

The Justice Gap: Confronting Complicity in the Legal Profession to Better Reimagine Reform

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INTRODUCTION

“Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

—United States Supreme Court Justice Lewis Powell, Jr.

While equal justice under law is an ideal to which this nation aspires, the United States has systematically failed to fulfill this purported commitment. Unfortunately, in this country, access to justice necessarily favors those who can afford it.¹ Rising income inequality in the United States has only exacerbated the problem, resulting in a justice gap that leaves the most vulnerable without adequate legal representation.²

The justice gap is defined as the “difference between the civil legal needs of low-income Americans and the resources to meet those needs.”³ In 2017, “86% of the civil legal problems reported by low-income Americans” received inadequate or no legal help.⁴ While demand for legal services is high, the supply of those able to assist is not; there is less than one civil legal aid attorney for every 10,000 people living in poverty.⁵ In 2014, the United States tied with Uganda “for sixty-seventh out of ninety-seven countries in access to the justice system and affordability of legal services.”⁶ It is quite ironic, then, that the United States

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1. Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 *FORDHAM URB. L.J.* 1227, 1228 (2014) (“Money may not be the root of all evil, but it is surely responsible for much of what ails the current legal aid system.”).

2. See Robert H. Frank, *How Rising Inequality Has Widened the Justice Gap*, *N.Y. TIMES* (Aug. 31, 2018), <https://www.nytimes.com/2018/08/31/business/rising-inequality-widened-justice-gap.html> [<https://perma.cc/3S9D-DFHH>].

3. LEGAL SERVICES CORPORATION, *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 6 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/64NK-3M8H>] [hereinafter LSC REPORT].

4. *Id.*

5. *Number of Attorneys for People in Poverty*, *THE JUSTICE INDEX*, <https://justiceindex.org/2016-findings/attorney-access/#site-navigation> [<https://perma.cc/C7VK-H6XU>].

6. Rhode, *supra* note 1, at 1227.

proclaims to provide “equal justice under law,” yet is so glaringly deficient in fulfilling this purported commitment. This is the access to justice problem.

In response to this problem, the legal industry has increasingly turned to pro bono initiatives and programs.⁷ As a result, pro bono services now account for the provision of more legal help to low-income individuals than government-funded programs do.⁸ While pro bono participation has grown steadily over the years,⁹ the legal profession as a whole still fails to satisfy the aspirational pro bono recommendation promulgated by the American Bar Association (ABA) in Rule 6.1 of the *Model Rules of Professional Conduct*. Rule 6.1 establishes the professional responsibility to provide pro bono service and recommends that each lawyer renders at least 50 hours of pro bono legal services per year.¹⁰ To better achieve the objective of equal justice under law, this Note posits that lawyers should receive exposure to and substantive training in pro bono early in their careers. In addition, Rule 6.1 should be made mandatory. However, this Note will argue that these proposals are the floor, not the ceiling, of reform.

This is because the reliance on pro bono to solve the access to justice problem fails to grapple with the structural incentives inherent to the legal industry. Specifically, it ignores the ways in which the legal profession, including law schools, systematically incentivizes the pursuit of employment in the private sector, rather than public interest work. Although many students initially pursue a career in the law to help the underserved and underrepresented, post-graduation employment outcomes indicate that their motivations change along the way. As a result, there is a dearth of public interest lawyers.

This Note explores income inequality trends, how those trends and corresponding issues exacerbate the access to justice problem, and will conclude by offering recommendations—both existing and proposed—that can better afford all individuals equal justice under law.

Specifically, this Note examines the efficacy of the current solution the legal industry utilizes to tackle the access to justice problem—pro bono. The Note suggests that while lawyers are society’s solution to effectuate justice, many fail in this respect. Ultimately, this Note argues that continued reliance on pro bono to solve the access to justice problem is misplaced and ignores the widespread, structural mechanisms that fundamentally incentivize students to pursue private sector employment.

This argument proceeds in eight parts. Part I establishes important background information that contextualizes the discussion that follows. Part II defines the justice gap and outlines the data and statistics in order to better ground the

7. See R. Lawrence Dessem, *Emeritus Attorney Pro Bono: From Rules, to Programs, to Law School Clinics*, 44 J. LEGAL PROF. 83, 87 (2019).

8. *Id.* (“Attorneys now provide more legal services through ‘private lawyer charity,’ or pro bono, than are provided through government-funded programs.”).

9. *Id.* at 89.

10. MODEL RULES OF PROF’L CONDUCT r. 6.1 [hereinafter MODEL RULES].

discussion. Pro bono, the legal profession's current solution to the access to justice problem, is explored in Part III, and recommendations pertinent to pro bono are outlined in Part IV. Part V revolves around the underlying incentives and disincentives inherent to pursuing a legal education, and Part VI proposes potential solutions that could change that calculus. The limitations of this discussion are outlined in Part VII. The Note concludes in Part VIII.

By understanding these issues, members of the legal profession—and the students and schools that operate within it—can assess how, instead of solving the access to justice problem, they may actually contribute to its aggravation. In so doing, these actors must grapple with the question of whether equal justice under law is an ideal to which they are honestly committed. Not just in theory, but in *practice*.

I. BACKGROUND

A. RISING INCOME INEQUALITY IN THE UNITED STATES

Income inequality in the United States is severe and escalating.¹¹ In 2018, “households in the top fifth of earners” in the United States earned more than half of all national income.¹² In comparison, the top fifth of earners in 1968 brought in 43% of the national income.¹³ This increase in economic gain is evidence of the fact that upper-income households in the United States have experienced more rapid income growth than their middle- and lower-income counterparts.¹⁴ Median middle-class income increased by 49% between 1970 to 2018, whereas upper-income households experienced a growth of 64%.¹⁵

The concerning level of income inequality in the United States is further evidenced by the fact that the country has the highest level of income inequality among all G7 countries.¹⁶ This is measured by the Gini coefficient, which “assigns a hypothetical score of 0.0 to a population in which incomes are distributed perfectly

11. Juliana Measce Horowitz, Ruth Igielnik & Rakesh Kochhar, *Trends in Income and Wealth Inequality*, PEW RES. CTR. (Jan. 9, 2020), <https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/> [https://perma.cc/8DQE-K9N6] (“[A] greater share of the nation’s aggregate income is now going to upper-income households and the share going to middle- and lower-income households is falling.”).

12. Katherine Schaeffer, *6 Facts About Economic Inequality in the U.S.*, PEW RES. CTR. (Feb. 7, 2020), <https://www.pewresearch.org/fact-tank/2020/02/07/6-facts-about-economic-inequality-in-the-u-s/> [https://perma.cc/NBS3-8239] (“In 2018, households in the top fifth of earners (with incomes of \$130,001 or more that year) brought in 52% of all U.S. income, more than the lower four-fifths combined, according to Census Bureau data.”).

