

June 1980

A Proposal for Trial Lawyers

to form and sponsor

a

NATIONAL PUBLIC INTEREST LAW FIRM

Ralph Nader's Speech
to the Michigan Trial Lawyers
June 1980

RALPH NADER - MTLA - June, 1980

I would like to speak this evening about what I think should be part of the future agenda for trial lawyers in our country. One of the obstacles to forging ahead for any profession is a pride in what has gone before. When you compare what trial lawyers have done in the last 25 years to what they did in the 25 years before that, there's been movement. But no one can rest on laurels. You always have to look ahead and use the past as a base of experience and motivation.

My favorite suggestion for trial lawyers, one that has impeccable logic behind it, which is why it has been so continuously ignored is the following. I have met a number of trial lawyers who tell me they're under-challenged. They've won the big cases. They've taken the cleverest depositions. They've built the finest law firms. Some of them are still in their fifties. I say, "Well, what would you like to do?" They say, "Well, I don't know. I say, "What are you going to do?" They say, "Well, probably the same thing I've been doing." Well, here's a suggestion which maybe finally will take off, largely because some of the lawyers in this room have become interested and maybe they will take it as a Trial Lawyers Association position to the Montreal Annual Meeting next month.

That is the following: Why not start a Sabbatical Program for trial lawyers? Let's start it in Washington because that's where I think the biggest battles might be lost in the next few years and where you can make a great difference in addition to your national organization. There needs to be an office of seasoned trial lawyers

NADER /2/

dealing with the three branches of Government in this whole area of assault on the biosphere, personal injury from trauma to toxics. Right now, in Congress, for example, there is a consumer class action pending legislation going nowhere for the lack of forceful advocacy. There's a Toxic Substances Bill, there's a Chemical Waste Dump Compensation Fund, a super-fund, and there are many other proposals. Those that are moving are moving by losing. They move from one Committee to another, shedding some of their more important provisions. Before the Regulatory Agencies, all kinds of problems are coming up, attempts to chill the Regulatory Agencies, get them to reduce their initiatives, lessen their sanctions, abandon their missions, and on and on. Mr. Carter, just yesterday, proposed a project to consider flexible alternatives to regulation. That's like considering flexible alternatives to street patrol. What are these flexible alternatives? It's the all-purpose word today; it's called "incentives", otherwise known as "bribing corporations to stop them killing people" with "incentives". What kind of incentives? Is there any prognosis that they will work? The important thing is the word "incentives". That makes company executives feel good about Washington. That's the spreading trend now. Big, mismanaged corporations don't go bankrupt anymore. They go to Washington instead. It's incentives. Everything has to be an incentive now. An incentive to make a profit. If a corporation wants to open a new factory in a community, they don't just open it up, like in the old days and go to work. No, they sit down with the local government and negotiate all the incentives--tax abatements, free sewage connections and this and that. It's gotten so bad that even K-Mart won't open a store without some sort of tax concession.

NADER /3/

There are also great opportunities to work in the Federal Courts in this area. Look at the scenario. Let's say 40,000 trial lawyers that belong to the National Association, plus some more in addition to the 40,000 for the total State Associations. Suppose you did this. Suppose you opened an office with say three to four full-time lawyers who provide the continuity, working on Congress, litigation and Regulatory Agency efforts. Around that continuous core you build in sabbaticals where lawyers come, they take a year off to practice, or if they have just retired and going bananas at Daytona Beach, they come in. There are worse things to do than spend a year in Washington, D.C., whether you're just retired or want to take a year off. Cultural activities, go to the Kennedy Center, introduce your young lawyers to the Supreme Court. Also, do the tough, hard, ground-breaking work connecting up with all your networks throughout the country on these issues. I doubt very much, for example, whether the Price-Anderson Act would have survived in 1975 if there was that kind of group in Washington networked with the trial lawyers all around the country. I doubt very much whether the crucial provision in the Super-fund Bill expanding civil rights of action on behalf of people such as the victims of Love Canal would have been peremptorily one morning cut aside in a deal to compromise that Bill for anemic passage, if there was such an office.

