

In the Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education

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I. Introduction

There is much more in a profession than a traditionally dignified calling. The term refers to a group of men pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose. Gaining a livelihood is incidental, whereas in a business or trade it is the entire purpose.¹

Roscoe Pound's classic definition of a profession has three elements: the *organization* (the "group"); *learning*; and the *spirit of public service*. A fourth idea, gaining a livelihood, he found inherent in all callings. The spirit of public service, however, is the element which Pound emphasized. This article briefly traces the history of the public service ethos of the legal profession, particularly as expressed in its codes. We describe new Rule 6.1 of the ABA Model Rules of Professional Conduct, which is the most recent, specific, and insistent formal statement of the public service expectations of the legal profession. After the description of Model Rule 6.1, this article analyzes the critical role played by legal education in conveying to future practitioners the significance of the public service duty of attorneys. As the law schools continue to experiment with the best methods to impart the learning and to consider

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In working together on this article, the authors, who are in very different parts of the profession, came to a greater appreciation of the gulf between the law schools (the "academy") and the practicing bar regarding their respective roles in legal education and the profession.

1. ROSCOE POUND, *THE LAWYER FOR ANTIQUITY TO MODERN TIMES* 5 (1953).

their role in public service and the organized bar tries to find ways to improve the profession, the concerns of the bar and law schools come together more frequently, sometimes in partnership and sometimes in conflict. The authors offer, in conclusion, a means to encourage partnership activities and policies that promote public service opportunities in the law schools and reduce conflict between the profession and the law schools.

II. Pro Bono Services and Ethical Rules

A. *The Origins of the Legal Profession*

Law, along with medicine and the clergy, began as a profession which provided service to the public; making an income sufficient to support continued public service was secondary to the service. This professional ethos implied that service was not contingent upon pecuniary compensation.

The profession of law dates back as far as ancient Greece. In Athens and Sparta a person in a trial was expected to represent himself but often brought a head of a kin group to function as a speech writer.² A class of skilled and experienced representatives also acted for parties in civil trials in the Roman Empire, and there was an effort to restrict the class to men of "good character" in a position to give their time to cases without interfering with their other tasks.³ The Roman lawyer later became, in some senses, an independent professional. Lawyers studied in law school by the fourth century A.D.⁴ At the same time, they began to be associated with the courts and were subject to discipline.⁵

Early Greek and Roman advocates belonged to a privileged class. The *clientele* were the weak and impoverished. They were defended by *patrons* who assisted their clients in a wide range of matters, both legal and nonlegal. Advocates benefited by an increase of political influence. As time progressed, the advocates were not necessarily drawn from the privileged class and, therefore, were not necessarily patrons of their clients. These advocates began to collect a fee. As early as 294 B.C., codes evolved to prohibit or regulate fees.⁶

2. For a discussion on the history of professional ethics, see Dennis A. Kaufman, *Pro Bono: The Evolution of a Professional Ethos*, PBI EXCHANGE, Summer 1992, at 3.

3. *Id.*

4. POUND, *supra* note 1, at 56-57.

5. Kaufman, *supra* note 2, at 3; see also Mauro Cappelletti & James Gordley, *Legal Aid: Modern Themes and Variations*, 24 STAN. L. REV. 347, 348-49 (1972).

6. POUND, *supra* note 1, at 51-55.

Thus, in this early period, a tension emerged between law as public service and law as a trade by which its members earned a living. This same tension continues in the profession today. This tension affects not only how lawyers see themselves and how they choose to act each day, but also underlies the efforts to express an ethical code. This tension also affects efforts to design a system of legal education today.

After the fall of the Roman Empire, the Roman Catholic Church and its ecclesiastical courts were the source of law. The advocates were called proctors. Proctors were subject to standards of conduct, were required to procure a license from a superior, and could not charge excessive fees.⁷

Early English history included references to individuals who were entitled to conduct cases. However, the genesis of the legal profession in England is generally dated to the reign of Edward I (1272-1303). Apparently, two types of lawyers existed, attorneys and pleaders.⁸ Early regulation of these groups included statutes which prohibited deceit, collusion, pleading both sides of a case, having an interest in the case, and testimony about confidential communications with a client. Most pertinent to this article, they were not entitled to withdraw from representation without permission of the court, and could charge only reasonable fees for services.⁹

Lawyers had to be admitted to practice to the court in England and throughout Europe, and were required to give sworn oaths as a condition of practice. Many of those oaths contained language which specifically required a lawyer to assist the poor without regard to a fee. For example, in 1683 in Norway and Denmark, a lawyer gave the oath "that he will exact no exorbitant fee from the poor or others."¹⁰ In Geneva, the lawyers swore "not to reject, for any consideration personal to myself, the cause of the weak, the stranger, or the oppressed."¹¹ In early Germany, the lawyer swore to "faithfully and industriously aid everybody, the poor man quite as willingly as the rich man."¹² These oaths, of course, are very similar to oaths sworn by new lawyers today in most states.¹³

7. *Id.* at 66-68.

8. *Id.* at 78-79.

9. Kaufman, *supra* note 2, at 4; *see also* HENRY DRINKER, *LEGAL ETHICS*, 14-15 (1953).

10. ABA Comm. on Code of Professional Ethics, 31 *REP. A.B.A.* 674, app. at 717 (1907).

11. *Id.* at 716.

12. *Id.* at 735.

13. Kaufman, *supra* note 2, at 4.

B. *The Lawyer in Early America*

Lawyers were not well regarded in early America, presumably because the earliest settlers associated lawyers with the upper class and the oppression escaped in Europe. Dennis Kaufman identifies possibly the first mandatory pro bono rule in America in a 1645 Virginia statute. This rule prohibited lawyers from practicing for a fee.¹⁴ However, by the time of the American Revolution, lawyers were indispensable to the independence movement. Most had engaged in higher education and training. Consequently, their role and status increased.

