

## THE ROLE LAW SCHOOLS SHOULD PLAY IN FILLING THE JUSTICE GAP

*Karen E. Millard*<sup>†</sup>

It is a time-honored principle that the practice of law is a privilege burdened with conditions. First and foremost, attorneys shoulder the ponderous task of making justice equally accessible to all people, not just those who can afford to pay for it. The words “equal justice under law” paraphrase an earlier expression coined by Chief Justice Melville Fuller in the case of *Caldwell v. Texas*. In *Caldwell*, Chief Justice Fuller stated “[b]y the fourteenth amendment the powers of the states in dealing with crime within their borders are not limited, but no state can deprive particular persons or classes of persons of equal and impartial justice under the law.”<sup>1</sup> This phrase “equal . . . justice under the law” is significant because it encapsulates the very underpinnings of our legal system in which all persons have the right to be treated fairly, regardless of their economic status.

This Article explores how law schools play a significant role in providing the underserved with equal access to the legal system. The Article will begin with a summary of the need for pro bono services and why some lawyers oppose a mandatory requirement. Next, a summary of the different pro bono programs offered by law schools will be provided, along with suggestions on how to select the right program for a law school, and why law students should perform pro bono work. Finally, an overview of some unique programs currently offered to benefit the underserved will be discussed.

### I. WHY PRO BONO WORK IS NECESSARY AND THE REASONS WHY SOME LAWYERS OPPOSE MANDATORY PRO BONO WORK

The United States Census Bureau reports that the poverty level has increased from 37.3 million in 2007 to 46.9 million in 2010.<sup>2</sup> This includes

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<sup>†</sup> Professor Millard is an Associate Professor of Lawyering Process at Florida Coastal School of Law. She directs the law school’s pro bono program.

1. *Caldwell v. Texas*, 137 U.S. 692, 697 (1891).

2. *Hunger in America: 2012 United States Hunger and Poverty Facts*, WORLD HUNGER, [http://www.worldhunger.org/articles/Learn/us\\_hunger\\_facts.htm](http://www.worldhunger.org/articles/Learn/us_hunger_facts.htm) (last visited Feb. 7, 2013).

four consecutive annual increases in the number of people in poverty.<sup>3</sup> Based on the data gathered, “[m]ore than one in seven Americans lives below the poverty line, the highest proportion in nearly two decades.”<sup>4</sup> This is “the largest number in the fifty-two years for which poverty estimates have been published.”<sup>5</sup>

Along with the increase in the number of people living in poverty, the need for legal services by the poor is at an all-time high.<sup>6</sup> The last decade

3. CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, 60–239: INCOME POVERTY, AND HEALTH INSURANCE IN THE UNITED STATES, at 14 (2010), *available at* <http://www.census.gov/prod/2011pubs/p60-239.pdf>.

4. Barbara Mantel, *Legal-Aid Crisis*, 21 CQ RESEARCHER 829, 829 (2011).

5. DENAVAS-WALT ET AL., *supra* note 3, at 14.

6. The Pro Bono Institute (“PBI”) is an organization that performs research about the legal services provided by large law firms to the poor. *About Us*, PRO BONO INST., <http://www.probonoinst.org/about-us/> (last visited Mar. 28, 2013). Each year PBI prepares a report and in it, PBI examines the hours of “pro bono” performed by attorneys in large law firms. In 1995, PBI instituted The Law Firm Pro Bono Challenge (“Challenge”). PRO BONO INST., REPORT ON THE 2010 PRO BONO INSTITUTE LAW FIRM PRO BONO CHALLENGE STATISTICS (2011) [hereinafter CHALLENGE STATISTICS], *available at* <http://www.probonoinst.org/wpps/wp-content/uploads/2010-pbi-challenge-report.pdf>. In 2010, participating firms agreed to either:

- (1) annually contribute, at a minimum, an amount of time equal to 5 percent of the firm’s total billable hours or 100 hours per attorney to pro bono work; or
- (2) annually contribute, at a minimum, an amount of time equal to 3 percent of the firm’s total billable hours or 60 hours per attorney to pro bono work.

PRO BONO INST., LAW FIRM PRO BONO CHALLENGE STATEMENT OF PRINCIPLES AND COMMENTARY (2010), *available at* [http://www.probonoinst.org/wpps/wp-content/uploads/law\\_firm\\_challenge\\_commentary.pdf](http://www.probonoinst.org/wpps/wp-content/uploads/law_firm_challenge_commentary.pdf). “In 2010, 138 of the nation’s largest law firms reported their pro bono statistics to the [PBI].” CHALLENGE STATISTICS, *supra*, at 1. The 138 reporting firms “performed a combined 4,451,009.52 total hours of pro bono work, as compared to 134 reporting firms that performed 4,867,820 hours in 2009, an 8.56% decrease in pro bono time.” *Id.* The PBI statistics further show:

Consistent with the decline in overall pro bono hours, in 2010, more than 60% or 83 of the Challenge Signatory firms met or exceeded their commitment to the Challenge, a 16% decrease from the 72% or 96 of the Challenge Signatory firms who did so in 2009. Despite the lower overall figures in 2010, 24 firms again surpassed their goal by more than 2% — the same as in 2009. Of the remaining firms, 11 firms, or more than 7.5%, came within .5% of their goal, while 44 firms failed to reach their 3 or 5% goal by a factor of 1% or more (up from 36 in 2009), and 5 firms failed to report at all.

*Id.* at 2. Even though there was a decline in the number of hours reported by the large firms, there was good news because these firms began to dedicate more of their time volunteering to persons of limited means. *Id.* at 2–3. Not only are the firms challenged to perform pro bono work equal to three or five percent of total billable hours, the firms are also asked to devote a majority of their work to persons of limited means or to “charitable, religious, civic, community, governmental, and educational organizations in matters which are designed primarily to address the needs of persons of limited means.” *Id.* (internal quotation marks omitted).

In 2010, the percentage of overall pro bono time provided to persons of limited means or organizations dedicated to helping persons of limited means increased: “firms donated 2,840,382.40

has seen a burgeoning demand for free legal services in the United States. According to an American Bar Association (“ABA”) study, at least forty percent of people with low to moderate household incomes experience a legal problem each year.<sup>7</sup> Only about twenty percent of the legal needs of low-income people are being satisfied.<sup>8</sup> One reason for this is that less than one percent of the nation’s legal expenditures are given to legal aid and public interest legal organizations.<sup>9</sup> Another reason is that lawyers spend less than a half hour volunteering each week.<sup>10</sup> Those lawyers who do donate their time are only assisting low-income clients ten to twenty percent of the time.<sup>11</sup> Because the number of people living in poverty is on the rise, the need for legal assistance is only going to continue to increase.

The first step to addressing the need to provide more service to the underserved is to review the rules that are in place to require or motivate lawyers to help. The ABA has provided practicing lawyers with guidelines for the amount of pro bono work they should complete annually in the ABA Model Rules of Professional Conduct.<sup>12</sup> The term “pro bono” comes from the Latin “*pro bono publico*,” which means “for the public good.”<sup>13</sup> The ABA first introduced the Model Code of Professional Responsibility (“Code”) in 1969.<sup>14</sup> The Code stated in Ethical Consideration 2-25: “Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged.”<sup>15</sup> The rule has evolved over the years,<sup>16</sup> and its most recent amendment was in 1993.<sup>17</sup> In

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hours of pro bono service to individuals of limited means or organizations serving them.” *Id.* at 3. This was nearly sixty-four percent of the total pro bono hours performed compared to 2,962,028 hours (or nearly sixty-one percent of total pro bono hours) performed for this group in 2009. *Id.* This three percent increase indicates a “greater focus on the needs of individuals of limited means.” *Id.*

7. *The Need for Pro Bono*, PROBONO.NET, <http://www.probono.net/> (last visited Feb. 5, 2013).

8. *Id.*

9. DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS* 3 (2005).

10. *Id.* at 1.

11. Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2415 (1999).

12. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2012).

13. AMERICAN HERITAGE DICTIONARY 1398 (4th ed. 2000).

14. Ctr. for Prof'l Responsibility, *About the Model Rules*, A.B.A., [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html) (last visited Feb. 5, 2012).

15. *Policies—State Pro Bono Ethics Rules, App. B: Development of ABA Model Rule 6.1*, A.B.A., [http://www.americanbar.org/groups/probono\\_public\\_service/policy/state\\_ethics\\_rules.html](http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html) (last updated Jan. 20, 2012).

