"Ties that Bind: Defining the Public Interest"
Stage One

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Introduction*

Since the 1890s, liberals have been able to entrench their version of the public interest deeply into American political culture. Currently espoused explanations of this phenomenon often are framed in the context of the vehicles by which liberals express their version of the public interest--interest groups. A major proponent of this view, Theodore J. Lowi, in fact, refers to this as interest group liberalism.¹

The liberal leanings of interest groups, however, are but a partial explanation for the emergence of a liberal public interest. At least two other factors have contributed: the types of strategies some groups adopted to obtain their often initially unpopular objectives and the ability of leaders of these groups to obtain government ratification of their objectives. Typically, the latter was accomplished when group supporters became members of various administrations.

This paper is a preliminary report of a longer project that will explore the factors enumerated above from the 1890s to the present. Our examination here is limited in scope. Examining only the period from 1890 to 1917, we simply attempt to demonstrate that (1) currently we view the public interest as liberal, (2) the liberal version of the public interest was conceived of by a small group of people during the 1890s, and (3) this cadre of individuals formed three organizations--the National Consumers' League, the National Association for the Advancement of Colored People, and

*The authors would like to thank Andreas Sobisch for his research assistance.
the American Civil Liberties Union—to operationalize their concept of the public interest, which they most frequently did through litigation.

The concept of the public interest is elusive. Most have not attempted to define the term and those who have have been apologetic for their efforts.1a

Simply because political scientists have been unable to define the term does not mean that there is not a public interest or, as Glendon Schubert suggested, that we should not try to study it.2 The fact of the matter is that however elusive a definition of the public interest may be, we have a responsibility to explain political phenomenon of which the public interest is part. As Jeffrey Berry as eloquently stated,

Because the public interest is such an amorphous concept, it may seem self-defeating to use it at all. The single fact is that both the media and the organizations themselves are using the expression 'public interest group' with increasing frequency. It is most meaningful, therefore, to take what is common usage and to construct a precise definition that will make reasonable sense to both political elites and political scientists alike.3

Beyond the explosion of so-called public interest groups, other illustrations of the manifestation of the public interest are readily available; we now have a journal entitled Public Interest, litigation by public interest law firms, and politicians standing for the public interest.

Even though we may be unable to construct crisp conceptual and operational definitions of the public interest, we have some notions about
the meaning of the term. Simply stated, like obscenity, we tend to know the public interest when we see it. And, currently the image we tend to conjure of the public interest is one closely allied with liberal goals.

Examples of how liberals have influenced the development of the public interest are readily available. In the past few years, for example, there has been a proliferation of works with such generic titles as *The Public Interest*, *Public Interest Lobbies*, etc. Upon a careful examination of these works, it is clear that scholars agree that the public interest is decidedly liberal. For example, to conduct his study, Jeffrey Berry surveyed 83 public interest groups, 53 of which are easily identifiable as "liberal." Conversely, only six groups could be readily identified as "conservative."

Another indication of the liberal entrenchment of the public interest in the literature comes from American government textbooks, which now regularly include discussions of the public interest or public interest groups. Most, in fact, specifically connect the public interest with the philosophies of Ralph Nader groups and Common Cause. Typical of the sections in general textbooks is this statement found in Robert D. Kantor's *American Government*: "Two of the best-known public interest groups today are Common Cause . . . , and the many groups formed by Ralph Nader." In the latest edition of his text Robert Dahl even included a list of public interest groups: Common Cause, 15 Nader groups, the League of Women Voters, the Consumers' Federation, Americans for Democratic Action, the American Civil Liberties Union, and one conservative group, Americans for Constitutional Action.

Even the more specialized textbooks on interest group behavior operationally define public interest groups as those with liberal leanings.
Again, according to these authors, at the epitome of those representing the public interest are those groups founded by Ralph Nader. For example, Ronald J. Hrebenar and Ruth K. Scott, authors of *Interest Group Politics in America*, claim that "the two most active [public interest groups], Common Cause and Ralph Nader's groups under the umbrella of Public Citizen Inc., have sparked major changes in the structure of the political process and government policy." After detailing the activities of these two groups, Hrebenar and Scott describe the tactics of other so-called public interest groups, including those representing environmentalists and consumers.

The above discussion is not meant to be a harsh critique of various textbook authors; rather, it is intended to provide evidence of the liberal entrenchment of the public interest. It is clear to us that these authors simply adopted the prevailing view. Yet, as Andrew S. McFarland has noted, "The environmentalists, consumerists, and government reformers believe that they are representing public interest . . . But a claim to represent 'the public interest' can be accepted or rejected according to a wide range of political and social values."  

