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PANEL II

THE ROLE OF THE PRIVATE BAR AND PRO BONO SERVICE IN MEETING THE LEGAL NEEDS OF THE TWENTY-FIRST CENTURY

John S. Kiernan, Moderator: My connection to the issue of the private bar and legal services in the next millennium is through my involvement with the City Bar Association. I am also Chair of my firm’s pro bono committee, Vice-Chair of Legal Services of New York City and a member of the Executive Lawyer’s Guild Committee for Civil Rights.

Michael Hertz: My name is Michael Hertz. I’m on a leave of absence from Latham & Watkins, where I’m still on the National Pro Bono Committee. I am working right now with support from the Soros Foundation on a project called Pro Bono Net. The idea of Pro Bono Net is really to set up a place on the web where the legal services and public interest lawyers, volunteers and private attorneys can collaborate on issues more effectively than they are currently able to do.

James C. Moore: My name is Jim Moore. I am a lawyer from upstate, in Rochester. I’m president of the New York State Bar Association. I have spent a good deal of time working with our Association’s director of pro bono activities, Tony Casino, visiting legal service providers in this state and trying to address how we can more effectively address their problems.

The Honorable Judith Billings: Good afternoon, I am Judy Billings. I am a judge on the Utah Court of Appeals. I am part of this panel because I chaired the ABA Standing Committee on Pro Bono and Public Service. Locally, I have served on the Legal Services Board and Legal Aid Board of Utah.

Andrea Pair Bryant: I am Andrea Bryant, and I work as a patent attorney in Austin, Texas. I am here today because the Dean of CUNY asked me when we met in my capacity as a liaison member to Judge Billings’ Committee for the ABA. I also chair the National Bar Association Pro Bono Committee. I was just reappointed for two more years to the legal services program. Finally, I take pro bono cases that are not patent law.

William J. Dean: My name is Bill Dean and I am with Volunteers of Legal Service (“VOLS”). We are a very small organization that tries to identify areas of legal need in New York City. We de-
sign programs to fill those needs and identify law firms and pro bono lawyers to undertake the work.

Tom Maligno: My name is Tom Maligno. I just recently resigned as executive director of a legal services program on Long Island to take a position at Touro Law School's new campus. This campus houses a public interest wing that will mix all of the legal services, legal aid and public interest programs, including a pro bono effort between the law school and the local courts on campus.

Sandy Rousseau: My name is Sandy Rousseau and I am with the Legal Services for New York City Housing Law. I serve as the pro bono coordinator.

Marlene Halpern: My name is Marlene Halpern. I am a coordinator with Legal Services for New York City Family Law.

John Acmadus: My name is John Acmadus, and I am with the Civil Division of the Legal Aid Society of New York City. I am the pro bono coordinator. I am working on recruiting pro bono attorneys in the outer boroughs, Staten Island, Queens and the Bronx, where there has been less luck in the past. I am looking for ideas on how to recruit and train small practitioners.

John Kiernan: When the panelists were talking before, it seemed the question split into two pieces. One is what will the private bar look like as we play our futurist roles here, looking further into the future and the other is what will legal services needs be. The effort will be to think about how we can put those together. One way to think about how the private bar will look in twenty years' time is to ask how it looked twenty years ago and what changes have occurred. Thinking back twenty years, even the futurist might not have thought the law library would be close to obsolete, thanks to technological advances. I suppose there would have been a prediction that the notion of the full-time practitioner would have developed even more than it has. I read a week ago in the local press that every large law firm in New York City has at least one part-time or non-full-time woman partner. This suggests that although the movement has not been rapid, it has existed. There has been the beginning of a process of a redefinition of what constitutes an office. And there's every reason to think that what the word "office" means will change a lot over the next twenty years. There has been tremendous specialization and diversification. People will describe their practices in narrower and narrower terms. In 1979, the largest law firm in New York City had just cracked 200 lawyers. Size is obviously a major source of change.
So one question is, how does all of this affect pro bono work? It has become almost a watchword that professionalism in the legal profession has eroded. It has become more of a business. So what is the effect on pro bono? The answer to that question reminds me a little of that H. L. Mencken comment that the world has been going to hell for so long that it is a wonder it has not gotten there yet. It turns out that if you go back as long as VOLS has been keeping statistics, the number of pro bono hours per lawyer at the firms that subscribe to the VOLS survey is almost indistinguishable now from what it was when the survey began. During the same time period, the number of lawyers has increased. There was a study done by the Office of Court Administration ("OCA") recently that showed almost identical numbers of lawyers self-reporting doing pro bono now as last time the OCA survey was conducted. However, there's also a footnote that the definition of "pro bono" for lawyers includes work for family or close friends. It has become almost impossible to get your finger on what is the amount of pro bono that is being done by private practitioners for the indigent or politically disenfranchised.

