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## The Pledge for the Public Good: A Student-Led Initiative to Incorporate Morality & Justice in Every Classroom

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# The Pledge for the Public Good: A Student-Led Initiative to Incorporate Morality & Justice in Every Classroom

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*Katherine Steefel\*\**

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\* Alexi Freeman, Director of Externships and Public Interest Initiatives and Assistant Professor of the Practice , University of Denver Sturm College of Law. I assisted the Chancellor’s Scholars with the Pledge for the Public Good, but it was a student-led initiative; however, for the purposes of this Article, we use the word “we” to describe all activities. The co-author Katie Steefel, along with Ashley Basta, Haley DiRenzo, and Mia Kontnik are the true leaders of this endeavor. Students Isabel Breit, Alison Dunlap, Alexandra Moore, Sarah Spears and Ashley Smith were also involved. I am so grateful for the leadership that each of these students, and the larger Chancellor’s Scholars community, brings to Denver Law. Their efforts to elevate and encourage public interest are second to none and our school benefits greatly from their passion, intelligence, and leadership. They make my job easy and enjoyable, and I cannot wait to see what else they have in store for us!

\*\* Katherine Steefel, 2L Chancellor’s Scholar, University of Denver Sturm College of Law. I had the honor of working with fellow Chancellor’s Scholars Ashley Basta, Haley DiRenzo, and Mia Kontnik to start the process of the Pledge for the Public Good. While we started the process, we could not have brought the pledge to full implementation without the support of the twenty student groups who added student voice behind the pledge and our early faculty supporters. Thank you particularly to Professor Nantiya Ruan for encouraging us. And most of all, thanks to Professor Alexi Freeman, who supported us every step of the way and who inspires us to never forget the reasons we came to law school.

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### I. Introduction

“The first thing I lost in law school was the reason I came.” This is the disheartening reality for countless law students.<sup>1</sup> While legal education has made great strides towards diversifying its offerings and expanding its focus over time,<sup>2</sup> the struggle to maintain one’s vision and identity, especially if such things connect to the public interest,<sup>3</sup> remains challenging. Some notable exceptions<sup>4</sup> exist, but overall, law schools often still underserve those who are public interest focused<sup>5</sup> and fail to

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1. Bill Quigley, *Letter to a Social Justice Student*, 1 DEPAUL J. FOR SOC. JUST. 7, 9 (2007).

2. In recent years, there has been a concerted effort to create more practice-ready lawyers through experiential learning. The 2007 report by Carnegie Foundation for the Advancement of Education, *Education Lawyers: Preparation for the Profession of Law*, and the publication, *Best Practices for Legal Education* both called for closing the gap between learning to think like a lawyer and acting like a lawyer. Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 3 (2015); See Katherine R. Kruse et al., *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 ELON L. REV. 225, 225 (2015) (noting that many law schools have created experiential education dean or director positions, schools have a clinic requirement or guarantee, or a semester-in-practice). See also Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb, Russell & Engler, *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 521–26 (2012) (detailing the development of practical education); Stephen Ellmann, *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877, 878 (2009) (advocating for and describing the mechanics of a clinical year as the third year in law school); Martin J. Katz, *Facilitating Better Law Teaching-Now*, 62 EMORY L.J. 823, 834 (2013) (describing the experiential efforts at Denver Law).

3. Generally, for this Article, we use the term public good and public interest interchangeably, though we recognize distinctions between the two.

4. For example, Northeastern University School of Law (NUSL) and the City of University of New York School of Law (CUNY) have been widely marketed as public interest law schools since their inceptions and public interest is heavily tied into their missions and identities. NUSL’s “mission is to be a global leader in experiential legal education, providing students with the knowledge, skills, and ethical and social values essential to serving clients and the public interest, now and in the future. Through teaching, scholarship, and public service we work to promote social justice and enhance understanding of law’s impact on individuals, enterprises, and communities, at home and around the world. *History and Mission*, NORTHEASTERN UNIV. SCH. L., <https://www.northeastern.edu/law/about/history.html> (last visited Jan. 18, 2016). CUNY identifies as, “the premier public interest law school in the country. It trains lawyers to serve the underprivileged and disempowered and to make a difference in their communities.” *About*, CUNY SCH. L., <http://www.law.cuny.edu/about.html> (last visited Jan. 18, 2016).

5. See Louis S. Rulli, *Too Long Neglected: Expanding Curricular Support for Public Interest Lawyering*, 55 CLEV. ST. L. REV. 547, 548 (2007) (describing how some career officers push students toward private options, rather than public service positions); George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311,

graduate many students who devote themselves to serving the public good.<sup>6</sup>

While the climate at our school is supportive and embracing of public interest, and efforts to do even more are on the rise,<sup>7</sup> the University of Denver Sturm College of Law (Denver Law) is no exception. To move any law school to “the other side” that only a few are privileged to be a part of, large-scale, long-term transformation is needed to connect public interest to all aspects of culture and curriculum. The consumers of legal education—the students—can play a major role in jumpstarting this transformation. At Denver Law, the Chancellor’s Scholars did just that with the creation of the Pledge for the Public Good.

This Article will first share the research and literature of many scholars who have documented and studied how ingrained and widespread this disenchantment and disengagement with public interest law has been in legal education. Then, in Part II, we will discuss the Pledge for the Public Good, which aims to elevate and embed this idea of serving the public good within all classes. In Part III, we will share how we were able to “pass” the Pledge, including identifying five key elements to success.

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348 (2015) (concluding that the elitist model of legal education fails to product lawyers to serve society’s unmet legal needs); see also Douglas Quenqua, *Lawyers with Lowest Pay Report More Happiness*, N.Y. TIMES, (May 12, 2015 2:42 PM), [http://well.blogs.nytimes.com/2015/05/12/lawyers-with-lowest-pay-report-more-happiness/?\\_r=0](http://well.blogs.nytimes.com/2015/05/12/lawyers-with-lowest-pay-report-more-happiness/?_r=0) (noting the pressures of law students to work at private firms rather than public service placements).

6. According to the National Association for Law Placement, public interest organizations, including public defenders accounted for 7.3 percent of jobs in 2014. NATIONAL ASSOCIATION FOR LAW PLACEMENT, EMPLOYMENT FOR THE CLASS OF 2014—SELECTED FINDINGS 4 (2015), <http://www.nalp.org/uploads/Classof2014SelectedFindings.pdf>. Overall, the average amount of free legal services provided in 2011 by lawyers in the private sector was 56.5 hours with a median of 30 hours. Private practice attorneys provided significantly more pro bono hours than did corporate attorneys. JANET BUCZEK, ET AL., SUPPORT JUSTICE III: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 5 (2013), [http://www.americanbar.org/content/dam/aba/administrative/probono\\_public\\_service/ls\\_pb\\_Supporting\\_Justice\\_III\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_Supporting_Justice_III_final.authcheckdam.pdf). While there has been an upward trend, in the grand scheme, this is not many hours.

7. One of the visions in Denver Law’s 2015 strategic plan is: “We will engage with our community, our alumni, and the University at all levels of our work, including teaching, scholarship, public service, and public policy.” UNIVERSITY OF DENVER, STURM COLLEGE OF LAW, STRATEGIC PLAN ACADEMIC YEAR 15/16—ACADEMIC YEAR 19/20 5, 17 (2015), <http://www.law.du.edu/documents/about/strategic-plan/Strategic-Plan-2015-0420-Approved-FINAL.pdf> (noting Denver’ Law has five subject areas of focus including: Environmental and Natural Resources Law, International and Comparative Law, Workplace Law, and Constitutional Rights & Remedies).

In Part IV, we will provide a mini template to develop something similar elsewhere. We also share ways in which faculty can support student activism more generally. While this is the last section of the article, it is the most important to us. We are excited to share what we are building at Denver Law, but we know to fully immerse public good values and ideals into legal education, we need initiatives like the Pledge and countless others to pop up at every law school across the country. We hope our story inspires and supports current and future law students to grab a hold of their legal education and transform it so that they never forget the reason why they came, the reason why they stayed, and the reason why they maintained a professional identity that spreads, embraces, and supports the public good.

## *II. Law School: A Place to Learn to Serve the Public Good?*

### *A. Losing One's Passion*

Many students come to law school because of their desire, to put it simply, to help people.<sup>8</sup> While the stereotypical goal of law schools is to teach students to “think like a lawyer,” the omnipresent theoretical lawyer is typically not one dedicated to serving the public good. To use the words of Professor Bill Quigley as he described the law school experience for students interested in public interest, “[u]nless you are serious about your direction and the choices you make and the need for assistance, teamwork and renewal, you will likely grow tired and start floating along and end up going downstream with the rest.”<sup>9</sup> Some have even gone as far as to describe law school as an impediment to becoming a lawyer devoted to helping others.<sup>10</sup>

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8. See, e.g., Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563, 1566 (2002) (stating the rationale for why many students attend law school); see also generally Rulli, *supra* note 5, at 547; see also Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 *J. LEGAL EDUC.* 51, 53 (2001) [hereinafter *Infusing Passion*] (citing that studies have noted between 20 to 40 percent of students come to law school planning to work in public service); Jane Stidman Evelth, *Where Has All the Passion Gone?*, 34 *MD. B.J.*, July–Aug. 2001, at 2, 6 (2001) (suggesting many law students begin law school with a passion to do good).

9. Quigley, *supra* note 1, at 10.

10. ALAN K. CHEN & SCOTT L. CUMMINGS, *PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE* 401 (2013) (citing DEBORAH KENN, *LAWYERING FROM THE HEART* 67–121 (2009)).

Numerous legal scholars—through both anecdotal descriptions and research studies—have noted the impact the experience of law school has on students' passions and the type of career they plan to pursue.<sup>11</sup> As aspiring lawyers feverishly learn the doctrinal basics during law school, law students often learn to push aside their passions in attempts to achieve the predetermined marks of success in law school.<sup>12</sup> Law professors have even described the visible change in students' passion. For example, Robert Solomon, a clinical professor at Yale, described his experience with law students:

[S]tudents do come to law school filled with passion, with morality, with a sense of justice, and we spend, the generic we, the law school itself, spends three years doing our best to crush them under the weight of the rule of law instead of helping them to integrate their ideas and values with the law.<sup>13</sup>

Judge Richard Posner similarly noted, while he was a professor, the stark change in the attitudes and ambitions of law students between the day they enter law school and the day that they graduate, emphasizing the failure of law schools to build upon the pre-existing passions of students.<sup>14</sup>

Research has corroborated this descriptive shift in passions throughout students' law school experiences.<sup>15</sup> For example, Gregory Rathjen studied

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11. See, e.g. generally, Robert A. Solomon, *Teaching Morality*, 40 CLEV. ST. L. REV. 507, 508 (1992); Judge Richard Posner, *The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1683 (1998); James R. P. Ogloff et al., *More Than "Learning to Think Like A Lawyer:" the Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 92 (2000); Jenée Desmond-Harris, *"Public Interest Drift" Revisited: Tracing the Sources of Social Change Commitment Among Black Harvard Law Students*, 4 HASTINGS RACE & POVERTY L.J. 335, 344–45 (2007); Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, 6 JURIS DR. at 34, 36 (1976); ROBERT STOVER, MAKING IT AND BREAKING IT, THE FACT OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (Howard S. Erlanger 1989); ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND (1992); LANI GUINIER, MICHELLE FINE, & JANE BALIN, BECOMING GENTLEMEN 37–38, 40 (1997).

12. See Lawrence Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 116–17 (2002) [hereinafter *Institutional Denial*] (emphasizing failing paradigms of the core attitudes at the foundation of the educational culture including: the belief that academic success and being in the top ten-percent is the source of self-worth, and that what is good in work is defined by financial affluence); see also generally Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. L. 261, 261–86 (2004).

13. Solomon, *supra* note 11, at 508.

14. Posner, *supra* note 11, at 1683.

15. See Ogloff et al., *supra* note 11, at 92 (describing Gregory J. Rathjen's study). *But*

legal values,<sup>16</sup> legal orientation, and legal ideology among first, second, and third-year law students and found that the biggest indicator of legal values, orientation, and ideology was the year of the student.<sup>17</sup> He found that students shifted away from viewing the law as a way to change and better society, to a more traditional viewpoint of the law.<sup>18</sup>

### *B. Drastic Changes in Career Aspirations*

As students' passions change throughout their three years of law school, their career objectives similarly follow suit. Research over the past forty years has noted the same occurrence: students arrive at law school to find a job to "help others," but leave law school with no such plans. In 1975, Craig Kubey conducted one of the first studies to note such a change. When looking at career expectations for students,<sup>19</sup> he found that thirty-seven percent of first-year law students expected to work as "movement," "poverty," or "public interest" lawyers after graduating; however, by 3L year, only twenty-two percent of students expressed such expectations.<sup>20</sup> The percentage of students who actually engaged in such work upon graduation is likely even lower.

A few years later, Robert Stover<sup>21</sup> led a study between 1977 and 1980—while he was a law student at our school—regarding his classmates' career preferences and choices.<sup>22</sup> Stover polled students entering law school, and again during their third year, to identify what type of job they would most like as a full-time job upon graduation.<sup>23</sup> Thirty-three percent of students rated public interest as their first choice at the beginning of law school.<sup>24</sup> However, within just three short years, that number had more than

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*see* Thomas E. Willging & Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. LEGAL EDUC. 306, 306, 348, 351 (1981) (finding no effect of legal education on moral development from a study using sixty-three incoming students who completed tests at the beginning and end of the year).

16. *See* Ogloff et al., *supra* note 12, at 92 (describing Rathjen's study).

17. *Id.* at 100.

18. *Id.*

19. Desmond-Harris, *supra* note 11, at 344–45.

20. Kubey, *supra* note 11, at 34, 36.

21. STOVER, *supra* note 11.

22. *Id.* at 5.

23. *Id.* at 3.

24. *Id.*



halved, falling to sixteen percent.<sup>25</sup> Stover summarized his qualitative observations: “I found considerable evidence that my classmates’ view of the world, and of the legal world in particular, was altered in ways that diminished their desire to practice public interest law, by markedly changing their expectations concerning certain types of jobs.”<sup>26</sup>

A little less than ten years later, a study on career trajectory changes for students at Harvard Law School<sup>27</sup> was conducted.<sup>28</sup> More than half of the sample students expected their initial job to be in the public interest field upon graduation.<sup>29</sup> However, even though “less than half of first-year students anticipated entering larger, corporate law firms upon graduation, almost all of the third-year students expressed the desire to work in one of these law firms.”<sup>30</sup> Research in the following decade revealed the same demoralizing impact law school has on those who want to work in public service. A 1994 study at the University of Pennsylvania School of Law found that twenty-five to thirty-three percent of first-year female law students planned to practice some form of public interest, but only eight to ten percent of third-year female students expressed such intentions.<sup>31</sup>

Unfortunately, the turn of the century did not end the trend of major decreases in those devoted to public interest. A longitudinal study, tracking lawyers’ careers starting in 2000, found that a very small number of new lawyers entered the public interest field. The study found in 2002 that only four percent of new lawyers worked in either legal service/public defender or public interest jobs (another 16.5 percent were in government positions).<sup>32</sup> Moreover, according to the National Association for Law Placement, only 7.3 percent of all 2014 law graduates are working in public interest jobs.<sup>33</sup> While the decade and location change, the discouraging

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25. *Id.* at 13.

26. STOVER, *supra* note 11, at 15.

27. *See* Desmond-Harris, *supra* note 11, at 383–84 (finding about fifteen percent of black graduates in 2006 pursue public interest immediately or immediately after a clerkship).

28. GRANFIELD, *supra* note 11.

29. *Id.* at 147.

