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Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century

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Legal Education and the Role of Law Schools in Defining and Training Lawyers for Public Interest Practice in the Twenty-First Century

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**THE FUTURE OF PUBLIC INTEREST LAW:
MEETING LEGAL NEEDS IN THE
TWENTY-FIRST CENTURY**

**A SYMPOSIUM IN CELEBRATION OF THE
15TH ANNIVERSARY OF THE CUNY
SCHOOL OF LAW**

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the Bar of the City of New York on March 15, 1999**

PANEL I

**LEGAL EDUCATION AND THE ROLE OF LAW
SCHOOLS IN DEFINING AND TRAINING
LAWYERS FOR PUBLIC INTEREST PRACTICE
IN THE TWENTY-FIRST CENTURY**

James A. Cohen, Moderator: (Introduces panel.) We are going to start with Deborah Rhode.

Deborah L. Rhode: On this topic, like all of the other distinguished participants on this panel, I have spent too much of my life mired in scholarly platitudes about professional ethics and the role of legal education. This subject's anesthetizing effect on ceremonial occasions always reminds me of a famous passage from one of Warren Harding's biographers. His efforts were, as one historian described them:

Like an army of pompous phrases moving across the landscape in search of an idea. Sometimes these meandering words would actually capture a straggling thought and bear it triumphantly as a prisoner in their midst until it died of servitude and overwork.

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It has always struck me that these kinds of conversations have that potential. Or to borrow from a *New Yorker* cartoon that I keep on my wall, which has a picture of a couple of monks striding through cloisters, one of them saying to the other, "I, too, am holier than thou." So, I come to the topic with no less conviction perhaps than them, but a lot more humility about what is useful to say and do on this subject. Despite my disclaimers, I do think there is some value in talking about values and to do it both in legal education in general and on these occasions in particular.

Academic life and academic institutions provide the culture that reminds us most consistently for the need for an examined life. As part of that culture, I think law schools have an obligation to help students and practitioners understand how law helps constitute the professional life and how those who are enmeshed in it in turn help constitute law. I think what has too often passed for professional ethics education is wanting on a couple of dimensions. First of all, I just think it fails to connect up with what the central problems facing the profession are. We know in public opinion polls, for example, that only about one-fifth of Americans feel that the phrase "honest and ethical" or "caring and compassionate" describes lawyers. "Overpriced" is the word that they use. And in comparative ratings of integrity, the bar is close to the bottom. We edge out used car salesmen and advertising executives, but just barely.

Discontent is also widespread within the profession. A majority of lawyers report that they would choose a different career if they could and over three-fourths would not want their children to become lawyers. Law schools, it seems to me, are mercifully isolated from much of this disaffection. As émigrés from the world of full-time practice, we can easily – too easily, I think – distance ourselves from these problems. We can critique, but need not confront, adversarial abuses, sweatshop hours, glass ceilings, inadequacies in disciplinary processes, and we can tune out most consumers' complaints of over-charging, neglect and inaccessibility. When our public attention turns to professional ethics in contexts like in the recent impeachment hearings, or the O.J. Simpson trial, we can stand above the fray and declaim from a distance. Seldom do we personally bump up against a shameful irony, which is that the nation with the highest concentration of lawyers meets less than a quarter of the legal needs of its low-income population. These sorts of issues receive little systematic attention in today's educational curriculum. Almost all law schools relegate profes-

sional responsibility, a serious discussion of professional responsibility issues, to one course. The rest of the faculty treats professional responsibility as somebody else's responsibility.

I think occasions like this invite us to rethink our obligations in a profession facing difficult questions of legal ethics, legal access and social justice. At the most basic level, they require us to confront our professional ethics as professional educators to deal with the problems, on which we pronounce in principle, but seldom deal with adequately in practice. I want to talk about two ways in which I think the law schools really need to connect up to these broader problems. One is a much richer understanding of professional responsibility and an integrated approach that puts those issues not just in one single course but throughout the curriculum. A second level is encouraging public interest and pro bono involvement throughout the law school experience.

At a conference when we were talking about this issue a couple of years ago, Justice Ruth Bader Ginsburg described a typical student's first encounter with legal ethics. The professor in a core first-year course was describing some tactics that left the student feeling, as Ginsburg described it, "bothered and bewildered." "But what about ethics?" the student asked, to which the professor's response was, "ethics is taught in the second year." That message describes the experience of most American law schools. The vast majority put it in one course and they define it to consist largely of teaching about the Model Rules and Conduct that the bar has put forth. The result, as my colleague William Simon has suggested, is to offer legal ethics without the ethics. Students get what the disciplinary rules require, but they lack the foundation for critical analysis; and they do not reach some of the professionalism issues about access to justice and the problems that have fostered so much discontent with the profession, in general. It is illuminating that in the American Bar's mid-1990s study, less than one-fifth of all surveyed lawyers felt that law had met their expectations in contributing to the social good. Yet doctrinally-oriented professional responsibility courses do not address the structural problems that make clear why legal practice so often falls short.

There has not been much of an effort to integrate those ethics issues throughout the law school curriculum. When the topic arises elsewhere in the curriculum it is without assigned reading and, of course, no questions on the exam. Students get too little theory and too little practice. Classroom discussions are too far removed from the real-life contexts in which these problems are

confronted and too uninformed by insights from allied disciplines, like philosophy, sociology, economics, organizational theory, and the problem-solving approach. And I think there is not a good justification. It used to be that many faculty were weary of this approach – a little knowledge feels like a dangerous thing and, understandably, academics are nervous about wandering into someone else's specialty without adequate background. But in this context, there certainly have been a wide enough variety of curricular integration materials for a long enough time to suggest that we could and should do much better. I am just about to publish a second edition of an annotated bibliography on innovated ethics materials. It breaks these materials down in subject matter, gives names and telephone numbers of where you can get them, and I would be happy to proselytize with anyone in this room about how to make that more widely available. This material needs to be in the entire law school curriculum, not in just a kind of "add ethics and stir," stand-alone approach at the side.

The other dimension that I want to briefly note here is pro bono and public service involvement, which like professional responsibility instruction, is something that the bar and legal education is for in principle, but neglects in practice. The AALS has just released a commission report that is the first attempt systematically to look at the issues of pro bono and public service opportunities in law schools, made possible I should note by the generosity of the Open Society Institute. One of the critical findings of that commission was that most students graduate without any significant pro bono involvement, indeed without any pro bono involvement at all. Only about ten percent of schools require public service and, while ninety percent of schools have some voluntary program, most of them attract a very small number of students. One third have no law-related pro bono activities at all. What is the most, I think, distressing single finding of the commission, coupled with the spottiness of what's out there, is that nonetheless two-thirds of law school deans were pleased with their own school's performance in this area. One has to believe that law school deans are either just unacquainted at the systemic level of what is and isn't happening at their own school, or just have been pushed by other forces to worry about issues that are more pressing daily needs than this. But I suggest that in the long run there is no single, more pressing ethical or professional responsibility than inculcating at a very early age the need to have some level of pro bono, public service involvement throughout one's legal educational experience. From what

little literature there is on the subject, we know that having a positive experience with pro bono or public service involvement is one of the key factors that encourages people to become involved later in life. Law schools are missing an opportunity for themselves and their students, as well as opportunities to connect up with the bar, their own alums and the broader community that care about access to justice issues. This is one of those kinds of questions where there is an enormous difference between our rhetorical and our resource commitments. It has not been, as a practical matter, a priority in legal education. I think that simply has to change.