So what we have seen in the last twenty years may be significant changes in the nature of practice and in the nature of law firms, but not significant changes in the total amount of pro bono work done. That raises questions about what the future holds concerning the general attitude of commitment toward pro bono and where a greater level of commitment is going to come from. Will it come from the firms themselves or the recruits that have been the big drivers for so long? Will it come from in-house corporate clients who want to see this in their firms? Will it come from publicity or from the inherent professionalism of lawyers and desire of lawyers to do good? Those are a bunch of rhetorical questions to which I would be interested in hearing the panelists and the members of the audience respond.

Michael Hertz: I have spent the last year and a half thinking a lot about how to use technology to link up with pro bono work. One of the remarkable things when we talk about pro bono is that the discussion tends to focus on big firms. However, most of the figures show that the vast majority of legal services that are provided to low-income people by private attorneys are done outside those programs by smaller practitioners who as part of their practice are delivering services to their communities, which in many areas may be low-income. So one of the interesting things about technology is that we can build bridges between different parts of
the legal profession which deliver services to low-income people. We can build a bridge from the traditional legal services attorneys, legal aid lawyers and the pro bono lawyers who are operating within organized pro bono practices to this vast pool of private attorneys who are delivering services outside of organized programs, including the law school clinics, the courts, and other organizations like that.

I think there is a long way to go with the technology. We are just at the beginning of figuring out how to use the technology to build these sorts of bridges and create a sense of community. But I do think there are possibilities now for collaboration between different parts of the legal community which were not possible before, or that collaboration was difficult and inefficient even if it was possible. I think the meaning of what an office is will change as the technology changes. How we identify ourselves will change as well. I think in the future it will be very possible for me to practice in a big firm and feel part of the culture of the firm but also through the internet technology feel like I’m part of another community of lawyers who are practicing for the public interest or delivering services to low-income people. This is an interesting time for rethinking some of those things.

James Moore: I think that we are at the point in the development of our profession where we are approaching the edge of a cliff or the first part of a storm. We really do not know what is out there. I think the delivery of legal services could very likely go through a profound change over the next ten to fifteen years. And you have to ask yourself, in the year 2015, how will people get legal services? Will they get them from independent lawyers or independent law firms or will they buy them from multi-professional firms that will include us along with accountants, or engineers or public relations people? Will they buy them through the internet or software packages and eliminate the middleman, the lawyer altogether? Imagine what the delivery of legal services is going to be like. Then you can ask how are we going to be able to address the needs which will probably be pretty much the same.

I have spent a lot of time with Tony Maligno this year visiting legal services providers, including Bill Dean’s and Michael Hertz’s program here in the city, and you can’t help escape the feeling that there is an enormous unmet need for legal services out there. To some extent it is being responded to, but not all that well. The need will still be there fifteen years from now. The real issue is if the delivery of legal services changes and some of those people
who deliver the services are not lawyers – and that’s assuming lawyers are doing pretty good job right now, which is a debatable issue – how are we going to get those services to that huge pool of people who need help?

**Judge Billings:** I am worried about the delivery of legal services to the poor because of the development in multi-disciplinary practice. I hope it is an unfounded worry, but I say that because serving in my position, I’ve talked to a lot of pro bono lawyers and members of the community as a whole who care about it. One or two things make lawyers do pro bono work in the first instance. The first is that they were introduced to it in their law school. So the ABA Standing Committee has spent a lot of time this year encouraging the law school community to develop pro bono programs because we just know that lawyers who start in law school continue in practice. If the firms are going to be run by non-lawyers, these people never went to law school, so that vehicle for getting people to do pro bono work won’t be as useful. The second thing is that I believe that the reason many young lawyers continue their experience, if they have started in law school or even if they have not, is because of mentoring by senior members of the Bar, whether they be a managing partner in their law firm or member of the judiciary or Bar leader. I firmly believe that most of us start because someone we respected said, “try it.” And that again frightens me if people who are running the organization that lawyers are working for have never thought about the ethical responsibility to make sure there is access to the courts and to ensure justice for all. I think it is something to think about.

As far as what the needs are going to be, the needs that I see as a judge, I don’t think these needs are going to change a lot. Poor people generally don’t have a lot of access to the internet or to the kinds of communications that we may be able to talk to one another about. And most of their problems ultimately need to get resolved in court. Therefore, they need at least a lawyer to help them go into court *pro se* at least, and often they really need a lawyer to deal with substantial housing, safety, and unemployment issues. I am concerned that we can maintain the ethical responsibility in the future. The more that I hear, the more I agree that at least a large percentage of lawyers will be working in practice settings that will include other professionals, and often will be owned by other professionals. I think it is a dangerous time.

