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# MANDATORY PRO BONO FOR LAW STUDENTS: ANOTHER DIMENSION IN LEGAL EDUCATION\*

Lewis S. Calderon,\*\* Lawrence Bortstein, Robert W. Frommer, David Karp & Jordana Silverstein\*\*\*

## INTRODUCTION

In recent years, the New York State Bar Association and the New York State courts have wrestled with the question of mandatory *pro bono*<sup>1</sup> for practicing attorneys<sup>2</sup> and several law schools have imposed requirements for such service on their

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\*\* BLS Class of 1993.

\*\*\* BLS Class of 1994.

<sup>1</sup> *Pro bono publico* or the colloquial term, *pro bono*, is used to describe work or services done or performed free of charge for the public good. BLACK'S LAW DICTIONARY 1203 (6th ed. 1990). See also Joseph S. Genova, *Pro Bono Pauperis?*, N.Y. ST. B. J., Feb. 1993, at 30 (discussing which services should be included in the definition of *pro bono*).

<sup>2</sup> See, e.g., Cynthia R. Watkins, Note, *In Support of a Mandatory Pro Bono Rule for New York State*, 57 Brook. L. Rev. 177 (1991); Pamela DeFanti Robinson, *Insurmountable Opportunities or Innovative Choices: the Pro Bono Experience at the University of South Carolina School of Law*, 42 S.C. L. REV. 959, 960 (1991) (state *pro bono* programs for practicing attorneys are "wrought with exceptions, buy-out proposals, and funding difficulties"); Committee to Improve the Availability of Legal Services, *Final Report to the Chief Judge of the State of New York* (April 1990)(hereinafter *Final Report*), reprinted in 19 HOFSTRA L. REV. 755 (1991). Constitutional challenges to imposition of mandatory *pro bono* include use of the "Just Compensation" clause of the United States Constitution, the due process rights of attorneys and clients under the Fifth and Fourteenth Amendments, equal protection arguments, and contests invoking the First and Thirteenth Amendments. See, e.g., John C. Scully, *Mandatory Pro Bono: An Attack on the Constitution*, 19 HOFSTRA L. REV. 1229 (1991).

students.<sup>3</sup> These *pro bono* programs seek to remedy the unequal distribution of legal representation based on income, to raise the ethical level of prospective attorneys, and to infuse what is ordinarily an abstract legal education with a measure of practical experience.<sup>4</sup> This article discusses a plan for law students to provide *pro bono* legal assistance to the poor as one mechanism for society to make legal services available to the indigent, and as a means for law students to acquire "field experience" as part of their legal education. The authors support the concept of mandatory *pro bono* as a graduation requirement for law students and have devised a plan which attempts to encompass the various needs, requirements, and limitations of different law schools with regard to implementing such a program.

### **GOALS OF MANDATORY PRO BONO SERVICE PROGRAMS**

The proposal that law schools impose mandatory *pro bono* service on students as a graduation requirement has three underlying purposes. First, the practical experience gained by students involved in such a program would bridge the gap between law school and the profession. Second, this program could help remedy the dearth of legal representation for the poor. Third, a mandatory *pro bono* plan would instill prospective attorneys with a heightened sensitivity to the legal needs of the poor.

1. Narrowing the Gap Between Law School and the Profession

The first concern a mandatory *pro bono* proposal should address is the gap between law school and the legal profession. Traditionally, law schools have concentrated on teaching students legal theory and principles, leaving the actual practice of law to be learned "on the job." Although many law schools have instituted clinical programs through which students can acquire practical

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<sup>3</sup> See generally, notes 30-44 *infra*, and accompanying text.

<sup>4</sup> See generally, notes 30-44 *infra*, and accompanying text.

experience, these programs have remained on the periphery of legal education and have not been made part of the standard curriculum. A recent ABA task force concluded that law schools must prepare their students to be practicing attorneys rather than simply training them to be admitted to the bar.<sup>5</sup> The ABA report recommended that each law school develop a curriculum which extends beyond re-enforcement of the student's analytical, research and writing skills, to include instruction in areas such as problem solving, factual investigation, communication, counseling, negotiation, and litigation.<sup>6</sup>

The approach recommended by this paper requires law students to perform "field work" as a means of acquiring these skills before graduation, and affords students the opportunity to work with practicing attorneys in a professional setting.<sup>7</sup> Students working in this capacity would be exposed to practical skills such as conducting interviews and factual investigations, and writing briefs and/or memoranda of law. In addition, working with legal professionals will take students beyond the world of the hypothetical and give them the opportunity to test their mettle.<sup>8</sup>

## 2. Improving Legal Aid for the Indigent

Currently, indigent persons are required to comply with strict eligibility standards in order to receive governmental assistance.<sup>9</sup> Complex rules and procedures governing entitlements

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<sup>5</sup> AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT -- AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 233-72 (1992).