The dean of this law school, Kristin Glen, whose tenure and whose institution we are celebrating today, is one of the rare exceptions in the landscape of legal education where these issues and concerns are central. We need to make that happen elsewhere. As she points out, public interest and pro bono service are what reinforce the best ideals and aspirations in our students. By making those issues a priority, they can do the same for us as legal educators as well.

Robert F. Drinan, S. J.: Thank you very much. I, too, rejoice in this lovely anniversary and I take credit for the whole thing because years ago Charles Halpern was an associate of mine down the corridor and he and I talked on several occasions about the birth that we celebrate today. So I encouraged him to do it and I said we need something like this. I think that in the decade to come, and even the century, we will all be thinking about what we are talking about today: what are the legal needs of people in this country going into the new decade.

I think we ought to stress the idea of a vocation. This comes from my own background, that in the Catholic community, the term "vocation" is well-known and well-used. You have a vocation to be a Christian or to be a priest or a nun. And that in the history of the legal profession in England the consecrated phrase was that you were called to the bar. This is something sacred, a vocation or an avocation. The awful reality as we enter the new century is that seventy-five percent of the people of America on the civil side do not get the legal aid that they need, that they are entitled to. I dream sometimes that we need a *Gideon*¹ decision. *The Supreme Court said you have to give representation on the criminal side to anybody who may be punished severely and that, dream on, we need a Gideon.* They would say it is a right under the Constitution to due process and equal protection that the bar has to give this. I think it would be a

¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

God-send. And in the old days giants like Reginald Heber Smith said that – that legal aid is an inherent right of all of these people.² He started the first legal aid clinic in Boston and wrote a book about it.

Coming to this venerable place, I recall that I have been to several conferences on legal aid in the 60s and 70s. When I was in the Congress, we structured the Legal Services Corporation. I was happy to be one of the architects of that. Even Mr. Nixon saw the need of it and signed the bill. As you know, we have had a long hard struggle since that time: Legal Services gets only 300 million dollars a year now and it could use double or triple that amount. But at least the national level, the ABA and all of us said that we need federal subsidies for this. Federal subsidies were not enough and seventy-five percent of the people still were not getting legal aid. So the ABA invented Model Rule 6.1: every lawyer should, not shall, give fifty hours of legal services per year, particularly to the poor. I keep dreaming, that if 600,000 practicing lawyers did, in fact, put in fifty hours a year, would that transform the landscape? For a couple of years I have been chairman for the Standing Committee on Professionalism of the American Bar Association. We try very hard. We have limited resources, but our principal, majestic vocation, if you will, is to enhance professionalism and that presumably is the opposite of commercialization. I have misgivings about Justice O'Connor's philosophy on this, but I welcome her dissents in the advertising cases where she stresses professionalism. We are not merchants or hucksters of business people. We are professionals. And it means that we need to be reminded on a constant basis that we are not in this to get rich. We are here to serve people. Some of her dissents are really quite eloquent, that here is the ideal.

The mission statement of Georgetown Law School was gone over this last weekend when we had an academic retreat of the ninety-two full-time professors. In the tradition of Jesuit education, it says "we teach everyone to give service." That obviously is in the twenty-three Catholic law schools in this country. It is in the mission statement that you are here, we're not indoctrinating you, but the whole purpose of law is to give service to people: to help them. We are their brothers and sisters. I was pleased at the end of the academic retreat when two or three people, who were not Catholic, said that they were very pleased to be at a university that would make this commitment. We teach the students to give service to

² See REGINALD HEBER SMITH, *JUSTICE AND THE POOR* (1919).

others. That is the essence of why Georgetown Law School was established. One of the professors said that he did not know of any other major university that would make such a commitment. I don't know about that, but what can we do to change the role of the law schools?

Number one, we ought to train more in legal history, the nature of the profession. Years ago in graduate school, I learned that – about the rise of the legal profession in England and in later years and all of the degradation, but all of the glories. Coming to this building, I thought again that in 1870, the lawyers of this city organized to have a new bar association to get rid of the corruption in the administration of justice. In 1870, presumably they did good things. One of the people that is legendary, of course, is Sir Thomas Moore, who was the chancellor and who became a martyr for his convictions. I dwell on legal history and that we lost a lot in the United States when the bar came here and they wrote the Constitution and the Declaration of Independence, but there were no law schools until roughly 1860. We lost a lot of our traditions. In a semester when I taught at Oxford I retrieved a lot of them. I had never known all of these things and all of the great rhetoric, the truths and the adages by which they lived in the English Bar. We have lost an awful lot of history and if people understood it I think it would change their attitudes as to why they are there.

Secondly, I think that we ought to go back to the sanctity of rights – if we tell people all of the time that they have rights to property. You know the famous philosophy of Justice Brennan, Justice Douglas and others that the term “property” in the Fourteenth Amendment for the modern times means the right of tenants to decent housing, the right of everyone to their entitlements from the Government. That is property. We should be given the property that they have. That line of cases now has been attenuated, even annihilated in a way. At the faculty retreat the other day a student gave a picture that to all of us that was pretty horrifying. Seven blocks from Georgetown Law School is the D.C. housing court. This student goes there morning after morning, and he said that it's something like a Dickens novel. These people, mostly African-American, come and sit on long benches and wait for their time and then somebody tells them, “no, you have no claim to this.” And the realtors have all of their slick lawyers from the leading firms and these poor people go away at the end of the day with no satisfaction. The faculty and the students at Georgetown Law School were pretty humiliated and chagrined that this is seven

blocks from our institution. So the right to equality and fairness, and human dignity and the due process, and the spirit of *Goldberg v. Kelly*,³ that is what we should be teaching. Now everybody takes Constitutional Law, or almost everybody, and they do not get this. We shouldn't say that all the poor out there – it's so awful. They are *entitled* to these things. They are being denied their constitutional rights and privileges. If we inculcate that in the students, that is if you will, a very definite moral view, I hope that that would last them for their lifetime.

Well, the scenario here says that we are talking about the next century – well, the next century is going to be global. The globalization of justice demands that we change legal education. Americans are only four percent of the entire world. We control forty percent of the resources. But the ninety-six percent of the people who do not live in America look to us and say, what are you going to do for us? When we look at the millions in Africa and Asia who are in a situation that is unworthy of the human family, we should say that they too under international law have commitments, have obligation, have a right to economic and political equality. I teach international human rights. I wrote a book about it, and the economic and the political rights are the same. They are not separate. Economic rights are not subsidiary to political rights. I hope we teach a whole core of students that so that they would say that I am going to work for global justice. We have the Lawyers Committee for Human Rights and other entities, but the law schools should be there saying that you, in the globalization of the world that is happening, should also say that justice too should be globalized. Is that too much of a dream? Well, maybe, but we have that dream. It's alive and well at CUNY, and I hope at other law schools.

And what about these faculty? Are they educable? All of these people. We have changed a lot. We have minorities and women now and I like to think that some of us have aspirations. But if things are not happening with the students, we have to say, who are these faculty anyway? There are four or five thousand full-time professors or more, and we have to convince them. The thrust of the committee that I chair at the ABA is that we have to reach these people somehow. It's not easy to change a majority of the profession – that is what we are talking about today. Assuming that there are 800,000 lawyers out there practicing, we want apostles or disciples or something. Nothing is going to change unless we have a significant number of these attorneys saying that we are going to

³ 397 U.S. 254 (1970).

change. We need role models for the students in law school. After their second-year summer, they come back and they are very perplexed: "Is this what I want to do? Go out there and make the rich richer?" This is not what they came to law school for. But so many of them say there is no option – "I have these debts and I'm going to get married" – and it's very attractive. They know that they're going to be there for six years, exploited by the partners. Hardly any will become partners and then they move on to something else. So, my dear friends, we're up against something very, very difficult: when you have the faculty who are only half-convinced about this, then when you have the students up against these enormous economic problems and we have to say that you should go and serve the poor.

