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Training Lawyers for the Powerless: What Law Schools Should Do to Develop Public Interest Lawyers

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Training Lawyers for the Powerless: What Law Schools Should Do to Develop Public Interest Lawyers

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I. Introduction

In the spring of 1976, I graduated from law school — one of a class of 165. Of that number, approximately six took jobs with one of the following: public defender office, legal aid or legal services office, non-profit civil rights organization, legislative counsel. I was one of the six, having accepted a position as staff attorney with the Mental Patients Advocacy Project of Western Massachusetts Legal Services. All the others (except for a few who were destined from the outset to go into law teaching) entered private practice or government work, either immediately or after a year or more of clerkship. That was in the tail-end of the “liberal” Sixties and early Seventies. Now, after eight years of public interest law practice, I teach law students full-time. As the official “public interest” counselor on the faculty for students who think they might be interested in such work, I’m in a good position to identify my counterparts in the not-so-liberal Eighties. Judging from the numbers of students who undertake clinical placements or volunteer jobs with public interest employers, or who apply for one of the summer grants my law school makes available, the percentage of “public interest” law students remains about as small as it was during my stu-

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dent days.

That's not surprising. Law students' attitudes often change toward conservatism during the course of three or four years of legal studies. Practical factors, like timing of employment decisions and access to employers, also should not be underestimated; when the big firms make their hiring decisions in November and the local legal aid office won't even know if it has funding for a new staff attorney until the following May, prudence dictates accepting the private firm's offer.

Of the not so prudent students who seek me out, a few are self-identified radicals or feminists or otherwise "politically active" students. They appear to be already committed to public interest law. Most, however, have not made a clear career choice; they want to do something "humanistic" but aren't sure what, or come from a social service background (teaching, social work, mental health) and wonder if they can integrate their experience with law practice.

I encourage them all. I hand out lists of possible employers, I help arrange conferences about alternative law practice. I get together with the financial aid people and the placement people and try to work out academic credit or work-study arrangements. Last year, for the first time, I administered a program of summer grants to enable a small number of students to undertake public interest jobs. As a result of my experience, I believe: that more students would like to do public interest work than eventually do; that law school experiences — both in the classroom and in clinical programs — significantly influence whether students go into public interest law; and that law schools can and should do more to make public interest law a real option for law students and law graduates.

Even as a recent law graduate, I knew that I had been lucky to have come into contact with the clients I wanted to serve and to have had previous work experience which helped me understand what legal advocacy for the clients would be like. Especially important had been a semester's externship with a public interest law project.¹ Working with an attorney after whom I could model myself, I could "see myself" doing the same kind of work he did, once graduation and the bar exam were behind me. I think that many of my classmates who did not choose public interest law were not less idealistic, or politically-oriented, or altruistic than I — they were simply less lucky. Yet some-

1. From September 1975 to January 1976 I worked as an extern at the Mental Health Law Project, then affiliated with the Center for Law and Social Policy, Washington, D.C.

thing as important as the development of lawyers for the public interest should not be left to luck. Or, at any rate, the odds should be a little greater in favor of public interest law.

This article is about weighting the odds. First, I will offer a definition of what "public interest law" is. Next, I will analyze the factors that influence a decision to become a public interest lawyer, and explain why the law schools' and my efforts, though well-motivated, do not make such a choice possible for most students. Finally, I will propose ways in which the traditional law curriculum could be revised to enable more students to choose public interest law.

