Committee to Improve the Availability of Legal Services - Final Report to the Chief Judge of the State of New York

Victor Marrero, Chair

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COMMITTEE TO IMPROVE THE
AVAILABILITY OF LEGAL SERVICES

FINAL REPORT TO THE
CHIEF JUDGE OF THE STATE OF NEW YORK*

April 1990

Victor Marrero, Chair

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April 27, 1990

The Honorable Sol Wachtler
Chief Judge of the State of New York
New York State Court of Appeals
Albany, New York 12207

Dear Chief Judge Wachtler:

On June 30, 1989 the Committee to Improve the Availability of Legal Services presented to you its Preliminary Report. In it the Committee responded to the charge you gave us in April, 1988 to study the extent of the unmet need for civil legal services among the poor in New York State and to recommend ways to improve the availability of those services.

As was detailed in the Preliminary Report, we found that in New York there is an imbalance of crisis proportions between that need and the legal resources now available to address it. We concluded that lack of free legal assistance effectively denies access to the legal system to vast numbers of poor people, thereby intensifying and prolonging their already harsh distress, and that this condition reflects severely on the legitimacy of our justice system. To address the problem, we recommended a comprehensive program of remedial actions which should be promptly undertaken jointly by the legal profession and the rest of society. The most far-reaching among them was the adoption of a rule that would obligate all practicing attorneys admitted to the Bar in New York to perform a minimum of forty hours every two years of pro bono service related to the legal needs of the poor.

Before drawing our final recommendations for submission to you, the Committee, aware of the importance of the subject and the sensitivity of our proposals, invited public comment on its Preliminary Report. To this end we conducted a series of public hearings throughout the State in late October and early November of 1989. The reactions elicited from the public and the legal profession at these hearings, and in other correspondence the Committee received, as well as the Committee's responses to these comments, are set forth in the Final Report which we now submit.

As expected, the bulk of the public comment, most of it from the organized Bar, related to the Committee's mandatory pro bono
legal services proposal. With some notable exceptions, the reaction was substantially negative. Nonetheless, following the public review, the Committee considered the issues anew and agreed to stand by the principles expressed in its Preliminary Report and the recommendations that followed from them. The Final Report we now transmit, therefore, with some clarifications, minor adjustments and responses to the major comments we heard, remains essentially a reiteration of the Preliminary Report’s findings, conclusions and recommendations.

Of course, in the face of intense adverse reaction from a significant part of the organized Bar, we did not reach this conclusion lightly. Thus, some explanatory notes are in order. The Committee’s decision to reaffirm the plan it first presented flows, first, from our belief that this approach is the most responsive and effective way to address the critical shortage of civil legal services for the poor. Second, we feel that our proposal not only better recognizes the lawyers’ special role in our society and their professional duty to the legal system, but also is more faithful to the meaning and spirit of the lawyers’ public interest service obligations under the Code of Professional Responsibility, than the alternative plans offered by critics of the Committee’s view. Third, our examination of the major opposing arguments satisfied us that the objections raised were already anticipated and answered in the Committee’s Report or can be reasonably accommodated without compromising the guiding principles embodied in our proposal. And fourth, the Committee’s final conclusion rests upon our profound conviction regarding other fundamental issues that we believe compel the Committee’s pro bono services plan but that, in our view, were not sufficiently addressed by its critics.

Some general observations about the testimony we heard, and especially about that which we did not hear, may help place in context our conclusions and perspectives regarding these vital points. Part of the opposition to the Committee’s pro bono services proposal seemed to stem from lack of understanding, misconceptions or incomplete reading of our Preliminary Report. While much of the oral and written commentary reduces simply to an expression of distaste for the concept of compulsory service, some opponents of the principle presented detailed, well-considered critiques of the Committee’s plan. Others, in particular the New York State Bar Association, came forth with constructive counterproposals. The Committee does not question the sincerity of the critical comments. On the contrary, we recognize that any endeavor as complex as the Committee’s task is bound to stir controversy. But intense debate can leave room for reasonable
differences of opinion. We are certain that the judgments reached by
many Bar leaders in examining our findings and conclusions were
grounded on reasoned, honest doubt about the long-term wisdom,
practicality or efficacy of the Committee's pro bono legal services
plan. We respect these views, and appreciate the conciliatory spirit in
which they were offered. But, having considered the same facts and
circumstances, we have, with equal strength in our conviction, come
to an opposite conclusion. As further articulated in our Final Report,
the arguments and concerns advanced by the organized Bar relating to
the Committee's pro bono services concept are, in our considered
judgment, either unfounded, or can be reasonably answered. We also
concluded that, given the vast dimensions of the need, the response
offered by the various voluntary alternatives advocated by critics of
the Committee's plan would be inadequate, and that it is unlikely that
these proposals would reach and sustain volunteer efforts at the opti-
mistic heights which their proponents hope to attain.

To be sure, the organized Bar's reaction to the Committee's pro
bono legal services plan was disquieting. It gave us pause to consider
whether it would be advisable to retreat from the basic principle of
our proposal on account of the opposition, or to proceed in spite of
it. In the end, confronted with the gravity of the legal services short-
age, no foreseeable prospects for effective relief, and the more pro-
foundly disturbing implications of inaction, we remained persuaded
that the Committee's approach was sound. The voluntary plans and
do-nothing options, however principled or well-intentioned, simply
leave us very unsettled, knowing as we do what their inevitable out-
come would be. To neglect or shortchange a problem is to compound
it. If we do not act decisively and effectively in the crisis, especially
in light of the known dynamics of poverty, the legal needs of poor
persons will accrue, the human hardships accompanying those needs
will be multiplied and prolonged, and a fundamental failure in our
justice system will be correspondingly enlarged. Troubling, too, is the
sight of a missed opportunity, the chance presented by this emergency
for lawyers to claim leadership, to make a difference, to identify with
the professionally more fruitful course.

Thus the choices narrowed for the Committee, and we were
again drawn perforce to our original approach. To stand still is unten-
able — indeed is tantamount to regression. To shift the burden to a
small force of volunteers is unrealistic and unfair and would condone
the shirking of professional duty by those who would decline to
contribute. To hold out indeterminately for the perfect societal re-
sponse, to do nothing at all because we can do only a little, is unwise. And so, as between the Committee’s plan and the fundamental flaws of the status quo, faced with an unpopular solution or no real solution at all, the Committee’s response is to reaffirm the principles underlying its pro bono legal services proposal. In so doing, we remain persuaded that this alternative provides the greatest benefits, at the earliest time, to poor persons who are most in need of legal services. In the long run, it also will best serve the interests of our legal system and profession.

We believe that the Committee’s conclusions reflect a renewed commitment to the basic principles of our legal system and the high aspirational goals of our profession’s ethical code. In summation, the essence of our stance perhaps may best be captured by a recasting of Shaw’s familiar lines: Some see a thing that never was and say it can’t be done. Others see the consequences of not doing it, and say it must be done.

Sincerely,

Victor Marrero

VM/mr
ACKNOWLEDGEMENTS

The preparation of this Final Report and the Committee's work during the past two years were greatly assisted by the generous contributions of a number of people outside of the Committee. To each of them I extend the Committee's deepest appreciation. The Association of the Bar of the City of New York hosted all of the Committee's meetings, making the Association's conference rooms and other facilities readily available to us. Fern Sussman and the officers and staff of the Association made provisions for these resources. Margaret Carlson of the American Bar Association's Private Bar Involvement Project assisted with the compilation of the voluminous materials that the Committee reviewed regarding pro bono legal services efforts across the country. Joseph Genova, Chair of the New York State Bar Association's Committee on Legal Aid, closely coordinated his Committee's work with ours and shared the preliminary results of his Committee's legal needs study. Matthew Crosson and staff of the New York State Office of Court Administration facilitated the Committee's travel and research. Philippe Adler, Valerie Campbell and Marion M. Mullen performed outstanding staff work for the Committee. I am particularly grateful to my law partners, who contributed the bulk of the administrative and staff support for the project, to my secretary, Maria Ramos, who spent many late hours in the preparation of the many, many drafts of Committee's minutes, reports and numerous other documents, and finally to my wife, Veronica, who provided not only editorial assistance but general encouragement and support.

V.M.
MARRERO COMMITTEE REPORT

COMMITTEE TO IMPROVE THE AVAILABILITY OF LEGAL SERVICES

Final Report
to the Chief Judge of the State of New York

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COMMITTEE TO IMPROVE THE AVAILABILITY OF LEGAL SERVICES

Final Report to the Chief Judge of the State of New York

I. INTRODUCTION

A. The Committee's Charge

On April 4, 1988, New York State Chief Judge Sol Wachtler appointed the Committee to Improve the Availability of Legal Services (hereinafter referred to as the "Committee"). Observing that: "There has been a disproportionate growth in the number of lawyers engaged in the practice of law in relation to the number of people who are denied effective access to the civil justice system in this state because of a lack of means", the Chief Judge charged the Committee with three specific tasks.1

First, the Committee was to review information and to report on the extent of the unmet need for civil legal services for the State's poor. Second, it was to explore the scope and operation of legal services currently provided. Third and most critical, it was to prepare "a plan for action concerning methods and programs necessary to provide increased ... legal services to the poor."2 In particular, according to the Chief Judge, the Committee's deliberations "may also include consideration of the propriety and feasibility of imposing a mandatory pro bono obligation on all members of the bar . . . ."3

B. The Committee's Process

1. Membership

The twenty-two members of the Committee reflect a broad cross section of the New York legal community, including legal services providers, academics, public officials, and private practitioners from small and large law firms located both upstate and in New York City. The members had deep and wide experience in the provision of vol-

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1. Letter dated March 30, 1988 from Chief Judge Sol Wachtler to Victor Marrero. A copy of this letter is attached as Appendix A to this Report.
2. Id.
3. Id.
untary pro bono legal services and included key figures in major bar associations, the Legal Aid Society, Volunteers of Legal Service and New York Lawyers for the Public Interest. All had been deeply involved in the issues confronted by the Committee and some had participated in prior studies of the very same questions.

2. Methodology and Deliberations

As a starting point, the Committee sought the views of selected individuals who possess special knowledge of the subject and who have had first-hand experience in other attempts to address the multiple issues which our inquiry raises. To this end, during its early meetings, the Committee invited and heard from representatives of legal services providers, including the New York Legal Aid Society (Civil and Volunteer Divisions), Community Action for Legal Services, Volunteers of Legal Service, and Southern Tier Legal Services. The Committee also received presentations from sitting Housing Court judges and one retired Supreme Court Judge. Legal services officials and Bar leaders from two other states (Maryland and Massachusetts) that have conducted legal services needs surveys, and from the New York State Bar Association’s Committee on Legal Aid, which also more recently completed a similar survey, also appeared before the Committee. A representative of the American Bar Association’s Private Bar Involvement (PBI) Project described nationwide efforts to promote pro bono legal services. Clinical legal studies professors from two major law schools addressed the Committee as well. Finally, the Deans of virtually all the law schools in the State joined the Chief Judge in one full session with the Committee.

With the assistance of the PBI Project, the Committee compiled and examined an exhaustive volume of materials, most of which are listed in the Bibliography of this Report. These documents review the historical, ethical, legal and constitutional basis of the lawyer’s pro bono service obligation and detail all aspects of the legal profession’s national debate regarding whether the obligation should be made mandatory. Included in this material are the legal needs surveys and reports conducted in several states, law review articles and other studies, court decisions, proposed legislation, bar association resolutions, speeches and other public commentary by lawyers, judges and legislators, Bar leaders and other citizens from all over the country.4

4. See American Bar Association, Private Bar Involvement Project, Assessing the Role of the Organized Bar in Delivery of Pro Bono Legal Services, Selected Materials (June
This voluminous input, sifted through the Committee's early deliberations, yielded a series of threshold issues and revealed divergent approaches which the Committee had to address and resolve. The process of deliberation entailed pointed clashes among opposing perspectives, tensions among competing objectives, and pushes and pulls between sometimes equally valid ends and means. For example, the following complex of questions broadly divided the "purist" from the "utilitarian" approaches to defining the scope of the lawyer's public interest legal services responsibility. Should the Committee's principal thrust be to give meaning and force to the lawyer's pro bono service obligation as an expression of the profession's ethical aspirations, or to maximize the quantity and effectiveness of legal services delivered to the poor? Should the obligation be strictly a personal duty of every lawyer that could be discharged only by individually performed legal services, or should satisfaction of it be allowed as well through collective or monetary means that emphasize efficiency? Should the fulfillment of the responsibility rely solely on volunteer professional activities of the individual lawyer's choice, or be imposed by a mandatory rule which would set forth the specific services that would qualify?

As well, the Committee weighed concerns about the different interests of big and small firms and sole practitioners; geographic differences in legal services needs, problems and resources upstate and those of the New York City region; the interest of legal services organizations in obtaining full-time legal staff support and that of the private Bar in providing part-time volunteer services; the need for flexible exemptions to address special circumstances, as against the importance of universal coverage; the risk of low quality legal services rendered in order to comply with a pro bono requirement versus the lawyer's ethical responsibility to provide competent and diligent representation; ease in administration and enforcement at the risk of noncompliance, or strict central administration and enforcement at the risk of large bureaucracy and government intrusion.

The conclusions reported here constitute the Committee's best judgment about how to resolve these conflicting pressures and pressing issues, with the overall end and aim of redressing a grave imbalance between the needs of the poor for legal services and the resources now committed to meeting those needs.

1988).
Initially the Committee’s findings, conclusions and recommendations were issued, in June 1989, in the form of a Preliminary Report. While we felt that, as a whole, the Preliminary Report represented the Committee’s best thinking, we realized that the issues involved had far-reaching implications and that the Committee’s plan should not proceed to implementation without full airing within the legal community. The Committee concluded that it should invite written and oral comments and recommendations on its proposals from the profession and the public at a series of statewide public hearings.

3. Public Hearings and Comments

The Committee conducted four public hearings on its Preliminary Report, in New York City, Albany, Buffalo and Rochester. In total, 74 people testified. A few persons submitted written statements but did not speak. In addition, the Committee received approximately 161 letters commenting on its proposals. Several newspapers around the State expressed editorial views.5

Most of the speakers at the hearings testified as representatives of bar associations, legal services and public interest organizations, government agencies and private corporation legal departments. A relatively small number spoke as individuals. (The list of speakers and their statements, as well as other correspondence received by the Committee, are contained in separate Appendix volumes accompanying this Report.)

The testimony and correspondence revealed some areas of general agreement with the Committee’s work. First, we found almost universal acknowledgment, particularly among bar associations, of our finding that a significant gap exists between the needs of the poor in New York State for free civil legal services, and the availability of lawyers to address the need. Second, there was general agreement that society as a whole has paramount responsibility for solving the problem and that it should respond by augmenting public funds for legal services providers. Third, most of the speakers who addressed the point concurred that lawyers have some professional responsibility to contribute to solutions to the problem.

There was broad disagreement, however, with the Committee’s

view of the extent of the lawyers’ professional responsibility regarding the unmet need for free legal services. Not surprisingly, the Committee’s proposal that the lawyers’ professional duty to provide pro bono legal services be made obligatory stirred the most intense debate. A significant majority of those who testified, including an overwhelming majority of the leaders of the organized Bar, expressed conceptual opposition to the Committee’s view. Many of the speakers also objected to specific details of the Committee’s plan.

Among the opponents of the Committee’s plan were the New York State Bar Association and the local bar associations from most of the major counties throughout the State. One notable exception within the organized Bar’s reaction was the Association of the Bar of the City of New York, which supported the principle of mandatory pro bono legal services, but reserved comment on the particulars of the Committee’s proposal. A number of legal services and public interest organizations expressed general support for the principles and thrust of the program formulated by the Committee. These included: the Legal Aid Society, the Council of New York Law Associates, Community Action for Legal Services, New York Lawyers for the Public Interest, and Volunteers of Legal Service, Inc. Most of the newspaper editorial comment favored the Committee’s proposal.6

Following its public hearings the Committee reconvened to consider the testimony. As a starting point, we were pleased by the number of Bar leaders who stated that the Committee’s efforts have already been salutary. In fact, we believe that the work of the Committee has had a catalytic role in raising the organized Bar’s awareness of a crisis that otherwise might have remained inadequately addressed. It has served to heighten the sensitivity of the legal profession to its responsibility to the legal needs of the poor. And it has reinforced the commitment of our State Bar Association and many local bar associations to intensify their efforts to respond to the need. Thus, the Committee feels that an important start has been achieved towards the mobilization of the public and the legal profession that is essential to address this crisis effectively.

C. Summary of Committee Conclusions and Recommendations

For the Committee, the public debate provoked by the Preliminary Report was particularly helpful in sharpening the issues and in

6. Id.
highlighting aspects of our work that suggested further refinement. But the public review, and our reexamination of both the issues and our proposal in light of it, served the additional purpose of confirming most of the views we expressed in the Preliminary Report. Specifically, we remain convinced that: (1) the unmet need for civil legal services for the poor in New York is a critical problem that has a devastating impact on the lives of vast numbers of poor people who need legal assistance and cannot afford it; (2) the problem poses severe implications for the legitimacy of our legal system and our profession; (3) the problem must be addressed promptly through a combination of efforts by society in general and the legal profession; (4) whether or not society responds, lawyers have a separate professional responsibility to contribute meaningfully to remedy the problem; (5) volunteer efforts alone will not provide an adequate response to such an extreme need; (6) the pro bono legal services plan proposed by the Committee in its Preliminary Report, with some adjustments and refinements that emerged in answer to public comments, remains both essentially sound and more responsive to the crisis than any of the alternatives proposed or than mere inertia; and (7) all of the legitimate objections to the Committee’s proposal either were anticipated and addressed in our Preliminary Report or are answered in this Final Report.

Accordingly, in order to improve the availability of civil legal services to the poor in New York State, the Committee recommends the following comprehensive program:

1. **Lawyer’s Contributions**
   a. **Pro Bono Services**

   The Committee proposes that all lawyers admitted to practice and registered as attorneys in New York be required to provide a minimum of 40 hours of qualifying pro bono legal services every two years. Time contributed in any given period in excess of the minimum standard would be allowed to be carried forward for four years and to be credited towards fulfilling the pro bono service requirement corresponding to that subsequent period.

   The Committee’s definition of qualifying services would limit the scope to professional services and activities that fall within any one of three categories:

   1) those rendered in civil matters to persons who cannot afford to pay counsel, and also legal services in criminal matters
for which there is no government obligation to provide funds for legal representation;

2) those related to improvement of the administration of justice by simplifying the legal process for, or increasing the availability and quality of legal services to poor persons; and

3) those provided to charitable, public interest organizations on matters which are designed predominantly to address the needs of poor persons.

Only members of the State Bar who are required to register biennially under the provisions of the New York Code of Rules and Regulations section 118.1[^7] would be covered. Attorneys who are not required to pay a fee pursuant to Section 118.1 would not be subject to the pro bono legal services requirements. Thus, under the Committee's plan retired attorneys and judges would be exempt from the rule. Our proposal would include attorneys employed and practicing as lawyers for government agencies, legal services and public interest organizations and private corporations. It would also apply to law school faculty but not to law graduates before admission to the Bar. Waivers would be permitted for extraordinary circumstances such as illness, incapacity, long-term personal or business absence from the jurisdiction and other special financial or personal hardships occurring in any particular year.

The proposed pro bono service requirement would be an individual obligation of every attorney covered. But the Committee would allow two exceptions. Attorneys could aggregate their individual requirements and satisfy their obligation in whole or in part by group services or activities performed on behalf of the entire group by one or more of its members. The group could be composed of all or part of the attorneys of a firm, or a combination of otherwise unaffiliated lawyers who join together for this purpose.

The second exception to individual services would permit certain attorneys, in lieu of performing the minimum number of hours of qualifying services, to satisfy all or any part of the obligation by making a monetary contribution to an eligible legal services or public interest organization. The minimum contribution would be a specified

amount, which the Committee’s plan would fix initially at $50 per hour of service required. The monetary contribution option would be available only to attorneys practicing alone or in firms of fewer than 10 lawyers.

Attorneys who have been admitted to practice for less than two years would be excluded from participating in both the group services and the monetary contribution alternatives, and the pro bono services they would contribute individually would not be counted in determining the collective requirement or the satisfaction of the obligation for a group.

The Committee proposes that administration and enforcement be kept as simple as possible, initially relying for compliance, to the maximum extent feasible, on existing administrative mechanisms and on the personal and professional integrity and good faith of each individual attorney.

The Committee is satisfied that there is adequate historical, ethical and legal basis for the program described, and its analysis of this subject is set out at Part III.D. of this Report. We believe that the plan can be implemented by rule promulgated by the Chief Judge or by the Court of Appeals under their authority to oversee the administration and operation of the State’s court system and to regulate admission to practice law.

b. Other Contributions by Lawyers and Legal Institutions

Resources from other segments of the legal profession can and should be mobilized to complement the organized Bar’s contribution of pro bono legal services. The Committee recommends measures by which the law schools, retired lawyers, law firms as entities, legal assistants, bar associations and others can make their unique contributions to redressing the imbalance of need and availability of legal services for the poor.

2. Contributions by Society as a Whole

The Committee believes that the obligation to provide adequate legal assistance to indigents in civil matters extends not only to the legal profession but to society in general. We therefore recommend increased public spending for legal services to the poor, particularly for aspects of the need that cannot be satisfied by volunteer lawyers. These include more full-time legal services attorneys, more judges and personnel in some courts and funds for reimbursement of volunteer lawyers’ expenses. Additional funds should come from federal,
state and municipal governments in higher appropriations to fund legal services organizations to provide more assistance to the poor in areas of vital needs.

State funds should be budgeted to establish or expand programs required to meet the needs of specific populations—e.g., public assistance recipients, handicapped children, homeless families, the mentally disabled—whose unmet social and economic needs directly affect the legal system and increase the demand for free legal services.

Within the judicial system, State funds should be allocated to expand the appointment of counsel from panels established pursuant to the New York County Law, Article 18-B, section 722-b to vital needs such as housing, life support public benefits, matrimonial rights and child support. To encourage attorney participation in the 18B program, levels of payments should be increased to a more reasonable level.

In administrative proceedings involving denial or termination of public benefits and entitlements, government agencies that operate such programs should be required to provide substantial funding for legal services organizations to assist poor persons threatened with the loss or denial of a means of support.

II. PLAN FOR MANDATORY PRO BONO SERVICE: RATIONALE AND DESCRIPTION

A. The Crisis of Unmet Civil Legal Needs

Our society has evolved in a way that makes access to legal services increasingly crucial to handling the emergencies which routinely beset poor persons. Whereas people of means can regard the service of a lawyer as an optional convenience to be availed of only in certain relatively well defined circumstances, the poor paradoxically live in circumstances in which they need legal services more but can obtain them less. Typically, their needs for legal services are not in any sense optional but rather deal with access to essentials of life: shelter, minimum levels of income and entitlements, unemployment compensation, disability allowances, child support, education, matrimonial relief, and health care.® Precisely because poor persons cannot command access to these basic requirements by their own economic power in the marketplace, society has sought, through remedial legis-

---

lation, to ensure their access to them by law. Thus, the poor must make legal claims to get basic goods and services that other people can obtain more readily.

After reviewing an abundance of available information on the subject, the Committee has come to the inescapable conclusion that the ability of the poor to assert these claims has been gravely impaired by their frequent lack of access to legal services. The need for such legal services has grown enormously in recent years, and the Committee is convinced that a crisis now exists which jeopardizes both the welfare of poor persons and the legitimacy of the legal system itself. The Committee finds no reasonable basis for believing that voluntary efforts or public funds on the necessary scale can successfully and promptly close the gap and therefore concludes that lawyers, because they uniquely have the skills and the franchise to provide legal services, must be required to do so.

The scope and dimension of the crisis of poverty and the gap between legal needs and legal services associated with them are matters of common experience and are confirmed by information, studies, documentation and statistical evidence that put the size and importance of the crisis beyond reasonable doubt. All the indicia of distress—homelessness, domestic violence, hunger, disease, crime, public dependency—are evident as street facts visible on any short walk in any city in the State. That distress has mounted before our very eyes over recent years, a commonplace observation that is documented by all the available statistics.

Thus, New York State demographics for the past decade indicate a substantial increase in the number of persons living below the poverty line, growing from 13.4% of the total State population in 1979 to approximately 14.6% in 1987. In absolute terms, the number of

10. Id.
11. Id.
persons who lived below 125% of poverty levels, thus generally requiring legal help to lay claim to vital human services, rose during this period by approximately 400,000, or 13%. This rise in poverty levels has been accompanied by an exacerbation of all the social and economic pathologies of poverty; such problems feed on each other and produce still newer problems. Legal services officials confirmed this synergy. They reported to the Committee, for example, that the rapid spread of AIDS, the incidence of crack and other forms of drug abuse and the rise in drug-related crime in recent years has placed major new and unforeseeable demands on their organizations' already overstrained resources. The net result has been that legal services providers have been able to offer representation to a smaller and smaller percentage of the larger and larger number of people who need and request their assistance.

