

## NOTES AND COMMENTS

### RESPONSIBILITY OF SCHOOLS IN DISPENSING EQUAL JUSTICE: A SINGAPORE CASE STUDY

#### Abstract

The gap between the needs of indigents and the state subsidised legal services or *pro bono* legal services exist in all societies. Traditionally, the state and the legal fraternity have assumed responsibility to bridge this gap. Law schools have traditionally and culturally confined themselves to the academic instruction of the law. This paper considers whether law schools have an equal responsibility to plug this gap. Four main issues are considered. *First*, law schools have a professional responsibility to instill legal professionalism in law students, which includes educating students in a *pro bono* culture. *Second*, these responsibilities can be effectively discharged by engaging faculty and students in *pro bono* programs/clinics which have the effect of sensitising law students to social justice issues, advocate legal professionalism and demonstrate professional and community relevance in education. *Third*, these responsibilities should not merely be justified on the basis of pedagogical relevance and value. Legal curriculum should be improved upon to advance professional responsibilities and a *pro bono* culture. *Fourth*, it is important to sustain the *pro bono* commitment nurtured in law schools. To this end, it is proposed that the Singapore Legal Profession Act, 2009, Cap. 161, § 71, The Legal Profession (Professional Conduct) Rules, (2010) and the Legal Professional Conduct Rules (LPCR) be amended to reflect the professional responsibilities of a lawyer and to encourage dedication of certain number of *pro bono* hours per *annum*.

#### I Introduction

“To no man will we deny, to no man will we sell or delay justice or right.”  
- *Magna Carta*

THE GAP between the needs of indigents and state subsidised legal services or *pro bono* legal services exist in all societies. Traditionally, the state and legal fraternity assumed the responsibility to bridge this gap. Law schools, on the other hand, have traditionally and culturally confined themselves to the academic instruction of the law. This paper takes the

stand as to how law schools have an equal responsibility to plug this gap. For reasons mentioned in this paper, it is contended that law schools have a professional responsibility to instill legal professionalism in law students and, additionally, an institutional responsibility to fulfill the unmet legal needs of indigents in society. It is further proposed that these responsibilities may be discharged by introducing mandatory *pro bono* courses/programmes in law school curricula.

Being stakeholders of the justice system, law schools must advocate and nurture a *pro bono* culture amongst law students. Changing legal landscape and growing legal needs of indigents have changed the traditional role of law schools engaged in academic instruction of law. Law schools have a duty to demonstrate professional and community relevance in education beyond pedagogical relevance. The study and understanding of the law must encompass an ethical dimension so as to instill professional values in law students and sensitise them to social justice issues. As future trustees of justice, law students need to understand, amongst others, the purpose of law in society, delivery of justice, disconnect between legal services and indigent needs and students' responsibility to society.

## II Current legal climate dealing with the indigent/ legally underprivileged in Singapore

Singapore is not a welfare state. Government funded legal aid is available only under limited circumstances. For civil cases, state funded legal aid is governed by the Legal Aid and Advice Act.<sup>1</sup> The administration of this Act falls under the purview of Legal Aid Bureau (LAB), Singapore. By reason of section 8(2) and (3) of the LAAA, to qualify for legal aid the indigent has to show: (i) that his threshold disposable income and capital are that of \$ 10,000 each per *annum*<sup>2</sup> and (ii) he has 'reasonable grounds' for taking or defending the action<sup>3</sup> Otherwise, the legal aid for civil cases is supplemented by community legal clinics run by private practitioners, various private organisations<sup>4</sup> and the Singapore Law Society

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1. Hereinafter referred to as LAAA.

2. The Legal Aid and Advice Act, 1996, Cap. 160, § 8(2). (Sing.).

3. Director of LAB and two private practitioners will decide whether there are reasonable grounds. The director can refuse legal aid if it appears to him that it is unreasonable to give legal aid "in particular circumstances of the case"; see *id.* § 8(3).

4. Singapore Association of Women Lawyers, Catholic Lawyers Guild (Singapore) and Association of Women for Action and Research, *etc.*

*Pro bono* Office. The Singapore Law Society *Pro bono* Office through its various activities such as the community legal clinics, Project Law Help<sup>5</sup> *etc.* provide civil legal aid to the legally underprivileged. For PLH, the aid consists of legal advice that does not involve court proceedings and is given to any charity, voluntary welfare organisation, non-profit organisation or social enterprises with an objective to meet community concerns or needs and have limited or no financial resources to pay for the advice.<sup>6</sup> Community legal clinics are resourced by volunteer lawyers from practices who commit their time giving free legal advice. These clinics aim to assist needy Singaporeans and permanent residents on matters where they are not legally represented. Aid in legal clinics consists of legal advice and where private practitioners decide to take up such cases, legal costs excluding disbursements<sup>7</sup> are often waived. Payment of legal disbursements, including court fees, which can be substantial, remains the liability of the indigent.

Given rising inflation rates, the nature of the case and the extent by which an individual's income and capital exceeds LAAA threshold amount, it is tenable that an individual whose disposable income and capital exceeds the threshold may still not be able to afford legal services for a fee reduced or otherwise.<sup>8</sup> For ease of reference, one shall refer to these people as falling within the sandwiched class.

The LAAA does not provide for criminal legal aid.<sup>9</sup> For criminal cases, generally, there is no state funded legal aid. Though the accused has

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5. Hereinafter referred to as PLH.

6. The Law Society of Singapore: Project Law Help - About Project Law Help, [http://www.lawsociety.org.sg/probono/project\\_law\\_help/aboutProLawHelp.aspx](http://www.lawsociety.org.sg/probono/project_law_help/aboutProLawHelp.aspx) (visited on Oct. 8, 2010). Assistance here usually revolves around reviewing the commerce contracts, employment and other related documents, copyright and trademark issues, registering charities and advice on obtaining Institution of Public Character (IPC) status, *etc.*

7. Legal disbursements would include court fees.

8. See also Gary Chan, "Access to Justice for the Poor: the Singapore Judiciary at Work", 17 *Pac. Rim L. & Pol'y J.* 591, 598 (2008). The author opines that a fixed income and capital threshold is inadequate as a parameter to establish eligibility for legal aid. He states that it is impossible to predetermine in advance a fixed income and capital threshold below which an indigent is regarded as lacking access to justice.