30. *Id.*

31. GUINIER, FINE, & BALIN, *supra* note 11.

32. RONIT DINOVIETZ ET AL., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS 27 (2009).

33. NATIONAL ASSOCIATION FOR LAW PLACEMENT, CLASS OF 2014 NATIONAL SUMMARY REPORT, <http://www.nalp.org/uploads/NationalSummaryChartforSchools2014Class.pdf>.

story does not; many students come to law school to serve the public good but motivations and goals change, causing far fewer to actually do it.<sup>34</sup>

### C. What Happens Inside the Classroom

#### 1. Thinking Like a Lawyer—An Amoral Hired Gun

Legal scholars have long speculated why students so drastically change their passions and career plans throughout the three years of law school. While there are numerous possible factors leading to this—like law school debt,<sup>35</sup> the job market,<sup>36</sup> lack of institutional career development

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34. However, some suggest that the negative influence is less than generally perceived. For example, Howard S. Erlanger & Douglas A. Klegon studied changes in attitudes in law school and found only minor negative shifts in attitude toward public interest careers in a study of students at the University of Wisconsin—Madison Law School that changed their attitudes throughout law school. While the study found that the attitudes of students in 1973 and 1975 of the class of 1975 became more conventional and there was a decline in interest in pro bono or social reform work, the authors concluded the impact of legal education on students' dedication to public interest were less drastic than suggested by many studies. Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientation to Public Interest Concerns* 13 L. & SOC. 11, 30–31 (1978). In addition, some argue that there is not a change in attitudes, but instead, students overstate their commitments to public interest law at the beginning of law school without ever really having such intentions. Adrienne Stone suggests that “[i]t is perfectly possible that the preferences students express at the beginning of law school overstate their commitment to public interest law.” Adrienne Stone, *The Public Interest and the Power of the Feminist Critique of Law School: Women’s Empowerment of Legal Education and Its Implications for the Fate of Public Interest Commitment*, 5 AM. U.J. GENDER & L. 525, 529 (1997). Adrienne Stone also notes that others might argue that jobs in the public interest field are scarce and/or extremely competitive, and as a result, students’ intentions change because of the fear of not getting employment in the field. *Id.* at 531; see also Luize E. Zubrow, *Is Loan Forgiveness Divine? Another View*, 59 GEO. WASH. L. REV. 451, 572 (1991) (noting that some have observed there are more graduates seeking position in the public interest sector than the number of public interest positions available); see generally Equal Justice Works, *Myths and Realities of Pursuing Public Interest Careers*, (April 18, 2012, 13:59) <http://www.equaljusticeworks.org/news/blog/myths-and-realities> (suggesting that it is a truth that “[i]t is harder to obtain public interest jobs than large law firm jobs”). While all of this may be true, the decades of research and lived experience certainly gives some credence to the idea that legal education as it stands is at least partially responsible for this drastic difference.

35. See e.g., CHEN & CUMMING, *supra* note 10, at 408–10; Scott L. Cummings, *The Future of Public Interest Law*, 33 U. ARK. LITTLE ROCK L. REV. 355, 359 (2011); For a comprehensive coverage of law school debt and repayment options see *Student Debt Relief*, EQUAL JUSTICE WORKS, <http://www.equaljusticeworks.org/ed-debt> (last visited Jan. 18, 2016).

36. See Christa McGill, *Educational Debt and Law Student Failure to Enter*

support for public interest jobs,<sup>37</sup> and more—many legal scholars have pointed to the style and content of legal education as a cause for such major changes in students.<sup>38</sup> The traditional style of teaching and learning—

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*Public Service Careers: Bringing Empirical Data to Bear*, 31 L. & SOC. INQUIRY 677, 692, 704 (2006)

The most significant determinant of the proportion of students entering the public sector was the percentage of [government of public interest] jobs in the state in which the law school was located. As mentioned earlier, about 70 percent of graduates remain in the state in which their law school is located. The more [government or public interest] jobs available to them relative to private sector jobs, the more likely students are to take them regardless of debt, school prestige, the salary gap, or any of the other factors measured. All other things being equal, for example, a school located in a state in which twenty percent of new graduates were hired into jobs in the public sector could expect 3.75 percent more of its students to enter public sector employment than a school located in a state in which only fifteen percent of the positions filled were in the public sector.

*See id.* at 704 (suggesting that the shortage of public interest jobs is a pressing barrier to students entering the public sector); *see also* Cynthia Fuchs Epstein & Hella Winston, *The Salience of Gender in the Choice of Law Careers in the Public Interest*, 18 BUFF. J. GENDER, L. & SOC. POL'Y 21, 24 (2010)

As a contextual issue, we would like to point out that not everyone who wants to work in the public interest sphere is able to secure the kind of work that they will find appealing and that conforms to their images of what a public interest career would look like. The ‘opportunity structure’ of the non-profit public interest bar is limited. Because public interest firms receive a large proportion of their funds from donations and foundation funding, their staffs tend to be small and the assurance of jobs is always problematic when recruiting seasons start at the law schools. This makes the competition for these jobs high.

(citation omitted); *see also generally* Lynn A. Addington & Jessica L. Waters, *Public Interest 101: Using the Law School Curriculum to Quell Public Interest Drift and Expand Students’ Public Interest Commitment*, 21 AM. U.J. GENDER SOC. POL'Y & L. 79, 84 (2012).

37. *See* Robin Runge & Christyne J. Vachon, *Planting the Seeds and Getting into the Field: The Role of Law Schools in Ensuring Access to Justice in Rural Communities*, 59 S.D.L. REV. 616, 622 (2014)

In most American law schools, the career development offices historically have focused on helping law students find jobs in law firms. This is represented by the traditional law school emphasis on fall recruitment programs where law firms participate in on-campus interviews and resume drops. Many law students go to law school with an understanding that being a lawyer means working in a large firm in a large city.

*see also* Aliza B. Kaplan, *How to Build A Public Interest Lawyer (and Help all Law Students Along the Way)*, 15 LOY. J. PUB. INT. L. 153, 155 (2013) (“Public interest law students often find themselves at the bottom of their institution’s hierarchy with regard to resources, programs, job search assistance, and relevant course work.”).

38. DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 198 (Oxford 2000) (hereinafter “IN THE INTERESTS OF JUSTICE”); *see* Kubey, *supra* note 11, at 39 (1976) (“While the many other factors that push the law student toward

valuing objective and often heavily relying on case method<sup>39</sup>—does not encourage, and even discourages, students’ feelings regarding morality and rightness.<sup>40</sup>

Throughout law school, every student hears numerous times: think like a lawyer. However, legal scholars have highlighted the one-dimensional nature of the “lawyer” to whom students are taught to think like, with a strong emphasis on private, corporate law.<sup>41</sup> As Lawrence Krieger summarized, thinking like a lawyer is “fundamentally negative; it is critical, pessimistic, and depersonalizing.”<sup>42</sup> Students are not taught to learn the “common legal problems of Americans” but rather to focus on the issues of those who can afford private legal counsel.<sup>43</sup> Legal issues facing middle and low-income families, those often in desperate need of legal assistance, are glaringly absent from most law school courses.<sup>44</sup> Instead, students learn to

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a more tradition posture may in concert outweigh it, law school is the one most powerful factor”); see also Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 529 (1998) (discussing how students report because of “law school’s intellectual emphasis, they learn to suppress their feelings and come to care less about others. They learn that their value systems are irrelevant”).

39. See Patricia Mell, *Not the Primrose Path: Educating Lawyers at the Turn of the Last Century*, MICH. B.J., July 2000, 846, 848 (2000) (outlining the standard method of teaching in law schools); see also Shawn L. Whiting, *Breaking with Tradition: A Two-L’s Perspective on the Case Method*, 3 PHX. L. REV. 381, 382 (2010) (stating the traditional law school teaching method); see also A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1973–82 (2012) (describing the traditional view of employing the case method and Socratic method as envisioned by Harvard’s Christopher Langdell and the eventual “Harvardization” of American law schools).

40. CHEN & CUMMINGS, *supra* note 10, at 401; see RHODE, IN THE INTERESTS OF JUSTICE, *supra* note 38, at 197; Daniel B. Rodriguez, *Foreword: Public Interest Lawyering and Law School Pedagogy*, 40 SAN DIEGO L. REV. 1, 2 (2003) (“[M]any, if not most, law students go away from three years of legal instruction without any serious exposure to the materials most relevant to public interest practice.”).

41. See Henry Rose, *Law Schools Should Be About Justice Too*, 40 CLEV. ST. L. REV. 443, 450 (1992)

Law school curricula need to include more courses focusing on substantive topics relevant to the legal problems of indigent persons and other traditionally underrepresented groups . . . . In traditional courses, teachers need to be more comprehensive in their choice of topics and use of cases, hypotheticals, and exam questions to encompass the legal problems of all segments of society who are affected by the specific area of substantive law. Property law courses, for example, should include the study of the problems of homelessness. Contracts courses should include more topics relevant to consumers.

42. Krieger, *supra* note 12, at 117.

43. Rose, *supra* note 41, at 444.

44. *Id.* at 443–44; see Stephen Wizner, *Can Law Schools Teach Students to Do Good?*

“value the hierarchy of a law firm over a public interest career.”<sup>45</sup> Deborah Rhodes emphasizes that when professors give little or no attention to real-life issues in the core curriculum, it marginalizes their significance in classes.<sup>46</sup>

Many professors stress that a lawyer should be a “hired gun,” and that any emotional reactions to the law are to be greatly discouraged.<sup>47</sup> The

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*Legal Education and the Future of Legal Services for the Poor*, 3 N.Y. CITY L. REV. 259, 262 (2000)

Law schools have, on the whole, simply ignored this malfunction [of failing low and moderate income citizens] in the legal system. They have failed to commit intellectual and financial resources to teaching, research, writing and clinical practice aimed at exposing, analyzing and addressing social justice issues. With few exceptions, law schools have failed to play a critical role in examining the state of the justice system and what needs to be done to fix it, in teaching students about this, and in proposing and advocating the necessary reforms.

45. Desmond-Harris, *supra* note 11, at 346.

46. Deborah L. Rhode, *The Professional Responsibilities of Professors*, 51 J. LEGAL EDUC. 158, 165–66 (2001)

The vocation of the law professor is inescapably value laden. Those who choose this life cannot avoid teaching ethics. They can only avoid doing so explicitly and self-critically. None of us who profess for a living can be value neutral on matters of value. How we live our lives and what we choose to discuss conveys a moral message. If we decline to view professionalism and public service as priorities, we encourage future practitioners to do the same.

47. See Joseph Allegritti, *Have Briefcase Will Travel: An Essay on the Lawyer as Hired Gun*, 24 CREIGHTON L. REV. 747, 749 (1990–1991)

From the first day of law school, in class and out, in what is said and left unsaid, prospective lawyers are trained to see themselves as the hired guns of clients. They learn quickly that they must be ready to argue any side of any issue. Their personal values and beliefs are to play no role in how they do their job. They owe their clients uncompromising loyalty. If they have moral qualms about a client, or about the means needed to achieve a client’s goals, then they should refuse to take the case. But once they take a case they are in, all the way in, and the client has the right to expect them to do everything possible to win the case, subject only to the constraints of the law and the codes of the legal profession.

See also Ted Schneyer, *Some Sympathy for the Hired Gun*, 41 J. LEGAL EDUC. 11, 11 (1991) (criticizing the standard critique of the hired gun metaphor and defending his perspective of the hired gun metaphor); see also K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 116 (1960) (describing how Karl Llewellyn would begin lectures to new law students: “The hardest job of this first job is lop off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking, along with ideas all fuzzed along their edges. You are to acquire ability to think precisely, to analyze coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of the law”); see also Michael I. Krauss, *The Lawyer as Limo: A Brief History of the Hired Gun*, 8 U. CHI. L. SCH. ROUNDTABLE 325, 326 (2001) (describing the development of the concept of the lawyer as a hired gun).

emphasis on the conventional “hired gun” concept encourages a form of “valuelessness”<sup>48</sup> embodied in the law. The “hired gun” is typically thought to be a lawyer for the rich, and to prioritize both the goals and desired means of the client above all, with no moral feelings toward others.<sup>49</sup> Traditional classes train students to be neutral and to objectively analyze legal problems—important legal skills<sup>50</sup>—yet, often at the expense of allowing or encouraging any emotional reactions to legal situations.

As legal scholars Stuart Schiengold and Austin Sarat state there are “moral and emotional repercussions” of learning to think like a lawyer.<sup>51</sup> They share that “[t]he dominant view is that moral sensibilities are weakened or even extinguished by legal education, that political commitment is regarded as a barrier, not an aid, to making good lawyers.”<sup>52</sup> Students learn to remove emotion and feelings of compassion to better analyze the legal issues.<sup>53</sup> Many students end up believing that they must learn that “emotion and values are antithetical to legal thinking because they are represented as irredeemably subjective.”<sup>54</sup> This idea to “think like a lawyer” then, as experienced by most students, is incompatible with encouraging careers that provide legal assistance to subordinate groups.<sup>55</sup> Through this process, students became cynical.<sup>56</sup> Those who manage to be tied into their emotional connection to the law or motivation to solve legal

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48. CHEN & CUMMINGS, *supra* note 10, at 401; *see* Krieger, *Institutional Denial*, *supra* note 12, at 123–24 (noting the “common perception of lawyers as valueless and unhappy hired guns”).

49. *See* Michael I. Krauss, *The Lawyer As Limo: A Brief History of the Hired Gun*, 8 U. CHI. L. SCH. ROUNDTABLE 325, 325–26 (2001) (discussing the development of the concept of the “hired gun”); *see also* Stephen L. Pepper, *The Lawyer’s Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 11 AM. B. FOUND. RES. J., No. 4 at 613 (1986) (discussing the benefits of the amoral role of lawyers).

50. Rose, *supra* note 41, at 446–47.

51. STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 58 (2004).

52. *Id.*

53. *Id.* at 75–77.

54. *Id.* at 63.

55. *See* Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, MICH. B.J., Jan. 2008, at 20, 23 (“Some law students feel that the legal reasoning they are taught is intensely dehumanizing.”); *see also* Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 23 IND. L. REV. 34, 36, (“Law schools claim, above all else, to teach students how to ‘think like a lawyer.’ In fact, they often teach students how to think like a law professor, in a form distanced and detached from human contexts.”).

56. Granfield, *supra* note 11, at 70.

problems may then even feel inferior, marginalized, or inadequate when faced with this frame.<sup>57</sup> While different from cynicism, these reactions may also cause students to flee from their focus on the public good.

While still a student at Yale Law, Harvard Law School professor Duncan Kennedy famously commented on the legal education system.<sup>58</sup> Kennedy described the process by which students learn to disengage and not ask questions about morality:

[Students] are passive to start with; they want to please. After a while they tend to be deeply apologetic, to their fellow students as well as to the teacher, whenever they appear to be raising a really fundamental question about what is going on. Since nothing of any great interest is offered, students become eager to "get on with it"; the objective is to accumulate as many nuggets of pseudo-concrete "knowledge", or rather as much knowledge of the teacher's "views" as is possible in the hour." As students are often taught what the law is, discussion of what the law should be are often absent from the law school classroom.<sup>59</sup>

The learned apathy that Kennedy describes fits the trend the legal scholars note; students leave behind emotional or moral reactions and adopt more of a dispirited approach.

The process through which students change to "think like a lawyer"—learning the good and the bad associated with this—has been referred to as the "socialization" of students.<sup>60</sup> This concept, which refers to instilling the culture of the legal profession into students, was first coined in the 1970s.<sup>61</sup> Since then, scholars have continued to remark on how legal education changes students as, "[s]tudents participating in this culture learned to adopt new orientations [and] new definitions of their social work,"<sup>62</sup>

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57. Stephen Wizner, *Is Learning to 'Think Like a Lawyer' Enough?* 17 YALE L. & POL'Y REV. 583, 587–88 (1998); see Thomas L. Shaffer, *Moral Moments in Law School*, 4 SOC. RESP.: JOURNALISM, L., MED. 1, 32–36 (1978) (describing a scenario where a student is mocked by a professor for suggesting the purpose of a trial is "to discover the truth" and explain how students then learn to push aside any such feelings to avoid embarrassment).

58. Duncan Kennedy, *How the Law School Fails: A Polemic*, YALE L. REV. L. & SOC. ACTION 71 (1970) [http://duncankennedy.net/documents/How%20the%20Law%20School%20Fails\\_A%20Polemic.pdf](http://duncankennedy.net/documents/How%20the%20Law%20School%20Fails_A%20Polemic.pdf). (last visited Apr. 23, 2016).

59. *Id.*

60. CHEN & CUMMINGS, *supra* note 10, at 401.

61. Ronald M. Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 4 AM. B. FOUND. RES. J. No. 2, 247, 247–75 (1979).

62. GRANFIELD, *supra* note 12, 92–93.

To be clear, legal education has undergone some changes over time. Now, with the much greater emphasis on experiential learning,<sup>63</sup> students have the opportunity to employ the theoretical into the practical. In many cases, this results in students engaging in projects or externships on behalf of nonprofit, government, and other public entities.<sup>64</sup> Perhaps, then, even if still taught like “hired guns,” their experiences are vastly different and they learn how a lawyer can employ a different type of “thinking” and working style.

