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## POVERTY LAW: PRO BONO PUBLICO AS A CONSCIENCE GOOD, 35 Wm. Mitchell L. Rev. 977

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2009

**Reporter****35 Wm. Mitchell L. Rev. 977 \*****Length:** 14738 words**Author:** Professor Deborah A. Schmedemann+

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### Text

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**[\*977]** I. Introduction

Three social psychologists who have spent decades studying volunteerism have depicted volunteering this way: "People participate in volunteer work in the face of substantial obstacles - it is effortful, it is work and work performed on an unpaid basis, it is time consuming, and it involves interactions with strangers ... . Some volunteers engage in work that is clearly trying." [1](#) Thus their research question has been: "Why would anyone volunteer?" [2](#)

**[\*978]** Their observations fit legal **pro bono publico** well. [3](#) **Pro bono** work is indeed effortful, unpaid, time-consuming, and sometimes, if not often, trying. This article seeks to answer the question "why would anyone do **pro bono** work?" by looking at **pro bono** through the lens of social science research into volunteering. In particular, this article explores whether **pro bono** is a "conscience good," as economist Richard Freeman has depicted non-legal volunteering. [4](#)

Part II of this article presents an overview of social science research into volunteering. [5](#) Part III discusses the present practice of **pro bono**. [6](#) Part IV describes the empirical research leading to the results that are presented and discussed in Part V. [7](#) Part VI presents suggested ways to promote **pro bono**, and Part VII concludes with one of the study's recommendations - a story. [8](#)

## [II](#). Social Science Insights into Volunteering

Over the past four decades, researchers from various disciplines have studied volunteering. As the following overview demonstrates, they have learned that volunteering is a complex phenomenon.

Social psychologists [9](#) see volunteering as "a distinctive form of prosocial action," in which the volunteer chooses, without prior obligation or commitment, to help others; seeks out an opportunity to do so; serves over an extended period of time; and expends considerable time and effort doing so. [10](#) Louis Penner and his colleagues' wide ranging model of why people volunteer encompasses dispositional variables, such as prosocial personality, **[\*979]** religiosity, other beliefs, and motives; age, income, and education; situational factors and social pressure; and attributes of the volunteer organization, such as its reputation. [11](#)

Sociologists define volunteering as an activity in which time is freely given to benefit another person, group, or organization; it is one in a cluster of helping activities. [12](#) John Wilson recently synthesized the sociology

literature into three theories explaining who volunteers. **13** The human resources theory focuses on time, education, and income. Thus, for example, professional workers work long hours but nonetheless volunteer more because their jobs entail community service. **14** The social context theory focuses on social contacts, which lead to invitations to volunteer. Social contexts resemble concentric circles: family, neighborhood, cities, etc., as well as psychological communities, i.e., people to whom one feels a sense of attachment. **15** The socialization theory posits volunteerism as a learned social norm, which, when activated, leads to assuming the role of a volunteer. Socializing agents include parents, schools, and religious organizations, which support as well as teach the volunteer. **16**

For example, Paul Schervish's identification theory of charitable giving **17** is "fundamentally a relational theory." **18** The **[\*980]** process involves membership in communities of participation, i.e., formal and informal networks; frameworks of consciousness, such as political ideology, religious beliefs, and social concerns; and direct requests for contributions, which arise within communities of participation and are based upon frameworks of consciousness. **19** Also important are models and experiences from one's youth and the presence of discretionary resources. **20** Of these various factors, being in a community of participation is the most powerful; giving fundamentally depends upon one's associational capital, that is, "social networks of invitation and obligation." **21**

Recently, economists **22** have researched the benefits volunteers consider as they seek to maximize their utility. For example, Paul Menchik and Burton Weisbrod have documented two models: in the investment model, one volunteers to, for example, obtain work experience; in the consumption model, one volunteers because the act of volunteering itself has direct utility. **23** James Andreoni has catalogued the social and psychological factors that influence charitable giving: seeking prestige, respect, or friendship; avoiding scorn or receiving social acclaim; and experiencing guilt, sympathy, or a desire for a "warm glow." **24**

Richard Freeman, taking a rather different approach, has determined that volunteering is not actually voluntary behavior. **25** Rather, the key to why people volunteer is that they are asked and feel social pressure to participate. **26** Stated another way, **[\*981]** volunteering is a "conscience good," that is, a "public good[] to which people give time ... because they recognize the moral case for doing so and for which they feel

social pressure to undertake when asked, but whose provision they would just as soon let someone else do." [27](#)

These models suggest that some, perhaps many, antecedents to volunteering in the form of **pro bono** are set before someone becomes a lawyer. Certainly her childhood is over, her religious beliefs very likely are fixed, and she has probably established her political ideology. [28](#) Yet these models also suggest that volunteering is driven in part by the volunteer's situation, such as Penner's situational factors and social pressure and Schervish's social networks of invitation and obligations. Freeman's concept of volunteering identifies three elements of the volunteer's situation: (1) the work is a public good, and the volunteer sees the moral case for doing it; (2) the volunteer feels social pressure to do it and is asked; and (3) the volunteer would rather someone else do it. [29](#) Does this description accurately reflect legal **pro bono**?

### [III](#). The Practice of **Pro Bono Publico**

Legal **pro bono publico** has been described as "a professional duty, discharged outside the normal course of billable practice, to provide free services to persons of limited means or to clients seeking to advance the public interest ... ." [30](#) Low-income [**\*982**] households experience two to three important legal needs per year; there are 6861 low-income people for every legal aid attorney, compared to 525 for the general population. [31](#) Thus, **pro bono** plays a critical role in the provision of civil legal assistance to America's poor. [32](#) Even so, the legal profession has somewhat of an ambivalent relationship with **pro bono**.

For some time, lawyers have debated the issues surrounding **pro bono**, specifically the idea of requiring **pro bono**, but also voluntary **pro bono**. Most arguments are grounded in public policy. [33](#) Lawyers opposed to **pro bono** as a general matter ask whether more direct means of reducing poverty are preferable and why lawyers should bear the burden of a social problem. Detractors of mandatory **pro bono** cite the difficulty of defining **pro bono**, the costs of administering and enforcing a legal requirement, concerns about the competence of **pro bono** lawyers, and the undermining of **pro bono**'s voluntary nature and moral foundation. [34](#) Factors favoring **pro bono** in general, and mandatory **pro bono** more specifically, are the needs of the poor for legal representation; professional and personal benefits for the lawyer; benefits to legal employers seeking to

recruit, train, and retain lawyers interested in public interest work; and improvement in the overall reputation of the legal profession. [35](#)

**[\*983]** The American Bar Association ("ABA") has considered, indeed fiercely debated, **pro bono** several times during the past forty years. [36](#) To date, its Model Rules have not gone so far as to require **pro bono**, but each revision has inched a bit closer to such a mandate. [37](#) Model Rule of Professional Conduct 6.1, entitled Voluntary **Pro Bono Publico** Service, currently states:

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. [38](#)

**[\*984]** Nearly every state has a **pro bono** rule, many resembling Model Rule 6.1; no state rule compels **pro bono**. [39](#) Intriguing options occupying a middle ground between an aspirational rule and a mandate are a rule requiring reporting of **pro bono** hours (but not **pro bono**) and a rule

granting continuing legal education ("CLE") credit for **pro bono** service. Seven states require reporting of **pro bono** hours, and seven permit credit toward mandatory CLE. [40](#)

The incidence of **pro bono** has been researched in recent years. [41](#) For Deborah Rhode's study, [42](#) researchers obtained data regarding **pro bono** participation in 2000 from 844 lawyers who either: (1) graduated from one of six elite law schools in 1993 or 1997; (2) received an ABA **Pro Bono Publico** award; (3) worked for a firm that received that award between 1993 and 2000; or (4) worked at one of the country's largest firms during that period. [43](#) The average number of **pro bono** hours per year for lawyers participating in the study was seventy - heavily skewed by the 230-plus hours of award winners and estimated to be three times that of the bar as a whole, based on media and bar reports. [44](#) Rhode **[\*985]** concluded that "the average for the bar as a whole is less than half an hour a week." [45](#)

Similarly, Robert Granfield's 2004 survey focused on several graduating classes from three law schools around the country. [46](#) About 70% of the respondents performed at least some **pro bono** in their current job. [47](#) The average number of annual hours was sixty-nine. [48](#)

After the JD: First Results of a National Study of Legal Careers is a study conducted by the National Association for Law Placement and the American Bar Foundation. [49](#) The authors plan to study, over ten years, a cohort of 5,000 lawyers who entered practice in 2000. [50](#) The first survey, conducted after the lawyers had been in practice two to three years, revealed wide variation in **pro bono** participation by practice setting: at one end, 81% of lawyers in very large firms performed an average of forty-five hours per year; at the other end, 18% of government lawyers performed an average of ten hours per year. [51](#)

