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Lawyering for Ordinary People
in Today's Context**

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New Roles to Solve Old Problems: Lawyering for Ordinary People in Today's Context +

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I. INTRODUCTION

The lawyering landscape is unsettled. Changes such as the extreme American economic downturn, the ever-widening justice gap, and the reshaping of legal work by technology contribute to a sense of unease. The economic downturn contributes to a severe reduction in law jobs due to a reduced client base and diminished law firm profits.¹ The justice gap is increasing due to reduction in government funding for legal services resulting in less representation available for low-income litigants.² The ability to access legal information and forms through the internet allows litigants to access information that previously was provided by lawyers who could charge for these services. While some aspects of law practice seem cyclical (such as funding of legal services, and the legal marketplace) in other ways the current legal landscape could not have been imagined even five years ago. Some see the changes as modest but others see a paradigm shift that challenges how legal services will be provided in the long term.³

This unsettled landscape provides an opportunity to rethink the delivery of legal services to ordinary people. How can affordable legal resources be provided to people dealing with family disintegration or those having difficulty accessing health care services or facing a housing foreclosure? The paradox is that the very changes that are roiling the legal profession may offer opportunities for new forms of practice that use different tools and roles. On one hand, the justice gap exists for both poor people and the

¹ This phenomenon has been the subject of numerous discussions and articles. See e.g. William D. Henderson & Rachel M. Azzhorskay, *Law Job Stagnation May Have Started Before the Recession-And It May Be a Sign of Lasting Change*, ABA Journal, July, 2011; Mark Curriden, *Future Law: Rethink Client Needs, Or Else*, ABA Journal, March, 2011, summarizing the results of the American Bar Foundation's panel discussion of the "The Future of Lawyering" at the ABA's midyear meeting, and the Harvard Law School Program on the Legal Profession, *FutureEd 2: Making Lawyers for the 21st Century*, in 2010.

² The trend nationwide is that more and more people enter the justice system without legal assistance. While a few people who are able to pay for legal assistance elect to proceed without a lawyer, research indicates that far more have no choice. See *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* (Legal Service Corp., 2005); Cf. Reese & Eldred, *American Bar Ass'n, Legal Needs Among Low-Income and Moderate-Income Households: Summary of Findings from the Comprehensive Legal Needs Study* (1994).

³ *Supra*, note. 1.

middle class. Reduction in legal services to the poor is paralleled by inability of the middle class to afford traditional legal services. On the other hand, available technology and new collaborations create opportunities for new roles and tools. Legal information can be provided over the internet and easy to use forms can be utilized to access the court system. Professionals can share expertise through new forms of collaboration. The complexity of this new landscape can encourage innovation by those who can figure out how to develop affordable systems using new information and technologies. Law schools can serve as incubators for experimentation with these new roles and tools while providing students with the training, skills, and knowledge to assume new roles in the legal world.

The challenge then is creating practices that can utilize these long term substantive changes to benefit people needing legal services. These include sharing expertise with other professionals and paraprofessionals, using data and technology, and coordinating with a variety of stakeholders. Lawyers do play different roles when they use these tools. These roles are collaborator, evaluator, and facilitator.⁴ Law schools can enable the development and expansion of these practices and roles by providing the environment to envision and implement the models of lawyering that will assist ordinary people.

This article first discusses what types of legal services can best assist ordinary people in the current context using as examples experiences of Wisconsin law clinics, centers for legal assistance, and from related national programs. The article then explores the new roles created by the new context. Finally the article addresses how law schools, through expanded clinics and innovative curricula, can train students to envision productive careers.

II. THE LAW PRACTICE CONTEXT

The current “great recession” is highlighting the job crisis for lawyers.⁵ The vision of a viable legal practice is shifting, particularly for attorneys practicing on behalf

⁴ David E. Van Zandt, *Foundational Competencies: Innovation in Legal Education*, 61 RUTGERS L. REV. 127 (2008); Karen Rothenberg, *Recalibrating The Moral Compass: Expanding “Thinking Like a Lawyer” Into “Thinking Like a Leader,”* 40 U. TOL. L. REV. 411 (2009).

⁵ See data compiled by the National Association for Law Placement regarding employment trends, available at <http://www.nalp.org/july09trendsgradempl> (last visited August 27, 2010).

of low- and moderate-income people.⁶ This type of practice includes assistance on individual matters as well as addressing broader systemic issues such as mortgage lending practices and improving health care outcomes. It also encompasses assistance to moderate- to low-income rural clients and urban neighborhood organizations. For purposes of this article, we will use the phrase “ordinary people” to refer to these clients and constituencies.⁷

The lack of available legal resources for such individuals is longstanding. Even when more government funding was available, there was still a vast undersupply of legal resources for ordinary Americans.⁸ But the current economic climate is widening the gap. In a recent comparison of access to legal services in the United States and abroad, Gillian Hadfield observed that poorer Americans report much lower uses of legal assistance in resolving their problems and much higher rates of simply giving up as compared to poorer citizens of other nations, because of the lack of a variety of legal redress.⁹ She concludes that the United States’ socioeconomic life relies on law but devotes few resources to making law effective in practice.¹⁰

Many attribute the low level of available redress to regulatory and practice restrictions on the use of paraprofessional services and technologies.¹¹ A second factor underlying the shortage of assistance is the lack of knowledge of when full-scale lawyer services are appropriate and when other types of services, such as unbundled legal

⁶ William D. Henderson & Rachel M. Zahorsky, *supra*, note 1.

⁷ Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans*, *FORDHAM URB. L. J.* 129, (2010) available at: <http://works.bepress.com/ghadfield/31>

⁸ *Id.* at 134.

⁹ *Id.* at 136-38, 151. See also Marc Galanter, *Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *L. & SOC’Y REV.* 95, 124–25 (1974). Galanter notes that some are unable to take action because they lack information or access, while action because the gain is too minimal or the cost too large.

¹⁰ *Id.* at 22, citing ROBERT KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* 57 (2001); Rebecca L. Sandefur, *The Fulcrum Point Of Equal Access To Justice: Legal And Nonlegal Institutions Of Remedy* 42 *LOYOLA OF LOS ANGELES LAW REVIEW* 949, 966, 968 (2009).

¹¹ *Id.* at 154, citing Deborah L. Rhode, *ACCESS TO JUSTICE* (2004); Deborah L. Rhode, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000); Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 *STAN. L. REV.* 1 (1981); Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to NonLawyer Practice*, 22 *N.Y.U. REV. L. & SOC. CHANGE* 701 (1996), David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988).

services,¹² brief service, or information only clinics might perform equally as well. A third factor is the limited amount of pro bono service available to low-income clients.¹³ The civil-right-to-counsel movement illuminates the need to enhance civil legal representation for low-income, middle-income, and vulnerable litigants.¹⁴

Family law is an example of a major practice area that serves low- and moderate-income families.¹⁵ Just as the legal profession as a whole has changed significantly in recent years, the context in which family law is practiced also has changed radically. Over the past twenty years, the American legal system has shifted from one where litigants were predominately represented by lawyers to one where self-represented litigants are most common.¹⁶ As a result, many available alternatives to traditional lawyer-based services have developed, such as limited-scope representation, collaborative law, and client-accessible forms.¹⁷ Moreover, those confronting marital difficulties face complex contemporary problems such as relocation and job loss that further complicate resolution of issues related to custody, placement, and support.

