PUBLIC INTEREST LAW: A STEP TOWARD SOCIAL BALANCE

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If the United States could be governed by town meetings there would be no need for public interest lawyers. Typically, the town meeting affords each citizen the opportunity for direct and personal involvement in the governmental decision-making process. His contribution is real; it can be felt by him and measured by his neighbors. The best interests of the community are threshed out from the competing interests of individuals, all of whom are more or less equal. Additionally, a town meeting society exercises social control over its members, holding them accountable for their actions and for the quality of the goods and services they provide. When the butcher is a neighbor and slaughters local hogs, the consumer of bad pork knows where to go for redress. The shoemaker whose product is defective harms only himself because news of such matters travels quickly in a small community.

Obviously, the United States is not a town meeting society. Rather, it is a sprawling nation grown so large and complex that control of its social and governmental institutions is removed from the people whom these institutions are designed to serve. No longer is one acquainted with the man who sells him meat, much less the one who slaughtered it. The hope of regulating the manufacturer or the quality of the goods which he produces is unrealistic. The doors to meaningful participation and influence in the decision-making process have closed, and the ordinary citizen with little political muscle or money is virtually excluded. In place of the town meeting, citizens are now immersed in a system composed of layer upon layer of highly structured business establishments and governmental authority. The distance between the public and control of public institutions increases.

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This distance is the result of several factors. One of the most significant is the interposition of administrative agencies between the citizen and the decision makers. Instituted originally as watchdogs of the public interest, these agencies have not served to amplify the voice of the public, but have replaced it with the voice of the bureaucrat, a voice responding to very different pressures and demands, and with a definite private interest of its own to protect. In order to achieve this protection, agencies have constructed labyrinths of procedure and red tape; citizens who become entangled in this process commonly lose their way.

Similarly, the distance between citizens and governmental power is to a great extent the result of public indifference. This apathy is a reflection of feelings other than a lack of interest or social concern. It reflects a sense of hopelessness, an absence of faith in the ability of an individual to confront the problems of society. It also reflects one result of this nation's stress on specialization and expertise. Wherever I spoke last year I encountered people who shrugged their shoulders and said, "I don't know. I'm not a lawyer," or "I'm not an expert." They seemed to possess little faith in their own judgment and they would readily pass decision-making to those whom they considered "more qualified."

Lawyers have a responsibility to shorten the distance between people and government and to help restore the public's faith in its own judgment. Merely spending three years in a law school or earning a graduate degree confers no mantle of wisdom on an individual. It simply provides a bundle of skills or a body of knowledge which can be useful, if put to work.

How do lawyers overcome this apathy and lack of faith? How do they restore social responsiveness to the institutions and control to the public? The answer seems to be to balance the scales, to restore and perpetuate a true adversary system throughout our society, a system in which all are equal in the eyes of the law. This can be done only by first recognizing that the unbalanced scale is the root problem in the country today. It encompasses and transcends all of the other social conflicts with which we struggle—racism, environmental degradation, corporate irresponsibility. Indeed, pollution, discrimination and consumer complaints may be regarded as symptoms of this far more pervasive and complicated problem. Change will not be realized until our attack on these individual problems is redesigned to accomplish a basic reordering of governmental institutions so that access and influence may be had by all.

To achieve this goal, the public must have full-time, professional representation in the courtroom, in the legislature, in the agency—

wherever the interest of the public is in an adversary position. Substantive and permanent changes in the way these bodies function is not likely as long as the burden of representing the public interest is placed upon volunteers, or upon non-professionals who must march outside legislatures in protest or spend hours in the ante-room of an administrative office to gain a few minutes with a lower echelon official.

None of the potential channels of influence should be ignored. In his excellent book, *Defending the Environment*,[1] Professor Joseph Sax looks to the courts as the ultimate vindicators of citizen rights, and in this assumption he is certainly correct. But court battles take time, massive amounts of time. They also require more money than most citizen groups can afford. The public interest lawyer must not look only to the courts since much can be done in and through the legislature and administrative agency, as well as with publicity. Ralph Nader's success with trial by media is obvious. Often the well drafted letter or the appropriately timed telephone call can be as effective as the filing of a law suit. One of the advantages of practicing public interest law is the opportunity to use the law in a creative and flexible way, and this should be a goal of any new public interest attorney or firm. Any social problem has a variety of possible solutions, and time should be taken to develop a number of alternative strategies and tactics.