13. *Id.* (“In 1968, by comparison, the top-earning 20% of households brought in 43% of the nation’s income . . .”).

14. Horowitz et al., *supra* note 11, at 3.

15. *See id.* at 4:

[M]iddle-class incomes have not grown at the rate of upper-tier incomes. From 1970 to 2018, the median middle-class income increased from \$58,100 to \$86,000, a gain of 49%. This was considerably less than the 64% increase for upper-income households, whose median income increased from \$126,100 in 1970 to \$207,400 in 2018. Households in the lower-income tier experienced a gain of 43%, from \$20,000 in 1970 to \$28,700 in 2018.

16. Schaeffer, *supra* note 12.

evenly and a score of 1.0 to a population where only one household gets all the income.”¹⁷ The United States had a Gini coefficient of 0.434 in 2017, the highest among all G7 countries—which also include the United Kingdom, Italy, Japan, Canada, Germany, and France.¹⁸

Factors such as “technological change, globalization, the decline of unions[,] and the eroding value of the minimum wage” have all contributed to this increase in economic inequality.¹⁹ The sustained intensification in income inequality discussed above manifests itself in difficulties related to access to economic opportunity, mobility, and influence.²⁰

II. INEQUALITY IN THE ACCESS TO JUSTICE

A. THE PROBLEM DEFINED

The growing income inequality also contributes to the increasing inequality in access to justice.²¹ Unlike in criminal cases, there is no right to legal assistance for civil matters.²² When facing civil legal issues, individuals do not have a constitutional right to counsel; they must obtain paid counsel, proceed *pro se* (without legal representation), or receive the aid of legal assistance programs.²³ Although this problem is not exclusive to low-income individuals, “rising income inequality has contributed both to a reduction in the supply of legal assistance to low-income families and an increase in the need for it.”²⁴ As a result, the legal system has been stacked “even more heavily against [low-income individuals].”²⁵ Growing income inequality therefore increases the barriers for low-income individuals to obtain legal representation. This phenomenon has been termed “the justice gap.”²⁶ The Legal Services Corporation (LSC), a non-profit corporation that serves as the “largest funder of civil legal aid for low-income Americans,”²⁷

17. Bill Chappell, *U.S. Income Inequality Worsens, Widening to a New Gap*, NATIONAL PUBLIC RADIO (Sept. 26, 2019), <https://www.npr.org/2019/09/26/764654623/u-s-income-inequality-worsens-widening-to-a-new-gap>. [<https://perma.cc/3WYZ-F492>].

18. Schaeffer, *supra* note 12.

19. Horowitz et al., *supra* note 11.

20. *See id.*

21. *See* Frank, *supra* note 2.

22. Latonia Haney Keith, *The Structural Underpinnings of Access to Justice: Building a Solid Pro Bono Infrastructure*, 45 MITCHELL HAMLINE L. REV. 116, 117 n.1 (2019):

See Gideon v. Wainwright, 372 U.S. 335, 344–45 (1963) (holding that in criminal cases where the defendant faces imprisonment or the loss of physical liberty, the defendant has a right to state-funded counsel). *But see Turner v. Rogers*, 564 U.S. 431, 448 (2011) (declining to recognize a constitutional right to counsel for indigent persons facing civil contempt charges and the prospect of imprisonment).

23. *Id.*

24. Frank, *supra* note 2.

25. *Id.*

26. LSC REPORT, *supra* note 3, at 6.

27. *Id.* at 2.

defines the justice gap as the “difference between the civil legal needs of low-income Americans and the resources to meet those needs.”²⁸

B. THE JUSTICE GAP: DATA & STATISTICS

Similar to income inequality, inequality in the access to justice is severe and escalating. LSC “contracted with NORC at the University of Chicago,” which conducted a survey of “approximately 2,000 adults living in households at or below 125% of the Federal Poverty Level (FPL)” and compiled its findings in its 2017 report.²⁹ LSC found that 86% of the civil legal problems reported by low-income Americans in the previous year had received “inadequate or no legal help.”³⁰ This was true despite the fact that “71% of low-income households experienced at least one civil legal problem” during that timeframe.³¹ LSC also found that low-income Americans “seek professional legal help for only 20% of the civil legal problems they face.”³² The most prevalent reasons for the failure to seek legal help included: “deciding to deal with a problem on one’s own”; “not knowing where to look for help or what resources might exist”; and “not being sure whether their problem is ‘legal.’”³³

Further, these statistics fail to capture the true extent of the access to justice problem. First, to be considered eligible for LSC-funded legal assistance, the individual seeking aid must have a family income at or below 125% of FPL.³⁴ Even then, the civil legal problem is subject to certain criteria that can disqualify it for legal assistance—such as civil legal problems related to abortion, euthanasia, or class action litigation.³⁵ For those problems that withstand these eligibility requirements, LSC estimated that, in 2017, “low-income Americans will receive limited or no legal help for an estimated 1.1 million eligible problems after seeking help from LSC-funded legal aid organizations.”³⁶ At minimum, 1.1 million problems will not be addressed. This figure does not include those problems deemed ineligible, or problems that never make it to the LSC in the first place.

Second, besides being systematically disadvantaged in the ability to access justice, the legal problems that these individuals experience can manifest themselves in worsened mental and physical health.³⁷ Many of the problems that they face include matters such as losing a home, dealing with debt, or confronting a health issue.³⁸ As Martha Bergmark, the executive director for Voices for Civil Justice,

28. *Id.* at 6.

29. *Id.* at 6.

30. *Id.*

31. *Id.*

32. *Id.* at 7.

33. *Id.*

34. *Id.* at 38.

35. *Id.*

36. *Id.* at 8.

37. *Id.* at 25.

38. *Id.*

observed, “[i]ndividuals face really high stakes in the civil justice system. You can lose your children, you can lose your home, you can lose your livelihood without having legal help to get you through complicated legal proceedings.”³⁹ In fact, 70% of LSC respondents categorized at least one of their civil legal problems as “very much” or “severely” affecting their lives.⁴⁰

C. WHY INEQUALITY IN ACCESS TO JUSTICE MATTERS

The United States has one of the world’s highest concentrations of lawyers, yet systematically fails to make legal services accessible to those who need it most.⁴¹ In 2014, the United States tied with Uganda “for sixty-seventh out of ninety-seven countries in access to the justice system and affordability of legal services.”⁴² In 1999, the legal industry made \$100 billion per year; of that, less than \$1 billion went towards delivering legal services to low-income Americans.⁴³ And, as determined by the Justice Index from the National Center for Access to Justice (NCAJ), there is less than one civil legal aid attorney for every 10,000 people living in poverty.⁴⁴ Specifically, NCAJ determined that there is 0.64 of these attorneys available.⁴⁵ In contrast, there are approximately forty attorneys for every 10,000 Americans in the general population.⁴⁶ It is a shameful irony, then, that the United States proclaims to provide “equal justice under law,” yet systematically fails in achieving this ideal.

