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Choosing, Nurturing, Training and Placing Public Interest Law Students

Cover Page Footnote

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CHOOSING, NURTURING, TRAINING AND PLACING PUBLIC INTEREST LAW STUDENTS

*Richard L. Abel**

I'd like to be good, it's true, but there's the rent to pay. And that's
not all: I sell myself for a living.¹

I give myself very good advice, but I very seldom follow it.²

INTRODUCTION

Lawyers spend inordinate amounts of time debating what they ought to do. This is not surprising. Splitting hairs is their professional disease and normative discourse their language, and they have good reason to be defensive. The public has never bought their "hired gun" rationalization for amoral partisanship. Partly to distract from that failure and partly as a substitute for constructing an effective enforcement mechanism, lawyers endlessly revise their ethical codes, dealing with means, not ends.³

Despite their learned incapacities, however, lawyers have no more difficulty than others telling right from wrong. Numerous studies over the last thirty years have found that a large proportion of students are attracted to law by a desire to help others, improve society and redress injustice.⁴ And the standard ethical advice to young lawyers is: If you

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1. Bertolt Brecht, *The Good Woman of Setzuan* 24 (Eric Bentley trans., 1947), quoted in David Luban, *The Adversary System Excuse, in The Good Lawyer: Lawyers' Roles and Lawyers' Ethics* 83, 118 (David Luban ed., 1983).

2. Alice, in *Alice in Wonderland* (Walt Disney Pictures 1951).

3. See Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 *Tex. L. Rev.* 639, 667-68 (1981).

4. E.g., Robert Granfield, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* 37-40 (1992); Richard D. Kahlenberg, *Broken Contract: A Memoir of Harvard Law School* 5 (1992); Kenneth H. Barry & Patricia A. Connelly, *Research on Law Students: An Annotated Bibliography*, 1978 *Am. B. Found. Res. J.* 751, 753 (citing various studies pertaining to law students); G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 *Am. B. Found. Res. J.* 225 (discussing the results of a study researching the emotional well-being of law students); Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 *Law & Soc'y Rev.* 851, 853-54 (1996); Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns*, 13 *Law & Soc'y Rev.* 11, 18-21 (1978); James C. Foster, *Legal Education and the Production of*

have to ask whether it's right, it's probably wrong. For these reasons, I am not going to try to define what it means to practice law in the public interest. Although all of us at this conference would have different definitions, we would probably welcome each other's characterizations under the broad tent (although we might question the appropriation of the concept by interests that can easily buy representation in the market).

Instead, I am going to talk about the erosion of public interest commitment during law school and what we as legal educators can do about it, drawing on the experience of the first five years of the UCLA Program in Public Interest Law and Policy ("PPILP"). There are four challenges: choosing, nurturing, training and placing those who will make the greatest contribution to the public interest.

I. SELECTING STUDENTS

Law schools can take various approaches to selecting students for public interest practice. This part discusses three potential approaches. They are: completely disregarding the issue, encouraging all students to do public interest work, and the PPILP approach (admitting students based on demonstrated commitment to and competence in public interest work).

Law schools might disregard the issue entirely for two reasons. First, they might think it is inappropriate to consider career preferences. I disagree, however, because pretenses of neutrality allow career preferences to be shaped powerfully by the market; and the failure of our legal system to serve unrepresented interests works considerable injustice. Second, law schools might believe it impossible to predict careers. We have ample evidence, however, that background variables (ascribed and achieved) and stated intent are significantly correlated with future behavior.⁵

Some schools seek to encourage public interest commitment in all students through voluntary or mandatory pro bono requirements. Such

