

FROM THE MARGINS TO THE CORE: INTEGRATING PUBLIC SERVICE LEGAL WORK INTO THE MAINSTREAM OF LEGAL EDUCATION

RUSSELL ENGLER*

INTRODUCTION

The call for law schools to increase their role in supporting public interest and pro bono legal work has grown stronger over the past decade. In 1997, the American Association of Law Schools (AALS) appointed a Commission on Pro Bono and Public Service Opportunities to explore the issue. The Commission's findings and proposals were published in 1999.¹ In response to the Commission's findings, the AALS created a Pro Bono and Public Service Section. The AALS also launched its Pro Bono Project, which collected data on programs at over 150 law schools. In 2001, the Project published *A Handbook of Law School Pro Bono Programs*, making available the collected data.²

The information from law schools reflects significant changes in their pro bono, public interest and public service programs. In 1997, only twelve law schools had some type of graduation requirement related to pro bono or public service work. By 2005, that figure had risen to thirty.³

* Professor of Law and Director of Clinical Programs, New England School of Law. I am grateful for the helpful feedback I received from Tracy Miller, Peter Manus, Lawrence Friedman and Linda Morton.

1. AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES, *LEARNING TO SERVE: THE FINDINGS AND PROPOSALS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES* (1999) [hereinafter *LEARNING TO SERVE*].
2. THE AALS PRO BONO PROJECT, *A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS* (2001) [hereinafter *A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS*].
3. The thirty programs are divided among pro bono (14), public service (13), and community service (3). See A.B.A., *Directory of Law School Public Interest and Pro Bono Programs*, <http://www.abanet.org/legalservices/probono/>

Public interest and pro bono programs are a source of pride at many law schools, and a selling point in law school marketing. Law school catalogs and websites often display their schools' pro bono and public interest work prominently. The organization Equal Justice Works developed a survey of law school public interest and pro bono programs to help prospective law students evaluate the different programs.⁴

This essay explores some of the questions involved in designing or modifying such a program. After noting confusion that arises by the use of different labels for the programs, the essay focuses on the need to identify goals in designing the program, factors to be considered in choosing particular goals, and the values a school communicates in labeling and designing its program. The next section uses my law school, New England School of Law in Boston, as a case study to illustrate the successes and challenges a school faces in putting together a program. The essay concludes with recommendations regarding whether to limit the program to volunteer work, how to decide what types of placements will be approved, and whether the program should be voluntary or mandatory.

I. PUBLIC INTEREST, PUBLIC SERVICE OR PRO BONO? SEEKING THE GOALS BEHIND THE TERMINOLOGY

The variety of programs at law schools raises questions as to the strengths and weaknesses of the programs. That inquiry is important for prospective students attempting to compare the programs, but also for those within a law school's community attempting to design a new program or improve an existing one. The process of evaluating requires an understanding of the goals a school is seeking to accomplish in developing these programs.

These inquiries are complicated by the use of an array of terms, such as "public interest," "public service," and "pro bono."⁵ The lack of clarity involving the terminology hinders the ability to compare programs. It also

lawschools/pb_programs_chart.html (last visited Oct. 8, 2005). For the 1997 data, see LEARNING TO SERVE, *supra* note 1, at 1.

4. Equal Justice Works, Making Equal Justice Work: A Guide to Public Service in Law Schools, <http://www.equaljusticeworks.org/legaleducationreport/> (last visited Oct. 8, 2005).
5. For example, A HANDBOOK ON LAW SCHOOL PRO BONO PROGRAMS, *supra* note 2, sorts programs with graduation requirements initially into "Pro Bono" and "Public Service" Graduation Programs. *Id.* at 9. Elsewhere, the Handbook notes that "[t]wenty-four law schools have located their pro bono programs within a public interest or public service center." *Id.* at 15. The ABA has made an effort to provide definitions, but there is no evidence that the definitions are universally accepted or widely understood. See http://www.abanet.org/legalservices/probono/lawschools/definitions.html#pb_definitions.

clouds a discussion about the role of these programs in legal education, their goals, and the success of various components of the programs in achieving the stated goals.⁶

A comparison of the American Bar Association (ABA) Standards regulating legal education to other initiatives underscores the potential gaps in purpose, in turn driving very different structural responses. For example, the ABA Standard 302(b)(2), the relevant ABA Standard, provides that law schools “shall provide substantial opportunities for . . . student participation in pro bono activities.”⁷ The Standard does not specify how these opportunities should be provided.⁸ As a result, a school that relegates pro bono work to volunteer opportunities directed by student groups would be in compliance with the rule. This level of regulation produces unsurprising results:

While almost all [law schools] offer voluntary programs, their scope and quality varies considerably. About a third of schools have no law-related pro bono projects or projects involving fewer than 50 participants. In others, only a small minority of each class is involved. In short, most students do not have public service in law as part of their education experience.⁹