In August 2005, the ABA Standing Committee on **Pro Bono** and Public Service released Supporting Justice: A Report on the **Pro Bono** Work of America's Lawyers, [52](#) a report based on a 2004 survey of 1,100 lawyers selected to form a representative sample of lawyers in the United States. [53](#) The survey found that 66% of the respondents performed "tier 1" **pro bono**, i.e., free legal services to people of limited means or organizations serving the poor; an additional 18% performed "tier 2" **pro bono**, such as free services to other entities **[\*986]** and reduced-rate services; an additional 2% did other work meeting the lawyer's personal definition of

**pro bono**; and 14% did no **pro bono** work in the past year. [54](#) Respondents performed, on average, thirty-nine hours of "tier 1" and thirty-eight hours of "tier 2" work. [55](#) At 73%, respondents in private practice participated at more than twice the rate of corporate counsel and government lawyers, with participation rates of 35% and 33% respectively. [56](#)

The ABA followed up with a study conducted in 2008, finding that 73% of the lawyers provided some type of "tier 1" **pro bono**, and that lawyers in private practice participated at a higher rate (81%) than lawyers in corporate (43%) and government (30%) settings. [57](#) The average number of tier 1 hours performed during the preceding year was forty-one (fifty-five when looking only at attorneys performing tier 1 work). [58](#) One-third reported performing non-tier 1 **pro bono**, and one-fifth reported that they did no **pro bono** work in the preceding year. [59](#) This study also explored lawyers' concepts of **pro bono**, finding that many lawyers see **pro bono** in the terms of Model Rule 6.1. [60](#) For example, 64% indicated that legal services had to be free to qualify as **pro bono**, 70% indicated that an individual client had to be of limited means, and many stated that only some not-for-profit organizations should qualify. [61](#)

**Pro bono** is gaining favor among lawyers. In a 1994-1995 survey of Chicago lawyers, when asked whether lawyers should be required to perform or fund **pro bono**, 35% of the respondents agreed, 15% were undecided, and 50% disagreed. [62](#) The 2004 ABA survey found that 93% of the lawyers believe that **pro bono** is **[\*987]** something lawyers should do. [63](#)

Almost all lawyers now see **pro bono** as a professional obligation. Yet a sizeable number do little or no **pro bono**. Can social science insights into volunteering, especially the concept of volunteering as a conscience good, explain this phenomenon?

#### [IV](#). Research Design and Respondents

To a social scientist, volunteering is not an easy phenomenon to research; it is a "relatively hot, active process[] - the interplay of values, emotions, motives, and behavior." [64](#) My approach was to gather data from an array of groups through a variety of qualitative and quantitative methods, including focus groups, online and paper surveys, and extended interviews. [65](#) Most of the findings reported here derive from surveys. [66](#)

The Main Survey of New Lawyers: The main survey involved William Mitchell College of Law graduates from the years 2001-2004. These graduates could receive recognition for fifty or more hours of public service through the college's Law School Public Service Program ("LSPSP"). [67](#) One of the study's major purposes was to assess the impact of the LSPSP on new lawyers' participation in **pro bono**. [68](#) The Minnesota Justice Foundation, which coordinates public service placements for the four Minnesota law schools, [69](#) collaborated on the main study.

**[\*988]** The pool consisted of slightly more than 1,100 graduates; 420 participated for a response rate of 39%. The respondents were employed in a wide variety of practice settings: large firm (over 25 lawyers) - 16%; small firm (up to 25 lawyers) - 27%; solo practice - 6%; governmental settings, including judicial clerkship and legal services, public defender, or other government law office - 20%; law-related positions (e.g., tax accountant) - 13%; corporate legal staff - 6%; and other (including not working) - 10%. Sixty percent of the respondents were female, and 40% were male. About one in five were born before 1965, the rest between 1965 and 1980. [70](#)

Respondents were asked to report their **pro bono** participation in hours per year. The survey was sent out in May 2006; the latest surveys were returned in July 2006. Respondents were asked to report the number of hours they actually performed in 2005 and the hours they projected for 2006. To qualify, the work had to be done for no fee or a substantially reduced fee; work for which the respondent intended to collect a fee did not qualify as **pro bono** even if no fee was collected. Moreover, respondents were asked to categorize their hours [71](#) as follows:

. Category A: Legal services to people of limited means and legal services to organizations that address the needs of the poor.

. Category B: Legal services to organizations seeking to secure or protect civil rights, civil liberties, or public rights; legal services to other charitable, religious, civic, community, governmental, or educational organizations; and activities to improve the law, the legal system, or the legal profession.

This article uses "access" to refer to Category A, "civic" for Category B, and "combined" for both.

[I](#) conducted three secondary surveys as well. Each covered some of the same territory as the main survey, permitting comparisons across groups.

Each of the three also explored a topic not covered in any of the others.

**[\*989]** . Experienced Lawyers: Seventy-five lawyers teaching as adjunct professors in William Mitchell's extensive skills program filled out a questionnaire covering their experience of **pro bono**. This sample was roughly 40% female and 60% male. Sixty percent were born before 1965, and the rest were born between 1965 and 1981. Their years of experience varied: 20% had five to nine years of experience, 45% had ten to nineteen years of experience, 28% had twenty to twenty-nine years of experience, and 7% had thirty to thirty-seven years of experience.

. Professional Responsibility ("PR") Students: Two hundred twenty-four students in at least their second year of law school taking the PR course filled out a questionnaire focusing on their **pro bono** intentions. They had not yet discussed **pro bono** in class. This sample was roughly 60% female and 40% male. About three out of four were born between 1965 and 1981, most of the rest since 1981, and a few before 1965.

. First-Year Students ("1L"): Three hundred twenty-five 1L students filled out a questionnaire in the spring semester about discussion of **pro bono** in their first-year courses. This sample was 55% female and 45% male. About six out of ten were born between 1965 and 1981, most of the rest since 1981, and a few before 1965. **72**

Some data reported here are descriptive, such as the percentage of respondents who chose an option in response to a question about preferences. Some results are correlations, all from the survey of new lawyers; the other surveys did not include questions about **pro bono** participation. A correlation between X and Y indicates that as the value of X changes, so does the value of Y. It may be that X caused Y, or Y may have caused X, or both X and Y may be influenced by an unmeasured factor. For example, being raised to do volunteer work correlated with access **pro bono**; presumably, the upbringing caused the participation (along with other factors). As another example, employer support correlated with **pro bono**, especially access **pro bono**. Employer support - or lack of support - may influence the decision to participate. **[\*990]** Another explanation is that lawyers select employers with policies that match their own pre-employment attitudes toward **pro bono**. **73**

[V](#). Results and Discussion

Freeman's concept of volunteering as a conscience good has three elements: (1) the work is a public good, and the volunteer sees the moral case for doing it; (2) the volunteer feels social pressure to do it and is asked; and (3) the volunteer would rather someone else do it. **74** All of these elements derive directly or indirectly from the lawyer's situation. This part presents and discusses results of the surveys corresponding to these three elements. **75**

#### A. The Moral Case for Doing the Work

Several studies of **pro bono** have explored why lawyers do **pro bono**. Rhode found that the most powerful influences were "a sense of satisfaction and obligation, together with the professional benefits or costs associated with **pro bono** work." **76** Granfield found that the most significant motivating factors were intrinsic satisfaction as well as the profession's normative obligation. **77** Lawyers also engaged in **pro bono** for instrumental reasons, such as enhancing skills (large-firm lawyers) and career advancement (solo practitioners). **78** Depending on the setting, commitment to the community also mattered. **79** Lawyers participating in the 2004 ABA **[\*991]** study identified "a combined sense of professional responsibility and ... personal satisfaction derived from providing the service" as their major motivators, followed by "recognition and understanding of the needs of the poor." **80** Few sought professional benefits. **81**

My research into this topic approaches the question from a different slant - grounding the study in the social-psychology literature on motivations to volunteer. The functional approach posits that different people may perform the same task for different reasons. **82** Working from a major wide-ranging survey about volunteering, Gil Clary and colleagues developed the Volunteer Functions Inventory ("VFI"), which taps into six major motivations: values, enhancement, understanding, career, social, and protective. **83** Below are the motivations along with a brief description of each, **84** and the statement used in my study, derived from the VFI:

Values	One volunteers to express or act on important values like humanitarianism.	Through <b>pro bono</b> work, I can do something for a cause, principle, or group of people that matters to me.
Enhancement	One can grow and develop psychologically through volunteer activities.	<b>Pro bono</b> work helps me feel better about myself.
Understanding	One seeks to learn more about the world or exercise unused skills.	<b>Pro bono</b> work allows me to gain a new perspective on things.

