

1999

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

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**BIBLIOGRAPHY TO THE CONFERENCE ON THE
DELIVERY OF LEGAL SERVICES TO LOW-
INCOME PERSONS: PROFESSIONAL AND
ETHICAL ISSUES**

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INTRODUCTION

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

I. RENDERING LEGAL ASSISTANCE TO
SIMILARLY SITUATED INDIVIDUALS

ABA and State Bar Opinions

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974) (Legal Services Offices: Publicity; Restrictions on Lawyers' Activities as They Affect Independence of Professional Judgment; Client Confidences and Secrets).

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1439 (1979) (Communicating with Members of Class in Class Action).

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

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

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

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

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

Legal Ethics Comm., Oregon State Bar Ass'n, Opinion 1994-138 (1994) (Multiple Conflicts of Interest—Legal Aid Service Referrals to Private Lawyers).

Legal Ethics Dispute Resolution Comm., West Virginia State Bar, Opinion 93-01 (1993) (Multiple Representation of Legal Services Clients Through a Pro Bono Program).

Standing Comm. on Prof'l and Judicial Ethics, State Bar of Mich., Opinion JI-50 (1992) (The Chief Judge of a Probate Court . . . May Hire a Lawyer as an Employee of the Court to Represent Juveniles in Delinquency and in Neglect Proceedings or Parents in Neglect Proceedings).

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

Journal Articles

Against Domestic Violence for the Impact Litigation/Client Service Debate, 3 Mich. J. Gender & L. 493 (1996).

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

Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1975).

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

Bruce A. Boyer, *Ethical Issues in the Representation of Parents in Child Welfare Cases*, 64 *Fordham L. Rev.* 1621 (1996).

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

Marshall Breger, *Disqualification for Conflicts of Interest and the Legal Aid Attorney*, 62 *B.U. L. Rev.* 1115 (1982).

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

Harry Brill, *The Uses and Abuses of Legal Assistance*, 31 *The Pub. Interest* 38 (1972).

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

Edgar S. Cahn & Jean Camper Cahn, *Power to the People or the Profession?—The Public Interest in Public Law*, 79 *Yale L.J.* 1005 (1970).

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

Diana Calais, *Ethical Violations Resulting from Excessive Workloads in Legal Aid Offices: Who Should Bear the Responsibility for Preventing Them?* 16 *Loy. U. Chi. L.J.* 589 (1985).

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

Judson W. Calkins, *Legal Aid Groups Face Conflicts with Multiple Indigent Client*, 36 *J. Mo. Bar* 177 (1980).

Attorneys in separate legal aid offices of a single legal aid corporation must be presumed to be colleagues in the practice of law, each seeking to advance the interests of all clients of the corporation.

Moreover, there must be presumed to be cooperation and communication between such attorneys, even if positioned in different offices. Where the interests of the two clients directly conflict, then the interests of one, or the other—or both—are jeopardized.

Teresa Stanton Collett, *The Ethics of Intergenerational Representation*, 62 Fordham L. Rev. 1453 (1994).

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

Robert F. Drinan, *Legal Ethics from 1983-1993: Golden Age or a Decade of Decline?*, 6 Geo. J. Legal Ethics 693 (1993).

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

Christopher Dunn, *The Ethical Legitimacy of Class-Action, Institutional-Reform Litigation on Behalf of Children: A Response to Martha Matthews*, 64 Fordham L. Rev. 1991 (1996).

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

Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 Va. L. Rev. 1103 (1992).

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

Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. Rev. 717 (1987).

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

Stephen Ellmann, *Manipulation by Client and Context: A Response to Professor Morris*, 34 UCLA L. Rev. 1003 (1987).

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

Linda D. Elrod, *An Analysis of the Proposed Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases*, 64 Fordham L. Rev. 1999 (1996).

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

Marie A. Failinger & Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45 Ohio St. L.J. 1 (1984).

Group-oriented case selection procedures currently employed by legal services offices do not violate the rights of individual poor cli-

ents. Group-oriented approaches to legal services recognize that the poor have common interests and are subjected to class treatment, a reality that suggests the desirability of group legal responses. Moreover, the group-oriented legal strategies, particularly class actions, are also consistent with legal services lawyer's ethical and statutory obligations.

Steven H. Hobbs, *Family Matters: Nonwaivable Conflicts of Interest in Family Law*, 22 Seattle U. L. Rev. 57 (1998).

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

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

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

The relationship between impairment, competence, and confidentiality.

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

Issues in representing a large group of people with whom communication is problematic.

Nancy J. Moore, *Conflicts of Interest in the Representation of Children*, 64 Fordham L. Rev. 1819 (1996).

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

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

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

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

John K. Morris, *Power and Responsibility Among Lawyers and Clients: Comment on Ellmann's Lawyers and Clients*, 34 U.C.L.A. L. Rev. 781 (1987).

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

Russell G. Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 Fordham L. Rev. 1253 (1994).

Problems of joint representation, waiver, disclosure.

Susan Poser, *The Ethics of Implementation: Institutional Remedies and the Lawyer's Role*, 10 Geo. J. Legal Ethics 115 (1996).

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

Burnele V. Powell & Ronald C. Link, *The Sense of a Client: Confidentiality Issues in Representing the Elderly*, 62 Fordham L. Rev. 1197 (1994).

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

Deborah L. Rhode, *Class Conflicts in Class Actions*, 34 Stan. L. Rev. 1183 (1982).

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

William B. Rubenstein, *Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns*, 106 Yale L.J. 1623 (1997).

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

Roy T. Stuckey, *Guardians Ad Litem as Surrogate Parents: Implications for Role Definition and Confidentiality*, 62 Fordham L. Rev. 1785 (1996).

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

Donald E. Woody, *Professional Responsibility Conflicts of Interest Between Legal Aid Lawyers*, 37 Mo. L. Rev. 346 (1972).

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

Christopher N. Wu, *Conflicts of Interest in the Representation of Children in Dependency Cases*, 64 Fordham L. Rev. 1857 (1996).

"What is the attorney's duty of loyalty to a client when the client is a child?"

Tracy N. Zlock, *The Native American Tribe as a Client: An Ethical Analysis*, 10 Geo. J. Legal Ethics 184 (1996).

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

Books and Other Monographs

Professional Responsibility: A Guide for Attorneys (1978).

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

Norman Redlich, *Professional Responsibility: A Problem Approach* (1983).

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

Deborah L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (1994).

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

David E. Schrader, *Ethics and the Practice of Law* (1988).

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

Ruth Fleet Thurman, *Client Incest and the Lawyer's Duty of Confidentiality* (1985).

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

II. USE OF NONLAWYERS

ABA and State Bar Opinions

ABA Informal Op. 1274 (1973) (Use of Laymen by Legal Services to Inform Elderly Adults About Legal Issues).

