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Roundtable: Pro Bono and Volunteer Practices

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Roundtable: Pro Bono and Volunteer Practices

Joan Vermeulen, Andrea Durbach, Jean-Luc Bedos, Sophie Forsyth, and John McKay

Abstract

Joan Vermeulen led a panel discussion on the role of the private sector in addressing unmet legal needs in various country contexts. Countries represented were Australia (Andrea Durbach), France (Jean-Luc Bédos), the UK (Sophie Forsyth), and the United States (John McKay).

ROUNDTABLE:
PRO BONO AND VOLUNTEER PRACTICES

APRIL 8, 2000

MODERATOR: Joan Vermeulen, *New York Lawyers for the Public Interest, New York*

PANELISTS: Andrea Durbach, *Executive Director, Public Interest Advocacy Centre, Sydney, Australia*

Jean-Luc Bédos, *Founder, Droits d'Urgence, Paris, France*

Sophie Forsyth, *Pro Bono and Community Affairs Officer, Allen & Overy, London, England*

John McKay, *President, Legal Services Corporation, Washington, D.C.*

JOAN VERMEULEN: I am the Executive Director of New York Lawyers for the Public Interest, and I want to welcome you to our roundtable discussion on the role of the private bar in enhancing access to justice and addressing unmet legal needs.

The modern state increasingly draws its citizens into the legal system, a problem that confronts both the poor and the middle class. For the poor, the legal system occupies a pivotal position. It stands between rights and entitlements and their ability to utilize them. Indeed, because of the complexity of the system, lack of access to legal assistance becomes a barrier to the enforcement of basic rights and contributes to continuing people in a marginalized position in society.

For both the poor and the middle class, many of the basic functions of human life are increasingly being adjudicated by administrative agencies and the courts—issues relating to the education of children, health care, housing, and the means of subsistence, to mention the most important of those.

In the United States, we have seen a significant shift in our thinking about how to provide legal assistance to the poor and disadvantaged. In the 1960s when the legal services programs and the public interest law centers were being established, many in the legal profession sought to create a separate, publicly

funded sphere of practice that would address both the individual and the systemic problems of the poor. As a result, the social responsibility of the private sector was significantly downplayed.

Today, our understanding of the scope and complexity of the legal needs of the poor, the degree of unmet legal need, and economic realities have brought us to quite a different understanding. We see that the private sector is a very necessary component of a delivery system for providing access to justice.

While acknowledging the important role of the private sector, I would also underscore what Mike Cooper said so clearly and forcefully Thursday night. The private sector plays that role best when it functions as a complement and a supplement to the work of a strong and well-funded legal services program.

Our roundtable today is going to look at what is happening around the world with respect to the role of the private sector in addressing unmet legal needs. We have four people here. I have to tell you, I had breakfast with them this morning, and I could almost hand the mike over to any one of them and walk out of here; the discussion would be so stimulating. I am not going to do it, because I would miss the discussion and also it would probably be hard for you to get a word in edgewise between these four—all of whom are very experienced using the private sector in a variety of settings.

Starting at the end of the table, we have Jean-Luc Bedos, a private practitioner from Paris who has established an organization called *Droits d'Urgence*, Emergency Rights. We have John McKay, the President of the Legal Services Corporation in the United States; Sophie Forsyth, the Pro Bono and Community Affairs Officer from the law firm of Allen & Overy in London; and Andrea Durbach, the Executive Director of the Public Interest Advocacy Centre in Sydney. All of these people have a lot of opinions and a lot of experience on the role of the private bar.

Before I turn it over to them, I want to make it clear that those of us up here very much want this to be a discussion between all of us, and not just a lecture on our part to you. I am going to start by throwing out a few questions to the people up here to get it started, but we very much want your participation. As I see you fidgeting and moving around, I am going to start thrusting the mike into your hands. There are even a few of you—I already know something about what you do. I may even

call on you to answer some of these questions, too. So, *allons-y*—that shows you my limited knowledge of French—let's go. I am going to throw out this question to all of our panelists, and I think begin with Andrea. What is the responsibility of the private sector to address unmet legal need?

MS. DURBACH: In keeping with Michael Dowdle's introductory technique, I should begin by saying that I have been admiring from afar the *pro bono* work of America for probably the last fifteen years. It is really very much the work of lawyers in America that has influenced so much my thinking and that of my colleagues in Australia regarding the role of the private profession and our involvement in legal work for underrepresented and unrepresented communities.

I was reminded when we had our discussion this morning of the comment of Justice Earl Johnson during the opening session, when he said that lawyers are so essential for the effective implementation of justice. They are integral to the efficacy of the justice system. The practice of law throws up a difficult tension between achieving justice and implementing law. Andre Brink, a South African writer, in his book, *A Dry White Season*, writes, ". . . justice and law are distant cousins. And in South Africa they're not even on speaking terms."

Even in a country of less extremes such as Australia, that tension is manifest when trying to get the private profession to acknowledge that they have a responsibility to practice law, to address unmet legal need, and to implement justice; not just to work with and interpret laws, but actually do so with an appreciation of their effect. Our professional responsibilities as lawyers to ensure the implementation of justice through our legal practice is critical, particularly when we look at the effect of laws on disadvantaged communities; and I think with cuts to legal services, which we are experiencing more and more in Australia, that responsibility increases.

So in short, I think that the involvement and responsibility of the legal profession is crucial. I think it is underrated and underestimated in law schools in Australia. I think it is underrated in the profession. The real challenge for us is how we draw the private profession into acknowledging that responsibility.

MS. VERMEULEN: Jean-Luc?

MR. BEDOS: Just to start with, Droits d'Urgence is not a

lawyers' organization. We founded Droits d'Urgence because we were deeply involved in humanitarian activities, both outside of France (mostly in Africa) and also in France. By talking with the French doctors, they told us that basically there were no lawyers working with them. They asked us to come to the hospitals, to come to the streets with them; and then we decided to found Droits d'Urgence.