Well, can the ABA give leadership? I am very encouraged by what the ABA is doing. There are thirty-five states that now have committees on professionalism. I like to think that they are changing the attitudes of lawyers in Georgia and elsewhere – and that the students are idealistic. I don't think that they only go to school to make some money. If they really wanted to be big moguls, they would go and get an MBA. They have all these aspirations and we somehow have to touch them.

Well, let me close with CUNY as I opened, that they have this central idea and we all look at them with admiration. They are ahead of us. They were a prophet long before some of us heard the word and we are all united in something that is very ancient today. I love to go back, and I'll close with this, to the Code of Hammurabi. Twenty-five hundred years before Christ, he said it all. He said, "the purpose of law is to protect the powerless from the powerful."

Stephen Wizner: We are here to celebrate the CUNY Queens Law School, some of whose faculty is here. What began as a noble educational experiment has matured while I was not looking to a fifteen-year-old adolescent with all the energy and optimism and dreams of an idealistic teenager, and also some of the missteps. But it is cause for celebration, I think, that the values that we are talking about on this panel are values that were incorporated into the founding of this law school. All of its faculty, unlike the 40,000 others that Father Drinan referred to, are committed to that ambition.

When Kris Glen sent an e-mail around, the topic she asked us to address is: What is legal education? Be that as it may, it called to mind a story about my mother-in-law. My mother-in law is eighty-

six years old and just completed the University of Chicago basic program, which she took in her eighties. She has been reading Shakespeare and Plato and Aristotle, and one day the phone rang. "Stevie, what is virtue?" I said, "What is virtue? That's a good question." She said, "I know it is a good question. Aristotle asked that question." But as I think about it, what is virtue seems to me something we need to talk about. I blush to do this in front of Father Drinan, but I am going to give a stab at it.

Can we teach virtue? And if so, how? As a lawyer, I take an instrumental approach to virtue. First, I need to identify the good to which we aspire, and then second, how can we pursue, and hope to attain this aspiration. In the context of this panel, I have identified two "goods" that we should pursue. One is to make the justice system accessible to low- and moderate-income people, and to other under-served groups like children, people with disabilities and the elderly. The second is to instill and inculcate in law students the professional value of providing free or affordable legal services to those who cannot afford to pay market rates. Let me take them one at a time.

To make the justice system accessible is usually referred to as access to justice. It seems to me that there are three ways to think about access to justice. One is to reduce the need for using the justice system. All of us who have represented people of low or moderate income know that many of their legal problems arise from their poverty and because there is anything inherently legal about their problems. When you are poor, you have problems. So, I was going to say we should restart the War on Poverty, but of course today there is no War on Poverty. We need to turn our attention to the working-class poor, both to people who are moving from public assistance into the world of work, and those whom they are displacing, and those who are working full-time and still living below the poverty line, and we need to think of ways of moving them up a little bit.

The second is to delegatize some of what we now require that lawyers do. There are a lot of things that we insist that lawyers do that do not really require lawyers. I think uncontested divorces, when there is no issue of child custody or visitation, do not require lawyers to do them. Most bankruptcies do not require lawyers to do them. I am sure you can think of other examples of things that other people should be allowed to serve as advocates for poor people when they confront these problems.

Finally, of course, increasing pro bono. I would say increasing

government support for Legal Services but that is like welfare – we can, for the time being, forget that. But to increase the participation of members of the bar in providing legal services.

How do we get there? That is my second spin on teaching virtue. We get there, as Deborah says, by inculcating values. It seems to me that there are a variety of ways to inculcate values. The curriculum is one way. Placement and career planning in the law school is another way. Or doing what CUNY Law School does, which is doing it at the point of admissions, letting people know up front before they come to law school that that is what kind of law school it is. You cannot teach virtue by preaching, I don't think, Father Drinan; preaching seems to me not a good way to teach virtue. I think virtue, like most things, is learned from practice, and insight, and repeated exposure. I think that the virtues to which we aspire need to be mainstreamed within the law school and not put out as an afterthought – on your way out of the door as you are graduating law school, "Incidentally, you are going to have to do some pro bono work." But I think, as Father Drinan again said, the moment a student walks into the door of a law school, he or she should be asked, "Have you been called to the Bar? We want you to start thinking about that the first day of law school, and think about it throughout law school." I do not know how many of us did that – I did not.

There is a lot of talk of curricula changes, changes for the new millennium. I am not sure what that word connotes for you. I have heard it enough. But curricula changes are being talked about. We need more computers and more this and more that. Cyber-education. But I think that the curricula changes need to have a goal beyond the teaching of new skills because new skills can be put to any end. The right question is not whether we need new skills to be taught in the law school, but new skills for what purpose? Why should we change the curriculum? I would suggest that the reason to change the curriculum is in order to infuse and inject into the curriculum the teaching of a variety of subjects that are not currently taught in law schools: the legal needs of low- and moderate-income people and communities. Do we teach about that in law schools? The maldistribution of legal services. I do not think that my students are aware that most people cannot afford lawyers. The organization and culture of the private bar, and what do our students know about that, and how they can fit pro bono into that world. Strategies for addressing the distribution problem, as I said before, including delegalization of many personal and so-

cial problems. It is a fact that very few of our students will or can become full-time public interest lawyers. As to those who do not, we can either leave them to figure it out on their own, or we can push them away saying, "you are not a public interest lawyer, I do not want to talk to you," or we can think of ways of drawing them in. We need to break down the divisions within the law schools between public interest students and private law firm students – the two worlds, the two cultures – to pay attention to both, by striving to create a culture, what Deborah Rhode has called a "culture of commitment," or what I would call a culture of professionalism that includes the professional responsibility to provide free or affordable legal services to low- or moderate-income people. We need to find ways to mainstream these values and not just talk about them every once and awhile, but do what Deborah Rhode suggests – make them pervade the entire curriculum. I think there are two strategies. One is Deborah's, which is teaching ethics by the pervasive method, incorporating public interest issues in academic courses throughout the curriculum. Another way is by creating new courses, focused on the legal needs of the public, the distribution of legal services, and the like. This is all by way of an elaborate introduction so I can advertise a course we are teaching for the first time this semester. There is a new course at the Yale Law School called "Professionalism in the Public Interest." Let me read the course description from the catalogue:

This seminar is designed to prepare students to pursue pro bono activities while working in private law firms. Students will prepare pro bono plans for their first few years in private practice. Students will then work in groups to explore the legal issues raised by each plan and to help design methods for implementing the plans. Experienced attorneys involved in public interest work, both in private and in non-profit organizations, will be guests of the seminar from time to time, both to give advice and to help students begin pro bono projects before graduation. Our hope is that each student will bring his or her firm a well-designed, functioning project in which the student is involved.

