Innovative Ways to Close the Justice Gap: Pro Bono Practice Rules, Technology, and More!

June 14, 2024, 11:45 a.m.

The Justice Gap—between the civil legal needs of Americans with low incomes and the resources available to meet those needs—is persistent and widening. In a 2022 report, the Legal Services Corporation determined that 92% of Americans with low incomes did not receive any or enough legal help for their civil legal problems. Legal aid organizations are struggling to meet the rising numbers of clients who need emergency civil legal services.

This panel will explore private practice involvement in pro bono projects, including ways that big law, corporate legal departments, small firms, and solo practitioners can support attorney involvement in pro bono programming, and the use of technology to support pro bono services. This panel will also cover Pennsylvania ethics and CLE rules that facilitate pro bono services. Please join the panel for an interactive discussion about how we can work together to close the Justice Gap in Allegheny County and beyond.

1-hour Ethics Credit

Speakers: *Honorable Jill Beck,* Pennsylvania Superior Court
Gabrielle Carbonara, Esq., Dickie, McCamey & Chilcote
Judy Hale, Esq., Neighborhood Legal Services

Moderator: *Barbara Griffin, Esq.,* Pro Bono Center of the Allegheny County Bar Foundation

Agenda:

I. Introduction and Overview

II. Perspectives from the bench & value of pro bono services

III. Perspective of volunteers: pro bono projects from a firm perspective

IV. Pro bono projects and good practices

V. Typical cases, common issues

VI. How to get involved

VII. Questions and Answers

VIII. Closing Remarks and Call to Action

Program Materials:

1. Program Agenda
2. List of Program Materials
3. Pro bono rules of professional conduct
4. Poverty guidelines 2024
5. Cultural Competency in the Practice of Law
6. Beyond Bias, Cultural Competence as a Lawyer Skill
7. Pro Bono Legal Work: For the Good of Not Only the Public but Also the Lawyer and the Legal Profession (1993)
8. Access and Justice: Fordham Law Review (2004)

PUBLIC SERVICE

6.1 Voluntary Pro Bono Publico Service

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.

Comment:

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. This Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

[4] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

6.5 Nonprofit and Court Appointed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment:

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not

preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

. . . .

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

Comments

. . . .

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

ELIGIBILITY GUIDELINES FOR
FREE AND REDUCED-FEE LEGAL SERVICES 2024
(Effective Jan. 12, 2024)

These guidelines are based upon the 2024 federal poverty guidelines set by U.S. Department of Health and Human Services. Guidelines are based upon amount of gross yearly or monthly income.

Number in Household	100% Poverty		125% poverty[1]		187.5% Poverty[2]		200% Poverty[3]		250% Poverty[4]	
	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly	Monthly	Yearly
1	$1,255	$15,060	$1,569	$18,825	$2,353	$28,238	$2,510	$30,120	$3,138	$37,650
2	$1,703	$20,440	$2,129	$25,550	$3,194	$38,325	$3,406	$40,880	$4,258	$51,100
3	$2,152	$25,820	$2,690	$32,275	$4,034	$48,413	$4,304	$51,640	$5,380	$64,550
4	$2,600	$31,200	$3,250	$39,000	$4,875	$58,500	$5,200	$62,400	$6,500	$78,000
5	$3,048	$36,580	$3,810	$45,725	$5,716	$68,588	$6,096	$73,160	$7,621	$91,450
6	$3,497	$41,960	$4,371	$52,450	$6,556	$78,675	$6,994	$83,920	$8,742	$104,900
7	$3,945	$47,340	$4,931	$59,175	$7,397	$88,763	$7,890	$94,680	$9,863	$118,350
8	$4,393	$52,720	$5,491	$65,900	$8,238	$98,850	$8,786	$105,440	$10,983	$131,800

*If you notice any errors in this chart, please contact Barbara Griffin at 412-402-6622.

[1] Neighborhood Legal Services limit for most cases. Divorce Law Project limit.
[2] IOLTA-funded program limit.
[3] ACBA Modest Means Program limit.
[4] Limit for Pro Bono Center and Pittsburgh Pro Bono Partnership programs. Some programs have lower eligibility limits.

Cultural Competency in the Practice of Law

A monolingual Spanish-speaking single mother. A young professional who recently emigrated from India. A victim of domestic violence seeking help at a pro bono clinic. These are just a few clients I have assisted over the last few months. In an increasingly diverse society, cultural competency is becoming imperative to the practice of law.

The legal industry is primarily a service-based industry, and the foundation of the practice of law is communication with clients. Understanding the needs of clients and the cultural differences that may arise during communications with clients can make delivering legal services more effective.

With the American Bar Association's mandate to improve access to lawyers and legal services for those of moderate incomes, cultural competency will continue to play an important role in the future of the legal profession, both for attorneys and for clients. With these guiding principles in mind, below are some practices and policies that every lawyer can learn and implement in an effort to become culturally competent.

> **Cultural competency is achieved by identifying and understanding the needs and behaviors of individuals seeking help.**

Learn what "culture" means.

According to the National Center for Cultural Competence (NCCC), cultural competence "embraces the principles of equal access and nondiscriminatory practices in service delivery." Cultural competency is achieved by identifying and understanding the needs and behaviors of individuals seeking help. More importantly, the practice of cultural competency is driven in service delivery systems by a client's preferred choices, not by culturally blind or culturally free interventions.

In order to be mindful of the cultural differences and similarities in clients, it is important to be cognizant of the characteristics that can define different cultures. Culture is often described as the combination of a body of knowledge, a body of belief and a body of behavior. Culture not only refers to a person's superficial features, such as their appearance, but also to a person's identity, language, thoughts, communications, actions, customs, beliefs, values and institutions that are often specific to ethnic, racial, religious, geographic or social groups.

Although appearances and linguistic differences are clear indicators of the need to be culturally competent, other characteristics such as personal identification can be difficult to ascertain. One example of this is simply the way that we refer to people. If a client introduces herself in a specific way or using a certain name, keep that in mind. Be mindful of the way a client refers to himself or herself, and if you are unsure of how to refer to him or her, ask. Do not assume.

Recently, in a seminar that I attended about providing legal counsel to homeless youth, one of the speakers mentioned that in her nonprofit practice, she found that young homeless clients are more likely to feel comfortable if they are sitting closer to the exit than the attorney. Due to past experiences, she said, homeless youth are likely to distrust authority and are less likely to have open conversations in uncomfortable environments — environments that are too ostentatious or too restrictive.

In learning what "culture" means, it is best to learn what it means in the context of the community that you serve.

Value diversity.

Diversity is a catch-all word for the notable characteristics in a person. Diversity has many avatars and learning how to convey information to diverse clients can be a career-defining action. A little bit of research and understanding can go a long way. Conveying information to clients so that it is easily understood is an invaluable skill, whether talking to someone with limited English proficiency or literacy skills, an individual with disabilities or someone who has never before dealt with an attorney.

Similarly, valuing diversity within the legal profession is just as important. We can learn important lessons in cultural competency through each of our colleagues, whether they are disabled, ethnically diverse or bring a different perspective to the table. Making the effort to attend events for diverse bar associations can be the first step in learning cultural competency in the legal profession. LGBT bar associations, ethnic bar associations such as the National Bar Association and the National Asian Pacific American Bar Association and religious bar associations such as J. Reuben Clark Law Society are some of many safe places to ask questions about certain diverse groups in order to increase cultural competency.

Build and nurture relationships.

While speaking with colleagues about cultural competency recently, I found that one of my colleagues was in favor of learning about a client's culture or values beforehand and making it a topic of conversation in the first meeting to build a rapport.

Another colleague disagreed and said that she would proceed the same way with any client and not make a client conscious of the differences in his or her background.

I believe the right answer is to set boundaries in conversation, along with a personable tone, and then assess each client's reaction and comfort level before asking questions that could be perceived as personal, such as country of origin, family background, education, etc. In certain situations, such as discovery during litigation, questions about background may be inevitable. In other legal services, such as contract review or negotiations, the same questions can be irrelevant and intrusive. This can lead to distrust, especially from clients who come from backgrounds where law enforcement and legal counsel are seen as more intimidating than helpful.

Engaging and staying attuned to each client's boundaries and comfort level can provide a solid foundation to build and nurture relationships based on trust and mutual respect.

Conclusion.

The field of medicine encourages and often requires professional training in cultural competency prior to communicating with patients because culturally competent communications foster effective and honest relationships and trust. Delivering legal services, whether litigation or transactional, requires the same level of respect and competence in an increasingly diverse world.

Once we acknowledge the importance of cultural competency, and the fact that cultural competence is a developmental process that evolves over an extended period, we can begin to learn and improve the way that we interact with clients.

Aastha Madaan

About the Author

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Beyond Bias—
Cultural Competence as a Lawyer Skill

By Nelson P. Miller

Fast Facts:

A lawyer's cultural competence goes beyond avoiding bias. To serve diverse clients, lawyers should have special communication and interpersonal skills. Those skills can be taught and learned.

American popular culture judges in terms of "bias" the quality of relationships between cultures and classes. A good person is defined to be one who is free of cultural, ethnic, and class bias. A bad person exhibits bias—perhaps a Don Imus against African Americans or an Al Sharpton or Mel Gibson against Jews (to take celebrated recent examples).

The problem for lawyers is that the bias model is one of purity, not performance. The litmus test of bias allows us to draw comfort from simply not saying the wrong thing. It has nothing to do with how we actually perform as professionals in complex interactions with individuals of diverse cultures and classes. The comfort we draw in not exhibiting bias is an obstacle to real lawyer skill. It tells us that as long as we have not said anything wrong, we are acceptably professional. In truth, good lawyers—culturally sensitive and aware lawyers—employ considerable skill. Cultural competencies can be taught. Indeed, they are taught to educators, translators, social workers, nurses, missionaries, and a host of others who deal with diverse populations. By and large, they are not taught to lawyers.

Cultural competencies cover a wide range of areas. Communication is primary. It is important how we speak and listen. Communication varies. What is understood and appreciated in one household will not be understood and may instead be offensive in another household. And it is not only communication that varies. So, too, do individual cognition, individual and family resources, cultural references, and relationships.

Lawyers should possess cultural competencies in at least those five areas. Lawyers who possess and exercise these skills are able to meaningfully serve diverse populations. They can serve black and white, rich and poor, educated and uneducated, helping each to draw on their available skills and resources without mistakenly misjudging any to be uncommunicative or unintelligent. Lawyers who do not possess and exercise these skills cannot serve diverse populations effectively.

Take as an example the different language registers clients of different cultures may employ. A language "register" is the form or level of language (intimate, casual, consultative, formal, or frozen) that a speaker uses, indirectly indicating preferences in the way the speaker wishes to treat the relationship with the listener. Lawyers ordinarily speak in a consultative register, but many clients do not. An effective lawyer adjusts to the client's register, not the other way around, because register is closely connected to hidden rules and cognitive practices within various cultures.

Thus, in some pro bono work at a local Hispanic center, the lawyer spoke only English. The client was a shy Guatemalan woman whose first language was a dialect, but who also spoke just enough Spanish to communicate in that second language. The translator was a pert Mexican Spanish-speaker who spoke English as a second language, but did not speak the Guatemalan dialect. Although he could not understand the Guatemalan client's Spanish, the lawyer quickly discerned from her hesitancy and tearfulness that she was probably communicating only in an intimate (child to parent) or at best casual (close friend to close friend) register. The lawyer quickly adjusted accordingly, speaking much more like a parent or friend than the lawyer would have when using the typical consultative register with which all lawyers are familiar. Lawyers typically render legal advice in a consultative, not intimate or casual, register.

The problem was that the Mexican translator had not recognized the shift in registers, or if she had recognized it, was unwilling to accommodate the shy Guatemalan client. This much the lawyer could tell from the client's confusion and the air of superiority the translator was exhibiting. The translator was (as the observing translator-trainer explained it later) dressing up the lawyer's words into flowery and important-sounding messages that the client was unable to grasp and process. The observing translator-trainer had to intervene and employ the appropriate intimate and casual register to successfully salvage the consultation. Competence in cultural communication, of course, does not mean being able to work with translators. The incident simply shows how important language register is and how roles and expectations can interfere with sensitive communication.

Take another example from the area of cultural reference. The narrator of the *Planet Earth* television series makes an important cultural reference when she intones (in that dry seriousness typical of the genre) that it is a matter of "luck" that the Sun/Earth relationship has remained so stable over billions of years. A lawyer making a similar comment about the "luck" involved in some event would already have appeared foolish and insensitive to what some low-income clients would more reasonably regard as extremely improbable but clearly providential events.

Thus, listen carefully to a client's answer to the greeting, "How are you?" The response "I am blessed" is a low-income, minority client's clearly intentional deviation from the majority culture's standard answer of "fine" or "good." It is a hint to the finely attuned ear, or in some cases a declaration against the obstinate dominant culture, that the client is a person not of fate but of faith. It would be insensitive for the lawyer to think the response weird or unintelligent, when instead it is a reflection of a highly developed ethic having potentially important consequences to the consultation.

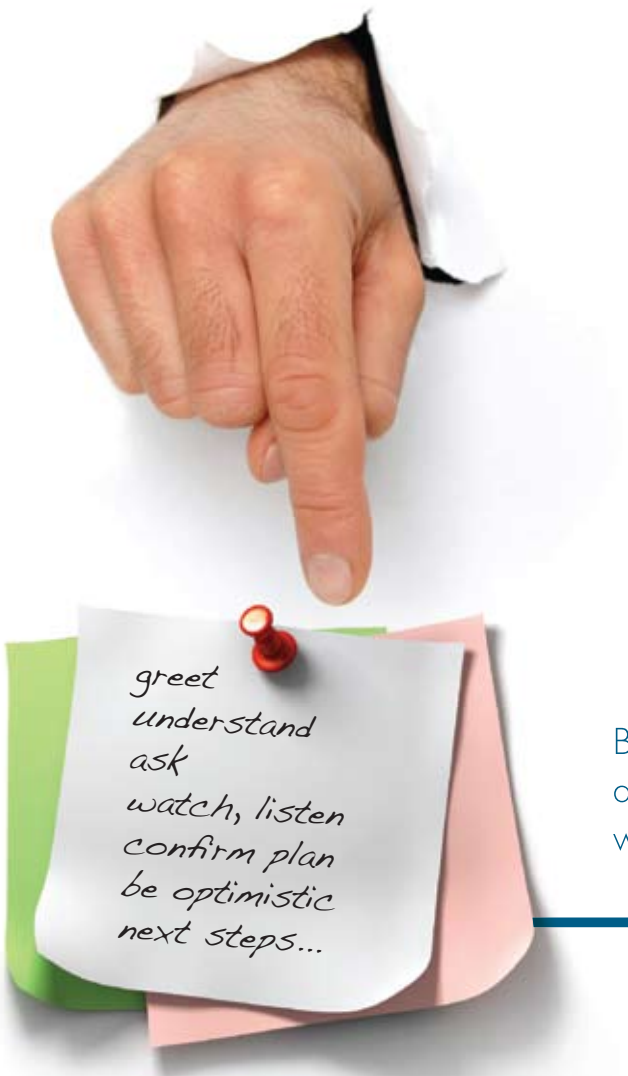
Listen carefully to a client's answer to the greeting, "How are you?" The response "I am blessed" is a low-income, minority client's clearly intentional deviation from the majority culture's standard answer of "fine" or "good." It is a hint to the finely attuned ear that the client is a person not of fate but of faith.

Is it indeed significant that we notice these differences about our clients? It was significant to one. The lawyer met the pro bono client in a cubicle off the soup kitchen's day room, where patrons could get identification, a locker, a haircut, and mail, shower, and use a washer-dryer. The homeless client, a middle-aged and quite weary African-American male,

nonetheless responded to the lawyer's greeting with "I'm blessed. How are you?" The consultation then ensued about child support that had accumulated while the client was incarcerated for better than a decade. At its conclusion, the client rose appreciatively but wearily, saying that, in the end, he was concerned about the drugs and prostitutes tempting him on the streets. It was not a complaint, but an almost-silent plea without expectation of response.

But the lawyer then remembered the client's faith expressed in the greeting. So as the client turned to leave, the lawyer said simply: "Ah. There is no temptation except that which…." The client stopped, turned back, brightened noticeably, and completed the verse, saying he had not thought of it (powerful advice for anyone in the client's situation) since his release from prison 10 weeks before. There now seemed little doubt that the client would stay sober another night—a greater victory for the client and community, perhaps, than anything else the lawyer and client might have accomplished that day.

Here, then, are some tips on cultural competence. Although the examples have been in pro bono settings and with elderly clients, these competencies can be just as important in law-firm settings with paying clients. Please keep in mind, though, that if you are serving a client who is from a culture different from your own, you have already demonstrated the first cultural competency, which is willingness. Consider the following recommendations to increase your cultural competency:



- ***Introduce yourself*** in a manner that puts the client at ease. Always say your name. Anonymity appears aloof, insular, uncaring, and arrogant. Make eye contact, unless the client studiously avoids eye contact, and smile. If the client appears ready to offer a handshake, offer a handshake first. If the client is reluctant to offer a handshake, do not embarrass the client with an extended hand. Accept that there are hidden rules of interaction you do not know.
- ***Understand intimate and casual register*** and communicate accordingly. Not all clients share your verbal skills and interests. They may speak in indirect and generalized fashion and using frequent nonverbal assists. Participate with frequent verbal acknowledgments ("mm-hmm," "yeah, I know," etc.), behavioral prompts (nodding, smiling, etc.), and emotional responses (shared interest, sorrow, satisfaction, etc.). Do not force a client to say something the client wishes to avoid saying. Respect the circular nature of casual register. Avoid power struggles over language. Use calm, nonjudgmental, adult voice, never commanding or scolding in parent voice, and never defensive or emotional in child voice. Appreciate the client's humor. Use metaphor and story as a guide. Draw diagrams. Recognize cultural references. Accept and employ them to contextualize and communicate solutions.
- ***Ask why the client is here*** before making any assumptions. Ask open-ended questions, like "What worries you?" or "What do you want to happen?" Respect the client's freedom and personality. Be wary of assuming that the client has purely legal goals. Legal goals may be enmeshed in social, political, moral, financial, familial, ethical, personal, and spiritual goals, or legal goals may be absent. Assist with more than purely legal goals when your life experience enables you. Refer the client for other help with nonlegal goals. Think in terms of broad, team solutions while helping the client avoid negative influences. Legal solutions are not the only solutions.
- ***Listen to the client*** rather than your own judgment about what is important. Let the client decide. Do not dismiss the client's hopes, goals, expectations, and objectives, even when you would choose different objectives. Active pursuit of an unrealistic but safe goal can serve the client by indirectly achieving more useful objectives. Listen for words that seem out of place to you. They may be clues to a resource, habit, or understanding on which the client can draw for solutions. Develop a context for the client's situation—whether personal, medical, legal, family, or social.