When I said that we are not a lawyers' organization, it is because we do not ask only lawyers to intervene. We believe that the responsibility is not only one of the bar association, but it is the responsibility of the full legal profession, which means that we want also to have the judges, bailiffs, and public notaries joining us in our action.

You have already listened to three French lawyers talking at this conference, and all of them have explained to you that the French system for legal aid is quite well organized. That is correct with regard to access to justice. It is completely wrong with regard to access to what I will call legal information.

At Droits d'Urgence we only take care of people who are deeply marginalized. We take care of people like the homeless, prostitutes, and drug addicts living in the streets. It is the type of category of people that you will not find in the court. They will not go to the court.

Five years ago when we started Droits d'Urgence, we tried to conduct an analysis of the legal needs of these people. I think the very first thing we have to do is to try to understand what are the legal needs of these people. Very quickly, we realized that only ten percent of them had to go to court, which meant that basically their legal need is not access to justice, but access to information and access to lawyers.

MS. VERMEULEN: Sophie, what do you see as the responsibility of the legal profession?

MS. FORSYTH: I think the very first point to make which actually, Joan, you have already made, but I am going to re-emphasize it, is that *pro bono* work is not an alternative to the very valuable public service work, legal aid work, we have been hearing about throughout the last couple of days at this conference. However, certainly in the United Kingdom, I think that most commentators on the legal scene would agree that, despite the

provision of some state aid for poor people, there is still a really massive unmet legal need.

In the United Kingdom, if you earn more than UK£83 a week, which is about US\$120, you are not eligible for legal aid. So that means there is a really huge number of people out there who still cannot afford a lawyer, even though they are not eligible for legal aid. And I think that that is really where *pro bono* lawyers can be an additional resource, an additional layer of support.

MS. VERMEULEN: John?

MR. MCKAY: Well, I think in the United States there is clearly a symbiotic relationship between the organized bar and legal services. I have been President of the Legal Services Corporation, which is not a *pro bono* organization—in fact, we are a government organization—but we, as an organization, would not exist today if it were not for the American Bar Association, who supported the federal funding for legal services.

I think by the same token, local bar associations consider local legal aid programs, whether they are federally funded or not, to be almost charter members of the bar association. So the bar association and the organized legal services programs, I think, are very symbiotic in the United States, and I feel as if they are owned in many ways by bar associations, which I mean in a healthy context.

In terms of actual *pro bono* contribution, I want to make two quick points. First, I do believe that, despite all the politics around legal aid in the United States, the question of access to justice is one which is felt as a responsibility of individual lawyers in this country. If that is something that didn't exist before, I feel it does now. That does not mean—in fact, it clearly does not mean—that every lawyer will do *pro bono* work, but I think that you will find in discussing questions of access to justice that the bar associations and rank-and-file lawyers themselves believe it to be the responsibility of the bar. As legal aid has been threatened in recent times—and it has been threatened at other times as well—this threat has brought the judiciary along and is bringing others more slowly along. I think the policy-makers in America are clearly the last to come along to see that access to justice is a governmental and broadly societal urgent need.

MS. VERMEULEN: Well, John, what is it, do you think, in

the American legal culture that gives lawyers the sense that they have a responsibility to do *pro bono* work?

MR. McKAY: I wish I could say it was the Constitution of the United States. I won't be so cynical as to say that that is not a factor. It is a factor. But, I think many lawyers are afraid that without legal aid and without someone bearing the *pro bono* burden, if not them, that governments will come back to them and make *pro bono* mandatory.

MS. VERMEULEN: So you don't think it is our wonderful canon of ethics?

MR. McKAY: Well, I do. I am enough of a Pollyanna—excuse that expression—an eternal optimist to say that there are many motivated by that desire. We cannot say there is one reason that motivates *pro bono*, but I do think that many private practitioners, and I think more and more in government are saying, “If we do not want these organized, government-funded legal aid societies in America, we will make the lawyers do the work.” And the reason is that it is simply a fact that, in this country anyway, you cannot establish a justice system that systematically excludes poor people and reconcile that with the Constitution.

So as to who is going to do it, we are still very much in flux in this country, despite some of the appearances. There is great tension over why and actually how those services are going to be provided. The bar says the right things and does the right thing a lot of the time, but the truth of it is that we have a Swiss cheese approach to legal aid, and we have a Swiss cheese approach to *pro bono*. The cheese is good in some places, but there are large holes in others.

MS. VERMEULEN: Andy, in Australia.

MS. DURBACH: I would say from where I sit the (American) Constitution is very important, because I think it has generated a rights culture, a discourse of rights, a language of rights, which I think is quite absent in Australia. We have had to cultivate that through very different ways, and it is fairly undeveloped as a result.

So where you have a culture that talks about law in relation to justice, that talks about rights, that must permeate the legal profession and shape its understanding of its responsibility in relation to *pro bono* work particularly.

I also think in communities where there is real adversity and disparity that that also cultivates a rights interest. And I talk from the South African experience where I think lawyers when they see a crisis and where they see that the law can actually be a tool for assisting people in some way because of extremes in a society that that also ignites people's responsibility. Where that is absent, you have a flattening out of approach, less urgent, less compassionate.

In Australia we have had to work extremely hard to wake lawyers up to that responsibility because the society is not a society of extreme adversity, of violence, of abuse of the rule of law. And it is not a society that is used to a rights discourse. So I am very grateful to the American Constitution, because we can look at it and point to it as a model.

MS. VERMEULEN: Jean-Luc, earlier when we were all talking, you talked about how the medical profession is ahead of the legal profession in France in terms of a sense of social responsibility. Do you want to say some more about that?

