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LEGAL SERVICES LAWYERS AND THE INFLUENCE OF THIRD PARTIES ON THE LAWYER-CLIENT RELATIONSHIP: SOME THOUGHTS FROM SCHOLARS, PRACTITIONERS, AND COURTS

*Samuel J. Levine**

INTRODUCTION

AMONG the challenges facing the lawyer who renders legal services to clients with limited means are ethical and professional questions relating to the influence of third parties on the lawyer-client relationship. Although all lawyers may potentially face ethical dilemmas involving third parties, legal services lawyers are particularly vulnerable to such issues because, unlike most lawyers, legal services lawyers generally rely on the financial support of someone other than their client.

These challenges may take many forms, affecting a variety of ethical and professional considerations. This Article examines a number of areas in which bar association committees, scholars, and courts have addressed the issue of third-party influence on legal services lawyers. Part I discusses the challenges to the fundamental value of attorney-client confidentiality that may arise as a result of the influence of third parties on legal services lawyers. Part II describes the more direct influence of third parties on legal services lawyers, addressing problems relating to the Model Rules of Professional Conduct. Finally, Part III briefly discusses some of the broader issues of third-party influence on resource allocation in legal services lawyering.

I. CONFIDENTIALITY

It is fundamental that in order to maintain the proper attorney-client relationship, an attorney must preserve the client's confidences.¹

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I thank Bruce Green and Russell Pearce for inviting me to present this paper at the Conference on "The Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues," held at Fordham University School of Law, December 4-6, 1998.

1. See Model Code of Professional Responsibility Canon 4 (1981); Model Code of Professional Responsibility EC 4-1 (1981) ("Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him."); see also Model Code of Professional Responsibility Canon 6 (stating that a lawyer should represent a client competently); ABA Comm. on Ethics and Professional Responsibility, Formal Op. 287 (1953) (finding that a lawyer is not "bound to speak out" when the court has misinformation about his client). *But see*

At times, the actions of the Legal Services Corporation ("LSC")² and other legal services organizations appear to threaten the lawyer-client relationship by implicating client confidentiality. In a 1974 opinion, the ABA Committee on Professional Ethics discussed the impact of the establishment and functions of the LSC on the duty of confidentiality.³

The opinion cited the lawyer's obligation, under Canon 4 of the Model Code of Professional Responsibility, to preserve the confidences and secrets of a client, but found that "the board of directors of a legal services office could require staff lawyers to disclose to the board such information about their clients and cases as was reasonably necessary to determine whether the board's policies were being carried out."⁴ The Committee was careful to add, however, that "the information sought must be reasonably required by the immediate governing board for a legitimate purpose and not used to restrict the office's activities, and that in many contexts a request for such information by a board may be the practical equivalent of a requirement."⁵ Thus, the opinion concludes, "a legal services lawyer may not disclose confidences or secrets of a client without the knowledgeable consent of the client."⁶

More recently, in a 1985 opinion, the Ethics Committee of the Mississippi State Bar considered the rules of confidentiality as applied to a legal services corporation.⁷ A local legal services agency was funded by a private, federally-funded corporation, which required that the local agency would "upon request cooperate with all data collection and evaluation activities undertake (sic) by the corporation, and give any authorized representative . . . access to all records, books, papers or documents, provided that neither the corporation nor the . . . (sic) shall have access to any reports, records, or information subject to the

ABA Comm. on Ethics and Professional Responsibility, Formal Op. 250 (1943) (noting that a lawyer may reveal a confidence in a suit to enforce payment of fees). For illuminating discussions and varied perspectives on the extent of the duty of confidentiality, see Symposium, *Executing the Wrong Person: The Professionals' Ethical Dilemmas*, 29 Loy. L.A. L. Rev. 1543 (1996).

2. Professor Marshall Breger has described the LSC as "the autonomous federally-funded public corporation charged by Congress with providing legal assistance to those persons whose income is below prescribed limits [and] makes grants to local legal aid programs that employ attorneys for this purpose." Marshall J. Breger, *Legal Aid for the Poor: A Conceptual Analysis*, 60 N.C. L. Rev. 281, 284 (1982) [hereinafter Breger, *Legal Aid*].

3. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974).

4. *Id.* (citing ABA Comm. on Ethics and Professional Responsibility, Formal Op. 324 (1970)). The opinion thus adopted, but also modified, the approach offered in the ABA Comm. on Ethics and Professional Responsibility, Formal Op. 324 (1970).

5. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974).

6. *Id.*

7. See Ethics Comm., Mississippi State Bar Ass'n, Op. 101 (1985).

attorney client privilege.”⁸ While the local agency permitted the federally-funded corporation to inspect its fiscal records and provided information on cases without identifying particular clients, the corporation, for the purpose of evaluating the quality of service of the local agency, insisted that its evaluators examine some or all of the files relating to particular clients.⁹

Before assessing the issues, the Committee noted that the question raised the “very difficult problem of balancing the need for proper stewardship of public monies with the demands of confidentiality on behalf of the client.”¹⁰ The opinion articulated two distinct but complementary goals underlying the principle of client confidentiality: to protect the client, who could potentially be harmed by release of the information, and to protect the adversary system, by encouraging full discourse on the part of the client.¹¹ Citing the Mississippi State Code, which requires attorneys “[t]o maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients,”¹² the opinion looked to the Model Code of Professional Responsibility to define “confidence” and “secret.”¹³ Under the Code,

“[c]onfidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.¹⁴

In an attempt to further refine these definitions, the Mississippi Committee synthesized a number of opinions from other jurisdictions. The Committee valued one such opinion for emphasizing the principle, fundamental to the enterprise, that “a legal aid lawyer owes the duty of confidentiality to his client, and that the one to whom legal services are rendered, rather than the one who pays the lawyer, is the client.”¹⁵ Additionally, the Committee looked to a 1974 ABA Formal Opinion,¹⁶ a prior ABA Informal Opinion,¹⁷ and a Tennessee Ethics

8. *Id.* (alteration in original).

9. *See id.*

10. *Id.*

11. *See id.*

12. *Id.* (quoting Miss. Code Ann. § 73-3-37(4) (1972)).

13. *See id.*; *see also* Model Code of Professional Responsibility DR 4-101(A) (1981) (discussing the preservation of client confidences).

