

Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum

Cynthia F. Adcock

In January 2011, at the AALS Annual Meeting, the Section on Pro Bono and Public Service held a panel discussion on “innovative curricular components.” The call for papers asked for proposals describing projects that engage faculty in teaching that is likely to fulfill the promise of Bylaw 6-1—to instill in all graduates a commitment to justice and to public service as core values. The six papers selected and presented are published in this symposium.

This introductory paper, drawn from my contribution to the prior year’s AALS workshop on exploring the role of pro bono in legal education, sets the context for the others. First, it provides a quick overview of the development of law school pro bono programs, a history that explains the gap that grew between the law school curriculum and pro bono programs.¹ Second, it sets out the research basis for the call to integrate the teaching of the pro bono service ethic throughout the curriculum. Finally, it notes how the programs described in the other papers meet this challenge.

I. Law Student Pro Bono Service: Professional Responsibility or Charity?

In 1875, Christopher Columbus Langdell introduced the case-dialogue method of training lawyers, emphasizing the teaching of critical legal thinking in law schools to the exclusion of other lawyering skills.² Less than 20 years later, in 1893, law students at the University of Pennsylvania, in search of practice experience while in law school, established a “legal aid dispensary” dedicated to helping the poor.³ This initiative is the first recorded law student pro bono project. Students at a few other law schools followed suit at the turn of the 20th century. These legal aid dispensaries, created during a time of

Cynthia Adcock is Associate Professor and Director of Experiential Learning at Charlotte School of Law.

1. A more complete history can be found by this author in *Shaped by Educational, Professional and Social Crises: The History of Law Student Pro Bono Service*, in *Private Lawyers and the Public Interest* 25 (Oxford Univ. Press 2009).
2. Jerome Frank, *A Plea for Lawyer Schools*, 56 *Yale L.J.* 1303, 1304 (1947).
3. Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 *Tenn. L. Rev.* 1099, 1102-3 (1997).

pervasive denial of justice for the poor,⁴ began the first era in law student pro bono service. Only at the University of Denver legal dispensary, which was run by a local lawyer, did law students receive academic credit.⁵

The first full-fledged in-house clinical program was started by John Bradway at Duke University School of Law in 1931. His goal was “to improve legal education in the United States, with objectives in the field of practical training and public service.”⁶ Bradway reported that by 1939, students at approximately 17 law schools were engaged in legal aid, whether through a legal aid society (for credit or for no credit), a student operated legal aid dispensary (no credit), or a law school legal aid clinic (for credit).⁷

The second era of law student pro bono service dawned with a large infusion of money into legal education. From 1959 to 1978, the Ford Foundation gave nearly \$13 million in grants to more than 100 law schools to supplement federal funding for legal services to the poor.⁸ A 1969 survey found that 86 law schools had used Ford funds to create legal aid clinics, only 43 of which granted credit for student participation.⁹ Many credit-bearing clinical programs were externship programs with “placement in another agency with less than complete law school supervision.”¹⁰

By the mid-1970s, legal aid offices and clinical education, both fighting for their existence, were going their separate ways. The external funding for law school clinics ran out, and clinical faculty positions were endangered. It became important for clinical faculty to advocate for themselves and for the cause of clinical education. This advocacy required that they draw a bright line in the sand regarding academic credit. They had to separate themselves from legal aid programs that gave no credit to students (and that were not run by faculty who could provide training and supervision). Clinical faculty developed a pedagogy focused on the teaching of lawyering skills and values, and less focused on the number of clients served. They also expanded into clinical areas beyond poverty law. These professors sought to prove their clinics had the academic rigor necessary to be accepted within the legal academy.

The Legal Services Corporation was created in 1974 in part to help insulate legal services to the poor from politics. But when Ronald Reagan, who was openly hostile to federally funded legal services, became president in 1980,

4. See Reginald Heber Smith, *Justice and the Poor*, (Carnegie Foundation, 3d ed. 1924).

5. Adcock, *supra* note 1, at 29.

6. Douglas Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 *Tenn. L. Rev.* 939, 945 (1997).

7. John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 *Wash. U. L.Q.* 173, 181 (1939).

8. Peter Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 *Wm. Mitchell L. Rev.* 35, 39 (2003).

9. Jewel Klein, *Law School Legal Aid Programs: A Survey 4-10* (National Legal Aid and Defender Association, 1969).

10. Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 *N.M. L. Rev.* 287, 297 (1989).