Another example of the tendency to equate the public interest with liberal ideas is the fact that conservatives have severely attacked the current definition of the public interest. According to Leonard Freedman, Liberal organizations claim that, unlike business groups, they speak for the public interest. Conservatives disagree on two grounds.

First, the leaders of liberal organizations do not necessarily speak for anybody but themselves . . . Ralph Nader's staffs consist mostly of young people, students
and recent graduates who constitute an elite far different in their tastes and beliefs from the great majority of Americans.

Second, conservatives object to the claim of these groups that only what they stand for can be defined as the 'public good.' In calling his organizations 'Public Interest Centers,' Nader is making an arrogant assertion. These liberals are identifying the public interest exclusively with liberalism and the attack on business.\textsuperscript{10a}

Conservatives have not only lashed out at the current definition of the public interest but they have vowed to change it, especially as it has been promulgated in legal circles. As one conservative observer of the current legal political climate has stated,

Litigation purportedly brought in the public interest has not benefitted the people. It has deprived them of their jobs, housing, food, and medicine. It has increased costs. It will soon limit their supply of electricity with resulting health hazards and hardships.

By any test, the general public interest has not been well served by many of our self-proclaimed public interest law groups.\textsuperscript{11}

This sentiment was echoed by current Supreme Court Justice Lewis Powell. In fact, several months prior to his nomination to the Court in 1971, believing that liberals had used the courts to further their own agenda, Powell urged conservatives to use the courts to redress this imbalance. He claimed that:
Other organizations and groups . . . have been far more astute in exploiting judicial action than American business. Perhaps the most active exploiters of the judicial system have been groups ranging in political orientation from 'liberal' to the far left . . . It is time for American business—which has demonstrated the greatest capability in all history to produce and influence consumer decisions—to apply their great talents vigorously to the preservation of the system itself.\textsuperscript{12}

To a large extent, Powell's "Manifesto" was on target: public interest law is viewed almost solely as the province of liberals and as a tool to advance liberal interests. A vivid example of the dominance of liberals in the public interest law movement can be seen in a survey conducted by the Center for Public Interest Law on the status of that movement. The survey of 92 firms included but one devoted to the furtherance of conservative ideals.\textsuperscript{13} This is not surprising given the Center's working definition of public interest law firms: "non-profit, tax-exempt groups that devote a large share of their programs to providing legal representation to otherwise unrepresented interests in court or administrative agency proceedings involving questions of important public policy."\textsuperscript{14}

Beyond these examples, further evidence of the liberal hold on the public interest, especially in the legal arena, comes from the federal government, which over the years has nurtured the development of this truism. In fact, all three branches of government have played a supporting role.
The executive branch has lent credence to the liberal public interest in innumerable ways. Although one thesis of this work, which will be dealt with in subsequent writings, is that executive branch support has in and of itself led to the entrenchment and subsequent ratification of a liberal public interest, some illustrations are readily available. For example, the Lawyers Committee for Civil Rights Under Law, a public interest law firm that represents minority groups against discrimination, was specifically created at the request of President John F. Kennedy in June of 1963.15 Further, political observers have increasingly suggested that Justice Departments of several recent administrations retained close ties with certain liberal public interest law firms, discussing cases and policy and supporting litigation efforts through compatible briefs.16 At times, the Justice Department has even changed its position at the urging of liberal groups.17

Congress also has played a role in nurturing a liberal hold on the public interest. In numerous pieces of legislation, Congress has included attorneys fee award provisions.18 Liberal groups including the American Civil Liberties Union and the NAACP Legal Defense Fund lobbied heavily for such legislation and as a result rely on attorneys fee awards to provide substantial portions of their operating budgets.19 In the late 1970s, for example, the NAACP Legal Defense Fund received $555,000 of its $3,000,000 budget from awards of attorneys fees.20 In short, by passing such laws, Congress has not only directly supported the efforts of liberal public interest groups, but ratified the "private attorney general" concept.21

Finally, the U.S. Supreme Court, perhaps the most important political arena for public interest law firms, has been particularly receptive to the efforts of liberal groups. As early as 1963, the Court recognized the
special role of groups representing minority interests. Writing for the Court in *NAACP v. Button*, Justice William Brennan noted that:

Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievance ... For such a group, association for litigation may be the most effective form of political association.23

Undoubtedly, this decision facilitated the entrenchment of the liberal public interest by reiterating support for its principles.24

Fifteen years later even the Burger Court, which liberals view as less receptive to their interests than the Warren Court, continued its predecessor's tradition. In *In re Primus*, seven Justices acknowledged "the special role the ACLU has played in the defense of unpopular causes and unpopular defendants."26