Arizona State Bar, Op. 96-06 (1996) (Use of Out-of-State Attorneys).
 Virginia State Bar, Op. 1633 (1995) (A Legal Aid Office May Refer Potential Clients, Initially Interviewed by Nonlawyer Staff, to Private Attorneys Serving On A Volunteer Pro Bono Panel, and Still Represent a Party Adverse to Such Potential Client in the Same or Substantially Related Matter).

Journal Articles

Annette R. Appell, *Decontextualizing the Child Client: The Efficacy of the Attorney-Client Model for Very Young Children*, 64 Fordham L. Rev. 1955 (1996).

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

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

Provides a history of *pro se* litigation and an appraisal of the constitutional underpinnings for the right of self-representation. A particular focus is self-help divorce.

Joaquin G. Avila, *Legal Professionals and Unauthorized Practice*, 8 Harv. C.R.-C.L. L. Rev. 104 (1973).

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

Louis M. Brown, *The Authorized Role of the Legal Assistant*, Unauthorized Prac. News, Mar. 1971, at 9.

Proposed course discusses differences between the routine mechanics of the practice of law and the professional judgment of attorneys.

Ralph C. Cavanagh & Deborah L. Rhode, Project, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 Yale L.J. 104 (1977).

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

Barlow F. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors—Or Even Good Sense?*, 1980 Am. B. Found. Res. J. 159 (1980).

Traces development of the unauthorized practice concept and analyzes its fundamental principles.

Barry M. Davis, *On the Question of Negligence: The Paraprofessional*, 4 U. Toledo L. Rev. 553 (1973).

In the case of the paraprofessional, licensure is an inhibiting device which is contrary to the ultimate goal of accessibility to legal services. Certification, use of common law and an optional licensure procedure offer viable alternatives to licensure.

Mark E. Doremus, *Wisconsin's Elderlinks Initiative: Using Technology to Provide Legal Services to Older Persons*, 32 Wake Forest L. Rev. 545 (1997).

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

John Greacan, *No Legal Advice from Court Personnel: What Does it Mean?*, Judges' J., Winter 1995, at 10.

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

Sigfried Hesse, *General Practitioners and Legal Assistants: A Position Paper*, Unauthorized Prac. News, Mar. 1971, at 1.

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

Zona Fairbanks Hostetler, *Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, 2 Admin. L. J. 85 (1988).

Nina Keilin, *Client Outreach 101: Solicitation of Elderly Clients by Seminar Under the Model Rules of Professional Conduct*, 62 Fordham L. Rev. 1547 (1994).

Assistance by group education and ethical implications.

Barbara E. Lybarger, *Retention of Paralegals in Legal Service Programs: Initial Statement of the Problem*, 11 Clearinghouse Rev. 858 (1978).

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

Carrie Menkel-Meadow, *Nonprofessional Advocacy: The "Paralegalization" of Legal Services for the Poor*, 19 Clearinghouse Rev. 403 (1985).

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

Michael Millemann et al., *Rethinking the Full-Service Legal Representational Experiment: A Maryland Experiment*, 30 Clearinghouse Rev. 1178 (1997).

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

Randy Retkin et al., *Attorneys and Social Workers Collaborating in HIV Care: Breaking New Ground*, 24 Fordham Urb. L.J. 533 (1997).

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

Deborah L. Rhode, *Delivery of Legal Services by Non-Lawyers*, 4 Geo. J. Legal Ethics 209 (1990).

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

Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 22 N.Y.U. Rev. L. & Soc. Change 701 (1996).

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

Bruce D. Sales et al., *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 St. Louis U. L.J. 553 (1993).

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

Roy D. Simon, *Fee Sharing Between Lawyers and Public Interest Groups*, 98 Yale L.J. 1069 (1989).

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

Edward V. Sparer et al., *The Lay Advocate*, 43 U. Detroit L.J. 493 (1966).

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

William P. Statsky, *Paraprofessionals: Expanding the Legal Service Delivery Team*, 24 J. Legal Educ. 397 (1972).

Describes a program for Legal Service Assistants conducted by Columbia Law School and the College for Human Services. A small

section is devoted to ethical questions and the various sources of a non-lawyer's authority.

Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 Fordham Urb. L.J. 1123 (1995).

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

John W. Wade, *Tort Liability of Paralegals and Lawyers Who Utilize Their Services*, 24 Vand. L. Rev. 1133 (1970).

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

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 (1994).

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

Books and Other Monographs

Commission on Nonlawyer Practice, American Bar Ass'n, *Nonlawyer Activity in Law-Related Situations* (1995).

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

Harry J. Haynsworth, *Marketing and Legal Ethics: The Rules and Risks* (1990).

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

Sir Thomas George Lund, *Professional Ethics* (1970).

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

Standing Comm. on Lawyers' Responsibility for Client Protection, American Bar Ass'n, 1994 Survey and Related Materials on the Unauthorized Practice of Law/Nonlawyer Practice (1996).

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

William P. Statsky, *Paralegal Ethics and Regulation* (1993).

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

III. LIMITED LEGAL ASSISTANCE

ABA and State Bar Opinions

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

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

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

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

Ethics Advisory Opinion Comm., Utah State Bar, Opinion 96-07 (1996) (What Are the Ethical Implications of Federal Funding Reductions and Practice Restrictions to Utah Legal Services Lawyers).

Ethics Comm., Alaska Bar Ass'n, Opinion 92-7 (1992) (Preparation of a Client's Legal Pleadings in a Civil Action Without Filing an Entry of Appearance).

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

Standing Comm. on Legal Ethics, Virginia State Bar, Opinion 1633 (1995) (A Legal Aid Office May Refer Potential Clients, Initially Interviewed by Nonlawyer Staff, to Private Attorneys Serving on a Volunteer Pro Bono Panel, and Still Represent a Party Adverse to Such Potential Client in the Same or Substantially Related Matter).

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

Standing Comm. on Prof'l and Judicial Ethics, State Bar of Mich., Opinion RI-91 (1991) (It Is Not Unethical for a Lawyer to Pay the Court a Security for Court Costs on Behalf of an Indigent Client).

Journal Articles

Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 62 Fordham L. Rev. 1699 (1996).

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

Janet A. Chaplan, *Youth Perspectives on Lawyers' Ethics: A Report on Seven Interviews*, 62 Fordham L. Rev. 1863 (1996).

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

Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 Clinical L. Rev. 433 (1998).

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

Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 Geo. L.J. 2665 (1993).

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

Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyer's Negotiations with Unrepresented Poor Persons*, 85 Cal. L. Rev. 79 (1996).

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

counsel in civil proceedings in which lawyers oppose unrepresented parties.

