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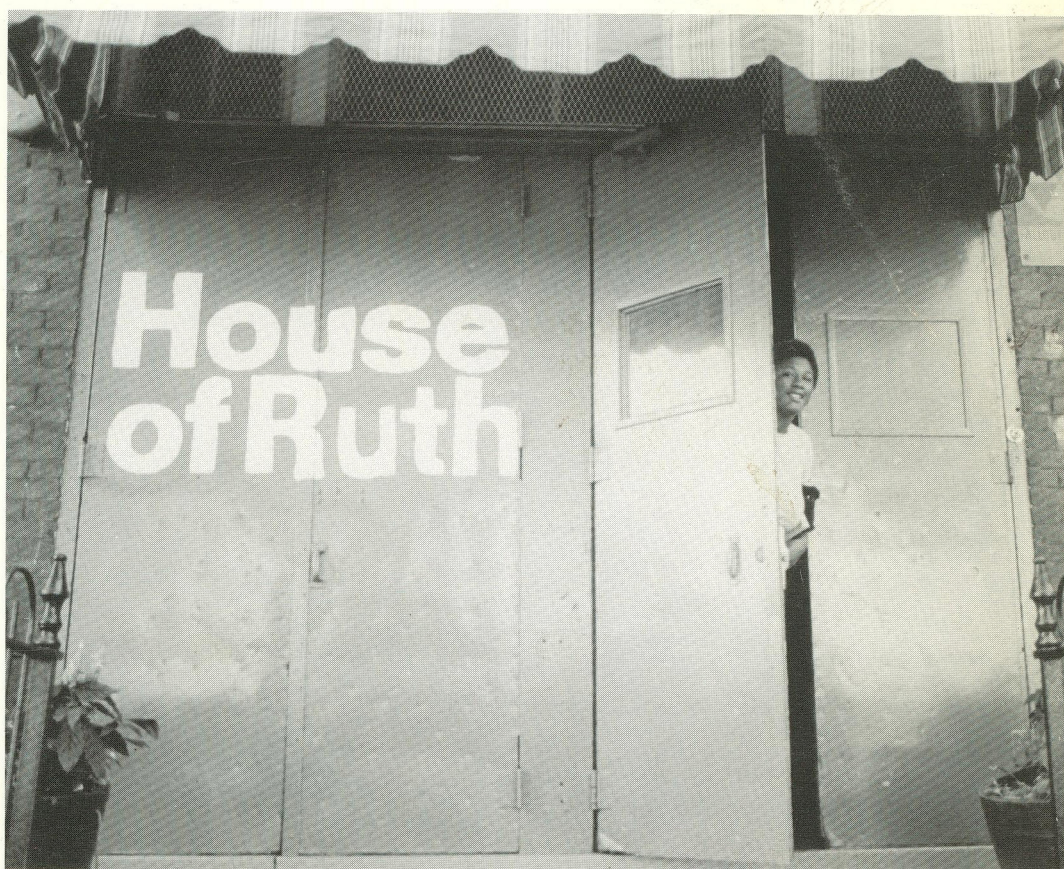
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Rethinking the Full-Service Legal Representational Model: A Maryland Experiment

by Michael Millemann, Nathalie Gilfrich, and Richard Granat

[Editor's note: Advocates across the country remain committed to continuing to provide legal services to the poor. Advocates are designing new and effective ways to deliver quality legal services to low-income clients. Their efforts are highlighted in this periodic column on the redesign of legal services delivery.]

I. Introduction

In this article we describe an experimental project in which law students provide legal information and advice to otherwise unrepresented parties in family law cases.¹ We argue that lawyers generally, and legal services programs particularly, should make more use of such limited representational models.² We identify some problems produced by limited representation, as well as possible solutions, and propose some related access-to-justice law reform measures.

We offer an assisted pro se project as but one part of an appropriate continuum of legal services. That continuum should include several different legal services levels, incrementally more intensive, between the information-only and full-service

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¹ We thank the 40 or so clinical law students who, to date, have provided legal information and advice to over 6,000 unrepresented people in Maryland. Judge Alan M. Wilner, chief judge, Court of Special Appeals of Maryland, was the initial proponent of the project. We thank him and the judges, masters, administrators, and clerks in Anne Arundel County, Baltimore City, and Montgomery County for their essential support. We also appreciate the many contributions of Frank Broccolina, deputy state court administrator, Maryland Administrative Office of the Courts; Robert Rhudy, executive director of the Maryland Legal Services Corporation; and Herbert Garten, president of the Maryland Legal Services Corporation and chair of the Maryland Moderate Income Access to Justice Advisory Task Force. Esther Lardent, Sara-Ann Determan, and Will Hornsby, Jr., offered us many good ideas and much encouragement. We also thank Dr. Raymond Paternoster, who evaluated the project (see note 12 *infra*); Rosemarie Loverde, who helped administer the project and who typed this article; and the other participants in this project, some of whom we recognize in note 10 *infra*. The important role of law students is described in Joan L. O'Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLIN. L. REV. 109, 154-55 (1996).

² Some call such forms of limited legal help "discrete task" or "unbundled" legal services. See generally Forrest S. Mosten, *Unbundling of Legal Services and the Family Lawyer*, 28 FAM. L.Q. 421, 426 (1994) (citing ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., RESPONDING TO THE NEEDS OF THE SELF-REPRESENTED DIVORCE LITIGANT (1994)). We use these two terms and the term "limited representation" interchangeably in this article. See text accompanying note 9 *infra* for the American Bar Association (ABA) definition of "discrete-task" representation.

poles.³ Many clients need only limited representation fairly to resolve legal problems. By playing a larger role in resolving the problem, the client also may fully exercise her right to make basic case judgments and learn to avoid future legal problems.⁴

The expanded use of limited representational models also would respond in part to the Congressional dismemberment of the nation's legal services programs. The need is clear. Without some legal assistance many litigants forfeit their rights. Some forfeit rights even with legal help when the level of assistance is inadequate. Studies of pro se litigants in domestic cases indicate that they "did not [as frequently as represented parties] pursue temporary orders . . . [and] were less likely to receive marital counseling, dispute resolution services, request spousal maintenance or to get tax advice than represented litigants . . . [and] were also less likely to pursue post-decree modification."⁵

Many clients need only limited representation to resolve legal problems fairly.

