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## Symposium: Creative Problem Solving Conference – Conference Transcript Excerpt--Session 1: Envisioning the New Lawyer

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# CALIFORNIA WESTERN LAW REVIEW

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## SESSION 1: ENVISIONING THE NEW LAWYER

[EXCERPTS]

### I. OPENING REMARKS: DEAN STEVEN SMITH, CALIFORNIA WESTERN SCHOOL OF LAW & DEAN ROBERT WALSH, WAKE FOREST LAW SCHOOL

DEAN STEVEN SMITH: Problems are things that get in the way of clients achieving their goals, and clients have problems, not cases. This conference is really dedicated to talking about the role of attorneys in helping clients avoid problems when we can help them avoid problems—that is to say, help them get what they want without problems, and when problems arise, helping them to efficiently and effectively solve the problems and get to their goals. It's true that clients often may not have given much thought to what their goals are, and so part of the role of the attorney is helping clients understand where they want to be and what their goals are.

This really is an exciting time for us to think about the very best in our profession, of helping people achieve what they need to achieve in their lives and doing it in a way that is efficient and effective.

Bob Walsh has been a terrific chair of the Section of Legal Education. In addition to that, he's the dean of the Wake Forest Law School and has contributed an enormous amount, really, to legal education over the last two decades as the chair of the Standards Review Committee and half the committees of the Section of Legal Education. It's a particular honor for me to introduce my friend and my colleague, Dean Robert Walsh.

DEAN WALSH: I am—I guess you could call it—in the good sense of the term—a baraholic. I have been president of a county bar. I've been on the board of governors of two different state bars. I've been involved in the ABA. I have been to as many bar committee meetings as it is possible for someone of my age to have been at, I think, in my lifetime.

And the two recurrent themes—especially over the last decade—have been, one: professionalism; what can we do? Is there a loss of professionalism? What can we do about it? Not just in legal education but in the profession. The other theme that I've seen over the last decade recurrently is the quality of life of lawyers, that there seems to be a decline in the quality of life of lawyers, and if there's a decline in professionalism, I think the two are related.

My state, North Carolina, did a wonderful, empirical quality-of-life survey. We surveyed more people than the ABA did in their survey a couple years before, and it had some scary findings in it. And I think at base, at least, that we're losing professionalism, and the empirical data shows that lawyers are not as happy with their profession as they used to be—there is a taking away from the idea of what makes us a profession, a calling to service.

I think there's also a focus that the lawyer has become more of a "technocrat," a hired gun. I think this conference and the focus of what I think we're going to do the in next few days takes away from that and heads back in the right direction, that the lawyer isn't a hired gun but rather a sage advisor and a creative problem-solver, as the title of the program goes.

It really goes to the core of how we think of ourselves as lawyers. What is the focus at the heart of the matter? What are lawyers at the heart of the matter? And I think, if we agree on that, then we think differently about how we educate those lawyers, what we do in practice and on down the line.

There's a famous story among trial lawyers about the lawyer and the client that were in trial where there were two lawyers on the other side—two against one. At one of the breaks, the single lawyer and his client went out, and the client was muttering under his breath, "It's unfair; it's just unfair." And the lawyer said to the client, "Well, what's unfair?" "Well," said the client, "they have two lawyers, and we only have you." And the lawyer said, "Well, what's unfair about that?" And the client says, "Well, when one of them is talking, the other one is thinking, and when you're talking, no one is thinking."

So, I hope, after the days ahead, that what we'll come out with is a thinking lawyer, whether one or many, and that this lawyer will be thinking as a creative problem-solver.

It's now my great pleasure to introduce the next speaker, Jamie Cooper. Jamie got his law degree from the University of Toronto, his master's in law from the University of Cambridge. He's both a barrister and a solicitor. He's taught all over the world, and he's presently on the faculty at Cal Western where he is the Executive Director of the McGill Center for Creative Problem-Solving.

## II. INTRODUCTION TO CREATIVE PROBLEM SOLVING: JAMES COOPER, EXECUTIVE DIRECTOR, MCGILL CENTER FOR CREATIVE PROBLEM SOLVING

MR. COOPER: Thank you, Dean Walsh. I can't tell you how exciting it is to see such a turnout for a conference like this, a first conference, where such a novel idea as the Lawyer as Creative Problem-Solver is being promoted.

The structure of the conference with its plenary sessions, with the breakout sessions and with the conversations in between should assist us in building a discourse as to what is the future lawyer.

The conference is really part of a new movement within the legal world. It's about problem-solving, and it's about creativity. And really, as we've learned about creative problem-solving over the last couple of years, we've come to realize that there's a lot of talk about it. There are even tangible movements afoot. Judges are using peacemaking and other techniques outside of litigation to solve people's problems. We're seeing the government promoting ADR, alternative dispute resolution. Law students are taught how to mediate disputes. Law professors are teaching negotiation and not just trial advocacy. Preventive lawyering is being extolled by judges and is the subject of continuing legal education courses, and more and more mediation and arbitration clauses are being used in commercial contexts. Much of the electronic commerce world, be it e-retailing or e-trading, has boilerplate arbitration and mediation provisions built in.

Creative problem-solving is everywhere. The Internal Revenue Service has problem-solving days. Dot-com companies and other corporations advertise their software solutions as problem-solving in action. The Attorney General and the Department of Justice is promoting problem-solving often. Law schools are teaching courses in creative problem-solving. One law school, California Western, has it as its mission.

So, creative problem-solving is really about inclusion. It brings in all the stake holders to create a better form of law, a more efficient mechanism for resolving disputes.

Our conference over the next three days will assist in framing the national discourse about what is creative problem-solving and give it some normative order. That's what this conference is about. We must build on the strengths of the legal profession, and amend the public's perception of lawyers. We must also amend the perception of ourselves. In doing so, we need to construct our future lawyer. What will she look like? What skills shall she possess? How will we as legal educators, lawyers and judges, produce the kind of lawyer that members of society needs and demands? Is the case method the right way to teach future lawyers? How does the 'v,' as in *Palsgraf v. Long Island Railroad* and *Brown v. Board of Education*, how does the 'v' affect our psychology?

This leads us to why you're here. You're with us as part of our journey, to assist all jurists in answering some of these questions and to help us make

sense of the changes in legal culture that's happening across our cities, our country and internationally. There are so many like-minded jurists here in this room that come from around the country and from around the world to share their and your experiences and vision for the future of judging, lawyering and legislation.

Throughout this conference you'll work in interdisciplinary breakout sessions with members of the bar, legal educators, JAG officers, law enforcement officials, aboriginal justice experts in developing new forms of lawyering. You'll explore joint problem-solving exercises and their applicability in the legal curriculum, in the courtroom and outside the courtroom. We hope that you'll emerge from the conference with the sense that you're on the cutting edge of building an innovative idea for legal practice and legal education.

