Volume 3 | Issue 2

Summer 2000

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Recommended Citation

Michael A. Cooper, Charles J. Ogletree, Robert F. Drinan, Elaine R. Jones, Margaret Fung, Bob Herbert, Deborah L. Rhode, Beverly M. Smith, William G. Paul, Charles Halpern, Kristin B. Glen & Robert E. Bank, *Delivery of Legal Services to the Poor in the Twenty-First Century*, 3 N.Y. City L. Rev. 191 (2000).
Available at: 10.31641/clr030205

Delivery of Legal Services to the Poor in the Twenty-First Century

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ROUND TABLE DISCUSSION

THE DELIVERY OF LEGAL SERVICES TO THE POOR IN THE TWENTY-FIRST CENTURY

Michael A. Cooper, Association of the Bar of the City of New York: Good evening. My name is Michael Cooper. I am the President of the Association of the Bar and I want to welcome you all wholeheartedly to this evening's program, although you may consider, after having meetings that lasted for more than two hours, that a welcome is a little belated. The topic of this conference, "The Delivery of Legal Services to the Poor in the Twenty-First Century", is of immense importance to this bar association, to other segments of the organized bar, to our profession, and to society as a whole. It is important, in particular, to those of our neighbors who cannot afford to retain a lawyer to help them navigate through the maze of statutes and regulations that affect their lives. The growing number and complexity of laws and regulations affecting the poor, the paradoxical increase in the number of poor persons in a seemingly increasingly affluent society, and the erosion of governmental funding supporting the delivery of services for the poor are working profound changes in the legal landscape which they confront. These phenomena call on us to make corresponding changes in the methods that we employ to deliver legal services to the poor.

There is an increasingly pressing need for collaboration and for cooperation. In a way, it is symbolically fitting that this program is being co-sponsored by the City University School of Law and by three bar associations: the City Bar, the American Bar Association, and the New York State Bar Association. It is vivid proof, if you needed proof, of the importance of this subject to the other two bar associations, that we have with us this evening the President-elect of the ABA, Bill Paul, and the President of the New York State Bar Association, Jim Moore. I also want to pay particular tribute to, and give thanks to, the people who have put this conference together. Specifically, Kristin Booth Glen, who is here wearing two hats as Dean of CUNY Law School and Chair of the State Bar Committee on Public Interest Law. To James Cohn, John Kiernan, and John Amadeal, who are the Chairs, respectively, of this Association's Committee on Legal Education and Admission to the Bar, the Committee on Pro Bono and Legal Services, and the Commit-

tee on Symposia. I also want to thank the ABA Standing Committee on Professionalism chaired by Father Robert Drinan, and Judge Judith Billings, Chair of the ABA Standing Committee on Pro Bono and Public Service.

The panel discussions in which many of you participated this afternoon will now be followed by a round table discussion among fifteen participants. The formidable task of moderating that discussion will be undertaken by Charles Ogletree, who is the Jesse Climenko Professor of Law and Director of Clinical Programs at Harvard Law School. It is a formidable task, but don't worry, he has done this kind of thing before. Without further ado, I give you Professor Ogletree.

Charles J. Ogletree, Jr., Moderator: Thank you very much. It is a pleasure being here at the City Bar Association to talk about the future of public interest law. We have assembled one of the most distinguished and experienced groups of individuals who have, in one way or another, had an impact on this field and will have an impact on its continuing legacy as part of our profession. Over the course of the next hour or so, they will give you their own candid unrehearsed views about the legal profession, in particular public interest law, and may agree or disagree about its goals, its direction, and its future. But they will not be silent in expressing to you how important it is that we focus on public interest law.

Let me, on a personal note, say that I am particularly delighted that we are doing this on the occasion of the fifteenth anniversary of the CUNY Law School. With all due respect to my legal institution and others, in my view CUNY Law School is the premier legal institution in the country and in the world for training lawyers who are committed and dedicated to the public interest. If we do nothing else, we need to celebrate a school that sees as its mission to go after those individuals who come to law school, who train for three years, and go back in the community and dedicate themselves to the public good. So on behalf of all of us, I think we should congratulate CUNY Law School and its very distinguished alumni.

Father Drinan, let me start with you talking about the future of public interest law, and I am not going to you because of your age, but because of your experience. I want that to be clear. You have been involved in the profession long enough to remember what our society was like before *Brown v. Board of Education*.¹ You have

¹ 347 U.S. 483 (1954).

been involved long enough to know what it was like before we had *Gideon v. Wainwright*², before we had the doctrine that came through *Mapp v. Ohio*³, and before we had the *Miranda*⁴ rules. There was a different society. Generations of lawyers fought in the Thirties, Forties, Fifties, and Sixties to try to create something to protect the public interest. Can you share with us your view—how important were those lawyers and how important were those early victories in setting sort of a table center of public interest law? What have we learned from the past that helps us today to think about public interest law?

Robert F. Drinan, S. J., Georgetown University Law Center: We have learned an immense amount during the past thirty or forty years. And I, too, want to commend CUNY. This is an institution that makes us all proud to be lawyers. They have revived and restored the real concept of a lawyer as an advocate for justice—someone who is very angry when he sees human rights denied.

Frankly, we should think tonight about the globalization of law. We have had these victories that you have mentioned. We somehow have to translate them into that third world out there where all of these people live. We are only four percent of humanity in this country. We control forty percent of the resources. And now it is the destiny and providence of this country that we have to export those to a whole new world. We should remember, and if you remember anything from tonight my dear friends, remember that 35,000 children die needlessly everyday—17 million. That is correctable, easily correctable. We should know that 800 million people are chronically malnourished, 900 billion dollars is spent this year and every year on armaments, 28 million people are soldiers, and over fifty nations have no semblance of democracy. I think that, in the generation to come, it is the legal profession in America that must concretize human rights. They are now a part of international customary law. The rights of economics and political equality are there. And we should say that it is the new destiny of 800,000 lawyers in America to refine and re-consecrate ourselves to their implementation.

Charles Ogletree: Thank you very much. Ms. Jones, let me ask you, you have read everything that they have ever written. And you have, in a sense, continued the legacy of Charles Hamilton Houston and Thurgood Marshall, who walked the streets and went

² 372 U.S. 335 (1963).

³ 367 U.S. 643 (1961).

⁴ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

to court. It was the most difficult time imaginable in the Thirties, Forties, and Fifties trying to change America's view about race. Now we are in the Nineties and you are still fighting that battle. What is the future of public interest law, Ms. Jones?

Elaine R. Jones, NAACP Legal Defense and Education Fund: Just listening to what Father Drinan has said about the globalization of these issues and taking what we have learned abroad and shining it—that is okay up to a point. But our problem in this nation is that we are losing ground. We should have made progress to the point that we are not incarcerating 1.8 million people in the United States. Look at the front page of *USA Today*. We had 744,000 incarcerated in 1985, and we have more than doubled that fifteen years later. We are losing ground in the principles of the Constitution and what we set forth in these various statutes. We pay homage to a lip service, but when it comes to practice, we have forgotten the meaning of *Gideon*—that people are supposed to be represented. What we are doing is sending people off to death row, ignoring egregious constitutional violations.

