CHAPTER 10

SEGMENTATION IN THE PROFESSION

Law, especially as practiced in major urban settings, is a segmented profession, divided by lawyers whose clientele generally comprises individuals (personal service) and those whose clientele generally comprises businesses (corporate service.) This segmentation was first documented in 1975 through a major study of the Chicago bar conducted by two researchers, John Heinz and Edward Laumann. The study was so illuminating that Heinz and Laumann were joined by two other researchers, Robert Nelson and Rebecca Sandefur, to replicate it two decades later to see if its findings still held true. Below you will read an excerpt from the original study (Chicago Lawyers I) and a book review of the second study (Chicago Lawyers II).

The next piece in this chapter is an instructive profile of several lawyers in the personal injury practice area (both plaintiff and defense, personal and corporate service). It provides a closer, more fine-grained understanding of career trajectories, entrepreneurship/business opportunities, the changing nature of practice, business acumen, legal talents, and career satisfaction of the profiled lawyers.

As you conduct your attorney interviews for the EXPLORING CAREERS FOR JDS assignment, these well-documented analyses of the profession can provide useful context for you in examining your personal values, in choosing which attorneys to meet, and in formulating your interview questions. In examining how these practice profiles fit your personal values, do you like the idea of dealing with clients as individuals with personal needs, or with clients who are businesses with legal needs that match their corporate/shareholder goals? How do you predict you will react to changes in the law and practice? Do you like the idea of working with people who see change as opportunity to capitalize on (first adopters of new methods), or with lawyers/clients who are more conservative and only change once the new needs are absolutely clear. What is an important value to you about the junior lawyer's roles vis-à-vis the clients of a large firm and of a smaller firm? Other differences to explore relate to what kinds of training, whether formalized, informal shadowing, or close coaching—is typically available to novice lawyers in the large and small firm settings.

It is worth underscoring, like any attempt to categorize sub-elements of a diverse ways of practicing law, the categories have no scientific precision. You may well meet attorneys who fit the profiles described here, and ones who do not fit the profile at all.

10.1 Chicago Lawyers: The Social Structure of the Bar

John Heinz and Edward Laumann
Russell Sage Foundation, 1982

Any profession will surely include disparate parts, but we doubt that any other is so sharply bifurcated as the bar. Only, perhaps, in architecture is there a similar fundamental division between types of clients that has such inevitable consequences for the nature of the work and for the relative power positions of professional and client—and in architecture the number of individual clients is trivial. The difference between serving corporations and serving individuals

is, for a lawyer's work and career, a difference that has important, highly predictable implications, several of which have been explored in this book: That there is a fundamental split of some sort within the American legal profession has been recognized at least since the Reed report of the early 1920s distinguished between the "inner bar" and the "general body of practitioners." The difference between litigators and office lawyers has, of course, also been widely noticed for a long timed it has been formalized in England in the distinction between barristers and solicitors. But that is a task or skill difference, analogous to that between physicians and surgeons. The distinction within the American bar that is based in service to corporations, on the one hand, and to individuals and their small businesses, on the other, is quite another sort of phenomenon, with quite different consequences.

It would clearly be a mistake to assert that these two sectors of the legal profession are entirely separate, but the extent to which the complexity of the social structure of the Chicago bar may be sorted out by the fundamental difference between the two types of clients is nonetheless remarkable. The two hemispheres differ significantly both in practice and in social background variables. We have noted the very substantial difference in the prestige of the two sectors, lawyers serving corporate clients being much more likely to be accorded deference within the profession. We have also noted that lawyers who work in one hemisphere relatively seldom form friendships or close personal relationships with those who practice in the other. This, in turn, corresponds to the differential connections of the two hemispheres to the several spheres of influence in Chicago politics, community affairs, and the organized bar. The probability that a Chicago lawyer will know other lawyers who are influential in each of these realms differs systematically with the fields in which he or she practices and the nature of his or her clients. The client-based structure of the profession is, then, directly related to the structure of various sorts of power in the broader community.

In sum, the Chicago bar consists, to an extent that is quite striking, of two separate professions, quite different in type and content and both of substantial size. The more prestigious is, ironically, the less independent. It is a patronage-type occupation, in Terence Johnson's terms, where corporate clients to a large degree dictate the nature of the work done. The other profession, serving individuals and small businesses, is either a collegiate occupation by Johnson's definition, because the lawyers dominate their clients in the decisions that are made about the work, or mediative in type because governmental authorities and other parties mediate the relationship between lawyer and client, intervening in or regulating some aspects of that relationship.

The claims to professionalism of the lawyers in the two sectors are thus based in fundamentally different sorts of social power. Lawyers who practice in the personal client sector usually have the greater degree of authority vis-à-vis their clients because the wealth and social standing of the lawyers more often exceeds that of the clients and because the clients are ordinarily more dependent upon the lawyers than are the lawyers upon any one client. But what is it, precisely, that these personal sector lawyers have that their clients need so badly? The lawyers' knowledge and skills are not widely shared by the public at large, perhaps, but the skills required for many of the tasks performed by personal sector lawyers are not really all that abstruse, surely a good deal less so than those regularly needed by lawyers in the corporate sector, and the requisite knowledge could often be mastered by reasonably diligent non-professionals who had a sufficient incentive to do so.

Obviously, what the client often needs, at least in part, is the license to practice law. The officially sanctioned monopoly that is granted to licensed lawyers limits the entry of unlicensed

persons into this market—it excludes nonlawyers from the performance of some, but only some, of the tasks regularly done by the personal client sector of the bar. Plea bargaining on behalf of defendants in criminal cases is, for example, effectively restricted to lawyers, even though nonlawyers might conduct the bargaining equally well, but searches of real estate titles are often now done by employees of real estate brokers, title insurance companies, and the like, who may or may not be lawyers.

In other portions of their market, personal sector lawyers may compete with marriage counselors or women's centers that provide assistance in divorce cases, with freelance accountants or franchised tax return preparers, or with do-it-yourself probate kits. In these latter situations, the lawyers' monopoly of the relevant services is imperfect, at most. To the extent that clients choose to employ lawyers in such matters, therefore, they may have some affirmative reason to do so.