We have fifteen third-year students this semester for the first time. Their term paper is to prepare a pro bono project. All of them are going to corporate law firms. My clinic students are furious at me for teaching this course and I am trying to explain to them why it is a good idea. All fifteen are going to firms – New York, Dallas, Houston, Phoenix – and all of them are designing a project that they are going to take with them to their firms. They

have all contacted their firms already, and got their firms to buy into the idea that they could take responsibility for their own project and bring it with them to the firm. We are spending a lot of time in the course trying to deal with the culture and economics of private practice so they will know that you cannot bring a project that requires you to be out of the office every week, Tuesday and Thursday afternoon from 3:00-5:00, because the firm may not be able to handle that. But you have to design a project, whether it is transactional or litigational or affiliating with some non-profit agency, and doing legal work that is consistent with the firm's economics. The firms have all said, and I will believe it when I see it, that these students can do up to twenty percent of their billable hours on their projects, and that they get credit hour-for-hour. At least one pro bono coordinator in one large New York firm, which shall remain nameless, was so delighted, and said it has been a long time since students had called him and demanded to do pro bono work. So that is a step.

So whether we succeed in teaching virtue, I do not know, but maybe if they just do good things, that is a good substitute.

Bonnie Forrest: This is a wonderful and refreshing panel to have the privilege to work with. I spent four years as the pro bono coordinator for Shearman & Sterling; I left six months ago to put together a foundation for a client, but I am still pretty intricately involved in the program in trying to increase the effort. I think that there are a couple of things, I feel a little like a bear in a bull market in the sense that I want to sort of back up and talk about what I see as not working because I really believe, having been out there trying to staff these cases for the last four years, that unfortunately, it is not working. The cases that are not getting taken are the cases that are not the sexiest, they are not glamorous and they are not necessarily going to get you the court training experience that a lot of young lawyers coming into a law firm want to get. They are the basic housing rights cases, which may or may not be in court. They are the basic divorce cases for women, and basic daily need cases. Given the cuts in legal services, the system really is in a crisis.

I actually distributed a survey which I am in the process of writing, counting up and tabulating the results. I distributed a questionnaire to legal service providers over the past year in New York City to get a sense of which needs are being met and which are not. As we all expected, it is the basic needs which are not, on a daily basis, being met. I think that is partially because people do not

know what they are. Deborah talked a little bit about that. I came up with a top ten list of things that I would love to see after the millennium about how legal education would meld more and changes that from the practice-perspective that I would love to see. One is more panels like this. I cannot tell you how refreshing it is to sit in on a panel with people who are in the law school environment. The person I am sitting in for, Steve Armstrong – who is head of professional development at Paul, Weiss and used to be at Shearman & Sterling – and I partnered for four years on projects where we would try to do both because an associate's time is at a minimum, so we are talking about making the most and being efficient and trying to create synergies that are not necessarily there.

That means solving the disconnect between law school and practice. The same disconnect occurs at sixty-five. We are pushing people who are sixty-five out the door at law firms. There is your wisdom, your grace, your knowledge, Father Drinan, that never gets communicated to your junior associates. Why isn't somebody harnessing that energy in a more productive way, because a lot of these people still come into the office every single day. I see them in the office and those are the phone calls that I used to get at Shearman & Sterling.

You also see this, I think, in the rise in mandatory pro bono in law schools. Deborah Rhode said it's ten percent. It is actually twenty schools. I got that number today from the pro bono institute down in Washington. In fact no states have gone to mandatory pro bono, but I think as more and more people sort of realize about the crisis, you hear this bantered around. Judge Kaye has gone back and forth about it in New York, and it is sort of a dicey proposition. If anybody is interested, I have certainly been on a number of committees that have debated it back and forth and it is a wider debate. But I think that as more schools go to it, I actually would be a bigger advocate of the more professionalism approach, because I think if you cram pro bono down too many students' throats, it is not something that is a positive experience for the client or the student. I think to go at it another way is pretty important.

I also see the practice becoming more interdisciplinary. I think that you talked about the problems of the poor – I would go back almost to a Bed-Stuy model and I think that we are coming full circle. That is, one-stop shopping. That in fact you don't necessarily just give the house – you get the job, you teach job training skills, and you have a center where people can safely leave their

children for the day if they're trying to work. Fordham has a good example of this. They have now partnered with the School of Social Work. Columbia now has a program with their School of Social Work. I think that the combined degrees are really going to pick up and move forward, especially in this area. I would argue that the J.D./M.B.A.s, while some people see it as you use one or the other, I would argue that if you did a study of looking at those lawyers in practice, in fact, if you're drafting a statute and you have a broader view of economics you are going to draft a better statute. I think that is especially true in this area. I think that you have also got, and this goes back to the disconnect issue, once people get into practice, they are disillusioned. They have no idea what practice is going to be like. People went to law school for varying reasons. You have a small number of people within each department in law firms who are your busiest. That has always been the case and probably if you could solve that, it would solve a tremendous number of problems. Then you have a band of people who are sort of medium busy. Again, I have a skewed view, I totally own that, I have practiced in large firms for my thirteen years of practice. But it is that middle group that I think is disconnected. My guess is that some of them came to large law firms because they had to pay off loans. That is a situation where I think we have to take an ethical look – is it ethical to put people out into practice with two hundred thousand dollars' worth of loans? Maybe we need to monitor our practice because I'm afraid that if we don't, other outside organizations are going to start monitoring it for us.

If you look back to globalization, I agree with Father Drinan that practice has become more globalized. I have gotten a lot of requests to go overseas and practice in overseas offices. The issue of wanting to go overseas is a lifestyle decision. But one other trend I also see happening is more and more from the human rights projects, like Amnesty International, who are saying, wait a minute, how can we sit there and talk to China about their human rights policy when you have all of these projects in the United States and all of these articles about the death penalty coming out and saying, "we've got to do something differently"? The number of people on death row in the past year, who came off of death row, is pretty scary. I am reminded of a case at Shearman & Sterling before I left where a judge in Texas said that the Constitution only guarantees you a lawyer, it doesn't guarantee you a wide-awake lawyer. That case was not easy to staff, as you might think in Texas, and that's a pretty sad statement. But I would think that

more and more law students could step up and become more involved. While I certainly want to keep an eye on globalizations, there are a lot of human rights issues here in New York. I think we're going to see a rise in environmental projects. One of the last cases I did at Shearman & Sterling was an environmental racism case. Environmental law is going to be back. Environmental law clinics – Tulane, for example – have been able to keep their clinics going in the face of cutbacks. I think that is a wonderful thing. I also think elder law needs to funnel itself into the law schools in a big way.

Then my last suggestion of what I would propose, and I know that people have proposed it before, is two-year programs. Law schools do not want to do it for the financial constraints because that third year provides a lot of tuition money. I would go to something like medical school in a way. A first-year internship that you talk to the law firms about funding as a training institute because your first year is really spent learning how to be a lawyer. So if they had say-so, and collaborated with the federal government on a pay-back program, I would love to see a one-to-two-year program after law school – a joint effort between law schools, law firms and the federal government – with a loan-repayment provision where they do public service to really meet the unmet needs of the poor. I think that's a win-win situation for everybody.

James Cohen: Would you compare this to a Peace Corps-type idea?

Bonnie Forrest: Father Drinan had talked a little about that. I think the Peace Corps is a good idea, but I have to tell you, at Shearman & Sterling, I was part counselor, part confessional, part everything else, because I was the place to come, the safe harbor as the pro bono attorney – I mean a lot of these people really enter the practice with good intentions, or “I’ll do this for two years, I’ll pay off my loans, I’ll get out, I’ll go do public service.” You get the whole golden handcuffs and your life circumstances change and they can’t do that. So the Peace Corps is a good option, but you have got to have a loan repayment provision. And you have to get your law firms to buy into it because otherwise you’re going to take money away from your law schools and the bottom line is, for most universities, law schools are the bread and butter, and they provide a lot of income. You are not going to do away with the third year, so create a fourth year and internship. Look, would students want to go to another year of school? Not necessarily. But I think actually they would get better training. Because right now they’re com-

ing out of law school and they feel ill-prepared. They get thrown into an environment where they are given memos to do for four years – there is a disconnect. In the fifth year they're supposed to be partnership material and start running for partner. The way it's structured right now isn't working, so why not harness that energy and talent, combine training with pro bono – I've seen it work – and come up with a program that really meets each of the group's needs?

