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Rebecca A. Cochran, Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service, 8 B.U. PUB. INT. L.J. 429 (1999).

ALWD 7th ed.

Rebecca A. Cochran, Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service, 8 B.U. Pub. Int. L.J. 429 (1999).

APA 7th ed.

Cochran, R. A. (1999). Legal research and writing programs as vehicles for law student pro bono service. *Boston University Public Interest Law Journal*, 8(3), 429-448.

Chicago 17th ed.

Rebecca A. Cochran, "Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service," *Boston University Public Interest Law Journal* 8, no. 3 (Spring 1999): 429-448

McGill Guide 9th ed.

Rebecca A. Cochran, "Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service" (1999) 8:3 BU Pub Int LJ 429.

AGLC 4th ed.

Rebecca A. Cochran, 'Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service' (1999) 8(3) Boston University Public Interest Law Journal 429

MLA 9th ed.

Cochran, Rebecca A. "Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service." *Boston University Public Interest Law Journal*, vol. 8, no. 3, Spring 1999, pp. 429-448. HeinOnline.

OSCOLA 4th ed.

Rebecca A. Cochran, 'Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service' (1999) 8 BU Pub Int LJ 429  
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## ARTICLES

### LEGAL RESEARCH AND WRITING PROGRAMS AS VEHICLES FOR LAW STUDENT PRO BONO SERVICE

REBECCA A. COCHRAN\*

At its most promising, skills education presents an opportunity for moral education.<sup>1</sup>

#### I. INTRODUCTION

During the past decade, changes in law school curricula have made possible the model for law student pro bono work proposed here. Foremost among these is the growth of legal analysis, research, and writing (LRW) programs. Since the mid-1980s, ever larger numbers of law schools have developed required courses in legal analysis, research, and writing.<sup>2</sup>

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\* Associate Professor of Law University of Dayton School of Law; B.A. The Colorado College; M.A. Northwestern University; J.D. The John Marshall Law School. I wish to thank Elaine Bernstein, Tony Buscemi, Rick Perna, Maria Crist, Darby Dickerson, Katie McManus, Terrill Pollman, Michael Solimine, Leonard Adler of NAPIL, Helinka Marculewicz of the Dayton Volunteer Lawyers Project, and James Guthrie. Work on this article was supported by a research grant from the University of Dayton School of Law.

<sup>1</sup> Joseph P. Tomain and Michael E. Solimine, *Skills Skepticism in the Postclinic World*, 40 J. LEGAL EDUC. 307, 319 (1990).

<sup>2</sup> The rise of writing and research skills courses began in the mid-1980's as law schools and the bar recognized a need to bridge the gap between law school and practice. No single description can summarize the goals of LRW programs. At a minimum, the programs share the common goals of introducing students to legal analysis, critical reading, research strategy and methods, and basic forms of objective and persuasive legal writing.

A good profile of LRW programs can be gleaned from the Legal Writing Institute's *Annual Survey of LRW Programs, 1996 Survey Results* (Jill J. Ramsfield & Florence Super Davis eds., Georgetown University Law Center 1997) [hereinafter Results]. Another resource is a LRW syllabi bank maintained by Mary Beth Beazley at the Ohio State University College of Law. Finally, the Association of Legal Writing Directors (ALWD) offers information and materials gathered from its membership on designing and directing LRW programs. Useful materials and a bibliography are included in the proceedings of the first ALWD conference, *The Politics of Legal Writing: Proceedings of a Conference for Legal Research and Writing Program Directors*, (Jan Levine, Rebecca Cochran & Steve Johansen eds., West 1996).

Thus, each year an army of students, mostly first-years,<sup>3</sup> master research by book, by computer (computer-assisted legal research, or CALR), by CD-ROM, and by the Internet.<sup>4</sup> These students often perform their research in response to problems presented within carefully crafted client simulations.<sup>5</sup> These novice researchers produce massive binders of printouts, photocopies, case summaries, and notes. They plow this research into complaints, office memoranda, and court briefs.<sup>6</sup> Faculty provide extensive feedback on the quality of the research and writing<sup>7</sup> and, with the assignment completed, students dump their piles of research into trash and recycling bins until the containers overflow.

While law schools were creating these LRW programs, they were simultaneously beginning to require or urge law students to perform pro bono service.<sup>8</sup> Through mandatory or voluntary pro bono programs, law schools seek to inspire students to undertake pro bono work throughout law school and after gradua-

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<sup>3</sup> The majority of law schools surveyed by LWI offer two-semester programs; however, some programs extend into the second year and beyond. See Results, *supra* note 2, at 1. Upper level advanced research and writing programs have also entered the LRW curriculum. See *id.* at 7-8.

<sup>4</sup> For an overview of evolving methods of legal research currently being taught, see CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* (4th ed. 1996) (including chapter on assessing and selecting research media options: paper, microforms, online resources, the Internet, and CD-ROMs).

<sup>5</sup> See, e.g., Jo Anne Durako, *Building Confidence and Competence in Legal Research Skills: Step by Step*, 5 PERSPECTIVES 87 (1997); Rebecca Cochran & Maria Crist, *Using Closed Universe Assignments to Teach Legal Analysis, Legal Writing and Lawyering Skills*, available in 1996 WL 403350; 1996 WL 403357; 1996 WL 403351; Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research and Writing*, 3 PERSPECTIVES 58 (1995) (describing methods and resources for designing detailed, realistic assignments for LRW courses).

<sup>6</sup> For the range of typical first year LRW assignments, see Results, *supra* note 2, at 5 (listing client letters, legal memoranda, pretrial briefs, trial briefs, appellate briefs).

<sup>7</sup> LRW courses, texts, and exercises emphasize the detailed feedback students need to ensure that they can analyze a set of facts, determine which legal authorities to locate, and know how to use and update those authorities. Several research texts provide detailed explanation of research exercises and the precise methods and tools students need to perform the exercises. The LRW faculty must be prepared to respond to all aspects of the students' research methods and results. See, e.g., OATES, ET AL., *THE LEGAL WRITING HANDBOOK* (1993); JAN M. LEVINE, *ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH AND WRITING* (1994).