<sup>6</sup> *Id.* at 327-37.

<sup>7</sup> John Kramer, *Mandatory Pro Bono at Tulane Law School*, NAPIL CONNECTION CLOSE-UP, Pro Bono at Law Schools: New Solutions to Old Problems, at 1, 1990 (published by National Association for Public Interest Law, 1666 Connecticut Avenue NW, Suite 424, Washington, DC 20009).

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g.*, 7 U.S.C. § 2014 (1992) (eligibility requirements for food stamps); 38 U.S.C. § 3698 (1992) (eligibility for veteran's loans); N.Y. SOC. SERV. LAW

such as welfare, public housing and Medicaid often require the retention of legal assistance. Unfortunately, the ability to obtain such assistance varies inversely with one's financial status.<sup>10</sup> Thus, the shortage of legal aid in civil matters leaves indigents wholly without recourse when they require such assistance. This condition has continued to deteriorate as our society has become more litigious,<sup>11</sup> social programs have become more complex and federal funding for legal aid has declined.<sup>12</sup> These budget cuts have adversely affected the staffing of local legal services offices, the backbone of indigent representation, thereby increasing the shortage of lawyers working with indigents.

An example of the effect these cuts have had on legal services for the poor is made apparent by a report by officials of the New York City Community Action for Legal Services (CALs)<sup>13</sup> that states that the agency was forced to reduce its roster of attorneys by 20% in the 1980's.<sup>14</sup> Similarly, Minnesota's State Bar Legal Assistance Committee reported that there are presently 10% fewer legal services attorneys available to

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§ 349 (McKinney 1992) (eligibility for aid for dependent children).

<sup>10</sup> See *Final Report*, 19 HOFSTRA L. REV. 755, 772 n.9 (1991) (citing New York State Bar Association, Committee on Legal Aid, *New York Legal Needs Study: Draft Final Report* (Oct. 1980)); Association of the City of New York Committee on Legal Assistance, *Housing Court Pro Bono Project: Report on the Project, Parts I and II* (June and Nov. 1988) and *Report on the Availability of Matrimonial Representation for the Poor and the Feasibility of Mandatory Pro Bono Representation in Matrimonial Matters in New York City* (Nov. 1988); William J. Dean, *The Poor of the City of New York*, N.Y. L. J., May 16, 1989, at 1.

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., Chuck Haga, *Bar Pleads With Lawyers To Donate More Of Their Time*, STAR TRIBUNE, Aug. 14, 1989, at 1A (federal funding in the 1980's decreased from \$321 million in 1981 to \$308.6 million in 1988).

<sup>13</sup> CALS has since become Legal Services for New York (LSNY).

<sup>14</sup> Committee to Improve the Availability of Legal Services, *Final Report to the Chief Judge of the State of New York* (April 1990), reprinted in 19 HOFSTRA L. REV. 755, 776 (1991).

the poor than there were in 1981.<sup>15</sup> This reduction in legal services has reached the point where 80% of Americans at or below 125% of the poverty line are experiencing civil legal problems for which they have no remedy.<sup>16</sup> To put these numbers in perspective, New York State demographic studies for the past decade indicate that the percentage of the state's population living below the poverty line increased from 13.4% in 1979 to approximately 14.6% in 1987,<sup>17</sup> or in other words, an additional 400,000 people now live below 125% of the poverty level.

The New York State Bar Association (NYSBA) hired a consultant, the Spangenberg Group of Massachusetts, to quantify the legal service needs of the poor throughout the State.<sup>18</sup> The Spangenberg Group found that, on average, low income households in New York are faced with approximately four problems every year requiring legal assistance.<sup>19</sup> These needs most frequently

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<sup>15</sup> Chuck Haga, *supra* note 12.