MR. BÉDOS: It is very curious, because the medical profession and the legal profession are pretty similar in France in terms of organization, but I think that the legal professionals are twenty or twenty-five years late.

You were talking about the culture of the legal profession. At the moment, every time you meet a French lawyer, if you ask him if he feels responsible for the type of work that we are doing, his answer will be, "Yes, of course I am." But unfortunately, we do not find them in the places where we go at the moment.

It is a very curious situation in France, very ambiguous, in the sense that we do believe that the bar association cannot do everything. We have to do it as individuals. It is a certain type of commitment that we have *vis-à-vis* the people that we have been meeting in the streets or in the shelters.

In terms of culture, I think that we will only be in a position to change it if we go to the law schools. We do not find any program or any clinics in French law schools with regard to the people we are working with. In law school, you do not learn how to listen to these people.

MS. VERMEULEN: Sophie, how do you get people's interest in the United Kingdom?

MS. FORSYTH: I think that one of the issues we actually

face in the United Kingdom at the moment is the fact that the profession simply does not speak with one voice on the issue of *pro bono*. There have been some really great developments.

In 1997, for instance, eleven firms founded the Solicitors' Pro Bono Group, which is designed to promote *pro bono* and also *pro bono* best practice. Interestingly, of those eleven firms, eight firms pop up in any ranking that anybody would choose to do about the ten largest firms in the United Kingdom. So I think within the ten largest firms, the *pro bono* battle has been won.

But I think—and I spoke to Sue Bucknell, who is here today and who is also the current Director of the Solicitors' Pro Bono Group—we all agree that we have not yet achieved the breakthrough beyond that group, and that really is a big issue for us, how we go about doing that.

I think my experience, obviously, comes from how you interest lawyers in *pro bono* within a firm, and I think there are a number of themes that emerge from that that you can extrapolate more widely, that have resonance within the profession as a whole.

I think, firstly, leadership is absolutely crucial. Within my firm, I have benefited from the fact that our senior management has actively supported *pro bono*, and, beyond that, we have actually got very senior lawyers who themselves take on *pro bono*. There is simply nothing like that for getting younger lawyers involved in our *pro bono* program.

Secondly, I think communication is absolutely key, telling lawyers about what other lawyers do, giving them examples. It generates ideas, it galvanizes interest. Within the profession as a whole, I think we need to have much more of a debate about what opportunities are available.

I am very impressed by the U.S. system of referral schemes. There seems to be a huge number of those. We do not yet have those kinds of schemes in the United Kingdom, and what that means is it is actually very hard for lawyers to find a *pro bono* opportunity even if they are interested.

So I think all of that needs to happen before we can really generate a very widespread *pro bono* ethos in the United Kingdom.

MS. VERMEULEN: John, are you ready to weigh in?

MR. MCKAY: Yes. I think there are two things that we have

to consider, and they may apply across the board here, and that is how do we consider the language around *pro bono*. First of all, we are starting with a Latin expression that maybe we all know and a lot of other people do not know, but the concept of free or vastly reduced legal services to low-income people has to be a fundamental concept. Otherwise, you are debating with lawyers who say, "Well, I have clients who do not pay my bill. I consider that *pro bono*;" "I do reduced-fee work all the time in my small town in Kansas, because there are five of us in this town which can really only support two, and I give my services away;" or "I serve on the symphony board and I consider that *pro bono*," and I think some expansive views under our ethics rules allow that.

I think lawyers need to be radicals in the sense that they say, "No, what we are talking about here by any name—Latin, French, English, American—is low-income representation for people who cannot otherwise afford it." We need to make that clear and say that is the responsibility of the bar, that is the responsibility of judges, that is the responsibility of people in government who care about justice.

The second thing is we have to get lawyers out of their offices and, not literally but figuratively, on Jean-Luc's buses and out into communities where lawyers who practice in high rises or even comfortable small towns in America do not go. Or they can come with me to the *colonias* along the border between Texas and Mexico and see that there are really no private practitioners in, say, Weslaco, Texas, who can go down to the border and represent those people for critical civil legal problems; or out in the strawberry fields in California.

There has to be a sense among lawyers in downtown New York that the injustice that occurs on the border or that occurs in the strawberry fields is their problem, too. And that is a trick, because otherwise you tend to evaluate your success on how well you are serving people within your own and—I apologize for this—ivory tower world.

MS. VERMEULEN: Andy?

MS. DURBACH: I think that we have managed to attract lawyers' interest via a structure to which they can belong. We established Public Interest Law Clearinghouse, which is very much based on—in fact, we stole the idea entirely from—New York Lawyers for the Public Interest. We like to think we have

refined it. But seriously, within the Public Interest Advocacy Centre ("PIAC"), which is primarily a test case litigation center, which also undertakes policy work around public interest issues and conducts a training program, exists the Public Interest Law Clearinghouse.

The Clearinghouse was established simply because, as a non-profit NGO, PIAC could not take on all the work that came to us. So instead of turning people away, we went out and spoke to law firms and said, "Would you participate in a venture where we can refer matters that we cannot take on in-house to you?" We now have about sixty law firms in Sydney and its surrounds, and barristers and accountancy firms as members.

They pay us Aus\$100 per partner per firm or barrister to provide the service, the service being that we assess matters for compliance with certain eligibility criteria, which I will talk about, and then we refer them out. The members pay us to do the assessment and referral work, and they then conduct the legal aspects which the matter raises, for free. A pretty neat system and it works very well.

It worked initially through a combination of shame and conviction. We shamed people into joining us, because we were able to say that the equivalents of Allen & Overy were joining, and they went, "My God, if Allen & Overy are in, we had better join."

Then we started to seek out some of the senior partners in the firms who had a passion and commitment to do this work and wanted to do it. And I think, to take John's point, they wanted to do work that was not seen as charitable, as *pro bono* work has tended to be seen. Rather, they were keen to use their skills as lawyers to do things that were challenging and innovative and made a difference to people's lives.

