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The New Public Interest Lawyers*

At a time when our society is badly demoralized and failing to meet the needs of many of its citizens, the traditional modes for public service by lawyers—through working in the government¹ or through combining pro bono activities with commercial law firm practice²—have lost much of their effectiveness and allure. Some law students now feel an angry despair, no longer believing it possible to play a positive role within their prospective profession. But others have decided to believe, with the poet, that you don't have to be a Weatherman—either to know which way the wind is blowing, or to be a force for necessary and fundamental change.

A source of intense interest for the present generation of law students is the small number of practitioners outside government or corporate law practice whose prime goal is the promotion of significant social

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¹ This Comment originated in independent work by a small group of students for Professor Charles Reich's course, entitled "The American Corporate State," at Yale Law School. Research was made possible by grants from the American Bar Foundation and the Urban Studies Committee of Yale Law School.

² Information was gathered through a series of in-depth interviews with numerous lawyers who are engaged in what the authors feel may be loosely termed "public interest law." The Journal expresses sincere thanks to these lawyers, whose names are listed in the Appendix, both for the primary contributions which brought them to our attention, and for their remarkably straightforward and insightful interviews. We are especially grateful to James Lorenz, Jr., Thomas Hecht of the American Bar Foundation, and Gary Bellow, for extensive comments and suggestions on an earlier draft. Professors Thomas I. Emerson, Charles Reich, Quintin Johnstone, and Daniel J. Freed offered us helpful criticism at various stages of the project. We also wish to thank Lloyd Cutler, Charles Horsky, and Victor Kramer of the Washington bar for reading this Comment in draft form and helping us to put the new public interest lawyers in historical and analytic perspective.

1. Perhaps the most widely recognized way for a lawyer to serve the public interest in the past was by working for the federal government. According to Charles Horsky, author of The Washington Lawyer, the focus on government service developed in the 1930's. At that time, the various state governments had in large measure been taken over by powerful, moneyminded interests. Roosevelt convinced the public that there was a significant opportunity to effect economic, social, and political change through the federal government. Young lawyers flocked to Washington to "save the Union from the states." In the thirties, Horsky reflects, "to join one of the federal administrative agencies was seen as a way of fighting the enemy; now it is more often perceived as just joining the club." Though there are certainly important differences among many of the agencies, critics say that they are at best demoralized and inefficient, and, at worst, the captives of a few powerful special interest groups, much like those which had captured the state governments in Roosevelt's time. In a very recent opinion, the Court of Appeals for District of Columbia Circuit boldly focused the issue: "This appeal presents the recurring question which has plagued public regulation of industry: whether the regulatory agency is unduly oriented toward the interests of the industry it is designed to regulate, rather than the public interest it is designed to protect." Moss v. Civil Aeronautics Board, Dkt. No. 23,627 (D.C. Cir. July 9, 1970) (slip opinion).

2. For some observations on the past contributions of the private bar to the cause of social change, and references to current pro bono activities of commercial law firms, see pp. 1106-09 and notes 65 & 67 infra.
change. The activities of these lawyers, coupled with their sense of commitment and willingness to make personal sacrifices, have led publicists to call them the new “public interest lawyers.”

3. Though we will use the term “public interest lawyer” freely in this Comment, we would like to note that its use raises serious conceptual difficulties. See generally, G. SCHUBERT, THE PUBLIC INTEREST (1960); Riley, The Challenge of the New Lawyers: Public Interest and Private Clients, 38 Geo. Wash. L. Rev. 547 (1970).

The slipperiness of the term is well illustrated by a recent incident involving one of the better known “public interest” lawyers, Ralph Nader. Earlier this year, Lloyd Cutler, a Washington lawyer of considerable professional stature, led a firm team which obtained a consent decree on behalf of automobile companies, settling before trial a government antitrust action which charged the companies with conspiracy to impede the development of pollution control systems. Through Nader’s promptings, a number of law students picketed Cutler’s firm to draw attention to the settlement, which they felt to be a Justice Department sellout of the public interest. The students felt that the settlement prevented a proper public airing of crucial issues, and noted that the settlement also prevented the possibility of private treble damage actions based on the original judgment, which would have been possible had the government gone to trial and prevailed. In the midst of a press conference, in which a clearly upset Mr. Cutler accused the picketing students of violating legal ethics, he asked an especially difficult question: “Why do you think you have a monopoly on deciding what is in the public interest?”

In an interview, Mr. Cutler said that the negotiations were not “secret” as the students had alleged; that public objections were heard and amendments made; and that the final settlement was unanimously affirmed on appeal. According to Cutler, the government received the relief it had sought, and it was by no means clear to those involved that the government would have prevailed had the case actually been tried. Cutler’s press-conference question, then, appears to mean the following: if we agree that the pluralistic political system is a fair one, the public interest can only be defined as the outcome of the political process in which various private and group interests compete. Thus any lawyer representing any substantive interest in the process can with equal justification claim to be working towards the “public interest.” Assuming that the process operated properly, the pollution case settlement, which was the outcome of the process, must have been “in the public interest.”

According to the pluralist theory, better decisions for society, at least over the long run, will be produced where competing interest groups have a chance to use power, reason, and compromise to get what they desire. Critics, however, have repeatedly noted that the political system is not presently functioning in the fashion prescribed by pluralist theory. Of many different criticisms, two are most relevant here. First, as Henry Kariel has emphasized, the leaders of large hierarchical organizations have increasingly been granted governmental recognition as quasi-official representatives and spokesmen for their respective groups. As a result, it has become more difficult for the members of such organizations (labor unions, corporations, professional groups) to influence policy—either directly or through their groups. Additionally the political system retains a distinct bias against unorganized interests, or those in the process of formation. H. KARIEL, THE DECLINE OF AMERICAN PLURALISM (1961).

Second, other critics have emphasized that the contemporary social structure encourages groups to organize politically around occupational categories, while inhibiting effective organization on the basis of other considerations. The process therefore ignores concerns which the active legitimate groups fail to define as high priority interests. This is why environmental and consumer interests have until recently been so badly neglected. See generally J.K. GALBRAITH, THE NEW INDUSTRIAL STATE (1957); G. McCONNEL, PRIVATE PROPERTY AND AMERICAN DEMOCRACY (1968); Connolly, The Challenge to Pluralist Theory, in BIAS OF PLURALISM (W. Connolly ed. 1969).

Because the lawyers we interviewed are representing social groups and interests which are currently underrepresented in the legal and political arenas, they may be said to be acting in the public interest by consciously attempting to correct the bias of the political system. One problem with this approach is that to label a lawyer a “public interest lawyer” because he is “making pluralism operative” suggests that his personal commitment is to the process (i.e. is it fair? are all groups and interests being heard?), whereas in fact he may be, and generally is, committed to realizing the substantive interests he represents. From the premise that the public interest is the result of a process in which
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Both the reinvigoration of government agencies and the further development of the *pro bono* potential of private firms will be crucial factors in long range social change. But many observers believe that the new public interest lawyers will be the gadflies and catalysts for a major reallocation of legal resources, which will stimulate the expression of important interests and values in our society and further political, economic, and social equality. What follows is an attempt to describe and analyze some twenty-five in-depth interviews with leaders of this new movement.

Keenly aware of the defects in our society, each of the lawyers we interviewed has made the existential decision to act to bring change. As a group, they have engaged in a mélange of activities and have developed a number of strategies to effect the goals they seek; they have tapped a number of different sources of funding for their new operations; they have developed distinctive relationships with clients and groups contend, it follows that one cannot validly claim to be a "public interest lawyer" by pointing to the merits of the particular causes he pursues. Since there is no societal consensus about values, such a claim is merely an assertion of subjective value preferences, a game which can be played by Lloyd Cutler with as much authority as Ralph Nader.

It is possible to step outside Cutler's premises entirely, and to fault pluralist theory itself. This may be in essence what Nader is doing when he claims to speak out for the public interest in his role as independent professional. For example, it may be argued that the historically produced limitations of the "subdued pluralism" of modern industrial society undermine any faith that decisions made through that process will produce the best results for the whole society. As Herbert Marcuse has argued, critical social analysis may expose "the irrationality of the whole." The competing institutions in modern industrial society, he claims, concur in a common interest to defend and extend their established position, and to solidify the "power of the whole over the individual." The irrationality of the whole—of growing productivity based upon growing destruction, of technological advances used to produce weapons of death or plastic products for a consumer society, of increasing affluence producing pervasive affluence—goes unnoticed and unprotected. H. MARCUSE, ONE-DIMENSIONAL MAN 13 (1964). Under such circumstances, we may wish to define the public interest apart from the process of contending groups. Indeed, as Barrington Moore has suggested, the pluralist conception has "become part of what requires explanation." Moore, *The Society Nobody Wants: Beyond Marxism and Liberalism*, in *THE CRITICAL SPIRIT* 418 (1967).

Under this "substantive" (as opposed to process-oriented) approach to defining the public interest, an actor may be able to claim that he represents a group or interest the advancement of which is "in the public interest." Using this approach, Ralph Nader is asserting, from his own research and before the outcome of a long and complex process, where the public interest lies with respect to a given issue. The value choices underlying this claim may be no more subjective than the value preference which supports a faith in the outcome of the pluralist system as it presently operates. For attempts at conceptualization of "the public interest," see Barry, *The Public Interest*, in *THE BIAS OF pluralism* (W. Connolly ed. 1969); Wolff, *The Poverty of Liberalism* (1968); MARCUSE, supra.

Despite the slipperiness of the term "the public interest," its popularity makes its use inconvenient to avoid. In this Comment, the term "public interest lawyers" will be used to refer to lawyers who represent the underrepresented groups and interests in society; the term "public interest lawyer" is applied as a word of approval, because the authors believe that representation of such clients in the legal-political process will make pluralism work better, or in some instances because we believe that the interests and groups being represented by these lawyers are to be preferred, at least temporarily, over other interests and groups.
have transformed the concept of the "client;" and they have occasionally experimented with different, freer life and working styles. The present career role of each of our interviewees undoubtedly represents a tentative compromise between personal values and societal concerns, risk and security, reality and dreams. Our purpose in writing this Comment is to describe these new career roles and tentatively to evaluate their potential as models for future development.

I. Survey: Clients, Activities, and Social Change

The lawyers to whom we talked are involved in essentially three different pursuits: aiding the poor; representing political and cultural dissidents and new radical movements; furthering substantive but neglected interests common to all classes and races, such as environmental quality and consumer protection. Individual lawyers and law firms often engage in activities which serve more than one of these goals, and of course the categories themselves overlap somewhat. Nevertheless, because many of the operations we will describe do have a primary thrust, these categories will be useful for a survey of the terrain occupied by public interest lawyers. In this section, an attempt will be made to suggest the full range of public interest work by describing the differing activities engaged in and clients and substantive interests represented, as well as the various theories of social change informing specific choices of clients and modes of action. To a surprising extent, it should be noted at the outset, the lawyers we interviewed did not articulate either a "politics" or a theory of what was wrong with American society; and in many cases an individual lawyer's work lacked the programmatic quality such a social theory would produce. But we have at least attempted, with the help of the more theoretically inclined lawyers we interviewed, to suggest the assumptions which underlie the various directions in which public interest lawyers are travelling.

A. Lawyers for the Poor

Poverty is both a cause and a consequence of underrepresentation in the legal-political process. The poor need legal services as much as anyone else, and the profession has always recognized, at least in principle, a duty to provide these services without regard for ability to pay. But the poor also need legal services because they are poor; the very fact of poverty fiercely intensifies an individual's need for legal representation in almost all facets of his life.4

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Legal services programs are one response to the dilemma of the poor. The neighborhood legal services office usually assists individual clients with occasional crises; landlord/tenant, welfare, consumer credit, wage garnishments, and family law problems predominate. Legal services, in theory, are to be provided without cost to every "eligible" poor person who walks through the door. Assuming that the political and economic order are basically sound, but that some people are cut off, legal service efforts attempt to supply more lawyers so that more cases can get into the legal system. The goal is to make the legal system available to more people, so that their grievances can be heard and channeled.

The benefits of these programs are obvious. Poor individuals are endlessly victimized, and their rights are often violated. Legal services programs serve a great need by attempting to remedy those individual wrongs perpetrated against poor people that make their day-to-day plight even more miserable. Second, lawyers in these programs must be credited with developing much of the law of the poor; in addition to evolving new forms of action and new remedies, legal services lawyers have, through their work, had the secondary effect of bringing an awareness of the problems of the poor to the law schools, to the legal profession, and to the general public. Finally, these programs provide a training ground for lawyers who then move on to other kinds of work for the poor.

The shortcomings of the legal services programs as a way of dealing with the problems of the poor have become increasingly apparent over time. The ideal of service for all has led to extremely heavy caseloads, with a necessary effect on the quality and comprehensiveness of the representation given; the only realistic way to begin to cope with the quantity problem is to push for increased standardization of legal forms and procedures, and for greater use of lay people in furnishing legal service. In addition, legal services programs may funda-
mentally misconceive the plight of the poor and the relation of the law to that plight. A program focused upon services to individuals will fail to deal with the legal and institutional sources of the grievances of the poor. As Carol Ruth Silver says, "The legal problems of the very poor . . . tend to involve issues common to the entire economic class; [the] class has a group interest in institutions and institutional practices, in governmental policies, programs and laws." In the legal services office, overwhelmed by individual cases, reform of laws and institutions—reform that would affect the poor as a group and would deal with the depressed state of their day-to-day existence—is neglected in the rush of small, individual matters the office must handle. Mary Beth Halloran of the Neighborhood Legal Services Project in Washington, D.C., admits that she "has no time for any long-range solutions.

While it may be true that the ready availability of legal services will somewhat deter institutional offenders, and while, as Edgar Cahn pointed out, the availability of legal services may be necessary to free community people as well as lawyers to attend to larger matters, legal services alone cannot further fundamental goals of the struggle to alleviate poverty. It does not contribute to substantial redistribution of the country's economic resources; it affects income redistribution for the class of poor people only by subsidizing the cost of legal services provided. It does not redistribute political power in the society. And it does not open new life possibilities for those who are born poor or black.

Most of these criticisms of the service approach to "legal problems" facing poor people are not new. As the War on Poverty's Legal Services Program was itself taking shape, shortcomings of the services approach were pointed out by those suggesting a different emphasis in the federally-supported effort. The lawyers for the poor whom we interviewed are all in some way attempting to meet perceived weaknesses in the legal service approach. One goal is to provide more creative and comprehensive service to individual clients with specific legal dif-

9. See, e.g., Cahn & Cahn, What Price Justice: The Civilian Perspective Revisited, 41 NOTRE DAME LAWYER 927, 941 (1966). They criticize those who treat "the demand of the poor for justice under law" as "coextensive with the demand for legal services. Other demands—for full citizenship, for opportunity, for participation—are treated by the legal profession as 'political demands.'"
10. Earl Johnson's forthcoming history of legal services discusses in detail the origin and early days of the federally-sponsored program.
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Jim Lorenz, a founder of California Rural Legal Assistance (CRLA) and an alumnus of a large corporate law firm, relates this comprehensive service to that traditionally given by large firms:

The mere fact that the best private firms say “take as much time as it takes to do a good job” is something extraordinary. You have a lot of pressure in the legal aid business to help people. They come into your office in horrible straits. To keep saying “No, I will only take as many of you as I can represent on a quality basis,” was a pretty revolutionary attitude.1

Aside from more comprehensive service for specific clients, the emphasis of most public interest lawyers is on having a wide impact on the poor, usually through representing groups rather than individuals and through attempting to achieve changes in legal rules and in the behavior of governmental agencies. As Lorenz pointed out, there may be a connection between comprehensive service and the quest for “impact”:

We found that cases other legal services groups were handling were treadmill only because they were perfunctorily done. We found that many of those cases had issues which were bigger issues. One of the ways to find impact cases is to be thorough on the cases you do handle. When you go into depth in the cases which you handle, and maintain an ongoing relationship with groups which are interested in broader issues, you tend to run across more impact cases.

Since the search for greater impact depends in large part upon the

1. Lorenz adds:
   The large corporate firm is involved with power. That is part of the business of big firms. They represent powerful clients, and they build up a reputation of having smart lawyers who do thorough legal work which can be relied upon by judges, administrators and legislators. Having clients with power, they can resolve things short of going to court. Because many of their clients have enough money to employ them on a continuing basis and to provide them with a good deal of work, they can establish continuing relationships with the people who are involved in making decisions in the society. Since they handle big, involved cases, they are more likely to be handling “interesting” cases, and more able to recruit bright young law students.

   All of this is relevant if you are talking about setting up a quality legal services organization concerned with the reallocation of power in society. Legal services programs can only attain a small amount of the kind of power held by the large corporate firms because the power of the legal services program’s clients is, by definition, limited. But legal services programs can maximize the bargaining power which they are able to bring to bear on their clients’ problems if they become involved in big case litigation, administrative proceedings, and legislation, as well as the routine day-to-day service work. In so doing, they can establish continuing relationships with government officials and interest groups. They and their clients would be able to plan ahead and take the initiative on some problems by filing lawsuits, rather than always reacting to the issues raised against them. They could offer interesting and compelling work to bright, committed lawyers.
lawyer's assessment of how social change is best achieved in the United States—and of what sort of change is most important—the lawyers we interviewed have moved in many directions. The various roles which they have assumed, including litigator, negotiator, policy researcher, public relations man, and community organizer, suggest a much larger conception of the lawyer's role than the old-fashioned legal aid lawyers ever imagined. Despite frequent disagreement over strategies, and sometimes over goals, the lawyers proved remarkably tolerant of the work of other lawyers for the poor—reflecting, perhaps, their personal doubts and uncertainties about what the right answers are for American society, and therefore what the lawyer's role and approach should be.

One approach to achieving large impact is through test cases, which seek to establish wide-ranging legal principles or legal rules. Many public interest lawyers, including those legal services organizations with law reform units, use this approach. Some organizations concentrate on test case litigation and often specialize in certain substantive areas.

12. In referring to those lawyers, Gary Bellow said, "There is a much narrower view of what a lawyer does among the legal aid lawyers than there is among private firm lawyers."

13. The lawyers we interviewed exhibit a range of commitments to and alienation from the American political and economic system; but for the most part, they are committed to that system and hopeful that it will undertake the reforms necessary to make this a decent society. Nevertheless many have found it impossible to live through the past few years without developing a basic ambivalence about their work and their commitments. For example, Marian Edelman, who plays the system's political game in Washington, revealed her deep uncertainty about the utility of what she is doing:

I don't know what the answers are in this country. Hunger has taken three years and we are about where we started off—we are getting little reform. I am beginning to understand a little about the cooptation of the system. I'm not sure I'm right. My instinct is to keep at it, but I'm not sure whether the answer is inside or outside the system. I'm beginning to think it's probably both. I know that if I had grown up on the block with the Panther office in Chicago I would have been a Panther in a week. In fact, if I had stayed in Mississippi I would be a very different person.

Though I'm personally very pragmatic, I find it very hard to maintain real hope about the capacity of this country to change. I just don't think people fundamentally understand, or if they understand will give up the kinds of things that would have to be given up to bring about the kind of change necessary. I will not say "you're wrong" to people like Tom Hayden because I'm not convinced they are wrong. I may not agree with their tactics, but I don't feel that I can judge them and say they are wrong, particularly when my way is not always effective. While I won't shoot somebody myself and while I don't think that the best way of operating is to go out in the streets with the Weathermen, I no longer feel so easy in condemning violence as a means of change in this country when I run up against the unresponsiveness of institutions day after day in seeking change through peaceful means.

Another lawyer commented that "it is wrong to assume a monolithic approach. We need militants to make people more ready to deal with us, to make us more acceptable." But he added, "No one is omniscient enough, or sufficiently in control, to say with any certainty who is serving whose purposes. . . . You have to be careful about co-optation if you are a legalist, which is basically my method of social reform. We have to acknowledge that there are other ways of doing things."
The Columbia Center on Social Welfare Policy Law focuses mainly on state and federal public assistance programs. It has attempted to coordinate its litigation with other lawyers in the country to produce a national litigation strategy. The NAACP Inc. Fund brings test cases in furtherance of a value, integration; these cases may have national impact, as Brown v. Board of Education\(^\text{14}\) did, or may seek simply to affect a single local school system. Test case law reform is a kind of interest group politics which uses the court as a vehicle. The great advantage of test case litigation, of course, is that the appeal to legal principles short-circuits the political process, where the interests of unorganized poor or black people are rarely represented and often disregarded.\(^\text{15}\)

There are two main drawbacks to test case litigation. As Gary Bellow put it:

The basic theory of test case litigation is that a court case can be framed and directed toward the elimination of a particular wrong, like maldistribution of income, and can be a vehicle for the elimination of injustice. For test case lawyers, the problem is merely finding the particular rule or doctrine which embodies or causes the injustice and challenging it. This approach is a dead end for a number of reasons. First, it misconstrues the problem. The problem of unjust laws is almost invariably a problem of distribution of political and economic power; the rules merely reflect a series of choices made in response to these distributions. If a major goal of the unorganized poor is to redistribute power, it is debatable whether judicial process is a very effective means toward that end. This is particularly true of problems arising out of disparities of wealth and income. There is generally not much doctrinal judicial basis for adequately dealing with such problems, and lawyers find themselves developing cases whose outcomes are peripheral to the basic issues that these problems raise.

