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## Roundtable Discussion: Visions for the Future

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## ROUNDTABLE DISCUSSION: VISIONS FOR THE FUTURE\*

MODERATOR

*Daniel L. Greenberg\*\**

PANELISTS

*Anthony V. Alfieri\*\*\**

*Michelle Adams†*

*Edgar S. Cahn††*

*Jennifer Gordon†††*

*Luis Garden Acosta‡*

*Alan W. Houseman‡‡*

*Errol G. Louis‡‡‡*

*Esmerelda Simmons◇*

*David A. Thomas◇◇*

MR. GREENBERG: I could not pass up the opportunity to moderate this panel. There are four professors on this panel. The opportunity to call upon a professor when they are not prepared — and see what'll happen — is one that I couldn't say no to.

This is an unusual panel, and it's an unusual panel in a sense because this is an unusual conference. For many in this room who have participated in conferences before, it seems to be that as we approach the year 2000, there are numbers of places asking in different ways, what's the future of the profession, what's the future of poverty law, what do we do in this era as we go forward? The Second Circuit itself had a panel on this at its summer

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\* This discussion was originally held as part of the Symposium on Nov. 6-7, 1994, at Fordham Law School. The remarks have undergone minor editing to remove the cadences that appear awkward in writing. The panelists were asked to respond to the question, "What sort of program, legal or otherwise, would you establish if given a million dollars?"

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conference, and there are numerous other schools that have done it.

This is different. It's different because of who the panelists are. We hope that this part will be different because of the format that we've chosen to try to do, to surface what some of the issues are. But the people that you see before you are people who bring really varied and different perspectives to the work that lawyers might do with communities.

And this is a very community-based, community-oriented session that we're trying to do. We're trying to filter some of the issues that can be done abstractly, and put them into a realm and put them into a context that we hope will take some of the abstractions and make them more real.

So look up here and see who is here. I'm not even going to introduce them, even as individuals. I'm just going to say that two of the folks are really community activists and are not lawyers. Four are professors, three at a law school, one at a business school. Two work as lawyers with community-based organizations. And then there's Alan Houseman, who runs the Center for Law and Social Policy ("CLASP"). And Alan, for all who have been fortunate enough to know him through the years, sort of has perspectives on all of those and is one of the leading people in thinking about those issues. So that's the panel that we have.

Here's the context; here's the hypothetical. Fordham Law School, through a generous benefactor, is going to give between one and two million dollars to a community in New York to set up some kind of legal services for its community. No restrictions. No LSC regulations. No rules about how it's going to be spent. Not even a requirement that it be an office, as such. Simply that between one and two million dollars is coming into a community.

And the other part is the community doesn't have legal services now. We're at blank slate. There is the ACLU, and a lot of other organizations that are citywide, countrywide, but there is no community-based law office around. And the question for these nine distinguished panelists to think about, and they have been thinking about, is: What are we going to do with that money?

Now, in the audience today there are an extraordinary number of people who might as easily be standing up here or sitting down on the panel. That's not meant to be simply a compliment; it's meant to say that I intend, as the moderator, to involve you in this. This is not passive; we will not talk for an hour and a half, and then we will say at the end, "Anybody have a question?," and four

people will stand up and either make a small speech or ask a question. That is a traditional model. We're not going to do that.

I am going to try to involve you, and I want you to be involved as it is going on. There may be moments that I will actually turn and ask someone in particular in the audience, or more likely anyone in the audience, whether they have a different perspective or anything else to add to it. We want this to try to be interactive. We want no speeches up here; we want this to be a discussion, with a lot of experts struggling with the hard issues. Not at the abstract level that is mere theory, nor at the very concrete level. A million to two million, and Errol, what would you do with it?

MR. LOUIS: Okay. I would take it and create a project in a limited community, a relatively small community, similar to the one that I work in, Bedford-Stuyvesant. I would limit it to what I call non-heroic lawyering in other words, providing legal services to support the ordinary flow of commerce and transactions in that community.

Because one of the most overlooked aspects of poverty, when looked at from a community basis, is that funds are constantly siphoned out — in part because there has been insufficient development of a commercial culture, and in part because people are winging it on transactions. People are going into real estate closings, the biggest deal in their life, the essence of the wealth that they hold, and signing their name to \$80,000 documents without ever having talked to a lawyer.

Not surprisingly, people are being fleeced; transactions are falling apart; employers, small business and so forth are unable to really complete the kind of work that they need done. One small example is somebody I had to make a loan to because nobody else in the world would make a loan to him. He ran a business for nineteen years in an inner city community and he never had a lease. And that was because he was relying on the information networks and arrangements and traditions that you'll see cropping up in what is by definition a subsistence economy in a low-income community.

To move folk beyond that, to something that approximates the kind of structure that you need to interface with the rest of the economy requires lawyers.

MR. GREENBERG: Okay, Luis, you're shaking your head a little bit up and down.

MR. ACOSTA: Well, first of all, as it would be a miracle I would communicate immediately to the Vatican, so as to support any Jesuit up for sainthood.

Second, I would begin to look at my community and see what is the issue, the most pressing issue on the tip of everyone's tongue, and organize a development team of people throughout the community focused on that issue. I would not even mention legal services.

MR. GREENBERG: Esmeralda, as a community-based lawyer, Center for Justice, what would you say to what has been said?

MS. SIMMONS: Well, the first thing I would look at is: Why this community? And more important than that, the fact that there needs to be a consensus of the community itself, of the civil society of the community. So I am not exactly agreeing with Errol that it is only the business community that needs to be consulted.

So the first question would be putting together, with some lawyers, yes, but more importantly, with researchers and community residents, a composite team that is going to decide how we are going to move our community out of poverty.

MR. GREENBERG: Okay. Jennifer, you started The Workplace Project in Long Island around immigrant issues. How does that fit in?

MS. GORDON: Well, I think if the money was coming to me, I would take one \$1,925,000 and find a very good mutual fund and put it in and let it sit there for a while, and use \$75,000 to hire an organizer — maybe a lawyer — and figure out a couple of things.

One is process. What is going to be the process to set this up, so the community knows. The second is strategy, and the strategy varies, depending on the problem. You may have a very different strategy if you are dealing with workers' rights and the underground economy, and the needs of people with AIDS to have access to public benefits and wills, etcetera.

And once you have process and strategy, it is a community question. I would see my responsibility, as a person who was bringing the money in, as getting people what they need in the community, what they need to know, in order to make the decisions about process and strategy, and get them started.

MR. GREENBERG: So let me keep directing this. So, Alan and Edgar, you were both around, literally, at the beginning of legal services movements, where the question about if you have yourself a couple of million dollars, what would you do, was not a theory. And it was supposed to be community-based.

You have heard four visions of using the money today. How does that comport, how is that different, are we going to make the same mistakes that we made thirty years ago if we go ahead and do this? Edgar?

PROFESSOR CAHN: I view law as an extractive industry that creates dependencies and takes resources and salaries out of community. I would fundamentally restructure, first of all, the legal system within the community, dealing with neighborhood courts, dealing with youth courts. I would invest in the use of technology to expand radical use of pro se work. I would create a barter economy that generates flowing currency, flowing within the community. And I would work to shift from entitlements to something I would call earned entitlements, where the work done to earn entitlements is community development work by the residents.

MR. GREENBERG: All right. And Alan?

MR. HOUSEMAN: Actually I agree with much of what Edgar just said. But I probably would focus on the sort of approach to ending poverty in the community that Esmeralda laid out, and Jennifer amplified. I would probably start by asking: what are the active groups in this community, both low income and non-low income. And what kind of issues are they working on. And out of that, try to figure out the best ways of using lawyers as well as a variety of other folks to address those issues.

At the same time, because we are talking about a legal services program here, I would do much of what Edgar did, my focusing on court and technology.

PROFESSOR ADAMS: I actually just want to go back to something that Jennifer said, that sort of first little piece you said about doing something with a mutual fund.

One of the main concerns I would have, and I think it is a little bit different from the sort of approaches people have talked about in terms of community, which I think are really important, is how do we ensure the longevity of this project.

So \$1 to \$2 million sounds like a lot of money to begin with, but it is not. It is gone. It is gone in six months, it is gone in a year, it is gone in eighteen months. And one of the things that legal services has been poor at doing has been thinking about programmatically, how do we ensure our funding sources, and how can we ween ourselves off of federal funding. Because I think we have a huge problem with that right now.

The other thing I would suggest is just to think about how, in terms of building up a structure to do that — it does not have to be a lawyer who runs the organization, runs the financial aspect of the organization. We need to professionalize what we are doing in terms of thinking about money and going out and marketing our ability to continue to be able to maintain these services to the people who have money. And those are corporations and donors.

PROFESSOR THOMAS: Yes, I want to jump in there. I want to come back to the way that Errol started this off. Because one thing that struck me when he started was that his definition of the community in need seemed much broader than just thinking about poor in terms of the bottom ten percent of the society. He talked about things that I think relate to how you sustain a community that has a range of poor people in it.

What that makes me think about is if I had the million dollars, I would think to myself that for the first year we might not be able to impact the actual amount of legal services. But in terms of thinking about the long term, I would want to move away from programs that have a tendency to go toward more bureaucracy, or professionalism. I think legal services suffers from some of what education suffers from in terms of people becoming unionized, and professionals becoming invested in professional interests.