Not surprisingly, one of the most frequently asked questions regarding ABA Standard 302(b)(2) is: “What quantum of pro bono activities must a school offer in order to be deemed to offer ‘substantial’ pro bono activities?”¹⁰ While the Standards urge more in the area of Clinical Legal Education,¹¹ and while many clinics operate within the realm of public

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6. For a detailed discussion of data regarding pro bono participation at law schools, and factors involved in law school pro bono programs, see Deborah L. Rhode, *Pro Bono in Principle and in Practice*, 53 J. LEGAL EDUC. 413 (2003).
 7. A.B.A. Standards for Approval of Law Sch. 302(b)(2) (Section of Legal Educ. and Admissions to the Bar) [hereinafter A.B.A. STANDARDS].
 8. As of this writing, the ABA is considering adoption of an interpretation designed to answer questions that have arisen since the ABA’s most recent revisions to Standard 302(b)(2). See A.B.A., Council Solicits Comments on Proposed Revisions of Standards 210-12, and Interpretation 302-10, available at <http://www.abanet.org/legaled> (last visited Nov. 21, 2005).
 9. Deborah L. Rhode, *Essay: The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201, 1202 (2000).
 10. Memorandum from Professor J. Martin Burke, Chair, Rules Revision Committee and John A. Sebert, Consultant on Legal Education, Regarding Proposed New Interpretation 302-10, dated July 1, 2005 [hereinafter Burke & Sebert Memo] (on file with author).
 11. See, e.g., ABA STANDARDS, *supra* note 7, Standard 301. The Standards also provide specificity with respect to the regulation of externships, or “field placement programs.” *Id.* at Standard 305(e).

interest law, the Standards do not explicitly require such a connection.

In contrast to the ABA Standards, other initiatives relating to legal education have placed the emphasis elsewhere. The MacCrate Report, published in 1992, identified a list of fundamental lawyering skills and values that all new lawyers should seek to acquire.¹² The values include “Promoting Justice, Fairness, and Morality . . .,” helping “to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford To Pay . . .” and “Enhanc[ing] the Capacity of Law and Legal Institutions to Do Justice.”¹³ Almost a decade after the publication of the MacCrate Report, The AALS Equal Justice Project, urged the stimulation “throughout the entire law school . . . [of] cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities.”¹⁴

12. A.B.A. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

13. *Id.* at 213-15 (Values 2.1-2.3). Despite these features of the MacCrate Report, some critics claimed that the Report gave inadequate attention to the ways in which the law and legal institutions negatively affect the poor and other disenfranchised groups. See Mark Heyrman, *Regulating Law Schools: Should the ABA Accreditation Process Be Used to Speed the Implementation of the MacCrate Report Recommendations?*, 1 CLINICAL L. REV. 389, 390 (1994). For a more general discussion of responses to the MacCrate Report, see Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 116-24 (2001). The Clinical Legal Education Association’s (CLEA’s) Best Practices Project returns to the values of the MacCrate Report in its discussion of goals for a school’s program of instruction. See *Best Practices for Legal Education*, A Project of the Clinical Legal Education Association (CLEA) in conjunction with other organizations and individuals who are interested in improving the preparation of new lawyers in the United States, 84-89 (December 15, 2005 Draft), available at <http://professionalism.law.sc.edu/news.html#CLEA>.

14. ASSOCIATION OF AMERICAN LAW SCHOOLS, AALS EQUAL JUSTICE PROJECT REPORT, PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES 9 (2002), [hereinafter AALS Equal Justice Project]. The Project consisted of colloquia held at law schools around the country during the 2000-2001 academic year. The Project’s final report was published in the fall of 2002. See generally *id.* The articulated goals of the Equal Justice Project were:

1. To identify models of equal justice teaching, scholarship, and service that can be used in different law school settings with various levels of resources;
2. To stimulate throughout the entire law school—in both clinical and nonclinical courses, library programs, and pro bono projects, among others—cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities;

While there is overlap between the pro bono route reflected in the ABA Standards and the Equal Justice route reflected in the MacCrate Report and Equal Justice Project, the choice of program focus will have significant consequences in the structure of the program and the allocation of resources. Programs with a pro bono focus involve primarily extracurricular student work and the administrative apparatus necessary to oversee such a program.¹⁵ Programs with an Equal Justice focus are more likely to involve an array of credit-bearing, volunteer, and paid activities.¹⁶

II. LAW SCHOOL VALUES, PROGRAM GOALS, AND PROGRAM DESIGN

As with any program that law schools establish or modify, it is essential to determine the program's purpose. Determining the purpose requires an understanding of the problems the program identifies and the goals it targets. Program design and resource allocation decisions must be made by assessing which choices are most likely to solve the problems identified and further the articulated goals.¹⁷

A. The Advantages of a Public Service Program Compared to a Pro Bono Program

I believe that the most effective programs are organized around an Equal Justice or social justice goal, with student pro bono work as simply one feature of the program, rather than the program's focus. The nature of the problems being faced, the mission and role of law schools, and the likely benefits to students and clients alike recommend this programmatic

3. To establish formal relationships between law schools and equal justice communities aimed at promoting on-going support for the provision of legal services to underserved individuals, groups, and communities;

4. To encourage collaboration among law schools and their faculties in addressing...pressing equal justice issues; and

5. To create sustained commitments to equal justice education, scholarship, and work in law schools on both the national and local levels.