Alan W. Houseman et al., *Alternative Dispute Resolution and the Poor: Dealing with Problems in Using ADR and Choosing a Process*, 26 Clearinghouse Rev. 288 (1992).

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

Helen B. Kim, Note, *Legal Education for the Pro se Litigant: A Step Towards a Meaningful Right to be Heard*, 96 Yale L.J. 1641 (1987).

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

Barbara E. Lybarger, *Retention of Paralegals in Legal Service Programs: Initial Statement of the Problem*, 11 Clearinghouse Rev. 858 (1978).

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

Peter Margulies, *The Lawyer as Caregiver: Child Client's Competence in Context*, 64 Fordham L. Rev. 1473 (1996).

Questions of decisionmaking in the representation of children.

Mary Helen McNeal, *Redefining Attorney-Client Roles: Unbundling and Moderate-Income Elderly Clients*, 32 Wake Forest L. Rev. 295 (1997).

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

Michael Millemann et al., *Rethinking the Full-Service Legal Representational Experiment: A Maryland Experiment*, 30 Clearinghouse Rev. 1178 (1997).

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

Wayne Moore, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach*, 41 Emory L.J. 805 (1992).

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

Forrest C. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 Fam. L.Q. 421 (1994).

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

Diane Molvig, *Unbundling Legal Services: Similar to Ordering a la Carte: Unbundling Allows Clients to Choose from a Menu the Services Attorneys Provide*, Wis. Law., Sept. 1997, at 10.

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

Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 Fordham L. Rev. 1505 (1996).

Who should make which decisions in child protective proceedings.

Linda Singer et al., *Alternative Dispute Resolution and the Poor: Part I: What ADR Processes Exist and Why Advocates Should Become Involved*, 26 Clearinghouse Rev. 142 (1992).

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

Paul R. Tremblay, *Impromptu Lawyering and De Facto Guardians*, 62 Fordham L. Rev. 1429 (1994).

"Discretionary lawyering" in emergency situations.

Books and Other Monographs

Kimberly D. Prochnau, *Limited Services Representation* (1997).

David E. Schrader, *Ethics and the Practice of Law* (1988).

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

Standing Comm. on the Delivery of Legal Servs., American Bar Ass'n, *Responding to the Needs of the Self-Represented Divorce Litigant* (1994).

An attempt to assist the bar and courts in developing innovative programs to assist pro se divorce litigants.

IV. CLIENT/MATTER/CASE SELECTION

ABA and State Bar Opinions

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1359 (1976) (Use of Waiting Lists or Priorities by Legal Service Office).

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1361 (1976) (Legal Service Office May Assume Ultimate Responsibility for Costs of Litigation).

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

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

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

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

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

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

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

Journal Articles

Gary Bellow, *Legal Aid in the United States*, 14 Clearinghouse Rev. 337 (1980).

Addresses problems for the 1980s: Political support, the strains of practice and the trend toward insularity.

Bryna Bogoch, *Difference and Dominance in Lawyer-Client Interaction*, 31 *Law & Soc'y Rev.* 667 (1997).

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

Bruce A. Boyer, *Ethical Issues in the Representation of Parents in Child Welfare Cases*, 64 *Fordham L. Rev.* 1621 (1996).

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

Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 *N.C. L. Rev.* 281 (1982).

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

Teresa Stanton Collett, *Professional Versus Moral Duty: Accepting Appointments in Unjust Civil Cases*, 32 *Wake Forest L. Rev.* 635 (1997).

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

Committee on Professional Responsibility, *A Delicate Balance: Ethical Rules for Those Who Represent Incompetent Clients*, 52 *Rec. Ass'n B. City N.Y.* 34 (1997).

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

Eleanor M. Crosby & Ira M. Leff, *Ethical Considerations in Medicaid Estate Planning: An Analysis of the ABA Model Rules of Professional Conduct*, 62 *Fordham L. Rev.* 1503 (1994).

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

Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 *Ariz. L. Rev.* 501 (1990).

Section III.A.5 of the article specifically addresses client-centered counseling as an ethical argument under the ABA Model Code and

Model Rules; in addition, the underlying assumption of the article is that this debate is a professional ethical one.

Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 Geo. L.J. 2665 (1993).

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

Linda D. Elrod, *An Analysis of the Proposed Standards of Practice for Lawyers Representing Children in Abuse and Neglect Cases*, 64 Fordham L. Rev. 1999 (1996).

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

Charles Fried, *The Lawyer as Friend: The Moral Foundations of Lawyer-Client Relations*, 85 Yale L.J. 1060 (1976).

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

Paula Galowitz, *Restrictions on Lobbying by Legal Service Attorneys: Redefining Professional Norms and Obligations*, 4 B.U. Pub. Int. L.J. 39 (1994).

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

Michael Higgins, *Getting Out the Word*, A.B.A. J., Sept. 1998, at 22.

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

Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equity and Collaboration*, 44 Buffalo L. Rev. 71 (1996).

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

Jack Katz, *Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problem in the Legal Services Program*, 12 Law & Soc'y Rev. 275 (1978).

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

Karen E. Kelleher, Note, *The Availability Crisis in Legal Services: A Turning Point for the Profession*, 6 *Geo. J. Legal Ethics* 953 (1993).

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

Jeanne Kettleison, *Caseload Control*, 34 *NLADA Briefcase* 111 (1977).

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

Jeanne Kettleison & Gary Bellow, *The Politics of Scarcity in Legal Services Work*, 36 *NLADA Briefcase* 5 (1979).

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

David Luban, *Paternalism and the Legal Profession*, 1981 *Wis. L. Rev.* 454.

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

Peter Margulies, *Access, Connection, and Voice: A Contextual Approach to Representing Senior Citizens of Questionable Capacity*, 62 *Fordham L. Rev.* 1073 (1994).

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

Richard D. Marisco, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 *Clinical L. Rev.* 639 (1995).

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

Arthur R. Matthews, Jr. & Jonathan A. Weiss, *What Can Be Done? A Neighborhood Lawyer's Credo*, 47 *B.U. L. Rev.* 231 (1967).

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

Carrie Menkel-Meadow & Robert G. Meadow, *Resource Allocation in Legal Services: Individual Attorney Decisions in Work Priorities*, 5 *Law & Pol. Q.* 237 (1983).

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

Wallace J. Mlyniec, *A Judge's Ethical Dilemma: Assessing a Child's Capacity to Choose*, 64 Fordham L. Rev. 1873 (1996).

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

Francisco L. Olquin & Albert E. Utton, *The Indian Rural Poor: Providing Legal Services in a Cross-Cultural Setting*, 15 U. Kan. L. Rev. 487 (1967).

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

Jeffrey N. Pennell, *Representations Involving Fiduciary Entities: Who Is the Client?*, 62 Fordham L. Rev. 1319 (1994).

