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A Comment on Nielsen's and Albiston's Sample Selection Methodology, and Implications for the 'Have-Nots'

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A COMMENT ON NIELSEN’S AND ALBISTON’S SAMPLE SELECTION, METHODOLOGY, AND IMPLICATIONS FOR THE “HAVE-NOTS”

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INTRODUCTION

Professors Nielsen and Albiston revisit the 1978 article, *The Public Interest Law Industry*, by Joel F. Handler, Betsy Ginsberg, and Arthur Snow, which presents an empirical study of the public interest law (“PIL”) industry in the mid-1970s.¹ At that time, there were only eighty-six PIL firms or public interest law organizations (“PILOs”) in existence in the United States.² Then, PILOs tended to be small, had relatively small operating budgets, received most of their funds from private sources, and tended to focus most of their effort in a single substantive area, among other characteristics noted by Professors Nielsen and Albiston. However, there have been significant changes in the legal, political, social, and economic landscape since the mid-1970s, so one would expect PILOs to have changed significantly as well. Nielsen and Albiston’s study is therefore a timely and important empirical reassessment of PILOs. The primary goals of their study are to understand how PILOs have changed between 1975 and 2004 and to address the related question “whether public interest

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1. Joel F. Handler et al., *The Public Interest Law Industry*, in PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 42, 42–79 (Burton A. Weisbrod et al. eds., 1978).

2. *Id.* at 50.

lawyering with PILOs [has] changed dramatically.”³ To those ends, they replicate the Handler et al. study using PILO data from 2004.

Professors Nielsen and Albiston present several findings. Most notably, they find that, since 1975, the number of PILOs has increased by roughly tenfold,⁴ the ratio of lawyers to non-lawyers in PILOs has dramatically declined,⁵ PILOs now perform a broader range of activities beyond litigation in more diverse practice areas,⁶ and, of particular note to the authors, PILOs increasingly advocate “conservative” causes.⁷

The authors’ findings seem generally consistent with what one would expect in light of the various legal, political, social, and economic changes that have occurred between the 1970s and the present. Therefore, I have no quarrel with the general tenor of their findings. Indeed, I think that they demonstrate some very important organizational trends among PILOs over the past thirty years and raise crucial questions for further research. However, their sample selection methodology is somewhat problematic, thus raising questions about the comparability of the 1975 and 2004 PILO data. In turn, this raises additional interpretive questions concerning some of their findings. Part I of this Comment discusses these related issues. Next, Part II offers some suggestions about how Professors Nielsen and Albiston might further analyze their data to present a more complete picture of contemporary PILOs, especially regarding how PILOs’ current activities and areas of focus relate to the incentives and constraints that they presently face. Finally, Part III

3. Laura Beth Nielsen & Catherine R. Albiston, *The Organizational Environment of Public Interest Practice: 1975–2004*, 84 N.C. L. REV. 1591, 1598 (2006).

4. Nielsen & Albiston estimate there were about one thousand PILOs in 2000 compared to the eighty-six PILOs that Handler et al. identified in the mid-1970s. See Handler et al., *supra* note 1, at 50; Nielsen & Albiston, *supra* note 3, at 1605–06.

5. See Nielsen & Albiston, *supra* note 3, at 1608–09.

6. Professors Nielsen and Albiston find that PILOs spend relatively more time on research, education, and outreach than they did in the mid-1970s, suggesting a de-emphasis on litigation as a social change strategy. *Id.* at 1612–15.

7. See *id.* at 1615–16 (describing “conservative” causes as consisting of “promoting traditional values, free market/free enterprise, law and order, and protecting property rights”). Professors Nielsen and Albiston’s other findings are that PILOs are much larger on average than they were in 1975, although most PILOs are still of modest size, see *id.* at 1606–08, average operating budgets of PILOs have increased dramatically between 1975 and 2000, although many PILOs are still relatively resource scarce, see *id.* at 1609–11, PILOs’ reliance on public funding (especially state and local government funding) has increased relative to their reliance on private funding, see *id.* at 1616, and federally funded PILOs tend to be large and to provide more direct legal services than do non-federally funded PILOs, although most PILOs still do not rely on federal funds, see *id.* at 1617–18.

discusses the contextual background to their findings and raises a few questions for further inquiry.