A system of courts was established in the Constitution and each jurisdiction sought to control admission to the practice of law. Lawyers were required to give oaths similar to those in Norway, Denmark, Geneva and Germany, quoted above. Associations of lawyers formed as early as 1790 in Portland, Maine, with the Cumberland Bar Association.¹⁵ The Association of the City of New York was formed in 1870, and the American Bar Association was formed in 1878.¹⁶

The law of lawyering was common law prior to 1836. Lawyers referred to traditions, ethos, or community norms. The first publication of those norms may have been in 1836 by David Hoffman, a Baltimore lawyer, as part of a course of legal study in which he set forth fifty rules concerning the profession, including rule XXVIII:

To my clients I will be faithful; and to their causes zealous and industrious. Those [clients] who can afford to compensate me, must do so; but I shall never close my ear or heart because my client's means are low. Those who have none and who have just causes, are, of all others, the best entitled to sue, or be defended; and they shall receive a due portion of my services, cheerfully given.¹⁷

The most significant early expression of professional ethics was by George Sharswood, who became head of the law department at the University of Pennsylvania. In 1884, Sharswood stated:

He certainly owes it to his profession, as well as himself, that when the client has the ability, his services should be recompensed; and that according to a liberal standard. There are many cases, in which it will be his duty, perhaps more properly his privilege, to work for nothing. It is to be hoped that the time will never come, at this or any other Bar in this country, when a poor man with an honest cause, though without a fee,

14. *Id.*

15. POUND, *supra* note 2, at 193.

16. *Id.* at 249.

17. DRINKER, *supra* note 9, at 342.

cannot obtain the services of honorable counsel, in the prosecution or defense of his rights.¹⁸

C. *Written Codes of Ethics*

The first written code of lawyer ethics in America was adopted by the Alabama State Bar Association in 1887. It included a rule that: "A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in some instances, and sometimes not at all."¹⁹ At least eleven states adopted codes by 1906.²⁰ The American Bar Association's first Canons of Professional Ethics were adopted in 1908 and were based on Sharswood's formulation. Kaufman's article suggests that these Canons were based on a view of the profession centered on the small-town lawyer, even though by that time an urban practice and corporate practice had developed. The values expressed in the Sharswood and ABA formulation were, nevertheless, compatible with those held by the new elite corporate bar. Those Canons did not have an explicit provision about services for which a client could not afford to pay. However, those Canons did contain a provision under which a lawyer assigned by the court would not be excused "for any trivial reason."²¹ The fee language of the Canons stated "it should never be forgotten that the profession is a branch of the administration of justice and not merely a money-getting trade."²²

The next changes occurred in the 1969 Model Code of Professional Responsibility. This was sparked in part by Justice Harlan Fiske Stone, and set in motion by ABA President, Lewis Powell. This code expresses *Canons* which articulate standards of professional conduct. These standards are "aspirational in nature and represent the objectives toward which every member of the profession should strive," and include *Disciplinary Rules* which "state the minimum conduct below which no lawyer can fall without being subject to the disciplinary conduct and *Ethical Considerations*."²³

The public service ethos is expressed in our Ethical Considerations:

Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated

18. Hon. George Sharswood, *An Essay on Professional Ethics*, 31 REP. A.B.A. 151 (1907).

19. ABA Comm. on Code of Professional Ethics, *supra* note 10, at 708 (quoting ALA. CODE § 48).

20. Kaufman, *supra* note 2, at 6.

21. *Id.*

22. *Id.*

23. Preamble to the ANN. CODE OF PROFESSIONAL RESPONSIBILITY 3 (1979).

their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.²⁴

There was a good deal of criticism of the Model Code of Professional Responsibility (for reasons largely unrelated to this Ethical Consideration). As a result, in 1977 the ABA established the Commission of Evaluation of Professional Standards, chaired by Robert Kutak. By that time, the Bar Association of the City of New York had issued a report recommending that pro bono service no longer simply be part of a professional ethos, but that all lawyers should be *obligated* to perform pro bono as a minimum standard of conduct. It recommended numbers as high as fifty to seventy hours per year.²⁵

A 1979 preliminary draft of the Kutak Commission also contained a mandatory pro bono provision. It recognized a duty of public service and would have required lawyers to serve forty hours per year.²⁶ The first published draft, however, removed that language and inserted: "A lawyer shall make an annual report concerning such service to an appropriate regulatory authority."²⁷ Kutak's suggestion of mandatory pro bono was based not so much on defining the profession as on the need to provide the legal services to the poor. In a journal article, Kutak reported:

The thrust of a mandatory *pro bono* obligation is not to compel charity, but to provide needed services that only lawyers can give. Those who would oppose a mandatory obligation to serve the poor and their communities should come forward with alternative proposals which will address the continuing crisis of unserved legal needs as directly and efficiently as would *pro bono* service.²⁸

24. *Id.* EC 2-25.

25. Kaufman, *supra* note 2, at 15.

26. Robert J. Kutak, *Pro Bono Service: Should It Be Mandatory?*, 37 N.L.A.D.A. BRIEFCASE 90, 90 (1980).

27. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.1 (Discussion Draft 1980).

28. Kutak, *supra* note 26, at 91.

Kutak's comments demonstrate that inclusion of a public service provision in ethical rules can come from either a concept of the definition of the profession and its relationship to the community; or, it can come as a response to a crisis of unmet legal need. In the view of the authors, the crisis in unmet legal need comes in part from lack of recognition by today's lawyers of the roots of the profession and the profession's evolution into a trade, with lawyers primarily dedicated to the increase of their incomes.

There was intense criticism of the mandatory service and mandatory reporting concepts of the Kutak report. The next draft dropped the reporting requirement and substituted "should" for "shall."²⁹ The new Model Rules of Professional Conduct were ultimately adopted in 1983. The Preamble of the Model Rules provides in part:

*A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. . . . A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.*³⁰

Rules 6.1 and 6.2 read:

Rule 6.1 PRO BONO PUBLIC SERVICE

*A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.*³¹

Rule 6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;*
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or*
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.*³²

29. Scott Slonim, *Kutak Panel Report: No Mandatory Pro Bono*, 67 A.B.A. J. 33 (1981).

30. *Preamble to the ANN. MODEL OF PROFESSIONAL CONDUCT* (1984).