14. Model Code of Professional Responsibility DR 4-101(A) (1981).

15. Ethics Comm., Mississippi State Bar Ass’n, Op. 101 (1985) (footnote omitted) (citing Nassau County Bar Ass’n, Ethics Op. 82-5 (1984)).

16. *See* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974).

17. *See* ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1287 (1974) (stating that client names, addresses, and phone numbers qualified as secret, due to the embarrassment clients might feel if others knew they were served by a legal services office).

Opinion,¹⁸ all of which, the Mississippi Committee found, took "rather stringent positions."¹⁹ Before arriving at its conclusion, though, the Committee also considered the more lenient view of the Kentucky Bar Association.²⁰

Based on the various codes and opinions, the Committee offered a list of several findings.²¹ Significant among these were the decisions that "the legal services lawyer cannot reveal client confidences or secrets to auditors from the [L]egal [S]ervices [C]orporation, or to anyone else"; "any information that would tend to identify the client in a given case, whether it be name, particulars of the case, objective sought, or other, is a 'secret' within the meaning of DR 4-101(A)"; "if the information to be disclosed is a matter of some public record that shows that the client is a client of the legal services office or one or more of its attorneys, the matter is not 'secret' merely because it identifies the client."²²

The ABA Committee on Ethics and Professional Responsibility recently provided further guidance regarding confidentiality, updating its 1974 opinion.²³ A nonlawyer supervisor in a government elder-care office requested access to client files in order to compile demographic information about the agency's clients.²⁴ The Committee found that, under Model Rule 1.6,²⁵ "as long as the information will be used to carry out the client's representation or its disclosure to the

18. See Ethics Comm., Supreme Court of Tenn., Formal Ethics Op. No. 81-F-25 (1984) (requiring a client's written consent for the release, to a legal services funding agency, of a client's social security number, date of birth, sex, race, date of referral, and date service started).

19. See Ethics Comm., Mississippi State Bar Ass'n, Op. 101 (1985).

20. Kentucky Bar Ass'n, Ethics Op. E-253 (1982) (permitting the release of clients' names and addresses when they are part of public record as a result of the representation).

21. See Ethics Comm., Mississippi State Bar Ass'n, Op. 101 (1985).

22. *Id.*

23. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 393 (1995).

24. See *id.*

25. Model Rule 1.6 states:

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
 - (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Model Rules of Professional Conduct Rule 1.6 (1998).

supervisor will otherwise be helpful to the lawyer in carrying out the representation, disclosure to the supervisor is not prohibited simply because the supervisor is not a lawyer.”²⁶ The ABA Committee did caution, though, that “[b]efore making the disclosure . . . the lawyer must assure that the supervisor understands the confidential nature of the information and the limited purposes for which it may be used.”²⁷

In addition, the opinion suggested that “the needs of the nonlawyer supervisor to collect demographic information about agency clients can be met by appropriate general inquiries to the lawyer concerning all of the lawyer’s files.”²⁸ Then, the lawyer can “glean the relevant data from those files and disclose it to the nonlawyer supervisor in a way that does not in any way compromise the confidentiality of any particular client’s data or permit the client to be identified or the data to be traced to that client.”²⁹

A similar question recently came before the New York City Bar Committee on Professional and Judicial Ethics, regarding attorney-client confidentiality in the case of an attorney who worked for a social services agency.³⁰ Under Social Services Law section 413, certain agency employees were “required to report or cause a report to be made . . . when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or mistreated child”³¹

In considering the proper conduct of an attorney working for the agency, the Committee first emphasized that in representing a minor as a client, like any attorney, a social services lawyer “must provide independent, zealous and competent representation and must preserve the client’s confidence in accordance with the provisions of the Code of Professional Responsibility.”³² Indeed, the Committee

26. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 393.

27. *Id.*

28. *Id.*

29. *Id.* According to the Committee, this scenario is consistent with Model Code of Professional Responsibility EC 4-3, which states:

Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

Model Code of Professional Responsibility EC 4-3 (1981).

30. See Committee on Prof'l and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 1997-2 (1997).

31. *Id.* (alterations in original).

32. *Id.* (citing Model Code of Professional Responsibility Canon 4 (“A Lawyer Should Preserve the Confidences and Secrets of a Client”); Model Code of Professional Responsibility Canon 5 (“A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client”); Model Code of Professional Responsibility Canon 6 (“A Lawyer Should Represent a Client Competently”); and Model Code of Professional Responsibility Canon 7 (“A Lawyer Should Represent a Client Zealously Within the Bounds of the Law”)).

stressed that even though the lawyer was compensated by the social services agency, a lawyer "must represent her clients with independent professional judgment [and] not allow the agency to direct or regulate her professional judgment in rendering legal services to clients."³³ Moreover, minors' lawyers "owe them the duties of loyalty, zealous representation, competence and confidentiality that a lawyer would ordinarily owe to any client."³⁴

Like the Mississippi State Bar Ethics Committee,³⁵ the New York City Bar Committee then focused on the meaning of the terms "confidence" and "secret" in DR 4-101(B).³⁶ The Committee found that "[c]onfidences" include information protected by the attorney-client privilege," while "secrets" include other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely to be detrimental to the client."³⁷ In short, they include "'substantially all information gained in the professional relationship.'"³⁸

The Committee continued its analysis of the Model Code by looking at the exceptions to confidentiality under DR 4-101(C).³⁹ The first exception allows the lawyer to reveal a confidence when "required by law."⁴⁰ Although questions of law are beyond its authority, the Committee noted that, if the lawyer is uncertain as to whether the law requires disclosure of suspected child abuse or mistreatment, the lawyer "should take available legal steps to seek clarification of the law before making disclosure."⁴¹

The second exception, according to the New York Bar Committee, allows disclosure to save the client's life.⁴² While the Committee observed that the Code does not allow disclosure merely when the lawyer believes it to be in the best interests of the client, the Committee found that "a lawyer has latitude to report information concerning child abuse or mistreatment in the rare case in which the lawyer honestly concludes, after full consideration, that disclosure is necessary to save the client from being killed or maimed."⁴³

33. *Id.* (citing Model Code of Professional Responsibility DR 5-107(B) ("A lawyer shall not permit a person who . . . employs[] or pays [the lawyer] to render legal services for another to direct or regulate his [or her] professional judgment in rendering such legal services")).

34. *Id.*

35. See Ethics Comm. of the Miss. State Bar, Op. 101 (1985).

36. See Committee on Prof'l and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 1997-2.

37. *Id.*

38. *Id.*

39. See *id.*

40. *Id.* (citing Model Code of Professional Responsibility DR 4-101(c)(2) (1981)).