Naturally, with our co-sponsors being the American Bar Association Section on Legal Education, our focus is on legal education, not just in the law schools but in the practice, on the bench, in the clinics and everywhere. We have a duty to continue our legal education. The law doesn't stop, and neither should we. Thank you for being here while we discover the new lawyer, the jurist of the future, the creative problem-solver.

### III. CLOSING REMARKS: DEAN JAMES P. WHITE, INDIANA UNIVERSITY SCHOOL OF LAW

DEAN WHITE: In the legal profession lawyers are often derided; indeed we see jokes about lawyers. They existed obviously from time immemorial, Shakespeare being an obvious culprit in disrespect, but the legal profession has not particularly gained a lot of respect. Indeed, the American Bar in 1975 put in a requirement in its standards that there be instruction in the ethics of the profession, professional responsibility. How did that come about? Was it because lawyers did not have the kind of ethics that the profession and the public thought they should have? No, it really came about as a result of Watergate because a great many persons in the Watergate fiasco were lawyers. Now, they were not, with rare exceptions, acting in a lawyer capacity. They were acting in an administrative capacity, but nonetheless they were lawyers, and as you know, many of them ended up losing their license to practice, so there was this approach that we have to deal with a professional responsibility and the ethics of lawyering, and I think that the lawyer as a problem-solver is an extension of that 25-year-ago phenomenon.

Several years ago, Ohio State University created a consortium for what was termed the healing professions: medicine, religion, social work, and law, and this consortium emphasized the theme that these professions resolved people's problems. Indeed, this was an attempt in problem-solving and resulted in various professions working together in a collaborative method. And I believe that is what the outcome will be of the new educational pro-

gram at California Western, and indeed, perhaps the outcome of what many law schools will do, as stimulated by this conference.

The conference emphasizes that a healing profession is one that deals with and solves problems. The former chief judge of the Indiana Court of Appeals the other evening related to me that when people say, "Well, lawyers are not very reputable and they want to sue," et cetera, and he always responds, "If the individual has a problem and wants advising and wants a resolution of the problem, to whom does he turn?" And invariably he turns to the lawyer.

So I think this conference in the next two days will continue to build on the ingenuity and creativity of the lawyer as a problem-solver.

The American Bar runs a workshop for deans each year at the midyear meeting of the ABA, and this year the theme was—one of the major topics—was multidisciplinary practice, something that I dare say a number of deans didn't know was coming down the road. But it is with us, and if we look to many of the big-5 accounting firms as setting the pace, it has as many as 5,000 lawyers engaging in multidisciplinary practice. A worldwide concern of multidisciplinary practice is professionalism. If lawyers are associated with accounting firms, how do they keep the profession?

By the same token, another issue arising from multidisciplinary practice is whether you actually provide a greater service to the client? Will the lawyer, by having an accountant, a financial planner, a whole array of disciplines available, be able to do a better job as a problem service—solving problems for the client?

And so I think this conference—The Lawyer as a Problem-Solver—will address these facts.

Another factor which several persons mentioned was the current dissatisfaction with the practice of law. We read a great deal and all of you know how law firms break up, how young lawyers who go with the largest firms in the country leave as often and as quickly as they came. Some of them at the very top of their class become law teachers, and then unfortunately they sometimes carry into law teaching their unhappiness with the practice of law.

I hope that this conference and the approach that California Western School of Law is taking, this multidisciplinary approach, will change that by showing that it is not an adversarial system, but it is a more compassionate system, looking at serving the clients so that you do not end up in an adversarial litigation firm, but indeed resolving the problem long before that.

So, I look forward to the rest of the conference, and I congratulate the school on its new focus.

#### IV. PLENARY ONE—ENVISIONING THE NEW LAWYER

DEAN SMITH: The rest of the program is really conceived as having

three parts. The first focuses on what the lawyer, as problem-solver, should be, the “new lawyer” as some people call it. The second part focuses on how we—in legal education and as a profession—how do we ensure that we’re educating students to be problem-solving lawyers. The third is to develop an action plan of things that we can do to help our profession focus on problem-solving and creative problem-solving.

So this morning, we start with what the lawyer should be like. I’m pleased to introduce Professor William Aceves, who will be the moderator for this morning’s program. Professor Aceves.

MR. ACEVES: Thank you. Good morning, welcome. My name is William Aceves. I’m an associate professor of law at California Western School of Law. It’s my pleasure, as Dean Smith also has just done, to welcome you to the conference and to this first plenary session on the lawyer, and envisioning the new lawyer.

As you know, the goal of the conference itself is to begin the process of trying to envision what the new lawyer is. In some respects it was begun a number of years ago. Alternative dispute resolution has become a common form, a common alternative to traditional litigation methods. For example, a lot of professors now regularly teach classes on mediation, arbitration, and negotiation. Law students are learning the process of trying to mediate disputes before the litigation process is reached. Judges are becoming more comfortable, I think, with the idea of encouraging litigants to seek alternative methods of dispute resolution. So, in some respects, what we’re doing today is to really try to build upon that tradition that’s been developing over the last 20 years.

In addition, I think the idea of preventive lawyering is also becoming an important alternative as attorneys are beginning to try to consider ways of addressing issues before they even arise. Certainly these methods of alternative dispute resolution are necessary and important, but I think a critical question that we need to consider is whether they’re sufficient. Certainly we’ve seen alternative dispute resolution developing for a number of years, and yet I wonder whether it has really been able to have a profound impact on how society views lawyers and how society views the legal process itself. So, in some respects, I think it’s important to use this as a foundation but to recognize that there’s much more that actually needs to be done.

In this respect, I think it’s interesting to note that the change in the legal process that we’ve seen developing with respect to alternative dispute resolution has been beneficial. But is it possible to really change how society views lawyers, the problems that lawyers face, the obstacles that they face, without having an underlying fundamental change in the way we think as attorneys, as legal professionals?

This is certainly an ambitious project. We cannot expect to really change the centuries of human cognitive function, or centuries of indoctrination in terms of our process of thinking in a three-day conference. What we can do, though, is to map out a strategy, identify possibilities for improvement, and champion the movement from what is to what ought to be.

The plenary sessions have been established in a progressive manner so that each session builds upon the work of prior sessions. In this respect I think this first plenary session is particularly significant. It will influence the development of the subsequent sessions this afternoon and tomorrow.

This morning we seek to envision the new lawyer. What, if anything, is wrong with our legal profession? Are these problems limited to members of the legal community? Are they symptomatic of a broader problem within our society as a whole? What kind of legal professionals do we want to develop in the future? Can we be comfortable with a legal profession where more people are familiar with Ally McBeal than they are with Thurgood Marshall? For that matter, can we be comfortable with a legal profession where more people are familiar with Judge Judy than they are with, say, Justice Rehnquist of the Supreme Court?

Let me now introduce our three panelists for today. Peter Steenland is senior counsel at the Office of Dispute Resolution in the Associate Attorney General's office at the United States Department of Justice. He's the first person to hold that position. He advises on the department's ADR activities, including the use of ADR in training, in litigation, in policy, record-keeping and in reporting. Among the numerous awards and accomplishments he has received, he was awarded the John Marshall Award for appellate advocacy and the Attorney General's Award for distinguished service.

