A growing army of legal activists is attacking the system and the status quo. Here is a special report on the lawyers, firms, and schools leading the charge.

By David Riley

On the steps of the Supreme Court, from left: Michael Nussbaum, Edward Berlin, Joseph Forer, David Levy, David Rein, Kendall Barnes, Ralph Temple, Monroe Freedman, Anthony Roisman, Bruce Terris, Charles Halpern.

PHOTOS BY RENEE MISSEL
1. Political Lawyers

Fager & Reis, Longtime defenders of radicals, Fager works with Montgomery County ACLU, takes conscientious objectors for cases. Recently joined by Alan Dranitze, former editor of Selective Service Law Reporter.


Selective Service Law Reporter, a compendium of draft cases and regulations. New editor is John Schuss. Established three years ago through the leadership of Tom Adler, grey eminence of legal activism and head of the Public Law Education Institute which also supports the forthcoming Environmental Law Reporter and the Emergency Ball Fund.

Washington Area Military and Draft Law Project, a 100-member center staff lawyers and counselors, has panel of thirty draft lawyers on call.

Selma Samols, sole practitioner in D.C. and Maryland. Takes student protests and draft cases.

Lawrence E. Friedman, active with Northern Virginia ACLU chapter. Writer for peace groups attempting to hold religious services at Pentagon. Takes student rights, draft, and consumer protection cases.

2. Poverty Lawyers

Citizens' Advocate Center, Foundation-funded, run by Edgar Cahn. Produced reports on hunger and Indian problems. Helps community groups fight federal funding cuts. Researching government handling of citizen complaints.

Urban Law Institute. Run by Jean Cahn. OECD-funded VISTA training project for twenty-five GW graduate law students who work on projects such as the Metro jobs task force and D.C. tenant groups. Helps organize neighborhood gas billing for variety of community groups.

Washington Research Project. Foundation-funded, affiliated with Clark College.

Concentrates on improving federal programs in education, health care, and housing. STSSA student research federal programs. Civil rights groups: Marian Martin, Richard Sobol, Michael Trister write reports and bring suits to improve government programs.

Neighborhood Legal Services Project. OECD-funded. Forty-seven staff attorneys in ten neighborhood offices handle civil cases for the poor. Central law reform section concentrates on changing law with large-scale effect (Mary Margaret Ewing), and housing law (Sam Abbott and Chris Brown).

Legal Aid Agency, D.C.'s Congregation-defender program for criminal indigent cases. Expanding to thirty-four staff attorneys plus offices by Bishop Burton and Deputy Director Norman Leitzen. Does high quality work.

Legal Aid Society, a UGF organization, two-thirds of budget from direct contributions by private bar. Handles civil cases for the poor. Longtime Director Alathan Fisher coordinates twenty partners and volunteer attorneys, some semi-retired.

3. Public Interest Centers and Lawyers

Center for the Study of Responsive Law, set up by Ralph Nader. Has fulltime consultants studying government policies on pesticides and hazardous waste (Harrison Weford); food additives, food pricing, and drug regulation (James Turner); air and water pollution (John Esposito); Civil Aeronautics Board, other matters (Reuben Robertson); occupational health and safety (Gary and Beverly Marks); medical (Dr. David McClelland); administrative (Henry Adams Cowan); and relationship between private consultants and government programs (run by Leonard Rodtriger).

Central Law and Safety Bureau. Book entitled Lemon Cookbook, by John Moorman, won providing for Safety and Health, and is getting into other health-safety issues. Legal committee encourages citizen groups to challenge proposed facilities, and uneven municipal services. Jacobs is new director of center. Staging area for Nader's Raider's.

Public Interest Research Group, opened in July; funded and directed by Nader personally. A dozen lawyers just out of school at subsistence pay bringing suits against Excedar ad (Karen Ferguson), Better Business Bureau (Leonard Rodtriger), and other consumer protection matters.

Center for Law and Social Policy. Works on environmental, consumer, and labor issues. Four staff attorneys: Center Director Charles Halpern concentrates on meatpacking industry; on Iron Alaska pipeline and DOT (USDA) cases for Environmental Defense Fund; Geoffrey W. Brown concentrates on year's leave from Arnold & Porter. Has seminar and research program for visiting scholars.

Metropolitan Washington Coalition for Citizens Against Clean Air Act. Loose coalition of seventy-six citizens groups, including citizens over WMAL-TV here. Preparing citizens' handbooks on minority housing in broadcasting and access to FCC proceedings. 1970 project of fourteen students under Jerrold Oppenheim is preparing report on FCC.


Environmental Law Reporter, cosponsored by Conservation Foundation and Public Law Education Institute. First monthly publication due this fall; editor is Fred Anderson. Will report important cases, publish articles, suggest strategies for developing environmental law as tool for change.

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Environmental Defense Fund. Washington office opened September 1. Supported by national membership and small foundation grants. Works with volunteer lawyers and retained D.C. lawyers, Michael Tersh Boasberg and Richard Granat, formerly at OEG, now economic development. Counsel nonprofit organizations, Benny Kas, former Congressional assistant, now consumer and urban affairs consultant. Kas heads D.C. City Council's energy commission on interest rates and consumer credit, works on home rule and other D.C. matters.


