned judgment. See *id.*

78. The opinion stated:

The circumstances under which a lawyer in the agency may provide client confidences to an agency employee consistent with the attorney-client privilege, as well as the circumstances under which an agency employee will have a fiduciary duty to preserve such confidences, are questions of law. These questions implicate not only the attorney-client privilege and employment and/or agency law, but also § 413 of the Social Services Law.

Id.

On a related issue, the opinion concluded that a lawyer may advise minor clients prior to undertaking representation that the lawyer will disclose confidences and secrets concerning the client's intention to maim or kill himself or another. See *id.* Because a lawyer may make a disclosure under such circumstances, it does not necessarily follow that a lawyer must make such a disclosure. See *id.*

There is an inherent tension between a lawyer's and a social worker's ethical responsibilities. The lawyer's responsibility is to advocate zealously for the client's wishes, while the social worker's is to safeguard the client's best interests.⁷⁹ These potentially inconsistent ethical obligations may create difficulties, particularly when a lawyer works in a non-legal office or as part of an interdisciplinary team. As part III shows, however, they are not insurmountable.

B. *Issues of Role*⁸⁰

The mission statement and values of the social work profession overlap significantly with the purposes of legal services. The NASW Code of Ethics states:

The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of the people who are vulnerable, oppressed, and living in poverty. A historic and defining feature of social work is the profession's focus on individual well-being in a social context and the well-being of society. Fundamental to social work is attention to the environmental forces that create, contribute to, and address problems in living.⁸¹

79. See Peters, *supra* note 12, at 18. Ethical Standard 1.01 of the Code states that "[s]ocial workers' primary responsibility is to promote the well-being of clients" and Ethical Standard 1.02 requires social workers to "respect and promote the right of clients to self-determination . . ." NASW Code of Ethics, *supra* note 64, Ethical Standard 1.01-02.

80. It is, of course, overly simplistic to talk about "the role" of social workers as if there is only a single role. Within social work itself, there are differing views of the role of the social worker. As stated by one commentator:

Although there is no doubt that social workers have an ethical obligation to be advocates, the social work profession still debates the proper role of advocacy in their practice. There is a conflict between those who argue that social workers should fill a pure advocate role and those who argue that they should work in the best interests of the client and community. Due to the vagueness of the professional regulations for social workers, they, and many of their professional colleagues, are left with the discretion to define their role when representing clients, deciding for themselves whether or not to respect confidentiality if it goes against clients' best interests.

Glynn, *supra* note 59, at 645 (footnotes omitted).

81. NASW Code of Ethics, *supra* note 64, pmb1. The NASW Code further provides:

The mission of the social work profession is rooted in a set of core values. These core values, embraced by social workers throughout the profession's history, are the foundation of social work's unique purpose and perspective:

- service
- social justice
- dignity and worth of the person
- importance of human relationships
- integrity
- competence

Id. For the value of social justice, the ethical principle is:

Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers'

There are also, however, differences, some of which stem from the differing roles of the professions and their different views of their obligations to clients.⁸² As stated by one commentator:

This distinct ethical imperative derives from the healing professions' approach to a client. While lawyers are traditionally trained in problem solving or problem preventing on their client's behalf, social workers, like psychiatrists and other clinicians, will initially seek to understand fully the context of the presenting problems before designing a treatment or intervention. Lawyers, certainly, can also benefit from a larger contextual perspective, and, indeed, must counsel their clients about the wide implications of the client's decisions. Nevertheless, attorneys are clearly bound, in traditional representation, by the express wishes of their clients [sic] wisdom regardless of the lawyers [sic] assessment of the decision. Social workers, on the other hand, are trained to appreciate the client's total circumstances and to approach every professional intervention in that light.⁸³

Some commentators have suggested that the differences between the two professions' approaches run so deep that they are "impossible to reconcile."⁸⁴

social change efforts are focused primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.

Id. Ethical Principles.

82. Ethical Standard 1.01 (Commitment to Clients) states:

Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

Id. Ethical Standard 1.01.

Ethical Standard 1.02 (Self-Determination) provides:

Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

Id. Ethical Standard 1.02.

