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Expanding Skills: Lawyering in the New Context

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Introduction: [To be expanded]

This article first addresses the new context in which our law graduates are entering as professionals. The article next explores the new skills required by the new context, using examples from clinics and other practices. The third section addresses how clinics can encourage and support student understanding of how to develop innovative and entrepreneurial careers.

A) The New Context

The current “great recession” is highlighting the job crisis for lawyers.¹ Many commentators note the significant reduction in big firm and corporate jobs available, and the decreasing number of court trials.² Global factors such as outsourcing are one reason. Another is the potential for technology to reshape how to provide services.

The vision of a viable legal practice is blurring. This is true not only in the corporate hemisphere but also for lawyers practicing on behalf of low and moderate-income people. This type of practice can be termed social justice lawyering, public interest lawyering, or legal services lawyering; it includes assistance on individual matters as well as addressing

¹ 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).

² David E. Van Zandt, FOUNDATIONAL COMPETENCIES: INNOVATION IN LEGAL EDUCATION, 61 Rutgers L. Rev. 127 (2008); See Marc Galanter & William Henderson, THE ELASTIC TOURNAMENT: THE SECOND TRANSFORMATION OF THE BIG LAW FIRM, 60 Stan. L. Rev. 1867 (2008) (traditional law firm no longer hire students from the best law schools and groom them to become partners, in light of moves to lateral hiring, changes in partnership structures, changing systems of associate compensation, and more evolving expectations and relationships with corporate clients). See also William Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 Geo. J. of Leg. Ethics 1249 (2009).

broader systemic issues. It also includes assistance to moderate-to-low income rural clients and urban neighborhood organizations.³

What type of practice can best assist this client base? The Supreme Court's constitutional decisions and massive entitlement programs are no longer the primary tools for redressing inequalities. Furthermore, lawyers for the disadvantaged can no longer rely on government funding or attorney fees to provide an adequate income. The "main street" practice no longer produces sufficient income to provide locally based services to middle income clients.⁴

A new framework is needed for new practices. These new practices must meaningfully assist clients as well as provide worthwhile and financially remunerative work for the lawyer. How do we create such a framework? One approach is to take a bottom-up look at innovative practices in clinics and in the community that are working. Small scale programs can provide insight into how innovators are providing services using new tools.

Reinvisioning new practices is complex and daunting. The task is even more complex because of resistance and fear expressed by various aspects of the legal profession. There is resistance within law schools to rethinking the legal practice. There is the fear that the use of non-lawyers 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 hallmark of a professional. The use of social science research is controversial. Even clinicians have doubts about taking on this challenge. They are just moving into respectability in law

³ The clients described are in the "personal plight" and "poverty" hemisphere of layers practices. See Jack Heinz articles.

⁴ As Jeanne Charne notes, "these changes are not the result of top-down policy formulation and implementation. Rather, they have emerged bottom up as local actors have responded to the inadequate reach of federal efforts." Jeanne Charne, LEGAL SERVICES FOR ALL: IS THE PROFESSION READY? 42 Loy. L.A. L. Rev. 1021, 1023 (2009). Significant change in the legal services landscape has occurred as a by-product of strategies aimed at shoring up core, government-funded legal services offices. "Emerging from the new terrain are the outlines of a multi-pronged policy agenda that focuses on results achieved for clients, welcomes a multiplicity of service providers, challenges professional hegemony over service delivery, prioritizes structural changes aimed at achieving a genuine delivery system, and recognizes the need for skillful management to assure efficiency, quality, and smart targeting of resources." *Id.*

schools through endorsing research, and stressing their ability to provide needed skills in a difficult job market. Often the clinics are committed to using the clinics as a location for the heroic lawyer fighting injustice with traditional tools.

But reinvisioning can broaden and enrich the lawyer's work. One example is rethinking family law practice. Family law is a major practice area for serving low and moderate-income families. Yet the context in which family law is practiced has changed in many aspects. First, there are many available alternative options to traditional lawyer-based services such as limited scope representation, collaborative law, and client accessible forms. Second, families confronting marital difficulties face complex contemporary problems: two parent working families is one; joint custody is another. A recent TV program explored the difficulties in divorce of interfaith couples and proposed using faith based mediators rather than the court system.⁵

Third, the effectiveness of lawyer assistance can be assessed through careful research. McMullen et.al analyzed what clients found useful in lawyer-based assistance. Her study revealed the usefulness of lawyers for two quite different tasks: complex asset analysis and psychological support.⁶ Elizabeth Scott suggests making changes in the law that will meet the "needs and challenges facing modern families."⁷ She suggests that these changes in the law will occur when policymakers are better informed about the major findings of social science research from the various disciplines.⁸

One route for law schools to take the lead and overcome the resistances is to teach new skills. The skills curriculum is now an essential aspect of legal education and clinicians are designated gatekeepers. New practices require new skills. Proposing new skills is an opportunity to overcome resistances and place clinicians in a strategic position.