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

Christine A. Picker, *The Intersection of Domestic Violence and Child Abuse: Ethical Considerations and Tort Issues for Attorneys Who Represent Battered Women with Abused Children*, 12 St. Louis U. Pub. L. Rev. 69 (1993).

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

Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 Fordham L. Rev. 1571 (1996).

Choosing advocates for children.

Robert E. Shepherd, Jr. & Sharon S. England, *"I Know the Child Is My Client, But Who Am I?"*, 64 Fordham L. Rev. 1917 (1996).

Determining the scope of the representation.

Carol Ruth Silver, *The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload*, 46 J. Urb. L. 217 (1969).

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

William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern Post-Reagan Era*, 48 U. Miami. L. Rev. 1099 (1994).

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

William Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones Case*, 50 Md. L. Rev. 213 (1991).

There is a large category of cases involving legal decisions, where, given the circumstances in which the decisions must be made, we

have no criteria of autonomy entirely independent of our criteria of best interests.

Edward D. Sprugeon & Mary Jane Ciccarello, *The Lawyer in Other Fiduciary Roles: Policy and Ethical Considerations*, 62 Fordham L. Rev. 1357 (1994).

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

David H. Taylor, *Conflicts of Interest and the Indigent Client: Barring the Door to the Last Lawyer In Town*, 37 Ariz. L. Rev. 577 (1995).

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

Paul R. Tremblay, *On Persuasion and Paternalism: Lawyer Decision-making and the Questionably Competent Client*, 1987 Utah L. Rev. 515.

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

Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. Rev. 1101 (1990).

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

Books and Other Monographs

Professional Responsibility: A Guide for Attorneys (1978).

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

Richard R. Zitrin, *Legal Ethics in the Practice of Law* (1995).

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

V. INFLUENCE OF THIRD PARTIES ON THE LAWYER-CLIENT RELATIONSHIP

ABA and State Bar Opinions

ABA Comm. on Professional Ethics and Grievances, Formal Op. 291 (1956) (Publicity for a Lawyer's Referral Service Need Not State that the Service Is Designed for Persons in Low-Income Groups).

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974) (Legal Services Offices: Publicity; Restrictions on Lawyers' Activities as They Affect Independence of Professional Judgment; Client Confidences and Secrets).

ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1361 (1976) (Legal Service Organization May Assume Ultimate Responsibility for Costs of Litigation).

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

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

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 347 (1981) (Ethical Obligations of Lawyers to Clients of Legal Services Offices When Those Offices Lose Funding).

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

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

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

Standing Comm. on Prof'l and Judicial Ethics, State Bar of Mich., Opinion JI-50 (1992) (The Chief Judge of a Probate Court May Hire a Lawyer as an Employee of the Court To Represent Juveniles in Delinquency and in Neglect Proceedings or Parents in Neglect Proceedings).

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

Journal Articles

Spiro T. Agnew, *What's Wrong with the Legal Services Program?*, 58 A.B.A. J. 930 (1972).

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

Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470 (1975).

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

Marshall J. Breger, *Disqualification for Conflicts of Interest and the Legal Aid Attorney*, 62 B.U. L. Rev. 1115 (1982).

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

Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. Rev. 281 (1982).

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

Nicole T. Chapin, Note, *Regulation of Public Interest Law Firms by the IRS and the Bar: Making it Hard to Serve the Public Good*, 7 Geo. J. Legal Ethics 437 (1993).

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

Roger C. Cramton, *Crisis in Legal Services for the Poor*, 26 Vill. L. Rev. 521 (1981).

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

Warren E. George, *Development of the Legal Services Corporation*, 61 Cornell L. Rev. 681 (1976).

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

Dennis G. Katz, *The Public's Interest in the Ethics of the Public Interest Lawyer*, 13 Ariz. L. Rev. 886 (1971).

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

Arthur B. Lafrance, *Public Interest Litigation, Attorneys' Fees, and Attorneys' Ethics*, 16 *Envtl. L.* 335 (1986).

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

Peter Margulies, "*Who Are You to Tell Me That?*": *Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients*, 68 *N.C. L. Rev.* 213 (1990).

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

Russell G. Pearce et al., *Ethical Issues Panel: The Future of Legal Services: Ethical and Legal Implications of the LSC restrictions*, 25 *Fordham Urb. L. J.* 357 (1998).

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

Sen. James B. Pearson, *Protect the Rights of the Bar: The Legal Services Corporation Act of 1971*, 19 *U. Kan. L. Rev.* 641 (1971).

Argues for the need for independence for the LSC.

Michael B. Roche, Note, *Ethical Issues Raised by the Neighborhood Law Office*, 41 *Notre Dame L. Rev.* 961 (1966).

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

Roy D. Simon, *Fee Sharing Between Lawyers and Public Interest Groups*, 98 *Yale L.J.* 1069 (1989).

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

Edward V. Sparer, *The Role of the Welfare Client's Lawyer*, 12 *UCLA L. Rev.* 361 (1965).

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

Books and Other Monographs

Marjorie Girth, *Poor People's Lawyers* (1976).

Access issues, restrictions, funding and reporting requirements of government-funded legal services programs.

Harry J. Haynsworth, *Marketing and Legal Ethics: The Rules and Risks* (1990).

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

Sir Thomas George Lund, *Professional Ethics* (1970).

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

Norman Redlich, *Professional Responsibility: A Problem Approach* (1983).

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

VI. REPRESENTATION BY PRIVATE PRACTITIONERS

ABA and State Bar Opinions

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 94-389 (1994) (Contingent Fees).

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

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

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

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

Legal Ethics Comm., Oregon State Bar Ass'n, Opinion 1994-138 (1994) (Multiple Conflicts of Interest—Legal Aid Service Referrals to Private Lawyers).

Legal Ethics Dispute Resolution Comm., West Virginia State Bar, Opinion 93-01 (1993) (Multiple Representation of Legal Services Clients Through a Pro Bono Program).

Legal Ethics Dispute Resolution Comm., West Virginia State Bar, Opinion 96-18 (1996) (Is It a Violation of the Ethics Act for Government Attorneys to Handle Pro Bono Cases for Low-Income Citizens?).

Professional Ethics-Advisory Comm., Kansas Bar Ass'n, Opinion 92-11 (1992) (Ethical Nature of Fixed-Fee Contracts to Provide Indigent Defense Services).

Standing Comm. on Legal Ethics, Virginia State Bar, Opinion 1633 (1995) (A Legal Aid Office May Refer Potential Clients, Initially Interviewed by Nonlawyer Staff, to Private Attorneys Serving on a Volunteer Pro Bono Panel, and Still Represent a Party Adverse to Such Potential Client in the Same or Substantially Related Matter).

