FORMAL LITIGATION AND PROFESSIONAL INSECURITY: LEGAL ENTREPRENEURSHIP IN SOUTH INDIA

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INTRODUCTION

Social facts about a profession are usually treated by sociologists as dependent variables—phenomena to be explained (e.g., Carlin, 1962, 1966; Becker, *et al.,* 1961). I propose to analyze the features of the legal profession in a society which uses such services mostly in the pursuit of litigation. While the facts about the Indian legal profession are no doubt interesting in themselves, my purpose is to examine what can be learned about the process of litigation from a study of the profession. The relationship between lawyers' careers and work styles on the one hand and the demands for law work on the other has been presented in general terms by Rueschemeyer (1973: Ch. 1). The data I shall discuss deals with this relationship in more detail, and can, I submit, yield important support for a critique of the various analyses of litigation which assume that its function is dispute settlement.

India's experience with law has, of course, included the long period of colonial control. The Indian response to British colonial courts has been a subject of particular interest. The rate of litigation in a non-industrialized, non-urbanized society has been considered remarkable, because the lawsuits usually involved "unsophisticated" peasants, artisans, and merchants who might have been expected to abhor the alien, rationalistic, universalistic procedures of British law.[1] That people flocked to the courts with charges and countercharges is the observed fact, and litigation has remained a wisespread activity even in independent India.

The legal profession which developed in response to these events has been, and continues to be, almost entirely concerned with the processing of litigation between private citizens.[2] The

1. See Cohn, 1959, 1961; Galanter, 1972.
2. While some areas of practice are developing around the problems faced by citizens dealing with government agencies, most practitioners continue to see civil litigation as their man source of income and professional identity. See the special issue on the Indian legal profession in 3 *Law & Society Review* (1968-69).

profession is composed almost without exception of solo practitioners each of whom must single-handedly attract his own clientele. Because of this nearly exclusive emphasis on litigation, study of the profession as a vehicle for the analysis of litigation is not complicated by the wider range of activities, many non-litigational, which characterize the practices of many American lawyers.

METHOD

The research for this study was conducted in the city of Bangalore, Mysore State and in surrounding District and Taluq (i.e., administrative subdivisions of Districts) Headquarters towns during 1969 and 1970. Systematic field observation was conducted in courts at all levels, in lawyers' offices, in court compounds where clients wait for their hearings, and in various other settings frequented by lawyers and/or clients. Assistants conducted structured interviews with litigants at court. An attempt to sample lawyers with a structured questionnaire produced only a fifteen percent rate of return, but it generated a more valuable response from lawyers who sought me out in great numbers to explain why the questions could not be answered as asked. Questionnaires were completed by over half of the law school students studying in Bangalore's three law colleges, and these were augmented by in-depth interviews with many students. Further information came from notes taken by interviewers concerning the passing comments made in the course of the more than 1,770 interviews conducted with a representative sample of Bangalore's population (an interview concerning experiences with lawyers and litigation). Finally, in-depth interviews with more than thirty caste leaders helped to produce more detailed information on the histories and attitudes of some of the most experienced litigants in Bangalore. (Kidder: 1974).

CLIENT RELATIONS AND EXPERTISE

A. Alternative Conceptions of Professional-Client Relations

The practice of law is normally regarded by sociologists as typifying the work of a professional. Ideally, the interests of the lawyer and his client are unified. For the purposes of litigation, the lawyer's function is to adopt and assert his client's legitimate goals. As in other professions, the quality of execution of this function is thought of as variable. That is, like the doctor or engineer or orchestra conductor, the lawyer is supposed to be possessed of an *expertise* which he makes available to the

client in return for fees paid. In this view, expertise is both marketable and cumulative (in the same sense that longer study and brighter minds should produce more expertise) and as such can be measured and compared across individuals who possess the proper credentials. The expertise of the lawyer in litigation is supposed to be comparable to the expertise of the surgeon in a critical operation—in both cases the client is expected to believe that the outcome depends heavily on his professional's expertise. As in other professions, the credibility of the lawyer's claim to expertise depends on the belief that some underlying stable reality lends itself to discovery and mastery. The professional-client relationship then, is usually treated as asymmetrical, with the client in a position of dependency on the quality of the professional's expertise.

In contrast to this model stands a rival one which posits negotiation at the prevailing characteristic of professional-client relationships. This model emphasizes the negotiability of reality and, by inference, the divergence of reality definitions between professional and client. The expertise of the professional is portrayed as residing in his skill at negotiating a definition of reality which maintains his control of the situation, and preserves his image as expert. Doctors and patients, for example, are described as engaged, not primarily in a common search for an underlying problem, but in a bargaining session where offers are tendered, revised, and finally compromised.[3] Patients in psychiatric institutions are found to be released or detained as a consequence of their own decisions which are supported by skilled self-presentation strategies known among patients to be convincing to the doctors (Scheff, 1966, 62). In the same fashion welfare clients are discovered to be engaged in an ongoing struggle with their supervising social workers over assertions about the client's circumstances.

My research indicates that, in the context of Bangalore's litigation, the lawyer-client relationship is best described by the negotiation model. Furthermore, I shall argue that the observed instability in lawyer-client relationships is a product of the negotiable nature of adjudicative processes in the courts. The data show that the kind of litigation from which most lawyers derive most of their income presents a degree of instability greater than that in most of the other professions thus far analyzed within the negotiation model. Specifically, the litigation that prevails

3. See, for example, Roth, 1962. For a fuller treatment of these alternative professional models as applied to the legal profession, see Rosenthal, 1974.

in Bangalore produces career constraints for lawyers which are capricious and which therefore produce the patterns of behavior discussed below. Each of these patterns functions to shore up the expertise image which the lawyer must develop and maintain.

B. Image Management

Among the lawyers observed, one of the most basic problems is the acquisition and retention of clientele. They regularly joke about the devices they must use to lure and then impress clients. Most spoke of their first days of practice largely in terms of stage setting. One lawyer, for example, told of renting a tiny room which he furnished with a used table, bookcase and chair. He then acquired an out-dated set of law books which a benevolent senior lawyer was preparing to discard. As reference works they were useless because they had been superseded by later volumes, but they served to transform a bare room into a professional's office.

Stage setting of this kind was by no means confined to the beginners' offices. For most lawyers, a given cohort of clients is the only resource for generating subsequent cohorts, and the public arenas of lawyer-client interaction are stages upon which prospective clients will be either impressed or not. Several lawyers with thriving practices pointed out whole walls full of irrelevant journals in their offices. A nameboard in front of an office may say "Supreme Court Advocate" while its occupant may have taken just one case to the Supreme Court in New Delhi and lost. The sign, however, enhances the impression of competence and contacts in high places.

