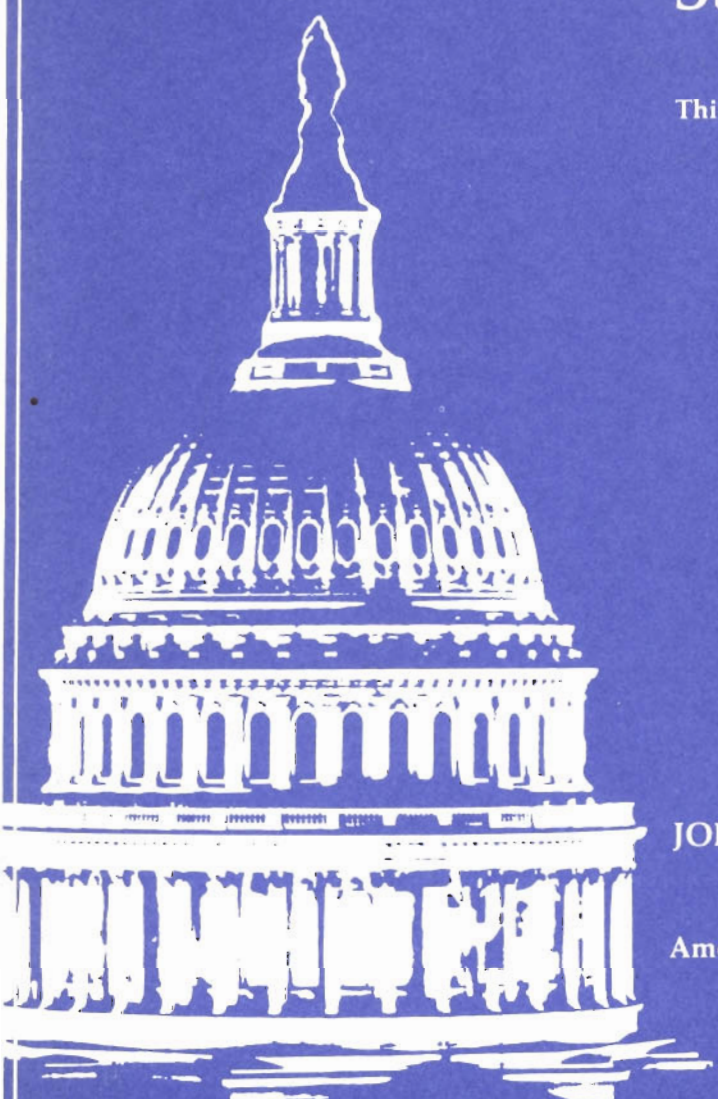
The Legal Profession in the United States

Third Edition



JOHN FLOOD

American Bar Foundation

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Preface

In 1978 *Time* magazine published an article titled, "Those #X&!!! Lawyers." The missing expletive expresses many people's feelings about lawyers. Certainly some people think that the United States is an "overlawyered" society—that too many lawyers and too much litigation are corroding the vital American spirit. Is it true or is it a myth? One way to dispel myths is by trying to present an accurate picture, so the leviathan is seen to be a mere chimera. The following pages are intended to do just that: to present both glories and failings of the American legal profession while showing how it is constituted and illustrating what it does. However, the singular noun "profession" is probably a misnomer, an infelicity derived from common usage, for, as the reader will soon learn, "the profession" is as diverse and varied as the society from which it emanates. I trust other stereotypes will be similarly dispelled. Whether the missing expletive is deserved or not is for others to decide.

The text is divided into five main parts, followed by an annotated bibliography. The first part sets out the structure of the political and legal system so that readers unfamiliar with U.S. politics and courts can make sense of what follows. The second part discusses the varieties of practice at large today, their structures, their tasks, and their prospects. In the third part the processes of becoming a lawyer and of removing lawyers are described. The fourth part presents statistics on the composition of the legal profession and some figures on the earnings of lawyers. The fifth examines the ways lawyers consociate. Finally, the annotated bibliography is offered to assist readers who want to look more deeply into the subject of lawyers. The bibliography provides most of the sources used, which is one of the reasons, in addition to avoiding disrupting the text, that no footnotes to sources will be found.

In the writing I incurred many debts. Thanks are especially due to Barbara A. Curran, Terence C. Halliday, John P. Heinz, Joanne Martin, Olavi Maru, Elizabeth Nelson Munger, Robert L. Nelson, Bette H. Sikes, Rayman L. Solomon, and Margaret Troha. I am indebted also to Connie Schroeder for her unfailing patience in typing draft after draft.

Chicago, 1985 *John Flood*

The Structure of the Government and Legal System of the United States

Today law is made in the United States by three levels of government: federal, state, and local. It is also made, in a sense, by the three branches of government: legislative, executive, and judicial. American lawyers spend most of their time articulating, interpreting, and implementing or reacting to the rules, regulations, programs, and policies of the various branches and levels of government. To comprehend the functions of the legal profession in the United States, then, one must understand the structure and appreciate the complexity of American government.

The United States is not a unitary government but a federation. Both historically and functionally, the structure of American government and its legal system begins with the states. Before the adoption of the Constitution of the United States, the several states were sovereign political entities, bound together in loose confederation. The act of union embodied in the Constitution created a federal government to which were granted certain enumerated powers, together with the power to adopt all measures "necessary and proper" to implement them. Included among these enumerated powers were exclusive authority with respect to foreign affairs, the power to create the nation's defense establishment, and the power to regulate commerce among the states and with foreign countries. Powers not delegated to the central government were reserved to the states or to the people. In the course of subsequent history, the federal government has become increasingly powerful through exercise of the powers granted to it. Nevertheless, the states' residual authority and responsibility regulate most of the ordinary affairs of the community.

The States

The state governments have retained major responsibility for the range of matters that concern any social community and are the stuff of its daily life. They provide for and regulate education; they regulate the organization and conduct of businesses (corporations, partnerships, and sole proprietorships); they regulate the organization and conduct of voluntary as-

sociations (trade associations, professional organizations, labor unions, religious corporations and organizations); they have responsibility for public health (air and water anti-pollution measures, sewerage, standards of cleanliness in public facilities); and they are the source of authority for land-use control (zoning and the regulation of building safety and utilization). The states are also chiefly responsible for the promulgation of the penal law and its enforcement; for the operation of prisons and jails; for the maintenance and regulation of highway facilities; for the construction, operation, and regulation of medical facilities, mental hospitals, nursing homes, child care centers, and similar institutions; for the administration and regulation of many public and private welfare, medical insurance, and pension systems; for the licensing and regulation of occupations and the professions; and for the legal incidents of property ownership and its transmission.

Each state government has three branches parallel to the federal government. The legislature typically consists of two houses, one known as the assembly or house of representatives and the other as the senate. A governor is the state's chief executive officer and has the power to recommend legislation and to veto measures adopted by the legislature. A judiciary consists of a statewide system of trial courts and an appellate court structure with a supreme court of the state at the top. In addition, each state has a host of executive departments and autonomous or semiautonomous agencies, commissions, and administrative tribunals. These typically include a superintendent of education, a board of regents for state-supported colleges and universities, a board of public welfare, a prison superintendent, a public utilities commission, a department of health, a bureau of highways, and so on. Each state has an attorney general as its chief legal officer, supported by a staff. That officer is official legal advisor to the agencies of state government and to the governor.

Cities, counties, and special-purpose governmental entities such as water districts and port authorities are units of local government that have a semiautonomous existence under the general supervision of the states. The legislative powers of these local governments are limited to their jurisdiction, of course, as are the powers of their executive and administrative officials and agencies. They in turn have their official legal advisors: a state's attorney or district attorney in the case of counties, a municipal corporation counsel or city attorney in the case of cities.

The Federal Government

Since the adoption of the Constitution of the United States in 1787, the federal government has had exclusive authority in foreign affairs and matters of national defense. Moreover, the historic trend has been towards centralization of the powers of government at the national level. In part, this movement is the result of amendments to the Constitution of the United States, notably the Thirteenth, Fourteenth, and Fifteenth Amendments, which were adopted immediately after the Civil War. These amendments limited the autonomy of the states in the administration of their laws, undertaking specifically to protect the civil rights of blacks, but also requiring generally that state laws be fairly and equally administered. Moreover, adoption of the Sixteenth Amendment in 1913 authorized the federal government to levy an income tax and thereby placed at its command what is now the most important tax revenue source in this country. The power of the purse conferred by this allocation of revenue has had an enormous centralizing influence.

The tendency towards centralization is partly the result of reinterpretation of the Constitution by successive generations as they applied it to the problems of their day which they felt, increasingly, required national solutions. The trend towards centralization is also the consequence of the Congress and the President of the United States having undertaken with increasing vigor to exercise powers that the Constitution conferred on the federal government. Most significant in this regard, perhaps, has been the exercise of the power "to regulate commerce among the several states." Under this clause of the Constitution, for example, the national government (1) now regulates minimum wage rates and working conditions in industries engaged in interstate business; (2) has adopted a national antitrust policy to preserve competition in business enterprise, and, most recently, (3) has prohibited discrimination based on race or sex in various settings. The exercise of federal authority in matters affecting interstate business has both stimulated and been stimulated by the development of nationwide markets, enterprises, and transportation systems. As a result of these developments, the role of the federal government in domestic concerns has come to exceed that of the states.

The Constitution has as one of its chief purposes the protection of the individual against arbitrary action by the government and its officials. These protections include the restrictions imposed on the federal government by the Bill of Rights (the first ten amendments to the Constitution, adopted in 1791) and the restrictions on the states embodied in the due process of law and equal protection of the laws clauses of the Fourteenth Amendment. As governmental activity has increased, and more recently as the movements towards protection of civil liberties and civil rights have

gathered strength, the significance of these provisions has increased correspondingly. The Constitution remains the legal and political centerpiece of the American federal system.

The federal and state spheres of responsibility are not mutually exclusive. On the contrary, in many important areas—education, social welfare, employment security, and highway construction—there are cooperative arrangements in which the federal government provides most of the funds and establishes general program guidelines while the states provide administration and local implementation. Groups of states by formal compact and informal arrangements often pursue activities on a regional basis. Also, the federal government acts directly with local governments in many programs, such as slum clearance and urban renewal. Taken as a whole, American federalism is an expression of expediency rather than formal arrangement.

The organization of the federal government is the model which the states parallel. The federal legislature is the Congress, consisting of the House of Representatives and the Senate; the President is the chief executive. The federal judiciary consists of a system of trial courts, a system of appellate courts, and the highest court of the nation, the Supreme Court of the United States.

In the federal government there are executive and administrative agencies. These consist of departments under the direct supervision of the President, of agencies that are semiautonomous, and of agencies that are nearly autonomous. Under the direct supervision of the President come, for example, such agencies as the Department of State, the Department of Defense, the Department of Justice, and the Department of Health and Human Services. Semiautonomous agencies include the Federal Trade Commission (which regulates interstate trade practices), the Securities and Exchange Commission (which regulates the marketing and exchange of investment securities), the Federal Communications Commission (which governs radio and television), and the National Labor Relations Board (which supervises relations between labor and management in business engaged in interstate commerce). Nearly autonomous agencies are numerous; among them are the Federal Reserve Board (which governs the national banking system) and the Civil Service Commission (which supervises the recruitment and discipline of civil service employees of the federal government).

The relationship between the federal courts and the state courts is intricate and the source of much popular confusion. In brief, the relationship is this: The courts of each state are organized in a pyramid, from trial courts of limited jurisdiction (minor civil matters and misdemeanor offenses), to

trial courts of general jurisdiction (major civil cases and felonies), to a tier of appellate courts of the first instance (in the densely populated states), to a state supreme court at the top. The state courts have initial and final jurisdiction over the general mass of litigation.

The federal court system is also a pyramid. At the first level, extending across the country are trial courts (the U.S. District Courts); with an intermediate tier of Circuit Courts of Appeals; to the Supreme Court of the United States at the top. The jurisdiction of the U.S. District Courts extends only to cases involving claims affirmatively based on federal law; to cases involving the U.S. government as a party litigant; to certain private litigation in which the parties are citizens of different states or nations; and to a few other limited categories of cases. The U.S. Courts of Appeals have jurisdiction of appeals from the U.S. District Courts; they have no authority to review state court decisions. The Supreme Court of the United States has general appellate jurisdiction over the lower federal courts. It also has constitutionally important authority to review decisions of the state courts that involve questions of federal law. This jurisdiction is designed to assure uniform application by the state courts of federal law, especially the due process requirements of the U.S. Constitution. The practical exercise of this jurisdiction, limited as it is, has been a decisive unifying influence in American constitutional development. Moreover, in recent years the elaboration of requirements of procedural fairness under the due process clause has required the states to conform to a widening range of federal constitutional standards.

The Common Law System

Historically and conceptually, the foundation of the American legal system is the common law of England. The common law is a body of legal principles, precedents (case decisions), and procedures that emerged initially as judicial rulings that interpreted and applied the remedial writs (orders) issued by the medieval English kings in their governance of England. By the period of the English post-Renaissance, on the eve of the American colonization, the common law together with English local customary law had formed a general corpus of law and procedure. As such it was a part of the cultural inheritance received in the American colonies and absorbed insofar as appropriate to the colonial situation.

At the time of the American Revolution the common law was formally embraced by each of the original thirteen states on their independence from Great Britain. As the United States expanded westward across the

North American continent in the nineteenth century, the common law system was introduced in practically all the states. The most notable exception is the State of Louisiana, which adopted and continues to enjoy a legal system predicated on the civil law of France. (The state was part of the Louisiana Territory, a French colony, before the United States purchased it.) In addition, California, Texas, and some other western states retain important elements of civil law from their Spanish heritage, particularly the family law concept of community property. Some traces of rules and concepts that originated outside the English common law can, indeed, be found in all states. Family law and the law of decedents' estates, private international law (conflict of laws, as it is commonly called in the United States), and other areas of the law display an affinity with European legal systems.

Upon this common law base, each state has an accretion of statutes that were enacted from time to time to remedy specific perceived defects in the common law and to meet changing social needs and conditions. In consequence, the law of each state is a complex of inherited common law precedent, adaptations of the common law through local judicial decision, and a pervasive body of legislation.

Statutory enactment has become a major legal process in the twentieth century. The enactments emanating from legislatures, however, are not usually comprehensive rule systems, in either origin or form. On the contrary, they are in the main *ad hoc* changes worked out in a common law framework. Thus, an important part of the development of law by statutory enactment has been codification to reform and rearrange existing court decisions and statutory law on a particular subject into an integrated legal code. (Such codes bear some resemblance to Continental codes based on the Napoleonic model, but they differ in that they are not conceived or drafted as texts definitive in themselves without judicial interpretation.) The law of civil procedure is now codified in virtually every state, as is much of the commercial law, much corporation law, and many of the laws that regulate business and the professions.

Of equal importance is the fact that statutory enactment has been, and still remains, the chief vehicle for major social and political reform. The regulation, for example, of wages and hours, of insurance, and of building safety all first appeared as statutory innovations.

The Lawyer's Role in the Legal System

The legal profession has a significant role in the system just described. The

common law tradition is the sum total of substantive and procedural aspects, and articulation and development of this common law tradition are functions of the courts. Except in the courts of limited jurisdiction of some states, all judges are trained lawyers. Thus the lawyer as judge is the guardian and expositor of the common law—the substance of which is the precedent, principle, policy, and practical expediency that the court considers in applying the common law to particular cases. In addition, because the American legal procedure is adversarial in nature, legal disputes are resolved through the partisan submission of fact and law by advocates —invariably lawyers—speaking for the respective parties. Thus, procedurally, the principle, precedent, and policy are brought to bear on particular cases through adversarial argument by lawyers to those judges who are also lawyers. The lawyers' influence on the development of the common law is therefore profound.

Interpretation and application of statutory law are similarly influenced. A statute is regarded as simultaneously a principle, a precedent, and a policy which, while entitled to the faithful deference of judges and lawyers, is not to be read slavishly or in disregard of its historical origin or its practical purposes. Because considerable latitude is left for interpretation, the effect of the common law tradition has been to make the roles of judge and lawyer highly influential in the development of statutory law. Another effect has been sharpened attention to drafting clearer and more precise statutes. This creates yet another role for the legal profession: the lawyer is called on for technical assistance in drafting statutes. Moreover, most legislatures, state and federal, include many lawyers, so the influence of the lawyer is also exercised in the very enactment of legislation.

