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Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs

ROBERT GRANFIELD†

INTRODUCTION

The legal profession's commitment to the expansion of pro bono has achieved significant gains in recent years.¹ In 1996, the American Bar Association initiated a campaign to make pro bono a priority by revising the ethical rules regarding pro bono, encouraging law firms to establish new infrastructures to support pro bono activity, and generally increasing lawyers' commitment to pro bono service. In an attempt to institutionalize the value of pro bono within the legal profession, the ABA amended Model Rule 6.1 in the hope of inspiring lawyers to "render at least 50 hours of *pro*

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1. See Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004) (discussing the institutionalization of pro bono).

bono publico legal services per year.”² Also in 1996, the ABA revised its accreditation standards to call on law schools to encourage students to participate in pro bono activities and provide an organizational infrastructure to facilitate pro bono opportunities.³ In related moves, several state bar associations, such as the New York State Bar, have passed resolutions urging attorneys to provide a minimum amount of pro bono legal services each year while others have instituted or are considering instituting annual reporting protocols.⁴

The legal academy has likewise seen a growing institutionalization of pro bono. Approximately ninety percent of all law schools currently have some type of organized pro bono program.⁵ While these programs have become commonplace in the legal academy, there has been little empirical attention given to them.⁶ This Article investigates the influence of mandatory law school pro bono on the careers of lawyers, especially with regard to pro bono work. Examining the relationship between mandatory pro bono and the careers of lawyers is not only important for evaluating the impact of such programs but also for articulating how pro bono is experienced by lawyers. The visions that lawyers have of pro bono work are critical to investigate, as are issues related to the equal access to justice.⁷

2. ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS 9 (2005).

3. Professionalism Comm., A.B.A., *Teaching and Learning Professionalism*, 1996 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR; see also DEBORAH L. RHODE, ACCESS TO JUSTICE (2004).

4. NYSBA, *Association to Expand Definition of "Pro Bono Publico,"* 14 PRO BONO NEWS 1 (2004). For other states, see *State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono*, ABA (2002), <http://www.abanet.org/legalservices/probono/reportingguide.html>.

5. See COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES IN LAW SCHOOLS, ASS'N OF AMERICAN LAW SCHOOLS, LEARNING TO SERVE (1999), available at <http://www.aals.org/probono/report.html>.

6. One of the only other empirical investigations of mandatory pro bono has been conducted by Deborah Rhode. See DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS (2005).

7. On lawyers' visions of practice, see Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 177, 205 (Robert L. Nelson et al. eds., 1992), noting that

First, this Article examines recent developments of pro bono in the legal profession and in legal education. This section of the Article explores the trends in the institutionalization of pro bono across these two related institutional fields. An institutionalist approach to the recent developments in pro bono activity within the bar and within law schools across the country would suggest that they are related to more than simply the atomistic interests of unique actors.⁸ Rather, pro bono developments in the bar and in legal education need to be understood within a broader social context within which they are embedded.⁹ Institutions provide people with a vocabulary of motive and generate subjectivities, even when the institutionalized frameworks and related modes of thought may be nothing more than empty rhetorical claims. In the case of new organizational forms and practices, like mandatory pro bono in law schools, such developments need to be located within the institutionalized logics of existing social relations. Thus, mandatory pro bono initiatives in law schools reflects not merely the interests of individuals but rather signifies the expression of the legitimation claims within the legal profession.¹⁰

Next, this Article presents empirical data from a sample of lawyers that examines the impact of mandatory pro bono in law school. In addition to general perceptions of the impact of pro bono on their development as lawyers, the data explores their overall thoughts about participating in

[t]he legal workplace is an arena of professionalism in the sense that the specific organizational contexts in which lawyers work produce and reflect particular visions of professional ideals. These visions, what we refer to as workplace ideologies, correspond to the external relationships between the work organization and its environment, relationships among lawyers inside the organization, and the lawyerly roles actors adopt within the specific fields in which they practice.

Nelson and Trubek further note that “[l]awyers’ visions of their working life and working relationships are intimately related to the kinds of organizations they construct and the roles they play in political, economic, and social exchange.” *Id.* at 213.

8. For a discussion of institutionalist theory, see *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* (Walter W. Powell & Paul J. DiMaggio eds., 1991).

9. See Cummings, *supra* note 1, at 6.

10. See Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations*, 41 *LAW & SOC’Y REV.* 113 (2007) (discussing institutionalist perspectives on mandatory law school pro bono).

mandatory pro bono. I then present comparisons of pro bono activity among lawyers who graduated from law schools with mandatory pro bono requirements and those from the same institutions who graduated immediately prior to the institutionalization of these requirements. Finally, the Article concludes with a discussion that situates mandatory pro bono programs in law school in a broader institutionalist perspective suggesting that mandatory pro bono in law school is part of the legal profession's continuing project of monopoly control.

I. INSTITUTIONALIZING PRO BONO IN THE LEGAL PROFESSION

More than simply the enactment of new rules and aspirational standards, pro bono has witnessed a profound shift in organizational resources and infrastructural support in recent years. While throughout the greater part of American legal history pro bono was dispensed informally and administered in atomistic fashion through charitable organizations, it has more recently become "centralized and streamlined, distributed through an elaborate organizational structure embedded in and cutting across professional associations, law firms, state-sponsored legal services programs, and nonprofit public interest groups."¹¹ Although past surveys have indicated that pro bono accounted for less than one-half of one percent of a lawyer's work, recent evidence would suggest that pro bono service has gained increasing popularity within the profession.¹² A casual search of law firm pro bono opportunities on the internet produces scores of "hits" identifying a broad range of pro bono projects undertaken by these firms. In many cases, these pro bono initiatives appear enormously ambitious as in the recent announcement by DLA Piper, a Washington based international law firm, of a pro bono program called "New Perimeter" that commits 13,000 lawyer hours and global resources of the law firm to advance pressing social issues such as AIDS treatment and prevention in developing

11. Cummings, *supra* note 1, at 6.

12. See, e.g., JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976).

countries.¹³ According to press releases issued by DLA Piper, this international initiative expands the firm's existing pro bono commitment to 80,000 hours, an estimated value of twenty-three million dollars in legal fees.¹⁴

In many law firms, the institutionalization of pro bono has been demonstrated by the creation of new professional roles such as pro bono partners or managers who coordinate the pro bono initiatives of the firm and the activities of lawyers.¹⁵ In addition to the formalization of bureaucratic roles, some law firms now allow lawyers to credit some proportion of pro bono work to their billable hour requirements. Several large law firms have become signatories of the "Law Firm Pro Bono Challenge," an initiative launched by the ABA in 1993 and now operating under the aegis of the Pro Bono Institute located at Georgetown University Law Center.¹⁶ The Challenge requires law firms to demonstrate an institutional obligation to pro bono by "promulgating and maintaining a clearly articulated and understood firm policy" and by "using their 'best efforts' to ensure compliance" with the goal of providing three to five percent of resources to pro bono causes.¹⁷ "In its first two years, there were over one hundred and seventy signatories to the Challenge, which included many of the nation's elite firms."¹⁸ Currently, a third of the nation's large law firms have accepted the Challenge, although many of these firms have yet to meet the desired goal.¹⁹ The extent of pro bono participation within the legal profession is arguably greater given that

13. See DLAPiper.com, DLA Piper Announces Unprecedented International Pro Bono Initiative (Feb. 28, 2005), <http://www.dlapiper.com/global/media/detail.aspx?news=64>.

14. *Id.*

15. See Cummings, *supra* note 1 (discussing the new institutional roles associated with pro bono).

16. For information about the Pro Bono Institute, see <http://www.probonoinst.org> (last visited Feb. 9, 2007).

17. Cummings, *supra* note 1, at 40; see also Ester F. Lardent, *Structuring Law Firm Pro Bono Programs: A Community Service Typology*, in *THE LAW FIRM AND THE PUBLIC GOOD* 59, 79 (Robert A. Katzmann ed., 1995).

18. Cummings, *supra* note 1, at 4C.

19. RHODE, *supra* note 6, at 20.

lawyers in smaller firms routinely accept needy clients for free or at discounted rates.²⁰

Added to these initiatives, virtually all bar associations currently offer annual awards that recognize pro bono work as do several law firms across the country.²¹ Many of these law firms tout the accomplishments of pro bono award winners on their web sites and in the national lawyer periodicals like the *American Lawyer* and the *National Law Journal* that ranks and profiles outstanding pro bono initiatives and achievements. While the culture of legal practice and market forces may continue to limit pro bono initiatives in various locations, it seems unquestionable that pro bono has achieved a degree of formalized attention and, at least rhetorical—if not actual—vitality in the legal profession.²²

The pro bono movement taking shape in the legal profession is especially significant in light of the profession's generalized disinterest over the years in increasing access to justice for the poor and disadvantaged.²³ It is, however, important not to become too sanguine over the extent to which the bar has experienced an expansion of pro bono. Even in states such as New York with high pro bono participation rates, less than half of all attorneys reported engaging in some type of pro bono, and less than one-third of those attorneys reported contributing at least twenty hours of pro bono in the past year.²⁴ In other states, such as Texas, which rank poorly in the area of providing legal services to the indigent, the situation is far bleaker. In Texas, a scant two hundred attorneys work full-time representing the indigent, and the overwhelming

20. See LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 136 (2001) (noting that many small firms take clients at discounted fees).

21. RHODE, *supra* note 6, at 19.

22. There continues to be numerous restrictions placed on pro bono work within various legal practice settings. For a general discussion of these limitations, see RHODE, *supra* note 6; Cummings, *supra* note 1; see also STUART A. SCHEINGOLD & AUSTIN SARAT, *SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING* (2004); Norman W. Spaulding, *The Prophet and the Bureaucrat: Positional Conflicts in Service Pro Bono Publico*, 50 STAN. L. REV. 1395 (1998).

23. RHODE, *supra* note 3, at 154.

24. *Id.* at 19.

majority of practicing lawyers are not engaged in pro bono service.²⁵ While some law firms have established high profiles in their pro bono commitment, such efforts “represent the ripples of a drop in the bucket.”²⁶ Many law firms have actually cut back on the amount of pro bono work they do and most fail to meet the minimum standards suggested within professional guidelines.²⁷

Also much of what now passes as pro bono is work done not necessarily for economically disadvantaged populations, but for civic organizations in an effort to obtain clients. As Scheingold and Sarat argue, “[m]ixing with the civic elite is a time-tested way of making contacts that can generate clients while at the same time embellishing the reputation of the firm with those who count in the community.”²⁸ Indeed, the time honored tradition of “doing well by doing good” has not been the best way of delivering legal services to those who are unable to pay.²⁹ And while the ABA has revised its ethical rules to include the provision that lawyers should provide fifty hours of legal services without fee, or expectation of fee, to persons of limited means or to charitable, religious, civic, community, governmental and educational organizations that deal with the indigent,³⁰ like the earlier changes drafted by the Kutak Commission in 1979, these revisions fall short of making pro bono mandatory.³¹ Ironically, the institutionalization of pro bono

25. *Id.* at 20.

26. RALPH NADER & WESLEY J. SMITH, *NO CONTEST: CORPORATE LAWYERS AND THE PERVERSION OF JUSTICE IN AMERICA* 334 (1996).

27. James Regan, *How About a Firm Where People Actually Want to Work?: A “Professional” Law Firm for the Twenty-First Century*, 69 *FORDHAM L. REV.* 2693, 2695 (2001).

28. SCHEINGOLD & SARAT, *supra* note 22, at 77.

29. On the thesis of becoming successful through acts of public service, see David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 *HOUS. L. REV.* 1 (2004). See also Rob Atkinson, *A Social-Democratic Critique of Pro Bono Publico Representation of the Poor: The Good as the Enemy of the Best*, 9 *AM. U. J. GENDER SOC. POL’Y & L.* 129 (2001); Robert W. Gordon, *Private Career-Building and Public Benefits: Reflections on “Doing Well by Doing Good,”* 41 *HOUS. L. REV.* 113 (2004).

30. MODEL RULES OF PROF’L CONDUCT R. 6.1 (2002).

31. For a discussion of the Kutak Commission and its failed attempts to make pro bono mandatory in the legal profession, see Theodore Schneyer,

may not lead to an expansion of legal services to clients who are unable to afford lawyers since the meaning of pro bono has increasingly become contested terrain. As Mather and her colleagues point out, the formalization of pro bono potentially threatens to transform the ethic of professional obligation to serve the needy into a form of charitable public service for the purpose of career advancement or skill-building.³² In fact, many firms now support pro bono precisely for the opportunity it provides to increase the skills of young associates as well as to attract new clients.³³ This support for pro bono in large firms may be mostly symbolic in that it advances the interests of elite members of the bar who are better able to afford the commitment of time and resources mandatory pro bono entails.³⁴

The obligation to participate in pro bono has also been a hotly contested issue within state bar associations. In New York for instance, members of the Association of the Bar of the City of New York (ABCNY) and the wider New York City legal community were sharply divided over this issue. With the emergence and expansion of public interest law in the 1960s and 1970s, a new emphasis on pro bono work was born, particularly among young practitioners.³⁵ Responding to the continued interest in public interest law and to the concern that lawyers and law firms were not meeting their pro bono obligations voluntarily, the president of the ABCNY appointed a special committee in 1977 to study the issue of pro bono and make policy recommendations.³⁶ Committee members were drawn mostly from the elite, large firm sector of the New York City bar. Their report concluded that pro bono ought to be mandatory, with failure

Professionalism as Politics: The Making of a Modern Legal Ethics Code, in *LAWYERS' IDEALS/LAWYERS' PRACTICES*, *supra* note 7, at 95-143.

