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# The Organization of Public Interest Practice: 1975-2004

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# THE ORGANIZATION OF PUBLIC INTEREST PRACTICE: 1975–2004

Laura Beth Nielsen\* & Catherine R. Albiston\*\*

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INTRODUCTION

Since the NAACP Legal Defense Fund’s landmark success in *Brown v. Board of Education*,<sup>1</sup> public interest law (“PIL”) has occupied a special place in American conceptions of law and social change. The efforts of lawyers in the civil rights movement led other groups to see law as an instrument for social justice. As the 1960s came to a close, public interest law organizations (“PILO”) had become an established form of social movement organization with a distinctive role in the American legal system.<sup>2</sup> For example, a classic article in law and social science, *Why the “Haves” Come Out Ahead: Speculation on the Limits of Legal Change*, considered the potential effects of PIL firms as compared to other highly effective modes of private legal representation.<sup>3</sup> Another indication of the prominence PILOs had gained was a comprehensive survey conducted by Weisbrod, Handler, and Komesar in 1975 (“the Weisbrod study”), which examined seventy-two PIL firms in existence at that time.<sup>4</sup> Although not a study of all the PIL firms operating at the time, this study was a good representation of what the industry was like in 1975.<sup>5</sup>

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1. 347 U.S. 483 (1954). Although perhaps the most famous of the NAACP Legal Defense Fund’s judicial victories, it was far from the first. The NAACP Legal Defense Fund won numerous cases prior to *Brown v. Board of Education*. NAN ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND 9 (1989).

2. See ARON, *supra* note 1, at 10.

3. See Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95, 114–23 (1974).

4. PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 1–3, 50–60 (Burton A. Weisbrod et al. eds., 1978) [hereinafter PUBLIC INTEREST LAW].

5. Joel F. Handler et al., *The Public Interest Law Industry*, in PUBLIC INTEREST LAW, *supra* note 4, 42, 42–79. Handler and his colleagues identified eighty-six organizations in total, but limited their analysis to seventy-two of those for reasons that are not entirely clear.

The Weisbrod study concluded that while PIL firms had “contributed to equity and efficiency by providing more representation for underrepresented collective interests,”<sup>6</sup> they also “confront[ed] barriers that limit [their] success either inside or outside the courtroom.”<sup>7</sup> In the authors’ view, because PILOs were then “at a crossroads, where the form and level of governmental support for PIL-type activities as well as the continuity of private foundation support are being reconsidered, PIL may have a future quite unlike its past.”<sup>8</sup>

Which path have PILOs taken in the nearly thirty years since this study? That is the subject of this Article, which is part of a larger empirical study of PILOs and the lawyers who work within them. In this Article we concentrate on how PILOs have changed over time. That is, we return to fundamental questions about how these organizations are financed, the nature of the work they perform, the types of causes they represent, and the personnel they employ. We find notable shifts in the organizational structures and activities of PILOs. These shifts suggest that the role of PIL has changed in the last three decades. Given the potential importance of PILOs’ efforts to achieve social change, we consider the implications of these changes.

The major transformations we observe in PILOs are: (1) growth in average organization size, especially growth in the size of the largest organizations in the field; (2) organizational rationalization similar to that observed in private sector law firms and law departments; (3) a shift from single issue and single (legal) function to multiple issue and multiple services/functions; and (4) more government support (and restrictions) for PILOs that choose to accept public funds.<sup>9</sup>

While it is difficult to summarize a variety of rather complex changes in a single term or phrase, the theme that emerges is that the nature of PILOs has shifted. In the 1970s, PILOs were primarily law reform organizations interested in using litigation-oriented strategies to pursue social change for disadvantaged groups. Our empirical study shows that in 2004, a significant segment of the PILO industry was made up of direct services organizations interested in providing direct legal services to individual clients representing a multitude of constituencies, including many that differ from the traditional poverty

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6. PUBLIC INTEREST LAW, *supra* note 4, at 554.

7. *Id.* at 556.

8. *Id.* at 558.

9. *See infra* Part III.

and civil rights constituencies of the past.<sup>10</sup> Thus, the field of public interest law has matured but still embodies many of the tensions that have been present in public interest lawyering for many years.

This Article proceeds in five Parts. Part I details the reasons for studying PILOs, including a brief discussion of background data about the public interest industry and its relationship to the legal profession more generally. Part II details the methodologies of two studies of PILOs in the United States, the Weisbrod study conducted in 1975 and the authors' recent study of PILOs in 2004. Part III analyzes the transformation of PILOs from 1975 to 2004. Part IV moves from exploring changes in PILOs over time to addressing differences between PILOs that received Legal Services Corporation ("LSC") funding in the year 2004 and those that did not.

Part V concludes by assessing the implications of the changes we see in the field. We observe that as PILOs are increasing in size and budget, two distinct sectors of the PILO industry are emerging—publicly-funded organizations and privately-funded organizations. The publicly-funded organizations focus almost exclusively on poverty law practice. These organizations operate with relatively large budgets, but their representation of those living in poverty is constrained by federally-imposed restrictions on PILOs that accept government funding. The privately-funded organizations operate on smaller budgets but enjoy greater freedom in the practice of law, which results in less emphasis on individual representation and a greater focus on large scale social change. This division means that those individuals least able to access justice—those living in poverty—are represented by lawyers who are the most constrained in the practice of law.

## I. THE PILO INDUSTRY: POLITICAL CHANGES, IMPORTANCE TO THE PROFESSION, AND STRUCTURAL CHANGES TO THE ORGANIZATIONAL FIELD

Access to justice long has been a concern of the American legal profession.<sup>11</sup> Early efforts focused on individual pro bono representation, but in the twentieth century, a new organizational

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10. See *infra* Part I.B.

11. See Louis D. Brandeis, *The Opportunity In Law, in BUSINESS: A PROFESSION* 313, 322–23 (1914) (articulating the professional obligation for a commitment to providing legal services to the poor in the Progressive Era). See generally ARON, *supra* note 1, at 6–14 (discussing the evolution of PIL in private foundations, the federal government, the bar, and law schools); Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1439–43 (1984) (discussing the development of PIL from 1879 to 1984).

form—the PILO—emerged as an important vehicle for this concern. These free-standing, voluntary organizations typically are established to further particular causes, such as environmental protection or racial justice, or simply to provide the poor with access to the civil litigation system.<sup>12</sup> In this Part, we discuss the importance of PILOs to the legal profession and structural changes in PILOs. The purpose of this Part is to put PILOs in context within the larger American legal profession and to raise questions about PILOs that require empirical analysis.

*A. Symbolic and Practical Importance of the PILO Industry to the Legal Profession*

PIL, broadly conceived, can be thought of as the “effort[] to provide legal representation to interests that historically have been unrepresented or underrepresented in the legal process”<sup>13</sup> and has its roots in a conception of the legal profession that has an ethical obligation to ensure representation for all.<sup>14</sup> Although early efforts to meet this obligation took the form of private attorneys providing pro bono legal services for those unable to pay, the early part of the twentieth century saw the emergence of more formally organized legal aid in the United States.<sup>15</sup> This legal aid movement primarily sought to provide basic representation for the poor in everyday legal matters.<sup>16</sup> As such, it was part of a Progressive Era effort to integrate poor, immigrant populations into mainstream American society.<sup>17</sup>

Of course, PILOs are one of many avenues through which the legal profession attempts to provide disadvantaged groups with access to representation. Large law firms increasingly tout their commitment to pro bono legal services<sup>18</sup> and the American Bar

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12. See Houck, *supra* note 11, at 1439–41 (identifying three large movements in public interest law—poverty, civil liberties, and civil rights).

