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Pro Bono Legal Work: For the Good if Not Only the Public, but also the Lawyer and the Legal Profession Symposium: Legal Education

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PRO BONO LEGAL WORK: FOR THE GOOD OF NOT ONLY THE PUBLIC, BUT ALSO THE LAWYER AND THE LEGAL PROFESSION†

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INTRODUCTION

Judge Harry Edwards' important, provocative article,[1] which is the subject of this symposium issue, contained a triple-pronged critique of legal education and the legal profession. It constructively criticized legal scholarship,[2] legal pedagogy,[3] and legal practice.[4] My commentary will focus on the last aspect of Judge Edwards' analysis: what he calls "ethical practice."[5] More specifically, my commentary will focus on the first of the two criteria that Judge Edwards delineates for such practice: the lawyer's "ethical obligation to . . . deploy his or her talents pro bono rather than pro se, at least in part."[6]

I agree with Judge Edwards that "the lawyer has an ethical obligation to practice public interest law — to represent some poor clients; to advance some causes that he or she believes to be just."[7] I also concur in Judge Edwards' opinion that "[a] person who deploys his or

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1. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession,* 91 MICH. L. REV. 34 (1992).

2. *See id.* at 42-57.

3. *See id.* at 57-66.

4. *See id.* at 66-74.

5. *See id.*

6. *Id.* at 67. The other criterion that Edwards articulates for "ethical practice" is comporting with standards of professional responsibility. As he states, "the ethical lawyer cannot always advance the client's narrow self-interest, because the lawyer is an officer of the court as well as an advocate." *Id.*

7. *Id.*

her doctrinal skill without concern for the public interest is merely a good legal technician — not a good lawyer."[8]

Rather than further develop Judge Edwards' theme that lawyers have a professional responsibility to do pro bono work, I will offer another rationale for such work, grounded in professional and individual self-interest. Specifically, my major theme is that, by serving the public, lawyers can simultaneously do *well* and do *good.* In other words, by doing *pro bono publico* work, lawyers benefit not only the public, but also themselves.

Before turning to my main area of focus, I will briefly address the two other areas that Judge Edwards examined: legal scholarship and legal pedagogy. I share Judge Edwards' concern about "the growing disjunction between legal education and the legal profession,"[9] which was also documented in a 1992 American Bar Association report that urged "narrowing the gap" between the law schools and the legal profession.[10]

I would like, however, to note some specific recent examples of legal scholarship and legal pedagogy that run counter to this general trend and that are noteworthy efforts to bridge the academic-professional gap. The scholarly works in question were published, and the curricular developments crystallized, after Judge Edwards' article was published. The deliberations leading to these curricular developments, as well as one of the scholarly works, specifically refer to Judge Edwards' article and consciously seek to redress its concerns.[11]

These current counterexamples to the general schisms that Judge Edwards decries are significant not only in their own right, but also because — to the extent that they become known throughout the legal academic community — they may serve as models for other, similar undertakings. Accordingly, the instant symposium issue of the *Michigan Law Review* constitutes an important forum for disseminating information about these exceptions.

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8. *Id.* at 66.

9. *Id.* at 34.

10. *See generally* THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) [hereinafter TASK FORCE REPORT].

11. *See infra* text accompanying notes 16-26.

I. Some Recent Efforts To Bridge the Gap Between Law Schools and the Legal Profession

A. *Legal Scholarship*

According to Judge Edwards, "[t]he growing disjunction between legal education and legal practice is most salient with respect to scholarship."[12] In support of this conclusion, he notes the recent, distressing decline in the volume of, and the recognition that law schools accord to, what he calls " '[p]ractical' legal scholarship."[13] He defines such scholarship "in the broadest sense,"[14] as follows:

> It is *prescriptive:* it analyzes the law and the legal system with an aim to instruct attorneys in their consideration of legal problems; to guide judges and other decisionmakers in their resolution of legal disputes; and to advise legislators and other policymakers on law reform. It is also *doctrinal:* it attends to the various sources of law (precedents, statutes, constitutions) that constrain or otherwise guide the practitioner, decisionmaker, and policymaker.[15]

I want to note two significant examples of " '[p]ractical' legal scholarship," in this broad sense, that recently have been published and may well serve as harbingers of more such scholarship to come.

1. New York Law School Law Review *Symposium Issue on "Lawyering Theory"*

The first is a recently published symposium issue of the *New York Law School Law Review* concerning "lawyering theory,"[16] which the symposium's "Preface" describes as follows:

> [A] lawyering-theory approach invites us to study concrete particularities. It does not join in . . . the effort to construct comprehensive abstract models as points of departure for analyzing what the law is or should be. If there are constructs to uncover, a lawyering theorist might say, let us look first to see how they are operating in practice. Let us examine the numerous acts of representation and interpretation that occur every[ ]day in the life of lawyers and others with whom they interact.[17]

The introductory article in that symposium issue, by New York

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12. Edwards, *supra* note 1, at 42.

13. *Id.*

14. *Id.*

15. *Id.* at 42-43 (footnote omitted).

16. *Lawyering Theory Symposium: Thinking Through the Legal Culture,* 37 N.Y.L. Sch. L. Rev. 1 (1992).

17. Richard K. Sherwin, *Preface, id.* at 1. Sherwin adds: "Lawyering theory, at least at this initial stage in its development, may be viewed as an effort to surface the linguistic and cognitive tools and assumptions that legal and lay actors use in their everyday practices within . . . the legal system . . . ." *Id.* at 7.

Law School Professor Richard Sherwin,[18] quotes Judge Edwards' article[19] and presents lawyering theory as an innovative effort to close the gap between legal scholarship and legal practice that Edwards laments.[20] For example, in outlining the goals of future lawyering theory scholarship, Sherwin states:

> [A]dditional links should be forged between academia and the domain of legal practice. Lawyers, judges, and administrators, among others within the profession, should be apprised of the research efforts under way and be invited to join in. In this way, not only may researchers gain a valuable resource, but in addition, those who participate from outside academia are likely to gain an opportunity to learn more about their own practices. The business of learning and teaching may thus achieve a level of mutual scholar/practitioner reinforcement that can help to reintegrate a now seriously fragmented legal culture.[21]

The other articles in the symposium issue[22] substantiate that lawyering theory can play the important integrative function that Professor Sherwin suggests. They provide highly sophisticated scholarly treatments of concrete lawyering practices.[23] For example, by examining the lawyers' closing arguments to the jury in a 1991 homicide prosecution in New York City on multiple levels, Professors Anthony Amsterdam and Randy Hertz show complex, subtle, and profound links between the two attorneys' different strategic objectives and the rhetorical, narratival, linguistic, metaphoric, and mythic devices they use

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18. Richard K. Sherwin, *Lawyering Theory: An Overview;* What We Talk About When We Talk About Law, 37 N.Y.L. SCH. L. REV. 9 (1992).

19. *Id.* at 10 n.2.

20. See, e.g., Sherwin's conclusion:

> Developing further the kinds of research studies, innovations, and concerns suggested above may have the potential to take us past, or at least reduce, the divisiveness and tensions that have for too long been hectoring legal academia from within and straining its relationship with judges, practitioners, and the public at large.

Id. at 52-53.

21. *Id.* at 51 (footnote omitted).

22. Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury,* 37 N.Y.L. SCH. L. REV. 55 (1992); Jerome Bruner, *A Psychologist and the Law,* 37 N.Y.L. SCH. L. REV. 173 (1992); Peggy C. Davis, *Law and Lawyering: Legal Studies with an Interactive Focus,* 37 N.Y.L. SCH. L. REV. 185 (1992); Martha A. Fineman, *Legal Stories, Change, and Incentives — Reinforcing the Law of the Father,* 37 N.Y.L. SCH. L. REV. 227 (1992); Sally E. Merry, *Culture, Power, and the Discourse of Law,* 37 N.Y.L. SCH. L. REV. 209 (1992); Kim L. Scheppele, *Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth,* 37 N.Y.L. SCH. L. REV. 123 (1992); Richard A. Shweder, *The Authority of Voice,* 37 N.Y.L. SCH. L. REV. 251 (1992).