Be prepared to pick up on a small parting comment and to address new legal issues at what you thought was the conclusion of the session.

Develop factual content when you see a legal issue that you can help address. Clients may express emotions and opinions, leaving it to you to prompt for relevant facts.

- ***Watch the client*** with an eye sensitive to the client's reactions. Summarize the client's goals and your advice on how to achieve them. If the client does not share your confidence in the solution you proposed, you may not have understood the client properly, or you may have assumed that the client has capabilities and resources that the client does not have. Continue to listen, ask, summarize, suggest, and generate other options until the client appears satisfied with your advice. What seems to you to be readily achievable may in fact not be for reasons only the client can appreciate. Suggest and teach coping strategies. Gently let the client know that you are offering bridges out of negative situations.

- ***Break down steps*** into manageable components. Think of each step that a larger task requires and then explain those steps for the client. Clients of poverty may lack the ability to break larger tasks down into manageable components. Help the client do so. When the steps become too many, stop, return to the first step that the client can understand and follow, and then plan another consultation for the rest of the steps. Watch for signs that the client is overwhelmed or frustrated. Assign to the client only those tasks that the client believes are clearly manageable. Model self-talking through procedures, but also propose role models. Clients of poverty can benefit more through mentors and relationships than through systems and actions. Be a coach, not a commander, judge, or taskmaster. Speak about choices and consequences. Help the client identify cause and effect (impulse and consequence) relationships.

- ***Confirm the plan*** that you have developed. Ask the client if the client would like you to write it down. If you do write it down, print in a clearly legible handwriting and number the steps. Clients may lack the planning and initiating skills that you possess. Help them prioritize and plan. Then help them record the plan in a manner that they can understand and use. Help them confirm that the plan will lead them toward their objective. Ensure throughout that they believe that they have the resources available to follow the plan. Do not plan anything for which the client lacks the resources. Solutions are not systems. They are relationships leading to small steps in the right direction. But also limit your responsibility. Be responsible *to* them for the steps you accept that you will perform. Make it clear to them what you are and are not going to do for them. But do not be responsible *for* them.

- ***Express hope and optimism*** about the client's situation, no matter how dire it may seem to you. Building and maintaining hope is essential for clients who have few resources. You may indeed have a client whose legal situation cannot be addressed. But through your discussion of it and your continuing relationship with the client, the client may develop other objectives that are achievable. Be frank in your advice, but do not destroy the client's confidence. Stress the client's internal assets—perhaps the client's perseverance and tenacity, or the client's knowledge of truth, or the client's faith and ethics.

- ***Listen for a parting request*** from the client. The consultation does not end until the client has left. Just because you think it is over does not mean it is over. Some clients will use the consultation time simply to develop trust and understanding and only introduce the important matter when you think the consultation is over. It is not always about what you think it is about. Be prepared to pick up on a small parting comment and to address new legal issues at what you thought was the conclusion of the session. Be sure to elicit any lingering concerns with a question like, "Is there anything else we should talk about?"

- ***Tell the client when you are next available*** for further consultation, especially if time did not permit you to answer all of the client's questions and address all of the client's legal issues. To clients with limited resources, the relationship with you is more important than the service you rendered. Clients get out of poverty not through service, but through relationship. Letting the client know that you value the relationship may contribute more to the client's situation than any legal service you are able to provide. If you cannot be a mentor, then think of and offer one. ■

Sources and Suggested Reading: Payne & Krabill, *Hidden Rules of Class at Work* (Aha Process, Inc, 2002); Payne, *Understanding Learning: The How, the Why, the What* (Aha Process, Inc, 2001); Payne, DeVol & Smith, *Bridges Out of Poverty: Strategies for Professionals and Communities* (Aha Process, Inc, 2001); Payne, *A Framework: Understanding and Working with Students and Adults from Poverty* (Texas: RFT Pub, 1995); Bryant, *The five habits: Building cross-cultural competence in lawyers,* 8 Clin L R 33 (2001); *Initial Interview Protocol,* Thomas M. Cooley Law School Clinics.

Nelson Miller, associate dean and associate professor at Thomas M. Cooley Law School, is the 2005 winner of the State Bar John W. Cummiskey Award for pro bono service. The above article draws on his pro bono experience, service on the State Bar Equal Access Initiative Committee, service as president of the Grand Rapids Bar Association's Legal Assistance Center, and instruction and mentoring at Cooley Law School.

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Pro Bono Legal Work: For the Good of Not Only the Public, but Also the Lawyer and the Legal Profession

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PRO BONO LEGAL WORK: FOR THE GOOD OF NOT ONLY THE PUBLIC, BUT ALSO THE LAWYER AND THE LEGAL PROFESSION†

*Nadine Strossen**

INTRODUCTION

Judge Harry Edwards' important, provocative article,[1] which is the subject of this symposium issue, contained a triple-pronged critique of legal education and the legal profession. It constructively criticized legal scholarship,[2] legal pedagogy,[3] and legal practice.[4] My commentary will focus on the last aspect of Judge Edwards' analysis: what he calls "ethical practice."[5] More specifically, my commentary will focus on the first of the two criteria that Judge Edwards delineates for such practice: the lawyer's "ethical obligation to . . . deploy his or her talents pro bono rather than pro se, at least in part."[6]

I agree with Judge Edwards that "the lawyer has an ethical obligation to practice public interest law — to represent some poor clients; to advance some causes that he or she believes to be just."[7] I also concur in Judge Edwards' opinion that "[a] person who deploys his or

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Part II of this essay is based on the keynote address that I delivered during the University of Chicago Law School's Public Service Week on October 26, 1992. For most of the research assistance with this piece, I thank Phillip Stillman. For additional research assistance, I thank Anita Connolly, William Mills, Tess Schwartz, and Catherine Siemann. I also thank New York Law School Dean Harry Wellington, Associate Dean Ellen Ryerson, and Professors Karen Gross, Randy Jonakait, Edward Purcell, and Richard Sherwin for their leadership and support concerning significant steps to bridge the gap between legal education and the legal profession. Finally, I am grateful to Ellen Ryerson and Richard Sherwin for their comments on an earlier version of this essay.

1. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession,* 91 MICH. L. REV. 34 (1992).

2. *See id.* at 42-57.

3. *See id.* at 57-66.

4. *See id.* at 66-74.

5. *See id.*

6. *Id.* at 67. The other criterion that Edwards articulates for "ethical practice" is comporting with standards of professional responsibility. As he states, "the ethical lawyer cannot always advance the client's narrow self-interest, because the lawyer is an officer of the court as well as an advocate." *Id.*

7. *Id.*

her doctrinal skill without concern for the public interest is merely a good legal technician — not a good lawyer."[8]

Rather than further develop Judge Edwards' theme that lawyers have a professional responsibility to do pro bono work, I will offer another rationale for such work, grounded in professional and individual self-interest. Specifically, my major theme is that, by serving the public, lawyers can simultaneously do *well* and do *good.* In other words, by doing *pro bono publico* work, lawyers benefit not only the public, but also themselves.

Before turning to my main area of focus, I will briefly address the two other areas that Judge Edwards examined: legal scholarship and legal pedagogy. I share Judge Edwards' concern about "the growing disjunction between legal education and the legal profession,"[9] which was also documented in a 1992 American Bar Association report that urged "narrowing the gap" between the law schools and the legal profession.[10]

I would like, however, to note some specific recent examples of legal scholarship and legal pedagogy that run counter to this general trend and that are noteworthy efforts to bridge the academic-professional gap. The scholarly works in question were published, and the curricular developments crystallized, after Judge Edwards' article was published. The deliberations leading to these curricular developments, as well as one of the scholarly works, specifically refer to Judge Edwards' article and consciously seek to redress its concerns.[11]

These current counterexamples to the general schisms that Judge Edwards decries are significant not only in their own right, but also because — to the extent that they become known throughout the legal academic community — they may serve as models for other, similar undertakings. Accordingly, the instant symposium issue of the *Michigan Law Review* constitutes an important forum for disseminating information about these exceptions.

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8. *Id.* at 66.

9. *Id.* at 34.

10. *See generally* THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) [hereinafter TASK FORCE REPORT].

11. *See infra* text accompanying notes 16-26.

I. Some Recent Efforts To Bridge the Gap Between Law Schools and the Legal Profession

A. *Legal Scholarship*

According to Judge Edwards, "[t]he growing disjunction between legal education and legal practice is most salient with respect to scholarship."[12] In support of this conclusion, he notes the recent, distressing decline in the volume of, and the recognition that law schools accord to, what he calls " '[p]ractical' legal scholarship."[13] He defines such scholarship "in the broadest sense,"[14] as follows:

> It is *prescriptive:* it analyzes the law and the legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decisionmakers in their resolution of legal disputes; and to advise legislators and other policymakers on law reform. It is also *doctrinal:* it attends to the various sources of law (precedents, statutes, constitutions) that constrain or otherwise guide the practitioner, decisionmaker, and policymaker.[15]

I want to note two significant examples of " '[p]ractical' legal scholarship," in this broad sense, that recently have been published and may well serve as harbingers of more such scholarship to come.

1. New York Law School Law Review *Symposium Issue on "Lawyering Theory"*

The first is a recently published symposium issue of the *New York Law School Law Review* concerning "lawyering theory,"[16] which the symposium's "Preface" describes as follows:

> [A] lawyering-theory approach invites us to study concrete particularities. It does not join in . . . the effort to construct comprehensive abstract models as points of departure for analyzing what the law is or should be. If there are constructs to uncover, a lawyering theorist might say, let us look first to see how they are operating in practice. Let us examine the numerous acts of representation and interpretation that occur every[ ]day in the life of lawyers and others with whom they interact.[17]

The introductory article in that symposium issue, by New York

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12. Edwards, *supra* note 1, at 42.

13. *Id.*

14. *Id.*

15. *Id.* at 42-43 (footnote omitted).

16. *Lawyering Theory Symposium: Thinking Through the Legal Culture,* 37 N.Y.L. Sch. L. Rev. 1 (1992).

17. Richard K. Sherwin, *Preface, id.* at 1. Sherwin adds: "Lawyering theory, at least at this initial stage in its development, may be viewed as an effort to surface the linguistic and cognitive tools and assumptions that legal and lay actors use in their everyday practices within . . . the legal system . . . ." *Id.* at 7.

Law School Professor Richard Sherwin,[18] quotes Judge Edwards' article[19] and presents lawyering theory as an innovative effort to close the gap between legal scholarship and legal practice that Edwards laments.[20] For example, in outlining the goals of future lawyering theory scholarship, Sherwin states:

> [A]dditional links should be forged between academia and the domain of legal practice. Lawyers, judges, and administrators, among others within the profession, should be apprised of the research efforts under way and be invited to join in. In this way, not only may researchers gain a valuable resource, but in addition, those who participate from outside academia are likely to gain an opportunity to learn more about their own practices. The business of learning and teaching may thus achieve a level of mutual scholar/practitioner reinforcement that can help to reintegrate a now seriously fragmented legal culture.[21]

The other articles in the symposium issue[22] substantiate that lawyering theory can play the important integrative function that Professor Sherwin suggests. They provide highly sophisticated scholarly treatments of concrete lawyering practices.[23] For example, by examining the lawyers' closing arguments to the jury in a 1991 homicide prosecution in New York City on multiple levels, Professors Anthony Amsterdam and Randy Hertz show complex, subtle, and profound links between the two attorneys' different strategic objectives and the rhetorical, narratival, linguistic, metaphoric, and mythic devices they use

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18. Richard K. Sherwin, *Lawyering Theory: An Overview;* What We Talk About When We Talk About Law, 37 N.Y.L. SCH. L. REV. 9 (1992).

19. *Id.* at 10 n.2.

20. See, e.g., Sherwin's conclusion:

> Developing further the kinds of research studies, innovations, and concerns suggested above may have the potential to take us past, or at least reduce, the divisiveness and tensions that have for too long been hectoring legal academia from within and straining its relationship with judges, practitioners, and the public at large.

Id. at 52-53.

21. *Id.* at 51 (footnote omitted).

22. Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury,* 37 N.Y.L. SCH. L. REV. 55 (1992); Jerome Bruner, *A Psychologist and the Law,* 37 N.Y.L. SCH. L. REV. 173 (1992); Peggy C. Davis, *Law and Lawyering: Legal Studies with an Interactive Focus,* 37 N.Y.L. SCH. L. REV. 185 (1992); Martha A. Fineman, *Legal Stories, Change, and Incentives — Reinforcing the Law of the Father,* 37 N.Y.L. SCH. L. REV. 227 (1992); Sally E. Merry, *Culture, Power, and the Discourse of Law,* 37 N.Y.L. SCH. L. REV. 209 (1992); Kim L. Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth,* 37 N.Y.L. SCH. L. REV. 123 (1992); Richard A. Shweder, *The Authority of Voice,* 37 N.Y.L. SCH. L. REV. 251 (1992).

23. *See* Sherwin, *supra* note 17:

> [T]he articles in this volume provide a fresh approach to what law is and where it can be found. They suggest that law's domain includes, but also reaches beyond, the realms of judicial discourse, legislative or regulatory enactment, and academic debate. Law's force can be felt wherever lawyers, officials, and lay people confront or anticipate legal issues and conflicts.

Id. at 6.

to achieve those objectives.[24]

The *New York Law School Law Review* lawyering theory symposium should dispel one important concern that may be raised by Judge Edwards' call for more " '[p]ractical' legal scholarship," namely, the concern that such scholarship would detract from law schools' academic or scholarly mission. The articles in the symposium demonstrate that legal academics can usefully apply sophisticated theoretical analyses to everyday lawyering practices. They also show that significant legal scholarship need not be abstract and esoteric or discuss matters of concern to only a few practitioners. To the contrary, the symposium's writings on lawyering theory illustrate that legal scholarship can be widely helpful among practitioners while also contributing to theoretical insights about the law and the legal system.

For those who find the lawyering theory branch of legal scholarship a promising means for narrowing the gap between law schools and the legal profession, the *New York Law School Law Review* symposium is especially exciting because it suggests directions for future scholarship. Sherwin's article clarifies that this is a major purpose of the symposium:

> My hope is that this effort will help to set the stage for the kinds of concrete studies that I and others believe can come of a lawyering-theory approach. The youngest fruits of this approach may be tasted (and tested) in the sampling of articles that follow this one. These articles are meant to be illustrative, marking perhaps the beginning of a more extensive effort to produce a broad range of similar micro-analytical lawyering case studies.[25]

Accordingly, his article concludes by outlining "a program for future research and innovation" in lawyering theory scholarship.[26]

2. *Ronald Dworkin's Revival of a Neglected Genre, an "Argumentative Essay" Concerning Theoretical and Policy Issues*

A second important recent example of " '[p]ractical' legal scholarship" further reinforces the point that such scholarship can make significant contributions to theoretical discussions among legal and other academics, while at the same time affording helpful insights to those who shape and make practical policy decisions. This second example is the latest book by Ronald Dworkin, Professor of Law at New York University and University Professor of Jurisprudence at Oxford Uni-

24. *See* Amsterdam & Hertz, *supra* note 22.

25. Sherwin, *supra* note 18, at 10.

26. *Id.* at 51-53.

versity: *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom.*[27]

Since Dworkin is a distinguished jurisprudential philosopher, it is not surprising that this book offers nuanced solutions to the challenging theoretical problems posed by abortion and euthanasia. What is more unusual, though, and especially noteworthy in light of Judge Edwards' call for " '[p]ractical' legal scholarship," is that Dworkin consciously sets out simultaneously to provide lawyers, judges, legislators, and others engaged in the policymaking process with concrete approaches for addressing the troubling practical problems presented by abortion and euthanasia. In so doing, he expressly recognizes that he is inventing — or at least reinventing — the lapsed genre of " '[p]ractical' legal scholarship" whose decline Judge Edwards laments. Dworkin explains:

> I hope that the book may serve as an example of a now neglected genre: an argumentative essay that engages theoretical issues but begins with, and remains disciplined by, a moral subject of practical political importance.
>
> Political philosophers, philosophers of law, social theorists, linguists, structuralists, pragmatists, and deconstructioninsts have in recent years produced innovative and sometimes compelling theories, which other people have tried to apply to social and political issues. But these theories have not yet improved the quality of public political argument as much as they might have, and that is partly because though the theories plainly do have implications for particular contemporary political controversies, they were not constructed for or in response to them.[28]

Dworkin's book brilliantly fulfills the foregoing, integrative vision. It develops a subtle but powerful theory for analyzing the various difficult issues entailed in the abortion and euthanasia controversies from both academic and policy-oriented perspectives. Synthesizing philosophical, constitutional, and political perspectives, this book should have a profound, transformative impact on academic debates, judicial rulings, and public policy determinations alike. Moreover, since Dworkin is such an eminent, influential legal scholar, it is likely that other legal scholars will emulate his reinvigoration of the "practical" — or, perhaps more aptly, "practical-theoretical" — genre of legal scholarship. Judge Edwards and those who share his concern about "[t]he growing disjunction between . . . legal practice and . . . [legal]

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27. RONALD DWORKIN, LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM (1993).