31. *ANN. MODEL OF PROFESSIONAL CONDUCT* Rule 6.1 (1984).

32. *Id.* at Rule 6.2.

III. New Model Rule 6.1

Model Rule 6.1 was revised by the American Bar Association House of Delegates in February, 1993. The change was initiated by the ABA Standing Committee on Lawyers' Public Service Responsibility (SCLPSR).³³ For some time SCLPSR had been studying and discussing mandatory pro bono requirements, calls for which continued to arise around the country. SCLPSR decided not to recommend mandatory pro bono; rather, it decided to recommend strengthening Rule 6.1, while maintaining it as an aspirational rule.

SCLPSR proposed a rule that continued the essence of the prior rules but made the statement more specific and insistent than before. SCLPSR hoped that by drawing attention to the rule and by making clear that the obligation was real and immediate, although aspirational, more lawyers would provide services to those unable to pay for legal services.

SCLPSR drew on two prior resolutions of the ABA. In the 1975 Montreal Resolution, the ABA provided, in part, "[t]hat it is a basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services."³⁴ The resolution defined public interest legal services in much more detail than before and divided public interest into five categories: poverty law, civil rights law, public rights law, charitable organization representation, and administration of justice.³⁵ SCLPSR also drew on the 1988 Toronto Resolution, in which, the ABA "[u]rges all attorneys to devote a reasonable amount of time, but in no event less than fifty hours per year, to *pro bono* and other public service activities that serve those in need or improve the law, the legal system, or the legal profession."³⁶

The proposed modification to Model Rule 6.1 was presented to the House of Delegates in February, 1993, with support from a number of ABA sections and state bar associations. Following a

33. SCLPSR was supported by the Litigation, Business Law, Torts and Insurance Practice, and Individual Rights and Responsibilities Sections of the ABA, Young Lawyers' Division of the ABA, the State Bar of California and the Minnesota State Bar Association.

34. AMERICAN BAR ASSOCIATION, 100 ANNUAL REPORT OF THE AMERICAN BAR ASSOCIATION 684 (1975) (Recommendation of the Special Committee on Public Interest Practice, as amended and approved by the House of Delegates).

35. *Id.* at 684-85.

36. HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION 43 (Aug. 9-10, 1988).

spirited debate, the modification was adopted.³⁷ The new rule reads:

RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50 hours of legal services without fee or expectation of fee to:

- (1) persons of limited means; or*
- (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and*

(b) provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitably, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;*

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

- (3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.³⁸*

The two most significant changes of new Model Rule 6.1 were based on the Montreal and Toronto Resolutions, which, upon the adoption of New Model Rule 6.1, were for the first time embodied in a model rule by the American Bar Association, intended to become part of the ethical rules of each state. As with the Montreal Resolution, pro bono work was defined with a great deal more specificity than before. The five categories were essentially maintained, although somewhat reorganized and consolidated into two groups. The (a) group involves provision of legal services to persons of limited means or to organizations that are designed primarily to address the needs of persons of limited needs. The (b) group involves the other forms of pro bono legal services. New Rule 6.1 follows the Toronto Resolution of fifty hours per year (or such number of hours a state may choose); but suggests that "a substantial majority of the (fifty) hours of legal services should be provided in the (a) cate-

37. HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION 6 (Feb. 8-9, 1988).

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

gory.”³⁹ This creation of a hierarchy of pro bono legal services was among the more controversial elements of the modified rule.

The distinction between parts (a) and (b) is based on the great unmet need for legal services in this country. Several studies have shown that twenty percent or less of the legal needs of low income persons are met in the United States.⁴⁰ Long, acrimonious, Congressional debates over public funding of the staffed and judicare programs that provide these services have made clear that in the near future adequate funding will not be available. The effort to meet this set of legal needs is one of the primary forces that has driven the consideration of mandatory pro bono and the adoption of new Model Rule 6.1. The other principal basis for the distinction between (a) and (b) services is that lawyers have a special responsibility for the basic accessibility and functioning of the legal system. The (a) category involves direct legal services to those who cannot afford those services, and reflects the core idea that we have seen throughout the codes described above. The (b) category assumes the functioning of the system and assumes access to justice, but calls on lawyers in other ways.

To make clear that the rule was not mandatory pro bono, the word “voluntary” was added into the title of the rule.⁴¹ In addition, the words “should aspire to” were added into the first sentence.⁴²

One matter which had been the subject of great debate was the issue of a “buy-out.” On the one hand, it was argued that a large number of lawyers would not be in a position to provide these services or would not feel competent to do so, and that they should be offered the alternative of providing a financial contribution instead. As a practical matter, the administrative structure needed to support opportunities for lawyers to provide actual pro bono service requires a good deal of financial support. It was argued that unless a buy-out was available, providing financing for the pro bono administrative structure would draw funds away from the already overburdened staffed legal services system. On the other hand, it was argued that it was simply not acceptable to have a buy-out of an ethical obligation. This issue was not addressed in the rule itself but in the comment which contained a kind of a compromise:

39. *Id.*

40. ABA Standing Comm. on Lawyers' Public Service Responsibility et al., Report Accompanying Proposed Revisions to Model Rule of Professional Conduct 6.1 (February 1993) (citing, *inter alia*, ABA Consortium on Legal Services and the Public, Two Nationwide Surveys, 1989 Pilot Assessments of the Unmet Legal Needs of the Poor and of the Public Generally (1989)).

41. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1994).