83. Peters, *supra* note 12, at 18.

84. Sandra Nye, *From a Lawyer-Social Worker—Some Thoughts on Confidentiality and Other Matters*, *Prac. Dig.*, Fall 1984, at 33, 34 (1984). Nye, who is a lawyer and social worker, observed that she cannot practice both as a lawyer and social worker for the same client. *See id.* According to Nye, the lawyer's goal is to win the case, and the lawyer would not hesitate to give advice to the client to achieve that objective; the social worker's goal is not to give advice to the client but to help the client to think and act for himself or herself. *See id.* Nye concluded that working with the same client with these two different objectives "doesn't work clinically." *Id.*

In describing the different roles of the two professions in the context of working with children in delinquency cases, one commentator stated:

Lawyers' and social workers' ethos and roles often differ and conflict in such settings. The attorney representing a child client in a delinquency proceeding must zealously advocate the child's interests. Social workers, though not bound by the same types of formal rules of ethics as lawyers, often employ a "best interests" model, which requires social workers to act according to what, in their judgment, is best for the child, the family, and the community.⁸⁵

In essence, the lawyer's focus is to advocate for the client, while the social worker's is to safeguard the client's best interests. The shorthand way in which this is usually expressed is that the lawyer approaches the client from the advocacy model while the social worker approaches the client from the best interests model. It has been postulated that "[s]ocial workers tend to lean toward mediation and are less inclined to view their role as adversarial."⁸⁶ These differences between the approaches of the two professions are even more accentuated when there are, from the social worker's perspective, multiple clients. The lawyer views the individual as the client, and is under certain restraints and guidelines with respect to multiple clients,⁸⁷ while the social worker "enhances a client's well-being in a social context, as well as the well-being of society as a whole."⁸⁸ For example, in a family situation, the social worker might see conflicting, or potentially conflicting, interests of various members of the family and weigh those interests in assessing the best interests of the client.

85. Stanger, *supra* note 11, at 1125-26 (footnotes omitted). Stanger describes the two models that social workers employed in legal settings: the "pure advocate" model and "best interests" model. She concludes that social workers should adopt the "pure advocate" model since the "adversarial system used in juvenile adjudication procedures demands zealous advocacy, social workers must acknowledge this reality and accept a more restricted role of social work services in delinquency proceedings." *Id.* at 1126.

86. Arnason et al., *supra* note 24, at 450; see also Katherine van Wormer, *No Wonder Social Workers Feel Uncomfortable in Court*, 9 Child & Adolescent Soc. Work J. 117, 118 (1992) (positing that the adversary model is contrary to social work principles of cooperation and negotiation).

87. For example, New York Code of Professional Responsibility DR 5-105(A) provides that "[a] lawyer shall decline proffered employment if the exercise of independent professional judgement in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it [is] likely to involve the lawyer in representing differing interests." New York Code of Professional Responsibility DR 5-105(A) (1998). DR 5-105(B) further provides that "[a] lawyer shall not continue multiple employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests." *Id.* DR 5-105(B).

88. Retkin et al., *supra* note 12, at 538-39.

C. *Values Transmitted Through Training and Inherent in the Practice*

Social work training has a broader perspective than legal training. "When assessing client needs, social work students are trained to adopt a global, 'biopsychosocial' approach to care. This approach encourages practitioners to look beyond their clients' present problems and examine the various familial, social, and community forces in their lives."⁸⁹ Social workers tend to use systems theory as a way to evaluate the many factors that can affect a particular situation with a client, broadly assessing a client within his or her environment.⁹⁰ In contrast, much of law school training is atomistic.⁹¹ As Susan Bryant has observed, "[f]or the most part . . . law schools and post-law school training programs have failed to teach lawyers how to work with other lawyers and professionals for the client's good."⁹² Law students need opportunities to learn how to collaborate with other lawyers and to work in an interdisciplinary team. The law school curriculum should incorporate methods and methodology for interprofessional collaboration.⁹³

In recent years, some legal educators have begun to focus on collaborative and interdisciplinary work.⁹⁴ Within legal education, the clinical methodology encourages various approaches to client representation and some clinical programs have experimented with collaborative arrangements. For example, the clinical program at the University of Maryland has clinical professors co-teaching with a so-

89. *Id.* at 544 (footnotes omitted).

90. Social work uses the school of systems theory to help explain the relationship of the parts to the whole. According to Naomi Brill, "[a] system is defined simply as a whole made up of interrelated and interdependent parts."

. . . .

The systems approach, as well as viewing the person in her environment, is evident in the social worker's use of multidimensional assessment. A non-linear diagnostic approach, multidimensional assessment is a dialogic process between client and worker—as well as other significant participants—that identifies the relevant information in, and solutions to, the situation.

Cervone & Mauro, *supra* note 24, at 1977-78 (footnotes omitted).

91. "The norms of legal education and the profession are patterned after the image of the solo practitioner representing individual clients. This atomistic image belies the increasingly collective nature of the practice of law." Bryant, *supra* note 9, at 463 (footnote omitted).