13. ARON, *supra* note 1, at 3.

14. See *id.* at 120; JACK KATZ, POOR PEOPLE’S LAWYERS IN TRANSITION 1 (1982); Brandeis, *supra* note 11, at 322–23.

15. See ARON, *supra* note 1, at 7; KATZ, *supra* note 14, at 34; see also Brandeis, *supra* note 11, at 344–46.

16. KATZ, *supra* note 14, at 34–40; see also Edward H. Levi, *Foreword* to GORDON HARRISON & SANFORD M. JAFFE, THE PUBLIC INTEREST LAW FIRM: NEW VOICES FOR NEW CONSTITUENCIES 7, 7–8 (1973).

17. HARRISON & JAFFE, *supra* note 16, at 29.

18. In 1993, the American Bar Association’s Standing Committee on Pro Bono and Public Service formed the “Law Firm Pro Bono Project,” which challenged law firms to commit to contributing three to five percent of their billable hours to pro bono service. As of 2005, 138 law firms had accepted the challenge. See STANDING COMM. ON PRO BONO & PUB. SERV., AM. BAR ASS’N, SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 7 (2005) [hereinafter ABA PRO BONO REPORT],

Association recently undertook an empirical study regarding the degree to which lawyers in private practice perform legal services for free or reduced fees.<sup>19</sup> While these efforts are significant,<sup>20</sup> PILOs remain the primary institutionalized structure for serving the civil legal needs of those who cannot otherwise afford a lawyer. In addition, PILOs are virtually the only institutionalized means for supporting dedicated, experienced lawyers with expertise in the particular legal areas most relevant to representing poor, disadvantaged, or underserved constituencies.

PILOs differ from private law firms in that their primary goals focus on social justice or social change through law reform, rather than profit.<sup>21</sup> Despite the legal profession's commitment to and recognition of the need for pro bono services,<sup>22</sup> law practice in the private sector is profit driven. For lawyers in solo and small firm practice,<sup>23</sup> large private law firms,<sup>24</sup> and the corporate context,<sup>25</sup> empirical studies show that the practice of law is a business that must be organized to ensure economic survival.<sup>26</sup> PILOs are different precisely because the economic imperative is secondary to the

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available at <http://www.abanet.org/legalservices/probono/report.pdf>; see also Pro Bono Institute at Georgetown University Law Center, Law Firm Pro Bono Challenge List of Signatories, <http://www.probonoinst.org/challenge.sigs.php> (last updated Oct. 31, 2005) (providing a list of all the current signatories to the pro bono challenge).

19. ABA PRO BONO REPORT, *supra* note 18, at 4–5.

20. See Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 5, 99–106 (2004) (arguing that the efforts of pro bono lawyering in settings other than PILOs dwarf the amount of public interest lawyering that occurs in them).

21. See Houck, *supra* note 11, at 1419–21.

22. COMM'N ON PROFESSIONALISM, AM. BAR ASS'N, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 47–50 (1986); Brandeis, *supra* note 11, at 322–23. See generally ANTHONY KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993) (detailing the structural barriers that prevent individual lawyers from doing public good).

23. See CARROLL SERON, THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS 1–3, 67–86 (1996) (discussing how small and solo firms organize themselves).

24. See ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM 271–72 (1988); Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 191, 205–07 (Robert L. Nelson et al. eds., 1992) (analyzing the ABA commission study suggesting that economic forces have changed the legal profession).

25. Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC'Y REV. 457, 474–77 (2000) (discussing ways in which corporate counsel behavior may reflect the realities of business).

26. Houck, *supra* note 11.

organization's purposes.<sup>27</sup> To be sure, PILOs must have sources of income to pay salaries and operating expenses, but they are not driven by the same profit motive as firms in private law practice. Rather than being controlled by the profit motive, however, PILOs may be constrained by restrictions that accompany funding from the federal government.

PILOs must engage in extensive fundraising activities to fund litigation costs. This diverts significant time and energy from other objectives.<sup>28</sup> Dependence on charitable funding may undercut PILO lawyers' professional independence, as they must be sensitive to the wishes and agendas of those that fund their work.<sup>29</sup> As such, it is important to understand the sources of PILO funding. Has it changed over time? Is the government or private funding primarily supporting the practice of public interest lawyering in these organizations? Are PILOs performing primarily direct legal services or are they engaged in law reform activities? Do PILO activities differ by whether they are publicly or privately funded?

#### *B. Political Transformation in the Public Interest Law Industry*

Until very recently, much of the research on public interest lawyers and public interest lawyering has focused on lawyers for the poor, or on lawyers engaged in civil rights litigation or poverty litigation against welfare agencies.<sup>30</sup> "Traditional" public interest practice has also been thought to include representing clients who are historically underrepresented in the adversarial legal system, such as consumers or environmental groups.<sup>31</sup> This focus on poverty practice

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27. The government does exert control, via funding restrictions, on about a quarter of PILOs that receive Legal Services Corporation funding from the federal government. We discuss this at more length in Part III.E, *infra*, but our purpose here is to point out that there is a sector of organized practice dedicated to serving the underrepresented that is autonomous.

28. See *infra* Part III.E.

29. Although private firms also must be sensitive to the desires of their larger clients, escaping these limits on legal practice is theoretically one important advantage of practicing in PIL firms.

30. See KATZ, *supra* note 14, at 7–8, 34–104 (examining the history of legal assistance lawyers and agencies). *But see* ARON, *supra* note 1, at 63–84 (examining a range of public interest practices, including conservative agendas); John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology and Social Distance*, 37 LAW & SOC'Y REV. 5, 7 (2003) (analyzing furtherance of conservative principles under the PIL framework); *but cf.* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES *passim* (Austin Sarat & Stuart Scheingold eds., 1998) [hereinafter CAUSE LAWYERING] (compiling essays by various authors on "cause lawyering").

31. Karen O'Connor & Lee Epstein, *Rebalancing the Scales of Justice*, 7 HARV. J.L. & PUB. POL'Y 483, 484–93 (1984) (describing the rise of "liberal" PIL).



and underrepresented causes may be due to the way that PILO practice itself developed—largely on the left, based on the early models of effective litigation provided by civil rights organizations such as the NAACP.<sup>32</sup>

Increasingly, however, conceptions of PIL and public interest lawyering as not-for-profit law practice include ideological causes divorced from issues of poverty, but not necessarily from issues of wealth distribution.<sup>33</sup> For example, some PILOs, such as the Pacific Legal Foundation and the Washington Legal Foundation, focus on market-based policies and the support of “free enterprise.”<sup>34</sup> Others represent interests primarily associated with business.<sup>35</sup> Still other PILOs pursue traditionally conservative agendas regarding individual rights, such as promoting prayer and other forms of religious expression in schools.<sup>36</sup> The addition of a more conservative agenda for some PILOs and public interest lawyers means that a new understanding of this area of practice, and of the typical PILO organizational structure in which it is embedded, is overdue. Studying only the “traditional” conception of public interest lawyering risks missing a significant segment of the PILO field and of public interest lawyering.<sup>37</sup> Although this Article does not specifically examine the political ideology of PILOs, we do explore topical diversity to ask whether public interest lawyering with PILOs changed dramatically, whether modern PILOs are championing similar causes as were championed in 1975, or whether new areas of practice are supplanting old ones.<sup>38</sup>

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32. See Handler et al., *supra* note 5, at 44 (discussing the origins of the modern concept of PIL).

33. See JEAN STEFANCIC & RICHARD DELGADO, NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA 140–57 (1996) (analyzing seven “conservative” legal campaigns and their effects); Heinz et al., *supra* note 30, at 7 (presenting systematic data on the characteristics of a relationship among lawyers affiliated with organizations active on a selected set of seventeen conservative issues).

34. See O'Connor & Epstein, *supra* note 31, at 495–501 (describing the traditionally conservative national and regional interests that these firms promote).