The reason for that preference is probably often the belief—one that sometimes, at least, has a sound basis in fact—that the lawyer will have superior access to networks of authoritative decision makers, networks that include the persons who have the power to solve the client's problem, to confer the benefit the client seeks or to relieve the client of the unwanted burden. This belief is commonly expressed as some variant of a statement that the lawyer knows the ropes at the criminal courts building or has friends at City Hall or has clout in the zoning board. Scholarly research on the criminal courts has confirmed the existence of "courtroom work groups" that consist of the judge, the lawyers who regularly appear in that court, whether for the prosecution or the defense, the bailiff, and the court clerk. In such circumstances, it can, indeed, be advantageous to be a member of the work group and disadvantageous to be an outsider. The stock-in-trade of the lawyer in the personal client sector may therefore often be perceived, by both the client and the lawyer, to be his "connectedness." Access to the relevant networks may be improved by a license to practice lawd it may enhance acceptance as a member of the club. Ethnicity or political affiliation, however, may also be important criteria for membership in such networks, and this fact helps to account for the salience of ethnic and political group memberships in the social organization of the profession.

The types of social power that can be mobilized by lawyers in the corporate sector are quite different. Connectedness is probably less highly valued by them and by their clients, though their contacts will surely sometimes be useful. The corporations that are the clients of this sector of the bar more often maintain their own networks of relationships with the authoritative decision makers whose actions are most often relevant to the conduct of their operations. Corporate officers are themselves often persons of considerable influence, political and otherwise. Thus, what corporations need and expect from their lawyers is in large measure the lawyers' special skills and arcane knowledge.

The skills and knowledge that are valued are not, of course, always legal skills or knowledge of legal doctrine narrowly defined. Rather, knowledge of business circumstances or of the cast of characters participating in a particular matter, skill as an advocate or a negotiator, or simply good judgment may recommend the lawyer to the corporate client. Such power as corporate lawyers have over their clients is power of the sort that derives from the client's belief in the lawyers' skills and from the correlative need of the clients to have some external expert to believe in. Corporate executives often operate in conditions of great uncertainty. The assistance of a sage or a conjurer is one of the classic means used by persons in precarious positions to reduce the uncertainty, to gain control. In such situations, faith in the powers of the savant or shaman is crucial.

Similarly, the power of lawyers may be based largely in their repute. (This may be true of both corporate and personal sector lawyers, though the types of repute that will be important to them will be quite different.) To nurture the appropriate sort of repute and to conserve it once it has been attained, corporate lawyers engage in various kinds of status display. Their furniture is often upholstered in leather and their walls are lined with books, whether those books are often consulted or not; where the walls are not covered with books; they are often covered with hard-wood paneling or with sophisticated paintingsd the lawyers dress conservatively and they behave with circumspection (much like bankers, though perhaps not carrying this to quite such an extreme)d and a certain type of prestigious corporate lawyer tries hard to keep the firm name out of the newspapers, knowing that some clients retain the firm in the belief that it has the ability to keep their names out. The style of the corporate bar is, thus, designed to reassure its clientele, and the power of that sector of the bar is highly dependent on the clients' confidence in the sagacity, discretion, and stability of the corporate lawyer.

Assuming that corporate lawyers succeed in gaining the confidence of their clients, however, what sort of power have they then? As Edward Shils points out, persons are accorded deference corresponding to the degree to which they serve the central value system of the society. Because corporate lawyers advise persons who make the most consequential decisions regarding the allocation of economic resources and because modern, industrial societies attach great importance to economic values, we might expect corporate lawyers to be accorded deference to the extent that they are perceived to influence these allocative decisions.

The social power of the corporate sector of the bar is, then, based in its perceived influence on the distribution of the wealth of the society, influence that is derived from the belief of corporate officers in the wisdom and arcane skill of these lawyers, while the claim to professionalism of lawyers working in the personal sector is based less in special skills and more in their superior access to networks of relatively minor, relatively low visibility decision makers, such as insurance claims adjusters, police, state judges, court clerks, building inspectors, zoning commissions, and aldermen. The social origins of the practitioners in the two sectors are, as Shils predicts, consonant with the degree to which they are perceived to be entitled to deference on other grounds. That is, Shils observes that the deference to which one is thought to be entitled on the basis of one's social origins is not likely to be greatly inconsistent with the deference that one's occupation is thought to warrant.

The two sectors of the legal profession thus include different lawyers, with different social origins, who were trained at different law schools, serve different sorts of clients, practice in different office environments, are differentially likely to engage in litigation, litigate (when and if they litigate) in different forums, have somewhat different values, associate with different circles of acquaintances, and rest their claims to professionalism on different sorts of social power. For the most part, these lawyers find themselves unable to cooperate in the organizations of the bar.

Only in the most formal of senses, then, do the two types of lawyers constitute one profession. Why should the degree of cohesion among lawyers be of concern? Some reasons will already be apparent. The social structure of any occupation that places so many of its members in positions where they can influence the allocation of scarce resources is of interest because the nature of the bonds and the divisions among the occupation's membership may have consequences for who gets what in the case of lawyers, consequences for the distribution of legal services and for values that may be affected by the distribution of legal services. If the members of an occupation are so influentially placed, the ability to mobilize them toward a common purpose will carry the potential for great political and societal power. If, on the other

hand, the social composition of the occupation suggests that it will be able to unite on common goals only rarely or only within a narrow range of issues, then the relative impotence of the occupation *qua* occupation is also of interest.

But there may be another, less obvious consequence of the lack of social integration of the legal profession. To the extent that the public perceives the separation of lawyers into two hemispheres or two occupations, the symbolic unity of the law, and thus its legitimacy, will be weakened. The efficacy of law depends, in very large measure, on voluntary compliance with its requirements, and the disposition to comply depends, in turn, on the existence of a consensus that the legal system is legitimate. To secure this public support, a legal system will need to honor the society's central ideals, including those concerning equality of treatment that are manifested in such legal standards as "equal protection of the laws."

The perception of equality is served by the symbolism of a unitary legal system that there is only one law, one set of rules and procedures that determines justice for all. If lawyers of distinct social types work in distinct realms of law, serve separate sorts of clients, and deal with separate systems of courts and government agencies, symbolic unity can be maintained only with mirrors and smoke, and then unreliably. Ethnic diversity within the bar, reflecting the pluralism of the broader society, might enhance the legitimacy of the system if lawyers from the full range of social backgrounds were well represented and if they were all participating in the same system. But if the reality is that large cities like Chicago have two legal professions, one recruited from more privileged social origins and the other from less prestigious backgrounds, while yet other social groups are almost entirely excluded, and if the first kind of lawyer serves corporate clients that are quite wealthy and powerful, and the other serves individuals and small businesses that are far less powerful, then the hierarchy of lawyers suggests a corresponding stratification of law into two systems of justice, separate and unequal.