⁵ PBS Religion and Ethics August 29, 2010

⁶ McMullen & Oswald, *supra*, note 22.

⁷Elizabeth S. Scott, AN INTERDISCIPLINARY APPROACH TO FAMILY LAW, Va. J. 29 (1996).

⁸ *Id.* at 30.

B) New Skills

As students face the context of fewer traditional jobs, they need to learn how to make their way in this changed world. The skills 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 best techniques for teaching traditional skills.[need cite] But traditional skills, even if taught through experimental and outcome learning, are not sufficient. Furthermore, little attention is being focused on whether these skills, even when mastered, lead to effective and cost efficient assistance for clients or to jobs for lawyers.

Additional skills are required for the emerging practices. The new skills are derived from analyzing contemporary innovative programs that provide legal assistance using unconventional techniques and tools. These programs enable ‘new’ lawyers not only to understand their clients’ legal challenges, but also the business, social, and strategic contexts in which they arise.⁹ The importance of understanding what makes for a successful practitioner is further supported by a recent study providing a listing of “non-cognitive predictors” for success as lawyers.¹⁰ The study highlights the important skills that are needed for effective practice.¹¹ Personality, interpersonal skills and situational judgment as well as entrepreneurship are important factors in professional success.¹²

We have grouped the new skills into three categories. While there are obviously other ways to conceptualize the skills, the three sets we discuss are derived from a review of the literature, analysis of Wisconsin experiences and examples from national programs. The skills are: learning to engage in a collaborative practice in a variety of contexts with colleagues from different disciplines and knowledge bases; measurement and evaluation

⁹ *Id.* At 1134.

¹⁰ 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 .

¹¹ *Id.*

¹² *Id.*

of the effectiveness of outcomes interventions; and, providing strategic leadership for diverse stakeholders in legal and governance structures.¹³

1) Collaboration: Multi-discipline and inter-professional approaches¹⁴

People's lives are not neatly compartmentalized. When legal problems arise, they typically occur in the context of a financial, medical, family, or housing crisis. Utilizing expertise from a variety of disciplines may be most effective in resolving both the underlying legal issue and related concerns. However, historically, distinct services addressed distinct 'legal problems' or 'medical problems' or 'financial problems,' and advocates rarely joined forces to provide comprehensive assistance.¹⁵ When problems are addressed in such a narrow fashion, the possible solutions identified may be limited. In addition, clients who live in the same community and share common interests are separated from one another and less likely to generate ideas for addressing issues affecting the entire community.¹⁶ Finally, in an era of increasing specialization, it has become increasingly unlikely that any single lawyer, or often any single law firm, can effectively meet all their clients' needs.¹⁷

Thus, collaboration across disciplines and across curriculum developed as a useful tool for serving clients and addressing major social and political issues.¹⁸ The Carnegie Report recognized their worth in recommending that law school faculty work "across

¹³ Van Zant, *supra*, Karen Rothenberg, *Recalibrating The Moral Compass: Expanding "Thinking Like a Lawyer" Into "Thinking Like a Leader,"* 40 U.Tol.L. Rev. 411 (2009).

¹⁴ 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, 15 n.2 (2004).

¹⁵ Stacey L Brustin, LEGAL SERVICES PROVISION THROUGH MULTIDISCIPLINARY PRACTICE-- ENCOURAGING HOLISTIC ADVOCACY WHILE PROTECTING ETHICAL INTERESTS, 73 U. Colo. L. Rev. 787, 789 (2002).

¹⁶ *Id.*

¹⁷ Deborah Rhode, ACCESS TO JUSTICE: CONNECTING PRINCIPLES TO PRACTICE, 17 GEO. J. LEGAL ETHICS 369, 410 (2004).