35. Houck, *supra* note 11, at 1454 (studying PIL and its practice by legal foundations created, funded, and directed by American corporations).

36. See, e.g., DiLoreto v. Downey Unified Sch. Dist., 196 F.3d 958, 962 (9th Cir. 1999) (involving a case litigated by the Individual Rights Foundation dealing with the posting of religious material in a public school).

37. See Heinz et al., *supra* note 30, at 5 (describing how lawyers working on the conservative side of the political spectrum have received little academic attention).

38. Although the 1990s brought scholarly debate about the “new” conservative PILOs, this trend was recognized by scholars as early as 1983. See ARON, *supra* note 1, at 4 (“[PIL] is practiced by organizations that span the ideological spectrum.”).

### C. *Transformations of the Legal Profession*

Between 1975 and 2004, an organizational restructuring of law practice has taken place in virtually every arena of legal practice. For-profit law firms, in-house corporate counsels' offices, and government legal departments all have increased dramatically in size during this period. The percentage of lawyers operating within some kind of law practice organization is on the rise.<sup>39</sup>

Two major studies of lawyers in Chicago suggest the magnitude of this change. Researchers found that in 1975 a mere 15% of lawyers working in private firms worked in firms with 100 or more attorneys, but by 1995, the number had grown to 41%, and 22% of lawyers practicing in Chicago in 1995 worked in firms with 300 or more attorneys.<sup>40</sup> Similarly, organizations employing government lawyers grew dramatically from 1975 to 1995. In the business world, corporate counsels' offices also increased in size, nearly tripling from an average of twenty-one to fifty-five lawyers between 1975 and 1995.<sup>41</sup> In 1975, prosecutors' offices more than quadrupled, going from employing an average of 127 lawyers to 543 lawyers.<sup>42</sup> These data indicate that, at least in the for-profit industry, an increasing proportion of the legal profession is now employed within some sort of organizational context and that these organizations are growing at a dramatic rate.

But what about PIL practice? Have these organizations grown in size as dramatically? If so, what, if anything, does this mean for law reform strategies of PILOs? What impact would this have on their capacity to perform direct legal services for clients? We know very little about these employing organizations. And, as indicated above, the organizations themselves are subject to very different kinds of motivations and exogenous forces that may shape both organizational structure and the decisions of lawyers to practice within them. These questions and others motivated us to undertake a large-scale study of PILOs in 2004.

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39. EVE SPANGLER, *LAWYERS FOR HIRE: SALARIED PROFESSIONALS AT WORK* 9–10 (1986) (“At mid-century, 87 percent of the bar was in private practice, 59 percent in solo practice. By 1980, only one-third were solo practitioners . . .”).

40. Robert L. Nelson et al., *From Professional Dominance to Organisational Dominance: Professionalism, Inequality, and Social Change Among Chicago Lawyers, 1975–1995*, in *REORGANISATION AND RESISTANCE: LEGAL PROFESSIONS CONFRONT A CHANGING WORLD, 1975–1995*, at 317, 319 (William L.F. Felstiner ed., 2005).

41. *Id.*

42. *Id.*

## II. THE STUDIES/METHOD

This Article presents data about PILOs and how those organizations have changed since 1975. The data are based on two studies of PILOs. The first was conducted by Burton Weisbrod, Joel Handler, and Neil Komesar and is presented in its entirety in *Public Interest Law: An Economic and Institutional Analysis*.<sup>43</sup> The second study was conducted by the authors of this Article and was designed, in part, to replicate many of the questions about organizational structure from the Weisbrod study. This Part of the Article describes the methodologies of the two studies.

It is important to note that, although we are presenting data about changes in organizational structure and function over time, this is not what is known as a “panel study”<sup>44</sup> because the organizations surveyed in the 1975 Weisbrod study are not necessarily the same organizations surveyed by the authors of this Article in 2004. Nonetheless, we believe that both studies are representative of the PIL industry at the times they were conducted, and so comparisons across time are meaningful.

A. *Weisbrod et al.*

In *Public Interest Law: An Economic and Institutional Analysis*, Burton Weisbrod, Joel Handler, and Neil Komesar, together with a number of co-authors, present findings from an impressive empirical research project about the PIL industry.<sup>45</sup> The study primarily focuses on those organizations in the voluntary sector that engage in PIL activities, although their book analyzes in some detail the activities of “mixed firms” (those that engage in pro bono and for-profit work).<sup>46</sup>

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43. See *supra* note 4 and accompanying text.

44. Panel studies use the same respondents (in our case, organizations) at Time 1 and Time 2. EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 103–04 (9th ed. 1998).

45. PUBLIC INTEREST LAW, *supra* note 4, at 50–60 (dissecting the PIL industry by primarily focusing on its most visible and influential functions and actors).

46. See *id.* at 500–31 (discussing PIL activities in other countries). For the purposes of this Article, we will not go into great detail summarizing the work of Handler et al. in the public and private sectors except to highlight that Weisbrod et al. found that only a small percentage of private practice is pro bono work and that only a small percentage of pro bono work is characteristically similar to PIL activities. The authors note that this is largely due to the fact that work done for clients in the private sector is not likely to “generate significant external benefits” unlike the work done for issue-oriented organizations by the PIL firms. Handler et al., *supra* note 5, at 67. In the public sector, Legal Services Backup Centers, a successor to the Office of Economic Opportunity (“OEO”), “were nearly united in indicating a single target group as intended beneficiaries

The Weisbrod study identified eighty-six organizations that met its definition of a PIL firm.<sup>47</sup> Chapter four of *Public Interest Law* describes the PIL industry by looking at the year of establishment, number of lawyer and non-lawyer positions, income, activities, and topic areas on which PIL firms worked.<sup>48</sup> The study was not designed to identify all of the PIL firms in existence at the time of the study.<sup>49</sup> While this means we cannot use the Weisbrod study as a baseline to look at the growth in the PIL field by the year 2004, it still is possible to use the Weisbrod study as an accurate representation of PIL firm characteristics in 1975 and suggest how the field has changed in the intervening twenty-five years.<sup>50</sup>

### B. *Albiston and Nielsen*

The study conducted by the authors of this Article primarily concerns variation in strategy, structure, and mission among private organizations that use law, at least in part, as a strategy to pursue their goals.

#### 1. Definition

Our definition of a PILO is similar to the one utilized by Weisbrod to facilitate comparison across time. We sought to study: organizations in the voluntary sector that employ at least one lawyer at least part time, and whose activities (1) seek to produce significant benefits for those who are external to the organization's participants, and (2) involve at least one adjudicatory strategy.<sup>51</sup>

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of all their activities." *Id.* at 68. This is "in sharp contrast to both the mixed firms and the PIL firms." *Id.*

47. Handler et al., *supra* note 5, at 49. The study's working definition of a PIL firm consists of those firms with the following characteristics: "1) they are part of the voluntary sector; 2) they use primarily legal tools such as litigation; and 3) they are involved primarily in actions which, if successful in accomplishing change, have a substantial external benefits component or high public interest (PI) ratio." *Id.*

48. *Id.* at 50-55.

49. *Id.* at 49 ("We cannot offer a complete description of the industry because we do not have all the necessary data.").

50. To study organizational change over time most accurately would be to conduct a "panel study." As required by the Institutional Review Boards at the University of Wisconsin, Madison; the University of California, Berkeley; and the American Bar Foundation in accordance with federal regulations on conducting research on human subjects, our research design includes guaranteeing confidentiality for our participants. See Basic HHS Policy for Protection of Human Research Subjects, 45 C.F.R. § 46.111 (2005). As such, we could not conduct a panel study without violating confidentiality.

