THE TRAFFIC IN LEGAL SERVICES: LAWYER-SEEKING BEHAVIOR AND THE CHANNELING OF CLIENTS

JACK LADINSKY

This paper discusses the major factors that appear to influence how clients and lawyers come together, and what role professional advertising might play in this process. The context for the discussion is the traditional model of appropriate lawyer-client relations, which is an ideal built into the code of professional conduct. The model presumes a lawyer's professional reputation, and the maintenance of professional standards by the bar. In the real world, conditions of legal practice and problem defining by consumers cause departure from the ideal. A number of factors influence how clients come to perceive problems as amenable to legal assistance. These are certain psychological, cultural, and social attributes whose operation in law is less well understood than it is in medicine. In addition, there are certain structural factors that influence the link between prospective clients and lawyers. Prominent among these is the fact that legal services comprise an imperfect market due to uncertainty of case outcome and difficulties of information procurement. It is suggested that consumers are reasonably rational in their search for lawyers given these problems. Consumers rely heavily upon informal contact networks and influential intermediaries, a process not unlike searching for a job or a doctor. The implications of these findings for opening up information channels through relaxation of the ban on advertising are discussed.

I. INTRODUCTION

Since 1965 when the legal services program was initiated, under the Economic Opportunity Act (P.L. 88-452, September 20, 1964, 42 U.S.C., para. 2701, *et seq.*, as amended), there have been numerous efforts to expand the definition of legal rights. The past ten years have seen significant developments in those areas of law, such as civil rights, welfare rights, housing and environment, which have come to be subsumed under the broad labels of poverty, consumer, and public interest law (Cahn and Cahn, 1970; Carlin *et al.*, 1967; *Duke Law Journal*, 1969; *North Carolina Law Review*, 1972; Reich, 1964 and 1965; Sax, 1971). Efforts to secure these rights to protect the legal interests of the less affluent segments of our population have resulted in a number of innovative methods for providing legal services: public and private neighborhood law offices, Judicare programs, public interest law firms, law com-

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munes, community law offices, group legal programs, legal insurance schemes, and private practice legal clinics (Cahn and Cahn, 1964; Fisher and Ivie, 1971; *Harvard Law Review*, 1970 and 1967; Marks *et al.*, 1972; Riley, 1970; Schwartz, 1965; *Yale Law Journal*, 1970; Rosenthal *et al.*, 1971; Ashman, 1972; Brakel, 1974; Marks *et al.*, 1974). Systematic and careful study of organizational similarities and differences, and of outcomes, has not progressed beyond the descriptive stage. Yet the legal rights movement has attracted attention—praise and criticism—far out of proportion to the size of the effort. The movement stands as a symbol of needed changes, indeed, a challenge to the limits of the traditional mode of providing legal services to Americans. In courts, legislatures, and bar associations across the nation, a consumer movement has exerted pressure for experimentation and demonstration in delivery of legal services. There are clear signs that some reshaping of the organization and practice of traditional legal services in America is in the making. In the 1960s, trade unions managed to break the restrictions on group legal practice (*United Mine Workers* v. *Illinois Bar Association*, 389 U.S. 217, 1967, *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 1964). More recently, in *Goldfarb* v. *Virginia State Bar* (421 U.S. 773, 1975), the Supreme Court held that enforcement of a bar association minimum fee schedule constituted price-fixing and therefore was in violation of the Sherman Act. The Court's refusal to exempt state bar activity from the Sherman Act meant that bar restrictions on advertising were also suspect because of their monopolistic tendencies. Spurred by the *Goldfarb* decision and the threats of further lawsuits, the American Bar Association's Committee on Ethics and Professional Responsibility in December 1975 officially proposed that the ban on advertising be relaxed. In response to this the American Bar Association House of Delegates revised the Canon of Ethics to permit limited advertising, such as display ads in the yellow pages of telephone directories. It is now simply a matter of time before many state bar associations adopt the revised Rule, or parts of it, making lawyer advertising of hours, field of concentration, and initial consultation fees a reality. The major question remaining is whether the ABA's relaxation of limits on advertising goes far enough to withstand further legal challenge. The Department of Justice clearly does not think so, for it filed suit to enjoin the rules against advertising as violations of the Sherman Act (*United States* v. *American Bar Association*, C.A. 76-1182, D.C.D.C., filed June 25, 1976).