¹⁸ Louise Trubek, CROSSING BOUNDARIES" LEGAL EDUCATION AND THE CHALLENGE OF THE "NEW PUBLIC INTEREST LAW," WI Law Rev. 463-65 (2005).

curriculum” and facilitate programming where students and faculty could link together disparate kinds of knowledge and skills.¹⁹

Some clinics are historically multidisciplinary such as the Interdisciplinary Center for Family and Child Advocacy at Fordham University School of Law²⁰ or The Clinic for Women, Children, & Social Justice at the University of Buffalo School of Law.²¹ Renewed interest has emerged for community legal clinics.²² There is an Interdisciplinary Committee of the Clinical Section that brings together clinicians who work with other disciplines. There are also outstanding examples of successful interdisciplinary practices in many sectors. These clinics and practices however, are low-visibility and have gained little traction as alternative modes for service. In addition, ethical rules present obstacles that restrict multi-professional practices and inconsistent ethical codes apply within different professions.²³

Recently new energy has emerged for interdisciplinary collaborations where professionals work together at non-traditional sites. The best known and hottest example of moving the lawyers out of the firm 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-income supports for food insecure families, utility shut-off protection during cold winter months, and mold removal from the homes of asthmatics. “Many of the problems faced by the poor are in fact “justiciable” problems – that is, they are problems which could, if barriers to using the legal system were addressed, be resolved through litigation or mediation.”²⁴ Medical-legal partnerships can increase

¹⁹ 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.

²⁰ <http://law.fordham.edu/interdisciplinary-center-family-child-advocacy/interdisciplinary.htm>

²¹ <http://law.buffalo.edu/familyviolence/>.

²² Karen Tokarz, Nancy L. Cook, Susan Brooks, Brenda Bratton Blom, CONVERSATIONS ON “COMMUNITY LAWYERING”: THE NEWEST (OLDEST) WAVE IN CLINICAL LEGAL EDUCATION, 28 Wash. U. J.L. & Pol’y 359, 379 -385 (2008)

²³ See Louise Trubek Social Justice Collaboratives; Susan Poser, MAIN STREET MULTIDISCIPLINARY PRACTICE FIRMS: LABORATORIES FOR THE FUTURE, 37 U. Mich. J.L. Reform 95, 104-07 (2003).

²⁴ Diana Hernandez, LITIGATING HEALTH RISKS: USING THE LAW TO MEDIATE THE RELATIONSHIP BETWEEN POOR HOUSING AND POOR HEALTH,” available at www.allacademic.com/meta/304186_index.html.

access to legal services for low-income individuals and thereby reduce the burden of social conditions that affect health.²⁵

Currently there are 180 of these partnerships that are springing up in a wide variety of medical locations ranging from hospitals to community health centers.²⁶ The lawyers who work in these medical sites come from legal aid agencies, law schools, and law firms.²⁷ These partnerships serve different client groups: “children, the elderly, patients with cancer, pregnant women, the formerly incarcerated reentry community and other vulnerable populations.”²⁸

Medical-legal partnerships consistently reflect three core components.²⁹ “First, lawyers and physicians partner on-site in health care settings to ensure timely access to legal assistance when needed. Second, to detect legal needs, lawyers and doctors train all health care staff, including medical students, residents, nurses, social workers, and practicing physicians, how to screen for legal needs. Third, lawyers and doctors may collaborate to effect change to social policies and laws that result in system-wide solutions to improve health.”³⁰ Thus, lawyers and doctors (and other healthcare providers), in partnership together, make a powerful team to effectively improve peoples’ lives.

The University of Wisconsin’s Center For Patient Partnerships³¹ also embodies this change in focus from a traditional advocacy model to one that stresses the importance of working with and leading teams whose members may speak a different language. The

²⁵ 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)

²⁶ Website www.medical-legal-partnership.org May 18,2010

²⁷ Website www.medical-legal-partnership.org/about-us/history May 18, 2010

²⁸ *ibid*

²⁹ Edward Paul et al., *Medical – Legal Partnerships: Addressing Competency Needs Through Lawyers*, J. Graduate Med. Educ. 304, 305 (2009).

³⁰ *Id.*

³¹ The Center for Patient Partnerships is an advocacy clinic for patient choice and preferences with health care providers, insurers, and other parties. The Center trains both graduate and law students and is affiliated with the University of Wisconsin Schools of Law, Medicine & Public Health, Nursing, and Pharmacy. <http://www.patientpartnerships.org/Philosophy.php>.

Center provides a client experience in a clinic setting for law students and student's medical school, nursing, pharmacy, public health, and other medical professions. The students study at the Center through designated field placements, clerkships, or fellowships. The curriculum is a transdisciplinary experience³² - where students work collaboratively with students and staff from diverse professional backgrounds - law, medicine, public health, social work, pharmacy, public affairs, science, etc. - to offer holistic client-centered advocacy.