28. *Id.* at 28-29; *see also id.* at 29: "Theories homemade in that way [tailored to resolve practical problems] may be more likely to succeed in the political forum. They may be better suited to the academy, too, but that is another story."

scholarship"[29] should find this a heartening prospect.

B. *Legal Pedagogy*

The second disjunction between legal education and legal practice that Judge Edwards deplores flows from the first. As he explains, " 'Impractical' scholars often are inept at teaching doctrine, for either lack of any practical experience or lack of interest in the subject matter, or both."[30] Edwards defines "doctrinal education" broadly, just as he broadly defined " '[p]ractical' legal scholarship":

> [T]he law student should acquire a capacity to use cases, statutes, and other legal texts. The person who has this capacity knows the full range of legal concepts . . . . This person is also skilled at interpretation: the reading of a case or statute, or a mass of case law, or a complex regulatory scheme. Finally, this person can communicate the interpretive understanding, both orally and in writing.[31]

I would also like to note a significant counterexample to the general disjunction between legal pedagogy and practice. The faculty of New York Law School, where I teach, recently formalized an institutional commitment to bridge this gap, which many faculty members had already been seeking to do on an individual basis.[32] Judge Edwards' article, as well as the 1992 ABA report that endorsed a narrowing of the gap between law schools and the legal profession,[33] played notable roles in the deliberations leading to this institutional initiative.

New York Law School's refocused pedagogical approach reflects an integrative view, which rejects traditional dichotomies between legal theory and practice, and between doctrinal law and "lawyering."[34] Members of the faculty have developed and taught a number of courses, and will expand the range and quality of such courses, that seek to instill in our graduates not only the broad "doctrinal" skills that Judge Edwards describes, but also other skills essential to functioning legal professionals, including:

> helping clients to define goals, evaluating which of the available means best serves a client's ends, uncovering relevant facts and deciding

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29. Edwards, *supra* note 1, at 42.

30. *Id.* at 57.

31. *Id.*

32. *See* Memorandum from the Planning Committee to Harry H. Wellington, Dean and Professor of Law, New York Law School (May 25, 1993) ("Final report on priorities for New York Law School," rev. ed.) (on file with author) [hereinafter Memorandum].

33. *See* TASK FORCE REPORT, *supra* note 10.

34. *See* Memorandum, *supra* note 32, at 6 (describing "lawyering"-oriented pedagogy as "a notion of legal learning broader than the traditional one, one that encompasses also what practitioners of the law need to do and to think about when they . . . interpret and apply the law to the circumstances of their clients").

> whether and how to use them . . . communicating [persuasively] orally and in writing . . . do[ing] legal research . . . plan[ning] effectively to help clients achieve their ends over time, and . . . identify[ing] and resolv[ing] ethical problems.[35]

Lawyering theory scholarship and the lawyering-oriented pedagogy at New York Law School explore concrete issues of concern to the bench and the bar not by abandoning sophisticated theory but by integrating theory with analysis of these issues. Moreover, consistent with Judge Edwards' recommendation that law schools make a more concerted effort to train ethical practitioners,[36] these new courses also integrate ethical concerns into the doctrinal, practical, and theoretical mix, thus paralleling the way in which lawyers and judges confront such interrelated issues. The faculty-adopted report that details New York Law School's new pedagogical focus provides the following overview:

> To correct what we perceive as an imbalance in legal education toward the appellate judge's perspective on law . . . we recommend redirecting our academic program toward the attorney's perspective on and roles in the legal system. . . . An education that requires students to consider legal rules and policies from the perspective of the practitioner will better prepare them to recognize and rise to the responsibilities and opportunities that they will have as members of the bar. Considering how lawyers participate in the legal system, and the tools available to them in pursuing their clients' ends, will naturally and continually raise ethical questions in meaningful context; that is, it will raise normative as well as strategic questions.
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> . . . .
>
> A steady diet of appellate opinions is a necessity (not a necessary evil) in the study of our legal system; we do not recommend abandoning the study of doctrine as it is given in appellate opinions. What we hope to do is to help our students to a more sophisticated understanding of the legal system and their future role in it than can be gleaned from an academic diet that consists almost exclusively of appellate opinions and considers doctrine solely from the perspective of the appellate judge. We believe that this can best be done by breaking down some of the compartments into which legal education has hardened: doctrine separated

35. *Id.* at 7.

36. *See* Edwards, *supra* note 1:

> If law firms continue on their current course [exerting institutional pressures on lawyers to behave unethically], law schools must work all the harder to create "ethical graduates." Such graduates will at least attempt to resist the institutional pressures and practice law in a manner that serves the public interest. The J.D. who . . . knows nothing of professional responsibility, will succumb all the more readily to the pervasive materialism of the law firms. The law schools should perhaps not be blamed for unethical practice, but they have considerable power to correct it. . . .
>
> Unfortunately . . . a "strong foundation in ethics" is not being built in legal education. . . . The professional responsibility class must not be "a joke." More generally, ethics can and should be taught pervasively, in almost every law school course.

Id. at 73-74 (footnotes omitted.)

from theory separated from "skills" training separated from professional ethics.

> The kind of education we advocate would broaden our students' learning by weaving strategic questions (how can you use substantive and procedural rules and policies to your advantage in a given situation?) and normative considerations (what are the ethical, social, and policy implications of your strategic choices?) into the study of the rules and policies themselves.[37]

New York Law School's commitment to bridging the gap between pedagogy and practice is reflected not only in its curriculum, but also in other contexts, including a series of faculty development seminars focusing on pedagogical issues. These seminars seek to increase faculty members' effectiveness in training our students to do what the vast majority of them — along with the vast majority of all law school graduates — will do throughout their professional careers: practice law.

As New York Law School faculty members continue to develop course and pedagogical materials aimed at preparing students for what Judge Edwards labels "ethical practice,"[38] I hope that we will be able to disseminate such materials, as well as our experience with them, within the legal academic community through conferences, seminars, and publications. Thus, this counterexample may prove to be significant not only in and of it itself, but also as a model for faculty members at other law schools who also share Judge Edwards' integrative vision of legal pedagogy.

II. Lawyers Should Do Public Service Work

As noted above,[39] I enthusiastically endorse Judge Edwards' view that all lawyers should devote some time, on a volunteer basis, to public interest work. While Judge Edwards makes a persuasive argument that such work is a matter of professional obligation,[40] I will try to show why lawyers should voluntarily *choose* to do such work, even assuming arguendo that they have no professional duty to do so.

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37. Memorandum, *supra* note 32, at 6-7.

38. Edwards, *supra* note 1, at 66.

39. *See supra* text accompanying notes 7-8.

40. *See* Edwards, *supra* note 1, at 67; *see also* Harry T. Edwards, *A Lawyer's Duty To Serve the Public Good*, 65 N.Y.U. L. Rev. 1148 (1990).

A. *Broad Concept of Public Service Legal Work*

1. *Lawyers' Own Conception of the Public Interest*

First, along with Judge Edwards,[41] I think public interest work should be understood, broadly and neutrally, as encompassing any case or cause that advances the lawyer's own vision of the common good, whatever that may be. Of course, I would be thrilled if all lawyers decided to do volunteer work for the American Civil Liberties Union (ACLU)! But I would also be pleased if each lawyer did any other public service work, as I have broadly defined it, including work for an organization that opposes the ACLU on particular cases or issues.

Indeed, in an important sense, I feel more in common with lawyers and organizations whose substantive positions I reject than with lawyers who do not care enough about public issues to take positions at all. We may disagree about what policies or court rulings will best serve the public interest, but we are all dedicated to expending our professional energies to pursue those policies or rulings.

The broad, neutral definition of public service legal work that I propose would encompass any legal work for any government agency, even though many private sector public interest groups — including the ACLU — are often adversaries of the government. For example, I would consider lawyers for both the Sierra Club and the Environmental Protection Agency to be public service lawyers, even though they may often be on opposite sides of particular controversies.

2. *Part-Time, as Well as Full-Time*

I also believe that public interest legal work should be broadly understood in a second respect. Specifically, it should extend not only to work done by lawyers in full-time, salaried public service positions, but also to part-time, volunteer public interest work that is done by other lawyers.

For the remainder of this piece, I will focus on the "hybrid model" of full-time private practice[42] combined with part-time pro bono work, for two reasons. First, this is the model that accords with my own experience. I have always earned my living either as a lawyer with a private law firm or as a law professor. Yet, I have always done pro

41. *See* Edwards, *supra* note 1, at 67 (stating that a lawyer "has an ethical obligation to practice public interest law . . . [and] to advance some causes that he or she believes to be just").

42. This term is intended to designate any practice other than one of a public interest nature. It would include practice in a private law firm, work for a corporation or business, and teaching law.

bono work simultaneously, mostly for the ACLU and other human rights organizations. This has been a very satisfying combination for me personally, and it is one that is manageable no matter what your paying legal career path might be.

This last observation leads to my second, more important, reason for emphasizing the "hybrid" model: it applies to far more lawyers. After all, there are only a finite number of staff jobs with public service organizations. However, there is no reason why every single member of the legal profession should not do some part-time, voluntary pro bono work. Thus, the potential applicability of this hybrid approach is boundless.

3. *The Benefit Extends Beyond the Public*

My third observation about the meaning of public interest legal work ties in directly to my main theme. The various terms for such work all refer only to the *public* benefit. For example, the Latin phrase that is commonly used to describe this work, *pro bono publico,* literally means "for the good of the public." Of course, the public does benefit enormously from such work. But the terminology masks the central fact that the work is equally for the lawyer's *own* good, as well as for the good of the legal profession. Unfortunately, both the legal profession and individual lawyers certainly can use a boost to their images and morale. I want to elaborate on this point because it underscores one of the major positive impacts of doing public service work: such work counters the disturbingly negative attitudes toward the legal profession that are widely held both by the general public and by lawyers themselves.

B. *Pro Bono Legal Work Can Help To Counter Negative Attitudes Toward the Legal Profession*

1. *Negative Public Attitudes Toward Lawyers*

Lawyer bashing seems to have been with us throughout history, but it seems to be especially rampant right now. As a lawyer, I can hardly go to any social gathering without at least one non-lawyer subjecting me to at least one anti-lawyer joke. Such negative jokes and stereotypes abound in publications and in the media as well.

For example, I recently saw a new book by humorist Joe Queenan about how to survive a Quayle presidency. It is entitled *Imperial Caddy* and subtitled, "The Rise of Dan Quayle in America and the Decline and Fall of Practically Everything Else."[43] Queenan's theory

43. JOE QUEENAN, IMPERIAL CADDY (1992).

is that a Quayle presidency "wouldn't matter," because the presidency and vice presidency are essentially irrelevant. In making this point, he succumbs to the apparently irresistible urge that all humorists feel to take a swipe at lawyers: "The Ur-Truth about the American system of government is that: It takes a licking but it keeps on ticking. If twenty-four lawyer presidents and thirty-two lawyer vice presidents couldn't destroy it during its first two centuries of existence, nothing can."[44]

Public opinion polls show that we lawyers belong to one of the least popular professions, and that we are almost as unpopular as U.S. congressmen and senators, which is saying a lot! For example, a Gallup Poll during the summer of 1992 asked respondents how they would rate the honesty and ethical standards of people in various fields.[45] Only eighteen percent rated lawyers' honesty and ethics as "high" or "very high," while twice as many, thirty-six percent, rated lawyers' honesty and ethics as "low" or "very low." [46] These numbers further showed that lawyers had slipped in the public's regard even since the preceding year.[47] The public's negative attitude toward lawyers is especially pronounced with regard to trial lawyers.[48]

In contrast with their negative attitudes toward lawyers' honesty and ethical standards, members of the public tend to view medical doctors as very honest and ethical. To be precise, fifty-two percent of the survey respondents rated doctors' ethical standards as "high" or "very high," while only nine percent rated them as "low" or "very low."[49]

Let us turn back to Dan Quayle, because he is on both sides of this issue. On the one hand, he is a lawyer. Therefore, as indicated by the passage from the book that I quoted earlier, to the extent that humor-

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44. *Id.* at 157.

45. Search of DIALOG, Poll File (July 8, 1993) (search for polls containing the terms "honesty" and "ethical standards"), *available in* THE GALLUP POLL: PUBLIC OPINION 1992, at 118-19 (George Gallup, Jr. ed., 1993).

46. *Id.* The corresponding numbers for congressmen were as follows: "high" or "very high" — 11%; "low" or "very low" — 43%. For senators, the figures were: "high" or "very high" — 13%; "low" or "very low" — 40%.

47. In a May 1991 survey, 22% of respondents rated lawyers' honesty and ethical standards as "high" or "very high," while 30% rated them as "low" or "very low." *Id.*

48. *See* Alessandra Stanley, *Selling Voters on Bush, Nemesis of Lawyers,* N.Y.TIMES, Aug. 31, 1992, at A1:

> Recent public-opinion surveys suggest that Americans viscerally dislike lawyers and feel that society is, in the words of one Bush campaign focus-group participant, "sue-happy." . . .
>
> As Fred Steeper, a Bush poll-taker, put it rather gleefully: "Trial lawyers today have the same favorability rating as Richard Nixon in 1974."

Id. at A12.

49. Search of DIALOG, *supra* note 45.

ists make Quayle the frequent butt of jokes, they often also mock the legal profession in the same breath. On the other hand, during his vice presidency, Quayle himself made it a pet cause to criticize harshly the legal profession.[50]

During the 1992 presidential campaign, George Bush took up his vice president's lawyer-bashing theme. In fact, this was a major point in President Bush's acceptance speech at the Republican National Party Convention in August, 1992. The *New York Times* ran a front-page story on that aspect of the speech. It opened with the following line: "The President's aides have found something they think is even scarier to voters than Willie Horton: lawyers."[51]

2. *Negative Attitudes Among Lawyers Themselves*

In light of the relentless public criticism of our profession, it is not surprising that many lawyers feel a lack of self-esteem and professional satisfaction. There are additional reasons for the increasing dissatisfaction among lawyers, including work pressure and financial pressure.

In 1984, the American Bar Association's Young Lawyers Division undertook a "National Survey of Career Satisfaction/Dissatisfaction," the first in-depth survey of lawyers' attitudes toward their work.[52] The survey revealed that lawyers suffer from severe professional dissatisfaction.[53] In 1990, the ABA Young Lawyers Division conducted a follow-up survey in response to what its leaders viewed as increasing signs of lawyer dissatisfaction and burnout. Alas, the 1990 survey indeed supported these perceptions. The number of lawyers who were very satisfied with their jobs fell dramatically — by twenty percent.[54] Strikingly, this severe drop-off in professional satisfaction was manifest throughout the legal profession, regardless of the lawyer's particular employment setting.[55] In light of these troubling indications of

50. *See, e.g.*, John H. Cushman, Jr., *G.O.P. Proposes Curb on Lawsuits*, N.Y. TIMES, Feb. 5, 1992, at A21; William H. Miller, *Lawyer Jokes and Dan Quayle*, INDUSTRY WK., Jan. 20, 1992, at 50.

51. Stanley, *supra* note 48. Stanley continues:

> George Bush and Vice President Dan Quayle have begun painting Bill Clinton as a captive of a special interest group — "sharp lawyers" in "tasseled loafers" who, as Mr. Bush put it in his speech to the Republican convention, are "running wild," terrorizing doctors and even Little League coaches with personal-injury suits, malpractice suits and other kinds of liability cases.

Id. at A1.

52. *See ABA Probes Sources of Lawyer Burnout*, N.J. L.J., Oct. 18, 1990, at 20.

53. *Id.*

54. *Id.*

55. "Across the board, regardless of employment setting (private, corporate, government), the number of lawyers very satisfied with their jobs fell a dramatic 20 percent; significantly more

pervasive professional malaise among lawyers, the Young Lawyers Division concluded that this problem "warrants the immediate attention of the profession."[56]

I am particularly disturbed by these surveys because they do not match the reality — or at least the potential reality — of the legal profession, based on my personal experience. This is a great profession. I am proud to be a lawyer. Many of the most impressive and most wonderful human beings I have met and worked with are lawyers. I consider it an honor, as well as a significant responsibility, to be educating future generations of lawyers.

Of all the goals toward which I am working, none is more important to me than helping to instill in law students, as our country's future lawyers, my vision of the potential greatness of our chosen profession. In this way, I hope to lay the foundations that will help them translate that vision into a reality.

3. *Remaking the Legal Profession*

As Judge Edwards' article stressed,[57] those engaged in the practice of law define not only standards of legal practice but also the nature of the legal *profession.* Lawyers can make their profession a calling of the highest order, a way to pursue our society's highest ideals: liberty, equality, and justice for all. Or they can make it something very different: the deserved target of every nightclub comedian and political demagogue.

On an individual level, lawyers can make their professional life into a path to personal growth and exploration. Or they can let it turn them into narrow and cramped persons. I have seen both happen to lawyers I have known.

Nothing can do more to ennoble a lawyer's own experience, and also to elevate the public perception of the legal profession, than some involvement in public service work. I do not necessarily refer to public service work on a full-time basis, but just as some regular, significant element in the lawyer's overall professional activities.

The ABA Young Lawyers Division apparently recognizes the vital role that public service work can play in dispelling the widespread professional dissatisfaction that its surveys have disclosed among lawyers.

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women, regardless of position, are dissatisfied than men, and dissatisfaction rates for both sexes have more than doubled." *Id.*

56. *Id.*

57. *See* Edwards, *supra* note 1, at 75 (quoting Felix Frankfurter, then a professor at Harvard Law School: " 'In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.' ").

In 1988, that Division adopted a resolution urging all lawyers to perform public service work and urging all law firms, corporate employers, and law schools to adopt policies that would facilitate such work.[58]

I think that the benefit to lawyers and the legal profession from public service work is less intuitively obvious than its other major positive impact: its benefit to the public. Therefore, the remainder of this piece will concentrate on the lawyer-centered benefit of pro bono legal work. First, though, I will comment briefly on the enormous public good that lawyers have done and can do.

