Public Interest Law in the 1990s: Strategies and Opportunities

by Ronald A. Zumbrun

Adverse court decisions often have as great an impact as federal legislation on government policies. How those who believe in our system of government can use litigation as a positive influence on the public agenda of the 1990s is the subject of this lecture. However, before addressing the future, it is essential to first cover the past and present in order to establish an accurate base upon which to set strategy.

PUBLIC INTEREST LAW BACKGROUND

Public interest law in the United States is several decades old. Today there are more than 158 liberal public interest law firms functioning within the U.S. which employ over 900 lawyers and expend over $120 million annually. In addition, over $300 million is appropriated annually through the federal Legal Services Corporation program, a large portion of which is directed toward public interest law activities rather than individual legal representation of low-income persons. There also are state bar and local legal aid programs that direct a significant amount of money to these efforts. Of particular significance are statutorily authorized attorney fees available only to those groups litigating "in the public interest." In addition, major law firms throughout the U.S. provide substantial pro bono time for such efforts.

Prior to 1973, all public interest law firms in the U.S. were considered to be philosophically liberal or radical in nature. When the Pacific Legal Foundation (PLF) was incorporated in Sacramento on March 5, 1973, it was described by the American Bar Association as the first public interest law firm in the U.S. that was "philosophically other than liberal to radical."

The Pacific Legal Foundation differed from the other groups because it was formed to defend and enhance individual and economic freedom by litigating and participating in administrative proceedings to support the free enterprise system, private property rights, and concepts of limited government. Beginning in 1975, other nonliberal public interest law firms were formed in other parts of the U.S., modeled in part after Pacific Legal Foundation. Each organization was unique in nature and personality. Some were single-issue efforts, while most dealt with a broad spectrum of interests.

High-Powered Opponents. In 1989, the nonliberal public interest law effort entered its seventeenth year of activity. The funding and litigation staffing of the pro-free enterprise effort remains dwarfed, however, in comparison to the staffing and funding of the traditional liberal groups. For example, during 1988, the conservative organizations had fewer than fifty litigators with total budgets of less than $11 million, while their philosophical opponents continued at their usual high levels, including Legal Services

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Corporation and other legal aid resources. Also, the liberal groups continue to be funded by handsome awards of attorney fees by the courts, and by state bar associations, which provide substantial funding. For example, the California Legislature passed legislation, which provided over $15.5 million in funding to liberal groups during 1988.

The significance and impact of traditional liberal public interest law, cannot be overstated. Time and again activists have thwarted or redirected the will of the majority as expressed by legislative bodies and carried out by the executive branch. As judges became more willing to make law, rather than interpret law, the impact was even greater. However, as will be shown, the conservative groups now have clearly established the ability to neutralize other public interest organizations as well as to take the offensive and establish their own agenda with the courts and regulatory bodies. It is interesting to note that the number of attorneys now involved in conservative public interest law is essentially the same as comprised those in liberal public interest law as of 1969, just before their big expansion during the 1970s.

THE PRACTICE OF PUBLIC INTEREST LAW

All public interest law firms are regulated by the Internal Revenue Service and are eligible for a Section 501(c)(3) charitable tax deduction under the Internal Revenue Code. They specialize in precedent-setting legal activities, are not allowed to accept fees for their services, and they exist to provide representation for interests that would not otherwise be before the courts.

Pacific Legal Foundation's practice of public interest law is one of the most challenging types of litigation available to an attorney. At PLF, we are involved in issues that are on the cutting edge of the law, destined to go to the highest levels of the courts. At the same time, it usually involves litigating against heavily staffed and funded governmental agencies and often heavily staffed and aggressive radical legal organizations. Our credibility is constantly being challenged, and opposing groups go to great lengths to combat efforts supporting the concepts in which we believe.