9. The position taken by the Singapore government is that it does not make sense, philosophically, jurisprudentially, practically for the state to prosecute and then defend, in public interest. 76 *Singapore Parl. Rep.* 715 (2003).

a right to counsel,<sup>10</sup> the state is not obliged to provide a counsel save as to the two scenarios when counsel is assigned: (i) where an accused is facing a capital charge in the Supreme Court<sup>11</sup> or (ii) when the Chief Justice considers it to be in the “interests of justice” in non-capital criminal appeal cases.<sup>12</sup>

Other than the abovementioned situations, an indigent accused is solely dependent on legal services of the criminal legal aid scheme (CLAS).<sup>13</sup> CLAS, is a *pro bono* initiative set up by the Singapore Law Society in 1985.<sup>14</sup> The scheme covers both legal advice and representation<sup>15</sup> and is not limited to Singapore residents or permanent residents. Applicants are subjected to a means test.<sup>16</sup> CLAS is sourced by volunteer lawyers. The efforts of CLAS are also supplemented by the Association of Criminal Lawyers, registered under the Societies Act whose members provide *pro bono* assistance for criminal cases. Both are resourced by volunteer lawyers.

Given the above, an indigent:

- who falls within the sandwiched class; or
- who does not satisfy CLAS means test for non-capital cases and nonetheless is financially unable to afford legal assistance and advice; or

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10. Art. 9 of the Constitution of the Republic of Singapore (1999): “[W]here a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice”. Thus, the right to counsel is at the expense of the accused.

11. Supreme Court (Criminal Appeals) Rules, 1997, Cap. 322, R 11(a). (Sing.).

12. *Id.*, rule 11(b).

13. Hereinafter referred to as CLAS.

14. The Legal Profession Act, 2009, Cap. 161, § 38(g) (Sing.) (A statutory obligation on the law society to “make provision for or assist in the promotion of a scheme whereby impecunious persons on non-capital charges are represented by counsel”).

15. However, the accused may be asked to pay for disbursements such as cost of obtaining statements or reports from the police.

16. The Law Society of Singapore: *Pro bono* – Eligibility, <http://www.lawsociety.org.sg/probono/CLAS/FAQs.aspx> (last visited on Oct. 8, 2010). The CLAS means test covers both income and disposable assets of the indigent and, if married, the total net worth. To qualify, an indigent must earn less than \$ 1,300 net per month or a combined income of \$ 1,700 net and that he/she does not own a private property or private motor-car. Additionally, indigents whose total net value of business, savings or shares exceeds \$ 3,000 or, \$ 5,000 for married applicants, will not qualify for aid.

- requires more than just free legal advice provided in community clinics;
- is entirely dependent on the services of a lawyer agreeable to doing legal work *pro bono* or for a significantly reduced fee.

Given that the *pro bono* services rendered by private practitioners, private organisations, community clinics, the Singapore Law Society *Pro bono* Office are fundamentally reliant on the voluntary efforts of gracious souls, it becomes important to sensitise lawyers and fundamentally law students to social justice issues to ensure a constant supply of lawyers who will dedicate part of their time to *pro bono* work.

To ensure a sustainable supply of such lawyers committed to *pro bono*, one needs to re-look at legal education and curriculum and the role of law schools. To this end, following two areas will be considered in this paper:

- *Nurturing at source*: Principally, whether law schools are responsible for educating young individuals into lawyers owe a duty to aid access to justice for indigents and a professional responsibility to inculcate legal professionalism in law students. If so, whether that duty should translate into first sensitising law students to a *pro bono* culture and engaging them in *pro bono* work by various means and in that process indirectly enhancing access to justice for indigents.
- *Sustaining pro bono consciousness at practitioners' level*: It is important to ensure that *pro bono* consciousness nurtured during tertiary education be sustained during practice. It has to be a two-prong approach. Otherwise the *pro bono* consciousness will wane. To this end, the paper considers various means by which *pro bono* awareness may be raised amongst practitioners.

### **III Institutional responsibility to aid access to justice for indigents**

Law schools are best placed to inculcate *pro bono* consciousness in law students. Whether there is a positive duty to do so is another matter altogether. Currently, *pro bono* programs are not mandatory at law schools<sup>17</sup> in Singapore, though there may be an active culture to engage in such

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17. Law Schools at National University of Singapore and the Singapore Management University.

services at the faculty and student level on a voluntary basis. However, at Singapore Management University,<sup>18</sup> there is a University-wide requirement which mandates a student to complete 80 hours of compulsory community service within four years of tertiary education failing which a student will not be able to graduate. The 80 hours community service is a graduating requirement. The SMU law students have the added option of clearing their community service requirement at *pro bono* placements and clinics secured and/or approved by the law school.<sup>19</sup> As of 18<sup>th</sup> August 2010, about 383 SMU law students<sup>20</sup> had engaged in community service and completed about 29630.8 hours<sup>21</sup> of community service. Of the 383 law students, 152 students engaged in *pro bono* services and a total of 3379.31 hours were committed to this end from August, 2007 to June, 2010.<sup>22</sup> That would account for about approximately 39.68 per cent of law students engaging in *pro bono* work with an average law student rendering approximately 22 *pro bono* hours in addition to the 68.54 hours rendered for general community service.<sup>23</sup>

This paper contends that law schools have a professional responsibility to instill legal professionalism in students during their course of study. Legal professionalism has been defined by the American Bar Association Commission on professionalism as “*pursuing a learned art as a common calling in the spirit of public service* - no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.”<sup>24</sup> Likewise, in England

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18. Hereinafter referred to as SMU.

19. *Pro bono*, [http://www.law.smu.edu.sg/gates/students/pro\\_bono.asp](http://www.law.smu.edu.sg/gates/students/pro_bono.asp) (visited on Oct. 8, 2010). (List of approved *pro bono* placements at School of Law, Singapore Management University).