Working with professionals from multiple different perspectives and professional training allows students to provide more comprehensive advocacy and problem-solving support 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, offered to patients with life-threatening or serious chronic illnesses, result in improved medical care, health outcomes and quality of life.

Examples range from assisting a patient recently diagnosed with stomach cancer by researching anti-nausea antidotes for treating side effects from chemotherapy and cutting through red tape so that he could retire early, to researching various treatment modalities in order to counsel a patient about her treatment risks and benefits, to negotiating as well as how a treatment regimen would affect the patient's life and her family. Center advocates offer reassurance and support that is often unavailable from other sources but critically important to a patient with a life-threatening illness. These types of services reflect the Center's mission to educate patients, their families, and the professionals who are providing medical care.

At the same time, the students learn to appreciate and understand of the importance of different knowledge. They learn to communicate on a variety of levels and utilize

³² M. 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, E. French, M. Gilkey eds.. Boston. (In interdisciplinary phraseology, the Center's model is described as "parallel socialization." See Trevillion S. & Bedford L. (2003) Utopianism and pragmatism in interprofessional education. *Social Work Education* 22, 215-227, p. 219.)

different mediums, from written communication to insurance companies and doctors, to informing 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 where collaboration and teamwork bring richness and creativity to problem-solving.³³ Through this collaboration, the role of the social determinants of health enables the legal work to fit into a framework that can produce results. It also requires an understanding of how to work with other professionals in a respectful and collaborative place.³⁴

The medical-legal partnerships and the Center for Patient Partnerships both challenge key aspects of the canonical public interest and legal services vision. There are four aspects that differ from the traditional way lawyering is envisioned. First the partnership bills itself as using law for "preventive rather than band aid." Many clinics and legal service offices do include education of clients as an element of their work. However, it 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. For example, eliminating mold in homes relieves the symptoms of asthma. Lawyers can use the tools of bringing actions for housing code violations and urging stricter regulation of public housing to curb the prevalence of asthma. These techniques can alleviate current illness and prevent further illness. The lawyer can help the patient access housing, medical or worker's compensation benefits, generating income for both the patient and the medical provider through increased health insurance payments. The lawyer becomes a part of the support system for the client in manner very different from the traditional lawyer role of intervening when the client comes to the lawyer's office for redress.

Second, these programs involve the lawyer as partner rather than autonomous savior. The Center for Patient Partnerships (CPP), by teaching students from health disciplines

³³ *Id.*

³⁴ Trubek, Social Justice Collaboratives, Poser Main St. Multi Disciplinary Practices for a discussion of middle income practices.

together with law students in a multi-professional seminar and clinic, emphasizes the interdependent roles. It is notable that the law students learn from this experience not only how to work with others, but also the need for the specialized knowledge that lawyers bring. At Wisconsin, a large proportion of the students who enroll on the advanced health law courses were inspired by the first year summer experience in the CPP clinic. The lawyer's autonomy and independence that some critics fear is impaired by the collaborative model³⁵ 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.³⁶ Early exposure to the partnership model can create different view of the role of the lawyer.

Third, the medical-legal program commits to documenting outcomes from their interventions. The emphasis is on gathering data and using the data to determine what is working and what is not. The medical-legal programs are particularly interested in documentation since they are often partnered with medical facilities and professionals. The medical world is now emphasizing evidence-based treatment and extensive systems are now pursuing rigorous comparisons for quality rather than relying on the expertise of the medical professional. Comparative performance based tables are now publicly disseminated.³⁷ Traditionally the expertise of the lawyer was considered the guarantee of quality. In recent years, there is a critique of this view, especially in some legal services programs and proposals have been advanced to evaluate the quality and outcomes.³⁸ The partnerships give some guidance on how to do it and perhaps a competitive push. Fourth the partnerships use a broad fundraising model. They search for private sources as well as law school clinical funds or pro bono contributions. CPP in particular relies on a

³⁵ 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 *Forham L. Rev.* 83, 135 (2000).

³⁶ Louise Trubek, "CROSSING BOUNDARIES" LEGAL EDUCATION AND THE CHALLENGE OF THE "NEW PUBLIC INTEREST LAW," 2005 *WILR* 455, 472.