Career	One has the goal of gaining career-related experience.	<b>Pro bono</b> work will help me succeed in my career.
Social	Volunteering allows one to strengthen social relationships.	Others with whom I am close place a high value on <b>pro bono</b> or volunteer work.
Protective	One uses volunteering to reduce negative feelings, such as guilt, or address personal problems.	<b>Pro bono</b> work helps me deal with my own personal problems.

## [\*992]

For the general population, the most powerful motivation is values; then enhancement, social, and understanding; then career and protective.<sup>85</sup> Four of the six motivations predict volunteering: values, career, social, and understanding.<sup>86</sup> Clary and colleagues have concluded that "the functional account is a multimotivational one, and volunteer behavior is a multi-layered variable as well."<sup>87</sup>

Three of my surveys included questions from the VFI: 1Ls, new lawyers, and experienced lawyers. The questions in the 1L survey referred to volunteering. The questions I used in the new lawyer and experienced lawyer surveys referred to **pro bono** work, an obvious adjustment to fit the legal context. For all groups, the values question was changed in a second way: to add references to "principles" and "groups of people." These additions derived from two sources. Daniel Batson, a leading researcher in the altruism-egoism debate about the essential nature of helping, has suggested exploration of two additional prosocial motives: principism, i.e., upholding a moral principle, and collectivism, i.e., benefiting a group.<sup>88</sup> In addition, lawyers in the focus groups spoke of pursuing ideals, such as equal treatment and fair process, and wanting to help those with whom they have some affinity, based on factors [\*993] such as race, ethnicity, or social class.<sup>89</sup>

The means, on a scale of 1 (low) to 5 (high), from the 1Ls, new lawyers, and experienced lawyers are presented in Chart 1. Some of these items correlated with the new lawyers' participation in **pro bono**. In all cases, the higher the motivation's score, the greater the participation. The correlations were as follows: values correlated with combined, especially access **pro bono**; <sup>90</sup> understanding correlated with access **pro bono**; <sup>91</sup> career correlated with combined **pro bono**; <sup>92</sup> and social correlated with access **pro bono**. <sup>93</sup>

Chart 1. Volunteer Motivations

1Ls, New Lawyers, and Experienced Lawyers

Bold indicates items that correlated with **pro bono** participation by new lawyers.

	1Ls	New Lawyers	Experienced Lawyers
Values	4.22	3.87	4.07
Enhancement	3.98	3.62	4.00
Understanding	4.20	3.53	3.97
Career	3.81	2.63	2.73
Social	3.04	2.37	3.04
Protective	2.10	1.63	1.72

These results suggest some evolution from law student, to new lawyer, to experienced lawyer. New-lawyer averages were low compared to the 1L and experienced-lawyer averages for all of the motivations. This perhaps suggests an overall low level of enthusiasm or lack of clarity about the motivations among new lawyers compared to law students and more senior lawyers.

To learn more about the values that may prompt a lawyer to perform **pro bono**, I asked the 1Ls, new lawyers, and experienced lawyers to state the group, cause, or principle they valued. The responses varied widely. Common groups were battered women, children, immigrants, and the poor. Common causes were civil [\*994] liberties and environmental protection. Common principles were equality and fairness. Classifying the answers into three categories yielded the distribution presented in Chart 2. These distributions reveal marked differences in two of the categories. All three groups listed causes roughly equally (around 20%). Groups became less prevalent as experience increased (from 73% to 54%), and principles became more prevalent (from 9% to 29%) as experience increased.

Chart 2. Types of Values: Groups, Causes, and Principles

1Ls, New Lawyers, and Experienced Lawyers

	1Ls	New Lawyers	Experienced Lawyers
Groups	73%	65%	54%
Causes	18%	21%	17%
Principles	9%	13%	29%

Use of the VFI and follow-up questions yielded some insights into how motivations align with Freeman's moral case. The general population scores values (the moral-case motivation) the highest, and the values motivation correlates with volunteering. So too with the respondents in my study: all three groups scored values the highest, and it correlated with new lawyers' participation in **pro bono**, especially access **pro bono**. **94** Furthermore,

the categorization of values supports Batson's theories of collectivism and principlism. [95](#) A moral case may be framed concretely or abstractly - the newer a person is to the law, the likelier that person will see value in serving a specific group of people.

## B. Social Pressure and the Ask

Social Pressure: An unresolved issue in the profession is, not surprisingly, whether **pro bono** should be mandated. [96](#) This is a question social scientists have explored in the context of volunteering and community service.

**[\*995]** The difficulty with mandated service is that it conflicts with the desire most people have to control their own decisions and actions. In general, a person who does a task because of external constraints, i.e., a requirement, is unlikely to continue doing so when the external constraints drop away. [97](#) For example, college students who perceived that they were externally controlled when required to "volunteer" as part of a course were unlikely to volunteer in the future. [98](#) The intentions of students who would have volunteered anyway were little affected by a requirement to serve. [99](#)

If a mandate may be counterproductive, an alternative could be offering an incentive to participate. An incentive, especially if it is substantial enough, may draw some people to volunteer (the price effect). For volunteers who are intrinsically motivated, however, receiving the extrinsic incentive may dilute their intrinsic motivation and prompt them to volunteer less (the crowding-out effect). [100](#) Stated another way, a person who volunteers because she believes that she is a helpful person, but is provided extrinsic rewards for volunteering, may volunteer less in the future because her self-image as an altruistic person has been undermined. [101](#) This effect is worrisome because intrinsically motivated people volunteer more than extrinsically motivated people. [102](#)

Two of the recent studies of legal **pro bono** explored the impact of a law school **pro bono** requirement. For **Pro Bono** in Principle and in Practice, Rhode surveyed graduates from two schools with mandatory **pro bono** programs, two with well supported voluntary programs, and two without **pro bono** programs. [103](#) About the same number of graduates - one out of five - found that their **[\*996]** law school experience had encouraged or dampened their interest in **pro bono** legal work. [104](#) There was no

statistically significant correlation between a law school's program type and **pro bono** hours in the graduates' early practice years. [105](#)

Granfield surveyed graduates of three law schools with mandatory programs - the last class before the requirement and two classes thereafter. [106](#) Half of the respondents indicated that law school **pro bono** affected their commitment to **pro bono** in practice. [107](#) Yet, lawyers who were required to perform **pro bono** in law school did not perform more in practice than lawyers who graduated before the requirement. [108](#) A smaller percentage of the requirement cohort performed **pro bono** in practice, and the average numbers of annual hours for the two cohorts were virtually identical. [109](#)

William Mitchell's public service program is incentive-based: students who perform fifty hours of law-related public service are recognized in various ways, including a transcript designation. Service may be through a clinic or through a volunteer placement program offered by the Minnesota Justice Foundation ("MJF"), which coordinates volunteer placements for all four Minnesota law schools. MJF has contacts with over one hundred organizations, and students may develop their own placements with MJF's assistance. In recent years, about half of each graduating class has earned the fifty hours of recognition, with some students performing many more hours than required. [110](#)

There were several correlations between participation in William Mitchell's incentive-based program as a student and **pro bono** participation in the student's early practice years. The fifty-hour participation recognition correlated with combined **pro [\*997] bono**, in particular civic **pro bono**. [111](#) The two methods of participation had different correlations: any volunteer participation through MJF correlated with combined and civic **pro bono**; [112](#) clinic course work correlated with access **pro bono**. [113](#)

To explore the impact of different ethics rules, I conducted a policy-capturing study involving the Professional Responsibility ("PR") students. In a policy-capturing study, the respondent reads a series of similar scenarios and answers the same question about each; statistical analysis teases out which factors within the scenarios, if any, influenced the answers. [114](#)

In the PR study, a respondent was asked to imagine that she was a new associate in a small firm that leaves **pro bono** up to each lawyer's individual discretion. She learned about a **pro bono** opportunity

representing low-income tenants in eviction proceedings, an area of some interest since graduating from law school. She had not yet performed any **pro bono**. Then the respondent read nine scenarios, each containing a unique combination of three versions of two factors:

. The state's professional responsibility rule either (1) required at least twenty-five hours per year of legal services to people unable to pay - mandate; (2) set an aspirational standard of twenty-five hours and required reporting - report; or (3) set an aspirational standard of twenty-five hours with no requirement - aspiration.

. The invitation to participate came: (1) in a letter from the state supreme court chief justice and president of the bar association - bar leaders; (2) a mention by a partner in the firm about her own experience, along with a reminder that **pro bono** is a matter of individual discretion - partner; or (3) a lunch conversation with a friend who works for the local legal aid agency - friend.