Today I looked at some of the minutes of the board meetings of the Legal Defense Fund. It is separate from the NAACP. When I looked at those minutes, Judge Spottswood Robinson, who recently died, who served as Chief Judge of the United States Court of Appeals for the District of Columbia, was an attorney, a corporate attorney, and a regional attorney for the Legal Defense Fund back in 1951. Today, I looked at the April minutes of the board and he had written to the board asking for a raise. At that time, he was earning a sum of \$6,000 a year. The board looked at it and increased him the princely sum of \$600, totaling \$6,600. That was a unanimous vote. That was 1951. I looked at the minutes seven years later, through the *Brown* period. In 1958, he came back. He had been serving at that same \$6,600 for seven years. He came back and then asked for another increase. Now lawyers at that time, I mean forget the *Brown v. Board of Virginia* case, for a lawyer's fee of \$6,600 was quite something.

But what the problem is now is that we cannot expect lawyers in the public interest to work for that. It is not fair. Students and young lawyers are coming out of law school with debt, with expenses, with loans. We have got to find a way for them to do this work and to pay a decent wage. So, it is constant work for an organization like mine to look for the resources. The work is there. The students are there. The young lawyers are there who are will-

ing to work. However, we have to be able to have a budget that can sustain the work that has to be done.

Charles Ogletree: Let me ask you, Ms. Fung. The Asian American Legal Defense and Education Fund, like MALDEF, the Mexican American Legal Defense and Education Fund, are following the steps of the NAACP Legal Defense and Education Fund. The public interest arena has changed. It is no longer black and white. It is no longer restricted to our borders. It is global. It is international. It is civil rights and human rights. How has that affected you and what do you see as the future of public interest law from your point of view?

Margaret Fung, Asian American Legal Defense and Education Fund: I think we are in a difficult period of time right now where there is a serious attack on civil rights, where issues of racism affecting people of color are not recognized. There is a sense that maybe discrimination has been eliminated—that we have gone far enough. That is what explains the attacks on affirmative action and the attacks on individual rights. But, the Asian American Legal Defense Fund, for example, was founded twenty-five years ago. The model of the NAACP Legal Defense Fund and the civil rights lawyers who fought the peoples' movements to try to improve the situation for everyone here in this country inspired us. I think it is because of these recent attacks on civil rights that many younger lawyers, especially from the Asian American community, are inspired to go to schools like CUNY Law School, to figure out how they can do public interest law and serve community needs. I see this in one sense as a very bad political climate, but one in which many young people and young lawyers will find a more important role for themselves to play.

Charles Ogletree: Mr. Herbert, let me ask you. You have been a frequent commentator on the social ills in our society, and although you don't spend all your time talking about issues of race, you do talk about injustice. A lot of what you write about for *The New York Times* deals with the roles of lawyers in our legal system. There is a lot of pessimism about how bad things are. What is your view of the image of the legal profession, and in whether or not lawyers are doing a good job letting people know that there is a crisis when we talk about public interest law?

Bob Herbert, *The New York Times*: If you think about it from my perspective, the image of the legal profession among the general public is lawyers working for powerful corporations. In the minds of many people, lawyers are getting too big of a percentage

of these gargantuan settlements or are going to bat for criminals and getting them off on this technicality or another. If you look past that and try to think about the image of public interest lawyers, I think it doesn't exist. Public interest lawyers are essentially invisible. People do not think about them. The general public doesn't know what they do. Even if I do stories, for example, on people falsely accused of crimes, the focus is on the individual. If someone manages to get off of death row, for example, the focus is on that case. If you prove that the person is innocent, the focus is not on the attorneys and the years of legal work that may have gone into righting this injustice. If you talk about the tens of thousands of young people who are searched by the police illegally in New York City, for the most part until recently, people did not even know that was occurring, much less becoming aware of the rights of these individuals and how lawyers might be brought into the situation to secure those rights or to guarantee those rights.

I think that what happens as this invisibility occurs is that your enemies have the high ground. They have the military advantage, if you will, and the idea is to cut budgets. The idea is for them to say, "Lawyers are making too much money so let us see what we can do to pay you guys even less. Let us shorten the appeals process because too much time is being wasted and all you really are trying to do is get criminals off the hook anyway." I think that you really need a public relations counterattack to explain to the public the importance of the work that you do and the importance to the public of securing the rights that seem like some kind of an abstract issue that doesn't really affect the lives of most Americans. I don't know how you are going to go about doing it because I know that you are overburdened with work and, as Elaine Jones has said, you are short of money. I think it is a tough job. But I think it is an important one.

Charles Ogletree: Professor Rhode, let me ask you. You are responsible for training the future generation of lawyers. You teach professional responsibility, telling lawyers about ethics and how important that is to their role in society. What do you see as the role of law schools and other legal institutions in trying to persuade law students, if they have to be persuaded, that public interest law is important and a critical role that they can play in our future?

Deborah L. Rhode, Stanford University School of Law: Not enough, is the short answer to the question. And to just follow Bob Herbert's point, I think the difficulty is not just one of public rela-

tions but also the reality of lawyering as it is practiced in the world out there. We don't talk about that very much in law schools. In theory, of course, we say that we offer instruction in professional responsibility and the ABA so requires. In practice, it is marginalized. And what we reward is thinking about thinking and we really haven't made much of an effort to integrate issues of public interest, access to legal services, and the responsibilities of the profession into the mainstream of the curriculum. When I went to law school twenty-five years ago, there was graffiti on the restroom walls that read, "We came talking of justice. We leave talking of jobs." I went to law school in the aftermath of reading *Simple Justice*⁵ and thinking that we were there to make change in the world. I don't think that enough students either come into law at this point with that degree of motivation or are reinforced while they are in law school to think of that as a primary career focus. And for those who cannot sustain full-time public interest careers, we do not do nearly enough to reinforce the values of a significant commitment to pro bono opportunities. Less than ten percent of schools require any pro bono service. Most schools that have voluntary programs attract just a tiny fraction of the students to participate. There is just a huge gap between our rhetoric and our resource commitment. We are not going to make a significant change in the profession unless we start from the ground to try to build cultures of commitment within legal academia.

Charles Ogletree: I want to go to Professor Beverly McQueary Smith, then to Mr. William Paul. They are both presidents, or presidents-to-be, of the two national bar associations: Professor Smith of the National Bar Association, the largest African-American Law Association, and William Paul, the incoming president of the American Bar Association. An interesting, and I think historic, thing happened this year. There was a joint publication of the National Bar Association report in the ABA journal.⁶ It was wonderful because, prior to the first time in my history, there was a black woman on the face of the ABA journal. That is one point. But even beyond that, the stories in there talked about two different organizations trying to come closer together. There was also something that was tragic about the profession. White lawyers and African-American lawyers have very different perceptions about the profession—about opportunities, discrimination, and mobility. Worlds

⁵ RICHARD KLUGER, *SIMPLE JUSTICE* (1976).

⁶ *Race and the Law: A Special Report by the ABA Journal and the National Bar Association Magazine*, 85 ABA Journal (1999).

apart. And so, if the profession is so divided based on issues of race, how can we persuade the public that we really are trying to do something to change? Professor Smith, your response.