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63. There has been a concerted effort to create more practice-ready lawyers through experiential learning. The 2007 report by Carnegie Foundation for the Advancement of Education, *Education Lawyers: Preparation for the Profession of Law*, and the publication, *Best Practices for Legal Education* both called for closing the gap between learning to think like a lawyer and acting like a lawyer. Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 3 (2015). See also Katherine R. Kruse et al., *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 ELON L. REV. 225, 225–26 (2015) (noting that many law schools have created experiential education dean or director positions, schools have a clinic requirement or guarantee, or a semester-in-practice); see generally Ellmann, *supra* note 2, at 878 (advocating for and describing the mechanics of a clinical year as the third year in law school). See Maranville, et al., *supra* note 2, at 525; Katz, *supra* note 2, at 834 (describing experiential efforts at Denver Law).

64. Externships usually involve students working at a public interest placement. However, there is a debate as to whether students should be able to extern with private firms. Sandra A. Hansberger, *The Road to Tomorrow How Much Practical Skills Instruction Should Law Students Get?*, OR. ST. B. BULL., May 1997, at 12 (1997)

Historically, externships have been limited to public interest placements. This most likely grew out of the goal of community service and also in response to concerns about potential abuses that could occur in a busy practice driven by financial pressures. These abuses could include lack of supervision and feedback, a very task-oriented approach to learning and limitations on the student’s involvement in research and writing (something most law clerks are paid to do).

See Captain Brian K. Carr, *The Externship Experience: Teaching New Dogs New Tricks*, J. KAN. B. A., January 2010, at 17 (2010) (noting that many law schools do not award externship credit for work at private firms); *Directory of Law School Public Interest and Pro Bono Programs*, American Bar Association, [http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html#pi\\_externships](http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html#pi_externships) (last visited Jan. 18, 2016)

Externships are non-compensated positions in settings outside a law school, for which students receive academic credit. Linking theory and practice, externships provide experience in and direct exposure to a legal work setting. Generally, students enrolled in an externship program work for a semester or full school year in a non-profit organization, government agency or judicial office under the supervision of a licensed attorney. Many programs supplement a student’s field placement with a required classroom component.



## 2. *The Survival Mindset of the 1L Experience*

The process of learning to think like a lawyer and internalize the socialization of legal norms that still permeate legal education begins as soon as students enter the law school. That first year, famed for its cutthroat and challenging nature, is also the initial leap away from students' passions.<sup>65</sup> Normally consisting of traditional, doctrinal classes where discussions of the public good do not enter the classroom, first-year classes can be a tough transition. If you add in the competitive atmosphere innate in legal education,<sup>66</sup> passion for serving others or the greater good can quickly dwindle.

This intense first year can cause students to enter a type of survival mindset, detracting from altruism.<sup>67</sup> Instantly thrown into a competitive

65. See G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse and Cocaine Abuse Amongst United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 234 (1990) (citing G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225, 246 (1986)). The study found that 32 percent of law students were clinically depressed by the spring of their 1L year.

66. See Lauren Carasik, *Renaissance or Retrenchment: Legal Education at A Crossroads*, 44 IND. L. REV. 735, 780 (2011)

Law school seems to foster a belief by some students that good jobs are only available to those in the top 10% of the class, yet hard reality dictates that 90% of the students will not realize that goal, and the ensuing pressure can be demoralizing. Mandatory grading curves foster an inherently competitive environment.

See also Daisy Hurst Floyd, *We Can Do More*, 60 J. LEGAL EDUC. 129, 130 (2010)

Law school is a highly competitive environment. Classrooms can be actively hostile, regardless of the professor's teaching style or the professor's accessibility; much of the classroom atmosphere is dictated by the general peer competition. Students feel pressure to 'win' at law school, which becomes the end game. Winning is defined by the identified prizes of law school: high grades; high class rank; law review or other journal membership; the right kinds of jobs in the summer and after graduation.

See also Yihwan Kin, *Greater Implications of a Conformist, Competitive Law School Culture*, LEXISNEXIS LEGAL NEWSROOM (June 30, 2011, 9:19AM), <http://www.lexisnexis.com/legalnewsroom/lexis-hub/b/law-school/archive/2011/06/30/greater-implications-of-a-conformist-competitive-law-school-culture.aspx> (last visited Apr. 16, 2016) ("The academic structure of law school promotes self-interest, which in effect leads to the ubiquitous competition that places students in a constant state of peer-group unease.").

67. Granfield describes a student's discomfort who felt her system of beliefs had changed during her first year: "The discomfort reported by this student is closely related to the individualist/altruist disjuncture noted earlier. These students had brought a sense of justice into law school that did not resonate with what they found in law. The 'professionalization' process conflicted with their entering values and ideas." GRANFIELD, *supra* note 11, at 38–41. See also Deborah L. Rhode, *Pro Bono in Principle and in Practice*,

whirl, where reaching the top ten percent and law review rise to the top of priorities,<sup>68</sup> students' often absorb only whatever they think will be on the final exam and will help them rise above others. The immense fear of falling below the curve gives professors huge power over students, whether they want it or not, making students desperate to learn the law according to the professors' frame and interpretation.

This survival mindset likely feeds into research that shows the damaging effects this first year has on students' ability to incorporate morals into their work.<sup>69</sup> One study found that first-year classroom case dialogue encompasses a belief of neutrality and suppresses discussion of the problems actually occurring in the case,<sup>70</sup> causing some to argue that these dialogues are damaging intellectually.<sup>71</sup> This arguably also leads to the erosion of the very ability to make ethical decisions,<sup>72</sup> with basic law training prioritizing competition<sup>73</sup> over justice, fairness, morality, and caring for others.<sup>74</sup> Indeed, many scholars have noted that the objective emphasis and case method style of learning—particularly stressed in

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53 J. LEGAL EDUC. 413, 414 (2003)

The French sociologist Auguste Comte coined the term *altruism*, derived from the Italian *altrui*, meaning "other." Under Comte's definition, altruism signified an unselfish regard for the welfare of others. In contemporary usage, most theorists apply the term to voluntary actions that promote the interest of others, primarily for reasons other than self-interest.

See generally Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1760 (1976) (describing an inherent contradiction between altruism and individualism in legal consciousness).

68. Kreiger, *Institutional Denial*, *supra* note 12, at 117.

69. See generally Kathleen O'Neill & Elizabeth Mertz, *The Language of Law School: Learning to "Think Like A Lawyer."* New York: Oxford University Press, 2007. Pp. XXIV + 308, 58 J. LEGAL EDUC. 579, 580–82 (2008).

70. *Id.*

71. *Id.*

72. To be certain, legal education does encompass the study of ethics and the law. But, oftentimes the study of ethics within the legal profession is limited to what the professional rules dictate. With the exception of encouraging or mandating in some cases, pro bono, described usually in only one sentence or two, the rules in almost every state fail to bring in these broader ideas of justice, morality, and the like. See Rhode, *supra* note 46, at 164 (noting the emphasis on passing the Multistate Professional Responsibility Exam often leaves legal ethic course as "legal ethics without the ethics").

73. Lawrence S. Krieger & Kennon Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 558 (2015) (hereinafter *What Makes Lawyers Happy?*) (describing Mertz's work at 132).

74. *Id.* at 568 (citing Mertz 14, at 1, 6, 10, 95, 100–01, 120); GRANFIELD, *supra* note 11, at 72–93.

traditional first-year courses—does not encourage students to consider the morality and larger context of the law.<sup>75</sup>

While the first year emphasizes learning the necessities of lawyering, it remains students' initial exposure to the law. That first impression often shapes their view of the law.<sup>76</sup> The Carnegie Report, authored by the ABA, refers to law school as “an inevitable apprenticeship,” whether or not intended by the school.<sup>77</sup> The report asserts that “the law school experience, especially in its early phases, is pivotal for professional development,” during which students are “apprenticing to the whole law school experience.”<sup>78</sup> As students taken in the culture, foster their relationships with faculty and students, and reshape their priorities, they learn from the moral culture of the campus.<sup>79</sup>

This failure to expose students to justice early on is particularly troubling. We set students on a path devoid of these important values for lawyering and functioning in society. Given this, many have called out these blaring omissions and suggested reforms. For example, most recently the impactful Carnegie Report on Educating Lawyers<sup>80</sup> builds on prior

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75. See Kaplan, *supra* note 37, at 178 (“The case method’s strict reliance on objectivity without an application of problem-solving principles often removes morality, politics, feelings, ethics, and justice from the discussion.”). In her call to infuse more context and passion into first year classes, Deborah Maranville faults law schools for failing to incorporate ideals of service in day to day classes, concluding “by failing to create a culture that supports and inculcates the values of public service, law schools undermine both an important motivation for students’ performance in law school and an important way for them to build satisfying lives in the law.” Maranville, *Infusing Passion*, *supra* note 8, at 52–53, 63.

76. See Miller, *supra* note 55, at 21 (2008)

The first-year torts, contracts, property, criminal law, and constitutional law courses are doctrinal (knowledge-dimension) courses. They are not skills or ethics classes, which are instead typically offered in the second or third years. By then, the law student’s approach to the law has largely been formed by the first-year experience. Law students understand what legal educators and lawyers value by what is first and dominantly offered to them.

77. “Law schools play an important role in shaping their students’ values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate professional success.” William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law*, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING (2007), [http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf) (last visited Apr. 18, 2016) [hereinafter *Carnegie Report*].

78. *Id.* at 139.

79. *Id.* at 140.

80. *Id.*

recommendations<sup>81</sup> and emphasizes the need to incorporate a moral dimension of the law into the traditional law school teaching.<sup>82</sup>

This lack of emphasis on morality and justice likely affects students' motivations moving forward. A study found that the overall shifts described to have occurred throughout law school actually happen immediately during students' first year. Students experience a shift away from intrinsic motivation toward extrinsic motivation.<sup>83</sup> Krieger and Sheldon based their work on the prominent Self-Determination Theory (SDT) motivation theory,<sup>84</sup> which emphasizes the importance of intrinsic motivation—when people do an activity because they find it interesting and derive pleasure from the activity itself<sup>85</sup>—as opposed to extrinsic motivation—when satisfaction is not derived not from the activity, but from the separable outcome.<sup>86</sup> In a later study, Krieger found an immediate and significant

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81. For example, the 1986 Report of the ABA's Commission on Professionalism recommended "weav[ing] ethical and professional issues into courses in both substantive and procedural fields." David S. Walker, *Teaching and Learning Professionalism in the First-Year with Some Thoughts on the Role of the Dean*, 40 U. TOLEDO L. REV. 421, 423–24 (2009) (citing ABA Comm'n on Professionalism, "In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism 12 (ABA 1986) [hereinafter *The Stanley Report*]). Several years later a 1992 ABA report, *Legal Education and Professional Development—An Educational Continuum* recommended instilling a desire to "striv[e] to promote justice, fairness, and morality. Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 195 (2011).

82. See *Carnegie Report*, *supra* note 77, at 142 ("A more effective way to teach is to keep the analytical and the moral, the procedural and the substantive in dialogue throughout the process of learning the law."). The Clinical Legal Education Association (CLEA)'s Best Practices in Legal Education recently called for more ethical consideration in law schools as well. Roy Stuckey et al., *Best Practices for Legal Education: a Vision and a Roadmap* (Clinical Leg. Educ. Assn. 2007) [hereinafter *Best Practices*]. Denver Law Professor Nantiya Ruan summarizes these recent reports as a call to incorporate ethical-social apprenticeship instead legal education to help students from "on Day One of law school." Ruan, *supra* note 81, at 197.

83. Sheldon & Krieger, *supra* note 12, at 275.

84. See generally Richard Ryan & Edward Deci, *Intrinsic and Extrinsic Motivations: Classic Definitions and New Directions*, CONTEMPORARY EDUCATIONAL PSYCHOLOGY 25, 54–67 (2000), [http://www.selfdeterminationtheory.org/SDT/documents/2000\\_RyanDeci\\_IntExtDefs.pdf](http://www.selfdeterminationtheory.org/SDT/documents/2000_RyanDeci_IntExtDefs.pdf); for a discussion of SDT as applied to the legal profession, see Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 253 (2008) [hereinafter *Human Nature*].

85. *Id.* at 259.

86. Ryan & Deci, *supra* note 84, at 56; Marylène Gagné & Edward Deci, *Self-Determination Theory and Work Motivation*, 26 J. OF ORGANIZATIONAL BEHAV. 331, 331, 362.

shift in law students' preferences from service-oriented career preferences toward lucrative, high-status careers.<sup>87</sup>

By the end of that first year, many students have been trained, whether they realize it or not, to push aside their passions<sup>88</sup> and to measure their success by external goals.<sup>89</sup> By stripping them of their identities and interests pre law school, we influence their professional identity post law school in a major way.<sup>90</sup>

First, this will affect their general state of well-being.<sup>91</sup> Indeed, while students generally experience similar levels of happiness as other people, within months at law school, they are much more likely to be depressed,<sup>92</sup> with some studies finding as many as twenty-to-forty percent of law students identifying as depressed or showing such symptoms.<sup>93</sup> Of course, it is unsurprising that a high stress and high work environment creates disconnect, but it seems there is something unique in law schools' ability to create misery,<sup>94</sup> with studies finding law students with higher rates of

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87. Krieger, *Human Nature*, *supra* note 84, at 262–63.

88. One study of students at J. Reuben Clark Law School at Brigham Young University found there was an overall decline in student passion in various subjects from the beginning of the first study to the end of the first year. Students were asked to give their mean interest in various topics (like antitrust law, criminal, poverty law, trust and estates law, etc.) and the study found the mean interests dropped in fourteen out of the eighteen areas. James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, 4 AM. B. FOUND. RES. J. 791, 820, 822–23 (1979).

89. G. Andrew H. Benjamin, Alfred Kaszniak, Bruce Sales, & Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225, 247 (1989).

90. *See* Ruan, *supra* note 81, at 198 (2011) (discussing the failure to use such passions to develop students professional identity); *see also* Maranville, *supra* note 8, at 51 (2001) (discussing the impact on students' learning when law schools fail to engage students' passions or put legal doctrines into context).

91. Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 869 (2009); *see generally* Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 J. LEGAL EDUC. 403, 405 (2015).

92. *See, e.g.*, Paula Davis-Laack, *The Science of Well-Being and the Legal Profession*, WIS. LAW., April 2010, at 14 (2010); Benjamin et al., *supra* note 89, at 240–47; Sheldon & Krieger, *supra* note 12, at 271.

93. Benjamin, et al., *supra* note 89, at 247. In the 1980s, only three to nine percent of individuals in industrial nations suffer from depression and the pre-law school was about the same. J.H. Boyd & M.M. Weisman, *Epidemiology of Affective Disorders*, 38 ARCHIVES GEN. PSYCHIATRY 1039, 1044 (1981). Yet, in their study, Benjamin and his fellow researchers found seventeen-forty percent and law students and alumni suffered from depression. Benjamin, *supra* note 89, at 247.

94. *See generally* Todd David Peterson & Elizabeth Waters Peterson, *Stemming the*

depression than medical students.<sup>95</sup> For those who want to remain committed to their passions, they often have to find fulfillment outside the classroom through volunteering or participating in student groups. Not only does this place the burden on students and run contrary to the advice sometimes given to first-years to just focus on classes, but this approach may not be feasible for everyone in the first year, and may in fact lead to burnout and stress in the midst of trying to stay afloat. The pervasive dissatisfaction in the legal profession<sup>96</sup>—often accompanied by high rates of depression and substance abuse<sup>97</sup>—likely begins prior to lawyers passing the bar.<sup>98</sup>

Second, we have long learned how important professional identity is to the way in which one practices law.<sup>99</sup> We think about professional identity

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*Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 359 (2009).

95. See Marilyn Heins, Shirley N. Fahey & Roger C. Henderson, *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J.L. EDUC. 511, 511–14 (1983) (finding law students had significantly higher levels of stress, stress symptoms, and alcohol abuse than medical students).

96. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 876 (1999) (discussing issues common to the legal profession such as: depression, anxiety, and stress).

97. A Johns Hopkins study found lawyers were 3.6 times more likely to be depressed, the highest rate of any profession. William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1085 tbl.3 (1990), <http://www.ncbi.nlm.nih.gov/pubmed/2258762>; see also Martin E.P. Seligman, et al., *Why Lawyers Are Unhappy*, 23 CARDOZO L. REV. 33, 37 (2001) (discussing how lawyers are at a greater risk for heart disease, alcoholism and drug use than the general population). One study found approximately 70 percent of lawyers are likely to develop alcohol problems over their lifetime. Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among A Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 51 (1996).