Percy Luney is the president of the National Judicial College. He earned an AB degree from Hamilton University and his JD from Harvard Law School. Most recently he served as dean and professor of law at North Carolina Central University School of Law. Dean Luney has also taught at law schools at Duke University, Washington University and the University of Oregon. He practiced law for several years, and has worked for the United States government as an attorney advisor for the U.S. Department of the Interior. He was also a special assistant to the president and general counsel at Fisk University in Tennessee. Finally, he has extensive experience abroad. He was a Fulbright lecturer at Kobe University Faculty College of Law in Kobe, Japan. He was a visiting professor at Doshisha University Faculty of Law in Kyoto, Japan and a Fulbright research scholar at the University of Tokyo Faculty of Law, and Waseda University Faculty of Law In Tokyo.

Bernie Jones is the editor of the *San Diego Union Tribune's* editorial pages and a member of the newspaper's editorial board, which determines the newspaper's editorial policies. As editor, Mr. Jones determines what voices are heard from the local community, from the state and from the country, and how those voices appear in the newspaper. He holds degrees in English and Journalism from the University of North Carolina. His previous assignments at the *Union Tribune* have included news editor, politics editor, assistant news editor. Prior to his tenure at the *Union Tribune* he worked as a news editor, copy editor and television critic for the *Baltimore News American*.

We'll first hear from Peter Steenland.

MR. STEENLAND: Thank you very much. Good morning, everyone.I



bring you all greetings from the Attorney General and commendations for coming out to attend such an important seminar and extend her best wishes and hopes that this will be a very successful event.

For those of you who have not had the opportunity to do so, I would commend to you last year's March, 1999 edition of the *Journal of Legal Education* where her address to the AALS in New Orleans is reprinted. I think it's a very instructive piece. It lays out her vision of the lawyer of the future as the peacemaker and the problem-solver. That, in essence, is sort of my job, to encourage everybody at the Department of Justice to focus on peacemaking and problem-solving skills as part of their responsibility in representing the United States.

In addition to that, given that the President, in 1998, designated the Attorney General as chair of an interagency working group to promote dispute resolution throughout the executive branch of the government, one could say that she has expanded her mandate and that we are working throughout the government, as well as to encourage this vision of the lawyer of the future.

When the Attorney General started the program at the Department of Justice it was abundantly clear to her what she wanted to do. I think, in many ways, it mirrors the concerns that she has expressed and the interest she has expressed with respect to legal education. It wasn't that anything was missing in our lawyers. It wasn't that anything was wrong. It was rather that there were some other aspects, some new techniques that needed to be focused on so that we could supplement and build upon what we'd already done.

Our lawyers are incredibly competent and talented people. They do any number of very difficult assignments at compensation far less than what you would get in the private sector. They do it extraordinarily well. They're good litigators. They're good writers. One of the things we saw was that, as they came to the department, either right out of law school or after a brief career in private practice, there were some things that needed to be supplemented. These were problem-solving skills.

So, when the Attorney General started the ADR program, what she told me was that she wanted to place a very strong emphasis on negotiating skills. I thought, "Okay, sure, why not?" After all, she is the boss and it's her program. Only later did I realize once more how incredibly perceptive and farsighted this woman is.

As litigators—and I've been there since 1970 and have represented the government in hundreds of cases—we're always prepared to go to court. We're always prepared to say, "May it please the court," and here's why we win. When we take those skills into negotiation, our lawyers are positioned because that's where their training comes from, that's where their experience was. For those who didn't have any training in negotiation, they were uncomfortable with it, not only because we needed to do something beyond positional negotiating. They were also uncomfortable because they wanted to do well, but they had no measurement, no yardsticks by which to indicate whether they were doing well or not. So they didn't know if they were being successful. As a result this was a very frustrating experience.

I would presume, although I don't know for sure, that we probably wound up litigating any number of cases that we otherwise could have settled because those were the traits that we were comfortable with, those were the skills that we were happy to use, and those were opportunities for creative problem-solving that we missed.

This was driven home to me most forcefully one day when I was in the tax division doing a training for 27 new honor grad lawyers. We were doing dispute resolution training for these very bright, very talented, very creative, young attorneys at the Department of Justice, and only three out of 27 had taken a course in negotiation. I scratched my head and I said, "Golly, there's something wrong with this picture." What does a tax lawyer do if she or he does not negotiate? There just aren't enough judges in the world to litigate all those claims. There's no need to litigate all those claims. We don't have the resources to litigate them all, but yet we also were not sufficiently prepared to negotiate them either.

So the heart of our program and what I hope we can talk about this morning is the new lawyer who is, on the one hand, most comfortable going to court and being the advocate because, unless you're prepared to litigate, you're not going to settle or get a good deal. And we're going to talk about, I hope, the skills that that new lawyer brings and how we can stimulate this process.

I think the principal way to go is the marketplace. I think the principal way that we're going to make this happen is by causing a demand for these traits that will then provoke students to ask the schools for the courses and, in that manner, we will be in the process of changing not only how we do business in terms of educating but also, and more fundamentally, how we practice law.

MR. ACEVES: Thank you. We will now hear from Bernie Jones.

MR. JONES: Thank you. One little correction, William, I'm not the editor of the editorial page but the opinion pages. I do sit on the editorial board and help determine what the editorial policies of the newspaper will be.

I must say, though, that I feel a little bit like Admiral Stockdale in the 1992 vice presidential debates. I'm sitting here among a whole bunch of people who are experts in the legal profession. I am not. I have been asking myself, like Admiral Stockdale did, who am I and why am I here?

Some of that started to become clear, particularly during the past few weeks when we have been talking to a number of people who are running for public office and our endorsement process. Part of that process involves talking to people who are running for open seats or seats being reaffirmed for the judgeships in the county. One of the things that becomes abundantly clear in those kinds of sessions is that people don't know very much about what is happening on the bench or in the legal profession overall. That, I suspect, is one of the reasons why I'm here, to sort of try to talk about providing somewhat of a bridge between what you do and what the public perceives you as doing.

In my role as opinion page editor, I am in contact with a number of attorneys and a number of people on the bench. Most of the discussions revolve around how we can amplify or shed some light on the issues that are occurring

and bring some expertise from the legal profession to these subjects.

Among the subjects that I have covered on the opinion pages of my paper is whether or not judges are right in overturning voter-approved ballot propositions. That's a very big debate in California. Every time it happens we're flooded with letters to the editor with people wondering why—and, in many cases, making statements that don't have much to do with reality and certainly don't have much to do with our constitution. So that's where people from the legal profession can come in and explain some of these things.

People have written about teaching lawyers. Several people from the faculty of this law school have written on that for me. That's been very enlightening.