This paper is an effort to comprehend what might come from these changes by drawing on social science concepts and on evidence about how legal problems get defined and brought before

providers of legal services. It builds upon the available studies of professions and the delivery of legal services, and also upon information from the health-seeking and job-seeking literature in sociology and economics. An effort is made to reason from analogy. The adequacy of the insights will have to await more empirical research in the delivery of legal services.

The Traditional Model of Providing Legal Services

Over the past three to four hundred years the learned professions evolved as service occupations distinctively different from other occupations in Western societies. Professions have developed their own model of the appropriate way to provide services and build practices. To understand the problems facing us today in the delivery of professional services, we must start with a recognition of the elements of this traditional model.

Authorities who write about professions have not come to agreement on the elements that comprise a profession, and many writers today have called for abandonment of the "attribute" approach to professions (Roth *et al.*, 1973). However, we do not escape the problems in the delivery of professional services by avoiding the definitional issue. There may be no hard-and-fast definition, no single test of what a profession is, as Lewis and Maude noted some 20 years ago (1953: 71). But there are certain clear-cut *generating* traits that form the core of the ancient professions of medicine and law. These generating traits are (1) advanced training in a highly specialized body of knowledge, and (2) the use of that knowledge in the service of mankind (Wilensky, 1964). T. H. Marshall defined professions in just this way, and pointed to some of the significant derivative attributes that follow from these basic traits (1939; see also Hughes, 1960). Marshall defined professions as a select body of superior occupations where commercialism cannot be tolerated and which are pursued not for pecuniary gain but out of a sense of duty to serve society. Thus the essence of professionalism, said Marshall, is service to individuals in a private relationship of trust between practitioner and client. Marshall is undoubtedly a classicist, a purist, in so defining professions. But he is by no means alone. Roscoe Pound, in a similar classical interpretation, defined professions as "callings in which men pursue a learned art and are united in the pursuit of it as a public service—no less a public service because they may make a livelihood thereby (1949; see also Pound, 1953). To Pound (1949) there were three ingredients in the professional idea: (1) organization, i.e., the bar; (2) a spirit of public service; and (3) learning. Livelihood is incidental, not a primary consideration. "Indeed, the professional spirit, the spirit of public service, constantly curbs the urge of that instinct."

This moral element, public service above pecuniary interest, has been stressed by many writers as the primary distinguishing characteristic of professions (Wilensky, 1964). But it was Karl Llewellyn (1933) who so pointedly noted that in law this ideal has been conspicuous by its absence—more honored in the breach than the observance. The same conclusion has been reached with respect to other professions, notably medicine. There has been a hiatus between the high ideals of service and the realities of practice. Talcott Parsons (1954: 34) has shed some light on this gap in the context of the classical tradition of Marshall and Pound. Self-interest, noted Parsons, is not a motivation exclusively characteristic of business occupations and unknown to professional people. Occupations vary in the recruits they seek and obtain, but all well-organized occupations attempt to institute patterns of aspiration to high ideals. The difference between the businessman and the lawyer lies not in personal motivation but in the institutional sphere. The moral element that sustains ethical professional behavior is an institutional constraint. Society historically surrendered to professionals a near-complete monopoly over practice, in return for professional self-control designed to protect citizens from exploitation and inadequate service. As Marshall and Pound recognized, *caveat emptor* is not to be tolerated in professional behavior. However, this subordination of pecuniary motivation to client interest must come from the pervasive affirmation of professional service by the organized bar and only indirectly from public opinion.

There are additional derivative attributes that emerge from the ideal of service and the capability that comes with a learned art. The list offered by Lewis and Maude (1953: 71) has hardly been improved upon: (1) registration or state certification, which embodies standards of training and practice in some statutory form; (2) a practitioner-client relationship of confidentiality and trust, i.e., a fiduciary relationship; (3) an ethical code, which includes a ban on advertising and other forms of commercial solicitation.

What consequence does all of this have in the legal profession for the way in which clients and lawyers relate? The traditional professional model has important consequences, as both Christensen (1970) and Rosenthal (1974a) have noted. The major consequence was aptly expressed in Canon 27 as originally adopted by the American Bar Association in 1908: "The most worthy and effective advertisement possible even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust" (quoted in Christensen, 1970: 128). Although the wording has been changed, this idea that the proper way to build a practice is through the

development of a reputation as an honest and competent practitioner, is still very much the standard of the bar. The traditional model holds that a prospective client knows the reputations of available lawyers among their colleagues and in the community, and chooses on that basis. For the occasional individual who is new to the community, or otherwise ignorant, the bar association may provide a lawyer referral service, although this will not distinguish among lawyers in terms of specialty or ability.

