

Social Justice Advocacy and Innovation: The Wisconsin Center for Public Representation 1974–Present

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* Clinical Professor of Law Emerita, University of Wisconsin Law School. B.S., University of Wisconsin; J.D., Yale Law School. Writing this paper turned out to be a wonderful opportunity for me to reflect on my career. I now understand many decisions, events and people that often puzzled me. Examining the actual documents and talking with my colleagues from that period has been life-changing. Many thanks to the people who shared their experiences and to Kris Turner, Head of Reference at the Law School Library, for his superb assistance in accessing the archives.

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I. INTRODUCTION

Social justice practice is undergoing a revival. Access to justice is a watchword in many states; funds and energy are flowing into programs to assist people in courts. Challenges to the rule of law from the Trump administration have energized immigration lawyers who are mounting constitutional and other challenges. Lawyers are mobilizing to protect the Legal Services Corporation. New ideas for social justice lawyering are being put forward, and law students are looking for new opportunities.

In a time of renewed energy and hope, we tend to look forward, not back. Yet recent initiatives must build on existing structures and explore paths taken in the past. For that reason, careful study of past experiences in social justice lawyering must be an essential part of the current revival.

This Article contributes to the social justice lawyering revival by recounting the history of the Center for Public Representation (CPR), a mid-western public interest law firm founded in 1974. Over a 40-year period, CPR experimented with many approaches to social justice lawyering, explored multiple institutional strategies, and developed several innovative programs. The CPR experience offers numerous lessons for those who seek to reinvent social justice lawyering; these include the importance of experimentation, the need for coordination of the local and national, and recognition of the potential role law schools can play in the revival.

The Article divides the history of CPR into three moments, each representing a particular period in the political, economic, and cultural context for social justice lawyering. The 40-year history of the firm was driven by a mixture of local politics and legal culture, individual passion and energy, and national movements and resources. The nature of each of these elements changed with time. While there is continuity throughout, it is possible to show three distinct periods in the life of the firm.

The founding moment took place from 1974–84. It saw the response to national trends by an innovative law school in a progressive state. This was a period when public interest law firms were being created nationally and law schools were beginning to experiment with clinics. The Wisconsin Law School Dean recruited me, a new arrival with public interest law background, to create a civil law clinic that would provide representation for underrepresented groups in state administrative agencies. We chose a non-profit, tax-exempt organizational format that was a hybrid of a free-standing public interest law firm attached to a University of Wisconsin law clinic, thus creating an innovative amalgam of a law firm, a teaching location, and a research site. Without access to the kind of long-

term funding available to many public interest law firms at that time, we developed innovative funding strategies and explored multiple advocacy arenas and modalities.

The second moment embraces the late 1980s and 90s. In this period, the state was privatizing government services, funding was available for poverty law work, and students sought more opportunities for individual and community service. CPR and the Law School adapted to these new conditions. The Center paid more attention to poverty and opened a community law office while the school added a course in poverty law. During this period, the state of Wisconsin was privatizing government services, forcing the lawyers and students to develop new ways to voice the concerns of the affected people. The CPR hybrid format was also under financial and organizational stress during this time as support for clinics grew and for public interest law waned.

In the third moment, 2002–present, CPR reinvented itself as the Economic Justice Center (EJI), which is alive and well today. The redesign was result of financial difficulties in the firm, shifts in legal and political atmosphere, and the success of clinical teaching. The free-standing public interest law firm was cut back. EJI houses civil law clinics in consumer, immigration, family law and poverty law. The clinic is housed in the law school but continues to maintain close connections with the Bar and community groups. The EJI clinicians continue the CPR tradition of research on advocacy using social science methodology.

The CPR history offers insights into the choices facing today's practitioners. Their challenge is how to develop long-term strategies, initiate networks and scale up practices that can meet contemporary needs, utilize law school resources, exploit available technology, and survive into the future. The lawyers are tackling the continuing complexity and contradictions of constructing these practices. In the final part of this Article, I look at a number of lessons from the CPR experience that can help in these struggles.

II. THE FIRST MOMENT (1974–1984): BUILDING A UNIQUE SOCIAL JUSTICE ADVOCACY INSTITUTION

In the first decade of its existence, CPR built a unique type of social justice advocacy institution that combined in one integrated endeavor public interest advocacy, clinical training, and social science research on legal problems. Each of the three pillars of this endeavor were based on national models.¹ However, CPR was exceptional in its efforts to combine all three and adapt each to local circumstances. Nationally, there were public interest law firms devoted to

1. See Robert L. Graham, *Book Review*, 8 *LOY. U. CHI. L. J.* 665, 669 (1977) (reviewing COUNCIL FOR PUB. INTEREST LAW, *BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA* (1976)); Jeanne Charn, *Evolution of Legal Services in the United States: From the War on Poverty to Civil Gideon and Beyond*, in *BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA* 161, 168 (Samuel Estreicher & Joy Radice eds., 2016); Louise G. Trubek, *A Promising Marriage: Social Science Research in a Public Interest Law Firm 5* (presented at the Law and Society Association National Meeting, May 18–20, 1978) (on file with the Nat'l Criminal Justice Reference Servs.).

specific advocacy issues like the environment, civil rights, etc.² Few, if any, had linkages to law school clinics or research units. Nationally, few law school clinics had direct ties to public interest firms.³ In this section, I explain how this unique institution emerged and operated. I trace the interaction between national and local trends that led to CPR's unique structure and explain our commitment to a family friendly workplace. Then, I describe the forms of advocacy that developed and describe the all-important history of funding for the overall endeavor which played a major role in shaping CPR's form and trajectory.

A. Integrating National Trends with Local Conditions

The idea for the project started with discussions between George Bunn, the newly appointed Dean of the University of Wisconsin Law School, and myself, recently arrived in Madison after years of public interest work in Connecticut. We both were aware of national trends in public interest practice and legal education and saw an opportunity to develop an institution in Wisconsin that would reflect both. Dean Bunn had just started his deanship and wished to expand the law school's clinical offerings.⁴ He had practiced administrative and regulatory law representing business clients in Washington, D.C., and was especially impressed with the work of a new Georgetown Law School clinic providing administrative agency representation for underrepresented groups and interests.⁵ I had just arrived from New Haven, Connecticut where I lived for seven years raising a family and working in public interest law. I practiced in a law firm committed to a mixed public interest and private practice and co-founded the Connecticut Women's Education and Legal Fund (CWEALF).⁶ Inspired by the national growth of public interest firms, CWEALF was set up as non-profit firm. It focused on fighting sex discrimination and offered legal education for the public.⁷ It was one of the first women's rights law firms in the country.⁸

With these experiences in mind, George and I and those we recruited, set out to embed these national ideas about public interest law firms and law school clinics into the Wisconsin setting. In Wisconsin, the law school valued research

2. Graham, *supra* note 1, at 667.

3. See Jeanne Charn, *The Teaching Law Office: Service and Learning in the Law School Years*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 365, 365 (Samuel Estreicher & Joy Radice eds., 2016).

5. He was aware of the early clinic at Wisconsin and wanted to expand the offering.

5. The Institute for Public Representation is still functioning at Georgetown University Law Center. The website describes the Institute as a "public interest law firm and clinical education program." *Institute for Public Representation*, GEORGETOWN LAW, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/IPR/index.cfm> (last visited Jan. 24, 2018). Dean Bunn admired Victor Kramer, a legendary anti-trust lawyer and a co-founder of both the Georgetown clinic and the canonical public interest law firm Center for Law and Social Policy. See Joe Holley, *Victor H. Kramer; Founded Center for Law, Social Policy*, WASH. POST (Jan. 13, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/12/AR2007011202109.html>.

6. *About*, CONN. WOMEN'S EDUC. & LEGAL FUND, <http://www.cwealf.org/about/> (last visited Jan. 27, 2018).

7. *Id.*

8. *Id.*

on law in action and the state, true to its progressive heritage, valued participation in its institutions. What emerged was a hybrid project reflecting both national and local conditions and combining elements of the public interest law firm model with a closely linked clinic in the law school and a research unit.

The 1960s was a period for national innovation in both legal organization and legal education. Non-profit tax-exempt law firms dedicated to public interest advocacy, named “public interest law firms” were founded.⁹ They were supported by national foundations and endorsed by many corporate law firms.¹⁰ Some firms were dedicated to specific substantive areas such as the environment or minority rights while others advocated for fair and open procedures in legal processes such as administrative agency actions or court cases.¹¹ The Legal Services Corporation was also being developed and funded.¹²

This was also a period of growth of clinics in what is called the “second wave” of clinical legal education.¹³ During this period, providing real client experience to law students in serving disadvantaged people emerged as part of the teaching mission. The new clinic initiative was largely funded by the Ford Foundation between 1959 and 1978: Ford provided close to \$12.5 million in grants to law schools for clinical education.¹⁴ The new clinics provided training in professional practice skills in a period when law teaching was largely doctrinal.¹⁵ In Wisconsin, we were influenced by the ideas behind the national initiative.¹⁶

The idea of creating a hybrid organization combining a law firm and a law school clinic offering student practice experience drew on national trends and elite school models. It also was shaped by local conditions including the political history of the state and the law-in-action ethos of the Wisconsin Law School. Wisconsin has a storied tradition of progressivism dating from the early twentieth century.¹⁷ In the 1970s, that tradition was alive and iconic. For example, the state’s civil service was nationally known as clean and innovative.¹⁸ The legislature employed full time professional staff.¹⁹ There was a Legislative Council, a non-partisan organization whose function, among other things, was to

9. ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 76 (2012).

10. Louise G. Trubek, *Public Interest Law: Facing the Problems of Maturity*, 33 U. ARK. LITTLE ROCK L. REV. 417, 431 (2011).

11. Graham, *supra* note 1, at 667.

12. Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213, 1213 (2001).

13. Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 18 (2000).

14. *Id.* at 19–20.

15. *Id.* at 24.

16. *Id.* at 11.

17. See generally DAVID PAUL THELEN, THE NEW CITIZENSHIP: ORIGINS OF PROGRESSIVISM IN WISCONSIN (1972).

18. JAMES K. CONANT, WISCONSIN POLITICS AND GOVERNMENT: AMERICA’S LABORATORY OF DEMOCRACY 171 (2006). 19. *Id.* at 57.

19. *Id.* at 57.

develop legislation with committees of citizens and legislators.²⁰ The progressive tradition of clean government, citizen participation, and consensus government was part of the legacy on which CPR drew.²¹ A picture of Robert M. La Follette, the famed progressive U.S. Senator and Governor, was posted prominently in the CPR office.²²

While the progressive tradition had served Wisconsin well, by the 1970s its institutions were coming up short. New constituencies concerned with issues like women's rights and environmental protection emerged and sought new laws and policies.²³ It seemed that the consensus-building institutions of the progressive tradition like the Legislative Council were not capable of handling these needs. CPR saw an opportunity to fill the gap.²⁴ Indeed, CPR's first hire, a lawyer working for the Council, saw the firm as a place where she could practice to change laws in ways that reflected her own opinions and not just carry out legislative compromises.²⁵

The founders of CPR realized that community groups and activists were important allies for the new law firm. The CPR founding documents included a requirement of consultation with these groups in developing programs and appointing directors.²⁶ The by-laws stated that when selecting new Board members, the Board shall "consult with educational institutions, lawyers' associations and numerous citizen organizations representing such interests as consumers, environmentalists, women, minorities and 'senior citizens.'"²⁷

A second element in the local context was the unique aspects of University of Wisconsin Law School. On one hand, it was nationally and internationally known for law and society research.²⁸ It also was a pioneer in clinical education; clinical education had just been added to the Wisconsin curriculum through a criminal law clinic established with the assistance of the Ford Foundation.²⁹ On the other hand, the Law School had a small budget, primarily from the state.³⁰ Fundraising from corporate law firms and alumni was underdeveloped. However, there was a tradition of encouraging faculty to seek outside funds for new

20. *See id.* at 21. The Council still exists and functions in an advisory capacity to legislators and legislature employees. WIS. LEGIS. COUNCIL, <http://lc.legis.wisconsin.gov/> (last visited Jan. 27, 2018). However, in the period under consideration, there was a component for developing legislation with committees that included citizens, under the auspices of a legislative council. *See generally* WIS. STATE LEGIS., <http://legis.wisconsin.gov/Pages/serviceagencies.aspx> (last visited Jan. 27, 2018).