<sup>8</sup> In 1995, the American Bar Association prepared a directory of law school public interest law support programs. See ABA DIVISION FOR PUBLIC SERVICES, *LAW SCHOOL PUBLIC INTEREST LAW SUPPORT PROGRAMS: A DIRECTORY* (Elissa C. Lichtenstein ed., 1995) [hereinafter *Directory*]. At that time, twenty-one law schools had established mandatory pro bono requirements for students. *Id.* at 3. The mandatory programs described present a broad range of requirements, as well as varying definitions of what constitutes pro bono work. Nearly every law school surveyed reported that volunteer pro bono activities were available to law students.

tion.<sup>9</sup> Yet administering such programs, providing adequate supervision, locating appropriate work placements, and documenting completed hours can be costly and difficult.<sup>10</sup>

New pro bono requirements supplement the pro bono course work already offered through clinics and externships. The model proposed in this Article offers an additional pro bono service model that integrates pro bono service into required first-year LRW programs. This Article first analyzes law school pro bono service requirements. These requirements have succeeded, benefitting both students and their communities. Yet most pro bono requirements implicitly teach students that pro bono work is to be performed not as part of the law school curriculum taught by law school faculty, but primarily outside the law school with supervising practitioners.

Next, this Article considers pro bono work integrated into law school courses and taught by law school faculty, such as traditional "live client" law clinics. This type of pro bono work offers a view of faculty and students jointly engaged in pro bono service within the law school. Such clinics, externships, or similar classroom pro bono opportunities are typically not required, however; indeed, they are limited primarily to a small number of upper level students.

Based on an analysis of existing pro bono opportunities, this Article proposes using legal research and writing programs as a well-supervised and cost-effective means of engaging students in pro bono legal work during law school. The proposal offers several attractive features. First, it reaches students in their first year, when student interest in pro bono service is greatest and when students are determining why they are in law school and what it means to be a lawyer. Second, it potentially involves larger numbers of students than existing models. Third, it provides close faculty supervision of pro bono work by utilizing LRW faculty members within the law school who already develop research and writing skills through client simulations. Finally, the proposal supports local pro bono providers in need of help.

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<sup>9</sup> See Lewis S. Calderon et al., *Mandatory Pro Bono for Law Students: Another Dimension in Legal Education*, 1 J.L. & POL'Y 95, 105-06 (1993) (no surveys are available documenting that students who perform pro bono work become attorneys who perform pro bono, but Tulane Law School students reported that the pro bono program had increased their willingness to provide pro bono services in the future).

<sup>10</sup> See Jennifer Murray, *Lawyers Do It For Free?: An Examination of Mandatory Pro Bono*, 29 TEX. TECH. L. REV. 1141, 1171 (1998) ("The sheer amount of supervision required to successfully operate an effective clinic or mandatory student pro bono program simply makes [such a program] not only economically infeasible, but also prohibitively time consuming."); Stephen F. Befort & Eric S. Janus, *The Role of Legal Education in Instilling an Ethos of Public Service Among Law Students*, 13 LAW & INEQ. J. 1, 17 (1994) (administrative costs for a mandatory pro bono program have been estimated at over \$100,000 per year); Calderon, *supra* note 9, at 105 (reviewing costs of mandatory pro bono programs as over \$100,000 per year).

## II. MANDATORY PRO BONO REQUIREMENTS: PRACTITIONER MODELS ADAPTED FOR LAW STUDENTS

The impulse for pro bono requirements in law schools was spurred by proposals from members of the bar alarmed by reductions in legal services available to the poor.<sup>11</sup> From the mid-1970s to the mid-1980s, a range of bar associations proposed and promulgated mandatory pro bono in several jurisdictions.<sup>12</sup> Nevertheless, several states rejected or resisted mandatory pro bono proposals.<sup>13</sup> In contrast, by the late 1980s, pro bono requirements were gaining favor within the academy.<sup>14</sup>

Mandatory pro bono programs for law students tend to adopt their structure from proposed attorney pro bono requirements. Practitioners and students donate a finite, minimum number of hours per year.<sup>15</sup> For students, these required hours

<sup>11</sup> See Angela McCaffrey, *Pro Bono in Minnesota: A History of Volunteerism in the Delivery of Civil Legal Services to Low Income Clients*, 13 LAW & INEQ. J. 77, 87 nn. 53-58 (1994) (chronicling the history of the LSC and the effects of the Reagan administration's major cutbacks); Frederick J. Martin III, *Law School's Pro Bono Role: A Duty to Require Student Public Service*, 17 FORDHAM URB. L.J. 359, 361-63 (1989) (indicating that, by the late 1980's, cuts in public funding and huge caseloads hampered delivery of legal services to the poor).

<sup>12</sup> See generally ABA CTR. FOR PRO BONO, *THE LAW OF PRO BONO: MANDATORY, ASSIGNED COUNSEL AND OTHER LEGAL ISSUES* (1994); Ronald H. Silverman, *Conceiving a Lawyer's Duty to the Poor*, 19 HOFSTRA L. REV. 885, 888-894 (outlining the discussion of attorney mandatory pro bono from the 1970s onward).

<sup>13</sup> See Silverman, *supra* note 12, at 888-894. For example, several jurisdictions either rejected or resisted pro bono efforts, including Oregon, Maryland, North Dakota, and Washington. See *id.*

<sup>14</sup> See, e.g., Caroline Durham, *Law Schools Making A Difference: An Examination of Public Service Requirements*, 13 LAW & INEQ. J. 39 (1994) (listing over a dozen mandatory pro bono programs and focusing upon two model programs at Tulane Law School and Tauro College Jacob D. Fuchsberg Law Center).

Several colleges and universities across the country began to require community service for graduation. The website <http://www.udayton.edu/~service> has information and links to sites which collect the specifics of college service requirements.

Public high schools also adopted mandatory graduation community service requirements. The Third Circuit upheld the constitutionality of a high school's requirement that students complete 60 hours of community service before graduation. See *Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989 (3rd Cir. 1993). The court found the community service program at issue was flexible and permitted students a wide choice of service activities. See *id.* at 996. Thus, the requirement violated neither the First Amendment protection against compelled speech nor the Thirteenth Amendment protection against involuntary servitude. See *id.* at 993-997. Observers believe that similar flexibility in law school pro bono requirements render them constitutionally valid as well. See Murray, *supra* note 10, at 1173.