There are additional consequences of the professional model for the relationship between clients and lawyers. Rosenthal (1974a), in his study of the effectiveness of lawyer services in solving personal injury claims, suggests the following:

1. In order to get the full benefit of professional services, the client should assume a passive rather than an active role in his case, leaving the major decisions to the lawyer, because only the lawyer is able to judge the best technical solution and strategy, matters that are inaccessible to lay understanding.

2. Professional standards of admission and continuation in practice are set and maintained by the bar and the court and protect the client against ineffective practice.

3. There is no conflict between the client's interests and the lawyer's, because the lawyer, by his certification to practice, is known to be capable of giving disinterested service.

It takes only a moment's reflection to conclude that the realities of law practice render these assertions nugatory. They simply do not stand up under empirical test. And that is exactly what Christensen and Rosenthal concluded. The problem with the traditional model is that it presumes these features exist. They do to some degree in some jurisdictions.[1] But they probably never have existed in their entirety even in the smaller Western nation states in which the model emerged.

Structural Constraints on the Lawyer-Client Relationship

The defects in outcomes that result from the operation of the profession in the real world are not attributable, by and large, to the immoral behavior of malevolent persons who become lawyers, nor to an historic conspiracy by the organized bar. Every profession has its share of unscrupulous practitioners, and self-serving behavior is certainly explicit in many acts. But both kinds of defects are more properly seen as the consequences of structural conditions that produce departures from the high ideals inherent in the traditional professional model.

1. The conditions of law practice in relation to ethical behavior are illustrated in Carlin (1966), and Handler (1967).

If the cause is not evil men and monolithic self-serving organizations how shall we understand this phenomenon? I suggest that we begin by tracing the path by which a legal problem matures from its origins in the vaguely felt needs of citizens to its appearance in the office of an attorney. What we strive to comprehend is the social psychological and organizational factors that influence (1) how felt needs are translated into problems deemed amenable to solutions by attorneys, and (2) how citizens with presumed problems find their way to lawyers. This two-step process is quite complex; it undoubtedly differs for different types of problems. The research necessary to specify the determinants and the dimensions of the process has not been done. The following pages build upon the discussions and studies presently available. The literature is neither comprehensive nor definitive, but hopefully it can direct us to the critical issues and stimulate us to ask the relevant questions that research should answer. And we shall also want to ask what difference reforms might make, if any, given what we know about patterns of seeking a lawyer and of legal practice.

II. FACTORS INFLUENCING THE DEFINITION OF LEGAL PROBLEMS

How does a person come to perceive a problem as needing a solution that an attorney can provide? It is a common observation in medicine as well as in law that consumers often come to providers with problems that they understand in one way, only to discover that the problems are to be understood in altogether different ways, or that they are not problems at all from the providers' perspectives. Sykes (1969) found that in the city of Denver attorneys and clients frequently saw different problems in the cases the clients brought to neighborhood law offices. Often the attorneys saw more problems and more serious problems than did the clients. Kadushin (1969) notes a similar divergence in problem definition when people seek psychiatric help. Even if one believes that attorneys in studies like that by Sykes tend to exaggerate the incidence and seriousness of legal problems, one must still acknowledge that there are many consumers who are not aware of the precise meanings of their felt needs. Indeed, there are many who may not know that the problems they have are legal. Medical sociologists note that having a medical problem is to a certain extent culturally defined. We do not define all of our bodily malfunctions and pains as ailments to take to a doctor. Legal problems are also culturally defined. We do not regard all of our social conflicts as problems to take to a lawyer. Sociocultural and social psychological factors influence the predisposition to perceive felt needs as amenable to professional intervention. A recent study by Greenley and Mechanic (1975: 16) led them to conclude:

> sociocultural characteristics, attitudes, knowledge, and reference group orientations, and psychological problems all have an independent effect on the use of helping services. Moreover, some sociocultural characteristics, attitudes, and orientations affect, on the one hand, generalized help-seeking behavior and, on the other, the specific sources of help consulted.

