



PUBLIC INTEREST LAW: THE MOVEMENT AT
MIDLIFE

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INTRODUCTION

“Lord, we ain’t what we want to be; we ain’t what we ought to be; we ain’t what we gonna be, but, thank God, we ain’t what we was.”¹

The contemporary public interest legal movement is not far from that description, which Martin Luther King, Jr. once invoked to characterize the civil rights campaign of the 1960s. Most of this nation’s leading public interest law organizations are now in midlife; they have grown substantially in size and influence since their formation beginning in the late 1960s. Groups that started with a few idealists, typewriters, and a Xerox machine are now multimillion dollar institutions at the forefront of social reform. Yet as the capacities of public interest legal organizations have increased, so, too, have many of the problems they seek to address. The growing conservatism of the public and the courts, and the increasing competition among reform-oriented groups, have also added new challenges. The movement has made enormous progress, but its aspirations far exceed its achievements.

Despite the importance of American public interest legal organizations as a force for social progress, they have attracted little systematic research. Our knowledge base is strikingly thin on key issues concerning their priorities, structure, strategies, funding, and challenges. This Article helps fill some of the gaps. Through interviews with some fifty leaders of the nation’s preeminent public interest legal organizations, the study detailed below offers the most comprehensive profile available of cause lawyering at its best.

The survey’s findings challenge much of the conventional criticism of public interest advocacy. Contrary to critics’ frequent claims, the organizational leaders profiled here have been acutely aware of the limits of litigation in securing social change. Over the past two decades, as courts have grown more conservative, most organizations have become more selective in their use of lawsuits, and have focused more attention on multiple strategies including policy and public education. Public interest leaders have also been more proactive in their choice of issues, attentive to the need for collaboration, and sensitive to the challenges of credit and control that alliances often pose.

The success of these organizations is apparent on multiple levels. They have grown substantially in size, scale, and diversity. Their influence has been critical in protecting fundamental rights, establishing legal principles, developing social policy, and raising public awareness. Yet as the capacities of public interest law have increased, so to have their aspirations and the problems they seek to address. Although the challenges vary somewhat across different

1. Martin Luther King, Jr., Response to Award of American Liberties Medallion at the 58th Annual Meeting of the American Jewish Committee (May 20, 1965) (quoting unidentified preacher), available at <http://www.ajc.org/site/apps/nl/content3.asp?c=ijITI2PHKoG&b=843719&ct=1052923>.

substantive areas, organizations generally face substantial obstacles in securing adequate resources and support in an increasingly competitive environment. How the nation's leading public interest lawyers cope with those pressures, and remain a powerful influence for reform is the subject of the discussion that follows.

I. METHODOLOGY AND CHARACTERISTICS OF THE SURVEYED ORGANIZATIONS

The survey was designed to include a diverse sample of the nation's leading public interest legal organizations. It was not representative in any statistical sense. No public database of such organizations exists, nor do rigorous, widely accepted criteria for determining what constitutes a "public interest" legal organization or how to assess "influence." Although there have been some efforts to construct samples, none have attempted to do so along lines consistent with this study's objectives: to understand the structure, strategies, and challenges facing leading legal organizations attempting to promote the public interest as they conceive it.²

Accordingly, this research constructed a sample that included most of the nation's largest and well-recognized public interest legal organizations, along with a selected group of smaller organizations that were diverse across key dimensions: substantive fields, ideology, size, strategies, and geographic scope. The study broadly defined "public interest legal organizations" to include nonprofit tax-exempt groups that attempted to use law to achieve social objectives. This definition avoided the difficulties of less inclusive approaches, such as those requiring "representation of previously unrepresented interests"

2. The most comprehensive recent effort to construct a data set is detailed in Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 N.C. L. REV. 1591 (2006). It estimated that about 1000 organizations fit its definition, adapted from an earlier landmark study by Weisbrod, Handler, and Komesar: nonprofit organizations 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." *Id.* at 1601. For Weisbrod, Handler, and Komesar's definition, see Joel F. Handler, Betsy Ginsberg & Arthur Snow, *The Public Interest Law Industry*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 42, 42 (Burton A. Weisbrod et al. eds., 1978); Burton A. Weisbrod, *Conceptual Perspective on the Public Interest: An Economic Analysis*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS, *supra*, at 4, 22. Nielsen and Albiston's study surveyed 221 organizations fitting that description. Nielsen & Albiston, *supra*, at 1605. Because the vast majority of the sample involved direct service providers, it did not focus on the most influential public interest legal organizations. Indeed, restrictions by the Legal Services Corporation severely limit the ability of federally-funded direct service providers to engage in impact litigation and public policy work. *See infra* note 43. So too, the data available on conservative organizations does not identify those that are most influential. For a survey of such organizations, see John P. Heinz, Ann Southworth & Anthony Paik, *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 LAW & SOC'Y REV. 5 (2003).

or limiting coverage to groups involved in adjudication.³ To identify a sample of about fifty organizations, I consulted a wide range of sources including public interest lawyers, directors of law school public interest programs, legal researchers, websites and publications such as Harvard Law School's *Handbook on Public Interest Work*.⁴

I initially contacted fifty-seven organizations during July and August of 2007 and attempted to arrange a telephone interview, typically with the director or president, but occasionally with the head of the legal program. The first contact was by e-mail and included a letter explaining the study and a copy of the interview questions. The letter and form appear in Appendix I. Participants had the option of remaining anonymous, of completing the questionnaire in whole or in part online, or of designating someone else in the organization to respond. Scheduling an interview usually required several follow-up contacts by phone or email; and completing it by phone generally required about an hour. Fifty-one groups participated; they are listed in Appendix II. Four organizations responded online. Four dropped out of the sample because an interview could not be scheduled during the relevant time period or another similar group responded first.⁵ Only two groups refused to participate.⁶ The overall response rate of 90% was exceptionally good for a telephone survey. None of the participants in the study requested anonymity, although a few asked that certain responses remain off the record; these are quoted without footnote attribution throughout this article.

The resulting sample was diverse along multiple dimensions. It included

3. A widely cited definition includes "non profit tax-exempt organizations 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." COUNCIL FOR PUBLIC INTEREST LAW IN AMERICA, *BALANCING THE SCALES OF JUSTICE* 81 (1976); see NAN ARON, *LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND* 3-5 (1989) (citing the Council's definition). That definition might exclude conservative or "freedom-based" organizations that represented interests already being advanced by corporate funders. DEBORAH L. RHODE & DAVID LUBAN, *LEGAL ETHICS* 849 (4th ed. 2004). For Nielsen and Albiston's definition, which requires some focus on adjudication, see Nielsen & Albiston, *supra* note 2, at 1601-02. Contributors to the classic Weisbrod study also defined public interest legal organizations to include those representing unrepresented interests and employing adjudication. See Weisbrod, *supra* note 2, at 22.

4. 1 STACY M. DEBROFF ET AL., *SERVING THE PUBLIC: A JOB SEARCH GUIDE* (17th ed. 2006-07).

5. Those groups were the Alliance Legal Foundation, NARAL Pro-Choice America, the Southeastern Legal Foundation, and the Whitman -Walker Clinic.

6. The assistant to the president of the Washington Legal Foundation explained that "we don't do surveys." Telephone Interview with Liz Foley, Assistant to the President, Wash. Legal Found., in Washington, D.C. (Aug. 22, 2007). The president of the Center for Individual Rights acknowledged that although the proposed interview identified "good questions that deserve thoughtful answers," he did not have time to supply them. Nor did he respond to requests that he designate someone else in the organization to respond. E-mail from Terrence Pell, President, Center for Individual Rights, to author (Aug. 22, 2007) (on file with author).

groups working in the following areas:

- Environmental Law (6)
- Civil Rights and Civil Liberties (including reproductive rights, human rights, and religious liberty) (20)
- Poverty (10)
- Immigrants' Rights (7)
- Women's Rights (6)
- Free Market/ Property Rights (5)
- Asian American (4)
- Latino/ Hispanic (4)
- African American (4)
- Juvenile (4)
- Education (3)
- Criminal Justice, Death Penalty (2)
- Gay, Lesbian, Bisexual, Transgender (2)
- Physical Disability and Mental Health (2)
- Technology (2)
- Education (2)
- Consumer (1)
- Elderly (1)⁷

Eight groups (16%) considered themselves “conservative,” or “freedom-based” organizations. They worked on a broad range of substantive issues including free market/property rights, environmental concerns, equal opportunity, religious freedom, reproductive issues, and criminal justice reform. For convenience, this study follows conventional usage and refers to these organizations as conservative. Where relevant, however, the discussion draws the distinction that many of these groups emphasize between those that pursue a libertarian “freedom-based” agenda on economic and regulatory issues, and those that advance a conservative position on social issues.

The surveyed organizations varied not only in terms of substantive and ideological focus, but also in size, location, structure, and strategic focus.⁸ Their annual budgets ranged from \$400,000 to \$103,000,000. The median was \$4,000,000. Staff size ranged from 5 to 425. The median was 30. All major regions of the country were represented, although the focus on national leaders meant that most were headquartered in four metropolitan areas: New York, Washington, D.C., San Francisco, and Los Angeles. Eight organizations (16%) had members, whose roles varied along lines discussed in Part III. In terms of strategies, a few groups focused almost exclusively on appellate litigation,

7. The total is greater than fifty because some groups fell in multiple categories. For example, all the Asian American and Latino Hispanic groups worked on immigrants' rights, as did one of the poverty groups.

8. For further details on size, see *infra* text accompanying note 15 and Table 1.

while several others engaged in no litigation and emphasized research and policy-related work. Most employed a mix of strategies detailed below.

In other respects, the participants in the study were similar. The vast majority of organizations were founded in the late 1960s or 1970s. Few predated the 1960s or emerged later than the 1980s.⁹ So, too, almost all the leaders of these organizations have had considerable experience working in public interest law. As Appendix II indicates, only 4% had held such jobs for fewer than ten years; slightly over a third (37%) had ten to twenty years experience, slightly under a third (31%) had twenty-one to thirty years, and about a quarter (27%) had over thirty years. Such a wealth of direct knowledge gives these leaders an exceptionally well-informed perspective on the changes and challenges in public interest legal work.

A. *The Evolution of Public Interest Law*

A central objective of the study was to gain a richer understanding of the evolution and challenges of public interest law from leaders who have the greatest direct experience with those issues. To that end, the survey asked: “In general terms, how do you think the public interest law movement has changed over the last quarter century in your field?”; “How have broader social and political changes affected your organization?”; “What have been the major achievements in your field?”; and “What have been the major limitations [in your field]?”

The most obvious change has been size. Over the last several decades, the number, scale, and diversity of public interest legal organizations has markedly increased. In 1975, Joel Handler, Betsy Ginsberg and Arthur Snow published the first systematic study of what they identified as the “core” of the movement. It included eighty-six organizations.¹⁰ Some thirty years later, Laura Beth Nielsen and Catherine Albiston estimated the total number of legal aid and public interest legal organizations to be about a thousand. Although that estimate included direct service providers that were not primarily engaged in using law to affect social policy, it is still clear that the movement has grown dramatically.¹¹

Many leaders commented on the increase. When most of today’s leading organizations were founded, almost no other groups were focusing on the same

9. The exceptions predating the 1960s were the Sierra Club (1892), the Legal Aid Society of San Francisco (1916), the NAACP Legal Defense Fund (1940), and the national and Northern California ACLU (1920, 1934). Those founded in the 1990s were the Electronic Frontier Foundation (1990), the Center for Democracy and Technology (1995), and the Center for Equal Opportunity (1995). *See* Appendix II.

10. Handler, Ginsberg & Snow, *supra* note 2.

11. Nielsen & Albiston, *supra* note 2, at 1605.

issues, and a small number of attorneys did “all the heavy lifting.”¹² Brian Stevenson, director of the Equal Justice Initiative, noted that in the 1980s, you could “count on one hand the number of lawyers doing death penalty work.” Some fields were not even recognized as fields: youth law and technology were commonly cited examples.¹³ Now, as Jamiene Studley, president of Public Advocates put it, “there is somebody for every issue.” The range of perspectives available on key issues has also broadened. Virtually all the leaders of conservative groups emphasized that change and noted the ability of the right to “fight back” in areas once dominated by liberal organizations.¹⁴ The movement’s growth has created both new opportunities and new challenges. As the discussion below notes, many organizations work effectively in coalitions and partner with each other on amicus briefs and policy initiatives. Yet the increase of fellow travelers has also introduced new pressures in the competition for funds and recognition, and has complicated the challenges of presenting a united front.

Growth is also reflected in staff size and budget. Table 1 illustrates the shifts in staff size over the last three decades. In 1975, 85% of surveyed organizations had ten or fewer lawyers on staff and only 5% had more than twenty. By contrast, in 2007, only 40% of surveyed organizations had ten or fewer lawyers on staff and 20% had more than twenty. In 1975, almost a quarter (22%) of organizations had no non-lawyer staff, and only 2% had more than twenty. In 2007, only 2% of organizations had no non-lawyer staff, almost half (46%) had more than twenty, and 10% had more than 150. A corresponding growth was apparent in financial resources. In 1975, about a quarter (28%) of organizations had annual budgets of under \$150,000 or about \$560,000 in current dollars; only 10% had budgets of at least \$900,000, or \$3.4 million in current dollars.¹⁵ In 2007, only 8% of surveyed organizations had annual budgets below \$1 million. Slightly over half (54%) had budgets between \$1 and \$5 million; and slightly under a quarter (24%) ranged from \$5 million up to \$15 million. About a sixth (16%) had budgets of at least \$15 million, and 8% had budgets above \$50 million.

12. Davison, Lambda Legal.

13. Dempsey, Center for Democracy and Technology; Gates, Children’s Defense Fund; Wilber, Legal Services for Children; O’Toole, National Center for Youth Law.

14. Newhouse, New England Legal Foundation. For similar views, see Kaufman, Atlantic Legal Foundation; Clegg, Center for Equal Opportunity; Casey, Christian Legal Society; Rushford, Criminal Justice Legal Foundation; Pendley, Mountain States Legal Foundation; Revett, Pacific Legal Foundation.

15. See Handler et al., *supra* note 2, at 56 tbl.4.6. The updated dollars come from the U.S. Bureau of Labor Statistics, <http://data.bls.gov/cgi-bin/cpicalc.pl>.

Table 1. Number of Lawyer and Non-Lawyer Positions in Public Interest Legal Organizations, 1975 and 2007¹⁶

Number of Lawyer Positions	Percent of Organizations		Number of Non-Lawyer Positions	Percent of Organizations	
	1975	2007		1975	2007
0	-	-	0	22%	2%
1-2	31%	-	1-2	33%	4%
3-5	31%	14%	3-5	28%	6%
6-9	20%	22%	6-9	7%	16%
10	3%	4%	10	-	4%
11-20	11%	40%	11-20	7%	22%
21-30	1%	10%	21-30	-	16%
31-40	4%	2%	31-40	1%	6%
41-50	-	2%	41-50	-	4%
51-60		2%	51-60	-	-
61-70		-	61-70	-	-
71-80		2%	71-80	-	4%
81-90		-	81-90	-	-
91-100		2%	91-100	-	2%
101-110		-	101-110	-	-
			111-120	1%	-
			121-150	-	4%
			Over 150	-	10%
	100%	100%		100%	100%
Total ¹⁷	N=72	N=50	Total	N=72	N=50
Total Lawyer Positions in Sample	478	855	Total Non-Lawyer Positions in Sample	384	2747
Mean Lawyer Positions in Sample	7	17	Mean Non-Lawyer Positions in Sample	5	55

A. Scale and Complexity

This increase in scale is partly due to the increased scope and complexity of problems and strategies necessary to address them. Environmental public interest law is a clear example. Frances Beinecke, president of the Natural Resources Defense Counsel, noted that when the organization was founded in 1970, the issues appeared “black and white.” The challenge was to “identify polluters and make them stop.” Similarly, the initial focus of the Sierra Club’s

16. Data on 1975 comes from Handler et al., *supra* note 2, at 51 tbl.4.2, reprinted in Nielsen & Albiston, *supra* note 2, at 1607. Data on 2007 come from my sample.