<sup>15</sup> See Howard Lesnick, *Why Pro Bono in Law Schools?* 13 LAW & INEQ. J. 25, 30 (1994) ("We set thirty-five hours as the requirement, in each of the second and third years, deriving the number from the American Bar Association's fifty-hour annual norm, as applied to the nine-month academic year."); University of Pennsylvania Program

range from as few as twenty to as many as seventy.<sup>16</sup> Like practitioners, law students cannot receive money for their work, nor can they receive academic credit. Just as attorneys or law firms may link up with established pro bono providers, students are typically "placed" with a community organization performing pro bono legal work. Therefore, the law students are supervised by community attorneys, not by law school faculty.<sup>17</sup>

Because students work out in the community with their supervisors, the system of tracking, matching, and monitoring students and supervisors usually requires a supporting office and "a commitment of some resources."<sup>18</sup> Pro bono obligations are typically imposed as graduation requirements and are completed during the second and/or third years of law school; first-year students are generally excluded.<sup>19</sup>

One result of modeling student pro bono requirements on the ABA or other practitioner models is that a law student typically experiences pro bono service outside of the law school, as an upper level student for a defined number of hours, and in a network of placements supervised by practitioners and administered by a single faculty member or administrator. Pro bono work is isolated from the "regular" law school curriculum taught for academic credit by "regular" faculty.<sup>20</sup>

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Guidelines (defining "billable" pro bono hours: a student may count training time, but not travel time, and cannot perform work for a judge).

<sup>16</sup> See Durham, *supra* note 14, at 41.

<sup>17</sup> Supervision typically involves time sheets, a brief description by the supervisor of the work performed, and copies of the student's work product. See generally *id.*

<sup>18</sup> Lesnick, *supra* note 15, at 36. Administration need not always be costly, but some method of supervising and documenting the work needs to be in place. The following are examples of mandatory pro bono programs for law students: Stetson University College of Law Student Pro Bono Requirements (each semester Deans conduct a "mandatory orientation" session for students about to begin pro bono requirement; each student submits a proposed plan for fulfilling the requirement; each student must keep "accurate records" and submit "proof of fulfillment of the requirement" (emphasis added) to the Registrar; each student must submit a certification completed by the student and signed by both the student and the supervisor); University of Pennsylvania Law School (program has an office with computerized list of placements; students are expected to keep brief log of activities); Valparaiso University School of Law (program administered through Career Services Office). See Directory, *supra* note 8.

<sup>19</sup> While some pro bono requirements may include first-years, the majority of law students completing pro bono requirements are upper level students. See Directory, *supra* note 8, at 21-93; Lesnick, *supra* note 15, at 30 (favoring a "recurrent" requirement, but excluding first-year students "simply because the first year is a time of unusual stress and adjustment"). See also ROBERT V. STOVER & HOWARD S. ERLANGER, MAKING IT AND BREAKING IT 111-12 (1989) (noting first-years' limited exposure to pro bono activities and lack of legal skills and knowledge, and that "most beginning law students direct so much time and energy to meeting the stress of the first year that they withdraw from other activities").

<sup>20</sup> This isolation from traditional course work may have little to do with the pro bono aspect of the work, but rather the skills nature of the work. Law schools frequently iso-

Law schools value pro bono service highly enough to require all students to donate legal services while working off-campus with a practicing attorney. Pro bono advocates suggest that when students bring their pro bono experiences into classroom discussion, "[s]ome teachers are hospitable to [student discussion derived from the pro bono work]."<sup>21</sup> However, not all law faculty are so "hospitable." This reluctance to bring pro bono experience into the traditional law school classroom goes to an assumption underlying many mandatory pro bono requirements: they involve students, they involve practitioners, and they involve administrators. Typically such programs do not involve law school faculty or the law school curriculum.<sup>22</sup> The requirements serve the exemplary goal of introducing upper level students to one model of pro bono work. The model, however, separates pro bono work from three years of "for credit" law school course work and the faculty who teach those courses.

While performing pro bono service with community lawyers the students acquire lawyering skills, which is a desirable result. Working with practitioners, students are motivated to seek answers to questions such as why they want to become a lawyer and how to do so. In this way, the pro bono requirement model uses practitioners to train future practitioners. The model does not, however, directly address academia's role in orienting students to the legal profession.<sup>23</sup>

In addition to orientation by practitioners, students should receive orientation to the profession from the faculty who teach them within the law school. Thus, to educate students, as well as train practitioners, the pro bono graduation requirement model cannot stand alone.<sup>24</sup> The law school must step forward earlier in the process to offer students both skills training and a personal vision of themselves as legal professionals.

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late legal skills teaching, rather than integrating it throughout the curriculum. Therefore, skills are taught in LRW programs, clinics, and externships by skills faculty, who in turn are often isolated from the rest of the law school faculty. See J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35 (1994) (discussing common views that "lawyers rather than professors" should teach skills courses, such courses should not absorb law school resources, and skills courses will render law school a "trade school").

<sup>21</sup> Lesnick, *supra* note 15, at 37.

<sup>22</sup> Some faculty are directly involved because they have imposed a pro bono work requirement upon themselves as well as upon their students. Stetson University College of Law's policy, for example, requires faculty to perform pro bono service as well. See Stetson University College of Law Draft Pro Bono Public Service Policy.

<sup>23</sup> See Steven Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123 (1987) (noting that there is a "crucial difference between training practitioners and educating students," and including the broader goal of teaching students "orientation to and comprehension of the profession").

<sup>24</sup> See *id.*

### III. PRO BONO "FOR CREDIT": MODELS FOR SERVICE IN LAW SCHOOL CLASSES

Law schools can, and some already do, provide skills courses within the curriculum where students and law faculty perform pro bono work together. Clinical programs are the best-known vehicle for this kind of "in house" law student pro bono work. Typically, clinics award academic credit to students who represent individual indigent clients,<sup>25</sup> though some clinics take on institutional issues as well.<sup>26</sup> Clinic students are generally third-year law students who obtain a provisional student certificate to perform legal tasks under the supervision of a licensed attorney.<sup>27</sup>

Like the pro bono service requirements, clinic courses offer students the chance to develop lawyering skills and to consider how and why they wish to become lawyers. In clinic pro bono work, unlike typical off-campus pro bono work, the students are closely supervised by clinical faculty with a typical teacher-to-student ratio of one to eight or ten students.<sup>28</sup> The close supervision means, however, that only a small percent of the law school's entire student population participates in the clinic.<sup>29</sup> Contact with clinic clients provides students a window into at least one indigent individual's efforts to resolve a problem through the legal system. The clinic's eligibility requirements highlight economic barriers a client faces in obtaining legal services in the community.<sup>30</sup>

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<sup>25</sup> This Article examines "live" client clinic settings. The LRW programs, like moot court or trial advocacy courses, already employ client simulations. Hofstra University School of Law offers a Clinic simulation to first years, which integrates Family Law and Trial Techniques beginning in the first year. See Directory, *supra* note 8, at 37.