So we set up the Clearinghouse, and I think how we have drawn people in is we have a Board made up of senior members in some of our member firms and from the bar (we have a split bar as in the United Kingdom) and there is a sense of ownership, and that is very important. The lawyers who are members and who are doing the work feel that they own the organization with us and with the clients. They come to Board meetings, they shape policy with us, they host seminars and breakfast meetings.

They want to be seen to be doing a collegiate, rather than a competitive, activity which serves the community.

Last year, PIAC and the Clearinghouse held a conference, called *Courting the Public Interest*, which was run with considerable sponsorship from our member firms. We attracted speakers such as Joan Vermeulen and Anne Owers. This occurred as a result of that investment from member firms.

We have *secondment* arrangements where we get young lawyers from our member firms to come to us on *secondment* for three to four months a year and work in the Clearinghouse. They get a feel for community issues, how to work with communities. In any one day they will be doing issues around environmental matters, health matters, discrimination, they will be looking at the Dog Act, the Adoption Act—the kind of variety of things that you just wouldn't get in a big firm practice. They are dealing with people, as opposed to paper, a lot of the time.

We have also recently got our members to support and participate in a winter school for young law students. Jean-Luc was mentioning law students and how we need to attract their interest before they become senior associates and just do not have the time to do this sort of work, or the inclination, because it is trampled out of them a little, due to their pressures. We are running a course, *Practicing in the Public Interest*, for the winter school and summer school for young law students. We will train them about *pro bono* issues and public interest practice, and then place them in some of our member firms for two to three days with the *pro bono* partners to get a sense that this kind of work is actually viable and possible in big commercial law firms, that there are opportunities to do *pro bono* work.

I think ownership is a very big factor in allowing the private profession to feel that they own something which is important, which is contributing to the wider community. And, while we are obviously on the ground doing the work, they are very much seen to be involved in its facilitation. They host talks, breakfasts and lunches, and we get great food and great wine as a result for our guests. But it works extremely well.

MS. VERMEULEN: Sophie, what kinds of collaborations work best?

MS. FORSYTH: I am very big on partnerships between pri-

vate practice and other agencies, be they state-funded salaried lawyers, or non-governmental organizations.

I think a really good example of a really successful scheme in the United Kingdom is something that has developed really out of an initiative of our judiciary, which is kind of interesting. What happened was they had perceived an increase in the number of global *pro se* litigants that they were meeting in their courts, and they set about at the Royal Courts of Justice in London looking into that.

They concluded, for instance, that in front of the Appellate Court twenty-nine percent of the cases they saw were unrepresented litigants; and what's more, of that group of litigants, they had a fifty percent success rate compared with those who were represented. I think that shocked them, and they basically issued a call to arms.

As a result of that, firstly—they are obviously a powerful, influential group—government money came their way to pay the salaries of two full-time staff solicitors. But in addition, they persuaded five large law firms to get involved by sending their senior litigators down to the courts to actually provide *pro bono* advice to unrepresented litigants.

Now, of course, once five firms had answered that call, there was then a huge amount of peer pressure for other firms to get involved, and that has now mushroomed to twenty-three civil law firms and another twenty-three family law firms who all take part in that scheme.

So I think if you pull apart what about that scheme makes it successful, I think, firstly, strong leadership from an influential group is really key. Yes, shame—you know, clearly there was a real need for that. Secondly, the opportunity to really, as Andy said, actually take part and take ownership of the scheme, to actually take a part, for instance, in the way the bureau is now managed. For instance, my boss, David Mackie, who is a senior partner at my firm, sits on that board of management. What that means is that we get very emotionally attached to that scheme, and once emotional attachment forms, cash follows.

From the point of view of the NGO sector, there are so many advantages to getting *pro bono* lawyers through your doors, particularly if you can foster that kind of emotional attachment, which clearly he has managed to get as well.

MS. VERMEULEN: Jean-Luc, what kind of collaborations work in France?

MR. BÉDOS: Well, again it is difficult to say because, first, even if we are supposed to be a Latin country, we do not have the concept of *pro bono*. *Pro bono* does not exist in France.

Also, the type of collaboration that Droits d'Urgence have at the moment with the bar is mainly with the Bar Association of Paris, because we have tried to put together a joint program of training, of clinics, and also tried to hire young lawyers to put them on the streets. At the moment, I think that we have around 400 lawyers working for us—once every two weeks or every three weeks.

I think the U.K. or U.S. examples are crucial for us, and if the example comes from the U.S. and U.K. firms which are practicing in Paris, that will be a good thing.

MS. VERMEULEN: John, before you were president of the Legal Services Corporation, you were a private practitioner and you did *pro bono*, so from both of those perspectives what kinds of collaborations do you think work best?

MR. MCKAY: Well, I think in America—at least in the cities and it is probably true outside of the major cities—the *pro bono* programs look oftentimes to the formal Legal Aid societies as trainers, at least in the establishment of *pro bono* projects. Elder law programs, youth at risk programs, that may be free-standing in the sense that they are not connected to legal aid societies, in fact obtain much of the substantive law training in poverty law that is necessary to continue.

I believe there is a sense, pretty widely held in America, that if the formal legal aid societies or federal funding for legal services went away, that many of the *pro bono* projects would also suffer.

New York, where the Legal Aid Society sprang up as really the first of our legal aid societies, would probably be okay because of the commitment of so many lawyers and the culture here. But if you went out to other parts of the United States and said there were no legal services or legal aid, you'd have a difficult time.

We have a requirement in federally funded legal services that 12.5% of all our federal funds in each of our recipients must be used to promote what we call private attorney involvement,

but essentially *pro bono* services. That is successful in some places, not successful in others.