Secondly, “rule” change, without a political base to support it, just doesn’t produce any substantial result because rules are not self-executing: they require an enforcement mechanism. California has the best laws governing working conditions of farm laborers in the United States. Under California law, workers are guaranteed toilets in the fields, clear, cool drinking water, covered with wire-mesh to keep flies away, regular rest periods, and a number of other “protections.” But when you drive into the San Joaquin Valley, you’ll find there are no toilets in field after field, and that


the drinking water is neither cool, nor clean, nor covered. If it's provided at all, the containers will be rusty and decrepit. It doesn't matter that there's a law on the books. There's absolutely no enforcement mechanism. Enforcement decisions are dominated by a political structure which has no interest in prosecuting, disciplining or regulating the state's agricultural interests. It's nonsense to devote all available lawyer resources to changing rules. Recently, attorneys in Florida were fighting day and night to establish the same rules we have in California which are not enforced. It's hard to admit it but it may well have been a waste of time.

These insights have a variety of consequences for the behavior of lawyers. Some lawyers may simply believe that the courts are not the best institutions to remedy social injustice. They therefore direct their activities at legislatures, seeking new laws, or concentrate on government bureaucracies, attempting to monitor the administration of laws affecting the poor. This effort at law reform may be done by self-appointed lobbyists for the poor, but where political institutions are involved, the existence of what Bellow calls a "political base" is obviously even more important than it is in the test case area. The theory is that legislatures will make new laws, and executives will enforce new rules, where interest groups exist to exert continuing pressure and to participate in the coalition work that is the stuff of legislative activity. Thus, most of the lawyers we interviewed have moved toward working with organized groups of poor people, working with organizers, and occasionally even organizing itself. Furthering the viability of organized groups has an impact beyond the effort to achieve new legislation; organizing and building a new set of coalitions may take place without immediate reference to electoral politics. Where organized groups exist, pressures can be applied in any number of ways on a whole range of institutions, public and private. Indeed, new "community controlled" institutions can be created. Furthermore,
while test case law reform necessarily requires the constant participation of middle class lawyers, organized poor people have power which they can exercise themselves, and they need not be so dependent upon the lawyer. Thus, test case law reform—the essential strategy of the unorganized—becomes simply one tactic among many available to poor people’s groups.\(^9\)

A decision to go beyond test case litigation characterizes virtually all the lawyers whom we interviewed. Some of those lawyers work permanently in Washington to affect policy for the poor as it is made by Congressional and agency decision-makers.\(^20\) They tend to have a less intimate or at least less sustained relationship with organizations

19. Jim Lorenz, a founder of California Rural Legal Assistance, attempted to show how test case litigation can relate to the new emphasis on working with organized groups, suggesting that although in some situations test case litigation can undercut organizing, the two may be complementary:

Test case litigation (which I think really started with the Inc. Fund’s *Brown v. Board*) predated organizing in the civil rights movement (which really began with Martin Luther King)—and there are very good reasons for this. In the early 1950s, economic and political inequality was so memorialized by our laws and implemented by our legal system that until blows were struck against this institutionalized inequality, it was impossible to say to Southern Negroes that organizing was possible. The Inc. Fund had to go to the courts first because the malapportioned legislatures were stacked against the Blacks and the poor, because the administrative agencies were pretty well dominated by the politicians and because the country believed that laissez-faire domination of the powerful counted for more than equality. Once the Equal Protection Clause came into play, once the federal courts and then the federal government enlisted on the side of the underprivileged, once the laws (which, if nothing more, are symbols of what the country professes to believe in) were changed, and most important, once the rural-dominated legislatures were being reapportioned, it was possible to speak of Black Power. As power could be exercised by the people themselves, less heed had to be paid to middle class people, including lawyers. The same process of development has happened all over again in the War on Poverty and in legal services.

[Thus,] law reform is not necessarily antithetical to organizing. First, it is often the first stage of organizing. Legal pressure can serve as a catalyst for political consciousness and organizing; and if it is like a skin which the snake sheds at a later season, it nonetheless serves a purpose for awhile. Second, test cases often prove complementary to the building of organizational power. For example, the welfare residency case [*Shapiro v. Thompson*, 394 U.S. 6.18 (1969)] served to move welfare decision-making away from the local level and helped organizers like George Wiley [of the National Welfare Rights Organization] build welfare rights organizations at the state and federal levels. Lawsuits filed on behalf of organized groups can be very helpful in giving the groups publicity, in allowing them to define issues more clearly, in providing a bridge with middle class allies (who are willing to undertake cooperation, if it is limited and defined, as law suits are), and in providing another weapon which the organizations can utilize against non-friendly government agencies, etc.

However, law reform can undercut organizing in a number of ways. When the lawyer is a necessary player in the game, he may well end up in center stage, with the people he is representing relegated to the background, unless he is very careful. To the extent that reliance is based upon legal change through the courts, which are essentially non-democratic institutions, the people may be less ready to mobilize themselves, either for pressure on particular issues or for more conventional political organizing. And insofar as lawyers are wrapped up in rule changes and are unsophisticated about economic realities, the basic economic nature of the problems can be overlooked.

20. Special issues, such as the battle to kill the Murphy Amendment, may bring locally based lawyers to Washington temporarily.

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of the poor than do locally-based lawyers. Edgar Cahn's Citizens Advocate Center is a Washington-based operation designed to monitor federal grant programs, such as food stamp, urban renewal, model cities, and legal services. Thus the focus of attention is those federal agencies charged with distributing funds to aid the poor. Cahn is in Washington because that is where decisions are made: he is trying to change the behavior of a centralized institution because he found that lawyers based locally, working with local community groups, could not deal adequately with the problems of federal grant-making. A controversy over the refunding of a project in Mississippi led Cahn to believe that "in order to avoid an ad hoc, crisis-approach to calls [by federal grantees] for help and intervention, a new institution, prepared to respond to complaints, and monitor the discretionary action of federal officials was needed." 21 Specific complaints from local groups are followed up by investigation, and the Center also initiates its own studies of federal programs.

The thrust behind Cahn's organization is complex: he is attempting to represent groups, to change the way institutions behave, and, in some sense, to organize. To the extent that he processes complaints he usually is representing organized groups of poor people who seek federal grants; in effect, then, one goal is to further the viability of community organizations of the poor, organizations which may engage in a variety of activities on a local level. He is also attempting to create monitoring mechanisms "so that federal agencies can begin to police their own programs and respond effectively to complaints." Finally, his research efforts—on issues such as hunger and the treatment of the American Indians—are attempts to organize a wide coalition around these issues, with an eye toward future changes in federal policy. It is important to realize that Cahn is not an organizer in the sense of organizing poor people. He wrote a report on American Indians, 22 but did not suggest that a group take over Alcatraz Island, did not participate in occupying the Island, and has not become involved in the affairs of various tribal councils—the Indians want to do this themselves. Cahn's studies are aimed at organizing middle class people to provide assistance to poor people on the terms poor people set.

Marian Wright Edelman, director of the Washington Research Project, is another public interest lawyer whose goal is to affect federal

Edelman began to do much more organizing of blacks in Mississippi. But she became convinced that fighting just on the local level was "a drop in the bucket." This led her to move to Washington, and to establish the Washington Research Project so that she could "concentrate on broader federal policy" in such areas as education, job discrimination, and economic development. The weakness of existing civil rights groups, she felt, was that they came to Washington once a year and talked to the Secretary of Labor or of HEW; the groups pushed for a big law once every three or four years, and forgot about the legislation once it was passed. No one remained to watch when agencies formulated crucial guidelines or were slow to enforce the laws. Someone was needed in Washington "to run a monitoring operation at the federal level," to bring continuing pressure and skill to bear on Congress and agencies affecting the poor, in particular poor blacks in the rural South, whom she sees as her "constituency." When she began, she expected to do only "negotiation, research, and reports—no litigation." But changing federal policy turned out to be a slow business, and the initial arsenal of weapons insufficient. Richard Sobol, an experienced litigator and specialist on employment, was hired so that the organization could pursue some of its more immediate goals in court.

However, a major part of the work of the Washington Research Project is research. The Project's most publicized effort thus far has been its preparation, with the NAACP Legal Defense Fund, of a detailed critical report on implementation of Title I of the Aid to Education Act. In discussing a new report the Project is preparing on "health problems from the point of view of the patient," Edelman indicated why research efforts are undertaken and how reports might be used as the springboard for other efforts:

We aren't going to have just a strictly legal operation here. I have always viewed the law as a tool to get other kinds of changes
going. The health study and other studies that we do will hopefully provide the framework for picking out one or two key issues around which to organize. One would, in addition, use the entire study to badger HEW and other agencies involved about their responses to the issues raised. I'm convinced that a key organizing tool of the next ten years is going to be health. It is one of the areas where money will be going from the federal government and we can use it for economic development. We have never thought of economic development centered around federal programs, but health and education are the two areas where there are going to be major expenditures. Health is going to be one of the things you can organize around in terms of poor blacks who are getting lousy services and middle-class whites who are getting lousy services. Everybody's got the same problem, and if you can somehow bring that out and get people to organize in the health area, I think you've got a real thing going. One of our obligations is to look forward to what kind of things you can build new kinds of coalitions on.

Edelman's day-to-day work is dealing with federal agencies. Much of the job is persistent overseeing of second and third level bureaucrats. She describes the mechanics of being a Washington lawyer for the poor:

What you really need to make anything move in Washington is just sort of a pesty operation where you call up a guy and say "What have you done?" or "What are you going to do?" or "Here's what we want." Several kinds of things are important. One is you just need persistence. Two, you need to know where the decisions are made and how you can affect them. You create a good internal network of information flowing out to you so you know when a decision is being made before it is made so that you can have an effect. What I wanted to do was try to get an early-alert system. An example of how that works best is Ruby Martin's role in monitoring school desegregation compliance. Ruby was head of the civil rights compliance agency in HEW under the Johnson administration, and for us she attempts to oversee all pending administrative decisions on schools before they're finalized. Take the Mitchell-Finch joint statement on school desegregation guidelines. When it finally came out everybody construed it as a victory. We didn't. But in one sense it was—if you had seen the many early drafts that said, in effect, that the guidelines were illegal and should have no effect. If Ruby hadn't had good leaks within HEW and received the early drafts of the statement so that we knew a guideline change was in process, and hadn't had time to circulate it among allies and to the press, and to get various Senators to call up Finch to ask, and have him deny, that any change in the guidelines was coming, and hadn't built up

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pressure over a few weeks span, you would have had a much worse statement on school desegregation than you did.23

What is most interesting about Edelman's conception is that even though she spends most of her time seeking change in federal policy, she remains deeply committed to the idea that "to take advantage of any new change you get in Washington" it is necessary to have an organized local community base:

Here we are, these nice bright lawyers going once a month to HEW about regulations. That's not bringing about change. Our big thing here is how can we get out in communities more and how can we get an effective community network. One of the things that has to be done is to build up a different constituency on the left or at the bottom that is going to push these national civil rights groups into more relevance, and you do that through the poor communities. To have effective policy implementation, you must have a mix of a sophisticated and informed press, good administrative pressure, as well as good community information and pressure. If we don't relate in all these ways, we might as well go out of business, because decisions will not be affected.

Aside from seeing to it that decisions are enforced at the local level, an organized and persistent political base is needed if a national lobbying effort on behalf of the poor is to be effective even in Washington. To the extent that Edelman turns more to litigation—which short-circuits the political process—she may be acknowledging that without a political base, expertise employed to monitor political agencies cannot have sufficient influence, at least where the interests of poor people are involved. The poor must organize. To build the needed community base, the Washington Research Project's broad policy issue fights in Washington must be selected with an eye to what issues can be organized around on the local level—"how you can take a step that is going to give you something to build on over the years." Organizing can only be effective where there are issues the community really cares about.24 Thus, Edelman hopes to hire community people

23. Edelman feels that she can often get necessary information from various administrative agencies where Ralph Nader, with his more direct and aggressive approach, meets greater resistance. A similar protective indirection informs her public relations. To protect its information gathering and supply network, the Washington Research Projects often leaks through others much of the information it uncovers. Edelman also gives occasional background briefings to press people, and in return relies heavily upon the press to supply her with information.

24. Edelman is convinced that "for two years in Mississippi when we were talking about voting, we should have been talking about food, because food was something that people wanted."

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and lawyers who, using the Project's Title I report to frame issues, can organize groups in Mississippi, groups that will gradually develop the confidence to move on their own into other areas. In addition to handling the broad policy issues, the Washington lawyers must also respond to day-to-day complaints that come in from the local communities asking for help: "You've got to keep in mind the relief that people need at the local community level. You want to keep their support." Furthermore, through the use of a newsletter, the Project is attempting to develop a network of contacts with community groups, and develop an information flow to them.

As Edelman indicates, there is a tension, both political and personal, between on the one hand wanting to be where powerful governmental decision-makers are, and on the other hand wanting to "stay local" where those decisions may have their impact, where important local changes can be made, and where organizing is actually done. Most of the other lawyers we interviewed restrict their activities to working with people from a single locality. A hybrid operation, reflecting some of the tensions within the Washington operations already described, is California Rural Legal Assistance. CRLA has numerous local "legal services" offices throughout rural California and a central office in San Francisco to coordinate major efforts. Many of the lawyers work extremely closely with organizers of the California Chicano community, such as Cesar Chavez, and are adjuncts to an increasingly powerful state-wide organization of Mexican-Americans. Thus, CRLA combines legal service for individuals, law reform, and group representation. Although 70% of its time is spent on day-to-day service cases, CRLA's most publicized activity has been its suits against government agencies. Jim Lorenz explained why he finds such suits particularly useful:

We are involved in a great deal of litigation with government agencies, in part because a large number of our clients rely on entitlements from the government, such as welfare, social security, and unemployment payments, which are often arbitrarily cut off by the government. In addition, I suppose, we and our clients like to attack social problems by suing the government because we think the government is more susceptible to legal pressure and to publicity than are private individuals or organizations. After all, the government is supposed to have a duty to serve all of the people, whereas most private organizations do not have such a duty. Government bureaucrats are often afraid of controversy, of notoriety, of anything which will disturb the security of their anonymity in the large, all-protecting organization. Government officials are bound by the freedom of information laws, which re-
quire them to make public some of the information in the files, whereas private individuals are not so bound. The government is a better pressure point. By filing one lawsuit against the government, we may be able to compel the government to take action against 10,000 employers, whereas if we dealt with the employers directly, we might have to file 10,000 lawsuits.

Lorenz added:

Our work has impact when the client groups which we represent are perceived as having some political power, when the cases which we handle for our clients succeed in arousing public sympathy for those clients and indignation against our opponents, and when the cases are supported by middle class groups, such as the trade unions, which do have political power.

Although most of the locally based lawyers we interviewed do handle cases for individuals, they tend increasingly to work with local groups of poor people, either organized or in the process of organizing.

The Boston office of the Lawyers Committee for Civil Rights Under Law provides its clients quite traditional legal representation: it refers most of its cases to private law firms. Representation, however, is oriented toward organized groups. According to the head of the office, Steven Rosenfeld:

Legal action seldom, if ever, exists in a political vacuum, and one's success depends very greatly on one's political power. Part of what defines political power is organization, the strength of the client's organization. If a group of disorganized people came to me and said, "We need help on rental increases," the first thing I might suggest is that as presently organized, I just don't think you've got the clout to turn them around short of litigation, and don't we really want them to turn around short of litigation? Clearly the most positive result is where you negotiate something above the minimum that the law requires. I say, "What's your chance of organizing. Why not use the discontent? If you have a meeting I will be glad to come along and explain what the law says in this area and what are some of the things we will have to do in order to present an effective challenge. But it is as an organized group that you have the greatest chance of making yourselves heard." If I were to say go ahead, I don't think I would be a very good lawyer. I don't think I would be recognizing as I should what it takes to win legal battles. I think a legal challenge is only a very small part of it.25

25. Note also the following passage from an article by Ann Fagin Ginger: I do believe that the law can be a tool for social change, but we must recognize its
Rather than becoming a member of an organization of lawyers that provides legal assistance to many groups and individuals, the lawyer may choose to make a commitment to a single organization of poor people. As a poor people's group grows in numbers, strength, and activity, there may be advantages in having a full-time lawyer, both because a better integration of the organization's and the lawyer's activities is possible and because the lawyer's exclusive commitment probably assures a deeper loyalty to the group and greater trust by the group. Stephen Wexler is, in effect, a house counsel to the National Welfare Rights Organization. The job of lawyer in this strong, increasingly well-organized group of welfare recipients—a national organization with numerous locally-based chapters—includes test case litigation and from time to time criminal defense work, but the lawyer works closely with NWRO leaders and organizers, who do not depend on the courts to provide all their victories.

Gary Bellow, co-founder of CRLA and now at the Western Center on Law and Poverty, shares the assumptions about the importance of organized groups of poor people, and self-consciously relates this to the importance of working on the local level. Having largely abandoned the hope that existing national governmental institutions are going to create quick social justice, and in any case committed to building independent, locally-based power units, Bellow is moderately critical of the "nationally"-oriented lawyers:

The attorneys in Washington tend first to establish a firm, and then focus upon developing a constituency. But constituencies do not develop overnight, and institutional restructuring is a long, tedious process. It may be that centralization of agencies of change in Washington or anywhere, has, at this time, inhibitory rather than productive effects. Too much power in one place too fast allows little opportunity for organizations to compete, to grow, to develop their own strategies and to learn from their own successes and failures. All of us in this type of work tend to want to change

limitations. Law is an instrument for the exercise and the restraint of power and defines power relationships. It does not determine who has the power. I do not think that a strike is the same thing as a court argument, and a lawyer's speech to the Fifth Circuit, even if he wins, is not the same as a sitdown strike in Flint or a boycott in a Southern city. The two can be connected. When a lawyer talks to people about their rights in a fundamental sense, he strengthens the individual client and the organizational client to the point where they are prepared to do things they were afraid to do before. Not that you should tell them what they should do and should not do. But certainly they should know what the law says, and something about the history of this society.


26. Mr. Wexler has written an article elsewhere in this issue of the Journal; Wexler, Practicing Law for Poor People, 79 YALE L.J. 1049 (1970).
structure too fast. We are doing nationally in the public interest law firms exactly what CRLA did in California. It moved so fast that a number of institutional problems were created which might have been avoided if there had been time to experiment, question and retreat from previously taken positions.27

Bellow believes that his fundamental goal of bringing about a re-
distribution of power can best be served by the lawyer becoming in-
volved in organizing the poor. Sophisticated in using litigation to deal
with governmental institutions,28 Bellow also suggests a unique way in
which litigation can be used as an organizing device:

If litigation is directed toward the different goal of organizing,
the potentials and methods in pursuing a law suit significantly
change. In such a context, law suits can consciously be brought for
the public discussion they generate, and for the express purpose of
influencing middle class and lower class perspectives on the prob-
lems they illuminate. They can be vehicles for setting in motion
other political processes and for building coalitions and alliances.
For example, a suit against a public agency may be far more im-
portant for the discovery of the agency’s practices and records
which it affords than for the legal rule or court order it generates.
An effective political challenge to the agency may be impossible
without the type of detailed documentation that only systematic
discovery techniques can provide. It is on this base that coalitions
and publicity can be built, and that groups can be organized to
limit previously invisible authority. This, of course, suggests a
different orientation for the attorney interested in political change.

27. A similar social analysis, and similar assumptions about “the limitations of the
law,” are expressed by “movement lawyer” Paul Harris of the San Francisco Commune.
In a paper presented at the national conference of the National Lawyer’s Guild, held
earlier this year, he emphasizes somewhat more than Bellow the need for lawyers to de-
velop “skills in the criminal law.”
28. Bellow described his use of law suits against government agencies in the following
way:
Remember that in assisting group interests, the purpose of the organization is not
to change legal doctrines. That’s the whole problem with the concept of law re-
form. That’s lawyers’ talk. The organization’s purpose is to bring about some
change in the situation of its members and to establish some real modification of
problems they face. That may involve changing legal rules; it may not.
For example, a group of farm workers tells me that, in essence, they want the
disease and injury rates from pesticides to be reduced substantially. There exist
laws on the books; the agency does not, however, enforce these laws or enforces
them so selectively that enforcement has no effect on the practice. The problem is
the creation of a mechanism that can create a substantial and lasting change in
behavior, governmental and private. This is inevitably a political as well as a legal
problem. We can try to generate pressures on the parties involved by bringing
public attention to the problem, or try to develop sanctions for non-compliance
with existing laws, or attempt to develop institutional mechanisms to keep the
problem visible. Sometimes we can achieve these results with a law suit. Sometimes
a legal decision can produce conforming behavior. But, what happens when we go
away—when the pressure abates? Legal victories can be so easily circumvented. If
one avenue is blocked, five other alternatives remain open.
He will spend a great deal more time in political organizing, in working on cases and priorities that reflect the group demands of his clients and in developing cases in a way which reinforces their political integration and cohesion. Let me give you an example: In Tulare County, I was involved in a law suit on behalf of a Tenants' Union attempting to improve conditions in a farm labor camp by withholding rent. I took a deposition from the head of the Housing Authority which ran the camp—at a place where the tenants could come and watch. I insisted that the deposition be taken in front of those tenants so they could see me challenge him, question him, and get information from him that they had previously been unable to obtain. They left with the sense that he was not invulnerable and that they were not totally without leverage or protection. It helped them, I think, continue the fight. It didn't matter that the case went on for two years, that the Supreme Court denied certiorari on it and that we in fact lost the legal issue. By the time the Supreme Court did rule, new housing was being built for the residents of the camp, over $5,000 in money had been returned to them in back rent, and a set of rules and procedures had been agreed upon that would bar any kind of retaliatory eviction actions in the future.

What we did there was to use the litigation for building the tenant's organization. Had we focused solely on the legal issues and on the litigation none of those tenants would be in that housing today.