17. Due to rounding, totals may not equal 100%.

legal staff was “just say no. Shut it down, clean it up.”¹⁸ Today, organizations like Earth Justice, the Environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club, all have a far broader and more proactive agenda. Crafting a responsible environmental framework requires a coordinated mix of strategies, which often includes partnerships with former corporate or governmental adversaries.¹⁹ The global dimension of problems in areas like climate change, human rights, and privacy and technology have also required an increasing number of American public interest legal organizations to work on an international scale.²⁰

In other fields, broader social, economic and demographic changes have increased the populations at risk and complicated efforts to assist them. For groups dealing with poverty and immigration, growing income inequalities and rising rates of undocumented and non-English speaking poor have posed new challenges.²¹ The problems have also been compounded by limitations in government support, particularly prohibitions on assistance by federally-funded programs to undocumented residents.²²

Leaders of civil rights organizations similarly emphasized the increased complexity of problems at issue. Ted Shaw, president of the NAACP, noted that a quarter century ago, “the evil [was] clear and visible and easy to organize around. Now evil in this crude form is rare.” In contexts like juvenile justice, the problem is often “less a lack of will than of competence,” and the solutions are less self-evident.²³ The heads of women’s rights groups made much the same point. As Kathy Rogers, president of Legal Momentum, summarized the situation, the underpinnings of current gender inequalities are “more complex and less susceptible to legal solutions.”²⁴

Just as many problems have grown more complicated, so, too, has litigation. Rare now are the contexts in which organizations like the American Civil Liberties Union (ACLU) or the Mexican American Legal Defense Fund can simply “find a judge and get an order,” and “win cases on the papers.”²⁵ Litigation is increasingly fact-sensitive, the facts are less clear cut, and the

18. Pope, Sierra Club.

19. Parker, Earth Justice; Krupp, Environmental Defense Fund; Beinecke, Natural Resources Defense Council; Pope, Sierra Club; *see also* Posting of Carl Pope, Environmentalism Is So Not Dead!, to Gristmill, <http://gristmill.grist.org/story/2007/9/18/121443/712> (Sept. 18, 2007, 3:42 PM) (“For a hundred years, those who called themselves first conservationists and then environmentalists defined their task as being to constrain, and clean up after, an existing industrial order. For the next hundred years, our task is to shape, design, and accelerate the arrival of a new, sustainable economic order.”).

20. Dempsey, Center for Democracy and Technology; Ross, Human Rights Watch; Beinecke, Natural Resources Defense Council.

21. Fujioka, Asian Law Caucus; Casey, Christian Legal Society.

22. *See infra* text accompanying note 43.

23. Shauffer, Youth Law Center.

24. Rodgers, Legal Momentum; *accord* Greenberger, National Women’s Law Center.

25. Crosby, ACLU; Trasvina, Mexican American Legal Defense and Education Fund.

process is more expensive. Richard Rothschild of the Western Center on Law and Poverty put it bluntly: “There are fewer easy cases. Defendants are more sophisticated.” And as noted below, courts are also more conservative, all of which has intensified pressure to find new resources and new strategies.

B. Goals

For many public interest organizations, the challenges are greater because so, too, are their aspirations. Groups like Human Rights Watch, which initially focused on political and civil rights, have broadened their agendas to include economic rights and protection for particularly vulnerable populations, such as children and gays and lesbians.²⁶ Disability rights groups that started with concerns mainly about physical access have taken up a wide range of issues including learning difficulties, veterans’ benefits, and mental health. Mental health groups, for their part, have “raised the bar.”²⁷ As Robert Bernstein, director of the Bazelon Center for Mental Health Law noted, the concerns are not simply conditions of confinement or abuse and neglect, but also “failures in the [entire] mental health delivery system.” The goals now are to maximize individuals’ “participation in the community,” and to ensure “services that allow for a successful life.”²⁸ That, in turn, requires not just minimally decent living conditions, but education, employment, and even a chance for a “date on a Saturday night.”²⁹

By contrast, other public interest legal organizations have felt pressure to scale down their aspirations. On many issues, the increasingly conservative orientation of the public, the judiciary, and the administration have forced some groups to redefine success. As Joan Graff, director of the Legal Aid Society of San Francisco’s Employment Law Center put it, “now victory is not necessarily winning. It’s not losing.” For death penalty opponents, the initial goal had been to “put ourselves out of business,” but over the last three decades, the death row population has tripled and the “demonization” of violent offenders has undermined chances for abolition of capital sentences.³⁰ In this, as in other surveys, progressive lawyers frequently saw their mission less as gaining new ground than as holding on to what they had.³¹

26. Ross, Human Rights Watch.

27. Bernstein, Bazelon Center for Mental Health Law.

28. Bernstein, Bazelon Center for Mental Health Law.

29. Bernstein, Bazelon Center for Mental Health Law.

30. Stevenson, Equal Justice Initiative; *accord* Bright, Southern Center for Human Rights.

31. See Greenberger, National Women’s Law Center; Wolfman, Public Advocates; Corey S. Shdaimah, *Intersecting Identities: Cause Lawyers as Legal Professionals and Social Movement Actors*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 220, 228-29 (Austin Sarat & Stuart A. Scheingold eds., 2006) (quoting poverty lawyers as trying to “maintain more than expand” and “fight back even worse changes”).

C. The Political and Judicial Climate

That narrowing of goals reflects what, to many public interest leaders, is the most significant change in public interest legal work over the last quarter century: the growing conservatism of the country and the courts. As research on social movements has long emphasized, a critical factor in promoting reform is the political opportunity structure.³² And over the last quarter century, the climate for progressive legal strategies has grown less favorable.³³ About 70% of surveyed leaders identified this increasingly conservative orientation as one of the most significant changes or challenges in their field.

The impact, of course, varied among groups. Unsurprisingly, leaders of conservative organizations viewed the judiciary as becoming more “balanced” and more receptive to their concerns on issues like abortion, religious liberty, criminal justice, and property rights.³⁴ By contrast, most other leaders saw the courts as more “ideological” and less “open and responsive . . . to the law and facts.”³⁵ Organizations encountered increasing “roadblocks, procedurally and substantively.”³⁶ Restrictive rulings on mootness and standing made it harder to obtain a hearing, and restrictive interpretations of statutory and constitutional protections made it harder to obtain relief. Doctrine had “gone south,” particularly in contexts such as civil rights, civil liberties, welfare, capital defense, prison reform, consumer protection, and youth law.³⁷ According to Laurence Paradise, director of Disability Rights Advocates, 90% of claimants in employment cases would never get relief under prevailing approaches because they were “too disabled or not disabled enough.” Steven Bright, former

32. See DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970* (1982); SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* (2d ed. 1998); Hanspeter Kriesi, *Political Context and Opportunity*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 67 (David A. Snow, Sarah A. Soule & Hanspeter Kriesi eds., 2004).

33. Michael McCann & Jeffrey Dudas, *Retrenchment . . . and Resurgence? Mapping the Changing Context of Movement Lawyering in the United States*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 31, at 37.

34. Clegg, Center for Equal Opportunity; Casey, Christian Legal Society; Rushford, Criminal Justice Legal Foundation; Pendley, Mountain States Legal Foundation.

35. Shaw, NAACP.

36. Romero, ACLU.

37. The quote is from Brian Wolfman of Public Citizen, concerning consumer interests. For similar views on civil rights and civil liberties, see Shaw, NAACP; Romero, ACLU; Crosby, ACLU of Northern California; Fung, Asian American Legal Defense and Education Fund; Kwoh, Asian Pacific American Legal Center; Bernstein, Bazelon Center for Mental Health Law; Olshansky, Center for Constitutional Rights; Arnwine, Lawyers' Committee for Civil Rights; Graff, Legal Aid Society of San Francisco, Employment Law Center; Rothenberg, New York Lawyers for the Public Interest. Conservatism on criminal justice and prisoners' rights was noted by Stevenson of the Equal Justice Center, and Bright of the Southern Center. For concerns on issues relating to youth, see Stotland, Education Law Project; Shauffer, Youth Law Center; and on welfare, see Bowman, Shriver National Center on Poverty; Rothschild, Western Center on Law and Poverty.

director of the Southern Center for Human Rights gave one of the bleakest descriptions. With few exceptions, courts in death penalty and prison rights cases “have gone from occasionally protective to actively resistant. They look for every possible reason to avoid ruling on substantive claims and then, if they reach the merits, to deny relief.”

The problems have been compounded by restrictive interpretations of attorneys’ fee statutes. Over the past fifteen years, federal and state court rulings have allowed denials or limitations on fees based on the monetary damages obtained rather than the work performed and have disallowed fees entirely where defendants settle before securing a final judgment.³⁸ The result of these rulings has been to erode a crucial source of financial support for legal representation.³⁹

The move to the right in many legislative as well as judicial contexts has also altered the landscape of public interest law. Leaders noted the lack of “political will” to meet the needs of vulnerable groups, like children and individuals with mental disabilities.⁴⁰ Heads of civil rights, civil liberties, and gay and lesbian rights organizations were particularly frustrated by the failure of Congress to “stan[d] on principle” or, as ACLU President Anthony Romero put it, show some “spine” on key issues.⁴¹ Even some prominent conservative leaders shared this view. As one put it, “Congress doesn’t care about the Constitution.”⁴²

Poverty, immigration, and prisoners’ rights organizations have been especially affected by legislative retrenchment. Congressional restrictions now prevent federally funded legal services programs from engaging in activities that are most likely to yield systemic changes, such as class actions, lobbying, community organizing, or participation in legislative and administrative rule-making proceedings.⁴³ These programs also may not represent particularly unpopular claimants, such as prisoners, undocumented individuals, and school desegregation plaintiffs. Nor may federally funded lawyers seek recovery of attorneys’ fees even when otherwise authorized by statute.⁴⁴ As a consequence,

38. *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and Human Res.*, 532 U.S. 598 (2001); *Farrar v. Hobby*, 506 U.S. 103 (1992); see David S. Udell & Rebekah Diller, *Access to the Courts: An Essay for the Georgetown University Law Center Conference on the Independence of the Courts*, 95 GEO. L.J. 1127, 1134-35 (2007) (describing restrictive state and federal decisions).

39. Needleman, Brooklyn Legal Services; Padilla, California Rural Legal Assistance; Paradise, Disability Rights Advocates.

40. Bernstein, Bazelon Center for Mental Health Law; Gates, Children’s Defense Fund.

41. Romero, ACLU; Olshansky, Center for Constitutional Rights; accord Davison, LAMDA.

42. Gaziano, Heritage Foundation.

43. Omnibus Consolidated Rescissions and Appropriations Act of 1996, 16 U.S.C. § 4601-6a (2000).

44. *Id.*

poverty organizations have been forced either to forgo federal assistance or to accept conditions that undermine their effectiveness and leave poor individuals who are politically most vulnerable legally vulnerable as well.⁴⁵ Restrictions on prisoners' rights lawyers have had similar results.⁴⁶

These legislative and judicial moves to the right are reflective of broader trends in popular opinion. On some social justice issues, leaders described a decline in the public's sense that problems are urgent or susceptible to legal solutions.⁴⁷ According to Mark Rothenberg, the Director of New York Lawyers for the Public Interest, many Americans "see civil rights as history, a struggle largely achieved." Similarly, leaders of women's rights groups like Equal Rights Advocates, Legal Momentum, the National Partnership for Women and Families, and the National Women's Law Center, all identified complacency as a major challenge. Women have a sense that "their basic needs have been addressed," and they generally fail to organize around the more subtle, structural aspects of discrimination.⁴⁸ On other issues, like immigration, affirmative action, and reproductive rights, conservative groups have reframed the debate in ways that place liberal public interest organizations in an increasingly defensive, reactive mode. More resources are consumed in policy and ballot initiative fights "just to prevent backsliding."⁴⁹ So too, 9/11 and the war on terrorism has dramatically redefined the agenda of civil liberties organizations in ways that are not of their choosing. In the words of Barbara Olshansky of the Center for Constitutional Rights, "Sisyphus doesn't begin to describe it."⁵⁰

Yet the landscape is by no means uniformly bleak. In some fields, most notably environmental protection and gay and lesbian rights, public attitudes

45. Virtually all the leaders of groups working on poverty issues criticized these restrictions. For similar views, see DEBORAH L. RHODE, *ACCESS TO JUSTICE* 105-06 (2004), and sources cited therein.

46. Bright, Southern Center for Human Rights (referring to Prison Litigation Reform Act, 18 U.S.C. § 3625 (2000)); see Brian J. Ostrom et al., *Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act*, 78 NOTRE DAME L. REV. 1525, 1525-26 (2003) (noting the 40% decline in prison litigation in the four years following enactment of the Prison Litigation Reform Act); Udell & Diller, *supra* note 38, at 1151 (noting that the attorneys' fee provision of the Prison Litigation Reform Act, together with bans on prisoner cases by federally-funded legal services organizations, has "made it impossible for most prisoners to find legal representation").

47. Rodgers, Legal Momentum; Shaw, NAACP; Greenberger, National Women's Law Center.

48. Greenberger, National Women's Law Center; accord Herrera, Equal Rights Advocates; Rogers, Legal Momentum; Frye, National Partnership for Women and Families.

49. Rogers, Legal Momentum, accord Romero, ACLU; Fujioka, Asian Law Caucus; Kwoh, Asian Pacific American Legal Center; Herrera, Equal Rights Advocates; Arnwine, Lawyers' Committee for Civil Rights.

50. Olshansky, Center for Constitutional Rights. Other leaders similarly noted how fallout from 9/11 had defined the agenda on privacy issues. Romero, ACLU; Dempsey, Center for Democracy and Technology.

have grown significantly more supportive and major victories are possible in both state and federal courts.⁵¹ Some organizations also experience what ACLU leaders term the “undertaker” effect: “When things are bad for others, they are good for us.”⁵² The curtailment of civil liberties following 9/11 led to a dramatic increase in ACLU membership. On other issues such as environmental protection and reproductive choice, adverse Supreme Court rulings or administration decisions can produce a surge in public support.

Conservative groups experience corresponding effects. As the head of the Mountain States Legal Foundation put it, a liberal administration is “good for [us], bad for the country.”⁵³ When conservative groups experience success on their issues, “the public gets complacent.”⁵⁴ If a Republican administration is in power, it is also harder for conservative organizations to hold a government agency’s “feet to the fire” without offending their donor base.⁵⁵

For most public interest legal organizations, however, the climate has grown more challenging over the last quarter century. That of itself is a measure of partial progress. Ted Shaw of the NAACP underscored the irony: “We are, to some degree, victims of our own success.” The movement’s many visible achievements have eroded the sense of urgency that gave it birth.

D. Achievements and Challenges

When assessing the achievements of public interest law in their field, participants in this study identified contributions along multiple dimensions. Some leaders emphasized the effect on individual lives. Brian Wolfman, litigation director of Public Citizen, noted the thousands of deaths and serious injuries prevented through litigation securing greater governmental accountability on health and safety issues. Heads of criminal justice organizations stressed the lives saved, the defendants exonerated, and the injustices reduced as the result of legal challenges and broader reform efforts in the indigent defense system.⁵⁶ For disability rights leaders, the measures of success included increases in access to facilities, services, and opportunities that materially improved the quality of individual lives.⁵⁷

51. Leaders pointed to multiple examples, including recent U.S. Supreme Court victories on environmental issues, state supreme court decisions on gay marriage, and California state court decisions on health law. Kendell, National Center for Lesbian Rights; Beinecke, Natural Resources Defense Council; Rothschild, Western Center on Law and Poverty.

52. Crosby, ACLU of Northern California (crediting phrase to Ira Glasser).

53. Pendley, Mountain States Legal Foundation.

54. Rushford, Criminal Justice Legal Foundation.

55. Pendley, Mountain States Legal Foundation.

56. Stevenson, Equal Justice Initiative; Bright, Southern Center for Human Rights.

57. Bernstein, Bazelon Center for Mental Health Law; Paradise, Disability Rights Advocates.

Other leaders stressed landmark legislation and legal decisions that have protected fundamental rights, established crucial principles, and safeguarded the environment.⁵⁸ Providing checks on arbitrary or overreaching actions by judicial and governmental officials has also been critical.⁵⁹ In fields that have emerged over the last quarter century, such as women's rights, environmental preservation, gay and lesbian rights, disability law, and information technology, public interest organizations have helped develop the central frameworks in which law and policy have evolved.⁶⁰ As a consequence, the institutional landscape of many public and private sector organizations has been transformed. Commonly cited examples include racial integration of schools, workplaces, and the military, work/family innovations in employment, and environmentally responsive policies for corporations and regulatory agencies.⁶¹

Many leaders also stressed more intangible but equally crucial advances in public awareness, social attitudes, and client empowerment. Their organizations' litigation and policy work, along with similar efforts documented in other studies, has helped to raise awareness, legitimate goals, mobilize support, attract funding, and gain leverage in dispute resolution and policy settings.⁶² The result is that Americans have a much greater understanding of problems affecting children and low-income and minority communities; of errors plaguing the American criminal justice system; of international human rights abuses; of the extent of environmental challenges; and of the concerns posed by new technologies.⁶³ Many traditionally disempowered constituencies, and the groups that represent them, have gained greater respect and legitimacy.⁶⁴ Poor communities have a voice in more of the

58. Romero, ACLU; Kaufman, Atlantic Legal Foundation; Clegg, Center for Equal Opportunity; Gates, Children's Defense Fund; Casey, Christian Legal Society; Pendley, Mountain States Legal Foundation; Revett, Pacific Legal Foundation; Bowman, Shriver National Center on Poverty.

59. Rushford, Criminal Justice Legal Foundation; O'Toole, National Center for Youth Law; Wolfman, Public Citizen.

60. Stotland, Education Law Project; Frye, National Partnership for Women and Families; Greenberger, National Women's Law Center.

61. Parker, Earth Justice; Krupp, Environmental Defense Fund; Shaw, NAACP; Greenberger, National Women's Law Center.

62. JOEL HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* 210 (1978); MICHAEL W. MCCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* 89-90, 171-76 (1994); Sandra R. Levitsky, *To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 31, at 145, 147; Ann Southworth, *Lawyers and the "Myth of Rights" in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469, 493 (1999).