I would support trying to find ways to bring law firms into the community-private law firms that have a social justice focus. For example, finding ways to figure out what the kinds of problems. And basically trying to support ways to bring storefront lawyers back to the community, as well as helping them to think about economically advantageous ways to deliver services within that model, like using non-lawyers to provide some services.

The other thing is then to connect with organizations like Jennifer's, that might speak to particular needs that are broad in our community and fund legal services from those organizations that focus on a particular sort of high impact kinds of things. But the idea would be somehow to feed entrepreneurship, move away from bureaucracy, and create for people the sense that they have lawyers, not just legal services.

MR. GREENBERG: So if Jennifer was only going to spend \$75,000 on new lawyers, you might not spend any; you might have other people try to bring the existing legal world into the community.

PROFESSOR THOMAS: I might give Jennifer \$75,000 for the services she wants to provide, and then do things like set up a fund



that would provide grants to people who want to put law services in our community, like they have done with doctors in some poor communities.

Provide bridge money when a community lawyer is taking on a project that might pay out in the end in terms of being able to collect fees, but would require a major investment from them to represent some set of community interest.

MR. LOUIS: What I like about what David is saying is that, to an extent that most people do not realize, there are not people just hanging out their shingle along a struggling commercial strip in a low income community. And what that means, among other things, is that you might be able to get legal services if you are about to get evicted, or if you have sort of a familiar pattern for which legal services are set up.

On the other hand, if you are a struggling business person, or you have some ideas, and by definition you are carrying a lot of the weight for the development of that community — maybe you are employing five or six people — the stakes go up for that community if you go out of business because you did not have any legal help.

We have a whole wave of just wills and estates; it's just incredible. I mean, we spend all this time trying to develop the communities, people acquire a little bit of something — a house they inherit or something like that — and then it is gone in half a generation, because nobody made up a will.

MR. GREENBERG: All right, so it is a half hour into a panel, and not one person has used the words "law reform." So what does that mean? That is what legal services has been doing largely for thirty years. Is it irrelevant as we go to the twenty-first century? Should we not even be thinking about that?

MS. SIMMONS: I think the reason why no one is talking about law reform is because our communities are basically interested in the community economy, and are not interested in things that are going to affect the broad brush, because they found out from their own experience that broad brushes, in fact, basically tend to lose their bristles.

And the only thing that affects them in the long run is someone else's determination about how they should be treated. So the only way out of this is, in fact, to build the economy of the local community, something that is almost unheard of. We do not even have regional economies in this area.

So that is why we are not talking about law reform, because people have lost faith in the fact that law can do much to change them in the long run.

PROFESSOR ADAMS: But I am not sure that that is legal services' fault.

MS. SIMMONS: I did not say it was. It is the society as a whole.

MR. ACOSTA: My community is not poor because it does not have lawyers. And I understand the need to have all kinds of professional expertise in every community, to make it whole. But I do not believe in the social service model.

And I would form a development team that would focus on one concept that could organize most people in that community to create a membership-based focus movement for peace and justice. One that could clearly articulate the needs of our community for development, for democracy, for healing, and for human rights. And one that had as its principal objective the creation, the inspiring, the nurturing of indigenous leadership.

And to the extent that lawyers or any profession can support that, it is a good. To the extent that they can come in and become a barrier to that, no matter how well meaning, it is evil.

MS. GORDON: And I think that just because we are lawyers, we see problems and assume that the direction to go in addressing them is law. I think that is the approach that has gotten broad based-legal service in trouble. I think as a matter of strategy, you have to look at the problems you are facing. There may be a role for legal services in them, and there may be a big role depending upon the problem. But I think that with local leadership and strategies that take into account economic development, organizing, maybe law reform, maybe legal services, maybe things that have nothing to do with a service model, that is how you get at the roots of those problems.

PROFESSOR ALFIERI: Danny, as a starting point, let me challenge the premise of this panel: *there is no community*. In Miami, for example, our communities of color struggle in conflict over race, class, and ethnicity. These conflicts encompass Cuban, Salvadoran, Nicaraguan, Colombian, African-American, Haitian and Caribbean communities.

At the University of Miami Law School's Center for Ethics and Public Service, the issue of community arises in developing and implementing our community service initiatives. Evidence of fragmentation, coupled with funding scarcity, compels us to pursue community projects based on limited public-private partnerships.

To the extent that these projects rely on underwriting from the private sector (banks or insurance companies), we risk compromising our community-based advocacy objectives.

MS. SIMMONS: But that is the whole point, you see. Community is not a racial group; community is a cultural group that self-defines itself in terms of what they have in common. What society basically builds itself on is those fragments. This whole concept of anything, of the neighborhood, or a community that is composed of a racial group or people with economic interests alone, has never existed.

So what we need to find is exactly what Luis has talked about. What drives that community, and how can their needs as they have defined them, how they want them to be addressed.

MR. GREENBERG: I take it that you are saying that there are multiple voices. So let us stay with it a second. What voices do you listen to, how do you get to hear the voices in a community that even defines what a community is.

MR. LOUIS: In other words, it is an art and not a science. And if you are operating within the community, who it is is whoever you happen to be talking to. You know? I mean, people self-organize along religion, race, class, the block that they live on and so forth. And the notion that it does not exist is, you know, I mean, in New York City if you cross a certain street, people will come out and beat you to death, you know. They will get into it based on something.

So it is real, and it is live. Police protection, political services, I mean, all kinds of things change radically from group to group. And it is very complicated. And it is fun. Actually, it is interesting; you have a lot of stuff going on.

So I would say that what you want to find is some kind of, a much more entrepreneurial model. And that is what I would be pushing for as well, to say, you know, you want to set some people down in the community who have to sort of make a living at getting good at this stuff. Because you can sit back and plan and look at this community, that community; you can start a process and wait for that to spin out while your money is eroding; or you can sort of go in and look at the way the people have organized themselves along institutional lines and within a local economy, and try and become a full player within that economy. And that is what is lacking right now, as far as I can tell.

MR. GREENBERG: So some people in the audience have worked in communities, maybe been around a long time; I see

faces of people who have been involved in legal services in communities a long time. So how do you understand the community? How do you know to whom to speak?

If it is whoever you are speaking to at that moment, what happens when the person next to that person disagrees? What happens when one group wants to put in a homeless shelter in the community, and another group says, "Not in my backyard," and they are both in your community and they are both poor.

How do we think about those questions, even if we are committed to community models? Voices out here, or there, whoever wants to take it.

AUDIENCE: I am Lee Banker from Brooklyn Legal Services Corporation "A." I am not intending to fudge the question, but people keep — the theme from the panel is economic development. And it seems as if they are saying economic development instead of legal services. Part of being a litigator is, the first thing you learn is to talk loud.

What Brooklyn's experience has been — Paul Acinapura and Marty Needleman from Brooklyn "A" quite a long time ago, recognized that community economic development should be an essential part of what legal services lawyers do. Which is to say, not just the defense of individuals, not just affirmative law reform cases, but learning the nuts and bolts of corporate law, tax law, contract law and government regulatory agency law.

And we have done that, and have established a large number of businesses, of self-owned housing projects, of health centers, none of which, not one of which could have been established without those nuts-and-bolts commercial legal skills being given to them, and which, I might add, the private bar are so time consuming that I don't think any pro bono system could volunteer sufficient services.

MR. GREENBERG: So what about that? Is there a role for lawyers in the visions that the panel is articulating? Or are they basically irrelevant?

MR. HOUSEMAN: Well, when you focus on the role lawyers, most lawyers do transactional work. And we have been talking about transactional work, so there is clearly a role for lawyers. It may not be the role of litigating major cases, or doing hands-on helping service work. Although I think both of those have roles which we need to talk about.

But most work is transactional that lawyers do, and that is in many respects what we have been talking about in part here. Not completely. So there's a clear role for lawyers.

MR. LOUIS: There absolutely is. We started what is now an over \$5 billion banking institution, federally regulated; we did it without ever talking to a lawyer. You know, we have gone to court multiple times over bankruptcy cases; people come to me with \$10,000 checks saying, "My uncle died and I just got this check; what should I do," and I do not even have any place to send them. That is a real problem. And institutions that have been formed painstakingly will crash and burn without assistance of a type that only lawyers can provide.

MR. ACOSTA: I think there is a role for lawyers if they are culturally syntonic and if they understand their class biases, and if they can be part of a team that is about indigenous leadership and they can be about a collective that is rooted in community. Definitely there is a place for lawyers. There is a place for doctors; there is a place for everybody with expertise.

But if we are talking about community development, if we are talking about the effort of my community and communities across America toward self-determination, then we are talking about a collective effort, rooted in community, led by indigenous leadership.

PROFESSOR CAHN: When you are talking about community economic development, you are talking about normally money-defined activity. The market economy does not want human labor, extracts human labor; it is the one cost you can squeeze because you cannot squeeze other costs. If we are going really to talk about economic development, we are going to have to talk about community ownership of assets.

