

ARTICLES

Clinical Professors' Professional Responsibility: Preparing Law Students to Embrace Pro Bono

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I. INTRODUCTION

The newly admitted twenty-first century lawyer faces a choice. As a member of a profession that claims a “special responsibility for the quality of justice,”¹ will she provide pro bono service to the people who cannot afford legal representation?² Or will she join colleagues who focus on the retained, paying client, and spend little or no time serving the “poor and sometimes persons who are not poor?”³ While the ethical framework for this decision-making process has been in place for several decades,⁴ the current lawyer’s code of ethics suggests that the profession has fallen short in meeting its ethical duties. But there is good news: clinical programs can have a profound impact and even lead to reform of systemic problems.

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1. MODEL RULES OF PROF'L CONDUCT, pmbl. 1 (2002) [hereinafter *Preamble*] (reading in part: “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice”).

2. MODEL RULES OF PROF'L CONDUCT R. 6.1(a) (2002) (declaring that, “every lawyer has a professional responsibility to provide legal services to those unable to pay”).

3. *Preamble*, *supra* note 1, ¶ 6 (informing every lawyer that his or her obligations include the following: “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession . . . A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel . . .”) (emphasis added).

4. See *infra* Part II (describing that in 1908, the American Bar Association created the first Canons of Ethics, which most state bar associations accepted when defining a lawyer’s ethical duties. Further revisions occurred in 1969, when the ABA voted in favor of the Model Code of Professional Responsibility and again in 1983 and 2002, when the ABA approved the current Model Rules of Professional Conduct).

When choosing a career professional path, lawyers may find that their decisions are influenced by whether their former classroom law professors addressed a lawyer's ethical responsibility to do pro bono work.⁵ For the current generation of law students, clinical faculty may wield the most profound guidance about pro bono service with the teaching academy. This would be ironic, considering that clinical faculty have historically occupied a relatively lowly position within the academy's hierarchy.⁶ Clinical faculty's attachment to the practice of law—and representation of people seen as occupying society's bottom of the class ladder—often contrasted sharply with the path taken by most traditional classroom law professors.⁷

5. Elizabeth A. Hoffmann, *Legal Education and Early Career Mentoring: Mid-Career Attorneys' Pro Bono Commitment*, 14 INT'L J. LEGAL PROF. 81, 90-91 (2007) (measuring the Wisconsin Law School class of 1976's twenty-year commitment to pro bono and finding former students attributed several factors, including "the overall milieu of the law school as well as actual discussions about the public interest and the responsibility of lawyers in his various classes"); see also Stephen F. Befort & Eric S. Janus, *The Role of Legal Education in Instilling an Ethos of Public Service Among Law Students: Towards a Collaboration Between the Profession and the Academy on Professional Values*, 13 LAW & INEQ. 1, 11-12, 20 (1994) (finding that pro bono policy in law schools can foster community service objectives and instill a lifetime commitment to service and recommending pro bono issues of poverty and justice be integrated into the entire law school curriculum); Russell Engler, *From the Margins to the Core: Integrating Public Service Legal Work into the Mainstream of Legal Education*, 40 NEW ENG. L. REV. 479, 485 (2006) (noting that "numerous studies reveal the extent to which the values of law students are shaped by their law school experiences . . ."); Deborah A. Schmedemann, *Pro Bono Publico as a Conscience Good*, 35 WM. MITCHELL L. REV. 977, 1007 (2009) (suggesting discussion of justice and social issues connected with people's non-access to counsel may increase pro bono participation based on lawyers' interest to assist others); cf. Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 59, 95 (2009) (concluding that early-career lawyers in private practice considered clinic their best preparation for practicing law but finding no correlation between clinic and new lawyers' pro bono work/service).

6. Peter A. Joy & Robert R. Kuehn, *Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 194 (2008) (indicating that "[s]tarting in the late 1970s, ABA site inspection teams began 'reporting to the accreditation committee that many schools were not providing their clinicians an opportunity to achieve tenure or any other form of job security.'"); see Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 32 (2000) (finding that "[a]lthough clinical legal education is a permanent feature in legal education, too often clinical teaching and clinical programs remain at the periphery of law school curricula."); see also Frank S. Bloch, *The Case for Clinical Scholarship*, 6 INT'L J. CLINICAL LEGAL EDUC. 7, 10 (2004) (stating that even when clinical faculty achieved a comparable promotion standards in the mid-1980s, clinicians still reported meeting "substantial resistance" from legal academics; "opposition [came] on virtually all fronts: over the granting of credit for clinical courses, in limiting the status of clinical faculty, and . . . by means of a territorial dispute over scholarship.").

7. JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 85 (1976) (remarking that traditionally, law professors entered the academy having graduated from a select group of law schools, served on a law journal, and completed a prestigious judicial clerkship. Auerbach described law professors' elitism as an "identifying trait," adding that "university teachers (like corporate lawyers) viewed themselves as the 'best men' whose service would assure orderly progress—and (not incidentally) elite hegemony"); see also Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 332 (2001) (noting that if a law professor practiced law before teaching, he likely would have specialized in corporate law at a mega-firm, yet clinical faculty entering the academy in the mid-1960s and 1970s typically practiced poverty or public interest law); see also Charles E. Ares, *Legal Education and the Problem of the Poor*, 17 J. LEGAL EDUC. 307, 310 (1965) (proposing clinical education would meet law

This Article suggests that clinical faculty can assume a crucial role in effectively conveying the lawyer's "public citizen" role to the current generation of law students. Most clinic professors no longer occupy the tenuous position they once did; nor do they find "stand up" colleagues questioning their place—instead, classroom teachers now view clinic colleagues as a valuable link to understanding real world injustices. Clinical faculty's improved standing within the academy can help encourage non-clinic colleagues to reinforce the value of public service. Clinical faculty can bridge the academic's world of theory and doctrine with the practicing lawyer's navigation of a harsh legal system. The collaboration allows clinicians to recommend ways to supplement colleagues' classes and course material. Expanding the influence of clinicians who practice in the public interest reinforces the importance of the pro bono obligation of lawyers in the eyes of students as they are developing and internalizing an idea of what a good lawyer does.

The profession has come a long way in defining the lawyer's ethical role since the American Bar Association (ABA) was formed in 1878. The ABA has a regrettable history of excluding groups regarded by the leadership as inferior or inherently unqualified⁸ and admitted an exclusive membership, whom it expected would represent the interests of powerful corporate and wealthy individual clients.⁹ For many decades, the ABA zealously defended its monopoly over law practices and showed little concern with protecting the rights of lower-income people.¹⁰

students' "desire . . . to help make the law serve the needs of the poor"); *Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 341 (1987) (transcript of panel discussion at Catholic University Law School Conference on Clinical Education, Oct. 18, 1986) ("It was the societal legacy of the sixties . . . that most shaped clinical legal education. The fervor of the sixties penetrated law schools quite passionately." (statement of Dean Hill Rivkin)).

8. See AUERBACH, *supra* note 7, at 65 (quoting 37 ABA REPORTS 93, 95 (1912): "the settled practice of the [American Bar] Association has been to elect only white men as members" and indicating that members accepted three African-American men in 1912 only when they did not know their race); *id.* at 66 (noting that thereafter, the Association required applicants to indicate race and "committed itself to lily-white membership for the next half-century"); see also Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Descendants*, 18 GEO. MASON U. C.R. L.J. 51, 72 (2007) (describing African Americans as "legally outcast" and "barred from membership" between 1878 to 1944); *infra* note 16 (finding that the rare female attorney also faced the barrier of ineligibility); Anthony Peirson Xavier Bothwell, *The Law School Admission Test Scandal: Problems of Bias and Conflicts of Interest*, 27 T. MARSHALL L. REV. 1, 15 (2001) (quoting PETER LIACOURAS, TOWARD A FAIR AND SENSIBLE POLICY FOR PROFESSIONAL SCHOOL ADMISSION 165-66 (1978): explaining that historically the ABA's "objective was keep out the Jews, southern and Eastern Europeans and Catholics who [allegedly] would dilute or undoubtedly deteriorate the high standards, order, congeniality and ethics in the legal establishment.").

9. AUERBACH, *supra* note 7, at 62-64.

10. *Id.* at 64 (explaining that the ABA and other bar associations "did venture timidly into the shallower waters of law reform, but they usually skirted the dangerous shoals of substantive change. . . . Rarely, however, did their concern extend to such problems as the provision of legal services."); *id.* at 65 (quoting Lawrence M. Friedman, *Law Reform in Historical Perspective*, 13 ST. LOUIS U. L.J. 351, 358 (1969): some attributed their concern as less authentic and instead serving as "'a banner of rectitude waved in the public eye,' a shield to deflect public criticism"); see *infra* note 52

Today's ABA takes pride in promoting diversity and ensuring that law school education is open to all. In the years following the elimination of legalized racial segregation in *Brown v. Board of Education*,¹¹ the ABA began a journey to shed its status as an elitist group of white, Protestant men of social standing.¹² Influenced by African-Americans' quest for full citizenship rights, the ABA supported efforts to guarantee access to counsel to poor and lower-income communities,¹³ and to provide students with a clinical educational experience.¹⁴ The past forty years also witnessed a transformation reflecting the changing face of law students.¹⁵ Law school entering classes now reflect more closely the diversity found in the general population.¹⁶

As the nation's War on Poverty opened opportunities for lawyers to represent the poor, many law graduates in the 1960s and 1970s chose public service careers because of their clinical experience and interest.¹⁷ Young attorneys who began in private practice also regarded pro bono work as an important part of their practice. In the revised Model Rules of Professional Conduct, ABA leaders championed the requirement that every lawyer devote a portion of time to serve

(referring to President Theodore Roosevelt and prominent attorney Louis Brandeis, who criticized corporate lawyers for their lack of public interest toward community).

