THE LEGAL PROFESSION: A TIME FOR SELF-ANALYSIS

An Address* by Ralph M. Nader, Esquire**

Law Day is always a good occasion to look over the role of the profession. Traditionally in many gatherings around the country, the profession has used Law Day to praise itself. This is an occupational trait of the legal profession which is not restricted to Bar Association banquets. I was asked to speak to a number of New York lawyers recently at one such event in New York. As I sat awaiting my turn, the lawyers first praised themselves and after they finished, they began praising judges and gave them awards, scrolls, and plaques. Finally I got up and I said, "Why don't you try something different next year? Why don't you clear the entire head table and replace it with victims, your victims, and honor the victims for once?"

There are, however, some occasions on Law Day when we do look at our profession and ask some fundamental questions about it. We have a society that is very legalized, (unlike many other societies), but this is not the only way to organize a system of justice. It so happens that we have organized our system of justice in such a way that it requires many lawyers. There are now twice as many lawyers practicing in this country as when I graduated from law school twenty-one years ago, and there is an estimate that it might reach one million before the year 2,000. One million lawyers. "Imagine!" How's that as an index of the Gross National Product? Does this reflect an increase in the quality of life, or is this a response to avoidable legal problems which reflect legal needs, which in turn, demand lawyers.

I was in Japan recently and I learned that in a population of 110 million people that there are only ten thousand lawyers. We have a population of 220 million people, and we have 440,000 lawyers. Then I went to China for a brief visit and I found that in a society of 800 million people there were only 5,000 lawyers.

It was ironic that it was there that I met Melvin Belli, who was on a tour of China. He had spent three weeks trying to get inside a courtroom; and when he finally did in Peking the last day he was there, he found it in recess. So while he did see a courtroom, he had to leave without seeing one in

*This address was delivered in observance of Law Day at E.J. Performing Arts Hall on the campus of The University of Akron, April 30, 1979.

action. However, before he left the Chinese told him never again in China would there be private lawyers because they represent the enemy—not the people.

Well, who do the private lawyers represent in our country? They represent to a great degree the powerful and the privileged, instead of the people who need such representation. The legal profession is not an equitably deployed one. If you look at the areas of injustice in the country and who among the population is exposed to this injustice, you will find that lawyers are often not there, or if there, they are there as an act of charity. Lawyers are not there because of the economic incentives which in the legal profession develop a magnetic attraction to clients with substantial retainers. Or they are not there because they are in government service which provides them with substantial on the job training before they go into the private sector and represent the clients they once were regulating. This serious problem has been going on for a very long time, but only periodically is it recognized as a crisis by the Bar.

Reginald Heber Smith earlier in the century developed the concept of legal aid and the public defender. The 1960s saw the war on poverty (which is the last war Congress declared) and the development of legal services. Now our Legal Service Corporation has a budget of 300 million dollars, very substantially up from four years ago, and the plan is to have one legal service attorney for every ten thousand poor people in the country. Beyond this, there are pretty thin pickings for a great number people in this country. What is left is certain law firms that have Pro Bono components. For example, they will take a tenant abuse case, but they won't deal with the structural problems of a landlord-tenant lease, nor the inequitable bargaining power between the two parties. They will just focus on a particular tenant grievance. But even that, in terms of allocation of resources, is very, very small since the Bar now has a Gross National Product of several billions of dollars a year. One might say that the Pro Bono activities of the Bar simply recognize a duty and illustrate how little this duty is fulfilled.

The Pro Bono activities of the Bar today fail dismally to meet the standards set by canons of ethics that are hung on the office walls of attorneys. The canons of ethics are representative of the interests of Justice that the Bar uniquely is equipped to uphold. They are not just slogans, if you read them carefully that is, and the allocation of resources by the Bar (given its enormous growth in income in the last 15 years, in particular) to Pro Bono activities is disgracefully small. There are a few large firms that are proud that they have one Pro Bono lawyer full-time out of the 140 lawyers they have, and most are groaning under the burden that imposes. This is the standard of leadership in the Pro Bono area.

The development of the profession also is inequitable in the sense it
tends to seek its highest professional reward by representing artificial entities instead of real human beings. The artificial entities we know as corporations. When Ford Motor Company needs lawyers they have no problem getting them. But when people, who are in the cars which go off the highway mysteriously due to a product defect, need lawyers, it is difficult to find one who will engage in the necessary discovery process and the necessary ordeal of confronting a very well-equipped defendant call Ford Motor Company. This is a problem that goes beyond the existing Bar. It starts with the law schools.

The law schools are the breeding ground of future generations of lawyers, and they are very modest in their self-estimate of their significance upon the profession. I think they are far more significant than they make themselves out to be. Once a student finishes law school, it's very difficult for him or her to develop a different legal value system. They are busy on a day to day basis, and they soon develop too set of an agenda to suddenly say, "We're gonna do it in a different way. I am not going to take cases that don’t reflect my conscious assessment of justice in this society. I'm not going to take cases that give me fat retainers or stigmatism."