42. *Id.*

*Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times, a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, it may be feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.*⁴³

New Rule 6.1 also contains the provision contained in Ethical Consideration 2-25 and old Model Rule 6.1 that lawyers should, in addition, provide financial support for existing legal services programs.⁴⁴

Another basic issue that surrounded the discussion of Model Rule 6.1 concerned the distinction between legal services and community services. Prior Rule 6.1 as well as Ethical Consideration 2-25, had been based upon the provision of *legal* services. That concept was continued in revised Model Rule 6.1 with the words "legal services" in the first sentence of the rule.⁴⁵ Nevertheless, the subject continues to cause some confusion for those who do not read the words carefully, or who do not know the history. It is clear that Rule 6.1 and all of its predecessors apply only to the provision of legal services. While it is admirable for lawyers to serve their community in a variety of ways, community service stems from a more general obligation that belongs to all citizens and not solely to lawyers. On the other hand, part of the basis for imposing a service rule on lawyers, whether mandatory or aspirational, comes from the fact that lawyers have specific skills and training and have a monopoly on the right to provide legal services. This gives rise to something like a "common carrier" relationship to the community. The training and the traditions of the legal profession, and the oath which lawyers take when they enter the profession, obligate them to provide *legal* services. Therefore, it is appropriate to have a public service requirement for legal services as an ethical rule for the legal profession.

At the time Rule 6.1 was proposed, four states, Arizona, Florida, Kentucky, and Georgia, had adopted or were in the process of adopting revisions to their ethical codes with specific hour require-

43. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 comment (1994).

44. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1994).

45. *Id.*

ments.⁴⁶ Since then Hawaii and Virginia have also done so.⁴⁷ In addition, Florida's code contains a definition of pro bono legal services which is limited to legal services to the poor.⁴⁸

The passage of new Model Rule 6.1 signalled a reinvigorated effort by the organized bar to enlarge public access to justice. The process leading to its adoption became, in part, a discussion about the nature of the profession — whether the practice of law involved a collection of technical skills available only to those who could afford them, or whether the public service dimension was inextricably bound up with the definition of the profession. The Rule in its final form, however, remains aspirational and consequently, gives rise to a number of issues. How can the new rule be called to the attention of lawyers? How can lawyers come to understand the history of the profession as reflected in this rule? How can lawyers know from their own experience the legal needs of the poor as well as satisfactions of public service? How do lawyers acquire the knowledge of poverty law which enable them to provide meaningful services? The answers to these questions may lie in the law schools.

IV. Ethics and Public Service in the Law Schools

A. *Teaching Ethics - A Shift in the Profession*

The organized bar, speaking through the American Bar Association, has paid special attention to how law schools shape our profession. With the objective of improving the educational standards of law schools, the ABA began accrediting law schools in 1927.⁴⁹ In conjunction with this effort, the profession encouraged states to enact policies allowing only graduates of accredited law schools to sit for the bar examination.⁵⁰

In 1973, The ABA House of Delegates, the ultimate decision-maker with respect to accreditation, approved a set of uniform stan-

46. ARIZONA RULES OF PROFESSIONAL CONDUCT 42, ER 6.1 (1994); FLORIDA RULES OF PROFESSIONAL CONDUCT 4-6.1 (1994); KENTUCKY RULES OF PROFESSIONAL CONDUCT RULE SCR 3.130(6.1); GEORGIA STATE BAR RULE 3-102, EC 2-25 (1994).

47. HAWAII RULES OF PROFESSIONAL CONDUCT Rule 6.1 (1994); VIRGINIA RULES OF PROFESSIONAL CONDUCT, EC 2-27 to EC 2-34 (1994).

48. FLORIDA RULES OF PROFESSIONAL CONDUCT Rule 4-6.1 (1992).

49. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 260-61 (1992). (Value § 2: Striving To Promote Justice, Fairness, and Morality) [hereinafter *MACCRATE REPORT*].

50. Currently 45 states require graduation from an ABA-approved law school in order to sit for the bar examination. See COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 1994-1995 10-12, Chart III (American Bar Association Section of Legal Education and Admissions to the Bar & the National Conference of Bar Examiners, 1994).

dards developed by the Section on Legal Education and Admission to the Bar. The bulk of the Standards deal with such issues as faculty-student ratio, the need for adequate library facilities, and the need for uniform admission policies.⁵¹

The accreditation standards, many of which remain in force today, are intentionally broad with respect to their subject matters. For example Section 301 (b) states:

*A law school may offer an educational program designed to emphasize some aspects of the law or the legal profession and give less attention to others.*⁵²

Law schools are expected to offer courses commonly thought of as core courses, leaving it up to individual law schools to define what is considered "core."

Soon after the adoption of these Standards, the law schools' role in transmitting ethics and professional responsibility instruction was given heightened attention. In 1974, the profession was confronted by the Watergate scandal. Shaken by events which involved attorneys in the highest seats of government, the ABA House of Delegates voted to amend the standards to require for the first time a substantive curricular requirement — the teaching of professional responsibility. The amended Standard 302(a) now reads in part:

*The law school shall offer . . . and shall provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.*⁵³

The amended Standard 302(a)(iv) remains the only specific accreditation requirement for a subject-based area. Its passage reflects the profession's view that learning professional responsibility is a fundamental educational objective of legal education.

51. AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (Office of the Consultant on Legal Education to the American Bar Association 1994). Standard 402 provides that law schools should have at least six full-time faculty members, a full-time dean and a full-time librarian. *Id.* at S402. Interpretation 1 of 405(d) (B) (1) and (2) maintains that a ratio of 20:1 is "presumably in compliance," while a ratio of 30:1 is "presumably not in compliance." *Id.* I405. Standards 601-604 address the adequacy of library facilities, *id.* S601-S604; Standards 502-504 and 506 govern law school admissions, *id.* S502-S506.

52. *Id.* at S301.

53. *Id.* at S302.