98. *Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century Panel I*, 3 N.Y. CITY L. REV. 139, 141 (2000) (Edited Transcription of Program held at the Association of the Bar of the City of New York on March 15, 1999). Deborah L. Rhode explains the discontent within the legal profession, citing that over three-fourths of lawyers do not want their children to become lawyers. Rhode describes the separation of general law school classes and topics such as ethics or public interest, creating separate topics for such courses instead of infusing them into every legal class.

99. For an example of a 1970s article discussing the important of professional identity, see generally Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392. For a 1980s report to the American Bar Association providing suggestions on how to foster professionalism within the legal career, including foster students' understanding of professionalism during law school, see REPORT OF THE COMMISSION ON PROFESSIONALISM TO THE BOARD OF GOVERNORS AND THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION, “. . . in the Spirit of Public Service” *A Blueprint for the Rekindling of Lawyer*

as the way a lawyer understands his or her role relative to all of the stakeholders in the legal system, including clients, courts, opposing parties and counsel, the firm, and even the legal system itself (or society as a whole).<sup>100</sup> “[Y]ou cannot teach someone to form their identity. Rather . . . students can be confronted with ethical questions and reflect on the decisions they make, and be guided by us as they form their own professional identities.”<sup>101</sup> It is all about the type of lawyer that you want to be—what is your moral compass, what are your values, what compromises will you make and which will you not make, regardless of the situation. When legal education fails to meet students where they are when it comes to their identities or cultivate identities that embrace public interest and public good values, especially from the onset of law school, we have little hope for building a profession filled with a cadre of lawyers with such values.

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*Professionalism*, 112 F.R.D. 243, 263 (1986). See generally Homer C. La Rue, *Developing an Identity of Responsible Lawyering Through Experimental Learning*, 43 HASTINGS L.J. 1147, 1147–48 (1992) for a 1990s article emphasizing the need to help students “learn” professional identity.

100. Martin J. Katz, *Teaching Professional Identity in Law School*, COLO. L., October 2013, at 45, <https://www.law.du.edu/documents/dean/TeachingProfessionalIdentity.pdf>.

Professional identity goes beyond those rules and precepts to encompass the ideals each of us holds regarding our professional roles, and how we apply those ideals to the complex situations we encounter in our professional lives. . . . “*Professionalism* relates to behaviors, such as timeliness, thoroughness, respect towards opposing counsel and judges, responding to clients in a timely fashion. . . . Professional identity relates to one’s own decisions about those behaviors (which sounds like overlap, but it’s not), as well as a sense of duty as an officer of the court and responsibility as part of a system in our society that is engaged in upholding the rule of law. . . .” The key is creating situations where students will be confronted with, and pushed to reflect on, questions of professional identity. The best questions are those that go beyond a particular ethical rule or a particular behavior associated with professionalism. The best questions for teaching address the complex interplay of our various roles and duties as lawyers.

(citing David Thomson, *Teaching Professional Identity with Skills and Values Texts*, LAW SCHOOL 2.0, [www.lawschool2.org/ls2/2012/01/teaching-professional-identity-with-skills-values-discovery.html](http://www.lawschool2.org/ls2/2012/01/teaching-professional-identity-with-skills-values-discovery.html) (Jan. 21, 2012) (last visited Apr. 18, 2016) (emphasis in original).

101 David Thompson, *Teaching Formation of Professional Identity*, LAW SCHOOL 2.0, [www.lawschool2.org/ls2/2012/07/formation-of-professional-identity.html](http://www.lawschool2.org/ls2/2012/07/formation-of-professional-identity.html) (July 24, 2012) (last visited Apr. 18, 2016).

### 3. Law School Creates a False Dilemma: Private or Public

The failure of legal education to incorporate discussions of morals, social context, and ethics into every aspect of law school has additional effects—it can create an unnecessary dichotomy between those students who decide to pursue work in public interest and those who work in the private sector. Law students feel as if they face a “false dilemma”<sup>102</sup> where they must choose between either following their passions or going to the private sector, as if there is no middle ground.<sup>103</sup> This unnecessarily stark line between public and private limits many students’ understanding of how to work to serve the public good, regardless of the setting they choose, even though we know how critically important the private sector’s role is enhancing public interest law.<sup>104</sup>

Law schools may inadvertently reinforce such a dichotomy by solely offering separate courses on public interest and ethics, instead of infusing such elements into every class.<sup>105</sup> This structure gives students the impression that serving the public is a separate field within the legal profession, instead of incorporated throughout the profession. Learning legal and advocacy skills, without understanding how such skills are used and the impact legal work can have on society and people’s lives,<sup>106</sup> is like learning only half the story. Legal scholars have called on law professors to incorporate more morality and passion into the skills they teach future lawyers,<sup>107</sup> but far too often, it still operates as two separate camps inside and outside of the classroom.

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102 Benjamin Archibald, *The False Dilemma*, B.B.J., Sept./Oct. 2003 at 16.

103 *Id.*

104 For a description of the important role the private sector plays in public interest law and the important of private firm’s large personnel and monetary resources see CHEN & CUMMINGS, *supra* note 10, at 170–81.

105 See Panel I, *Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century*, 3 N.Y. CITY L. REV. 139, 141 (2000) (describing the need for more public interest throughout the law school experience).

106 See Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695, 1698 (1993) (describing the tendency for law schools to teach legal skills without discussing the impact of how those skills are used).

107 In addition to teaching law students that there is more than just grades to their professional identify, Krieger and Sheldon suggested:

A second important strategy for law teachers would be to approach the task of teaching legal analysis with humility, clearly conveying to students that, although this skill will enable them to dispassionately analyze and argue legal issues while setting aside their own instincts, values, morals, and sense of caring



*a. The Public Interest Subculture*

This separation inherent in legal education's curriculum often contributes to the creation of a subculture within many law schools of public interest students. Students who want to enter the public sector face similar situations. They fail to see their interests reflected in their doctrinal classes and often feel like pressured to enter the private world. In an attempt to resist such pressure, public interest students can fortify themselves in the small communities at their law schools with other public interest students.<sup>108</sup> Such communities are beneficial and crucial to help students to understand other career paths, create strong bonds and networks, and keep students' commitment to the public sector strong. Indeed, numerous scholars have noted the importance of a public interest subculture for students who maintain their commitment to practice public interest law upon graduation.<sup>109</sup> Such communities actively contribute to the idea that if

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for others, such a skill must be narrowly confined to those analytical situations.

This is not a superior way of thinking that can be employed in personal life, or even in most work situations, without suffering psychological consequences.

Krieger & Sheldon, *supra* note 73, at 624; *see* Kaplan, *supra* note 37, at 179 (“Without a more integrative approach in core doctrinal classes, we are not only missing an opportunity to shape lawyers who are more intellectually and practically well rounded, but we are not supporting the idealism and passion that brought many of our students to law school in the first place.”); *see also* IN THE INTERESTS OF JUSTICE, *supra* note 38, at 199 (suggesting how to improve the legal education, such as expanding clinical offering and changes in law school curricula).

108 *See* Lynn A. Addington & Jessica L. Waters, *Public Interest 101: Using the Law School Curriculum to Quell Public Interest Drift and Expand Students' Public Interest Commitment*, 21 AM. U.J. GENDER SOC. POL'Y & L. 79, 87 (2012) (“Researchers have found that ‘subcultural support’—that is, ‘students’ involvement in law school subcultures supportive of public interest employment’—may act as a ‘bulwark’ against this drift.”); *see also* STOVER, *supra* note 11, at 46; Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on Old Question*, 30 LAW & SOC'Y REV. 851, 860–62 (1996) (summarizing legal scholars' suggestions that subcultural support help students maintain their commitment to pursuing “nontraditional” or public interest jobs).

109 For example, in Robert Stover's book regarding the overall decrease students who want to pursue public interest career at Denver Law, he noted the importance the public interest subculture for those students who did remain dedicated to a public interest path. STOVER, *supra* note 11, at 103–05. Granfield suggests for students able to maintain on public interest path, “Associating with other student who possess these ideals was perhaps the most useful strategy for these students.” GRANFIELD, *supra* note 11, at 70–71. In a study about students' interests pre-law school and actual jobs taken, the authors found that political commitments, in combination with involvement of a subculture of public interest during law school were important for the “staying power” of the pre-law school interest in students to pursue public interest work. Additionally, in a study about students' interests pre-law school and actual jobs taken, the authors found that political commitments, in combination with involvement of a subculture of public interest during law school were important for the

you work in the private sector, however, you cannot serve the public good through your legal work.

The limited contact the majority of students have with “public interest subcultures,” has downsides.<sup>110</sup> Research shows that “[T]he constraints on contact with a public interest subculture were especially great for first-year students, but also discouraged second- and third-year students.”<sup>111</sup> This causes one to consider that law schools should do something to not only enforce this subculture and instead, “encourage a more active and open expression of support for public interest values and expectations within the dominate law school culture.”<sup>112</sup>

#### *b. An Unnecessary Divide*

Classrooms often reinforce this concept of a dividing line for careers, with professors teaching, whether intentionally or unintentionally, bright lines between public and private legal work.<sup>113</sup> However, such a stark distinction of cultures and classroom rhetoric is unnecessary and unrealistic for the legal profession. From engaging in a wide range of pro bono work,<sup>114</sup> to joining mentorship programs, to participating in boards of nonprofit organizations, and to volunteering in free legal clinics, those in the “private world” have a myriad of ways to be involved in the “public interest world.”<sup>115</sup> Public interest groups often also co-counsel with major private law firms, benefiting from their vast resources, in big public interest litigation cases.<sup>116</sup>

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“staying power” of the pre-law school interest in students to pursue public interest work. The article refers to the jobs as “nontraditional careers”—including legal aid, public defender or nonprofit. Erlanger et al., *supra* note 108, at 862.

110 STOVER, *supra* note 11, at 111.

111 *Id.* at 114.

112 *Id.* at 117.

113 Doni Gewirtzman, *Reflections on Substance and Form in the Civil Rights Classroom*, 54 ST. LOUIS U.L.J. 783, 785, 789 (2010).

114 MODEL CODE OF PROF'L CONDUCT R. 6.1 (2013), [http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html) (last visited Apr. 18, 2016) (stating lawyers have a professional responsibility to do pro bono work).

115 CHEN & CUMMINGS, *supra* note 10, at 170 (“[M]embers of the private bar have contributed to public interest work as far back as the nation’s founding period.”).

116 Private co-counsel often provide necessary resources for cash-strapped public interest organizations. Almost every major famous public interest litigation has included private pro bono attorneys. For example, Washington law firm, Arnold & Porter represented Clarence Earl in the famous U.S. Supreme Court case, *Gideon v. Wainwright*. Andrew

In fact, in a 2007 study of just over fifty public interest organizations, only 1/5 of organization reported a failure to collaborate with the private bar, while forty-seven percent reported extensive collaboration.<sup>117</sup> Large firms' pro bono programs grew after The American Lawyer began ranking large firms according to their pro bono commitments in 1994.<sup>118</sup> Collaboration between the public and private now occurs in a variety of ways and methods, from issue specific referral programs, to co-counseling, to assistance with a discrete aspect of the trial.<sup>119</sup> Many law firms now use pro bono matters as a way to attract law students. For example, some firms allow law students to split their summer internship, with half at the firm and half at a public interest organization, with the full summer associate pay.<sup>120</sup>

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Cohen, *In Defense of Pro Bono Legal Service, Whatever Form it Takes*, THE ATLANTIC (Aug. 24, 2012), <http://www.theatlantic.com/national/archive/2012/08/in-defense-of-pro-bono-legal-service-whatever-form-it-takes/261465/> (last visited Apr. 18, 2016). Boston law firm, Wilmer Hale provided pro bono representation to Guantánamo Bay terrorist suspects, providing 35,448 billable hours, estimated valuing around \$17 million, from 2004 to 2008. Farah Stockman, *Lawyers Make Huge Pro Bono Effort for Guantánamo Detainees*, N.Y. TIMES (July 2, 2008), <http://www.nytimes.com/2008/07/02/world/americas/02iht-legal.5.14179947.html> (last visited Apr. 18, 2016). Washington D.C. firm, Ropes & Gray provided pro bono service and worked with Gay & Lesbian Advocates & Defenders (GLAD), and the National Center for Lesbian Rights (NCLR), the American Civil Liberties Union and Lambda Legal, to legally establish the constitutional right of same-sex couples to marry in *Obergefell v. Hodges*. Ropes & Gray, *Why Pro Bono Matters*, PRO BONO NEWS (July 2015), at 1–2, <https://www.ropesgray.com/firm/pro-bono.aspx>. (last visited Apr. 18, 2016); see also Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207, 213, 217 (1976)

The cooperating attorney serves as the organization's effective contact point with the outside world. He is the [Legal Defense Fund's] extension into the local community where an aggrieved black is most likely to be cognizant of the cooperating attorney's local reputation as a civil rights lawyer. The [Legal Defense Fund] provides the cooperating attorney, who is principally a private practitioner responsive to market forces, with varying degrees of assistance.

117 Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2070 (2008).

118 CHEN & CUMMINGS, *supra* note 10, at 172; see also Scott L. Cummings & Deborah L. Rhode, *Managing Pro Bono: Doing Well by Doing Better*, 78 FORDHAM L. REV. 2357, 2361, 2372 (2010) (“Unpaid work serves pragmatic as well as altruistic objectives. It can enhance firms' recruitment, retention, rankings, and reputation, while offering individual lawyers crucial training and career development opportunities.”).

119 Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 41–49 (2004).

120 Louise G. Trubek, *Public Interest Law: Facing the Problems of Maturity*, 33 U. ARK. LITTLE ROCK L. REV. 417, 431 (2011); see Pro Bono Service Program: Harvard Law School, *Law Firms Sponsoring Split Public Interest Summers and Summer Fellowships*, (April 2007) <http://hls.harvard.edu/content/uploads/2008/06/pi-summers.pdf> (last visited Apr. 18, 2016) (“These programs are gaining the attention of students because they provide an opportunity for a diverse summer experience and demonstrate the firm's strong commitment to pro bono work.”).

The sharp distinction of private and public interest worlds in law school can promote a false impression that students must make a choice between private and public, and that no overlap exists. This cannot be further from the truth of what actually happens in practice, and how important collaboration and connections are to truly serve the public good and achieve the change you seek.

*c. Current Efforts to Engage and Elevate Public Interest*

Law schools across the country have engaged in numerous efforts to encourage students to pursue work that serves the public good.<sup>121</sup> From a curriculum standpoint, these efforts include developing specific public interest tracks, certificates,<sup>122</sup> and LLM programs;<sup>123</sup> launching classes

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121. For example, several schools now offer public interest-focused scholarships to allow students to pursue work with less worry about debt. The Georgetown Public Interest Law Scholars Program (PILS) is for students intending to work in public service and provides a variety of institutional support such as partial tuition scholarships, summer work stipends, faculty advisors, and career counseling. *Public Interest Law Scholars Program About Us*, GEORGETOWN L., <https://www.law.georgetown.edu/admissions-financial-aid/pils/about/index.cfm> (last visited Jan. 23, 2016). Drake Law awards six full-tuition Public Service Scholarships each year, and up to four students with three-quarter tuitions to encourage students to pursue public service career opportunities. Students must participate in at least two public service internships. *Public Service Scholarship*, DRAKE L., <http://www.law.drake.edu/academics/?pageID=publicServiceScholar> (last visited Dec. 14, 2015). Many schools have public interest summer stipends for students who do traditionally unpaid public interest work. *See, e.g. generally, Social Justice Initiative: GSF Funding 101: Summer 2016*, COLUMBIA L. SCH., <http://web.law.columbia.edu/social-justice/students/summer-programs-public-service/guaranteed-summer-funding/gsf-basics> (last visited Jan. 24, 2016); *Public Service Law: Fellowships & Funding*, BROOKLYN L. SCH., <https://www.brooklaw.edu/strategicedge/publicservicelaw/fellowshipsandfunding> (last visited Jan. 24, 2016). Beyond scholarships, law schools offer mentorship programs. *See, e.g. generally, Public Interest Mentoring Program*, STANFORD L. SCH., <https://law.stanford.edu/levin-center/mentoring-program/#slsnav-overview> (last visited Dec. 15, 2015); and special orientations and early sessions, *see, e.g. generally*, George Washington University School of Law runs a public interest pre-orientation, where ninety students arrive three days early to learn more about public interest. ALAN B. MORRISON, PUBLIC INTEREST LAW & PUBLIC SERVICE LAW 2 (2015), [https://www.law.gwu.edu/files/PIPB\\_Annual\\_Report\\_15.pdf](https://www.law.gwu.edu/files/PIPB_Annual_Report_15.pdf) (last visited Jan. 24, 2016). Georgetown University Law Center offers both a Pro Bono Service Project and a first year public interest mentor program. *See generally Public Interest*, GEORGETOWN L., <https://www.law.georgetown.edu/admissions-financial-aid/about-georgetown-law-public-interest.cfm> (last visited Dec. 15, 2015).