In a general way, the same process has been at work in the development of administrative regulations. Drafting, interpretation, and application of such regulations are largely in the hands of lawyers who function both inside and outside the government. In the fullest sense, the lawyer in the United States is a lawmaker.

The Practice of Law*

The practice of law is conducted in many ways, though most lawyers are in private practice. Besides private practice, government—federal, state, and local—and business employ a growing number of lawyers. As the members of the profession have increased in number, the variety among the group has also expanded. Law is no longer the private province of the white, Anglo-Saxon, Protestant (WASP) male. Women and men of all colors and creeds have joined the legal profession in significant numbers in the past ten to twenty years.

In some areas of the world the legal profession is divided into discrete groups according to function—e.g., in England the barrister is mainly a courtroom advocate and the solicitor is concerned more with counseling, advising, and negotiation. The American lawyer, or attorney, can perform all functions. American lawyers do specialize, however. The great complexity and differentiation in the practice of law in the United States become evident in the following discussions.

Different types of private practice are described first, then the role of lawyers in private industry. Next, the varieties of government lawyers are examined. Since the days of the New Deal, this sector of the profession has enjoyed consistent and tremendous growth. The law teachers are considered last. Although they form the smallest group, their influence exceeds their numbers, for every would-be lawyer has to pass through their hands. The chapter concludes with a discussion of women and minorities in the law, notably blacks, detailing their history and their prospects.

Private Practice

Lawyers in private practice are not a homogeneous group. They vary widely. In the metropolis there is the large city firm representing major

*This following discussion in large part derives from studies of the legal profession carried out over the past twenty years. Most of these studies were limited in scope (for example, in time, in geography, in type of lawyer), which means that the narrative should be treated with caution, since we are unaware of the many countervailing situations that are as yet unresearched.

corporations, banks, and governments; there is the specialty firm handling patent applications or labor relations; there is the small—two to three partners—general practice based on real estate closings, probate, and small business matters; and there is the solo lawyer stalking the halls of the criminal courts looking for clients or waiting in his office (if he has one) for a personal injury case to settle so he can collect a contingency fee. In the rural areas the predominant cast of the private practice is one of small firms and solo practitioners carrying on general practices of real estate closings, divorces, business—whatever their communities require of them.

Metropolitan lawyers are separated by their respective types of practice; they are also separated socially, ethnically, and on religious grounds. A senior partner in a 300-lawyer firm on Wall Street in New York has little in common, either socially or economically, with a solo criminal lawyer. Yet they all undergo roughly the same initiation to become lawyers—four years of college and three years in law school—although in markedly different colleges and law schools.

Clients and their lawyers tend to have similar backgrounds, and this similarity has a marked effect on the nature of a lawyer's practice. Lawyers must tailor their practices to the shape of their clients' needs. Clients from a lower-middle-class background are unlikely to require extensive estate planning skills from their lawyers, whereas wealthy clients will require such skills. Corporations demand expertise from their lawyers in such areas as taxation and antitrust, which individual clients have little use for. It is thus the pull of client demand that influences how lawyers organize their work.

Private practice occupies most members of the legal profession. Over 370,000 lawyers (68 percent) are private practitioners. Most of these private practitioners (88 percent) work in urban areas defined by the U.S. Census as metropolitan. And 33 percent of all lawyers work in cities with populations of at least half a million. Slightly less than half (49 percent) of lawyers in private practice are solo practitioners. But if the number of solo practitioners is added to the number of lawyers in small firms (two or three partners), that group amounts to about two-thirds of the legal profession. Private practice, then, is heavily skewed towards the small firm. However, large law firms of over 100 lawyers, although few in number, have an enormous impact on the U.S. economy. They are clustered within the major metropolitan areas but draw their clients from the national and international scene.

The range of legal matters that private practitioners undertake is as broad as the law and legal institutions. Private practitioners help form organizations—business corporations, trade groups, labor organizations, charitable institutions, clubs, and societies. They negotiate contracts for goods and services between their clients and other businesses, individuals, associations, and units of government; transfers of ownership interests in real estate, movables, and intangible property such as literary property and patent interests. They devise mortgages and other security devices in connection with credit arrangements. They negotiate and draft terms of settlement of legal disputes. They advise clients in connection with litigation and represent them in court and before administrative tribunals. And they lobby in legislatures and elsewhere. (Lobbying is the representation of a client's interest in the legislative process—the drafting, negotiating, and supporting or opposing of legislative measures.)

The lawyer's relationship with a client may be continuous, often on a retainer fee, or it may be established only for a particular matter. The former is characteristic of law practices centering on business problems; the latter is characteristic of criminal, divorce, casualty, and other types of practice that involve problems which are nonrecurrent with the client.

The following sections describe in detail the different types of lawyers' practices, including the nature of their work, their personnel and organization, and their clients.

Large Law Firms

These have a significance that far outweighs their numbers. There are only 287 firms with more than fifty lawyers. The largest law firm in the U.S. contains over five hundred lawyers, many of whom staff offices as far afield as Hong Kong, Rio de Janeiro, Riyadh, and Paris. Most large law firms—that is, of a hundred lawyers or more—have branch offices in various cities in the United States, and some have overseas offices, but the usual location for a branch office is Washington, D.C. The original impetus for the establishment of branch offices within and outside the United States came from clients' needs to have representation on a permanent basis in certain key areas of law, for example, regulation. Since the typical client of a large law firm is a large corporation, a firm must be ready to respond quickly to such a demand.

As large law firms have increased in number, so has the competition among them for clients. Law firms are still kept on retainer for many routine tasks, but since the mid-1970s they have had to bid for work, especially when special services are required, on a case-by-case basis. As a result they are becoming more specialized. Clients will shop around to find the

best antitrust counsel, or mergers counsel, and they often will not reside in the same firm. Not only are clients becoming more selective in their choice of law firm and counsel, they are also becoming increasingly cost conscious.

The large law firm maintains many highly skilled personnel at high cost. Fees charged to clients reflect this cost. As one result of rising legal expenses, clients are maintaining their own in-house counsel.

Lawyers in large law firms concentrate on law for business needs. Areas of practice include: antitrust and patents, business tax, securities and general corporate, banking and commercial, business litigation and real estate, public utilities, and some labor law for management may be included. These fields of law are complex and few lawyers claim expertise in several, let alone all, of these fields. Complexity has forced firms to departmentalize, at least to some extent. A large law firm typically contains a litigation section, a tax section, a real estate section, a corporate section and so forth, each having a team of lawyers who are specialists in their respective fields. The size and composition of each team reflects the specialty's importance to the clients. But some fields such as litigation are labor intensive and require larger numbers of personnel to handle the extensive documentation that may be required in such cases. Many such personnel may be paralegals (ancillary nonlawyer staff).

Two types of cases that large law firms are uniquely organized to handle are defending antitrust suits and securities work.

1. Antitrust suits take one of two forms: either a complaint of price fixing, or a charge of monopolization of the market. Both can be brought by private parties against a corporation; the latter charge can also be brought by the government. The pattern of suits involving private parties is generally a smaller corporation charging a larger one with price fixing or monopoly practices. The preparation for such a case is extremely time consuming. Both parties will ask for discovery of documents (disclosure of the other side's documents), which may number millions of pages, and all will have to be combed for salient facts. Some firms now hire computer specialists to create programs that facilitate the storage and recall of such documentation. Paralegals catalogue and prepare documents for the lawyers. Lawyers depose witnesses (pretrial questioning), which may require traveling to various points of the country or abroad. Junior associates carry out research on points of law and other issues. And finally, a partner, in conjunction with either a junior partner or a senior associate, plans the strategy to be employed when the case goes to trial.

It may take years before such a case comes to trial. But once the briefs are submitted and the examination and cross-examination of witnesses begins, it may again be a matter of years before the trial concludes. Witnesses may be on the stand for weeks or months. When each trial day is over, two or more junior associates will comb the transcript for anything that will be of use in the next day's hearing. As the trial takes shape, the lawyers for both sides will be carefully monitoring and tuning their strategies and tactics. The defense may have spent thousands of dollars on expert testimony and mock juries on whom the lawyers will have tested various lines of argument.

The case of a single plaintiff, whether government or private party, can be the stimulus for other potential litigants to bring their suits. Thus a defending corporation requires many lawyers and many expensive hours of legal work. Fees can easily amount to millions of dollars, especially when this type of case is taken through a series of appeals.

2. Securities cannot be sold to the public unless the Securities and Exchange Commission (SEC) has examined and passed on the comprehensiveness of the formal statement offering the stocks or bonds. Again, as with antitrust suits, the numbers of documents can be enormous. Large law firms often act as counsel for the underwriter to the issue rather than the company issuing the stocks or bonds. This is because the underwriter is generally a large financial institution and, hence, can afford the high legal fees of Wall Street law firms, whereas the issuing corporation may be small and so unable to afford such fees. Much of the work, especially the registration statement is "boilerplate"—that is, standard forms are used. The document must cover all contingencies, hence it is long. Most of the work is delegated to associates, such as the tedious checking of the proofs where every digit of every number of every bond has to be correct. Errors in the document can cause the SEC to delay the sale of the stocks or bonds, thereby losing money for the company and the underwriter. Caution and speed have to be combined in judicious proportions.

The organization of large law firms is more complex than a simple division into partners and associates (salaried employee lawyers). Cutting across this are roles that can be termed "finders, minders, and grinders"—more elegantly, entrepreneurs, managers, and workers.

Entrepreneurs are most often the senior partners who bring in the clients (known as "rainmaking") and who determine the strategies for the development of the firm. Standing behind the entrepreneurs are the managers, who organize the work of the firm among the junior partners and associates. They are largely responsible for the delivery of the product to the clients. The workers, or grinders, are the junior partners and associates

who produce the legal research, write the memoranda, and put together the first drafts of briefs. The grinders are the producers of profit for the firm. They must bill up to 1,800 hours a year—which often means working at least a quarter more hours in order to produce the appropriate number of billable hours.

Large firms hire their associates most often from the elite, prestige law schools, in some cases following a clerkship with a judge. The salaries are high, especially in New York—they were in the region of $49,000 in 1984—but the opportunities for obtaining partnerships are low. It is not uncommon for up to thirty associates to be hired in a year, only two of which will achieve partnership status. Over the six years or so that associates wait before the partnership decision is taken, the competition between them for mentors within the firm becomes intense. Certain partners carry more authority than others and are able to sponsor their associates successfully. Under what is known as the "up or out" philosophy, those who fail to make partner generally move to another firm, possibly even in another city, where they will often do well.

Paralegals constitute a growing addition to the roster of law firms. Large law firms have made extensive use of them in cases that involve massive documentation, such as antitrust and commercial litigation. Paralegals can also undertake low-level research, especially using computerized retrieval systems, such as LEXIS and WESTLAW. Being a paralegal effectively carries no career path in a large law firm, although some paralegals are now professional administrators within the firm, responsible for hiring staff, space planning, and collecting bills.

In 1916 Julius Henry Cohen published a small book titled *Law: Business or Profession?* Today that question is even more pressing for the members of large law firms. The strains between the desire to retain a collegial structure between members and the pull towards a bureaucratic, hierarchical structure are approaching the tearing point. The idea of marketing a legal practice is anathema to many lawyers. Others believe the only way to survive in a competitive economic environment is to pursue potential clients aggressively. Among the consequences of such pursuit is that certain divisions in the firm—for example, antitrust and mergers—develop at the expense of a gradual overall growth, and the lawyers within those divisions believe they should be rewarded more generously than the remainder. This is a form of meritocracy, not envisaged by traditional lawyers, that cuts across the parity of partners. Also, it has led to the introduction, among other things, of higher associate-partner ratios and nonequity-sharing partners. A concomitant of the moves towards meritocracy and bureaucracy is the acquisition of one law firm by another. As law firms

push to expand into different geographical areas, they will often merge with or take over a firm in the desired location. One consequence of such a move is that the dominant firm acquires a client base from which it can further enlarge its practice. And, of course, mergers and acquisitions bring their own problems. In any case, as long as the well-being of large law firms is tied to the cycles of the economy, such strains will persist.

Specialty Law Firms

Specialty law firms, also called "boutique" firms, are inextricably linked to the sphere of large-law-firm practice. But in many respects they are the opposite of the large corporate practice inasmuch as they have roughly thirty lawyers or fewer and eschew general practice in favor of concentrating on an area of practice, such as labor law, litigation, or admiralty. Where a large law firm has retained its general practice format without developing any specialties, it will, when presented with a case requiring special skills, need to be able to draw on expert assistance. In large part, then, specialty firms depend on referrals from other law firms. Their small size relative to the large law firms which provide the referrals and their limited range of activity alleviates the fears of the referring firms that clients will be poached. And the expertise of these specialty firms gives larger firms an escape valve for their own difficult or recalcitrant cases.

One apparently insoluble pressure the specialty firm faces is growth. If the firm has determined that a particular number of lawyers is the optimum size of the firm, it will be difficult to hire new associates, for they can have no expectation of becoming a partner. The problem may cause such firms to split into ever smaller entities to allow for future growth.

Legal Clinics

The legal profession, in emphasizing its professional ethics, has never appeared a fruitful area for commercial, entrepreneurial exploitation. Since the Supreme Court decisions of the mid-1970s—*Goldfarb v. Virginia State Bar* (bar association minimum fee schedules violate federal antitrust law) and *Bates v. Arizona State Bar* (lawyers have a constitutional right to advertise their prices for routine legal services in print)—advantage has been taken of the potential market for legal services.

The main vehicle following in the wake of these decisions was the legal clinic. The legal clinic may often be large, but unlike the large law firm, it is tied to the small-firm sphere of practice: it is as the supermarket chain is to the small corner store. Set up to process routine, uncomplicated legal

business, the clinic relies heavily on standard forms and extensive use of paralegals. The main areas of work are wills, personal bankruptcy, divorces, and traffic offenses. To succeed, clinics have to advertise widely and compete forcefully on prices. In addition, they must generate a high turnover of business—volume is paramount.

Some clinics have established chain operations with more than a hundred offices in various states. For clinics of this scale, television advertising is essential. One such chain has forged links with a tax-return-preparing chain and entered the prepaid legal services field with a trade union. In order for ventures like these to thrive, new markets must be continually explored and exploited.

Small Firms and Solo Practitioners

This category comprises the largest proportion of the legal profession in private practice—almost two-thirds of all lawyers. The small law firm and solo practice are the most typical setting for lawyers in the United States and most typically where individuals go for legal services. The work is varied, but real estate, estate planning, and marital problems predominate. An American Bar Foundation study of the legal needs of the public showed that legal problems fell into the pattern shown in figure 1. The bulk of real property business involves the acquisition of property. Estate planning is largely the drawing up of wills, often at a relatively low cost, since the lawyer looks to the future for his remuneration, when the estates have to be settled. Marital problems include not only divorce itself but also difficulties over alimony or support payments.

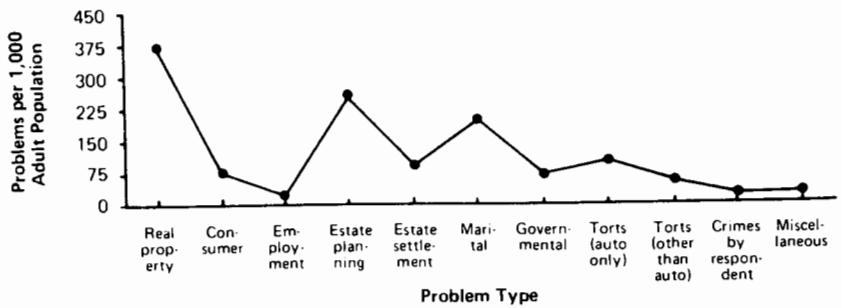

Fig. 1. Aggregate number of problems taken to lawyers per 1,000 adult population, by problem type (N=2,064). Reprinted with permission from Barbara A. Curran *et al., The Legal Needs of the Public: The Final Report of a National Survey* 196 fig. 5.14 (Chicago: American Bar Foundation, 1977).