The people who will receive either limited representation or none at all include those who are eligible for nationally funded legal services and those who are indigent but ineligible because they are disfavored litigants or have disfavored claims.⁶ Indeed, most people—whether classified as poor, working poor, or moderate income—cannot afford full-service representation in anything more than summary litigation, although many could pay for more limited legal services that would be useful to them.⁷

The pro se phenomenon was a growing justice problem before the most recent restrictions on, and reductions in, Legal Services Corporation funding.

In 1980, 76 percent of [domestic] cases involved at least one lawyer, generally two; leaving both parties unrepresented in 24 percent of the cases. In 1985 both parties were unrepresented in 47 percent of the cases. In less

³ Many legal services programs have provided some forms of limited legal services to clients for years, e.g., limited advice and information. Some also have developed assisted pro se projects. The Maryland Legal Aid Bureau's Pro Se Divorce Project in Baltimore City was one of the earliest. See Jane Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 B.Y.U. J. PUB. L. 123, 140 (1993). It "carefully screens all potential clients to ensure that their divorces remain uncontested, requires all clients to attend instructional classes, and provides a paralegal who works through the pleadings and attends the hearing." Analyzing the assisted pro se programs in 14 states, Murphy concludes: "At one extreme are programs that provide very little structure or monitoring of pro se litigants; they provide sample forms and cursory explanations to any interested individuals. Other programs appear far more organized and formal." *Id.* at 140.

⁴ See Mosten, *supra* note 2, at 424–27, 448–49. Mosten argues that giving limited representational options to clients improves the public image of lawyers (by offering a flexible and accommodating legal services model that empowers clients); restores to private lawyers a competitive advantage over legal technicians, nonlawyer advocates, and commercially available self-help manuals; and contributes to the efficient and fair administration of justice by better preparing pro se litigants for the adversarial process. *See id.* at 426.

⁵ Robert B. Yegge, *Divorce Litigants Without Lawyers*, 28 FAM. L.Q. 407, 410 (1994) (citing ABA STANDING COMM. ON THE DELIVERY OF LEGAL SERVS., RESPONDING TO THE NEEDS OF THE SELF REPRESENTED DIVORCE LITIGANT (1994)).

⁶ See Legal Services Corporation Act, 42 U.S.C. §§ 2996 *et seq.* See also Pub. L. No. 104-34, 110 Stat. 1321 (1996) (restrictions on fiscal year 1996 appropriations), Pub. L. No. 104-208, §§ 501 *et seq.*, 110 Stat. 3009 (1996) (continued in fiscal year 1997 appropriation).

⁷ See generally AMERICAN BAR ASS'N CONSORTIUM ON LEGAL SERVICES AND THE PUBLIC, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS—MAJOR FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY (1994) [hereinafter ABA NATIONAL LEGAL NEEDS STUDY]; MASON-DIXON POLITICAL/MEDIA RESEARCH, INC., MARYLAND LEGAL NEEDS ASSESSMENT SURVEY (1995) [hereinafter MARYLAND LEGAL NEEDS STUDY]. Both studies ranked domestic law as one of the top areas of unmet legal need for moderate-income persons. *See id.*

than 6 years, the number of families handling their entire divorce without any lawyers doubled!⁸

Rigid adherence to the full-service representational model, as well as funding restrictions, is a source of the access-to-justice problem. We accept that the traditional model *is* the *right* one in many matters. Lawyers and clients justifiably value the sustained professional relationships, which have many of the qualities of friendship, that help clients surmount legal crises. Many legal problems are complex and enduring, as are the adjudication processes.

There are, however, at least as many times when the lawyer's imposition of the full-service model on clients who do not need it and cannot afford it legally disenfranchise them as directly as Congress has done. We present below profiles of such clients and their cases. In these cases the all-or-nothing full-service model is a relic, which has never been a reality for most people and which we cannot equitably maintain for most legal matters today.

Because "discrete-task delivery of legal services" often is essential to justice, the American Bar Association (ABA) Consortium on Legal Services and the Public recommends that the profession "encourage" it and defines it as follows:

A task-orientation to personal legal services looks upon the practice of law as a sequence of distinct activities. These might range from a single task to full representation. Clients are encouraged to select from a "menu" of potential tasks a lawyer might perform. Proponents of this conception of the practice of law identify such tasks as advice, research, drafting, and representation in court or negotiation. It is envisioned that services offered task-at-a-time will be of equal quality to those provided through full representation.⁹

II. Maryland Family Law Assisted Pro Se Experiment

The competing needs of the poor for legal help (e.g., help in enforcing legal claims to food, shelter, health care, and other basic entitlements) make it difficult to keep in mind the importance of legal representation in domestic cases. However, for many, divorce is the first step in establishing a good (second) marriage and creating a family. For many women and children, legal help is their last chance to protect themselves against abuse and neglect and the enduring disabling effects of both.

⁸Mosten, *supra* note 2, at 427. See also Bruce D. Sales et al., *Is Self-Representation a Reasonable Alternative to Attorney Representation in Divorce Cases?*, 37 ST. LOUIS U. L.J. 553 (1993). The authors describe a study of pro se litigants in Maricopa County, Arizona. Among the findings were the following: (1) One or both parties in 88 percent of the divorce cases in Maricopa County represented themselves. See *id.* at 570-71. In 52 percent of the cases, both parties represented themselves. See *id.* at 594. (2) Nineteen percent of the pro se litigants had problems completing necessary forms, while 23 percent had problems with procedural requirements. See *id.* at 569. Half of the people who had problems did not obtain help in resolving them. The other half sought help from "paralegals, self-help manuals, lawyers, and 'other court personnel.'" *Id.* at 570-71. (3) The pro se litigants were less likely than the represented parties to seek marital counseling, use alternative dispute resolution models, and obtain tax advice. See *id.* at 571-73. (4) The pro se litigants were as satisfied as the represented litigants with their divorce decrees, but as cases became more complex the pro se litigants were less likely to be satisfied with the outcomes. See *id.* at 577. (5) The pro se litigants were more satisfied with the legal process than were represented paying clients, although the paying clients' levels of satisfaction with the legal process were directly related to their levels of satisfaction with their attorneys. See *id.* at 582-83.