I. SAMPLE SELECTION, COMPARABILITY, AND INTERPRETATION

In constructing their 1975 sample of PILOs, Handler et al. defined public interest law firms as organizations that: (1) are part of the voluntary sector; (2) use mainly legal tools such as litigation; and (3) pursue actions that potentially have substantial external benefits (public interest).⁸ Handler et al. found eighty-six PILOs that satisfied this definition.⁹ In constructing the 2000 sample, Professors Nielsen and Albiston utilize the following definition of a PILO: “organizations in the voluntary sector . . . 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.”¹⁰ Based on this sampling definition,¹¹ they estimate that there were more than a thousand PILOs in the United States in 2000; hence their finding of a more than tenfold increase in the number of PILOs since 1975. However, are the 1975 and the 2004 samples truly comparable? By their own admission, the authors’ “definition [of PILO] is broader than just traditional public interest firms.”¹² To what extent do they discern more PILOs (and thus overestimate the growth rate of PILOs) simply by virtue of the fact that they use a broader definition than the definition that Handler et al. use in their study?

In turn, this issue raises additional questions about the authors’ interpretation of their findings. For example, based on their findings of an increase in the non-attorney to attorney ratio and the increased diversification of PILO activities away from strictly legal work,¹³ the

8. Handler et al., *supra* note 1, at 49.

9. *Id.* at 50.

10. Nielsen & Albiston, *supra* note 3, at 1601.

11. *See id.* at 1603–05 (describing Nielsen and Albiston’s sampling methodology).

12. *Id.* at 1601 n.51.

13. Presumably, it makes sense for PILOs to utilize a greater proportion of non-attorneys than in the past, when PILOs tended to specialize more heavily in legal work, particularly if non-attorneys can do non-legal work just as well as, but more cheaply, than lawyers. The increase in the number of non-attorneys relative to attorneys might also be due to the shift in ideological focus of PILOs toward more conservative causes, to the extent that conservative PILOs “are mostly think tanks and lobbying groups that do not engage in litigation.” *See* John P. Heinz et al., *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 *LAW & SOC’Y REV.* 5, 18 (2003). *But see* Ann Southworth, *The Rights Revolution and Support Structures for Rights Advocacy*, 34 *LAW & SOC’Y REV.* 1203, 1215 (2000) (arguing that “[a]t a time when many activists on the left have lost confidence in litigation as a vehicle for social change, activists on the right are

authors conclude that PILOs were different organizations in 1975 and 2004. However, these two findings might be, in part, the result of the authors' sample selection. That is, since the authors' definition of PILOs is broader than Handler et al.'s definition, by construction their sample might be biased toward showing a different organizational structure than the structure that Handler et al. found. To what extent is their sample by deliberate construction more representative of what Handler et al. refer to as PINLOs (public interest non-law organizations), as opposed to PILOs?¹⁴

Table 4 raises another comparability issue. In Table 4, the authors present statistics on PILOs' "efforts devoted to twelve topical areas: civil liberties, environment, consumer protection, employment, education, media reform, health, welfare, housing, voting, occupational safety and health, and other."¹⁵ These are the original substantive areas that Handler et al. considered.¹⁶ To these original topical categories, Professors Nielsen and Albiston add four new categories that reflect a more conservative agenda: "promoting traditional values, free market/free enterprise, law and order, and protecting property rights."¹⁷ They then examine PILOs' allocation of effort across the sixteen practice areas and find that there is less topical specialization among PILOs: "In 1975, over one quarter (29%) of PILOs were single-issue organizations; by 2004, that number had dropped to 7%."¹⁸ This seems reasonable based on the data presented in Table 4.