The law schools, in turn, have a problem of analyzing this deployment issue. To put it simply, a large proportion of the lawyers represent a small proportion of the people in this country. Law schools have a difficulty in recognizing this problem, because they have allowed themselves, with various exceptions from time to time, to be mere images of the legal job market.

So what determines what courses are highlighted at law school? What really determines it is whether the material is used in obtaining a legal position after graduation. When I was at law school, for example, there were courses on corporate securities and regulations, corporate taxation, and corporate property. There were courses dealing with trusts and multi-million dollar estates. There were no courses on poverty law, no courses on consumer law, no courses on environmental law; and when I asked why, the answer was, "What a dumb question. Why aren’t Harvard Law School Students taking courses on poverty law, because you can go to Cumberland Law School for that!"

In the first few weeks of first year law school, I came up to one professor after having observed a number of courses and I said, "Professor why isn’t there a course on food and the law?" He was sort of dumbfounded by the question and couldn’t answer right away; one of the few times I ever saw the phenomenon. He recovered and said, "Food?" I said, "Yes." I was sort of dumbfounded myself. Maybe I asked a stupid question; you know how people are during their first year of law school. They think the important obvious questions suddenly become dumb questions. That is called acculturation, law school style. Anyway he said "Food?" Therefore, now I had to say something since it was kind of awkward because he asked
it as a question, so I said, "Yes, we all eat it professor." Then he said, "Well I suppose we don't have such a course (meaning the law) because the material has not been developed to a level where it presents a sufficient intellectual challenge to the students." I said to myself, "Maybe I don't understand?" You have the Food and Drug Administration, you have sanitary problems, I thought there was all kinds of problems regarding food and the law. I did not know what he meant by, "it had not reached a level of analytic intensity where it would present a sufficient intellectual challenge for law school work." So I said, "Which subject does professor?" He looked up at the ceiling and a kind of glow came over his eyes when he said, "Tax."

I learned more from that interaction than some more lengthy discussions at the law school. Basically, what he was saying was that the law school wanted intricate material. Something that would be challenging and would make the students think like lawyers — Whatever that means. Could it be that the group that could develop the law of food, namely consumers, simply didn't have the rights or evidence available to them or the legal representation to bring cases before the agencies and the courts which in turn, would have developed the food and drug laws into a wealth of material that qualified for the West Publishing Company's casebooks.

The reflection of the curriculum is all too often the reflection of what law has been developed in the past, which in turn reflects who had the might to shape the law. All of the above in turn very much reflects the distribution of power and wealth in this society.

Many law students take hold of case books that are very heavily filled with appellate cases. However, this may not be a very good sample of what the law really is in a particular course, because much of the law never gets appealed. The people who appeal cases must have the resources to appeal their case; therefore you are going to have trouble getting into a case book. This is something which is important for law students to think about as they go through law school. But for purposes of our discussion, it does reflect an observation that the value systems, specifically the legal value system that law students are fertilized with in school, are not ones that pay an extraordinary amount of attention to the gaps in our legal system and to the inadequate representation of millions of people. In our experience in law school, we never discussed the singular question of how many people can participate in the legal system, or its converse, how many people are shut out of their own legal system because they don't have the money, time, rights, etc. to gain access to justice. Now this issue of access to justice is becoming a paramount issue in legislation being proposed in Congress. This issue is also now being written about by public interest lawyers, and law reviews are also beginning to pay more attention to it.

It is interesting that this kind of emphasis usually follows a broad pattern
of legislative enactment that gives paper rights to a lot of people. We have of course civil rights law, environmental rights laws, occupational health and safety laws, consumer rights laws at the federal, state and local level all of which have greatly broadened the kind of rights that people, who were basically shut out of the system, now can avail themselves. So now that there are these legal rights on the statute books, the question shifts to, “What kind of access to our legal system do people have once they are given these legal rights?”

Justice really is a continual struggle with power. The law is really in tension with power, raw power, whether it is political or economic. Power is continually being civilized by law and justice. In totalitarian societies you have more power than you have law, and in every society there is a particular point on a continuum which spells the existing state of tension between law and power. In the Watergate tragedy, you can see how power had overwhelmed the law. In Watergate you had violations of the campaign finance laws, you had mail opened, you had burglaries, you had the associated violations by the FBI and CIA disrupting citizen activities, bugging telephones, burglarizing, etc. These were expressions of power overcoming the law, in defiance of the law.

Now when we talk about the emergence of legal constraints on power, we have to be very sensitive of how power reacts. There is too much emphasis, perhaps part of an inbuilt euphoric optimism, that if there are advances in legal rights and procedures that they are not seen as provocations for counter replies by the forces of power. In the fight for access to justice, the legal rights of the consumer, or the tenant, or the sharecropper must be connected with two other tools. The first is adequate remedies. As we know, you can win a case in small claims court, but if you can’t execute judgement, you are left with a hollow victory. The second is adequate legal representation. You can have the legal right, you can have a legal remedy, but without legal representation you’re out of luck.