21. *See* THELEN, *supra* note 17, at 309–312.

22. Interviews support the portrait in the office. *See* Telephone Interview with Dianne Greenley (Oct. 4, 2016). This interview and many other materials cited in this article that are not widely available are on file with the author or the University of Wisconsin Archives and Record Management.

23. Gordon Harrison & Sanford M. Jaffe, *Public Interest Law Firms: New Voices for New Constituencies*, 58 A.B.A. J. 459, 459–67 (1972).

24. *See* CTR. FOR PUB. REPRESENTATION, TEN YEARS OF ACCOMPLISHMENT (1983).

25. Telephone Interview with Judith Greenberg (Nov. 14, 2016).

26. By-Laws of the Center for Public Representation (Jan. 2, 1974) [hereinafter By-Laws].

27. *Id.*

28. Interview with David Trubek (July 20, 2017).

29. Meredith J. Ross, *A Systems Approach to Clinical Legal Education*, 13 CLINICAL L. REV. 779, 789 (2006).

30. Interview with David Trubek, *supra* note 28.

initiatives; for example, several leading scholars received major foundation grants for research in the law and society field.³¹

The intersection of the national and local can be seen in two features. The first was the organizational form, the hybrid law firm/clinic. The founders of CPR created a 501(c)(3) public interest firm with a clinical component where a faculty member served on the Board as a law school representative and another faculty member served clinical director.³² The decision to create a separate organizational firm with a Board of Directors rather than housing the clinic within the law school was based on the need to have separation between the actions of the lawyers and students and the state law school. Some of our advocacy might offend government officials and influential leaders who could affect the law school budget. Since our mission was to speak out in state administrative agencies, that possibility was real. For its part, the law school kept a “hands off” policy and we were never subjected to pressure to back off from controversial issues and the separation probably helped.³³ In addition to feeling that we needed to have a firm that was not part of the state law school, we also realized that the firm had to be a charitable enterprise as we knew we would have to aggressively raise funds from a variety of sources to sustain the organization.³⁴

The second feature was to have a local emphasis while maintaining contact with national networks. The public interest law firms throughout the country were part of the Council for Public Interest Law, an organization created under the sponsorship of the American Bar Association and funded by three foundations, including the Ford Foundation.³⁵ The mission of the Council was to create a national group to advocate for opportunities and provide mutual self-help for funding and legitimacy.³⁶ Their publications surveyed the field and provided listing of all the public interest groups nationwide organized by topic and location. CPR was listed in the 1976 report.³⁷ These and other national trends led us to believe that by incorporating national ideas we would be able to secure the long-term funding we would need to sustain the Center. The founding of the Legal Services Corporation (LSC) with its combination of local offices and central administration³⁸ suggested that federal support for antipoverty work would be forthcoming. LSC, Alliance for Justice, and the related foundations provided local and national conversation and mutual support—this support was necessary for innovative organizations to exist and thrive. This contributed to an atmosphere of optimism that money and support would continue to be available

31. Examples are grants to Frank Remington for a criminal law clinic from the Ford Foundation, see AM. BAR FOUND., ANNUAL REPORT 1959–1960 12–13, http://www.americanbarfoundation.org/uploads/cms/documents/1959_-_1960_abf_annual_report.pdf, and to Willard Hurst for Law and Society programming from the Russell Sage Foundation, see DAVID S. CLARK, ENCYCLOPEDIA OF LAW AND SOCIETY 724 (2007).

32. By-Laws, *supra* note 26, at 2.

33. Telephone Interview with Nina Camic (Nov. 29, 2016).

34. See Articles of Incorporation of the Center for Public Representation (Dec. 18, 1973) [hereinafter Articles of Incorporation].

35. COUNCIL FOR PUB. INTEREST LAW, BALANCING THE SCALES OF JUSTICE, *supra* note 1, at 6.

36. *Id.*

37. *Id.* at C-14.

38. Houseman, *supra* note 12, at 1220.

throughout the country. This was especially important for firms like ours located in mid-America where, unlike the East and West Coasts, peer groups were few and far between.³⁹

B. Building and sustaining a hybrid institution for advocacy and education in a progressive state

With these national ideas and trends in mind, Dean Bunn and I set out to embed them in the Wisconsin context. We created the articles of incorporation and by-laws and opened the office in early 1974.⁴⁰ I was appointed as executive director of CPR with Professor Arlen Christenson as co-director to supervise students in the clinics.⁴¹ The policies and purposes of CPR were defined by the Board of Directors, representing concerned citizen groups before administrative agencies; providing clinical training for University of Wisconsin law students; training paralegals and providing community education; and researching the social science and historical aspects of law.⁴²

The first challenge was finding funds to support the three pillars of the CPR structure. When we first envisioned a Wisconsin-based public interest law firm, the national firms financed and supported by the national foundations and elite law firms were already operating and received national attention.⁴³ By 1974, when CPR started operation as a 501(c)(3) public interest law firm, the national foundation enthusiasm for public interest law appeared to be waning.⁴⁴ Negotiations with the Clark Foundation based in New York, an early national foundation supporter for public interest law, did not materialize.⁴⁵ We were very disappointed when our efforts at national foundation support were rejected. To get started we negotiated a few grants including local grants for programming and national grants for clinical support: University of Wisconsin Humanities Committee for a conference, Wisconsin Council on Criminal Justice, for an ex-offender reintegration project, and Council of Legal Education for Professional Responsibilities for law student education. We opened our doors with no long-term commitment for general support.

This early history of risk taking and local fundraising set us on our path. The lawyers and students took risks, they volunteered if no funding was available and looked for all available opportunities.⁴⁶ Personal agency and investment was also part of the CPR story. Financial crises often arose. My salary was cut forty-five

39. A look at the listing of public interest law groups in the 1976 report by the Council for Public Interest Law, *Balancing the Scales of Justice*, supports this statement: Seventy-four firms are either on the East or West Coast; only ten are in the rest of the country. *See id.* at C-1 to C-14.

40. *See* Articles of Incorporation, *supra* note 34.

41. The by-laws required a co-director to supervise the clinical program. The appointments were in March 1974. *See* By-Laws, *supra* note 26, at 2.

42. CTR. FOR PUB. REPRESENTATION, 1975 ANNUAL REPORT (1975) [hereinafter 1975 ANNUAL REPORT].

43. *See* Graham, *supra* note 1, at 667.

44. Board Meeting Minutes, Center for Public Representation (Feb. 7, 1974).

45. *Id.*

46. Telephone interview with Mary Michal (Oct. 20, 2016); telephone interview with Dianne Greeley (Oct. 4, 2016).

percent in 1978,⁴⁷ and honoraria were donated by staff to the Center.⁴⁸ We understood that we did not want the mission to be lawyer's charity work. We saw it as a career opportunity for us and for women in particular. We understood that we had to use entrepreneurial tools and individual commitment. We also had a sophisticated Board who understood state politics and Bar involvement and a supportive law school administration and faculty.

What was the vision of how to fund the fledgling firm? The Board and staff realized that they had to adopt a pluralistic approach to funding that included commitment to our goals. CPR adopted criteria for cases and causes they would pursue. These criteria included "would the area, issue, or case provide opportunities for the center to have an impact commensurate to its limited resources?" It also included a related criteria "would the area . . . contribute to the center's other goals of lay advocate training, clinical education and research on institutions."⁴⁹ All staff were expected to understand funding needs; we believed that the passion and knowledge of the staff doing the work was essential for credibility.⁵⁰ We also aimed for decent salaries and benefits, believing that working against poverty did not require the staff to live in poverty. Our funding needs were substantial. We also had a sophisticated board that understood state politics and Bar involvement and could marshal the support of the law school's faculty and administration to raise funds.

CPR was not housed in the law school. We were located half-way between the capital, in the heart of the city, and the university, one mile away. We offered a course within our office for the clinical students that introduced them to administrative law, public interest practice, and lawyering skills. Our approach might be termed an apprenticeship model. We believed that lawyering skills like drafting could be done in the context of an operational law office where one would also learn about the practice.⁵¹ We co-counseled cases with local firms, especially when litigation experience proved essential. Local lawyers also served as Board members. CPR staff assisted Bar association programming and projects such as lawyer advice and referral. Our vision was that of a collective group of lawyers, students, advocates, and researchers working and learning together to advance social justice.

C. Integrating Advocacy and Research

Our location as a law school clinic and as part of a research university encouraged us to use research. We incorporated a social science research dimension as one pillar of our program. Law students were part of our research

47. Board Meeting Minutes, Center for Public Representation (Nov. 27, 1978).

48. Official Correspondence and Project Documents, Center for Public Representation (Sep. 20, 1995) (on file with author).

49. CTR. FOR PUB. REPRESENTATION, GUIDELINES FOR THE PROVISION OF LEGAL SERVICES (n.d.); cf. Eliane Botelho Junqueira, *Two Models of Brazilian Legal Services*, in HANDBOOK OF GLOBAL LEGAL POLICY 351 (Stuart S. Nagel ed., 2000) (comparing Brazilian legal service providers to CPR).

50. Board Meeting Minutes, Center for Public Representation (Sep. 19, 1996) (on file with author).

51. Jeanne Charn discusses how her Harvard model shared this position. Charn, *The Teaching Law Office*, *supra* note 3, at 656–666.

teams and there was also a pilot program of interns from the political science department under the direction of Joel Grossman with supervision from the research arm of the Center.⁵² We also employed students and professors to work with the core staff when research projects were funded. The research aspect both supported our advocacy and contributed to the funding of the law firm. We analyzed school discipline as part of our project on how juvenile justice is related to education. We studied the comparative effectiveness of laws to assist consumers. We supported the research primarily through federal funding; the school discipline study was paid for by federal criminal justice grants and the effectiveness study by a Federal Trade Commission grant.⁵³

Our methodologies included analysis of cases at the administrative level in order to evaluate effectiveness of laws and procedures. One example was an analysis of the effectiveness of agency work through counting complaints filed and outcomes; another example was extensive examination of Insurance Commission consumer complaints and publishing public reports on outcomes.⁵⁴ This research early in the history of CPR embedded a commitment and understanding to the relationship between research and advocacy that has carried forward in the history of CPR. We see it in the research on evidence-based effective legal practice and in the rethinking of participatory administrative procedures in the second moment.⁵⁵ EJI lawyers today are continuing to write papers using empirical research tools and examining local practices to learn about effective and efficient organizational structures.⁵⁶

To be sure, there was tension between advocacy and research. I wrote a paper for the first meeting of the Law and Society Association where I described the internal debate within the organization in which some lawyers and advocates questioned the usefulness of social science research. This was accompanied by external critique from people who questioned the neutrality of research undertaken by an advocacy organization.⁵⁷ This ambivalence has continued in different forms ever since. In recent years, however, there is more positive support for research about what makes advocacy effective from the Bar, law professors, and clinicians.⁵⁸

52. Board Meeting Minutes, Center for Public Representation (May 13, 1975) (on file with author).

53. See School Discipline Report, Wisconsin State Historical Society, Center for Public Representation Archives, box 23; Federal Trade Commission Report, Wisconsin State Historical Society, Center for Public Representation Archives, box 25 (On file with author). Both these publications were products of the research aspect of CPR.