Beverly McQueary Smith, National Bar Association: Well, number one, I agree with Robert Herbert that we really do need to work on our public image. But apart from that, I think there is a serious fundamental question that we have to reckon with. Elaine Jones has already told us that we are losing ground. Law students leave school saddled with so much debt for their legal education and their undergraduate education that, even if they want to pursue public interest careers after law school graduation, they simply cannot afford to do so. I read statistics recently which suggested that a person should be planning for their retirement at the time they are paying off their college debt. I advocated two weeks ago in Washington, D.C. that, for the people who have the brains, education should be free. It should be free all the way through the college level. It should be free all the way through the law school level. I did this at a meeting of the Justice Department. That is number one.

I also think we have a problem with respect to moral suasion, meaning the United States in terms of its global image. Yes, we reinstated the death penalty here. All of the data suggests that we *cannot* administer the death penalty in a racially non-discriminatory way. Articles in the ABA-NBA joint magazine say the same thing. I have advocated, since the beginning of my presidency, that we must repeal it. Again, *all* the evidence indicates that we cannot do it in a racially non-discriminatory way. If it were not for the lawyers who are working in the public interest on death penalty inmate cases, and some journalism students and a journalism professor in Chicago who are doing this kind of work on their own, we would have people on death row who are in fact executed when it is absolutely unlawful. Because of the position of the United States with respect to the death penalty, we have lost moral ground with respect to the advocacy of human rights internationally. When we are looking at public interest law and our position nationally and internationally, the United States is losing ground.

With respect to Deborah Rhode's point regarding how we inculcate our students, if you will, because I wear the other hat of being a law professor at Touro Law Center, I also question how we can encourage law students to be invested in the public interest and to be inspired to do public interest work. At Touro Law Center, we have a public interest pro bono requirement. So before

a student can graduate, he or she must fulfill those two prongs of the test. Also, every year we provide public interest lawyers-in-residence programs where we invite star practitioners in the field to talk with our students over a two or three day period about the opportunities in law. Actually, Danny Greenberg is one of our scholars-in-residence. Elaine Jones has also done it. So I am very proud to say that we encourage law students to be invested in the public interest by providing role models. We give students the opportunity to experience the gratification of doing these kinds of cases.

You can also work as a bar leader to change the dynamic about what it is that volunteerism in the law means—because you cannot be just about making money. You also have to give something back to your community. We have in the National Bar Association an enabler law school program which is one of the ways that we try to do that. We try to close the massive technology gap that exists for our kids in public schools that are not funded. Here again, we talk about the law not working for black students the way it works for white students. The funding base for public education means that students who go to schools in Jersey City and Newark do not get dollar for dollar spent on them in the same amount as students who go to school in Millburn, New Jersey. In equity, that results in a technology disparity. The technology gap must be closed. So all through the line, from elementary school through college, we must broaden access. We must give people equal educational opportunities. We must make it possible for those who have the will and the skill to do public interest work, to get compensated for it and not be saddled with law school or any other kind of educational debt.

Charles Ogletree: Mr. Paul, what about the Bar? What is your view of the Bar's mission, and can we accomplish that mission by increasing the significance of public interest law in the legal profession?

William G. Paul, American Bar Association: Well, we can certainly make progress. It is very difficult to achieve 100% of what we want to achieve. But I don't know that I would agree that we are losing ground. I would say that I don't think we are moving as fast as we should. A principal initiative of the American Bar Association this coming year is going to be to improve racial and ethnic diversity in the legal profession. We are losing ground there. We, in the legal profession, are only represented by seven percent of racial and ethnic minorities whereas the general population is

thirty percent. The general population is moving toward fifty percent, whereas the legal profession is crawling toward higher numbers and at a much lower rate than the general population. This is a very dangerous situation. It has long-term downside potential that is enormous for our system because the legal profession is the connecting link between the rule of law and society. If the legal profession does not reflect society, then the connecting link is weak.

How does this relate to public interest law? Well, in a very large way. We are lawyers, the guardians of the rule of law. The cornerstone, the foundation, the law we are talking about here is the rule of law. And public interest lawyers make the rule of law work. For every cause that needs to be represented, there must be a champion and there must be a lawyer. Our system permits that to be a lawyer. The role of the Bar Association, which is the question you asked me, is to make it so that this heritage—and it is a heritage—has viable life in the future and that our law schools and our young lawyers are inculcated with this philosophy and this culture.

In my view, public interest law is stronger when institutionalized, and we should do all we can to foster, nurture, and encourage entities like the Legal Services Corporation, which unfortunately has to fight for its life in every funding session. When public interest law is institutionalized, we get the most efficient, most cost-effective work. But even when the power of the institutions is weakened, and it does ebb and flow, within the mind and heart of every lawyer there must be a piece of that lawyer dedicated to public interest law. And the role of the American Bar Association is to make certain that this dedication occurs and to make certain that we never lose it.

Charles Ogletree: Let me ask, if I can, Charlie Halpern and Dean Glen. Mr. Halpern, you were there, and CUNY was part of the epicenter to create public interest law. What was your vision when you talked about a school that would be almost entirely dedicated, if not entirely dedicated, to the public interest? What did you have in mind? And Dean Glen, I would like you to talk about where CUNY is now, and where it is going.

Charles Halpern, Nathan Cummings Foundation: It is a long time ago, but we sat around one day before we had any students. I was told that I had the ideal deanship: no faculty, no students, no alumni.

Charles Ogletree: No money?

Charles Halpern: No, we had money, actually, so that made it . . .

Charles Ogletree: That is ideal. (*Laughter.*)

Charles Halpern: But that only lasted for a year and, in fact, things got much better when we became a law school with a faculty and students and alumni. However, it was simpler then. And a small group of us in that first year sat around and thought about what the motto or logo for the law school should be. It was an effort to encapsulate what we thought we were about in starting a public interest law school. The phrase we used and agreed upon was "Law in the Service of Human Needs." It is surprising to me how well that has held up. I think a more elevated ecological sensibility now raises some question about human needs alone: "Law in the Service of Human and Non-Human Needs," I think, Barry [Commoner], you might agree, would be preferable. What is striking is the fact and to some non-lawyers this may seem self-evident: "Law in the Service of Human Needs." Well, of course that is what it is all about, as Bill [Paul's] comments suggest. That is the core of the public interest piece of the lawyer's sensibility. But, in fact, other legal educators fifteen years ago thought that was a striking idea—"Law in the Service of Human Needs." Practitioners in the corporate firms that I knew well said, "What a striking idea—'Law in the Service of Human Needs,' or 'Law in the Service of Corporate Needs.'"

I think what we were trying to do was to plant a seed, which has flowered in Queens, that legal education and law practice can be about law serving human needs. We would have hoped that the seeds would have blown from that plant and affected other law schools and the larger world of law practice. I am afraid that has not happened. That was certainly the vision: to do something like that at CUNY and have that consciousness taken up in other law institutions.

Charles Ogletree: Dean Glen, to some extent the old Antioch Law School in D.C. tried to take up that vision of the public interest, but you have expanded the vision and supported its expansion under your deanship at CUNY. It is no longer just civil and criminal, but now it is also beyond borders. You have international programs. You talked about immigration. Has public interest law as a concept expanded or are we just simply now recognizing that it never had borders and should never have had limitations?