What are some of the obstacles to access to justice? We are talking about access to the courts, administrative regulatory agencies, and legislatures. First of all, there is the obstacle of lack of information. It is a stunning fact that people have far more rights than they have any idea of possessing; they just don’t know their rights. They are exposed to unfair consumer credit transactions or they find themselves denied life insurance, but they have no idea what rights they have. Persons who are denied a life insurance policy, under federal law, can go to the credit bureau and check their file to see on what basis he or she was denied the life insurance policy. Most people don’t know that. Women now have a number of laws insuring equal opportunity of credit. The federal reserve and some other banking agencies issue pamphlets which get distributed to ten to twenty thousand people around the country. But again, most people are not aware.
Our educational system has no professionalized learning of the law, that to this day we are doing a very poor job of educating elementary school students, high school students, and college students about the law, whether or not they are going to become lawyers. There is a group in California, a constitutional rights group which is developing a curriculum for elementary and secondary schools to teach the students their rights; their rights vs. police, their rights vs. merchants, their rights vs. city hall. This type of movement needs to spread. This problem of insufficient knowledge about one's rights was exacerbated until a very short time ago by the Canons of Ethics, since the Canons prevented lawyers from seeking out clients it prevented lawyers from telling people "look these are your rights." This was considered unethical soliciting. These Canons are now being reinterpreted or changed so not to be a barrier to equipping people with the knowledge that they do have rights, and that they don't have to swallow their complaints or their grievances. This whole issue of lack of sufficient dissemination of citizens' rights bears thorough study, and it should be a subject for law reviews to devote some of their energies. Especially since at the present time law reviews engage in a lot of superfluous rigor.

The importance of this subject cannot be underestimated quantitatively. We tend, as lawyers, to make judgements about our legal system in an optimistic vein without giving any indication of how quantitatively significant the advance may be. People say, "Why sure people who are poor have access to lawyers." There used to be a saying a few years ago, "Only the rich and the poor have access to lawyers in America." Well, obviously there are a great many poor people that do not, and even those that do, have access only in certain kinds of cases. Under the Nixon-Ford administrations, they certainly did not have access to legal services for structural changes. Access to legal services is extremely important to the poor, since lawyers can reform the law with these types of structural test cases.

The second barrier to achieving access to justice is economic. If you do not have deep pockets, can you afford a lawyer to take your case? For years we have seen a rule often applied that if you are accused of a crime and you are poor, you are entitled to counsel. In fact, it is a constitutional right in a criminal case. But we need to expand well beyond the criminal case, even beyond the courts. We must expand this right to regulatory agencies. If the Food and Drug Administration is having a proceeding dealing with a spectrum of antibiotics as to whether to keep these antibiotics on the market or not, is there any less a need for legal representation of consumers before a regulatory agency regarding this life or death situation, than it is for a person accused of a misdemeanor or a felony?

The problem is that access to justice in some forms in this country is so expensive that it even deters large corporations from litigating. I recall a case between American Electric Power, on the one hand, and Westing-
house and a couple of other electric equipment manufacturing companies on the other. American Electric Power sued Westinghouse and others alleging price fixing on heavy duty turbines. Westinghouse counterclaimed alleging that American Electric Power had acted in a monopolistic manner as a buyer. In short, there was a claim against a monopolist and a counter-claim against a monopolist. Then they hired their respective giant New York firms; these huge law factories where the young lawyers check in and huge secretarial pools go on at all hours. And the two large firms collided like two hippos in a swamp. The depositions started. The senior partners strutted to the deposition hearing room with their young associate lawyers carrying their bags at $50 per hour. Here, they would sit and haggle over what questions could be asked and whether the answer was responsive. One of the lawyers told me privately that he thought it was demeaning to see the senior partners, people with such substantial legal acumen, engage in such ridiculous haggling and arguing over these minute points. Well this went on for months and months. Before trial they decided to settle the case, and so these two giant corporate litigants got together with their two giant legal firms and sat down and settled the case. And you know what the settlement was? The settlement was that there would be no settlement on any substantive issues. It would be a settlement on legal fees. One of the parties received ten million dollars in legal fees and costs and that was the end of the case.

The IBM anti-trust litigation, which includes the Justice Department's case against IBM initiated in January of 1969, and also some private anti-trust litigation, will cost one-half billion dollars in legal fees. There is a law firm in New York that has an entire wing of its firm at Armonk, New York, which is the headquarters for IBM. Some of their people have been out of law school 10 years, and they have known nothing but this case—a rather broad minded experience.

Three years after I got out of Law School, I went to see a friend of mine who was practicing in a New York firm, and I said:

Q: How are you doing?
A: Fine.