Even those universally recognized as "leading lawyers" in Bangalore show that they feel unceasing pressure to control the image they present. One way observed in court is to read out, hour after hour, every reference that can be found which even remotely relates to the case. Both lawyers (plaintiff and defendant) may recognize that one side has the decision firmly in hand for one reason or another (e.g., a mutually recognized binding Supreme Court decision, or the obvious inclinations of the judge). But the client, and especially other potential clients who may be watching, might feel that the lawyer is incompetent or unmotivated if he makes a mere five-minute response to a three-day attack by the opposition. Significantly, lawyers do this even when they know they will be able to assuage the client's mounting anxiety with some mini-victory on a preliminary point the importance of which has been inflated by the lawyer for just

this purpose. They also go through these motions while admitting privately that most of them will be useless as legal ploys should the case go on to appeal.

Lawyers at all levels of practice were observed using a technique that can best be labeled "lawyers' rhetoric." It is a kind of double talk which permits an advocate to fill time during his arguments without completing trains of thought or logical sequences. Often it complements another prop—an imposing pile of law journals stacked on the advocate's table and intermittently opened with a flourish for the citation of some portion verbatim. To verify the interpretation of these acts as primarily theatrical is, of course, difficult since a rival explanation would simply assert the researcher's own ignorance of legal technicalities. But several facts tended to support this interpretation. First, when I began noticing nonsequitors in a lawyer's presentation, I also noticed telltale knowing smiles passing among other lawyers in the courtroom and between them and the judge. When informant lawyers (usually any other lawyers who happened to be waiting around for their own cases to be called) were asked what a performing lawyer was trying to say, the usual response was "Nothing. He is just going on like that. Simply you see, that [gesturing toward an onlooker] is his client." Such comments were not made in derogatory tones: rather they were spoken matter-of-factly as if to say, "What could be more natural when the client is watching?" When this phenomenon was discussed with lawyers, there was no direct personal acknowledgment of its use. But its use by others was typically explained as being related to the lawyer's need to impress people who might bring future business. One lawyer, for example, triumphantly gestured to a group of twenty-one clients crowding his office, and explained that they had switched to him from another lawyer after watching him in court. (He also hastened to add that he would "of course" never engage in "client stealing," which seemed to be a problem of considerable concern in the bar.)

Image management is also reflected in the manipulation of deference symbols. Many lawyers, for example, arrange their office furniture in such a way that they sit above all others in the room even if all are sitting on chairs. Lower-status clients with petty cases are often expected to sit on the floor. The gestures of deference are particularly striking to an American (perhaps because we take for granted our own more subtle—to us—deferential practices). Lawyers expect these gestures and clients tend to be highly anxious about finding appropriate gestures which will please their lawyers. It is common, for example, for

clients to perform servant-like services. A routine sight around the courts is an imperious or preoccupied lawyer moving about followed by an anxious-looking client who is carrying the lawyer's briefcase, and hovers at a respectful distance while the lawyer talks with "more important" individuals such as other lawyers or wealthier clients. The wealthier clients show their respect by providing temporary amenities to the lawyers such as a car with chauffer. Fetching tea or other refreshments for the lawyer and his guests is not uncommon. Lavish, sometimes fawning praise is conspicuously heaped on the lawyer in his presence.

These gestures are augmented by the lawyer's insistence that the client be responsible for procuring documents, notifying witnesses, finding out court hearing dates and waiting in court to hear when the case is likely to be called. Instead of giving full attention to the client's case, the lawyer sends his client to court and attends to other business, or casual socializing, until his client comes running with news that the case has been called. Some lawyers do this even on days when they lack sufficient work to be able to claim they are too busy. Client reasoning seems to be that a busy lawyer must be a competent lawyer.

This pattern of gestures, maneuvers, and favors is analogous to the guru-disciple relationship[4] in which deference is expected as an expression of awe for the guru's divinely-inspired power. In the litigational setting, these acts serve to enhance the aura of power and mystery with which the lawyer secures his client's patronage and possibly the patronage of potential clients. It may sound paradoxical to say that the demand for deference and privilege produces client respect. But we need only ask ourselves, for example, which surgeon most people would trust more for critical surgery: the one who rides to his high-rent office in a chauffeured Rolls Royce, or the one who drives to a plain office in a ten-year old Pontiac. Clients in Bangalore seem to conclude that if a lawyer demands no deference, no privilege, he must deserve none. Though clients constantly complained about these demands, their actions and expressed attitudes demonstrate that they would not be satisfied without them. By insisting on deference and by nurturing idiosyncracies, the lawyer creates and sustains the image of volatile, explosive, sometimes irrational genius. The client may not like his lawyer personally, but he does have at least some basis for believing that his champion in litigation is no ordinary man.

4. The traditional master-student bond considered to be akin to the father-son relationship.

None of the above discussion should be taken as implying that these lawyers are treating their clients to a "con game" in which the client's interests are deliberately and cavalierly subverted. To a certain extent, the discussion thus far places the Bangalore lawyer alongside a class of free-lance professionals who all face the same problem of clientele development. American professionals such as doctors, dentists, and tax accountants can certainly be observed stage-managing their offices to give the right impression of expertise. Perhaps we could even conclude that patterns of deference are a typical imperative of professional-client relationships, being necessary to sustain the impression that both members of the team agree on the locus of expertise. The litigation lawyer's problems, and his responses to them, resemble those of free-market professionals anywhere. However, the evidence developed in this study indicates strains on relationships with clients which are unlike those facing any other group of professionals. We will suggest, further, that wherever formal litigation is structured as it is in Bangalore, it will tend to subject the lawyers who process it to the same strains.

C. Career Ambivalence

One body of evidence that lawyers experience unusual pressures lies in the attitudes which lawyers hold toward their own profession. One might expect that the achievement of professional status would be the basis for at least moderate pride and perhaps chauvinism about the profession. But Bangalore's lawyers generally made little attempt to disguise their personal ambivalence about a lawyer's career. Most confess, often with considerable embarrassment, that their original intent was to enter some other profession (usually medicine, engineering, or government service) and that they backed into law only after all other doors seemed closed to them. This was true of their decision to study law (many saw it originally as just another paper qualification that might enhance their chances for some bureaucratic position) and their decision to try practicing law after law school. Most of the practicing lawyers we interviewed indicated that they began to take the profession seriously only after they discovered that they could actually earn income that way.[5]

What was true for practising lawyers remains true among law students; less than half of those studying law in Bangalore reported any intention of attempting to practice, and even that

5. In fact, our low response rate on the questionnaire for lawyers was explained by most lawyers we interviewed as showing reluctance to admit in writing that law was a last choice rather than a role eagerly chosen.

minority tended to speak of the decision to practice as remote and problematic, being related to their pessimism about finding other options. In each law school in Bangalore, not more than two percent of the enrolled students expressed both enthusiasm for the practice of law and unqualified intention to practice.