But we are also going to have to talk about redefining as work the work that was done in the home and in the neighborhood, the raising of kids, the building of community, a whole social infrastructure that was not money. A monetary system defines growth by how many prisons you build, how many people you put in jail; it is not growth to keep a kid out of trouble or growth to keep a senior out of a nursing home. So we have got actually to redefine what we mean by economic activity if we are going to talk economic development.

PROFESSOR ADAMS: I think there is a role for lawyers. I mean I am very pro-economic development and I am very pro-community economic development. I think that is incredibly

important and I think it's something that we have paid enough attention to and there is no question about it.

But I still believe there is a role for legal services. I still believe in legal services. I think we need really to undertake and look hard at how legal services functions, how it has been funded, how we need to continue looking at our funding.

But we still are in a situation where — and not to talk about people with \$10,000 checks — there are people who have nothing. People who have nothing. People who — and particularly now after the most recent welfare situation, how to deal with these sorts of large numbers of people — who really are on the edge, who are homeless, who are in the process of dying.

And I understand what you are saying. But I feel that there is a cultural role and a very useful role for legal services, and we need to reform that.

PROFESSOR CAHN: But it is that very deficit perspective that I think is going to get us in more trouble. I view the communities I work with as rich, as rich in human talent and knowledge. I dealt with a kid who was up for marijuana before a youth court, and I asked him did he know the alphabet, could he at least teach a first or second grader how to read, could he go hug a senior in a nursing home. When you start asking people not what skills they have, but what have they done for family, neighborhood or community, you find that they can do everything that is going on in the so-called mainstream economy. We have to build on that wealth.

So I say legal services has to charge clients in community service. I say to a person, "I can keep you from being evicted. I cannot make where you live a place where I would want to raise my kids and live. So if I do not want my life to be a life lived in futility, I need you as badly as you need me." We need to restructure reciprocity into the whole relationship.

MR. ACOSTA: I agree with that. And I think that if we went one step further and got away from client, the concept of client, and really build membership-based organizations where legal services was an integral part, as well as other kinds of services, but were based on a membership's rights and responsibilities, to develop one's community, that we could really get to some of the issues that are really underlying this whole discussion.

PROFESSOR CAHN: And there are complex legal questions. For instance, you have heard of business improvement districts. We could have neighborhood improvement districts where a neighborhood could levy on itself a time tax, because that was what

built all the roads in the Northwest and that is how, in effect, even the Appian Way was built if we are going to go back into history.

So what I am saying is that our ability to levy on ourselves taxes. Hope Six project in Baltimore is about to say, "Part of your rent can be paid in community service," to the community, and the community can decide how to use that flow of hours monthly. That is a kind of valuing of human time that we need to do that the market economy does not do.

MS. SIMMONS: And one of the reasons legal services is at a juncture, in my opinion, is because the whole idea of a larger society or a public role in assisting people and in giving people benefits, and anything that is considered to be an entitlement has been completely abandoned by a large number of people in our society; I am talking about the American society.

So if there are no entitlements, if there are no programs, if there are no benefits, then what in fact are legal services lawyers going to work for in terms of the poor? It will have to be a redefinition of how the poor want to live in society and how they feel they should be contributing.

MR. GREENBERG: What about that? Anybody disagree with that notion of the role of what legal services lawyers should be doing? I mean, I absolutely know that there are people out there who disagree — with the role that legal services — let me rephrase it. Anybody want to raise their hand and say why they disagree with what was just said?

AUDIENCE: My name is Erica and I work for the Children's Aid Society. I am an Assistant Director at an extended day program in a school. And I think there are a couple of issues at hand.

One is this money. I am from Washington Heights, and there are a lot of issues in Washington Heights. And I think one of the things that I want to say is that, when you go into a community, do not waste money reinventing the wheel. Utilize the resources in the community, because it is not that we do not have any resources; it is just that people have not looked for the resources.

And when you go into this community, you have to understand that you need to provide an explanation, a reasoning, behind why you are going into this community. You cannot go in with a savior mentality — "I'm going to save your community." It is not going to work. It has to be a "we" effort, a collective effort, for us to be able to help the people that have needs.

There are a lot of safety nets that are being taken away from our children, and there is nothing to replace them. And that is something that needs to be taken into account.

MR. GREENBERG: Okay, but I want to ask the question again. The statement was made and Esmeralda said it as directly as anybody can, and there must be somebody who does not agree with that statement. So what is the role, or is there a role? Wayne?

AUDIENCE: I am Wayne Hawley from MFY Legal Services. I am not sure I disagree with the conclusion that traditional defensive individual services for low income people are not the way to go. But there is that short run problem. There is that short run problem that we all see, any of us who are in the serving professions. We see that person who is about to be evicted, who has no food on the table, and all these solutions — and I think we are all increasingly becoming aware that the solutions the panel are suggesting are the right ones in the long run, but as the philosophers recognize, in the long run, we are all dead. And it is that client, he or she, client, community member, however the person in need is defined, who is there, who is going to be homeless, evicted, lose their kids, get deported, whatever it may be, in the next week or month. And how do we respond to that short-term problem and at the same time deal with the questions the group is addressing? I do not have an answer, but I think these are things that have to be attended to.

MS. GORDON: I would like to give a shot at an answer, which is that there are situations where nothing but legal services is going to solve the immediate problem. And the question is, can you set up mechanisms, so if you are running a community organization and legal services is part of that, so that people who come in get funneled through a process where they become part of figuring out a larger solution.

For example, at The Workplace Project, you come in, if you have not been paid your wages, we will help you if you take a nine-week class in labor law, immigration history, organizing techniques, labor history; become a member of the organization, go out on picket lines, start fighting for legislative change to deal with the problem, and become a part of a larger solution.

So there is a concrete mechanism set up to feed people from the sense of short-term victim to long-term actor in a solution.

MR. ACOSTA: I want to say that I am not against emergency services. But I think that in many of our discussions we pose this



question: Are we about treatment, or are we about development, or prevention, if you will? And I think we have to be about both, obviously.

But who is driving the engine? It is a membership based, indigenously-led, focused organization of community that has to drive that engine. Because without that, if we allow lawyers to lead an effort, if we allow doctors to lead an effort, in and of themselves — obviously there are lawyers from my community who are Latino, who live there, you know — I am not saying that lawyers cannot be indigenous to the community; I am not saying any of that.

I'm simply saying that in and of itself, the profession does not embody, necessarily, leadership skills or necessarily the ability to facilitate a community process for development. And that, therefore, what has to drive the engine has to be a community organizing effort, a membership-based, focused effort on broader issues. And rooted in collective self-help, even as we deal with the immediate.

PROFESSOR CAHN: I do not want to be difficult, but why do you have to join something to get your legal rights? Can you just be a citizen?

MR. ACOSTA: No, you do not have to, but I am saying, look, you can go for service anywhere. And you can continue to go to service. I do not think we are going to get out of the root causes or the problems that we face in our communities just by service alone; I think that is why the social service model is bankrupt. Definitely you can go to a service. But if we are focused on change, on transformation, it is not going to be by the client service-based approach.

PROFESSOR ALFIERI: Can I respond to Wayne?

MR. HAWLEY: Yes, Tony.

PROFESSOR ALFIERI: Let us revisit the "short run problem" Wayne Hawley mentioned regarding the provision of direct services to low-income clients and communities, especially in emergency circumstances. Although half of Miami's children under age six live in poverty, our primary indigent legal services provider (Legal Services of Greater Miami) lacks the institutional and staff resources to represent such a large, impoverished population. The history of local, state, and federal legal services programs illustrates this insufficiency and the ongoing burden of underrepresentation. Given this unfortunate history, Wayne, can

you explain how we should go forward in supplying direct legal services to meet emergency needs?

MR. GREENBERG: Let us not make it back and forth, but if anybody else wants to do it, let us get other voices.

AUDIENCE: Thanks. My name is Ray Brescia. I am an attorney at New Haven Legal Assistance, and was an attorney at Legal Aid Society here in New York for five years.

To speak to the service model of legal services, it is simply a fallacy to say that we handle every eviction that comes in the door. And I think that we have to realize that there are, you know, in Housing Court alone in New York City, 30,000 evictions that go through every year. And we turn down clients every day. So to say that we have to have this emergency services model is — we are not even doing that. So I think that we do have to take a step back and say, how can we do the preventative work, and how can we do the institution building work.

MR. HOUSEMAN: Well let me just add one thing to that. That is, that we have often thought that the only way we can do this is to, ourselves, try to meet all those emergencies. And I think we are beginning to see, this is not a panacea, but we have to think of ourselves as leveraging resources from others — private bar, non-lawyers — others to try to meet some of it now. Non-lawyers can not practice in the courts, obviously; but there are roles for law students, there are roles for non-lawyers, there are roles for the private bar here, and we have not utilized and leveraged those resources as effectively as we should. Even if that is done, we are never going to meet all of those emergency needs. But there is a way to do it better and reach more than we are doing it now.

AUDIENCE: My name is Sylvia Duingue. I am a senior post-doc at NDRI. I am intrigued that with the problem having been framed with none of the restrictions that apply to legal services, and with the dichotomy between immediate, emergency services and community building, nobody is mentioning the possibility of challenging some of the more recent legislation, including welfare reform. Because I would have to disagree that the social service model is bankrupt; I think it has been bankrupted. And I would suggest that is a different argument.