Kristin Booth Glen, City University of New York School of Law: Well, I think it certainly expanded. Nonetheless, I want to

start by saying that experience has modified theory in Charlie [Halpern's] case because the idea of being blessed to be a dean without a faculty, a student body, and an alumni is really not true in the case of CUNY. It may be true in the case of other law schools. It is precisely our students, our extraordinary faculty, and especially the alumni who really give us the vision of what public interest law now and in the twenty-first century is going to be. The work that those alumni have done, both in very local communities and internationally—at the International Criminal Court, in refugee settlements, in immigration work and so forth—is really quite breathtaking and I think molds and leads us in the kinds of things we are doing.

The other part of our mission, which I think is an important thing to say something about, is not only to train lawyers to practice in the public interest but also to recruit and train lawyers from historically under-served communities. Many of those are minority and immigrant communities, but they are also working class and working poor communities. I think one of the things that is most exciting about our work right now is trying to break down the kind of public/private split where we understood, for many years, public interest lawyers as being folks who were lucky enough to get jobs at Legal Aid or Legal Services or at the Legal Defense Fund, and understanding that, for all the fabulous work those people do, it is not enough. We understand that we need to have other resources, and that there were many communities that were untouched by the resources that those people brought to public interest law. We need to build on the work of our own alumni who have come from under-served communities and gone back and opened offices in storefronts and at their kitchen tables and in small firms. We really see a major trend and push in public interest law in determining and developing ways that law schools, in particular, can resource and support community-based practices. This means not only supporting community-based practices to increase access to the system of justice but also to rethink the role of a lawyering community so that lawyers are not just bound by a full litigation model which nobody can afford. Maybe the corporations can afford it, but the courts cannot and people cannot. We need to think about lawyers as problem solvers, lawyers as resource brokers, lawyers as change agents, and lawyers and their community-based offices as breeding grounds for leadership for communities—because that is where the real changes in public interest law, we think, will come from.

Charles Ogletree: Let me ask the client-based, and those who represent those in the client-based, to respond to that. Has this

concept of public interest lawyering broadened so much and expanded so far that maybe it is hard to serve the mission? Mr. Bank, let me ask your view. Ms. Samuels, you provide funding to these organizations. Should there be more focus? Mr. Commoner, you spent a lifetime trying to protect the public interest in a broader way. Finally, Ms. Honkala. Let me ask all four of you about what public interest lawyering has been described as now. Is it meeting the mission? Let me start with Mr. Bank.

Robert E. Bank, Gay Men's Health Crisis Center: I just want to step back a little and pick up on what Charlie [Halpern] was saying, since I was in the first class at CUNY, which has the privilege of being the best class because the best class is the one where you don't have a class above you. (*Laughter.*) In any event, I think that having been grounded in such a strong public interest lawyering model really had an incredibly powerful effect on me compared to the many young law students who walk through my door every day applying for jobs or internships. I think the difference is that those of us at CUNY never felt marginalized in our law school experience. I was just interviewing someone the other day who said that he was in a special model within his law school where ten percent of the client base was sort of apportioned off and they were seen as the public interest lawyering class—so they could be protected from the law firm applications and all of the sort of corporate dinners and dining. I felt good that the person had been segregated out and that these students were sort of given support from their colleagues but I also thought how sad this was in that they were so marginalized and set to the side. I think this was one of the truly powerful things, and continues to be the powerful thing, about the model at CUNY Law School: that this is the circumference. I think that takes you to new places. I also want to pick up on what Dean Glen was talking about, because I think it makes you think of public interest lawyering in your day-to-day work with your clients in a much broader way.

Going back to what Father Drinan is talking about—a lot of the work that I do at GMHC is around global epidemic that affects people. Throwing out statistics: there are 33 million people in the world infected with HIV, six every minute. We can go on and on and on. And this is obviously something that affects New Yorkers because a third of New Yorkers are foreign born. So when I think of public interest law in the context of the work that I do at an AIDS organization, I don't think of public interest law only as be-

ing about the limited kinds of models that lawyering might have deemed for someone from another law school.

Just to finish up on that point, one of the issues that Dean Glen was talking about was the community's involvement in lawyering. I think some of the solutions for the twenty-first century are actually getting our clients involved in lawyering. One of the models that I have been working with is a group of undocumented immigrants who are HIV positive. They are, at this moment, working and talking to legislators, trying to convince Congress that it is time to get rid of clearly outdated laws such as the HIV bar, which prevents anyone who is HIV positive from becoming a legal permanent resident—and larger, broader, global issues like that that obviously impact on everyone's lives. These immigrants work closely with other affected immigrants who are not HIV positive. You know the old Kennedy thing about "ripples turning into waves"—I think this is really something that sort of *is* a wave. And so I am rather optimistic about trying to move us in that direction.

Charles Ogletree: Ms. Honkala, what is it that lawyers in the legal profession can do to more effectively understand and promote the client's interest, as public interest lawyers?

Cheri Honkala, Kensington Welfare Rights Union: First of all, I would like to just say an opening statement. In a room full of attorneys and judges, I am sure you appreciate opening statements. After sixty-some arrests of breaking unjust laws in this country, I am delighted to be in this room.

I think that we are about to face a very difficult period in this country with public interest law. With the dismantling of a welfare system in this country, the access to legal help is going to become more and more difficult. We have always thought it to be imperative that poor and homeless families develop relationships in which we are working with the attorneys, as opposed to paternalistic relationships in which somebody is working on our behalf. We are frightened by the lack of involvement of those folks who are going to be on the front lines of being affected by welfare reform in this country, not being involved in their own survival. So we would, first of all, encourage the active involvement of clients. We are dismayed at seeing a lot of the oversight boards across this country no longer functioning of client groups and so we would highly advocate that those client groups that oversee legal service groups get reactivated again.

Charles Ogletree: Let me ask you, Mr. Commoner. You have been at this a very, very long time. I don't want you to tell us what

you think about lawyers. We will save that for another session. But the importance of lawyers thinking about their mission as public interest lawyers in the twenty-first century—what is your message to this group and the larger audience?

Barry Commoner, Queens College, City University of New York: First, I have to tell you that I am fond of lawyers. I am married to one. I am impressed with the fact that there is a close alliance between the problems that I hear in public interest law and the experience that we have had in the environmental movement. I hear we are losing ground. We are still fighting the same battles. That is true in the environment as well. One of the advantages that we have in the environment is that our problems come down to numbers—data. We have a record now of our attempt since 1970 to really try to do something about the environment. Beginning in 1970, there was a clear public mandate, which even Mr. Nixon heard, that we wanted to clean up the environment. Every poll has said that over and over again. That has not happened. We are also losing ground.

Let me give you what the numbers tell us. The EPA has predicted where we would be with air pollution in 2020. Take one prominent thing—smog. We know exactly how it happens. We know exactly what chemicals are involved. The measurements of those chemicals that the EPA reports have not gone down since 1970 and will increase by 2020 for the simple reason that every car produces them and we are bound to be driving more cars because the economy is growing. In other words, we have failed.

