

# THE UNFINISHED AGENDA FOR LAW SCHOOLS IN NURTURING A COMMITMENT TO PRO BONO LEGAL SERVICES BY LAW STUDENTS

Larry R. Spain\*

The vision of equal access to justice is far from realized in society today.<sup>1</sup> Although Legal Services Corporation ("LSC")<sup>2</sup> funded programs<sup>3</sup> closed nearly one million cases in 2002,<sup>4</sup> many otherwise financially eligible individuals and groups were denied access to any legal services.<sup>5</sup>

The sheer magnitude of unmet legal needs is best captured by the opinion of one commentator who, extrapolating from data existing at the time, conservatively concluded that an additional twenty million hours of annual service would be required to meet the civil legal service needs of low-income individuals.<sup>6</sup> More recently, while recognizing the significant lack of access to essential legal services, others have commented upon a series of more

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\*Associate Professor of Law, Texas Tech University School of Law.

<sup>1</sup> The unmet need for civil legal services by individuals of limited financial means is overwhelming. Even with the joint contributions of publicly funded civil legal services programs and the private bar through pro bono contributions, only a small percentage of the legal needs of low-income individuals are met with existing resources. See ALBERT H. CANTRIL, *AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE, FINAL REPORT ON THE IMPLICATIONS OF THE COMPREHENSIVE LEGAL NEEDS STUDY* (ABA Consortium on Legal Serv's & the Pub. ed., 1996), available at <http://www.abanet.org/legalservices/downloads/sclaid/agendaforaccess.pdf>. In fact, a legal needs assessment commissioned by the American Bar Association concluded that more than 70% of the legal needs of low-income households were not being addressed through civil justice system. ABA CONSORTIUM ON LEGAL SERV'S & THE PUB., *LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS, MAJOR FINDINGS FROM THE COMPREHENSIVE LEGAL NEEDS STUDY 23* (ABA Consortium on Legal Serv's & the Pub. ed., 1994), available at <http://www.abanet.org/legalservices/downloads/sclaid/legalneedstudy.pdf>.

<sup>2</sup> The Legal Services Corporation is a private, non-profit corporation established by the Legal Services Corporation Act of 1974 to provide financial support for legal assistance in civil matters to those persons financially unable to afford counsel by making grants to legal services programs in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and Micronesia. See 42 U.S.C. §§ 2996-2996(i) (2002); see also LSC Bd. of Dir's, *Semiannual Report to the Congress for the Period Oct. 1, 2001 - Mar. 31, 2002*, at 3 (May 31, 2002), at <http://www.lsc.gov/FOIA/other/bodsarc0302.pdf>.

<sup>3</sup> In fiscal year 2004, LSC will provide \$328 million in grants to support 161 state and local programs providing legal services to the poor. LSC, *Budget Request for Fiscal Year 2004*, at 3 (Apr. 2, 2003) at <http://www.lsc.gov/pressr/budgdocs/FY04BReq.pdf>.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> A survey of selected LSC-funded programs in 1993, when LSC funding was substantially higher, disclosed that nearly one-half of all individuals applying for legal services were unable to be helped because of limited program resources. Currently, an estimated 80% of financially eligible clients are unable to obtain necessary legal assistance. LSC, *Serving the Civil Legal Needs of Low-Income Americans: A Special Report to Congress* 13 (Apr. 30, 2000), at <http://www.lsc.gov/pressr/EXSUM.pdf>. A number of legal needs assessments have been undertaken nationally and in various states documenting the unmet need for legal services of low-income as well as moderate-income individuals. See, e.g., Lonnie Powers, *Legal Needs Studies and Public Funding for Legal Services: One State's Partial Success*, 101 DICK. L. REV. 587, 587-90 (1997).

<sup>6</sup> DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 241 (1988).

contemporary developments which have further diminished the resources available to respond fully to the legal needs of those unable to afford counsel.<sup>7</sup>

In addition, the LSC has encouraged significant structural changes in the number and configuration of LSC-funded programs since 1998.<sup>8</sup> This effort followed statewide planning initiatives designed to consider enhancements to legal services delivery systems to meet the increasing needs of low-income clients.<sup>9</sup> The planning initiatives sought to foster statewide and fully integrated equal justice communities composed of all stakeholders with an interest in providing equal access to civil legal services.<sup>10</sup> The convergence of recent changes in the primary system for delivering civil legal services to low-income individuals, with diminishing resources in the face of increased need, presents new challenges in fulfilling the vision of equal access to justice, but also offers new opportunities for forming collaborative partnerships to address the unmet legal needs of those unable to afford counsel.

## I. THE NEED FOR PRO BONO SERVICES

In times of budgetary restraint in governmental funding for civil legal services,<sup>11</sup> fully engaging the legal profession in providing pro bono services is one of the more promising methods for significantly expanding the services available to otherwise financially eligible clients. Increased involvement of the legal profession in rendering civil legal services to those otherwise unrepresented can also create political support for increased funding of civil legal services for those unable to pay.

It is now generally well-accepted that all lawyers have a professional responsibility to provide pro bono legal services.<sup>12</sup> However, translating this

<sup>7</sup> See Deborah M. Weissman, *Law as Largess: Shifting Paradigms of Law for the Poor*, 44 WM. & MARY L. REV. 737, 758-785 (2002).

<sup>8</sup> LSC, *Strategic Directions 2000-2005, Progress Report for 2002 - Programs 3* (Jan. 2003), at <http://www.lsc.gov/Websitedocs/SDpr02.pdf>.