**Andrea Bryant:** I share the feelings expressed by the previous panelists. I am new to the law firm setting. I have been there nine
months. Prior to that, I worked for a large corporation, so I am not as dug into the whole law firm experience as most of us seem to be. I grew up in a family that had lots of preachers and teachers, doctors and lawyers, but everyone was in a helping profession. So my introduction to the profession was that this was something you did to help people. When I talk to law students, I try to impress on them that the law is a people business. But what I am seeing as I learn more about practicing with a firm and talk to the students who are being recruited to come to the firm, I am really worried because so many people are now finishing school—even if they've had an introduction to pro bono and taken advantage of it—so into the need to make money that they get sucked into the exorbitantly high number of hours. Maybe, if there's an opportunity to give some money to the local volunteer legal program, they will do that, but they will not give the time. As Judge Billings mentioned, the people who really are experiencing the greatest needs are not the ones who are going to be in a position to buy the software that will allow them to be their own lawyers, and certainly are not going to be dealing as purchasers of services from the kinds of law firms that come to mind when you think of a typical big law firm.

So I like the idea of working at the law school level, and I have been really pleased with some of the things I have learned that law firms are doing. In Dallas I heard they will take a class of summer associates to make them spend a session at a clinic. In addition to the cruises and fancy dinners and outings, they will get to actually do intake at a clinic a couple of times. I think those experiences let students know other opportunities are there and keep them in touch with the real world. We still are a profession that should be about helping people.

William Dean: I always like to use as my text a paragraph from a speech that Justice Sandra Day O'Connor gave a few years ago. She begins: "Lawyers have much that we can be proud of," and we really do when you look at the participation of lawyers in providing free legal representation for poor people. It is very impressive. The Volunteers of Legal Service does an annual survey. We're working with about twenty-eight firms in the city and they report about 400,000 qualifying hours, which means directly assisting poor people or organizations that serve poor people. In the first year of the American Bar Association Pro Bono Challenge, 135 firms provided 1.6 million hours in donated services to poor people.

However, Justice O'Connor then goes on, "but we also have a
great deal to be ashamed of in terms of how we are responding to the people who can’t afford to pay our services." And again, looking at law firms in New York City according to the *American Lawyer*, out of twenty-nine major firms reporting in its most recent pro bono survey, fifteen firms reported that less than a third of their attorneys provided twenty hours or more of pro bono service. So there are a lot of attorneys doing no pro bono work. Justice O'Connor continues: "On the other hand, there’s probably more innovative pro bono work being done right now than at any time in our history." And as I follow the literature and see projects underway in New York City, the variety of the work is just extraordinary. It has become so much more sophisticated over the last fifteen years. But on the other hand, there’s probably never been a wider gulf between the need for legal services and the availability of legal services. My overall feeling about looking ahead is, yes, the bar is doing a lot, but the private bar is not doing nearly as much as it should be doing. For organizations like mine, we need to get the private bar to be doing much more. But we also have to realize that there are limitations on how much the private bar can do in terms of addressing the needs of legal services. If we were operating in a rational way, we would have a fully funded and strongly government supported legal services program that would be supplemented by the private bar. What unfortunately has been happening is that there has been an erosion on the legal services front and unreasonable expectations are coming to the fore in terms of the response of the private bar.

**John Kiernan:** Let me ask another question of the audience and the panel. I think we will want to come back to where public funding of legal services fits in on this. But let’s talk about the private bar for a minute. As everyone was introducing themselves, one thing that struck me as a common denominator was everyone in this room is in one way or another engaged in the business of trying to coax lawyers to do free legal services work. That is probably the common denominator that brings us all here. What I am curious about is people’s perspective about what works in that effort today – what they see the trends as being and what that suggests about what will work in the future. Will it be the mentoring and getting the feet wet exercises that some panelists have mentioned, or will it be other techniques? What do people think?

**Sandy Rousseau:** I think it’s all of those, just from my own experience. The easiest sell is to other alumni at legal services. If I need a lawyer in a hurry, it is a small practitioner from our commu-
nity and one who has a history with us that I call. Where there is an emergency situation, for instance housing is often an emergency situation, that is always the easiest and fastest way to get help. I feel guilty because those are the people who do it the most often, and earn the least income in terms of their law practice. But there are other ways. I have been doing this five or six years now, and I have seen more commitment from the larger firms. For example, the intern we were hiring this summer was funded by a firm. Her contract was to be at the firm for six weeks, and to work in our office for six weeks for a salary that she would be getting as if she were at the firm for the entire summer. So there is that kind of contribution. We have also had other kinds of contributions. Some of the most useful are material. Bill Dean has been incredibly helpful in getting us computers for our local offices, as well as furniture and telephones. Another thing that has been helpful is training. Rather than taking cases, we have asked experienced attorneys to provide training for us. You are the people with the skills and experience and the history in local and federal courts. So for example, the American College of Trial Lawyers has now done one training for us, and is doing another that is very hands-on and very intensive. Bill Dean was also very helpful in getting that organized. I am called upon to mentor for the County Bar Association, and I know it matters a lot that there is some backup. People do not have inexperienced lawyers approaching subject matter areas where they get lost. So I do not think any one thing matters – it all matters. It is a sense of outrage that ultimately triggers people that things go on that are unfair and unjust and have to be addressed.