Can this be done within the confines of the traditional practice of law so that the field of public interest law can be successfully grafted onto the existing format of legal practice? Although many will disagree, it seems that it cannot if it is to survive with integrity. I am aware that separation may mean its death because financial support is located in the private sector. But public interest law is a new field, arising in response to new social conditions and to strains and pressures on existing institutions. It must be free, therefore, to develop in its own way, as unfettered by the old rules as possible. Public interest law involves much more than work *pro bono publico*. Although the opportunities for *pro bono* work have indeed expanded, presumably in response to pressures from young associates, it is still narrow in scope and confined within a traditional law practice. A few hours are set aside, and the work is not to interfere with "billable hours." These constraints force many lawyers to be wary of engaging important or long-term cases on a *pro bono* basis. They fear possible conflict with the firm's paying clients, or they do not wish to "waste" all their *pro bono* time on one project.

One of the more interesting trends in the legal profession has been the rejection of traditional forms of legal practice. This was noted beginning about 1968 when New York law firms of considerable wealth

1. J. SAX, DEFENDING THE ENVIRONMENT (1970).

and prestige were unable to recruit the cream of the students from the establishment law schools that had traditionally served as supply houses for corporate lawyers. The students turned down large offers with combat pay for living in New York City to work in Legal Services, VISTA, offices of consumer protection and environmental protection groups. The practice of public interest law was beginning to become a workable alternative.[2] More recently, however, one commentator has observed that, perhaps because of the tightening job market, the trend is reversing so that top graduates are again seeking haven in the large commercial firms.[3] The results of this development remain to be seen.

To do the job more manpower must be attracted from the private sector. We need public interest firms organized and run by a variety of people—lawyers, economists, ecologists—who offer a combination of diverse knowledge and skills; people who believe that there should be an alternative to a life with the Widget Corporation or Able and Bobble, Attorneys at Law.

A public interest lawyer has a triple responsibility. He or she must work hard to represent the individual or group which needs assistance, and through these efforts attempt the changes in government and social structures necessary to enable the group to protect itself and represent its own interests in the future. At the same time the public interest lawyer must strive relentlessly to make the organization of which he or she is a part philosophically consistent with the work it is pursuing. Everyone in a public interest firm, including any secretarial or administrative personnel, should feel that they are participating in a worthwhile effort, and that they are making a positive contribution. One goal of the firm should be growth of the individuals working there. The legal profession specializes too much in the pounding of square pegs into gray flannel round holes.

A third responsibility of those involved in public interest law is to create and perpetuate opportunities for others. This practice must become a true alternative to private practice, with standing in the communities and sufficient financial support to make it possible for participation by not only the independently wealthy, the single, and those with working spouses. Public interest law cannot survive if it must be practiced by martyrs—persons willing to live on a shoestring for the cause.

Unfortunately, money remains the largest single problem. Foundation support is difficult to obtain and frequently comes tied with unwanted strings. Contributions and memberships are notoriously unre-

2. Nader, *Law Schools and Law Firms,* NEW REPUBLIC, Oct. 11, 1969, at 20, 22.

3. *See* Green, *The Young Lawyers, 1972: Goodbye to Pro Bono,* N.Y. MAGAZINE, Feb. 21, 1972, at 29-34.

liable. There is a need for a consistent funding source which can be tapped systematically. Thus far the student fee plan which is financing public interest firms organized by Ralph Nader seems the easiest and most effective way. Students simply vote to increase their activity fees a dollar or so per quarter or semester, with the funds used to finance a firm of professionals under the control and direction of the students. How such a system could be transferred to local communities has yet to be effectively worked out.

A lack of funds should not stop the movement. There are too many other obstacles of real concern. Being a public interest lawyer is not always the best way to make friends. In many instances the involvment in an issue is seen as vindictive and pointless name-calling. Corporations are suspicious of inquiries, and government agencies jealously guard their small fiefdoms.

Our victories are small, but crucial: helping someone with a lemon car get their money back and calling the public's attention to the potential danger, devising a strategy to aid a citizen group in its fight to clean up a local stream, seeing a regulation increasing citizen access to government decision-making become part of the body of law. In all of these endeavors the underlying goal is the same—putting the people back in control and restoring the balance to the scales of justice.