16. *ABA Model Rules of Professional Conduct (Pre-2002)*, LEGAL INFO. INST., <http://www.law.cornell.edu/ethics/aba/2001/history.htm> (last visited Apr. 9, 2013). For example: Rule 6.1

its current form, ABA Model Rule 6.1 states that lawyers “should aspire to render at least (50) hours of pro bono publico legal services per year,” emphasizing that these services should be provided to people of limited means or nonprofit organizations that serve the poor.<sup>18</sup> The Rule also allows for free or substantially reduced service on behalf of a variety of professional, governmental, educational, and civic organizations.<sup>19</sup> The key word in the current rule is “aspire.” Nowhere in the rule does it state that lawyers *must* perform pro bono work.

Even if the rule required lawyers to perform pro bono work, the ABA guidelines are just that—guidelines. Lawyers are bound to follow the rules of the States in which they are licensed to practice. Almost every state bar has an ethical rule that addresses the need for pro bono service.<sup>20</sup> For example, Alabama’s Rule 6.1 states:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.<sup>21</sup>

The comment states that the “Rule expresses that policy but is not intended to be enforced through disciplinary process.”<sup>22</sup> Lawyers practicing in Alabama are encouraged to do pro bono work, but are not required to do it. The rule in

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was amended in February 1993 to encourage lawyers to contribute their services to meet the unmet need of poor persons for legal assistance. The amendment added the word “voluntary” to the title of the rule; and rewrote the rule to include an aspirational goal of at least 50 hours of legal services per year without fee or expectation of fee to persons of limited means or groups that “address the needs of persons of limited means.” The Comment was largely rewritten at the same time. The version of the rule in effect from 1983–1993, and adopted by most states, provided as follows:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

*Id.* (quoting MODEL RULES OF PROF’L CONDUCT R. 6.1 (1983)).

17. *Id.*

18. MODEL RULES OF PROF’L CONDUCT R. 6.1 (2010).

19. *Id.*

20. *Development of ABA Model Rule 6.1, supra* note 15.

21. ALA. RULES OF PROF’L CONDUCT R. 6.1 (2011).

22. ALA. RULES OF PROF’L CONDUCT R. 6.1 cmt. (2011).

Alabama is similar to the rules in other states in that there is not a mandatory requirement in place to force lawyers to do the work.<sup>23</sup>

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23. Beginning in 2015, individuals seeking admission to practice in the state of New York must complete a total of fifty pro bono hours before they can file an application for admission to practice law. The entire text of the new pro bono rule § 520.16, which is an amendment to part 520 of the New York Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, states:

(a) Fifty-hour pro bono requirement. Every applicant admitted to the New York State bar on or after January 1, 2015, other than applicants for admission without examination pursuant to section 520.10 of this Part, shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.

(b) Pro bono service defined. For purposes of this section, pro bono service is supervised pre-admission law-related work that:

(1) assists in the provision of legal services without charge for

(i) persons of limited means;

(ii) not-for-profit organizations; or

(iii) individuals, groups or organizations seeking to secure or promote access to justice, including, but not limited to, the protection of civil rights, civil liberties or public rights;

(2) assists in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity; or

(3) provides legal services pursuant to subdivisions two and three of section 484 of the Judiciary Law, or pursuant to equivalent legal authority in the jurisdiction where the services are performed.

(c) Supervision required. All qualifying pre-admission pro bono work must be performed under the supervision of:

(1) a member of a law school faculty, including adjunct faculty, or an instructor employed by a law school;

(2) an attorney admitted to practice and in good standing in the jurisdiction where the work is performed; or

(3) in the case of a clerkship or externship in a court system, by a judge or attorney employed by the court system.

(d) Location of pro bono service. The 50 hours of pro bono service, or any portion thereof, may be completed in any state or territory of the United States, the District of Columbia, or any foreign country.

(e) Timing of pro bono service. The 50 hours of pro bono service may be performed at any time after the commencement of the applicant's legal studies and prior to filing an application for admission to the New York State bar.

(f) Proof required. Every applicant for admission shall file with the appropriate Appellate Division department an Affidavit of Compliance with the Pro Bono Requirement, describing the nature and dates of pro bono service and the number of hours completed. The Affidavit of Compliance shall include a certification by the supervising attorney or judge confirming the applicant's pro bono activities. For each position used to satisfy the 50-hour requirement, the applicant shall file a separate Affidavit of Compliance.

(g) Prohibition on political activities. An applicant may not satisfy any part of the 50-hour requirement by participating in partisan political activities.

An ABA report that details the pro bono rules for each state shows that seven states have a mandatory reporting requirement, while eleven states have voluntary reporting.<sup>24</sup> Even when states have mandatory reporting, this does not always mean lawyers have to perform pro bono work. For example, the Florida Rule of Professional Conduct 4-6.1(b) states:

The professional responsibility to provide pro bono legal services as established under this rule is aspirational rather than mandatory in nature. The failure to fulfill one's professional responsibility under this rule will not subject a lawyer to discipline. The professional responsibility to provide pro bono legal service to the poor may be discharged by:

- (1) annually providing at least 20 hours of pro bono legal service to the poor; or
- (2) making an annual contribution of at least \$350 to a legal aid organization.<sup>25</sup>

Lawyers are encouraged to perform pro bono work or make a monetary contribution to a legal aid organization but are not required to do either. However, they are required to report what they did or did not do. Florida Rule of Professional Conduct 4-6.1(d) states:

Each member of the bar shall annually report whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall report this information through a simplified reporting form that is made a part of the member's annual membership fees statement. The form will contain the following categories from which each member will be allowed to choose in reporting whether the member has provided pro bono legal services to the poor:

- (1) I have personally provided \_\_\_\_\_ hours of pro bono legal services;
- (2) I have provided pro bono legal services collectively by: (indicate type of case and manner in which service was provided);
- (3) I have contributed \$\_\_\_\_\_ to: (indicate organization to which funds were provided);

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24. Standing Comm. on Pro Bono & Pub. Serv., *Overview of State Pro Bono Reporting Policies*, A.B.A., <http://apps.americanbar.org/legalservices/probono/reporting.html> (last updated July 14, 2009).

25. FLA. RULES OF PROF'L CONDUCT R. 4-6.1(b).

(4) I have provided legal services to the poor in the following special manner: (indicate manner in which services were provided); or

(5) I have been unable to provide pro bono legal services to the poor this year; or

(6) I am deferred from the provision of pro bono legal services to the poor because I am: (indicate whether lawyer is: a member of the judiciary or judicial staff; a government lawyer prohibited by statute, rule, or regulation from providing services; retired, or inactive).

The failure to report this information shall constitute a disciplinary offense under these rules.<sup>26</sup>

Accordingly, it is only the lawyer's failure to report that may lead to the lawyer being disciplined.

There is an ongoing debate among lawyers about the duty to perform pro bono work. There are many reasons cited as to why state bars have only introduced guidelines for performing pro bono work, and they have not gone as far to impose binding rules. The majority of the arguments against requiring mandatory pro bono work are grounded in public policy.<sup>27</sup> Lawyers opposed to pro bono work suggest that there are more direct ways to reduce poverty and question why lawyers should be responsible for bearing the burden of this social problem.<sup>28</sup> For example, if lawyers are responsible for providing free legal services, why aren't farmers responsible for giving the poor free food or homebuilders responsible for providing free places for people to live? Further, opponents argue that lawyers should not be held to a higher standard than people in other industries.

These lawyers forget the traditional role lawyers have held in society.<sup>29</sup> Lawyers have been regarded as leaders in the community through their work with schools, nonprofit organizations, churches, and even coaching sports

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26. FLA. RULES OF PROF'L CONDUCT R. 4-6.1(d).

27. Deborah A. Schmedemann, *Pro Bono Publico as a Conscience Good*, 35 WM. MITCHELL L. REV. 977, 982 (2008).

28. *Id.*

29. See Lisa Schwartz Tudzin, *Pro Bono Work: Should It Be Mandatory or Voluntary?*, 12 J. LEGAL PROF. 103 (1987). In this article, the history of why lawyers were considered to be "officers of the court" is discussed. The author explains "[t]he term was used in England originally to express the view that special responsibilities and duties attached to the privilege of becoming a member of the legal profession. English barristers owed a duty to the judicial system to see that the truth was brought out and justice was served." *Id.* at 119.

teams. Because of their education, lawyers have always been relied on as the people who can find the answers and the resources for those needing assistance. Lawyers are taught to analyze problems and are given the skills to find answers to those problems. It would be a shame for lawyers to forego this special place that they have always held.