⁹ABA CONSORTIUM ON LEGAL SERVS. & THE PUBLIC, AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE 21 (1996) [hereinafter ABA AGENDA FOR ACCESS REPORT] (footnote omitted).

We initially developed the project in two Maryland jurisdictions¹⁰ to help pro se litigants protect basic rights, to identify the types of cases in which the assisted pro se approach might work,¹¹ and to give our students experiences with alternative representational models. After a year's operation, we commissioned a formal quantitative and qualitative evaluation of the project.¹² We continued thereafter to collect data. During a 17 month period in 1995-96, 34 law students conducted diagnostic interviews and gave basic legal information and advice (generally in 30-60 minute sessions) to approximately 4,400 people, 89 percent of whom were, or soon became, petitioners.¹³ Initially, lawyers supervised the students in the courthouses of the two jurisdictions, where the students met and assisted the pro se litigants. Later, the lawyers provided off-site supervision by telephone.

¹⁰ Anne Arundel County and Montgomery County. Anne Arundel County includes Annapolis, the state capital. It is primarily a rural/suburban county without large concentrations of poor persons. Montgomery County is a major suburb of Washington, D.C., and also contains substantial rural areas. It has one of the highest per-capita income levels in the country. Two lawyers, Trudy Bond in Anne Arundel County and Barbara Golden in Montgomery County, supervised the students excellently as did Nathalie Gilfrich and Richard Granat. We are now continuing the project in Baltimore City, as well as in Anne Arundel County. We developed the project in conjunction with the University of Baltimore School of Law in response to a request by the leaders of the state judiciary, led by Chief Judge Robert C. Murphy of the Maryland Court of Appeals. The bench asked the clinical law programs of the state's two law schools to assist the growing numbers of pro se litigants. The four pilot project jurisdictions—Baltimore City and Anne Arundel, Baltimore and Montgomery Counties—funded the design and implementation of the project with \$120,000 in one-year grants (\$30,000 per jurisdiction). Each law school initially assumed responsibility for the pro se litigants in two jurisdictions. The momentum for the project came from the Advisory Council on Family Legal Needs of Low-Income Persons, a joint project of the Maryland Legal Services Corporation and the University of Baltimore School of Law. See ADVISORY COUNCIL ON FAMILY LEGAL NEEDS OF LOW INCOME PERSONS, INCREASING ACCESS TO JUSTICE FOR MARYLAND'S FAMILIES (1992).

¹¹ Earlier studies indicated that, with limited assistance, some pro se litigants could effectively represent themselves. See, e.g., Ralph C. Cavanagh & Deborah L. Rhode, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104 (1976). Among the findings were these: With lay advice or clerical help, most pro se litigants could adequately prepare the necessary legal forms in uncontested divorce cases. See *id.* at 128. Limited consultations, rather than the traditional array of full-litigation services, would constitute in most cases the necessary legal help, "priced at a fraction of the cost attending a lawyer's orchestration of the entire dissolution process." *Id.* at 130. Without at least lay assistance, divorce kits did not help the majority of pro se litigants effectively represent themselves. See *id.* at 163-64. See also STEPHEN COX & MARK DWYER, ABA SPECIAL COMM. ON DELIVERY OF LEGAL SERVS., A REPORT ON SELF-HELP LAW: ITS MANY PERSPECTIVES (1987); BRUCE SALES ET AL., ABA STANDING COMM. ON DELIVERY OF LEGAL SERVS., SELF-REPRESENTATION IN DIVORCE CASES (1993).

¹² Dr. Raymond Paternoster conducted the evaluation. He has a Ph.D. in statistics and has conducted over 30 quantitative studies and published over 40 papers, as well as a book on statistical analysis. Much of the data Paternoster relied upon was obtained through 275 phone interviews with project consumers. Paternoster, with our advice, designed the survey instrument. Because of limited evaluation resources, the project students conducted the 275 phone interviews. Paternoster trained the students before they made the phone calls. To minimize bias, the students conducted the interviews pursuant to a written script. They did not call people with whom they had dealt. Paternoster also trained the "coders," students who transferred the information from the written survey forms to the computer program. After the students' phone calls, Paternoster made follow-up phone calls to 10 percent of the surveyed respondents to test the accuracy of the information the students had recorded. He was fully satisfied that these preinterview and postinterview steps led to the necessary study objectivity. See NATHALIE GILFRICH ET AL., THE FAMILY LAW ASSISTED PRO SE PROJECT, CLINICAL LAW PROGRAM OF THE UNIVERSITY OF MARYLAND SCHOOL OF LAW, REPORT ON THE UNIVERSITY OF MARYLAND SCHOOL OF LAW'S FAMILY LAW ASSISTED PRO SE PROJECT IN ANNE ARUNDEL AND MONTGOMERY COUNTIES, AND RECOMMENDATIONS (1996), app. 1 (Paternoster's data analysis) [hereinafter MARYLAND LAW SCHOOL ASSISTED PRO SE PROJECT REPORT].

¹³ See *id.* at 1, 35.

The students helped project consumers identify claims and defenses and plead them in simplified check-the-box forms. They explained the basic procedural rules, including those governing service of process and adjudication. The students also referred many people to private attorneys (when the person could afford to pay a reduced fee) or to pro bono attorneys (when the person was indigent and volunteer lawyers were available). The students made appropriate referrals to social services agencies, counselors, and mediators as well.¹⁴

We have learned much from the project.

A. Success of an Assisted Pro Se Project Depends Heavily upon the Contemporaneous Development and Use of Simplified Pleading Forms

The law students would have been unable to help many pro se litigants effectively if the parties had been required to prepare and file traditional pleadings.¹⁵ With limited help, most litigants understood and properly completed the check-the-box forms that were relevant in their cases.