32. MATHER ET AL., *supra* note 20, at 133-36.

33. See Cynthia Fuchs Epstein, *Stricture and Structure: The Social and Cultural Context of Pro Bono Work in Wall Street Firms*, 70 *FORDHAM L. REV.* 1689, 1693 (2002); Robert Granfield & Thomas Koenig, "It's Hard to Be a Human Being and a Lawyer": *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 *W. VA. L. REV.* 495, 519 (2003) (discussing the role of pro bono work in client generation).

34. See MICHAEL J. POWELL, *FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION* 161-65 (1988).

35. See *id.* at 161.

36. *Id.* at 162.

to provide service resulting in disciplinary action. "Considerable debate followed the publication of . . . [this] report."³⁷ Much of the opposition to mandatory requirements at that time was led by solo practitioners resulting in a polarized debate between large law firm members on one side and solo practitioners on the other.

Of central concern was that the proposed pro bono "tax" would not be equally distributed across the sectors of the New York bar. Because the proposed provision allowed lawyers to "buy out" of mandatory service by making significant monetary contributions, the onus of providing actual pro bono service would fall on the shoulders of small-firm and solo practitioners. Large law firm attorneys could easily choose to take the buy out option. As Powell maintains, elite law firm support for pro bono made it appear as though such law firms were ideologically aligned with the public interest bar and academics who could either afford to donate substantial amounts of their time or money.³⁸ The proposal for mandatory requirements ultimately failed due to intense opposition from the non-elite branches of the New York bar as well as from other large law firms throughout the state who were less supportive of the provision than were their colleagues on the special commission. Mandatory pro bono requirements foundered on the divisions within and across sectors of New York's legal marketplace.³⁹

Divisions within the New York State Bar Association over a pro bono requirement have flared recently leading to a 2005 revision of its policy. Prior to this revision, only pro bono services delivered to individuals of limited means or organizations whose clients are poor and indigent "qualified" as pro bono. Under this definition, less than thirty percent of New York lawyers fulfilled the goal of providing a minimum of twenty hours of pro bono work per year. In the wake of the 9/11 terrorist attack, many large law firm lawyers in New York City began offering free legal services to the families of the victims. Irritated by the state bar's unwillingness to recognize their efforts as "pro bono," these lawyers led the charge to transform the definition of

37. *Id.* at 163.

38. *Id.* at 163-64.

39. *Id.*

pro bono. As the past president of the New York County Lawyers' Association observed, "there are many ways to do good" other than by "providing direct services to the poor."⁴⁰ Predominantly through the efforts of large law firm practitioners, New York's expansive pro bono policy eventually allowed lawyers to declare pro bono credit for legal services provided "at no fee or substantially reduced fees to individuals, organizations seeking to secure or protect civil rights, civil liberties or public rights or to not-for-profit, governmental or public service organizations."⁴¹

Despite generally favorable reaction to this policy change, support was not unanimous. Sole and small firm practitioners still feared that the encouragement to do pro bono would eventually turn into mandatory requirements, risking an unfair burden on lawyers with limited resources. Members of the legal aid community, too, generally opposed the revision for fear of further marginalizing the legal needs of the poor. They feared that broadening the definition of pro bono would erode the private bar's willingness to engage in pro bono work for the poor, significantly reducing opportunities to achieve access to justice for individuals with limited means. As Lillian M. Moy, committee chairwoman and an attorney with the Legal Aid Society of Northeast New York in Albany, wrote in her objection to these changes, "[t]he current draft will dilute the [State Bar's] commitment to increase access to legal services for the poor, even as the need for these services continues unabated."⁴²

II. INSTITUTIONALIZING LAW SCHOOL PRO BONO

While mandatory pro bono remains hotly contested within the organized bar, the majority of American law schools have already implemented some type of pro bono program and many have adopted mandatory requirements. Over the past several years, a great deal of debate has been

40. Interview with Robert Caher, Past President, New York County Lawyers' Association (July 15, 2005) (on file with author).

41. NYSBA, *Association Adopts New Definition of Pro Bono Publico*, PRO BONO NEWS (2005).

42. Thomas Adcock, *N.Y. State Bar Draws Fire With Proposal to Change Pro Bono Definition*, LAW.COM (2005), <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1105364114924>.

generated on the subject of law school pro bono. From an institutionalist perspective, it is perhaps not surprising that a pro bono movement has taken root in the legal academy coming on the heels of a public assault on professional power and cultural authority.⁴³ As with any crisis of legitimacy within a professional group—as was witnessed in the legal profession during the 1980s—a resolve for improvement in the ethical character of practitioners is often foisted upon the professional schools.⁴⁴ The establishment of a professional monopoly derives not only from reliance on specialized knowledge and collegial controls but also from invocations to contribute to the public good.⁴⁵ As Abbott points out, professional claim to public service “confers status because through it a group claims corporate necessity or even irreplaceability within society.”⁴⁶ Claims to public service are a way of measuring the “purity of motives” within a profession in relation to society.⁴⁷ Calls for new ethical guidelines and curricular reforms to promote professionalism are frequently invoked by professional groups to extend and defend their status when the profession’s prestige is uncertain or under attack. Ethics instruction, for example, became mandatory in law school only in the wake of the Watergate scandal.⁴⁸ To remedy the perceived crisis in ethical standards within the legal profession, instruction in “the history, goals, structure, and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility” was

43. See ANDREW ABBOTT, *THE SYSTEM OF PROFESSIONS: AN ESSAY ON THE DIVISION OF EXPERT LABOR* 323-26 (1988).

44. See Andrew Abbott, *Professional Ethics*, 88 AM. J. SOC. 855 (1982) (arguing that a narrative of ethics is often an attempt by a profession to gain increased jurisdiction over the provision of services).

45. For general discussions of professional monopoly, see Eliot Freidson, *Professionalism as Model and Ideology*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES*, *supra* note 7, at 215; ELIOT FREIDSON, *PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE* (1988).

46. Abbott, *supra* note 44, at 866.

47. *Id.* at 872.

48. See Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 TEX. L. REV. 639 (1981).

deemed necessary.⁴⁹ Reforming legal education through increased attention to ethics as well as through the promotion of public service has often been suggested as a way of enhancing the commitment to professionalism within the bar.⁵⁰ Indeed, the legal profession's commitment to pro bono and public service stems from the rhetorical aspirations "to equal justice as well as from the desire to 'make[] the practice of law a higher calling and a profession, not merely a business.'"⁵¹

This commitment to the ideology of "civic professionalism,"⁵² which purportedly inspires lawyers to make contributions to the public good, has served an important legitimizing function within the legal profession. At various times throughout the history of legal education, an ideology of public service was advocated. According to Auerbach, the nexus between the legal profession, legal education, and public service came into sharp relief during the early twentieth century.⁵³ Prior to this, by the mid-nineteenth century, the legal profession had experienced a serious decline in its cultural authority and status as it became increasingly associated with elite interests. Licensing requirements were removed, law schools had been closed, and anyone with "good moral character" could enter the legal profession.⁵⁴ The emergence of the modern law school at Harvard under the leadership of Christopher Columbus Langdell did much to restore the status and prestige of the legal profession by linking the practice of law

49. James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 87 (1991).

50. See Robert W. Gordon & William H. Simon, *The Redemption of Professionalism*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES*, *supra* note 7, at 236-40.

51. Richard F. Storrow & Patti Gearhart Turner, *Where Equal Justice Begins: Mandatory Pro Bono in American Legal Education*, 72 UMKC L. REV. 493, 494 (2003) (quoting Esther F. Lardent, "The Case Against: Just Say No . . . To Mandatory Pro Bono," *AM. LAW* 1 (1996)).

52. This is a term used by Scheingold and Sarat to describe a normative value that "inspire[s] lawyers to make distinctive contributions to the well-being of civil society." SCHEINGOLD & SARAT, *supra* note 22, at 30. See also TERENCE C. HALLIDAY, *BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT* 3 (1987).

53. See AUERBACH, *supra* note 12, at 27-28.

54. *Id.*

to the need for expert knowledge acquired through the study of legal "science" in law school.⁵⁵ As Gordon has argued, "[t]he heart of the legal reform program . . . was to build institutions capable of perfecting a national, general, uniform classical legal science"⁵⁶ The rise of the modern law school premised upon the ideology of teaching the science of law substantially increased the professional powers of the bar.⁵⁷

However, the pursuit of legitimation and the acquisition of professional dominance were not only achieved through reliance on the study of legal positivism within the academy. Legal education also became the seedbed of a renewed conception of, and commitment to, lawyering as a public profession.⁵⁸ The rise of the New Deal, along with legal theories such as sociological jurisprudence and legal realism, contributed to the promotion of the image of the lawyer as a servant of the people and the profession as dedicated to a spirit of public service. The period of the New Deal and the corresponding public image of lawyers led to remarkable growth within the legal profession and created a path for the further enhancement of professional status.⁵⁹ The growth of the administrative state that increasingly relied on new legal rules and regulations paid substantial dividends to the legal profession by creating roles in government service as well as increased demand for lawyers in private practice with government experience.⁶⁰ Not surprisingly, it was during this period that clinical legal education emerged within law schools and several law schools developed legal aid clinics or became associated with legal aid programs

55. See ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* 29-30 (1992).

56. Robert Gordon, *Lawyers as the American Aristocracy* 38, 40 (1986) (unpublished essay, cited in SCHEINGOLD & SARAT, *supra* note 22, at 33).

57. See GRANFIELD, *supra* note 55.

58. See SCHEINGOLD & SARAT, *supra* note 22.

59. On the growth and enhanced status of the legal profession during the New Deal, see RONEN SHAMIR, *MANAGING LEGAL UNCERTAINTY: ELITE LAWYERS IN THE NEW DEAL* (1995).

60. See AUERBACH, *supra* note 12, at 222-30.

that provided opportunities for students to receive clinical training as opposed to instruction in pure law.⁶¹

During the period of the 1960s and 1970s, the legal profession experienced another injection of public spiritedness and practice dedicated to public service. Public interest lawyers, or what Scheingold and Sarat refer to as "cause lawyers," increasingly engaged in legal work on behalf of racial justice, anti-poverty efforts, the anti-war movement, consumer advocacy, and environmental justice.⁶² These lawyers used a variety of legal strategies including litigation, lobbying and advocacy, community mobilization, and law reform work in an effort "to achieve greater social justice—both for particular individuals . . . and for disadvantaged groups."⁶³ This is not to suggest that cause lawyers did not exist prior to the 1960s and 1970s. Surely, lawyers associated with the NAACP, the National Lawyer's Guild, and the ACLU could be considered cause lawyers who engaged in legal work out of a sense of public service and a commitment to social justice. However, as Scheingold and Sarat argue, it wasn't until the 1960s and 1970s that cause lawyering made a kind of peace with the organized bar.⁶⁴

The impact of this development on legal education was profound. Law students began to insist upon professional training that would resonate with the idealism they brought with them into law school. Law students began to work with disenfranchised communities as well as develop powerful critiques of the conservatizing effects of legal education.⁶⁵ Some law schools like Northeastern University

61. See generally JACK KATZ, *POOR PEOPLE'S LAWYERS IN TRANSITION* (1982) (discussing the clinical movement in law and legal education).

62. See SCHEINGOLD & SARAT, *supra* note 22, at 3 (defining cause lawyering as the use of "legal skills to pursue ends and ideals that transcend client service—be those ideals social, cultural, political, economic or, indeed, legal"); see also CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006).

63. Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31, 37 (Austin Sarat & Stuart Scheingold eds., 1998).