<sup>16</sup> See *National Survey of the Civil Legal Needs of the Poor*, May 1989 (conducted by Spangenberg Group Inc., West Newton, Mass.), in AMERICAN BAR ASSOCIATION, TWO NATIONWIDE SURVEYS: 1989 PILOT ASSESSMENTS OF THE UNMET LEGAL NEEDS OF THE POOR AND OF THE PUBLIC GENERALLY at 4 (ABA 1989). In preparing a study for the New York State Bar Association, the Spangenberg Group determined that 125% of the poverty level in 1990 was an income at or below \$7,228 for a single person and \$14,600 for a four person household. *State of the Judiciary*, N.Y. L. J., Dec 3, 1990, at 40.

<sup>17</sup> *Final Report* 19 HOFSTRA L. REV. 755, 772 n.12 (1991), citing U.S. Census Bureau, *1980 Census of Population of Housing, Summary Characteristics of Governmental Units and Standard Statistical Areas*, New York, N.Y. State Department of Economic Development, *Tabulation from Current Population Survey for New York State*, March, 1988 (conducted by the U.S. Census Bureau); New York State Bar Association Committee on Legal Aid, *New York Legal Needs Study: Draft Final Study* (Oct. 1989).

<sup>18</sup> See New York State Bar Association Committee on Legal Aid, *New York Legal Needs Study: Draft Final Report* (Oct. 1989)(Final Report). This Spangenberg study used telephone surveys of low income households, mail surveys of legal services programs, site visits, and state-level interviews. To qualify for the telephone survey, a household had to have an income at or below 125% of the federal poverty level. *State of the Judiciary*, N.Y. L. J., Dec. 3, 1990, at 40.

<sup>19</sup> Since there are approximately 700,000 low income households in New

relate to housing, public benefits, consumer protection, and health care.<sup>20</sup>

In response to the situation in New York State, former Chief Judge Wachtler commissioned the Committee to Improve the Availability of Legal Services (Marrero Committee).<sup>21</sup> The Marrero Committee's final report, issued in 1990, concluded that New York State's indigent population has significant legal needs of a civil nature that are not being met because there is a lack of legal representation.<sup>22</sup> The committee recommended that New York State institute mandatory *pro bono* service for practicing attorneys.<sup>23</sup> The committee's findings were met with widespread opposition by the State Bar, and action on the Committee's recommendations have been deferred pending further study.<sup>24</sup>

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York State, there may be as many as "3,000,000 separate actionable legal problems" arising for which no action "is taken for lack of affordable legal help." *State of the Judiciary supra* note 17.

<sup>20</sup> A more recent study by the Spangenberg Group, initiated by the Monroe County Bar Association and released in October of 1990, provided additional insights into this need. While reaching a conclusion similar to that obtained in the statewide study, the Spangenberg Group found that in Monroe County, having a utility turned off, having difficulty with obtaining child support, and living with dangerous housing conditions are problems that both happen frequently and have a serious impact on the poor. *See State of the Judiciary supra* note 17.

<sup>21</sup> Sol Wachtler, *Introduction*, 19 HOFSTRA L. REV. 739 (1991).

<sup>22</sup> *See* Committee to Improve the Availability of Legal Services, *supra* note 14; *State of the Judiciary, supra* note 17; New York State Bar Association Committee on Legal Aid, *supra* note 18.

<sup>23</sup> *Id.*

<sup>24</sup> *See, e.g.*, UNIFIED COURT SYSTEM STATE OF NEW YORK, THE STATE OF THE JUDICIARY 1992 at 52-53 (Nov. 1992). Opposition among the New York bar was based on the mandatory nature of the program. The NYSBA did recognize the problem, however, and responded by proposing a voluntary *pro bono* plan. In September, 1990, former Chief Judge Wachtler established the *Pro Bono* Review Committee to monitor the progress of the voluntary *pro bono* effort and to examine whether legal services needs were being met. Final recommendations based on surveys of voluntary *pro bono* performance are to be made in the Spring of 1993.