³⁷ 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. *N. Eng. J. Med.* 360(5):491-9 (2009)

³⁸ Jeanne Charn articles, Alan Paterson

very successful auction of artistically decorated shoes that is widely admired in the community. The acceptance of an entrepreneurial model for fundraising distinguishes these partnerships from the traditional legal services models where there is a commitment to full law school funding for clinics and a constitutional right to lawyers funded by the government.³⁹

2) Measurement: 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.⁴⁰ Lawyers lag behind other professions, particularly the health professions.⁴¹ One reason for this lag is the resistance to numbers and quantifying identified by Dean Van Zandt as a “resistance to numeracy.”⁴² Another aspect is the belief that practicing law is an art rather than a science and cannot be evaluated. In addition, until recently much of the work of the profession was hard to find because of attorney–client privilege and the difficulty of using paper records. The traditional lawyer resistance to using data to analyze effectiveness is gradually eroding however. In addition, 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.⁴³

³⁹ 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 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).

⁴⁰ We are discussing the effectiveness of the value of the lawyer work, not how well student achieve outcomes in learning skills. See Carnegie report that only analyzes learning by students.

⁴¹ Jeanne Charn & Jeffrey Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, *Manage. Informat. Exchange J.*, Winter 2007, at 28.

⁴² However, “[t]he ability of lawyers to understand accounting and basic finance principles, interpret financial statements, and evaluate and apply statistical analyses is important in almost every organization and sector, and certainly in both transactional and litigation work.” Van Zandt, 61 *RULR* at 1138 (2009).

⁴³ Jeanne Charn, *LEGAL SERVICES FOR ALL: IS THE PROFESSION READY?* 42 *Loy. L.A. L. Rev.* 1021, 1048 (2000).

The availability of electronic records, quick computing, and the rise of alternative techniques for providing assistance are beginning to take hold.⁴⁴ One area where this is evident is family law. Alternatives to full-scale representation are now common, ranging from pro se and self-help assistance programs based in courts or utilizing web-based standardized forms, to unbundled legal assistance. As the alternatives are developed and disseminated, and the tools for evaluation are at hand, measurement and assessment is possible. Students benefit from understanding how to measure effectiveness, evaluating their service, and comparing alternative ways of providing services.

One example is the Family Court Assistance Project, a clinic at the University of Wisconsin Law School. The clinic provides assistance to self-represented litigants and is part of a larger set of programs for self-represented litigants throughout state. Marsha Mansfield, the clinic's Director, has built in an evaluation component to evaluate the students' services, thereby enhancing the reflective component of the clinical program, as well as a means of collecting data to actually measure the effectiveness of the assistance provided. She also worked with a law student to study the prevalence of pro se programs around the state. The results were shared with the bar and reinforced the understanding by the bar that these programs could be effective and coordinate with traditional practice. The Mansfield study of pro se programs in Wisconsin demonstrates positive impacts in a statewide study.⁴⁵

A second study of self-represented litigants in Waukesha County, Wisconsin compared case files of divorces where lawyers appeared and those where the litigants were self-represented. The study concluded that the data *“suggests 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*

⁴⁴ See Amy Bach, “Justice by the Numbers.” The op-ed piece proposes a “justice index” for courts and proposes that the information be posted publically based on local data gathered under national standards. <http://www.nytimes.com/2010/08/11/opinion/11bach.html> (last visited August 28, 2010).

⁴⁵ Marsha Mansfield, *Keeping the Promise of Equal Justice*, 83 Wisconsin Lawyer 4 (April, 2010).

repercussions for lawyer training, as well as for the construction of user-friendly family court systems.”⁴⁶

These findings can form the basis of changes both in the delivery model for family law (i.e., to a more business oriented approach), as well as emphasizing the importance of psychological or counseling aspects of the attorney-client relationship⁴⁷ envisioned by the interdisciplinary family law clinics developed at the Indiana University Law School.⁴⁸

A third example demonstrating the way in which social science and law can intersect to make a significant contribution to the community is illustrated by the Wisconsin Bar’s Legal Needs Study, conducted in 2006. Students from the University of Wisconsin’s La Follette School of Public Affairs⁴⁹, worked with Professor Mansfield and members of the State Bar’s 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 which were incorporated in the published report and its recommendations.⁵⁰

⁴⁶ 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.

⁴⁷ “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).

⁴⁸ Amy Applegate, Brian D’Onofrio and Amy Holtzworth-Munroe, TRAINING AND TRANSFORMING STUDENTS THROUGH INTERDISCIPLINARY EDUCATION: THE INTERSECTION OF LAW AND PSYCHOLOGY. 47 Family Court Review (2009).