63. Kwoh, Asian Pacific American Legal Center; Steele, Electronic Frontier Foundation; Graff, Legal Aid Society of San Francisco, Employment Law Center; O'Toole, National Center for Youth Law; Beinecke, Natural Resources Defense Council; Shauffer, Youth Law Center.

64. Davison, Lambda Legal; Kendall, National Center for Lesbian Rights; Wolfman, Public Citizen.

decisions that affect them, and many grassroots organizations have increased their capacity to influence public policy.⁶⁵

Yet leaders of public interest organizations are also acutely aware of the limitations of their achievements and the major challenges that remain. The fundamental problem involves resources. Direct service providers and human rights organizations face the most obvious and painful reminders of the overwhelming demand and limited capacity to meet it.⁶⁶ Brooklyn Legal Services is forever “putting a thumb in the dyke;” the vast majority of needs of disabled, homeless, and immigrant populations remain unserved.⁶⁷ “Bailing with a thimble” is how Gen Fujioka, director of the Asian Law Caucus, described a similar experience.⁶⁸ Restrictions on legal service programs and attorneys’ fees have left only a tiny number of lawyers available to handle prisoners’ rights cases for 2.3 million incarcerated individuals.⁶⁹ Human Rights Watch has only two staff members in areas of Asia that account for a quarter of the world’s population.⁷⁰

Although liberal public interest leaders often described opposing conservative organizations as “well-heeled,” the heads of those groups tended to see themselves as financial underdogs.⁷¹ Leaders of the Center for Equal Opportunity, the Criminal Justice Legal Foundation, the Heritage Foundation, and Mountain States Legal Foundation, all perceived far more resources on the other side.⁷²

Even the richest organizations, environmental groups with \$75 to \$80 million in annual budgets, confronted major funding constraints, given the global dimensions of the challenges and the financial incentives of opponents. Natural Resources Defense Council President Beinecke acknowledged that her organization was better off than others in terms of “public and financial support, but the scale of the [environmental] problem is so much greater and the lack of a national strategy on issues like global warming is [more] appalling.” Fred Krupp, president of the Environmental Defense Fund, similarly noted that because reform on the dimensions needed has broad

65. Dunkerton, Community Law Center; Bowman, Shriver National Center on Poverty; Rothschild, Western Center on Law and Poverty.

66. Kamin, Bet Tzedec; Olshansky, Center for Constitutional Rights; Casey, Christian Legal Society; Ross, Human Rights Watch; Wilbur, Legal Services for Children; Perales, Puerto Rican Legal Defense and Education Fund.

67. Needleman, Brooklyn Legal Services.

68. Fujioka, Asian Law Caucus.

69. Stevenson, Equal Justice Initiative; Bright, Southern Center for Human Rights.

70. Ross, Human Rights Watch.

71. Arnwine, Lawyers’ Committee for Civil Rights (referring to well-heeled opposition).

72. That view is common among conservative public interest advocates. See Lee Edwards, *The First Thirty Years*, in BRINGING JUSTICE TO THE PEOPLE 11 (Lee Edwards ed., 2004); Mark R. Levin, *Following the Money*, in BRINGING JUSTICE TO THE PEOPLE, *supra*, at 165, 167.

economic effects, the political opposition has often been exceptionally intense and “the legislative strategies need to be unusually powerful, as do the resources to . . . execute them.”

Other limitations involved the inadequacies of litigation, particularly given the increasingly conservative climate in judicial decision making. A long-standing critique of “cause lawyering” is that it places too much faith in lawsuits and diverts energy from the political strategies that are necessary to secure long-term social change.⁷³ Many leaders shared those concerns, and noted that “victory in the courts does not necessarily mean victory in practice.”⁷⁴ As counter-majoritarian institutions, courts lack the legitimacy, expertise, and enforcement resources sometimes necessary for meaningful institutional reform.⁷⁵ Doctrinal change without a political base to support it is vulnerable to chronic noncompliance, public backlash, statutory reversal, or judicial retrenchment.⁷⁶ It is, as surveyed leaders generally recognized, impossible to “create policy,” “change attitudes,” or “build a movement” solely through litigation.⁷⁷ Lawyers in this, as in other studies, have ample experience with rights gone wrong—litigation strategies that yielded only temporary victories or counterproductive consequences.⁷⁸ The lesson that leaders like Buck Parker of Earth Justice have drawn is that organizations also need to have educational programs, lobbying strength, and “staying power” to monitor

73. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Lynn Jones, *The Haves Come Out Ahead: How Cause Lawyers Frame the Legal System for Minorities*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 31, at 182, 183; Michael McCann & Helena Silverstein, *Rethinking Law's "Allurements": A Relational Analysis of Social Movement Lawyers in the United States*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 261, 262-64 (Austin Sarat & Stuart Scheingold eds., 1998) (discussing the critique and arguing for a more context-specific analysis).

74. Olshansky, Center for Constitutional Rights; *accord* Trasvina, Mexican American Legal Defense and Education Fund; O'Toole, National Center for Youth Law; Rothenberg, New York Lawyers for the Public Interest; Shauffer, Youth Law Center.

75. GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); ROSS SANDLER & DAVID SCHOENBROD, *DEMOCRACY BY DECREE: WHAT HAPPENS WHEN COURTS RUN GOVERNMENT* (2003); Kenneth Lee, *Where Legal Activists Come From*, *AM. ENTERPRISE*, June 2001, at 50.

76. STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS*, at xxiv (2004); Steve Bachmann, *Lawyers, Law, and Social Change*, 13 *N.Y.U. REV. L. & SOC. CHANGE* 1, 3 (1984); Kevin R. Den Dulk, *In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 31, at 197, 199-200; Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 *STAN. L. REV.* 207, 243 (1976); Comment, *The New Public Interest Lawyers*, 79 *YALE L.J.* 1069, 1077 (1970) (quoting Gary Bellow).

77. Fujioka, Asian Law Caucus (movement); Gates, Children's Defense Fund (policy); Rothenberg, New York Lawyers for the Public Interest (attitudes).

78. Parker, Earth Justice; Rothschild, Western Center on Law and Poverty (citing examples of courthouse victories that produced backlash and reversal). For other examples, see sources cited in Southworth, *supra* note 62, at 510, and sources cited *supra* notes 73 and 76.

agency and industry practices. As Ralph Nader once summed it up: “You have to deal with the adversary on all the fronts on which the adversary deals with you.”⁷⁹

Yet such strategies, in turn, require a level of financial and popular support that many groups find difficult to marshal. Part of the reason public interest groups have relied heavily on lawsuits is because they can sometimes mobilize such support and because other options are less available.⁸⁰ Courts may not always be the most effective dispute resolution forums, but they are often the most accessible; they are open as of right and can force more economically or politically powerful parties to the bargaining table.⁸¹ As research on social movements makes clear, lawsuits can help frame problems as injustices, identify perpetrators and responses, and reinforce a sense of collective identity, all of which build a political base for reform.⁸² In this, as in other surveys, leaders were under no illusions about the relative limitations of litigation, but they were equally realistic about their challenges in other policy arenas.⁸³

The challenges varied across substantive areas. The ability of gays and lesbians to pass for straight “enables individuals to avoid homophobia but undercuts their collective ability to challenge it.”⁸⁴ The public often sees Asians as the “model minority,” and their relative economic success obscures the serious problems of poor and undocumented immigrants.⁸⁵ Children might be “cuter and more sympathetic” than other groups, but they don’t have the votes or money necessary for political leverage.⁸⁶ Nor do undocumented immigrants, whose diversity in backgrounds and languages and hostile reception among large segments of the public complicate efforts by advocacy organizations.⁸⁷ Groups representing poor communities often confront a public

79. ARON, *supra* note 3, at 90 (quoting Nader).

80. For discussion of lobbying restrictions and other institutional constraints that push lawyers to litigate, see Southworth, *supra* note 62, at 508.

81. Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. L. REV. 1015 (2004).

82. For the importance of framing, see JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS 171 (2005); Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611, 615-16 (2000); Bernd Simon, *Individuals Groups and Social Change: On The Relationship Between Individual and Collective Self-Interpretation and Collective Action*, in INTERGROUP COGNITION AND INTERGROUP BEHAVIOR 257, 260-61 (Constantine Sedikides, John Schopler & Chester A. Insko eds., 1998). For the experience of unjust treatment as a basis for collective identity, see Scott A. Hunt, Robert D. Benford & David A. Snow, *Identity Fields: Framing Processes and the Social Construction of Movement Identities*, in NEW SOCIAL MOVEMENTS: FROM IDEOLOGY TO IDENTITY 185 (Enrique Laraña, Hank Johnston & Joseph R. Gusfield eds., 1994).

83. Southworth, *supra* note 62 at, and *infra* text accompanying notes 84-92.

84. Kendell, National Center for Lesbian Rights.

85. Fung, Asian American Legal Defense and Education Fund.

86. Gates, Children’s Defense Fund; O’Toole, National Center for Youth Law.

87. Fung, Asian American Legal Defense and Education Fund; Fujioki, Asian Law

“exhausted by their plight.”⁸⁸ As noted earlier, civil rights and women’s rights organizations are also hobbled by cultural complacency, and Americans’ conviction that “we’ve solved that.”⁸⁹ Conservative groups feel that their issues are not “sexy,” and fail to get sympathetic coverage in the press.⁹⁰ Lawyers working on technology and individual rights emphasize their unique challenge in framing cases that would be compelling to the average American. It is “difficult to come up with a picture like belching smokestacks or kids with AIDS”; “peoples’ eyes glaze over” when technology is at issue, even though it raises serious privacy and free speech concerns.⁹¹

Robert Bernstein, director of the Bazelon Center for Mental Health Law, summarized the situation: “Everyone says the group they represent is worst off.” In his view, however, “our [group] is. It is still fine to ridicule the crazy and psychotic.” There were, however, other contenders for the “worst-off” title. Civil liberties’ leaders acknowledged that “these are tough times for all liberal public interest organizations,” but believed that it was hardest for their groups because it was easier to “ratchet up public fears” on security-related issues.⁹² Brian Stevenson of Equal Justice Initiative argued that prisoners, especially death penalty defendants, are “uniquely disempowered” and despised. Steven Bright of the Southern Center for Human Rights agreed, but added, “I didn’t really know what unpopular was before I began representing sex offenders as well.”

A final group of challenges that public interest leaders identified are more within their control. One concern involves the fragmentation of groups and splintering of their efforts. Too often individual organizations have “worked in silos,” in isolation or in competition for resources and recognition.⁹³ As subsequent discussion indicates, although most leaders reported a fair degree of collaboration, many also acknowledged competitive pressures that get in the way. Another concern involves expertise. Some leaders noted the disconnect between the skill set required for effective lawyering and that required for

Caucus; Kwoh, Asian Pacific American Legal Center; Trasvina, Mexican American Legal Defense and Education Fund; Perales, Puerto Rican Legal Defense and Education Fund. For some leaders, death threats were not uncommon. Perales, Puerto Rican Legal Fund.

88. Stevenson, Equal Justice Initiative.

89. Herrera, Equal Rights Advocate. *See supra* text accompanying note 48.

90. Newhouse, New England Legal Foundation; *accord* Revett, Pacific Legal Foundation.

91. Dempsey, Center for Democracy and Technology; Steele, Electronic Frontier Foundation.

92. Romero, ACLU; *accord* Fung, Asian American Legal Defense and Education Fund; Olshansky, Center for Constitutional Rights.

93. Kwoh, Asian Pacific American Legal Center; *accord* Bernstein, Bazelon Center for Mental Health Law; Olshansky, Center for Constitutional Rights; Herrera, Equal Rights Advocate; Graff, Legal Services Foundation of San Francisco, Employment Law Center; Frye, National Partnership for Women and Families.

effective management.⁹⁴ “Why didn’t I go to business school?” was one director’s question.⁹⁵ Barbara Arnwine, director of the Lawyers’ Committee for Civil Rights, put it bluntly: most public interest organizations “are not good at leadership development.” Nor, according to some leaders, have their organizations mastered the marketing skills necessary for effective public communication.⁹⁶ Only one leader, however, raised a concern often voiced by conservative critics, that public interest groups speak from a “too narrow” and “sometimes dogmatic” ideological perspective.⁹⁷ On the whole, the picture that emerged was of a diverse, self-critical community, proud of its achievements but conscious of its challenges and the diverse strategies necessary to address them.

E. *Strategies*

In describing the evolution of public interest law in their field, leaders often stressed the need to think more strategically and to pursue multiple approaches.⁹⁸ When many groups started, their orientation was more reactive and more focused on legal victories as “ends in themselves.”⁹⁹ Now, although litigation is still crucial, it is used more selectively in tandem with other approaches.¹⁰⁰ Roger Clegg, president of the Center for Equal Opportunity, put it succinctly: the key to effective social change “is not rocket science. You need to reach all three branches of government and public opinion.”

When contemporary public interest leaders consider filing lawsuits, it is with a more realistic vision of how they will serve long-term goals. For example, organizations may target practices that can only be fixed through systemic reform or select a few areas where they can have the greatest impact.¹⁰¹ Objectives apart from winning can be critical, such as making a

94. Olshansky, Center for Constitutional Rights; Arnwine, Lawyers’ Committee for Civil Rights.

95. Cohen, Immigrant Legal Resources Center.

96. Crosby, ACLU of Northern California; Rogers, Legal Momentum; Rothenberg, New York Lawyers for the Public Interest.

97. Kaufman, Atlantic Legal Foundation. For criticisms of liberal public interest lawyers’ elitism and radical agenda, see Edwards, *supra* note 72, at 6, 8.

98. Those who emphasized strategic thinking included Fung, Asian American Legal Defense and Education Fund; Olshansky, Center for Constitutional Rights; Parker, Earth Justice; and Gaziano, Heritage Foundation. Those who stressed the importance of multiple strategies included Paradise, Disability Rights Advocates; Stotland, Education Law Project; Stevenson, Equal Justice Initiative; Herrera, Equal Rights Advocates; Rothenberg, New York Lawyers for the Public Interest; and Bright, Southern Center for Human Rights.

99. Parker, Earth Justice; Stevenson, Equal Justice Initiative.

100. Fung, Asian American Legal Defense and Education Fund; Olshansky, Center for Constitutional Rights; Gaziano, Heritage Foundation.

101. Parker, Earth Justice (expressing the need to consider what it will take to achieve significant impact in a particular area); Stevenson, Equal Justice Initiative (expressing the need to identify institutional vulnerability); Gaziano, Heritage Foundation (expressing the

public record, attracting public attention, or imposing sufficient costs and delays that will force defendants to adopt more socially responsible practices.¹⁰² Many leaders stressed the need to maintain litigation as a “credible threat,” but also to avoid a “scattergun” approach that would “spread [resources] too thin” for structural change.¹⁰³ Direct service providers similarly cautioned against “taking whatever comes in without a broader strategy.”¹⁰⁴

Table 2. Percent Public Interest Legal Organization Efforts Expended on Activities, 1975 and 2007¹⁰⁵

% Effort Expended	Legal Work		Legislative/ Administrative Work		Other Research, Education, & Outreach		Political Mobilization	
	1975	2007	1975	2007	1975	2007	1975	2007
0%	-	4%	25%	15%	14%	2%	-	78%
1-19%	-	17%	54%	49%	63%	43%	-	15%
20-39%	14%	9%	15%	28%	22%	36%	-	6%
40-59%	35%	26%	4%	6%	1%	15%	-	-
60-79%	25%	23%	1%	2%	-	-	-	-
80-99%	24%	21%	-	-	-	-	-	-
100%	3%	-	-	-	-	4%	-	-
Total	100%	100%	100%	100%	100%	100%	-	100%
	N=72	N=47	N=72	N=47	N=72	N=47		N=47
Mean	60%	51%	7%	17%	12%	26%	-	3%

Note: The 1975 data describe the percentage of total effort expended in these areas. The 2007 data describe the percentage of programming effort expended in these areas.

need to select clients and causes to serve long term ends); Shauffer, Youth Law Center (expressing the need to look for opportunities for systemic change).

102. Romero, ACLU (noting that there is value in making historical record even if they lose the case); Pope, Sierra Club (noting that there is value in taking cases where delay will be financially disastrous and forcing a shift to a more environmentally responsive approach).

103. Olshansky, Center for Constitutional Rights (explaining that litigation can cause resources to be “spread too thin.”); Herrera, Equal Rights Advocate; Studley, Public Advocates (describing a “scattergun” approach); Wolfman, Public Citizen; Rothschild, Western Center on Law and Poverty; Shauffer, Youth Law Center (“credible threat”).

104. Needleman, Brooklyn Legal Services.

105. The source of the 1975 data is Weisbrod, *supra* note 2, at 55 tbl.4.5, *reprinted in* Nielsen & Albiston, *supra* note 2, at 1611. The data are not entirely comparable because the 1975 survey asked about total effort, including internal administration, included only organizations that used adjudication, and did not specify as many activities. Unlike the earlier survey, the 2007 study asked only about programmatic, not administrative, activities, included separate categories for political mobilization and research and reports, and considered administrative/regulatory as part of the category for legislation. Table 2 above includes research and reports as part of the category of “outreach,” the term specified in 1975. In the 2007 study, legal work is defined as direct services or impact/test case litigation.