### 3. Increasing Sensitivity to the Legal Needs of the Indigent

The third aim of this proposal is to demonstrate the positive affect a mandatory *pro bono* program for students can have on the public's perception of the legal community as well as raising the level of integrity of practicing attorneys. In recent years, the reputation of the legal profession has declined. Public opinion polls consistently rank lawyers at the bottom of public approval ratings, along with journalists, loan sharks and prostitutes.<sup>25</sup> Such "lawyer bashing" even became a part of the recent presidential campaign. Former Vice-President Quayle began the assault by attacking lawyers at an American Bar Association (ABA) convention,<sup>26</sup> and President Bush punctuated his Republican convention speech with an attack on lawyers.<sup>27</sup> A commitment to *pro bono* work has been recommended as a method of restoring public confidence in the integrity of the legal profession.<sup>28</sup>

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<sup>25</sup> See Cal Thomas, *Quayle Jolts the Lawyers Many Americans Feel the Legal System is Out of Touch With Their Interests*, LOS ANGELES TIMES SYNDICATE, ARIZONA REPUBLIC, Aug. 18, 1991, at C5; Alan M. Slobodin, *Pro Bono Should Be Free Choice*, NAT'L L. J., May 25, 1992, at 13 (In a May 1991 Gallup poll, Americans were asked to rank 73 occupations on the basis of integrity and honesty, and lawyers were near the bottom of the list, ranked only slightly ahead of prostitutes and members of Congress).

<sup>26</sup> See Text of Address by former Vice President Dan Quayle at the Annual Meeting of the American Bar Association, Atlanta, Georgia, FED. NEWS SERVICE, Aug. 13, 1991 (available in LEXIS, NEXIS library, Fednew file). Vice President Quayle's speech has permeated the media. See, e.g., *First, Sock the Lawyers*, 23 NAT'L J. 2041, Aug. 17, 1991 (reporting on Quayle's speech).

<sup>27</sup> President Bush's speech included the following quotes: "Sharp lawyers are running wild. Doctors are afraid to practice medicine. And some moms and pops won't even coach Little League anymore" and "We must sue each other less and care for each other more." The President had such an effect on the public that a judge ordered a new trial in a personal injury case because the judge felt the jury's unusually low damage award may have been influenced by a lawyer-bashing speech from President Bush. See *Bush Anti-Lawyer Talk Tainted Jury, Judge Says*, PHOENIX GAZETTE, Oct. 27, 1992 at A9.

<sup>28</sup> See, e.g., *If the Legal Profession Doesn't Clean Up Its Act*, CHICAGO TRIBUNE, Nov. 25, 1986, at 15; *Lawyers must stress service - not self-service -*



A long term goal of a mandatory *pro bono* plan can best be characterized as the "trickle-up" theory of moral obligation.<sup>29</sup> Since the ABA does not impose its own mandates for *pro bono* work, the most effective method of instilling a sense of responsibility to the indigent in practicing attorneys is starting from the ground up.<sup>30</sup> For example, students who had hands-on experience working in the area of poverty law would be more inclined to continue with *pro bono* work throughout their professional careers. This involvement in *pro bono* activities would improve the sullied reputation of lawyers by fostering sensitivity in law students to the legal needs of the poor and encouraging a lifelong commitment to serving those who cannot afford legal services.<sup>31</sup>

### A LOOK AT EXISTING PROGRAMS

In 1987, Tulane Law School became the first law school to adopt a mandatory *pro bono* program entitled the Community Service Program. At least nine law schools nationwide have followed in Tulane's footsteps, most recently, Columbia University School of Law.<sup>32</sup> More than a dozen other law schools, including New York University School of Law<sup>33</sup> and Fordham University

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to shed 'hired gun' image, CHRISTIAN SCIENCE MONITOR, Aug. 9, 1984, at 23.

<sup>29</sup> *The Tulane Law School Catalogue* (photo. reprint 1992)

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*; see also, notes 43-44 *infra*, and accompanying text.

<sup>32</sup> Schools which have mandatory *pro bono* requirements include: Columbia University School of Law, Florida State University School of Law, University of Hawaii W.S. Richardson School of Law, University of Louisville School of Law, University of Pennsylvania Law School, University of Richmond T.C. Williams School of Law, Stetson University College of Law, Touro College Jacob D. Fuchsberg Law Center, Tulane Law School, Valparaiso University School of Law. See Jane Easter Bahls, *Doing Good Time*, STUDENT LAWYER, Oct. 1992 at 14; Edward A. Adams, *Columbia Requires Pro Bono Commitment*, N.Y. L. J., Nov. 4, 1992 at 1.