The advantage we have in the environment is that we have got “objective evidence”—slightly more objective than what you find in civil rights where we are clearly losing ground—and we can ask the question, “Well, what did we do wrong?” We now know the answer. The answer is that we have been fighting the wrong battles. We have been attempting to shut off the pollution by plugging the pipe. We did not ask, “Why was it produced to begin with?” Putting it very simply, we can eliminate smog within the next ten years easily if the government would decide that it is in the national interest for us to have non-pollutant electric vehicles. They are entirely practical and can be put on the market if the government said this is what we ought to do. We don’t go to the root cause, which is that we produce cars that generate smog. We kill insects with things that poison our food. We produce power by raising the temperature of the earth. In other words, the environmental failure—that is what we share.

What the environmental failure tells us, if we look at the origin, is that it originates at a very fundamental point: the question of who controls what we produce and how we produce it. That affects labor, civil rights and the poor. It affects us all. We in New York see that very, very consciously. What we need to do is to look at our own experience and find the root cause as best we can. I think we will find its place of alliance. What happens in the corporate boardroom determines what happens in discrimination against the sexes, against race and in the environment. I am a congenital optimist. I think what we need to do is look at the failure and find the path from that failure to the fundamental cause and correct it.

Charles Ogletree: Ms. Samuels, let me ask you along the same lines, but from your point of view from the Open Society Institute. Is there a problem of there being too much of a good thing? There are a lot of great causes at this table, a lot of great causes in this room, a lot of great causes in this country. I am sure that you, like other organizations, are overwhelmed with great causes. But you have got to ask yourself, "Is this the best way to use the resources to accomplish our goals?" What is your message about the future of public interest law? We see a lot of litigators here. There are a lot of lawyers here. There are a lot of cases and clients. Is that a troublesome future from your point of view?

Catherine Samuels, Open Society Institute: Well, I am actually much more optimistic then I was a couple of years ago. As a funder, I am in a position to see what Elaine [Jones] described as us "losing ground." The way I see it is really in a guise of increased demands and needs, especially among individuals in this country with human needs. I think that with the cuts in legal services and devolution of welfare and other social policies to the states, that the needs have increased on what we are calling public interest lawyers that includes non-profit community-based organizations, and legal service lawyers. Let me also add to the downside that the resources that we have lost have not just been government resources. The cutbacks in resources have also been in private funding. As far as I know, we are the only national foundation that has any interest whatsoever in providing resources to the legal profession or the legal services community. That is a pretty sorry state of affairs. A lot of it is because of what Bob Herbert said—that lawyers have been seen as part of the problem and not part of the solution.

On the other side, what we get to see as a funder is the ex-

traordinary amount of creativity and energy that is coming out of the legal services and other communities in the last couple of years. There is a spirit of collaboration and a re-envisioning of what the role of lawyers can be. The type of projects Kris Glen has brought to us are very exciting.⁷ A lot of that in terms of re-envisioning is, I think, pretty fundamental. It is not superficial. It really relates to lawyers being a part of the solution—problem solving—holistic. You will hear “client-centered representation”. It is going on in the criminal area. It is going on in the civil area. It is much more creative and dynamic than anything I think we have even seen in the private bar, which has been on the defensive. I was in the private bar for seventeen years and we have been on the defensive for a long time in terms of competition. I think what is difficult now is how to translate a lot of the positive energy and the creative solutions and the use of technology back into support—more resources. This is from the private sector as well as, hopefully, from the public sector. So I think the public education about what lawyers are truly contributing now, even if the outmoded litigation model was fairly criticized, is not the model that is being pursued now. The collaborations and partnerships, I think, are real. What we are hoping is that local funders, community funders, will see what lawyers are doing today and in the future as part of advancing their social causes—part of the solution working in collaboration with other organizations. So I am optimistic.

Charles Ogletree: Let me ask Mr. Noisette. Leonard, you were part of an historic effort to create a whole new notion about indigent defense with the Neighborhood Defenders in Harlem: community-based, client-centered representation. Mr. Vargas, you are part of an organization that has been doing that for generations—providing representation to clients. What are the exciting and new things that both of you in the public interest arena are doing that will attract students to go to law school, to finish law school, and want to work with you? What are you doing that is important for the twenty-first century? Mr. Noisette first.

⁷ An example of such a project is the Immigrant Initiatives funded by the Soros Foundation. As law school institutions and the communities they serve grow increasingly more diverse, CUNY School of Law's Immigrant Initiatives program (CLII) has demonstrated how legal education can prepare its graduates for effective practice in this modern arena. CLII has created teaching tools to assist law professors in introducing immigrant perspectives and immigration law into traditional areas of law previously considered unrelated. CLII also models projects that can be tailored to the resources of an individual law school and to the needs of a particular immigrant community.

Leonard E. Noisette, Neighborhood Defender Services of Harlem: Well, I think that perhaps the most important thing that we have been doing is to really try to engage with the community that we serve. One of the reasons for creating a community-based public defender office was a sense that there was not sufficient connection with the communities that we were serving and, as a result, there was sometimes the level of distrust and not sufficient appreciation from our clients about the effort that we were putting forth. So that to be in the community, to see our clients on a regular basis—which perhaps some of my colleagues on the civil side had been doing, but certainly was not happening on the indigent defense side in any real way—has been really significant. I think, as a result of it, it opened up both opportunities and, I think, a sense of obligation about broadening our role even beyond what we expected. Our need to engage with the civil legal problems that either bring people into the criminal justice system in the first place, or it emanates increasingly as a result of criminal problems, is something that we just felt compelled to do. So the struggle to do more holistic representation, I think, has really been something that has grown out of this attempt to engage with the community and to begin to see our roles more as problem-solvers.

One of the benefits that we have realized, and which may be a lesson for public interest law in the future, is that notwithstanding the sense that there is no constituency, for instance, for indigent defense work, I think we have proven that *not* to be the case. When some of the panelists were talking about the troubling numbers of people in the criminal justice system and the impact, one of the things we have learned is that the law, and what it means to think about justice in poor communities, often is very significantly defined by the criminal justice system. That is the law that they see in their face and that is impacting on them the most. So that when our funding has been in jeopardy, our ability to mobilize those communities around the issue about which people said there was no constituency, I think, has been an exciting thing. We have a long way to go but it has been an exciting thing. It seems to me that it is also very important as it relates to the whole notion of resources—because to the extent that we need to redefine the discussion and the public image, the folks who get this service on a regular basis need to have confidence in it. The reason that communities stood up for the Neighborhood Defender Services, for instance, is that they know that the services are underfunded. They know that the resources are inadequate. They see it on a regular

basis. I think that sometimes the legal community is not vocal and forceful enough in acknowledging that. To accept that public interest lawyers are paid the abysmal sums of money that they are paid or to engage in the discussion in New York City that one lawyer's organization is only charging \$300 per case and the other is \$350 per case and the other is \$400 per case, and to allow that to be a legitimate discussion seems to me to be the real problem.

I think that if the legal profession can think about engaging with communities who understand that this is a real need, and then figuring out how to translate a poor community's understanding of the need into one where the larger mainstream understands that need as well, as a civil rights issue, as a human rights issue, is a challenge to really redefine the discussion. I think that we are beginning to do that as a result of engaging a bit more with the community.