<sup>26</sup> For example, the University of Arizona runs an Immigration Law Clinic, focusing primarily on asylum cases; the John Marshall Law School runs a Fair Housing Clinic; the University of Michigan runs a Child Advocacy Clinic. See Directory, *supra* note 8, at 39.

<sup>27</sup> The most common model for clinic education is "to have upper level students participate for a limited number of credits during one or two semesters." Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 How. L.J. 31, 34 (1993). However, a few law school clinics have involved first-year students. See *id.* (citing Antioch Law School (now closed), CUNY School of Law at Queens College, and the District of Columbia Law School).

<sup>28</sup> See Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990's*, 75 Minn. L. Rev. 619, 625-26 & nn. 32-34 (1991) (referencing AALS SECTION OF CLINICAL LEGAL EDUCATION, FINAL REPORT OF THE COMMITTEE ON THE FUTURE OF THE IN-HOUSE CLINIC (Aug. 1990), which found a typical teacher/student ratio for clinical education ranged from 1:8 to 1:10).

Thus, the expense of a clinic is an issue in expanding it beyond a limited number of students. See Tarr, *supra* note 27, at 36 ("Many law schools have been unwilling to commit themselves to the expense of clinical education.").

<sup>29</sup> There are notable exceptions to this general rule. Some schools require each student to spend time in a clinical setting as a graduation requirement. See Directory, *supra* note 8, at 2.

<sup>30</sup> The clinic eligibility guidelines serve to focus pro bono service on the poor. See Roger F. Schechter, *Changing Law Schools to Make Less Nasty Lawyers*, 10 GEO. J. LE-



Clinic students learn how to act as attorneys in a particular role: that of serving community members who could not otherwise afford legal services.

Like pro bono service requirements, clinics offer both skills development and a view of the lawyer serving the community in practice. Clinical goals and methods foster skills-learning and promote consideration of the role of the attorney in society.<sup>31</sup> The pro bono experience makes the appreciation of the attorney's role in society and the acquisition of skills important course goals.

Clinic pro bono class work brings pro bono service into law school for a small group of students who self-select and who may already be inclined to investigate service aspects of legal practice.<sup>32</sup> The majority of students may not gain any clear view of pro bono work during law school and may be left with myths or stereotypes about what pro bono work is and what type of attorney performs pro bono work.<sup>33</sup>

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GAL ETHICS 367, 388 (1997) (“[C]linical faculty can talk explicitly with students about the fact that but for the law school clinic, the client would have gone unrepresented, and use that to discuss a lawyer’s duty to engage in some pro bono activities throughout one’s career.”); Marc Feldman, *On the Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 638 (1985) (“Even if the majority of our students go on to professional lives entirely unrelated to the lives of the poor and unrepresented, we should, at the very least, impart to them an informed sense of what the legal system looks like to many Americans.”).

<sup>31</sup> See *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992). The AALS Committee listed nine goals for clinical education: planning and analysis in an “unstructured” client setting; professional skills instruction in interviewing, counseling, and fact investigation; learning from experience; exposing the students to professional ethics in action; exploring the role of the attorney; providing opportunities for collaborative learning; imparting the obligation of service to the poor; examining the impact of doctrine in real life; and critiquing the capacities and limitations of lawyers and the legal system. See *id.* While these goals may not be universally embraced by all clinics or clinicians, they provide a basic set of goals for comparison to other law school course work.

<sup>32</sup> In addition to clinics, pro bono work within the law school curriculum may grow from externships and other types of field placements. Externships commonly combine supervision by a practitioner with classroom meetings with a faculty member and potentially “may accommodate more students than in-house clinics.” Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems, and Possibilities*, 2 CLINICAL L. REV. 413, 413-14 (1996). Unlike clinics, some externships minimize the presence of law school faculty in favor of placements supervised only by practitioners. Thus, the duty to provide orientation to the practice within the law school is again exported to the practicing bar. See Daniel J. Givelber et al., *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995); Seibel & Morton, *supra* at 429 (externships need not include a classroom component taught by a faculty member; of 98 programs surveyed, 69% had a classroom component). Scholarship defining the faculty’s role in the classroom, however, continues to develop. See, e.g., Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429.

<sup>33</sup> See STOVER & ERLANGER *supra* note 19, at 71-88 (examining “myths” fueled by fellow students, practitioners, and some empirical experience, viewing pro bono work as

## IV. LRW COURSES: A FIRST AND BEST OPPORTUNITY FOR PRO BONO SERVICE

Each year, LRW faculty in over 100 programs across the country teach thousands of first-year students the required legal analysis, writing, and research skills courses.<sup>34</sup> Meeting the LRW skills professor is often a student's first encounter with a practitioner-professor whose express goal is to teach lawyering skills.<sup>35</sup> The first-year skills courses propose to teach law students essential lawyering skills, and LRW faculty have often come to teaching after several years of practice.

In small classes focusing on practice skills, LRW faculty are in a position similar to practitioners assisting students in pro bono work outside the law school and to clinicians and other faculty working with students inside the law school. They have the chance to teach lawyering skills and to help students consider questions that lie at the very heart of the legal profession. "During skills education students can ask such questions as: Do I want to be a lawyer? Why do I want to be a lawyer? How do I want to live my life as a lawyer? Can I be a good lawyer and a good person?"<sup>36</sup> These questions are expressed most openly during the first year of law school as students make the transition from their previous lives into law school and its culture.<sup>37</sup>

Answers to these questions must come from the students, not the faculty.<sup>38</sup>

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marginal, tedious, and of poor quality: "I don't have anything against public interest practice, but I want to work someplace where I'll get some decent training. At Legal Services, it's baptism by fire. Everybody's overworked. The quality of the practice is crummy!").