<sup>33</sup> Edward A. Adams, *supra*, note 32.

School of Law<sup>34</sup> are contemplating mandatory *pro bono* programs as well. This portion of the paper will compare the programs at Tulane and the University of Pennsylvania, two of the older and more established programs, in order to demonstrate how different law schools have implemented mandatory *pro bono* service as a graduation requirement.

### Time Commitment

The Tulane program requires students to complete a total of 20 hours of legal service on behalf of indigents living in the New Orleans area during their second or third years. Travel time is included in the 20-hour total whenever one hour or more is required to reach the destination.<sup>35</sup> In contrast to Tulane's minimal requirements approach, the University of Pennsylvania's (Penn) program has more stringent guidelines. Penn's program requires students to perform 70 hours of *pro bono* work before graduation. Students have the option to complete 35 hours in both their second and third year of legal education or to fulfill the entire obligation in their second year. Students who fail to complete the requisite 35 hours during the course of the second year are required to complete 55 hours of qualifying work during the summer in order to register for the third year of law school.<sup>36</sup>

### Type of Legal Services Involved

The nature of the legal services that students perform depends upon the school's definition of "*pro bono*." At Tulane, *pro bono* work is synonymous with poverty law and hence *pro bono* projects may not encompass work for the government such as working for the offices of the Public Defender or the District

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<sup>34</sup> *Fordham to Examine Mandatory Pro Bono*, N.Y. L. J., Feb. 13, 1992, at 9.

<sup>35</sup> *Tulane Law School, Community Service Program: A Procedural Outline* (1992).

<sup>36</sup> *University of Pennsylvania Public Service Program Guidelines* (photo. reprint 1990).

Attorney.<sup>37</sup> Moreover, clinical work is not acceptable. The school nonetheless offers its students a broad range of opportunities, both criminal and civil, including environmental law, housing, family law, death penalty and criminal appeals, immigration and elder law. Most participating students are placed with local service organizations or with *pro bono* programs coordinated by the local Bar Association.<sup>38</sup> Penn, on the other hand, defines *pro bono* as work that is unpaid, non-clerical, law-related, done for non-profit organizations (excluding trade associations), public interest law firms, legal aid offices, *pro bono* projects, or government offices.<sup>39</sup> Clinical work qualifies, however, students earn one credit less for *pro bono* work performed through the school's clinical programs.<sup>40</sup> Similar to Tulane's program, Penn offers its students a variety of placements developed and maintained by the program's director. Students are free to choose a placement according to interest and program availability.<sup>41</sup>

### Procedures for *Pro Bono* Placement

At Tulane, students attend a Placement Fair at the beginning of the academic calendar where they gather information regarding the various *pro bono* opportunities and then register for placement based on their particular areas of interest. Assignments are made according to the availability of cases and students' schedules. Students also have the option of proposing independent *pro bono* projects. Before taking on a *pro bono* project, the students are required to attend a training session.<sup>42</sup> While students are not

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<sup>37</sup> *Tulane Law School Catalogue* (photo. reprint 1990).

<sup>38</sup> *Id.*

<sup>39</sup> *Comparison Chart of Pro Bono Programs*, NAPIL CONNECTION CLOSE-UP, *Pro Bono at Law Schools: New Solutions to Old Problems*, 1990 at 4.

<sup>40</sup> *Id.*

<sup>41</sup> *University of Pennsylvania Public Service Program Guidelines* (photo. reprint 1990).

<sup>42</sup> *Tulane Law School Community Service Program: Procedural Outline*

graded on their legal service work, they do receive "Community Service" credit which is recorded on the students' transcripts in addition to the eighty-eight hours of required credited course work. It is up to the individual students to log the number of hours they worked on a case and have the time sheet verified by the supervising attorney.<sup>43</sup>

Similarly, at Penn, students sign-up for placement with a particular project. Once accepted, the student is responsible for keeping a time log and submitting a brief evaluation of the placement and supervision. A supervising attorney at the placement oversees the student throughout the project and certifies that the requisite hours were fulfilled and the work performed in a professional manner.<sup>44</sup>

### Administrating a Student Pro Bono Program

To coordinate the administration of its *pro bono* programs, Tulane has hired a full-time administrator and a part-time legal assistant. In addition, with resources from the Legal Services Corporation of New Orleans, the law school hired private attorneys specializing in poverty law to spend at least one day a week in office and client consultations working with students. The estimated annual cost of administering Tulane's program is approximately \$125,000,<sup>45</sup> while Penn's program costs approximately \$115,000.<sup>46</sup>

Since the first law school classes affected by the mandatory program have only recently graduated, it is too early to gauge whether the program has been effective in perpetuating

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(photo. reprint 1992).