A recent study of pro bono efforts in New York City Housing Court provides an example of the interrelationship between basic human needs of the poor—in this case for shelter—and available legal services. The study showed that every year more than 400,000 new proceedings are filed in New York City Housing Court, producing nearly 30,000 eviction orders against individuals and families who must then contend for shelter in New York City's extremely limited housing market. Many fail in that contest. According to the study, more than a quarter of the families who enter New York City shelters cite eviction by their landlords as the cause of their homelessness.

In these proceedings landlords have counsel in approximately 80-90% of the cases while tenants have counsel in no more than 10-15%. The overwhelming majority of the evictions ordered in Housing Court involve unrepresented tenants. Significantly for our purposes, the report discloses that, in project cases handled by pro bono attorneys, none resulted in eviction. The mere presence of counsel for the tenants shifts the balance in the Housing Court and significantly enhances poor litigants' chances of retaining access to their homes and avoiding homelessness.

The insights obtained by the Housing Court project are a fair example of the need and the importance of legal services for the poor. The results of the New York Legal Needs Study, prepared for

13. Id.
15. See Housing Court Pro Bono Project, supra, note 9.
16. Id., Part II at 36.
the New York State Bar Association Committee on Legal Aid, confirmed
this view.\textsuperscript{17} That study indicated that during the study year
the low income households interviewed reported having experienced,
on average, 2.37 non-criminal legal problems per household for which
they had no legal help.\textsuperscript{18}

The legal problems encountered by these households ran the
gamut of basic human needs. Those reported most frequently by
percentage of respondents included: housing — 34%; public benefits
— 22%; health care — 15%; consumer — 15%; discrimination —
11%; family — 8%. The problems recur; nearly 60% of all the prob-
lems mentioned were reported to have occurred more than once during
the study year but at best no more than 14% of the need for civil
legal services for the poor was being met with all available re-
sources.\textsuperscript{19} Similar findings have been reported in several other states
in studies to which the Committee has given close attention.\textsuperscript{20}

In short, whether one resorts to the evidence of everyday experi-
ence, the demographic statistics of the State, in-depth studies of par-
ticular areas like the Housing Court or a comprehensive survey of
legal needs such as the New York State Bar Association report and
similar studies across the country, a single conclusion is inescapable:
our society has evolved so that the poor need legal help to obtain
basic human requirements and to an appalling degree cannot get it.

This failure takes an intolerable toll not only on the poor but on
the public as a whole. The absence of effective legal counsel and the
consequent denial of access to resources made available by law im-
pose significant social and economic costs. Deny a poor family coun-
sel in an eviction proceeding and it greatly increases the likelihood
that the family will become homeless; it will then cost society much
more to resolve the ensuing homelessness and undo the results of
inadequate shelter. Denying poor persons the ability to obtain divorces
and form new marriages or denying them the ability to obtain protec-

\begin{itemize}
\item 17. See New York Legal Needs Study, supra note 8.
\item 18. Id. at 20.
\item 19. Id. at 20, 25, 195.
\item 20. See Advisory Council of the Maryland Legal Services Corporation, Action Plan for
Legal Services to Maryland's Poor (Jan. 1988); Massachusetts Legal Services Corporation,
Massachusetts Legal Plan for Action (Nov. 1987); Civil Legal Services Committee of the
State Bar Association of North Dakota and the North Dakota Trial Lawyers Association and
the North Dakota Supreme Court, A Workable Plan for the Poor of North Dakota: A Practi-
cal, Equitable and Political Proposal for Bar Leadership (Feb. 1988); University of Florida,
Center for Government Responsibility, The Legal Needs of the Poor and Underrepresented
Citizens of Florida; An Overview (Jan. 1980).
\end{itemize}
Five orders or parental custody or child support because they cannot afford a lawyer will result in more domestic violence, more broken homes, more abused children and higher cost for public education and child care. Denying poor persons access to federal social security disability benefits will require the state to foot a higher portion of the bill in home relief.

Moreover, the imbalance between the need for legal services and their availability undermines the legitimacy of the legal system itself. It is grotesque to have a system in which the law guarantees to the poor that their basic human needs will be met but which provides individuals no realistic means with which to enforce that right. The absence of legal assistance to the poor goes to the essence of some fundamental principles ingrained in our jurisprudence: simple equity, due process, equal protection, equal elementary access to the judicial system to redress wrongs. When the stakes of legal representation versus no representation at all to an indigent tenant run as high as the difference between having a home and being homeless, and when this harsh outcome could be easily averted by the mere courtroom presence of a lawyer on the tenant’s behalf, then the denial of counsel undercuts the basic ideals of justice that our society proclaims. The gap between the demand for legal services and their availability thus amounts to a gap in justice, a blot on our legal system and our whole society. As Chief Judge Wachtler observed when he delivered his charge to the Committee, a justice system which allows vast disparities in access to justice based on ability to pay cannot truly be called a system of justice at all.

There exists, then, a need for vastly increased legal services to be made available in order to alleviate the plight of the poor, to avoid the social and economic costs which the absence of such legal services imposes and to maintain the legitimacy and integrity of the legal system which is imperiled by widespread unavailability of civil legal representation for the poor.

There is no evidence to encourage the belief that the gap in legal services can be closed by any presently contemplated programs or measures. For one thing, the resources available to publicly-funded legal services programs for general purposes are shrinking in relative terms.21

Most pointedly, the 1982 reduction of 25% in federal funding for

legal services significantly widened the gap. That cut produced an immediate corresponding decrease in the number of full-time attorneys available to represent the poor. Officials of the New York City Community Action for Legal Services (CALS) program reported to us, for example, that they were forced to reduce CALS’ roster of attorneys from about 100 to about 80, many of whom are now paid with categorical program funds from New York City and State agencies. These fewer lawyers must be stretched to meet the needs of not only a larger universe of poor people but a dramatically wider range of new and growing legal problems that they experience.22

Simultaneously, the economics of the private sector of the legal profession have made it harder for legal service providers to recruit and retain legal staff or to attract substantial contributions of pro bono effort. As a prime example, lawyers starting out in large New York City firms now earn more than twice as much as a new lawyer joining the Legal Aid Society, a disparity that grows as each of them becomes more senior.23 This vast pay differential impacts the legal services organizations in higher attrition among their best lawyers and greater difficulty in obtaining better law students. The problem is aggravated by the burden of student loans with which many law graduates are saddled.

The economics of law practice also has made it harder to attract pro bono volunteers from the private bar to service the increasing legal needs of the poor. Driven by higher costs, striving in an increasingly competitive environment to retain and expand clientele, exceedingly busy with private legal work, many law firms of all sizes are critically examining their commitments to donate the time of their lawyers to the servicing of the poor. These problems are further aggravated by competitive considerations. Voluntary programs tend to spread the burden of providing legal services unevenly and unfairly and this in turn creates pressures to reduce involvement in free legal work to ease the competitive disadvantage produced by these disparities. By contrast, lawyers in various parts of the State and elsewhere in the country have quite willingly accepted mandatory assignments when the burden has been distributed more uniformly across the members of the Bar.24

22. Id. at 168, 170.
23. Id. at 179 and Nat’l. L.J., Mar. 27, 1989 at S12, col. 3.
24. See Dean, Two Model Programs, N.Y.L.J., Dec. 21, 1987, p.l.; Marin-Rosa and Stepter, Orange County — Mandatory Pro Bono in a Voluntary Bar Association, Fla. B.J.,
Despite the major attempts by the organized Bar in recent years to encourage and expand voluntary pro bono legal services, the number of New York attorneys who now participate in these efforts in general and in rendering professional services to poor persons in particular—perhaps no more than 10 to 15 percent of those admitted to practice—remains disappointingly low. The efforts have been important and praiseworthy but they have not closed substantially the ever-widening gap. While the organized Bar in New York, responding to the Committee’s Preliminary Report, firmly and uniformly urged the voluntary approach and proposed various constructive alternative plans, the Committee believes that, for the reasons more thoroughly articulated in Part II.F. of this Report, reliance on voluntarism to redress the legal services crisis would be inadequate.

Briefly, the Committee concludes that exhortations to the Bar to provide voluntary legal services to the poor are probably now as effective as they are likely to be. They simply have not met the need and, in the Committee’s view, they are unlikely to do so in the foreseeable future. Experience confirms our skepticism. In jurisdictions which, after debate of the pro bono service issue, made special Bar and judicial pleas for volunteer services, the responses were uniformly meager. In some jurisdictions unavailing Bar and judicial pleas for volunteers were followed by court orders mandating pro bono service under special circumstances. Later evaluations of these programs indicated that in each instance the order was implemented without incident and that compliance among the affected lawyers was widespread.

These assignment systems are themselves a form of mandatory pro bono legal service, and they may significantly improve the availability of representation in cases actually litigated. The Committee encourages the use of New York Civil Practice Law section 1102(a) to assign counsel in housing, matrimonial and other litigated matters. Assignment programs, however, are an incomplete solution to the broader range of legal needs that beset the poor. Because they do not include legal services outside of litigation, thus excluding

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26. See Dean, Marin-Rosa, Stepter, Miskiewicz, supra note 24.
27. Id.
administrative proceedings and other non-judicial matters, these pro-
grams do not extend far enough or by themselves close the widening
gap. For that, in our view, a virtually universal requirement that every
lawyer make available a significant amount of time to provide legal
service to the poor is now demanded by the magnitude of the crisis
and the inadequacy of other means of addressing it.

The Committee encountered no significant debate concerning the
existence of a dire need for more civil legal services for the poor.
Indeed, in much of the testimony at the Committee’s public hearings
and the written correspondence elicited by the Preliminary Report, the
need is assumed or acknowledged. But some of the commentary took
issue with the Committee’s characterization of the need as a “crisis”
that justified the far-reaching measures we propose. Unfortunately,
this comment missed or ignored the essential point we sought to
make about the nature of the crisis and its larger implications.

There is, of course, no universal standard by which to record the
existence or severity of a public crisis. Most people probably associ-
ate a public crisis with substantial threats to life, health, safety, prop-
erty or the general welfare. To us, all indicators of need described
above point to living conditions among the poor that reach crisis
proportions.

But perhaps more germane for our purposes is the legal dimen-
sion of the problem. Almost inevitably the want of life necessities
among poor people translates into legal problems that permeate our
legal system. This is an outcome of the reality that, to a greater de-
gree than occurs among other segments of the population, the liveli-
hoods of the poor depend on public entitlements, rights and
protections created by law. In this respect the legal process plays a
more essential role in the lives of the poor than it does for others.
Indeed, for them the legal system often provides a critical lifeline, a
means for survival. This obtains because our society established its
system of justice precisely as the official way by which people may
secure rights, prevent denial of benefits and seek remedies to human
needs, to the extent their problems are based on law. Grounded in
our justice system is a legal process that, in order to promote fairness
and equality, is constituted as public, formalistic and in part uniquely
adversarial. By virtue of these safeguards, as we all know, legal rep-
resentation is an indispensable aid both to initial access to the legal
system and to the likelihood of success in it.

Many of the legal problems that poor people experience for
which no legal assistance is available are capable of being relieved
through the process of law. Conversely, the poor’s lack of access to the legal system intensifies these problems. It follows that because large numbers of poor people cannot afford a lawyer, many legal rights and remedies that could relieve some of their suffering are now going unasserted. In this manner the poor’s problems remain unresolved or are further compounded.

This circularity expresses a public contradiction which we find deeply troublesome and which underpins the Committee’s conclusion regarding the nature of the legal services crisis. Our society creates life support benefits and protections for the poor and offers them a legal means by which to enforce their rights, but access to this justice often depends on means. In our view, a means test for effective access to justice, particularly in matters involving basic human needs, is inconsistent with fundamental principles upon which our legal system is founded.

Our justice system cannot proclaim in the bold letters of the law that it is just, but then block access to justice. We cannot promise due process, but raise insurmountable odds for those who seek it. Nor can we say that we stand for equality before the law, but honor this right only for those who can afford to pay their own way. To give with one hand and take away with the other is mean deception. A justice system that celebrates truth, that legitimizes fairness, that exalts principles of equality and human worth cannot, overtly or by neglect, engage in empty promises towards vast numbers of its citizens, particularly the neediest, without undermining the confidence of all citizens and the very values upon which it stands. In the Committee’s sense of the word, this threat represents the legal “crisis” with which we, as lawyers, are primarily concerned.

B. The Lawyer’s Role

In the face of the vast need for legal services and the devastating consequences of their denial, the Committee has been persuaded that only a virtually total mobilization of members of the Bar to meet the need provides any substantial and realistic hope of alleviating it. The Committee recognizes that an arguably better solution would be a quick, large infusion of federal, state and municipal funds to provide civil legal services equal to the demand. In the long run, as we discuss later in this Report, it is likely that higher public appropriation for full-time professional legal services would be the most effective answer to the need. If the Committee were satisfied that higher public appropriations commensurate with the demand were a realistic pros-
pect in the immediate future, it might reach a different conclusion from its inquiry. However, the Committee is convinced that the problem demands a response more immediate and lasting than any infusion of government funds we can realistically foresee being allocated through the public budget process in the near future.

While it recognizes the ultimate responsibility of society as a whole to redress this fundamental inequity, the Committee believes that it would be irresponsible not to address the crisis now and in a lasting manner. We believe that lawyers, independent of their ordinary duty as citizens, have a professional responsibility to mobilize their own resources in order to meet these needs. This duty flows from the lawyer's role as a professional and an officer of the court and arises particularly from the lawyer's possession of unique training and skills and of the exclusive, publicly granted franchise to practice law. Indeed, no other group is qualified or lawfully entitled to fill the need for legal services.

Moreover, the obligation stems, too, from the lawyer's responsibility to promote the legitimacy, efficacy and equity of the legal system itself, all of which are fundamentally undermined by permitting a vast gap to continue between the legal services required to procure basic human requirements and the availability of those services. The essence of this duty is embodied in various aspirational provisions of the Code of Professional Responsibility.29

The responsibility of the lawyer both to provide legal services to those who need them and to respond to the systemic challenge that we have described is not only collective and borne by the Bar as a whole; it is singular and individual to each lawyer as well. It is an insufficient response for individual lawyers to expect that some amorphous entity comprising "the profession" will respond to the needs we have found to exist. Each lawyer has a responsibility to make that response and lawyers fail the poor, the public interest, the profession and themselves as persons when they fail to do so.

That, in our view, is the meaning of the Code of Professional Responsibility when it declares in EC 2-25:

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer,

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29. See Code of Professional Responsibility, Canon 1, EC 1-2; Canon 2, EC 2-1, EC 2-25; Canon 8, EC 8-1, EC 8-2, EC 8-3, N.Y. Judiciary Law, Appendix (McKinney 1975).
regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer... (Emphasis added).

The Committee's proposal provides a means by which the exhortation of this passage in the Code can be made real and effective and, further, a means by which compliance with that fundamental professional obligation can be organized and administered.

However, the Committee's views regarding the meaning of the foregoing provision of the Code, and of the extent of the lawyer's responsibility for responding to the legal services crisis, were not shared by most of the lawyers who commented on our proposal. Much of that commentary stressed that if a need does exist for more free legal services to the poor, and whether or not this condition could properly be labeled a crisis, it is fundamentally a societal problem, and the responsibility for finding appropriate solutions belongs to society in general, not to the legal profession. This view also holds that to impose a requirement on lawyers to contribute pro bono legal services would represent a special tax on the legal profession that is unfair, and perhaps unlawful, because the State places no comparable burden on other licensed professions. We strongly disagree with this view. We believe that these arguments misread or ignore the legal history, traditions and pertinent sections of the Code of Professional Responsibility on which the Committee substantially relies.

While the Committee concurs that solution of the unmet civil legal services crisis is indeed a societal obligation, our point of departure regarding the responsibility issue relates to the question of whether, absent any foreseeable, adequate societal response, lawyers should be obligated to contribute reasonable services and resources to relieve the problem.

It is not enough to urge society to budget funds necessary to ease the legal problems of the poor and feel satisfied that we have fully discharged our professional obligation. As we have indicated, prospects for such funding in the near term remain slim at both Federal and State levels. This is especially evident at a time when the future of the Legal Services Corporation, which until recently was in disarray, remains uncertain. It would therefore be unrealistic to rely primarily on the chances of more public funding in order to respond to the unmet need for legal services to the poor. Our doubts about the reality of a foreseeable societal solution convinced us that, absent
meaningful leadership and effective action by the legal profession, the legal services crisis will persist and, over time, worsen. Concerns about the implications of inaction prompted our conclusion that we must look to the legal profession to assert the necessary leadership by taking the first important step towards effectuating a comprehensive program to address the need.

Another argument frequently asserted against the Committee’s pro bono legal services proposal was the alleged inequality of treatment it would create between lawyers and other professionals. As commonly articulated, the contention is that lawyers should not be required to provide free legal services to the poor because barbers are not required to give free haircuts to the poor, nor grocers free food, nor plumbers free repairs, nor accountants free financial statements, etc. Given legal content, the claim is presumably based up on principles of “equal protection of the law” and “involuntary servitude”.

The pervasiveness of this argument was both surprising and disturbing, for we believe that the comparison is as devoid of legal basis and content as it is demeaning to lawyers and their professional responsibilities. While other professionals also should provide more to meet the vital needs of the poor, our concern is with the lawyer’s role and responsibility in this regard. The lawyer’s role in our society has little parallel with that of members of any other profession or trade, licensed or not.

Much of the law and what lawyers do is about providing justice, a principle that few lawyers would hesitate placing nearer to the heart of our way of life and guarding more closely than services provided by other professionals. The legal profession serves as indispensable guardians of our lives, liberties and governing principles. Lawyers have a special obligation to insure a legal system that protects the rights of individuals, and their political, civil and religious freedoms. And it is lawyers whose business it is to ascertain that the political means of government are constrained by the higher bounds of the rule of law. Like no other professionals, lawyers are charged with the responsibility for systemic improvement of not only their own profession, but of the law and society itself. No other professionals abide by a code that creates as an ethical standard for each member “the basic responsibility for providing legal services for those unable to pay”.30 Indeed, lawyers declare in their official canons that “personal

30. Id. Canon 2, EC 2-25.
involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer."31

The lawyer’s public role and professional responsibilities and the ethical standards that lawyers profess are intertwined. With the higher public duty come not only responsibilities, but valuable privileges. The lawyers’ professional perquisites are many, not the least of which is that lawyers are given greater public responsibility for self-regulation than many other licensed professionals. As discussed above, both the lawyers’ greater public obligations and their related privileges give rise to the public’s right to place reasonably greater burdens on lawyers than on other citizens to improve our legal system.

A related, and to us similarly insubstantial, argument frequently raised against the Committee’s pro bono services requirement was that lawyers should not be required to provide pro bono legal services because one cannot “mandate charity”. We agree that charity is a matter of individual conscience and discretion. However, the premise of the argument is wrong. The public interest service that lawyers have a professional obligation to provide cannot be equated with acts of charity any more than jury duty can be so regarded. Both are obligations, whether general or professional, intended to promote particular public interests. The pro bono legal services requirement proposed by the Committee is designed to foster not charity to poor people, but justice for them and the improved administration and quality of justice in our legal system. The mandate in our proposal therefore serves specific aims embodied in the Code of Professional Responsibility. As such, it would require nothing more than professional activities and conduct consistent with those fostered by the Code. To us, the lawyers’ professional Code aspiration to provide public interest service should be given real meaning, at least in times of critical need in the legal system, as an enforceable norm.

C. Elements of the Committee’s Proposal

For all the reasons set forth above, the Committee was persuaded that a pro bono service requirement, coupled with other contributions from the legal community and additional public resources, is called for. We have endeavored to formulate a responsive, workable and realistic plan and are satisfied that the program we propose, whose components are detailed in the following sections of our Report,

31. Id.
meets these criteria. (The contents of the plan are set forth in Appendix B to this Report).

1. **Quantity**
   
The Committee’s plan would require that every attorney covered by the rule perform a minimum of forty hours of qualifying pro bono services (more fully described below) every two years. For ease in administration and enforcement, we propose that the two-year period coincide with the term for attorneys to file the biennial registration statement required pursuant to section 118.1 of the New York Code of Rules and Regulations.32

   The Committee recognized that the time standard for the lawyer’s pro bono obligation should be a function of the variety of services that would qualify to fulfill the requirement: the narrower the definition of qualifying services the more limited should be the required standard. This correlation recognizes that the qualifying services many lawyers would render in order to comply with the pro bono requirement would comprise only part of the uncompensated professional activities in which lawyers engage, both as concerned citizens and as members of the profession.

   The Committee considered standards ranging between 20 and 50 hours. Because we perceived the scope of qualifying services to be necessarily narrowed by our mission’s primary objective of increasing the availability of legal services for the poor, we propose the lower threshold.

   Linking the pro bono services requirement to attorneys’ biennial registration would offer flexibility to spread the services rendered over the two-year registration period in any distribution suitable to individual attorneys, as long as the 40-hour minimum is satisfied by the end of the period. This provision is intended to facilitate the lawyer’s obligation to report compliance with the new rule by using a familiar existing procedure, and to accommodate time demands that may vary from year to year depending upon a lawyer’s other personal and professional obligations.

   The Committee believes that its proposed requirement is modest and unlikely to be considered onerous by many attorneys. At the same time, we believe that it is the minimum individual support necessary to have a meaningful cumulative impact on the need. Assuming, as we do, that most of the approximately 88,000 attorneys

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who are currently registered and who indicate employment in New York State would comply with the minimum requirement, the combined contribution of legal services, even under the modest standard, would be significant. And we note, too, that the suggested time standard is only a minimum. It does not necessarily mean that all attorneys would contribute only the base amount necessary to fulfill the obligation. The better and more likely view, we believe, is that for every attorney who would strictly limit participation to the required time, there would be a greater number who would more generously exceed the minimum, especially since the lawyer’s responsibility to a client in a particular matter will determine that lawyer’s commitment of time, regardless of the specific obligation suggested by this Report.

2. Coverage and Exemptions
The Committee’s pro bono legal services requirement is intended to apply to all attorneys admitted to practice in New York State and who are actively practicing law. Consistent with the Committee’s proposed use of the biennial registration as a convenient means to administer this proposal, we also would rely in part on the standards set forth in the New York Code of Rules and Regulations, article 22 section 118.1(g) to describe which attorneys are covered and which are exempt from the pro bono service obligation. Thus all members of the Bar required to file the registration statement and pay the registration fee would be subject to reporting compliance with the pro bono requirement regardless of the nature of their practice. This would include attorneys employed as such in government, legal services and charitable public interest organizations and private corporations. Law school teachers would be covered as well. But attorneys who report in their registration forms that they are not engaged in law practice in New York would be exempt from the new pro bono service rule, as would be retired attorneys, judges and any others exempted from the registration fee under Section 118.1(g).

The Committee recognizes that in order for a required pro bono service plan to be reasonable and workable the rule would have to make allowance for special circumstances on a case-by-case, year-to-year basis. Accordingly, as the Committee contemplates it, the program would also excuse from service, though not from reporting,

33. Figures obtained from the New York State Office of Court Administration, Office of the Chief Administrator.
34. N.Y. Comp. Codes R. & Regs. tit. 22 § 118.1(g) (1988).
attorneys who claim incapacity by reason of illness or other extraordinary circumstances occurring in any given year. What would constitute acceptable extraordinary circumstances other than illness might include, for instance, unusual financial constraint or personal hardship experienced in any given year, or long personal or business absence from the jurisdiction. The individual attorney's biennial registration statement would affirm the factual basis for excuse from service.

We received extensive comment from lawyers in the offices of several District Attorneys, United States Attorneys and other federal, state and municipal government agencies, expressing concerns about the application of the proposed pro bono legal services requirement to them and frequently urging an outright exemption for government attorneys. A number of corporate law department lawyers voiced similar concerns.

Government attorneys cited various provisions of laws that prohibit some public agency lawyers from appearing before their own agencies, or from practicing law altogether or engaging in other private activities during regular work hours. These rules also bar the use of public resources for private purposes. Government lawyers pointed to other practical difficulties, such as the inability to obtain administrative support, malpractice insurance and reimbursement of expenses for any professional services or activities performed outside the scope of their official duties. Finally, they argued that the work performed by government lawyers already serves the public interest—employment which they generally undertake at great personal and financial sacrifice. These burdens, they claimed, would be increased by required participation in a pro bono service plan. The corporate law department lawyers cited similar employer policies restricting participation in outside activities while on the job.

The Committee considered these issues at length during the preparation of its Preliminary Report. We concluded that while these arguments raise some legitimate concerns, a categorical exclusion for government, public interest organization and corporate law department lawyers was not warranted. Such broad exemptions would compromise the integrity of a pro bono services requirement. Universal application is important to enhance acceptability of any obligatory rule. Large exceptions would erode not only the credibility but the effectiveness of the program by substantially reducing the number of participating attorneys.

