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Stephen F. Befort
University of Minnesota Law School, befor001@umn.edu

Eric Janus
William Mitchell College of Law, eric.janus@wmitchell.edu

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The Role of Legal Education in Instilling an Ethos of Public Service Among Law Students: Towards a Collaboration Between the Profession and the Academy on Professional Values

Stephen F. Befort*
& Eric S. Janus**

> Almost 200,000 people in Minnesota this year are getting hurt because they couldn't get legal help. And that's just the people who are within legal services eligibility guidelines.
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> The need [for legal services for low income individuals] is everywhere. It's urban. It's rural. It's old. It's young. It's every race. It's women. It's kids. It's straights. It's gays. It's people with mental health problems. It's people with developmental disabilities. Anywhere you look, you find that need.
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> * * *
>
> Far and away the largest untapped resource for meeting that need is volunteer attorneys and law students. I hope that the rest of this symposium can generate ideas and energy that we can use to tap that resource because while we talk about it, there are 200,000 men and women and children in this state waiting for help. They're not going to go away.[1]

Introduction

The symposium whose proceedings are reported in this issue is in the vanguard in seeking a collaborative partnership between the academy and the legal profession on the subject of professional values.[2] Sponsored by the three institutions of legal education in

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* Professor of Law, University of Minnesota Law School. Professor Befort wishes to thank Erik Aamot-Snapp for his assistance in the preparation of this article.

** Professor of Law, William Mitchell College of Law.

1. Jeremy Lane, Executive Director, Mid-Minnesota Legal Services, Remarks at A Working Symposium: Legal Education and Pro Bono, William Mitchell College of Law (Apr. 8, 1994).

2. James L. Baillie & Judith Bernstein-Baker, *In the Spirit of Public Service: Model Rule. 6.1, The Profession and Legal Education*, in this Journal, at 64-67

the State of Minnesota (University of Minnesota Law School, William Mitchell College of Law, and Hamline University School of Law), the Minnesota State Bar Association and the Minnesota Justice Foundation, the symposium brought together law professors, leaders of the organized bar, people involved in the provision of legal services to low income persons, the Minnesota Justice Foundation, law students, and the judiciary to discuss in a collaborative way a series of questions which are central to our notions of ourselves as a profession and as educators of professionals: What is our obligation to serve? And, what is our obligation to instill in our students an ethos of public service?

These are timely questions. In response to several forces, the legal profession has begun, on a number of fronts, to transform service as an aspirational ideal of the profession into concrete action.[3] Some law schools have followed suit, a handful mandating, and a larger number facilitating, public service activities for their students.[4] The ABA's MacCrate Report focused attention on the relationship between practice and the academy, advocating a greater role for law schools in teaching professional values and professional skills.[5] The issue is central enough to rate a "mini-workshop" at the 1995 Association of American Law Schools (AALS) Annual Meeting.[6]

The symposium, which is the subject of this and other articles in this issue, was a first step in using a collaborative process to work out the proper role for the law schools of the State of Minnesota in shaping one of the central values of the profession, the value of public service. Involved are important and sensitive questions about the self-conceptions of both the academy and the profession, and the interrelationship of the two institutions. Difficult questions of pedagogy and educational ethics must also be confronted in an intelligent approach to the issue.

(describing prior efforts at collaboration between the academy and the profession on professional values) [hereinafter Bernstein-Baker & Baillie].

3. *Id.* at 70-75; *see also* Angela McCaffrey, *Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients*, in this Journal, at 77.

4. Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirements*, in this Journal, at 39.

5. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM 7 (1992).

6. ASSOCIATION OF AMERICAN LAW SCHOOLS, BEYOND THE CLASSROOM: SCHOLARSHIP & TEACHING IN THE SERVICE OF PUBLIC POLICY (flyer, Fall 1994) (describing AALS Mini-Workshop on Professors in the Profession: Skills and Values in Legal Education which addressed the "issues that arise in the dialogue between the academy and the profession about the teaching of practical skills and lawyering values").

This article focuses on the collaborative process by which the legal academy and the legal profession in Minnesota have begun to work together to increase the level of public service in the profession. We begin by sketching the professional and academic context in which the process occurs. This context is described in much greater detail in the other symposium articles. The legal profession has long espoused the ideal of service, but the academy balks at embracing a significant role in the transmission of that professional value. Without extensive analysis, we suggest that this disjunction arises from fundamental concerns about the academy's relationship to the profession, and its relationship to its students. We suggest that the characteristics of these educational issues strongly support using a collaborative model in the pursuit of greater congruence on this critical issue of professional values. We describe the effort we helped coordinate to begin such a partnership in Minnesota, which included a Symposium on the subject in the Spring of 1994. We summarize the dialogues that the Symposium produced and conclude with some observations on the future of this process in Minnesota.

Pro Bono and the Legal Profession

Though the legal profession has long conceived of itself as characterized by service to the public[7], that self-conception remained largely an aspirational ideal until the early 1980s. Since that time, four forces have converged to push the profession to translate that ideal into action.[8] First, in the early 1980s, the Reagan Administration reduced the funding of the Legal Services Corporation and menaced its existence.[9] At the same time, the Legal Services Corporation required legal services offices to facilitate programs for volunteer, pro bono services by private attorneys.[10] Many localities responded by gearing up volunteer lawyer programs and by developing funding mechanisms for the provision of

7. Bernstein-Baker & Baillie, *supra* note 2, at 52-57; Talbot D'Alemberte, *Pro Bono Service*, 19 LITIG., Fall 1992, at 3.

8. McCaffrey, *supra* note 3, text accompanying note 3 (describing the long history of volunteerism in Minnesota and emphasizing the dramatic growth in public service since the early 1980's).

9. McCaffrey, *supra* note 3, text accompanying note 52; Paul J. Bschorr, *Challenges For The Decade*, 18 LITIG., Summer 1991, at 1.

> As a result of cutbacks in government-subsidized legal-services programs and a lack of lawyers willing to provide free legal services to the poor, many courts and bar associations are now considering imposing various forms of mandatory pro bono participation.