Q: What are you working on?

Q: How long have you been working on it?
A: Since I got out of law school.

He then described the case. It was one of these giant anti-trust conflicts between two companies. I came back five years later, and I said:

Q: How are you doing?
A: I'm still working on the twenty-third count of that anti-trust case.
Q: You've been working on that case for eight years?
A: Yes.
Q: How can you tolerate that?
A: It is good experience.

Then I said, "Well drop me a note when you get to work on the twenty-fourth count."

This economic barrier is really very serious when it comes to lower income people, because the poor do not believe that they are going to get value for their money. Never mind just the money, their whole image of a lawyer is one that takes the funds, delays and displays a lack of sufficient candor about the progress of the case. You know they hear these stories; so that makes it even worse. The economic barrier is combined with what might be called the time barrier. There are many complaints that are $50, $100, $200, $500, etc. complaints; your average consumer complaints. Is it worth the time of a person to go and haggle, to lose time off from work, and to worry about it? They say, well, who cares? The probability of winning is sufficiently indecisive; it's not worth the time. It is interesting when people say, "Oh there are a lot of product liability cases in the courts today." Can you imagine how many there would be if all the ones that were merited found their way into the court. We're just dealing with the tip of the iceberg here. Before a recall of millions of cars there can be thousands of accidents, but only about five cases find their way into the courts on product liability.

There are other obstacles that are more technical. People don't even understand them, and therefore, become cynical. One of the biggest being the "Standing to Sue" obstacle. The Burger Court has made it quite clear in recent years that they are severely intent on restricting "Standing" if you are a citizen or a taxpayer. For example, you ask the court to require disclosure of the CIA budget, citing a provision of the U.S. Constitution, and you're thrown out for lack of standing along with some 200 million other Americans who the Court decided didn't have standing either. For example, you are a citizen and you ask the Treasury Department to account for the conversion of government services and employees for the re-election of President Nixon in 1972, and you are thrown out as you don't have standing along with 200 million other Americans. Who has standing? Presumably the Attorney General. So we are left to rely on John Mitchell suing Richard Nixon. The restrictive standing cases have been so numerous in the last five or six years that there is now a proposal in Congress backed by Senator Kennedy, Senator Mathias, and Senator Metzenbaum, to overturn some of these cases and to liberalize the law of standing. The law of standing in the local jurisdictions around the country is often much more progressive than it is before the federal courts.

What is the purpose of standing to sue, historically? This is an illus-
trative use of legal history to show how something can be devolve into misuse. The purpose of standing, in particular, was to make sure that the litigant had enough stake in the case to pursue the case, rather than just file a complaint and then drop it or choose not to pursue it with a requisite diligence. Well this, of course, is now being grossly distorted to prevent, in particular, citizens from challenging government action. The Justice Department constantly uses standing as a defense instead of moving on the merits in the case. This allows them to harrass, delay and avoid facing up to the substantive issues of the case.

Changing from judicial to legislative bodies, what are some of legislative obstacles to access to legislative justice? One, legislatures do not disclose enough. There are only three members of the House of Representatives who will give you a full voting record when you ask them. For the last two years, only three representatives out of four hundred and thirty-five! If you write a member of Congress and ask, "How did you vote on this?" The member will tell you. But if you write your member of Congress and ask to have a description of his or her votes for the last two years or so, they will say, "What votes are you interested in?" How are you going to judge? And judgment is a prerequiste to incentive to act.

Second, you have campaign finance obstacles. The average citizen cannot buy the average member of Congress. It takes the average corporation, the large businessman, and the large special interest to effect such a purchase. Congress now has transcended Will Rogers famous description when he said, in the 1930's. "Congress is the best money can buy." Congress now also leases itself; it is more versatile, and money still passes in cash within envelopes on Capitol Hill. Money is still a very corrupting influence. It comes not only directly, but it comes indirectly in terms of bank directorships and below market rate interest loans. It comes in the form of hunting lodges, paid vacations, etc. When we were lobbying the consumer bill last year, we would have members of Congress tell us right out with great anguish that if they voted for this bill, they would lose so much campaign funding that they would be vulnerable in the election. One of them told me, "Well if you can find $100,000 for my next campaign, I'll tell the business community to go jump in the lake on this bill." Just like that! I said, "Is that what it is really going to cost you?" He said, "That's what it is going to cost me." He finally voted for the bill, and he lost the next election.

The proposals to reform these obstacles to justice have been articulated to a level that most law students perhaps are not aware of. I am concerned about how isolated law schools have become from the principal legal reform movements of the day. It is dismaying how isolated they have become from concern over the massive defiance of the corporate legal system. For instance, we are now witnessing the elaboration across the land of a corporate crime
epidemic; corporate bribes, domestic and foreign, serious violations of job safety laws, consumer laws, and environmental laws. Violation of environmental laws run rampant, not just technical violations, but substantive repeated violations which are often condoned at the top of the company. Over 500 companies have admitted to the Securities and Exchange Commission that systematic bribery was condoned at the top levels of the company. Lockheed, for example, specialized in bribery for fighter plane sales.