III. PRO BONO

A. PRO BONO IS CURRENTLY USED AS THE PREDOMINATE MEANS TO COMBAT INEQUALITY IN THE ACCESS TO JUSTICE

Currently, “legal services for poor and other marginalized clients are provided through a hybrid public-private system built upon three pillars: governmental support, institutional philanthropy, and private lawyer charity.”⁴⁷ LSC is an example of the first pillar, as it is a federally-funded nonprofit corporation that delivers civil legal aid to low-income individuals in the United States.⁴⁸ However, the “private lawyer charity” that attorneys provide through pro bono

39. Bryce Covert, *Poor People Don’t Stand a Chance in Court*, THINK PROGRESS (May 11, 2016), <https://thinkprogress.org/poor-people-dont-stand-a-chance-in-court-7e46bd4e5719/> [<https://perma.cc/CA6S-6D6Y>]; see also Frank, *supra* note 2.

40. LSC REPORT, *supra* note 3, at 26.

41. See Rhode, *supra* note 1, at 1228.

42. *Id.* at 1227.

43. David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CAL. L. REV. 209, 211 (2003).

44. *Number of Attorneys for People in Poverty*, *supra* note 5.

45. *Id.*

46. *Id.*

47. Scott L. Cummings & Rebecca L. Sandefur, *Beyond the Numbers: What We Know—And Should Know—About American Pro Bono*, 7 HARV. L. & POL’Y REV. 83 (2013).

48. Dessem, *supra* note 7, at 85.

now accounts for the provision of more legal services than through government-funded programs.⁴⁹

Interestingly, the increased dependence on pro bono services “occurred simultaneously with a significant decline in government-funded legal services.”⁵⁰ This decline in government-funded legal services is evidenced by the fact that, in 1981, LSC received upwards of \$860 million; its funding was \$385 million in 2017.⁵¹ As a result, pro bono is now seen as the solution that can address the deficiencies left by traditional legal services programs.⁵²

The institutional emphasis placed on pro bono is evidenced by the fact that the ABA encourages all lawyers to engage in pro bono service.⁵³ Specifically, Rule 6.1 of the ABA *Model Rules* provides that:

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

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

(1) persons of limited means or

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

(b) provide any additional services through:

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

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

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.⁵⁴

49. *Id.* at 87.

50. *Id.* at 90.

51. Frank, *supra* note 2.

52. Danielle R. Cover, *Pro Bono Grievances*, 12 CARDOZO PUB. L. POL’Y & ETHICS J. 375, 380 (2014).

53. *Id.* at 382.

54. MODEL RULES r. 6.1.

Although Rule 6.1 is not mandatory, the legal industry has experienced an increase in pro bono work in recent decades.⁵⁵ As a result, “pro bono service now constitutes the largest component of free or subsidized legal services to people without financial means.”⁵⁶

B. THE INSTITUTIONALIZATION OF PRO BONO

The increase in pro bono work is partly attributable to its institutionalization. Specifically, institutionalization refers to the fact that pro bono has become “interwoven into the basic fabric of the profession, where it is governed by explicit rules, identifiable practices, and implicit norms promoting public service.”⁵⁷ Having an established pro bono program, particularly at a large law firm, is seen as a critical tool in the recruitment of legal talent.⁵⁸ In fact, “an important impetus for the formation of these early programs was a desire to compete with public interest and legal services organizations, which were attracting graduates of elite law schools during a wave of progressive student activism.”⁵⁹ As a result, “[a] few leading firms in the regions most directly competitive with public interest organizations, especially Washington D.C. and New York, began establishing formal pro bono programs.”⁶⁰

One factor that solidified the importance of pro bono to large law firms was its impact on a firm’s ranking.⁶¹ For example, when *The American Lawyer* began “publicly ranking firms based on the depth and breadth of their pro bono performance” in 1994, pro bono became an increasing priority.⁶² *The American Lawyer* uses two quantitative measures in determining its rankings: the average number of pro bono hours per lawyer and the percentage of firm attorneys who performed

55. Dessem, *supra* note 7, at 89 (quoting John M.A. DiPippa, *Peter Singer, Drowning Children, and Pro Bono*, 119 W. VA. L. REV. 113, 114–116 (2016)):

Pro bono work by lawyers has risen significantly in recent decades. From 1998 to 2005, pro bono hours increased by 80% in large firms. Lawyers in those firms averaged five more hours per year, while the total pro bono hours for all lawyers increased by 50%. Depending on how it is measured, pro bono service now constitutes the largest component of free or subsidized legal services to people without financial means. It is an accepted feature of modern law practice and lawyers take pro bono for granted now.

56. *Id.*

57. Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2364 (2010).

58. *See id.* at 2372 (“By creating a highly visible and easily interpreted metric of law firm evaluation, this ranking structure established pro bono as an even more prominent factor in firm reputation and influenced the recruitment of associates.”).

59. *Id.* at 2370.

60. *Id.* at 2370–71.

61. *Id.* at 2371, 2374 (“Pro bono participation became a positional good: reputation and recruitment partly depended on how firms stacked up against their competitors.”).

62. *Id.* at 2371 (“*The American Lawyer*’s 1994 decision to begin publicly ranking firms based on the depth and breadth of their pro bono performance dramatically altered firm behavior.”).

at least twenty hours of pro bono work.⁶³ As Scott L. Cummings and Deborah L. Rhode aptly noted in their Article, *Managing Pro Bono: Doing Well by Doing Better*, “by measuring only the quantity and extent of participation, rankings encouraged firms to focus on these goals, rather than on harder to assess outcome measures such as the quality or social impact of their work.”⁶⁴

Focusing on the quantity of pro bono hours performed can therefore come at the expense of safeguarding its quality. Concerns include the lack of appropriate supervision, training, and mentoring that lawyers engaging in pro bono receive.⁶⁵ In addition, there are risks that pro bono clients are treated as “test subjects in the attorney’s long-term learning process.”⁶⁶

C. LAWYERS GENERALLY FAIL TO SATISFY ABA MODEL RULE 6.1

But, even with the institutionalization of pro bono, are lawyers really doing enough? The ABA’s *2020 Profile of the Legal Profession* indicates that the response to that question might be answered in the negative.⁶⁷ Although lawyers have increased their engagement in pro bono generally, most fail to meet the aspirational standard delineated in Rule 6.1.⁶⁸ This is problematic because, as established above, “[r]eliance on pro bono as the cure for gaps in legal services funding and access to the legal system has grown steadily over the years, culminating in civil pro bono assistance becoming one of the dominant legal service delivery systems in the country.”⁶⁹

The results that the ABA published in its Profile are based on a 2018 survey that the ABA conducted of 47,000 lawyers in 24 states.⁷⁰ The survey indicates that while lawyers are engaged in pro bono work, many fail to fulfill Rule 6.1. While over 50% of American lawyers performed free pro bono services for clients who were unable to afford an attorney, only 20% of lawyers met the ABA’s

63. *The 2020 Pro Bono Scorecard: The National Rankings*, THE AMERICAN LAWYER (Jul. 6, 2020), <https://www.law.com/americanyer/2020/07/06/the-2020-pro-bono-scorecard-the-national-rankings/#:~:text=The%20Pro%20Bono%20Scorecard%20ranks,hours%20of%20pro%20bono%20work.> [https://perma.cc/2HLY-EMDW].