The question thus becomes, what types of legal services can best assist this client base? The family law practice story demonstrates the need for more appropriate legal redress for ordinary people. New or improved tools are now available to help attorneys create viable practices serving ordinary people generally as well as individuals facing

¹² Unbundling or limited scope representation involves a lawyer handling only a part of case and not providing full-scale representation. See John T. Broderick, Jr. & Ronald M. George, *A Nation of Do-It-Yourself Lawyers*, N.Y. TIMES, January 2, 2010.

¹³ The most recent (but dated) ABA Center for *Pro Bono's* survey of state pro bono models reports that 135,572 lawyers, or 18 percent of the lawyers in 40 states, participated in formally organized pro bono programs serving the civil legal needs of the poor in 1997 (Center for *Pro Bono* 1998). See also, Sandefur, *supra* at 966.

¹⁴ See <http://civilrighttocounsel.org>. At the ABA's 2010 Annual Meeting, the House of Delegates formally endorsed the ABA Model Access Act and the ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings. These can be found at http://www.americanbar.org/groups/legal_services.html.

¹⁵ American Bar Association, Standing Committee on the Delivery of Legal Services, Responding to the Needs of the Self-Represented Divorce Litigant (A.B.A. Ass'n 1994); Lynn Mather, Craig McEwen, & Richard J. Maiman, *Divorce Lawyers at Work: Varieties of Professionalism and Practice*, Oxford University Press (2001).

¹⁶ See John Greacen, *Self-Represented Litigants and Court Legal Services Responses to Their Needs: What We Know*, at http://www.lri.lsc.gov/pdf/02/020045_selfrep_litigants&whatweknow.pdf; Elizabeth McCulloch, *Let Me Show You How: Pro Se Divorce Courses And Client Power*, 48 Fla. L. Rev. 481, 483 (1996).

¹⁷ The University of Florida Levin College of Law Family Law Pro Se/Unbundling Advice Clinic is an example of an innovative clinic that offers unbundled services to otherwise self-represented litigants such as advice, document preparation and make limited appearances. See <http://www.law.ufl.edu/centers/clinics.shtml>.

family law issues specifically. First, there is a plethora of new technologies that lawyers and other professionals can use to better provide services and understand issues. Second, there is an increasing understanding that law can be helpful to other professionals who are working with the same client base, including social workers, psychologists, physicians, financiers, and bankers. Third, there is a blurring of the distinctions between the for-profit, nonprofit, and government sectors so that borrowing from different models has become commonplace.

These new tools create an opportunity to further increase efficient and effective legal redress. Thus, contemporary innovative programs have emerged where lawyers are serving in new roles and providing legal assistance using unconventional techniques and tools.¹⁸ These programs enable “new” lawyers not only to understand their clients’ legal challenges, but also the business, social, and strategic contexts in which those challenges arise. New expertise and tools can increase the resources available to ordinary people by making them more accessible, usable, and affordable. One way to characterize the new resources is to describe them as “new roles for lawyers.”

These new roles require working with other professionals and paraprofessionals, using data and new technologies, and coordinating stakeholders for institutional change. Three identifiable roles emerge in this changing context: (1) learning to engage in a collaborative practice in a variety of contexts with colleagues from different disciplines and knowledge bases (the role of collaborator); (2) measuring and evaluating the effectiveness of outcomes interventions (the role of evaluator); and (3) providing strategic facilitation for diverse stakeholders in legal and governance structures (the role of facilitator).

As our graduating law students face a world with fewer traditional jobs, they need to learn how to make their way in this changed context. The competencies of legal research and analysis, coherent writing, and oral advocacy are still essential. In fact, there is renewed interest in how to teach these skills, as well as substantial debate about the

¹⁸ Margaret Martin Barry, et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 65-66 (2000). “Newer lawyering models, which shift the focus from vindication of legal rights and injuries to creative problem-solving, stress the need to transcend doctrinal areas, legal fora, and professional disciplines to fully address client problems. In increasing numbers, lawyers in both public interest and private practice settings are working collaboratively or cooperatively with professionals in other disciplines to address client problems in a more holistic, efficient, comprehensive, and cost-effective fashion.”

best techniques for teaching traditional skills.¹⁹ But traditional competencies, even if taught through experiential and outcome-based learning, are not sufficient.²⁰ Even when mastered, traditional competencies do not necessarily lead to effective and cost-efficient assistance for clients, or jobs for lawyers.

The new roles of collaborator, evaluator, and facilitator are different than the traditional roles of a lawyer as litigator, counselor, and advocate. While these traditional roles continue to play an important function, the new roles allow lawyers to be more effective in assisting ordinary people. They incorporate insights gleaned from other professions such as mental health, health care, and business, employ advanced technologies, and consider the variety of interests that affect the well-being of the clients beyond simply the bare legal issues.

III. NEW ROLES: COLLABORATOR, EVALUATOR, FACILITATOR

A. Collaborator: Multidisciplinary and Interdisciplinary Approaches²¹

People's lives are not neatly compartmentalized. When legal problems arise, they typically occur in a broader context often also involving a financial, medical, family, or housing crisis. Drawing on expertise from a variety of disciplines may be most effective in resolving both the underlying legal issue and related concerns. Historically however, distinct services addressed distinct "legal problems" or "medical problems" or "financial

¹⁹ Lauren Carasik, *Justice In the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism With A Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 33 (2006)

²⁰The importance of understanding the skills of a successful practitioner is further supported by a recent study providing a listing of "non-cognitive predictors" for success as lawyers. Marjorie M. Shultz & Sheldon Zedeck, *Identification, Development, and Validation of Predictors of Successful Lawyering* (2008), available at www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf. The study highlights the important skills that are needed for effective practice. Personality, interpersonal skills and situational judgment as well as entrepreneurship are important factors in professional success. *Id.*

²¹ Scholars have debated the use of the terms, "interdisciplinary," "multidisciplinary," and "transdisciplinary" over the years as different programs and approaches have evolved. See, e.g., Mary C. Daly, *What The Mdp Debate Can Teach Us About Law Practice In The New Millennium And The Need For Curricular Reform*, 50 J. LEGAL EDUC. 521, 522 n.3 (2002); Anita Weinberg & Carol Harding, *Interdisciplinary Teaching And Collaboration In Higher Education: A Concept Whose Time Has Come*, 14 WASH. U. J.L. & POL'Y 15, n.2 (2004).

problems,” and advocates rarely joined forces to provide comprehensive assistance to clients.²²

Addressing problems in such a narrow fashion limits the lawyers’ ability to identify possible solutions. In addition, clients who live in the same community and share common interests may be separated from one another, and hence unable to generate ideas for addressing issues affecting the well-being of the entire community.²³ Finally, in an era of growing specialization, it has become less possible for any single lawyer, or often any single law firm, to effectively meet all of the client’s needs.²⁴

Thus, collaboration across disciplines and across curricula has developed as a useful tool for serving clients and addressing major social and political issues.²⁵ The Carnegie Report recognized the value of collaboration in recommending that law school faculty work “across curriculum” to facilitate programming where students and faculty can link together disparate kinds of knowledge and skills.²⁶ There are also outstanding examples of successful interdisciplinary practices in many sectors, such as multidisciplinary practices for at-risk families, domestic violence, and community economic development.²⁷ However, these clinics and practices are traditionally low-visibility and have gained little traction as alternative service models.²⁸

Recently, new interest has emerged for interdisciplinary collaborations in which professionals work together at nontraditional sites. The best-known example is the medical-legal partnership. Medical-legal partnerships integrate lawyers into a health setting to help patients navigate the complex government and community systems that often hold solutions to many social determinants of health, such as income support for food-insecure families, utility shutoff protection during cold winter months, and mold

²² Stacey L. Brustin, *Legal Services Provision Through Multidisciplinary Practice-- Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 789 (2002).