<sup>9</sup> See LSC, *Building State Justice Communities, A State Planning Report from the LSC 5-6* (Mar. 2001), at <http://www.lsc.gov/websitedocs/bstjcrpt.pdf>.

<sup>10</sup> Meredith McBurney, *The Impact of Legal Services Program Reconfiguration on Pro Bono* (Apr. 2003), at [http://www.abanet.org/legalservices/probono/impact\\_reconfiguration.pdf](http://www.abanet.org/legalservices/probono/impact_reconfiguration.pdf).

<sup>11</sup> Since the creation of the LSC, federal funding for civil legal assistance to those who would otherwise be unable to afford an attorney has not kept pace with inflation. In real dollars, the current appropriation amounts to approximately half of the 1980 funding level. LSC, *Annual Report 2000-2001, Progress in the New Millennium 12*, at <http://www.lsc.gov/FOIA/LSCAR01.pdf> (last visited Oct. 29, 2003).

<sup>12</sup> See, e.g., MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002):

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

professional ideal into actual practice is one of the recurring challenges facing the legal profession. Despite the best efforts of creative and ongoing recruitment strategies as well as the significant increase in the number of pro bono programs,<sup>13</sup> relatively few attorneys engage in substantial pro bono activities.<sup>14</sup> Estimates of the percentage of attorneys who provide pro bono services range from 9% in Massachusetts and Oregon to 60% in Florida and Maine,<sup>15</sup> with the majority of states having less than 30% attorney participation.<sup>16</sup> Furthermore, a continuing commitment to pro bono service by the bar may show signs of waning.<sup>17</sup>

An increased commitment to providing pro bono legal services would have a dramatic impact on fulfilling the ideal of equal access to justice. If every

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(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

*Id.*

<sup>13</sup> The number of organized pro bono programs identified by the American Bar Association increased from 80 in 1980 to over 900 by 1995. ABA STANDING COMM. ON LAW. PUB. SERV. RESPONSIBILITY, STANDARDS FOR PROGRAMS PROVIDING CIVIL PRO BONO LEGAL SERVICES TO PERSONS OF LIMITED MEANS, at v. (1996).

<sup>14</sup> Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 MD. L. REV. 78, 90 (1990) (indicating that pro bono programs reported, on average, only 16.9% of attorneys participate in organized pro bono programs providing civil legal services to low-income individuals); Deborah L. Rhode, *The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201, 1201 (2000) (relatively few attorneys contribute significant time to pro bono service benefiting low-income individuals with the average hours for the legal profession as a whole amounting to less than half an hour per week).

<sup>15</sup> ABA CTR. FOR PRO BONO, PRO BONO DELIVERY AND SUPPORT: A DIRECTORY OF STATEWIDE MODELS A-1, A-2 (1998).

<sup>16</sup> *Id.* at A-3.

<sup>17</sup> From 1997 to 1998, there was a 6.38% decrease in the number of attorneys accepting referrals of pro bono cases from LSC-funded programs and a 13.33% decrease in the number of pro bono cases closed. LSC, *LSC Statistics: Private Attorney Involvement - All Programs*, at [http://www.lsc.gov/pressr/pr\\_pai.htm](http://www.lsc.gov/pressr/pr_pai.htm) (last visited Nov. 23, 2003).

licensed attorney<sup>18</sup> were to provide, on average, even twenty-five hours of pro bono service annually, this would result in more than twenty-six million hours of volunteer service; fifty hours of annual pro bono service<sup>19</sup> would result in nearly fifty-three million hours of volunteer service.

The staff and boards of organized pro bono programs spend considerable time and energy devising creative ways to recruit and retain attorneys to become actively engaged as volunteers with the work of their programs.<sup>20</sup> While providing support and encouragement for attorneys is necessary, additional efforts should be spent on cultivating partnerships with law schools as a means of developing the pro bono ideal among law students and leveraging additional resources in response to the unmet civil legal service needs of low-income individuals and groups.<sup>21</sup> If law students are involved in pro bono activities early in their professional development, it is more likely that they will come to appreciate the rewards offered by public service and continue to render legal services pro bono throughout their careers.<sup>22</sup>

## II. ROLE OF LAW SCHOOLS IN PROMOTING PRO BONO SERVICE<sup>23</sup>

There has been general recognition of the primary role law schools have in promoting and encouraging law students to render pro bono services<sup>24</sup> as part of

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<sup>18</sup> The number of active attorneys reported in 2003 totaled 1,058,662 nationally. ABA, *National Lawyer Population by State* (2003), at <http://www.abanet.org/marketresearch/2002nbroflawyersbystate.pdf>.

<sup>19</sup> The number of hours suggested by the MODEL RULES OF PROF'L CONDUCT, see *supra* note 12.

<sup>20</sup> See, e.g., ABA STANDING COMM. ON LAW. PUB. SERV. RESPONSIBILITY, *supra* note 13, at 115-19.

<sup>21</sup> Remarkably, although STANDARDS FOR PROGRAMS PROVIDING CIVIL PRO BONO LEGAL SERVICES TO PERSONS OF LIMITED MEANS, *id.*, addresses relations with other legal services providers, the organized bar, judiciary and community organizations, they fail to refer to cultivating and sustaining relationships with law schools.