64. Cummings & Rhode, *supra* note 56, at 2372.

65. Cover, *supra* note 51, at 389.

Attorney-focused arguments justify treating poor clients like test subjects in the attorney’s long-term learning process; a process that may lack the appropriate supervision, training, and mentoring that would otherwise protect a client if mistakes are made. As an examination of the attorney/firm-focused benefit arguments makes clear, nowhere are attorneys encouraged to engage in the training or mentoring that would assure the volunteer had the skills necessary to work with a particular population of clients, including the ability to identify effectively the client’s needs and how to most effectively meet those needs.

66. *Id.*

67. See AM. B. ASS’N., ABA PROFILE OF THE LEGAL PROFESSION 73–76 (2020) [hereinafter ABA’s 2020 PROFILE].

68. *Id.* at 73.

69. Cover, *supra* note 51, at 381.

70. ABA’s 2020 PROFILE at 73.

aspirational 50-hour goal.⁷¹ This latter figure has decreased since 2013, during which 36% of lawyers met the goal.⁷² The survey further indicates that “48% of lawyers did no pro bono work in the previous year,” and that 19% of lawyers stated that they had never performed pro bono work at all.⁷³ In addition, the average hours of pro bono hours provided was the lowest of the years surveyed; in 2018, lawyers averaged 36.9 hours of pro bono work, whereas the average number of pro bono hours was 56.5 in 2013.⁷⁴ These figures do not seem to reflect the 81% of attorneys who stated that they believe pro bono is “somewhat” or “very” important.⁷⁵

These statistics further demonstrate that the profession’s emphasis on pro bono can be problematic. Perhaps John M.A. DiPippa best articulated the issue with this trend in his Article, *Peter Singer, Drowning Children, and Pro Bono*. In it, DiPippa urges that:

The persistent level of unmet legal needs in spite of the increase in pro bono efforts in recent years and the unlikelihood that more public money will be spent on civil legal services means that pro bono must be seen as a fundamental strategy to close the justice gap. This means that lawyers must develop new, smarter, and stricter ways of doing pro bono work.⁷⁶

Although the profession’s acknowledgement of the importance of pro bono work is a start, there is still significant reform that should be undertaken. This need is particularly crucial given the fact that the failure to make concrete changes in affording individuals equal access to justice has a human cost.

IV. PRO BONO RECOMMENDATIONS

A. ABA MODEL RULE 6.1 SHOULD BE MANDATORY

Rule 6.1 is aspirational in its current form. This means that the 50-hour goal is merely a recommendation that may or may not be followed.⁷⁷ And, as established above, lawyers have generally failed to adhere to it. There are currently no disciplinary consequences for this dereliction of professional responsibility.⁷⁸

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. John M.A. DiPippa, *Peter Singer, Drowning Children, and Pro Bono*, 119 W. VA. L. REV. 113, 116 (2016).

77. MODEL RULES 6.1, cmt. 1; see Samantha Dorn, *Should Pro Bono Work Be Mandatory for Lawyers?*, JURIS MAGAZINE (Nov. 10, 2020), <https://sites.law.duq.edu/juris/2020/11/10/13053/> [<https://perma.cc/GM48-YMV7>] (“No state currently requires pro bono work as a requirement to keep an active law license, but several states do require attorneys to report any pro bono hours they may complete.”).

78. MODEL RULES 6.1; cmt. 9 (“Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer.”); cmt. 12 (“The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.”).

Accordingly, Rule 6.1 should, at the very least, be made mandatory. Adopting such a reform will incentivize more lawyers to engage in pro bono work, which will increase the provision of legal services to those who need it.

As a mandatory rule, it should be coupled with a structure modeled after a cap and trade scheme,⁷⁹ thereby creating a market for pro bono hours. This would mean that if a lawyer were unable to contribute pro bono hours individually, he or she could purchase those pro bono hours from another lawyer who exceeded the 50-hour requirement.⁸⁰ By implementing this model, the overall number of pro bono hours will increase, even if not all lawyers are able to meet the requirement in their individual capacity. This would have the effect of ensuring that each lawyer dedicates the equivalent of 50 hours to pro bono clients, thus increasing the availability of legal services.

Some scholars believe that making pro bono mandatory will result in attempts to “[broadly define] qualifying service, and dilute focus on serving the poor.”⁸¹ To combat these concerns, law firms should provide their lawyers with the tools, training, and skills to best serve the specific needs of their pro bono clients. This should include training on legal issues such as housing, education, and income maintenance.⁸² Further, rather than focusing solely on the quantity of pro bono hours contributed, the quality of the legal services provided should be the emphasis. To incentivize firms to adopt this standard, *The American Lawyer* should incorporate a quality benchmark in its calculation of firm rankings.⁸³

Failure to comply with the mandatory rule should also be subject to discipline. The ABA already has an infrastructure within which disciplinary action can be enforced. Specifically, Rule 4 establishes a disciplinary counsel, and Rule 11 generally outlines the procedure for disciplinary proceedings.⁸⁴ With the adoption of the appropriate standards and regulations, there is little doubt that the ABA can effectively monitor and enforce compliance with the rule. While this recommendation may seem extreme to some, lawyers are endowed with a “special responsibility to

79. See Marc Galanter & Thomas Palay, *Let Firms Buy and Sell Credit for Pro Bono*, NAT'L L.J. 17 (1993) (creating a cap and trade scheme by allowing “transferability of pro bono credits, so that lawyers were free to provide service directly or to pay other lawyers to provide it. If pro bono credits are transferable not only within firms but between them, there could be an effective market in pro bono credits”).

80. *Id.*

81. Dessem, *supra* note 7, at 89 (citing Judith L. Maute, *Changing Conceptions of Lawyers' Pro Bono Responsibilities: From Chance to Noblesse Oblige to Stated Expectations*, 77 TuL. L. REV. 91, 129–36).

