

Fostering a culture of pro bono among law school faculty: a US perspective

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Synopsis

While arguments that law school faculty should adhere to the same pro bono ethical obligation as lawyers is well established today, what that entails is not.¹ This could be contributing to the reason why the rate of pro bono work among faculty members is less than ideal. In seeking to identify pro bono opportunities in which a law school could engage, this chapter will be divided into six parts.

The chapter begins by outlining the history of pro bono culture among law school faculty. It will then identify pro bono opportunities for faculty members who are also licensed within their jurisdictions. The next part of the chapter identifies pro bono opportunities both for faculty members working at law schools who are not themselves licensed lawyers as well as those law school faculty which are licensed but do not wish to engage in work (eg, litigation) requiring admission to practice. This is followed by a discussion about the possibility of making monetary contributions instead of engaging in pro bono work, concluding that financial contributions should not discharge a faculty member's ethical duty to practice pro bono work but can, sometimes, stand in lieu of pro bono work, based on the individual circumstances each year. The penultimate part of the chapter discusses ways to motivate faculty members into committing to pro bono service. The final part discusses ways to motivate law schools to encourage faculty member involvement in pro bono work.

While the focus of this chapter is on law schools in the US, given the historical roots and ample examples of public interest work, what is outlined is applicable to all jurisdictions.

Introduction

Ensuring access to justice for all and promoting respect for the rule of law are vital for the eradication of poverty. Currently, pro bono representation is one of the most critical ways to promote the rule of law and ensure that the needs of the poor and the under-represented are met, through upholding their personal and financial interests, and avoiding exploitation.² Engaging in pro bono legal services strengthens the public's confidence in the

¹ See Erwin Chemerinsky, *A Pro Bono Requirement for Faculty Members*, (2004) 37 Loy L A L Rev 1235, 1244. '[M]any faculty members would like to do more pro bono work, but do not know how'.

² Robert Granfield and Lynn Mather, *Private Lawyers and the Public Interest: The Evolving Role of Pro bono in the Legal Profession* 8 (Oxford University Press 2009).

legal profession and promotes seeking access to those services.

In recognising the importance of pro bono work, the International Bar Association (IBA) has called on ‘lawyers, law firms and bar associations to provide pro bono legal service [...] on a consistent year-round basis, in all manner of criminal, civil and administrative matters where legal aid may be limited and on a national and international level [...]’³

The United Nations has also recognised the importance of serving the public interest and ensuring access to justice for all in its adoption of the Basic Principles on the Role of Lawyers (the ‘Basic Principles’).⁴ The Sixth Basic Principle reads: ‘Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer [...] in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services’.⁵ Although the Basic Principles are not binding, the International Covenant on Civil and Political Rights (ICCPR), which is binding on 173 States Parties,⁶ reiterates the importance of equality before the judiciary with a more expansive scope.⁷ While the Basic Principles apply in the context of criminal proceedings,⁸ Article 14 of the ICCPR sets out both general and specific obligations with respect to access to justice, most notably the ICCPR expressly guarantees legal assistance in criminal cases but also encourages free legal aid in civil cases for those who cannot afford it.⁹

Similarly, many bar associations have also stressed the importance of serving the needs of the poor and marginalised, especially in the wake of Covid-19. For example, the Georgian Bar Association has launched a collaborative initiative with the Council of Europe to provide free legal services for single parents affected by Covid-19.¹⁰ The American Bar Association (ABA) has created the ABA Coronavirus (Covid-19) Task Force of volunteer lawyers and judges to address the US public’s current legal needs.¹¹

More generally, in Japan, specific local bar associations *require* lawyers who are members of bars in these districts ‘to perform mandatory public interest service’.¹² In nations without compulsory pro bono requirements, the pro bono culture is still strong. In 2012, Spain hosted the European Pro Bono Forum, which gave rise to a pro bono culture in Spain

3 IBA, Pro Bono Declaration (16 October 2008).

4 UN, Basic Principles on the Role of Lawyers (7 September 1990).

5 *Ibid.*

6 UN Treaty Collection, *Status of Treaties: International Covenant on Civil and Political Rights* (19 August 2020), see https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mdsg_no=IV-4&src=IND accessed 3 January 2021.

7 G A Res 2200A (XXI), ICCPR, Art 14, 16 December 1966; Human Rights Committee General Comment No 32: Right to Equality before Courts and Tribunals and to a Fair Trial (Art 14), UN Doc CCPR/C/GC/32 (2007) (General Comment No 32).

8 Basic Principles on the Role of Lawyers, see n 4 above.

9 ICCPR, see n 7 above; General Comment No 32, see n 7 above.

10 Council of Europe, *Council of Europe is supporting the Georgian Bar Association to provide pro bono legal services for financially vulnerable single parents*, COE (10 July 2020), www.coe.int/en/web/tbilisi/-/council-of-europe-is-supporting-the-georgian-bar-association-to-provide-pro-bono-legal-services-for-financially-vulnerable-single-parents accessed 3 January 2021.

11 ABA, The ABA Coronavirus (Covid-19) Task Force, see www.americanbar.org/advocacy/the-aba-task-force-on-legal-needs-arising-out-of-the-2020-pandem accessed 19 August 2020.

12 Latham & Watkins LLP, ‘A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions’, (August 2012) ‘*Pro Bono Inst*’ see www.probonoinst.org/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf accessed 3 January 2021.

and Spanish-speaking countries.¹³ Spain's Constitution provides a mandated right to legal aid, which is further complemented by the General Council of the Spanish Bars and the local bar associations.¹⁴ Because of this, the Spanish legal community distinguishes between pro bono for charities and non-governmental organisations (NGOs) and legal aid for individuals.¹⁵ Because Spain has an incredibly strong, constitutionally mandated access to justice facilitation, the concept of pro bono there is rather new.¹⁶ In recent years, Spain has nevertheless expanded its pro bono efforts and, in 2018, the Pro Bono Spain Foundation was formed, with the purpose of strengthening commitment to pro bono in Spain and Spanish-speaking countries.¹⁷ Like Spain, there is no compulsory pro bono service requirement in the US.

The ABA's Model Rule 6.1 states that: 'A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year'.¹⁸ While merely aspirational and not a mandatory requirement, lawyers are nonetheless ethically obliged to and should take on pro bono work.¹⁹ Many, if not all, law firms across the legal community recognise the importance of pro bono practice, such that many lawyers do provide legal services without a fee for those who are unable to pay or on behalf of NGOs and so on. Each year, the Law Firm Pro Bono Project of the Pro bono Institute in the US, for example, challenges large law firms to honour their commitment to pro bono work.²⁰ In 2018, it was reported that 128 firms represented an aggregated total of over five million hours of pro bono work.²¹ Today, the pro bono culture is well documented among law firms outside the US; it has expanded to many countries, across all continents. In fact, a study conducted in 2012 surveyed 71 nations with a strong or emerging pro bono culture, indicating that the culture of pro bono among law firms has become increasingly widespread.²² In recent years and especially amid the Covid-19 pandemic, the number of lawyers across nations are increasingly engaging in pro bono work.

In face of the widespread practices of pro bono legal services among legal professions, it is imperative to instil this value among law students. Therefore, in the law school setting, compulsory pro bono graduation requires that pro bono clinics are set up so as to ensure

13 Latham & Watkins, 'Pro Bono Practices and Opportunities in Spain' (4 September 2015) *Pro Bono Inst* www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-spain.pdf accessed 3 January 2021.

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 'The Pro Bono Spain Foundation Is Born', *Lawyers in Barcelona* (17 July 2018), www.lawyers-in-barcelona.com/civil-law/the-pro-bono-spain-foundation-is-born accessed 3 January 2021.