Our type of practice is further complicated by judicial activism where courts act as legislators rather than jurists. Judicial activism tends to be favored by the more liberal members of the judiciary and is frowned upon by the more conservative judges who believe in strict interpretation. In the early days of our practice when the judiciary had been appointed primarily by President Jimmy Carter and governors like California's Jerry Brown, the courts were dominated by extreme judicial activists. The judicial context has changed significantly during the past ten years, allowing cases to be brought and procedures to be tested that previously would have been too risky to attempt, even though the law was on the side of the proponent.

NATURE OF CONSERVATIVE LEGAL GROUPS

The actual practice of public interest law varies within each nonprofit legal group. At Pacific Legal Foundation, we have established a major litigating law firm supported by the necessary administrative, fiscal, and fund-raising personnel. Our staff of 60 includes 20 full-time attorneys who handle a caseload of 100 to 125 proceedings at any given time. Our budget is $3.5 million. Our caseload includes a broad spectrum of public interest issues including land use, environment, agriculture, welfare and tort reform, constitutional law, taxation, public lands and natural resources, transportation, water, energy, education,

government regulation, victims' rights, compelled association dues, civil rights, housing, and public finance.

All public interest law firms are required by law to have a representative board of trustees to establish foundation policy and approve cases in addition to the normal corporate responsibilities. Thus attorneys are prevented from functioning as both client and attorney, since a board of trustees will assess the public interest involved. In practice, this function and its effectiveness vary greatly among the legal groups.

The PLF Board of Trustees meets monthly, either as a meeting of the full board, through legal review, or in executive committee meetings. Another approach used by many groups is to have, in effect, two boards: one responsible for the corporate activities and the other responsible for legal review. The second board backs up the first board by approving cases and establishing policy. Some groups have extensive board involvement in their activities, and others rarely have any board of trustee involvement. The latter approach lacks some of the checks and balances that many consider essential to a properly functioning public interest legal organization.

A debate that has existed since the beginning is the staffing of the public interest law firm. At PLF, all litigation is handled by a full-time staff, which devotes its entire professional attention to PLF and does not handle outside practice. Some groups contract out all of their litigation to private law firms, while others have a combination of these two approaches. PLF has structured its approach on the assumption that full-time staff attorneys will develop the expertise and continuity that results in being both the most economical and the most effective way to proceed. This, of course, is dependent upon the talent, commitment, and dedication of the staff involved.

Specialized Practice. The argument for contracting out litigation is that this allows the use of specialists in the field and, arguably, having the best subject matter representation. It is in part a specialist versus generalist type argument. PLF's response is that the practice of public interest law is a specialty in itself and that the diversity in subject matter is important for taking a balanced approach in assessing the true public interest. In addition, it is not difficult to gain expertise quickly in various fields of the law when starting from a proper, experienced litigator base (except in the land-use field, which is a specialty of its own). There are also problems when litigating against government and using outside counsel who also represent private clients before the same governmental agency and who will be appearing regularly before that agency in the future. This is especially true in the land-use field. On the other hand, using outside counsel avoids long-term budget commitments to staff and has greater fiscal flexibility.

The sources of funding for each group vary greatly. PLF historically has received about 50 percent of its funding from charitable foundations. The remaining half is split 50/50 between individual donations and corporate contributions. Groups who support the free enterprise system are automatically attacked as being fronts for business, but there is an interesting lack of significant financial support actually provided by the large corporate business community for the pro-free enterprise public interest efforts. Each year major corporations provide more financial support to liberal public interest law firms. The lack of support for conservative legal groups is caused partly by unfamiliarity with their activities or a failure of the companies to relate to them. For example, public interest lawyers usually represent individuals without resources sufficient to carry litigation. What often is missed by the corporate general counsel or by the corporate leadership is that, no matter who the party is in a case, the resulting law is applicable to everyone. In fact, a great deal of

attention is given to the structuring of a public interest law case. It is desirable to represent an attractive litigant or coalition in the best forum with the issues structured to have the maximum impact.