<sup>22</sup> See Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2431 (1999) [hereinafter Rhode, *Cultures of Commitment*] (suggesting that thoughtful strategies by law schools to involve law students in pro bono projects while in the developmental stage of their professional identity can significantly affect their commitment to pro bono activities); Rhode, *supra* note 14, at 1212 (indicating that limited information from schools with mandatory pro bono requirements suggest that between two-thirds and four-fifths of students found the experience increased their likelihood of performing pro bono work in the future).

<sup>23</sup> For a short history of pro bono programs in American law schools, see AALS PRO BONO PROJECT, A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS 7-8 (June 2001), available at <http://www.aals.org/probono/probono.pdf>.

<sup>24</sup> Ninety-five percent of deans responding to an AALS survey agreed that, "[i]t is an important goal of law schools to instill in students a sense of obligation to perform pro bono work during their later careers." AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, LEARNING TO SERVE: THE FINDINGS AND PROPOSALS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES 3 (Oct. 1999), available at <http://www.aals.org/probono/report.html>.

the fundamental values of the profession.<sup>25</sup> Accreditation standards<sup>26</sup> have also called upon law schools to encourage and provide opportunities for student participation in pro bono activities.<sup>27</sup> While some law schools have taken this responsibility seriously and have developed extensive programs,<sup>28</sup> others have not.<sup>29</sup>

In 1997, the Association of American Law Schools ("AALS") appointed a Commission on Pro Bono and Public Service Opportunities<sup>30</sup> which undertook a survey of pro bono projects and public service activities within law schools

<sup>25</sup> See, e.g., ABA Sec. on Legal Educ. and Admis. to the Bar, *Legal Education and Professional Development - An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 140-1 (Robert MacCrate ed., 1992) [hereinafter *MacCrate Report*].

Value § 2: Striving to Promote Justice, Fairness and Morality

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:

- Promoting Justice, Fairness, and Morality in One's Own Daily Practice;
- Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;
- Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

*Id.*

<sup>26</sup> The Standards for Approval of Law Schools promulgated by the ABA are premised on the principle that law schools are the primary means of access to the legal profession and, as such, should offer an educational program that, among other matters, ensures that students "understand the law as a public profession calling for performance of pro bono legal services." ABA SEC. ON LEGAL EDUC. & ADMIS. TO THE BAR, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS 2001-2002, at 9 (2001).

<sup>27</sup> *Id.* at 25, std. 302(e).

<sup>28</sup> See, e.g., AALS PRO BONO PROJECT, *supra* note 23 (providing an overview of law school pro bono programs as well as a detailed directory of individual law school initiatives); Stephen F. Befort & Eric S. Janus, *The Role of Legal Education in Instilling an Ethos of Public Service Among Law Students: Towards a Collaboration between the Profession and the Academy on Professional Values*, 13 LAW & INEQ. 1 (1994) (describing in detail a collaborative project involving several Minnesota law schools, the organized bar, civil legal service providers and others to encourage pro bono service among law students).

<sup>29</sup> Cynthia F. Adcock, *AALS & ABA Form Law School Pro Bono Partnership*, DIALOGUE, Fall 2001, at 19 (stating only ninety-nine of the 184 ABA-approved law schools have formal and institutionally supported pro bono programs of some type); Rhode, *supra* note 14, at 1202 (indicating approximately a third of all law schools have no law-related pro bono projects or have programs with fewer than 50 students and concludes that most students do not have a public service component as part of their law school experience); Rhode, *Cultures of Commitment*, *supra* note 22, at 2436-38 (summarizing the type and variety of pro bono programs in law schools).

<sup>30</sup> The appointment of the Commission represented the "first systematic effort by the Association of American Law Schools to address the role of pro bono and public service in legal education." Deborah L. Rhode, *Foreword to AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES*, *supra* note 24, at vii.

nationally.<sup>31</sup> The resulting report found considerable variation in the types of law school programs available, the degree of institutional support provided and, most importantly, the level of law student participation.<sup>32</sup> At some American law schools, no students participated in law-related pro bono projects while only a small minority of law students participated at most schools.<sup>33</sup> The conclusion reached was that law schools must do more.<sup>34</sup>

Additionally, many commentators have encouraged law schools to create an underlying culture that supports and encourages public service through a commitment to pro bono legal services.<sup>35</sup> Others have argued that law schools have a special obligation to encourage all students to recognize that part of their professional role requires serving the public interest.<sup>36</sup> Finally, individual law schools have a special role to play in ensuring access to the legal system for all, regardless of ability to pay.<sup>37</sup>

After publication of the report of the AALS Commission on Pro Bono and Public Service Activities, the AALS Pro Bono Project compiled a directory of individual law school programs as a means of documenting the pro bono activities of individual law schools, as well as their faculties and students.<sup>38</sup> The collection was to serve as a clearinghouse of ideas for law schools searching for

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<sup>31</sup> The impetus for creating such a commission and undertaking a survey was to highlight the importance of pro bono service within law schools that other stakeholders had not prioritized and to share models of practice for implementing pro bono projects. Rhode, *Cultures of Commitment*, *supra* note 22, at 2440.

<sup>32</sup> AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, *supra* note 24, at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 2-3.

<sup>35</sup> See Kristin Booth Glen, *Pro Bono and Public Interest Opportunities in Legal Education*, 70 N.Y. ST. B.J. 20 (1998) (providing examples of existing law school pro bono opportunities); David Hall, *Raising the Bar: A Campaign to Transform the Legal Profession*, 22 J. LEGAL PROF. 7 (1998).