18 ABA, Model Code of Professional Responsibility, 6.1 (1983).

19 Nadine Strossen, 'Pro Bono Legal Work: For the Good of Not Only the Public, but Also the Lawyer and the Legal Profession' (1993) 91(8) *Mich L Rev* 2122, 2122.

20 Law Firm Pro Bono Challenge® Initiative, *Pro bono Inst*, www.probonoinst.org/projects/law-firm-pro-bono/law-firm-pro-bono-challenge accessed 6 May 2020.

21 'Report on the Law Firm Pro Bono Challenge® Initiative', *Pro bono Inst* (6 June 2019), www.probonoinst.org/wpps/wp-content/uploads/2018-Report-on-the-Law-Firm-Pro-Bono-Challenge-Statistics-6.10.19.pdf accessed 3 January 2021.

22 Latham & Watkins, 'A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions', (August 2012), *Pro Bono Inst*, www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf accessed 3 January 2021.

that the value of pro bono work is instilled in students well before they graduate.²³ At the University of Buenos Aires in Argentina, all law students in their final year of study must provide some form of legal aid, whether through a clinical programme or otherwise, before graduating.²⁴ Similarly, the State of New York in the US imposes a mandatory 50-hour pro bono requirement as a pre-condition to become licensed as a lawyer in the State of New York.²⁵ Pro Bono Students of Canada (PBSC) was formed in 1996 with the goal 'to enhance pro bono services within the Canadian legal profession' and to ensure 'that each new generation of lawyers enters the profession already schooled in and committed to pro bono philosophy and practice'.²⁶ PBSC is the only national pro bono student organisation in the world and now consists of students from all Canadian law schools.²⁷ While the pro bono culture began in the US, it has now expanded to virtually all countries. Therefore, the importance of public service work does not go unnoticed. In addition to the rewarding experience gained as lawyers litigate on behalf of disadvantaged individuals, engaging in pro bono work also allows them to build on their existing legal skills, thereby proving beneficial to lawyers' development while, at the same time, benefiting the community.

While the importance of pro bono work is well established across law firms and throughout law school programmes, there is yet a subgroup of people belonging to the legal profession who may find themselves not engaging in pro bono work as much, if even at all: law school faculty.²⁸ The significance of faculty participation in pro bono work is so important that the Association of American Law Schools (AALS) Commission has recommended that 'all law schools adopt a formal policy to encourage and support faculty members to perform pro bono work'.²⁹ Nonetheless, very few schools in the US have adopted such formal policies.³⁰ At the same time, many law schools have faculty members that are performing pro bono work independently or work alongside the clinical and pro bono programmes associated with their respective law schools.³¹ Furthermore, a number of law schools recognise the achievements of their faculty in the interest of pro bono work.³²

23 See, eg, 'Clinical and Pro Bono Programs', *Harv L Sch*, <https://hls.harvard.edu/dept/clinical> accessed 6 May 2020; *Richard and Ginni Mithoff* 'Pro Bono Program', *U Tex Austin*, <https://law.utexas.edu/probono> accessed 6 May 2020); 'Pro Bono', *Colum L Sch*, www.law.columbia.edu/explore-columbia-law-school/experiential-learning/pro-bono accessed May 6, 2020); 'Pro Bono Litigation Clinic', *J Marshall L Sch*, <https://jmls.uic.edu/experiential-education/clinics/pro-bono> accessed 6 May 2020.

24 Latham & Watkins, see n 22 above.

25 ABA Standing Committee on Pro Bono and Public Service, *New York's 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons*, (October 2013), see www.americanbar.org/content/dam/aba/administrative/probono_public_service/lc_pb_preadmission_pro_bono_requirement_white_paper.authcheckdam.pdf accessed 3 January 2021.

26 Granfield and Mather, see n 2 above, at 8-9.

27 *Ibid.*, at 8; 'Who We Are', PBSC, www.probonostudents.ca/aboutus accessed 7 June 2020.

28 Deborah L Rhode, *Pro bono in Principle and in Practice: Public Service and the Professions* 24 (Stanford University Press 2005).

29 Cynthia F Adcock and Alison M. Keegan, *A Handbook on Law School Pro Bono Programs* (AALS Pro Bono Project 2001).

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

Unfortunately, it appears that law school professors' dedication to pro bono work has been met with much resistance worldwide.³³ Nevertheless, the importance of pro bono work for law school faculty has been gaining momentum and will soon be at the forefront of all law schools, setting those law schools that stress the importance of pro bono work among law school faculty apart from those that do not. Consequently, the time is ripe for law school faculty to understand what is entailed in pro bono work. While the AALS recommendation has stated that faculty members should engage in pro bono work, what that would require is not well known. This chapter will provide recommendations on how law school faculty members can contribute to pro bono work. In doing so, it will provide recommendations for both law school faculty members who are licensed to practise, as well as law school faculty members who are not admitted to practice. It is important that all law school faculty members provide meaningful pro bono work, so that they may serve their community and importantly, be viewed as role models by their students. If law schools are to mandate pro bono service requirements for students, an important way to instil the values of pro bono on the students is to ensure that law school faculty members also abide by the same policies.³⁴

Accordingly, let us first turn to the history surrounding the culture of pro bono among law school faculty members.

The history of the culture of pro bono among law school faculty

When the culture of pro bono began, it was thought of as demanding public service only of lawyers. For example, the ABA's Code of Professional Responsibility, which was adopted in the 1970s, addressed 'lawyers' obligations to broaden access to the legal system'.³⁵ It was not until the late 1980s that the culture of pro bono shifted to include law schools.³⁶ This transformation was guided by law students, who initially had to find their own pro bono opportunities, requesting the proper support from law schools to engage in pro bono service.³⁷ Accordingly, 'a growing number of faculty, administrators and students, as well as bar leaders, began encouraging law schools to do more to promote public service'.³⁸ Therefore, what spearheaded the development of pro bono culture within law schools was the work of, inter alia, law school faculty who were motivated to instil the values of public service within the law school environment. Because of these initiatives, '[i]n 1996, the ABA amended its accreditation standards to provide that every law school "should encourage its students to participate in pro bono activities and provide opportunities for them to do so."³⁹ Recognising the importance of pro bono service within the entire law school community, '[t]he revised standards also encouraged schools to address the obligations of faculty to the

33 Rima Sirota, 'Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case', (2018) 78(2) La L Rev 546, 549.

34 Adcock and Keegan, see n 29 above.

35 Rhode, *Pro Bono in Principle*, see n 28 above, at 13.

36 *Ibid*, at 21–22.

37 *Ibid*, at 22.

38 *Ibid*.

39 *Ibid*.

public, including participation in pro bono activities'.⁴⁰

Yet, although faculty are, at most law schools, required to promote the culture of pro bono in law schools, the culture of pro bono among law school professors themselves is lacking. In a survey conducted by the AALS Commission, it was reported that 'only half of administrators agreed that "many" faculty at their schools were providing "good role models to the students by engaging in uncompensated pro bono service themselves"'.⁴¹ This is, in part, due to the fact that law schools do not require faculty participation in pro bono service,⁴² as the focus rests on teaching, research and publication.⁴³ Dean Erwin Chemerinsky, Dean of the University of California-Berkeley School of Law,⁴⁴ has argued that the AALS should 'adopt a specific policy requiring that law schools insist that every faculty member spend a specified amount of time each year doing pro bono work'.⁴⁵ To date, the AALS has merely recommended that law school faculty adopt such policies, without any compulsory requirements.⁴⁶ In such case, Dean Chemerinsky has stated that: 'In the absence of an AALS mandate, law schools, on their own, should adopt such a requirement for their faculties'.⁴⁷ This is in fact a necessary means to obtain the participation of law school faculty and Dean Chemerinsky has noted that the form that the policy takes is for law schools to decide.⁴⁸ The important point is to ensure compliance of faculty members in engaging in pro bono services, no matter the form it takes, so as to eradicate the inequality that persists in the community and to improve the reputation of the legal profession.