64. SCHEINGOLD & SARAT, *supra* note 22, at 24-25.

65. See generally DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (2004).

School of Law even took up the mantle of cause lawyering by organizing around principles consistent with left-leaning social causes.⁶⁶ Energized by the New Left student movement, the feminist movement, and the establishment of the O.E.O. Legal Service Corporation, Northeastern University School of Law trained students primarily for the goal of providing legal services to the poor, to minorities, and to other oppressed social groups. Law courses taken by students in the early 1970s focused on draft resistance and de facto segregation, as well as the use of the tax mechanism to effect social change.⁶⁷ Students increasingly went to law school to pursue public service and social justice, and while this erstwhile idealism was generally eroded during the three years of legal education, an indelible impression had been left on legal education in the areas of public service, political causes, and social justice for marginalized groups.⁶⁸

The consolidation of conservatism in the 1980s under the Reagan administration initiated efforts to dismantle increased access to justice among marginalized groups developed a decade earlier. By the close of the decade, the funding for the Legal Services Corporation had been significantly reduced and the power of cause lawyers to engage in class action litigation, legal reform efforts, and other collective legal strategies had eroded considerably. Partially in response to the weakening of legal services programs, the organized bar began to call for vigorous pro bono programs in private law firms to take up some of the slack lost in the reduction of government sponsored legal services.⁶⁹ Despite much fanfare, proposals for mandatory pro bono were uniformly rejected.⁷⁰ However, out of the ashes of these failed attempts to institutionalize mandatory pro bono within the bar, many law firms began to see the benefits of pro bono for the purpose of expanding their pool

66. See GRANFIELD, *supra* note 55, at 169, 172-74.

67. *Id.* at 173.

68. On the decline of public interest idealism in law school, see GRANFIELD, *supra* note 55; see also MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (Robert V. Stover & Howard S. Erlanger eds., 1989).

69. See SCHEINGOLD & SARAT, *supra* note 22, at 44.

70. See Schneyer, *supra* note 31, at 113-14.

of potential clients, as opposed to engaging in such work out of a sense of professional obligation or to pursue social justice for poor and marginalized groups.⁷¹

Beginning in the early 1990s, law schools around the country began institutionalizing pro bono programs and mandatory requirements in the hope that the professional obligation to render pro bono would “trickle up to . . . practitioners.”⁷² In 1996, the American Bar Association amended its accreditation standards to call on law schools to encourage students to participate in pro bono activities and provide an organizational infrastructure to facilitate pro bono opportunities. When polled, law school deans have generally supported the goal of promoting greater commitment to pro bono and public service among law students. In an AALS study conducted by its Commission on Pro Bono and Public Service Opportunities, ninety-five percent of the law school deans who responded to the survey agreed that it is important for law schools to instill in students a sense of obligation to perform pro bono service.⁷³

Although there is some variation within the organizational structure and logistics of law school pro bono initiatives, as Deborah Rhode points out, it is hard to find anyone who opposes law school pro bono programs, at least in principle.⁷⁴ Nearly all law schools throughout the country currently have some type of organized pro bono program. So numerous are the number of law schools with pro bono opportunities that the AALS chose “Pursuing Equal Justice: Law Schools and the Provision of Legal Services” as the theme of its 2001 Annual Meeting, which included a half-day program on establishing pro bono programs in law schools. Where pro bono is required for graduation, student obligations range from twenty to seventy hours of uncompensated, not for credit, supervised legal work. In theory, these requirements most often emphasize the delivery of services to the poor or indigent. In practice, law schools seem relatively flexible in what constitutes pro bono

71. See Cummings, *supra* note 1, at 100-01.

72. See Deborah L. Rhode, *Essay: The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201, 1202-03 (2000).

73. COMM'N ON PRO BONO & PUB. SERV. OPPORTUNITIES IN LAW SCHOOLS, *supra* note 5.

74. See RHODE, *supra* note 6.

work, accepting assignments that are more closely related to public service such as teaching or legal work for non-profit civic organizations not specifically associated with poor or indigent populations. In a limited number of instances, non-legal volunteer work is considered acceptable for a portion of the requirement. Currently there are a handful of law schools across the country that support this type of mandatory pro bono program including the University of Pennsylvania Law School, Harvard Law School, Columbia Law School, Southern Methodist University Law School, the University of Hawaii Law School, Stetson University College of Law, Roger Williams College of Law, Tulane Law School, University of Louisville Law School, District of Columbia Law School, Valparaiso Law School, Florida State University School of Law, University of Nevada, Las Vegas Law School, St. Thomas Law School, and Texas Wesleyan Law School. At these schools, a coordinator, often serving at the level of an associate dean, along with a small staff, typically coordinates the pro bono opportunities for students, ensures that students are in compliance with the graduation requirement prior to commencement, and works with the local bar association, law firms, as well as public interest and governmental agencies to maintain support for the school's initiatives.

At other law schools, pro bono requirements are satisfied by participation in specific courses or internships that offer academic credit. The remaining majority of law schools have enhanced their institutional support for voluntary pro bono opportunities through the establishment of referral protocols that link students with pro bono opportunities. Such voluntary programs enlist pro bono coordinators to assist with the development, promotion, and coordination of pro bono placements, while other voluntary programs offer students administrative assistance in locating opportunities and tracking hours volunteered. Finally, some schools integrate their pro bono commitment with student organizations that work under faculty supervision and/or in collaboration with outside organization.

It is perhaps noteworthy to point out that there is a substantial degree of institutional isomorphism across

these pro bono programs.⁷⁵ Among the few law schools that have implemented mandatory pro bono requirements to be fulfilled through legal work external to the law school, there is a great deal of homogeneity despite the differences in the number of required hours. Several of these schools claim to focus on providing for the legal needs of the poor as well as building a lifelong commitment to pro bono among the schools' graduates. Across these schools, there is considerable flexibility in designing pro bono placements and programs frequently emphasize the opportunity to gain legal skills through the pro bono experience. In many cases, schools have modeled their pro bono programs on schools that have already established pro bono requirements. The Dedman School of Law at Southern Methodist University (SMU) acknowledges modeling their program on the public service program developed and implemented at the University of Pennsylvania.⁷⁶ Texas Wesleyan Law School, a recent arrival on the mandatory pro bono scene, after reviewing several options, made the decision to "hew most closely to SMU's model."⁷⁷

While there has been anecdotal evidence supporting the value of law school pro bono, no institution has undertaken an empirical examination of the impact of pro bono participation on law school graduates. This seems to suggest that many proponents of law school pro bono view such policies as an unqualified public good that is consistent with the service ideals of the legal profession. However, while anecdotal evidence indicates that law students generally believe that their law school pro bono experiences have increased the likelihood of continued contributions, recent follow-up data would suggest otherwise. In her recent study of pro bono activity of law school graduates across a range of schools where pro bono was mandatory, strongly encouraged, or institutionally less developed, Rhode has concluded that there is no significant

75. See THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS, *supra* note 8.

76. Interview with Rebecca Greenan, Director of the Public Service Program, Southern Methodist University Dedman School of Law, in Dallas, Tex. (Nov. 2003).

77. Storrow & Turner, *supra* note 51, at 503.

empirical relationship between law school pro bono policies and subsequent pro bono work.⁷⁸

III. METHOD

Data for this Article were collected as part of a project to examine the impact of mandatory pro bono on the educational and career experiences of attorneys. In addition to questions pertaining to the participation in pro bono, the impact of pro bono education on the various aspects of legal practice, including legal skills, client interactions, and professional networks were also examined. This study represents the first phase of a broader effort to understand the role of mandatory pro bono on the professional lives and identities of lawyers and the impact that educational and workplace experiences have on the multiple meanings that pro bono has for lawyers. For this portion of the study, quantitative survey data were collected and analyzed to address questions pertaining to the experiences and impact of mandatory pro bono. In the second phase of this study, extensive interviews will be carried out with lawyers in order to more adequately address the various ways that lawyers construct and give meaning to their pro bono experiences.

A. *The Schools*

A survey administered in the spring/summer of 2004 gathered data to assess the impact of mandatory pro bono on the careers of lawyers. Three law schools with varying pro bono requirements instituted in the 1990s were used to generate a sample. The schools differ by location, ranking, and the number of pro bono hours each law student is required to complete. One school is located in the northeastern part of the United States and is considered a leading law school in the country. A second law school is located in the western part of the United States and is ranked in the first quartile of law schools. The third school is located in one of the southern states and has a tier three ranking. In this study, these schools are referred to as

78. See RHODE, *supra* note 6, at 125-65.

Northeast Law School, Western Law School, and Southern Law School.⁷⁹

Each of the law schools selected to participate in this study have a well-established commitment to public service. According to a website at the Northeast Law School, they are “absolutely committed to public service. Our goal is quite clear: to create a [Northeast Law] student experience that will become the catalyst for a life-long commitment to pro bono and public service legal work—as part of our graduates’ careers, in whatever field they pursue.”⁸⁰ The goal of public service at the Western Law School is similarly designed “to enhance the legal profession and the law school curriculum by exposing lawyers-to-be to the importance of and the need for a life-long commitment to public service through a mandatory public service requirement.”⁸¹ At Southern Law School the development of “high ethical standards” is considered an important part of a lawyer’s education, and “commitment to service” is part of the school’s mission. According to the Dean of Southern Law School, “pro bono service allows our students an opportunity not only to try out their legal skills, but also to help those who need it the most. . . . Being a lawyer is a privilege, not a right, and this reminds students of their obligation to give back to the community.”⁸²

Each school was visited for the purpose of gaining support for the study as well as for identifying an appropriate strategy for generating a sample. While it had been hoped that each law school would provide a list of graduates from which a random sample could be drawn, all of the schools had administrative policies barring access to individual graduates. As an alternative, three graduation classes from each school were selected for comparison purposes. The three classes consisted of the last graduating class without a mandatory requirement, the first graduating class with a mandatory requirement, and a more recent graduating class of lawyers who had participated in mandatory pro bono. In addition to developing a protocol to draw a sample, input on

79. In order to preserve anonymity, pseudonyms are used instead of actual names.

80. Description of the program on file with author.

81. Description of the program on file with author.

82. Description of the program on file with author.

the survey was solicited from coordinators of the pro bono program at each school. Two of the schools, Northeast Law School and Western Law School, each employ a coordinator who is responsible for administering the program. In each of these cases, the coordinator is a lawyer with extensive experience in pro bono and/or public interest law. In the case of Southern Law School, the pro bono program is coordinated by one of the dean's administrative assistants. Draft copies of the survey were sent to these individuals for comment and to insure that the items and related response categories were consistent with the pro bono programs at each school.

Each pro bono coordinator was interviewed about the history of the program and its current operation. As part of the field visits at each location, coordinators made arrangements to interview a number of faculty associated with the development of the program, site supervisors whose agencies participate in the program, as well as advisory board members and administrative support staff. At Western Law School, the pro bono coordinator made arrangements with a group of fifteen graduates to pre-test a draft version of the questionnaire. None of these individuals graduated from any of the classes selected to participate in the study. Upon the recommendations of the coordinators at each site, as well as the suggestions from attorneys during the pre-test focus group, the questionnaire was finalized and placed into production.

B. Sample

Respondents were contacted through local commercial mailing companies contracted by the alumni office at each school. This was not the optimal sampling approach. Unfortunately, the law schools only agreed to participate in the study on the stipulation that respondents would remain anonymous and that entire classes would be sampled as opposed to random selection within each graduating class. No respondent names were given to the researcher. Consequently, contact information that would have allowed the principal investigator to conduct telephone follow-ups to increase the response rate was not provided by the law schools. All mailings to each respondent were handled through local commercial mailing companies who were provided with a list of the school's alumni. The initial mailing sent to each potential respondent contained two

letters requesting their participation in the study, one from me, the other from their school's pro bono coordinator or dean, informing them that a questionnaire would soon arrive and requesting their participation. My letter contained information about the study, the funding source, and provided relevant human subject information. These initial letters were followed by two separate mailings, each containing a copy of the survey and instructions for completing and returning it. Using this strategy, mailings were sent to approximately 2000 potential respondents. A number of pre-survey letters were returned without delivery and the respondent names were subsequently deleted from the mailing list used by the commercial mailing companies. This reduced the pool of potential respondents to approximately 1600 of which 474 respondents completed and returned surveys, yielding a response rate of approximately thirty percent.

Nearly thirty-five percent of the respondents indicate they presently work in a large law firm. Of the remaining respondents, twelve percent are sole practitioners, sixteen percent are employed in small firms, thirteen percent are located in medium-sized firms, and twelve percent practice as in-house counsel. The remainder of the sample is employed in public interest settings as well as in government and judicial locations. The sample also contained slightly more women than men. Most respondents were white, with a significantly smaller proportion of minority participants. The average age of the respondents is thirty-five. Since two of the three classes selected at each school graduated after the school's implementation of pro bono requirements, a greater proportion of attorneys report participating in mandatory pro bono, seventy-two percent compared to twenty-eight percent.

C. *Measurement*

A broad definition of pro bono was used in this study which was defined as *activities undertaken without expectation of fees consisting of the delivery of legal services to persons of limited means or to charitable, religious, civic, community, governmental, and educational organizations.* This definition is consistent with current bar association definitions, with pro bono advocacy groups such as the Pro

Bono Institute located at Georgetown University Law Center, and with recent research on the topic of pro bono in the legal profession.⁸³ Data were collected on a number of variables pertaining to their law school pro bono participation including number of hours, types of pro bono activities, and attitudes about the performance of pro bono. Also, the questionnaire included items that sought to ascertain respondent satisfaction with various components of the requirement, i.e., supervision, opportunities to learn about legal practice, level of responsibility, and integration of pro bono learning into other law school classes. General demographic information including gender, race, age, marital status, political orientation, religious affiliation, and income was also collected.