92. *Id.* at 459 (footnote omitted). The article is primarily about law students and lawyers collaborating within their own profession.

93. Some have noted that social workers, as well as lawyers, need more in their educational background to prepare them for working with people in other professions. See Cervone & Mauro, *supra* note 24, at 1976 ("[M]ost graduate level educational programs are unidisciplinary, in contrast to undergraduate education where students are required to take courses outside of their major field of study.")

94. Collaborative pedagogy is "currently enjoying a much-deserved respect and acceptance among legal educators." Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 *Clinical L. Rev.* 485, 487 (1998).

cial worker and encourages law students and social work students to work together.⁹⁵ This approach tended to improve the quality of services to the clients in that the team used a holistic approach to client services.⁹⁶ The clinical faculty also found that this collaboration produced educational benefits, including an improved understanding of the social issues that affect practice, and more effective teaching of the skills of interviewing, counseling, and administrative advocacy. They found that social workers challenged the clinical faculty to "expand our concept of the client's 'problem' from narrowly conceived legal issues to larger life problems; and . . . require[d] us to think more carefully about the interests of third parties."⁹⁷

The generally atomistic nature of legal education mirrors the orientation of legal practice. Although poverty law practice traditionally has been oriented towards collaboration, the practice in recent years has become more atomistic. This trend may stem from the current realities of decreased funding of legal services in a time of shrinking resources, issues of morale, the recent decision of the Supreme Court in the IOLTA case,⁹⁸ and the adoption of more limited models of providing services.⁹⁹

95. See Joan L. O'Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 *Clinical L. Rev.* 109, 167-68 (1996); see also Gay Gellhorn et al., *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 *Clinical L. Rev.* 245 (1994) (discussing the collaboration of law students and anthropology students on a study of interviews in a clinical program).

96. See O'Sullivan et al., *supra* note 95, at 168.

97. *Id.*

98. See *Phillips v. Washington Legal Foundation*, 118 S. Ct. 1925 (1998). In this case, the Supreme Court decided that the interest earned on client funds that are held in IOLTA (Interest on Lawyers' Trust Accounts) accounts is the "private property" of the client for the purposes of the Takings Clause of the Fifth Amendment. *Id.* at 1934. The interest earned on IOLTA accounts is used to finance legal services for low-income persons in 49 states and the District of Columbia. See *id.* at 1927-28. The Court left open for consideration on remand whether the IOLTA funds have been "taken" by the State and, if so, the amount of "just compensation," if any, due to the individuals. *Id.* at 1934.

99. There are various models for providing a lesser degree, or different kind, of service. For example, in the State of Washington, the legal services-funded program has created a telephone network advice and triage system. See, e.g., David Barringer, *Downsized Justice*, A.B.A. J., July 1996, at 60, 64, 66 (establishing a companion-delivery system to provide legal services in response to cutbacks in state funding). In another example, there has been a focus on the concept of the "unbundling" of legal services (the partitioning of legal issues or problems into their component parts) so that clients can choose particular aspects for a lawyer's representation or advice. See, e.g., Mary Helen McNeal, *Redefining Attorney-Client Roles: Unbundling and Moderate-Income Elderly Clients*, 32 *Wake Forest L. Rev.* 295, 296 (1997) (discussing the spectrum of professional responsibility issues in the context of the technique of bundling legal problems). Another idea is to use an internet-based technology system to connect government benefits specialists with lawyers. 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).

There are also plans to provide preventive services. See, e.g., Wayne Moore, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach*, 41

The increasingly isolated nature of poverty law practice is particularly due in part to funding cutbacks and the imposition of new restrictions on the nature of legal services practice. If an office accepts funding from the Legal Services Corporation ("LSC"), the lawyers cannot provide a variety of services to their clients.¹⁰⁰ Moreover, an office that receives LSC funding cannot allocate funding obtained from other sources to restricted work.¹⁰¹ This has the effect not only of confining the kinds of work that LSC-funded lawyers can do but also of restricting the extent to which they can collaborate with lawyers who handle matters outside the newly narrowed LSC mandate. The funding cutbacks exacerbate the problem because there are fewer resources to devote to collaborating with other professionals; the scarce funds are invariably allocated to the provision of minimal services.