Contributing to public service enhances the reputation of the legal community.⁴⁹ If that is the case, then law school faculty, who are entrusted to train the many generations of lawyers to come, must also contribute to pro bono service to 'improve [public] opinion of [their] profession'.⁵⁰ '[E]ducators worry about the hypocrisy of having a faculty impose a requirement on students that it is unwilling to impose on itself'.⁵¹ The idea that professors should engage in service for the public good is not unique to law professors but crosses all disciplines: it is asserted that all professors should participate in philanthropic work.⁵² Faculty engagement in philanthropic work has been recognised to 'shape and inform faculty work, enhance its meaning and influence faculty career paths'.⁵³ That is rightly so, because 'faculty work is imbued with and the faculty profession is grounded in, a responsibility to contribute

40 *Ibid.*

41 *Ibid.*, at 24.

42 *Ibid.*

43 Chemerinsky, see n 1 above, at 1235.

44 Erwin Chemerinsky, *Berkeley Law*, www.law.berkeley.edu/our-faculty/faculty-profiles/erwin-chemerinsky accessed 5 June 2020.

45 Chemerinsky, see n 1 above, at 1235–1236.

46 Adcock and Keegan, see n 29 above.

47 Chemerinsky, see n 2 above, at 1236.

48 *Ibid.*

49 Deborah L Rhode, *Access to Justice* 147 (Oxford University Press 2005).

50 *Ibid.*

51 Deborah L Rhode, *Ethics in Practice: Lawyers' Roles, Responsibilities and Regulation* 276 (Oxford University Press 2000).

52 See Genevieve G Shaker, *Faculty Work and the Public Good: Philanthropy Engagement and Academic Professionalism* 9 (Teachers College Press 2015).

53 *Ibid.*, at 11.

to the public good'.⁵⁴ Taking this argument to be true, then, law professors should be held to the same standards as all other professors. Accordingly, now is the ideal time for faculty members to be willing to contribute to the welfare of the community by engaging in the much-needed practice of public interest service.

Faculty members can take advantage of unique benefits available to them in the pursuance of pro bono work. For example, faculty members may be less inhibited in taking pro bono cases than a practicing lawyer because the income of professors is not dependent on ensuring that the interests of private clients are met.⁵⁵ Faculty members also bring a unique perspective to pursuing individual and social justice due to their role as legal academics.⁵⁶ Faculty members spend the majority of the time engaged in teaching and research. These activities could contribute to the broader achievement of adequate access to justice should faculty members choose to use their scholarship and expertise for the greater good. Faculty members could be a powerful force for good if they considered and undertook activities from among the ample opportunities that are available to them to engage in pro bono work as would a practicing lawyer.

It is recognised that many faculty members may very well be interested in participating in pro bono but do not know what that may entail. Accordingly, the rest of the chapter will discuss ways in which faculty members can also contribute to the culture of pro bono, so as to reinforce the culture of pro bono service not only among lawyers (now law students) but also among law school faculty who are pivotal for the strengthening of pro bono commitment among law students, future lawyers.

Pro bono opportunities for faculty members of bars

Law school faculty involvement is a vital component to any successful pro bono programme.⁵⁷ In fact, pro bono work is equally as important for law school faculty members as for the practicing lawyer, as not only does pro bono work serve the needs of the underrepresented but it also serves a dual role of creating 'a model for students to emulate'.⁵⁸ As the AALS has stated, law professors often belong to two professions requiring adherence to professional standards. These are: law professors who are also lawyers are subject to the standards of their respective jurisdictions in which they practice; and all law professors are subject to institutional and more general regulations with respect to teaching.⁵⁹ These standards require law professors to ensure that students recognise 'the responsibility of lawyers to advance individual and social justice'.⁶⁰ One of the ultimate obligations of each lawyer is to

54 *Ibid.*

55 AALS, AALS Handbook: Statement of Good Practices, www.aals.org/about/handbook/good-practices/ethics accessed 11 June 2020.

56 *Ibid.*

57 Rhode, *Pro Bono in Principle*, see n 28 above, at 24.

58 David L Chambers and Cynthia F Adcock, 'Learning and Serving: Pro Bono Legal Services by Law Students', (2000) 79(8) Mich B J 1056, 1057.

59 AALS Handbook, see n 55 above.

60 *Ibid.*

be involved in pro bono service. ‘As role models for students and as members of the legal profession, law professors share this responsibility’.⁶¹ Law school faculty therefore have an obligation, not only to engage in pro bono work themselves, but also to prepare law students to include pro bono in their practice.

It is reported that law students who have been required to engage in pro bono practice in law schools are more likely to be involved in pro bono service as lawyers later on.⁶² Even though there is a lack of information regarding whether it is in fact true that law students attending law schools with requirements of pro bono engage in more pro bono work on graduation,⁶³ law students who are nonetheless exposed to inequalities in the justice system through pro bono representation in law schools and will have increased awareness of the deficiencies in the law and its availability to those in need who are too often largely ignored. Law students engaged in pro bono service will understand the value of pro bono early on and be equipped with learned values which can be used in their law-firm settings as lawyers.

Faculty members play a pivotal role in shaping the minds of law students and the best way to instil these values is by showing students that they are engaged in that which they teach: they ‘practice what they teach’. As the AALS has stated: ‘[I]aw teachers teach as much about professional responsibility by what they do as by what they say’.⁶⁴ In recognising that students practice by example, in 2000, Georgetown Law School ‘adopted a resolution encouraging all faculty who are [District of Columbia] bar members to meet their bar obligation of 50 hours of pro bono work a year’.⁶⁵ The resolution also encouraged unlicensed faculty members to participate in pro bono service and complete the same amount of hours, all for the purpose of demonstrating the importance of servicing the disadvantaged to students.⁶⁶ To teach law students about the importance of pro bono work, it is important that law students view their professors as also being motivated to serve the needs of the public.⁶⁷

Law school faculty members who are also lawyers admitted to practice have the same ethical obligations under Model Rule 6.1 as any other lawyer.⁶⁸ Consequently, law school faculty working at law firms may, for example, provide legal services for free (for those who are unable to afford legal services) at the law firms where they work. Additionally, many lawyers who serve on the boards of pro bono service committees or legal services entities are, of course, engaging in meaningful pro bono practice. There are plenty of opportunities to engage in pro bono work for all law school faculty members and these opportunities are discussed in the next section.

Model Rule 6.1’s voluntary pro bono service is met either by providing legal services at no cost or at a substantially reduced fee *or* through ‘participation in activities for improving

61 *Ibid.*

62 Rhode, *Access to Justice*, see n 49 above, at 158.

63 *Ibid.*, at 147.

64 Adcock and Keegan, see n 29 above.

65 *Ibid.*

66 *Ibid.*

67 Chemerinsky, see n 1, at 1239.

68 See David Luban, ‘Faculty Pro Bono and the Question of Identity’, (1999) 49 *J Legal Educ* 58, 60.

the law, the legal system or the legal profession'.⁶⁹ It therefore appears that, for lawyers who are subject to voluntary pro bono service, the opportunities are ample, beginning first with pro bono consultative work.