Journal Articles

Mark E. Allen, *Pro Bono Attorneys Do It for Free*, Wash. St. B. News, Nov. 1991, at 21.

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

Omar J Arcia, *Objections, Administrative Difficulties and Alternatives to Mandatory Pro Bono Legal Services in Florida*, 22 Fla. St. U. L. Rev. 771 (1995).

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

B. George Ballman, Jr., Note, *Amended Rule 6.1: Another Move Towards Mandatory Pro Bono? Is That What We Want?*, 7 Geo. J. Legal Ethics 1139 (1994).

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

Suzanne Bretz, *Why Mandatory Pro Bono Is a Bad Idea*, 3 Geo. J. Legal Ethics 623 (1993).

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

Debra Burke et al., *Pro Bono Publico: Issues and Implications*, 26 Loy. U. Chi. L.J. 61 (1994).

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

Mary Coombs, *Your Money or Your Life: A Modest Proposal For Mandatory Pro Bono Services*, 3 B.U. Pub. Int. L.J. 215 (1993).

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

Jeanne Costello, *Who Has the Ear of the King? The Crisis in Legal Services*, 35 N.Y.L. Sch. L. Rev. 655 (1990).

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

Roger C. Cramton, *Mandatory Pro Bono*, 19 Hofstra L. Rev. 1113 (1991).

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

Gregory A. Hearing, *Funding Legal Services for the Poor: Florida's IOTA Program—Now Is the Time to Make It Mandatory*, 16 Fla. St. U. L. Rev. 337 (1988).

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

Catherine E. Campbell Henn, *Poverty Law Work by Associates in Bingham, Dana & Gould*, 59 Mass. L.Q. 340 (1974-75).

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

Stephanie Edelstein & Jan May, *Senior Attorney Volunteers: A Resource for Legal Services Programs*, 27 Clearinghouse Rev. 619 (1993).

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

Robert L. Haig, *Pro Bono: A Proud Tradition*, N.Y. St. B.J., June 1977, at 38.

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

Michelle S. Jacobs, *Pro Bono Work and Access to Justice for the Poor: Real Change or Imagined Change*, 48 Fla. L. Rev. 509 (1996).

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

Esther Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 Md. L. Rev. 78 (1990).

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

Esther Lardent, *The Uncertain Future of Attorney Volunteerism: Pro Bono*, 56 Tex. B.J. 166 (1993).

Esther Lardent, *Work 'for the Good' Doesn't Have to Be Free; The Ethics Rules Offer Guidance on Acceptance of Attorney Fees*, Nat'l L.J., Jan. 15, 1996, at B10.

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

John Leubsdorf, *An Organized Public Interest Effort from Within a Law Firm*, 59 Mass. L.Q. 335 (1974-75).

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

F. Raymond Marks, *A Lawyer's Duty to Take All Comers and Many Who Do Not Come*, 30 U. Miami L. Rev. 915 (1976).

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

Howard A. Matalon, *The Civil Indigent's Last Chance for Meaningful Access to the Federal Courts: The Inherent Power to Mandate Pro Bono Publico*, 71 B.U. L. Rev. 545 (1991).

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

Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 Md. L. Rev. 18 (1990).

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

W. Frank Newton, *The Lawyer as a Public Servant, in The Lawyer as a Professional* (1991).

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

Kendra Emi Nitta, Note, *An Ethical Evaluation of Mandatory Pro Bono*, 29 Loy. L.A. L. Rev. 909 (1996).

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

Andrea J. Saltzman, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 Hastings L.J. 1165 (1983).

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

Steven C. Shamberg, *Utilization of Volunteer Attorneys to Provide Effective Legal Services for the Poor*, 63 Nw. U. L. Rev. 159 (1968).

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

David L. Shapiro, *The Enigma of the Lawyer's Duty to Serve*, 55 N.Y.U. L. Rev. 735 (1980) [reprinted in book form from New York University Press, 1981].

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

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

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

Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflict in Service*, 50 Stan. L.J. 1395 (1998).

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

Cynthia R. Watkins, *In Support of a Mandatory Pro Bono Rule for New York State*, 57 Brook. L. Rev. 177 (1991).

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

John Taylor Williams, *The Referral Program of the Lawyer's Committee for Civil Rights Under Law*, 59 Mass. L.Q. 347 (1974-75).

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

Books and Other Monographs

Samuel J. Brakel, *Judicare: Public Funds, Private Lawyers, and Poor People* (1974).

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

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

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

Commission on Professionalism, American Bar Ass'n, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (1986).

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

The Law Firm and the Public Good (Robert A. Katzmann ed., 1995).

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

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

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

Sir Thomas George Lund, *Professional Ethics* (1970).

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

Professional Responsibility, Ethics, Pro Bono and Associated Office Practice Suggestions: Course Materials (1990).

[Second Annual] *Professional Responsibility, Ethics, Pro Bono and Associated Office Practice Suggestions: Course Materials* (1991).

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

Lloyd H. Randolph, *Lawyers' Responsibility to Provide Pro Bono Publico Service: A Search for Moral Foundations* (1983).

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

Representing Pro Bono Clients: A Survey of Legal Issues (1994).

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

Deborah L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (1994).

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

Ronald D. Rotunda, *Professional Responsibility* (1984) (other editions 1992, 1995, and 1998).

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

Special Comm. on Pub. Interest Prac., American Bar Ass'n, Implementing the Lawyer's Public Interest Practice Obligation (1977).

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

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

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

Sharon Tisher, *Bringing the Bar to Justice: A Comparative Study of Six Bar Associations* (1977).

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

VII. REPRESENTATION WITHIN LAW SCHOOL SETTINGS

Journal Articles

Margaret Martin Barry, *A Question Of Mission: Catholic Law School's Domestic Violence Clinic*, 38 How. L.J. 135 (1994).

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

Kate E. Bloch, *Subjunctive Lawyering and Other Clinical Extern Practices*, 3 Clinical L. Rev. 259 (1997).

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

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).

Addresses how a school's special mission to train public interest lawyers is implemented in the design and teaching choices of the

clinic. An essential element is that students learn how to empower clients by using a client-centered approach.

George Critchlow, *Professional Responsibility, Student Practice and the Clinical Teacher's Duty to Instruct*, 25 Gonz. L. Rev. 415 (1991).

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

Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards and Ethnography of Legal Discourse*, 77 Cornell L. Rev. 1298 (1992).

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

Mary C. Daly et al., *Contextualizing Professional Responsibility: A New Curriculum for a New Century*, 58 Law & Contemp. Probs. 193 (1995).

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

Mary Jo Eyster, *Clinical Teaching, Ethical Negotiation, and Moral Judgment*, 75 Neb. L. Rev. 752 (1996).