Consider another example: assume an attorney is seeking an injunction and he must make a decision as to the type of preliminary relief he will ask of the court. What criteria should govern this decision? An attorney focusing on political organizing might well delineate the narrowest rather than the broadest ground in seeking preliminary relief. For example, in a landlord-tenant dispute he might seek a restraining order preventing the landlord from using force or self-help. This is, of course, a clear legal right in California, and the likelihood of obtaining such an order would be high. Why would it be sought? Twenty tenants would go in with the attorney to court asking that they not be thrown out by the landlord before he goes to court. And they'd walk out with a paper in their hands restricting the landlord's power. More than the protection, they'd have won a victory. They can go back to the forty other tenants who didn't go to court and say "We won our first fight. Now we'll try a harder fight."

Another perspective on working with local groups of poor people was suggested by John Flym:

The only hopeful solution is to return decision-making power to people generally, and that can only be done by decentralization. That doesn't necessarily mean a simple concept of decentralization. We can have political units of various sizes but I think the
The vast majority of decisions can be made in very, very small units, on what the individual really thinks is important. Then you stimulate these individuals to take responsibility for decisions; it stimulates the imagination.

I do have a sense that the ghettos particularly have tremendous potential for renovation. They are pools of real life; the suburbs are almost dead by comparison. There tends to be concentrated culture and experience in the ghetto which seems to me to be necessary for people in those communities to make the most out of the precious resources that they have available. By breaking down geographical units into small political units, I mean really taking things very much as they are now... I have a sense that probably people could improve their own lives in a fantastic way, given existing resources. I base that in part on the fact that other people in other countries do manage to lead beautiful lives... The quality of their lives is very substantial in circumstances that are basically very bad. Here we tend to compare the worst off and the best off people and judge by standards that are really very artificial. What makes life hard here is the institutional organization of life—all of the things which do not necessarily make things big but which destroy the small units, so you end up with no community as such... Those things depend much less on substituting one set of structures and institutions for others than they do on getting the ball rolling and doing it yourself and getting your friends and neighbors where you happen to find yourself to start doing things. Stimulate a process where you say to people, "Look, we are not talking big. We're talking about you having power, not big power, but power over your lives and the institutions that affect your life right around you."

Concepts of community participation and control are central to Jean Cahn's work at the Urban Law Institute. Perhaps more interested in creating institutions than Flym, many of whose clients are personal friends, Mrs. Cahn works only with community groups. Most clients are local Washington, D.C., groups—tenant organizations, co-ops, small corporations, etc. The Institute helps these groups in such matters as funding, writing by-laws, and incorporation. Mrs. Cahn is intimately involved in the organizing of groups as well, and her emphasis is on developing institutions which embody the ideal of community participation. Thus, she attempts to set up cooperative food stores, cooperative housing developments, community-run hospitals, and community-run child care facilities. Establishing local institutions does not itself bring about major reallocations of national wealth or power. But new local institutions can keep resources from fleeing the ghetto, and can help create new resources. In addition to working for specific local groups, the Institute is drawing up blueprint "models" for other...
groups around the country who want to apply the Institute's successful trial runs. Thus, the model on "tenants' organizations" discusses such problems as how to organize a group, how to bring the group from rent strikes to buying and managing its own property, and how to incorporate and draft by-laws. Other models either completed or in progress are an "economic development" model (how to finance projects through the Small Business Administration and other programs for black ownership), a "co-op" model (how to organize a co-op and get members, how much capital is needed, difficulties generally encountered), a "Model Cities" model (for community groups involved with Model Cities planning and administration), and a "public housing" model (how tenants and others can deal with FHA). Some of these models are aimed at lawyers, and others, at those who want to organize the community groups themselves. The models could be used to start national, but locally-based, movements: a tenants' union movement, a federal housing rights movement, a co-op movement, etc. As inner-city residents become mobilized and organized around similar local institutions, there is potential for a cumulative effect, for the creation of a new national movement or lobbying force.

It is still unclear how successful the various efforts at organizing will be, or what will be the lawyer's role in such efforts. Organizing can be very difficult and very discouraging, especially where people are exhausted by their efforts to eke out an existence, and where they are used to struggling for survival against each other rather than working in groups to raise general standards. Building a strong and continuing tenants' organization is harder than winning a single fight. An organization may not be able to win the victories necessary to keep it going or to achieve visible change. Other interest groups, firmly entrenched in the decision-making process, may limit the successes of poor people's organizations, whether those organizations are national or local. Supporters of the pluralist system argue that social problem-solving is best achieved by a process of mutual adjustment among competing interests. But the constant pressure to compromise may lead to incremental, piecemeal solutions or approaches to problems; for the poor, the incrementalism that follows from the process of interest group mobilization may not be sufficient.29

Furthermore, as the lawyer becomes more intimately involved with growing organizations of poor people his own role becomes increasingly problematic, especially if he is white with a middle class background.

The lawyer’s most effective role in organizing is probably not to go into a poor community and say to some people, “Hey, let’s form an organization,” or to serve as a policymaker in an organization that is forming. The preferred and increasingly common role, as Jim Lorenz said, is one in which “the lawyer works closely with an organizer or with a group which is organizing itself, and provides legal advice consistent with their wishes.” Thus, the lawyer works with an organizer of the poor, but is not himself an organizer—except in the specific sense Lorenz pointed to: “White middle class lawyers can’t effectively organize poor people; they can only organize for poor people, by organizing their own middle class communities.”

This outlook in part answers the question of what special skills the lawyer has to become involved with organizing the poor. To a significant extent, as Bellow’s approach to organizing suggests, the lawyer is using traditional techniques and skills—for example, litigation—to help the organizers do the job of organizing. But Bellow also realizes that the use he suggests for litigation is based on a new self-conception for the lawyer, and inevitably will require lawyers to be specially trained to work with and serve poor people. There are, after all, significant dangers when middle class lawyers get intimately involved in the task of organizing the poor.30 More articulate, better educated, aggressive by nature and training, some lawyers tend to dominate newly formed groups, even when they try not to; such dominance, even if the middle class lawyer has been able to internalize the perspective of the poor, will generally result in the same dependence on the lawyer which a strategy of test case litigation inevitably means for the poor. The organization will not develop the aggressive and self-confident indigenous leadership that is probably the most effective stimulus to a vigorous membership, and the only lasting basis for the organization’s power.

B. Lawyers for Political and Cultural Dissidents

A number of public interest lawyers and law firms concentrate their practice upon representing political and cultural dissidents, such as student activists, underground publishers, and militant political organizations. Many so-called “political lawyers” are also lawyers for poor people, who are themselves in many senses “political dissidents”; in addition, groups such as SDS and the Black Panthers, who are frequent

30. For a more general discussion of the lawyer’s relationship with his clients, see pp. 1119-37 infra.
clients of "political lawyers," are centrally concerned with the problems of the poor. It is only because such radical groups have a wide-ranging political and cultural critique of American society, because their contacts with the legal order are significantly different from those of the poor people's groups already discussed, and because their lawyers tend to have a wide-ranging political practice, that those lawyers are treated separately in this discussion.

Traditional civil liberties lawyers, such as those who work for the ACLU, represent political, religious, and cultural dissenters of all types, from the far right to the far left. As Melvin Wulf, Director of the ACLU, put it, "Our real client is the Bill of Rights." For a number of decades, the ACLU has been a courageous and lonely advocate for unpopular clients. Its efforts, and those of other civil libertarian lawyers, have been devoted to furthering the values of free speech, belief, and association, regardless of the particular aims of individual clients.

In contrast to the traditional civil libertarian, some political lawyers dedicate their efforts only to political and cultural dissenters with whom they are in sympathy. Thus, where speech is concerned, they will accept as clients only those people with whose political position they agree. For example, William Kunstler was recently asked if he would use the arguments with which he defended Panthers to defend Minutemen. He replied, "No, I wouldn't defend them at all. I only defend those whose goals I share. I'm not a lawyer for hire. I only defend those I love."

While the ACLU lawyer is typically a litigator in the civil liberties field, these other political lawyers often engage in a wider range of activities. In addition, while the ACLU usually represents individuals,
the "new" political lawyer, like the lawyer for the poor, tends to emphasize organized groups. His relationship to those groups may take a number of forms, combining organizing, offensive representation, and criminal defense work. Ongoing contact with the groups is common. George Johnson of New Haven, for example, handles draft and drug cases as well as criminal defense work, but is also a lawyer and organizer for the American Independent Movement, a minority party active in New Haven politics. John Flym, of Flym, Zalkind and Silverglate in Boston, emphasizes a somewhat different role for a lawyer committed to social change. Although he usually represents individuals (often students with such "hassles" as draft and drug problems) and "underground" organizations (such as Sergeant Ground's Memorial Necktie, a coffeehouse), much of his time is spent in a slow process of organizing the people he lives among. Convinced that important changes happen on a small scale, and convinced that "there is not a hell of a lot that you can do through law in the way of fostering change," Flym is also attempting to change individuals' consciousness:

You can try insofar as you can to build an awareness about what you know best, among people that you understand best. What I would like to do is stimulate a process, build a community where people relate to each other in meaningful ways. As a lawyer, and a recent law student—5-6 years away now, but I'm not that far away and I am among student groups all the time—I know and understand law and students better than anything else. This is my constituency, if you will. I'm anxious to talk about the legal system and legal education and foster consciousness about that. I think the whole system is just hopeless and we've got to do something about it. One thing an individual lawyer can do is talk about what part the legal system plays in all of this.  

Where the political lawyers represent groups, those groups tend to be "radical" in the sense that they are committed to fundamental change in the structure of American society. The groups may not have a commitment to the theory of pluralism and interest group politics, or a faith that the existing legal system, with some reform, can achieve a just society. For these political and cultural dissidents, to a greater extent than for the groups usually served by legal services, legal institutions do not provide the primary focus for affirmative activity, and

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26. It should be noted that where a middle class lawyer "organizes" by talking about law to children of the middle class, there are likely to be fewer dangers than were discussed above in connection with middle class lawyers' organizing poor or black people. See pp. 1090-91 supra.
the practice of their lawyers reflects this difference. Indeed, wary of any activity that confirms or maintains "the system," some radical lawyers are hostile to the work done by "public interest lawyers"; such work is counterproductive, in their view, for while it can make the system slightly less oppressive, it defuses efforts for more radical change. Nevertheless, in one sense the lawyer for political groups shares the thrust of the lawyer for the poor: his goal is to further the viability of definable groups of people.

While this may entail servicing various legal needs of the group, and even some organizing, the most important activity of lawyers for groups such as SDS or the Black Panthers is criminal defense work. Although criminal defense work is obviously needed to keep movement groups alive, movement lawyers are at least ambivalent about the legal system, and are endlessly troubled by whether their work aids or is in fact counterproductive to radical efforts. One lawyer recounted a story told by Victor Rabinowitz at a National Lawyers Guild conference. Rabinowitz was handling a case involving GI's who had gotten in trouble for operating a coffeehouse at Fort Dix. The coffeehouse matter was highly publicized and had become the focus of GI discontent at the base, and of efforts to organize that discontent. Rabinowitz won the case, and afterwards asked someone who had been organizing GI's whether winning the case had been helpful to the organizing efforts. On the contrary, the organizer said. Because the case was won, the GI's tended to feel that they could rely on the courts, and that there was no need to get involved with the riskier business of organizing.

One of the most enterprising and well-known of the political law firms is Lefcourt, Garfinkle, Grain, Cohn, Sandler, Lefcourt, Karft & Stolar of New York City. Frequently called the Law Commune, this firm specializes in criminal defense work, and is counsel in such cases as the "Panther 21" conspiracy trial in New York. While the lawyers in the firm admit to having different political views, they all see themselves as socialists and are careful to distinguish themselves from most of the other lawyers we interviewed. The Commune selects political (usually non-paying) cases on the basis of whether "the aims, political or otherwise, of the group are towards wresting government power into the hands of the people." But while all the Commune's clients are "anti-Establishment," and while the Commune will accept political cases

37. See, e.g., Harris, You Don't Have to Love The Law to be A Lawyer, 28 GUILD PRACTITIONER 97 (Fall, 1969). Of course, not all lawyers for the poor and racial minorities focus on legal institutions in an "affirmative" way. See generally, pp. 1087-89 supra.
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only where there is a "basic agreement" with the group, "there can be areas of disagreement." "Yuppies are elitist," Commune lawyer Ann Garfinkle says, "but I take them."

In contrast to their sense of the need for wide-ranging social change, the Commune lawyers have a narrow conception of their own role in achieving that change. As Ann Garfinkle said:

Our job is to service people in the movement. Law is used two ways to service the movement: to keep people on the street through criminal defense work, and occasionally through offensive use of the law where it can be used civilly. Movement people need the help of lawyers in order to do organizing they, the movement people, want to do. I organize lawyers, not other people. It would be presumptuous to do otherwise.

Most of the Commune's work, then, is criminal defense work for political radicals. Because the topic has been so much debated recently, a special word should be said about the so-called "political trial." Today the phrase usually applies to criminal prosecutions of such "enemies of the realm" as radical political groups and draft resisters. From the defense lawyer's point of view, a number of different conceptions are involved. A political trial may be characterized simply by the fact that public opinion and public attitudes on one or more social questions will inevitably have an effect on the decision. In this sense, a political trial is one where the defense lawyer seeks to get an acquittal by meeting the implicit political issues head-on. Thus, where the defendant is part of a mass arrest of anti-war demonstrators or campus activists, public attitudes on the war or student movements are inevitably present in the courtroom; the defense lawyer may choose to meet these attitudes directly, to present his client's political beliefs explicitly, and to make political arguments as much a part of the "defense" as any other alibi.

Furthermore, the trial may itself be used as an organizing device. The trial becomes a propaganda vehicle for the defendants, and hence a method for the group to bring its grievances and its program to the general public. Political issues and differences are raised in the court-

38. To explain how they determine whether a case is "political" or not, Ann Garfinkle invoked the "Maggot Test," as explained by Arthur Kinoy and related by Abbie Hoffman in his book Woodstock Nation. In brief, the test notes that the only perception which all of the sailors on the ship Potemkin shared was that conditions were so abysmal that the food was infested with maggots. That shared perception stimulated the revolt which triggered the Russian Revolution. The Commune, then, treats as political any case involving people who can see the maggots.

39. See generally O. Kirchheimer, Political Justice (1961); Malcolm Burnstein, Trying a Political Case, 28 GUILD PRACTITIONER 33 (Spring, 1969).
room and aired in the press. The goal may be to affect the outcome of the trial, but it may be more general. To a greater or lesser extent, these defendants do not have faith that the American legal system will or can grant them a just trial. In some cases defendants in political trials, and occasionally their lawyer, have engaged in disorderly tactics; these may be a response to specific perceived injustices in the handling of the trial, or may be provocative acts to draw the judge into an overreaction, which can then be pointed to as further evidence of the impossibility of achieving a just trial. In many senses, the trial becomes a play about itself: the issue of justice for the defendants is united with issues of social justice, and the trial is conducted in such a way as to illustrate the impossibility of either in American society. The tension for the lawyer is obvious. To conduct a trial in this “political” way is to complicate the task of securing an acquittal, which goal neither he nor his clients entirely abandon. However, the defendants see the trial as part of a wider political struggle, and an opportunity to bring their larger case to the public and to expose inequities in the legal system.

C. Value-Oriented Public Interest Lawyers

The attempt to represent consumer and environmental interests poses somewhat different problems for the public interest lawyer. Unlike lawyers who deal with the concerns of the poor or political dissidents, which often approach the level of immediate survival and are therefore very intense, the consumer or environmental lawyer deals with diffuse and, to any individual, less pressing interests held in common by all people. The vigorous labor union member is unlikely, despite his disgruntlement at the quality of the appliances he purchases, to join a consumer union. A partial explanation for his behavior is that the goals of consumer organizations, such as fair labeling and product safety, are “public goods”; that is, the labor union member knows that he cannot be denied the benefit of fair labeling even though he did not participate in securing it.

Just as there is a trend among poverty lawyers toward building political communities of the poor, so too is there a movement among environmental and consumer lawyers to build economically and politically powerful coalitions around a particular value or “secondary” interest. But there is an important difference between the organizing activities of poverty lawyers and those of consumer or environmental lawyers. The goal of the former is the enfranchisement of a relatively distinct minority; achievement of this goal involves primarily the
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development of group consciousness, internal leadership and organization, and political sophistication. Consumers, on the other hand, do not constitute an identifiable and politically underrepresented class. The problem is not disenfranchisement, but diffusion of power and the low visibility of corporate and regulatory agency decisions affecting the quality of American life. The primary effort in building coalitions around consumer or environmental values, therefore, is to arouse and mobilize the latent power of a potential majority.\(^40\)

The most straightforward method of increasing public awareness—the simple dissemination of information about substantive issues—is not a preserve of lawyers alone, as is evident from a brief look at the activities of environmentalist lawyers and laymen. The conservation movement in America has a long history, yet its character has changed dramatically in recent years. The change is well illustrated by the circumstances surrounding the formation of the Friends of the Earth Society, a group of ecology-minded professionals who emphasize education through publication. Friends of the Earth grew out of a split within the Sierra Club. Under the direction of David Brower, the Sierra Club had developed from a “professional hiking organization” with 5000 members into a radical environmental group of 80,000. Brower began to publish expensive books designed to give a vicarious wilderness experience. Additionally, the Sierra Club published a series of books about areas in danger, including one that helped to arouse popular support for saving the Grand Canyon. But Brower’s activities led to policy disagreements within the Club, and he was ousted in 1969.

In response, Brower formed Friends of the Earth to carry on the activities he had pursued in the Sierra Club. It has already signed a $13 million publishing agreement with McCall’s magazine for an international series and a scientific series on ecology. Although its lawyers

\(^40\) Edgar and Jean Cahn, in an article elsewhere in this Journal, maintain that the “majoritarian, middle-class, white concerns” of environmental protection as a type to which the political process can respond adequately “without siphoning off limited, special and constitutionally distinctive resources of the legal profession.” Cahn & Cahn, \textit{Power to the People or the Profession?—The Public Interest in Public Interest Law}, \textit{79 Yale L.J.} 1005 (1970). The coalition-building work needed to attack the problems of pollution is different in kind from the efforts needed to meet the pressing needs of disfranchised minorities; the latter necessarily require the “unique skills” of lawyers, while “other avenues of redress are clearly open” for environmentalists. The Cahns conclude: “At a time when the political system has become less responsive, if not outright hostile, to the grievances of ethnic minorities, the only profession specially protected in an advocacy role cannot justify its dereliction by regrouping under the righteous banner of essentially majoritarian concerns.” \textit{Id.} at 1044.
will resort to the courts where necessary, Friends of the Earth will function primarily as an issue-oriented public relations firm, in the business of educating the public about ecology.

Marshall Patner, of the Chicago firm of Patner & Karaganis, feels that part of his function is to satisfy the demands of the press for commentary on developments in the law. Beyond this, he described another method of direct public education which utilizes the firm’s five-member investigative staff. At the firm’s suggestion, a group called SAIL (Stop the Airport In the Lake) published a full-page cartoon advertisement in the *Chicago Sun-Times* to highlight the safety and environmental reasons against building an airport in Lake Michigan. Another effective advertisement, entitled “Happy Cleaner Air Week to Mayor Daley and His Friends,” was placed for the Campaign Against Environmental Violence. Patner indicated that the firm is now considering whether to allot its time to personal appearances before local groups and at teach-ins or to give top priority to preparing a pollution handbook to assist community groups by laying out the relevant laws and pinpointing the responsibilities of governmental officials. The handbook would have a section on strategy analyzing the reasons for success or failure of past environmental campaigns.

Yet another variant of the public education approach is employed by the Conservation Law Foundation, a Boston-based organization of New England lawyers and laymen. Under Executive Director Benjamin Nason, the Foundation’s primary endeavor has been to encourage and assist community groups to implement wetlands and open space legislation, by explaining complex statutes and preparing the necessary legal documents. Recently the Foundation financed the reprinting and distribution of a comprehensive study of municipal powers, *Open Space and Recreation: Program for Metropolitan Boston*.

Corporate and governmental disregard for consumer and environmental values stems not only from the lack of public awareness of the problems, but also from a lack of public access to the decision-making process. The corporations are so large and powerful that an individual consumer or shareholder cannot expect to have any influence upon their decisions. Regulatory agencies such as the Federal Power Commission or the Federal Trade Commission, in theory the advocates of “the public interest,” are both relatively insulated from the political

process and relatively immune, because of their own structures and procedures, from significant inputs by consumers. A second thrust of legal activity in this field of public interest law is, therefore, to bring pressure upon corporations and agencies to make their decisions and their processes more responsive to the interests in product and environmental quality. This tactic is, of course, interrelated with the goal of increasing public awareness; without the support of a vocal public, lawyers can have little impact upon corporations, agencies, or Congress.

One technique of consumer advocacy is lobbying in Congress and state legislatures. While the most effective impact upon legislatures no doubt comes from the Ralph Nader-type exposure of corporate abuses and agency dereliction, increasing pressure by lawyers on behalf of organized consumer or environmental groups is being brought in less visible ways. The Washington firm of Berlin, Roisman & Kessler recently represented the Consumer Federation of America in opposing the Uniform Consumer Credit Code. The drafting of the Code illustrates the lack of consumer participation in the legislative process. According to Anthony Roisman.

Consumers had not really been permitted to participate in drawing [the Code]. There was an advisory committee, which had some consumers on it, but they were not permitted to vote. The people we felt best represented the consumer movement weren't involved at all. We spearheaded the drive by the Consumer Federation of America to stop it.