Those opposed to requiring lawyers to perform pro bono work also cite the need for pro bono lawyers to be competent in the area of law they are practicing,<sup>30</sup> even if they are accepting the case without compensation. Lawyers who practice law in today's society tend to only practice in specialized areas.<sup>31</sup> This modern trend of specialization is leading to the imminent demise of general practice. Because most attorneys are no longer general practitioners, accepting cases in different areas of law carry additional burdens, including balancing a steep learning curve with a duty of competence. This new era of specialization raises important ethical questions for attorneys accepting cases outside of their area of expertise.

Although the legal need of the underserved runs the gamut from simple small claim matters to serious felony criminal offenses, the majority of those needs are a handful of specific types of cases, some of which are not traditionally handled by members of the private bar. Some of the most common needs include eviction, foreclosure, unpaid wages, unemployment, Medicaid, and other public benefits related legal issues<sup>32</sup>—areas normally handled exclusively by public interest attorneys, not private practitioners. Lawyers seeking to assist the underserved do so with a great deal of fear and trepidation citing their top concerns as fear of the unknown, massive investments of time, uncompensated opportunity costs, and concerns over incompetent or sub-par advocacy.<sup>33</sup>

The concern regarding competence is a valid one, but these lawyers ignore the attributes inherent in the profession that empower attorneys to overcome these impediments. Lawyers need to think about the amount of time it will take them to become comfortable in a particular practice area compared to the client. Lawyers should acknowledge that their learning

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30. See Michael Foy, *Defining the Contours of the "Duty to Refer" in Today's Specialized Legal Landscape*, BENCHER, July–Aug. 2011 (quoting *Cent. Found. v. Chi. Ins. Co.*, 227 Cal. App. 3d 547, 557 n.7 (1991)), available at <http://www.innsocourt.org/Content/Default.aspx?Id=6106> (“[A] lawyer may be disciplined for representing a client in a field in which the attorney has no experience and without associating or consulting a sufficiently experienced attorney.”).

31. *Id.*

32. See Oregon State Bar, *Legal Aid*, <http://www.osbar.org/public/ris/LowCostLegalHelp/LegalAid.html> (last updated Oct. 2011); LEGAL AID OF N.C., <http://www.legalaidnc.org/public/learn/locations/offices/morganton/default.aspx> (last visited Mar. 28, 2013).

33. RHODE, *supra* note 9, at 39–41.

curve is much less than the person needing assistance; lawyers are already comfortable with navigating the legal system. These lawyers should think of the opportunity to practice a new area as their big break. Many lawyers have practiced the same type of law for years and have grown tired of the monotony of a particular practice area. Pro bono cases create an opportunity for them to get a break from the daily grind and learn something new. Ultimately, the lawyer could expand his or her practice area to include this new type of law. Doing pro bono work can be especially inviting for a new lawyer. Pro bono is a wonderful means for a new lawyer to learn about the practice of law while doing something good for someone who does not have the resources to help himself.

Another criticism of mandatory pro bono requirements is that it undermines its voluntary nature and moral foundation.<sup>34</sup> Pro bono work should be altruistic, not a requisite. It should not be required of those individuals who have no interest in providing this type of assistance. When states require lawyers who do not want to perform pro bono work to do so, it goes against the very essence of why this work is being performed. Lawyers argue that those forced to do this work will do so grudgingly, and will only serve to hurt the reputation of the legal community, rather than help it. But when lawyers provide free legal help, it should bolster how others in the community perceive the legal profession.

Morally, the argument is that if a lawyer is forced to do something, then it is not as good as if he had chosen to do it on his own. Those expressing this concern seem to miss the point that pro bono work is a rewarding experience, even when required. As a law school professor, I require my students to perform pro bono work as part of their professional responsibility class. Every semester, I open the first class with the same question: “Why did you choose to go to law school?” Although the responses yield varying permutations, the replies all echo essentially the same message—people become lawyers to help people. After everyone shares their reasons for deciding to get a law degree, I announce that they are going to have the opportunity to volunteer and to help the underserved in the Northeast Florida community, where the law school is located. Interestingly enough, the students have never expressed opposition to having to do this volunteer work. I imagine this is probably because before I introduce the class requirement, there is discussion about the number of people living in poverty in the community, the number of children who are not graduating from school, and pictures and testimonials from past projects are shared.

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34. Schmedemann, *supra* note 27, at 982.

It never fails that during the semester in which the class is held, one or more students will talk to me about how dire their situation was before they came to law school. Students tell me about how they want to make a difference for children who end up in foster care or who are living with an abusive family member. After completing their volunteer project, many students remark that they cannot believe that there are people out there in even more dangerous and desperate situations than they were in. The students in the class continually state that they miss volunteering and were so glad that they had the opportunity to do so. The volunteer project helps students remember why they went to law school and it ignites their passion for the practice of law, which was in some way stifled by their first year studies. If only all practicing lawyers were required to take one case, maybe the same result would ensue and the number of those in need of legal assistance would drop dramatically because lawyers remembered how good it felt to help those who could not help themselves.

Another concern expressed by lawyers for not being required to do pro bono work is time poverty—i.e., that lawyers just do not have the time to do the work, especially in today's economy.<sup>35</sup> Lawyers are already faced with extremely challenging hourly requirements and their firms do not include pro bono work as part of the hours that they can count toward their annual requirement. These lawyers claim that there are only so many hours in a day. If they do pro bono work, then there is less time that they can spend with their families, whom they already rarely get to see. This time poverty concern, however, is a misnomer. In reality, technology allows us to do more in less time than ever before. Leaders in the profession have historically found time to do pro bono work; therefore, modern technological advances should be opening the door to permit more time for pro bono commitments, not less.

For those lawyers concerned about the time it will take to perform pro bono work, they should encourage their firms to include pro bono work as part of the billable requirement for their associates. Law firms possess the talent and resources to take the lead in changing the culture of pro bono work to better meet the legal needs of the poor. Associates should encourage law firms that do not have a pro bono policy to adopt one. By implementing such a policy, the law firm sends a message to its associates—as well as its clients—that the firm truly supports pro bono work and understands the importance of giving back to the community. Some firms have even identified ways to involve their clients in their pro bono efforts.

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35. See Eric M. Kraus, *Do Pro Bono Work? Are You Crazy?*, N.Y. L.J. MAG., Sept. 2006, at 1.

Not all of the arguments presented against mandatory pro bono work are based on public policy concerns; lawyers have also presented constitutional arguments against mandatory pro bono.<sup>36</sup> One of the arguments is that mandatory pro bono work is a form of involuntary servitude and is unconstitutional.<sup>37</sup> Lawyers want to have the constitutional freedom to choose to work for whomever they desire and under whatever terms and conditions they negotiate with a particular employer or client. The Thirteenth Amendment to the United States Constitution addresses the concept of servitude.<sup>38</sup> Courts have routinely rejected the argument that the Thirteenth Amendment applies to requiring lawyers to do pro bono work.<sup>39</sup> Instead, this Amendment has been narrowly construed to protect against racial slavery.<sup>40</sup>

The other constitutional argument presented is that requiring lawyers to do pro bono work is a taking. In *United States v. Dillon*, the Ninth Circuit Court of Appeals held that attorney appointments in criminal cases with or without compensation is not unconstitutional because there is no “taking” of “property” as used in the Just Compensation Clause of the Fifth Amendment, which does not contemplate personal services.<sup>41</sup>

The other and final constitutional argument advanced is that some lawyers claim that appointment of involuntary pro bono counsel is ineffective representation.<sup>42</sup> For example, in *Yarbrough v. Superior Court of California*, counsel argued the court’s appointment of involuntary, pro bono, counsel was the functional equivalent of denial of counsel because this type of appointment created a conflict of interest between the client and lawyer.<sup>43</sup> The conflict presented a choice between proceeding with a proper defense paying all attendant ancillary costs out of his own pocket or providing a “lesser defense” than would be given to a client who could afford to pay for

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36. Standing Comm. on Pro Bono & Pub. Serv., *Argument in Favor and Against Pro Bono Reporting*, A.B.A., <http://apps.americanbar.org/legalservices/probono/reportingarguments.html> (last updated July 28, 2009).

37. *Id.*

38. U.S. CONST. amend. XIII.

39. *Bradshaw v. U.S. District Court*, 742 F.2d 515, 517 n.2 (9th Cir. 1984); *Family Div. Trial Lawyers of the Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695, 704–05 (D.C. Cir. 1984); *White v. U.S. Pipe & Foundry Co.*, 646 F.2d 203, 205 n.3 (5th Cir. 1981); *State ex rel. Scott v. Roper*, 688 S.W.2d 757, 758 n.1 (Mo. 1985) (en banc).

40. *See City of Memphis v. Greene*, 451 U.S. 100, 124–30 (1981).