Lawyers to (Re)Produce Liberal Capitalism, 9 Legal Stud. F. 179, 195 (1985); James C. Foster, *The "Cooling Out" of Law Students: Facilitating Market Cooptation of Future Lawyers*, 3 Law & Pol'y Q. 243, 245 (1981); Robert Granfield & Thomas Koenig, *Learning Collective Eminence: Harvard Law School and the Social Production of Elite Lawyers*, 33 Soc. Q. 503, 516-18 (1992); Robert Granfield & Thomas Koenig, *Pathways into Elite Law Firms: Professional Stratification and Social Networks*, 4 Res. in Pol. & Soc'y 325, 327-28 (1992) (research study arguing that contact networks are the distinguishing factor among top law schools); Robert Granfield & Thomas Koenig, *The Fate of Elite Idealism: Accommodation and Ideological Work at Harvard Law School*, 39 Soc. Probs. 315, 317 n.4 (1992); Audrey James Schwartz, *Law, Lawyers, and Law School: Perspectives From the First-Year Class*, 30 J. Legal Educ. 437, 443 (1980); Audrey James Schwartz, *The Paper Chase Myth: Law Students in the 1970s*, 28 Soc. Persp. 87, 91 (1985); Robert Kerry Wilkens, *"The Person You're Supposed to Become": The Politics of the Law School Experience*, 45 U. Toronto Fac. L. Rev. 98, 104-06 (1987).

5. Joel F. Handler et al., *Lawyers and the Pursuit of Legal Rights* 166-70 (1978).

programs educate students who may have been ignorant of or insensitive to the problems of the unrepresented and express the valuable principle, reaffirmed by the Model Rules,⁶ that *all* lawyers have an obligation to ensure that the legal system promotes justice. We might be able to evaluate the efficacy of those programs by comparing support for and participation in public interest activities among graduates of those schools and graduates of otherwise similar schools without mandatory or voluntary pro bono programs (especially changes in students with no prior commitment).

Some schools admit students on the basis of demonstrated public interest commitment and competence (although always within other constraints, typically a combination of undergraduate GPA and LSAT scores, reinforced by competition for *US News* rankings). UCLA PPILP asks students to describe (and document through references) the content and quantity of their public interest activities (especially those that display qualities of “tenacity, idealism and initiative that are particularly important for public interest lawyers who may forgo material incentives in their careers”), special abilities (including linguistic and cultural affinity with underserved groups), and intellectual strengths and skills (including quantitative and qualitative methods). We define public interest broadly as “all interests underrepresented by the private market,” including the poor, ethnic minorities, unpopular causes “across the political spectrum,”⁸ and diffuse interests (such as the environment and peace).

The use of past public interest activity to predict future activity perversely privileges those from wealthier backgrounds who can volunteer in high school and college and take low-wage or unpaid internships after graduation. We are beginning to test the predictive value of these data. Even if this is validated, we are troubled by the class bias and the tendency to exclude students of color. Because we look for experience, our students are older. Women are over-represented in both our applicant pool and enrollment.⁹ These differences—class, race, age and gender—may have independent effects on the stability of career choice. They also may have implications for the clients our public interest graduates serve and the ways they serve them, the public image

6. Model Rules of Prof'l Conduct R. 6.1 (1983) (stating that all lawyers “should aspire to render at least (50) hours of pro bono publico legal services per year”).

7. See UCLA PPILP Application for Fall 2002 (on file with the *Fordham Law Review*).

8. *Id.*

9. Women were eighteen of twenty-six students in the PPILP class of 2002 and nineteen of twenty-three in the class of 2003. Other public interest programs have noted similar gender disparities, but Kornhauser & Revesz find only a small difference, if any. See Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. Rev. 829, 936-43 (1995).

of public interest law, and relations among public interest law students and lawyers.

Competitive admission to an organized public interest program has potential advantages and disadvantages. Like the Reginald Heber Smith fellowships for legal services lawyers in the 1970s, it makes students feel special—a possible counterweight to the rewards of money and prestige offered by the private sector. It may, however, simply woo students away from other schools (depriving them of a critical mass of public interest students) and may discourage students rejected by the program from pursuing a public interest career. It might be possible to compare the public interest activities of graduates from otherwise similar schools with and without selective public interest programs.