Pro bono consultancy

Serving as a legal consultant provides 'the real-world contact that faculty otherwise lack, making them better able to bridge the worlds of academia and practice'.⁷⁰ Many philanthropies, NGOs and interest groups actively seek lawyers to act as pro bono consultants for their respective foundations. The ABA Center for Human Rights, for example, often seeks 'pro bono attorneys to provide legal assistance to human rights defenders who are the subject of harassment in retaliation for their advocacy efforts...'.⁷¹ Accordingly, faculty members can serve as pro bono consultants in this capacity, where they can take on cases in which they can practice their specific areas of expertise, in this case human rights law. Similarly, a patent law professor can join the Patent Pro Bono Programme for independent investors and small businesses, set up, for example by the US Patent and Trademark Office.⁷² An immigration law professor can act as consultant for immigration law firms or otherwise provide immigration assistance to those who cannot afford it. A family law professor, if trained, may volunteer as a mediator. A tax law professor can counsel organisations on tax-related matters. A constitutional law professor can engage in pro bono work defending an individual or group's constitutional rights. A public policy professor can act as an adviser to state or local government officials without accepting recompense for services. Pro bono consultancy is therefore not only rewarding but also a worthwhile means of engaging in practical work that is well within a faculty member's area of interest.

Involvement in legal clinics that serve persons of limited means

Almost all law schools offer enriching programmes that allow law students to gain legal practical experience and prepare them for legal work after graduation. Harvard Law School, for example, has established clinics on practically every field of expertise, ranging from international human rights to cyberlaw.⁷³ The school also provides law students with many opportunities to engage in pro bono work, which counts towards the compulsory graduation requirement of 50 hours' pro bono service.⁷⁴ Through student practice organisations, for

69 *Ibid.*

70 Paul T Hayden, 'Professorial Conflicts of Interest and "Good Practice" in Legal Education', (2000) 50(3) J Legal Educ 358, 367.

71 *Current Opportunities*, ABA Ctr Hum Rts, www.americanbar.org/groups/human_rights/justice_defenders/opportunities accessed 6 May 2020.

72 USPTO, *Patent Pro Bono Program for independent inventors and small businesses*, www.uspto.gov/patents-getting-started/using-legal-services/pro-bono/patent-pro-bono-program accessed 6 May 2020.

73 *In-House Clinics*, Harv L S, <https://hls.harvard.edu/dept/clinical/clinics/in-house-clinics> accessed 6 May 2020.

74 *Pro Bono Program*, Harv L S, <https://hls.harvard.edu/dept/clinical/pro-bono-program> accessed 6 May 2020.

example, law students at Harvard have the opportunity ‘to gain practical legal experience under the supervision of a licensed attorney’.⁷⁵

Similarly, the Bluhm Legal Clinic at Northwestern Pritzker School of Law, Chicago, provides pro bono services to various clients, ranging from delinquent teenagers to entrepreneurs in need of affordable legal services.⁷⁶ The clinic consists of students working alongside clinical faculty, ensuring that students gain hands-on experience prior to graduation.

While legal clinics are created to provide students with experience they may not otherwise gain before entering the field of law, legal clinics may also provide opportunities for faculty members to engage in pro bono work. Faculty members may choose to lead legal clinics within their field of expertise or, if there is no legal clinic already established within their expertise, they may choose to start one at their law school. Consequently, legal clinics should not only be composed of clinical professors, but also be open to all faculty members, including non-admitted faculty members wishing to take part in legal clinics.

Pro bono training opportunities

The above examples have focused on engaging in the practice area that is of relevance to the law school faculty member. However, sometimes law school faculty members may have no desire to participate in the practice of law but purely enjoy the academic aspect of it. If that is the case, litigation is not the only pro bono opportunity available for admitted law school faculty members. These faculty members could also teach and train current lawyers about how to engage in public service work in their area of expertise. For instance, professors teaching immigration law could donate their time to training young lawyers on how to assist clients who are seeking asylum or who face deportation. Likewise, a bankruptcy law professors could train lawyers on how to assist clients in filing for bankruptcy.

Seeking pro bono opportunities in this capacity is incredibly easy in the US, as all state and local bar associations and the ABA, have created pro bono centres dedicated to providing opportunities and training.⁷⁷ Law school faculty may choose to volunteer with their respective bar associations to train lawyers interested in undertaking pro bono assignments. Additionally, law school faculty members can choose to take on leadership roles within their respective bar associations’ pro bono committees. For example, District of Columbia bar members can serve on the Pro Bono Committee, which oversees the daily activities of the DC Bar’s Pro Bono Center.⁷⁸

75 *Student Practice Organizations*, Harv L S, <https://hls.harvard.edu/dept/clinical/student-practice-organizations-spos> accessed 6 May 2020.

76 *Bluhm Legal Clinic: About The Clinic*, Nw Pritzker Sch Law, <http://www.law.northwestern.edu/legalclinic/about> accessed 6 May 2020.

77 See, eg, *Center for Pro Bono*, ABA, www.americanbar.org/groups/center-pro-bono accessed 6 May 2020; *Pro Bono Resources*, Atlanta B Ass’n, www.atlantabar.org/page/OLRProBono accessed 6 May 2010; *Pro Bono Resource Center*, St B Georgia, www.gabar.org/committeesprogramssections/programs/probonoproject/index.cfm accessed 6 May 2020; *Pro Bono Partnerships*, Fla B Ass’n, <https://thefloridabarfoundation.org/pro-bono-partnerships> accessed 6 May 2020.

78 *About the Center: Pro Bono Center Leadership*, DCB, www.dcb.org/pro-bono/about-the-center/leadership.cfm accessed 6 May 2020.

The opportunities for faculty members who are lawyers are not just limited to the above examples. They can also carry out the types of pro bono work described in the next section. This is particularly the case for faculty members wishing to focus their efforts strictly on academic matters.

Pro bono opportunities for non-admitted faculty members

The following examples are relevant to both non-admitted faculty members, as for faculty members who do not wish to litigate cases. In addition to serving in the clinical programme, law school faculty members who are not members of a bar association can elect to engage in various ways to provide pro bono services. For example, they can develop and use 'legal materials to teach adult [legal] literacy – and at the same time [make students] far better able to navigate a legal system that poses constant threats to their well-being'.⁷⁹ Since non-admitted law school faculty train the next generation of lawyers, it is equally as important that they, too, engage in pro bono work to motivate their students to continue this work. There are many ways in which such faculty can practice pro bono work, limited only by an individual's imagination. The following are some noteworthy examples.

Service as *amicus curiae*

An *amicus curiae* or 'friend of the court', is defined as someone who is not a party to a given case but provides the court with information based on his/her own expertise, which is helpful to the court in deciding the matter before it.⁸⁰ While only lawyers may file an amicus brief, anyone may assist in writing one. Both lawyers and non-lawyers can therefore contribute their knowledge in writing such briefs.⁸¹ Professors who are interested in a certain matter that is in litigation can therefore assist the court, by way of public interest pro bono work and provide the court with their knowledge on the matter.⁸²

A professor is in the best position to assist the court as *amicus curiae*, since the professor in a given field will have the necessary expertise and will be able to provide information in order to ensure the court does not fall victim to potential error.⁸³ It has been acknowledged that *amicus curiae* are at times 'in a better position than either of the parties to advocate for their own unique point of view'.⁸⁴ Law teachers, especially, are able to provide the court with new arguments or frameworks on how best to interpret a given piece of legislation and are also able to pinpoint information that is vital to interested parties that may not be

79 Luban, see n 68 above, at 73.

80 See Samuel Krislov, 'The Amicus Curiae Brief: From Friendship to Advocacy', (1963) 72 Yale L.J 694, 694, 695.

81 *Ibid.*, at 695.

82 See Arleigh P Helfer III, *Niche Appellate Practice: Pro Bono Appellate Representation*, ABA (6 September 2019), www.americanbar.org/groups/judicial/publications/appellate_issues/2019/summer/niche-appellate-practice-pro-bono-appellate-representation accessed 3 January 2021.