10. Private Attorney Involvement, 46 Fed. Reg. 61,018 (1981) (requiring 10% of funding to be used for volunteer programs); Private Attorney Involvement, 50 Fed. Reg. 48,586 (1985); 45 C.F.R. § 1614.1 (1994) (increasing the amount to 12.5%).

legal services which essentially "taxed" the practice of law.[11] Second, the profession became increasingly alarmed at the level of dissatisfaction and disaffection within its ranks.[12] Third, in a perennial problem, the public, while valuing the rule of law and enjoying a myriad of legal rights, holds the law profession in low esteem.[13] Bar leaders see pro bono service as one possible remedy for the last two concerns.[14] Finally, vast numbers of the populace have legal needs that go unserved.[15] There is little prospect of public funding sufficient to meet that need.[16] These stark facts present an ethical imperative to a profession which characterizes itself as having a core value of service.[17]

Baillie and Bernstein-Baker's article in this issue traces the profession's evolving efforts to define the place of pro bono service as a professional value.[18] The Model Rules have moved to quantify the obligation and to focus it more clearly on the needs of low in-

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11. McCaffrey, *supra* note 3, text accompanying note 2 (describing the development of Interest on Lawyer Trust Accounts program (IOLTA) and filing fee surcharge funding mechanisms).

12. James E. Brill, *The Secret of Success: Need Balanced Lives, Not Necessarily More Billable Hours*, 78 A.B.A. J., Oct. 1992, at 100 ("Dissatisfaction abounds" among lawyers. One survey of recent law school graduates found that "only 63 percent would again choose to be lawyers and that 47 percent of the women and 42 percent overall were considering leaving the profession. Another study of lawyers of all ages indicated that only 31 percent were more than somewhat satisfied with the way their work lives meshed with their personal lives, and 59 percent did not predict any improvement.").

13. Gary A. Hengstler, *Vox Populi, The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J., Sept. 1993, at 60 (describing "comprehensive survey" of public perception of the legal profession, which found, *inter alia*, "strongly rooted dissatisfactions with some aspects of the way the system works and how lawyers practice their skills").

14. *See id.* at 61 (public opinion survey identified the provision of pro bono services as the most commonly mentioned factor improving the respondent's perception of lawyers).

15. At the Symposium, Jeremy Lane, Executive Director of Mid-Minnesota Legal Services, estimated that almost 200,000 low income people in Minnesota are adversely affected each year by the unavailability of legal services. *See* introductory quotation to this article.

16. McCaffrey, *supra* note 3, at 86-88.

17. Robert B. McKay, *The Road Not Traveled: Charting The Future for Law, Law Schools and Lawyers*, 76 A.B.A. J., Nov. 1990, at 76-77:

> Current resources for civil legal services to the poor amount to an estimated annual total of about $500 million to $1 billion, adding together the resources of the Legal Services Corporation, state and local funds, and the value of contributed legal services. This amount is far below the minimum standard based long ago on two lawyers per 10,000 indigents. In a nation as rich as the United States, this deplorable showing is an absolute disgrace. Until government fulfills its obligation, mandatory pro bono must be seriously contemplated.

18. *See* Bernstein-Baker & Baillie, *supra* note 2, at 51-62 (describing the evolution of this value in the profession).

come persons.[19] A small number of states have imposed mandatory reporting or service requirements.[20] Many states have taxed the profession in some way to support and facilitate the provision of legal services to low income persons. Thus, the past ten years have seen a proliferation of IOLTA and filing fee schemes to fund legal services while many bar associations and legal services programs run highly sophisticated volunteer lawyer pro bono programs.[21] At a local level, the Minnesota Bar Association has promulgated model pro bono policies for use by law firms.[22] A small but growing number of law firms devote substantial resources and organizational capacity to provide pro bono services in a focused, highly competent manner.[23]

Despite the size of this effort (some sources report 900 pro bono programs nationwide[24]) only a fraction of all lawyers engage in uncompensated service to the poor.[25] It is only natural, then, that the profession would look to the academy as the most significant "socializing" agent in the production of public service values in new lawyers.[26]

Pro Bono and Legal Education

Law schools have not rushed massively to embrace the call by the profession to increase the salience of the value of pro bono service. Of the 158 law school members of the Association of American Law Schools, only a score have a required portion of their curricu-

19. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993).

20. Bernstein-Baker & Baillie, *supra* note 2, at 61-62; Mark Hansen, *Reporting Pro Bono: Fla.'s Requirement Could Lead to Blacklisting, Some Say*, 79 A.B.A. J., Oct. 1993, at 16 (describing Florida's mandatory pro bono reporting requirement). D'Alemberte describes a "comprehensive" approach to pro bono in Florida, involving judicial appointments of lawyers to handle, on a voluntary basis, pro bono cases, along with mandatory reporting of pro bono work. D'Alemberte, *supra* note 7, at 4, 56-57.

21. McCaffrey, *supra* note 3, at 88-93.

22. McCaffrey, *supra* note 3, text accompanying notes 81-84.

23. George H. Hettrick, *Doing Good: How One Law Firm Started A Low-Fee Branch Office To Help Those In Need*, 78 A.B.A. J., Dec. 1992, at 77. *See generally* D'Alemberte, *supra* note 7, at 4, 56 (summarizing significant efforts at encouraging pro bono nationwide).

24. D'Alemberte, *supra* note 7, at 3.

25. *Id.* ("the vast majority of lawyers today perform little or no pro bono service for the poor"). Durham's article asserts that only one in six attorneys is providing pro bono services. Durham, *supra* note 4, at 39. Participants at the symposium suggested that fewer than half of Minnesota's lawyers provide pro bono services.

26. *See* Bernstein-Baker & Baillie, *supra* note 2, at 62-74.

lum which focuses on instilling this value in students.[27] Slightly more have voluntary pro bono programs.[28]

In some ways, the disjunction between the profession's self-conception and the academy's response is stunning. If, indeed, service is a central value of the profession, why is it that law schools, in the main, have not embraced that value concretely in their curricula? Any effort to transform legal education's stance toward the value of service must attempt some account of this disjunction.