Some people will say, "Well, most lawyers can't get away from their practices." Let's assume that's true. Most lawyers don't have to get away from their practices. It would suffice if 15 or 20 or 30 or 40 lawyers from all over the country at any one time spent

a sabbatical in Washington to animate and galvanize this kind of effort. Around those 30-40 sabbatical lawyers with the hard core of the few lawyers that provide the continuity, you build up a Law Student Intern Program, not only from the many law schools in the Washington area, but law schools from around the country, such as Stanford, Columbia and Harvard which have decided that they are willing to send law students for a whole semester where they get credit to work in Washington in such areas.

It's really something that needs a coalition of convinced people around, to be proposed to the national organization, to the various State organizations to get it underway. You are very badly needed and it's my judgment that the trial lawyers in this country, whatever they've done in the past, are not using more than a fraction of their potential influence and know-how and muscle from their files to their sabbatical principles. This is something which is written in blood because you've got your ability to expand your saving of life and limb and prevention of disease; you've got the political base around the country; you've got the litigative know-how; the lobbying savvy; and certainly, you've got the challenges are not small in number.

Albert North Whitehead once said, "Duty arises out of the power to shape events." If you apply that to yourself, you're going to have to expand the concept of duty because you've got the power to shape the course of events.

A few years ago, I sent a young lawyer around to law schools to ask the question, "Would law school graduates be interested in tithing themselves to form a new type of law reform group?" It was considered almost a lost cause because you know law schools a few years

NAD ER /5/

were deemed to be the pits of a kind of lethargy and apathy. Well, there was a good response and now we see the following: the class of 1978 and 1979, about 400 law school graduates from about 15 law schools have tithed themselves 1% of their lawyer-income after they graduate to form the Equal Justice Foundation which is under their control with offices in Washington and soon to be in other parts of the country. Its mission is structural reform of the law, wholesale reform, not retail. It is not interested in legal services on an individual basis. It is interested in reform of the Landlord-Tenant situation; it's interested in standing to sue bills; it's interested in class-action; it's interested in broader ways of appraising the selection of Judges, where they are not elected and on and on. It's a kind of structural approach to try to deal with these issues. The third class which has just come out will be another 200 or so law school graduates who have tithed themselves 1% of their lawyer-income. Now when this was reported in the legal newspapers, some lawyer from San Francisco got on the phone with me. He said, "What's this that's going on?" And I told him. He said, "Well, you know these law students are doing quite an interesting thing. I understand they have a lot of doubts when they graduate and that's pretty idealistic of them." I said yes. He said, "Well, I want to help." I said fine. He said, "Here's what I will do. I'll pledge \$25,000 matching dollar for dollar to any law school class which has 10% or more of its class pledging 1% of its income to join the Equal Justice Foundation." I said, "That's fine. I think there will be some law schools that will do that." Boston College did it that year and George Washington University Law School did it last year. Harvard came close with 8% and the University

NADER /6/

of Michigan came close with about 8%, so I thought it was a pretty good offer. He said, "I have one condition to the contribution." I thought, "Here it comes." I don't want any of the law students to think in any way that my pledge of \$25,000 is anywhere near 1% of my income."