23. *See* Sherwin, *supra* note 17:

> [T]he articles in this volume provide a fresh approach to what law is and where it can be found. They suggest that law's domain includes, but also reaches beyond, the realms of judicial discourse, legislative or regulatory enactment, and academic debate. Law's force can be felt wherever lawyers, officials, and lay people confront or anticipate legal issues and conflicts.

Id. at 6.

to achieve those objectives.[24]

The *New York Law School Law Review* lawyering theory symposium should dispel one important concern that may be raised by Judge Edwards' call for more " '[p]ractical' legal scholarship," namely, the concern that such scholarship would detract from law schools' academic or scholarly mission. The articles in the symposium demonstrate that legal academics can usefully apply sophisticated theoretical analyses to everyday lawyering practices. They also show that significant legal scholarship need not be abstract and esoteric or discuss matters of concern to only a few practitioners. To the contrary, the symposium's writings on lawyering theory illustrate that legal scholarship can be widely helpful among practitioners while also contributing to theoretical insights about the law and the legal system.

For those who find the lawyering theory branch of legal scholarship a promising means for narrowing the gap between law schools and the legal profession, the *New York Law School Law Review* symposium is especially exciting because it suggests directions for future scholarship. Sherwin's article clarifies that this is a major purpose of the symposium:

> My hope is that this effort will help to set the stage for the kinds of concrete studies that I and others believe can come of a lawyering-theory approach. The youngest fruits of this approach may be tasted (and tested) in the sampling of articles that follow this one. These articles are meant to be illustrative, marking perhaps the beginning of a more extensive effort to produce a broad range of similar micro-analytical lawyering case studies.[25]

Accordingly, his article concludes by outlining "a program for future research and innovation" in lawyering theory scholarship.[26]

2. *Ronald Dworkin's Revival of a Neglected Genre, an "Argumentative Essay" Concerning Theoretical and Policy Issues*

A second important recent example of " '[p]ractical' legal scholarship" further reinforces the point that such scholarship can make significant contributions to theoretical discussions among legal and other academics, while at the same time affording helpful insights to those who shape and make practical policy decisions. This second example is the latest book by Ronald Dworkin, Professor of Law at New York University and University Professor of Jurisprudence at Oxford Uni-

24. *See* Amsterdam & Hertz, *supra* note 22.

25. Sherwin, *supra* note 18, at 10.

26. *Id.* at 51-53.

versity: *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom.*[27]

Since Dworkin is a distinguished jurisprudential philosopher, it is not surprising that this book offers nuanced solutions to the challenging theoretical problems posed by abortion and euthanasia. What is more unusual, though, and especially noteworthy in light of Judge Edwards' call for " '[p]ractical' legal scholarship," is that Dworkin consciously sets out simultaneously to provide lawyers, judges, legislators, and others engaged in the policymaking process with concrete approaches for addressing the troubling practical problems presented by abortion and euthanasia. In so doing, he expressly recognizes that he is inventing — or at least reinventing — the lapsed genre of " '[p]ractical' legal scholarship" whose decline Judge Edwards laments. Dworkin explains:

> I hope that the book may serve as an example of a now neglected genre: an argumentative essay that engages theoretical issues but begins with, and remains disciplined by, a moral subject of practical political importance.
>
> Political philosophers, philosophers of law, social theorists, linguists, structuralists, pragmatists, and deconstructioninsts have in recent years produced innovative and sometimes compelling theories, which other people have tried to apply to social and political issues. But these theories have not yet improved the quality of public political argument as much as they might have, and that is partly because though the theories plainly do have implications for particular contemporary political controversies, they were not constructed for or in response to them.[28]

Dworkin's book brilliantly fulfills the foregoing, integrative vision. It develops a subtle but powerful theory for analyzing the various difficult issues entailed in the abortion and euthanasia controversies from both academic and policy-oriented perspectives. Synthesizing philosophical, constitutional, and political perspectives, this book should have a profound, transformative impact on academic debates, judicial rulings, and public policy determinations alike. Moreover, since Dworkin is such an eminent, influential legal scholar, it is likely that other legal scholars will emulate his reinvigoration of the "practical" — or, perhaps more aptly, "practical-theoretical" — genre of legal scholarship. Judge Edwards and those who share his concern about "[t]he growing disjunction between . . . legal practice and . . . [legal]

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27. RONALD DWORKIN, LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM (1993).

28. *Id.* at 28-29; *see also id.* at 29: "Theories homemade in that way [tailored to resolve practical problems] may be more likely to succeed in the political forum. They may be better suited to the academy, too, but that is another story."

scholarship"[29] should find this a heartening prospect.

B. *Legal Pedagogy*

The second disjunction between legal education and legal practice that Judge Edwards deplores flows from the first. As he explains, " 'Impractical' scholars often are inept at teaching doctrine, for either lack of any practical experience or lack of interest in the subject matter, or both."[30] Edwards defines "doctrinal education" broadly, just as he broadly defined " '[p]ractical' legal scholarship":

> [T]he law student should acquire a capacity to use cases, statutes, and other legal texts. The person who has this capacity knows the full range of legal concepts . . . . This person is also skilled at interpretation: the reading of a case or statute, or a mass of case law, or a complex regulatory scheme. Finally, this person can communicate the interpretive understanding, both orally and in writing.[31]

I would also like to note a significant counterexample to the general disjunction between legal pedagogy and practice. The faculty of New York Law School, where I teach, recently formalized an institutional commitment to bridge this gap, which many faculty members had already been seeking to do on an individual basis.[32] Judge Edwards' article, as well as the 1992 ABA report that endorsed a narrowing of the gap between law schools and the legal profession,[33] played notable roles in the deliberations leading to this institutional initiative.

New York Law School's refocused pedagogical approach reflects an integrative view, which rejects traditional dichotomies between legal theory and practice, and between doctrinal law and "lawyering."[34] Members of the faculty have developed and taught a number of courses, and will expand the range and quality of such courses, that seek to instill in our graduates not only the broad "doctrinal" skills that Judge Edwards describes, but also other skills essential to functioning legal professionals, including:

> helping clients to define goals, evaluating which of the available means best serves a client's ends, uncovering relevant facts and deciding

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29. Edwards, *supra* note 1, at 42.

30. *Id.* at 57.

31. *Id.*

32. *See* Memorandum from the Planning Committee to Harry H. Wellington, Dean and Professor of Law, New York Law School (May 25, 1993) ("Final report on priorities for New York Law School," rev. ed.) (on file with author) [hereinafter Memorandum].

33. *See* TASK FORCE REPORT, *supra* note 10.

34. *See* Memorandum, *supra* note 32, at 6 (describing "lawyering"-oriented pedagogy as "a notion of legal learning broader than the traditional one, one that encompasses also what practitioners of the law need to do and to think about when they . . . interpret and apply the law to the circumstances of their clients").

whether and how to use them . . . communicating [persuasively] orally and in writing . . . do[ing] legal research . . . plan[ning] effectively to help clients achieve their ends over time, and . . . identify[ing] and resolv[ing] ethical problems.[35]

Lawyering theory scholarship and the lawyering-oriented pedagogy at New York Law School explore concrete issues of concern to the bench and the bar not by abandoning sophisticated theory but by integrating theory with analysis of these issues. Moreover, consistent with Judge Edwards' recommendation that law schools make a more concerted effort to train ethical practitioners,[36] these new courses also integrate ethical concerns into the doctrinal, practical, and theoretical mix, thus paralleling the way in which lawyers and judges confront such interrelated issues. The faculty-adopted report that details New York Law School's new pedagogical focus provides the following overview:

To correct what we perceive as an imbalance in legal education toward the appellate judge's perspective on law . . . we recommend redirecting our academic program toward the attorney's perspective on and roles in the legal system. . . . An education that requires students to consider legal rules and policies from the perspective of the practitioner will better prepare them to recognize and rise to the responsibilities and opportunities that they will have as members of the bar. Considering how lawyers participate in the legal system, and the tools available to them in pursuing their clients' ends, will naturally and continually raise ethical questions in meaningful context; that is, it will raise normative as well as strategic questions.