51. This definition is a modified version of the one adopted by Weisbrod et al. in their early study of PIL firms. See PUBLIC INTEREST LAW, *supra* note 4, at 49. Our definition

This definition excludes individual pro bono work in private firm settings,<sup>52</sup> organizations such as trade organizations formed primarily to pursue benefits for their members, private for-profit businesses, and government organizations. Like the Weisbrod study, we also limit the study to organizations in the United States, leaving aside for the moment the question of cross-national differences among PILOs.<sup>53</sup> We also exclude organizations that focus primarily on criminal law and clients.<sup>54</sup>

We limited our study to organizations that employed at a minimum one lawyer working at least part-time because we are specifically interested in lawyers as agents for social change, their different and perhaps changing roles in public interest organizations, and how they resolve professional dilemmas unique to this practice setting. Similarly, we required organizations to employ at least one adjudicatory strategy because in our future work we seek to understand how these lawyers integrate traditional adjudicatory strategies with other strategies for social change, and how they resolve potential conflicts between the two.

As this definition makes clear, ours is not a study of public interest practice or “cause lawyering” in general because such a study

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is broader than just traditional public interest firms and might better be labeled “public interest law organizations” or “public interest litigating entities.”

52. By studying lawyers who work in PILOs, we do not mean to discount the important work of lawyers who provide pro bono legal services. The nature of pro bono practice makes it difficult to know how much cause lawyering is being conducted by lawyers outside of PILOs, though there are two recent studies that attempt to do just that. See ABA PRO BONO REPORT, *supra* note 18, at 5. See generally Rebecca L. Sandefur, Lawyers’ Pro Bono Service and American-Style Civil Legal Assistance for the Poor (Feb. 20, 2006) (unpublished manuscript, on file with the North Carolina Law Review) (examining state variation in civil pro bono activity).

53. See PUBLIC INTEREST LAW, *supra* note 4, at 500–31 (discussing briefly PIL activities in other countries). For more on cross-national studies of PIL, see generally CAUSE LAWYERING, *supra* note 30.

54. Criminal organizations tend to differ qualitatively from voluntary organizations engaged in civil practice in many ways, including the stakes at risk, the incentives for compromise or going forward, and the process through which the organizations find and select their clients. For example, representation in criminal cases often is constitutionally required and funded by the government. See *Gideon v. Wainright*, 372 U.S. 335, 340 (1963) (guaranteeing court-appointed counsel in criminal cases pursuant to the Sixth and Fourteenth Amendments). Criminal defense attorneys may have little choice in which clients they represent. Even those criminal law-oriented organizations that do not rely on government funding are likely to litigate almost exclusively against government entities. Accordingly, many of the issues we sought to explore, including how external funding environments influenced organizational strategies and structure, and how organizations conceptualized and pursue their objectives are not as relevant to criminal organizations. For these reasons, we chose to focus our study on private voluntary organizations that have more flexibility and control over strategies and cases they choose.

might also include, among other things, pro bono work by attorneys in private practice and other, non-traditional forms of law practice.<sup>55</sup> Accordingly, we examine a more circumscribed subject: people who come together to form an organization dedicated to pursuits benefiting others and who utilize adjudicatory strategies to do so.

## 2. Sampling Frame and Strategy

Our study surveyed a national random sample of PILOs in the United States. To produce a random sample of PILOs, we developed a sampling frame of organizations that potentially met our criteria by compiling an exhaustive list of public interest organizations engaged in legal activity. That list was compiled using several sources, including: (a) records of amicus briefs filed by public interest organizations before the Supreme Court; (b) scholarly books and articles that list PILOs; (c) directories of public interest organizations; (d) lists of providers of free legal services obtained from state bar associations and Internet web sites; (e) lists of organizations receiving funding from Interest on Lawyer Trust Accounts (“IOLTA”) obtained from state IOLTA programs;<sup>56</sup> and (f) Internet searches to identify potential public interest organizations. Our strategy was to err on the side of inclusion and leave the final determination of whether an organization met our definition until a later stage of the sampling process.

By using multiple strategies we attempted to capture as diverse a group of PILOs as possible. For example, our amicus brief strategy is likely to capture organizations seeking to influence policy by participating in high-profile litigation. In contrast, the information from IOLTA programs and free legal service providers ensures that smaller organizations that provide direct legal services are also represented. We searched lists and national directories that spanned the political spectrum and that captured a variety of organizations.

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55. Indeed, defining PIL, or “cause lawyering” in general, is not an easy task. Although in the future we hope to compare our findings to research about cause lawyers in other organizational settings, our goal for this project is to examine variation within public interest organizations themselves. We chose this approach because too often these organizations are treated as an undifferentiated category, rather than a diverse population in its own right. See Carrie Menkel Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING, *supra* note 30, at 33 (“Descriptions of cause lawyering raise a host of boundary questions.”).

56. We contacted IOLTA programs in each state. A list of IOLTA programs compiled by the ABA is available at ABA Comm’n on Lawyers’ Trust Accounts, Directory of IOLTA Programs, <http://www.abanet.org/legalservices/iolta/ioltdir.html> (last updated Mar. 9, 2006).

By the end of our search, new sources were typically redundant with the organizations that we had already identified.

This approach yielded a sampling frame of 4,588 organizations, though not all of the organizations ultimately met our criteria for inclusion. We then drew a random sample of 1,200 organizations from the sampling frame,<sup>57</sup> and narrowed the sample to include only those organizations that met our criteria.<sup>58</sup> This yielded a sample of 327 organizations. We then contacted each organization to identify the appropriate individual within the organization to answer basic questions about the organization's structure and activities. All respondents were lawyers, typically the managing partner, director, or head of legal services.

### 3. Surveying the Organizations

In 2004, we conducted a telephone survey consisting of primarily closed-ended questions and a few open-ended questions that could be answered with a short response. The survey addressed the organization's history and mission, budget and structure, goals and activities, and strategies for pursuing those goals.

Respondents were mailed an advance letter regarding the nature of the study, and returned letters were traced to find accurate information for each organization.<sup>59</sup> Organization representatives were then contacted by phone to complete the survey. Fifty-seven organizations were excluded from the study based on the initial

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57. To ensure our sample contained enough valid PILOs for the study, we needed to know approximately the proportion of organizations on the comprehensive list that fit our definition. We estimated this proportion by drawing a preliminary random sample of 100 organizations from the list. This sample yielded twenty-two organizations that fit our definition. We sought a final sample of between 250 and 300 PILOs; accordingly, we drew a random sample of 1,200 organizations from the comprehensive list.

58. Our definition required that the PILO employ at least one lawyer at least part-time and use an adjudicatory strategy of some sort. As such, representatives needed to answer "yes" to the following questions to be included in the study: (1) Does your organization employ at least one lawyer full or part time? (2a) Does your organization file *amicus curiae* briefs in state or federal court? (2b) Does your organization represent clients in cases in state court, in federal court, or in administrative hearings? and (3) Are the activities of your organization intended to benefit someone beyond the employees and members, if any, in your organization?

We accomplished this narrowing process through information available from publicly available sources such as web sites or literature put out by the organization. In some instances we contacted the organization directly by telephone to clarify its status or, where only a mailing address was available, by sending a short questionnaire that asked about adjudicatory strategies and employment of lawyers in order to clarify the organization's status.

59. Much of the survey work was performed by the University of Wisconsin Survey Research Center ("UWSC").

screening questions because they did not meet our criteria despite our previous efforts to ensure that they did.