Although many law schools had previously offered a course in legal ethics, the passage of amended Standard 302(a) led to almost universal compliance, so that by 1977, ninety-six percent of the law schools had courses in professional responsibility.⁵⁴ It has been noted, however, that "law schools did not view the new task with any particular pleasure" believing that morals could not be "taught," but are arrived at through family training and life experiences.⁵⁵ Many of the courses were taught in a traditional pedagogical mode, relying on the Code of Professional Responsibility. In 1979, Ronald Pipkin studied the effectiveness of courses on professional responsibility and concluded that students perceived them as easier and less demanding.⁵⁶ Pipkin further maintained that the form of instruction prevalent at the time actually served to desensitize students to legal ethics.⁵⁷ Speaking in 1985, Robert McKay, former dean of New York University Law School and President of the Association of the Bar of the City of New York, echoed this statement of the dilemma:

Although the ABA standards for approval of law schools now require that all students receive instruction in professional responsibility, the response in some schools has been somewhat grudging. Almost nowhere do students come away from law school believing that professional responsibility is central to the practice of law.⁵⁸

Based on these findings, it is possible that simply including discussions about the Model Rule 6.1 and the urgent need for pro bono work in a classroom setting would not have the effect on students' attitudes.

B. Linking Model Rule 6.1 to Professional Responsibility in the Law School Curriculum

1. Public Service as a Special Element of Professional Responsibility

The 1974 amendments to the accreditation standards probably did not contemplate that pro bono or public service was a special

54. Ronald M. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, AM. B. FOUND. RES. J. 247, 249 (1979).

55. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 236 (1983).

56. Pipkin, *supra* note 54, at 264-65.

57. *Id.*

58. Robert McKay, *Law, Lawyers, and the Public Interest*, 55 U. CIN. L. REV. 351, 371 (1985). There is much discussion among educators on how to improve the teaching of professional responsibility. See, for example, *Teaching Legal Ethics: A Symposium*, 41 J. LEG. EDUC. 1 (Mar. 1991); Edmund B. Spaeth Jr., *Do the Rules of Professional Conduct Help a Lawyer to Be Ethical?*, 57 PHILADELPHIA LAWYER, Fall 1994, at 24.

element of professional responsibility that should be promoted in law schools. The American Bar Association's Model Rules of Professional Conduct alone contain eight general categories, including a category entitled "Public Service." Model Rule 6.1, appearing in the "Public Service" section, is only one of over 50 black letter model rules created for the purpose of self-regulation. So why should law schools devote educational and programmatic resources to one aspect of the rules?

First, the public service obligation of lawyers is an inherent characteristic, or defining element, of the profession. If there is no larger calling to public service, then the practice of law is simply a trade, consisting of a collection of analytical skills honed for commercial success.

Second, law schools are the portals through which all new members of the profession must pass. After graduation most attorneys enter private practice in different size firms, with different cultures, different norms and different resources.⁵⁹ Lawyers may or may not relate to organized pro bono activity in their jurisdiction.⁶⁰ Attendance at law school may be the single most unifying experience of our profession.

In their carefully documented study, *Making it and Breaking it: The Fate of Public Interest Commitment during Law School*, Robert Stover and Howard Erlanger studied how the law school experience at the Denver University Law School socialized its students to a particular world view. Although concerned with why students who originally sought public interest careers changed their career goals, the study is relevant to understanding students' diminished commitment to altruistic goals. Stover and Erlanger identified several factors leading to this change of values. They found a lack of emphasis in the law school curriculum on issues associated with the disadvantaged. Surprisingly, even the course on the legal profession which included a study of the Code of Professional Responsibility ignored social justice issues.⁶¹ First year anxiety about grades pressured students who initially entered law

59. According to the MacCrate Report, in 1988, 71.9% of all lawyers were in private practice; of those, 46.2% were sole practitioners. MACCRATE REPORT, *supra* note 49, at 33.

60. See, for example, FINAL REPORT OF THE PRO BONO COMMITTEE app. Table 7 (Pro Bono Committee, Apr. 18, 1994). This table shows that in 1992 37.1% of respondents to a survey conducted by the Pro Bono Review Committee, appointed by then Chief Judge Sol Wachtler of the New York Court of Appeal, reported that they performed pro bono services that year. Pro bono was narrowly defined in the survey and included civil legal services to the indigent.

61. ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL 57-58 (Howard S. Erlanger ed., 1989).

schools to work with the underprivileged to forfeit these concerns to concentrate on studies. Although grade anxiety had lessened in the second year, altruistic goals did not reappear among these students. The overall law school culture stressed rigorous analysis, scholarship and, to some extent, economic success.⁶² Thus, while law schools are in a unique position to convey to students the centrality of public service to the profession, unless special attention is devoted to this issue, this wider vision will be lost.

Third, law schools, like the profession, have some resources they can devote to the ever present disparity in legal service delivery, where indigent populations are unable to gain access to counsel. And as members of the profession, the law schools owe a concomitant obligation to perform a type of "institutional pro bono." This type of service can go beyond client representation and include research and scholarship that benefits the poor and underrepresented.

Finally, law students and legal educators increasingly embrace the concept that law schools have a responsibility to develop curricular and programmatic responses to address the legal needs of the poor.⁶³ In 1990, three student authors of *Campaigning for a Law School Pro Bono Requirement*, a manual distributed by the National Association for Public Interest Law, expressed their concern with the corporate focus of law school curriculum and argued that

few law students are aware of their professional responsibility to provide pro bono legal services or the extent of the need for these services. And for those who are aware of the need, few have received from law school the training to carry out their pro bono obligation once they graduate.⁶⁴

Students today come to law school with renewed idealism; there is an upsurge in their desire to perform various levels of public service work. The dramatic growth of the National Association for Public Interest Law (NAPIL), a student based organization that works to support curricular reform and public interest career development,

62. *Id.* at 57-59.

63. See Cynthia R. Watkins, Note, *In Support of Mandatory Pro Bono Rule for New York State*, 57 BROOK. L. REV. 177 (1991); Stephen Wizner, *What is a Law School*, 38 EMORY L.J. 701 (1989); Henry Rose, *Law Schools Should be About Justice Too*, 40 CLEV. ST. L. REV. 443 (1992); Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993); L. Calderon et al., *Mandatory Pro Bono For Law Students: Another Dimension in Legal Education*, 1 J.L. POL'Y 95 (1993); Frederick J. Martin III, Note, *Law School's Pro Bono Role: A Duty to Require Student Public Service*, XVII FORDHAM URB. L.J. 359 (1989).