However, the authors' claim that the data in Table 4 show that PILOs are increasingly dedicated to conservative agendas is more

investing heavily in strategic litigation"). However, Nielsen and Albiston do not present their data in a manner that shows the relationship among PILO ideology, activities, and the ratio of non-attorneys to attorneys, a point that I return to in Part II. Or, it might simply be that "PILOs are adopting the practices of other law firms and legal departments to leverage lawyers and entrust much work to non-lawyers." Nielsen & Albiston, *supra* note 3, at 1609.

14. Handler et al. define PINLOs as "organizations in the voluntary sector that are engaged principally in public interest non-law (PINL) activities . . . [including] organizing individuals to act on their common interests; gathering, analyzing, and disseminating information through publications and seminars; lobbying legislatures and agencies in the public sector; and providing information to decision-makers." Handler et al., *supra* note 1, at 73. In fact, Handler et al. noted that the distinction between PILOs and PINLOs "is often a matter of degree . . . [but they] have chosen here to keep the two distinct." *Id.* Professors Nielsen and Albiston seem to make a less clear distinction between these two types of organizations and that might drive their findings.

15. Nielsen & Albiston, *supra* note 3, at 1613, 1614 tbl.4.

16. Handler et al., *supra* note 1, at 53.

17. Nielsen & Albiston, *supra* note 3, at 1615.

18. *Id.*

problematic. Since Handler et al. did not consider the four additional conservative categories, Professors Nielsen's and Albiston's data do not directly prove that PILOs are more dedicated to conservative agendas than they were in the past, although there is compelling evidence elsewhere suggesting that this is the case.¹⁹ The last row of Table 4 illustrates that in 1975 all but 9% of PILO effort was devoted to the eleven original topical areas that Handler et al. considered. In fact, Handler et al. labeled this 9% unexplained effort as "other."²⁰ In contrast, in Table 4, Nielsen and Albiston find that 15% of PILO effort is unexplained, which they label as "other." However, the two samples are not directly comparable because Nielsen and Albiston have added the four new conservative topical areas (described above) to Handler et al.'s eleven original topical areas. It is at least conceivable that at least some of the 9% "other" effort that Handler et al. found in 1975 consisted of what Professors Nielsen and Albiston refer to as conservative causes (i.e., their four new categories, which represent 13% of PILO effort in their 2004 data). If that is the case, their data might overstate the case for a shift in emphasis among PILOs to conservative causes.²¹ On the other hand, their data might understate such a shift to the extent that their "other" category includes additional conservative causes.

Ideally, the authors would have used both panel data, that is, data in which the same PILOs are followed over time, and data on

19. See Timothy L. Foden, *The Battle for Public Interest Law: Exploring the Orwellian Nature of the Freedom Based Public Interest Movement*, 4 CONN. PUB. INT. L.J. 210, 212–18 (2005) (detailing the history of the expansion of the freedom-based "conservative public interest legal movement"); Heinz et al., *supra* note 13, at 35–40 (discussing the "building of an infrastructure of resources and organizations to advance conservative goals"); Karen O'Connor & Lee Epstein, *The Rise of Conservative Interest Group Litigation*, 45 J. POL. 479, 481–83 (1983) (presenting evidence that there has been an increase in conservative interest group litigation since the early 1970s); Ann Southworth, *Conservative Lawyers and the Contest over the Meaning of "Public Interest Law,"* 52 UCLA L. REV. 1223, 1241 (2005) (noting that "[t]he first organizations to call themselves conservative public interest law organizations . . . appeared in the mid-1970s," which was precisely the period of the Handler et al. study); Southworth, *supra* note 13, at 1215.

20. The eleven original topical areas that Handler et al. considered included: civil liberties, environmental protection, consumer protection, employment, education, media reform, health care, welfare benefits, housing, voting, and occupational health and safety. They also included a twelfth category, which they labeled "other." Handler et al., *supra* note 1, at 53, 57 tbl.4.7.