41. *Id.*

42. See *id.*

43. *Id.* (noting, however, that the Model Code of Professional Responsibility DR 4-101(C) "does not explicitly" provide for this).

The Committee also considered a possible third exception, which involves a client incapable of making a reasoned judgment regarding whether the lawyer should report the possibility of mistreatment or abuse.⁴⁴ According to the Committee, if the lawyer determines that the minor lacks decision-making capacity and the lawyer continues to represent the minor, "then in the course of the representation the lawyer may make decisions, including those concerning confidentiality or disclosure, that the client cannot make in a reasoned way."⁴⁵ Even in this instance, however, "in deciding on behalf of the incapacitated client whether to report suspected child abuse or mistreatment, the lawyer should make a principled decision as to whether or not such disclosure would be in the client's best interests."⁴⁶ Moreover, "[a]lthough the client's decision-making is impaired, a lawyer should not lightly disregard the client's insistence that the lawyer keep his secrets."⁴⁷

The issue of confidentiality and the control of third parties is relevant to other settings as well, such as the law school clinic. In a recent case, in response to the actions of Tulane Law School's environmental clinic, a number of business groups requested that the Louisiana Supreme Court place restrictions on student practice, including limiting the types of clients that law school clinics may represent, requiring representation of other clients, and limiting the supervisory capacity of clinical faculty.⁴⁸ The Association of American Law Schools ("AALS") opposed these proposals on several grounds,⁴⁹ including the potential threat to lawyer-client confidentiality.

44. *See id.*

45. *Id.* (citing Committee on Prof'l and Judicial Ethics, Association of the Bar of the City of New York, Formal Op. 1987-7).

46. *Id.*

47. *Id.*

48. *See Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 Clinical L. Rev. 539, 540 (1998) [hereinafter *Submission*].

49. The AALS argued that the proposal posed a number of problems affecting the effectiveness and integrity of the clinical program. *See id.* at 558. The AALS found that, in addition to the issue of confidentiality, the proposal implicated other ethical duties. *See id.* For example, the AALS suggested that the proposed requirement of "balanced representation of government, small business, and environmental interests" may lead to a violation of the basic duty to "provide competent representation to a client" by mandating that a clinic function in areas outside its expertise. *Id.* at 563 (citing La. Rules of Professional Conduct Rule 1.1). Similarly, the AALS expressed concern that the requirements could lead to a conflict of interest, violating the duty not to represent a client "if the representation . . . will be directly adverse to another client." *Id.* (citing La. Rules of Professional Conduct Rule 1.7(a)).

The AALS also criticized the proposal for the more direct effects it would have on legal education. *See id.* at 564. For example, the AALS asserted that the proposed restrictions would hinder Louisiana law schools' ability to provide appropriate training and experience, which would in turn be reflected in the reputation of the schools and of the students participating in the program. *See id.* at 551. Moreover, according to the AALS, the proposed restrictions on the conduct of law school clinics "constitute[d] a direct intrusion into the academic freedom of law faculty and law students in

One proposal required that the clinic submit to screening and approval by a panel of "individuals with knowledge and representations of the various types of interests and positions affected by the [case]" who would "determine whether there is a substantive basis for the action to be taken."⁵⁰ The AALS noted that no other state had adopted such a restriction on clinics, and argued that the requirements would violate the attorney's duty of confidentiality.⁵¹

The AALS cited numerous sources to support its argument. First, the Louisiana Rules of Professional Conduct place on an attorney the duty to "not reveal information relating to [the] representation of a client."⁵² Second, the ABA Committee on Ethics found that a legislative LSC proposal that "required disclosure of (a) the client's identity, and (b) certain other facts relating to representation, conflicts with the lawyer's obligation [of confidentiality]."⁵³ Third, in a situation of a pre-paid legal services plan, the Ethics Committee found that "quality control mechanisms and other features are unacceptable to the extent that they lead to the disclosure by the lawyer of information relating to the representation in violation of the Rules."⁵⁴ Finally, the AALS referred to the 1974 and 1995 ABA Committee on Ethics and Professional Responsibility opinions regarding the LSC,⁵⁵ which addressed the disclosure of client information by staff lawyers to the board of directors. Significantly, the Committee wrote that "the information sought must be reasonably required by the immediate governing board for a legitimate purpose and not used to restrict the office's activities," and found it "difficult to see how the preservation of confidence and secrets of a client could be held inviolate . . . when the [client's] proposed action is described to those outside of the [clinic]."⁵⁶ In short, the AALS argued, under the proposed restrictions,

the directing panel, comprised of outside interests, would receive information for the very purpose of restricting the office's activities. And the clinic lawyer's disclosures have the real possibility of adversely affecting the client, since the panel could use the informa-

the state . . . the law faculty will be limited in selecting what it deems the best method for teaching law students in the application of substantive law, litigation skills, and professional values." *Id.* at 556.

50. *Id.* at 565 (quoting Letter from La. Ass'n of Business and Industry to Chief Justice Calogero 2 (Sept. 9, 1997)).

51. *See id.*

52. *Id.* at 565-66 (citing La. Rules of Professional Conduct Rule 1.6).

53. *Id.* at 566 (citing ABA Comm. on Ethics and Professional Responsibility, Formal Op. 399 (1996)).

54. *Id.* (citing ABA Comm. on Ethics and Professional Responsibility, Formal Op. 355 (1987)).

55. *See id.*

56. *Id.*

tion to deny representation and because members of the panel may represent opposing interests.⁵⁷

II. THIRD-PARTY INFLUENCE AND THE MODEL RULES

One of the most vexing ethical dilemmas for legal services attorneys involves the influence on the representation of clients by third parties who are funding the legal services organization. This problem, as it relates to congressional influence on the LSC, arose with particular urgency in relation to congressional action following the November 1994 election. As part of the "Contract with America," Congress implemented substantial cuts in the funding provided to the LSC.⁵⁸ In addition, Congress enacted extensive restrictions on the practices of the LSC.⁵⁹

Certainly, this legislation did not represent the first time that Congress placed restrictions on the actions of the LSC. Indeed, the very establishment of the LSC by Congress carried with it various guidelines curtailing the autonomy of legal services attorneys.⁶⁰ As one commentator suggested, however, the proposed legislation was unique and particularly troubling to legal services attorneys because previous restrictions had been limited to "the type of clients that could be represented, or even . . . the type of actions that could be brought."⁶¹ "[W]hat had never been done before," though, "was to impose restrictions on the legal arsenal of tools available to a client once a person was determined eligible and the case involved an acceptable subject matter. A restriction on how to proceed with that case, and limitations on the kind of advocacy to pursue, had never before been imposed."⁶²

In response to the pending legislation, at the request of "members of the legal services community," the ABA Committee on Ethics and Professional Responsibility issued an opinion for the purpose of "provid[ing] guidance regarding legal services lawyers' obligations

57. *Id.* at 567.