122. As of 2009, 42 schools have public interest certificate programs. CHEN & CUMMINGS, *supra* note 10, at 438. *See also generally Law School Public Interest Programs—Certificate and Curriculum Programs*, AM. BAR ASS'N, [https://apps.americanbar.org/legal-services/probono/lawschools/pi\\_certificate\\_curriculum.html](https://apps.americanbar.org/legal-services/probono/lawschools/pi_certificate_curriculum.html) (last visited Dec. 14, 2015).

123 The University of California at Berkeley School of Law offers the Public Law &

focused on relevant subjects;<sup>124</sup> offering clinics<sup>125</sup> and externships<sup>126</sup> in the public sector; and requiring and/or rewarding pro bono, among other

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Regulation Certificate. *Berkeley has a Public Law & Regulation Certificate (Professional Track)*, BERKELEY L.: UNIV. OF CAL., <https://www.law.berkeley.edu/llm-jsd/professional-llm/public-law-regulation-certificate-professional-track/> (last visited Dec. 14, 2015).

124. Substantive courses and specialized seminars inherently discuss topics related to serving the public good. See Kaplan, *supra* note 37, at 179 n.125 (“Such courses include civil rights litigation, disability law, environmental law, family law, immigration law, labor law, and voting rights/election law.”). Other schools have gone as far to offer courses dedicated specifically to the theory and practice of how to practice public interest law. For a description for one such course called, *Lawyering in the Public Interest*, see Rulli, *supra* note 5, at 550. Some law schools tout classes that teach students how to incorporate public interest into whatever field they work, demonstrating how best to practice pro bono. For example, the University of Chicago has a course to help students prepare pro bono plans. Wizner, *supra* note 44, at 264–65. Columbia Law School, Northwestern University School of Law, and the University of Virginia School of Law also all organizes courses dedicated to pro bono work in the private sector (course descriptions on file with authors).

125. In-house clinics are often described as havens for public interest that are very effective at encouraging students to continue to pursue jobs in this field. The birth of clinics grew out discontent with the traditional method of learning and a vast amount of research on the impact of clinics on sustaining students’ public interest dedication exists. Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L L. 505, 529 (2003). For a description of a study done at Denver Law, see SALLY MARESH, *THE IMPACT OF CLINICAL LEGAL EDUCATION ON THE DECISIONS OF LAW STUDENTS TO PRACTICE PUBLIC INTEREST LAW* 154, 163. Sally Maresh did a study at the impact of clinic involvement on public interest at the University of Denver between 1989 and 1995. The survey found of 56 of students who did not want to do public interest work before the clinic, only twenty-four said no after. For those students who originally wanted to do public interest work before the clinic, only two students said they did not want to do public interest work, citing dislike of litigation; see also Karen Gargamelli & Jay Kim, *Common Law’s Lawyering Model: Transforming Individual Crises into Opportunities for Community Organizing*, 16 CUNY L. REV. 201, 219 (2012) (describing legal clinical models at CUNY).

126. Legal externships have also grown exponentially, offering a way to reflect on and practice in the public sector. Externships have been seen as a recent way to promote further growth in public interest law. James H. Backman, *Where Do Externships Fit? A New Paradigm Is Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL EDUC. 615, 615 (2006) (“The growth of externships has produced numerous scholarly articles, three national conferences, and a list serve network called Lextern.”). Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347, 358 (1999)

My sense is that for these students [interested in social justice], there is little enough in the curriculum to sustain them while they are in law school. It is usually their passion that brings them to law school, and in the three or four years of law school they have limited opportunities to express that passion, or to discuss it with others. By offering a small forum for these students to explore the social justice concerns that they care about most deeply, the extern clinic may provide them with the energy and inspiration to continue to pursue their ultimate objectives.

efforts. Some schools use the first-year writing course as a way to incorporate issues of morality and larger justice questions into the law school curriculum.<sup>127</sup> Overall, according to the Equal Justice Works 2009 E-Guide to Public Service, over 50 schools offered a combination of upper-level public interest courses, public interest-gear clinics, and public interest field placements.<sup>128</sup>

While extremely valuable aspects of legal education, most of these efforts only reach a small percentage of selected or self-selecting students. Students can easily “avoid” any courses that incorporate the public good with intention. In addition, while these course selections are crucial, the socialization impact of students can happen by the end of their first year. Some schools allow students to take public interest courses during their first year,<sup>129</sup> but most do not. There are two exceptions, however, to integrating public good values early.

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127. For example, Northeastern University ensures all students gain exposure to public interest law with its required first-year course, Legal Skills in Social Context, where students work on a community-based legal research project, giving student both legal skills and the larger context of the law. *Legal Skills in Social Context*, NORTHEASTERN UNIV. SCH. L., <http://www.northeastern.edu/law/experience/lssc/> (last visited Dec. 14, 2015). Michelle Weyenberg, *Best Public Interest Law Schools*, PRELAW, Fall 2008, at 32. The year-long course teaches social justice advocacy in addition to legal research and writing. *First-Year Courses*, NORTHEASTERN UNIV. SCH. L., <https://www.northeastern.edu/law/academics/curriculum/first-year/index.html> (last visited Dec. 14, 2015).

128. CHEN & CUMMINGS, *supra* note 10, at 413.

129. At Richmond School of Law, 1L students can take a public interest elective in the spring semester (like Family Law and Environmental Law). *Public Interest and Public Policy Curriculum*, RICHMOND SCH. L., <http://law.richmond.edu/academics/curriculum/planning/public.html> (last visited Jan. 16, 2016). Golden Gate University allows students to select a first-year public interest elective course in the public interest. *Special Programs: Public Interest Law*, GOLDEN GATE L., <http://law.ggu.edu/clinics-and-centers/special-programs/public-interest-law/> (last visited Jan. 16, 2016).

First, a school (or state bar)<sup>130</sup> may require pro bono hours.<sup>131</sup> At least 24 law schools have mandatory pro bono or public service graduation requirements.<sup>132</sup> It is becoming more common to require students to do pro bono hours, but relatively few schools require similar faculty participation.<sup>133</sup>

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130. See NEW YORK RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW § 520.16

Every applicant admitted to the New York State bar on or after January 1, 2015, other than applicants for admission without examination pursuant to section 520.10 of this Part, shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission with the appropriate Appellate Division department of the Supreme Court.

See also *Task Force on Admissions Regulation Reform*, STATE B. OF CAL., <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx> (last visited Dec. 29, 2015) (describing the State Bar of California's Task Force on Admissions Regulation Reform for California's suggestion that applicants to the California bar be required to complete the fifty hours of pro bono work either before and after applicants are admitted to the bar).

131. See Chaifetz, *supra* note 106 (advocating for the benefits of Pro Bono Students New York, created in 1990–1991 an organization which places New York State law students in voluntary public interest positions, advocating that law school mandate a pro-bono requirement); see also Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415, 2418 (1999) (describing benefits of pro bono requirements). Some schools have optional pro bono programs, giving students a certificate or special recognition for completing a certain amount of hours. For example, the University of Arkansas at Little Rock: William H. Bowen School of Law awards a Dean's certificate to student who have completed 100 hours of public service. See generally *University of Arkansas at Little Rock William H. Bowen School of Law*, AM. BAR ASS'N, [https://apps.americanbar.org/legalservices/probono/lawschools/pi\\_certificate\\_curriculum.html](https://apps.americanbar.org/legalservices/probono/lawschools/pi_certificate_curriculum.html) (last visited Dec. 14, 2015).

132. *A Vision for the Future: Mandatory Pro Bono Programs in Texas Law Schools*, HOUS. LAW., Feb. 2001, at 18, 22. For a discussion of the benefits and shortcomings of Mandatory Pro Bono hours at law schools see Jennifer Murray, *Lawyers Do It for Free?: An Examination of Mandatory Pro Bono*, 29 *TEX. TECH L. REV.* 1141, 1167–74 (1998). For example, Florida State University College of Law requires students complete twenty hours of civil pro bono during their second or third year of school. *Law School Public Interest Programs—Certificate and Curriculum Program*, AM. BAR ASS'N, [https://apps.americanbar.org/legalservices/probono/lawschools/pi\\_certificate\\_curriculum.html](https://apps.americanbar.org/legalservices/probono/lawschools/pi_certificate_curriculum.html) (last visited Dec. 14, 2015). Tulane with a fifty-hour pro bono requirement. *Tulane University School of Law*, AM. BAR ASS'N, <https://apps.americanbar.org/legalservices/probono/lawschools/116.html> (last visited Jan. 18, 2016). Touro College Jacob D. Fushberg Law Center has a “Public Law Perspective Requirement”, which they must fulfill to graduate, which can be fulfilled by a public interest-gear clinic, completion of fifty hours of pro bono work, or a combination of pro bono work and a satisfying course. *Frequently Asked Questions*, TOURO L.: TOURO COLLEGE JACOB D. FUCHSBERG L. CEN., <https://www.tourolaw.edu/PublicServiceInitiatives/pro-bono-requirement-faq> (Dec. 14, 2015) (last visited Apr. 18, 2016).

133. Rhode, *supra* note 46, at 158–59.

Second, a handful of schools try to maintain public interest as part of the dominant culture at their schools.<sup>134</sup> They are of the belief that even if inevitable that many of their students will ultimately enter private practice, they should encourage all students to recognize that the “service of public interest is part of the role of lawyers, not a specialty to be pursued by a morally exalted few.”<sup>135</sup> These programs are beneficial for allowing for a deep dive in the study of public interest and for reinforcing the often-valuable public interest subculture. However, as noted previously, they also contribute to a division that isolates the idea that only the “die-hards” can use their law degree to serve the public good, leaving behind those students who are less certain about their future career aspirations. Without exposure, it is far too easy for students “on the fence” to follow the “group”, and simply end up in the private sector. The lack of exposure may also lead to a failure to cultivate any interest in doing pro bono work.

### *III. Denver Law’s Solution—The Pledge for the Public Good*

Integrated efforts demonstrate to all students how the law relates to the public good. They allow schools to make progress towards engaging students’ intrinsic motivations and serve the public as part of the general law school culture. Like many law schools, Denver Law has long offered numerous programs, courses, and institutional support for students interested in public service, similar to those described.<sup>136</sup> We also require

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134. See Wizner, *supra* note 44, 264

Incorporation of public interest issues into academic courses throughout the curriculum is the “pervasive method” of “mainstreaming values.” The City University of New York School of Law is the only school currently employing the pervasive method, with a special emphasis on the provision of legal services to persons of modest means. The strength, as well as the weakness, of the pervasive method as a strategy for teaching values is that it treats professional responsibility issues with equal importance to other issues addressed in standard courses.

(internal citation omitted). See also *supra* note 4 and accompanying text.

135. Stone, *supra* note 34, 532.

136. We offer classes with a specific substantive focus—like Election Law, Family Law, Health Law, Forced Migration and Human Trafficking—which are often inherently related to the public good. *Registrar: Course List*, UNIV. DEN. STURM COLL. L., <http://www.law.du.edu/forms/registrar/course-list.cfm> (last visited Jan. 24, 2016). We also have Social Change Lawyering, an all-encompassing course about public interest strategies and practice. Other schools have similar public interest courses. Also, in 2013, the first law school textbook dedicated to teaching an upper level course on public interest/social justice lawyering was published. See CHEN & CUMMINGS, *supra* note 10. Denver Law also offers



all students to engage in fifty hours of supervised, uncompensated, law related public service work.<sup>137</sup> Nevertheless, while we have a robust public interest subculture, we do not require public good values be a part of the general curriculum<sup>138</sup> nor have we reached the level of those select few deemed as “public interest schools.”<sup>139</sup> This is where the Pledge for the Public Good comes in—it is a first step towards explicitly demonstrating that all areas of the law involve the public good.

Law professors have a tremendous power—the power to shape the minds of future lawyers. The Pledge requests that law professors use that power to demonstrate how students can use their legal expertise in any area to help people.

Textually, the Pledge is quite simple. It states:

I, \_\_\_\_\_, pledge that I am dedicated to fostering consciousness of the public good in my students and to helping my students develop their professional identities from day one in law school. To fulfill this dedication, I pledge to help them understand the moral dimensions and social context of the law.

I pledge for the 2015–2016 school year to engage in at least one of the following four options:

(1) Public Interest Lecture

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numerous externships related to how the law can serve the public good with externships including Child Advocacy, Nonprofit, Holistic Juvenile Defense, Racial, Social, and Economic Justice, Veterans Advocacy Project, and more. *Legal Externship Program*, UNIV. DEN. STURM COLL. L., <http://www.law.du.edu/index.php/legal-externship-program> (last visited Dec. 14, 2015). Denver Law hosts five in-house clinical programs: Civil Litigation Clinic, Civil Rights Clinic, Community Economic Development Clinic, Criminal Defense Clinic, and Environmental Law Clinic. *Clinical Programs*, UNIV. DEN. STURM COLL. L., <https://www.law.du.edu/index.php/law-school-clinical-program/clinical-programs> (last visited Dec. 14, 2015). We offer a full scholarship devoted to students who hope to pursue public interest law and who have shown devotion to public interest in the past through the Chancellor’s Scholarship. *Chancellor Scholarship*, UNIV. DEN. STURM COLL. L., <https://www.law.du.edu/index.php/financial-aid/tuition-and-financial-aid/du-scholarships/chancellor-scholarship/> (last visited Dec. 14, 2015).

137. *Public Service Portal: Public Service Requirement*, UNIV. DEN. STURM COLL. L., <http://www.law.du.edu/index.php/public-service-portal/public-service-requirement> (last visited Dec. 14, 2015).

138. We still graduate few students who pursue public interest careers. Of the 2014 Denver Law graduates, nine months after graduation, only thirty-one percent of students were working in the public sector (with twenty-one percent of students working in government, seven percent working in academia, and just three percent working in “public interest”). Note: this number does not include judicial clerkships, which totaled fourteen percent of students.

139. *See supra* note 4 for discussion of NUSL and CUNY.

- (2) Case Connection
- (3) Practitioner Guest Speaker
- (4) Other Tactic to Lift Up the Public Good

The Pledge explains how professors can engage in each of the strategies. The first option of the Pledge is to dedicate at least one-half of one class period or give an additional optional lecture relating the class to an area of public good. For example, the professor can share about his/her own personal pro bono work or discuss a particular topic within the course that relates to the larger social context or to the public good. It encourages faculty to open students' eyes to how the subject relates to serving the public good by explicitly making the connection through a lecture.

Second, the professor can make case connections. For two to six cases the professor already uses in class, the professor incorporates a discussion concerning the social context of the cases and/or how the law therein relates to the greater social good.<sup>140</sup> Professors can lead the discussion by asking how the parties received representation (e.g., discussion of a public defender or pro bono counsel, access to justice issues); asking what motivations a party may have for embarking on a particular act (e.g., class consciousness); and/or discussing the social context at the time the case was decided, among other ideas. This option focuses on expanding the context of the often-criticized appellate case method of learning the law.<sup>141</sup>

The third option of the Pledge centers on a practitioner guest lecturer. The professor can dedicate at least one-half of one class period to hosting a practitioner guest speaker to talk about the pro bono, public good, or public interest work he or she has done in the field.

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140. See Kaplan *supra* note 37, at 182

[I]ncorporating some social justice themes into assignments, doctrinal classes should do the same by covering some topics related to social justice. Examples of these topics include (1) stop and frisk policies, racial profiling, and ineffective assistance of counsel in a criminal (procedure) law classes; (2) landlord/tenant relations, community development, and gentrification in property classes; (3) toxic and environmental torts and tort reform in torts classes; (4) class action suits involving low income plaintiffs and the use of summary judgment in race and sex discrimination suits in civil procedure classes; (5) arbitration clauses in consumer and employment contracts and the effects of language barriers in contracts classes; and (6) the list of possible topics is endless for constitutional law classes.

141. See O'Neill, *supra* note 69, at 580–81 (discussing the case connection teaching method).

The final option of the Pledge is a catch all, allowing the use of another tactic to lift up the public good. We encourage professors to intentionally call attention to and/or connect how the subject matter of the course relates to the public good in any way they see fit.