II. What is "Public Interest" Law?

A commonly heard definition is that public interest practice is dedicated to representing a point of view that otherwise would go without an advocate. That category embraces organizations such as the American Civil Liberties Union, while rejecting self-described public interest organizations such as the Pacific Legal Foundation, whose position of environmental issues is widely identified with corporate and industrial interests which also retain private counsel to advocate their views. But what of organizations like Mexican American Legal Defense and Education Fund (MALDEF) or both my former employers, Mental Patients Advocacy Project and Youth Law Center? Don't they advocate a particular point of view or advance the goals of a defined interest group which could also retain private counsel? Of course, the argument can be made that it is in the public interest for diverse points of view to be asserted and for justice in the criminal courts, for example, to be worked out through the adversarial system. Hence, both prosecutor and public defender serve the public interest, but so does the private defense lawyer who specializes in "white collar" crime. Nevertheless, students who come to see me about "public interest" law usually don't have in mind making a good living defending wealthy clients accused of international drug smuggling — and I confess I'd be reluctant to give them "public interest" funds to intern in such a practice. But why? Are the students and I just hopelessly narrow-minded?

When I was a "public interest" lawyer, I spent a lot of time doing things which, at least in the opinion of much of the general public, did not advance the public interest. If I succeeded in winning release of a chronically mentally ill person who took up residence in a public park, arguably I had served the client's interest — but not the interest of the members of the public who would call the police with requests to re-

move the crazy man from their picnic grounds. If I devoted years to a class-action lawsuit designed to force the state to develop a range of community-based services for the crazy man and others so that more clients could be released from mental hospitals and have access to good after-care, some of my clients were happy and some were angry (those who declined mental health care services). Much of the rest of the "public," however, who wanted cut-backs in taxes and had decided that a reduction in publicly-funded mental health services was a small price to pay, were unequivocally opposed.

Nevertheless, over the years, as I struggled for a way to explain my work, I noticed an interesting thing: even though many members of "the public" objected to my success in releasing crazy people or improving treatment of juvenile delinquents, very few of them objected to my trying. In general, people agreed that my clients *should* have a lawyer, that their point of view should be heard; the only objection came when the clients actually got what they wanted.

I have decided that "public interest" lawyering is really about *empowerment*. A lawyer who is a real advocate for his/her client is a lawyer who, however fleetingly, gives that client greater power. A lawyer who shows up in juvenile court or at a commitment hearing, stipulates to everything, waives cross-examination, and collects his/her fee for fulfilling the appearance of "due process" requirements, is the friend of the status quo — and of the "general public." The attorney who gives the individual client's rights meaning by using all his/her skills to require the state to prove its case, empowers that client — and usually annoys the public. The passive attorney may be accepted by the public; the active advocate is likely to be resented.

Empowering the powerless one at a time is much less inimical to the public interest than permitting the kind of "public interest law" which is aimed at large-scale social reform. Individual representation of fifty welfare mothers may result in some of them receiving benefits they would not otherwise have received; a class action suit on behalf of 5,000 welfare mothers which results in the eligibility guidelines being changed and thus in many more people receiving benefits, is against the public's interest.²

2. This is why in recent years opponents of the Legal Services Corporation have attempted to restrict its offices from undertaking class action suits, client organizing or lobbying efforts. These are all lawyering tactics in which the powerful hire advocates to use for them; they are successful methods of empowerment, which is precisely why they are denied the powerless.

Therefore, the “public interest” program in a law school should be devoted to training students to do for powerless people all the things that lawyers do for the powerful. Of course powerlessness is a relative term, so as a working definition I offer the following: the powerless are people who cannot afford lawyers and for whom having access to legal assistance would enable them to assert their rights, individually or collectively, more effectively.

It is sometimes argued that lawyering for the powerless is really “social work,” and hence that a curriculum designed to train such lawyers would be less rigorous and intellectually demanding than the traditional one. I disagree. The skills needed for representing both groups are exactly the same: the bag lady and the mega-corporation president both want results, not just a warm heart. Similarly, the mega-corporation president and the bag lady both prefer an attorney who acknowledges and responds to their needs as human beings. So the public interest lawyer needs to learn interviewing, client counseling, issue spotting, research, analysis, brief writing, oral argument, negotiation — oh yes, and ethics: all the things law schools teach.

So why not just keep on doing more of what we do, which is to offer the traditional law curriculum and let students choose, upon graduating, whether to represent the powerful or the powerless? Why not just remain “neutral”? The answer is that the traditional law school experience is not “neutral”; it effectively encourages students to choose the powerful.