As Lockheed was selling their fighter planes abroad, there would be an advance team of political fixers sent to the country of potential sale. These fixers would go to Japan, Korea, Indonesia, or West Germany, and they would find out which people could influence improperly which government procurement officials. Then they would proceed to buy these people out. This developed to such a level of intricacy that on one occasion in Indonesia, Lockheed was bribing the requisite Indonesian generals who would make the decision on which fighter planes would be bought. The competitors were other U.S. corporations, I might add. However, the generals were not responding to the bribes. So Lockheed sent in a team to investigate, and they found that another company was also bribing the same generals. On a subsequent investigation, they found that this company had been acquired two years previously as a wholly owned subsidiary of Lockheed.

Now this type of corporate crime might be seen as stimulating some law school discussions. Do you ever find yourself walking by groups of law students huddled in deep conversation regarding corporate bribery and what it does to our legal system? Is this something that is discussed in class? Are there students writing papers on corporate crime, white collar crime, economic crimes, which take a far greater toll in property and in human life than does street crime? I think these questions answer themselves.

The isolation of law schools, law professors and law students has never been greater since the 1950's. Even in the '50's, you would have law professors speak up in letters and petitions which they would release to the New York Times and the wire services on the Joe McCarthy phenomenon and other kinds of abuses. But now there seems to be a kind of collective feeling of what good does it do? And don't they always have other things to do?

At Harvard Law School, a good number of professors are very busy consulting, moonlighting with corporations. Law students were not told about an anti-trust professor consulting with IT&T on the Hartford Fire acquisition at the same time he was teaching them anti-trust law. The question is should students have the right of disclosure of the moonlighting and consultantships that the professors are conducting? What are they — in business? I mean, leave the consulting to the practicing lawyers. Law professors should be articulating career roles and higher standards for
the legal system. They should be spending more time with students. There is little professional work easier than teaching law if you just want to teach it routinely. All you have to do is master the case book, keep up-to-date with a few cases, go to class, and throw the students the Socratic method. Professors know that the Socratic method is a game at which only one can play.

Law schools and professors should strive to stimulate the horizons of students and to encourage students to become involved in broadly clinical legal education. For example, have students analyze legal systems in the community, the city, the country, and the state; do empirical work outside the library; develop public proposals, public recommendations, and new methods of organizing the unorganized. The law schools with their time, their scholarship, and their standards should be principal movers in this area. There are enough examples of where they have moved. However, much more could be done quite easily, while still having the students master the traditional rudiments of the subjects that form the core of the curriculum.

Second, there are proposals to permit regulatory agencies to allocate a portion of their budget to reimburse people who are needed to present the consumers’ view point with expertise before proceedings; whether it be the Federal Trade Commission, the Civil Aeronautics Board, the Food and Drug Administration, or the Interstate Commerce Commission. It's not conducive to a proper administrative process to have only one seat filled, that of the special interest claimant. It is not right to have only the industry seat filled with their lawyers while the consumer chair is empty.

The Federal Trade Commission has already spent about one-half million dollars a year providing funds to consumer groups to participate in rule making. It has worked very well but the Chamber of Commerce and other corporate lobbies are fighting in Congress not only to block a bill that would authorize this kind of reimbursement for public participation (under stipulated conditions) across the board, but also to repeal explicitly the authority of the Federal Trade Commission and a few other agencies who are already doing this in a modest manner.

The Department of Energy is in desperate need of public participation as it goes about wrecking our energy future by indenturing itself to the Exxon, Texaco, Shell, and Mobil Oil cartel. But, in 1977 Mr. Schlesinger fought in the Senate and in the House against proposals to equip the Department of Energy with an explicit authorization to assist people to participate in natural gas proceedings and other energy proceedings to counter balance the oil companies' representation which is charged off as a cost of doing business.

A third proposal that has been before Congress for years is to create a Consumer Protection Agency in the Executive Branch of government,
This would not be a regulatory agency, but an advocacy agency. If, for example, the Food and Drug Administration has been sitting on its hands and ignoring the evidence produced by the National Academy of Science concerning the ineffectiveness of the number of drugs, the consumer advocacy agency could petition the Food and Drug Administration to open the proceedings. Furthermore, the agency could participate in the proceeding and, if necessary, appeal the agency's decision. If the consumer agency thinks the result is contrary to law, it could appeal the result to the courts. This authority would break up the comfortable fraternity between regulators and regulatees that has prevailed in Washington for so many years. A pattern has developed where commissioners spend a few years on the Interstate Commerce Commission or the Federal Communications Commission, and then, go into the industry that they once regulated either directly or as lawyers or consultants to it. This consumer advocacy agency could pull the cases out into the courts. It would also have the expertise on its staff to challenge the marketing of products that adversely affect the health, safety, or economic well being of consumers.

