

January 2005

Tenth Anniversary of University of Tennessee Pro Bono

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Justice of the Tennessee Supreme Court

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Recommended Citation

Anderson, E. Riley (2005) "Tenth Anniversary of University of Tennessee Pro Bono," *Tennessee Journal of Law and Policy*. Vol. 1 : Iss. 2 , Article 5.

Available at: <https://trace.tennessee.edu/tjlp/vol1/iss2/5>

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Cover Page Footnote

E. Riley Anderson is a Justice of the Tennessee Supreme Court. In addition to his numerous honors, Justice Anderson received the Tennessee Bar Association's William M. Leech, Jr. Public Service Award in 2001. He is a graduate of the University of Tennessee College of Law.

**Tenth Anniversary of
University of Tennessee Pro Bono***

*The Honorable E. Riley Anderson***

Dean Galligan,¹ thank you for that overly generous introduction and for the honor of allowing me to speak at this reception celebrating the tenth anniversary of the University of Tennessee's Pro Bono program. But most of all, thank you for your strong leadership of this excellent law school.

I want to begin by recognizing the truly outstanding work performed by U.T. Pro Bono over its ten years of existence under the forceful and energetic leadership of Doug Blaze² and the more recent able assistance of April Hart³ as student director; and to talk about the critical importance of providing legal services and representation to the poor and the disadvantaged.

* U.T. Pro Bono is a student-directed community service organization at the University of Tennessee College of Law. It was founded in 1994. The reception was held April 1, 2004 in Knoxville, Tennessee.

** E. Riley Anderson is a Justice of the Tennessee Supreme Court. In addition to his numerous honors, Justice Anderson received the Tennessee Bar Association's William M. Leech, Jr. Public Service Award in 2001. He is a graduate of the University of Tennessee College of Law.

¹ Thomas C. Galligan, Jr. is the Dean and Elvin E. Overton Distinguished Professor of Law at the University of Tennessee College of Law.

² Douglas A. Blaze is the Art Stolnitz and Elvin E. Overton Distinguished Professor of Law at the University of Tennessee College of Law. Professor Blaze is also Director of Advocacy and Clinical Programs.

³ April Hart is a 2004 graduate of the University of Tennessee College of Law. While a law student, Ms. Hart directed the U.T. Pro Bono program.

In the last ten years, U.T. Pro Bono has become an invaluable and irreplaceable part of our legal landscape. It has helped more than 2,000 low-income citizens in East Tennessee to receive legal services that would not have been available. It has provided that legal representation while also providing valuable training and experience annually for approximately 150 future members of the legal profession. Indeed, U.T. Pro Bono has become a model for providing legal services to low-income citizens and a reminder of the vital importance of promoting pro bono services.

The idea of pro bono publico – “free legal services to the poor” – dates back to early English jurisprudence and has for centuries distinguished the legal profession from all others. As Dean Roscoe Pound said some 60 years ago, “Historically, there are three essential ideas involved in a profession – organization, learning, and a spirit of public service. These are *essential*. The remaining idea, that of gaining a livelihood, is incidental.”⁴

The importance our profession continues to place on providing services to the poor and the disadvantaged has become a fundamental principle grounded in our ethical rules. The comments to ABA Model Rule 6.1, which was adopted by the Tennessee Supreme Court in 2002,⁵ state: “Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”⁶

⁴ Roscoe Pound, *What is Profession?*, 19 NOTRE DAME L. REV. 203, 204 (1944) (emphasis added).

⁵ See TENN. RULES OF PROF'L CONDUCT R. 6.1 cmt. (2004).

⁶ MODEL RULES OF PROF'L CONDUCT R. 6.1 (2004).

This extraordinary University of Tennessee Pro Bono program, which is guided by these principles, has become even more important because of a number of negative trends which affect access to justice:

First, Congress recognized in the Legal Services Corporation Act of 1964 that there was a need to provide equal access to justice; and that to preserve its strength, the program had to be free from the influence of political pressure, and attorneys must have full freedom to protect the best interests of their clients.⁷

From that highly principled beginning, we all are aware of the continuing battle in Congress year after year over restrictions on the program and constant cuts in funding. The local result in federally funded legal services programs is that only five percent of the needy are served and that priority must be placed on survival issues—*i.e.* health, housing, income, and safety.