41. 346 F.2d 633, 636 (9th Cir. 1965); *see also Williamson v. Vardeman*, 674 F.2d 1211, 1214 (8th Cir. 1982).

42. Standing Comm. on Pro Bono & Pub. Serv., *supra* note 36.

43. Petition for Review at 11–16, *Yarbrough v. Superior Court of Cal. ex rel. County of Napa*, 1987 WL 890698 (Cal. 1987) (No. S002025).

such services.<sup>44</sup> In both instances, appointed counsel argued he would “suffer[] a conflict where financial disincentives collide with legal and ethical considerations.”<sup>45</sup>

In addition to the policy and constitutional arguments, lawyers argue the time and cost associated with implementing a mandatory pro bono requirement is prohibitive.<sup>46</sup> The cost of administering and enforcing a pro bono requirement would be substantial. For example, there are more than 93,000 licensed lawyers in the State of Florida.<sup>47</sup> If Florida introduces a mandatory requirement, someone would have to oversee it. There has to be some type of tracking system, and arguably, some sort of consequence for not fulfilling the requirement. Implementing the tracking system, communicating the rule, tracking compliance with the rule, and then enforcing the rule would all cost money. Although the startup cost may be high, the overall benefit to the underserved and to the legal profession would be well worth the time, cost, and energy.

While the arguments for not performing pro bono work are as plentiful as they are diverse, individuals in favor of pro bono work—including mandatory pro bono—have a multitude of reasons for wanting to require lawyers to do this important work. These reasons include: “the needs of the poor for legal representation; professional and personal benefits for the lawyer; benefits to legal employers seeking to recruit, train, and retain lawyers interested in public interest work; and improvement in the overall reputation of the legal profession.”<sup>48</sup>

Also, performing pro bono work provides private lawyers exposure to the legal needs of the poor while they are learning a new practice area

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44. *Id.* at 11.

45. *Id.*

46. Standing Comm. on Pro Bono & Pub. Serv., *supra* note 36.

47. *Frequently Asked Questions*, FLA. BAR, <http://www.floridabar.org/tfb/flabarwe.nsf/f6301f4d554d40a385256a4f006e6566/47fc0a8f415a11d285256b2f006ccb83?opendocument#How%20many%20lawyers%20are%20licensed%20to> (last modified June 20, 2012).

48. Schmedemann, *supra* note 27, at 982. Scholars have varying conclusions on the issue of mandatory pro bono. See, e.g., Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 GEO. J. LEGAL ETHICS 459 (2001) (relying on psychological research into moral development and favoring “enhanced volunteering”); Steven Lubet & Cathryn Stewart, *A “Public Assets” Theory of Lawyers’ Pro Bono Obligations*, 145 U. PA. L. REV. 1245 (1997) (arguing that lawyers benefit from certain advantages created by the legal system, such as the lawyer-client privilege, and these benefits support a social claim satisfied by mandatory pro bono (a draft) or contributions to legal aid organizations (a tax)); Jonathan R. Macey, *Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?*, 77 CORNELL L. REV. 1115 (1992) (predicting that the poor would derive more benefit from a lump sum of cash, and that mandatory pro bono would transfer wealth from solo and small to medium-sized firms to large firms).

thereby helping their professional development. While working on pro bono cases, lawyers may obtain legal training that plays a key role in developing their legal skills. It should not be discounted that many studies have found that “volunteering is correlated with both physical and mental health.”<sup>49</sup> When compared to the general population, people who regularly assist others tend to have longer lives, and report less pain, stress, and depression.<sup>50</sup> They also tend to claim a higher sense of physical well-being.<sup>51</sup> Lawyers should seek out pro bono work if for no other reason because performing this work seems to be positively related to improved physical and mental health. Hopefully, while lawyers are seeking to improve their health, they will also develop an appreciation and passion for helping the underserved.

In 2005, the ABA Standing Committee on Pro Bono and Public Service asked lawyers to identify factors that motivated them to perform pro bono work in the past twelve months.<sup>52</sup> The lawyers ranked the factors on a scale of one to five, with a five meaning “very influential” and one meaning “not at all influential.”<sup>53</sup> The following factors were included as part of the survey:

A sense of professional responsibility; [t]he personal satisfaction derived from providing the service; [t]he opportunity to enhance your legal skills; [t]he ability to use the activity toward CLE requirements; [e]mployer policies (where relevant); [e]mployer encouragement (where relevant); [e]ncouragement from law firm clients (where relevant); [p]rofessional benefits such as contacts and referrals; [t]he opportunity to gain exposure in the community at-large; [a] directive from a court; [k]nowledge of the legal needs of poor people; [f]aith-based commitment; [and] [a]wards or professional and judicial recognition.<sup>54</sup>

The results from the survey were that:

The largest motivator in the twelve-month period covered was a combined sense of professional responsibility and the personal satisfaction derived from providing the service (70%). The second biggest motivator was the recognition and understanding of the needs of the poor (43%). In

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49. RHODE, *supra* note 9, at 58.

50. *Id.*

51. *Id.*

52. STANDING COMM. ON PRO BONO & PUB. SERV., ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 17 (2005).

53. *Id.*

54. *Id.*

comparison, relatively few attorneys (15%) mentioned any form of professional benefits as a motivator.<sup>55</sup>

The playing field in most litigation is virtually never as uneven as it is in pro bono cases. Generally speaking, lawyers who take on pro bono cases have the opportunity to protect the interests of the disadvantaged. This is the reason many lawyers decided to enter this profession—to fight the good fight. Pro bono work implicates the very foundational tenets upon which the system was designed to ensure justice is available to all.

## II. A LOOK AT THE DIFFERENT PRO BONO PROGRAMS OFFERED BY LAW SCHOOLS

As Rebecca Cochran noted, “[f]rom the mid-1970s to the mid-1980s, a range of bar associations proposed and promulgated mandatory pro bono requirements in several jurisdictions.”<sup>56</sup> Bar associations took this action as a result of the significant reductions in legal services available to the poor.<sup>57</sup> During this same time period, law schools began to follow the lead of the bar associations and implement pro bono programs at their schools.<sup>58</sup>

Law schools, like State bars, have different ideas as to what type of pro bono work their students should perform. In 1997, the Association of American Law Schools (“Association”) created a Commission on Pro Bono and Public Service Opportunities (“Commission”).<sup>59</sup> On behalf of the Commission, the Association conducted a national survey of schools regarding their pro bono programs.<sup>60</sup> In total, 123 law school deans and 110 law school administrators answered questions about school programs and policies.<sup>61</sup> The Association inquired as to why law schools decided to implement a pro bono program. The survey results showed law school pro bono programs serve two objectives: (1) to increase the likelihood that

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55. *Id.* (cross-reference omitted).

56. Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. PUB. INT. L.J. 429, 432 (1999).

57. *Id.*

58. *Id.*

59. *Section on Pro Bono and Public Service Opportunities*, ASS’N AM. L. SCH., <http://www.aals.org/probono/> (last visited Jan. 3, 2013).

60. *Learning to Serve*, ASS’N AM. L. SCH., <http://www.aals.org/probono/report2.html> (last visited Apr. 13, 2013).

61. *Id.*

students will perform pro bono activities after graduation and (2) to create a more meaningful educational experience.<sup>62</sup>

Just as Rule 6.1 does not require lawyers to perform pro bono work, there is also no rule in place to require law schools to implement mandatory pro bono programs for their students. However, the ABA has developed standards to provide guidance to law schools when they establish pro bono programs. The ABA Standards for Approval of Law Schools, Standard 302(b)(2)—Curriculum provides: “A law school shall offer substantial opportunities for . . . student participation in pro bono activities.”<sup>63</sup> Additionally, law schools “must provide an educational program that ensures that its graduates . . . understand the law as a public profession calling for performance of pro bono legal services.”<sup>64</sup>

Based on the guidelines provided by the ABA, all law schools should make pro bono opportunities available to its students. While law schools struggle with the same concerns that the legal profession encounters regarding pro bono work when determining whether their students should or should not be required to perform mandatory pro bono work, one additional consideration for law schools is the need to obtain supervising lawyers when the students perform legal pro bono work.<sup>65</sup> The law students are sometimes supervised by community attorneys, and not always law school faculty. This is important because law schools have to be cautious in who they assign to work with their students. If lawyers do not want to perform pro bono work, they may be equally opposed to working with a law student seeking to fulfill a law school’s mandatory pro bono requirement. Performing pro bono work under the supervision of a lawyer may be a student’s first exposure to the practice of law and it may be the first time a student sees how the material he or she is learning in the classroom is applied in practice. Therefore, it is important for law schools to think about whether requiring its students to perform pro bono work fits with the school’s overall mission.