Table 2 captures changes over time in the programmatic focus of leading public interest organizations. Over the past three decades, the mean percentage of legal work, defined as direct services or impact litigation, fell somewhat, from 60% in 1975 to 51% in 2007. By the same token, the mean amount of legislative work increased from 7% to 17%, and the research, reports, education and media activities jumped from 12% to 26%.

A more detailed breakdown of the 2007 data finds that litigation remains important. Ninety percent of surveyed organizations bring impact cases, and nearly half of organizations (47%) devote at least 50% of their efforts to such work. Slightly under half (45%) of the organizations provide some direct services to clients, but only 11% devote at least half of their efforts to such assistance. More than four fifths of organizations (85%) pay some attention to legislative and administrative regulatory matters. For about a third of organizations, this work accounts for 25% to 50% of their efforts, and for about half (49%), it constitutes no more than 15%. About a fifth (21%) devote some effort to political mobilization. Nearly all organizations (98%) are engaged in public education, media, or information/technology activities, but for a majority (51%), communications account for no more than 15% of their work. For the remainder (47%), such educational activities generally constitute 20% to 40% of their efforts. Almost two thirds (62%) of organizations produce some research and reports, but nearly half (47%) limit their publication activity to no more than 10% of their work. Only 11% of organizations devote at least half of their efforts to research and reports.¹⁰⁶

In describing their most effective strategies, public interest leaders most often mentioned, in addition to impact litigation, coalition building and communication. For some groups, their greatest successes came from partnering with community organizations and enabling them to become more effective advocates.¹⁰⁷ “Victory” in this context was often legal representation that left a client organization “stronger, and in a position to monitor and enforce a favorable decision.”¹⁰⁸ Public interest organizations were sometimes instrumental in founding these groups or training their members. In other situations, the coalitions involved similar organizations in their field, or well established professional or industry associations.¹⁰⁹

Many surveyed groups also have become more conscious of the need for

106. Only one group reported doing more than 4% of its work outside the categories; the Environmental Defense Fund spends 25% of its time on “partnerships with companies.” Survey Result: Krupp, Environmental Defense Fund.

107. Fujioka, Asian Law Caucus; Needleman, Brooklyn Legal Services; Dunkerton, Community Law Center; Ross, Human Rights Watch; Studley, Public Advocates.

108. Arnwine, Lawyers’ Committee for Civil Rights.

109. For sister organizations, see Rogers, Legal Momentum; Greenberger, National Women’s Law Center; and *infra* text following note 182. For industry groups, see Gaziano, Heritage Foundation; Newhouse, New England Legal Foundation; and *infra* text accompanying note 183.

public education and more skilled in providing it. Putting a “human face on social problems” and showcasing “real life stories” of injustice have often been critical.¹¹⁰ One example involves “child watches” that take policy makers into settings where children are at risk. As Susan Gates of the Children’s Defense Fund noted, “It is one thing to know that nine million children are uninsured and thirteen million live in poverty, but to see and meet [some of them] gives a different dimension and [a greater] sense of urgency.” Many organizations also have become increasingly effective in using Internet technologies and blogs to mobilize support and communicate with coalitions.¹¹¹

F. The Contemporary Landscape

In short, the landscape of public interest law has changed substantially over the last three decades. The playing field has grown in size, scale, and complexity. There are more organizations with more resources, representing more diverse perspectives and constituencies. The challenges are also greater. In some fields, the problems and target populations have significantly increased; in others, a growing conservatism among the public and judiciary has complicated the search for solutions. To meet these challenges, public interest legal organizations are employing more varied strategies and more selective uses of litigation. As the following discussion suggests, how organizations set priorities and balance the needs of their various stakeholders creates its own set of challenges.

II. THE STRUCTURE OF DECISION MAKING

Almost no systematic information has been available concerning the processes that public interest legal organizations use to establish priorities and to accommodate competing concerns. To help fill the gap, this survey asked a range of questions about the formality, inclusiveness, and substance of organizational decision making, as well as the role of various stakeholders: staff, boards, funders, members, potential clients, and community groups. Table 3 summarizes the results.

110. Gates, Children’s Defense Fund; Kendell, National Center for Lesbian Rights; Beneicke, Natural Resources Defense Council; *see also* STEPHEN TELLES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT 244 (2007).

111. Clegg, Center for Equal Opportunity; Paradise, Disability Rights Advocates; Krupp, Environmental Defense Fund; Gaziano, Heritage Foundation; Ross, Human Rights Watch; Beneicke, Natural Resources Defense Council.

Table 3. Organizational Decision Making

Response	Formal Process (N=37)	Inclusive Process (N=44)	Staff Involvement (N=44)	Board Involvement (N=46)	Funder Involvement (N=38)
1 Limited	62%	73%	5%	63%	55%
2 Moderate	24%	14%	9%	24%	39%
3 Extensive	14%	14%	86%	13%	5%

Note: The figures do not add up to 100% due to rounding. An inclusive process encompassed outreach to members, potential clients, and community groups and other stakeholders.

A. The Priority-Setting Process

Only about a third of the sample reported either highly formal processes (14%, n=37) or moderately formal processes (24%) for setting priorities. Those with the most formal procedures generally held annual or biannual retreats with detailed planning documents, and frequent staff meetings in the intervening period. Some groups occasionally included boards of directors, members, or community leaders.¹¹² Organizations with moderately formal processes typically engaged in strategic planning through staff retreats on a less frequent basis. Assessments of the most structured procedures varied but, at their best, they offered useful occasions for taking stock and communicating among individuals in different offices or substantive specialties. For example, the Lawyers' Committee for Civil Rights ended up with a quite valuable strategic plan that doesn't "just sit on a shelf . . . [but] actually guides priorities."¹¹³

About two thirds of the groups relied on more informal processes and with only one exception, seemed to function well. Small organizations typically saw no need for elaborate planning procedures. One midsized organization, however, experienced significant internal tensions over priorities and finally brought in a management consulting team, which helped develop a shared vision.

For the vast majority of organizations, the priority-setting process was largely staff-driven. All but 5% of organizations reported extensive (86%, n=44) or moderate (9%) involvement of their legal staff. Most leaders felt that lawyers deserved deference because they had the greatest expertise and closest contact with the problems that needed addressing. Only about a quarter of

112. The ACLU had formal processes every two years involving retreats, reports, subcommittees, and staff from all offices. Crosby, ACLU of Northern California. The Brooklyn Legal Services office has an annual review that includes a demographic analysis of the community and its needs and a questionnaire response from community members. Needleman, Brooklyn Legal Services. The Sierra Club convenes its members about every four or five years to identify concerns and engages in more formal staff-driven planning in the intervening years. Pope, Sierra Club.

113. Arnwine, Lawyers' Committee for Civil Rights.

organizations made extensive (14%) or moderate (14%) efforts to include other stakeholders (such as members, clients, or community groups) in the priority-setting process. Some of those with the most inclusive structures were organizations that received federal Legal Services Corporation funding and were therefore subject to detailed requirements of client and community outreach.¹¹⁴ Other groups found it useful to consult local service providers or business advisory councils.¹¹⁵ No organization with members reported that they had significant influence over priorities. “It sounds harsh to say that they’re not involved,” acknowledged one leader, “but their unhappiness with a particular position doesn’t affect our decision.” Members might occasionally be convened or consulted on surveys, but their views were not binding. They voted with their feet (and dollars); they didn’t determine policy.

Nor did most boards of directors have extensive involvement in the priority-setting process. Only 13% of organizations reported high levels of participation; almost two thirds (63%) reported limited involvement and a quarter (24%) reported moderate involvement. Members of highly active boards were often interested in all aspects of legal and policy work. As John Tasvina, president of the Mexican American Legal Defense and Education Fund noted, “That’s what attracts them to serve.” Particularly in organizations like the ACLU, where the membership has elected representatives to the board, the board has participated in all controversial litigation decisions.¹¹⁶ For the most part, board members’ expertise has been welcome, but it could occasionally prove intrusive. Wealthy and powerful individuals who were used to being in control sometimes have overstepped their role. As one leader ruefully put it, “They are involved in everything *but* fundraising.”

Where boards had moderate or limited involvement, leaders were generally satisfied with that role. Board members often provided crucial assistance concerning not only legal issues, but also financial, employment, media, and public relations matters. Even members who lacked the time or information to contribute in substantive areas played an important oversight role. They “kicked the tires” and brought excellent judgment to bear on questions of

114. Current federal regulations require recipients of federal funds to:

include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient’s employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient’s employees, and support services.

45 C.F.R. § 1620.3 (2008).

115. Newhouse, New England Legal Foundation (explaining that it consults business advisory groups in each state in the region); Rothschild, Western Center on Law and Poverty (explaining that it consults local providers).

116. Crosby, ACLU of Northern California.

governance.¹¹⁷ The vast majority of groups also relied heavily on their boards for development, and those that couldn't felt the loss. Some leaders were explicit about selecting members who could "give or get," or found it "unfortunate" when boards resisted that role.

B. *The Influence of Funders*

In a majority of organizations (55%, n=38), funders reportedly have only limited affect on priorities, but in nearly two fifths of organizations (39%), they have a moderate impact. In principle, most leaders resisted allowing "money to drive the agenda."¹¹⁸ As Shannon Wilber, director of Legal Services for Children put it, "We try very hard not to let the tail wag the dog." Conservative as well as liberal groups were committed to having "strategy drive funding, not the other way around."¹¹⁹ Some leaders spoke from experience. They had established programs that funders wanted, which either had overburdened their existing staff or had required new personnel who had to be laid off when the funders' priorities shifted.¹²⁰

In general, public interest lawyers did their best to fit their priorities into foundations' "pigeon holes" but the effort was not always successful.¹²¹ Margaret Fung, director of the Asian American Legal Defense and Education Fund, captured a common experience: "We try to avoid having our agendas driven by funders but the reality is that they are partially driven. The availability of funding enables us to do [only] part of what we want to and we can't do other things." The constraints varied across different substantive fields. Environmental groups tended to have the most independence because they worked on problems that were "very fundable," or because they had a large membership whose annual contributions provided "added flexibility" in supporting internally driven priorities.¹²² Of the two organizations that reported extensive influence by funders, one was a federally subsidized legal services program. It operated under strict government regulations about how both private and public dollars could be spent.¹²³ The other organization

117. Romero, ACLU; *accord* Fung, Asian Law Caucus; Kaufman, Atlantic Legal Foundation; Kamin, Bet Tzdek; Parker, Earth Justice; Herrera, Equal Rights Advocates; Rogers, Legal Momentum; O'Toole, National Center for Youth Law; Beneicke, Natural Resources Defense Council; Bowman, Shriver National Center on Poverty.

118. Davison, Lambda Legal.

119. Casey, Christian Legal Services; *accord* Revett, Pacific Legal Foundation.

120. Olshansky, Center for Constitutional Rights; Perales, Puerto Rican Legal Defense and Education Fund. Stotland of the Education Law Project also reported serious staff cuts when government funds dried up.

121. Cohen, Immigrant Legal Resource Center.

122. Krupp, Environmental Defense Fund (explaining that the Fund works on problems that are fundable); Beneicke, Natural Resources Defense Council (explaining that membership provided flexibility).

123. Needleman, Brooklyn Legal Services.

focused on technology-related issues that had attracted only a few sources of support. As Jim Dempsey, the policy director of Center for Democracy and Technology noted, “We can only do what we have funds to do and can convince foundations or corporate donors to support.”

C. Criteria for Decisions

In explaining the considerations apart from funding that drive their organizations’ priorities, leaders stressed several criteria. Would the work fit within their mandate and advance their substantive mission?¹²⁴ Where could the organization have the most impact? Groups measured impact in different ways. The Southern Center for Human Rights considered which needs were most desperate.¹²⁵ Earth Justice focused on natural resources that were most in need of protection in an office’s geographic region.¹²⁶ The Children’s Defense Fund looked for policy opportunities and networks that it could assist in maximizing those opportunities.¹²⁷ The Environmental Defense Fund considered its likelihood of success; it didn’t simply “fight the good fight.”¹²⁸ A further consideration was where the group could bring “value added” and “do what no one else is doing.”¹²⁹ Where were there “gaps in public interest coverage?”¹³⁰ A final concern was whether the work would attract additional public and donor support for the organization.¹³¹ Although straightforward in principle, these criteria were often difficult to apply in practice, and they sometimes tugged in different directions. Yet the subjectivity of the process and the limited structures of accountability often enabled organizations to avoid second guessing particular decisions. It was generally hard to know whether different choices would have been more cost-effective. So informed judgments by experienced staff generally drove the priority-setting process and attracted reasonable consensus in strategic decision making.

III. MONEY

As noted earlier, money constituted one, if not the greatest, challenge and constraint for most public interest legal organizations. To gain a greater sense

124. Kaufman, Atlantic Legal Foundation; Clegg, Center for Equal Opportunity; Steele, Electronic Frontier Foundation.

125. Bright, Southern Center for Human Rights.

126. Parker, Earth Justice. So, for example, the Pacific Northwest office focused on salmon and old growth forests, while the Alaska office emphasized preservation of the national forest and oil and energy issues.

127. Gates, Children’s Defense Fund.

128. Krupp, Environmental Defense Fund.

129. Rogers, Legal Momentum; *accord* Kendell, National Center for Lesbian Rights.

130. Rothenberg, New York Lawyers for the Public Interest.

131. Pendley, Mountain States Legal Foundation.

of financial issues, the survey asked a range of questions about sources of funding, the difficulties involved in raising money, the time and effort spent raising money, and the impact of salaries on recruitment and retention.

A. Sources of Funding

Although all organizations provided some information about their financial support, the precision of the data varied. Some leaders gave exact figures for the preceding year, but noted that the proportion of funds from particular sources changed somewhat over time, given the episodic timing of foundation grants, attorneys' fee awards, and so forth. Other leaders estimated percentages based on several recent years, and not all used the same categories. Table 4, on the next page, details the information available.

Overall, foundations and individual donations were the most common and most significant source of funds. Almost all organizations (98%, n=50) received some foundation funding; the mean amount was slightly over a third of their budgets. Just over half of surveyed groups (52%) received at least 40% of their funding from foundations, and a fifth relied on them for at least 60% of their support. More than four fifths of organizations (85%, n=47) received at least some individual contributions, and the mean amount accounted for just over a quarter (28%) of their budgets. For a majority of organizations (58%), individual donors accounted for at least 40% of their support.

The remainder of funds came from multiple sources. Most organizations (55%, n=42) got at least some corporate funding, but it accounted for a mean proportion of only 14% of revenues. Almost half of organizations (49%, n=41) received some attorneys' fee awards, but the mean proportion of funding was only 8%, and only 14% of organizations relied on awards for at least a fifth of their budgets. About a third of the groups used events as fundraisers, but they seldom constituted a large percentage of support; the mean proportion of revenues was only 1%. Just under a fifth of organizations (17%, n=36) received government grants, and slightly smaller numbers received membership fees (17%, n=39) or sales revenues (16%, n=38). None of these were major revenue sources; they accounted for only 1- 4% of funding.

Table 4. Sources of Funding

% Funding from Source	Attorneys' Fees	Corporations	Events	Foundations	Government	Individual Donations	Membership Dues	Sales
0%	51%	45%	69%	2%	81%	15%	82%	84%
1-19%	34%	24%	10%	20%	3%	28%	5%	16%
20-39%	7%	12%	5%	26%	8%	11%	5%	-
40-59%	5%	14%	15%	32%	8%	34%	7%	-
60-79%	2%	5%	-	10%	-	11%	-	-
80-99%	-	-	-	6%	-	2%	-	-
100%	-	-	-	4%	-	-	-	-
Total	100% N=41	100% N=42	100% N=39	100% N=50	100% N=36	100% N=47	100% N=39	100% N=38
Mean % Funding	8%	14%	1%	37%	1%	28%	4%	2%

Note: Due to rounding, totals may not add up to 100%. Where an organization failed to account for all of their sources of funds, the categories that it did not mention were coded as non-responses. Where an organization accounted for all their funds and did not include a particular source, it was coded as zero.