58. See H.R. Conf. Rep. 104-159, at 137-38 (1995).

59. See 142 Cong. Rec. H8149, H8185 (daily ed. July 23, 1996) (statement of Rep. Robert Dornman); see also Steven Epstein et al., *Foreword*, Symposium, *The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 Fordham Urb. L.J. 279, 281 (1998) (addressing the ethical obligations of lawyers in spite of the restrictions on LSC funding); Alan W. Houseman, *Address: Interpretation of LSC Restrictions*, 25 Fordham Urb. L.J. 285, 287 (1998) [hereinafter Houseman, *Interpretations*] (discussing the funding and structural decisions made by the 104th Congress regarding legal services). For an extensive discussion of the ethical implications of the LSC restrictions, see Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 Fordham L. Rev. 2187 (1999).

60. See *supra* note 2 and accompanying text.

61. Russell G. Pearce et al., *Ethical Issues Panel*, 25 Fordham Urb. L.J. 357, 360 (1998) [hereinafter Pearce et al., *Ethical Issues*] (panel discussion comments of Helaine Barnett).

62. *Id.* (panel discussion comments of Helaine Barnett).

under the new funding regime.”⁶³ The opinion was the subject of much discussion and controversy,⁶⁴ and provided the framework for a panel on legislative issues, conducted as part of a broader conference on the LSC restrictions held at Fordham University School of Law in May 1997.⁶⁵

One panelist, Helaine Barnett,⁶⁶ focused on the opinion’s discussion of ethical issues regarding existing clients. For example, when the attorney is faced with existing high-priority cases that violate funding regulations, the opinion states that “where the LSC is the sole source of funds, the choice is clear: in such a circumstance, the lawyer’s withdrawal from ineligible matters would be mandatory, since it would otherwise be impossible for the lawyer to fulfill her obligations to any clients.”⁶⁷ However, when the LSC is not the sole source of funds, the attorney must determine “whether the greater good is served by forgoing LSC funding and maintaining restricted representations—undoubtedly at the cost of some services—or by withdrawing from prohibited matters and preserving those aspects of the practice that comply with restrictions.”⁶⁸ Barnett notes, however, that the opinion does not address the relationship between the potential violation of federal funding guidelines and the provision in Model Rule 1.16 that states that withdrawal may be mandatory when “required by law.”⁶⁹

Another area of concern that the opinion does not address, one that troubled many of the panelists at the Fordham symposium, involves the influence on the lawyer-client relationship by a third party paying for the representation.⁷⁰ Professor Stephen Ellmann discussed this

63. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 399 (1996).

64. See Pearce et al., *Ethical Issues*, *supra* note 61, at 366 (panel discussion comments of Helaine Barnett).

65. See Symposium, *The Future of Legal Services: Legal and Ethical Implications of the LSC Restrictions*, 25 Fordham Urb. L.J. 279 (1998).

66. Ms. Barnett was introduced as Attorney-in-Charge of the Civil Division of the Legal Aid Society and former Chair of the ABA Ethics Committee.

67. Pearce et al., *Ethical Issues*, *supra* note 61, at 363 (panel discussion comments of Helaine Barnett) (citing ABA Comm. On Ethics and Professional Responsibility, Formal Op. 399 (1996)).

68. *Id.* (panel discussion comments of Helaine Barnett) (citing ABA Comm. on Ethics and Professional Responsibility, Formal Op. 399 (1996)).

69. See *id.* at 363-64 (panel discussion comments of Helaine Barnett) (citing Model Rules of Professional Conduct Rule 1.16 (1997)). Barnett also discussed the related questions of the legal services attorney’s duties to prepare, plan for the reduction of services, and fulfill ethical obligations to remaining clients. See *id.* at 364-65 (panel discussion comments of Helaine Barnett).

70. See *id.* at 361 (panel discussion comments of Helaine Barnett); *id.* at 367-69 (panel discussion comments of Emily J. Sack). Sack cites the Code’s EC 5-21 which, expanding on Model Rule 5.4(c), states that:

The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment. The desires of a third person will seldom adversely affect

problem at length,⁷¹ analyzing the issue in the context of Model Rule 5.4(c), which states that “[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”⁷² Ellmann identifies a similar provision, Model Rule 1.8(f), which states that a third party can pay for a lawyer’s representation only if “(1) the client consents after consultation [and] (2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship.”⁷³

Ellmann traces a series of controversies that accompanied the emergence of legal services organizations, stemming from the ethical concern that the establishment of these organizations allowed for third-party interference with the practice of law. He cites a number of state court cases in which the lawfulness of legal services organizations was challenged on the theory that, as not-for-profit organizations, they violated laws prohibiting the practice of law by corporations. Employing reasoning that Ellmann finds significant in an analysis of third-party influence, some courts upheld the lawfulness of the organizations on the condition that the individual lawyer retained independent professional judgment on behalf of the client.⁷⁴

a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer.

Model Code of Professional Responsibility EC 5-21 (1981). Sack concludes that “[t]he legislation does subject the legal services lawyer to this kind of pressure.” Pearce et al., *Ethical Issues*, *supra* note 61, at 370 (panel discussion comments of Emily J. Sack).

71. See Pearce et al., *Ethical Issues*, *supra* note 61, at 371 (panel discussion comments of Stephen Ellmann).

72. Model Rules of Professional Conduct Rule 5.4(c) (1998).

73. *Id.* Rule 1.8(f)(1)–(2). Ellmann also identifies similar principles in the Model Code of Professional Responsibility and in the ABA Canons of Professional Ethics. See Pearce et al., *Ethical Issues*, *supra* note 61, at 371–72 & nn.61–62 (panel discussion comments of Stephen Ellmann) (citing Model Code of Professional Responsibility DR 5-107(B) (1983) and Model Code of Professional Ethics Canon 35 (1970)); see also Martha A. Hausman, Note, *The Ethics of Lawyering in the Public Interest: Using Client and Lawyer Autonomy as a Guidepost*, 4 Geo. J. Legal Ethics 383, 387–88 (1990) (noting ethical problems raised by the influence of legal organizations serving as third-party payors, and citing the warning of Model Code EC 5-23 that “[a] person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers”).