MR. GREENBERG: So let me phrase it back to the panel and say, Congress passes the law, it talks about welfare reform, it talks about immigration; clearly, clearly, clearly some gross unconstitutional parts of those things. Who in your model takes

that on? Should it be taken on? How does the money come to do it?

MR. HOUSEMAN: First of all, there are a lot of organizations that are taking the issues that are there to litigate on. There is the ACLU, there is a whole host of organizations that are taking them on, including some legal services programs. So you can not just say it is the legal services role to take on that set of issues.

Secondly, there is much less legal leverage that exists around those set of issues today, and one has to face up to that. Most of the legal services welfare law is premised on federal law; most of that federal law is gone. There are very few constitutional issues there; most of them are being litigated and will be litigated. So the notion that we, legal services, have to be in the forefront of that litigation is not necessarily a correct use of our resources it is not thinking about how to leverage resources, it is not looking at our role, in my view.

PROFESSOR ADAMS: I guess the question that I have is, why should the ACLU be the appropriate organization to do that? I mean, why are they more appropriate to litigate around the rights of low-income people than legal services is? Why are they in a better position to know what to do? Is it because they have better legal expertise than we could hope to have?

MR. HOUSEMAN: No. What I was trying to say is there is a set of issues that have to be litigated, given the hypothetical that was set. But there is a discrete set of issues that is different from daily representation of people who are adversely affected by the system.

PROFESSOR ADAMS: I guess we are back to the sort of class action versus direct client services issue.

MR. HOUSEMAN: Yes, but what I am trying to make is a different point. The point is there are very few legal issues like that can be effectively litigated. That is the point I am trying to make. So that it is easy to leverage resources from the ACLU or from the private bar, working in collaboration with legal services programs who may have some expertise, to challenge those issues.

The harder problem, the more difficult problem, is how do you relate to and react to and assist and work with the people who are going to be adversely affected on a basic level by the changes that are going on. What do you do about them? And that is not going to be class action litigation.

MR. GREENBERG: Let us hear from some other people and we will come back to you.

AUDIENCE: My name is Bruce Rosen. I am a city planner. Yesterday Peter Edelman raised the issue very briefly of "regular" people, those people who have some income above poverty level but the inability to access for any needs, legal services, and who would be impacted by deteriorating conditions of their community.

I am wondering, where does the law community fit in before you get into a situation of constant stress and crisis? And I will give some examples that I think fall into the economic realm. Within the City of New York we have had a continual outflow of savings institutions based in the Bronx, Brooklyn and Queens, the most recent being Greenpoint Bank, which up to now has had the majority of its mortgage portfolio in the City. Their charters say that they are based in Brooklyn, the Bronx or Queens; nobody goes and makes an attempt to stop them from crossing over the City's boundary.

Or some other examples in terms of manufacturing firms. The case of Farberware, where the workers were not allowed to acquire, with assistance, control of the corporation, and the product line has been moved overseas. Or Tastee Bakeries in Flushing, where the City held because of industrial revenue bond, the real property, and allowed the corporate owner to reacquire that.

And there are similar things like that. And I never see anybody saying, "Let us stop this before you create the situation where we are going to have the deterioration where it is a more expensive and a more arduous process of reconstructing."

MR. GREENBERG: So let me take that and the previous two or three statements and let us get back to the hypothetical. Which is that there is some finite amount of resources to go in; the panel has acknowledged that there is some role for what would be called traditional lawyering, using some of those resources. But like the question, we are talking also about economic development, and I guess that we are still in the middle of what role, if any, for the traditional concept of lawyering that Michelle and Alan and others were talking about. Anybody want to talk back to those points?

PROFESSOR CAHN: Back to clients, though. If you have an organization and that organization is making the shots as to what are the priorities, it is one thing. If you can engage in the kind of leadership development sources, a civic or municipal or neighborhood corporation says, "I want to attack the movement, you know, they came here with a promise and they have taken the money and now they are splitting," that is a fight they get onto.

There are other kinds of fights that we know legal service lawyers or others have to get into. I have yet to meet a grassroots leader who was not either sooner or later under investigation or indictment.

MR. GREENBERG: That is the criminal defense part of the legal services.

PROFESSOR CAHN: And so the question of how you protect the process, because on the one hand you have got to go at war with forces that want to invade and want to extract money; on the other hand, you have got a whole structural building process. I think Jennifer's statement gives you an exact example of one thing we need to do, everything that we give out, that we have given out in the past, could become a catalyst to generate and build organizations, to generate membership, to generate a giving back. Not necessarily to the person who gave, but to a community group so that we need to use what we have as an asset to leverage and to get a multiplier effect and to imbed people in the self-help matrix.

MS. GORDON: I think, if I can just quickly build on what Edgar said. It is not just that you want people in the community to get services and then be drawn into the fight. They have to be the leadership of the organization. And that is not ever going to happen unless there is a mechanism for it to happen, like, for example, an all-member board. You can not have a couple of "client representatives" on a board and hope that it is really going to be a community organization.

PROFESSOR THOMAS: One thing that strikes me is, in this conversation there is a lot of debate about whether or not lawyers should lead. And I guess the issue for me is, what kind of relationship should lawyers be in to their communities and to their clients.

One thing about Jennifer's model is there is a notion of how they are in relationship to their clients, the people they serve. If we come back to a kind of broader view of meeting other kinds of needs, you know, how should lawyers exist in relationship to the community.

My view is that you have to find ways to bring lawyers to communities in ways that they feel invested in that community. Then I think you can create a relationship where if there is an organization like Luis's, there are also lawyers in that community who are invested in the community, therefore have a right just like everybody else, to be a part of that movement.

But on the other side, to come back to the kinds of issues that Errol raised is, if there are people who do not belong to the organization, but who have needs that in lots of ways are going to influence the health welfare of the community, how do we make sure that they are in relationship to the services that they need?

And the issue is, how do we put together the relationship, not who leads or who does not or whether there is a role for litigation. We know you need lawyers; we live in a litigious society. But how should they be in relationship?

AUDIENCE: My name is Allison Farina. I am a second year law student here at Fordham. And I worked for a short time at a business improvement district local development corporation in New York City. And a lot of what I guess I have been hearing is maybe that the purpose of legal services somehow is to take a greater part in these organizations that are already set up throughout the City. They provide forums, they hook into all the people and the institutions already in the neighborhood, and they would be a great solution possibly to pulling your lawyers in.

I know that down at 14th Street, Cleary Gottlieb has adopted Washington Irving High School and has made tremendous strides. And I was just wondering what your thoughts were on that issue.

PROFESSOR THOMAS: Well, let me just say, I would not say that what you want to advocate for is legal services taking a greater role. That expanding their role is not the way to go. The way to go is, how do you create other kinds of relationships with lawyers in the community, and bring people with lawyering skills and knowledge and expand people's understanding of the law. Which means finding ways to educate a broader base of people about how to use the law and what the law is, not expanding the role of an organization that has done a lot of good, but I think also has a central tendency toward bureaucracy and being over-professionalized.

MS. SIMMONS: In response to your point, I will use the example of my center, the Center for Law and Social Justice. The lawyer is first of all the minority; but in order to qualify for lawyering these are the criteria I establish as the founder of this organization, you have to live in the community or in a community that we are serving. Live there. I walk to work; I live in Bedford-Stuyvesant.

And other staff members who are researchers have to have a history of working with community-based organizations. You just can not walk in out of law school or with an MBA or an MPA and

say, "Here I am; I am going to help you." We do not want anyone to help us; we want to work with our community. And it is community organizations that we represent and work with in partnership.

That is the only way we found to make sure that there is not this elitism established, and this "hypothetical leadership" that has never in fact worked for our community. And that is why we are trusted in our community.

PROFESSOR CAHN: Last year I structured a relationship between a community development corporation, MANA in Washington, D.C., and Holland & Knight. Holland & Knight agreed that for every hour of legal services they put in, the community would pay with one hour of community service. The community wanted crack houses closed, an investigation of police corruption, their neighborhood school kept off the closing list, and the money released for Kennedy Playground.

Last year Holland & Knight compiled bills of \$230,000, all paid for in community service by people campaigning for street lights, by doing landscaping, by escorting seniors at night to safe places, by tutoring in the schools, by painting the schools. That kind of reciprocity can in fact generate major support. I am not saying it is a substitute for the kind of creation, but you need all the resources in there you can get.

MR. GREENBERG: We have too much consensus.

So let me instead of trying to generate lack of consensus from the audience, which has not worked, let me try to throw back to the panel in your consensus, let me see if I could break you apart.

Tony Alfieri started by saying that he did not know what community was, and actually gave ten examples, five examples from Miami, which are very Miami-based. Esmeralda, I assume that you have to deal with, in your community where Medgar Evers is, an African-American community and a Hasidic community very close to each other. Edgar, you talk about the community said they want the playground closed or open, but I assume there are other parts of the community that may have a different view of whether the priority was to close the playground and put the private law firm time-dollar hours into the keeping of the school playground open or closed. And on and on and on and on.

How do you do it? How do you do it? How do you find out, how do you make the decision, did you make the decision about where people had to live, did you make the decision or was that a

community decision that the best people would be living in the community and that value should trump other values.