End **I** Heinz and Laumann, *Chicago Lawyers: The Social Structure of the Bar*

10.2 Chicago Lawyers II, Twenty Years Later
A Second Look at the Second City

William D. Henderson, *reviewing* URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR, *Legal Affairs*, November/December 2005.

Chicago lawyers changed a lot in 20 years.

At some point in law school, probably during the first year, most students hear the lawyerly saw, "If the law is against you, argue the facts. If the facts are against you, argue the law. If both the law and the facts are against you, pound on the table and yell like hell." It should come as no surprise that lawyers and empirical research are often a bad match. Empirical research tests our perceptions of the world, and, when properly done, it shrinks the universe of contestable facts. But unlike social scientists, who tend to focus on methodologies and to draw inferences from samples of data, lawyers can't resist the temptation to score points through argument. They tend to dismiss empirical evidence that does not comport with their own experience or ideology.

This preference for polemic over empiricism often colors lawyers' views of their own profession. A well-developed genre of books, typically written by lawyers and law professors, uses anecdote and observation to argue that the legal profession is going to hell in a handbasket.

Urban Lawyers: The New Social Structure of the Bar is not part of that tradition. Its authors, John Heinz, Robert Nelson, Rebecca Sandefur, and Edward Laumann, have written a meticulous work of empirical sociology. All are distinguished social scientists who have taken pains to put their findings in context, and their methodology yields carefully circumscribed facts rather than normative conclusions.

Urban Lawyers updates a 1982 study by Heinz and Laumann that was published as *Chicago Lawyers*. Drawing on detailed interviews with approximately 700 practicing attorneys, *Chicago Lawyers* presented a comprehensive analysis of the social structure of the Chicago bar. Its most famous finding was that Chicago lawyers were separated into "two hemispheres," one serving corporate clients and the other serving individuals. These two groups seldom overlapped and were sharply divided by race, ethnicity, law school pedigree, professional and social networks, and income. "Only in the most formal of senses," Heinz and Laumann said, "do the two types of lawyers constitute one profession." The interviews for *Chicago Lawyers* were conducted in 1975, when Chicago was fraught with political and racial turmoil. Although the feminist movement was then gathering considerable momentum, women comprised a minuscule 4 percent of the Chicago bar.

"Chicago Lawyers II"—the title given to the new study by the American Bar Foundation, its principal sponsor—provides a rare opportunity to carefully assess and, at times, quantify how much things changed since 1975. The complexity of the job is evident from the preface of *Urban Lawyers*, which exudes the tone of explorers safely returned from a decade-long expedition. The 787 interviews for "Chicago Lawyers II" took place in 1994 and 1995, and the publication of *Urban Lawyers* this year is the project's culmination.

Fortunately, some of the findings support the perception of social progress that is widely shared. For example, substantial numbers of women and minorities joined the legal profession between 1975 and 1995. High-status corporate law firms also hired a much larger proportion of students from less prestigious local and regional law schools. At least in recruiting, the distinctions based on social class, gender, and ethnicity have largely disappeared. And despite their harried schedules, Chicago lawyers have maintained a commitment to civic and religious activities.

Yet over the same period, the structure of the Chicago bar experienced a gradual but major transformation. Most fundamentally, the term "hemisphere" no longer applies, at least not exactly so: In 1975, 53 percent of Chicago lawyers worked primarily for corporate clients. By 1995, the figure had jumped to 64 percent while the percentage of lawyers serving mostly individuals had decreased to 29 percent. The other 7 percent of practicing lawyers represent the governmentd this figure changed little between 1975 and 1995. Since the total number of Chicago lawyers approximately doubled between 1975 and 1995, the number of lawyers for individuals actually grew in this period. Corporate firms, however, have been on a three-decade-long hiring spree. Quantifying this development highlights an important point: Surprising as it may be, many law students and law professors, and probably members of the public, don't understand that lawyers are increasingly employed to facilitate commerce. Despite the impression that many critics of litigation have helped create, few lawyers make it into court anymore, and those who do are often representing corporations in disputes against other corporations.

The authors resist drawing broad conclusions about the legal profession, though they readily admit that over the last three decades the large law firm has emerged as the "clear winner" in a

variety of ways. Between 1975 and 1995, the typical Chicago law firm increased in size from 27 to 141 lawyers. Further, large law firms comprise a growing segment of the Chicago bar. In 1975, roughly 5 percent of Chicago lawyers began their careers in firms of 100 or more lawyers. By 1995, that figure had increased to 19 percent—and there is no reason to doubt that the percentage is even higher today.

Some academics have argued that the growth of large law firms is inevitable because their pyramid structure requires that, for every new partner, they hire two or more associates. But *Urban Lawyers* provides conclusive evidence that, at least in a large market like Chicago, a large surge in corporations' demand for legal services is an important part of this story. Not surprisingly, the compensation of associates and partners in large firms has increased dramatically—after adjusting for inflation, the average income of lawyers in Chicago's largest law firms grew from $144,985 in 1975 to $271,706 in 1995. The median incomes in all other practice settings, with the exception of in-house counsel, have remained flat or declined.

The rise of the large law firm has consequences beyond higher salaries and profits. For example, Heinz and his colleagues compared the social networks of the 1975 and 1995 samples and found that Chicago lawyers' professional contacts are increasingly drawn from within the firm. In part, that is because successful lawyers in large law firms build and protect their client base by referring work to their colleagues rather than to lawyers at other firms. And the growth in firm size and scope of practice makes it much more likely that a specialist on virtually any matter is somewhere in the firm. Lawyers therefore have less incentive to develop and sustain professional ties outside the firm with colleagues who are not potential clients. So over time, young associates begin to think of themselves as attorneys of Kirkland & Ellis, for example, rather than as members of the Chicago bar. This trend may be great for profits, but it undercuts the perception and reality of lawyers as independent professionals capable of self-regulation.