More specifically, they found that three factors were related to the willingness to seek assistance: being female, psychological readiness, and orientations toward introspective others. I suspect that we would find that similar factors operate in legal help-seeking behavior. We do have evidence, for example, that significant others play critical roles in the definition of legal problems. Lochner (1975), in his study of no-fee and low-fee clients, shows that lay intermediaries not only assist prospective clients to find lawyers, but also are important in helping them to define their problems as legal. Mayhew notes that the ombudsman project in Buffalo, by using neighborhood aides, turned up large numbers of complaints (1975: 405, quoting Tibbles and Hollands, 1970). OEO neighborhood law offices have had similar experiences (Johnson, 1974: 188). Hunting and Neuwirth (1962: 65), in their study of personal injury suits in New York City, found that the presence of an authority figure substantially increased the chances that a person would file a personal injury claim. In all these instances influential persons, whether operating informally or as formal representatives of organizations, helped to define the situation as a legal problem. We do not understand the dynamics of this interactional process. There is no body of research on legal clients and their information gathering behavior. Nor do we know if and how attitudes toward lawyers and the law, knowledge about law, experience with law and lawyers, and such basic social attributes as age, sex, education level, income, race, ethnicity, marital status, and rural-urban origin influence the propensity to define a problem as one for which to seek legal assistance.

It is probably true that culturally we are more predisposed to seek professional assistance from doctors than from lawyers. Rosenthal (1974a: 129-30) is correct in noting that people have more experience with the selection of doctors. We are socialized from an early age into familiarity with medicine and with doctors. In most segments of society no such early and sustained socialization occurs with respect to law and lawyers.[2] Along the same line, Mayhew has noted that existing legal need studies do not tell us much about the behavior of seeking legal help (1975: 404; see also Mayhew and

2. There is an interesting question as to whether people in some social milieus are socialized at an early age into particular views about how to manipulate the legal system. For example, Claude Brown (1971), in his autobiography, suggests that he and his peers "managed" the juvenile court in a way that was at once childish and sophisticated.

Reiss, 1969). Legal issues cannot be listed and checked off the way diseases are. There are many common events that could generate legal actions—disputes, disorders, wrongs, discriminations. To a great extent whether a problem will be perceived as amenable to legal intervention depends upon cultural currents, the level of development of legislation and judicial precedent, the extent to which legal services are organized to deal with the problem, and the availability of nonlegal solutions. All of these factors are generally biases toward the treatment—and thus the perception—of property rights. Thus, attempts to stake out new areas in which legal modes of problem solving are appropriate are often linked with efforts to define novel claims as involving property interests.[3] Women's rights and environmental protection are recent examples of radical innovations in what can be made the subject of formal legal action. The fact that informal and nonlegal avenues have not provided satisfactory solutions has also helped to direct these issues into the legal system. And once such problems are acknowledged to be amenable to formal legal resolution, new possibilities for informal dispute settlement, both legal and nonlegal, open up.[4]

There are, then, two broad levels on which to study the range of factors that influence legal help-seeking behavior: the *individual* level, having to do with social and social psychological attributes that predispose a person to perceive a problem as subject to legal assistance; and the *institutional* level, where cultural currents and legal developments and the organization of legal assistance operate to stimulate the perception of problems as remediable through legal intervention. On neither level is research at even a rudimentary stage of development.

III. FACTORS INFLUENCING THE LINKAGE BETWEEN CLIENTS AND LAWYERS

Defining a problem as legal is but the first step. It does not automatically follow that a person who defines his problem as amenable to legal assistance will find his way to a lawyer. Rosenthal, Mayhew, and Sykes all report that many people do not take perceived legal problems to lawyers. Mayhew and Reiss (1969: 314), in their Detroit study, found that 20 percent of those interviewed reported occasions when they wanted to see a lawyer but did not. One can think of many factors that would explain this: concerns about cost and time, seriousness of the problem, knowing a lawyer to go to, previous experiences with lawyers, and attitudes toward law and lawyers. To understand how lawyers and clients make

3. For an example in welfare rights, see Reich (1964).
4. For a comparable development in relations between automobile manufacturers and dealers, see Macaulay (1966).

connections, we will profit from considering studies by labor economists and sociologists, as well as studies of the accessibility of lawyers to consumers.

Legal Services as an Imperfect Market.