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

Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 Hastings. L.J. 1175 (1992).

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

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)

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

Donald G. Isaacson, Comment, *Confidential Communications in Student Legal Clinics*, 1972 L. & Soc. Ord. 668 (1972).

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

Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 Golden Gate U. L. Rev. 345 (1997).

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

Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 Clinical L. Rev. 195 (1997).

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

Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 Clinical L. Rev. 359 (1998).

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

Susan G. Kupfer, *Authentic Legal Practices*, 10 Geo. J. Legal Ethics 33 (1996).

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

David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 Geo. J. Legal Ethics 31 (1995).

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

Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 Neb. L. Rev. 537 (1990).

Extensive article devoted to externships; it differentiates between "practice supervised" programs, in which students' work is supervised by lawyers at their place of work, and "case supervised" programs, in which there is supervision of actual case work by the law

school faculty. Ethical concerns of the latter type of program are discussed; the author sees great potential for the "practice supervised" model.

Michael Millemann et al., *Rethinking the Full-Service Legal Representational Experiment: A Maryland Experiment*, 30 Clearinghouse Rev. 1178 (1997).

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

James E. Moliterno, *On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010*, 46 J. Legal Educ. 67 (1996).

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

Joan L. O'Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 Clinical L. Rev. 109 (1996).

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

Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 B.U. Pub. Int. L.J. 275 (1995).

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

Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. Rev. L. & Soc. Change 109 (1993-94).

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

Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 Stan. L. Rev. 1731 (1993).

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

James H. Stark et al., *Directiveness in Clinical Supervision*, 3 B.U. Pub. Int. L.J. 35 (1993).

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

A Teacher's Trouble: Risk, Responsibility and Rebellion, 2 *Clinical L. Rev.* 315 (1995).

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

Louise G. Trubek, *Lawyering for Poor People: Revisionist Scholarship and Practice*, 48 *U. Miami L. Rev.* 983 (1994).

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

Albert J. Wicks et al., *Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study*, 15 *Wm. & Mary L. Rev.* 353 (1973).

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

Books and Other Monographs

Task Force on Law Schs. and the Profession: Narrowing the Gap, American Bar Ass'n, *Legal Education and Professional Development—An Educational Continuum* (1992).

Association of the B. of the City of N.Y. Comm. on Legal Assistance, *Mandatory Law School Pro Bono Programs: Preparing Students to Meet Their Ethical Obligations* (1995).

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

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

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

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

Clinical Education for the Law Student (1973).

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

Alex Hurder, *Clinical Anthology: Readings for Live-Client Clinics* (1997).

Michael Meltsner & Philip G. Schrag, *Public Interest Advocacy: Materials for Public Interest Advocacy* (1974).

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

National Ass’n on Legal Clinics, *Education for Professional Responsibility in the Law School: Preliminary Reports on Seven Experimental Projects* (1962).

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

VIII. ASSESSMENT OF SYSTEMS FOR DELIVERING LEGAL SERVICES

Journal Articles

Anthony V. Alfieri, *Impoverished Practices*, 81 *Geo. L.J.* 2567 (1993).

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

Samuel Jan Brakel, *Legal Services for the Poor in the Reagan Years*, 68 *A.B.A. J.* 820, 822 (1982).

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

Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 *N.C. L. Rev.* 281 (1982).

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

Wes Daniels, *Derelicts, Recurring Misfortune, Economic Hard Times and Lifestyle Choices: Judicial Images of Homeless Litigants and Implications for Legal Advocates*, 45 *Buff. L. Rev.* 687 (1997).

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

Talbot "Sandy" D'Alemberte, *Tributaries of Justice*, 25 *Fla. St. U. L. Rev.* 631 (1998).

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

Stephen Ellmann, *Lawyers and Clients*, 34 *UCLA L. Rev.* 717 (1987).

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

Stephen Ellmann, *Manipulation by Client and Context: A Response to Professor Morris*, 34 *UCLA L. Rev.* 1003 (1987).

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

Marc Galanter, *Delivering Legality: Some Proposals for the Direction of Research*, 11 *L. & Soc'y Rev.* 225 (1976).

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

Marc Galanter, *Duty Not to Deliver Legal Services*, 30 *U. Miami L. Rev.* 929 (1976).

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

Barbara A. Glesner, *The Ethics of Emergency Lawyering*, 5 *Geo. J. Legal Ethics* 317 (1991).

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

Stanley S. Herr, *Representation of Clients with Disabilities: Issues of Ethics and Control*, 17 *N.Y.U. Rev. L. & Soc. Change* 609 (1989-90).

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

Michael R. Koval, Note, *Living Expenses, Litigation Expenses, and Lending Money to Clients*, 7 Geo J. Legal Ethics 1117 (1994).

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

Arthur B. Lafrance, *Public Interest Litigation, Attorneys' Fees, and Attorneys' Ethics*, 16 Env'tl. L. 335 (1986).

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

Michael L. Lindsey, *Ethical Issues in Interviewing, Counseling, and the Use of Psychological Data with Child and Adolescent Clients*, 64 Fordham L. Rev. 2035 (1996).

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

F. Raymond Marks, *Some Research Perspectives for Looking at Legal Need and Legal Services Delivery Systems: Old Forms or New*, 11 L. & Soc. Rev. 191 (1976).

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

Carrie Menkel-Meadow, *Lawyer Negotiations: Theories and Realities—What We Learn from Mediation*, 56 Mod. L. Rev. 361 (1993).

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

Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering?*, 8 Ga. St. U. L. Rev. 385 (1992).

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

Robert G. Meadow & Carrie Menkel-Meadow, *Personalized or Bureaucratized Justice in Legal Services: Resolving Sociological Ambivalence in the Delivery of Legal Aid to the Poor*, 9 Law & Hum. Behav. 397 (1985).

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

John K. Morris, *Power and Responsibility Among Lawyers and Clients: Comment on Ellmann's Lawyers and Clients*, 34 *UCLA L. Rev.* 781 (1987).

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

Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 *BYU J. Pub. L.* 123 (1993).

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

Robert Borosage et al., Note, *The New Public Interest Lawyers*, 79 *Yale L.J.* 1069 (1970).

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

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

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

Carol Ruth Silver, *The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload*, 46 *J. Urb. L.* 217 (1969).

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

Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 *D.C. L. Rev.* 123 (1992).

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

Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 *Fordham Urb. L.J.* 1123 (1995).

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

Books and Other Monographs

Civil Justice: An Agenda for the 1990s: Papers of the American Bar Association National Conference on Access to Justice in the 1990s (Esther F. Lardent ed., 1991).

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

David Binder & Susan Price, *Legal Interview and Counseling: A Client-Centered Approach* (1997).