III. How Law Students Choose Their Client Group

From the employers who come on-campus to the content of the casebooks, the message most law students get is that most lawyering involves clients who can afford to pay. That’s perfectly accurate. It’s also true today that, if you can’t afford a lawyer, you are powerless. Students who enter law school intending to be “public interest” lawyers because they wish to advocate their particular political points of view may not be dissuaded from pursuing that career by this message. But for most students, law school is a place to decide to which clients one will market one’s skills;³ upon entering law school, they have not de-

3. Obviously there has to be agreement between employer and prospective employee here; if student A wants to work for only 1 or 2 law firms and they decline the honor, there is a problem. But in order to pay off his/her law school loans, student A will eventually find an employer — and will prefer the one with which he/she feels “at

cided whether to pursue a "public interest" career.

Law school is supposed to teach a student to be able to argue equally well either side of any case. From a purely intellectual point of view, that is a desirable goal; it promotes analysis of the issues and enables the advocate to anticipate his/her opponent's argument or defense. I don't believe, however, that lawyers can remain indifferent to which side of a real-life case they argue. Despite their avowed pride in being "hired guns," lawyers who habitually represent a certain group of people develop an identification with that group. We have all had the experience of meeting again with a former classmate who took a job representing a group he/she avowedly despised and of discovering that the classmate's perspective has dramatically changed: "You know, there's something to be said for the point of view of corporations . . . [or landlords or nuclear power plant operators or the state welfare agency]. . . ." If this happens at one end of the lawyering spectrum, it happens at the other. I can't be the only knee-jerk moderate who went to work in a legal services office and found myself becoming more radicalized as I came to share something of my clients' perspective. The jump from simply presenting an argument to identifying with the client — and often accepting the client's argument — is what makes a lawyer zealous and effective. It is also what keeps "public interest" lawyers working despite lower pay and less respect⁴ than they would receive working "for the other side."

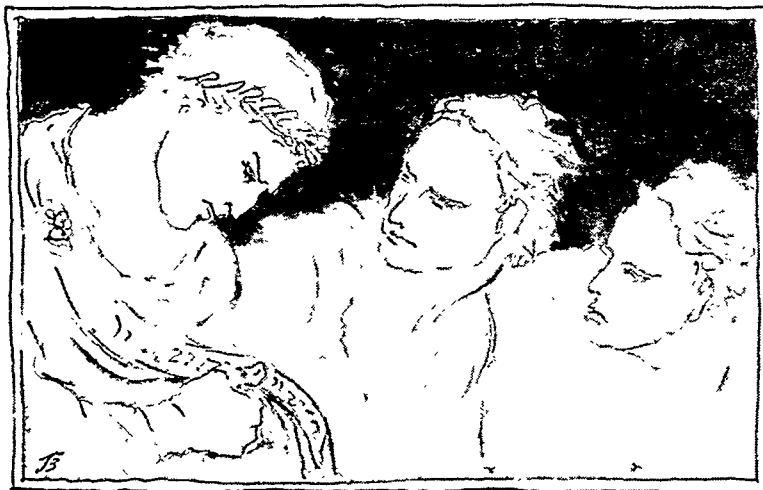
Not all lawyers who work with a client group identify with that group. Some find that they cannot identify with the group, and, to relieve the resulting discomfort, go into a different specialty or start working "for the other side." Prosecutors become public defenders; in-house counsel make the move to government regulatory agencies; personal injury litigators leave the "plaintiffs' firm" to work in insurance defense. This is a natural and sensible adjustment to a human reality: people have greater job satisfaction when they believe in what they do.

This phenomenon is just as true within "public interest" law as within the world of private practice. A standing joke at legal services conferences is that you can tell which lawyers represent tenants, which specialize in public benefits, and which, like me, represent the deviant institutionalized clients. Of course, lawyers who work for neighborhood

home."