The sexual and ethnic components of the pattern are analyzed in figures 2 and 3. Figure 2 shows that women take divorce and estate settlement problems to lawyers more often than do men. In marital matters, women have traditionally been the moving party in divorce proceedings. The higher incidence for women of estate settlement problems is explained by women having a greater life expectancy than men.

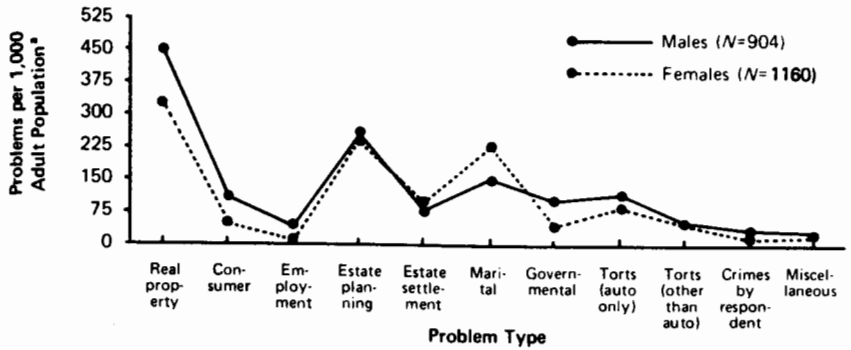

Fig. 2. Aggregate number of problems taken to lawyers per 1,000 adult population, by problem type and sex. Reprinted with permission from Barbara A. Curran *et al., The Legal Needs of the Public: The Final Report of a National Survey* 197 fig. 5.15 (Chicago: American Bar Foundation, 1977).

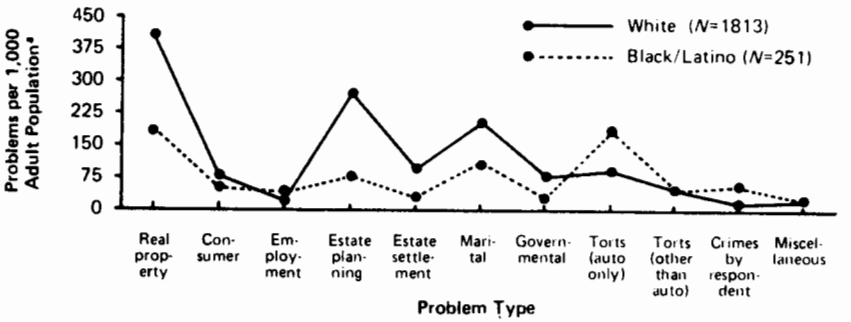

Fig. 3. Aggregate number of problems taken to lawyers per 1,000 adult population, by problem type and race/ethnicity. Reprinted with permission from Barbara A. Curran *et al., The Legal Needs of the Public: The Final Report of a National Survey* 197 fig. 5.16 (Chicago: American Bar Foundation, 1977).

The differences in numbers of problems taken to lawyers are more noticeable between whites on the one hand and blacks and latinos on the other than between women and men. Figure 3 shows that blacks and latinos take fewer problems to lawyers than do whites, except for employment

matters, torts (mainly damage to automobiles), and crimes. The lower numbers for real property, estate planning and settlement, and marital matters reflect the poorer economic conditions of these groups compared to whites.

Lawyers in small firms also deal extensively with small businesses, counseling them, assisting them in dealing with governmental agencies, particularly at the local level, advising them on taxes and debt collection matters, and handling their business disputes with suppliers, competitors, and customers.

Solo practitioners and small-firm lawyers constitute the most heterogeneous group in the legal profession. In some metropolitan areas there is a diversity of ethnic, social, and religious background not found to the same extent in the other strata of the legal hierarchy. Combined, the factors of social background, ethnoreligious group, and type of law school attended have a powerful influence on a lawyer's career pattern. Moreover, these factors inhibit movement between the strata of the hierarchy, and are especially strong barriers at the polar extremes. In the larger cities solo practitioners and lawyers in small firms come from families of somewhat lower socioeconomic standing than do lawyers in large firms. They have different ethnoreligious origins—Irish and European Catholic and Jewish as opposed to Anglo-Saxon Protestant. They attended local rather than elite law schools. In smaller cities the bar as a whole is more homogeneous, being white Anglo-Saxon Protestant; thus small-firm lawyers do not stand apart.

Practice in Middle-sized Cities and Rural Areas

Most legal practice is conducted within urban areas, and not much is known about the practice of law in less densely populated areas. The evidence suggests that the demand for lawyers' services in middle-sized cities and rural areas is correlated with the level of retail trade and local government activity.

The leading areas of practice are business matters (with clients ranging in size from small retail stores to utilities), real estate, estate planning and settlement, personal injury for both plaintiffs and defense, and criminal defense. For over half the lawyers in these areas, at least 50 percent of their income is from work on business matters. Nonetheless, few rural lawyers can be classified as specialists—that is, spending 25 percent or more of their time in one area of law. But in towns approaching a population level of 150,000, some specialization emerges, usually as a result of the larger business sector.

The majority of clients are drawn from the upper and middle income groups of the population. And there is no differentiation along religious and ethnic lines in the rural areas. Most lawyers practice in firms rather than on their own, although some firms may be only office-sharing arrangements with no fee sharing.

Lawyers in rural areas tend to have close ties to the areas in which they work. They will have grown up in the area and most probably have gone to college and law school within the state. And most will spend their entire career there. Rural lawyers are not as diverse a group as lawyers in urban settings. They share many characteristics (religion, ethnic background, politics) with their local communities.

The types of private practice of lawyers outside urban areas vary much more widely than their backgrounds. Therefore, rather than talk of *the* legal profession as a homogeneous entity, we should acknowledge that there are *many* legal professions, representative of the many facets of society. One illustration of the variety is found in a large-scale study of Chicago lawyers. (The results are indicative rather than definitive because the study was limited by time and place.) The authors analyzed twenty-five fields of law on nine variables and displayed the results in two-dimensional space that summarizes the relationships among the fields when all of the variables are taken into account simultaneously. The relationships are shown in figure 4. The nine variables used in the analysis were as follows:

1. Business clients (mean percentage of income received from business rather than individual clients)
2. Stability of practice (mean percentage of clients represented for three years or more)
3. Lawyer referrals (mean percentage of clients obtained through referrals from other lawyers)
4. Freedom in choice of cases (percentage of practitioners indicating wide latitude in selecting clients)
5. Negotiating and advising (percentage of practitioners indicating that their work often involves negotiating and advising rather than the use of highly technical procedures)
6. Government employment (percentage of practitioners employed by federal, state, or local government)
7. Local law school (percentage of practitioners who attended any of four law schools in Chicago)
8. High-status Protestants (percentage of practitioners who are Presbyterians, Episcopalians, and Congregationalists)
9. Jewish origin (percentage of practitioners who report either Jewish religion or ethnicity).

The most prestigious fields of law are found at the top right of the U. As one moves clockwise around the U, the prestige of the fields declines, ending with the least prestigious at the top left of the U. Moreover, if a vertical line were drawn through the U, the two halves would represent the distinction between corporate business law practice and personal plight practice. At the bottom of the U are the fields of law with generally the most stable sets of clients. Finally, the median size of the law firm increases as one moves from the top left around to the top right of the U.

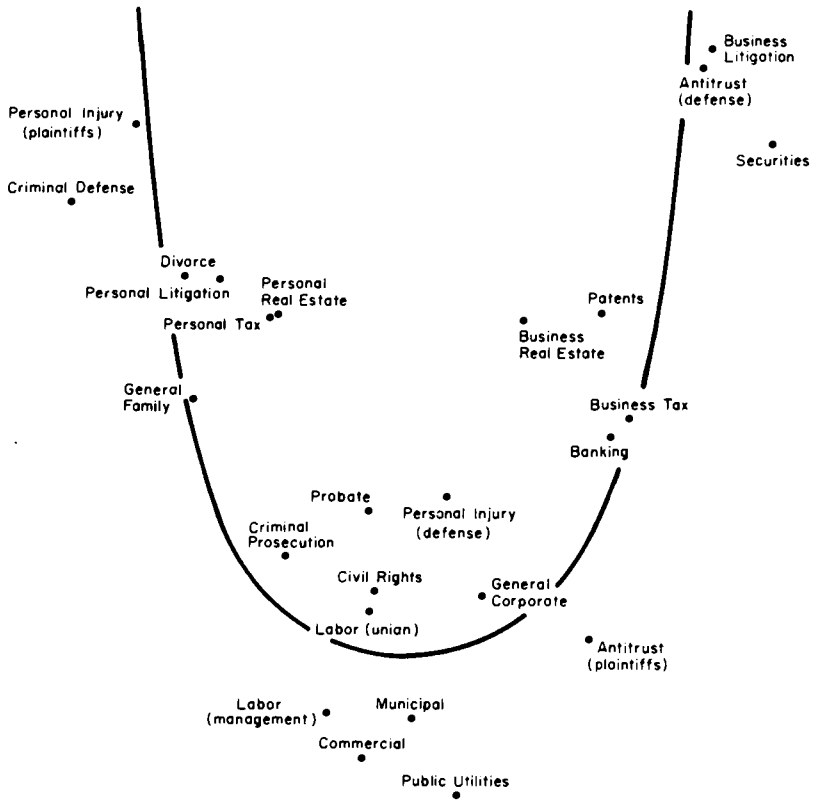

Fig. 4. Multidimensional scalogram analysis of twenty-five fields of law, on nine selected variables. Reprinted with permission from John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 75 fig. 3.1 (New York: Russell Sage Foundation; Chicago: American Bar Foundation, 1982).

Lawyers in Private Industry

In the decade from 1970 to 1980 the number of lawyers employed by businesses has risen by 55 percent, from 35,000 to 55,000, now accounting for one in ten lawyers. Some business corporations established law departments as early as the late nineteenth century, but rapid growth has been a relatively recent phenomenon. One major reason is the dramatic increase in government regulation of business in such areas as occupational safety and health and securities. Another is the increased size and complexity of modern corporations.

The work of corporate or in-house counsel (as business lawyers are called) combines ordinary legal work with involvement in the business and management affairs of the corporation. Litigation has generally been referred to outside counsel, but such referrals are declining. The in-house lawyer, then, has a dual role: to assist the corporation in its external relations with the worlds of business and government, and to resolve problems that arise within the corporation.

Unlike private practitioners, in-house counsel are viewed as having only a single client—their employer. In one respect this is true; a corporate counsel is hired by one company alone. But as corporations have grown —both by internal expansion and through vertical and horizontal mergers—the range of problems arising has enlarged too, and in-house counsel may serve many masters within a single corporation.

The more corporations have demanded legal advice, the more conscious of costs they have become. The traditional adviser to the corporation, the large law firm, charges high fees for work, so it is possible for a corporation to cut such costs by as much as half by having its own corporate law department.

Many of the lawyers who work in corporations have crossed over from private practice—at both associate and partner levels. The majority of corporate recruits are still hired in this way, but some are now hired directly out of law school. Nevertheless, the expanding range of skills required by corporations means that experienced lawyers must be hired.

Lawyers who work in corporations have traditionally not been held in high esteem by private practitioners, who argue that in-house counsel lack the professional independence of lawyers in law firms. But with law firms themselves becoming steadily more bureaucratized, that line of reasoning is losing its power and the position of corporate counsel is gaining in attractiveness.

In its best form, practice as corporate counsel is much like practice in a law firm, except that there is, in theory, but a single client. The emergence of corporate counsel certainly represents a departure from the traditional model of independence held by members of the legal profession, and their professional identity has been thought jeopardized on that account.

Public Law Practice

Government Lawyers About 50,500 American lawyers are employees of governmental agencies. Except for the approximately 19,000 who are employed in the judiciary at all levels of the national and state judicial systems, most governmentally employed lawyers may be thought of as engaged in the practice of public law. One of the longest established, and certainly the most widely encountered, types of public attorney is the public prosecutor (variously called district attorney, prosecuting attorney, county attorney, state's attorney, and other titles). Each of the more than 3,000 counties in the United States has a prosecutor. Their principal responsibilities are prosecution of criminal cases. In most areas of the country the district attorney is also corporation counsel for the county government, and in this respect performs functions that are substantially similar to those performed by a private law firm for its corporate clients. District attorneys' responsibilities for enforcement of the criminal law make them key figures in local politics. Their duties as corporation counsel likewise draw them deeply into public affairs. They must give legal advice on tax and other revenue measures, bond issues, contracts for the purchase of goods and services by public agencies, matters relating to public employees, the regularity and validity of local regulatory measures, and a host of other problems of local government.

The office of the district attorney varies in size according to the size and complexity of the community in which it is located. In rural counties, the district attorney has no staff and is very often only a part-time official. In metropolitan areas, the district attorney heads a staff that may include over a hundred lawyers and correlative numbers of supporting clerical, secretarial, and technical assistants. The number and type of legal problems and legal operations with which the district attorney's office is concerned rivals, and often exceeds, the practice of the largest private law firms in the same community.

The expansion in the number and complexity of governmental agencies, especially in the last half-century, has required them to employ more and more lawyers to assist and guide them in their operations. Each city has a corporation counsel; each state has an attorney general with a staff of attorneys who provide legal assistance to a wide variety of agencies of the state government; each autonomous local unit of government (such as water districts, park districts, port and bridge authorities, and sewer districts) has its own attorneys, as do the autonomous or semiautonomous regulatory agencies of the state and federal governments.

The Attorney General of the United States is the chief legal officer of the United States and is in charge of the Department of Justice. (As with other higher level posts in the Executive, this position is filled by an appointee of the President, with the consent of the Senate.) Under the direction of the Attorney General is the Solicitor General, who appears for the government in cases before the U.S. Supreme Court, though he seldom does so personally. Usually, one of his assistants appears. The Department of Justice is organized in divisions of special responsibility, including criminal, antitrust, tax, and civil rights divisions, and a civil division, which is responsible for the general business of the government. The department employs hundreds of lawyers having a wide range of special skills. Subordinate to the Attorney General are the United States Attorneys for the respective federal judicial districts across the country. The United States Attorneys are responsible in their districts for enforcement of federal criminal laws and for handling the federal government's legal business that must be discharged on a local basis.

The Department of Justice has supervision of the Federal Bureau of Investigation, which is the federal government's investigatory arm, and the Federal Bureau of Prisons, which operates the federal prison system and its parole service. In this respect the Attorney General of the United States has a broader responsibility than a state counterpart. The Attorneys General of the states usually have no responsibility for the administration of either the state police or the state prison system, which are autonomous agencies whose chief administrative officers report directly to the governor of the state. Hence, the Attorney General of the United States is the public official closest to being a minister of justice in the European sense. Nevertheless, because the government is a federation, the authority and responsibility of the Attorney General of the United States are limited to matters within the jurisdiction of the federal government.

Not all, nor even most, of the lawyers who are in the service of the United States are in the Department of Justice. All agencies and tribunals of the federal government have their own legal staffs. Moreover, the military establishment, which is by far the largest federal agency, has a complex legal staff of its own. This staff includes legal counsel to the Secretary of Defense and to the Secretaries of the Army, Navy, and Air Force. It also includes the Judge Advocate General offices of each of the three branches of service, which provide legal counsel to the services and administer the system of military law and justice that applies to members of the armed forces.

Public Defenders, Public Interest, and Legal Services Lawyers

The prevalent orientation of the American legal profession is to the concerns of organized enterprises—both private and government—and to the property and proprietary affairs of individuals of better than modest means. This may leave the individual of lesser circumstances who needs legal assistance in a difficult position. This is especially true of the field of criminal representation, where U.S. Supreme Court decisions, expanding the scope of the constitutional right to counsel, have vastly increased the need for lawyers in the defense of persons accused of crime.

The main form of representation for indigent criminal defendants is the public defender. Public defenders existed before the Supreme Court decisions; they were supported by private contributions, public funds, or both. Where defender programs do not exist—as in some state courts—the onus is on the court to provide an attorney. Even though the number of defender programs has increased, their financial position is often precarious, their caseloads are heavy, and the number of lawyers involved is low. The situation is different in federal courts, where the provision of counsel is regulated by a statute that provides for compensation of counsel at specified rates from federal funds. The defender programs, at both state and federal levels, are uneven in quality and in quantity.