For a discussion of the ethical conflicts arising in class actions aimed at structural reforms in public and private institutions, see Deborah L. Rhode, *Class Conflicts in Class Actions*, 34 Stan. L. Rev. 1183 (1982).

74. See Pearce et al., *Ethical Issues*, *supra* note 61, at 372 & n.63 (panel discussion comments of Stephen Ellmann) (citing *Azzarello v. Legal Aid Soc’y*, 185 N.E.2d 566, 570 (Ohio Ct. App. 1962), and *Touchy v. Houston Legal Found.*, 432 S.W.2d 690, 695 (Tex. 1968)). Ellmann also cites two cases in which the New Jersey Supreme Court ruled in favor of legal services corporations, finding that although they were engaged in the practice of law, lawyers retained independent professional judgment. *Id.* at 372 n.63 (panel discussion comments of Stephen Ellmann) (citing *In re 1115 Legal Serv.*

Ellmann infers from these courts' reasoning that if the corporations had placed constraints on lawyers' professional judgment, they would have been engaged in the unlawful practice of law. Similarly, he argues, an organization's compliance with the federal legislation to a degree that interferes with lawyers' professional judgment may constitute the same unlawful activity.⁷⁵ Although the issue of corporate practice of law may currently have limited relevance,⁷⁶ Ellmann finds that these cases emphasize the "importance of the principle that lawyers' judgment must not be constrained by third parties, even those who pay the bills."⁷⁷

On a more technical level, Ellmann provides a nuanced analysis of the applicability of Model Rule 5.4(c) to the actions of the LSC. He raises and rejects as "blink[ing] reality" the notion that the LSC does not violate the Rule because the limitations on individual legal services lawyers are enforced by their supervisors, who are also lawyers.⁷⁸ Instead, Ellmann sees the supervisory lawyer not as a "payer" or an "employer" but as an employee of the LSC, which determines the restrictions to which the supervisors must adhere.⁷⁹

Therefore, the fundamental question for Ellmann is whether to characterize the LSC limitations as restrictions on a lawyer's professional judgment on behalf of clients. To answer this question, Ellmann distinguishes different categories of restrictions. He argues that restrictions on which clients to serve or not to serve does not restrict a lawyer's professional judgment in serving a client. In contrast, according to Ellmann, restrictions on what services can be performed on a client's behalf do serve to limit a lawyer's independent professional judgment.⁸⁰ Ellmann includes in this category a wide variety of restrictions, broadly including, constraints that prevent a law-

Care, 541 A.2d 673 (N.J. 1988), and *In re Education Law Ctr., Inc.*, 429 A.2d 1051 (N.J. 1981)).

75. See *id.* at 372 (panel discussion comments of Stephen Ellmann).

76. Ellmann notes that New York no longer prohibits the corporate practice of law, and suggests that "in an era of 'professional corporations' probably few states do." *Id.* at 372 n.64 (panel discussion comments of Stephen Ellman).

For an early discussion of the problems of unauthorized practice of law by a legal services corporation, see Michael B. Roche, Note, *Ethical Problems Raised by the Neighborhood Law Office*, 41 Notre Dame Law. 961, 963-69 (1966).

77. Pearce et al., *Ethical Issues*, *supra* note 61, at 372-73 (panel discussion comments of Stephen Ellmann).

78. *Id.* at 373 (panel discussion comments of Stephen Ellmann). This theory would rely on Model Rule 5.2(b), which allows lawyers to not only follow their supervisors' directions, but to "act[] in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." Model Rules of Professional Conduct Rule 5.2(b) (1998).

79. Pearce et al., *Ethical Issues*, *supra* note 61, at 373 (panel discussion comments of Stephen Ellmann).

80. See *id.* at 374 (panel discussion comments of Stephen Ellmann).

yer from considering possible methods of representation.⁸¹ This is in addition to specific restrictions which prohibit, for example, challenging welfare reform policy, bringing class actions, initiating legislative advocacy, or seeking attorneys' fees.⁸² Moreover, the next step of Ellmann's analysis requires lawyers to leave organizations that violate the Rule.⁸³

Despite this close adherence to the letter of Rule 5.4(c) and DR 5-107(B), Ellmann acknowledges a number of contexts in which third parties are permitted to exercise substantial control over the conduct of lawyers toward their clients.⁸⁴ Ellmann suggests that these exceptions, in part, gave rise to the language of the 1996 Proposed Final Draft of Section 215(2) of the Restatement of the Law Governing Lawyers, which stated that:

A lawyer's professional conduct on behalf of a client may be directed by someone other than the client when: (a) the direction is reasonable in scope and character, such as by reflecting obligations borne by the person directing the lawyer; and (b) the client consents to the direction under the limitations and conditions provided in § 202.⁸⁵

81. See *id.* (panel discussion comments of Stephen Ellmann). In fact, Ellmann notes that each of these specific restrictions was imposed, in some measure. See *id.* at 374 n.69 (citing Alan W. Houseman, *Legal Representation and Advocacy Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 30 Clearinghouse Rev. 932 (1997)). For a further discussion of ethical issues related to attorneys' fees in public interest litigation, see Arthur B. LaFrance, *Public Interest Litigation, Attorneys' Fees, and Attorneys' Ethics*, 16 *Env'tl. L.* 335 (1986).

82. See Pearce et al., *Ethical Issues*, *supra* note 61, at 374 (panel discussion comments of Stephen Ellmann).

83. See *id.* at 375 (panel discussion comments of Stephen Ellmann). In addition, according to Ellmann, under both Rule 5.4(c) and DR 5-107(B), a client may not consent to a lawyer's departure from those ethical obligations. See *id.* at 377 (panel discussion comments of Stephen Ellmann). Thus, "[c]lients . . . are not permitted to allow third parties to regulate their lawyer's professional judgment." *Id.* (panel discussion comments of Stephen Ellmann). Ellmann does acknowledge, however, that apparently clients may consent to third-party limitations prior to the commencement of the representation. See *id.* (panel discussion comments of Stephen Ellmann). Ellmann finds unconvincing Professor Stephen Gillers' scheme for thereby permitting lawyers to remain in these organizations by re-starting the attorney-client relationship and including the new restrictions as part of the new relationship. See *id.* (panel discussion comments of Stephen Ellmann).