Let us stay with your vision of it, and we can come back to other visions. But let us stay with yours. But let us get hard and let us get concrete about how you know what community means, and where there are divisions in the community. So take it away.

MS. SIMMONS: Yes, in regard to my center, I did not make the decision solo. I put together the same group that I mentioned at the first question and said okay — and this is the truth — I have half a million dollars. Everyone said they want a legal center to fight police brutality, etcetera. We are not going to try to trump legal services in Bedford-Stuyvesant. So what is it that you want to do?

And who were those people? Some folks that I do not work with regularly. Yes, ministers; yes, elected officials; yes, the head of this youth organization, Sub-Grown; some homeless folks that had organized themselves; and block associations in the community. And they all said, "Well, why do you not get some lawyers, but we need people that are going to tell us what the real facts are." And that is how the research component came about; that is how it was done.

And thereafter, those are the same people that have come to us and said, we want to do, not in my backyard in regard to this homeless shelter, because we have sixteen within two blocks. Exaggeration. But not great exaggeration. Or we want to have the school closed or school open, etcetera. And it has only been on the basis of how many cases we can handle that we have taken it; when we have no more room in our docket, we close our docket until we have room. And that is how it has worked.

PROFESSOR ALFIERI: Recognize, however, that part of the challenge here stems from the unitary notion of community pervading the civil rights movement, the welfare rights movement, and even the interpretive construction of class actions under Rule 23 of the Federal Rules of Civil Procedure. The inherent fallacy in this notion, indeed the common fallacy of group cohesion and expression, accounts for the widespread and growing decertification of class actions in federal and state courts. Exposing this fallacy renders our decisions concerning group and community representation incoherent and therefore, unprincipled. Yet, circumstances compel us to make these decisions on a daily basis. And we make them!



MR. ACOSTA: Well, I do not know about that. In 1981, in a community outside of Williamsburg, Brooklyn not large enough to fill Yankee Stadium—less than 50,000 people—we lost one young person every single week. The community had a greater homicide rate than any country in the world at peace, and any country at war in terms of young people in that time.

Now, that is an emergency. You know the social service model in terms of providing a service meant that we would perhaps have to have better suturing if they fell down from their gang wars in the street, and try to save a few. But we looked at that emergency, took it as a way of creating community.

For example, when I, as the Associate Executive Director of the Municipal Hospital, went to the City Councilman and said, “Our young people are dying,” he said to me, “What young people? They are not ours. They are gang kids. They are not part of *our* community.” Now that City Councilman went to jail. There are a lot of people within our community who would extricate themselves at any given moment, based on their politics or world-view.

So our effort is to create community. Because we created El Puente, focused on development, not client-based services, but focused on development, six years later when a crazy school district put a wall to segregate children at Public School 16, guess what? We were able to reach out to Brooklyn Legal Services and Puerto Rican Legal Defense and Education Fund, put together a team of lawyers, and we led the effort of the largest boycott in Brooklyn school history, and brought that wall down.

Last year, the Republican governor of this state signed a law prohibiting the building of a fifty-five-story incinerator in my community. Now this was an incinerator that was already legislated, already passed by the City Council. Everybody told us, legally we did not have a chance. Yet because we had an indigenous-led community development organization that could reach out to Brooklyn Legal Services and to other lawyers, and come up with an organizing effort that, yes, involved litigation and the practice of law in the courts, but more importantly, involved creating a political base between people that, Tony, you would think would never understand themselves as a community, the Latino majority and the very volatile Hasidic minority, coming together to build a bridge, and finding common ground in the ground itself, and thereby beginning to create the structures of a community.

PROFESSOR CAHN: You can get different voices together around several things, around a shared grievance; you can get them together around enlarging the pie. If they are fighting over a fixed pie, they will scratch each others' eyes out over nickels and dimes; however, if they are around enlarging a pie, the focus will shift to building a dream, and making a future for their kids.

And the other thing is, if today's decision is not the last time, but if they know there is a commitment to, you go first, but I go second, and there is a relationship of trust, it has been my experience that they will let somebody go first and go second. But if you set it up so it is all or nothing, one time only, you are in trouble.

MR. ACOSTA: And I should say that I was indicted, by the way, by Attorney General Mitchell, who also went to jail.

MR. GREENBERG: That is the beauty of the American legal system.

AUDIENCE: Hi, I am Daniel Asano and this will merely be a question from a first year law student who does not have too much experience being a lawyer. But from talking to other lawyers and upper class law students, there seems to be a tension between traditional thinking and thinking outside the box.

And my basic question is, are lawyers trained, do lawyers have the capability, do lawyers have the skills to do community organizing, economic development? Are these things that we really should be asking lawyers to do, because lawyers are just smart people and the degree has flexibility, as we all say?

Or, is it that we should maybe insist on lawyers sticking to their levels of expertise, because lawyers do not know how to organize people because they deal essentially with very narrow sort of types of issues. And that is something I struggle with: have I made the right decision in coming to law school, if I want to work on these other issues?

MS. GORDON: See, I think that nobody would argue with the premise that in the business context, lawyers make mergers, lawyers do business, lawyers organize things, bring different corporations together; that lawyers have a broad range of things to offer to their clients in business.

And I think that in poor communities, you can make similar analogies. I think the danger is, lawyers are used for what they are in the business community — they are a tool. And in poor communities, lawyers have the chance to have too much power and use the community for what they want. And I think that is the

distinction as opposed to the skills distinction. I think all the skills are important.

MR. LOUIS: The skills are important. I should say, though, that there is a problem when it does come to thinking outside the box. I mean, some of the stuff that Edgar is talking about, you could not find one lawyer in a hundred who could walk you through some of that stuff. And that is a problem all by itself.

We started a cooperative financial institution, and I am a big believer in producer and consumer cooperatives. I find very few people, students or otherwise, who know anything about coop law, you know, outside of the narrow housing field, and could really sit down side by side with people and do some interesting stuff.

And these different formats, worker-owned companies, producer and consumer cooperatives, credit unions and so forth, this is how you can leverage what resources there are within low income communities. So I would say that there is a real need to sort of look at a lot of this stuff. And it does not necessarily involve litigation at any point. It does not necessarily involve, you know, sort of conditional corporate law, although obviously that has to be sort of a background against which you start to look at some of the other stuff.

MR. LOUIS: Absolutely. I wanted to start something called the Central Brooklyn Partnership for Cooperative Economic Development; found out it is against the law in New York State to put cooperative into your title unless you are structured in a particular way.

I started asking around: well, who can help us structure ourselves in a particular way? Nobody knew how to do it. It happens all the time.

PROFESSOR CAHN: There is homework to be done. You are always walking out there on space. Even in a field you know, every case feels like it is almost a case of first impression, no matter how long you have practiced, if you take things seriously.

The problem is we are talking about structuring. But lawyers have always structured. The frame is the Constitution, mainly the lawyers; and I will bet they had never written a constitution before, most of them.

Lawyers are restructuring all of Eastern Europe. They are privatizing, you know, all over the damn places that they know what they are doing. We are in a mess because of the experts we have. Okay?

MR. GREENBERG: All right, without being Thomas Jefferson up here, let us get another opinion.

AUDIENCE: Hi, I am Karen Weber from the Public Justice Center. We are Maryland-based. We have a very different community than exists here in New York City. I am originally from New York City, so I know that for a fact. I have been in Baltimore now for two years.

And I think that the trap we may be falling into is our own parochialism as New Yorkers. Every community is not the same; every community does not have the same level of sophistication or even tension. Because sometimes it is tension that drives communities into action and into empowerment.

The community that I am now used to dealing with in Baltimore has the same group of five or ten leaders, who come to the same meetings, and articulate the same positions. Is this community empowerment? I think that we have a tendency to over-romanticize the notion of community and community leadership. And I think that is the trap that this panel is falling into.

So I am the voice of dissension at this particular point, and I look forward to your feedback on that.

MR. ACOSTA: But your dissent is not about community. Your dissent, I think, if I heard it correctly, it is about that there are various kinds of communities. And that we ought to keep a notion that what you heard was examples of New York City, and that necessarily New York City is not America.

It is the whole that we are talking about. Maybe that is a semantic thing, but we are talking about the whole. And about creating infrastructure for the whole. We call it community; you might call it something else.

But bringing different networks together to work together so that a common space, a common place where people live and thrive can be bettered, is what we are about.

PROFESSOR CAHN: I was not talking about the whole when we started. I mean, we have a hypothetical that assumes scarcity and assumes making some hard choices strategically, which is sort of where I think we are kind of missing the point. I mean, we need to define what we want to do and we need to define just as clearly what we do not want to do.

MR. GREENBERG: Let us hear from someone up here.

AUDIENCE: Hi, my name is Eddie Bautista. I am a community organizer with New York Lawyers for the Public Interest. Just two comments. First, I heard someone mention

before about lawyers being trained to organize. God help us from that model; it is not something I would ever encourage.

Secondly, I think people are oversimplifying this concept of community. I just want to take a page from our experience in Red Hook, Brooklyn. Community is, in our concept, a bunch of stakeholders who, for a given issue in a given moment, find unity in something. And God knows how long that unity will last, probably just beyond that one issue.