Generally, the practice of the legal profession itself reflects an individualistic, non-collaborative view. Accordingly, both the Model Rules of Professional Conduct and Model Code are "silent on the standards of attorney behavior towards members of other professions."¹⁰² In contrast, the Code of Ethics for social workers is not.¹⁰³ The NASW Code of Ethics states that "[s]ocial workers should treat colleagues with respect . . . and should cooperate with . . . colleagues

Emory L.J. 805, 828 (1992) (suggesting three ways to increase the provision of preventive legal services: statewide legal hotlines to give free preventive services and resolve legal problems; free group plans; and seminars to provide high-volume and low-cost preventive legal services). In addition, the American Association of Retired Persons ("AARP") has funded toll-free legal hotlines in some states that provide assistance and advice by lawyers and paralegals, with referrals to legal services, if needed. See Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 22 N.Y.U. Rev. L. & Soc. Change 701, 714 (1996). Similarly, some programs, sometimes in partnerships with local bar associations, provide a telephone hotline using pro bono attorneys. Cook County, Illinois has started the Coordinated Advice & Referral Program for Legal Services ("CARPLS"), as has the Central Virginia Legal Aid Society with the Virginia Bar. See Houseman, *supra* note 30, at 1694.

100. See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504, 110 Stat. 1321, 1321-53, which was re-enacted by the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 502, 110 Stat. 3009, 3009-59 (1996) (the "Act"). For example, legal services programs that receive funding from the Legal Services Corporation cannot lobby, participate in class action litigation, or participate in efforts to reform the welfare system. The restrictions were unsuccessfully challenged in *Legal Aid Soc'y v. Legal Servs. Corp.*, 145 F.3d 1017, 1020 (9th Cir. 1998).

101. See Omnibus Consolidated Appropriations Act of 1997 § 504(a); 45 C.F.R. 1610.7, 1610.8 (1997). The statutory and subsequent regulatory restrictions on the use of non-LSC funds were unsuccessfully challenged in *Velazquez v. Legal Servs. Corp.*, 985 F. Supp. 323, 326 (E.D.N.Y. 1997), *aff'd in part and rev'd in part*, No. 98-6006, 1999 WL 5300 (2d Cir. Jan. 7, 1999).

102. Peters, *supra* note 12, at 15.

103. A number of health and human services professionals have codes of ethics. See Donald T. Dickson, *Law in the Health and Human Services: A Guide for Social Workers, Psychologists, Psychiatrists, and Related Professionals* 83 (1995).

of other professions when such cooperation serves the well-being of clients."¹⁰⁴ The "Social Workers' Ethical Responsibilities to Colleagues" include respect, cooperation (when such cooperation serves the well-being of clients), and confidentiality.¹⁰⁵ The NASW Code specifically addresses interdisciplinary collaboration, encouraging social workers to participate in interdisciplinary teams by "drawing on the perspectives, values, and experiences of the social work profession."¹⁰⁶

Legal education and practice need to explore various ways of practicing law collaboratively. One way is to deliver services in an integrated fashion. In response to the changes in legal services, some states are examining integrated service programs.¹⁰⁷ For example, in California, state bar officials and legal services are developing plans to modify the design of the programs and integrate legal and social service programs.¹⁰⁸

In the arena of collaboration with social workers, there are various models that could be pursued.¹⁰⁹ One such model is for lawyers and social workers to work in the same agency and to be available for

104. NASW Code, *supra* note 64, Ethical Standard 2.01(a)-(c).

105. *See id.* Ethical Standard 2.01-02.

106. *Id.* Ethical Standard 2.03(a). Ethical Standard 2.03 provides:

- (a) Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established.
- (b) Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other avenues to address their concerns consistent with client well-being.

Id. Ethical Standard 2.03(a), (b).

The Code also provides for consultation: "Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients." *Id.* Ethical Standard 2.05(a). Additionally, it provides for referral for services: "Social workers should refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to serve clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that additional service is required." *Id.* Ethical Standard 2.06(a).

107. *See* Goodmark, *supra* note 3, at 266-67. Various examples of integrated service delivery programs are discussed in the article, including the Bread for the City and Zacchaeus Free Clinic (a neighborhood-based service program which has food, clothing, medical, legal, and social work services), the Medical-Legal Services Project (legal "check-ups" in a hospital waiting room, staffed by physician, lawyer and patient advocate, in conjunction with the Legal Services Center in Boston), and the Clayton/Mile-High Family Futures Project (twenty-three community agencies provide comprehensive services, including child care, medical clinic, job readiness classes, literacy and GED programs, vocational education, and college classes). *See id.* at 245-46, 265-66.

108. *See id.* at 267.

109. Although beyond the scope of this Article, it is important to study various models of collaboration. I plan to do so in a subsequent article.

consultation on an as-needed basis. Another possibility is for lawyers and mental health professionals to collaborate on common issues. In a model that is currently in use in Farmington, Connecticut, a group of approximately four lawyers and four therapists (psychologists and social workers) meet every six weeks to discuss issues of importance to both professions, such as child custody and divorce issues. The professionals give each other information.¹¹⁰ The informal group, which meets over lunch, was started by a lawyer and a psychologist to discuss common issues and to educate each other. Sometimes cases are discussed, with identifying information redacted.