These and many of the other examples that we could use to illustrate this point not only indicate that the public interest has a liberal taint, but that a common understanding of the public interest exists. We may be unable to define it in precise terms, but again, like Justice Potter Stewart, we know it when we see it. The question then becomes how this came to be. Why is the term public interest so closely allied with liberal interests? Furthermore, how have conceptions of that term changed and developed over time?
The Development of the Liberal Public Interest

Even though the proliferation of public interest groups did not begin until the mid-1960s, it is a commonly held assumption that our present concept of the public interest can trace its roots to the late 1800s. As noted by McFarland,

The recent upsurge of power on the part of public interest groups is in fact the present manifestation of a tendency in American politics that surely dates back at least to the 1890s. The aims of the public interest movement today are not new: Municipal reformers of the 1890s advocated reforms similar to some of those advocated by Common Cause ... [27]

As the industrial revolution took hold and the United States braced for the next major wave of immigrants from Eastern Europe, the period referred to by McFarland was a time of tremendous societal upheaval. Amidst the chaos of this era arose the multi-faceted progressive movement aimed at restoring societal order and improving conditions for the less fortunate. [28] During its formative stages, this movement was epitomized by the rapid growth of settlement houses across the United States. [29]

The idea for settlement houses was one that was transferred across the Atlantic Ocean by Stanton Coit, a graduate of Amherst College, who like many others at the time went to Europe to seek an advanced degree. While at the University of Berlin, Coit learned of a social experiment being conducted by Oxford University, Toynbee Hall, the first social settlement. After living at Toynbee Hall for a short period of time, Coit returned to the States to implement a similar program. The results of Coit's effort was establishment in 1887 of the Neighborhood Guild, [30] a
social settlement located in the heart of New York City's East Side, where many new immigrants first settled.31

In establishing this first settlement house, Coit was assisted by several individuals including Dr. Jane Robbins, Jean Fine, and Vida Scudder, all recent graduates of Smith College.32 So impressed with the settlement notion were these women that they convened a meeting of their former classmates in Boston to discuss the possibility of establishing a settlement house solely for women.

Although the creation of a women-only settlement house may have been a novel idea for the time, acceptance of the notion is not all that surprising. The Boston group was representative of the first cohort of women to receive college training, yet they could not find employment in which they could put to use their newly obtained skills. The idea of a settlement house where they could live together and work for the betterment of those who lived around them, then, was very appealing.33 Thus, in 1889, these women established the College Settlement in New York to work in cooperation with Coit's Neighborhood Guild, which was located nearby.

While the settlement movement was taking hold in New York, Jane Addams and Ellen Gates Starr, just back in Chicago from a similar visit to Toynbee Hall, began a search for an appropriate location in which to begin their efforts. Addams and Starr, who had been college classmates, shared the desire to help the less fortunate, a desire which was reinforced by their sojourn in England. After nine months of scouring "the slums" of Chicago and learning as much as they could about those who lived there, in September of 1889 the twosome moved into Hull House, a dilapidated mansion.34
Even though Hull House was established after the New York settlement, it clearly was the preeminent establishment of its day. It attained such a status because it not only performed the function of the other settlement houses, but because of the status of those who were drawn to Hull House. Among those who, at one time or another, were part of the Hull House community or actually lived there were: Grace Abbott, future head of the Children's Bureau and director of the Immigrants' Protection League; Sophonisba Breckinridge, a later member of the boards of numerous civil rights/liberties organizations including the ACLU and the NAACP; William Chenery, a future editor of Colliers magazine; William Colvin, a president of the Chicago Board of Trade; John Dewey, a leader of the educational movement and a member of the boards of several organizations; Dr. Alice Hamilton, a leader of the reform movement and the first woman professor at Harvard Medical School; Julia Lathrop, the first head of the Children's Bureau and on the boards of numerous organizations; Mary E. McDowell, a holder of various U.S. government posts and president of the Chicago Women's Trade Union League; Allen Pond, a prominent member of the Municipal Voters League, Mary Kenny O'Sullivan, a labor leader and an executive with the National Child Labor Committee; and Alzina Stevens, co-editor of Vanguard and a labor leader.  

Meanwhile, back in New York, the settlement house movement was in full gear. In addition to the Neighborhood Guild and the College Settlement, another house--the Henry Street House--which was second only to Hull House in its eventual status, was formed by Lillian D. Wald in 1893. Wald, a nursing school graduate, was "determined to devote her professional skill in personal ways to working people." To this end, she and a friend, Mary Brewster, lived in the College Settlement while looking for a
house in which to establish their own settlement. The home they eventually found on Henry Street in New York City was initially called the Nurses' Settlement after Wald's vocation.  