20. It must be noted that School of Law at the Singapore Management University started with its pioneer batch of law students in August, 2007. The Law School enrolls about 120 law students each year.

21. These hours include the *pro bono* service hours of 3379.31.

22. The data mentioned were obtained from the Office of Career Services, Community Service and Singapore Management University. This office maintains records of community service of all students enrolled at the University. These data are not publicly available and have been released on permission by the Office of Career Services.

23. An average of 68.54 hours per law student is rendered towards general community service hours. The figure is arrived at as follows: 29630.8-3379.31=26251.49 divided by 383 students.

24. American Bar Association Commission on Professionalism, “...In the spirit of Public Service”: A Blueprint for the Rekindling of Lawyer Professionalism, 112 F.R.D. 243, 261(1986).

and Wales, a sense of noblesse oblige consistent with the spirit of public service prevailed among the elite since 1275. This spirit of public service pervaded as there was a professional monopoly on legal services and thus had consequential effects on access to legal system. In view thereof, professionals embraced an ethos of not rejecting the cause of the weak and the oppressed and serving the poor for free. This ethos traditionally took a reactive role as it was presumed that a man pursuing this learned art would do so in the spirit of public service.

A volunteer lawyer's commitment to *pro bono* stems from this legal professionalism and the need to facilitate access to justice that is dependent on obtaining competent legal representation for all. The lawyer's role as a guardian of the legal system is reflected in the Singapore Legal Profession Act, 2009, Cap. 161, § 71 and the Legal Profession (Professional Conduct) Rules, 2010 (LPCR).<sup>25</sup>

Given the lawyers' role as a stakeholder of justice, it is important that legal professionalism or professional values underlying Singapore justice system be inculcated in a law student at an early stage. Legal professionalism is important to the understanding and practice of law, as it is the soul of legal education. Since it is the responsibility of the law schools to disseminate legal knowledge, it becomes the responsibility of the law schools to ensure that teaching and learning of law encompasses an ethical dimension to model lawyers with professionalism. One should not be taught devoid of the other. A law school must ensure that the curriculum inculcates legal professionalism in the understanding and practice of the law.

Secondly, legal education like medicine is a specialised education. It bears direct relevance to its profession upon graduation. Hence, it is fundamental that tertiary legal education demonstrates community and professional relevance by ensuring that professional values are incorporated in the study of the law.<sup>26</sup> Law schools can imbibe legal professionalism

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25. Rule 2(2), LPCR, requires a lawyer to ensure administration of justice, adjudication of disputes in a fair and just manner and to facilitate access to justice.

26. Under the existing curriculum at SMU, law students take a compulsory course in ethics and social responsibility. The student will learn the fundamental principles of influential ethical theories and its application to various factual situations. The objectives of the course are twofold: *First*, it is expected that students will learn the fundamental principles of influential ethical theories that have guided, or have been invoked by, explicitly or implicitly, governments, citizens, business persons and consumers, and other stakeholders in societies for centuries. Having learned these

and engage the community by acclimatizing law students to a *pro bono* culture through *pro bono* programs, clinics or courses that sensitise students to social justice issues. Such attempts increase the awareness of law students to the purpose of law in society and the need to address disconnects between legal services and unmet legal needs of indigents.<sup>27</sup>

Thirdly, it is undeniable that legal education shapes future lawyers. Imbibing professional values during tertiary education will be instrumental in conditioning a law student's perspective of the purpose of legal profession and its ethos.

Carnegie Report<sup>28</sup> supports the aforementioned development of professional values as a central aspect of legal education. This report on United States legal education affirms the paradigm shift in legal instruction methods. It proposes professional values to be embedded in all aspects of the curriculum.<sup>29</sup> Additionally, the Report calls for *effective learning via* active learning. Engaging students in *pro bono* programmes or clinical courses would not only imbibe legal professionalism but constitute an effective learning method. The Report acknowledges that clinical courses that combine legal doctrine and analysis whilst engaging in practical supervised work are most appropriate for developing professional values within the law curriculum.<sup>30</sup> However, currently such programs or clinics in Singapore are electives and not core in law curricular, in which event imbibing legal professionalism in the areas of *pro bono* service, access to justice, *etc.* will only be achieved *via* selecting a few. A mandatory *pro bono* programme, on the other hand, would reach all law students and have the desired effect of attempting to inculcate professional values by an effective learning method. Such a programme would increase the number

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theories, the student will be expected to achieve a degree of fluency in applying these theories to a range of different fact situations. Where relevant, references will be made to statutory provisions and legal principles (*e.g.* the Prevention of Corruption Act). *Second*, the student will be introduced to basic principles of professional ethics in various disciplines including accounting and law.

27. It is an accepted fact that the lack of competent and affordable legal advice is in part caused by the professional monopoly of legal services.

28. William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

29. Currently, this is being done at the School of Law, SMU, where issues of ethics are incorporated in instruction of most of the law subjects. Additionally, there is a separate subject of Ethics and Social Responsibility. This is a compulsory module for all law students.

30. Sullivan, *supra* note 28 at 24 (Recommendation 1).



of students assisting indigents in clinics under the supervision of a faculty.

Lastly, some writers, such as Deborah Rhode, are of the view that increasing access to justice should start with the law schools since they are "...uniquely well positioned to disseminate awareness that privileges of the profession are, in part, what contribute to inequality of justice..."<sup>31</sup> and therefore socially responsible for alleviating or reducing this inequality.

It is also asserted that law schools have an institutional responsibility towards indigents in society. *Firstly*, this obligation arises from the fact that law schools are arguably one of the stakeholders of the justice system and hence have a moral obliquity to aid access to justice. *Secondly*, both law schools<sup>32</sup> are substantially state-funded. Though there are no express terms of reference governing state funding, it is arguable that given the substantial nature of state funding of universities, an institute should ensure that its curricula is socially and ethically inclined. Engaging law students in *pro bono* outreach programs, clinics or courses educating students in social justice issues will be instrumental in discharging this institutional responsibility, if any.