The next part discusses sustaining public interest commitment in law students after they have been admitted.

II. SUSTAINING COMMITMENT

Although many students are attracted to law by a desire to serve their own conceptions of the public interest, few ultimately do so. An obvious reason is the scarcity of public interest jobs, discussed below. Growing awareness of that fact undoubtedly contributes to declining public interest commitment during the three years of law school, but there are other causes. One may be public interest-minded students' increasing sense of isolation and alienation. These feelings may be less severe at the few schools where public interest is the dominant ideal (a proposition that could be tested). At other schools, public interest students eventually find each other, but their reluctance to speak in class (for fear of ridicule by fellow students and teachers), the division of the first-year class into sections (with little interaction among them), the overwhelming demands and anxieties of the first year (which discourage volunteer activity), and the lack of contact with upper-class students all obstruct solidarity.

By identifying and bringing public interest students together from the outset, public interest programs may contribute to solidarity and mutual support. (It would be possible to test this hypothesis by comparing class participation and patterns of interaction among public interest students at schools with and without programs.) UCLA PPILP, for instance, gives its students a separate lawyering skills section, which offers a "safe" place to exchange views. At the same time, because public interest students are politically self-conscious and opinionated (and because we tend to be most critical of those with whom we share common ground), such concentration may intensify internal friction, dividing the group and driving some to its margins or beyond. Furthermore, such programs accentuate the separation of public interest students from the rest of the class. Those students who are uncomfortable with that heightened identification may drop out; outsiders with public interest goals may feel denigrated and abandon

those aspirations.¹⁰ We could test these hypotheses by comparing changes in public interest commitment between students inside and outside programs and between schools with and without programs.

Robert Stover's excellent study of changes in law student aspirations documents the ways in which those initially attracted by public interest *ends* come to focus on *means*—lawyerly technique—forsaking public interest as intellectually less demanding than large firm practice.¹¹ Students fear (with some justice) that overworked public interest lawyers do a poor job of preparing new recruits.¹² By contrast, summer clerkships in large firms may solidify the conviction that they offer better training and superior opportunities to use hard-won legal skills. Students and lawyers may feel more concerned (and less guilty) about preserving and increasing their human capital than about maximizing their income. Just as law school is a default choice for many students primarily concerned with preserving or attaining middle class status and comforts, so large firm associateships offer them the best chance to continue to “keep their options open.”

Public interest programs may counteract that process. Classes, colloquia and mentoring by upper-class students, faculty, staff and alumni can help to convince students that they can make a difference and that the work is challenging and rewarding. Many students report that volunteer activity, especially contact with clients and lawyers, powerfully sustains commitment. In the intensely individualistic and competitive law school environment, such activities allow students to work cooperatively and associate with those in other classes (and sometimes schools). They also foster interaction with public interest lawyers, providing role models and images of the satisfactions of public interest work. This is particularly important because law faculty offer role models that are either irrelevant (few students want to teach law) or antipathetic to public interest practice (federal clerkships and large firm practice). Students learn from doing public interest lawyering that it offers *significant* work, a reward that amply outweighs their sacrifices of money and professional status.¹³

Fifty years ago law students did not seek jobs until Christmas of their third year and often obtained them through family contacts.¹⁴ Now job

10. Alternatively, those students may be motivated to seek entry to the program after their first year.

11. Robert V. Stover, *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* 5, 34 (1989). Charles Derber has suggested that professionals offer less resistance to ideological proletarianization (allowing others to determine their ends) than technical proletarianization (allowing others to determine their means). Charles Derber, *Professionals as Workers: Mental Labor in Advanced Capitalism 189-90* (1982).

12. Jack Katz, *Poor People's Lawyers in Transition* 109-11 (1982).

13. *See id.*; see also Lisa J. McIntyre, *The Public Defender: The Practice of Law in the Shadows of Repute* 87 (1987).