Catherine Samuels: Thank you. Well, I had difficulty with the assignment, I have to admit. I was not always like this. But when first Jim said think ten, twenty years out, and Kris said think twenty years out, the future of public interest, the role of law schools, I just found myself getting stuck. First, I should say that I come at this issue without any expertise in legal education; none at all. I graduated, practiced for seventeen years, didn't think much at all even about my alma mater until I went to a foundation and started a grant-making program that was concerned with the legal profession. I started looking at the profound economic changes in the profession over the last twenty years, the extent to which professional values are being replaced with marketplace values, and how lawyers can better meet what we used to call their public responsibilities as guardians of the legal system of justice, and how we can all improve access to legal assistance for all Americans.

Now you start looking at those issues and we inevitably kept coming back to legal education. In fact, it was not only a logical entry point, it was just a place that we realized all of us were spending an insufficient amount of time for lots of the reasons that we are talking about today. We worked on a fellowship program, the NAPIL fellowship program, expanding that so we could offer more public interest jobs. What was the problem? Not the interest by graduates in the fellowship, and really it is similar to the type of program that you're talking about. It was debt. It was lack of jobs and it was debt. It is a terrific program. There are now more than eighty fellows and every year there should be another sixty to eighty that are already in that program. But already the very first year that the Soros challenge was in place, we are saying that the debt of these fellows is exceeding what we have in place to service it. The projections that were made by NAPIL were based on the projections that they have been making every year with the appropriate increases. The question is ten, twenty years, who is going to be paying for that? We are receiving grant applications from deans. One, in particular, a hundred million dollars, one law

school for loan forgiveness to support a significant percentage of graduates who wanted to go into public interest. One law school. A rich law school, by the way. But you'll be interested, that is sort of when we came up with the phrase "feeding the monster," which is the way we look at a lot of the loan forgiveness programs. So the reason I had difficulty looking, especially twenty years out (ten years was a little easier) is that I just found myself coming up against the cost of legal education over and over again.

So what I am going to give you is two visions: one pessimistic, what I call the medical profession model. And the other is more optimistic. Now, the pessimistic one is that market forces basically determine the future of public interest and they determine the future, in many ways, of the profession itself and our ability to train lawyers who can serve any one except those that are not wealthy in this country. Now under that, I did some math. My math is not great, I should tell you, but I based all of my calculations on John Kramer's work, which is solid, and the work of the Access Group, which is the private loan company. We have had some meetings at the Open Society on the cost of legal education. In fact, the figures that I am going to give you are fairly conservative because I could not figure out how to compound interest on ten, twenty years, so I just give them to you flat. So these are conservative figures.

If we look at increases in private law schools, an average of 18% a year, and we do not compound it, and at 30% in public law schools, because you may already be thinking, don't worry, public law schools will save us, CUNY will be there, what does it look like? Ten years from now, tuition for, I am assuming a three-year program, tuition alone without any of the living costs, will average \$170,000 in private law schools in ten years. If you add reasonable amount of living expenses you are at \$230,000 for a three-year program, and that is in ten years. If you actually force me to go twenty years out, we have tuition in private schools at \$92,000 a year, \$276,000. Public schools in twenty years, we are at \$53,200 a year, \$159,600 without any living expenses. Now, 75% of today's students are borrowing in order to cover some of the costs of law school education, which may be higher than many of you realize. It certainly was higher than I realized. The average debt is \$68,000 to \$70,000. That's just the average and that's before the interest. Ninety to a hundred thousand is really common, that's what we see in the NAPIL fellows over and over again. So many people are coming with college debts to law school, so before they get going

they have \$10,000 to \$20,000 worth of debt. Now, default rates for law school loans exceed all other professional schools. There are lots of reasons for that, but we'll see later that most of it has to do with income. It is at 15% to 18%. So we are being told that some of the private lenders are beginning to red-line schools. They look at your average LSAT scores and decide that that is somehow going to correspond to what type of income and success you are going to have as a lawyer. They are increasing interest rates for some law schools. They are requiring co-signers if you go to certain law schools. That is now, so you can just project it forward as you go. I figured that debt in ten years, let's say 75%, but it is more likely at that point if you have got a couple hundred dollars for costs, debt alone could be \$250,000 before interest when you get out of law school.

Now, let's look at the income side: lawyers right now, last year's graduates, the median, was \$41,000. Half made more, half made less. In trying to service an average debt of \$68,000 to \$70,000, you've got pre-tax income, you are paying 20% of your pre-tax income alone before anything else. I mean, some of you already know this, right, will go just the debt-repayment. That is today. The income side, twenty years ago, there was fair parity between people who worked in public interest in government and people in the private sector. It was really not a significant differential. Today, the median, which I said was \$41,000, that is \$30,000 for public interest and that's \$50,000 for private. Half of the people who are working in what we call public interest jobs are making less than \$30,000. NYU and Michigan studies have said that the differential between the private sector and either the public sector or public interest is the leading reason for decisions not to go into public interest. Now, if you take a look at how the gap, the income gap, should develop over the next ten to twenty years, remember the increase in the public sector is very, very small – in fact, not only is it small from year to year when you go in, if you take a look even in New York, what D.A.s and people in legal services have made after they have been in practice for ten years, you have got a very small amount of increase, because who's going to pay for that increase: foundations or the government? These are not likely sources of significant increases in compensation over the next ten or twenty years.

OSI is the only private national foundation that is providing any money for the legal profession, projects or initiatives, or for legal services. Now if you take a look at what the differentials

should look like in ten or twenty years, you are looking at maybe \$40,000 on the public interest side and maybe \$200,000 on the private firm side. So when I started just working out where we are going to be in twenty years and trying to figure out therefore what we should be thinking of the role of law schools, I found myself thinking, who is going to be financing legal education in the future? Who is going to lend students that much money? And to whom are they going to be willing to lend money, and at what rates? And who basically is going to be able to afford legal education? What institutions are still going to be able to afford any lawyers other than those that are going to be serving the global economy? Because I concluded that the government foundations are not going to increase the level of public interest jobs significantly enough to pay for the debt that will be incurred, I really found myself thinking that we are going to have many fewer lawyers who are going to be able to take public service jobs or serve lower, moderate, middle-income individuals, or anyone except for wealthy individuals and corporations. When you start looking at, therefore, what is the impact going to be on law schools, you start realizing the economics of that is similar. You're going to have an even more precipitous drop in the applications as time goes on, and there are some people who believe that we are really going to have a two-tiered educational system. We are going to have certain elite schools that are going to survive this. We will go from 178 to somewhere south of 100 law schools; the elite law schools will survive and they will train corporate lawyers, global lawyers and hopefully we will have enough money – I say hopefully – to support a small elite corps of public interest lawyers. The competition for those institutions will be ferocious and really will be for people from privileged backgrounds, or who receive the highest scores on whatever the standardized tests are at that point, or maybe there will be time to interview, I don't know. What will be left over will become trade schools, and trade schools will basically train those who are going to serve individuals. Public interest jobs and government jobs will basically come out of those institutions, which may not be all bad because we don't know what those institutions may look like. They may be very creative and innovative and some exciting things may happen. For-profit ventures, like Stanley Kaplan – I found myself reading this article, recently, in which Stanley Kaplan announces his for-profit Internet-based legal educational system. It seems that probably the for-profit enterprises are beginning to move into legal education, they say because costs and management is just very weak and so they are going to move into it and

that's probably going to continue. So that is my depressed version of what will happen if somehow we do not stop the train that seems to be moving at a fairly constant clip without a lot of attention to the fact that it is even happening. I was really pleased that there were references today to how significant this problem is, but it is very difficult to get anyone to really talk about what are the implications of how serious this problem is, and what it is that we have to do.