²³ *Id.*

²⁴ Deborah Rhode, *Access To Justice: Connecting Principles To Practice*, 17 GEO. J. LEGAL ETHICS 369, 410 (2004).

²⁵ Louise Trubek, *Crossing Boundaries: Legal Education And The Challenge Of The “New Public Interest Law*, WILAW REV. 463-65 (2005).

²⁶ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 9 (2007) (hereinafter Carnegie Report) at 10.

²⁷ See Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL LAW REVIEW 227, 230 (2000).

²⁸ Ethical rules often present obstacles that restrict multiprofessional practices, and inconsistent ethical codes apply within different professions. There is extensive literature on how these can be approached. See *Id.*

removal from the homes of asthmatics. Medical-legal partnerships can increase access to legal services for low-income individuals and thereby reduce the impact of social conditions that adversely affect health.²⁹ These partnerships can ease the burden both by reducing the stress associated with unmet legal needs and alleviating specific health conditions.³⁰

Currently, there are over 200 medical-legal partnerships springing up in a wide variety of medical locations ranging from hospitals to community health centers.³¹ Many of these partnerships are associated with The National Center for Medical-Legal Partnerships (the Center) based in Boston. The Center encourages and supports these partnerships, but there is tremendous variation. The lawyers who work in these medical sites come from different organizations: legal aid agencies, law schools, and law firms.³² These partnerships serve different client groups, according to the Center's website: "children, the elderly, patients with cancer, pregnant women, the formerly incarcerated reentry community and other vulnerable populations."³³

Through medical-legal partnerships, lawyers, physicians, and other health care providers partner together in health care settings to ensure timely access to legal assistance.³⁴ The partnerships have been successful because they have a clear goal of improving public health. They make medical expertise available to low-income people by incorporating doctors and other health care professionals into a multidisciplinary practice while maintaining the lawyer as a visible and critical component. Some of these partnerships also train doctors to be alert to legal issues impacting the health of their patients and enable them to become better advocates.

²⁹ Peter Shin, et al., MEDICAL-LEGAL PARTNERSHIPS: ADDRESSING THE UNMET LEGAL NEEDS OF HEALTH CENTER PATIENTS, Geiger Gibson/RCHN Community Health Foundation Research Collaborative, No. 18 (2010); American Bar Association Medical-Legal Partnership Pro Bono Support Project, *available at* <http://www.abanet.org/legalservices/probono/medlegal/home.shtml>.

³⁰ Interview Mark Hansen Nov. 5, 2010.

³¹ See National Center for Medical-Legal Partnerships, <http://www.medical-legalpartnership.org> (last visited July 7, 2011).

³² *Id.*

³³ *Id.*

³⁴ Edward Paul et.al, Medical-Legal Partnerships: Addressing Competency Needs Through Lawyers, J. Graduate Med.Educ.304,305 (2009). See also Elizabeth Tobin Tayler Allies Not Adversaries: Teaching Collaboration to the next Generation of Doctors and Lawyers to Address Social Inequality Vol.11:249(2008)

A final factor in the success of the medical-legal partnerships has been the ease of replication. Through the combination of a shared mission, team approach, and broad use of resources, the medical-legal partnerships have been able to form a strong network and spread their model. The University of Wisconsin's Center for Patient Partnerships³⁵ also embodies this change in focus, from a traditional advocacy model to one that stresses the importance of working with teams whose members may speak a different language. The Center provides a client experience in a clinic setting for students in law, medicine, nursing, pharmacy, public health, and other medical professions. Under faculty supervision, the students provide a wide range of assistance to patients with life-threatening or serious chronic illnesses. The students study at the Center through designated field placements, clerkships, or fellowships. The curriculum is a transdisciplinary experience,³⁶ in which students work collaboratively with other students and staff from diverse professional backgrounds—law, medicine, public health, social work, pharmacy, public affairs, science, etc.—to offer holistic, client-centered advocacy.³⁷

Working with professionals from different perspectives and professional training allows the Center's students to provide more comprehensive advocacy and problem-solving support. Such support is necessary to effectively help patients understand a diagnosis and range of treatment alternatives; negotiate disability or medical leave requirements, coordinate care, and support services; or address family matters. These services result in improved medical care, health outcomes, and quality of life.

Examples of the students' work include assisting a patient recently diagnosed with stomach cancer by researching antinausea antidotes for treating side effects from chemotherapy, as well as cutting through red tape so that this patient could retire early; researching different treatment modalities in order to counsel a patient about her

³⁵The Center for Patient Partnerships is an advocacy clinic for patient choice and preferences with health care providers, insurers, and other parties. This center enrolls both graduate and law students and is affiliated with the University of Wisconsin School of Law, Schools of Medicine & Public Health, Nursing, and Pharmacy. See, <http://www.patientpartnerships.org/Philosophy.php>.

³⁶M. HURST, M. E. GAINES, R. N. GROB, L. W., S. DAVIS, EDUCATING FOR HEALTH ADVOCACY IN SETTINGS OF HIGHER EDUCATION" IN PATIENT ADVOCACY: PATIENT CENTERED STRATEGIES FOR IMPROVING HEALTHCARE QUALITY, J. Earp, et al. eds. (2007) In interdisciplinary phraseology, the Center's model is described as "parallel socialization." See Trevillion S. & Bedford L. *Utopianism And Pragmatism In Interprofessional Education*, 22 SOCIAL WORK EDUCATION 215, 219 (2003).

³⁷*Id.*

treatment risks and benefits, in addition to explaining to the patient how a treatment regimen would affect her life and family, and negotiating insurance coverage.³⁸ Center advocates offer reassurance and support that is often unavailable from other sources but that is critically important to a patient with a life-threatening illness. The variety of services reflects the Center's mission to educate patients, their families, and the professionals who are providing medical care.

At the same time, the Center's students learn to appreciate and understand the importance of different types of knowledge. They learn to communicate on a variety of levels and use different media, from written communication to insurance companies and doctors, to letters that inform clients of their options in clear and understandable language.

The Center's approach is grounded in the belief that interprofessional skills can best be learned on "neutral" ground where everyone's expertise is equally valued, everyone is a new learner about the core work of health advocacy, and collaboration and teamwork bring richness and creativity to problem-solving.³⁹ This collaboration promotes the understanding of the medical and social aspects of health, and allows legal work to fit into a framework that can produce results. It also teaches the students how to work with other professionals in a respectful and collaborative place.⁴⁰

The medical-legal partnerships and the Center for Patient Partnerships both challenge key aspects of the traditional way that lawyering for ordinary people is envisioned. First, the medical-legal partnership bills itself as using law for prevention rather than for crisis driven legal needs.⁴¹ Many clinics and legal service offices include client education as an element of their work. However, education is secondary to the pursuit of a claim for redress. The partnership, because it is placed in the medical site, sees the role of the lawyer as eliminating obstacles to the patients' health through legal tools. These techniques can alleviate current illness and prevent further illness. The lawyer can help the patient access housing and medical or worker's compensation

³⁸ <http://www.patientpartnerships.org/patientStories.php>.

³⁹ *Id.*

⁴⁰ Trubek and Farnham, *supra*, note 24 at 230; Susan Poser, *Main Street Multidisciplinary Practice Firms: Laboratories For the Future*, U. MICH. J. LAW REFORM 95 (2003) for a discussion of middle-income practices.