Bruce J. Terri, now independent practitioner, former consumer lawyer, heads of Consumer Union, and Social Policy. Chairman of D.C. Democratic Central Committee. Commissioner in consumer affairs. Has-staff as consumer advisor on rent strikes, also does environmental work. Firm is co-counsel on interest rate suit against D.C. banks.

3. Pro Bono Work in Law Firms

(Note: This list cannot hope to be complete; the ACLU alone has a panel of over 120 volunteer public defenders. The list attempts only to mention the major contributions of lawyers and firms.)

National Capital Area Civil Liberties Union, third most active ACLU chapter, litigation program in the country. Legal Director Ralph J. Temple oversees work in 500 pending cases, mainly in areas of First Amendment, government employee rights, local discrimination, criminal justice, police practices, and poverty law. Lawrence Speiser runs national ACLU office here, watches over Congressional anti-legislation. James Heller is new NCACLU chairman. Northern Virginia, Maryland, and District chapters have affiliate ACLU chapters with active legal programs.

Lawyers' Committee for Civil Rights Against Discrimination. Chair of D.C. chapter is Jake Bleevans. Chapter chairman is Stephen Pollak. Now concentrates on police abuses, youth and jobs task force and forthcoming drug treatment project. Rod Boggs, on committee's na-
tional office staff here, is driving force behind both projects, and has long led high-profile civil rights litigation, largely in the South, and has chapters in fourteen cities. New national stall director is extensive pro bono work for years. Currently has two attorneys working full-time in Washington, D.C. (Peter Nickles and Howard Westbrook). John Vanderstar is very active ACLU lawyer on pro bono work, largely in the South, and has chapters in fourteen cities. New national stall director is extensive pro bono work for years. Currently has two attorneys working full-time in Washington, D.C. (Peter Nickles and Howard Westbrook).
D.C.'s landlord-tenant law from the Middle Ages to the twentieth century in three years; it has its Ralph Nader, whose bands of roving student researchers are the scourge of federal bureaucrats; and Washington has its combination theorist and trial lawyer in Monroe Freedman, who has the audacity to be both an erudite law professor and an active believer in civil disobedience through the simple declaration that he was a free man before he was a lawyer. Washington also has its veteran black civil rights lawyers, its Thurgood Marshalls, in Howard Law Professors Herbert Reid and Frank Reeves; it has its embryonic group of Panther-defending Charles Garrys in the recently reactivated National Lawyers' Guild local chapter; and it has its activist law students who have lobbied for and received new programs and courses at all area law schools. There are many others, too; these names give just a flavor of the legal activism in Washington today.

There are, of course, different concepts of the public good, different approaches and strong disagreement within the legal activism movement as well as outside it. Legal activism breaks down into three overlapping areas: political law, poverty law, and general public interest law.

Political law is the oldest kind of legal activism. In 1761, James Otis of Massachusetts argued eloquently and successfully that search warrants not limited by time and place violated basic human rights and thus could not be enforced against the American colonists who had had no hand in drafting them. Otis' courtroom speech was hailed by many observers as the opening scene of the American Revolution.

The Chicago conspiracy trial is recent enough so that most people now know what you mean when you talk about a political trial and a political defense. Not everyone needed to be reminded. Crusty Joe Forer and his longtime partner, David Rein, have been involved in political trials since the beginning of the Cold War, when it became very unfashionable to be a communist or associate with one, and a lot of people wanted the Constitution to become an arbiter of fashions. Forer and Rein understood the inherent tyranny in such a notion. Between them, and sometimes with other lawyers, they handled every important McCarran Act case as the government tried to deny passports, make the Communist party register, and so on.

Such activities sound like another era, but the last Communist party registration case here was in 1965; Forer got it thrown out of court on appeal, and the government decided not to repursue.

Forer and Rein represented hundreds of witnesses before the Senate Internal Security Subcommittee, and the McCarthy Committee; out of dozens of contempt of Congress cases, they lost only one early on. The result of all their work is that today only an unusable skeleton of the McCarran Act and the Subversive Activities Control Board remain for narrow minds to tinker with.

"Quietly," in their modest office, Forer and Rein keep on going, producing universally respected legal work and not worrying about who gets the credit or the headlines. Each has argued about twenty cases in the Supreme Court. Forer worked long and hard with the NAACP to get public accommodations desegregated in the District twenty years ago; in the early sixties he got Joe Johnson and the Giles brothers out of Maryland's old southern justice system: blacks rape white girl, get chair.

More recently Forer got Bethesda activist Brint Dillingham cleared of an obscenity charge growing out of Dillingham's sale of the Washington Free Press issue with the "Here Comes de Judge" cartoon. During the trial, Forer pointed out that a Bethesda bookstore run by the prosecutor's wife sold material also depicting masturbation; Forer had the prosecutor stipulate he didn't plan to prosecute his wife for selling such stuff. Forer didn't just defend Dillingham; in the process, being a "legal activist," he also got sections of Maryland's antisubversive and obscenity laws declared unconstitutional.