There are multiple pro bono models that a law school can choose from when deciding what level of pro bono work it wants its students to perform. The ABA has identified six main categories, including:

[1] Pro Bono Graduation Requirement Program:

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62. *Id.* at Welcome Page.

63. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 302(b)(2) (2012–2013).

64. *Id.* pmb1.

65. *See* FLA. RULES OF PROF’L CONDUCT R. 4–5.5(b)(2) (2012).

These schools require students to perform a set number of hours of law-related<sup>66</sup> public service. The number of hours required by these schools ranges from 20 to 70. The students' service is pro bono as they receive neither academic credit nor pay for their service.

[2] Public Service Graduation Requirement:

These schools require students to perform law-related public service or to be exposed to poverty law through a class or independent study. The ways in which the graduation requirement can be met vary from school to school. Eligible service options include the completion, in a public interest setting, of a pro bono placement, externship, clinic, and/or internship.

[3] Community Service Graduation Requirement Program:

[These schools require] students to perform a set number of hours of public service. Eligible service options include both law and non-law related placements. The students receive neither pay nor academic credit for their service.

[4] Formal Voluntary Program Characterized by a Referral System with Coordinator(s):

These schools have a formal pro bono program designed to match students through a referral system with law-related pro bono opportunities in the community. These programs have a designated pro bono coordinator/advisor, or group of coordinators/advisors, who has the responsibility of developing, promoting and/or coordinating pro bono placements. In some schools, these coordinators/advisors also provide administrative support to in-house and collaborative student group projects. Students participate voluntarily.

[5] Formal Voluntary Program with Administrative Support for Student Group Projects:

These schools promote pro bono service primarily through the provision of administrative support for student groups engaged in law-related pro bono work. The student groups often work in collaboration or partnership with outside organizations. The type of support provided by the school ranges from full-time staffing of a center where the pro bono projects may locate to

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66. A discussion of what constitutes "law-related" work will be provided *infra* Part III.

administrative assistance in tracking hours volunteered. Students participate voluntarily.

[6] Independent Student Pro Bono Group Projects [with no official program]:

Schools in this category have no formal program for school-wide pro bono coordination and support, but individual pro bono projects—usually student organized and run—do exist. These group projects generally target a particular legal need or a particular segment of the population. Most groups work with a faculty supervisor and/or in collaboration with an outside organization.<sup>67</sup>

The first three programs—the pro bono graduation requirement, public service graduation requirement, and community service graduation requirement—are mandatory programs. Mandatory programs require all students to perform a certain number of pro bono hours while in law school. The other three programs—referral system with coordinators, administrative support for student group projects, and independent student pro bono projects—are voluntary programs. Voluntary programs are programs that students may elect to participate in but they are not required to do so.

Each year the ABA gathers information about law school pro bono programs. According to the ABA, there are a total of 202 law schools in the United States; 201 of the 202 schools confer the juris doctorate degree and the other ABA approved school is the United States Army Judge Advocate General's School, which offers a specialized program beyond the juris doctorate degree.<sup>68</sup> The ABA has record of 176 pro bono programs in place at these law schools.<sup>69</sup> Thirty-nine law schools have a mandatory program or a graduation requirement.<sup>70</sup> Out of the thirty-nine schools, twenty-one have a pro bono requirement, fourteen have a public service requirement, and four have a community service requirement.<sup>71</sup> A total of 118 law schools have a formal voluntary program.<sup>72</sup> Ninety-seven of these programs are

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67. Standing Comm. on Pro Bono and Pub. Serv., *Chart of Law School Public Pro Bono Programs*, A.B.A., [http://apps.americanbar.org/legalservices/probono/lawschools/pb\\_programs\\_chart.html](http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html) (last updated June 14, 2012).

68. Section of Legal Education and Admissions to the Bar, *ABA Approved Law Schools*, A.B.A., [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html) (last visited Dec. 13, 2011).

69. Standing Comm. on Pro Bono and Pub. Serv., *supra* note 67.

70. *Id.*

71. *Id.*

72. *Id.*

characterized by a referral system with a coordinator, and the remaining twenty-one schools are characterized by administrative support for student group projects.<sup>73</sup> Nineteen law schools have independent student pro bono group projects.<sup>74</sup> These different programs are currently in place at law schools in the United States.

### III. HOW TO CHOOSE THE RIGHT PRO BONO PROGRAM FOR YOUR SCHOOL

Law schools must consider how pro bono fits into the overall mission of the school before deciding what program to institute, as well as what resources it has available to dedicate to the program. To do this, law schools should take a close look at which of the six programs described above should be implemented. Based on the guidelines provided by the ABA, all law schools should make pro bono opportunities available to its students.

Before implementing a program, the law school needs to define the type of pro bono work it wants its students to perform. All pro bono work is public service; however, not all public service is legal pro bono work. There are many definitions as to what qualifies as legal work.<sup>75</sup> Some law schools define legal pro bono service as service directly benefitting the poor and traditionally unrepresented people using legal skills for which students do not receive pay or credit. However, other law schools define legal pro bono work to include services using legal skills rendered to governmental entities, public interest or community-based organizations, non-governmental agencies, and other nonprofits. The broader definition obviously benefits those other than the poor.

Some law schools limit recognition of pro bono activities to legal work, whereas other law schools allow students to complete a percentage of the hours through community service work.<sup>76</sup> Community service work is public interest work but it does not require law students to use legal skills. For example, a law student who paints a house for Habijax<sup>77</sup> is completing public service, but this work is not legal work because painting a house does not require the use of a legal skill. Additionally, some schools allow students to

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73. *Id.*

74. *Id.*

75. *See generally* Standing Comm. on Pro Bono & Pub. Serv., *Description of Law School Pro Bono Programs*, A.B.A., [http://apps.americanbar.org/legalservices/probono/lawschools/pb\\_description.html](http://apps.americanbar.org/legalservices/probono/lawschools/pb_description.html) (last updated June 29, 2012).

76. Standing Comm. on Pro Bono & Pub. Serv., *supra* note 67.

77. A non-profit organization that provides affordable housing opportunities in the Northeast Florida area. *See* HABIJAX.ORG, <http://habijax.org> (last visited Apr. 13, 2013).

count credit-bearing public interest clinics and externships toward their law school pro bono goal or graduation requirement.

Florida Coastal School of Law has a voluntary program in place, which recognizes students who complete at least 125 hours of pro bono work while in law school. To receive recognition at graduation, the law student must perform seventy-five hours of legal work; he or she could do fifty hours of community service to meet the 125-hour threshold. Florida Coastal School of Law has defined what constitutes “legal” versus “non-legal” work for its students. For honors stemming from “legal work,” the following standards need to be met: “(1) Under the supervision of a licensed attorney[;] (2) Legal or law-related in nature[;] (3) Without compensation[;] (4) No academic credit awarded[;] [and] (5) Directly or indirectly addresses the legal needs of low-income clients, traditionally underrepresented population, groups or organizations.”<sup>78</sup> For “non-legal” honors, the work must be: “(1) Work done for a public interest organization[;] (2) Without compensation[;] (3) No academic credit awarded[;] [and] (4) Directly or indirectly addresses the needs of low-income individuals, groups, or organizations.”<sup>79</sup>

Once the law school decides what pro bono work it wants to encourage or require its students to complete, it needs to determine how much work the students should or must complete. Providing law students with a pro bono opportunity can be extremely valuable to both the student and the receiving organization. It can be a wonderful learning experience for the student, and the organization can receive much needed help that it would not otherwise be able to obtain. The ability to identify a sufficient number of meaningful opportunities can be a challenge depending on the size of the student body.

To create these opportunities the law school should form relationships with members of the local bench and bar. If there is a local or state pro bono committee or professionalism committee, the coordinating person or organization should join the committee. The law school should make connections with the local legal aid or legal services organizations. Depending on what the law school will allow the student to claim pro bono credit for, the law school should also foster relationships with lawyers in the local governmental offices, like the public defender’s office and state attorney’s office. If the law school chooses to implement a program in which the students can perform community service, then the law school should also foster relationships with nonprofit organizations in the area. Many cities

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78. *Pro Bono Honors*, FLA. COASTAL SCH. LAW, <http://www.fcsl.edu/pro-bono/pro-bono-honors> (last visited Jan. 3, 2013).

79. *Id.*

have listings of local nonprofits available on their websites. Another option is to contact the chief judge at the local court to identify organizations the court partners with. For example, in Duval County, Florida, the judges of the Florida Fourth Judicial Circuit refer parties to Hubbard House,<sup>80</sup> Sulzbacher Center,<sup>81</sup> Family Nurturing Center of Florida,<sup>82</sup> and many other organizations depending on the legal issue presented in a given case.