A traditional academic instruction of the law churning law graduates knowledgeable in law will no longer suffice. As reiterated above, a duty is owed to society to ensure that the education at both law schools has community and professional relevance. The community relevance can be achieved by faculty giving *pro bono* advice and assistance, engaging in legal clinics, sensitising law students to social justice issues *via* legal aid programmes. Community engagement and relevance in education will encourage a *pro bono* culture and commitment in the formative years of a law student. A law student exposed to clinics geared towards *pro bono* services of indigents, serving disenfranchised sections of the community or assisting community education programmes, *inter alia*, will become sensitised to social justice issues. Arguably, a law student trained in such a culture is more likely to commit to *pro bono* work in practice.

At a micro level, most universities, including SMU, use three basis criteria to assess an individual faculty's yearly performance for appraisal purposes. The criteria are: research, teaching and service. Any service committed to society by a faculty would count towards these performance appraisal criteria. Such a criteria evidences the fact that the University recognises and encourages a faculty to serve society. Traditionally law

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31. Deborah L. Rhode, "Ethics in Practice: Lawyers' Roles, Responsibilities and Regulation" 21 in Deborah L Rhode (ed.), (Oxford University Press, USA, 2000).

32. National University of Singapore and Singapore Management University.

professors engage in important social, political or juridical issues *via* scholarly discussion and educative and research publications. This service can and should evolve to include service to the broader community in the form of *pro bono* programmes monitored by the faculty.

Corollary to the argument on state funding of universities, arguably even a law student owes a responsibility to the larger community for two fundamental reasons. *Firstly*, a law student's fees are substantially subsidised by the Singapore government.<sup>33</sup> *Secondly*, admission to the two law schools in Singapore is stringent and limited in numbers. In a country with a population of approximately 4.9 million, only three hundred and 70 or thereabouts<sup>34</sup> will graduate from the two universities as qualified persons within the meaning of the Singapore Legal Profession Act in a given year from 2011. Given the limited intake of law students and the monopoly of legal services, which contributes to the inequality of justice, law students have an equal responsibility in eliminating this unequal legal representation and lack of access to justice. Likewise, this responsibility to the society can be aptly discharged by participating in community engagement programmes or mandatory *pro bono* programmes.

#### IV Benefits of a mandatory *pro bono* programme

Traditionally, *pro bono* programmes or clinics are justified on the basis of pedagogical value. A law school owes its students a legal education of certain pedagogical value in part by providing opportunities for students to master skills and knowledge only lawyers hold. The pedagogical aspirations of a law school can be achieved *via* mandatory *pro bono* programmes. However, given the benefits mentioned here below, *pro bono* programmes/clinics can be justified beyond pedagogical value. *Pro bono* programmes, mandatory or otherwise, *inter alia*, have tremendous potential to instill legal professionalism and professional values in students fundamental for an effective practice of the law.

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33. Tuition Fees, <http://www.smu.edu.sg/financial/fees/index.asp> (last visited Oct. 8, 2010). Currently, a law student at SMU pays a subsidised fee of \$ 10,920 in tuition fees per *annum*. An annual non-subsidised fee is \$ 30,230.

34. Currently, NUS Law School takes about 250 students per *annum* whereas SMU, School of Law matriculates 120 students. This does not include foreign graduates.

**Educational value**

Usually, there is a distinction between theoretical and practical learning. Essentially, participation in *pro bono* programmes, mandatory or otherwise, enables students to bridge the gap between study of law as pure theory and practice of law.

**Practice skills**

The MacCrate Report<sup>35</sup> published by the American Bar Association's Section of the Legal Education and Admissions took the position that mastery of lawyering skills cannot take place solely in a classroom environment. As a matter of fact, in 1992, the American Bar Association Task Force set up to look into law school curricula, amongst others, reported<sup>36</sup> that each law school curriculum must extend beyond study of legal doctrines, developing analytical, research and writing skills and encompass practice skills. *Pro bono* programmes provide for valuable direct training in professional practice skills such as problem solving, factual investigation, communication, techniques of client interviewing, counseling, negotiation, advocacy, observing or assisting drafting of legal documents in a supervised environment. These skills can be truly mastered only in a clinical environment *via* opportunities presented through real cases. In cases where there are opportunities to assist the supervising practitioner for a trial, the student will have the added benefit of trial experience and exposure. Hence, having a mandatory *pro bono* programme expresses the law schools' commitment to a strong skill based curriculum. Currently, the Legal Profession Act<sup>37</sup> prohibits a student from engaging in practice of law and offering legal advice. However, a student can *via* clinics or *pro bono* programmes assist a supervising practitioner or faculty. Essentially, participation in *pro bono* programmes allows the students to integrate and appreciate academic work with clinical experience.

**Social responsibilities**

Community engagement tends to instill a sense of social responsibility and seriousness in the student, as there is a reality to the situation. The effects of dealing with real clients and real life situations cannot be cultivated

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35. American Bar Association's Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992).

36. *Id.* at 327-37).

37. The Legal Profession Act, 2009, Cap. 161, § 32, 33.

*via* simulation or hypothetical exercises. Students learn from situations and reflect on professional responsibilities demanded by the situation and demonstrated by the supervising practitioner or faculty.

**May encourage a *pro bono* culture**

Doing a mandatory *pro bono* programme may instill a social responsibility towards *pro bono* commitment in the student, which may be carried into his professional career. Though *pro bono* is not mandatory amongst practitioners, it is actively encouraged by the Singapore Law Society in service to humanity. Thus, a mandatory *pro bono* culture at University may encourage *pro bono* service in practice, when the students graduate.

On another note, it has been indicated in some studies<sup>38</sup> that students who come to law school with interest in public service or *pro bono* lose that momentum for various reasons. Lure of private sector, latent curriculum,<sup>39</sup> societal emphasis on material goods and changes in political viewpoints are cited as some of the reasons for change. Perhaps, engagement in mandatory *pro bono* programmes may enable a student to maintain that momentum to *pro bono* commitment.