54. Attention to complaints as a way to assess effectiveness continued throughout CPRs history. See *Report Cites HMO Complaints: 90 Percent Challenge the Denial of Benefits*, WIS. ST. J., May 5, 1997. This research approach has been endorsed by Atul Gawande for all doctors by counting the cases they had in a week and noting trends. See ATUL GAWANDE, BETTER 254–55 (2007).

55. See *infra* Part III Section C.

56. See *infra* Part VI.

57. Louise Trubek, A Promising Marriage: Social Science Research in a Public Interest Law Firm 10–12 (unpublished manuscript) (on file with author).

58. Elizabeth Chambliss et al., *What We Know and Need to Know About the State of “Access to Justice” Research*, 67 S.C. L. REV. 194 (2016); see also D. James Greiner & Andrea Matthews, *Randomized Control Trials in the United States Legal Profession* (Harvard Pub. Law Working Paper No. 16-

D. Creating a Women-Friendly Workplace

We constructed a workplace supportive of women and families. This came about in part because I was the Director and this was my first full-time law job. My previous work included a part-time position for a social justice private law firm and volunteer legal work with non-profits on issues affecting women and minorities. I was committed to a professional career as a social justice lawyer while raising a family. I imagined working in a place that allowed flexibility in work times, provided parental leave, health insurance and retirement benefits.

CPR had a strong commitment to women's rights.⁵⁹ Women were always a substantial percentage of the staff. Many of the lawyers over the years mentioned that the most important aspect of their experience working at CPR was that it provided an opportunity to combine their commitment to career and social values and also maintain a family.⁶⁰ Although public interest firms believed in the idea of social justice, they did not always serve as model workplaces for women.⁶¹ CPR, however, sought to combine effective advocacy for clients with construction of a family friendly workplace. One lawyer remembered that when she returned after a three-month parental leave, I reminded her that she was back to work and I expected full commitment.⁶²

The importance of the workplace in keeping women in legal jobs was essential. It did not mean that the workplace was a family; rather, it meant that it allowed for autonomy and provided meaningful work.⁶³ Our substantive areas of advocacy in addition to women's rights included mental health, advancing children's needs, and equality for handicapped persons.⁶⁴ In the 1990s, as a result of renewed student interest in feminism, we held internal workshops to reflect on our workplace as a "pro women and family space" and discussed our interest in women's roles in work and family.⁶⁵

06, 2016). For debate, see Jeffrey Selbin et al., *Service Delivery, Resource Allocation and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L.J. ONLINE 45 (2012).

59. See Employment Discrimination Case Files, Wisconsin State Historical Society Archives, boxes 7-8.

60. Telephone Interview with Betsy Abramson (Oct. 20, 2016); Telephone Interview with Dianne Greenley (Oct. 4, 2016). We also placed a picture of Belle Lafollette, an early Law School graduate and wife of Robert Lafollette on the CPR wall.

61. One example is Brenda Feigen in her accounting of her work at the ACLU Women's Rights Project. She was fired by the executive director when she was five months pregnant. She eventually founded her own firm with her husband where they did civil rights cases. See BRENDA FEIGEN, NOT ONE OF THE BOYS: LIVING LIFE AS A FEMINIST 96 (2000).

62. Telephone interview with Betsy Abramson (Oct. 20, 2016).

63. On women and law firms, see Laura A. Rosenbury, *Working Relationships*, 35 WASH. U. J.L. & POL'Y 117 (2011); Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 HARV. C.R.-C.L. L. REV. 415 (1996); Joyce S. Sterling & Nancy Reichman, *Navigating the Gap: Reflections on 20 Years Researching Gender Disparities in the Legal Profession*, 8 FLA. INT'L U. L. REV. 515 (2013).

64. See CTR. FOR PUB. REPRESENTATION, TEN YEARS OF ACCOMPLISHMENT, *supra* note 24.

65. Interview with Nina Camic (Nov. 29, 2016); see also CTR. FOR PUB. REPRESENTATION, LONG RANGE PLANNING REPORT AND IMPLEMENTATION SCHEDULE (1993).

CPR was an early law firm model designed to provide a workplace that allowed work-family balance but also offered respect and meaningful work.⁶⁶ At CPR, we felt that the workplace environment was an important aspect of a social justice practice.⁶⁷ Our early understanding of the importance of the workplace atmosphere for the ability of women to thrive in legal practice is still not fully accepted into the legal world.⁶⁸

E. Advocacy

CRP advocacy included efforts both to represent groups and to protect individuals. Sometimes they were combined.

1. Speaking Out for Unrepresented Groups

Initially, our primary substantive mission was facilitating participation by underrepresented groups in administrative agencies.⁶⁹ The Annual Reports stated, “The Center for Public Representation Inc. is a public interest law firm representing, within the administrative process, the interests of groups which do not have the resources to obtain other legal counsel.”⁷⁰ The Board of Directors established criteria to evaluate which cases and issues to undertake. These guidelines specified that CPR should take cases representing collective interests affected by administrative action where there was no organized group or legal services organization able to provide adequate representation.⁷¹

66. CPR is an example of one model of a supportive legal workplace. For a discussion of other models, see Joan C. Williams et al., *Disruptive Innovation: New Models of Legal Practice*, 67 HASTINGS L.J. 1 (2015).

67. See Louise Trubek & M. Elizabeth Kransberger, *Critical Lawyers: Social Justice and the Structures of Private Practice*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 213 (Austin Sarat & Stuart Scheingold eds., 1998).

68. See generally Joyce S. Sterling & Nancy Reichman, *Overlooked and Undervalued: Women in Private Law Practice*, 12 ANN. REV. L. SOC. SCI. 373 (2016).

69. A description of the evolution of our thinking during this period can be seen in papers that CPR published in the 1970s. See, e.g., CTR. FOR PUB. REPRESENTATION, APPROACHES TO PUBLIC INTEREST ADVOCACY (1980). One was published in a book. See Louise G. Trubek & David M. Trubek, *Civic Justice Through Civil Justice: A New Approach to Public Interest Advocacy in the United States*, in ACCESS TO JUSTICE AND THE WELFARE STATE 119 (Mauro Cappelletti ed., 1981).

70. CTR. FOR PUB. REPRESENTATION, 1976 ANNUAL REPORT (1976) [hereinafter 1976 ANNUAL REPORT].

71. The guidelines specified:

Are there a substantial number of individuals who, as a group are being harmed by existing state or local administrative decisions or could be benefitted by future state or local administrative decisions; Are there individuals either unable to form a formal organization which can adequately represent their interest in the decision making process or have formed an organization which does not have adequate resources to compensate counsel at prevailing rates; Is there another legal services organization which can provide adequate representation for this group; will improved representation before federal state or local administrative bodies contribute to more careful consideration of these group interests by decision makers taking into consideration the constitutional and delegated powers of the

The emphasis on administrative agencies stemmed from the personal experiences of George Bunn as a lawyer in Washington, D.C., representing business clients in regulatory matters, and my advocacy for eliminating sex discrimination in banking and credit in Connecticut. The need to provide representation for underrepresented groups in the agencies and then in follow-up court proceedings was an active scholarly, legislative, and judicial issue at the time.⁷² In this period, significant changes in administrative law practice were underway: increasing critique of regulatory agencies as captured by the industries, passage of new social regulatory programs, and the rise of public interest law advocacy in consumer and environmental law.⁷³ Bunn was interested in having students experience administrative law issues in an advocacy setting at the Wisconsin level.⁷⁴ We soon realized that in order to improve administrative agency action at the state level, we needed to work in conjunction with community and issue-based partners.

CPR accomplished a tremendous amount in a wide variety of substantive areas in its first years. The ex-offender project worked toward removal of civil disabilities. The project trained probation officers and parole officers and conducted studies of ex-offender insurance denials.⁷⁵ CPR carried out a project to investigate compliance by the insurance industry with a statute that prohibited discrimination based on sex or marital status in the extension of credit. Under a contract with the Governor's Commission on the Status of Women, CPR prepared a pamphlet explaining the law. Ten thousand pamphlets were printed, but the demand was so heavy that an additional 20,000 had to be printed.⁷⁶ In the same year, CPR's client, the League of Women's Voters, together with the Commissioner of Banking, decided to draft rules which explicitly prohibited discrimination based on sex or marital status.⁷⁷ We also worked on behalf of our clients with the Department of Veterans Affairs to eliminate language that created different standards for men's and women's income and excluded child support and alimony from criteria for lending.⁷⁸ Land use was an early issue under the leadership of our client Capital Community Citizens. We were active in four areas: preventing excessive development using septic tanks; mining development in Northern Wisconsin; enforcement of the Wisconsin

administrative body to deal with the issue; Would the area, issue or case be one where the provision of legal services would contribute to the Center's other goals of lay advocate training, clinical education and research on institutions; Would the area, issue of case provide opportunities for the Center to have an important impact that is commensurate to its limited resources?

GUIDELINES FOR THE PROVISION OF LEGAL SERVICES, *supra* note 49; *see also* Beltho Junqueira, *supra* note 49, at 366.

72. *See* Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1669 (1975).

73. *See* Richard B. Stewart, *Administrative Law in the Twenty-First Century*, 78 N.Y.U. L. REV. 437, 441 (2003).

74. 1976 ANNUAL REPORT, *supra* note 70, at 19.

75. Board Meeting Minutes, *supra* note 52.

76. 1975 ANNUAL REPORT, *supra* note 42, at 3.

77. *Id.*

78. *Id.* at 4.

Environmental Policy Act; and litigation under the Clean Water Act.⁷⁹ We encouraged citizen participation through helping people access government documents and attend public meetings through publicizing the Wisconsin Open Meeting law.