The Committee, however, is mindful that a pro bono services requirement could create some initial practical difficulties for some of
these attorneys. To this extent, special attention may have to be paid to these concerns during the implementation phase of the plan. Between the adoption of a rule and its effective date government agencies can, we believe, devise ways to remove barriers to compliance by their lawyers.

Examined closely, the particular concerns expressed by government lawyers are not difficult to overcome. First, we recognize that under a mandatory pro bono legal services rule, regulations broadly prohibiting government attorneys from outside legal activities would need to be amended to permit them to participate in qualifying pro bono services and activities that do not entail direct professional conflict of interest. Such amendments should also specifically recognize that pro bono activity undertaken in fulfillment of a professional legal obligation is itself a public interest function, such as jury duty, for which the necessary public time and administrative support should be authorized. For example, the rule that limits pro bono legal representation by court employees was promulgated by the State Office of Court Administration (OCA). We would expect that OCA, which undoubtedly would play a significant role in effectuating any mandatory legal services plan, would amend its regulations in order to facilitate compliance by its own attorneys.

Second, we note with encouragement that some public agencies, recognizing the rising trend towards pro bono legal services, have begun to relax regulations in order to permit government attorneys to participate more easily in public interest professional activities. At the federal level, an Executive Order issued by the President in 1979 established the Federal Legal Council and authorized as one of its functions “the facilitation of personal donation of pro bono legal services by Federal lawyers”.35 Pursuant to this Order a number of federal agencies, including the Justice Department, established departmental policies to encourage pro bono activities by their lawyers.36 These rules recognize that participation in some pro bono activities would have to be carried out during normal working hours and that it would require the reasonable use of government libraries, offices and

equipment. To accommodate these situations the rules encourage agencies to grant annual leave and to authorize flexible work schedules.

Similarly, some states have enacted statutes and regulations specifically permitting some state attorneys to engage in public interest legal representation and defining permissible activities and resources. Although New York has no similar statute, the State Department of Civil Service has rules in place which are pertinent and helpful. The rules, for instance, require state agencies to grant "any leave of absence, with pay, required by law". The rules also permit discretionary paid leave for participation in professional meetings, conferences or seminars which are "directly related to the employee's profession or professional duties". Only minor adjustments to these rules would be necessary to facilitate compliance by State government attorneys with a pro bono services requirement that is made part of a lawyer's professional duties.

The issue posed by private corporation law department attorneys in complying with a pro bono legal services rule differs from that presented by government lawyers, whose claim entails potential conflict between the demands of policies and objectives that serve public purposes—those of their employment and of their professional pro bono obligation. The conflict raised by private business corporation lawyers, on the other hand, represents a difference between the requirements of a public purpose and the need of a private entity to maximize economic return. In this circumstance we believe that the public need for more legal services for the poor should and would prevail. Private corporations that do business in this state and that employ New York lawyers for that purpose would do so with the knowledge that such lawyers carry an additional professional responsibility whose financial implications, within reasonable limits, may have to be absorbed as a cost of business. We believe that it is highly unlikely that private corporations would discourage or impede their law department attorneys from fulfilling a pro bono legal services obliga-

37. Id.
40. Id. at § 28-1.12.
41. Id. at § 28-1.14.
tion.

Third, whether or not legal and policy restrictions constraining government and corporate law department lawyers are lifted, the Committee’s formulation of the scope of qualifying services, set forth in the next section of this Report, includes a reasonably broad range of professional services and activities through which the requirement may be fulfilled. These activities could not be found to conflict with these attorneys’ official duties. Nor would they require expenditures of funds, support services or malpractice insurance. Some government attorneys could, for example, perform qualifying services on their own time by teaching and training other attorneys in legal services practice, or even by undergoing such training themselves and then performing pro bono work through legal services organizations that do offer the necessary administrative support and malpractice insurance. Public agency, legal services and corporate law department lawyers could also engage in eligible work for bar association committees or charitable organizations, as indeed many of them now do. And they could participate in other professional activities designed to improve the administration of justice, such as serving as arbitrators, mediators or law clerks in the court system. Some, particularly eligible corporate law department attorneys, could even choose to comply by way of the monetary contribution or group services options.

In response to the government attorneys’ economic argument, we note that if the income of all the lawyers in the State were averaged, the annual earnings of a substantial number of private lawyers, particularly those in practice alone or with small firms, is not appreciably different from the average annual salaries earned by government and legal services attorneys. In our view, any marginal difference in average compensation is not sufficient ground to warrant an exemption from the rule for all public attorneys. And while it is true that much of government lawyers’ work serves the public interest, the same can be argued about most other attorneys who serve non-profit organizations, and indeed even about many attorneys in private practice. The letter and spirit of our proposal calls for each attorney to provide some public interest professional activities undertaken without compensation. Services performed by attorneys as part of their duties and for which they are paid a fixed salary would not fall within the type of personal commitment envisioned in the Committee’s plan.

3. Qualifying Services

In defining the scope of qualifying services, three distinct ap-
proaches were considered by the Committee. The first would describe the scope broadly to encompass all uncompensated professional activities, both legal and non-legal, in which lawyers engage, either as lawyers rendering the kinds of service associated with the practice of law, or merely as citizens participating in activities that serve general public or professional interests. This definition would incorporate the aspirations expressed in several Ethical Considerations of the current Code of Professional Responsibility.\(^\text{42}\) It would include, for example, pro bono legal representation of indigents and not-for-profit groups, general bar association activities designed to improve the legal system, encourage law reform and promote individual professional competence. In its most liberal reading, it would also include membership on a school, hospital or museum board.

A second and narrower definition would limit eligible pro bono work to public interest legal representation, services or activities that require the assistance of lawyers' special ability and training as lawyers and their unique role in the functioning of the legal system. This middle ground would parallel the "public interest legal service" formulation of the lawyer's pro bono professional responsibility adopted by the American Bar Association's House of Delegates in its "Montreal Resolution" of August 1975,\(^\text{43}\) and its refinement as "public service practice" proposed in 1979 by the Association of the Bar of the City of New York's Special Committee on the Lawyer's Pro Bono Obligations.\(^\text{44}\)

The third view would restrict the scope of qualifying services even further to recognize professional activities, whether legal only, or both legal and non-legal, designed in some way to address, directly or indirectly, the legal needs of poor persons. This approach would rest primarily on the substance of Ethical Consideration EC 2-25 only, which refers to the individual lawyer's basic responsibility for providing legal services for those unable to pay. This ethical guide specifically states that: "[E]very lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."

Motivated primarily by our focus on providing maximum incre-

\(^{42}\) See Code of Professional Responsibility, supra note 29.


\(^{44}\) Association of the Bar of the City of New York, Special Committee on the Lawyer's Pro Bono Obligations, Toward a Mandatory Contribution of Public Service Practice by Every Lawyer (Jan. 1980).
mental legal assistance to the poor, the scope we settled upon adopts the third, and narrowest, approach. It would limit qualifying pro bono services to professional activities that are primarily intended to address the legal needs of the poor. While following the narrower definition in this respect, however, the Committee opted for the less restrictive version of it. Our scope would not limit qualifying services solely to direct legal representation of the poor, but would recognize some other professional activities in which lawyers participate. The essential test is that the attorney's professional function or service must contribute meaningfully, directly or indirectly, to improving the availability of legal services for poor persons or otherwise addressing needs of the legal system as they bear significantly upon the poor.

We realize that reducing somewhat the scope of eligible activities may generate concerns about the plan. The Committee's proposal attempts to respond to this issue in a number of ways. First, although the scope proposed by the Committee has its limits, those boundaries are drawn broadly enough to accommodate a very wide variety of professional activities. Services that qualify are not limited to adversarial settings or to particular subject matters, such as housing. The needs of the poor are so diverse and the lawyerly skills required to meet them so varied, that the proposed scope offers diverse opportunities for service to lawyers of every background, temperament and training. Moreover, as elaborated below, the Committee proposal includes mechanisms, such as the group service and monetary contribution alternatives, that are intended in part to encourage and facilitate participation by the greatest number of attorneys. For this reason, too, we believe that the inclusion of activities other than direct representation of individuals is appropriate, provided they address the legal needs of the poor.

One final observation with regard to the scope of qualifying services is important. This aspect of the plan is particularly sensitive. Questions and controversies are bound to arise as to what would or would not fall within the acceptable range of pro bono activities for purposes of compliance with the rule. We think it is beyond the purview of the Committee's role to anticipate and resolve every definitional nuance raised by our proposal. In time, and with experience as the plan evolves, many of these questions would be answered.

Under the Committee's definition, unpaid professional services and activities eligible to satisfy the pro bono services requirement would fall into three categories. Each of these is described separately
a. Legal Services to Poor Persons

The Committee's statement of the first category of qualifying services reads as follows:

Professional services rendered in civil matters, and in those criminal matters for which there is no government obligation to provide funds for legal representation, to persons who are financially unable to compensate counsel.

Generally, this category is intended to cover legal representation and other lawyers' professional services rendered directly to individuals who cannot afford to pay counsel. The Committee concluded that it would be inappropriate to propose specific guidelines describing the persons eligible for qualifying legal services under the proposed plan. We assume that, as a practical matter, eligible clients would be persons who qualify as "poor" in order to receive assistance from legal services organizations. It is also a fair assumption that many lawyers who choose to fulfill their pro bono services obligation by providing the direct legal representation contemplated here would do so through the auspices of the legal services organizations.

Some comments to the Preliminary Report suggested that the Committee establish criteria to determine individual eligibility for pro bono legal services under our proposal, and urged specifically that, in order to expand the coverage of the plan, the income standards for persons to receive legal services from attorneys complying with the rule be set at a level higher than that now applicable to some free legal services programs. Such standards generally follow federal indexes of poverty and establish qualification at a fixed percentage of the poverty mark. While we are sympathetic to the desire to broaden the coverage of the program, and appreciate the public value in doing so, we remain convinced that fixing specific eligibility levels for legal services would be best determined during the implementation phase of the program by public officials who are well-suited to establish priorities for services among competing public interests, consistent with State economic, policy and political considerations.

However the individual eligibility issue is resolved, the controlling determination, as viewed by the Committee, should be the essence of what is intended. In this spirit, legal services to particular clients would fall within the scope of the rule if the program's goals are served by those services or that representation, i.e., if the clients validly fall within the population whose legal needs are now unmet,
if the availability of legal representation for those individuals would
be augmented by the particular case, or if thereby some contribution
to alleviating the current crisis in the availability of justice to the
poor would be made. Under this standard the Committee’s scope of
qualifying services would include pro bono representation of poor
persons even in cases involving issues that do not disproportionately
affect the poor per se. The requirement is obviously not meant to be
satisfied by free representation provided to persons able to pay and
motivated by social courtesy, business development or like consider-
ations. Nor would the requirement be satisfied, as a rule, by uncom-
pensated time spent by attorneys in preliminary consultations to deter-
mine whether to accept a case, nor by representation provided to a
paying client who later is unable to pay for the services. Similarly,
our definition would not recognize services to persons who are not
poor even in cases which may raise issues that affect poor persons
disproportionately.

In one significant respect the Committee’s proposed scope of
legal services to indigents represents a departure from the strictures of
the Chief Judge’s charge. Although we were asked to examine avail-
ability of legal services specifically in civil matters, the Committee’s
definition of qualifying services would also recognize the representa-
tion of persons who cannot afford counsel in criminal matters for
which no public obligation presently exists to provide funding for
assistance of counsel, as, for example, in the case of collateral attacks
on a conviction or sentence.

b. Administration of Justice

The text of the second category of qualifying services reads as
follows:

Activities related to improvement of the administration of justice by
simplifying the legal process for, or increasing the availability and
quality of legal services to, poor persons.

The lawyer’s special role in protecting the fairness and legimita-
cy of our legal system represents a fundamental legal and public
policy justification for imposing on lawyers a pro bono services re-
quirement. This basic objective constitutes a unifying element com-
mon to all three categories of the Committee’s definition of qualify-
ing services. But we intend the second category more specifically to
embrace uncompensated professional services and activities whose
systemic aim or effect is to improve the administration of justice as it
relates to the needs of poor persons.

This category is broad in one respect and narrow in another. In order to build in flexibility, the professional services and activities we envision here, unlike the legal representation contemplated in category one, would reach professional functions other than direct representation of clients. However, consistent with the Committee’s primary objective, we again would limit the scope of the eligible contribution to services designed to simplify the legal process for, or increase the availability and quality of legal services to, poor persons.

Simplifying the legal process for the poor might include, for example, serving as an uncompensated arbitrator, mediator or law clerk or in any other court-appointed capacity in cases involving indigent parties. Lawyers’ pro bono services rendered in these capacities would contribute to achieving swifter, fairer and more effective administration of justice for poor litigants. This criterion would also encompass other efforts designed to improve access to the legal system as it affects the poor. Examples would include advocating for legislation or appropriations for pertinent court reform, or for allocation of public and private funds to finance additional legal services for the poor. In addition, this category would extend to certain types of bar association activities and participation in the work of other professional, civic or community organizations, provided the intent of the activities is to foster the amount or quality of legal representation available to indigent clients. Cases in point may include teaching and training of volunteer attorneys to provide pro bono representation and fund-raising efforts for or board membership on organizations such as the Legal Aid Society, Volunteers of Legal Service, New York Lawyers for the Public Interest or Community Action for Legal Services. Participation on Bar projects to improve the legal process in the Housing Court would also meet this test.

On the other hand, the Committee would exclude from qualifying services the wider scope of Bar and civic involvement which, though worthy and generally related to improving the administration of justice, would not specifically contribute towards ameliorating the immediate crisis. By not including these professional activities within the Committee’s qualifying services definition we do not mean to diminish them in any way.

Because we recognized that lawyers do participate in and contribute to other activities that serve the public and the profession (beyond those we define as qualifying services), and that their professional responsibilities do extend beyond the types of services in-
cluded in our definition, the Committee, in establishing the quantitative statement of the requirement, opted for the more limited time standard. We would restrict the scope of qualifying services to activities related to the unmet needs of the poor because that is where the Committee perceives the pressing need to exist at this time, and where this need, while it remains unmet, poses a critical threat to the quality of justice our legal system offers. Implicit in what we say is that if other means and resources became available to ease the immediate legal services crisis, the Committee's definition of qualifying services could be modified to embrace the more expansive scope.

c. Services to Charitable Organizations

The statement of the Committee's third category of qualifying services reads:

professional services to charitable, religious, civic and educational organizations in matters which are designed predominantly to address the needs of poor persons.

This category is intended to offer further flexibility and latitude to attorneys in fulfilling the pro bono service requirement. Like the types of services covered under the second category, the scope of this classification is inclusive in that legal and some non-legal functions would qualify. But it is also limited in that the eligible services must relate to matters which predominantly address the needs of the poor. It should be noted, however, that here the reference to the needs of the poor would not be limited specifically to legal needs, as would be the case regarding the activities and services encompassed in the other categories.

Type of Organization

The scope of the Committee's charitable organization services formulation is purposely broad. It expresses our recognition that the non-legal services and activities to which many charitable organizations are dedicated, by generally addressing the broader needs of the poor, often have a substantial indirect impact on legal needs and services and ultimately on the legal process. This remedial role, in relation to legal services needs, is largely preventive: to the extent other vital needs of the poor would be relieved, potential legal problems would be avoided. For one example, the work of a public interest organization that develops housing for the poor or assists in relocating tenants who face eviction may lessen the likelihood that the people aided would find themselves among the multitude of unrepre-
sented tenants in Housing Court. The preventive effect referred to, in our view, would justify the breadth of the activities contemplated in the Committee's third category of qualifying pro bono services. However, for the purposes of determining qualifying services, the Committee would draw a distinction among charitable organizations between those that are engaged generally in services and activities that address non-legal needs of the poor, and those which specifically provide for the legal needs of poor people. We would also distinguish between the legal and non-legal functions performed by lawyers for or on behalf of charitable organizations.

**Type of Service**

Applied as a rule, the Committee’s formulation of this category of services would recognize legal representation and other forms of lawyering provided to or on behalf of the organization itself. Non-legal functions on behalf of the charity would be eligible only to the extent that the organization provides legal services to the poor, and thus the lawyer's services would respond to important needs of the poor or would bear substantially upon the legal system. By way of example, lawyers’ pro bono legal services to organizations dedicated to sheltering the homeless would satisfy the obligation, but legal services to groups working generally to protect the environment would not. On the other hand non-legal functions such as fund-raising or membership on the board of directors would qualify if the organization is a legal services provider but not if it engages in non-legal activities on behalf of the poor. Obviously, these are the extremes. We are aware that determinations of compliance under this category, whether related to eligible groups and activities, the needs of the poor they serve or the functions performed by attorneys, are bound to create gray areas. To become consumed now by trying to sort out all the fringe definitional issues would be neither desirable nor productive. In time, answers to these peripheral questions would also emerge.

The Committee was urged, in public comments relating to qualifying services, to clarify whether particular types of representation of poor people, such as indigents in immigration proceedings, would satisfy the Committee’s definition. Others advocated that the scope of qualifying services be expanded to take in activities not covered under the definition formulated by the Committee, such as pro bono services provided to all federally tax-exempt charitable organizations or under the broader range of “public interest legal services” as that
term was defined in the American Bar Association’s 1975 “Montreal Resolution”. 45

As noted earlier, it would be impossible to anticipate and respond to the many semantic gradations bound to arise concerning the scope of a pro bono services rule. We do stress that the common element requisite to all determinations of qualifying services and activities is that they must relate, directly or indirectly, to the legal services needs of the poor. Within this broad standard, it also would be best left to the programs’ administering authority to settle these types of uncertainties.

The standard, however, broad as it is, clearly would not embrace legal services and activities to all charitable organizations. As we have emphasized, however socially worthy the mission of most charitable organizations may be, the mission spelled out for this Committee by the Chief Judge specifically limited us to considering recommendations for responding to the unmet needs of the poor for civil legal services. Our proposals, with only minor departures, endeavor to reflect that end as closely as practicable. Expanding the scope to encompass the broad charitable activities urged would represent too large a deviation from the Committee’s charge and would not respond to the most pressing societal need we encountered in our work: legal services for the poor.

4. Compliance

The lawyer’s pro bono services requirement proposed by the Committee is a personal obligation of every attorney subject to it. Every lawyer, therefore, would have a professional responsibility to comply with the requirement by individually fulfilling the minimum time standard of qualifying work. The Committee’s plan, however, contains two notable exceptions. Under certain circumstances described below, we would recognize collective compliance with the requirement by performance of group services and individual compliance by monetary contribution to a qualifying legal services program. In our plan these provisions are interrelated. The Committee considered each a necessary outcome of the other and, together, integral components of the whole program we recommend.

a. Group Services

Collective compliance with the pro bono services requirement
would permit groups of lawyers to fulfill all or portions of the individuals' obligation through qualifying services rendered by one or more members of the group. We use the word "group" because, as envisioned by the Committee, application of this idea could take several forms. The group could be an entire firm or corporate or government law office, or it could be a portion of such a practice unit. Or, as a way of affording small firms and sole practitioners similar options and flexibility, it could consist of a combination of otherwise unaffiliated lawyers who join together for this purpose.

In practice, the concept would enable the group to assign one or more of its members to perform qualifying pro bono legal services in an amount sufficient to satisfy the combined time requirement of the entire group. Or, the group could hire one or more additional lawyers solely or partly for this purpose. In determining the total time requirement to be satisfied, the group could aggregate the hours of qualifying services its members actually perform in a given year. If the total corresponds to the amount required from the group, the individual members would be deemed to have discharged their pro bono service obligation for the particular period. If a shortfall results, the difference could be made up as described above.

The group services concept acknowledges that some attorneys are more personally or professionally inclined, or have far more opportunity, to provide pro bono services, and that when affiliated with a firm they are able to do so by virtue of the support, good graces and cooperation, whether active or tacit, of the rest of the firm. Undeniably, many lawyers' pro bono activities could not be as generous, or sometimes not possible at all, without the contribution of resources—in legal staff, administrative support, filing fees and out-of-pocket expenses and even some of the pro bono attorneys' own time—that belong to the whole firm. In part for these reasons the Committee concluded that it would be equitable and practical that qualifying pro bono services rendered by members of a firm or group of lawyers could be aggregated and applied towards the collective requirement of the firm or group.

The Committee's group services proposal entails one significant exception. We would not count, for the purpose of computing the aggregate number of hours required from a group, nor for the collective satisfaction of the group members' obligation, the minimum pro bono services hours required from any lawyers in the group who have been admitted to practice for less than two years, or any qualifying services actually rendered by these attorneys, respectively. We
frame this exception in recognition of several realities. It is desirable, in our view, for all lawyers to encounter early in their careers the condition of the poor who depend on free legal services; it is a formative experience that can go far in shaping lawyers’ view of their profession and their careers. It is also useful to harness the energies and idealism of lawyers for this important task while at the same time protecting them from either being discouraged by the pressures for chargeable hours in law firms or being unduly burdened by delegation of the pro bono duties of more senior lawyers in their firms.

b. Monetary Contribution Option

The Committee’s second exception to personal compliance with the obligation would permit attorneys, in lieu of providing the minimum hours of qualifying services, to contribute money to an approved legal services organization or other public interest group.

In formulating its plan, the Committee recognized that a realistic, effective pro bono legal services requirement cannot rely solely on attorneys’ personal services to individuals as the only recognized way by which to discharge the obligation. To do so could create compliance difficulties for some specialists and other lawyers who truly could not render effective direct legal services to the poor, thereby giving some credence to the “incompetence” argument, which is discussed in Part II.C.8 below. For these attorneys, as well as for government, legal services and corporate attorneys, more flexible options should be available to permit compliance, in whole or in part, by way of options other than personal legal services. The compliance alternatives offered should not only provide a wide range within which lawyers could elect the qualifying services and activities they would want to contribute, but should also recognize, without unnecessarily limiting compliance, that at any given time some lawyers’ other professional or personal commitments may be so pressing that to call upon them to comply with the pro bono services requirement by performing uncompensated services in person could create financial hardship or practical difficulties for them. The alternative to contribute money rather than personal legal services is meant to provide a choice in such cases.

The funds raised from lawyers’ monetary contributions would be used to pay for additional full-time legal services attorneys to serve in specialized practice areas, such as Housing Court and some government entitlement programs. Evidence we heard from judges and legal services officials convinced us that in those practice areas pro bono
representation rendered individually by volunteer attorneys is not as effective and efficient a means of responding to the unmet need. The cash option funds could be used as well to defray certain of the disbursements incurred by attorneys providing pro bono services under the plan. Again, funds could be used to close the vast legal services gap that exists between supply and demand on a geographical basis and that cannot be addressed by volunteer lawyers. In New York City, for example, the bulk of volunteer legal services are supplied by lawyers of Manhattan firms. Their pro bono activities are thus concentrated in Manhattan. This geographical impediment to volunteer services worsens, particularly in upstate counties, as the distances expand between urban centers, where lawyers are generally located, and suburban and rural areas where substantial numbers of the people who may need legal services reside. The supply and geographical gap, the Committee concluded, could only be closed by providing for more full-time legal services attorneys who could be assigned to serve larger geographical areas.

Provision would have to be made for training and supervising the significant pool of additional private lawyers who would seek to comply with the pro bono requirement by volunteering their services to legal services providers. These organizations could not be expected to absorb the costs and burdens imposed on them by the new program. A monetary contribution option would generate a new source of funds paid directly to legal services organizations with which these costs could be paid.

Finally, a pro bono services requirement should include provisions for reimbursement of certain expenses incurred by attorneys in providing services in compliance with the rule. Funds generated by the monetary contribution option could be dedicated in part for this purpose.

Mindful of the importance of striking a fair balance between the interests of large firms and small practitioners, the Committee formulated an exception to the monetary contribution option. We propose that the cash alternative be available only to attorneys who practice alone or in firms of ten or fewer lawyers. By so limiting the monetary option, the Committee recognized that smaller firms and sole practitioners, because of circumstances unique to their practice or particular hardships in any given year, need additional latitude to comply with the rule. By the same token, not permitting the larger firms to rely on the monetary option for collective or individual satisfaction of the pro bono obligation would cause their members to turn
to the group practice provision in order to comply. Working in tandem, these two aspects of the Committee’s plan would serve two purposes. They would generate funds for legal services organizations to expand services and to administer their volunteer programs, thereby increasing the number of full-time attorneys providing legal services. At the same time, they would also encourage greater participation by the large firm private Bar in rendering pro bono services directly to the poor.

Finally, the Committee examined how and to whom the financial contributions should be made. Several possibilities were considered: payment to a State agency such as the Office of Court Administration, to a quasi-public agency such as the Interest on Lawyer Accounts Fund, to a new body created for this purpose or, alternatively, at the individual lawyer’s choice, payment to legal services organizations and public interest groups determined, by reason of their services to poor persons, to be eligible for the lawyers’ monetary contributions.

The Committee concluded that the first three alternatives raise administrative complexities that would require considerable time and perhaps legislative authority to carry out. The fourth would be the preferred approach, at least during the early stages of the program. Consistent with our theme that administration of the plan should be kept simple and offer maximum choice, this alternative would allow lawyers to decide which organizations they care to support. And it would give the organizations the direct infusion of funds they need to increase services, to hire full-time attorneys and to respond to the new training and supervision challenges created by the demands imposed by the pro bono services requirement.

