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LAWYERS AS CITIZENS

DEBORAH L. RHODE*

*If we judge by wealth and power, our times are the best of times;
if the times have made us willing to judge by wealth and power,
they are the worst of times.*

Randall Jarrell¹

The Preamble to the American Bar Association's Model Rules of Professional Conduct declares: "A lawyer as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibilities for the quality of justice."² In the absence of empirical evidence, it is at least a useful thought experiment to ask whether attorneys view themselves in those terms. What exactly are the "special responsibilities" of lawyers as "public citizens"? Does that question ever occur to a practicing attorney? Or even to the drafters of the bar's Multistate Professional Responsibility Exam? Are these phrases simply ceremonial folklore, embellishments reserved for celebratory speeches and academic symposia? If those questions seem rhetorical, perhaps they are the wrong questions, and far too dispiriting for occasions like this. The more useful inquiry might be: What responsibilities *should* lawyers assume for the quality of justice? And what would it take to get lawyers to take those responsibilities seriously?

This is not uncharted ground. The centrality of law and lawyers in American culture has inspired a vast literature on the civic obligations of the profession. Although this nation may not have the world's most developed sense of attorneys' public responsibilities, it

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1. Randall Jarrell, *The Taste of the Age*, in *NO OTHER BOOKS: SELECTED ESSAYS* 314 (Brad Leithauser ed., 1999).

2. MODEL RULES OF PROF'L CONDUCT pmb1., para. 1 (2002).

undoubtedly has the most extensive commentary on the subject. If little of the discussion has had the intended effect, that is no reason to abandon the enterprise. It is, instead, an invitation to more searching and sustained inquiry. In his celebrated 1934 address on "The Public Influence of the Bar," U.S. Supreme Court Justice Harlan Stone noted that legal academics were the segment of the profession most "detached ... from those pressures of the new economic order which have so profoundly affected their practicing brethren."³ With that position came opportunities for disinterested analysis of the "Bar as an institution, seeking to gain an informed understanding of its problems, to appraise the performance of its public functions and to find ways of stimulating a more adequate performance of them."⁴ In that capacity, law professors could discharge their own responsibilities for public service.

In that spirit, this Essay assesses three fundamental obligations of the lawyer's civic role. The first involves developing and sustaining legal frameworks, including those that govern the profession's own behavior. The second grows out of lawyers' relationships with clients and entails some responsibility for the quality of justice that results from legal assistance. The third obligation involves access to justice, and the bar's responsibilities not only to engage in pro bono work, but also to support a system that makes legal services widely available to those who need them most.

I.

The foundations for the American bar's civic role are generally traced to the lawyer statesmen who helped shape American governance structures in the late eighteenth century and legal reforms during the early twentieth century. Alexander Hamilton, in *The Federalist Papers*, offered one of the earliest expressions of this idealized portrait: "Will not the man of the learned profession, who will feel a neutrality to the rivalships between different branches of industry, be likely to provide an impartial arbiter between them ... conducive to the general interests of society?"⁵

3. Harlan F. Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1, 11 (1934).

4. *Id.*

5. THE FEDERALIST NO. 35, at 221 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

Alexis de Tocqueville and Louis D. Brandeis similarly stressed lawyers' capacity to serve as "arbiters between the citizens,"⁶ and independent intermediaries "between the wealthy and the people, prepared to curb the excesses of either"⁷ According to Woodrow Wilson, "[p]ublic life was a lawyer's forum," with both opportunities and obligations to shape "matters of common concern."⁸

A related responsibility involves the bar as an intermediary between client and societal interests. As Brandeis famously argued, the issues that arise for lawyers guiding private affairs are often "questions of statesmanship."⁹ To nineteenth-century legal ethics experts like George Sharswood, as well as twentieth-century sociologists like Talcott Parsons, the attorney served a crucial role in compliance counseling, and in providing a "kind of buffer between the illegitimate desires of his client and the social interest."¹⁰

A third aspect of the lawyer's civic role involves making legal services available to clients and causes pro bono publico. The tradition of offering unpaid representation, either voluntarily or by court order, has extended historical roots.¹¹ The American Bar Association's 1908 Canons of Professional Ethics exhorted lawyers not to decline representation for indigent criminal defendants for "trivial reason[s],"¹² and to give "special and kindly consideration" to requests for assistance from "brother lawyers."¹³ Many bar

6. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 243 (J.P. Mayer & Max Lerner eds., George Lawrence trans., 1966).