64. JASON ADKINS ET AL., *CAMPAIGNING FOR A LAW SCHOOL PRO BONO REQUIREMENT*, 1 (NAPIL 1990).

which now has chapters on 128 campuses, demonstrates the breadth of student involvement.⁶⁵ There is also increased pro bono activity among faculty members. Since the ability to insure equal justice is based on providing services by and to a diverse population, The Society of American Law Professors hosted three national conferences devoted to incorporating diversity issues into the classroom. These conferences attracted hundreds of professors.

2. Changing the Law School Culture

Even if one agrees that the law schools ought to play some role in exposing students to the ethical obligation to perform pro bono service, what methods will adequately convey this unique aspect of professional responsibility? The lessons gleaned from Stover's study and confirmed by observations of those inside the academy is that law school is as much a professional socialization experience as it is a scholarly and skills building enterprise. Henry Rose, Assistant Professor at Loyola, urges us to examine the "seamless fabric of legal education" in approaching the incorporation of a pro bono ethic and sensitivity to the less fortunate.⁶⁶ "The entire enterprise of legal education, from classroom to student and faculty conduct, must be infused with the sense that being a lawyer includes special responsibilities beyond the interests of self and client."⁶⁷

This "pervasive approach" includes attention to admission policies that have criteria that examine candidates' commitment to professional idealism, enlarging clinical opportunities for students, creating extracurricular and co-curricular pro bono programs, and offering courses in poverty law. In-house clinical courses and externships are important avenues through which service to the underrepresented may occur. The educational objectives of these courses are focused on developing lawyering skills. Reflections in these settings about how this type of representation fits into larger questions of access to legal assistance and the courts and discussions between students and faculty about how or whether to use the skills obtained in a clinical situation in subsequent pro bono work as an attorney can add a public service framework to these educational experiences.

Rose proposes that traditional courses use hypothetical and exam questions that illustrate the subject matter taught from the perspective of an indigent client. Other methods include inviting

65. KATHLEEN WELCH, BUILDING A MOVEMENT FOR JUSTICE (1994)(NAPIL Career Fair & Conference Booklet).

66. Rose, *supra* note 63, at 449.

67. *Id.*

outside speakers to discuss their cases, or involving students in a writing project that seeks to resolve a problem affecting the poor.⁶⁸

Placement offices are important centers for promoting a culture of service. Placement offices can gather information about the pro bono policies of area law firms and can publicize this information to students.⁶⁹ This sends a dual message. Firms understand that the law schools believe this information is important, and students are given the signal that it is permissible to assess firms on that basis. Several placement offices contain public interest counselors who also coordinate voluntary pro bono programs. Pro Bono Students America, which has regional centers in over twenty law schools in New York, New Jersey, Illinois, Florida and Texas, use this model.

3. Non Credit Pro Bono Programs — A Growing Trend

In a recent survey conducted by the Section on Legal Education and Admissions to the Bar, sixty-three of the 106 schools who responded reported having a pro bono program in place.⁷⁰ Since no definition of a "pro bono" program was supplied, the respondents self-defined pro bono. Most of the initiatives were non-credit activities. For example, seventeen schools required public service as a condition of graduation (mandatory programs), and sixty-eight schools reported extra-curricular programs.⁷¹ Such programs can be characterized as "free-standing" law school pro bono programs, as compared with credit-bearing courses.

The spread of law school pro bono programs outside the normal course framework is a result of several factors involving cost, accreditation (discussed later in this article)⁷² and philosophical concepts of the meaning of "pro bono" in a law school setting. With

68. Several colleagues from the University of Pennsylvania use this approach. Professor Barbara Woodhouse asks members of her Child, State and Family Class to write a paper based on a problem identified by practicing public interest attorneys; Professor Howard Lesnick, in a seminar regarding civil liberties in the workplace, obtained research assignments from the ACLU's project with the same name.

69. The Philadelphia Bar Association funded a joint project between area law schools and firms that published the policies of over 40 law firms with respect to pro bono. The booklet, SPOTLIGHT ON PHILADELPHIA LAW FIRM PRO BONO, was distributed to all law school members of the National Association for Public Interest Law (NAPIL) by NAPIL.

70. William B. Powers, REPORT OF LAW SCHOOL PRO BONO ACTIVITIES, A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 1 (Fall 1994). See *infra* p. 75 for a discussion of the genesis of the survey.

71. *Id.* at 2.

72. "Free-standing" pro bono programs are less expensive because many are administered by non-faculty members, including part-time attorney and non-attorney coordinators. Because such programs do not offer course credit, they are able to place a substantial number of students outside of the law school under the supervi-

respect to the latter, there is the viewpoint that since pro bono work in legal practice means uncompensated work, and "compensation" in a law school involves earning course credit, an uncompensated experience means one that does not contain course credit.⁷³ In contrast to this notion is the position that the most important feature of a "pro bono" program is engagement in law-related service that builds confidence and skills, while exposing students to the importance of carrying on such service after graduation. The authors take no position on whether "pro bono" in the law schools should be credit or non-credit.

Founded before the revision of Model Rule 6.1, many free-standing programs have an expansive definition of a public interest activity which includes work for government organizations.⁷⁴ Part of this definitional ambiguity is based on the premise that the attorney's public service responsibility should be viewed broadly. Practical and financial constraints, however, may play a critical role in how a law school designs its program and defines an activity as "pro bono." A law school program that seeks to maximize the number of students performing public service "in the field" must identify a corps of attorney supervisors. Often the supervisory capacity of the law school, the non-governmental public interest community and pro bono practitioners are not sufficient to accommodate large numbers of students.

The passage of Model Rule 6.1 presents a challenge to programs using the expansive definition. Efforts should be made to insure that the range of placements available to students is responsive to the crisis in legal service delivery which Model Rule 6.1 addresses so that a "substantial majority" of the placement options involve service to the poor. There are several possible means for achieving this end: promoting exchanges among programs about worthwhile projects that can increase placements involving the poor; establishing advisory panels with closer links to the legal services community and private bar involvement programs to de-

sion of practicing attorneys without regard to the faculty-student ratio required under ABA accreditation standards for credit-bearing externships.

