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Making It and Breaking It: The Fate of Public Interest Commitment During Law School

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MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL. By *Robert V. Stover*. Edited by *Howard S. Erlanger*. Chicago: University of Illinois Press. 1989. Pp. xxviii, 146. \$19.95.

Many students come to law school believing that after their three years of legal education they will be prepared to save the world by doing legal work in the public interest. However, when they leave law school, the vast majority of students follow the more traditional path of going to work for a private law firm or corporation. In *Making It and Breaking It: The Fate of Public Interest Commitment During Law School*, Robert V. Stover¹ and his editor, Howard S. Erlanger,² attempt to formulate a theory that explains the role of legal education in producing this change in students' job plans. The book is based on a number of surveys and interviews of law students at the University of Denver College of Law in the late 1970s, and focuses particularly on a small group of students who expressed a strong interest in public interest law upon entering law school. Although Professor Stover completed the bulk of his research ten years ago, his data, interviews, and conclusions still ring true. It is an interesting and valuable piece of work, offering intriguing insights into students' tendency to lose their initial interest in public service work.

"[P]ublic interest practice," as defined in *Making It or Breaking It*, "refers to legal representation of individuals and interests who would lack adequate representation if they had to rely exclusively on their own resources" (p. 4). It is clear throughout the book that the author considers service of such interests to be an admirable and important goal of the bar, and views a declining interest in such service as a problem that law schools should remedy. However, this attitude does not prejudice the book's treatment of the problem: no battle lines are drawn between the "good" people who work in public interest and the "evil" people who work in more lucrative private sector jobs. Stover simply tries to determine what it is about the law school experience that appears to sway so many people from their original desire to work in the public interest.

According to Professor Stover's research, thirty-three percent of the entering class at Denver planned to work in the public interest as an initial full-time job, but that number shrank to sixteen percent by

1. The late Robert V. Stover was associate professor of political science at the University of Colorado, Boulder. In 1980, he received his J.D. from the University of Denver College of Law, where he gathered the material for his manuscripts.

2. Howard S. Erlanger is professor of law and sociology at the University of Wisconsin, Madison. He edited and assembled *Making It and Breaking It* from draft manuscripts that Professor Stover was working on at the time of his death.

the end of their law school experiences (pp. 3, 13). In attempting to explain that phenomenon, Stover views law school's approach to public interest law practice as a pair of "bookends, neatly spaced, but without books" (p. 2). This refers to his recollection of an enthusiastically received speech to his entering class, exhorting them to serve the public interest, and a similar speech, barely applauded, given on the occasion of his and his classmates' induction to the Colorado bar. In the three intervening years, Stover recalled barely any reference at all to the lawyer's obligation to serve the public interest. Professor Stover's premise is not that law schools intentionally reroute law students into private sector practice, but that there is something about the law school years that socializes students, even many of those originally interested in public interest law, into choosing private sector jobs immediately upon graduation.

In order to track changes in job preferences, Professor Stover drafted questionnaires which were intended to ascertain students' preferences for initial jobs after graduation. The questionnaire, which was completed by 103 students, allowed students to describe their ideal jobs in their own words, and asked them to rank twenty listed legal jobs in order of desirability. Administered during the first and final quarters of the students' law school careers, the surveys showed a marked increase in preference for business-oriented jobs, and approximately a fifty percent decrease in preference for public interest jobs (pp. 13-16).

In addition to the questionnaires about pure job preferences, Professor Stover asked students to respond to questionnaires (distributed at several points between the beginning and end of law school) that asked what specific attributes they hoped to find in their initial legal jobs. The students were also asked how much they actually expected to find the things that they valued and were searching for in various jobs (p. 23). In other words, Stover was attempting to determine exactly why students hoped to take particular jobs after graduation: not only what jobs they thought would fulfill their hopes for the future, but why.

Rather than accepting the facile and often-used assumption that law students choose private sector jobs simply because they get greedier as they get older, Professor Stover believed that there were much deeper reasons, closely related to experiences during the law school years, that caused people to go into private practice rather than public interest law. Professor Stover's research shows that the students in his sample did not just decide to earn as much money as possible; both their values and the places of employment in which they expected those values to be satisfied changed substantially between the beginning and end of law school.