82. See LSC REPORT, *supra* note 3, at 23–24.

83. Cummings & Rhode, *supra* note 56, at 2378–2379:

Yet the pressures generated by *The American Lawyer* rankings to ‘score well’ in quantitative terms may divert focus from output measures that are not being ranked, such as individual client outcomes, the satisfaction of nonprofit organizations that refer clients or cooperate on cases, and the social impact of pro bono efforts.

84. See generally MODEL RULES r. 4, 11.

provide legal assistance to the poor because of the profession's public commitment to justice and its monopoly of the provision of legal services."⁸⁵ Even the ABA considers the provision of pro bono services to be both a professional responsibility and an ethical commitment.⁸⁶ Failure to meet the 50-hour rule should indeed be considered a dereliction of duty.

B. PRO BONO SHOULD BE A REQUIREMENT FOR ADMISSION TO ANY STATE BAR

Another proposal that could foster the ethos of pro bono in future lawyers is requiring the completion of a minimum number of pro bono hours for admission to any state bar. This rule could be completed over the course of a student's legal education. In addition to increasing access to legal services, this would also provide future lawyers with supplementary legal training and exposure to pro bono matters from the outset of their careers.

As an example, New York requires bar applicants to perform at least 50 hours of pro bono to be considered for admission.⁸⁷ In describing the rule, Chief Judge Jonathan Lippman described the rule as "user friendly."⁸⁸ This is because law schools already provide students with ample opportunity to engage in pro bono—from clinics to established pro bono programs. Further, this requirement would also contribute to providing greater pro bono training early in a lawyer's career, as the rule, like New York's, should explicitly incorporate adequate supervision.⁸⁹ While this rule alone may not cure the access to justice problem, it would certainly constitute progress.⁹⁰ In addition, cultivating a mindset of service and giving back early in a lawyer's career will likely motivate and better equip lawyers to provide pro bono once they are in practice.⁹¹

85. Roger C. Cramton, *Mandatory Pro Bono*, 19 HOFSTRA L. REV. 1113, 1126 (1991).

86. MODEL RULES r. 6.1, cmt. 9 ("Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer.").

87. *Mandatory 50-Hour Pro Bono Requirement*, THE NEW YORK STATE BOARD OF LAW EXAMINERS, <https://www.nybarexam.org/MPB.html> [<https://perma.cc/KKV4-PJ4L>] (last visited Feb. 21, 2021) ("All candidates seeking admission after January 1, 2015, with the exception of admission on motion candidates, will need to file documentation showing that they have completed 50 hours of qualifying pro bono work, as required Rule 520.16 of the Rules of the Court of Appeals.").

88. Benjamin P. Cooper, *Mandatory Pro Bono for New York Bar Applicants: Why Not*, 21 PROF. LAW. 3 (2012).

89. 22 NYCRR Part 520.16(c).

90. Cooper, *supra* note 88, at 4 ("10,000 New York bar applicants providing fifty hours of pro bono service every year is at least a small step in the right direction.").

91. *Id.* at 4:

[T]he new requirement fosters practical training, the very area in which critics (rightly) claim that law schools are lacking. On the margin, applicants for the New York bar will undoubtedly be better prepared for practice if they have performed fifty-plus hours of pro bono service than if they have not. This work offers 'students a range of practical benefits, such as training, trial experience, and professional contacts.' Fifty hours of mandated pro bono service is hardly a solution to what ails legal education, but, again, it is a baby step in the right direction.

As Judge Lippman articulated:

Justice must mean that when people are fighting for the necessities of life, for the roof over their heads, they must get the legal assistance that they need, and the scales of lady justice will be exquisitely balanced. Learned Hand's famous quote—"thou shall not ration justice"—is the one cardinal rule of our democracy.⁹²

These pro bono requirements would bring the profession a step closer to achieving its objective of solving the access to justice problem.

V. UNDERLYING STRUCTURAL INCENTIVES AND DISINCENTIVES

A. WHERE ARE ALL THE PUBLIC INTEREST LAWYERS?

An inevitable question raised by this discussion is why, instead of relying on public interest lawyers, solutions to address the access to justice problem mainly involve pro bono. One possible answer is that the supply of public interest lawyers is deficient. Many students make the decision to go to law school to help underserved, underrepresented, and vulnerable populations.⁹³ Why, then, are so many aspiring lawyers foregoing the opportunity to pursue public interest work as their vocation and instead choosing the private sector, specifically Big Law?

B. BIG LAW AND PUBLIC INTEREST DEFINED

As defined in Pam Jenoff's Article, *Big Law Dreams*, Big Law refers to "full-service firms with attorneys spread across numerous practice areas. They have multiple offices nationally, and in many cases, internationally."⁹⁴ On the other hand, Harvard Law School's website defines public service practice as "tak[ing] place in legal services and law reform organizations, as well as in government agencies at all levels. It encompasses charities, educational and public international organizations, private public interest law firms and private law firms performing *pro bono* work."⁹⁵

At its core, public interest law "deals with the representation of people or interests that, through most of history, have been underrepresented in legal institutions and processes."⁹⁶ Big Law firms contribute to providing public interest services to these populations, but they do so through designated pro bono programs.

92. Jonathan Lippman, *A Perspective from the Judiciary on Access to Justice*, 87 FORDHAM L. REV. ONLINE 155 (2018-2019).

93. See ABA's 2020 PROFILE, *supra* note 67, at 57.

94. Pam Jenoff, *Big Law Dreams*, 13 FLA. A & M U. L. REV. 183, 185 (2018).

95. *Public Service Practice Settings*, HARVARD LAW SCHOOL, <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/> [<https://perma.cc/5ZYT-FEUB>] (last visited Feb. 21, 2021).

96. *Public Interest Law*, GEORGETOWN LAW, <https://curriculum.law.georgetown.edu/jd/public-interest-law/> [<https://perma.cc/2MPM-WUJV>] (last visited Feb. 21, 2021).