⁴⁹ 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 social sciences. The School extends the practice of the Wisconsin Idea across the state and around the world through research and outreach on issues that include the design and management of social welfare programs, international currency and trade, analysis of the effects of welfare reform, determinants of health and health care reform, environmental regulation, public management and finance, Social Security, and science and technology.

⁵⁰ “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 August 28, 2010).

The studies demonstrate two important reasons why measurement is important. First, the studies deploy social science statistics and rigorous data using the resources of students and the social science departments at the university. The interdisciplinary collaboration assists both student and faculty learning, and creates new knowledge. Second, the findings can be used in discussions with the bar and law schools about the future of lawyers and how to train lawyers to play the new roles. The studies also highlight how comparative effectiveness research can be used to analyze the strengths and weakness of various techniques of providing legal services.

The ability to conduct these studies also emphasizes the importance of joint degree programs and the ability to take courses in other departments. Both studies used the resources of other university departments.⁵¹ There are other current examples of the recognition of the importance of social science research and techniques in other fields. 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 public health effects of legal interventions. The program is producing extensive information on how to do social science research.⁵²

Furthermore, the use of law in finance, the growth of in-house counsel, lawyers' increasing roles within businesses, and the combination of law with other types of expertise, all help create a demand for lawyers who can function within business rather than just delivering technical legal advice from the outside.⁵³ In addition, the onslaught of new legal products and the increasing use of technology in law practice require technical training that enables lawyers to do more than just litigate and give individualized advice.⁵⁴

Law schools such as Rutgers, have implemented courses to provide law students with a fundamental understanding of the principles of accounting, finance, and statistics to give

⁵¹ Note that the Mansfield paper was developed at the University of Wisconsin and the McMullen paper at Marquette University Law School.

⁵² See Burris website

⁵³ Larry E. Ribstein, THE DEATH OF BIG LAW, 2010 Wis. L. Rev. 749, 813.

⁵⁴ *Id.*

the context and understanding that they will need in working with business and other clients.⁵⁵ Other law schools are beginning to offer advanced programs in entrepreneurial law.⁵⁶

3) Strategic leadership for clients and client groups.

There has been a recent raft of criticism about the loss of the statesman or leadership role for lawyers. Much of this literature focuses on the loss of the elite role in public affairs or as counsel for corporate management.⁵⁷ There is a related critique of lawyers working for low and moderate income clients. They 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 who turn passion into technical cases with limited impact on broader social conditions.⁵⁸ So the role of the lawyer is viewed as no longer the broad visionary thinker but rather the technical naysayer with limited influence.

Yet there is another way to view leadership in the current context. This leadership role requires a different view of strategic effectiveness. The doctors that are leading in the success of the medical-legal partnerships and evidence-based medicine are an example of new leadership. The best description of this new role is found in the burgeoning literature on “reformist doctors”⁵⁹ 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 skills and tools. One example is the recent story of the discovery of bio markers for Alzheimer’s disease where under the leadership of several doctors the National Institute of health (NIH) mobilized a large set of actors and with the funding

⁵⁵ Van Zandt, *supra*, at 1139.

⁵⁶ Ribstein, 2010 *Wis. L. 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)

⁵⁷ Kronman book

⁵⁸ 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).

⁵⁹ see Lee, *Turning Doctors Into Leaders*, Harvard Business Review, Trubek, Health care and New Governance in the US DeBurca and Scott.

from the government and pharmaceutical companies, a gigantic sharing of data from universities, companies and government occurred and breakthroughs in knowledge are achieved.⁶⁰ The doctors combined the large data sets that were occurring in isolation and created a collaborative network of researchers and funders. They also put aside immediate interest in patents for the long range goal of achieving breakthroughs.

Lawyers can become strategic leaders. They can initiate collaborative community programs, understand complex public-private governance structures and develop innovative uses of technology.⁶¹ The lawyers that initiated medical-legal programs for example, exemplify the traits of collaboration across disciplines, understanding the uses of data and technology, and seeking a broad set to stakeholders.

Understanding how to be a leader is an important skill for law students. As with the medical-legal partnerships, law students can be exposed to teaching tools and approaches in a variety of legal settings. These leadership skills can be grouped into three sets: learning to work with a variety of stakeholders and people from a wide variety of cultures and classes including using performance-based tools; understanding how to communicate; and utilizing hard law and soft law approaches to obtain systemic changes.