Public interest lawyers engage in practice in the two broad areas of "interests" and "individuals." The former refers to particular causes, such as protection of the environment or safeguarding of individual liberties. The latter entails prosecution of cases on behalf of poor persons. Group interests are represented by organizations such as the Sierra Club Legal Defense Fund and the American Civil Liberties Union (ACLU). Individual interests are within the ambit of government agencies—for example, the Legal Services Corporation. The salient difference between services to the two broad areas is that group interests are protected through private funding whereas individuals must depend on governmental largesse.

Legal aid for the poor has an extensive history. Free legal aid offices were opened in Chicago and New York at the turn of the century. Private funds were the mainstay of these and other offices that opened subsequently. But growth in legal aid offices was slow until the mid-1960s, when the Office of Economic Opportunity's Legal Services Program (OEO/LSP) was established. The OEO/LSP did not provide legal services itself; it provided funds to local legal services programs already in existence, and it helped establish new programs where none had previously existed. Services were provided for civil matters; criminal matters were the province of the defender programs. In 1974 the OEO/LSP programs were transferred to other federal agencies, among them the Legal Services Corporation (LSC), financed by congressional appropriations. As with the OEO, the LSC provided funds for civil legal aid programs. It was also directed to investigate alternatives to the neighborhood legal aid office staffed by salaried attorneys. One alternative, often canvassed, is Judicare, which uses members of the private bar as the prime deliverers of legal services. Except in a few states, such as Wisconsin and Montana, it has never been extensively developed in the United States—but in other countries such as Great Britain, it is the standard model.

The Legal Services Corporation has been the focus of political controversy for some years. Different administrations perceive its role in various ways, Those of a more liberal disposition believe it should have an expansive role, while those of a more conservative bent feel that some, if not many, of its activities should be curtailed. With the reduction in funding in recent years, there has emerged a "caseload crisis." This has meant that Legal Services lawyers have had to abandon, in part, the law reform aspect of their work in favor of regular legal problems. The dilemma they now face is whether to give services to as many people as possible, with a concomitant lowering of quality, or to provide a higher standard of service to fewer people.

The work of Legal Services lawyers is concentrated in five main areas: family, consumer, housing, landlord-tenant, and welfare. Since the late 1960s there has been a decreasing emphasis on family law in favor of an increase in housing work. The possible reason for the decline is that Legal Services was never considered the proper agency to handle divorce work: it had no wish to become a divorce mill.

Most lawyers in Legal Services enjoy their work, but this satisfaction depends, in part, on the amount of law reform work they engage in. Those who do more view their programs more favorably than those who spend most of their time in service work. Nevertheless, this type of work is considered temporary. Most lawyers expect to move out of Legal Services into private practice or some other job within three years. The reasons given for leaving include job dissatisfaction, becoming burned out, and the availability of a new job, often in private practice.

Groups such as the ACLU are committed to the process of reform through tackling constitutional precedent-setting cases. The bias of these organizations is towards the pursuit of an ideological program—that is, particular ends, as against the reactive policies of Legal Services groups. Part of the reason for their selectivity is expense. The enormous costs of litigation effectively hamper wider engagement.

In the 1960s another type of law reform organization emerged—the

public interest law firm. These firms were a response to the competition of organized interests—unions, trade associations, cooperatives, and so on—and their interplay with the growing number of government agencies. In addition, an ancillary group came into being, one that identified issues of concern and reported on them. The most well known, perhaps, is Ralph Nader's group, which issued reports on, among others, the Federal Trade Commission and the Chevrolet Corvair.

Some of these public interest law firms chose a specific area within which to work. For example, the Sierra Club Legal Defense Fund is involved exclusively in environmental litigation; but the Center for Law in the Public Interest is engaged in a wide variety of matters, such as employment discrimination, mental health, consumer protection, and access to government files. Much of the work of these firms is proactive, that is, they search for issues, then find clients.

Many public interest law firms receive their funding from foundations. One effect of such funding is freedom from client control. The firm itself decides what cases will be supported and what areas of specialization will be pursued.

Private firms have also supported *pro bono publico* service, but generally only to a limited extent. Rule 6.1 of the ABA Model Rules of Professional Conduct exhorts lawyers to engage in public interest legal service for no fee or at a reduced fee for persons or groups.

There is now increasing use of prepaid group legal service plans, or legal expense insurance. These are similar to group health plans: a fund is established that is used to assist contributing members when they require legal services. Various organizations run them—for example, employers, unions, and insurance companies.

There are two basic types. One gives limited assistance for relatively simple matters; then if further services are needed, they are provided on a discounted fee-for-service basis. Such plans are usually inexpensive. The other plan provides full coverage and is generally designed to meet 80 to 90 percent of the legal service needs of middle income families. Both plans may have open or closed panel mechanisms. That is, the plan may specify which lawyers are to be used (closed panel), a mechanism favored by union plans. Conversely, the plan may allow members to use any lawyer in a given jurisdiction (open panel), a procedure often used by bar association and insurance company plans.

Such plans may be an answer to the plight of middle income persons who find lawyers' services prohibitively expensive and who are ineligible to use Legal Services. They also allow lawyers to exploit a market that was becoming increasingly remote. For example, in Germany, where legal insurance is widely accepted, 40 percent of all West German households carry legal expense insurance. The percentage ranges from 61 percent among professionals and civil servants through 31 percent among unskilled workers to 13 percent among retired persons.

Law Teachers

Professors of law, including 4,000 who teach full time and over 2,000 who teach part time, have a substantial influence on the legal profession. All lawyers must pass through a law school, and consequently their modes of thinking and values can be deeply affected by their law professors. This is a great responsibility for the smallest segment of the legal profession.

The motif of smallness tempered by disproportionate influence is taken further in that twenty law schools produce most of the nation's law teachers. Five elite law schools (Harvard, Yale, Columbia, Michigan, Chicago) are responsible for training over 33 percent of all full-time law teachers.

The prime requirement for teaching is the acquisition of the J.D. degree (preferably with high honors from an elite school), membership on a law review, and election to the Order of the Coif (a national honorary society, membership in which is granted only to those graduating in the top 10 percent). Between graduation and entering the first full-time teaching post, many prospective teachers spend one or two years clerking for a judge and two to five years practicing in a law firm or government. Often those years are the sole contact a law professor has with the practical side of the profession.

Generally, the higher in status is the school from which the teacher receives the law degree, the higher in status will be the one where he or she starts teaching. Some law teachers make up deficiencies in these areas by taking advanced degrees (LL.M., S.J.D.) at elite schools. But they will usually take teaching positions at less prestigious schools.

Once a post has been accepted, few teachers move to other jobs or law schools. Their entire career is spent in one school. They progress through the standard pattern of assistant to associate to full professor, spending roughly three years in each of the first two stages. Within their first four years or so of teaching most professors specialize, to some extent, in one of the "basic areas," such as contracts, tax, criminal law, torts, civil procedure, property, or constitutional law.

The main duties of a law professor are teaching and scholarship. Much of legal scholarship is the textual analysis of cases, often appellate decisions. One of the first broadsides against the norm of black-letter law

scholarship (i.e., a straightforward doctrinal analysis) came from the Legal Realists in the late 1920s and 1930s. They devised one of the first forays into the sociology of law. Was an empirical science of law possible? How do legal institutions function in American society? They were iconoclasts with a tradition that could trace its lineage to Jeremy Bentham. In some respects their impact has never faded; they forged links between law and social science. Indeed, over the past twenty years there has been a movement to broaden the scope of legal scholarship to include methods and approaches of other disciplines, chiefly history, political science, sociology, economics, anthropology, and psychology. The impetus for this work was dissatisfaction among some scholars with the normal, mainstream exegetical work expected of lawyers. Instead, attempts have been made to locate the function of law within a broader social context. Contributions have ranged from deeply empirical studies of law in action—as in the research on speeding crackdowns in Connecticut—to grander theorizing about law as an autonomous part of capitalism and its development—as in a study of the eighteenth-century gaming laws that imposed draconian penalties on the working class for minor offenses.

The most recent manifestation of the movement away from conventional legal scholarship is the emergence of the Critical Legal Studies group. Members of the group deny that the legal order is a central part of the Western tradition of social thought and law. These critics employ many of the same materials as conventional scholars but not to display the inherent continuities of legal thinking—rather, to show how law is often marginal and frankly ideological.

The debates between these various schools of thought continue and, most probably, will never be resolved. But they illustrate the dynamic legal scholarship of recent years.

Minorities in Legal Practice

Women in the Law

One of the more significant changes in the legal profession over the last decade has been the increased number of women entering the law. In 1970 there were 10,000 women lawyers; by 1980 the number had grown to approximately 44,000. The trend appears to be continuing.

Women have been discriminated against in law jobs for many years, although 37 percent of law students are now women. The government is one of the main providers of jobs for women in law, employing 17 percent of all women lawyers. Law firms still hire disproportionately few women, although the situation is improving. A major reason for this disparity in hiring is that law firms are "greedy institutions" in that they demand large commitments of time from their associates. This is not to say that women associates work fewer hours than their male counterparts; rather, that women are *perceived* as less available to work long hours because of possible alternative commitments to the raising of a family. A woman lawyer with children may be rejected as a serious member of a firm. The government is less demanding in this respect.

Also, clients in the past have been reluctant to accept women assigned to their cases, and women were offered a restricted choice of work. The larger firms were more insistent with clients than the smaller firms, and less discriminatory, in assigning associates to cases. Some women lawyers attempted to overcome such rejection by setting up independent practices. Many of these lawyers were forced into domestic relations law, where women lawyers were already overrepresented. But women are now found in all areas of the law—no longer only in the traditional fields of domestic relations, probate, and real estate.

Even though women are appearing in law teaching in increasing numbers (virtually every law school has at least one woman on its tenure track faculty), subject specialization follows the old patterns. Women faculty members are found in constitutional law (which encompasses civil rights and discrimination), family law, trusts and estates, and legal research and writing; they are underrepresented in business law, such as antitrust and securities law.

Women have also come up against barriers to partnership. Firms have always assumed that a partnership was not the same as employment; therefore, their denials of partnership to associates have always been assumed to be beyond review by the courts. The decision by the Supreme Court in *Hishon v. King & Spalding* has altered this view. In this case a woman joined a law firm because she was told that becoming a partner was a matter of course after five or six years. If that inducement was made (and that has yet to be determined), then the firm may have discriminated against her when it denied her partnership status. Thus law firms will have to be more circumspect in the future in the wording of their offers to would-be associates. And they will have to expect more challenges to their decision-making processes as minorities in general become more aggressive in the pursuit of their civil rights.

Women predominate among the rapidly growing number of paralegals employed by firms. Statistics on numbers of paralegals are sketchy, but one estimate sets the number as high as 80,000. Anywhere from 80 to 90 percent of them are women, most under thirty and holding a college de-

gree. For the most part, paralegal employment is a short-term career of one to three years' duration. Paralegals generally perform routine and repetitive tasks, such as indexing and summarizing large numbers of documents in commercial litigation, assembling documents and information for real estate closings, and checking citations in briefs. Such work is often referred to as "idiot work" because it can be dull and repetitious. The most common step after paralegal employment is going to law school and then qualifying as a lawyer. Working as a paralegal provides one way of testing a person's interest in a law career.

Women have made substantial inroads into the legal profession and are now a significant minority, but there are still huge discrepancies between the numbers of women in the private and public sectors—a situation that is likely to obtain for some time. And with the market for lawyers now contracting, women entrants to the profession may find it harder to obtain jobs and to progress up their career ladders.

Blacks in the Law

The first black person was admitted to the bar in 1844. By 1960 the number of black lawyers had risen slowly to 2,000. There are now estimated to be 12,000 black lawyers. Much of this growth was a result of the civil rights movement, but geographical distribution of black lawyers remains skewed. In the states that have more than one million blacks, 1970 figures show California having 3,754 blacks per black lawyer compared to 736 whites per white lawyer and Georgia having 39,693 blacks per black lawyer compared to 844 whites per white lawyer.

Blacks are underrepresented in some areas of legal employment. Fewer than 14 percent of black lawyers are in private practice; over 30 percent are employed by federal or state governments. This is similar to the employment pattern of women lawyers.

A typical career pattern in the early days for black lawyers was graduation from a black law school and then employment in a small law firm or as a solo practitioner with, generally, poor black clients. Nowadays more blacks are attending white law schools and being hired by larger white law firms. The number of black lawyers in the large law firms is low, however. One survey of the fifty largest law firms in the United States found that there were only 20 black partners out of a total of 4,271 partners. Similarly, out of 6,408 associates in these firms, a mere 151 were black. The affirmative action programs started in the 1960s had some impact on government and corporate employment of black lawyers, but since the 1978 Supreme Court decision in the *Bakke* case (school's affirmative action plan where a percentage of places were reserved for minorities was unlawful) affirmative action programs have lost their vitality, with the result that law schools and law jobs are, for blacks and other ethnic minorities, becoming harder to enter.

Education, Admission to Practice, and Professional Discipline

Legal Education

The system of legal education in the United States uniquely reflects and contributes to the structure of the American legal profession. All who are legal professionals in any capacity—judges, private practitioners, corporate counsel, public practitioners, and law teachers—receive a formally similar basic legal education. The three-year professional legal curriculum is common training for all, though longer for those attending part-time law school. Career selection is generally made on graduation from law school. All judges and lawyers in the United States (excluding the very few who were trained through apprenticeship) hold the J.D. degree (Doctor of Jurisprudence); or, if they graduated more than twenty years ago, the LL.B. (Bachelor of Laws)—which can be, and often is, traded in for a J.D. on a modest contribution to one's law school.

Law schools prospered in the mid-nineteenth century. Until that time they were largely private schools without university affiliation. Yet it was possible for many lawyers to join the bar without having been through law school. Abraham Lincoln is the most famous example.

The watershed for legal education came in 1870 with the appointment of Christopher Columbus Langdell as dean of the Harvard Law School. He argued that law is a science and that the necessary materials are contained in reports of cases. This pragmatic approach to learning emphasized practicality. The case method, as it was known, became the standard form of education for virtually all law schools.

The Case Method

In formal content, the course of study is substantially the same in most American law schools. Practically all law schools have a required first-year curriculum that includes courses in contracts, property, torts (civil wrongs), criminal law, and civil procedure. These courses are commonly taught by the case meth-

od, a term whose familiarity belies its imprecision. In fact, there is no single case method. There is, rather, a group of methods all of which entail instruction by means of analysis and discussion of particular problem cases. Frequently, but not invariably, these cases are the reported decisions of appellate courts, which customarily set out in detail the facts of the case in litigation and the reasons offered by the court for its decision. To an increasing extent, however, hypothetical but lifelike problem situations devised by the instructor are also used in the case method.

Whether the case is real or hypothetical, it is the focus of an instructional technique that is peculiarly associated with the American law school. The case method requires the student to be thoroughly prepared and to be ready in class to state and defend an analysis of the case in a dialogue with the teacher. Under the probing of the instructor, the student is called on to analyze the legal aspects of the problem presented and the rules of law that may be relevant to its disposition; to consider the reasons for and against applying a particular rule to the case; and to consider in the broadest sense the practical implications of resolving the case one way rather than another. The case method thus involves the law student temporarily taking the role of a fledgling lawyer confronted with a practical situation that calls for resolution. The first year at most American law schools consists of a repetition of this experience, with progressive sophistication, in each of the basic legal subjects.

The second- and third-year curriculum in most law schools represents an extension of the case method into different and more specialized subject matter areas. Many second- and third-year courses are offered on an elective rather than a compulsory basis. In the second and third years the law student may have courses in constitutional law, taxation, commercial law, the law of corporations and other associations, *inter vivos* and testamentary property transactions, the regulation of business, and advanced courses in procedure, legal remedies, and the like, as well as a required course in professional responsibility. Most schools also offer or require courses in conflict of laws (private international law). A growing number, perhaps now the majority, offer courses in comparative and international law. Some schools also offer courses embracing the perspectives of other disciplines (e.g., law and psychiatry; law and economics) and courses in new and developing fields of law (e.g., welfare law). Some are promoting joint-degree programs combining the J.D. with a Ph.D. in, say, history or sociology; or even offering an M.B.A. degree (Master of Business Administration) with the J.D.

The second- and third-year curriculum typically involves, in addition to broadened subject matter, variation in instructional technique. In some

instances the case method is enlarged to reach legal philosophy and jurisprudence, problems of legislation, and more sophisticated probing of the economic, social, and political implications of legal rules and legal rule systems.