We've talked about internet taxation, and the issues involved in whether or not Miranda should be upheld in the recent case that is looking at the federal law passed by Congress dealing with Miranda. We've talked about labor issues. We've talked about Ninth Circuit reorganization, which is sort of esoteric to most of our readers but certainly important to anyone in the legal profession.

I think that a lot more can be done in that respect in terms of helping people understand the bench, helping people understand the legal profession, and helping people maybe frame a new perspective about what attorneys do and how they do it, because right now a lot of the perception is not terribly positive. I think you guys rank just above journalists in terms of respect for your profession from the public.

There's also a question of whether or not people who are in your profession want to broaden their perspective and whether or not they want to have a better relationship with the public. Most of us, particularly specialists, tend to have as their audience their peers, and pretty much their only concern is what their peers and what other people in the profession are thinking. That's one way to approach what you're doing, but a broader way, and I suspect a way to effect some change in our society, is to broaden that appeal and try to reach out and try to help educate and help others understand what you're doing. Thanks.

MR. ACEVES: Great. Thank you. I have to say probably the fact that you aren't affiliated with the legal profession is a significant advantage here. Thank you.

Finally we'll hear from Percy Luney.

MR. LUNEY: Thank you. It's a pleasure to be here. I must admit that, since I assumed the presidency of the National Judicial College about 18 months ago, I find that, if I'm ever addressing an audience that is not primarily composed of judges, I have to first address the issue of what the National Judicial College is.

We have no resident faculty. We have program attorneys. We specialize in training our faculty, who are mostly judges—but there are psychologists, law professors, and various professionals—in how to do adult education. So we have extensive faculty development programs where we teach judges, who are basic faculty, about learning theory, the different types of learners, the different technologies to use in teaching. We train our faculty. Then we have program

attorneys that help develop courses.

We offer some 90 courses per year. They vary from courses that are two to three weeks for judges just starting out, to specialized courses that run from two days to a week. We do about 50 courses a year in Reno and 40-plus courses around the country in various locations. We do special training for government agencies such as administrative law judges who may be at the Immigration Department in Washington D.C., the National Labor Relations Board, and California administrative law judges.

It's a very extensive process, and our faculty donate their time to the tune of about 1.3 million dollars a year. We just pay their expenses. We have a standing faculty that usually varies from 300 to 400 individuals per year.

The opportunity for judges, I think, to share their experiences and the approaches that they have tried means that good practices found helpful in one area are often adopted in other states. It's this sharing process that state judicial education programs generally can't provide. We also operate our educational programs, we like to think, outside the normal peer and political pressures that come to bear on judges in their particular states.

I hope I've answered the general question about what the National Judicial College is.

Our courses are really focusing on problem-solving and helping judges address new roles that you see created by family courts and drug courts, and new theories of judging such as community judging. Judges and courts are, in our minds, assuming a stronger managerial, administrative, protective and rehabilitative role toward those persons appearing before them. Some experts have coined the term "therapeutic jurisprudence" to describe what is essentially a "problem-solving, person-centered approach" to judicial decision making. This problem-solving approach stands in sharp contrast to the more traditional roles of judges as dispassionate decision-makers and of lawyers as providers of adversarial representation. Here, the judge in this model, sits passively while lawyers present their two contending visions of reality.

Those arguing for more problem-solving by judges note that when certain types of matters come into the court, the judge often becomes a traffic director into the government system for individuals needing social services. Judges must then develop expertise in problem-solving and become more active in seeing that the services are provided to the persons appearing before them, rather than dealing only with the manifestations of the problems that fit within our traditional judicial task. This problem-solving approach may involve coordination with social service agencies or it may involve ongoing supervision of the service delivery.

The demand for problem-solving judges is part of the push behind the creation of family courts, permitting the judge to address the problems of the family unit: divorce, child custody, child abuse and neglect, and juvenile crime.

The drug court model is also premised on problem-solving judges in a therapeutic environment. The judge coordinates and cooperates with various agencies in supervising the drug user's programs in treatment and rehabilita-

tion.

This creative problem-solving, I think, has large cultural implications for the judiciary. We view it as involving what I describe as “person-centered judging,” focusing on the person rather than process. Judges must become more adept at entering into the management of people’s problems and coordinating social services where needed to address those problems.

Our courses are going in the direction of training judges to be better managers of the judicial process. It’s very difficult because funds for judicial education at the state level are declining. Legislatures are not very generous to state judiciaries. Our affiliation, as I said, is with the ABA, which was our founder, but we’re an independent non-profit. Some of our board are appointed by the American Bar Association board of governors and the judicial division of the American Bar Association. We elect our other board members. We have affiliations with the various states and the National Judicial Center in Williamsburg, which focuses more on court administration as opposed to the training of judges.

With that, thanks.

MR. ACEVES: What I’d like to do now is start off with a series of questions. At this point I’d like to ask the panelists that implicit in this conference is the notion that there is something wrong with the existing lawyer and, in some respects, even with the existing legal system. It seems to me as a first question, is that a correct statement? If so, what are these new skills that we’re trying to instill in our lawyers? Again, not only lawyers representing the interests of their clients, but lawyers as judges, lawyers as government officials. So I’d like to start off with that question.

MR. STEENLAND: Let me take a crack at that if I may. I think it’s a number of things.

I think it’s the ability to work effectively in a collaborative manner. So much of law school is solitary activity. You’re off doing your own thing. You’re preparing for your tests. You’re writing your law review article or whatever. Working collaboratively is, I think, incredibly important.

Furthermore, being able to do, and being comfortable with, risk analysis, knowing what all that is and being able to make some sort of dispassionate, objective analysis of risks is important.

Of course, being open to some interdisciplinary analysis, even if it’s not ultimately used in persuading the judge, can be very helpful in understanding what the client’s real interests are. The client simply has a problem. The client isn’t going to bring you a problem neatly packaged with three issues, two subsets and something that’s going to look like one might see on a final exam or a bar exam.

Lastly, one must not forget the ability to negotiate and negotiate comfortably which, to be an effective lawyer, I think is absolutely essential.

We need somebody who is familiar with the full range of dispute resolution processes and someone who knows the difference between advocacy to a court and problem-solving in another context. In effect, this is dual advocacy.

This has been driven home to me as we've been going around the country training some 1,600 government lawyers.

Now, like I said earlier, we've got some great litigators, but what you do in discovery, what you do in a deposition, is totally different from what you do in a mediation. In a deposition you're building facts. You want answers. You want narrow answers. You want people to say yes; you want people to say no. You never ask why. That is the third rail of discovery. Don't go there. It's all designed to shape a position that will then get you a victory from court. It has very little, if anything, to do with the parties' interests.

So what we need to do is we need to take our attorneys and, without derogating or denigrating those skills, we have to say there's another set over here that are complementary to them that work the other way. You need to know when to go on this side and when to go on that side. You need to be able to do a mediation, to be sensitive. You need to listen rather than talk. You need to be able to ask the kind of problem-solving questions that will allow you to work effectively with your clients in terms of resolving problems.