**John Kieman:** Now John [Acmadus], it sounds like you are filling your days thinking about this in different situations these days. Are you having the same experiences as Sandy, or do you have other formulae?

**John Acmadus:** I am newer. I have just been in the position for the last nine months. I have been focusing on the outer boroughs around Manhattan where there are fewer firms. I found during the year in reaching some of the bar associations in particular, the leadership from the State Bar has trickled down and impacted how they receive us and listen to us, whereas in the past when we approached them about pro bono work, we'd get ignored much more easily. They now know that the State Bar takes it really seriously to enhance their pro bono work. The local bar has gone after their membership. We have gotten more cooperation in set-
ting programs up and working with the local bar associations because they know it is important. And each of the presidents has indicated that they have been to the State Bar meetings and they know how significant this is. So I think that kind of leadership and pressure from above has to continue to promote these programs.

The other thing that has worked somewhat successfully is that everybody is not doing it for altruistic reasons. One of the things we do at legal aid is offer training to the new practitioners. We'll say, you come and we will train you in a legal practice area—we can provide Continuing Legal Education ("CLE") credits—and in return, you take some cases from us. That turns out a certain number of people for us, especially new practitioners who are willing to do it and get involved in a practice area that they are not familiar with. Sometimes, that is very effective. They will see that taking a couple cases is not a big deal to them, so this gives them incentive to participate. They see that they get some gain out of this.

There is a very big attitude thing. Small practitioners express the view that they do pro bono when they have clients who do not pay their full fee, or that we are somehow taking their business away from them and that these people we are helping might have been potential clients for them. We are able to do the education by getting cooperation from the bar association, but we can educate them that these are not people that are going to walk into their offices and pay them to get a divorce or get representation.

**Judge Billings:** One thing that we have seen happening across the country, not as much as we would like but surprisingly often, is that Corporation Counsel who retain law firms to do certain parts of their legal work in their retainer forms are asking firms what their commitment is to pro bono work. That has an incredible effect in the communities where a major client puts on the retainer questionnaire, "What is your firm's policy on pro bono? Do you have any requirements that each attorney do it?" And that would work whether the firm is run by an accountant or an attorney, if the client makes it clear that they are interested in hiring a firm that has a public commitment.

**James Moore:** I just want to say in response to Sandy Rousseau's well-deserved praise for the work that is being done by some of the big law firms in New York, that that is not where the problem is. The irony is that the big firms that you would think would be only concerned about making lots of money and being very impersonal are where some of the very best programs in this state are being operated. I visited a couple of those programs and cannot
say enough about the Davis, Polks, and the Skaddens and the Sullivans and Cromwells, and what they do. But that is not where most lawyers live and work. The vast majority of lawyers in this country, including New York City, are practicing in firms of one to five lawyers. And that is where we are falling down. You can say what you want, and Bill Dean and I agree with you, the response of the private bar has been admirable but not that admirable. Chief Judge Kaye’s survey shows that forty-seven percent gave twenty hours of pro bono work. A significant percent, seventy-seven percent, included doing work for their brother-in-law. What that really means is that fifty-three percent of the bar are doing zero. The average gift billed to a pro bono legal service program is eighty dollars. That is basically chump change. We really need to inspire people to do more than that and when John said, how are we going to do that, I started thinking about that. Andrea Bryant and Judge Billings tapped into some of the great ideas I had, which means they really were great ideas. But seriously, I do think we really need to address this issue of the obligation of practicing lawyers. If you have a law license, you have a moral obligation and it has got to rise to the level of a legal obligation to respond and give back to the community. That has got to be taught from the first day in law school. Every year people must be told about the need to provide pro bono law services. I went to school in the dark ages but I do not remember anyone talking about pro bono services when I was at Cornell Law School.

Regarding pro bono, the media has got to get on board. Then you need the organized bar to speak on the issue. It is like being a long-distance runner – it has got to be constant. It is like building up your strength as a runner. The minute you stop, the reservoir drains and all of a sudden you are not so strong. The same thing happens as soon as we stop talking about providing pro bono services. People forget it and go off and do something else.