CRITERIA FOR EVALUATING PUBLIC INTEREST LAW FIRMS

For those wishing to provide financial support for public interest legal activities, there seems to be a recurring dilemma: how to properly evaluate each group's efforts and accomplishments. This results either in hesitating to provide funding to any group or in finding that support has gone to a group that does not provide a good return concerning the issues of interest to the donor. The following are some of the criteria that should be used when evaluating public interest law firms:

1) **Litigators** – Public interest law is a litigation concept. How many litigating lawyers are actually employed by the public interest law firm, and what is their trial experience and capability? And in other types of groups, how much funding is going directly to private law firms handling a public interest law foundation's litigation, and what is the general reputation of that law firm?

2) **Nature of Caseload** – How many cases is the organization actually handling and how complex are those cases? There are basically three avenues for participation in a case: "friend of the court," attorney of record or plaintiff, and intervenor.

The friend of the court role in litigation usually involves a legal group presenting written legal argument without the opportunity to introduce evidence, cross examine, or appeal. The answer to the effectiveness of this approach relates to the effectiveness of the organization filing the brief and whether or not they are truly adding something that would not otherwise be before the court. This can only be ascertained by examining the briefs filed with the court and the resulting court ruling. Often, however, a public interest law firm can participate in a case as a friend of the court and do more than just file a brief. Whenever the organization is participating in the oral argument or trial, there definitely is an opportunity for significant impact.

Another way of functioning in court is as the plaintiff or the plaintiff's attorney. This is the most difficult but most effective process. The plaintiff has the burden of proof. But the plaintiff can also control the scope and nature of the issues, the forum, the timing, and so on. Although this type of direct litigation is the most expensive, it also has the greatest payoff.

A third approach is to intervene as a party to someone else's lawsuit. In this way, the intervenor becomes a party to the suit by filing a motion and then, if given permission by the court, can proceed and present evidence, cross examine, give written and oral argument, and have the right to appeal.

Pacific Legal Foundation historically has participated in each category approximately one-third of the time. No matter what the choice of approach, the fact that PLF has the capability to carry a protracted lawsuit gives it great impact and capability, because one of the techniques of opposing counsel is to tie up a law firm in protracted litigation.

Each public interest law firm has to report annually to the IRS on the cases it handles. This information is readily available to the public upon request.

3) Use of Funding – If a donor wants to support litigation financially, it is essential that the funding actually go into the courtroom presentations. The audited annual financial reports of public interest law firms show how much of their revenue goes for litigation, fund raising, administration, or other activities. Some public interest law firms actually function more in the nonlitigating legal world, such as providing publications and conferences. While these are worthy activities, it is important that financial supporters know what they are funding.

4) Success Ratios – The win/loss record of a public interest law firm is of interest to donors. However, mere numbers provide a rather meaningless assessment. Many public interest law firms, including PLF, pride themselves on an excellent win/loss ratio. However, what is important is the impact of what was won, because what was lost probably would have been lost anyway. Therefore, the attention should be on positive accomplishments.

5) Method of Approach – Some public interest law firms, such as PLF, function under the code of conduct and ethical standards of the established bar. Some groups, however, function outside of the establishment. This is particularly true of more radical liberal organizations. PLF believes that those who support our system of government should play by the rules of that system.

6) Quality, Caliber, and Use of Staff – The quality and caliber of staff can be judged by asking a public interest law firm for background information on its staff or even by asking for the resumes of each member of the professional staff. This information is, of course, readily provided to the public when giving speeches or participating on panels. It is quite valuable in assessing the litigation capability of a particular public interest law firm.

To truly get a sense for an organization, there is nothing better than actually visiting and seeing its facility. What is the quality of the library? The support equipment? The personality of the total organization?