Interaction with some Wisconsin administrative agencies proved to be an unexpected mixture of adversarial advocacy and *ad hoc* collaboration. There were agencies where the administrators saw CPR as an ally in enacting consumer protection rules and developing educational strategies to assist consumers. One example was the enactment of consumer protections for seniors seeking to purchase insurance that complemented Medicare. Our development of supportive testimony at hearings assisted the Commissioner in generating the support for the issue. We then transformed those regulations into consumer information and developed and ran a hotline to counsel consumers on purchasing the policies.⁸⁰ Looking back, the then-Commissioner of Insurance said that the knowledge that CPR would be there to support his initiative was a crucial element in his decision to move ahead.⁸¹

2. Helping Individuals: Lawyers, Students and Lay Advocates

Initially, we only took on causes that affected large unrepresented groups, but students wanted something more. Student involvement was encouraged, two students, Margaret Angle and Tom Levi, were nominated to be Board members after extensive interviews and suggestions from clinical students.⁸² While some students were primarily motivated by a desire for broad political and social change, a substantial number were motivated by “helping.” Many noted that our conceptualization of how to use law to create a more just society did not include individual representation. They challenged that dichotomy and urged us to develop an individual representation dimension. These were early days in the firm and we were seeking clients, funding, and a vision. We realized that adding individual representation not only expanded our knowledge of the field but was an effective and humanizing means to draw attention to the plight of the people affected by the policies. Students spoke out within CPR, urging the firm to provide individual assistance to people affected by unfair policies. One student, for example, had worked as a social worker in a housing project and enrolled in law school so she could learn how to deploy legal tools to help poor people.⁸³ When she started as a clinical student, she pointed out the importance of expanding the CPR mission to include individual assistance for the clients and students.

So we began to add individual case representation to policy advocacy. For example, we provided advocacy for people with criminal records unable to obtain jobs by developing legislation prohibiting discrimination based on criminal records, while also representing individuals with real life controversies. We

79. CTR. FOR PUB. REPRESENTATION, 1977 ANNUAL REPORT (1977).

80. *See infra* Part II Section F.

81. Interview with Harold Wilde (Aug. 18, 2016).

82. Board Meeting Minutes, *supra* note 52.

83. Interview with Mary Michal, *supra* note 46.

developed a program to provide legal services for the elderly that included extensive individual assistance. We also brought lawsuits against an insurance company when classes of individuals were unfairly deprived of Medicaid services.⁸⁴

Another aspect of the CPR approach was a style of advocacy that was collaborative and community-based. Our staff included non-lawyers knowledgeable about the issues. We collaborated with community groups. Our bylaws required consulting with community and issue organizations in the selection of directors. We had close relationships with local groups, such as environmental and women's rights organizations or health and social service non-profits. At the same time, some state government agencies, such as the Bureau on Aging, expanded their authority to facilitate and fund legal assistance to disadvantaged people.⁸⁵ They sought non-profit groups willing to design outreach and advocacy programs and offered grants and contracts to fund these efforts. We realized that we might use the combination of our community connections with the funding from government agencies to provide advocacy. We were also interested in how law could be utilized by citizens and the appropriate roles of clients, lay people and lawyers in using the law to improve their lives. We developed models where we, as lawyers, worked with other professionals and paraprofessionals to develop effective and efficient ways to reach and assist clients.⁸⁶

One example is the highly successful benefit specialist model that still is the model for providing services to elderly and disabled throughout Wisconsin.⁸⁷ The model provided assistance across Wisconsin through a program based in the local agencies for the elderly. We hired local people interested in seniors and trained them in legal information and procedures. They provided individual counseling and advocacy on government and health benefits and were supervised by our Madison-based CPR lawyers. In rural areas, for example, the benefit specialists were housed in the county office on aging that provided other social services for the elderly. That community placement helped coordinate the range of services for seniors and disabled.⁸⁸

The benefit specialist model is an example of how expertise can be developed in ways that would ensure wider reach and impact by helping more people. Lay advocates, lawyers, and other professionals working together were a crucial theme of CPR.⁸⁹ We wanted to present a professional vision of lawyers

84. CTR. FOR PUB. REPRESENTATION, 1983 ANNUAL REPORT (1983).

85. For a description of this program, see generally WILLIAM H. SIMON, CTR. FOR PUB. REPRESENTATION, AN INNOVATIVE MODEL FOR PROVIDING HIGH QUALITY LEGAL ASSISTANCE FOR THE ELDERLY IN WISCONSIN (1989).

86. Another example is the reintegration project, where under a contract with the Wisconsin Department of Corrections, we provided assistance to ex-offenders seeking to return to jobs and integration into the community.

87. *Benefit Specialists*, WIS. DEP'T OF HEALTH SERVS., <https://www.dhs.wisconsin.gov/benefit-specialists/index.htm> (last visited Jan. 27, 2018).

88. SIMON, *supra* note 85, at 15.

89. That continues to this day, and Marsha Mansfield and the EJI Family Court clinic provide self-representation assistance. She has also studied the effectiveness of the clinic. Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1381 (2015).

who worked for the disadvantaged, rather than provide charitable donations to poor people. We also saw the advantage of using lay advocates. Our model combined social-work-style, holistic, non-litigation assistance with the professional expertise of the traditional Bar. Part of the success was the creation of easy-to-use manuals that simplified complex laws and procedures and allowed the benefit specialists to provide accurate counseling and representation. The lawyers were able to handle the complex issues and cases. These two were linked through a seamless system and worked together; lawyers provided expertise in the legal process and in substantive information.⁹⁰

The move to combine cause lawyering, individual advocacy, community collaboration, and the use of lay advocates to help deliver legal services was innovative and unusual in the United States at that time. It brought success but created tensions as the project struggled to achieve success in both system reform and mass individual assistance. Many scholars note the tension and contradiction between service to particular individuals and efforts to achieve structural or institutional change.⁹¹ In addition, this model challenged the conventional view of the lawyer as an independent professional with special expertise. It relied extensively on locally based lay advocates. Compounding the complexity were the students as part of the team. Could this approach be more successful in combatting inequality? One study of the CPR model showed substantial success in providing high quality services for the clients.⁹² Our approach also contributed to legal education; students worked with the CPR-based lawyers and learned substantive elderly law and administrative hearing processes. There were challenges with incorporating students as part of the representation. The clinic was training students to understand the role of the lawyer. Could we teach them both how to be a distanced professional and a collaborator in the field?⁹³

F. An Innovative Business Plan: Government Support, Market Income and Entrepreneurship

Unlike many national public interest law firms that started off with long-term grants from Ford or other major donors, CPR knew from the beginning that it had to develop an innovative and, for the times, heterodox approach to funding. Our approach, which was based on local needs and resources and national opportunities, had four pillars: Law school support, government grants and contracts, charitable giving and market-based sales. We exploited our legal and substantive expertise and legitimate position in a well-regarded law school. We utilized our law school clinic as a key pillar for support. The law school

90. Today, the use of paraprofessionals and lay advocates in social justice practice is widespread throughout the world. In fact, our contacts with international scholars and social justice practitioners influenced our development of the model. Paolo Freire was a widely read scholar, and we had links with lawyers in different countries experimenting with social justice practice.

91. See Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies in Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347 (2012).

92. SIMON, *supra* note 85.

93. As discussed below, the program was eventually placed in an NGO representing seniors and the student dimension was substantially reduced. See *infra* Part III.

supported many of the lawyers as clinical instructors and we counted the value of the clinical students as contributed revenue. The founding period set up a pattern of state government support for targeted programs to assist unrepresented people. Occasionally, we received federal funding directly or through re-grants from state agency programs. We soon realized that charitable individual contributions through United Way-type giving and direct “Friends of the Center” contributions were also possible. We sold self-help information and also provided legal information in conferences for which we charged fees.

The 1977 report noted income of \$308,000, of which twenty-four percent came from the law school and seventy-six percent from grants and contracts. The 1984 financial annual report noted income totaling \$363,148, government grants accounted for forty-one percent and the law school accounted for twenty percent. The remaining thirty-nine percent was revenue from sales of publications, training fees, foundation grants, individual contributions, and attorney fees.⁹⁴ By 1988 to 1989 the total income was more than \$1,000,000. The sources in that year were similar except there was a substantial increase in government sources due to health programs that included not only advice, but also direct funding of needed preventive services for children.⁹⁵

The ability of CPR to survive and sometimes flourish can be seen in the financing model. We were innovative in what we provided using all opportunities. The importance of government grants seems contradictory since the mission of CPR was to provide a voice in government decision-making for unrepresented interests and this often meant challenging agency positions. As one observer noted “this link produces a very ambiguous relationship between CPR . . . and the government. Although the CPR has always been ‘largely an adversary of state government,’ the ‘state government has enlisted our cooperation for research and representation projects.’”⁹⁶ The state of Wisconsin had a strong tradition of participatory government and provision of programs for people in need. During these decades, the provisions of national funding to the states were growing for programs such as Medicaid, the elderly, and disabled. Our position as a well-regarded law firm linked to the law school and our willingness to work with the agencies in developing programs at a low cost allowed us to both receive funding and be a critic when needed. The role of the state in our success in that period is notable. Our work can be seen in the state’s reputation for innovation in health care and elder and disability projects in particular.

We also used market tools to raise money. We were a non-profit, but we could still produce and sell in the market. CPR also relied on supplemental funding from revenue producing events, individual charity giving, and memberships in a social justice funding collaborative. We also received attorney

94. CTR. FOR PUB. REPRESENTATION, TEN YEARS OF ACCOMPLISHMENT, *supra* note 24.

95. This is a model where the legal advocates also were able to fund preventive services. This model has some similarities to the contemporary Medical Legal Partnerships. See NAT’L CTR. FOR MED.-LEGAL P’SHIP, <http://medical-legalpartnership.org> (last visited Jan. 27, 2018).

96. Junqueira, *supra* note 49, at 363.

fee awards when cases arising from these practices produced awards.⁹⁷ We provided continuing educational programs for fees on subjects where we had expertise such as health law and elder law. Private practice lawyers attended as well as social workers and health care providers. Our most successful market products were our self-help legal documents: Do-it-yourself wills and marital property agreements.⁹⁸ We worked with law professors who developed these court- or legislature-approved documents. CPR was the publishing house that distributed and publicized the availability of these documents that enabled people to control their own finances.⁹⁹ In the ex-offender project, we trained probation officers on how to reduce barriers for the reintegration of ex-offenders using material developed by our staff lawyers and law students. That was a model emulated by other local firms such as the public interest firm that formed to assist persons with disabilities.¹⁰⁰ Tax laws that granted tax-exempt charitable contributions and legislation allowing class actions and attorney fee awards were essential for our survival. Tax regulations in that period permitted tax-exempt contributions to public interest firms and allowed for some lobbying.¹⁰¹

Perhaps the most heterodox feature of CPR was its entrepreneurial orientation. We created new forms of legal representation for different clients with different needs. After producing a pilot, training staff, and providing assistance for a period of time, we then placed the program with the most appropriate organization, what may be termed as “spinoffs.”¹⁰² We developed different types: Lay advocates supervised by lawyers, hotlines, and training non-legal professionals in legal knowledge and skills.

We were able to create these programs because of our broad range of skills and community contacts. However, sustaining these ambitious programs in a public interest law firm with services often provided by students was challenging. One solution was to spin off these programs and place them in appropriate community organizations and government agencies that could more easily fund the program and maintain close contact with the clients. We developed a hotline to provide advice to seniors on purchasing supplemental health insurance. The hotline and its staff were transferred to the Insurance Commissioner’s office. The benefit specialist program for the elderly described above was placed in a statewide membership organization that advanced the interests of seniors.

Another example is the early legal service program for people with HIV. In the 1980s, the spread of HIV leading to the plague of AIDS was devastating

97. Board Meeting Minutes, Center for Public Representation (May 26, 1998); CTR. FOR PUB. REPRESENTATION, 1989 ANNUAL REPORT (1989) [hereinafter 1989 ANNUAL REPORT].

98. For a contemporary discussion of such efforts, see Reid Weisbrod, *Facilitating Homemade Wills*, in BEYOND ELITE LAW 395 (Samuel Estreicher & Joy Radice eds., 2016).