This particular bill has passed on various occasions in the House and Senate. Even back in 1975, this bill passed both the House and the Senate, but it was never sent to the President because it was believed that President Ford would have vetoed it. So to this day we do not yet have a consumer advocacy agency. We do have the Department of Commerce which advocates for business and spends money subsidizing promotional and other efforts of business; and we have a Department of Agriculture which advocates for agribusiness and also spends billions of dollars subsidizing agribusiness; but we don't have for the one group in the United States that pays all the bills, the consumers, an independent advocacy authority in the Executive branch. This bill would have an appropriation of $15 million a year which is equivalent to one hour's expenditure of the Pentagon; one hour! Yet, it was furiously opposed by the most powerful combination of industry, trade groups, and corporations ever assembled against a bill. Why? Because this bill challenged their hegemony in Washington. The ability of the consumer agency to take cases into the federal courts convinced the business lobbies that we had a very, very good proposal.

Some day we hope that this bill will get through. As of now, there is no countervailing force in the federal government to defend consumer interests. As a result, the consumer loses in the following manner. There are decisions being made in the Department of Energy costing consumers billions and virtually no consumer representation. On occasion where there has been consumer representation, there is a glimmer of what the power of the consumer advocacy office would be. For example, last year we brought a case before the Department of Energy challenging Secretary Schlesinger's plan to decontrol gasoline prices, and for some seven months we progressed
in that case. This action saved consumers $350 million a month until the case was lost. This was a very unfortunate decision. Now gasoline decontrol, of course, is on its way.

There are other proposals on the agenda of the House and Senate for the next few years with which lawyers and law students should concern themselves. The Burger Court has established prohibitive economic barriers against consumer class actions. So once again, there is now a bill in Congress to overturn the case law. But who is going to lobby for it; who understands consumer class actions? Your average consumer group hardly understands it! It's just like the standing to sue problem I discussed earlier. The logical place for this burden or opportunity seems to be on the legal profession.

There are also two other proposals which are perhaps the most far reaching in terms of overcoming these barriers to justice. What is it that keeps large numbers of people with similar grievances from organizing? Now if we knew the answer to that question fully, we would have one of the most useful innovations in our social history. One answer, I think, is that there is not an inexpensive continual form of communication that is possible between these millions of consumers. After all, when you turn on the television set you can't talk back to it. Television is a one way form of communication from the station to you. So what other form of communication would be appropriate? Newspapers are very expensive to have a full-page saying, "Hear Ye, Hear Ye, All Ye Consumers Concerned with Ohio Edison," or "March To The Nearest Auditorium for an Aggregation So We Can Organize."

Thus, what we are proposing is that there be a law in every state that requires certain kinds of business; legal monopolies like electric, gas, telephone, utilities, and companies that use contracts of adhesion, as in insurance policies or landlord leases, to be required to put a message either in their monthly bill or on their policy or lease notifying you of the opportunity to join a state wide consumer group. Dues would be required; be it $5 or whatever minimum a year. These dues would work to provide the group with organizers, accountants, lawyers, and other experts that would represent consumers. For example, tenant groups, utility consumer action groups, and insurance consumer action groups could be formed. This plan would not cost the taxpayer anything since it would be voluntary to the consumer. Just imagine, you get the monthly bill, open it up and you find a little slip of paper saying, "Are you fed up with high utility rates? Would you like to join your own Ohio consumer utility action group?" (This by the way would create constructive career roles in the public interest area for young attorneys, accountants, economists, publicitists, organizers, writers, physicians, physicists.) Or this notation on your insurance policy: "Attention if you would like to join the group that advances justice in the insurance industry this is how you can do it.” Then maybe later the notice itself will
be written by the consumer group after it gets into operation and you are a member of it. In no time it could grow from a small one member-one vote group to an organization with a full-time staff, newsletters, technical expertise, political power, and the ability to confront these companies and trade associations in all forms of decision making within three branches of government. Thus, there would develop private non-governmental consumer groups rooted in a sustaining funding system with a full-time staff; through what we call a consumer check off.

This type of consumer involvement vis-a-vis utility companies was proposed in Wisconsin, California, Maryland, and New York. It passed one house in each state and the utility companies blocked it in the other house (as recently as last year in California and Wisconsin). However, it is coming back and I am convinced that this check-off is going to be to the consumer movement, in a voluntary way, what the labor union check-off was to the labor movement. It would be a convenient communication system to facilitate voluntary cooperation for consumer action. It would be a convenient system to connect large numbers of people who have no existing communication system, to connect them up through the corporations that are legal monopolies or that engage in contracts of adhesion. We have developed the check-off concept in an article by our associate, Arthur Best, that appeared in the *Temple Law Quarterly*.