<sup>34</sup> See Results, *supra* note 2, at 1 (a total of 132 respondent law schools submitted information about the LRW program within their curriculum).

<sup>35</sup> Jan M. Levine, *Voices in the Wilderness: Tenured and Tenure-Track Directors and Teachers in Legal Research and Writing Programs*, 45 J. LEGAL EDUC. 530, 531-32 (1995) (most LRW teachers "bring with them significant experience from prior law practice"). Some LRW courses, like Appellate Advocacy courses, are taught by adjuncts alone or by adjuncts team-teaching with full time faculty. Therefore, some LRW students are taught by attorneys who are still actively practicing full time. See Roy Stuckey, *Using Adjuncts to Team-Teach Professional Skills and Values*, XXVII Syllabus 16 (Fall 1996) (concluding that professional skills and values should not be taught by adjuncts alone but through collaboration with full-time skills faculty who have a professional interest in teaching values).

<sup>36</sup> Tomain & Solimine, *supra*, note 1, at 319 (citing THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS (David Luban ed., 1984)).

<sup>37</sup> See Rideout & Ramsfield, *supra* note 20 (identifying the "socialization" aspect of law students entering law school, a new discourse, and a first step toward entering a profession).

<sup>38</sup> See Tomain & Solimine, *supra* note 1, at 319 ("The inquiry into values should not be tied to a narrow political agenda."); LEGAL STUDIES DIVISION, WASHINGTON LEGAL FOUNDATION, IN WHOSE INTEREST? PUBLIC INTEREST LAW ACTIVISM IN THE LAW SCHOOLS 1-2 (1991) (calling into question political one-sidedness of law school public interest courses; "when chosen political issues become 'favored,' such one-sidedness chills intellectual curiosity and discussion").

Moreover, the most helpful answers may not come from assigned essays, ethical exhortations, or solemn pronouncements. The best answers come from "experience" as an attorney, an experience that first-year LRW skills courses and faculty are uniquely equipped to provide.

To supply the "experience" of practice for first-year students, faculty typically use a simulation to present a hypothetical client with a problem for students to resolve.<sup>39</sup> In these simulations, faculty strive for realism and seek to raise ethical and moral issues about the legal profession.<sup>40</sup> To create simulated clients and problems, LRW instructors select an area of the law appropriate for novice researchers. The assignments require students to become familiar with a range of primary and secondary sources. However, rather than send the students on a "treasure hunt" through the library, the assignments place the research tasks in the context of a simulated client's problem.<sup>41</sup>

First-year students are highly motivated researchers. Although faculty and upper-level research assistants may research exhaustively to prepare an assignment, dozens of first-year students taking on the task can unearth an amazing wealth of information.<sup>42</sup> As novice researchers, first-year students take detailed notes, keep research logs or journals, update repeatedly, seek secondary sources for

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<sup>39</sup> See, e.g., KUNZ, *supra* note 4 (research for simulated client exercises); RUTH ANN MCKINNEY, *LEGAL RESEARCH: A PRACTICAL GUIDE* (1996) (series of assignments contained in memos to associates with a request to help resolve client's problem); Levine, *supra* note 5, at 58 (stating that simulated client assignments are the heart and soul of teaching and learning in LRW courses).

LRW programs can hardly be credited with inventing the use of client simulations, but they are probably the most frequent and consistent users of them. Other law school courses integrate skills simulations into more abstract doctrine. See, e.g., Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report — of Skills, Legal Science, and Being a Human Being*, 69 WASH. L. REV. 593 (1994).

<sup>40</sup> See, e.g., Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 NEW ENG. L. REV. 883, 905 (1995) (stating that one goal of LRW simulated assignments is to examine the "role law serves in delineating relationships of power, privilege, and public authority in society").

<sup>41</sup> The "treasure hunt" method requires students to answer unrelated questions, rather than supplying a client context for the research. See, e.g., J. MYRON JACOBSTEIN, ET AL., *ASSIGNMENTS TO ACCOMPANY FUNDAMENTALS OF LEGAL RESEARCH* (6th ed. 1994) [hereinafter JACOBSTEIN, *ASSIGNMENTS*]; J. MYRON JACOBSTEIN ET AL., *LEGAL RESEARCH ILLUSTRATED* (6th ed. 1994) [hereinafter JACOBSTEIN, *LEGAL RESEARCH*]. For example:

1. What is the maximum penalty for violation of the labeling requirement of the Public Health Cigarette Smoking Act of 1969?
2. Who fixes the per annum rates of basic pay of positions on the National Zoological Park police force?
3. Is the Secretary of Agriculture authorized to eradicate the golden nematode?

JACOBSTEIN, *ASSIGNMENTS* at 100-01.

<sup>42</sup> The teacher/student ratio in a LRW class varies greatly with each program. See Results, *supra* note 2, at 3 (class sizes range from around 20 students per faculty member to 75 or more).

background information, and, out of an abundance of caution, tend to copy and print out more material than more experienced researchers do.

As a professor in a LRW program, I appreciated my students' intensity during research sessions. To cite an example: one October morning as my students and I walked through the library selecting, locating, and using resources to solve a simulated client's problem, a concerned student approached me. "I am so worried about Margaret. Can we talk?" I prepared myself for a story about Margaret, who, I assumed, was a first-year student overwhelmed by the stress of the initial months of law school. Instead, as the conversation progressed, I slowly realized my student was actually speaking about the simulated client in the assignment she was currently researching. The simulation involved Margaret Smith, a newly-minted lawyer who assumed that a form letter a partner at her firm had given her to sign and send out had to be valid, because surely the partner knew what he was doing. Unfortunately, by signing and sending the letter, "Margaret" ended up violating several provisions of the Federal Fair Debt Collection Practices Act.<sup>43</sup> My student, by locating the statute and a few key cases, quickly realized that her client was in trouble.