21. However, there is strong evidence that PILOs devote greater effort to conservative causes than they did in the mid-1970s. See *supra* note 19. Thus, my point here is simply that the authors' data do not necessarily show this increase in conservative effort, since Handler et al. did not explicitly consider the four conservative categories.

newer PILOs.²² Panel data would have allowed Professors Nielsen and Albiston to investigate whether and how the PILOs that existed in the mid-70s have changed over time. New entrant data would have allowed them to do what they do now, which is to map the current scope of PILO activity, and at the same time it would have avoided confounding the current overall situation with changes within the older public interest sector over time. The latter information would have helped to illuminate the dynamics of changes in classic PILO activity over time. Panel data can be hard to collect, particularly when one has not done the original research, so I want to be clear that I am not criticizing Professors Nielsen and Albiston for their failure to do this. Rather, I want to point out how valuable panel data can be in research of this sort to encourage future students of PILOs to include a panel component in their work.

II. SUGGESTIONS FOR FURTHER ANALYSIS

This Part offers some suggestions for further analysis of the 2004 PILO data that might enable the authors to tell a more complete story about the changes among PILOs between 1975 and 2004. In addition, this Part suggests several additional ways that the authors might analyze the 2004 data to paint a richer picture of the effects of the incentives and constraints that PILOs face in the twenty-first century.

One of the main inferences that the authors draw from their data is that PILOs have shifted from being agents of “social change for disadvantaged groups” (e.g., the poor and minorities) to being “increasingly direct service organizations interested in providing direct legal services to individual clients . . . many that differ from the traditional poverty and civil rights constituencies of the past.”²³ The authors suggest that there has been a relative shift of emphasis among PILOs away from poverty and civil rights issues—“traditional” public interest practice—to mainstream or conservative issues.²⁴ Handler et al. demonstrated PILOs’ substantive emphasis in the mid-1970s in part by a table equivalent to Nielsen and Albiston’s Table 4, discussed above. However, Handler et al. also examined PILOs’ allocation of effort to various beneficiary groups, finding that “[o]n average, 34 percent of a PIL firm’s effort was intended to benefit the general

22. See DAMODAR N. GUJARATI, *BASIC ECONOMETRICS* 24 (3d ed. 1995).

23. Nielsen & Albiston, *supra* note 3, at 1593–94.

24. *Id.* at 1598. This is in accord with other studies finding an increase in conservative PILOs. See *supra* note 19.

population, 15 percent the poor, 10 percent women, and the remaining 41 percent was distributed among all other groups."²⁵ I am curious as to why Professors Nielsen and Albiston do not also investigate PILOs' allocation of effort to specific beneficiary groups, since doing so would allow them more directly to assess whether the poor and other disadvantaged members of society are being served by PILOs to a lesser extent than they were in the mid-1970s.²⁶

Although Professors Nielsen's and Albiston's main purpose is to study the changes in the PILO industry over time, their 2004 data allow them to give a fuller account of how PILOs respond to the incentives and constraints that they face and of the increased heterogeneity among PILOs since the mid-1970s. The following are some suggestions (in summary form) for how they might further analyze the 2004 data.

1. *PILO budget as a function of PILO size (where size might be measured as the total number of personnel, for example).* In Table 2, the authors examine the distribution of PILOs by total operating budget. However, this analysis does not normalize by PILO size. An arguably more useful measure of resource constraint is the operating budget available per employee (lawyer and/or non-lawyer).

2. *Distribution of effort among various activities/substantive areas by PILO size and/or by budget per personnel.* In Tables 3 and 4, respectively, the authors examine the distribution of PILOs by the percent of effort that they devote to various types of activities (e.g., legal work, legislative work, research, education, outreach, etc.) and substantive areas (e.g., civil liberties, environment, education, housing, conservative causes, etc.). While Tables 3 and 4 facilitate comparison with the same analyses conducted by Handler et al. on the 1975 data, the analyses of Tables 3 and 4 do not inform the reader about how PILOs' activities and substantive areas of focus currently vary with their size and budget constraints. The authors can tell this story with their 2004 data.