In our view, two central themes account for the academy's stance. The first has to do with the academy's notion of its relationship to the profession; the second, with its concerns about its relationships with its students.

First, legal education, as a general matter, holds itself at some distance from legal practice.[29] That posture arises in part from the supposed disjunction between theory and practice, and the primacy of the former as a subject worthy for university education.[30] Teaching students the values of practice falls decidedly into the dispreferred category.[31] A more legitimate reason for this posture is the role of critique in legal education. The legal academy, if it follows its highest calling, does not simply transmit the received wisdom of the

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27. Durham identifies 20 law schools which require some public service as a condition of graduation. Durham, *supra* note 4, at 40-41.

28. *Id.* (identifying 36 schools with voluntary programs). Bernstein-Baker & Baillie report a recent survey which shows 63 schools reporting some form of extracurricular pro bono program. No definition of "pro bono" was supplied. Bernstein-Baker & Baillie, *supra* note 2, at 68. *But see* William B. Powers, REPORT ON LAW SCHOOL PRO BONO ACTIVITIES, A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 1-2 (1994) (In a survey in which 172 of 177 ABA approved law schools responded, 103 of the schools indicated "having some kind of pro bono program already in place." This survey showed that 17 schools had programs which are or soon would be "mandatory," and 31 schools reported pro bono programs which are "an elective component of the curriculum for credit.").

29. Bernstein-Baker & Baillie, *supra* note 2, at 72-73.

30. Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577 (1987) (Legal education divides "things into the theoretical and the practical: the main tent and the sideshow"); Carrie Menkel-Meadow, *Review Essay: Too Little Theory, Too Little Practice? Steven's Law School*, 1985 AM. B. FOUND. RES. J. 675 (arguing for a reconciliation of the problematic nature inherent within the "mixed mission of legal education"); Walter Probert & Louis M. Brown, *Theories and Practices in the Legal Profession*, 19 U. FLA. L. REV. 447 (1966-67); Stephanie B. Goldberg, *Bridging the Gap: Can Educators and Practitioners Agree on the Role of Law Schools In Shaping Professionals? Yes and No*, 76 A.B.A. J., Sept. 1990, at 44-45, quoting Robert MacCrate:

> When I was in law school over 40 years ago, I heard nothing of what you describe as professionalism. It simply was not taught. Law schools considered it beneath their dignity.

31. Of course, the *practice* of legal education, in contrast to its self-articulated theory, is shaped in fundamental ways to serve the profession. *See, e.g.*, THOMAS H. SHAFFER, FAITH AND THE PROFESSIONS 244 (1987) (describing the "sorting" function of law schools).

practice, but rather assumes a critical stance from which it can measure current practice against a fundamental set of values and theories.[32] The legal academy, in this view of itself, may study the profession and teach about it, but its true mission is to maintain a stance apart from, and above, the profession. The aim of the academy is to develop powerful explanatory tools for the law and the profession, and to offer a critical view of the law and the profession. For the academy to embrace the value of public service *because* it is a value of the profession, then, would be to threaten this critical stance.

The second thread concerns the peculiarly problematic nature of "values education." "Values education" has as its goal the transmission to students of a particular set of values. The frank purpose of those who advocate pro bono programs in law schools is to transmit to students the professional value of service.[33] The process of "values education" is in some way similar to the general enterprise of legal education. To translate the value of public service into real action, after all, requires a lawyer to process legal knowledge and skills which are adapted to that purpose. But in other ways, "values education" differs fundamentally from the balance of legal education and presents problems of effectiveness and ethics which are unique. Values represent a core constituent of that which makes each person unique.[34] Transforming a person's values means changing who she is. If teachers indeed have the power to change their students' values (to "instill" in them the value of pro bono service), the use of this power invokes important questions of ethics.[35]

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32. Robert J. Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986) (arguing that new clinical formats must be created that provide time for "detached critical reflection"); Eric S. Janus, *Clinics and "Contextual Integration": Helping Law Students Put the Pieces Back Together Again*, 16 WM. MITCHELL L. REV. 463 (1990) (arguing that "clinical education helps students begin to integrate what they have learned of doctrine with the practical skills of lawyering in a way which is informed by a critical sense of values").

33. Bernstein-Baker & Baillie, *supra* note 2, at 61.

34. David Luban, *Paternalism and the Legal Profession*, 1981 WIS. L. REV. 454, 470 ("Values . . . are those reasons with which the agent most closely identifies — those that form the core of his personality, that make him who he is."). *See* Bernstein-Baker & Baillie, *supra* note 2, at 75 (suggesting that the ethos of public service must be "an integral part of [lawyers'] professional identity"). On the relationship between professional and personal identity *see* Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63, 75 (1980) and ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 19-20 (1959) (individuals maintain complex relationships between "self" and "role", "moving back and forth several times between sincerity and cynicism").

35. Some may argue that the ethics objection is merely academic because the value of public service is so benign and uniformly accepted. This is not the case. Though the abstract ideal may be widely espoused, its reduction to practice stirs deep controversy. *See* Bernstein-Baker & Baillie, *supra* note 2, at 59 (noting that

Collaboration: Towards an Ethical and Effective Pedagogy for Public Service

The path towards greater congruence of values between profession and academy requires collaboration and openness. The values of the profession, and of each lawyer who makes up the profession, are of legitimate interest to the profession as an organization, to the students who are to become its members, and to the schools that educate the students. Each has a stake in the choices law schools make about the values they teach.[36] And each has a stake in the way the values of the profession are continually reconstructed. It is through mutual, open and collaborative processes of educational design and method that the interests and autonomy of each of these parties will be best preserved.[37]

The authors are law school professors whose context for the work described in this article is a committee of the Minnesota Bar Association, the Legal Assistance to the Disadvantaged Committee. We wear two hats in our work. As legal educators, we are thinking about the transformation of our students' values. As lawyers and members of the Bar Association, we are thinking about transforming the values of the profession. Coming full circle, then, wearing both hats, our goal is to transform our educational institutions so that they develop new lawyers instilled with the values of public service.

