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## Doing Good, Doing Well Symposium: Note

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# Doing Good, Doing Well

Howard M. Erichson

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*Positioned at the intersection of big-money practice and social change litigation, mass torts provide a useful study in multiple motivations. Despite the difficulty disentangling reasons from rhetoric and rationalization, it is worth exploring the significance of mixed motives for lawyers who are committed to policy objectives as they pursue litigation on a contingent fee basis.*

*The combination of monetary and policy goals may create a lawyer-client conflict of interest, but in the mass collective representation that typifies mass tort litigation, the risk of conflicts is greater with a lawyer fully devoted either to particular policy objectives or to the pursuit of wealth than with a lawyer motivated by multiple considerations. By reflecting the various interests of a large group of clients, mixed motives tend to mitigate rather than exacerbate the conflicts of interest that inhere in mass collective representation.*

*The mix of financial incentives and policy objectives invites a rethinking of the prevailing conception of public interest lawyering. Lawyers equate "public interest" with low-paying law jobs, and they use the phrase "for the public good" (pro bono publico) to refer to services without fee. The prevailing definitions of these terms are based on market-undervaluation, which makes sense for purposes of determining subsidies such as loan forgiveness and the ethical duty of pro bono representation. But defining public interest work in terms of undercompensation may have an unintended consequence in its effect on the attitudes of lawyers whose work does not fall within the narrow definition. If public interest lawyering is what lawyers do for little or no pay, does that imply that most lawyers should pursue wealth and raw client interest without regard to whether their work serves the public good? Whether a redefinition of public interest lawyering would contribute to lawyers' overall commitment to the public good, however, is unclear given the ease of overvaluing the good achieved by one's own practice.*

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