11. See *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

12. See *supra* note 8.

13. See *infra* Part II.

14. See *Argersinger v. Hamlin*, 407 U.S. 25, 44 (1972) (noting Chief Justice Warren Burger delivered the same message to law schools' skills and clinical programs to help meet the need for counsel); SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979); ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 234-36 (1992) [hereinafter MacCrate Report] (calling upon every law school to create clinical programs for the teaching of professional ethics and skills training).

15. See AUERBACH, *supra* note 7, at 112-29 (describing the ABA's effort to regulate and restrict the admission of ethnic, foreign-born minorities to the profession); *supra* note 8, referring to the profession's transition from an exclusive white male, Anglo-Saxon membership.

16. See Ruth Bader Ginsburg, *Remarks on Women's Progress at the Bar and on the Bench: For Presentation at the Annual Sociological Association Annual Meeting Montreal, August 11, 2006*, 30 HARV. J.L. & GENDER 1, 4 (2007) (remarking that since the late 1960s, female law students have made the biggest increase in attending law school. Before 1967, male law students represented almost 97% and women only 3% of enrolled law students.); *First Year and Total J.D. Enrollment by Gender 1947–2008*, AM. B. ASS'N, http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_6.authcheckdam.pdf (last visited Feb. 10, 2011) (showing that by the 2008–2010 law school year, women comprised more than 47% of the 145,000 number of law students throughout the country); *African American J.D. Enrollment, 1971–2010*, AM. B. ASS'N, http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_13.authcheckdam.pdf (last visited Feb. 10, 2011) (indicating that African-American law students' increase has been more gradual. In 1977, law schools included 5350 black law students or 4.7% of the total enrollment nationally; in 2009–2010, nearly twice as many African-Americans attended law school (10,173), but the overall percentage had risen only to 7%).

17. AUERBACH, *supra* note 7, at 275-78; see Wizner, *supra* note 7, at 332; J.P. "Sandy" Ogilvy, AN ORAL HISTORY OF CLINICAL LEGAL EDUCATION, PART I: SEEDS OF CHANGE (2006) (interviewing the first generation of founding members of clinical education, who spoke about their prior legal experience in legal services and public interest law).

people unable to afford counsel.¹⁸

Though the bar defeated the mandatory pro bono proposal,¹⁹ it subsequently embraced the ABA's revised preamble and current Model Rule 6.1's recognition of a lawyer's duty to perform pro bono legal service as a member of the legal profession.²⁰ Model Rule 6.1 gives concrete meaning to the preamble's first words: an attorney is "a public citizen having special responsibility for the quality of justice."²¹ Read together, the Model Rules make clear that "every American lawyer and legal employer has an affirmative responsibility to do her fair share of pro bono work, ensuring access to justice for those unable to pay."²² The preamble also tells lawyers they are ethically bound to engage in law reform efforts that educate the public about "deficiencies" in the current system,²³ such as denying access to counsel when people's fundamental rights are at stake.

However, there exists a substantial gap between a lawyer's duty and reality. Too many civil litigants have no advocate to protect against loss of freedom, a home, a job, or a child. Clinical faculty and practicing lawyers are aware of this disconnect between what the professional code says and what most attorneys choose to do, and they have the chance to make a difference.

Nationally, only five to twenty percent of lawyers meet the recommended *minimum* of fifty hours of volunteer legal services annually.²⁴ Most ignore their

18. See MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002) (In 1983, Model Rule of Prof'l Conduct 6.1 stated that, "[a] lawyer should render public interest legal service." In 2002, the ABA amended Model Rule 6.1 by replacing the "should render" language and recognizing every lawyer's "professional responsibility to provide legal services to those who are unable to pay.").

19. See Douglas L. Colbert, *Professional Responsibility in Crisis*, 51 HOW. L.J. 677, 710-12, 714 (2008) (noting that proposal was defeated in 1983 and again in the late 1980s and early 1990s); Michael Millemann, *Mandatory Pro Bono in Civil Cases: A Partial Answer to the Right Question*, 49 MD. L. REV. 18, 70 (1990); Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 610 (1985) (noting that between 1977 and 1983, the ABA's Kutak Commission proposed that every lawyer "shall" engage in 50 hours (then reduced to 40 hours) of mandatory pro bono service. The mandatory language met with strong opposition, with outraged members of the organized bar calling it, among other things "latent fascism").

20. *State by State Pro Bono Service Rules*, AM. B. ASS'N (updated Nov. 2, 2010), http://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html (depicting that all fifty states and the District of Columbia have adopted a form of Model Rule 6.1; thirteen states accepted the most recent 2002 version, which acknowledges a lawyer's ethical duty to pro bono; fifteen states have adopted the "aspire to render" 1993 version; and eighteen states have a rule substantially similar to the 1983 rule).

21. *Preamble*, *supra* note 1, at 3.

22. Judith L. Maute, *Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance Noblesse Oblige to Stated Responsibilities*, 77 TUL. L. REV. 91, 147 (2002); see also AUERBACH, *supra* note 7, at 286.

23. *Preamble*, *supra* note 1, at 3 (stating that an attorney "should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.").

24. Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 886 (2004) (noting that "[p]recise figures are unavailable because only seven states require the reporting of pro bono work.").

duty. Disciplinary action never follows; pro bono is voluntary.²⁵ Consequently, too little help is available to compensate for the inadequate funding of civil legal services programs, which leaves four out of five low-income litigants without counsel in housing, family, and immigration proceedings.²⁶ In criminal cases, indigents are often unrepresented in their first appearances before judicial officers as they seek to protect their liberty before trial.²⁷ Are new lawyers today willing to close the access to justice gap? Students' volunteer work following the devastation caused by Hurricane Katrina and engagement in local pro bono endeavors suggests they are ready and willing to close this access to justice gap, but this is unlikely to happen without the leadership and participation of clinical and law school faculty.

Law professors play a key role in making students aware of their public responsibilities and sensitizing them to a range of "access to justice deficiencies" that need immediate fixing. Practicing lawyers explain that, when their former professors engaged in "actual discussions about the public interest and the responsibilities of lawyers" in law school classes, it created an "overall milieu" and "sub-culture of support" that encouraged subsequent pro bono work in the lawyers' legal practices.²⁸

When faculty members alert students to the profession's expectations, they should not be surprised at the positive response. Consider students' reactions after Hurricane Katrina. More than 5,500 students volunteered and responded to people's emergency needs.²⁹ They formed a national organization,³⁰ organized numerous pro bono projects, and entered Louisiana jails and prisons to interview people awaiting trial who had not seen a lawyer or a judge for seven to eight months following arrest.³¹ Consider also the many law students currently participating in public service and pro bono projects outside the law school

25. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002) (noting that a lawyer does not face punishment for choosing not to comply with Rule 6.1(a). "This Rule is aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions.").

26. LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (updated 2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

27. Douglas L. Colbert, *Thirty-Five Years After Gideon: The Illusory Right to Counsel at Bail Proceedings*, 1998 U. ILL. L. REV. 1 (noting that in 1998, a national survey revealed that only eight states guaranteed an assigned counsel's representation of an indigent defendant at the initial bail hearing); see also Douglas L. Colbert, *Prosecution Without Representation*, 59 BUFF. L.J. 333 (2011) (noting that ten states currently ensure counsel).

28. See Hoffmann, *supra* note 5, at 91.

29. See Colbert, *supra* note 19, at 736-40 (indicating 3,000 students volunteered for criminal defense project between 1996-1997); see also *Student Hurricane Network Dissolution Announcement*, STUDENT HURRICANE NETWORK, www.studentjustice.org (last visited Feb. 10, 2011) (indicating that since 2005, over 5,500 law students had volunteered to assist victims of Hurricane Katrina).

30. Colbert, *supra* note 19, at 730-33.

31. *Id.* at 725-26 (describing the courageous work of the "One Hundred Plus" volunteer Louisiana lawyers, who interviewed more than 6000 incarcerated detainees and inmates who had been transported to prisons throughout the state after Katrina); see also *id.* at 730, 737-38 (describing volunteer law students' response and interviews of prisoners who had waited to see a lawyer and judge).

community.³² Students appear prepared to welcome their law professors' message of lawyers' pro bono responsibility.