B. Challenges

Virtually all organizations faced major challenges raising revenue. Expenses and needs have never stopped escalating, and few had relatively secure sources of income, such as membership dues or interest on endowment or reserves. For most groups, the budget had “to grow just to stay current,” and “every January 1 we’re back to zero.”¹³² Even leaders of the wealthiest membership organizations experienced “bone-crushing” pressure to make their budgets.¹³³ When the “economy goes south” or a particular region experiences a downturn, such as the technology bubble burst in the San Francisco Bay Area, then public interest funding becomes still harder to secure.¹³⁴

For organizations that depended to any significant extent on legal fees, the unpredictability of awards added further challenges. The problems were compounded if much of the litigation involved large up-front expenses. The Equal Rights Advocates’s sex discrimination claim against Wal-Mart is a case in point. The lawsuit was filed six years ago and still appears a long way from resolution.¹³⁵

In addition to the general challenges in attracting public support noted earlier, many leaders identified particular problems with foundations. Most were unwilling to fund operating expenses and many were unwilling to support litigation.¹³⁶ As one director of a youth law center put it, “Foundations like children, not lawyers.”¹³⁷ Even program officers who were most receptive to legal work sometimes lacked the expertise to know where programs could have the greatest impact.¹³⁸ Foundations’ desires for “newer hotter issues” and “measurable outcomes” also created frustration.¹³⁹ Program officers were

132. Davison, Lambda Legal; Bouman, Shriver National Center on Poverty; *accord* Crosby, ACLU of Northern California (noting that litigation more expensive); Herrera, Equal Rights Advocates (noting that litigation is more expensive); Rodgers, Legal Momentum (“There’s no cushion.”); Trasvina, Mexican American Legal Defense and Education Fund (noting that the size of community is growing); Rothschild, Western Center on Law and Poverty (“We’re seeing more and more people with more complex issues.”).

133. Romero, ACLU.

134. Crosby, ACLU of Northern California; *accord* Newhouse, New England Legal Foundation; Shauffer, Youth Law Center.

135. Herrera, Equal Rights Advocate.

136. The unwillingness to provide general support was cited by Fung, Asian American Legal Defense and Education Fund; Herrera, Equal Rights Advocate; Arnwine, Lawyers’ Committee for Civil Rights. The reluctance to fund litigation was also noted by Kwoh, Asian Pacific American Legal Center; Olshansky, Center for Constitutional Rights; Parker, Earth Justice; Arnwine, Lawyers’ Committee for Civil Rights; Graff, Legal Aid Society of San Francisco, Employment Law Center; Rogers, Legal Momentum; Wilbur, Legal Services for Children; Davison, Lambda Legal; Frye, National Partnership for Women and Families; Studley, Public Advocates; and Shauffer, Youth Law Center.

137. Wilbur, Legal Services for Children.

138. The lack of expertise was noted by Parker, Earth Justice; and Cohen, Immigrant Legal Resource Center.

139. Shaw, NAACP (“newer hotter issues”); *accord* Bernstein, Bazelon Center for

“always looking for the next new thing. And civil rights seem same old”¹⁴⁰ To demonstrate quantifiable results, groups sometimes had to shift priorities or, as one leader put it, “stretch the truth.” Well versed in the art of foundation spin, that director would “sometimes laugh when I read newsletters of other organizations.”

These foundation policies raise broader issues about strategic philanthropy that deserve further research. Leaders who expressed frustration echoed concerns by other experts on the nonprofit sector that some of the progress that reform organizations were seeking could not be readily quantified.¹⁴¹ Yet funders distributing limited resources have an obvious and justifiable interest in having some way to assess cost-effectiveness.¹⁴² Well designed evaluations can often help both funders and recipients improve their performance.¹⁴³ Demands for assessment are among the few structures of formal accountability for public interest law. It would be useful to know more about how the oversight process could be made most productive for all concerned.

Government and corporate funding also posed challenges. Restrictive conditions prevented many poverty programs from seeking federal support, and other organizations fell victim to spending cuts under conservative administrations.¹⁴⁴ Few corporate donors saw public interest litigation as valuable to their bottom line, and other legal programs involving unpopular clients or controversial issues fared badly in an increasingly competitive funding environment.¹⁴⁵

Many organizations used special events as a way to build corporate and law firm support. Prominent speakers, annual awards, or glitzy atmospheres could boost attendance and expand the group’s donor base. But as noted earlier, these events were seldom major revenue sources. They were expensive to run and required contacts with a large and affluent professional community.¹⁴⁶

Mental Health Law; Gates, Children’s Defense Fund (“measurable outcomes”); Arnwine, Lawyers’ Committee for Civil Rights (discussing novelty).

140. Arnwine, Lawyers’ Committee for Civil Rights; *see also* Perales, Puerto Rican Legal Defense and Education Fund (noting that newer foundations were less likely to support civil rights work).

141. *See* Bruce Sievers, *Philanthropy’s Blindspots*, in *JUST MONEY: A CRITIQUE OF CONTEMPORARY AMERICAN PHILANTHROPY* 131-33 (H. Peter Karoff ed., 2004).

142. *See* Paul Brest, *Strategic Philanthropy and Its Malcontents*, in *MORAL LEADERSHIP: THE THEORY AND PRACTICE OF POWER, JUDGMENT, AND POLICY* 229, 230-31, 243 (Deborah L. Rhode ed., 2006).

143. PETER FRUMKIN, *STRATEGIC GIVING: THE ART AND SCIENCE OF PHILANTHROPY* 333-35 (2006).

144. Restrictive legal services conditions were cited by O’Toole, National Center for Youth Law; Bouman, Shriver National Center on Poverty. *See also* sources cited *supra* note 43. Those discussing other cutbacks in government funds included Kamin, Bet Tzedek; and Stotland, Education Law Project.

145. Pendley, Mountain States Legal Foundation; Fujioka, Asian Law Caucus; Revett, Pacific Legal Foundation; Rothschild, Western Center on Law and Poverty.

146. *See, e.g.*, Gina Lobaco, *Going Hollywood: L.A.-Style Fund-Raising Supports*

Many of the neediest organizations have been unable to stage the kind of fundraiser that would generate significant income.

C. Time and Staff

The portion of time directors spent fundraising varied considerably, ranging from 10% to 78% (n=49), with a mean of 38% and a median of 40%.¹⁴⁷ Only about a fifth (18%) of directors spent 20% or less of their time on development. Almost two thirds (62%) devoted around a quarter to a half of their time to fundraising, and a quarter (24%) devoted more than half of their time to fundraising. Regardless of their amount of effort, leaders generally felt it was “too much,” “not enough,” or a combination of both.¹⁴⁸ Spending 20% percent of her time on development “[felt] like too much” for one director; another who devoted 30% acknowledged that it was “20% more than I’d like.”¹⁴⁹ In explaining why he spent only 10% of his time on fundraising, one president expressed a common view with uncommon candor: “I’m more interested in substantive issues.”¹⁵⁰

The same was generally true of legal staff. About three fifths of organizations (58%, n=31) involved lawyers to some extent in fundraising, typically in grant writing and site visits by funders.¹⁵¹ Other groups took the view that “lawyers should practice law;” fundraising was “not what lawyers are best at.”¹⁵² Nor was it a skill that they wanted to acquire. When asked how much time the legal staff spent on fundraising, one director responded: “They would say ‘all their time.’ In fact, it’s about 5 hours a month but they are too wrapped up in legal work to want to do it.”

To fill the gap, organizations typically relied on other staff. More than four fifths (84%, n=44) reported having at least some employees dedicated to fundraising, with a mean of 7 and a median of 3. About a fifth of surveyed groups (21%) had more than 10 on their development staff, and one (ACLU)

Legal Services That the Feds Won't, CAL. LAW., May 2007, at 24-25, 63 (describing events and their inability to generate significant funds in small communities).

147. The leader of Atlantic Legal Foundation, Martin Kaufman, indicated that he spent “little” time fundraising. This was coded as 10%, which was the lowest percentage reported by any group that responded to the question.

148. “Too much” was the description of a leader who devoted 20%, Fung, Asian American Legal Defense and Education Fund, as well as one who devoted 50%, Arnwine, Lawyers’ Committee for Civil Rights, and one who devoted 65%, Bernstein, Bazelon Center for Mental Health Law. “Not enough” came from individuals who devoted 15%, Bright, Southern Center for Human Rights, 40%, Trasvina, Mexican American Legal Defense and Education Fund, and 50%, O’Toole, National Center for Youth Law. To Shaw, director of the NAACP, fundraising was “more than I’d like and not enough.”

149. Cohen, Immigrant Legal Resource Center.

150. Clegg, Center for Equal Opportunity.

151. Rogers, Legal Momentum.

152. Shaw, NAACP; Pope, Sierra Club.

had over 50.

D. Salaries, Recruitment, and Retention

Salaries for entry-level lawyers ranged from \$30,000 to \$80,000, with a median of \$46,000. This figure was somewhat higher than the national median (\$40,000), because the survey focused on the country's most prominent groups, which were, on average, better funded than the norm.¹⁵³ A third of organizations (n=33) reported salaries of \$35,000 to \$44,999. Just over a third (36%) paid \$45,000 to \$54,999. The other third offered salaries between \$55,000 and \$80,000. Much of the difference reflected the organizations' budget constraints, the cost of living in the surrounding area, and the degree of experience and expertise required. So, for example, technology organizations in major metropolitan areas were at the top of the range. Poverty and death penalty/criminal justice groups were at the bottom, along with one non-metropolitan-based conservative organization.

Some of the variation in salaries also may have reflected different perceptions about the effect of pay differentials on recruitment and retention. About three-fifths of surveyed leaders (58%, n=36) believed that pay scales had little impact on their ability to recruit attorneys. Slightly more than a quarter (27%) reported a moderate impact, and 14% saw a significant impact on recruiting. Those who felt the greatest effect generally had offices in cities with expensive housing markets and faced competition from other higher-paying public interest or public sector organizations.¹⁵⁴ As in other surveys, some leaders also noted the difficulty of hiring minorities and those with backgrounds comparable to the clients being served.¹⁵⁵

Most organizations, however, did not experience major recruiting problems as a result of the increasing gap between public interest and other employers' salaries. Surveyed groups were drawing on a restricted and highly committed pool of individuals who had "already made [the] life decisions" to sacrifice income.¹⁵⁶ The nation's leading public interest organizations have continued to

153. NALP, 2006 PUBLIC SECTOR & PUBLIC INTEREST ATTORNEY SALARY REPORT 16-20 (2006). Where leaders indicated that their organizations pay two different salaries depending on experience, the salaries were averaged.

154. Fujioka, Asian Law Caucus (citing competition); Olshansky, Center for Constitutional Rights (New York); Parker, Earth Justice (Honolulu, San Francisco); Pope, Sierra Club (San Francisco Bay Area). For salary wars among New York public interest and public sector organizations, see Hilary Potkewitz, *Public Lawyer Pay Wars*, CRAIN'S N.Y. BUS., Mar. 12, 2007, at 2.

155. Crosby, ACLU of Northern California; Parker, Earth Justice; Kendell, National Center for Lesbian Rights; Shauffer, Youth Law Center; see also Sandhya Bathija, *Loans Not Filling Public Service Gap*, NAT'L LAW J., Nov. 13, 2006, at 1, 26 (quoting Jonathan Smith, director of the Legal Aid Society of the District of Columbia, regarding the difficulty of finding lawyers who themselves grew up in poverty).

156. Dempsey, Center for Democracy and Technology; accord Perales, Puerto Rican

get substantial numbers of “great,” even “dazzling,” applicants.¹⁵⁷ The legal issues have remained “immensely attractive,” and the working conditions apart from salary often have been excellent: decent hours, benefits, and collaborative decision making.¹⁵⁸ If these organizations experienced recruiting difficulties, it was due to other factors, such as an undesirable location.¹⁵⁹

Perceptions about retention were similar. About three fifths (59%, n=29) of organizations indicated that salary had little impact. Just under one third (31%) indicated that salary had a moderate impact on retention, and only 10% indicated that salary had a significant impact. In organizations that experienced greatest effects, the reasons typically involved the flat pay scales for senior attorneys. Lawyers with twenty years of experience were sometimes making only \$75,000 to \$80,000. A few organizations also had lost mid-level attorneys who were trying to start families while still paying off student debts.

For the most part, however, in prominent public interest organizations, “people don’t want to leave.”¹⁶⁰ The lawyers “love what they do;” they get to “shape a [social reform] agenda and work with high-quality colleagues.”¹⁶¹ When attorneys take these jobs, they generally “have figured out [how] to solve the financial issues,” typically by making some lifestyle sacrifices and relying on a partner or other independent source of income.¹⁶² Many veterans of the public interest movement also graduated from law school before crushing educational debt burdens became common. Whether this generation’s lawyers will be able to make a similar long-term commitment remains an open question.

The importance of debt in influencing those career decisions is also somewhat unclear. About two fifths of leaders believed that educational loan burdens had an impact on recruiting and retention. According to Carol Shauffer, director of the Youth Law Center, “No one can pay off debts and live

Legal Defense and Education Fund.

157. Kwoh, Asian Pacific American Legal Center (“25-30 applicants for every slot”); Studley, Public Advocates (explaining that there are one hundred candidates for every fellowship and describing applicants as “dazzling”); Wolfman, Public Citizen (describing applicants as “great”).

158. Bouman, Shriver National Center on Poverty (“immensely attractive”); *accord* Paradise, Disability Rights Advocates (“People want to work for a good cause.”); Steele, Electronic Frontier Foundation (describing decent hours, benefits, and collaborative decision making); Cohen, Immigrant Legal Resource Center.

159. Stevenson, Equal Justice Initiative (noting that Montgomery was a “difficult place to live for progressive public interest lawyers”); *see also* Bathija, *supra* note 155, at 20 (discussing unattractive locations).

160. Crosby, ACLU of Northern California; *accord* Shaw, NAACP (“People don’t leave.”); Studley, Public Advocates (“Everyone wants to stay.”).

161. Studley, Public Advocates; Wolfman, Public Citizen.

162. Greenberger, National Women’s Law Center; *accord* O’Toole, National Center for Youth Law (noting that more of their top applicants came from “backgrounds of means”); Studley, Public Advocates (noting the difficulty for lawyers with debts unless they had income through a partner).

in San Francisco on what our lawyers make unless they have loan forgiveness.” A few organizations were experimenting with forgiveness programs of their own.¹⁶³ Other leaders were less certain about the importance of educational debt. That division of views is common in the literature generally. Many law students and commentators have asserted that educational loans play a major role in determining whether graduates begin their careers in public interest law.¹⁶⁴ However, most systematic studies suggest that other factors are more important, such as the availability of jobs and the disparity in pay scales between public interest and other employment.¹⁶⁵

How much loan forgiveness programs can affect recruitment and retention by public interest organizations is also subject to debate. The most recent data indicate that about 100 law schools offer some forgiveness, which is benefiting an estimated 1778 law graduates nationwide.¹⁶⁶ The median award is \$3400.¹⁶⁷ Another 194 attorneys are known to have coverage under employer programs and receive a median award of \$2400.¹⁶⁸ The relatively modest amount of many programs’ reimbursement, together with their stringent caps on duration and eligibility, has led to criticism that they often reflect “more will than wallet.”¹⁶⁹ According to some research, public interest scholarships may be more effective than debt forgiveness in influencing entry-level

163. Padilla, California Rural Legal Assistance; Paradise, Disability Rights Advocates.

164. See ABA COMM’N ON LOAN REPAYMENT & FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE (2003); EQUAL JUSTICE WORKS ET AL., FROM PAPER CHASE TO MONEY CHASE: LAW SCHOOL DEBT DIVERTS ROAD TO PUBLIC SERVICE (2002).

165. See David L. Chambers, *The Burdens of Educational Loans: The Impacts of Debt on Job Choice and Standards of Living for Students at Nine American Law Schools*, 42 J. LEGAL EDUC. 187 (1992); Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829 (1995); Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 L. & SOC. INQUIRY 677 (2006). The only study finding that debt had a significant impact on entry into public interest jobs, EQUAL JUSTICE WORKS ET AL., *supra* note 164, had significant methodological limitations, including a 4% response rate. See McGill, *supra* note 165, at 679-80. However, as Scott Cummings has noted, most data finding a more limited impact were collected before the recent escalation in debt levels. E-mail from Scott Cummings, Professor of Law, UCLA Law School, to author (Jan. 25, 2008) (on file with author).

166. EQUAL JUSTICE WORKS, FINANCING THE FUTURE: RESPONSES TO THE RISING DEBT OF LAW STUDENTS 6-7 (2d ed. 2006). Since that survey, a number of schools have expanded their programs. See Jonathan D. Glater, *Harvard Law, Hoping Students Will Consider Public Service, Offers Tuition Break*, N.Y. TIMES, March 18, 2008, at A14.

167. EQUAL JUSTICE WORKS, *supra* note 168, at 10.

168. *Id.* at 24.

169. Nancy H. Rogers, *Preserving the Route to Public Service Careers*, AALS NEWSL., Apr. 2007, at 2 (quoting Kurt Schmoke). For example, twenty-four law school loan forgiveness programs limit their benefits to five years or less, and nineteen limit them to between six and ten years. About half have salary caps below \$45,000. EQUAL JUSTICE WORKS, *supra* note 166, at 13-14.

employment.¹⁷⁰ Still, among many graduates who are committed to public interest careers, loan forgiveness can be crucial in making the choice financially viable. In one large scale national study of recent law graduates, half of the responding attorneys with public interest jobs said that the availability of loan forgiveness was very important in their choice.¹⁷¹

In any case, the financial landscape is likely to change, given the federal government's recent enactment of a comprehensive loan forgiveness program. In essence, that program will provide debt relief to graduates of any law school who take qualifying positions and total forgiveness for those who commit to at least ten years to public interest legal work.¹⁷² Increasing numbers of scholarships and post-graduate fellowships are also available.¹⁷³ Taken together, these initiatives may expand the pool of lawyers interested in public interest careers and reduce some of the financial pressure on their employers to increase salaries or offer additional loan forgiveness. Still, the need to stay somewhat competitive in the nonprofit job market is part of the considerable budgetary challenge that public interest legal organizations are likely to face in the coming decades.