The change in values can be summarized by saying that the stu-

dents became less interested in serving the needs of others, and more interested in improving their own legal skills and working in a congenial atmosphere. The greatest value change was a significant decline in students' interest in working for "social and political goals or . . . help[ing] persons or groups with whom [they] sympathized" (p. 31). Equally important were the students' feelings that even if they were to choose public interest jobs, they might not be able to provide significant service to those with whom they sympathized.

As law school progressed, law students' estimates of the efficacy of public interest legal work steadily decreased. As they continued through law school, increasing numbers of law students began to doubt the power of the law as a tool for social change and reform (p. 85). They felt that not only would they not help those they wished to help, but also that they would receive none of the valuable training and professional advantages and advancement enjoyed by their peers who chose to work in the private sector (p. 31).

Working for large, private law firms became more and more attractive to law students as they became more concerned with high quality training, opportunities for creative and rewarding work, and professional advancement with initial employers, values which they increasingly associated with large firms (pp. 31, 35). Students believed that in the long run, they would become much more marketable if they went to large firms with large resources. They believed that in such firms they could hone their legal skills and make contacts that would serve them well throughout their careers, while in public interest jobs they would be out of the legal mainstream (pp. 82-83). Therefore, the students felt that if they went into private practice, their options would remain open, including the option to return to public interest law as a lifetime career, while they feared that if they went into public interest law and found it not to their liking, other options would not exist for them.

Although interest in working in a congenial atmosphere increased during the course of law school, and life in a large firm was consistently seen as being the least congenial option, students apparently did not find this factor significant enough to counteract what they perceived to be the big firms' significant advantages in other areas like training and remuneration.

It may seem fairly elementary to say that people who are more interested in serving their own, rather than the public's, interests will choose private jobs over public ones. Nonetheless, why do students originally interested in the latter become more interested in the former, and why do students believe that their personal interests (aside from obvious monetary benefits) will be better served by work in the private sector? *Making It or Breaking It* is most interesting when it discusses these questions.

Professor Stover gives an intriguing, and largely convincing, explanation of how law school and summer legal jobs contribute to the shift in student interest from public to private sector jobs. He argues that the first year of law school is simply too traumatic for most students to concentrate on the needs or interests of anyone but themselves. He suggests that law students are too busy either doing schoolwork or worrying about it privately and with each other to focus seriously on outside interests (like social reform through the law). Many of them, used to being the best and the brightest, can focus on little more than the struggle to survive and make it through their first year (pp. 50-51). Stover suggests that with some encouragement, many students would return to their original interest in public interest work once the first year is over and they are able to concentrate more on matters other than academic survival.

However, since the average student is constantly bombarded with images and messages relating to or supportive of traditional private sector jobs, Stover believes that only a student who "finds refuge in a public interest-oriented subculture" is likely to retain an initial commitment to legal work in the public interest (p. 45). Stover discusses the failure of his professors to discuss the responsibility of lawyers to serve the disadvantaged. Instead, throughout school, he found that his professors (and his peers) made jokes and statements referring to the correlation between legal skill and "big money" and "big jobs" in big firms (pp. 52, 64-65). Particularly in his second and third years, he found that professors, even the ones considered the most liberal and progressive, taught rules and legal analysis with very little discussion of any sort of normative concerns or policy considerations. He admits, however, that this was preferred by many higher-level students. In one class of mostly first-years, "a third-year student disgustingly reacted to the professor's attempt to discuss the social importance of exclusionary zoning by muttering, 'We're not paying for this stuff. I've got to take the bar exam, and he's wasting our time on policy'" (p. 59). While this attitude may not be universally shared by law students, it is certainly a common one, particularly for upper-level students.

As law school went on,⁹ students interested in public interest became increasingly uncomfortable discussing these preferences with peers who were interested in more traditional careers. Except in meetings of organizations like the National Lawyers Guild, students reported feeling that discussion of public interest concerns at law school was not quite normal and therefore not really acceptable. The perception seemed to be that those students who discussed their interest in public interest law were somehow attempting to demonstrate their moral superiority to their peers. As a result, such expressions were greeted with disapproval (p. 60). While this may explain why students originally interested in public interest feel a lack of support and choose

not to discuss their interests, it does not fully explain why they change their values and expectations significantly enough to change their job preferences in such great numbers. Stover contends that a number of students decided that it was best "temporarily" (for instance, during law school summers) to take jobs incompatible with their actual interests and goals because they could later utilize their top-notch training to fulfill those interests and goals. However, as they found that they liked a number of features of these "temporary" jobs, they could achieve "psychological consonance" and decrease post-choice regret only by downplaying the importance and possibility of using the law in the service of their political values. These students began to view their legal positions more as jobs, something they were good at, rather than as potential instruments of public good (p. 62). This shift in perspective, combined with a constant, subtle emphasis on money, prestige, and career advancement, worked to make it seem more and more sensible for students to seek private sector jobs if they wished to be happy in their careers.