I think the prior issue is more important, and that is the substantive law support, because within private firms, the cultures vary from city to city. We do not want to project New York as the only place where legal aid or *pro bono* occurs.

In my home state of Washington, in Spokane, ninety-seven percent of attorneys that practice law in Spokane participate on *pro bono* panels, which is really remarkable. There are other towns where they have a hard time getting five to ten percent, but it depends on the leadership within law firms. And I think Sophie is saying the same thing, where if you can put together a dynamic person or group of persons who will put the lead to others, either shame them or motivate them for good reasons into doing *pro bono*, you will be successful.

MS. VERMEULEN: I was just thinking it is time for me to start asking the audience if you have things to say, because you must also have some sense of collaborations that work. I saw Dan Manning kind of raising his hand. So unless he has changed his mind, here you go. You will get recorded for posterity.

AUDIENCE: I just want to throw out a small idea that worked very well for us in Boston. We actually get a lot of support, both political and financial, from the private bar and work very closely with them, but one thing really worked well. It started when a retiring managing partner of one of the biggest firms in Boston decided to come and volunteer at our office three days a week for about a year. That produced a relationship that has paid off in so many ways, I just can't believe it.

It easily resulted in US\$500,000 in financial contributions, because it opened doors to us. We had always had good relations, but the credibility that came from having somebody so senior and respected in the legal community actually say "I've been there, I've seen what they do, I've met the clients, I know what the work is," just has been a wonderful thing for us and has resulted in an ongoing program of senior lawyers who come to us. We teach them landlord/tenant law; we teach them family court law. They are very excited about it, and then they go back and tell the firms what a wonderful experience it is. I just wanted to mention that particular idea.

MS. VERMEULEN: I've got somebody over here; and then, all right, why don't you guys just start moving forward and I'll hand the mike around?

AUDIENCE: I do legal aid work as an attorney, and I've had experiences with *pro bono* counsel in the very large firms. I'm very interested in the differences that the woman from South Africa mentioned that the firms pay you, and here we pay the firms. As we all know—anyone who has worked in legal aid—it is a very, very frequent occurrence that a second-year attorney in legal aid is training a fifth-year associate at a big law firm, because you simply have more experience.

Not that *pro bono* does not help these legal aid agencies. Of course it does. It fosters an emotional attachment, it fosters more awareness of what the needs are, but there is no substitute for funding consistent, permanent people who work every day in legal aid.

One of the things that concerns me when I hear all this sort of emphasis on how wonderful *pro bono* is—not that it is not; of course it is—it seems like it sort of clouds this issue, which is that legal aid agencies in general in this country are at huge financial risk every couple of months. And it is just not a substitute for institutional funding, either from the government or from the law firms.

MS. DURBACH: I agree with that wholeheartedly. We have just had a series of cuts in Australia to legal aid. One of the justifications that the state can use for those cuts is to say, "Look at all these fabulous *pro bono* services." What this argument raises is a confusion between the state's obligation to its citizens to provide access to the legal system on the one hand, and the profession's responsibility on the other. It is an extension of our professional responsibility to do *pro bono* work. *Pro bono* work is the icing on the top. It doesn't—I really do not believe, despite my belief in the Clearinghouse—impact in the way that legal aid services do.

We endeavor to make that point very clear to government, and we make it very clear to our members. But as Director of the Public Interest Advocacy Centre, which is very much dependent on semi-state funds, our links with Clearinghouse firms can actually enhance or supplement our state-aided work. Our relationship with them allows us access to resources in the firms, to

libraries, to quality advice. Many of our Clearinghouse barrister members undertake PIAC work on a *pro bono* basis. The private-public contribution can, I think, work both ways as long as we ensure that the quality of our work is not compromised.

MR. MCKAY: I would say, to make your point, the current political attack in Washington coming from the right side of the aisle, the conservative side of the aisle, is the point that Andrea was making, which is the claim that with all of these *pro bono* services in the United States who needs legal aid? Of course, that is totally false for some of the reasons that you mentioned.

It is also extremely disingenuous, because it is made by people who I think fundamentally do not care about the access rights of low-income people. They do not offer an alternative to the legal aid structure in the United States, nor do they explain who is going to provide those services in places where there is not the infrastructure of law firms to serve low-income people; again, the example of the poor along the border and there are many, many more. I select that out, but there are many more places where *pro bono* lawyers simply wouldn't begin to address the needs that are there and the substantive poverty law issues which cannot be addressed by *pro bono* lawyers.

The other side of it, and I think it is just as important, I think it is terribly wrong of legal aid lawyers to in any way miscommunicate to their private bar brethren and sisters, if you will, that their efforts are not valuable and are not welcomed by legal aid lawyers. I think it should be a privilege, an absolute privilege, of legal aid lawyers to say that they train private bar practitioners in poverty law, because you win admirers, you win supporters. They want to understand you and the work that you are doing. They want to be a part of it, and you give them that opportunity.

AUDIENCE: I am sorry if I gave the impression that legal aid people do not appreciate *pro bono* work, but the fact is in New York four months ago the big law firms gave every first-year associate a US\$30,000 increase in pay per year. That is about the equivalent of a first-year attorney's salary at a legal aid agency. So it is not that legal aid lawyers do not appreciate working with *pro bono* attorneys, but you have a fundamental problem when the contribution of the *pro bono* law firm is going to be that one of those attorneys contributes on a case or two and contributes

well and is being trained by someone who is making much less and has much more experience. The real valuable stuff could also be financial contributions to the legal aid agencies so that they can have steady, committed, consistent resources for their clients. It is not to say that *pro bono* isn't valuable—of course it is—but you just can't compare a couple of cases a year to a financial contribution.

AUDIENCE: I want to give a little context on the role of *pro bono* and staff programs in Maryland and describe something that is taking place in Maryland that we stole wholeheartedly from Florida that I think is helpful, and it could be helpful across the country.