73. See, for example, Howard Lesnick, *Why Pro Bono in Law Schools*, in this Journal, at 25.

74. The University of Pennsylvania Law School, Duke Law School, Southern Methodist University School of Law, the University of Louisville School of Law, and the over 20 cooperating schools in Pro Bono Students America's regional centers all include government work in their definition of public interest. Tulane University Law School limits the activity to work with people of limited means. See Caroline Durham, *Law Schools Making a Difference: An Examination of Public Service Requirement*, in this Journal, at 39.

termine appropriate areas for student work; and creating more opportunities for supervision by faculty.

C. Expanding Law School Pro Bono Initiatives — What Role for the Profession?

1. Building Partnerships

One fascinating element about promoting pro bono programs in the law schools is that any extensive effort in this regard opens up the law school to the profession in new ways. Many of the programs and activities outlined above are premised on increased cooperation between the law schools and the profession. As we have seen, most law schools are using a "free-standing" model which attempts to place large numbers of students outside of the law school. Public interest lawyers, leaders of pro bono bar involvement programs, and law firm pro bono coordinators can work with law schools to identify supervisors capable of overseeing students' work and to develop projects that leverage student assistance to increase legal services.⁷⁵ Since funding, administration and supervision of law students may be an impediment to developing programs, bar leaders and organizations can explore the feasibility of using additional resources to enable schools to create or expand programs.

National and regional symposia between the profession and the law schools allow for the cross-fertilization of ideas. In April 1993, the Section on Legal Education hosted a program in coordination with the Standing Committee on Lawyers' Public Service Responsibilities that brought together over fifty law professors, deans and law school administrators to explore model law school pro bono programs. Minnesota law schools joined with the public interest community and the Minnesota State Bar to sponsor a day long conference about pro bono in the law schools. Another recent regional conference planned by legal services providers, bar association groups and Virginia law schools at the Richmond School of Law entitled, "Access to Justice" explored a number of approaches to linking the law school curriculum with the legal needs of the unrepresented.

Bar organizations can consciously include in their local and state meetings representatives from law school programs to give presentations, while law school faculty, staff and students can reach out to both private lawyers active in pro bono matters and public service attorneys, inviting them to law school forums and

75. Almost all "free-standing" pro bono programs place students with private law firms to assist on pro bono cases.

classes. State bar associations and law schools can review state practice rules or other regulations that may deter law schools from establishing clinical or structured service programs. Since most states require students to be in their third year of attendance before they appear in court, many clinical programs are limited to third year students. Enlarging service delivery to the underrepresented by examining the feasibility of permitting second year students, with adequate supervision, to engage in representation serves the interests of both the law schools and the profession.

2. Exploring Law School Curricula

One method by which the profession has influenced legal education in the particular area of professional responsibility is through the accreditation process. As the ensuing discussion of recent developments indicates, any proposal to modify accreditation standards comes at a time of heightened debate between members of the profession and legal educators over setting curricular standards in the law schools.

a. The Accreditation Controversy

The hegemony granted to the ABA's Section on Legal Education to accredit law schools has recently been challenged in an antitrust law suit brought by the University of Massachusetts School of Law at Andover against the American Bar Association in the Federal District Court for the Eastern District of Pennsylvania.⁷⁶ This non-accredited law school argues that the accreditation process drives up the cost of legal education and prevents law schools with other models of education from developing. Since forty-five states require graduation from an accredited law school to take the bar examination, lack of such credentials puts an institution at a severe disadvantage. The University of Massachusetts School of Law claims that the denial of accreditation will cause a drop in enrollment which will result in substantial economic damage. Other law school deans are concerned that requirements imposed by the accreditation process inhibit scholarship and academic freedom.⁷⁷

With respect to curricular reform that enlarges public service opportunities for students, the accreditation standards pose a paradox. Standard 302(a)(iv) establishes the teaching of professional responsibility as a hallmark of legal education, which could be read as encouraging pro bono activities, including the development of creative and innovative experiential approaches to instill the pro bono

76. Martha Middleton, *Passing the Buck*, *STUDENT LAWYER*, Oct. 1994, at 19.

77. *Id.* at 21.

ethic into the educational experiences of law students. But Standard 306 and its Interpretation, approved in February 1993, set forth detailed requirements for acceptable credit-bearing field programs. These standards require close faculty supervision, including faculty visits to placement sites.⁷⁸ For those schools which choose to develop credit bearing programs where large numbers of students are placed outside of the law school under the supervision of attorneys, the need for the expenditure of faculty resources for oversight and supervision is considerable. The newly enacted Interpretation to 306 may prove to be a barrier to the expansion of the for-credit externship model.

b. The MacCrate Commission

In the past few years, a similar sense of urgency to that felt by the profession following the 1974 Watergate incident was rekindled both outside and inside the law schools with respect to the role of law schools in preparing its students for professional practice. In 1989, the Council of the Section of Legal Education and Admissions to the Bar established the Task Force on Law Schools and the Profession: Narrowing the Gap. Robert MacCrate, a partner at Sullivan & Cromwell and former ABA president, chaired the Task Force and stated that its mission was to examine the perceived gap between the practicing bar and the law schools. A report entitled "Legal Education and Professional Development — An Educational Continuum" was issued in July, 1992. Known as the MacCrate Report, it has been widely disseminated in the law school community and the profession.⁷⁹

The Introduction to the MacCrate Report explains the disparities between the expectations of practitioners and those of the law schools. Practitioners want law schools to emphasize lawyering skills and tend to view scholarship as irrelevant to practice. Law schools, generally affiliated with universities, have a strong commitment to academic achievement and research, and seek to attract faculty with a reputation for scholarship. In order to establish some common ground, the Task Force produced a "Statement of Skills and Values" which is an inventory that describes the desirable skills and values appropriate for competent practice. The Statement was meant, among other things, to be used by law students to prepare for practice and by law schools as an aid in curricular development.