The feeling among lawyers is one of ambivalence and uncertainty. Lacking is the quiet pride of a confident elite. But lacking also is an air of defeat. The opportunity structure apparently impresses those within it as discontinuous. The type of practice done by "leading lawyers," while characterized by unusual numbers and prominence of clients, appears to other lawyers as being the consequence of "luck" upon which they all feel dependent. Leading lawyers are seen as having achieved a breakthrough into top status by seizing on some fortuitous event, such as a chance contact with a potential client in court or a lucky referral from a momentarily overworked senior lawyer. Both nepotistic assistance and the virtues of skill and hard work are seen as secondary, though important, advantages, helpful only to those who happen upon a good source of clients. Though there is talk, quite bitter at times, about the injustice of familial headstarts, the most frequent criticism of "leading lawyers" centers on charges of hypocrisy, ruthlessness, snobbishness (forgetting their humble roots), and cynical manipulation of both law and social contacts. In other words, leading lawyers are held guilty only of having done in excess what most lawyers feel they must do to some extent in their own practice. Most lawyers see the profession as holding the promise of mobility. But they see success as a product of both good luck and a personal assertiveness that takes one beyond the bounds of conventional thought and behavior.

To lawyers, then a career in law seems to offer very little advance notice about the keys to success. Law practice in a litigational context is an entrepreneurial activity creating an entrepreneurial career. That is, it is openended, fluid and has great potential for remarkable mobility in both directions for those willing to risk innovation. It is a career which reveals the keys to success only in retrospect, and makes that revelation ungeneralizable to incoming recruits.

It is striking, for example, that very few of Bangalore's lawyers (even the most successful) would even consider allowing their sons to enter law. There was almost no evidence that a son would be encouraged in such a choice. Regardless of their success, the lawyers spoke of the great uncertainty, the inevitable "lean years," the unpredictable and over-long work schedule and

its consequent disruption of family life, and the necessity for close, though often disagreeable relationships with fickle clients. These fathers looked, instead, to the bureaucratized professions (medicine, engineering and government service), which many of them originally aspired to themselves, as prestigious havens for their sons.

The lawyers' culture abounds with Horatio Alger-style accounts of spectacular successes (and failures) of law careers. Often they hyperbolize the pressures and uncertainties most lawyers feel, while reasserting the "sky's the limit" view of potential mobility. One such story concerned a leading Supreme Court advocate who, at age 80, and with a fortune built on his professional success, continues to live in a one-room low rent apartment and maintains a grueling schedule out of fear that luck might suddenly ruin him in spite of his ability to command fees in excess of five hundred dollars per hour. He reputedly sleeps with his pants folded carefully under a pillow so that he can avoid extra laundry bills. Such miserliness signifies to those who tell the story the exaggerated consequences of a career constructed around the capricious events of litigation. Some consider it not exaggerated. They point out that most of the more successful senior lawyers in Bangalore pay nothing to the juniors who attempt to apprentice with them. Constantly on guard against the unexpected event or treacherous act, these senior lawyers expressed the typical entrepreneur's rationale for their exploitation of juniors: "I made it by my own hard work and some luck, and if you work as I did, you can make it too."

This belief in personal achievement was reflected in the generally endorsed view that no lawyer can rely on kin as a source of clientele. Lawyers shared this belief and it is consistent with our conclusion from the general survey of Bangalore that people almost never rely on kin for a referral to a lawyer. Particularistic factors such as membership in a particular minority or origin in a particular region of the state has served as a basis for clientele development. But it is also true that the profession has provided remarkably open opportunities for success.[6] Where a successful lawyer is thought to have received

6. Two processes which might be responsible for this are: 1. The rapid population growth in the area, especially that produced by migration. This has provided fertile new ground for the development of litigation issues, and hence for professional careers. 2. The creation of new areas of law over which litigation can proceed. These two processes may be related since, as Mayhew (1974) has shown, increasing population density within a bounded area will normally produce increased interpersonal conflicts at a geometric, rather than arithmetic, rate. If so, then rapid population growth such as has occurred in Bangalore since independence may be expected to pro-

a boost from particularistic contacts, his overall success is still considered an achievement which would be very difficult to pass on, for example, to a son who lacked the creative, innovative spirit of an entrepreneur.

Those who enter the profession, as we have noted, admit that it is a "last" choice. But they also speak of being attracted to law by its reputed openness. Among lawyer-respondents, the statement "So much scope is there [in the profession]" became a cliché in reference to reasons for entering the profession. Furthermore, for those stuck in dead-end bureaucratic jobs, lawyering gave them the chance to be their "own boss." Voicing this attitude, one young lawyer foresook a coveted position in one of Bangalore's two law firms in favor of a return to "court work." His high and predictable salary with the firm reflected his close professional contact with some of the most influential industrialists and bankers in India. But it was almost all "chamber work" —preparation of documents, searches for legal precedents, and consultation with clients. It rarely offered the openended creative potential of ordinary litigation. In a word, it required him to be an "organization man." In response, he packed his bags and returned to litigation, explaining that litigation is the true test of a lawyer's mettle and that work in the firm was dulling his ability to do court work, removing him from the mainstream of the profession, and costing him the respect of other lawyers. He added, of course, that there was greater potential for self-advancement in being on his own.

The following conversation with another moderately successful young lawyer draws many of these lines of thought together. He was explaining why he would stay in Bangalore instead of returning to his home town to practice.

Ram: I am staying here to try my hand. You see, Bangalore courts—the practice here is like a vast ocean compared to back there. Here there are 50 different courts to practice in—there there are only two.

Q: So there is more chance?

Ram: Exactly. See, I should say, so much in this profession depends on . . . , yes, we must say that it depends on luck. You see, there are so many lawyers and some of them will be having the luck and others they will have no chance.

Q: You mean luck in court?