It was clear to us, and to the group we worked with, that collaborative approaches to these tasks were the only legitimate approaches, and the approaches most likely to be effective.[38] Our core

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the debate about Model Rule 6.1 was "quite heated"). Hansen, *supra* note 20, at 16 (observing that a "bitter debate" surrounded Florida's adoption of a mandatory pro bono reporting rule. The Florida Bar's Board of Governors opposed the rule as "unnecessarily coercive" while supporting the aspirational goals encompassed in the rule.). Katharine T. Bartlett, *Teaching Values: A Dilemma*, 37 J. LEGAL EDUC. 519 (1987) (discussing the ethical issues involved in teaching values).

36. The actions of law schools around the issue of public service have a special impact on existing providers of public service law. In the long run, the quality of law graduates available to these employers may depend in a significant way upon the numbers of law students who are interested in, and educated for, this type of practice. In a more immediate sense, these organizations are often asked to supervise students who are engaged in a law school's pro bono program. Thus, they have an immediate interest in the existence and structure of any law school initiatives. Members of the public whose legal needs are unmet also have a stake.

37. DONALD A. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS (1987) (providing an example of mutual, open and collaborative education); CHRIS ARGYRIS & DONALD A. SCHON, THEORY IN PRACTICE: INCREASING PROFESSIONAL EFFECTIVENESS (1974) (providing a model for decision-making which is based on the same principles).

38. Alternate approaches would have involved a more frank use of power. Thus, one of the three Minnesota law schools could have initiated its own massive pro bono program, thus seeking to gain a competitive edge over the other two, both in the

working group was a subcommittee of the Minnesota State Bar Association's Legal Assistance for the Disadvantaged Committee. The subcommittee was formed to investigate initiatives which law schools could take to increase the level of services to low income persons in the state. This work would supplement the other work of the committee, which has involved a wide variety of initiatives, including legislative advocacy on behalf of legal services and the development of model pro bono policies to be used by law firms and government agencies.[39]

In 1993, the Law School Initiatives Subcommittee began to construct a strategy around pro bono and law schools. The problems and issues involved in that project are substantially different from those involved in the committee's previous projects. As discussed above, there are substantial ethical and pedagogical issues in developing an approach to public service in legal education. The subcommittee adopted an approach to the problem that involved collaborative work in a multi-level, multi-step process. The subcommittee organized itself into a collaborative, cross-institutional planning group. With representation from all three Minnesota law schools, the private bar, law students and the service provider communities, the subcommittee included voices from the majority of the stake holders in the process.[40] The subcommittee then designed a symposium which was to be a first step in the development of a plan to increase the role of the law schools in the production of an ethic of public service among new lawyers. The symposium was specifically advertised to key constituencies: law faculty, law students, bar leaders, service providers, and client groups.

In design, the symposium used a variety of educational formats. It began with a series of presentations to provide factual background information to the participants, and to suggest ways of framing the issues for discussion. The core of the symposium was small, participative working groups organized around key issues. These groups then reported back to the main body. A panel of deci-

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competition for students, and in terms of opportunities for internships for its students. Or, as members of a bar organization, we could have sought to influence the Bar to take a public stand on pro bono in law schools, thus embarrassing the schools into developing pro bono programs. Neither approach seemed likely to serve the ultimate aim effectively.

39. McCaffrey, *supra* note 3, text accompanying notes 84-87.

40. A shortcoming in the subcommittee's work was the absence of a direct client voice. *See* Ann Juergens, *Teach your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J. L. & PUB. POL'Y 339 (1993) (describing the importance of taking "clients' interests" into account in clinical teaching); SHAFFER, *supra* note 31, at 261 (advocating a presence for clients in the law school classroom).

sion-makers from the law schools and the profession reflected on the work of the groups.

To facilitate the symposium, we developed a list of core questions which, we concluded, needed to be addressed in working on the issue. The issues, each of which would be discussed in a "break-out" group in the symposium, were as follows:

> Is it a proper role for law schools to attempt to foster a particular set of professional values? Is pro bono service one of those values? How can it be transmitted to students effectively?
> Are there particular legal skills which form the foundation for effective pro bono work for poor people? What are they? Should law schools teach them? Should they insure that all of their students learn them?
> Should some sort of pro bono work be a requirement for graduation from Minnesota law schools?
> Should Minnesota's law schools insure that a pro bono experience is available for all students who want one?
> How should law school pro bono programs be structured? Who are the clients? Who insures quality services? How?
> How much would pro bono programs cost? How would they be financed?
> What are the curricular implications of a focus on pro bono? How do pro bono considerations relate to the MacCrate Commission's recommendations?

A Collaborative Design for Legal Education and Pro Bono Service

The Minnesota Symposium on Legal Education and Pro Bono was very much a *working* symposium. Members of the bar and the academy actively debated the questions posed above in an interactive format.[41] The crowning achievement of this dialogue were the reports of the break-out groups which are summarized below.

The break-out group reports, taken as a whole, establish a collaborative blueprint for creating and implementing a law school pro bono program. While this blueprint was created with reference to Minnesota and its three law schools, we believe that it more universally provides a design for instilling the value of service in legal education.[42]

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41. A more detailed list of questions was developed for the facilitators of the various break-out groups. This list of questions, along with the names of the break-out group facilitators, is set out in an Appendix to this article. *See* Appendix at 22-24.

42. For other articles discussing the appropriate goals and operations of a law school pro bono program, *see* Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993); Note, *Mandatory Pro Bono for Law Students: Another Dimension in Legal Education*, 1 J.L. & POL'Y 95 (1993); Note, *Law School's Pro Bono Role: A Duty to Require Student Public Service*, XVII FORDHAM URB. L.J. 359 (1989).

A. *Break-out Group 1 - Why Pro Bono? The Objectives of Developing a Pro Bono Policy*

The first break-out group addressed the reasons for developing a law school pro bono policy. This group was asked to define the objectives served by either encouraging or requiring pro bono in law school. A broad discussion led to the formulation of three general objectives.