⁴¹ <http://www.medical-legalpartnership.org/sites/default/files/page/MLP%20--%20A%20New%20Standard%20of%20Care.pdf>

benefits, as well as generate income for both the patient and the medical provider through increased health insurance reimbursements. The lawyer becomes a part of the support system for the client in a manner very different from the traditional role of intervening when the client comes to the lawyer's office for redress of a singular problem. The lawyer is part of the public health endeavor's ongoing mission.⁴²

Second, these programs involve the lawyer as partner rather than autonomous savior. The Center for Patient Partnerships, by teaching students from health disciplines together with law students in a multiprofessional seminar and clinic, emphasizes the interdependent roles of these professionals. Notably, the law students learn how to work with others while appreciating the need for the specialized knowledge that lawyers possess. The lawyer's autonomy and independence, which some critics fear may be impaired by the collaborative model,⁴³ is in fact enhanced as the lawyer contributes his or her expertise to the problem-solving process. In more sophisticated legal settings, this ability to share information across institutional divides is essential for strategic development and for new approaches to changing policy.⁴⁴ Early exposure to the partnership model can create a very different view of the lawyer's role.

Third, the partnerships can use a broad range of funding and resources. They search for private sources as well as law school funds, legal service revenues, and pro bono contributions. The Center for Patient Partnerships relies on a very successful annual auction of artistically decorated shoes that is widely admired in the community. In addition, the partnerships' participants emphasize how the group's work improves fundraising for all the participants. For example, the health centers and hospitals can document how the partnerships reduce unnecessary costs for the hospitals or the government.⁴⁵ The acceptance of an entrepreneurial model for fundraising distinguishes these partnerships from the traditional legal services models.⁴⁶

⁴² Trubek & Farnham, *supra*, note 24 at 230.

⁴³ See e.g., John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice And The American Legal Profession: A Market Approach To Regulating The Delivery Of Legal Services In The Twenty-First Century*, 69 *FORDHAM L. REV.* 83, 135 (2000).

⁴⁴ Louise G. Trubek, "Crossing Boundaries" *Legal Education And The Challenge Of The "New Public Interest Law"*, 2005 *WI Law Rev.* 455, 472.

⁴⁵ Shin et.al, *supra* at note 26 *Financial Impact Study of Legalhealth Services to New York City Hospitals*, Legalhealth (Nov. 2007)

⁴⁶ See e.g., Russell Engler, *Connecting Self-Representation To Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 37 (2010); See, e.g., *Special Issue, A Right To*

B. Evaluator: Assessing the Effectiveness of Interventions Using Experimentation and Comparative Data

The legal profession has historically paid scant attention to evaluating the effectiveness of its work.⁴⁷ In this regard, lawyers lag behind other professions, particularly the health professions.⁴⁸ There are little systematic data on legal costs and the relationship between costs and effectiveness.⁴⁹ Sometimes, this lag is attributed to a resistance to numbers and quantification of productivity by those who chose law as a career.⁵⁰ Another factor is the belief that practicing law is an art rather than a science, and that it cannot be empirically evaluated. Traditionally, the expertise of the lawyer was considered the guarantee of quality. This traditional view has been critiqued in recent years, especially in some legal services programs.⁵¹ Finally, until recently, much of the work of the profession was hard to analyze because the underlying data were difficult to locate due to claims of attorney-client privilege and the difficulty of accessing paper records.

Lawyer resistance to using data to analyze effectiveness is gradually eroding. One factor is the emphasis on evidence-based outcomes.⁵² A second factor is the availability of computerized software and statewide data compilation programs that allow for relatively easy data analysis.⁵³

In law, there has been an emphasis on procedure as the measure of quality. Now, there is an increasing emphasis on outcomes rather than procedures, particularly in light

A Lawyer? Momentum Grows, 40 Clearinghouse Rev. 163 (2006) [hereinafter *Momentum Grows*]; Symposium, CIVIL GIDEON: CREATING A CONSTITUTIONAL RIGHT TO COUNSEL IN THE CIVIL CONTEXT, 15 TEMP. POL. & CIV. RTS. L. REV. 697 (2006).

⁴⁷ We are discussing the effectiveness of the value of the lawyer work, not how well students achieve outcomes in learning skills. See Carnegie Report that only analyzes learning by students.

⁴⁸ Jeanne Charn & Jeffrey Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, MANAGE. INFORMAT. EXCHANGE J. 28 (2007), available at <http://ssrn.com/abstract=1126444>.

⁴⁹ Hadfield *supra* note 5, at 2.

⁵⁰ David E. Van Zandt's "resistance to numeracy." Van Zandt *supra*, note 4.

⁵¹ See a discussion of quality in legal services in Alan Paterson "Peer Review and Quality Assurance" 13 Clinical Law Review 757 (2006-7)

⁵² See Amy Bach, "Justice by the Numbers." The Op-Ed piece proposes a "justice index" for courts and proposes that the information be posted publicly based on local data gathered under national standards. <http://www.nytimes.com/2010/08/11/opinion/11bach.html> (last visited August 28, 2010).

⁵³ An example is Wisconsin's Circuit Court Access Project (WCCA), a website that provides access to certain public records of the circuit courts of Wisconsin <http://wcca.wicourts.gov/index.xsl>.

of the recognition that simply providing litigants access to the legal system is insufficient to improve legal services for ordinary people.⁵⁴ Other professions are leading the way, by incorporating outcome evaluations into their assessment process. Examples are seen in the education field, where the “No Child Left Behind” funding is outcome-based.⁵⁵ The medical world is now emphasizing evidence-based treatment and is pursuing rigorous comparisons for quality, rather than relying on the expertise of the individual medical professional.⁵⁶ Comparative performance-based tables are now publicly disseminated.⁵⁷

Some medical-legal partnerships are now looking carefully at measuring their effectiveness because of the importance of demonstrating that they are successful and cost efficient. There is a push both from the legal and the medical arenas to undertake evaluative research. The emphasis is on gathering and using the data to determine what is working and what is not. The legal service groups involved with the medical-legal partnerships also recognize the importance of data gathering and analysis. They are gathering data so that further analysis can assist in demonstrating the value of the partnerships.⁵⁸ Most of the evaluation experimentation has been conducted at the local program level. There is now interest in creating standardized indicators and using these nationally to create a broad national database.⁵⁹

As the resistance to the use of data erodes, the ability to evaluate and measure legal redress is now a crucial role for lawyers who are working for ordinary people. As Jeanne Charn notes,

resource-targeting decisions should be based on credible evidence of benefits to clients as a result of legal (as compared to other helping) interventions. Therefore, research and independently verifiable data validating a positive impact will be

⁵⁴ Charn & Selbin *supra*, note 48 at 29; Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 915 (2009); Richard Moorhead & Pascoe Pleasence, *Introduction to After Universalism: Re-Engineering Access to Justice*, 30 J.L. & SOC. (Special Issue) 1 (2003).

⁵⁵ James Liebman & Charles Sabel, *A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform*, 28 N.Y.U. Rev. L. Soc. Change 183 (2003).

⁵⁶ Louise G. Trubek et al. Improving Cancer Outcomes Through Strong Networks and Regulatory Frameworks: Lessons from the United States and the European Union *Journal of Health Care Law and Policy* forthcoming vo. 14 Issue 1

⁵⁷ Atul Gawande, Elliott S. Fisher, Jonathan Gruber, & Meredith B. Rosenthal, *The Cost Of Health Care — Highlights From A Discussion About Economics And Reform*, N. ENG. J. MED. 361(15): 1421-3 (2009); Hayes, et al., *Surgical Safety Checklist to Reduce Morbidity and Mortality in a Global Population*, 360 N. ENG. J. MED. 360(5):491-9 (2009).