25. Handler et al., *supra* note 1, at 59. Handler et al.'s beneficiary groups include the poor, women, prisoners, children, Blacks, Spanish-speaking people, the mentally impaired, the elderly, Native Americans, other racial or ethnic minorities, and other. *Id.* at 58 tbl.4.8.

26. I am not questioning the veracity of this claim. My argument here is simply that Nielsen's and Albiston's data do not directly prove it.

3. *Distribution of effort among various activities/substantive areas by funding source (i.e., Legal Services Corporation ("LSC") treatment).* The authors suggest that LSC-funded PILOs operate under a different set of incentives and constraints than non-LSC-funded PILOs. Thus, presenting the data in this additional way would allow Professors Nielsen and Albiston to assess more precisely how the activities and/or focus areas of LSC-funded PILOs differ from those of non-LSC-funded PILOs.²⁷

4. *Formal modeling of PILO behavior.* Using multivariate regression analysis²⁸ or other quantitative techniques, one might formally model the factors that are associated with or affect PILO size, budget, or activities. For example, regressing budget size on variables such as organization size, organization age, PILO sector, political leanings and the like might have cast light on those factors that affect the resources PILOs have to deploy. It may be that holding organizational size and age constant, conservative PILOs have no more money to spend than liberal ones, or it may be that they have much more to spend, or it may be that, everything else held constant, environmental PILOs on either side have larger budgets than civil rights oriented PILOs. The modeling problem is not easy for some variables, like organizational size, are clearly endogenous, but if the modeling problems could be solved, we might gain a much better idea of how the PILO sector is structured and why certain relationships exist in the data.

5. *Case studies.* In conducting further research, Professors Nielsen and Albiston might select a few PILOs from their 2000 data and conduct in-depth case studies.²⁹ What they might lose in generality they might gain in a richer understanding of how PILOs respond to various incentives and disincentives and, of

27. See Nielsen & Albiston, *supra* note 3, at 1617–18 (speculating that LSC-funded PILOs are doing much more direct legal work and are refraining from reform work, as the new rules require).

28. Multivariable regression analysis is a statistical method of determining the relationship between one variable, called the dependent variable, and two or more explanatory variables. See GUJARATI, *supra* note 22, at 191.

29. Weisbrod et al. include several specific case studies in their book in addition to the more general statistics that Handler et al. present. PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS (Burton A. Weisbrod et al. eds., 1978) [hereinafter PUBLIC INTEREST LAW].

particular significance, PILOs' own view of the relative significance of various tools (e.g., litigation vs. non-litigation) of social change and how that view has changed with the changing environment within which they operate.³⁰ They might also discover the strategic reasons why some PILOs that represent the "have-nots" have shifted to non-litigation strategies over time.

III. THE BROADER CONTEXT AND FURTHER QUESTIONS

In their introduction, Professors Nielsen and Albiston motivate their study by recollecting the 1960s civil rights era's optimism for "law as an instrument for social justice."³¹ By contrast, in Part II of the Article, they note the recent shift to "a more conservative agenda for some PILOs and public interest lawyers."³² However, the authors do not explicitly discuss the changes that have occurred in the socio-legal context within which PILOs have operated since the 1970s, which might explain the changed characteristics of PILOs.

What has changed in the socio-legal environment since the 1970s? Republicans' federal electoral successes (reflected in the victories of Presidents Ronald Reagan, George H.W. Bush, and George W. Bush) have led to a rollback of liberal policies and to the appointment of more conservative judges on the federal bench. These political changes have been accompanied by massive deregulation, more lax enforcement of civil rights and equal