Like Hull House, the Henry Street Settlement attained its prominence through its good work and residents. Among those who lived at or were part of Henry Street community were: Felix Adler, a leader of the Ethical Cultural Movement and the National Child Labor Committee; George W. Alger, a leader of the New York Child Labor Committee; Sidney Hillman, president of the Amalgamated Clothing Workers Union; Alice Lewisohn, a leader of several organizations including the Bureau of Conscientious Objectors and the New York NAACP; and, Felix Warburg, a prominent Jewish leader.  

In short, in and of itself the settlement house movement, which eventually included over 400 houses throughout the United States, was important. In the communities in which settlement houses were founded, they provided recreation, education, and cultural facilities for the poor who lived in the surrounding neighborhoods. But perhaps the more lasting impacts of the settlement house movement were the tradition of social reform they preserved and the seeds for labor reform they helped to germinate as individuals were given a place to meet, live and share ideas; for example, individuals active in the various settlement houses were very active in the suffrage movement, the calls for reforms in juvenile treatment, in education systems, and in city government. Later, many of these same individuals went on to organize the civil rights, civil liberties, and reform groups that worked to lay the groundwork for development of current notions of the public interest.

Those who were part of the settlement house movement were particularly drawn to the suffrage movement. Linking the enfranchisement
of women with women's ability to secure municipal and other kinds of reforms, many settlement house residents directed substantial portions of their energies to the suffrage movement.

Sophonisba Breckinridge and Florence Kelley, both one time residents of Hull House and later the Henry Street Settlement, were vice-presidents of the National American Woman Suffrage Association (NAWSA), an organization formed in 1890 to seek the ballot for women. Likewise, Margaret Drier Robbins, whose husband Raymond was the head resident at the Northwestern University Settlement, served on the Leslie Suffrage Commission after ratification of the 19th Amendment. Additionally, Jeanette Rankin, a resident of the N.Y. Suffrage League House, was a field secretary for NAWSA.

Settlement house residents' concern for the rights of women also led them to form the National Women's Trade Union League (NWTUL) in 1903 to work for improved labor conditions for women. Jane Addams, in fact, was one of the original founders of the NWTUL. Others who held leadership positions in branches of the NWTUL included Margaret Drier Robbins, president of the Chicago branch and later national president; Hull House residents Mary McDowell, Grace Abbott, Francis Perkins, and Mary Kenny O'Sullivan. New York City settlement house residents Rose Schneiderman, Mary Simkhovitch, and Emma Carola Woerishoffer also held important positions in the New York branch of the union.

But women's issues were only one item on the progressive agenda. Creation of juvenile court systems, kindergartens, daycare centers, health clinics, immigration reform, city refuse collection, and ethical culture were among their varied concerns. And, as was the case with the issue of
women laborers, settlement house workers again effectively formed specialized organizations to put these issues on the public agenda. Julia Lathrop of Hull House, for example, founded the Immigrants Protection League. Likewise, Florence Kelley was a co-founder of the National Child Labor Committee. Rachelle Slobodinsky Yarros who with her husband lived at Hull House for 20 years founded the American Hygiene Association and directed hygiene programs for the Chicago Health department. Additionally, Grace Abbott, a University of Chicago professor and Hull House resident was Director of the Immigrant Protective League and later head of the U.S. Children's Bureau. Additionally, Felix Adler of the Henry Street Settlement and later John Lovejoy Elliot of the Union Settlement led the Society of Ethical Culture. The list is endless but suffice it to say those involved in the settlement house movement made an important contribution to the success of the progressive era.

While these individuals did much to give the progressive era its name, the impact they made through the organizations they formed and led went far beyond the movement itself. More specifically, three of the organizations that were founded during this era—the National Consumers' League, the National Association for the Advancement of Colored People and the American Civil Liberties Union—went on to become major shapers of current notions of the public interest. The dominance and impact of these three organization has been documented by the Council for Public Interest Law. It specifically, in fact, has singled out the work of Louis Brandeis, the ACLU, and the NAACP as laying the groundwork for current public interest law.
Once again, however, we get back to the question, how did these groups succeed in getting their definition of the public interest on the national agenda? The answer seems clear. Prime movers behind each of these groups possessed important organizational skills learned during the formative phases of the settlement house movement and thus were able to adopt strategies best suited for their purposes. The ability to select appropriate tactics, however, would have been insufficient to ingrain such an indelible version of the public interest without one additional factor—the uncanny ability of these individuals to develop strong ties with or actually become a part of the New Deal administration, which institutionalized their notions of the public interest.

In the following section we examine the first ingredient of the successful entrenchment of the public interest—the leaders of these groups and their organizational expertise. In particular, we explore the ties of these groups' leaders to the settlement house movement and the strategies they used.