First, the group found that pro bono in law schools can foster community service objectives by helping to reduce the unmet need for legal services. Each year, for example, approximately 200,000 low-income Minnesotans are unable to obtain legal representation.[43] Law students can help meet the needs of these individuals by working with legal service programs and volunteer lawyers. Law students, of course, are well trained to undertake basic legal research projects. And, with proper supervision,[44] they also can perform many other significant legal tasks, such as interviewing clients, investigating facts and preparing legal documents.

A law school pro bono policy, according to the group, also may help to reduce the unmet need by instilling a lifetime commitment to service. A small percentage of Minnesota's attorneys presently perform pro bono work. By engaging in pro bono legal services while in law school, students may develop a greater inclination to view pro bono work as an important and rewarding part of their legal careers.

In addition to these service objectives, the group also determined that a pro bono policy in law schools would fulfill a number of educational objectives. In this regard, the group felt that an important educational contribution of a law school pro bono program is to facilitate an examination of the role of justice in the legal system and the community as a whole. A pro bono experience would expose students to fundamental issues of justice in society and provide a valuable real-life context for class discussion.

The group thought that pro bono in law schools also may lead to an examination of the legal profession's ethical responsibility to respond to the needs of individuals who are unable to pay for legal services. Through pro bono service and class discussion, students

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43. Jeremy Lane, Executive Director of Mid-Minnesota Legal Services, made this estimate at the Symposium by extrapolating from the results of a recent nationwide study concerning the unmet need for legal services. *See also* AMERICAN BAR ASSOCIATION, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS 3 (1994). *See* introductory quotation to this article.

44. This break-out group, like a number of others, strongly expressed the need for adequate supervision to insure both high quality legal representation for clients and a meaningful educational experience for students.

can explore the meaning of Rule 6.1[45] and their ethical obligations as members of the legal profession.

The group also discussed the educational benefits of pro bono service in terms of developing students' professional skills. While interviewing clients and helping to resolve the legal problems of the poor, students gain valuable real-world experience unavailable in the classroom. Thus, a pro bono policy would assist law students in developing those lawyering skills that will enable them to represent clients, regardless of income level, after graduation from law school.

The final objectives of a pro bono policy identified by the group are to meet the needs of law students who desire to do service and to encourage others who may not realize the impact they can make. Many students come into law school with a passion for service. This passion often recedes, however, during the grind of the law school regimen and an atmosphere that appears to value other types of legal work more highly. A law school pro bono policy would provide students with the opportunity to perform pro bono work while also sending an institutional message underscoring its importance.

A pro bono policy, the group thought, might also mobilize students who otherwise would not recognize the impact they can make. Some students do not come into law school predisposed toward doing service. A pro bono policy might enable these students to realize their ability to make a difference and provide an incentive for future service.

This break-out group clearly believed that a pro bono policy would serve several important objectives[46] and that law schools should be encouraged to adopt such policies, whether mandatory or voluntary in nature. The group also concluded that law school is a particularly appropriate forum for the adoption of a pro bono program because of its role in preparing students for entry into the legal profession.

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45. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993)(suggesting a 50 hour annual minimum level of pro bono service and setting forth a hierarchy among the services qualifying as pro bono work); MINNESOTA RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1993)(recommending that a lawyer should render public interest legal service by performing pro bono legal work, by working to improve the law, the legal system or the legal profession or by financially supporting public interest legal organizations).

46. The group concluded that these objectives were equally important and did not attempt to rank them in any order.

B. Break-out Group 2 - Mandatory, Voluntary, or What? The Threshold Question for a Pro Bono Policy

The second group discussed the issue of whether a mandatory or a voluntary pro bono program is preferable. This group considered the relative pros and cons of mandating student participation in a pro bono program while weighing the educational importance of pro bono and its impact on clients.

The group reached a consensus that the objectives served by pro bono service are sufficiently important to make participation a mandatory requirement in law school. The group considered two objectives to be dispositive. First, mandatory pro bono would instill a desire in law students to do pro bono work during and after law school. Second, a mandatory program would instruct students in the development of those lawyering skills necessary to represent clients in an effective and responsible manner. These objectives, according to the group, warrant implementation of a pro bono program that extends to all law students.

Despite the group's conclusion that a pro bono program should be mandatory in law school, it recognized and considered a number of concerns with such a program. The group first discussed the possibility that a mandatory program may quash, rather than instill, a desire for service. Some students may feel forced into such activities and develop an aversion to pro bono work. Additionally, involuntary participants may have less than a full commitment to provide high quality legal services. Conference participants suggested that this potential problem could be ameliorated by appropriate levels of supervision and by making the pro bono experience one that earns credits or grades. Overall, the group felt that these concerns were not sufficiently serious to threaten either individual motivation to do pro bono work in the future or the quality of client representation in the present.

Another concern expressed by some group members was that students may not have the time available to fulfill a pro bono requirement. Students often must balance jobs, course work and family responsibilities, leaving little time for public interest work. Conference participants pointed out that a sufficient variety of pro bono placements could be arranged to accommodate student schedules, particularly if law schools and placement agencies work together to make service opportunities available during evenings and weekends. The time factor would also be lessened if law schools provide credit for pro bono work, thereby freeing time that otherwise would be spent on course work. The general sense of the group, comprised primarily of students and recent graduates, was

that the benefits of a pro bono requirement would outweigh the relatively minor time burdens that such a requirement would impose.

The group also noted that a mandatory program would require more administrative and supervisory resources due to the greater number of students that would be involved. Although recognizing the importance of cost issues in deciding whether to adopt a voluntary or a mandatory program, this group deferred consideration of this factor to the break-out group generally charged with considering the financing topic.[47]

As a final concern, some conference participants suggested that a mandatory pro bono requirement should begin, if at all, with lawyers rather than law students. These participants pointed to the greater lawyering skills and financial resources possessed by members of the practicing bar. The consensus of the conference, however, was that a pro bono requirement is appropriate in law school, independent of its appropriateness for the profession in general, by virtue of its educational value and the importance of developing a commitment to legal service at the beginning of one's career.[48]

This working group concluded that a mandatory, rather than a voluntary, student program would best meet the objectives of a pro bono policy. The group analyzed the various difficulties related to the adoption of a mandatory program, but found that they were outweighed by the benefits of universal participation.