The legal services programs in Maryland are serving about 100,000 cases per year. There are twenty-eight programs. Four or five of them do primarily *pro bono* coordination. The rest are primarily staff programs. I think all the services, all the models—*pro bono*, staff, reduced fee, full fee, whatever—have contributions to make. And there are collaborations in which the private bar needs the legal services bar, the public interest bar, and the law school clinic bar.

Out of the 100,000 cases, there are 200 staff attorneys in Maryland. There are 25,000 attorneys in Maryland in total. Out of 100,000 cases, 10,000 are *pro bono*, which is good in comparison with most states, and 90,000 are staff cases, done by staff attorneys and paralegals.

There is a recommendation in a report that just came out from a commission that was created by the chief judge in Maryland's Court of Appeals, Judge Bell, last year to look at how to expand the role of *pro bono* throughout the State of Maryland in small communities, in the cities, Baltimore, wherever. And the recommendations—taken almost entirely from what is underway in Florida, and has been for several years—would require mandatory reporting each year of every attorney on what *pro bono* work they have done. It is not mandatory *pro bono*, but it is mandatory reporting, say what you have done.

It also adopts 6.1 of the Model Rules of the American Bar Association that all attorneys ought to do at least fifty hours per year of *pro bono* work, and at least more than half of which should be civil legal services for low-income people. If you don't do *pro bono*—and you don't have to, but you ought to—if you

don't do *pro bono*, you ought to pay at least US\$350 per year as a pay or play—pay some money to support legal services, civil staff programs, if you don't have the opportunity or the inclination to do direct services yourself.

If 15,000 out of the 25,000 attorneys did that, that would be over US\$5,000,000 per year in the State of Maryland, which would be more than IOLTA and substantially more than the federal funding that comes into the state. It would be a real adjunct to the funding of the state.

It also directs each court, each county through its court leadership, to develop a *pro bono* plan in terms of how *pro bono* can be incorporated with the staff programs and how you can change court procedures to make the use of *pro bono* services more convenient for the clients and for the attorneys.

I think when this plan came in place in Florida about eight or nine years ago, *pro bono* was perceived as doubling funding, and private funding contributions for legal services from the bar went up very, very substantially. So I think it is going to have a real effect in our state and, based on Florida's experience, I think it is a model some others should look at as well.

MS. VERMEULEN: I think the discussion of quality has come up, and my colleagues in the back tell me we have less than a half an hour. So we don't want to let the time go by without addressing that.

It is pretty clear that all of the programs have lawyers working in areas that they would not normally practice in, or at least certainly in some instances. So how you go about ensuring quality of representation seems to me an important issue.

Sophie, I wonder if you could address that.

MS. FORSYTH: Actually, one of the thrusts of what I do try to do with my *pro bono* program is find ways in which my lawyers can use their existing skills to support disadvantaged communities. I think that is possible, because we are a corporate business firm, but we are also a full-service firm, which means that, alongside mergers and acquisitions, banking, and international capital markets experience, we have property law experience, we have employment law experience, we have a charities practice, we have a wills and probate practice. So I actually think there are lots of opportunities to use those skills that we already have in a *pro bono* context.

It can require some creative thinking. We do frequently copy U.S. schemes. For instance, I'm working at the moment on a franchising scheme which aims to promote regeneration in a poor area of London by encouraging the local community to become franchisees. We will provide not only corporate advice on the franchise agreement, but also banking advice on the soft loan agreements. So I think with a bit of creative thinking, we can actually use our existing skills.

But you're absolutely right. Particularly in the United States, as I understand it, it is reasonably common practice for attorneys to actually get involved in *pro bono* projects which bring them outside their area of expertise. This was brought home to me very recently at our New York office when two transactional lawyers took on their first political asylum case successfully.

So how do you ensure quality? Well, I think you have to get serious about training. When I said that I was keen on partnerships, not only does that mean partnerships in the way that we structure our *pro bono* program, but also partnerships in terms of training.

So, for instance, we partner with a law center, which is a local government-funded charity essentially, that provides free advice services to a local community in London. We partner with them. They provide us with training, and we provide them with training, because there are some areas of our practice that they need in their daily lives that they don't necessarily have. So I think it is a two-way process.

I think the other thing is that if your actual *pro bono* projects are run in partnership with local grassroots organizations that have a real depth of expertise, you can tap into the systems that they have in place for monitoring and evaluating and all those necessary things, as well as training. I think that all those kinds of factors help to ensure quality.

MS. VERMEULEN: Jean-Luc, the lawyers who work with Droits d'Urgence certainly give advice in areas that they wouldn't normally be practicing in. How do you address the question of quality?

MR. BÉDOS: I must say that I am just scared of what, sometimes, our lawyers are doing. The way we deal, instead of sending just one lawyer, we send two lawyers. Every time we give

a consultation somewhere, we have two lawyers listening to the person.

You may be shocked by what I am going to say, but I don't think that legal technique is the most important things for the people we try to take care of. The very first thing that they want to have is to have somebody listening to them and trying to understand their problems.

Almost thirty percent of the people who come to us do not have any legal needs at all. They just come to us because they want to meet a lawyer—in French it is an *avocat*—and it will be so important for them to be listened to by somebody that they are not used to meeting on a day-to-day basis.

The other aspect is that we don't organize a consultation at Droits d'Urgence. Droits d'Urgence doesn't have any boutique, any shop. We go to the places where the people go, which means that in these places we already have social workers, we have doctors, we have volunteers, and they are used to treating and to helping people. The legal issues are not the very first ones for these people. The very first one for these people when they go to these places is to have something to eat, a place where they can stay at night, and to meet a doctor.

The legal issue will come afterwards. The technicality and the quality of the work, of course, is crucial, but even if we are called Droits d'Urgence, there will be no urgency as such, except for illegal aliens.