Now the optimistic view. The law schools start debating, seriously debating, the alternatives and different approaches for legal education in this country. They start creating exciting new models. They end the competition, which has become very much like CEOs of corporate America competing against each other for the same students, and they begin to collaborate and to partner. They talk about how they can share resources, share expertise, share facilities. How they can basically work together in the interest of the profession and the public.

Accountability: we started in some ways in our program thinking about the accountability of lawyers; I think we have become equally, if not more intense, about the accountability of law schools. Because unlike the profession, where clients are increasingly serving a role in terms of accountability, who is holding law schools accountable? The students come and go in three years. The relationship with students is really terminated at that time except to the extent that it is an alumni relationship, which is mostly fund-raising. So, accountability has become a major issue and in the positive, the optimistic view of what will happen in legal education over the next twenty years – given the high costs and the impact that the high costs have on the lives of their students, on the families of these students, on the access to legal education and on the ability of the profession itself to serve the public and the legal needs of the public – that what educational institutions will do is they will begin looking at a very different way of offering education. Even though I love Steve's new course, and it's very exciting and I can actually see how it could translate pretty quickly into tangible results, I think that one of the big problems is that over the last five or ten years with clinical education and with new ideas and demands, we need to do more in training for global practices. We need to teach mediation. We need to teach all of these things. What law schools have done is simply add on. They have added on more and more courses. Those are all added costs. There are more professors, more materials. No choices are being made. No-

body is saying, you know, I think we really have to integrate and a lot of what we are talking about into the course. I mean Deborah Rhode's pervasive method applies to so many of the things that we're talking about. So that in teaching a property law course or some other course, there is no reason why we have to have a separate clinical track and a separate case law track. We can actually begin integrating the methods that we are learning, or we think we're learning, into the same courses. We can make very difficult choices about what is really in the best interest of our students and what ultimately is in the best interest of the public. Everybody loves the two-year law school idea. It may be that it is a tough one, but I do not know that you could ever curtail costs enough unless you somehow address the third year and somehow translate it into a training experience where the compensation is available for the student. But I don't think we can afford to keep going and I think that's one of the reasons we have to make some very difficult choices.

In the optimistic vision, there are a few other things that are quite exciting. Professors are valued and promoted, first and foremost based on their teaching abilities. Scholarship is judged, at least in part, to the extent that it contributes to public policy. To the extent that it fills real gaps in our understanding about what works and what does not work in the legal system to the extent that it promotes legal reform and it promotes public interest. That it responds to the need of legal services communities and other communities who are out there fighting the battles every day and really do not have the resources or time to do a lot of what the academy can contribute and is trained to contribute. Schools become think tanks for the profession. That is a vision for the future. We do have more Internet-based training, but it is not necessarily for-profit, and it is used to provide greater flexibility and it is used often where you do not need to have hundreds of students in a classroom listening basically to a lecture, but you can provide that over Internet-based educational systems.

Law schools break out of their isolation from the profession and they begin partnerships with the bar and with the non-profit communities. They become full participants in the profession, which in itself leads to just enormous creativity and synergies. They re-envision their roles and responsibilities. I guess that is part of the vision for what happens with the legal profession.

The new models of legal education – I think a number of people talked about them today – and I think that is one at least that I

am seeing a lot of change in, or at least potential change, in how we teach legal education and a focus on multi-disciplinary approaches, and what is being called problem-solving approaches. The idea that you can integrate a lot of these approaches again into the core-curriculum. They do not have to be new offerings or taught separately or only to those who are in clinical programs. In that way, public interest, or what is in the public's interest (maybe I shouldn't say public interest) is again part of the way we learn torts, the way we learn contracts, a lot of the basic disciplines.

Professionalism training: I think that a couple of people mentioned the exciting possibility of moving and broadening what is now becoming more effective ethics training into a professional training. I think Father Drinan particularly talked about the history of the profession. Who are we as lawyers? What is our role in society? What is our history? Why do we have self-regulation? Do we still deserve to have self-regulation? What are the conflicts that every single student can expect to experience when they leave that law school, and I do not mean conflicts of law, I mean the conflicts between your values and reality and the realities of the profession. I think that really could have an impact.

Finally, I think in a new vision the public interest will have a somewhat different definition. I have become concerned that public interest is almost becoming a political term. There are those that do public interest and then there are those that serve private needs, and the full integration has not really happened. When you read the descriptions of what the legal profession was all about, what was the "calling." It was that all of us were to serve as guardians of the legal system. It was both to provide access to all Americans, but also in what we do every day, it was to be responsible for the administration of justice. And if we can re-integrate that back into the notion of who we are and what we are, then there will be a sort of a definition of all of us always working in the public interest rather than having those who theoretically do and those who do not.

Finally, in the optimistic view of the legal profession and law schools in particular, *U.S. News and World Report* will no longer publish the rankings. No one buys them anymore, the market is gone and certainly no one relies on *U.S. News and World Reports* to understand what is the value of particular law schools and the quality of their legal education.

William L. Robinson: The wonderful thing about going last is you get to hear all of the scintillating presentations that go before.

The downside is that you do not have anything left to say that has any originality to it. Catherine, you in particular stole a lot of what I had wanted to say. I do agree with you that here is a huge disconnect between the law schools and the legal profession, the society, our clients, our students; and a lot of that has to do with the economics of legal education. The figures that Catherine gave you were not pie-in-the-sky figures. They are nothing more than the same kind of figures that you would come up with if you looked at the cost of legal education when I went to law school thirty-five years ago, Ohio State being \$100 a term: it now being about \$15,000 a year. If you extrapolate that out, you are looking at the same kinds of figures.

Looking backwards instead of forward, what have law schools done with the funds as they watched cost of legal education (and it is not just legal education, it is education in general) escalate so incredibly – much, much, much, more rapidly than the rate of inflation? Well, we pay higher salaries. They are still too low, I say. We offer more courses. Unfortunately, these courses as often as not track the contours, the intellectual curiosity of the individual faculty member more than any careful assessment of curricular needs and how that curriculum is going to serve any of the several constituency that I have mentioned. The law firms then, especially the big law firms, are really angry at the law schools. They feel like we have taken their people, their young lawyers, run them into debt to the point where the law firms have to pay them an amount of money just so they can service their debt and have something left to live on. That in order to pay that, they have got to then charge the client an outrageous amount of money that means the client will no longer tolerate post-law school training. They have got to work that young lawyer to the point where he has no life anymore, and fairly quickly sours on at least the firm and perhaps the profession. So there is a lot of anger directed at law schools from the profession. If you just trace it out for yourself and fill in the blanks you know that the same kind of anger is out there against the law schools to the extent that they can focus on us, but the profession from other sources as well. I am talking about law schools for these few minutes, and so then I can say that the law schools have effectively defaulted on one of our most fundamental responsibilities – the fundamental responsibility to have the vision that goes into the optimistic view that Catherine talked about to provide the answers then, or at least the questions, as to what is the role of lawyers in a twentieth-century democracy? How do we go

about achieving the goal of a more just society in our democracy? What are the tensions between the various principles, democratic principles, majority rule – minority rights, to name a couple, and how do we sort those out?