**Tom Maligno:** I think you are right. I am curious about how we might connect it with the comments about changes with the legal profession in the future. Maybe from the pro bono end, we need to think about how to use that to our advantage. So for example, if as a lawyer we have a professional obligation, then a firm owning lawyers or their services should have a similar obligation. Maybe that needs to be legislated. For instance, perhaps if they want to come into the profession, there should be some type of entry fee.

**John Kiernan:** Firms have owned lawyers from time immemo-
rial. They have just been called in-house legal departments. Really, the issue is: what is the culture of the organization that owns lawyers? Let me just suggest a couple of concrete answers to your questions. Then I want to take Bill’s comments about moral suasion, and you probably heard that subordinate clause about of course we should not mandate this, and ask some of the more rigorous questions. For example, we talked about the influence of the judiciary. I attended a meeting at the Southern District of New York about a year and a half ago. The invitees were the heads of pro bono at about sixty law firms. The Chief Judge said, “Now this is the hospital at which you have admitting privileges. Of course, we are all doctors that have admitting privileges. Of course, we are all doctors that have admitting privileges at hospitals. There is the need to serve the indigent and at the end of this discussion we’ll talk about how many cases each of you is going to take on in our pro se office.” Now, that was the long end of moral suasion. In talking about the involvement of corporate clients, there has been an effort started over the last few years, called “Project Teamwork,” in which law firms pair with their own clients. Precisely what work gets done by the client and what work gets done by the law firm differs with respect to each institution. But the common denominator is that there is this linkage to commercial advantage which is direct enough for even the most un-altruistic lawyer to recognize.

The next thing to talk about is mandatory pro bono. You said, Sandy, that the easiest people to get are the people who have done it before. Should a service requirement be a component for every lawyer just as is the requirement that they spend about six to eight weeks studying the law of secured transactions for the bar exam? What do people think about these more pro-active urgings? Is it too much to force that down people’s throats? Should we stay with trying to appeal to people’s better instincts?

**Andrea Bryant:** I don’t think so. From the brief research I have done, I found out that the firm I have been in now for nine months has a partner who’s dedicated to doing pro bono, and one of the associates is actually responsible for getting cases from the Dallas Young Lawyers Pro Bono Project and then distributing them and trying to get takers. They will actually give one-for-one credit for pro bono hours in billable hours. Another firm had a certain number and if associates did not make that number of hours two years in a row, that was a negative in the calculation of any increase or bonus. So I think it is still fertile ground for us to ask firms and in-house legal departments to do things that as controller of the paychecks they can do. Another thing we are doing in Austin,
Texas is we have had for the first time some numbers generated from a reporting form on pro bono after there was a dilution of the definition of pro bono to include any kind of board service. The same general trends are there. Somewhere between a quarter and a third of the lawyers reported on their dues statement but then the people with the higher numbers in the traditional kinds of pro bono were from the smaller firms and solo practices. So in addition to making everyone recognize the obligation they have to do pro bono, we have to treat legal services as something that anybody in our society should have access to. So the same way the community comes together to raise money for the free medical clinic, and other kinds of social services, it should not just be the lawyers who are responsible for contributing money and services for provisional pro bono. We have something called "justice for all" going on. In addition to the general counsels of the corporate community, we are also looking at the business leaders and trying to educate them that the same way they think it is a big deal to come into our town and have a wing of the art museum named after them or be a patron of the ballet, that it is just as important that they give what they can, whether it's hours with their attorney or simply money, so that the poor can have access to legal services.

[Unidentified Speaker]: John, just to be mildly provocative on the subject of mandatory pro bono, I am rather dubious about it. The most recent survey of the OCA strengthens my dubiousness about it. It seems to me it would result in such a bloody brawl among the state bar and among lawyers that the fight would not be worth the candle. The definition of what would constitute pro bono would be so watered down that I do not think there would be much additional work provided to the poorest people through legal services and legal aid programs. Under the rather broad definition of pro bono mentioned earlier, seventy-seven percent of the people reporting said that they did free legal services for relatives and friends. One of the more useful things that has happened over the last few years is that an alliance has formed which did not exist before between the private bar and legal services at the state and city level. I think that a mandatory pro bono might undermine that alliance. It seems to me that better efforts would be spent continuing to strengthen that alliance and encouraging voluntary efforts, and not imposing a system.

John Kiernan: What if our worst fears come true, and fifteen years from now, John the accountant, Jim the lawyer, and Judy the insurance person are practicing in a professional services firm and
Tom's running the legal services office. Tom comes to me and says, "I need a lot of time from all of you." Do we now say to the insurance person and the accountant, you have to do some legal service work too? I have no idea what the answer is. I think when we talk to lawyers who go in-house from firms, their answer is, "my attitude on pro bono didn't change, but I took my direction from the people on the top." And one of the vehicles for selling pro bono is going to be to get the people at the top, and one of the ways to get to the people on the top is to get them when they are kids and to wait for them to get old. And hope they get old successfully.