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As was the case with many organizations of the day, the National Consumers' League was formed by residents and contributors to various settlement houses who had been active in local organizations that had a similar purpose—to expose and remedy intolerable labor conditions. Once the national league was formed in 1899, Dr. John Graham Brooks, a frequenter of Hull House as its President, convinced Florence Kelley to move to New York and become its General Secretary.
Kelley was the prototypical organizer of this era. The daughter of a Pennsylvania member of Congress, Kelley studied at Cornell University and then travelled to Europe for further study. While there she married Lazare Wischniewetzky, a Russian socialist. When they returned to the United States, Kelley lectured at the College Settlement while becoming deeply involved in the Socialist-Labor party. Her marriage soon dissolved, however, and she moved to Chicago to take advantage of Illinois' more liberal divorce laws. She immediately took up residence at Hull House where she "was quickly admitted to [its] inner circle and formed deep and long lasting friendships with Jane Addams, Julia Lathrop, Alice Hamilton, and others."45 While in residence there, she quickly turned her attention to the labor and living conditions of those who lived around Hull House. In fact, largely at her insistence, the Illinois legislature passed legislation "limiting hours of work for women, prohibiting child labor and controlling tenement sweatshops."46 She soon thereafter was appointed the state's Chief Factory Inspector. In that position she quickly came to realize the importance of litigation as a means of preserving and obtaining implementation of protective legislation. In fact, unsatisfied by the state's attorneys' prosecution of violators who failed to pass her factory inspections, she enrolled in Northwestern University Law School, earning her degree in 1894.47

Thus, given her experience and the personal connections developed in Chicago, it was not surprising that Brooks attempted to woo her away from Hull House. Neither is it surprising that when Kelley moved to New York City to accept the position, she immediately moved into the Henry Street Settlement.
While many were associated with the Consumers' League during Florence Kelley's tenure, she held the position of General Secretary until her death in 1932. All during that period, she drew on the skills and resources of others, lecturing throughout the U.S. and establishing more than 60 local consumer's leagues. Among those who Kelley was associated with during this period were Emily Balch, a former Dennison House resident, who served on the editorial staff of Nation; Sophonisba Breckinridge, who had served in the city health department while Kelley was Factory Inspector; Hamilton Holt who publicized Kelley's work in his weekly Independent, who later became president of Rollins College; Mrs. Edward Lauterbach, a kindergarten and child welfare activist who also was Vice-President of the Woman Suffrage League; Frances Perkins, a former Hull House resident and NCL Executive Secretary; Rev. John A. Ryan, Director of the National Catholic Welfare League; and, Rabbi Stephen S. Wise, founder of the Oregon Prisoner's Aid Association.

This cadre of influential NCL leaders were instrumental in the achievement of a key NCL goal—the enactment of maximum hour legislation in several states. Wise and Ryan, in particular, were especially instrumental in passage of the Oregon law prohibiting women from working more than 10 hours a day. When Kelley got word from the Consumers' League of Oregon that this legislation had been unsuccessfully challenged but now was on appeal to the U.S. Supreme Court, Kelley tried to recruit a leading New York attorney, Joseph A. Choate, to defend the Oregon law before the Court.48

Kelley's distrust of state prosecutors' defense of protective legislation was deep rooted; her earlier experiences in Illinois and New York convinced her that assistant state attorneys general were not as
dedicated to the cause as she. Thus, when Choate declined her invitation, she turned to the brother-in-law of the Chair of the NCL Legal Committee, Louis D. Brandeis. The rest of the story of Muller v. Oregon is well documented; Brandeis, armed with sociological data quickly amassed by NCL researchers presented the Court with what now is termed "the Brandeis Brief." In turn, this novel brief has been attributed with convincing the Court to uphold the constitutionality of the Oregon provision in the face of negative precedent.49

The use of litigation by Kelley and the NCL did not end with Muller. After this major victory, the NCL and NCL members secured grants from the Russell Sage Foundation to gather extensive information about the perils of adverse working conditions on women's health.50 These data became, in turn, the keystone of briefs subsequently filed by the NCL in other legal challenges.