Five different possible models of practice have been suggested in an article on collaboration: Separate agencies with a memorandum of understanding; multiservice centers; legal agencies; social service agencies; and a team approach.¹¹¹ The team approach was thought to be the best one. Although it "often demands the largest amount of planning and procedural development . . . [the team approach] may also result in the most integrated, continuous and comprehensive services to families."¹¹² In discussing the five models, a cautionary note was sounded: "The question is not which model works better, but which ingredients are key to each model. Clarity of purpose, roles of each professional, written guidelines and clear communications to clients are essential elements of effective service delivery."¹¹³ The article concluded that "[t]he optimum approach integrates the knowledge and skills of both disciplines through service collaborations and referrals, encouraging professionals to maximize their expertise within the parameters of their legal and ethical responsibilities."¹¹⁴

III. REMOVING THE IMPEDIMENTS TO COLLABORATION BETWEEN LAWYERS AND SOCIAL WORKERS

Lawyers and social workers have much in common, beginning with their central commitment to serving their clients. They have much to offer each other in their service to clients and they also have much they can learn from each other. For example, lawyers often need to understand psychological aspects of legal problems to help counsel clients;¹¹⁵ social workers need to appreciate and understand the implications of the legal system on their clients.

110. For example, topics discussed were the procedures for a legal separation and divorce; custody evaluations; the mediation process; training law enforcement officials on stress management; the subpoena process and if and when therapists need to respond to subpoenas; and issues relating to confidentiality.

111. See Retkin et al., *supra* note 12, at 562-65.

112. *Id.* at 564.

113. *Id.* at 563.

114. *Id.* at 565.

115. "Lawyers should be knowledgeable about relevant psychosocial aspects of legal problems Without such an understanding, they may not, in reality, help the client reach an optimal resolution. Moreover, discussions of interpersonal and family

Although, as part II showed, the professions may experience difficulties in collaborating because of differing ethical mandates and conceptions of role, lawyers owe their clients an ethical duty to cooperate with social workers.¹¹⁶ One way to overcome the ethical dilemmas is to follow a general rule that the confidentiality requirements of the primary service provider should prevail.¹¹⁷ Thus, if the primary service provider is the legal services office or if the primary objective is legal representation, then the social worker or mental health professional would come under the lawyer's confidentiality umbrella and would be prohibited from revealing privileged information.¹¹⁸ If the professional goal is therapy, then the mental health professional's privilege would apply.¹¹⁹

Another approach to minimizing difficulties is to have a limited relationship between the two professionals in which discrete tasks are referred to the members of the other profession.¹²⁰ Clients would be given advance notice of the relative lines of authority of the professionals as well as the legal reporting obligations of the social workers (such as the duty to report). Under this approach, the attorney would likely share less information and would not give the social worker access to the client's file.

For both ethical and role issues, it is useful to identify and discuss possible conflicts at the beginning of the relationship.¹²¹ If the lawyer and social worker work in the same agency, it is critical that it be decided whether (and, if so, when and how) they will share information. It has been suggested that there should be a written document, translated into the languages of the office's client population, that outlines for both the staff and the clients how and when information will be shared; the document should be periodically reviewed by all parties

issues are often a critical part of formulating an effective legal custody plan." *Id.* at 546. However, "[a]s the legal experts, attorneys should not try to resolve psychosocial issues that are beyond their training. These situations require partnerships with social workers and other mental health professionals." *Id.* at 546-47.

116. This ethical duty is "based on readings of the legal ethical codes, the lawyers' statutory mandates and other factors intrinsic to the legal role." Peters, *supra* note 12, at 15.

117. See Glynn, *supra* note 59, at 649. Concerns have been raised, however, that applying the more restrictive lawyer standard, at least in the context of children, is problematic: It might affect the collegiality and parity of the professional relationship, and it may be inappropriate in some situations in which the client is a child. See Cervone & Mauro, *supra* note 24, at 1984-85.

118. As stated by some commentators, "[a]lthough untested, one of the best hopes of maintaining the privilege for clients after the disclosure of confidential information to social workers and others, would be to characterize such disclosure as necessary for the provision of legal services, i.e., their technical knowledge is necessary to resolve the legal matter." Retkin et al., *supra* note 12, at 553.

119. There would probably be situations in which it is not clear which profession is the primary service provider. In those circumstances, the professional whose confidentiality protections are the broadest (typically the lawyer's) should govern.