83 *Ibid.*

84 Sarah F Corbally and Donald C Bross, *A Practical Guide for Filing Amicus Curiae Briefs in State Appellate Courts*, CDN (2001), https://cdn.ymaws.com/naccchildlaw.site-ym.com/resource/resmgr/amicus_curiae/amicuspracticalguide.pdf accessed 3 January 2021.

so apparent.⁸⁵ One professor has deemed writing *amicus* briefs so fundamental to the legal profession because of its potential ‘to achieve a more just society’.⁸⁶ Consequently, professors should and often do, file *amicus* briefs in matters of interest.⁸⁷

Law reform and other research assistance

Law teachers have studied law for many years and continue to do so as they teach and research their various fields of expertise. As such, they are able to benefit society by preparing reports to governments or community agencies in furtherance of legal reform. For example, a human rights professor could reform the law as it relates to women’s rights. An employment law professor could look for ways to reform the existing labour laws so as to ensure that there are no discriminatory provisions. Law reform work is therefore plentiful and is not limited to law faculty. In 1994, Emory University faculty members in the Rollins School of Public Health, Atlanta, assisted in legislative reform relating to healthcare.⁸⁸ As such, faculty can engage in similar work regarding their identified areas in need of legislative reform.

Similarly, law school faculty members can conduct legal research assistance on behalf of disadvantaged and vulnerable groups to seek improvements in the judicial system with respect to such groups. Any legal research assistance that would benefit disadvantaged groups would serve for the ethical obligation of pro bono service being met. Social justice law professors could, for example, research the best ways to implement a rights-protection framework to those who are often excluded due to structural discrimination, including but not limited to the elderly, migrant workers, women, children, ethnic minorities and people living with diseases or disabilities. Criminal law professors might engage in research activity related to prison reform. A professor interested in poverty law could provide a research assistance support programme to tackle homelessness.

Working on law reform and providing other informative research assistance is useful not only because it benefits society as a whole, but it also helps professors tailor their research. In conducting this sort of pro bono work, the professor will also have more expertise in conducting their own research activities. At the same time, professors are considered experts in their respective fields. As such, sharing this knowledge and allowing society to benefit from it in the shape of legislative reform or other research assistance will prove to be relatively convenient for such professors.

Community legal education

Teaching law students would, of course, not count as pro bono. Educating the community

85 See, eg, *Professors’ Amicus Curiae Briefs Shape the Law*, Colum L Sch (15 January 2019), www.law.columbia.edu/news/archive/professors-amicus-curiae-briefs-shape-law-0.

86 *Ibid.*

87 See, eg, Brief of Law Professors as Amici Curiae Supporting Petitioner at 1, *Mission Product Holdings, Inc v Tempnology, LLC*, 587 U S 5 (2019) (No 17-1657). This amicus curiae brief was written by ‘law professors who study the US bankruptcy system’.

88 Carol Holtz, *Global Health Care: Issues and Policies* 536 (2nd edn, Jones & Bartlett Learning 2012).

about the law, however, particularly if it relates to the rights of the disadvantaged, would count as such. In fact, students at most law schools are already familiar with such initiatives, otherwise known as legal outreach.⁸⁹ Many law schools participate in some form of legal outreach programme. One legal outreach programme has partnered with law schools in New York ‘to inspire students from underserved communities in New York City to strive for academic excellence and to pursue careers in the law’.⁹⁰ Law school professors can therefore dedicate their time to teaching students from underserved communities about their rights as well as preparing them for a future career in the legal profession. Such activities include coaching students for mock trials in addition to teaching them the relevant substantive law.⁹¹

A similar initiative, known as the Know Your Rights Initiative, which is set up by the First Defense Legal Aid to ‘conduct street outreach, workshops, leadership development [...] to build the hope, skills and knowledge necessary for people to access their constitutional rights’ when in contact with police’.⁹² Similar Know Your Rights initiatives have been established with respect to the interests of the respective outreach programmes.⁹³ Since 1972, the Georgetown Street Law Attorney Mentor Program has allowed law students at Georgetown, DC, to teach and provide high school students with complex legal information in a straightforward and easy-to-digest manner.⁹⁴ The Street Law initiative has been expanded to more than 150 law schools worldwide.⁹⁵

Law professors can join these initiatives or create their own to improve the legal profession by teaching those with limited access to academic resources or finances about their legal rights. Law professors teaching civil rights and civil procedure courses could teach the community about their civil rights and how to navigate the court system. Law professors interested in immigration law could teach immigrants about their respective rights, including developing the best arguments for the tribunal. In addition, law professors who travel abroad to teach can use their time abroad to engage in meaningful pro bono work, helping to improve the legal profession in the country in which they teach.

Community legal education is not limited only to teaching law. It could also include developing law-related materials for use by other faculty members. Pro bono work in this regard could also constitute the translation of legal documents for use by other professionals. One individual with a passion for human rights and humanitarian law has ‘started a movement to translate human rights law into pictures’.⁹⁶ This was undertaken

89 See, eg, *Raising the Bar Since 1983*, LEGAL Outreach, <https://legaloutreach.org> accessed 6 May 2020.

90 *Become a Legal Teaching Fellow at the 2020 Legal Outreach Summer Law Institute (SLI)*, Legal Outreach, www.dropbox.com/s/31h03se6hr0vdch/Legal%20Outreach%20Legal%20Teaching%20Fellow%20Announcement%2012.12.19.pdf?dl=0 accessed 6 May 2020.

91 *Ibid.*

92 *Know Your Rights Peer Education Initiative*, FDLA, www.first-defense.org/community accessed 6 May 2020.

93 See, eg, *Know Your Rights*, ACLU Mich, www.aclumich.org/en/Know-your-rights accessed 6 May 2020; *Know Your Rights*, Advocates Hum. Rts www.theadvocatesforhumanrights.org/kyr accessed 6 May 2020.

94 *History of Street Law*, Street Law, www.streetlaw.org/who-we-are/history accessed 19 August 2020.

95 *Street Law Around the World*, Georgetown, www.law.georgetown.edu/experiential-learning/clinics/dc-street-law-program/street-law-around-the-world accessed 19 August 2020.

96 Tedx Amsterdam, *The Geneva Convention in Pictures*, Shayne Smart, YouTube (18 November 2015), www.youtube.com/watch?v=i3_tuRbkRf8 accessed 3 January 2021.

for the purpose of educating the community, through the use of pictures, on their rights, since many people are illiterate, but they able to identify with and understand pictures.⁹⁷ Consequently, any activity that would contribute to the knowledge and awareness of the law or empowers individuals to engage with the legal system would constitute community legal education.

Monetary contribution in lieu of pro bono work

Model Rule 6.1 also states that, in addition to providing at least 50 hours of pro bono services annually, ‘a lawyer should voluntarily contribute financial support to organisations that provide legal services to persons of limited means’.⁹⁸ Pro bono work and making financial contributions are often viewed as a dichotomy, where lawyers can either engage in pro bono practice or make a financial contribution.⁹⁹ They are and should, however, be viewed as complementary. The Model Rule is clear such that financial contributions should be provided in addition to the 50 hours of pro bono services. Nevertheless, it is acknowledged that, like lawyers, law school faculty may face difficulty in committing to pro bono work in a particular year, yet in another, they may have a relatively light workload. In such instances, financial contributions may act in lieu of pro bono practice. In different parts of the world, law teachers may not be well paid and unable to make financial contributions. However, law school faculty should strive to provide at least 50 hours of pro bono services, as well as make financial contributions annually whenever they are able, as the norm and make financial contributions in lieu of pro bono services only as the exception.¹⁰⁰ Making a financial contribution will rarely provide the equivalent of providing legal services to those who so urgently need them. Motivating law school faculty to engage in pro bono practice is essential.