Id. at 9-10. "[T]he Project seeks to influence law schools to create institutional arrangements that will nurture and encourage more collaborative justice work both within and across institutions and to point the way toward the creation of lasting networks where equal justice work would flourish." *Id.* at 7.

15. LEARNING TO SERVE, *supra* note 1, at 7-12.

16. In the absence of a common terminology, there may be more overlap than is readily apparent from the title of a school's program.

17. For a more detailed exploration of these concepts in the process of assessment and planning for law school programs, see GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 45-63 (Institute for Law School Teaching ed. 2000).

direction. With regard to terminology, this model favors public service legal work over pro bono work as a starting point, to avoid limiting the recognized work to volunteer activities.¹⁸ Ironically, a program that cuts across the law school's operation, rather than focusing exclusively on pro bono work, is better positioned to increase pro bono work among students and graduates.

The Equal Justice goal addresses a fundamental problem in legal education, and the legal profession generally, that must command attention in developing such a program. Despite the plethora of lawyer jokes that imply an oversupply of lawyers and the often grim employment statistics for some law school graduates, reports from state after state indicate a high incidence of unmet legal needs among the poor and working poor.¹⁹ Legal needs studies have consistently shown that anywhere from seventy to ninety percent of legal needs of the poor go unaddressed in America.²⁰

While some lawyers generously perform pro bono work, "[i]n most jurisdictions, participation levels [among lawyers] in pro bono activities, variously defined, range between 15 and 18 percent."²¹ For those who perform pro bono work, the time commitment is generally between twenty and forty hours annually, a figure that decreases to a range between five and twenty hours annually per attorney when all lawyers are included.²² Even this figure may be inflated. Lawyers tend to over-report pro bono work, including work for which they expected to be paid, but later were uncompensated or undercompensated.²³ Moreover, only ten to twenty percent of lawyers performing pro bono work assist low-income clients.²⁴

A number of factors affect whether lawyers perform pro bono work.

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18. As explained in Section IV.B., *infra*, it defines recognized public service activities more narrowly than often occurs in pro bono programs, and excludes many placements in government.
 19. See generally, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans*, A Report of the Legal Services Corporation (September 2005), available at <http://www.lsc.gov> (last visited December 21, 2005) (hereinafter *Documenting the Justice Gap In America*). The LSC report relies in part on recent Legal Needs Studies from nine states: Montana (2005), Illinois (2005), Tennessee (2004), Connecticut (2003), Massachusetts (2003), Washington State (2003), Washington D.C. (2003), New Jersey (2002), Vermont (2001), Oregon (2000). *Id.* at 9. Virtually "all of the recent state studies found a level of need substantially *higher* than the level" found in a 1994 Study conducted by the American Bar Association. *Id.* at 13 (emphasis in original).
 20. *Id.*
 21. Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 429.
 22. *Id.*
 23. *Id.*
 24. Rhode, *The Pro Bono Responsibilities of Lawyers and Law Students*, *supra* note 9, at 1201.

Intrinsic factors such as a capacity for empathy and a sense of human or group solidarity are important, but are only part of the explanation.²⁵ Lawyers provide other reasons why they do not perform pro bono work, including not enough time, a gap between available pro bono opportunities and their areas of interest, and that their workplaces do not support non-fee-generating work.²⁶ Some lawyers object specifically to pro bono work serving low income clients due to a lack of expertise or motivation to serve underrepresented clients, which does not result in cost-effective or competent representation.²⁷

The latter reason provides an important starting point for this discussion about a law school's programs. The goal of the law school experience is legal education. While experts continue to debate the appropriate balance between theory and practice, it is essential to understand the impact of the law school experience on the actual work performed by lawyers. A service ethic among particular lawyers may be traced to characteristics developed long before law school. Nonetheless, each gap identified in a law school graduate's knowledge or skill set provides a window into the effectiveness of a particular law school program. A public service program may be the best opportunity at a law school, if not the only one, to provide the educational opportunities necessary to support future pro bono work.

B. The Values Law Schools Convey and Their Impact on Students' Values

If law school graduates are unaware of the extent of unmet legal needs, that topic likely was not a focus of their legal education. If law school graduates lack the skills to represent indigent clients, that too, is a commentary on their legal education. If graduates do not believe it is important to perform volunteer legal work, or place it low on a list of other important objectives, that reality reflects a value system shaped in part by their legal education.