120. See Brodey Memo, *supra* note 28, at 9-10.

121. See Glynn, *supra* note 59, at 648-49.

and updated as needed.¹²² Even when the lawyers and social workers are in different agencies, it is extremely useful for role issues to be clarified in writing at the beginning of the relationship.¹²³

In an article on ethically-based conflicts between children's lawyers and social workers, Jean Koh Peters suggested strategies to prevent or resolve such conflicts. If there is a conflict between the lawyer and social worker, she recommended joint or successive counseling with the client and the lawyer and social worker, in order to attempt to resolve the conflict.¹²⁴ To avert such conflicts, she suggested a variety of proposals including: (1) the lawyer should precisely articulate the reason for the referral to the social worker; (2) the lawyer and social worker should work together to anticipate potential pitfalls; (3) both professionals should develop a working schedule that permits easy communications; (4) they should hold an early joint meeting with the client; and (5) they should initiate a practice of holding an early referral meeting in every joint case.¹²⁵

Another means to avoid or resolve potential conflicts is for the professions to address the subject of interprofessional conflicts explicitly; this could be done with an ethical opinion by each profession's ethics committee.¹²⁶ Alternatively, the state legislatures could adopt a new confidentiality statute that would apply consistently to lawyers, social

122. See Retkin et al., *supra* note 12, at 541.

123. To prevent confusion, lawyers and social workers in the two different agencies should:

predetermine how referrals will be handled, what information will be shared, and how conflicts will be handled.

Most of the confusion is caused by a lack of understanding of the roles each professional plays. Distrust may arise when role clarification is not carried out by the agencies and professionals. Each professional had expectations that were based on their [sic] own body of knowledge, rather than an explicit written understanding between themselves, which may have prevented discord and result in enhanced services to the families.

Id. at 542.

124. See Peters, *supra* note 12, at 19-20. If the conflict cannot be resolved after the counseling, she suggested presenting the child's conflicting positions to the court and reassessing the case. See *id.* at 20. In the parameters of case assessment, she recommended: (a) viewing the case from the client's point of view; (b) meeting with a mutually trusted third party or perhaps establishing a group of professionals who can be called on as need arises (keeping in mind that ground rules are needed to safeguard confidentiality, such as use of redacted materials); (c) case review; (d) role clarification (the primary service objective of the agency); (e) issue identification; (f) addressing the relationship between the lawyers and social workers; (g) brainstorming about all possible directions in the case before choosing a strategy; (h) acknowledging the ethical bases of the dilemma and agreeing to disagree; and (i) designing a solution to the dilemma for the future. See *id.* at 20-22.

125. See *id.* at 22-23.

126. See Glynn, *supra* note 59, at 651-52 ("The professional either can be made responsible for all the work of her co-workers regardless of their status as independent professionals, or the professionals can be exempt from responsibility for another co-worker who is an independently-licensed professional regulated by another professional organization." (footnote omitted)).

workers, doctors, and psychologists.¹²⁷ The obvious advantage of such a uniform statute is that “[t]he professionals would have a clear understanding of their obligations to the state, and the professionals could provide their clients a clear definition of confidentiality and its exceptions.”¹²⁸ The uniform statute would thus make treatment and representation of clients easier.

This proposal for collaboration between lawyers and social workers could raise a concern of whether lawyers would treat clients as wholly passive recipients of professional help, with the result that mental health services would be brought to bear without the client’s knowledge or desire. The “theoretics of practice”¹²⁹ and the relative allocation of authority and power between the client and the lawyer is a

127. *See id.* at 653. His proposed statute is:

- (a) A licensed professional shall not reveal information relating to a client relationship unless the client consents in writing after consultation, except as stated in paragraph (b).
- (b) A professional may reveal information relating to a client relationship to the extent the professional reasonably believes necessary:
 - (1) to provide needed professional services to the client, such as a disclosure to a co-worker or subordinate of the professional;
 - (2) to protect the client or others from imminent death or substantial bodily harm, provided such disclosures are limited to that necessary to accomplish the protection;
 - (3) to report to the state’s child abuse registry that the client has abused or neglected a child, or if the client is a minor, that the client has been abused or neglected, provided such a disclosure is limited to the initial report and investigation; or
 - (4) to establish a claim or defense on behalf of the professional in a controversy between the professional and the client, to establish a defense to a criminal charge or civil claim against the professional based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the professional’s relationship with the client, provided such disclosures are limited to that necessary to achieve the stated purpose.

Id. at 653-54. The statute would be a shift to discretionary reporting, instead of mandatory reporting. *See id.* at 654.