⁵⁸ Interview with Mark Hansen Nov. 5, 2010.

⁵⁹ *Id.* For further discussion of research and evaluation in medical-legal partnerships see <http://www.medical-legalpartnership.org/impact/research-and-evaluation>.

needed to sustain adequate funding levels, periodically reassess and reorder service priorities, and gauge overall system performance.⁶⁰

In the legal arena, alternatives to full-scale representation are now common, including brief service and self-help assistance programs based in courts or via web-based standardized forms and unbundled legal assistance. As alternatives are developed and disseminated, and the tools for evaluation are at hand, measurement and assessment are possible. Lawyers can benefit from understanding how to measure effectiveness, evaluating their services, and comparing alternative ways of providing services. The range of service models reflects a continuum of cost and quality trade-offs. Assessments must be done with expertise, care, and ultimately, empirical validation in order to justify need, value, and effectiveness.⁶¹

One law school clinic engaged in the measure of its effectiveness is the Family Court Assistance Project (FCAP) at the University of Wisconsin Law School. The clinic provides assistance to self-represented litigants in family law cases, much of which is provided through unbundled or limited-scope assistance.⁶² Unbundled services have been touted as an effective means of delivering legal assistance to those who otherwise would be unable to afford representation. FCAP students assist self-represented individuals by helping with forms completion, providing information about the court process, and answering questions about the nature of the court proceedings. Individuals are free to return to the clinic as often as they choose, but no legal representation is provided. A separate component of FCAP also allows the students to represent individual clients. FCAP students thus learn the difference between information and advice and apply their skills and knowledge in a variety of settings, including at the courthouse clinic and through individual representation. The students also learn to critically evaluate the responses of the justice system to the needs of self-represented litigants.

FCAP Director Marsha Mansfield has built in an evaluation component to assess both the students' services and the self-represented person's experience with the judicial system. Several months after receiving FCAP services, persons who have used the

⁶⁰ Jeanne Charn, *Symposium: Legal Services For All: Is The Profession Ready* 42 *Loy. L.A. L. Rev.* 1021, 1029 (2009).

⁶¹ *Id.* at 1048.

⁶² See fn.10.

clinic's pro se assistance services are given a telephone survey where they rate aspects of their experience, ranging from rating their satisfaction with the assistance provided to answering questions regarding their success in completing their matter and their satisfaction with the court process. The survey results allow Mansfield to empirically assess the value of limited-scope assistance in the family law sector. These results will be especially valuable to the court system as more and more litigants access the courts in family law matters without counsel, but they also can enhance the reflective component of the clinical program as students consider the impact of their services on the population served by the clinical program.

Another study of self-represented litigants in Waukesha County, Wisconsin, compared case files of divorces in which lawyers appeared with those in which the litigants were self-represented. The study concluded that the data

suggests [sic] that lawyers are most utilized to deal with the more complex aspects of divorce, and may be less necessary for the routine procedural matters that many clients handle themselves. It may also be the case, although our research could not measure this, that lawyers serve a primary role that is more psychological than mechanical, at least for some clients. This may have important repercussions for lawyer training, as well as for the construction of user-friendly family court systems.⁶³

These findings can form the basis for changes in the delivery model for family law to a more business-oriented approach. The findings also emphasize the importance of the psychological or counseling aspects of the attorney-client relationship⁶⁴ envisioned by the interdisciplinary family law clinics developed at the Indiana University School of Law.⁶⁵ Furthermore, the findings may provide guidance as courts and law schools grapple with

⁶³ Judith G. McMullen & Debra Oswald, *Why Do We Need a Lawyer? An Empirical Study of Divorce Cases*, 12 J. LAW & FAMILY STUDIES 57 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1580243.

⁶⁴ "Lauren Carasik, *Justice In The Balance: An Evaluation Of One Clinic's Ability To Harmonize Teaching Practical Skills, Ethics And Professionalism With A Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23 (2006). ("A frequent criticism of litigation-based strategies is that they fail to identify, acknowledge and attend to the emotional needs of clients. A response is reflected in the relatively new field of Therapeutic Jurisprudence ... an 'interdisciplinary, psychologically oriented paradigm that concerns itself with client needs and emotional well-being as well as rights.'") *Id* at 48, quoting Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 ST. THOMAS L. REV. 429, 433 (2005).

⁶⁵ Amy Applegate, Brian D'Onofrio and Amy Holtzworth-Munroe, *Training And Transforming Students Through Interdisciplinary Education: The Intersection Of Law And Psychology*, 47 FAM. COURT REVIEW (2009).

the difficult question of directing scarce resources in a practice area where the need is so great.

Yet another example of how evaluation and measurement can intersect to make a significant contribution to the community is the Wisconsin State Bar's Unmet Legal Needs Study, conducted in 2006. Students from the University of Wisconsin's La Follette School of Public Affairs⁶⁶ worked with Professor Mansfield and members of the Wisconsin Access to Justice Study Committee to design and implement a study that found gaps in legal services for victims of domestic violence. Their research resulted in recommended program expansions that could yield positive economic benefits for the State of Wisconsin and that were incorporated in the published report and its recommendations.⁶⁷

These studies demonstrate why measurement is important. The findings can be used in discussions with the bar, the courts, and law schools about the future of lawyering and how to teach lawyers to play new roles. The studies also highlight how comparative effectiveness research can be used to analyze the strengths and weakness of differing strategies for providing legal services to ordinary people.

C. Strategic Facilitator

There has been a recent raft of criticism about the loss of the statesman and leadership roles for lawyers. Much of this literature focuses on the loss of lawyers' elite role in public affairs.⁶⁸ There is a related critique of lawyers working for low- and moderate-income clients, who are sometimes presented as bureaucrats working for government agencies, or as utopian reformers working for little money with poor results. Many in the social justice and social services fields view lawyers as narrow and legalistic

⁶⁶ The Robert M. La Follette School of Public Affairs at the University of Wisconsin-Madison offers domestic and international degrees in public management and policy analysis. Many law students seek dual degrees in law and the social sciences. The School's research and outreach on global issues influences and improves people's lives beyond the university. See <http://www.lafollette.wisc.edu/>.

⁶⁷ "Bridging the Justice Gap: Wisconsin's Unmet Legal Needs" (State Bar of Wisconsin, 2007) http://www.wisbar.org/am/template.cfm?section=bridging_the_justice_gap (last visited November 28, 2010).

⁶⁸ Anthony T. Kronman, *The Law as a Profession*, ETHICS IN PRACTICE: LAWYERS' ROLES, RESPONSIBILITIES, AND REGULATION (Deborah L. Rhode ed., 2000)

functionaries who turn passion into technical cases with limited impact on broader social conditions.⁶⁹

Yet there is another way to view how lawyers can effectively help ordinary people solve their problems. This role—that of a facilitator—requires a different view of strategic effectiveness. Lawyers can assume the role of strategic facilitators, bringing stakeholders together to seek solutions and also ensuring that all voices are heard. Strategic facilitators can initiate collaborative community programs, understand complex public-private governance structures, and develop innovative uses of technology.⁷⁰

The doctors and lawyers successfully leading the medical-legal partnerships and evidence-based medicine exemplify this new role. The best description is found in the burgeoning literature on “reformist doctors”⁷¹ The literature portrays the need for doctors to reject the autonomy and heroic posture role and instead become team facilitators and skillful users of the new tools such as collaborative treatment and utilization of electronic records.⁷²

The expertise for the facilitator role requires, first, that lawyers learn to work with a variety of stakeholders and people from a wide variety of cultures and classes, and second, that they are able to develop and present alternative strategies. There are now both high- and low-tech tools to engage with people needing information and guidance. These tools range from social networking, to lively brochures, to web-based interactive sites. The facilitator is able to work with a variety of stakeholders to present information and options to nonlawyer stakeholders in clear, concise formats. The knowledge that there are alternative ways of using the law to assist clients allows the lawyer to sort

⁶⁹ Karen H. Rothenberg, *Recalibrating The Moral Compass: Expanding “Thinking Like a Lawyer” Into “Thinking Like a Leader,”* 40 U. TOL. L. REV. 411, 414 (2009).