The amount of time the staff actually expends on litigation also is significant. A good litigator who is only fund raising, lobbying, or being involved in public relations should not be supported with moneys intended to support litigation, but he or she should be required to otherwise justify the true use of funding. If a firm represents itself as a public interest lititation organization, it naturally should be expending more than half of its funds on litigation. If it does not, its activities should be redefined. If a donor has serious questions concerning a particular group, it may be beneficial to ask for a cost accounting statement of the actual time and effort that was spent on a particular case. The results, of course, have to be carefully analyzed from the standpoint that a low cost may show efficiency and experience with the subject matter or it may show that the organization is claiming credit where the effort did not deserve it.

7) Reporting – How well does a group report its activities to its donors? Does the donor get the type of information by which he or she can judge the true return on an investment?

8) Goal Orientation – Organizations differ broadly as to goals and objectives. A public interest law firms' goals should be supported because of their contribution toward a goal the donor also supports.

9) Team Orientation – A goal-oriented organization is naturally a team-oriented group, which allies itself comfortably with policy groups or other public interest law firms sharing similar goals. Particular care should be given to avoid supporting a public interest law firm that exists primarily to serve the political motivations of its leadership.

10) Leadership – A key to an effective public interest law firm is its leadership. There have been numerous examples of excellent leadership on boards and staff during the seventeen years of the pro-free enterprise public interest law movement.

11) Ego – Effective public interest law litigators are taking a financial loss in practicing public interest law compared to their worth in the private sector. Effective litigators could significantly increase their income at any time, but many choose instead to pursue the worthwhile goals of their public interest efforts.

The nonprofit world has a strange mixture of those who could not possibly make it in the private sector and have found a haven and those who could make it handsomely anywhere but have the commitment and dedication to forego wealth for a higher goal.

The pro-free enterprise public interest law movement initially suffered difficulties similar to those of the rest of the nonprofit world. Often fund raising and self-survival dominated over program goals. However, it is important to recognize that most participants in the conservative public interest law movement who have successfully litigated in the trenches have a market value far exceeding their salary. These individuals, many of whom have no name identity outside their local bar association, are true heroes who have made a substantial difference.

CURRENT BREAKTHROUGHS FOR THE CONSERVATIVE PUBLIC INTEREST LAW MOVEMENT

The last two and one-half years of conservative public interest law are most significant. Events and achievements have occurred that have totally changed the environment and potential for positive accomplishment in the future.

Prior to November 1986, the trend of constitutional interpretation, or the lack thereof, had been particularly onerous in the areas of government regulation and property rights law. The framers of our Constitution believed in limited government and that the right to own and reasonably use private property directly equated to basic freedom. These concepts are a cornerstone of our Constitution. Over the centuries, the courts have been the primary defender of these freedoms. During the last fifty years, however, there has been a radical departure as the courts became less inclined and less motivated to restrict government and defend private property rights.

We saw the government take property through regulation and the courts not provide any financial remedy to owners. We saw states using the power of eminent domain where there was no public use envisioned for the property being acquired. We saw activist jurists and activist organizations using concepts like rent control and environmental protection as a way to change our basic economic system. We saw the evolution of an exaction game, where the challenge was to figure out what the government could take from you as a condition for issuing you a license or a permit to which you were otherwise entitled. If you refused to play the game, you would face a worse fate – years of expensive litigation and the corresponding loss of the use of your property as you undertook the fight. States such as New York and Texas used these opportunities as their primary springboard for government confiscation.

It was very difficult challenging the government in court. Not only were the courts unsympathetic, but there was a great unwillingness to sue. It was more economical to avoid fighting city hall.

A primary criticism of the U.S. Supreme Court in the decades just preceding 1987 was that it tended to emphasize the power of government over the rights of the individual. It talked in terms of upholding states' rights and the belief that government closest to the people was the best government. However, in case after case, the Court gave such a broad interpretation to the power of government, rather than to its responsibility to the governed, that the rights and freedoms of the individual were subrogated to the power of the majority. This was a highly dangerous course to travel and was a flawed view of states' rights. The power of government, wherever placed, will not work within our constitutional framework unless it is an exercise of responsibility rather than a tyranny of the majority.