C. LAW SCHOOL GRADUATES PURSUE JOBS IN THE PRIVATE SECTOR,
SPECIFICALLY BIG LAW, AT HIGHER RATES THAN PUBLIC INTEREST
WORK

In May 2020, the ABA released a survey regarding the employment outcomes of law school graduates from the Class of 2019. In 2019, 48.1% of those surveyed worked at a law firm post-graduation, while 6.8% pursued public interest work.⁹⁷ These figures represented an increase of 1.2% for law firm positions, and an increase of 1.9% for public interest work since 2018.⁹⁸ These statistics are reflective of the trends seen at law schools across the country. For example, of Georgetown Law's 667 members in the Class of 2019, 378 (56.6%) went on to work at a law firm, while 68 (10.2%) chose to pursue public interest work.⁹⁹

Of those pursuing jobs in the private sector, students choose Big Law jobs over smaller firms at higher rates.¹⁰⁰ For example, in 2008, the American Lawyer found that the two hundred largest law firms in the country were on track to hire 10,000 associates that fall, which amounted to 25% of all law school graduates in 2009.¹⁰¹ As a point of reference, "the top 20 law schools will only produce about 6,500 graduates."¹⁰²

Many flock to Big Law jobs because of the conception that they provide better compensation, opportunities, training, and work assignments.¹⁰³ The prestige inherent to the job is an added bonus. However, common complaints associated with the job include the hours, competitive environment, high billing quotas, long partnership track, and limited client contact.¹⁰⁴

These trends seem inconsistent with the motivators that most students provide when asked about their pursuit of a legal education. The ABA's *2020 Profile of the Legal Profession* collected responses from "22,189 undergraduates at 25 four-year institutions and from 2,727 first-year law students at 44 law schools."¹⁰⁵ When asked about why they aspired to go to law school, 44% of those surveyed

97. AM. B. ASS'N., EMPLOYMENT OUTCOMES AS OF APRIL 2020 (CLASS OF 2019 GRADUATES), www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2019-law-graduate-employment-data.pdf. [https://perma.cc/U4NC-7WY7] (last visited Feb. 21, 2021).

98. *Id.*

99. *Employment Summary for 2019 Graduates*, GEORGETOWN LAW, <https://www.law.georgetown.edu/wp-content/uploads/2020/06/L19-ABA-Summary-Page-with-Addendum.pdf> [https://perma.cc/SZA9-U36J] (last visited Feb. 21, 2021) (The remaining 184 students went on to pursue employment in the Business & Industry, Government, Clerkships – Federal, Clerkships – State & Local, and Education categories).

100. For example, 281 of the 378 (74.3%) Georgetown Law graduates in 2019 worked at law firms with 501+ attorneys. *Id.*

101. Marc Galanter & William D. Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1870 (2008).

102. *Id.* (quoting Aric Press, *The New Reality*, AM. LAW., Aug. 2007, at 91).

103. Jenoff, *supra* note 94, at 190–92.

104. Sally Kane, *15 Challenges to Working in a Large Law Firm*, THE BALANCE CAREERS (Nov. 20, 2019), <https://www.thebalancecareers.com/large-law-firm-disadvantages-2164675> [https://perma.cc/W3YU-AJQH] (last visited Feb. 21, 2021).

105. ABA'S 2020 PROFILE, *supra* note 67, at 57.

stated that it was a path to careers in politics, government or public service; 35% viewed it as an opportunity to be helpful; 32% sought to advocate for social change; and 31% were motivated by access to high-paying jobs.¹⁰⁶ While undergraduate student responses were included in the results, the responses still reflect a divergence between pre-law school motivators and post-law school outcomes. What, then, accounts for this disparity?

D. FACTORS CONTRIBUTING TO THE DISPARITY BETWEEN PRE-LAW SCHOOL MOTIVATORS AND POST-LAW SCHOOL OUTCOMES

1. LAW SCHOOL TUITION AND RESULTING DEBT CAN BE FINANCIAL DETERMINANTS

Today, law school tuition can cost upwards of \$70,000 per year.¹⁰⁷ Many students take out loans to finance their education.¹⁰⁸ For example, in 2016, “71% of all law school graduates borrowed money for law school.”¹⁰⁹ According to the ABA’s *2020 Profile of the Legal Profession*, among those who completed the survey, median cumulative debt at law school graduation totaled \$160,000.¹¹⁰ In 2016, the average law school graduate had \$145,000 in cumulative student loan debt.¹¹¹ In addition, in response to the survey, 226 respondents included their own open-ended comments.¹¹² As noted by the ABA, these comments evinced feelings of unhappiness, frustration, and fear caused by student loan burdens, as well as mental health issues and depression.¹¹³ 37.3% of respondents indicated that, because of their debt, they chose a job that pays more money instead of a job that they really wanted; 17.2% chose a job that qualifies for loan forgiveness instead of a job that they really wanted.¹¹⁴

“Receiving loans to fund tuition is easy, but paying the loans back is increasingly difficult.”¹¹⁵ While many law schools offer their public interest graduates assistance through Loan Repayment Assistance Programs (LRAP), the guarantee of a high salary can be a more reassuring safety-net. As of 2019, the median first-year salary at a large law firm was \$155,000,¹¹⁶ whereas the median entry-level

106. *Id.*

107. *E.g.*, *Costs and Budgeting*, COLUMBIA LAW SCHOOL, <https://www.law.columbia.edu/about/offices-and-departments/office-financial-aid/costs-and-billing/costs-and-budgeting> [<https://perma.cc/8GB6-Y4SM>] (last visited Feb. 21, 2021).

108. ABA’S 2020 PROFILE, *supra* note 67, at 27 (“71% of all law school graduates borrowed money for law school in 2016.”).

109. *Id.*

110. *Id.* at 25.

111. *Id.* at 27.

112. *Id.* at 25.

113. *Id.*

114. *Id.* at 26.

115. Samantha Robbins, *From Big Law to Legal Education: The Trickle Down Effect of the Recession*, 27 GEO. J. L. ETHICS 841, 854 (2014).

116. *First-Year Associate Salaries on the Rise at Large Law Firms*, THE NATIONAL ASSOCIATION FOR LAW PLACEMENT, <https://www.nalp.org/associatesalarysurvey2019> [<https://perma.cc/9UK2-FCA7>] (last visited Feb. 21, 2021).

salary for a legal services attorney was \$48,000 in 2018.¹¹⁷ Therefore, the high cost of law school tuition, coupled with the effects of overwhelming student loan debt, is a likely contributor in a student's decision to choose a higher-paying job in the private sector, rather than pursuing public interest work.

2. THE LAW SCHOOL CURRICULUM FAILS TO EXPOSE STUDENTS TO PUBLIC INTEREST TOPICS OR SKILLS

Approximately two-thirds of students who begin law school hoping to work in a government or public interest job graduate without one.¹¹⁸ In part, this can be attributed to the fact that “public interest law students often find themselves at the bottom of their institution’s hierarchy with regard to resources, programs, job search assistance, and relevant course work.”¹¹⁹ The law school curriculum primarily relies on the case method approach, which requires that students “read cases, interpret rules (black letter law), and understand the principles judges use to determine these rules.”¹²⁰ This focus on objectivity without the application of social justice themes may be particularly difficult for public interest students, who seek to include “morality, politics, feelings, ethics, and justice” as part of the discussion and decision-making process.¹²¹ Beyond the Socratic method pedagogy, there is a dearth of courses that specifically address social justice themes and provide exposure to public interest skills.¹²² Clinics and externships can provide meaningful training; however, relying on those experiences does not guarantee “that every law student receives sufficient training in representing low-income clients, just as they would receive preparation in legal writing, contracts, torts, or criminal law.”¹²³ As a result, students once interested in pursuing public interest work can lose their

117. *New Public Service Attorney Salary Figures from NALP Show Slow Growth Since 2004*, THE NATIONAL ASSOCIATION FOR LAW PLACEMENT, https://www.nalp.org/uploads/PSASR_7-9-18_FINAL.pdf [<https://perma.cc/F9DQ-NXP5>] (last visited Feb. 21, 2021).