Stover goes on to make the excellent point that potential law students, and even those graduating from law school, do not have accurate information about what lawyers do. Most law students really do not know what they are getting into when they enter law school: not only do they not know how to "think like a lawyer," they do not really know what a lawyer does, day in and day out. There is a great deal of what Stover refers to as "lay mythology" (p. 73) about what exactly it is that lawyers do, and as they go through law school, students realize that they, too, had subscribed to this lay mythology. What they may not realize, however, is that these myths will not be replaced by objective truths, but rather by what Stover calls "the mythology of the legal profession" (p. 73). It is not that students begin law school with a clouded vision of what lawyers do and leave with an accurate understanding of all of the realities of the legal profession. Instead, they graduate with many of their "lay myths" replaced by "legal myths" provided by teachers, peers, and summer employers.

Many students in Stover's study entered law school believing that all business and corporate work was dull and unchallenging, and that they could do stimulating, effective work only in lower-paying, public interest jobs. However, a number of them enjoyed their business law classes, found them challenging, and performed similar work in their summer jobs at private firms, jobs which many of them may have taken only intending to reap short-term financial benefits to help them with huge tuition costs. On the basis of this experience and the socialization process that placed corporate work at "the pinnacle of creative and challenging legal practice," these students concluded that they had misjudged corporate work and could find it very stimulating (p. 74). These same students increasingly believed that the sort of public

interest work in which they had been interested was unchallenging, unstimulating, and would not have much impact on the world (p. 75).

Stover points out that, while many students took basic courses which discussed business, very few took poverty law or civil rights courses or worked to serve the poor during their tenure in law school. Most of the students who worked in public interest enjoyed it and found it very stimulating. Most students, however, lacked this personal experience, and adopted the point of view seemingly dominant in the legal community that public interest work was not very challenging or interesting. They based their opinions about public interest work primarily on secondhand information from professors, employers, and other students, most of whom also had no firsthand experience with public interest law (p. 77). While there is no empirical evidence to support this conclusion, the reality of the matter may well be that corporate work is less interesting than they thought, and public interest work more interesting, but the combination of real information and legal myth combined to make students view the two types of work as opposite extremes.

Stover's book also discusses more traditional explanations for the shift away from public interest jobs. Based on his studies, he determined that growing older was not a cause of the shift, but that increasing political conservatism did have some limited role in causing students to prefer private sector jobs. He also found that students believed that fewer and fewer jobs were available in the public interest field, and that this influenced some to shift their preferences toward private sector jobs. While these factors should be considered, Professor Stover concludes that his explanation of shifts in values and expectations is more significant (ch. 5).

Stover argues that, in light of the dominant attitude in the legal profession that corporate jobs are more valuable than public sector ones, it is only those students who immerse themselves in some sort of supportive, public-interest oriented culture during law school who retain their commitment to public interest law. Only if they are sheltered in this way from absorbing dominant attitudes will they be able to pursue their original interests (ch. 6). Stover, however, perceives problems with these subcultures that cause them to be available to only a limited number of those students interested in public interest law. The National Lawyers Guild, for example, while strongly supportive of public interest, also is often perceived as a radical left-wing group, and many of the students polled by Stover were too uncomfortable with its political views to turn to it for support (p. 113). The other two subcultures that Stover identifies are part-time public interest work during law school, and clinical public interest work for credit. Unfortunately, while Stover found that a higher percentage of those students who worked in these areas during law school tended to

keep their commitment to public interest work than those who did not work in these areas, the opportunities for such work were very limited. Public interest groups had limited resources to provide to interns, and the law school had a fairly small clinical program. Consequently, very few students were actually involved with these supportive subcultures.