The structure of the law school curriculum has come under attack from some students and lawyers. Disenchantment has been expressed over the size of classes, the case method, the absence of written work, and the three-year curriculum.

One of the advantages of the case method for law schools is that it permits large classes—up to, say, 150 students. The impression conveyed by such a large teacher-student ratio is that education is conducted as cheaply as possible. Some reform has been introduced by small-group discussions to supplement the larger classes, and seminars that involve extended writing assignments are run for second- and third-year students. The case method itself has been accused of lacking coherence, and the hodge-podge of first-year law courses appeared fragmentary with no unity of themes. Some scholars have even considered the case method's so-called Socratic dialogue to be degrading and dehumanizing for the students. Its adherents claim that the case method forces students to "think on their feet" and act like proper lawyers.

One further criticism of the case method should be mentioned. As the materials used are, on the whole, appellate opinions, some have argued that there is little relevance to the actual practice of law: it is law in a vacuum, mere theory. The response to this criticism by many law schools was to introduce clinical legal education.

In the late 1960s and early 1970s, the number of clinical legal programs run by law schools had increased to 494. Clinical legal education requires students to engage in some form of practice, generally in the public interest arena. Although the programs are well established, many schools consider the clinical faculty second-class citizens. One objection aimed at clinical programs is that they are expensive. The students require close supervision, which cannot be done cheaply. Also, unlike medicine, where clinical training will be useful to future doctors, the clinical legal work is often far removed from what students will practice later.

For many students the three-year curriculum is burdensomely long. Elements of the legal profession and some academics have proposed a two-year curriculum with the possibility of a post-graduate year. The core of the argument is that the third year adds little to the students' education. Many students work part-time in law firms during their final year. Law schools, however, have not accepted the argument, and the three-year curriculum remains the norm, although innovations are occurring. Har-

vard Law School has modified its curriculum to allow some of its students to spend their third year exclusively in a clinical program.

Law Schools

The legal training offered in the law schools of the United States, though formally similar, is of diverse character and quality. The better law schools attract students nationally and may have a curriculum which has national scope and is more theory oriented in approach. Other schools may draw their student body mainly from their own region and may focus on training them to practice law within the state. Part-time programs of law study, generally of four years' duration, are offered by a number of schools. The resources of these institutions may vary, depending on whether their university affiliation is state or private. Some law schools are independent of any university affiliation, and others are proprietary (operated for profit).

There are 175 law schools that meet the minimum accreditation standards set by the American Bar Association and are therefore, by established practice, recognized by the bar examiners of the states as meeting the legal education requirements for admission to the practice of law. At the same time, a number of schools that have not applied for accreditation by the American Bar Association or do not meet the ABA's minimum standards are, nevertheless, recognized by the bar examiners of a few states. The bar examiners in one state may then allow graduates of such a law school to take the bar examination while another state will not allow those same graduates to sit for its bar examination.

Admission to a law school, particularly one of the better ones, is chiefly on a competitive basis according to academic merit and achievement, most often measured by scoring well on the Law School Admissions Test (LSAT), a nationally administered, standardized test taken by all law school applicants. Most institutions provide some scholarship aid to needy students, and tuition loans are available from law schools.

Notwithstanding the assistance given to law students, they, and hence the profession, come from a fairly restricted range of socioeconomic groups. Research in the early 1960s showed that an overwhelming majority of aspiring law students came from wealthier families. Families in which the head of the household was in a manual occupation were underrepresented in this category. Also, more aspirants were Protestant than Catholic or Jewish. Further, law careerists derived from urban rather than rural areas.

By the middle-to-late 1970s this state of affairs had not radically altered. A study of Chicago lawyers (which admittedly may not be representative of the United States as a whole) found that lawyers who had attended elite national law schools had fathers with occupations in the professional, managerial, and technical category. Protestants were overrepresented in the elite schools; Jews and Catholics were overrepresented in local law schools. The study showed that recruitment into law has continued to favor higher socioeconomic groups rather than the working and lower middle classes. While this is largely due to structural changes in the labor force over the years, there are now fewer blue-collar workers than before. The result is that the law remains, to paraphrase Tocqueville, an aristocracy.

In the face of differing approaches to legal theory, of the leveling off of the rising curve of law school applicants, and of the debates over teaching methods, law schools are confronted by severe challenges. They have been forced to adjust to more stringent budgets. At the same time salaries have not kept pace with law firm remuneration; consequently professors are leaving academia, and in some schools law professors have begun to unionize.

Admission to Practice

Admission to the practice of law is regulated by the states. In practically every state, admission carries with it a license to engage in all types of legal practice in that state without further formality. A few states require a period of apprenticeship as a condition of admission to practice.

Admission to practice in most states takes the form of admission to practice before the highest court of the state, which carries with it authorization to practice before all lesser tribunals as well. Typically, the supreme court of the state is responsible for establishing and applying the standards of admission, but in most jurisdictions administrative responsibility for examination of applicants is delegated to a committee of bar examiners who prepare and administer the examinations for admission to the bar.

In most states applicants for admission to the bar must have completed formal education through at least three years of college. (American education comprises eight years of primary or elementary school beginning at age six, four years of high school, and then college. College normally consists of four years and results in the degree of Bachelor of Arts or equivalent.) In addition, applicants for admission to the bar normally must (1) complete a three-year full-time (or equivalent) legal curriculum in a law school approved by the state; (2) establish satisfactory proof that they are

of good moral character; and (3) successfully pass an examination administered by the bar examiners.

The typical state bar examination is a written examination, usually lasting two days, consisting of a standardized test of about 200 multiple-choice questions supplemented with essay-type questions. The latter are usually in problem form, requiring the applicant to analyze a stated problem case and set forth the proposed solution and the law applicable to it. Many bar examinations now also administer a standardized test based on the Code of Professional Responsibility or the Model Rules of Professional Conduct. Bar examinations in many states have been criticized on the ground that they place a premium on repetition of legal formulas rather than on careful and penetrating analysis; but the sophistication of the examinations has improved in recent years. In any event, American bar examinations are probably not comparable to professional examinations elsewhere. On the average, about two-thirds of a group taking the bar examination at any given time are able to pass it. The cumulative passing rate (which takes account of repeaters) is higher; perhaps as many as seven or eight out of ten applicants eventually pass the bar examination.

Admission to Other Courts

Admission to the bar of a state is by custom a sufficient condition for admission by formal motion to practice before the U.S. District Court sitting in that state. A lawyer who has been admitted to practice in one state for three years may be admitted before the Supreme Court of the United States. Lawyers admitted in one state may be given audience in the courts of another for the purposes of a particular case but otherwise are not entitled to practice outside the state in which they have been admitted. Some lawyers are admitted to practice in more than one state. Some states make it possible for a lawyer who has been admitted to the bar of one state to become admitted locally without great difficulty; others require such lawyers to pass the local examination. Nineteen states and the District of Columbia *expressly* provide for admission of lawyers from common law countries other than the United States. That is, they may permit them to take the bar examination either without the necessity of attending law school or after attending law school for an LL.M. or J.D., as the case may be. Lawyers from civil law jurisdictions, however, ordinarily are required to complete law school in the United States in order to qualify for admission.

Professional Discipline

Professional regulation and discipline are under the authority of the individual states. However, this focus is shifting towards national regulation. Movement towards a national bar is evidenced by the Law School Admissions Test, the national approach of law school teaching, the multistate bar exams, and national accrediting institutions for law schools. The American Bar Association (ABA) in 1969 promulgated a Model Code of Professional Responsibililty as a statement of standards of professional conduct. It was adopted by most states or it forms the basis of their rules of professional conduct. The code extended from the vitally important rules that deal with representation of conflicting interests and preservation of clients' confidences to rules of professional etiquette. Code provisions, like laws, are interpreted and applied at various adjudicatory levels. Voluntary bar association committees may issue nonbinding advisory opinions to lawyers who ask for them; state high courts rely on the code in lawyer disciplinary proceedings; on occasion the U.S. Supreme Court may review code provisions when constitutional issues are raised. Thus, the Supreme Court has held in a number of recent opinions that certain code regulations against advertising and solicitation of business by lawyers infringed on constitutionally protected freedom of speech. As a consequence, the code was amended to permit lawyers to advertise in accordance with the mandates of the Supreme Court.

In 1977 the ABA decided that *ad hoc* revisions of the code were insufficient to cope with its defects; a thoroughgoing review was needed. It came about because during the 1970s dissatisfaction was expressed with the content and format of the Code of Professional Responsibility. Its content was considered overly individualistic. The paradigm lawyer was still the solo practitioner, a situation increasingly at odds with the burgeoning of large law firms. Clients were viewed as single entities, even though many were large, complex corporations. Who within them actually was the client? The bifurcated format of disciplinary rules on the one hand and ethical considerations on the other was felt to be deficient, since not all states had incorporated the ethical considerations (more aspirational than mandatory) into their own statements on standards of professional conduct. Moreover, the large number of lawyers involved in the Watergate affair cast doubt on the efficacy of the Code requiring conformity to ethical standards. As a result the ABA established the Commission on Evaluation of Professional Standards for the purpose of devising a new, more realistic and practical set of ethical rules.

Preliminary drafts of the proposed Model Rules aroused much controversy within the legal profession. One of the most far-reaching and dramatic proposals was that lawyers should be required to become whistle blowers if the need arose. The Association of Trial Lawyers of America countered with their own draft rules, which required a lawyer to assist a client in presenting perjured testimony. Truth was to be subordinated to the lawyer-client relationship. Eventually a compromise was reached. Rule 1.6 in the Model Rules says that a lawyer may reveal information relating to representation of a client if the lawyer believes the client is likely to commit a criminal act resulting in imminent death or substantial bodily harm. Rule 3.3 requires a lawyer not to assist in the presentation of false testimony; rather, becoming aware of such, he or she shall take "reasonable remedial measures." Attempts to include insistence that a lawyer withdraw from such a case were abandoned.

The proposal that all lawyers should be required to contribute forty hours per year of their time to *pro bono* service was muted to an exhortation to provide free, or low-fee, legal services.

Recognition was granted, however, to the existence of law firms as complex entities, with intrafirm responsibilities. And recognition was similarly given to organizations as clients and the possible conflicts of interest within them.

In 1983 the ABA House of Delegates adopted the Model Rules of Professional Conduct, and since then a few states have taken steps to implement them. Virginia, New Jersey, and Arizona have adopted the model rules but have also modified them. The main rule modified by the states has been Rule 1.6. Instead of the restrictive conditions imposed on disclosure of client confidences imposed by the model rules, the three states require disclosure, or give a discretion to disclose, under much broader conditions. For example, in Virginia if the lawyer is aware of the client's intention to commit a crime, then he or she is *required* to disclose that intention. Other states, namely, Pennsylvania and Maryland, examining the model rules for possible adoption are similarly likely to modify them. Thus the original proposals of the Commission on Evaluation of Professional Standards are surviving what was considered their death knell in the House of Delegates.

A central weakness of codes and model rules is that adoption of them by local groups is not obligatory. There is no control exerted over the state bars by the ABA in this process. Neither is enforcement obligatory. Here, too, the ABA is unable to implement uniform adherence, although it has advocated uniform standards in disciplinary procedures. Moreover, extraprofessional forces are coming increasingly into play. Malpractice suits

by aggrieved clients are rising in number. Finally, lay persons now sit on disciplinary boards of regulatory agencies. Because their perspective is often different from that of the lawyer members, their presence is intended to counteract the belief that the codes are designed to serve the self-interest of lawyers.

Broadly speaking, disciplinary sanctions are imposed only for serious instances of misconduct, such as criminal acts, mishandling of clients' property, and flagrant violation of certain rules of professional conduct. Other breaches of rules rarely evoke formal disciplinary action, although there is informal discipline in the form of expressed disapproval, which carries its own practical penalties. There is no agreement on what the reasons are for this prevailing tendency towards leniency.

When disciplinary proceedings are involved, they typically commence with the lodging of a complaint with the appropriate regulatory agency responsible to the state supreme court—e.g., in Illinois, the Attorney Registration and Disciplinary Commission. Such agencies have begun to take over disciplinary matters from bar associations because of the discontent felt by many with lawyers' self-regulation. These agencies are much better staffed than the bar associations were. The Illinois Attorney Registration and Disciplinary Commission has four attorneys and three investigators—compared to the one retired private investigator employed by the Chicago Bar Association. Most complaints are resolved at this stage, either by adjustment of the dispute or by dismissal of the charges as unfounded. If the charges are of greater consequence, a formal hearing is held before the bar committee, evidence taken, and a disposition recommended. Sanctions include reprimand, suspension, or revocation of the license (disbarment). The agency's recommendation is submitted to the appropriate court, typically the supreme court of the state, which is solely authorized to impose sanctions.

In addition to internal modes of control of the profession, there has been a rise in external forms of control, notably from the federal government. Both the Federal Trade Commission and the Justice Department became interested in the problem of delivery of legal services. The FTC circulated a questionnaire to state and local bar associations requesting information on alternative delivery systems. It was concerned that monopolistic restrictions might have curbed the provision of legal services to the poor and those of moderate means. In 1976 the Justice Department filed a civil antitrust suit against the American Bar Association alleging practices constituting restraint of trade. The suit was dismissed without prejudice in 1978. And in 1984 the Antitrust Division of the Justice Department criticized the Model Rules of Professional Conduct for being anticompetitive.

The Division took the unusual step of transmitting its criticisms not to the ABA directly but to the state supreme courts. There were four areas of concern: (1) the model rules did not permit lawyers to hold themselves out as specialists, except in limited cases; (2) the rules prohibited direct solicitation; (3) clients were prevented from endorsing their lawyers; (4) the provision that reasonable fees must be charged might be construed as a bar to charging low or no fees.

The most active federal agency has been the Securities and Exchange Commission (SEC). Through its Rules of Practice, the SEC has invoked its authority over the private bar and disciplined attorneys and accountants who practice before it by temporarily suspending or disbarring them. The SEC has been keen to make lawyers take a more independent stance from their clients and inform the SEC of any possible fraudulent activities on the part of clients. This is a stronger position than that taken in the new Model Rules of Professional Conduct.

In all countries, the monitoring of judicial conduct is a problem of some delicacy and difficulty. The problem is to protect judges from unfair attacks so as to support their judicial independence while at the same time provide an effective mechanism for the retirement or removal of those few who may have become unable to perform their duties properly. In some states the only procedure for removal of judges before expiration of their terms of office is impeachment—discharge of a judge from office by vote of the legislature sitting as a court of impeachment. This clumsy and disruptive procedure has been on the whole ineffective. Efforts are now being made to handle such problems through committees of judges empowered to investigate charges of judicial incompetence and to compel the retirement of a judge found incapable of fulfilling the office.

The most dramatic step taken so far to root out judicial corruption has been Operation Greylord. The investigation by the Federal Bureau of Investigation (FBI) of the Cook County unified court system (the largest in the country, taking in Chicago, with over 300 judges) took three and a half years. It uncovered a range of corrupt practices by some judges and others. In return for bribes, they gave favorable rulings, case referrals, influenced the disposition of criminal cases, and gave permission to lawyers to solicit clients in the courthouse. The FBI used agents to represent criminals and lawyers to infiltrate the court system. At one stage a judge was wired in order to record conversations between corrupt lawyers and judges. The operation resulted in several judges, lawyers, and court officials being indicted for corruption. So far four judges have been convicted and one acquitted.

The federal judiciary has been much less prone to wrongdoing than

state judges. It is, of course, much harder to remove them, since they have tenure for life and they would have to be impeached by both houses of Congress. Only one federal judge has ever been convicted on criminal charges.

Size and Economic Position of the Legal Profession

The Number of Lawyers

Since 1950 the size of the legal profession has grown dramatically, with a concomitant decline in the population/lawyer ratio. Table 1 shows these trends.

TABLE 1 Size of Lawyer Population, by Year

	No. of Lawyers	Population/Lawyer Ratio
December 1951	221,605	696/1
December 1960	285,933	632/1
December 1970	355,242	572/1
January 1980	542,205	418/1
January 1984	649,000 (est.)	363/1 (est.)

SOURCE: Barbara A. Curran *et al., The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* 4 (Chicago: American Bar Foundation, 1985).