Katrina highlighted such professors' vital role as hands-on supervising attorneys.³³ Clinical teachers know from the crises in their local courts that volunteers are needed to address inequitable representation in the everyday practice of law. They and their students regularly witness the importance of a lawyer's advocacy when tenants and homeowners are faced with the loss of a home; when immigrants are targeted for deportation; when disabled or needy individuals are deprived of essential government benefits; and when indigent criminal defendants wait days, weeks and months before gaining an assigned lawyer's in-court assistance. Consequently, students and faculty could relate to the extraordinary catastrophe Katrina brought to the Gulf Coast legal system. Clinical education had exposed them to the legal needs of the poor; they understood what happens to people who lack access to counsel. Working with

32. See ERIC GREENBERG & KARL WEBER, GENERATION WE: HOW MILLENNIAL YOUTH ARE TAKING OVER AMERICA AND CHANGING OUR WORLD FOREVER 31 (2008) (supporting the assertion that the current generation of millennial students are more involved in pro bono volunteerism than any previous generation and are turning to service oriented institutions like America Corps, Peace Corp and Teach for America); Ronald Brownstein, *Children of the Great Recession, The Next Economy*, ATLANTIC (May 5, 2010); see also *About Us*, Student Hurricane Network, <http://www.studentjustice.org/about/> (last visited Apr. 18, 2011) (reflecting law students' values when they formed the Student Hurricane Network's mission statement: "The Student Hurricane Network (SHN) is a national network of law students dedicated to advancing the cause of social justice in communities affected by Hurricanes Katrina and Rita by coordinating volunteer efforts, aiding public interest organizations, and educating members of the legal community about legal crises in the region."); Mark Matthews, *Law Student Starts Campaign to Expedite Japan Donations*, ABC 7 NEWS (Mar. 18, 2011), <http://abclocal.go.com/kgostory?section=news/local&id=8021996> (describing a Hastings law student's online petition, signed by tens of thousands of people, to expedite donations to tsunami relief in Japan); *Fordham Law Student Group Spends Spring Break Helping in Haiti*, FORDHAM UNIVERSITY (Mar. 19, 2010), <http://law.fordham.edu/newsroom/17547.htm>; see also Deborah Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *Fordham L. Rev.* 2415, 2436 (1999) (noting that "[e]ach year, at schools with well-developed programs, students provide as much as 16,000 hours of free legal assistance to underserved groups. Such assistance offers opportunities for cooperation with local bar organizations and for outreach to alumni who can become sources, sponsors, and supervisors for student projects."); Deborah Rhode, *Whatever Happened to Access to Justice*, 42 *Loy. L.A. L. Rev.* 869, 905 (2009) (arguing that the ABA's accreditation process should rank law schools' compliance with providing students "at least one well-supervised pro bono opportunity.").

33. Ian Weinstein, the current President of the Clinical Legal Education Association, remembered the "huge experience" that he and many clinical faculty colleagues experienced when they accompanied law students and supervised their work in Louisiana and Mississippi after Hurricane Katrina struck the Gulf Coast. "I recall the lively discussion that took place on the clinic list serv that led many clinical faculty like myself volunteering and traveling with our law students. Our teaching and work with students translated so readily in this setting. Together, we spent time getting guys charged with misdemeanors released from jail, who already had served more than a year without seeing a lawyer."; Tulane Professor Pam Metzgar, who directed the Katrina Gideon Project, was a member of the Board of Directors of the New Orleans Public Defenders, and coordinated efforts by volunteer SHN students and lawyers during 2006–08 stated, "Clinical law professors, along with public defenders, had a very significant presence among the out-of-state lawyers who traveled to New Orleans and supervised volunteer law students." See Colbert *supra* note 19, at 739.

local attorneys, students' pro bono assistance made a difference.³⁴

Clinical professors occupy an ideal position for incorporating the Model Rules into their teaching with greatest effect. Ever since clinical education emerged in the mid-1960s,³⁵ clinic courses have demonstrated the potential for expanding pro bono. A student's experience of representing an indigent client, while receiving supervision from a clinic professor, can inculcate a commitment to public service. While the incoming law student may be temporarily transfixed by the traditional Socratic method, she is likely to remember forever her first pro bono case. Collaboration between clinical and non-clinical faculty sends the clear message that the academy values students' continued pro bono work as lawyers.

In brief, by teaching students the core ethical values of the legal profession, clinical faculty will emphasize the importance of mastering traditional skills and proper courtroom conduct while simultaneously providing students with a framework for identifying deficiencies in the administration of justice. Sharing this information allows clinical faculty and students to address a systemic problem and apply their developing legal and advocacy skills. Teaching from the Model Rules also helps avoid the inevitable conflict clinical faculty face in deciding whether skills or social justice deserve more attention;³⁶ both are essential parts of students' ethical duty and preparation for joining the profession. Additionally, by providing examples of lawyers remedying deficiencies in the legal system and fulfilling their ethical obligation, clinical faculty can enrich "stand up" colleagues' substantive courses.

Take the criminal justice issue of indigent defendants' lack of counsel when first appearing at a bail hearing. Many people, including law professors, assume that a poor person accused of a crime is provided with a lawyer's representation when personal liberty is at stake. They are wrong. Throughout the country, indigent defendants often stand alone when first appearing at their initial bail hearing in a local criminal court. Frequently, they remain in jail for very long periods without a lawyer.³⁷ This article describes the experience of the Maryland Law School's Access to Justice Clinic, where students discovered this issue through their representation of indigent clients.³⁸ Students' efforts to reform the practice of inadequate representation at initial bail hearings educated the public and the bar about the problem. The decade-long endeavor resulted in several stunning victories, including one of the first court rulings recognizing indigent defendants' right to counsel at their initial bail hearing.

34. See Colbert, *supra* note 19, at 736-39.

35. See AUERBACH, *supra* note 7, at 275-78.

36. See Wizner, *supra* note 7, at 338.

37. See Colbert, *Prosecution Without Representation*, *supra* note 27 (explaining typical delays of many days and weeks, and sometimes months, before assigned counsel represents an indigent defendant in court).

38. See *infra* Part IV.

Part I of this article traces the legal profession's hundred-year evolution toward recognizing a lawyer's ethical commitment to pro bono work. Part III tells the story of clinical education's introduction to the law school curriculum during the mid-1960s, when the legal profession considered the bar's ethical responsibility to poor people. It encourages the incorporation of public service and pro bono endeavors into existing clinics and experiential programs as part of students' professional responsibility. Part IV details the Maryland Access to Justice Clinic's effort to integrate the Model Rules' pro bono obligation into students' representation of individual indigent clients and into students' development of legal reform strategies. Part V concludes that clinical education represents an excellent opportunity for faculty to assume a prominent role in influencing law students to be "public citizens" dedicated to meeting their pro bono obligation and helping to fill the glaring gap in people's access to counsel.

II. A PROFESSION'S ETHICAL PATH AND TRANSFORMATION TO PUBLIC SERVICE

The ABA leaders who drafted and approved the bar's first Canons of Ethics over a century ago, in 1908,³⁹ would be startled to learn that every attorney today has an ethical duty to provide legal assistance to people who cannot afford a private attorney's legal assistance.⁴⁰ They would wonder what had changed so drastically as to cause the nation's largest bar organization to reverse direction and embrace this type of preamble. Unlike the preamble from the 1908 Canons, which focused on restoring public trust and accountability,⁴¹ the current preamble informs every attorney that he or she belongs to "a profession"—and not a business⁴²—that explicitly recognizes a lawyer's core value as a "public citizen

39. ABA CANONS OF PROF'L ETHICS (1908).

40. See MODEL RULES OF PROF'L CONDUCT R. 6.1(a) (2002) (recognizing the lawyer's ethical duty to pro bono work; however, the Model Rule does not set forth a required number of hours to fulfill her responsibility. Instead, the Rule states that, "a lawyer should aspire to render at least 50 hours of pro bono public legal services per year"); MODEL RULES OF PROF'L CONDUCT R. 6.1(b) (2002) (concluding by indicating that a lawyer will not face disciplinary consequences for non-compliance); MODEL RULES OF PROF'L CONDUCT R. 6.1(c) (2002) (stating that "the responsibility set forth in this Rule is not intended to be enforced through disciplinary process").

41. Andrew Olson, *Authoring a Code of Ethics*, ILL. INST. OF TECH. CENTER FOR THE STUDY OF ETHICS IN THE PROFESSIONS (1998), <http://ethics.iit.edu/index1.php/Programs/Codes%20of%20Ethics/Authoring%20a%20Code%20of%20Ethics> (last visited Apr. 14, 2011) (focusing on presenting lawyers as embracing values of honesty, integrity and impartial justice in order to counter the public perception that lawyers act in the pecuniary interests of corporations and the wealthy); see Colbert, *supra* note 19, at 690-92; ABA CANONS OF PROF'L ETHICS, pmb. (1908) (stating in part the following: "In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.").

42. See AUERBACH, *supra* note 7, at 32-36 (noting that by the turn of the twentieth century, corporate lawyers' close ties to their corporate clients caused members of the public to see the attorney as a

having a special responsibility to the quality of justice.”⁴³

The 1908 Canons remained the standard for sixty years. Systemic change began during the decade following the Supreme Court’s groundbreaking 1954 ruling dismantling racial segregation in *Brown v. Board of Education*.⁴⁴ Law graduates who came of age during African-Americans’ struggle for human rights were entering the profession “more conscious of the urgency of social reform than any past generation.”⁴⁵ Their insistence upon improving the quality of justice for poor people helped reshape the profession’s understanding of public service. The current language of the Model Rules reflects substantial revisions that have occurred since the Rules first came into existence in 1983 and have propelled the bar to reach the final stop of its ethical journey: lawyers meeting their minimum 50 hours of pro bono, public service duty.⁴⁶

The ABA has made a remarkable shift from the days when its “elite” corporate lawyers either ruled or “were concentrated at the professional apex”⁴⁷ of the organization’s exclusive Anglo-Saxon, male membership.⁴⁸ From the ABA’s founding in 1878, and continuing to the civil rights movement of the 1960s, it was only the rare ABA attorney who considered and recognized a professional obligation to perform public service.⁴⁹ The public’s perception reflected the reality of the corporate bar: they saw lawyers’ wealth grow as they served the

surrogate and as a business manager, rather than as reflecting the popular image of the country lawyer); *see also id.* at 33 (quoting John Dos Passos describing the bar’s “transformation from a profession to a business”); *id.* at 36 (quoting New Jersey corporate lawyer James Dill’s declaration that “law is a business” and admitting his admiration for the “lawyer who brings his profession into touch with business methods, [predicting] the greater will be his success . . .”); *see generally id.* at 32-38.