128. *Id.* at 656.

129. The theoretics of practice:

refocuses legal thought on clients who are disempowered. . . . It also renews the search for a self-critical understanding of the meaning of legal work with clients, and it develops forms of practice that reflect such an understanding.

. . . [It] takes care to situate clients within the social world, taking into account the particularities of the clients’ experiences and circumstances.

Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *Stan. L. Rev.* 1731, 1748 (1993); *see also* Gerald P. López, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* 47-51 (1992) (exploring the advantages of “putting overlapping practical knowledges to work”); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *Yale L.J.* 2107, 2146 (1991) [hereinafter Alfieri, *Reconstructive Poverty Law Practice*] (recommending a commitment to integrate “client narratives into the storytelling of advocacy”); Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 *Hastings L.J.* 717 (1992) (addressing the realities of societally disempowered people and their interactions with the lawyers working with them); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*

particularly critical issue in poverty law practice.¹³⁰ Gerald López, in his critique of traditional activist lawyering, criticizes lawyers for excluding clients from the process of defining problems, identifying options, and selecting strategies.¹³¹ Developing a lawyer-client relationship that empowers clients is not an easy task.¹³² Lawyer

38 Buff. L. Rev. 1, 57-58 (1990) (discussing the possibility of "constitutional revolution" in order to afford the disempowered equal representation).

130. See, e.g., Ann Southworth, *Lawyer-Client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyers' Norms*, 9 Geo. J. Legal Ethics 1101, 1148 (1996) (researching the allocation of power between poor clients and their lawyers). Southworth conducted a study to assess whether civil rights and poverty lawyers assume too much control in their relationships with clients. See *id.* at 1102-03. Southworth found that lawyers' views on proper allocation of decisionmaking roles between lawyer and client vary substantially by types of practice settings. See *id.* at 1105. She concluded that legal services lawyers played significant roles and sometimes chose strategies without consulting with clients; lawyers in law school clinics typically created strategies on their own or with other lawyers and community groups; lawyers in advocacy groups often decided positions on their own; lawyers in civil rights firms participated aggressively in choosing strategies but consulted with clients on all important decisions; lawyers in grass roots organizations allowed clients to make decisions as an end in itself, in order to empower clients. See *id.*

131. See López, *supra* note 129, at 48-50. The possible abuse of power relations in political lawyering and the need for collaborative lawyering with clients have been discussed by many scholars. See Alfieri, *Antinomies of Poverty Law*, *supra* note 51, at 665; Alfieri, *Reconstructive Poverty Law Practice* *supra* note 129, at 2119, 2140-41; Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 Harv. C.R.-C.L. L. Rev. 297, 303 (1996); Brustin, *supra* note 3, at 44-46; Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. Rev. 717, 776-78 (1987); Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 B.U. Pub. Int. L.J. 49, 49-56 (1991). But see Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 Stan. L. Rev. 213, 224-25 (1993) (critiquing López's rebellious lawyering for underestimating the ways lawyers can help facilitate the client's assertion of control, for assuming that clients benefit by participating in all aspects of the lawyer's work, and for underestimating the range of activities lawyers can perform for clients).

Bellow views his concept of "alliance" between a lawyer and client as approximating López's view of "rebellious" practice. See Bellow, *supra*, at 303 n.11. Bellow selected the concept of alliance because

alliance generates bonds and dependencies and is grounded, at least in aspiration, in forms of respect and mutuality that are far more personal and compelling, for many of us who do political legal work, than the demands of some notion of client-centered lawyering, no matter how strongly held. Alliance also seems to offer an ideal that permits us to talk seriously about purposive judgment—when and whether to intervene or to seek influence—in situations in which one has unequal power in a relationship.

The ideal of alliance avoids oversentimentalized and categorical attitudes—my client, the victims, the hero—toward clients. Such an orientation seems necessary in any honestly mutual relationship and is especially important when working with groups in which issues of which faction one serves constantly arise, and where humor, patience, and a genuine fondness for and realism about the individuals involved are often all one has to maintain one's bearings until some particular storm subsides.

Id. at 303 (footnotes omitted).

132. See, e.g., Houseman, *supra* note 30, at 1698-99 (discussing the complications of poverty law practice).

[A] number of scholars have identified the difficulties of developing a lawyer-client relationship that is based on mutual respect and responsibility, in-

domination and client subordination, however, do not necessarily result from collaboration between lawyers and social workers. Depending on how the collaboration is structured, it could permit—or conceivably even facilitate—the empowering of clients. The effects of the collaboration turn on a variety of factors, including the nature and timing of the collaboration. For example, one significant factor is whether the collaboration is solely to assist the lawyer (where the social worker does not have contact with the client) or whether the collaboration results in the social worker having contact with the client.