The number of lawyers includes those who identify themselves as lawyers but engage in activities other than the practice of law. Of the 1980 figure (542,205), approximately 370,000 were in private practice, or 68 percent. In 1960, 76 percent of all lawyers were private practitioners. This shift from private practice was distributed among all other categories of lawyer employment, raising each proportion. (See table 2.) The vast majority of lawyers in private practice are engaged in solo practice or work in small firms, as shown in table 3.

Of the practitioners who work in firms (51 percent in 1980), 26 percent are in firms of twenty-one lawyers or more. Firms of five or fewer lawyers have only 19 percent of the associate pool. (See table 4.)

The geographical distribution of the legal profession is skewed as well. Virtually all (88 percent) of private practitioners work in urban areas (i.e., U.S. Census metropolitan areas). One-third of practitioners have offices

in cities with populations of 500,000 or more; a further 25 percent work in cities in the 100,000 to 500,000 population range. The city with the highest concentration of lawyers is Washington, D.C., with one lawyer for every 65 persons. Within cities most (92 percent) of the larger firms (more than

TABLE 2 Distribution of Lawyers, by Type of Employment and Year

Type of Employment	Percent 1960	1970	1980
Private practice	76	73	68
Judiciary	2	2	4
Government	7	8	9
Private industry	9	10	10
Other	1	1	4
Retired	4	5	5
Total	100	100	100
No. of lawyers	285,933	355,242	542,205

SOURCE: Barbara A. Curran *et al.*, *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* 5 (Chicago: American Bar Foundation, 1985).

TABLE 3 Distribution of Private Practitioners, by Practice Setting (1980)

	No. of Lawyers	Percentage of Practitioners	
In solo practice	179,923		48.6
In firms	190,187		51.4
2 lawyers	32,509	8.8	
3 lawyers	22,635	6.1	
4 lawyers	16,233	4.4	
5 lawyers	11,574	3.1	
6–10 lawyers	33,377	9.0	
11–20 lawyers	24,130	6.5	
21–50 lawyers	22,529	6.1	
More than 50 lawyers	27,200	7.3	
Total	370,110		100.0

SOURCE: Barbara A. Curran *et al.*, *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* 5 (Chicago: American Bar Foundation, 1985).

ten lawyers) are situated in the center; 66 percent of four- to ten-lawyer firms and 57 percent of solo practitioners and lawyers in two- to three-person firms are situated in city centers. Located in the suburbs are 18 percent of lawyers in four- to ten-lawyer firms, 24 percent of lawyers in two- to three-lawyer firms, and 30 percent of solo practitioners.

Of all practitioners outside metropolitan areas, 50 percent are in solo practice. These lawyers represent a mere 12 percent of all solo practitioners, however. Less than 2 percent of lawyers in firms greater than ten have offices in nonmetropolitan areas.

TABLE 4 Distribution of Associates, by Firm Size (1980)

Firm Size	Percentage of Associates (N=45,908)
2 lawyers	3.3
3 lawyers	5.0
4 lawyers	5.6
5 lawyers	5.0
6–10 lawyers	18.0
11–20 lawyers	15.9
21–50 lawyers	18.2
More than 50 lawyers	29.1
Total	100.0

SOURCE: Barbara A. Curran *et al.*, *The Lawyer Statistical Report: A Statistical Profile of the U.S. Legal Profession in the 1980s* 15 (Chicago: American Bar Foundation, 1985).

Economic Position of Lawyers

Although often exaggerated, the economic rewards of the law are, for most lawyers, substantial. There are no reasonably current national income data for all lawyers, but some recent information is available for lawyers in selected practice situations. In 1980 the median annual earnings, as distinguished from receipts, were about $55,000 for members of small partnerships and about $100,000 for members of large partnerships. In 1981 nonsupervisory lawyers employed by corporations and related entities were paid a median annual salary of about $41,000. During the same year those graduating from law schools received median annual salary offers of about $26,000. The U.S. government pays its lawyers from about $20,000 to $50,000 per year, depending on experience and responsibilities. There are no reliable data about the income of solo practitioners, but it is known that, on the average, they earn less than members of partnerships. It is also known that their incomes vary widely. At one end of the scale are a significant number, especially the inexperienced recent graduates, who do not earn a living wage from their legal work and must engage in some other occupation or trade on the side. At the other end of

the scale there are some who reputedly earn hundreds of thousands of dollars per year.

A few income figures for the U.S. population at large will show where lawyers are in the general scheme of things. In 1980 families with one wage earner had a median family income of about $16,700. In 1979 about 4 percent of households had an income of $50,000 or more; about 28 percent had an income between $20,000 and $35,000.

A closer look at one area may help to show how lawyers' incomes vary. In 1981 lawyers in Illinois were surveyed about their incomes. The results, in table 5, show that lawyers' median earnings varied widely for different types of practice.

Table 6 breaks these figures down to show the differences between partners and associates. One can also see the steady rise in income from solo practitioner to large-firm lawyer.

TABLE 5 Median Income from Practice of Law in 1981

Practice Setting	Median Income
Solo practitioner (alone)	$26,000
Solo practitioner (sharing)	33,000
Firms:	
2–4 lawyers	40,500
5–9 lawyers	35,800
10 or more lawyers	45,000
Government	25,000
Other law-related	44,100

SOURCE: Gary R. Lietz, "Illinois Lawyers and Their Income," *Illinois Bar Journal*, November 1983.

TABLE 6 Median Income from Practice of Law in 1981, by Setting and Position

Practice Setting	Median Income
Solo practitioner (alone)	$26,300
Solo practitioner (sharing)	17,500
Firms:	
2–4 lawyers:	
Associate	21,400
Partner	49,500
5–9 lawyers:	
Associate	25,000
Partner	76,300
10 or more lawyers:	
Associate	35,000
Partner	89,400

SOURCE: Gary R. Lietz, "Illinois Lawyers and Their Income," *Illinois Bar Journal*, November 1983.

The Patterns of Lawyers' Careers

The stability of lawyers' careers can be measured by examining the attrition rates over time. In this way lawyers can be compared to other professionals. Figure 5 shows the survival function for lawyers, doctors, university teachers, chemical engineers, and the clergy. The survival function gives the proportion of those still in the profession at any given age. The data for this comparison were drawn from the 1965 and 1970 U.S. Censuses, so they reflect a moment in time rather a longitudinal study.

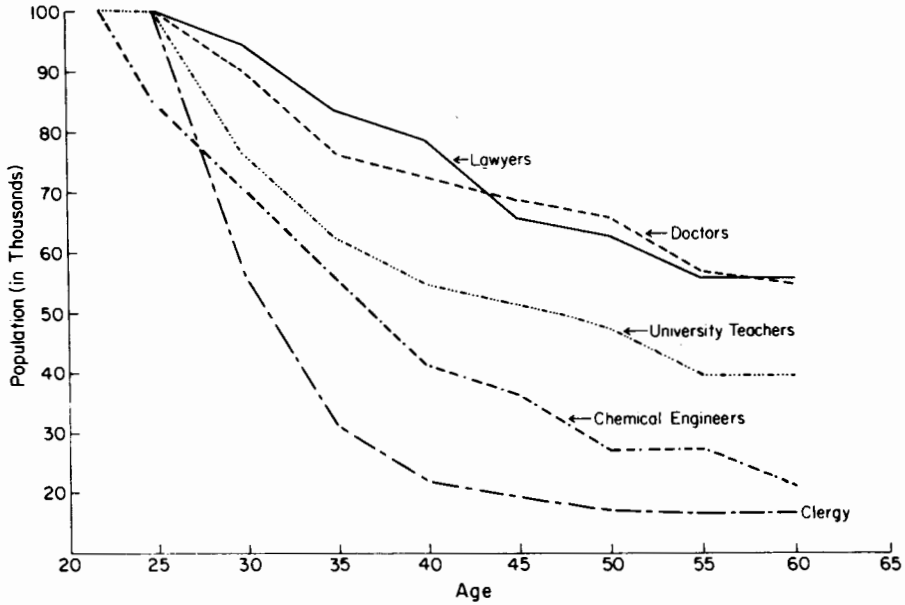

Fig. 5. Survival functions depicting differential propensity to remain in practice, for selected professions. Reprinted with permission from John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 208 fig. 6.1 (New York: Russell Sage Foundation; Chicago: American Bar Foundation, 1982).

Figure 5 shows that lawyers have relatively stable careers and are likely to continue in the practice of law throughout their occupational lives. The decline between the ages of 30 and 35 suggests that lawyers leave practice if they fail to become a partner in the firm where they are working. The drop between the ages of 40 and 45 is not so easily explainable.

Organizations of the Legal Profession

State, Local, and National Associations

The legal profession in the United States has been prolific in producing organizations. There are local bar associations in virtually every city and county of any size, and many communities have several. Of some 1,700 bar associations in this country, some have fewer than a dozen members; others, such as the Los Angeles County Bar Association and the Chicago Bar Association, have close to 20,000 members each. Perhaps the best known is the Association of the Bar of the City of New York, whose headquarters houses one of the outstanding law libraries of the United States.

In addition, every state has a state bar association; some have two. About 40 percent of the state associations are voluntary membership organizations while the rest are unified (meaning that all lawyers admitted to practice in the state are obliged to maintain membership). Membership and participation in state bar associations, both voluntary and unified, have risen significantly over the last twenty years. Most of the voluntary associations include in their memberships not only a substantial majority of the lawyers in the respective states, but also virtually all the lawyers who are recognized as leaders of the profession in those states.

All state bar associations and most local associations are general membership organizations in the sense that they are made up of lawyers in all types of legal practice. There are, however, many local organizations of lawyers with particular interests or concerns. In Chicago, for example, there are the Patent Law Association of Chicago, the Women's Bar Association of Illinois, the Latin American Bar Association, the Catholic Lawyers Guild of Chicago, the Cook County Bar Association (an organization of black lawyers), the Appellate Lawyers Association, and others.

A closer look at one local bar association may reveal more clearly the *raison d'être* of such an organization. The Chicago Bar Association (CBA) is one of the two largest metropolitan bar associations in the country. Its

membership is varied. Republicans and Protestants are slightly more represented than are Democrats and Jews. Graduates of elite law schools have higher membership rates than those from regional and local schools. The latter are found more often in the Illinois State Bar Association. Moreover, members of large law firms are more likely to be significantly represented in the CBA than are lawyers from small partnerships or solo practitioners. On the whole the CBA is surprisingly representative of the total, as table 7 illustrates.

TABLE 7 CBA Members Compared to Full Bar on Selected Characteristics

Characteristic	Percent of CBA Members	Percent of Total Bar
Irish	16	14
Black	2	3
Southern & eastern European	24	25
Catholic	29	29
Jewish	28	27
Nonreligious	10	12
Independent political affiliation	19	20
Regular Democrats	22	19
Local law-school graduates	42	46
Elite law-school graduates	25	20
Solo practitioners	16	19
House counsel	12	13
Lawyers from firms with more than 30 lawyers	19	16
Law practice incomes over $60,000	21	17

SOURCE: Reprinted with permission from John P. Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* 272 (New York: Russell Sage Foundation; Chicago: American Bar Foundation, 1982).

Participation in the activities of the CBA seem to be spread evenly across the membership. The type of law school attended—elite and prestige, especially—affects the membership of the CBA committees. The size of firm also affects active participation: members in large law firms are able to devote time to CBA activities without incurring great financial loss.

In a major research study of the Chicago bar, lawyers were asked to rank in order of importance a list of the CBA's objectives. The objective highest in importance was improving the quality of the bar, followed by improving the quality of the judiciary and the efficiency of court procedures. Other objectives lower on the list included enhancing the status of the profession, initiating legislation, disciplining lawyers, providing library and dining facilities, preventing unauthorized practice, and improving the lot of the disadvantaged.

The same lawyers were also asked to rate how effectively the CBA was supporting its objectives. Its effectiveness was greatest in improving the library and the dining facilities, improving the quality of the members of the bar, initiating legislation, and preventing unauthorized practice. The CBA was least effective in improving the efficiency of court procedures, enhancing the status of the profession, and improving the lot of the disadvantaged.

The CBA has been able to accommodate diverse interests to some extent. As membership has grown and become more varied, so have the claims asserted by the various factions. Conflicts have arisen over a number of issues, and a study of the CBA attempted to analyze the response of the CBA's Board of Managers to such conflicts.

One contested issue was the CBA's attempted restriction of the activities of the personal injury plaintiff bar in the 1950s. In this period the Board of Managers was dominated by corporate defense interests, clearly antithetical to the plaintiff bar, which was considered inferior to the defense bar. The first attack tried to use the tactic of disbarring personal injury plaintiff lawyers for solicitation. It failed; the courts did not uphold the arguments of the CBA. The second attack came in the form of a legislative effort to outlaw the solicitation of clients. This too failed when the bill did not pass in the legislature.

As a result of these attacks the CBA's leadership was shown to be divided, not pursuing the ideal of a cohesive, unified profession. In the wake of this foment the personal injury plaintiff bar mustered sufficient support for two of their group to be elected to the Board of Managers. Thus the CBA began to reflect a broader range of interests and class. The newcomers were also able to use their rise to power to extend their influence in the court system and judicial selection.

At the national level are general membership organizations, such as the American Bar Association, and also a range of particular interest organizations. Examples are the American Judicature Society (devoted to improvement of the administration of justice in the courts); the Federal Bar Association (consisting chiefly of lawyers employed by the national government or engaged primarily in practice before U.S. government agencies); the American College of Trial Lawyers (an elective membership organization of trial lawyers); the American Trial Lawyers Association (trial lawyers representing mainly personal injury plaintiffs); the National Association of Women Lawyers; the Maritime Law Association of the United States; the American Society for International Law; the International Law Association; the National Bar Association (an organization of black lawyers); and many others.

State and local bar associations are typically governed by boards of directors elected by the membership. A president and other officers, who ordinarily serve one-year terms, are elected by the membership in some associations, by the board of directors in others. The business of bar associations is normally done through standing and special committees. A typical state bar association has standing committees on judicial administration, discipline and grievances, continuing legal education, and legal aid, among others. It also has an array of committees on special subject matter areas, such as corporation law, family law, and probate law. Local bar associations are similarly organized.

The American Bar Association

The principal national organization of lawyers in the United States is the American Bar Association (ABA). Its present membership, about 300,000, constitutes roughly half of the entire legal profession. It is open on simple application to any lawyer who is in good standing in his state, though its history in this regard is checkered. The ABA was founded in 1878 to promote the administration of justice, to advance jurisprudence, and to encourage social intercourse among lawyers. In many ways it had the atmosphere of a gentleman's club. Not until after 1910 did the ABA become a professional protective organization. Two issues forced it to take a stand. The first was the admission of black lawyers to the ABA; the second was the nomination of Louis D. Brandeis to the U.S. Supreme Court.

In 1912 the ABA unwittingly admitted three black members. It quickly revoked its decision when it discovered its error. However, the revocation did not rest easy with some prominent members of the profession. George Wickersham, then Attorney General, criticized the decision but was, in turn, rebuked by the ABA; Moorfield Storey, a former president of the ABA and first president of the National Association for the Advancement of Colored People, also voiced dissent. After Storey's dissent, the ABA readmitted the three black lawyers and rewrote its application form to require the disclosure of race, so allowing it to maintain an exclusively white membership until the 1940s. Ethnicity played a role in the nomination of Brandeis to the Supreme Court in 1916. He was the first Jewish nominee. He had spent much of his career in public service, unlike the typical ABA member, who was committed to protecting private property, not to promoting social change. The ABA opposed Brandeis, accusing him of being a unfit person to sit on the Supreme Court because his ethical standards were defective. But Brandeis was appointed despite the opposition.

At this time the ABA had no formal mechanism for involvement in the judicial selection process. In 1946 the ABA formed the Committee on Federal Judiciary, which gradually established links with the Senate Judiciary Committee and was invited to comment on proposed judges. The ABA committee's views carried little weight, however, unless they could be backed up by specific charges leading to disqualification. A general unease over "leftist" judges was not sufficient. Neither was the committee able to promote its own choices for judgeships. The ABA later won the right to be consulted by the Justice Department on judicial nominations, and for a period in the mid-1950s it had a virtual veto power over nominations. At the end of the 1950s the ABA Committee on Federal Judiciary was brought more intimately into the process of judicial selection by the Justice Department. It was asked to evaluate nominees before any substantial official decisions had been taken. The power to veto nominations has never since been as strong as it was during the Eisenhower administration, but the ABA is fully involved in the process of judicial selection.