<sup>36</sup> See Rhode, *Cultures of Commitment*, *supra* note 22, at 2431-33; James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education*, 13 LAW & INEQ. 51, 75 (1994); Jonathan O. Hafen, *Public Interest Law and Legal Education: What Role Should Law Schools Play in Meeting the Legal Needs Crisis?*, 2 B.U. PUB. INT. L.J. 7 (1992); Adrienne Stone, *The Public Interest and the Power of Feminist Critique of Law School: Women's Empowerment of Legal Education and Its Implications for the Fate of Public Interest Commitment*, 5 AM. U. J. GENDER & LAW 525, 531-32 (1997).

<sup>37</sup> In fact, the AALS Equal Justice Project was premised on the understanding that "law schools have a special responsibility to promote equality in the legal system and meaningful access to law and lawyers." AALS EQUAL JUSTICE PROJECT, PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES 5 (Mar. 2002), available at [http://www.aals.org/equaljustice/final\\_report.pdf](http://www.aals.org/equaljustice/final_report.pdf).

<sup>38</sup> AALS PRO BONO PROJECT, *supra* note 23. Through a collaboration between the ABA Center for Pro Bono and the AALS, this information has been updated and maintained in a centralized web-based compilation. ABA, DIRECTORY OF LAW SCHOOL PUBLIC INTEREST AND PRO BONO PROGRAMS, available at <http://www.abanet.org/legalservices/probono/lawschools> (last updated Mar. 21, 2003) (documenting the variety of courses, public service projects and pro bono programs within law schools nationwide).

innovative approaches to implementing pro bono initiatives and identifying the best practices in the field.

As a result of the AALS Pro Bono Project, a new section on public service programs within the AALS was created – the Section on Pro Bono and Public Service Opportunities<sup>39</sup> – as a forum for facilitating the exchange of information and ideas among law schools.<sup>40</sup>

Subsequently, the Equal Justice Project was initiated in 1999 by the AALS and convened a series of colloquia at law schools across the country during the 2000-2001 academic year to stimulate dialogue and consider how law schools could become more actively involved in equal justice issues.<sup>41</sup>

The question is not whether law schools have an obligation to cultivate and instill an ethic of pro bono service among law students, but what the most effective means are for accomplishing this objective.

The *MacCrate Report* correctly noted that the lawyer's skills and values develop along a continuum preceding admission to law school and continuing throughout their career, but are most profoundly shaped during their legal education.<sup>42</sup> If law schools fail to provide sufficient opportunities for students to develop a commitment to public service, a substantial increase in the level of pro bono services provided by lawyers will likely not occur.

Law schools should be challenged to develop a strategic plan for instilling in students the sense of personal and ethical commitment to providing legal services to low-income individuals and groups as part of their professional identity.<sup>43</sup> While a variety of law school programs and projects seeking to instill an ethic of public service have been chronicled,<sup>44</sup> it is now time for every law school to consider the means by which an institutional culture of commitment<sup>45</sup> to pro bono and public interest may be created within individual schools. The entire law school community must embrace the equal justice mission and commitment to pro bono and public service opportunities.

There are a variety of approaches available to move law schools forward in encouraging and inculcating an ethical obligation of providing pro bono service as part of a student's future professional career. I offer the following brief summary of general strategies related to teaching, research and service for guiding the future agenda of law schools, while recognizing that each school is unique with differing visions, resources, faculty and student composition that

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<sup>39</sup> A brief introduction of the Section is available at <http://www.aals.org/probono/section.html> (last visited Nov. 21, 2003).

<sup>40</sup> AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, *supra* note 24, at 2.

<sup>41</sup> AALS EQUAL JUSTICE PROJECT, *supra* note 37, at 1.

<sup>42</sup> *MacCrate Report*, *supra* note 25, at 3.

<sup>43</sup> Stephen Wizner, *Can Law Schools Teach Students to do Good? Legal Education and the Future of Legal Services for the Poor*, 3 N.Y. CITY L. REV. 259, 260 (2000).

<sup>44</sup> See AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, *supra* note 24; AALS EQUAL JUSTICE PROJECT, *supra* note 37; AALS PRO BONO PROJECT, *supra* note 23.

<sup>45</sup> See Rhode, *Cultures of Commitment*, *supra* note 22 (referring to a broad array of initiatives within law schools to foster an underlying commitment to public service among law students).

must be considered in developing their own approach to promoting the ideal of public service among their students.

### A. Law School Mission Statement

Every law school should have a well-defined mission statement.<sup>46</sup> It should constantly guide the teaching, research and public service of the school.<sup>47</sup> The process of creating or refining a law school mission statement provides an opportunity for dialogue on the essential role of the law school in relation to the profession and the values it desires to promote in its students.

The notion of a justice mission for law schools has been written about extensively.<sup>48</sup> Law schools should incorporate the ideal of promoting equal access to justice through pro bono and public service as an explicit part of their mission. This can serve to constantly guide individual law schools in developing strategies for stimulating interest in and a lifelong professional commitment to providing legal services to those who would otherwise be unable to afford counsel.

Promoting the professional ideals of pro bono and public service should not be a peripheral objective of a law school's mission, relegated to the margins of a law school education; it should be fully integrated throughout the law school curriculum and be a central focus of law school programs, research and public service activities.<sup>49</sup> Others have made a similar call for developing a comprehensive agenda for addressing the lack of attention in law schools to social justice issues.<sup>50</sup>

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<sup>46</sup> Standard 202 (a) of the Standards for Approval of Law Schools provides:

The dean and faculty of a law school shall develop and periodically revise a written self study, which shall include a mission statement. The self study shall describe the program of legal education, evaluate the strengths and weaknesses of the program in light of the school's mission, set goals to improve the program, and identify the means to accomplish the law school's unrealized goals.