**[\*998]** After reading each scenario, the respondents answered this question: "Based on this scenario, would you take a **pro bono** eviction case?" The scale ranged from 1 (certainly not) to 5 (certainly yes). Chart 3 presents the means for the nine scenarios. The most persuasive combination, with a mean of 4.462, was mandate + friend (the top row). The least persuasive combination, with a mean of 3.661, was aspiration + bar leaders (the bottom row).

As for the **pro bono** rules, the following differences were statistically significant: mandate was more persuasive than report and aspiration, regardless of who extended the invitation; **115** and report was more persuasive than aspiration for partner and friend invitations, **116** but not for invitations from bar leaders.

Chart 3. Professional Responsibility Rules and Invitations

Professional Responsibility Students

Mean	Mandate	Report	Aspiration	Bar Leaders	Partner	Friend
4.462	[check mark]					[check mark]
4.444	[check mark]				[check mark]	
4.333	[check mark]			[check mark]		
4.027		[check mark]			[check mark]	
4.022		[check mark]				[check mark]
3.897			[check mark]		[check mark]	
3.883			[check mark]			[check mark]
3.716		[check mark]		[check mark]		

These results of my and others' research provide insight into the distinctive type of social pressure involved in legal **pro bono**. Law students and lawyers can be expected to do what they are required to do. However, reluctant participants may do no more once the requirement is satisfied, as suggested in the Rhode and Granfield studies. On the other hand, less obligatory approaches may succeed in prompting continued participation. William [\*999] Mitchell's incentive-based program had a positive impact on continued participation in **pro bono**. A key factor may have been the considerable choice students had over which type of service to perform. In addition, in the policy-capturing survey study, the in-between rule - the reporting requirement - was not as powerful as a mandate but did have more of an impact than an aspiration. This rule may create an incentive to perform **pro bono** to report.

The Ask: Volunteering research is clear - to get someone to volunteer, ask her. In a Gallup survey, nearly nine out of ten people who were asked to volunteer did so in the previous past year, versus three out of ten for people who had not been asked. [117](#) Invitations vary in their efficacy. Face-to-face invitations, especially from a person who knows about the work, are more influential than impersonal appeals. [118](#) Invitations from a previously known person (a friend, business associate, or member of the clergy) are more effective than phone calls, people coming to your door, or encouragement in the workplace. [119](#) Invitations that carry some significant social pressure (invitations from family and friends) are more effective than invitations carrying less social pressure (employers and colleagues) and invitations lacking social pressure (strangers). [120](#) The ABA's 2008 survey found that three out of four lawyers who provided **pro bono** did not go looking for **pro bono** work; the opportunity found them. [121](#)

The PR student policy-capturing study regarding ethics rules also explored invitations to engage in a specific **pro bono** program. Chart 3 (above) presents the results of that study. Friend and partner invitations were statistically significantly more effective than letters from bar leaders. [122](#) Friend and partner comments, over lunch and in a firm meeting respectively, were not statistically significantly different from each other.

This finding is likely due to several factors: the recipient of a widely circulated letter may figure that someone else will respond, so she need not; the author is not someone the recipient knows or interacts with; and few letters are as compelling as conversations, especially when the speaker is knowledgeable and committed to the **[\*1000]** work. These results show that lawyers are, at least in this respect, not much different from other people in their reactions to appeals to serve.

How should an invitation be framed? Some guidance comes from social psychologists who have studied motivations to volunteer. Not surprisingly, a message based on the invitee's motivation to volunteer has been found more effective than a mismatched message. **123** To recruit new volunteers, one should focus on concrete reasons to volunteer and refute abstract reasons for not volunteering. **124** Furthermore, to trigger an inclination to provide help, an invitation should appeal less to logical analysis than to emotions that may be triggered by individual stories and images. **125**

To obtain some insight into the content of a **pro bono** appeal, I conducted a study involving about two hundred undergraduates. **126** After reading a bit about legal **pro bono**, respondents read seven messages, all actual messages about **pro bono** drawn from bar publications, a firm website, and the Legal Services Corporation's study of the unmet legal needs of the poor. **127** Respondents rated each message on a scale of 1 (not at all persuasive) to 5 (very persuasive). Next, they reviewed all seven messages again to identify the two most persuasive messages. The messages, listed from most to least persuasive, were:

- . A simple story about a case, along with the lawyer's comments about the rewards of working on the case;
- . A photograph of a man's hand reaching toward a child's hand plus the phrase "rediscover the true meaning of law"; **[\*1001]** . A professionalism pledge that included a vague reference to **pro bono** work plus a statement about **pro bono** work by the bar president;
- . An article about the business advantages of **pro bono** work;
- . A list of statistics regarding the poor's lack of access to legal services;
- . A profile of the winner of a **pro bono** award; and

. A nuts-and-bolts explanation of how a particular **pro bono** program works.

Every approach was persuasive to some respondents. **128** Overall, creative presentations focusing on two specific people - the story and the photograph - were most persuasive. Statistics, even numbers documenting a clear case for concern, were less persuasive. The messages differed not only in approach but also in the motivations in play. For example, the story focused on the impact of the representation on the client, i.e., the values motivation presented as a connection to people in need; and the professionalism pledge focused on the abstract values inherent in practicing law. In contrast, the piece discussing business advantages focused on the lawyer's career.

### C. The Preference Not to Do the Work

Freeman's third element is the most challenging to assess: the volunteer would rather someone else do the work. This assertion does not square with other researchers' findings that volunteering benefits the volunteer in many ways, including improved physical and mental health. **129** As to the latter, volunteering contributes to a person's well-being, including social participation; helping others, which is a self-validating experience; and a belief that one can make a difference. **130**

To explore this topic as to legal **pro bono**, I gathered information about lawyers' **pro bono** experiences. The new lawyers, who had performed **pro bono** in practice, provided insights into their experiences through a series of questions about their reactions. The experienced lawyers, through a policy- **[\*1002]** capturing study, provided insights into sustained involvement in **pro bono**. In brief, it appears that legal **pro bono** is a mixed experience for many lawyers.

The new lawyers performed various tasks. The four most common tasks were providing brief advice to an individual (66%), taking on a full case in a fairly routine matter (64%), advising an organization (37%), and handling a business matter for an organization (30%). **131** This list is somewhat different from the list of desired tasks, which includes providing brief advice to an individual (68%), making a presentation about a legal topic to people affected by the law (46%), taking on a full case in a fairly routine matter (42%), and advising an organization (37%). **132**

Many new lawyers participated in **pro bono** that bore little resemblance to their regular work. **133** More specifically, when asked about the similarity between the two, 31% responded "not at all," 21% responded "a little bit," 24% responded "somewhat," and 24% responded "to a great extent." Similarity correlated with access **pro bono**. **134** Some lawyers likely were seeking rewards that their regular practice did not provide. **Pro bono** work was indeed more satisfying in some respects than regular practice, as presented in Chart 4. Many respondents found their **pro bono** and regular work equally satisfying. But more lawyers rated their **pro bono** work more satisfying than their regular work as to the following two facets: the work's connection to broad social issues (44% versus 10%) and the amount of autonomy and responsibility (24% versus 12%).

**[\*1003]** Chart 4. Satisfaction of **Pro Bono** and Regular Work

#### New Lawyers

<b>Pro bono</b> work is	Less Satisfying	Equally Satisfying	More Satisfying
_____ than regular work.			
a. The work's intrinsic interest	20%	65%	15%
b. The work's connection to broader social issues	10%	46%	44%
c. The amount of autonomy and responsibility	12%	64%	24%
d. Recognition for the work	22%	58%	20%

In addition, new lawyers listed up to three emotions they experienced when performing **pro bono** work. The emotions listed most often were satisfaction (19%), frustration (14%), happy (10%), and empathy (10%). Of the thirty-eight emotions listed, roughly half were negative (such as anger, fear, anxious, and overwhelmed), and half were positive (such as grateful, helpful, and pride). Six out of ten experienced their first listed emotion "to a great extent," and roughly four out of ten chose this intensity level for the second and third emotions they listed.

The new lawyers answered similar questions about themselves and their **pro bono** clients. When asked how similar they were to their **pro bono** clients were to their **pro bono** clients, 28% responded "not at all," 33% responded "a little bit," 29% responded "somewhat," and 10% responded "to a great extent." Similarity to one's client correlated with access **pro bono**. **135**

New lawyers listed up to three attitudes they held toward their **pro bono** clients. The attitudes listed most often were empathy (30%) and frustration

(13%). Of the thirty-two attitudes listed, roughly half were negative (such as disappointment and skeptical), and half were positive (such as inspired and hopeful). Two-thirds of the new lawyers experienced their first listed attitude "to a great [**\*1004**] extent"; roughly four out of ten chose this intensity level for their second and third attitudes.