The Sleeping Giant Awakens. Fortunately, beginning in late 1986, there was an abrupt change in direction. To begin, the U.S. Supreme Court took jurisdiction of a number of individual rights cases – particularly in the areas of government regulation and land use. These included the issues of whether there should be a compensation remedy for a regulatory taking of private property, whether the exaction game was unconstitutional, whether a landlord in a rent control district could be denied a rent increase solely because the tenant was suffering financial hardship, whether innocent private parties could be forced to pay for the cleanup of toxic pollution caused by government negligence, and whether prohibitions against racial discrimination were observed for all races.

Just as significant as the U.S. Supreme Court's reassertion of its role as a defender of individual freedoms were the ramifications of the November 1986, judicial retention election in California, where three California Supreme Court justices were not returned to office. This was the beginning of the demise of judicial activism in California and in certain other jurisdictions.

California voters made legal history by ousting Chief Justice Rose Bird and two of her associate justices on the California Supreme Court. The public, by a two-to-one margin, rejected the jurists who were perceived as judicial lawmakers rather than interpreters.

The California election is important to the rest of the nation because it demonstrates that the public will not tolerate judges who rewrite law under the guise of interpreting law. The reaction was not merely a partisan political phenomenon. The two-to-one margin of defeat was not Republican versus Democrat; more of the latter are registered in California. Even 64 percent of the California judges who responded to a *Los Angeles Times* poll voted against at least one of the Supreme Court justices.

The subject jurists erred in usurping the power of the Legislature and of the people to make law. Thus, the public treated them like politicians and they lost their judicial independence. The result was a highly visible political campaign with justices raising million dollar war chests from attorneys and individuals who eventually would be appearing before them.

California Lesson. The lesson from the California experience is that the public will not tolerate judicial activism. The true threat to the independence of the judiciary is not an involved public, but rather justices acting as lawmakers rather than as interpreters of the law.

The next historical event occurred in 1987, when the U.S. Supreme Court decided Pacific Legal Foundation's *Nollan v. California Coastal Commission* and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*. These two cases involved an individual family and a small church pitted against government. In *First Church* the U.S. Supreme Court held that there is a compensation remedy when government by regulation

deprives an individual of the use of private property. The decision, authored by Chief Justice William Rehnquist, went further and found a right to interim damages for government-caused delays or where government chooses not to proceed after a court finds that a taking has occurred.

In *Nollan*, authored by Justice Antonin Scalia, the Court held that the exaction game was over and that the California Coastal Commission could not require Patrick and Marilyn Nollan to dedicate one-third of their property to the state as a condition of receiving a permit to rebuild their home. Thus, government may no longer impose exactions and conditions on permits or licenses where the individual otherwise has a right thereto. This ruling is quite broad and applies to all government agencies in the nation that issue permits or licenses.

Shifted Power Balance. In *Nollan*, the United States Supreme Court also changed its practice of giving full deference to government. Instead, the court held that government regulations and exactions are to be subjected to "strict scrutiny." As a result, the power balance has adjusted and the individual has the right to ask the courts to strictly scrutinize government action. While government technically does not have the burden of proof, under the strict scrutiny rule the practical effect is a shifting of that burden.

The court also set up numerous other tests for judging the validity of a permit condition, including the requirement that government must show that its actions substantially further a legitimate government purpose. This means that government agencies with confiscatory or other unacceptable intents are out of business. In the future, they will have to pay for what they take; certainty and fairness will be restored in the government regulatory process. In the meantime, there is much work and opportunity available to the conservative public interest litigator.

Other significant judicial trends include the U.S. Supreme Court's recent decisions indicating that prohibitions against racial discrimination apply to all races. Access to jobs, housing, public contracts, education, and other such opportunities will not be based on race no matter what the government decrees.