118. William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 7, 9 (2007) (“The repeated emphasis in law school on the subtleties of substantive law and many layers of procedure, usually discussed in the context of examples from business and traditional litigation, can grind down the idealism with which students first arrived. In fact, research shows that two-thirds of the students who enter law school with intentions of seeking a government or public-interest job do not end up employed in that work.”).

119. Aliza B. Kaplan, *How to Build a Public Interest Lawyer (And Help All Law Students along the Way)*, 15 LOY. J. PUB. INT. L. 153, 155 (2013).

120. *Id.* at 176.

121. *Id.* at 178.

122. *Id.* at 155.

123. Vanita Saleema Snow, *The Untold Story of the Justice Gap: Integrating Poverty Law into the Law School Curriculum*, 37 PACE L. REV. 642, 643 (2017):

A traditional law school curriculum can effectively extinguish students’ fire in the belly for social justice. Although many schools now offer pro bono and clinic opportunities, these curricular realignments do not ensure that every law student receives sufficient training in representing low-income clients, just as they would receive preparation in legal writing, contracts, torts, or criminal law. Instead, schools promote social justice as something tangential to practicing law, creating a hidden curriculum—a curriculum that minimizes lawyers’ ethical duty to address the access-to-justice crisis.

motivation. Moreover, “many students graduate without an informed understanding of how the law affects those who cannot afford to invoke it.”¹²⁴

VI. RECOMMENDATIONS TO STIMULATE AND PROMOTE COMMITMENT TO PUBLIC INTEREST WORK

To combat the disincentives outlined above, reform should be undertaken. Proposals such as requiring the completion of pro bono for admission to any state bar, reducing the cost of law school tuition, and intentionally incorporating public interest topics in the first-year curriculum are recommendations that can better stimulate and sustain commitment to public interest work.

A. PRO BONO SHOULD BE A REQUIREMENT FOR ADMISSION TO ANY STATE BAR

The recommendation outlined in Part IV regarding the requirement of pro bono for admission to any state bar would also contribute to sustaining and cultivating commitment to public interest work. As established by Richard L. Abel in his Article, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, exposure to public interest work as a law student can foster an understanding that the work can make a meaningful difference, and that it is both challenging and rewarding.¹²⁵ Having a framework within which law students can interact with public interest lawyers and clients can instill in them the significance of public interest work, while providing them with the role models, training, and exposure that are currently lacking. This sort of volunteer activity can sustain commitment where it could otherwise wane.¹²⁶

B. LAW SCHOOLS SHOULD REDUCE THE COST OF TUITION

As established by Paul Campos in *The Crisis of the American Law School*, “[p]rivate law school tuition increased by a factor of four in real (inflation-adjusted) terms between 1971 and 2011.”¹²⁷ Campos identified the “declines in student-

124. Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 545 (2013).

125. See Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 FORDHAM L. REV. 1563, 1567 (2002) (“Classes, colloquia and mentoring by upper-class students, faculty, staff and alumni can help to convince students that they can make a difference and that the work is challenging and rewarding.”).

126. *Id.* at 1567:

Many students report that volunteer activity, especially contact with clients and lawyers, powerfully sustains commitment. In the intensely individualistic and competitive law school environment, such activities allow students to work cooperatively and associate with those in other classes (and sometimes schools). They also foster interaction with public interest lawyers, providing role models and images of the satisfactions of public interest work. This is particularly important because law faculty offer role models that are either irrelevant (few students want to teach law) or antipathetic to public interest practice (federal clerkships and large firm practice). Students learn from doing public interest lawyering that it offers significant work, a reward that amply outweighs their sacrifices of money and professional status.

127. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J. L. REFORM 177, 178 (2012).

faculty ratios, large increases in faculty compensation, the creation and development of clinical legal education, the expansion of administrative staffs, and expensive capital construction projects” as contributing to the increasing cost of pursuing a law degree.¹²⁸

The exorbitant cost of obtaining a legal education is therefore one factor that can motivate law students to pursue higher paying employment in the private sector, rather than public interest work, post-graduation. To effectively mitigate this disincentive, law schools should reduce the amount they charge students for tuition. Law schools can achieve this goal by reducing their overhead expenses,¹²⁹ which could include the cessation of facilities and building construction, reduction of the amount of faculty members, and incorporation of more online instruction technologies.¹³⁰

This potential recommendation is especially germane in terms of the COVID-19 pandemic, which forced many law schools to operate fully or partially virtual during the fall of 2020 and into the spring of 2021.¹³¹ Despite the pandemic and turmoil it inflicted globally, many law schools reacted by freezing tuition, or in some cases, increasing it.¹³² This decision was made notwithstanding the reduced quality of instruction students would receive and the decrease in the law school’s operating expenses. While law schools are also affected by the pandemic, “higher education institutions, which pull in millions of dollars in revenue each year, are better suited to bear the costs than students.”¹³³ Considering many law schools were reticent to pursue tuition reductions in the context of a global pandemic, the proposal is unlikely to be adopted even under normal circumstances. However, it still merits comprehensive consideration, especially given that the pandemic has already forced law schools to reevaluate their business models.

C. THE CURRENT LAW SCHOOL CURRICULUM SHOULD BE REFORMED

While there are upper level courses that focus on public interest topics,¹³⁴ law students should be exposed to these themes in their first year of law school as well. Proposals range from reforming the first-year curriculum to add a course

128. *Id.* at 183.

129. Robbins, *supra* note 115, at 855 (“Law schools can decrease the cost in tuition by cutting back on certain expenses to operate at a more efficient level.”).

130. James Huffman, *Law Schools: Reform or Go Bust*, NEWSWEEK (Feb. 2, 2015), <https://www.newsweek.com/law-schools-reform-or-go-bust-308339> [<https://perma.cc/3ZDP-FWVX>] (last visited Feb. 21, 2021).

131. *Law Schools That Have Announced They Will Be Fully or Primarily Remote this Fall*, SPIVEY CONSULTING, <https://blog.spiveyconsulting.com/remote-law-schools-fall-2020/> [<https://perma.cc/2SMC-2D8F>] (last visited Feb. 21, 2021).