Second, the Tennessee Alliance for Legal Services,⁸ chaired by Dean Galligan, recently surveyed the needs of the state's one million poor (18 percent of our population of 5.7 million) and identifies the key issue as a difficult policy choice of who to serve since so many cannot be served.⁹

Third, in the pro bono hey-day of the 1980s and 1990s, law students were encouraged to ask employers about their contribution to pro bono. When the economy faltered, competition turned fierce and the dynamic changed in

⁷ See 42 U.S.C. § 2996 (2004).

⁸ "The Tennessee Alliance for Legal Services (TALS) is a statewide non-profit organization that seeks to build partnerships to support the delivery of effective civil legal services for low income and elderly Tennesseans." See <http://www.tals.org/PublicWeb/About/> (last visited Feb. 19, 2005).

⁹ See TENN. ALLIANCE FOR LEGAL SERV., THE TENNESSEE STATE PLAN FOR CIVIL LEGAL JUSTICE (updated Oct. 2002), available at <http://www.tals.org/PublicWeb/About/StatePlanOct2002.pdf>.

many big law firms to limiting pro bono time and types of cases (no more environmental protection, reproductive or prayer cases, among others).

Fourth, bar-sponsored pro bono programs are excellent, but despite our best effort, the rate of participation is low. As of 2003, the rate in our metropolitan counties is as follows:

County	Total Lawyers	Participation Rate ¹⁰
Davidson	3,657	11.4%
Hamilton	1,039	14.5%
Knox	1,600	17.4%
Shelby	3,026	4.3%

It is arguably lower in more rural counties with less organized programs.

To respond to the problem, the conference of chief justices in the late 1990s recommended judicial involvement in promoting pro bono delivery of civil legal services. As a result, a number of states have revised their ethical rules to specify the amount of recommended pro bono service. The Florida Supreme Court has gone further and ordered mandatory pro bono reporting, which has been controversial, but effective – attorney participation increased by 36 percent. The Tennessee Supreme Court actively encourages participation through outreach programs. It has considered mandatory reporting, but rejected it on the basis that pro bono work is an ethical duty and we expect attorneys to fulfill their duty without compulsion.

¹⁰ See Terry Woods, *How the Knoxville Bar Stacks Up*, DICTA, Feb. 2004, at 15, 15, available at <http://www.knoxbar.org/PDF/2004/DictaFebruary.pdf>.

Our history has shown that a commitment to pro bono and public service is essential in our quest for justice and equality. Our state and federal constitutions promise due process, fairness, and equal treatment under the law for *all*. There are no exceptions and no conditions in these words. As Justice John Marshall Harlan wrote in dissent years ago in *Plessy v. Ferguson*,¹¹ “[I]n the eye of the law there is, in this country, no superior or dominant ruling class of citizens. There is no caste here. Our Constitution is color-blind. All citizens are equal before the law. The humblest is the peer of the most powerful under the law.”¹²

Our history also demonstrates, however, that the goal of equal justice under law is attainable only when *all* citizens are provided equal *access*. Ensuring that everyone has that vital access is the very essence of pro bono and public service.

As a profession and as a society, we should be measured by how we treat the downtrodden and the disadvantaged among us. As Winston Churchill is often quoted as saying, “We make a living by what we get, and we make a life by what we *give*.”

That is why it is important to recognize and congratulate U.T. Pro Bono for its exceptional accomplishments as it marks its tenth anniversary. We must all follow the example set by U.T. Pro Bono and renew our commitment to public service and to the fulfillment of the promises of equal justice under law.

I look forward to a time when exceptional programs such as U.T. Pro Bono are expanded, and to a time when legal services programs are fully and liberally funded, and to a time when criminal defense appointments are fully funded, and to a time when all lawyers will dedicate more

¹¹ 163 U.S. 537 (1896).

¹² *Id.* at 559 (Harlan, J., dissenting).

time to the service of the poor, and to a time when everyone will have full access to the courts. And it is only when that time comes that we will truly achieve the promise of equal justice under law.

Thank you.