C. *Public Benefit from Lawyers' Public Service Work*

There is a marvelous American tradition of lawyers donating time to public service. This lawyers' pro bono tradition is one aspect of the general pattern of active voluntarism in the United States.[59] Many human rights and other public interest causes have been won thanks to the generosity of lawyers. The American Civil Liberties Union certainly depends on such services. Many of our great cases — and many great landmarks of United States constitutional law — were won by pro bono counsel.

One of the ACLU's prominent volunteer attorneys was the legendary Clarence Darrow. It was as an ACLU volunteer lawyer that he

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58. The Young Lawyers Division adopted Report No. 122A, which reads:

Be It Resolved, That the American Bar Association

(1) Urges all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year, to *pro bono* and other public service activities that serve those in need or improve the law, the legal system, or the legal profession;

(2) Urges all law firms and corporate employers to promote and support the involvement of associates and partners in *pro bono* and other public service activities by counting all or a reasonable portion of their time spent on these activities, but in no event less than 50 hours, towards their billable hour requirements, or by otherwise giving actual work credit for these activities; and

(3) Urges all law schools to adopt a policy under which the law schools would request any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and *pro bono* activities.

AMERICAN BAR ASSN., SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES 43 (1988) (proceedings of the ABA's annual meeting of Aug. 9-10, 1988) [hereinafter HOUSE OF DELEGATES].

59. *See, e.g.,* Anita Manning, *Charitable Spirit Survives Hard Times,* USA TODAY, Oct. 16, 1992, at 1D:

Americans remain generous even when the chips are down.

. . . .

. . . 51% of Americans do volunteer work, averaging 4.2 hours a week, up from four hours per week by the 54% who volunteered in 1989.

Even during a time when household incomes fell 7%, researchers found "giving and volunteering in America are still pervasive and wonderfully attractive characteristics of our society," says Brian O'Connell, president of Independent Sector, a coalition of corporations, foundations and volunteer groups, which released the survey . . . .

Id.

represented John Scopes in the famous "monkey trial," which challenged Tennessee's law forbidding the teaching of evolution.[60] The great American humorist, Will Rogers, made an observation about the *Scopes* case that illustrates a point I made earlier: "We had that 'monkey trial' down in Tennessee to prove that man descended from the apes but I never believed that. Because I never yet met an ape who was devious, heartless or greedy[,] I always figured man was descended from lawyers."[61]

In contrast with Will Rogers' derision of lawyers, I wish that more of the human race would carry on the traits embodied by Clarence Darrow and many other outstanding lawyers who have helped the ACLU to protect human rights for all Americans: generosity, courage, idealism, intellectual integrity, and — perhaps most important — a passionate commitment to justice for all.

To this day, the vast majority of the ACLU's legal work, all over the country, continues to be done by volunteer lawyers. Nationwide, we have fewer than seventy-five staff lawyers. Yet, at any given moment, ACLU cases are being handled by thousands of volunteer or "cooperating" lawyers, who contribute some portion — in many cases, a substantial portion — of their time to this work. It is only due to the generous donation of these pro bono legal services that the ACLU has become, in effect, the largest private law firm in the country, handling more than 6000 cases a year and appearing before the Supreme Court more often than any other organization except the U.S. Justice Department.[62]

I am proud to be a member of this important cadre of ACLU cooperating attorneys. Although the ACLU presidency is a very demanding position, it is a nonpaid, volunteer one. Thus, I am probably the most active volunteer ACLU lawyer in the country! As ACLU president, one of my most inspiring experiences has been to travel all over the country and meet many of the lawyers, from all branches of the profession, who are handling civil liberties cases in cooperation with the ACLU. The first time I was asked to speak to a group of ACLU cooperating lawyers — it happened to be in Texas — I asked the ACLU's then-Legal Director what I should say. I will never for-

60. *See* SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 72-75 (1990).

61. Memorandum from Annemarie Stoll, Theater Operations Assistant, Fisher Theater, Detroit, Michigan, to Heather K. Gerken, Editor-in-Chief, *Michigan Law Review* 1 (June 8, 1993) [hereinafter Will Rogers Memorandum] (relying on attribution by Peter Stone, book writer for *The Will Rogers Follies: A Life in Revue*) (on file with the *Michigan Law Review*).

62. *See Guardian of Liberty: American Civil Liberties Union,* BRIEFING PAPER NO. 1 (ACLU, New York, N.Y.), at 2 [hereinafter *Guardian of Liberty*].

get his answer, because it rings so true: "Tell them that they are all heroes and heroines."

The ACLU has the largest nationwide network of volunteer attorneys of any public interest organization, but many other such organizations also enlist the assistance of private sector lawyers on a part-time, volunteer basis. I am proud that other organizations try to copy the ACLU in this regard, even organizations that ideologically oppose it. Most recently, the conservative fundamentalist leader, the Reverend Pat Robertson, founded an organization called the ACLJ, an acronym for the "American Center for Law and Justice."[63] Deliberately mimicking the ACLU in name, as well as in its effort to advance its goals through litigation carried out by a cadre of volunteer lawyers,[64] the ACLJ was expressly designed to combat what Pat Robertson described as the "anti-God, anti-family" activities of the ACLU.[65] As the ACLU's Media Relations Director, Phil Gutis, commented to the *Washington Post:* "Imitation is the sincerest form of flattery."[66]

The formation of the ACLJ to counter some of the ACLU's activities illustrates the broad ideological spectrum that is spanned by the various public interest organizations for which lawyers can do pro bono legal work. Such organizations also span a broad spectrum in terms of the legal issues on which they work, their clientele, the types of cases they handle, and the other kinds of work they do. It is important to stress that lawyers not only litigate, but also engage in a range of other tasks that can promote public interest causes and groups, including legislative lobbying, public speaking, writing, and other forms of public advocacy.

I can say confidently to all lawyers that there is some pro bono work that will be tailor-made for you, no matter what your intellectual

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63. *See* Mark O'Keefe, *Robertson Tries To Outdo ACLU,* CHI. TRIB., Oct. 9, 1992, § 2, at 9.

64. *See* Roy Rivenburg, *Litigating for a "Godly Heritage,"* L.A. TIMES, Dec. 30, 1992, at E1:

> Actually, much of the American Center for Law and Justice is patterned after the ACLU — the use of free labor from law students and professors . . . and the bid to set up a nationwide network of volunteer attorneys. . . .
>
> "We've learned a lot from them," [Keith] Fournier [ACLJ executive director] says.

Id. at E51.

65. *See id.* at E1; *see also* O'Keefe, *supra* note 63:

> Robertson has named the new group so that its initials — ACLJ — are but one letter different from those of the American Civil Liberties Union, a chief adversary of the Christian Right. Writing this year in a newsletter, Robertson singled out the ACLU for special mention among groups opposed to God and family. The ACLU, which often undertakes unpopular free-speech and civil-liberties cases, is Robertson's main target.

O'Keefe, *supra* note 63, at 9.

66. O'Keefe, *supra* note 63, at 9. Gutis added, "[w]e regard their formation as a compliment to our effectiveness and welcome their participation in the public arena." *Id.*

interests, no matter what your philosophical beliefs, no matter what your professional skills, and no matter what your time constraints.

I will return to this point later, when I note the personal benefits from doing public interest work, because the range of opportunities available through such work allows lawyers to complement their private practice experience in many ways and thus to lead a fuller professional life.

Before elaborating on the personal benefits lawyers realize from doing public service work, though, I want to mention some of the areas in which public service by private practitioners would be especially welcomed. There is a crying need for all lawyers to subscribe to the goal expressed in the carving above the entrance to the Supreme Court building: "Equal Justice Under Law." Yet, as the *American Lawyer* recently documented in a special report entitled *Poor Man's Justice,*[67] the "serious problems" that plague governmental efforts to provide legal representation across the country to poor people accused of crimes "should disturb the conscience of every American concerned about equal justice."[68]

Because of fiscal pressures on state and local governments, government-funded public defenders and legal aid offices are vastly overburdened. This means both that they cannot handle all the cases that come to them, and that they cannot do an adequate job on the cases they do take. Accordingly, the American Bar Association has

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67. *Poor Man's Justice: A Special Report on Indigent Defense, Thirty Years After* Gideon, AM. LAW., Jan.-Feb. 1993, at 45.

68. Andy Court, *Is There a Crisis?*, AM. LAW., Jan.-Feb. 1993, at 46. Court adds:

> As our reporters fanned out across the country, they did not look exclusively at the worst places, but they did find serious problems that should disturb the conscience of every American concerned about equal justice.
>
> Why, for example, would any judge, anywhere in this country, assign a death penalty case to a civil practitioner who had never even taken a felony case to trial? . . .
>
> Why would judges and politicians anywhere in this country tolerate a system in which a defendant could be detained for so long before trial that, by the time he was vindicated, he had served more time than if he had been convicted and received the minimum sentence? And if that same person spent four months in jail *after the charges had been dropped* because his public defender never informed him of the development and didn't take steps to secure his release, wouldn't one think that the judges and politicians responsible for the system would do something other than argue among themselves while another man languished in the same jail, for over a year without a trial?
>
> Why should courts drive a wedge between defense lawyer and client through fee caps, lump sum contracts, and flat fees that create blatant economic disincentives for indigent defenders to invest time in a case? . . .
>
> . . . .
>
> Why should a chief federal public defender have to worry that if his lawyers too zealously defend clients in court, federal judges may not reappoint him to another term? . . .
>
> Why, on the state level, should court-appointed defense lawyers know that if they do something to anger the judge who is hearing their case — even if it is in the best interests of their clients — they may not get any more work from that judge in the future?

Id. at 47 (citation omitted).

issued several recent reports that have decried the poor quality of representation that many indigents receive.[69]

The most dramatic examples are cases in which accused criminals have been condemned to death after shockingly poor representation by appointed counsel.[70] It is no coincidence that virtually everyone on death row is poor. Indeed, some observers have pointed out that it is ironic to refer to the death penalty as "capital punishment," because "only those without capital get the punishment."[71] Even prominent defenders of the death penalty in principle believe that it should not be meted out unless all accused defendants who face the possibility of such a sentence, including those who cannot pay for private counsel, receive adequate and effective representation. For example, former U.S. Attorney General Ed Meese repeatedly has taken this position in public debates with me.[72]

In many states, it will be up to the private bar to ensure that all indigent defendants, including those facing a death penalty, receive effective legal counsel.[73] In a number of states, the bar associations are mobilizing lawyers to donate their services to assist in resolving what

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69. *See, e.g.*, Robert L. Spangenberg, *We Are Still Not Defending the Poor Properly*, CRIM. J., Fall 1989, at 11. This article updates a 1982 national survey, *National Criminal Defense Systems Study*, conducted under contract with the United States Department of Justice, Bureau of Justice Statistics, as well as a 1986 study, *Criminal Defense for the Poor*. Spangenberg concludes: "Overall . . . the indigent defense delivery system is in a state of crisis throughout the country. Only substantial additional resources will help to relieve the problem." *Id.* at 45; *see also* Henry Rose, *Law Schools Are Failing to Teach Students to Do Good*, CHI. TRIB., July 11, 1990, at C17 ("The Reagan administration's assault on the Legal Services Corporation has decimated civil legal representation for the poor. Recent studies . . . reveal that poor people can obtain legal assistance for only one in five of their civil problems.").

70. *See, e.g.*, People v. Garrison, 765 P.2d 419 (Cal. 1989). In *Garrison*, a defendant convicted of first-degree murder and sentenced to death submitted a habeas corpus petition based on ineffective assistance of counsel. The petition alleged that the court-appointed counsel was an alcoholic who smelled of alcohol throughout the trial; drank in the morning, during court recesses and throughout the evening; and was arrested for driving to the courthouse with a .27% blood-alcohol content on the second day of jury selection. Despite these allegations, the court denied the petition.

71. *See The Death Penalty*, BRIEFING PAPER NO. 8 (ACLU, New York, N.Y.), at 2; *see also Guardian of Liberty*, *supra* note 62, at 2 (quoting Clinton Duffy, former warden at California's San Quentin Prison, as stating that capital punishment is "a privilege of the poor").

72. Public Debates Between Edwin Meese III and Nadine Strossen, President, American Civil Liberties Union, at Slippery Rock University, Slippery Rock, Pa. (Mar. 1, 1993), Northwest Missouri State College, Maryville, Mo. (Dec. 1, 1992), University of North Carolina, Chapel Hill, N.C. (Nov. 13, 1992), Victoria College, Victoria, Tex. (Oct. 13, 1992), Randolph-Macon College, Ashland, Va. (Sept. 15, 1992), and the University of Nebraska, Lincoln, Neb. (Apr. 1, 1992); *see also* Ronald Smothers, *A Shortage of Lawyers to Help the Condemned*, N.Y. TIMES, June 4, 1993, at A21:

> Even some of the people who defend death sentences agree that the fairness of the sentence is often called into question by mistakes at the trial level. . . .
>
> . . . [Ernest Preate, the Attorney General of Pennsylvania] and others have tried to get more state and Federal money for . . . state death-penalty resource centers.

Id.

73. Smothers, *supra* note 72, states:

has been called a "crisis" in terms of the current inadequacy of defense services for poor people accused of crime.[74] All lawyers should share this burden, which is great in both senses of the word: very large and very important.

D. *Lawyers' Public Service Work Benefits Lawyers*

I will turn now to the last, but far from least, reason that lawyers should choose to do pro bono legal work: the good that lawyers can do for themselves and, by extension, for the legal profession.

In 1992, I had the great privilege of giving the commencement address at the graduation ceremonies of the University of Pennsylvania Law School. I was especially excited about this event because Penn's 1992 graduating class was the first to have completed a mandatory pro bono program. To the best of my knowledge, this is the most extensive such program at any law school in the United States. During each of their second and third years of law school, the students are required to do thirty-five hours of pro bono work, in addition to their classroom requirements.[75]

Law school programs such as the University of Pennsylvania's mandatory pro bono program make an especially important contribution to reshaping the legal profession, and individual lawyers, toward Judge Edwards' ideal of "ethical practice." As Judge Edwards notes, if law firms are not instilling in their young lawyers the ideals of such a practice, including the sense of responsibility to do public interest work, then it is particularly important for law schools to do so.[76] Edwards elaborates upon this point:

> If law firms continue on their current course, law schools must work all the harder to create "ethical graduates." Such graduates will at least attempt to resist the institutional pressures and practice law in a manner that serves the public interest. The J.D. who has no interest in pro bono work . . . will succumb all the more readily to the pervasive materialism

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> Overwhelmed by a surge of death sentences and a desperate shortage of money to pay for experienced legal counsel, the small band of lawyers who represent condemned inmates in their final appeals is turning to law firms in distant states for volunteers. And they say even that well is running dry.
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> . . . .
>
> The states are required to pay only for representation at trial. Once a defendant is sentenced to death, legislatures have generally provided for only initial and direct appeals in state courts to be paid for, usually using the same pool of overworked and inexperienced lawyers who represented the defendants at their trials. Eight states . . . pay nothing at all for appeals.

Id.

74. *See* Court, *supra* note 68, at 46.

75. *See* PUB. SERVICE PROGRAM ANN. REP. 1990-1991 (Public Ser. Program, Univ. of Pa. Law Sch., Philadelphia, Pa.) at 1.

76. *See supra* text accompanying note 36.

> of the law firms. The law schools should perhaps not be blamed for unethical practice, but they have considerable power to correct it. . . .
>
> . . . Our law schools must place much more emphasis on serving underrepresented persons.[77]

Some analysts have faulted law schools for not instituting the types of countermeasures Judge Edwards suggests to offset the legal profession's inadequate commitment to pro bono work. For example, law professor Henry Rose stated:

> American law schools are losing their souls. Entering the 1990s, the primary function of legal education in America is to train students to serve affluent people and business interests. . . .
>
> At the same time, 85% of Americans cannot afford the services of an attorney. . . .
>
> . . . .
>
> Most American law schools not only fail to study the maldistribution of legal services in the U.S., they barely even acknowledge it. . . .
>
> . . . .
>
> One of the tragedies of American legal education is the socialization of students to work in profitable practice settings. Many students are attracted to law school because of important moral, political or social values. They view a legal career as an opportunity to contribute to society. However, these aspirations are subverted rather than supported by legal education. The subliminal message of their training is clear to most students: "Real" lawyers work in large firms representing corporate and affluent clients.[78]

The University of Pennsylvania Law School's extensive pro bono program constitutes an important effort to recapture the "soul" of legal education, as described by Rose. It seeks to instill in lawyers-to-be a sense of their ethical responsibility to do public service work even if — perhaps especially if — their primary professional work is serving affluent individuals and business interests. Since the University of Pennsylvania Law School is highly respected, I hope that its pro bono program may serve as a model for other law schools.

I was delighted, but not surprised, to learn that the University of Pennsylvania Law School students who were the first to complete its mandatory pro bono program had a very positive attitude toward this experience. Even some students who initially had been unenthusiastic or hostile changed their minds as a result of their actual experiences. To illustrate this positive reaction, I will quote three of the students. Marta Gutierrez said, "The program is a tremendous confidence builder. Now I know I can do it. I can be a lawyer. I can help people.

77. Edwards, *supra* note 1, at 73 (footnotes omitted).

78. Rose, *supra* note 69, at C17.

I can make a difference."[79] Alex Seldin commented, "When I got here [to Penn], I thought there were two types of lawyers: big firm Wall Street types, and public interest lawyers. Now I know you can do both. The Penn program is breaking down the walls between the careers we can follow."[80] Finally, Wendy Ferber said,

> I've learned a real lesson. No matter how busy you think you are . . . I now know that there is room in my work life for pro bono — even if it has nothing to do with everything else I am doing. All you have to do is decide you're going to do it, and you can.[81]

These comments show that the Penn law students had already learned a lesson that I have seen confirmed throughout the nearly two decades that I have practiced law myself: no matter what your area of specialization, and no matter how you define the common good, your professional life as a lawyer will be immeasurably more satisfying if you complement your ordinary work with public-oriented projects. This is true for two reasons. I have already mentioned the first: pro bono work can round out your professional experience and expand your horizons in many dimensions. Whether you wish to use your existing expertise and specialization or to develop new types of expertise, you can do either through public interest work.