Respondents were also asked a series of open-ended questions regarding mandatory pro bono. Such questions acquired information on the types of pro bono experiences respondents had during law school as well as an assessment of the perceived impact of this experience on their development as lawyers. Finally, all respondents were asked to describe their general thoughts about mandatory pro bono in law school. All of the comments offered by respondents were transcribed from the survey, categorized, and coded for the purposes of quantitative analysis.

D. *Analysis*

For this Article three sets of analyses are included. First, descriptive statistics are utilized to provide a profile of the experiences attorneys had with mandatory pro bono. These statistics provide respondent assessment of their mandatory pro bono experience. Next, T-tests are presented in order to determine the impact that participation in mandatory pro bono has on attorneys compared to those who graduated from the same law schools just prior to the institutionalization of the requirement.⁸⁴ For this portion of

83. Deborah L. Rhode, *Pro Bono In Principal and In Practice*, 26 *HAMLIN J. PUB. L. & POL'Y* 315, 320-23 (2004).

84. In statistical analysis, a T-test is commonly performed to determine if the mean score of one group is different from that of another group on a host of variables. In this study, T-tests are used to compare the mean scores of respondents who graduated from law school with mandatory pro bono requirement against those respondents who did not across different variables.

the analysis, the mean differences in the number of hours of pro bono currently reported by each group will be compared. Finally, regression coefficients are presented for the purpose of identifying the determinants of pro bono participation across these different groups.⁸⁵

IV. FINDINGS

A. Attitudes About Law School Pro Bono

Attorneys who participated in mandatory pro bono requirements during law school generally report that their experiences were worthwhile in some areas, while in other areas the effect seems less apparent. For instance, nearly seventy percent of these attorneys endorse the view that their law school pro bono experiences taught them something about people who were different from themselves, while a similar percentage believe that they acquired more awareness of the legal needs of the poor as a result of their law school involvement in pro bono. A large percentage of attorneys, sixty-four percent, report that their mandatory pro bono was helpful in gaining a practical understanding of how the legal system works and nearly seventy percent maintain that engaging in pro bono made their law school experiences more enjoyable. Additionally, while the majority of graduates endorse the view that pro bono had a positive effect on their overall law school experience, attorneys with the greatest number of hours of mandatory pro bono report the greatest amount of enjoyment during law school.

Overall, lawyers believe that they benefited directly from the opportunity to further develop their legal skills through mandatory pro bono. Many attorneys, forty percent, report that they were actually enthusiastic about the pro bono requirement and felt that they benefited from having to participate in the program, while several others, thirty-three percent, accepted mandatory pro bono as just another law school requirement from which they consider to have benefited. Only twenty percent of the respondents indicate that their pro bono experiences interfered with or

85. Regression analysis is a statistical technique for identifying the variables that best predict a dependent variable.

took valuable time away from the legal education. A substantial number of attorneys, fifty-eight percent, report that they acquired valuable legal skills through their participation in law school pro bono. It appears from this data that a significant proportion of lawyers consider that they derived some positive benefits from their mandatory pro bono experiences and that their overall law school experiences were more satisfying as a result.

Despite the value that mandatory pro bono had for many of these lawyers, most did not believe that their experiences had a significant effect on their legal careers. Only thirty-four percent of the respondents believe that their pro bono experience affected their initial job choice and twenty-eight percent report that their law school pro bono helped them acquire their initial job after graduation. Few respondents, less than thirty-five percent, report that their pro bono experiences helped them to develop useful professional contacts that might assist them with their careers. It appears that despite their pro bono experiences in law school, graduates were not necessarily compelled to seek out opportunities for pro bono upon graduation. Somewhat surprisingly, and contrary to anecdotal evidence, half of the respondents did not believe that their law school pro bono experiences made them any more committed to doing pro bono as a practicing attorney. It is thus somewhat questionable whether the pro bono experiences in law school enhanced a respondent's commitment to perform pro bono work as an attorney.

In terms of their assessment of their law school pro bono, lawyers tended, for the most part, to be satisfied with the various facets of the programs. More than two-thirds of the respondents indicate that they were satisfied with the quality of supervision during their pro bono placement, and three-quarters of them feel the range of pro bono opportunities to choose from were satisfactory. Similarly, approximately seventy-five percent of the attorneys report that they were generally satisfied with the opportunities to learn about legal practice, opportunities for client contact, the level of responsibility within their pro bono placement, and the overall ease of the process, i.e., choosing placements, completing forms, and evaluating their experiences. It is interesting to note, however, that one of the only areas where attorneys register any dissatisfaction is in the integration of their pro bono experiences with

general coursework. Nearly seventy percent of the respondents report that they were dissatisfied with the integration of pro bono learning into other law classes. While these respondents report being generally satisfied with the mandatory pro bono experience itself, they express dismay with the lack of attention this experience was accorded in their regular law school classes. It appears that for many respondents, while they believe their pro bono experiences were beneficial in many areas and were considered an important part of their legal socialization, the value of this experience did not seem to translate into the classroom. As one respondent commented, "law school offers limited opportunity for practical work; all students benefit from pro bono opportunities, but the school must take its obligation to pro bono seriously. There was very little opportunity to explore the relevance of the experience in my regular classes." Another respondent raised a similar concern about the disconnection between his pro bono experience and his law school classes:

Law school is an isolated process and most of its emphasis is to train for work in large firms. The reality of law practice is just the opposite. Pro bono opportunities expose one to how individuals present real life problems—not artificially created fact patterns. Unfortunately, pro bono experiences rarely made their way into classroom discussion.

B. Impact of Pro Bono on Practice

While the responding lawyers generally report favorable experiences associated with their mandatory pro bono in law school, its impact on their legal career is less certain. The data indicate that lawyers do consider that the pro bono experience in law school contributed to their understanding of marginal groups as well as enhanced their legal skills, but also reveals that the impact of that experience on their career was not substantial. It is important to determine the effect, if any, that participating in mandatory pro bono during law school has on the pro bono activities of practicing attorneys. To explore the potential impact the following indicators of pro bono activity will be examined below: (1) participation in pro bono in a lawyer's current job, (2) the extent to which the amount of pro bono activity has changed over the years, and (3) the number of pro bono hours in the past year reported

by respondents. In addition to these indicators of effect, the potential impact of mandatory pro bono during law school on non-legal volunteerism will also be assessed.

1. *Pro bono in current job.* Do more lawyers who participated in mandatory pro bono during law school engage in pro bono activity in their current legal positions, compared to those respondents who did not participate? Over seventy percent of the lawyers in the sample report having performed at least some pro bono work in their current position. Unfortunately, there are few accurate national statistics on the percentage of lawyers who perform pro bono work.⁸⁶ Because of this, it is difficult to compare the percentage of lawyers who engage in pro bono from the current sample with the overall legal profession. However, indicators from other states suggest that the level of participation in pro bono among lawyers in the current sample may exceed that of the profession as a whole. For instance, a recent study of pro bono participation in New York found that forty-seven percent of the attorneys in the state performed at least some pro bono in 1997.⁸⁷ However, it should be noted that this figure relates only to legal work that “qualified” as pro bono. In that study, legal work that qualified as pro bono included only those services that were directed exclusively at providing legal assistance to individuals who were poor or to institutions whose primary mission it was to increase the availability or quality of legal services for, or access to justice by, poor persons. This figure is further clouded by the fact that an additional thirty-nine percent of attorneys in New York State reported performing legal work that did not “qualify” as pro bono but which the individual considered as pro bono publico.⁸⁸ Such public service work may have included free or reduced-fee legal service or other law-related activities for a charitable, public interest, or not-for-profit organization, or bar association. This category of non-qualifying pro bono also included instances of legal guardianship. However,

86. Rhode, *supra* note 83, at 326.

87. NYSBA, REPORT ON THE PRO BONO ACTIVITIES OF THE NEW YORK STATE BAR 15 (1997), available at <http://www.courts.state.ny.us/pbconvocation/pbrpt.pdf>. Three quarters of these lawyers report providing pro bono work for close friends and relatives. *See id.*

88. *Id.* at 5-6.

qualifying and non-qualifying pro bono are not mutually exclusive. It is no doubt the case that lawyers in New York State who engage in pro bono do so across both of these dimensions. Consequently, estimating the degree of pro bono participation in New York cannot be done in simple additive fashion since many of these lawyers participate in each kind of volunteer work.

Other indicators of pro bono participation suggest that the current study does not exaggerate the amount of pro bono. In their work on divorce lawyers in Maine and New Hampshire, Mather and her associates found that “[o]verall, seventy-six percent of the lawyers we interviewed reported that they currently took formal pro bono referrals for divorce cases.”⁸⁹ Seventy-seven percent of the lawyers these researchers interviewed reported accepting informal pro bono cases, that is, cases in which the attorney’s fee was adjusted based on the client’s ability to pay.⁹⁰ While these rates of pro bono participation are impressive when compared to estimates of the national averages, all the lawyers in this study were either sole practitioners or were associated with relatively small firms. Lawyers in smaller practices typically have the highest levels of pro bono participation.

In the current sample of lawyers, sixty-nine percent report having participated in pro bono work in their current job. This figure corresponds to recent ABA statistics on pro bono work. In a study of 1100 lawyers across the country, researchers found that two-thirds (sixty-six percent) of the lawyers interviewed reported doing at least some amount of pro bono work.⁹¹ Among the lawyers in the current study who were required to engage in pro bono work during law school, slightly more than sixty-seven percent indicate that they engage in at least some pro bono in their current workplace. Among those lawyers who were not required to perform pro bono in law school, just under seventy-five percent report currently participating in pro bono work. Although there is a difference (actually in the direction of

89. MATHER ET AL., *supra* note 20, at 135.

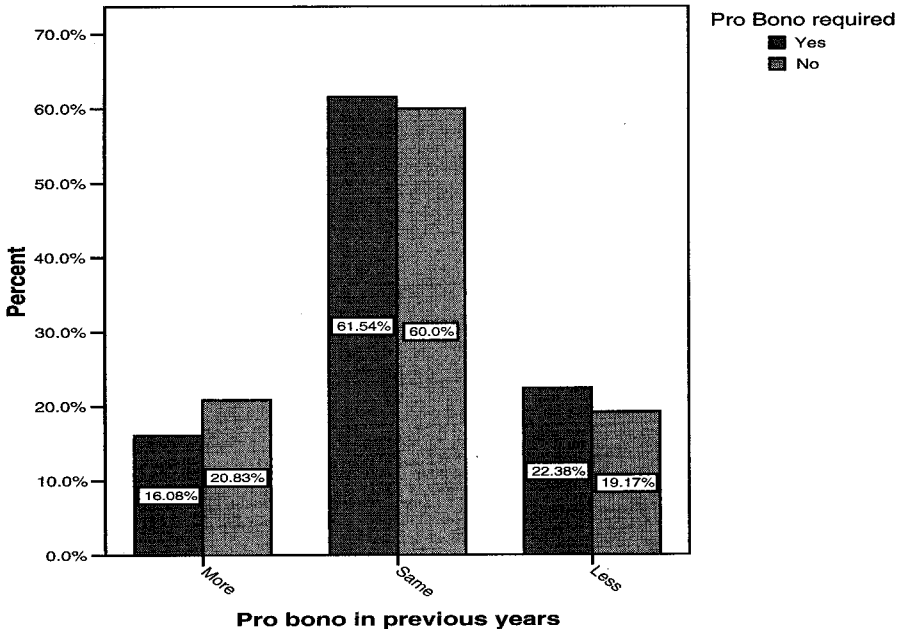
90. *Id.*

91. ABA, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 4 (2005), available at www.abanet.org/legalservices/probono/report.pdf.

non-mandatory pro bono lawyers), it is not statistically significant ($X^2 = 1.94$; $P = .163$).

2. *Shifting Patterns of Pro Bono Participation.* Although there is no significant difference between these two groups with respect to the rate of pro bono participation, it is reasonable to suspect that a mandatory pro bono experience might increase the longevity of a lawyer's pro bono participation. In other words, does the experience of mandatory pro bono in law school obviate a possible "aging out" process by which lawyers simply discontinue pro bono work due to assorted professional and/or personal demands? Respondents were asked to indicate whether there were any changes in their pro bono participation rate compared to previous years. The overwhelming majority, sixty percent in each group, reported that there was no change in their rate of participation. As Figure 1 demonstrates, there is no significant difference between these two groups of respondents.

Figure 1.



Lawyers who did not participate in mandatory pro bono during law school do not abandon pro bono work at a significantly higher rate than respondents with mandatory law school pro bono experiences. In fact, a larger percentage (although statistically non-significant) of lawyers who were not required to perform pro bono during law school report increasing their amount of pro bono contribution compared to previous years.