For the same client, the firm is presently lobbying in Congress for legislation to facilitate consumer class actions.

Another recent effort by Berlin, Roisman & Kessler illustrates the use of regulatory agency procedures to obtain relief for a particular client, to seek broader change in agency rules, and to bring to public and Congressional attention the need for changes in the law affecting environmental regulation. Although the firm was retained by an elderly couple to oppose the placement of power lines across property situated along the Potomac River, the case developed into a full-blown Congressional hearing in an effort to make the Federal Power Commission establish general criteria for power lines. What had been a low-visibility decision affecting only a few property owners became a public hearing where the lawyers could raise general issues concerning the effect of power lines on scenic beauty.

43. See pp. 1103-05 infra for an extended discussion of Nader's activities.
Litigation is also a primary tool for lawyers who seek to further values of consumer and environmental protection. Litigation may be used as an adjunct to the pursuit of change through legislatures or agencies; for example, a preliminary injunction obtained by Victor Yannacone, Jr., prevented the destruction of unique fossil beds in Colorado pending action by the United States House of Representatives upon a Senate-approved bill to declare the area a National Monument. The courts may also be used to review the actions of regulatory agencies, or to force those agencies to act where they have resisted pressure from consumer or environmental groups. The Environmental Defense Fund, for example, recently succeeded in obtaining, from the Court of Appeals for the District of Columbia, a vacation of orders of the Secretaries of Agriculture and HEW concerning the use of DDT. EDF's approach to environmental protection illustrates an effective use of litigation as a primary tool. The twelve-man Board of Trustees attempts to limit its efforts to matters where there is a broad scientific consensus on the merits, a likelihood that the problems can be attacked through a few carefully chosen lawsuits, and a significant chance of setting a beneficial precedent.

The utility of constitutional litigation to achieve new principles of legal entitlement is a subject of intense debate among consumer and environmental lawyers as well as law school academics. Constitutional litigation may be seen in part as a substitute for the political process, and thus any judgment as to its proper use will depend upon one's evaluation of the responsiveness of political institutions as well as of the inherent limitations of the judiciary. Victor Yannacone, Jr., who frequently calls upon courts to use their equity powers to vindicate what he asserts to be the public's constitutional right to a clean environment under the Ninth Amendment, charges that agencies and legislatures, dominated by special interest groups, simply do not protect environmental values.

44. On the difficulties of obtaining effective judicial review, see Sirc, Some Thoughts of an Environmental Lawyer in the Wilderness of Administrative Law, 70 COLUM. L. REV. 612 (1970).
46. "The judiciary is the one social institution already structured to provide the wise responses that may enable us to avert ecological disaster." Environmental Defense Fund, Incorporated, descriptive pamphlet at 5 (1970).
49. But Yannacone recognizes the political context of environmental litigation. He brings class actions where possible to emphasize the public nature of the rights that he
Either you seek to enter the political arena and secure passage of legislation offensive to the least number of voters or other members of the power structure, or you enter the courthouse and take action to prevent further environmental degradation and to compel restoration of the quality of the environment consistent with the state-of-the-art.\textsuperscript{50}

In contrast to Yannacone, Professor Joseph Sax of the University of Michigan, a behind-the-scenes consultant for many environmental lawyers, believes that ultimate authority should reside in legislatures energized to environmental questions rather than in a constitutional mandate administered by the courts. While courts can sharpen issues and handle relatively complex matters, Sax is "deeply troubled by careless, ill-prepared, and premature litigation which can destroy the credibility of the effort to promote intelligent use of the courts."\textsuperscript{51}

In evaluating the different approaches to the use of courts to achieve broad social change, it may be helpful to distinguish matters such as environmental protection, which involve interests common to the entire population, from matters involving the legal entitlement of minority groups. While in the former case the political process is adequate, once the public is aroused, to respond to real needs, in the latter case the courts may be the only institution through which minorities can vindicate fundamental rights neglected by a self-serving majority.

The use of litigation by public interest lawyers is not limited to the pursuit of judicial remedies or court-made doctrinal reform. Yannacone points out that constitutional litigation, even where unsuccessful in the courts, may stimulate the legislature to action.\textsuperscript{52} His own consciously dramatic claims and flamboyant style attract sufficient press coverage to increase popular awareness of the issues raised by his lawsuits. The use of judicial review to focus popular attention upon an issue is also recognized by Professor Sax, who suggests that when formerly low-visibility decisions are remanded to legislatures or agencies, they will then be made in the context of a popular awareness generated by the lawsuit, thus promoting "equality of political power for

\textsuperscript{50} Yannacone, A Lawyer Answers the Technocrats, 5 Trial, August/September 1969, at 14, 15.
\textsuperscript{52} "All the major social changes which have made America a finer place to live have their basis in fundamental constitutional litigation. Somebody had to sue somebody before the legislature took long overdue action." Quoted in Rogin, All He Wants To Save Is The World, Sports Illustrated, Feb. 3, 1969, at 24.
a disorganized and diffuse majority.’’53 David Sive, President of the Atlantic Chapter of the Sierra Club, whose efforts to stop the Hudson River Expressway have thus far been successful, remarked: “A lawsuit is a dramatic political instrument, much like a proxy fight.” But Sive adds a caveat: “While it is a legitimate instrument for promoting progress, the lawyer must take care that he is not abusing the judicial process.”

While some lawyers in the consumer and environmental area have used litigation and public education to attack particular actions of corporations and agencies, other efforts have been aimed more generally at changing the decision-making processes of those institutions. With regard to corporations, a frontal attack has been mounted by the Project on Corporate Responsibility, a recently-formed group of four young Washington lawyers. Philip Moore joined the Project after experience in a corporate law firm, the McCarthy campaign, the ACLU convention litigation project, and a brief stint with Patner & Karaganis in Chicago. On the assumption that “corporations make all the decisions in this country,” Moore sees the Project as an effort to open up the corporate decision-making process to public influence and participation.

The Campaign to Make General Motors Responsible, the first major undertaking of the Project, centered on a proxy contest to secure adoption by the corporation of several resolutions and amendments to its bylaws.54 General Motors was selected as a target, according to Moore, because of its “enormous size and fundamental impact upon the public.” The Securities & Exchange Commission required GM to include in its proxy statement Campaign-sponsored proposals to enlarge the Board of Directors (in order to permit public representatives on the Board), and to create a Shareholders Committee for Corporate Responsibility, but refused to require the inclusion of resolutions on pollution, mass transit, minority employment and franchises, and insurance.

At a stockholders meeting in May, the Campaign GM resolutions were rejected overwhelmingly, receiving about three per cent of the vote. Defeat of the proposals came as no surprise to the campaign coordinators, who regard the campaign as a success in furthering the goal of corporate responsibility to the public. Moore noted that “we

are using the resolutions as vehicles for this fight, but the real fight is to open up the corporation, to force it to respond to whatever the public articulates." By generating debate within institutions which hold General Motors stock, such as universities and foundations, as well as among the public generally, Moore feels that Campaign GM has "made the issues extremely visible," an important first step toward corporate accountability.

The Corporate Responsibility Project and other efforts aimed at pressuring corporations to heed the demands for product and environmental quality can be seen in part as a response to the failure of administrative agencies. Designed to regulate business activity "in the public interest," agencies such as the ICC, the FTC, and the FCC typically had an initial period of vigorous activity directed toward specific evils which led to their creation. In recent years, however, these agencies have notoriously failed to play the active champion of an ill-organized public. It is no exaggeration to say that consumer and environmental advocates today see the agencies less as a solution than as part of the problem.

The most publicized effort to expose and to correct the fumblings and inadequacies of administrative agencies has been that led by Ralph Nader. Nader's first crusade, on behalf of automobile safety, made him a public figure in 1966 after the attempts of General Motors to investigate and discredit him were exposed. He established the Center for Study of Responsive Law in June, 1969, institutionalizing an operation that had been growing since the 1966 investigations. The Center is staffed by six full-time lawyers in addition to Nader, one political scientist, and one physician, and is supplemented during the summer by law, medical, engineering and graduate students—196 of them during the summer of 1970.

Nader starts from a conviction that the basic evil in American society is concentrated corporate power. The Center's actions are directed toward making corporations and regulatory agencies give greater weight in their decision-making to the consumer interest. To that end, the Center investigates corporate and agency activity, publishes reports to embarrass officials and shock the public, badgers administrative agency personnel, and at times seeks relief in the courts.

The first major agency study criticized the Federal Trade Com-

55. In July, 1970, Nader founded a new public interest law firm called the Public Interest Research Group. As the sole proprietor, Nader employs—at minimum salaries—thirteen full-time lawyers who will use a variety of legal techniques to help make large institutions accountable to the public.
mission, pointing to its extreme laxity and calling for major reorganization;\textsuperscript{56} this report was the first of several critical studies which bore fruit in a proposal by the then-FTC Chairman Weinberger for a thorough restructuring of the agency.\textsuperscript{57} The Center's recent report on the Interstate Commerce Commission\textsuperscript{58} went even further in its recommendations, urging the complete dismantling of the ICC and the establishment of a new regulatory apparatus. In-depth studies of the Agriculture Department, the Food and Drug Administration,\textsuperscript{59} the administrators of the air\textsuperscript{60} and water pollution control laws (Departments of the Interior and HEW), and the administrators of the occupational health and safety laws (Departments of Labor, Interior, and HEW) are all either in process or completed.\textsuperscript{61} Significantly, these investigations have encountered agency secrecy, enabling Nader to raise issues about citizen access to government records under the Freedom of Information Act.\textsuperscript{62}

Aside from specific successes, Nader has clearly had an overwhelming impact on the growing consumer movement and is aware of the effects of his work on citizen consciousness. He gave several reasons for selecting the consumer area as the focus of his activity. It affects the entire range of the population by raising fundamental values. "The consumer issue shows the lack of fair play not to the Panthers, but to Joe Doe. It is a litmus test of the hypocrisy of the power structure." Conduct such as tampering with markets, false advertising, and seeking special favors from regulators show corporate activities to be corrupt even under the corporations' own market ideology. The consumer issue "lets you talk about 'market power' and 'concentration of power' in concrete terms. It is supposed to be a free market, but how much comparative information can you, the consumer, obtain from the manufacturer about your car?"

The focus of the Center's work, then, is less advocacy than investi-


\textsuperscript{57} See N.Y. Times, June 9, 1970, at 1, col. 2.

\textsuperscript{58} See N.Y. Times, Mar. 17, 1970, at 67, col. 3.

\textsuperscript{59} See N.Y. Times, Apr. 9, 1970, at 17, col. 1 (report quoted as charging that the agency had been "unable to exert any meaningful influence on behalf of the food-consuming public").

\textsuperscript{60} See N.Y. Times, May 13, 1970, at 6, col. 1.

\textsuperscript{61} The Center will soon cast its net even wider with studies of the pulp and paper industry in Maine, the First National City Bank of New York, and the corporate responsibility of DuPont as respects the state of Delaware.

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gation. The reason that corporate power is so vulnerable, according to Nader, is that Americans possess an underlying value system which will produce necessary changes when it is confronted by all the facts. "Who needs Marxist-Leninist rhetoric when you can get them on good old Christian ethics?" His studies document the failure of the agencies to fulfill their mandates, and shatter the consumer's confident assumption that the agencies are protecting him. Like those who publish or litigate, Nader relies on widespread public response to abuse of widely shared values to force decision-makers to respect diffuse consumer interests.

Unlike lawyers for the poor or for political and cultural dissidents, advocates of consumer and environmental causes represent values whose time seems to have come in the minds of an American majority. The developing public consciousness in these areas has produced some major changes in a relatively short period of time; the isolated protests of yesterday have become uncontroversial elements of major-party platforms today. The apparent successes of the movement, however, may pose an obstacle to the goals of those who see shoddy products and abuses of the environment as symbols of a deeper and more pressing need for public control over the institutions which have such enormous power over individual lives. It is not unrealistic to expect that as the battle becomes focused on issues affecting more significantly the distribution of power in American society, the most militant lawyers for consumer and environmental values will take on more of the forms and strategies of lawyers for political and cultural dissidents.

II. The Economics of Public Interest Law

The major obstacle in the effort to provide full representation to underrepresented interests is the necessity for a massive infusion of resources into an area which promises little return through traditional fees. While established law firms have only recently begun to become

63. The usefulness of research and investigation to further major law reform has been demonstrated in the criminal justice field by the Vera Institute of Justice. Most noted for its studies leading to the Manhattan Bail Project which spurred bail reform throughout the country, the Institute undertakes long-term experiments and projects, often in cooperation with the New York City police department and judiciary, to test hypotheses about law enforcement and corrections. Unlike Nader, the lawyers and scientists at Vera do not see themselves as advocates for a constituency or political philosophy. As staff lawyer Andrew Schaefer put it, "Our client is the criminal justice system." Vera's approach is most effective in achieving concrete but relatively isolated reforms: by demonstrating the viability of an idea through empirical testing and research, the Institute can put upon defenders of the status quo a heavy burden of proof.
involved in a systematic way, government and foundation grants, private contributions, and reduced client fees have supported lawyers willing to accept salaries which are in most cases far below what they could earn in private practice. A central difficulty arising from the need to seek financing from sources other than clients is that the source of funds may place explicit or implicit conditions on their use which make the lawyer less effective in his advocacy. And the search for funds is itself a time-consuming process which may interfere with legal work.

A. Support of Public Interest Activity by Commercial Law Firms

In response primarily to agitation by associates and law students, some major commercial law firms have systematically undertaken to provide legal services to non-paying clients. Formal arrangements

64. Another source of manpower for public interest law is the law schools. Spurred by the increased demands by their students for "relevance" in the curriculum, several law schools have established clinical programs in which law students under the direction of practicing attorneys provide legal services to the poor. Law students have also been utilized by public interest law firms, either during the summer or through an "intensive semester" arrangement with law schools. These arrangements are embraced by the public interest firms not only for the manpower they provide, but also for the contribution they make to the education of law students in dealing with social problems. Ralph Nader, for example, is employing 196 student volunteers this summer—60% of them law students—to conduct his studies and investigations of government agencies, corporations, and law firms; many of these students will continue their work after returning to school in the fall. Twelve students spent a semester this spring at the Center for Law and Social Policy; besides working on specific projects, they met twice a week in seminars with members of the staff to discuss the various undertakings of the Center. The Washington Research project has a similar program for undergraduate students: through an affiliation with Clark College in Atlanta, the Project takes five to ten students each semester for training in the federal decision-making process, with the hope that they will go back to their local communities and organize projects or work with black elected officials.

Perhaps the most ambitious attempt to engage law students in attacking problems of the poor community is Jean Cahn's Urban Law Institute in Washington, D.C. The Institute is an adjunct to George Washington Law School, and has a working relationship with the Neighborhood Legal Services Project and VISTA. Under a revised model to begin this fall, the Institute's practicing attorneys have appointments as Adjunct Professors at George Washington, and offer courses in federal programs and community organization. The field work is formally structured as a special kind of law office under subcontracts with the NLSP and with private law firms in Washington. Aside from their activities in group representation, community organization, and consulting with groups of poor people, students at the Institute design new institutions and new approaches to community problems, discussed at pp. 1089-90 supra. The program, combining field work with academic scrutiny, follows what Mrs. Cahn calls "the classical pattern of immersion, retreat and meditation, followed by a re-entry with renewed dedication and expanded vision."

65. The sources and results of the increased interest by private firms in pro bono work have been discussed in a number of recent articles, and the reader is referred to that literature for a survey and analysis of the possibilities and limitations of the movement. A recently conducted survey is Note, Pro Bono Work and the Private Bar, soon to be published in the Harvard Law Review. Elsewhere in this Journal, Edgar and Jean Cahn explore the potential contributions of private firms to public interest law. Cahn & Cahn, Power to the People or the Profession?—The Public Interest in Public Interest Law, 79 YALE L.J. 1005 (1970). See also Berlin, Roisman and Kessler, Public
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developed by these firms range from "released time," to a separate department or branch office, to integration with the firm’s paying business. A representative model is that of the Washington firm of Arnold & Porter, under which one partner spends full time and other lawyers up to fifteen per cent of their time on work pro bono publico. As a source of support for public interest activity, private law firms offer an enormous pool of lawyer time and talent. At first glance, only the reluctance of private lawyers to accept less income than they might otherwise make seems to prevent full harnessment of their resources to the needs of the underrepresented. However, while the absence of a genuine commitment is probably the primary obstacle, other factors complicate the effort to involve the commercial bar in public interest activity.

In the first place, members of commercial law firms are unlikely to have personal knowledge of the problems of the poor or contact with those who cannot afford legal representation. One attempt to meet this problem is made by the Lawyers Committee for Civil Rights Under Law, formed in 1963 at the request of President Kennedy. While its first major effort was to represent civil rights workers in Mississippi, it now has thirty full-time staff members in fourteen cities attempting, as National Director James Robertson put it, “to make private lawyers into public interest lawyers.”

M. C. Miskovsky, former National Director, stresses the importance of involving the private bar in civil rights work, both because the bar brings technical expertise and experience with governmental institutions to that work and because active involvement makes lawyers more sympathetic to the problems of the poor. On the local level, the Boston Urban Areas Project, with two staff lawyers and twenty-five law firms working on more than one hundred projects, suggests the extent to which the Committee can utilize the resources of private firms. The Boston Project has, among other efforts, undertaken a comprehensive study of the lower criminal courts of Boston, negotiated on behalf of the Tufts Afro-American Society to assure minority employment on University construction, represented tenant groups seeking greater rights in public housing, and provided business development assistance for black entrepreneurs.

Lack of contact with poor people and their problems is probably

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the most easily remedied obstacle to large-scale public interest activity by private firms. More difficult to overcome is the barrier created by the commercial firm's primary commitment to serving the needs of corporate clients. Several of the lawyers with whom we talked suggested that there is something about the traditions and conditioned expectations and frames of reference at large commercial firms which make lawyers at such firms unsuited to represent many clients who are not in the establishment. This orientation also seems to limit the kinds of clients and causes which the firms feel comfortable with: both the subject matter and the style of public interest law may create real or imagined conflicts of interest with fee-generating work, especially when the firm must undertake major actions against government or corporate clients. In addition, where the commercial lawyer is willing to repre-

66. Marshall Patner related an incident which vividly illustrates this point. He was representing the "Coalition," a group of community organizations— including street gangs—which in 1969 closed down constructions projects in downtown Chicago as part of a campaign to force unions and builders to employ more black workers. The parties were brought together before the Mayor in order to negotiate a settlement to the dispute. During the negotiations, Patner recalls, "we were never invited to speak, although the union and builder lawyers spoke. The Coalition members were their own spokesmen." Patner felt that regular commercial firm lawyers would have found this silent role psychologically wearing. He also felt that "regular" lawyers would not have felt comfortable with the kind of relief which BPI ultimately achieved for the coalition. The proposal offered by the builders and unions centered around the idea of an administrative board, composed of two representatives from the builders, two from the union, two from the Coalition, plus the Mayor. The Coalition said "Hell no. We'll be outvoted." Under tremendous pressure one day, and it is hard to say why, the builders and unions said, "You stick to our six-plus-one, and we'll agree to an appeals committee. We'll have one from our side of the table, one from yours, and a neutral picked by these two." To me, that was extraordinary, and we had contributed—the lawyers could honestly say that we had contributed by pressure here, a note there, and a lot of thinking. And then the blacks rejected the whole 2-man committee. It's very clear why: what was an appeals committee to them? They never had a court that they sensed anything from, why should this one be any different? What they wanted was to get back even to the six-plus-one, because it would at least be sensitive to political pressure. So they abolished what we thought we had achieved. That's pretty classical, and we're pleased.

Marian Edelman was the most articulate spokesman for the idea that the orientation of commercial firms makes them unsuited to handle cases for poor people: I'm going to police anything that goes from here to private law firms. They just don't understand what is at stake. These people—who are my best friends—are on civil rights boards all over the state, and when you really get into them on what the relief ought to be, on what the federal government ought to do, they all have very narrow views of the government role in private industry. When we asked for relief in Crown-Zellerbach which was very far-reaching, you could have a five-hour discussion with your liberal friends that is just vicious about how the courts really shouldn't be granting that relief. We don't have those kind of hang-ups. We don't have the industry mentality. If you have been representing private firms all your life and your big thing is to win to save their money and get your fee, you have a very different perspective than the client in Louisiana who has been screwed out of a promotion. . . . What I think is needed is a new type of law firm, a new breed of lawyers with a different outlook, who haven't grown up in the encrusted legal system, who do not have preconceived notions about how you proceed in cases, and who have a respect and understanding for their clientele.
sent a dissident or insurgent group, his primary commitment to and daily contact with the wealthy and powerful may generate tension between himself and his client.

Whatever the reasons, the volume of public interest work by private firms remains small in comparison with the need. While lawyers from the largest metropolitan firms have a long and estimable record of service to the community and to "the public interest," the needs and demands of underrepresented groups today—and consequently the nature of public interest practice—create tensions with the lawyer's paying clients not present when the pro bono work involved representing indigent criminal defendants or working for procedural reform. Lawyers are probably more effective, and certainly less constrained by client or intra-firm pressure, when their primary commitment is to the underrepresented. Where the commercial firm acknowledges such limitations upon its own involvement in public interest work, an alternative might be to assist independent public interest firms by making direct grants or yearly tithes. To date, however, such contributions have been rare.