Charles Ogletree: Let me try and use that, before I go to Mr. Vargas, as an example of what Bob Herbert and Father Drinan believe to be the problem. Let us take, as accepted, everything Mr. Noisette says. This is an example of client-centered representation on the spot. Here is the story: An immigrant is charged and arrested for homicide late at night. The immigrant is taken to the police station. The immigrant is bilingual but does not speak English very well. The good news is Mr. Noisette's lawyers, for purposes of this story, work 24 hours a day—so when that person is brought in at two o'clock in the morning he or she has a lawyer there, paid for by the state, to help the individual understand his or her rights. This sounds great from Mr. Noisette's point of view. However, I am the Mayor of Gotham City and I am hearing that these criminals are getting lawyers at two o'clock in the morning making it impossible for the police to spend four hours talking to them. This is a public relations problem, is it not?

Bob Herbert: I think it is. I think a case has to be effectively made that this is a service, for which the public ought to be paying and providing. The legal profession itself, I think, must educate the public on the importance of guaranteeing these rights for all and then must demonstrate to the public a benefit from guaranteeing these rights.

Charles Ogletree: And even if he has problems getting merit on the local level, Father Drinan, in reference to the aforementioned story, I can imagine Congress saying that it may be public interest lawyering but Congress doesn't want to support lawyers who see their clients before the police see them. Would they?

Would your colleagues in Washington think that Mr. Noisette's doing a good job for representing the client in the middle of the night?

Robert Drinan: I won't speak for the people in Congress right now. I think, however, that on the criminal side the *Gideon* opinion has gotten into our souls. Down deep we know that the no one should be questioned by the police in anything serious until he has a lawyer present. This idea has pervaded the whole issue and these terrible abuses that we read about in *The New York Times*. But I don't think that the problem is there. The problem is elsewhere—with insensitivity to racial matters, a lack of education of the police force—all types of things. We can say that the legal profession is more guilty of all this than anyone else. We are supposed to be there. There are 800,000 lawyers. They are the conscience of the country. They just have to do more. They have to insist, as I keep insisting all the time, that if somebody comes into the emergency room we absolutely expect that physicians will be there. The patient won't bleed to death. Therefore, if somebody comes in at two o'clock in the morning with a cop, the legal profession should be there.

Charles Ogletree: Mr. Vargas, that is well stated. How do you think politicians, even the public, respond to vigorous advocacy by lawyers on behalf of their clients?

Manuel D. Vargas, New York State Defenders Association: I appreciate the example you used because there is one thing that's worse in this country than being accused of a crime—and that is being an immigrant accused of a crime. One of the things we are trying to do with the New York State Defenders Association, and to pick up on comments of others, is to expand our view of what it is that lawyers do. As many of you know, in 1996 there were new immigration laws passed that greatly impacted those of us in this country who don't happen to be citizens of the U.S. As lawyers, and I'm as guilty of this as anybody else, we are trained in law school to approach these issues in terms of figuring out what legal arguments may be raised in court. What the immigration laws, I think, make clear, or Congress's amendments in 1996⁸, is that we have to expand our view of what lawyers do. We have to develop partnerships with our clients in helping them, at a grassroots level, educate policymakers, reach out to policymakers, and try to get these laws changed.

⁸ See Immigration Reform Act of 1996.

Charles Ogletree: Well, isn't it exactly what we tried to do on the civil side? That is how the Legal Services Corporation got into trouble, saying, "Well, you could be lawyers for clients but not in important litigation." Law students did a brilliant job at Tulane Law School challenging corporations that were engaged in alleged environmental damage and they had their clinic virtually shut down. So, it sounds like when lawyers expand their role and become more client-centered, it's a public relations disaster, a political disaster, and it backfires.

Manuel Vargas: Then we have to work with our clients to address that particular restriction put on what advocates can do. Given the climate of the times, it seems that education of policy-makers is more crucial than ever. We should not look at our clients' cases just in terms of what legal arguments can be raised, but how we can develop a partnership with that client and other people similarly affected to effect policy. It may range from things like helping educate our clients about what the law now says, what the law *could* say, helping them write letters to the editor, to their local newspaper and helping them to know what they should say to their local congressman when they visit the office. It's that kind of policy-making. I think we have to resist the urge to be what law school teaches us to be as lawyers, and think of it more broadly in terms of how we develop partnerships with our clients to affect change in policy.

Charles Ogletree: Interesting. We are going to go to questions from the audience in just a minute. Before we do that I want to do a couple of wrap-up things with the panel.

I've heard at least four suggestions about how to approach this problem about the future of public interest lawyering—in terms of what we need to do. One was public relations—that we need to present a more coherent and persuasive case for the importance of public interest lawyering. It is not going to happen by itself. A second suggestion concerned resources. That is always debatable but more resources will make us better. A third, controversial, yet seemed very explicit, is that we need less selfish lawyers. There is not a shortage of lawyers. There are almost a million lawyers. However, we do not have as many lawyers doing what needs to be done to protect the public interest. The one thing that I heard implicitly, as there are a few judges in the audience, is that we may need a more compassionate judiciary to see how important these issues are. Maybe later we will hear from judges about that. Now if those are some of the issues how do we go about it? Professor

Rhode, what is your sense of how we should start to talk about the future of public interest lawyering based on what we heard here from this panel?

Deborah Rhode: Well, to follow on that useful summary, I think it is true, as one Denver Legal Aid lawyer put it, that the only thing less popular than a poor person these days is a poor person with a lawyer. Unless we make efforts to branch out and mobilize constituencies whose rights are affected by this, and get people to see that it is not just "legal technicalities" that are at issue but, instead, that there is something to that much-used and recently abused phrase "Rule of Law" that is important and critical to their lives—we are not going to be successful in the other areas that were mentioned, including expanding resources and enlisting the profession.

So, I think building bridges to broader constituencies and trying to make the profession itself more accountable in a global way for the delivery of legal services . . . I hesitate to say this in such august surroundings like celebrations sponsored by three bar organizations, but you know the bar has not always been in the forefront of ways to reduce the need for lawyers and increase access in ways that would be cost-effective for consumers. We have to enlist more leaders like the ones who are present at this round table to see this as part of the profession's responsibility. And we have to create

Charles Ogletree: Why, why? I go to law school. I get my law degree. I get a nice fat job in a firm that pays me a lot of money. Why should I be committed? I write a check every month to the typical organizations. You are saying I also have to represent clients and believe in this kind of public interest, you know, pushy stuff that you guys do? Why?

Deborah Rhode: Well, listen, I am

Charles Ogletree: I am a professional.

Deborah Rhode: I am for cost-effective delivery of services. If you want to do it by writing a check, more power to you. A lot of people on this panel could suggest ways to direct that check. What we need is for lawyers to see either writing a check or providing personal service as an important part of their professional responsibility. The truth of it is that a lot of lawyers, while they are for it in the abstract, are not for it in the particular. One way to get them to write more checks, do more of it, and support, within their organization, a climate for other lawyers to do more of it is to force them to confront what passes for justice among the have-nots.

Charles Ogletree: Mr. Paul, it sounds like indentured servitude to ask or tell me that I *have* to do these things. Why?