7. Louis Brandeis, *The Opportunity in Law*, in *BUSINESS—A PROFESSION* 313, 321 (1914); see Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 14 (1988).

8. Woodrow Wilson, *The Lawyer in the Community*, in 21 *THE PAPERS OF WOODROW WILSON* 64, 67, 70 (Arthur Link ed., 1976).

9. Brandeis, *supra* note 7, at 319.

10. Talcott Parsons, *A Sociologist Looks at the Legal Profession*, in *ESSAYS IN SOCIOLOGICAL THEORY* 370, 384 (rev. ed. 1964). For Sharswood's claim that "lawyers 'diffused sound principles among the people,' and brought the law 'home ... to every man's fireside,'" see Russell G. Pearce, *Lawyers as America's Governing Class: The Formation and Dissolution of the Original Understanding of the American Lawyer's Role*, 8 U. CHI. L. SCH. ROUNDTABLE 381, 390 (2001) (quoting GEORGE SHARSWOOD, *AN ESSAY ON PROFESSIONAL ETHICS* 54, 31 (Fred B. Rothman & Co. 1993) (5th ed. 1884)). For general discussion, see Gordon, *supra* note 7, at 14; David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 723-24 (1988).

11. For an overview, see DEBORAH L. RHODE, *ACCESS TO JUSTICE* 64-66 (2004).

12. ABA CANONS OF PROF'L ETHICS Canon 4 (1908).

13. *Id.* Canon 12. Canon 12 also noted that a client's poverty might justify a reduced fee or "even none at all." *Id.*

leaders throughout the twentieth century gave generously of their time and talents to social causes and indigent clients. Before he assumed a seat on the Supreme Court, Louis Brandeis was celebrated for combining his profitable law practice with pro bono service. "Some men buy diamonds and rare works of art," Brandeis observed, but "[m]y luxury is to invest my surplus effort ... to the pleasure of taking up a problem and solving or helping to solve it for the people without receiving any compensation."¹⁴

II.

The extent to which lawyers' actual practices reflected these public responsibilities has been a matter of extended debate that need not be recounted at length here. There is, however, little doubt that on most dimensions, the profession's performance has fallen considerably short. For well over a century, the American bar has perceived itself in decline and its sense of professionalism in need of "rekindling."¹⁵ Most of the early articulations of the lawyer's civic role occurred in critiques of its erosion. Brandeis in 1932 charged that "able lawyers have, to a large extent, allowed themselves to be adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people."¹⁶ Wilson similarly claimed that the "prevailing type" of lawyer in the early twentieth century was no longer a counselor of "right and obligation ... [concerned] with the universal aspects of society."¹⁷ All too often, Stone warned, "the learned profession of an earlier day [had become] the obsequious servant of business, ... tainted ... with the

14. Clyde Spillenger, *Elusive Advocate: Reconsidering Brandeis as the People's Lawyer*, 105 YALE L.J. 1445, 1478 (1996) (citation omitted).

15. ABA COMM'N ON PROFESSIONALISM, "... IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 1-3 (1986), available at http://www.abanet.org/cpr/professionalism/Stanley_Commission_Report.pdf; ABA COMM'N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION 2 (2006), available at <http://www.abanet.org/renaissance/downloads/finalreport.pdf>. For other examples, see Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 283-84, 303-04, 307 (1998).