In addition to the factors influencing pro bono work after graduation, there are parallel questions for those inclined toward careers in public interest or public service work. Numerous studies reveal the extent to which the values of law students are shaped by their law school experiences and those experiences typically push students away from, rather than toward, public interest work.²⁸ Students still pursuing public

25. Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 418-19.

26. *Id.* at 447-51.

27. *Id.* at 434.

28. For discussions of the effects of law school socialization on students with an orientation toward public interest law, see ROBERT V. STOVER, MAKING IT AND

interest careers are often derailed by the lack of jobs, the attractiveness and prestige of alternative jobs, and the crushing debt burden facing most law school graduates today.²⁹

Understanding the law school's role in contributing to the factors that influence pro bono and public service work requires an understanding of the manner in which students learn the messages, whether intended or unintended, that law schools send students over the course of their law school career. Whether law schools make available pro bono opportunities, in compliance with the ABA standard, is only one aspect of the set of values that law students are likely to recognize at their law schools. Students are overwhelmed with information and opportunities at every turn.

How do students learn which components of legal education are the most important as they make choices? One easy way is the hierarchy that students are likely to discern from the way law schools package legal education in the first place. Credit-bearing programs presumptively are more important than volunteer programs—if an activity were viewed as important by the law school, surely the school would award credit. Among credit-bearing programs, those that are required are perceived as more important than elective programs. Given the powerful impact of the first year, required courses in the first year are perceived as more important than those in subsequent years. The more credits awarded to a course, the more important it is perceived to be. Courses taught by full-time faculty are considered more important than those taught by adjunct faculty or instructors hired for specialized courses, such as Legal Research and Writing.³⁰

BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 46, 48, 66 (Howard S. Erlanger ed., 1989). For particular references to the first-year experience, see *id.* at 37, 42. Regarding the curriculum, see Daniel B. Rodriguez, *Foreward: Public Interest Lawyering and Law School Pedagogy*, 40 SAN DIEGO L. REV. 1, 2 (2003) (“The modern law school curricula steers students away from public interest law practice.”). For a discussion of law school socialization generally, see Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric, and Social Context*, 43 HASTINGS L.J. 1111, 1111-19 (1992). As the authors explain, “counter-socialization” was an explicit goal in the design of Maryland’s Legal Theory and Practice Program. *Id.* at 1119-44. For a discussion of the negative effects of law school on women, see Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

29. STOVER, *supra* note 28. See also generally Equal Justice Works, *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service*, (2002), <http://www.equaljusticeworks.org/choose/lrapurvey.pdf> (last visited Nov. 21, 2005).

30. For a discussion of the crucial role of course title in the first-year curriculum, see generally Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387 (1992).

The value system carries over to the labeling of courses and programs and to extracurricular activities. However much educators might view the first year as teaching students the essential skill of legal analysis and reasoning, the typical law school does not offer a course by that name. Rather, students take a standard curriculum likely to include Torts, Contracts, Property, Civil Procedure, some form of Legal Writing, and either Criminal Law or Constitutional Law, or both. Students thus conclude that the subject matters are what is important. Outside the curriculum, programs run by the school itself are viewed as more important than those relegated to students. Extracurricular activities recognized by the administration for awards, such as at graduation, are viewed as more important than those that are not.

The features of a school's public service or pro bono program reflect that school's value system. If the program is purely extracurricular it is likely to be closer to the margins of the school's operation. Similarly, when a program is left largely in the hands of students, it is marginalized. If the school is playing the lead role, the higher the leaders are placed within the administrative hierarchy, the greater the program's prominence. As with courses, if the program is required, that feature sends an important message, as will the extent to which such participation is rewarded or honored by the school. Finally, resources matter: while money is not the solution to all problems, the proportional allocation of resources to the program communicates an important message as well.

C. Selecting the Structure, Substance and Label to Further the Goals

The substance of the program, in addition to the structural features, is crucial relative to the stated goals. If a goal of the program is to increase student pro bono work as defined by uncompensated, volunteer work, then the program needs to be comprised solely of uncompensated work. Yet, programs limited to uncompensated placements miss the opportunity to include clinical courses, including externships, nonclinical courses that incorporate service work into their structure, student activities that require service as a component of their participation, and summer work that is paid, whether by grants, work-study money or other sources of funding.

A shift away from purely voluntary, extracurricular activities furthers many of the goals of the MacCrate Report and the AALS Equal Justice Project. For example, the MacCrate Report urged that students gain instruction in a wide array of fundamental lawyering skills and values. As a general matter, the more time that students dedicate to instruction geared toward particular skills or values, the better the learning will be. Volunteer programs tend to require many fewer hours for completion than courses

lasting a full semester or year, such as clinical programs.³¹ Assuming similar content of work, the instruction will be stronger and the learning better through the clinical course. A program labeled as “public service” or “public interest” has a greater chance of including credit-bearing work than one labeled “pro bono.”