B. Government Funding

The OEO Legal Services Program, founded in 1964, attempts to provide continuing representation for the poor. As long as Legal Services provides low-visibility assistance, it is not politically endangered. But the danger of withdrawal of support increases as a particular pro-

67. Daniel Freed, now a professor at Yale Law School and formerly director of the office of criminal justice in the Department of Justice, gives credit for important reform in the criminal law field to private lawyers who did uncompensated volunteer work. Though the criminal law reform is commonly credited to the Warren Court decisions or to legislation such as the Criminal Justice Act of 1964, these were merely the end products of work which began in the fifties or earlier. Private firm lawyers normally engaged in civil and administrative practice represented indigent defendants in thousands of cases on a "one-shot" basis. They brought to this pro bono work the same intellectual training and meticulous technique that served them in private civil practice; and in working up their criminal cases from scratch, they began what may finally result in a fundamental reexamination of the criminal process.

In a piece elsewhere in this Journal, Abe Fortas argues that private law firms have come a long way toward developing a sense of public responsibility. Fortas, *Thurman Arnold and the Theatre of the Law*, 79 Yale L.J. 988, 994 (1970). Others take a less sanguine view. In considering the life of a distinguished private firm lawyer in a recent book review, Lloyd Cutler asks whether any large firm or its senior members would win public attributes accorded Emory Buckner in his time. His answer is revealing:

I doubt it, but not because the basic structure and character of law firms have deteriorated since Emory Buckner's time. To the contrary, firms have improved considerably; they now do a better job of assisting their business clients to discern where the public interest lies, of devoting more time to people unable to afford services, and of shaping the law into a more effective instrument for achieving social justice. The reason is that the society as a whole is changing even faster than the law firms. The law firms, though trying harder, appear to their critics to be falling behind in their efforts to be "relevant" to the solution of society's current problems. Cutler, Book Review, 83 Harv. L. Rev. 1746, 1747 (1970).
gram gains high visibility or seeks to advance a particular social or geographic group. The program may then encounter local opposition if it relies heavily on the Bar Association or local government for support, or national opposition if its efforts appear especially threatening.

The history of one of the most aggressive legal services programs, California Rural Legal Assistance, suggests some of the limitations of government funding. James Lorenz described the process by which CRLA was funded over the unanimous opposition of the Board of the California Bar Association. The first step was to draw up a proposal, which was submitted to OEO and to the Bar Association.

The proposal had colorful language . . . . It was just at this time that Chavez was marching to Sacramento. If I had been smart I would have written four pages in absolutely neutral, boring language that would have been more acceptable.

But Sargent Shriver, then head of OEO, had decided to expand the legal services programs, to make some new departures, particularly in rural areas. So OEO sent Lorenz to lobby for his program in Congress despite the attitude of the Bar Association.

CRLA was funded with $1,276,000 in late May of 1966. According to Lorenz,

The most notable condition in our grant was and is that we cannot supply legal representation to the United Farm Workers Organizing Committee, although we can represent farm workers, groups of farm workers, and general classes of farm workers. The reason for this special situation is political: Shriver feared an outcry from San Joaquin Valley congressmen if government money was given to the Union to enable the Union to sue growers.

Another obvious limit imposed on CRLA is in terms of the income level and make-up of its clientele. It may represent only those persons who earn under $2200 (or $2200 plus $500 for each dependent). At least fifty per cent of the clients are Mexican-Americans, the group which Lorenz had most in mind when formulating the proposal, and a great many of them are farm workers. But CRLA ensures its good standing with OEO by also representing consumers, welfare recipients, and an increasing number of students and senior citizens in the larger towns.

Gary Bellow, one of the key figures in the organization of CRLA and now a professor at the University of Southern California, contends that government sponsorship precludes effective community organizing:
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When we started we assumed that withdrawal of funds wouldn't matter if we could first build a political base among the poor. This takes a good deal more time, more trust, more community work than we were willing to recognize. To have carried out this approach would have involved focusing on a small number of offices with seven or eight attorneys in each and an enormous amount of supervision, both in political perspectives and in lawyering. It would have involved four or five years as we developed contact, sophistication, and skills. This can't be done by a poverty program with year-by-year funding because definable, explicit results are constantly required to justify the program's existence. The attacks on such a program far exceed in intensity and effectiveness the capacity of the program to build a deep political base to counteract it. Coalitions can be created that enable the program to survive, but a focus and emphasis on political community organizing probably can't be done with government funds at all.

But in Bellow's view, one bolstered by the defeat of the Murphy Amendment (which would have given state governors greater control over the administration of the Legal Services Program), CRLA can survive for a long time as presently constituted, providing a large volume of services from its regional offices and test case litigation from its central office.

In terms of government funding of legal services for the poor, the major structural alternative to the OEO legal services program is direct payment to lawyers for the services which they perform on behalf of the poor. Bellow believes that such a system of “judicare” is an essential next step, but sees little likelihood that such a program will be enacted, principally because of opposition from the bar and from OEO.

C. Funding by Private Foundations

As with government support, the need to procure and maintain foundation support limits the kinds of activities in which the lawyer can engage. There are, however, some atypical examples. Perhaps the most fortunate is the Chicago firm of Partner & Karaganis, supported by Businessmen for the Public Interest, a group of Illinois industrialists. Far from imposing restraints on the firm's activity, B.P.I. gives the firm's aggressive efforts a boost in credibility. In a formal sense, B.P.I. is Partner's client; but the distinction between attorney and client is blurred, since they share a joint commitment to and a similar perception of “the public interest.” Partner's relationship with his source of funds seems to differ from that of firms funded by large
foundations in two significant ways. On the one hand, Patner's activi-
ties are truly "on behalf of" B.P.I., and there is little of the distance
between lawyer and source of funds that is—perhaps intentionally—
characteristic of operations funded by large and diversified founda-
tions. At the same time, however, Patner is highly independent of his
source of funds, since the joint-venture nature of the enterprise gives
him effective power to choose his own causes and shape his own ac-
tivities. A similar relationship exists between Monroe Freedman and the
Philip Stern Family Fund, which finances his Community Law Firm
through a grant to the Lincoln Memorial Congregational Temple; the
seven-man Board of Directors consists of Freedman, Mr. & Mrs. Stern,
and four members of the church's congregation.

For most firms, the search for initial funding requires that the firm
establish a Board of Directors. As Marian Wright Edelman describes
it: "Basically, foundations demand nice, respectable boards—it's a
front. You have to have Arthur Goldberg as chairman of your board
to get two cents." In her view, the basic disadvantage in having a
Board is that the need to consult will often preclude swift, effective
action. Her organization, the Washington Research Project, has ob-
tained foundation funding without a Board.

The main support we have we didn't even ask for, it was just
handed to us. They gave us $25,000. With one exception, every
application I have put into a foundation was requested. It's mostly
a lucky fluke. Mississippi was the best place to be when I was there,
because everybody came through. You got to know all the foun-
dation people in a different capacity when you weren't asking for
money for yourself. This is not to say that it isn't going to be
tougher now.

The experience of the Center for Law and Social Policy is more
typical. The Center was opened in August, 1969, to provide Wash-
ington-style representation for the "interests of the poor and the ordinary
citizen" on health, consumer, and environment issues. For its first
year, the Center has a projected budget of $380,000. Despite an im-
pressive Board of Directors, Charles Halpern, Director of the Center,
spent at least half of his time in the first few months raising funds
to meet that budget and visiting law schools to interview students and
professors interested in working for a semester at the Center.

Probably the most stable areas of foundation support are education
and research. The Conservation Foundation, a not-for-profit educa-
tional organization financed primarily by grants from the Ford, Rocke-
feller, and Mellon Foundations, has a single legal associate, Malcolm
Baldwin. Baldwin characterized the Foundation as trying "to determine what values people should have consistent with human nature and a finite world with finite resources." While it seeks to have an impact on the public by demonstrating the long-term effects of short-term desires, its activities are not intensely political. For example, the Foundation sponsored a Conference on Law and the Environment at which sixty-five lawyers and professors discussed papers on litigation, constitutional law and legal education, including one prepared by Baldwin on the Santa Barbara oil spill. In addition, Baldwin holds occasional informal meetings of Washington environmental lawyers, publishes a newsletter, and, with the Public Law Education Institute, will soon publish a monthly loose-leaf service to be called _The Environmental Law Reporter_. The Foundation's subdued tone and educational orientation minimize the danger that its funds will be cut off.

For those whose activities generate political controversy, the constraints may be much greater. Marian Wright Edelman indicated that the Washington Research Project stays away from the big foundations, although we have a Carnegie grant, mainly for the education component. I really want to keep it to the educational component. I wouldn't go to Ford for money, because I don't want their conditions. The little foundations are the most gutsy. That is why we have deliberately sought broad support, so no foundation can cripple us.

Foundation funds for public interest law are limited, and there seems to be competition for support at least among some of the Washington firms. Edgar Cahn, Director of the Citizen's Advocate Center which this year has suffered a fifty per cent cutback, believes that limited funds and lawyer time should be utilized "where legal resources do something that virtually nothing else can do. And simply as a matter of historical fact, it has been only minority interests and political dissent whose access to political systems has been limited to the courts and to legal representation." In his view, environmentalists,

68. Jack Drake, staff counsel to the Selma Inter-Religious Project in Selma, Alabama, which has been foundation-funded since 1968, wrote:
Dealing with foundations is a little like watching classical Japanese theatre. You force yourself to watch for each subtle nuance: the raised eyebrow, a slight twist of the wrist, a change in voice inflection, or a seemingly innocent inquiry. But even with the subtleties, no control has been exercised over S.I.P.'s programs or policies, to my knowledge, by any of the Foundations now giving us aid.
J. Drake, _Selma Inter-Religious Project_, Feb. 20, 1970 (paper prepared for 31st Nat'l Convention, Nat'l Lawyers Guild). This is true despite the fact that S.I.P. is attempting to develop the political and economic power of rural blacks.

for example, can gain access to political forums without relying on lawyers or outside funding.\textsuperscript{70}

Others fear that foundations will lose interest in funding law firms. Tony Roisman, of Berlin, Roisman, & Kessler, remarked that "there isn't any future in foundations. Five years from now there will be a new vogue. For all we know it could be sexual freedom—putting in foundation money for communes all over the country." The increasingly hostile attitude of the federal government toward innovative foundation ventures—in particular the involvement of the Ford Foundation in the New York decentralization crisis and in the infamous "Kennedy Fellowships"\textsuperscript{71}—may further restrict their willingness to support law firms. Prior to the Tax Reform Act of 1970, the primary relevant limitation on foundations was that "carrying on propaganda or otherwise attempting to influence legislation" could not be "a substantial part" of their activities.\textsuperscript{72} Congressional conservatives led by Rep. Wilbur Mills became so upset with the "radical" activities of foundation-supported groups that they pushed a bill through the House Ways and Means Committee (chaired by Rep. Mills) which would have subjected to stiff penalties any foundation sponsoring an activity which directly or indirectly affected the actions of any government agency.

The bill was amended before passage; as the law presently stands, a private foundation will be subjected to a ten per cent tax\textsuperscript{73} on any expenditure which supports an attempt to influence legislation by appealing to the general public or by communicating with a legislator or legislative employee except in response to a written request.\textsuperscript{74} If the expenditure is not "corrected" within ninety days, a tax equal to one hundred per cent of the expenditure is imposed.\textsuperscript{75} To ensure

\textsuperscript{70} See also Cahn & Cahn, Power to the People or the Profession?—The Public Interest in Public Interest Law, 79 YALE L.J. 1005, 1006 (1970).
\textsuperscript{72} INT. REV. CODE of 1954, § 501(c)(3).
\textsuperscript{73} INT. REV. CODE of 1954, § 4945(a)(1).
\textsuperscript{74} "The term 'taxable expenditure' means any amount paid or incurred by a private foundation for—
(1) any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and
(2) any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a government body or to a committee or other subdivision, as the case may be),
other than through making available the results of nonpartisan analysis, study, or research." INT. REV. CODE of 1954, § 4945(e).
\textsuperscript{75} INT. REV. CODE of 1954, § 4945(b)(1).
that no organization which it supports engages in any of these activities, the foundation must exercise "expenditure responsibility" as to those organizations.76

Because the purpose of foundation-supported law firms is to deal with important and timely questions of public policy, they will inevitably be dealing with matters of legislative concern at least some of the time. The Tax Reform Act seems clearly to preclude use of the press to mobilize public support for legislation, but the "written request" exception may provide an important avenue of access to legislators. For firms whose primary activity is research, a provision which allows "making available the results of nonpartisan analysis, study, or research" should provide shelter from the penalties for attempts to influence legislation.77 The Internal Revenue Service has not yet promulgated regulations under the relevant sections of the Act; the content of the regulations will go far in determining the permissible scope of foundation activity.78 At least as important as the specifics of the new tax law, however, will be the response of the foundations. If they fear further regulation, they may cease to support any but research or educational ventures. But if they feel that Congressional ire has subsided, they may again begin to sponsor new ventures—albeit with careful controls.

D. Funding through Membership Contributions

The history of the Environmental Defense Fund suggests two ways to finance legal action by appeal to the general public. E.D.F. was incorporated on a not-for-profit basis in 1967. Armed with testimony of friendly scientists, lawyer Victor Yannacone, Jr. and scientist Charles Wunster led a fight to ban DDT at hearings in Wisconsin and Michigan. Their strategy was to generate sufficient publicity to arouse community political and financial support. As a result, public contributions constituted $82,000 of the $112,000 received during 1969.

Since Yannacone's departure in the fall of 1969, E.D.F. has embarked on a drive to build a national lay membership of several hundred thousand similar to that of the ACLU. According to Edward Rogers, the new General Counsel, the purposes of the drive are to develop a wider financial base, to facilitate public education, to create

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76. INT. REV. CODE of 1954, § 4945(h).
77. INT. REV. CODE of 1954, § 4945(e) (quoted note 74 supra).
an "early warning system," and to ensure accountability to the public.\textsuperscript{79} If successful, the drive will result in greater stability for expanded operations; probable future targets include leaded gasoline and the insecticides dieldrin, aldrin, and endrin.

Similarly, the Conservation Law Foundation of Boston finances its annual budget by gifts and by dues-paying ($10 per year) Foundation Associates. Despite its small budget, the Foundation survives because its lawyers are volunteers. Executive Director Benjamin Nason is employed as a lobbyist by the Massachusetts Forest and Park Association. Another lawyer, Oakes Plimpton, is a full-time volunteer.

The major disadvantage of the membership method of financing is that building a membership is a difficult and time-consuming process which diverts manpower from the primary tasks of the organization. Where the values pursued by the organization are deeply felt and widely shared, however, funding through membership dues may provide a stable basis of support which has the added benefit of providing a popular base for the lawyers' activities. The ACLU has flourished for fifty years relying almost solely on small contributions from its members. In the environmental area, rising public consciousness may facilitate the process.

E. Self-Supporting Firms

To avoid the restraints which come from working within the traditional law firm or from accepting outside funding, several groups of lawyers have set out to generate their own funds by charging reduced fees or by accepting fees on only a small percentage of their work. One firm in the first category is Berlin, Roisman, & Kessler, which has operated on a minimum budget from an appropriately unpretentious office in an old house in Washington since January, 1969. Dissatisfied with corporate and agency practice, the three lawyers set up a new firm to fill the needs for representation which they had perceived in their previous employment.

Their initial hope was to start out with a sufficient amount in guaranteed retainers to cover a minimum budget of $90,000 for the first year. When that proved impossible, they decided to open the firm anyway. The firm's first major undertaking was on behalf of the Consumer Federation of America, which opposed promulgation of the Uniform Consumer Credit Code. From testimony and publicity arising out of this work, the firm received sufficient exposure to attract further clients,

primarily organizations, although many of them have yet to make the financial commitment to hire lawyers even at reduced fees.

The lawyers split the firm's income evenly and hope that each will earn about $15,000 per year during the early years, but they have provided for division according to need should income fall much below that figure. While the salary is much less than the lawyers could earn in other forms of Washington practice, Roisman asserted that "psychic income" derived from representing only clients "we feel perfectly comfortable about representing" more than makes up the difference.

The firm has survived for more than a year, a fact that seems to demonstrate the viability of the reduced-fee model, at least in Washington, and for a limited number of firms. Continued development of citizens' organizations with sufficient resources to retain lawyers at a substantial fraction of the going rate will improve the prospects for economic success of lawyers who concentrate on issues which appeal to the middle class, such as health and consumer and environmental protection. From the perspective of representing the unrepresented, the model has the weakness that the firm can do only a limited amount of free work and must appeal to those few conservation and consumer groups which can afford a retainer, but the advantage that all lawyer time is spent on representing clients rather than courting foundations or Congressmen.

Political firms have developed other types of self-support. These firms follow the basic pattern of the "old left" law practice: some political cases and some commercial work. The Law Commune in New York supports the salaries and expenses of six lawyers and eight secretaries by taking twenty-five per cent paying cases arising out

Another self-supporting public interest law firm in Washington is Asher & Schneiderman, formed in late 1969 by an associate at Arnold & Porter and a young lawyer from the Antitrust Division of the Justice Department. Michael Schneiderman explained that he and his partner intended to devote 25% of their time to commercial, "high-leverage" work, and the rest to generally nonpaying public interest activity. Unlike Berlin, Roisman & Kessler, Asher and Schneiderman do not insist that all their cases be "in the public interest," in the sense of affirming the lawyers' own social goals, and in fact enjoy much of their commercial work. "We would work for almost anybody in order to finance the public interest work. We have handled bankruptcies, real estate, personal injury, almost everything. But we drew the line on evictions, though we were offered the chance and it would have earned a lot of money for us."

Six months after the firm was founded, Schneiderman accepted a short-term job with the Governor of Illinois, and the firm became dormant. Compare note 118 infra. Schneiderman says, however, that the firm was successful for its first six months, though not without its problems—which derived primarily from the firm's small size. Schneiderman believes that the prospects for self-supporting public interest firms are good, if they are willing to handle high-paying corporate work alone with their public interest activities. Though he refers to Berlin, Roisman & Kessler as "real pioneers," he suggests that there are not enough "public interest" clients who can afford any legal fees at all to support more than one or two small firms in Washington.
of the drug and draft problems of "youth culture—white, middle class kids who get into trouble." The lawyers draw salaries according to need; the secretaries receive more money than the lawyers because they are not in the communal money pot. In order to get good legal secretaries, the Commune found that it had to pay the going rate.

The Boston firm of Flym, Zalkind, & Silverglate relies on the same market for its support. John Flym described the firm's practice:

"Right now, like so many others, we have managed to get by on money from selective service cases. The problem is not so much getting enough money, but how much time and effort you are willing to dedicate to practice of that sort. I think we do make a conscious attempt to limit the amount of work we do of that sort—that is, on behalf of people who don't need us. So we tell people who walk in who can afford to pay that they are being charged exorbitant rates. That is being done consciously and honestly, because we want them to subsidize our work on behalf of other people."

The Chicago People's Law Office takes the contrary position in seeking to limit its reliance on middle-class clients. Their orientation is primarily to the neighborhood around them, raising the difficulty that they may have to charge fees on the non-political work which they do for the neighborhood poor. Consequently, they are still struggling with their financial structure.

Gary Bellow commented:

"Young guys in law schools who claim to want to do something that is exciting and interesting generally want to do it at not too great a financial loss. That's one aspect that can't change without major changes in political orientation."

Bellow observed, however, that civil damage suits on behalf of the poor could generate substantial lawyers' fees. Noting that attorney's fees are awarded in many civil rights cases, including cases under Title VII of the Civil Rights Act of 1964 and in all consumer cases in California, Bellow suggested contingency fees in claims for punitive damages against landlords. And because poor people are concerned about rat bites, lead paint poisoning, and welfare maladministration, the claims might be effective vehicles for organizing.

In general, the need for funding creates a trade-off between political and economic independence. Government and the foundations are of course economic institutions of enormous power and their support frees the lawyer completely from the marketplace. Yet their support
may mean overt or subtle restrictions on certain kinds of high-visibility political activity. Lawyers who go the self-supporting route are under no political constraints other than the wishes of their clients, but forgo economic independence and may for that reason have to accept cases which they might otherwise not choose to take, and to accept an even lower standard of living.

III. Clients, Constituencies and the Independent Lawyer

According to traditional theory, the lawyer is a “neutral” professional who puts his skills at the disposal of whatever values or interests come with a client through the office door. Even where the lawyer has the luxury of choosing his clients, he rejects any notion that representation either requires or implies an identification with the goals of the client or the social effects of his representation. The lawyer is responsible only for the quality of his professional services, and since “everyone is entitled to representation” the lawyer insists that he should not be criticized for the clients he represents. The lawyers we talked with see this conception of the lawyer’s role as neither the most socially productive nor the most personally satisfying, and they have embraced a different role in their own practices—by asserting the legitimacy of personal value choices in their work, and by accepting responsibility for the effects of their professional acts. In

81. As Abe Fortas puts it, “Lawyers are agents, not principals; and they should neither criticize nor tolerate criticism based upon the character of the client whom they represent or the cause they prosecute or defend.” Regardless of personal preferences, the lawyer has traditionally represented any client for whom there was a “reasonable prospect that the firm could contribute something of value for which payment could and would be received.” Fortas, Thurman Arnold and the Theatre of the Law, 79 YALE L.J. 988, 1002, 991 (1970).

It is surely debatable whether reliance on the market to select clients is consistent with a lawyer’s claim to be value-neutral; in a society where wealth is unequally distributed, to choose to represent those who can afford to pay large fees is to apply criteria which favor certain interests in the society. Even if one agrees that a lawyer is not to be criticized for the “character” or views of his client, surely it does not follow that the lawyer is not responsible for the social consequences of his actions. Once a lawyer admits that some standard for the selection of clients is used, why shouldn’t he be held responsible for the basis of his choice and for the social consequences of applying that standard?