16. Brandeis, *supra* note 7, at 321.

17. Wilson, *supra* note 8, at 69.

morals and manners of the market place in its most anti-social manifestations.”¹⁸

So too, contemporary historians have found relatively little evidence of lawyers’ compliance counseling during the allegedly golden ages of civic virtue; in fact, many of the bar’s institutional reform initiatives were made necessary by the lawyers’ own complicity in client misconduct.¹⁹ Recent competitive pressures and bottom-line orientations have compounded the problem, as examples like Enron amply demonstrate. In all too many cases, lawyers have remained willfully ignorant or unwilling to help prevent unethical conduct.²⁰ Yet much of the bar’s response to overly zealous client representation has remained at the level of exhortation. For example, over one hundred state and local bar associations have adopted aspirational civility codes, despite a striking lack of evidence that they have had any effect on those most in need of restraint.²¹ It is scarcely self-evident that unenforced norms will be sufficient to counteract the other rewards that hardball tactics can confer. One of the nation’s most notoriously uncivil practitioners, Joe Jamail, is worth close to \$100 million and has a pavilion, legal research center, and two statues honoring his accomplishments at the University of Texas Law School.²²

Moreover, even the profession’s most revered figures were not as disinterested in representing the public welfare as bar portraits

18. Stone, *supra* note 3, at 7.

19. MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 57 (1994); Stuart M. Speiser, *Trial Balloon: Sarbanes-Oxley and the Myth of the Lawyer-Statesman*, 32 LITIG. 5, 68 (2005).

20. See Robert W. Gordon, *A New Role for Lawyers? The Corporate Counselor After Enron*, 35 CONN. L. REV. 1185, 1185-86 (2003); David Luban, *Making Sense of Moral Meltdowns*, in MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT AND POLICY 57, 57-58 (Deborah L. Rhode ed., 2004); Deborah L. Rhode & Paul Paton, *Lawyers, Enron and Ethics*, in ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS 625, 633-40 (Nancy Rappaport & Bala G. Dharan eds., 2004); William Simon, *Rethinking the Professional Responsibilities of the Business Lawyer*, 75 FORDHAM L. REV. 1453 (2006); William Simon, *Wrongs of Ignorance and Ambiguity: Lawyers’ Responsibility for Collective Misconduct*, 22 YALE J. ON REG. 1, 15-17 (2005); Speiser, *supra* note 19, at 66-67.

21. Deborah L. Rhode, *Opening Remarks: Professionalism*, 52 S.C. L. REV. 458, 459-63 (2001).

22. Jonathan Macey, *Occupation Code 541110, Lawyers’ Self-Regulation, and the Idea of a Profession*, 74 FORDHAM L. REV. 1079, 1088-89 (2005). Other sites around the university are also named in his honor. *Id.* For Jamail’s net worth, see Rhode, *supra* note 21, at 461.

typically assume. For example, when the nation's Founding Fathers spoke of "We the people," they were not using the term generically; the rights they envisioned belonged only to their own white male landowning class.²³ For that reason, Supreme Court Justice Thurgood Marshall declined to join the lionization of the Framers during the American Constitution's bicentennial celebrations. As he noted, their vision of justice was "defective from the start."²⁴ To underscore the point, Marshall refused to participate in a pageant reenacting the signing of the Constitution unless he could appear in a historically accurate role, dressed in servants' knee britches and carrying trays.²⁵

Moreover, whatever the bar's contributions to equitable governance structures in general, its performance has been far less impressive when its own interests have been at issue. Like any occupational group, lawyers have had difficulty identifying points at which professional and public concerns diverge. The ABA's first systematic research on disciplinary processes revealed what the ABA's own commission termed a "scandalous situation."²⁶ Surveys of bar admission processes have also found chronic inequities and overly exclusionary practices.²⁷ Despite recent improvements, the profession's oversight practices still leave much to be desired. For example, fewer than 4 percent of public complaints to the disciplinary process result in public sanctions, and few state bars provide consumers with readily accessible sources of information about lawyer performance.²⁸ Bar regulators are still too often resolving

23. Deborah L. Rhode, *Letting the Law Catch Up*, 44 STAN. L. REV. 1259, 1264 (1992).

24. MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961*, at 5 (1994).

25. Rhode, *supra* note 23, at 1264.

26. ABA COMM'N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, *PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 1* (1970).

27. See DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 150-51* (2000) [hereinafter RHODE, *IN THE INTERESTS OF JUSTICE*]; Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 498-503 (1985).