43. Preamble, *supra* note 1.

44. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

45. *See AUERBACH, supra* note 7, at 278 (quoting Jerry J. Berman & Edgar S. Cahn, *Bargaining for Justice, The Law Students’ Challenge to Law Firms*, 5 HARV. C.R.-C.L. L. REV. 16, 16 (1970)).

46. MODEL RULES OF PROF’L CONDUCT R. 6.1(a)(1)-(a)(2) (2002) (stating that attorneys can fulfill this obligation by providing legal services without a fee to “persons of limited means” or “charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of person of limited means.”).

47. AUERBACH, *supra* note 7, at 62 (describing a “highly stratified professional culture” that elevated the corporate lawyer and allowed these “relatively few lawyers, concentrated in professional associations, to legislate for the entire profession and to speak for the bar on issues of public and professional consequence.”).

48. *See id.* at 63 (noting that from its earliest days, the exclusive ABA membership was limited to “leading men or those of high promise” who were financially successful); *id.* at 65 (noting that the “best men” membership policy became synonymous with the Association’s “settled practice . . . to elect only White men as members.”).

49. *See id.* at 4 (describing the professional elite’s ability “to serve certain political preferences at a time when social change threatened the status and values of the group to which elite lawyers belonged”); *see id.* at 85 (citing some “progressive lawyers,” who focused on the public interest in the early twentieth century, such as Louis Brandeis); *see id.* at 71-72 (attributing the ABA’s opposition to Brandeis’ nomination to the Supreme Court to Brandeis being Jewish, noting, “[C]ertainly it is impossible to know what distressed his opponents more: his Jewishness, his public service, his social approach to legal problems . . . [T]hese traits made Brandeis a professional outsider—reason enough to contest his nomination.”); *see infra* (reflecting the prevailing ideas expressed by President Theodore Roosevelt, who admonished the legal profession for emphasizing personal wealth rather than the public interest.).

special interests of the powerful and ignored the legal needs of ordinary people.⁵⁰

During the progressive era of the early twentieth century, the corporate lawyer encountered considerable public hostility and criticism.⁵¹ At a Harvard commencement, President Theodore Roosevelt took the opportunity to condemn the corporate bar's devotion to business clients and entrepreneurs, whom he charged with expressing "cynical contempt" for government regulatory policies. Roosevelt denounced the lawyers for creating "bold and ingenious schemes by which their very wealthy clients, individual and corporate, can evade their laws, which are made to regulate in the interest of the public the use of great wealth."⁵² The President told graduates that, "the great profession of the law . . . [ought] to take the lead in the creation of . . . a spirit [that would] actively frown on corporations seeking even greater accumulation of wealth at public expense."⁵³

Several weeks earlier, future Supreme Court Justice Louis Brandeis had delivered a similar message to the Harvard Ethical Society. He chided the elite lawyers for "having neglected the obligation to use their powers for the protection of the people." Charging that they had become "adjuncts of great corporations," Brandeis urged the non-corporate members of the bar to devote their expertise to people who had no advocate. "We hear far too much of the corporation lawyer and far too little of the 'people's lawyer.'"⁵⁴

ABA leaders responded to these criticisms by developing a body of ethical canons that they hoped would restore the public's trust in the profession's integrity. But instead of heeding what President Roosevelt and Brandeis had said about the corporate lawyers, the ABA targeted the "socially unfit," foreign-born lawyer. Typically Jewish or Catholic or from Europe's southern or eastern borders, these solo or small firm practitioners filled an important gap in providing access to a legal system for immigrants, laborers, and the poor. The elite ABA leadership, though, regarded them as adversaries whose tort claims threatened their clients' business interests.⁵⁵ They were seen as unworthy of admission to the profession because they appeared "slovenly in dress, uncouth in manners and habits, ignorant even of the English language, jostling, crowding, [and] vulgarizing the profession."⁵⁶

Holding the "people's lawyers" accountable for the public's low image of and contempt toward the bar, ABA leaders relied on the canons to discipline the

50. *Id.* at 32 (referring to the public identifying the lawyers with the corporate clients they served. Some critics charged that the lawyers had "abdicated [their] role as representative citizen to defend special interests.").

51. *Id.*

52. Theodore Roosevelt, Address at Harvard Commencement Exercises, *The Harvard Spirit* (June 28, 1905), in 14 HARV. GRADUATES' MAG., Sept. 1905, at 7-8.

53. *Id.* at 7.

54. Louis D. Brandeis, Address Before the Harvard Ethical Society, *The Opportunity in the Law* (May 4, 1905), reprinted in LOUIS D. BRANDEIS, BUSINESS: A PROFESSION 337 (1933).

55. See AUERBACH, *supra* note 7, at 49-52.

56. *Id.* at 51.

“shyster,” “ambulance chaser,” and “Russian Jew”⁵⁷ for having “solicited” clients when explaining their legal rights, or for agreeing to a contingency fee when advocating for a person without the resources to enter a retainer agreement. The stewards of the 1908 Canons closely guarded against the small practitioners’ representation practices, aware that they would leave more people without access to counsel and without recourse to a profession that had rejected an ethical pro bono duty to serve the non-represented. The canons might allow an attorney to do pro bono work or to reduce or waive a low-income client’s fee, but that was the individual lawyer’s decision—not a professional obligation.

The 1908 Canons recognized a lawyer’s noblesse oblige and the charitable act of engaging in pro bono work.⁵⁸ That relieved the profession from any ethical responsibility to the public and remained the bar’s position until 1969, when the ABA approved a new ethical Model Code of Professional Responsibility. In revisiting the new ethical rules, the ABA appeared heavily influenced by the social changes over the preceding tumultuous fifteen-year period, and by African-Americans’ courageous civil rights protests. The Code’s preamble implicitly acknowledged the legal profession’s role in maintaining segregation and excluding African-Americans and people of color, and implored lawyers to take special responsibility for protecting people’s legal and social rights.⁵⁹

The 1969 restructured Model Code identified nine canons that defined an attorney’s professional standard of conduct. Violators faced disciplinary action through enforcement of the Disciplinary Rules. The Model Code also set forth a series of Ethical Considerations, including one that encouraged the bar to accept a lawyer’s public responsibility to ensure access to justice. The second canon explained that “[e]very lawyer, regardless of professional prominence or professional workload should find time to participate in serving the disadvantaged.”⁶⁰

Though aspirational only, the Model Code’s second canon added an important building block toward repairing the damaged reputation of the legal profession. The ABA acknowledged that a major defect existed in the legal system’s commitment to equal justice. The Code gave needed attention to lawyers’ ethical responsibility to serve the non-represented community. Such a “radical departure” from the ABA’s principle of dedicated service to the retained client provided hope that the Model Code was “only” the first step and “the start of a

57. 29 A.B.A. Rep. 600, 600-01 (1906); AUERBACH, *supra* note 7, at 127 (quoting the chair of Philadelphia’s ethics committee, Henry S. Drinker, who referred to the “Russian Jew boys” as among those who had come “up out of the gutter . . . [and] were merely following the methods their father had been using in selling shoe-strings and other merchandise.”).

58. A.B.A. CANONS OF PROF’L ETHICS, Canon 12 (1908) (reminding attorneys that they should consider a client’s financial circumstances or inability to pay, noting that a client’s “poverty may require a less charge or even none at all.”).

59. See Colbert, *supra* note 19, at 701.

60. MODEL CODE OF PROF’L RESPONSIBILITY, CANON 2-25 (1969).

new effort . . . to state a valid philosophy of the lawyer's place in society"⁶¹ as a public citizen.

That new effort began earlier in the 1960s after southern lawyers made clear they would not represent and protect the rights of civil rights protestors.⁶² Responding to the unavailability of counsel, a portion of the legal profession responded to the crisis: "Hundreds of lawyers and law students [traveled to the] south to offer free legal services to those whose color and politics prevented them obtaining legal course."⁶³ They set an example for other lawyers and led law schools to make significant changes to their curricula and public responsibilities. It also led to federal legislation as part of President Lyndon Baines Johnson's War on Poverty.