The second proposal is federal chartering. Until now, I have been speaking mostly about access to government policymaking. However, we have to recognize that there are many forms of government. We have a political government, Washington; we have an economic government of large corporations. What is their legitimacy? They are given the right to operate through a charter, a state charter, on the traditional ground that it is sufficient that the market will discipline them, and if they cannot meet the rigors of competition they will shrink and go out of business.

But we now know that the corporations have been working mightily for the last 100 years to find ways to overcome those market disciplines; and not always by appealing to consumers. One way is through monopoly, illegal monopoly, or administering prices, and price fixing. Another is by deception, by not permitting consumers to be able to compare different products on the basis of the merits. Corporations try to program consumers into company products on the basis of slogans, jingles, television commercials or packaging, but not on nutritional comparisons, durability, or ease of maintenance and repair. They also overcome market disciplines by going to Washington for major subsidies. The corporate welfare system is booming in Washington. Uncle Sam is now called Uncle Sugar in some corporate circles, while they batter Uncle Sam when it comes to consumer protection.

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activities. Also, there are tax preferences and tax advantages that diminish the rigors of the marketplace. Another example is a licensed monopoly. You go to Washington, get an ICC truck certificate, and you can transport goods between two points with this ICC certificate giving you basically a very valuable monopoly which enhances the value of your company immeasurably. Therefore, there are many ways by which companies can overcome these market restraints.

Corporations also have non-market impacts that are very adverse on people. Pollution is one example. Pollution is a form of compulsory consumption of violent hydro-carbons, nitrogen oxides, and thousands of other toxic chemicals and gases. In recent months there have been widespread disclosures of many chemical waste dumps near residential areas and drinking water supplies all over the country. Another non-market impact is the influence over the political system that corporations have with their campaign financing. Yet another is their ability to shake down a community by saying, "If you don't give us waivers on this law and if you don't give us property tax reductions or exemptions, we'll have to close up and unemploy 5,000 people and go somewhere else." These are illustrated and documented in our book, *Taming the Giant Corporation*, to support the need for corporate legal reform.

Wherever there is damage and injury there should be a remedy, but corporations significantly are unaccountable to the 19th century state chartering instrument. Large corporations have too much hazardous technology, too much market power, political power, and communications control. It is simply a mismatch between the modern 1979 multi-national conglomerate corporation and antiquated state chartering mechanisms. It seems that in 1900 Delaware decided it was going to become the most premissive jurisdiction in the country for state chartering of corporations. Whereupon companies ran to Delaware to be chartered, and the rest of the chartering laws of the states began to be pressed down by the Delaware lowest common denominator. Delaware had no interest in controlling corporations through the charter. Delaware simply wanted a revenue source, and it worked since they now receive 20% or so of their state revenues from the thousands of corporations that are now domiciled in Delaware. These include Ford, GM, First National City Bank, IT&T, and Dupont. Of course, Delaware is a tiny little state and it hasn't got the ability nor the will to exercise its chartering responsibilities, to-up-date them, or to expand them. GM could buy Delaware in a weekend if Dupont was willing to sell it. And yet, Delaware sets the standard, the lowest common denominator for corporate chartering laws.

We have had proposals for federal chartering ever since Teddy Roosevelt and William Howard Taft. This federal chartering proposal was revived

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in 1939 by Senator O'Mahoney of Wyoming, and it is being revived once again. The important aspect of federal chartering is to open up new areas of legal accountability on the part of corporations to various constituent groups that they demonstrably have abused. Shareholders have fewer direct rights versus the corporation than they had years ago. The corporate system of elections is rigged and it couldn't hardly be more rigged. If a shareholder challenges a slate of Board of Directors, you are up against the corporation also. The incumbents in the corporation use corporate money to re-elect themselves. They have control of the proxy material notwithstanding the Securities and Exchange Commission.

Other constituent groups abused by corporations are the workers who have to deal with the workplace, the safety of the workplace, the right to know the chemicals and the gases they are being exposed to, etc. Take a typical company town situation; the ability to say if you don't do what we want we are going to throw you into a depression and go to the Mississippi is overpowering. You'll do what they want! And of course let's not forget the taxpayer who is increasingly asked to subsidize corporations. You know if you are a big enough corporation now and you are mismanaged, you don't go bankrupt. You go to Washington instead for a bail out. What is the Quid Pro Quo when there are loan guarantees or direct subsidies. What is the Quid Pro Quo? What is the taxpayer getting and what kind of administrative process to challenge is the taxpayer able to use? None! Zero! You could not have challenged the Department of Commerce when it decided in January 1976 to give General Dynamics a $750 million loan guarantee to build liquified natural gas tankers to ship gas from Indonesia to Japan. It is not appealable!