Now, that in and of itself isn't going to get you anywhere. What we need to do is train our existing attorneys so that they understand this. Training existing attorneys is important because our law school graduates, when they move into the practice, unless there is some existing culture that will allow them to take those problem-solving skills and apply them, they're going to lose them. The senior partner in the law firm may not be that conversant with what we're talking about here. So we need to create that environment where these things get used.

In that sense, I would suggest to you that the Department of Justice, indeed the federal government, has both a special opportunity and a special responsibility to promote the concept of the attorney as problem-solver, because the private sector just can't do it. We can do it because we have a different perspective. Our role is not to make a profit as a law firm. It is not to look at things through the view of a profit-and-loss statement of a corporation. Our responsibility is to represent the public in the best way possible. In doing so, we have an obligation not just to be effective advocates, but as the Attorney General says, to deal with controversies that involve our citizens and taxpayers with a minimum amount of adversity and a maximum amount of respect.

So, if we can resolve disputes with our citizens in an effective, respectful and efficient way, then that's exactly what we ought to be doing. We can do that. We can do that through what the department is doing, through our inter-agency working group, where we're growing dispute resolution programs in 70 different federal agencies for workplace disputes, contract and procurement disputes, monetary claims against the government, disputes arising from civil enforcement matters. We can create the environment where the federal lawyer begins practicing problem-solving in a problem-solving forum. What does that mean?

Well, first of all, it gives this all a greater degree of visibility. Secondly, to the extent we can put these types of disputes into mediation or some other form

of dispute resolution or practice negotiation in this way, it puts the onus on opposing counsel to go there also and to match our skills. "What are these folks doing? Well, I guess we better do the same thing." So we can, in that sense, not only create the opportunity to do this, but we can bring opposing counsel along as well.

Now, as a practical matter I think we all have to realize that many graduates of law school go into private firms. One of the large profit centers in the legal practice is the litigation practice. That's what generates lots of money. That's what keeps lots of associates busy. To go in and say, "Let's mediate everything," or, "We'll take half of this and put this into neutral evaluation and arbitrate a third and mediate the rest," at the end of the day, long term, that might be in the client's best interest, but short term, it's going to be a very difficult sell within the law firm. So what we need to do in that regard is to create the demand, the marketplace demand from the client perspective.

Here's where I think the concept of collaborative lawyering is so interesting. This is a concept developed in family and domestic relations law where the parties retain counsel and counsel says, "I agree to represent you and to get a settlement out of the dispute. If, however, we are unable to resolve it and litigation is inevitable, you will at that point hire another firm. I'm out of it. I will transfer all the files and everything else. I will have no financial or other interest in anything other than a settlement."

Where this was initially tried the results were very encouraging. Parties really got into the negotiation regime, began developing all sorts of creative concepts that otherwise might not have appealed to them because the litigation was always in the back of their minds.

What's most exciting is that a very good friend of mine who runs the United States Court of Appeals mediation program for the Sixth Circuit in Cincinnati, Bob Rack, is now in the process of expanding this to the corporate community in Cincinnati. So we have entities like Procter and Gamble and General Electric and the other behemoths in the Ohio Valley going to their law firms and saying, "Hey, have you guys heard about collaborative lawyering? We think it's kind of neat." The law firms are saying, "Oh, well, if we want to keep the client, maybe these are things that we ought to start doing."

So, in that sense, we're actually seeing some growth in this area. I would, at this point, conclude my observations by simply saying the legal curriculum can be supplemented with a number of these courses, and this can become mainstream when the students at the law school realize that there is an economic incentive for them to have these skills. Yes, it's good to be selected as a judicial law clerk in the state or federal court. That's good for your career, but it's also good for your career to have these kinds of abilities. If the students want it, if the students see that this will be good for them, then I think the law schools will accommodate them. After all, there is a measure of responsiveness there. That's where I'd like to go. That's what I'd like to see.

MR. JONES: I'd like to pick up on some points that were made by Peter and by Percy in terms of interdisciplinary approaches to problems, something

I've seen manifest itself several times over the past few weeks in discussions about drug courts that I've had with people in San Diego County and in discussions about Proposition 21 on the ballot in California in March, which deals with juvenile justice.

Proposition 21 would add about 40 provisions to the penal code and to the welfare institution code in California. A number of judges, particularly in San Diego County, the chief presiding judge in the juvenile courts, the present and the former one, have come out against this proposition because it takes one approach to justice—and we're talking criminal here—whereas we have set up a system that reaches across disciplinary lines to bring in a number of different kinds of people to solve what had been a criminal problem, and that is juvenile justice.

The system has worked very well in San Diego County and is working fairly well in some other counties that I know about, but it all revolves around bringing people from outside the legal profession into the circle to solve problems. This has been far more effective than just a legal or a criminal approach to the problem.

So I think, building on what both of you have said, collaborative approaches really matter, and it would seem to me that, in pursuing a legal education at a teaching level, that one of the first things that should be taught is trying to go outside of the legal profession and bring in experts in other areas to help solve problems that may have been thought of as legal in the past.

MR. LUNEY: I have a couple of comments. Peter really sparked one when he was talking about the magistrates and negotiation or mediation. I want to remind him those are federal judges with lifetime appointments who don't feel the need to go back to the public again, as opposed to elected judges who have to constantly go back to the public and feel the need to interact with the community a little more.

Something happened when we had a reunion at the college for retired judges. I was proudly showing them our new model courtroom with all the technology, plasma screens, computer, everything you could want. They looked around and they said, "Something's wrong." I couldn't figure it out. Finally I said, "Well, what is it?" It's the bench. See, with our people-centered approach, our bench is much lower so that the judge is really facing the client, the person in front of the court, at eye level. In their mind the judge should still be sitting up high, looking down. It really surprised me, because in my wildest dreams I never would have expected that comment. That was the old attitude in judges, to keep the distance between the individuals appearing before them and the judge. This is what's changing, particularly with a person-centered approach to judging.

I must admit the academic comes back on as we talk about creative problem-solving and how to institutionalize it, institutionalize it in the practice of law, and institutionalize it in legal education. It occurs to me that the one thing that I have not heard is that, in order to do this, maybe we need to go back and look at the model code of professional conduct and the model code of judicial



conduct. Those two documents are geared to the adversarial model of the practice of law. I have a gut instinct that if you follow creative problem-solving to its natural conclusion, then in certain situations you are liable to put individuals at odds with the current provisions of the model code of professional conduct and the model code of judicial conduct.

MR. STEENLAND: Let me build on that last observation. One of the things that the department is looking at—it's not my office that's doing it but the office of justice programs—is to go beyond the conventional litigation civil dispute arena and talk about how these processes can be helpful with respect to our communities.

There's been a great deal of attention over the last couple years on community policing and how bringing the cop back to the beat and back to the neighborhood has had some very beneficial results with respect not only to law enforcement but with respect to the public's perception of the law enforcement official.