The data in *Urban Lawyers* also suggest that lawyers' political orientations are substantially influenced by the economic interests of their clients. Although lawyers in the 1995 sample tend to be very liberal on social issues, favoring affirmative action and pro-choice policies by a wide margin, they are also strongly pro-business. They are 50 percent less likely than the general public to believe that corporations have accumulated too much wealth or power. This disparity widened between 1975 and 1995 as lawyers took on more corporate clients. In other words, the social and economic values of lawyers appear to depend on who is paying them.

The larger size of law firms has had another subtle but important effect: Law partners are less willing to share profits or financial risk equally. Different legal specialties, geographic markets, and work habits (measured, inevitably, by billable hours) produce different economic returns. When lawyers don't interact with their nominal partners because, for example, they work in other offices or practice groups, the traditional "lockstep" model of compensation—in which every lawyer of equal seniority generally gets the same pay—can't survive. The result is a culture of free agency in which fewer associates are promoted to partner and more equity partners are willing to switch firms.

It is easy for the commentators to decry this bare-knuckles capitalism, but the changes are not necessarily bad. The rationalization of corporate law firms is arguably an example of what Joseph Schumpeter, the great Austrian economist, referred to as "Creative Destruction"—the "essential fact of capitalism" that established economic structures and institutions are constantly supplanted by new ideas, technologies, and methods of organization. For example, lawyers routinely leave large firms to start small firms and solo practices. They rarely did so in 1975.

Partners at major Chicago firms told the study's authors that approximately one-third of all proposed clients had to be referred outside the firm because of conflicts between the interests of the proposed clients and of existing clients. Many of these referrals now go to local boutique firms staffed by former big-firm lawyers. These firms are too small to poach the major clients of big firms, so their phones ring often. Yet big law firms have horrible diseconomies of scale—firms with 150 or more lawyers typically have overhead $70,000 higher per lawyer than firms with 20 or fewer lawyers. So corporate boutiques can charge lower rates, generate a comfortable income, and offer associates and partners some of the autonomy and control absent from the bigger firms.

But market forces may not be the only factors at play here. Professor David Wilkins of Harvard Law School and Professor Mitu Gulati of Georgetown Law Center have long argued that large law firms, consciously or not, run a "seeded" tournament that funnels the best assignments to associates with the best social or academic pedigree. Under this system, women and minority lawyers eventually feel like window dressing, so they tend to leave large law firms and often private practice at much higher rates than their white male counterparts. Unfortunately, the career patterns of women and minorities in the "Chicago Lawyers II" sample are generally consistent with this theory.

Urban Lawyers also provides a detailed picture of the large portion of Chicago lawyers who serve individuals through personal injury, family law, criminal defense, and trusts-and-estates work. For the most part, the news is not good. A startling statistic: In 1975, the median income of a solo practitioner in the Chicago sample was $99,159 (in 1995 dollars). By 1995, this figure had plummeted to $55,000. Further, 32 percent of the solo practitioners were working a second job in 1995 compared with only 2 percent in 1975. The distribution of income within the legal profession has always been a bell curve, with a small group of public interest lawyers earning a modest living, a majority of private practitioners in the middle class, and a handful of elite lawyers getting truly wealthy. But over the last three decades, the curve has become much flatter and developed two large tails. Law school has become a speculative investment for most law students, and *Urban Lawyers* documents only the lawyers who stick with the law. Solo practitioners and low-paid government lawyers, like public defenders, have the fewest ties to professional groups like local bar associations and appear the most likely to quit the law, so the author's data may understate the bleak economics that face low status lawyers.

How do the findings in *Urban Lawyers* compare with conditions in other cities? Some of my own research has focused on the 200 largest law firms in the nation based on gross revenues, commonly called the Am Law 200 because the data is compiled by *The American Lawyer* magazine. These are the same types of firms that *Urban Lawyers* portrays as growing and prospering. Between 1993—just two years before the "Chicago Lawyers II" sample ended—and 2003, the number of lawyers employed by Am Law 200 firms in the Chicago metropolitan statistical area increased from approximately 5,000 to 7,000. Similarly, Am Law 200 law firms opened 16 new offices in the area.

Though strong, the growth in high-end legal services in Chicago is not as vigorous as in some other cities—particularly New York. Between 1993 and 2003, Am Law 200 law firms added 9,290 lawyers in New York (from 11,920 to 21,210) and 69 offices (from 108 to 177). In many respects, New York is just plain different. The single best predictor of Am Law 200 profitability is the proportion of a firm's lawyers that work in New York City. The proportion of lawyers in other major markets, such as Washington, D.C., Chicago, San Francisco, and Los Angeles, has no bearing on profitability.

What, exactly, is all this information good for? The empirical data presented in *Urban Lawyers* provides readers with a clear-eyed picture of the changes that are reshaping the legal profession. Unfortunately, when discussing their own profession, lawyers and law professors tend to prefer the sweeping claims of polemicists rather than the measured results of social scientists. But *Urban Lawyers* might provide special value to law students.

In my experience, the insecurity many law students feel about their job prospects makes them more open to new ideas. As their angst builds over growing mountains of debt incurred to pay tuitions, students crave reliable, complete, and objective information about the legal marketplace. Surprisingly, that information is virtually never found in law school courses. Last year, I taught a course on the economics of law firms and discussed many of the empirical findings of the "Chicago Lawyers" I and II projects. The students were initially depressed to learn about the long hours, the stratified incomes, the dwindling partnership opportunities, and the two professional spheres that rarely overlapped. But as they worked through the material and listened to practicing lawyers place the difficult realities into context, the students grew more confident and self-assured about their futures. In contrast to many of their classmates, they learned how the legal world really works—empiricism gave them a competitive advantage. So *Urban Lawyers* offers powerful stuff, especially for law students anxious about entering an increasingly difficult marketplace. In a truly important and memorable study, the volume provides a precise and nuanced assessment of the modern legal profession, in all its empirical complexity.

End I Henderson, *Review of Urban Lawyers (Chicago Lawyers II)*

10.3 Chicago Lawyers: Boots on the Ground

While the *Chicago Lawyer* studies provide the sociologists view of the legal profession, the following vignette gives breath and flesh to the personal injury bar. Through the stories of the careers of eight lawyers, we can trace major shifts in evolution of personal injury practice—including visionaries, talented trial attorneys, a groundbreaking Supreme Court decision on attorney advertising, the business realities of client development and cost pressures, and the drama of a spilled cup of McDonald's coffee.