The law schools have frankly defaulted in general; and most importantly, have defaulted with respect to the question of public interest. There have always been lawyers who put their shoulder to the wheel and took on the dirty, gritty work of doing what we now call doing public interest law. But public interest law as we know it is a relatively recent invention. It got started basically in the early, middle 1960s, acquired its name “public interest law.” A number of law students from various law schools banded together, went off and did various kinds of public interest things. Outside the law schools, the notion of legal services to the poor was invented and developed. Edgar Cahn was a leading designer and advocate of legal services to the poor,⁴ but where were the law schools? Edgar then was not a law professor. But we did develop this movement for public interest law. The law schools by and large were not participating. As another one of our speakers pointed out, even now, basically you have got some ten to fifteen percent of students at most law schools taking clinics. Ten to fifteen percent of students at most law schools participating in what we can broadly describe as public interest or pro bono work. I think then that one of the first challenges for the law schools is to get on board, to become participants in defining public interest and the role of lawyers in pursuing public interest practice in the twenty-first century. I believe there are encouraging signs that they will be forced, if not willing, to do that. I am greatly encouraged by the enclaves that are being hosted by state bar associations, beginning with Virginia and now being hosted by other state bars under the leadership of the American Bar Association very often.

The questions that we have been posing then are brought to the fore at those enclaves. As we move forward to answer those questions, then it seems to me that there are two dimensions that we are going to have to make progress on. One, is the broad question of values. I think the broad question of values goes beyond just teaching legal ethics, but goes to the broader question of sorting out the basic values of society and lawyers playing their unique role in helping society reflect those values in laws, in administration of justice, so we can indeed move closer to that elusive goal of

⁴ See Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964).

having a more just society. It is that emphasis on values that I think we have to see more from in the law schools.

The second aspect of it involves the teaching of skills. Here too, law schools are going to have to adjust very dramatically in order to meet the needs just to teach lawyers the skills that will be needed in public interest law. I think for at least the next twenty to fifty years there will in fact be a multi-tier or at least separation in terms of who does basic public interest work. There will be the big, mega-firms and they will be driven by market forces. They will occupy ten to fifteen percent of the lawyers in the country. When we talk about the legal profession, we are not talking about the big firms. The overwhelming majority of lawyers in America who are providing representation are not ever going to work at big firms and they did not go to one of the preeminent, wonderful, prestigious law schools. They went to one of the ordinary law schools in America, which are pretty darn good at this point, and they are providing basic representation to real people in everyday situations. That is going to mean that we are going to have to train them in terms of their doing public interest work a little differently.

Technology is going to continue to develop, the speed at which we do things is going to increase dramatically; so there will then be a need for things like distance learning, and much more emphasis on providing technical skills, and by that I'm referring to technology. There's going to have to be a continuum in legal education. Law schools are going to have to end the practice of graduating and then stopping their education. Education is going to have to go on into the practice. I see one of my wonderful colleagues, Rick Rossein, here. He regularly gets telephone calls from his students asking him to provide them with updates, and guidance after they are into the practice. I think law schools are going to have to develop a capacity to do that for their students: additional training in the use of alternative forums. I do not know how you do this next thing consistent with the cost problem, but there is going to have to be an increased emphasis on clinical legal education so that students receive hands-on training with respect to skills, and personal involvement with people and their problems where they will learn under our guidance how to deal with the values problem. You see when we teach it in law school, too often, it is a black and white problem. When you get out into the real world, ethical concerns, crisis of values don't occur in a black and white context – they are very gray. It is very, very difficult to figure

out what is the right thing to do. For myself, I never felt that it was particularly courageous for me to do the right thing once I figured out what it was. All too often I couldn't figure out what it was, what was the right thing to do. And law schools, it seems to me, will need to do more clinical training in order to help people sort that out while they are still in our nest, in our hands. Finally, it seems to me that law schools have to, from day one right straight through the time they cease their relationship with their students, continue to preach the idea that law schools are not training lawyers: they are preparing advocates for justice, and preach that, preach that, preach that, preach that.

James Cohen: I was surprised listening to this discussion, which I found quite interesting, to only hear two references to technology – one, really through the back door – I understand that Kaplan is moving into the world of the Internet to train lawyers, and the other, Bill, you described about technology. I wondered what the panel members thought about how technology would impact ten or perhaps twenty years down the line on this particular subject matter? If we could have a couple of brief answers from the panel and then I'm going to hand it over to the audience, because I know a number of people here and this would not be a situation where when I stop talking, we have silence.

Stephen Wizner: I think in order to address the whole issue of accessibility of justice, justice needs to be made cheaper. I think one of the goals of technology ought to be reducing the costs of providing legal services. I think there are all kinds of ways, especially in routine legal matters in which technology can assist in that way. But I would just like to repeat my caution that in the pursuit of technological advance we not lose sight, as Bill says, of the values. Why are we pursuing technological advance, because technological advance can be put to any end that you want it to.

James Cohen: Right. And I think it's fair to point out that risk. But I think it could be something positive.

Deborah Rhode: Yes. I'm teaching a course this semester on delivery of legal services. One of the issues we focused on is the role of technology, and I think in the interest of getting further along toward audience participation, why don't I defer to Catherine whose institution has funded a number of these projects and who could describe what I think are useful directions.

Catherine Samuels: The legal services community in particular has just been extremely creative in the use of technology. We have funded a number of projects and it's moving very quickly. So

in terms of delivering information and training, and providing support, it opens your mind to a whole other way of relating to how to provide justice. Now, what is the relationship between that and legal education? And this is where, not being a legal educator myself, I'm afraid of what I may say because perhaps I don't sufficiently value the participation of an individual professor in communication of education and values. But I tend to think that technology will be equally revolutionary and can be equally positively used, if it's used properly, in the area of legal education. It can greatly reduce cost. You can participate through technology. It seems to me it can be enormously flexible, especially for students who are trying to juggle a number of different things. There's so much information that is simply there. You're sitting there taking notes so much of the time you're in law school. So I don't feel as if I have the scheme and I'm not enough of the legal educator to imagine how it can be used. There is enormous anxiety when we brought it up at the one meeting we had. It went to extremes, it was either everything should be through distance learning and oh, my God, what's going to happen to all of us if that happens – instead of a reasonable use. NYU is already using it in continuing education. There is a fear that we're going to lose everything that is really valuable about legal education if we actually allow it to penetrate into the traditional realm of professors and I don't think – people like you are probably better able to speak to that.

James Cohen: Fear of losing one's job. Does anyone else have anything to share?

Bonnie Forrest: I guess I have a practical story to share. A couple years or so ago now, three people were killed in Colombia; and as recently as the day before they were killed we had e-mail messages saying they were okay. And to be able to deliver on-site like that and to collaborate with people who are involved on the spot in human rights struggles around the globe on a real-time basis is something that's phenomenal. I mean, to be a part of that is amazing.