My student's concern for "Margaret" was gratifying. Secretly, I was pleased with my own ability to create a believable fact pattern for the assignment. The "built-in" professional and ethical issues of the attorney's reliance on others' research and judgment, the pressure placed on her to produce a document quickly, the stress of a first legal job, and a host of other professional issues had been successfully identified and raised for discussion. However, weeks later, as I walked around the library, I felt frustrated by the evanescence of the entire process. Once the assignment was turned in, the students, quite understandably, cleared out the masses of notes, copies, and printouts of all their materials on Margaret and her problems. A veritable mini-thesis on the topic of the Federal Fair Debt Collection Practices Act and how it governed Margaret's conduct overflowed from the recycling boxes throughout the law school library.

Not only was the research wasted, but in some sense, the intensity that drives the research also drives first-year students to grapple with the essential issues of why and how to be a good lawyer had also been lost. The project was, after all, just a simulation, not "real." The research was recycled, and I feared perhaps the ethical and professional issues were also discarded because they had been raised by a "paper" client.

The only real clients in the law school were those who received pro bono assistance from third-year students serving in the clinic, and a clinic setting was not hospitable to, or practicable for, forty-five first-year students. Yet, serving pro bono clients like those in the clinic would provide students not only with great skills training, but also the chance to find answers to questions about themselves and the legal profession that were foremost in their minds during the first year of law school. Moreover, it is first-year law students, not upper-level

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<sup>43</sup> See 15 U.S.C. § 1692 (1977). The violations included: threats to take actions that are not intended to be taken; threats to take actions that cannot legally be taken; and attempting, through the letter, to collect a debt by using contradictory language and threats.

students, who express the greatest interest in pro bono work.<sup>44</sup> While first-year students have only recently obtained basic legal research skills, they evince more desire to explore the role of attorney and a desire to perform service that could motivate them to tackle a pro bono project. As first-years, they have few avenues for pro bono service because they are not eligible for pro bono legal work in the community or in law school courses.<sup>45</sup> The ideal pro bono project would use their newly acquired research skills and tap into their existing desire to perform service.

#### A. *Creating an LRW Model for Pro Bono Service*

A few writing courses and seminars,<sup>46</sup> as well as the format of law librarian pro bono work,<sup>47</sup> provided the requisite element needed to create a model for LRW pro bono work: the use of an "indirect" client. An "indirect" client is an attorney or organization providing pro bono legal services to the community. The law student researches and writes for these pro bono providers. These providers, in turn, use student work product on issues to serve future pro bono clients. Thus, LRW students are several steps removed from a "live" individual client, like those served in a clinic setting.

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<sup>44</sup> See Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695, 1699-1701 & nn. 21-23 (1993) ("Various articles and studies support the contention that the law school experience plays a significant role in shifting a student's interests away from public interest work."); Befort, *supra* note 10, at 12 ("Many students come into law school with a passion for service. This passion often recedes, however, during the grind of the law school regimen and an atmosphere that appears to value other types of legal work more highly.").

<sup>45</sup> Most law schools prohibit full-time first-year students from paid or volunteer legal work. See, e.g., University of Dayton School of Law Policy Manual F-1 (1995) ("First-year students are prohibited from working without the written permission of the Dean.").

<sup>46</sup> In addition to the clinic courses and externships, law schools have developed useful hybrid courses incorporating pro bono service. See, e.g., Angela J. Campbell, *Teaching Advanced Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653, 673-677 (1993) (a clinic course that focuses on the writing process within a clinic providing pro bono services); Calderon, *supra* note 9, at 110 n.59 (describing pro bono research and writing in a seminar on Constitutional Law and the death penalty where students research and write sample certiorari petitions that the professor incorporates into petitions filed with the U.S. Supreme Court).

<sup>47</sup> Law librarian pro bono work has included: (1) providing research to individual attorneys and firms providing pro bono service; and (2) providing research to agencies providing pro bono service. See Kathy Garner, *Lawyer-Librarians in Public Law Schools: The Ethical Conundrums of Pro Bono Activities*, 84 L. LIBR. J. 31 (1992); Kathy Garner, *Reply to Herskowitz's Unanswered Questions*, 85 L. LIBR. J. 209 (1993) (arguing pro bono work should be part of a law librarian's professional duty). Law schools have also used this model of providing research to attorneys, who in turn use it to serve pro bono clients. See NAPIL Briefs (Summer 1993) (Minnesota Justice Foundation matches pro bono attorneys in need of research with volunteer student researchers).

The first task was to find the "indirect" client, an attorney or an organization providing pro bono legal services in the Dayton community. Next, the skills component of the project needed to be defined. The CALR training in the second semester always generated great student enthusiasm, and the CALR representative and I could tailor computer research training sessions to incorporate the pro bono project.

Although the indirect client approach sacrificed some of the advantages of live client contact, this model afforded the control needed to direct first-years through a project. An ideal project would simultaneously provide, for faculty, the vehicle to teach second semester research skills, and, for the students, a closeup view of the legal profession and attorney pro bono service.

At the University of Dayton School of Law, one community pro bono organization was already on campus: the Greater Dayton Volunteer Lawyers Project (VLP). The VLP provides pro bono legal assistance to those in need, but who are unable to afford legal assistance. Upper-level law students already worked with the VLP and its volunteer attorneys through the Public Service Placement Program (PSPP), a voluntary pro bono program jointly created by the VLP and the Law School. The PSPP connects interested upper level student volunteers with local lawyers volunteering to provide legal services to VLP clients. The founders of PSPP had already begun searching for ways to involve first-year students in pro bono activities, but none had been forthcoming.

Not really knowing what kind of project would work best, I contacted the VLP Director. She suggested a useful student research project: support for the VLP's Continuing Legal Education (CLE) Programs. Ohio has mandatory CLE, and the VLP provides CLE instruction for their volunteer attorneys, focusing on areas of law most frequently needed by VLP clients. For example, in exchange for the opportunity to attend the CLE seminar on Employment, Age and Civil Rights Discrimination, "an attorney is required to accept one pro bono discrimination case through the VLP in the twelve months following the seminar. This commitment is in lieu of a registration fee."<sup>48</sup>

Each year, VLP attorneys from local law firms not only attended the CLE seminar, but also made presentations and updated the seminar material. Now, the Employment Discrimination CLE seminar materials needed updating. The volunteer presenter explained that she used a "composite" VLP client during the CLE program to highlight for the attorneys the various, related types of employment discrimination claims common to VLP clients.