The Future of Public Interest Law in the 1990s. With the beginning of the demise of judicial activism and judicial appointments by President Ronald Reagan and governors like California's George Deukmejian, the present federal and state judiciaries have changed. Strict interpretation is the trend. However, as stated by California's new Chief Justice Malcolm Lucas, while speaking to a group of Pacific Legal Foundation supporters shortly after his confirmation in March 1987:

> [Y]ou should not assume that the new court will so readily overturn or reexamine prior decisions having an adverse effect upon the search for justice. These former decisions will remain comfortably in place until someone has the ambition, in the context of a particular appeal, to raise the question of whether a reexamination of the underlying principles may be appropriate. I suggest therefore that your Foundation will continue to play an important role and perhaps an even more useful and appreciated role than ever before in the development and reshaping of the civil and criminal law....

THE PLAN FOR THE 1990s

The following are the steps that will be taken by Pacific Legal Foundation and its allies in meeting the challenge and opportunities of the 1990s:

1) ***Nollan* Follow Up** – There is an extensive effort nationally to seek to narrow and restrict the application of the *Nollan* decision. This involves intense publication efforts and participation at the state and federal trial court levels to have the principles of *Nollan* restricted. Conservatives must respond.

The *Nollan* decision was solely the result of the conservative public interest law movement's efforts. Its continuation and expansion are essential. Already, successful efforts have been achieved using the *Nollan* principle to invalidate arbitrary no-growth land-use ordinances, challenge rent control concepts, prevent trade secret disclosure as a condition of competing for government contracts, attack permit fees to finance government activities normally funded by general taxation, and oppose arbitrary special taxation schemes.

2) Computerized Information Sharing – Thanks to grants awarded to PLF by Lilly Endowment and the E. L. Wiegand Foundation, a computerized information retrieval system is being implemented. This process will eventually place a computer in the office of each allied public interest litigator with access to all pleadings, research, analysis, and tactics developed by conservative public interest lawyers. Such information is not otherwise available and will significantly increase the effectiveness of all allied groups. The potential of this computerized clearinghouse of information is impressive. This nerve center of information also will facilitate greater personal contact between litigators and interaction with policy groups.

3) Special Focus on the Judicial Branch – All three branches of government are critical to the goals of those who believe in true individual and economic freedom. Each needs attention. However, PLF believes that the judicial arena affords unique opportunity and needs the special attention of conservatives for the 1990s.

The prognosis for the U.S. Congress in the next decade is not a rosy one. Here, hope for the principles upon which our country was founded are bleak. As to the executive branch, much is hoped for the Bush Administration. However, five months into the Administration forebodes little gain for those concerned about the rights of the individual versus government. It is unlikely that the executive branch will hold its own against bureaucracy during the next four to eight years. What already has happened in the environmental field during 1989 is staggering. No one has even noticed the great intrusion of federal jurisdiction into what has traditionally been that of the individual or local and state government. Is it impossible to have environmental gains without adversely affecting jobs, housing, and the national deficit? The answer is that it is, but no one is addressing this issue.

Without taking anything away from the importance of the executive and legislative branches of government, there is a rare opportunity in the judicial branch. The earlier discussion of events during the last two and one-half years demonstrates what is at hand. Pacific Legal Foundation and allied groups are overwhelmed with opportunity. Unfortunately we are able to take only one out of every thirty to fifty cases brought to our attention. The process of setting priorities and choosing cases is critical. However, groups are pulling together to simplify and expand our collective effectiveness.

4) Limited Government Project – Another process in development is a plan to deal with bureaucratic activism. We have accomplished much concerning judicial activism, but the

bureaucrats outlast everyone else and never lose ground. A plan is evolving to deal with this subject effectively. The initial efforts have been encouraging.