[Unidentified Speaker]: Or to get them when they want something. What people want is greater access to the legal community, and I have heard all of the misconceptions or concerns about what that might lead to. But if, in fact, that is a road that we are heading down, then I think that the organized bar needs to make sure that those professionals have the same responsibilities as lawyers in this world, and that they understand that. Maybe they need to have more responsibilities when they first get in.

John Acmadus: Well, I have wanted to talk about something I have not heard mentioned yet. I retired from the civil court and went to work for Bronx Legal Services. I am still there nine years later. Two things struck me during my work. One is that a lot of this work for the poor is complicated — so complicated in fact that the average lawyer steps in at his peril. And it struck me that both legal aid and legal services in New York have been struggling for funds to enable them to hire and retain lawyers to do this on a regular basis so that they are experienced. Another thought is that we cannot seem to attract the people from the bar whom we really need. We say, "come here and give us one, two days a month, give us whatever you can give us, and we will put you to work on the kind of cases that we find we can’t begin to accept the number of clients who are telephoning us." We need more money to hire more lawyers and we need people, whether they come from a one-man, six-man or hundred-man firm, who will give us so much time. At the same time that I see this happening, I see both the state and the city cutting the money that comes to these services, and having their own spats with the people who run them. It seems to me that one thing the bar can do is put more pressure on the political leaders, especially with respect to pro bono programs. They can get the training and be under supervisors who are ready to use them for half a day or a day or whatever they can give.
John Kiernan: Your comments raised a couple of questions, but first, here's a question in the interest of being provocative. It has been suggested that the truth is that for most legal services organizations trying to get volunteer pro bono assistance, the training of lawyers who do not have information about the merits of the matter takes so much time that it probably would be easier and more efficient for one of your lawyers to do it. It is actually a lost leader. And the reasons why pro bono works is really to get the lawyers wrapped into the notions of pro bono so that the institutions that they are associated with will have a culture of giving, that checks will come from it and that something larger will come along.

Marlene Halpern: Well, I wish those checks came. I will be very honest. I think that anyone who practices in the public service world would say that their number-one desire is for more funding so that the program can actually do the work where attorneys can establish or specialize what they do, and can breathe and do it. We will probably never have enough funding. But that is our reality. I think it goes both ways. We have to figure out a way where we can do training and get more efficient ways to get our staff and the private bar, and we really haven't thought that through well enough. I know personally, what has been the most helpful in the past is when I get a call from a law firm and they say, "We have x amount of associates interested in x type of case. Could you come down for a morning and do some training and bring some written material, and you can have an audience or we can choose to do it in a larger group?" So I think there are different ways.

As for mandatory pro bono, I used to think, never in New York. But I also thought that about CLE. I was a clinical professor at one point in my life and I started to wonder whether there is a way to weave the two together. Is there a way to talk about mandatory pro bono that means that we need training or a skills component where pro bono is like clinical prep, as we would do in a law school or in a medical school? So that is what popped out in my mind on the mandatory issue.

John Kiernan: I think it raises a fascinating question and it segues into a follow-up on what you said, Judge Billings. Let me take one of the points and divert for a moment, and talk about what are the mechanisms of communications that we have known – what is the educational and training process going to look like? Clearly, the Internet will play a role in that; Michael has been one of the leading thinkers in this area.
Judge Billings: I just want to mention, since we were talking about mandatory pro bono, the experience of the ABA Standing Committee. We try to keep track of what’s happening nationally. The only place that has adopted mandatory reporting, the Supreme Court of Florida, has said that attorneys will report on their bar dues form the amount of pro bono they have done. The Florida Court claims it has raised the amount of pro bono work in Florida. I have talked to a number of lawyers from Florida who have tried to reverse that rule. Where they have tried mandatory reporting, to be enforced by the supreme courts in most places, your Court of Appeals here in New York, it has had very negative results in the places that have tried it: Colorado, Utah, they are thinking about it in Ohio. And just what you have feared does happen. It does not increase or encourage lawyers. In fact, it has been kind of negative. So frankly the Standing Committee thought mandatory reporting was a wonderful idea because then we would finally know how much pro bono work is really done and we could brag about the lawyers, but it just has not been a positive result.

John Kiernan: Let me ask you, Judge, the Florida experience is getting discussed a lot. But you’ve talked earlier about the role of the judiciary. Is there any role for the judiciary, apart from the substantial one, but the moral suasion of urging people to do pro bono and championing them when they do?