Motivating faculty members

None of the provided recommendations for ways to engage in pro bono practice will be productive unless faculty members are motivated to engage in pro bono service. This chapter does not argue that faculty pro bono should be imposed on faculty as a compulsory requirement rather, that faculty should be motivated to practice pro bono work so as to ensure commitment to best results when engaged in pro bono work. As such, the law school must promote an environment and culture of commitment to serve the public interest. While large law firms are incentivised through various means, including the Pro Bono Institute Challenge described above,¹⁰¹ law school faculty members require different incentives. This section will therefore discuss ways in which law school faculty members can be motivated to engage in public interest work.

⁹⁷ *Ibid.*

⁹⁸ Model Code of Professional Responsibility r 6.1, see n 18 above.

⁹⁹ Chemerinsky, see n 1, at 1244–1245.

¹⁰⁰ *Ibid.*, at 1245.

¹⁰¹ See n 19 above; Lawrence J Fox, *Raise the Bar: Real World Solutions for a Troubled Profession* 226 (ABA 2007).

First and foremost, it is difficult to convince law school faculty members of the importance of their engaging in pro bono activities due to a prevailing mind set among faculty members that their career is in legal academia and not in the practice of law, and that pro bono is the practice of law.¹⁰² Consequently, law school faculty rarely view practicing lawyers as their peers rather, that their peers are university faculty in other departments, such as professors of economics or history; in fact, they do not see themselves as lawyers.¹⁰³ Such a strong identity is counterproductive to fostering a culture of commitment to pro bono. Even among law school faculty who are not engaged in the practice of law, pro bono service must be viewed in the context of academia, as the above recommendations have provided.

Tying faculty interests to pro bono service

Of course, if faculty members engage in pro bono service which interests them, either personally or professionally, faculty members will find pro bono practice rewarding. That is, in addition to the benefits that are reaped by engaging in meaningful work towards individuals who would otherwise be left without legal representation. If faculty members are involved in pro bono projects that they have the most interest in, this would ensure renewed interest in taking more pro bono cases. Dean Chemerinsky put it best when he said: ‘We make time for the things we care about’.¹⁰⁴ Faculty members should therefore consider working for a causes in which their members have significant interest. Law professors who are interested in human rights will find more motivation using their time servicing human rights groups. Animal rights law professors will find greater motivation serving animal rights groups, and so on. Faculty members can find meaningful pro bono work within their own particular interests. If law schools encourage faculty members to find such pro bono opportunities, they could ensure that law school faculty members continue to provide pro bono service for many years.

It is noted that one of the barriers to continued pro bono service is the unfortunate opposition that is often encountered in taking on cases of significant societal interest.¹⁰⁵ That is especially true when taking on controversial cases on behalf of individuals who would have a more difficult time finding lawyers to represent them. For example, when Dean Chemerinsky took on a case on behalf of a Guantanamo detainee, he received much criticism and hate mail.¹⁰⁶ Coupled with the fact that these cases are rarely won, this could have been most disheartening and led to the inevitable consequence that individuals are unable to obtain representation and stop fighting for their causes.¹⁰⁷ Nonetheless, Dean Chemerinsky took this as an opportunity to fight even harder and he subsequently ‘urged students to use their legal education to fight for the public interest, however hard it is to

¹⁰² Luban, see n 68 above, at 67.

¹⁰³ *Ibid.*

¹⁰⁴ *Faculty Lives in Public Service: Professor Erwin Chemerinsky*, Duke Law News (22 April 2008), <https://law.duke.edu/news/faculty-lives-public-service-professor-erwin-chemerinsky> accessed 3 January 2021.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

affect social change'.¹⁰⁸ It is much easier to develop this mind set for causes in which the person taking on the case has a keen interest. Accordingly, law professors should be involved in pro bono opportunities which most interest them, despite any criticism this may bring.

Enhancing teaching in the classroom

Many law professors had practical experience in their fields before entering legal academia. This experience leads many lawyers to take up law teaching on retirement or at the end of their careers after many years of practice. For them, realising that the law is often changing to keep up with social changes, the best way to keep up with the law is to continue the practice of law in one form or another. Even younger law professors who entered academia with little legal practice are able to complement their academic skills through practicing law in conjunction with teaching.

In the US, law professors and lawyers earn the same degree, a Juris Doctor (JD), which translates to doctor of law.¹⁰⁹ Almost all US professors teaching in law schools throughout the US will hold a JD.¹¹⁰ When US law professors hold PhDs, the degree is often in a subject other than law as PhDs in law 'are almost unheard in the US'.¹¹¹ A study has found that, 'of 26 "leading" law schools [...] 361 of 1,338 current law professors (27%) have [PhDs]'¹¹² and 296 of the professors with PhDs also have law degrees.¹¹³ The remainder only hold JDs. So, it is not common for a US law professor to hold a PhD. Some have argued that this is because law schools in the US should focus on the practice of law in order to best prepare law students for future law practice.¹¹⁴ This makes sense, as students coming to law school will, for the most part, become lawyers and not law professors. Only a small minority will become law professors. Therefore, being involved in the practice of law during law school and having faculty who can supervise law students in this regard is highly beneficial to the students.

In compliance with the ABA Standards and Rules of Procedure for Approval of Law Schools, US law schools now require students to complete some form of experiential learning of at least six credit hours.¹¹⁵ If that is the case, then law professors definitely need

108 *Ibid.*

109 J Gordon Hylton, 'What Should be the Prerequisites for Becoming a Law Professor', *Marq U L Sch Fac Blog* (8 September 2011) <https://law.marquette.edu/facultyblog/2011/09/what-should-be-the-prerequisites-for-becoming-a-law-professor> accessed 3 January 2021.

110 *Ibid.*

111 *Ibid.*

112 *Ibid.*

113 *Ibid.*

114 *Ibid.* See also 'The Age of the PhD Law Professor Is Upon Us, Study Says', Bloomberg L (19 February 2016), <https://news.bloomberglaw.com/business-and-practice/the-age-of-the-phd-law-professor-is-upon-us-study-says> accessed 3 January 2021.

115 *Chapter 3: Program of Legal Education*, ABA (2014-2015), www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf accessed 3 January 2021; I. (F) *Experiential Learning Requirement*, Harv L Sch, <https://hls.harvard.edu/dept/clinical> accessed 6 June 2020; *Courses satisfying Requirement 2020-2021*, B U Sch L, www.bu.edu/law/current-students/jd-student-resources/curricular-requirements/experiential-learning-requirement last updated 29 May 2020 accessed 3 January 2021; *Experiential Learning*, Colum L Sch, www.law.columbia.edu/academics/experiential accessed 6 June 2020; *The Six-Credit Experiential Learning Requirement*, Emory L Sch, <https://law.emory.edu/academics/>

to be involved in the practice of law to be more able to prepare their law students for the practice of law and to oversee law students' experiential learning placements. Furthermore, one way in which law students are influenced to engage in pro bono during law school is if people they look up to, namely faculty, also engage in pro bono work.¹¹⁶ Therefore, faculty involvement in pro bono plays a direct role in garnering interest to engage in pro bono service among law students.¹¹⁷ Yet, faculty members are not always engaged in the practice of law. In fact, one of the critiques most often cited for the disconnect between law schools and law practice is 'faculties' lack of connection to law practice'.¹¹⁸ One of the factors which contributes even more to this disconnect is when lawyers who enter the field of legal academia stop being involved in the practice of law and as the law is often changing, 'law professors who practiced law in the past might not be familiar with the current realities of law practice'.¹¹⁹ For that purpose, law professors should continuously be engaged in the practice of law and therefore the structure of US legal education benefits in particular.

PhDs in law are far more common outside the US.¹²⁰ Therefore, law professors in other countries do graduate with PhDs in law, whereas practicing lawyers usually hold only a bachelor's degree in law. Still, since law professors outside the US will hold a bachelor's degree prior to pursuing a PhD in law, this means that they can qualify to become lawyers in their respective jurisdictions if they seek admission to practice and meet the necessary requirements.