Consistent with the same provision contained in the group services proposal, and based on the same practical reasons set forth in our earlier discussion, the Committee proposed that attorneys admitted to practice for less than two years not be eligible to satisfy their pro bono service requirement by way of the monetary contribution option.

Another issue considered relating to the cash alternative was the standard by which to determine an appropriate amount of the contribution. The Committee was aware of the difficulties inherent in placing a value on the professional services of attorneys, whose billing practices, rates and fees vary so widely according to type of matters, practice and geographic areas, seniority in a firm and even clients. The Committee considered whether adjustments for any of these variations should be permitted. In the end, we reached for a
standard based on actual practice in cases involving public payment for legal representation of indigents. It was our view that a value of $50 per hour, with provision for periodic adjustments for inflation, would be appropriate. That rate is consistent with the hourly fee paid for assigned counsel for indigents in federal criminal cases. Thus, attorneys admitted to practice for more than two years and practicing in firms of ten or fewer lawyers would need to contribute $1000 per year to a legal services organization to satisfy the obligation if they decide to provide no direct qualifying services.

Most of the views expressed in public comments about the monetary and group delivery options opposed the ideas on what were termed moral grounds. As a starting point, these objections see the lawyer’s pro bono services obligation as an ethical duty personal to each attorney. This view therefore considers satisfaction through collective or monetary means simply as ways by which lawyers would avoid personal fulfillment of a professional responsibility.

Other arguments cited equitable and perceptual concerns. Payment of a fixed sum of money in lieu of personal service was said to be tantamount to imposing a discriminatory tax on lawyers in order to finance what is properly a societal responsibility. It was argued that the options would discriminate particularly against sole practitioners and small-firm lawyers, many of whom would not be able to afford the contribution. Lawyers in large firms, on the other hand, could pay or pass the responsibility on to junior lawyers, thereby avoiding personal service and offering the poor the substitute services of inexperienced junior lawyers. Opponents of the plan contended that from the public perspective this practice would appear no different from the hiring of substitute conscripts by the wealthy to escape military duty.

The Committee weighed these considerations. It concluded that, consistent with the Committee’s charge and in response to a critical condition in our legal system, the primary aim of its plan was to improve the availability of legal services to the poor and thereby also enhance the administration of justice. We did not regard it to be the starting point of our task to effectuate the lawyers’ ethical obligation under the Code of Professional Responsibility to provide public interest service. As we view it, the legal profession’s contribution to the legal services shortage would be one component of a judicial solution to relieve a crisis in our legal system and improve the administration of justice. The lawyers’ participation through any appropriate means, therefore, has legal and traditional antecedents outside of the personal
ethical standards embodied in the Code of Professional Responsibility. To this end, as discussed in Part II.D. below, authority for requiring lawyers' participation in a pro bono services plan stems from other constitutional, statutory and inherent powers of the court. Accordingly, the means by which the primary objective of improving the availability of legal services is carried out should not be constrained by the personal service standard that would pertain if the sole task at hand were effectuating the ethical principles set forth in the Code of Professional Responsibility. Instead, the means by which the problem could be remedied could be formulated within the bounds of what the court could reasonably require lawyers to contribute pertinent to the need.

Under this formulation, every practicing member of the State Bar can be required by court rule to contribute something to remedy the legal services crisis that threatens our legal system and the legal profession, so long as the contribution is reasonable and bears a reasonable relation to the public need and objective. The group services and monetary contribution options proposed by the Committee reflect these considerations. They recognize that: (1) the primary aim of the options is to maximize the availability of free legal services for the poor, (2) for the purpose of relieving the legal services crisis, resources in addition to lawyers' personal pro bono services are essential, including new funds with which to employ more full-time legal services lawyers and reimburse related volunteers' expenses and training costs, (3) lawyers possess such other resources, which include not only funds but also administrative structures and support that can maximize effectiveness and efficiency in the delivery of legal services, and (4) lawyers should be offered the flexibility to contribute to the response to the legal services need in accordance with their individual means, skills and personal and professional interests.

Consistent with these utilitarian and pragmatic judgments, the Committee's group services and monetary alternatives would encompass ways of promoting efficiency and effectiveness in achieving the pro bono services proposal's principal objective. Group services, for example, would bring to bear upon a pressing need the combined resources of a substantial number of firms and aggregations of lawyers. They could reassign or hire lawyers to work on a full-time basis on qualifying pro bono matters, thus generating substantial additional legal services. Group services would also offer an advantage uniquely valuable in handling complicated cases. Administrative costs, filing fees and other expenses, and training and supervision of junior law-
yers by more experienced practitioners in a firm would be available to facilitate the disposition of these cases more effectively and expeditiously.

Finally, although we believe that to judge the merits of the group services and monetary contribution options only by the ethical standards of personal service reflected in the Code of Professional Responsibility inappropriately confuses the issues and misses the point, we recognize that in times of crisis the efficiency and pragmatic objectives which the Committee’s proposal would promote are not devoid of their own moral edge. Every crisis invites relief. To be effective, it must be swift, measured to the need, totally committed, and humane. A reasonable response to emergency conditions—in kind, with resources equal to the need and made accessible through all available means—is one measure of the ethical fiber of those called upon to serve. Almost as a given, when the crisis at hand affects justice and its adequate administration, and when the people who would benefit most from speedy and efficient remedies are the members of society most in need, the moral imperative of crafting a maximally useful response is correspondingly enlarged. As attorneys are all too aware, justice deferred is justice denied. To do nothing while a crisis exists, to quibble about an ethical basis for action, and to be paralyzed by a quest for higher moral ground while a dire public need persists, it seems to us, makes a contrary statement, one that diminishes the bona fides and moral suasion of objections advanced on “ethical” grounds.

The Committee therefore found it ironic that among lawyers who voiced moral objections to the Committee’s group services and monetary contribution alternatives on the ground that the lawyer’s pro bono services obligation is an ethical duty that can be discharged only by personal rendition of legal services, none commented on the morality of what may be a more compelling ethical issue: the fact that under current rules, and in the face of long-standing, dire need, only a limited number of all practicing lawyers in this State are fulfilling that ethical responsibility, personally or otherwise. We fail to understand the moral calculus under which to do nothing in a crisis, even in utter disregard of professional ethical norms which bid some action, is tolerable but to make a monetary contribution to those engaged in easing the problem would be offensive.

In response to equitable objections to the monetary contribution option on the ground that it would discriminate against sole practitioners and small firm lawyers, we point out that, as formulated, the
Committee's proposal would limit the option to lawyers practicing in firms of fewer than 10 attorneys. This provision is intended precisely to achieve equity between lawyers in large firms and those in small firms in the means available by which to discharge the pro bono obligation. We also note that at the Committee's public hearings lawyers who objected to the monetary contribution option were asked whether, assuming a mandatory pro bono rule were adopted, they would rather have a program without a monetary alternative. Almost uniformly these lawyers answered "no".

The Committee was also urged, by lawyers and officials of the Legal Aid Society, to consider permitting all lawyers to satisfy their pro bono obligation through the monetary contribution option. This policy was promoted both as a way to generate more funds with which legal services providers could hire full-time lawyers and to ease the "incompetence" objection. Our proposal limits the option to attorneys practicing in firms of fewer than 10 lawyers and excludes lawyers admitted to practice less than two years. The Committee rejected the more inclusive application of the monetary contribution option for three reasons. First, as discussed above, we sought to recognize the equitable considerations regarding the small versus large firm lawyers. Second, we believe that there is inherent value to individual attorneys and to the profession in having some pro bono legal services provided individually. And third, the Committee did not want to encourage large firms which now make charitable cash contributions to legal services organizations to count these donations towards satisfaction of their collective pro bono obligations. Instead, the Committee sought to induce large firms to render legal services over and above their current pro bono contributions.

Other public comments relating to compliance with the pro bono obligation urged that legal services rendered to indigents by assigned counsel from panels formed pursuant to New York County Law section 18-B⁴⁶ be recognized as qualifying service under the requirement. Alternatively, it was suggested that monetary discharge be permitted at the hourly rate that attorneys are paid under the 18-B program, thereby allowing these attorneys to comply with the pro bono requirement by not accepting the designated fee in 20 hours of 18-B work in any given year. In favor of these proposals, it was argued that the 18-B panel work should be recognized and encour-

aged and that a mandatory requirement of pro bono legal services may cause some attorneys to reduce their participation in 18-B cases in order to accommodate the additional pro bono work load.

The Committee does not agree that 18-B panel work should be credited towards the discharge of the pro bono services obligation. First, though theoretically to do so may encourage attorneys to accept 18-B panel assignments, in reality the crediting is unlikely to affect that work to any measurable degree. To credit all or any portion of 18-B work towards satisfaction of the pro bono services obligation would allow attorneys whose practice consists primarily or solely of 18-B panel work to comply with the pro bono service rule by doing no more professional work than they now do. This would result in no net addition to the level of free legal services to the poor. Moreover, as we pointed out in connection with our discussion relating to government attorneys, the intent of the Committee's proposal envisions discharge of the obligation through rendition of uncompensated legal services by every lawyer. Though the rate paid by the government for 18-B panel services is meager, and elsewhere in this Report we urge it be raised to a more realistic level, nonetheless it still represents compensation for the lawyer's time.

5. Excess Time

The Committee was also mindful that attorneys handling a case, whether paid or uncompensated, cannot allocate precisely 20 hours to the matter in a given year and then terminate their representation. Many matters are likely to and inevitably would require more than 20 hours in any year, or perhaps more than 40 hours in a particular two-year period. Practical, ethical and professional considerations compel attorneys to continue the representation to its appropriate conclusion. Consequently, under a pro bono services requirement, especially one with the modest time standard we propose, it is likely that in some years many lawyers would end up contributing substantially more hours than the minimum required. The Committee concluded that it would be inequitable not to make provision for this circumstance, consistent with our recognition that the plan should provide for hardship waivers for extraordinary situations. The Committee thus proposed to allow time devoted to qualifying services in excess of the 40-hour minimum in any period to be carried forward and applied towards the requirement for subsequent two-year reporting periods.

The Committee considered whether the carry-forward should be indefinite or limited to a fixed period. On balance, the prevailing
view was that it be restricted to no more than two successive registration periods. In other words, pro bono time spent on a qualifying activity in excess of 40 hours in any two-year period would be carried forward and credited towards the pro bono service requirement for the following four years. At the end of that period, the 40-hour requirement would apply again, whether or not any excess time carried forward from prior periods still remained uncredited.

6. Disbursements

In rendering professional services to satisfy the pro bono requirement, lawyers may incur related expenses. These would include disbursements such as court costs, service and filing fees and other legitimate expenses for which attorneys customarily receive payment from clients as part of fee arrangements. The Committee believes that, again for practical and equitable considerations, these costs should be reimbursable. In most pro bono matters the amounts involved may be insignificant and the likelihood is that lawyers would choose to absorb them, as they generally do in connection with current voluntary pro bono practice. But extraordinary situations could arise in which the legitimate expenses associated with completing a particular pro bono assignment would be significant, perhaps substantially exceeding even the value of the time expended on it by the attorney. In such circumstances, it would be unfair to demand that the lawyers' pro bono contribution include significant out-of-pocket costs in addition to their time. The inequity would be particularly severe in a program that included a cash alternative. Under such a plan, absent provision for disbursements, the rule could create circumstances under which some lawyers, in addition to the value of their time, would absorb expenses which might exceed the specified amount that other attorneys would be permitted to contribute to satisfy their pro bono services requirement in full. The Committee therefore determined that reasonable legal expenses incurred by lawyers on pro bono matters should be reimbursable.

The Committee offers no specific answer concerning the immediate sources for reimbursement of pro bono legal expenses. Earlier, we indicated that the lawyers' efforts alone would not suffice to solve the legal services problem. The profession's contribution, as the Committee envisions it, can only provide vital first aid. Reimbursement of lawyers' pro bono service expenses is one area which would require public response and participation to complement the lawyers' contribution. Further consideration of this issue will be required, along with
other details relating to implementation of the Committee’s proposal.

Although the Committee does not propose a detailed solution to the disbursements issue, it does suggest two potential sources of funds which might be appropriate for this purpose. One is the monetary contributions generated from attorneys who choose the cash option to satisfy their pro bono obligation. Lawyers with cases involving non-absorbable costs may wish to work in conjunction with a legal services organization that receives such contributions and that operates a pro bono program. Another source may be the Interest on Lawyer Accounts program (IOLA). We recommend that, in connection with implementing the Committee’s plan, the IOLA Board be asked to examine the feasibility of applying a portion of its program funds for this purpose, either directly or through its grantees.

7. Professional Liability Insurance

The Committee’s proposal contains no specific provision for malpractice insurance because we believe no such provision is necessary. Based on our research, malpractice insurance is not now an issue with respect to the significant amount of pro bono legal activity, including direct representation of indigents, traditionally made available by legal services providers and other organized volunteers of legal services programs. Malpractice insurance is available for these programs, and pro bono work for legal services organizations and other public interest groups has not been deterred for this reason. We assume that it is because volunteer legal services carried out officially under the auspices of legal services providers, and that formally sanctioned by private law firms, would be covered by malpractice policies of those organizations and firms. We have seen no evidence that the availability or absence of professional liability insurance under a required pro bono services rule would materially alter this experience. Under the Committee’s program, lawyers who choose to fulfill their obligation by rendering services under the auspices of legal services providers and volunteer coordinating groups would be insured for malpractice to be arranged under the coverage provided to these organizations.

Where such insurance is unavailable through either the lawyer’s employer or a legal services organization, the lawyer may decide to refrain from providing direct legal representation and choose to comply through any of the broad array of other qualifying professional services and activities that would not entail the risk of malpractice.

Concerns about the potential for malpractice suits and the impact
on professional liability insurance rates of large numbers of attorneys engaged in new areas of practice were voiced extensively by many attorneys at the Committee's public hearings and in correspondence. The objections were made particularly by lawyers in small firms and by sole practitioners. We believe that the discussion and conclusions we offer here adequately respond to the comments.

Also in response to concerns about malpractice issues, it is pertinent to note that some practicing attorneys in New York carry no professional liability insurance—even for matters involving paying clients. Most of these attorneys practice in small firms or alone. Thus arguments by or on behalf of these attorneys about the absence of professional liability insurance serving as a deterrent to pro bono activities seem inappropriate. It does not sound credible that lawyers who forego professional insurance in their regular practice would find it essential for 20 hours per year of pro bono services, or that lawyers are more likely to risk malpractice exposure from this modest amount of pro bono work than from their remaining practice on behalf of paying clients. In so stating we must assume, which we believe it is reasonable to do, that attorneys who are not covered by professional liability insurance and who, given the broad range of options for compliance permitted under the Committee's plan, would choose to fulfill their pro bono obligation through direct representation of indigents, are most likely to do so in areas of the law with which they are familiar and which would not raise the prospect of malpractice to any higher degree of risk than they ordinarily assume in the course of their compensated legal practice.

8. Incompetence

Among the most vexing challenges with which the Committee had to contend was the claim that under a mandatory pro bono services rule many attorneys would be "incompetent" providers of legal representation to the poor. Opponents argue that "incompetence" would disqualify attorneys whose practice specialty is so narrow that they could not, consistent with the Code of Professional Responsibili-

47. No public data on the number of practicing attorneys in New York State who do not carry professional liability insurance have been reported. A 1988 mandatory survey conducted by The State Bar of California pursuant to state law found that 64% of attorneys with any private practice and 72% of those engaged in full-time private practice in California were covered by professional liability insurance. Hamlin and Harkins, State Bar of California Questionnaire on Professional Liability Insurance, (February 16, 1988) at p. 286.
ty, properly render pro bono services outside their area of expertise. The objection was also raised as to currently registered attorneys who do not practice law at all, as well as with regard to attorneys who, regardless of practice specialty, would feel professionally or philosophically disinclined to provide direct legal services to the poor and who, if compelled to do so, would offer half-hearted, inferior representation.

To be sure, there are attorneys whose practice is so limited and so far afield of services related to the legal problems of the poor that they would believe that their legal skills could not be usefully matched to the needs. And, too, some areas of the law that bear most directly on the needs of the poor have developed their own substantive and procedural complexities. The intricacies of this practice require specialized knowledge not easily mastered by occasional volunteer novices with limited time to devote. That some attorneys forced to render free services may do so grudgingly and in the process would fail to represent the interests of their pro bono clients with due zeal and commitment, also raises troublesome concerns.

The Committee considered these issues at length. Though they are significant, we concluded that the objections they raise are by no means insurmountable. We recognize that lawyers, specialists or not, should not be required to accept legal assignments in areas of practice in which they may be unqualified to represent clients. Nor should lawyers who may be seriously ill, elderly, or truly incompetent be forced to provide direct free legal services to the poor. We are aware of the overriding ethical dictates of the Code of Professional Responsibility that demand both competent and zealous legal representation from every attorney. Hence, the Committee would not, as opponents suggest, urge upon the poor the services of a legion of uncommitted, ill-prepared, inexpert lawyers offering grudging, uninformed representation that no attorney would risk providing to a paying client.

But while recognizing that the narrow specialties of some private practitioners cannot contribute directly and effectively to a response to the need, and that some legal services for the poor require full-time, trained attorneys, the Committee feels that the incompetence objection was anticipated and adequately answered in the Committee's proposal. We note, first, that the incompetence argument, as far as it goes,

48. See Code of Professional Responsibility, Canon 6, EC 6-1, EC 6-3, EC 6-4, supra note 29.
assumes (1) that legal services to the poor necessarily entail courtroom practice or other direct legal representation of individual clients that the specialist or unwilling lawyer could not competently undertake, and (2) that under the Committee's plan lawyers would be assigned specific cases. Neither assumption is valid.

Pro bono legal services of benefit to the poor need not be limited to judicial proceedings, nor even to direct representation of individual clients. The Committee has defined its scope to encompass a broad range of professional activities of the kind that lawyers generally engage in as part of their practice. To this end, the Committee built enough flexibility into its definition of qualifying services to allow fulfillment of the pro bono services obligation through various means that should obviate the incompetence issue. The alternatives offered by our proposed scope were specifically chosen to enhance direct legal services to the poor by generating both more full-time legal services attorneys and many more able part-time volunteers who would choose to discharge their pro bono service obligation by providing legal assistance to individual poor people. But we also would recognize some indirect services beneficial to the poor that could be offered through lawyers' other professional activities. This option was designed to afford lawyers who may believe they are legitimately "incompetent" a reasonable range of other choices through which to satisfy the requirement. The mode of compliance would be selected individually by each attorney; no lawyer would be assigned to any case or client.

For these reasons, the Committee does not confine its definition of eligible pro bono work to legal representation of individuals, but expands it to the more inclusive "professional services or activities". In addition, the Committee's plan offers the choice of compliance through the group services and, for some attorneys, the monetary contribution alternatives. Under our formulation of qualifying services and permissible options, few attorneys, however specialized their practice, could credibly claim incapacity to perform qualifying work.

Second, the Committee's proposal recognizes that retirement, extreme age, illness, absence from the jurisdiction and other extraordinary circumstances may affect lawyers' ability to provide fully competent services, either temporarily or permanently. To accommodate these special circumstances the Committee's plan would provide exemptions, on a categorical basis for some lawyers, such as retirees, and on a case-by-case basis for others.

Although we are satisfied that the Committee's plan adequately
addresses the “incompetence” objection, we feel obliged to add an additional note in response to the extensive commentary that we received on this issue. To an extent this argument, somewhat disingenuously we feel, understates lawyers’ competence and thus overstates its case. Even in an age of pervasive specialization, lawyers are known for their versatility as generalists, for their capacity to master the unfamiliar complexities of cases in areas of the law in which they may have had little or no prior training or exposure. Litigation practice readily bears out this point, as does the daily experience of many sole practitioners who often do not know what unfamiliar areas of the law their next client’s matter will entail. This is also generally true with junior lawyers receiving early assignments at the start of their careers. Common experience tells us that in few of these instances, which are fairly typical of the way the legal profession works, do lawyers refuse the work on the ground that they lack familiarity with the relevant law; rather, they gain the required familiarity as quickly and as thoroughly as they can. Were it otherwise, were lawyers to reject work from paying clients on the ground of “incompetence” as often as opponents of the Committee’s plan claim lawyers would decline pro bono service on this ground under a mandatory rule, the ranks of the legal profession would be severely depleted.

Of course we do not wish to oversimplify. Some areas of law that relate most closely to the needs of the poor—housing, rent regulation, public assistance and health care benefits in particular—involve complexities which rank them among the more arcane fields of legal practice. It is indisputable that as to such areas the assistance of full-time experts trained for this practice is preferable. But that is not to say that the subjects are incomprehensible to lawyers of ordinary skill who could learn what they need to know and then provide such services pro bono. Still less does the preference for a staff-attorney delivery system in such areas mean that all specialists would or should be discouraged from offering pro bono legal services to the poor at all, or that they would be intimidated from doing so.

Several considerations reinforce this view. First, many of the common legal problems of the poor raise issues that fall within the scope of some of the broader legal specialties, for example, bankruptcy, tax, matrimonial and trusts and estates law, in which specialist lawyers can provide useful pro bono legal service. Second, as to matters outside the field of specialty practice, there is much legal services representation that entails simple, routine legal questions that can be
readily handled by most lawyers. We are persuaded by experience that as to these uncomplicated matters many lawyers, even if unfamiliar with the specific practice area, would do justice to the legal and intellectual challenges presented. In fact, every day, hundreds of volunteer lawyers, many of them recently admitted to practice, provide valuable pro bono assistance to the poor under the auspices of the Legal Aid Society and other voluntary legal services programs throughout the State. These volunteers play a vital role in filling that part of the poor’s legal services needs which are being satisfied by legal services organizations. Third, even with regard to the more complicated cases, many attorneys, specialists or not, can be trained to provide valuable pro bono representation. Several legal services organizations offer regular programs to train volunteer lawyers in areas of practice that match the legal services needs of the poor. Such training programs may well be expanded as legal services attorneys use the vehicle of teaching in them as the mode of fulfilling their own obligation under the Committee’s plan. Thus it came as no surprise to us to hear about the active participation by patent lawyers from the law department of a major corporation in the Volunteer Legal Services Project of Monroe County. These lawyers, after some training, are providing useful representation to the poor in matters that relate to the unmet need.

Accordingly, our conclusion regarding the “incompetence” issue is that in reality it does not present a serious obstacle to a general pro bono legal services obligation. This view is supported by the observation, which is consistent with views expressed to the Committee by judges who appeared before us, that, at the very least as to matters which do not involve the more complex fields of practice, for many poor persons the mere presence of a lawyer can make a critical difference to the outcome of many judicial and administrative proceedings. And at least two characteristics of lawyers tend to support this conclusion. First, while we would not urge inexpert lawyers upon the poor, most lawyers, challenged with a responsibility to serve their clients, generally will rise to the demands of the task. Whether or not they are familiar with the particular legal issues involved, they can be trained by those who know. Alternatively, they make it their business, as they frequently do with regards to matters for paying clients, to acquaint themselves enough with the facts and the law to enable them to render useful, effective service.
Second, the legal problems of the poor include a substantial number of matters that do not entail legal technicalities requiring experts. Most lawyers can perform satisfactorily and successfully in these cases. In fact, in many of these matters the level of skills and training necessary to render useful pro bono legal services is no different for senior legal specialists than it is for the large numbers of junior lawyers, many of them no more than a few years out of law school, who now contribute valuable free legal services through organized volunteer programs. When they first undertake pro bono assignments, some of these junior lawyers may be as unfamiliar with the practice areas relating to the needs of the poor as any senior specialist would be. Indeed, they may be no more expert in this practice than junior lawyers often are even on assignments for paying clients. And yet, as legal services organizations attest, the services performed by junior lawyers are not only satisfactory but essential to the contribution being made by legal services organizations to improving the availability of legal services to the poor.

D. Authority to Implement the Proposal

The Committee considered three avenues by which its plan could be implemented: (1) judicial regulation; (2) an amendment to the Code of Professional Responsibility; and (3) legislation. Judicial regulation appears to be the most appropriate and efficient method of implementation. The Committee chose this method because the judiciary is the branch of government most directly affected by the proposal and because judicial regulation provides an appropriately detailed, comprehensive, and cohesive program that can take effect immediately using existing methods of implementation, regulation and enforcement that will be easier to adjust if necessary once the program is in place.