The AALS Equal Justice Project similarly urged law schools to institute a wide range of offerings. One of the goals of the Equal Justice Project was: “To stimulate throughout the entire law school—in both clinical and nonclinical courses, library programs, and pro bono projects, among others—cross-cutting interest in and commitment to the provision of legal services to underserved individuals, groups, and communities[.]”³² The advantage of including pro bono projects along with other aspects of a law school’s operation is that the program is not quarantined within the law school. It can draw from a range of departments and initiatives, and marshal existing resources from different parts of the academy. The disadvantage is that if the program is too diffuse, the overarching goals of the program may become ineffective if students or other members of the law school community do not recognize the various components as a coherent program.

III. ONE SCHOOL’S EXPERIENCE: NEW ENGLAND SCHOOL OF LAW

A. Public Service Opportunities

New England School of Law (“New England”), located in Boston, Massachusetts, provides a revealing case study.³³ The school’s operation reflects many features described above. New England has a vibrant clinical program, including both in-house clinics and externship placements. The clinics are popular with students: over sixty percent of graduating students take at least one clinic, a figure that rises to between sixty-six and seventy-five percent when considering the day division alone. Depending on how one defines public interest or public service, many of the placements afford

31. For schools with a pro bono requirement, the hours required range from twenty to seventy, with most at forty or below. See Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, 13 *LAW & INEQU.* 39, 42-43 (1994). One survey, covering mandatory and voluntary programs, reported a range of required or suggested service of 8-300 hours per year. William B. Powers, *Report on Law School Pro Bono Activities*, ABA CENTER FOR PRO BONO EXCHANGE 6 (April 1995). More programs have fewer hours. See *LEARNING TO SERVE*, *supra* note 1, at 13 (“Most pro bono experiences are intense but brief.”).

32. AALS Equal Justice Project, *supra* note 14, at 9.

33. For a more detailed discussion of New England School of Law as a case study, see Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade*, 23 *PACE L. REV.* 519, 555-69 (2003).

students significant experience in these areas. Very few are in the private sector, with most either in government, or in direct service to indigent clients. The menu includes both civil and criminal work.³⁴

The service component of the curriculum is not limited to the clinics. At least five nonclinical professors experimented with service components that they have incorporated into their seminar courses. Over the past few years, students enrolling in seminar courses in environmental justice or advocacy, criminal justice, and domestic violence worked on projects on behalf of those in the community outside the law school. Their work satisfies certain aspects of the seminar's requirements and constitutes a form of service learning.³⁵ Students also receive credit for research memos aiding ongoing War Crimes Prosecutions, such as in the former Yugoslavia and Rwanda.³⁶

Outside the classroom, student participation in voluntary pro bono work has varied depending on the interests of student leaders. Participation in a volunteer program, teaching students at Boston High School, reached a high in the mid-1990s when the President of the Student Bar Association was dedicated to the cause; this program no longer exists. More recently, active student leadership led to a surge in participation in the activities of Shelter Legal Services. Yet, the student work goes beyond volunteer work: students working on the school's Journal for Criminal and Civil Confinement are required, as part of the participation on the Journal to work in the Journal's Confinement Outreach Program.³⁷

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34. More information about New England's clinical programs is available online at <http://www.nesl.edu/academics/clinics.cfm>. Past data has indicated that roughly 60% of each graduating class takes at least one clinical course, with the figure for the Day Division in the 67%-75% range, and the figure for the combined Evening and Special Part-time programs having risen dramatically from 15% a decade ago to almost 33% recently. 60.6% of the Class of 2004 took at least one clinic, with the Day Division figure at 70.9%. The evening division alone was at 32.8%, with the combined Evening and Special Part-time Division reaching 35.9%. The latter figure reflects a significant increase in participation in the clinic program by part-time students, up from 15% a decade ago. Data regarding New England's clinical program are available from the author.
35. For a more detailed discussion of the inclusion of service work into seminars at New England School of Law, see Russell Engler, *Integrating Public Service into Nonclinical Courses*, LAW TEACHER (Gonzaga Univ. Sch. of Law, Spokane, Wash.), Fall 2001 available at <http://www.law.gonzaga.edu/Programs/Institute+for+Law+School+Teaching/The+Law+Teacher+Newsletter/Past+Issues+of+The+Law+Teacher/Fall+2001/Integrating.htm>.
36. See The Center for International Law and Policy at New England School of Law, War Crimes Project, <http://www.nesl.edu/center/WC.cfm> (2003).
37. For descriptions of volunteer opportunities available at New England, see New England School of Law, Student Organizations, <http://www.nesl.edu/students/>

Over the summer, students also can obtain significant experience, and perform important service work. Some of this work is unpaid, but some is funded through the Federal Work-Study Program, which requires a contribution from the employer for a portion of the money. For some New England students, the employer's portion is paid instead by grants awarded by the school's Public Interest Law Association (PILA), whose fundraising efforts culminate each year with the PILA auction. A few other students obtain summer grants from other organizations, such as the Massachusetts Bar Foundation. Since much of the summer work is full-time, the students spend many more hours learning in the service setting than they would in volunteer programs during the school year, which typically require between twenty and sixty hours to complete.