While the *Chicago Lawyer* studies document the prestige split between the personal service and corporate service bars, the vignette below, *The Personal Injury Bar: Tracing Eight Lawyers' Careers*, provides important color to that story. Some of the most accomplished lawyers in the story came from the most modest of schools and backgrounds. On the other hand, defense lawyers at the prestige firm suffered the doldrums of routine work similar to some of their counterparts in the plaintiffs' firms.

This profile is based on the composite experiences of actual lawyers and the extensive sociological literature on the legal profession. While the weaving together of lives is entirely fictional, the historical evolution faithfully tracks several decades of research findings on the practicing bar. Further, as the stories illustrate, these broad social and economic structures significantly shape lawyer careers, often in ways that they never anticipated.

The Personal Injury Bar: Tracing Eight Lawyers' Careers

Gwen Breen: Gwen is a 55-year-old trial attorney who maintains a highly successful personal injury practice in downtown Chicago. Gwen was born and raised in rural south-central Illinois. Her father was a mechanic and small-time livestock farmer. Her mother managed the household, including assigning chores to Gwen and her five brothers and sisters. Because she got good grades in high school, Gwen's teachers encouraged her to apply to college. At the time, Gwen had no ambitions about becoming a lawyer—she had never known anyone who worked as a lawyer or had need to consult one over a legal problem—but she was profoundly curious about the world outside of Vienna County, Illinois. Despite her family's modest circumstances, the low in-state tuition at the University of Illinois circa 1975 put the possibility of college within reach.

By the time she graduated from college in 1979, there was a dramatic surge in the number of female college graduates applying to law school. Beyond Atticus Finch (the defense lawyer in *To Kill a Mockingbird*) and *Perry Mason* (the television show from the 1950s and 1960s), Gwen didn't know very much about lawyers. But she knew a lot about livestock, working in factories (her college summer job), waiting tables and bartending, and none of them had long-term appeal. Similar to high school, Gwen had college professors who encouraged her to continue her education by applying to law school. Because of cost, she attended University of Illinois College of Law. Remarkably, she graduated from law school debt-free in 1982, having supported herself and paid her tuition by working several part-time jobs. Years later she would remark that more than 50% of what she needed to know to be successful as a lawyer she learned from waiting tables and serving drinks in college.

In 1982, the U.S. economy was in the midst of a deep economic recession. Gwen lacked the grades to be competitive for a law firm job in Chicago (her dream, more for the city than the work). And very few small-firm lawyers had the financial wherewithal to hire new graduates. So, much to her dismay, Gwen's first legal job was back in Vienna County, Illinois in the Prosecutors Office, a position that she got through a combination of family and work connections. As the County Attorney, Doug Colburn spent half of his time doing work for the County and half on his local law practice. A modest increase in state funding enabled Doug to hire an intern. With these funds, he hired Gwen.

The pay was very low, and the environment (Vienna County) was all-too-familiar. But the work was nothing at all like law school—and surprisingly interesting. During the first year, Gwen tried several less serious crimes, such as DUI and cases involving vandalism and property theft. She also assisted Doug with a murder trial and a sex crimes case. She particularly enjoyed conversations with Doug, in which he would seek out her opinion on the weight of the evidence and decision to charge an individual with a crime. Gwen saw the world through the eyes of the defendants— rural folks without much formal education and sometimes overwhelmed by personal or financial hardship. When Gwen stopped to think about it, she was often stunned at the enormous influence and discretion she possessed over the lives of real people. In Vienna County, a significant portion of the criminal justice system was, effectively, run by a 26-year-year-old farm girl. *Should we prosecute this case? What is a fair punishment? What is the best way to prepare this case so we can get this person in jail and out of our community?* Nothing in law school or her prior work experience had prepared Gwen for this power.

By the time Gwen was twenty-nine, Doug had semi-retired. As a result, Gwen was doing virtually all of the County's significant criminal prosecutions. Although she loved her job, Gwen

felt that she had outgrown Vienna County. Gwen thought about applying for a job in the Cook County Prosecutors Office but was discouraged by the starting pay. Then something unexpected happened. Gwen received a phone call from Edward ("Ned") Markovitz, whom she knew from her undergraduate days at Illinois. He asked a simple question: "Would you consider joining my law firm?"

Gwen knew Ned from her waitressing days at Chuck's Diner, which had been one the places she worked part-time while an undergraduate student. Ned, who had been attending law school at the time, was one of Gwen's regulars. During Ned's 3L year, Gwen decided to apply to law school and asked Ned for advice. Although Ned was Jewish (Gwen was Catholic) and a "big city" guy from Chicago, Gwen thought he was funny, charming and honest. Their Saturday morning banter often included jokes about their relative states of poverty, as both Gwen and Ned were the first in their families to attend college. Ned's father was a butcher on the city's south side, which was—as Ned joked—the urban counterpart of the rural livestock farmer. Gwen and Ned seemed to have a special rapport with each other because they both had to work two or three part-time jobs to pay tuition and pay their rent.

Ned Markowitz, Jay Manford: After graduation in 1979, Ned moved back to Chicago and took a job with Manford Legal Services, which was part of the burgeoning legal "storefront revolution" of the 1970s. The firm was started by Jay Manford, an idealist Yale Law School graduate, who left his Wall Street law firm job in 1977 in the aftermath of *Bates v. State Bar of Arizona*. The *Bates* case effectively ended the ban on lawyer advertising and, in turn, opened the door for a new law firm model that tapped into the enormous volume of unmet legal demand of middle and lower class consumers—what Manford called the "low cost, high volume" model. The key to the "low cost" portion was the standardization and automation of the range of legal needs experienced by the typical middle class family—e.g., drafting a will, getting a divorce, or obtaining workers compensation or Social Security disability benefits. According to the model, this standardization was to be achieved through a template-driven computer program. Mass marketing through newspaper and television ads was the core element of the "high volume" portion of the model.

Manford's insights may have been obvious to many other lawyers, yet in the Midwest, Manford had virtually no competition. The primary barrier to entry was lack of capital. Running newspaper and television ads cost tens of thousands of dollars a month, and in the 1970s computer technology for a dozen storefronts ran into the high six figures. Although many private investors would have been anxious to underwrite this business opportunity, state ethical rules barred splitting of profits between lawyers and non-lawyers (see MRPR 5.3). In the case of Mansford, thanks to millions of dollars of family money, he was able to pioneer this new concept without significant competition.