84. These include: public interest litigation, in which "advocacy organizations frequently determine that they will only press cases if the clients agree to seek particular objectives"; insurance defense, in which "insurers routinely regulate at least some aspects of the decision-making of their insured's counsel"; and poverty law practice, in which "budget limitations have generated caseloads that must require lawyers to make careful choices about what resources to expend on which cases." *Id.* at 379 (panel discussion comments of Stephen Ellmann). See generally Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 *UCLA L. Rev.* 1101 (1990) (discussing how legal services lawyers allocate their limited time and resources).

85. Restatement (Third) of the Law Governing Lawyers § 215(2) (Proposed Final Draft No. 1, 1996). Ellmann further cites a revised version of Section 215, which does

Ellmann expresses concern that the application of the Restatement's acceptance of third-party influence that is "reasonable in scope and character" might "broaden the current departures from the rule," to such an extent that the result may be "the elimination of the rule itself."⁸⁶ Ellmann's own view, however, is that the LSC restrictions do not qualify as "reasonable in scope and character," as required by the Restatement.⁸⁷ Ellmann supports this conclusion on several grounds.

He argues that the restrictions "are uniform and across-the-board, and hence less likely to be reasonable in the circumstances of individual cases."⁸⁸ In addition, Ellmann notes that the restrictions "block lawyers from even considering the prohibited steps in particular cases, and this across-the-board restriction on professional judgment undercuts lawyer representation in any case where competent practice would require *consideration* of these steps."⁸⁹ Moreover, Ellmann observes that the LSC restrictions are imposed by the federal government, even though "the United States is likely to be the *adversary* in many of the cases whose handling it is now regulating, and the funder and ally of the adversaries (state and local governments) in many others."⁹⁰ Finally, Ellmann worries that clients' interests will not be properly protected by "legislators who have no ethical obligation to put these citizens (and non-citizens) first—to say nothing of those legislators' politics."⁹¹

In short, Ellmann states that "the preservation of an independent bar is threatened when the professional judgment of particular groups of unpopular lawyers—such as those representing the poor—is sub-

not change the text of the section but does revise the commentary, to "strongly support[] the conclusion that the LSC restrictions, if they *are* inconsistent with Section 215, are inconsistent with the law of lawyering, and can be validated, if at all, only by reference to other law that displaces the rules of the Restatement." Pearce et al., *Ethical Issues*, *supra* note 61, at 380 & n.85 (panel discussion comments of Stephen Ellmann) (citing Restatement (Third) of the Law Governing Lawyers § 215 cmt. g (Proposed Final Draft No. 2, 1998)).

86. Pearce et al., *Ethical Issues*, *supra* note 61, at 381 (panel discussion comments of Stephen Ellmann).

87. *Id.* at 382 (panel discussion comments of Stephen Ellmann).

88. *Id.* (panel discussion comments of Stephen Ellmann).

89. *Id.* (panel discussion comments of Stephen Ellmann).

90. *Id.* at 383 (panel discussion comments of Stephen Ellmann). More than 30 years before the conference at Fordham, Edward Sparer wrote of the political pressures facing lawyers, paid with government funds, who represent low-income clients against the government. See Edward V. Sparer, *The Role of the Welfare Client's Lawyer*, 12 UCLA L. Rev. 361, 374-80 (1965).

91. Pearce et al., *Ethical Issues*, *supra* note 61, at 384 n.97 (panel discussion comments of Stephen Ellmann) (referring to "the explicitly political flavor of congressional opposition to the work of the Legal Services Corporation"); see also 142 Cong. Rec. H8149, H8176-88 (daily ed. July 23, 1996) (debating the amount of funding allocated to the Legal Services Corporation).

jected to restrictions imposed as a result of political decisions by the state.”⁹² He concludes that

at least a substantial number of legal services lawyers are in breach of their ethical obligations by virtue of staying at jobs with LSC-funded entities, and that perhaps a number of those entities are in breach of their statutory program obligations as well—none of which is any good for the clients of legal services at all.⁹³

III. RESOURCE ALLOCATION

In addition to placing direct restrictions on legal services lawyers, third parties may exert an apparently less direct—yet potentially profound—influence on the conduct of these attorneys through the means of resource allocation. An analysis of these issues may be presented through a brief look at the respective roles of Congress, the LSC, and the attorney in resource allocation.

Alan Houseman has provided a detailed discussion of many of the ethical issues relating to congressional authority over LSC funding.⁹⁴ In a law review article, Professor Marshall Breger provides a conceptual framework for analyzing issues of resource allocation for organizations providing legal services to clients with limited needs.⁹⁵ Breger’s discussion highlights some of the ethical considerations that arise as a result of the reality that, by the very nature of the enterprise, funding for legal services lawyers is provided by a third party—largely the government—and not by the client,⁹⁶ and that significant priority-setting policy is established by the LSC, rather than by local attorneys.⁹⁷

Through the Legal Services Corporation Act of 1974, which established the LSC, Congress, which funds the LSC, placed numerous restrictions on the activities of legal services attorneys, including the prohibition of representation in criminal, school desegregation, selective service, and nontherapeutic abortion cases, in addition to a ban,

92. Pearce et al., *Ethical Issues*, *supra* note 61, at 384 (panel discussion comments of Stephen Ellmann).

93. *Id.* at 385 (panel discussion comments of Stephen Ellmann). Though it technically does not fund legal services organizations, the Internal Revenue Service wields a strong influence on these groups, leading to potential conflicts of interest, by granting them tax-exempt status as public charities under I.R.C. § 501(c)(3). See Oliver A. Houck, *With Charity For All*, 93 Yale L.J. 1415, 1425-30 (1984); Nicole T. Chapin, Note, *Regulation of Public Interest Law Firms by the IRS and the Bar: Making it Hard to Serve the Public Good*, 7 Geo. J. Legal Ethics 437, 438 (1993).

94. See generally Houseman, *Interpretation*, *supra* note 59, at 289-93 (discussing the ethical dilemmas legal aid attorney’s face due to the 1996 Congressional restrictions).