One of the things that happened in Red Hook, for example, is that we in fact use El Puente as a model. Red Hook is a community that is predominantly African American and Latino; eighty percent of that community lives in public housing; there are about 12,000 people in that community. And there was a sludge treatment plant that was planned for that community. The people who took the leadership was a small civic group of White homeowners in Red Hook; and when they approached our office, we encouraged them, and it took about six months before they even were willing to step into public housing to meet with the people in the tenants' association. And we built a really unlikely alliance between White homeowners and people in public housing. We fought back, the community beat back the sludge treatment plant.

A year later, an AIDS facility was proposed for Red Hook. And the White homeowners went bananas, and started organizing against it. The tenants' association approached us and we had to represent the tenants' association and help negotiate economic development opportunities, housing opportunities, health care opportunities, that were arising from this AIDS facility.

So within three or four years, we had this coalition that came together, fell apart, and came back together again last year. Why? Because now they are threatened by the closure of Fresh Kills landfill and an exponential increase in waste transfer stations.

These people have been at each others' throats, and we expect them to be at each others' throats again. But they have identified as stakeholders things that they can struggle together on.

MS. SIMMONS: I differ with your initial definition of community. Community is not geographic. You later changed your definition of community to alliance, stakeholders, and coalition. That is exactly what that was. That is not a community in my definition.

"Community" is people who have a cultural affiliation with one another, that share common values and mores, and have a world

view that is together. It is not merely the fact that they are homeowners sitting next to public housing folks. That — and Crown Heights shows that — does not comprise community.

MR. GREENBERG: Okay, again, from the audience?

AUDIENCE: I am Alan Rothstein from the New York City Bar Association. I had two thoughts, one of which I think is a thought for another conference that is coming up here, which is, when you start looking at the issue of delivering services to clients in an individual model, and you want to get away from, that has all sorts of ethical implications which have to be looked at. Is the code of ethics that lawyers operate under appropriate for what you are talking about? And that is really fundamental. But my sense is that it is not.

The second thought is, there is a lot of conversation essentially about clients — if you use that term in this context — buying into the use of lawyers or developing community structures. Which leads to the notion that, we have always assumed legal services are free; and I know Professor Cahn is making the point that they should not be. What is the general sense that you have as to whether people should buy in one way or another, sweat equity or money, for the kinds of services that are provided in the community as a better way of legal services provided in the community, to leverage that money better?

PROFESSOR CAHN: I would use my \$2 million to help a lawyer or lawyers get established, and then rely on them to make their own living. Because there are — I say this to law students all the time — there are millions and millions and millions of dollars washing around, even in what looks like the most disastrous low income local economy. It takes time and it takes patience to figure out how to operate with in, in such a way that you can make some money. And you can make a decent living there.

I mean, all the work that I have done is sort of based on that assumption. And the raw numbers, I think, bear out. So I think that you lose an essential component of what the market can do well, which is to provide some accountability and some immediate feedback on whether or not you are doing a good job.

For instance, in the case of the “NIMBY-type” stuff, if you are a lawyer and your bread and butter is working within, say, a geographic area, you cannot end up too often on the unpopular side of issues, or you will not make a living. So I would look to something like that and to not let folks off the hook, because providing free services as the only model starts to open up a lot of

the questions we talked about before, about who defines community, who says a good job was done or not and how do we know, and how were sides chosen.

MS. GORDON: I also think money has a tremendous — and this is no news to anybody — amount to do with power and control. And unless you pay for the legal services you receive — and I believe at least partly in money. In our organization, you pay for them, you have a twenty dollar retainer, a seven percent contingency; but then we ask you to put in time because you have to ration services somehow. It is not unlimited resources. You have to figure out a way to build the organization, and part of that comes through money. But part of that comes through deciding who you are going to help, based on who is going to help build the organization.

PROFESSOR ALFIERI: Precisely in order to reach out to communities in a state of disorganization or preorganization, we at the Law School's Center for Ethics and Public Service are contemplating various interdisciplinary forms of collaboration involving partnerships with other divisions of the University of Miami, particularly the Schools of Medicine and Nursing. Emphasizing entitlement education, such partnerships would enable us to gain access to individuals and groups at the local, grass-roots level.

MR. GREENBERG: I see some hands in the audience. Robin and Mike, hold it for a second, because I, as we are sort of moving toward what is the last half hour of this panel, there have been a couple of comments out there that always evoke in law schools the great laughter which is, you know, sort of, God forbid lawyers be organizers, what is this place teaching me anyway, what am I supposed to do when I get out of here, and other such things that we can all identify with.

So let me throw it to the panel and to others out here, and try to move the conversation, again from the consensus of the community controlling what happens, arguments and nuances about what the community is, and how we build coalitions to leveraging roles of other institutions within the community —

PROFESSOR ADAMS: Just before that, just to break the consensus on clients who pay.

MR. GREENBERG: I will always allow that, Michelle. We will always allow that.

PROFESSOR ADAMS: Just because I feel so strongly about this I think that we have to set sort of very intelligent income

requirements if we are going to still have that. But if we are talking about people who are the poorest of the poor, I do not believe they should have to pay for legal services.

MR. ACOSTA: But you will accept the idea that, let us say, my mom, who is a beneficiary in my family of this great welfare system, can contribute something to someone else's support and health, and that there could be some kind of informal bartering, as is always the case in our communities as we build relationships.

PROFESSOR ADAMS: I do not know whether I will accept that notion or not.

MR. GREENBERG: Okay. We will leave it —

MR. ACOSTA: That is how we have survived.

MR. GREENBERG: We will leave it for the moment and we will say that it is certainly, if part of the role of this panel is to raise issues, it is raised, and there are clearly different viewpoints. But let us get to law schools. This is a law school. Many people in the audience are people who have moved from being legal aid, legal services lawyers into the academy where they are training next generations; still see themselves as involved in the struggles, in the movements that they first started out with, albeit now doing it from a different place.

Panel, what role do law schools, what role do law students, what role, if we want to then move it to the private bar, what role do the external institutions that are now in place — but let us stay with law schools for at least a couple of minutes — what role do law schools, clinical program students, what roles do they play in your vision of using the million and a half dollars in ways that are useful to your community?

MS. GORDON: I think clinical programs, especially some of the largest ones, right now are focusing on individual cases. And what that leaves out is what it really feels like to work as a lawyer in part of a community. People are not, by and large — although there are some very good exceptions — getting the experience of how you work with organizers, how you work with an organized community, how you work with a disorganized community, and what skills as a lawyer you are going to need to play all these complex roles that communities require of lawyers. And I think that is something that clinical programs and the courses that back them up really need to begin to address.

PROFESSOR ADAMS: One thing that I have noticed at my school that I think is something that would not have occurred to me without teaching there, is that my view is that law students can



play an enormous role in terms of providing legal services under appropriate supervision. The problem is whether law schools will let them. Okay?

And what I mean by that is to suggest that often there are internal struggles in the law school about the role of the clinical program, whether we ought to let outside practitioners supervise our students, and things of this nature. And I think one of the things that we have to do, speaking now to stand-up professors in law schools, is to make sure that the clinical professors, number one, are treated well; and number two, understand that the law students can perform a service role, maybe as a primary function, and secondarily, that they learn from preferring that service role as opposed to the other way around.

MR. GREENBERG: So Tony's view that Miami as a community is somewhat fragmented pales as a concern to most law schools.

PROFESSOR ADAMS: I would not speak about most law schools; I just talk about mine. But keep going.

PROFESSOR THOMAS: Can I jump in? Let me just say what I saw as the role for law schools in my vision of trying to get lawyers to establish firms in communities, private lawyers. And that was to link with lawyers who work in communities and provide law students as interns who work with community lawyers who are in private practice.

The other role, I think, is in acting as educators. Working with programs that, say, have a focus around housing, and being involved in efforts that educate tenants about their legal rights, those kinds of efforts.

PROFESSOR CAHN: I think part of the problem with getting law schools to make the contribution they can, is if you only have one semester of clinic, you are going to be dealing with that level of cases that people can handle just in case management and in basically right/duty relationships.

I think we are talking about shifting from rights and duties to the question of powers-how people can create new contractual, new organizational structures. And for that you would need to have relationships, I think the law school should have relationships with, and sponsor relationships with advanced public interest groups that are doing the kind of community lawyering we are talking about. And I think that needs to be an advanced clinic.

Beyond that, I really think that we have got to look at the practice of law and the impact of technology because of its

dramatic impact. If we are preparing people for a mode of practice that we already know is obsolete, then we are not preparing the law students of today for the future, and we are not.

MR. GREENBERG: Tony, you look like you are saying something.

PROFESSOR ALFIERI: Edgar rightly points out the importance of both technological and training innovation in legal education, especially in the arena of clinical legal education. Yet, until recently, law schools and clinical educators have appeared surprisingly resistant to the integration of community-based methods of advocacy instruction. That long-standing resistance may be attributable to inexperience as well as ideology. Put differently, the politics of community law practice may be incompatible with the politics of legal education.

PROFESSOR ADAMS: Well, the liberal right is not trying to kill our clinics. I mean, we pride ourselves on our clinical programs to a certain extent. But for instance, one of the ideas that was proffered this year on the clinical committee is, let us let as many students as possible take advantage of the clinics, and let us not be able to let the individuals who run the clinics actually select students. And that would mean making sure that most of the students' clinical experiences would last only one semester.