elimination of the LSC became a political priority.¹¹ Though Reagan was not successful in this campaign, he was successful at crippling LSC. By 1983, “sixty-one LSC-funded programs reported a loss of *thirty* percent of their staff attorneys, many of whom were the most experienced attorneys. Moreover, LSC reported a *twenty-five* percent decline in the number of legal services offices operating nationwide.”¹²

The private bar’s response to the legal services crisis was to create pro bono programs, which grew exponentially. “In 1980, there were approximately 80 pro bono programs, many of them quite limited in scope. In 1989, these programs number[ed] in the 500s.”¹³

The response from the legal academy came from both students and faculty, beginning the third era of law school pro bono, which itself has occurred in three waves. In the “first wave” response, students at law schools across the country “launched on-campus funding campaigns to provide grants... to underwrite costs to participate in summer internships in legal services programs and to provide fellowships for post-graduate research projects.”¹⁴ Some of these student-run groups formed projects dedicated to student pro bono service, either providing direct assistance to clients or serving as a pro bono clearinghouse. The first such student run pro bono project was formed in 1982 by a group of University of Minnesota law students.¹⁵ This project became the non-profit Minnesota Justice Foundation, which still exists today.

On the faculty front, a group of poverty law professors from a handful of schools responded to the crisis by obtaining funding from the Ford Foundation to create, in 1988, the Interuniversity Consortium on Poverty Law. Its purpose was “to mobilize, increase and improve the commitment of law school resources to the critical task of attacking the root causes and tragic effects of poverty and disadvantage in America.”¹⁶

The Consortium pursued two efforts: the Information Exchange and the Project Group. The Project Group brought together faculty with “innovative projects” that connected scholarship, teaching and advocacy for the poor.¹⁷ One such initiative was instituted by the faculty at Loyola University, New

11. See, e.g., Tigran W. Eldred & Thomas Schoenherr, *The Lawyer’s Duty of Public Service: More than Charity?* 96 W. Va. L. Rev. 367, 370-71 (1993-1994).

12. *Id.* at 371 (emphasis in the original).

13. Esther Lardent, *Conference on Access to Justice in the 1990s: Pro Bono in the 1990s 2* (1989) (unpublished paper) (on file with author).

14. Michael Caudell-Feagan, *Students Work toward Granting Public Service Needs*, 7 PBI Exchange 11, (1989).

15. About Us, Minn. Just. Found., available at http://mnjustice.org/index.asp?Type=B_BASIC&SEC={F819FF1F-C7D6-4F94-B8F0-40067B127376}.

16. Martha Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 Fordham Urb. L.J. 1391, 1403 (2007).

17. Howard Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. Legal Educ. 199, 200 (1993).

Orleans: all students were required to take Poverty Law in order to graduate. The course combined classwork with direct contact with the poor through site visits.¹⁸ At the University of Maryland, the faculty considered a variety of approaches, including mandatory clinic or pro bono. In 1986, they settled on a more integrated approach—a required Legal Theory and Practice course linking theory in first year courses to practical experiences with actual clients from poor and underserved communities.¹⁹

Mandatory versus voluntary student pro bono service became the hot debate on law school campuses across the country. As a result, formal law school pro bono programs emerged, the “second wave” response to the legal services crisis.. The first programs were mandatory. In 1987, the faculty at Tulane Law School voted to require all students to complete 20 hours of law-related public service prior to graduation.²⁰ In 1989, law students convinced the faculty at Florida State to do the same.²¹ Just one month later, the faculty at the University of Pennsylvania Law School, a participant in the Consortium, adopted a pro bono requirement of 70 hours.²² All of these graduation requirements were cast as tools for teaching professional responsibility²³ and were heralded as innovative for their curricular integration of actual pro bono work.²⁴

In 1990, Law Students for Pro Bono was launched, “a nation-wide campaign to establish an in-the-trenches, mandatory pro bono requirement at law schools.”²⁵ The students asserted “that law schools have not met their responsibility to teach students that public service is part of the profession.”²⁶ They urged that mandatory programs “not be for academic credit...that the

18. *Id.* at 206. The requirement was later expanded to include other options for meeting the requirement—including pro bono service.

19. Barbara Bezdek, “Legal Theory and Practice” Development at the University of Maryland: One Teacher’s Experience in Programmatic Context, 42 Wash. U. J. Urb. & Contemp. L. 127, 129–30 (1992). Today, LTP courses are one way in which students can meet what is called the Cardin requirement. Students can also meet it by completing a public interest clinic or an externship.

20. John Kramer, Mandatory Pro Bono at Tulane Law School, in Nat’l Ass’n of Public Interest Law, Pro Bono at Law Schools: New Solutions to Old Problems, NAPIL Connection (Supp. 1990) (copy on file with the author).