District of Colum. Task Force on Fam. L. Representation, *Access to Family Law Representation in the District of Columbia: A Report of the D.C. Bar Public Services Activities Corporation* (1992).

Alan W. Houseman & Jeanne Franklin, *Evidentiary Rules and Ethical Requirements Applicable to Legal Services Attorneys Concerning Confidentiality of Client Information and Work Product* (1986).

Representing People With Disabilities: New York State and Federal Law (Peter Danzinger et al. eds., 1991).

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

Catherine R. O'Dwyer, *An Evaluation of Provision of Legal Services to the Poor* (1984).

An LL.M. thesis at UCLA Law School.

Deborah L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (1994).

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

Thomas L. Shaffer & Mary M. Shaffer, *American Lawyers and their Communities: Ethics in the Legal Profession* (1991).

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

Thomas L. Shaffer & Robert F. Cochran, *Lawyers, Clients and Moral Responsibility* (1994).

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

IX. THEORETICS OF PRACTICE

Journal Articles

Annette R. Appell, *Decontextualizing the Child Client: The Efficacy of the Attorney-Client Model for Very Young Children*, 64 *Fordham L. Rev.* 1955 (1996).

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

Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. Rev. L. & Soc. Change 659 (1987-88).

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

Anthony V. Alfieri, *Practicing Community, Review of Gerald López, Rebellious Lawyering*, 107 Harv. L. Rev. 1747 (1994).

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

Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 Yale L.J. 2107 (1991).

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

Anthony V. Alfieri, *Speaking Out of Turn: The Story of Josephine V.*, 4 Geo. J. Legal Ethics 653 (1991).

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

Angelo N. Ancheta, *Community Lawyering*, 1 Asian L.J. 189 (1994) (reviewing Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992)).

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

Marie Ashe, *Bad Mothers, Good Lawyers and Legal Ethics*, 81 Geo. L.J. 2333 (1993).

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

Gary L. Blasi, *What's a Theory for: Notes in Reconstructing Poverty Law Scholarship*, 48 U. Miami L. Rev. 1063 (1994).

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

Lester Brickman, *Expansion of the Lawyering Process Through a New Delivery System: The Emergence and State of Legal Paraprofessionalism*, 71 Colum. L. Rev. 1153 (1971).

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

Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 62 Fordham L. Rev. 1699 (1996).

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

Naomi R. Cahn, *Inconsistent Stories*, 81 Geo. L.J. 2475 (1993).

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

Frank P. Cervone & Linda M. Mauro, *Ethics, Cultures, and Professions in the Representation of Children*, 64 Fordham L. Rev. 1955 (1996).

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

Anthony Cook, *Beyond Critical Legal Stories: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 Harv. L. Rev. 985 (1998).

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

Anthony E. Cook, *Toward a Postmodern Ethics of Service*, 81 Geo. L. J. 2457 (1993).

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

Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client*, 62 Fordham L. Rev. 1655 (1996).

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

Christopher Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 *Hastings L.J.* 861 (1992).

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

Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards and Ethnography of Legal Discourse*, 77 *Cornell L. Rev.* 1298 (1992).

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

Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 *Fordham L. Rev.* 1399 (1996).

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

Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretics of Practice Movement*, 61 *Brook. L. Rev.* 889 (1995).

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

Richard D. Marsico, *Working for Social Change and Reserving Client Autonomy: Is There a Role for "Facilitative" Lawyering*, 1 *Clinical. L. Rev.* 639 (1995).

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

Leon H. Mayhew, *Institutions of Representation: Civil Justice and the Public*, 9 *L. & Soc'y Rev.* 401 (1975).

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

Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *Stan. L. Rev.* 1731 (1993).

Examines several ways in which legal education typically "constructs" clients. This is followed by a review of efforts by legal

scholars to reshape the realm of the client, tracing these efforts from creation of live-client clinics through the development of "client-centered lawyering" to the emergence of "theoretics of practice."

Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 *Stan. L. Rev.* 213 (1993).

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

Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflict in Service*, 50 *Stan. L.J.* 1395 (1998).

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

Paul R. Tremblay, *Practiced Moral Activism*, 8 *St. Thomas L. Rev.* 9 (1995).

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

Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 *Hastings L.J.* 947 (1992).

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

Louise G. Trubek, *Critical Lawyering: Toward a New Public Interest Practice*, 1 *Pub. Int. L.J.* 49 (1991).

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

Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 *Harv. C.R.-C.L. L. Rev.* 415 (1996).

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

Lucie E. White, *From a Distance: Responding to the Needs of Others Through Law*, 54 *Mont. L. Rev.* 1 (1993).

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

Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 *Brook. L. Rev.* 861 (1990).

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

Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 *N.Y.U. Rev. L. & Soc. Change* 535 (1988).

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

Lucie E. White, *Paradox, Piece-Work, and Patience*, 43 *Hastings L.J.* 853 (1992).

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

Lucie E. White, *Seeking: A Response to Professors Sarat, Felstiner and Cahn*, 77 *Cornell. L. Rev.* 1499 (1992).

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

Lucie E. White, *Subordinating Rhetorical Survival Skills and Sunday Shoes: Notes on the Meaning of Mrs. G.*, 38 *Buff. L. Rev.* 1 (1990).

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

Books and Other Monographs

Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992).

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

X. GENERAL WORKS

Journal Articles

Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice*, 83 *Geo. L.J.* 1633 (1995).

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

Gary Bellow & Jeanne Kettleon, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. Rev. 337 (1993).

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

Robert Borosage et al., Note, *The New Public Interest Lawyers*, 79 Yale L.J. 1069 (1970).

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

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

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

Roger C. Cramton, *The Task Ahead in Legal Services*, 61 A.B.A. J. 1339 (1974).

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

Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 Mich. L. Rev. 1401 (1995) (reviewing Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (1993)).

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

Robert F. Drinan, *Legal Ethics from 1983-1993: Golden Age or a Decade of Decline?*, 6 Geo. J. Legal Ethics 693 (1993).

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

Stephen Ellmann, *Lawyering for Justice in a Flawed Democracy*, 90 Colum. L. Rev. 116 (1990) (reviewing David Luban, *Lawyers and Justice: An Ethical Study* (1988)).

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

John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 Tenn. L. Rev. 1135 (1997).

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

Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 Geo. L.J. 1529 (1995).

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

James J. Graham, *The Ghetto Lawyer*, 14 Cath. Law. 37 (1968).

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

Joel Handler, *Constructing the Political Spectacle: The Interpretation of Entitlements Legalization and Obligations in Social Welfare History*, 56 Brook. L. Rev. 899 (1990).

Alan W. Houseman, *Legal Representation and Advocacy Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 30 Clearinghouse Rev. 932 (1997).

Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 Geo. L.J. 1669 (1995).