IV. CLIENTS AND COLLABORATION

A final set of challenges that arises in cause lawyering involves client and collaborative relationships. As the earlier discussion noted, leaders of contemporary public interest organizations are generally well aware of the limits of litigation and the need to use lawsuits strategically in conjunction with other political, regulatory, and educational initiatives. Most leaders are equally conscious of the value of pursuing those initiatives in collaboration with other public interest and grassroots organizations, and in some cases, with government agencies and business interests. To gain a deeper understanding of such efforts, the survey asked a range of questions about how public interest organizations find appropriate cases and manage collaborative relationships.

A. Clients

Nearly nine out of ten (88%, n=48) organizations reported obtaining clients

170. See Erica Field, *Educational Debt Burden and Career Choice: Evidence from a Financial Aid Experiment at NYU Law School*, (Princeton Univ. Indus. Relations Section, Working Paper No. 469, 2002), available at <http://harris.princeton.edu/pubs/pdfs/469.pdf>.

171. NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AMER. BAR FOUND., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 72 (2004).

172. College Cost Reduction and Access Act, 20 U.S.C. § 1001 (2000). For discussion, see Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 *HOFSTRA L. REV.* 27 (2007).

173. See EQUAL JUSTICE WORKS, *supra* note 166, at 17-19.

either through direct services or referrals. The remaining organizations either did not engage in litigation or relied on their own members as parties.¹⁷⁴ A fifth of the organizations operated hotlines or free legal clinics. These provided advice and referrals, but seldom yielded impact litigation. Such outreach efforts did, however, help staff identify major problems and build public awareness of the organization. That visibility sometimes resulted in inquiries that generated important cases.

For most organizations, however, the major way of obtaining clients was through media and community outreach, and referrals by nonprofit organizations, government agencies, churches, local service providers, and other lawyers. Almost four out of five groups (88%, n=32) looked for clients proactively. Some groups, like Mexican American Legal Defense and Education Fund and the San Francisco Employment Law Center, offered workshops for potential client populations. Bet Tzedek sent staff to local institutions like synagogues and senior centers, and groups serving non-English speaking communities reached out to media serving those constituencies.¹⁷⁵ User-friendly websites were also important. Increasing numbers of clients came “over the transom” or through the Internet.¹⁷⁶ In organizations like Public Citizen or the Lawyer’s Committee for Civil Rights, “you have to read your email. One in a hundred is a case that matters.”¹⁷⁷

Some lawyers were still more proactive. If they saw an important lower-court case or a promising profile in the newspaper or legal press, they would contact the individual or lawyer involved and offer assistance. Other groups might reach out to local governments, grassroots organizations, or industry associations to see if they wanted to file a lawsuit or an amicus brief.¹⁷⁸ In many organizations, if lawyers saw “a problem that should be litigated,” they would search for an appropriate party.¹⁷⁹ As one leader put it, “we find issues, then we find a client.”¹⁸⁰ No leaders raised concerns about bar prohibitions against solicitation, although ethical issues could arise if “pecuniary gain” was

174. Non-litigating organizations included the Children’s Defense Fund, the Heritage Foundation, and Human Rights Watch. The Environmental Defense Fund and Sierra Club relied on their own members.

175. Fung, Asian American Legal Defense and Education Fund; Graff, Legal Aid Foundation of San Francisco, Employment Law Center.

176. Rodgers, Legal Momentum; *accord* Fung, Asian American Legal Defense and Education Fund; Clegg, Center for Equal Opportunity; Casey, Christian Legal Society; Paradise, Disability Rights Advocates; Steele, Electronic Frontier Foundation; Revett, Pacific Legal Foundation.

177. Wolfman, Public Citizen; *accord* Arnwine, Lawyers’ Committee for Civil Rights.

178. Kaufman, Atlantic Legal Foundation; Rushford, Criminal Justice Legal Foundation; Davison, Lambda Legal; Pendley, Mountain States Legal Foundation; Trasvina, Mexican American Legal Defense and Education Fund; Beinecke, Natural Resources Defense Council.

179. Wolfman, Public Citizen.

180. Shauffer, Youth Law Center.

a “significant motive” for legal representation.¹⁸¹ The absence of concern may be attributable to the infrequency of large fee awards in solicited cases and the predominance of other non-financial reasons for pursuing litigation.

B. Collaboration with Grassroots, Government, and Private Sector Organizations

For many organizations, opportunities for grassroots collaboration were an important consideration in determining what cases and strategies to pursue. Such alliances are widely perceived as critical in securing sustainable social change.¹⁸² About three fifths (61%, n=44) of surveyed leaders reported extensive collaboration at the grassroots level, and another quarter reported moderate collaboration. Only about a tenth (13%) reported limited or no collaboration.

The nature of the involvement varied. Legal organizations sometimes represented or helped to form grassroots groups; in other cases, these organizations worked together to provide services or in coalitions to secure legal and policy reforms. Partnerships with government and private sector organizations were somewhat less common. About half (51%, n=39) of public interest leaders reported limited or no such alliances. About two fifths (38%) reported moderate collaboration, and 10% reported extensive collaboration.

Whatever their structure, these alliances served multiple objectives. Expanding the number of organizations cooperating on an issue brought additional resources, perspectives, and legitimacy. As Marcia Greenberger, co-president of the National Women’s Law Center noted, “Almost never will a single organization have the capacity to achieve major policy change.” For conservative groups, long-term relationships with industry and trade associations have helped to “broaden our influence and share expenses.”¹⁸³ For technology organizations, relationships with companies that develop and

181. ABA Model Rule 7.3(a) prohibits direct contact with prospective clients if a “significant motive” for the contact is the lawyer’s “pecuniary gain.” MODEL RULES OF PROF’L CONDUCT 7.3(A) (1983). The only Supreme Court case on point held that the bar’s prohibitions on solicitation could not be constitutionally applied to direct client contacts by a cooperating ACLU attorney where that attorney would not be entitled to any fee recovery. *See In re Primus*, 436 U.S. 412 (1978). The Court specifically reserved the issue of whether a different policy on attorneys’ fees would have altered the result. *Id.* at 431 n.24.

182. For a sample, see Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (book review); Alan Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L.J. 1213 (2002); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2001); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995); Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990).

183. Newhouse, New England Legal Foundation; *accord* Kaufman, Atlantic Legal Foundation; Revett, Pacific Legal Foundation.

market products have been essential in promoting core values.¹⁸⁴ Youth organizations often have worked closely with government agencies handling foster care, child welfare, and probation, because “they have control over our clients” and cooperative relationships could serve mutual interests.¹⁸⁵

Many groups have worked hard to expand their political base beyond conventional partners. For example, Lambda Legal has reached out to local black ministers in the push for same-sex marriage.¹⁸⁶ The Mexican American Legal Defense and Education Fund has worked with the business community on immigration issues, which builds its credibility in policy settings.¹⁸⁷ Earth Justice has partnered with ranchers, commercial fishers, Native American tribes, Latino farm workers, health service providers, and the American Lung Association. Such alliances not only have increased policy leverage, they have also challenged the stereotypes that environmental groups “just represent rich backpackers.”¹⁸⁸

Coalition work has served other functions as well. One is to ensure accountability. Gen Fujioka of the Asian Law Caucus emphasized that lawyers in their programs—immigration, employment, and housing—worked extensively with local community groups to “keep us grounded and responsive. They provide a reality check that helps define our policy agenda and identify important cases.” Other civil rights groups have similarly found that on issues like environmental justice, “grassroots coalitions are key. The local folks have to live in the community when the national folks go home.”¹⁸⁹ Such coalitions also have helped bridge divisions among racial and ethnic groups on divisive issues such as immigration reform.¹⁹⁰ From both a political and public relations standpoint, it has been useful to have both individual clients and activist organizations involved; “the organizations have staying power and the individuals have stories.”¹⁹¹ And for groups that offer direct legal services, partnering with other community organizations has been essential to ensure effective referral networks and cross-professional assistance.¹⁹²

In principle, virtually no public interest leader doubted the value of these collaborative relationships, but in practice, they did pose certain challenges.

184. Dempsey, Center for Democracy and Technology; Steele, Electronic Frontier Foundation.

185. Shauffer, Youth Law Center.

186. Davison, Lambda Legal.

187. Trasvina, Mexican American Legal Defense and Education Fund.

188. Pope, Sierra Club. Conservative groups have employed the same strategy to break down stereotypes that they represent only rich business interests. *See TELLES, supra* note 110, at 245.

189. Shaw, NAACP.

190. Trasvina, Mexican American Legal Defense and Education Fund.

191. Paradise, Disability Rights Advocates.

192. Kamin, Bet Tzedek; Casey, Christian Legal Society. For the importance of collaborative relationships in developing holistic services, see DEBORAH L. RHODE, *ACCESS TO JUSTICE* 118-19 (2004) and sources cited therein.

One involved unrealistic expectations. Members of grassroots organizations sometimes assumed that their legal partner would meet individual as well as collective needs. Yet although lawyers wanted to know about members' problems, it was impossible to address them all individually with the resources available.¹⁹³

Further difficulties involved issues of turf and the allocation of credit. About a tenth of leaders (12%, n=44) reported such issues in their grassroots collaborations and 3% reported them in connection with government and private-sector alliances. In some cases, the problem arose because a local group was "less interested in the issue than in creating leadership opportunities and building organizational strength. They will insist on doing the press conference where [our lawyers] have done the work. They need to share."¹⁹⁴ In other contexts, tensions emerged because the public interest organization was the "big boy in the boat."¹⁹⁵ Its greater size and visibility led to disproportionate media coverage, which created resentment and sometimes difficulties in donor relations for the smaller group. Yet for the most part, these issues were not significant obstacles in grassroots collaboration. Although tension over credit was an occasional "annoyance," it seemed never to "undermine an important policy objective. By and large, people are in it for the issues."¹⁹⁶

The same was true for questions of control. Just over a tenth (14%) of surveyed leaders reported difficulties in managing substantive or strategic disagreements in grassroots coalitions, and just under a tenth (8%) experienced difficulties in government and private sector partnerships. Coalition work often required compromises in pursuit of common ground, and the larger the group, the greater the challenges.¹⁹⁷ Even smaller partnerships could be problematic, particularly if a corporate player was involved and lacked sufficient "buy in" at the leadership level.¹⁹⁸ Environmental groups were especially wary about joining private sector alliances that might do more to "greenwash" businesses than to promote significant reform.¹⁹⁹

Whether to engage in radical tactics and to accept a partial victory were also occasional sources of disagreement. Grassroots constituencies sometimes saw issues in "black and white" and assumed "the sky would fall" if they settled for only incremental gains.²⁰⁰ Other tensions, well documented in the

193. O'Toole, Youth Law Center; *accord* Fujioka, Asian Law Caucus (describing expectation that caucus would provide direct services as well as represent organizations and serve as the "voice of the community" on all its concerns).

194. Bouman, Shriver National Center on Poverty.

195. Romero, ACLU; *accord* Studley, Public Advocates.

196. Greenberger, National Women's Law Center.

197. Kwoh, Asian Pacific American Legal Center; Kaufman, Atlantic Legal Foundation; Rodgers, Legal Momentum; Greenberger, National Women's Law Center.

198. Krupp, Environmental Defense Fund.

199. Beinecke, Natural Resources Defense Council.

200. Dempsey, Center for Democracy and Technology. Others stressed tension over

literature on cause lawyering, involved lawyers' reluctance to be involved in "raising hell"; by training and temperament, even progressive attorneys have been wary of seeming to undercut a system they are socialized to accept.²⁰¹ Additional complications arose when public interest organizations like the ACLU had to consider whether a coalition position was consistent with their own national policies.²⁰² In other cases, local groups were internally divided or had unrealistic expectations; lawyers were more apt than lay partners to recognize that "just because there's a wrong, [it doesn't mean] there is necessarily a legal solution."²⁰³ Occasionally, the result was that coalition group members had to "agree to disagree."²⁰⁴ But again, most organizations seemed able to work through their differences when important issues were at stake.²⁰⁵

C. Public Interest Collaboration

Collaboration among public interest groups is even more common. About half (55%, n=44) of leaders reported extensive collaboration, and another two fifths reported moderate collaboration. Only 4% reported limited or no public interest collaboration, and their reason was not a lack of interest but rather a lack of plausible partners. In some instances, the alliances are formally structured. For example, about twenty organizations are part of a green coalition whose members work closely together on multiple issues. Reproductive rights and women's rights groups also have formal networks that attempt to coordinate efforts and develop common positions. Disability rights groups have a listserv, and some members have daily conversations to share strategies and information.²⁰⁶ Any major lawsuit involving youth law tends to

when to compromise. Krupp, Environmental Defense Fund; Bouman, Shriver National Center on Poverty. For a case history on point, see Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 31, at 302, 329.

201. For a general discussion, see Quigley, *supra* note 182. Such tensions can arise with activist groups in the environmental and gay rights movement, as well as in community law practice.

202. Romero, ACLU.

203. For internal divisions, see Dunkerton, Community Law Center; and Michael Diamond & Aaron O'Toole, *Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma When Representing Non-Democratic Client Organizations*, 31 FORDHAM URB. L.J. 481 (2004).

204. Rodgers, Legal Momentum.

205. See Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004); Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006); Lucie White, "Democracy" in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 (1997).

206. Paradise, Disability Rights Advocates.

have at least two or three advocacy organizations involved.²⁰⁷ Leaders of conservative, civil rights, gay and lesbian rights, poverty, and education organizations also reported extensive collaboration, and some cities also have public interest networks that cut across substantive areas. For several groups, convening and facilitating alliances is a central part of their mission and one of the most satisfying aspects of their work.²⁰⁸

Not only does collaboration help build a united front and prevent duplicative or inconsistent efforts, it provides fresh perspectives and an occasion for strategic reassessment. As Shannon Wilber of Legal Services for Children noted, “The danger with direct services is that you get so overwhelmed by the need. Collaboration gives opportunities to stand back and be reflective about larger issues. The least effective approach is to work in isolation pulling people out of the river one at a time.”

Yet such partnerships are not without their challenges. Almost two thirds of leaders reported some difficulties over turf in their public interest collaborations, a percentage significantly higher than in other cooperative relationships.²⁰⁹ Seven percent experienced extensive difficulties, 36%, moderate difficulties, and 20%, limited difficulties. In explaining the frequency of these issues, Gen Fujioka of the Asian Law Caucus noted, “There are always problems of roles, responsibility, and credit, which relate to money and publicity.” Often the problems are driven by funders, who want to see concrete payoffs for their investment. In many fields, organizations are competing for a limited pie from the same donors.²¹⁰ Funders themselves occasionally recognize this difficulty. As the environmental director of the Nathan Cummings Foundation acknowledged, “We set [groups] up to compete rather than cooperate.”²¹¹ Organizations that rely heavily on law firms, corporations, and individual donors also have to worry about publicity and about being seen as the “go to” group on particular issues.²¹² Even lawyers willing to take a low profile may have boards of directors that want greater recognition in the

207. O’Toole, Youth Law Center.

208. Gates, Children’s Defense Fund; Gaziano, Heritage Foundation; Shaw, NAACP.

209. Only 12% of leaders reported turf problems in grassroots collaborations and 3% in public or private sector collaborations. *See supra* text following note 193. Forty percent of leaders reported these problems in pro bono collaborations. *See infra* text following note 225.

210. Leaders who reported the problem included Bernstein, Bazelon Center for Mental Health Law; Kamin, Bet Tzedek; Olshansky, Center for Constitutional Rights; Dunkerton, Community Law Center; Krupp, Environmental Defense Fund; Herrera, Equal Rights Advocates; Gaziano Heritage Foundation; Cohen, Immigrant Legal Resource Center; Shaw, NAACP; Frye, National Partnership for Women and Families; Beinecke, Natural Resources Defense Council; Trasvina, Mexican American Legal Defense and Education Fund.