C. *Break-out Group 3 - The What, How and Who of Structuring a Pro Bono Program*

The third break-out group addressed issues involving the structure and operation of a pro bono program. The group focused on defining the components of such a program and how those components should be administered.

First, the group discussed the definition of qualifying pro bono activities. The group concluded that any definition should be broad, incorporating most law-related services performed by students. A broad definition, the group noted, would allow for a variety of placements and distribute the supervisory role and its accompanying costs to many agencies. Additionally, a broad definition would allow students to choose placements in which they are interested and

47. *See infra* pp. 17-19.

48. A related question, left unanswered by the conference participants, is whether law school faculty members should be required to fulfill a pro bono requirement similar to that of students.

which, in turn, would increase their commitment to providing high quality legal services.

The group's proposed definition of pro bono service, however, would require the work to be legal in nature. While direct legal services to low-income people would clearly qualify, volunteer work of a purely civic or religious nature would not. Less direct legal work, such as teaching a class at a local high school, could also satisfy the pro bono requirement, if the teaching furthered the policy objectives of decreasing the unmet need for legal services by educating students about that need.[49] As a general standard, the group felt that service which utilizes skills acquired through legal education and which promotes the goal of reducing the unmet need for legal services should qualify under a pro bono program.

The group agreed that law school clinical work should count toward a pro bono requirement for several reasons. First, most clinics represent low income clients, which itself is one of the primary goals of a pro bono program. Second, the clinics provide focused training in fundamental lawyering skills. The development of these skills will enable students to perform pro bono work throughout their careers.[50] Third, law school clinics provide close supervision of student legal work, a concern expressed by many conference participants. Finally, because a high percentage of law students in Minnesota already participate in clinics, implementation of a mandatory program would be considerably easier to accomplish if clinical work counted toward the pro bono requirement.

The group suggested that a desirable pro bono model would encompass elements traditionally associated both with law school clinics and with community pro bono work. Ideally, the group felt, students should receive classroom training in those skills necessary to do pro bono work in the field.[51] A classroom component also would provide a forum for discussion and reflection upon the stu-

49. The group used the example of a student's volunteer position at the Securities and Exchange Commission to illustrate a type of work that fails to qualify as pro bono service because it does not further the policy objective of reducing the unmet need for legal services. Transcript of group discussion at 166 (on file with authors).

50. The training students receive in law school clinics should assist future lawyers in performing pro bono work regardless of their eventual area of specialization. For example, a student may develop the requisite skills necessary to perform pro bono family law services in a clinic, even if she later specializes in some other practice area, such as probate or commercial law.

51. The group also discussed the need for classroom exposure to substantive issues common to pro bono legal work, such as housing, government benefits and family law.

dents' fieldwork experiences. The group expressed concern, however, about the cost of implementing such a classroom component.[52]

The envisioned pro bono model also would include a fieldwork component in which students perform legal work under supervision. The break-out group suggested that the preferred approach would be for legal service providers in the field and clinic faculty in the school jointly to supervise and oversee student work performance. The group felt that this model would best provide guidance to students and competent legal work for the clients they serve.

The group's proposed pro bono model would award academic credit for student work in a pro bono program. Like the group which focused on the issue of whether to adopt a mandatory or a voluntary program,[53] this group thought that graded academic credit would best facilitate student commitment to providing high quality legal services.

The group considered, but did not decide, the amount of time that students should be required to devote to pro bono service. The group believed that twenty hours, the amount required by a number of existing programs,[54] was an insufficient period of time. Twenty hours of service, according to the group, may not be enough time for students to develop the skills and knowledge necessary to deliver useful services to the community.[55] In addition, the group questioned whether twenty hours of service would be enough to expose students to an in-depth experience that would promote the objectives of a pro bono program. The group concluded that a requirement in excess of twenty hours would be desirable.

The group's proposed model pro bono program would require the administration of a coordinated effort to link law school training with a wide variety of desirable fieldwork opportunities. The administrative organization would be responsible for finding appropriate placements, insuring adequate supervision and tracking students' hours.

Most existing pro bono programs are administered internally by employees of the sponsoring law school. An attractive alternative in Minnesota is to build upon the existing structure of the Min-

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52. The group left the issue of financing a program to another break-out group. *See infra* pp. 17-19.

53. *See supra* pp. 13-14.

54. JASON ADKINS ET AL., CAMPAIGNING FOR A LAW SCHOOL PRO BONO REQUIREMENT App. B (Nat'l Ass'n for Pub. Interest L. 1990).

55. One source estimates that the average pro bono case requires approximately 10 hours of legal work. *Id.* at 22.

nesota Justice Foundation (MJF)[56] which currently coordinates pro bono placements for students at all three Minnesota law schools. The group felt that a tri-school cooperative arrangement with MJF to administer a state-wide program would likely be less expensive and more efficient than creating three separate and, to some extent, competing programs.

The group concluded that the establishment of a pro bono program will require a coordinated effort between law schools and nonprofit legal services agencies. The group stressed that whatever the program's structure, a well-defined set of rules must set out the respective commitments and expectations of the students, law schools and supervising attorneys. The most desirable program, according to this break-out group, would include both classroom training and community pro bono service elements. In addition, an administrative entity will be necessary to coordinate these elements and insure adequate supervision of students' work.

D. Break-out Group 4 - Financing a Pro Bono Program

The fourth break-out group discussed the financial aspects of starting a pro bono program. The group focused primarily on how much it would cost to start a program and the possible sources of funding.