The Committee believes that implementation by amendment to the Code of Professional Responsibility would be more cumbersome, both in implementation and in enforcement, and, because it regulates only the conduct of attorneys, would have less comprehensive effect unless it were combined with some judicial regulation concerning its administration in the courts. Legislation would also be more cumbersome in implementation and enforcement, and the resulting statute would most likely delegate to the judiciary, at least partially, the task

49. Id.
of devising and implementing the program through judicial regulation. The Committee anticipates implementation of the plan in a four-fold regulatory program promulgated by the judiciary under its constitutional and delegated statutory authority and its inherent powers. Although the scope and interrelation of the relevant constitutional and statutory provisions are not completely settled, there is an adequate framework of authority for the program.50

New York courts have inherent power to regulate practice and procedure before them, as recognized by the reservation of power in the New York Constitution, article six, section 30.51 They also have inherent power to assign counsel in appropriate cases.52 In that respect, the Legislature merely codified the inherent power of the courts in its provision for assignment of counsel to indigent litigants in civil cases.53

The Committee believes that, in light of the current crisis adversely affecting the administration of justice, regulations that are designed to assist in meeting the legal needs of the poor by requiring lawyers to render professional services would improve the administration of justice and the operation of the court system and would offer more even-handed justice in the adjudication of civil disputes. The Committee could have proposed that the Chief Judge promulgate a

50. See infra notes 51-56 and accompanying text.

51. Nothing herein contained shall prevent the adoption of regulations by individual courts consistent with the general practice and procedure as provided by statute or general rules.

N.Y. Const., art. 6, § 30.

52. Inherent in the courts and historically associated with the duty of the Bar to provide uncompensated services for the indigent has been the discretionary power of the courts to assign counsel in a proper case to represent private indigent litigants. Such counsel serve without compensation. Statutes codify the inherent power of the courts (CPLR 1102 . . .).

In re Smiley, 36 N.Y.2d 433, 438, 369 N.Y.S.2d 87, 91 (1975) (citation omitted); see In re Farrell, 127 Misc. 2d 350, 486 N.Y.S.2d 130 (Sup. Ct. Westchester Co. 1985). In Smiley, the Court of Appeals questioned whether compelling services without compensation would violate an attorney's constitutional rights. The United States Supreme Court, deciding that 28 U.S.C. § 1915(d) did not authorize assignment of unwilling counsel in federal civil cases, also left open the constitutional question, but the language of both the majority and dissenting opinions appears sympathetic to the view that an appropriately drawn rule or statute could articulate and enforce this important professional obligation. Mallard v. United States District Court for the Southern District of Iowa, ___ U.S. ___, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989).

53. In re Smiley, 36 N.Y.2d at 438, 369 N.Y.S.2d at 91 (1975) ["Statutes codify the inherent power of the courts (CPLR 1102 . . .)"].
rule affecting only practice in the courts pursuant to the Chief Judge's unquestionable authority under Judiciary Law section 211. Such a rule would ultimately reach substantially less than all attorneys since, in this era of specialization, fewer and fewer attorneys appear in the courts with any degree of frequency. Yet mandatory court assignments for attorneys are in place elsewhere and are well recognized in New York. Thus the Committee's proposal mandates pro bono legal service to the poor that might in another age have been confined to representation in court, but permits attorneys to satisfy the requirement with legal services in addition to appearances in court.

As contemplated by the Committee, a pro bono legal services requirement can be implemented and enforced as a common judicial enterprise by the Chief Judge, the Court of Appeals, the Appellate Divisions of the Supreme Court and the Chief Administrator through the following measures:

(1) By authority under the New York Constitution article 6, section 28 and Judiciary Law section 211, the Chief Judge would promulgate new standards and administrative policies to promote and facilitate expeditious and fair treatment of the civil cases of

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54. See supra note 24 and accompanying text.
56. b. The chief administrator, on behalf of the chief judge, shall supervise the administration and operation of the unified court system. In the exercise of such responsibility, the chief administrator for the courts shall have such powers and duties as may be delegated to him by the chief judge and such additional powers and duties as may be provided by law.
   c. The chief judge, after consultation with the administrative board, shall establish standards and administrative policies for general application throughout the state, which shall be submitted by the chief judge to the court of appeals, together with the recommendations if any, of the administrative board. Such standards and administrative policies shall be promulgated after approval by the court of appeals.
N.Y. Const., art. 6, § 28 (b, c). The Chief Judge has delegated his authority to supervise the administration and operation of the court system to the Chief Administrator. N.Y. Comp. Codes R. & Regs. tit. 22 §§ 1.2, 80.1. (1988).
57. 1. The chief judge, after consultation with the administrative board, shall establish standards and administrative policies for general application to the unified court system throughout the state, including but not limited to standards and administrative policies relating to:
   (a) The dispatch of judicial business . . . .
   (b) The adoption, amendment, rescission and implementation of rules and orders regulating practice and procedure in the courts, subject to the reserved power of the legislature provided for in section thirty of article six of the constitution . . . .
indigents in the New York courts and to give effect to the Legislature’s desire to provide counsel for indigents in appropriate cases, as expressed in the New York Civil Practice Law section 1102.\textsuperscript{58} This regulation would set a new standard and policy that would require pro bono services by attorneys admitted to practice before the courts of New York. The power of the Chief Judge to administer the practice of law in the courts is “complete”.\textsuperscript{59} This Committee has found, as have others, that a crisis arising out of the unmet legal needs of the poor threatens the administration of justice in the courts and the legitimacy of the legal system.\textsuperscript{60} Lawyers admitted to practice in New York pursuant to standards set by the Court of Appeals under Judiciary Law section 53 can be required to assist in the overall administration of justice in the courts, which ultimately become the forum where the unmet legal needs of the poor must be redressed. The practice of law is subject to reasonable restriction by the Judiciary\textsuperscript{61} and it is not unreasonable to require attorneys to provide modest legal assistance to the poor—either in the courts or even before they reach the courthouse. The Chief Judge would also promulgate a standard and administrative policy that would direct the Chief Administrator to devise and implement a plan to facilitate appointment of counsel to indigents in appropriate civil cases under the New York Civil Practice Law article 11. Finally, the Chief Judge would promulgate a standard and administrative policy directing all New York courts to be sensitive to the need to provide counsel to indigents in appropriate civil cases and to appoint counsel more often in order to facilitate the administration of justice.

(2) The Chief Administrator, with the advice and consent of the administrative board of the courts, would issue administrative orders by authority under the New York Constitution article 6, section 30,\textsuperscript{62}

\textsuperscript{58}\hspace{1em} Attorney. The court in its order permitting a person to proceed as a poor person may assign an attorney. N.Y. Civ. Prac. L. & R. 1102(a) (McKinney 1988).


\textsuperscript{60} See supra p. 15 & note 9.


\textsuperscript{62} The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has theretofore exercised. The legislature may, on such terms as it shall provide and subject to subsequent modification, delegate, in whole or in part, to a court, including the appellate division of the su-
Judiciary Law section 212, and the delegations of authority in the New York Code of Rules and Regulations, title 22, sections 1.2 and 80.1 and the Chief Judge’s newly promulgated standard and administrative policy. The first order would adopt a uniform rule for the New York trial courts establishing a procedure to ensure availability of attorneys and to facilitate their appointment to represent indigents in appropriate civil cases. The second would require pro bono services of attorneys admitted in New York to facilitate the program and ensure availability of attorneys, in keeping with their ethical obligations under the Code of Professional Responsibility. Finally, the Chief Administrator would amend the rules concerning registration of attorneys to require that with the biennial registration, attorneys certify during each two-year registration period that they have met the requirement of 40 hours of qualified pro bono services. If an attorney fails to certify compliance with the new rules, the Chief Administrator could refer the matter to the appropriate Appellate Division for appropriate action under Judiciary Law section 90 and New York Code of Rules and Regulations, title 22, section 118 (Registration of...
E. Administration and Enforcement

The plan proposed by the Committee would be administered and enforced by the Supreme Court, primarily by the Appellate Division of each Department, under the authority of Judiciary Law section 90 and the inherent powers of the courts. The Chief Judge and Chief Administrator of the Court of Appeals would share responsibility for administration of the plan, particularly in overseeing equality of stan-

65. The appellate division of each department . . . also from time to time may provide rules as it may deem necessary generally to promote the efficient transaction of business and the orderly administration of justice.


66. 2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice . . . .


67. See N.Y. Comp. Codes R. & Regs. tit. 22 § 603.2 (First Dept.), § 691.2 (Second Dept.), § 806.2 (Third Dept.), § 1022.17 (Fourth Dept.) (1988).

68. 1. The court of appeals may from time to time adopt, amend, or rescind rules not inconsistent with the constitution or statutes of the state, regulating the admission of attorneys and counsellors at law, to practice in all the courts of record of the state.

HOFSTRA LAW REVIEW

The Committee proposes this approach for several reasons. First, these mechanisms of administration and enforcement are appropriate to the proposed implementation by the judiciary, with each body responsible for the administration and enforcement of its aspect of the plan. Second, the scheme is efficient in that it uses existing mechanisms of judicial administration and enforcement in their traditional roles. Third, the Committee is well aware both that the practical difficulties of administration and enforcement of a pro bono services requirement are among the primary sources of objection to its imposition and that this proposal is a pioneering effort in which it is advisable to proceed cautiously. As a result, the Committee believes it best to keep the enforcement mechanism as simple and familiar as possible. The plan should offer the maximum possible ease of compliance consistent with meaningful achievement of the essential objectives.

The proposed plan anticipates that the primary inducement to widespread compliance among attorneys will be an individual acceptance of the requirement as a civic and professional responsibility, depending largely upon attorneys' individual integrity and commitment to professional responsibility. The Committee is satisfied that most attorneys will accept and fulfill the obligations of a new pro bono services requirement. This confidence is based on the Committee members' personal knowledge and experience and on evidence from other jurisdictions, discussed above, indicating that when lawyers were required to participate in mandatory pro bono services experiments, an overwhelming number of them complied.69 The primarily self-regulated system we recommend should suffice; if later evaluation of the program reveals abuses or substantial noncompliance, appropriate measures and alternatives could be considered at that time.

Nor should it be necessary initially to establish new mechanisms to carry out other aspects of the proposal such as delivery of pro bono services, training, collection and distribution of cash contributions, or reimbursement of expenses.70 Many worthy and capable le-

69. See Dean, Marín-Rosa, Stepter, Miskiewicz, supra note 24.
70. In any event, the Committee anticipates that, at least at the outset, the costs of administration of the plan and funds for reimbursement of disbursements would come from moneys contributed under the plan or resources other than public funds. See In re Smiley, 36
gal services and public interest organizations already exist that are qualified to perform many of the service delivery and related functions that may be involved in administering the program. The experience, professional credibility and public recognition these organizations possess would enable them to play an effective role in administering the proposed pro bono services plan.

The extensive questions and comments that the Committee received regarding the administration and enforcement of its pro bono services requirement proposal generally urged that more details be provided before the concept be given further consideration. Others dismissed the proposal in its entirety, predicting that its implementation in any form posed risks of bureaucratic nightmares, massive costs and governmental intrusion that rendered the whole endeavor unworthy of additional consideration.

The Committee acknowledges that its treatment of administration and enforcement issues raised by the proposed pro bono services plan is necessarily sketchy. Without minimizing the significance of these issues, we recognize that it is more important first to overcome the conceptual hurdles raised by the proposal before engaging in the details of its management. We are satisfied that once the philosophical obstacles are resolved and a decision is made to proceed with the idea in principle, lawyers' energies and creativity will coalesce and be directed towards carrying out the plan. The remaining implementational details will then be more easily settled.

A starting point towards carrying out the plan should be the appointment of an oversight or implementation committee to formulate more of the administrative particulars, to identify those parts of the program that can be carried out first, and to refine details that require further consideration. Among the latter, for example, are the issues raised by government lawyers, determinations of a standard of eligibility for services and the logistical details of matching the availability of new legal resources to the substantive and geographic need.

Although the Committee advocates that administration and enforcement of a pro bono service rule remain simple, by that we do not mean that implementation ought to be simplistic. We are very much aware that a program of this magnitude is bound to raise financial and administrative implications, both foreseeable and unanticipated. Looking ahead, it is true, for example, that during the implemen-

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tation of the Committee's proposal a uniform process would have to be developed by which to resolve definitional questions and details certain to arise, to issue interpretations and to promulgate guidelines to aid the profession in complying with the new rule. Obviously, some costs and risks, financial, professional and otherwise, would be associated with carrying out the program. But the Committee is not persuaded that these costs will reach the frightful level that some objectors claim would be required. To the question whether the benefits expected from the plan we outline would outweigh its administrative and other costs, our reply is decidedly yes.

To arguments that we should not rush into such a far-reaching endeavor until more is known about the details and until the specifics are all identified and settled, we say that, as formulated, the Committee's proposal could hardly be characterized as rash. Rather, it represents what we view as a modest, measured, perhaps too cautious but logical next step onto ground already solidly paved with years of lawyerly debate and scholarly consideration.

F. Mandatory vs. Voluntary Plan

Earlier in this Report we mentioned that in framing its response to the legal services crisis the Committee considered whether the problem could be adequately remedied by alternate plans that would rely primarily on voluntary rather than obligatory measures. After extensive debate of the merits of each approach the Committee rejected the voluntarism alternative as inappropriate and unresponsive to the need. A majority of the organized Bar in the State, however, reached a contrary view. While acknowledging, at the Committee's public hearings and in written comments, that a significant unmet need exists for free civil legal services for the poor, almost uniformly bar associations across the State concluded that any contribution by lawyers to relieve the problem should be strictly voluntary. In fact, stimulated by the Committee's proposals, the State Bar Association and several county bar associations formulated their own alternative plans, all of which rely on raising lawyers' contribution of voluntary pro bono services to unprecedented heights.

Because this divergence on the approach to the legal services crisis is so fundamental, and because the organized Bar expended so much effort devising voluntary counterproposals, a more detailed discussion regarding the Committee's reservations about voluntarism and its reasons for ultimately rejecting this alternative is appropriate.

At the outset, we recognize that some objectors of the
Committee’s plan may advocate voluntary alternatives because they may have sincere doubts about the wisdom, effectiveness or practicality of our proposal. In any debate as complex and intense as that stirred by the Committee’s plan there is ample room for reasonable differences of opinion. While we respect the opposing view, we have examined the same circumstances and alternatives and, for the reasons discussed throughout this Report, have reached a different conclusion.

On another level, we believe that the voluntary/mandatory debate reflects a fundamental difference in professional outlook towards the lawyer’s pro bono obligation. Some proponents of voluntarism seem to regard lawyers’ public interest service as individual charity. In the context of the legal services crisis, we see it as a professional duty. As charity, a pro bono service contribution would take lesser rank among lawyers’ other professional pressures and even personal commitments that are not obligatory. As a professional duty, rendering pro bono services rises to the standing of an unavoidable obligation. This distinction is not merely philosophical, but has a practical effect in public policy. Because as a public and professional duty the lawyers’ pro bono obligation could not easily be avoided, its recognition as such is likely to result in the contribution of more legal services than a program understood and carried out as charity, under which every contribution is a purely discretionary act of kindness.

Second, the Committee expressed deep skepticism about the prospects for increasing volunteer legal services on a sustained basis to the optimistic levels the organized Bar hopes to attain. We voiced doubts not because we would discount the value of the legal services that volunteer lawyers provide to the poor, nor because of any a priori bias against alternatives to the Committee’s plan. Rather, we were persuaded by substantial empirical evidence that volunteer efforts would not succeed in significantly closing the gap between legal services available to the poor and the critical need. The recent history of a number of campaigns in several jurisdictions to enlist significant numbers of volunteer lawyers for pro bono service proves the point.

Beginning in 1981, the organized Bar nationwide united in its reaction to attempts by the federal government to eliminate appropriations for the Legal Services Corporation. Today, after years of an intense crusade by the legal community to restore funding and preserve free legal services for the poor, funding for the Legal Services Corporation, adjusting for inflation, remains far below its level prior to the 25 percent federal budget reduction which took effect in 1982. This regrettable experience of not only budget reductions but explicit
threats to the Legal Services Corporation’s very existence provided a medium in which to rally the Bar and test the depth and strength of voluntarism to fill the legal services gaps. And yet, despite the surge of moral outrage, exhortations and arm-twisting by courts, the private Bar and legal services organizations, the record is not encouraging.

In jurisdiction after jurisdiction across the country, calls were made for more volunteers. But, consistently, volunteers failed to materialize in sufficient numbers. Here in New York, local bar associations joined efforts with legal services providers in creative delivery programs to meet the shortfall. But this partnership has been unable to fill the gap. While the rate of participation by private attorneys in pro bono work may have risen slightly during this period, this involvement includes all forms of professional pro bono activity, not just services provided specifically to benefit the poor. Counting only the latter, a fair estimate of the rate of pro bono participation in organized Bar programs by all admitted attorneys in the State would be roughly 10 percent, a number in line with estimates of the nationwide proportion of lawyers performing pro bono services for the poor.

But even if the level of voluntary pro bono participation in any given period were to rise dramatically, it would not correct one basic flaw of voluntarism that affects not just legal services, but other activities deemed to be merely charity: participation is essentially uneven and sometimes unreliable. It takes extraordinary effort and resources, as well as extraordinary leadership, to appreciably boost voluntary contributions of services. And generally the intensity of effort is not sustained at its peak. Rather, it fluctuates from time to time, intensifying in direct proportion to the impact and proximity of significant events and applied pressure from the boosters of voluntarism, but ebbing as pressure lets up, as the initial volunteer campaign euphoria fades, as news coverage ends, as the leadership propelling the voluntary drives changes, as the interest and commitment of volunteers wane when other professional demands reclaim their higher priorities—in sum, as life, like water, returns to its more natural level when the intensity of focus of voluntarism subsides. Then, foreseeably, charity’s impulse slackens to its more customary pace and the booster’s appeal begins to lose force.

Actual results of some recent efforts to boost volunteer legal services revealed the fundamental inadequacy of voluntarism and

72. *Id.* at 207.
confirm our doubts about the reality of achieving better prospects. In New York, the Association of the Bar of the City of New York organized Volunteers of Legal Service, Inc. (VOLS) in 1984. Law firms in the City were asked to pledge a minimum of 30 hours of pro bono legal services per attorney. With the Association of the Bar strongly behind the campaign, 75 firms with approximately 9500 lawyers pledged. Although most of the largest firms were included, these represent a small percentage of New York City's more than 1850 law firms and about 16 percent of the approximately 57,000 lawyers practicing in the City. In a recent survey of the program, 43 of the 75 firms responded. Of these, 32 (with 5892 lawyers) reported that they had reached the goal for the year. Twenty-six of the responding firms said that they had met the standard during each of the five years since the program began. Fourteen indicated that they had not met the goal for the year, although they provided services at a lower per-lawyer standard.\textsuperscript{73} We cite this record to exemplify not a particular failure of voluntarism, but the reasonable limits of its success. The VOLS results may reflect the maximum achievement that voluntarism can reasonably be expected to yield over time under the most favorable circumstances. It sustains our view that even in a climate of urgency, backed by dynamic, respected and committed leadership, and directed at the segment of the profession best placed to contribute, charity can squeeze out volunteers only so far.

A more recent and equally instructive statewide campaign to increase voluntarism was mounted in Maryland. There, the Maryland Legal Services Corporation, with the support of an advisory committee composed of Bar and community leaders, legal services providers and public officials, issued in January 1988 an “Action Plan” of measures designed to increase legal services to the poor. Among its recommendations was the adoption of a mandatory pro bono legal services rule. The Maryland Court of Appeals’ Standing Committee on Rules of Practice and Procedure came within one vote of supporting the mandatory pro bono proposal. Instead, the Committee agreed to defer the rule for approximately two years and await the results of a campaign urged by the Maryland State Bar Association intended to raise the level of pro bono participation and to document the extent

\textsuperscript{73} Statement of Thomas H. Moreland, President of Volunteers of Legal Service, Inc. To The Committee to Improve the Availability of Legal Services, October 19, 1989, and updated information provided in a telephone interview on March 13, 1990 with William J. Dean, Executive Director of Volunteers of Legal Service, Inc.
of pro bono legal services being provided by Maryland's approximately 19,000 attorneys. The State Bar Association and the Maryland Legal Services Corporation allocated $100,000 for the campaign and developed a pro bono survey and volunteer solicitation form. The form asked lawyers to indicate whether they would pledge to accept at least one pro bono case per year in a specified area of the law. Labeled as the Maryland's People's Pro Bono Campaign, the drive began with a major media advertising drive, much of it funded by public service contributions, that was valued in excess of $250,000. The state's Chief Judge sent a letter to all practicing attorneys urging them to respond to the campaign. The Bar Association's survey questionnaire and solicitation form was transmitted with the Chief Judge's letter. Maryland's Governor proclaimed October 16-22, 1989 as "People's Pro Bono Week" and himself pledged to accept a pro bono case. As of December 1989, after at least two reminders to those who had not replied, approximately 8200 attorneys had returned the questionnaire, 90 percent of them agreeing to pledge volunteer services. Maryland Bar leaders thus reported that the state Bar's voluntarism rate exceeded 50 percent of the total number of practicing attorneys.4

Is the glass half-full or half-empty in this example? We do not wish to sound unduly pessimistic—only realistic. Assuming we could raise the level of lawyer participation in pro bono services to the poor to 50 percent of all attorneys admitted to practice in New York, would we have reason for jubilation and self-applause? For sure it would be an impressive feat. And the contribution of that amount of legal services to the unmet need certainly would have a telling impact. But what about the other half of the members of the Bar? Without their share, could we feel content that we had achieved the utmost improvement of legal services? If the pro bono obligation is, as we maintain, a professional duty and not mere charity, can it be a responsibility for only part of the Bar and still retain any meaning? How would we justify letting the other half of the practicing lawyers avoid a professional duty? Would we feel self-satisfied and euphoric, for example, if only 50 percent of all citizens filed tax returns or answered the call for jury duty?

The Maryland experience also demonstrates the extraordinary cost, effort, Bar and public leadership required to secure a voluntary

74. See ABA Outreach Partnership Resource Materials, "People's Pro Bono Campaign" (February, 1990 National Conference on the Profession and Outreach to the Public) Tab A.
pledge and the return of a questionnaire from only 50 percent of lawyers in a state which has only one-fifth as many attorneys as New York. How much more demanding and costly would it be to achieve comparable outputs in New York? Realistically, can such an extraordinary level of effort and expense be voluntarily sustained from year to year? Can all of the volunteer forces, resources and participants who contributed to the first results be counted on year after year for future campaigns? Making a pledge to accept a pro bono case is one thing. As the VOLS experience in New York City illustrates, carrying it out is quite another. By what means could attorneys who pledge services be made to honor their commitment?

Voluntarism’s central shortcoming lies in its inability to offer satisfactory replies to these questions. But answers to them have been supplied by experience. In several other jurisdictions in which courts, legal services and organized Bar groups obtained consistently disappointing results from appeals for volunteers, they chose to support judicially-imposed pro bono legal services programs in order to address the critical need.75

Proponents of more voluntarism seem to ignore the apparent lessons of these very pertinent realities and experience, and thus entirely disregard the proven flaws in their approach. Against the known record, we see no reliable evidence that by now placing greater faith in volunteers to fill the unmet legal services need we will yield appreciably better results. Even if by more exhortation, however firm and authoritative, current levels of legal volunteer effort in New York were to double, which we doubt would occur, the increment would remain far short of a meaningful mark and would be unlikely to be sustained.

Excessive reliance on voluntarism, then, seems unfounded and misplaced. Moreover, the organized Bar is inherently limited in the scope of its efforts; it can reach only those lawyers who are members of bar associations. These total perhaps no more than 50 percent of all practicing lawyers in the State, of whom an even smaller number participate actively in Bar activities.

The validity of our skepticism was most recently confirmed by events prompted by the Committee’s proposal. At all of our public hearings, local bar associations, one after another, spoke with pride of impressive programs and campaigns they had recently embarked upon

75. See articles cited, supra note 24.
to increase voluntarism among their members in projects designed to meet the legal services needs of the poor. These efforts were worthy, creative, did credit to their sponsors and were long overdue. But among the associations which had programs already underway, none reported volunteer lawyer participation in excess of 10 to 15 percent of their members and, of course, still smaller proportions of the lawyers practicing in their geographic areas. From one point of view, these results are impressive; but from the point of view of rallying all of the Bar to do its duty of meeting the need for legal services for the poor, the results are modest indeed. They are more disappointing given the undeniable spur provided by apprehension of mandatory pro bono. This experience underscores our basic point: Herculean efforts producing voluntary responses praiseworthy by historical standards simply do not produce a response acceptable by any other practical measure.

In addition, bar associations, even with regard to members they can reach, lack the authority and effective means to ensure widespread response to their pleas for volunteers. The bar associations, therefore, would be content with voluntary pro bono contributions by perhaps 10 percent of their total membership and would overlook the non-cooperation by the other members. They would discount non-members’ failure to participate at all, and would disregard the associations’ lack of access to these lawyers. Such lax reckoning of professional accountability seems unacceptable. It is precisely the vast number of lawyers who, unless required to participate in public interest service would leave the problems to others, whose contribution the Committee’s plan is designed to elicit. Paradoxically, it is these very same attorneys whose non-participation the proponents of voluntarism would condone. In the name of objecting to the principle of compulsory service, they would allow the vast majority of attorneys, both members and non-members of bar associations, to avoid fulfilling their professional duties at the expense of the minority of attorneys who do contribute.