Ram: Luck in court, but mainly also luck in the clients—simply getting the clients. So much depends on circumstance. There are so many brilliant lawyers who are just simply

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duce not just more of the same kinds of problems for adjudicative bodies, but to create critical pressures which lead to innovative attempts to redefine relationships. These pressures may lie behind the perception of opportunity which characterizes part of the average lawyer's attitudes.

> struggling. And there are these others who know almost nothing about the law, yet they have the luck and they will succeed.

As in this case, the combination of risks and opportunities in law both attract and frighten most lawyers. It is a profession of entrepreneurs who prevail through innovation rather than a profession of experts who merely apply received knowledge or systematically elaborate on that knowledge. This can be inferred from the attitudes we have discussed above, and is reflected finally in the atomized condition of the bar. Rueschemeyer (1973, 47-48) has detailed the organized nature of the profession in the United States, where practice involves much more than just litigation. In Bangalore, the primary function of the Bar Association is to maintain a canteen, library and lounge for the members' routine daily needs. Beyond that, it is "every man for himself." Several instances were described, for example, where a piece of legislation being considered by the legislature had the clear potential to either reduce or increase the amount of litigational work and legal fees available to the profession. Yet those few who tried were completely unsuccessful in mobilizing the profession to exercise collective influence on such clearly relevant issues. Their failure had nothing to do with ideological objections. Rather, their colleagues were ignorant of legislative developments and saw nothing to be gained from collective response. They therefore simply ignored the futile attempts to organize. This is not to say that Bangalore's lawyers are apolitical. They debate vigorously and participate in a variety of parties in key leadership roles. But they do so on behalf of other social aggregations, not the profession. In the profession, open and fierce competition for clients occupies the full-time attention of most lawyers. And the manipulation of professional imagery, as discussed above, is one of the key weapons in the struggle.

D. Client Ambivalence

1. Patterns of Suspicion

One middle-aged lawyer during an interview was trying to express the scope of difficulties facing even the most conscientious practitioner.

> Dev.: And you see, the profession here is so difficult—not like in America. Because here there is not trust from the clients. They simply will not trust their lawyer.
>
> Q: You mean the clients won't even trust their own lawyer, the one they have engaged?
>
> Dev: No, no trust. They will go on doubting and hiding things right up until they have their money in hand, or their property guaranteed. And even then they will not pay

their fee properly.
Q: There is trouble collecting fees?
Dev: Almost all the time, definitely. You see, these fellows come in from the villages looking for a lawyer and they have no trust. Particularly with these new fellows, they will come, and there is the danger that they will be saying the wrong thing in court and lose even though they have a good case. These new fellows are always doing this thing so it is a strain for the lawyer. That is why my father advised me not to go into law. . . But I had my own thoughts and I went into law anyhow [said with an air of resignation].

The most predictable characteristic of lawyer/client relationships to emerge from all sources of data is the fact of deep mutual mistrust. There were almost no interviews with litigants in which the respondent failed to *volunteer* statements maligning his lawyer. This was true both of litigants whose cases were finished (even those decided favorably) and those still in litigation. It was also true regardless of the litigant's degree of success, and regardless of the amount of experience he had had with litigation (though the bases of derogation differed according to degree of experience).

On the other side of the relationship, there was continuous discussion among lawyers (like the one quoted above) about their negative experiences with clients. Stories about non-payment of fees, change of testimony in mid-stream, failure to appear for a hearing, switching to another lawyer, and other practice-related offenses were among the most common topics of conversation whenever lawyers were relaxing together. In addition, however, there was considerable personalized discussion about examples of client behavior in everyday life which demonstrated the perfidy and ignorance of clients. These examples were drawn directly from the lawyer's intimate knowledge of his client's private life.

These observations seem to contradict what was said earlier about gestures of deference. The situation is epitomized by the following incident. I was spending a two-hour period in a lawyer's office just observing and asking occasional questions. At one point a well-dressed man entered and carried on a long conversation with the lawyer. His bearing at first was extremely uncertain, his words and manner expressing severe anxiety:

Client: Well, sir?
Lawyer: Well?
Client: So you went there?
Lawyer: There?
Client: Yes, did you go?
Lawyer: Yes, I went there.
Client: Then?
Lawyer: Then?
Client: Did you get what I wanted?

Lawyer: What you wanted?
Client: Yes, you were able to get it?
Lawyer: (Pauses and smiles wryly) I got what you wanted.

This cat and mouse routine had the client on the edge of his chair and practically in tears. When the lawyer uttered those last words, the client wilted back into the chair and began effervescing to me about the miraculous skills of his lawyer and what a stroke of fortune it had been for him to find such a genius. The conversation then went into detail about the favorable move that had just been completed and the client continued to exclaim about the lawyer's unbelievable skills. The lawyer accepted the praise with a smile while explaining the next steps to the client. The observed situation, then, contained all the elements of conspicuous deference discussed above.

When the client had left, the lawyer began to explain his case—a bankruptcy suit in which the client's business was being dissolved. The lawyer then began to elaborate the description with evaluative comments about the client. He pointed out that this was the client's third bankruptcy in ten years, and his choice of words clearly conveyed contempt for the man. He described how he had helped the client dispose of three cars and hide the money to reduce the effect of the suit. But his expressed attitude was not "See how clever we were." Rather, he used the story to show how the client's incompetence and venality had reduced him to such base tactics. His entire description of the client was derogatory and conveyed not just contempt but distrust of the client's intentions toward the lawyer. He obviously saw little lasting importance in the client's effusive praise.

Based on our observations and interviews with litigants, such skepticism was warranted. We repeatedly witnessed cases of face to face deference which dissolved into expressions of doubt, mistrust, and contempt when the lawyer had departed. During one afternoon in another lawyer's office, for example, the lawyer urged the author to interview one of the four or five clients present. In the interview, the client explained conspicuously that he had never been involved in litigation, but was just consulting the lawyer on a tax-related problem. Everyone in the room seemed to accept his response as basically accurate. Two days later, when the client visited my house, he spent at least two hours describing all the litigations he had initiated and won. As it turned out, he was approaching the status of "court bird"—one whose frequent involvement in litigation wins him a widespread reputation for unusual familiarity with the courts. When I asked why he had denied litigational involvements during the

conversation in the lawyer's office, he replied that lawyers can never be trusted and that he did not want that lawyer to know any of the details of his cases, for which he had used other lawyers. He indicated that he would tell the lawyer only what he needed to know to advise on the tax problems. The contrast between his expressed attitude and the friendly familiarity and deference of all those present in the lawyer's office two days earlier was typical of numerous interviews with clients.