We're seeing more in the way of community courts. What we're beginning to see now in just a handful of places is the concept of community prosecutors where there is a problem-solving approach to the enforcement of law that fits hand in glove with the community-oriented policing and that the prosecutor, having a jurisdictional, geographical assignment much like the community-oriented police person, focuses on and has a client which is the neighborhood, the community. If there are particular problems in that community that are unique from other parts of town or the city or whatever, then that's the focus, because that's how the law needs to be enforced in that area to make the community a better society.

That whole approach builds on a lot of what we've been talking about here as well. So I want to make sure everybody understands that we're not looking at this very narrowly in terms of just commercial disputes, or civil litigation, or anything like that. You can take these concepts and just really have some broad application that is limited only by one's imagination and a certain degree of reason.

MR. ACEVES: Does anyone want to comment? If you want to come up to the microphone, please.

UNIDENTIFIED SPEAKER: Peter commented before that the way that these new aspects of teaching and training students and lawyers will arise is when they become sort of marketable; that is, when the students demand them.

I think that if we wait till the students demand them, everybody in the room will be as gray as I am. I think that students take their lead about what's economically important and valuable to them or professionally valuable even beyond the economics from us. In our school, we had a time when there weren't a lot of students who were applying for clerkships. People on the faculty decided that was not a good thing and started talking up clerkships. Now we have a whole program and the students are lining up to do that.

So I think it's incumbent upon us, as law professors and teachers, and as mentors and people that our students look up to, to inculcate them with the val-

ues of problem-solving skills that we're talking about now rather than wait for them to demand them from us.

MR. STEENLAND: Oh, I think that's well taken. I would encourage all of you to do exactly that. My sense from talking to Carrie Menkel-Meadow and many others who practice in this area is that they can't do it on their own. They're going to need a lot of help. So, to the extent that you can get there on your own or with others on the faculty, that's great.

Ultimately whether this becomes something enduring and an inherent part of legal education, maybe we're going to have to wait for the marketplace to take us there. I hope not, but my own suggestion was that that most surely would get us there. If there's a faster route, more power to you.

UNIDENTIFIED SPEAKER: As a follow up on that, I've found that peer group pressure within a law school is what drives the courses they choose. I was associate dean at my school for a while and I found this to be true.

I think Cal Western has done a wonderful institutional job of stressing the importance of problem-solving, and we're all doing that. In fact, though, our students break down into two categories. There are those who want to be and will be clerks or judges and work for law firms. They usually are the same group of people in terms of the grades they get. There's another group of students who will work for small firms or hang up a shingle.

The peer pressure comes from the group that's going to be law clerks or lawyers at large firms. They also know that when they go out, short term, their job is going to be the traditional job. Nobody is going to put them with a client to negotiate a deal. They're going to be doing the gut work, the research, the kind of stuff the old lawyer does. That's what drives the courses they want to take.

I'm just curious to know whether any state bar examiners are thinking about including some sort of exercise in a bar exam which would inspire students to really think seriously about taking these courses. You know, let's face it, that is often what drives students to take courses.

MR. ACEVES: The California bar exam, I believe, finished yesterday. I'm sure many of those taking the exam would have much preferred that type of a question then, say, the performance exam.

Yes?

UNIDENTIFIED SPEAKER: Thank you. A lot of discussion here has been about the relative roles. We've heard discussion about the different roles that attorneys play. I think some thought needs to be given about how those roles shift and shift consciously from the advocate to healer or so forth.

Also, the one model that hasn't been discussed here is the legislative model. I'm privileged to serve as a city councilor in my home community, and I've served in that capacity, as well as being a law teacher, for over 16 years. I can guarantee you that there are plenty of times when city councils are called on to act in virtually all of the capacities that you have indicated but without any of the staff and without any of the assistance that I would very much like to have.

So I would encourage some thought be given to the local level of government as a way of getting access to some of the experience that our students and, indeed, maybe even our faculty might benefit from. Thank you.

UNIDENTIFIED SPEAKER: I think Mr. Steenland said something about what we need to do is teach people outside the legal profession. It would seem to me that there is a lot of controversy about whether that really is going to help the client or not because of the different economic realities involved with that, and the fact that other professions have different codes of professional responsibility than we do. I'd like to know if there's some comment about whether you think we need to change our code, or whether other people have to follow us.

MR. STEENLAND: I don't think it's appropriate in this kind of a conference to get into the entire multi-disciplinary practice, that wetland, or swamp, or bog, or whatever you might want to call it. It's a fascinating area and one that the profession clearly has to address in the future.

My point was somewhat narrower, and that is that lawyers tend to think that every problem can be solved with a legal solution. That is not necessarily always so. I don't think we need to go all the way to multi-disciplinary practice in order to be open to new approaches, and to be able to converse with others in different fields who may give us insights into how to resolve something that comes to us seemingly looking like a legal problem.

Let me give you an example. As we travel around the country teaching our federal attorneys how to become dispute resolution advocates, the first day of the training focuses solely on negotiations. That's all we do. We do a negotiations course. The second day is how to become an advocate in mediation.

Then, the last half day is spent in an actual role play. We do a sexual harassment role play sometimes. Generally that's the one that we take all around the country. It's kind of interesting how different areas of the country respond. We hire local mediators to come in and provide the role of the neutral as our attorneys fill out various roles in this role play. They work it for four or five hours.

When we were in Los Angeles one of the mediators, at the conclusion of our training, said, "Do you mind if I borrow this? I teach dispute resolution at one of the University of California business schools, and I think this would be an interesting exercise."

Now, we'd run this thing about 25 times. The facts were sufficiently ambiguous so that you could find harassment or not find harassment. There was a great deal of risk on both sides and sometimes we got settlements and sometimes we didn't. When we did, we got settlements ranging somewhere between 25 and 150 thousand dollars.

This person took the sexual harassment role play and ran it four times to his business students. Each time they settled it. Each settlement involved matters in consideration but never any money. No money because there wasn't a lawyer in the room. They fixed the relationship. They solved the problem. They did something.

Now, was one settlement inherently more valuable than the other? No. Of course not. If folks were willing to settle, that's fine. All I'm saying is that people from different professions bring different perspectives. We, as lawyers, can't think that we've got the only perspective on problem-solving. We need to be open to others.

What I'd like to do for just a second, if we can, is to shift the focus back to Bernie a little bit and talk about how the media and others see our role. How does society view lawyers, and is there something that we can be doing that would affect, impact, or otherwise assist us in our ability to promote this idea of problem-solving? I think it's a real problem.

MR. ACEVES: I think that that's an incredibly important comment, because much of what we're talking about is focusing on the legal profession. I can't help but think that it's certainly an important component of what it is that we're trying to accomplish, but I wonder if we can really do what we're setting out to do without making reference to broader concerns among the entire society.

MR. JONES: One of the points that I had been stressing, and was trying to stress today, has been public perception and getting involved with the public, broadening the perspectives beyond what is legal, exactly what Peter was referring to a few minutes ago.