211. Peter Teague, *quoted in* MICHAEL SHELLENBERGER & TED NORDHAUS, *THE DEATH OF ENVIRONMENTALISM* 33 (2004).

212. Frye, National Partnership for Women and Families.

press.²¹³

In some cases, lawyers' personalities have compounded the problems. "Not everyone plays well with others," was the observation of several leaders; staff who were "very aggressive in positioning themselves" inevitably created tensions.²¹⁴ As Public Advocates President Jamiene Studley also pointed out, because "so much of the reward [of public interest work] involves recognition," it is hard for lawyers not to care how credit is allocated. Yet despite "occasional friction," most organizations had developed workable strategies for dealing with these concerns.²¹⁵ One was an "informal division of terrain"; groups tried to steer clear of each others' major donors and priority issues.²¹⁶ Other approaches included joint development efforts, expansion of fundraising strategies, and explicit sharing of credit in public relations strategies. On the whole, the consensus seemed to be that turf-related tensions were "part of the cost of doing business," but that "most people . . . are adults about it."²¹⁷

The same was true for issues of control, although problems were less common. Only about a quarter of surveyed leaders reported moderate (23%, n=44) or limited (5%) tensions over decision making in public interest collaboration. Again, the frequency of difficulties was significantly higher than in other cooperative relationships, but took similar forms.²¹⁸ Some problems involved disagreements over substantive matters, such as when to compromise. The more "different points of view," or unsettled the political climate, the greater the difficulty getting everyone "on the same page."²¹⁹ Conservative groups experienced particular tensions over the clash between libertarian and social/religious values, and organizations like the Heritage Foundation worked hard to help "smooth relationships" and remind groups not to "burn bridges" with a potential ally that that they would need on other occasions.²²⁰ Although

213. Pope, Sierra Club.

214. Leaders who noted such problems included Shaw, NAACP; Frye, National Partnership for Women and Families; Greenberger, National Women's Law Center; Studley, Public Advocates; Bouman, Shriver National Center on Poverty.

215. Pope, Sierra Club.

216. Rodgers, Legal Momentum; *accord* Dempsey Center for Democracy and Technology.

217. Krupp, Environmental Defense Fund; Pope, Sierra Club.

218. About 10% of leaders reported moderate or extensive difficulties in grassroots or government and private sector collaborations and about 15% reported such difficulties in pro bono collaboration. *See supra* text accompanying note 199 and *infra* text accompanying note 236.

219. Fung, Asian American Legal Defense and Education Fund (political climate); Gates, Children's Defense Fund (same page); Stotland, Education Law Project (different views). Tensions over compromises were noted by Crosby, ACLU; Dempsey, Center for Democracy and Technology; Shaw, NAACP. Those who mentioned difficulties in general included Krupp, Environmental Defense Fund; Paradise, Disability Rights Advocates; Beinecke, Natural Resources Defense Council; Wolfman, Public Citizen; Rothschild, Western Center on Law and Poverty.

220. Gaziano, Heritage Foundation.

a few leaders mentioned occasional “personality clashes” and “sharp elbows,” there seemed to be “surprisingly little unpleasantness” around control issues in public interest collaborations.²²¹

D. Pro Bono Collaboration

About four fifths of organizations reported extensive (47%, n=49) or moderate (33%) collaboration with the private bar. About a fifth reported little or none. Those in the latter category tended to have small legal staffs that preferred to keep control over the work or found that it was more cost-effective to do so.²²² Groups that focused mainly on policy or international human rights issues also felt that the private bar generally lacked the necessary expertise to assist on substantive matters.²²³ However, almost all of the large national organizations relied heavily on pro bono counsel for impact litigation, and involved them in at least half of their major cases.²²⁴ A few organizations, including the ACLU, the Electronic Frontier Foundation, the Lawyers Committee, and the New York Lawyers for the Public Interest, served a referral function. They investigated and screened cases to place with cooperating attorneys, while keeping some cases to handle on their own or to co-counsel with the private bar. Other organizations developed ongoing relationships with particular firms and relied on their pro bono assistance for litigation requiring substantial time and resources. The role of these volunteer lawyers varied considerably, depending on their expertise and availability. In some instances, they handled 90% of the work; in others, it was closer to 20%.²²⁵

Problems involving the allocation of credit were less common in relationships with pro bono counsel than in collaborations with other public interest organizations. Only a fifth of leaders reported extensive (2%, n=49) or moderate (18%) difficulties; 12% experienced limited difficulties. Pro bono

221. Crosby, ACLU, Northern California (elbows); Wolfman, Public Citizen (little unpleasantness); Rothschild, Western Center on Poverty Law (personality clashes).

222. Pendley, Mountain States Legal Foundation; Revett, Pacific Legal Foundation; Wolfman, Public Citizen.

223. Gates, Children’s Defense Fund; Ross, Human Rights Watch. Although some lawyers had experience with international law, they seldom had the kind of background in the local culture that Human Rights Watch required for the bulk of its work.

224. Leaders who affiliated pro bono counsel on all their large cases included Kwoh, Asian Pacific American Legal Center; Davison, Lambda Legal; Greenberger, National Women’s Law Center; Shauffer, Youth Law Center. Leaders who used pro bono lawyers in three-quarters of cases included Kendell, National Center for Lesbian Rights; Perales, Puerto Rican Legal Defense and Education Fund. Leaders who affiliated with pro bono counsel in at least half of their cases included Crosby, ACLU Northern California; Fung, Asian American Legal Defense and Education Fund; Paradise, Disability Rights Advocates; Shaw, NAACP. Others who indicated extensive use included Romero, ACLU; Kamin, Bet Tzedek; Survey Result: Rogers, Legal Momentum.

225. Perales, Puerto Rican Legal Defense and Education Fund; *accord* Greenberger, National Women’s Law Center.

attorneys varied in their preferences. Occasionally they might not even want to be listed on a brief or would be “willing to give [the public interest organization] the limelight;” others had “very aggressive public relations departments.”²²⁶ When problems arose, the reasons were usually straightforward. Public interest organizations “want our lawyers to take the lead. [Firms] want their lawyers to lead. Ours have expertise.”²²⁷ The more prestigious the opportunity and the less experienced the pro bono lawyer, the more likely the difficulty; “individuals and institutions have egos.”²²⁸ The press sometimes compounded the problem by ignoring one partner in the relationship.²²⁹

Public interest groups dealt with the issues in different ways. Most tried to prevent difficulties through a clear understanding up front, but varied in the understandings they hoped to reach. Some groups wanted to be lead counsel in most of their cases; others virtually always gave cooperating counsel the credit, press, and opportunity to argue the case, even if it took two or three moot courts to prepare them.²³⁰ The most common approach was more flexible, and took account of the nature of the case and pro bono lawyers’ expertise and expectations.

Issues of control sometimes arose but rarely posed serious difficulties. No public interest leaders experienced extensive difficulties over decision making in pro bono collaborations; eight percent (n=49) reported moderate problems, and 14% reported limited problems. Occasionally, firms “want[ed] to go to the wall,” or took the view that “if it’s our money, we should have control over spending it.”²³¹ Allowing private counsel to exercise such authority was generally unacceptable to public interest organizations, which had long-term policy objectives to consider. Most attempted to make it clear at the outset that they would retain control over strategic decisions.²³²

The most common difficulty in pro bono collaboration, however, involved not credit or control, but quality. About three fifths of organizations experienced some quality concerns; fourteen percent (n=49) reported extensive problems, 33% reported moderate problems, and 8% reported limited problems. For some organizations, the highly specialized nature of their work made it

226. Arnwine, Lawyers’ Committee for Civil Rights (wouldn’t be listed or had public relations department); Greenberger, National Women’s Law Center (limelight).

227. Shaw, NAACP.

228. Shaw, NAACP; *accord* Paradise, Disability Rights Advocates; Rodgers, Legal Momentum.

229. Romero, ACLU; Herrera, Equal Rights Advocates.

230. Crosby, ACLU, Northern California (gave opportunities away, even if moots required); Kwoh, Asian Pacific American Legal Center (lead counsel); Rothenberg, New York Lawyers for the Public Interest (gave lawyers opportunities).

231. Herrera, Equal Rights Advocates; Bouman, Shriver National Center on Poverty; *accord* Pope, Sierra Club (firm sometimes fail to grasp long term implications).

232. Romero, ACLU; Rushford, Criminal Justice Foundation; Rodgers, Legal Momentum; Trasvina, Mexican American Legal Defense and Education Fund.

inefficient to rely on inexperienced counsel, and few pro bono attorneys had the relevant skill sets. In death penalty work, for example, “getting people to the point of real competence takes years, not weeks.”²³³ Immigration, voting rights, and technology cases also presented challenges for non-specialists, and lack of language skills amplified problems in assisting non-English-speaking clients. Some organizations were willing to provide volunteers with the necessary background in substantive law, but could not afford to “train a junior associate in how to take a deposition.”²³⁴

Another problem involved firms that “want to do pro bono work in theory but in practice, don’t want to make the commitment.”²³⁵ They look for “training and opportunities for bored associates, but don’t want to give them the time . . . when other paid work comes up.”²³⁶ Often it was hard to predict the problem at the outset of a case. For that reason, groups frequently preferred long-term relationships with a few firms that would develop expertise in a particular area and provide oversight by a senior partner.²³⁷ In general, it was possible to work through quality concerns, and even groups that had difficulty using volunteers for substantive work relied on their expertise for internal needs involving employment, transactional, and similar matters. For most organizations, most of the time, pro bono assistance made a major contribution, and the commitment of many volunteer lawyers was truly exceptional.

The survey’s final question asked whether public interest organizations could use more pro bono help and what, if any, challenges they might face in taking advantage of it. About a quarter of the sample (24%, n=49) indicated that they could benefit from increased volunteers in at least some areas. Some organizations, like the ACLU, Mexican American Legal Defense and Education Fund, and the National Center for Lesbian Rights could use more local counsel outside major metropolitan areas. Other groups had needs in certain substantive fields.

Most public interest organizations, however, face major obstacles to expanding their pro bono programs, and many already have requests far beyond what they can accommodate. One significant constraint involves staff. It is time consuming to screen cases as well as to supervise or train volunteer counsel, and some public interest lawyers prefer to handle small matters themselves or

233. Stevenson, Equal Justice Initiative.

234. Kamin, Bet Tzedek. Other organizations did continuing legal education in areas where volunteers could provide adequate representation, such as school discipline cases. Stotland, Education Law Project.

235. Rothschild, Western Center on Law and Poverty.

236. Bright, Southern Center for Human Rights; *accord* Kaufman, Atlantic Legal Foundation (noting difficulties in relying on firms at “crunch time”).

237. Fung, Asian American Legal Defense and Education Fund; Fujioka, Asian Law Caucus; Paradise, Disability Rights Advocates; O’Toole, National Center for Youth Law; Pope, Sierra Club. A growing number of law firms find that strategy effective as well. For examples, see Ben Hallman, *Starting at the Top*, AM. LAW., July 2007, at 92, 94.

need to focus limited resources on mentoring their own junior colleagues.²³⁸ A related limitation involves translation services, which direct services organizations generally cannot afford to provide for pro bono counsel.²³⁹

The concerns and preferences of potential volunteers also impose significant limitations. Conflicts of interest keep many large firms from handling broad categories of cases particularly in fields like technology, environmental justice, and employment law.²⁴⁰ One public interest organization had twenty-six firms turn down an employment claim.²⁴¹ Death penalty cases are also a “hard sell,” given their time demands and unpopularity with the public.²⁴² Some leaders of conservative groups also feel that their political orientation makes it difficult to attract pro bono support, although that may be changing, partly through the network of the Federalist Society.²⁴³ Even organizations with relatively attractive volunteer opportunities find that firms often “cherry-pick cases” and are not interested in direct services or matters that cannot be scheduled at the lawyer’s convenience.²⁴⁴

Not all of these problems are insurmountable, and both private lawyers and public interest legal organizations have a stake in finding solutions. Many legal employers are becoming increasingly interested in developing pro bono opportunities as a way to improve training, recruitment, satisfaction, and public relations.²⁴⁵ Interest is also likely to grow among the large number of baby

238. Kamin, Bet Tzedek (noting lawyers’ preference to handle cases themselves); Kendall, National Center for Lesbian Rights (noting need to train junior lawyers); Bouman, Shriver National Center on Poverty (noting work involved in developing cases). Other leaders who cited staff concerns included Steele, Electronic Frontier Foundation; Gaziano, Heritage Foundation; Wilber, Legal Services for Children; O’Toole, National Center for Youth Law; Frye, National Partnership for Women and Families; Perales, Puerto Rican Legal Defense and Education Fund. *See also supra* text accompanying note 222, discussing lawyers’ preferences.

239. Fujioka, Asian Law Caucus; Padilla, California Rural Legal Assistance.

240. Casey, Christian Legal Society; Paradise, Disability Rights Advocates; Steele, Electronic Frontier Foundation; Herrera, Equal Rights Advocate; Rothenberg, New York Lawyers for the Public Interest; Padilla, Puerto Rican Legal Defense and Education Fund. Concerns include not just actual conflicts but positional or business conflicts. For a general discussion, see RHODE & LUBAN, *supra* note 3, at 589-92.

241. Graff, Legal Aid Foundation of San Francisco, Employment Law Center.

242. Stevenson, Equal Justice Initiative.

243. Kaufman, Atlantic Legal Foundation (noting that “Big Law Firms” seemed to favor work for indigents or criminal defendants); Clegg, Center for Equal Opportunity (noting that many firms were reluctant to be on the conservative side but that it was possible to tap into the Federalist Society); Rushford, Criminal Justice Legal Foundation (noting that their causes were not popular with law firm pro bono programs but that support was likely to grow); *see* Vivian Chen, *Rise of the Right*, AM. LAW., July 2007, at 114-17 (noting some firms’ resistance to conservative pro bono work, but other firms’ increasing willingness to support such representation).

244. Fujioka, Asian Law Caucus; Needleman, Brooklyn Legal Services; Shaffer, Youth Law Center; *see also* Graff, Employment Law Center (cases involving injunctive relief and low wages unattractive to private lawyers).

245. *See* DEBORAH L. RHODE, PRO BONO IN PRINCIPLE AND IN PRACTICE 30-32 (2005);

boomers who will soon be facing retirement and looking for productive volunteer activities.²⁴⁶ Some public interest organizations are already getting offers from retirees willing to make substantial commitments. Finding ways to use more volunteers is a challenge requiring greater efforts from all concerned.

One strategy is for public interest organizations to hire additional staff to coordinate and supervise pro bono work, and for firm participants to help subsidize that effort. Some organizations have moved in that direction. They require their pro bono partners to make a specified financial contribution, give preference to firms that contribute, or ask firms to donate any attorneys' fees that they receive from pro bono cases.²⁴⁷ Although some firms are troubled by these explicit "pay to play" arrangements, it is by no means clear that they are more problematic than the informal relationships that many groups have with firms and corporations that provide both time and financial assistance. Nor is it more equitable for underfunded public interest organizations to subsidize all the costs of pro bono programs from which legal employers benefit.

Another pro bono model is for law firms to pay associates or for law schools to subsidize post-graduate fellows to work for public interest groups for a specified period.²⁴⁸ More research is necessary to determine what approach is most cost-effective in providing quality services as well as accomplishing many donors' training, recruiting, and public relations objectives.

Other strategies should focus on ways to expand lawyers' pro bono work, monitor their performance, and channel more assistance to organizations that need it most. Despite recent progress, a majority of lawyers fail to contribute significant time or money to public interest legal organizations and the average hourly commitment among the nation's largest and most profitable firms is shamefully low.²⁴⁹ Courts, bar associations, clients, and law students all could

New Approaches to Access to Legal Services: Research, Practice, and Policy, RESEARCHING LAW: AN ABF UPDATE, Summer 2005, at 1, 5-6.

246. The number of lawyers in their 50s and 60s will triple in the next two decades. See Michael Aneiro, *Room to Improve*, AM. LAW., July 2006, at 100, 103 (quoting Esther Lardent). For examples of pro bono programs for retired attorneys, see *In Focus: The Senior Lawyer Public Interest Project*, WASH. LAW., Dec. 2006, at 30.

247. Ashby Jones, *Law Firms Willing to Pay to Work for Nothing*, WALL ST. J., June 19, 2007, at B1 (noting Lawyers Without Borders requires \$7,500 and Lawyers for the Arts gives preferences). Firms vary in their practices concerning fee awards; some donate the full amount, while others keep all or some of the recoveries to support their pro bono work. Carlyn Kolker, *The Good Fight*, AM. LAW., July, 2006, at 125-26; Anat Rubin, *Pro Bono Has "Benefits Beyond the Heart"*, L.A. DAILY J., May 18, 2006, at 1. Organizations may also be more willing to affiliate pro bono counsel whose practice is to donate fees. Studley, Public Advocates.

248. *New Approaches to Access to Legal Services: Research, Practice, and Policy*, *supra* note 245, at 7.

249. RHODE, *supra* note 245, at 19-20 (estimating that American lawyers' average pro bono contribution, broadly defined to include not just public interest organizations, was less than half an hour a week and half a dollar a day); Aneiro, *supra* note 246, at 100 (noting that only slightly over a third of attorneys at the 200 most profitable firms performed at least 20

demand more information on pro bono contributions, and increase pressure on poor performers.²⁵⁰ Coalitions of public interest organizations, bar associations, and pro bono counsel could also develop ways to monitor quality, match resources with unmet needs, and reach populations that now fall through the cracks, such as the non-English speaking and rural poor.²⁵¹ Pooling resources and improving technological capacities could enable coalitions to provide more efficient forms of training, supervision, and language assistance. Pro bono work has made enormous contributions to public interest causes, but its full potential remains unrealized.

CONCLUSION

The public interest legal movement at midlife has much to celebrate. It has increased dramatically in numbers, scale, and scope. Growth is apparent in the diversity of interests and perspectives represented, the resources available, and the strategies pursued. Thirty years ago, only ten percent of the nation's public interest organizations had budgets that, adjusted for inflation, come close to the norm of today's organizations. Fewer still had leadership with the experience, expertise, or strategic vision now common in the field.