If the Manford business model had a flaw, it wasn't the advertising campaign— the work literally poured in. Instead, his major problem was Ned Markovitz and people like him. As noted earlier, the model required volume, which meant that unusual or difficult cases were unprofitable because they required additional analysis that the consumer either could not afford to pay or did not expect to pay. This economic constraint, in turn, flipped the traditional law firm hierarchy on its head. Because payments hinged on the ability to complete form documents through a computer system, legal secretaries were much more integral to the operations of the office than attorneys like Ned Markovitz. Perhaps it would have been better and simpler to have the secretaries deal directly with the customer, but the state required a law license for that. So, in effect, Ned had become a salesman for a series of simple, highly repetitive legal matters that

required virtually no independent analysis. Further, the only way to make a decent salary was to sell (quickly) more simple jobs and turn away (quickly) those people with more complex legal problems.

Unfortunately for Mansford Legal Services, it was hard to recruit and retain lawyers for highly routinized work where clients with the most serious problems have to be turned away. Not surprisingly, turnover of attorneys was rampant. And by the end of his first month (in the fall of 1979), Ned was plotting a way to find a new job.[1]

By the summer of 1980, Ned ultimately signed on to work for Bob Petroff, a 66-year-old solo practitioner who maintained an office on the city's south side. Petroff was hoping to transition his lease and his referral business to a younger lawyer in exchange for a set of buy-out payments (see MR 1.17(a)). Although Petroff was a general practitioner, he was always grateful for a good personal injury case because the contingency basis made it possible to generate a substantial fee. During the year that Ned worked with Petroff, they worked on two car wreck cases, both of which resulted in significant settlements for Petroff. Ned was surprised by the contrasts between Mansford and Petroff. At Mansford, they didn't do any personal injury work, but they got lots of walk-ins and phone calls from people injured in accidents. At Petroff, these types of cases were available only occasionally. The difference, of course, was advertising.

When Ned took over Petroff's practice the following year (1981), he borrowed $10,000 from his aunt and uncle to purchase a large ad on the back of the Yellow Pages. At the time, Illinois bar authorities limited the ability of lawyers to make claims of special expertise and knowledge. But in Ned's case, the most important aspects of the ad were his photograph (he was handsome), his name (to convey that he was Jewish), and the words "handling car accidents and other personal injury matters." Within a month of publication, Ned was spending half of his time answering the phone and screening clients. The other half was spent negotiating settlement with insurance companies, especially copying the tactics he had learned from Petroff. Despite the fact that Ned had never tried a case—and had seldom been inside a courtroom—he was underwater with personal injury cases.

Despite his economic good fortune, Ned was plagued with feelings that he was a fraud. He could sell legal services, he could negotiate settlements and take his one-third share, but as he started to interact more and more with the city's insurance adjusters, he increasingly heard the refrain, "Maybe we are going to have to try this case." Rather than affiliate with another lawyer with trial experience, Ned made the mistake of backing off his settlement demands, which precipitated a slow downward slide in which Ned felt certain that his clients were being underserved. Adjusters called Ned's office a settlement mill, which made him feel sick to his stomach.

Phillip Brogan, Jim Halloran, and Jeff McGuire: The opposite of a settlement mill, at least in Chicago, was the Brogan law firm. The Brogan law firm grew out of the solo practice of Phillip Brogan, an Irish-Catholic Chicagoan who grew up working class, the son of a police officer, on the city's north side. Brogan struggled to get through college before joining the army

[1] The business model for Manford Legal Services, and a handful of other firms in the storefront revolution, eventually failed. Manford evolved into a prepaid legal services model catering to union members, effectively becoming a purveyor of legal insurance for middle class people. Another competitor used its strong brand, built through advertising, to broker high-value personal injury cases for member of the plaintiffs' bar.

in World War II. When he returned home, Loyola University Law School admitted him under the GI Bill. At the time, undergraduate degrees were not required as a condition of law school admission or accreditation.

Upon graduating first in his class, Brogan got a chilly reception from Chicago's established business law firm. Brogan had three liabilities. First, he was Catholic. Second, he had attended a non-elite law school. Third, his entire family network was working class. Brogan would recount how one of his classmates, with far lower marks, got the LaSalle Street law firm job he wanted just because he had an uncle who was an executive at the gas company. Lacking even one of three requisite requirements for a LaSalle Street firm, Brogan's intelligence, drive, or personal accomplishments mattered little.

Yet as an Irish-Catholic from a large extended family, Brogan had his own resources. He got his first legal job through his uncle, a well-known priest, who sent him for an interview with the City of Chicago Corporation Counsel's office. At the time (1949), there were 100 lawyers in the office, half of whom were "lifers" and the other half on the road to become state and federal judges. The Corporation Counsel's office was part of the political machine built by Mayor Richard J. Daley and other Irish-Catholic politicians. If Brogan fell in line with this political machine, through the civil service system he would eventually prosper.

Brogan's life took an unexpected turn, however, when he was asked to speak to his fraternity at the invitation of fellow fraternity alum, James Halloran. Halloran was impressed by Brogan's charm and easy rapport with people. Halloran was part of a new breed of Illinois lawyers who tried to separate themselves from the so-called "ambulances chasers." Halloran's colleagues would later call him a visionary. His goal was three-fold: first, to elevate the professional stature of personal injury lawyers through professional organizationsd second, to hone the art of courtroom advocacy for the purpose of securing large jury verdicts for his clientsd and three, to expand the law of tort liability through deft appellate advocacy[2] and statutory reform at the state level, leading the effort to repeal the $30,000 cap on wrongful death cases. Brogan's primary argument to the legislators was that he had won $90,000 for the wrongful death of a horse, but in Illinois a man's life was only worth $30,000.

When Brogan met Halloran in 1952, Halloran's vision was slowly gathering momentum and attracting some positive attention within the Loyola community and among the legal profession generally. When Halloran offered him a position in his office, the ambitious Brogan accepted. Brogan apprenticed under Halloran's nurturing watch. Brogan understood well the benefits he accrued under Halloran's tutelage, so much so that he used it as his model that would evolve into "Brogan University" training his associates in skills needed to evaluate valuable personal injury cases, prepare the case for trial, and persuasively convey that story to a jury. One of the central ironies of the Brogan University, however, was that it practiced a form of exclusion that was very similar to LaSalle Street firms, even if the criteria was different: the most desirable candidates were Irish-Catholic working class men who graduated from local, non-elite Chicago law schools.