STANDARDS FOR THE APPROVAL OF LAW SCHOOLS 2001 - 2002, *supra* note 26.

<sup>47</sup> Gordon T. Butler, *The Law School Mission Statement: A Survival Guide for the Twenty-First Century*, 50 J. LEGAL EDUC. 240, 244 (2000).

<sup>48</sup> See, e.g., Symposium, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 277-531 (1992).

<sup>49</sup> David Hall, *The Law School's Role in Cultivating a Commitment to Pro Bono*, BOSTON B.J., May/June 1998, at 4.

<sup>50</sup> Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 164 (2001).



## B. Expanding Law School Pro Bono Programs

Beginning in 1987,<sup>51</sup> an increasing number of law schools have implemented programs requiring participation in public service activities as a condition of graduation<sup>52</sup> while other law schools have instituted voluntary pro bono programs.<sup>53</sup> There has been an ongoing debate between those supporting mandatory pro bono programs<sup>54</sup> and those opposing it.<sup>55</sup>

Whatever choices schools make, there should be strong institutional support for programs and initiatives that promote and encourage students' commitment to public service. In fact, a principal recommendation of the AALS Commission on Pro Bono and Public Service Opportunities was that "law schools make available to all law students at least once during their law school careers a well-supervised law-related pro bono opportunity and either require the students' participation or find ways to attract the great majority of students to volunteer."<sup>56</sup> Each individual school should take up this challenge and decide how they can best carry out this objective.

Providing a wide array of choices for participation in pro bono opportunities that correspond with differing student interests is likely to increase voluntary participation.<sup>57</sup> These choices can range from pro bono projects

<sup>51</sup> Tulane Law School was the first law school to require pro bono service as condition of graduation in September 1987. Michael Cudell-Feagan, *Pro Bono and Legal Education*, 1 B.U. PUB. INT. L.J. 193, 193 (1991).

<sup>52</sup> As of June, 2001, fourteen law schools had a mandatory pro bono requirement as a condition of graduation: Columbia University; University of the District of Columbia; Florida State University; University of Hawaii; University of Louisville; University of Nevada; University of Pennsylvania; Roger Williams University; St. Thomas University, Miami; Southern Methodist University; Stetson University; Texas Wesleyan University; Tulane University; and Valparaiso University. AALS PRO BONO PROJECT, *supra* note 23, at 9. I have previously endorsed and recommended a universal pro bono requirement for attorneys. See Joel D. Medd et al., *A Workable Plan for Civil Legal Services for the Poor of North Dakota: A Practical, Equitable and Political Proposal for Bar Leadership, Report and Recommendations of the Civil Legal Services Committee of the State Bar Association of North Dakota and the North Dakota Trial Lawyers' Association and the North Dakota Supreme Court* (Feb. 18, 1988) (on file with author). While I personally favor a pro bono requirement as a condition of graduation from law school, the purpose of this article is not to fully discuss the merits of mandatory pro bono for law students. I also recognize that individual schools must thoroughly discuss the relative merits of designing and implementing such a requirement consistent with their particular strategies for cultivating an ethic of pro bono and public service in their students.

<sup>53</sup> Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 LAW & INEQ. 39, 40-41 (1994).

<sup>54</sup> E.g., Lewis S. Calderon et al., Note, *Mandatory Pro Bono for Law Students: Another Dimension in Legal Education*, 1 J.L. & POL'Y 95 (1993); Howard Lesnick, *Why Pro Bono in Law Schools*, 13 LAW & INEQ. 25 (1994); Christina M. Rojas, Note, *Mandatory Pro Bono Publico for Law Students: The Right Place to Start*, 30 HOFSTRA L. REV. 1069 (2002).

<sup>55</sup> E.g., Alan M. Slobodin, *Forced Pro Bono for Law Students is a Bad Idea*, 1 B.U. PUB. INT. L.J. 199 (1991).

<sup>56</sup> AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, *supra* note 24, at 7.

<sup>57</sup> See Rhode, *supra* note 14, at 1210.

sponsored by the law school to projects in collaboration with other organizations and groups.<sup>58</sup> Universal participation in law student pro bono programs, whether voluntary or mandatory, could significantly impact the promotion of equal access to justice. Based upon a current law school enrollment of 140,612,<sup>59</sup> increasing law student pro bono activities would generate in excess of seven million volunteer hours over a three year period if every student met an aspirational goal of fifty hours of service during their law school enrollment.

### C. Increased Clinical Opportunities

Every law school should provide increased opportunities for students to participate in a live-client clinic or externship, which provides services to low-income clients. The *MacCrate Report*<sup>60</sup> found that in 1990, a total of 314 clinical programs were offered at 119 law schools.<sup>61</sup> By the end of 1999, 183 law schools had clinical programs.<sup>62</sup> However, clinical opportunities for students in most schools are neither mandatory nor available for every student.<sup>63</sup> Although accreditation standards require that law schools offer live-client or other real life experience by means of clinics or externships,<sup>64</sup> there is no requirement that such opportunities be made available to every student.<sup>65</sup>

Law schools must expand clinical opportunities to assure that each student has access to a clinical experience or, alternatively, impose a requirement that each student complete at least one clinical course during their law school education. As an example, the University of New Mexico has required completion of an in-house clinical experience as a condition of graduation since 1970.<sup>66</sup>

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<sup>58</sup> See Susan J. Curry, *Meeting the Need: Minnesota's Collaborative Model to Deliver Law Student Public Service*, 28 WM. MITCHELL L. REV. 347 (2001) (describing a collaborative public service project involving 3 law schools in Minnesota, the state bar association, the Minnesota Justice foundation and legal services programs in the state).