30. See discussion *infra* Part III.

31. Nielsen & Albiston, *supra* note 3, at 1592. Marc Galanter's seminal article, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974), also provided (cautious) optimism about the role of law for social change. Galanter posited that the U.S. legal system systematically advantages the "Haves" against the "Have nots." *Id.* at 95. The "Haves" are "repeat players . . . who are engaged in many similar litigations over time" and the "Have nots" are "one-shotters," "who have only occasional recourse to the courts." *Id.* at 97. The poor and the disadvantaged tend to be one-shotters and thus systematically disadvantaged in litigation, suggesting important limits on the law as a force for progressive social reform. *Id.* at 103–04. The advantaged repeat players are private market actors (e.g., landlords and corporations) and the government (e.g., welfare agencies). *Id.* at 97. However, because they assume many characteristics of repeat players, public interest organizations can level the playing field and thereby enhance the role of law as a tool of social change. *Id.* at 143–44; see also Beth Harris, *Representing Homeless Families: Repeat Player Implementation Strategies*, in IN LITIGATION DO THE "HAVES" STILL COME OUT AHEAD? 108 (Herbert M. Kritzer & Susan S. Silbey eds., 2003) [hereinafter IN LITIGATION] (providing empirical confirmation of the potentially leveling role of public interest organizations). Note that Galanter wrote his seminal article in 1974, at roughly the same time as Handler et al. conducted their empirical study of PILOs.

32. Nielsen & Albiston, *supra* note 3, at 1598.

protection by the federal courts, greater activism by conservative judges,³³ cutbacks in public funding for legal services, and a greater emphasis on the market to allocate goods and services:

Since 1974, movements seeking less government, fewer entitlements, increased personal responsibility, and a reduction in the regulation of wealth and property in favor of greater reliance on the market have been ascendant and successful In the 1960s and early 1970s, there may have been an overemphasis on a “rights strategy” and the efficacy of rights to secure social change Since the 1980s, however . . . these rights, and judicial protection for them, have been steadily eroded by a spate of Supreme Court decisions . . . a more conservative federal judiciary is less aggressive in protecting them, and the Court has placed important new limits on Congress’s authority even to legislate in support of rights.³⁴

CONCLUSION

Professors Nielsen’s and Albiston’s broad findings—especially the decreasing emphasis on litigation relative to other activities—are consistent with these significant changes in the socio-legal context within which PILOs operate. For liberals, litigation as a form of progressive social change seems to have run its course in the post-New Deal/Civil Rights Era.³⁵ This raises the important question

33. See Earl M. Maltz, *The Prospects for a Revival of Conservative Activism in Constitutional Jurisprudence*, 24 GA. L. REV. 629, 650 (1990); Christopher E. Smith & Avis Alexandria Jones, *The Rehnquist Court’s Activism and the Risk of Injustice*, 26 CONN. L. REV. 53, 76 (1993). *But see* Foden, *supra* note 19, at 223 (“What makes the conservative adoption of litigation so peculiar is the overall sentiment amongst conservatives that activism, both from lawyers and judges, is normatively bad.”); William Kristol, *The Judiciary: Conservatism’s Lost Branch*, 17 HARV. J.L. & PUB. POL’Y 131, 133 (1994) (arguing that even conservative courts tend to aid liberal causes).

34. *Introduction* to IN LITIGATION, *supra* note 31, at 1, 7–8; *see also* sources cited *supra* note 19.

35. See *Introduction* to IN LITIGATION, *supra* note 31, at 1, 8 (“[L]itigation now increasingly offers rights only at a discount, if they are obtainable at all The result is that where up until the time Galanter wrote ‘Why the ‘Haves’ Come Out Ahead’ litigation seemed to constitute a liberal strategy for social progress, today conservatives actively engage the legal system to further a very different agenda.”); Southworth, *supra* note 19, at 1266 (noting that although liberal PILOs “may have been optimistic about what they could achieve through the courts in the 1960s and 1970s, they have since become less invested in affirmative litigation strategies”). In fact, some legal commentators have questioned the efficacy of litigation strategies to achieve progressive social change even during the civil rights era. See generally Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976) (discussing the frequent conflict between civil rights lawyers’ integration