Well, my view is that students should be in a clinic for a year. In part, for the reasons that were just mentioned here. But that was something that I had to fight for as a member of that committee, so it was important for me to get on that committee and make my views known because there was a distinction between the administration and the clinic on that.

PROFESSOR ALFIERI: Plainly, to combat the traditional politics of legal education exhibited in ongoing battles over clinical instruction, students need to mobilize institutional support. It is folly to expect such support from law school faculties, even progressive faculties.

MR. GREENBERG: Let us go to the audience.

AUDIENCE: My name is Joe Tomlin. I am at the University of the District of Columbia School of Law. I run a clinic and I have been in clinical education since 1984. We are a progressive law school, you know, we are there to create clinics. Every student is mandated to take a clinic at least twice, with community service in the first year.

The problem with clinics, it seems to me, fundamentally, is that we are subsidizing the apprenticeship program into the

marketplace of lawyering, because we do not bridge people into public interest positions because they are all still market-based.

So I guess one of the ideas I want to posit for folks, and it goes back to the very first comment, is, if we are going to get this million or two million dollars, maybe as we are all struggling to create community and do community-based organizing that uses lawyers, not to extract resources but to put them back in, and so the community controls the lawyers. Right? While we are on our way to that, why do we not teach students, and ourselves find ways to use the techniques that rich lawyers, lawyers for rich people, have used to transfer wealth. So why do we not find fee shifting, I mean there are fewer and fewer of these that work for poor people, but let us train our students to find, if we are talking about splitting up a limited pie, ways to enrich poor people and ways to get themselves into public interest poverty law jobs.

One proposal, Tony, which goes back to your point earlier, how do we represent the poor kids. You know, special education still has market rate attorneys' fees if you prevail. Every poor kid I have ever met is getting screwed over by the school system; most of them have some special education disability. We should train our students — that is what we are trying to do — to represent those kids and extract that money back into the poor community and use it for organizing.

MR. GREENBERG: Okay, let me just say that in the audience we have representatives of Soros and NAPIL Fellowships that are designed to actually create more jobs, more roles for lawyers, rather than simply shift the number of people who want those jobs. And throw back into the mix for you to talk about not only clinics, but roles of foundations, roles of the private bar, as we move toward thinking about how to implement your visions of it. So whoever wants to start it, take it.

MR. HOUSEMAN: Well, I am not sure I want to start there. On the clinical point, I think there are a couple of models that we need to recreate a few more of. One of them is Gary Bellows' model in Boston, where students actually spend a semester or a year at a legal services office full time, and they are not somewhere else. They are not in and out, they are not doing class work, they are actually working at that office full time.

There were some earlier attempts at this approach; it has not been replicated very much. But it seems to me that if we are thinking in the clinical education field, we ought to think about

ways to replicate that model, see what works and does not work about that model, and see how it is useful.

Secondly, when we are talking about the community lawyering, at least four different models were proposed. And law students can play a role in each of these models. One was — the New York Public Interest Law model. You have a central office, you have organizers that work out of that office and work with community groups, and then the law firm, if you wish, comes in itself and mobilizes and leverages other resources to help that community group. I think that is that model.

A second model was to put lawyers in the community, use the Fordham money for that, cut them loose, and hope they survive.

A third model was to create a community-based institution along the lines of Esmeralda's institution, where there will be some lawyers and some non-lawyers.

And a fourth model was to create legal units of community-based organizations.

Now law students can play a role in each of those; clinical programs can attach themselves to each of those. So there is a wide variety of opportunities that are presented for law students to be used effectively and for them to grow, whichever one of those models you adopt.

So it seems to me that when we are thinking about this issue, we need to look at some things like what we have got in place that may not have been replicated very much and see how they can be used, and if we are moving to a different sort of paradigm around community-based lawyering, as one fundamental direction that we are going, then there is at least four different models have been discussed, and law students can fit into any of these.

MS. SIMMONS: I believe there is also a need for "Ph.D.-type" graduate students outside of law school-type fellowships to be created. So that people that are in fact studying law, that have an interest in stepping outside the box and getting a larger picture of what community needs are, will have an opportunity to do that, not only in practice, through a clinical experience, but a clinical experience in conjunction with an abstract thinking experience, either on the ground or in university, or a combination of both.

That sort of fellowship, I have not seen exist. Though there are some very, very good clinical experiences that attempt to match that by giving students a larger picture.

And I also think there could be a very creative use of clinical experiences, depending upon the demands of the students. I had a

rather unique clinical experiences ages ago, out of Brooklyn Law School, where I spent two years, twenty hours a week, working as an intern clerk to a Federal District Court Judge. And the reason I spent all that time in that clinic was because I wanted to learn the U.S. legal system as it operates in terms of power. And it truly, truly taught me that, in terms of what actually works, how the rules really get effected, and how a group or groups or poor people in general would suffice and basically come out in terms of the American justice system.

That could be duplicated on community level at any of these models that Alan has so nicely put forth, if the student comes with the ideas of how he or she wants to package the experience, and does not simply say, "Give me what you have, tell me what to do and I will do that."

PROFESSOR CAHN: I think the past definition of poverty law has really focused on, how do you assert rights, how do you protect rights. And rights are essentially claims that already exist in law and expectations already protected by law.

I think the poverty law of the twenty-first century is about, how do we empower people to define themselves as contributors to expand the pie, and how we make sure that we do not define the pie purely by reference to dollars. If you talk about environmental degradation, if you talk about quality of life, if you talk about civic engagement, if you talk about social capital, you are not talking about things measured by dollars.

MR. GREENBERG: All right, so raise your hand in the audience or on the panel if you are currently involved in a clinical program, either as a teacher or a student. Raise your hand. Just keep your hands high. All right? [A majority raise their hands.]

Now, keep your hand up if you are currently involved, either as a teacher or a student, in a clinical program that approximates the models that they are talking about. Put your hand down if you are not involved in that. [About half lower their hands.]

MS. SIMMONS: I am not clear.

MR. GREENBERG: Well, good. A confusing question. And you actually answered it. I heard the panelists saying that one of the problems is that traditional clinical models — I will translate it — teach basic lawyering skills for the most part, do not teach community skills in the way that for an hour and a half we have talked about it. All of which leads to the logical question that was asked up there, which is, what does my legal education have to do

with anything that is being talked about? That is what my question is.

If you are involved in a clinical program that is beyond the skills in the individual cases, and have programs that more approximate the values in the ways people here are talking about it, raise your hand and let us hear a little bit about that. Louise?

AUDIENCE: Louise Trubek, University of Wisconsin Law School. All of my students work on non-client-based projects. And we work on legislative and administrative advocacy work, as well as coalition building. We do not use any one neighborhood base.

One of the areas that I am involved in that I think is interesting is in health care, where we have organized a group in the community, which is Madison, of people who are basically field level people — nurses, community health, public health people — and we get together on a monthly, no, every-other-week basis to monitor and act on issues involving health care. What is interesting is that I facilitate and my students work along with me on this. And the reason we are successful is all of these other people cannot speak out; they cannot publicly speak because of their positions. So they tell me what the issues are and I speak out.

And we are increasingly now developing out-stationing in Medicaid in the community, and we are taking the lead on it. So I think this is kind of a mixed example, because it is both coalition and community, if you agree with the community being the small city, and we use people from within the existing bureaucratic institutions who want a space. And they also influence their own institutions because they then speak out privately to the people on top of them. And I am increasingly thinking that health care is a very interesting model; as we move into managed care, there are a lot of opportunities there.

MR. GREENBERG: Okay.

AUDIENCE: I am Steve Wizner, and have been a clinical teacher for twenty-eight years at the Yale Law School. And I have been hesitant to speak this morning because in the thirty years plus that I have been a legal services lawyer, things have gotten worse and not better. So I kind of thought I had nothing to offer.

But we do have a clinic. The majority of our clinics follow the classical individual client representation service or law reform model. We have one clinic called Housing and Community Development. And in that clinic, we only work with groups. For instance, we work with public housing tenants' organizations, or we

work with community-based groups. In starting up small businesses, we helped start up a laundromat that is owned by a non-profit tenant organization in a public housing project. We work with community organizations, we work with developers of affordable housing, and in that clinic students learn how to work with groups, how to serve as counsel to community organizations.

And I have to say that teaching in that clinic is the most challenging teaching that we do, because we are not used to doing it. Even the idea of doing deals, of transactional work, is not something traditionally that legal services lawyers do. But it is important, I think, that law students today learn those skills.

MR. GREENBERG: I am going to go over to the other end of the room and ask Alan Grauper, Bill Dean and some people who are involved in trying to leverage the private bar for some thoughts about that. But if the panel wants to respond to some of the clinical points, why don't you do that as I am walking around. Great blank looks, right? Great blank looks.

I am a former criminal defense lawyer. Alan, the private bar, the role, if we hear the things that are being said about non-traditional uses of lawyers in communities, and listening to communities, how do you see the private bar's role in that?

AUDIENCE: Danny, I see a law school auditorium, and I sit in the back seat for a particular reason that I remember, even thirty years ago. But it never worked thirty years ago, and it doesn't work today.