. . . .

A steady diet of appellate opinions is a necessity (not a necessary evil) in the study of our legal system; we do not recommend abandoning the study of doctrine as it is given in appellate opinions. What we hope to do is to help our students to a more sophisticated understanding of the legal system and their future role in it than can be gleaned from an academic diet that consists almost exclusively of appellate opinions and considers doctrine solely from the perspective of the appellate judge. We believe that this can best be done by breaking down some of the compartments into which legal education has hardened: doctrine separated

35. *Id.* at 7.

36. *See* Edwards, *supra* note 1:

If law firms continue on their current course [exerting institutional pressures on lawyers to behave unethically], law schools must work all the harder to create "ethical graduates." Such graduates will at least attempt to resist the institutional pressures and practice law in a manner that serves the public interest. The J.D. who . . . knows nothing of professional responsibility, will succumb all the more readily to the pervasive materialism of the law firms. The law schools should perhaps not be blamed for unethical practice, but they have considerable power to correct it. . . .

Unfortunately . . . a "strong foundation in ethics" is not being built in legal education. . . . The professional responsibility class must not be "a joke." More generally, ethics can and should be taught pervasively, in almost every law school course.

Id. at 73-74 (footnotes omitted.)

from theory separated from "skills" training separated from professional ethics.

> The kind of education we advocate would broaden our students' learning by weaving strategic questions (how can you use substantive and procedural rules and policies to your advantage in a given situation?) and normative considerations (what are the ethical, social, and policy implications of your strategic choices?) into the study of the rules and policies themselves.[37]

New York Law School's commitment to bridging the gap between pedagogy and practice is reflected not only in its curriculum, but also in other contexts, including a series of faculty development seminars focusing on pedagogical issues. These seminars seek to increase faculty members' effectiveness in training our students to do what the vast majority of them — along with the vast majority of all law school graduates — will do throughout their professional careers: practice law.

As New York Law School faculty members continue to develop course and pedagogical materials aimed at preparing students for what Judge Edwards labels "ethical practice,"[38] I hope that we will be able to disseminate such materials, as well as our experience with them, within the legal academic community through conferences, seminars, and publications. Thus, this counterexample may prove to be significant not only in and of it itself, but also as a model for faculty members at other law schools who also share Judge Edwards' integrative vision of legal pedagogy.

II. Lawyers Should Do Public Service Work

As noted above,[39] I enthusiastically endorse Judge Edwards' view that all lawyers should devote some time, on a volunteer basis, to public interest work. While Judge Edwards makes a persuasive argument that such work is a matter of professional obligation,[40] I will try to show why lawyers should voluntarily *choose* to do such work, even assuming arguendo that they have no professional duty to do so.

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37. Memorandum, *supra* note 32, at 6-7.

38. Edwards, *supra* note 1, at 66.

39. *See supra* text accompanying notes 7-8.

40. *See* Edwards, *supra* note 1, at 67; *see also* Harry T. Edwards, *A Lawyer's Duty To Serve the Public Good*, 65 N.Y.U. L. Rev. 1148 (1990).

A. *Broad Concept of Public Service Legal Work*

1. *Lawyers' Own Conception of the Public Interest*

First, along with Judge Edwards,[41] I think public interest work should be understood, broadly and neutrally, as encompassing any case or cause that advances the lawyer's own vision of the common good, whatever that may be. Of course, I would be thrilled if all lawyers decided to do volunteer work for the American Civil Liberties Union (ACLU)! But I would also be pleased if each lawyer did any other public service work, as I have broadly defined it, including work for an organization that opposes the ACLU on particular cases or issues.

Indeed, in an important sense, I feel more in common with lawyers and organizations whose substantive positions I reject than with lawyers who do not care enough about public issues to take positions at all. We may disagree about what policies or court rulings will best serve the public interest, but we are all dedicated to expending our professional energies to pursue those policies or rulings.

The broad, neutral definition of public service legal work that I propose would encompass any legal work for any government agency, even though many private sector public interest groups — including the ACLU — are often adversaries of the government. For example, I would consider lawyers for both the Sierra Club and the Environmental Protection Agency to be public service lawyers, even though they may often be on opposite sides of particular controversies.

2. *Part-Time, as Well as Full-Time*

I also believe that public interest legal work should be broadly understood in a second respect. Specifically, it should extend not only to work done by lawyers in full-time, salaried public service positions, but also to part-time, volunteer public interest work that is done by other lawyers.

For the remainder of this piece, I will focus on the "hybrid model" of full-time private practice[42] combined with part-time pro bono work, for two reasons. First, this is the model that accords with my own experience. I have always earned my living either as a lawyer with a private law firm or as a law professor. Yet, I have always done pro

41. *See* Edwards, *supra* note 1, at 67 (stating that a lawyer "has an ethical obligation to practice public interest law . . . [and] to advance some causes that he or she believes to be just").

42. This term is intended to designate any practice other than one of a public interest nature. It would include practice in a private law firm, work for a corporation or business, and teaching law.

bono work simultaneously, mostly for the ACLU and other human rights organizations. This has been a very satisfying combination for me personally, and it is one that is manageable no matter what your paying legal career path might be.

This last observation leads to my second, more important, reason for emphasizing the "hybrid" model: it applies to far more lawyers. After all, there are only a finite number of staff jobs with public service organizations. However, there is no reason why every single member of the legal profession should not do some part-time, voluntary pro bono work. Thus, the potential applicability of this hybrid approach is boundless.

3. *The Benefit Extends Beyond the Public*

My third observation about the meaning of public interest legal work ties in directly to my main theme. The various terms for such work all refer only to the *public* benefit. For example, the Latin phrase that is commonly used to describe this work, *pro bono publico,* literally means "for the good of the public." Of course, the public does benefit enormously from such work. But the terminology masks the central fact that the work is equally for the lawyer's *own* good, as well as for the good of the legal profession. Unfortunately, both the legal profession and individual lawyers certainly can use a boost to their images and morale. I want to elaborate on this point because it underscores one of the major positive impacts of doing public service work: such work counters the disturbingly negative attitudes toward the legal profession that are widely held both by the general public and by lawyers themselves.

B. *Pro Bono Legal Work Can Help To Counter Negative Attitudes Toward the Legal Profession*

1. *Negative Public Attitudes Toward Lawyers*

Lawyer bashing seems to have been with us throughout history, but it seems to be especially rampant right now. As a lawyer, I can hardly go to any social gathering without at least one non-lawyer subjecting me to at least one anti-lawyer joke. Such negative jokes and stereotypes abound in publications and in the media as well.

For example, I recently saw a new book by humorist Joe Queenan about how to survive a Quayle presidency. It is entitled *Imperial Caddy* and subtitled, "The Rise of Dan Quayle in America and the Decline and Fall of Practically Everything Else."[43] Queenan's theory

43. JOE QUEENAN, IMPERIAL CADDY (1992).

is that a Quayle presidency "wouldn't matter," because the presidency and vice presidency are essentially irrelevant. In making this point, he succumbs to the apparently irresistible urge that all humorists feel to take a swipe at lawyers: "The Ur-Truth about the American system of government is that: It takes a licking but it keeps on ticking. If twenty-four lawyer presidents and thirty-two lawyer vice presidents couldn't destroy it during its first two centuries of existence, nothing can."[44]

Public opinion polls show that we lawyers belong to one of the least popular professions, and that we are almost as unpopular as U.S. congressmen and senators, which is saying a lot! For example, a Gallup Poll during the summer of 1992 asked respondents how they would rate the honesty and ethical standards of people in various fields.[45] Only eighteen percent rated lawyers' honesty and ethics as "high" or "very high," while twice as many, thirty-six percent, rated lawyers' honesty and ethics as "low" or "very low." [46] These numbers further showed that lawyers had slipped in the public's regard even since the preceding year.[47] The public's negative attitude toward lawyers is especially pronounced with regard to trial lawyers.[48]

In contrast with their negative attitudes toward lawyers' honesty and ethical standards, members of the public tend to view medical doctors as very honest and ethical. To be precise, fifty-two percent of the survey respondents rated doctors' ethical standards as "high" or "very high," while only nine percent rated them as "low" or "very low."[49]

Let us turn back to Dan Quayle, because he is on both sides of this issue. On the one hand, he is a lawyer. Therefore, as indicated by the passage from the book that I quoted earlier, to the extent that humor-

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44. *Id.* at 157.