<sup>43</sup> *Id.*

<sup>44</sup> *University of Pennsylvania Public Service Program Guidelines* (photo. reprint 1990).

<sup>45</sup> Christopher Sterbenz, *Mandatory Charity on Campus*, LEGAL TIMES, Apr. 29, 1991 at 22.

<sup>46</sup> Ken Myers, *Students Try to Press the Issue of Mandatory Pro Bono Work*, NAT'L L. J., Feb. 18, 1991 at 4.

commitment to *pro bono* work by students upon passing the bar.<sup>47</sup> However, given the results of a survey of Tulane's class of 1990, administered during the 1989-1990 year, 65% of the students reported that their participation in the program increased their willingness to provide *pro bono* services in the future, and 42% expressed a desire to continue to practice in the area of poverty law.<sup>48</sup>

### THE MULTI-OPTION PLAN

Law schools should adopt a *pro bono* program for their students as a graduation requirement. It would be difficult, however, to devise a plan that would work well for all law schools and all law students. Therefore, this article proposes several options which can be used separately or in combination to accommodate the diverse needs of law schools and their students.

Of particular concern to the authors is the limited time and competing responsibilities of part-time and/or night students who would be most burdened by a mandatory *pro bono* requirement.<sup>49</sup> Primarily because of the needs of these students and others with special time constraints, an optimal mandatory *pro bono* program for law students should allow students to fulfill their requirement by participating in a clinical program for credit that provides legal services to qualifying indigents. Such a program allows students with competing obligations to participate in a *pro bono* program while simultaneously fulfilling their credit requirements.

A major impediment to the implementation of such a program is the concomitant administrative and personnel costs. For instance, if a mandatory clinic were imposed on each law student there would have to be a shift of financial and faculty resources to that area. A larger student body would require more personnel to

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<sup>47</sup> Telephone Interview with Julie Jackson, Dean for Community Service and Pro Bono Activities, Tulane Law School (Nov. 13 1992).

<sup>48</sup> John Kramer, *supra* note 7.

<sup>49</sup> See, e.g., Brooklyn Law School, 1992-1993 *Bulletin* at 73, (hereinafter *BLS Bulletin*) (Brooklyn Law School had 471 entering students in August of 1991, 147 of which [approximately 31%] were part-time students).

oversee the coordination of such a program, and the shift of resources might displace traditional law school courses. Additionally, for clinics to receive academic credit they must be accompanied by a traditional academic component,<sup>50</sup> thus requiring an additional investment of faculty time.

Regardless of the type of *pro bono* program in which they participate, students are restricted from engaging in the practice of law and offering legal advice, pursuant to ABA regulations.<sup>51</sup> Nonetheless, students' assignments can involve research, drafting legal documents, assisting supervising attorneys in interviewing and counseling clients and interviewing witnesses in preparation for trials or hearings.<sup>52</sup>

#### FOUR OPTIONS

##### Option 1: Public Service Option (Without Academic Credit)

The public service option is based on the program administered by the University of Pennsylvania Law School. This option entails students taking advantage of the various *pro bono* opportunities available in the region. Its focus is on the students fulfilling a set commitment of hours volunteered and the actual content of the completed work would not be supervised by the law school itself.

The benefit of such an option is its relatively low cost and ease of administration as there would be minimal oversight and involvement on the part of the faculty. This proposal would work well for law schools that do not have the financial ability to handle more innovative and expensive plans. One of the burdens attached

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<sup>50</sup> New York has written such a requirement into law. See *infra* note 58 and accompanying text. At Brooklyn Law School every clinic has a classroom component as well as field experience in order to meet the standards for academic credit.

<sup>51</sup> See Pamela DeFanti Robinson *supra* note 2 at 965-66. In New York, the provisions relevant to law students and unlicensed law practice are N.Y. JUD. LAW §§ 478, 484 (Consol. 1991).