In 1964, Congress approved the president's sweeping Organization of Economic Opportunity (OEO) legislation that included a federally subsidized legal services program for the poor. OEO's legal services plan provided for the representation of indigent litigants and led lawyers to pursue a series of proactive legal strategies to reform existing deficiencies in states' and localities' legal systems.⁶⁴ The following year, two important events occurred. First, the ABA lent its support to OEO attorneys' aggressive strategies to assert the rights of previously unrepresented populations.⁶⁵ Second, law schools' revised curricula included clinical courses that helped students grasp the needs of their communities and the scope of a lawyer's professional responsibilities.⁶⁶

Both changes resulted in a different type of law school graduate in the late 1960s and 1970s. The new graduate was committed to public service and obtaining justice for low-income populations. Students entering the profession

61. See John F. Sutton, Jr., *The American Bar Association Code of Professional Responsibility, An Introduction*, 48 TEX. L. REV. 255, 266 (1970) (Sutton was the reporter for the Model Rules of Professional Responsibility and believed that "constant review and reappraisal of the Code . . . [was] necessary in refining our professional ethical standards.").

62. See AUERBACH, *supra* note 7, at 265 (noting that white lawyers refused to defend African Americans' civil rights and pursued "their defense of Nordic, White, Protestant, Anglo-Saxon Christian values . . . for at least a decade after *Brown*"); *id.* at 264 (stating that northern lawyers and Department of Justice prosecutors had been "trained for Wall Street . . . and thought like the corporate lawyers they had been trained to be." They thought they could solve any problem through reason and negotiation; following a "professional code of the Ivy League Gentlemen," they were not prepared for passionate segregationists who were fighting to maintain a legal system they had maintained for decades); *id.* at 266-67 (indicating that black attorneys were too few in number: "Racism suffused professional life . . . professional opportunities remained virtually non-existent . . . [t]he overwhelming majority remained . . . confined to solo practice, an impoverished black clientele and a narrow range of legal business.").

63. *Id.* at 269.

64. OEO attorneys filed proactive suits against landlords, lending agencies and state officials, and relied on class action litigation. They could be found going "to courtrooms . . . engaged in zealous advocacy on behalf of neglected clients; to legislative halls, where they lobbied; to law schools, where new courses were introduced on a range of poverty law subjects and students swarmed into clinical work. The effort to provide legal services to the poor, declared Justice Abe Fortas, had become 'the legal frontier of our time.'" *Id.* at 270.

65. *Id.* at 272.

66. See *infra* Part III.

had seen the strength of collective action during the civil rights movement, and they provided an energy boost that inspired the profession to revisit the ethical rules (The Model Code of Professional Responsibility) once again. Many law graduates became Legal Aid lawyers and would soon participate in work strikes to protest the small number of attorneys representing large numbers of indigent people.⁶⁷ As the lawyers risked disciplinary consequences for their strike actions, they provided clients with a previously unheard voice for quality representation. Their actions helped induce the ABA to sponsor a revised preamble and mandatory pro bono rule in 1983.⁶⁸

The 1983 Model Rules⁶⁹ and the Ethics 2000 Commission's supplement⁷⁰ contained explicit language indicating that a lawyer's ethical responsibility goes beyond the individual client. Today's attorney is a public citizen. He or she has a special responsibility to the quality of justice. Each is charged with identifying deficiencies in the legal system and with using one's expertise to correct them. Most significantly, every lawyer owes an ethical duty to people who cannot afford a private lawyer.

In the late 1980s and 1990s, a majority of the profession rejected the idea of making pro bono mandatory. Opponents objected strenuously and made their positions heard widely.⁷¹ Though proponents of enhanced pro bono retained references to a lawyer's pro bono obligations in the 2002 Model Rules language, they refrained from reopening the dialogue. "Too tired," said some veterans, referring to battles fought long ago.⁷² "Don't want to reopen old wounds," said another.⁷³

Nearly a decade later, an energetic group of law students waits to be called upon to take its place in the ethical circle that began one hundred years ago. It is likely that most of today's students graduate from law school having had a valuable clinic experience. Many carry a moral compass that points to Katrina and other crises in the tradition of their predecessors.⁷⁴ They assume a similar public service role when volunteering for pro bono endeavors in local communities. Many graduates are eager to use their first-hand experiences to change the public's perception of lawyers as uncaring and greedy.

67. See Colbert, *supra* note 19, at 706.

68. See *id.* at 706-07.

69. MODEL RULES OF PROF'L CONDUCT (1983).

70. AM. BAR ASS'N, ETHICS 2000 COMM'N, REPORT ON THE MODEL RULES OF PROF'L CONDUCT, http://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_redline.html (last visited Apr. 24, 2011) (adding to the Preamble that every lawyer has a duty "to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel," and to the language to Rule 6.1: "Every lawyer has a professional responsibility to provide legal services to those unable to pay."); see also Colbert, *supra* note 19, at 714 (discussing the Ethics 2000 Commission's changes to Rule 6.1 and to the Preamble.)

71. See generally Millemann, *supra* note 19, at 60-76 (describing and analyzing the primary arguments against mandatory pro bono).

72. Conversations with Maryland Bar leaders of pro bono work, who preferred to remain anonymous.

73. *Id.*

74. See Colbert, *supra* note 19, at 734.

During a time of economic crisis and inadequate funding for poverty lawyers, the current generation can help fill the gap in access to justice. They can lead by example and persuade colleagues to do the same. But they cannot do it alone: they require their professors' inspiration, guidance and support. The following section identifies the important role of clinical faculty and clinical education.

III. CLINICAL EDUCATION JOINS THE LEGAL ACADEMY: MEETING STUDENTS' ETHICAL DUTIES AND SERVING COMMUNITIES

As discussed above, the Civil Rights movement had a profound influence on the ABA's revised ethical code. No longer could it be seen solely as an organization dedicated to enriching corporate and wealthy clients. The ABA transitioned from an exclusive club to one that expressed concern and support for economically disadvantaged people. The revised preamble and Model Rules provided faculty with the language of an ethical norm that now calls upon all lawyers to fulfill an ethical pro bono obligations.

The anti-poverty and racial justice movement influenced other institutions to reconsider their perspectives on a lawyer's obligations to assist the unrepresented. Before 1963, it was settled law that an accused indigent defendant facing a felony charge had no guarantee to counsel and often had no choice but to self-represent at a criminal trial.⁷⁵ That year, at the peak of the civil rights movement, the Supreme Court recognized that indigent defendants' Sixth and Fourteenth Amendment right to counsel required every state and bar to provide legal representation.⁷⁶ The following year, ABA President (and future Supreme Court Justice) Lewis Powell expressed the organization's support for a federally financed legal services organization to provide counsel to eligible low-income civil litigants.⁷⁷ The high court's ruling in *Gideon*, combined with Congress's legislative response to a heightened understanding of poverty and inequality, caused law schools to do the unthinkable: they revisited an educational curriculum that had remained "frozen in its Langdellian mold,"⁷⁸ and addressed whether faculty prepared students adequately for the practice of law and for meeting the needs of the public interest.

Many scholars agree that the inclusion of "clinical education has been the most significant reform in American legal education since Langdell's case method approach."⁷⁹ Unquestionably, the clinical experience allowed students to appreciate how doctrine and analysis could address real world injustice. The national war against racism and poverty in the 1960s had exposed law students to the denial of poor people's fundamental rights. This included access to counsel in civil and

75. See *Betts v. Brady*, 316 U.S. 455 (1942).

76. See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

77. See AUERBACH, *supra* note 7, at 285.

78. *Id.* at 269.

79. *Id.* at 269-70.

criminal cases where the Supreme Court had considered a lawyer's advocacy essential to a fair trial and a "necessity, not a luxury"⁸⁰ for achieving even-handed justice. Students' awareness of the gross disparities between the legal rights afforded to the rich and those afforded to the poor,⁸¹ and encounters with the policy issues of the Vietnam War, led this "new generation [to be] ripped away from the conventions of its predecessors."⁸² Student discontent caused "law schools [to] reel under challenges to their educational purpose and to the authority of the legal order they defended."⁸³ Students questioned their schools' professed "neutral" and "value-free"⁸⁴ curricula that focused mostly on problems of the wealthy. They also challenged the relevance of teaching a Socratic, case-based method without connecting the material to practical experience and ordinary people's lives.⁸⁵

In 1964, Jean and Edgar Cahn launched the idea for the Office of Economic Opportunity's legal services program by advocating for a "university-affiliated neighborhood law firm."⁸⁶ The Cahns believed that law schools would provide the ideal home for institutionalizing community-based programs and for introducing students to people's legal needs.⁸⁷ Law schools, though, had begun creating their own clinics in the 1960s and did not become interested in sponsoring additional programs until 1968.⁸⁸ Then, the Ford Foundation extended its National Council on Law Clinics and devoted \$12 million to provide grants to law schools as part of its Council on Legal Education for Professional Responsibility (CLEPR).⁸⁹

80. *Id.* at 344.

81. *See id.*

82. *Id.* at 275.

83. *Id.* at 269.

84. *Id.*

85. *See* Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 116 (1999) ("The late 1960s ushered in a period of sustained attacks against [the Socratic method] that continues today."); James B. Levy, *As a Last Resort Ask the Students What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 50, 71 (2006) (noting that law students rejected the Socratic method where they were cold called in class and then penalized or criticized when unable to answer correctly. "The Socratic Method is hell," said one, while another described it as "a terror tactic putting student against teacher and fostering a better-you-than-me mentality.").

86. AUERBACH, *supra* note 7, at 269.

87. *Id.* at 269-70.