45. Search of DIALOG, Poll File (July 8, 1993) (search for polls containing the terms "honesty" and "ethical standards"), *available in* THE GALLUP POLL: PUBLIC OPINION 1992, at 118-19 (George Gallup, Jr. ed., 1993).

46. *Id.* The corresponding numbers for congressmen were as follows: "high" or "very high" — 11%; "low" or "very low" — 43%. For senators, the figures were: "high" or "very high" — 13%; "low" or "very low" — 40%.

47. In a May 1991 survey, 22% of respondents rated lawyers' honesty and ethical standards as "high" or "very high," while 30% rated them as "low" or "very low." *Id.*

48. *See* Alessandra Stanley, *Selling Voters on Bush, Nemesis of Lawyers,* N.Y.TIMES, Aug. 31, 1992, at A1:

> Recent public-opinion surveys suggest that Americans viscerally dislike lawyers and feel that society is, in the words of one Bush campaign focus-group participant, "sue-happy." . . .
>
> As Fred Steeper, a Bush poll-taker, put it rather gleefully: "Trial lawyers today have the same favorability rating as Richard Nixon in 1974."

Id. at A12.

49. Search of DIALOG, *supra* note 45.

ists make Quayle the frequent butt of jokes, they often also mock the legal profession in the same breath. On the other hand, during his vice presidency, Quayle himself made it a pet cause to criticize harshly the legal profession.[50]

During the 1992 presidential campaign, George Bush took up his vice president's lawyer-bashing theme. In fact, this was a major point in President Bush's acceptance speech at the Republican National Party Convention in August, 1992. The *New York Times* ran a front-page story on that aspect of the speech. It opened with the following line: "The President's aides have found something they think is even scarier to voters than Willie Horton: lawyers."[51]

2. *Negative Attitudes Among Lawyers Themselves*

In light of the relentless public criticism of our profession, it is not surprising that many lawyers feel a lack of self-esteem and professional satisfaction. There are additional reasons for the increasing dissatisfaction among lawyers, including work pressure and financial pressure.

In 1984, the American Bar Association's Young Lawyers Division undertook a "National Survey of Career Satisfaction/Dissatisfaction," the first in-depth survey of lawyers' attitudes toward their work.[52] The survey revealed that lawyers suffer from severe professional dissatisfaction.[53] In 1990, the ABA Young Lawyers Division conducted a follow-up survey in response to what its leaders viewed as increasing signs of lawyer dissatisfaction and burnout. Alas, the 1990 survey indeed supported these perceptions. The number of lawyers who were very satisfied with their jobs fell dramatically — by twenty percent.[54] Strikingly, this severe drop-off in professional satisfaction was manifest throughout the legal profession, regardless of the lawyer's particular employment setting.[55] In light of these troubling indications of

50. *See, e.g.*, John H. Cushman, Jr., *G.O.P. Proposes Curb on Lawsuits*, N.Y. TIMES, Feb. 5, 1992, at A21; William H. Miller, *Lawyer Jokes and Dan Quayle*, INDUSTRY WK., Jan. 20, 1992, at 50.

51. Stanley, *supra* note 48. Stanley continues:

> George Bush and Vice President Dan Quayle have begun painting Bill Clinton as a captive of a special interest group — "sharp lawyers" in "tasseled loafers" who, as Mr. Bush put it in his speech to the Republican convention, are "running wild," terrorizing doctors and even Little League coaches with personal-injury suits, malpractice suits and other kinds of liability cases.

Id. at A1.

52. *See ABA Probes Sources of Lawyer Burnout*, N.J. L.J., Oct. 18, 1990, at 20.

53. *Id.*

54. *Id.*

55. "Across the board, regardless of employment setting (private, corporate, government), the number of lawyers very satisfied with their jobs fell a dramatic 20 percent; significantly more

pervasive professional malaise among lawyers, the Young Lawyers Division concluded that this problem "warrants the immediate attention of the profession."[56]

I am particularly disturbed by these surveys because they do not match the reality — or at least the potential reality — of the legal profession, based on my personal experience. This is a great profession. I am proud to be a lawyer. Many of the most impressive and most wonderful human beings I have met and worked with are lawyers. I consider it an honor, as well as a significant responsibility, to be educating future generations of lawyers.

Of all the goals toward which I am working, none is more important to me than helping to instill in law students, as our country's future lawyers, my vision of the potential greatness of our chosen profession. In this way, I hope to lay the foundations that will help them translate that vision into a reality.

3. *Remaking the Legal Profession*

As Judge Edwards' article stressed,[57] those engaged in the practice of law define not only standards of legal practice but also the nature of the legal *profession.* Lawyers can make their profession a calling of the highest order, a way to pursue our society's highest ideals: liberty, equality, and justice for all. Or they can make it something very different: the deserved target of every nightclub comedian and political demagogue.

On an individual level, lawyers can make their professional life into a path to personal growth and exploration. Or they can let it turn them into narrow and cramped persons. I have seen both happen to lawyers I have known.

Nothing can do more to ennoble a lawyer's own experience, and also to elevate the public perception of the legal profession, than some involvement in public service work. I do not necessarily refer to public service work on a full-time basis, but just as some regular, significant element in the lawyer's overall professional activities.

The ABA Young Lawyers Division apparently recognizes the vital role that public service work can play in dispelling the widespread professional dissatisfaction that its surveys have disclosed among lawyers.

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women, regardless of position, are dissatisfied than men, and dissatisfaction rates for both sexes have more than doubled." *Id.*

56. *Id.*

57. *See* Edwards, *supra* note 1, at 75 (quoting Felix Frankfurter, then a professor at Harvard Law School: " 'In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them.' ").

In 1988, that Division adopted a resolution urging all lawyers to perform public service work and urging all law firms, corporate employers, and law schools to adopt policies that would facilitate such work.[58]

I think that the benefit to lawyers and the legal profession from public service work is less intuitively obvious than its other major positive impact: its benefit to the public. Therefore, the remainder of this piece will concentrate on the lawyer-centered benefit of pro bono legal work. First, though, I will comment briefly on the enormous public good that lawyers have done and can do.

C. *Public Benefit from Lawyers' Public Service Work*

There is a marvelous American tradition of lawyers donating time to public service. This lawyers' pro bono tradition is one aspect of the general pattern of active voluntarism in the United States.[59] Many human rights and other public interest causes have been won thanks to the generosity of lawyers. The American Civil Liberties Union certainly depends on such services. Many of our great cases — and many great landmarks of United States constitutional law — were won by pro bono counsel.

One of the ACLU's prominent volunteer attorneys was the legendary Clarence Darrow. It was as an ACLU volunteer lawyer that he

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58. The Young Lawyers Division adopted Report No. 122A, which reads:

Be It Resolved, That the American Bar Association

(1) Urges all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year, to *pro bono* and other public service activities that serve those in need or improve the law, the legal system, or the legal profession;

(2) Urges all law firms and corporate employers to promote and support the involvement of associates and partners in *pro bono* and other public service activities by counting all or a reasonable portion of their time spent on these activities, but in no event less than 50 hours, towards their billable hour requirements, or by otherwise giving actual work credit for these activities; and

(3) Urges all law schools to adopt a policy under which the law schools would request any law firm wishing to recruit on campus to provide a written statement of its policy, if any, concerning the involvement of its attorneys in public service and *pro bono* activities.