William Paul: Well, the answer to the “why” question is because the very definition of the profession is that it is dedicated to the public service. Now not each one of the 800,000 of us may be individually dedicated to the public service. But, if not, we should be, and as a profession, we are. That is why. And with every issue that we approach, the first question should be, “What is in the public interest?” If we do not ask ourselves that question, we are not being truly professional.

There are just two really quick thoughts here. One thing that I have heard over and over, here particularly at the end, has to do with educating and informing opinion makers. To me, preservation of a free society is a race between education and ignorance. If we lose ground, that is where we lose the ground. In an educated, informed, free society, public interest law will flourish. People will understand why we do what we do. People will understand the need for it.

The last thought is that fundamental and critical to all this is an independent legal profession. If there is any profession that is independent, it is the public interest lawyer. God bless the public interest lawyer for that independence. The public interest lawyer is a lot more independent than a corporate lawyer and a lot more independent than lawyers in private practice. The whole profession recognizes and appreciates that independence. We must fight, fight, and fight to preserve that independence.

Charles Ogletree: Ms. Honkala, your response.

Cheri Honkala: Well, I can just tell a brief story. In Philadelphia, we live in the poorest district, which is Kensington. The number one source of income is welfare and the second is drugs. With the dismantling of the welfare system, we’ve had to do a whole lot of creative things because just to be poor in Kensington or in the United States of America means to be a criminal—because you have to do something or another in order to feed, clothe and house yourself and your family. After a quarter of a million people were cut off of medical assistance in Philadelphia, we marched for about ten days every day and pitched tents along the roadside to go speak to our governor about this issue. When we arrived in Harrisburg with tons of homeless families, they needed some place to sleep. So we moved them into the capitol rotunda. After all, we figured it was warm there and we thought it should be against the law that these families should freeze to death outside. When we

moved in there, we learned how the law works. They changed the hours of the capitol. It was no longer a public building. After changing the hours of the capitol, then they moved us out onto the capitol stairs. While we were out on the capitol stairs, we also learned that there was a closing time for the capitol stairs. We also learned what it meant to have public interest lawyers trying to support us, because as soon as they got ready to introduce a legal case against removing us from the capitol stairs, they threatened to remove a million dollars from Legal Services. At that time, that is when we learned this is not just about attorneys not wanting to help out in this situation—that there is a much more serious problem that we face in this country. That is why we think we need to build a massive movement calling for an end to hunger and unemployment in this country, and it needs to be backed by attorneys both financially and through their legal help. (*Applause.*)

Charles Ogletree: We've got a question from the audience.

Audience Member: I think if somebody who was not a lawyer went to a group of public interest lawyers and said, "Help me file an *amicus* brief," then that person would probably get looked at and presumed to be a fool. If a person without a degree were to ask, "Help me establish some law libraries in the occupied communities," then that person would be presumed to be a fool. I think if somebody said, "Help me write a motion to get a camera in the courtroom in the *Diallo* case," then the first presumption would be that that person is a fool. How can you have a partnership if the first presumption is that the person without this degree is a fool?

Charles Ogletree: Good question. What about the client there? Who wants to respond?

Leonard E. Noisette: I'll respond to that. I think that that is a very legitimate question to the extent that that is often the dynamic between lawyer and client relationships. It seems to me that individuals need to figure out how to demand more. I think that one of the problems I was relating to earlier is that the expectation about the quality of services and what is accepted has become in many instances so low that that is all that is expected. As a result there is no ability or recourse to challenge that relationship. I don't really know the solution to the problem or I don't think that there is an immediate solution to the problem, but I think that it really is in mobilizing people who are getting inadequate services and who are suffering the brunt of inadequate relationships. It's sort of all part of this figuring out how to mobilize the constituency

of the people who are being served and who maybe *should* be playing larger partnership roles.

Charles Ogletree: Ms. Smith.

Beverly McQuery Smith: I think a couple of things that the National Bar Association is doing with our 18,000 lawyers throughout the United States and increasingly the world, is that we are reconnecting with our community as much as we can. You heard me mention earlier that we have a neighborhood law school program. That is one of the ways that our attorneys reach out to the community to connect better, so there *is* better communication and there is no "presumption" that the client is a fool. Second, we have our "Computers in the Communities" program, which is our way of putting technology in the hands of people who need it, who will not otherwise get it because the funding for public education is disparate in our society. Third, to touch on Barry Commoner's point about the environment, I am also an environmental lawyer nationally and internationally. I am the Chair of the Southern African Environment Project. We have a "Corporate Green Action Plan" where we are going around the United States planting trees in environmentally sensitive and overburdened areas.

Now, in the various arenas in which I traveled this year, it has become clear that often I am accused of asking for the universe, if not the moon or the stars or something as ambitious. Because I really believe that Barry Commoner is right that we need to go back and examine the root cause for the failure. We would not need Legal Services or Legal Defenders Services and Legal Aid if people were not impoverished. So, some of the recommendations I made at the meeting of the Justice Department go to changing quality of life with respect to access to health care. To me, it is absolutely anathema that a person's quality of health care is based on their race. That if you are a black man who is sixty you will not get the same kind of treatment if you were a white man who is sixty with heart disease. To me, that kind of discrimination is repulsive. Lawyers need to fix it. Lawyers have the talents to fix it. Similarly, we are planting trees because in our communities we have rampant cases of asthma and upper respiratory disease killing black people in astronomical numbers. Talk about the AIDS crisis. We have that in the black community. I am now the national Chair of the National Campaign for Black Health. That is one of the reasons why the National Bar Association formed that coalition.

So we are personally, in the National Bar Association, working as much as we can throughout our communities on a grassroots

level to go to fixing some of the root causes. Because if you fix poverty and you provide people with an equal educational opportunity and access to education, then you are going to change this dynamic. And then we will have people who will be sitting here at this panel discussion, too, who will be lawyers or judges or the like.

Charles Ogletree: Dean Glen and Mr. Bank, we hear this concept of client-centered advocacy in terms of CUNY. What does that mean for the twenty-first century? Is there more emphasis on clients playing a central role in public interest law? And Mr. Bank, from your point of view representing those who represent thousands of clients, how do we get the clients' interests to the top so they are appreciated and understood? Dean Glen.

Kristin Booth Glen: Well, I think that at CUNY, as part of being what we call ourselves "the conscience of legal education" and "the conscience of the profession," we understand that respect for, and the willingness to work with clients, is critical. I want to go back for a second to the question before because it seems to me that although in our panel this afternoon there were a lot of discussions about the use of technology to spread resources into communities, to make clients more knowledgeable, to give them more grasp and determination over their cases and so forth that in the end, a lot of your questions involve who the lawyers are. So the question, which we have not addressed here, is, "who gets to be a lawyer?" To whom is legal education open? What are the barriers, not only money, but also a certain kind of testing that privileges one kind of learner over another which does not necessarily relate at all to who is going to be a good lawyer for the community or for the public interest. That seems to me to be an issue that we are very deeply committed to at CUNY. I think that people who care about public interest law need to look at this also.

Charles Ogletree: Mr. Bank.