28. For information on public sanctions, see ABA CTR. FOR PROF'L RESPONSIBILITY, *SURVEY ON LAWYER DISCIPLINE SYSTEMS*, charts 1 & 2 (2006), available at <http://www.abanet.org/cpr/discipline/sold/06-ch1.pdf>. For an overview, see generally DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* (5th ed. 2008). For an example, see Michael S. Fisch, *No Stone Left Unturned: The Failure of Attorney Self-Regulation in the District of Columbia*, 18 GEO. J. LEGAL ETHICS 325, 332-36 (2005). For information concerning the lack of public data, see Leslie Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 1-2

conflicts between professional and societal interests in favor of those doing the resolving.²⁹ The same is true of legislative initiatives. The organized bar's opposition to post-Enron reforms requiring disclosure of client fraud represents only the most recent well-publicized example.³⁰

The problem is compounded by the unique degree of independence that the legal profession has maintained over its own governance systems. Because courts have asserted inherent power to regulate the practice of law, and state judges often depend on lawyers' support for their election and advance, the legal profession lacks adequate checks on its own oversight.³¹ And because attorneys have played such a dominant role in legislative and administrative arenas, the United States has lagged behind other countries in imposing governmental checks on the bar's regulatory autonomy.³²

So too, the bar's performance concerning access to justice reveals a dispiriting disjuncture between principle and practice. No comprehensive research is available concerning lawyers' pro bono contributions before the late mid-twentieth century, but the limited evidence available is anything but reassuring.³³ Surveys found that lawyers averaged five to thirty hours a year on charitable work, little of which benefitted poor individuals.³⁴ Most pro bono service assisted friends, family members, and employees of lawyers and their clients, or bar associations and middle- and upper-class organizations such as little leagues and symphonies.³⁵ Few lawyers

(2007). For information concerning the problems in admission systems, see RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 150-55.

29. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 19.

30. See Susan P. Koniak, *When the Hurlyburly's Done: The Bar's Struggle with the SEC*, 103 COLUM. L. REV. 1236 (2003); Rhode & Paton, *supra* note 20; cf. Speiser, *supra* note 19, at 68-69 (noting the need for reform and a return to the higher ethical standards of the past).

31. See RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 19-20 & n.44.

32. For examples, see Legal Services Act, 2007, c. 29 (Eng.); Leslie C. Levin, *Building a Better Lawyer Discipline System: The Queensland Experience*, 9 LEGAL ETHICS 167, 193-94 (2006); Richard Parnham, *The Clementi Reforms in a European Context—Are the Proposals Really that Radical?*, 8 LEGAL ETHICS 195 (2005); Deborah L. Rhode, *In the Interests of Justice: A Comparative Perspective on Access to Legal Services and Accountability of the Legal Profession*, 56 CURRENT LEGAL PROBS. 93, 114-19 (2003).

33. DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE 5-6 (2005).

34. See RICHARD L. ABEL, AMERICAN LAWYERS 129-30 (1989); JEROLD S. AUERBACH, UNEQUAL JUSTICE 282 (1976); RHODE, *supra* note 33, at 14; Joel F. Handler et al., *The Public Interest Activities of Private Practice Lawyers*, 61 A.B.A. J. 1388, 1393 (1975).

35. See studies cited in RHODE, *supra* note 33, at 14; Rhode, *supra* note 32, at 100.

reported any involvement in law reform.³⁶ Although the current situation is vastly improved, the best available data indicate that the average pro bono contribution for lawyers is still less than half a dollar per day and half an hour per week.³⁷ Yet proposals to require some minimal level of assistance have met overwhelming resistance.³⁸ Only five states even demand reporting of pro bono contributions, and almost no effort is made to evaluate their quality.³⁹

Other bar policies on access to justice have been similarly inadequate.⁴⁰ Until the 1960s, lawyers did little to support, and often actively opposed, government-subsidized legal services on the ground that it would result in “socialization” of the profession.⁴¹ The bar’s campaign against the “unauthorized practice of law” by even qualified lay competitors helped to price justice out of reach for the vast majority of low-income individuals.⁴² Although in recent years the profession has strongly supported increased government assistance, its lobbying efforts have fallen well short, and its policies on nonlawyer practice and pro se assistance reflect traditional anti-competitive biases.⁴³ Partly as a consequence, an estimated four-fifths of the individual legal needs of low-income Americans, and two-thirds of moderate-income Americans, remain unmet.⁴⁴ It is a