21. Nat’l Ass’n of Public Interest Law, NAPIL Connection 3 (July 1989) (copy on file with the author).

22. Memorandum from Howard Lesnick 1 (May 22, 1989) (on file with author).

23. *Id.*; Anne Huizinga, Law Students Learn from Hands-On Pro Bono Experiences, 7 PBI Exchange 14 (1989).

24. Caudell-Feagan, *supra* note 14.

25. Mandatory Pro Bono Sought for Law Schools, Legal Times, Oct. 29, 1990.

26. *Id.*

students have as many options as possible, and that the pro bono programs supplement, not diminish, the clinical programs.”²⁷

Some faculty agreed that law schools should stress pro bono as a professional responsibility but believed that mandatory pro bono was an oxymoron. In 1989, the faculty at the University of South Carolina Law School became the first to create a formal voluntary pro bono program.²⁸ From 1990 to 1993, faculty at 15 law schools created formal pro bono or public service programs, a pro bono program boom not seen since. Eight of these programs were mandatory and seven were voluntary. Dissatisfied with the inaction of their faculty, students at some schools created their own formal voluntary pro bono programs.²⁹ Beginning in 1994, the growth of new law school pro bono programs declined precipitously.

While pro bono programs were being created in the name of the lawyer’s ethical obligation to provide pro bono service, most schools kept them separate from the curriculum and far from the faculty—even the professional responsibility faculty. Some clinical faculty remained suspicious of these programs. Still battling for equal status in law schools, clinical faculty feared that their schools would decide that students could learn to practice law by volunteering at legal entities without expensive faculty oversight. An unfortunate consequence of this division was that, over time, pro bono programs were siloed, often relegated to career services offices, with some becoming mere window dressing.

The “third wave” response was triggered in the late 1990’s when the American Bar Association and the Association of American Law Schools applied pressure on law schools to do more to teach students the ethic of pro bono. In 1996, the ABA included pro bono programs for the first time in their Accreditation Standards. Standard 302(e) was amended to state: “A law school should encourage its students to participate in pro bono activities and provide opportunities for them to do so.”

In 1998, Deborah Rhode, professor at Stanford Law School, became the AALS president. The theme for her term was the professional responsibility of professional schools. In her speech to the AALS House of Representatives, Rhode chastised the legal academy for marginalizing instruction on professionalism, professional responsibility and pro bono. As to pro bono, she argued that legal educators must do more to “foster a culture of commitment

27. *Id.*

28. Pamela D. Robinson, *Insurmountable Opportunities or Innovative Choices: The Pro Bono Experience at the University of South Carolina School of Law*, 42 S.C. L. Rev. 959, 960-62 (1991).

29. For example, in 1990-91, these projects were created: Georgetown Outreach at Georgetown University Law Center, the Pro Bono Recognition Program at Santa Clara University School of Law, Saving Our Society at Chicago-Kent School of Law, and Seek Justice at Whittier College of Law. ABA Standing Committee on Lawyers’ Public Service Responsibility & National Association of Public Interest Law, *Pro Bono in Law Schools*, 1, 46 (1991).

to public service among future practitioners.”³⁰ To help make this happen, as her presidential initiative, Rhode appointed a Commission on Pro Bono and Public Service Opportunities “to collect information about how law schools can promote pro bono and public service initiatives among both faculty and students.”³¹

Upon surveying law schools, the commission found a disappointingly low participation rate among law students in pro bono. Its primary recommendation in its report to law schools was to:

Make available to all 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.³²

The commission also created a Section of AALS dedicated to Pro Bono and Public Service Opportunities. They secured funding for a two-year Pro Bono Project and hired a director to assist law schools in implementing its recommendations.³³ During the project term, the director visited 90 law schools, gathering best practices and encouraging faculty and administrators to create or expand pro bono programs. By the end of the project in 2001, 100 law schools (just over half of the total number) were identified as having a formal, administratively supported, pro bono program offering a variety of volunteer opportunities; 12 had a public service requirement; 14 had a pro bono requirement; and one had a community service requirement.³⁴ Another 73 schools had formal voluntary programs.³⁵

Though the number of formal programs had grown dramatically between the first one in 1987 and 2001, it was less clear that significantly more students were engaging in pro bono and, most importantly, internalizing an ethic of pro bono that would carry them into the careers. Indeed, the rate of lawyer pro bono service had not grown significantly.