In short, then, the “voluntarism” so eloquently extolled and advocated by the organized Bar may well amount to little more than a rallying cry for the status quo. When all is said and done, only the same disappointingly small proportion of practicing attorneys who now contribute pro bono efforts to the poor would be counted upon to continue bearing the full load for the rest of the legal profession. To shunt the weight of this responsibility to a limited number of volunteers and permit as many as 85 to 90 percent of the other mem-

http://scholarlycommons.law.hofstra.edu/hlr/vol19/iss4/6
bers of the Bar to escape their proper share of a professional duty in times of critical need, we believe, is unconscionable in principle and inherently unfair to those who do contribute. Perhaps even more important, it would inevitably shortchange the legal needs of the poor and fail to give the corresponding crisis in our legal system the serious consideration and response it requires. Given the magnitude of the problems and their deeper implications, it is a shirking of professional responsibility for every attorney capable of doing so not to make some reasonable contribution to relieve the unmet legal services need, and instead to let volunteers and the rest of society respond when and if they choose to do so.

In support of their alternatives to the Committee’s proposal, adherents of voluntarism argue that the relative effectiveness of voluntary versus mandatory programs favors their approach. Volunteers, they say, would provide more effective service because they would contribute willingly, unhindered by the counterproductive resentment that lawyers would feel under a compulsory rule. We disagree. The effectiveness of a program should be judged by the total amount of useful service rendered by its participants. If our view is correct that in the long run a purely voluntary program would not raise the extent of participation in legal services to the poor appreciably more than the estimated current level of approximately 10 to 15 percent of all practicing attorneys in the State, and that an obligatory plan is more likely to generate significantly more compliance by enlisting the services of vastly greater number of lawyers who otherwise would not participate, then the mandatory approach would be more effective because it would yield a substantially greater amount of legal services.

We do not suggest that under a compulsory rule some lawyers would not feel some initial resentment. But we believe that such lawyers would represent a small minority of the profession, still leaving a much higher number of participants unaffected by these attitudes than the smaller number of attorneys who would contribute under a voluntary program. We also feel that with strong leadership from the private Bar, the judiciary and public officials, any initial discontent stirred by a mandatory rule would be limited, and eventually, as familiarity and acceptance grew, would fade. Finally, it seems to be the virtually uniform experience that exposure to the plight of the poor tends to breed in persons of good will a commitment to their aid that in turn yields new efforts on their behalf. This dynamic, too, can be expected over time to mitigate any initial resentment.
These observations are not mere conjectures and speculation on our part. They reflect actual experience in the mandatory pro bono programs described above, some of them now of long standing.

Nor do we accept the premise that most lawyers subject to an obligatory pro bono legal services plan, motivated by resentment, would either render half-hearted, shoddy, ineffective service to non-paying clients or violate the rule altogether by refusing or avoiding service. This argument ascribes the alleged base motives of perhaps a few lawyers to the entire profession. We find the inference not only offensive and a disservice to the legal profession, but unsupportable.

First, the claim overlooks some reasonable assumptions and safeguards incorporated in the Committee’s plan to address the issue. As we propose it, a pro bono legal services rule would not require any attorney to accept any case or render any service for any given client. We would leave it entirely to each attorney to choose the manner of compliance most suitable to the individual, and to do so from among categories of qualifying services broad enough to offer real choice and flexibility consistent with the lawyer’s personal and professional skills and interests.

The fact is that some attorneys, albeit a relatively small minority of all practicing lawyers, now engage in pro bono activities which satisfy the Committee’s definition of qualifying services. These lawyers are likely to comply with a mandatory rule simply by continuing to do exactly the type of pro bono work they now do. Indeed, we were impressed at the public hearings that many of the speakers who testified against the Committee’s plan prefaced their objections with a recitation of all the public interest professional activities and services to which they regularly devote well in excess of the 20 hours per year called for in the Committee’s proposal. It seems inconceivable to us that these lawyers would cease doing pro bono work they now perform or would begin to render services ineffectually, if their participation in these same professional services and activities became obligatory rather than voluntary. Similarly, with regard to lawyers who are not now regularly involved in pro bono activities, we fail to see why, under the flexible scope of qualifying work and options we propose, these attorneys, whether providing pro bono services to public interest organizations, participating in bar association activities or counseling indigents, would necessarily perform services ineffectively.

Second, as set forth earlier in this Report, the attitudinal argument overlooks persuasive contrary evidence from a number of limit-
ed mandatory pro bono service programs carried out in several jurisdictions around the country, including some in New York counties. In each known instance which we examined, substantial experience refutes the claim that significant numbers of lawyers would resist participation in a mandatory plan or would offer inferior services. Quite to the contrary, these programs persuasively demonstrate that predictions about bitter compliance are largely exaggerated. Court appointment of counsel for indigents, arguably a form of mandatory pro bono service, is another case in point. We are unaware of any significant resistance to such court assignments. Nor could it be sustained that all or even significant numbers of lawyers who comply with court appointments provide grudging, substandard representation to indigent clients.

Thus, empirical evidence supports our view that under the Committee's plan lawyers would accept and fulfill their pro bono services responsibilities professionally and effectively. It is not difficult to explain why. First, it is ingrained in lawyers' professional training to perform effectively and advocate zealously on behalf of their clients, consistent with the ethical canons that enjoin their utmost professional effort in providing legal representation. And second, we feel that lawyers would respond to compulsory service not only as lawyers but as citizens. We know from experience that most citizens, especially in times of crisis, generally respond to obligatory civic duties with appropriate public spirit and good faith. Jury duty, military service, and even paying taxes often cause inconvenience and are sometimes greeted with initial resentment. But, when called to serve, most people place personal attitudes aside, recognize the public purpose and higher duty involved in the call and comply uneventfully. No persuasive reason has been given for us to believe that lawyers would react differently to required pro bono service, especially if, as is the case with the Committee's proposal, the obligation is flexibly drawn and reasonably administered.

Another argument advanced by proponents of voluntarism against the mandatory approach is that an obligatory pro bono legal services program would remove the pressure on government to accept responsibility for the legal services crisis and to respond with the allocation of necessary public funding for legal services organizations. Public officials, the argument goes, would point to the free legal services

76. Id.
provided by the profession as evidence that the problem is being solved and decline to take other action. There is inconsistency in this view. For if government refused to address the legal services crisis on account of the pro bono legal services contributed under a mandatory rule, it would be just as likely to do so under a voluntary effort which achieved the level of success hoped for by advocates of voluntarism. To contend that a mandatory rule is not advisable for this reason while maintaining that voluntarism is appropriate, also carries the implicit admission that an obligatory program is more likely to succeed in significantly improving legal services than the voluntary approach. In fact, this position, carried to its logical conclusion, would suggest complete stasis, and would argue even against voluntarism itself, because it could be said that any significant voluntary effort perceived as successful could dissuade government from addressing the problem.

But the more important failing of the argument is that it ignores reality. The fact is that government has failed to respond adequately to the legal services crisis. No more proof of that failure is necessary than the Legal Services Corporation’s budget and administrative problems over the last eight years. How much longer is it reasonable and responsible to wait for public action? As discussed above, it was in part this history and reality that prompted the Committee to propose its pro bono legal services requirement. Consequently, the objection that our plan would encourage government to put off action would countenance an indefinite prolongation of inaction and would continue to accept the harmful effects of the legal services crisis until government chooses to respond, even though we, as lawyers, have it within our means to make a significant difference. For reasons already stated, we find this position untenable.

While claiming that voluntarism would be more effective because volunteers would enlist of their free will, unaffected by the resentment that coercion would breed even among lawyers who now do contribute pro bono services, proponents of voluntarism ironically cited the impending threat of a mandatory pro bono services rule as a reason to arouse the Bar to raise the level of voluntarism. We also find contradiction in this view. For we do not accept that lawyers would perform unsatisfactorily under an obligatory rule but that they would respond with more alacrity, effectiveness and good faith under the threat of compulsion. Moreover, the level of voluntarism induced by fear is inherently unreliable. It is likely to decline the moment that the impelling threat is removed or ceases to be perceived as fearsome.
G. Constitutional and Statutory Issues

Numerous objections to the Committee’s pro bono legal services plan challenged its validity under several provisions of the United States Constitution. Opponents variously charged that the plan constituted a taking of property without just compensation in violation of the Fifth Amendment, sought involuntary servitude contrary to the Thirteenth Amendment, and/or effected a denial of due process and equal protection of the laws in breach of the Fourteenth Amendment. Opponents also charged that the Committee’s plan conflicted with provisions of some existing laws and regulations and that the courts lack authority to implement it. By and large these claims were made as conclusory assertions unsupported by legal research and analysis.

Needless to say the Committee gave extensive consideration to potential constitutional issues raised by its proposal. While issues of this kind are never free of doubt until resolved by a definitive ruling of the United States Supreme Court, extensive scholarly review, court rulings and legal literature exist thoroughly analyzing the constitutional questions. Having examined the material, we are satisfied that the weight of scholarly and judicial opinion adequately responds to the constitutional challenges and that the principle of mandatory pro bono service as set forth in the Committee’s proposal would be upheld in a judicial challenge. Similarly, we believe, as set forth in Part II.D. above, that adequate judicial authority exists to carry out the Committee’s plan. (A more detailed legal analysis and response to these arguments is attached as Appendix C to this Report.)

III. OTHER MEASURES TO MEET THE CRISIS

A. Other Contributions by the Profession

The services and monetary assistance that would be provided by lawyers and law firms under the Committee’s program represent only one part of the contribution that the legal profession can make to improve the availability of legal services to the poor. Other compo-

77. See Shapiro, The Enigma of the Lawyer’s Duty of Serve, 55 N.Y.U. L. Rev. 735 (1980); Rosenfeld, Mandatory Pro Bono: Historical and Constitutional Perspectives, 2 Cardozo L. Rev. 255 (1981); Note, Court Appointment of Attorneys in Civil Cases: The Constitu
tionality of Uncompensated Legal Assistance, 81 Colum. L. Rev. 366 (1981). And see the discussion and cases cited in Appendix C to this Report.
ments of the profession, not specifically covered by the plan, should participate in this effort. The Committee offers the following recommendations.

1. Law Schools, Law Students and Recent Graduates

The Committee recognized that law schools could be a significant resource for legal services to the poor. Law school faculty members who are members of the New York Bar would be covered by the Committee's principal proposal. The Committee considered whether to move beyond individual faculty participation and involve law schools, through their students and academic programs, in the effort to provide legal services for poor persons. For reasons discussed below, the Committee concluded that while law schools should be exhorted to contribute more than they now do to improve legal services to the poor, it would be inadvisable to impose such institutional requirements on the law schools of this State.

The Committee considered, for example, whether clinical courses, which are now offered in all fifteen law schools in this State, should be tapped as a source of legal services for the poor. Specifically, we debated whether law schools in New York should establish as a degree requirement that every law student, at any time prior to graduation, provide a specified number of hours of legal assistance to the poor, either through satisfactory completion of a clinical program or through work performed under the auspices of a legal services organization.

While clinical programs, particularly those that are client-oriented, may make a valuable contribution to providing legal services to a limited number of poor persons, we concluded that it would be inappropriate to require all law students to participate in such programs as a condition of graduation. Fundamentally, the mission of clinical legal studies is instructional; the legal services they provide are incidental to the students' educational experience. A well-structured clinical program generally contains a substantial simulation component; many are integrated into a seminar or traditional courses and, accordingly, do not offer client contact. The client-contact component of clinical education is extremely costly, with significantly lower student/faculty ratios, and any requirement that students participate in such programs would impose intolerable fiscal burdens on law schools and interfere with their educational mission, including their skills training programs. Moreover, law school buildings, developed primarily for instructional purposes, have only limited facilities for client-oriented clinical pro-
grams. Given the limited return in legal services, requiring that the law school curriculum be altered for this purpose would be unproductive and unwise. It would represent an unwelcome intrusion of government into the pedagogic content of legal education.

Nevertheless, the Committee remains convinced that client-oriented clinical programs are of sufficient value to law students and their clients that they should be encouraged. Exposure to this type of practice offers students a professional experience they might otherwise not encounter in their careers, and may encourage more of them to view public interest and public service practice as desirable career alternatives.

The Committee also considered, and rejected, a proposal to require, as a condition of admission to the New York State Bar, that every law school graduate shall have provided a specified number of hours of pro bono services to the poor, either through participation in law school client-oriented clinical programs or by services performed through established legal services organizations.

Any such requirement would have far-reaching consequences that are difficult to predict. Law schools, here and in other states, would be pressured to offer client-oriented clinical programs that they cannot afford and that they might consider educationally undesirable in comparison to other traditional and skills training courses. Applicants could be discouraged from applying for admission to New York law schools, and graduates of out-of-state schools who do accept employment in New York might find it difficult to satisfy the requirement during the relatively brief period between graduation and admission to the Bar. The Committee was also swayed by the practical difficulties of providing adequate supervision for the pro bono work of substantial numbers of law students and of responding to the new administrative burdens that would be imposed on legal services organizations. A vastly higher number of law students providing legal services without adequate supervision would raise issues of unauthorized practice of law.

2. Student Loans

The Committee also considered whether the easing of the debt burden now borne by law school graduates might affect the provision of legal services to the poor. By themselves, loan-forgiveness programs would not increase the number of attorneys presently engaged in legal services programs. Easing the students' debt burden, however, could enlarge the pool of those seeking legal services positions, and,
if combined with increased government funding to enlarge the number of positions, could have favorable impact on the provision of legal services to the poor. Several law schools in New York have adopted such programs, and we urge the others to consider them. But since law schools are presently stretching their financial aid resources to meet the high cost of legal education, we recommend that most of the cost of expanding loan-forgiveness be met by government programs.

3. **Retired Lawyers**

Retired lawyers comprise a significant reservoir of legal expertise that could be drawn upon to assist legal services organizations. Because these attorneys would not be subject to the Committee's pro bono services requirement, they should be more actively encouraged and recruited to volunteer their time. The State should consider waiving its biennial lawyers' registration fee for retired lawyers who devote their practice solely to uncompensated representation of indigents, and reimbursing costs related to such representation.

4. **Law Firms**

Many law firms now support a wide array of legal services and public interest organizations. But the record is uneven. Reports evaluating participation in New York City's Volunteers of Legal Service program demonstrate that the levels of compliance with a purely voluntary commitment vary widely among the member firms that agreed to a standard of 30 hours of legal services per firm attorney.78 There exists a vast potential for additional support for legal services from the private Bar, and law firms should be encouraged to provide greater leadership to draw upon this potential. We endorse four specific forms of support as responses to the need especially appropriate to law firms: (1) creating fellowships to enable law school graduates to engage in full-time legal services programs; (2) providing shorter-term legal services internships to enable associates to work for legal services organizations on a full-time basis for periods of three to six months; (3) crediting as "billable hours" the time spent by associates on pro bono service to poor persons; and (4) establishing libraries of forms, manuals and other documents relevant to legal services practice and making them available to other firms, organizations and individuals. Law firm partners should communicate unequivocally to their

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78. See N.Y.L.J., supra note 24 and see note 69 and text accompanying these notes.
associates that participation in pro bono services programs is encouraged and will be a positive factor in evaluating their work for the firm.

5. **Paralegals**
   
   Certified paralegals, under the supervision of attorneys, are capable of performing many vital functions such as interviewing, screening, research and drafting. Many perform similar work in private law firms and could help relieve the workload of attorneys in legal services programs. Recruitment and training of paralegals can be achieved under the auspices of existing legal services organizations and bar associations.

6. **Bar Associations**
   
   Bar associations should coordinate and supplement the efforts of legal services organizations in recruiting, training and matching volunteers with services. They can play a central role in the implementation of a pro bono legal services plan, by operating such programs, by aggregating lawyers into qualifying groups for collective delivery of services, and by facilitating the availability of professional liability insurance.

   Bar associations should also promote the value of pro bono contributions to legal services by establishing and publicizing awards, monetary or otherwise, to honor individuals who perform outstanding services for the poor. In evaluating candidates for judicial office, screening committees of bar associations should make clear that they will regard a candidate’s pro bono service to poor persons as a significant factor in their appraisal. Similarly, pro bono services should be a consideration in compensated court appointment of guardians, receivers, trustees, and similar positions.

7. **Interest on Lawyers’ Accounts**
   
   Funds raised by the State law requiring participation in the Interest on Lawyers’ Accounts (IOLA) program have been allocated to support a broad range of programs providing legal services to the poor. The IOLA Board should be requested to support some of the new legal services initiatives set forth in the Committee’s Report, if they are ultimately adopted, and to consider mechanisms to provide reimbursement of attorneys’ out-of-pocket disbursements where appropriate. The Committee was informed that on March 31, 1990 the IOLA Board established a special grant in the amount of $1,000,000
to support expanded pro bono efforts and to devise methods of implementing such efforts, including models for training, matching and monitoring pro bono attorneys.

8. Community Education

Meeting the legal problems of poor persons involves more than providing a lawyer to deal with a problem that has arisen. More effective public education could make individuals aware of legal issues and of the availability of legal assistance. Moreover, early consultation with an attorney may resolve problems before they reach the litigation stage.

To this end, the Committee recommends more educational efforts directed to high school and junior high school students to promote understanding of the nature and scope of the civil justice system, and of administrative agencies. We believe that the participation of law students in such programs in schools with significant populations of low-income children would be desirable. Practicing and retired attorneys can also perform these services, even more effectively than law students. Some bar association programs provide these services and we recommend that they be expanded.

B. Beyond the Profession: The Societal Role

This report directs most of its attention to the duty of each lawyer to respond to the crisis of unmet legal needs and the ways and means of promulgating that obligation and administering the response. The Committee fully appreciates, however, that to address adequately the problem of legal services to the poor requires an effort that transcends both the lawyers’ resources and their professional obligations. Government, at all levels, has an obligation to help provide civil legal assistance to indigents. Government must respond more generously first by allocating greater public resources to provide for the life necessities of our neediest citizens. Public benefit programs and reforms that would offer more responsible and realistic sustenance to critical needs of the poor than is now available, such as income assistance, shelter, health care and child support, merit the strenuous advocacy of the organized Bar.

Clearly, to the extent basic needs of the poor are responsibly addressed in the first place, many legal problems that later derive from the existence of these needs and the meager public resources available for them can be relieved or averted altogether. In the process, government actually can save part of the public resources that
are spent when the needs of the poor extend into more costly legal problems. The recent unanimous decision of the Court of Appeals in *Jiggets v. Grinker*, No. 36,754 (Ct. App. April 3, 1990) (WESTLAW, States library, N.Y. file) provides a case in point. The Court, recognizing that rent allowances unreasonably below minimum rents available in the marketplace inevitably produced increased homelessness and family disruption, ruled that the Social Services Law required sufficient rent allowance to meet the market rents. The result of *Jiggets*, if its mandate is complied with, is likely to be somewhat less frequent eviction proceedings, some abatement in Housing Court pressure, and a net long-term savings in avoided homelessness and related social pathologies. And it is a profoundly important truism that the homeless would have less need of legal services if they were not homeless.

The reality of such savings, and the soundness of this approach as public policy, have been demonstrated by a number of State-funded experimental programs that merit broad support for expansion. These provide funds for legal assistance to the poor in matters related to homelessness, AIDS, child support, mental health and disability. Each program attempts to prevent the more serious legal problems from arising, or to shift their expense to a less costly public or private source.

More public funding is also necessary to provide free legal assistance to the poor, especially in asserting and defending vital needs. As we have already stressed, there are aspects of the unmet legal services crisis that cannot be dealt with effectively by volunteer lawyers, but require a large number of full-time attorneys trained in the intricacies of the relevant body of substantive law and regulation, and more generally in the ways of successfully dealing with the judicial and administrative bureaucracy that is so much a part of easing the problems of the poor. The now insufficient cadre of full-time legal services attorneys must be increased to deal more effectively and efficiently with the crushing volume of cases requiring expertise in these public entitlement laws and procedures. The special knowledge and commitment of these attorneys enable them to identify programmatic connections and coordinate more effectively among the benefits and remedies of related programs. They are also better able to address problems systemically—by means which may benefit not just one individual client but entire classes of people similarly situated — and to train volunteer private lawyers who provide pro bono representation through legal services organizations.
Our work on this Committee convinced us more than ever that as regards many basic needs, legal aid to the poor is not a luxury but an essential means of securing life support. By not addressing this need realistically and responsibly, society deepens the individual suffering of the poor, and in the long run exponentially multiplies the human, economic and legal costs involved. Public penury also serves to sustain and intensify the crisis of legitimacy in our legal system that we described above. By failing to promote the promise of justice that our legal system proclaims, it weakens and diminishes us as a society.

For these reasons other public actions are essential to compliment the lawyer's contribution to improve legal services to the poor. To summarize, the following specific measures are recommended at the outset:

(1) The federal government should restore and expand funding or the Legal Services Corporation which, accounting for inflation, has declined even from pre-1982 levels.

(2) State government should provide funding to improve and augment the efforts of legal services organizations and public interest groups devoted to addressing the basic legal needs of the poor.

(3) By providing increased funding for public assistance programs designed to meet the needs of specific population groups (e.g., public assistance recipients, handicapped children, homeless families and mentally disabled individuals) government could have a direct impact on the need for legal services.

(4) The compensated appointment of counsel for indigents should be expanded to proceedings involving such fundamental needs as housing, public assistance, matrimonial and child support. Legal intervention in proceedings involving such fundamental needs may prevent people from being thrown deeper into poverty, destitution and costly public dependence. Moreover, payment to attorneys who represent indigents pursuant to appointments from panels established under Article 18-B of the New York County Law79 should be raised to a reasonable level. Maximum payment now permitted is $40 per hour for work performed in court and $25 per hour for work out of court, except in appellate matters, for which the maximum rate is a standard $40 per hour.

(5) Government agencies operating entitlement programs that

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79. N.Y. County Law, supra note 46.
result in the denial or termination of essential public benefits should be required to provide funding to legal services organizations that assist persons who cannot afford counsel.

C. Effects on the Courts

Some of the public comments to the Committee’s proposals expressed concern about the ability of the State court system to cope with the greater burden likely to result from a substantial increase in legal representation available to poor persons. It is certain that if the Committee’s plan is adopted thousands of indigents who now appear in court unrepresented, and many others who do not press legal claims at all because they cannot afford counsel or are unaware of available free legal services, would seek and obtain legal assistance under the program. Availability of new legal resources would convert into adversarial proceedings many of the thousands of cases that now are summarily disposed of, whether by default or by stipulations signed by unrepresented indigents. This potentially large infusion of new legal activity, it was claimed, would further strain the already overburdened judicial system.

We reject this concern as a rationale for inaction for a fundamental reason. A system of justice that can work at all only by denying to large numbers of people either basic access or the elementary tools necessary to participate meaningfully in its process, is no system of justice at all. To the extent justice for some can be obtained only by excluding for others any prospect of obtaining it, our legal system is undermined in theory and rendered illegitimate in practice. The argument that our courts would be unable to sustain genuine adversary proceedings for all who come before them, and that the State cannot afford to provide resources for such cases, mocks the promise of “equal justice for all”. The argument, understood for what it really says, serves to prove the Committee’s conclusion that a crisis threatening the very legitimacy of our legal system is presented by the widening gap between the needs of the poor for legal assistance and the resources deployed to meet it.

Beyond this primary ground, these concerns about straining the justice system should not dissuade us from promoting more free legal services for poor people for other reasons as well. There may be a seeming contradiction in our deploring a crisis in the administration of justice that by all accounts is already lamentable, while at the same time advocating measures that arguably could further strain the system. But the alleged effects of a mandatory pro bono program on
the courts do not consider countervailing measures that could mitigate the impacts and result in judicial efficiencies. First, not all matters in which indigents would receive legal representation under a pro bono legal services requirement would entail final disposition in judicial proceedings. Many of them, including substantial numbers of cases now in the courts involving unrepresented and pro se litigants, would be settled by attorneys in pre-litigation stages of the disputes. Second, some judicial resources would also be saved because judges may spend less time protecting unrepresented indigents against themselves.

Moreover, what may appear to be an inconsistency arises only because the administration of justice conditions we fault point to not one but two major crises, both of which demand immediate attention. The first is in the structure of the State legal system: the woefully heavy caseload carried by judges in some State courts, an outcome of a shortage of judicial personnel and supporting resources, compounded by inadequate courtroom space and poor conditions in other aspects of the judicial environment. The second is in the operation of the legal system: hundreds of thousands of indigent litigants are caught in it each year without legal representation.

The judicial shortage, caseload and court space urgencies in and of themselves cry out for swift improvement. Whether or not a pro bono service rule were adopted, or even if such a program generated not a single hour of additional legal representation for the poor that would impact on the courts, conditions prevalent in some of our State courts would require decisive and substantial relief. But it is beyond the scope of this Committee’s charge to treat that issue here. Our primary concern is the shortage of legal services for the poor. Superimposed on the structural needs, it serves to severely intensify our legal system’s deficiencies. If under ordinary circumstances passing through the legal process is harsh for any person, even one assisted by counsel, under crisis conditions the harshness is magnified, many times more so for the person who is poor, uninformed, perhaps unable to speak English, and also not represented by a lawyer.