"Rein, meanwhile, has acquired a new specialty: military law involving antivar protests. He represented the Fort Jackson soldiers protesting the war in preliminary hearings a few years ago, after which the charges against them were dropped. Last April he got Seaman Roger Priest acquitted on six of eight counts at his court martial for putting out an antiwar newsletter. A short, stocky man in his fifties, Rein's understated, sure courtroom manner in the Priest case contrasted sharply with the overwrought manner of the prosecution. Sitting at the defense counsel's table, slightly slumped down and very attentive, Rein looked very much like a judge, with his deep-lined face that has seen a lot of human folly. But Rein is not a judge, and probably never will be. Instead, Rein and Forer are the quiet elder statesmen of movement lawyers in Washington.

One of Rein's current clients, Philip J. Hirschkop, is now appealing a contempt of court citation handed down in February by U.S. District Court Judge John Pratt for Hirschkop's vigorous manner in defending the D.C. Nine protesters who defiled Dow Chemical's Washington office. He was also brought by Judge Pratt before the District Court's Grievance Committee, which has recommended disciplining him. Hirschkop is Washington's current political trial lawyer par excellence; he has defended H. Rap Brown, Norman Mailer, and Jerry Rubin, and he has been chief counsel for the New Mobe during its antifascist demonstrations in Washington.

Hirschkop does a lot of civil rights and civil liberties work in his Alexandria firm. He and partner Bernard Cohen got Virginia's antimiscegenation law overturned by the Supreme Court, and he got a federal court order to restrain Virginia prison officials from abusing prisoners. He also tried unsuccessfully to get a court order allowing American Nazis to wear their uniforms for the burial ceremony of George Lincoln Rockwell in a federal cemetery at Culpeper; his parents wouldn't speak to him for a year...
after that.

Like a lot of “radical lawyers,” Hirshkop himself is not all that radical. Not only does he spend a lot of time working within the system—which is what useful radical lawyers do, often at considerable psychic expense—but Hirshkop does it in a special way. The role of most “movement” lawyers is simply to keep the movement activists on the streets and out of jail. Hirshkop has played a role within the system not only in the courts but in the streets as well. During the Counter-Inaugural and the November and May antinuclear demonstrations, Hirshkop rode around in a police car with a top D.C. official in constant touch by radio with the mayor; he told the police to cool it here and make themselves less irrelevant there; and so on.

“What stood out about him,” wrote Norman Mailer about his attorney Hirshkop during the Pentagon March trials, “was his love of law as an intricate deceptive smashing driving tricky game somewhere between wrestling, football, and philosophy—what also stood out was his love of winning, his tenacity, his determination of defeat.” That is a good description of Hirshkop and most legal activists in town; it is also a good description of what separates them from the most movement-oriented activist lawyers, whose love is not of the process or even the winning—they see that as ego-pleasing and counterproductive; their love is for the movement, the community, the togetherness, the cause.

That is why movement lawyers cannot represent the Nazis one day and Rap Brown the next as civil libertarians do, or an international cartel today and a draft dodger tomorrow, as big firm pro bono lawyers do. Instead, by living very modestly, they manage to represent Black Panthers and draft and drug clients pretty much full time. They provide a lot of desperately needed legal help that most lawyers won’t provide. Even so, with all this useful work being done, the most militant legal activists have trouble justifying their role as lawyers at all; their hearts are really in the streets, not in court.

Poverty law, the second kind of legal activism, has its militants, too. Jean Camper Cahn, a mother of two, can be just as bitter about the system’s failures as any radical law student ten years her junior. Her voice of controlled anger tells you how well she understands those failures. “But the real activist,” says Mrs. Cahn, “doesn’t turn his back on the system. Rather, he learns how to use it.”

That is the theme of the seminal work of Jean and Edgar Cahn over the past six years since their first law review article in 1964 proposed neighborhood law offices in poor communities; the article became the model for the Neighborhood Legal Services Program which they later established in cities across the country, while working at the American Bar Association’s Legal Services Program. Their work has been a different legal scene ever since.

The Cahn’s answer is a neighborhood court system which would include simplified mechanisms for settling disputes by out-of-court mediation and which would be much more responsive to the world of the poor than the present centralized, middle-class-oriented system. The Cahn’s emphasize the “consumer perspective,” the accountability of legal and governmental services to those being served; they have suggested establishing neighborhood corporations which would take on various governmental functions.

After 1963, Jean Cahn taught at Howard Law School, while Edgar worked at the Citizens’ Crusade Against Poverty, a union-funded refuge for ex-MSM officials who wanted more vigorous support for the poor than the war on poverty would allow. When a particularly effective Head Start program called the Children Development Group of Mississippi (CDGM) was denied refunding by OEO in October 1964, and was given no prior notice of the decision, no bill of particulars attached to it, and no chance to defend itself, the Cahn’s came to the rescue. They conducted a broad campaign through the use of picketing, extended press coverage, a prestigious Citizens’ Board of Inquiry, Congressional pressure, and the threat of legal action. The effort was finally successful—CDGM was partially refunded—after months of building up enough public pressure to counter the private pressure possessed by the two Senators from Mississippi. The incident taught the Cahn’s more than they cared to know about the unchecked discretion that federal grant-making agencies have in creating and killing government programs and citizens’ dreams. The Cahn’s referred to this “governmental lawlessness” as “The New Sovereign Immunity” in the title of their Harvard Law Review article. To monitor such discretionary authority, the government, the Cahn’s proposed a new organization to be an advocate for the poor in Washington.