B. Initial Diagnostic Interview Is Critically Important

To sort unrepresented people by the types and levels of legal services they require, the diagnostic interviewer must understand the whole body of family law and be good at eliciting facts, evaluating people, and probing for hidden issues. In our project the impersonal courthouse site and large volume of clients made the interviewing task even more difficult.

A thorough intake interview is the first of several steps in avoiding the real dangers of limited representation. The client may be unwilling or unable to relate a number of important facts, for example, she is less resolved about getting divorced or salvaging the relationship than she appears to be; she or her children have been abused, or the children are at risk of abduction; she has a claim to an undisclosed pension plan, or to social security or military benefits, that she does not know about; she is considering doing something that will undermine her legal position; or she has an addiction problem that has helped cause the legal problem.

The client may also be less able than she appears to perform an essential task, or to understand, accept or act on legal advice. Moreover, the client may not know that the opposing party has retained counsel and that this will significantly affect the pro se client's ability to obtain a fair result. And the client may find that the decision maker, burdened by an excessive docket, will not or cannot accommodate the special needs of pro se litigants.

A good intake interview can avoid some of these problems. The provision of follow up legal services is necessary in many cases to avoid the others.¹⁶

¹⁴ In disputes about alimony, significant amounts of property, the grounds for divorce or the custody of children, the students usually advised the pro se litigants to obtain counsel, if possible. However, the indigent-client waiting lists for pro bono lawyers in contested cases were long (so long they discouraged many people from pursuing pro bono help). People who could afford to pay some fee frequently were still unable to retain private counsel. Indeed, 60 percent of the project consumers had sought help from private attorneys before they came to us. Rarely did the attorney offer to "unbundle" (see note 2 *supra*) legal work. A separate statewide study found that nine out of ten moderate-income residents who sought legal assistance from attorneys reported that the lawyers did not give them the option of paying a more limited fee in return for less than full-service legal representation. See MARYLAND LEGAL NEEDS STUDY, *supra* note 7, at 11. We argue elsewhere that many of these eventual pro se litigants could have paid private attorneys reasonable fees for the more limited legal help that they needed if that help, rather than full-service representation, had been offered to them. See generally Michael Millemann et al., *Limited-Service Representation and Access to Justice*, 11 AM. J. FAM. L. 1 (1997).

¹⁵ The administrative judge of the Maryland district court for Baltimore City (Mary Ellen T. Rinchardt, a former legal services attorney) chaired the Family and Juvenile Law Subcommittee of the Maryland Rules Committee, which developed the simplified forms.

¹⁶ See proposed legal services continuum in pt. V *infra*.

C. Significant Majority of Project Consumers Were Able Properly to Complete Simplified Pleading Forms and Perform Other Basic Tasks

Many project consumers had simple legal problems but had the variety of complex life problems that often accompany divorces. Some were in crisis. The students advised many to seek marital or other counseling.

On the other hand, in a number of cases the parties had never established a recognizable relationship of love. Or if they had, they had emotionally "divorced" each other, distributed their property (usually limited personal property), and stopped communicating with each other. Many also had established child custody arrangements, sometimes by default.

As we explain below, in many cases there were no real legal disputes or the issues were relatively simple. The prevalent relationship between the parties, therefore, was not the complex emotional and legal war that some offer as the basis for the full-service representational model.

The students concluded that, in the categories of cases that we describe below and with their help, between "two out of three" and "three out of four" of the project consumers were able effectively to identify claims and defenses, provide relevant facts, and fill out, file, and serve the simplified pleading forms.

A thorough intake interview is the first of several steps in avoiding the real dangers of limited representation.

What distinguished the capable from the incapable *pro se* litigant in these cases was not the difference between a high school or college education. Rather, it was more basic factors: the ability to speak and read English; a basic intelligence level; the absence of emotional and mental disabilities; and some degree of self-motivation, among other qualities. In his Evaluation Study, Dr. Paternoster found that clients who had a high school education reported that they understood the simplified forms and the students' advice as well as those who had more formal education and were as willing as the better educated consumers to continue as *pro se* litigants in their cases and to litigate *pro se* in a future hypothetical case.¹⁷

The onetime-only information and advice did little to help most *pro se* parties become more effective litigators at hearings and trials. This disappointed some of the masters and judges and undoubtedly undermined the fairness of some case outcomes. In many cases, however, fair outcomes did not depend upon the litigation capacity of *pro se* parties, as we explain in part H.E.

D. Project Consumers Had a Variety of Family Law Problems

Chart 1 sets forth, by frequency, the various types of legal problems the project consumers had.

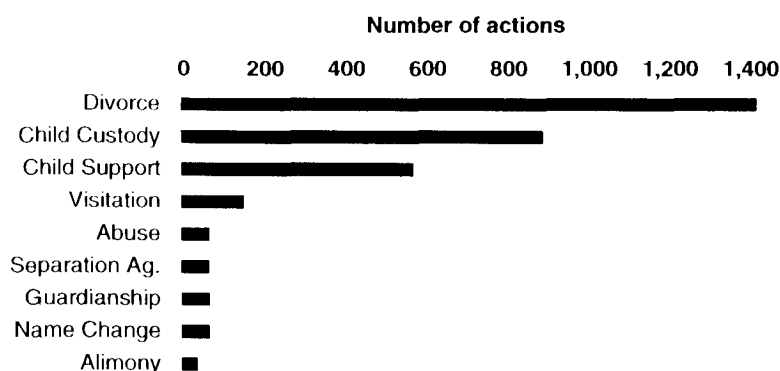
E. Effectiveness of the Law Students' Help and the Consumers' Satisfaction with the Students Were Inversely Related to the Degree of Decisional Discretion

The legal problems named above can be roughly sorted into three categories, distinguished by the degree of legal discretion or judgment the students or decision maker had to exercise: (1) problems that could be resolved in largely mechanical ways; (2) problems that required limited legal discretion and judgment; and (3) problems that required substantial legal discretion and judgment.