Over a period of decades, and before the advent of lawyer advertising, an informal patronage system evolved within the Chicago personal injury bar. The very best, most complex cases were

[2] Halloran's drive for professionalism and professional respect was legendary. Later in his career, he would draft the three-volume treatise, *Modern Tort Law*, which reflected his mastery of the field he largely created.

referred up the food chain to lawyers like Brogan and Halloran. Specifically, if an insurance company failed to agree to a settlement that was in the vicinity of a likely jury award, these skillful and well-resourced trial lawyers would actually try the case. In exchange, lower-value cases were referred down the food chain, where the higher volume of simple cases made it easier to make a living as a personal injury lawyer.

When Ned Markovitz placed his first Yellow Pages ad, he did not fully understand that ecosystem of the Chicago personal injury bar. Petroff only said that "if you got a really complicated case, you should call Jeff McGuire." Ned just figured that McGuire had a lot of trial experienced he did not realize that McGuire was a graduate of "Brogan U" or that such a vast professional network even existed. No Ned was dying on the vine – a Jewish lawyer who got cases through advertising rather than referrals. Lawyers like McGuire were hesitant to partner with Ned because doing so threatened to pull the plaintiffs' bar back to the era of ambulance chasing.

Markovitz & Breen, the law firm: Ned's strategy to re-level the playing field was to hire Gwen Breen, a tall, attractive farm girl with years of courtroom experience. "Juries will love Gwen," Ned reasoned, "but insurance companies will hate her." Ned had one good card to play. "Gwen, how would you like to come to Chicago?"

In its early years (1985 to 1995), Markovitz & Breen was the ultimate example of division of labor. Ned, the natural salesman, would greet potential clients and sort though the cases for high value claims. Gwen, drawing upon her years of experience in plea-bargaining, would negotiate with insurance companies. When insurance adjusters, knowing Ned's settlement mill reputation, would tell Gwen that "maybe we need to try this case," Gwen would say, with a big, sincere smile, "Good. I will enjoy trying this case."

The plaintiffs' law practice was also a perfect fit for Gwen's politics and worldview. Gwen was tired of being underestimated as a woman and of having her intellect questioned because she grew up on farm. And, because she dealt with only the serious cases, she loved the fact that her skills and legal acumen were the key ingredients to getting clients the help they needed. Gwen also liked living in Chicago, where she made a comfortable living and eventually met her spouse. By the late 1990s, however, the Markovitz & Breen model was being widely replicated. To maintain sufficient volume, the plaintiffs' bar was entering into a *de facto* arms race that eventually extended to expensive television advertisements, which required repetition in order to be effective. Although Markovitz & Breen seemed to be winning this arms race, Gwen was becoming steadily disillusioned with the public persona of the firm, particularly the cheesy nature of the firm's advertising that suggested getting big bucks quickly. Although she was elected the first female president of the state's trial lawyers association, the negative reaction toward Ned— the public face of the firm—was wearing her down.

Larry Ketchum and George Ballmer: During the 1950s and 1960s, Brogan and Halloran essentially created a whole new industry around personal injury. In the courts and in the state legislature, they laid the groundwork for a system in which it was possible to get a jury verdict of hundreds of thousands of dollars. By the 1970s, Brogan secured his first million-dollar verdict. By this time, the success and muscle of the plaintiffs' bar had gotten the attention of the insurance companies, who backed legislative proposals for no-fault insurance. When the no-fault insurance campaigns failed, the insurance industry started more sophisticated tactics.

One person who witnessed these tactics firsthand was Larry Ketchum, an Illinois Law classmate of Gwen Breen. Unlike Gwen, Larry had the grades to get a job with Miller Auerbach, a large general practice Chicago law firm. When Larry arrived at the firm in the fall of 1982, he asked to be assigned to the litigation department because he was interested in trial work. Larry soon became the protégé of a senior partner, George Ballmer, who kept more than a dozen associates busy representing many of the nation's largest insurance companies. George's book of business was based on volume—aggregating the many cases that could not be settled by non-lawyer insurance adjusters and getting them ready for trial. Larry loved the experience he was getting in the courtroom, but the substance of the cases was very narrow. By his third year at the firm, he became pigeonholed as an insurance defense lawyer.

Although Larry did not realize it, insurance defense work was gradually taking on a negative connotation due to the financial pressures that insurance companies were placing on their outside counsel. State courts gradually followed the lead of federal courts in adopting comprehensive rules on pre-trial discovery and motion practice, which had the unintended effect of elongating cases and making a quick resolution on the merits virtually impossible. Further, more cases began to rely on expert testimony, which gradually turned into an arms race between plaintiffs and defendants. The cumulative effect of these changes was a dramatic shift in the respective costs and payoffs of litigation. As heavy consumers of legal services, insurance companies began to take proactive steps to reduce their costs.

Step one was to apply rate pressure to lawyers like George Ballmer and his large team of associates. This, in turn, had the secondary effect of making George's work less profitable, which undermined his stature at the firm. By 1988, the tensions caused George to start a new firm with other Chicago lawyers doing insurance defense work (Ballmer, Lewis & McFee). Larry, who now had a wife and two children, decided to go with George. Although he did not necessarily like having a specialty that was becoming more price-sensitive to his primary clients, he reasoned that he would never make partner if he stayed at Miller Auerbach. Larry's rewards for his loyalty were a smaller office at a less prestigious address and a promotion to partner without any substantial increase in pay. His name was also added to the lease, so he was liable for payment.

Separate and apart from the cost of litigation, the insurance companies launched a broad-based public relations effort to roll back legislation and judicial cases that favored plaintiffs, what the mainstream press dubbed "tort reform." The goal of the movement was to turn public opinion against the plaintiffs' bar by marshaling evidence of a steady increase in frivolous litigation that clogged the courts and raised prices for ordinary consumers. The most notorious example was *Liebeck v. McDonalds Restaurants*, in which a woman won a $2.7 million jury verdict against the fast-food giant for injuries suffered when she spilled excessively hot coffee on her lap. The facts of the case were actually pretty extreme, but the media account told a much simpler and more sensational account. The *San Diego Tribune* wrote, "When Stella Liebeck fumbled her coffee cup … she might as well have bought a winning lottery ticket. … This absurd judgment is a stunning illustration of what is wrong with America's civil justice system."