The American Bar Association is in some respects a federation of state and local bar associations. The bulk of its central body, the House of Delegates, consists of (1) representatives of the state bar associations and most of the large local associations; (2) one representative from each state elected by the individual ABA members in that state (the state delegates); and (3) representatives from a variety of important special organizations of the legal profession. The last group includes the American Law Institute (a voluntary elective membership organization concerned chiefly with legal research and responsible for the well-known *Restatements* of the law); the Federal Bar Association; the Judge Advocates Association (military lawyers); the American Judicature Society; the National Conference of Bar Examiners; and still other organizations. The remaining members of the House of Delegates are *ex officio* and include the Attorney General of the United States, the director of the Administrative Office of the United States Courts, the chairman of the Conference of Chief Justices (an association of the chief justices of the supreme courts of the respective states), and others.

The House of Delegates, which meets twice annually, sets the policy of the American Bar Association. The state and some section delegates nominate the president and other principal officers of the association. They also nominate members of the Board of Governors, which is the executive committee of the association. In most years, the nomination of the president is tantamount to election. The president serves a one-year term after a year as president-elect and, like all officers of the association, receives no compensation as such.

Like its state counterparts, the American Bar Association acts through standing and special committees. In general, these committees parallel those of the state bar associations. The ABA also has large subassociations, known as sections and divisions, that are composed of lawyers who have special interests in particular areas of law. Some of the sections, for example, are Administrative Law, Antitrust Law, Criminal Law, Individual Rights and Responsibilities, and Taxation. Membership in the sections ranges from several hundred to tens of thousands. The sections provide the structure and the forums through which lawyers can involve themselves in areas of their particular concern. But 40 percent of ABA members do not belong to any sections. Table 8 provides a picture of the relative numbers of members and range of topics in the sections.

TABLE 8 American Bar Association Sections (1984)

Section	No. of Members
Administrative Law	13,158
Air and Space Law	544
Communications Law	1,802
Construction Industry	2,957
Corporation, Business and Banking Law	50,294
Criminal Justice	8,382
Economics of Law Practice	17,034
Entertainment and Sports Industry	2,840
Family Law	13,062
Franchising	1,217
General Practice	17,689
Health Law	2,527
Individual Rights and Responsibilities	2,837
International Law and Practice	10,052
Judicial Administration Division	6,741
Labor and Employment Law	12,390
Legal Education and Admissions to the Bar	2,152
Litigation	42,511
Natural Resources Law	7,231
Patent, Trademark and Copyright Law	6,853
Public Contract Law	3,274
Public Utility Law	3,300
Real Property, Probate and Trust Law	29,256
Science and Technology	3,097
Taxation	17,324
Tort and Insurance Practice	21,519
Urban State and Local Government Law	5,108
Young Lawyers	141,239
Total	446,390*

*A lawyer may belong to more than one section. For example, in 1984, 2,367 ABA members belonged to five sections; 54,000 belonged to two sections.

Many matters of interest to sections and committees of the American Bar Association have important international aspects—for example, antitrust law; corporation, banking, and business law; insurance law; and patent, trademark, and copyright law. Two groups of special interest to lawyers from abroad are the Section of International Law and the Standing Committee on World Order Under Law, which seeks to enlist the efforts of lawyers of all nations in the cause of peace and order through law. The Section of International Law operates an International Legal Exchange Program, which sponsors group seminars and visits of American lawyers in foreign countries and foreign lawyers in the United States as well as placement of individual lawyers in the United States. Recently, in 1983, the House of Delegates adopted a resolution advocating the advance of the rule of law in the world. It contained four goals: to promote the development of international law, including human rights; to promote dispute resolution between nations; to maintain relations with other professions in other countries; and to foster contacts among American and foreign lawyers.

Afterword

It should be clear now that to talk of *the* legal profession is a misnomer; we would be better off referring, instead, to *many* legal professions. There are strong similarities between the modern American legal profession and that of fifteenth-century England. At that time there were six discrete strata of lawyers: serjeants and judges, clerks and officers of the central courts, attorneys, apprentices, utter-barristers, and solicitors and accountants. By the eighteenth century the number of groups had effectively declined to two—barristers and attorneys (later solicitors).

American lawyers are differentiated along many axes. They are distinguished along lines of class, ethnicity, religion, economic status, place of practice, and type of clientele. Lawyers, though they espouse the tenet of justice, cannot help but serve interests. The corporate lawyer and the criminal defense lawyer have little in common. They do not meet each other in court, they belong to different bar associations and clubs, and they hardly understand each other's area of expertise. All they share is the same name, lawyer.

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Bates and O'Steen v. State Bar of Arizona, 433 U.S. 350 (1977).

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975).

Hishon v. King & Spalding, ____ U.S. ____ (1984); 104 S. Ct. 2229 (1984).

Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

Annotated Select Bibliography

The following bibliography is offered as a guide to readers interested in learning more about the legal profession. It is arranged alphabetically by author with no subject divisions. It is selective inasmuch as the works chosen represent a combination of the important and the interesting in the literature on the subject. They are important either because they have withstood the test of time (insofar as nothing has replaced them or they stand as the definitive texts) or because they make us examine our assumptions and preconceptions. They may awaken us to deficiencies in our knowledge or try to prevent lapses into complacency.

Only published works are included—books, monographs and journal articles. Readers can trace unpublished pieces (mainly Ph.D. dissertations) through the bibliographical guides included. The coverage and scope of this bibliography is intended to be both wide and deep by encompassing historical, economic, sociological, and synthetic studies. Some works are located firmly within the empiricist tradition with no theoretical overview; others are avowedly theoretical. No judgment of either is intended here. The variety merely represents the state of play in the literature.

Abel, Richard L. "The Sociology of American Lawyers: A Bibliographic Guide." 2 *Law and Policy Quarterly* 335–91 (1980).

An extensive bibliographic source with occasional critical comments.

Auerbach, Jerold S. *Unequal Justice: Lawyers and Social Change in Modern America.* New York: Oxford University Press, 1976.

A radical social history of elite lawyers during the twentieth century and their attitudes and values in response to pressures for change from within and without the legal profession.

Bloomfield, Maxwell. *American Lawyers in a Changing Society, 1776–1876.* Cambridge: Harvard University Press, 1976.

Traces the history of the American bar in the postrevolutionary era. Shows the bar was fragmented, had little autonomy, and no organizations to speak for it. The bar also denied an obligation to assist poor people. Only in the case of freed slaves did the bar appear to provide services, but then under government auspices. Describes the rise of the modern corporate lawyer along with bar organizations.

———. "The Texas Bar in the Nineteenth Century." 32 *Vanderbilt Law Review* 261–79 (1979).

A valuable preliminary inquiry into frontier lawyers of the south: social backgrounds, types of practice, and bar organization.

Blumberg, Abraham S. "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession." 1 *Law and Society Review* 15–39 (1967).

Describes how lawyers persuade clients to accept plea bargains, as a result of the institutional pressures of the court system.

Brakel, Samuel J. *Judicare: Public Funds, Private Lawyers, and Poor People*. Chicago: American Bar Foundation, 1974.

Examines the delivery of legal services to the poor through the medium of private attorneys—as in Wisconsin and Montana—as opposed to the use of salaried legal services offices. Advocates Judicare as the primary mode of delivering legal services, with salaried, staffed offices being used to supplement it.

Brazil, Wayne D. "Views from the Front Lines: Observations by Chicago Lawyers About the System of Civil Discovery." 1980 *American Bar Foundation Research Journal* 217–51.

Through interviews with 180 Chicago-area litigators, the author examines the complex features of one aspect of civil litigation, the discovery process. The study describes how litigators use and abuse the process and how they would reform discovery abuse. This article is part of a large study of the civil discovery system.

Brickman, Lester. "Expansion of the Lawyering Process Through a New Delivery System: The Emergence and State of Legal Paraprofessionalism." 71 *Columbia Law Review* 1153–1255 (1971).

A study of the roles and functions of paralegals in various legal settings, with suggestions for their future development.

Cappell, Charles L., and Terence C. Halliday. "Professional Projects of Elite Chicago Lawyers, 1950–1974." 1983 *American Bar Foundation Research Journal* 291–340.

For description see Halliday and Cappell below.

Carlin, Jerome E. *Lawyers on Their Own: A Study of Individual Practitioners in Chicago*. New Brunswick, N.J.: Rutgers University Press, 1962.

Examines the role and situation of the solo practitioner. Shows that such lawyers are at the margin of the legal profession and are the most likely to act unethically. Much of their work is routine and requires little legal skill or expertise.

———. *Lawyers' Ethics: A Survey of the New York City Bar*. New York: Russell Sage Foundation, 1966.

A study of metropolitan lawyers' adherence to the ethical values of the legal profession. While all lawyers rejected behavior such as stealing and cheating, only the elite lawyers upheld the distinctively professional standards. Individual and small-firm lawyers tended to ignore ethical norms in favor of ordinary business standards.

Christensen, Barlow F. *Lawyers for People of Moderate Means: Some Problems of Availability of Legal Services*. Chicago: American Bar Foundation, 1970.

An analysis of lawyers' services: what they are, what they do, and who they are for, and the problems involved in making these services available to the mass of the population, who do not use legal services to the extent expected. Several solutions are offered: specialization, greater use of paralegals, group legal services, legal service insurance, and better lawyer referral services.

———. "The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors—or Even Good Sense?" 1980 *American Bar Foundation Research Journal* 159–216.

Traces the history of unauthorized practice from the colonial period to the present day. Raises the questions of whether the public benefits from the rules against unauthorized practice or whether they should be permitted to choose among various services in an unfettered way.

Chroust, Anton-Hermann. *The Rise of the Legal Profession in America*. 2 vols. Norman: University of Oklahoma Press, 1965.

A detailed, if occasionally flawed, history of the American legal profession from the colonial period.

Curran, Barbara A. *The Legal Needs of the Public: The Final Report of a National Survey.* Chicago: American Bar Foundation, 1977.

A large-scale survey of the problems of and attitudes about the public's relationship with lawyers. What types of legal problems the public has; how they are dealt with; the nature of the lawyer-client relationship; and how the public perceives lawyers as professionals.

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A quantitative analysis of the changing composition of the legal profession based on data from the 1980 *Martindale-Hubbell Directory of Lawyers.*

Danet, Brenda, Kenneth B. Hoffman, and Nicole C. Kermish. "Obstacles to the Study of Lawyer-Client Interaction: The Biography of a Failure." 14 *Law and Society Review* 905–22 (1980).

A personal account of the authors' failure to gain access to an as yet unmapped area of research. Delineates the special difficulties (for example, lawyer-client privilege) entailed in directly studying lawyer-client relations. Followed by interesting critical comment by Douglas E. Rosenthal at 923–29.

Day, Alan F. "Lawyers in Colonial Maryland, 1660–1715." 17 *American Journal of Legal History* 145–65 (1973).

Constructs a typology of early lawyers in Maryland: planters, clerks, merchant-planters, and entrepreneurs. All are "preprofessional." Provides data on practice and wealth of lawyers. Shows how professional lawyers came to monopolize practice.

Donnell, John D. *The Corporate Counsel: A Role Study.* Bloomington: Bureau of Business Research, Graduate School of Business, Indiana University, 1970.

An inquiry into the functions of in-house counsel within corporations. Contains some data on the work of counsel but concentrates mainly on the conflicts and strains of professionals in bureaucracies.

Engel, David M. "The Standardization of Lawyers' Services." 1977 *American Bar Foundation Research Journal* 817–44.

In considering five indicators of standardization—the use of systems analysis in the performance of legal services—the author identified legal services where there is strong evidence for standardization. Those ripe for routinization are uncontested divorces and simple wills and trusts. Other services suggested by the indicators are the preparation of income tax returns, probate services, certain real estate matters, uncontested adoptions, simple personal bankruptcies, collections, change of name, and the incorporation of small businesses.

Epstein, Cynthia Fuchs. *Women in Law.* New York: Basic Books, 1981.

A study of women lawyers at two different periods, the 1960s and the 1970s. Asserts that opportunities for women in the law have increased dramatically over time and are likely to improve as male attitudes become more accepting.

Erlanger, Howard S. "The Allocation of Status Within Occupations: The Case of the Legal Profession." 58 *Social Forces* 882–903 (1980).

An argument based on a national sample of lawyers that although entry into the profession is strongly correlated with social background, advancement within the profession is based more on educational background.

———. "Young Lawyers and Work in the Public Interest." 1978 *American Bar Foundation Research Journal* 83–104.

Argues that the relatively small percentage of lawyers working in public interest law is not due to a limited supply of lawyers; rather, the problem lies in the inadequate demand for their services. If more jobs were made available at the current public interest wage, more lawyers would enter the pool.

Eulau, Heinz, and John Sprague. *Lawyers in Politics: A Study in Professional Convergence.* Indianapolis: Bobbs-Merrill Co., 1964.

Explains how lawyers and nonlawyers involved in politics do not display any significant differences. In fact, law and politics are seen as convergent professions, and lawyers' skills are ideally suited for the practice of politics.

Feeley, Malcom M. *The Process Is the Punishment: Handling Cases in a Lower Criminal Court.* New York: Russell Sage Foundation, 1979.

An observational study of a lower criminal court in New Haven, Connecticut. Illustrates the compromises that are made by lawyers and court personnel in order to process the inordinately large volume of cases.

Fossum, Donna. "Law Professors: A Profile of the Teaching Branch of the Legal Profession." 1980 *American Bar Foundation Research Journal* 501–54.

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A social history of American law up to the beginning of the twentieth century that treats law as contingent on economy and society. Contains sections on lawyers.

Galanter, Marc. "Mega-Law and Mega-Lawyering in the Contemporary United States." In *The Sociology of the Professions: Lawyers, Doctors and Others*, edited by Robert Dingwall and Philip Lewis. New York: St. Martin's Press, 1983.

Characterizes the growth of corporate law practice as mega-lawyering. Discusses how large law firms are different from small ones and illustrates the impact of large firms by reference to large-scale cases.

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Gawalt, Gerald W. *The Promise of Power: The Emergence of the Legal Profession in Massachusetts, 1760–1840*. Westport, Conn.: Greenwood Press, 1979.

A case study of how one bar was transformed from a small, occupational group on the fringes of British governing circles to a major profession having a powerful impact on American economic and political life.

George Washington Law Review. "Inside Washington Law: The Roles and Responsibilities of the Washington Lawyer." 38 *George Washington Law Review* No. 4 (Special Issue) (1970).

A symposium on the various aspects of Washington law practice: tax, lobbying, public interest, and administration. Also includes comments on ethical responsibilities of Washington lawyers. Will be superseded by the ABF study on Washington representatives.

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a reading of the success of elites different from that of Heinz and Laumann below. Halliday and Cappell analyze the tension between democracy and oligarchy in the internal politics of bar associations. They use the Chicago Bar Association as a case study over the period 1950 to 1974.

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Interviews with lawyers in a Midwestern city provide data on types of practice, the economic position of lawyers, ethical problems, and the role of lawyers in community life. Comparisons are made with big-city lawyers.

Handler, Joel F., Ellen Jane Hollingsworth, and Howard S. Erlanger. *Lawyers and the Pursuit of Legal Rights*. New York: Academic Press, 1978.

Analyzes the role of Legal Services, its aims, its personnel, and its organizational characteristics. Based on interviews with Legal Services lawyers, at two points in time, and a national sample of the bar. Concludes that legal services is a growing area of law and that its lawyers will have an increasing influence on the legal profession at large.

Hazard, Geoffrey C., Jr. "Reflections on Four Studies of the Legal Profession." 13 *Social Problems* (Law and Society Supplement) 46–54 (1965).

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———. *Ethics in the Practice of Law*. New Haven, Conn.: Yale University Press, 1978.

Report of a symposium attended by law professors and students, attorneys in private practice, social scientists, and government officials. Discusses ethical problems and issues that arise between elite legal institutions, large law firms, large corporations, and government agencies.

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———, and Edward O. Laumann. *Chicago Lawyers: The Social Structure of the Bar*. New York: Russell Sage Foundation; Chicago: American Bar Foundation, 1983.