4. This phenomenon is called identification of lawyer with client; if your client is treated badly, you will be treated only a little better. If your client is treated well, you will be treated equally well.

poverty law offices will take on a variety of cases, but it's amazing how often a specialty area develops. Some lawyers simply identify with bag ladies, and some with migrant workers. What's more, the bonding works in two ways: certain clients respond to certain lawyers. I can have all the intellectual understanding and political solidarity in the world with a welfare mothers' coalition, but I'm certain that we won't have the immediate bond and sense of trust that I usually experience with a coalition of ex-mental patients or a frightened hostile juvenile delinquent. Clients and attorneys identify with each other, a process which takes place quite early in an attorney's career — often during law school.



Revealing to be part of the powerful class

Former students who decided to go into public interest work are all people who have identified with their clients. A judicial externship which required helping people fill out *pro se* complaints, or a volunteer stint in a hospital emergency room, enabled them not just to observe the powerless, but to serve them. Common remarks are: "I never knew those kind of people existed" or "I never really understood it from the poor person's point of view before." These students are not blind to the unpleasant aspects of the work: "Sometimes I have to sit across the table a few feet away when a client smells really bad. But you know, I've gotten used to it. And let me tell you about this one smelly client. . . ." The student has identified with the client. He/she has moved from "the person smells and is NOT LIKE ME" to "the person is LIKE ME even though he smells."

Most law students, however, will only have the opportunity to identify with powerful clients — and with those who serve them. Although law students come from a variety of social and economic backgrounds, the vast majority are from middle class or upper-middle class backgrounds, either from educated families or with a strong “white collar” identification. Before law school they probably have had very little contact with powerless people. If they are not encouraged to pursue that contact during law school, it is not surprising that they will choose to work for a client group with whom they are more familiar, more comfortable — with whom they share a common identity.

IV. What Can and Should Law Schools Do to Promote the Choice for Public Interest Law?

So, how do we get students to identify with clients to whom they were turned off at first glance? Easy. We require the students to spend time with the clients, to assist someone else in advocating for the clients, and finally, to do that advocating themselves.

I concede *arguendo* that perhaps 75% of all law students were born to bond with business executives or corrections officers and will never identify with the powerless. However, my proposed program is not intended to graduate an entire law class of public interest lawyers. Rather, it is designed to substantially increase the likelihood that a student with the potential for a public interest law career will discover that vocation.

There are some law schools which have developed nontraditional curricula and have sought specifically to prepare public interest lawyers (CUNY at Queens, Antioch and Northeastern, for example). While some students who are firmly committed to public interest law will choose to attend those schools, most students may be geographically or financially precluded from doing so or may choose to attend a “traditional” school for other reasons. During the usual law school experience, the student who is uncertain is more likely to drift away from public interest law than to make a commitment to it. My proposal is designed to check that tendency, so that we lose fewer potential attorneys for the powerless.

V. Overview of the Proposal

The proposed program is designed to give law students (1) an opportunity to identify with powerless clients, (2) experience in the role of

an attorney representing the powerless, (3) a realistic possibility of job placement after law school, and (4) temporary financial assistance to pursue their choice of a public interest law career.

The program would require for first-year students, and encourage for upper-level students, supervised work experience in public interest law. Because this will mean a substantial increase in the number of students participating in public interest placements, the law school should have standing arrangements with designated public interest offices which provide direct services to individual clients: neighborhood legal services offices, for example, or projects doing outreach to mobile populations such as the homeless or migrant workers. Law school clinics usually can take only a small percentage of students, and they are expensive to run because of the low faculty-student ratio they require for supervision. But the law school should consider operating on-campus clinics that would meet special needs for legal services in the local community not being addressed by existing offices, *e.g.* a domestic violence clinic or a handicapped law center. In so doing, the law school could most closely connect a clinical experience with the academic curriculum and also fulfill a duty to the community.