Once the opportunities are created and the students perform the work, law schools must also identify a way to track student hours. Because students work out in the community with supervising lawyers and not within the law school, there must be some form of tracking system. Some law schools allow students to self-report, much like lawyers do in the legal profession. The students simply fill out a form or hour log before graduation stating where they volunteered, the total hours completed, and may also include information like the dates they worked and the extent of the work performed. It is important to include language on the form that informs students that misrepresented information would be an Honor Code violation. This is especially important if the school is not going to require the supervising lawyer to sign the form. Even if a supervising lawyer signs the form, someone should still check to ensure that the work was performed. Other law schools require the law students to complete an online application.

In addition to deciding how to track the hours, law schools should also determine if it wants to track information other than the total hours completed. For example, the law school should ask the students to report the name of the organization and contact information for the organization and supervising lawyer that they worked with. This is helpful because the school can identify how much work its students are doing for a particular organization. The students should also report the exact dates the work was performed. A description of the work completed is also helpful.

To help identify opportunities and to ensure students are performing pro bono work, some form of supervision is helpful. The ABA has noted that pro bono programs should have their own identities.<sup>83</sup> Pro bono programs should not be subsumed under a large office, like career services. Some schools have a professor, career service representative, or member of

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80. See HUBBARDHOUSE.ORG, <http://hubbardhouse.org> (last visited Apr. 13, 2013).

81. See SULZBACHERCENTER.ORG, <http://sulzbachercenter.org> (last visited Apr. 13, 2013).

82. See FNCFLORIDA.ORG, <http://fncflorida.org> (last visited Apr. 13, 2013).

83. CENTER FOR PRO BONO, EVERYTHING YOU WANTED TO KNOW ABOUT LAW SCHOOL PRO BONO BUT WERE AFRAID TO ASK . . . , A.B.A. 5 (Feb. 2010), [http://apps.americanbar.org/legalservices/probono/everything\\_you\\_always\\_wanted\\_to\\_know.pdf](http://apps.americanbar.org/legalservices/probono/everything_you_always_wanted_to_know.pdf).

administration provide oversight for the program,<sup>84</sup> whereas other programs are student-run.<sup>85</sup> Some schools even have partnerships between administration and the faculty.<sup>86</sup>

After the students perform the work, many schools offer recognition to students who meet or exceed the school's pro bono goals. A couple examples of recognition provided include presenting students with certificates or allowing them to wear a cord during the graduation ceremony. Schools may also hold receptions during which students are recognized for their efforts. Other schools include a pro bono notation on the student's diploma or a notation in the graduation program. Some schools may do a combination of different recognitions.

In an effort to ensure the students are given meaningful volunteer experiences, it is important to evaluate the volunteer process. This can be done through the use of surveys. If possible, students should be surveyed about their experiences with each and every organization they work. However, if this is not possible, then a significant statistical sample should be taken of those students completing volunteer work. The survey should be taken as soon as possible after the student has volunteered in order to gather the most accurate information. People are much more likely to recall the details of an event if they are asked right after the event occurred. In the survey, students can identify ways to improve the volunteer process with a particular organization. They also identify new volunteer opportunities for other students.

Additionally, it is equally important to get feedback from the organization for which the student volunteered. Law schools need to know how their students are performing. Schools are concerned about their reputations in the community and want to know when their students are doing well and if there are opportunity areas for them. This can have an impact on the law school's reputation if students are not taking their pro bono requirements seriously.

Regardless of the type of program that is implemented, the key is to get students involved in pro bono work while in law school. It is much more difficult to get a lawyer who has been practicing for twenty years involved in pro bono work than it is to involve a law student. If given the opportunity to

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84. Standing Comm. on Pro Bono and Pub. Serv., *supra* note 67. Ave Maria School of Law students who complete at least forty hours of pro bono legal or law-related work that is consistent with Catholic faith and morals between the end of their first and third years of study receive a transcript notation indicating the total number of service hours provided.

85. *Id.*

86. *Id.*

participate in a pro bono program, students can develop an awareness of their ethical and professional responsibilities to provide service to their community. Participation in the program also provides students with several benefits, namely: the opportunity to perform valuable community service while learning about the legal needs of the underserved, and developing the legal skills and gaining the experience necessary to help meet those needs.

#### IV. WHY LAW STUDENTS SHOULD DO PRO BONO WORK

In today's job market, the need for a graduate to be able to distinguish oneself from others in the job hunt is more critical than ever before. The National Association for Law Placement, Inc. ("NALP") released an Employment Report and Salary Survey for the Class of 2010 that measured the employment rate of law school graduates as of February 15, 2011—nine months after a typical May graduation.<sup>87</sup> According to the report, the overall employment rate for the class of 2010 was 87.6 percent, marking the worst job market since 1996, when 87.4 percent found work.<sup>88</sup> In 2009, 70.8 percent found jobs.<sup>89</sup> Just 50.9 percent of 2010 graduates are working in private practice, down five percentage points from 2009, and 15.1 percent were working in business instead of at a law firm, the highest level ever measured by NALP.<sup>90</sup>

Because of the increased competition in the job market students need to be even more marketable to employers than they have been in past years. One way for a student to increase marketability to potential employers is to get legal experience while in law school. Students who do not participate in academic programs, such as law review, moot court, or mock trial, need to find other ways to develop their research and writing skills.

There are some substantial benefits to students who complete pro bono work. Pro bono programs help students develop professionalism and an understanding of a lawyer's responsibility to the community. Participation facilitates student involvement in the community and increases the availability of legal services to needy populations. Students also benefit by increasing their knowledge and marketability, gaining practical experience,

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87. *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s: Longstanding Employment Patterns Interrupted*, NALP, at 1 (June 1, 2011), <http://www.nalp.org/uploads/PressReleases/11SelectedFindings.pdf>.

88. *Id.*

89. *Id.*

90. *Id.*

developing skills, enhancing their reputations, and exploring alternative career opportunities.

It is one thing to read appellate decisions from a casebook; it is quite another to understand the rules of procedure and how they come into play in the practice of law. By working with a lawyer, students get invaluable tutelage. Students get to see how what they have learned or what they are learning in the classroom is applied in practice. In a doctrinal class students are not told where to sit in the courtroom or how to interact with their clients. Although there are many skills courses and clinics offered at law schools, not all students opt to take these classes/clinics. Compared to students who do not have any legal experience, the first hand exposure can really make a student stand out and serve as a form of networking. Law schools should not only be preparing their students to pass the Bar exam; they should be preparing their students to be practicing attorneys. By performing pro bono work, students can obtain experience with problem solving, factual investigation, communication, counseling, negotiation, and litigation. Although law schools offer clinics to students, at most law schools, not all students have the opportunity to participate. However, the same experience gained in the clinic can also be gained through pro bono work.

Another benefit to those students who volunteer is the ability to find out what areas of the law they are interested in practicing. It is much better for a student to discover he has no interest in foreclosure work while in law school rather than after accepting employment with a law firm that expects him to bill thousands of hours each year doing work that he despises. According to a bulletin released by NALP in April 2010, the 2009–2010 Directory of Legal Employers shows that a requirement of 2,000 billable hours per year is “not typical” but accounts for twelve percent of reported minimum billable hour requirements.<sup>91</sup> The average billable requirement for all size firms was 1,885 hours.<sup>92</sup>

The next reason for doing pro bono work is surprisingly the most forgotten and discounted by people, but may be one of the most inspirational to those of us who regularly do pro bono work. This is the altruistic feeling that a person gets from doing something good. At Florida Coastal School of Law—where I currently teach—students hold an annual writing contest at a local elementary school. The topic for the competition is “Why is it important to help others?” There is a consensus among the nine and ten year

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91. *A Look at Associate Hours and at Law Firm Pro Bono Programs*, NALP (Apr. 2010), <http://www.nalp.org/july2009hoursandprobono>.

92. *Id.*

olds that they do it because they feel good about it. The same thing applies to students who decide to engage in this work. There is nothing like knowing that you helped a family stay in their home or realizing that you assisted them in obtaining necessary or life changing medical or health benefits.

Also, some law firms have a pro bono requirement for their associates. For an interviewee right out of law school, this is a definite plus when the hiring selection is narrowed down to two people and you are the one that has already volunteered while in school. The firm can see that the student is already committed to the cause and the student's values are in line with what the firm expects from its associates.