The implications, to the traditional lawyer, of the phrase “everyone is entitled to representation” are forcefully stated by Fortas:

If the interest of the client required the lawyer to advocate a position or seek a result which he personally disliked or even which he considered contrary to society’s welfare, it was the lawyer’s duty to do so with all his mind and heart, subject only to the restrictions and proprieties which the rules and conventions impose.

Id. at 996. But this use of the phrase, to justify representing whom he does, ignores the way in which “everyone is entitled to representation” condemns the traditional lawyer for whom he does not represent.
doing so, they have changed the role of the client in the lawyer's practice. The public interest lawyer is a man with commitments which precede and define the client; and the nature of his clients, his activities, and his source of funds often allows him the freedom to assert personal values in his professional work. The most independent is the lawyer who sets his own priorities in matters to handle and who defines his own positions—what Charles Reich terms a "primary being." Not all public interest lawyers are so independent. As we have already seen, the lawyer's need for funding inevitably imposes some restrictions on him. In addition, the nature of the client and the structure of the law firm may impose certain limitations, and may create a tension between the lawyer's goal of furthering his own values and the goal of serving the needs of others.

A. Restrictions on Independence

1. Lawyers With Specific Clients

Public interest lawyers who deal with specific clients (whether individuals or organizations) generally select those clients according to personal criteria: the lawyer's own values, his sense of what is important, his areas of interest and competence. But the lawyers insist that once a client has been accepted, his interests control. As John Flym said:

I don't find myself obligated to take the case of anyone who walks in the door. If someone walks in and wants me to help him with respect to a cause with which I am unsympathetic, then that's the end of it. I just don't take the case. But if I take the case, it's a matter of engaging in whatever rational, intelligent discussion I can; the final decision is the client's, and I respect his decision. I think it's arrogant, and I think lawyers are terribly arrogant, to assume that they know best what is best for other people. That happens all the time. I have my own sense of things, but I try to be humble when I deal with other people and clients.

Marshall Patner agreed, noting that his clients "are not treated differently from clients in a private firm."
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Radical lawyers—whether they are house counsel to a single group like NWRO, or, like the Law Commune, represent a number of clients—claim to defer to the client for almost ideological reasons, a notion that technique must serve those political purposes defined exclusively by the group itself. One Commune lawyer argued that “the lawyer’s only political decision is at the outset, when he decides whether he is going to work with a group—lawyers should not want to control the Movement.” The lawyer properly participates in political decision-making only if he is a member of the Movement group, and then only as a member, not as a lawyer-leader. The Commune lawyers place their deference to clients in the context of their general attempt to break down what they see as the traditional arm’s length relationship between the lawyer—“hung up on his self image as a professional”—and the client. They seek “to demystify the law,” and “at all points to tell the client where he’s at. We’re honest with our clients in a way that most lawyers aren’t, and we have with them almost the relation of friends.”

But the oft-repeated theme that “the client dominates” has significant variations in actual practice. The client’s role may be smaller than theory suggests, and there are significant opportunities for the lawyer to assert his personal values and goals even after a client is selected. Obviously in some cases the client is largely a dummy, with little personal stake in a matter; he is merely a device to get the lawyer into court. In other cases he may have a significant personal interest in the outcome; but even then his case may be selected on the explicit condition that the lawyer will argue a certain “test case” theory which reduces the client’s chances of prevailing. If the case is a class action, the real “client of interest” is an entire class of people with whom the lawyer has, at most, selective contact.

In terms of the traditional theory of legal representation, the in-

attention on saving the trees. When he got the case “referred back for error on a sleeper technical issue,” the clients were furious, and protested that he had no right to raise the technical issue, even though it achieved their original purpose of saving the trees.

84. While this attitude is consistent with the equality of professionals and non-professionals within the Commune, and with the critique of a class society implicit in most Movement politics, the description of clients as “friends” was also given by Marian Edelman and Jim Lorenz. To the extent that the lawyer’s self-image as a disinterested professional introduces a formality or distance, and a dehumanizing element, into the lawyer/client relationship, it is predictable that lawyers who concede a personal commitment to their clients’ goals would also be willing to approach their clients as friends.

85. For example, in a case brought by Victor Yannacone, the plaintiff was Yannacone’s wife.
Involvement of a lawyer's personal values in a particular cause threatens the paramount principle of the lawyer-client relationship, the idea of total devotion to the client's interests as the client sees them. Although the lawyers interviewed were hesitant to be very explicit, some did indicate an occasional tension between the client's interests and the lawyer's larger purposes. They insist, however, that the client's judgment invariably prevails:

I see a conflict sometimes between my strategy preference for presenting a case and the short-term interests of the client, but I haven't sacrificed a client yet. Sometimes our clients themselves are willing to forego a minor short-term advantage, especially where the client is a more sophisticated group. They prefer to deal with it on a wide basis. (Melvin Wulf, ACLU)

Our purpose in general is to take cases which have important implications. Not infrequently, although it doesn't happen a lot, we might have cases which develop in a way that might be detrimental to an individual client. An example of that is a capital case in which we are going for broke trying to get a higher court to establish a principle, and then the prosecutor will offer you a plea, like five years and parole. We represent our client first. We have had any number of cases that wash out because of some such development, especially in the capital punishment area. It also happens a lot in employment cases where the issue is seniority or back pay, and the situation develops to the individual client's advantage. We put it up to the client. "They're offering you this. If we keep the case the chances of winning are X, if we lose you may get nothing." Very often the client will take the deal. But sometimes he'll say, "I went into this for the principle, not a couple hundred bucks." (Jack Greenberg, Inc. Fund)

While the "client controls" model is undoubtedly simplistic, it is easy to exaggerate the change in the lawyer-client relationship involved in the representation of individual clients by public interest lawyers. The texture of every relationship between lawyer and client gives the lawyer a great deal of power to affect the client's choice: the lawyer has expertise, and is trained to argue well. Where clients are poor people, however, other factors may be present. For example, if the client is

86. Marian Edelman's remarks are revealing:
I'll argue with them. If they can argue me down, I'll accept it. The client-lawyer relationship isn't like it is in private cases. You are friends, basically. A conflict between the immediate interests of the client and a broader solution has been an issue in some cases, but, again, I think you deal with that by simply saying to people that they ultimately have the veto. I learned early in Mississippi that you always have a lot of plaintiffs, because you can expect to lose 10% of them. You
not paying the lawyer, he is deprived of a pecuniary sanction and a psychological advantage; and the client may be uneducated and therefore more deferential to the lawyer or more vulnerable to his control. The lawyer may inevitably make crucial decisions simply because he is well-educated, quick-witted, or possessed of a domineering personal- ity. One lawyer observed:

It's really an elitist decision. Much of that is inherent in legal representation. The fact is that if you are a high-class smart lawyer and you are representing a poor, black client or any ill-educated client group, there is necessarily going to be this element. No matter how militant your clients are, how much they push you around and call you a white mother-fucking lawyer and stuff, you still in a very meaningful sense have the whip hand. It is a very interesting and complex relationship.

As client groups increase in sophistication, strength, and cohesiveness, the possibility of manipulation by the lawyer decreases. Today, groups of blacks or Mexican-Americans or welfare recipients are likely to be sufficiently suspicious of middle-class people, including public interest lawyers, to demand strict accountability. Should the lawyer want to manipulate client groups to further goals they don't share, he will find his path blocked. And as client groups come to believe that even the “sympathetic” lawyer should not participate in shaping the groups' policies, the lawyer's role inevitably narrows. Recognizing the trend toward strong client groups, and believing that a weaker client

always are very careful about the kind of plaintiffs. I always know an awful lot about my plaintiffs before I file suit. You explain to them what might happen and what their options are. On the whole, I think we have never had any problem when we have dealt honestly with them, about what they can get and what the total com- munity can get. I think it really is the kind of relationship you have with your clients and how you deal with them from the beginning.

87. Jim Lorenz cautioned against quickly jumping to the conclusion that in legal service programs there is a unique kind of lawyer/client relationship:
I think it is a fiction [to say that legal services created a new lawyer/client relationship] because a number of the things we have done, lawyers at big firms do . . . for example, comprehensive representation involving the lawyer taking the initiative, such as anticipating effects of legislation or advising the Real Estate Board to sponsor Proposition 14. . . . While legal services lawyers may have considerable amount of freedom in choosing the means by which they try to obtain particular results for their clients, this latitude is also enjoyed by private practitioners, to a much greater extent than most people realize. If we analyze the nature of attorney/client relationship generally, we will probably find that most clients are result oriented and feel that it is the attorney's job to figure out the means.

But while it is good to point out similarities, the important differences should not be lost. Aside from the possibility that big firm clients are less vulnerable to manipulation by the lawyer, when the private lawyer takes the “initiative” or enjoys his “latitude” the only interest he is trying to further is his client's; because the public interest lawyer has in his work a commitment that may precede the client, the lawyer's goals and the client's may conflict.
organization loses its possibilities for strength when an aggressive middle-class lawyer gets deeply involved, CRLA has adopted guidelines to restrain lawyers from overreaching. Under the guidelines, as described by Jim Lorenz, (1) a CRLA lawyer doesn’t join organizations of poor people; (2) he doesn’t serve as one of their officers or spokesmen; (3) he doesn’t take sides in disputes between community groups; (4) he stays off picket lines; and (5) he refrains from making policy decisions. “In other words,” Lorenz added, “he restricts himself to serving as a legal advisor to the group, and doing what the group wants once the group decides what it wants.” It is important to realize that this kind of lawyer for the poor has a relatively narrow role, with relatively little independence. He serves groups with which he is in personal sympathy, but he very much serves. A lawyer who hopes to further his values and to work with increasingly sophisticated and militant poor people’s groups is well advised to be a lawyer who numbers deference to the client as one of his personal values.

2. Lawyers with both Clients and Constituencies

A striking and significant aspect of the practice of public interest law is the frequency with which the lawyer’s “client” cannot be adequately described as the individual or organized group named as the client in a particular matter. Many public interest lawyers, while representing specific clients in most of their legal work, see themselves as advocates for a much more loosely defined constituency or community. The lawyer’s relationship to that constituency affects his independence in handling specific cases and, more importantly, in setting priorities as to the matters he will handle.

A common example of such a dual commitment in the handling of particular cases is the lawyer who represents a specific client in a class action. Where the named plaintiffs in a class action control the lawsuit, there may be a tension between their desires and the interest of the

88. See also the discussion of lawyers and organizing at pp. 1090-91 supra.
89. The lawyers in the New York Law Commune gave an additional reason for not “running with” the groups they represent: since many of their client groups often break the law, to run with a group is to risk arrest, thereby depriving the group of the lawyer’s usefulness as a lawyer. In addition, the Commune lawyers also said they simply didn’t have the time to get very involved with the groups they represent, although that had been their initial plan. This latter point was also made by Jack Drake of the Selma Inter-Religious Project; working in a rural area of the South, he represents groups from a dozen or more counties, and this inevitably restricts his contact with the groups he represents. Drake, Selma Inter-Religious Project, Feb. 26, 1970 (paper prepared for 31st National Convention at National Lawyers Guild).
larger class. It is often true, however, that the named plaintiffs are nominal only. Even so, this does not mean that the “larger class” controls the legal action. The lawyer’s relationship to the class on whose behalf he brings the suit is likely to be extremely limited. In class actions, of course, courts are charged with determining whether the class is adequately represented, but it is important to realize the extent to which the lawyer is independent of the “class” client in determining the positions he takes.

Because this inevitable independence may cause difficulties and misunderstandings, CRLA has developed guidelines for attorneys in class actions. First, attorneys have a duty to represent individually named clients who have more than nominal interests; this not only ensures that clients will be less likely to bail out of the case later on, or fold on the witness stand, but also ensures that they will be giving the attorney direction. Second, poverty organizations which will be affected by class actions must be consulted before the cases are filed to ensure that the class beneficiaries are in favor of the result being sought. Third, where attorneys come up with new ideas for legal attacks, the ideas are to be discussed with existing clients who have an established relationship with the attorney, rather than with outside groups, so that no solicitation is involved. Fourth, to the greatest extent possible, the spokesmen for the class actions should be poor people’s groups themselves, rather than the attorney; the purpose of this rule is to counteract a seeming tendency among many legal services attorneys to make class actions personal showpieces (with lots of personal publicity), a tendency which can lead to cases that don’t really assist the poor, and which can lead judges to view class actions as children of “outside agitators.”

The existence of a “constituency” for the lawyer is a phenomenon which extends far beyond the limited example of class actions. The lawyer who decides to devote his professional talent to the needs of a particular community or social class adds a dimension to his role which may restrict not only his independence in handling specific cases, but also his choice of which matters to handle. On the one hand, a perceived

90. For example, in a class action consumer suit, the individual client may desire a settlement while the members of the class may want to go to court to secure a broad ruling.
91. Lorenz adds: Otherwise, when we come into court, the judges think that the case is cooked up by a social reformer attorney. As the courts become more conservative, and the power of the client groups grow, the role of the attorney, of necessity, must be more circumspect.
"constituency" may be merely a way of articulating personal values or a personal commitment. The lawyer may select matters in light of his goal of furthering the interests of the local black community, for example, and yet have no limitations on his independence that are not internal or self-imposed. However, the commitment to a group of people or to a community apart from specific clients may express itself in a more structured way, with the effect of limiting the lawyer's freedom. Thus, the OEO-funded Neighborhood Legal Services programs are based on a "neighborhood concept," where the lawyer, even though representing individual clients, is also conceived of as representing the neighborhood. Consistent with that concept, Congress has required that the affected community be allowed to participate in the administration of OEO programs; most legal services programs comply by placing community people on the board of trustees or on an advisory committee. While the powers of the advisory committees vary both in theory and in practice, their role is usually in the area of defining basic guidelines for client selection, an area of great importance given the need for some limitations on the caseload. Thus the lawyer is made responsive to the community's perception of priorities in providing limited legal services to community residents.

Mary Beth Halloran of the Washington, D.C., Neighborhood Legal Services Project says that her organization has been "very independent from our board of directors, with the exception of a policy change last year." In that policy change, the lay board voted to have the office take domestic relations cases. The lawyers had opposed this because they didn't think that domestic relations was a key area of law reform and because, without any increase in staff, domestic relations cases are a large burden on the limited resources of the office. However, "at the same time, we were committed to serving the community and couldn't do anything but accept the community view, even though it may be the quickest way to dilute our effort."

92. There may be "constituencies" other than those mentioned in the text which act to restrict what the lawyer does. Most of the traditional legal aid societies are run by local bar associations. This may lead to a soft-pedaling of controversial matters, or an avoidance of those client relationships that are likely to give rise to controversial issues, with the consequent sacrifice of clients' (or potential clients') interests. Government or foundation funding may come with rigorous restrictions on clients to be represented. See pp. 1109-15 supra.
93. See Note, Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 Harv. L. Rev. 805, 805-10 (1967).
94. See generally id. at 828-33.
95. A different experience with community boards is described by Carol Ruth Silver, Imminent Failure of Legal Service for the Poor: Why and How to Limit the Caseload, 49 JOURNAL OF URBAN LAW 217 (1966). She found that domestic relations cases were
The caseload policies of CRLA are set by its Board of Directors, which includes many client representatives, and by local advisory committees, which are made up entirely of poor people. Usually employment and discrimination cases are at the top of the priority list, consumer cases next, and domestic relations cases at the bottom. Recently, many pesticide cases have been handled because farm workers on the advisory committees had stated in no uncertain terms that pesticides were the number one danger facing farm workers. As between the central Board of Directors and the advisory committees, the latter are emerging as the more important force. Their structure and composition are still fluid, and the extent of their powers depends upon how much they can effectively demand. One controversy described by Jim Lorenz highlights the difficult questions involved in determining the proper allocation of power between the lawyer-professionals and the lay community representatives:

Some of the advisory committees have claimed the power to hire and fire attorneys. This raises some difficult questions. Are laymen on the advisory committees competent to judge the capability of a lawyer, especially regarding his handling a large number of cases which do not involve them as plaintiffs? Should the decision of hiring a lawyer be left to eight or ten "representatives" of a community sitting on an advisory board, when three or four hundred other people may be represented by the law office, and be affected by what the attorney does? If the advisory committee representatives are the best judges of whether the lawyer gets along well with the community, aren't staff lawyers still the best judges of his professional ability? What the CRLA attorneys and advisory committees have finally agreed to is that the advisory committees will assigned low priority, and that the highest priority was given to legal efforts directed at institutional change and law reform, or on behalf of client groups. See also Cahn & Cahn, The New Sovereign Immunity, 81 Harv. L. Rev. 929, 987-99 (1968). The Cahns argue that in evaluating the contribution poor people can make to the running of programs which affect them, a distinction must be made between poor people in roles as clients and in roles as planners for a poor community. The Cahns assert that when given roles as community planners, poor people are able to see beyond short-term wants to the larger long-term needs of the community.

96 Jim Lorenz gives an illustration of how intense is the community's interest in CRLA priorities, and how community groups may make themselves heard in the policymaking process:

This program has always been more oriented to Mexican-American farm workers than to any other group, even though there are many other kinds of people in rural areas. The lawyers have had a great deal to do with who the client groups were. In Modesto, the Okies thought they were being under-represented and sat in twice in our office. As a result they got an Okie community worker, more seats on the board, and a lawyer to work with them full time. Our emphasis on Mexican-Americans was because they were the best organized group in rural areas, a response to power groupings.
be consulted before directing attorneys (the head attorney in each of the nine regional legal services offices) are hired.97

3. **Lawyers Without Clients**

As already mentioned, some lawyers who bring class actions name plaintiffs who in no way control the law suit. These plaintiff-clients serve only to get the lawyer into court—for all practical purposes the lawyer has no specific client, and the law suit is his. Other public interest lawyers, who have made their battleground outside the courthouse, are engaged in work where the formality of having specific clients is not required. Such lawyers pursue a "cause" or the general interests of a large and diffuse constituency without the ambivalence of being tied to specific clients with particular needs. There is no specific client to invoke the lawyer's services, no specific client to structure the lawyer's time. The concept of the "client" has been transformed, and with it the dependence of the lawyer.

Marian Wright Edelman's Washington Research Project well illustrates the phenomenon. While the Project occasionally represents specific clients, most of the work is not of that type. In its research projects and political work in Washington, the Project sees itself as furthering the interests not of specific clients but of a constituency composed of poor blacks in the rural South. Obviously, such a constituency cannot exercise the close direction and supervision characteristic of the traditional client. Edelman accepts in theory that the lawyer must be responsive and accountable to his constituency: "Our basic thesis is accountability, both at the government level and elsewhere. We can't be any different." But although Edelman is one of the few voices rural Southern blacks have in Washington, she is not their elected representative; she cannot be recalled; there is no formal process of accountability.

While on the one hand Edelman is attempting to organize her constituency,98 she at the same time faces the immediate burden of fairly representing its views. Ironically, while Edelman came to Washington because of a perceived need to give Southern blacks a voice there, her location increases the danger that she will become isolated and out of

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97. Lorenz adds:
The resolution was not propounded unilaterally by attorneys who said, "Wouldn't it be nice if the people of the community had more say-so in hiring." This resolution was the result of very hard bargaining between staff attorneys and members of the community—which shouldn't surprise anybody. A healthy decisionmaking process is not characterized by continual consensus, but by a good deal of pushing and pulling.

98. See pp. 1083-84 supra.
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touch; there is also the chance, as Edelman puts it, of "spending so much time with bureaucrats that I become more 'reasonable' and more 'negotiable.'" A classic example of the need for close contact between a lawyer and his claimed constituency is the problem of representing Southern blacks on the schools problem:

We are up here filing desegregation suits, but something else is going on in the black community. I sensed it before I left Mississippi. We hear more about non-desegregation, about "our" schools, about money to build up black schools. I'm not sure we are doing the right thing in the long run. We automatically assume that what we need to do is close lousy black schools. But desegregation is taking the best black teachers out of the black schools and putting lousy white teachers in black schools. It has become a very complex thing. We'd be in a much better position if I took off for 2-3 months to go down South and just talk to people, about what they want in education policy. I don't think we can do anything with Title I until we find out what they really want.99

In practice, the substance of accountability is difficult to achieve—even assuming a genuine commitment to it. The difficulty with the constituency Edelman has adopted is that it is so large, so diffuse and so unorganized. Part of what Edelman is doing, in fact, is organizing her constituency, creating and bolstering groups to which she can be responsive—in a sense, organizing to limit her independence. The Washington Research Project's newsletter is designed to transmit information to community groups and to build up a network of contacts. But for now, the constituency exists chiefly in the minds of the Project's lawyers. Edelman says: "I think the way we handle our guilt feelings about the theoretical, technical nature of the constituency is by making ourself responsive." But how is that to be done? Trips to the South, visits from southern blacks, and an affiliation with Atlanta's Clark College are all devices to keep in touch with what is happening outside of Washington in local communities, but obviously small ones; greater efforts along this line would be expensive and time-consuming. Finally, Edelman is very much independent; although straining to be responsive, she is in no way restrained by any formal democratizing mechanism. In speaking for others she inevitably will be speaking her

99. She is aware of the implications of this idea of responsiveness: Poor parents turn out to be very conservative. You find out they say, "I want my kid to be able to read, to count, etc." We have been talking about all kinds of fancy enrichment things that they couldn't care very much about. I think that we are being less than honest if we form our policy in a vacuum.
own sense of what must be done to achieve social justice for Southern blacks.