Robert Bank: Well, I agree with Dean Glen on that. I just want to go back to your question about how to get clients more involved. I don't think that's the problem. I think the problem is resources. I think there is a bigger problem than that and that is what I am hearing around the table. I read a wonderful article recently about immigration, talking about how the economy is booming but that the spirit is mean. I think that is our big problem about losing ground, about "where are we?" What happened to the war on poverty? I mean, all of us in this room are on the same page. We are preaching to the choir. That is wonderful. But I think we have adversaries and those are other public interest law-

yers. Whose public interest are we talking about? I mean, for some people public interest is bombing abortion clinics and for other people public interest is protecting a woman's right to choose. So, I think that's a discussion we haven't really gotten into here. But I think we really do have a strong adversary and our legal skills should be used to build a base in public interest lawyering which speaks volumes about getting our clients involved in the kind of advocacy that those other public interest lawyers use. I don't think the Immigration Reform Act and Welfare Reform Act of 1996 would have happened had we not all been sitting back and letting those other public interest lawyers and other public interest advocates do their job.

I really think it goes back to getting our clients involved in trying to stop that kind of legislation. So, while I think litigation is obviously probably the most effective tool for change ultimately, I think that what we want to do with limited resources is really work with our client base. One of the things we have at the GMHC, which I think is very interesting, is a group called "New York Citizens AIDS Network." This is a group of thousands of people who are notified daily about something that will impact their lives. Then they have the choice when that comes across. We heard earlier in a panel about how everyone in ten years, low-income people apparently, are going to be able to turn on their TV, talk to it, and it will talk back to them. If that in fact happens, maybe all of us around this table and others like us will be able to communicate more effectively with our client base to really make some change and stop us from losing ground.

Charles Ogletree: Ms. Samuels.

Catherine Samuels: I just want to say that I really do think it is a problem. I think it is a serious problem. I think it is problem that, again, some communities of lawyers are beginning to address, which is the history of arrogance of lawyers both in terms of our ownership of some type of exclusive knowledge and secret, in the sense that we know better. I think in large law firm practice, clients took control and started telling us, "thank you very much but we would like you to actually listen to the entire problem and give us sage advice, and not simply send us a bill in six months saying you have handled a very aggressive litigation." I don't think that that kind of responsiveness to clients existed a few years ago in the legal service community and other communities. I think it is changing enormously again. I think community-based lawyering, the idea that you are representing an entire person and you are responsible

to that person, not just a particular political perspective—I was involved in NOW Legal Defense and Education Fund, and constantly having to come back and think about whether we were really representing the client or whether there was a particular issue—is the constant conflict that public interest lawyers have always had.

I do think we are letting law schools off a little easily tonight. When you went through the four systemic issues—we are here to talk about the role of law schools. I think that over time, although civic education and other things are all part of what we need to address, I think law schools are a major part of the problem. They are much more difficult to change because they are controlled by the universities on one side and by faculty on the other. The cost of legal education will basically eliminate the public interest market. It is beginning to already. I see all the time the foundation responds to what we are trying to do. Ten, twenty years from now we will not be able to afford to educate public interest lawyers. They will not be able to afford to do the work. That is something that law schools can address, and they *have* to address it because there is not an awful lot that we can do from the outside. Students have some leverage. Alumni have some leverage. But I think that's something that we really have not discussed. We talked about the debt problem, but we have not talked about how it is just ahead of us. We are following the medical profession path, both within the profession but particularly within legal education. I do not know how we are going to stop it and get off this train.

Charles Ogletree: Mr. Commoner.

Barry Commoner: I was struck by something Mr. Vargas said and also Mr. Bank. If I heard you correctly, you said you want to raise the question what the law “could say,” or you might say, what the law “should say.” You raised the question of legislation. Well, that is the fundamental problem that we face in the environmental situation. What we now know is that we have been using exactly the wrong strategy, which is to say, “here are all the instruments of production and we are going to fiddle around with what they do to the environment.” Now, it's really strange if you go back to the original national Environmental Protection Act of 1969, the opening paragraph's purpose says, “It is the purpose of the nation's environmental policy to prevent and eliminate environmental hazards.” What we've been doing is diddling around with how much we can stand, instead of going to the question of elimination. What is very strange is that it was Mr. Reagan's head of EPA who, on retirement, made a confession. He said, “We are doing

the wrong thing. We are trying to control. We should be preventing." That's now twenty years ago nearly and we haven't yet changed what we're doing. Someone in the legal area has to go back and ask, "What was Congress thinking here?" Can't we raise this issue again because this is the heart of the question, which is "How do we govern the way in which our production system works so that it is compatible with the environment?" And when we answer that, we will learn how to make it compatible with civil rights and racial discrimination and so on.

Charles Ogletree: Next question.

Audience Member: From the discussion this evening both here at the round table and in the separate discussion groups, it seems apparent that there is an extraordinarily insufficient amount of public interest law service that is being provided based on what the need is. The bar has prided itself throughout its experience and history on being independent, self-governing, and wanting to remain independent from outside pressures since it feels it knows what is best for itself. It seems perhaps strange that CUNY Law School should be one of the few law schools that has the program it does to train and focus on public interest law. Why is this association exceptional in the kind of outreach program that it has for the community and the service it does? Has it not reached a point where the association of law schools and the bar associations ought to start to really address this problem and lay down a mandate to try and meet these needs instead of just waiting for volunteers to come forward, which really haven't come forward to the extent necessary?

Charles Ogletree: A quick response, Ms. Fung. What about the law schools playing a more direct role? Can you give us a quick response, if that is something that can be done?

Margaret Fung: I think frankly we have, because of many of the battles that have been fought either by law schools or by public interest organizations, we have lowered our sights. We are trying to be more realistic and therefore we will settle for fewer, whether it is contributions of pro bono time by law firms or a fraction of time spent by the legal profession to serve the needs of the poor. Government really has an important role to play. It has to provide certain kinds of services for the poor and it also should be funding legal services at a much higher level. Foundations and corporations need to be funding the types of programs that are done at a fraction of the level, and they need to really be able to sustain and help public interest organizations to do the kind of litigation that

they need. Finally, regarding constituents. We do not always need to organize our clients. Frankly, I think our clients are way ahead of us. They are ready to take action and they are thinking creatively. What we need is more lawyers who are going to be acting in the service of those people and those communities. We really need to expand our vision about what we can expect from the legal profession as well as from the law schools. It shouldn't be just a few schools that are doing a few kinds of clinical programs. It's got to be every school. All lawyers need to be thinking about how they can contribute to the public interest.

Charles Ogletree: It is no surprise that CUNY Law School has decided to have this topic – “The Future of the Public Interest Lawyer” – as the topic for the presentation tonight. It is a pleasant surprise that the local, state and national bar associations have endorsed it and been a big part of it. The real challenge, I think, that we face from today's discussion is to take these ideas and thoughts and challenges and to not just pontificate but to channel them into some direct action. Such action will make a difference in terms of funding, public relations, law schools, the bar, and the judiciary. It will also make this profession much more responsive to the clients it is intended to serve. We hope we have at least scratched the surface, but you will take us beneath that surface so we can continue this dialogue.

Again, I want you to join me in thanking our panelists and CUNY Law School and all the bar associations for making this possible. Thank you.