⁷⁰ See Robin Golden, *Collaborative as Clients: Lawyering for Effective Change*, presented at NYLS clinical workshop 2010; Allen Yu, *Enhancing Legal Aid and Access Through an Open Source Model*, 20 HARVARD JOURNAL OF LAW AND TECHNOLOGY, No. 2 (2007)

⁷¹ See Thomas H Lee, *Turning Doctors Into Leaders*, Harvard Business Review April 2010 p.51, Louise G.Trubek, *New Governance Practices in U.S. Health care Law and New Governance* ed. DeBurca and Scott (2006).

⁷² ElizabethTobin Tyler “Allies not Adversaries: Teaching Collaboration to the next Generation of Doctors and Lawyers to Address Social Inequality” University of Maryland, School of Law Journal of Health Care Law & Policy, 2008, 11 J. Health Care L. & Pol'y 249,

through many alternative strategies.⁷³ The lawyer can provide cost-effective advice and innovative assistance appropriate to meet client needs.⁷⁴

Another skill possessed by the facilitative leader is expertise in government and nongovernmental laws and rules: What are the appropriate uses of legislative enactments such as entitlement programs, or “soft law” that demand accurate information about quality from service providers?⁷⁵ Legislators and regulators often require sophisticated analysis about the results that policy options might yield.

The Georgetown Harrison Institute State Policy Clinic⁷⁶ (the Clinic) is an example of a clinic that has integrated these skills with a strategic focus by working with groups seeking to achieve policy development. The Clinic explores options at the local, state, and federal level in both public and private sectors. They organize the information for the client groups and help them develop initiatives through careful analysis and well-written documents aimed at the stakeholders.⁷⁷ The Clinic has carefully organized a series of courses that are organized to teach the roles of the collaborator, evaluator, and facilitator.⁷⁸

Another example of the new facilitator roles is found in the foreclosure work of the University of Wisconsin Law School’s Economic Justice Institute (EJI).⁷⁹ In 2009, EJI partnered with local service agencies and the UW School of Human Ecology to convene a foreclosure summit. At the summit, representatives from a variety of professions, including mediators, social workers, government representatives, university researchers, lenders’ representatives, private attorneys, and others met to analyze the foreclosure crisis in Dane County in order to develop and implement a coordinated

⁷³ Robin Golden see footnote 70.

⁷⁴ Charne, *supra*, note 60 at 1047.

⁷⁵ For a discussion of soft law see Louise Trubeck, *New Governance & Soft Law in Health Care Reform*, 3 *Indiana Health Law Rev.* 139, 149 (2006).

⁷⁶ A complete description of the clinic can be found at www.law.georgetown.edu/clinics/hi/policy.html.

⁷⁷ *Id.* Kathleen Noonan at the University of Wisconsin Law School has developed a similar clinic.

<http://law.wisc.edu/profiles/kgnoonan@wisc.edu>.

⁷⁸ *Id.* at footnote 76.

⁷⁹ The Economic Justice Institute is the home to the Law School’s four civil legal clinics: the Family Court Assistance Project, the Consumer Law Clinic, the Neighborhood Law Project and the Domestic Violence Immigration Clinic.

response to the county's foreclosure problem.⁸⁰ EJI's clinical faculty decided to involve clinic students in planning and attending the meeting. The EJI director co-facilitated the summit, reflecting the importance of this issue to both the community and the Law School. As a result of the summit, committees were formed around three goals: prevention, intervention, and neighborhood stabilization.⁸¹

The EJI faculty viewed these efforts as tools to teach their clinic students about facilitative leadership.⁸² Their educational goals included exposing the students to the wants and needs of stakeholders from a wide variety of cultures and classes; learning to understand and communicate legal regulations, proposed legislation, and government initiatives to wide-ranging audiences; learning how to engage in alternative dispute resolution; using performance-based tools; and analyzing the need for systemic changes—all necessary skills for facilitative leadership.

After the summit, EJI students worked with committee members to plan an event that would connect homeowners facing foreclosure with assistance under the new federal Home Affordable Modification Program (HAMP).⁸³ They recruited students from all of the UW's civil legal clinics to assist with workshop presentations and to provide individual assistance to homeowners in completing HAMP applications. At the event, several hundred applications for loan modifications were filed and another several hundred people who did not meet threshold eligibility criteria for loan modifications received information and counseling on other foreclosure prevention options. Similar to the Georgetown Clinic, EJI students also studied and advised local leaders on the range of initiatives pertaining to foreclosure prevention.

Through their studies, the EJI students are grappling with the data that predict foreclosure trends in their community. They are engaged in strategic planning as they consider client objectives, work with loan counselors, communicate with opposing

⁸⁰ It is interesting in the Hadfield discussion of the failures of the current legal redress system, she uses the lack of effective lawyer assistance that assisted in the housing and foreclosure disaster. See Hadfield *supra*, note 5 at 5.

⁸¹ <http://daneforeclosurehelp.org/>.

⁸² UW's Consumer Law Clinic has a lengthy track record of assisting consumers in high-cost credit and other issues affecting financial stability. It provided a natural home for an initiative to provide support to Dane County residents facing the loss of their homes to foreclosure.

⁸³ In February 2009, the Obama administration introduced a Financial Stability Plan, which included "Making Home Affordable" (also known as HAMP), a plan to stabilize the housing market and help struggling homeowners avoid foreclosure by modifying their mortgages.

counsel, and evaluate the best way to accomplish each client's goals, given the reality of a client's economic circumstances.⁸⁴ The court system, social service agencies, the legislature, and the community look to the EJI students as "leaders" in addressing a significant aspect of the foreclosure crisis. More importantly, the students are learning the tools for effective problem-solving by working with other stakeholders and community members. In turn, the credibility and image of lawyers are enhanced by these efforts, which are grounded in the very community in which they practice.⁸⁵

IV. TEACHING COMPETENCIES FOR THE NEW ROLES

Law schools can be crucial to the development of these new practices and roles for lawyers. The curriculum in law school is being reshaped. The rich clinical experience now institutionalized in so many of our law schools can provide law students with the expertise to envision and develop these practices and legitimize their relevance. Yet teaching these new tools may be a challenge for several reasons. Information about what is happening in the field is not easy to obtain. The gap between the realities of practice and what is taught in law school is not easy to overcome. Law school clinics, now the primary teachers of practice skills, are often embedded in routines that reflect earlier contexts.⁸⁶ The law school curriculum is often compartmentalized and information does not flow smoothly between different types of instruction, doctrinal areas, and course requirements.⁸⁷ Thus, the spaces where lawyer competencies are taught are also compartmentalized.⁸⁸

Live-client clinics and simulation courses, classroom teaching, law firm management topics, and career building are all part of the law school curriculum. But there are few opportunities for all aspects to be integrated so that students can understand

⁸⁴ Rothenberg, *supra*, at 416.