Thus, not surprisingly, the new lawyers experienced **pro bono** in various ways. Some did tasks they desired, while others likely did not. Many did their **pro bono** work in unfamiliar territory, seeking greater contact with broad social issues and more autonomy and responsibility than their regular work offered. They listed many positive emotions and attitudes toward their **pro bono** work and their **pro bono** clients, but they also listed many negative emotions and attitudes. Most striking was the intensity of emotions the lawyers reported; the new lawyers were not apathetic about their **pro bono** work. Finally, commitment to access **pro bono** for the new lawyers hinged in part on similarity between the lawyers' regular and **pro bono** work, and similarity between the lawyer and the client.

The policy-capturing study involving experienced lawyers explored several factors that might bear on the decision to continue doing **pro bono** work, i.e., the inverse of leaving the work for someone else to do. The respondent was asked to imagine that she handled commercial litigation in a mid-size law firm and that she recently completed a case obtained through a bar-sponsored volunteer attorney program ("VAP"), her first such case. The VAP recruiter asked that she take on another similar case. The respondent then read eight scenarios, each containing a unique combination of two versions of three factors:

- . The previous case was difficult or straightforward - the procedures and working with the client were challenging. Or the procedures made sense, and working with the client was easy.
- . The client in the previous case won or lost.
- . The respondent had just completed the firm's forty-hour **pro bono**/public service requirement for the year - forty-hour rule. Or the firm had no policy on **pro bono** work - no policy.

After reading each scenario, the respondents were asked to indicate the likelihood of accepting the new case on a scale of 1 (certainly not) to 5 (certainly would). Chart 5 presents the means for the eight scenarios. The

situation in which accepting the new case was most likely, with a mean of 3.67, was straightforward case + client won + no firm rule (the top row). The least likely was **[\*1005]** difficult case + client lost + forty-hour rule (the bottom row). In all combinations of the three factors, the challenge and outcome of the previous case had statistically significant impacts on the decision to take the new case.

Chart 5. Firm Rules and Experience in Previous Case

Experienced Lawyers

Mean	Previous Case Was	Client in Previous Case	Firm Has			
	Straightforward	Difficult	Won	Lost	Forty-Hour Rule	No Rule
3.67	[check mark]		[check mark]			[check mark]
3.55	[check mark]		[check mark]		[check mark]	
3.53	[check mark]			[check mark]		[check mark]
3.44	[check mark]			[check mark]	[check mark]	
3.11		[check mark]	[check mark]		[check mark]	
2.93		[check mark]	[check mark]			[check mark]
2.75		[check mark]		[check mark]		[check mark]
2.63		[check mark]		[check mark]	[check mark]	

One **pro bono** case begets another. The experienced lawyers were asked to explain their reactions to the various factors. A difficult case would prompt a second case so that the lawyer could put hard-won knowledge to use. A loss would lead to a second case to improve the lawyer's tally of wins and losses. However, the results revealed the opposite: a straightforward case was more likely to lead to taking another case, as was winning the previous case. **136** This pattern could simply reflect human nature, or it could reflect the lawyers' pragmatic preference for **pro bono** work that returns the most value for the effort contributed by the lawyer.

**[\*1006]**

VI. Implications

All things considered, legal **pro bono** fits Freeman's definition of a conscience good. **137** First, lawyers are committed to **pro bono** as a matter of professional if not moral obligation, as evidenced by the results of the 2005 ABA study. The most powerful reason for volunteering in my study was to express or act on one's values, and that reason correlated with participation in **pro bono**. Second, legal institutions exert social

pressure to participate, in the form of Model Rule 6.1, [138](#) law school, and **pro bono** programs for practitioners, and lawyers are asked to participate in various ways. Lawyers appear to react to this pressure and the request in much the same way as non-lawyers react to social pressure and requests to volunteer. Third, some lawyers, although certainly not all, would prefer that someone else do the work. The ABA found that a good number of lawyers did not participate in access **pro bono**, and the average number of hours was below the mark set by ABA Rule 6.1. [139](#) Furthermore, the new lawyers in my study who did **pro bono** viewed the work with intense ambivalence. Not only did the group of respondents list positive and negative views in approximately equal shares, some lawyers listed both positive and negative emotions.

Are there practical applications to these insights? Many lawyers obtain their **pro bono** work through a legal services agency's **pro bono** organization, [140](#) employer **pro bono** program, or bar referral program. What might a **pro bono** program do in response to this research?

Some applications are straightforward: Frame the program around the values it serves, presented in various ways, such as low-income tenants (group), fair housing (cause), and relative equality between rich and poor (principle). Do not mandate participation; **[\*1007]** rather, create incentives to participate. Ask lawyers to participate not by a mass mailing but through conversations between participants and potential participants. Offer a range of tasks and training as needed. Offer options in various areas of practice so lawyers can find familiar - or unfamiliar - territory.

The results, when paired with additional social science research, suggest another implication for **pro bono** programs. A prominent social psychologist has described volunteering as "the interplay of values, emotions, motives, and behavior." [141](#) An economist ascribed charitable volunteering as a desire for a "warm glow." [142](#) How might a **pro bono** program work with the emotions generated by **pro bono**, so that lawyers experience a warm glow rather than heated frustration?

The finding that similarity between lawyer and client correlated with access **pro bono** provides significant guidance. Few new lawyers viewed themselves as similar to their clients: about six out of ten chose "not at all" or "a little bit," another three out of ten chose "somewhat," and only one in ten chose "to a great extent." Most likely, the new lawyer was in a different socioeconomic class and had more education than her **pro bono** client;

they may also have differed in race, ethnicity, religion, country of origin, gender, age, and physical and mental capacity. She probably had never faced the problem the client was facing. This contrast in culture and circumstance may be a major cause of the negative emotions associated with **pro bono**: a **pro bono** lawyer may not understand why or how the client got himself into the situation, how to communicate effectively with the client, and why the client's life did not greatly improve as a result of the lawyer's assistance. [143](#)

**Pro bono** lawyers need to process these facets of their work. This is suggested by the finding that two elements of the college's **pro bono** placements correlated with **pro bono** participation: discussion of broad social issues correlated with access **pro bono**, and reflection on one's reactions correlated with civic **pro bono**. What might this discussion and reflection cover? Again, social science research provides some insights: "The supply of volunteer labor is increased by getting people to think about their obligations [**\*1008**] as citizens - fostering tolerance, fellow-feeling, and empathy - and boosting people's civic skills and self-confidence about how they can make a difference." [144](#) The discussion and reflection can seek to widen the lawyer's circle of "we-ness," the psychological identification that is a critical element of the decision to help. [145](#)

The goal for this processing could be to address the lawyer's thinking according to the just-world hypothesis. In brief, a person needs to believe that the world is orderly and just, where people get what they deserve. [146](#) If this does not seem to be so, she will act to restore justice by helping the victim - or persuading herself that there is no injustice by derogating the victim. For example, she might see the homeless man as lazy and thus not deserving of help. [147](#)

Discussion of the causes of and solutions for social problems should reduce the inclination to derogate the victim. For new lawyers, viewing poverty as the result of social, economic, and political factors (rather than individual inadequacies), [148](#) correlated with access **pro bono**. Seeing change in social institutions (rather than changing individuals) as the better approach for solving social problems correlated with combined, especially access, **pro bono**. [149](#)

Similarly, discussion of moral reasoning approaches should also reduce the inclination to derogate the victim. New lawyers were asked to choose between two models. In the care approach, the focus is on seeking a way

to respond that will minimize the hurt to all concerned. In the justice approach, the focus is on seeking what is most just by considering the rights of all involved. The care choice correlated with access **pro bono**.

**150** ↓

This discussion of injustice and responses to it may meet some resistance. Only 12% of the new lawyers chose education in the life situations of **pro bono** clients as a desirable form of support from a **[\*1009] pro bono** program, significantly less than a set of sample forms or a manual on the law and procedures. This discussion may encompass sensitive topics, such as bias, and may entail some topics or approaches that are unfamiliar, if not foreign, to the lawyer. For example, improving a lawyer's emotions toward a group, by prompting her to contemplate her emotions when thinking about discrimination against the group, has been found to lead to greater willingness to engage in contact with the group at issue. **151** ↓ On the other hand, the understanding motivation, i.e., gaining a new perspective, was rated highly by 1Ls, new lawyers, and experienced lawyers, and it correlated with access **pro bono** by new lawyers.

## VII. Ellen's Story

This article has presented many statistics and quantitative findings. Yet for many, stories provide more insights than numbers. So to close, here is Ellen's story, found to be the most persuasive of the **pro bono** messages in the undergraduate students' survey:

Ellen's client is 36 years old and a refugee from the killing fields of Cambodia. She fled to Thailand at the age of 11, where she lived in a refugee camp until 1985. In 1985, she made her way to the United States, where she attended school for about one year, but did not receive a diploma. She has no other formal education.