One of the most independent of the lawyers we interviewed is Ralph Nader. With no specific clients and no clearly defined constituency beyond that of all of us in our roles as consumer,\textsuperscript{100} Nader is free from outside control in the selection of matters to handle as well as positions to take on the matters he selects. He is, in some sense, his own client and constituency. But he is not particularly troubled by the implications of his independence because he believes that most of his activities thus far do not involve serious allocation and priority questions. "We're at such a primitive level now, fighting dirty food, seeking procedural reform like the Freedom of Information Act, that the decisions are easy to make." To the suggestion that attacking General Motors on safety and pollution issues might raise the cost of cars to poor people, Nader responded that he does consider the external effects of his activities, but that, for example, poor people rarely buy new cars anyway. Beyond such rationalizations, however, the justification for his independence lies in Nader's belief that the lawyer is properly a social engineer.

Yet while Nader is perfectly free to take any position on any issue, the consuming public does have a degree of control over the power which he wields. As he suggests, his visibility invites public attack by critics who dispute his view of the public interest; the wide support he is presumed to have will slip away if he blunders.

The best check on the honesty of public interest lawyers is their insecurity of role. To be secure they must perpetuate their ideal mission; they have no bureaucracy. If they're dishonest or let the public down, they lose whatever impact they might have. If I make a mistake, if I charge General Motors falsely, I lose credibility.

This form of accountability is seen as a definite check by another observer of Nader's activities, Stephen Rosenfeld of the Boston Lawyers' Committee for Civil Rights Under Law:

\begin{quote}
I think Nader's type of accountability is probably the most rigorous of all, a continuing one, since he has become the accepted spokesman for the consumer nationally. He is constantly being judged by a lot of people, and his ability to articulate their needs, littleness, powerlessness, and to translate that into some kind of action accurately reflecting their concern, will determine whether or not he will be retained as their spokesman. That is
\end{quote}

\textsuperscript{100} From the quality of his actions (attacking automotive and small airplane safety, quality in baby food, and hot dogs), it might be said that Nader defines the consumer interest from a middle class perspective.
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a very tenuous kind of retainer. Once Nader takes a wrong turn—as judged by consumer groups—the retainer is lost. Part of the marvel of the man is that he has retained such a large constituency and is accountable to them.

B. Independence and Accountability

In the preceding pages, we have attempted to sketch the origins and extent of the public interest lawyer's freedom from the traditional limitations of the lawyer-client relationship. The clear import of this newly found independence is a greater reliance on the lawyer's personal values; public interest lawyers are continually and willingly thrown back upon their own sense of what is important for society. The difficult question, which we now address, is the extent to which this independence is a good thing; or, to put the question differently, to what extent the lawyer should look outside himself—to the poor community, to consumers, to environmentalists, or to the radical political community he serves—for perspective and control.

In representing a specific client—whether an individual or an organized group—the lawyer's obligation is clearly set by the Code of Professional Responsibility.101 The lawyer should inform the client of every alternative open to him, and explain the probable consequences of each alternative; the choice among possible courses of action is then the client's, and the lawyer must pursue the chosen course with dedication. We found nothing in our study to suggest that the lawyers we interviewed do not conform to this rule. But our statement of the rule leaves open an important question: How far, and for what purposes, is the lawyer justified in using his powers of persuasion to influence the client's choice? This question is an important one not only with respect to public interest lawyers; it is debated even more hotly with respect to private lawyers advising business clients where public interests are seen to be at stake.

Two important observations peculiar to public interest law are justified. First, when the client is poor or unsophisticated, the lawyer's ability to manipulate him to serve the lawyer's personal values or ambitions is increased. It is hardly necessary to point out that such "representation" would be a cruel hoax, and that the lawyer in these circumstances should carefully examine his own motives and defend to the client the true purposes of his persuasion. Second, when the lawyer's acknowledged job is to provide legal representation to a con-

stituency or community, as with some legal services organizations and a few other firms, the lawyer may be justified in using strong persuasion upon the client to adopt that course which best serves needs of the community as a whole, even to the point of refusing to handle the client's case unless he agrees to adopt a particular strategy. The reason for this conclusion is that lawyers available to meet the needs of a poor community are scarce, and their time is best allocated to handle matters in ways that are likely to have the greatest impact on that community. A poor person should certainly be entitled to the services of an attorney to handle his individual needs, but it does not follow from this proposition that a lawyer whose acknowledged commitment is to a larger community should be charged with the burden of meeting all those individual needs. Similarly, it should be perfectly acceptable for the lawyer to solicit a nominal client in order to get a case into court; where cases are designed to affect the community as a whole, it makes no sense to require the lawyer to wait for a "suitable plaintiff" to appear unsolicited.

Somewhat different problems are raised by the lawyer's freedom to select matters to handle. At issue is the allocation of legal services among deserving clients or causes; since legal resources are limited, a lawyer's decision to serve one client or one cause may mean that another goes unrepresented.

Traditionally, lawyers have chosen to allocate their time primarily according to the market. When a lawyer repudiates a criterion of client selection which depends upon the client's ability to pay—as have the lawyers we interviewed—he must use some different method. The method he elects to use can range from one which allows him no freedom whatever to select cases or clients, to one which amounts to nothing more than following his whim of the moment. Our purpose here is not to discuss the lawyer's freedom to elect a method of allocating his time, but rather to evaluate particular methods which may allow a lawyer the freedom to choose cases according to his own goals and values.102

Though there are a great variety of checks and controls the lawyer may adopt in his selection of cases, the issues are focused most clearly by comparing two models: "independence" and "community control."

102. We discussed earlier, pp. 1105 ff. supra, the limitations on client selection imposed by the public interest lawyer's source of funding. Where such limitations exist, the lawyer's freedom to select cases is to that extent curtailed. Moreover, the freedom of the lawyer to choose his clients and the freedom of the government or foundation to decide what clients a lawyer it funds will represent are identical for the purposes of our present discussion.
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The “independent” lawyer relies solely on personal values and his own sense of what is important. Monroe Freedman, director of the Philip Stern Community Law Office in Washington, justified the independence model, arguing that lawyers totally released from external constraints serve a highly useful social purpose: they provide a perspective on the legal process and social change which cannot be achieved by those concerned with their own immediate problems.

I do not mean to say that people in the community, groups in the community, don’t know what they want or are not entitled to have representation on what they want or think they want. I am saying that there is a place for lawyers who don’t serve that function. It’s in part a matter of expertise and values and of the public not knowing what they’re going to need in the future. I’ll use a dirty word. It’s very elitist, and although I’m a very strong believer in participatory democracy, it doesn’t prevent me from being an elitist.1

Set against the “independence” model is the “community control” model, which subordinates the lawyer’s decisions on cases to handle to control by those whose interests are at stake in his work. This model is usually implemented by a board composed of true representatives of the constituency—rather than lawyers or inveterate board sitters—who have effective power to control the lawyer’s allocation decisions. The contemporary movement for decentralization and democratization of institutions urges that people are the best judges of their own best interests and ought to participate in decisions which affect their lives—and thus it supports the notion that the lawyer should be accountable to those he serves. Since lawyers for the underrepresented are by definition scarce, a lawyer’s decision to handle one kind of case rather than another is also a decision setting priorities in the community’s legal representation. The “community control” model asserts that those decisions are properly the people’s.

The two models are true alternatives where—as in Neighborhood Legal Services—the question is how best to serve the interests of a poor community. Here there exists a group which is able, through representatives, to exercise control over the lawyer; yet the lawyer can also, while still claiming to serve the group’s best interests, be inde-

103. While Freedman’s independent and relatively secure source of funds gives him great freedom to pursue whatever causes he pleases, his operation reflects an acceptance of the idea that several voices in the setting of priorities are better than one. In the brief existence of the firm, Freedman has found that his seven-man Board of Directors, including four representatives of Reverend Channing Phillips’ church in Washington, provides “real guidance.”

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pendent of it in allocating his services among various types of cases. The dilemma is well focused: who should decide how to allocate the community's legal resources, the lawyer or the community?

The justification for independence in this situation is paternalistic: the lawyer is properly a social engineer, deciding what is really important for a community or constituency, because he is skilled, rational, and benevolent. Independence allows rational action and the use of expertise free from the need to spend energy and time dealing with people who may be uneducated, prone to irrationality, unaware of their best interests, and difficult to organize. But this notion of benevolent expertise is undercut by the community's conflicting claim of "expertise" in matters which concern it, and by the danger that, in following his own instincts, the lawyer may be misled by the limitations of his perspective, and mistake personal interests for those of the group on whose behalf he speaks. Thus the lawyer's personal interest in furthering his career or his organization, or in amusing himself, and the limitations of his perspective because of his class and racial background, may undermine the goals to which he professes devotion.

No one really knows which of these models will produce "better" decisions, nor is there agreement on what "better" means. Given what have been publicized as failures of expertise in the country's recent history, however, and given the demoralizing powerlessness so many citizens feel today, the arguments seem stronger in the direction of community control; where there is popular participation, decisions are at least likely to be perceived as more "legitimate," and, even should there be increased in-fighting among groups, community organization is likely to be furthered. This is not to say that lawyers whose selection of cases is not controlled by the community are somehow illegitimate advocates of the underrepresented. They may be handling matters affecting the community to which no other lawyer is giving consideration; and they may even be handling matters which they perceive are the most important for the community. But where a lawyer, a foundation, or a program administrator is faced with the choice between the independence and community control models of

104. See, e.g., pp. 1075-91 supra.
105. It should be remembered that the "community control" model can be expensive to apply, requiring as it does time, energy, and even money if it is to work. And as community control increasingly comes to be justified by different people on differing grounds—it is smart politics, it will give the participants a beneficial feeling of control over their lives, it will produce "better" decisions—it becomes a concept which has imprecise connotations and which may raise false expectations when championed.
service, we can favor the latter, insisting that only it will offer the poor more than "expert"—though presumably benevolent—manipulation of their future.

The community control model is not a realistic possibility for lawyers who choose to represent interests not associated with a defined community. Nevertheless, the problem of scarce resources for representing these interests suggests the appropriateness of limitations upon the independence model of choosing cases and setting priorities. Quite apart from the contending claims of expertise and lay wisdom is a distrust of individual arrogance, presumably shared by experts and the laity. Thus, for lawyers working in the environment or consumer areas, where a constituency or community is hard to pinpoint although it is somewhere "out there," an advisory board may be useful to suggest the most important and pressing areas for legal attack. Formal devices such as advisory boards are not, of course, necessary for the lawyers to remain responsive; informal consultation may be just as effective when the lawyers are genuinely committed to seeking guidance beyond the limits of their own perspectives. Working relationships or frequent consultation with organized community or citizens' groups have been found particularly useful. According to Charles Halpern of the Center for Law and Social Policy, "We are learning fairly fast that interaction with conservation groups of various kinds is very important. They do help to define cases you get into, and their sense of priorities affects our sense of priorities."

An additional step seems important because there is another possible ground for criticism of the independent lawyer: he may select cases on such a personal, unarticulated basis that he will be acting without a clear sense of direction. To the extent that the lawyer makes completely ad hoc decisions in selecting cases, his ability to achieve significant, lasting change is likely to be small because his efforts will not be programatic. While this relative powerlessness is a safeguard against abuse of independent power, it is hardly an efficient use of limited funds and lawyer time. In addition, without clearly defined goals, the lawyer's operation may be difficult to evaluate—difficult for the lawyer and for others. Thus, a prior articulation by the lawyer of his goals and his strategy for implementing them would be useful as a focus both for the lawyer's activity and for outside evaluation, a standard by which to assess specific decisions and to measure deflections from the proclaimed goals.

A new dimension is added to the problem of the lawyer's independence when his work allows him not only to select matters to
handle, but also to select positions to take on particular issues. The tensions present are illustrated in the work of Ralph Nader of the Center for the Study of Responsive Law and Marian Edelman of the Washington Research Project. Both spend much of their time seeking to influence Congressional and agency policy as it affects underrepresented interests in society, and each is largely free from control by those on whose behalf he speaks.

With regard to the selection of positions to take, there is an argument for “independence” aside from that of expertise: the maverick introduces new ideas and fresh perspectives into the political system; he ensures flexibility in the political process; and, indeed, today’s novel idea may become the focus of tomorrow’s consensus. But Ralph Nader and Marian Edelman are not simply offering their own ideas for consideration: they wield power. Regardless of how Edelman thinks of herself, she is often looked to as the voice of black Southerners on particular issues, and what she says carries weight because she is a powerful negotiator and is perceived as controlling political clout. Her position is thus to a great extent perceived and acted upon as the position of black Southerners. The tension between the “independence” and “community control” models is present here as well.

The dilemma may be muted, if not resolved, by practical considerations, much the same ones that provide the basis for recent criticism of “pluralist politics” itself. The diffuseness and indeterminateness of Edelman’s or Nader’s constituency, and its lack of organization, make any formal democratizing mechanism impossible. To require a lawyer like Edelman to be genuinely “accountable” is in effect to tell her either to act simply as a conduit for scattered local groups (who need funding grants or who have specific complaints) or to work locally, to organize poor blacks; it is to deny a place in Washington to anyone who wields power with the best interests of poor black people in mind. To require a lawyer like Nader to be genuinely accountable is to tell him what—to be voted on by all consumers? Too rigid a requirement of an organized constituency for public interest lawyers discounts one of the major weaknesses of the pluralistic model: the treatment of matters of principle (everyone must be fed and clothed) as matters of

106. The freedom to select positions is present to a certain extent in the selection of clients: if opposing community groups are struggling for mutually exclusive plans in a Model Cities program, for example, a lawyer’s decision to represent one group is a choice of positions as well. But the questions about that freedom are raised most seriously where the lawyer’s activities do not involve primarily the representation of clients.
interest (we, hungry and unclad, demand food and clothing). Such a model leaves no opportunity for the articulation of either "community values" or of new values with as yet unorganized constituencies.

Black people may from time to time be divided on some issues, and Edelman may favor "integrationist" policies over "separatist" ones. But she is one of the few people in Washington totally committed to the interests of black people. As the allocation implications of decisions become more complex, the "consumer interest" may become less clear, and Ralph Nader may use his power to push for a mandatory auto safety device when many consumers would prefer a cheaper car. But he is one of the few people in Washington totally committed to the interests of the consumer. Both he and Edelman at least try to force others to throw into the balance a set of considerations that would otherwise be ignored. A rigid accountability requirement, though in the name of more honest and complete representation, would for the time being deprive any voice to unorganized interests, and thereby would not even let the stage be set for debate about what is indeed best for those interests.

As a matter of priorities we might criticize a diversion of resources from "accountable" lawyers to "independent" professionals. And, in the long run, for reasons of "legitimacy" and for the reason that the achievement of social change requires far more than the activity of lawyers, we may want a society where citizens are effectively represented not by self-appointed lawyers but by their own organizations which are able to retain and control lawyers. But today's maverick voice should be heard, and the crusader respected, if only because unorganized interests have no more practical alternative. Consistent with the participation model, of course, one can urge these lawyers to be as responsive as possible to the people they "represent" and affect. One can also demand that they keep a steady sense of direction. And, finally, if one looks for lasting change, and change on other than a piecemeal basis, one can hope that others will work to organize the poor and other underrepresented interests so that those groups can become social forces in their own right.

IV. Life and Working Styles

The growth of new political consciousness in the sixties contributed to the development of T-groups, Women's Liberation, Communes, and other experiments in the search for a personally fulfilling way of life. The attempt to strike a satisfying balance between the demands of the...
craft, societal concerns, and personal needs has been an important determinant in the occupational choices of the lawyers we interviewed. The adoption of new life styles seems to have proved particularly difficult for them, perhaps because something in the nature of legal practice itself imposes a pattern on one's entire life, or at least blocks the integration of one's personal life with an aggressive professional role.\textsuperscript{107}

Many of the lawyers we interviewed were refugees from the life patterns of private corporate firms. Few doubted that the atmosphere and regimen of such firms provide the stimulus for the acquisition of a high level of professional expertise and craftsmanship. John Flym reflected:

I spent four years with a large firm and I worked for all the wrong clients. It was useful in some respects. You dedicate yourself to a concept of craftsmanship; craftsmanship becomes all. You do what law school tells you that you are supposed to do, which is to take either side of any issue. You focus on how to do whatever you are told to do, and don't worry about what it is you are doing. You learn to do it very well.\textsuperscript{108}

But the same atmosphere which fosters technical competence is also perceived by the public interest lawyers as involving great costs. For example, many of the lawyers we interviewed emphasized the inherent "friction" in the competitive hierarchical relationships found in a large firm, and complained that such firms are dehumanizing. One of the lawyers was particularly disturbed by the impersonality and cautiousness\textsuperscript{109} of his colleagues at the corporate firm where he once practiced:

\begin{quote}
107. Of the many commentaries on the effects of practicing law on the practitioner, perhaps one excels for its insight:

But the lawyer is always in a hurry . . . . He is a servant and is continually disputing about a fellow-servant before his master, who is seated, and has the cause in his hands; the trial is never about some indifferent matter but always concerns himself; and often the race is for his life. The consequence has been, that he has become keen and shrewd; he has learned how to flatter his master in work and indulge him in deed; but his soul is small and unrighteous . . . . [F]rom the first he has practiced deception and retaliation, and has become stunted and warped. And so he has passed out of youth into manhood, having no soundness in him; and is now, as he thinks, a master in wisdom. Such is the lawyer, Theodorus . . . .—Plato as cited in M. Mayer, The Lawyers 4 (1966).

108. Flym, however, is far from convinced that equivalent technical expertise could not be gained independently:

I certainly feel that I have grown more and more rapidly, since I left the firm. I really don't feel that you need to have the big firm experience. You can develop your expertise independently more rapidly on your own than inside the large firm.\textsuperscript{109}

109. This is not a new complaint. See, e.g., C. Dickens, Bleak House, ch. 59 (1853): Mr. Vholes is a very respectable man. He has not a large business, but he is a very respectable man. He is allowed by the greater attorneys who have made good fortunes, or are making them, to be a most respectable man. He never misses a chance in his practice; which is another mark of respectability. He never takes any pleasure;
Most of the things that we felt strongly, if we felt anything strongly, we did not express to each other. There were no deep relationships among most of our people. One partner committed suicide about three years ago. Everyone was shocked. The statement given was "Gee, I didn’t realize he was unhappy or had any personal problems."

Even those lawyers who found the atmosphere of the corporate firm amenable on a personal level discovered shortcomings in the work opportunities of such firms. Michael Schneiderman practiced at Arnold and Porter for two and a half years in general corporate work. Although he found the firm to be "an extremely civilized place," with a relatively generous policy on pro bono work, Schneiderman felt "trapped into situations where, although there were some opportunities for public interest work, they were basically insufficient." He also "felt confined by the firm’s policy about conflicts of interest, which was also relatively liberal, but not liberal enough for me." Tony Roisman of Berlin, Roisman & Kessler summarized the personal difficulties in the part-time pro bono work possible at the large private firms:

You have to be able to immerse yourself in the problems of your clients, to see the thing from their standpoint, and not be bothered by the fact that the pile on one side of the desk represents money-making, amoral work, and that the pile on the other side represents non-money-making work that you feel committed to do. It doesn’t work to do it that way, either emotionally or in terms of the quality of service provided.

Most important, many of the lawyers reacted against the use of technical competence divorced from any concept of personal responsibility for the effects of one’s work. As Flym noted, "the corporate lawyer today is someone who does his job within the four corners of an institution. There is a sharp dichotomy between his professional work and his personal values."

The structure of the new public interest law firms tends to reflect the reaction against practice in the large corporate firms or government agencies from which many of them have come. Virtually all firms emphasize the independence of the individual lawyer. For example, Marian Wright Edelman describes the Washington Research Project as being an "unstructured structure":

which is another mark of respectability. He is reserved and serious; which is another mark of respectability. His digestion is impaired, which is highly respectable. And he is making hay of the grass which is flesh, for his three daughters. Compare E. SMIGEL, THE WALL STREET LAWYER (1964).
We have gone after people who are independently good, who can run their own thing. We do not interfere in each other's stuff. We don't have a "boss" relationship. We hire people who are good; we ask them what they want to do, tell them what we need, and then let them go to work.

Another sign of reaction to the corporate law firm experience is that most of the new organizations tend to be small, generally composed of fewer than ten lawyers who relate as equals. Such equality is occasionally expressed in communal decision-making and financial arrangements. In the Law Commune, for example, decisions on which major political cases to handle are made jointly by the entire staff, including secretaries. In both Berlin, Roisman & Kessler and the Commune, all money received is divided according to need, or equally beyond need.

A further indication of "liberation" among the lawyers we interviewed was that all had, to some degree, abandoned the traditional criterion of financial reward as the measurement of professional success and as a primary source of personal gratification. Although many of the lawyers lived very comfortably, all had accepted distinct limitations on their immediate salary potential. As Tony Roisman indicated, other types of compensation replace wealth:

We think that the public interest area is such that you are not rewarded by making money. You are compensated by sleeping better, and by really enjoying what you are doing. I look forward to coming into the office in the morning and I only leave it at night because I get so hungry that I can't stand it any longer. We really enjoy everything that we do. I think it's called psychic income.

Others pointed to different external rewards—publicity, hobnobbing

110. "Sufficient" financial remuneration was still, however, an essential prerequisite for most of the lawyers interviewed. For many, "sufficiency" was often a very comfortable income. An interesting example of this requirement was recounted by Ralph Nader. In a lecture at Harvard Law School, Nader asked the audience how many were interested in public interest law. About 90% of the audience stood up. He then asked how many would be interested if the salary were $12,000 per year; a few sat down. At 10,000, 8,000, and 7,000 increasing numbers sat down. By the time he reached $4,000, two students remained standing. "That's right, gentlemen," Nader sneered, "your convictions are entirely a matter of price."