There is a kind of ethical grandeur to the tithing principle and although it isn't 10% such as in the reactionary, medieval days, it is 1% and it does have a kind of ethical attraction and it's our hope that other lawyers long out of law school will see the wisdom of developing a group which is rooted around the country which has not for its mission any kind of Guild mentality like some of the Bar Associations, the ABA, and others, but has as its mission a structural reform of the legal system to open up access. I hope that in the next 10 years, access to the legal and political system will become one of the great issues of our country--political campaign finance reform, as well as access to the Courts, intervenor funding to provide people with the wherewithal to participate in administrative regulatory proceedings and many other similar approaches which have been worked on, studied, written up in the Law Reviews, discussed at some professional meetings, even put into Bills supported by people like Kennedy, but without an infra-structure out there, a power among the profession, it's going nowhere because "standing to sue" is not a widespread, popular, hot issue in America. It's understandable not to that many people unfortunately. These access issues are inescapably to be placed on the shoulders of the profession, which understands them and should try to de-mystify them and make them really understandable to a broader

NADER /7/

constituency. After all, if a Sheriff stood in the doorway of the Federal District Court in Detroit and for three hours blocked everyone from going in, that might even make page one of the Detroit News. But, standing to sue obstruction, taking these antiquated doctrines which are no longer rooted in the original rationale behind the standing to sue obstruction--that is an invisible barrier to the Federal Courtroom and it doesn't make news. But that doesn't mean it can't make news if we learn how to translate these issues and connect them to the deep-set values of people, all of whom believe that, yes, you should at least have your day in Court to prove the case on the merits and not be blocked by some of the Burger Court's recent decisions on standing to sue.

By now, you are getting the idea that I want something to transcend this evening. That is, I want a continuous process of working with you on the subjects that you have declared a particular interest in. Indeed, the one that most strikes my favor in terms of an immediate implementation for planning it is the Sabbatical concept. The idea of seasoned lawyers taking off for a year is a very self-renewing process. It's good for the lawyers; it's good for the law students they are teaching; it's good for society and it's good for their law firms.

I think it's something which should be given serious consideration for all professions. The mid-career Sabbatical--taking off, plowing new ground, making new kinds of contributions, applying your experience to new challenges. It also works for retired lawyers. Why do lawyers retire at age 65? Some of them haven't retired at age 65, but they're still extremely experienced. They have judgment. They have wisdom. They can draw on their pasts. I hope that people that do want to retire

NADER /8/

from the daily pressure and the daily work and lighten up a bit would have an opportunity to say to a sabbatical law firm, "Well, I want to take just one case. Let me take one case at a time. Or, I'd like to work half-time." Or whatever particular adjustment that would meet the sense of contribution that the person wants to make.

Let me just conclude on this note, if I may. That is, leadership is a very rare commodity in any society and when societies develop in a way where more people who could be leaders don't want to be leaders, they avoid leadership roles, the society is heading for trouble. Something is going on in our country which is inhibiting or discouraging the flowering of leadership at all levels, geographically and occupationally and politically. Mort Sahl said, "Our country has gone a long way. Two hundred years ago we had about 2½ million people and we produced Jefferson, Madison, Adams. Now we have 220 million people and we're producing Carter, Reagan and Anderson." Without commenting on the harshness of that observation, there is something going on. It could be over-specialization. There's a tendency when people are very, very specialized, they don't feel the time or the confidence to become synthesizers, to become integrators of pathways that open up new avenues and opportunities for justice and happiness. It could also be that people are too busy. That is, the telephone, jet planes, the tightly-packed daily schedules keep people from reflecting from time to time and re-assessing goals, re-assessing purposes and restricting themselves to specialized means to a means to a means where they often forget what it's all about.

NADER /9/

Whatever the reasons, I think we have to pay some attention to this problem. I think when you look at the law schools and you say to students, "Look, there are tremendous projects you can work on. You can be the only person within America overseeing the Postal Service from the point of view of the first-class user." They say, "Oh, really." "Or you could go to work for a prestigious law firm and hold the papers for the young lawyers who's working on the 23rd Count of the anti-trust suit," and they say, "That's for me."

How to motivate people in the profession of all ages to aspire to the highest fulfillment of the Canons, the ones that etch the obligation of a profession to the outside world beyond even the client parameter, important as that is, is the overall system of justice--lawyer-work without clients--law reform. How to motivate that is possibly the generic underlying challenge of all these things that we're talking about.

Ralph Nader
Detroit
June, 1980.