99. The authors were two University of Wisconsin law professors who were expert in their fields. See Howard S. Erlanger et. al., *Estate Planning Under Wisconsin’s Marital Property Act*, WIS. BAR BULL., Feb. 1986, at 14–17, 50–58.

100. Telephone Interview with Dianne Greenley (Oct. 4, 2016).

101. Later changes allowed fees from clients but CPR never adopted that strategy. See Mitch, *Tipping the Scales of Justice: The Role of Non-Profit Sliding-Scale Law Firms in the Delivery of Legal Services*, 20 N.Y.U. J. LEGIS. & PUB. POL’Y 375, 380–381 (2017).

102. Today these may be termed “legal start-ups.” See Daniel W. Linna Jr., *What We Know and Need to Know About Legal Startups*, 67 S.C. L. REV. 389, 389 (2016).

many people nationally and in the state.¹⁰³ A combination of personal contacts and student interest led CPR to put together a project to provide legal assistance to persons with HIV/AIDS. Here, we used the CPR approach of a manual and self-help guides but relied on pro bono attorneys for most of the legal assistance. This project also relied extensively on the doctors and nurses at the hospital that housed the major AIDS medical center.¹⁰⁴ Patients were referred by the Madison AIDS Support Network. After several years, the project migrated to that organization where it is a well-regarded program within the organization.¹⁰⁵

CPR can be described as an incubator for generating new organizations to provide legal knowledge. This was also a funding mode for CPR since we used grants and clinical funding to underwrite the initial start-up costs. The placement of the service in a sustainable non-profit or government agency permitted the service to continue in a stable location and allowed CPR to respond when other client and community needs developed. We developed this path when we saw both the limits of endless fundraising and the desire of the social movement groups to provide the legal services linked to their other services.¹⁰⁶ Sometimes this mode created serious tensions both within CPR and with external stakeholders; sometimes lawyers and staff did not want to move to other locations; sometimes CPR leadership wanted to keep a program when the lawyers wanted to start their own spin off. One program that was spun off without support of the leadership was the health advocacy project which is still running and has flourished.¹⁰⁷

III. THE SECOND MOMENT (1985–2002): NEW CONDITIONS AND NEW STRATEGIES

In the second moment, CPR confronted major changes in the ideas and structures that animated its vision, channeled its advocacy, and supported its activities. These changes required modifications in the topics we focused on, the advocacy approaches we employed, and the organizational forms we used. In this section, I outline the major changes in our environment and describe three ways in which we adapted our original model: Moving into poverty law as a field and a practice; finding new tools to deal with the privatization of government services; and strengthening the clinical dimension of the Center's work.

103. MARK MADER, *CTR. FOR PUB. REPRESENTATION, INSURING THE UNINSURABLE: THE AIDS CONCERN* (1988).

104. Telephone Interview with Nina Camic (Nov. 29, 2016).

105. That program is now part of the statewide ARCW that merged with the AIDS network in 2015. The legal program is still flourishing. *See* Email from Daniel Guinn, Legal Counsel, to Louise Trubek (Nov. 4, 2016, 3:04 PM CST) (on file with author).

106. Some social movement groups are now seeking alternative models for legal assistance. *See* Luz E. Herrera, *Starting a "Low Bono" Law Practice*, in *BEYOND ELITE LAW* 367 (Samuel Estreicher & Joy Radice eds., 2016).

107. The spinoff is called ABC for Health; on their website, they acknowledge their origins at CPR. *See* *ADVOCACY & BENEFIT COUNSELING FOR HEALTH INC., PROMOTING ACCESS TO HEALTH CARE THROUGH PATIENT ADVOCACY IN WISCONSIN* (2006), <https://www.safetyweb.org/common/WHITE%20PAPER%20Promoting%20Access%20to%20Health%20Care%20through%20Patient%20Advocacy%20in%20Wisconsin.pdf>.

A. A Changing Environment

In the 1980s and 1990s, there was dissatisfaction from all sides with the Great Society's welfare state; conservatives wanted to diminish the role of the federal government while social movements worked for more attention to racism and discrimination against women.¹⁰⁸ To diminish the role of the federal government, conservatives pushed for devolution and privatization; the left drew more attention to race and gender and client empowerment. This was accompanied by a move to the right in the courts and a falling away of political interest in poverty alleviation including the gutting of the LSC. There was skepticism about the ability of the canonical public interest law firms to speak for the unrepresented and improve outcomes through participation in administrative agencies.¹⁰⁹ The skeptics on the left portrayed the legal reforms of the 1960s as alliances of elite law firms and elite legal education to adapt social policy and law to meet the 1960s social discontent without really challenging hierarchies and self-interest. The struggle to find a stable funding model for public interest law firms persisted with the realization that foundations were unreliable and government assistance chancy.¹¹⁰

CPR was affected by the shifts in scholarship, politics, and funding, with the new critiques challenging our model. There was debate within the firm about how we should respond if at all. During this period, some at the Wisconsin Law School were engaged in a critique of traditional liberal legalism.¹¹¹ Our students and colleagues were exploring these critiques and reexamining traditional reforms. On the other hand, in the state political culture, there emerged legislative and administrative implementation of privatization to decrease the role of the welfare state. Wisconsin was a leader in privatization in health and welfare. These challenges took place in a period where legal education was confronting the paradoxical situation where drastic cuts in federal funds for clinics were intersecting with national efforts to encourage law schools to expand clinics. To deal with all these changes we made numerous changes in advocacy and organization.

B. Expanding our commitment to poverty law

The first change was to substantially expand our commitment to poverty law. This demanded much more than the addition of new legal issues; it also required organizational change. CPR was set up as a free-standing law firm located near the State Capital, and our advocacy was organized around policy approaches

108. Pierre Schlag, *Critical Legal Studies*, in THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 295 (Stanley N. Katz ed., 2009).

109. GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (2008).

110. See Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 2056–58 (2008); Catherine R. Albiston & Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 L. & SOC. INQUIRY 62, 71 (2014).

111. For a summary of the critique, see Schlag, *supra* note 108.

carefully constructed by the legal team with limited client contact. We came to see that this structure could undercut our understanding of client problems, especially the problems of the poor. We accepted the critique of traditional hierarchical relationships between the lawyer and client in public interest lawyering that we found in feminist analysis and critical legal theory. As described by Ruth Buchanan, “the struggle to maintain the balance between respecting the client’s knowledge and falsely essentializing it” was a topic discussed by students and the newly hired lawyers.¹¹² As we moved more into poverty law, we explored community-based advocacy.

These shifts directly affected how we practiced at CPR. We opened both a Madison neighborhood office and Milwaukee office. As I stated at that time, “in addition to changing society from the top down, our philosophy was to affect change from the bottom up through individual representation and case-work.”¹¹³ CPR, prodded by students and young lawyers, opened a Madison community-based law office to assist a low-income neighborhood. The office was placed in a largely African-American and Latino neighborhood. Law students and lawyers worked with clients and the communities to determine what issues were relevant to that community. The new Milwaukee office provided health benefit counseling services primarily to African-American consumers. The office was set up in response to the need for legally trained advocates created by the redesigned managed care system.

The move from the courtroom and administrative agencies to neighborhood centers created many difficulties such as how to find clients, decide on issues with community groups, and develop expertise.¹¹⁴ The neighborhood base produced a clearer understanding of client needs and how to provide assistance in an accessible format. We believed that “changes can arise from everyday practice.”¹¹⁵ This concept was closely tied to linking the lay advocates, lawyers and community-based practice. The move to the urban community setting during this period continued the earlier benefit specialist model of rural communities, where local advocates worked with the CPR lawyers to assist the elderly. The students and the lawyers worked together in tandem with lay people in figuring out how to resolve issues. They attempted to combine the lawyer’s legal tools and expertise together with community’s knowledge and needs.¹¹⁶

The interest in poverty also included an academic component. Poverty law arose as an academic field with the War on Poverty and the famous Supreme Court cases of the 1960s. By the 1980s, social justice academic interest was now centered in critical legal studies, feminism, and anti-racism. The Wisconsin Law School, founded with Harvard and UCLA, the Interuniversity Consortium on

112. See Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1043 (1994).

113. 1989 ANNUAL REPORT, *supra* note 97, at 4; see also Junqueira, *supra* note 49, at 367.

114. See Ruth Buchanan & Louise G. Trubek, *Resistances and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687, 687–89 (1992).

115. See Junqueira, *supra* note 49, at 368.

116. We also moved the CPR home office to new space closer to the Capitol. We decorated the office with columns that looked like a courthouse but placed simple legal material and community announcements on bulletin boards placed on the columns. This was our attempt to use design to express our commitment to the use of elite law combined with the community needs.

Poverty Law to revive interest in poverty law. The Ford Foundation contributed a large multiyear grant. I was one of the facilitators. The Consortium brought together law school teachers interested in poverty law around the country incorporating clinicians and teachers of welfare law and constitutional law. It also facilitated interaction between those committed to the original Legal Service Corporation vision and those interested in the emerging feminist approaches, community based programs, and anti-racism.¹¹⁷ As part of that commitment, I began to teach poverty law in the law school as a free-standing course and co-authored the first poverty law casebook to be published in many years. The book stressed new feminist and anti-racist approaches as well as canonical Supreme Court cases.¹¹⁸ Consortium emphasis on anti-poverty work and the poverty case book connected CPR to the academic mission of the Wisconsin Law School.¹¹⁹

C. Privatizing Government: Participation and Accountability

At the same time as we were moving to an overt community-based poverty law approach, the traditional administrative agency regulatory process was undergoing change. At CPR we could see that public services in Wisconsin were beginning to be privatized and we realized that our advocacy had to be rethought.¹²⁰ Wisconsin was an early leader in privatizing government functions, shifting from the classic welfare state model. At CPR, our work had focused on providing voice for the underrepresented in administrative agencies including monitoring agency accountability.¹²¹ We used the tools of administrative due process and court review. Many policy makers believed there was an overreliance on centralized command-and-control methods.¹²² CPR's experience demonstrated that despite our partial successes, our participation often was overwhelmed by the power of the organized interests. In the 1980s, the Republican leadership in state government initiated a process of devolving public services to private groups. Our model of participation through rulemaking hearings and legislative oversight would no longer be as effective. It forced us to reexamine how to best use our resources to ensure participation and accountability in these new processes. Healthcare and welfare programs were at the forefront of privatization in Wisconsin.

Healthcare had a long history as an area for CPR advocacy. Wisconsin, under a Republican governor, led the reorganization of healthcare delivery into a

117. For the history of the Consortium, see Martha Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 *FORDHAM URB. L.J.* 1391 (2006); Elizabeth Chambliss, *Organizational Alliances by U.S. Law Schools*, 80 *FORDHAM L. REV.* 2615 (2012).

118. JULIE A. NICE & LOUISE G. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW: THEORY AND PRACTICE* v–vii (1997).

119. I taught Poverty Law as a free-standing course, unconnected to the clinical program. Many of the consortium members were traditional academics, so I integrated my academic scholarship into the courses and clinic.

120. See Louise G. Trubek, *Old Wine in New Bottles: Public Interest Lawyering in an Era of Privatization*, 28 *FORDHAM URB. L.J.* 1739, 1739–40 (2001).