88. Lauren Carasik, *Justice in Balance: The Evaluation of One Clinic's Ability to Harmonize Teaching Practice Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST., 23, 30 (2006) ("Although clinical training had been present in the academy for years, the 1960's ushered in a watershed in clinical legal education. A number of factors influenced this shift, including the increasingly politicized social climate, vocal student demand for the social relevance of their studies, the availability of some funding for clinics, faculty interest in teaching clinical topics, and, starting in the 1970s, the incipient development of a distinct clinical instructional methodology."); *see* Trubek, *infra* note 90, at 385.

89. Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 n.7 (2004) (noting that some schools had begun creating their own clinics in the 1960s but law schools did not begin sponsoring additional programs until 1968); *see id.* at 998 (referring to "Sandy" Ogilvy, History of Clinical Legal Education, at

CLEPR's first director, William Pincus, had a "missionary dedication to the service role of the profession and a vision of how law schools could contribute to that role."⁹⁰ He appreciated the vacuum of legal representation for the poor and looked to law faculty and students as natural resources for devoting their legal skills to address injustice. Recognized as the "father of the clinical education movement,"⁹¹ Pincus made more than one hundred Ford Foundation grants available to law schools.⁹² These schools then established legal aid/legal services clinical courses for law students.⁹³ Experienced poverty lawyers entered the academy in the 1970s directly from their legal service providers. Their popularity was instant as "law students swarmed to clinical work"⁹⁴ and the opportunity to gain the first-hand experience. Pincus envisioned clinical education capable of "developing in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and . . . to learn and to recognize . . . what is wrong with the machinery of justice in which [they are] participating and for which [they have] a special responsibility."⁹⁵

Many clinical teachers incorporate Pincus' philosophy in their skills-based teaching. They teach a lawyer's competence in conducting, interviewing, counseling, fact investigation, negotiation and advocacy. They also instill students with a social justice and law reform perspective that drives those students to apply these learned skills toward repairing a deficiency affecting many people within the current system. Experienced clinical faculty, though, have expressed concern that their "old school" social justice approach may have become outdated. They fear colleagues may be tailoring scholarship by discarding the social justice mission in favor of emphasizing value-neutral skills in order to achieve promotion and acceptance. In response, skills-focused clinicians justify emphasizing the enhancement of students' competency as a lawyer in order to achieve the best result for clients. What can be wrong with that, they wonder? Some reject social justice law reform because it appears to follow a

<http://www.aals.org/nlt/2004/ogilvy.pdf> who targets 1968 as the year when CLEPR money began funding over 100 grants toward clinical education).

90. Louise Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 381, 385 (1994).

91. Wizner, *supra* note 7, at 331.

92. *Id.* at 332 (describing "[t]he three decades since William Pincus provided the initial conceptual and financial impetus for the development of clinical legal education have witnessed the spread of clinical programs to virtually every law school in the United States, making it the most significant reform in American legal education since Langdell's invention of the case method a century earlier.")

93. Trubek, *supra* note 90, at 385 (finding that "[t]he grant program funded many projects for legal services for the poor that later became clinics; many are still functioning. Several of the original informal law school legal aid projects, such as the programs at Yale and the University of Chicago, were converted to more formal clinics and placed under the control of the law schools. The original clinics developed through CLEPR primarily served poor people, with an emphasis on individual client service."); *see also* Wizner & Aiken, *supra* note 89, at 998 n.7.

94. AUERBACH, *supra* note 7, at 272.

95. *Educating Values in Clinical Experience for Law Students*, II CLEPR Newsletter, No. 1, Sept. 1969.

faculty member's personal agenda. Others may resent the "affluent" and well-situated colleague's failure to appreciate the political battles they face and vulnerability of their positions when they pursue controversial law reform endeavors. At clinic conferences, scholars frequently express their preference for one school of thought.

Teaching from the ethical rules allows professors to circumvent these teaching dilemmas. The Model Rules of Professional Conduct recognize that a lawyer must satisfy skills training as well as an ethical duty to the poor, and clinical faculty should include both objectives in their clinic course discussions. Moreover, when professors highlight public service in lectures, they enable students to become "mindful" of problems in the legal system. This could lead students to act and add reform issues to the clinic docket, or it may result in valuable conversations that enhance understanding of law reform responsibilities. Whatever occurs, the point is clear: today's clinician can no longer refrain from speaking about professional responsibility and the crisis in the legal profession. She must multi-task and encourage students to see client representation as a link for addressing systemic issues. Clinical faculty can teach about risk or vulnerability when they or any lawyer challenge the status quo; it is surely not unusual for a backlash or attack to follow, and it can become a valuable teaching moment for students to appreciate a common reaction to proposed change. Fortunately, the current secure standing of clinical education makes it less likely that such external attacks will succeed.⁹⁶

Many issues, ripe for potential challenge, await the scrutiny of clinical faculty and students who look for ways to improve the quality of justice for people entering the legal system.

IV. THE MARYLAND ACCESS TO JUSTICE CLINIC: STUDENT LAWYERS FULFILL THEIR SPECIAL PROFESSIONAL RESPONSIBILITY TO JUSTICE

A. *Connecting the Clinic to Professional Responsibility to Pro Bono Service*

Clinic students obtain important legal skills and preparation for practicing law.⁹⁷ Students come to understand the dire need of economically disadvantaged

96. See Robert Kuehn & Peter Joy, 'Kneecapping' Academic Freedom, 96 ACADEME (2010), available at <http://www.aaup.org/AAUP/pubsres/academe/2010/ND/feat/kueh.htm> (noting that from the early days of clinical education, faculty have faced political efforts to limit students' representation); see also Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom and Political Interference: A Clinical Program Under Siege*, 4 CLINICAL L. REV. 532, 532 (1998) (describing that "[a]s clinics began representing previously disenfranchised client populations [in the 1960s], clinicians, especially those at state funded institutions, became subject to some of the same attacks experienced by legal services organizations."); cf. Robert Kuehn & Bridget McCormack, *Lessons from Forty Years of Interference in Law School Clinics*, 24 GEO. J. LEGAL ETHICS 59 (2011) (noting that while such challenges to a clinic's autonomy remain, clinicians can count on substantial support from the academy and legal profession).

97. Sandefur & Selbin, *supra* note 5, at 89 (new lawyers consider law school clinical training as one of their most valuable learning experiences "of lawyering skills that facilitates the transition into practice.").

people for access to counsel. They learn that the good work they are doing enhances the administration and quality of justice.

The ethical perspective allows students to discuss strategies for improving the local justice system. A clinic law reform project may take many forms. Students could prepare testimony and appear before a legislative and administrative committee, draft legislation, pursue affirmative or class litigation, or educate the public about overlooked problems.

Clinical faculty deserve recognition for the important work and teaching they do. The inquiry, however, must go further. Clinical faculty's well-deserved reputation for self-reflection should lead to asking several questions when they evaluate their clinic course and program. Are they referring students to the preamble's declaration that every lawyer is a "public citizen having a special responsibility to the quality of justice?"⁹⁸ Are faculty members connecting the student lawyer's representation to an attorney fulfilling her pro bono duty under Model Rule 6.1? How much class time do faculty devote to "access" issues? Do they address law reform? When developing a school's clinical program, is there a conscious effort to address a community's needs? Clinical faculty should also consider whether they are teaching students about public service.

The following section highlights a faculty member's reflections of changes that resulted from converting the criminal defense clinic he taught for fifteen years to an Access to Justice Clinic providing representation at bail hearings. Students examined their ethical obligation to challenge a local and statewide practice of not providing counsel to indigent defendants when they first appeared at a bail hearing before a judicial officer.

B. The Maryland School of Law Access to Justice Clinic

Clinical teaching is unpredictable because practicing law is unpredictable. Typically, law reform projects develop when representation of individual clients leads to discovery of an issue or practice calling for change. When a project succeeds, students applaud the experience; when it falls short of meeting expectations, faculty risk alienating some students. Like most people learning new skills, students prefer traveling a smooth road. They expect to meet a client, investigate a case, prepare argument, and argue before a judge. Law reform cases seem daunting at first. But the satisfaction of taking on a systemic problem is profound and provides new meaning, both for law professors preparing students to enter the profession and for students' embracing their professional responsibilities.

The Access to Justice Clinic's adventure began during the 1998 school year and reached an unexpected high point in October 2010. A judge granted summary judgment in favor of indigent defendants' right to counsel at their initial bail

98. *Preamble, supra* note 1.

hearing.⁹⁹ Students expressed elation and disbelief at what we had collectively achieved. They had almost forgotten the uphill journey that they and previous students had traveled.

1. Year One: A New School, A New Clinic

Student lawyers had just returned from the local jail where they met their incarcerated clients awaiting trial. The clients appeared surprised and pleased to find someone willing to advocate for their immediate release. They had not seen an attorney since arrest nearly two weeks earlier and had been without counsel when they appeared at a bail hearing soon after. “What took you so long to get here?” a few joked after they had been interviewed by their student lawyer. Detainees knew that had we not appeared, they would have waited two more weeks before a public defender represented them in court.

Back at school, one or two students wondered, “Why do we wait so long to meet our clients? Could we be present at the first bail hearing?” This reaction launched the first of many class discussions about the assigned lawyer missing in action when an indigent defendant’s liberty was being decided. Students felt something had gone wrong.