**Reinforces the fundamentals of the profession**

Experiences at the *pro bono* clinics usually demonstrate that lawyering is a vocation committed to justice and not just making dollars and cents. It reinforces the four paramount principles: access to justice; maintaining rule of law and administration of justice; ensuring integrity and independence of the profession; and acting in the best interest of clients as espoused in rule 2 of the LPCR. In particular, it enables a law student to facilitate access to justice and provide supervised assistance to those legally underprivileged. It has been recommended that a commitment to

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38. Audrey James Schwartz, *Law, Lawyers and the Law School: Perspectives From The First-Year Class* 30 *J. Legal Education* 437, 468 (1980). It is to be noted that there exists equally other research that indicates otherwise.

39. Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro bono Ethic in Law School*, 45 *Stan. L. Rev.* 1695 (1993), where the author defines latent curriculum as “a set of values about what “good” (i.e. smart, efficient, respected) lawyers practice in their professional lives. The latent curriculum is transmitted to students through class content, the emphasis placed on certain skills and areas above others, cues from the law faculty, discussions between students, advice from attorneys and the method of job recruitment. It is part of a process of acculturation whereby students shape their legal identities in accordance with majority viewpoint.”

*pro bono* by the law students and law schools may be a way to restore public confidence in the integrity of the legal profession.<sup>40</sup>

#### **Sensitising a law student to unmet legal needs**

There are students who are unaware of the existence of indigents. *Pro bono* programmes sensitise them to social justice issues and their role in society. Such sensitisation may inspire an enduring commitment to *pro bono* culture or public service. Primarily, the *pro bono* programme has a strong propensity to educate law students of the ethics of being a lawyer.

### **V Practical considerations in advocating a mandatory *pro bono* culture**

Notwithstanding the merits of advocating a mandatory *pro bono* program, implementation has its own issues.

#### **Establishing parameters of *pro bono***

*Firstly*, there is a need to establish the parameters of legal service that would satisfy the requirement of *pro bono*. *Black's Law Dictionary* defines *pro bono* as "being or involving uncompensated legal services performed especially for the public good" and *pro bono publico* is defined as "for the public good".<sup>41</sup> Given the myriad activities that are sponsored by the PLF and the community legal clinics, it would appear that legal services to indigents, non-governmental organisations, charities, societies, churches, civil rights organizations, *etc.* are regarded as *pro bono*. It is recommended that the definition of *pro bono* services proposed in part VI of this paper for the purposes of practice may be adopted. This would maintain parity of treatment. Given that the law school owes a twin-fold responsibility towards students and the community at large, it is important to ensure that only discharge of *legal services* for public good satisfy the *pro bono* requirement. The proposed definition will satisfy this requirement and, additionally, safeguard the program's pedagogical value.

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40. "If The Legal Profession Does Not Clean Up its Act", *Chicago Tribune*, November 25, 1986. The position in Singapore is not any different given the recent spate of lawyers running with client's monies over the last 10 years in particular. It is not suggested that a *pro bono* commitment by the law schools and its students will counteract the criticism faced with lawyers breaching professional conduct rules. However, *pro bono* programmes will sensitise the students to professional responsibilities and ethics, and hence, will not have the propensity to engage in conduct unbecoming of an advocate and solicitor.

41. *Black's Law Dictionary* 1240-1241 (7<sup>th</sup> ed., 1999).

*Secondly*, one has to consider as to who should be main beneficiaries of these legal services emanating from faculty and law students? To ensure that the students are adequately challenged and given myriad opportunities in corporate and non-corporate work, it may be prudent to encompass work done for non-governmental organisations, charities, societies, churches, civil rights organizations, *etc.* as *pro bono* for the purposes of mandatory program and *pro bono* placements made with external organisations. The *clinical courses* rendering legal services to indigents should qualify as *pro bono* placements. However, one will have to resolve the academic credit additionally given for these courses, compulsory or otherwise. Given the definition of *pro bono*, it would suggest that such clinics should only count if there was no academic credit given for the subject. Otherwise, it would be technically compensated legal service.<sup>42</sup> However, clinical programmes have the dual advantage of advocating a *pro bono* commitment and integrating *pro bono* experience with coursework. A possible added advantage might be that the students engaged in clinical work would have the dedication to ensure quality of legal service, as the work would be graded. Hence, it is recommended that where such programmes carry academic credit, a reduced hour rating be given for the purposes of reckoning it for community service, and hence, graduation. For instance, where the *pro bono* programme carries an academic rating, the number of hours to be reckoned towards compulsory community service may be halved in value in terms of *pro bono* hours reckoned for community service.

#### **Timing requirement**

Should a mandatory *pro bono* programme be instituted, it has to be considered whether it ought to be confined to 80 hours. There is strength

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42. For instance, Tulane Law School which runs a mandatory community service programme, *pro bono* work is synonymous with poverty law. Thus, work done for government sectors would not count. The students are required to complete 20 hours of legal service during their second and third years: Tulane Law School, *Community Service Program: A Procedural Outline* (1992). This requirement is similar to the 80 hours community service that law students at Singapore Management University must complete prior to graduation. However, their service is not limited to legal services but includes public service. University of Pennsylvania requires students to perform 70 hours of *pro bono* work before graduation. It defines *pro bono* work as work that is unpaid, non-clerical, law-related, done for non-profit organisations (excluding trade associations), public interest law firms, legal aid offices, *pro bono* projects or government offices: *University of Pennsylvania Public Service Program Guidelines* (reprint, 1990).

in maintaining parity in treatment between all SMU students with respect to public service. In any event, there is no cogent argument for reducing the hours given that the current law students seem to fulfill the requirement without difficulty.

#### **Resource issues**

In implementing such a programme, one has to be mindful of the resources that would be required for implementing a programme that is run differently from the one currently used at SMU, School of Law. Implementing a mandatory *pro bono* programme for 80 hours at SMU School of Law may not necessarily require additional commitment of resources, if existing external *pro bono* placements are used. However, attention must be given to adding new external placements to accommodate all students for the mandatory requirement. Setting up a *Pro bono* Centre within the auspices of the University would aid for this purpose. Such a Centre should also act as a bridge between the students, practitioners engaged in *pro bono* work and the legal clinics run for the indigents.