Judge Billings: Yes, I think there is the one role we just talked about, which is the institutional role of the courts passing some sort of rule that you do it. There is what you have just referred to. There’s a particular judge who says, “if you come into my court, you will also do x.” Many judges have real ethical problems with that and I personally do myself. I think it is an undue use of your authority to require people who appear before you to do anything such as that. But if encouragement to groups to do pro bono work is effective, that is good. The other thing that judges are very good at, and frankly get asked to do very little, is to serve as an education arm. We know how to do domestic relations cases because we sit in that court. Judges, because they feel isolated, are always very willing to come out and teach lawyers. And frankly, lawyers are more willing to take a case if they know a judge is teaching. They want that judge to see them being trained to do a pro bono case. So I think that is another way to use them effectively.

Andrea Bryant: One other thing judges do – at least in the Travis County district court, the newest district court judge began her legal career as a Reginald Haber Smith Fellow. So that is how
it is in that courthouse. John, you mentioned in the beginning that what most of us have in common is that we coax people to take pro bono cases. Well, I am also a coaxee. As a patent attorney, I felt I was not connected to people who did real law at the courthouse. So we have a training program. Because we have a minimum continuing legal education requirement, I got six hours of CLE, an hour of ethics and a list of consultants I could call, and I didn’t have to pay for the CLE. I got to do two pro bono divorces. What the judges do when you come to the courthouse is to make you feel like you are doing the greatest thing in the world. If they see an affidavit of inability to pay and they see this is a pro bono case, they thank us and make us feel good. We are being coaxed, and you know, we like that.

John Kiernan: One of the suggestions that was made in the CLE area is that there is an ethical sub-component. There were some overtures that were not taken up, of suggesting that among the thirty-odd hours of training, that a couple hours be directed at training in legal services outside one’s specialty. Maybe there is a way to get your toes wet, given the concern that people do not know the particular law, and that it is technical and complex.

Let me ask you something. Both Bill Dean and Jim Moore talked about in their remarks the need for both public supported and private bar supported legal services. Obviously this program was designed to primarily focus on the private bar, but one of the roles of the private bar probably includes advocacy on the public side. Jim has been a leader in that area, and Jim, I was wondering if you would comment on that piece of the equation.

James Moore: I would be glad to hear from the audience about how we could do more here. I think that public funding of legal services in the future, both civil and criminal, continues to be a very tough sell. While I think we probably stanched the ball on the federal level, we will probably see in the foreseeable future continued funding at about the same level for the legal services corporation. I am not at all sanguine about the future of state funding for civil legal services or any increase in public or indigent criminal defense work – not that it has been foreclosed. But I think it is going to be a tough sell. I think the organized bar has got to lead. I can think of no other group that can lead in addressing this issue. The way we do that is to try to make a public issue of it, to get the press interested in it. During this past year, I have met with boards of editors of The New York Times and of the upstate papers, and my number one or two concern for them is always the impor-
tance for them to be up-front about legal services. We need to talk to constituents about it. You folks have got to write to your legislatures, contact them directly about how important continued funding of legal services is. I talked to New York legislators and members of the executive branch about it. Beyond that, I do not know what you can do. I do think that it is up to the New York Bar to play an active role because a very big problem with this issue is that there is no constituency clamoring for more money for legal services. In fact, they are probably saying the opposite. We also live in a time when there is absolutely no access before the electorate and it is easy for any legislator to pick on the people and say no to providing legal services. So it is absolutely imperative for people like us, who are concerned about this, to speak out and lead.

John Kiernan: Tom Maligno knows a lot about this. One of the things that has been happening the last couple of years is to develop partnerships in this effort. To get, for example, the legal profession talking with the unions, who have been perhaps the most effective voice in getting increased funding for legal services. And to get the various bar associations talking together so that there is some kind of coordination of effort. But it is hard to resist the sense that as powerful as a group as the lawyers of New York State are, that power is not being wielded politically in the interest of trying to get the government to support legal services. On this issue it is not being wielded effectively.

Let me do one other nuts and bolts thing. Mark O'Brien, you're the coordinator of pro bono at a large firm. Of course, in this room lots of people are dying to be consumers of your lawyers' time. What are your secrets to them about things they can do to increase the allocation of your lawyers' hours to pro bono activity, and to theirs in particular?

Mark O'Brien: One of the things that large firms have as an added responsibility is to give time; not just to think about how to get more hours out of them, but to be thinking more creatively about how the firms can become more of an integral part of the legal delivery system beyond just plugging in the lawyers to the cases. That is, to talk with different groups about a variety of sources whereby we can get involved in working with them, not simply to handle the first case that comes across the desk.