One of the most personally satisfying of these to Kelley was Ritchie v. Wayman, a case challenging Illinois' recently drafted 10 hour work law. This actually was the second Ritchie case, the first having been decided against the 8 hour law for which Kelley had personally lobbied. In the second case, however, Kelley persuaded Brandeis to travel to Springfield, Illinois to argue the case on behalf of the state. Like his presentation in Muller, Brandeis relied heavily on sociological data, convincing the court to uphold the law overruling its earlier decision.51 As indicated in (Table 1 about here) Table 1, using the tactic, the NCL lost only one case between 1908 and 1915. The cumulative impact of this litigation created strong precedent changing public acceptance and awareness of the issue.
While Kelley and Brandeis were preparing for Ritchie in Springfield, Illinois, they were undoubtedly confronted with the aftermath of that city's major race riots that had recently occurred. Although similar disturbances had occurred in Southern cities, many were shocked that Springfield was the location of such hostilities. Among those who expressed their deep concern was William English Walling, a former settlement house worker and co-founder of the WTUL. After travelling to Springfield, Walling expressed his indignation in an article published in the Independent, which some have credited with crystallizing the need to form an organization "to help right the wrong of the Negro." This article, in fact, prompted Mary White Ovington, a former Greenpoint Settlement House resident engaged in a study of Harlem under the auspices of the Greenwich House, to write to Walling. When they finally met in New York in 1908, they agreed on the need for a permanent organization and decided to hold a small meeting at Walling's apartment.

After this initial meeting, the group expanded to include Oswald Garrison Villard, the President of the New York Evening Post who had helped the NCL attract publicity; Lillian Wald; Florence Kelley, who had worked with Walling in Chicago where they both were factory inspectors; and, Rabbi Wise, who had moved from Oregon to New York, among others.

When Walling's apartment proved to be too small to hold the meetings, they were moved to N.Y.'s Liberal Club, where the group began to call itself the Committee on the Negro. During the first meeting at the Liberal Club in March 1909, those in attendance including John Haynes Holmes, a Unitarian minister and later leader of several groups, Helen Phelps Stokes, Ovington, Wald, White, Wise, and others made plans for a Conference on the Status of the Negro for late May.
At this conference, the Committee of Forty was established from which the current National Association for the Advancement of Colored People (NAACP) evolved. This Committee of Forty included the original members of the Negro Committee as well as Jane Addams; John Dewey; Moorefield Storey; president of the American Bar Association; and, W.E.B. DuBois, founder of the Niagara Movement.55

While leaders of the NAACP worked tirelessly to establish a viable organization and to educate the public, they quickly found themselves involved in life and death legal matters. In fact, while use of litigation to attain black rights through liberalization of the public agenda has become a hallmark of the NAACP, it was almost by coincidence that it first came to use the courts.

The case in which the NAACP realized that it would need to turn to litigation involved a poor black farmer in South Carolina who had been charged with violating the state's peonage code. When he was sentenced to death for shooting in self-defense the officer who attempted to serve the arrest warrant, the NAACP recognized the need for some intervention.

First attempts to aid the cause of Pink Franklin took the form of a publicity campaign launched by Villard through the Associated Press. When this effort failed to convince the U.S. Supreme Court to reverse Franklin's death sentence, NAACP attorneys petitioned the Governor to commute Franklin's sentence. Additionally, Villard worked behind the scenes to bring pressure on other officials to act on Franklin's behalf. The cumulative impact of these efforts was Governor Ansell's commutation of Franklin's death sentence to life imprisonment. The Franklin case also acted as a catalyst for the NAACP prompting Villard to request the Executive Committee to establish a legal department.56
Although some have suggested that the Pink Franklin case was an anomaly, that is, NAACP litigation was sporadic during its formative years, a close reading of Association records requires rejection of that view. Under the leadership of Arthur Spingarn, a Columbia trained lawyer and settlement house devotee and his law partner Charles H. Studin, who were brought into the cause by Arthur's brother Joel, a colleague of NAACP supporter John Dewey, the Association mounted intense local litigation campaigns. Cases handled by the NAACP early on involved lynching, the death penalty, black on white rape cases, the "Third Degree" (forced confessions), exclusionary zoning, and employment and school discrimination. These efforts, of course, were facilitated by numerous volunteer lawyers and Moorefield Storey, NAACP President and noted Boston constitutional lawyer.

It was not until 1915, however, that the NAACP made its debut before the U.S. Supreme Court, the arena in which it has most successfully etched its version of the public interest. In Guinn v. United States, a challenge to Oklahoma's grandfather clause, the NAACP was given permission to file an amicus curiae brief and participate in oral argument. Given that disenfranchisement was a major topic at the 1910 Conference, NAACP leaders welcomed the opportunity to present their views to the Supreme Court. Without charge, Storey drafted the amicus brief and appeared before the Court to argue the NAACP's position. Even though they faced a conservative court, Storey and U.S. Solicitor General John W. Davis were able to secure a favorable decision from the Court.