AMERICAN BAR ASSN., SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES 43 (1988) (proceedings of the ABA's annual meeting of Aug. 9-10, 1988) [hereinafter HOUSE OF DELEGATES].

59. *See, e.g.,* Anita Manning, *Charitable Spirit Survives Hard Times,* USA TODAY, Oct. 16, 1992, at 1D:

Americans remain generous even when the chips are down.

. . . .

. . . 51% of Americans do volunteer work, averaging 4.2 hours a week, up from four hours per week by the 54% who volunteered in 1989.

Even during a time when household incomes fell 7%, researchers found "giving and volunteering in America are still pervasive and wonderfully attractive characteristics of our society," says Brian O'Connell, president of Independent Sector, a coalition of corporations, foundations and volunteer groups, which released the survey . . . .

Id.

represented John Scopes in the famous "monkey trial," which challenged Tennessee's law forbidding the teaching of evolution.[60] The great American humorist, Will Rogers, made an observation about the *Scopes* case that illustrates a point I made earlier: "We had that 'monkey trial' down in Tennessee to prove that man descended from the apes but I never believed that. Because I never yet met an ape who was devious, heartless or greedy[,] I always figured man was descended from lawyers."[61]

In contrast with Will Rogers' derision of lawyers, I wish that more of the human race would carry on the traits embodied by Clarence Darrow and many other outstanding lawyers who have helped the ACLU to protect human rights for all Americans: generosity, courage, idealism, intellectual integrity, and — perhaps most important — a passionate commitment to justice for all.

To this day, the vast majority of the ACLU's legal work, all over the country, continues to be done by volunteer lawyers. Nationwide, we have fewer than seventy-five staff lawyers. Yet, at any given moment, ACLU cases are being handled by thousands of volunteer or "cooperating" lawyers, who contribute some portion — in many cases, a substantial portion — of their time to this work. It is only due to the generous donation of these pro bono legal services that the ACLU has become, in effect, the largest private law firm in the country, handling more than 6000 cases a year and appearing before the Supreme Court more often than any other organization except the U.S. Justice Department.[62]

I am proud to be a member of this important cadre of ACLU cooperating attorneys. Although the ACLU presidency is a very demanding position, it is a nonpaid, volunteer one. Thus, I am probably the most active volunteer ACLU lawyer in the country! As ACLU president, one of my most inspiring experiences has been to travel all over the country and meet many of the lawyers, from all branches of the profession, who are handling civil liberties cases in cooperation with the ACLU. The first time I was asked to speak to a group of ACLU cooperating lawyers — it happened to be in Texas — I asked the ACLU's then-Legal Director what I should say. I will never for-

60. *See* SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 72-75 (1990).

61. Memorandum from Annemarie Stoll, Theater Operations Assistant, Fisher Theater, Detroit, Michigan, to Heather K. Gerken, Editor-in-Chief, *Michigan Law Review* 1 (June 8, 1993) [hereinafter Will Rogers Memorandum] (relying on attribution by Peter Stone, book writer for *The Will Rogers Follies: A Life in Revue*) (on file with the *Michigan Law Review*).

62. *See Guardian of Liberty: American Civil Liberties Union,* BRIEFING PAPER NO. 1 (ACLU, New York, N.Y.), at 2 [hereinafter *Guardian of Liberty*].

get his answer, because it rings so true: "Tell them that they are all heroes and heroines."

The ACLU has the largest nationwide network of volunteer attorneys of any public interest organization, but many other such organizations also enlist the assistance of private sector lawyers on a part-time, volunteer basis. I am proud that other organizations try to copy the ACLU in this regard, even organizations that ideologically oppose it. Most recently, the conservative fundamentalist leader, the Reverend Pat Robertson, founded an organization called the ACLJ, an acronym for the "American Center for Law and Justice."[63] Deliberately mimicking the ACLU in name, as well as in its effort to advance its goals through litigation carried out by a cadre of volunteer lawyers,[64] the ACLJ was expressly designed to combat what Pat Robertson described as the "anti-God, anti-family" activities of the ACLU.[65] As the ACLU's Media Relations Director, Phil Gutis, commented to the *Washington Post:* "Imitation is the sincerest form of flattery."[66]

The formation of the ACLJ to counter some of the ACLU's activities illustrates the broad ideological spectrum that is spanned by the various public interest organizations for which lawyers can do pro bono legal work. Such organizations also span a broad spectrum in terms of the legal issues on which they work, their clientele, the types of cases they handle, and the other kinds of work they do. It is important to stress that lawyers not only litigate, but also engage in a range of other tasks that can promote public interest causes and groups, including legislative lobbying, public speaking, writing, and other forms of public advocacy.

I can say confidently to all lawyers that there is some pro bono work that will be tailor-made for you, no matter what your intellectual

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63. *See* Mark O'Keefe, *Robertson Tries To Outdo ACLU,* CHI. TRIB., Oct. 9, 1992, § 2, at 9.

64. *See* Roy Rivenburg, *Litigating for a "Godly Heritage,"* L.A. TIMES, Dec. 30, 1992, at E1:

> Actually, much of the American Center for Law and Justice is patterned after the ACLU — the use of free labor from law students and professors . . . and the bid to set up a nationwide network of volunteer attorneys. . . .
>
> "We've learned a lot from them," [Keith] Fournier [ACLJ executive director] says.

Id. at E51.

65. *See id.* at E1; *see also* O'Keefe, *supra* note 63:

> Robertson has named the new group so that its initials — ACLJ — are but one letter different from those of the American Civil Liberties Union, a chief adversary of the Christian Right. Writing this year in a newsletter, Robertson singled out the ACLU for special mention among groups opposed to God and family. The ACLU, which often undertakes unpopular free-speech and civil-liberties cases, is Robertson's main target.

O'Keefe, *supra* note 63, at 9.

66. O'Keefe, *supra* note 63, at 9. Gutis added, "[w]e regard their formation as a compliment to our effectiveness and welcome their participation in the public arena." *Id.*

interests, no matter what your philosophical beliefs, no matter what your professional skills, and no matter what your time constraints.

I will return to this point later, when I note the personal benefits from doing public interest work, because the range of opportunities available through such work allows lawyers to complement their private practice experience in many ways and thus to lead a fuller professional life.

Before elaborating on the personal benefits lawyers realize from doing public service work, though, I want to mention some of the areas in which public service by private practitioners would be especially welcomed. There is a crying need for all lawyers to subscribe to the goal expressed in the carving above the entrance to the Supreme Court building: "Equal Justice Under Law." Yet, as the *American Lawyer* recently documented in a special report entitled *Poor Man's Justice,*[67] the "serious problems" that plague governmental efforts to provide legal representation across the country to poor people accused of crimes "should disturb the conscience of every American concerned about equal justice."[68]

Because of fiscal pressures on state and local governments, government-funded public defenders and legal aid offices are vastly overburdened. This means both that they cannot handle all the cases that come to them, and that they cannot do an adequate job on the cases they do take. Accordingly, the American Bar Association has

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67. *Poor Man's Justice: A Special Report on Indigent Defense, Thirty Years After* Gideon, AM. LAW., Jan.-Feb. 1993, at 45.

68. Andy Court, *Is There a Crisis?*, AM. LAW., Jan.-Feb. 1993, at 46. Court adds:

> As our reporters fanned out across the country, they did not look exclusively at the worst places, but they did find serious problems that should disturb the conscience of every American concerned about equal justice.
>
> Why, for example, would any judge, anywhere in this country, assign a death penalty case to a civil practitioner who had never even taken a felony case to trial? . . .
>
> Why would judges and politicians anywhere in this country tolerate a system in which a defendant could be detained for so long before trial that, by the time he was vindicated, he had served more time than if he had been convicted and received the minimum sentence? And if that same person spent four months in jail *after the charges had been dropped* because his public defender never informed him of the development and didn't take steps to secure his release, wouldn't one think that the judges and politicians responsible for the system would do something other than argue among themselves while another man languished in the same jail, for over a year without a trial?
>
> Why should courts drive a wedge between defense lawyer and client through fee caps, lump sum contracts, and flat fees that create blatant economic disincentives for indigent defenders to invest time in a case? . . .
>
> . . . .
>
> Why should a chief federal public defender have to worry that if his lawyers too zealously defend clients in court, federal judges may not reappoint him to another term? . . .
>
> Why, on the state level, should court-appointed defense lawyers know that if they do something to anger the judge who is hearing their case — even if it is in the best interests of their clients — they may not get any more work from that judge in the future?