Having just begun teaching at a new school located in a different state, I explained that our clinic’s arrangement with the public defender had required that we assign students to a case ten days after arrest—and nine days after bail had been first decided. Students had many questions. They focused on asking about indigent defendants’ entitlement to counsel at the bail stage, the extent of the no-counsel practice outside of Baltimore City and students’ role as a public citizen reformer. As the semester continued and they gained more courtroom experience, students spoke with a stronger and more sophisticated voice. Most agreed it was unfair for poor people to remain in jail for weeks before obtaining representation in court. But they could not imagine trying to change an entire system.

Everyone agreed that a reform strategy would require considerable thought. When discussing what they could do, some students raised a potential personal conflict: they feared that joining a legal challenge against an agency where they had applied for employment would jeopardize their hiring prospects.

Ultimately, students agreed to conduct research that would help decide the strength of indigent defendants’ claim to counsel when first appearing at a bail hearing. Their research revealed few reported decisions. Students learned Maryland’s denial of counsel practice was not unusual. They wrote a fine legal

99. See *Richmond v. District Court of Maryland*, No. 24-C-06-069911 (Cir. Ct. Balt. City Sept. 30, 2010) (following the dismissal, the Supreme Court ruled in 1998 in *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), that an accused’s right to counsel attached at the defendant’s first appearance, which opened further inquiry into indigent defendants’ constitutional right to counsel when liberty is at stake).

memorandum, which concluded that an accused's constitutional right to counsel at bail was ripe for adjudication.

Students turned to the relevant language of Maryland's Rules of Professional Conduct and the ABA Model Rules about addressing "deficiencies" in the administration of justice and educating the public about ways of improving the current system. Most thought the general language applied to a lawyer's ethical obligation to provide a more balanced playing field for the indigent defendant denied access to a lawyer. But who would bring such a challenge to a longstanding problem? Perhaps our clinic could take on the job.

In the end, students proceeded with caution. They knew that much work had to be done before the clinic could reach a decision. They had expected to participate in the program in order to gain the courtroom experience of representing people charged with misdemeanor crimes at trial. Law reform went beyond what they had anticipated. Students thought it would be prudent for the clinic and the "new kid on the block" professor to move slowly and not jeopardize the school's partnership with the public defender's office.

During the final class, some students argued passionately that the clinic must take on the issue. "No one else will do it, Professor. We have talked the talk and now understand the importance of counsel's presence. Now it is time for you and for us to walk the walk." Most everyone agreed.

I wrote articles to bring attention to the lack of representation at the bail stage,¹⁰⁰ and gained faculty approval for changing the criminal defense clinic to an Access to Justice program where clinic students would represent indigent defendants at the bail stage and focus on law reform. The next section highlights the experience of teaching about a lawyer's ethical pro bono responsibility through the Model Rules of Professional Conduct.

2. Teaching Law Reform: The First Decade: 1998-2010¹⁰¹

Students' efforts to guarantee counsel for indigent defendants at their first appearance can be categorized by the law reform strategies they developed during different time periods. Stage one focused on a legislative strategy; it began when the two-semester Access to Justice Clinic commenced in 1997 and continued through the 2001 session. Stage two began with reform proposals to Maryland's Rules Committee, following state legislators' final rejection of the proposed legislation during the 2001 session. Maryland's Chief Judge selected a

100. Douglas L. Colbert, *Thirty-Five Years After Gideon: The Illusory Right to Counsel at Bail Proceedings*, 1998 U. ILL. L. REV. 1 (1998) (detailing the absence of counsel at local bail hearings nationally); Douglas L. Colbert, Op-Ed., *Attorneys at Bail Hearings Would Unclog the Court System*, BALT. SUN, Jan. 17, 1999, at 1C (telling about an African American journalist who entered the criminal justice system for driving with a suspended license).

101. I taught a two-semester Access to Justice Clinic between 1997-2002 and during the 2006-2007 academic year. Beginning in the Spring 2005 semester and continuing from 2008 to Spring 2011, I taught a one-semester clinic during the fall or spring. At other times, I taught stand-up and seminar classes.

committee to study the state's pretrial justice system; the group submitted its report and recommendations to the Court of Appeals Rules Committee, which considered the proposals from 2002 to 2004. Stage three developed over the course of a semester and a yearlong clinic in 2005 and 2006; it involved a series of educational and public service endeavors that lead to class action litigation filed in late 2006. Stage four covered the years 2007 to 2010, when students and pro bono attorneys pursued the class action lawsuit and targeted other specific right to counsel and bail practices for change.

a. 1997-2001

In 1997-1998, the first year of the Access to Justice Clinic, students joined a state bar's legislative reform initiative that was intended to gauge legislators' reactions toward establishing an indigent defendant's statutory right to counsel at the bail stage.¹⁰² Students helped draft the legislation and presented testimony, as did some of their clients, about their first-hand experience of providing representation at bail. They encountered a hostile reception. House Judiciary Committee legislators questioned the value of anecdotal accounts,¹⁰³ while the Maryland Public Defender belittled students' accomplishments and expressed concern with attorneys' ability to handle extra representation absent designated funding.¹⁰⁴ The legislation never came to a vote.

In preparing for the 1998-1999 legislative session, students led a sustained lobbying effort that built widespread support for the Access to Justice legislation. These students, along with a broad array of supporters—including Maryland's Chief Judge, the Maryland State Bar, law enforcement groups, prosecution and defense attorney groups, and national advocates including the former president of the District Attorneys Association—all testified before the Senate and House judiciary committees. Yet, the 1999 legislation did not survive committee review.¹⁰⁵ Students watched the legislation fail by one vote when a key legislator reversed his longstanding support at the eleventh hour.¹⁰⁶ Though disappointed with the outcome, students soon gained the satisfaction of knowing that their work had influenced Maryland's governor to designate additional funding to the city's public defender office to represent indigent detainees at bail review hearings.¹⁰⁷

102. See Douglas L. Colbert, Raymond Paternoster & Shawn Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 *CARDOZO L. REV.* 1719, 1765-69 (2002).

103. See *id.* at 1766.

104. See *id.*

105. See *id.* at 1767.

106. See *id.* at 1767-68.

107. In Maryland, defendants remain without counsel at the first bail proceeding before a District Court Commissioner. If a defendant cannot post bail, the defendant appears at a bail review hearing before a judge within the next 24 hours, excluding weekends.

Matters improved the following year when the Chief Judge of the Court of Appeals of Maryland, the state's highest court, along with the State's Attorney Association and the State Police, offered testimony in support of the Access to Justice legislation. That session, Professor Paternoster also released his initial findings on the benefits of representation during bail hearings.¹⁰⁸ The Senate Judiciary Committee voted in favor of the legislation and sent the bill to the full Senate, which voted overwhelmingly in favor, 41-6. In the House of Delegates, however, the Chair of the Judiciary Committee never allowed the bill to be considered.¹⁰⁹ The bail bond industry had led the charge against passage.¹¹⁰ Students made one final futile attempt to gain passage of the bill in 2001.

The right to counsel legislation had suffered many ups and downs during the four-year period between 1997 and 2001, but Access to Justice clinical students had addressed a serious deficiency in the city's pretrial justice system and had helped to gain counsel for many people who could not afford a private attorney. Clearly, they had fulfilled their pro bono role as a "public citizen having a special responsibility to the quality of justice."¹¹¹

b. Fall 2001-2004¹¹²

Following the legislative defeat in March 2001, the Chief Justice of Maryland's highest court created a broad-based committee, the Deeley Committee, to study the issue of the right to counsel at bail. Aided by clinic students' legal research and testimony, the Deeley Committee met throughout the 2001-2002 year and issued a report containing recommendations for reforming the state's pretrial system.¹¹³ Over the course of the next two years, Maryland's Rules Committee considered the recommendation to modify the bail bond system and allow families and individuals to avoid paying the bail bondsman's non-refundable 10% fee.¹¹⁴ Against the strong opposition of bail bondsmen, the Rules Committee decided to provide the 10% cash deposit option for bonds of \$2,500

108. See Colbert et al., *supra* note 102, at 1741-48 (describing the findings, commissioned by the Lawyers at Bail Project (LAB) and conducted by social scientists, concerning the benefits of representation at bail hearings).

109. See *id.* at 1769 (referring to the procedure of keeping a bill in the "bottom drawer" until it is too late to be voted).

110. See Stephen Sachs, Op-Ed., *Bail Bonds' Biases Show*, BALT. SUN, Jan. 20, 2002.

111. *Preamble*, *supra* note 1, ¶ 1.

112. Aside from the 2001-2002 school year when the Deeley Committee first met, there was no Access to Justice clinic until Spring 2005 because of other teaching responsibilities. Individual law students worked on the Rules Committee Project in 2002-2004.

113. See C. CAREY DEELEY JR., REPORT OF THE PRETRIAL RELEASE PROJECT ADVISORY COMMITTEE (2001), available at <http://www.courts.state.md.us/pretrial/pretrial.pdf>.