I can't tell lawyers how to do that necessarily. I can certainly say from the perspective outside of the profession that not enough of it is done. In many cases, people allow perceptions to become a reality. The media, in many cases, don't help, because we do try to simplify arguments. We do focus on conflict. We do focus on black and white, left and right, rich and poor, and without much of a gray area. That's where communication, where trying to show people what you're doing, maybe in a step-by-step process, might help to shed some light in the gray area, which is really under-covered in the media.

UNIDENTIFIED SPEAKER: I want to use an analogy to show how the perception of an industry can be changed. There was a time when the greatest thing you could do was become a travel agent because it was a fun job, and you could travel around the world telling your clients where to go. We changed the architecture of that industry. We said rather than having to rely on these specialists to be able to travel, we're going to find ways that you can do it all by yourself. In five years that industry will cease to exist. The travel industry will essentially cease to exist.

What we're talking about here is fundamentally changing the structure of the exclusivity of the legal system, and by that I mean that the only way you can solve your problems is to go in front of one of those 32,000 judges and have them solve it for you. And of course, you have to have a lawyer, because lawyers have access to the common law and those little secrets that the public doesn't know about. We need to change this.

We're now trying to understand and envision a way of being lawyers that says we're going to look at solving problems from a much more interdisciplinary approach. But by doing so however, we very well may come to realize

something very fundamental, and that is by solving most of our clients' problems by this approach, lawyers may not even be necessary. Skills may be necessary. Some knowledge of law may peripherally be a part of the problem, but these problems could be solved by a wide array of different people. Without getting into multi-disciplinary practice, and I agree it's kind of a big topic for what we're considering here, I wonder what we are thinking in terms of what the future of this profession will look like. I can't imagine, if we really are successful, that there will be 32,000 judges. I can't imagine, if we're successful, there will necessarily be a million lawyers or 186 law schools. I personally think that would be a positive thing, but am I wrong in that assumption?

MR. STEENLAND: I'm not so sure that judges are going to wind up sitting next to travel agents on park benches any time in the near future. The reason I have that feeling is because I sense that a great deal of this movement is not about putting judges out of business. There will always be enough disputes.

This new approach is multi-faceted, number one, to increase access to justice by making the courts more available to those people who really need them, and who also need to get there more quickly so that justice can indeed be appropriately rendered.

Secondly, and I think this recognition is shared by any number of other organizations like the group in New York that promotes dispute resolution, there's a healthy self-interest in all of this, because we've been calling this alternative dispute resolution. That's kind of silly. The real alternative method of dispute resolution is litigation. It happens maybe three percent of all occasions when matters are actually filed in court. One of the things I keep kidding with the Attorney General about is, if you want to save some money, since all these cases settle on the courthouse steps, hell, just build the steps and forget the courthouse.

As a practical matter, what's happening is the lawyers are leaving too much on the table. They're not doing well by their clients. It's taking too long. We look at e-commerce and how business is changing, how the travel agents are going to be out of business. Nobody is going to have time to spend five years waiting for an adjudication. We're going to need things resolved more quickly.

Now, sometimes, yes, we'll be able to call on professionals. The ABA section of dispute resolution recognizes that there are any number of qualified third-party neutrals who do not have to be lawyers. Absolutely. No problem about that at all. But we're still going to need the attorneys, because, number one, we have to structure these settlements in a legal way so that we don't cause future problems and, number two, we have to be prepared so that if the settlement doesn't arise, to be able to go to court.

So I don't think the lawyers are going to become obsolete; I don't think the judges are going to become obsolete. We're just trying to find a better way to continue doing what we're doing now.

UNIDENTIFIED SPEAKER: This morning the most significant thing was when Peter Steenland said that the same dispute given to a business community

ended up with a very different result. What that highlights for me is that very often even the notion of problem-solving is about the past, putting right what has happened before. In the business community the emphasis is always more on designing the way forward, designing the way forward. That's very different.

I'll give an example from the medical world, where I used to work. If you've got a headache you take an aspirin. That fixes the headache. Fine. Other conditions you may have to design a way forward. I'll give an example.

There's a somewhat rare condition where people spend all their lives flat in bed called idiopathic postural hypertension. As soon as you get up, you faint; you don't have enough blood volume. I happened to be working on kidneys, and I figured out what was happening. The only intervention needed is when you sleep at night, place the head of your bed on six-inch blocks. That's all, no surgery, no medication. These people now live 100% normal lives.

In other words, designing the way forward often results from putting right a wrong that has happened. Problems cover both those, but too often when we're looking at problems we just think of the headache and the aspirin. You can put right what is wrong rather than designing a way forward. I think that's a very key difference. It's not just problem-solving; it's designing a way forward. Sometimes that includes problem-solving; sometimes it includes design.

MR. CONNER: I'd like to follow up on that comment. My name is Roger Conner. This entire conference is a little schizophrenic to my outsider's view, because the title of the conference is "The Problem-Solving Lawyer," and much of the discussion is about the ADR lawyer. The last comment brings to mind that these are different.

The research I've been doing on lawyers in prosecutors' offices, defender offices, city attorneys' offices, pro bono programs, and legal aid offices, all involve lawyers who are doing community-oriented problem-solving. There are far more of them than you think. A survey that is in process, but almost complete now, has found that in over 20% of the prosecutors' offices in the U.S., there is at least one attorney assigned full time to problem-solving. In 10% of the offices there are multiple lawyers that have been given such assignments.

I can't find a criminal law course or criminal procedure course that has been modified to begin teaching new skills to the lawyers going into these offices. I've had at least one district attorney say to me, "I cannot get one applicant over a four-to-five-year period for jobs in my offices who is coming here with a mixture of knowledge about criminal law and the orientation toward designing forward."

I hope in our subsequent discussions in this conference and on this panel, as we debate the skills needed for the problem-solving lawyer of the future, that we'll include in the mental picture in our heads of who we're talking about, the very substantial number of government and public sector lawyers whose work touches on neighborhood and community safety.

So I'd ask the panel, what are the qualities we need in problem-solving

lawyers, in particular among government and public sector lawyer whose work touches on the safety and health of neighborhoods and communities?

MR. STEENLAND: Roger, you and I have discussed this on a couple of occasions. I was alluding to some of those discussions earlier when I was talking about community-oriented prosecution and drug courts and things like that.

There are some common areas to the problem-solving approach, whether you're looking at it as just described by you or through a more narrow prism of dispute resolution. Of course what we're doing now is we're looking prospectively, and one of the things that we have seen in virtually all successful mediation programs instituted throughout the federal government is that they share a concern for continuing relationships. One of the rationales for why you want to do this in the work place is because a work place dispute involving someone who has a Title 7 claim is an incredibly corrosive experience. Likewise, a contract dispute with someone who has been a longtime supplier and provider can be very troublesome.