Our concerns about legal representation, about equality of access to the legal system and the quality of justice it renders, would remain as valid and profound even if the system’s judicial burdens were entirely resolved. Building new courts or assigning all the judges in the State to clear the docket in some courts will do nothing to dispose of the legal services crisis if thousands of indigents continue to appear in judicial and administrative proceedings unassisted by counsel.
As attorneys, we are duty-bound to fulfill our professional responsibility to improve the availability of legal services, whether or not other related legal and societal problems are also addressed, let alone resolved. That improving one aspect of the legal system may worsen circumstances elsewhere in the process only points to the interrelationship among the issues and to the need for a comprehensive response to the entire problem, one that would spread responsibility for corrective action to other segments of society. Lawyers, as we urge, can and should provide personal efforts and resources for the improvement of legal services because that contribution would be uniquely within their means, and because it falls squarely within one of the fundamental precepts of the profession's canons. On the other hand, adding judicial, physical and other resources to the legal system truly is a public responsibility. Although it also is an important concern for all lawyers, and lawyers should advocate for improved court resources, this responsibility must be addressed legislatively, in the context of related economic and social needs.

IV. CONCLUSION

The Committee found that a significant unmet need for legal services to the poor exists. Resources now available to legal services providers are not enough to address the problem adequately. Failure to respond to this need would have severe adverse consequences not only to the poor, but to the legal system and to our society in general. The legal community can do more to respond to the problem and should be mobilized to do so. Strictly voluntary efforts would not raise the level of legal services sufficiently. But a plan that included a rule requiring practicing lawyers to provide pro bono legal services responsive to the need, together with other contributions by the legal community, would make a significant improvement in the availability of legal services to the poor. The Committee recommends such a plan.

Lawyers' efforts alone, however, will not suffice. To address the problem adequately also would require public resources and additional public spending. The Committee urges that consideration be given to higher government appropriations for civil legal services to the poor as an integral component of our proposed plan.
Committee to Improve the Availability of Legal Services

Victor Marrero, Chair

Bradley Backus Raymond W. Hackbarth
Hanna S. Cohn Sandra W. Jacobson
Sol Neil Corbin Robert M. Kaufman
Louis A. Craco Joseph T. McLaughlin
Evan A. Davis Gerald A. Norlander
Charles H. Dougherty John K. Powers
Herbert B. Evans Norman Redlich
Robert B. Fiske, Jr. Hon. Israel Rubin
Alexander D. Forger Cyrus R. Vance
Ellen V. Futter Bryan R. Williams
Thomas F. Gleason

April 1990

Statement of Evan A. Davis*

I believe that lawyers, as officers of the court and members of an independent profession, have a mandatory ethical obligation to render pro bono service. I view this obligation as traditional, albeit not enforced through disciplinary proceedings, and extending to representation of the indigent, reform of the law, and efforts to insure the selection of competent judges.

The Committee believes there is a need to craft a mandatory and enforceable pro bono requirement with respect to the representation of the indigent. I agree. A key overall task of the legal profession is to make rights real so that they will exist not only on paper but in actual fact. When the poor are not adequately represented, their rights are not real. To allow this situation to persist is inconsistent with our profession's basic mission.

Our professional obligation does not depend on whether governmental institutions are doing what they should to make rights real. In this State we have recently adopted the Equal Access to Justice Act

* Perhaps it goes without saying, but these are personal views expressed as a member of the profession and not in any official capacity.
which is an important advance. The federal government should do more. But government is also within its rights to expect that the traditional pro bono obligation of members of the legal profession will play a key role.

I also believe that individual members of the legal profession are within their rights in wanting to see that every member of the legal profession does his or her fair share. I think it is obvious to all that not all lawyers are doing their fair share now.

I would modify the Committee’s plan in only two respects.

First, I believe the enforceable pro bono requirement should be phased in. Some argue that mandatory reporting is an adequate first phase. I do not agree because I think we can and should go further. In the initial phase, I would require mandatory reporting by all and mandatory service during the ten years following law school graduation.

Ten years is a period long enough to provide a reasonable mix of junior and experienced attorneys. Over time it will provide a fair system under which all lawyers will go through a period of mandatory service. And if resources prove inadequate, the period of mandatory service can be expanded.

The only objection I have heard to this approach is that younger lawyers will think that older lawyers are trying to foist off their responsibility. I do not see it that way. We need some kind of transition to assure orderly administration and competent representation. And we want a transition that helps build at least a minimal level of acceptance by the profession. The phase-in I am suggesting works well, I think, on both counts.

Second, it is important, in my judgment, to adhere to the principle that pro bono work is part of a lawyer’s regular work to be done during regular working hours with full access to office support resources. This is a problem for the government attorney or the attorney who works for a corporation. Does the Court of Appeals have the power to require a corporation to allow its lawyers to do pro bono work on company time and with company resources? Does the New York judiciary have the power to require the United States Department of Justice or the New York Attorney General to allow government attorneys to use taxpayer time and taxpayer resources to handle pro bono cases? And can a governmental employer voluntarily agree to permit use of taxpayer resources and time? Would that violate the gift and loans provision of the New York State Constitution? Should compensation be reduced as compensation is reduced when
the sole practitioner or partner uses work hours to do pro bono work?

My personal view is that the judiciary does have the power to make it unethical for a lawyer to work for an employer who refuses to make time and resources available for mandatory pro bono work. But unless that step is taken, or some other arrangement is made to authorize the use of company or government time and resources for pro bono work, I think it would be unfair to impose an enforceable requirement on lawyers who, unlike their peers, would have to fulfill that requirement on their own time.

That being said, I think it is important to move forward. I am pleased to join the essentials of the Committee’s Report and grateful for this opportunity to express my view separately.

STATEMENT BY THOMAS F. GLEASON

I join in the statement of Evan Davis. In my view, also phasing in the program is important in view of the discussions at the public hearings.

At the hearings, the great majority of speakers representing the Bar disagreed with any pro bono service requirement, citing issues of enforced servitude, incompetent representation, difficulty of administration and the like. These arguments were anticipated by the Committee and appropriate responses and compromises are reflected in the Committee’s report to address them. For this reason, I join in the Committee’s Report except to the extent that it recommends implementation of mandatory pro bono service now.

A phase-in of the program is appropriate because the long term achievement of the Committee’s objectives depends upon the unhswitating commitment of the Bar. The New York State Bar Association and various other bar associations have proposed aggressive voluntary programs.

These programs may not succeed. They face formidable obstacles, but there is benefit in the trying. The strong present resistance of the Bar to the mandatory concept and the need for unified commitment to any successful program lead me to conclude that phasing in the pro bono requirement as suggested by Evan Davis is an appropriate first step.
I agree with the Committee that (1) there exists an obligation to provide adequate legal assistance to poor persons, (2) the obligation rests with society in general, not only those who are lawyers, and (3) society as a whole should fulfill its obligation, by providing the necessary funds, but has not done so. In my view, however, the Committee should not attempt to solve or circumvent this political problem by compelling the lawyers of this State personally to underwrite the obligation of society as a whole.

I also concur with the Committee's conclusion that *pro bono* service is a personal obligation of every lawyer. For that very reason, I cannot endorse the Committee's proposal to compel lawyers to fulfill their personal obligation by rendering free services to the poor while, at the same time, creating a mechanism whereby the personal obligation can be bought out or hired out by a substantial number of lawyers.

Specifically, I believe that:

(1) The Committee has devoted inadequate attention to the historical role of lawyers in *voluntarily* contributing their legal services to worthy public causes, including free services for those unable to pay for those services.

(2) Although the poor clearly would benefit from additional free services of lawyers, there is inadequate evidence of a crisis of such magnitude as to warrant the conscription of lawyers to render such services, rather than the continuation of a voluntary system mobilized for increased services.

(3) If the compulsory service of lawyers is warranted, there is no basis for exempting large numbers of lawyers from that mandatory obligation.

(4) If the compulsory service of lawyers is warranted, the requirement should not be satisfied by activities (however laudable) that do not constitute the provision of legal services.

(5) The existing New York statutes and Constitution do not empower the Chief Judge (or any other person or entity) to impose the drastic compulsory obligation proposed by the Committee.

*First*, the Committee fails to recognize or take steps to mobilize lawyers in their historical role of *voluntarily* rendering legal services to those who need but are unable to afford such services — whether

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* Mr. Dougherty joins in Mr. Corbin's statement.
they be poor or middle-class. Lawyers may not be unique—but they are nearly unique—in proclaiming and honoring a professional obligation to serve those unable to pay for legal services. Obviously, the results thus far have not satisfied the Committee. I cannot accept, however, that the Committee and Bar Associations have done all they can do to (a) educate lawyers and the public of the need and (b) mobilize increased efforts to meet the need and, more critically, society’s obligation.

Second, although there is some empirical evidence that the poor require more free legal services than they now receive, there is inadequate support for the Committee’s conclusion that a “crisis” exists. While the Committee asserts that the existence of such a “crisis” has been proved “beyond reasonable doubt,” there is little in the Committee’s report to justify this broad conclusion. The Committee points to only one area—the New York City Housing Court—in which the problems undoubtedly encountered by the poor can be remedied by the infusion of additional legal services. It certainly has not been established that it is necessary to resort to the drastic step of requiring lawyers, by the force of government sanction (ironically, by a government unwilling to provide the needed funds), to render all manner of free legal services.

Third, and most critical from my point of view, even if one assumes the need for conscripting lawyers, there is no warrant for the two proposed exclusions from the obligation that individual lawyers contribute their services. If compulsory service is indeed justified, it should not be possible to evade that duty by hiring someone else to perform the work or by purchasing an exemption. In that respect, the Committee’s report contains a serious internal contradiction. The Committee concludes that not only is there a need to conscript attorneys into the battle, but “[t]he lawyer’s pro bono service requirement proposed by the Committee is a personal obligation of every attorney subject to it.” Yet the Committee incongruously would permit “groups” of attorneys to discharge this “personal obligation” by “hir[ing] one or more additional lawyers solely or partly for this

2. Indeed, the “preliminary report” on the “status” of the study of the New York State Bar Association’s Committee on Legal Aid, on which this Committee relied, itself carried the injunction that until the research staff completes its work of investigating its data, “no conclusion can be drawn from the overall results of the study”.
purposethat.\textsuperscript{4} Equally at odds with the notion of individual (and universal) responsibility is the option, which the Committee's proposal grants to law firms of fewer than ten attorneys, "to contribute money to an approved legal services organization or other public interest group."\textsuperscript{5}

I am unaware of any sound reason for these exceptions. More likely, a "trade-off" has been proposed. The "hire out" exception apparently is designed to make the service "requirement" less onerous for lawyers in the larger (principally downstate) firms—they can simply designate associates, or hire new ones, to function as their "substitutes". At the other extreme, the "buy-out" option permits small firms (largely upstate) to contribute money rather than provide \textit{pro bono} services themselves. These "exceptions" are of no small importance, given the large number of lawyers in the State who will be eligible to take advantage of them.\textsuperscript{6}

For those whose memories are short, I refer to the history of the Civil War for the evils of such a "practical" solution.\textsuperscript{7} As that history reveals, a system of conscription that is not universal, but purports to be such, undermines public confidence. If so, the ironic result may be to strengthen, rather than break down, an erroneous perception that lawyers are not sufficiently committed to help the poor obtain legal assistance.

Fourth, if the problem to be addressed is—as the Committee says—a lack of "adequate legal assistance to indigents in civil matters",\textsuperscript{8} then the remedy ought to be tailored to that problem. The Committee's proposal is not so limited. It permits lawyers to satisfy the "legal services" requirement not by actually rendering legal services to the poor, but also by one of two other methods: (1) engaging in "[a]ctivities related to improvement of the administration of justice by simplifying the legal process for, or increasing the availability and
quality of legal services to poor persons,"9 or (2) rendering "[p]rofessional services to charitable, religious, civic and educational organizations in matters which are designed predominantly to address the needs of poor persons."10

The Committee thus proposes a "remedy" which need not bear any relation to the problem to be addressed. If our goal is to meet a "crisis" in providing civil legal assistance to the poor, why should the rendering of any kind of services to charitable, religious, civic and educational organizations (or even to the "administration of justice") qualify, even if those services or organizations do not provide legal services (in contrast to other services) to the poor? It is not self-evident why some types of charitable work, concededly not limited to legal needs of the poor,11 should be an acceptable alternative to actually providing legal services. In this respect, the Committee goes well beyond EC 2-25 of The Lawyer's Code of Professional Responsibility, which speaks only of the obligation to render free "legal services" to those unable to pay reasonable fees.

Finally, it is submitted that there is no basis for the Committee's proposal that New York's Constitution or existing statutes authorize the Chief Judge, or any other person or entity, to compel lawyers at large to render free legal services. There may be an issue whether the courts have the implied traditional right to act in individual cases before them, and, if so, whether such action is valid under the state or federal Constitution. But even such an implied right would not justify the broad duty the Committee seeks to impose, since the proposed mandated services would cover not only matters in litigation before the Courts, but a multitude of other services having no relationship to those matters.

STATEMENT OF ROBERT B. FISKE, JR.

I respectfully dissent from the Committee's Report.

I am opposed to the imposition of a mandatory pro bono requirement to attempt to meet the need for increased legal services to the poor. It is my view that in recent months there has been an increase in the voluntary response by many in the profession to the needs of the poor for more effective representation. I am confident

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9. Id. at 49 [19 HOFSTRA L. REV. at 793].
10. Id. at 52 [19 HOFSTRA L. REV. at 795].
11. Id. at 53 [19 HOFSTRA L. REV. at 795-96].
that much more can be done by education of lawyers as to the extent
and specific nature of the need—a process which has been greatly
enhanced by the issuance of the Committee’s Preliminary Report and
the resulting public hearings—and by mobilization of volunteer law-
yers, matched to the specific needs involved, through coordinated
efforts of bar association leaders, legal assistance groups and the
leaders of individual law firms.

The organized bar, through the State Bar Association and nu-
merous County Bar Associations, has opposed the imposition of a
mandatory pro bono requirement and has asserted its ability to gen-
erate on a voluntary basis the pro bono contributions to the needs of
the poor which the Committee would make mandatory. I would favor
giving the bar the opportunity to do what it has said it can do, over
a two-year period, with the imposition of the mandatory reporting
requirement recommended by the State Bar. If this two-year period
shows that the requisite contribution can be made on a voluntary
basis, I would defer consideration of a mandatory pro bono require-
ment for a further period of time. If the two-year period does not
produce the requisite level of legal assistance on a voluntary basis,
the organized bar will be in a much weaker position to complain
about the imposition then of a mandatory pro bono requirement; the
imposition of such a requirement at that time will generate consider-
ably less hostility and opposition than will the imposition of such a
requirement now.

I would hope this process will also produce significant voluntary
financial contributions from lawyers and law firms to increase the
full-time legal staff of existing legal assistance agencies who are the
best equipped, by experience and training to provide assistance to the
poor. Proper representation of the poor calls for specialized knowl-
edge and experience in the areas of most concern to them: e.g., hous-
ing, family law and government benefits. These are areas in which
the vast majority of lawyers who would be subject to the proposed
mandatory pro bono requirement have little or no experience. The
training necessary to meet this problem—for a return per lawyer of
less than 20 hours per year—would itself impose a heavy diversion-
ary burden of time and expense on the very agencies which are al-
ready inadequately staffed to meet the problems.

Finally, I share the reservations expressed by Sol Neil Corbin as
to the authority under the New York Constitution and existing statutes
for the compulsion of mandatory pro bono services.

March 27, 1990
APPENDIX A

The Chief Judge of the State of New York
Sol Wachtler

March 30, 1988

Victor Marrero, Esq.
Brown & Wood
One World Trade Center
New York, New York 10048

Dear Mr. Marrero:

Thank you so much for agreeing to serve as the Chair of the Committee to Improve the Availability of Legal Services.

As the growing need for providing legal services to the poor has worsened, attention has been increasingly focused on the obligation of the private bar to provide greater representation on behalf of those who need such services but are unable to pay for them.

There has been a disproportionate growth in the number of lawyers engaged in the practice of law in relation to the number of people who are denied effective access to the civil justice system in this state because of a lack of means. Although there have been creative attempts by some segments of the public and private sectors to address these needs, the need still overwhelms the available solutions.

I am joining the members of the Association of the Bar of the City of New York and other leading citizens of our state in an attempt to facilitate the involvement of attorneys in the discharge of their fundamental and ethical responsibilities as members of the Bar. The committee will be charged with reviewing information and reporting about the extent of the unmet need for civil legal services, the scope and operation of the existing networks recruiting private lawyers for pro bono assignments, and mechanisms for inducing cooperation and compliance and sanctioning the opposite.
While committee membership and deliberations will be statewide in scope, it is expected that the focus of their initial considerations and recommendations will concentrate on the particularly pressing need for additional pro bono publico representation in New York City, and will be asked to submit to me by March 31, 1989, a report which will include a plan for action concerning methods and programs necessary to provide increased provision of legal services to the poor. The report should include specific proposals as to the operation of mechanisms necessary to implement the suggestions of the committee. Deliberations of the committee may also include consideration of the propriety and feasibility of imposing a mandatory pro bono obligation on all members of the bar as is developing in other jurisdictions.

I am most grateful for your willingness to perform this valuable public service by attempting to devise solutions to a problem that seems intractable and overwhelming but should not be.

You will be contacted soon to arrange for a convenient time for the first Committee meeting.

Most cordially,

Sol Wachtler

SW/bla
APPENDIX B

TEXT OF THE PRO BONO LEGAL SERVICES
REQUIREMENT PLAN PROPOSED BY THE COMMITTEE TO
IMPROVE THE AVAILABILITY OF LEGAL SERVICES

I. Scope of The Requirement:

Except as otherwise provided pursuant to Article II hereof, every attorney who is required to file a registration statement pursuant to the provisions of 22 N.Y. Codes R. & Regs. § 118.1 shall have the obligation to perform a minimum of forty (40) hours of qualifying services during each two (2) year registration period. This obligation shall be performed personally, except as otherwise permitted pursuant to Articles IV and V hereof.

II. Exemptions:

The following attorneys shall be exempt from the requirement:

A. Attorneys described in 22 N.Y. Codes R. & Regs. §118.1(g) who are not required to pay a registration fee by reason of the provisions thereof.

B. Attorneys who are not involved in the active practice of law in New York or who are unable to participate by reason of illness or other extraordinary circumstances. Attorneys claiming exemptions by reason of this subdivision shall, with their registration statements, file affirmations specifying the factual bases for their claims.

III. Qualifying Services:

Qualifying services shall consist of professional activities provided without fee which fall into one or more of the following categories:

A. Professional services rendered in civil matters, and in those criminal matters for which there is no government obligation to provide funds for legal representation, to persons who are financially unable to compensate counsel.

B. Activities related to improvement of the administration of justice by simplifying the legal process for, or increasing
the availability and quality of legal services to, poor persons.

C. Professional services to charitable, religious, civic and educational organizations in matters which are designed predominantly to address the needs of poor persons.

IV. Groups:

The requirement may be met individually or by an aggregate of work performed by a specified group of attorneys (i.e., an existing firm, bar association group, or a group formed by practitioners for the purpose of this requirement.)

1. If attorneys choose to fulfill their requirements by participating in a group, the group shall be required to maintain records identifying each member participating, the nature of the project, the client represented, the date that work was performed, the nature of the work performed, and the total number of hours of work performed by each attorney in the group, and the allocation of same.

2. A copy of such records shall be made available to, and shall be maintained by, each member of the group. In meeting the requirement, no member of the group may take credit for qualifying work performed by any other attorney, without a prior allocation of hours having been agreed to, in writing, by the group.

3. Attorneys admitted to practice in New York State for less than two (2) years shall be required to personally perform their requirement for qualifying services. While such attorneys may participate in a group, their personal obligation may not be counted towards satisfying the requirement of any other member of the group.

V. Monetary Contribution Option:

Attorneys admitted to practice in New York State for more than two (2) years and who practice alone or in firms with fewer than ten (10) attorneys may satisfy all, or part, of their qualifying services requirement by a payment of $50.00 for each hour of qualifying services not performed. Payments made pursuant to this provision shall be made to any established program administered by or under the
auspices of a legal aid organization, law school, or bar association or a similar program which has been approved by the appropriate authority.

**VI. Qualifying Work Exceeding The Requirement:**

Any amount of qualifying services performed by attorneys in excess of forty (40) hours during any two-year registration period may be carried forward to be credited to the next two successive registration periods.

**VII. Disbursements:**

Reasonable costs incurred by attorneys in connection with rendering qualifying services shall be reimbursable.

**VIII. Reporting:**

Attorneys shall indicate on their registration statements whether or not they complied with the requirement during the two-year registration period. Every attorney avowing compliance with the requirement shall maintain, for a period of seven (7) years, such records as shall be necessary to substantiate claims of compliance.

Failure to comply with the requirement, or making false representations of compliance with the requirement, or false representation that filing a registration statement and/or fulfilling the requirement is not required, shall result in referral for disciplinary action by the relevant Appellate Division of the Supreme Court, pursuant to Section 90 of the New York Judiciary Law.
APPENDIX C

CONSTITUTIONAL AND STATUTORY ISSUES

The legal arguments lodged against the Committee’s pro bono legal services plan may be categorized under three types of claims: 1) that the proposal is unconstitutional; 2) that the Court of Appeals lacks power to implement the plan; and 3) that in operation the plan will conflict with other laws or ethical precepts. Generally, these contentions were advanced without reference to the authorities and materials cited in our Preliminary Report and Appendix. We have examined each of these legal arguments and find them unpersuasive. Indeed, although the plan is novel, the relevant authorities lend strong support to it.

A. Constitutionality.

1. The Thirteenth Amendment Claim

The legal objection most frequently raised was that required service by attorneys would constitute “involuntary servitude”, in violation of the Thirteenth Amendment to the federal Constitution. It is well established, however, that the Thirteenth Amendment does not prevent the government from compelling its citizens “to perform certain civic duties”. It simply is not applicable to “a call for service made by one’s government according to law to meet a public need”. The judicial assignment of uncompensated counsel to represent indigent persons, which often involves a greater demand upon the time and schedules of individual lawyers than the plan recommended by the Committee, has withstood challenge under the Thir-

2. The Thirteenth Amendment provides:
   Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
   U.S. Const. amend. XIII (1).
4. Heflin v. Sanford, 142 F.2d 798, 799 (5th Cir. 1944); Butler v. Perry, 240 U.S. 328, 333 (1916). See infra note 6 and accompanying text.
teenth Amendment. Thus, the Committee’s plan should readily survive such challenge.

The Supreme Court, in *Butler v. Perry*, rejected a Thirteenth Amendment challenge to a law requiring “every able bodied male person” between the ages of eighteen and forty-five to work without compensation on roads and bridges for six ten-hour days each year, or, alternatively, to pay a three dollar assessment or to find a substitute to perform the labor. Because the Committee’s proposal applies to all members of the relevant population, requires only forty hours every two years, in contrast to the sixty hours per year required in *Butler*, and because the Committee’s plan also permits alternate means of discharging the duty, the Committee is confident that the plan would be upheld against a Thirteenth Amendment challenge.

Moreover, as the Supreme Court has observed, “in every case in which the Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.” Thus, involuntary servitude challenges to employment conditions fail when the complainant is free to quit the employment involved. In sum, although the claim of “involuntary servitude” was heard with surprising frequency by the Committee, it is not supported by legal authority.


6. 240 U.S. 328 (1916). The Thirteenth Amendment “certainly was not intended to interdict enforcement of those duties with individuals owe to the state, such as services in the army, militia, on the jury; etc.” *Id.* at 333.