The Citizens’ Advocate Center (CAC) was established in the fall of 1967 with Edgar Cahn as its director; it was the first of the public interest law centers in Washington.
Antiestablishment Lawyers
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Washington. Using the same multi-weapon approach, CAC organized and staffed a Citizens’ Board of Inquiry on Hunger; its report, Hunger, U.S.A., literally created the public issue of hunger in America for the media to investigate and the politicians to do something about.

A year ago CAC issued a devastating report on America’s handling of Indians. Our Brothers’ Keeper: The Indian in White America combines a thorough analysis of the Bureau of Indian Affairs with poignant, personal examples of the human destruction the white man has wrought. Currently, CAC, with a foundation-funded, fluctuating budget of around $100,000 a year, is trying to develop effective standards for judging governmental grant-making practices.

Jean Cahn knows something about grievance mechanisms; two years ago she conducted a major study on what was wrong with the D.C. government’s complaint system and how to improve it. The District is looking for funds to implement her suggestions. She is now director of the Urban Law Institute at George Washington University, one of the country’s two VISTA training programs for graduate law students. Funded by OEO at about a $300,000 level, going up to $500,000 to cover tuition for students, the program has resulted in eight new poverty law courses at GW which hundreds of undergraduate law students take.

At the Urban Law Institute, Jean Cahn emphasizes giving poverty lawyers the same broad range of skills that corporate lawyers use. She wants them to be in effect corporate lawyers for the poor, not only representing the poor in court, but also lobbying for legislation, organizing and funding new institutions, using the press, and exploring means of out-of-court mediation for quicker, less expensive settlement of disputes. If lawyers just serve the poor in court, the poor then become more dependent upon outside lawyers; Jean Cahn would rather the poor be helped to solve their own problems and settle their own disputes through new community organizations.

But in law school, you don’t learn that approach. You don’t learn to empathize with the people you serve or to think up imaginative new institutional approaches to old problems. Those are not the "professional skills" one learns in the ascetic classroom atmosphere studying how one ratified precedent may or may not logically follow from another, according to dried-up casebook law. As Jerome Frank, the late distinguished judge and critic of the legal profession, wrote thirty-five years ago, law students trained under the traditional casebook method "resemble prospective dog breeders who never see anything but stuffed dogs." He then wondered whether such "stuffed dog study" had something to do with "the over-production of stuffed shirts in the legal profession."

Jean Cahn’s non-stuffed shirt program brings real people inside the monastic law school walls, and sends students outside to meet them. She talks to her students about the real and serious problems of human relations between attorney and client and between the attorney and the community.

The law schools are finally beginning to adopt programs for clinical legal experience, as medical schools did decades ago. GW has become the leading law school in the area, and perhaps in the country, in experiments in legal activism and new ways of teaching students.

Florence Wagman Roisman is a housing law specialist; she was managing attorney in the Neighborhood Legal Services law reform office until she resigned in June over the new director’s "rule-bound, unresponsive, ineffective, conservative, racist policies," to use her words.

Following a stint in the Justice Department, the training ground of many legal activists in Washington, Florence Roisman spent three and a half years at NLSP. During that time she had a hand in all the recent landmark landlord-tenant decisions in the District. While avoiding the political compromises and trade-offs, Florence Roisman did what Senator Tydings and the D.C. City Council couldn’t do: In effect she established a rent strike law for the District. In 1964 tenants in the Girard Street rent strike were evicted and their strike was broken. In 1966 Senator Tydings held hearings before the Senate District Committee on his proposed rent strike law; everyone said we needed one, except the landlords, and the bill died. Today, through a legal defense combining several new court decisions, rent striking tenants are generally not evicted, and their new bargaining power gives them clout they never had before.

Mrs. Roisman was once described in the Washington Post as looking "like a gentle brewer of tea and baker of patty-cakes." She does look like that, except when she gets in court, or at a tenants’ council meeting, or before the D.C. City Council. In court her sharp eyes peer over the rostrum at the judges, and she is very good. Adroit at handling judges’ questions, she knows landlord-tenant law inside and out, because she has made a lot of it herself. At tenant meetings and City Council hearings she is appropriately aggressive. At a NLSP Board meeting last May when Mrs. Roisman was being criticized, a public housing tenant leader, Gloria Jackson, spoke up for her. She said some people were upset about Florence Roisman because she was a "pushy white woman" working with poor blacks.

(continued)
"You damn right she's pushy," said Gloria Jackson. "You got to be pushy to help the poor."

Another woman lawyer prominent in poverty law is Marian Wright Edelman. A Yale law graduate like Jean Cahn (Florence Roisman went to Harvard), Marian Wright ran the NAACP Legal Defense Fund office in Jackson, Mississippi, from 1964 until she came to Washington in 1968, where she married former RFK aide Peter Edelman. She now runs the Washington Research Project on the 1800 block of Jefferson Place, Northwest, an area which has become the place to be, the mini-main street of Washington legal activists.