⁸⁵ Deborah L. Rhode, *The Professionalism Problem*, 39 Wm. & Mary L. Rev. 283, 290 (1998).

⁸⁶ Law school clinics evolved as a method of teaching students to critically evaluate the lawyer's role in the justice system and in society, while developing the necessary skills for them to be effective lawyers. Other clinics focused on an explicit social justice agenda as the foundation for clinical legal education. Meredith Ross, *A 'Systems' Approach to Clinical Legal Education*, 13 CLINICAL L. REV. 779, 781 (2007).

⁸⁷ Louise D. Trubek, *Crossing Boundaries: Legal Education & The Challenge of the "New Public Interest Law,"* W.L. Rev 455 (2005).

⁸⁸ *Id.*

the wide variety of practice models: public-private law firms, corporation and government compliance oversight, policy analysis for nonprofits, and innovative assistance programs. There are also few opportunities in the law school curriculum where the myriad of roles for lawyers can be analyzed and discussed. Finally, there are no regularized methods to reevaluate the relevance of what is being taught.⁸⁹

Re-envisioning new roles and practices is complex and daunting. The task is made more complex because of resistance and fear found within the legal profession. There is the fear that the use of nonlawyers and technology will undermine the vaunted professionalism that many view as the hallmark of being a lawyer, or that the use of interdisciplinary teams and cooperative work will reduce the autonomy that many believe is the essence of a professional.⁹⁰ The use of social science research is also controversial. Even some clinicians have doubts about taking on this challenge. They are just moving into respectability in law schools through endorsing research, and stressing their ability to provide needed skills in a difficult job market. Some clinicians remain committed to using the clinics as a vehicle for the heroic lawyer fighting injustice with traditional tools.

Yet, this may be a good time to re-examine how and what we teach. There is synergy building as a result of the collapse of the legal market, the turn toward empirical evaluation and outcome-based assessment of legal education, and the entrance of new law teachers into law schools.

Recently, law educators and leaders met to generate ideas and reach a consensus about how to make legal education more relevant. They declared that “the law school model is not sustainable,”⁹¹ noting that “the legal sector market is rapidly changing and that law schools are going to be facing some pressing challenges in the immediate future.”⁹² One particular concern was the lack of jobs for graduates. The participants committed themselves to exploring all possible options for change, among them: teaching

⁸⁹ See Carnegie Report, *supra* at 7.

⁹⁰ See generally the ABA Commission on Ethics 20/20 at http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html.

⁹¹ Consensus emerging that the law school model “is not sustainable,” National Law Journal Oct. 20 2010 http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202473648292&Consensus_emerging_that_law_school_model_is_not_sustainable&slreturn=1&hblogin=1. (In October 2010, the Harvard Law School Program on the Legal Profession hosted FutureEd 2: Making Lawyers for the 21st Century where legal scholars, practitioners and regulators from around the world addressed the evolution and future of legal education, and presented proposals for change.)

⁹² *Id.*

decisionmaking, forming partnerships between legal practitioners and legal educators, outcome assessment, and building professional collaborations.⁹³

Jeanne Charn and Jeffrey Selbin have written about the positive impact of the revitalized and pragmatic empiricism within the legal academy.⁹⁴ The move towards empiricism encourages an appreciation of the tools of evaluation and measurement and supports the incorporation of social science techniques and approaches into traditional courses. They also discuss the movement toward evidence-based knowledge throughout the professional curricula in the university.⁹⁵ The widespread interest in methodologies and evaluation encourages law schools to allocate resources to expertise beyond doctrine and traditional practice skills.

Finally, there are changing attitudes of new law teachers about what and how law students should be taught about practice. Praveen Kosuri has recently written about the generational shift in clinical teachers.⁹⁶ Kosuri describes the interest in accounting, finance, and business that led to his entry into teaching a small business clinic. He points out that founding clinicians were baby boomers who “typically were movement lawyers from the 1960s and 1970s.”⁹⁷ He proposes that the clinic agenda should be rethought to include more concepts such as collaboration and technologies. He urges that the senior clinicians who created clinics allow the newer clinicians to participate in the design for the future, examine alternatives, and move away from the fights of the past.⁹⁸

These three factors—poor job prospects, the turn toward empiricism, and the new generation of clinicians—are producing some ferment in legal education. There are two major curricular reforms that can take advantage of these factors and incorporate the new roles for lawyers envisioned here.

A. Holistic Clinics Exploring New Lawyering Models

⁹³ *Id.*

⁹⁴ *Supra*, note 48.

⁹⁵ *Id.*

⁹⁶ Praveen Kosuri, *Clinical Legal Education at a Generational Crossroads: X Marks the Spot*, 17 CLINICAL L. REV. 205, 212-13 (2010).

⁹⁷ Editors will provide pincite.

⁹⁸ *Id.* at 217-220.

The first curricular change involves “clinics as laboratories,” in which new models of lawyering can be explored and analyzed.⁹⁹ Students can learn the new skills in a space where the service delivery is part of the instruction. They can also learn about options for translating these services into jobs. For example, the experience of FCAP, discussed earlier, leads to ideas for new law school seminars and externships in which family law practice is explored in different contexts. Perhaps students could also be placed in private-public interest practices in which rural or urban lawyers are providing family law services. They could learn the techniques and the financial basis for the firms. Other students could be placed in courts where family law cases are tried and gather data for analysis. In the seminar, the students could explore these and other models for providing legal services. Thus, there is a feedback into the law school as to how to adapt and adjust teaching and experiential education to fit into the new world. This feedback is then translated into realistic career expectations in the new context.

One example that strives to incorporate collaboration, leadership, and measurement within the clinic construct is an interdisciplinary child support project, which grew out of a meeting between the directors of FCAP and the Center for Family Policy and Practice (CFFPP).¹⁰⁰ CFFPP is a nationally focused public policy organization that provides policy research, technical assistance, training, and public education in order to focus attention on the barriers faced by unmarried, low-income fathers and their families. FCAP teaches students to engage in a critical inquiry into the role of law and lawyers in redressing economic injustice and inequality, while developing and applying a practical understanding of Wisconsin’s family law processes. FCAP students have significant experience assisting low-income families with family law issues. The clinic also is engaged in social science research to evaluate how well its assisted pro se project has worked and has conducted extensive discussions with judges and other court personnel on best practices for assisting self-represented people in court proceedings. When the director of FCAP met with the director of CFFPP to discuss the CFFPP’s research, a new project emerged.

⁹⁹ Jeanne Charn and Jeffrey Selbin have written extensively about this concept. See Jeanne Charn & Jeffrey Selbin, *supra*, note 46, Charn, *supra*, note 60; Jeanne Charn & Jeffrey Selbin, *The Clinic Lab Office 3-13* (2010) (unpublished manuscript on file with the Southern California Law Review).

¹⁰⁰ See CENTER FOR FAMILY POLICY AND PRACTICE, <http://www.cffpp.org/> (last visited May 25, 2011).

The CFFPP has developed a project to work with low-income, noncustodial parents on financial literacy education and debt reduction, particularly as it pertains to child support debt. Individuals from faith-based organizations were particularly interested in this issue and began meeting to generate ideas for addressing the barriers that noncustodial parents (including those recently released from prison) faced in meeting child support obligations. These experiences enabled the two organizations to quickly develop a new joint project to help these payors. FCAP students attended meetings with representatives of a variety of organizations and identified a need to develop easy-to-read, basic leaflets explaining issues related to child support and paternity. As a result, the students created handouts explaining the law and the legal process in basic, understandable terms.