For law professors, it is beneficial to be engaged in the practice of law and it is equally as beneficial to be immersed in scholarship surrounding the law. The best format, however, is one that makes use of both. In that sense, if law professors across all jurisdictions were able to practice law, then balancing the two would provide for better engagement in the classroom.

Law professors often teach students based on their experience with the practice of law. For instance, an intellectual property (IP) law professor would probably be able to paint a better picture for their students if they was engaged in IP law, such that they could touch on 'real world' examples to supplement the theoretical study. Likewise, transactional law professors who are also an experienced transactional lawyers will better be able to teach their students the hands-on practical experience required to understand the complex fields of transactional law.¹²¹ That is true of professors across all disciplines. Professors who are involved in practical experience in the field they teach are more confidently able to prepare students for future law practice than is the case for law professors who 'are unfamiliar with what their students will be doing as practicing lawyers'.¹²² Law students who are taught

experiential-learning-requirement.html accessed 6 June 2020.

116 Margaret M Cordray, 'Expanding Pro Bono's Role in Legal Education', (2011) 48 *IDAHO L REV* 31, 38.

117 *Ibid.*

118 Emily Zimmerman, *Should Law Professors Have a Continuing Practice Experience (CPE) Requirement?*, (2013) 6(1) *NE UL J* 131, 136.

119 *Ibid.*, at 138.

120 Hylton, see n 109 above.

121 See Jay G Finkelstein, 'Practice in the Academy: Creating "Practice Aware" Law Graduates', (2015) 64(4) *J LEGAL EDUC* 622, 633.

122 Zimmerman, see n 118 above, at 145.

through both theory and practice are, on graduation, more likely to understand what law practice entails. Professors who touch on ‘real life’ examples in the classroom will be better able to relay what law practice is like to their students.

Furthermore, many Master of Laws (LLM) programmes worldwide prefer applicants to have some form of professional work experience before applying to these programmes.¹²³ This is because these law schools recognise that those with professional work experience are able to ‘get more out of their LLM year’.¹²⁴ In addition, studying in an LLM programme is more enriching when students are able to contribute to class discussions through their diverse work experiences. Similarly, then, law professors who are engaged in the different area practices of law can enrich the classroom experience based on their various practice areas. Therefore, if law professors are able to embrace the benefits that law practice could bring to their classrooms, they may be more enticed to practice law through pro bono service.

Honouring faculty members’ pro bono efforts

Like many others, faculty members respond well to positive incentives.¹²⁵ Providing incentives to faculty members who perform pro bono work is likely to increase the chances of faculty engagement in pro bono service. Such pro bono work could entail promotion and tenure consideration.¹²⁶ The promotion and tenure committees might consider the average number of hours of pro bono work contributed by faculty members applying for promotion and/or tenure. So, where most law schools require faculty to report on their research and service activities for the year, ‘[a] faculty member’s pro bono efforts should be considered as well’.¹²⁷

Another incentive that law schools can adopt includes distinguishing faculty members who perform pro bono work and recognising their accomplishments through honouring ceremonies and awards. By rewarding faculty members who have demonstrated a strong commitment to public service, law schools convey to their faculty members that pro bono service is an important aspect of a law professor’s career.¹²⁸ As the ABA has stated: ‘Institutions award and recognise that which they consider important – in order to give due praise but also to show others what can be accomplished and, in some cases, what is expected’.¹²⁹ Awards given by law schools to showcase their students and faculty who engage in pro bono demonstrate these schools’ commitment to and respect for pro bono values.¹³⁰

A number of law schools already honour faculty members who engage in substantial pro bono service with some form of recognition.¹³¹ Many law schools recognise faculty

123 See, eg, LL M Admissions, U Wash Sch L, www.law.uw.edu/admissions/llm-admissions accessed 6 June 2020; Admissions, U Toronto Fac L, <https://gpplm.law.utoronto.ca/admissions> accessed 6 June 2020.

124 *LL M Admissions*, Harv L Sch, <https://hls.harvard.edu/dept/graduate-program/llm-admissions> accessed 6 June 2020.

125 Chemerinsky, see n 1 above.

126 *Ibid.*

127 *Ibid.*

128 See *Awards & Recognitions*, ABA, www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/definitions/pb_awards accessed 8 June 2020.

129 *Ibid.*

130 *Ibid.*

131 See *Faculty & Administrative*, ABA, www.americanbar.org/groups/center-pro-bono/resources/

members who have performed outstanding pro bono service with various types of honours and awards.¹³² In addition to award recognition, Columbia University School of Law faculty members wear a blue ribbon on their gowns to indicate that they have performed outstanding pro bono work.¹³³ To ensure that law school professors continue to service the public good, more law schools might adopt such policies of rewarding law school professors with favourable consideration during tenure and promotion decisions and/or with awards and other honours.

Identifying research topics

Finally, as has been a recurring theme throughout this chapter, engaging in the practice of law, by way of pro bono service, is beneficial to law school professors, in the sense that it ‘could help law professors identify topics for their scholarship: both legal issues that arise in a practice setting and issues about the context in which law is practiced’.¹³⁴ Therefore, law school faculty should engage in pro bono service as it also helps them to discover topics for further research and scholarship.

Motivating law schools to encourage faculty pro bono service

The key players in increasing pro bono service among faculty are law schools. Law schools are pivotal in the development and maximisation of pro bono work among both law professors and law students. It is therefore not only faculty members who require motivation to engage in pro bono, but, if law schools give less credence to faculty pro bono work, faculty members may be less inclined to look for pro bono opportunities, thereby setting a perception among law students that pro bono work is not that important. This was recognised by the ABA in 1996, when it published a report calling ‘for law schools to focus greater attention on the significance of faculty as role models for law students’ perceptions of lawyering, even to give greater weight to this role-model function in decisions about hiring and evaluating faculty’.¹³⁵ In fulfilling this function, the ABA encouraged faculty to be more experienced in the practice of law.¹³⁶

Similarly, the 2007 *Carnegie Report Educating Lawyers: Preparation for the Profession of Law*¹³⁷ has also made recommendations to legal educators to provide advanced practical training to law students, emphasising ‘that legal educators must link their interests with the needs of legal practitioners and the public the profession takes an oath to serve’.¹³⁸ The report, which called for law schools and educators to rethink their ways of teaching legal education, was

directory_of_law_school_public_interest_pro_bono_programs/definitions/pb_faculty accessed 6 May 2020.

132 *Awards & Recognitions*, see n 128 above.

133 *Ibid.*

134 Zimmerman, see n 118 above, at 141.

135 William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* 157 (Jossey-Bass 2007).

136 *Ibid.*

137 William M Sullivan, ‘The Carnegie Report and Contemporary Legal Education’, (2018) *U St Thomas LJ* 331, 331.

138 Doug Ferguson, ‘What Is the Carnegie Report and Why Does It Matter’, *Slaw* (21 May 2014), www.slaw.ca/2014/05/21/what-is-the-carnegie-report-and-why-does-it-matter accessed 3 January 2021.

instrumental in changing curriculums across many law schools in America'.¹³⁹ Law schools that place more emphasis on faculty participation in law practice, most notably through pro bono work, can safeguard the profession to which they belong.

For the most part, however, law schools do not view faculty pro bono as an important factor in making tenure or hiring decisions. Nor is it given the same value as scholarship, teaching and law school service.¹⁴⁰ That said, professors are increasingly involved in pro bono opportunities and schools which do distinguish these professors stand apart from those that do not. Nevertheless, in order to show commitment to faculty pro bono service, in addition to honouring professors who engage in pro bono service, which motivates law professors to undertake a greater amount of pro bono service, as already described, law schools with a commitment to faculty pro bono work should also be honoured.