Marian Wright grew up in a small South Carolina town, and she knows what an inferior segregated school education is like: She had one. With college in Atlanta, a junior year in Europe, and Yale law, she left that constricted world, and then returned to it when she went to Mississippi. There were the same small towns and overcrowded black schools without enough books. She acquired a reputation as the tireless, sensitive, almost legendary black lawyer who raised hell in court for the people. The first black woman admitted to the Mississippi bar, Mrs. Edelman's major work involved suits to desegregate and improve the schools. Hunger also struck her especially hard on visits down dusty roads to tarpaper shacks. Her impassioned testimony helped bring the Senate subcommittee on poverty, along with Robert Kennedy and a press entourage, down to the bayous to discover hunger.

When she first came to Washington, Mrs. Edelman worked as counsel and liaison to federal agencies for the Poor People's Campaign; the experience convinced her that a permanent liaison office in Washington between the poor and the government was needed. In the fall of 1968, the Washington Research Project, affiliated with the Clark College Southern Center for Studies in Public Policy, was established. Along with Clark students spending a semester here researching federal programs affecting the poor, four experienced lawyers have done most of the project's work:

Ruby Martin, former head of the HEW Secretary's Office of Civil Rights, supervised the project's influential report on the Education Act's Title I grants to schools with poor children.

Harry Huge, on an eighteen-month leave from Arnold & Porter, worked on hunger and health problems, running the Citizens' Board of Inquiry into Health Services (drawn on the cac hunger model). Its report is due out this fall. Huge is now back at Arnold & Porter conducting a major suit against alleged mishandling of the United Mine Workers' retirement fund.

Dick Sobol, former Arnold & Porter associate and veteran southern civil rights attorney who enjoys a reputation as a superb trial lawyer, continues to handle
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Public interest law, the third kind of legal activism, is the newest kind. It is not as explicitly political as political law, and not at specifically concerned with poverty and minority discrimination as poverty and civil rights law. Public interest law involves environmental and consumer problems and related corporate practices. The distinctions overlap in the work of both individuals and groups. But differences of emphasis do exist.

The king of the public interest lawyers is the man from Connecticut who came to Washington in 1964 to work for Pat Moynihan at the Labor Department: Ralph Nader. Despite all the publicity, Nader remains a loner determined not to let his public role interfere with his individual work. Once or twice a day Nader checks in to look over his massive pile of mail and return the calls he wants to; then he disappears to think out a speech, prepare testimony for a Congressional hearing, or plan the next assault on some nefarious business practice. Then he will surface, and we will have another epiphany from the man who sees his role as that of exposing what is going on around us. “We have got to know what we are doing to ourselves,” he told Time magazine, which was a good group to tell that to.

Some say Ralph Nader is a fanatic. He is a very unusual man, but we’re not nearly so quick to pin that somewhat pejorative label on a lot of other unusual men extremely devoted to more accepted goals like making money, flying to the moon, or becoming President. Nader has to be the most engaging fanatic in history. His manner is so open and spontaneous that it makes ludicrous his enemies’ suggestion that he is some kind of a conniving powermonger. The most striking thing about Nader is the combination of abilities concentrated in one man. His devotion to his work and his charisma are well known. But you have to listen to a speech or an interview to appreciate the range and depth of Nader’s intelligence, his command of a myriad of facts about how this society runs and doesn’t run, his ability to marshal concepts, arguments, theories, and historical connections along with the facts. On top of that, he is extremely articulate. We should accept him for what he is: an extraordinary man who wants to make this country a decent place.

A ramshackle red brick house near Dupont Circle with Victorian turrets on the roof and no sign out front is the Center for the Study of Responsive Law, which Nader set up for about ten full-time consultants and a brigade of summertime students. Now in its second year, the center has produced three books based on the 1969 summer investigations by 120 visiting students, with three more books still to come. During the summer of 1970, about 200 students worked on center projects. The center is funded by different private sources at about $250,000 a year; its consultants get $10,000 to $15,000, which is about average for public interest centers and a fraction—a tenth—of what the big names get in Washington’s private interest bar.

In July, Nader opened the Public Interest Research Group with a dozen recent law school graduates committed to a year’s work at subsistence wages. They will be overseeing federal agencies and handling the kind of major suits that require the team approach of four or five lawyers which big firms use, and with which they have been able to overpower their public interest opponents. Nader has had a ten-year dream to institutionalize his concept of the “citizen-lawyer.” Impatient with cautious foundations, he is financing it with his own money from book royalties and lecture fees. The firm will avoid profit-making organizations or fee-paying clients, or even cases with a potential fee. “Clients are incidental says Nader, who views himself as a citizen-lawyer who works for “the public,” not for individual parts of it; he represents himself and his view of the public interest. Most legal activists still view the lawyer as an advocate for someone else.