5) Information Exchange – In addition to the computerized information exchange, an information system is being developed to alert allied groups and individuals of major developments in areas of interest. This monthly release of information is scheduled to begin during late 1989. Once alerted to emerging developments, interested participants will have direct access to the base documents, court decisions, or related matters by use of a computer modem or telephone access. Special areas of interest also will be targeted in which all legal developments nationally will be tracked.

6) Presidential Executive Orders – Following the U.S. Supreme Court's decisions in the *Nollan* and *First Church* land-use cases, President Reagan issued Executive Order 12630. This order mandates federal agencies to evaluate all their activities and actions to avoid the possibility of unconstitutional and expensive takings of private property through regulatory action. This requires federal attention not only to environmental impact but also to improper interference with private property. Thus, the *Nollan* and *First Church* cases have been implemented by the federal government and takings assessments will be made right along with environmental assessments. We hope that during the 1990s a similar assessment will be required of government agencies as to the impact of their activities on the availability of jobs, affordable housing, and the national deficit.

7) Environmental Balance – Protection of the environment is a critical national concern. The question is how this can be accomplished without sacrificing a healthy economy or the availability of adequate food, housing, and jobs. The country needs an environmental policy that balances and meets the needs of all these important national interests.

Sound environmental policy must balance protection of the environment with other equally important national interests. Clearly, protection of air and water quality, preservation of nature's treasures, and other environmental objectives are necessary to ensure that present and future generations enjoy a high quality of life. However, an environmental policy that pursues these important goals without regard to other national interests – including housing development and economic growth – will constrict the nation's ability to meet important societal needs and have a disproportionately negative impact for the future.

Protection of the environment is not an option, but a necessity. Nature provides limited natural resources, which must be protected. The essence of a sound environmental policy, however, lies in achieving a balance between protection of the physical environment and promotion of other fundamental human needs.

To strive for the appropriate balance, government must design programs to weigh competing interests effectively and pursue the best course efficiently. Environmental policy that places environmental concerns ahead of all other concerns is out of balance. And so is a program that fails to strike a proper balance when the cost to create and operate the program is high and environmental benefits are small. The broad government goal is to determine what is best for all the people in the long term and to give due regard for costs and other fundamental issues when seeking environmental protection.

Today the only voices for balance in the environmental area are those of the conservative law movement. It is essential that we be fully heard throughout the 1990s.

8) Opportunity Without Discrimination – Major breakthroughs are occurring at the U.S. Supreme Court level to eliminate all racial discrimination and quotas. The public interest law movement has been there when it counted and will continue to be there. It is significant that the Landmark Legal Foundation has established its Center on Civil Rights in Washington, D.C., to specialize in this subject and is developing a broad-based coalition including persons of all backgrounds who oppose discrimination in any form.

9) Education – With the increased effectiveness of the pro-free enterprise public interest law firm there is a major need for expanded educational programs. The 1990s will reflect an increasing role for public interest groups and will see a unique integration of public policy and legal groups to maximize their respective contributions. The computerized information retrieval system described above will be a catalyst for this assimilation.

CONCLUSION

It is clear that there is more opportunity than ever before to use the courts effectively to preserve and enhance individual and economic freedom. There is no question but that goal-oriented litigators who believe in individual freedom, free enterprise, and limited government have the opportunity and the ability to dominate the 1990s. It is essential that all necessary steps be taken now to assure that this occurs.

It is up to the conservative law movement and its allies to seize the offensive and take advantage of the opportunities at hand. For conservatives, the 1990s could be comparable to the explosion of liberal public interest activists in the 1970s, which resulted in a growth from 50 to more than 900 liberal public interest lawyers.

While we do not need a proliferation of conservative groups or an additional 900 public interest lawyers running around the landscape, we do need to fill in our ranks and develop our effectiveness, computerization, and modernization. Improved communication, cooperation, and coordination need to be established.

Most conservative public interest law firms have policies against accepting funding from government agencies, but mainstream America believes in their their philosophy and has the capacity to provide the necessary funding. Now is the time to recognize this opportunity and have the commitment to respond.