Of the remaining 270 organizations that fit our criteria, 221 completed the survey yielding a response rate of eighty-two percent,<sup>60</sup> which is quite good for an organizational survey such as this.<sup>61</sup>

### III. TRANSFORMATIONS OF PUBLIC INTEREST LAW ORGANIZATIONS: 1975–2004

Handler and his co-authors summarized the typical PILO this way:

Very few of these PIL firms use legal tools exclusively. Rather, most use, to varying degrees, non-legal tools and so engage in public interest non-law activity as well as PIL activity . . . . The average firm employs about seven lawyers and five other professionals, and . . . about 43 percent [of total income] comes from foundation grants. Sixty percent of the average firm's effort . . . [is] devoted to legal work. A typical firm concentrates over 70 percent of its effort in a single area . . . and intends all its actions to benefit either the general population or some specific subgroup of the population.<sup>62</sup>

This Part places this now-historic picture of PILOs next to our new data about the organizational structure of the PIL firm to observe the transformation in the PILO industry over the last nearly thirty years.

#### A. *Growth of the Industry*

The Weisbrod study surveyed the “core” of the PIL industry, which was comprised of eighty-six firms.<sup>63</sup> The Weisbrod study did not purport to capture the universe of PILOs in the field; thus, we cannot know precisely how much the industry has grown as measured by the number of PILOs.<sup>64</sup> By projection from our data, we estimate that there were a little over 1,000 PILOs operating in the United

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60. See BABBIE, *supra* note 44, at 256.

61. In an attempt to improve the response rate after exhaustive attempts to reach some organizations, the survey was converted from a CATI instrument to a paper and pencil form and mailed to all non-respondents and refusals. Two organizations completed the mail survey rather than the telephone format.

62. Handler et al., *supra* note 5, at 60.

63. *Id.*

64. As such, we limit our analyses to proportional changes rather than looking at change in absolute numbers.



States in 2000.<sup>65</sup> The growth in the legal profession generally in the same period was quite dramatic. For example, between 1980 and 2000, the number of lawyers practicing in the United States roughly doubled—from 542,205 to 1,066,328.<sup>66</sup> Similarly, between 1980 and 2000, the number of law firms grew dramatically—from 38,482 to 47,563.<sup>67</sup> Thus, although there were many PIL firms in 2000, they were only a tiny fraction of the legal profession as a whole.

### *B. Growing Staffs and Rationalization of Practice*

Like other organizations engaged in law practice,<sup>68</sup> the organizational structures of PILOs have changed significantly in the last quarter-century. PILOs are much larger now according to almost any measure: the number of attorneys employed, total staff, and operating budgets. This growth tracks the trend in the profession in general as private firms were also growing in size during this period. For example, in 1980 there were 2,682 firms with more than ten lawyers; by 2000 there were 4,962.<sup>69</sup>

Table 1 shows the number of lawyer and non-lawyer employees in PILOs in 1975 and 2004.

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65. Our initial draw of 1,200 organizations yielded 270 PILOs for a rate of .225. Multiplying the number of organizations on our initial list (4,588) by .225 yields 1,032 organizations. Although we conducted the survey in 2004, the sampling frame was constructed in 2000 and 2001.

66. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2000*, at 1 (2004).

67. See Nelson et al., *supra* note 40, at 317–19.

68. JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005) 12–13, 288–95; see also Nelson et al., *supra* note 40, at 317–19.

69. CARSON, *supra* note 66, at 15.

**Table 1**  
**Number of Lawyer and Non-Lawyer Positions in PILOs, 1975–2004\***

Number of Lawyer Positions	Percent of Responding Organizations		Number of Non-Lawyer Positions	Percent of Responding Organizations	
	1975	2004		1975	2004
0	-	-	0	22%	-
1–2	31%	19%	1–2	33%	8%
3–5	31%	28%	3–5	28%	17%
6–9	20%	13%	6–9	7%	17%
10	3%	4%	10	-	5%
11–20	11%	14%	11–20	7%	17%
21–30	1%	9%	21–30	-	8%
31–40	4%	5%	31–40	1%	6%
41–50	-	4%	41–50	-	5%
51–60	-	1%	51–60	-	4%
61–70	-	1%	61–70	-	1%
71–80	-	1%	71–80	-	2%
81–90	-	1%	81–90	-	2%
91–100	-	-	91–100	-	2%
101–110	-	1%	101–110	-	1%
			111–120	1%	1%
			121–150	-	-
			Over–150	-	4%
Total**	100%	100%	Total	100%	100%
	<i>n</i> =72	<i>n</i> =217		<i>n</i> =72	<i>n</i> =212
Total Lawyer Positions in Samples***	478	2924	Total Non-Lawyer Positions in Samples	384	8748
Mean	7	13	Mean	5	40

\* Source: Handler et al., *supra* note 5, at 51 tbl.4.2 (presenting the 1975 data from the Weisbrod study).

\*\* Totals may not equal 100% due to rounding.

\*\*\* It is important to remember that "total lawyer positions in samples" does not represent all of the lawyers practicing in PILOs in either 1975 or 2004. Because we do not know precisely the proportion of the field represented by Handler's 1975 data, we cannot estimate the number of lawyers practicing in PILOs in 1975.

Note that the proportion of PILOs that employ very few attorneys declined in the period 1975 to 2004. In 1975, PILOs employed an average of seven attorneys, but by 2004 that number had almost doubled, rising to thirteen attorneys. In 1975, nearly one-third

of PILOs (31%) employed only one or two lawyers and in 2004, that number was under 20%.

At the other end of the organizational size spectrum, the number of large PILOs also grew over the period. In 1975 only 5% of PILOs employed more than twenty lawyers while in 2004, 23% of PILOs employed more than twenty attorneys. What might be thought of as "mega-PILOs" (those employing forty or more attorneys) did not emerge until after 1975. In 1975, the largest PILOs employed between thirty-one and forty attorneys (4%) and by 2004, the proportion of PILOs that employ between thirty-one and forty attorneys had not changed (5%). But, fully another 9% of PILOs employed more than forty attorneys by 2004 and the largest PILO in our study employed 110 attorneys.

The number of non-lawyers employed by PILOs also has grown dramatically. In 1975, in addition to employing an average of seven attorneys, PILOs averaged five non-lawyer employees. By 2004, that number had climbed to forty. In 1975, 22% of PILOs were staffed *entirely* by attorneys. In 2004, not one PILO that we surveyed was staffed entirely by attorneys. At the other end of the scale with large PILOs, the changes are equally dramatic. In 1975, only 2% of PILOs employed more than twenty non-lawyers and in 2004, 36% of PILOs employed more than twenty non-lawyers and 4% employed over 150 non-lawyers.

We also see indications of organizational rationalization among PILOs, that is, the application of modern management techniques. Perhaps the most salient indication of this process is captured by the ratio of lawyers to non-lawyers.<sup>70</sup> According to Handler et al., in 1975, for each one and a quarter lawyers employed at a PILO, there was one non-lawyer staff person employed.<sup>71</sup> That is to say, the typical PILO in 1975 employed more lawyers than non-lawyers, but the ratio was relatively close to one-to-one.<sup>72</sup> By 2004 the ratio of lawyers to non-lawyers had reversed dramatically. In 2004, for each lawyer employed by a PILO, there were an average of over six non-lawyers employed. This ratio seems to suggest that like their private sector counterparts, PILOs are more efficiently leveraging their

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70. See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 65 (1991).

71. Handler et al., *supra* note 5, at 51 tbl.4.2.

72. Handler et al. seem to have constructed the ratio of lawyers to non-lawyers using the overall means from Table 2. This method is not the most accurate method; we calculated the average ratio by constructing a ratio for each organization in the sample and averaging those ratios.

lawyer professionals by allowing support staff to perform an increasing proportion of the functions of the firm. These shifts reflect the relative cost of attorneys, to be sure, but they may also indicate a mimetic process at work<sup>73</sup>—PILOs are adopting the practices of other law firms and legal departments to leverage lawyers and entrust much work to non-lawyers.