The cost to a law school of administering a mandatory pro bono program currently runs in excess of $100,000 per year.[57] Voluntary programs that facilitate but do not require student pro bono work are generally less expensive. While this break-out group did not reach a consensus on how much a program would cost in any of Minnesota's three law schools, the members agreed that a program could be administered at an appreciably lower cost by building upon Minnesota's existing high level of pro bono activity.

Minnesota law schools should be able to fund a pro bono program at less than the $100,000 norm by incorporating existing clinical programs and the Minnesota Justice Foundation's (MJF) volunteer placement services. At the University of Minnesota Law School, for example, student participation in either a client-based

56. MJF is a nonprofit organization of Minnesota law students and attorneys whose mission is to facilitate the delivery of pro bono legal services on behalf of low income individuals. *See* A.B.A. & NAPIL, PRO BONO IN LAW SCHOOLS 5-11 (1991)(describing the MJF program).

57. Note, *Mandatory Pro Bono for Law Students: Another Dimension in Legal Education*, 1 J.L. & POL'Y 95, 105 (1993) (reporting that Tulane spends approximately $125,000 per year and the University of Pennsylvania spends approximately $115,000 per year on their respective pro bono programs).

clinic[58] or a volunteer pro bono project[59] is estimated to encompass sixty-five to seventy-five percent of the student body. As a result, it was suggested that even a mandatory program would require only a commitment of additional resources with respect to the remaining twenty-three to thirty-five percent of students.

This break-out group also discussed potential funding sources for a pro bono program. The group, noting the high cost of legal education, especially at private law schools,[60] did not favor funding pro bono programs solely by tuition increases. Rather, the group supported a combination of tuition increases and a reallocation of law school resources. A reallocation of resources, the group acknowledged, raises concerns with respect to competing programs. While many of these other programs are worthwhile, the group believed that the value of a pro bono program warrants some diversion of existing resources.[61]

The group also suggested that a pro bono program should tap outside funding sources such as law firms, foundations, federal grant programs and IOLTA surcharges. While discussing the possibility of outside funding, the group expressed concern about competition between law schools and legal services providers for these sources of funding. The group feared that aggressive fundraising by the law schools for pro bono programs would leave less money available for legal services providers. The group favored a cooperative effort by the law schools and legal services agencies to expand the pool of available resources, rather than competing for the same scarce funds.

The group suggested that one way to lower field placement costs would be for law firms to contribute supervisory resources. The group cited the ABA Pro Bono Challenge, by which firms agree

58. Approximately 55% of University of Minnesota Law School graduates participate in one or more client-based clinics. During the 1992-93 school year, 328 students enrolled in 13 clinic courses. *See* UNIVERSITY OF MINNESOTA LAW ALUMNI NEWS 4 (Spring 1993). These students opened approximately 600 new cases and provided more than 17,000 hours of free legal services. *Id.*

59. During the 1992-93 school year, 179 students at Minnesota's three law schools, in combination with 169 volunteer attorneys, provided 6,269 hours of free legal services through MJF's pro bono programs. Interview with Theresa Murray Hughes, Executive Director of the Minnesota Justice Foundation, in Minneapolis, MN (Dec. 13, 1994).

60. The group also discussed the high cost of pro bono service to students in terms of time. This concern primarily centered on part-time and working students, who, the group felt, should not be required to pay more tuition in addition to the existing cost of their time. *See supra* pp. 13-14 (discussing time availability concerns in a mandatory pro bono program).

61. This break-out group felt that while pro bono is a very important issue, the law schools also must provide adequate funding for other important programs. The group mentioned scholarship funds as an example of such a competing program.

to contribute a percentage of their annual billable hours to pro bono work, as a possible incentive for greater law firm involvement.[62]

In a somewhat different cost context, the group discussed the cost to legal services providers of supervising students. The group noted that a significant factor in the amount of time that field supervisors must devote to their supervisory role is the extent of prior training by the law schools. The group generally supported more pre-placement training at the law school level, thereby enabling the field supervisors to devote the bulk of their supervisory time in the context of direct client representation.

This break-out group concluded that Minnesota law schools should be able to implement a pro bono program more economically than has been the experience at many other law schools. The Minnesota schools have the advantage of a substantial existing base of clinical courses and pro bono placement programs. Because the MJF program is already in place at all three schools, one particularly cost effective model would be for the law schools to contract with MJF to expand its pro bono efforts. Funding for this expansion, the group concluded, should come from a combination of tuition increases, a reallocation of law school resources and from outside sources, such as private law firms.

E. Break-out Group 5 - Pro Bono and the Law School Curriculum

This break-out group considered the issue of integrating a pro bono program into the existing law school curriculum. Specifically, this group addressed the role of poverty and justice issues in the classroom and pro bono's relationship to the remainder of the law school curriculum.

The group believed that a pro bono program should be integrated with the broader law school curriculum. The group thought that faculty and students might view a stand-alone program as less valuable than other law school courses or programs. Accordingly, the group favored integrating pro bono in the traditional curriculum in order to underscore its importance and best accomplish its goals.[63]

The group felt that the issues of poverty and the role of the justice system in confronting these issues should be addressed

62. As an example, during the 1993-94 school year, the Minnesota-based Dorsey & Whitney firm donated the time of an associate who supervised the Asylum and Refugee Law Clinic at the University of Minnesota Law School.

63. The break-out group also noted that a classroom component would aid the perceived legitimacy of a pro bono service program.

throughout the curriculum. For example, a modern real estate course could explore low income housing issues, while an ethics course could examine the role of the legal profession in reducing the unmet needs for low income legal services. Similarly, law professors could use cases and hypotheticals dealing with poverty issues to teach traditional legal concepts. This integration of poverty issues in the overall law school curriculum, the group concluded, would do much to diminish the traditional over-emphasis on issues concerning commerce and wealth.

The group supported the introduction of poverty and justice issues in the first year of law school. Programs in many law schools do not expose students to pro bono issues until the second or third year. This break-out group noted, however, that the traditional first year curriculum conveys a powerful message to students about the role played by law and lawyers in society. Accordingly, the group felt that first year courses in traditional subject matters should include pro bono issues that would increase students' sensitivities to the legal problems of the poor.