Some have suggested that Guinn "had little practical effect." Yet, it served as a catalyst leading the NAACP to place added emphasis on litigation as the major means to secure its version of the public interest.
Shortly before the NAACP was to argue Guinn, the seeds of what was to become the American Civil Liberties Union were taking root at the Henry Street Settlement. In 1914, at the invitation of Lillian Wald; Jane Addams; Paul Kellogg, editor of Survey magazine; and, Villard a small group, later to be known as the Henry Street Group, met to discuss growing militarism in the United States. The Henry Street Group, which included federal judge Julian W. Mack and William Kent, a member of Congress, drew up a declaration proclaiming their opposition to U.S. war preparations. The declaration was soon published in Kellogg's Survey.60

As the call for U.S. armament gained momentum, those of the original Henry Street Group and others held a national pacifist conference in late 1915 to address the issue. As a result, they established the Anti-Preparedness Committee (APC) to lobby against the defense build-up proposed by President Wilson. The leaders of the APC clearly reflected the group's settlement house ties—Kelley, Wald, and Alice Lewisohn, a Henry Street resident and early NAACP member. Others including Rabbi Wise, John Haynes Holmes, and Crystal Eastman guided its early efforts.

As Donald Johnson noted, "For some reason, almost no one in the APC liked the name they had chosen. Four months later they changed it to the American Union Against Militarism" (AUAM).61 Regardless of the reason for the name change, over the next year the AUAM was a successful "organization." Drawing on its initial members' contacts around the U.S., it established a strong network of affiliates. Also, new sympathizers including William Jennings Byran and William Howard Taft provided it with the status necessary to obtain access to governmental hearings and the like.62
As the inevitability of war became apparent in February 1917, AUAM members held fierce debates over what actions they should take. To make matters worse, amidst this crisis Crystal Eastman, secretary of AUAM, became ill and could no longer fully handle her responsibilities. Thus, Wald, Villard, and others immediately telegraphed a St. Louis settlement house worker Roger Baldwin requesting him to assume Eastman's duties.63

The parallels between John Graham Brooks' plea to Florence Kelley and Wald's request to Baldwin are interesting; Baldwin and Kelley had similar backgrounds and their impact on their respective organizations was equally profound. After graduating Harvard with a B.A. and a M.A. in anthropology in 1905, Baldwin took leave to St. Louis, where he taught sociology at Washington University and served as head resident at a settlement house. Later, he became involved in the juvenile reform movement, becoming chief probation officer of a juvenile court and secretary of the National Probation Association.

By 1910, Baldwin left probation and became executive secretary for the St. Louis Civic League, a good government organization. Although he worked arduously at this job for seven years, his concerns began to drift to other matters, particularly U.S. involvement in the war. When the AUAM contacted him in the spring of 1917, he quickly resigned from his position at the Civic League.64

Wald and the others were probably unprepared for the huge impact Roger Baldwin would have on the destiny of AUAM. Just two months after his arrival coinciding with passage of the Selective Service Act, Baldwin asked the AUAM to create a Bureau for Conscientious Objectors. Most of the AUAM Board approved his plan, believing like Baldwin that the defense of
objectors "would be a fulltime job." Because some, particularly those in
the original Henry Street Group, believed that this course would detract
from AUAM prestige, Crystal Eastman suggested that the new bureau also
defend "anyone whose rights were violated by wartime laws." To reflect
this suggestion, Baldwin changed the name of the Bureau to the Civil
Liberties Bureau of the AUAM.

This arrangement was short-lived. In 1917 Baldwin again changed the
name to the National Civil Liberties Bureau, the direct predecessor of the
ACLU. Again, the settlement house imprint was evident. Among those on the
Directing Committee of the NCLB were John Lovejoy Elliot, a founder of the
Hudson Guild, a resident of the Union Settlement and president of the
National Federation of Settlements; Helen Phelps Stokes; and, Norman Thomas
of the Spring Street Settlement. Others on the Directing Committee
included Judah L. Magnes, a founder of the American Jewish Committee; Agnes
Brown Leach, a board member of the National Urban League (NUL); Crystal
Eastman, a suffrage leader; L. Hollingworth Wood, a president of the NUL
and a founder of the American Friends Service Committee; and, Stokes, a
member of the first governing board of the N.Y. Consumers' League and a
founder of the NAACP. Thus, the immediate precursor to the ACLU clearly
evidenced ties that bind and the strain of liberalism that began in the
1890s.