There is another, more basic difference between Nader and some legal activists about the nature of society’s problems. Poverty lawyers like the Cahns believe that poverty and discrimination are the most crucial problems, the greatest moral wrongs, of our society. The Cahns are most concerned about the plight of the consumer, not of material goods, but of social programs, and the lawless way government grant-making agencies deal with them. The Cahns are concerned about the priorities for using the limited legal resources available. As Edgar Cahn put it, “Some are more disenfranchised than others.” Nader and others viewed the country’s problems differently. Nader believes that ghetto riots and slum conditions are overt manifestations of the basic problem,
which is the accountability and responsiveness of our institutions, public and private. Though the middle class participates in the political process more than the poor, it often can fare no better than accountable, unresponsive institutions.

For example, public interest lawyer Charles Halpern finds that administrative agencies are less willing to deal with him and give him access to information than they were a year and a half ago when he represented private interests as a lawyer at Arnold & Porter. A man can have a $10,000 or a $20,000 income, Halpern points out, and still be unable to influence government agencies that make decisions with major effects on his life. Another way the unresponsive institutions may be bad for the middle class as for the poor is in consumer suits against giant corporations. Corporations can engage in deception, overpricing, and the like and risk no threat from consumers who as individuals are never singly injured enough to make it worthwhile to hire a lawyer and go to trial against a battery of corporate lawyers. Pending Congressional legislation allowing consumer class actions would help remedy that problem; but meanwhile, as the public interest firm Berlin, Roisman & Kessler points out in an article, the middle-class individual consumer is no better off, no less powerless, before the giant corporation than the poor consumer.

Public interest advocates realize fully that the poor often suffer more: Air pollution is usually worst where the poor live, and the poor obviously suffer most from consumer credit abuses. But they contend that the fundamental problem is how to make all our institutions, public and private, accountable and responsive; to do that, we need public interest lawyers working in many areas. And we need what Nader calls a "new kind of citizenship," under which citizens take it upon themselves to expose abuse and stop it, rather than delegate their citizenship to others, like public officials, whereupon it may be lost.

So while poverty lawyers tend to see government programs as the problem, and vastly better ones as the solution to help the poor, public interest lawyers see both government and private institutions working together as the problem, and sweeping changes in both as the solution for the whole society.

In addition to Nader's organizations, two other major foundation-funded groups are active in public interest law. One is the year-old Center for Law and Social Policy, headed by Charles Halpern, funded at about $200,000 a year, and working in environmental, consumer, and health problems. Halpern is following up on an important court decision he won four years ago establishing a judicially reviewable right to treatment for mental patients at St. Elizabeths Hospital. Jim Moorman at the center has won major environmental lawsuits on the Alaska pipeline and others. In September, Victor Kramer, a senior litigation partner at Arnold & Porter, took a year's leave from the firm to work at the center. Kramer is the lawyer who in the early fifties at the Justice Department refused to sign the consent decree that settled the AT&T-Western Electric antitrust suit without requiring AT&T to divest itself of its wholly owned subsidiary. Kramer said signing the decree would be inconsistent with his oath of office to uphold the laws of the United States, particularly the antitrust laws.

The center has also undertaken an exciting innovation in legal education under which a handful of students from several leading schools spend six months doing research on center projects and attending seminars in return for a semester of academic credit.

Last summer the Stern Community Law Firm opened for business, funded by a $150,000 grant from Washington philanthropist Philip Stern and run by Monroe H. Freedman. Freedman is on leave from GW Law School, where he has taught contracts for twelve years. A deeply religious family man with four children, Freedman is an incurable secular iconoclast. His career in controversy reached its peak after he got tenure at the law school (otherwise he would probably have been long gone by now), with a speech he gave in 1966 suggesting...
that under certain circumstances a lawyer's overriding duty to serve his client might lead him to knowingly mislead the court. It was a closely reasoned attempt to resolve some conflicting canons of ethics which the legal profession generally slides over. For his honesty, Freedman was called before the District Court Grievance Committee by "several federal judges"; to this day he doesn't Jow for sure who his accusers were. (The matter was later dropped.) He does know that Judges Hart, Holtzoff, and (now Chief Justice) Burger complained to the dean about him after an account of his speech appeared in the newspaper. And he knows that on two following occasions Judge Burger insisted behind the scenes that Freedman not appear with him on bar association panels to discuss legal ethics.

Three years later an ABA Journal editorial criticizing Freedman's views contained language virtually identical to Judge Burger's at one of those panel discussions. Ralph Temple, legal director of the National Capital Area Civil Liberties Union, heard Judge Burger's statement at the panel discussion. He concludes that the identical wording is "sufficiently unique in its impropriety" to suggest that "if Chief Justice Burger did not have a hand in the ABA Journal editorial, then someone is guilty of plagiarizing his style." A few months later the ABA Journal ran another editorial withdrawing much of its criticism of Freedman and commending him for raising these important issues in several scholarly law review articles.

Freedman has actively engaged in civil disobedience. Recently he told hundreds of D.C. law students demonstrating outside the Justice Department that he hereby did "urge...incite...conspire...counsel...and aid and abet" them to resist the draft in any way consistent with their consciences, because that was the only really meaningful way left to fight the war.

Freedman has also long been active in the National Capital Area Civil Liberties Union, of which he served one term as chairman. An experienced trial attorney, he is responsible for the decision holding the D.C. vagrancy statute unconstitutional, and for challenging discrimination in the jury selection process here, which since has been reformed, partly through his efforts.