There are skills that social workers possess that could help lawyers facilitate a more empowering relationship with their clients. Grass-roots legal education and community empowerment projects can help expand the confines of the traditional attorney-client relationship. As Stacy Brustin points out:

Attorneys can learn to effectively facilitate, educate, and organize, and can create an environment that empowers members of historically marginalized communities. Clients can begin to take a greater role in making decisions within their individual legal cases, and can work together to solve their own problems. In addition, empowered clients can be more effective in building community organizations and coalitions dedicated to bringing about fundamental social change.¹³³

These skills of organizing, facilitating, and listening are ones that social workers generally possess and can teach to lawyers or use in a collaborative process with lawyers.

A critical aspect of collaboration of lawyers with social workers is an acknowledgment by the lawyer that he or she is not capable of doing it all. There are limits in expertise, abilities, and realities. Even in a clinical program, where students have the time, energy, and interest to try to do all kinds of things for clients, there are inevitably limits on what students can do and functions that only social workers and mental health professionals can fulfill.

Collaborating with social workers and other professionals is a way to better serve our clients. As stated by one commentator,

stead of lawyer domination and client subordination. They point out that current practice excludes client voices and the power of clients to speak for themselves, both in terms of client-attorney interaction and in terms of the way pleadings are prepared and cases handled, which reflect only the lawyer's perspective.

Id.

133. Brustin, *supra* note 3, at 58. The author notes that some might question whether the *Hermanas Unidas*, a project which began as a series of workshops and support sessions to deal with domestic violence in the Latino community, was appropriate for social workers or community activists, instead of lawyers. *See id.* at 59. Her response is that these projects “offer new vehicles for expanding the boundaries of legal services representation, legal education, and conceptions of lawyering . . . [and that they] challenge lawyers to engage in a multidisciplinary effort to affect institutional change.” *Id.*

“[c]ollaborating with other professionals allows us to approach our clients’ needs in a more holistic way, and to tease out some of the root causes of those problems by increasing our sensitivity to the full range of client needs.”¹³⁴ The process of collaboration also prevents “tunnel vision,” of seeing the client’s problem as one that falls within the expertise of the professional.¹³⁵

CONCLUSION

The foregoing discussion has underscored the value of, and need for, collaboration between lawyers and social workers, particularly in the legal services context. It has also suggested, however, that there are several factors that can inhibit the formation of such collaborative relationships or impede the effectiveness of collaborations that are formed. The professions should take an active role in overcoming these impediments and in laying the groundwork for individual lawyers and social workers to work together effectively.

The key to comprehensive, longlasting reform lies, I believe, in the academy. As this Article has explained, the period of professional education plays a critical role in shaping new professionals’ understanding of the differing ethical mandates and roles of other professions. As discussed earlier, some of the current problems in lawyer and social worker collaborations actually stem from academia’s failure to pay sufficient attention to the nature and role of other professions and the means of collaborating effectively with members of other professions.

These observations bring me full circle to the scenario with which I began this Article: a clinic case in which law students work together with a social worker or a social work student.¹³⁶ I believe that such collaborations during the period of professional education can sensitize students to the potential value and possible pitfalls of interprofessional collaborations. Moreover, they afford an opportunity for teachers—both clinical legal educators who supervise students and social work school teachers who supervise social work interns—to explore and develop models for effective interprofessional collaboration. Indeed, one of the original functions of law school clinics was pre-

134. Goodmark, *supra* note 3, at 267.

135. *See id.* at 259. As noted by Goodmark, the problems of the poor are “multi-faceted and require multi-faceted solutions.” *Id.* Having professionals work together in an integrated service program “helps combat a natural (though unfortunate) tendency to focus solely on the problems that fall within the professional’s field of expertise.” *Id.*

136. In that case, collaboration with a social worker at an earlier stage, preferably with a social worker in the clinical program, would probably have resulted in a better relationship with the client, perhaps the ability to continue working with the client, and certainly less stress for the students (and myself).

cisely to function as a “laboratory-like practice setting.”¹³⁷ By taking advantage of these laboratories, the professions can settle upon a vision of effective collaboration and begin to formulate the best means to disseminate and implement that vision.

137. Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 *Clinical L. Rev.* 235, 245 (1997); see also Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 *S. Cal. L. Rev.* 664, 695 (1971) (observing that although no definitive conclusions could be drawn from the one-year clinical semester, perhaps the most important contribution that such programs can make is the dialogue over clinical education itself).