111. The lawyers who received the highest salaries were those connected with foundation-funded Washington operations (Ralph Nader is the exception). The Washington lawyers, plus the older members of the NAACP Legal Defense Fund and some of the conservation people were also those who had made the least break with the traditional style of the corporate lawyer. Moreover, the limitations on the salary potential of all of the lawyers interviewed only apply as long as they remain in public interest firms. For many, a return to a more remunerative traditional practice was not unforeseeable.
with Congressmen, meeting celebrities. Ann Garfinkle of the Law Commune observed that with financial success removed as a measure of achievement, status came from handling "sexy" cases with large attendant publicity. According to Garfinkle, the women attorneys in the Commune were initially not receiving any of these cases. Only after threats of a women's revolt were the cases more evenly distributed.

But despite these conscious choices of working relationships, firm structure, firm size, and the nature of compensation, the lawyers accepted distinct limitations upon their life styles. For many, the decision to work on matters which they valued was a personal political event. Once having made their choice, they felt pressure to measure up to corporate practice standards of professionalism.

The sensitivity about technical competence has caused most of the lawyers we interviewed to view their professional role as requiring long, diligent labor. For the dedicated, the demands upon their time and energy were so great that their personal lives generally suffered. As Gary Bellow noted about his CRLA experience, "the work load is inconceivable. . . . The sheer absolute work is incredible." For Ralph Nader, the emphasis on competence combines with a missionary zeal to create a life of ascetic self-denial. For members of the Commune it results in devotion to legal work often to the exclusion of other political activities.

The crux of the public interest lawyer's dilemma in finding a satisfactory working role is this: his desires for an integrated, humane personal life, both on the job and off, conflict, perhaps irresolvably, with his commitment to clients in whom he believes. On the one hand, the disparity in legal services available to his clients is such, and his commitment to his clients so strong, that he feels driven to work

112. On the entire question, Edgar Cahn, a watchful critic of his colleagues, noted that:
There is a form of private profiteering going on in public interest law. [We] would get our kicks out of doing good and being saviors and acting like the elitist governors of our society, and then in favoring ourselves and holding conferences, and getting very interesting fringe benefits. I'm not prepared to say that everybody in poverty law has taken a vow of ultra penury. I haven't and I don't pretend to have. I think there is a hypocrisy in this claim of purity which I haven't seen lived up to, and I see no intention of being lived up to, by those who go into poverty law.

113. Similarly, exiles often establish what Stanley Diamond has called "an exilarchy, a sort of hereditary rule in the place of exile, recapitulating the culture of the past so far as that is possible, while drawing strength from the mythos of persecution." Diamond, The Old School at the New School, New York Review of Books, June 18, 1970. The lawyers interviewed frequently recreate the atmosphere and demands of the corporate firm, while drawing strength from the mythos of personal sacrifice for the sake of good causes.

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spartan hours and to be as efficient as possible in his work. On the other hand, complete efficiency and self-denial would lead to the very de-humanization and lack of personal expression and fulfillment which these lawyers rebelled against when they left private practice and government service.

No doubt the underrepresented deserve lawyers who are as proficient and dedicated as those who labor for corporations. No doubt any concept of professional responsibility implies the acquisition of a degree of technical competence. But as some of the more perceptive lawyers noted, over-dedicated poverty lawyers tend to exhaust their commitment in a relatively short while. Dennis Roberts, Reginald Heber Smith Fellow with Oakland Legal Services, worked for two years with C.B. King in Albany, Georgia. He described that job as being very necessary, but as involving terrible working conditions, subsistence pay, and fifteen to twenty hour work days. Although he is pleased to have had the experience, Roberts felt that the pace was too hectic for a long-range commitment. The feverish work of such lawyers is often neurotic; as Roberts put it, "you work like hell because you feel guilty that you are a well-off white." Too heavy a work load puts unbearable stress on interpersonal relationships and decreases the lawyer's ability to do quality work for the client. Undoubtedly some poverty lawyers view their role as a routine nine-to-five job, enjoying what Edgar Cahn harshly calls "a position of secured indulgence for the self-anointed." But for others, a forty hour week may be a necessary element in an attempt to establish a life pattern conducive to long-range commitment.

A traditional working style may be counter-productive for public interest lawyers in the short run as in the long run. The tension between professional accomplishment and the need for personal expression and satisfaction is symbolized in the frequent debate over dress and appearance. For most public interest lawyers, style is at present secondary to effectiveness. Ralph Nader, who looks like the archetypal college student of the fifties (sans letter sweater), expressed a strong distaste for reformers who hurt their cause by indulging in "vanities and symbols," including long hair, beads and rhetoric, all of which "flout the aesthetic sensibilities of the masses." Most of the lawyers we interviewed felt that they had to dress and act "straight" to solicit funds effectively and to be successful in the forums where their client's rights would be decided.

But if public interest lawyers are to live truly integrated lives, then the medium may indeed have to become one with the message. Fred
Cohn of the Law Commune, a bearlike man who combines a Mailer-esque head of hair with a bushy black mustache, felt that his appearance was beneficial to his clients both because it identified him with his client in the courtroom, thus providing the client with a powerful and articulate spokesman, and because it was part of the message which both he and his client were trying to spread. Jim Lorenz noted, on the basis of his CRLA experience, that an increasing number of the better young lawyers feel that the way in which a lawyer dresses is a matter of personal integrity and principle. This has direct implications for the directors of public interest firms: "If we impose conditions of dress or put rigid restrictions on their personal discretion or life style, what calibre attorney will we be able to attract?" In sum, acting on principle may not contribute to effectiveness within the current system, but if part of the lawyer's goal is to change the system and the professional role of the lawyer, he may preserve areas of independence, recognizing that there are some matters which simply cannot be compromised.

Few lawyers have successfully reconciled the demands of their professional craft and the dictates of their personal values. The failure to achieve an integrated personal and professional life style often leads to a tension between the lawyer's substantive goals and his professional activities. Even those lawyers who profess a belief that an effective agent for social change must first change himself find it difficult to establish a satisfactory balance between professional responsibility and efficiency on the one hand, and personal relationships and expression on the other. Perhaps the best examples of lawyers struggling with these problems were the two lawyers least convinced of the desirability of legal work. George Johnson practices independently in New Haven. Worried about working in a manner which reaffirms what he feels to be an illegitimate legal order, Johnson justifies his legal role as one of "cushioning the fall of people who get trapped in the legal system." He does not view his legal work as primary, and thus is not particularly concerned about the professional disadvantages of working alone. He practices law as a means of support, hoping eventually to work part-time in criminal defense work and to spend the rest of his time "either organizing or freeing my wife to organize." By specializing in drug and draft cases, Johnson has had general success in the law which he does practice, but he candidly notes: "There is no question that I am not going to be as good an attorney as I might have been."

Johnson has consciously chosen to work at a local level, because "nothing is changing on the national scene in Washington except the names of the people." He believes strongly that he must devote as
much of his time as possible to radical political activity and to his family life, changing himself and "freeing" his wife. A sign of this emphasis was that he was one of the few lawyers we interviewed who displayed no sign of the driving argumentative personality common to successful law school graduates. Yet his attempt at achieving a balanced life was still tentative; and he commented that he had "few definite answers" about the best way to combine radical political activity with the practice of the law.

John Flym of Flym, Zalkind and Silverglate, also viewed his role as a lawyer as secondary:

I live with the people I represent. I represent very few people who are not friends, to a greater or lesser degree. I participate in their activities. My life style is different because I don't think of myself as a lawyer at all. I am a human being. I have a skill, and I spend my time doing things among people that I like.

Distressed at the trend toward centralization in the United States, Flym also consciously chose to work on the local level, attempting to make his life a personal statement of his views. Yet Flym expressed a profound frustration. His dissatisfaction stemmed in part from his perspective on the legal system: "I consider the function that the legal system performs to be basically a very evil one." It also derived from what he views as the limitations of the lawyer's role: "There is not a hell of a lot that you can do through the law in the way of fostering change." These attitudes have produced a deep ambivalence in Flym about the practice of law:

I have thought a great deal about my situation, and certainly I think that the system is using me. I am lending myself to be used by the system at the same time that I am letting myself be used by the Panthers. What you do about that is hard to resolve. For myself, I have decided that I want to practice law less and less, and focus more and more on living the things that I believe. But I have an expertise now, and it is hard to imagine what else I would do. I would be far from candid if I told you that I wasn't troubled by that question, and if someone asked me whether it was a good idea to go to law school and become a lawyer, I would say "no" unequivocally. I may stop practicing law and it may be soon, I don't know. Maybe I'll become a poet . . . .

Johnson and Flym are perhaps unique within the reaches of our study, but their experiences may be viewed as less idiosyncratic as more lawyers attempt to reconcile their professional and personal goals. In the future, increasing numbers of professionals will perhaps be un-
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satisfied with merely placing their traditional expertise at the service of groups or causes which they believe in. Increasingly, lawyers struggling to establish new roles in the legal profession will be driven to question the basic assumptions and forms of the profession. Behind the questioning will be the vision of a new kind of law, more humane both for the people whose lives it orders and for its practitioners as well.114

V. Conclusion

Throughout this Comment, we have used the term "public interest lawyer" to describe a large and diverse group of practitioners engaged in a broad range of activities. We believe that these lawyers occupy a professional role which differs both from that of the commercial lawyer, with his primarily profit-oriented practice, and from that of the government lawyer or administrator, who is charged with protecting the "public interest" but who does so without clients or a real constituency. A precise definition of this role, and certainly any evaluation of it, must be tentative at this time. The lawyers we interviewed have for the most part been out of law school less than ten years; with some exceptions, their firms have been in existence only a few years, and in some cases a few months. Although the field is varied and rapidly changing, our discussion in the previous sections does allow us to identify the forces which have created the role of public interest lawyers, to point out the most significant aspects of that role, and to speculate upon where the public interest law movement—to the extent that it can fairly be labeled a movement—is headed.

The role of the new public interest lawyer is a response to two major developments of recent years. First, the expansion of substantive

114. The lay advocacy movement is currently a focus of interest for those, both within and without the public interest law movement, who are dissatisfied with the self-complacency and ritual obsolescence of the legal profession. One force behind the lay advocacy movement is purely practical—the desperate need to provide assistance, by paraprofessionals if necessary, to potential clients who are left without counsel under our present system of allocation. But another equally vital force behind the lay advocacy movement is dissatisfaction with the elitism of the profession, which is in turn part of a wider movement within our culture to break down the artificial barriers which separate one man from another. To many observers, the conscious and/or unconscious mystification practiced by lawyers on their clients is perceived as an act of violence. A self-conscious existential decision to throw off the cloak of his professionalism would mean the disappearance of the lawyer as we commonly know him and his emergence as someone speaking in simple language, following understandable procedures, and loving, not manipulating, his fellows. See generally R. D. Laing, The Politics of Experience (1967).
and procedural guarantees, and the growth of organized and politically sensitive groups of poor people and consumers, have made new demands upon the legal process which are inadequately met by lawyers in commercial practice or by government agencies. These developments have coincided, not accidentally to be sure, with a heightened political and social consciousness on the part of many young lawyers, and an increased determination to integrate their personal values and their professional work. Both these demands—that of emerging interest groups for representation, and that of young lawyers for personally fulfilling work—have contributed to the present shape of public interest practice, but they are not necessarily complementary. In some ways, they create a tension which underlies most of the serious controversies within public interest law, and they provide two different perspectives for evaluating the role of public interest lawyers.

Public interest lawyers are significant first of all in the types of needs they serve. The present day public interest lawyer feels that the old style pro bono work, while admirable, is no longer adequate to cope with the problems we face. Rather than devoting his energies to the defense of the constitutional rights of individuals, he feels that he must take more affirmative action and think in broader social, economic, and political terms. The lawyers we interviewed are committed ultimately to causes, not clients. They believe that the nation's most pressing problems cannot be attacked by professionals whose role is passive until retained by a client with a "legal problem." At the same time, many are unwilling to subject their professional efforts, their sense of what is important for society and how best to achieve it, to control by particular clients. Their efforts take on added significance because the resources available to pursue causes of social justice are limited; thus these lawyers are not only advocates in particular causes, but also arbiters of social priorities.

Public interest lawyers are also significant because of the type of representation they offer. In attacking broad problems and pursuing long-term goals, public interest lawyers have engaged in a wide range of strategies and activities, including litigation, counseling, lobbying, research and investigation, use of propaganda and the press, mobilizing

115. Edgar and Jean Cahn refer to these increased demands on the legal process as the "Rights Explosion" and the "Grievance Explosion." Cahn & Cahn, Power to the People or the Profession—The Public Interest in Public Interest Law, 79 YALE L.J. 1005, 1008-10 (1970).
116. See pp. 1119-20 supra.
community demonstrations, and organizing citizen's lobbies and community groups. Though none of these activities is novel in itself, the programatic use of various strategies and various forums by a single lawyer or law firm in behalf of broad social causes has given new dimensions to the notion of "legal representation." As the services performed by public interest lawyers for their client groups have become more and more complex and far ranging, the increasing tendency has been to see the lawyer as a political figure. Several of our interviewees predicted that the next decade will see public interest lawyers attempting to enter the political arena directly, using their client groups as a constituency on either national or local levels.

In speculating about the future, we suggest that the most important forces which will shape the role of the public interest lawyer are (1) the growth of politically sensitive community organizations and citizens' groups, and an accompanying demand that lawyers who represent the interests of these groups be accountable to them; (2) the future availability of foundation and government funds, and the success or failure of efforts to develop a public interest practice supported by client fees; and (3) the response of government and the private bar to the needs which public interest lawyers are attempting to serve.

The tension between the demands of the underrepresented and the search by lawyers for personal fulfillment in their practice will be most visible in the trend toward increased accountability. First, a stricter notion of accountability may force out some of the public interest lawyers currently representing economically or racially defined client groups. For example, as blacks and other minority groups become more politically conscious, they may demand minority group lawyers to represent them. Lawyers of a different economic or racial class, and those not rooted in the communities they represent (especially the foundation-funded Washington lawyers), may come to be regarded

117. Labor lawyers in the thirties and forties helped to organize labor unions, but lawyers have not until recently tried to organize communities. The trend toward community participation by lawyers for the poor, in combination with the movement for lay advocacy, may help to break down the barriers between professional and layman, and to remove the cloak of professionalism from much of the lawyer's work.

118. Jim Lorenz suggested that the current batch of public interest lawyers may increasingly shift their attention in the future to representing the middle class on consumer and environmental issues, leaving the representation of minority groups to minority lawyers. He thinks that public interest law will lead into politics because at the moment the necessary votes for middle class legislation cannot be mustered in California. He cites David Brower's Friends of the Earth as a client group or constituency which is going to support political candidates on the basis of their environmental voting record, and suggests that some public interest lawyers may themselves become candidates.
with an increasing measure of distrust. Related to this development may be a trend by more radical groups to demand lawyers who are willing to lay down their professional status and role to "run with" the group.

In the consumer protection area, time will put the Ralph Nader model of the independent professional to a stringent test. The politics of the public interest is sufficiently complex that Nader may be unable to continue to find issues which will generate immediate and overwhelming support by consumers. Nader's latest crusade against General Motors by proxy fight was certainly more controversial than his fights against unsafe automobiles or rotten sides of beef. As the focus shifts from manifest corporate irresponsibility to more difficult issues of public policy, the public interest lawyer who was once able to speak for all may find it necessary to actively seek support from particular special interest groups; and in representing those groups against others, he will become less independent.

As we have discussed at length, the continued availability of funds to support public interest lawyers is a major unknown. This potential source of trouble is noted not only by the public interest lawyers themselves, but also by older lawyers, some of whom feel that the "new" movement is part of a recurrent pattern in which they themselves have already played their part. To these older lawyers, many of whom are veterans of the Roosevelt era, the brashness and idealism of the new crop of public interest lawyers is in large measure the product of a national affluence which may prove to be temporary. While some of the current public interest lawyers continue to make the financial and personal sacrifices traditionally associated with such work, some—particularly those whose firms are foundation-funded—are able to have the satisfaction of serving the underrepresented and of receiving very handsome remuneration at the same time. If funds for public interest law become more scarce, the convictions of these lawyers will be put to a more severe test.

While existing OEO-funded legal services programs are probably secure over the short run, even these programs are now suffering the effects of an economy drive which invariably hits social welfare programs the hardest. Foundation funds are unreliable at best, and would be severely curtailed by an economic depression or by a political reaction to zealous efforts by public interest lawyers in controversial causes. These factors alone ensure that the practice of public interest law, if it is to survive at all, will have to seek new forms and sources of financing. Edgar and Jean Cahn suggest that the resources for
public interest law will come from law schools and commercial law firms.\textsuperscript{119} We believe, however, that neither of these institutions will prove well suited to handle some aspects of the work now performed by the lawyers we interviewed, particularly where total devotion to the needs of a constituency is required; and, perhaps more important, that law firms and law schools, at least as presently constituted, cannot satisfy what we have described as the second energizing force behind public interest law firms—namely, the search by young lawyers for a professional role fully integrated with their personal values. For those lawyers who wish to devote their efforts to serving underrepresented interests without government support, one hope lies in the development of community groups and citizens' organizations which can afford legal representation. Even if such a development does occur, however, it is likely that lawyers who base their practice upon ongoing relationships with these groups will do so at a personal financial sacrifice. The next few years will probably see a greater number of firms founded by relatively young lawyers which, like the large commercial firms, will combine public interest activity with fee-generating work for private individuals or businesses, but which, unlike the established firms, will regard public interest work as their primary commitment, and will refuse to accept paying clients whose interests conflict with the lawyers' sense of what is best for society.

The unstable financial base of public interest lawyers heightens the significance of the reaction of government and the organized bar to the needs which those lawyers are attempting to meet. There is the possibility that a new and vigorous national administration will launch an effort to take on some of the functions presently performed by public interest law firms. Several of the lawyers we interviewed suggested that the current flowering of public interest firms, and the agitation within commercial firms to undertake more \textit{pro bono} activities, is directly related to the present unattractiveness of government service to highly motivated, socially conscious lawyers. If an administration with different priorities were to take office, many of the lawyers now in foundation-funded or commercial firms might quickly join up. The prospects of such a development, of course, are highly speculative.

Commercial law firms and the organized bar can themselves do much to alleviate the plight of the under-represented. But just as important as the development of \textit{pro bono} programs within their own firms will be

\textsuperscript{119} Cahn & Cahn, \textit{supra} note 115, at 1024.
the attitudes of members of the private bar toward separate public interest law firms. Ralph Nader, in a recent New Republic article, has predicted polarization, with the lines becoming more sharply drawn between establishment private firms and crusading public interest lawyers. The reaction of conservative forces within the bar to the public interest law movement is well illustrated by the resistance of the California bar to the funding of California Rural Legal Assistance. When Sargent Shriver had decided to fund CRLA, he sent Clinton Bamberger, then head of OEO Legal Services, to make a presentation to the Board of Governors of the California State Bar Association. The lawyers on the Board of Governors were especially worried that the creation of CRLA would upset the "balance" of power between grape growers—their own traditional clients—and farm workers. At a luncheon after the presentation, one member of the Board told Bamberger that CRLA should not be supported because it was a "social experiment" which required the bar to "take sides in an economic struggle still pending." Back at OEO, Shriver remarked that this was the best one-line definition of the War on Poverty he had yet heard.

Further developments in the practice of public interest law will also test the attitudes of more progressive members of the bar. The current controversy over the courtroom conduct of defense counsel in political trials may lead to a more fundamental discussion of the proper scope of advocacy, as the public interest lawyer's insistence upon being more than a "value-neutral professional," upon acting in accord with his own moral sense as well in compliance with the code of professional conduct, is recognized as a frontal challenge to the traditional self-image of the bar. It seems clear to the authors that a crusade against the more radical elements of the bar can only hurt the profession and defeat the very ends which the bar would serve, while a vigorous defense of their efforts, through a more flexible definition of the professional role, can protect these lawyers against an inevitable political reaction.

So long as there continues to be a huge disparity in legal resources available to different interest groups in our society, the public interest law movement is likely to continue in some form. But beyond

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121. The conservative reaction is also illustrated by the narrow defeat of the Murphy Amendment, which the organized bar, to its credit, officially opposed, and by the new restrictions on the activities of private foundations embodied in the 1970 Tax Reform Act. See pp. 1114-15 supra.
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this probability, the future of public interest lawyers seems no less murky than the future of the rest of our very troubled society.

APPENDIX

Interviews were conducted for this project during the first four months of 1970. No attempt was made to compile a complete list of "public interest lawyers," and it is doubtful whether the authors could agree on a definition of public interest law which would make such a list possible. Our self-conscious bias was to talk with the leaders and most publicized lawyers in the public interest area. A more comprehensive study would of course have to be based upon a more complete interview sample. Special emphasis might be directed to the growing number of minority group public interest lawyers; to the rank and file of the larger organizations, who may view this field very differently from the "chiefs"; and to the client groups themselves, who will no doubt play a crucial role in the development of public interest law. Despite the limitations of our research, the authors feel that the interviews we conducted constitute a rich and fascinating material for study, and that the variety of goals, activities, sources of funding, kinds of clients, and life styles exhibited by our interviewees provide a fine starting point for a description and analysis of the new public interest lawyers.