For its inaugural year, over sixty full-time faculty members signed this Pledge, agreeing to engage in one of the aforementioned options for the 2015–2016 school year. This represents two-thirds of full-time faculty.<sup>142</sup>

#### *IV. Our Six Key Factors for Successfully Passing the Pledge for the Public Good*

We went through a number of steps in order to figure out what to actually create, how and when to propose the Pledge, and who to contact, among other things. Upon reflection, we identified six factors that were essential to the process and success of this effort.

##### *A. Key Factor #1: Establish the Effort as Consumer-Driven.*

While there may be an array of factors that affect the decisions by law school administrators and faculty members,<sup>143</sup> law students remain the direct recipients of a legal education. Outside pressures aside, faculty and others generally aim to educate their consumers and to some extent, please them. After all, law schools need students to make them run.<sup>144</sup> In addition,

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142. While we suspect that many of our adjunct faculty would be interested in the Pledge, for the first year, we limited outreach to only full-time faculty. However, those faculty members spanned departments, including tenured and tenure-track (including clinical professors) and contract-based faculty (externship, legal writing, and academic success/bar passage).

143. See generally George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998) (describing of the influence of the ABA over law schools); Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1464 (1995) (describing the relationship between law schools and law firms); Neil J. Dillof, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 358–63 (suggesting how law schools adapt to changes with the economics of big firms, concluding that “[r]ecent economic events have rocked the practices of BigLaw. As a result, law schools have a golden opportunity to increase their relevance to the real world practice of law by implementing changes in their curricula that meet the challenges of tomorrow’s large law firm practice”).

144. Danielle Douglas-Gabriel, *Why Law Schools are Losing Relevance—and How They’re Trying to Win it Back*, WASH. POST, (Apr. 21, 2015), [https://www.washingtonpost.com/business/economy/why-law-schools-are-losing-relevance--and-how-the-ye-trying-to-win-it-back/2015/04/20/ca0ae7fe-cf07-11e4-a2a7-9517a3a70506\\_story.html](https://www.washingtonpost.com/business/economy/why-law-schools-are-losing-relevance--and-how-the-ye-trying-to-win-it-back/2015/04/20/ca0ae7fe-cf07-11e4-a2a7-9517a3a70506_story.html)

once present at a law school, law students can hold some power. For example, on the most basic level, student evaluations of faculty are often included in decisions for tenure, promotion, and the like.<sup>145</sup> There have been instances when student action or inaction has had an even greater, far-reaching impact.<sup>146</sup>

The Pledge for the Public Good genuinely was created by students, specifically a select group of students who were members of the Chancellor's Scholars Program,<sup>147</sup> a program that provides scholarships for students who have demonstrated a strong commitment to public service prior to admission. These students, perhaps because of their extensive history of work in the public sector, were especially attuned to how legal education as a whole, and especially the first year, can be a bit isolated from public good ideals and values. They felt compelled to create some avenue to ensure that such values and ideals do not disappear from students' hearts and minds when they first enter law school or when they become so immersed in their studies. The students talked informally with classmates to determine whether they were alone in their quest to better connect to such values and ideals. Feeling bolstered by these conversations, the group fleshed out their idea.

Realizing the power in numbers, the group reached out to other student organizations for their support. The first targets were student organizations

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(last visited Apr. 18, 2016).

145. Robert E. Haskell, *Academic Freedom, Tenure, and Student Evaluation of Faculty: Galloping Polls in the 21st Century*, 5 *EDU. POL. ANALYSIS ARCHIVES* 1, 3 (Feb. 12, 1997); John D. Copeland & John W. Murry, Jr., *Getting Tossed from the Ivory Tower: The Legal Implications of Evaluating Faculty Performance*, 61 *MO. L. REV.* 233, 242 (1996); see Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the "Legal Writing Pathology" Diagnosis Confirmed*, 5 *N.Y. CITY L. REV.* 115, 117 n.10 (2002) ("Sixty eight percent of legal writing directors responding to the survey reported that at their institution promotion, tenure, or merit pay are based to some degree on student evaluation scores.").

146. For example, in 1998, Lani Guinier became the first woman of color appointed to a tenured professorship at Harvard Law School after nearly a decade of student protests calling for a minority, female tenured faculty. The student protests included rallies, class strikes, a lawsuit against Harvard Law for discriminatory faculty hiring practices brought by Harvard law students, and more signs of student discontent. *Timeline of Student Activism for Diversity and Inclusion*, RECLAIM HARVARD L. SCH., <https://reclaimharvardlaw.wordpress.com/timeline-of-student-inclusion-requests/> (last visited Jan. 23, 2016).

147. The first class of the Chancellor's Scholars Program was in 1991, about 25 years ago. Each year five to fifteen students join the incoming class as Chancellor's Scholars. While in school, the students must maintain a specific grade point average and commit to a certain number of volunteer hours each year. The students often voluntarily also become very active in the broader law school community and are especially active in public interest endeavors.

that were more likely to be allies because of their missions such as the Denver Law branch of the American Civil Liberties Union. Universally attractive groups with established power like the Student Bar Association were similarly targeted. Overall, though, the group focused on getting as many organizations to sign on to the pledge as possible prior to any official engagement with any administrators or faculty.<sup>148</sup> Ultimately, when a delegation did meet with law school administration, the Pledge had a list of over twenty supportive student organizations. Thus while conceived by one student organization, the Pledge was viewed as a school wide initiative, making it far more difficult for it to be ignored or downplayed.

*B. Key Factor #2: Gain Buy-In from a Cadre of Faculty Members Initially.*

While the delegation ultimately conducted a presentation to the entire faculty,<sup>149</sup> prior to engaging the broader community, the students sought advice, guidance, and feedback from specific faculty members first. We identified a few professors who were generally supportive of public interest law efforts and then the students attempted to meet with them one-on-one. We intentionally identified professors who taught varying subject matters as well as first-year courses in particular. The students also tried to meet with professors who had been teaching at the law school for some time as we thought their support and institutional knowledge might be particularly beneficial. These individuals assisted us in identifying other professors for outreach and sharing potential challenges, questions, and feedback that others might bring up.<sup>150</sup> Based on these initial conversations, we tweaked the Pledge, and ultimately felt far more secure and better prepared for future discussions.

We also decided to try to meet with all six of the deans prior to the larger faculty presentation.<sup>151</sup> Discussions and input from the key faculty members prior proved extremely beneficial in this meeting. We anticipated questions and prepared responses in advance. The deans appreciated the input that the group had already sought out, and it became harder to reject

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148. The students did engage with the Chancellor's Scholars' faculty advisor along with one other faculty member who had a close relationship with the students and was an avid supporter prior to reaching out to any student groups.

149. *See infra* Key Factor #4.

150. For example, as discussed in Part V, there were a number of minor obstacles that arose. For the most part, we were well aware of these going into our meetings with the deans as well as the broader faculty presentation, which allowed us to prepare beforehand.

151. *See infra* Key Factor #4.

the idea when other seasoned faculty, even if they were only a limited group at this point, were on board already.

*C. Key Factor #3: Solicit Examples of the Pledge in Practice from Faculty Members.*

In order to illustrate how a professor could implement the options listed in the Pledge, we asked three faculty members to supply examples to accompany the Pledge. They shared activities they led in their classrooms that demonstrated public good values and fit with the options delineated in the Pledge. For example, one Corporations professor discussed how she continually presses her students to consider the social responsibility of a corporation. Regularly asking questions like, “In an era where the corporate form is being vested with increasing rights and powers, does it also bear increasing obligations?; Is the sole purpose of the corporation to make money for its shareholders or should it do more?; and Did corporate law need the addition of the ‘social benefit corporation’?” the professor emphasized that “issues concerning the public good arise frequently in all subject matters and can easily be emphasized without detracting from doctrinal coverage. It simply becomes part of the conversation.”<sup>152</sup> A first-year legal writing professor,<sup>153</sup> speaking to option three, discussed how she invited a guest lecturer who was an Immigration and Customs Enforcement (ICE) officer to discuss policing the border and immigration policy from a law enforcement viewpoint. The class then also attended a workshop on immigration family detention with community activists, where the panelists discussed the negative impact on children detained by Homeland Security. According to the professor, exposing students to multiple speakers “provided a nice contrast for students to hear about policy choices on both sides of the legal issue that they were researching for their trial and appellate briefs,” to study an issue that clearly affects the public good.

An example for a Contracts course was also shared. The professor noted,

I try to highlight the issue and other factors that may seem to imply that one party is disadvantaged when in fact they may not be. We often read cases where one party has less education than another and it is easy to assume that the less educated party is therefore less capable of

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152. See *The Pledge for Public Good*, CHANCELLOR’S SCHOLARS 5 (2015) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

153. First-year legal writing courses at Denver Law are called Lawyering Process courses.

protecting their interests. I stress that education and intelligence do not correspond! Nor does one's economic situation in life dictate intelligence. At the same time, these factors must be considered to the extent the law is working unfairly to take advantage of particular classes of people, as in the *Williams v. Walker-Thomas Furniture* case.<sup>154</sup>

In addition to these more traditional courses, we provided examples done by professors for Civil Procedure and two Employment Law-focused courses.<sup>155</sup> The inclusion of these examples demonstrated that three long-time faculty members supported the Pledge, and shared ideas for implementation across a range of subjects. Notably, each professor was already engaging in the examples they shared; therefore, other faculty members realized that they might not need to tweak their curriculum and class plans at all. Perhaps they too already fulfilled the requirements of the Pledge; just now, we could document and celebrate these efforts, and maybe even urge them to increase.

*D. Key Factor #4: Present the Pledge to the Administration Prior to the Entire Faculty.*

As discussed above, we secured a meeting with all six of the faculty deans.<sup>156</sup> Conversations with previous faculty members understandably suggested that the dean of the law school might want to have an opportunity to learn about the Pledge before hearing about it from others. In addition, the dean pre-approves anything presented at a faculty meeting. However,

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154. Professor Celia R. Taylor describes how *Williams v. Walker-Thomas Furniture* relates to the public good in *Class Example: Public Interest Lecture & Case Connection, The Pledge for Public Good*, CHANCELLOR'S SCHOLARS 5 (2015) (on file with Washington & Lee Journal of Civil Rights & Social Justice). In *Williams v. Walker-Thomas Furniture Co.* the court holds that Walker-Thomas Furniture Company could not enforce its contract against people who defaulted on monthly payments because the contracts were unconscionable. The contract demanded that until the full amount of the contract was paid, the company could repossess all items previously purchased by the same person. The court held that unconscionability could be a defense to contract enforcement when there was "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." Notably, the court noted "[i]n many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power." 350 F.2d 445, 447, 449 (D.C. Cir. 1965).

155. Specifically, the two courses were Employment Law Mediation and Poverty and Low Wage Work in America.

156. This included the dean of the law school, the associate dean of academic affairs, the associate dean for institutional diversity and inclusiveness, the associate dean of student affairs, the associate dean of faculty development, and the associate dean of budget and planning.

we never expected all six deans to be present for this initial meeting. This was a pleasant and encouraging surprise, as it indicated a willingness to listen to student ideas as well as a sign that they were taking the Pledge proposal seriously. It was also a bit intimidating, as we could not anticipate all of the concerns that might arise given the varying expertise and perspectives of the deans.

To best prepare, the delegation developed a full proposal, which we provided to the deans prior to the meeting. The proposal included the text of the actual Pledge, rationale and background for its creation, the aforementioned examples provided by professors of the Pledge in action, and the list of student organizations in support.

The proposal and accompanying presentation received positive reviews. The presence of all of the faculty deans played a role in this reception. While various concerns were raised, as discussed in depth in Part IV, as soon as one or more dean expressed support and appreciation for the Pledge, it not only gave the group confidence, but also helped move others to support and kept the tenor of the meeting positive.

The deans also made a few suggestions—such as altering the name of the Pledge,<sup>157</sup> adding a fourth all-encompassing option,<sup>158</sup> and putting up the Pledge for a faculty vote. Ultimately, we did not modify the Pledge to reflect all of the suggestions made, but we did make some changes to make the Pledge more palpable to others without changing its substance or tone, or straying too far from our goals and vision. Strategically, taking some of the suggestions also helped to continue positive relationships with the deans. We valued their insight and subsequent changes reflected that, but we also stuck to our convictions when necessary.<sup>159</sup>

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157. Initially, we called it the Public Interest Education Pledge, but upon this feedback, we changed it to better tie into our university's mission (i.e. dedicated to the public good) and to ensure professors knew this was not a politically left or politically right endeavor. One dean expressed that the word public interest can have a "lefty" connotation—even if the term is apolitical and is used by both more liberal and conservative groups working to serve the public good—and because of that, the Pledge could be ignored by some.

158. This idea was incorporated into the final text. The thought was that there may be other ways beyond the three stated options to embrace public good ideals into a classroom and the group wanted to be as inclusive and as creative as possible.

159. For example, it was suggested that we put up the Pledge for a faculty vote, e.g. if the subsequent number/percent of faculty voted in favor of the Pledge, then it would be officially adopted and "required" participation by all faculty members. We decided that we would not pursue this method as discussed in Key Factor #5.



*E. Key Factor #5: Present the Pledge Proposal to the Entire Faculty.*

Within a month after the meeting with the deans, members of the group presented the Pledge at the faculty meeting. The presentation lasted no more than ten minutes and then we shared more documentation, including the full proposal, in a subsequent email, along with the hyperlink to sign the Pledge electronically. At this presentation, we were clear on two things: First, the group was not seeking feedback. We did our “homework” prior to this presentation and modified the proposal as needed based on earlier feedback. In addition, the list of student organizations who expressed their support had signed on to a specific version of the Pledge. If we had changed it again, we would have had to return to the student organizations for new sign-ons, which would not only be administratively burdensome, but also potentially compromise our integrity. We wanted to maintain our integrity, the integrity of the Pledge, and the signees’ intentions.

Second, we were not seeking a faculty vote on the Pledge. Instead, we had decided this would be a voluntary measure. Each individual professor could decide whether to participate. This decision was extremely intentional—while a faculty vote in favor of the Pledge could certainly allow for 100% participation, even if some participants had voted nay initially, we were concerned about this approach. We knew there was a chance that despite a faculty vote in favor, little accountability could occur. There was no established method for follow up generally on these types of measures,<sup>160</sup> and we did not think that we should try to impose such an accountability program through the deans. Instead, if our group pushed for accountability outside of a specific administrative-led structure, there might be a better chance of professors following through and an opportunity to obtain substantive and substantial feedback on the Pledge from both faculty members and students.

We also thought that the Pledge would be better received if presented outside of the voting structure. As aforementioned, this maintains the effort as a student-led initiative vs. administrative-imposed initiative. This distinction keeps the focus on the consumers’ (the students) interests, priorities, and needs versus risk becoming entangled in issues related to faculty governance, power, and workload.<sup>161</sup> Granted, it puts the burden on

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160. While there are likely follow-ups on a range of issues or decisions made by the faculty, this type of proposal seemed unique vs. a decision connected to a strategic plan or something like that. Based on informal conversations, there did not appear to be a recent example that was similarly passed and included an accountability measures.

161. Law schools use a system of shared governance among faculty members, which is

the students to follow through on success or failure, identify challenges and benefits, and the like, but it also keeps the group—the students—in control of the measure. This control was important, as it allows the student group to decide what to pursue and not pursue, how to evaluate it, how to modify it, and more.

*F. Key Factor #6: Build in an Evaluation Process.*

Following semester one of the Pledge, the group developed and disseminated a survey which asked students to consider the level of engagement with the public good in their courses, think about whether issues of morality and justice are explored in classes, and determine whether they want to engage with these topics. The survey was sent to all students asking if they were aware of the Pledge and whether they witnessed any of their professors engaging explicitly or implicitly with the tactics laid out in the Pledge. We also left room for students to share any other relevant information (related to public interest). Overall, 260 students responded to the survey—a huge response rate for an optional survey. Out of those students, forty-three percent were 1Ls, thirty-four percent were 2Ls, twenty-one percent were 3Ls, and two percent were evening students in their fourth year. Initial analysis shows that seventy-two percent of students reported noticing professors making connections to the public good.

To engage in this evaluative process, the Chancellor's Scholars leaders recruited new 1L members to learn about the Pledge and participate in its implementation. These students advertised the survey, discussed it in their classes both formally and informally, and spoke with professors. This automatically gave first-year Chancellor's Scholars a way to feel empowered and engaged with their school community and with public interest efforts for a minimal time commitment.