Now the federal chartering concept would develop not only a much more comprehensive disclosure pattern which would be incumbent upon corporations above a certain size, but it would also give more explicit rights and remedies to these aggrieved constituent groups directly to achieve justice. They would not have to go through a government agency. What is this called? It is basically a common law move. If you are in a car and the tie rod breaks and you crash into a tree, you do not go to the government and say please sue General Motors, you can sue General Motors directly under product liability. This is the kind of direct legal right and remedy that needs to be expanded to the various constituencies—tax payers, consumers, community residents, workers, and shareholders in order to develop the proper countervailing power to curb corporate illegality, pollution, or other abuses.

Now how can we develop the instruments to make these remedies work: the consumer check-off, public participation, reimbursement, standing to sue, consumer protection bill, consumer class action, federal chartering, and others. How can we develop the instruments to put them into action? One is, of course, the old call for more professional responsibility by the Bar, Bar Associations, and law firms. A second is to encourage law students to
see themselves and their faculty at a higher plane of significance, and further, to encourage them to research, investigate, and propose reforms as part of their law school education and intellectual ferment. A third would be to try to encourage enough individuals to hang up their own shingles. You can't imagine how small a percentage of law students intend to hang up their own shingle compared to 20 or 40 years ago. Not more than three percent! In rough surveys we have conducted, young lawyers do not intend to start on their own, even though we are in an era of great demand for general legal services. This is not a depression period for lawyers. More prepaid legal plans open up each day; more legal rights and procedures fertilize ingenuity and initiative. Now you can even advertise, and under certain conditions you can solicite. So you don't have to take a back stage to older lawyers and work with them as apprentices, etc. Yet there is little entrepreneurial spirit. However, we have seen some young lawyers who have done it for themselves, and have broken new ground as in occupational health and safety. For instance, the great asbestos recovery in Texas was achieved by a lawyer who hung up his own shingle. He worked on it for a number of years and broke this enormous litigation wide open. Now there are hundreds of cases and there may be hundreds of millions of dollars in judgments and settlements involving many worker-victims and many lawyers all over the country.

I think the idea that is most current is the Equal Justice Foundation proposal. It is a very simple idea. About two years ago, I sent a young lawyer to about 20 law schools for a period of several weeks to ask law students if they would be interested in pledging one percent of their lawyers' income to a new institution called the Equal Justice Foundation, which they would control, one tithe, one vote. The pledgers would be in the constituency that would elect a Council of Directors, and then the staff at the national and local level; pushing not for legal services, but for structural legal reform. The Equal Justice Foundation would deal with injustice on a wholesale, not on a retail basis. It would be working to put into operation many of these proposals that I have just discussed, such as liberalizing standing to sue, consumer class actions, and many of the others that have been well articulated in legislative coffers, but with no constituency to move them.

The first year, the class of 1978, 160 third year law students pledged to join the Equal Justice Foundation. This year the class of 1979, from a variety of law schools, is expected to pledge over 200. Some law schools are so sufficiently interested in this, that their graduating classes are achieving a 10 percent or better pledge rate. This moral stand by students is now beginning to affect members of the Bar, and some law professors have pledged. Ramsey Clark was the first practicing lawyer to pledge one percent and join the Equal Justice Foundation. A lawyer in San Francisco was so impressed that he pledged to match any third year class that achieved
10 percent of the class pledge rate up to $25,000 for the current academic year.

So I think we are seeing the creation of what could be a historically significant law reform group rooted in lawyers around the country who have enough of a commitment to allocate a percent of their income. Many of them will also participate by giving their time for structural reform in removing the many barriers that impede access to justice for millions of Americans. By doing so, the law profession is going forward in a more positive manner. Once these barriers are removed there will develop methods and instruments that will connect up legal rights with legal remedies. With legal representation there will also develop a professional sensitivity which will aid in delegalizing areas of our society which are needlessly complicated, in simplifying contracts and other instruments of agreement, in decentralizing certain courts such as small claims court, and in developing arbitration systems. More importantly, this new attitude will aid in our effort to convince people to spend more time understanding their rights even if they never want to be lawyers. By understanding their rights they would be developing a process of justice that would minimize the need for lawyers.

At the present time, the Equal Justice Foundation has just opened for operation. It is working on a number of projects in Washington and Boston, and they would be very pleased to hear from some law students and faculty here at the law school. They would like to see whether there is some degree of interest here in Ohio for opening a chapter of the Equal Justice Foundation. Year after year the Equal Justice Foundation will grow in numbers as well as in contributions as it tackles problems that have been far too neglected by the one profession the country relies on to deal with the justice issues, namely lawyers. Lawyers are for better or worse, the catalytic profession in our country. It is the profession that brings in medical, scientific, statistical, and engineering evidence and welds them into a process of advocacy and decision. And until our society is organized to do without so many lawyers, the lawyers have to take upon their shoulder responsibility commensurate with their status and power in society. The concept of the Equal Justice Foundation and the “one percent tithe” by lawyers and graduating law students is an effort to move toward those horizons.