30. Deborah Rhode, President, Ass’n of Am. Law Sch., *The Professional Responsibility of Professional Schools*, speech before the AALS House of Representatives (January 1998), in *AALS House of Representatives Proceedings* 166–68 (1998).

31. *Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities*, AALS Comm’n on Pro Bono & Pub. Serv. Opportunities in Law Sch. 1 (1999), available at <http://www.aals.org/probono/report.html>.

32. *Id.* at 7.

33. The author served as director of the AALS Pro Bono Project for the duration of the grant, 1999–2001.

34. Law school pro bono programs are categorized as 1) mandatory public service (w/pro bono option), 2) mandatory pro bono programs, and 3) voluntary pro bono programs. The first category differs from the second in that it allows public interest work for which students get credit or pay to meet the requirement. A community service requirement can be met through non-legal service.

35. Cynthia F. Adcock, *The AALS Pro Bono Project, Handbook on American Law School Pro Bono Programs* 13 (AALS 2001), available at <http://www.aals.org/probono/probono.pdf>.

Pro bono programs had come to mean different things at different schools. A common perception by many law students and faculty was that pro bono was for the do-gooders, the public interest students. Indeed, at more than a few law schools, there was a loss of distinction between pro bono service and public interest careers, often with the later swallowing the former. Law schools that housed their pro bono programs in career services offices only added to this confusion.

Placement of pro bono programs in departments run by non-faculty employees created a chasm between pro bono service and the law school curriculum. In these situations, pro bono service was often viewed as purely voluntary charity. Through this lens, volunteering was a value that could not, or should not, be taught.

In sum, at the dawn of the new millennium, most schools were giving little thought to the relationship of pro bono programs and the curriculum. Thus, teaching a pro bono ethic was not required, did not have to be done by faculty, and did not require dedicated resources.

II. The Resurrection of Curriculum-Based Pro Bono Service

Events in the new millennium have caused some in the legal academy to rethink the role of pro bono programs and their relationship to the curriculum. The start of this new era is marked by the ABA's adoption of Accreditation Standard 302(b)(2) in 2005, requiring law schools to "offer substantial opportunities for student participation in pro bono activities." Now, every law school must consider whether they meet the standard. The application and enforcement of the standard is yet to be determined. But, in its first interpretation, the ABA resisted efforts to allow clinical opportunities alone to be sufficient: "Standard 302(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program."³⁶

Recent research on lawyer pro bono service has challenged the long-held assumption that students who do pro bono in law school will do pro bono upon graduation.

Deborah Rhode, for example, surveyed graduates of several schools with voluntary and mandatory pro bono programs. She discovered that there was no correlation between whether pro bono was voluntary or mandatory at a graduate's law school and whether that graduate actually engaged in pro bono service. Experiences mattered but in which direction depended on whether the student's law school influences were positive or negative.³⁷ Positive experiences can be voluntary or mandatory, for credit or not for credit. Mandatory programs have an advantage not only because more students have pro bono experiences

36. ABA Standards and Rules of Procedure for Approval of Law Schools Interpretation 302-10 (2011-2012).

37. Deborah Rhode, *Pro Bono in Principle and in Practice* 156-60 (Stanford Univ. Press 2005).

but because they convey a message that the institution views pro bono service as important. Credit-bearing clinical experiences can be as effective, if not more so, than pro bono experiences.³⁸ Ultimately, Rhode's research reveals that positive pro bono experiences require resources—monetary but also institutional resources, such as visible support and promotion by faculty. They also require that “the value of pro bono service . . . be reflected and reinforced throughout the law school experience in both curricular coverage and resource priorities.”³⁹

Robert Granfield surveyed graduates from three law schools with mandatory pro bono programs. His findings are consistent with those of Rhode. Graduates generally found their law school pro bono experiences to be valuable, but there was no significant increase in pro bono involvement by these attorneys than by those coming from voluntary programs.⁴⁰ The lawyers were “critical of the lack of integration of their pro bono experiences into other law school activities, particularly their classes . . .”⁴¹ Granfield concludes that “[f]or the law school pro bono movement to have an impact, the pro bono experiences of law students must be better integrated into the general law school curriculum.”⁴²

Deborah Schmedemann's research into the outcomes of the voluntary pro bono program at William Mitchell College of Law sheds light on why curriculum-based experiences can have a more profound and lasting effect on law students. The program features that correlated with increased pro bono participation after graduation proved to include “reflections on one's reactions and discussion of broad social issues.”⁴³ One implication, Schmedemann suggests, is that for transference of the ethic of pro bono service to occur, it is important “to teach law students about the situations of people in need in the students' community.”⁴⁴ She draws parallels to service learning, which combines community service with academic study of a related field.⁴⁵ Studies document that those who engage in service learning demonstrate growth in commitment to service to others and community activism. This growth can be

38. *Id.*

39. *Id.* at 165.