114. Telephone interview with C. Carey Deeley, March 25, 2011. The 10% cash deposit option permits a family or friend to post the amount with the court; it is refunded (less a small administrative fee) when the case concludes, as long as the defendant appeared in court. A commercial surety bail bondsman retains the 10% fee as payment for underwriting the bond, regardless of whether the defendant appears when required.

or less.¹¹⁵ In the following 2004-2005 legislative session, however, the bail industry succeeded in repealing the 10% cash alternative by statute.¹¹⁶

c. Spring 2005 to Spring 2006: A Big Year for Pro Bono Activity

Having seen the outcome of both a legislative strategy and an administrative rules strategy, students in the Spring 2005 clinic took a different approach. Targeting the absence of counsel at the first bail hearing and again at a review proceeding, students created a brochure that they circulated to pretrial jails throughout the state.¹¹⁷ The brochure provided important information to Maryland detainees and called public attention to the plight of the non-represented pretrial jail population.¹¹⁸

When Hurricane Katrina struck the Gulf Coast states that summer, Maryland's law students joined students at other law schools by volunteering to engage in humanitarian and pro bono work. The experience of witnessing Louisiana defendants spend months in pretrial jail before seeing a lawyer or judge inspired Access to Justice students to take a more aggressive approach to advocacy, one that they and faculty had considered a "last resort,"¹¹⁹ after witnessing defendants spend months in a Louisiana prison before seeing a lawyer or judge.¹²⁰ In 2006, students discussed and prepared a litigation strategy that challenged the practice of denying counsel to the class of indigent defendants who appeared at initial bail hearings. Students presented this strategy to one of the city's biggest law firms and urged the firm to accept the right to counsel litigation on a pro bono basis. In April 2006, students succeeded in persuading the Venable law firm to represent the class of Baltimore City's indigent population of pretrial detainees. Students'

115. MD. R. 4-216(e)(4)(B) (2009) (stating: "The effort of the Court of Appeals committee was able to persuade the Maryland Rules Committee to agree to modify the existing 10% procedures, which the bail bond industry then took to the legislature the following year."); *see infra*, note 117; *see also supra* note 113.

116. *See* 2004 Md. Laws 531 (amending MD. CODE ANN., CRIM PROC. § 5-205); Colbert et al., *supra* note 102, at 1768-69 ("The bondsmen's powerful lobby had conducted a vigorous behind-the-scene campaign against the proposed legislation. They considered the guarantee of counsel as a threat to their lucrative business in which arrestees were required to repurchase their freedom by paying a mandatory 10 % fee.").

117. Students' information pamphlet explained the pretrial process and what a person should and should not say when appearing before a commissioner and then a reviewing judge. Local wardens and the Secretary of Public Security approved providing copies of the brochure to detainees during processing.

118. *See* Daniel Ostrovsky, *University of Md. Law Students' Brochure Outlines Pretrial Rights for Prisoners*, DAILY RECORD (Balt.), Nov. 3, 2005 (noting that members of the Judiciary reviewed the pamphlet and offered suggested changes. Once revised, the Chief Judge of the District Court of Maryland gave approval to distribute the brochure).

119. Press Release, Venable LLP, Baltimore Circuit Court Holds Criminal Defendants Entitled to Appointed Counsel at Bail Hearings-Decision Expected to Apply Statewide (Oct. 5, 2010), *available at* <http://www.venable.com/NEP/presreleases/NewsDetail.aspx?news=b73bd423-2d24-483a-870f-51e688e315bb>; *see* Colbert, *supra* note 19, at 679-83.

120. *Id.*

perseverance had resulted in understanding a lawyer's "special responsibility" and role in enhancing the administration of justice.

d. Fall 2006 to Fall 2010

During the following Fall 2006 semester, clinic students worked closely with the pro bono lawyers and devoted many hours researching the class action suit on behalf of the city's indigent defendants. Clinic students and the lawyers met frequently to brainstorm and experienced the unique learning opportunity of collaborating with experienced, first-rate attorneys. In November, the lawyers filed *Richmond v. District Court of Maryland*.¹²¹ Students' joy, however, was short-lived. The State and the Public Defender moved for summary judgment and dismissal of the suit. During the Spring 2007 semester, the same students continued researching and writing a response reply. The work, however, greatly exceeded what they had expected. Students had already devoted substantial time to filing the class action suit and to clients' representation. Students' frustration levels peaked that semester and again the following year when the defendants' motion for summary judgment was granted. Many felt that they had been asked to do more than what was reasonable. Aware that law reform had reached its nadir, the supervising faculty member acknowledged an important lesson: to be a positive experience, law reform assignments must not exceed students' capabilities within the school semester.

I continued teaching the Access to Justice Clinic the next two years and supervised several students' law reform projects. This time students focused on finite, specific issues. They wrote an excellent letter to the editor about video bail proceedings¹²² and completed a terrific op-ed article the next year dealing with the expensive cost of pretrial incarceration.¹²³ Students also met with corrections officials and succeeded in gaining public defenders' access to clients' criminal records. Students persuaded the judiciary to provide a de novo hearing for defendants who had missed a court appearance and now faced a judge's preset bail,¹²⁴ a situation that often was tantamount to remaining in custody.¹²⁵ Students observed many ways for a lawyer to engage and fulfill pro bono obligations.

The *Richmond* lawsuit progressed through the Maryland appellate system. Students contributed to the brief filed with the state's high court after it had granted certiorari sua sponte. The Court of Appeals eventually remanded *Richmond* to the circuit court judge who had dismissed the suit years three years earlier. This time, the judge granted summary judgment and affirmatively

121. See *Richmond v. Dist. Ct. of Md.*, No. 24-C-06-009911 CN (Cir. Ct. Balt. City Nov. 25, 2006).

122. See Anne M. Deady, Letter to the Editor, *BALT. SUN*, Jan. 4, 2008, at 20A.

123. See Portia Wood & Dave Pantzer, Op-Ed., *High Cost of Pretrial Jailing: Incarceration Alternatives Are Often Better for Defendants, Taxpayers*, *BALT. SUN*, Nov. 24, 2009, at 13A.

124. See *Richmond v. Dist. Court of Md.*, No. 24-C-06-009911 (Cir. Ct. Balt. City Sept. 30, 2010).

125. See *id.* (explaining judicial practice of ordering bail for a defendant who failed to appear in court and of subsequent judicial officers deferring and not disturbing the preset bail).

declared that indigent defendants have a right to counsel at the initial bail hearing,¹²⁶ nearly four years after the Access to Justice Clinic students had helped to file the class action suit.

V. CONCLUSION

While interviewing a Louisiana lawyer in 2007, I asked him why more members of the bar had not volunteered to offer assistance after Hurricane Katrina struck.¹²⁷ The lawyer looked surprised. “Of course more of us should have worked pro bono. No question. But here’s one for you: How many law professors are teaching about pro bono and telling us about a lawyer’s ethical duty as a public citizen?” Perplexed, I waited for his response. “Not in any class I took in law school,” he countered, “not even my legal profession course.” The other lawyers nearby nodded in agreement. “What about clinic?” I asked. “Clinic was great. But I learned nothing about a lawyer’s obligation to public service.” He paused before his parting remark. “Maybe if you were teaching us about pro bono and what it means to be a lawyer, we’d be doing it.”¹²⁸

This Louisiana lawyer’s comments raise many questions: Do we in the academy inform our students and lead discussions about what the preamble and Model Rule 6.1 say about a lawyer’s ethical obligations? Are clinical faculties doing any better than our “stand up” colleagues? As we supervise clinic students and applaud their growth and good work, do we bring attention to the many litigants who had no lawyer? Do we explain today’s crisis where so many people are desperate for a lawyer and so few lawyers meet the public need? Do we spend class time discussing the lawyer’s pro bono obligation and the reality that few—roughly one out of six—fulfill their minimum fifty-hour duty? Or better yet, do we respond adequately to the call for help? Or better yet, do we respond adequately to the call for help? We can do more.

Would it make a difference if clinic professors inspired students to meet their ethical obligation and even identify existing systemic deficiencies? Would this translate into more lawyers doing pro bono work? Of course it would. Teach the preamble and Model Rule 6.1. Tell students they are joining a profession that proudly declares that a lawyer has a special responsibility to make access to counsel a reality. Clinic students understand this: without a lawyer, justice rarely occurs.

Clinical education presents the ideal opportunity for teaching students the ethical duty to achieve access to justice. It has taken a century to understand that we must teach students both legal skills and social justice values.

126. *See id.*

127. *See* Colbert, *supra* note 19, at 721-29 (noting that approximately 5% of Louisiana’s bar volunteered, which was roughly the same percentage of New York lawyers who responded to the devastation following the destruction of the World Trade Towers on September 11, 2001).

128. Conversation with New Orleans lawyer (Nov. 2007).

Steve Wizner once asked clinic professors: Who am I as a law teacher? What am I doing when I teach law?¹²⁹ Sharing a delightful parable, he tells teachers that a legal education goes beyond “the acquisition of legal knowledge and the development of professional skills, although both of those are essential.”¹³⁰ A stalwart believer in using the law to pursue justice, Wizner suggested that, “clinical legal education, properly understood, should have a political and moral purpose.”¹³¹ This view is neither radical nor novel. By living and leading by the Model Rules, clinical professors can inspire their students to do great things and to embrace pro bono service as an integral element of their professional life.

129. See Wizner, *supra* note 7, at 340.

130. *Id.* (using Milner Ball’s jurisprudence class as a backdrop, where Ball pressed his students to answer two questions when they returned from providing legal assistance to poor people: “Who am I as a lawyer?” and “What am I doing when I do law?”); *id.* (applying a rabbinical tale about a rabbi learning an important lesson from a sentry on duty, Wizner urges law professors to be their own “clinical sentries” and to continually ask: “Who am I as a law teacher? What am I doing when I teach law?”).

131. *Id.*