Foreword: Public Interest Lawyering and Law School Pedagogy

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The historic summit held at the University of San Diego School of Law in the spring of 2001 was framed as a twentieth anniversary celebration of our renowned Center for Public Interest Law (CPIL) and also as an opportunity to gather together as a public interest law community to discuss candidly and specifically the present and future of public interest law practice in the United States. The lineup of participants and the many pages of edited transcripts that follow in this issue testify well to the spectacular success of the venture. Now more than a year after this event, I know I speak for all of the faculty, staff, and alumni of the CPIL and its close cousin, the Children's Advocacy Institute (CAI), in noting that these organizations show no signs of slowing down. Depending almost entirely on the kindness of strangers and good friends, these law reform organizations continue to press ahead with an active—and *activist*—program of advocacy and education.

Celebration to one side, though, I want to take the opportunity graciously afforded to me by the editors of the *San Diego Law Review* to reflect very briefly on an aspect of the Summit deliberations that deserves particular attention: the proper role of law schools in inculcating in their students and other constituencies the values, theory, and practice of public interest law.

The conversation among the participants at the Summit suggests that we still have a long way to go to develop the appropriate curricular arrangements for a satisfactory public interest pedagogy. In the

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remainder of this Foreword, I highlight some reasons why this is so. Let me begin with a puzzle: the curricular canon in the early part of the twenty-first century traces to a remarkable degree the structure of legal education at the turn of the *last* century. The founder of the law school case method, Christopher Columbus Langdell of Harvard, would be intrigued, but not especially shocked, to wander onto the modern law school campus and see what and how we teach law. Private law remains the staple of the law school curriculum in the critical first year; that there are conspicuous efforts at reform illustrate how slow is the process of change. At the same time, public interest law is a fairly recent phenomenon. As its practitioners and theorists emphasize, the nature and scope of the enterprise demands a substantially different sort of attention than does what I will call (with some admitted license) "ordinary" legal instruction. So the puzzle is this: how can law schools be particularly responsive to the changing configuration of public interest law practice while remaining in the tight grip of an essentially conservative, private-law focused, and case method driven approach to legal instruction?

The modern law school curricula steers students away from public interest law practice. Let me offer two different pieces of evidence for this claim: first, public interest lawyering involves, in the modern administrative state, expertise in the workings of contemporary politics. Public interest lawyers write legislation, participate in lobbying efforts, monitor regulatory agencies, draft administrative regulations, and toil away incessantly in the legislative process at the national, state, and local levels. And even where public interest lawyers litigate, they are more often than not focusing their attention (and occasionally their ire!) on the fruits of the legislative and administrative process. Public interest lawyers litigated *Brown v. Board of Education*, but most cases—even the blockbuster ones—are not *Brown v. Board of Education*. More frequently than not, successful public interest lawyers triumph by persuading an appellate court to interpret a term or sentence in a recently enacted piece of legislation one way rather than another; or they succeed by convincing a court to block a noxious administrative regulation.

The world of public interest practice is a world of administrative regulation, legislative politics, and prolix codes. Yet law schools spend the lion's share of their efforts and energies on the common law and private law. By contrast to this curricular core, courses in administrative law, legislation, state and local government law, and more specialized regulatory subjects are often treated as boutique offerings. As a result, many, if not most, law students go away from three years of legal instruction without *any* serious exposure to the materials most relevant to public interest practice.

Second, there are logistical impediments to the successful teaching of public interest law through practical engagement. Much of the work demands of public interest lawyering are built around the processes of key federal and state legislatures and agencies. In California, for instance, most of the key regulatory bureaus do their work in the state capital; and the legislative and executive branches, of course, are located there as well. Unlike ordinary civil litigation or transactional business work, which are widely distributed throughout the state, public law practice is frequently governmental practice; and there is a practical imperative to be in proximity to these centers and locations of power. Moreover, regulatory lawyering is intensely demanding, incredibly detail oriented, and organized around the schedules of individuals and organizations that work in and for the government. For example, students in our CPIL programs travel dutifully to Sacramento to monitor state agencies and boards; and the cumbersome work that goes into the preparation of the *California Regulatory Reporter* and the *Children's Budget* involves labor and resource intensive work with state governments and agencies. Like the famous bank robber, Willie Sutton, said about why he robbed banks (because that is where the money is), our students and staff go to Sacramento and to Washington, D.C. because that is where the action is.

Developing clinical initiatives in the public interest law area is difficult for most law schools, particularly for those that are not located in close proximity to the state capital and those that do not have the resources to implement and maintain a program that regularly involves students in the day-to-day work of public interest lawyering. With rare exceptions, the law schools that have developed and maintained the most comprehensive, practically oriented programs for public interest lawyering are those that are: (1) close to the state or national capital, (2) wealthy, or (3) both.