Are you interested in corporate law? Then you can help not-for-profit community organizations become incorporated. Are you interested in getting more involved with the arts and artists? Then you can join Volunteer Lawyers for the Arts. Do you believe that the ACLU does not do an adequate job of protecting property rights? Then you can volunteer for the many organizations that are trying to do so. Do you want to promote law and order without becoming a full-time prosecutor? Then you can arrange with your local prosecutors' office to prosecute individual criminal cases on a volunteer basis. Would you like a change of pace from the lawyering activities in your law practice? Then you can volunteer to teach law-related classes at a local school or adult education program. Are you in the litigation department of a large corporate law firm, where you are getting little hands-on experience or courtroom exposure? Then you can volunteer to represent criminal defendants or to handle housing or other civil cases for poor people to gain that experience.

Conversely, do you have such a hectic trial schedule in private practice that you cannot possibly do pro bono work that also involves

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79. Carl Oxholm III, *Penn Public Interest Program Gets 'A' Grade From Students,* THE LEGAL INTELLIGENCER, Apr. 20, 1992, at 1, 36.

80. *Id.*

81. *Id.*

courtroom appearances and scheduling complications? Would you like a chance to do more legal analysis and writing? Would you also like to have an impact on pathbreaking issues of national importance? Then you can write amicus appellate briefs for public interest organizations, including Supreme Court briefs. For example, the ACLU submits amicus briefs in all Supreme Court cases presenting civil liberties issues. Almost all of these are written by volunteer lawyers. In fact, writing amicus appellate briefs, including for the Supreme Court, was one of my principal volunteer functions for the ACLU while I was an associate in the litigation department of a major New York law firm. Writing appellate briefs on significant legal issues is a wonderfully stimulating and fulfilling undertaking, but at the same time, it is compatible with even an extremely demanding private practice.

The second reason why doing *good* for the public also means doing *well* for yourself as a lawyer is less tangible but, I think, even more important: the unique inspiration and fulfillment that come from pursuing whatever your vision of the greater good might be. The law can and should be more than just a way to serve the private interests of your clients and to provide a living for yourself and your loved ones. Important as those purposes are, it is still more enriching to use your professional skills to serve some higher conceptions of justice and the common good. These pursuits are, in large part, what make the practice of law a profession, rather than just a business. To quote Will Rogers again: "A man makes a living by what he gets — he makes a life by what he gives."[82]

An article by Dan Pollitt, professor emeritus at the University of North Carolina Law School and a dedicated, accomplished human rights activist, illustrates this point. Dan's comments were provoked by watching the UNC Law School graduation ceremonies in 1991. He wrote:

> Last Sunday some 200 young, brilliant, attractive men and women walked across the stage . . . to receive their law diplomas. The law school can take pride in them, and in their competence to serve the people and the state . . . .
>
> This elite group includes the future governors, the judges, the legislators, the movers and shakers of their home communities. They will do well. They will do good.
>
> But will they do enough?
>
> Fictitious alumnus John Jones illustrates the career path many might follow. He returned to his home town and opened a solo practice above the barber shop. His shingle read: "John Jones. Lawyer. Upstairs."
>
> He was a good citizen. He was at his neighbors' side when they

82. Will Rogers Memorandum, *supra* note 61.

purchased their first home, when they incorporated a business, when their children were caught with drugs. He wrote their wills, he probated their estates with fairness and dispatch.

He worked for his community, chairing the by-laws committees of his civic groups and church. He represented the school board and served a stint as a county commissioner. When he died, the townsfolk erected a tombstone for him. It read: "John Jones. Lawyer. Upstairs."

Is this not honor enough? Should John Jones have done more?

He sometimes regretted that he had stood mute when the Kurt Vonnegut books were removed from the high school library; that he had been "too busy" for the young Marine reservist in his church (willing to die but not to kill for his country), who refused the order to report for war. He worried when rumors of sexual abuse at the day care center stampeded the community into a seemingly blind search for vengeance.

He knew the police sweep down by the tracks violated the Fourth Amendment requirement that all warrants particularly describe the place to be searched and the things to be seized. And his mind turned to the Establishment of Religion clause whenever his minister offered prayers at the high school football games.

But why mess with these things? Why be an oddball? It might be his undoing. He listened to the voices within that whispered caution, told him to wait; wait until his prestige was secure, his voice more powerful; wait for the right time, for the right case.

But every lawyer's case is a leap in the dark. There is always the hazard of being undone. If the lawyer stays close by the campfire and never ventures forth, the circle of safety and freedom will contract. And one dark night, the fire will go out. The highest wisdom is to dare.[83]

Several recent American Bar Association reports have urged the dissemination among lawyers of "Creeds" or "Pledges" of "Professionalism," which contain commitments to undertake pro bono work, including for poor clients and individual rights causes. For example, the ABA Young Lawyers Division has recommended the following pledges:

3. I will remember my responsibilities to serve as . . . [a] protector of individual rights.
4. I will contribute time and resources to public service, public education, charitable, and *pro bono* activities in my community.[84]

As another example, the ABA's Tort and Insurance Practice Section has proposed "A Lawyer's Creed of Professionalism" that contains the following commitment: "I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of the administration of justice, and the contribution of uncompensated time and civic influence on behalf of

83. Daniel H. Pollitt, *Law School Can Do More,* NEWS & OBSERVER (Raleigh, N.C.), May 19, 1991, at 1J.

84. HOUSE OF DELEGATES, *supra* note 58, at 44.

those persons who cannot afford adequate legal assistance."[85] The all-too-typical saga of John Jones suggests, though, that these ABA creeds may be honored more in the breach than in the observance.

A model of a different type of lawyer and law practice is offered by a great human rights lawyer for whom Dan Pollitt had worked before going into teaching: Joe Rauh.[86] Following Joe's death in 1992, the *Washington Post* published a letter in which Dan recounted a recent occasion when Joe had been unable to attend the ACLU ceremony honoring his lifelong human rights work. Dan, who was accepting the award on Joe's behalf, asked Joe what he should say in Joe's absence. Joe's reply was, "Tell them we did not make much money but had a hell of a good run."[87]

Somewhat similar sentiments were expressed by a lawyer who may lack Joe Rauh's national renown, but who is well known and respected within his own state of Maryland for his tireless public service voluntarism: Jack L. Levin. When he was honored by the ACLU of Maryland for his lifetime of work on behalf of civil liberties, Jack Levin said: "I decided early on that I would rather make a little bit of difference than a whole lot of money."[88]

Another excellent counterexample to the fictitious John Jones is one of my personal heroes, Louis Brandeis. I have great admiration for the judicial opinions that Brandeis wrote after becoming a Supreme Court Justice, but I am referring now to Louis Brandeis the lawyer, before his Supreme Court nomination. Brandeis was one of the most successful, prominent lawyers of his day, representing many wealthy and powerful clients, including affluent individuals and businesses.[89] Yet he also pioneered the performance of pro bono legal services by private practitioners. When that concept was literally unknown, Brandeis resolved to donate at least one hour per day to public service legal work. He hoped to be able ultimately to donate half his

85. AMERICAN BAR ASSOCIATION, TORT AND INSURANCE PRACTICE SECTION, REPORT TO THE HOUSE OF DELEGATES, June 1, 1988, Exhibit A, at 4.

86. *See, e.g.*, Roxanne Roberts, *A Liberal Dose of Memories; Celebrating Joseph Rauh, Lawyer, Activist & 'Fun Guy,'* WASH. POST, Sept. 28, 1992, at B1. Arthur Schlesinger, Jr., commented of Rauh, "I doubt that any lawyer in American history has had more impact on the Court and on the Congress in the vindication of individual freedoms and in the defense of the Bill of Rights." *Id.*

87. Daniel Pollitt, Letter to the Editor, "'. . . *A Hell of a Good Run,*'" WASH. POST, Sept. 11, 1992, at A22.

88. Pamphlet of the American Civil Liberties Union of Maryland and the Maryland Civil Liberties Foundation, Third Annual Elisabeth Gilman Award Dinner (Nov. 9, 1989) (honoring Jack L. Levin) (on file with author).

89. *See* PHILIPPA STRUM, LOUIS D. BRANDEIS: JUSTICE FOR THE PEOPLE 226 (1984) (stating that, by 1914, Brandeis was "the best-known lawyer in the United States, and by far one of the richest").

total working time to public service. Brandeis never accepted fees for such work, even when the client could afford to pay, because he viewed this work as a lawyer's obligation.[90]

Louis Brandeis supported public interest legal work through substantial financial contributions as well. In accordance with his general belief that workers should participate in the profits and management of the firms that employed them, Brandeis instituted a profit-sharing system for his law firm's employees. He believed that it was unfair for his firm's employees, in effect, to subsidize his public interest legal services by receiving reduced profit shares. Therefore, he voluntarily paid his firm for the value of these services.[91]

Brandeis often addressed law students, seeking to instill in them his notion that membership in the legal profession entailed an obligation to perform public service work. I would like to quote from one such talk that Brandeis gave at Harvard, entitled *The Opportunity in the Law*.[92] Although this lecture was given in 1905 — almost a century ago — it is as pertinent and powerful today as it was then. Foreshadowing Judge Edwards' criticisms of contemporary lawyers,[93] Brandeis complained that too few lawyers in his day were concerned with protecting ordinary people and promoting public causes. The continuing timeliness of Brandeis' talk is further reinforced by his discussion of the public's low regard for the legal profession. His explanation of, and proposed solution for, this still-present phenomenon are also instructive in current circumstances:

> [I]n America, the lawyer was in the earlier period omnipresent almost in the State. Nearly every great lawyer was then a statesman; and nearly every statesman great or small was a lawyer. . . .
>
> . . . .
>
> It is true that at the present time the lawyer does not hold that position with the people that he held seventy-five or even fifty years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the "corporation lawyer," and far too little of

90. *Id.* at 61.

91. *Id.* (noting that Brandeis paid his firm as much as $25,000 on one public service matter alone).

92. *See* LEONARD BAKER, BRANDEIS AND FRANKFURTER: A DUAL BIOGRAPHY 40 (1984).

93. *See* Edwards, *supra* note 1, at 67 (noting "a general consensus [among respondents to Edwards' survey of his past law clerks] that practicing lawyers are overly concerned with profit"); *id.* at 68 ("[L]awyers tend not to find time to fulfill their pro bono obligations.").

the "people's lawyer."[94]

To correct the legal profession's tilt toward representing affluent individuals and corporations, Louis Brandeis urged a dual role for lawyers. First, he maintained, in their private practice lawyers should serve as advisers to the large private interests that dominate our industrialized economy. He urged secondly, though, that in their public service capacity, lawyers are morally obligated to pursue public sector solutions to the inequities that inevitably flow from industrialization.[95]

Demonstrating that work for the public's good can also be for the lawyer's own good, Brandeis offered the following explanation of his refusal to accept any payments for his extensive pro bono work:

> Some men buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest my surplus effort, beyond that required for the proper support of my family, to the pleasure of taking up a problem and solving, or helping to solve it, for the people without receiving any compensation. Your yachtsman or automobilist would lose much of his enjoyment if he were obliged to do for pay what he is doing for the love of the thing itself. So I should lose much of my satisfaction if I were paid in connection with public services of this kind.[96]

CONCLUSION

While Judge Edwards has provided a constructive critique of the partitioning of legal scholarship, legal pedagogy, and legal practice, significant efforts are under way — in part stimulated by his critique — to dismantle such unnecessary, counterproductive barriers. Thus, important recent scholarly works and pedagogical innovations aim to bridge "the growing disjunction between legal education and the legal profession" that Judge Edwards decries. Moreover, Judge Edwards' ideal of "ethical legal practice" is well served by such promising recent developments as the University of Pennsylvania Law School's mandatory pro bono program and the American Bar Association Young Lawyers Division's call for all lawyers to perform public service work, and for all law firms, legal employers, and law schools to facilitate such work.

Public service legal work goes hand in hand with professional and personal satisfaction. I hope as many lawyers as possible will realize

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94. Louis D. Brandeis, The Opportunity in the Law, Address Before the Harvard Ethical Society (May 4, 1905), *in* 39 AM. L. REV. 555, 555, 559 (1905).

95. *Id.* at 559, 562-63.

96. STRUM, *supra* note 89, at 61 (quoting interview with Justice Brandeis, *reprinted in* THE CURSE OF BIGNESS: MISCELLANEOUS PAPERS OF LOUIS D. BRANDEIS 266 (Osmond K. Frankel ed., 1934)).

that only by serving the cause of justice in any way that they may choose can they experience the law's full potential as a profession — indeed, as a noble calling. That potential is eloquently captured in a speech that Oliver Wendell Holmes gave in 1866, entitled "The Profession of the Law." Justice Holmes gave this talk to Harvard College students in an effort to persuade them to go to law school. He spent most of his lecture describing the more mundane satisfactions that the legal profession offers, but he then ended with a passage about the profession's more transcendent possibilities. Based on my own experience, and my observation of many other lawyers, I fully concur with every word.[97] Justice Holmes said:

> And now, perhaps, I ought to have done. But I know that some spirit[s] of fire will feel that [their] main question has not been answered. [They] will ask, What is all this to my soul? . . . [W]hat have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the manner-less conflicts over often sordid interests, make out a life? [Ladies and] Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If [people have] the souls of Sancho Panza, the world to [them] will be Sancho Panza's world; but if [they have] the soul[s] of idealist[s] [they] will make — I do not say find — [their] world ideal. Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of [a person's] activities is the large survey of causes, that to know is not less than to feel, I say — and I say no longer with any doubt — that [persons] may live greatly in the law as well as elsewhere; that there as well as elsewhere [their] thought may find its unity in an infinite perspective; that there as well as elsewhere [they] may wreak [themselves] upon life, may drink the bitter cup of heroism, may wear [their] heart[s] out after the unattainable.[98]

I echo Justice Holmes in giving the following advice to all lawyers: you can and should live greatly in the law. You can do so by devoting your professional skills and energies to advancing the public interest and the cause of justice, however you may conceive of them.

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97. Since Justice Holmes' audience at Harvard College in 1866 was entirely male, he used the male pronoun exclusively. I have taken the liberty of updating his language in this respect.

98. OLIVER W. HOLMES, *The Profession of the Law: Conclusion of a Lecture Delivered to Undergraduates of Harvard University on February 17, 1886, in* COLLECTED LEGAL PAPERS 29, 29-30 (1920).

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Cover Page Footnote

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ACCESS *AND* JUSTICE: THE TRANSFORMATIVE POTENTIAL OF PRO BONO WORK

*Martha F. Davis**

INTRODUCTION

In the early 1990s, I briefly taught a social welfare policy class for graduate social work students in New York City. One of the class assignments was to draft a welfare law. I gave the students the relevant parameters for the assignment and emphasized that they should think about how their law might be enforced. I expected to get back drafts that spelled out a series of procedural protections such as rights to counsel, private rights of action, appeal rights, hearing procedures, and so on. But instead, the social work students almost always took a different approach. My students drafted laws creating special client-centered services and funding new programs providing everything from food to mental health counseling. These laws showed little regard for procedure. In fact, my efforts to direct our post-assignment discussions to procedural issues were usually met with active resistance.

In the ensuing decade, I have often reflected on the lessons that I learned from this foray into social work. Among other things, it taught me the importance of policing the gap that too often develops between procedure and substance.[1] Effective laws and programs need

* Associate Professor, Northeastern University School of Law. I would like to thank Amy Marinacci for excellent research assistance and Sue Zago and the staff of the Northeastern Law School library for bibliographic assistance. I received helpful suggestions from Bill Mayer, Lucy Williams, Fred Davis, Harry Hope, and George Kocur.

1. *Goldberg v. Kelly* and the subsequent enactment of the 1996 welfare reform law are a good illustration of this problem. *See* Goldberg v. Kelly, 397 U.S. 254 (1970). As Lucie White has asserted, "[w]elfare hearings . . . offered no 'panacea to the problems inherent in our ossified and bureaucratic system of public assistance administration.'" Lucie E. White, Goldberg v. Kelly *on the Paradox of Lawyering for the Poor,* 56 Brook. L. Rev. 861, 866-67 (1990) (citations omitted). Further, in 1996, Congress purported to repeal the entitlement that *Goldberg* sought to protect through fair hearing rights. 42 U.S.C. § 601(b) (2000). The procedural rights established by *Goldberg* did little to hinder Congress, though some state courts have subsequently ruled that due process rights continue to attach to welfare benefits despite Congress's efforts. *See, e.g.*, Weston v. Cassata, 37 P.3d 469 (Colo. Ct. App. 2001).

both: substantive provisions to address real needs and procedural mechanisms to ensure proper, fair implementation and access.

The social work students' reluctance to focus on procedure (and my own preoccupation with it) also underscores the role that personal experiences and professional training play in shaping one's preference for policy approaches. Lawyers learn in law school that procedural justice is important, and that lawyers have a unique role as procedural gatekeepers and technicians.[2] As Professors Austin Sarat and Stuart Scheingold have observed, "the dominant understanding of lawyering [is that it is] properly wedded to moral neutrality and technical competence."[3] Social workers, operating on a different, yet parallel plane where moral stances are acceptable, are less likely to see procedure as central to their clients' well-being. Indeed, social workers' concept of justice may be more muscular than the legal profession's. The National Association of Social Work's Code of Ethics states squarely that "[s]ocial workers promote social justice and social change with and on behalf of clients."[4]

Deborah Rhode's book, *Access to Justice*, takes a lawyerly tack, focusing on the more procedural, "access" part of the "access to justice" equation. Certainly, creating equal access to the legal system is challenge enough for one book and one author, even a scholar as insightful and prolific as Professor Rhode. Both her diagnoses and prescriptions are illuminating, particularly her suggestions regarding provision of legal services by nonlawyers.[5] If implemented, these reforms alone could dramatically change the face of the justice system in America.