<sup>52</sup> *Tulane Law School Catalogue* (photo. reprint 1992).

to such an option, however, is the element of time commitment. Programs of this nature require seventy or more hours over the course of a student's final two years of law school,<sup>53</sup> a significant burden on night students or others who must seek paid employment to enable them to support themselves while in law school. Furthermore, because the program is unsupervised, the nature and quality of experience that is sought may be lacking, and students may have little or no exposure to actual poverty law or substantive legal experience.

### Option 2: Clinics

Increasing the role of clinical education at law schools to benefit the indigent is not a new concept.<sup>54</sup> A law school clinic would help serve many basic needs of the community while providing law students with much-needed practical experience. For example, students in the Family Law Clinic at Brooklyn Law School represent individuals in Family Court with a wide variety of legal problems and perform many litigation functions under faculty supervision.<sup>55</sup>

As mentioned above, offering clinics, as an option for meeting a mandatory *pro bono* requirement, both internships and externships, would be helpful to those students with special time constraints and other extraordinary circumstances. Additionally, on-campus clinics would make students more sensitive to the problems of the indigent. Clinics providing academic credit would also mitigate any resentment students might feel towards a

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<sup>53</sup> If New York University School of Law adopts the *pro bono* requirement currently proposed by its students, students will contribute 95 hours of *pro bono* service before graduation. Edward A. Adams, *supra* note 32.

<sup>54</sup> See Stephen Wizner, *What is a Law School*, 38 EMORY L. J., 701, 709-11 (1989).

<sup>55</sup> "Students represent individuals in Brooklyn Family Court in paternity, child-support, visitation, custody and domestic violence cases. Representation can include interviewing and counseling, fact investigation and development, pretrial motion and discovery practice, negotiation, trials, and writing memoranda, briefs and appeals." *BLS Bulletin* at 55.

mandatory *pro bono* requirement.<sup>56</sup> Moreover, internships would be monitored by faculty members, while externships would be overseen by the attorney at the individual placement. Thus, clinics are a valuable experience through which students benefit from the expertise and guidance of supervising faculty members or outside attorneys. However, the clinic option would inevitably require a great expansion of the school's clinic program and would entail a shifting of funds and faculty time to the school's clinic program which, unfortunately, might be too onerous for some law schools.

### Option 3: Credit for Pro Bono Work in a Non-Clinical Setting

Another option is to give students credit for *pro bono* work even when the work itself has no academic complement. *Pro bono* work, it may be argued, is worthwhile, both to the community and to the development of the law student, and therefore, merits academic credit on that basis alone. In fact, the experience of working in an actual legal setting under proper supervision has been recognized as an alternative to classroom study.<sup>57</sup> The state has recognized that the valid study of law may take place in a practical setting and that a *pro bono* experience plays an integral role in the legal system. This suggests that a program properly supervised by the *pro bono* organization is worthy of academic credit without classroom experience.

The advantages of this proposal lie in the quality of experience ensured through appropriate supervision. Similar to internships which are performed under the guidance of law school faculty, students fulfilling their *pro bono* requirement through externships would be working under the close supervision of outside attorneys. Further, since there is no academic component

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<sup>56</sup> See Rosemary C. Harold, *Dilemmas*, STUDENT LAWYER, Jan. 1990, at 11-12.

<sup>57</sup> New York recognizes as a candidate for the bar someone who has successfully completed one year of law school and four years of "study of law in [a] law office." N.Y. COMP. CODES R. & REGS. tit. 22 § 520.4 (1992).



involved and because supervision comes from outside the law school, this option would not require a great shift in faculty time and would be less expensive and easier to administrate.

However, there may be problems with this option since it could conceivably conflict with the current state law or ABA accreditation requirements.<sup>58</sup> For law schools to adopt this option, a reconciliation with the accreditation policies of outside authorities will be necessary. One solution that would maintain the positive aspects of this option without conflicting with accreditation rules would be to offer the program as an independent study, allowing the student to write a paper about his/her *pro bono* experience or to submit any significant briefs or memoranda completed during the project. Thus, the law student would have an academic experience while simultaneously benefitting from practical experience.