These patterns do not however, contradict the thesis that deference patterns and other image-management techniques function to preserve the lawyer's livelihood. The point is that the litigants express a *mixture* of contempt and respect, a combination of confidence and doubt. Most important in this study is the fact that the *confidence* usually related to the lawyer's skill or *expertise,* while the *doubt* concerned the question of his *dedication* to the client's interests. *Contempt* seems to arise in response to the client's experience with the lawyer's *professional detachment* from the case. In other words, the tasks of litigation demand professional responses which regularly drive a wedge of doubt and contempt between the client and lawyer, and thereby generate basic career problems for all lawyers involved in litigation.

2. The Client's Experience—Contempt for the Legal Way

A novice litigant's first approach to a lawyer is usually laced with ill-disguised ambivalence. He usually voices the widely-endorsed view that one must use courts only as a last resort, after all compromise measures have failed. In all probability, the lawyer he approaches is a distant stranger with only the most indirect connections "through friends," such as a village headman or a union leader to the client's world.[7] The client usually shares the general public ambivalence towards lawyers—a mixture of respect (based on the conspicuous success of a few practitioners) and mistrust. In this state of ambivalence, the novice client comes both wanting and needing to be persuaded of his lawyer's skill and trustworthiness.

7. Indeed, most lawyers agreed that taking on cases of close friends or family was risky and normally to be avoided. The exposure of highly confidential information was viewed as necessitating a healthy distance between client and lawyer lest the lawyer become embroiled in the unwanted complications of personal obligations. Further, clients tend to avoid lawyers too closely associated with them on the expressed grounds that only particular outside groups "make good lawyers." One caste group, for example, took their cases to Brahmin lawyers rather than members of their own caste because they could not believe that their own people could be as competent as the Brahmins.

Caught in this quandary, the client must then initiate the interaction by revealing deeply personal, potentially damaging information. For many clients, this initial contact apparently feels like a preliminary trial. The individual makes every effort to compensate for his vulnerability in the situation. He works hard trying to convince the lawyer of the truth and strength of his case. In doing so, both his story and his projected self-image are likely to be inflated by his eagerness to be accepted on his own terms. His initial story is inadequate not only as a common-sense description, it is also lacking because it is expressed only in layman's terms. Facts seen as important by the client are emphasized; "irrelevancies" are omitted, especially those that are painful or compromising to his understanding of his claim. He exposes his naivete to the lawyer as facts and past actions are described which, for legal and procedural reasons, "ruin the case" by eliminating some strategies as viable options.

With the client in a posture of vulnerability, the lawyer must then begin organizing facts and law into a case that can be presented in court. To do so, the lawyer must extract from the client facts which may threaten the image put forward by the client. Without such facts, the lawyer cannot build alternative theories which will improve the client's strategic position. And yet, as lawyers repeatedly stated, clients at this stage usually try to conceal facts they consider damaging to themselves. A major source of this deception is the client's fear that the lawyer could use this information to hurt him in some way. The lawyer's problem, then, is to extract the information in a way that will satisfy the client concerning the necessity of disclosure.

The details discussed so far may not seem especially different from some aspects of the work of other professionals.[8] Doctors face similar problems, for example, when attempting to diagnose symptoms resembling syphillis in a "respectable" patient who repeatedly denies prior sexual contacts. The professional's problem in each case is to negate the client's resistance to the need to fully expose and clarify his expectations, intentions and previous actions. For a freelance professional in a competitive market, this is a risky process, demanding a technique which does not anger the client, and placing considerable pressure on the professional to produce conspicuous results.

Two features of the lawyer's job in litigation, however, make it considerably more demanding of the professional's diplomatic skills. For one thing, most professionals encounter this kind of

8. See Rueschemeyer, 1973, pp. 13-14, for comparative discussion.

client resistance only occasionally, since only some of their clients' problems are morally "loaded." The client, on the other hand, is caught up in a conflict, usually involving strongly felt normative judgments. Hence, the professional who must service a litigant is almost always dealing with a client and situation which, for the client, is "morally loaded."

Secondly, the lawyer's task in constructing a case for court places him in a position not usually faced by other professionals. Not only must he extract guarded information from the client, but he must then subject the client's entire position to professional redefinition. Formal litigation imposes the need to develop a portfolio of alternative legal "theories" which can first be examined for legal strengths and weaknesses, ranked into a set of priorities, prepared and protected like a "fail safe" system, then altered innovatively as the events of litigation make some positions untenable.[9] To do this, the individual facts, which the client thinks of as intimately integrated into the justice of his position, must be sorted out, categorized, and constantly rearranged into alternative configurations. Many of the client's most basic assumptions about the relevance of events and facts will be shattered by the lawyer's decision to discard peripheral or legally irrelevant details. As this occurs, the client must tenderly be disabused of his sense of the inherent justness and coherence of his case. In place of his initial expectations, the client is asked to help create what to him appears as a twisted, dishonest, opportunistic deception which he is told is necessary for his success in court. To the client, the lawyer's actions seem designed to make them both accomplices in a prolonged lie. This aggravates both the client who believes in the truth of his claim (exposure of the "truth" is often an important aim of such litigants) and clients whose initial intent was to succeed through deception (it is difficult to share the awareness of lying with a stranger whose reactions and attitudes are unknown quantities.)

In the face of this disillusionment and wariness, it becomes the task of the lawyer to convince the client that his recommendations, even if distasteful, are necessary. To the extent that the client resists, based on common-sense notions of justice or persuasiveness of an argument, he curtails the lawyer's ability to manipulate the elements of litigational interaction in the client's favor. To the extent that the client yields to the lawyer's

9. In current Watergate-inspired discussion, I am speaking here of "scenarios".

judgment, the relationship becomes tainted with resentment, particularly when gratifying results are not rapidly forthcoming.

Parsons (1964: 370-85) interprets this aspect of the lawyer's role as mediational. He argues that, by reinterpreting a client's case for legal purposes, the lawyer serves as a buffer between the client's demands and those of the legal order. But he misses the point, overwhelmingly supported in this research, that clients may experience this mediation as not merely compromising to their interests but as destructive of the legitimacy of the process. Whether or not they continue to expect to win the specific objects of the litigation, they lose any sense of connectedness between their claims, their notions of truth and justice, and their sense of self-esteem in relation to legal values. This view is well-summarized in the words of one seasoned litigant:

> "If we have to win the case according to law, we must tell lies. If we stick to the moral conscience, we will have to forget about winning the case."