In this Essay, however, I want to focus on pro bono lawyers while, at the same time, expanding the frame—as Professor Rhode herself has done in other work—by looking more closely at the impact that her agenda for the profession might have on pro bono lawyers' substantive concepts of "justice."[6] That is, the very act of providing

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2. *See* David W. Neubauer, Judicial Process: Law, Courts, and Politics in the United States 125 (2d ed. 1997) (stating that "lawyers are the gatekeepers of the judicial process"). This preoccupation with process can relegate lawyers to a conservative role even when they are active within progressive social movements. *See, e.g.*, Martha F. Davis, Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973, at 49, 72-73 (1993).

3. Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, *in* Cause Lawyering: Political Commitments and Professional Responsibilities 3, 3 (Austin Sarat & Stuart Scheingold eds., 1998) [hereinafter Cause Lawyering: Political Commitments and Professional Responsibilities].

4. Nat'l Ass'n of Social Workers, Code of Ethics: Preamble (1999), *available at* http://www.socialworkers.org/pubs/code/code.asp.

5. Deborah L. Rhode, Access to Justice 90-91 (2004).

6. *See, e.g.*, Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 Fordham L. Rev. 2415 (1999); Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. Legal Educ. 413 (2003) [hereinafter Rhode, *Pro Bono in Principle and in Practice*]. In *Access to Justice*, Professor Rhode devotes an entire

access might change pro bono lawyers' own personal understandings of justice; the experience of representing a homeless client or a death penalty client or some other pro bono client might actually influence a lawyer's views of the solutions to homelessness or the propriety of the death penalty.

If pro bono lawyering changed lawyers, then providing access would be the beginning, not the end, of pro bono work, which would also engage the pro bono volunteer in seeking substantive justice. As former City Year participant Drake Bennett wrote in *The American Prospect*

> [M]uch of what's done by volunteers has a tacit politics that volunteerism may inadvertently conceal. If you volunteer in a soup kitchen or help the homeless, you should also be working to eliminate the causes of homelessness. That enterprise, of course, logically leads to social change and to politics as the necessary instrument of change.[7]

In the pro bono arena, a lawyer or law student who has not been exposed previously to low-income clients or social justice issues may take on one or two public interest cases to fulfill a law firm expectation, to meet a bar association guideline, or to gain experience.[8] Perhaps under these circumstances, where prior political views may not be particularly rigid, the initial impulse to volunteer can, if properly channeled, nurtured, and supported, lead the volunteer to adopt a concept of justice that encompasses political activism.

Because *Access to Justice* focuses primarily on the mechanics of access, Professor Rhode takes justice at face value through much of the book.[9] In particular, she does not suggest that pro bono lawyers have an ethical obligation to change the law, but that the profession must simply ensure access to the accepted legal institutions set up to secure fair outcomes.[10] For example, a pro bono lawyer representing a capital defendant must defend her client in available venues to the

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chapter to an analysis of, and recommendations concerning, pro bono legal work. *See* Rhode, *supra* note 5, at 145-84.

7. Drake Bennett, *Doing Disservice: The Benefits and Limits of Volunteerism*, Am. Prospect, Oct. 23, 2003, at A20. City Year is a Boston-based community service organization that served as the inspiration for the federal Americorps program. *See* City Year, *at* http://www.cityyear.org (last visited Oct. 14, 2004).

8. Rhode, *supra* note 5, at 147.

9. In *Access to Justice*, Professor Rhode notes that "justice" is an elusive concept, and discusses briefly the distinction between procedural and substantive, or distributive, justice before moving on to other topics. *Id.* at 5-7. Given the book's implicit emphasis on procedural justice, i.e., access to lawyers, it is worth noting that some experimental data has suggested that procedural justice is more important to people as an indication of fairness than distributive justice. *See* Kees van den Bos et al., *Procedural and Distributive Justice: What Is Fair Depends More on What Comes First than on What Comes Next*, 72 J. Personality & Soc. Psychol. 95, 95-96 (1997).

10. *See, e.g.*, Rhode, *supra* note 5, at 6, 185, 189.

best of her ability—and may even argue the law's unconstitutionality—but she is under no obligation to personally oppose the state's death penalty law. Instead, while the pro bono lawyer's individual social justice concerns may indeed have motivated her to take on death penalty litigation, these concerns are in a separate sphere from her professional obligations.[11]

This view of lawyers' obligations is consistent with traditional professional constraints but its capacity to expand or re-conceptualize the norms of justice is necessarily very limited.[12] Under this view, a death row client may be "lucky" enough to get excellent legal representation, yet still be justly executed. The lawyer has done her job. If the execution was consistent with existing law and obtained through fair processes, justice has been done.

It is reasonable to infer that most lawyers would agree with this concept of justice—that is, most lawyers believe that adherence to the rule of law is the minimum standard of justice. Whether lawyers should also oppose the death penalty because it is inherently unjust is, however, more contested. This question moves the focus from procedure to substance, from the question of mere "access" to the issue of what is "justice." Under this second inquiry, providing access to legal mechanisms alone may be no assurance of justice.[13]

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11. In essence, this attempt to preserve moral neutrality in legal representation marks the boundary between a pro bono lawyer and a "cause lawyer." *See, e.g.*, Sarat & Scheingold, *supra* note 3. Cause lawyers embrace the connections between their personal politics and their clients' goals. Indeed, those connections between the personal and the professional are the reason for the cause lawyer's involvement in the first place.

12. The formal professional rules that govern lawyers' obligations to clients may reflect a set of concerns that are inappropriate to a public interest context. Jennifer Gordon has noted that "[m]any of the ethical rules that govern the conduct of attorneys have been developed in the context of private lawyering and, thus, conflict with lawyering in the context of a larger mobilizing effort." Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 Harv. C.R.-C.L. L. Rev. 407, 440-41 n.97 (1995) (citing, for example, Canon 5 of the Lawyer's Code of Professional Responsibility).

13. International human rights law reflects a parallel dichotomy between procedural justice and substantive justice. The International Covenant on Civil and Political Rights stresses issues such as access to lawyers, consistent procedures, and procedural fairness. *See* International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171. The International Covenant on Economic, Social and Cultural Rights focuses on a set of rights that are more substantive in nature: food, water, and shelter, for example. *See* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 933 U.N.T.S. 3; *see also* Joy Gordon, *The Concept of Human Rights: The History and Meaning of Its Politicization*, 23 Brook. J. Int'l L. 689, 696-97 (1998). International institutions and jurists have repeatedly noted, however, that the divisions between procedural rights and substantive rights are artificial, and that there is no dividing line or hierarchy between those rights that put food directly on the table and those that do so by improving political participation. *See Vienna Declaration and Programme of Action*, U.N. GAOR ¶ 5, U.N. Doc. A/CONF.157/23 (1993) ("All human rights are universal, indivisible and interdependent and interrelated."). There is a similar (though often

Given the disagreements surrounding more substantive definitions of justice—and the ample justifications for pro bono work based on procedural fairness alone—Professor Rhode's decision to focus in *Access to Justice* on clients' access to lawyers is understandable. Yet she also acknowledges that providing access to justice is more than a simple mechanical process—and that the lawyers providing the access may have an emotional stake of some kind in both the process and the outcome. For example, in making her case supporting the importance of pro bono work for the legal profession, Professor Rhode draws a connection between providing access and lawyers' emotional well-being: She describes the many positive personal impacts that pro bono participation may have on lawyers, including alleviating depression and reviving sagging professional morale.[14]

Certainly there is much anecdotal evidence of the enthusiasm that lawyers bring to their pro bono work, even in dire circumstances. After the September 11, 2001 attacks, the New York City Bar's outpouring of volunteerism was cathartic for many who wanted to make a meaningful contribution to the relief effort. As one attorney who provided assistance to victims in New Jersey stated, "[volunteering] was really a privilege. It was not a sacrifice. I was extremely lucky to be in the right place at the right time in my practice and in my life."[15] Volunteering in less trying times, one in-house counsel who provided pro bono intellectual property assistance through an organization called the Pro Bono Partnership observed that "[t]o be able to give a little time and effort to the legal problems of those who otherwise might not have access to the legal advice they deserve, is not only 'the right thing to do,' but it is also personally gratifying."[16] Law students completing public interest placements have described similar feelings. A sampling of student responses from a Stanford Law School survey included: "I loved where I worked." "There was never a dull moment. Very interesting, very good experience . . . I truly loved my experience there." "Very rewarding, interesting and informative." "I found it extremely interesting and helpful in providing a terrific learning experience." "I loved the work

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unacknowledged) continuity in domestic law, and procedural victories often have significant substantive impacts.

14. Rhode, *supra* note 5, at 146-47; *see also* Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 416-17 (describing health benefits of volunteerism); John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer,* 62 Law & Contemp. Probs. 141, 150-62 (1999).

15. Ass'n of the Bar of the City of N.Y. Fund, Inc. et al., Public Service in a Time of Crisis: A Report and Retrospective on the Legal Community's Response to the Events of September 11, 2001, at 41 (2004) (quoting Nancy Erika Smith).

16. Rich Stewart, Champion International, Statement at Volunteer Testimonials of Pro Bono Partnership Volunteer Attorneys, *at* http://www.probonopartner.org/volunteer_comments.htm (last visited Oct. 20, 2004).

I did this semester." "It was fantastic! I was able to combine many interests from my undergraduate [experience] with the project."[17]

The effect of pro bono work on lawyers is even more complex, however. Not only do lawyers reap emotional benefits from their pro bono practices, but the experiences associated with doing pro bono work can re-shape their political attitudes. Theories of political psychology suggest that there is a relationship between access and justice—that is, an individual lawyer's participation in providing legal access to marginalized clients will influence that lawyer's view of underlying substantive concepts of justice, and may in turn influence political participation by the lawyer to attain a substantive law reform goal.[18] Of course, as successive social movements have found, simply having access to lawyers (and therefore, access to power) may change the political dynamics surrounding a marginalized group in profound ways.[19] But lawyers can change too. Both intuition and the limited empirical data available suggest the political views of the pro bono lawyers may be altered as they confront the bias and hardships directed at their clients.[20] Professor Rhode herself has acknowledged this possibility, observing that "[g]iving broad segments of the bar some experience with poverty-related problems and public interest causes can lay crucial foundations for change."[21]

It may be particularly important to take this dynamic relationship between access and justice into account in shaping the legal profession's pro bono policies—for example, what does this relationship tell us about the impacts of mandatory pro bono requirements on the profession, or about the potential power of law school public interest mandates?[22] What lessons does it have for professional standards of client representation? At this stage of the

17. Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 Stan. L. Rev. 1695, 1707-08 n.60 (1993). While such positive feelings are in the majority, they are not universal. In *Pro Bono in Principle and in Practice*, Professor Rhode reports on negative comments from some law school graduates who were required to participate in pro bono work as a prerequisite to graduation. Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 436-43; *see also* Rhode, *supra* note 5, at 175-78.

18. *See infra* Part I.A.

19. Access to lawyers can give shape and weight to clients' own more expansive views of justice, an effect that may also contribute to client subordination if lawyers are not sufficiently sensitive to this power imbalance. *See, e.g.*, White, *supra* note 1.

20. *See infra* Part I.B.

21. Rhode, *supra* note 5, at 148; *see also id.* at 147 ("Involvement in community groups, charitable organizations, high visibility litigation, and other public interest activities is a way for attorneys to expand their perspectives...."); Deborah L. Rhode, Foreword, *in* Ass'n of Am. Law Schs., Learning to Serve: The Findings and Proposals of the AALS Commission on Pro Bono and Public Service Opportunities (1999), *available at* http://www.aals.org/probono/report.html.

22. Some of these questions are also examined in Reed Elizabeth Loder, *Tending the Generous Heart: Mandatory Pro Bono and Moral Development*, 14 Geo. J. Legal Ethics 459 (2001).

research in this area, the evidence is still too sparse to draw firm conclusions.[23] In this Essay, I survey the existing data, identify its practical implications for the legal profession and client representation, and outline future research that would bring the relationship of access and justice, for lawyers themselves, into clearer focus.

I. DOES PRO BONO WORK INFLUENCE LAWYERS' CONCEPTS OF JUSTICE?

Studies of volunteers have tried to identify the collection of factors that might initially lead to volunteerism. As Professor Rhode has catalogued them, these attributes include: "a willingness to empathize, a sense of civic or group responsibility, and earlier positive exposure to volunteers and volunteer work."[24]

However, not all people engaged in volunteerism fit neatly into these categories. It is not the case that individuals possessing these characteristics invariably volunteer and those without these attributes do not; external factors may exert a strong influence on such decisions. Further, individuals are not static. A number of studies note that volunteerism is often undertaken by those who are most likely to be sympathetic to the plight of those they are helping.[25] This chicken-egg problem makes it difficult, though not impossible, to determine what independent effects volunteerism may have on the volunteers. Considerable research demonstrates, however, that regardless of their age, initial sympathies, or alternative motivations for volunteering, once they have volunteered, individuals' experiences of volunteerism will have an impact on their political outlook and values.

A. *Adults' Political Views*

Some researchers have concluded that by the time a person reaches adulthood, his or her basic values and political beliefs are well-established—if not necessarily coherent. Indeed, Professor Rhode herself has written that "[b]y the time an individual launches a legal career, it is too late to alter certain personal traits and experiences

23. Professor Rhode has noted the absence of discussions of altruism from the literature on lawyers' pro bono activities. Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 414. Part of the reason, she observes, "may be the daunting scope of relevant material across multiple disciplines, including philosophy, psychology, sociology, and political science, as well as applied work on philanthropy and community service." *Id.* The same might be said of discussions of this related topic of the political and psychological impacts on lawyers of pro bono activities.

24. *Id.* at 423.

25. Loder, *supra* note 22, at 480; Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 418.

that influence public service motivations."[26] According to one sizeable longitudinal study, individuals' political philosophies become well-defined during the college years and rarely change with the passage of time.[27] Even law school, which many lawyers remember as a time when their fundamental beliefs were challenged daily, has been found to have little impact on students' political and social attitudes.[28] According to a recent analysis, while law students are generally left-of-center on social issues at the time they enter, "little attitudinal change takes place while they are in law school."[29] Another study, looking at parents and children over time, similarly concluded that as individuals age and acquire greater political experience, their political affiliations crystallize and harden.[30]

More recent and nuanced research has, however, emphasized that adults' political beliefs, while perhaps preliminarily shaped in young adulthood when an individual's independent identity is formed, are really quite malleable and can change throughout the entire life course.[31] Even studies that ultimately support the "persistence" theory of attitude development acknowledge that there is also substantial evidence of attitude change. For example, a fifty-year study of Bennington College graduates of the 1930s and 1940s found that "some 60 percent of the variance in our latent attitude variables in 1984 could be predicted on the basis of 1930s attitudes, whereas 40

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26. Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 423.

27. George E. Vaillant, Aging Well: Surprising Guideposts to a Happier Life from the Landmark Harvard Study of Adult Development 155-58 (2002). This study followed a cohort of Harvard men recruited from the classes of 1939 through 1942 for the rest of their lives. While Professor Vaillant found that liberals were "more likely to be open to new ideas . . . [and] to display creativity," for both liberals and conservatives, "[p]olitics are set in plaster." *Id.* at 156-57. Quoting Gilbert & Sullivan's *Iolanthe*, Vaillant concluded that "'every boy and every gal, [t]hat's born into the world alive, [i]s either a little liberal, [o]r else a little conservative!'" *Id.* at 158. Several subsequent studies have supported this conclusion, called the "generational theory," though often with significant caveats. *See* Duane F. Alwin et al., Political Attitudes over the Life Span: The Bennington Women After Fifty Years 264 (1991) (accepting the generational hypothesis with "a number of qualifications").

28. J.D. Droddy & C. Scott Peters, *The Effect of Law School on Political Attitudes: Some Evidence from the Class of 2000*, 53 J. Legal Educ. 33, 34 (2003).

29. *Id.* Interestingly, men and women do not start out in the same place politically: "Female law students are significantly more liberal than their male counterparts and are more liberal than the broader population of female college graduates." *Id.* at 46.

30. M. Kent Jennings & Gregory B. Markus, *Partisan Orientations over the Long Haul: Results from the Three-Wave Political Socialization Panel Study*, 78 Am. Pol. Sci. Rev. 1000, 1006 (1984).

31. Roberta S. Sigel, *Conclusion: Adult Political Learning—A Lifelong Process*, *in* Political Learning in Adulthood 458, 459 (Roberta S. Sigel ed., 1989); *see also* William G. Mayer, The Changing American Mind: How and Why American Public Opinion Changed Between 1960 and 1988, at 188 (1992). Mayer also rejects the assertion that people become more conservative or attitudinally rigid as they grow older. *Id.*

percent of that variation reflected attitude change."[32] In short, these lives were marked by significant amounts of both stability and change.

The Bennington research and other studies have found that there can be subtle or even major shifts in response to external changes—and in the aggregate, entire generations may have less durable political associations than prior generations depending on their collective experiences.[33] This phenomenon may explain the different research outcomes of studies concerning stability of political views, because the persistence of views acquired in young adulthood may vary from generation to generation. Catastrophic events of national scope, such as the events of September 11, 2001 or incremental changes, such as greater access to information via the internet, may have broad impacts on political orientation.[34] Additionally, as President Clinton's campaign mantra, "it's the economy, stupid!" intimates, broad changes in the economy may encourage people to rethink their political affiliations on a large scale.[35]

Further, individuals' political attitudes may change because of individual experiences. As Professor Roberta Sigel has observed, even so-called private roles such as mother or member of a religious community "involve or have the potential to involve political engagements."[36] Divorce, perhaps precipitating a change in economic status, or some other private tragedy such as a parent's death or loss of a job, may lead to dramatic shifts in an individual's political socialization. Interestingly, as borne out by the increase in pro bono after the attacks on September 11, 2001 or Senator John Edwards' entry into politics following his oldest son's death, adults often "seek out [new] learning experiences in order to cope with specific life-changing events."[37] It is at these points, when adults are already

32. Alwin et al., *supra* note 27, at 265.

33. Mayer, *supra* note 31, at 274; Jennings & Markus, *supra* note 30, at 1007-08, 1015.

34. With respect to lawyers, the events of September 11, 2001 triggered a huge outpouring of pro bono legal work from lawyers around the country. *See* Ass'n of the Bar of the City of N.Y. Fund, Inc. et al., *supra* note 15. Other events—whether disasters or galvanizing political developments—have had similar triggering effects on the legal community. *See, e.g.*, Doug McAdam, Freedom Summer 156-57 (1988) (describing lawyers who volunteered in the South during the Freedom Summer and were "radicalized"). For a discussion of crisis events and incremental changes, see Mayer, *supra* note 31, at 274-75.