95. Breger, *Legal Aid*, *supra* note 2, at 283.

96. See *id.* at 303-13.

97. See *id.* at 313-20.

later repealed, on representing juveniles.⁹⁸ Later legislation excluded representation of illegal aliens and cases involving homosexuality or gay rights.⁹⁹ Conversely, members of Congress attempted to require the allocation of funds for specific poverty groups.¹⁰⁰

Such restrictions by Congress might be criticized as unethical, reflecting the improper influence of a third party on the representation of legal services lawyers toward the clients. Breger finds no merit to such criticism, arguing that "[m]any attorneys limit their practice to particular areas" and that "[n]o group of attorneys is required to provide a full panoply of service—one's professional duty is to do competently whatever job one chooses to take on."¹⁰¹ Breger acknowledges, however, that "when pursuing a discrete legal claim, restrictions on the manner or object of discovery proceedings or the nature of the remedy pursued would be improper."¹⁰²

Breger sees a closer question regarding the role of the LSC in resource allocation. By retaining broad authority over certain aspects of resource allocation, the LSC limits the autonomy of individual attorneys and thus affects the service provided to individual clients, through decisions resulting from concerns other than the interests of the individual clients. In an important 1978 law review article, Professor Gary Bellow and Jeanne Kettleson provide an analytical approach to the ethical implications of corporate board control over resource allocation.¹⁰³ They set forth and analyze various ways in which corporate boards may potentially influence the work of legal services lawyers. With respect to intake and service, for example, they note that one board of directors might delegate all such decisions to the staff, while some boards "have been considerably more active in setting priorities, even to the point of case-by-case approval and review."¹⁰⁴ Still a third variation might provide for the resolution of such decisions through an outside group.¹⁰⁵

98. *See id.* at 305 (citing provisions of the Legal Services Corporation Act of 1974, § 1001, 42 U.S.C. § 2996 (1976)). Congress placed further restrictions on the advocacy functions of legal services lawyers in behalf of their clients, through broad prohibitions on lobbying activities. *See id.* at 308-09 (footnotes omitted).

99. *See id.* at 305-06 (footnotes omitted).

100. These attempts resulted in the compromise language requiring consideration of "the relative needs of eligible clients for . . . assistance . . . including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals)." *Id.* at 307 (quoting 42 U.S.C. § 2996f(a)(2)(C)(i) (Supp. III 1979)).

101. *Id.* at 311.

102. *Id.*

103. *See* Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. Rev. 337, 346 (1978).

104. *Id.* at 344.

105. *See id.*

Bellow and Kettleson also note that the corporate board may influence decisions relating to the type of service offered.¹⁰⁶ They observe that legal services attorneys may potentially engage in a variety of activities, which may or may not include representation of individual clients.¹⁰⁷ Instead, these lawyers "might represent only the tenant or community groups themselves, or deal directly with the public officials involved, without any clients at all."¹⁰⁸ In addition, they "might also draft and lobby legislative proposals, or even attempt to sue on their own behalf in pursuit of reform goals."¹⁰⁹ Thus, when legal services lawyers offer their services, "[a]ll of these choices raise questions concerning whether goals of this nature can properly serve as the basis for accepting or rejecting clients and, if so, who may decide what specific goals to pursue."¹¹⁰

Breger identifies as areas of LSC control: "(1) control over the geographical placement of programs and their funding levels; (2) control over the boundaries of client eligibility; [and] (3) control over the priority-setting process."¹¹¹ Priority setting may pose a particular concern because, despite the emergence of legal services staffs as "increasingly autonomous . . . [and] free to set their own priorities,"¹¹² Breger observes that "[t]he Corporation monitors the actions of the local programs."¹¹³ Indeed, he finds that "[b]y means of informal communication and monitoring by regional offices, the LSC sensitizes local programs to the outer limits of their autonomy in the priority setting area,"¹¹⁴ to such an extent that Breger refers to a "myth of local autonomy."¹¹⁵

The ABA Committee on Ethics and Professional Responsibility has addressed the ethical concerns raised by priority setting, finding the process acceptable "to the extent necessary to allocate [resources] fairly and reasonably . . . and establish proper priorities in the interest of making maximum legal services available."¹¹⁶ In the opinion, the Committee suggested that "[i]t is possible that, in order to achieve the goal of maximizing legal services, services to individuals may be limited in order to use the programs' resources to accomplish law reform in connection with particular legal subject matter."¹¹⁷ However, to allay concerns of improper influence by the LSC, the opinion added:

106. *See id.*

107. *See id.*

108. *Id.*

109. *Id.* at 344-45 (footnote omitted).

110. *Id.* at 345.

111. Breger, *Legal Aid*, *supra* note 2, at 313.

112. *Id.* at 315 (citation omitted).

113. *Id.* at 316.

114. *Id.* (footnote omitted).

115. *Id.* at 317.

116. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 334 (1974).

117. *Id.*

The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program. They may not be based on considerations such as the identity of the prospective adverse parties or the nature of the remedy ("class action") sought to be employed.¹¹⁸

Moreover, in another opinion, the Committee found priority setting not only consistent with, but apparently a necessary element of, the ethical obligations of a public services lawyer. The opinion criticized "the refusal of the directors of a legal services office to institute a system of priorities or waiting lists" because such an approach could result in ethical violations by staff attorneys because of "inadequate preparation" or "neglect" by a staff lawyer¹¹⁹

Finally, Breger addresses a third factor related to the role and influence of third parties on legal services lawyers. Breger discusses the professional and ethical implications of the role of the individual legal services attorney in allocating resources; irrespective of congressional and LSC regulations, the line attorney ultimately serves as the "gatekeeper" of the system.¹²⁰ As Breger observes, attorneys exercise the professional autonomy that they find fundamental to their vocation.¹²¹ Indeed, Breger cites some of the early scholarly literature emphasizing the need for lawyers, as professionals, to determine their own cli-

118. *Id.*

119. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1359 (1976).

Nevertheless, Breger, in another article that discusses conflicts of interest, raises the concern that a board member of a legal services corporation may represent an interest adverse to a client of the legal aid office, potentially creating "a significant appearance of impropriety." Marshall J. Breger, *Disqualification for Conflicts of Interest and the Legal Aid Attorney*, 62 B.U. L. Rev. 1115, 1133 (1982). According to Breger, "[t]he board's authority over staff attorneys' salaries and questions of promotion could reasonably raise the inference of subtle influence by members of the board on a staff attorney's action." *Id.* (footnote omitted). In fact, Breger notes that "[s]everal state bar associations also have been wary of the appearance of impropriety when a board member represents interests adverse to a legal aid staff attorney." *Id.* at 1133 n.79. He cites one such committee, which found that "[c]ertainly, in the minds of the organization's indigent clientele, the [legal aid] staff could not reasonably be deemed free of compromising influences if the lawyer-members of its board were to accept retainers from relatively affluent adverse parties." *Id.* (quoting Committee on Professional Ethics, New York State Bar Ass'n, Op. 489 (1978)).