Particularly with firms that have coordinators or have partners who devote a portion of their time to planning the firms's pro bono activities, to speak to them about what the overall needs of
the office are, and think of a variety of difficulties, is important. An example of one of these areas where there is an unmet need and where a lot of large firms have frustration with picking up individual cases is housing work. Part of the difficulty is because of the learning curve for doing these cases and the turnover of the lawyers in the firm, so that they are not necessarily going to do more than one case. We spoke to a number of legal services firms about doing housing work and we decided that the way that it would work best is if we would try to figure out what the one particular area where the legal services office could not deliver or serve in that area. We could say we would take on a sustained number of cases in that area and work with them. That is why legal services came up with the concept of "building fires." That is, where there are groups of tenants who were dispossessed because of a fire in the building who are rent regulated tenants and had a right to force the landlord into affirmative litigation to restore the building. We would not take on ninety-five percent of the types of housing cases that come into your office. But if there are ones in this particular area, we then have taken them on. Over the past few years we have litigated probably six or more that involve representation of tenants who live in these buildings and have built up some experience within the firm. There are plenty of different ways we try to do that, from clinics and pro se clinics to working with legal services. I think that trying to think creatively about not just plugging the next case—and there is an obligation on the firm's side as well—when you are approaching firms, is best. Think about the variety of different ways to get the work that you do to mesh with the number of different things that firms are looking for when they have committed their firms' lawyers and resources.

John Kiernan: Bill Dean, you are a big exponent of the internship model, of creating people who have a large-scale commitment to satisfy Marlene's concerns about efficiency, and to create the alumni network that Sandy talked about—and certainly Michael Hertz, your current employer the Open Society Institute, has very much followed that.

William Dean: Well, that actually addresses your question or issue. There are a number of firms in the city, about five now, which loan associates to work full-time in legal services or public services organizations. In a sense the grand-daddy of firms doing this is Cleary Gottlieb, which has been doing it for about twenty years now. In the course of the year, for four months, three associates go from Cleary to work full-time at a legal services organiza-
tion, and it is a little bit like a relay race. The number one associate hands to number two associate the cases that person has been working on and the next one comes in. The legal service office really likes it. Ideally they would like a six-month internship because after the learning curve is over, the associate is being very productive. The lawyers like it and the firms like it. We have just had Kramer Levin, which is one of the smaller firms participating with about 200 lawyers in the city. I have just been interviewing the first person who has gone through the process and he was saying, "I'm going back to the firm and, my God, the things I have learned. I have dealt with clients directly. I have dealt with adversaries. I have stood on my legs in front of judges. I have had real life clients." My experience is limited because I deal with large firms, but one of the appealing things for pro bono lawyers, at least at the large firms, is that there is such a hierarchy involved that to have a real live breathing client, with all of the problems they bring with them, really means a lot to lawyers because it is like being a bedside doctor. You are actually making important decisions about someone who needs your help. So it is great program. I would like to see twenty or thirty firms in the city doing it. We will slowly but surely add one firm here and one firm there, growing very slowly.

**John Kiernan:** Just to follow up on that, one of the major initiatives that the Law and Society Program at OSI, the Soros Foundation, has pursued is a public interest fellowship program and they structured it in a way which is very interesting and pretty successful. They have matched contributions from private law firms and companies to create these positions so that the Soros Foundation will pick up the cost of half of the two-year fellowships. In the first year of the program, in 1998, there were seventy new jobs created. This year there will probably be similar numbers. At any one time there will be 150 jobs. And I was thinking about how that model, in this case it is a private company and a private foundation, but I was thinking about how that model can be shifted to private/public companies and foundations to create these sorts of positions. So it is really a very exciting, new approach.

**[Unidentified Speaker]:** I think sometimes when I go to firms and talk about what I think is the ideal pro bono program of a firm, it would be participation of all the lawyers, every lawyer at every firm should have one pro bono matter on his or her docket at all times. The Code of Professional Responsibility says, "A lawyer has an obligation to render public interest pro bono service."
think that law firms should be supporting fellowship programs like the OSI program. They should have programs that appeal to different approaches. Some lawyers want to be very touchy-feely. They want to have clients that they are working with directly. Others want to do a sort of cosmic public interest type of case. I think within the firms’ pro bono programs there should be this kind of diversity of opportunities. This should not be so difficult to bring about, if the leadership of the firm is committed to this approach.

John Kiernan: So the simple ingredients are to get the leadership control from the top committed to it, no matter what the firm or organization might be; to get the folks who are doing the work at the bottom committed to it, to use mechanisms like CLE, and friendship and internship and training opportunities, and anything else you can think of to get the toes wet, because once people begin doing pro bono work and make it part of their life career habits, they very rarely stop. Those are the ingredients today and those may be the ingredients for even looking 300 or 400 years down the line.