<sup>59</sup> ABA SEC. OF LEGAL EDUC. & ADMIS. TO THE BAR, LEGAL EDUCATION AND BAR ADMISSION STATISTICS, 1963-2002, available at [http://www.abanet.org/legaled/statistics/le\\_bastats.html](http://www.abanet.org/legaled/statistics/le_bastats.html) (last visited Nov. 21, 2003).

<sup>60</sup> *MacCrate Report*, supra note 25.

<sup>61</sup> *Id.* at 239.

<sup>62</sup> Margaret Martin Barry et al., *Clinical Education for This Millenium: The Third Wave*, 7 CLINICAL L. REV. 1, 30 (2000).

<sup>63</sup> Data from a survey of law schools indicated that, on average, law school clinical programs were available to only 30% of law students at schools where a live-client clinic was offered and only two schools offered all students some type of clinical experience. Marjorie Anne McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239, 280-81 (1990).

<sup>64</sup> ABA SEC. ON LEGAL EDUC. & ADMIS. TO THE BAR, supra note 26, at 25, stnd. 302(c)(2).

<sup>65</sup> *Id.* at stnd. 302-2.

<sup>66</sup> Antoinette Sedillo Lopez, *Learning through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 312 n.35 (2001).

A number of clinical faculty have written about the social justice missions of law school clinics.<sup>67</sup> In fact, the origins of clinical legal education arose out of the anti-poverty movement of the 1960s and early 1970s.<sup>68</sup> Others have noted the profound effect that clinical legal education can have on developing a student's commitment to providing legal services to the poor.<sup>69</sup> Surveys of students enrolled in clinical programs confirm the transformative and positive impact these programs have on a student's future motivation to perform public service.<sup>70</sup> Consequently, expanding clinical offerings for students can prove to be an effective strategy for instilling a professional commitment to pro bono work.

#### D. Curricular Reform

One study examining the decline in student commitment to public interest concluded that a principal reason for this substantial decline was the lack of focus on social justice concerns within the law school curriculum, and the lack of attention paid to the topic of equal access to justice by the faculty.<sup>71</sup> Others have commented on the relationship between the failure of law schools to highlight the legal problems of the poor and the low participation rates of attorneys in pro bono work.<sup>72</sup>

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<sup>67</sup> E.g., Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287 (2001); Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 RUTGERS L. REV. 855 (1999); Barry et al., *supra* note 62, at 12-14; Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1463-78 (1998); Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235, 263-71 (1999); Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31, 32 (1993); Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327 (2001).

<sup>68</sup> AALS EQUAL JUSTICE PROJECT, *supra* note 37, at 4.

<sup>69</sup> See Henry Rose, *Law Schools Should Be About Justice Too*, 40 CLEV. ST. L. REV. 443, 452 (1992); Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1934-36 (2002).

<sup>70</sup> Carl Oxholm III & Alfred J. Azen, *Law School Clinical Programs Foster Legal Skills and the Pro Bono Ethic*, DIALOGUE, Spring 2002, at 12 (reporting on the results of a survey of students participating in IOLTA-sponsored law school clinics in Pennsylvania in which all survey respondents indicated their experience had increased their knowledge of public interest legal work and 90% stated the experience influenced their interest in pursuing public service and pro bono work after graduation). My own anecdotal evidence from twenty years of clinical teaching and student evaluations confirms the positive impact that a clinical experience has on the vast majority of students in their future commitment to public service and who, in practice, become some of the most committed volunteers with pro bono programs.

<sup>71</sup> ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 2-3, 52-53 (Howard S. Erlanger ed., 1989).

<sup>72</sup> See, e.g., Rose, *supra* note 69, at 444.

Law schools should regularly offer courses on poverty law<sup>73</sup> and public interest lawyering,<sup>74</sup> as well as other courses and seminars exploring the role of law and lawyers in addressing economic and social inequality and access to justice, and preparing students for pro bono and public interest work. Such courses can provide perspective for students on the legal needs of those traditionally underserved by the legal profession. However, it is necessary and important to integrate an exploration of access-to-justice issues throughout the curriculum, particularly in core courses where the potential audience is greater.<sup>75</sup> Several schools, most notably the City University of New York, the University of the District of Columbia, and Northeastern University have taken the initiative and are widely recognized for their fully integrated public interest curricula.<sup>76</sup> Throughout the curriculum, the professional value of pro bono service should be constantly reinforced.

Some scholars have offered recommendations on how to incorporate issues of poverty and inequality into traditional law school courses.<sup>77</sup> The ability to integrate poverty law and access to justice issues in the first year curriculum has become easier through the creation of teaching modules especially designed for courses in civil procedure, constitutional law, contracts, criminal law, property and torts.<sup>78</sup>

The agenda for law schools and faculty should be expanding these course-specific teaching materials so that equal justice issues may be fully integrated and infused throughout the law school curriculum. The problems posed by lack of access are inextricably involved in our legal system. Thus, a "pervasive method"<sup>79</sup> of continuously and systematically exploring these issues across the

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<sup>73</sup> Between the fall of 1994 and spring, 1997, fourteen new courses in poverty law were created in law schools. Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper-Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524, 555 (1997). For descriptions of such courses, see Symposium, *New Approaches to Poverty Law, Teaching, and Practice*, 4 B.U. PUB. INT. L.J. 235 (1995); Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 203-208 (1993); Lois Johnson & Louise G. Trubek, *Developing a Poverty Law Course: A Case Study*, 42 WASH. U.J. URB. & CONTEMP. L. 185 (1992). The most recent directory of law teachers lists 122 faculty self-reporting as having taught poverty law with fifty-eight currently teaching the subject either as a clinical course, seminar or other. AALS, THE AALS DIRECTORY OF LAW TEACHERS 2002-2003, at 1335-36.