The movement's strength is also reflected in its concrete achievements. Public interest lawyers have saved lives, protected fundamental rights, established crucial principles, transformed institutions, and ensured essential benefits for those who need them most. The movement has changed not just

hours of work); Aric Press, *Drawing the Line*, AM. LAW., July 2007, at 119 (defining what constitutes "pro bono").

250. For example, more courts or bar associations could require reporting of contributions. Only five states now have such requirements. See ABA State-by-State Pro Bono Service Rules, <http://www.abanet.org/legalservices/probono/stateethicsrules.html>. For the value of such rules, see RHODE, *supra* note 245, at 167-69. Since Florida imposed such a requirement, the number of hours devoted to assisting the poor has grown by 160%, and financial contributions have grown by 243%. STANDING COMMITTEE ON PRO BONO LEGAL SERVICE, REPORT TO THE SUPREME COURT OF FLORIDA, THE FLORIDA BAR, AND THE FLORIDA BAR FOUNDATION ON THE VOLUNTARY PRO BONO ATTORNEY PLAN (2006). For student efforts to increase information about pro bono contributions, see G.M. Filisko, *Students Aim for BigLaw Change*, ABA J., Dec. 2007, at 28; Building a Better Legal Profession, <http://www.betterlegalprofession.org/>; Posting of Peter Schmidt to the Chronicle of Higher Education News Blog, *Advocates of Diversity Grasp for Ways to Drive Change in Legal Profession*, <http://chronicle.com/news/article/3519/advocates-of-diversity-grasp-for-sticks-to-drive-change-in-legal-profession> (Nov. 29, 2007).

251. Padilla, *California Rural Legal Assistance*. For examples of outreach efforts to underserved groups, see RHODE, *supra* note 192, at 118-19. For the need for greater monitoring of the quality of pro bono services, see RHODE, *supra* note 245, at 184-85. For Maryland's efforts to assess how well pro bono contributions address unmet needs, see Cynthia Dipasquale, *Pro Bono Reporting Requirements Help Maryland Lawyers Measure Up*, DAILY REC. (Baltimore), Feb. 16, 2007. For recommendations of what courts and bar associations should do, see ILLINOIS REPORT OF THE SPECIAL SUPREME COURT COMMITTEE ON PRO BONO LEGAL SERVICES 6 (Dec. 2003).

law but “lawyers’ approach to the law.”²⁵² By representing causes as well as clients, public interest organizations have made clear the capacity of legal strategies in promoting social change. Law reform has been both an end in itself and a vehicle for raising public awareness, mobilizing political support, and giving communities a voice in the policies that affect them. In virtually every major American social reform movement of the last half century, cause lawyers have played an important role.

Yet as public interest legal organizations have grown in size and scale, so too have most of the problems they seek to address. In fields involving environmental quality, human rights, and technology, the challenges have global dimensions. In fields involving poor, elderly, immigrant, and imprisoned clients, the populations in need of services have increased dramatically and far outpaced legal resources.

Further challenges arise from the growing conservatism of the courts and the public on many issues involving social justice and judicial remedies. In this climate, the limits of litigation have become more pronounced. Victories in court are harder to achieve, sustain, and enforce. And the difficulties of gaining public support, political leverage, and financial backing are often no less daunting. Increasing competition from within the public interest community has compounded these challenges.

In the face of these pressures, lawyers committed to social causes have grown more strategic, proactive, and collaborative. They are less reliant on litigation, and more innovative in their use of multiple legal, political, and educational approaches. Coalitions with grassroots, governmental, and other public interest organizations have become increasingly common and effective. The same is true of partnerships with pro bono counsel. Although these relationships are not always free of difficulty, they have enabled most organizations to greatly expand their resources, influence, and credibility.

Yet while the public interest movement has grown substantially in recent decades, research on its challenges has not kept pace. We need to know much more about what works in the world, and what enables some organizations to be more effective than others with similar missions. This study’s data on the nation’s most prominent groups is a critical first step, but we also need more information about those that have been less successful, and why. In what fields are unmet needs most critical? What strategies are most likely to fill them and to foster effective collaboration among existing organizations? To what extent do the views of leaders square with those of researchers, clients, and other stakeholders? What forms of accountability and evaluation are most productive? How can pro bono programs be better structured to ensure quality services in areas of greatest need?

In 1970, the *Yale Law Journal* published the first study of “The New

252. Oliver A. Houck, *With Charity for All*, 93 *YALE L.J.* 1415, 1441 (1984); accord ARON, *supra* note 3, at 6.

Public Interest Lawyers.”²⁵³ The article drew on interviews with twenty-five leaders of the fledging movement, who identified some of the same challenges facing contemporary organizations. Two of these continuing concerns were how to sustain public legitimacy and support and how to ensure a stable financial base. First-generation cause lawyers, like their current counterparts, worried about their credibility and the potentially fickle nature of their foundation support. Yet ironically enough, as Ralph Nader noted, the “best check” on the performance of public interest lawyers was their “insecurity of role.”²⁵⁴

That check remains strong. Today’s leaders remain acutely aware of the ongoing challenges in sustaining their organizations’ work. The social problems that launched the public interest legal movement remain with us. But so does the commitment of its lawyers, who continue to express all that is best in the American legal tradition.

253. Comment, *supra* note 76.

254. *Id.* at 1130.

APPENDIX I

Dear [Organization Leader]:

I have been a law professor at Stanford for almost thirty years and also direct the University's Center on Ethics. I am now surveying leaders of the nation's most influential public interest legal organizations for a symposium jointly sponsored by the Stanford Center on Ethics and the Stanford Law School's new Levin Center for Public Interest Law, to be published in the Stanford Law Review. I would very much like to interview you briefly by telephone about the challenges of public interest law in your field. I attach a draft questionnaire. I know how busy you are, but the interview need take no more than 20 minutes and it would be an ideal opportunity for you to help other leaders, scholars and students to get a better sense of common challenges and effective strategies. I am happy to protect your anonymity on any questions that you request, and to accommodate your schedule in finding a time for the interview.

Please let me know what might be convenient. I am deeply grateful for your assistance.

Sincerely

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Public Interest Survey

Name
Position and Affiliation

Background

How long have you been involved in public interest legal work?

How long have you been with your current organization?

When was it founded?

What is its staff size (lawyers and non-lawyers)?

What is its current budget?

Experience Over the Last Quarter Century

In general terms, how do you think the public interest law movement has changed over the last quarter century in your field?

What have been its major achievements?

What have been its major limitations?

What are its major challenges?

To what extent are they different from other legal organizations?

When you entered the field, what were you most trying to achieve, and what strategies did you find most effective?

How have those goals and strategies changed? Why?

What strategies have proven most effective in achieving legal change?

What about broader social change?

Which have proven least effective?

Why?

Current Priorities

Roughly speaking, what percentage of your organization's effort is spent on:

Test-Case Litigation

Direct Services

Legislative and Administrative Regulatory Matters

Public Education / Media /Information Technology

Research/Reports

Political Mobilization

Other (please specify)

How has the mix changed over time? Why?

Influences

How have broader social and political changes affected your organization?

What are examples? (e.g. globalization, the composition of the federal judiciary, the availability of funding for conservative public interest legal organizations, the role of the internet, the complexity of problems, etc)

How does your organization determine its goals and priorities? By what criteria? What is the role of the director, the board, the legal staff, the members, funders, client groups, etc.?

How do you obtain clients? What role do they play?

Do you have members?

If so, how many and how involved are they in influencing your goals, priorities, and strategies?

Do you work closely with client groups or grassroots organizations? What challenges does that pose?

How large is your board? How are members chosen? What role does it play apart from development?

Funding

What are the major sources of your organization's funding?

How much of the director's time is spent on fundraising matters? How large is the development staff? Do legal and project staff have major fundraising roles?

How does your funding structure affect your organization's priorities, strategies, and allocation of time?

What are the major challenges you face in funding, and have they changed over time?

How do your organization's salaries compare with other public interest organizations, and with the public and private sector?

Has that changed significantly over time? How does it affect recruiting?

Alliances

To what extent do you collaborate with other public interest legal organizations in your field?

What challenges does that pose?

Are there significant difficulties over turf?

What about alliances with the private sector or governmental entities?
To what extent have you collaborated with the private bar?

How successful have those collaborations been?

What challenges do you face in enlisting pro bono assistance? For example, are positional conflicts of interest a major problem? Do turf and credit problems arise? What strategies might facilitate cooperation?

APPENDIX II: SURVEY PARTICIPANTS

Organization	Responding Individual (Years of Public Service)	Position	Annual Budget	Size of Board	Number of Staff	Year Founded	Date of Interview
ACLU—No. California	Maggie Crosby (31)	Director, Reproductive Rights	\$7 million	45	13 lawyers; 15 non-law	1934	July 27
ACLU: National	Anthony Romero (17)	Executive Director	\$103 million	83	Headquarters: 100 lawyers; 300 non-law	1920	Aug. 2
Asian Law Caucus	Gen Fujjoka (22)	Dir. of Programs	\$1.3 million	15	7 lawyers; 11 non-law	1972	Aug. 8
Asian American Legal Defense & Education. Fund	Margaret Fung (33)	Executive Director	\$1.8 million	11	9 lawyers; 7 non-law	1974	Aug. 3
Asian Pacific American Legal Ctr.	Stewart Kwoh (33)	President Executive	\$4.5 million	27	18 lawyers; 37 non-law	1983	Aug. 13
Atlantic Legal Foundation	Martin S. Kaufman (20)	Senior V.P. & Gen. Counsel	\$600,000	25	3 lawyers; 2 non-law	1976	Aug. 30 (mail)
Bazelon Center for Mental Health Law	Robert Bernstein (25)	Executive Director	\$3 million	20	7 lawyers; 19 non-law	1972	Aug. 16
Bet Tzedek Legal Services	Mitchell Kamin (10)	President & CEO	\$6 million	54	35 lawyers; 25 non-law	1974	Aug. 27
Brooklyn Legal Services	Martin Needleman (38)	Project Director, Chief Counsel	\$4 million	17	20 lawyers; 20 non-law	1968	Aug. 7
California Rural Legal Assistance	Jose Padilla (29)	Executive Director	\$11.3 million	44	52 lawyers; 136 non-law	1966	Aug. 22
Center for Constitutional Rights	Barbara Olshansky (16)	Deputy Legal Dir.	\$4.2 million	27	12 lawyers; 18 non-law	1966	Aug. 7
Ctr. for Democracy & Technology	Jim Dempsey (22)	Policy Director	\$2 million	10	10 lawyers; 4 non-law	1995	Aug. 13
Center for Equal Opportunity	Roger Clegg (14)	President, General Counsel	\$400,000	6	13 lawyers, use contractors	1995	Aug. 27
Children's Defense Fund	Susan Gates (3)	General Counsel	\$25 million	23	no. of lawyers unknown; 170 non-law	1973	Aug. 23
Christian Legal Society	Samuel B. Casey (25)	Executive Director, CEO	\$2.9 million	n/a	11 lawyers; 14 non-law	1962	Sept. 13 (mail)
Community Law Center	Kristine Dunkerton (10)	Executive Director	\$710,000	15	5 lawyers; 7 non-law	1983	Aug. 1 (mail)
Criminal Justice Legal Foundation	Michael Rushford (25)	President	\$700,000	22	3 lawyers; 4 non-law	1982	Aug. 3

APPENDIX II – CONTINUED

Organization	Responding Individual (Years of Public Service)	Position	Annual Budget	Size of Board	Number of Staff	Year Founded	Date of Interview
Disability Rights Advocates	Laurence Paradise (17)	Executive Director	\$2 million	15	10 lawyers; 10 non-law	1993	Aug. 2
Earth Justice (Sierra Club Legal Defense Fund)	Buck Parker (27)	Executive Director	\$27 million	25	50 lawyers; 100 non-law	1971	Aug. 8
Education Law Project	Janet Stotland (38)	Co-Director	\$1.4 million	18-20	7 lawyers; 6 non-law	1975	July 27
Electronic Frontier Foundation	Shari Steele (15)	Executive Director	\$3 million	8	12 lawyers; 18 non-law	1990	July 25
Environmental Defense Fund	Fred Krupp (29)	President	\$80 million	40	26 lawyers; 275 non-law	1967	July 30 (mail)
Equal Justice Initiative	Brian Stevenson (23)	Executive Director	\$1.4 million	13	11 lawyers; 8 non-law	1989	July 25
Equal Rights Advocates	Irma Herrera (15)	Director	\$1.4 million	16-17	5 lawyers; 7 non-law	1974	July 30
Heritage Foundation	Tod Gaziano (17)	Director	\$34 million	n/a	12 lawyers; 212 non-law	1975 or 1976	Aug. 27 & Aug. 30
Human Rights Watch	James Ross (22)	Legal & Policy Director	\$37 million	36	12 lawyers; 138 non-law & researchers	1978	Aug. 14
Immigrant Legal Resource Center	Eric Cohen (20)	Legal Director, Interim Exec. Dir.	\$1.7 million	10	5 lawyers; 7 non-law	1979	Aug. 21
LAMDA Legal	Jon Davison (20)	Legal Director	\$11.5 million	31	25 lawyers; 75 non-law	1973	July 31
Lawyers' Committee for Civil Rights Under Law	Barbara Arnwine (30)	Executive Director	\$6.1 million	22	22 lawyers; 35 non-law	1963	Aug. 24
Legal Aid Society of San Francisco – Employment Law Center	Joan Graff (36)	President	\$4 million	n/a	14 lawyers; 17 non-law	1916 & 1930	Aug. 15
Legal Momentum	Kathy Rodgers (12)	President	\$6.1 million	30	11 lawyer; 25 non-law	1970	July 25
Legal Services for Children	Shannan Wilber (17)	Executive Director	\$1.5 million	16	8 lawyers; 10 non-law	1975	July 24
Mexican American Legal Defense and Education Fund	John Trasvina (24)	President and General Counsel	\$6.5 million	29	18 lawyers; 47 non-law	1968	Aug. 20
Mountain States Legal Foundation	William Pendley (18)	President and Chief Executive	\$1.7 million	30	6 lawyers; 7 non-law	1977	Aug. 21
NAACP Legal Defense & Educ. Fund	Ted Shaw (25)	Director & President	\$10 million	40	18 lawyers; 40 non-law	1940	Aug. 24

APPENDIX II – CONTINUED

Organization	Responding Individual (Years of Public Service)	Position	Annual Budget	Size of Board	Number of Staff	Year Founded	Date of Interview
National Resources Defense Council	Frances Beinecke (33)	President	\$77 million	41	75 lawyers; 350 non-law	1970	Aug. 6
National Center for Lesbian Rights	Kate Kendall (17)	Executive Director	\$4.3 million	15	7 lawyers; 16 non-law	1977	Aug. 21
National Center for Youth Law	John F. O'Toole (32)	Director	\$1.8 million	15	9 lawyers; 30 non-law	1970	July 31
National Partnership for Women & Families	Jocelyn Frye (15)	General Counsel	\$5 million	15	5 lawyers; 25 non-law	1971	Aug. 15
National Women's Law Center	Marcia Greenberger (35)	Co-President	\$7 million	25	30 lawyers; 30 non-law	1981	July 31
New England Legal Foundation	Martin Newhouse (3)	President	\$1 million	40-50	4 lawyers; 2 non-law	1977	Aug. 23
New York Lawyers for the Public Interest	Michael Rothenberg (16)	Executive	\$4.3 million	48	15 lawyers; 25 non-law	1976	Aug. 17
Pacific Legal Foundation	Rob Revett (32)	President, CFO	\$9 million	22	25 lawyers; 25 non-law	1973	Aug. 22
Public Advocates	Jamienne S. Studley (24)	President	\$1.7 million	12	11 lawyers; 6 non-law	1971	Aug. 30
Public Citizen	Brian Wolfman (22)	Director of Litigation	\$800,000 legal; \$13 million	n/a	15 lawyers; 80 non-law	1971	Aug. 14
Puerto Rican Legal Defense and Education Fund, Inc.	Cesar A. Perales (10.5)	President and General Counsel	\$2 million	27	6 lawyers; 12 non-law	1972	Aug. 21
Sierra Club	Carl Pope (40)	Executive Director	\$70 million	15	13 lawyers; 400 non-law	1892	Aug. 9
Shriver National Center on Poverty	John Bouman (32)	President and Advocacy Director	\$3 million	25	9 lawyers; 25 non-law	1967	Aug. 9
Southern Center for Human Rights	Stephen Bright (32)	Former Director	\$1.7 million	15	11 lawyers; 15 non-law	1976	Aug. 1
Western Center on Law and Poverty	Richard A. Rothschild & Syd Whalley (31)	Director of Litigation; Executive Director	\$3.6 million	32	18 lawyers; 12 non-law	1967	July 29
Youth Law Center	Carole Shauffer (30)	Executive Director	\$2 million	16	7 lawyers; 3 non-law	1978	Aug. 9