The Centre should be responsible for the following:

- establish a *pro bono* culture at the law school;
- approve and facilitate *pro bono* programmes for the students to engage;
- consolidate and centralise all *pro bono* programmes and clinics engaged by the students for efficient administration.
- to continually assess quality of external *pro bono* placements ;
- to act as a bridge between the indigents, law students, Singapore Law Society and practitioners engaged in *pro bono* work;
- to conduct legal clinics for the public at the University premises;
- to increase *pro bono* consciousness among law students and practitioners;
- to ensure faculty availability and supervision for the *pro bono* programmes;
- to provide a valuable platform for collaboration, *etc.*

Most US Law Schools that run such centres have administrators or directors engaged to take care of administration and other ancillaries. Should a *pro bono* centre be considered for implementing mandatory *pro bono* programmes, it is imperative that an appropriate strategy be devised

to take into account the institutional capacities, constraints and priorities, resource or otherwise.

**Recognition of faculty's commitment to *pro bono***

Deborah Rhode points that “[L]aw schools should provide ...encouragement for faculty public service by developing appropriate policies and incentive structures. These policies could require professors to report their annual *pro bono* activities, and make clear that such work will count affirmatively in promotion and tenure decisions. Schools could also provide research assistance and curricular- development funds for courses that include public- service case histories and placements.”<sup>43</sup> This would be particularly a concern among faculty where clinics or helping out in a *pro bono* centre fills the mandatory requirement. Deborah’s proposal would ensure participation and career progression of a faculty involved in such areas.

**VI Current *pro bono* culture and ways to  
raise *pro bono* consciousness  
amongst lawyers**

Currently,<sup>44</sup> a law faculty in Singapore cannot render *pro bono* advice or assistance at a legal clinic or practicum unless certain conditions are fulfilled. Section 32 of the LPA lays the ground rule to practise as an advocate and solicitor or to do any act as an advocate and solicitor. By this section, only a person whose name is on the rolls and has in force a practising certificate can practise or do any act as an advocate or solicitor. The LPA only allows a law faculty, who is a qualified person within the meaning of the LPA, to render opinions or to act in an advisory capacity on matters instructed by an advocate and solicitor.<sup>45</sup>

Given the above, it is quite clear that only a legally qualified person with a *practising certificate* can render *pro bono* legal advice at a legal aid clinic. Thus, a legally qualified law academic who does not have a practising certificate cannot do any act as an advocate and solicitor which would include legal advice unless instructed by an advocate and solicitor. At a practical level, this qualification severely curtails the number of faculty

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43. Deborah L. Rhode, “Cultures of Commitment: *Pro bono* For Lawyers And Law Students”, 67 *Fordham L. Rev.* 2415, 2443 (1999).

44. For purposes of this paper, the *pro bono* culture would be considered at the practitioners’ level and the faculty level.

45. The Legal Profession Act, 2009, Cap. 161, § 34(h) (Sing.).



eligible to give *pro bono* advice or assistance or to run a clinic.

As of today, there is no any statistical data in Singapore to evidence the number of practising lawyers engaged in *pro bono* services. However, as of 2009, there were 3697 practitioners<sup>46</sup> in a country with 4.9876 million people.<sup>47</sup> This works out to a *ratio* of 7 lawyers to 10,000 people. Given this fact, it can be fairly surmised that the *ratio* of practising lawyers engaged in *pro bono* services would be significantly less. Thus, an amendment of the LPA, allowing law faculty who are qualified legal persons, to engage in a *pro bono* advice and assistance, organise and lead courses/practicum which would invariably involve doing acts as an advocate and solicitor without an instructing advocate and solicitor would significantly increase the pool of lawyers committed to community engagement.

Second, it is imperative that the *pro bono* culture encouraged and developed at the University be sustained at the practitioners' level. Currently, that may be achieved if certain mechanisms are placed to remind practitioners of their responsibility to society and to raise the *pro bono* consciousness. LPCR does not encourage a proactive *pro bono* culture. The LPCR, though comprehensive in many aspects, appears to be rudimentary in the area of dictating *pro bono* awareness. At the practitioners' level, rendering *pro bono* services are purely voluntary and not mandated or even encouraged by statute or the Legal Profession Act,<sup>48</sup> or the Legal Profession (Professional Conduct) Rules. The only pronouncement on *pro bono* is a negatively worded obligation in the LPCR (applicable only to lawyers with a practising certificate) which states that an advocate and solicitor "shall not in the conduct of his practice do any act which would compromise or hinder....the obligation .....to facilitate access to justice by members of the public."<sup>49</sup> A mere referral by an advocate of an indigent to a legal clinic or a *pro bono* organisation should satisfy that obligation.

It is interesting to note that the LPCR fails to encourage a *pro bono* commitment amongst practitioners and state in unequivocal terms the

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46. The Law Society of Singapore: General Statistics, <http://www.lawsociety.org.sg/about/genStatistic.aspx> (visited on Oct. 9, 2010).

47. Statistics Singapore – Time Series on Population, <http://www.singstat.gov.sg/stats/themes/people/hist/popn.html> (visited on Oct. 9, 2010).

48. Chapter 161, s. 71.

49. The Legal Profession Act, 2009, Cap. 161, § 71, the Legal Profession (Professional Conduct) Rules, (2010), rule 2(2) (Sing.), rule 2(2)(a) and (d).

basic ethics dictating the profession such as upholding honor of the profession<sup>50</sup> and professional responsibilities in the area of facilitating access to justice. Unlike the American counterparts, it does not encourage advocates and solicitors to dedicate certain number of hours towards *pro bono* commitment or, in the alternative, to make a financial contribution to an organisation dedicated to providing *pro bono* services to the legally poor. It also naturally follows that the LPCR does not advocate a reporting requirement of the *pro bono* hours dedicated to the indigent society or donations made to that end.

In contrast, Maryland, Florida, Nevada and New Mexico<sup>51</sup> state affirmatively in their equivalent professional conduct rules, the professional responsibility of a lawyer to:

- render *pro bono* services to the poor and or to participate to the extent possible, in any other *pro bono* service activities that directly relate to the legal needs of the poor; OR
- to make a financial contribution to a legal aid organisation or a religious, charitable, civic, community, governmental or educational organisations designed to address the needs of persons of limited means.