36. See studies cited in RHODE, *supra* note 33, at 14.

37. *Id.* at 20. ABA survey results finding that a majority of lawyers report doing some pro bono work are not inconsistent with this estimate, given that the average hourly contribution of lawyers who offered pro bono assistance needs to be adjusted for the numbers who did not, and for those whose contributions involved activities such as bar association service. For ABA survey results, see ABA STANDING COMM’N ON PRO BONO AND PUB. SERV., SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 4 (2005).

38. See RHODE, *supra* note 33, at 15-17, 31-46.

39. ABA State-by-State Pro Bono Service Rules, <http://www.abanet.org/legalservices/probono/stateethicsrules.html> (last visited Feb. 8, 2009). For the absence of quality data, see RHODE, *supra* note 33, at 40-43, 174.

40. RHODE, *supra* note 11, at 112.

41. *Id.* at 60 (quoting a 1950 warning by the ABA’s president).

42. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 135-40; Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 6-10 (1981). For a historical overview, see RHODE, *supra* note 11, at 75-76.

43. RHODE, *supra* note 11, at 84-90.

44. For information on low-income Americans, see LEGALSERV. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA 12-18 (2005). For information on middle-income Americans, see RHODE, *supra* note 11, at 79.

shameful irony that the nation with the world's highest concentration of lawyers has one of the least adequate systems for making legal services accessible.

III.

According to the recent Report of the ABA's Commission on Renaissance of Idealism in the Legal Profession, "while it is undeniably true that the pace and pressures of modern practice pose serious challenges to the values of the profession, it is equally true that the spirit of idealism needed to meet those challenges is alive and well."⁴⁵ If so, more efforts will be necessary than the largely exhortatory initiatives chronicled in the Report, such as public service awards, model powerpoints, billboard campaigns, continuing education programs, advisory resolutions, and "I Am an Idealist" buttons.⁴⁶ Translating the bar's civic obligations into daily practices will require less aspirational rhetoric and more structural reform.

This is not the occasion for a full-scale blueprint, but the general direction of change is clear. In essence, the bar needs to become more publicly accountable for its public responsibilities. If, as lawyers often lament, the profession has become more like a business, then it needs to be regulated more like a business.⁴⁷ Although some measure of professional independence remains necessary, models from other nations suggest that it can be maintained under governance systems that have greater distance from the self-interests of the organized bar.⁴⁸ At a minimum, such systems need

45. ABA COMM'N ON THE RENAISSANCE OF IDEALISM IN THE LEGAL PROFESSION, *supra* note 15, at 2.

46. *Id.* at 20-23.

47. See, e.g., David Barnhizer, *Profession Deleted: Using Market and Liability Forces To Regulate the Very Ordinary Business of Law Practice for Profit*, 17 GEO. J. LEGAL ETHICS 203, 221 (2004); Russell G. Pearce, *Law Day 2050: Post-Professionalism, Moral Leadership, and the Law-as-Business Paradigm*, 27 FLA. ST. U. L. REV. 9 (1999); Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995); cf. Macey, *supra* note 22 (tracking the shift in the law profession, and noting the increased levels of competition and decreased levels of civility and professionalism that have accompanied the shift).

48. See RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 162. For descriptions of co-regulatory structures in which the bar shares oversight authority with independent bodies, see RHODE & LUBAN, *supra* note 28, at 984-85.

to provide more transparency regarding lawyer performance and stiffer sanctions for those complicit in client misconduct.