3. *Amount of annual pro bono participation.* Another way to examine the effect of participating in a mandatory pro bono program is to compare the number of hours participants currently devote to pro bono legal service with lawyers from the same law schools who graduated without such a requirement. To do this, a T-test was conducted that examines the difference in the mean number of hours devoted to pro bono across the different groups in the study. On average, lawyers in the entire sample report contributing a total of sixty-nine hours of pro bono legal services per year. While this figure is well above the national average of thirty-nine hours according to the American Bar Association,⁹² it is consistent with recent research on graduates from law schools that currently emphasize pro bono obligations.⁹³

Data reveal that there are no statistically significant differences across these two groups. The total number of pro bono hours for lawyers who participated in mandatory pro bono during law school did not significantly vary from the number of hours devoted to pro bono reported by those who were not required to participate in such a program. Among those lawyers who participated in mandatory pro bono, the average number of hours is sixty-nine as compared to sixty-eight hours for lawyers who graduated prior to the implementation of the pro bono requirement ($T = .01$; $P = .991$). The failure to achieve statistical significance is consistent with the earlier finding that mandatory pro bono is not perceived by lawyers as having a substantial impact on their careers. As indicated above, half of those attorneys participating in mandatory pro bono did not report being more committed to doing pro bono in their career as a result

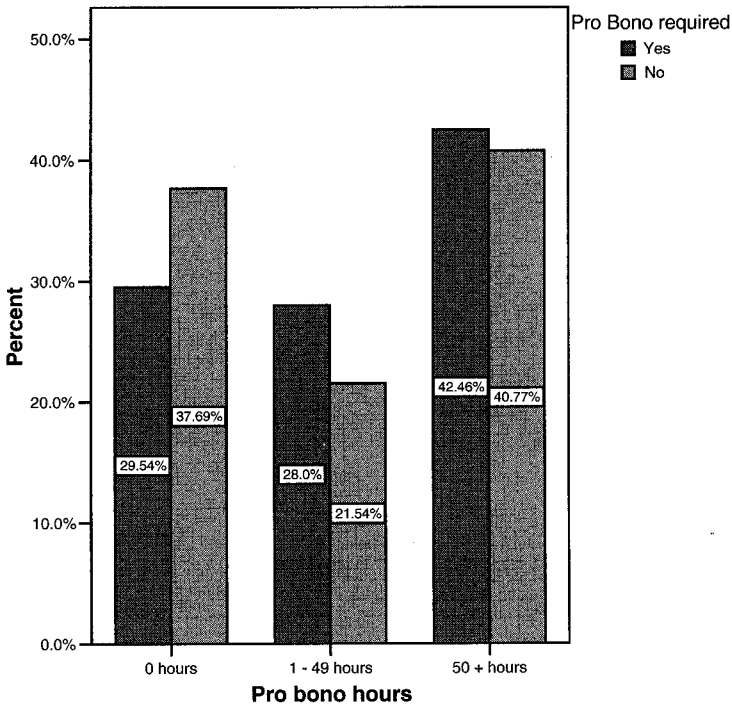
92. *Id.*

93. See RHODE, *supra* note 6, at 162.

of being required to do it in law school and most did not consider it a priority when choosing their initial job. While doing pro bono in law school is seen by most as an experience that enhances the skill-based—and even humanistic—aspects of their professional socialization, the actual impact of such a program in increasing the level of pro bono participation in legal practice appears less dramatic. On average, the lawyers who graduated with pro bono requirements do no more pro bono work than those lawyers who have not participated in mandatory pro bono.

Despite the fact that mandatory pro bono does not lead to a significant increase in the number of reported hours devoted to pro bono in practice when compared with respondents who did not participate in mandatory requirements, it is possible that such experiences might influence the *proportion* of those who participate in pro bono. For instance, does mandatory pro bono increase the likelihood that more lawyers will engage in levels of pro bono work that are consistent with ABA aspirations of fifty or more hours?

Figure 2.



As Figure 2 demonstrates, among the attorneys who did not participate in mandatory pro bono, nearly forty percent indicate that they had not engaged in any pro bono practice during the past year while another forty percent report contributing more than fifty hours annually. While there is a similar proportion of lawyers with mandatory pro bono participation that contributed fifty hours or more per year, fewer of them report that they had not engaged in pro bono at all. Thirty-seven percent of respondents who did not participate in mandatory pro bono in law school indicated that they had not performed pro bono work in their legal practice during the past year. Of those attorneys who participated in mandatory pro bono, less than thirty percent report that they had not performed pro bono in their current legal practice during the past year. Although there are proportionally fewer of these respondents who report zero hours of pro bono, the difference is not statistically significant ($\chi^2 = 3.48$; $P = .175$). Thus, despite the fact that each of these schools have well-established mandatory pro bono programs that aspire to increase the commitment to performing pro bono within legal practice settings, the current data reveal no such positive outcome. Attorneys who participated in mandatory pro bono in law school are not significantly different from those attorneys who were not required to perform pro bono during their law school years. There is no difference between these groups in either the raw number of hours nor is there any significant difference in the proportion of attorneys in each group who perform the ABA-recommended amount of fifty hours and more.

4. *Non-legal volunteerism.* While participation in a mandatory pro bono experience in law school does not significantly affect the rates or proportion of lawyers who do pro bono, it is reasonable to inquire into the possible impact such experiences may have on the extent of non-legal volunteerism. If part of the mission of mandatory programs is to build a commitment to public service among lawyers, then the degree to which lawyers become involved in their communities as private citizens, as opposed to their professional role as a lawyer, may be amplified. As community leaders and members of the general public, lawyers frequently hold voluntary positions on an assortment of public institutions including schools, non-

profit organizations, and church groups where their activity is not necessarily related to the provisions of legal services.

In an attempt to differentiate between pro bono work and non-legal service, respondents were asked to estimate the total number of hours in the past year they devoted to volunteer activities in community and political groups, as well as local and national organizations etc. that do not involve providing legal services. The average number of hours of non-legal volunteer work reported by respondents was seventy. Respondents who did not participate in mandatory pro bono programs during law school indicated engaging in a slightly higher level of non-legal volunteer service compared to those respondents who participated in mandatory pro bono during law school, seventy-nine versus sixty-six hours respectively. Despite this variation, the difference is not statistically significant ($T = .996$; $P = .320$). As is the case with pro bono legal work, there is no significant difference in the amount of non-legal volunteer service that graduates engage in from law schools with mandatory pro bono programs compared to those who graduated from the same law schools but before the implementation of pro bono requirements.

C. Current Pro Bono Work

While there are no significant differences in the number of hours devoted to pro bono work between attorneys who were required to do pro bono in law school and those who were not, it is possible that the types of pro bono activities may differ across these two groups of lawyers. Does the experience of mandatory pro bono in law school affect the shape of pro bono that is performed in legal practice? On this question, the data again reveals no significant differences.

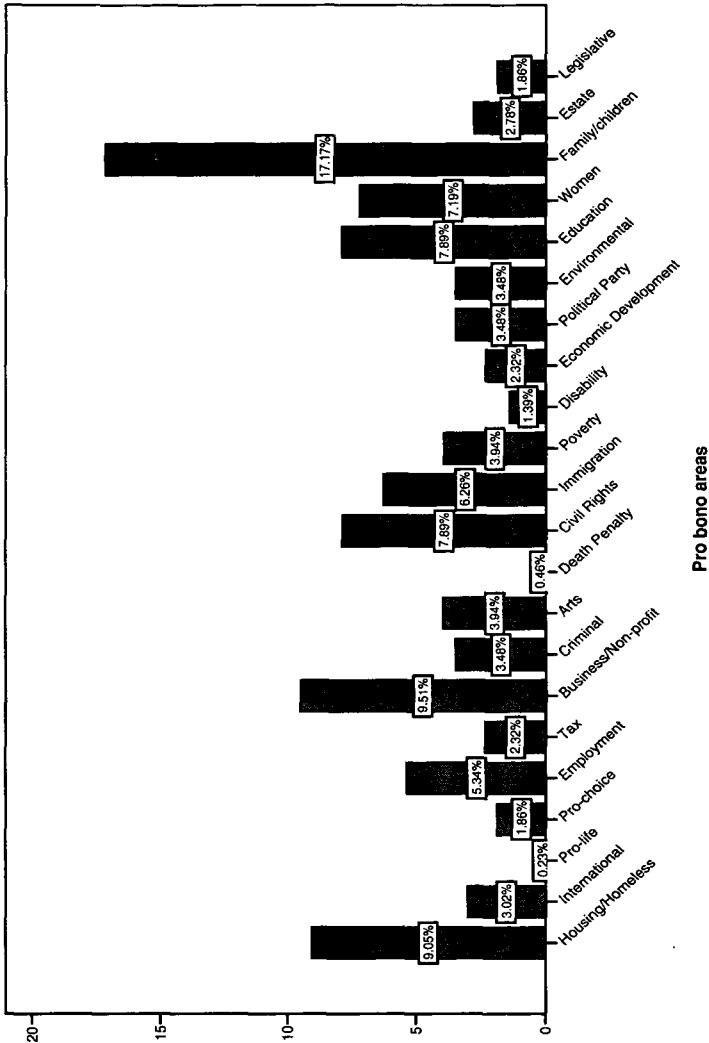
Upon examining the amount of time lawyers spend performing pro bono work with the poor and indigent populations, it was found that lawyers who were required to do pro bono during law school are no more likely to perform pro bono for these populations than are attorneys with no mandatory pro bono experiences. The survey asked respondents to identify the pro bono work they currently perform as well as indicate if that work “typically” was devoted to providing for the legal needs of persons with limited means. A large portion of respondents indicate

doing pro bono work for corporate entities such as non-profits. It is apparent from the survey data that these lawyers have broad definitions of the meaning of pro bono. When asked, only slightly more than twenty-six percent of the respondents indicate that a substantial portion of their pro bono work was devoted to individuals who were considered poor or indigent. While attorneys who participated in a mandatory pro bono program in law school report slightly higher levels of pro bono work with individuals who were poor or indigent compared to those who did not participate in such programs, the difference is not statistically significant ($X^2 = .141, P < .707$).

In addition to the finding that there is no difference between these two groups with respect to the provision of pro bono services to indigent populations, neither does there appear to be a significant difference in the general types of pro bono work that is performed. Figure 3 presents the percentage of all lawyers in the sample who performed at least some amount of pro bono in the past year. As this figure demonstrates, the type of pro bono work performed by lawyers in the sample is dispersed broadly across a range of legal areas. However, the majority of the work is clustered in only a few of these categories. For instance, nearly eighteen percent of all lawyers in the sample who did some pro bono in the past year focused at least a portion of their efforts in the area of family law and child service. The next largest categories identified by these lawyers are business/non-profit and housing. Almost ten percent of lawyers who performed pro bono worked in the area of business and non-profit development while just over nine percent indicate working in the area of housing. This finding is consistent with data from New York indicating that the most frequently cited area for pro bono legal work is family law followed by landlord-tenant matters.⁹⁴ Pro bono work in the areas of women, civil rights, education, immigration, and employment are identified by three to five percent of the lawyers in the sample with the remaining area such as disability, death penalty, environmental etc. all falling below three percent.

94. See NYSBA, *supra* note 87, at 5; see also Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 637 (1985).

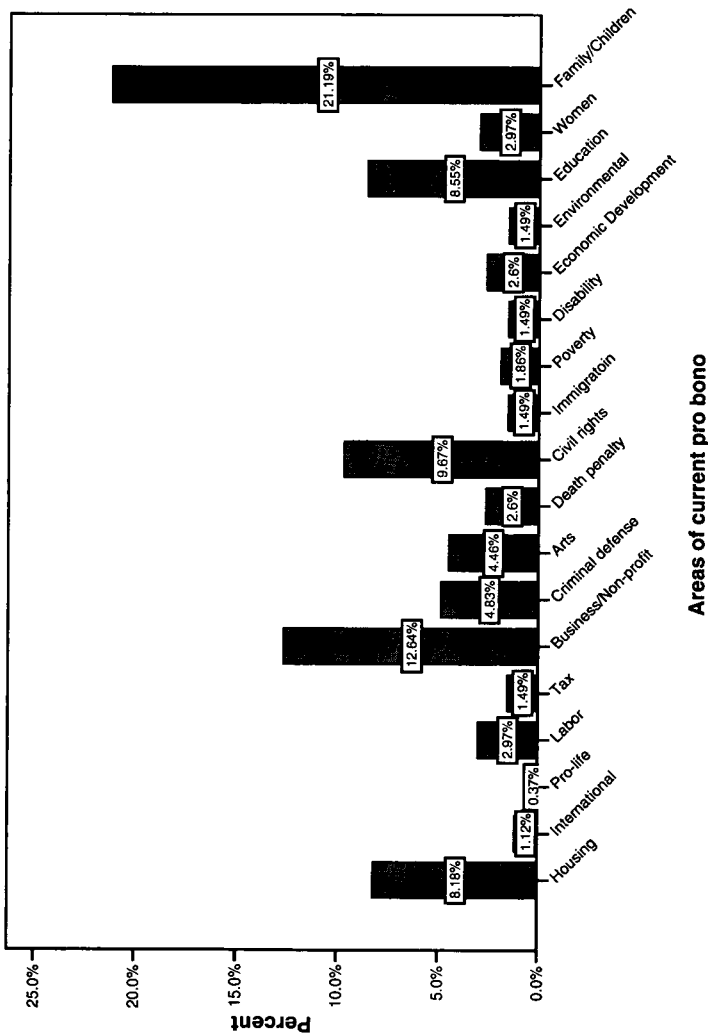
Figure 3.