### *B. Teaching Research Skills Through Pro Bono Service*

By adopting the volunteer attorney's composite employment discrimination "client" for the initial WESTLAW training and the research classes that followed, first-year students would update and annotate the CLE Employment Discrimination outline. Second semester research classes, traditionally taught

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<sup>48</sup> VLP CLE Registration Form.

through client simulations,<sup>49</sup> could instead use VLP's composite employment discrimination client.

The composite VLP client would meet many research goals. During the second semester, students begin to see that research resources are connected together into a web, rather than viewing each research medium in isolation. Students almost universally prefer CALR and resist combining research media. The goal is to teach the possible combinations among computer databases, CD-ROM, books, and the Internet. Students come to recognize that a single research project may require different research media in different sequences and combinations.

CALR training goals are at least twofold: to debunk any belief that computers are always the first place to start any research project;<sup>50</sup> and to prevent students from missing authorities because of poor searching practices. Novice computer researchers waste valuable time by running poorly-conceived searches, miss cases because they search through the wrong database, and find that more is *not* always better when a broad search turns up far too many cases.

During the latest pro bono project, the students first met with the WESTLAW representative in the computer training center to discuss the client's facts. CALR training emphasizes that research results are only as good as the search which the system receives;<sup>51</sup> therefore, the students generated a list of search terms to perform an efficient CALR search. Then the students ran their searches, and once the essential claims were agreed upon, the students divided them up and began gathering the primary and secondary authority relevant to their chosen employment discrimination claim. To avoid duplication, students researching a single claim discussed search results and then divided the printing tasks.

Once the printed materials were collected, each group met to discuss its particular employment discrimination claim and decide on a format for the CLE materials. For example, one group of students researched the Ohio Whistleblowers' Act. First, the students compiled a complete, annotated bibliography on the Act. Each element within a claim was set out, and beneath it the students supplied first the relevant word or phrase from statute or common law and then the cases, listed in reverse chronological order. Each case had a parenthetical or annotation summarizing the holding and the legally significant facts<sup>52</sup>

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<sup>49</sup> Some LRW program faculty teach on-line services themselves, while others rely on the vendor training representatives. Our program has tried to strike a balance by team teaching and sharing ideas and simulations with the vendor representatives. See generally Marilyn R. Walter, *Retaking Control Over Teaching Research*, 43 J. LEGAL EDUC. 569 (1993) (assessing roles of faculty and vendors in teaching legal research).

<sup>50</sup> See HELENE S. SHAPIRO ET AL., *WRITING AND ANALYSIS IN THE LAW* (3rd ed. 1995) TEACHER'S MANUAL 73 ("A major task of any research instructor will be to convince students that they should not begin every research problem sitting at the computer. Many students assume computers can do everything . . . better and faster.").

<sup>51</sup> Even with the advent of natural language and freestyle searches, the ability to articulate effective search terms remains important to achieving effective, economical research results.

<sup>52</sup> See RUGGERO J. ALDISERT, *LOGIC FOR LAWYERS* 229-238 (3rd ed. 1997) (listing

upon which it turned. Printouts of the relevant cases followed in the same order as the annotations. For each claim, the students also chose the most helpful secondary source, printed it out, and included it in the binder.

The entire group of researchers then came together in a class session to share research processes and consider the strength of each potential claim. Each group detailed its research process and evaluated their results. The composite client's case provided abundant learning opportunities — including a variety of ways to make mistakes. Some reported overly broad searches that had inevitably resulted in thousands of cases being retrieved. Some of the Whistleblowers' Act researchers admitted that their initial searches had retrieved cases about train whistles. In despair over the results of their computer research, some had resorted to books, using a digest to locate a topic and key number and gather a few relevant cases. They integrated media by updating on line. "Unreported" Ohio appellate cases lurked on databases; therefore, they researched Ohio's view on citation of unreported cases.<sup>53</sup> Through this process they learned how to cite to unpublished cases — that is, cases that appear only on a database, not in any published volumes.<sup>54</sup>

Students expressed surprise that a single incident, the composite client's circumstances, could generate several different theories of recovery. Each student had seen the importance of the claim he or she researched, but not until the larger group came together did they realize the full range of possible responses to a single set of facts.

From the very nature of CLE research, students realized how frequently law may need to be updated. The CLE seminar put updating in a specific context. Furthermore, students asked how attorneys keep up to date while occupied with the daily practice of law. We considered systems for keeping up with changes in the law as a practitioner, including CLE's, advance sheets, newsletters, and websites.<sup>55</sup>

The research lessons were greatly enhanced by researching for a "client," albeit an institutional pro bono client. Many issues were generated by the need to

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guidelines for determining which facts are material or legally significant for purposes of legal analysis).

<sup>53</sup> Their research took them to the Rules of the Ohio Supreme Court, specifically Ohio S.Ct. Prac. Rule VI governing unreported cases. They also considered the quality of the unreported opinions and debated whether judges spent less time and care drafting and issuing unreported cases. See Patricia Wold, *Going Through the Motions*, 62 JUDICATURE 58, 63 (1978) (arguing unpublished opinions are shorter, less accurate in citation and quotation of authority, and poorly written).

<sup>54</sup> The search for the proper citation led to further discoveries: Ohio has its own system of citation, issued by the Ohio Supreme Court's clerk, and distinct from the "Blue-book" forms students had to master the previous term.

<sup>55</sup> Students often found practitioner discussion groups and practice area websites most helpful in highlighting trends and emerging issues. See generally MARIA PEREZ CRIST, *THE INTERNET: STRATEGIES FOR EFFECTIVE USE IN LAW PRACTICE* (1998) (outlining websites and discussion groups relevant to a range of legal practice areas).



communicate effectively to several "real" audiences, including the seminar presenter and attendees.

The results of the pro bono project generated many more research and skills issues than the projects undertaken for previous simulated clients. Because there was a legal audience for the CLE and a future VLP attorney relying on the work, students worked with great care. Fierce debates raged over how to proceed, and the shared research demonstrated the need to document carefully. No one wanted to hear that someone was "pretty sure" he had updated a case or that she "thought" she had run a search through a particular database.