The profession's regulatory structures and workplace norms also must provide more support for lawyers' public responsibilities in representing private clients. One of those responsibilities is to foster compliance with the purposes as well as letter of the law and with core principles of honesty and fairness on which legal processes depend.⁴⁹ That, in turn, will require better oversight structures in law firms and corporate counsel offices, and stiffer liability standards for lawyers who fall short.⁵⁰ Everyone's ethical compass benefits from some external checks; clients need pressure from attorneys, and attorneys need pressure from each other.⁵¹

With respect to pro bono services, lawyers need not just exhortation but enforceable expectations, imposed by courts, bar associations, or legal employers.⁵² More information should be widely available about lawyers' contributions and the quality of services provided. Since Florida has required reporting of pro bono work, the number of lawyers providing assistance to the poor has increased by 35 percent, the number of hours has increased by 160 percent, and financial contributions have increased by 243 percent.⁵³ The *American Lawyer's* rankings of pro bono contributions by large firms, and the special visibility that it gives to high performers and "cellar dwellers," also has had a significant impact.⁵⁴ But more efforts are necessary, and enlisting law students and clients in the demand for better public service records should be a high priority.⁵⁵

49. See MODEL RULES OF PROF'L CONDUCT R. 3.3, 3.4 (2002); Deborah L. Rhode, *Moral Counseling*, 75 *FORDHAM L. REV.* 1317, 1319, 1329 (2006).

50. See Gordon, *supra* note 20, at 1210-11 (explaining possible oversight structure); Rhode, *supra* note 49, at 1333-34.

51. Rhode, *supra* note 49, at 1334.

52. RHODE, *supra* note 33, at 167-69.

53. STANDING COMM'N ON PRO BONO LEGAL SERVICE, REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR AND THE FLORIDA BAR FOUNDATION ON THE VOLUNTARY PRO BONO ATTORNEY PLAN 3 (2006).

54. Ben Hallman, *Pro Bono Starts at the Top*, AM. LAW., July 2007, <http://www.law.com/jsp/article.jsp?id=1183107989276>.

55. See RHODE, *supra* note 33, at 167-71. One such initiative is Building a Better Legal Profession, a database grading firms on their diversity and pro bono records. Building a Better Legal Profession, Leadership, <http://www.betterlegalprofession.org/leadership.php> (last visited Feb. 8, 2009); see Adam Liptak, *In Students' Eyes, Look-Alike Lawyers Don't Make the Grade*, N.Y. TIMES, Oct. 29, 2007, at A10.

Law schools also need to become more active partners in this effort. In too many institutions, issues of professional responsibility are relegated to a single required course, which focuses largely on the minimum requirements of the ABA's Model Rules of Professional Conduct.⁵⁶ The result is legal ethics without the ethics and little attention to broader issues of access to justice.⁵⁷ The Carnegie Foundation's recent overview of legal education found that issues such as social responsibility or matters of justice rarely received significant coverage in the core curriculum; when the issues arose they were "almost always treated as addenda."⁵⁸ In my own recent national survey of several thousand lawyers, only 1 percent reported that pro bono service received coverage in orientation programs and professional responsibility courses; only 3 percent reported that it received visible support from faculty.⁵⁹ Another national study found that less than half of students participated in pro bono work while in law school.⁶⁰ If legal educators are serious about reinforcing values of public service, then they cannot treat these issues of professional responsibility as someone else's responsibility.

Some sixty-five years after Harlan F. Stone reminded law schools of their need to assemble facts that would stir the profession's "latent idealism,"⁶¹ David Wilkins echoed similar themes in a plenary speech to the Association of American Law Schools.⁶² In his remarks on the professional responsibilities of professional schools, Wilkins talked about the responsibility to study and teach about the bar:

At a time when the American legal profession is being radically transformed on almost every dimension, ... the legal academy must become an active participant in developing ... [the] knowledge about legal practice that will allow us to construct a

56. RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 27, at 200-01.

57. *Id.*

58. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS 187 (2007).

59. RHODE, *supra* note 33, at 162.

60. IND. UNIV. CTR. FOR POSTSECONDARY RESEARCH, STUDENT ENGAGEMENT IN LAW SCHOOLS: A FIRST LOOK 8 (2004).

61. Stone, *supra* note 3, at 12.

62. David B. Wilkins, *The Professional Responsibility of Professional Schools To Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

vision of legal professionalism fit for the twenty-first century

....⁶³

If we want that vision to include the obligations of lawyers as public citizens, with a “special responsibility for the quality of justice,” we also must assume that responsibility ourselves.

63. *Id.* at 76-77.