Ellen's client has been diagnosed with lupus, major depression, post-traumatic stress disorder and, although mild, she has mental retardation. Together, these conditions have been debilitating, and Ellen's client filed a claim for benefits in 2000. Her application for Social Security Income (SSI) indicated that she had been disabled since May 1, 1996.

The client was assessed by a physician, who concluded that she had a severe impairment; yet, in September 2000, she was notified by the Social Security Administration that her lupus and mood disorders were not severe enough to keep her from working. She was denied benefits three times

until she received legal assistance from Ellen. There was also an allegation that her problems were exacerbated **[\*1010]** by misuse of alcohol. After a treating physician reconfirmed her lupus diagnosis, others confirmed her mental-health impairments, and the alcoholism allegation was proven to be without foundation, Ellen appealed the denials. She took the matter to hearing and secured the benefits her client should have been receiving since 2000.

"I am involved with **pro bono** work because it is very much needed and I enjoy the work. The gratitude that is expressed by our **pro bono** clients is almost unexplainable. Instead of a firm handshake at the end of a case, you see tears of joy and receive huge heartfelt hugs - proving that you made a difference in someone's life. That's why I do it." - Ellen. **152**

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## Footnotes

**1** E. Gil Clary et al., Volunteer's Motivations: Findings from a National Survey, 25 Nonprofit & Voluntary Sector Q. 485, 485-86 (1996) [hereinafter Clary et al., Volunteer's Motivations].

**2** Id. at 486.

**3** Although legal **pro bono** has some distinctive dimensions, it falls well within the province of volunteering. See generally Ram A. Cnaan et al., Defining Who Is a Volunteer: Conceptual and Empirical Dimensions, 25 Nonprofit & Voluntary Sector Q. 364 (1996) (identifying four dimensions: free choice (from free will to obligation), remuneration (from none at all to low pay), structure (from formal to informal), and intended beneficiaries (from strangers to oneself along with others)).

**4** Richard B. Freeman, Working for Nothing: The Supply of Volunteer Labor, 15 J. of Lab. Econ. S140 (1997).

**5** See infra Part II.

**6** See infra Part III.

**7** See infra Parts IV-V.

**8** See infra Parts VI-VII.

**9** See C. Daniel Batson, *Altruism and Prosocial Behavior*, in II *Handbook of Social Psychology* 282 (Daniel T. Gilbert et al. eds., 4th ed. 1998) (providing an overview of the psychology research into helping).

**10** Allen M. Omoto & Mark Snyder, *Considerations of Community: The Context and Process of Volunteerism*, 45 *Am. Behav. Scientist* 846, 847 (2002).

**11** E.g., Louis A. Penner, *Dispositional and Organizational Influences on Sustained Volunteerism: An Interactionist Perspective*, 58 *J. Social Issues* 447 (2002); Louis A. Penner & Marcia A. Finkelstein, *Dispositional and Structural Determinants of Volunteerism*, 74 *J. Personality & Soc. Psychol.* 525 (1998).

**12** John Wilson, *Volunteering*, 26 *Ann. Rev. Soc.* 215, 215-17 (2000) [hereinafter Wilson, *Volunteering*].

**13** John Wilson, *Volunteerism*, in *Encyclopedia of Community: From the Village to the Virtual World* 1466-68 (Karen Christenson & David Levinson eds., 2003) [hereinafter Wilson, *Volunteerism*]. See Wilson, *Volunteering*, supra note 12, at 215, 217-33 (providing a more theoretical and critical discussion of various theories and findings).

**14** Wilson, *Volunteerism*, supra note 13, at 1466-67.

**15** Id. at 1467-68.

**16** Id. at 1466.

**17** Schervish extends the model to volunteering as well as donating money. Paul G. Schervish & John J. Havens, *Social Participation and Charitable Giving: A Multivariate Analysis*, 8 *Voluntas: Int'l J. Voluntary & Nonprofit Orgs.* 235, 236 (1997). See also Paul G. Schervish, *Gentle as Doves and Wise as Serpents: The Philosophy of Care and the Sociology of Transmission*, Introduction to *Care and Community in Modern Society: Passing on the Tradition of Service to Future Generations 1* (Paul G. Schervish et al. eds., 1995) (providing a more complete philosophical treatment).

**18** Schervish & Havens, *supra* note 17, at 240. Considered, but found not to be influential, were the apparent urgency of the need and the probable effectiveness of the donation. Id. at 243, 247.

**19** Id. at 240-42.

**20** Id. As with most sociological research, the model encompasses standard demographic attributes as well. Id. at 250-51.

**21** Id. at 257.

**22** Many economists researching volunteering have focused on quantifying how many people volunteer, how many hours they volunteer, and the economic value of their volunteer service. See, e.g., Eleanor Brown, *Assessing the Value of Volunteer Activity*, 28 *Nonprofit & Voluntary Sector Q.* 3 (1999). See Laura Leete, *Work in the Nonprofit Sector*, in *The Nonprofit Sector Research Handbook* 159-79 (Richard Steinberg & Walter Powell eds., 2d ed. 2006) (providing an overview of economists' scholarship on volunteer workers).

23

Paul L. Menchik & Burton A. Weisbrod, Volunteer Labor Supply, 32 J. Pub. Econ. 159 (1987). Similarly, Lorenzo Cappellari and Gilberto Turati have recently documented that volunteers may be intrinsically motivated, seeking no reward but the activity itself; extrinsically motivated, seeking other compensation; or both. See Lorenzo Cappellari & Gilberto Turati, Volunteer Labour Supply: The Role of Workers' Motivations, 75 Annals Pub. & Coop. Econ. 619 (2004).

24

James Andreoni, Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving, 100 Econ. J. 464, 464 (1990).

25

Freeman, supra note 4, at S149-59.

26

Id. at S159-65.

27

Id. at S141.

28

The new lawyers participating in the main study, described infra Part IV, were asked to rate the importance of various factors as they considered doing **pro bono**. On a scale of 1 (not at all important) to 5 (very important), being raised to do volunteer work averaged 2.82 in importance; this correlated with participation in access **pro bono** ( $p < .01$ ). Religion averaged 2.55 and did not correlate with participation in **pro bono**. Political stance correlated with access and combined **pro bono**, with liberals participating more than conservatives ( $p < .04$ ). As seen in this footnote and others throughout the article, the variable "p" refers to the probability that the two activities are not correlated. For example, in the example above,  $p < .01$  means that the two activities are correlated together 99% of the time. In other words, there is a 1% probability that the activities are not correlated.

See also J. D. Drodgy & C. Scott Peters, The Effect of Law School on Political Attitudes: Some Evidence from the Class of 2000, 53 J. Legal Educ. 33 (2003) (discussing of the political leanings of law students and the impact of law school).

This paper uses feminine pronouns because women generally volunteer more than men. See, e.g., Clary et al., Volunteer's Motivations, supra note 1, at 497.

**29** Freeman, *supra* note 4, at S141.

**30** Scott L. Cummings, The Politics of **Pro Bono**, [52 UCLA L. Rev. 1, 4 \(2004\)](#).

**31** Legal Servs. Corp., Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans 11, 16 (2d ed. 2007), <http://www.lsc.gov/justicegap.pdf>.

**32** Rebecca L. Sandefur, Lawyers' **Pro Bono** Service and American-Style Civil Legal Assistance, [41 Law & Soc'y Rev. 79, 79 \(2007\)](#).

**33** Some arguments against mandatory **pro bono** are framed as constitutional principles - just compensation, the prohibition against involuntary servitude, equal protection, and first amendment rights - but have been met with little success. See Deborah L. Rhode, **Pro Bono** in Principle and in Practice: Public Service and the Professions 7-12 (2005).

**34** See *id.* at 37-45 (presenting the arguments against mandatory **pro bono**).

**35** See *id.* at 26-31 (outlining the justifications for mandatory **pro bono**). Scholars have varying conclusions on the issue of mandatory **pro bono**. See, e.g., Reed Elizabeth Loder, Symposium, Tending the Generous Heart: Mandatory **Pro Bono** and Moral Development, [14 Geo. J. Legal Ethics 459 \(2001\)](#) (relying on psychological research into moral development and favoring "enhanced volunteering"); Steven Lubet & Cathryn Stewart, A "Public Assets" Theory of Lawyers' **Pro Bono** Obligations, [145 U. Pa. L. Rev. 1245 \(1997\)](#) (arguing that lawyers benefit from certain advantages created by the legal system, such as the attorney-client privilege, and these benefits support a social claim satisfied by mandatory **pro bono** (a draft) or contributions to legal aid organizations (a tax)); Jonathan R. Macey, Symposium, Mandatory **Pro Bono**: Comfort for the Poor or Welfare for the Rich?, [77 Cornell L. Rev. 1115 \(1992\)](#) (predicting that the poor would derive more benefit from a lump sum of cash, and that mandatory **pro bono** would transfer wealth from solo and small to medium-sized firms to large firms).