The lawyer's routine response to a client's case is, then, one which regularly stimulates hostility and suspicion on the part of the novice litigant. At best the lawyer can hope to retain the client's loyalty on the grounds that the lawyer, though a professional liar (in the client's eyes), is a good liar who will use his skills on the client's behalf.

But even this hope is regularly eroded by the subsequent events of normal litigation in Bangalore. Having established the relationship on the grounds of cooperative deception, the lawyer must then maintain his client's trust. But he must do this in the face of his demonstrated willingness and ability to carry on public deception. Under such circumstances, the client has only the practical criterion of results by which to evaluate the lawyer, since the lawyer's role as champion of the "real" cause has been destroyed by the reduction of the cause to a process of tactical maneuvering. In almost every interview with less experienced litigants, their descriptions of their experiences included expressions of mistrust of their lawyers. Those who had relied on local influentials to help them find their lawyer often turned back to those leaders for reassurance that the lawyer could indeed be trusted. This mistrust was clearly a sensitive point with the lawyers. For example, a prominent lawyer introduced the author to a close associate with whom he had been boyhood friends and law school classmates. When I asked whether their conspicuous friendship didn't occasionally stir the doubts of a client whose opponent was being represented by the friend, the respondent's whole manner changed. His face darkened, he sat up

from his relaxed position, and began lecturing me about "these people" who fail to grasp the ability of the professional lawyer to separate his personal life from his professional obligations. With a sweep of his hand he rejected the anxieties of "these people" and proclaimed that they could take their business elsewhere if they objected to his social life. I had obviously touched a raw nerve in this case, one which was quite common among the lawyers.

3. The Client's Experience—Delay

One of the most predictable complaints expressed by clients about their lawyers was that there was nothing done to defeat the delaying tactics of the opposition. No matter how quickly a case may be proceeding, novice clients have expectations which will not be met by the pace in court. Still convinced that "true justice" will ensue if only the judge can be made aware of his opponent's outrageous behavior, the litigant grows restive as procedural and terminological debate and maneuver seem to obscure the "real issues." In casting about for explanations for this "delay," many clients come to suspect their own lawyers. The suspicion which is least harmful to the lawyer is that he just does not give his full attention to the case. More damaging to the relationship however, is the suspicion, which often grows as the case wears on and frustration mounts, that his lawyer has ulterior motives for prolonging the case. One often-voiced suspicion was that the lawyer was actually interested only in prolonging the case in order to increase his fee. One litigant with moderate experience, for example, explained:

MV: Yes, yes, going to court takes too much time, and then it costs so much in the meantime. And these lawyers will be making so much in the meantime—so many of them do not stick to their fees.

Q: Is it? How is that?

MV: Yes, they simply do not stay with the fees they say.

Q: You mean, they set a fee, and then start asking for more?

MV: Yes, they will set a fee at the beginning—you see, suppose the fee is Rs. 200 at the start. But then part-way through the case, the lawyer will come and demand more, for this or that additional work he says, and then if you do not pay, he will not go to court for you.

Fee-setting practices in Bangalore contribute to this suspicion, since contingent fees are not allowed. The alternatives are to charge a fee for each step in the process, such as ten rupees per hearing, regardless of outcome, or to charge a flat fee regardless of the cases's duration. Most lawyers opt for some version of the former because litigation is so non-routinized that they

consider a flat-fee too risky. It is risky because a case's duration is usually unpredictable and because so many cases eventually end in some kind of out-of-court compromise, in which clients may respond to fee-payment requests by asking "What did you do for me? You wasted my time in court, and we finally settled this thing among ourselves." Usually, then, the fee arrangement is for immediate payments for each court hearing. The typical litigant appears at court prepared for debate and decision only to watch as the case is postponed for what seems like an endless list of reasons. Little wonder then that client frustration often becomes centered on the lawyer, who clearly does not suffer from these events.

Since most litigation involves claims to alienable property or value, another major source of suspicion is the lawyer's potential as a turncoat. Being a stranger to both plaintiff and defendant in most cases, he is not likely to be suspected of prior conflicting loyalties, but he can easily be suspected of having an interest in increasing his wealth. And because he is, as we have shown, the proximate source of both demystification and remystification about the legal system (he demystifies by removing the normative issue of justice and remystifies by manipulating tactical definitions of the current status of a case), he is also a highly plausible suspect in the litigant's frustrated speculation that the whole court apparatus is a conspiracy against him. The lawyers, after all, conspicuously associate with each other between court appearances. There might be good money for the lawyer who did secretly join the opposition. And what can one's lawyer offer as contradictory evidence most of the time but the same old promise of real progress in the next hearing?

LITIGATION: A decision or a Bargain?

Having analyzed the characteristics of the profession that is most deeply involved in litigation, we must now examine how those characteristics yield information about litigation in Bangalore. In discussing the lawyer-client relationship, we have already spoken of the process of legalistic abstraction which distorts the case from the client's point of view. The events of litigation occur within a system whose manifest function is adjudication. Ideally, adjudication in common law systems settles disputes between citizens by declaring one party right and the other wrong in their claims. This declaration is to be arrived at by rational exposure and examination of all relevant facts and application to those facts of existing legal rules. The definitive characteristics of litigation, in contrast to other modes of dispute settlement, are the decisive finality of judgment and its either/

or approach. As Aubert (1969: 284-9) describes it in ideal-typical terms, dispute settlement will remain a negotiated process as long as a positive sum solution is possible.[10] Litigation via adjudication occurs through transformation of the conflict into a zero-sum game, that is, a conflict whose positive outcome for one side necessarily produces a negative outcome for the other. "When a conflict of interest passes from the stage of negotiation to that of litigation, one of the parties must be prepared to suffer a total loss" (Aubert, 1969: 286).[11] This adjudicative forum is the context within which the opportunities and constraints that determine a lawyer's career arise.

But why should a framework so highly determined by rationalized rules and processes, designed as it is to produce such clear-cut results, produce at the same time a profession so caught up in entrepreneurial innovation that its members feel continuous severe pressure on their professional images and career chances and its clients regularly display growing distrust? Why, in other words, doesn't the absoluteness and finality of the adjudicative model provide a firm base on which the lawyer can rest his claim to expertise and on which the client can rely for predictable, conclusive, rule-determined outcomes?