B. Public Service Challenges and Responses

The risk of diffusion is real, despite the range of service learning opportunities, and the strength and popularity of each of the components. Students fail to perceive an overall public service program and to view the various components as part of an integrated whole. Instead, they tend to see the work separately, as clinical work, seminar work, journal work, summer work, or the work of student organizations.

In part to address this perception, the New England faculty created the school's Center for Law and Social Responsibility (CLSR) in the fall of 2000. The Center's website explains:

The New England School of Law Center for Law and Social Responsibility (the "CLSR") dedicates itself to the ideal of law as a means through which to achieve socially responsible goals.

In keeping with this mission, the CLSR supports the faculty, students, and alumni classroom, scholarship, pro bono projects and other activities that study or otherwise address social problems that can be addressed through the law and those that are products of the inequities in the legal system itself. The CLSR serves, in part, as the New England School of Law's implementation of Massachusetts Rule of Professional Conduct 6.1, a rule encouraging lawyers to engage in public service activities. The CLSR also aims to assist in the school's mission to perform "public service and other work that further the

Studorgs.cfm (2005). For a description of the Journal's Outreach Program, see New England School of Law Journal on Criminal and Civil Confinement, Confinement Outreach Program, <http://www.nesl.edu/journal/prison.cfm> (2003). The Law Review has no comparable service component.

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interests of justice.”³⁸

The idea was to create a place at the law school that would serve as a magnet for public service legal work in various aspects of the operation, lending support for existing work and providing energy for the undertaking of new work. The faculty approved the Center with overwhelming support. It was a significant accomplishment for those committed to public interest and public service work at New England.

The Center achieved some of its original goals. The Center remains the public face of the school’s public service and public interest work. The Admissions Committee reported a surge in applications from prospective students interested in performing public interest work. The “capture” rate increased as well, with more of those applicants choosing to come to New England. The Admissions Committee attributed the increase directly to the Center, and its website promoting the work.

At the same time the Center has not overcome the problem of diffusion. Students on campus continue to recognize the work through its components of clinics, seminars, student organizations, and summer work. The Center may be the hand that provides a guiding force to the work. But, the hand remains largely invisible. Adding to this problem is the absence of an overarching program, requirements focused on service work (as opposed to skills), and a mechanism for rewarding or acknowledging the work for the service provided by students.

IV. HARD CHOICES FOR PROGRAM DESIGN

A. Purely Voluntary or for Credit too?

As the details of an overarching program take shape, schools such as New England face hard choices that will determine the program’s effectiveness in achieving its goals. A first question is whether recognized work must be limited to volunteer work, or also may include credit-bearing activities?³⁹ I have already suggested the reasons why the program should not be limited to purely volunteer work. Only by permeating all aspects of the school’s operation, including the curriculum, will the program have a chance of avoiding the marginalization that comes from purely volunteer programs, particularly if they are student run.

While a countervailing argument is that volunteer work breeds future volunteer work, the existing data suggest that the connection is far more

38. The Center for Law and Social Responsibility, <http://www.nesl.edu/clsr> (2005).

39. The first listed of “frequently asked questions” that Proposed Interpretation 302-10 seeks to answer is: “Do pro bono activities for which academic credit is received ‘count’ toward the pro bono requirement?” Burke & Sebert Memo, *supra* note 10.

complicated. Programs that have mandatory pro bono or public service programs report that a benefit of those programs is that their graduates report that they are more likely to perform future pro bono work.⁴⁰ These findings, if valid, suggest that the habit of volunteering may be one reason people perform future pro bono work, but mandatory programs can also achieve such results.⁴¹

I obtained similar results in data I collected in the mid-1990s from New England's clinical programs, which demonstrated that students' willingness to perform future pro bono work varied greatly depending on their clinical placements. Students working for civil legal services, public defenders' offices, and in equivalent placements in which they represented or encountered indigent litigants, were twice as likely to indicate an increased interest in future pro bono work than those who worked in government and private settings. Since all the placements were credit-bearing, the key did not turn on the "volunteer" nature of the work. Nor can the results be explained by a student's predisposition toward pro bono work prior to taking the clinic, since the question focused on whether the clinic made the student "more likely to perform pro bono work."⁴² Students