A major extensive study of Chicago lawyers that argues the thesis that the legal profession is stratified, not by the type of legal services rendered, but by the character—social and economic—of the clients. Much information is presented on lawyers' backgrounds and fields of practice. The legal profession is shown to fall into two hemispheres: those who serve corporate clients and those who serve individuals.

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Jacob, Herbert. *Justice in America: Courts, Lawyers and the Judicial Process*. 3d ed. Boston: Little, Brown & Co., 1978.

A political analysis of how justice is administered in American courts. Includes results from empirical research. Discusses participants—lawyers, judges, and public (juries, media); the judicial process; and the functions of the courts. Provides a thoughtful overview of the system.

Johnstone, Quintin, and John A. Flood. "Paralegals in English and American Law Offices." 2 *Windsor Yearbook of Access to Justice* 152-90 (1982).

Compares and contrasts the role and use of paralegals in American attorneys' offices and English solicitors' offices. Analyzes the reasons for the rise of paralegals in the U.S. and their decline in Great Britain.

———, and Dan Hopson, Jr. *Lawyers and Their Work: An Analysis of the Legal Profession in the United States and England.* Indianapolis: Bobbs-Merrill Co., 1967.

A comparison of English and American lawyers, describing private practice, corporate counsel, use of paralegals, bar associations, and alternatives to legal services—with some proposals for change.

Katz, Jack. *Poor People's Lawyers in Transition.* New Brunswick, N.J.: Rutgers University Press, 1982.

A case study of the provision of civil legal service to the poor in Chicago. Attempts to explain attitudes of legal assistance lawyers towards involvement in the program, their role within the organization, and their career plans. Also gives historical overview of legal services in Chicago.

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Critical Legal Studies (CLS), a fast-growing movement in American legal academia, has spawned a diversity of approaches. This bibliography is the most complete list extant of CLS work.

Kritzer, Herbert M. "The Dimensions of Lawyer-Client Relations: Notes Toward a Theory and a Field Study" (Research Note). 1984 *American Bar Foundation Resarch Journal* 409-25.

On the basis of interviews with corporate lawyers in Toronto, the author sets out a framework for studying lawyer-client relations. Proposes that relationships be examined in three ways: from the viewpoint of professionalism; from the viewpoint of business; and from the social viewpoint, any of which may be salient at any given time. Thus the lawyer-client relationship is drawn as complex and dynamic.

Ladinsky, Jack. "Careers of Lawyers, Law Practice, and Legal Institutions." 28 *American Sociological Review* 47-54 (1963).

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Landon, Donald D. "Clients, Colleagues, and Community: The Shaping of Zealous Advocacy in Country Law Practice." 1985 *American Bar Foundation Research Journal* 81-111.

Taking a small town of less than 20,000 people, the author examines the impact of rural lawyers' high visibility on the zeal with which they pursue their cases in an adversarial forum. He finds that the context of rural practice tempers the lawyer's zeal in favor of community as well as clients' interests.

———. "Lawyers and Localities: The Interaction of Community Context and Professionalism." 1982 *American Bar Foundation Research Journal* 459-85.

Compares practices of lawyers in rural areas with those in middle-sized cities and concludes that the types of stratification found among lawyers in urban areas do not affect rural lawyers. However, rural lawyers are very much a part of local life and are thus subject to the influence of local values. See also Marvin W. Mindes, "Comment: Defining Professionalism in the Bar: Comments on Landon's Article," 1982 *American Bar Foundation Research Journal* 1163-76.

Larson, Magali Sarfatti. *The Rise of Professionalism: A Sociological Analysis.* Berkeley: University of California Press, 1977.

Provides a structural analysis of the means employed by professions, including law, to enhance their control over markets under capitalism. Argues that professions as free bodies began to decline in the nineteenth century as bureaucracy challenged and succeeded over other forms of organizations.

Lasswell, Harold, and Myres S. McDougal, "Legal Education and Public Policy: Professional Training in the Public Interest." 52 *Yale Law Journal* 203-95 (1943).

A radical attempt to base legal education on broad and firm principles so that lawyers can produce and implement policy effectively. One of the few attempts to analyze theoretically what the role of the lawyer in modern society should be. In many ways the authors' insights are still valid today.

Llewellyn, Karl N. "The Bar Specializes—with What Results?" 176 *Annals of the American Academy of Political and Social Science* 177-92 (1933); 39 *Commercial Law Journal* 336-43 (1934).

A radical view of the legal profession, still relevant today. Describes the growth of specialization in the corporate bar and its deleterious impact on delivery of legal services for the poor. Argues for an ethical revitalization of the bar as a whole.

Lindgren, James, ed. "Review Symposium: The Model Rules of Professional Conduct." 1980 *American Bar Foundation Research Journal* 921–1023.

Nine scholars, including Robert J. Kutak, the late chairman of the ABA's commission that drew up the Model Rules, discuss the first legislative proposal on lawyers' ethics since Watergate: "Are the Model Rules meant to codify the changes that have occurred since the Code of Professional Responsibility was adopted in 1969, or are they meant to reform lawyers' behavior?" (See ABA Model Rules of Professional Conduct, adopted by the ABA House of Delegates on August 2, 1983.)

Lortie, Dan C. "Laymen to Lawmen: Law School, Careers, and Professional Socialization." 29 *Harvard Education Review* 352–69 (1959).

Analyzes the routes by which young lawyers are recruited to the legal profession. Compares the graduating classes of three types of law schools in Chicago: how the graduates view their education and expectations, and the types of law jobs they take on leaving school.

Macaulay, Stewart. "Lawyers and Consumer Protection Laws." 14 *Law and Society Review* 115–71 (1979).

A study showing that lawyers apply legal rules in different ways. Lawyers for individuals in consumer matters tend to eschew legal norms in favor of mediation between buyer and seller based on principles of fairness, whereas business lawyers are likely to make use of law in such matters.

Mackinnon, F. B. *Contingent Fees For Legal Services: A Study of Professional Economics and Responsibilities.* Chicago: Aldine Publishing Co., 1964.

Describes the historical, economic, and professional context within which the contingent fee developed. Notes that the contingent fee—taking a share of the money recovered for damage or injury—is the dominant way of financing a claim in the United States.

Maru, Olavi. *Research on the Legal Profession: A Review of Work Done.* 2d ed. Chicago: American Bar Foundation, 1985 (in press).

An extensive review and critique of legal profession research, encompassing monographs, articles, and unpublished dissertations. Includes historical studies, the work of lawyers, career patterns, the organized bar, and lawyers' political activities.

Mayer, Martin. *The Lawyers.* New York: Harper & Row, 1967.

A good, popular overview of the legal profession, including legal education, criminal lawyers, corporate lawyers, Washington lawyers, and the courts.

Melone, Albert P. *Lawyers, Public Policy and Interest Group Politics.* Washington, D.C.: University Press of America, 1977.

Attempts to demonstrate that the American Bar Association concerns itself with legislative issues that have little to do with the direct interests of lawyers. Author's profile of the ABA leadership (and its clientele) shows that the lower echelons of the bar are underrepresented. Author argues that as a political interest group, the ABA is allied with big business interests.

Nader, Ralph, and Mark Green, eds. *Verdicts on Lawyers.* New York: Thomas Y. Crowell, 1976.

Catalogues failures of the legal profession (high legal fees, inferior judges, undermining of poverty law, ambulance chasing, restrictions on advertising, and the politics of the ABA) and suggests methods of reform.

Nelson, Robert L. "Practice and Privilege: Social Change and the Structure of Large Law Firms." 1981 *American Bar Foundation Research Journal* 95–140.

———. "The Changing Structure of Opportunity: Recruitment and Careers in Large Law Firms." 1983 *American Bar Foundation Research Journal* 109–42.

Even though large law firms are apparently becoming more bureaucratic, the author, in a study of four large Chicago law firms, argues that because law firms are "organizations of men" and not "organizations of offices," they still retain many of their former traits.

Patterns of recruitment and career development are altering in large law firms because of growth and bureaucratization. Recruits are more heterogeneous, and the bureaucratization of firms means that associates must specialize earlier, accept decreased client responsibility, and spend more time on large-scale litigation. The author concludes that in such firms it is the firm that dictates the career choices of lawyers.

O'Gorman, Hubert J. *Lawyers and Matrimonial Cases: A Study of Informal Pressures in Private Professional Practice.* New York: Free Press of Glencoe, 1963.

Inquiries into lawyers' attitudes towards matrimonial disputes, types of practice, and clientele. Shows that lawyers practicing in matrimonial law are from lower-class backgrounds, in solo practice or small partnerships, and have largely working-class clients.

Pashigian, B. Peter. "The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers." 20 *Journal of Law and Economics* 53–85 (1977).

Historically, the supply of lawyers has been slow to adjust to changes in demand for lawyers' services. Suggests that historical evidence shows there may have been too few lawyers, and warnings of a glut of lawyers may be erroneous.

Powell, Michael. "Anatomy of a Counter-Bar Association: The Chicago Council of Lawyers." 1979 *American Bar Foundation Research Journal* 501–42.

Shows how an alternative, reform-oriented bar association was established amid the discontent with the mainstream organized bar. The membership of the CCL was drawn from the younger elite lawyers in the Chicago area. They forced the Chicago Bar Association to reconsider its positions on public interest matters and community services.

Rabin, Robert L. "Lawyers for Social Change: Perspectives on Public Interest Law." 28 *Stanford Law Review* 207–61 (1976).

Describes the history of function of private law reform groups—for example, the ACLU—and speculates on their role in the future.

Reichstein, Kenneth J. "Ambulance Chasing: A Case Study of Deviation and Control Within the Legal Profession." 13 *Social Problems* 3–17 (1965).

A study of personal injury solicitation based on 101 interviews. Discusses the tensions between the lawyers' needs to get business and the requirement to follow ethical codes.

Rosenthal, Douglas E. *Lawyer and Client: Who's in Charge?* New York: Russell Sage Foundation, 1974.

Argues that there should be more shared responsibililty for decision making between lawyers and clients. Through studying personal injury claims, it is shown that clients who actively participate in the lawyer-client relationship obtained larger damages awards than did those clients who were not so involved.

Rueschemeyer, Dietrich. *Lawyers and Their Society: A Comparative Study of the Legal Profession in Germany and in the United States.* Cambridge: Harvard University Press, 1973.

Shows that societies emerging under different conditions (bureaucratic and entrepreneurial) produce different legal professions, which will have diverse roles within their respective contexts; for example, half of all German lawyers are in the civil service, while the majority of American lawyers are in private practice.

Schwartz, Murray L. "Observations: The Reorganization of the Legal Profession." 58 *Texas Law Review* 1269–90 (1980).

Charges that the rise in number of lawyers and size of law firms has led to the bureaucratization of the legal profession, with consequent dents in lawyers' autonomy and professionalism and disadvantages for the clients.

Segal, Geraldine R. *Blacks in the Law: Philadelphia and the Nation.* Philadelphia: University of Pennsylvania Press, 1983.

A study of the social structure of blacks in law in Philadelphia with condensed versions for fifteen other cities. Shows how blacks have been systematically discriminated against and are now beginning to overcome the obstacles. Stresses that blacks have far to go to achieve parity with whites in the legal profession.

Slovak, Jeffrey S. "Working for Corporate Actors: Social Change and Elite Attorneys in Chicago." 1979 *American Bar Foundation Research Journal* 465–500.

———. "Giving and Getting Respect: Prestige and Stratification in a Legal Elite." 1980 *American Bar Foundation Research Journal* 31–68.

———. "Influence and Issues in the Legal Community: The Role of a Legal Elite." 1981 *American Bar Foundation Research Journal* 141–94.

———. "The Ethics of Corporate Lawyers: A Sociological Approach." 1981 *American Bar Foundation Research Journal* 753–94.

These articles, based on a study of Chicago in-house counsel, working in business, social, civic, political, and cultural organizations, discuss types and modes of work; relations with legal community (in-house counsel are perceived as second-class citizens); participation in professional and political affairs; and ethics, especially "whistleblowing."

Smigel, Erwin O. *The Wall Street Lawyer: Professional Organization Man?* Rev. ed. Bloomington: Indiana University Press, 1969.

Examines the work and organization of lawyers in large law firms. Argues that such firms display bureaucratic tendencies.

Speiser, Stuart M. *Lawsuit.* New York: Horizon Press, 1980.

A leading plaintiffs' personal injury lawyer discusses some of his cases, his strategies, his clients, and their contribution to the development of tort law in the United States.

Steele, Eric H., and Raymond T. Nimmer. "Lawyers, Clients, and Professional Regulation." 1976 *American Bar Foundation Research Journal* 917–1019.

Analyzes historical patterns of regulatory enforcement by the disciplinary agencies responsible for regulating lawyers' conduct. Also analyzes complaints against lawyers received by a contemporary lawyer disciplinary agency, and its regulatory enforcement activities from the viewpoints of the disciplinary agency, the legal profession, and the clients who are the consumers of legal services.

Stevens, Robert B. *Law School: Legal Education in America from the 1850s to the 1980s.* Chapel Hill: University of North Carolina Press, 1983.

Analyzes the ways in which American law schools, from humble beginnings, grew to eminence in the twentieth century. The importance of the Harvard case law method is detailed as a tactic that attempted to raise the intellectual caliber of law schools. Struggles over the question of legal education being available to all or to an elite few are described.

Stewart, James B. *The Partners: Inside America's Most Powerful Law Firms.* New York: Simon & Schuster, 1983.

Large corporate law firms are investigated through a selection of cases, such as the Justice Department's antitrust suit against IBM. Maintains that the archetypal Wall Street lawyer is the best and the brightest.

Swaine, Robert T. *The Cravath Firm and Its Predecessors 1819–1947.* 2 vols. New York: Ad Press, 1946.

A history of one of the leading New York law firms: Cravath, Swaine & Moore. Describes the Cravath system of taking top-flight students from elite law schools and training them in the practice of law. This system has become the standard for most large law firms in the United States.

Tomasic, Roman. "Trend Report: The Sociology of Law." 33 *Current Sociology* 1–275 (1985).

A comprehensive report published under the auspices of the International Sociological Association with sections on (1) theory in the sociology of law, (2) lawyers and legal services, (3) courts and dispute processing, (4) policing and the sociology of criminal law, and (5) law-making and social change. Attempts an overarching comparative perspective and provides a selective but broad, occasionally annotated, bibliography of published materials.

Twining, William L. *Karl Llewellyn and the Realist Movement.* 2d ed. London: Weidenfeld & Nicolson, 1985.

An historical treatment of the rise and fall of Legal Realism, using Karl Llewellyn as the core figure.

Warkov, Seymour, with Joseph Zelan. *Lawyers in the Making.* Chicago: Aldine Publishing Co., 1965.

A large-scale survey of college seniors and first-year law students providing background data and information on attitudes towards law school and future career expectations.

Watson, Richard A., and Rondal G. Downing. *The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan.* New York: John Wiley & Sons, 1969.

Evaluates and analyzes the changeover from a system of elected state judges to a nonpartisan selection plan. Findings indicate that the system is a pluralistic one, in that all sections of the bar are represented and that no single group—for example, large-firm lawyers—has been able to dominate the process.

Wice, Paul B. *Criminal Lawyers: An Endangered Species.* Beverly Hills, Cal.: Sage Publications, 1978.

Examines the role of criminal lawyers in the light of changes brought about by, for example, the *Miranda* decision and the increased bureaucratization of the criminal law. Argues that criminal lawyers are unable to cope with the strains of practice and that they are on their way to extinction.

Wood, Arthur L. *Criminal Lawyer.* New Haven, Conn.: College & University Press, 1967.

Surveys the career patterns, work, and professional behavior of criminal lawyers. Up to two-thirds of lawyers interviewed did not maintain high professional standards. Generally, the criminal lawyer is similar to other solo practitioners—someone on the fringes of the profession.

Zemans, Frances Kahn, and Victor G. Rosenblum. *The Making of a Public Profession.* Chicago: American Bar Foundation, 1981.

A survey of practicing lawyers' responses to their legal education. The findings show that the type of law school attended heavily influences the later career patterns; that law school only provides some of the skill necessary for practice; and that it provides a basic understanding of ethical and professional behavior.