The hours encouraged towards *pro bono* amongst the four states ranges from 20 to 50 hours. The amount of financial contribution

50. *Code of Ethics Adopted by the Alabama State Association*, Dec. 14, 1887. The Code presents the “Duty of Attorneys to Each other, to Clients and the Public” as follows:

To uphold Honor of Profession;

8. An attorney should strive, at all times, to uphold honor, maintain the dignity, and promote the usefulness of the profession: for it is so interwoven with the administration of justice, that whatever rebounds to the good of one advances the other: and the attorney discharges, not merely an obligation to his brothers, but a high duty to the state and his fellow man.

51. They are Florida, Maryland, Nevada and New Mexico. Rules Regulating the Florida Bar: RULE 4-6.1 *PRO BONO PUBLIC SERVICE*, <http://www.floridabar.org/divexe/rrtfb.nsf/FV/BF60AF4C185D99D085256BBC00533761> (visited on Oct. 9, 2010), MARYLAND *PRO BONO* – MD Rules of Procedure, <http://www.courts.state.md.us/probono/probonorules.html> (visited on Oct. 9, 2010) (see rule 6.1), Nevada Rules of Professional Conduct, <http://www.leg.state.nv.us/courtrules/rpc.html> (visited on Oct. 9, 2010) (see rule 6.1), State Bar of New Mexico Rules Governing the Bar, <http://www.nmbar.org/AboutSBNM/Governance/rulesgoverningbar.html> (visited on Oct. 9, 2010) (see rule 24-108).

encouraged to be given in lieu thereof to the above mentioned organisations ranges from US \$ 350 to 500 amongst three of the states.<sup>52</sup>

Though the obligation to provide *pro bono* services to the poor or to make financial contribution in lieu thereof is cast in aspirational terms for all four states, the duty to report the hours rendered towards such service is mandatory. Thus, a failure to render the *pro bono* service or to donate will not subject the lawyer to disciplinary offence but failure to report will constitute a disciplinary offence in Florida whereas in Maryland and Illinois, the practitioner will not be allowed to register for practice. In case of Nevada, there is an imposition of fine in the sum of US \$100. About 7 states in America,<sup>53</sup> inclusive of the four above mentioned, have mandatory reporting requirements of hours rendered towards *pro bono* services or the financial contribution made in lieu thereof. The reporting is done either as part of the member's annual membership fees statement<sup>54</sup> or as a *pro bono* legal service report form<sup>55</sup> or as part of registration for

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52. The Florida Bar advocates 20 hours or US \$350 financial contribution to a legal aid organisation in lieu of service. Rules Regulating the Florida Bar: RULE 4-6.1 PRO BONO PUBLIC SERVICE, <http://www.floridabar.org/divexe/rrtfb.nsf/FV/BF60AF4C185D99D085256BBC00533761> (visited on Oct. 9, 2010), Maryland proposes 50 hours of *pro bono* publico legal service. MARYLAND PRO BONO – MD Rules of Procedure, <http://www.courts.state.md.us/probono/probonorules.html> (visited on Oct. 9, 2010) (see rule 6.1(b)) Illinois does not recommend a minimum number of hours. Nevada provides for 20 hours minimum or payment of US \$ 500 in lieu to an organisation or group that provides *pro bono* services to persons of limited means or 60 hours of professional services at a substantially reduced fee to persons of limited means. Nevada Rules of Professional Conduct, <http://www.leg.state.nv.us/courtrules/rpc.html> (visited on Oct. 9, 2010) (see Rule 6.1(a) and Rule 6.1(a) (3) (i) and (ii)) For New Mexico the recommended hours is 50 or contributing financial sum of US \$ 500. New Mexico even has a table for suggested contribution. State Bar of New Mexico Rules Governing the Bar, <http://www.nmbar.org/AboutSBNM/Governance/rulesgoverningbar.html> (visited on Oct. 9, 2010): see rule 24-108A and B(1) and (2).

53. Florida, Maryland, Nevada, New Mexico, Hawaii, Illinois and Mississippi, Reporting of *Pro bono* Service, <http://www.abanet.org/legalservices/probono/reporting.html> (visited on Oct. 9, 2010).

54. Rules Regulating the Florida Bar: RULE 4-6.1 PRO BONO PUBLIC SERVICE, <http://www.floridabar.org/divexe/rrtfb.nsf/FV/BF60AF4C185D99D085256BBC00533761> (visited on Oct. 9, 2010): see rule 4-6.1(d).

55. MARYLAND PRO BONO – MD Rules of Procedure, <http://www.courts.state.md.us/probono/probonorules.html#Rule%2016-903> (visited on Oct. 9, 2010): see rule 16-903.

practice purposes.<sup>56</sup> The reporting requirement allows the respective states to track the hours contributed towards indigents and also serves to sensitise lawyers to a *pro bono* commitment and remind them of their professional responsibility.

Currently, Singapore lawyers engaged in *pro bono* do it purely out of legal professionalism and an innate sense to serve the humanity. To sustain a healthy *pro bono* commitment amongst lawyers, it is imperative that the LPCR that governs their conduct and relations on all matters relating to practice should prescribe for the following:-

- professional responsibility of a lawyer to render *pro bono* service to the poor;
- define what constitutes *pro bono publico* legal service;
- encourage a certain number of minimum hours towards *pro bono* service or to contribute a dollar equivalent to the Law Society *Pro bono* Office in lieu thereof;
- encourage law firms/corporations to allow their lawyers to credit *pro bono* hours towards billable hours;
- a mandatory reporting requirement of the *pro bono* hours rendered or the financial contribution made in lieu thereof.

The 1983 version of the American Bar Association Model Rule 6.1 states proactively a lawyer's responsibility to engage in *pro bono* work. The rule provides:

A lawyer should render public interest legal service. A lawyer may discharge his responsibility by providing professional services at no fee or reduced fee to persons of limited means or to public service or charitable groups or organisations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organisations that provide legal services to persons of limited means.<sup>57</sup>

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56. Illinois Supreme Court Rules, Art. VII, Part B. Registration and Discipline of Attorneys, Rule 756 (f), Disclosure of Voluntary *Pro bono* Service, [http://www.state.il.us/court/supremecourt/Rules/Art\\_VII/ArtVII.htm](http://www.state.il.us/court/supremecourt/Rules/Art_VII/ArtVII.htm) (visited on Oct. 9, 2010).