1. Largely Mechanical Justice

Many cases requiring largely mechanical justice were handled. The students repeatedly helped people who had neither children nor significant property obtain

¹⁷ MARYLAND LAW SCHOOL ASSISTED PRO SE PROJECT REPORT, *supra* note 12, at 7–8.

Chart 1: Project Consumer by Type of Legal Problem


uncontested divorces. The parties generally understood and relatively easily filled out and filed the relevant simplified pleadings.¹⁸ Without follow-up coaching, however, some of the parties did not effectively handle the master's hearing, at which they were required to produce certain documents and the testimony of a corroborating witness. It quickly became apparent to most students that the hearings themselves served little purpose.¹⁹

The students also helped many custodial parents obtain default custody orders. In these cases the noncustodial parent had disappeared. The sticking point was service by posting. The custo-

dial parent did not understand the "good faith" personal-service efforts she had to make before she could serve by posting. Once she understood this, she made these efforts, complied with the service rules, completed and filed the simplified pleading forms,²⁰ and obtained the default judgment.

The students also helped many de facto custodial parents obtain consent custody orders. Often the custodial parent had been raising the child for some time, and there was no dispute about child support. (Noncustodial parents often incorrectly assumed that contesting custody would reduce the amount of a child-support award. Therefore, if support was not a settled issue, they were more likely to contest custody.)

2. Limited Judgment and Discretion

A number of divorce cases were designated as "contested" but were not really disputed. Others were contested only because one of the parties did not know the law. Often the parties could not agree on the amount of child support but were unaware of the Maryland child support guidelines, which significantly limit decisional discretion.²¹ Noncustodial parents often wanted to pay little or no child support. Custodial parents sometimes were willing to trade a valid child support claim for the noncustodial parent's agreement to relinquish his claim to custody of the child. Absent exceptional circumstances, the guidelines trumped both sets of client decisions. When the students explained the governing rules and performed the cal-

¹⁸These forms included a two-page Complaint for Absolute Divorce (Md. Dom. Rel. 20); a two-page Motion for Waiver of Prepayment of Filing Fees and Other Court Costs (Md. Dom. Rel. 32); a two-page Joint Statement of Parties Concerning Marital and Non-Marital Property (Md. Dom. Rel. 33); a one-page Request for Master's Hearing (Md. Dom. Rel. 51); and a one-page Affidavit of Service (Md. Dom. Rel. 55 or 56).

¹⁹See note 21 *infra*.

²⁰These forms included a two-page Complaint for Custody (Md. Dom. Rel. 4); a two-page Motion for Waiver of Prepayment of Filing Fees and Other Court Costs (Md. Dom. Rel. 32); a one-page Request for Master's Hearing (Md. Dom. Rel. 51); a one-page Order of Default (Md. Dom. Rel. 54); and a one-page Affidavit of Service (Md. Dom. Rel. 55 or 56).

²¹Jane Murphy argues persuasively that the significant reduction in decisional discretion in child support cases has helped pro se litigants and their children enforce their legal rights to support. See Murphy, *supra* note 3, at 132-33. She argues that having clear rules for custody, alimony, and marital property decisions would help pro se litigants, many of whom are indigent, enforce family law rights. See *id.* at 132-38. Criticizing the requirement of a hearing in uncontested divorce cases, she argues that the burden on the poor outweighs the limited benefits of "solemnity and ritual" that, in any event, could be achieved by requiring the parties to execute an affidavit. *Id.* at 137-38. We agree with these arguments.

culations, they usually convinced clients to accept the inevitable, converting contested cases into uncontested cases. When the opposing party was the misinformed person, in a number of cases the client was able to educate him (usually with a photocopy of the guidelines) and obtain his agreement to a consent order.

The students helped consumers with a variety of visitation issues. Frequently, effective child support orders failed to provide for visitation or granted the parents "reasonable" visitation rights without further elaboration. The student helped consumers identify a reasonable visitation schedule and embody it in a simplified consent order form. When the other spouse would not agree, the student helped the project consumer file the appropriate simplified pleadings.²²

In some cases noncustodial parents sought plainly reasonable visitation rights that the custodial parent opposed without knowledge of governing law. The student's advice often gave the consumer the information he needed to persuade his spouse to execute a consent order. If not, the students helped the person file the appropriate forms.²³

The students also helped a number of consumers determine whether they were entitled to modifications of court-ordered visitation schedules because of changes in circumstances (e.g., relocation, a new work schedule, or a new transportation problem).²⁴

Similarly, the students helped a large number of consumers, particularly noncustodial parents, determine whether they had grounds to seek modifications of child support orders (e.g., because they had taken new jobs at significantly lower pay or become disabled, entitling their children to disability payments).²⁵ We helped these clients file meritorious modification claims but also advised them that they were legally responsible for child support arrearages until the court modified the child support order. This advice encouraged many to resume making at least partial child support payments.

Consumer satisfaction was highest when the legal task was most mechanical (e.g., simple uncontested divorce).

3. Substantial Legal Judgment and Discretion

The students helped people avoid legal problems, for example, physical abuse (by referring them to advocates who could help them obtain protective orders); illegal child abductions (by helping some consumers obtain custody orders that deterred abductions, and possibly discouraging others from themselves abducting children, by informing them of the serious legal consequences); future conduct that would give the opposing party a fault ground for divorce; and child support arrearages, which would expose the parent to criminal liability and potential incarceration.

This legal assistance was among the most important the students provided.

E Consumers Expressed High Levels of Satisfaction with the Students' Legal Advice and Information

The project consumers expressed high levels of satisfaction with the law stu-

²² A one page Complaint for Visitation (Md. Dom. Rel. 5) and the other standard accompanying forms.

²³ The Complaint for Visitation (Md. Dom. Rel. 5), or Petition/Motion to Modify Visitation (Md. Dom. Rel. 7), and the other standard forms. Often the noncustodial parent was a defendant in a child support contempt proceeding because he had wrongly stopped making his court ordered child support payments after he was denied reasonable visitation. The students advised such clients about the contempt proceedings as well and often convinced the noncustodial parent to reinstitute at least partial support payments.