78. A.B.A. STANDARDS, *supra* note 51, at I306.

79. MACCRATE REPORT, *supra* note 49, at 260-61.

The Statement's compendium of skills, which includes Problem Solving, Factual Analysis, Communication, Counseling, Negotiation and Litigation and Alternative Dispute Resolution are certainly important devices needed by future professionals who intend to perform pro bono representation. In addition, the Statement identifies an attorney's commitment in "Striving to Promote Justice, Fairness and Morality" as a fundamental professional value. The Statement squarely addresses the obligation of a lawyer to . . . "Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them."⁸⁰

Although the MacCrate Report specifically states that the Statement of Skills and Values should not be used as a standard by which to measure curriculum or to measure performance in the accrediting process,⁸¹ its recommendations became intermeshed with the accreditation debate. When the ABA House of Delegates passed a resolution in February, 1994, asking law schools to voluntarily implement portions of the Report, Deans of fourteen major law schools joined in a letter to their colleagues to object to the intrusiveness and costliness of the accreditation process. In a clear expression of its frustration with the law schools, the House adopted the resolution anyway.

Obviously the MacCrate Report has become a lightning rod that focuses on the very issue it sought to address and ameliorate—the gap between the profession and the law schools. Notwithstanding the accreditation controversy, the MacCrate Report provides an impetus to exchange ideas among and between law schools and the profession with respect to curricular offerings, including an increased emphasis on experiential programs that deliver services to indigent clients.⁸²

80. *Id.* at 140.

81. *Id.* at 131-32.

82. But see John J. Costonis, *The MacCrate Report: Of Loaves, Fishes and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1992). Dean Costonis of the School of Law at Vanderbilt University argues that the MacCrate Report does imply that the ABA should exercise some regulatory control over law schools. "The bar's temptation to further overload law schools with lawyer-training costs mandated by ABA Standards is daunting." *Id.* at 196. Dean Costonis concludes that the problem in legal education is that the profession and law schools did not garnish the resources that were necessary in order to fashion a model of education, as the medical profession did when it created the medical clinical/residency continuum, and the law schools are now not situated to pay the costs of such a model. *Id.*

c. *The ABA August, 1993 Resolution Promoting Law School Pro Bono Programs*

Entities within the American Bar Association looked with interest upon the continued establishment of both curricular and co-curricular programs that required law student pro bono graduation requirements and sought to encourage their development. During 1993, following the adoption of Model Rule 6.1, the Young Lawyers' Division of the American Bar Association circulated a draft resolution calling upon the American Bar Association to "encourage law schools to establish a public service graduation requirement." The Law Students' Division had adopted a similar proposed resolution. Another resolution, proposed by the Philadelphia Bar Association and supported by the Illinois Bar Association, developed against the backdrop of the MacCrate Report, proposed a plan that would expose law students to skills training through internships, while at the same time enabling students to engage in pro bono service.

In August, 1993, SCLPSR brought together the Young Lawyers' Division, the Section on Legal Education and Admission to the Bar, representatives from the Philadelphia Bar Association, the Illinois Bar Association and representatives of the Section of Litigation, Business Law and Torts and Insurance Practice to discuss these resolutions. The meeting served to point out once again the ongoing debate between those in legal education and those in the profession with respect to curricular development. Legal educators were fearful that the imposition of a curricular or co-curricular requirement on law schools would cause the reallocation of resources in ways that might not be consistent with long standing curricular notions. Representatives from the profession thought that they had a responsibility to direct the law schools in a manner beneficial to the profession and the public. In this case, the benefit identified by the profession was that engaging law students in some form of experiential pro bono activity would increase the number of attorneys willing and able to perform pro bono work.

The resulting resolution passed by the ABA House of Delegates reflects a compromise of these two perspectives. The resolution provides in part: "Resolved, That law schools are strongly encouraged to develop pro bono/public service programs as components of their skills training curricula or programs and to exchange information about such pro bono/public service programs through the Section of Legal Education and Admissions to the Bar."⁸³ The resolution addresses the profession's desire to promote the develop-

83. HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES 44 (Aug. 10-11, 1993).

ment of law school pro bono activity, while recognizing the preeminent role of the Section on Legal Education in that promotion effort.⁸⁴

As a result of the resolution, the Section of Legal Education compiled information on law school pro bono programs. As discussed previously in this article, preliminary findings demonstrate that law school initiatives run the gamut, from pre-existing clinical courses to structured mandatory programs to extra-curricular projects. That so many law schools are examining their institutions to establish which activities may be classified as "pro bono" indicates that legal educators are sensitive to the evolving emphasis, by the profession and by others in the law school community, on the need to promote public service as part of the educational process.

V. Conclusion

The revision of Model Rule 6.1 is based on the special tradition of pro bono service as a defining characteristic of the profession. The tremendous need for such service among the poor remains undisputed. Yet the passage of an aspirational rule is rendered meaningless unless attorneys view such service as an integral part of their professional identity and unless they possess the skills to provide that service. As a gateway to the profession, law schools have a special responsibility to acquaint students with the public service calling of our profession in general, and to equip students to deal with the problem of the poor in particular.

The development and expansion of curricular and free-standing pro bono programs in the law schools presents opportunities for increased partnership efforts on behalf of those representing the practicing bar and those in legal education, including the formation of local projects joining practitioners with law students; local regional and national exchanges to examine pro bono initiatives and evaluate their effectiveness; reviewing state practice rules that may impede greater student involvement in service delivery; and examination of accreditation standards to consider the role of standards in encouraging or hindering the development of innovative experiential programs.

If the enlargement of pro bono programs in law schools is addressed as a partnership effort between the legal educators and the organized bar, we may hope for an enriched law school education

84. The Section of Legal Education and Admissions to the Bar proposes accreditation standards to the House of Delegates and establishes procedures to process applications by law schools for accreditation. A.B.A. STANDARDS, *supra* note 51, Foreword.

and increased public support for legal education and a profession which realizes its own ideals.