Once inter-professional teams are formed the professionals must be able to work effectively with one another. The alternative dispute resolution (ADR) literature and courses are examples of courses now taught in law schools that can help serve as a basis for emulating the team approach. The process solidifies through the formation of inter-professional clinics.

Allied with interprofessional coordination is a revamped understanding of how to communicate. There are now high tech and low-tech tools to engage with people needing information and guidance. These range from social networking to lively brochures, to web-based interactive sites. The knowledge that there are alternative ways of using the

⁶⁰ NYTimes August 13,2010 “Rare Sharing of Data Led to Results on Alzheimer’s”

⁶¹ See articles on community lawyering and the web commons.

law to assist clients allows the lawyer to sort through many alternative strategies.⁶² Additionally, the lawyer can provide cost-effective advice and assistance appropriate to meet client needs.⁶³

Another aspect of communication is utilizing expertise in government and non-governmental laws and rules: What are the appropriate uses of legislative enactments such as entitlement programs or soft law such as demanding accurate information on quality from providers of services. Legislators and regulators often require sophisticated analysis about what the results might be of various options for policy. The “policy lawyer” is able to work with a variety of stakeholders and offer various options and present to non-lawyer stakeholders this information in clear concise formats.⁶⁴ The Georgetown Harrison Center Policy Clinic is an example of a clinic that has integrated these communication skills with a strategic focus by working with groups seeking to achieve policy development. They explore 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 initiative through careful analysis and well-written documents aimed at the stakeholders.⁶⁵ The clinic has carefully organized a series of courses that are organized to teach this set of skills.

An example of the new leadership is found in the foreclosure work of the U.W. Law School’s Economic Justice Institute⁶⁶ (EJI). In 2009, EJI partnered with local service agencies and the U.W. Department of Human Ecology to convene a foreclosure summit where representatives from a variety of professions, including mediators, social workers, government representatives, university researchers, private attorneys and others met to analyze the foreclosure crisis in order to develop and implement a coordinated response

⁶² article on community effects on foreclosures.

⁶³ Charne, 42 Loy. L.A. L. Rev. at 1047.

⁶⁴ See Georgetown University advocacy clinic

⁶⁵ See Georgetown website. Kathleen Noonan at the University of Wisconsin law School is developing a similar clinic.

⁶⁶ The Economic Justice Institute is the home to the Law School’s four civil legal clinics: The Family Court Assistance Project, The Consumer Clinic, The Neighborhood Law Project and The Domestic Violence Immigration Clinic.

to the current foreclosure problem in Dane County. EJI staff decided to involve clinic students in planning and attending the meeting.

As a result of the meeting, committees were formed around three goals: prevention, intervention, and neighborhood stabilization. The EJI staff saw these efforts as teaching tools for the clinic students.⁶⁷ The educational goals included exposing the students to the wants and needs of stakeholders and people from a wide variety of cultures and classes, learning to understand and communicate legal regulations and government initiatives to wide-ranging audiences, learning how to engaged in alternate dispute resolution, utilizing performance-based tools, and analyzing the need for systemic changes.

The students worked with various committee members to plan an event, connecting homeowners facing foreclosure with assistance under the new federal “Making Home Affordable” Modification Program⁶⁸. They recruited colleagues from all of the U.W.’s civil legal clinics to assist with workshop presentations and to provide individual assistance to homeowners in completing HAMP applications. Several hundred applications for loan modifications were filed and another several hundred people, who didn't meet threshold eligibility criteria for loan modifications, received information and counseling on other foreclosure prevention options.

The students continued their participation in the “Dane County Foreclosure Prevention Task Force,” through a mediation program that was developed with the assistance of the Intervention Committee. Students are now meeting with homeowners who are in the foreclosure process to assist them with preparing for a mediation session. At the homeowner’s request, the students will attend a mediation session as the homeowner’s advocate. They also are staffing an “Answer Clinic,” – partnering with volunteer lawyers to help self-represented litigants prepare responses to foreclosure complaints and

⁶⁷ The U.W.’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

⁶⁸ 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.

providing information about the court process as well as alternatives available to homeowners involved in the foreclosure process. They have developed brochures to assist homeowners with various aspects of the foreclosure process.