132. Jonathan Wolf, *As Law Students Sue Schools Over Exorbitant Tuition for Online Classes, Consolidation Might Be Coming*, ABOVE THE LAW (Jul. 30, 2020), <https://abovethelaw.com/2020/07/as-law-students-sue-schools-over-exorbitant-tuition-for-online-classes-consolidation-might-be-coming/> [<https://perma.cc/Y5SR-WTRM>].

133. LAW STUDENT DIVISION, AM. B. ASS’N, REPORT TO THE HOUSE OF DELEGATES: URGING LAW SCHOOLS FREEZE TUITION, <https://abaforlawstudents.com/wp-content/uploads/2020/07/lsd-200804-law-school-tuition-covid.pdf> [<https://perma.cc/36B3-C369>] (last visited Feb. 21, 2021).

134. See Kaplan, *supra* note 119, at 183 (“Unlike in the first year curriculum, there has been a recent surge in the number of upper level courses available to public interest students.”).

devoted to access to justice issues,¹³⁵ to the integration of poverty law topics within the existing framework of first-year courses.¹³⁶ The integration of social justice themes into current doctrinal courses might be the more practicable alternative. As Aliza B. Kaplan noted in *How to Build a Public Interest Lawyer*, “this could easily be achieved by incorporating readings and discussions on social justice topics related to the course.”¹³⁷ As an illustration, “required first-year courses could include coverage of topics relevant to the justice gap. For example, constitutional, criminal and civil procedure classes could focus on limits on the right to counsel and its enforcement. Property classes could address landlord/tenant, environmental justice and community development concerns.”¹³⁸ No matter the exact form this recommendation takes, it is a critical step in better preparing aspiring lawyers to commit to the pursuit of justice. Not simply in theory, but in practice.

VII. LIMITATIONS

This discussion has been limited by the assumption that the solution to the access to justice problem exists within the traditional legal landscape. Underlying this assumption is that legal mechanisms are the constant in this equation; the variable is the resources poured into the legal system to address the issue. However, alternative proposals, even extra-legal ones, also have the potential to assist these low-income individuals in resolving their problems.

For example, Deborah L. Rhode suggests that “more effective channels of informal dispute resolution, not only in courthouses, but also in neighborhood, workplace and commercial settings” could benefit low-income individuals.¹³⁹ She proposes that certain businesses be incentivized to institutionalize informal, out-of-court processes, as well as mandates for arbitration and mediation procedures that are not skewed against weaker parties.¹⁴⁰ Further, she suggests that qualified non-lawyers, through appropriate licensing systems, should be able to offer personalized assistance to low-income individuals on routine matters.¹⁴¹

Another potential path is the development of online self-help resources. For example, New Mexico Legal Aid (NMLA) partnered with a software technology solutions firm and Pro Bono Net to create a client self-help platform.¹⁴² According

135. Rhode, *supra* note 124, at 546 (“To address these curricular gaps, schools should offer at least one course that focuses substantial attention on access to justice and should encourage integration of the topic and required skill sets into the core curriculum.”).

136. Snow, *supra* note 123, at 685.

137. Kaplan *supra* note 119, at 182.

138. Rhode, *supra* note 124, at 546.

139. Rhode, *supra* note 1, at 1243.

140. *See id.*

141. *Id.* at 1244.

142. Robert J. Derocher, *Old Problem, New Solutions: Improving Access to Justice Through Innovation, Collaboration*, 40 BAR LEADER 3 (2016), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2015-16/january-february/old-problem-new-solutions-improving-access-justice-innovation-collaboration/ [https://perma.cc/ZAZ4-EAHR] (last visited Apr. 12, 2021).

to NMLA's executive director, such a system is "a one-step way for clients to seek help, instead of going to 10 or 12 different places."¹⁴³ This solution has the benefit of equipping NMLA, which had just 37 staff attorneys handling 20,000 applications a year statewide, greater ability to help low-income residents meet their legal needs.¹⁴⁴ This sort of program "directs Internet users to the right resources, from self-help content to finding an attorney."¹⁴⁵ Such a model not only streamlines the process by which individuals can identify and seek resources, but also better enables them to determine whether their problem is a legal one (which, as outlined in Part II, are both top reasons for the failure to seek professional help in the first place).

These proposals demonstrate that there is potential to design processes that are quicker, less litigious, and more informal in comparison to operating only within the traditional legal scheme. While not the central solution explored in this Note, such approaches present viable solutions to mitigate the access to justice problem, and as such they merit continued consideration.

CONCLUSION

President Jimmy Carter remarked in 1978:

We have the heaviest concentration of lawyers on earth—one for every 500 Americans. That is three times more than in England, four times more than in Germany, 21 times more than in Japan. We have more litigation, but I am not sure we have more justice. No resource of talent and training in our society, not even medical care, is more wastefully or unfairly distributed than legal skills. Ninety percent of our lawyers serve 10 percent of our people. We are overlawyered and underrepresented.¹⁴⁶

Forty years later, it is clear that the access to justice problem has not improved. As outlined in this Note, attempting to solve the justice gap requires an overhaul of:

1. How its solution has been conceptualized;
2. The exorbitant cost required to obtain the requisite legal education to effectuate change; and
3. The ways in which the standard legal curriculum excludes substantive training in public interest skills and topics.

At a minimum, Rule 6.1 should be mandatory; not because this reform will entirely eliminate the justice gap, but because it is the professional and ethical responsibility of lawyers to use their specialized skills and training for the public

143. *Id.*

144. *Id.*

145. *Id.*

146. *Excerpts from Carter's Speech to the Bar Association*, N.Y. TIMES, May 5, 1978, <https://www.nytimes.com/1978/05/05/archives/excerpts-from-carters-speech-to-the-bar-association-overlawyered.html> [<https://perma.cc/AU24-7KGU>] (last visited Feb. 21, 2021).

good. However, if access to justice is sincerely a problem the legal profession is committed to solving, the answer is not *pro bono* in its current flawed form.

The profession's underlying structural incentives must be reformed as well. Aspiring public interest lawyers are not incentivized to the same degree that law students interested in pursuing private sector work are. Although these schools purport to be training the next generation of lawyers seeking to effectuate and defend justice, their post-graduation employment statistics indicate otherwise. By imposing barriers such as the high cost of tuition and the lack of public interest first-year courses, law schools are not conducive to cultivating a sustained commitment to public interest work. A career in Big Law is not inherently problematic; the problem instead lies in the dearth of resources, training, and opportunities that students interested in public interest work—even if only an inkling itching to be explored—receive at law schools across the country.

The legal profession cannot have an honest conversation about its commitment to solving the justice gap without first reconciling its own shortcomings. This Note seeks to serve as a means by which that conversation can be started.