When all the areas of pro bono work are compared together, it is clear that the areas of family and business are, by far, the most active areas of pro bono work. The survey asked respondents to identify the areas in which most of their pro bono work is done. As the figure below indicates, the overwhelming majority of pro bono work is performed in the general area of family law and child service issues. Just over twenty percent of all pro bono work done by lawyers in this sample is focused in this area of legal practice. Much of this work is in the specific area of divorce cases as well as acting as a guardian ad litem.

Slightly more than half of the above amount is performed in the area of business/non-profit law. Nearly thirteen percent of the total amount of pro bono work identified by lawyers in this sample fell into this area of legal practice. In many cases, the specific pro bono work performed was assisting non-profit entities with the process of incorporation. In other cases, respondents identified helping small businesses in their community with general legal council. These two areas constitute more than a third of the pro bono work identified by the lawyers in this sample. The areas of civil rights, education, and housing together occupy another twenty-six percent of the pro bono work these lawyers performed.

Figure 4.



The remaining pro bono areas associated with death penalty work, environmental law, economic development, women, poverty, and labor law failed to attract much attention among lawyers in this sample.

Although there were some differences with regard to the area of pro bono activity across those attorneys who participated in mandatory pro bono during law school and those that did not, these differences were not statistically significant. For instance, in both groups, the legal areas associated with family law and child services constituted the bulk of the pro bono work performed. There were slightly more lawyers who participated in mandatory pro bono in law school that reported being engaged in pro bono work for businesses or non-profit organizations compared to those lawyers who were not required to perform pro bono during law school, fourteen percent and nine percent respectively, but the difference is insignificant. Also, slightly more lawyers in the non-mandatory pro bono group engaged in civil rights pro bono work, while more lawyers from the mandatory pro bono group engaged in pro bono work in the area of the arts and entertainment. However, these differences were not statistically significant. Very few lawyers from either group performed pro bono work in the areas of death penalty, poverty law, economic development, environmental law, or labor law.

The fact that there are few differences in the type of pro bono work between these two groups suggests that the workplace may be a stronger predictor of pro bono than law school socialization.⁹⁵ In many law firms, the types of pro bono work provided (as well as the amount of resources devoted) offers insight into the transformative possibilities of pro bono work. Indeed, as Cummings points out, pro bono in law firms has become “the lynchpin of an increasingly privatized system of public interest advocacy.”⁹⁶ Increasingly, however, pro bono has become driven entirely by the needs and limitations of the law firm.⁹⁷ Small law firms often do not have the capacity to accept certain pro bono cases that might deplete valuable resources. Such

95. See RHODE, *supra* note 6, at 164; *see also* Granfield, *supra* note 10.

96. SCHEINGOLD & SARAT, *supra* note 22, at 75 (quoting Cummings, *supra* note 1).

97. See SCHEINGOLD & SARAT, *supra* note 22, at 75.

resource limitations in small firms frequently encourage pro bono lawyers to quickly dispose of cases through less costly negotiation proceedings rather than through formal litigation which might consume more time and pose greater burden on the firm.⁹⁸ While small firms do sometimes hedge financial risk by refusing cases that will consume too many resources against those that have more potential for recovery of fees, there is strong pressure against doing so on a regular basis.⁹⁹ In larger corporate law firms, lawyers are often restricted from taking certain pro bono cases for ideological reasons. Rhode found that nearly half of the lawyers in her study indicated that they were dissatisfied with the types of pro bono cases that were permitted in their workplace.¹⁰⁰ In many cases, pro bono work is directed away from controversial areas like abortion, consumer law, death penalty, labor rights, environmental law, or gay and lesbian issues that might "offend" paying clients.¹⁰¹ Large law firms often carefully vet pro bono cases to ensure that they are "politically safe and non-threatening to client interests."¹⁰² Pro bono work that poses "[p]ositional conflicts" are frequently avoided since the pro bono client may be "pursuing an objective that runs counter to the perceived interests of one or more of the firm's clients."¹⁰³

The findings reported in this Article support the argument that the most popular areas of pro bono work are those that pose the least potential for conflict. Family law and child services are, by far, the most common types of pro bono work performed by attorneys in this sample. The predominance of family law pro bono work is not surprising given that this area of legal practice has been the most common type of legal aid work.¹⁰⁴ A Rhode Island study found that family law and guardianship cases have attracted the greatest amount of pro bono activity among

98. See MATHER ET AL., *supra* note 20, at 39.

99. Cummings, *supra* note 1, at 133.

100. RHODE, *supra* note 6, at 172.

101. Cummings, *supra* note 1, at 122-23.

102. *Id.* at 137.

103. SCHEINGOLD & SARAT, *supra* note 22, at 77.

104. See Abel, *supra* note 94, at 637.

the state's lawyers.¹⁰⁵ Although there is significant value in pro bono work in this area, particularly for redressing sexual inequalities in the home, offering women a means of exiting abusive relationships, assisting families in their adjustment to welfare reform policies, and providing protection for children who face a threatening family environment, rarely do such cases challenge the interests of paying clients. Cases associated with housing matters also occupy a significant proportion of pro bono work done by the lawyers in this sample. While many of these cases are conducted in the service of economically marginalized populations, much of the work is directed at forestalling or delaying eviction. The fact that the areas of family and child services and housing reflect common areas of pro bono practice is no doubt related to the retrenchment of legal service since the 1980s which has limited legal services to three main substantive areas: public benefit related matters, housing matters, and family law.¹⁰⁶ Welfare reform in the 1990s also placed new burdens on families with children, rendering it increasingly difficult to acquire public subsidies, while at the same time making this an increasingly attractive area of pro bono practice.¹⁰⁷

In a similar way, other popular areas of pro bono work include those that are exceedingly mainstream and do little to bring needed services to poor and marginalized populations. For instance, many lawyers in the sample report being engaged in pro bono work that assists small businesses and non-profit organizations. The pro bono work performed in these instances often includes general transactional matters associated with incorporation, liability, and tax. Until recently, pro bono done in the interests of small business was considered an oxymoron. However, this type of pro bono work has become increasingly popular.¹⁰⁸ In some instances, pro bono activity in this area involves working with union groups,

105. *Pro Bono Spotlight*, 47 R.I.B.J., Oct. 1998, at 17.

106. David H. Taylor, *Conflicts of Interest and the Indigent Client: Barring the Door to the Last Lawyer in Town*, 37 ARIZ. L. REV. 577, 581 (1995).

107. See Peter Pitegoff & Lauren Breen, *Child Care Policy and the Welfare Reform Act*, 6 J. AFFORDABLE HOUS. & CMTY. DEV. L. 113 (1997).

108. See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 200 (1997).

community development corporations, nonprofit organizations, selected enterprises, and tenant councils for the purpose of urban revitalization and economic development.¹⁰⁹

While such community economic development work has transformative potential for poor communities, the amount of pro bono investment required is often too great for many law firms to shoulder. In addition, community economic development approaches to improving the lives of the poor and disadvantaged communities may be at odds with political and financial elites whose business support many law firms rely upon. This data is consistent with arguments suggesting that pro bono work rarely challenges fundamental inequities within the structure of American society but instead focuses on more garden-variety injustices.¹¹⁰

D. *Acquiring Pro Bono Work*

Respondents were asked to indicate the most common means through which they acquire pro bono work. Overall, the most common method of obtaining pro bono work (twenty-six percent of cases) occurred through an employer's pro bono committee or coordinator. This finding is consistent with Rhode's data that identifies employers as the most common source of pro bono clients.¹¹¹ The next most common channels for acquiring pro bono work occurred through one's friends and acquaintances as well as through public interest organizations. One quarter of the respondents indicate obtaining pro bono work through each of these methods. Respondents also commonly report using community groups (twenty-three percent) and bar associations (twenty percent) to acquire their pro bono work. Acquiring pro bono work through family members and relatives as well as through existing clients, legal services providers, or faith-based communities occurred less

109. See Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 B.U. PUB. INT. L.J. 275 (1995).

110. See SCHEINGOLD & SARAT, *supra* note 22, at 75-80 (discussing the limitations of pro bono practice); see also NADER & SMITH, *supra* note 26, at 339-47.

111. RHODE, *supra* note 6, at 145.

often. Only eleven percent of respondents report acquiring pro bono through family members and existing clients while an additional twelve percent indicate using legal services and faith-based communities to acquire pro bono work.

Despite these differences, there are no significant variations between lawyers who participated in mandatory pro bono during law school and those lawyers who were not required to perform pro bono in order to graduate. There are however, significant differences in the methods of acquiring pro bono work that exist across each of the law schools from which respondents graduated. For instance, a significantly greater proportion of respondents who graduated from Northeast Law School obtained pro bono work through their employer compared to graduates of Western and Southern Law Schools. Over a third of the respondents from Northeast Law School report acquiring pro bono work through an employer's pro bono committee or coordinator while only twenty-two percent and ten percent from Western and Southern respectively, report using this method. These variations no doubt reflect the labor market differences across law schools. In most cases, legal practice settings that have formal pro bono committees or coordinators tend to be located in larger law firms. Smaller law firm practices are often unable to afford spending resources on a pro bono partner or coordinator. As one of the top law schools in the country, graduates of Northeast Law School are more likely to work in large law firm settings than are graduates from less prestigious law schools. In fact, the data from these respondents bear out this point. Over forty-five percent of the respondents who graduated from Northeast Law School report being currently employed in a large law firm compared to thirty-two percent from Western Law School and only six percent from Southern Law School. Among those respondents who graduated from Southern Law School, over fifty percent are employed in small law firms or as sole practitioners while thirty percent of Western Law School graduates and less than fifteen percent of the Northeast Law School alumni work in these settings. Given these differences, it is not surprising that graduates of Northeast Law School are more likely to utilize employee-based methods of locating pro bono work since they are the ones who have the greatest access to such methods.

The existing law school hierarchy also seems to explain other variations in the pattern of obtaining pro bono work. While graduates of more elite schools may have greater opportunities to use formal employee-based programs, graduates of lower ranked schools seem to rely more on informal networks. Graduates of Southern Law School overwhelmingly report using their available social capital, i.e., friendship networks and local community group involvement to acquire pro bono work. Nearly forty percent of these respondents report obtaining pro bono work through these methods compared to only twenty percent of Northeast Law School graduates. Respondents who graduated from Western Law School report using a combination of methods for locating worthy projects including formal bar association venues (thirty percent) as well as friends and acquaintances (thirty-one percent). Finally, while only thirteen percent of respondents cite faith-based sources as a method of obtaining pro bono work, graduates of Southern Law School were significantly more likely to use faith-based connections to obtain pro bono work. While nearly a quarter of Southern Law School graduates cite this as a venue to obtain pro bono cases only eighteen percent of the Western Law School graduates and seven percent of the Northeast Law School graduates relied on these methods. While these findings seem to reflect differences in the hierarchy of the legal profession, the greater role of faith-based organizations in the South and the tendency for lawyers in smaller and less prestigious work settings to emphasize informal methods of acquiring pro bono work,¹¹² there does not appear to be any distinct variations across those lawyers who were required to participate in mandatory pro bono during law school and those who were not. Participating in mandatory pro bono in law school has no appreciable influence on the methods employed by lawyers to obtain pro bono work in practice.

The venue from which a lawyer acquires pro bono cases has significant implications for the type of work performed and especially the population for whom the services are provided. For instance, while many large law firm attorneys use pro bono committees and/or coordinators available

112. See MATHER ET AL., *supra* note 20, at 136 (discussing the informal methods of acquiring pro bono work by solo practitioners and small firm lawyers).

through the workplace, much of the work is not directed at poor and indigent populations. Of those lawyers who use employee pro bono committees and coordinators, only twenty-eight percent indicate that a substantial portion of their pro bono work is directed toward addressing the legal needs of poor and marginalized populations. By contrast, of those who report using bar association programs to acquire pro bono work, nearly forty percent of the respondents indicate that a substantial percentage of their pro bono work is directed at serving these populations. Thus, while many of the attorneys in this sample report use employee-based opportunities to obtain pro bono work, much of the available pro bono does not seem to be in the service of increasing access to justice for the poor. This is particularly true for lawyers employed in large law firms who are more likely to have access to employee-based opportunities to obtain pro bono work.