Id. at 47 (citation omitted).

issued several recent reports that have decried the poor quality of representation that many indigents receive.[69]

The most dramatic examples are cases in which accused criminals have been condemned to death after shockingly poor representation by appointed counsel.[70] It is no coincidence that virtually everyone on death row is poor. Indeed, some observers have pointed out that it is ironic to refer to the death penalty as "capital punishment," because "only those without capital get the punishment."[71] Even prominent defenders of the death penalty in principle believe that it should not be meted out unless all accused defendants who face the possibility of such a sentence, including those who cannot pay for private counsel, receive adequate and effective representation. For example, former U.S. Attorney General Ed Meese repeatedly has taken this position in public debates with me.[72]

In many states, it will be up to the private bar to ensure that all indigent defendants, including those facing a death penalty, receive effective legal counsel.[73] In a number of states, the bar associations are mobilizing lawyers to donate their services to assist in resolving what

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69. *See, e.g.*, Robert L. Spangenberg, *We Are Still Not Defending the Poor Properly*, CRIM. J., Fall 1989, at 11. This article updates a 1982 national survey, *National Criminal Defense Systems Study*, conducted under contract with the United States Department of Justice, Bureau of Justice Statistics, as well as a 1986 study, *Criminal Defense for the Poor*. Spangenberg concludes: "Overall . . . the indigent defense delivery system is in a state of crisis throughout the country. Only substantial additional resources will help to relieve the problem." *Id.* at 45; *see also* Henry Rose, *Law Schools Are Failing to Teach Students to Do Good*, CHI. TRIB., July 11, 1990, at C17 ("The Reagan administration's assault on the Legal Services Corporation has decimated civil legal representation for the poor. Recent studies . . . reveal that poor people can obtain legal assistance for only one in five of their civil problems.").

70. *See, e.g.*, People v. Garrison, 765 P.2d 419 (Cal. 1989). In *Garrison*, a defendant convicted of first-degree murder and sentenced to death submitted a habeas corpus petition based on ineffective assistance of counsel. The petition alleged that the court-appointed counsel was an alcoholic who smelled of alcohol throughout the trial; drank in the morning, during court recesses and throughout the evening; and was arrested for driving to the courthouse with a .27% blood-alcohol content on the second day of jury selection. Despite these allegations, the court denied the petition.

71. *See The Death Penalty*, BRIEFING PAPER NO. 8 (ACLU, New York, N.Y.), at 2; *see also Guardian of Liberty*, *supra* note 62, at 2 (quoting Clinton Duffy, former warden at California's San Quentin Prison, as stating that capital punishment is "a privilege of the poor").

72. Public Debates Between Edwin Meese III and Nadine Strossen, President, American Civil Liberties Union, at Slippery Rock University, Slippery Rock, Pa. (Mar. 1, 1993), Northwest Missouri State College, Maryville, Mo. (Dec. 1, 1992), University of North Carolina, Chapel Hill, N.C. (Nov. 13, 1992), Victoria College, Victoria, Tex. (Oct. 13, 1992), Randolph-Macon College, Ashland, Va. (Sept. 15, 1992), and the University of Nebraska, Lincoln, Neb. (Apr. 1, 1992); *see also* Ronald Smothers, *A Shortage of Lawyers to Help the Condemned*, N.Y. TIMES, June 4, 1993, at A21:

> Even some of the people who defend death sentences agree that the fairness of the sentence is often called into question by mistakes at the trial level. . . .
>
> . . . [Ernest Preate, the Attorney General of Pennsylvania] and others have tried to get more state and Federal money for . . . state death-penalty resource centers.

Id.

73. Smothers, *supra* note 72, states:

has been called a "crisis" in terms of the current inadequacy of defense services for poor people accused of crime.[74] All lawyers should share this burden, which is great in both senses of the word: very large and very important.

D. *Lawyers' Public Service Work Benefits Lawyers*

I will turn now to the last, but far from least, reason that lawyers should choose to do pro bono legal work: the good that lawyers can do for themselves and, by extension, for the legal profession.

In 1992, I had the great privilege of giving the commencement address at the graduation ceremonies of the University of Pennsylvania Law School. I was especially excited about this event because Penn's 1992 graduating class was the first to have completed a mandatory pro bono program. To the best of my knowledge, this is the most extensive such program at any law school in the United States. During each of their second and third years of law school, the students are required to do thirty-five hours of pro bono work, in addition to their classroom requirements.[75]

Law school programs such as the University of Pennsylvania's mandatory pro bono program make an especially important contribution to reshaping the legal profession, and individual lawyers, toward Judge Edwards' ideal of "ethical practice." As Judge Edwards notes, if law firms are not instilling in their young lawyers the ideals of such a practice, including the sense of responsibility to do public interest work, then it is particularly important for law schools to do so.[76] Edwards elaborates upon this point:

> If law firms continue on their current course, law schools must work all the harder to create "ethical graduates." Such graduates will at least attempt to resist the institutional pressures and practice law in a manner that serves the public interest. The J.D. who has no interest in pro bono work . . . will succumb all the more readily to the pervasive materialism

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> Overwhelmed by a surge of death sentences and a desperate shortage of money to pay for experienced legal counsel, the small band of lawyers who represent condemned inmates in their final appeals is turning to law firms in distant states for volunteers. And they say even that well is running dry.
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> . . . .
>
> The states are required to pay only for representation at trial. Once a defendant is sentenced to death, legislatures have generally provided for only initial and direct appeals in state courts to be paid for, usually using the same pool of overworked and inexperienced lawyers who represented the defendants at their trials. Eight states . . . pay nothing at all for appeals.

Id.

74. *See* Court, *supra* note 68, at 46.

75. *See* PUB. SERVICE PROGRAM ANN. REP. 1990-1991 (Public Ser. Program, Univ. of Pa. Law Sch., Philadelphia, Pa.) at 1.

76. *See supra* text accompanying note 36.

> of the law firms. The law schools should perhaps not be blamed for unethical practice, but they have considerable power to correct it. . . .
>
> . . . Our law schools must place much more emphasis on serving underrepresented persons.[77]

Some analysts have faulted law schools for not instituting the types of countermeasures Judge Edwards suggests to offset the legal profession's inadequate commitment to pro bono work. For example, law professor Henry Rose stated:

> American law schools are losing their souls. Entering the 1990s, the primary function of legal education in America is to train students to serve affluent people and business interests. . . .
>
> At the same time, 85% of Americans cannot afford the services of an attorney. . . .
>
> . . . .
>
> Most American law schools not only fail to study the maldistribution of legal services in the U.S., they barely even acknowledge it. . . .
>
> . . . .
>
> One of the tragedies of American legal education is the socialization of students to work in profitable practice settings. Many students are attracted to law school because of important moral, political or social values. They view a legal career as an opportunity to contribute to society. However, these aspirations are subverted rather than supported by legal education. The subliminal message of their training is clear to most students: "Real" lawyers work in large firms representing corporate and affluent clients.[78]

The University of Pennsylvania Law School's extensive pro bono program constitutes an important effort to recapture the "soul" of legal education, as described by Rose. It seeks to instill in lawyers-to-be a sense of their ethical responsibility to do public service work even if — perhaps especially if — their primary professional work is serving affluent individuals and business interests. Since the University of Pennsylvania Law School is highly respected, I hope that its pro bono program may serve as a model for other law schools.

I was delighted, but not surprised, to learn that the University of Pennsylvania Law School students who were the first to complete its mandatory pro bono program had a very positive attitude toward this experience. Even some students who initially had been unenthusiastic or hostile changed their minds as a result of their actual experiences. To illustrate this positive reaction, I will quote three of the students. Marta Gutierrez said, "The program is a tremendous confidence builder. Now I know I can do it. I can be a lawyer. I can help people.