35. *See* Michael X. Delli Carpini, *Age and History: Generations and Sociopolitical Change*, *in* Political Learning in Adulthood, *supra* note 31, at 23-25; *see also* Sharan B. Merriam & Baiyin Yang, *A Longitudinal Study of Adult Life Experiences and Developmental Outcomes*, 46 Adult Educ. Q. 62, 77 (1996) (concluding that experiencing a period of unemployment significantly impacted developmental outcomes such as social action participation).

36. Sigel, *supra* note 31, at 461.

37. Ron Zemke & Susan Zemke, *30 Things We Know for Sure About Adult Learning*, Innovation Abstracts, Mar. 9, 1984, at 6, *available at* http://honolulu.hawaii.edu/intranet/committees/FacDevCom/guidebk/teachtip/adults-

dealing with a life transition of one kind, that they may be most ready to re-evaluate other aspects of their beliefs and values.

It has also long been accepted that, to the extent that political views change over time, they drift toward greater conservatism.[38] But again, such a drift is not inevitable, and varies tremendously from one individual to the next; in particular, the individual's larger social context is a critical factor.[39] For example, numerous studies indicate that a large percentage of law students are motivated to study law by their strong feelings about justice.[40] Yet few of these students ultimately enter full-time public interest work, and the profession as a whole provides only a relatively minimal per capita pro bono contribution. According to Professor Rhode, "the average [pro bono contribution] for the bar as a whole is less than half an hour a week and fifty cents a day."[41]

Robert Stover's classic study of law students' commitment to public interest work indicates that age is not a significant factor in these outcomes.[42] Rather, Stover found that one of the prerequisites for maintaining individual political constancy is group support.[43] At the University of Denver School of Law where Stover conducted his study, only a handful of students who entered with an aspiration to go into public interest law retained that commitment through law school.[44] Those who did had the benefit of peer group support and had successfully identified one or more mentors who supported their

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3.htm; *see also* Merriam & Yang, *supra* note 35 (identifying links between certain life experiences such as marriage and employment and developmental outcomes such as socio-political activity and political participation). This is the premise of at least one bestseller about the legal profession. *See* John Grisham, The Street Lawyer (1998). After being taken hostage by a homeless man, the story's protagonist, a partner in a large law firm, revaluates his career and leaves his practice to join a legal clinic specializing in representing the homeless. *See id.*

38. *See* Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 Law & Soc'y Rev. 11, 21 (1978) (finding that though they remained more liberal than the general population, all of the changes that their respondents registered over the course of law school were in the conservative direction).

39. For example, a classic study of students at Bennington College in the 1930s and 1940s found that Bennington women were "even more intensely liberal than women of their own generation." Alwin et al., *supra* note 27, at 262. In re-analyzing the data fifty years after the original study, the authors credited "the unique influences of the Bennington College environment" that supported such out-of-the-mainstream views. *Id.*

40. Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 Fordham L. Rev. 1563, 1563 n.4 (2002) (citing studies).

41. Rhode, *supra* note 5, at 145; *see also* Abel, *supra* note 40, at 1566 (few students ultimately engage in public interest work). Law schools' records of promoting pro bono work are also uneven. *See* Ass'n of Am. Law Schs., *supra* note 21.

42. Robert V. Stover, Making it and Breaking it: The Fate of Public Interest Commitment During Law School 90-91 (1989).

43. *Id.* at 103-15.

44. *Id.*

goal.[45] As Professor Rhode reports, economic hurdles, such as the need to pay back hefty law school loans, can also have the practical effect of steering students away from public interest work.[46] Better financial aid and loan forgiveness programs would allow students to freely choose public interest careers rather than accept default positions with higher pay.

The importance of support was also a key finding in Doug McAdam's research on volunteers (including some lawyers) who participated in Mississippi's Freedom Summer in 1964. Surveying volunteers' lives in the wake of that experience, McAdam found that community support was critical to volunteers' continued activism decades later. As he put it:

> Activism depends on more than just idealism. It is not enough that people be attitudinally inclined toward activism. There must also exist formal organizations or informal social networks that structure and sustain collective action .... Those volunteers who remain active today are distinguished from those who are not by virtue of their stronger organizational affiliations and continued ties to other activists.[47]

To an extent, then, a life of volunteerism and political activism can begin with just one step. McAdam surveyed both Freedom Summer volunteers and the group of "no-shows" (those who registered but did not participate), who were not initially attitudinally distinguishable from the volunteers.[48] Importantly, the no-shows' reasons for not showing up to participate in Freedom Summer activities were not political, but pragmatic, including parental opposition and being too young.[49] Experiences can change attitudes, however, and by the end of the summer, the Freedom Summer participants' views had moved farther toward the radical left.[50] This gap between volunteers and no-shows persisted for the rest of their lives. The volunteers, to a greater extent, "made politics the central feature of their lives," while for the no-shows, "activism remained subordinate to the rest of their lives."[51] McAdam concludes that one of the critical factors separating these groups was their social context. His study found that the greater the number of Freedom Summer volunteers an individual was in contact with, the higher his or her level of activism.[52] At bottom, then, the

45. *Id.* (describing students' experiences accessing subcultural support for public interest work).

46. Rhode, *supra* note 5, at 174.

47. McAdam, *supra* note 34, at 237.

48. *Id.* at 61.

49. *Id.* at 54, 61, 189-90 & app. F. Though Freedom Summer activities were targeted at college students, the average age of volunteers was 23.2. These were, in fact, young adults. *Id.* at 43.

50. *Id.* at 186-87.

51. *Id.*

52. *Id.* at 190.

difference between these two groups began with, and was perpetuated by, the initial decision to show up or not.

B. *Formative Experiences*

As the Freedom Summer study suggests, to the extent that adults' values are not rigid and can shift over time, participation in service-learning or volunteer projects can have a significant effect on their moral reasoning and, consequently, concepts of justice. To date, most research has focused on high school and college-age youth.[53] Several studies have examined how high school and college students' participation in public service projects influences their thinking about social problems, or their political engagement. In general, such programs have shown statistically significant results, with participants experiencing "greater increases in social responsibility and moral reasoning than their counterparts in traditional school programs."[54] One large longitudinal study conducted by University of California researchers collected data from 22,236 college undergraduates, and found that service participation showed "significant positive effects on . . . values," defined as "commitment to activism and to promoting racial understanding."[55]

On a smaller scale, a study of students at a Michigan college found that those participating in service-learning courses "demonstrated greater resolve to act in the face of acknowledged uncertainty and greater awareness of the multiple dimensions and variability involved in dealing with social problems."[56] In addition, "[s]ervice-learning appears to have influenced participants' use of prosocial decision-making and advanced forms of prosocial reasoning."[57] While the evidence that community service programs trigger future participation

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53. Spurred in part by school-based service learning programs, rates of volunteerism among young-people have risen in recent years and now reach nearly ninety percent. *See* Nat'l Ass'n of Secretaries of State, New Millenium Fact Sheet (2000), *available at* http://www.stateofthevote.org/survey/sect2.htm. Yet according to the New Millennium Survey conducted by the National Association of Secretaries of State, much of this student activity is apolitical, centered on community service projects rather than social change activity. *Id.*

54. Thomas H. Batchelder & Susan Root, *Effects of an Undergraduate Program to Integrate Academic Learning and Service: Cognitive, Prosocial Cognitive, and Identity Outcomes*, 17 J. Adolescence 341, 342 (1994); *see also* Wilson & Musick, *supra* note 14, at 146-47 (citing "convincing evidence that early volunteering increases the likelihood that young people will become active members of their political community" as adults).

55. Alexander W. Astin et al., Higher Educ. Research Inst., Executive Summary: How Service Learning Affects Students 2 (2000).

56. Batchelder & Root, *supra* note 54, at 352.

57. *Id.* at 354. The term "prosocial" is the opposite of antisocial and generally denotes behavior that is altruistic. *See* Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, *in* Cause Lawyering: Political Commitments and Professional Responsibilities, *supra* note 3, at 31, 38.

in civic and political issues is more mixed, several studies report that students engaged in political and social action through school-based programs become more "open-minded."[58] Further, the large University of California study demonstrated that "service participation appears to have its strongest effect on the student's decision to pursue a career in a service field," an effect that carried over regardless of the student's initial career choice.[59]

Consistent with findings about the importance of peer group and mentoring support, students also benefited from the personal connections that they established in the community through public service projects.[60] For example, a drop-out prevention project that utilized service-learning found that such experiences had an "important and positive influence on young people," and contributed to school success.[61]

The few studies focusing on adults have also found significant connections between life experiences and individuals' propensity to be socially and politically active. In particular, a study of more than 6000 individuals surveyed in both 1974 and 1986 found that work experiences influenced these adults' attitudes. According to the researchers, "the more one works with people, the greater the impact on developmental outcomes. Apparently the more one is exposed to and interacts with people, the more sensitive one becomes to social inequality, [and] the more likely one is to participate politically and socially."[62]

II. EMPATHY AND JUSTICE

Lawyer-client relationships, of course, are different from peer relationships, precisely because of the professional screen that separates lawyers from clients. While attitudes toward stigmatized groups may change through strategies involving cooperation, equal status, and personal contact, the contact between lawyers and clients is complicated by status differences and power differentials.[63] As Professor Lynne Henderson has observed, lawyers have a tendency to

58. Andrew Furco, *A Conceptual Framework for the Institutionalization of Youth Service Programs in Primary and Secondary Education*, 17 J. Adolescence 395, 400 (1994). Another study of adolescents ages eleven to seventeen showed a slight gain in attitudes toward society's obligation to meet the needs of others, but no significant gains in the adolescents' own sense of personal duty to meet such needs. Wilson & Musick, *supra* note 14, at 145 (describing the study).

59. Astin et al., *supra* note 55, at 2. Rhode summarizes several of these studies in *Access to Justice*. Rhode, *supra* note 5, at 158, 164.

60. Robert Shumer, *Community-Based Learning: Humanizing Education*, 17 J. Adolescence 357, 366 (1994).

61. *Id.* at 367.

62. Merriam & Yang, *supra* note 35, at 76.

63. C. Daniel Batson et al., *Empathy and Attitudes: Can Feeling for a Member of a Stigmatized Group Improve Feelings Toward the Group?*, 72 J. Personality & Soc. Psychol. 105, 117 (1997).

"deny a role to empathic responses in their approach[] to legal problems."[64] Because they are taught not to identify with clients, but to represent them, lawyers may deliberately or unconsciously avoid empathizing with clients' situations when such empathy would expose the lawyers to greater attitudinal influence.[65] In extreme cases, empathy might inhibit lawyers' pursuit of justice. One experimental study suggests that empathy-induced altruism can lead one to act in a way that violates the moral principle of justice.[66] Thus, by minimizing empathy, lawyers can avoid the "two masters" problem that might be raised by conflicts between their altruistic impulses and the requirements of justice. Perhaps in doing so, however, lawyers sacrifice competent representation of the client and appreciation of the larger social justice context of the representation.

This tension between feeling empathy for a client and pursuing impartial justice on the client's behalf is one of the things that distinguishes legal representation from a social work approach or a peer relationship. As set out above, social workers profess to work *with* their clients, not *for* them.[67] Reacting against the traditional account of lawyers as independent actors, some scholars have argued that the best legal representation is "client-centered," i.e., a relationship that transcends lawyers' independent and preconceived notions of clients' desired outcomes to focus on client communication and participation.[68]

One might assume that in a "client-oriented practice," empathy should prevail over lawyers' instincts for justice. For example, Stephen Ellman has asserted that empathy has a "central role in client-centered practice."[69] Undue emphasis on empathy may, however, swing the pendulum too far in the other direction. Interestingly, psychologists argue that the most positive approach in a legal context is not to denigrate or suppress the theoretical concepts of justice that animate lawyers, but to make these factors—justice and empathy—work together. According to Professor C. Daniel Batson and his co-authors, "[d]esire for justice may provide perspective and reason; empathy-induced altruism may provide emotional fire and a

64. Lynne N. Henderson, *Legality and Empathy*, 85 Mich. L. Rev. 1574, 1576 (1987).

65. For a definition of empathy, see Menkel-Meadow, *supra* note 57, at 39 & n.69. *See also* Loder, *supra* note 22, at 479-80 (defining empathy as "sharing the perceived emotion of another person").

66. C. Daniel Batson et al., *Immorality from Empathy-Induced Altruism: When Compassion and Justice Conflict*, 68 J. Personality & Soc. Psychol. 1042, 1051-52 (1995).

67. *See* Nat'l Ass'n of Social Workers, *supra* note 4, at pmbl., *available at* http://www.socialworkers.org/pubs/code/code.asp.

68. *See, e.g.*, Stephen Ellman, *Lawyers and Clients*, 34 UCLA L. Rev. 717, 720 (1987); Lynn Mather, *What Do Clients Want? What Do Lawyers Do?*, 52 Emory L.J. 1065 (2003).

69. Stephen Ellman, *Empathy and Approval*, 43 Hastings L.J. 991, 1011 (1992).

push toward seeing the victims' suffering end, preventing rationalization and derogation."[70] In short, exercising empathy does not require that lawyers abandon the goal of justice altogether. Instead, empathy can help overcome lawyers' predilection for settling for procedural justice, opening up an expanded vision of justice that is responsive to clients' substantive needs and the larger social context of the representation. In fact, recent legal scholarship has even suggested that one way to balance empathy and justice in practice is to "make empathy a kind of ritual in one's work," thus transforming it into a "professional" emotion alongside justice.[71]

If combining individual empathy with a sophisticated understanding of justice is a solid basis from which to engage in public interest representation, can this approach be taught? Moreover, can such enlightened pro bono representation open a gateway through which a lawyer re-evaluates and expands her understanding of justice on a more systemic scale?

As an initial matter, there is a widespread belief among lawyers that empathy can be taught or induced.[72] While individual lawyers may have varying capacities for empathy based on their backgrounds, it is uncontroversial to assert that some degree of empathy is a professional imperative for a competent lawyer working with clients.[73] Empathy is fully consistent with, and indeed is virtually required by, standards of professionalism; that is, it is integral to the profession's own sense of fairness and process.[74] Because of its central role in legal

70. Batson et al., *supra* note 66, at 1053.

71. Note, *Being Atticus Finch: The Professional Role of Empathy in* To Kill a Mockingbird, 117 Harv. L. Rev. 1682, 1702 (2004). The author concludes: "This is not, however, to say that empathy should always be tightly controlled; there may come a time, as there did for Atticus Finch, when one feels compelled to break the ritual and let empathy have full sway." *Id.*

72. Loder, *supra* note 22, at 481 (citing studies to support the proposition that "empathy can be encouraged or cultivated"); *see also* Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 422-23 (discussing community service programs designed to foster empathy).

73. *See* Robert Dinerstein et al., *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 Clinical L. Rev. 755, 758 (2004) ("Empathy and its cousins, including sympathy, approval and support, are key ingredients in [a]... respectful and helping lawyer-client relationship . . . ."); Kimberlee K. Kovach, *Lawyer Ethics Must Keep Pace with Practice: Plurality in Lawyering Roles Demands Diverse and Innovative Ethical Standards*, 39 Idaho L. Rev. 399, 426 (2003) (noting that empathy "can have a positive and powerful effect on client representation").

74. *See* Dinerstein et al., *supra* note 73, at 758-59. Empathy is a particularly important aspect of the lawyer-client relationship. Indeed, these authors characterize empathy as an "ethical obligation" that is "integral to shaping relationships through which you can effectively assist your clients." *Id.* at 804; *see also* Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 Clinical L. Rev. 135, 136 (2002) (empathy is "part of the process of gathering information"). Nevertheless, even within an empathetic lawyer-client relationship, "you will need to maintain a certain boundary between you and your client so that you can deliver the critical or negative assessments and information

practice, law schools, and particularly law school clinics, have devoted significant resources to developing techniques for teaching empathetic practices such as active listening and other supportive techniques.[75] Further, techniques for inducing empathy in fully-formed adults are well known to lawyers, who routinely use them when appealing to judges and juries on behalf of their clients.[76] Some practitioners even identify empathy as a trial skill to be taught in skills-based courses or continuing legal education seminars.[77]

Direct contact with individuals is one of the ways that empathy may be induced. For example, studies of juries have found that "[e]mpathy is[] more likely when a courtroom decision-maker observes distress, rather than merely imagines it."[78] Similarly, law teachers and practitioners have used techniques such as storytelling—crafting a narrative to explain the client's predicament in terms that resonate with the listener—to induce empathy.[79]

Once learned or induced, empathy itself may open doors to a greater appreciation of the larger political issues implicated by pro bono work.[80] Significantly, an influential study led by Professor

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that are a routine part of the lawyer-client relationship." Dinerstein et al., *supra* note 73, at 766; *see also* Fletcher & Weinstein, *supra*, at 145 ("Self-awareness and boundary setting are critical outgrowths of empathic communication with clients.").

75. *See generally* Joshua D. Rosenberg, *Teaching Empathy in Law School*, 36 U.S.F. L. Rev. 621, 638-39 (2002) (describing class on interpersonal dynamics for lawyers that involved teaching empathy).