²⁴ The party filed the Petition/Motion to Modify Visitation (Md. Dom. Rel. 7), along with the other standard forms.

²⁵ Petition/Motion to Modify Child Support (Md. Dom. Rel. 6).

dents' legal information and advice, particularly in the mechanical justice and limited-discretion matters. Chart 2 shows the levels of satisfaction by the stage of case, with 1 being low and 10 high.²⁶

Chart 2: Satisfaction Levels by Stage of Case

Stage of Case (Not all stages included)	Level of Satisfaction with Law Students	Percent of Respondents by the Stage of the Case When Surveyed
Forms selected, completed and filed	8.3	42%
Awaiting a scheduling conference	8.2	3%
Awaiting a preliminary hearing	8.3	6%
Awaiting a final hearing	8.1	3%
Attended a final hearing	8.3	4%
Obtained final disposition	8.8	35%

Consumer satisfaction was highest when the legal task was most mechanical (e.g., simple uncontested divorce). Consumer satisfaction dropped slightly when the legal task involved more, but still limited, discretion (e.g., applying the "material change in circumstances" test in cases in which pro se litigants sought to modify child support orders). When students were called upon to make more complex judgments/predictions, consumer satisfaction dropped again (e.g., when the students applied the "best interests of the child" standard in custody cases).

What would be fairer to unrepresented litigants, and more efficient for the court, is to accept that trained nonlawyers may give limited, simple legal advice, and attorneys, more substantial legal judgments.

III. Unique Ethical Issues

The provision of limited legal services raises some unique ethical and professional liability issues.²⁷ Although limited retainer agreements generally are ethical, lawyers must make sure that they do not promise to perform only part of a functionally indivisible task. We generally found that the legal information and advice the students gave to the project consumers helped them perform useful legal tasks without misleading them.

One of our hardest tasks, as many legal services paralegals know, was distinguishing between "legal information" and "legal advice"; only a licensed attorney

²⁶ Paternoster conducted his evaluation approximately a year after we initiated the project. At that time 35 percent of the project consumers had obtained final dispositions in their cases, and another 4 percent had attended the final hearings in their cases. Thus, two out of every five consumers had functionally concluded their litigation. See chart 2 *infra*.

²⁷ See, e.g., George Overton, *Lawyers as Ghosts*, 9 CHL. B. ASS'N REC. 41 (1995). See also Deborah L. Rhode, *Professionalism in Perspective: Alternative Approaches to Nonlawyer Practice*, 22 N.Y.U. REV. L. & SOC. CHANGE 701, 705 (1996).

Trial Skills Training for Cases Involving Children

"Presenting Evidence in Cases Involving Children" will be the subject of the Second Annual Rocky Mountain Child Advocacy Training Institute to be held on May 18-20, 1997, at the University of Denver College of Law.

A faculty of judges, trial lawyers, and teachers of trial advocacy will cover such topics as "exercising and refreshing recollection and impeachment," "preparing and questioning child witnesses" and "using exhibits in examination." The training program, presented by the University of Denver College

of Law, the Children's Legal Clinic, and the National Association of Counsel for Children and planned for attorneys who handle children's cases, follows the National Institute for Trial Advocacy's "experiential model" for instruction—performance exercises, problem solving, role playing, and demonstration.

The registration fee is \$380, although a limited number of scholarships are offered. For further information contact the Institute for Advanced Legal Studies (University of Denver College of Law) at (303) 871-6326.

may give the latter. The students gave legal information to any person who requested it but gave additional legal advice (pursuant to the state's student practice rule) only to indigent clients.²⁸

We found it easier, however, to posit a distinction between legal information and legal advice in the classroom than to apply the differential standard in practice. We developed criteria that the attorney general of Maryland, writing in a different context, later endorsed.²⁹ Before giving legal advice, the students established an attorney-client relationship with the client and explained and executed a limited retainer agreement.³⁰

We conclude, however, that maintaining the theoretical distinction between legal information and advice is sometimes impossible in practice. What would be fairer to unrepresented litigants, and more efficient for the court, is to accept the

²⁸ One of the findings that surprised us the most was that 80 percent of the pro se litigants who asked us for legal information and advice were employed. The next biggest income category, 13 percent, aggregated project consumers who lived on welfare, unemployment, and social security payments. Sixty-one percent of all project consumers made more than \$20,000 annually; 36 percent made more than \$30,000. Three out of five project consumers (approximately 62 percent) did not qualify as indigents under the comparatively generous state standard (\$26,859 annual gross income for a family of four). We caution that Montgomery County is an affluent jurisdiction, and Anne Arundel County is not a major metropolitan center with concentrations of poverty found, for example, in Baltimore City. See note 10 *supra*. The Baltimore City data were not part of the study. Therefore, our income data do not accurately describe the income levels of the state's pro se litigants. We rely on these data to argue that private lawyers can give significantly more legal help to these potential clients if they use the limited representational model. See pt. V *infra*.

²⁹ J. Joseph Curran, Jr., Maryland's attorney general, concluded that "legal information" is knowledge "about the existence of legal rights and remedies" and "about the manner in which judicial proceedings are conducted," but not "advice" about whether one person's "particular circumstances suggest that she should pursue a particular remedy." Supplying "legal information" includes helping one "prepare a legal pleading or other legal document on her own behalf by defining unfamiliar terms on a form, explaining where on a form the victim is to provide certain information, and if necessary transcribing or otherwise recording the victim's own words verbatim." 56 Op. Md. Att'y Gen. 303 (1995) (discussing the rights of, and restrictions on, lay advocates who are not supervised by lawyers and who provide services to victims of domestic violence).