Breger, though, disagrees with the view that requires the resignation of board members whose interests conflict with those of legal aid clients. *See id.* at 1132-33. Breger argues that such an approach "severely restricts the ability of members of the private sector to participate on local boards" because "conflicts will inevitably occur." *Id.* at 1134. Moreover, he cautions, "[t]he impact of this requirement is especially acute in rural areas where there are generally fewer attorneys," while "[l]arge law firms may also be discouraged from contributing money to legal aid work for fear of accusations" *Id.* (footnote omitted). Therefore, due to the "heavy price" exacted on local legal aid offices, Breger concludes that "[a]ppearances should not be enough to require the disqualification of board members when little likelihood exists that actual conflicts will occur." *Id.*

120. *See Breger, Legal Aid, supra* note 2, at 321.

121. *See id.*

ents, as part of the principle of "fidelity to self."¹²² Additionally, Breger notes that the Model Code of Professional Responsibility protects attorney autonomy in the selection of clients.¹²³ Unlike the "British taxi-rank rule," which require acceptance of any client who fits within the attorney's workload and who can pay the fee, the

122. *Id.*; see, e.g., Edward A. Dauer & Arthur Allen Leff, Correspondence, *The Lawyer as Friend*, 86 Yale L.J. 573 (1977) (discussing the importance of attorneys' individual autonomy when choosing clients); John J. Flynn, *Professional Ethics and the Lawyer's Duty to Self*, 1976 Wash. U. L.Q. 429 (asserting that amoral lawyer conduct is a greater moral hazard than immoral conduct); Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 Yale L.J. 1060 (1976) (explaining that lawyers must be able to choose their own clients because the lawyer-client relationship is inherently personal); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 Wis. L. Rev. 30 (analyzing the "Ideology of Advocacy" as a framework to discuss lawyers' professional ethics).

It is interesting to note that since the appearance of Breger's article, a number of scholars and practitioners who are concerned about legal ethics have found lacking the common treatment and conception of professionalism in the practice of law. See, e.g., Commission on Professionalism, American Bar Ass'n, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* 12-15 (1986) (suggesting various solutions to the current lack of lawyer professionalism); Professionalism Comm., American Bar Ass'n, *Teaching and Learning Professionalism* 2-5, 11-34 (1996) (discussing the decline in lawyer professionalism and recommending alternatives to increase the level of professionalism); Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* 60-84 (1994) (explaining how professionalism is hampered by lawyers' conflicting duties); Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* 11-14, 165-352 (1993) (describing the ideal of the lawyer-statesman and the various forces attacking that ideal that have caused its decline); Sol M. Linowitz & Martin Mayer, *The Betrayed Profession: Lawyers at the End of the Twentieth Century* 185-206 (1994) (offering suggestions to rekindle pride and restore respect in the legal profession); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 St. John's L. Rev. 85, 86-90, 104-07 (1994) (emphasizing the role of lawyers in the administration of justice and how the public perceives them in that role).

Indeed, it is somewhat ironic that, according to some scholars, current attempts to improve the ethical culture of lawyering may advocate alternatives to the professional model. As Professor Russell Pearce has suggested, "[e]ven the prevailing notion of professional role . . . faces challenge or revision as part of the solution to the current crisis of professionalism." Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 Fordham L. Rev. 1075, 1082 (1998) [hereinafter Pearce, *Religious Lawyering Movement*]; see also Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. Rev. 1229, 1237-40 (1996) (discussing how the legal profession alone was permitted to regulate itself). One response to the challenge has been the emergence of a "religious lawyering movement." See Pearce, *Religious Lawyering Movement*, *supra*, at 1082.

For further discussion, see Symposium, *Lawyering and Personal Values*, 38 Cath. Law. 145 (1998); Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 Fordham L. Rev. 1075 (1998); Symposium, *Faith and the Law*, 27 Tex. Tech L. Rev. 911 (1996). See also Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 Geo. J. Legal Ethics 19 *passim* (1997) (exploring the extent to which lawyers may act in accordance with personal moral and religious beliefs and still be within the realm of professional ethics).

123. See Breger, *Legal Aid*, *supra* note 2, at 322.

American Code allows for broader discretion on the part of the attorney.¹²⁴

Nevertheless, Breger finds the application of the American ideal of attorney autonomy less than satisfying in the context of legal services lawyers. In this situation, such an approach "minimizes the role of the client as a participant in determining how program funds should be spent," while "vest[ing] the legal aid lawyer with expert status in determining a community's legal agenda."¹²⁵ Moreover, Breger writes, the legal services attorney, as a salaried employee, "has agreed to work for a particular employer, thus relinquishing his freedom to select his own clients."¹²⁶ Working under the constraints of the policies of both Congress and the LSC, the attorney "operates within a bureaucratic matrix that limits . . . professional autonomy."¹²⁷

CONCLUSION

Bar associations, scholars, and courts have addressed the growing issue of the influence of third parties on the relationship between legal services lawyers and their clients. Some members of these groups have voiced strong objections to the influence that corporate boards and other organizations exert on the work of legal services lawyers, while others do not express the same level of concern. In any event, it can be hoped that participants in these discussions will sense the importance of carrying forward the effort by synthesizing the contributions of all those involved on practical, theoretical, and philosophical levels.

124. *See id.*

125. *Id.*

126. *Id.* at 326.

127. *Id.* For a different view, offered in 1965, see Sparer, *supra* note 90. Sparer acknowledges the reality that the lawyer's ethical duties "[do] not and cannot serve to prevent a decision . . . by his organization . . . prohibiting him from establishing a lawyer-client relationship on certain matters or in relation to certain agencies." *Id.* at 380. According to Sparer, however, "[the] government, if it is truly interested in making counsel available for the poor with whom it deals, must establish its own ethic: it must make lawyers available with no conditions or limitations other than those imposed by the lawyers' own legal judgment and sense of duty." *Id.*