121. *Id.*

122. See Jody Freeman, *The Private Role in Public Governance*, 75 *N.Y.U. L. REV.* 543, 672–74 (2000).

process called managed competition.¹²³ This process was a major restructuring that affected both public and private healthcare programs through a competitive contracting process. Many national consumer groups fought against the managed care reorganization and the new forms of stake-holder alliance. We realized that to be effective we had to rethink our usual process of speaking at agency hearings since much of the decision making and implementation was now conducted within the healthcare HMOs.¹²⁴ One reporter said “in health politics it’s hip to be pro-consumer.”¹²⁵ We advocated for strategies that would turn the new system into a “social arena.”¹²⁶ We organized a forum on the new model, which filled past room capacity and raised \$4000.¹²⁷ We organized client and provider groups to work together. We proposed increased oversight by government agencies and participation by client and provider groups within new managed care organizations. We advocated for performance measures and used that information to participate in the government bidding process. We worked to ensure complaint processes both internally in the HMOs and externally in the government agencies. Today, the Affordable Care Act is modeled on many of the concepts developed during that period.¹²⁸

We also participated in the tense debate over the reorganization of welfare benefits. Private agencies were contracted to administer benefits to encourage work. We successfully urged that performance criteria in the contracts be linked to government monitoring to ensure that the jobs provided health care coverage through public or private insurance.¹²⁹ Our advocacy included a conference on “Federal and State Welfare Reforms: Protecting health care for our families and children”¹³⁰ that included a critical policy analysis of the state welfare reform.

Our administrative advocacy shifted to enlist government and non-government actors, including non-profits and public interest groups, in the formulation of regulatory policy.¹³¹ Our experience with administrative agencies where our clients and issues were often overwhelmed by organized interest groups contributed to our willingness to support innovation if participation and accountability were allowed and embedded.¹³² Using metrics for evidence-based evaluation of effective regulation combined with information for consumers is part of the challenge. I described some aspects of this new process for admini-

123. See Louise Trubek, *Making Managed Competition a Social Arena: Strategies for Action*, 60 BROOK. L. REV. 275, 275–76 (1994).

124. Julie Snelder, *In Health Politics, It's Hip To Be Pro-Consumer*, MILWAUKEE BUS. J. (Apr. 24, 1998).

125. *Id.*

126. See Trubek, *Making Managed Competition a Social Arena*, *supra* note 123, at 276.

127. Board Meeting Minutes, Center for Public Representation (Sep. 17, 1997).

128. For a recent discussion of the relevance of the HMO experience to the ACA, see generally D. Farringer, *Everything Old is New Again: Will Narrow Networks Succeed Where HMOs Failed*, 34 QUINNIPIAC L. REV. 299 (2016).

129. See Trubek, *Old Wine in New Bottles*, *supra* note 120, at 1739; see generally Matthew Diller, *The Revolution in Welfare Administration*, 75 N.Y.U. L. REV. 1121 (2000).

130. Board Meeting Minutes, Center for Public Representation (Nov. 15, 1996).

131. See Stewart, *Administrative Law in the Twenty-First Century*, *supra* note 73, at 448.

132. See Louise G. Trubek, *Public Interest Lawyers and New Governance: Advocating for Health-care*, 2002 WIS. L. REV. 575, 577.

strative participation as “new governance.”¹³³ Our advocacy during this period is reflected in the continuing interest of figuring out what makes for effective and participatory administrative regulation.¹³⁴ Recent scholarship on the relation between national and federal policy has highlighted the need for innovative approaches to facilitating group participation in administrative processes, and suggests that technologies not available during the CPR era may now be harnessed to that end.¹³⁵

D. The CPR Organizational Structure: The Paradox of the Expansion of Clinics and Fading of Public Interest Law

In this period, the Center’s hybrid structure underwent a substantial change as the clinical component expanded significantly while the separate public interest law dimension declined. These changes were driven by external factors, including change in funding and the Law School’s decision to institutionalize clinics and regularize the position of clinicians.

CPR’s continued success in the 1980s and 1990s was clearly related to the amazing growth of funding for clinics and availability of a career path for clinical teachers. Clinical education had become a national phenomenon with almost all law schools now providing pedagogically sophisticated offerings with instructors who had law school appointments. Clinics expanded nationally fueled by federal funding and student interest in skills training.¹³⁶ From 1978–97, \$87 million federal dollars were allocated to clinical education. CPR’s early commitment to clinical teaching placed our lawyers in an advantageous position to obtain the new clinical teaching positions funded by the federal clinical education program. CPR applied for these federally funded law school positions and expanded our offerings and programs using these funds. The lawyers functioned as clinicians supervising students and as lawyers in the firm. The federal subsidy that ran through the law school substantially increased our programming and supported our budget. In 1995–96, the federal funding was \$206,000 while the law school support, which included value of student hours, totaled only \$104,000.¹³⁷ The CPR clinics participated in the growing and successful clinical movement that emphasized the “importance of skills training and clinical pedagogy.”¹³⁸

While support for clinics grew in this period, other sources began to dry up.¹³⁹ The Clinton administration continued the conservative approach towards

133. Louise G. Trubek, *New Governance and Soft Law in Health Care Reform* 14–17 (Univ. of Wis. Legal Studies Res. Paper No. 1018, 2006), <https://ssrn.com/abstract=908674>.

134. The use of computers in submitting notice and comment materials can be used to generate useful data. See Michael A. Livermore et al., *Computationally Assisted Regulatory Participation*, 93 NOTRE DAME L. REV. (forthcoming 2018), <https://ssrn.com/abstract=2970222>.

135. See John Dillon, *Law School Gets First Woman Dean*, YALE ALUMNI MAG. 14 (2017); cf. Miriam Seifter, *Second-Order Participation in Administrative Law*, 63 UCLA L. REV. 1300 (2016).

136. See Barry et al., *supra* note 13, at 12. The Federal government invested 87 million towards the institutionalizing of clinics between 1978 and 1997.

137. CTR. FOR PUB. REPRESENTATION, 1996 ANNUAL REPORT (1996).

138. *Id.*

139. See Rhode, *supra* note 110, at 2076; Albiston & Nielsen, *supra* note 110, at 71.

public interest work started by President Reagan.¹⁴⁰ This crushed the belief that there would be a major federal initiative under a Democratic administration.

Nonetheless, CPR remained optimistic. The “Twenty Years of Advocacy for the Public” stated that in the year 1993–94, CPR had revenues of over \$1 million and went on to say:

[T]he diversity of funding and activities—one of its greatest strengths. Grants, law school clinical support, individual gifts and contracts all play a vital role in the Center’s fiscal health. This ability to bring together resources and advocate effectively has allowed the Center to develop into one of the most effective state level public interest groups in the nation.¹⁴¹

The intricate funding model required constant attention. We aimed at preserving the model of a free-standing social justice practice combined with an internal clinic. While the clinic side was healthy, other activities were short of funds. More professional fundraising was one option. A funding consultant was considered for a short while but there was little value observed in this process.¹⁴² CPR explored but rejected a development committee to work on fundraising with representatives of the Friends of the Center and Board members.¹⁴³ More consistent relationships with local law firms was explored including sharing resources, co-counseling cases, and reviewing case files together. The spin-off to separate firms continued. Maintaining such a diverse set of programs and funding sources was exhilarating but also worrisome and stressful.

After almost 20 years of serving as executive director, I decided that I would prefer to concentrate on the clinical dimension and use law school resources to support my salary. I proposed that a new executive director be hired and the Board of Directors initiated a search. The hiring of a full-time executive director with no law school financial support was very controversial. Some doubted the ability of CPR to fund the position.¹⁴⁴ Michael Pritchard was hired as the Executive Director in 1992. Mike was one of the first lawyers at CPR in the 1970s. He developed the environmental project and contributed to the ex-offender reintegration advocacy. After his first stint at CPR, he worked as a legal service lawyer overseas and in the United States for almost 20 years. Mike served as executive director for three years. In that period, CPR trained Russian lawyers in public interest law under a grant that helped fund the law firm. He resigned in 1995. In his resignation letter, he encouraged the law school to provide more support for the firm beyond the salaries of the clinical teachers.¹⁴⁵

140. Albiston & Nielsen, *supra* note 110, at 66–67.

141. See CTR. FOR PUB. REPRESENTATION, TWENTY YEARS OF ADVOCACY FOR THE PUBLIC 5 (1996).

142. Board Meeting Minutes, Center for Public Representation (Mar. 25, 1982).

143. Board Meeting Minutes, *supra* note 52.

144. Board Meeting Minutes, Center for Public Representation (Mar. 30, 1992); see CTR. FOR PUB. REPRESENTATION, LONG RANGE PLANNING REPORT AND IMPLEMENTATION SCHEDULE (1993).

145. Undated Letter of Resignation and Reference to Nov 1, 1995 Resignation, in Center for Public Representation Board Meeting Minutes (Sep. 18, 1995).

A major blow was the elimination of the federal clinical education funding in 1997.¹⁴⁶ Paradoxically, this loss embedded CPR even further within the law school clinic structure. The reduction in federal funds required the law school to provide funding for the lawyer positions. We were able to maintain some of our programs as several lawyers obtained full time law school based non-tenure track positions that required a year-long teaching obligation. These positions could be viewed as superior to the unstable public interest law firm jobs. Several lawyer positions and programs were in fact eliminated since the law school could not replace all of the federal funding.¹⁴⁷ The remaining programs such as the publications, conferences, and non-law school supported legal programs were struggling for funding. The lawyers who moved into the law school and assumed full-time clinic positions enjoyed the stability of the positions. However, the flexibility and innovation that was a hallmark of the CPR workplace was reduced. Once the clinics were fully funded by the law school and the instructors became full-time employees of the school, the emphasis on education increased and faculty control was enhanced.

Thus, in this period the Center shifted from primarily a public interest law firm with clinical students to a law school clinic with a community education component, strong contacts with local law firms, and public visibility. One CPR board member, who had formerly been a CPR clinical student, spoke against moving the CPR programs into the law school observing “the significance of having a law firm separate from the law school was of great importance to the clinical experience.” I decided to continue as clinical director but undertook to serve as de facto executive director to maintain the public education functions through fundraising sources.¹⁴⁸

Why did the model change? CPR was a hybrid institution. As a clinic it was part of a vibrant and networked national movement but as a state-based public interest law firm it was geographically isolated. Why did this happen? The strength of the clinics emerged from their strong national networks embedded in the American Association of Law Schools and the newly formed CLEA. These networks provided national conferences for networking and exchange of practices as well as a strong lobbying arm to advance the funding for clinics and the status of clinicians. The national trend in clinics aimed at improving status and salaries of clinicians and developing complex skills training. Although the clinics continued to provide live client service as well as structured training for the students, there was increasing emphasis on training.¹⁴⁹ This was very different than the CPR “apprenticeship” pedagogy of learning how to be a public interest lawyer.

During this period, while the clinics were developing into institutionalized elements in legal education, social justice public interest law firms were losing momentum. The growth of conservative public interest firms was one element. As 501(c)(3) non-profits claiming to seek to balance the scales of justice, these

146. See Barry et al., *supra* note 13, at 20.

147. Board Meeting Minutes, Center for Public Representation (Nov. 4, 1997).

148. Board Meeting Minutes, Center for Public Representation (Jun. 26, 1991).

149. Barry et al., *supra* note 13, at 39–41.

firms challenged the link between progressivism and access to justice.¹⁵⁰ Another element was that The Council on Public Interest Law, the network of the initial public interest firms and the publisher of the influential description of the firms, all evolved into a new organization, the Alliance for Justice. The organizational mission changed from a clearinghouse for public interest law firms that worked to strengthen the firms to a federal-court-watching and advocacy organization seeking to combat the rising right wing Federalist Society.¹⁵¹ The loss of the clearinghouse reflected the loss of momentum as the founding generation moved on.