77. Edwards, *supra* note 1, at 73 (footnotes omitted).

78. Rose, *supra* note 69, at C17.

I can make a difference."[79] Alex Seldin commented, "When I got here [to Penn], I thought there were two types of lawyers: big firm Wall Street types, and public interest lawyers. Now I know you can do both. The Penn program is breaking down the walls between the careers we can follow."[80] Finally, Wendy Ferber said,

> I've learned a real lesson. No matter how busy you think you are . . . I now know that there is room in my work life for pro bono — even if it has nothing to do with everything else I am doing. All you have to do is decide you're going to do it, and you can.[81]

These comments show that the Penn law students had already learned a lesson that I have seen confirmed throughout the nearly two decades that I have practiced law myself: no matter what your area of specialization, and no matter how you define the common good, your professional life as a lawyer will be immeasurably more satisfying if you complement your ordinary work with public-oriented projects. This is true for two reasons. I have already mentioned the first: pro bono work can round out your professional experience and expand your horizons in many dimensions. Whether you wish to use your existing expertise and specialization or to develop new types of expertise, you can do either through public interest work.

Are you interested in corporate law? Then you can help not-for-profit community organizations become incorporated. Are you interested in getting more involved with the arts and artists? Then you can join Volunteer Lawyers for the Arts. Do you believe that the ACLU does not do an adequate job of protecting property rights? Then you can volunteer for the many organizations that are trying to do so. Do you want to promote law and order without becoming a full-time prosecutor? Then you can arrange with your local prosecutors' office to prosecute individual criminal cases on a volunteer basis. Would you like a change of pace from the lawyering activities in your law practice? Then you can volunteer to teach law-related classes at a local school or adult education program. Are you in the litigation department of a large corporate law firm, where you are getting little hands-on experience or courtroom exposure? Then you can volunteer to represent criminal defendants or to handle housing or other civil cases for poor people to gain that experience.

Conversely, do you have such a hectic trial schedule in private practice that you cannot possibly do pro bono work that also involves

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79. Carl Oxholm III, *Penn Public Interest Program Gets 'A' Grade From Students,* THE LEGAL INTELLIGENCER, Apr. 20, 1992, at 1, 36.

80. *Id.*

81. *Id.*

courtroom appearances and scheduling complications? Would you like a chance to do more legal analysis and writing? Would you also like to have an impact on pathbreaking issues of national importance? Then you can write amicus appellate briefs for public interest organizations, including Supreme Court briefs. For example, the ACLU submits amicus briefs in all Supreme Court cases presenting civil liberties issues. Almost all of these are written by volunteer lawyers. In fact, writing amicus appellate briefs, including for the Supreme Court, was one of my principal volunteer functions for the ACLU while I was an associate in the litigation department of a major New York law firm. Writing appellate briefs on significant legal issues is a wonderfully stimulating and fulfilling undertaking, but at the same time, it is compatible with even an extremely demanding private practice.

The second reason why doing *good* for the public also means doing *well* for yourself as a lawyer is less tangible but, I think, even more important: the unique inspiration and fulfillment that come from pursuing whatever your vision of the greater good might be. The law can and should be more than just a way to serve the private interests of your clients and to provide a living for yourself and your loved ones. Important as those purposes are, it is still more enriching to use your professional skills to serve some higher conceptions of justice and the common good. These pursuits are, in large part, what make the practice of law a profession, rather than just a business. To quote Will Rogers again: "A man makes a living by what he gets — he makes a life by what he gives."[82]

An article by Dan Pollitt, professor emeritus at the University of North Carolina Law School and a dedicated, accomplished human rights activist, illustrates this point. Dan's comments were provoked by watching the UNC Law School graduation ceremonies in 1991. He wrote:

> Last Sunday some 200 young, brilliant, attractive men and women walked across the stage . . . to receive their law diplomas. The law school can take pride in them, and in their competence to serve the people and the state . . . .
>
> This elite group includes the future governors, the judges, the legislators, the movers and shakers of their home communities. They will do well. They will do good.
>
> But will they do enough?
>
> Fictitious alumnus John Jones illustrates the career path many might follow. He returned to his home town and opened a solo practice above the barber shop. His shingle read: "John Jones. Lawyer. Upstairs."
>
> He was a good citizen. He was at his neighbors' side when they

82. Will Rogers Memorandum, *supra* note 61.

purchased their first home, when they incorporated a business, when their children were caught with drugs. He wrote their wills, he probated their estates with fairness and dispatch.

He worked for his community, chairing the by-laws committees of his civic groups and church. He represented the school board and served a stint as a county commissioner. When he died, the townsfolk erected a tombstone for him. It read: "John Jones. Lawyer. Upstairs."

Is this not honor enough? Should John Jones have done more?

He sometimes regretted that he had stood mute when the Kurt Vonnegut books were removed from the high school library; that he had been "too busy" for the young Marine reservist in his church (willing to die but not to kill for his country), who refused the order to report for war. He worried when rumors of sexual abuse at the day care center stampeded the community into a seemingly blind search for vengeance.

He knew the police sweep down by the tracks violated the Fourth Amendment requirement that all warrants particularly describe the place to be searched and the things to be seized. And his mind turned to the Establishment of Religion clause whenever his minister offered prayers at the high school football games.

But why mess with these things? Why be an oddball? It might be his undoing. He listened to the voices within that whispered caution, told him to wait; wait until his prestige was secure, his voice more powerful; wait for the right time, for the right case.

But every lawyer's case is a leap in the dark. There is always the hazard of being undone. If the lawyer stays close by the campfire and never ventures forth, the circle of safety and freedom will contract. And one dark night, the fire will go out. The highest wisdom is to dare.[83]

Several recent American Bar Association reports have urged the dissemination among lawyers of "Creeds" or "Pledges" of "Professionalism," which contain commitments to undertake pro bono work, including for poor clients and individual rights causes. For example, the ABA Young Lawyers Division has recommended the following pledges:

3. I will remember my responsibilities to serve as . . . [a] protector of individual rights.
4. I will contribute time and resources to public service, public education, charitable, and *pro bono* activities in my community.[84]

As another example, the ABA's Tort and Insurance Practice Section has proposed "A Lawyer's Creed of Professionalism" that contains the following commitment: "I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of the administration of justice, and the contribution of uncompensated time and civic influence on behalf of

83. Daniel H. Pollitt, *Law School Can Do More,* NEWS & OBSERVER (Raleigh, N.C.), May 19, 1991, at 1J.

84. HOUSE OF DELEGATES, *supra* note 58, at 44.

those persons who cannot afford adequate legal assistance."[85] The all-too-typical saga of John Jones suggests, though, that these ABA creeds may be honored more in the breach than in the observance.

A model of a different type of lawyer and law practice is offered by a great human rights lawyer for whom Dan Pollitt had worked before going into teaching: Joe Rauh.[86] Following Joe's death in 1992, the *Washington Post* published a letter in which Dan recounted a recent occasion when Joe had been unable to attend the ACLU ceremony honoring his lifelong human rights work. Dan, who was accepting the award on Joe's behalf, asked Joe what he should say in Joe's absence. Joe's reply was, "Tell them we did not make much money but had a hell of a good run."[87]

Somewhat similar sentiments were expressed by a lawyer who may lack Joe Rauh's national renown, but who is well known and respected within his own state of Maryland for his tireless public service voluntarism: Jack L. Levin. When he was honored by the ACLU of Maryland for his lifetime of work on behalf of civil liberties, Jack Levin said: "I decided early on that I would rather make a little bit of difference than a whole lot of money."[88]

Another excellent counterexample to the fictitious John Jones is one of my personal heroes, Louis Brandeis. I have great admiration for the judicial opinions that Brandeis wrote after becoming a Supreme Court Justice, but I am referring now to Louis Brandeis the lawyer, before his Supreme Court nomination. Brandeis was one of the most successful, prominent lawyers of his day, representing many wealthy and powerful clients, including affluent individuals and businesses.[89] Yet he also pioneered the performance of pro bono legal services by private practitioners. When that concept was literally unknown, Brandeis resolved to donate at least one hour per day to public service legal work. He hoped to be able ultimately to donate half his

85. AMERICAN BAR ASSOCIATION, TORT AND INSURANCE PRACTICE SECTION, REPORT TO THE HOUSE OF DELEGATES, June 1, 1988, Exhibit A, at 4.