Law students begin to form their reputation the very first day they enter law school. Students do not always realize that the connections they make in law school can lead to client referrals and employment opportunities. By getting involved in pro bono projects, students get the opportunity to meet people who are not lawyers. They get to form relationships and make connections in the community. These connections can also lead to obtaining future clients and positions on boards. By doing pro bono work students also make connections in the legal community. These connections are very advantageous to the student because legal communities are very small even where there are a large number of lawyers who are practicing in an area. Even if you may not personally know a lawyer, you may know someone in the firm that works with that individual or who may serve on a committee or be a part of an association with that individual.

Law students volunteering in the community help to create good will for the law school. Students' good works can increase the law school's reputation with the local bench and bar. They also help the law school because they are fostering good will in the community by making it a better place to live, which in turns makes things better for everyone. Moreover, although it may not be the main motivator for doing pro bono work, many law schools offer student recognition for completing a threshold number of hours. For example, some schools offer certificates or recognition during the graduation ceremony. By getting students involved in pro bono law schools are simultaneously complying with the ABA's requirements and teaching students the importance of using the legal skills acquired in law school to do good works.

## V. OVERVIEW OF LAW SCHOOL PRO BONO PROJECTS

This part of the Article will provide some ideas for law schools to offer opportunities for student participation in pro bono activities. Information

about six programs will be provided: an Orientation project, Ask-A-Lawyer, Pro Bono Fall Forum, Reverse Shadow Program, Public Interest Research Bureau, Spring Break Immersion Project, and Citizenship Day.

#### *A. Orientation Project*

One way to start on the right foot with a new class is to immediately immerse students in the culture of the law school and the community. Law schools can do this by offering the opportunity to participate in a pro bono project during orientation before students start the school year. This is a great way for the students to interact with their new classmates, professors, staff, and members of administration in a casual setting while becoming acquainted with the community. By introducing the students to pro bono before they even begin classes, the law school sends a clear message to the students how important pro bono work is to the institution. Part of the law school experience should be to educate students about their responsibility, as lawyers, to be community leaders and to use their skill set to make a difference in their communities.

The type of orientation project chosen depends on class size, human resources, and the amount of time available to dedicate to a project. A further consideration in the planning stage is whether there is a need to obtain funding for the project. If the law school is unable to provide funding, the school may consider obtaining money from a local law firm or partnering with a local legal aid organization or other nonprofit organization.

At Florida Coastal School of Law, there were more than 600 students in the Fall 2011 entering class. All students were invited, but not required, to participate in the pro bono orientation project. In Jacksonville, Florida, where the law school is located, there is a group called the Keep Jacksonville Beautiful Commission. The group's mission is to "support community beautification, enhance community pride and improve the quality of life in Jacksonville through provision of outreach, educational activities and programming."<sup>93</sup> The city's website boasts that it is "the nation's largest volunteer-based community action and education organization."<sup>94</sup>

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93. *Keep Jacksonville Beautiful*, CITY OF JACKSONVILLE, [http://www.coj.net/Departments/Environmental-and-Compliance/Clean-It-Up,-Green-It-Up/Keep-Jacksonville-Beautiful-\(KJB\).aspx](http://www.coj.net/Departments/Environmental-and-Compliance/Clean-It-Up,-Green-It-Up/Keep-Jacksonville-Beautiful-(KJB).aspx) (last visited Dec. 16, 2011).

94. *Id.*

The law school partnered with JaxParks<sup>95</sup> to organize its Fall 2011 orientation project. The group presented several project possibilities including a park cleanup. Based on the need at the park and the size of the entering class, it was decided that all interested students would volunteer at Kathryn Abbey Hanna Park. The park is located 1.5 miles from Atlantic Beach and has a sixty-acre freshwater lake on the property. The day after orientation was completed at the law school—and a few days before classes started—approximately 175 people met at Hanna Park early in the morning to work together to clean up the facilities. Members of the new class, second and third year law students, professors, staff, and members of administration participated.

Students broke up into multiple groups to work in different areas of the park. Each group teamed up with upperclassman, professors, staff, and members of administration. The project lasted two hours and after it was completed, everyone met up for a picnic on the beach. The law school provided funding for the picnic and the lunch was catered. The overwhelming feedback from the students who participated was that it was a very good experience. They were able to interact with students from their class while learning a little bit about the Jacksonville area. They also had the chance to meet upperclassmen and obtain the inside scoop about what they should expect during their first week and even their first year of law school.

Regardless of the class size or funding available, there are all types of projects available. Students could meet at a local food pantry to volunteer or meet at a shelter to serve food. These are all community service projects. Another idea is to connect with a legal aid organization and see if there is a project that the students could help with. For example, several law students from Florida Coastal School of Law participate in an Ask-A-Lawyer event each quarter.

### *B. Ask-A-Lawyer*

At Ask-A-Lawyer events, lawyers conduct ten-to-fifteen minute individual interviews in their areas of expertise with individuals who need legal assistance.<sup>96</sup> The goal at these events is for lawyers to provide free

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95. *Parks and Recreation Department (JaxParks)*, CITY OF JACKSONVILLE, <http://www.coj.net/departments/parks-and-recreation/recreation-and-community-programming.aspx> (last visited Apr. 13, 2013).

96. Kathy Para, *Pro Bono Attorneys and Law Students Provide Legal Guidance at Ask-A-Lawyer*, JAX. DAILY RECORD, Mar. 12, 2012, [http://www.jaxdailyrecord.com/showstory.php?Story\\_id=535892](http://www.jaxdailyrecord.com/showstory.php?Story_id=535892).

legal services to people who may find legal consultation cost prohibitive.<sup>97</sup> Interviewees sign statements verifying that they understand that the lawyer is not opening a case, but is providing brief counsel and advice.<sup>98</sup> Ask-A-Lawyer events are held four times a year at different locations in low socioeconomic parts of the Jacksonville area. The Jacksonville Bar Association and Jacksonville Area Legal Aid are consistent sponsors of the event.<sup>99</sup> Other local bar groups and nonprofit organizations have also helped host these events.

The first Ask-A-Lawyer event in Jacksonville was offered on October 24, 2009.<sup>100</sup> During this first event, fourteen lawyers attended and twenty-five individuals received assistance.<sup>101</sup> Since then, a minimum of four events has been held each year. At just one event, Ask-A-Lawyer volunteers provided compassionate and competent guidance to ninety-seven people while addressing approximately 120 legal issues including family law matters, employment, landlord/tenant issues, wills and estates, criminal law, bankruptcy, foreclosures, and more.

Law students help plan these events by coordinating the meetings between the lawyers and clients, observing the lawyers during the sessions, performing legal research when necessary and some students also provide translation. In some cases, lawyers will agree to provide representation for the legal issue being discussed. In many of these cases, the lawyers will ask the observing student to help research the legal issue. Attending these Ask-A-Lawyer events is a terrific way for students to perform valuable community service while learning about the legal needs of the underserved and developing the legal skills and experience necessary to help meet those needs. Interestingly enough, students who once observed lawyers at these Ask-A-Lawyer events are now the lawyers providing advice to the interviewees and being observed by new Florida Coastal students.

### *C. Pro Bono Fall Forum*

To educate law students about the different volunteer opportunities in the community, law schools should consider hosting a forum in which members of public interest organizations—legal and possibly non-legal, depending on

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97. *Id.*

98. *Id.*

99. *Id.*

100. Joe Wilhelm, Jr., *Program Helps Community "Ask-a-Lawyer"*, Jax. DAILY RECORD, Nov. 2, 2009, [http://www.jaxdailyrecord.com/showstory.php?Story\\_id=529463](http://www.jaxdailyrecord.com/showstory.php?Story_id=529463).

101. *Id.*

the pro bono program in place—can come to the law school to meet with the law students. During every fall semester, Florida Coastal School of Law holds an annual Fall Forum.<sup>102</sup> Representatives from public interest organizations meet with the students to educate the students about the services the organizations offer and how the students can help.

The law school should determine what the proper amount of time for the organizations to meet with the students and the time period in which most students will be able to attend. In the past Florida Coastal School of Law has held the forum for an hour and a half. Students meet with representatives and obtain brochures and other informational materials. Many organizations bring sign-up sheets so the students can volunteer for specific projects.

By inviting representatives from the groups to the school, the law school is able to build a personal relationship with various organizations. The law school should also consider inviting leadership from the local bar associations to participate in the forum. Members of these associations can take this opportunity to educate the students about projects their associations are involved in and need help with. This is a wonderful networking opportunity for the students.