whether the "have-nots" are worse off now than they were in the mid-1970s. As Weisbrod et al. note in the preface to their book, "it [is] axiomatic that there are always alternative ways for society to deal with its economic and other problems."³⁶ The judiciary/litigation is just one of many alternative avenues for rights/interest expression and attainment.³⁷ Additional channels include the legislature, administrative agencies, private non-profit organizations (for example, lobbying groups and think tanks), corporate board rooms, grassroots social movements, various institutions of civil society that engage in more direct action, and the media.³⁸ Law and public policy are debated in and emanate from all of these alternative arenas.³⁹ Indeed, it is possible that some of the PILOs that were litigating in the 1970s on behalf of the "have-nots" are now lobbying or otherwise working in some of these alternative arenas to preserve their earlier gains in the courts.⁴⁰ Thus, while the "have-nots" might have lost ground in litigation, as Nielsen and Albiston suggest, it is possible that they have gained ground in some of these other arenas and are therefore no worse off than they were in the mid-1970s. Have sufficient and effective substitutes to litigation to promote the interests of the "have-nots" emerged in the United States since the mid-1970s?

Although this is largely a rhetorical question and is beyond the scope this Comment, the sociopolitical and economic changes that have occurred since the mid-1970s render an affirmative answer quite unlikely. It is more likely that many of the available channels for the articulation and promotion of "have-nots'" interests have narrowed simultaneously since the mid-1970s, due to the same background changes that might have rendered the judiciary/litigation a less effective arena for pursuing these interests. The dual trends of deregulation and greater reliance on market processes for the

commitment and their African-American clients' interest in the quality of their children's education); Galanter, *supra* note 31 (noting that the "Haves" tend consistently to come out ahead of the "Have-nots" in litigation).

36. PUBLIC INTEREST LAW, *supra* note 29, at vii.

37. See JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE 3 (1978) ("[A]dvocacy is not restricted to courts; it takes place wherever important decisions are made affecting the interests of client groups—in all branches and levels of government, in the media, in the private sector."); see also Southworth, *supra* note 13; *supra* text accompanying note 13 (noting the various arenas within which law and public policy are debated and formed).

38. See *supra* note 37 and accompanying text.

39. *Id.*

40. A good recent example is the Lawyer's Committee for Civil Rights, which is lobbying for extension of the Voting Rights Act.

allocation of goods and services coupled with “the intense political resistance to [redistributive] economic policies in the United States”⁴¹ have probably increased the advantage of the “haves” relative to the “have-nots” across all arenas and not just in the judiciary since the mid-1970s. Like the courts, processes in these other arenas are not immune to the effects of underlying sociopolitical and economic changes, since rights/interest promotion depends on an entire support structure, which in turn is dependent upon the underlying sociopolitical and economic environment.⁴²

In short, it seems possible that market, legal and political failures vis-à-vis the “have-nots” have coalesced, making “have-nots” worse off in all sociopolitical and legal forums since the mid-1970s.⁴³ While this broader question is beyond the scope of Nielsen’s and Albiston’s Article, a significant contribution of their Article is that it inevitably raises this important, albeit troubling, question.

41. See Gary Burtless & Christopher Jencks, *American Inequality and Its Consequences*, in AGENDA FOR THE NATION 61, 96 (Henry J. Aaron et al. eds., 2003).

42. See Bell, *supra* note 35, at 514 (“The problem of unjust laws . . . is almost invariably a problem of distribution of political and economic power.”); see also *supra* note 37 and accompanying text.

43. Perhaps the most compelling evidence in support of this assertion is the increased income inequality in the United States since 1973, which has coincided with deregulation and laissez faire economic policies. See Burtless & Jencks, *supra* note 41, at 64, 96 (presenting evidence that income inequality, along various measures, has increased in the United States since 1973). Burtless and Jencks suggest that one of the most disturbing potential effects of greater income inequality in the United States is an increase in the degree of political inequality among Americans, with relatively greater political power accruing to the “well-to-do,” who are probably less likely to support redistributive policies. See *id.* at 98.