Finally, the group discussed the need for law school courses that provide instruction in the substantive legal areas affecting the poor. The group felt that the traditional law school curriculum does not adequately prepare students for the types of issues that they may face when providing pro bono service. As a result, students, and ultimately future lawyers, may decline to participate in pro bono service efforts or may provide less than adequate representation if they do. Courses in poverty law, low-income housing, government benefits and family law would assist in preparing these future lawyers to engage in pro bono service.

This break-out group favored a pro bono program integrated into the law school curriculum, beginning with traditional first year courses. In addition, the group supported classroom exposure to substantive issues common to pro bono legal work.

Conclusion

The Minnesota Symposium on Legal Education and Pro Bono was a unique collaborative effort. It is among the first attempts by legal educators, the practicing bar and providers of legal services to debate jointly the role of public service in law school on a state-wide basis. The symposium not only initiated discussion of the design for a model pro bono policy, it also initiated discussion of a model partnership between the profession and the academy with respect to the shared issue of professional values.

The collaborative energy generated by the symposium continues to produce tangible results. The articles appearing in this issue are one example. Another is the creation of a new Public Interest Law Consortium by the University of Minnesota Law School, William Mitchell College of Law and the Minnesota Justice Foundation. This consortium has implemented a combined law school clinic/community pro bono service program similar to that recommended by symposium participants.[64] In addition, the Law School Initiatives Subcommittee is building upon the symposium by drafting a statement of principles for a model law school pro bono policy. Most importantly, however, the symposium has established a link between legal educators and legal practitioners that will continue to explore and foster the professional value of service.

64. The Public Interest Law Consortium (PILC) is funded, in part, by a grant from President Clinton's Learn and Serve America program. In the PILC program, students from each law school enroll for credit in a clinical course that provides both classroom instruction and field work experience in public interest representation. Weekly class sessions explore the role of the public interest lawyer, the attorney-client relationship, and basic interviewing and counseling skills. Each student also works on a structured public interest project under the supervision of a practicing public interest attorney. During the 1994-95 school year, 36 students have participated in the PILC program.

Appendix
Break-Out Groups

(A) Objectives of a Pro Bono Policy

Facilitators: Justice Rosalie Wahl, Minnesota Supreme Court; Sally Scoggin, Briggs and Morgan

Issues: 1. What objectives are served by encouraging or requiring pro bono in law school?
a. Expose students to the poor.
b. Reduce unmet need for legal services.
c. Promote ethic of public service.
d. Develop skills and competencies to handle pro bono cases.
e. Others?
2. Are some objectives more important than others?
3. Is law school the right place to attempt to meet these objectives?
4. Is pro bono the right method to attempt to meet these objectives? What about clinics? professional responsibility courses?

(B) Mandatory, Voluntary, or What?

Facilitators: Ed Cassidy, Johnson, Lynn & Associates; Peter Knapp, William Mitchell College of Law

Issues: 1. Are the objectives of pro bono worth promoting by law schools in some formal way?
2. Are the objectives so important that pro bono service should be mandated as a condition of graduation?
3. What are the respective pros and cons of mandatory and voluntary programs?
4. What about the impact on clients if reluctant students are forced to work on their cases?
5. What about pro bono service for faculty?

(C) Structuring a Pro Bono Program

Facilitators: Stephen Befort, University of Minnesota Law School; Theresa Murray Hughes, Minnesota Justice Foundation; Peggy Russell, Minneapolis Legal Aid

Issues: 1. How should pro bono service be defined?
a. Only direct legal services to the poor?
b. Teaching "street law" at an inner city high school?
c. Volunteering as a big sister/brother?

2. Should law school clinical work count toward a pro bono requirement? Should pro bono service earn law school credit?
3. How should a pro bono program be administered?
   a. Finding appropriate pro bono opportunities.
   b. Linking students with opportunities.
   c. Ensuring adequate student supervision.
4. Who should administer a pro bono program?
   a. Law school administrators?
   b. Minnesota Justice Foundation?
   c. Other ideas?
5. Should a pro bono program have a classroom component? If so, what should it look like?
6. How much time should be required for pro bono service in a mandatory program?
7. What is the perspective of the legal services provider?
   a. Can the necessary number of projects be accommodated?
   b. What is the benefit/burden equation with respect to supervising students?
   c. What training of students or supervisors is desirable?

(D) FINANCING A PRO BONO PROGRAM

Facilitators: Matthew Downs, William Mitchell College of Law; Peter Thompson, Hamline University School of Law

Issues:
1. Is financing increased pro bono service doomed in a climate of shrinking law school resources?
2. How much would it cost to adopt a mandatory pro bono requirement (Penn—$115,000/year; Tulane—$125,000 year)?
3. How much would it cost to provide a pro bono opportunity to every student who wants one?
4. Can Minnesota do this more economically by building on the existing base of clinic and MJF programs?
5. Who should pay for a pro bono program?
   a. Students, by higher tuition?
   b. Law schools, by diverting funds from other programs?
   c. Are there other potential sources for funding, i.e., foundations, the bar, the legislature?

(E) PRO BONO AND THE LAW SCHOOL CURRICULUM

Facilitators: James Coben, Hamline University School of Law; Ann Juergens, William Mitchell College of Law; Maury Landsman, University of Minnesota Law School

Issues:

1. Are the educational goals of law schools furthered by the adoption of a policy that either mandates or encourages pro bono service? How?
2. Don't in-house clinics generally provide better instruction and supervision than ad hoc pro bono experiences?
3. What relationship should pro bono have to the remainder of the law school curriculum?
   a. Free-standing program.
   b. Explicitly linked with other courses and clinics.
4. Should pro bono be brought into the classroom? As a classroom component to a pro bono program? In other courses? How?
5. Will a pro bono program have any likely effect on issues of diversity in law school?
6. How does the adoption of a pro bono policy relate to the recommendations of the MacCrate Report, which calls on law schools to play a larger role in the development of the skills and values of the legal profession?