In addition, the students worked with social service agencies and nonprofits to present a series of workshops directed at groups of low-income, noncustodial parents where these concepts could be explained. The workshops were followed by individual assistance provided by clinic students in areas such as driver's license reinstatement and child support. Students helped individuals complete the necessary forms to have child support modified. They contacted the child support enforcement and obtained alternate payment plans and modification of support orders. Through the use of Wisconsin's electronic court records access program,¹⁰¹ the students could track each case to see if the parent was successful in his efforts.

The noncustodial parents expressed relief and gratitude for the opportunity to address a significant problem in their lives and have someone available to both listen and help problem-solve. This experience makes clear to law students, at a most basic level, the difference that legal assistance can make in a person's life. The complexity of the problem and the solutions have challenged the students to develop creative ways of reaching out to payors who may not otherwise seek assistance, and to find ways to use the "system" to effectively advocate for these individuals.

In all of these experiences, law students meet and work with stakeholders from a variety of contexts: child support enforcement personnel, social workers and probation officers, child support payors, court personnel, and other professionals. Through learning

¹⁰¹ <http://wcca.wicourts.gov/index.xsl>.

the applicable statutes, administrative procedures, and public policies, they study the role of child support in our society from a variety of viewpoints. They are engaged in interviewing, research, and data collection as they figure out how to assist clients and also learn about the intersection of public agency rules and procedures, court procedures, and non-profit programs. They are learning how to use low-tech tools such as simplified forms and pamphlets to assist clients in understanding legal concepts and process. They are exploring how to use technology and data sets to understand the complex child support laws and regulations. Overall, their work is interprofessional and community based.

As the project progresses, students and staff will be exploring how to develop a long-run funding plan. Options include working with community-based lawyers in private-public law firms, embedding the service in grant funding requests to foundations that support CFFPP, providing compliance assistance within child support agencies, and obtaining federal funding from the fathers' initiatives.¹⁰²

This example shows how clinical projects can integrate the competencies, knowledge, and leadership that law students need as they apply substantive law to problem-solve client and society-wide issues within a context different than that typically encountered in the clinical setting or in the law school curriculum. Their work with community members, agency personnel, and other professionals allows the students to engage in the interdisciplinary collaboration needed to effect change in their own community, while melding the traditional and nontraditional role of a lawyer in a way that provides them with the skills and knowledge transferable to a host of legal careers.

B. New Law School Courses and Degrees

The second curriculum reform is the interest of law schools in policy and methodological courses and degrees. There is a surge of courses on regulation and government in first-year curricula. These courses emphasize policy development in the

¹⁰² See Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 Harv. CR-CLL Rev. 415(1996), Louise G. Trubek, *The Worst of Times and the Best of Times: Lawyering for Poor Clients Today*, 22 Fordham Urb.L.J. 1123 (1995)

public and private sectors and the use of economic incentives and public management tools.¹⁰³

In addition, some schools are developing new degrees. For example, the University of the District of Columbia School of Law is now offering an LLM with a concentration in clinical education, social justice, and systems change that will develop knowledge about new practices throughout the country.¹⁰⁴ These curriculum initiatives also emphasize learning about what is going on around the world,¹⁰⁵ and law schools can use them to demonstrate to potential students and employers that the schools are preparing students for viable practices.

The stories of the Wisconsin clinics and research also emphasize the importance of joint degree programs and the ability to take courses in other departments. Both the Marquette and U.W. family law studies discussed above used the resources of other university departments.¹⁰⁶ The studies deploy social science statistics and rigorous data. Knowledge of how to use social science and evaluative methodologies is important expertise that students should acquire through using the resources of social science and policy departments at the university. Interdisciplinary collaboration assists both student and faculty learning and can produce new knowledge.

There are other examples of the recognition of the importance of social science research informing techniques used by lawyers work with policymakers. The Robert Wood Johnson Foundation has just funded a major grant program for public health and law research. The program provides grants to law-based programs that analyze the public health effects of legal interventions. The program has also produced extensive information on how to do social science research.¹⁰⁷ As Elizabeth Scott suggests,¹⁰⁸

¹⁰³ See *Building Good Government*, nyu.edu/magazine, Columbia course “Deals: Public Sector Problem-Solving, William Simon and Charles Sabel, Syllabus 2009, 2010 and *Reconstructing the Administrative State*.

¹⁰⁴ See <http://www.law.udc.edu/?page=LLM>.

¹⁰⁵ Cahn, *Clinical Legal Education: Creating and Becoming Agents of Change* (on file with authors).

¹⁰⁶ Note that the Mansfield article was developed at the University of Wisconsin, and the McMullen article at Marquette University Law School.

¹⁰⁷ See Burris website

¹⁰⁸ Elizabeth S. Scott & Andre Derdeyn, *Symposium: The Parent-Child Relationship And The Current Cycle Of Family Law Reform: Rethinking Joint Custody* 45 OHIO ST. L.J. 455, 498 (1984).

changes in the law will occur when policymakers are better informed about the major findings of social science research from many disciplines.¹⁰⁹

Teaching the new roles requires that law schools open their curricula to other disciplines. Law schools such as Rutgers have developed courses that provide law students with a fundamental understanding of the principles of accounting, finance, and statistics to give the context and understanding that the students will need in working with business and other clients.¹¹⁰ Other law schools are beginning to offer advanced programs in entrepreneurial law.¹¹¹

In addition, as interprofessional teams are formed, the professionals must be able to work effectively with one another. Alternative dispute resolution is an example of a course now taught in law schools that can help serve as a basis for enhancing the team approach.

Finally, teaching facilitative leadership can occur in substantive classes where the new roles become part of the method for addressing a societal problem. For example, in a recent article, Lisa Alexander examines new regulatory systems that propose monitoring, measurement, and collaboration as tools to solve problems.¹¹² These systems decentralize litigation and other traditional legal tools. Alexander expresses concern that participation by disadvantaged groups might be undercut, and that there should be an emphasis on assuring that disadvantaged groups are integrated and given the tools to effectively participate. She proposes that traditional tools such as rights advocacy be included. Alexander argues that a relational and interdisciplinary approach in teaching law is critical to prepare students to work in these facilitating endeavors.¹¹³

V. CONCLUSION

There is an urgent need for effective and efficient assistance for people dealing with legal problems in a world of shrinking resources. Innovative practices that utilize technologies, relationships, and collaborations to provide assistance demonstrate that

¹⁰⁹ *Id.* at 30.

¹¹⁰ Van Zandt, *supra*, at 1139.

¹¹¹ Ribstein, 2010 WIL. REV. at 813, citing Ashby Jones, Want to Become an Entrepreneur? Get a Degree in it, at Law School!, Wall St. J. L. Blog, <http://blogs.wsj.com/law/2010/01/22/want-to-become-an-entrepreneur-get-a-degree-in-it-at-law-school> (Jan. 22, 2010)

¹¹² Lisa Alexander, *Afterwood Part 111*, WILAW REV. 737 (2010).

¹¹³ *Id.* at.747.

lawyers are relevant and effective. These practices can inspire students as they begin legal careers that are very different from the traditional legal practice. Our law school courses and clinics can encourage experimentation based on these innovations and these experiments can flow into practice and vice versa. Building programs and expanding opportunities that engage students in nontraditional endeavors can better prepare our students, address legal needs that arise in our communities, and expand productive practice.

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