<sup>74</sup> For a sample of public interest law and lawyering courses, see AALS EQUAL JUSTICE PROJECT, *supra* note 37, at 16-20.

<sup>75</sup> See Barry et al., *supra* note 62, at 15-16; Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695, 1698 (1993).

<sup>76</sup> AALS PRO BONO PROJECT, *supra* note 23, at 31.

<sup>77</sup> E.g., Veryl Victoria Miles, *Raising Issues of Property, Wealth & Inequality in the Law School: Contracts & Commercial Law School Courses*, 34 IND. L. REV. 1365 (2002).

<sup>78</sup> Stephen F. Befort & Eric S. Janus, *Poverty Law Lesson Plans*, <http://lawschool.westlaw.com/shared/marketInfoDisplay.asp?code=MI&id=153&mainpage=10> (last visited Jan. 5, 2004); see Curry, *supra* note 58, at 364-65.

<sup>79</sup> See DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2d ed. 1998).

curriculum is a particularly effective method for reinforcing and inculcating the professional obligation to provide pro bono services.

Such curricular reform through an expansion of course offerings can also provide students with the skills and competency to provide legal services to low-income clients. This would address an objection commonly offered to the participation in pro bono service that lawyers lack the necessary special expertise to handle the types of legal problems frequently encountered by low-income individuals.<sup>80</sup>

### E. Public Service Practicums

Service learning<sup>81</sup> can expose a broader group of students to community need as part of a public service practicum connected to core courses.<sup>82</sup> Although service learning programs have existed as part of higher education for some time, the concept has been much less known within law schools.<sup>83</sup> However, more faculty are gradually incorporating a service component into their doctrinal and other courses, which can promote the value of public service.<sup>84</sup> All law schools should encourage and facilitate these efforts to connect theory and practice through service to others.

### F. Equal Justice Scholarship

By linking law schools, organizations and individuals directly serving and advocating for the poor and disadvantaged, faculty and student research and scholarship can provide significant support for the work of the public interest community and pro bono advocates. The AALS Equal Justice Project recommended this after a series of colloquia involving law school faculty and the equal justice community.<sup>85</sup> Encouraging and promoting student research and writing projects on social justice issues can promote the ideal of public service

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<sup>80</sup> Rhode, *supra* note 14, at 1207.

<sup>81</sup> Service learning, as part of the National and Community Service Act of 1990, 42 U.S.C. § 12501 (2000), has been defined as a "method under which students . . . learn and develop through active participation in a thoughtfully organized service that . . . meets the needs of a community . . . , is integrated into and enhances the academic curriculum . . . and provides structured time . . . to reflect on the service experience." 45 C.F.R. § 2510.20 (2002).

<sup>82</sup> For example, at Texas Tech University School of Law, students enrolled in a Wills & Estate course are required to draft wills for low-income individuals in the community. Such public service requirements could be replicated in a variety of other law school courses to instill the ethical obligation to render legal assistance to the poor while fulfilling a community need.

<sup>83</sup> Mary Pat Treuthart, *Weaving a Tapestry: Providing Context Through Service-Learning*, 38 GONZ. L. REV. 215, 219 (2002-03).

<sup>84</sup> See, e.g., *id.* (describing her experiences of incorporating a service learning component into her Women and the Law course); ABA, DIRECTORY OF LAW SCHOOL PUBLIC INTEREST AND PRO BONO PROGRAMS, *supra* note 38.

<sup>85</sup> AALS EQUAL JUSTICE PROJECT, *supra* note 37, at 35-36.

and provide valuable resource materials to those representing the traditionally unrepresented.

It has been suggested that students in legal research and writing programs could provide research support for pro bono attorneys, cases and projects.<sup>86</sup> Additionally, law school libraries should utilize the Poverty Law Library, a comprehensive repository of poverty law materials and resources for poverty law advocates and a project of the Sargent Shriver National Center on Poverty Law.<sup>87</sup> This could expose students and faculty to cutting edge issues in public interest law.

### G. Faculty Pro Bono

Compelling arguments have been made that law faculty should have the same pro bono obligation as lawyers generally.<sup>88</sup> Accreditation standards also recognize the responsibility of pro bono service by faculty.<sup>89</sup> The AALS Commission on Pro Bono and Public Service Opportunities recommended "that all law schools adopt a formal policy to encourage and support faculty members to perform pro bono work."<sup>90</sup> Some law schools have taken the lead in adopting formal policies with respect to faculty pro bono expectations.<sup>91</sup> All law schools should consider adopting such policies and the policies should explicitly recognize public service, which is often devalued in promotion and tenure reviews.