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commonly considered to have a whole range of difficulties. See Nancy B. Rapoport, *Not Quite "Them," Not Quite "Us": Why It's Difficult for Former Deans to Go Home Again*, 38 U. TOL. L. REV. 581, 581 (2007) (discussing issues with the shared governance system of law schools). See also Melissa J. Marlow, *Law Faculties: Moving Beyond Operating As Independent Contractors to Form Communities of Teachers*, 38 OHIO N.U. L. REV. 243, 245–50 (2011) (describing barriers to law school faculty members acting as a community, rather than individuals such as the emphasis on scholarship, the competitive culture, and status distinction); Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS'N LEGAL WRITING DIRECTORS 12 (2002) (noting the hierarchies and tensions that are often inherent within law school faculty).

Moving forward, we will conduct evaluations at the close of each semester. Depending on this inaugural full year results, we will reassess whether the Pledge requires alterations for 2016–17, whether we need to reengage with signees and offer feedback, and how to engage those faculty members who failed to sign.

#### *V. Building a Movement—Replicating the Pledge at Other Law Schools*

The Pledge for the Public Good is a feasible option for any law school, no matter what the current level of public interest engagement. For example, many professors already do one or more of the suggested methods. The Pledge validates the efforts of those professors and encourages them to continue to embrace such techniques. For those professors who do not already utilize such techniques, the suggested options provided are not hugely burdensome, but do make a difference in the student experience.

Further, the Pledge is workable because it does not prescribe to a particular political cause. Efforts focused on “social justice” or conversely “family values” come with a whole set of political associations, which can isolate some groups and thoughts. The current definition of public interest is far from settled,<sup>162</sup> as the scope of those who call their work “public interest” work is large.<sup>163</sup> Both conservative and libertarian groups use the term public interest lawyering,<sup>164</sup> though the term “public interest” is traditionally associated with a small number<sup>165</sup> of groups with more liberal

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162. The term, first coined in the 1960s and 1970s, was largely associated with the political left, with the ACLU and the NAACP being the largest organizations associated with public interest lawyering. CHEN & CUMMINGS, *supra* note 10, at 5–6; *see also generally* Rhode, *supra* note 117, at 2032; Trubek, *supra* note 120, at 433.

163. *See* Ann Southworth, *What Is Public Interest Law? Empirical Perspectives on an Old Question*, 62 DEPAUL L. REV. 493, 493–94 (2013)

“[P]ublic interest law/legal” organizations take opposing sides of nearly every divisive social and economic issue of our time; they advocate for gun control as well as gun rights, for environmental protection and property rights, for stronger protections for organized labor and for the “right to work,” for pro-choice and pro-life positions, and for diversity initiatives and the end of affirmative action. All of these groups claim the special professional legitimacy that the “public interest law” label confers.

164. Trubek, *supra* note 120, at 423.

165. *See* Southworth, *supra* note 163, at 496, 515

For a brief period, the term ‘public interest law’ may have been widely understood to apply to a well-specified set of institutions, practices, and policy agendas. When a team of social scientists funded by the Ford Foundation

views or causes.<sup>166</sup> The Pledge and its chosen terminology allows space for any type of political beliefs or no political ties at all, creating a stage for professors to demonstrate what they believe is necessary work within their respective fields.

#### A. Step-by-Step Guide for Students

While the *what* can be replicated, as with any course or program, there is never a set formula for exactly *how* to go about developing a similar endeavor at your home law school. This is particularly true when the endeavor is something like the Pledge, which does not follow a casebook and does not have a long history yet of implementation. While the ultimate end product may look different at your institution, we propose a number of steps that can help you determine first whether something akin to the Pledge is a good fit for your school and then second, how to create and develop a Pledge that fits your school's culture. To be clear, we did not necessarily go through each of these steps in depth, but recognize that all of these steps would be valuable and the level of depth and/or engagement with them will depend at least partially on the climate around public good issues at your school.

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studied and assessed "public interest law" in the mid-1970s, they reported finding "consensus" about its general definition: "[A]ctivity that (1) is undertaken by an organization in the voluntary sector; (2) provides fuller representation of underrepresented interests (would produce external benefits if successful); and (3) involves the use of law instruments, primarily litigation."

(citing BURTON A. WEISBROD, CONCEPTUAL PERSPECTIVE ON THE PUBLIC INTEREST: AN ECONOMIC ANALYSIS, IN PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 22 (Burton A. Weisbrod et al. eds., 1978); NAN ARON, LIBERTY AND JUSTICE FOR ALL 3 (1989) ("[I]n the early 1970s . . . the term 'public interest law' applied to a self-contained, easily definable, and relatively homogeneous set of organizations."); *see also* Chen & Cummings, *supra* note 10, at 49.

166. *See* Rhode, *supra* note 117, at 2032 (2008)

In 1975, Joel Handler, Betsy Ginsberg and Arthur Snow published the first systematic study of what they identified as the 'core' of the movement. It included eighty-six organizations. Some thirty years later, Laura Beth Nielsen and Catherine Albiston estimated the total number of legal aid and public interest legal organizations to be about a thousand. Although that estimate included direct service providers that were not primarily engaged in using law to affect social policy, it is still clear that the movement has grown dramatically.

*1. Step 1: Assess the Climate of Your School to Understand the Best Starting Point for Your Campaign to Infuse Public Good Ideals into the Curriculum.*

Every school has a different history associated with, and commitment to, public interest law and public service work. Some schools have long-standing rich and robust histories and public good ideals are embedded into all aspects of their culture and curriculum.<sup>167</sup> Others are newer to the idea of incorporating any aspect of law beyond the traditional doctrinal curriculum. To determine where your school falls on such a spectrum, we recommend conducting a survey of sorts, whether formally or informally. Such inquiry and investigation allows you to recognize the ideal method and medium to employ that will balance your aspirations with your school's reality.

First, you should engage with the members of the student body to understand their interests, priorities, and needs, and to ascertain their goals for incorporating and integrating the public good into their legal education. You could consider informal ways to gather such information or launch a survey. Explore this with all students, but consider a focus on first-year law students in particular. For example, you could gather information on the following:

1. The number of students at your school who were motivated to attend law school generally and your school in particular due to a commitment to, interest in, or passion for, public interest law.
2. Whether students identify particular courses or faculty members as engaging in measures to elevate public good values into their classes.
3. Whether students feel a disconnect between courses and their relationship to the public good.

Second, to gain a better sense of current curricula offerings, you should engage your academic dean, other administrators, and broader faculty and review policies, handbooks, and schedules. Specifically consider exploring the following:

1. What, if anything, your law school already has in place regarding public interest law and the curriculum. First, determine the number of classes offered that directly address public interest law. Second, identify whether your school requires enrollment in any such courses. Third, see whether the curriculum mandates or offers any

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167. See *supra* note 4 and accompanying text.

public interest related courses, topics, or paths specifically for first-year law students. For example, as mentioned before, some schools offer electives, whether for credit or not, to 1L students with a focus on public interest law.

2. Whether your school requires students, faculty, or others to engage in pro bono or public service work as a requirement for graduation or employment.
3. Whether the mission, vision, strategic plan, or other similar directives or guidelines of your law school refer to public interest law or give any insight into the value that it places on the public good, justice issues, or pro bono efforts.
4. Whether there is any quantitative data that details why students attended law school overall and/or your school specifically. For example, oftentimes in admissions forms, students identify areas of interest. This could provide insight into student motivation and help provide support for stronger integration of public interest ideals. Some administrators may periodically survey students to obtain information on their interests and may have relevant data they are willing to share.
5. Whether faculty would identify courses in which they already engage in measures to elevate the public good, and if so, how they do that.

It is also useful to consider the broader relationships that your school has or the context in which your school operates. For example, consider what relationship exists between your law school and its home institution. The fact that the University of Denver's mission included a dedication to the public good proved to be extremely helpful for our efforts both in terms of how to name our pledge, but also in messaging its importance to faculty and the community at large. In addition, research your state's bar requirements, rules, and philosophies to assess whether the state as a whole emphasizes or makes any connection to public service, justice issues, or pro bono efforts. While the state of Colorado does not mandate pro bono for all lawyers, it does include an aspirational goal of fifty hours of pro bono work in its Rules of Professional Conduct.<sup>168</sup> In addition, in 2007, the Colorado

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168. COLO. RULES OF PROF'L CONDUCT R. 6.1.

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono public legal services per year. In fulfilling this responsibility, the lawyer should: (a) provide a substantial majority of the fifty hours of legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious,

Supreme Court launched a campaign that began recognizing those law firms, solo practitioners, and in house counsel groups who notified the Supreme Court of their commitment to having each lawyer engage in those fifty hours of pro bono.<sup>169</sup> Even if most students who attend your school do not obtain jobs in state that require pro bono for bar admission,<sup>170</sup> a shift in culture to one that values student engagement with public good and pro bono exists. While these requirements or aspirational goals are not directly tied to the law school's decision-making processes, they certainly influence the climate of a law school and can serve as obvious reference points and areas of entry to apply pressure if needed.

It is worth noting, however, even when we gathered this sort of information, at Denver Law, the group ultimately decided what a "win" would look like prior to figuring out the entire strategy. For example, we developed the first draft of the Pledge far before knowing what the entire proposal would like; who we would talk with; and whether it would be voluntary or required. This vision was clear at the onset and then we adapted to some extent based on the information gathered.

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civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and (b) provide any additional legal or public services through: (1) delivery of legal services at no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; (2) delivery of legal services at a substantially reduced fee to persons of limited means; or (3) participation in activities for improving the law, the legal system or the legal profession. In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means. Where constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in paragraphs (a)(1) and (2), those individuals should fulfill their pro bono publico responsibility by performing services or participating in activities outlined in paragraph (b).

169. *Colorado Supreme Court Pro Bono Legal Services Recognition Program*, COLO. BAR ASS'N, <http://www.cobar.org/display.cfm?link=924> (last visited Jan. 3, 2016).

170. *See supra* note 131 and accompanying text.

*2. Step 2: Anticipate Potential Hurdles and Pushback, and be Prepared to Respond in a Way that Respects Concerns but also Provides Reasonable, Thoughtful Responses to Overcome Such Hurdles.*

Even if you dutifully engage in your “homework” as part of Step 1 and launch your campaign from a grounded and realistic starting point, you will likely encounter some level of opposition or at least potential doubt. To combat such opposition, you need to consider the types of concerns that may arise in advance so that you are not blindsided or unable to provide alternatives.

*a. Hurdle 1: Academic Freedom*

One of the most common points of pushback that we initially encountered at Denver Law concerned the idea of academic freedom. Academic freedom has long been a priority, understandably, of law school professors.<sup>171</sup> The idea of academic freedom became imbedded as a core value within academia as the image of American universities changed in the second half of the nineteenth from one of “passing on received wisdom to the next generation” to one focused on “research and scholarship, seeking new knowledge.”<sup>172</sup> Put simply, academic freedom works to support and

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171. Walter P. Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 TEX. L. REV. 1265, 1265–67 (1988); see Barbara K. Bucholtz, *What Goes Around, Comes Around: Legal Ironies in an Emergent Doctrine for Preserving Academic Freedom and the University Mission*, 13 TEX. WESLEYAN L. REV. 311, 311–18 (2007) (describing the historical development of the concept of academic freedom in American academia); see also Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 J. LEGAL EDUC. 97, 103 (2009)

The AAUP, AALS, and ABA each promote academic freedom principles in law school teaching. The AAUP separates academic freedom into three elements: freedom of inquiry and research; freedom of teaching, including both what may be taught and how it shall be taught; and freedom of extramural utterance or action. The AAUP notes that academic freedom in teaching is ‘fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning.’ Through its bylaws, the AALS and its member law schools have adopted the AAUP academic freedom principles, and stated that law professors must enjoy the benefit of academic freedom to pursue their teaching obligations effectively. The ABA endorses these same AAUP academic freedom principles in its law school accreditation standards.

172. Todd A. DeMitchell, *Academic Freedom—Whose Rights: The Professor’s or the University’s?*, 168 ED. LAW REP. 1, 3 (2002) (internal citation omitted); see Oren R. Griffin, *Academic Freedom and Professorial Speech in the Post-Garcetti World*, 37 SEATTLE U. L.



protect professors' abilities to express freely their ideas and thoughts in research and teaching,<sup>173</sup> falling within the context of the First Amendment.<sup>174</sup> Legal cases pertaining to academic freedom have resulted when institutions have punished faculty for the content and/or style in which they teach in the classroom by either failing to renew contracts,<sup>175</sup> firing faculty,<sup>176</sup> or withholding economic benefits,<sup>177</sup>

With great respect for this issue, the group adamantly reminded both administration and individual faculty that the Pledge was indeed voluntary and student-led, rather than imposed by the institution. No professor had to sign it and even if signed, the professor still maintained extensive flexibility in how to implement the Pledge, including having the option to create something entirely new if aligned with the spirit of the Pledge.

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REV. 1, 11 (2013) (noting the first codified definition of academic freedom in America was in 1915 when Association of University Professors (AAUP) wrote the Declaration of Principles on Academic Freedom and Academic Tenure).

173. See James J. Fishman, *Tenure and Its Discontents: The Worst Form of Employment Relationship Save All of the Others*, 21 PACE L. REV. 159, 175–76 (2000) (“‘Academic freedom’ is a non-legal concept, referring to the liberties claimed by professors through professional channels against administrative or political interference with research, teaching, and governance. Academic freedom allows the professorate to seek and discover, to teach and publish, without outside interference.”); see also Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom*, 56 CATH. U.L. REV. 67, 79 (2006) (defining academic freedom as “[a] non-legal concept, this freedom gives professors the liberty, established through professional associations, that shields them from administrative or political interference with their teaching, research, service in the university and profession, and institutional and academic self-governance”).

174. J. Peter Byrne, *Academic Freedom: A “Special Concern of the First Amendment”*, 99 YALE L.J. 251, 252 (1989).

175. See *Hetrick v. Martin*, 480 F.2d 705, 709 (6th Cir. 1973) (holding an institution did not infringe upon a female professor’s academic freedom by not renewing the professor’s contract after she said she was an unwed mother and discussed the Vietnam War and the draft in class).

176. See *Martin v. Parrish*, 805 F.2d 583, 586 (5th Cir. 1986) (holding a professor’s dismissal for profane language did not fall under the protections of the First Amendment because their use served no educational benefit).

177. See *Wirsing v. Board of Regents of the University of Colorado*, 739 F. Supp. 551, 554 (D. Colo. 1990), *aff’d*, 945 F.2d 412 (10th Cir. 1991) (holding that professor of education who refused to administer the school’s standardized test and then failure to receive a pay raise, was entitled to disagree with the policy and was not entitled to fail to perform the duties imposed upon her as a condition of employment).

*b. Hurdle 2: Risk of Shaming*

When shopping the pledge, we encountered some who expressed concern that the Pledge could be viewed arguably as a loyalty oath, and that people might feel shamed or even coerced into participating. To refute this concern, you need to determine, perhaps at the outset, whether to publicize the names of individual professors who commit to the Pledge and subsequently the omission of those professors who do not commit. There is less risk of such coercion or appearance of shaming without public naming. Professors may feel internal pressure, but at least the external pressure is removed. Arguably, there are other ways to track faculty participation. For example, you could share the percentage of professors who signed the Pledge. This demonstrates an overall impact and participation rate without exposing or tracking individuals, and perhaps then convinces more to sign on, which is the goal.

However, if you choose to not publish names explicitly, potential downsides exist. Namely, students benefit from knowing the names of participants. It can help students determine which professors to seek out or even potentially avoid depending on their interests. Helping students identify mentors<sup>178</sup> and have as much of an individual and targeted experience<sup>179</sup> as possible in law school is incredibly important for nurturing that student's interests and professional identity.<sup>180</sup> While participation in the Pledge may not make or break a student's interest in enrolling in a class of a particular topic or with a particular professor, it could be a factor.

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178. See Patrick J. Schultz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 752, 774–77 (1998)

[Law students] walk into the law school classroom knowing virtually nothing about the profession in which they will likely spend the rest of their lives. Law school will represent the “most formative and intensive stage” of their legal careers; it will be where “their professional self-conception first takes shape.”

Over the next three years, the law student will spend literally hundreds of hours with her professors. Her professors will be the most important—perhaps the only—professional role models that she will have during this formative stage of her career.

179. See Stephanie A. Vaughan, *One Key to Success: Working with Professors . . . Outside the Classroom*, 29 STETSON L. REV. 1255, 1259 (2000) (noting how actions such as individual conferences with law students can help to individualize instruction, form mentoring relationships, and allow students to practice conferencing they may experience later in their careers with more experienced attorneys).

180. See Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 109–19 (2007) (discussing the benefits of mentoring relationships to develop professionalism within the legal profession).