MR. GREENBERG: Let me just say there are rare moments where somebody gets to put a member of his Board of Directors on the spot.

AUDIENCE: No, I don't feel on the spot, but I feel that I should listen for a change. I think we may be in a certain respect complicating things here today. We are not complicating it in terms of what I am hearing, which is a need for lawyers to be a part of the community-based, project-oriented movement, if I can use that word.

But I think if we look at what lawyers do and what we are trained to do and what I think we do best, if we restrict ourselves to what lawyers do, things could become a little simpler. I hear some of the community-based people today saying, well, when lawyers step out of the lawyer's role, they are a hindrance rather than a help.

A lawyer without a client, I have always felt, is a very dangerous thing. The lawyer takes his or her instructions from the client and

represents the community organization in what the community organization wants to do. Lawyers are sometimes smart people who can help and can be organizers as well. But if we are talking about legal services, I think that lawyers as lawyers have a role to play in finding out how to create a cooperative and doing it.

And in terms of the role of the private bar, one thing I am very impressed by today is the need that I am hearing for business lawyers. And one of the big problems in terms of *pro bono* is, you know, Danny, over the years, is that we are talking about eviction cases, which private lawyers do very badly. And we keep coming back to that group; we come back to a minority of the legal profession in New York who are litigators to put more business lawyers into the job of doing what they do best. I think we can do more.

I heard the lawyer from Brooklyn "A" say that *pro bono* lawyers are hard to train and may not be able to function that well. But I do think that if we keep in mind the need for training, and we keep in mind obviously that *pro bono* lawyers have disappointed the professionals over the years, I think that they can do a great deal more.

But I think we are talking about the traditional role of the lawyer. The lawyer does not make the merger; the lawyer is called in to effect it when somebody else decides what to do. And I think a lawyer can be perfectly comfortable representing a community-based organization, if the lawyer remembers what the lawyer does and what he or she does best.

MR. GREENBERG: All right. So let us get some reactions from the panel, or anybody else, to the role of either law schools or the private bar, as we try to think of lawyering roles in these things.

MR. ACOSTA: I think it would be, to support what Esmeralda's been saying and others have been saying here, I think it would be disingenuous of us to think that what we are talking about, at least what I am talking about, is the kind of perspective or approach to the work that basically says, you know, these are poor people, and whatever I can do, I can do. You know. And I will commit myself to that.

Yes, we need commitment; and we need a sense of passion for that. But what we need are skills. I mean, I think he was right. You know? I think our young people who have set up the rap groups and are making CDs, want to make sure that they have the kind of understanding about the law that does not allow them to get ripped off by labels.



El Puente is launching a new paradigm in public education where we are the first community organization to own our own public school. Well, guess what? We needed lawyers to help us navigate all of that.

So what we are saying is simply that all of us bring our skills to serve a particular effort, world view, goal; and we ought to know what that goal is, and make sure that we are supportive of it and don't get in the way of it.

MR. GREENBERG: Okay.

AUDIENCE: My name is Peggy Healy and I am working right now at a battered women's shelter in White Plains, called My Sister's Place. And I am a recent graduate of law school and I went to law school after much experience in community organization.

But I just want to reflect again, that you do not need one or two million dollars to do several things that are possible to do without money in the law schools. Certainly, you need money for clinics, but you also need the Public Interest Resource Center that we have at Fordham and other places; you need places where students can get out into the community. If they are exposed, I think hearts and spirits will be engaged. And that is what you need; you need people's passion, you need people's concern.

But also if you are going to bring your skills, which are very specific, I think that we need to de-mystify the law in many ways. We need to make it accessible to regular people. We need to do that in very simple ways; there are simple ways to do that. And everyone here, if they did it, it would make an enormous impact.

And finally, there are no communities out there that have nothing. There are none. There is not a community in this world that does not have anything. All of them have something. And amazing resources. And if we can see more and more clearly — that is really a mind change for all of us — to see what the resources are, I think there would be enormous possibilities for us changing in an enormous way.

MR. GREENBERG: To those of you on the panel who are in New York and are doing the work that you are doing, and there are at least four or five if you. Could you use law students? Could they get in touch with you directly and be put to use in learning how to do the lawyering you are talking about? Jennifer?

MS. GORDON: We can, we do. I think the truth is, though, that sometimes working in communities requires a special kind of law student. For example, we do not take law students who do not speak Spanish. But it is also necessary for a law student to want to

work as part of a community. And I think that because it is not emphasized in classes and clinics, people do not understand yet what those skills are.

And so when law students come to us and find out that the expectation is that they will support organizing efforts, that they will support the development of our business cooperative and other efforts that are not direct services, we have a lot of attrition. So we would love more than we get, and we can certainly use them.

MR. ACOSTA: Yes, ditto to everything that Jennifer said. But principally and bottom line, are you willing to grow, in body, mind, spirit and community? And are you willing to understand that this is an opportunity for your growth, and to respect the process as such?

MS. SIMMONS: Yes, we do, and the students basically get to choose the type of project that they want to work on from that which has been brought to us by community groups. And/or they can create their own with a community organization. So we obviously do use them and we work with established clinical programs. Or a student can come on their own and we will negotiate credit with their law school.

MR. LOUIS: Yes, we have used law students a number of times. The most interesting use of them is interns. What we have tended to do, actually, is show them all the legal background, the Federal Credit Union Act of 1934 and some of the other relevant legislation, and then just have them do straight research.

But what was most interesting recently was just sort of toss some of them into a business development project, and help them just apply their skills, just as bright people who can think through a problem if they have the information. And it was to expose them to the kind of business transactions that take place even in a low income community.

MR. GREENBERG: Okay, one more from the audience. Bill?

AUDIENCE: Bill Dean of Volunteers of Legal Service. In Peter Edelman's presentation,<sup>1</sup> I was especially drawn to his sentence that resources for serving the poor must come from the entire bar. And I do think that the private bar, on selective projects, can make an enormous contribution in terms of transactional work and developing projects in terms of community development; in terms, obvious, of the lawyer's grist for a lawyer's mill, which is impact litigation and class action work, especially

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1. See Peter Edelman, *Opening Remarks*, 25 FORDHAM URB. L.J. 685.

important now that legal service offices, many of them cannot do those actions; even in emergency cases. While housing is a disaster for the private bar in terms of Housing Court, there are many areas — benefit issues, issues of school suspension, issues of special education.

But let me just turn it around and say that from the private bar's perspective, I think that it is extremely important; not only do I think that lawyers can give and provide useful services and advice, but I think that the experience that they get and what they learn from this experience is very, very important for the private bar.

One of the things that I think has to distress anyone living in this city or in this country is that we have too many golden ghettos, too many lawyers in the profession who have absolutely no sense whatsoever of the social problems and economic problems that people face in our society. And I think that lawyers who work on these types of projects, they come away with a tremendous sense of human problems, of the city that they live in; and they can indeed become advocates for these issues in legislative hallways. So it is a very useful exchange.

MR. GREENBERG: So we are getting to the end. So this has gone on, and let me thank the panel for really highlighting for us exactly what at least the mission of the session was, which was to get us to focus about what lawyering might look like from community-based, and now you can all give them really a well deserved round of applause.

Let me thank the audience for doing exactly what I hoped the audience would do, which was to stay engaged and talk.

I am not going to try to sum up everything that the panel said. I do, however, want myself to make one comment as we are breaking for lunch, which is to say this:

I think this was an extraordinarily successful panel for what it was asked to do, which was to help us think about lawyering in ways that do not usually get done. I do want to take the last minute or so to talk to the students, and particularly students who asked what they could do.

Some of the words that are never used in law school are words like fun, words like enjoyment, words like, what do you love to do. I think that at the end when I asked, can students volunteer or through clinical programs go there, the four people in community-based organizations gave exactly what I would say was the right answer, which was, "You could come to work for us, but it depends

upon whether or not you are going to love being with us and can do what we do, because only then can you do it well."

This was an extraordinary discussion, and almost a unique discussion, of an aspect of lawyering that is rarely talked about. It is an aspect of lawyering. If you do not want to be, if you do not love to be, if you cannot relate to being in the community with the people that are being talked about, do not go there out of guilt. Do not go there out of guilt because you will be miserable and you will make your clients miserable.

If what you love to do is to be in a library and understand knotty issues, and deal with them and think about them, there is a role, as everybody said, still, for the going ahead and challenging that law suit. If you love to be on your feet and help people solve problems in the individual way that Wayne says they need it, there is still a role despite all the regulations of Legal Services Corporation for people to be in court day after day after day, doing the exciting, important and wonderful work.

If you are great with talking with people, think about lobbying. If you want to deal with communities, go here. There is a myriad of ways. If none of those appeal to you, think about teaching kindergarten.

There are thousands and dozens, and lawyers, as you have heard, have no monopoly on it. So I think we would do you a disservice at the end, if this gets raised to a level of prescription for you rather than an important model of how we think about lawyering.

There are so many wonderful, wonderful, wonderful ways of living a really wonderful life, where the contradiction between being a human being and being a professional is brought to a minimum. And look around at the people in this room and you will see the wonderful examples of people who would never use the word sacrifice for the fact that they have devoted their lives to doing the things that are important.

I thank you again.