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Book Review

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Book Review

*Reviewed by Suzanne M. Spitz**

THE LAWYER, THE PUBLIC, AND PROFESSIONAL RESPONSIBILITY, by F. Raymond Marks, American Bar Foundation, (1155 East Sixtieth St., Chicago, Ill. 60637) (1972) 299 pp. Cloth, \$7.95; Paper, \$2.95.

In the last analysis, all effort by public interest and private law firms—whether for regular or public interest clients—must be viewed against a single ideal: the maximization of representation so that *all* relevant parties are heard from on any issue touching on decisions of public policy.

Until recently one presumption dignifying the legal profession was the assumed equivalence of professional pursuit and public interest. A careful analysis, however, indicates that many viewpoints and interests have been routinely excluded from participating and being represented in the legal and legislative forums. These unrepresented interests and their advocates now fall within the relatively new field of public interest law.

After noting that the “emerging public interest response . . . may be as descriptive of professional disease as it is of professional health” the authors of *The Lawyer, The Public and Professional Responsibility* discuss the past history, present responses, problems and future of public interest law.

Based on careful research and selected interviews, the authors detail the response of the private and organized bar to public interest demands. Excluding the response of the individual practitioner and small firms as beyond their scope, the analysis centers on the response of large firms. Noting that the response (if any) takes the form of a partner or committee, department or section, branch office or released-time approach, the authors conclude that in large firms

[p]ublic interest work . . . , though explicitly directed, continues to look like a dispensation of grace rather than the discharge of professional duty.

while the organized bar

has not played a central role in defining, initiating, leading or coordinating new responses to public demand or public need.

Since the law firms do (and can) not actively solicit public interest clients or issues, certain groups and individuals have begun to perform the function of public interest brokers. These brokers include such traditional groups as the A.C.L.U. and Legal Aid offices,

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as well as bar groups, public interest law firms, community law offices and issue-oriented community groups. This brokerage function, noticeably absent in more traditional fields of law, has become a necessity in the public interest field. Also, whereas traditional access to lawyers has been in direct proportion to dollar expenditure, public interest clients meet a reverse financial test—the absence of means to command services.

The public interest firm is a unique response to the perceived inadequacies and omissions of the legal profession. Oriented towards issues rather than clients, reform rather than specific remedy, public interest firms are voices addressed primarily to all levels of government. The authors discuss the public interest firm as a phenomenon to be found only in the largest urban areas. They also note that there are only two methods by which these groups are funded (foundation support and fee-paying clients). On these two points the authors err.

Public interest firms are now operating in many areas across the country which may be categorized as anything but megalopolis; and they are being funded exclusively by either voluntary contributions of state citizens (i.e.: The Ohio Public Interest Action Group) or voluntary fee assessments on university campuses (i.e.: The Oregon Public Interest Research Group). These interdisciplinary public interest firms act as brokers, clients and advocates for the public interest. In addition to the traditional roles of counselors and litigators, these firms actively lobby, draft legislation and organize citizens around public interest issues. While the authors note that public interest lawyers are rejecting the prior passive role of serving the paying client and are aggressively representing issues, they did not go far enough. Many of these firms are also actively engaged in simplifying and altering the need for legal counsel in matters more appropriately handled through individual citizen action.

This is a well-written, perceptive book which recognizes the need for public interest lawyers and firms, deplors the inadequacy of the various responses, and goes so far as to suggest the need for economic subsidy, the drafting of lawyers or a tax on lawyers' time, to assure a sufficient supply of publicly committed advocates. Indeed, the authors view the legal profession as a "public utility" which, as a monopoly, must begin to regulate itself in a positive way or justification of its monopolistic prerogatives will cease.

The authors eloquently express their view when they state:

the arrogance of the nonresponsive bar . . . necessitated the special vocabulary—"public interest lawyer." The term "public interest lawyer" is truly redundant. There are lawyers and there are tradesmen. The lawyers are carrying a burden for the tradesmen; they are retaining for the nonresponders a semblance of dignity that those nonresponders cannot truly claim until they have paid for it.