There are a limited number of courses, credits, and semesters so making informed and intentional decisions is necessary for charting your own path. This is particularly relevant for students interested in public interest law, as it is usually much easier to align with your fellow classmates, follow the traditional processes, and almost forget that other options are available.<sup>181</sup>

At Denver Law, while we thought such concerns of shaming and the like were extreme, we did not necessarily want peer pressure to be the motivating factor in convincing people to sign such the Pledge. We wanted people to participate because they believed in its spirit and intentions, and in exposing students to public good values. With that said, at the beginning of our Pledge process, we were actually undecided about whether or not to make signees' information public. We discussed this topic during our meeting with the six deans but left the meeting still undecided. Ultimately, we tabled this decision until we presented to the full faculty. During our efforts to build up support, we gave no indication as to whether the sign-on list would be public. Significantly, no one asked. While it was beneficial to obtain feedback from the deans on this issue, we simply did not prioritize this aspect during our initial outreach and conversations as we focused on getting support behind the idea of the Pledge. We also were intentional about whose participation we solicited prior to that faculty meeting. Perhaps we would have had to address this publication issue prior to the meeting if we had broadened our initial outreach. Depending on how you think such an effort would play out in your school's climate, taking a firm stance on this particular issue might be helpful at the onset.

Ultimately, we decided to make the number of professors who signed public but avoid sharing the individual names. If students were interested in the signatories, they could ask the director of public interest, a faculty member, for the list.

*c. Hurdle 3: Prioritization of "Public Interest" vs. Other Important Areas of Law & Skills*

Legal education has been attempting to respond to critiques that claim it fails its students and must expand its traditional notions of what is

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181. See *supra* Part I.A–B for discussion; see also Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563, 1566 (2002) (describing that the isolated feeling of students interested in public interest can deter such students for pursuing public interest careers).

necessary to prepare law students for real practice.<sup>182</sup> Because of this, receiving pushback that argues that many different subjects and skills ought to be infused throughout classes is inevitable. At Denver Law, faculty expressed that professional ethics, skills such as negotiation or interviewing, cross-cultural competency, and globalization and international law, among others, are also topics that warrant more attention in the law school curriculum overall and in individual courses. Certainly, such topics, and likely others, are incredibly important to the study of law and are relevant for many, if not all, specific subjects. Our approach in responding to this critique was to agree wholeheartedly—but to also share that we considered work dedicated to the public good to be all encompassing. Such topics can be teased out more in particular classes if desired within a public interest context. Thus, we saw the idea of public interest not as narrowing out these other topics, but instead being a category broad enough to embrace them and others.

The Pledge for the Public Good could also be seen as stage one in a long-term plan of better integrating all skills, subjects, and competencies that are relevant for multiple areas of practice. For example, the Pledge model could inspire others to employ a similar method focused around diversity and inclusive excellence, or globalization. It remains true though that these topics could easily be embraced as part of the public good endeavor.

#### *d. Hurdle 4: Preservation of the Traditional 1L Classroom*

While it has undergone some changes over past years,<sup>183</sup> the curriculum for first-year law students has essentially followed a particular

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182. See, e.g., Sullivan et al., *Carnegie Report supra* note 77 (calling on law schools to teach students how legal thinking applies to actual law practice); see also Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 *ELON L. REV.* 1, 3 (2015) (suggesting solutions for how to break down the separation between formal knowledge and the experience of practice in law schools); Martin J. Katz, *Facilitating Better Law Teaching—Now*, 62 *EMORY L.J.* 823, 834 (2013) (explaining efforts at Denver Law to expand experiential learning opportunities).

183. For example, the David J. Epstein Program in Public Interest Law and Policy Specialization at the University of California at Los Angeles Law School has curricular requirements that include a first-year seminar and a special section of the first-year *Lawyering Skills* course. *David J. Epstein Program in Public Interest Law and Policy Specialization*, UCLA, <http://law.ucla.edu/academics/degrees-and-specializations/specializations/david-j-epstein-program-in-public-interest-law-and-policy/curriculum/> (last visited Jan. 24, 2016). At Georgetown University Law Center, two first-year curricula are available.

structure. Others have written about potential reform efforts that would better integrate public interest values,<sup>184</sup> but most law schools still engage in the status quo.

While first-year law students initiated this effort, it was never the intention to limit the Pledge to first-year law classes. In fact, ideally, we aspired for every class in the law school curriculum to encompass the public good in some way since we believe every subject of the law could be, and should be, connected to the public good. That was the underlying premise of our initiative and motivation. In addition, however, we did not seek to target first-year law professors or make them feel as if they were the sole reason for the disenchantment student encounter, or that such disenchantment disappeared in later years.<sup>185</sup> This idea was especially important to avoid the coercion concerns that had arisen as well.

#### *e. Hurdle 5: Lack of Time*

While this was not a common complaint at Denver Law, we can imagine some resistance because law professors are often already “crunched for time” and may find themselves rushing at the end of a semester to cover all of the relevant materials. This can be particularly relevant for those professors teaching first-year law courses or courses commonly taught on bar exams. If this concern arises, be sure to recognize its legitimacy but perhaps offer options that are not too overwhelming and thus, are doable for even the busiest professor. For example, in our Pledge, we provide an option in which professors can maintain all of the cases and

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Curriculum "A" is the traditional first-year curriculum which parallels those at all major law schools. Curriculum "B" was developed in 1991 by a faculty committee charged by the Dean to comprehensively rethink the first year of law school and offers an innovative and integrated approach to the study of law. Students pursuing curriculum "B" begin their legal studies with courses which emphasize the sources of law in history, philosophy, political theory, and economics. *First-Year Full-Time Curriculum*, GEORGETOWN L., <https://www.law.georgetown.edu/academics/academic-programs/jd-program/full-time-program/first-year.cfm> (last visited Jan. 3, 2015).

184. For a summary of new models and approaches to improve law schools' abilities to incorporate public interest into legal training see George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. TOL. L. REV. 311, 336–39 (2015).

185. Granted, at Denver Law and many schools across the country, second and third year law students have the opportunity to enroll in clinics, externships, and the like, many of which can provide the context students so desperately crave. This does make the final two years of law school seem less removed for students, but students still crave the connection in traditional doctrinal courses and even some experiential-based courses as well that are not directly connected to public good values.

readings currently assigned, but simply discuss the public good relevance for two of such cases, with no requirement of how long such a discussion should be. This option minimizes additional preparation on behalf of the professor and does not remove key or required materials from a coveted class session. It only adds a new element to the discussion around a case, which may seem far more manageable to a professor.

*3. Step 3: Develop an Organizing Strategy Specific to Your School's Needs and Interests.*

Once you assess the culture of your school and determine how you might respond to the resistance and/or questions, it is time to evaluate your situation and embark upon your strategy. Whether or not mirroring ours is appropriate depends on information you gathered. Regardless of the strategy, we recommend being flexible and open at the onset. Even when we did not take a recommendation provided, we still considered all recommendations genuinely, appreciated the feedback received, and were willing to make changes if warranted. This helped with the perception of the Pledge and did improve the Pledge that we presented, likely enhancing the number of positive responses.

As you consider your strategy and ultimate goal, remember that being intentional and anticipating roadblocks can make your efforts go much smoother. Keeping key principles of effective community organizing<sup>186</sup> in mind will prove fruitful as well. For example, renowned activist Si Kahn shares the following:<sup>187</sup>

- “As a creative community organizer, you are always trying to figure out people’s common self-interest.”
- “Start the process of strategy development by imagining that instant just before victory. Then, working backwards, do your best to figure out the steps that will lead to that moment.”

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186. While our efforts were not specifically aligned with any community organizing strategy and we did not research such approaches prior to embarking on this endeavor, upon reflection we very much tried to abide by tenets and principles of successful social justice organizing.

187. A sample of the takeaways and lessons from the book SI KAHN, CREATIVE COMMUNITY ORGANIZING: A GUIDE FOR RABBLE-ROUSERS, ACTIVISTS, AND QUIET LOVERS OF JUSTICE (Berrett-Koehler ed., 2010).

- “It is generally useful, as a part of any creative community organizing campaign, to advocate for a positive as well as to oppose a negative.”
- “The more complicated a strategy or tactic, the harder it is to carry out, and the less likely that it will be successful.”
- Go not only with what you know, but with whom you know. Even in the Internet age, personal relationships still count, especially when you’re asking people to do something.”

*a. Faculty’s Role in Supporting Student-Driven Reforms*

While we want to encourage student-led advocacy, we know that faculty can play key roles in supporting student initiatives, both directly and indirectly. We identify five overarching ways in which faculty can help plant seeds for student activism.<sup>188</sup>

*1. Do More than Just Hold Office Hours and Truly Have an Open Door Policy.*<sup>189</sup>

Faculty members host office hours for students and many look forward to students’ visits. Oftentimes, these conversations center on a discussion in class, a challenge the student faces, and the like. With limited hours, conversation can be cut off at times due to a line out the door or the lack of time to discuss much else. Students, and perhaps even some professors, often yearn for more. Students seek advising and guidance on how to stay afloat and remain connected to their passions and desired career paths. They want to hear about the faculty member’s journey but, very often, they are intimidated to even broach these discussions or bring up any topic that goes beyond an obvious class connection. When faculty members are physically present in the building beyond the designated office hours, when they

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188. This list is not meant to be exhaustive.

189. See Bridget A. Maloney, *Distress Among the Legal Profession: What Law Schools Can Do About It*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 307, 314–15 (2001) (describing that one reason of law students’ stress is their fear of law professors); see also C.A. Auerbach, *Legal Education and Some of Its Discontents*, 34 J. LEGAL EDUC. 43, 57 (1984) (“The great bulk of law students stated there was no professor in the law school who was taking a special interest in their academic progress (84%), or to whom they could turn to for advice on personal matters (71%), or who was or would be taking personal interest in helping them get a job after law school (72%).”).

attend events on campus, and when they are reachable in offices on a regular basis, they are seen as more approachable, accessible, and interested in engaging with student community. Professors can become trusted advisors and student allies—and students interested in pursuing a nontraditional, public interest career often need these connections desperately. To help students remain or become interested in using the law for the public good, faculty must be present and be willing to play a role in students' lives outside of the traditional classroom setting.

### *2. Create Spaces for Dialoguing about Public Interest Law on Campus and Beyond.*

While general accessibility is an informal way to engage with students, faculty members can also establish formal spaces that allow students to discuss public interest law topics, with or without faculty members. When conferences, lunch talks, retreats, and the like are organized by, attended by, and/or supported by faculty and administration, they may be seen as more legitimate. Students may then be more likely to attend such events and dialogue with each other as well as with professors. These spaces also demonstrate to the student body that the school values the public good enough to host such events proactively versus simply allowing students to do so. When students attend these events, they see how they are a part of a broader community with similar interests. This can be especially helpful for students in their first year—who often only interact with students in their assigned section—to meet faculty and other students interested in using the law to serve the public good. These types of spaces often spark ideas like the Pledge.<sup>190</sup>

### *3. Solicit Student Involvement for Faculty-Led Public Interest Projects.*

Many faculty members remain engaged in pro bono and/or other projects that affect the public good simultaneously while operating as a law professor. By opening up opportunities for students to participate in such projects, whether as part of a class, as a research assistant, or volunteer, not

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190. Indeed, at Denver Law, the initial idea for Pledge for the Public Good came about at a public interest focused two-day retreat in which Denver Law students were given time to discuss public interest on campus—what worked, what did not work, and how to build this community.



only do students gain practical legal experience, which is incredibly valuable for today's legal market, but they also witness how much a professor values these issues. They see people they respect and people who already have another job taking time to pursue additional avenues to help the public good. This can transcend into what students then ultimately value and reiterate the idea that one can juggle multiple interests and obligations, while still finding numerous ways to maintain and foster passions.

#### *4. Form Partnerships with Student Organizations.*

While faculty should be available to dialogue with all students, there are times when specific individuals or subgroups of faculty are particularly aligned with a student group's mission overall or a specific event. If interests collide, faculty members can serve as official advisors to student groups. While there may be times when such advisors should take a backseat and allow student organizations to be truly student-led, faculty advisors can offer expertise and experience that may prove incredibly valuable to a student organization. An effective faculty advisor takes time to develop a relationship with organization leaders early on and regularly checks in with the group. If this trusted relationship develops, the advisor knows when to voice an opinion or a concern, and when to stifle thoughts. The student group realizes that the advisor not only cares, but is also a value add.

It is true that developing this sort of relationship between faculty advisor and student group takes time. Unfortunately, far too often student groups seek out professor support, but they are ignored. Faculty members become too busy with teaching, researching, and writing, and thus, do not prioritize this type of student engagement. The challenge is that if faculty members fail to engage with students in this way, students may be more likely to drift from those passions that drove them to join this student group and enroll in law school in the first place. Faculty who seek to build the next generation of lawyers dedicated to the public good must be willing to carve out time to support these students outside of their traditional duties at the law school.

Beyond serving in an official capacity to a student organization, individuals and subgroups of faculty can support student groups in other ways. Whether co-sponsoring an event (by providing funding),<sup>191</sup>

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191. As an example, the Denver Law chapters of the ACLU and the Black Law Students Association approached the Rocky Mountain Collective on Race, Place, and Law

advertising an event to a class (by making an announcement or sending an email), allowing students to discuss an event in class, and posting flyers on office doors, simple efforts can demonstrate that you care about using the law for the public good and enhancing student activism. These sorts of efforts cost little time and energy but are helpful both tangibly and symbolically.

*5. Acknowledge the Influence You Have on Students and at Times, Table it, to Build Confidence, Alter Existing Power Structures, and Bolster Student Activism.*

Students often have ideas for improving, changing, or otherwise affecting students and legal education. Students are often intimidated to share such ideas with faculty members. If you have become an accessible law professor, aligned with our first suggestion, a student may approach you to discuss the idea. There are many different ways to handle such a conversation. For example, faculty members can simply state their opinions, whether it is supportive or unsupportive, steer students in another direction, or negate an idea at the onset. The challenge is that there is an implicit assumption by students that law school faculty are all knowing and that their opinion is not only what matters most, but is also undoubtedly correct. Faculty members are perceived with honor within the walls of the law school building. Given that faculty may only interact with students in a manner in which they are teaching the student, as in class, or assigning work to the student, as with a research assistant, this dynamic is not too surprising. Deference to faculty becomes the default for students. Deflating ideas or beating down initiatives, even if in a polite way, affects students' self-confidence and can cause them to doubt their instincts about what legal education or a lawyer can or should be. While many students arrive at law school with much confidence, it dwindles quickly when faced with a challenging curriculum, let alone an extremely hierarchal relationship with professors. The resulting sentiments are precisely the opposite of what is

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(RPL)—a collective of faculty members aligned by certain social justice values—to co-sponsor a discussion series they developed on race and the law. Not only did RPL offer financial support, but some RPL members led small discussion groups over a semester with groups of eight to fifteen students. This shared initiative helped identify multiple faculty members who were interested in mentoring students who care about race and the law and build bonds among students and faculty.

needed to encourage student activism. Faculty must realize this dynamic, practice restraint, and do more to overcome it.

For example, faculty members can encourage initiative and student decision-making, and recognize that they, along with their institutions, benefit from student-driven efforts. When a student arrives with the start of an idea, faculty can express excitement, share positive reinforcement, ask questions, and urge further inquiry and effort, in a helpful way. When a student is a research assistant, faculty can seek out their ideas and brainstorm with them rather than simply assign tasks. Faculty also do not have to wait for a student to approach them. They can be proactive inside and outside of the classroom in engaging students in conversation about their legal education including how to improve it and how to better connect it to the public good.

#### *VI. Conclusion*

The Pledge for the Public Good moves us one step closer towards the goal of embedding public good values throughout legal education. For the Chancellor's Scholars and the countless students, faculty members, and supporters dedicated to public good ideals at Denver Law, the Pledge offers tangible changes in some classes and makes a statement symbolically. The Pledge is part of our larger long-term vision for change, pursuing incremental over time, starting with something not too divisive or complex, and hopefully building upon the success.

The Pledge is an example of what can happen when students take charge of their education, develop robust and well-researched proposals, and push an entire legal community—students and faculty alike—to respect and respond to their ideas. We need more of this at every law school and this is why we share this story. Whether you choose to start small and build incrementally like this effort, or “go big” right from the beginning, students can make law school more of what they aspire it to be. Be sure to tell others about your ideas, your successes, and your failures, too. Blogs, law review articles, Facebook posts. Let us start a wave of student-driven efforts that embrace and elevate the public good, and expose all students to the idea that public interest is a core value of legal education and of the lawyering profession. This is our pledge. What's yours?