The AALS Section on Pro Bono & Public Service Opportunities annually awards faculty members or deans with the Deborah L Rhode Award for having 'made an outstanding contribution to increasing pro bono and public service opportunities in law schools through scholarship, leadership, or service'.¹⁴¹ When these faculty members or deans are recognised, their respective law schools gain recognition too. For example, the 2020 Deborah L Rhode Award recipient was Dean Aviam Soifer of the University of Hawaii, William S Richardson School of Law.¹⁴² On making his statement on receiving this prestigious honour recognised nationwide, Dean Soifer stated that his 'recognition really ought to be to the entire Richardson Law School – students, faculty and alumni – for their ongoing support for free legal assistance to those most in need'.¹⁴³ Certainly, that is true of Richardson Law School, which requires its students to complete at least 60 hours of pro bono work before graduating.¹⁴⁴

The ABA also recognises pro bono work through its annual Pro Bono Publico Award, which the ABA awards to a total of five lawyers and organisations, including law schools, for outstanding commitment to public service.¹⁴⁵ Only three law schools have been awarded this top honour for their outstanding achievements to pro bono service since 1984. They are: the University of Pennsylvania Law School in 2000; Fordham University School of Law in 2008; and, most recently, Baylor University School of Law in 2015.¹⁴⁶

In addition to these prestigious awards, organisations such as the AALS and the ABA could consider recognising the top law schools each year, separate from other categories, which have demonstrated the strongest commitment to public service each year. This would be similar to the *National Law Journal's* recognition of the top law firms in the annual Pro

139 Patricia E Roberts, 'From "War on Poverty" to Pro Bono: Access to Justice Remains Elusive for Too Many, Including Our Veterans', (2014) 34 B C J L & Soc Just 341, 356.

140 Chemerinsky, see n 1, at 1243–1244.

141 *Section on Pro Bono & Public Service Opportunities*, AALS, www.aals.org/sections/list/pro-bono accessed 7 June 2020.

142 *Ibid.*

143 'Law school dean to receive top national award', *UHawNews* (24 December 2019), www.hawaii.edu/news/2019/12/24/soifer-aals-rhode-award accessed 3 January 2021.

144 *Ibid.*

145 *Award Nomination Criteria*, ABA, www.americanbar.org/groups/probono_public_service/projects_awards/pro_bono_publico_award/award_nomination_criteria accessed 7 June 2020.

146 *Past Recipients*, ABA, www.americanbar.org/groups/probono_public_service/projects_awards/pro_bono_publico_award/past_recipients accessed 7 June 2020.

Bono Hot List (the ‘Hot List’).¹⁴⁷ The Hot List recognises law firms which ‘are dedicated to making a monumental impact on the lives of those in need’.¹⁴⁸ Before legal publications began ranking law firms by the amount of pro bono service undertaken, there were few law firms engaged in the practice of pro bono.¹⁴⁹ Since then, however, lawyers were enticed by competition to making sure that their law firms would be ranked as one of the nation’s top law firms.¹⁵⁰ The positive reputation created by the rankings in doing more public good gave rise to the importance of pro bono demonstrated among law firms today.¹⁵¹ Furthermore, the effects of rankings was much broader than simply being limited to reputation: ‘[o]nce some firms began hiring pro bono counsel, others felt pressure to do the same, both to maintain their position and to signal their commitment to public service’.¹⁵² Consequently, publication rankings of law firms – hinging on pro bono services – became a pivotal turning point to ensuring that the newly created pro bono work culture would continue to drive and motivate law firms to become more involved in pro bono work. This was successful, as more law firms were recruiting lawyers actively engaged in pro bono work so that they could have someone to showcase on their websites and lead the pro bono efforts in their respective law firms.¹⁵³ In a field driven by competition, ranking law firms became the (initial) means with which to enhance public service among them.

A *Guide to Law Schools* has existed since 2005, where Equal Justice Works, a non-profit focused on the promotion of legal careers in public interest, has ranked law schools ‘by compiling extensive data on issues related to public service’.¹⁵⁴ This guide is meant to help law school applicants in choosing which law schools to apply to, serving as an incentive for law schools to compete in terms of public service programmes.¹⁵⁵ In addition, the AALS and the ABA could recognise the top law schools that are dedicated to providing legal services for those who are disadvantaged or otherwise not able to obtain legal service. This could be similar to the ranking of law firms by legal publications, prompting law firms to be more involved in pro bono. The IBA could consider annually recognising top universities worldwide which have made the greatest contribution to public service. The IBA Pro Bono Committee currently honours one lawyer who has demonstrated commitment to pro bono work each year.¹⁵⁶ Similar awards could be developed by the IBA Pro Bono Committee to recognise law professors and faculties of law separately.

147 See ALM Staff, ‘The 2020 Pro Bono Hot List’, Nat’l LJ (4 May 2020), www.law.com/nationallawjournal/2020/05/04/the-2020-pro-bono-hot-list accessed 3 January 2021.

148 *Ibid.*

149 Scott L Cummings and Deborah L Rhode, ‘Managing Pro Bono: Doing Well by Doing Better’, (2010) 78(5) *Fordham L Rev* 2357, 2370.

150 *Ibid.*, at 2371.

151 *Ibid.*, at 2372.

152 *Ibid.*, at 2374.

153 *Ibid.*

154 *Ibid.*, at 2431.

155 *Ibid.*

156 Annual IBA Pro Bono Award, IBA, www.ibanet.org/Committees/Divisions/Legal_Practice/Pro-Bono-Award.aspx accessed 7 June 2020.

Once law schools are incentivised to create a culture of pro bono in the law-school setting, this will create a positive impact not only on law students who will themselves be expected to engage in pro bono service during their careers as lawyers, but also on law professors. Whatever the form of incentive, the point is that as practitioners and scholars in the field of law, we are in a position to influence future generations of lawyers and, we should therefore have ethical duties to contribute meaningfully to our community too.

Conclusion

Pro bono service is an instrumental part of the legal community. It is vital for the eradication of inequality among classes in access to justice. Without meaningful pro bono work, many individuals from disadvantaged communities will not be able to have their day in court. It goes without saying that each individual must be afforded the protection of the law. This means serving under-represented communities and providing legal services to those who might not be able to afford it. Law schools and law school professors should therefore consider fostering a culture of pro bono by being dedicated to pro bono service themselves. If law professors were exempt from performing pro bono work, then that would be an injustice for all. Law schools should encourage law professors to be more involved in pro bono work and offer resources that would be tremendously beneficial to the legal community as a whole.

This chapter has provided some examples on how law faculty members, both licensed and unlicensed, can engage in pro bono work. However, the opportunities are not limited to those listed in this chapter and law professors are encouraged to engage in pro bono work as they deem fit. To that end, law schools may elect to adopt formal pro bono policies, which can include examples of what will count as pro bono work, so as to ensure that law faculty members are motivated and will understand what pro bono work law professors might engage in. The time is ripe for law school faculty to participate in the practice of pro bono work, as they have so much to offer and refraining from doing so is a disservice to the profession and the public. Law school faculty are in a position to engage in very meaningful pro bono work and, at the same time, are able to call for generations of law students and future lawyers to engage in a type of service that is both rewarding and beneficial. As Dean Chemerinsky has stated: 'I have no doubt that the pro bono work I do greatly enhances my teaching and my scholarship. If nothing else, my work as a lawyer has greatly enhanced my ability to relate the material in every class to what my students will be doing as lawyers'.¹⁵⁷

This chapter serves as a good starting point for law school faculty wondering where to begin.

157 Chemerinsky, see n 1 above, at 1240.

About the author

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