Some of the increased organization size we observe by 2004 may be due to the entry of large voluntary organizations into the category of PILOs by adding adjudicatory strategies to their representational approaches. In other words, over the past twenty-nine years, legal strategies for change may have seeped into the strategic repertoire of more organizations in the voluntary, non-profit sector. These organizations would not have been captured in Weisbrod's study in 1975.

Another measure of the growth of PILOs is in their budgets, which increased dramatically between 1975 and 2004. To meaningfully compare 1975 and 2004 data, 1975 figures were adjusted for inflation using the U.S. Bureau of Labor Statistics Inflation Calculator.<sup>74</sup> In this Part of the Article, all dollar figures are presented in 2004 dollars unless otherwise noted.

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73. See Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 151-52 (1983).

74. Bureau of Labor Statistics, U.S. Dep't of Labor, CPI Inflation Calculator, <http://146.142.4.24/cgi-bin/cpicalc.pl> (last visited Apr. 19, 2006).

**Table 2**  
**Approximate Annual Operating Budget (or Annual Operating Budget**  
**of Legal Subunit)**  
**1975–2004<sup>\*</sup>**

Total Income in 2004 thousands of dollars <sup>**</sup>	Percent Responding Organizations 1975	Percent Responding Organizations 2004
\$32 and Under	3%	2%
\$33–84	1%	1%
\$85–137	10%	3%
\$138–189	6%	2%
\$190–260	4%	8%
\$261–347	6%	3%
\$348–523	10%	9%
\$524–698	11%	9%
\$699–874	10%	6%
\$875–1049	10%	11%
\$1050–1400	4%	5%
\$1401–1751	6%	5%
\$1752–2102	3%	5%
\$2103–2453	3%	2%
\$2454–2804	-	4%
\$2805–3154	-	4%
\$3155–3505	3%	2%
\$3506 and Over	11%	20%
<b>Total<sup>***</sup></b>	100%	100%
	<i>n</i> =71	<i>n</i> =187

\* Source: Handler et al., *supra* note 5, at 56 tbl.4.6 (presenting the 1975 data from the Weisbrod study).

\*\* 1975 figures converted to 2004 dollars using U.S. Bureau of Labor Statistics Inflation Index. See *supra* note 74.

\*\*\* Totals may not equal 100% due to rounding.

Table 2 shows that in 2004, nearly half (42%) of PILOs had annual operating budgets greater than \$1.4 million while in 1975 only 26% of PILOs had budgets in this range. The percentage of PILOs operating with budgets of \$3.5 million and greater more than doubled in the period (from 11% of all PILOs in 1975 to 29% of all PILOs in 2004). Although this growth is striking, there are still many PILOs operating on relatively small budgets. In 1975, 40% of PILOs managed on \$523,000 or less annually. In 2004, only 28% of PILOs did so. As with the number of attorney employees, the growth in

PILO budgets is dramatic, but a focus on 2004 makes it clear that many PILOs are still relatively small organizations and relatively resource-poor when compared to other practice settings.<sup>75</sup>

*C. Shift from Single Issue and Single Function to Multiple Issues and Multiple Functions*

Table 3 presents data about how PILOs in the year 2004 characterized what they do. Using Weisbrod's original categories of activities, we asked respondents to indicate the percentage of the organization's effort that is spent on each of the following activities: legal (including litigation, negotiation, adjudication, and/or monitoring); legislative (including lobbying, testifying, drafting model legislation, and/or other advocacy work directed toward government organizations or officials); research, education, and outreach (including disseminating information, community education, publications, and/or community organizing); and internal administration (including fundraising and other in-house activities).

**Table 3**  
**Percent PILO Effort Expended on Activities, 1975–2004\***

% Effort Expended	Legal Work		Legislative Work		Other Research, Ed., & Outreach		Internal Administration	
	1975	2004	1975	2004	1975	2004	1975	2004
0	-	1%	25%	32%	22%	5%	14%	2%
1–19%	-	9%	54%	57%	47%	60%	63%	87%
20–39%	14%	6%	15%	9%	21%	22%	22%	10%
40–59%	35%	18%	4%	1%	7%	10%	1%	1%
60–79%	25%	37%	1%	1%	3%	1%	-	-
80–99%	24%	28%	-	-	-	2%	-	-
100%	3%	1%	-	-	-	-	-	-
Total**	100%	100%	100%	100%	100%	100%	100%	100%
	<i>n</i> =72	<i>n</i> =209	<i>n</i> =72	<i>n</i> =213	<i>n</i> =72	<i>n</i> =209	<i>n</i> =72	<i>n</i> =209
Mean % Effort	60%	63%	10%	7%	14%	19%	12%	11%

\* Source: Handler et al., *supra* note 5, at 55 tbl.4.5 (presenting the 1975 data from the Weisbrod study).

\*\* Totals may not equal 100% due to rounding.

75. HEINZ ET AL., *supra* note 68, at 281–82 (discussing the practice size of law firms and government law offices).

It would appear from Table 3 that the mean amount of effort that PILOs expend on these various activities has not changed much over time.<sup>76</sup> In 1975, the mean amount of effort spent doing legal work was 60%, and in 2004, that number increased to 63%. The only change of any magnitude is in the category of other research, education, and outreach, which grew from 14% of overall effort in 1975 to 19% of overall effort in 2004. That gain was offset by small declines in the categories of legislative work, and internal administration. However, the means mask changes worth noting.

Although the mean effort in each category is little changed over time, a more detailed look at the response to this question reveals interesting variations. For example, a much higher proportion of organizations are doing little or no legal work than was the case in 1975. In 2004, 10% of PILOs reported that they devoted less than one-fifth of their organizational effort to legal activities; this is a dramatic increase from 1975, when all of the organizations included in the study devoted at least one-fifth of their effort to legal activity. At the other end of the spectrum, we see that fewer organizations report devoting 100% of their effort to legal activities, down from 3% in 1975 to 1% in 2004.

Another important change in the activities pursued by PILOs is in the amount of effort that organizations expend on research, education, and outreach. Research, education, and outreach constituted a more significant part of organizational effort in 2004 than in 1975. The interesting changes in this category of activities are at the extremes. In 1975, the percentage of organizations that expended no effort on research, education, and outreach was 22%. By 2004, the percentage had dropped to 5%.

Thus, while in 2004 PILOs continued primarily to emphasize legal activities, it is almost unheard of that PILOs did not also engage in research and outreach. We are not yet in a position to analyze why this shift occurred. It might be, for example, a necessity for fundraising. Yet, given that a much larger share of PILO funding came from government sources in 2004, it is more likely that this shift represents a change in how PILOs define their mission. Our research suggests that PILOs have moved beyond litigation as the sole focus of social change.

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76. Figures reported in each column represent the percent of PILOs that expended a given level of effort on a given category of activities. For example, in 1975, 14% of organizations expended 20–30% of effort on legal work; in 2004, 6% of organizations expended 20–39% of effort on legal work.

*D. Pluralization and Polarization*

In the earlier study, Weisbrod and his colleagues asked informants from PILOs about their organization's efforts devoted to twelve topical areas: civil liberties, environment, consumer protection, employment, education, media reform, health, welfare, housing, voting, occupational safety and health, and other. In 2004, we asked again about these twelve categories.