A full account of the story runs as follows. The plaintiff was a 79-year-old woman who spilled coffee on her lap while sitting in the passenger seat of her grandson's car while trying to add cream and sugar. The hot coffee soaked into her sweatpants, causing third-degree burns over 6% of her body (i.e., penetrating through the full thickness of the skin to bone or muscle) and permanent scarring that covered 16% of her skin. According to the surgeon who applied the

skin grafts, the injuries added up one of the most serious burn cases from hot liquids that he had ever treated.

Liebeck, who was a lifelong Republican and had never filed a lawsuit, wrote a letter to McDonald's stating that the coffee was unreasonably hot and should not be served to customers at that temperature. Her letter requested that the coffee machine in question be checked for defects, that the policies for coffee temperature be reviewed, and that her medical expenses be reimbursed. When the company rejected her request for a policy change and offered her $800, she retained a lawyer. As it turned out, McDonald's had litigated other cases involving excessively hot coffee and had paid substantial damages. The company manual specified that coffee should be made between 195 and 205 degrees and served between 180 and 190—hot enough to cause permanent, disfiguring third-degree burns within seven seconds.

Lieback was awarded $160,000 in compensatory damages and $2.7 million in punitive damages, primarily because McDonald had knowledge of the danger and had refused to correct it despite a number of injuries to customers. The judge subsequently reduced the punitive damage to three times compensatory damages (a cap formula championed by the tort reform movement). Liebeck ultimately accepted a lesser amount in order to end the litigation prior to appeal. These aspects of the case, however, received far less media attention. Thereafter, the McDonald coffee cup case became a staple of tort reform movement, which was largely financed by insurance companies.

Breen, Markowitz and Ketchum—next chapters in their careers: The immediate and intended effect of tort reform was to vitiate public opposition to legislation that capped compensatory and punitive damages. This effort succeeded in many states. But the broader but more subtle impact was the effect it had on juror pools, who were inclined to view plaintiffs' lawyers and their clients with suspicion or hostility. This aspect of the tort reform movement played out in unexpected ways for lawyers like Breen, Markovitz and Ketchum.

As an empirical matter, juries were becoming less generous over time. So rather than settle cases at so-called nuisance value, insurance companies increasingly decided to take them to trial. The long-term goal of this strategy was to reduce the total number of claims by subjecting the plaintiffs' lawyers to the risk of adverse jury verdicts and absorbing all associated costs. With fewer plaintiffs' victories and lower overall damage awards, a large proportion of small cases started to go away.

For Larry Ketchum, the systemic impact of tort reform was significant. Because more cases were being litigated rather than settled, the insurance company put even more pressure on his rates. By his own admission, Larry had, for a period of 30 years, taken the road of least resistance. In 2004, this led to an offer to manage insurance defense cases for one of his clients, a large national insurance company. Although the pay was less than his partnership draw at his law firm, he was thrilled to be rid of the deadlines and stress of day-to-day litigator's life.

Bringing Larry in-house was part of an overall effort to reduce the company's reliance on outside counsel. Recent case law held that it was not a material conflict of interest for an insurance company lawyer to represent a defendant (cf. MR 1.7, cmt. 13). Larry's job was now to streamline the litigation process with the goal of reducing total costsd it was also to set settlement values based on the quality of the plaintiffs' counsel. In the company database, Gwen Breen has one of the highest ratings. "That is good," thought Larry. "I really like Gwen."

In contrast to Larry Ketchum, the impact of tort reform on Markovitz & Breen was the need for greater volume to find the cases that actually had economic value for the perspective of the firm. Although more potential clients were calling the firm, a smaller proportion was actually being taken as clients.

The merits of the case were completely separate from the analysis of whether the case could be cost-effectively litigated—the firm, after all, was bearing all the financial risk. As Ned's advertising became more aggressive, Gwen decided to leave the firm and start her own practice with another trial lawyer with similar personal and professional sensibilities. Her greatest asset was her reputation—she was a stellar advocate and a person of unquestioned integrity. From her professional activities, she was also very well known. So, completely by accident, she became the beneficiary of a referral network that was similar to Brogan's, albeit comprised of Chicago lawyers from a different generation.

Ned remained at the firm, confiding in Gwen that he understood her position. "For me, there aren't many options. I am a marketer and a businessman, not a lawyer. This is my stock in trade." Ned believes that his expertise in marketing may be especially valuable in the years to come, as more sophisticated uses of legal products begin to replace legal services. "The idea behind the storefront revolution remains true—there is an untapped market of legal need. I hope someday I can figure out how to do it. Maybe social media is part of the solution."

Notes

- "Gwen Breen" is based on an Indiana University Maurer Law graduate who remains active with the Law School.
- "Ned Markovitz" is a composite of several lawyers drawn from the world of franchise law firms and high-volume personal injury practice.
- Phillip Brogan" is based on the life of Phillip Corboy (1924-2012), a legendary Chicago plaintiffs' lawyer, who was named by the *National Law Journal* as one of the 100 most influential lawyers in America. Corboy similarly benefited from a mentor, James Dooley.
- Larry Ketchum is a composite of dozens of lawyers who work for the insurance defense bar and in-house with insurance companies.

Sources: for the sake of realism, the above narrative draws upon the following pieces

- William Haltom & Michael McCann, *Distorting the Law: Politics, Media and the Litigation Crisis* (2004) (chronicling the role of media coverage in shaping the tort reform movement).
- Sara Parikh & Bryant Garth, *Philip Corboy and the Construction of the Plaintiffs' Personal Injury Bar*, 26 L & SOC. INQUIRY 269 (2005) (chronicling career and impact of legendary Chicago plaintiffs' lawyer Phil Corboy).
- H. Laurence Ross, *Settled Out of Court* (1980) (exploration of the structure and economics of the industry insurance circa 1970, including the interaction between aggrieved victims, insurance adjusters, and lawyers).
- Jerry Van Hoy, *Franchise Law Firms and the Transformation of Personal Legal Services* (1997).

End **I** *Personal Injury Bar: Tracing Eight Lawyers' Careers*