We've seen time after time that when the lawyers take a half step back and put their problem-solving hats on, it isn't half as important regarding what happened in the past as it is tackling the question of how we can fix the problem and move on in the future. That type of approach, whether in a civil dispute or in a drug court, I think has a great deal in common. The lawyers who do well at this also have things in common. They are good listeners. They've developed the active listening skills. They're open to new options. They don't come in with a rigid focus. They take great pride in their creativity and in their willingness to consider things that might have otherwise been totally foreign to them.

So, yeah, I think there's a lot of commonality there. We're just extending it a couple steps beyond the regime of civil disputes.

MR. ACEVES: I wonder whether the idea of design can be limited simply to the legal process and legal professionals. This goes back to one of the earlier comments made concerning the idea of trying to promote these types of creative problem-solving approaches. We can take the necessary steps in perhaps seeking to design alternative methods, alternative approaches of addressing disputes or concerns, but the concern is whether that's really enough—whether we don't have to try to address the broader cultural concerns, the societal concerns that often view conflicts in a zero sum manner.

UNIDENTIFIED SPEAKER: There seems a broad consensus in this room—and maybe it's because we're a somewhat skewed group who have come to this program—that we need to transform the legal profession and maybe, to some extent, the judicial profession in the direction of seeing ourselves as problem-solvers, not as litigators.

I think we all agree with the observation that started off this program that clients have problems, not cases and the like. We've been talking about the different obstacles and possible ways of kind of getting there. How do we do this transformation?

We've noted the economic pressures on lawyers to practice the way they do. I know there's a lot of resistance on the judiciary as well about giving up

that power of sitting up high and calling the shots, the rights and the wrongs. Of course the law schools, which need to make some big changes in the way of teaching students, are still teaching the Langdellian case method from a hundred years ago, which suggests that there's lots of resistance there too. We law professors, you know, like to do what we've been doing all along. Changing has its costs and its problems.

One response we've heard this morning is the market will change this. Let's hope it will, but a certain skepticism emerges on my part because clients don't understand who good lawyers are and who bad lawyers are. They don't quite get it yet, and perhaps they never will. Given this perspective, maybe the best we can hope for is a market change.

Let me introduce another ingredient that I think we've got to get the word out about that can help change the way lawyers regard their work and judges regard their work. An ingredient that focuses not only on the client, but on the lawyer as well. The point is that, by being members of what I would like to see us consider ourselves, a helping profession, not only can we help solve the problems of our clients more effectively and do them a greater and larger service, but we can do ourselves a larger service.

As we all know, there is incredible lawyer burn-out, judicial burn-out as well, incredible degrees of lawyer depression, anxiety, even suicide. We're not happy as lawyers. We're groping around for other things. What is the impact on the mental health, emotional well-being of the lawyer who practices in these new ways and of the judge who practices in these ways? I think the answer is that it's considerable. I think that's an important ingredient in this transformation we all want to bring about.

MR. PERLIN: If I could throw one other idea in. My name is Michael Perlin. I've been a law professor for 16 years, but I was a real lawyer before that. I represented mostly mental patients, criminal defendants, juveniles. One of the things that I'm concerned about is that there's a presumption of a kind of an even playing field between lawyers, between different positions. It occurs to me, certainly in the cases I litigated, it was never so. It was that the judges, frankly, were not particularly neutral about the cases. I'm concerned, as we try to build up creative problem solving through new methods, and we do this from right brain rather than left brain, that we're assuming a fact not in evidence.

Percy, you were talking about the rise of the bench. What I found was—and this is actually very interesting—that it was contrary. When I used to go to the juvenile youth house and represent clients I would lose all the time. When the youth house was being rebuilt and we had to come down to court and the judge was up on the bench, the Miranda arguments that he would never have listened to up there all of a sudden became real. Representing a mental patient inside the superior courtroom is very different than representing a mental patient up at the hospital in terms of how seriously that side is taken by the judge.

We're talking about using ADR and mediation for civil commitments, right to refuse medication hearings, things of that sort. My sense is I think somehow we've built something into this to kind of accept that fact that it's



really not always going to be even. Whatever we do, I'd like to see that somehow take flight.

One final thing, I'm thinking also that there may be very different kinds of problem-solving approaches for different kinds of lawyers, in different kinds of areas. In discussions with Judge Towne upstairs a little bit earlier, even the notion of criminal lawyers involves a variety. You have the public defender, the legal aid guy, and you have the person who is representing organized crime. You have people who are doing white-collar crime, and of course, the occasional criminal defense lawyer. All of these individuals have very different interests, different financial interests, different social interests, and different relationships with the attorney general's office.

I know if I'm representing somebody in a class action, representing mental patients in a hospital, the attorney general's office is going to look at me very differently than if I'm representing somebody on a RICO charge. No question about it. That's going to affect perceptions about whether we're doing it as problem-solvers or not—just to throw that in as another thing to the mix.

UNIDENTIFIED SPEAKER: About the one limitation that struck me here is that I'm a solo practitioner. A lot of the people that call me, it's a matter of do they really need me. I think part of the resentment our profession gets is because it's sort of like being tied to a wheelchair. You don't hate the wheelchair; it's the fact that you need it.

To give an example, a lot of what I do is consumer law. Very few attorneys do it. The person comes to me. They should be able to go to small claims court, but if they have not been advised how to do this either by paying me, or going through some free service or information service where they can do the research, they don't know the cross complaints they need that would fairly allow the commissioner to decide both sides of the issue. If I try sending them to the community mediation service we have here in the county, they will not deal with legal issues at all.

I guess the one complaint I've had so far with everything we're doing here is all of those multiple doors we're talking about are inside the courthouse or inside my office doors. I'd like to try and see if Mr. Jones has any suggestions as to how he and the paper could help lawyers by educating the public. Do you know of some way your paper could assist in trying to present a greater array of possible solutions to cases that may not need us?

MR. JONES: So much of what you're talking about comes from a mind set. If you, as an attorney, see these alternatives and want people to know about them, then you sort of have to be thinking, "I want to tell a lot of people about this. How can I do that?" Then you look at the media in your area to do so.

We have an audience of substantial numbers. Other papers or other media have audiences as well, but, again, you have to be thinking about wanting the public to understand what you're doing. Based on many of the conversations I have with attorneys, I sort of get the sense that there is a self-preservation element to what they're doing in terms of not letting people know about their little secrets.

I'm not an attorney, but there are lots of things about the legal system that aren't that complicated if people know about them. Again, I get the sense that sometimes people in the legal profession don't want this information to be broadly shared, because then people can resolve their problems without going to an attorney. I may be wrong in that perception, but that is my perception.

MR. ACEVES: I want to thank our panelists for taking the time out today to comment on this very challenging issue. I appreciate all the comments and suggestions and critiques that were made today.

Clearly this is a long process that we're undertaking. It's certainly not anything we can accomplish today or this weekend, but I hope it's an important part of our efforts to make ourselves better attorneys and better legal professionals.