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40. See, e.g., *LEARNING TO SERVE*, *supra* note 1, at 32 ("Eighty-six percent of students [participating in the mandatory pro bono program at the Brandeis School of Law in Louisville, Kentucky] say the experience has had a positive impact on their willingness to do pro bono work after they graduate"); see also Durham, *supra* note 31, at 49 ("A survey of Tulane's class of 1990 found that sixty-five percent said the program had 'increased their willingness to provide pro bono services' after graduation and seventy-two percent believed 'they gained confidence in their ability to handle cases for indigent clients'") (footnote omitted). For a description of Tulane's program, see *id.* at 43-46. But see Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 457 ("It also bears note that regression analysis revealed no significant correlation between law school policies and subsequent pro bono work.").
41. "Nor is it clear whether a pro bono requirement is the most effective way for a school to promote public service." Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 458.
42. Students were required to complete an evaluation at the end of their clinical experiences. One of the questions was framed as follows:

The clinic experience in this course made you:

- a. more likely to do pro bono work after you graduate
- b. less likely to do pro bono work after you graduate
- c. had no effect on whether you would do pro bono work after you graduate

Please explain:

The title of the evaluation document varies slightly from clinic to clinic, and typically is called either "Clinical Component Course Evaluation" or "Clinical Course Evaluation." The wording of the survey question that produced the data is identical regardless of the title of the evaluation form. (evaluation forms on file with author).

offered a range of explanations, including that the clinical work opened their eyes to the problems in the legal system and provided them with the skills necessary to perform future pro bono work. These reasons parallel those given by attorneys explaining their motivations for performing pro bono work.⁴³

B. The Scope of the Placements

While these findings confirm the importance of recognizing work beyond volunteer work, they also suggest important reasons for limiting the placements that might be recognized. If the goals of the program include providing the experiences that will yield future pro bono work, then it becomes important to identify the placements likely to achieve that result. These experiences involve education regarding the acquisition of particular lawyering skills and the operation of the legal system as it relates to individuals for whom pro bono services are most needed. The program should be structured accordingly, leading to the exclusion of most government placements.

A programmatic decision along these lines is controversial. The larger the program, the greater the likelihood that the program will include government placements, particularly if the program is mandatory.⁴⁴ A number of reasons explain this reality. One is availability of placements. Most law schools may have trouble identifying enough placements in settings in which students encounter indigent litigants to satisfy the demand in terms of the number of placements needed. The problem is eased somewhat as clinical placements, summer jobs, and other service learning experiences are included in the number of available placements.

A second reason is philosophical. Many people involved, in the faculty, the administration, and the student body, simply believe that regardless of the terminology, government work is public service and/or public interest. The alternative reasons urged here do not overcome that belief. This relates to a third reason: law school politics. Any new program, particularly one encouraging or mandating pro bono or service work, will be controversial. The “political” nature of the program is easier to overcome the broader the nature of the placements, so that no one feels that

Students with a prior disposition toward pro bono work often answered “c,” and explained that the clinic had no effect because they already planned to do pro bono work. *Id.*

43. For a description of this survey, see Engler, *supra* note 9, at 137. I have continued to collect responses from students since the mid-1990s, and the picture remains consistent with those findings.

44. The University of Pennsylvania’s Public Service Program, placing over 500 students in over 300 projects nationwide, is one example. See LEARNING TO SERVE, *supra* note 1, at 31.

law students are being “forced” to do something they do not want to do.

One telling statistic uncovered by the AALS Commission on Pro Bono and Public Service Opportunities underscores this point. In its survey of law schools, forty percent of deans agreed with the proposition that “it is inappropriate for schools to impose a mandatory requirement on students to participate in public service projects.”⁴⁵ Whatever arguments support public service work, that work is viewed differently from Contracts, Legal Writing, Legal Ethics, and other features of law school that are typically required.

Despite the likelihood that there will be less resistance to voluntary programs and to programs that utilize a broad definition of pro bono or public service work, such a broad program is unlikely to achieve the important goals identified in this article. The program will not further the goals of Promoting Equal Justice if the placements are not tied to that concept. The program similarly will not fill the important gaps in legal education. For example, the MacCrate Report identified the fundamental lawyering value of “[c]ontributing to the Profession’s fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay;”⁴⁶ the broader the nature of the placements, the less likely students will gain any education in that value. Finally, the ABA’s Model Rule 6.1, related to pro bono work, describes a narrower array of placements than the broader pro bono programs would approve; the breadth of placements undercuts teaching regarding Rule 6.1 as well.

C. Voluntary or Mandatory?

The same concerns arise in determining whether the program should be mandatory or voluntary. The reasons to move public service legal work to the core of legal education and to provide more lawyers with the skills and experiences necessary to perform future pro bono work suggest that the program should be mandatory. Given the realities of law school education today, efforts to make such a targeted program mandatory will meet stiff resistance. The program will fail to become mandatory, or the resulting mandatory program will include an expanded range of approved placements and a reduced time commitment, undercutting the program’s educational goals.

Given the importance of the educational goals, I would not push for a mandatory program in the short run, and prefer a voluntary, carefully targeted program. This interim step should be paired with data collection and initiatives to increase student participation. When participation hits a

45. *Id.* at 9.