14. Erwin O. Smigel, *The Wall Street Lawyer: Professional Organization Man?* 54 (1st ed. 1964).

anxieties pervade all three years of law school, and the selection process relies on more impersonal factors. When public interest practice burgeoned with the rapid expansion of federally funded legal services and foundation-supported public interest firms in the 1970s, private practice paid new lawyers only about fifty percent more than public interest jobs.¹⁵ The ratio of starting salaries in elite New York law firms and the federal government rose from three to two in 1982 to more than five to two in 1990.¹⁶ Today the ratio can be as high as five to one and the disparity in summer salaries even greater (\$25,000 to \$4000). Because college and law school tuition have far outstripped inflation, a larger proportion of students come from poorer backgrounds, and loans have expanded while need-based scholarships have contracted, students graduate with a far greater debt burden, one that increased fifty percent in constant dollars just between 1982 and 1990.¹⁷ The combination of these factors produces the common credo that "I'm just going to the firm to pay off my debts." As Dr. Faustus found, however, it is hard to escape such entanglements. Few people find it attractive, or even possible, to take a salary cut of seventy-five percent or more in their thirties, just when they are assuming increased financial obligations for housing and children (or have simply become accustomed to material comforts). Although Kornhauser and Revesz found that loan repayment assistance programs have little or no effect on career choice, they also hypothesized that giving students already oriented toward public interest careers scholarships that have to be repaid only if they abandon these careers might strengthen such commitment.¹⁸

In any market-based society, especially ours, money tends to be the most powerful signal of prestige. School teachers and social workers rightly complain that their derisory salaries—far lower than those paid for jobs requiring less training and inflicting less stress—signify disrespect. Studies have confirmed that status within the legal profession is inversely correlated with such variables as public service, representation of individual clients, and litigation in lower state courts—the core of public interest practice.¹⁹ Highly competitive post-graduate fellowships (Skadden, Open Society Institute, NAPIL, Echoing Green, for example) may be a partial antidote. Law schools also might structure loan forgiveness so that it honors public interest commitment as well as making it economically possible.

15. Neil K. Komesar & Burton A. Weisbrod, *The Public Interest Law Firm: A Behavioral Analysis*, in *Public Interest Law: An Economic and Institution Analysis* 80, 83 (Burton A. Weisbrod et al. eds., 1978); Burton A. Weisbrod, *Nonprofit and Proprietary Sector Behavior: Wage Differentials among Lawyers*, 1 *J. Lab. Econ.* 246, 252 (1983).

16. Kornhauser & Revesz, *supra* note 9, at 889.

17. *Id.* at 889-90.

18. *Id.* at 952-54.

19. Jerome E. Carlin, *Lawyers on Their Own: A Study of Individual Practitioners in Chicago* 173 (1962); John P. Heinz & Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 55-73 (1994).

If we are successful at sustaining law students' commitment to public interest work, we must adequately prepare them. The next part addresses this preparation.

III. PREPARING FOR PUBLIC INTEREST PRACTICE

Most public interest programs focus on introducing students to the world of public interest work, encouraging volunteer activities, fundraising and selection for public interest law fellowships ("PILFs"), and securing public interest summer clerkships and post-graduate fellowships and jobs. With some guidance, public interest students may choose a curriculum that helps prepare them for the distinctive demands of public interest practice (for example, substantive courses like poverty law, process courses like administrative law, and most clinical courses). They also may avoid valuable courses out of ideological bias, fear of difficulty or mistaken belief in irrelevance (e.g., corporations, commercial law, bankruptcy, tax). Programs that believe public interest lawyers need particular knowledge and skills can shape student curricular choices through a cafeteria plan or required courses.