These two dilemmas are not insurmountable, of course. Law schools can, and occasionally do, develop courses, initiatives, and programs that speak to these and other obstacles to successful public interest law programs. At the University of San Diego School of Law, we are hard at work enriching our public law and public interest programs. Reforming the curriculum is part of this enterprise, as is redeploying the energies of the students and faculty who are involved in public interest law, whether through teaching, scholarship, professional work, or all of the above. We are certainly not alone in these efforts.

The other dilemma proves less tractable. Successful public interest

law pedagogy is time and resource intensive. The efforts of our able CPIL and CAI teachers and staff—led by Robert Fellmeth and Julie D'Angelo Fellmeth—are nothing short of heroic. And the resources provided by exceptionally generous individuals and organizations are absolutely essential for these programs, and other public interest law initiatives, to survive and thrive. But make no mistake about it: even a law school with its heart in public interest lawyering struggles to maintain its programs in the face of all of the temptations to do more with less. Moreover, we are constantly reminded of the fact that the vast majority of our law students will not go into public interest law practice in earnest; therefore, the devotion of precious tuition resources and external dollars to what remains a cul-de-sac of legal practice raises hard questions.

These hard questions must be faced squarely. From where we sit as legal educators in 2003, the objective of training the great public interest lawyers of tomorrow is a responsibility. Indeed, it is an imperative. Public interest law, of course, has many definitions and imperatives. The conversation about what constitutes lawyering "in the public interest law" is rich and enduring. Yet, taking the most capacious definition of the phrase, we serve the public as academic institutions only insofar as we create worthy, dependable opportunities for our students to learn the skills to practice public interest law. This means, *at the very least*, pursuing the following pedagogical projects:

(1) *Exposure to the basic institutions of democratic government in our nation, in our states, and at the local level*. More specifically, careful consideration of the law, politics, and processes of modern regulatory government is necessary. To be sure, there are different approaches to accomplishing this goal. But if we persist in calling our curricula and academic enterprise *modern*, we need to think more creatively about how to teach law students how to work with, for, and occasionally against the government for change.

(2) *Opportunities for students to concentrate during their law school upper years in public interest lawyering*. Some ambitious programs include LL.M degrees in public interest law; more modest enterprises involve some sort of major in public interest law through cumulative, supervised coursework and practica.

(3) *Law reform organizations nested within law schools, thereby enabling students actually to practice public interest law while going to law school*. We have proudly pioneered this effort at USD. There are, as well, a variety of highly successful clinical programs, particularly legislation clinics, at other American law schools.

(4) *The development, maintenance, and support of loan repayment assistance programs (LRAP).* These programs provide the

> necessary, though not sufficient, conditions for students to pursue public interest careers in the face of substantial law school debt. LRAP is a national imperative. Critical to the success of these endeavors is the philanthropic support of private individuals and groups and public officials. Law schools will and should continue to seek external support for these programs and it is essential that law firms, corporations, foundations, and legislatures provide the funding to enable law students to make the informed choice to pursue public interest careers.

In addition to these and other initiatives, there is an objective that must undergird any effort to expand public interest programs in the modern law school environment. This objective, to borrow a tired phrase from an earlier era, is faculty "consciousness raising." That is, public interest professionals, sympathetic faculty members, law deans, and others must make the case for the devotion of precious institutional resources to the development of innovative programs and projects that create new, improved pedagogies of public interest law. After all, seldom are faculty members opposed in principle to the development of public interest programs. As with all other initiatives, the constant question is "compared to what?" Public interest law can be explicated as a priority only by careful, passionate advocacy.

Service to the public is a high calling; it represents the best of what lawyers can do. Taking many different forms and nested in many different ideological fundamentals, public interest law involves the development of persuasive tactics and informed legal strategies to recreate the institutions of a democratic society in order to serve and preserve justice. Mired in the details of teaching legal doctrine, developing legal theory through our scholarly activity, and managing the far-flung enterprise of a contemporary professional school, it is easy to forget the public trust that we as lawyers have to promote and preserve justice. The instinct to maintain fidelity to this public trust in the face of competing pressures must be learned; and it must be learned, in the first instance, in law school. Communicating to our faculty colleagues the imperative of developing durable, practical, reliable strategies for inculcating these central values, and for turning these values into action through active engagement with the real world of public interest law practice, is the main objective. All curricular strategies of the sort described above are ultimately designed to serve this aim.