The fact that those lawyers who use bar association methods of obtaining pro bono work have a higher likelihood of serving the poor may reflect the tendency for bar associations to clearly define pro bono as work that is performed for the poor and indigent. In many states, work that “qualifies” as pro bono involves legal services that are delivered to the poor and economically disadvantaged. Although large law firms may have pro bono committees, coordinators, and even partners, policies at some firms may not be as restrictive when it comes to defining the meaning and purpose of pro bono. In her research on pro bono work, Rhode found that a substantial number of lawyers complained that much of the pro bono work done in firms involved matters that lawyers classified as not truly pro bono.¹¹³ She found that nearly half of the lawyers in her study were dissatisfied with the types of pro bono cases permitted in law firms and opined that pro bono in firms was done for the benefit of partners and their families or that the firm supported pro bono projects that would benefit the firm’s image.¹¹⁴ Thus, while large law firms may have formalized procedures to generate pro bono opportunities for lawyers, the pro bono work that is performed may not be

113. RHODE, *supra* note 6, at 148.

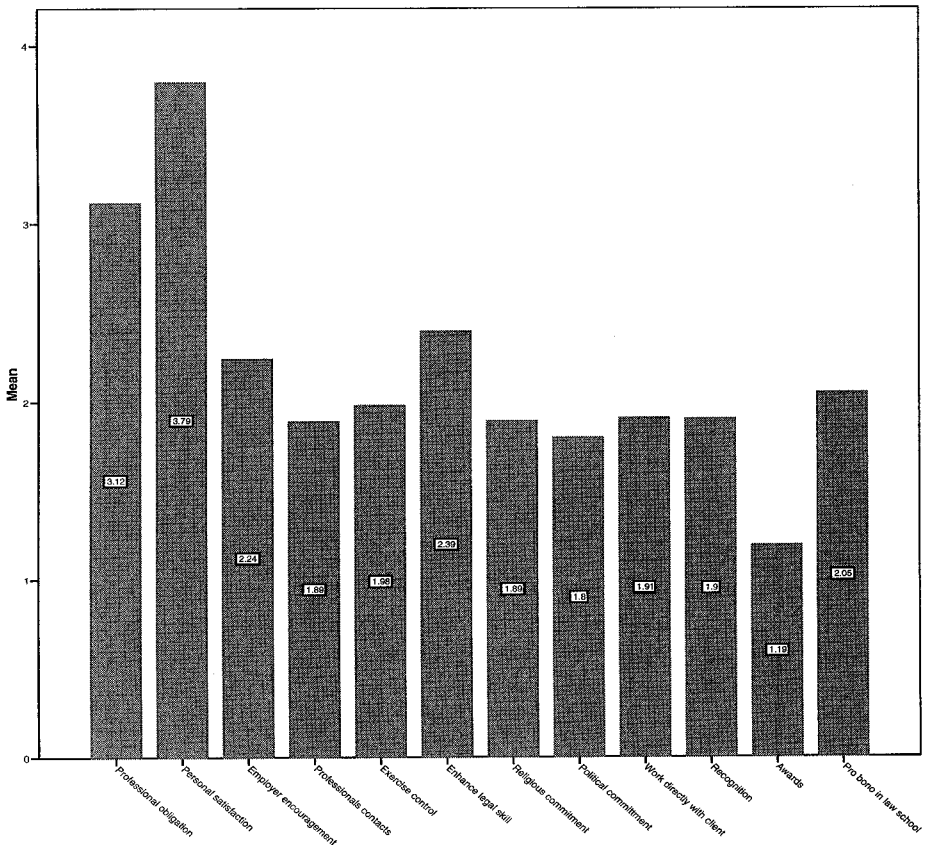
114. *Id.*

directed at the most socially disadvantaged constituencies in society.

E. *Motivations for Performing Pro Bono*

In order to understand the motivations for pursuing pro bono work and for investigating differences in motivations between lawyers who were required to perform pro bono during law school and those lawyers who were not, the survey asked respondents to rank a set of factors that influenced their decision to engage in volunteer legal services. Figure 5 provides the mean values associated with each motivational factor.

Figure 5.



As Figure 5 demonstrates, motivations for pursuing pro bono work are consistent with the general literature on volunteering. The most significant motivating factors in the lives of these respondents were intrinsic satisfaction from doing pro bono work (3.79) and a normative obligation that comes from being a member of a profession (3.12). These findings closely resemble those recently identified by Rhode who similarly found that “the most commonly emphasized forces driving pro bono participation were the intrinsic satisfaction that came from the work . . . and a sense of obligation to pursue it”¹¹⁵ Instrumental motivations including the opportunity to enhance legal skills (2.39) and organizational encouragement (2.24) were of secondary importance to these respondents. Factors such as acquiring contacts, exercising control over work, opportunities to work directly with clients, and workplace recognition or awards were cited less frequently by respondents as influencing their decision to pursue pro bono work. Interestingly however, respondents report that doing pro bono in law school had some—albeit marginal—influence on their decision to pursue pro bono opportunities. Again, these findings correspond to previous work on motivations for engaging in pro bono work.¹¹⁶

Despite the belief among respondents that law school pro bono experiences influenced their decisions to pursue pro bono opportunities in practice, there appears to be little difference in the motivations between lawyers who were required to perform pro bono in law school and those who were not. However, the intensity of motivations is stronger on some items than on others. As Table 1 demonstrates, graduates of mandatory pro bono programs rank the motivating factor of professional obligation somewhat lower than do lawyers who were not required to participate in pro bono in law school. While the intrinsic personal satisfaction associated with doing pro bono work is virtually the same across these groups, lawyers who were not required to perform pro bono in law school report a slightly higher sense of professional obligation to do pro bono.

115. RHODE, *supra* note 6, at 130.

116. *See id.*

Table 1. T-test difference of means for motivations for pursuing pro bono work Mandatory Pro bono

<u>Variable</u>	<u>Yes</u>	<u>No</u>	<u>T</u>
Professional obligation	3.07	3.39	2.01*
Personal satisfaction	3.80	3.80	.02
Employee encouragement	2.27	2.27	.03
Professional contacts and referrals	1.86	1.92	.43
Exercise control over work	2.08	1.88	1.42
Enhance legal skills	2.52	2.19	2.05*
Religious commitment	1.91	1.92	.03
Political commitment	1.82	1.82	.01
Work directly with clients	2.00	1.72	1.99*
Recognition/reputation	1.84	1.99	1.14
Employer or bar association awards	1.19	1.21	.30
Pro bono in law school	2.38	1.18	8.38***

* P < .05; *** P < .001

By contrast, respondents who were required to perform pro bono during law school registered slightly greater motivational intensity with regard to enhancing their legal skills and working directly with clients. Also, respondents who were required to participate in pro bono during law school ranked this factor significantly higher than did respondents who were not required to perform pro bono work in order to graduate. The last finding suggests that the immersion in pro bono during law school may increase a

lawyer's level of motivation to pursue pro bono opportunities in practice.

As a way of further disentangling the impact of motivations on pro bono obligations, a regression analysis was conducted. For this analysis, lawyers were asked whether they thought "all lawyers should be required to perform pro bono each year." This variable was regressed on the above list of motivations as well as other variables including pre-law school volunteer experiences, importance of religion and political orientation in the respondent's life, and the amount of involvement with other attorneys who do pro bono. An additional factor was included that measured the value of "giving something back" as a motivation for participating in pro bono. Finally, general demographics including gender, marital status, race (white/non-white), and income were entered into the regression equation.

Table 2 demonstrates that there are a number of factors that are associated with the belief that lawyers should be required to perform pro bono work.

Table 2

<u>Variable</u>	<u>Beta</u>
Pro bono in law school	.235***
Giving something back	.203***
Professional obligation	.197***
Pre-law school volunteering	.154**
Political commitment	.134**
White/Non-white	.127**
Work directly with clients	.111*
Importance of religion	.106*

* P < .05; ** P < .01; *** P < .001; R2 = .370

Those who graduated from a law school with a mandatory pro bono requirement tend to be more supportive of pro bono requirements in the legal profession than are respondents who graduated without such a requirement. Respondents who subscribe to strong normative beliefs that pro bono work is a professional obligation tend to support the opinion that lawyers should be required to perform some annual amount of pro bono work. Respondents who feel that volunteer legal work offers them a way to "give something back" to their community similarly support making pro bono a requirement of all lawyers. Previous volunteer experiences also had a significant impact on the belief that lawyers should perform pro bono.

Respondents who were more active in volunteering prior to law school generally support a pro bono requirement for lawyers. This finding supports the literature that points to an association between early volunteer experiences and participation in volunteer work in adulthood.¹¹⁷ Also the greater the importance of religion to a respondent, the less likely she is to support making pro bono a requirement for all lawyers. This is due to the fact that the majority of respondents who claimed that religion is very important in their lives also identified themselves as politically conservative. By contrast, those who believe that religion is not particularly important in their life tend to view themselves as being liberal. Supporters of mandatory pro bono lean more to the liberal side of the political spectrum. Finally, minority respondents were more likely to support the view that pro bono should be a requirement of all lawyers.

V. MANDATORY PRO BONO AND LAW STUDENT SOCIALIZATION

Does it matter that law school pro bono experiences may not enhance the amount of involvement in pro bono services once a person moves into legal practice? In other words, is the stated goal of increasing pro bono participation in the legal profession the only goal, or even the primary goal, of such programs? The answer to this question is of course in the negative. In terms of the

117. See Eleanor Brown, *The Scope of Volunteer Activity and Public Service*, 62 LAW & CONTEMP. PROBS. 4 (1999).

socialization of law students, opportunities to develop actual practice skills are extremely important to legal education. This point was made a number of years ago in the 1992 MacCrate Report. Much of this report and its call for reforms in legal education focused on “teaching students how to learn systematically from experience and simultaneously to educate them in a broader range of legal analysis and skills than have traditionally been taught.”¹¹⁸ Despite the call to take up the “values” question in legal education, the report attended more to the issue of narrowing the skill-based gap between law school and legal practice. Since its publication, “work on [f]undamental [v]alues has generated far less attention than its work on [f]undamental [s]kills.”¹¹⁹

The mandatory pro bono experiences reported by the attorneys in this study would seem to reflect, in part, the emphasis of the MacCrate Report. These attorneys did feel they derived experiential skill-based benefits from engaging in pro bono legal services during law school. Many spoke directly about the impact of this experience on developing skills in working with people, in litigation experience, in interviewing, and in drafting documents. While opportunities to enhance skills are a worthwhile endeavor, it’s not clear that such an outcome would necessitate mandatory pro bono. Schools that offer strong clinical programs undoubtedly have similar outcomes without requiring law students to do pro bono work. On this point it’s perhaps interesting to note that there are far more law schools that require pro bono offered through clinical “for credit” courses than there are those that require it through activities independent from other law school activities.

This emphasis on promoting skills through pro bono programs has not been lost on the law schools that require such involvement. Most law schools market their pro bono requirements not solely on the basis of providing for the legal needs of indigent persons, but also on the presumed benefits pro bono experiences have for enhancing skills. This message is consistent with the view that pro bono

118. Russell G. Pearce, *MacCrate’s Missed Opportunity: The MacCrate Report’s Failure to Advance Professional Values*, 23 PACE L. REV. 575, 576 (2003).

119. *Id.* at 583.

serves as a way to enhance legal skills in practice. In this regard, pro bono is seen as capable of helping young lawyers to "mature more rapidly through having responsibility in performing community legal services than they would in the structured setting of most law firms."¹²⁰ While there are certain educational benefits to the "gaining skills through pro bono" argument, the obvious concern is that this emphasis trumps the value-based question regarding the purpose of pro bono to advance justice and provide greater access to legal representation. Many of the lawyers in this study did see that they had a professional obligation to do pro bono, but this belief did not perforce contribute to higher rates of pro bono when other factors were taken into consideration. Similarly, many of these attorneys indicated that doing pro bono raised their overall level of satisfaction with being a lawyer but again, this value had little impact of predicting the rates of pro bono involvement. It would seem that the skill promoting rhetoric of mandatory pro bono may have more staying power or at least is more consistent with law firm needs than arguments promoting professional service ideals.