Freedman's new five-man law firm concentrates on broad-ranging litigation aimed at "reform, not relief." He is representing Julius Hobson in his employment discrimination suit, and is suing to ban children's toys and furniture found dangerous by the Product Safety Commission. The firm's governing board has a majority of members from Channing Phillips' Lincoln Temple church community, which makes it the only "community controlled" public interest center in the city. In announcing formation of the firm, Freedman said, "Our mandate is to make waves and rock boats." Coming from him, it was a little superfluous.

One major boat rocker is the firm's plan to advertise for clients and test cases, thus violating the canon of ethics which prohibits solicitation. Lawyers regularly find ways to circumvent that canon. The difference is they do it very quietly; Freedman is going to be more honest about it.

There is another difference, too. In public interest work, it is often necessary to advertise to find clients and evidence for effective litigation. And Freedman feels the community has a First Amendment right to know what public interest lawyers are doing for the community.

Before the Freedman firm, the Halpern Center, or Nader's center opened—back in January 1969 when "public interest law" was a term not yet in common use—three young lawyers opened an unsubsidized law firm devoted "exclusively" to public interest law. It was the first of its kind in Washington, and perhaps in the country.

"Why, you might ask, would anyone want to starve like that, especially in the wintertime? Tony Roisman, Ed Berlin, and Gladys Kessler believe fervently that public interest groups should get just as vigorous, broad-ranging, and accountable legal counsel as their corporate opponents. Foundation-funded public interest..."
centers are not fully and directly accountable to their clients. Such centers are continually going to the foundations, usually to several, to tell them all the good, earthshaking (gently earthshaking) things they are doing to reform society. They are thus accountable to foundation boards, their lifeline, as well as to the nonpaying clients they choose to take on. Berlin, Roisman & Kessler want to be free to give their clients the best, most complete service they can.

The firm's biggest victory so far was the Court of Appeals' order to begin administrative proceedings which may lead to the banning of dot. Ed Berlin argued that case representing the Environmental Defense Fund and five women petitioners. It was a superb argument, showing the advantages of really believing in your client's cause; the contrast could hardly have been greater with the opposing government attorney who bumbled quietly along. Berlin began his argument by mentioning the individual petitioners, all of them mothers, who cannot be sure it is safe to nurse their babies because the milk in their breasts, according to studies, may have too high a ddt content. That image of a mother worried about nursing her baby hung over the whole argument, and may have had a lot to do with who won it.

Berlin, Roisman & Kessler is not as unique a firm as it may sound, which its members freely admit. Other small firms around Washington have been taking a lot of "public interest" work, paying and nonpaying, for a long time before it became fashionable. But they were the first to take what they consider only public interest work.

A relatively new firm in Georgetown, Dowdey, Levy & Cohen, is working with the Berlin firm on an important bank case. Banks in the District charge about 15 percent on personal installment loans, though the D.C. usury law says they can't charge higher than 8 percent interest. How do the banks charge almost double the legal limit? First, there are certain charges such as insurance, credit checks, points in real estate loans, and "unspecified charges" which the banks don't call interest; but you have to pay them to borrow money. Then the banks compute the 8 percent interest on the whole amount of the loan for the whole length of time it is outstanding, even though you don't have use of all of the money the whole time, because you start paying it back in installments right away. The two firms are representing the local ADA chapter, the Democratic Central Committee, and a number of individuals who have outstanding loans. Last year the banks were backing a bill that would have raised the usury ceiling from 8 percent to 16 percent retroactively to 1968, thus effectively killing such suits. It is a good example of how Washington law isn't practiced just in the courts. That old populist from Texas, Wright Patman, killed the bill in the House. (continued)
The bank case is the most pointed example of the kind of case big firm pro bono departments have trouble taking, because their other departments more likely than not already represent at least one bank. The same conflict of interest problem exists with other broad public interest suits; the Washington Area Construction Industry Task Force on more Metro construction jobs for blacks is probably the most substantial pro bono project the big firms have taken on in terms of broad social change.

The firm of Hogan & Hartson, which has a high ratio of local business clients, withdrew from contributing pro bono work to the task force last January. Partly caused by an administrative mix-up, the official explanation was that there was a conflict of interest with some work the firm did for Metro in 1969 to help get it through Congress. The work consisted of an opinion letter sent to Congressman Natcher assuring him that any litigation to stop the highway program would probably fail. The letter was signed by three prominent lawyers, under their firm name: E. Barrett Prettyman of Hogan & Hartson, Stephen Ailes of Steptoe & Johnson, and Roger Clark of Rovall, Koegel & Wells. The lawyers were not acting on behalf of clients but rather as interested citizens; neither the Metro’s name nor that of any other client is on the memorandum.

There may be another explanation for Hogan’s conflict of interest. Some of the firm’s conservative partners, who were voted down in the decision to set up a pro bono program, objected that the proposed Metro jobs plan could be a harmful precedent for their local business clients. The incident shows how the conflict problem works in the big firms. Hogan & Hartson is not the only place it happens; Arnold & Porter has had some conflict problems, particularly an embarrassing one a few years ago involving an attempt by young associates to take a civil rights case.