Public interest offices have limited use for untrained students, so the law school must insure that students are committed to a regular work schedule and are closely supervised by the law school faculty and more experienced students. The law schools themselves are concerned about the consistency and uniformity of clinical experiences, the "tie-in" to the academic curriculum and the cost of such programs.

My proposal responds to these concerns. It would assure direct services offices a consistent, well-supervised student work force and would give law schools a procedure to place students in settings where they will develop legal skills.

The problems of cost and supervisor-student ratio would be addressed by creating a hierarchy for supervision and by using task specialization. Task specialization will contribute to consistency of experience; supervision will advance quality control. Supervision of less experienced law students by upper level students will not adversely affect the quality of work so long as the staff attorneys and faculty with ultimate authority take their responsibility seriously and give adequate direction to case supervisors and to the students doing client representation.⁵

5. I have trained college students and paralegal advocates for mental patients using a similar system; paralegals with one year's training were able to function as

The proposed public interest curriculum would look like this:

<i>Stage 1 (First Year)</i>	
<i>(Fall Semester)</i>	<i>(Spring Semester)</i>
Buddy System	Intake and other client/contact work
<i>Stage 2 (Second Year)</i>	
<i>(Fall or Spring Semester)</i>	
Intake supervision	
Case representation	
<i>Stage 3 (Third and Fourth Year)</i>	
Case supervision	
Case representation	
<i>Stage 4 (Post Graduation)</i>	
Supervising Staff Attorneys	

Stage One

The goal is to give first-year students the opportunity to identify with powerless people. At this stage, they do not have sufficient skills to provide legal advice to the client, but if we postpone the opportunity until the following summer or the second year, it may be too late. Therefore, my proposed curriculum would require all first-year, first-semester students to be matched as “buddies” with powerless individuals who are clients at public interest law offices.⁶ Each student would accompany the client, for example, to an interview with a welfare worker, to a meeting with the landlord, to stand in line at the unemployment office, to ask for an extension of time on credit at a finance company — you name it. As a “buddy,” the student is forbidden to wear a suit, to identify him/herself as a law student, or to do anything that would “pull rank” and indicate that he/she is one of the powerful class. The role is “buddy.”

Each student would then sit in on a follow-up meeting with the client and his/her public interest lawyer to observe how the attorney

effective case supervisors. In fact, I found that paralegal case supervisors, perhaps because they were not so far removed from the first-year experience, did a better job than staff attorneys in explaining assignments to trainees and in giving feedback to them.

6. I am indebted for this idea to Nancy M. Shea, Staff Attorney, Mental Health Advocacy Services, Los Angeles; it's a training device used for their paralegals.

and client interact. Is it different from how the client and welfare worker interacted? How did the client experience the earlier interaction? Were his/her reactions the same as the student's? Finally, the student should be "debriefed" by a supervising, third-year student (see *Stage Three*, below). During the semester, all the students should meet to compare "buddy" experiences. They should also be given follow-up assignments to research the law involved in the client's case and to develop an advocacy strategy which would make the client more powerful in the particular situation. For example, a student could research landlord-tenant law and find out whether knowledge of his/her rights would have made a difference to the client in the meeting over rent dispute.

In the spring semester of first year, I would require all students to do two unit's worth of work at a designated public interest office which will involve direct client contact. This experience will enable the student to begin to understand what the services of a lawyer can (and can't) do for the client. The student will have responsibility to do intake for a given number of hours each week. Intake supervisors who are second-year students (see *Stage Two*, below) will review the intake forms and show first-year students how the information is used in follow-up interviews with clients. Students should be given a range of tasks common to public interest offices which will increase identification with the client interviewing witnesses and clients' family members, facilitating client organization meetings, or any work involving direct client contact.