³⁰ Under Maryland's student practice rules, properly supervised and qualified law students have the status of members of the bar. Maryland Rule 16, Rules Governing Admission to the Bar. We performed a conflict of interest check against other parties, e.g., the client's spouse. Conversely, we asked persons to whom we would offer only legal information to execute a waiver agreement in which they affirmed their understanding that we were not giving them legal advice.

principle that trained nonlawyers may give limited, simple legal advice, and attorneys, more substantial legal judgments.³¹

Other professional responsibility issues arose. We operated in the courthouses at the request of the courts. Therefore, the judges and masters were fully aware that we were helping otherwise pro se clients prepare pleadings. By fully disclosing the student's limited role, we preempted the general "ghost-writing" criticism of assisted pro se projects to the extent it applies to legal services-sponsored projects.³² When we gave legal advice to clients, we assumed *arguendo* that we had the state's version of Rule 11 ethical duties: to refrain from advising a client to file a bad-faith or frivolous claim. We advised clients whom we thought had no valid claims to refrain from filing the simplified pleading forms. When we had good reason to believe the person had no valid claims or defenses (this was rare), we discontinued our help.

When the other side had counsel, that lawyer generally knew of our limited role. (Again, in these cases, we tried to refer our pro se clients to lawyers as well.) We did not seek, through our client, to communicate with a represented party without going through counsel but rather tried to give our clients the advice and information that they needed to deal with the opposing party and lawyer.

Some opposing attorneys tried to use the limited representation we provided as a strategic weapon by arguing that the court should hold the pro se party to the demanding practice standards imposed on fully represented parties rather than to the more permissive pro se standards. In preproject conversations with the administrative judges in each of our jurisdictions, we identified this potential problem, and the judges and masters worked hard to avoid this misuse of our limited legal representation.

In sum, we believe that there are reasonable answers to the ethical issues.³³ For example, the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee, in Ethics Opinion No. 483, concluded that

³¹ See Carl M. Selinger, *The Retention of Limitations on the Out-of-Court Practice of Law by Independent Paralegals*, 9 GEO. J. LEGAL ETHICS 879, 897 (1996) (concluding that "an ideal . . . relationship between lawyers and independent paralegals would probably resemble the traditional relationship between physicians and pharmacists: certain 'legal medicines' for uncomplicated problems would be dispensed by an independent paralegal to clients directly, while medicines for more complex problems would be available only with a lawyer's 'prescription,' following perhaps a referral from the paralegal"). See also COMMISSION ON NONLAWYER PRACTICE, AMERICAN BAR ASS'N, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS (Aug. 1995); Rhode, *supra* note 27, at 701 (criticizing the commission's report because it makes few tangible recommendations, instead deferring to individual state regulatory decisions).

³² See generally California State Bar Comm. on Professional Responsibility, Formal Op. 131 (1993); Overton, *supra* note 27 (arguing that, with indigent legal aid exceptions, the "disapproval of ghost-writing is a conventional wisdom, affirmed in ABA Informal Opinion 1414 (1978) and N.Y. State Bar Opinion 613 (1990)"; *id.* at 41).

³³ MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2 (c) authorizes a lawyer to "limit the objectives of the representation if the client consents after consultation," and Comments 4 and 5 allow limited-service retainers by agreement, as long as the client is not "asked to agree to representation so limited in scope as to violate Rule 1.1." MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2 cmt. 4, 5 (1996). Model Rule 1.1 requires from a lawyer "competent representation" and defines it contextually: "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." *Id.* Rule 1.1. The too "limited in scope" warning would appear to be aimed at retainers in which the lawyer so limits the legal services, e.g., 15 minutes of legal research on a complex matter, that the services will not be useful to the client or, worse, will mislead the client or misrepresent facts to a court. See *id.* Rules 7.1-3. In several provisions, the Model Rules encourage lawyers to provide legal services to people who cannot afford to pay for them. See, e.g., *id.* Rules 1.2 cmt. 3, 6.1-2. This ethos should strongly favor limited-representation retainer agreements when they are the only means by which people can effectively use the legal system.

lah attorney may limit the attorney's services by agreement with la self-representing] litigant to consultation on procedures and preparation of pleadings to be filed by the client in pro per. A litigant may be either self-represented or represented by counsel, but not both at once, unless approved by the court; therefore, in order for the attorney to especially appear on behalf of the litigant before the court for a limited purpose, the attorney should comply with all applicable court rules and procedures of the particular tribunal.³⁴

We agree with the ABA Consortium on Legal Services and the Public that "professional standards" should not "stifle development of new ways of providing legal services in which clients and lawyers are protected while the broader public interest is also served,"³⁵ especially when discrete-task representation is the only legal help that may be available to a litigant.

IV. Need for Related Law Reforms

The limited availability of lawyers and the underuse of the limited-service representational model are only two of many sources of the public's access-to-justice problem. In addition, our laws and rules often unnecessarily create the need for legal representation. Some laws vest decision makers with more discretion than is necessary fairly to individualize decision making by considering all factors that are unique to the claim or claimant. In Maryland, enactment of the child support guidelines has reduced the need for full-service representation in child support cases and encouraged many people to resolve these issues by consent. Good reason exists to apply a more limited-discretion principle to alimony and property decisions as well.³⁶ However, given the bad experiences with some "limited-discretion" reforms (e.g., the federal sentencing guidelines), we do not mean to tout uncritically the virtues of limiting decisional discretion.

People also would have less need for legal representation if legal presumptions and burdens of proof were modified, in some instances, either to reflect contemporary values or to make existing legislative judgments easier to implement. For example, tenants would be more effective pro se litigants if laws that make the existence of dangerous housing conditions a defense to eviction required landlords to prove the absence of such conditions, or at least required them to attach outstanding housing code violation notices to their ejectment complaints. Similarly, people who own limited amounts of property might not need to retain a lawyer to draft a will if, consistent with today's practices and values, intestate succession rules presumed they wished to leave all their property to their spouse, not to their spouse and (in significant shares) to their parents or minor children.³⁷

The positive Maryland experience with the simplified, domestic pleading forms supports developing simplified forms in most or all practice areas and simplifying the processes in other respects (e.g., abolishing the hearing requirement in uncontested divorce cases).³⁸ There also is little reason, other than the modest initial costs, not to supply computer, video, audio, and/or hard-copy sources of legal information to the public in most courthouses and in other accessible sites as well as on the Internet.