57. American Bar Association, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2005 278 American Bar Association 2006) (2006); also see Judith L. Maute, "Changing Conceptions of Lawyers *Pro bono* Responsibilities: Noblesse Oblige to State Expectations", 77 *Tul. L. Rev.* 91, 134 (2002).

Rule 6.1 was subsequently amended, whereby lawyers were encouraged to “render at least 50 hours of *pro bono publico* legal services per year”.<sup>58</sup> *Firstly*, the duty was cast in aspirational terms and *secondly*, defined *pro bono* as widely as possible. The latter would have the effect of allowing lawyers counting services that would not otherwise fall within the traditional *pro bono* definition. No reporting requirements were attached to the rule.

Given the active stand taken by Singapore’s judiciary<sup>59</sup> to facilitate access to justice, the growing efforts of volunteer lawyers and the efforts of Law Society *Pro bono* Office towards encouraging a *pro bono* culture amongst practitioners, a section on *pro bono* public service in the LPCR is long overdue. This section should state the professional responsibility of a lawyer akin to the 1983 version of the American Bar Association Model Rule 6.1. This commitment, though to be cast in positive terms, must remain purely inspirational and not to be made mandatory. Having a rule on professional responsibility in LPCR will serve as a constant reminder of a lawyer’s professional responsibilities towards indigents.

*Secondly*, this *pro bono* section should seek to define comprehensively what constitutes *pro bono* service for purposes of the LPCR. *Pro bono publico* legal service should include delivery of legal services rendered without fee or expectation of a fee to:

- persons of limited means;
- charitable, religious, civic, community, governmental, or educational organisations in matters designed primarily to address the needs of people of limited means;
- individuals, groups, or organisations seeking to secure or protect civil rights, civil liberties, or public rights;
- provision of legal services to charitable, religious, civic, community, governmental, or educational organisations in matters in furtherance of their organisational purposes when the payment of the standard legal fees would significantly deplete the organisation’s economic resources or would otherwise be inappropriate; and
- participation in activities for improving the law, legal system or the legal profession.<sup>60</sup>

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58. The ABA Standing Committee on *Pro bono* and Public Service, Supporting Justice: A Report on the *Pro bono* Work of America’s Lawyers 9 (2005).

59. Chan, *supra* note 8.

60. See Nevada Rules of Professional Conduct, <http://www.leg.state.nv.us/courtrules/rpc.html> (visited on Oct. 9, 2010): see rule 6.1(a)(1) and (2); Rules

*Thirdly*, this section should encourage lawyers to dedicate certain hours per *annum* towards *pro bono* service or contribute the dollar equivalent to the Law Society *Pro bono* Office or organisation/s dedicated to providing legal services to persons of limited means. The Law Society *Pro bono* Office should be vested with the discretion to decide on the hours and the dollar equivalent after considering the views of the legal fraternity and the relevant stakeholders. The dollar equivalent was suggested to cover lawyers who cannot, or decide not to, provide *pro bono* services. This will ensure that the delivery of *pro bono* services is not diluted by lawyers not inclined towards *pro bono* work.

To be effective, a reporting requirement of the number of hours dedicated to *pro bono* service or the dollar equivalent in contribution must be imposed. This should be made a mandatory requirement. Such a declaration can be made when the payment for Singapore Academy of Law subscription is made. Where there is a failure to declare, the lawyer should not be allowed to renew his practising licence. This censure is important so as to educate the lawyers into the knee jerk habit of reporting their hours or the dollar equivalent when payment is made for Academy subscription fees. The reporting requirement allows the lawyer to monitor the *pro bono* hours per *annum* and whether the recommended hours have been fulfilled. Invariably, the hours or financial contributions would serve as a benchmark for self-assessment. Additionally, the Law Society or the Singapore Academy of Law will be able to keep track of the *pro bono* services rendered per *annum* and evaluate the weakness and strengths of the *pro bono* plan. The reporting requirement should not under any circumstances be used for enforcement purposes.

*Lastly*, increasing first year salaries of lawyers in Singapore and elsewhere naturally translates to increased billable hours. That naturally increases the billable hours and, consequently, reduces the time for *pro bono* services. In the circumstances, a rule encouraging law firms to allow their lawyers' *pro bono* hours to be credited towards billable hours

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Regulating the Florida Bar: RULE 4-6.1 *PRO BONO PUBLIC SERVICE*, <http://www.floridabar.org/divexe/rrtfb.nsf/FV/BF60AF4C185D99D085256BBC00533761> (visited Oct. 9, 2010); Rule 4-6.1(a); MARYLAND *PRO BONO* – MD Rules of Procedure, <http://www.courts.state.md.us/probono/probonorules.html> (visited on Oct. 9, 2010); see Rule 6.1(b)(1)(A)-(D), Illinois Supreme Court Rules, Art. VII, Part B. Registration and Discipline of Attorneys, rule 756 (f), Disclosure of Voluntary *Pro bono* Service, [http://www.state.il.us/court/supremecourt/Rules/Art\\_VII/ArtVII.htm](http://www.state.il.us/court/supremecourt/Rules/Art_VII/ArtVII.htm) (visited Oct. 9, 2010).

would certainly aid a young lawyer to contribute his part to the indigent society.

## **VII Conclusion**

One of SMU School of Law's core values is dedicated to the service of humanity:

We are mindful of the importance of collegiality, compassion and service to the community, whilst pursuing excellence.

A mandatory *pro bono* program committed to serve the legal needs of indigents or a practicum inclined to social justice issues will allow us to do just that. For some of us, the duty to serve humanity is innate whereas for others it has to be nurtured. The issue we have to address as stakeholders of the justice system is whether we have done enough to nurture it, and if so, whether we have done enough to sustain that nurtured responsibility to serve the indigent humanity.

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