Consequently, in mandatory programs, the emphasis on skills training may usurp the question of professional commitment to serving underrepresented populations. The value becomes not one of a political nature but instead, a technically rational one that fails to adequately address the problem of the unequal access to justice, the legal profession's responsibility in redressing this situation, and the various models of pro bono that might be employed to accomplish this goal. While it is certainly the case that many of those lawyers who participated in mandatory pro bono felt that it was beneficial to be exposed to the problems of the poor and other marginalized populations, the answer to the question of how this experience benefited them personally or professionally is not immediately apparent. Many have argued that being exposed to poor and marginalized populations during law school is critical to "humanize" the law as well as articulate the inherent inequality within the system of legal justice. It is further believed by some that such experiences may encourage or at least help maintain a commitment among a small number

120. Robert A. Katzmann, *Themes in Context*, in *THE LAW FIRM AND THE PUBLIC GOOD* 1, 11 (Robert A. Katzmann ed., 1995).

of law students to pursue public interest work. One potential drawback of mandatory pro bono programs and their tendency to focus on skill-based benefits might be that they unintentionally dilute the meaning and purpose of pro bono. For example, medical students often do internships and residencies in inner city hospitals where they provide services to the poor. However, in most of these cases, the poor are simply "medical cases" for the young physician to learn medical procedures. The lesson is to build skills, not necessarily to learn that there is a large segment of society that has limited access to health care and that physicians have a responsibility to redistribute medical services downward. In fact, the finding that most participants in mandatory pro bono, while generally supportive, were critical of the lack of integration of their pro bono experiences into other law school activities, particularly their classes, suggests a similar dynamic. In this regard the pro bono experience is similar to other ethics courses in law school which often limit ethically-charged, value-based questions to a single course as opposed to being pervasive throughout the law school curriculum.¹²¹ Like ethics courses generally, the law school pro bono experiences of attorneys in this study and the potential for such experiences to challenge the structure of the legal profession as well as the structure of the social order that contributes to inequality remained under-examined, perhaps signifying to students that the experience is not very important in the long run.

VI. MANDATORY PRO BONO AND PROFESSIONALIZATION

Whether it matters that law school pro bono programs may not result in an eventual increase in pro bono service in legal practice has implications for more than the question of law school socialization. Whether law school pro bono matters also raises questions about the institutional role such programs play internally and externally, that is, within the profession itself as well as the profession's relationship to society. Pro bono programs might be seen as part of the ongoing processes of institutionalization within the legal profession and may serve professional interests.

121. See Deborah L. Rhode, *Institutionalizing Ethics*, 44 CASE W. RES. L. REV. 665, 732-35 (1994).

As an institution, the legal profession is characterized by several normative attributes. There are two that have particular bearing on this research on mandatory pro bono. In the first place, the legal profession is internally hierarchical in nature. As Heinz and Laumann pointed out years ago, the two hemispheres of the bar that divide practitioners into high status and low status are greatly affected by law school status.¹²² Where a lawyer falls in the prestige hierarchy of the profession is often dependent on what law school that lawyer graduated from. Elite law schools tend to "charter" students into high status positions within the bar while those graduating from the least prestigious schools often occupy the lowest rungs of the profession. This hierarchically-patterned arrangement has a long-standing history that continues to be reproduced within contemporary society.¹²³ The factors that give rise to producing and reproducing this hierarchy are of little importance to this paper. What is important is that the patterned arrangement within the profession is well established, acted upon, and justified along the lines of a meritocratic ideology.

The fact that law schools are hierarchical has posed intense market pressures for many law schools that fall at the lower end of the prestige hierarchy. Law schools have had to compete in order to establish a niche for their graduates. Historically this led to interesting developments such as Suffolk University Law School's attempt to gain a foothold in the market tightly controlled by Harvard Law School by abandoning the Langdellian-inspired case method of legal instruction. Suffolk adopted a curricular approach of "teaching to the test" by specializing on Massachusetts law, a strategy that resulted in higher bar passage rates than their elite competitor across the river. Suffolk sought to establish its position within the legal hierarchy by scratching out a particular market niche.

In a similar sense, the rise of mandatory pro bono programs might, in part, be a response to the

122. JOHN HEINZ & EDWARD LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982).

123. See Thomas Koenig & Michael Rustad, *The Challenge to Hierarchy in Legal Education: Suffolk and the Night School Movement*, in RESEARCH IN LAW, DEVIANCE AND SOCIAL CONTROL 189 (Steven Spitzer & Andrew T. Scull eds., 1985).

institutionalized hierarchy operating within the legal profession. It's interesting to note that many of the law schools that have instituted mandatory pro bono programs are those that fall in the lower echelon of the law school hierarchy. Schools such as St. Thomas Law School in Miami, Roger Williams University School of Law in Rhode Island, and Texas Wesleyan Law School have all recently adopted pro bono requirements. Stetson University College of Law as well as Valparaiso Law School and the District of Columbia Law School, while more highly ranked than the above noted law schools, are less prestigious than first or second tier schools. Mandatory pro bono at these institutions may represent market-oriented efforts to help graduates cultivate relationships and networks within an already crowded legal marketplace as well as a way of attracting new students into law school. For graduates of these schools, doing pro bono for the poor or for government-based agencies can provide a viable path to employment. Consequently, the urge to promote mandatory pro bono at some schools may be related more to efforts to succeed in the institutionalized status hierarchy within legal education than with aspirations to accommodate professional norms. Whether pro bono programs lead lawyers from these schools to contribute to pro bono in practice may be of little importance to these schools so long as their graduates are able to translate the social capital formed through doing pro bono into real opportunities within the profession.

In addition to these internal pressures, the external pressures confronting the legal profession noted earlier may offer another institutional explanation for why mandatory pro bono programs may matter despite their limited outcomes. The status of the legal profession in the eyes of the public has eroded significantly over the years. Lawyers have been criticized for a variety of ethical lapses such as being greedy, dishonest, overly litigious, and more concerned with winning than with promoting justice.¹²⁴ Personal injury lawyers have been especially vilified, often by conservatives, in the conventional media.¹²⁵ The lament

124. See Granfield & Koenig, *supra* note 33.

125. See THOMAS H. KOENIG & MICHAEL L. RUSTAD, IN DEFENSE OF TORT LAW 173-75 (2001).

that the practice of law has become "just a business" and that lawyers have lost their soul has become common, and the struggle to recapture the supposed spirit of professionalism is a theme that has regularly recurred.¹²⁶ In a stinging critique of the legal profession offered a decade ago, Glendon argued that "[t]oday's lawyers wander in an increasingly impersonal, bureaucratized legal world, where neither honesty-based nor loyalty-based systems seem to be operating"¹²⁷ Indeed, the cultural authority of lawyers has eroded significantly and the legal profession has experienced a degree of deprofessionalization in which lawyers have lost a portion of their control and autonomy, due largely to the increasing rationalization of the professional workplace.¹²⁸

Professionalization encourages homogenization within a profession and across professions as these groups struggle to succeed in a "collective mobility project."¹²⁹ The goal of professionalization is to establish control, autonomy, cultural authority, and dominance within society.¹³⁰ However, as Larson points out, rarely is the professional project achieved with complete success. Professions periodically come into conflict with other groups vying to enter their domain and with those who would challenge the cultural authority and status of professional groups.

There are two aspects of professionalization that are important sources of collective mobility: formal education and the legitimation of a cognitive base as well as the

126. See Sol Linowitz, *Regaining Respect for the Legal Profession: Some Suggestions*, 60 N.Y. ST. B.J., Nov. 1998, at 8 (discussing the decline of the legal profession); see also ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993).

127. MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 83 (1994).

128. For a general discussion of deprofessionalization, see Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 LAW AND SOC'Y REV. 713 (1999) [hereinafter Kritzer, *Legal Practice in a Postprofessional World*]; see also RICHARD L. ABEL, *AMERICAN LAWYERS* (1989); Herbert M. Kritzer, *Abel and the Professional Project: The Institutional Analysis of the Legal Profession*, 3 LAW & SOC. INQUIRY 529 (1991).

129. MAGALI SARFATTI LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* (1977) (arguing that professions seeks to enhance their power and status through various activities).

130. See *id.*

growth and elaboration of professional networks that span professional organizations. These features of the professionalization process ensure that occupants and new entrants are “relatively” similar to each other so as to achieve or at least appear to achieve a sense of community. While there are clear differences in lawyer perceptions and workplace activity across distinct practice settings, such differences may be of little matter to the public who tend to think of the legal profession as a solitary group. In order to achieve and continue to hold on to the consolidation of power, professions shape and reshape themselves in such a way to accommodate or challenge emerging pressures within a changing environment.¹³¹ As Larson has pointed out, this consolidation of power was pursued through the creation of market closure, the appropriation of formal credentials as well as acceptance by established professional networks, i.e., the bar, professional associations, and employers.¹³²

Over the past several years, the legal profession has experienced a deep crisis in its ability to maintain power and cultural authority in society. Writing specifically about the current state of the legal profession, Kritzer concludes that, because of processes of deprofessionalization or what he refers to as “postprofessionalism,” the legal profession’s traditional place in society has withered. According to Kritzer, such external pressures force the legal profession, as well as other professions, to adapt and re-image themselves so as to continue to thrive in an increasingly uncertain environment. From an institutionalist perspective, efforts to revive or redefine professionalism take on significant importance during periods of professional decline.

It is in this institutional sense that mandatory pro bono programs may matter in spite of their limited impact on leading to increased rates of pro bono participation in practice. Mandatory pro bono represents a way for the legal profession to re-moralize itself in the face of challenges to their collective ethical integrity. Requiring law students to perform pro bono and public service with the intention of

131. See Kritzer, *Legal Practice in a Postprofessional World*, *supra* note 128, at 720.

132. LARSON, *supra* note 129.

encouraging such behavior in legal practice sends a message to potential challengers that the profession is doing something about this perceived problem. Like courses in ethics developed after the Watergate scandal, mandatory pro bono represents a way for the profession and legal educators to "clean house," not by imposing integrated bar requirements on current practitioners but upon those least capable of resisting such requirements. In at least one instance involving the adoption of such requirements, "a majority of the law faculty voted against mandatory faculty pro bono seconds after a vote in favor of mandatory student pro bono."¹³³ Requiring students to perform pro bono in law school in the hope that they will learn to like it and will come to believe that such work is emblematic of what it means to be a profession is a fairly non-obtrusive way to establish or encourage greater participation in pro bono or public service. However, from an institutionalist perspective, it may matter less that such outcomes are achieved through mandatory law school pro bono. What may ultimately matter is that pro bono obligations have been formally incorporated under the banner of professionalization so as to signify the profession's moral claim to the public good.

This is not to suggest that mandatory pro bono is mere window dressing. It may be an unqualified good that law schools have formal policies in place that encourage their graduates to perform pro bono work. Although it is extremely doubtful that pro bono service done by private attorneys will ever adequately provide for the legal needs of the poor and marginalized populations, what is important from an institutionalist perspective is that the process of professionalization involving the accumulation of formalized knowledge and credentials is a narrative that shapes the practices of organizations within an institutional field. Hence, mandatory pro bono in law school "makes sense" institutionally since there is a premium placed on the specialized training of new recruits. Perhaps such a strategy makes more institutional sense than forcing practitioners to perform pro bono and explains why there has been so much controversy over doing so. Forcing professionals to engage in pro bono is frequently seen as

133. Atkinson, *supra* note 29, at 162.

undermining their autonomy and stature as a professional. However, requiring law students to perform pro bono, purportedly for their own good, is consistent with other requirements associated with professional training. It is in this sense that mandatory pro bono requirements in law school are isomorphic with the institution of profession and the associated process of professionalization.

CONCLUSION

The results of this study suggest that while most of the attorneys who participated in mandatory pro bono programs see many values associated with having the opportunity to perform pro bono in law school, participation in these programs did not lead to a significant increase in pro bono involvement when compared with attorneys from the same schools who were not required to do pro bono. Nor were there significant differences in the types of pro bono work currently taken by these respondents. These findings are nearly identical to those recently reported by Rhode in her study of pro bono service.¹³⁴ In that study, many graduates of law schools that had made significant investments in pro bono opportunities reported positive experiences. For these attorneys, pro bono experiences in law school offered a valuable educational benefit in enhancing skills training while at the same time providing an opportunity for direct client contact. Lawyers also cited the impact of pro bono in gaining an appreciation for the power that lawyers have in helping disenfranchised individuals. Indeed, among the lawyers that Rhode studied, many of those who participated in law school pro bono programs seemed to feel that they derived a great deal of benefit from the experience. However, while the attorneys in that study generally believed that participation in law school pro bono made them more likely to be actively involved in pro bono in legal practice, the data Rhode presents fails to confirm that belief. Rather, as she concludes, “[p]ersonal values and the costs and rewards of pro bono involvement in particular practice settings are likely to be more important than law school policies.”¹³⁵

134. RHODE, *supra* note 6, at 159-60.

135. *Id.* at 160.

The results of the current study and of Rhode's investigation have important implications for the pro bono movement within legal education. On the one hand, these conclusions might suggest that the project to promote pro bono in the legal profession by exposing law students to it during law school has failed. Despite these data, it is still too early to perform a postmortem on the law school pro bono movement. In fact, these data may suggest that the pro bono movement, while still in its infancy, needs further attention and refinement. Many respondents in this study reported that their law school pro bono experiences were not well integrated into their overall legal education. Many simply felt that the experience was a another requirement to be completed rather than an experience that offered insight into the practice of law, the normative obligations of lawyers, and the realities of human suffering. For the law school pro bono movement to have an impact, the pro bono experiences of law students must be better integrated into the general law school curriculum. Perhaps if the educational and normative potential of these pro bono experiences became more pervasive throughout the law school curriculum, then the impact of the experience and its lasting effects might be more substantial.¹³⁶

136. See Rhode, *supra* note 121, at 733 (discussing making ethics pervasive throughout the law school curriculum).