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

Jeanne Kettleson, *Ethical Outlook: Revising the Code of Professional Responsibility*, 35 NLADA Briefcase 40 (1978).

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

Daniel H. Lowenstein & Michael J. Waggoner, Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 Harv. L. Rev. 805 (1967).

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

Karen Mayer, *Poverty Law: The Legal Services Corporation Act, 1977* Ann. Surv. Am. L. 275.

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

Carrie Menkel-Meadow, *Legal Aid in the United States: The Professionalization and Politicization of Legal Services in the 1980's*, 22 Osgoode Hall L.J. 29 (1984).

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

Susan Poser, *The Ethics of Implementation: Institutional Remedies and the Lawyer's Role*, 10 Geo J. Legal Ethics 115 (1996).

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

Allen Redlich, *A New Legal Services Agenda*, 57 Alb. L. Rev. 169 (1993).

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

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

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

Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 58 Law & Contemp. Probs. 361 (1995).

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

Kevin M. Ryan, *Reforming Model Rule 1.6: A Brief Essay from the Crossroads of Ethics and Conscience*, 64 Fordham L. Rev. 2065 (1996).

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

William H. Sheppard, *Ethical Considerations for Neighborhood Lawyers Under the Code of Professional Responsibility*, 2 Tex. S.U. L. Rev. 303 (1973).

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

Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 Wis. L. Rev. 1121.

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

Ann Southworth, *Lawyer-Client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyers' Norms*, 9 Geo. J. Legal Ethics 1101 (1996).

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

Special Project: The Legal Services Corporation: Past, Present and Future?, 28 N.Y.L. Sch. L. Rev. 593 (1983).

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

Symposium, *Ethical Issues in Representing Older Clients*, 62 Fordham L. Rev. 961 (1994).

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

Symposium, *Ethical Issues in the Legal Representation of Children*, 64 Fordham L. Rev. 1279 (1996).

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

Esmeralda Thornhill, *Ethics in the Legal Profession: The Issue of Access*, 33 Alberta L. Rev. 810 (1995).

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

Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 Md. J. Contemp. Legal Issues 381 (1994).

This article, a reprint of a work published separately by the University of Wisconsin-Madison Institute for Legal Studies in 1993, surveys the history of the interaction between legal education and

services for the poor in America. It assesses this long-standing relationship, traces its evolution, and analyzes the effect of tensions within the academic legal community of poverty law.

David S. Weschler, *Comments on Mr. Tabak's Paper*, 1989 Ann. Surv. Am. L. 115.

Commentary on Legal Ethics: *The Social Responsibility of the Lawyer*, by Ronald J. Tabak.

Stephen Wexler, *Practicing Law for Poor People*, 79 Yale L.J. 1049 (1970).

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

Books and Other Monographs

Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor (1991).

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

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

New standards adopted February 1996.

Albert H. Cantril, American Bar Ass'n, *Agenda for Access: The American People and Civil Justice: Final Report on the Implications of the Comprehensive Legal Needs Study* (1996).

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

Barlow F. Christensen, *Lawyers for People of Moderate Means: Some Problems of Availability of Legal Services* (1970).

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

Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (1993).

An account of lawyers' activities and roles in the representation of poor people in the "first wave" of the modern welfare rights movement. Ethical problems are part of the general narrative.

James L. Gattuso, *New Ways to Provide Legal Services to the Poor* (1986).

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

Alan W. Houseman, *Legal Services to the Poor and Disadvantaged in the 1980's: The Issues for Research* (1984).

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

Judith Hoye, *Assisting the Limited-Income Client in Family Law Matters* (1993).

Jack Katz, *Poor People's Lawyers in Transition* (1982).

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

Mark Kessler, *Legal Services for the Poor: A Comparative and Contemporary Analysis of Interorganizational Politics* (1987).

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

Legal Issues Affecting Homeless Clients: How You Can Help (1991).

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

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

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

Legal Services for the Poor: Time for Reform (Douglas J. Besharov ed., 1990).

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

Elissa Lenkin, *Assisting the Limited-Income Client in Family Law Matters* (1991).

Gerald P. López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992).

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

David Luban, *Ethics and the Legal Profession: A Model Course* (1982).

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

David Luban, *The Ethics of Lawyers* (1994).

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

David Luban, *The Good Lawyer: Lawyers' Roles and Lawyers' Ethics* (1994).

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

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

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

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

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

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

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

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

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

litigated in law school clinical programs; problems representing children.

Poverty Law Practice Manual: A Desk Reference For Legal Services Staff, and Private Attorneys Working with the Legal Services Programs in Arkansas (1996).

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

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

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

Roy Reese & Carolyn Eldred, *Legal Needs Among Low-Income and Moderate Income Households: Summary of Findings from the Comprehensive Legal Needs Study* (1994).

The Resource: A Pro Bono Manual (Esther Lardent ed., 1994).

American Bar Association looseleaf.

Deborah L. Rhode & David Luban, *Legal Ethics* (1995).

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

Austin Sarat & Stuart Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998).

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

World Wide Web Sites

Center for Law and Soc. Policy, *Center for Law and Social Policy* (visited Mar. 25, 1999) <<http://www.clasp.org>>.

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

Center for Prof'l Responsibility, American Bar Ass'n, *ABA Center for Professional Responsibility Home Page* (visited Mar. 25, 1999) <<http://www.abanet.org/cpr>>.

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

Division for Legal Servs., American Bar Ass'n, *ABA Legal Services Home Page* (visited Mar. 25, 1999) <<http://www.abanet.org/legal-services/home.html>>

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

Internet Legal Servs., *Legalethics.com: The Internet Ethics Site* (visited Mar. 25, 1999) <<http://www.legalethics.com>>.

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

Legal Information Inst., *LII: American Legal Ethics Library* (visited Mar. 25, 1999) <<http://www.law.cornell.edu/ethics>>.

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

National Clearinghouse for Legal Servs., Inc., *National Clearinghouse for Legal Services* (visited Mar. 25, 1999) <<http://www.nclslp.org>>.

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

National Legal Aid & Defender Ass'n, *National Legal Aid & Defender Association* (visited Mar. 25, 1999) <<http://www.nlada.org>>.

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

Project for the Future of Equal Justice, Center for Law and Soc. Policy, *Equal Justice Network—The Website of the Project for the Future of Equal Justice* (visited Mar. 25, 1999) <<http://www.equaljustice.org>>.

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

Welfare Law Ctr., *Welfare Law Center* (visited Mar. 25, 1999) <<http://www.welfarelaw.org>>.

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

APPENDIX

PARTICIPANTS IN THE CONFERENCE ON THE DELIVERY OF LEGAL SERVICES TO LOW INCOME PERSONS: PROFESSIONAL AND ETHICAL ISSUES

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Notes & Observations