86. *See, e.g.*, Roxanne Roberts, *A Liberal Dose of Memories; Celebrating Joseph Rauh, Lawyer, Activist & 'Fun Guy,'* WASH. POST, Sept. 28, 1992, at B1. Arthur Schlesinger, Jr., commented of Rauh, "I doubt that any lawyer in American history has had more impact on the Court and on the Congress in the vindication of individual freedoms and in the defense of the Bill of Rights." *Id.*

87. Daniel Pollitt, Letter to the Editor, "'. . . *A Hell of a Good Run,*'" WASH. POST, Sept. 11, 1992, at A22.

88. Pamphlet of the American Civil Liberties Union of Maryland and the Maryland Civil Liberties Foundation, Third Annual Elisabeth Gilman Award Dinner (Nov. 9, 1989) (honoring Jack L. Levin) (on file with author).

89. *See* PHILIPPA STRUM, LOUIS D. BRANDEIS: JUSTICE FOR THE PEOPLE 226 (1984) (stating that, by 1914, Brandeis was "the best-known lawyer in the United States, and by far one of the richest").

total working time to public service. Brandeis never accepted fees for such work, even when the client could afford to pay, because he viewed this work as a lawyer's obligation.[90]

Louis Brandeis supported public interest legal work through substantial financial contributions as well. In accordance with his general belief that workers should participate in the profits and management of the firms that employed them, Brandeis instituted a profit-sharing system for his law firm's employees. He believed that it was unfair for his firm's employees, in effect, to subsidize his public interest legal services by receiving reduced profit shares. Therefore, he voluntarily paid his firm for the value of these services.[91]

Brandeis often addressed law students, seeking to instill in them his notion that membership in the legal profession entailed an obligation to perform public service work. I would like to quote from one such talk that Brandeis gave at Harvard, entitled *The Opportunity in the Law*.[92] Although this lecture was given in 1905 — almost a century ago — it is as pertinent and powerful today as it was then. Foreshadowing Judge Edwards' criticisms of contemporary lawyers,[93] Brandeis complained that too few lawyers in his day were concerned with protecting ordinary people and promoting public causes. The continuing timeliness of Brandeis' talk is further reinforced by his discussion of the public's low regard for the legal profession. His explanation of, and proposed solution for, this still-present phenomenon are also instructive in current circumstances:

> [I]n America, the lawyer was in the earlier period omnipresent almost in the State. Nearly every great lawyer was then a statesman; and nearly every statesman great or small was a lawyer. . . .
>
> . . . .
>
> It is true that at the present time the lawyer does not hold that position with the people that he held seventy-five or even fifty years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the "corporation lawyer," and far too little of

90. *Id.* at 61.

91. *Id.* (noting that Brandeis paid his firm as much as $25,000 on one public service matter alone).

92. *See* LEONARD BAKER, BRANDEIS AND FRANKFURTER: A DUAL BIOGRAPHY 40 (1984).

93. *See* Edwards, *supra* note 1, at 67 (noting "a general consensus [among respondents to Edwards' survey of his past law clerks] that practicing lawyers are overly concerned with profit"); *id.* at 68 ("[L]awyers tend not to find time to fulfill their pro bono obligations.").

the "people's lawyer."[94]

To correct the legal profession's tilt toward representing affluent individuals and corporations, Louis Brandeis urged a dual role for lawyers. First, he maintained, in their private practice lawyers should serve as advisers to the large private interests that dominate our industrialized economy. He urged secondly, though, that in their public service capacity, lawyers are morally obligated to pursue public sector solutions to the inequities that inevitably flow from industrialization.[95]

Demonstrating that work for the public's good can also be for the lawyer's own good, Brandeis offered the following explanation of his refusal to accept any payments for his extensive pro bono work:

> Some men buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest my surplus effort, beyond that required for the proper support of my family, to the pleasure of taking up a problem and solving, or helping to solve it, for the people without receiving any compensation. Your yachtsman or automobilist would lose much of his enjoyment if he were obliged to do for pay what he is doing for the love of the thing itself. So I should lose much of my satisfaction if I were paid in connection with public services of this kind.[96]

CONCLUSION

While Judge Edwards has provided a constructive critique of the partitioning of legal scholarship, legal pedagogy, and legal practice, significant efforts are under way — in part stimulated by his critique — to dismantle such unnecessary, counterproductive barriers. Thus, important recent scholarly works and pedagogical innovations aim to bridge "the growing disjunction between legal education and the legal profession" that Judge Edwards decries. Moreover, Judge Edwards' ideal of "ethical legal practice" is well served by such promising recent developments as the University of Pennsylvania Law School's mandatory pro bono program and the American Bar Association Young Lawyers Division's call for all lawyers to perform public service work, and for all law firms, legal employers, and law schools to facilitate such work.

Public service legal work goes hand in hand with professional and personal satisfaction. I hope as many lawyers as possible will realize

94. Louis D. Brandeis, The Opportunity in the Law, Address Before the Harvard Ethical Society (May 4, 1905), *in* 39 AM. L. REV. 555, 555, 559 (1905).

95. *Id.* at 559, 562-63.

96. STRUM, *supra* note 89, at 61 (quoting interview with Justice Brandeis, *reprinted in* THE CURSE OF BIGNESS: MISCELLANEOUS PAPERS OF LOUIS D. BRANDEIS 266 (Osmond K. Frankel ed., 1934)).

that only by serving the cause of justice in any way that they may choose can they experience the law's full potential as a profession — indeed, as a noble calling. That potential is eloquently captured in a speech that Oliver Wendell Holmes gave in 1866, entitled "The Profession of the Law." Justice Holmes gave this talk to Harvard College students in an effort to persuade them to go to law school. He spent most of his lecture describing the more mundane satisfactions that the legal profession offers, but he then ended with a passage about the profession's more transcendent possibilities. Based on my own experience, and my observation of many other lawyers, I fully concur with every word.[97] Justice Holmes said:

> And now, perhaps, I ought to have done. But I know that some spirit[s] of fire will feel that [their] main question has not been answered. [They] will ask, What is all this to my soul? . . . [W]hat have you said to show that I can reach my own spiritual possibilities through such a door as this? How can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the manner-less conflicts over often sordid interests, make out a life? [Ladies and] Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. And yet I believe there is an answer. They are the same questions that meet you in any form of practical life. If [people have] the souls of Sancho Panza, the world to [them] will be Sancho Panza's world; but if [they have] the soul[s] of idealist[s] [they] will make — I do not say find — [their] world ideal. Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers. But to those who believe with me that not the least godlike of [a person's] activities is the large survey of causes, that to know is not less than to feel, I say — and I say no longer with any doubt — that [persons] may live greatly in the law as well as elsewhere; that there as well as elsewhere [their] thought may find its unity in an infinite perspective; that there as well as elsewhere [they] may wreak [themselves] upon life, may drink the bitter cup of heroism, may wear [their] heart[s] out after the unattainable.[98]

I echo Justice Holmes in giving the following advice to all lawyers: you can and should live greatly in the law. You can do so by devoting your professional skills and energies to advancing the public interest and the cause of justice, however you may conceive of them.

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97. Since Justice Holmes' audience at Harvard College in 1866 was entirely male, he used the male pronoun exclusively. I have taken the liberty of updating his language in this respect.

98. OLIVER W. HOLMES, *The Profession of the Law: Conclusion of a Lecture Delivered to Undergraduates of Harvard University on February 17, 1886, in* COLLECTED LEGAL PAPERS 29, 29-30 (1920).