This close research supervision kept me confident about the quality of the students' work product. Because I came to view myself as an "overinvolved" counterpart to a clinical supervisor, my intense supervision arose from two sources. First, as with any simulated assignment, I wanted to ensure the students created a quality product and also learned the process needed to get to that product. Second, this time, my own reputation and the Law School's reputation in the community were on the line, and this gave me an interest in the work similar to my students' interest: this research was not going to end up in the recycling bin.

### *C. Teaching the Experience of Pro Bono Service*

The VLP Project met the stated skills objective: students learned research skills and implemented them to produce materials incorporated into a CLE presentation, rather than simply filling recycling boxes. Beyond the research skills, however, the project also fulfilled the goal of giving first-year students a concrete introduction to the legal profession and pro bono work. Rather than waiting until their third year or until they graduated, first-year students served an institutional pro bono client, and provided materials to a practicing attorney performing pro bono work in her area of legal expertise.

The professional and pro bono service goals were much less defined than the skills goals for the project. Perhaps the main goal was to expose students to pro bono service as practiced, rather than as preached in a professional responsibility text or article. The students learned about a pro bono institution, the VLP, and about a practitioner who performed legal services for the institution. These two realities generated much research and discussion.

The students wanted to know more about their "client," the VLP. They learned how the VLP was formed and the range of practice areas that its volunteer attorneys represent. They gained insight into the law school faculty when they learned faculty members had been instrumental in forming the VLP and that some faculty worked on cases for the VLP.

Although the volunteer attorney did not meet with the students, they were interested in why and how she came to work for the VLP. Her volunteer work dispelled for them the idea that only a certain "type" of attorney would perform pro bono work. Some students expressed surprise that an attorney working within a traditional law firm would perform pro bono work. Others asked if the

attorney's firm required such work, and we discussed both law firm and individual lawyers' commitment to pro bono work.

The discussion of the volunteer attorney and the VLP as a pro bono organization arose in a concrete context, rather than as an abstract obligation to serve the public. Rather than picturing attorney pro bono service only vaguely as some future obligation, the students were able to learn from direct experience. They saw how a specific pro bono organization functions, and they encountered two distinct types of pro bono work: service to an individual client and service from researching and presenting the materials for the CLE. Thus, the experience taught them that any practice area can offer opportunities for pro bono work and that attorneys can perform such work in different ways.

The pro bono experience also gave me a chance to become involved in pro bono service as an academic. Pro bono work had been a driving force in my decision to practice with a particular law firm, but in my law school teaching, I had not yet found a way to perform legal pro bono work. The project provided a means to perform pro bono service that was integrated with my classroom teaching. When I performed pro bono service with the students, the topic of pro bono service came up naturally in classroom discussions throughout the rest of the term. In other years, I had created simulations which involved pro bono service in the facts, but we never had the range of discussion about pro bono work that this project generated.

The pro bono research project fulfilled my initial goals. It reached first-year students and thus allowed the opportunity for pro bono work in law school to recur and develop over three years. It developed lawyering skills in a more realistic setting and took the students at least one step past a pure simulation. It took place inside the law school, the same setting in which other more "traditional" modes of learning occurred. It was taught by an LRW skills faculty who helped students answer the most basic questions about the legal profession — why they came to law school, and what it means to be a good lawyer and a good person. It gave students the chance to discuss and consider different models and possibilities of pro bono work in a specific context. The context could inform their experiences in their third-year professional responsibility course, a clinical course, or when confronting stereotypes of attorney pro bono practice prevalent in law schools and among practitioners.<sup>56</sup>

The essential elements of the VLP pilot project — research and writing for a pro bono service provider — can be incorporated into other first-year LRW courses, as well as upper level LRW courses. The pro bono project involved only my small group of first-year students; the three other first-year LRW faculty did not participate. Based on the results, however, each instructor could take on a small pro bono project and thus give the entire first-year class a pro bono research experience within the LRW program. However, LRW curriculum often proceeds well beyond the first year into more advanced research and writ-

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<sup>56</sup> See STOVER & ERLANGER, *supra* note 19.

ing courses.<sup>57</sup> These courses could serve as equally viable vehicles for pro bono projects. Because these classes are made up of upper-level students, more difficult or complex research issues could be used, and legal issues of particular importance to local pro bono providers could be identified and researched.

Pro bono research projects could also begin at "home" — within the law school. If a law school offers a live client clinic, the clinic might use manuals for commonly raised issues. Perhaps upper-level LRW students could create a searchable database, including forms, sample papers and other helpful materials on frequently litigated legal issues. Depending on the availability of other pro bono opportunities in the law school, student researchers could support individual faculty pro bono projects. For example, if a faculty member were litigating homeless people's rights, a class could research one aspect of the law at issue.

Other "indirect" clients also exist outside of the law school. Legal Aid or other community agencies, such as a shelter for battered families, a hospice, or a consumer protection group, may have needs for basic legal research. Student work could take on a variety of forms, including research summaries or manuals on particular issues or processes. Local judges may have projects appropriate for LRW researchers, such as keeping track of recent developments in the law. For example, some judges periodically update the "boilerplate" language and citations used in common motions and claims before them, such as motions to dismiss, motions for summary judgment, and motions to compel. Often judicial externs research and update these items, but students could also provide this service and gain valuable experience by revising the "boilerplate" or attempting to write jury instructions. If second semester students are also writing appellate briefs, they might be able to contribute to manuals maintained in appellate courts describing the law of finality as defined in that jurisdiction, or other appellate practice issues.

## V. CONCLUSION

The LRW model of first-year pro bono service should supplement, not replace, existing law school pro bono service models. Recurrent and varied pro bono experiences in law school will give students a richer, more sophisticated view of the many forms pro bono service can take. Currently, students have few opportunities during law school to explore what it means to enter a profession and how to integrate professional and personal ethics into a law practice. LRW courses already explore the lawyering skills essential to legal competence in practice. Within this context, the same faculty can use the skills experience to consider the ethical issues arising from entering into the profession, issues which are foremost in first-year students' minds. LRW faculty undisputedly have the first, best chance to link professional skills training to professional ethics "training." By offering first-year students a chance to observe and participate in pro

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<sup>57</sup> See generally Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203 (1995) (addressing the need for advanced LRW courses and providing a model for such courses).

bono service, LRW faculty can engage generations of future attorneys in a dialogue about the professional and personal ethics inherent in the practice of law.