**Table 4**  
**Percent Effort Expended by PILOs by Topic Area, 1975–2004\***

% Effort Expended	Civil Liberties		Environmental Protection		Consumer Protection		Employment	
	1975	2004	1975	2004	1975	2004	1975	2004
0	58%	34%	66%	76%	62%	43%	54%	37%
1–19%	15%	48%	10%	18%	18%	44%	24%	58%
20–39%	10%	10%	11%	2%	7%	11%	13%	4%
40–59%	4%	5%	3%	1%	4%	2%	1%	-
60–79%	1%	2%	1%	1%	4%	1%	6%	-
80–99%	3%	1%	1%	1%	3%	1%	1%	1%
100%	8%	2%	7%	1%	1%	-	1%	-
Total**	100%	100%	100%	100%	100%	100%	100%	100%
	n=71	n=199	n=71	n=209	N=71	n=202	n=71	n=196
Mean % Effort	17%	12%	14%	5%	12%	8%	12%	6%

  

% Effort Expended	Education		Media Reform		Health Care		Welfare Benefits	
	1975	2004	1975	2004	1975	2004	1975	2004
0	61%	31%	83%	93%	65%	37%	75%	42%
1–19%	23%	54%	8%	6%	20%	54%	10%	45%
20–39%	8%	8%	3%	1%	15%	7%	10%	10%
40–59%	4%	4%	-	1%	-	2%	4%	2%
60–79%	3%	2%	-	-	-	1%	-	1%
80–99%	-	1%	-	-	-	-	-	-
100%	1%	1%	6%	-	-	-	1%	-
Total	100%	100%	100%	100%	100%	100%	100%	100%
	n=71	n=197	n=71	n=217	N=71	n=201	n=71	n=203
Mean % Effort	9%	10%	6%	1%	6%	8%	6%	8%

  

% Effort Expended	Housing		Voting Rights		Occupational Health & Safety		Other	
	1975	2004	1975	2004	1975	2004	1975	2004
0	70%	40%	87%	80%	92%	82%	72%	50%
1–19%	23%	38%	8%	17%	7%	18%	13%	21%
20–39%	6%	17%	3%	2%	-	1%	8%	15%
40–59%	-	3%	-	1%	1%	-	1%	7%
60–79%	-	-	1%	1%	-	-	-	4%
80–99%	-	2%	-	-	-	-	3%	2%
100%	1%	1%	-	-	-	-	3%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%
	n=71	n=201	n=71	n=208	N=71	n=212	n=71	n=206
Mean % Effort	5%	12%	2%	2%	1%	1%	9%	15%

\* Source: Handler et al., *supra* note 5, at 57 tbl.4.7 (presenting the 1975 data from the Weisbrod study).

\*\* Totals may not equal 100% due to rounding

Note first the rows labeled “100% effort expended.” These rows show the percentage of PILOs that report that they dedicate 100% of their organization’s effort to a single cause. In 1975, over one quarter (29%) of PILOs were single-issue organizations; by 2004, that number had dropped to 7%. This diversification in topic area is significant because it means that these organizations are practicing law, researching, writing, and conducting education and outreach programs with respect to multiple legal issues.

In addition to the simple fact that many more organizations are devoted to multiple causes, we see important shifts in the effort devoted to the various causes about which we inquired. About 8% of PILOs devoted 100% of their effort to civil liberties in 1975, and that number fell to 2% by 2004. Similarly, 7% of PILOs were devoted entirely to environmental protection in 1975 and that number had dropped to 1% by 2004. In 1975, there were PILOs devoted entirely to the issues of consumer rights, employment, media reform, and welfare rights, but by 2004, we observe no PILOs devoted solely to any of these causes. This represents perhaps one of the most significant changes in the organizational character of PILOs—there is much more topical diversity within organizations than we saw in 1975.

The mean percent effort expended on various topical areas also is instructive. The rows labeled “mean effort expended” can be thought of as the total percent effort expended by the PILO industry on the various topical areas.<sup>77</sup> These data show the most dramatic declines in the following areas of practice: civil liberties (from 17% in 1975 down to 12% in 2004); environmental protection (from 14% in 1975 down to 5% in 2004); consumer protection (from 12% in 1975 down to 8% in 2004); employment (from 12% in 1975 down to 6% in 2004); and media reform (from 6% in 1975 down to 1% in 2004). There were also, however, sharp increases in efforts directed at housing issues (from 5% in 1975 up to 12% in 2004).

We also inquired about four new categories not included in the Weisbrod study that better capture more conservative PILO agendas: promoting traditional values, free market/free enterprise, law and order, and protecting property rights. When combined, the four new

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77. Respondents were asked: “Does your organization devote any effort at all to civil liberties, environmental protection, consumer protection, employment, education, media reform, health care, welfare benefits, housing, voting rights, occupational health and safety, promoting traditional values, free enterprise/free market, law and order, protecting property rights, or other?” For each activity that the respondent indicated the organization expended effort, the respondent was asked to estimate what percent of the organization’s effort was expended on that activity.

categories made up 13% of all PILO effort in 2004. Protecting traditional values represents 2% of all PILO activity, free market/free enterprise represents 1%, law and order represents 4%, and protecting private property represents 6% (not shown in the table). It is important to remember that these data may not represent the total conservative PILO effort, however, as some politically conservative organizations may be captured in the civil liberties category.

*E. Increased Reliance on Government Funding and Other Funding Changes*

Sources of income also changed for PILOs from 1975 to 2004. In 1975, the single largest income source for PILOs was foundation grants; 42% of all funding for PILOs came from foundation grants in that year. This percentage is not surprising considering that many large granting organizations (including the Ford Foundation) made access to justice and law reform a high priority for funding efforts at that time.<sup>78</sup> The low proportion of PILO income from federal funds in 1975 (8%) may have been due to the fact that the LSC had not yet become a major source of funds.

By the year 2004, sources of income changed dramatically. In 2004, the greatest sources of funding were state and local funds, accounting for 28% of PILO funding. This funding trend is a dramatic reversal from 1975 when state and local funds were at the bottom of the list, accounting for only 1% of PILO funding. In 2004, federal funds and foundation grants were the second greatest sources of income (21% each). This number represents a drop by half in the percentage of foundation grant money supporting PILOs (in 1975, 42% of funding came from foundation grants) and a significant increase in federal funds.

The dramatically increased reliance of PILOs on government funding is initially surprising given increasing government hostility toward the social change efforts of these organizations. However, a closer examination reveals the growth in government funding is not an unmitigated benefit for PILOs. Government funding comes with strings attached, allowing the government to partially control PILOs' social change agendas. For example, in 1996, a series of new federal restrictions were placed upon organizations that accepted LSC funds.

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78. HARRISON & JAFFE, *supra* note 16, at 5 (stating that the Ford Foundation is a "principal source of support" for PILOs and citing the expansion of "[f]ederal and foundation-supported neighborhood legal services").

The new rules prohibited LSC organizations from taking class action lawsuits, challenging welfare reform, collecting attorney's fees, rulemaking, lobbying, litigating on behalf of prisoners, representing clients in drug-related public housing evictions, and representing certain categories of aliens.<sup>79</sup> Thus, the government simultaneously provides resources to PILOs and negatively impacts their efforts to promote social change.

#### IV. LEGAL SERVICES CORPORATION FUNDED PILOs IN 2004

Given the increasing role that federal funding plays for many PILOs, we were interested in how the LSC-funded<sup>80</sup> (publicly-funded) organizations compared to organizations that did not receive LSC funds (privately-funded). This Part of the Article compares LSC-funded PILOs operating in 2004 to PILOs that did not receive LSC funds in 2004 rather than comparing 1975 and 2004 PILOs.

Of course, the majority of public interest organizations did not receive federal funds in 2004, and LSC-funded PILOs have some unique characteristics relative to the rest of the sample. The fifty-four PILOs (24.8% of the total sample) that reported that they receive LSC funds tend to be clustered in the higher budget categories, employ more lawyers, and are more oriented to direct legal services than the organizations that do not receive LSC funds.