**36** ¶

See Judith L. Maute, Changing Conceptions of Lawyers' **Pro Bono** Responsibilities: From Chance Noblesse Oblige to Stated Expectations, [77 Tul. L. Rev. 91, 109-47 \(2002\)](#). (outlining the history of the professional regulation of **pro bono** requirements).

**37** ¶

See ABA Standing Comm. on **Pro Bono** & Pub. Serv., State-by-State **Pro Bono** Service Rules (2008), <http://www.abanet.org/legalservices/probono/stateethicsrules.html> [hereinafter ABA, State-by-State].

**38** ¶

Model Rules of Prof'l Conduct R. 6.1 (2007).

**39** ¶

ABA Standing Comm. on **Pro Bono** and Pub. Serv., Supporting Justice II: A Report on the **Pro Bono** Work of America's Lawyers 29 (2009), <http://www.abanet.org/legalservices/probono/report2.pdf> [hereinafter ABA, Supporting Justice II].

**40** ¶

Id. at 30-31.

**41** ¶

See John P. Heinz et al., Urban Lawyers: The New Social Structure of the Bar (2005) (providing the results of a 1994-1995 wide-ranging study of Chicago lawyers, in addition to the surveys synopsized below). Respondents spent varying amounts of time per month on **pro bono** work depending on their practice settings: medians of 0 hours for corporate counsel and government lawyers, 0.5 hours for lawyers in firms of over three hundred, 1 to 3 for lawyers in other firms, and 3.5 hours for solo practitioners. Id. at 131. The numbers were similar to the time spent managing personal investments. Id. at 331 n.26.

By way of comparison, in the September 2005 Current Population Survey, about 29% of the American adult population volunteered at least once in the preceding year; the median number of hours volunteered was fifty. News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, Volunteering in the United States, 2008 (Jan. 23, 2009), available at <http://www.bls.gov/news.release/volun.nr0.htm>. Educational attainment correlated with volunteering: 10% of people with less than a high-school diploma volunteered; 46% of people with at least a college degree volunteered. Id.

**42** ¶

Rhode, *supra* note 33, at 125.

**43** ¶

Rhode selected Fordham University, Northwestern University, Tulane University, University of Chicago, University of Pennsylvania, and Yale University because they had varied approaches to **pro bono**. Id. at 125. She selected the ninety-four law firms that were in the top one-hundred firms by size at least four times between 1993 and 2000. Id. at 126.

**44** ¶

Id. at 128. Less than a quarter of the participants made financial contributions, with a majority giving \$ 100 or less and only 4% contributing over \$ 200 annually. Id.

**45** ¶

Id. at 1.

**46** ¶

Robert Granfield, Institutionalizing Public Service in Law School: Results on the Impact of Mandatory **Pro Bono** Programs, [54 Buff. L. Rev. 1355 \(2007\)](#) [hereinafter Granfield, Institutionalizing Public Service].

**47** ¶

[Id. at 1381-82.](#)

**48** ¶

[Id. at 1384.](#)

**49** ¶

NALP Found. for Law Career Research and Educ. and the Am. Bar Found., After the JD: First Results of a National Study of Legal Careers (2004), [http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After\\_JD\\_2004\\_web.pdf](http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf).

**50** ¶

Id. at 13.

**51** ¶

Id. at 35, 37.

**52** ¶

ABA Standing Comm. on **Pro Bono** and Pub. Serv., Supporting Justice: A Report on the **Pro Bono** Work of America's Lawyers

(2005), <http://www.abanet.org/legalservices/probono/report.pdf> [hereinafter ABA, Supporting Justice].

**53** Id. at 9-10 (noting that the ABA excluded judges, retired attorneys, legal aid lawyers, and public defenders from the study).

**54** Id. at 10-11.

**55** Id. at 12-13. Forty-three percent of the respondents contributed an average of \$ 276 to legal services agencies or **pro bono** programs. Id. at 16-17. Earlier state surveys revealed the following participation rates and average numbers of hours: Maryland - 63.7% (2003), Nevada - 51.2% (2003), New York - 46% and 41.3 hours (2002), Texas - 57.5% and 47 hours (2002), and Missouri - 42 hours (2002). Id. at 7-8.

**56** Id. at 12 (measuring "tier 1" activities).

**57** ABA, Supporting Justice II, *supra* note 39, at 10.

**58** Id. at 12-13.

**59** Id. at vii.

**60** See id. at 17, 25 (reporting that more than 90% of the 587 attorneys who provided **pro bono** services defined a qualified recipient, and most attorneys defined an individual deserving of **pro bono** services, consistent with definitions in Rule 6.1).

**61** Id. at 8.

**62** Heinz et al., *supra* note 41, at 188.

**63** ABA, Supporting Justice, *supra* note 52, at 20.

**64** Batson, *supra* note 9, at 307.

**65** See James A. Vela-McConnell, Who Is My Neighbor? Social Affinity in a Modern World 255-69 (1999) (discussing the merits of eclectic research). For more details regarding the methods than provided in this article, please contact the author at [deborah.schmedemann@wmitchell.edu](mailto:deborah.schmedemann@wmitchell.edu).

**66** Survey research has some disadvantages. See E. Gil Clary & Mark Snyder, A Functional Analysis of Altruism and Prosocial Behavior: The Case of Volunteerism, in *Prosocial Behavior* 119, 135-39 (Margaret S. Clark ed., 1991). The following features of this survey research reduced the disadvantages to anonymity, voluntariness, objectivity in phrasing of questions, reasonable time spans to be recalled, use of well developed questions from others' research, and selection of respondent pools to avoid bias. See generally *id.*

**67** Earlier graduates could perform public service, but the college's recognition program was not in place.

**68** The college received a grant from the Minnesota Office of Higher Education's Campus-Community Collaboration Initiative. This survey was conducted by the Minnesota Center for Survey Research.

**69** See Sharon H. Fischlowitz & Peter B. Knapp, From Here to Next Tuesday: The Minnesota Public Service Program, Ten Years After, [26 Hamline J. Pub. L. & Pol'y 223 \(2005\)](#) (describing the Minnesota Justice Foundation).

**70** As for political stance, 25% of survey respondents described themselves as conservative, 27% as moderate, and 47% as liberal.

**71** The categories reflect the approach of Rule 6.1 of the ABA's Model Rules of Professional Conduct and the ABA's Supporting Justice studies. See Model Rules of Prof'l Conduct R. 6.1 (2007); ABA,

Supporting Justice, *supra* note 52; ABA, Supporting Justice II, *supra* note 39.

**72** As for political stance, 23% depicted themselves as conservative, 20% moderate, and 56% liberal.

**73** See, e.g., Thomas Janoski et al., Being Volunteered? The Impact of Social Participation and **Pro**-Social Attitudes on Volunteering, 13 Soc. Forum 495, 498-99 (1998); David Horton Smith, Determinants of Voluntary Association Participation and Volunteering: A Literature Review, 23 Nonprofit & Voluntary Sector Q. 243, 244 (1994).

**74** Freeman, *supra* note 4, at S141.

**75** See Deborah A. Schmedemann, Priming for **Pro Bono**: The Impact of Law School on **Pro Bono** Participation in Practice, in Private Lawyers in the Public Interest: The Evolving Role of **Pro Bono** in the Legal Profession (Robert Granfield & Lynn Mather, eds., forthcoming) [hereinafter Private Lawyers] (providing the results of the surveys regarding the impact of law school **pro bono** on participation in the early years of practice). See also Robert Granfield, Learning to Serve: Lawyers' Reflections on Mandatory **Pro Bono** in Law School, in Private Lawyers, *supra*; Granfield, Institutionalizing Public Service, *supra* note 46.

**76** Rhode, *supra* note 33, at 136.

**77** Granfield, Institutionalizing Public Service, *supra* note 46, at 1398-1402.

**78** Robert Granfield, The Meaning of **Pro Bono**: Institutional Variations in Professional Obligations Among Lawyers, [41 Law & Soc'y Rev. 113, 131-35 \(2007\)](#).

**79** See [id. at 143](#).

**80** ¶

ABA, Supporting Justice, *supra* note 52, at 17.