#### Option 4: *Pro Bono* Oriented Courses

This option integrates *pro bono* work into academic course work wherever possible. For example, a professor at Brooklyn Law School teaches a seminar on capital punishment that involves the actual representation of indigents on death row. Her students research and write sample petitions which she then incorporates into the petition for certiorari that she submits to the Supreme Court.<sup>59</sup> Appellate Advocacy and other research and writing courses also lend themselves to this option quite handily. Furthermore, many law professors who engage in *pro bono* work should consider involving their classes or individual students in these matters when practicable.

A problem with this option is that there may not be enough

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<sup>58</sup> In New York "clinical and like courses" must be taught under the "immediate supervision" of faculty and include "adequate classroom meetings or seminars". N.Y. COMP. CODES R. & REGS. tit. 22 § 520.3(c)(5)(ii), (iii).

<sup>59</sup> Interview with Ursula Bentele, Professor of Law and Director of the Criminal Appeals Clinic at Brooklyn Law School (Feb. 10, 1993) (the course is currently entitled Constitutional Law Seminar/Death Penalty and has been taught by Professor Bentele at Brooklyn Law School nearly every Spring semester since 1983).

*pro bono*-oriented courses to meet the student demand. Alternatively, the addition of similar courses could lead to the same resource allocation problems that the aforementioned clinic option creates.

### Balancing the Options

Clinics for all students are an expensive option. However, since fulfilling the *pro bono* requirement by successfully completing a clinic would ease the burden for part-time and night students, this option should be implemented when feasible. Under the *multi-option* approach a law school should also offer *pro bono*-oriented courses and independent studies where practical to provide yet another way for students to meet the requirement. The credit option should also be implemented where possible. This option could quite possibly accommodate the largest number of students while imposing a minimal burden on the school and continuing to provide a credit-incentive for students to perform *pro bono* service.

Finally, law schools should also offer the option of performing *pro bono* service without credit as in the Penn Plan. While a student would not receive credit under this option, the completion of the requirement through this option would be recorded on the student's transcript, making his or her contribution and experience as visible as that of the students who receive credit.<sup>60</sup> A law school may also wish to supplement other non-credit incentives to perform *pro bono* service such as awards and scholarships.<sup>61</sup> If *pro bono* work were accorded the same prestige and career-enhancing recognition as other student achievements, it would likely become more attractive to law students.

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<sup>60</sup> See *supra* text accompanying note 43.

<sup>61</sup> See, e.g., New York State Bar Ass'n, *Report of the Special Committee to Review the Proposed Plan for Mandatory Pro Bono Service*, Oct. 16, 1989, at 30. The report discusses the awarding of the New York State Bar Association President's Pro Bono Service Award and the expansion of awards given for *pro bono* service. See also, Cynthia R. Watkins, *supra* note 2, text accompanying nn. 83-86.

## CONCLUSION

The diverse requirements of different law schools, students and faculty dictate that a particular option may not work for all law schools. In particular, law schools have budgetary restrictions which should not be solved by raising tuition fees.<sup>62</sup> Cost problems can be redressed, at least partially, through fund-raising efforts, government subsidies and private bar involvement. Law schools may also benefit from attorneys seeking to fulfill their own *pro bono* commitment, either self-imposed or government mandated, by volunteering in a supervisory capacity in one of the above programs.

Elements of each option could be implemented simultaneously at a law school in a hybrid multi-option approach to provide maximum flexibility to law schools seeking to establish mandatory *pro bono* requirements. The adoption of a multi-option program is the most viable approach for many law schools. Also, the implementation of such a program would demonstrate an institution's earnest commitment to serving the needs of the indigent community. Since most law schools have limited funds for *pro bono* or similar programs, it would be more economically feasible for the school to undertake a *pro bono* commitment by utilizing all available routes, thereby minimizing the need for increased funding or a sacrifice in more traditional areas of legal education.

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<sup>62</sup> Law school tuition fees are prohibitively high. For example, in New York City, tuition for full time students during 1992-1993 ranged from a low of \$4,700.00 (for New York State residents, \$7,180.00 for out of state residents) at City University of New York School of Law at Queens College, *Application Informational Brochure CUNY School of Law at Queens College 1991-1993* (1992 addendum) to \$15,600.00 at Brooklyn Law School, *BLS Bulletin* at 75 to a high of \$19,160.00 at New York University School of Law, *N.Y.U. Bulletin Graduate Law Degree Programs 1992-1994* at 30.