Through their studies, the students are grappling with the social science research as it predicts foreclosure trends in their community. They are engaged in strategic planning as they consider client objectives, work with loan counselors, communicate with opposing counsel and evaluate the best way to accomplish the client's goals, given the reality of a client's economic circumstances.⁶⁹ The court system, social service agencies, and the community look them at as 'leaders' in addressing a significant aspect of the foreclosure crisis. More importantly, they 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 grounded in the very community in which they practice.⁷⁰

C) Viable practices: Developing models and knowledge about how to “do good and do well”

Law schools compartmentalize clinics; stand up teaching, law firm management, and career building. There are few opportunities for all aspects to be integrated so that students can understand the variety of practice models. There are a wide variety of models: public/private law firms, corporations and government compliance oversight, policy analysis for non-profits, and innovative assistance programs. Clinics can serve as laboratories where various models can be explored and analyzed.⁷¹ Students can learn the skills in a space where the delivery to the client is part of the instruction. They can also learn about options to translate these services into jobs. Adapting family law practice discussed earlier also leads to ideas on how law schools can develop seminars and externships where family law practice is explored in different contexts. Some students could be placed in private/public interest practices where rural or urban lawyers are

⁶⁹ Rothenberg, *supra*, at 416.

⁷⁰ Deborah L. Rhode, *The Professionalism Problem*, 39 Wm. & Mary L. Rev. 283, 290 (1998).

⁷¹ See Selbin

providing family law services. They could learn the techniques and the financial basis for the firms. In the seminar, the students could explore the various models for providing legal services. Other students could be placed at courts where family law cases are tried and gather data for analysis. Thus there is a feedback into the law school as to how to adapt and adjust teaching and experiential training to fit into the new world. This feedback is translated into realistic expectations for lawyer jobs in assisting families.

One example is the The Interdisciplinary Child Support Project grew out of a meeting between the Director of a Family Court Assistance Project (FCAP) at the University of Wisconsin Law School and the Director of the Center for Family Policy and Practice (CFPP), a nationally-focused public policy organization conducting 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 is a clinical program designed to train 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. The students work under the Director Marsha Mansfield's close supervision, learning the difference between information and advice, and applying their skills and knowledge in a variety of settings, including a courthouse clinic and through individual representation. The students also learn to critically evaluate the various responses of the justice system to the needs of pro se litigants.

When the director of FCAP met with the CFPP, a new project emerged. FCAP had significant experience using students to assist with low-income families with family issues. The clinic also utilized social science research to evaluate how well its assisted pro se project worked and conducted extensive discussions with judges and other court personnel on best practices for assisting self-represented people in court proceedings. This experience enabled the staff of the two organizations to quickly develop a new joint project.

The CFPP developed a project to work with low-income noncustodial parents on financial literacy training and debt reduction particularly as it pertained 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 (including those recently released from prison) faced in meeting child support obligations. Through FCAP's involvement, 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. They created handouts explaining the law and the legal process in basic, understandable terms.

In addition, the students worked with Madison Urban Ministry and Madison Urban League, as well as other social service agencies and non-profits, to present a series of workshops directed to low-income non-custodial parents where these concepts could be explained to groups of similarly situated individuals. They were followed by individual assistance provided by clinic students in areas of driver's license reinstatement, child support modification and related topics. Students helped these 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. The students, through the use of the state's electronic court records access program⁷² could follow the case to see if the parent was successful in his efforts. Significantly, non-custodial parents expressed relief and gratitude for the opportunity to present a significant problem in their lives and have someone available to both listen and problem-solve a solution. This 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 has challenged the students to develop creative ways of reaching out to payors who may not otherwise seek assistance as well as in utilizing the 'system' to effectively advocate for these individuals.

⁷² <http://wcca.wicourts.gov/index.xsl>. This website (WCCA) provides access to certain public court filings in Wisconsin's circuit courts.

Students are developing a workshop based research project with the CFPP to better understand the child support issues faced by payors in rural, as compared to metropolitan locations, so that the complex issues underlying child support delinquencies can be better understood and more successful outreach efforts could be initiated. In working on these projects the students encounter 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 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.

This project requires the law students to figure out how to assist clients. They 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 also exploring how to use technology and data sets to understand the complex child support laws and regulations. They are working with a broad set of stakeholders and non-profit agencies so that their work is interprofessional and community based.

The staff at CFPP is very interested in exploring how this work can be embedded in a permanent system. As the project progresses, the 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 the grant funding from the foundations that support CFPP, compliance assistance placed in child-support agencies and federal funding from the fathers' initiatives.⁷³

Conclusion

To be written

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⁷³ See Trubek, Embedding Public Interest Practice, Harvard CRCL, Trubek, The best of times, the worst of times