The paradox is resolved if we abandon the characterization of litigation as an adjudicative technique of dispute-settlement. I have elsewhere (Kidder, 1973) discussed the rather considerable evidence that the most typical result of litigation in Bangalore is some kind of compromise settlement. Such settlements normally conclude sometimes remarkable protracted delays and strategies of intricate manipulation of adjudicative procedures and personnel. In terms of statistics, the most common result of a case is some form of settlement without trial. These statistics bear increased significance when combined with court statistics on the average duration of cases (seventeen years from initial hearing for original suits) and with the pervasive description of court proceedings as being hopelessly delayed. The

10. Aubert refers to this positive-sum solution as a "minimax" solution (one reflecting the desire to minimize the risk of maximal loss.) I am using the term "positive-sum" here in order to distinguish it from a "negative-sum" solution in which the loss that is risked may go, not to one's opponent, but to a third party, meaning that both opponents stand to lose. Both positive- and negative-sum solutions may stimulate minimax strategies, but the objective consequences for the disputants may be considerably different.

11. Zero-sum games do not necessarily imply an all-or-nothing (total loss) consequence. They function only to make the gain of one party come at the expense of an equivalent loss to the opposite party. In the case of litigation, Aubert's point about "total loss" is that, being a zero-sum game, litigation makes total loss feasible and makes any loss short of total into the reciprocal of the opponent's gain.

conclusion of that earlier study was that when the parties to a dispute have approximately equal resources, both monetary and social, such as knowledge about the legal system, contacts with court actors, support from relatives and friends, they will be able to stalemate each other within the "confines" of litigation. The stalemate becomes the probable outcome because of the complexity of rationalized procedures. Those procedures furnish both sides with an inexhaustible arsenal of delaying techniques. Use of that arsenal depends mainly on the ability to continue paying. Persistence in such a costly stalemate was found to be a consequence of the multiplex, prolonged nature of most relationships involved in litigation in Bangalore.[12] Whereas simplex relationships tend to engender conflicts with clearcut issues and little prospect of future interaction between litigants, multiplex conflicts involve complex issues which motivate the litigants to prolong litigation as one item in an ongoing conflictful relationship.

In other words, in the face of litigant resistance the machinery of adjudication in Bangalore does not display the capacity to achieve and impose the kind of either/or decision which Aubert considers to be the essence of adjudication. The key point is that the "arsenal" of delaying tactics and strategies is something which is open to constant innovation by lawyers who approach the legal structure with a manipulative attitude. And because the cloture which both parties to a suit may desire is not forthcoming (neither side can achieve an effective legal action which is invulnerable to further attack) the lawyer becomes, in the eyes of both the client and himself, only an expert in delay. For some, this may be desirable. As one highly successful lawyer described his role:

> "But see, mostly they will end in a compromise after all. All he wants is to delay—we are hired to delay the case, that is all. Because after so much time, things will cool off and finally they will reach some agreement . . . So we become experts in delaying the matters . . . So like that, it is not a question of winning the cases."

But for each client who values delay, there is normally an opponent who condemns it. And in the average case both sides will have ample opportunity to experience delay as both advantage and frustration. Expression of that frustration was an almost universal phenomenon in our interviews with novice litigants.

12. See Van Velsen (1966) for a discussion of multiplex and simplex relationships. The basic difference lies in the number of functional and/or affective ties which make up the relationship between any two individuals. Simplex relationships involve only one or two such ties, while multiplex relationships involve many.

Only the dedicated "career" litigants, the "court birds," spoke favorably of it and this was because they had learned to use it to their advantage.

In this situation, the lawyer is the immediate and conspicuous agent of the frustrating experience. Initial assumptions of expertise linked to a rationalized, predictable and just sytem of rules are washed away by the growing realization of the opportunity available to the opposition to continue to "obstruct" real justice. In fact, it takes considerable ingenuity and the "expertise" of "knowing the ropes" around courts to enable a lawyer to maintain the stalemate. But this seems little consolation to most clients, especially because it is an achievement which takes little *visible* effort on the lawyer's part. It is in this context of delay and absence of results that the charges of incompetence and dishonesty arise. Judges rarely bear the brunt of the frustration, for clients tend to attribute adverse decisions to their inability to reach the judge with the "true" story as opposed to the story concocted by lawyers on both sides. Thus it is the inability of the adjudicative system to provide a decisively adjudicative outcome which creates the basis for both the opportunity and the conspicuous degree of insecurity in legal practice.

In studying the lawyer-client relationship, the model we have discussed so far was not the only one found. But the alternative type does not contradict the analysis—rather it supports it. The career litigant, or "court bird" as he is known, possesses the average financial resources and superior knowledge about the court system. He has overcome the novice's despair and distrust. He tends to develop quite different relationships with lawyers in cases where his opponent is a novice. The lawyer in this case is a puppet, supervised by the litigant who needs him primarily as a researcher and as a voice licensed to speak in court. The lawyer is usually a young graduate who receives none of the deference we described above. The "court bird's" mistrust of the lawyer extends only to the question of his ability to follow instructions and remain discrete. The imbalance of skills and resources transforms litigation into a predictable process for the court bird. He uses the court's resources to chip away at his opponent's resistance. Simple necessities such as reviewing court documents may be made difficult for the novice if the court bird asks such a favor from his acquaintances among the clerks. What starts out as a simple suit by a novice can be turned into a nightmarish maze of countersuits and preliminary appeals by the career litigant, who finds them an insignificant added burden

since he spends almost all of his time around the courts anyway processing his other cases. Paradoxically, then, where litigation most seems to resemble the adjudication model (i.e., where one party appears to acquiesce to the court's decision in favor of his opponent), it does so because of the preponderance of experience and resources on the career litigant's side. In other words, it is not the power of the adjudicatory apparatus to impose its will on the loser—it is rather the power of the career litigant, wearing down his novice opponent, which produces an end to the case. When this imbalance is elminated, as when two court birds engage in litigation against each other, the previously discussed pattern of delay, deference to the lawyer mixed with distrust of his motives, and out-of-court compromise re-emerges because such cases are not routine for the court birds. They enter such litigation only reluctantly, with considerable doubt about the outcome, and only when something of great value is at stake. Consequently, they tend to engage only the most prestigious, awe-inspiring lawyers available, evidencing their own continued mystification about realms of law with which they have no experience.

In terms of game analysis, cases may, as Aubert asserts, move into courts when a positive-sum solution is no longer considered possible. But because of the manipulability of the adjudicative system (and the consequent ability to exploit the factor of litigation costs facing an opponent), litigation transforms the conflict from zero-sum into a negative sum game confrontation by giving both parties a shared interest in avoiding further costs of litigation. I am proposing here that it is a mistake to treat *adjudication* as a phenomenon which normally functions in a way significantly different from *negotiation*. Gulliver (1973: 682-3) also proposes that the two are very similar, but his argument is that negotiation is similar to adjudication because negotiation is not a free-for-all: that is, as in adjudication, a negotiated relationship arises under the influence of identifiable rules. The argument I make is just the opposite—that the influence of rules in adjudication is overrated and that litigational outcomes are better predicted by the predictors of success in negotiation—strategic advantages of wealth, influence, prior experience, etc.