We have budget data for fifty-one LSC-funded organizations. LSC-funded PILOs have significantly larger budgets than PILOs that do not receive LSC funds. The mean budget of LSC-funded PILOs is \$3,706,372, while the mean budget for organizations that do not receive LSC funds is \$2,934,190.<sup>81</sup>

The larger budgets of the organizations that receive LSC funds may not be surprising given the size of government contracts, but these organizations are larger in other ways as well. For example, LSC organizations employ many more attorneys than their non-LSC-

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79. Regulations of the Legal Services Corporation can be found at 45 C.F.R. §§ 1600-1644 (2005). For a summary and history of legislation regarding the LSC, see William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation from the 1960s through the 1990s*, 17 ST. LOUIS U. PUB. L. REV. 241, 241 (1948). See generally LSC Home Page, <http://www.lsc.gov> (last visited Apr. 19, 2006) (providing general information about the LSC, as well as laws and regulations related to the LSC).

80. The LSC is the government organization that funds many PILOs, particularly those engaged in poverty law practice. The LSC consists of a Board of Directors appointed by the President and confirmed by the Senate, 42 U.S.C. § 2996c(a) (2000). PILOs that receive LSC funds are subject to unique restrictions. See *supra* Part III.E.

81. A t-test for equality of means revealed that this is a significant difference,  $p < .001$ .

funded counterparts. The mean number of attorneys employed by LSC-funded PILOs in 2004 was 31.75, while the mean number of attorneys employed by non-LSC-funded PILOs in that year was 7.75.<sup>82</sup>

LSC-funded PILOs are far more likely to perform direct services than their non-LSC-funded counterparts. The mean percent effort devoted to direct legal services of organizations that receive LSC funds is 83%, while for organizations that do not receive LSC funds, the effort devoted to legal service is 55%.<sup>83</sup>

One interpretation of these data is that LSC-funded organizations are prospering and providing much needed legal assistance to the poor. These organizations have large attorney staffs, large budgets, and perform primarily direct legal services (as the new regulations would have them do). They are performing no law reform activity, but operate essentially as another arm of the welfare state by providing direct legal services to the poor.

However, the emphasis on direct service by large LSC-funded providers should not be seen as evidence that the LSC is effectively meeting the civil legal needs of the poor. Despite their large budgets, these organizations only scratch the surface of legal need. Many studies suggest that as much as eighty percent of the civil legal needs of the poor go unmet.<sup>84</sup>

In addition, the PIL industry is a very small sector of the legal profession as a whole. We estimate that there are approximately 13,700 lawyers working in PILOs in 2004.<sup>85</sup> In 2005, there were

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82. *Supra* note 81.

83. *Supra* note 81.

84. See BARBARA A. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY* 251–57 (1976). See generally HELAINE M. BARNETT, *LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (2005), available at [http://www.lsc.gov/press/documents/LSC%20Justice%20Gap\\_FINAL\\_1001.pdf](http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf) (documenting the “civil legal needs of low-income individuals and families” in the United States); TIMOTHY L. BERTSCHY ET AL., *LAWYERS TRUST FUND OF ILLINOIS, THE LEGAL AID SAFETY NET: A REPORT ON THE LEGAL NEEDS OF LOW-INCOME ILLINOISANS* (2005), available at [www.ltf.org/legalneeds.htm](http://www.ltf.org/legalneeds.htm) (documenting the unmet legal needs of Illinoisans).

85. This number is a projection. Our sample of 1,200 organizations yielded 270 organizations for a rate of 23%. Our sampling frame consists of 4,588 organizations, so we then multiplied the 4,588 organizations by the 23% rate to get a total of 1,055 PILOs. We then multiplied the 1,055 organizations by the mean number of attorneys in PILOs (13) to get 13,715 attorneys.

961,000 lawyers practicing in the United States.<sup>86</sup> This means that only about 1.4% of practicing lawyers work in PILOs.

### CONCLUSION

Let us start our conclusion by comparing the picture of the PIL industry of the year 2004 we have developed here to the overall picture from Handler and his colleagues' description of the field in 1975. To paraphrase Handler, we would say:

As in 1975, in 2004 very few of these PIL firms use legal tools exclusively. Rather, most use, to varying degrees, non-legal tools and so engage in public interest non law activity as well as PIL activity. The average firm employs about thirteen lawyers (up from seven) and forty other professionals (up from 5), of which [the largest single source of income] is 28 percent state and local funds (as opposed to 43 percent from foundation grants). Sixty-three percent of the average firm's effort (up from sixty percent) . . . is devoted to legal work. A typical firm does not concentrate on one topic area (versus concentrating over 70 percent of its effort in a single area in 1975).<sup>87</sup>

We have indeed seen very significant changes in the field of PILOs. In a sense, the field has "matured." It now consists of larger organizations, paralleling organizational growth in the legal profession more generally. Like other sectors of sophisticated law practice, the PIL sector has witnessed trends toward leveraging lawyer talent with the efforts of non-lawyers. It has also become more diverse as the causes served by PILOs have become more diverse.

But these trends also embody many of the tensions in public interest law that have been present for many years and remain unresolved. While we must analyze our data in more detail, it appears that there now are two PIL industries—publicly-funded and privately-funded. On the one hand, we now see PILOs that receive a large amount of their funding from the LSC and other government agencies, largely provide direct services, and are statutorily prohibited from engaging in many law reform activities. As a result, this sector of the field has grown, but also has become increasingly constrained.

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86. Bureau of Labor Statistics, U.S. Dep't of Labor, *Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity, 1940 to Date*, <http://www.bls.gov/cps/cpsaat11.pdf> (last visited Apr. 19, 2006).

87. Handler et al., *supra* note 5, at 60. These are Handler et al.'s exact words but highlighting the more recent data, with Handler et al.'s numbers in parenthetical.

Despite the increasing size of some organizations that rely heavily on federal and state funding, these organizations fall far short of delivering anything approaching an adequate level of civil representation to the poor. For example, using census data to estimate the number of people eligible to receive legal services from LSC-funded organizations (those who live in households with incomes less than 125% of the federal poverty rate), recent research demonstrates that the client to legal aid attorney ratio for those living in poverty is 1:6,861, while for Americans overall, the ratio of private lawyers to individuals is 1:525.<sup>88</sup> Thus, lawyers who work in LSC-funded organizations attempt to meet an enormous potential legal need with resources far inferior to those available to private clients. Moreover, public funding comes at a price. These lawyers face significant demands at a time when government constraints on LSC organizations restrict their ability to leverage limited resources into sweeping legal reform through class actions or social change litigation.

In sharp contrast to the publicly-funded sector, we see a sector of privately-funded organizations that, while often smaller in budget and size, are free to pursue law reform activities as they please. Because this sector retains the professional autonomy to pursue social change through law, it may be a much more potent force for systemic change than the larger LSC-funded organizations despite significantly smaller budgets. Unlike the early period of PIL activity, this sector is now populated by conservative as well as liberal groups, by groups concerned with interests of the middle class, the wealthy, and the socially powerful, as well as the poor and socially disadvantaged.

Weisbrod et al. stated in 1975 that PILOs were at a crossroads, and that their future would largely be determined by the nature of the funding support PILOs received. Those words were prophetic. Our study demonstrates that PILOs have grown the most in sectors supported by government funding, where lawyers primarily representing people in poverty are most constrained in efforts at systemic change. The privately-funded sector of PILOs remains a context where lawyers can seek to have maximum impact on social

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88. BARNETT, *supra* note 84, at 17. This comparison is useful to show the magnitude of the difference, but it is not the entire picture because it does not include lawyers working in PILOs that do not receive LSC money and who serve individuals in poverty. Nonetheless, the ratio would not change all that much even if they were included. Similarly, the number of lawyers to "ordinary citizens" may over-count lawyers who do not serve individuals but only serve businesses. Nonetheless, as a rough take on the disparity in legal services for the rich and poor, the comparison is as illuminating as it is dramatic.

policy through law, yet liberal groups no longer have a monopoly in this sector. Private power has realized that it too can lay claim to the mantle of “public interest.”