2. The "Taking Without Compensation" Claim

Critics also contend that the Committee plan would amount to a "taking" of lawyers' property for government use without compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 7 of the New York State Constitution. The argument is based upon holdings that a lawyer has a constitutionally protected property interest in seeking bar admission\(^\text{10}\), juxtaposed with holdings prohibiting the taking of real property interests without just compensation.\(^\text{11}\)

The argument is flawed for several reasons: The most basic argument against the plan is that "the Fifth Amendment does not require that the . . . Government pay for the performance of a duty it is already owed."\(^\text{12}\) New York lawyers have no legitimate expectation of being excused from providing uncompensated services to the poor pursuant to judicial direction.\(^\text{13}\) Accordingly, the threshold "taking" of property, necessary to trigger scrutiny under the takings clause, is absent. Significantly, it has been held that the assignment of uncompensated counsel does not constitute a taking without compensation.\(^\text{14}\)

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12. Hurtado v. United States, 410 U.S. 578, 589 (1973). "The personal sacrifice involved [for a witness] is a part of the necessary contribution of the individual to the welfare of the public [citation omitted]." Id. Quoting Wigmore, the Court said: "[t]he may be a sacrifice of time and labor, and thus of ease, of profits, of livelihood. This contribution is not to be regarded as a gratuity, or a ceremony, or an ill-required favor. It is a duty not to be grudged or evaded. Whoever is impelled to evade or resent it should retire from the society of organized and civilized societies, and become a hermit. He who will live by society must let society live by him, when it require to . . . ." Hurtado, 410 U.S. at 589, n.10 (quoting 8 Wigmore, Evidence § 2192, p. 722 (J. McNaughten rev. 1961)).
13. The "recent scholarship" cited in Mallard v. U.S. District Court, U.S., 109 S.Ct. 1814, 1819, n.4 (1989) does not adequately address the situation in New York, where the courts have repeatedly stressed both their inherent and statutory power to assign uncompensated counsel, and the "concomitant duty" of lawyers to accept assignments. E.g., Matter of Smiley, 36 N.Y.2d 433, 369 N.Y.S.2d 93, 330 N.E.2d 53 (1975); People ex rel Acrisetti v. Grout, 87 A.D. 193, 195-96, affirmed on prevailing opinion below, 177 N.Y. 587 (there has never been a time when the courts of New York lacked power to assign uncompensated counsel to represent the poor); Medina v. Medina, 109 A.D.2d 691, 487 N.Y.S.2d 23 (1st Dept. 1985). In addition to the inherent power of the court reaffirmed by all member of the Smiley court, statutes in New York State provided for assignment of counsel at least since 1801 (L.1801, c. 90 (21)), and since 1494 in England (II Hen. VII, c. 12). The current statute, N.Y. Civ. Prac. L. & R. 1102(a), is little different from the 1801 statute.
14. United States v. Dillon, 346 F.2d 633, 635-36 (9th Cir. 1965). Dillon was cited
A related argument, based upon a "regulatory taking" theory, is similarly unavailing. A regulatory taking occurs "when the adjustment of rights for the public good becomes so disproportionate that it can be said that the governmental action is 'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. . ..'" In *Smiley*, the Court of Appeals alluded to the possibility of such constitutional implications if judicial assignment burdens became so extreme as to become "intolerable". The Committee plan could not possibly lead to that result. For example, if a matter becomes more involved than originally anticipated, credit for the time spent can be carried forward to future reporting periods, or allocated to satisfy the obligation of other lawyers in the firm. The Committee's proposal is reasonably calculated to enlist many more hands to lighten the burden, and to generate significant additional services to the poor from the state's more than 80,000 lawyers, without overburdening individual lawyers or any segment of the Bar, such as trial lawyers. The plan is quite flexible, and it allows for consideration of special circumstances and exceptions where justified. It cannot seriously be contended that the twenty-hour per year requirement—twenty three minutes per week—would deny lawyers "economically viable use" of their license to practice law, or that it will "not substantially advance legitimate State interests" in making increased access to the civil justice system available to the poor. Accordingly, the doctrine of regulatory takings is not a barrier to implementation of the plan.

with approval by the Supreme Court in *Hurtado*, supra. In *Menin v. Menin*, 79 Misc.2d 285, 359 N.Y.S.2d 721 (Sup. Ct. Westchester Co. 1974), aff'd, 48 A.D.2d 904, 372 N.Y.S.2d 985 (2d Dept. 1975), Judge Gagliardi held that provision of counsel in divorce cases through assignments would violate the constitutional rights of assigned attorneys. *Menin*, sometimes cited by opponents of the Committee plan, was affired by the Appellate Division on other grounds, under the constrain of *Smiley*. Subsequently, the Supreme Court, Westchester County, held that an assignment did not violate the rights of the assigned attorney. *Matter of Farrell*, 127 Misc.2d 350, 351, 486 N.Y.S.2d 130, 131 (Sup. Ct. Westchester Co. 1985). Judge Gagliardi testified to the Committee concerning the system of uncompensated matrimonial assignments upheld in *Farrell*, and spoke in support of a mandatory service obligation.

18. *Id.*
3. Substantive Due Process and Equal Protection

Substantive due process and equal protection claims against the plan also fail. Lawyers in New York have no legitimate expectation that they will not be called upon by the court to fulfill their historic duty to provide uncompensated services to the poor. A lawyer becomes a member of the bar "for something more than private gain. He [becomes] an officer of the court, and like the court itself, an instrument or agency to advance the ends of justice." 19 The argument that lawyers are being singled out in ways that other professions or occupations are not is unavailing. Whether other professions have similar obligations is irrelevant, so long as the rule has a rational relation to a legitimate governmental purpose. 20 The plan is not arbitrary. Rather, it is an efficient mechanism for providing increased services to the poor, and it is reasonably related to the goal of providing access to the civil justice system for the poor.

B. Power of the Court to Adopt the Proposed Plan

The legal challenge under state law asserts that the Court of Appeals lacks authority under the New York Constitution and applicable statutes to implement a mandatory pro bono legal services plan, as the Committee proposes, by judicial rule. But the Committee is satisfied that there exists a sufficient framework of authority under which to promulgate a pro bono legal services requirement. The text of the Committee's Report, Part II.D., sets forth a constitutional and statutory basis for implementation of the plan through a four-fold regulatory process that would be effectuated by the Chief Judge, the Appellate Divisions of the Supreme Court, the Chief Administrator, and the Court of Appeals. 21 Briefly, under authority of the New


York Constitution, article 6, section 28 and Judiciary Law section 211, the Chief Judge can promulgate new standards and administrative policies to facilitate expeditious and fair treatment of the civil cases of indigents in the New York courts. The Chief Judge has power to administer the practice of law in the Courts, and this power is "complete." Furthermore, lawyers admitted to practice in New York can be compelled to assist in the overall administration of justice in the courts pursuant to standards set by the Court of Appeals under Judiciary Law section 53. That section would provide the authority for the Court of Appeals to promulgate a regulation compelling attorneys admitted to practice to consent to provide the required minimum standard of pro bono services as a condition of admission to practice.

It was contended, however, that Article 17 of the State Constitution vests the power to provide aid to the poor solely in the Legislature, and that legislation therefore would be necessary to adopt the rule proposed by the Committee. This argument, as well as the argument that the plan constitutes a tax which must be legislated under Article XVI, Section 1 of the State Constitution, ignores the inherent common law power of the Court to require members of the bar to provide uncompensated counsel to the poor, the judiciary’s power to regulate the practice of law by all attorneys, and the obligation of the judiciary, as a coequal branch of government, to maintain access to the justice system for the poor. This inherent power was recognized by all members of the Court in Smiley. Furthermore, the argument does not address the point that the service to the poor is not a duty owed by the lawyer to others, but a duty owed to the court, as a condition of admission to the Bar, to aid in the proper administration of justice.

Some argued that the only proper course is for courts to assign counsel on an ad hoc basis, in individual cases in judicial proceedings.

24. "The duty to defend the indigent without charge is not a personal duty in the conventional sense of an obligation owed by one man to another . . . . Rather, the duty is owed to the Court, and it is the Court’s call that he is obliged to answer. The duty is to assist the Court in the business before it. The duty thus is an incident of the license to practice law, and the power to deal with it must therefore repose in the branch of government charged with responsibility for the terms and conditions of the right to practice." State v. Rush, 46 N.J. 399, 217 A.2d 441 (N.J. 1966).
only, under Article 11 of the New York Civil Practice Laws and Rules. The Committee proposal recognizes the modern reality that many lawyers do not regularly appear in the courts where the cases of poor persons are heard; that courtroom assignments may be disruptive to the schedules of lawyers, particularly those who are unfamiliar with the subject matter of a case; that ad hoc assignments may contribute to congestion of court calendars, when assigned counsel require adjournments; and that assignments may not address the needs of the poor in the administrative proceedings, where adjudications sometimes affect the lives of the poor in drastic ways.

The judiciary is not limited to addressing the crisis only by assigning counsel without compensation in judicial proceedings. It also possesses ample inherent power to establish conditions upon the practice of law, and to regulate the conduct of attorneys, to assure meaningful access to justice for those who are unable to afford the cost of counsel. As recently stated by Justice Blackmun, in a case arising from a lawyers' "boycott" of judicial assignments:

[The courts and legislature . . . had the power to terminate the boycott at any time by requiring any or all members of the District Bar . . . to represent indigent defendants pro bono. Attorneys are not merely participants in a competitive market for legal services; they are officers of the court. Their duty to serve the public by representing indigent defendants is not only a matter of conscience, but is also enforceable by the government's power to order such representation, either as a condition of practicing law . . ., or on pain of contempt.]

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25. It must be conceded that judges, in making assignments under N.Y. Civ. Prac. L & R. 1102, properly could consider the amount of pro bono service for the poor performed by a lawyer in administrative proceedings or in other ways, and could even out the burden by assigning another lawyer who had provided less service. The end result, that lawyers would discharge their duty to assist the poor in a variety of ways, could be the same, but the Committee plan is administratively more convenient because it avoids formal motion practice under Article 11, and lawyers are better able to schedule and prepare for their pro bono work.

26. The judiciary comprehensively regulates the admission of lawyers to practice, their conduct, and their periodic registration and reporting. Rule of the Court of Appeals, 22 NYCRR Part 520 (Standards for bar admission); 22 NYCRR Part 118 (Registration of attorneys); 22 NYCRR Part 80, 80.3(6)(c) (Administrative Delegations of the Chief Judge, Appellate Division to supervise assignment of counsel and regulate practice of law). Rules of the Appellate Division, 22 NYCRR Part 603 (1st Dept. Conduct of Attorneys, 22 NYCRR Part 691 (Second Department, Conduct of Attorneys); 22 NYCRR Part 806 (Third Department, Conduct of Attorneys); 22 NYCRR Part 1022 (Fourth Department, Rules Relating to Attorneys).

27. Federal Trade Commission v. Superior Court Trial Lawyers Association, ___ U.S.
The United States Supreme Court, on two occasions in recent years, has implicitly recognized the power of the highest courts of New Hampshire and Virginia to require members of the bar, as a condition of their admission to practice, to provide legal assistance to the poor.\(^\text{28}\)

Accordingly, the method of implementation recommended by the Committee in Part II.D. of the Final Report is appropriate.

**C. Claims of Conflict With Other Laws and Professional Ethics**

1. **Government lawyers**

   Some government lawyers contended that the plan would violate agency rules against outside practice of law or laws against the use of government resources for private purposes. Some public agency policies that the Committee examined, however, made provision for limited outside practice without compensation, with supervisory approval. Significantly, the federal government has an Executive Order encouraging its attorneys to provide pro bono service.\(^\text{29}\) Upon adoption of the Committee plan, it would be incumbent upon lawyers who head government law offices to relax any perceived impediment in their rules in order to allow attorneys to discharge their obligations. Moreover, in the hypothetical instance of a government lawyer or law secretary to a judge who might be completely barred from representing a client, the Committee plan’s flexibility still allows the attorney to discharge the obligation in numerous other ways, such as training volunteer lawyers, or working to improve the laws that affect the poor and their access to legal assistance.

2. **The Competence Issue**

   Some claimed that the requirement of competent representation would be an obstacle to effectuation of the plan, because of the unfamiliarity of many lawyers with the laws that affect the poor. Lack of

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\(^\text{28}\) “A ‘nonresident bar member, like the resident member, could be required to represent indigents and perhaps to participate in formal legal-aid work.’” Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988) (quoting Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985). The Supreme Court has not yet decided whether United States District Courts possess inherent power to require member of the federal bar to provide assistance to the poor. Mallard v. United States District Court, ___ U.S. ___, 109 S.Ct. 1814 (1989)).

experience, however, is not grounds for relief of assigned counsel, because "[t]he Court of Appeals assumes that all the registered lawyers in this state are available for assignment either in the Appellate Courts or in the Trial Courts." Nothing in the Committee plan requires lawyers to perform work outside the limits of their competence, and some critics simply failed to understand the flexibility with which the obligation may be discharged. Because of the flexibility in the Committee plan, and in contrast to appointments, lawyers will have ample time to learn more about a particular area of practice where help is needed by the poor, such as housing or matrimonial law, and can avail themselves of a training or continuing education program, or associate with a legal services or volunteer program or with other lawyers who can aid in legal representation of the poor.

Conclusion

The Committee's mandatory pro bono legal services plan is constitutional under the Thirteenth, Fifth, and Fourteenth Amendments to the United States Constitution, and Article 1, Section 7 of the New York Constitution. The New York Court of Appeals has the power to implement the plan, and the plan does not conflict with other laws or ethical considerations. Therefore, there is no legal impediment to adoption of the Committee plan.

BIBLIOGRAPHY

I. BOOKS

B. Abel-Smith & R. Stevens, Lawyers and the Courts (1967)

J. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (1976)

J. Bradway & R. Smith, The Growth of Legal Aid Work in the United States (1936)


B. Brownell, Legal Aid in the United States (1951), & Supplement (1961)

M. Cappelletti, J. Gordley & E. Johnson, Toward Equal Justice: A Comparative Study of Legal Aid In Modern Societies (1978)

M. Cass & R. Sackville, Legal Needs of the Poor (1975)

B. Christensen, Lawyers for People of Moderate Means (1970)


J. Cooper, Public Legal Services: A Comparative Study of Policy, Politics and Practice (1983)

B. Curran, The Legal Needs of the Public (1977)

L. Deitch & D. Weinstein, Prepaid Legal Services: Socio-economic Impacts (1976)

R. Egerton, Legal Aid (1945)

K. Fisher & C. Ivie, Franchising Justice: The Office of Economic Opportunity Legal Services Program and Traditional Legal
MARRERO COMMITTEE REPORT

Aid (1971)

B. Garth, Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession (1980)

P. Hanks, Evaluating the Effectiveness of Legal Aid Programs: A Discussion of Issues, Options and Problems (1980)

E. Johnson, Justice and Reform: The Formative Years of the OEO Legal Services Program (1974)

J. Katz, Poor People’s Lawyers in Transition (1982)

D. Maddi & F. Merrill, The Private Practicing Bar and Legal Services for Low-Income People (1971)


C. Menkel-Meadow, The 59th Street Legal Clinic: Evaluation of the Experiment (1979)

G. Meredith, Legal Aid: Cost Comparison — Salaried and Private Lawyers (1983)

P. Morris, R. White & P. Lewis, Social Needs and Legal Action (1973)

E. Parry, The Law and the Poor (1914)

A. Paterson, Legal Aid as a Social Service (1970)

S. Pollock, Legal Aid — The First 25 Years (1975)

R. Pound, The Lawyer from Antiquity to Modern Times (1953)

L. Silverstein, *Defense of the Poor* (1965)

R. H. Smith, *Justice and The Poor* (3d ed. 1919)


L. Taman, *The Legal Services Controversy: An Examination of the Evidence* (1972)


M. Zander, *Legal Services for the Community* (1978)

F. Zemans, *Community Legal Services Report* (1972)

*International Directory of Legal Aid* (J. Lane & S. Hillyard eds. 1985)

II. COLLECTIONS OF ESSAYS

*Innovations in Legal Services* (E. Blankenburg ed. 1980)


*Access to Justice: A World Survey bk.3* (M. Cappelletti & B. Garth eds. 1978)

*Access to Justice: Emerging Issues and Perspectives* (M. Cappelletti & B. Garth eds. 1979)

*Access to Justice: Promising Institutions* (M. Cappelletti & J. Weisner eds. 1978)

*Lawyers and the Consumer Interest: Regulating the Market for Legal Services* (R. Evans & M. Trebilcock eds. 1982)

*The Professions and Their Prospects* (E. Freidson ed. 1971)


Verdict on Lawyers (R. Nader & M. Green eds. 1976)

Welfare Law and Policy: Studies, Practice and Research (M. Partington & J. Jowell eds. 1979)

Towards a Justice with a Human Face (M. Storme & H. Casman eds. 1978)

Law in the Balance: Legal Services in the Eighties (P. Thomas ed. 1982)

Public Interest Law: An Economic and Institutional Analysis (B. Wesbrod, J. Handler & N. Komesar eds. 1978)

Perspectives on Legal Aid: An International Survey (F. Zemans ed. 1979)

Symposium: An International Comparison of Legal Services for the Poor, 10 Cornell Int’l L.J. 205 (1977)

III. LAW REVIEWS

A. Articles

Abel, Socializing the Legal Profession: Can Redistributing Lawyers’ Services Achieve Social Justice?, 1 L. & Pol’y Q. 5 (1979)


Abel, Law Without Politics: Legal Aid Under Advanced Capitalism, 32 UCLA L. Rev. 474 (1985)

Adler, Fisher, Marable & Rothschild, Pro Bono Legal Services: The Objections and Alternatives to Mandatory Programs, 53 Cal. St. B.J. 24 (1978)
Agnew, *What's Wrong With the Legal Services Program*, 58 A.B.A. J. 930 (1972)


Carlin & Howard, *Legal Representation and Class Justice*, 12 UCLA L. Rev. 381 (1965)


Cheatham, *The Lawyer's Role and Surroundings*, 25 Rocky Mtn. L. Rev. 405 (1953)


Erlanger & Klegon, Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns, 13 L. & Soc’y Rev. 11 (1978)

Ervin, Uncompensated Counsel: They Do Not Meet the Constitutional Mandate, 49 A.B.A. J. 435 (1963)

Failinger & May, Litigating Against Poverty: Legal Services and Group Representation, 45 Ohio St. L.J. 1 (1984)


Fried & Siegel, The Unmet Need: Providing Legal Services to the Poor, 55 Fla. B.J. 313 (1981)

Friedman, Limitations on the Corporate Lawyer’s and the Law Firm’s Freedom to Serve the Public Interest, 33 Bus. Law. 1475 (1978)

Gaetke, Lawyers as Officers of the Court, 42 Vand. L. Rev. 39 (1989)

Galanter, The Duty Not to Deliver Legal Services, 30 U. Miami L. Rev. 929 (1976)


Halpern & Cunningham, Reflections on the New Public Interest


Harris, The San Francisco Community Law Collective, 7 L. & Pol'y Q. 19 (1985)


Huber, Thou Shalt Not Ration Justice: A History and Bibliography of Legal Aid in America, 44 Geo. Wash. L. Rev. 754 (1976)

Humbach, Serving the Public Interest: An Overstated Objective, 65 A.B.A. J. 564 (1979)

Hunter, Slave Labor in the Courts—A Suggested Solution, 74 Case & Com. 3 (1969)


Johnson, Legal Services for the Average Citizen, 64 A.B.A. J. 979 (1978)


Keeton, The Need for Legal Services to the Poor, 29 Tex. B. J. 351 (1966)


Levine & Preston, Community Resource Allocation Among Low Income Groups, 1970 Wis. L. Rev. 80

Lochner, The No Fee and Low Fee Legal Practice of Private Attorneys, 9 L. & Soc’y Rev. 431 (1975)

Luban, Political Legitimacy and the Right to Legal Services, 4 Bus. & Prof. Ethics J. 43 (1985)


Maguire, Poverty and Civil Litigation, 36 Harv. L. Rev. 361 (1923)

Maher, No Bono: The Efforts of the Supreme Court of Florida to Promote Full Availability of Legal Services, 41 U. Miami L. Rev. 973 (1987)

Marks, A Lawyer’s Duty to Take All Comers and Many Who Do Not Come, 30 U. Miami L. Rev. 915 (1976)


Martineau, The Attorney As An Officer of the Court: Time to Take the Gown Off the Bar, 35 S.C. L. Rev. 54 (1984)

McAninch, A Constitutional Right to Counsel for Divorce Liti-
MARRERO COMMITTEE REPORT

1991

MARRERO COMMITTEE REPORT

1991

MARRERO COMMITTEE REPORT

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MARRERO COMMITTEE REPORT

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MARRERO COMMITTEE REPORT

1991
Pye & Garraty, *The Involvement of the Bar in the War Against Poverty*, 41 Notre Dame Law. 860 (1966)


Smith, *Legal Service Offices for Persons of Moderate Means*, 1949 Wis. L. Rev. 416
Smith, President's Page, 60 A.B.A. J. 641 (1974)

Smith, President's Page, 66 A.B.A. J. 1166 (1980)


Smith, Improving the Image of the Organized Bar, 49 Judicature 139 (1985)

Smurl, In the Public Interest: The Precedents and Standards of a Lawyer's Public Responsibility, 11 Ind. L. Rev. 797 (1978)


Storey, The Legal Profession Versus Regimentation: A Program to Counter Socialization, 37 A.B.A. J. 100 (1951)

Stumpf & Janowitz, Judges and the Poor: Bench Response to Federally Financed Legal Services, 21 Stan. L. Rev. 1058 (1969)


Swygert, Should Indigent Civil Litigants in Federal Courts Have a Right to Appointed Counsel, 39 Wash. & Lee L. Rev. 1267 (1982)

Tate, Access to Justice, 65 A.B.A. J. 904 (1979)

Tisher, Bernabei & Green, The Sad State of Pro Bono Activity, 13 Trial 43 (1977)


B. Student-Written Materials


Comment, *The Uncompensated Appointed Counsel System: A Constitutional and Social Transgression*, 60 Ky. L.J. 710 (1972)


Note, The Practice of Law in the Public Interest, 13 Ariz. L. Rev. 797 (1971)

Note, Professional Responsibility—Conflicts of Interest Between Legal Aid Lawyers, 37 Mo. L. Rev. 346 (1972)


Note, The Indigent's "Right" to Counsel in Civil Cases, 43 Fordham L. Rev. 989 (1975)


Note, The Inherent Power of the Judiciary to Regulate the Practice of Law—A Proposed Delineation, 60 Minn. L. Rev. 783 (1976)

Note, Indigents' Right to Appointed Counsel in Civil Litigation, 66 Geo. L.J. 113 (1977)

Note, Court Appointment of Attorneys in Civil Cases: The Constitutionality of Uncompensated Legal Assistance, 81 Colum. L. Rev. 366 (1981)


Comment, Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution, 26 U. Pitt. L. Rev. 811 (1965)

Note, The Right to Counsel in Civil Litigation, 66 Colum. L. Rev. 1322 (1966)

Note, Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 Harv. L. Rev. 805 (1967)

Note, The Indigent's Right to Counsel in Civil Cases, 76 Yale
IV. SPECIAL REPORTS


American Bar Association, Commission on Professionalism
"... In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism (1986)


American Bar Association, Private Bar Involvement Project, *Assessing the Role of the Organized Bar in Delivery of Pro Bono Legal Services, Selected Materials* (June 1988)

American Bar Association Special Committee on Public Interest Practice *Implementing the Lawyer's Public Interest Practice Obligation* (June 1977)


Association of the Bar of the City of New York Committee on Legal Assistance, *Housing Court Pro Bono Project: Report on the Project, Parts I and II* (June and Nov. 1988)


Association of the Bar of the City of New York, Committee on Legal Assistance, *Report on the Availability of Matrimonial Representation for the Poor and the Feasibility of Mandatory Pro Bono Representation in Matrimonial Matters in New York City*
Marrero: Committee to Improve the Availability of Legal Services - Final R

(1991)

MARRERO COMMITTEE REPORT 881

(Oct. 1988)

Association of the Bar of the City of New York, Committee on Legal Assistance, Representation of Pro Se Civil Litigants In the Federal District Court Through The Pro Bono Panels (Aug. 1988)

Association of the Bar of the City of New York, Special Committee on the Lawyer's Pro Bono Obligations, Toward a Mandatory Contribution of Public Service Practice by Every Lawyer (Jan. 1980)

Center for Governmental Responsibility, Holland L. Center, University of Florida, The Legal Needs of the Poor and Underrepresented Citizens of Florida: An Overview (J. Mills ed. 1980)

Civil Legal Services Committee of the State Bar Association of North Dakota and the North Dakota Trial Lawyers Association and the North Dakota Supreme Court, Report and Recommendations: A Workable Plan for the Poor of North Dakota: A Practical, Equitable and Political Proposal for Bar Leadership (1988)

Florida Bar Public Interest Programs and Services, Report of the Special Commission on Access to the Legal System (1985)


Massachusetts Legal Services Corporation, Massachusetts Legal Services Plan for Action (Nov. 1987)

New York State Bar Association, Committee on Legal Aid, New York Legal Needs Study: Draft Final Report (October 11, 1989)

Spangenberg, Action Plan for Legal Services to the Poor (Boston Bar Association 1977)

V. MISCELLANEOUS

A. Relevant Publications

IOLTA Update


Legal Service Bull.


Legal Services Corp. News

Poverty L. Today

B. Ethical Codes


American Bar Association, *Canons of Professional Ethics* (adopted by American Bar Association at its 31st annual meeting in 1908, and applied as amended until 1970)

VI. COURT DECISIONS


*In the Matter of Snyder*, 734 F.2d 344 (1984)
In re Smiley, 36 N.Y.2d 433 (1975)


Yarbrough v. Superior Court (County of Napa), 702 P.2d 583 (Cal. 1985)

County of Los Angeles v. Superior Court, 102 Cal. App. 3d 926, 162 Cal. Rptr. 636 (1980)

County of Tulare v. Ybarra, 143 Cal. App. 3d 580, 192 Cal. Rptr. 49 (1983)