46. MACCRATE REPORT, *supra* note 12.

ceiling or resistance diminishes, the voluntary nature of the program should be re-evaluated.

The considerations discussed above, relating to each of the features of a public service program, expose the difficult choices and trade-offs that schools will face in designing or revising their programs. The process, however, should be no different from a process designed to make hard choices to solve other problems facing the law school. That process should include identifying goals and establishing a program best designed to achieve those goals. It is also important to prioritize the goals to help guide the hard choices and to analyze, where one decision might further one goal but a different decision would further a different goal. Is the most important goal of the program to fill a gap in legal education? Is it to promote future pro bono work? Is it to increase the number of volunteer hours performed by students while in law school? Is it to steer students from credit-bearing work, or to credit-bearing work? The more the answer is “yes to all of the above,” the greater the risk that the resulting program will have a laundry list of important—but competing—goals, and the resulting program will be less likely to achieve any of them.⁴⁷

V. BEYOND STUDENT WORK: THE ROLE OF FACULTY, ALUMNI, AND THE BAR EXAM

While the primary focus in a law school program should remain on the students’ legal education, this should not obscure the need to consider the activities of others, such as faculty and alumni, connected to the law school community. Faculty members serve as important role models in the area of public service. The current pro bono practices of law faculties typically are disappointing in this respect.

As legal ethics experts have often noted, professors can play a crucial role in inspiring service through their teaching, research, and community service. Yet most legal academics fail to take that role seriously. Few law schools require or reward pro bono work by their faculty. Fewer still insure that it is included in the curriculum.⁴⁸

The extent to which the school encourages or requires faculty pro bono or public service legal work, the number of faculty who actually perform that work, and how much students know about the faculty work, are all part of the formula for developing a successful public service program at a law

47. For a list of recommended features in constructing law school pro bono programs, see Rhode, *Pro Bono in Principle and in Practice*, *supra* note 6, at 461.

48. Deborah L. Rhode, *Pro Bono in Times of Crisis: Looking Forward by Looking Back*, 31 *FORDHAM URB. L.J.* 1011, 1019 (2004) (footnotes omitted).

school.

Alumni also play an important role in the conversation. Alumni not only perform public service and pro bono work, but they also support such initiatives at the law school. If the law school supports pro bono and public service work among its alumni—even by validating the importance of such work by asking about it, collecting data on it, and sharing the information—students and graduates may be emboldened to increase that work. If no one asks, how important can the work be? Since alumni also serve as role models for students, the more that law students realize that public service legal work is an important part of being a lawyer, the greater the likelihood that students will seek out opportunities at law school that provide the relevant experiences for such work. Networking that goes beyond the important goal of enhancing public service work among alumni and students alike may be a side-benefit of increased contact between students and alumni in the development of such public service programs.

Finally, structures outside the law school, including the Bar Exam, play an important role in shaping the law school experience, generally, and public service work in particular. Facing long lists of bar-tested subjects, students tend to focus their efforts on taking courses that will be covered by the bar. This leaves less time and energy for clinical courses, other credit-bearing public interest work, and extracurricular service work. In contrast, imagine a successful implementation of the proposed Public Service Alternative Bar Exam, in which some law school graduates may perform carefully supervised public service work in lieu of taking the traditional bar exam.⁴⁹ Compare the impact on student choices where students are preparing for post-graduate public service legal work, as opposed to sitting for the traditional bar exam.

CONCLUSION: THE NEED FOR A COHERENT PROGRAM AND ONGOING ASSESSMENT

Any conversation about implementing or altering a program related to public service legal work, public interest law, and pro bono work will be heated and difficult. The discussion will be shaped by the context at a particular law school, including the personalities involved, and the deals that can be cut. Moreover, the simple fact that a school adopts a program cannot be the sole measure of success. As with other programs at law schools, we must insure that the features of each program are designed to

49. See generally, e.g., Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 PACE L. REV. 343 (2003). For a statement critiquing the bar exam generally, see Society of American Law Teachers, *Statement on the Bar Exam*, 32 J. LEGAL EDUC. 446 (2002).

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achieve the stated goals. The devil is in the details.

Once programs are in place, we should develop assessment tools to determine if the programs deliver as intended. A program created to increase student participation should be modified if participation does not increase. A program designed to plug a hole in the curriculum should be modified if student learning in this area is not affected. Over the longer term, a program intended to increase future pro bono or public service work must be modified if the data does not demonstrate that the program is successful. The assessment tools must be capable both of measuring the baseline, as well as the change.

While we grapple with sophisticated assessment tools, we should not forget the utility of some easier ones. If public service legal work is actually an important feature of a law school, students will perceive it as such. No matter how much we might argue that a program on paper is a strong one, if students do not recognize it as an important part of their legal education, those arguments will ring hollow. While student opinion is not the only assessment tool, it will quickly reveal the distance a law school must travel to move public service legal work from the margins to the core of its legal education.

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