MS. VERMEULEN: I want to ask you a follow-up question, which I'll direct to the others as well on the panel. For the lawyers who work with Droits d'Urgence, there has to be an enormous gap, I would think, in terms of class and economics and the culture between the lawyers and the clients. I wonder if you give any thought to bridging that gap, and how you do that.

MR. BÉDOS: There is a huge gap, indeed, because what you have called our clients don't trust lawyers. I was very interested by what the Russian person said two hours ago. Basically, in this class of people in France, they do consider that the judges, the policemen, and the lawyers are the same, which means that they are on the other side of the society.

The sole fact that as lawyers we go into these places and we go and meet these people is really the way to reduce that gap. Every time I go there, I wear exactly the same clothes that I wear

today, which means I go with my tie, with my white shirt, and that is a sign for them that I treat them the same way that I treat my own corporate clients.

MS. VERMEULEN: Andy, do you want to weigh in on that one?

MS. DURBACH: Yes. I think the focus of the discussion is often so much on what the lawyers undertaking the *pro bono* work do, rather than on the responsibility on those of us who refer matters to *pro bono* lawyers to articulate referrals in a way that gives the issues some *gravatus*, that makes them understandable and intelligible to lawyers who may not have specific expertise. It is the way we package what we refer which is so important, not necessarily what they give back to us, because we have to take the responsibility for the outcome, particularly when you are dealing with people who do not have particular expertise (but wish to do the work).

The Clearinghouse ensures that once a matter has been placed with a member firm or barrister, Clearinghouse staff will sit in on that meeting, the first consultation, we outline the issues with the client and confirm what the lawyer is going to do for the client. We tend to refer matters to people with demonstrated expertise or understanding on the issue. If we cannot, we make sure that they are trained or they work in a co-counsel arrangement with another law firm which has that expertise.

And then we monitor. One of the aspects of the Clearinghouse work is that we monitor the outcome and the progress of the matter all the way along. It is, in a sense, an effective dating agency: we place clients with members, we see how the relationship goes, we make sure it progresses to the satisfaction of both parties, we monitor the outcome. If it does not work or progress, we step in and may refer the matter elsewhere.

Perhaps, I can comment on the issue of culture, or cultural differences, and the difficulties we have. We started a project last year related to the Stolen Generation. You may know that in Australia there was a policy to remove indigenous children from their parents and assimilate them into white Australia, and we have recently had an inquiry into the damaging and traumatic and horrendous effects of that policy and the consequences for indigenous communities in contemporary Australia.

Our Human Rights Commission undertook that inquiry,

and they spoke to us about what we could do as lawyers to facilitate that work for them. Through the Clearinghouse, we initiated the Stolen Generation project: some of our member lawyers participated in cross-cultural training with indigenous people who spoke to them about issues of trust and confidence, how to take instructions, how to communicate in relation to often very damaged and hidden histories.

We also provided questions coming out of the inquiry to our member firms in relation to what liability, if any, would attach if the government were to apologize to the Stolen Generation, the fiduciary relationship between those removed and their supervisors, aspects of compensation, etc. Clearinghouse lawyers were asked to research and advise on these questions. Most of the lawyers were commercial lawyers, and they had to think differently and confront the issues and, in effect, train themselves in new areas. Their advice was collated and published by the Clearinghouse, and this book was sent around the country as a resource for lawyers and others on how to work with indigenous issues.

Training is important but exposure to the lives of people, as Jean-Luc has said, is the best training. No matter how good your technical knowledge is, it is exposure to people's lives and experience which actually shapes how you're going to deal with the problem effectively.

MS. VERMEULEN: John, do you want to make any comments on either the quality or the gap issue?

MR. McKAY: Well, I think we have to admit the truth to begin with in this discussion, which is that of all the wonderful things we have talked about, in America we serve about one in five eligible clients with critical legal needs, and that means that maybe the places where we deliver them sometimes represent triage units and feel that way to people who do that work on a regular basis. There is no shortage of clients.

We have an office in my home state of Washington that in 1996, when the budget cuts from the federal government hit, had to turn away women who were victims of domestic violence, women who were being beaten. The priority setting was, "If you haven't been beaten in the last forty-eight hours, then we can't talk to you." If that seems pretty harsh to you, it is, and it tells us

that if we are going to assist those people, we really have to apply all of the resources that we can.

It would be wrong to say that what we will do is supply you with an ill-trained, incompetent lawyer who will mess it all up for you. You might have done better on your own. The answer is, as Andrea points out, that we should train, train, train, train, mentor, mentor, mentor, and increase the numbers of those who can provide those services. Working together, I think we can do that, but I do not think that if we try and create a divide between some who are passing standards developed by people in high office buildings and ignoring the woman who is being turned away, because we just do not have the resources to help her. So I concur that it is train, train, mentor, mentor, increase our numbers, and never turn people away like that again.

MS. VERMEULEN: I am told by my colleagues in the far back that we've got about fifteen minutes left. I was going to squeeze in one more comment, and then I promised all of the participants up here that they could have a couple of minutes, two to three minutes—and if they do it, they will get the Rekosh Brevity Award—to give their closing thoughts they have on this issue.

AUDIENCE: Does or should alternative dispute resolution or non-adversarial practice of law play any role in your country and in your work?

MS. VERMEULEN: Jean-Luc?

MR. BÉDOS: Mediation is not used in France, and we do believe that we have to introduce mediation for the people that we are helping. Because I think they will feel more comfortable to go in mediation, family mediation and housing mediation will be extremely useful for the work that we are doing.

The very first thing that we have to do is to train lawyers who are used to going to the court every time they have a problem.

MS. VERMEULEN: Does anyone else have a comment on mediation?

MS. FORSYTH: Just a very brief comment. In the United Kingdom our civil procedure rules have actually very recently been reformed. Mediation is now an important part of the litigation process. So yes, absolutely.