IV. THE THIRD MOMENT (2002–PRESENT): CONSOLIDATING CHANGE AND REBRANDING THE INSTITUTION

By the early 2000s, the accumulation of external and internal changes forced a major restructuring of CPR. National trends affected the environment for advocacy and the resources that could be mobilized. The Law School responded to these changes by a major restructuring.

A. A New Context

As the twenty-first century dawned, it was becoming harder and harder to support the public interest pillar of the original hybrid. Nationally, external support for the independent public interest law firm model had declined significantly. The cost of maintaining a separate firm, with a downtown office and independent staff, was high. By then, I had left the Center to work full time as a clinical professor of law teaching a substantive health law course with a health law externship component. No one else at Wisconsin was willing or able to undertake the arduous task of seeking continued funding for the firm as such. At the same time, clinical education was becoming more popular and law schools saw the need to invest more in clinics. This trend coincided with a shift in the bar and bench towards more support for efforts to help relieve poverty by offering access to justice for the poor, clinics seemed well suited to contribute to that goal.

B. Reorganization and Rebranding

In this context, the law school decided to restructure CPR. The separate office was eliminated. The legal staff was downsized to a smaller group employed full time by the law school. The mission was refocused to concentrate on access to justice for the poor. The name was changed to the Economic Justice

150. See generally Anthony Paik et. al., *Lawyers of the Right: Networks and Organization*, 32 L. & SOC. INQUIRY 883 (2007).

151. The mission statement of the Alliance for Justice now states it “works to ensure that the federal judiciary advances core constitutional values, preserves human rights and unfettered access to the courts, and adheres to the even-handed administration of justice for all Americans.” *Our Work*, ALLIANCE FOR JUSTICE, <https://www.afj.org/our-work> (last visited Jan. 27, 2018).

Institute.¹⁵² While the 501(c)(3) structure and Board of Directors were maintained, effective direction shifted primarily to the law school faculty and administration. In effect, one pillar of CPR's hybrid model of firm-plus-clinic was reduced.

The EJI newsletter described the organization's mission "EJI will focus its efforts on access to the legal system, protection of consumers and economic justice for the working and nonworking poor."¹⁵³ In addition, the EJI programs specifically emphasized "educating law students through teaching, supervision and reflection as students engage in the experiential learning process while empowering clients and community to resolve conflict by providing information, advocacy, and methods of alternative dispute resolution."¹⁵⁴ The new by-laws of EJI Inc. further clarified its mission by stating "the purpose of the Corporation shall be to provide financial and other support for the University of Wisconsin Law School clinical programs that focus on civil law."¹⁵⁵

EJI is primarily organized as a law school clinic with all the lawyers employed as clinicians. Most of the funding is provided by the law school, though additional grants also support some of the programs.¹⁵⁶ In recent years, EJI has hosted fundraising events and submitted grant proposals to various foundations and organizations.¹⁵⁷ The EJI clinic offers relevant and socially meaningful educational experience to students. The EJI teaching style emphasizes well-developed pedagogy on skills, intense community interaction, and seminars on public interest law. Although EJI continues to be committed to public interest law, the commitment to the hybrid public interest law firm-clinic was eliminated.

C. What Accounts for This Dramatic Change?

Why did the Board and the new leaders decide to change the name and modify the mission? The new leadership wanted to distinguish the new organization from CPR, an organization based on a different vision from a different time. There was an amalgam of local conditions and national trends in the first decade of the twenty-first century. At the local level, there was a conservative political outlook at the state level and unstable funding for the firm. At the national level, there was Bar pressure for coordinated state-based access to justice programs and in law schools for clinics as the route for social justice and skills training for law students. While the political shift to a more conservative political climate in the state—fully apparent today—was only starting in the early 2000s, the change was underway. The progressive Wisconsin political culture was a factor in our initial vision. We understood that the open, participatory structure of all three branches of government was crucial. As our annual reports

152. See Amended and Restated Bylaws of the Economic Justice Institute Inc. (Jan. 13, 2003); see also *CPR Undertakes Transition to Economic Justice Institute*, PUBLIC EYE (2003).

153. See *CPR Undertakes Transition to Economic Justice Institute*, supra note 152.

154. *Id.*

155. Amended and restated Bylaws of the Economic Justice Institute Inc., supra note 152.

156. Telephone Interview with Marsha Mansfield (Dec. 6, 2016).

157. *Id.*

made clear, we drew on that culture to gain support for our efforts to improve the process by integrating our clients' voices. We discovered that the Wisconsin progressive tradition was still alive.

The fading of an optimistic vision was reflected in the funding possibilities that looked increasingly grim. Our program for spinoffs resulted in a shortage of stable funding for organizational maintenance. There seemed to be few promising new financial sources; the story of the decline of the LSC provided a cautionary tale. The bulk of CPR funding now came from the law school for the salaries of the lawyers who were clinical teachers; the law school housed the staff lawyers eliminating the costs of the separate downtown office.¹⁵⁸

Nationally, the legal establishment, elite law schools, Big Law, and the Bar realized that the access to justice was fraying as demonstrated by the increase in self-representation and cutbacks in the LSC. A search for new ways to assist poor clients was now underway. One focus of the search was the effort to enact a constitutional or legislative right to civil representation to parallel the criminal right obtained under the *Gideon* decision. Meanwhile, clinicians, advocates and courts experimented with different modes to provide assistance to poor clients. Unbundling legal services to provide less expensive assistance for ordinary people was one thread. Another was the involvement of the judiciary in creating new approaches such as simplified forms and court-based advice centers.¹⁵⁹ The Bar and LSC initiated the drive for state-based Access to Justice Commissions to coordinate the variety of state-based groups. EJI used that framework to link with local and state groups.

At the same time, law schools were continuing to increase their commitment to clinics. The thriving clinical movement advocated for professional skills-based teaching in law schools, expanded emphasis on clinic opportunities for all students, and continued its support for clinics that emphasized social justice. The clinical movement maintained its commitment to using the clinics to provide assistance for needy clients and underrepresented groups. Clinic teachers aimed at being fully funded by the law school and achieving equal status with "standup" teachers.

D. CPR Today: The ELJ Mission and Program

EJI built on both local experience and national trends. Today, EJI participates in the access to justice movement through its clinics and close participation with the Wisconsin Bar in pro bono and other efforts at assisting low-income people. EJI sponsors four civil law clinics most of which bear some relation to CPR initiatives. The Consumer Law Clinic is a direct continuation of an old CPR program. It handles individual cases and foreclosure while also participating in administrative and legislative procedures and as amici in court cases that have larger policy implication for consumers. The Family Court Clinic sees people in

158. There is a neighborhood law office where students conduct their clinical service. However, this is in the form of an outreach office in a low-income neighborhood. See *Neighborhood Law Clinic*, U. OF WIS. L. SCH., <http://law.wisc.edu/eji/nlc/index.html> (last visited Jan. 27, 2018).

159. See Rachel Ekery, *Court Facilitation of Self-Representation*, in BEYOND ELITE LAW 413 (Samuel Estreicher & Joy Radice eds., 2016).

the courthouse and in the community. It assists self-represented people with family law matters using the family court standard forms, and provides individual representation for low income individuals, primarily those impacted by domestic violence. The Neighborhood Law Clinic is based in a low-income neighborhood and assists clients with problems in rental housing, employment, and public benefits. It also provides community legal education. The newest clinic is the Immigration Justice Clinic that is assisting with asylum and other immigration matters.¹⁶⁰ A research dimension continues and is encouraged by the national turn toward clinical scholarship.¹⁶¹ Two of the EJI clinicians are researching and writing papers based on their analysis of innovations in providing services; Mitch is writing on new forms of non-profit firms and Marsha Mansfield is evaluating the effectiveness of assisted self-representation.¹⁶²

V. LOOKING FORWARD AND LEARNING FROM THE PAST

There is renewed interest in social justice practice. Because of continuing economic and social inequities, opportunities for such advocacy abound. Lawyers are looking for opportunities to do this kind work, propelled by social concern and by the scarcity of traditional law jobs. As the new wave of social justice lawyering evolves, much can be learned from CPR's experience. We learned that constant experimentation is essential; that local efforts thrive when they are linked to national networks; that integrating social justice advocacy and clinical education can both facilitate education and serve client needs; and that law schools are an essential resource for social justice advocacy in America. In this section, I show the relevance of these lessons today.

A. *Experimentation with New Organizational Forms*

Social justice practices are in a period of experimentation. This includes looking for new vehicles for this kind of practice. CPR employed what was innovative for its time—the 501(c)(3) non-profit law firm model. However, the public interest “industry” has become much broader. In their book on public interest lawyering, Chen and Cummings present a chart of the industry showing it includes for-profit firms, non-profit organizations, and government agencies.¹⁶³ To some degree, the classic 501(c)(3) structure can be constraining.

While we used what is now the classic organizational form, we pushed it as far as we could. We always stressed the need for entrepreneurship in the design of platforms for social justice advocacy that explains our many spin-offs. This

160. See *Neighborhood Law Clinic*, *supra* note 158.

161. See Barry et al., *supra* note 13, at 32.

162. Mitch, *supra* note 101; Mansfield, *supra* note 89. Mitch's article uses interviews to analyze new types of practice; Mansfield's article utilizes surveys and case analysis to study effectiveness of new techniques.

163. See ALAN K. CHEN & SCOTT CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 126 (2014).

entrepreneurial¹⁶⁴ spirit is even more important today as new challenges arise and new technologies make possible things about which we could not even dream.

In an important book on technology in law, Ben Barton stresses that entrepreneurship is the most important tool for increasing social justice practice.¹⁶⁵ One observer called these new forms of practice “legal startups.”¹⁶⁶ We see practices using technology, hybrid organizational forms, and non-lawyers as advocates. New technology provides the potential to use business techniques to assist clients, which includes online forms, online programs to match lawyers and clients, and mass provision of services. Mixed models are now much more visible blurring the line between individual case representation and cause lawyering and mixing non-profit structures with fees from clients. There are solo and small firm practices that are sources of assistance to poor and middle class.¹⁶⁷ There are firms that rely on court-awarded fees where litigation is combined with a social justice mission. There is interest in practices that both accept fees from clients and foundation grants. There is also a revival of neighborhood law offices now termed “low-bono,” where local lawyers assist people in a for-profit organizational form, but seek to provide important services for low-cost.¹⁶⁸

The classic public interest firm is just one type organizational format in this proliferation of social justice practices. The search for viable sustainable business models will continue to produce tensions such as merging policy change and mass representation and balancing for profit and nonprofit motives. That experimentation is part of the ferment of this moment.

B. Integrating Local Needs and Conditions with National Resources and Opportunities

One of the problems CPR was never fully able to resolve was how to connect the local with the national. In that era, state based public interest firms had few opportunities to network nationally. If there were links to national groups, those groups simply viewed the local practices as information sources in a one-way transfer.¹⁶⁹ Today, there are new models that are transforming how the local interacts with the national. They incorporate social justice practices and law school clinics using technology and sharing of learning and information. These practices start out with access to technology that enables them to search for similar organizations, share data, and inform potential clients.