40. Robert Granfield, Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs, 54 Buff. L. Rev. 1355, 1411 (2007).

41. *Id.* at 1405.

42. *Id.* at 1412.

43. Deborah Schmedemann, Priming for Pro Bono: The Impact of Law School on Pro Bono Participation in Practice, in *Private Lawyers and the Public Interest* 73, 88 (Robert Granfield & Lynn Mather, eds., Oxford Univ. Press 2009).

44. *Id.*

45. *Id.* at 77.

attributed in part to an increased sense of empowerment that individuals can change society.⁴⁶

A “take-away” from all this research is that if law schools are serious about producing graduates who engage in pro bono and who will work to solve the access to justice problem, then pro bono service alone cannot be relied upon to achieve the desired result. Pro bono service must be connected to or part of the curriculum. Law schools must teach the value of pro bono service and its complexities as they teach other skills and values. Students must engage the text, which is the fieldwork.

This conclusion is supported by the recommendations of two recent reports—*Educating Lawyers: Preparation for the Profession of Law* and *Best Practices for Legal Education: a Vision and a Road Map*. Both reports conclude that the typical law school curriculum teaches students how to *think* like a lawyer but not how to *be* a lawyer. Specifically, law schools are giving only casual attention to teaching students “how to use legal thinking in the complexity of actual law practice” and “fail to complement the focus on skill in legal analyses with effective support” for developing ethical and social skills.⁴⁷ The solution offered is that law schools integrate throughout the three years of education legal doctrine and analysis, practical skills training, and the exploration and assumption of the identity and values of the profession.⁴⁸ A lawyer’s professional identity includes the understanding of why and how to engage in pro bono service.

III. Best Practices for Integrating Access to Justice Education

This new era brings clarity to the role of law school pro bono programs. It calls on us to ask “What are our desired outcomes for student pro bono service?”⁴⁹ The list of answers contains, no doubt, a mix of knowledge, skills and values. But central to the answer must be that our graduates work to address the access to justice problem in this country. And if this is true, the research tells us that we must teach students about the justice gap in legal services, what they can do to close the gap, why they have a responsibility to do so, and how to confront the strong counter-forces that can be impediments to improving access to justice in private practice.

46. *Id.*

47. William M. Sullivan, Anne Colby, Judith W. Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* 22 (Jossey-Bass 2007).

48. *Id.* at 191, 194; Roy Stuckey and Others, *Best Practices for Legal Education* 8–9 (Clinical Legal Education Assn. 2007).

49. *See, e.g.*, Report of the Outcome Measures Committee, 2008 A.B.A. Sec. on Legal Educ. & Admissions to the Bar, *available at* <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>. (recommending changes to its accreditation standards that will require schools to 1) identify learning outcomes, 2) offer a curriculum that affords opportunity to master outcomes, 3) assess whether students have mastered outcomes, and 4) measure and improve their progress in adequately preparing students for the practice of law).

After 50 years of experimentation, there is no single best structure for law school pro bono programs. Instead, scholars continue to test the waters with new and innovative pro bono programs designed to instill in students an ethic for pro bono service, to better train students for the realities of modern law practice, and to involve the law school and its curriculum in the needs of the legal community.

The articles that follow present law school courses and programs that represent some of the most innovative approaches to integrating pro bono services into the curriculum. Two essays concern programs that involve students in their first year of law school. David Oppenheimer, Susan Schechter, Shalini Swaroop and Trish Keady at University of California, Berkeley, School of Law, share how they brought existing pro bono projects, which students had created specifically for the first year, under the umbrella of the Professional Skills Program. Mary Nicol Bowman describes a project at Seattle University School of Law, called the Legal Writing Collaborative, which fosters student engagement early on by integrating pro bono opportunities into the first year legal research and writing curriculum.

Gregory Germain discusses some of the challenges, benefits and solutions he has found in supervising a large pro bono bankruptcy program at Syracuse University involving students in all three years of law school. Kimberly Emery and Scot Fishman have developed, at the University of Virginia School of Law, a doctrinal course studying the role of law firm pro bono services in society. Finally, Susan Waysdorf and Laurie Morin of the University of the District of Columbia, David A. Clarke School of Law, offer a service-learning model for access to justice education.

We hope these articles will help move the discussion and agenda forward as law school pro bono service begins its fourth era.