Tuition credit or outright grants should be available to enable students to work in public interest offices during the summer following the first year of law school. During the summer, placement should be permitted in both direct services offices and "back-up centers" or "law reform projects" (offices which do test-case litigation, legislative advocacy and law reform work, rather than the individual client representation characteristic of direct-services offices). Students who are attracted by public interest law, but who would enjoy undertaking complex litigation or legislative lobbying rather than direct-services work, should have a chance to experience both types of public interest work.

Public interest employers, like other employers, tend to prefer more experienced, second-year students; however, if the first-year student is subsidized, his/her marketability increases. An additional incentive to students would be to make public interest summer employment experience a preferred qualification in choosing some second-year students to be case supervisors, a position carrying academic credit and/or a salary.

Stage Two

Second-year students often are required to take legal ethics or legal skills courses. My own law school requires a course in ethics, counseling and negotiations which covers basic lawyering skills as well as ethics. Skills courses which rely on simulations rather than live clients can be very valuable and make it easier for teachers to standardize the classroom experience. However, simulation does not substitute for the experience of seeing how lawyering makes a difference for real clients. I would give students the option of satisfying the lawyering skills requirement by doing a public interest clinical placement. To reach the students who do take the skills courses, the simulations should use low-income clients as often as other types of clients. I would also require at least one experience in live-client representation as part of every skills course.

Ideally, the grade should rest in substantial part on how the student performs with the real client. Because experience with powerless clients would likely improve interviewing and representation skills, students would have a further incentive to undertake a public interest placement.

Finally, second-year students could obtain academic credit for supervising intake and handling cases under supervision at designated public interest law offices or at the law school clinic.

During the summer following the second year, the same arrangement as during the first summer should prevail. Funding preference should be given to students who have not previously been given a grant so as to maximize the number of students who have a public interest job experience.

Stage Three

If students haven't chosen public interest law by the summer of their second year, it's unlikely that they will. My goal at this stage is to reinforce those students who have made that choice but who need economic or other support to continue as public interest lawyers.

Certified third-year students should be afforded the option to work/study for two years and to earn tuition credit or a salary for supervising first and second-year students in designated placements. By working in designated offices for an extended period of time, these students would be in a favored position for the limited available public interest law jobs upon graduation. As certified law students, however, they will still need to be supervised by faculty members and practicing

public interest lawyers with several years of experience. To encourage the work of these supervising lawyers, I propose Stage Four.

Stage Four

I would establish a loan forgiveness program for up to five years if a student upon graduation takes a job in a public interest law office. If the graduate supervises law students, the law school could directly arrange loan forgiveness. If he/she practices public interest law, but is not involved in supervising students, the law school might still forgive the loans or other funding should be sought.

Funding

New ways must be found of subsidizing direct- services as well as back-up or law reform advocacy centers for the powerless. There should be a federal government loan forgiveness program, as is done with doctors who undertake practice in under-served areas. But because the federal government may not support this proposal, the law schools should seek support from the bar or from private foundations or donors.

Ideally, law schools in one geographic region could develop and obtain funding for a public interest foundation. The foundation would subsidize summer law student employment, pay tuition costs or salaries for case supervisors or attorney-supervisors, and pay the operating costs of law school clinics. In addition, law schools or the public interest foundation should annually organize and fund a public interest job fair to bring students and potential public interest employers together. Public interest offices rarely can afford, as can private law firms, to send a representative to a law school for on- campus interviewing or to pay travel expenses to enable candidates to be interviewed at the employer's locale. A public interest law fair, to which all public interest employers would be invited, would rectify this disparity in resources. In the unusual circumstance where a student was under consideration for a public interest position, and the employer was located too far away to attend the job fair, the law school or public interest foundation could reimburse the student's travel expense, just as is commonly done to enable a student to attend an interview for a prestigious clerkship or fellowship.

Why Should Law Schools Offer this Program?

Because the powerless need lawyers.

Because law school graduates need jobs.

Because law schools exist to train members of a “profession,” who have a special role and social status and who are well paid for their services.

Because professionals should pay a price for their privileged position.

Because law schools should exemplify the best ideals of the profession.

Because it is just.