Deborah Rhode and David Luban summarize the several law implementation strategies that might supplement increased national funding for legal services:

³⁴ Los Angeles County Bar Ass'n Professional Responsibility and Ethics Comm., Ethics Opinion 483 (reprinted in L.A. LAW, Feb. 1996).

³⁵ ABA AGENDA FOR ACCESS REPORT, *supra* note 9, at 27.

³⁶ See, e.g., Murphy, *supra* note 21.

³⁷ Sara-Ann Determan, a partner in Hogan & Hartson and ABA leader on civil and criminal justice issues, has more fully and effectively made these arguments at access-to-justice conferences that we have attended.

³⁸ See Murphy, *supra* note 3.

Wider acceptance of a limited-service representational model, and the coordination and reconfiguration of some existing legal services, can help increase the number of poor people who can obtain access to justice.

The first strategy involves simplification or modification of legal rules or processes. Plain-English statutes, no-fault insurance schemes, computerized

title searches, standardized forms for simple wills and uncontested divorces, and automatic wage garnishment for obligations such as child support payments are examples of efforts to minimize individuals' need for legal aid. A second approach is to promote corresponding reductions in the cost of such aid through greater reliance on parale-

gals, hotlines, routine form-processing services, citizens' advice bureaus, courthouse ombudsmen for pro se litigants, and alternative dispute resolution procedures that restrict or eliminate the role of lawyers. In addition to strategies for reducing the demand for professional assistance, a third approach is to expand the amount of such assistance that is available through public subsidies and private pro bono contributions.³⁹

The project's self-representational perspective enhanced our appreciation of the institutional barriers to justice and the need for additional reforms.

V. Conclusion

Most of the Maryland Family Law Assisted Pro Se project consumers concluded that the students helped them obtain a fairer result in their case.⁴⁰ This subjective sense of having been more fairly treated is important in itself and is some evidence that the outcomes were, in fact, fairer. The link between the increased availability of legal information, advice, and limited representation and increased public confidence in the administration of justice is important.

The qualified success of limited representation does not suggest that the nation needs fewer, rather than significantly more, legal services attorneys and pro bono lawyers. Virtually every unmet legal needs survey reaches the opposite conclusion.⁴¹ We argue, instead, that in making do with less, and in documenting the strong case for more, we should more carefully apportion our existing legal resources.

An appropriate legal services continuum might have the following features, beginning with a thorough intake interview. To avoid burnout, a serious problem, several different people ought to conduct the interviews. The rotating interviewers might include trained law students, paralegals, and lawyers. Before the interview, the person about to be interviewed would learn as much about her legal problems as possible from on-site multimedia legal sources and would furnish as much preliminary information as possible in written form to the interviewer.

³⁹ DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 7:57 (2d ed. 1995).

⁴⁰ Roughly three out of four project consumers concluded that the "procedures" in their cases (74 percent in Montgomery County and 68 percent in Anne Arundel County) and the "outcomes" in their cases (75 percent in Montgomery County and 76 percent in Anne Arundel County) were "fair." MARYLAND LAW SCHOOL ASSISTED PRO SE PROJECT REPORT, *supra* note 12, at 38 n.4. When the outcomes were largely based on consent, the consumers considered them to be fair (92 percent in divorce cases, which were mostly uncontested). In these cases, however, 76 percent of the consumers thought the process was fair. The consumers were least satisfied with outcomes in child support modification cases; *see id.* app. 1 at 25-26 (5 percent thought they were fair), although the consumers in these cases remained satisfied with the students (they gave them an 8.7 "grade"). *See id.* at 27. These data should be analyzed in light of reports of more client dissatisfaction with domestic cases than with any other type of legal matter. E.g., a survey indicated that the greatest level of client dissatisfaction with lawyers is in divorce and/or child custody cases. *When You Need a Lawyer*; CONSUMER REP., Feb. 1996, at 34-37.

⁴¹ *See, e.g.*, ABA NATIONAL LEGAL NEEDS STUDY, MARYLAND LEGAL NEEDS STUDY, *supra* note 7.

The interviewer would make an initial judgment, subject to more informed reconsideration, about the level and type of legal services that the client needs and consider the client's legal self-help capacity, the availability of useful self-education resources, the importance of the liberty or property interests at stake, and the extent of decisional discretion, among other factors. Some people would need no more than onetime-only legal information and advice such as that given by the project students. More would need follow-up legal assistance, however.

The follow-up service levels might range from light monitoring (a timely phone call to remind the person to bring the relevant documents and corroborating witness to an uncontested divorce hearing and a "phone prep" for the hearing), to more discrete-task representation (preparation of a client for mediation and review of the mediated agreement prior to execution), to more substantial representation (giving a court a written summary of a client's arguments with admissible exhibits), to traditional full-service representation.

Legal services programs, the private bar, pro bono projects, law school clinical programs, paralegal programs, and trained lay advocates will need to work closely together, as they are now doing through the LSC-sponsored state planning councils, to develop a coherent legal services continuum in the family law area or other areas. We believe that wider acceptance of a limited-service representational model, and the coordination and reconfiguration of some existing legal services, can help increase the number of poor people who can obtain access to justice. These steps, even without additional resources, can enlarge the quantity of legal services without decreasing quality. For example, by carefully identifying legal need, client self-help capacity, and the corresponding level of the required service, we can avoid the inefficient uses of existing legal services lawyers and identify additional legal tasks for more cost-effective lay advocates, paralegals, and law students. This more careful service calibration will more efficiently allocate and use the contributed time of volunteer lawyers (when it is fungible) and significantly expand the legal services that some poor (and low- and moderate-income) clients can purchase from private lawyers.⁴²

Judges, particularly the judicial leadership, should support this effort by accepting simplified pleading forms and processes and accommodating responsible limited-representational forms of practice.

The bar and judiciary, however, must continue to lobby for the additional legal services funding that is and will remain necessary to create an adequate legal services continuum, rather than institutionalize second-level legal representation for poor people.

⁴² E.g., a client at the top end of financial eligibility criteria (at least under more permissive nonfederal standards) might be able to purchase the one-to-five hours of legal help she needs for \$60–\$300 (in many areas). See Milleman et al., *supra* note 14.