Two different models demonstrate how, through revamping lawyering practices and leveraging technology, advocacy at all levels can increase. These have national scope, while not centralizing program development or legal

164. See *infra* Part V Section D.

165. See generally BENJAMIN H. BARTON, *GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION* (2015).

166. See Linna, *supra* note 102.

167. Herrera, *supra* note 106, at 368–372

168. *Id*

169. The legal services corporation is another story and had a different history than the state-based public interest firms. See generally ALAN HOUSEMAN, *INT’L L. AID GROUP, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2015* (2015).

strategy. Local initiative is encouraged and supported. One model is a national platform center with an affiliated network. The Innocence Project, founded in 1992 by Peter Neufeld and Barry Scheck at Cardozo Law School, is now an independent organization with the mission both to exonerate and support the innocent and redress the causes of wrongful conviction.¹⁷⁰ Soon after the Project opened as a clinical program, other criminal law clinics sought to emulate the model. Over time, a network of independent organizations throughout the country based in law schools, public defender offices, non-profits, and private firms emerged. Each network member is approved using criteria to function as a member of the network.¹⁷¹ The tie-in among the national center and the network enables policy advocacy and media attention; the national office hosts an annual conference and webinars and other forms of sharing information and training for the network.¹⁷² The relationship between the Innocence Project and the affiliated network is an ongoing negotiating process.¹⁷³

The second model is what is termed “Big Immigration Law.”¹⁷⁴ This is the product of the recent increase in deportations that has energized the immigrant community and the lawyers who work on immigration issues. The large number of clients involved and the absence of other avenues prompted the development of an innovative approach called “collectivizing representation.” The approach nationalizes presentation at a local deportation center by “engaging advocates outside the physical jurisdiction of the client’s immigration court.”¹⁷⁵ It uses remote teams assembled through the internet to support on the ground direct representation. It encourages data collection and sharing of information.

Both models demonstrate how local actions can be integrated into national strategies and networks using technology. New advocacy groups see that a national network is the key to survival and effectiveness.

C. Providing Complex Social Justice Advocacy and Clinical Education Simultaneously

There is renewed interest in thinking about hybrid institutions, such as CPR, that combine teaching law students and providing social justice advocacy. Two early examples are still functioning, the East Bay at UC Berkeley Law School and the Jamaica Plains office at Harvard Law School. The Berkeley public

170. *About*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about/> (last visited Jan. 8, 2018).

171. See Keith A. Findley & Larry Golden, *The Innocence Movement, The Innocence Network, and Policy Reform*, in *WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE* 93, 94–96 (Marvin Zalman & Julia Carrano eds., 2013).

172. *Id.* Another example of the central office and network model is Medical-Legal Partnership (MLP). Founded by a doctor and lawyer, the mission is to improve health and well-being through an integrated approach of public health and legal sectors. There are currently nearly 300 hospitals and health care centers that house a partnership. The coordinating office is in George Washington School of Public Health. MLP’s mission includes research, individual assistance for patients and policy interventions. See *About the National Center*, NAT’L CTR. FOR MED.-LEGAL PARTNERSHIP, <http://medical-legalpartnership.org/about-us/> (last visited Feb. 16, 2018).

173. Findley & Golden, *Innocence Movement*, *supra* note 171, at 95–96.

174. Juliet Stumpf & Stephen W. Manning, *Big Immigration Law*, U.C. DAVIS (forthcoming 2018).

175. *Id.*

interest law firm and clinical program developed from a report written by Professor Eleanor Swift in 1996 for Boalt Hall, the University of California Berkeley Law School. She wrote the report at the request of the dean who wished to develop a clinical program offering both experiential education and public interest services.¹⁷⁶ Harvard Law School's pioneering hybrid "teaching law office" was founded in 1964.¹⁷⁷

A contemporary route to a hybrid model might be the incubator model. Law schools assist post-graduate start-ups that focus on transition to law practices, access to justice and new technologies.¹⁷⁸ The CPR spin-off model discussed earlier combined law school expertise and contacts with community groups and government. Experienced clinicians, with student assistance, developed expertise in the field and worked with the appropriate organization to transfer the project. This can be seen as an early version of the incubator.

These new incubator programs are linked to the growth of new affordable legal services for groups without access to legal resources.¹⁷⁹ The incubator approach brings the entrepreneurial spirit shown in the new practices described earlier into the law schools through post-graduate programs. The incubators can be linked to clinics in a "staging" system where student interested in entrepreneurial practice can take courses and clinics in law school with the goal of locating a mentored placement after graduation. One program at University of Massachusetts Dartmouth has opened Justice Bridge, an incubator that is placed in Boston, a location remote from the law school.¹⁸⁰ The expansion of the incubator model to off-campus locations can spread the practices into the community at an early stage.¹⁸¹

D. Using Law School Resources Effectively

Law schools are crucial actors in rethinking how to maintain and support social justice practice. This rethinking is taking place in the intersection of legal profession changes, crisis in law schools enrollments, new technologies, and continuing funding struggle for social justice practices.¹⁸² The CPR experience highlights how crucial law schools can be in the success of social justice practice.

176. Jeffrey Selbin, *Eleanor Swift's Indelible Public Interest Legacy at Berkeley Law*, 105 CAL. L. REV. 583, 585 (2017).

177. Jeanne Charn, *The Teaching Law Office*, *supra* note 3, at 656.

178. For law school based incubators and access to justice perspectives, see generally Patricia Salkin et al., *Law School Based Incubators and Access to Justice-Perspectives from Deans*, 1 J. EXPERIENTIAL LEARNING 202 (2014).

179. See generally *Incubator Consortium's 4th Annual Conference*, TEX. A&M U. SCH. OF LAW, <https://law.tamu.edu/faculty-staff/news-events/conferences-and-symposia/incubator-access-to-justice-conference> (last visited Jan. 27, 2018).

180. See *Justice Bridge*, UMASS LAW, <http://www.umassd.edu/justicebridge/> (last visited Jan. 27, 2018).

181. See John Christian Waites & Fred Rooney, *What We Know and Need to Know About Law School Incubators*, 67 S.C. L. REV. 503, 504–06 (2015).

182. For discussion of the role of law schools, see Jonathan Lippman et al., *Law Schools Must Focus on Access to Justice*, 39 NAT'L L.J. 13 (2016). For discussion on continuing struggles of public interest law practices, see Rhode, *supra* note 110, at 2027.

However, the role of the law school changed over the 40 years of CPR's existence.

I see three avenues for law schools today to play in supporting expansion of sustainable social justice practices: Encouraging research, leading reform in professional regulation, and integrating teaching and practice.

CPR did “research on advocacy and advocacy research” from our earliest days and EJI continues in that tradition.¹⁸³ The importance of social science research for social justice lawyering is being revived nationally. One recent article stated, “Happily, there are signs of a renaissance in ‘Access to Justice’ research and the development of research communities capable of organizing and assessing such research.”¹⁸⁴

Legal regulatory processes are a crucial arena for law schools. Regulations are key to opening up experimentation and innovation in two ways, the ethic codes enacted by bar associations and regulation of law school curriculum. Law schools are essential actors in the regulation of the profession. Law schools teach ethics and the regulation of the legal profession, but they are also actors in the development, enactment and enforcement of these codes. Traditionally, the regulation of the profession is granted to Bar Associations that enact ethics codes that define and standardize legal practice. Ethics codes are now front and center in the debate over how to “narrow the justice gap.” At this moment ethics is a double-edged sword. On one hand, it is the basis for the pro bono movement, now a major source of legal services for the disadvantaged. On the other hand, ethics codes and laws are major barriers to innovation. Unauthorized practice prohibitions and multidisciplinary barriers can be used to limit innovation using technology and in the use of non-lawyers.

All law school teaching can intersect with social justice practice. Clinics can morph into practice sites as demonstrated in the Innocence Project and the immigration story.¹⁸⁵ Classroom teachers can provide classroom expertise in a field while teaching clinics where students participate in practice. Heather Gerken at Yale teaches courses and a clinic on administrative law and federalism¹⁸⁶ and Grainne De Burca at NYU teaches and supervises a clinic on international organizations.¹⁸⁷ Clinic learning can move into the classroom. I developed a seminar studying new governance as an alternative to traditional command and control administrative processes that I taught for several years. Many of the ideas for that seminar and articles emerged from the administrative agency advocacy that we undertook at CPR.¹⁸⁸ We brought together clinic and “stand up” teachers throughout the country in the Interuniversity Poverty Law as well as practitioners from legal services to reanimate the poverty law field.

183. *See supra* Part III.

184. Chambliss et al., *supra* note 58, at 194.

185. *See supra* Part IV.

186. *San Francisco Affirmative Litigation Project*, YALE LAW SCH., <http://law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/san-francisco-affirmative-litigation-project> (last visited Jan. 27, 2018).

187. *International Organizations Clinic Connects Students with Global Policymakers*, N.Y.U. LAW, <http://www.law.nyu.edu/news/international-organizations-clinic-connects-students-with-global-policymakers> (last visited Jan. 27, 2018).

188. Trubek, *Old Wine in New Bottles*, *supra* note 120, at 1744–49.

When we talk about law schools and social justice practice, we cannot forget the role of students: Student voices can be integrated into curriculum and services. In writing this history, I am reminded of and impressed by the importance of student vision and commitment in our evolution. The decline in student interest in legal education and legal careers is seen throughout law schools. Law schools are beginning to feel the fiscal crunch.¹⁸⁹ Law schools are now seeking ways to connect with practice both to increase student interest in law schools and to demonstrate the potential for jobs when they graduate. If law students understand early on that practicing social justice law is a satisfying option, they might make decisions to enable that life choice. Law schools can revamp their career counseling and marketing to present a more realistic picture of the legal profession and what lawyers actually do and how they earn and live. Female law students in particular can benefit from accurate information on the satisfaction of lawyers in various types of jobs and opportunities for creating satisfying workplaces.

VI. CONCLUSION

If I were a law student or a young lawyer today interested in a social justice career, I would not hesitate to start. The need for social justice lawyering is greater today than ever. We have learned a lot about how to carry on this kind of practice. There are challenges to meet but great possibilities.

Today's aspiring social justice lawyers can learn a lot from the history of CPR. The rich archive this article draws on reveals numerous lessons. It shows how valuable this kind of lawyering can be for individuals, communities, government, and business. It shows how social justice lawyering can benefit from, and enrich, legal education. The history also highlights the importance of adaption, energy and innovation in social justice practice.

The final section discusses a new era of social justice lawyering as the profession responds to new needs and seeks to take advantage of new technologies. Law schools, Big Law, leading bar associations, and some courts, are now actively involved in seeking ways to provide more access to the legal system. There are problems. Financial challenges continue; social justice lawyers in the broad center of the country still find it hard to link up with peers; and women continue to struggle to find supportive work places. While plenty of lawyers are engaged in individual representation, policy work, and advocacy research, these separate activities are not always coordinated. I see these as challenges to be met, not barriers to successful practice. Innovators are confronting—and meeting—all the challenges. If I were starting out myself, I would join them.

189. See BARTON, *supra* note 165, at 153.