MS. DURBACH: I think mediation has become a kind of a simplistic alternative to litigation in Australia, and I think regret-

tably, particularly from a public interest law perspective, it is because what tends to happen is the precedent you are wanting to establish in the public interest is privatized. An issue that you want articulated in a public forum, a public process and outcome, becomes hidden.

We have member lawyers engaged in alternative dispute resolution as members of the Clearinghouse. Some matters lend themselves very well to mediation, but we are very cautious in the way that we use it.

MS. VERMEULEN: Okay. I am going to turn it over to the four people up here for closing remarks. Sophie, do you want to start? Andy?

MS. FORSYTH: Just a couple of very quick points. First, my absolute conviction is that *pro bono* work is not an alternative to public service legal aid work, and that we at the private bar have a duty as well to keep articulating that within the legal communities. Second, leadership is absolutely crucial to the development of *pro bono* ethos, not only within private firms, but also across professions, and that can be leadership from the judiciary or from bar associations and other influential people. Finally, we haven't really discussed this in any great detail, but I think there is a real opportunity for bottom-up development with *pro bono*, so creating an awareness of *pro bono* amongst young lawyers is a really powerful tool for developing a *pro bono* ethos, not only because young lawyers are the face of the profession tomorrow, but also because firms like mine listen very hard to potential recruits.

MS. VERMEULEN: Jean-Luc?

MR. BÉDOS: I fully agree with what Sophie just said. It is not only the responsibility of the legal profession, at least in France, but I think it is also the responsibility of the state and of the government. Maybe I gave you the impression that everything was wrong in France which is not true, because access to justice works pretty well in France, but it doesn't concern, unfortunately, too many people in France. It is not a question of the legal profession, it is a question, generally speaking, of the economy and of the French government.

Given the topics that we have been talking about, I think that what we need at the moment in France is really a commitment from the large firms. Given the fact that fifty percent of

them are either American or English, I think at least on that issue we will try to reduce the tutorial gap that usually we have between the French and the Anglo-Saxon world, and we all will try to work together.

MS. VERMEULEN: John?

MR. McKAY: Thank you. My thanks to Joan and New York Lawyers for the Public Interest, Michael Cooper, the City Bar, Fordham University, and the other sponsors for inviting me and allowing me to participate in this.

I was a little late getting to the conference, because I was at the American Bar Association National Legal Aid and Defender Association Pro bono Conference in Houston, which I think had about 800 participants. It is pretty remarkable the commitment there to expand the partnership between legal aid societies and *pro bono*, and so I am really, I think, again making Sophie's point and the one emphasized by Jean-Luc.

I do think that there is another one that we really haven't covered, and I just kind of want to conclude with this. I looked through the media clips that I receive as the LSC president, and this one was an editorial from Mobile, Alabama, which I will tell you is not known as a hot spot of either *pro bono* activity or public interest work, yet has a number of very dedicated public servants and public service lawyers.

The headline is: "Kill the Lawyers! Not These." And the editorial refers to Shakespeare's Henry VI and the line, "The first thing we do, let's kill all the lawyers." What the paper is editorializing on behalf of is a *pro bono* program in Mobile, Alabama, which, for US\$95,000 a year and with the support of the local legal services office there, has handled numerous cases for low-income people. What they posit in this editorial is that those who subscribe, I think, to a misquoting or misperception of what that play was about, but who think it is okay to bash lawyers, one of the antidotes to that in society is *pro bono* work, and that when lawyers give selflessly to others, those who cannot afford those services, everyone in society will benefit from that and must come around to the view that the justice system in this country does have promise, if not in reality, of serving justice for everyone.

MS. VERMEULEN: Andy?

MS. DURBACH: There is a tendency for people when do-

ing *pro bono* work or talking about the *pro bono* work that they focus on the quantity as opposed to the quality of that work. We know a lawyer who says when we go into a conference with him with a client, "I have to talk very quickly because this is a *pro bono* matter." He is joking. He is very good. I think that what Anne Owers was saying yesterday is so true, that this approach to *pro bono* work leads to sacrificing outcome to output. There is a kind of grandstanding which centres on quantity rather than on quality. To some degree, one can restrain this approach by having in place criteria for conducting *pro bono* work, for example, the Clearinghouse has as one of its criteria that the work, much in line with PIAC's work, must have a public interest component. We require that there is a systemic issue that is being addressed, that the lawyers can address. That is my first point.

The second point I want to make relates to the educational value of doing *pro bono* work. I don't think we can overstate this benefit, as Sophie said. What people gain from doing *pro bono* work, in terms of turning them into whole human beings as opposed to just technical lawyers, is really quite fundamental. And their exposure to these sorts of issues, and this kind of work and the practices and strategies employed, and the techniques adopted when dealing with disadvantaged clients are very important. Our *secondees* go back to their law firms as ambassadors for this kind of approach and contribution within the private profession.

And finally, may I touch on a point that was raised this morning about the use of lawyers in other countries, the *pro bono* work of American lawyers, for example in foreign countries. I think that one has to be very cautious and mindful of the cultural differences between countries. Imposing practices that work in one place, transplanting schemes, can lead to inappropriate results. The Clearinghouse scheme, whilst based on the NYLPI model, had to be fashioned to local needs. And similarly, one has to be very careful in relation to the advice provided.

But what I do think that experience brings when you're working in foreign countries—and I think this conference has been so remarkable in that way—is that it reinvigorates us to go back to our countries and to do domestic work that is stimulated by this experience and exposure. I think it works in reverse very often, that we go to other countries thinking we can teach them,

but in fact we learn and we come back re-educated by that experience. So thank you for the conference.

MS. VERMEULEN: Well, thanks to all of you. I think we have four winners of the Rekosh Brevity Award, and let's give a great hand to these panelists.

Thank you, everyone.