Since he believes that lawyers have an affirmative obligation to work in the public interest, Stover argues that law schools have an affirmative obligation to foster public interest commitment, by encouraging such work and providing pro bono clinical opportunities during the law school years. He suggests that, in addition to setting up clinics, law schools could set up broad-based public interest student groups, and encourage or require faculty members to donate time to public representation. Also, faculty members could spend more time discussing policy and discussing cases involving indigent clients as illustrations in class, rather than using only hypotheticals involving wealthy clients and huge settlements (pp. 116-18). While Stover does not demand that law schools attempt to convert students to the goal of working in the public interest, he believes that they should encourage, or at the very least, not discourage, those students who plan to work in the public interest upon graduation.

In the years since Stover collected his data, some improvements have been made. One improvement is the creation, over the past ten to fifteen years, of student organizations that have attempted to remedy the problem of students lacking first-hand knowledge of what work in the public sector is really like. Organizations such as the University of Michigan Law School's Student Funded Fellowships (SFF), Boston College's Public Interest Law Fellowships, and Harvard's SFF attempt to give students opportunities to work in the public interest during their law school summers.

Michigan's SFF originally depended almost solely on student contributions, asking the students who worked in firms and corporations during the summer to pledge one-half of one day's pay to a fund that would provide stipends to their classmates who worked in low- or nonpaying public interest jobs.³ Since that time, the organization has expanded to include contributions from faculty members, federal work-study programs, and law firms. In the summer of 1989, students alone contributed over \$40,000, and the faculty at the law school made personal donations and pledged over \$30,000 of law school money, with the federal government providing work-study money as well. SFF asks firms that recruit on campus to match the donations of the students who work for them, and many do, providing the fund with

3. All information on Michigan's SFF and The National Association of Public Interest Law was provided by the University of Michigan Law School SFF board. In the interest of disclosure, it should be noted that the author of this notice is a member of the governing board of the University of Michigan Law School's SFF program.

almost \$20,000 annually. As a result, for the past several years, Michigan SFF has been able to fund every student working in the public interest who has applied for a grant: in 1989, more than fifty first- and second-year students.

Michigan students receiving SFF grants work in a wide variety of public interest settings, including legal aid offices, U.S. Attorney's offices, minority rights organizations, and government agencies. Since Michigan SFF has no political affiliations, will fund people for both summers if they so desire, and (although assisting people in finding jobs if they request assistance) allows applicants to choose their own jobs, it may serve as the kind of neutral, nurturing public interest subculture that Professor Stover argues is needed to help people sustain their commitment to public interest work through law school.

Michigan's SFF is by no means alone in its commitment to the public interest. The National Association of Public Interest Law (NAPIL), founded in 1986, helps law schools interested in forming SFFs with financing and organization, and more than sixty law schools in the United States have some form of SFF. NAPIL also sponsors public interest job fairs and conferences to alert law students to the opportunities and rewards available to those interested in working in the public sector. Some law schools even partially subsidize students' transportation to such conferences, which gives them an opportunity to meet employers who cannot afford to interview at many schools.

Due to the relative recency of most of these programs, it is not possible to measure their effect on the numbers of individuals who eventually go into public interest law. While there is a great deal to be done, more and more schools appear to be recognizing the serious lack of lasting commitment to the public interest and to be making the sort of efforts recommended by Stover to remedy the problem.

Despite such efforts, it is still difficult for students who may amass large financial debts in college and law school to take these jobs. Public sector employers still have a great deal of difficulty paying salaries anywhere near comparable to those provided by the private sector, while they work their employees at least as hard. For example, Michigan's SFF pays students a salary of only \$250-300 a week for a ten-week summer, instead of the \$1500-1600 that a student can make in a top-paying law firm. While the public interest organizations in which these students work almost always urgently need the help provided by these summer employees, they can seldom afford to contribute any money toward their salaries.

Most of Stover's book is an attempt to explain why so many students choose to go into the private sector, even if they initially planned on working in the public sector. He offers his explanation of changing values and expectations in a clear, convincing manner, and provides

tables showing the empirical data upon which he based his conclusions. The book is of real value in offering a plausible explanation of students' motives that is more compelling than is the explanation that refers only to competing financial incentives. Stover presents interesting suggestions for how law schools and the legal profession may encourage students and lawyers to do public interest legal work, and his book may help students interested in public interest understand how they can retain that interest even in the face of messages that they would be ill-advised to work in the public sector. This country has a desperate need for all varieties of service to those traditionally under-represented, and *Making It or Breaking It* serves both to remind its readers of that need and to affirm that the legal profession can and should do its part in serving the public interest.

— *Laura M. Schachter*