76. *See, e.g.*, ABA, *Guidelines for the Appointment and Performances of Defense Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 1068 (2003) ("Counsel who seeks to persuade a decisionmaker to empathize with the client must convey his or her own empathy."); Michael Frost, *Ethos, Pathos & Legal Audience*, 99 Dick. L. Rev. 85, 113 & n.117 (1994) (citing modern trial advocacy texts that advise using storytelling to create empathy); Sunwolf, *Talking Story in Trial: The Power of Narrative Persuasion*, The Champion, Oct. 2000, at 26, 30 ("Storytelling is an empathy-building tool for lawyers, offering a unique method for creating connected persuasion, both with clients and with the jurors . . . .").

77. For example, one article claims that with only four hours of training lawyers and law students can learn to respond empathetically to clients. John L. Barkai & Virginia O. Fine, *Empathy Training for Lawyers and Law Students*, 13 Sw. U. L. Rev. 505, 508 (1983); *see also* Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 Clinical L. Rev. 273, 275 (2000) (stating that "[e]mpathy is among the most important lawyering skills that students can learn in a clinic").

78. Douglas O. Linder, *Juror Empathy and Race*, 63 Tenn. L. Rev. 887, 897 (1996).

79. Henderson, *supra* note 64 at 1576; Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 Mich. L. Rev. 2099, 2104-05 (1989) (describing stories told to different audiences in order to "facilitat[e] empathic understanding").

80. Rosenberg, *supra* note 75, at 633. For example, one author states that:

> I believe that empathy is important not just for what financial rewards it can bring to a person, or for what a person can get with it, but also for what it can do to a person. Aside from its productive utility, empathy can shape a person's experiences, thoughts, and actions in a morally positive way.

Id. (emphasis omitted).

Batson indicates that feeling empathy for a single member of a stigmatized group can improve attitudes toward the group as a whole—a precursor to seeking group-based justice.[81] Professor Batson's team began by inducing people to feel empathy for individual members of stigmatized groups, such as AIDS victims, the homeless, or convicted murderers.[82] The team found, first, that arousing a person's empathy for such a stigmatized individual was fairly easy with guidance. Indeed, the researchers found that it was even possible to induce empathy for individuals who were responsible for their own plight, provided the "empathy induction occurred before participants learned about [the] victim['s own] responsibility."[83] Further, they observed that, once aroused, empathy changed people's attitudes about the group as a whole. Finally, the team concluded that changes in perceptions through empathy were more effective and enduring than attitude changes triggered by providing cognitive information about the group.[84] This effect proved true even for highly stigmatized groups. It was especially persistent for convicted murderers.[85]

Nevertheless, as my informal social work experiment suggested, lawyers engaging in pro bono work may find that their views of justice (and ability to empathize) have been circumscribed by their professional training; like me, they may start to believe that access *is* justice, and that once a lawyer has performed a piecemeal act of goodwill on her client's behalf, her job is done. Indeed, several studies indicate that over the course of law school, students become more committed to the importance of lawyers' role as advocate and less committed to promoting lawyers' role in social change.[86] Nor is this phenomenon limited to law students; as one would expect, the profession's prevailing view influences public perceptions as well. In one particularly telling survey, Gonzaga University students were asked to define "justice." According to Professor Mary Pat Treuthart, the Gonzaga faculty and administration were dismayed to find that "students defined 'justice' procedurally, and made virtually no connection to other issues such as peace and justice, gender and race, equality and justice or poverty and justice."[87]

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81. Batson et al., *supra* note 63, at 105; *see also* Loder, *supra* note 22, at 482.

82. *See generally* Batson et al., *supra* note 63.

83. *Id.* at 117. Empathy was induced when participants heard a victim's story and were asked to imagine the victim's feelings while listening.

84. *See id.*

85. *Id.* at 115-16.

86. *See* Droddy & Peters, *supra* note 28, at 35; Susan Ann Kay, *Socializing the Future Elite: The Nonimpact of a Law School*, 59 Soc. Sci. Q. 347 (1978); Gregory J. Rathjen, *The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students*, 44 Tenn. L. Rev. 85, 118 (1976).

87. Mary Pat Treuthart, *Weaving a Tapestry: Providing Context Through Service-Learning*, 38 Gonz. L. Rev. 215, 223 (2002).

Pro bono work will not reach its transformative potential if volunteer lawyers rely on a narrow vision of justice as a basis for their work. Direct engagement with clients and communities—acquiring an understanding of clients' "social world" as well as their personal situation—is an antidote to such a circumscribed view of the purposes of pro bono representation and the possibilities of justice.[88] Professor Peter Margulies calls this process "empathetic engagement," and it extends beyond the interpersonal aspects of empathy to encompass political commitments as well.[89]

A critical site for exercising, and inducing, empathetic engagement is the client interview—the actual interaction with the client, as opposed to the behind-the-scenes legal work on the clients' behalf. A trust relationship built on genuine communication, with a lawyer who is listening to and learning from her client, is the widely-recognized first step in providing responsible and responsive legal representation.[90] At the same time, this is where—through direct experience—a lawyer's notions of justice may be initially challenged and re-shaped, provided the lawyer really has a complete grasp of the client's situation and goals, uncolored by the lawyer's own penchant for hyper-technical approaches or procedural solutions.[91] Of course, it is not easy to bridge gaps of class, geography, and law school training. Taking to heart the widely-cited social work motto "be where the client is,"[92] one author has even suggested that lawyers look to the Settlement House movement for approaches to forging close connections with clients across disparate circumstances.[93]

Pro bono lawyers who engage in this open client-lawyer dialogue about the goals of representation may be surprised by what they learn about their clients' goals. For example, at a June 2004 public forum in Essex County, New Jersey, dozens of welfare recipients spoke directly

88. Genty, *supra* note 77, at 274-76. Discovering connections with your client may be hard work: "[E]ducating yourself about the experiences and lives of homeless people, or mentally challenged people or people who are recent immigrants or people from different racial or ethnic groups is often essential to supplement your well-intentioned attempts to connect with people who are different from you." Dinerstein et al., *supra* note 73, at 769.

89. Peter Margulies, *Re-Framing Empathy in Clinical Legal Education*, 5 Clinical L. Rev. 605, 614-17 (1999).

90. *See, e.g.*, Sarat & Scheingold, *supra* note 3, at 9 (stating that lawyers should "relate to clients as listeners and learners rather than as translators").

91. Elizabeth Reilly observes that the "robust openmindedness" required for empathy "permits one's own ideas and beliefs to develop during a true engagement conversation." Elizabeth Reilly, *Priest, Minister, or "Knowing the Instrument": The Lawyer's Role in Constructing Constitutional Meaning*, 38 Tulsa L. Rev. 669, 692 (2003).

92. Carolyn Copps Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 Wash. U. J.L. & Pol'y 133, 143 (2004).

93. Michelle Nunn, *Building the Bridge from Episodic Volunteerism to Social Capital*, Fletcher F. World Aff., Fall 2000, at 115, 123.

to the County Executive about their needs. Respect was high on the list, with most complaints "directed at caseworkers who, they said, are inattentive to client needs and often withhold important information about their cases from them."[94] A database of 208 surveys completed by low-income people in the wake of the 1996 welfare reform law, compiled by the Alliance for Children and Families, reveals that many of the low-income authors would like more social services from government, including more comprehensive child care assistance and therapeutic assistance with depression.[95] A fifty-six-year-old Cuban woman in East Harlem, New York, hoped to secure job training and a part-time job.[96] A twenty-two-year-old mother living with her two children in Green Bay, Wisconsin, quite simply needed money.[97]

A handful of the Alliance for Children respondents identified critical assistance that they had received from lawyers, often in negotiating divorce and custody arrangements, or obtaining additional benefits.[98] Not one of the authors, however, suggested that more lawyers—or more hearings (which might require more lawyers)—would make their lives better.[99]

Clients who are organized to advocate on their own behalf may articulate a more specific and far-reaching agenda. For example, the Welfare Rights Initiative ("WRI") of Hunter College has as one set of long-term goals "to democratize [the politics of poverty and welfare], to inject the voices of the poor into the poverty and welfare debate, to debunk the negative stereotypes that have driven public policy, and to

94. Jonathan Casiano, *Welfare Caseworkers Should Be More Helpful, Clients Complain*, Newark Star-Ledger, June 10, 2004, at 25.

95. Alliance for Children and Families, Faces of Change: Personal Experiences of Welfare Reform in America 140 (Thomas E. Lengyel ed., 2001) [hereinafter Alliance for Children and Families, Faces of Change]. Since 2001, the Alliance has continued to collect a range of qualitative data from low-income individuals. A complete searchable set of survey results can be found at Alliance for Children and Families, *at* http://www.alliance1.org (last visited Oct. 20, 2004).

96. Alliance for Children and Families, Faces of Change, *supra* note 95, at 175-77.

97. *See* Alliance for Children and Families, WI-18(II), *at* http://www.alliance1.org/Research/foc/articles/WI-18(II).htm (last visited Oct. 14, 2004).

98. *See* Alliance for Children and Families, Faces of Change, *supra* note 95, at 148 (lawyer assisted in obtaining custody of grandchildren); Alliance for Children and Families, PA-11(II), *at* http://www.alliance1.org/Research/foc/articles/PA-11%20(II).htm (last visited Oct. 14, 2004) (lawyer assisted in securing Social Security payments).

99. Alliance for Children and Families, Faces of Change, *supra* note 95. Similarly, the Community Service Society of New York conducted a survey of over 1000 low-income New Yorkers to identify their needs. Respondents identified job training, housing, and education needs as their top priorities. *See* Cmty. Serv. Soc'y, The Unheard Third: Bringing the Voices of Low-Income New Yorkers to the Policy Debate (2003), *available at* http://www.cssny.org/pubs/special/2003-11survey.pdf; *see also* Cmty. Voices Heard, The Journey Towards Self-Sufficiency (2002) (survey of welfare recipients in New York City report that increased "sensitivity and support" from caseworkers would help them transition off welfare), *at* http://www.cvhaction.org/english/policy_reports_capstone_sum.htm.

empower poor people to influence public decisionmaking."[100] More immediately, WRI seeks to help welfare recipients enrolled in the City University of New York to "stay in school and to agitate for reforms that expand welfare recipients' access to higher education."[101]

If pro bono lawyers from private practice are to stand in for under-funded full-time public interest lawyers, and undertake to pursue justice as well as provide access to low-income clients, they must have a nuanced understanding of, and empathetic engagement with, low-income clients' needs.[102] Not surprisingly, more lawyers and more legal services are not high on most clients' lists. But the point here is not to denigrate or marginalize technical fixes or procedural protections that may have significant practical value to clients and may be easier to secure from courts than more costly, substantive results.[103] Indeed, if lawyers have a more acute awareness than their clients of the importance and benefits of procedural protections, an important part of the lawyers' role is to share that expertise.[104] However, clients' substantive goals, which may require that pro bono lawyers champion expanded notions of justice, should also have a place at the table as part of providing empathetic, competent representation.

III. NEXT STEPS

The existing research on political psychology and on the relationship between public service and political values points toward several directions for future inquiry. First, the data compiled through Professor Rhode's own extensive empirical study of the factors contributing to lawyers' pro bono involvement provides a starting point for the next question: Does doing pro bono work influence lawyers' political attitudes? Because so much of the research about

100. Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. Pa. L. Rev. 173, 191 (2001).

101. *Id.*

102. Law firm pro bono programs have taken on this project. *See* Esther F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, *in* The Law Firm and the Public Good 59 (Robert A. Katzmann ed., 1995); *see also* John Kilwein, *Still Trying: Cause Lawyering for the Poor and Disadvantaged in Pittsburgh, Pennsylvania*, *in* Cause Lawyering: Political Commitments and Professional Responsibilities, *supra* note 3, at 181. The challenges raised by relying on pro bono attorneys to handle work that might otherwise be accomplished by full-time public interest lawyers are similar to the issues arising from reliance on amateurs or volunteers in other settings. *See, e.g.*, Charles T. Clotfelter, *Why "Amateurs"?*, 62 Law & Contemp. Probs. 1, 3-6 (1999) (discussing problems with reliance on volunteers).

103. *See* Aryeh Neier, Only Judgment: The Limits of Litigation in Social Change 138 (1982); *see also* White, *supra* note 1, at 874 (noting that the *Kelly* Court mandated process instead of money transfers).

104. As Dinerstein stresses, disagreement with clients is perfectly appropriate, and may even be expected by the clients. Dinerstein et al., *supra* note 73, at 760.

the impact of public service on political attitudes has been conducted on students, there remain lingering questions about extrapolating these findings to adults more generally, and particularly lawyers. Targeted research on this issue—and for these purposes, research that looked directly at development of lawyers' attitudes in professional contexts—would make an enormous contribution to efforts to gauge the broad impact of pro bono initiatives. Such a study would also help shape the profession's pro bono requirements in order to maximize their impact, not only on clients but on lawyers themselves.[105]

Second, there is a need for more clarity about the ways in which empathy can be induced or maximized between prospective pro bono lawyers and their clients. Again, many of the existing studies have focused on younger students rather than adults,[106] or have addressed the role of empathy in jury trials.[107] Research involving adults in a more representative capacity, specifically lawyers, would be illuminating. Questions remain about how empathy develops in such relationships, and whether empathy develops even when it did not figure in the lawyer's initial decision to provide representation. Meanwhile, advocates of expanded pro bono involvement would do well to look to the profession itself, and to utilize the techniques developed by lawyers to induce empathy for ostensibly unpopular causes and clients. These techniques—which include crafting storytelling narratives, and creating opportunities for direct contact between, for example, the jury and victim—could be tailored to the goal of promoting greater pro bono involvement by lawyers.[108] Creating such empathy will not only attract more pro bono lawyers to the cause, but will enhance the experiences of both lawyers and clients engaged in pro bono work.[109]

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105. Professor Rhode describes her empirical research on the pro bono practices of both lawyers and students in detail. *See* Rhode, *supra* note 5, at 160-79. While her survey corroborates the impact that pro bono work has on future altruism, she did not find a significant correlation between types of law school pro bono policies (mandatory vs. voluntary) and subsequent pro bono work. *Id.* at 176.

106. *See supra* note 53 and accompanying text.

107. *See supra* note 78 and accompanying text.

108. *See, e.g.*, Henderson, *supra* note 64 (describing power of storytelling to induce empathy).

109. At the center of recent pro bono debates has been the question of whether mandatory pro bono programs are self-defeating. Interestingly, another study of service-learning found that female high school students viewed mandatory community service requirements more favorably than did male students. Fayneese Miller, *Gender Differences in Adolescents' Attitudes Toward Mandatory Community Service*, 17 J. Adolescence 381, 381 (1994). A recent study of "mandatory volunteerism" also concluded that those who are least likely to volunteer are most likely to feel that their future intentions to volunteer are undermined by a mandate. Arthur A. Stukas et al., *The Effects of "Mandatory Volunteerism" on Intentions to Volunteer*, 10 Psychol. Sci. 59, 63 (1999). It is this group that might be reached by some sort of "empathy initiative."

Third, rather than shy away from underlying issues of justice, pro bono programs should encourage both access and justice by supporting the personal, political, and moral growth of lawyers in the context of providing pro bono representation. A number of studies have suggested that even a voluntary pro bono program can influence concepts of justice if the program provides support and continuity. Interestingly, one study of school-based programs found that it was the reflective component of the program that made "a clear difference in students' intellectual and social dimensions of development."[110] Along these lines, the American Association of Law Schools ("AALS") Pro Bono Project suggested that, among other things, school-based pro bono experiences could be enhanced by "curricular integration of materials concerning access to justice and pro bono service."[111] However, such efforts to contextualize pro bono work are often lacking once lawyers enter practice. Incorporating opportunities for discussion and reflection into pro bono practice—through firm-based programs, through bar associations, or through supervision and mentoring—may be a key component of connecting access and justice.

Fourth, in the context of pro bono representation, the standard of competent representation must include both empathetic engagement and a willingness to examine one's own political values that may be in tension with the client's needs. This is not an exercise reserved for "cause" lawyers and public interest lawyers. Overbroad notions of "professionalism" should not be used to exempt pro bono lawyers from active engagement in underlying issues of justice raised by their clients' situations.[112] As Lucie White has put it, this means that a lawyer must "embrace[] as her professional ethic a practice of unceasing, other-focused self-critique."[113] Pro bono lawyers, like full-time public interest or cause lawyers, should understand this dynamic.

CONCLUSION

The challenge that my social work students posed to lawyers was to step away from technique and procedure, and pursue a broader vision of justice on behalf of low-income clients. Social science research suggests that pro bono work itself, facilitated by empathetic lawyer-client relationships, may influence pro bono lawyers to alter and expand their notions of justice. As a result, they may be prepared to

110. Furco, *supra* note 58, at 400; *see also* Nunn, *supra* note 93, at 121 (suggesting that the same results are likely for adults).

111. Rhode, *supra* note 5, at 181. Not incidentally, the AALS Pro Bono Project was headed by Professor Rhode.

112. *See, e.g.*, William H. Simon, *Ethical Discretion in Lawyering*, 101 Harv. L. Rev. 1083, 1131-32 (1988) (arguing that ethical lawyers cannot rely on impersonal professional role expectations to shield them from the necessity of moral decision making).

113. White, *supra* note 1, at 862.

move beyond procedural or technical solutions to use the law, or other tools at their disposal, to champion a more comprehensive social change agenda for their clients.

The organized bar has framed pro bono work as a means to hone lawyers' skills, to improve the profession's image, and to do good by providing access to the justice system. *Access to Justice* persuasively reiterates and expands on these arguments. But the organized bar's vision may be too narrow, particularly given the evidence that pro bono work can contribute to changing lawyers' own political attitudes. Pro bono work that begins and ends with providing access alone is little more than a band-aid that masks larger social problems. If instead, pro bono representation meant a meaningful increase in both access and justice, you can be sure that clients would clamor for more lawyers, and the legal profession would be both transformative and transformed.