Increased faculty pro bono service could dramatically help meet the legal needs of those without access to the justice system. For example, a commitment to perform fifty hours pro bono work annually would generate more than 300,000 hours on a yearly basis.<sup>92</sup> Such faculty service could take a variety of forms, including a combination of the following: undertaking cases directly; supervising students on pro bono cases or projects; providing legal consultation, research and brief-writing for pro bono attorneys or public interest practitioners; writing amicus curiae briefs; developing legal resource materials and publications on

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<sup>86</sup> Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. PUB. INT. L.J. 429, 440-46 (1999).

<sup>87</sup> See Sargent Shriver Nat'l Ctr. on Poverty Law, <http://www.povertylaw.org> (last visited Nov. 22, 2003).

<sup>88</sup> See, e.g., David Luban, *Faculty Pro Bono and the Question of Identity*, 49 J. LEGAL EDUC. 58 (1999).

<sup>89</sup> See ABA SEC. ON LEGAL EDUC. & ADMIS. TO THE BAR, *supra* note 26, at 35, std. 404(a)(5) (encouraging law schools to establish policies regarding the obligation of full-time faculty to participate in pro bono activities).

<sup>90</sup> AALS COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES, *supra* note 24, at 18.

<sup>91</sup> See AALS PRO BONO PROJECT, *supra* note 23 app.

<sup>92</sup> This is based on 6,009 full-time law school faculty members nationwide as reported in 2001. If part-time faculty, deans, administrators and librarians were included and the number of annual volunteer hours based on fifty hours per individual, the commitment would generate in excess of 1 million hours a year. ABA, *Teachers in Law Schools, 2002*, at <http://www.abanet.org/legaled/statistics/miscstats.html> (last visited Nov. 22, 2003).

public interest law topics; and conducting CLE programs and training for pro bono and public interest attorneys.

A faculty commitment to pro bono service sends a powerful message to the (and reinforces for) students that it is the professional obligation of all lawyers, regardless of professional standing, to render public service. The faculty may thereby serve (in addition to serving) as role models and mentors to law students. The significance of faculty serving as role models for shaping the professional identity of students should not be underestimated.<sup>93</sup> It is important to create (in creating) a law school culture of commitment to pro bono and public service in which (that) all faculty members lead by example.

### H. Increased Collaborative Partnerships

Greater collaboration between law schools, legal services providers and other public interest organizations must be developed to promote the public service ideal. Law schools must invest in promoting equal access to justice, and in developing and enhancing partnerships with organizations providing civil legal services to the poor. Legal services staff, public interest lawyers and pro bono attorneys should regularly make class presentations, interact with and serve as supportive mentors to students, and actively participate in symposia on equal justice issues. Lecture series sponsored by law schools can also highlight social justice and public interest issues. Much of the AALS Equal Justice Project's work<sup>94</sup> involved exploring the manner in which law schools could be more actively engaged in equal justice issues in collaboration with other stakeholders. This work should continue in the communities within which each law school is a part.

## II. Career Counseling

A variety of initiatives can be undertaken to enhance public interest career counseling, which can in turn facilitate a commitment to pro bono and public service. These range from public interest career counseling to funding and

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<sup>93</sup> The *Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities*, an aspirational statement adopted by the Executive Committee of the AALS on November 17, 1989, explicitly recognizes this responsibility.

As teachers, scholars, counselors, mentors, and friends, law professors can profoundly influence students' attitudes concerning professional competence and responsibility. Professors should assist students to recognize the responsibility of lawyers to advance individual and social justice.

...

One of the traditional obligations of members of the bar is to engage in uncompensated public service or pro bono legal activities. As role models for students and as members of the legal profession, law professors share this responsibility.

AALS, AALS 2003 Handbook 96, 100, available at <http://www.aals.org/ethic.html>.

<sup>94</sup> AALS Equal Justice Project, *supra* note 37.

promoting public interest fellowships and internships,<sup>95</sup> establishing loan forgiveness programs,<sup>96</sup> hosting public interest career fairs, and maintaining resources on public interest career opportunities. Students need to be better informed of public service opportunities and provided the means by which they can create their own opportunities to expand access to justice.<sup>97</sup>

### III. CONCLUSION

Access to justice and a commitment to pro bono service should become an institutional priority at every law school. Recent initiatives undertaken by the AALS have challenged law schools to examine their efforts in promoting a commitment to public service and equal access to justice.<sup>98</sup>

Although much progress has been made, every law school should develop an agenda for cultivating the professional values of public service and pro bono by assessing the progress of their current programs and developing new strategies to address the provision of legal services to underserved individuals, groups and communities. In addition, further study is needed to evaluate which law school experiences can cultivate the professional values of law students and promote a lifelong commitment to bono service.

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<sup>95</sup> See, e.g., Elizabeth M. Schneider, *The Fifteenth Anniversary of the Edward V. Sparer Public Interest Law Fellowship Program*, 66 BROOK. L. REV. 147 (2000).

<sup>96</sup> See, e.g., Sarah Weddington, *Law: The Wind Beneath My Wings*, 7 WASH. U. J.L. & POL'Y 99, 107-09 (2001).

<sup>97</sup> See, e.g., Deborah Howard, *The Law School Consortium Project: Law Schools Supporting Increase Access to Justice for Low and Moderate-Income Individuals and Communities*, 29 FORDHAM URB. L.J. 1245 (2002) (describing the experiences of a group of law schools supporting their graduates serving low and moderate-income individuals).

<sup>98</sup> AALS Comm'n on Pro Bono and Pub. Serv. Opportunities, *supra* note 24; AALS Pro Bono Project, *supra* note 23; AALS Equal Justice Project, *supra* note 37.