UCLA PPILP has five mandatory components: a special first-year lawyering skills section, an ungraded first-year workshop, a second-year problem solving class, a third-year public policy class, and an upper-class writing requirement. The lawyering skills section is taught by an instructor with public interest experience and utilizes public interest cases and exercises to the extent possible; but its content is very similar to that of the other sections. The workshop (ungraded because the first year is so demanding) introduces students to the range of public interest practices in the fall semester and has them do a research project on the practices to which they aspire in the spring semester. The second-year course uses a public interest case study to develop a variety of problem-solving skills: the construction of social problems; the use of narrative, rhetoric, reframing and persuasion; community organizing and direct action; the role of the media; lobbying and legislation; litigation and enforcement of judgments; and social movements. The third-year course deploys a variety of public interest topics to introduce students to microeconomics, statistical analysis, systems analysis, program evaluation and systems design. The goal is to make them intelligent consumers of these techniques rather than fully competent practitioners. Although students can do independent research with any faculty member to satisfy the upper-class writing requirement, most have taken courses offered by PPILP faculty. We have twice taught a course on community law practice, intended to expose students to the practicalities of setting up their own law firms (after acquiring a grounding in some substantive specialty), combining fee-paying clients with other public interest activities. Additionally, I have twice taught a seminar on law and social change in which students do a collective research project on a major public interest campaign: first, an environmental justice struggle

over a concrete recycling plant in South Central Los Angeles, and then an effort to pass a unique living wage ordinance in Santa Monica. Both projects extended over at least four semesters and produced substantial narratives (about one hundred pages each).

Law schools make no effort to validate their unique claim to prepare students for practice. Nevertheless, it would be possible (although difficult) to test whether graduates of public interest programs are better equipped than others to practice public interest law. Process measures could include evaluation by superiors, judges, adversaries, peers and clients. I suspect it would be too difficult to control for input to be able to use outcome variables.

Now that I have addressed preparing law students for public interest work, I will move on to the issue of finding them jobs.

IV. PLACING PUBLIC INTEREST LAWYERS

Public interest programs experience some attrition in law school, although an average of less than one student has left each PPILP entering cohort of twenty-five. PPILP strongly encourages students to do a public interest summer internship after their first year, requiring them to apply for a PILF (program students are very active in raising and disbursing money) but guaranteeing everyone funding. Virtually all PPILP students do such summer public interest internships, more than doubling the number who received PILFs before the creation of PPILP. Although both PILF and PPILP summer funding are available for second-year PPILP students, fourteen of the twenty-five worked in firms, attracted by curiosity, salary, training and the lure of a permanent job. We could test whether there is a correlation between first and second summer public interest internships and later career decisions. We also could *require* PPILP students to do a second summer public interest internship (if we had the money to support them). We would need a strong justification for doing so, however, and might drive some of the students out of the program.

Many law schools encourage students to apply for public interest post-graduate fellowships. We could compare their success (before and after establishing programs, or between schools with and without them), although it would be difficult to control for other variables. Some may feel that competition among law schools for scarce public interest fellowships affects only prestige. In any case, recognizing there will never be enough public interest fellowships (or jobs after they terminate), PPILP designed and offered a course on community law practice to encourage students to consider creating their own self-supporting firms and to familiarize them with the challenges they will confront. We also are seeking funding to establish our own incubator for community law practice, which will be a model for such firms and train both students and recent graduates (analogous to medical residents) in its practicalities. If, as seems likely, there are no significant

increases in government or foundation funding, such practices represent the only way to expand public interest opportunities for law graduates. We envisage an office with one or two staff lawyers, engaged in both litigation (probably anti-discrimination, funded by contingent and statutory fees, and family or immigration law billed on a sliding scale) and transactional work (probably community economic development). Residents would establish their own practices, which would become additional training sites.

CONCLUSION

The corrosive influences on the public interest commitment that thousands of students bring to law school each year are substantial and structural, inevitable reflections of the economic rewards and status hierarchy of a wealthy and advanced capitalist society. Law schools, however, can and should do much more to support students who want to do the right thing. By learning from each other and testing the effects of different strategies empirically, schools might significantly increase their production of public interest lawyers.

Notes & Observations