A great time of year to hold the forum is during National Celebration of Pro Bono Week, sponsored by the ABA Standing Committee on Pro Bono and Public Service.<sup>103</sup> Although the week is officially the last week of October, because there are so many events held around the country in different locations events will begin in early October and run through the first week of November.<sup>104</sup> The purpose of the Celebration is to “encourage lawyers to connect with other legal professionals and community service providers to swell the ranks of those participating in and starting new pro bono services around the country.”<sup>105</sup> In 2010, there were over six hundred events in forty-eight states and Puerto Rico.<sup>106</sup> “Nearly seventy percent of those events were volunteer training or direct service events; the remainder were receptions, fundraisers, or awards ceremonies.”<sup>107</sup> Many financially distressed and vulnerable citizens received much-needed legal services. By

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102. Mark Bajalia, *Pro Bono—It’s Never Mattered More*, JAX. DAILY RECORD, Nov. 5, 2012, [http://www.jaxdailyrecord.com/showstory.php?Story\\_id=537943](http://www.jaxdailyrecord.com/showstory.php?Story_id=537943).

103. Siobhan Bailey, *National Celebration of Pro Bono Week October 23 through 29, 2011*, THE AFFILIATE, July/Aug. 2011, available at [http://www.americanbar.org/publications/the\\_affiliate/2011/july\\_august\\_2011/natl\\_pro\\_bono\\_week.html](http://www.americanbar.org/publications/the_affiliate/2011/july_august_2011/natl_pro_bono_week.html).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

holding the Forum during National Pro Bono Week, law schools can educate students about the importance of pro bono work and give students the opportunity to help with new programs that are implemented within the local community.

#### *D.Reverse Shadow Program*

The Reverse Shadow Program is a program that was introduced in the 2009–2010 academic year at Florida Coastal School of Law.<sup>108</sup> The goal of the program is to provide underprivileged tenth and eleventh graders who have an interest in law the opportunity to observe law students in their classes at law school. The first step in the process was to obtain approval from the school district and then to identify a high school that was willing to work with the law school. The Superintendent assisted with the process by identifying a high school to work with.

Once the school was identified, faculty from the law school met with the high school principal and teacher who would be the contact for the program. The high school teacher and law school faculty set a date and time for the reverse shadow day to be held. Then the law school faculty sought out a team of law students (“the steering committee”) to plan the event. The law students believed it was important to begin the day with a welcoming talk from one of the deans. During the welcoming talk, the Dean greeted the students and explained how obtaining an education can make a difference in their lives and the lives of family members, as well as in their local community.

After the welcoming speech, the high school students partnered with their law school mentor for the remainder of the day. The steering committee arranged for the high school students to attend a law school class, mock trial presentation, student panel discussion, admissions and finance department presentations, and tour of the library and campus. While attending law school classes, high school students were given a summary of the case that was being discussed. They engaged in class discussion with the law students and the professor. They watched the mock trial students deliver opening and closing arguments in one of the cases that they had recently competed in.

There was a panel of students who shared information about their backgrounds and why they decided to attend law school. Each of the panelists came from underprivileged backgrounds and many expressed an

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108. See *Volunteers Needed for Reverse Shadow Program*, FLA. COASTAL SCH. OF LAW, <http://www.fcsl.edu/story/2010/01/13/volunteers-needed-reverse-shadow-program>.

interest in performing public interest work after they graduated from law school. Representatives from the admissions department spoke to the students about what it takes to be accepted to an undergraduate institution and what would be expected of students if they planned to attend law school. The students then had the opportunity to tour the library and the school to see all of the different resources that are available to the law students.

The first time the Reverse Shadow Program was hosted, Dean of Multicultural Affairs Donald Jones served as the keynote speaker.<sup>109</sup> He spoke to the students about his legal career and the importance of getting an education. One thing that I have always remembered about his presentation was what he said about teachers. He took the time to acknowledge the teachers from the high school and the professors from the law school that were in the room. He said that all it takes is one person to believe in a student and to take an interest in a student's education to make a difference in that student's life. At the time he said this to the students, I thought he could not be more right. I thought back to a conversation my mother and I had over lunch when she asked me why I was waiting to go to law school. She said not to waste any more time working at a job that I did not love and to pursue my dream of being a lawyer. She offered her moral and financial support. A year later, I was in law school.

The initial goal of the program was to give underprivileged students the opportunity to see what could be. Since the planning stages have ended and the program has been held a few times the initial goal has not changed but I think our law students as well as the law school staff and faculty that the program is more than an opportunity for the high school students. Although this is not a legal opportunity for the law students, it is a wonderful opportunity for the students to see how their life choices have really made a difference for them, and the opportunity to see what a difference they can make for others with the skills that they are acquiring while in school.

#### *E.Spring Break Immersion Project*

Migrant workers have always existed in the shadows of the nation's commitment to social justice. "Because of their marginal social status, they have historically been the victims of severe economic abuse."<sup>110</sup> The Alternative Spring Break Migrant Worker Justice Immersion Program at

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109. Dean Donald Jones, Address at the Florida Coastal School of Law Reverse Shadow Program (2009).

110. *Alternative Spring Break Cultivates Student Outreach Work, Assists Migrant Workers*, COASTAL L. MAG., Sept. 15, 2011, <http://fcsf.edu/blogs/magazine/2011/09/15/alternative-spring-break-cultivates-student-outreach-work-assists-migrant-workers/>.

Florida Coastal School of Law is an intense, weeklong migrant labor project that is held annually.<sup>111</sup> The program was initially introduced in Spring 2010.<sup>112</sup> The inventive spring break initiative is supervised by law school faculty in partnership with Florida Legal Services Migrant Farmworker Justice Program.<sup>113</sup>

Before spring break, students attend training sessions that are held by Florida Legal Services lawyers. Students learn how to interview clients and the substantive law that impacts the farm workers. During the week, students and their supervising attorney went to the migrant labor camps in North and Central Florida to meet with the workers to identify possible legal issues.<sup>114</sup> After meeting with the workers, some of the students performed research for the lawyers to help with the potential cases that had been identified.

After the first year the students participated in the program, a student-lead steering committee was formed.<sup>115</sup> The committee worked with the lawyers from Florida Legal Services to plan the 2011 program. The concept of an alternative spring break program that focuses on migrant labor rights and issues helps meet a critical need for an underserved community: “The program simultaneously exposes law students to the pressing needs of an impoverished population, the vital importance of equal access to the courts and the promise of the law as an instrument for social justice.”<sup>116</sup> As participants in the program, law students are influenced to think about the importance of equal access for all to justice and the ultimate paths they choose to follow through the law.

#### *F. Citizenship Day*

“Citizenship Day” is a free annual workshop held at Florida Coastal School of Law to provide assistance to lawful permanent residents eligible for naturalization.<sup>117</sup> It has been sponsored by the law school, Jacksonville Area Legal Aid, and the American Immigration Lawyers Association.<sup>118</sup> The Citizenship Day program began in 2010, with the

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111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. Kathy Para, *Pro Bono Attorneys Receive Thanks for Citizenship Day Assistance*, JAX. DAILY RECORD, May 2, 2011, [http://www.jaxdailyrecord.com/showstory.php?Story\\_id=533493](http://www.jaxdailyrecord.com/showstory.php?Story_id=533493).

118. *Id.*

purpose of offering assistance to those individuals seeking naturalization with help filling out forms for citizenship. Individuals who are interested in applying are prescreened for eligibility and then meet with a lawyer to review their application.<sup>119</sup>

Students help applicants with the forms and conduct data entry. Lawyers examine the applications to make sure they are filled out correctly and completely. It is noteworthy that many of the lawyers do not practice immigration law. An online tutorial is provided to interested lawyers to educate them about the application process so that they can provide assistance during the workshop. During the workshop, interpreters are available—most of which are law students—so lawyers do not have to be bilingual to participate. This program is yet another great way for the law school to partner with other organizations to support the immigrants in Northeast Florida.

#### CONCLUSION

“If the motto ‘and justice for all’ becomes ‘and justice for those who can afford it,’ we threaten the very underpinnings of our social contract.”<sup>120</sup> The place to start filling the justice gap is in the law schools. The ABA is clear that law schools have an obligation to provide meaningful opportunities for students to perform pro bono work.<sup>121</sup> By providing students with these opportunities, law schools enable their students to understand their ethical and professional responsibility to provide service to the underserved while developing their legal skills. One way law schools are striving to improve the learning process for their students is the use of experiential learning techniques. Law schools should seek out opportunities to get their students involved in public interest organizations. Not only will students be able to get the hands-on experience they need, but the legal services organizations that are in dire need of resources to help the underserved in their communities will also benefit from this symbiotic relationship.

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119. *Id.*

120. Ronald George, Chief Justice, Supreme Court of Cal., Annual State of the Judiciary Speech (Sept. 2001).

121. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 302(b)(2) (2012–2013).