My difference with both Aubert and Gulliver is that they treat litigation as an instance of "dispute settlement" with the dual functionalist implications that: 1) disputes are in fact ordinarily settled, and 2) social systems, to remain stable, must provide legitimized devices for dispute settlement. I submit that

we lose more than we gain by trying to conceptually segregate "dispute settlement" events from the other events associated with conflicts of interest. To focus on litigation as a unique norm-constrained process distorts our understanding of its significance in the relationships between conflicting parties. This is because we accept too easily Bohannon's (1973: 309) assertion that adjudication isolates conflict (in Bohannon's terms, the "disengagement" of the difficulty from ordinary institutions, and the "reengagement" of the resolved relationship.)

The study of litigation in Bangalore reveals that most litigation is better understood as the expression of ongoing conflicts within social groups. This finding represents a special case of the general proposition that conflicts are better understood, not as deviant-case disruptions of normal relations, but as a significant dimension by which normal relations are identified (Coser, 1956: Ch. 2, 3). Litigation does not "disengage" the conflict, though most novice litigants seem initially to expect it to do that. Instead litigation becomes another arena in which the conflict develops. In Bangalore, the great majority of lawsuits involve parties with prolonged histories of interaction in various spheres of social and economic activity. As I have elsewhere proposed (Kidder, 1973) these multiplex relationships introduce into the litigation process the complications of both accumulated previous antagonisms and anticipated future relationships with the adversary. The type of relationship (multiplex or simplex, continuing or episodic) existing between litigants should be considered as a key variable determining the duration, strategies and consequences of litigation. My expectation that this will be found to be a decisive variable in litigation is linked to the finding that the strategies and consequences of litigation are not restrained by the official norms of the adjudicatory institution. The normative impact of the courts dissolves under the pressure of two variables: 1) the relational characteristics of the antagonists, and 2) the balance of resources between them. The former determines relative abilities to sustain a chosen strategy.

In adopting this point of view, I am directly questioning Gulliver's (1973: 682-3) contention that adjudication is "more inhibited by rules and norms" than is negotiation. He was criticising the position taken by Aubert (1969) and Eckhoff (1966) that a valuable distinction can be drawn between *conflicts of interest* (which are resolvable through negotiation, not adjudication) and *conflicts of value* (which are best solved by adjudication). Gulliver argues that a simple dichotomy ignores the de-

gree of overlap between the conflict types and the forum types. But he still clings to the idea that adjudication differs from negotiation because of its normative orientation. Based on the analysis presented here, I would argue that he is on much firmer ground when he suggests (1973: 682-3) that the primary difference which formal litigation makes is the introduction of third party interests whose formal public roles *may* incline them to impose certain outcomes. The optional nature of such imposition opens up a whole set of questions beyond the scope of this study concerning the conditions under which this third party does effectively mobilize its resources to impose outcomes. But in the routine litigation studied here, the rules and norms of the third party are routinely ignored or circumvented by tactical legal decisions and unpredictable innovation of legal positions. And because this is so, Bangalore's lawyers are unable to find a true basis of stable legal knowledge within which to root their claims to expertise. Because the rules and norms are ineffective, those lawyers become "experts at delay," functioning primarily as unappreciated midwives for compromise.

SUMMARY AND CONCLUSION

How generalizable is this analysis? Is adjudicatory normlessness only a culturally peculiar characteristic of the Indian legal system? I have argued elsewhere (Kidder, 1973) that there is ample evidence in fully "Westernized" societies that, at the very least, this analysis holds across cultures wherever litigation occurs within similar structural contexts. We need not reiterate that evidence here. But Wasserstrom (1971: p. 81), reflecting the frustration of some radical American lawyers whose ideological orientation has sent them in search of "victories" through litigation, seems to speak of a pattern similar to that discovered in Bangalore:

> Although there are, of course, some respects in which litigation is a "winner-take-all" situation, we should not let these glamorous features obscure the far more significant respects in which the process of litigation and adjudication derive from and are infected by the model of the market place in which a good bargain consists in each of the parties making concessions and compromises.

His discussion supports the conclusion presented here: that the law may provide public victories favorable to a claim, but that since the material consequences for the client (or class of clients) can still be negated through other legal maneuvers, there will always be accelerating pressure in the litigational arena to strike

some kind of compromise. The radical's distaste for such outcomes is in no way different from the frustrations expressed by Bangalore's novice litigants over their disillusionment with "lawyers' justice."

Rueschemeyer (1973: 6) suggests that the type of practice demanded of a lawyer will depend on whether the issue concerns the operations of a governmental bureaucracy or commercial transactions. In the former, he contends that the lawyer's primary contribution to a client is his expert knowledge of rule systems. In the latter, he sees the lawyer's contribution as consisting primarily of partisan dedication to the client's cause. In other words, Rueschemeyer is arguing that in the realm of commerce, the profession takes on the characteristics, not of expertise, but of assertive partisanship in which expert knowledge of rules takes a back seat to energetic pursuit of a client's goals.

Clearly there are other types of legal practice besides the one discussed in this paper. It may be that the bureaucracy as legal actor creates different, more predictable, tasks for lawyers, enhancing the importance of their expertise. Possibly room for innovation is curtailed in cases involving bureaucracies, though some evidence seems to raise doubts on this score (Bazelon, 1960; Macaulay, 1963). While we cannot generalize our finding to all legal professionals, we have shown that an individualized, free-market profession concerned chiefly with litigation offers an insecure, anxiety-producing career to those who risk it.

At the least this study should serve as a caution against certain assumptions that seem to have prevailed in the study of litigation. It is true that litigants express intransigent attitudes towards each other. It is also true that formal litigation is processed within an institution professing adherence to rules. But these appearances do not support the assumption that conflict meets a fate in courts different from that in unadjudicated relationships. By attending only to the formal actions of courts, we tend to ignore the effects of key structural variables (i.e., the type of relationships, whether multiplex or simplex, whether continuing or episodic, which exist between antagonists; and the relative wealth of resources available to the antagonists to carry on litigation). The consequences of adjudicatory clarity and decisiveness—in other words the effects of mobilized, routinized rule structures—must be subjected to emprical test, not left in the comfort of untested assumption.

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