* * *

As the following discussion has indicated, the development of the
liberal public interest evolved during the multi-faceted progressive era.
Of particular importance during this period were the settlement houses
scattered around the United States. And, as Clement E. Vose has noted, "A degree of specialization and coincident interlocking cooperation marked individual careers and organizations moving toward these [progressive] goals. The settlement houses . . . were educational research centers generating and encouraging reform." As Figure 1 below reveals, settlement house residents went on to play key roles in forming the groups that liberals have used as vehicles to pursue their version of the public interest. These efforts, however, did not stop in 1917. As we will demonstrate in future works, many of those who played key roles in these groups went on to assume important positions or retain close ties to the New Deal administration. It was during this period that they were able to etch their version of the public interest idelibly into society.
Notes


2Schubert claimed that, "I would also argue ... that if the public-interest concept makes no operational sense, notwithstanding the efforts of a generation of capable scholars, then political scientists might better spend their time nurturing concepts that offer greater promise of becoming useful tools in the scientific study of political responsibility." The Public Interest, p. 224.

3Lobbying for the People, p. 7.

4See Lobbying for the People, Appendix B, pp. 298-300.

5With two exceptions, the textbooks examined (13 in all) that contained sections on public interest groups referred to Ralph Nader groups and/or Common Cause. The two exceptions were Robert L. Lineberry, Government in America, 2nd Edition, (Boston, Massachusetts: Little, Brown, 1983), which discussed at length the Moral Majority, as well as the liberal public interest groups; and Leonard Freedman, Power and Politics in America, 4th Edition, (Monterey, California: Brooks/Cole, 1983, which discussed conservative response to liberal public interest groups.


Once again, all the interest group textbooks examined that had sections on public interest groups operationalized that concept through such groups as Common Cause and Ralph Nader's organization. And, there is an increasing trend to do so. See, for example, Graham K. Wilson, Interest Groups in the United States, (Oxford: Clarendon Press, 1981) and note 9.


The Council sent the survey to 92 firms, 86 responded. The Pacific Legal Foundation was the only conservative firm included in the survey. Council for Public Interest Law, Balancing the Scales of Justice (1976), pp. 81-82, Appendix H.
14Balancing the Scales of Justice, p. 81.

15For information on the Lawyers Committee, see generally Joseph Stewart, Jr. and Edward Heck, "Ensuring Access to Justice; The Role of Interest Group Lawyers in the 60s Campaign for Civil Rights," Judicature 66 (1982), pp. 84-95.


17See generally Taking Care of the Law.


For general comments and reviews of this era, see Arthur A. Ekirch, Jr., Progressivism in America (New York: New Viewpoints, 1974); Louis Fuller, ed., Late Nineteenth-Century American Liberalism (Indianapolis:
Bobbs-Merrill, 1962); Benjamin Parke De Witt, *The Progressive Movement* (Seattle, Washington: University of Washington Press, 1915); and, Charles Forcey, *The Crossroads of Liberalism* (New York: Oxford University Press, 1961). In his seminal work, *The Age of Reform*, Hofstadter notes that "The reform movements of the past sixty-five years fall readily into three main episodes, the first two of which are almost continuous with each other: the agrarian uprising that found its most intense expression in the Populism of the 1890's . . . the Progressive Movement, which extended from 1900 to 1914; and the New Deal whose dynamic phase was concentrated in a few years of the 1930s" (*The Age of Reform*, p. 3).


30 In 1892, the Neighborhood Guild changed its name to the University Settlement.

32It should also be noted that Coit received a great deal of assistance from Charles B. Stover, a missionary. Stover lived at the Guild for twenty years, staying on even after Coit went back to London to direct the Leighton Hall Neighborhood Guild. Ibid., pp. 43-44.


34Davis, American Heroine, pp. 53-91.

35These names were obtained from various sources on Hull House. Among the most important were Twenty Years at Hull House and The Second Twenty Years at Hull House. Biographies were also obtained from a variety of sources including The New York Times, Edward T. James, ed., Notable American Women (Cambridge, Mass.: Harvard University, 1971), and biographies and autobiographies of residents.

36Wood, The Settlement Horizon, p. 36.


38These names were obtained from various sources on the Henry Street Settlement. Among the most important were Wald, Windows on Henry Street and The House on Henry Street; and Kraus, The Settlement Movement in New York City. See also note 35.


See n. 28.

Center for Public Interest Law, Balancing the Scales of Justice, p. 19.

Ibid., chap. 1.


Ibid.

See Ibid., Vol. II, pp. 316-319; Goldmark, Impatient Crusader; and, Vose, Constitutional Change, p. 167.


See n. 44.

Vose, Constitutional Change, p. 176.

Goldmark, Impatient Crusader, pp. 161-162.

Ibid.


See Kellogg, *NAACP*, pp. 300-301 for a complete list.


See *NAACP Annual Reports*, 1910-1917.

238 U.S. 347 (1915).


Ibid., p. 5.


Ibid., p. 27.


Vose, *Constitutional Change*, p. 165.