Jean and Edgar Cahn have been influential in persuading some leading firms to set up organized pro bono programs and in suggesting projects for them to work on. The two groups busiest shopping around for legal help from them are the National Capital Area Civil Liberties Union (NCACLU) and the Lawyers’ Committee for Civil Rights Under Law, a national group formed in 1963.

The local ACLU chapter now has a docket of 150 cases, almost all handled by volunteer ACLU attorneys. Supervised by its intense, hard-driving legal director, Ralph Temple, formerly with Arnold & Porter, the ACLU chapter established its credentials in legal activism during the April 1968 uprisings here, when it went to court asking the immediate release of those who couldn’t make bail, in accordance with the Bail Reform Act which the judges had in effect suspended. The suit was dismissed; and General Sessions Chief Judge Harold Greene, a humane and usually mild-mannered man, publicly denounced the ACLU for filing it.

Michael Nussbaum, the aggressive, indefatigable young partner at Surrey, Karasik, Green & Hill, has won two of the ACLU’s biggest cases: the Howard University expulsion case and the recent D.C. General abortion case, which he handled with Gil Miller and Caroline Nickerson, who worked with the Women’s Liberation Movement on the case. After over a hundred draft cases, Nussbaum has yet to lose one! He keeps the sons of some of Washington’s finest families out of the armchair.

Some pro bono work, particularly that in small firms or by solo practitioners, is done with very little fanfare. Some of it, particularly in large firms where image is more important and competition for new lawyers stiffer, is done partly for the good name it brings and the new lawyers it will attract. In its memo proposing a pro bono program, Hogan & Hartson discusses the recruitment problem and mentions “the advantage of favorable community relations by strong firm identification” with pro bono projects. At Arnold & Porter, Bruce Montgomery, the young partner in charge of the official pro bono program’s first year, admits that recruitment problems were “a factor” in the decision to establish a formal program. But too much pro bono work in one area can hurt a firm’s image in the established circles. Also, pro bono work costs money: it means less income both for the lawyer who does it and for the firm generally.

Despite its limitations and pretentions, pro bono work by leading law firms is a valuable contribution. It has provided top-flight legal work for hopelessly overburdened legal services programs and community groups.

Large firms can pro bono departments can take on civil liberties, civil rights, and poverty law cases much more readily than environmental and consumer problems. Covington & Burling, for example, has two lawyers working full time for six-month stints in Neighborhood Legal Services offices; they are not so likely to send someone over to work with Nader. With poverty lawyers, the big firms share the common target of the government. The targets of much of the public interest work are the very corporations which the big firms represent.

Financing and staffing a public interest bar to rival the private interest one in Washington remains a very serious problem. Foundation hand-holding and scratching for manpower and administrative resources to rival those of big firms on a major case is a handicap for the public interest bar that the adversary system doesn’t take into account. If the big firms really wanted to help equalize the sides for a fairer contest, they might think less about finding important (and headline) cases their lawyers can work on and
more about just giving money to the full-time public interest bar so it can take the cases and bring more resources to bear on them. A year ago the Center for Law and Social Policy asked four major firms for contributions to support its student program; only one contributed. (All four firms have contributed, either through individuals or as a firm, to GW's scholarship program for minority students.)

Berlin, Roisman & Kessler have suggested in a law review article two ways the public interest bar could be financed without damaging accountability to its clients. Foundations can use their investment funds to finance much needed office space and library facilities, and they can contribute directly to the public interest client which can then pay for a lawyer. As it is, the law centers that depend on foundation funding are on shaky financial bases that require constant, time-consuming shoring up. Only the rarest foundation wizards like Ralph Nader have few funding problems, but not everyone can become a legend before he practices public interest law.

Congress could do a lot for the survival and growth of the public interest bar in Washington by enacting S. 3434, Senator Edward Kennedy's bill to establish a federally funded Public Counsel Corporation, whose lawyers would represent the public interest before regulatory agencies. The idea parallels the Legal Services Program, which is beginning to represent the poor before administrative agencies.

Nader has another idea for giving the public interest bar the legal manpower it needs. He suggests that the 300 top private lawyers in Washington—"already rich beyond their wildest dreams of avarice"—quit and devote full time to representing the public interest. It's not so preposterous an idea as it sounds. Louis Brandeis did it. He built a brilliant career as one of the most sought-after corporation lawyers in the country. Then, shocked by the blatant injustice of a company-labor dispute, he became a "people's Attorney" and a crusading reformer, fighting the business practices of the very corporate structure that had made him rich. Finally, he spent twenty years on the Supreme Court. Even established Republican lawyers like Elihu Root and Henry Stimson spoke of the tremendous satisfaction they found in turning from private law to public service. When Benjamin Franklin, at forty-two, just half way through his life, retired from his business enterprises and gave the rest of his life to public service, he explained that he "would rather have it said, 'He lived usefully' than 'He died rich.' " And there is Nader's own statement in defense of his proposition. He said it is like "telling people to stop what they are doing and put out fires, or stop what they are doing and fight an epidemic, or stop what they are doing and save the country."