**81** ¶

*Id.* A perceived lack of time was the major demotivator; less weighty factors were billable hours expectations, employer discouragement, lack of skills, and cost concerns. *Id.* at 18. See also ABA, Supporting Justice II, *supra* note 39, at 19-23 (discussing incentives and obstacles among attorneys who did and did not provide **pro bono**). For example, incentives included a wide range of options, ability to control the scope of the work, and free training and CLE credit. *Id.* Obstacles were employer lack of support and lack of time, including family commitments and billable hours expectations. *Id.*

**82** ¶

E. Gil Clary et al., Understanding and Assessing the Motivations of Volunteers: A Functional Approach, 74 *J. Personality & Soc. Psychol.* 1516 (1998) [hereinafter Clary et al., Understanding and Assessing]

**83** ¶

See Clary et al., Volunteer's Motivations, *supra* note 1. See also Clary et al., Understanding and Assessing, *supra* note 82 (utilizing additional studies and psychometrics).

**84** ¶

See E. Gil Clary & Mark Snyder, The Motivations to Volunteer: Theoretical and Practical Considerations, 8 *Current Directions in Psychol. Sci.* 156, 157 (1999) [hereinafter Clary & Snyder, Motivations to Volunteer].

**85** ¶

Clary et al., Volunteer's Motivations, *supra* note 1, at 492-93.

**86** ¶

*Id.* at 501.

**87** ¶

*Id.* at 502. See Clary & Snyder, Motivations to Volunteer, *supra* note 84 (providing a less technical and more practical discussion of the VFI research).

**88** ¶

Batson, *supra* note 9, at 302-03.

**89** See supra note 65 and accompanying text.

**90**  $p < .02$ .

**91**  $p < .02$ .

**92**  $p < .03$ .

**93**  $p < .01$ .

**94** As with the general population, understanding, career, and social also correlated with **pro bono** participation.

**95** See Batson, supra note 9, at 302-03.

**96** See Loder, supra note 35, at 462 (arguing that legal education is fertile ground to require **pro bono** work).

**97** See Clary & Snyder, Motivations to Volunteer, supra note 84, at 158-59.

**98** Arthur A. Stukas et al., The Effects of "Mandatory Volunteerism" on Intentions to Volunteer, 10 Psychol. Sci. 59, 59 (1999).

**99** Id.

**100** See Bruno S. Frey & Lorenz Goette, Does Pay Motivate Volunteers? 5, 7 (Univ. of Zurich Inst. for Empirical Research in Econ.,

**101** See John Wilson & Marc Musick, *The Effects of Volunteering on the Volunteer*, 62 *Law & Contemp. Probs.* 141, 167 (1999) (rewarding altruism may undermine motivation and distort values).

**102** This explains why per capita blood donation is higher in the United Kingdom, where it is unpaid, than in the United States, where some donors are paid. See Cappellari & Turati, *supra* note 23, at 626.

**103** See Rhode, *supra* note 33, at 125. The schools were Fordham University, Northwestern University, Tulane University, University of Chicago, University of Pennsylvania, and Yale University. *Id.*

**104** *Id.* at 156. Among the dampening reasons within the law schools was insufficient support and lack of integration with traditional courses. *Id.* at 157-58.

**105** *Id.* at 159-60.

**106** See Granfield, *Institutionalizing Public Service*, *supra* note 46, at 1373-74.

**107** *Id.* at 1379.

**108** *Id.* at 1411.

**109** *Id.* at 1383-85.

**110** Of the new lawyers who participated in the main survey, 35% earned the fifty-hour recognition, 39% did some volunteer work through MJF, and 40% took a clinic course. In general, students

viewed both types of experiences positively. Clinic courses have long been well regarded by students. The new lawyers who participated in MJF placements indicated that their goals were met somewhat (34%) or to a great extent (52%).

**111** p < .03.

**112** p < .03.

**113** p < .01.

**114** See, e.g., N. T. Feather, An Attributional and Value Analysis of Deservingness in Success and Failure Situations, 31 Brit. J. of Soc. Psychol. 125 (1992) (providing examples of policy-capturing research in other studies of helping behavior); Barbara A. Fritzsche, Marcia A. Finkelstein & Louis A. Penner, To Help or Not to Help: Capturing Individuals' Decision Policies, 28 Soc. Behav. & Personality 561 (2000) (providing the same).

**115** p < .01.

**116** p < .01.

**117** See Freeman, supra note 4, at S161.

**118** See Wilson, Volunteering, supra note 12, at 223.

**119** See Schervish & Havens, supra note 17, at 247-48 (extending the model to volunteering as well as donating money).

**120** See Freeman, supra note 4, at S163-65.

**121** ABA, Supporting Justice II, *supra* note 39, at 19.

**122**  $p < .01$ .

**123** E. Gil Clary et al., Matching Messages to Motives in Persuasion: A Functional Approach to Promoting Volunteerism, 24 *J. of Applied Psychol.* 1129, 1130-31 (1994).

**124** E. Gil Clary et al., Promoting Volunteerism: An Empirical Examination of the Appeal of Persuasive Messages, 23 *Nonprofit & Voluntary Sector Q.* 265, 267 (1994). To retain current volunteers, one should refute abstract reasons for not volunteering. *Id.*

**125** Paul Slovic, "If I Look at the Mass I Will Never Act": Psychic Numbing and Genocide, 2 *Judgment and Decision Making* 79 (2007) (discussing how mass suffering does not necessarily correlate with mass outpouring of help for those in need).

**126** All but a few believed that "volunteering is something most people should do." About two-thirds volunteered in the past quarter; their median number of hours was twenty-one to forty for the ten-week quarter.

**127** To avoid an order effect, the seven stories were presented in several sequences, all fixed by random draw.

**128** See Loder, *supra* note 35, at 495-502 (discussing **pro bono** messages based on moral arguments, statistics and exemplars).

**129** See Wilson & Musick, *supra* note 101, at 150-58.

**130** *Id.* at 153-54.

**131** Because lawyers could choose multiple answers, these statistics exceed 100%.

**132** Because lawyers could choose multiple answers, these statistics exceed 100%.

**133** But see ABA, Supporting Justice II, *supra* note 39, at 18 (eight-two percent of private practice and 68% of corporate and government lawyers indicated that their **pro bono** work was within their expertise).

**134**  $p < .01$ .

**135**  $p < .01$ . Dissimilarity correlated with civic **pro bono**.  $p < .02$ .

**136**  $p < .01$  for all versions except won versus lost a straightforward case when there was a forty-hour firm rule,  $p < .05$ . The impact of the firm rule was murkier. The presence or absence of the firm rule had a statistically significant impact when the previous case was difficult (but not when it was straightforward), as to both the won scenarios ( $p < .05$ ) and the lost scenarios ( $p < .02$ ).

**137** See *supra* Part II.

**138** Model Rules of Prof'l Conduct R. 6.1 (2007). On the other hand, Rule 6.1 is the only rule without "shall." Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*, 1003-04 (Thomson West 2007-2008).

**139** ABA, Supporting Justice, *supra* note 52, at 11-13; ABA, Supporting Justice II, *supra* note 39, at vii, 10, 12-13.

**140** The percentages for my new-lawyer study were 42% legal-service agency's program, 20% employer's program, and 20% bar

program. The ABA's 2008 survey found that a little more than half of the cases (53%) came through legal aid or an attorney outside organization. ABA, Supporting Justice, *supra* note 52, at 14.

**141** See Batson, *supra* note 9, at 307 (emphasis added).

**142** See Andreoni, *supra* note 24, at 465.

**143** See Martha Delaney & Scott Russell, Working with **Pro Bono** Clients, *Bench & B. Minn.*, Aug. 2005.

**144** Janoski et al., Being Volunteered?, *supra* note 73, at 516.

**145** Elton F. Jackson et al., Volunteering and Charitable Giving: Do Religious and Associational Ties Promote Helping Behavior?, 24 *Nonprofit & Voluntary Sector Q.* 59, 73 (1995).

**146** See Claire Andre & Manual Velasquez, The Just World Theory, 3 *Issues in Ethics* (1990), <http://www.scu.edu/ethics/publications/iie/v3n2/justworld.html>.

**147** *Id.*

**148** Roughly four out of five new lawyers chose social factors; this distribution was very similar to the PR students' distribution.

**149** Roughly one in two new lawyers chose social solutions; for PR students, the distribution was two out of three.

**150** Roughly three out of five new lawyers selected the justice approach; two out of ten chose the care approach. The PR students' distribution was very similar.

**151**

See Victoria M. Esses & John F. Dovidio, The Role of Emotions in Determining Willingness to Engage in Intergroup Contact, 28 Personality & Soc. Psychol. Bull. 1202, 1203 (2002).

**152**

Leonard, Street and Deinard, **Pro Bono** and Community Service Annual Report 4 (2004),  
[www.leonard.com/pro\\_bono/2004ProBono.pdf](http://www.leonard.com/pro_bono/2004ProBono.pdf).



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