I also sort of think that, again, one of the biggest issues is the middle-class access to legal services. You know, I joke a lot of times that I couldn't afford myself a large law firm, and I think that's really true. Where you have a whole middle class (especially with elder law this is becoming an issue, where people can't afford lawyers) I really can see, although some states have put the caboshes on it, 1-800-LAWYER popping up and over the Internet, getting access into clinics over the Internet, on real-time for people who

can't come in for one reason or another. I do see that starting to pop up. And also, that goes hand-in-hand with more legal insurance plans. That's one of the things I did for Shearman & Sterling, we were inundated by calls from support staff so we got more legal insurance plans. And what does that mean? Can students somehow be integrated into that or somehow serve the needs of the population in a different way through the insurance plan? I don't know, I think those are creative things to think about for the future.

James Cohen: Father, any comments on technology?

Robert Drinan: Well, in the third world I think this is enormously important because the people we will see on CNN about their legal rights. Furthermore, mothers will see that, yes, the inoculations their children should have are available. Now I would hope that with the education of all the masses that there'll be more pressure on all of us to give legal services. The American Bar Associations did a wonderful thing in CEELI, in the countries of Eastern Europe. And those people now as never before recognize that they have rights and they have not been granted those rights during the Communist period. So CEELI is really a moral revolution in those countries. And I dream (and I tell this to the leaders of the ABA) why don't you go into some African countries and educate people and get whatever bar does exist there and communicate a sense of injustice in the people.

Frank Askin, Rutgers School of Law:⁵ From my perspective, the problem with public interest law in the twenty-first century is not so much with the law schools as it is with the rest of the world, for reasons that some of the panelists have already commented on. Over the past thirty years at the Rutgers Constitutional Litigation Clinic, I've probably helped train some twelve hundred law students to become public interest lawyers. The problem they face is how to practice public interest law. Their biggest dilemma is how to find a public interest job. Some of them do, a small percent; maybe six percent, eight percent, ten percent of my students. Some of them have gone to set up private law practices where they actually practice mostly civil rights and public interest law, living on court-awarded fees. Some of them have gone into private practice and do the occasional pro bono case. But for the vast majority, it is very difficult for these students who wanted to be trained to be public interest lawyers and practice public interest law, and some-

⁵ Professor of Law and Robert Knowlton Scholar, Mr. Askin founded the Constitutional Litigation Clinic at Rutgers School of Law - Newark in 1970.

times I feel I'm training for a non-existent profession, I must confess. Now, Catherine Samuels from the Open Society, I think you're doing great work and trying to expand the public interest community. But it's difficult, and I think eventually, I hope at some point we're going to have to figure out how to get the government back into the funding business. Ultimately, that's where the money is going to have to come from. I think it's something that we have to keep in mind. And legal services are getting less and less funding, the back-up centers have been destroyed. New Jersey once had a public advocate, but that was eliminated in the last few years. So there's less and less opportunity.

James Cohen: I think that's right, and one of the questions that certainly came out through the discussion is how your students can't devote all or much of their time in that pursuit because of debt. And much of that debt might be law school.

Stephen Wizner: I think that we should criticize the premise that what goes on law school has anything to do with what goes on in the legal profession. And that's part of the critique also. I mean, in critiquing your premise that there ought to be some sort of resonance or connection between what goes on in law school and what goes on in the profession I also want to critique law schools who don't see themselves as part of the legal profession and don't see themselves as part of the legal system. They ought to and I think we ought to figure out how to make that happen.

James Cohen: I think it won't come as a surprise to many in this room that many people who teach law, teach law because they don't like practicing law and may even disdain the practice of law.

Deborah Rhode: What gets rewarded in the legal academy is fury and thinking about thinking. I'm reminded actually of a story once where a state attorney general was asked some sort of mechanical question during a Supreme Court argument; he was kind of clueless about what the answer was, there was a brief pause and then he said, "you know, I'm sorry, Mr. Justice, I have no idea; I, too, went to Yale." A legal education is no guarantee that you can answer those tough questions in practice and I acknowledge that. One of the first things I learned in the Yale legal clinic was how difficult some of those questions are, but also how removed most of my legal education; you know we were talking about Hegel, not where you find the form.

Stephen Wizner: And this pervades the law schools in all directions. The so-called non-elite law schools aspire to be more and

more like the so-called elite law schools, which is to say more academic and less professional, more removed from the practice.

Eileen Kaufman, Touro Law School: Consistent with this last discussion is one piece of the problem that we haven't really touched on: the role that the bar exam plays as an obstacle to admission to the bar to so-called non-traditional law students, many of whom would be interested in a career in public interest law schools but were precluded from entering the profession by the bar examiners. Of course the bar exam is driving all sorts of decisions within the academy, curriculum, who gets to teach and "who gets admitted to law school." I think that reforming the bar exam, which most of us agree has nothing to do with the practice of law, has to be a proper solution.

Catherine Samuels: I don't know that I ever touched on this, I think I skipped over this piece – but I think that what is triggered in my mind is the use of standardized tests for admission. It's part of the same problem and the idea, at least what I've read recently, is that LSATs have a seventeen percent predicted rate, and it's predicted for what? First-year grades. After that, nothing. We know that they have a discriminatory impact and yet, here we are, still in law schools using that and then it's basically the most important factor in *U.S. News and World Report*.

William Robinson: You don't have to question the motives of people at big firms in order to be correct in your assessment that big law firms are not the answer to the needs for basic legal services on questions that we can correctly describe as public interest issues. If they all devoted a hundred percent of their time, there ain't enough of them. We distort our discussion when we keep talking about big firms and their pro bono contribution, which I admire. I was director of the Lawyers Committee for Civil Rights Under Law, and I solicited work from a lot of big firms and they were very generous. Cravath, Swain & Moore for example, never told me no. But, if you're talking about civil rights and you're looking at the needs of just African-Americans, forget about all the other people who have civil rights issues, the pro bono time just wasn't going to cut it. What we've got to do is find an effective way to get a larger pool of lawyers being able to effectively to bring their time and talents to bear on the public interest problem. Law schools have a role. So for example, Frank, one of the things we did at D.C. School of Law is we didn't teach the constitutional litigation seminar. Instead we taught a juvenile seminar and made as a component part of it an emphasis on special education and so the

juvenile, we would assert, shouldn't be adjudicated in the juvenile system because the educational system had failed him. He needed and deserved under the law a special education program which the judge would often approve and then the government has got to pay for it. One of the things that we've got to do more effectively then is look at the legal fees that are available, where will the government now pay for it and figure out strategies and tactics so that we can use those funds to support our public interest work. The government is not going to go back into the business of massive funding of the legal services office. We can save it, but look, we've got to adapt. We've got to change. We've got to become effective, stay effective as times change and the challenge becomes different. So one of the things that law schools have to do in training our lawyers for the future is train them how to be flexible. Re-train yourself, because the law is going to change, circumstances are going to change; and in the end when there are tough times, when you don't know the answer, that's when you call upon your character. That's when you rely on your values. And I keep coming back to, then, that we've got to train advocates for justice and teach people how to see themselves in terms of that grand value.

Robert Drinan: One option that unfortunately has been lost in the country is that of Wisconsin Adjudicare. Years ago the local bar said that we will get x amount from the state and that any person with legal needs on the civil side goes to an administrator, and that's assigned to a lawyer. It worked very successfully. The lawyer gets roughly fifty dollars an hour instead of a hundred or more. The lawyers themselves at the local level should collaborate with the law schools and the government and do something. I think that the lawyers at the local level in Omaha, smaller cities are so embarrassed that these people are not getting legal aid that some stimulus from the law school or the administration of justice, I think could create something very, very creative.