Markets for professional services, such as medicine and law, are regarded by economists as highly imperfect. Services are distributed inefficiently because of (1) the uncertainty of outcome of legal work, and (2) the difficulties which consumers have in procuring information. Arrow (1974: 33), who has contributed most to the concept of imperfection in professional markets, notes that professional organization and ethical codes can be seen as conventional mechanisms to overcome the market failure that is created by the nonmarketability of risk-bearing, and the imperfect marketability of legal information. Arrow's thesis is the reverse of that held by critics of the legal profession who see professional organization and ethical codes as little more than self-serving efforts to create market failure and defeat competition (Auerbach, 1976). This is not the place to argue the merits of these alternative interpretations. We can agree that legal services are not distributed in a free competitive market. Regardless of why the professional delivery system originated or has been preserved, one consequence of professional ethical restrictions is to stifle competition. It is not clear to what extent this occurs, nor whether the benefits of professional restrictions outweigh the disadvantages. The critical question for research is to determine how well conventional organizational mechanisms operate to overcome market barriers and whether in the process they erect new obstacles.

The problem of the unsuitability of risk-bearing in professional markets stems primarily from the difficulty that actuaries encounter in specifying objective criteria upon which to base insurance coverage. It is true in both medicine and law that insurance carriers have difficulty finding procedures to spread known risks across a population in such a way as to achieve adequate coverage at predictable rates that will remain stable once in operation. The actuarial ideal, of course, is life insurance, where willful overuse of the program (dying) is not a problem, and where stable life tables are easily prepared. The problem of uncertainty of need and of demand is very real in legal services, and has important implications for the limits of prepaid legal insurance (Stolz, 1968a). However, it is but the tip of the iceberg. The client faces deeper uncertainty because he is not able to judge in advance what service he needs, and because the lawyer is often unable to guarantee a favorable outcome. For these reasons the client is heavily dependent upon the lawyer. The traditional professional response to this

extensive uncertainty and dependency has been to build a condition of trust between the client and the lawyer, as part of the fiduciary relationship. Rosenthal (1974a: 29-61) has aptly illustrated how uncertainty plagues personal injury suits. He has also shown that in the personal injury area, at least, clients who are passive in interacting with their attorneys fare less well than those who more actively involve themselves in the litigation. I do not doubt that the "participatory" model that Rosenthal recommends can serve clients' interests. However, the fact remains that even when the client actively participates in the case uncertainty is not eliminated. There is simply no way a consumer can fully guarantee the outcome of his case. Rational selection of an attorney and participation in the development of a case will maximize the probability of a favorable outcome in a contested matter. And where a controversy does not yet exist, as in the drafting of a will or the purchase of a home, the rational selection of an attorney and intelligent client involvement will come even closer to guaranteeing a desired outcome. But I suspect that in other situations most clients are not able to assist their attorney with critical decisions. The fiduciary relationship in theory says "trust me to do the very best that any lawyer can for you." Many clients are unable or unwilling to do otherwise.

The problem of uncertainty in legal service directs our attention to the role of information. Assume for the moment a rational consumer who knows he has a legal problem and needs a lawyer. When he sets out to find a lawyer he faces three problems: (1) finding the right kind of lawyer (that is, one who will do divorce or criminal or real estate work); (2) finding one at the "right" price; and (3) finding one who is "good."

The first and second problems come under what Albert Rees (1966) has called the *extensive* information margin. By this Rees means searching for alternative prices from different providers of the desired service. In legal services this would involve "shopping" among various lawyers for information on the kinds of cases they handle and their likely fees. Most of the debate about consumer access to legal services has focused on the extensive margin—on the barriers to price information created by the bans on advertising and solicitation. These are real and important problems. There remains, however, the equally critical third problem, that of procuring information which will allow the consumer to evaluate quality—which falls within what Rees calls the *intensive* information problem. Because the product of legal services is uncertain, information at the intensive margin is more elusive than market information about commodities and even other human services Most consumers of legal services are what Galanter (1974) calls "one-shot players,"

i.e., one-time or occasional users of lawyers who lack experience in the legal marketplace, as opposed to "repeat players" who regularly use legal services. One-shot players cannot readily evaluate a lawyer's services in advance. They must "buy" it and "consume" it. They can only evaluate it when it is too late to shop further. However, even repeat players have some difficulties evaluating the outcomes, if for no other reason than that no two cases are alike.

To illustrate the intensive margin problem, let us consider the point made by Rosenthal (1974a: 130) that a person seeking medical help has more familiar criteria for judging a provider's ability than a person seeking legal help. A patient, at a minimum, can judge a doctor according to the amount of time he spends with his patients, how accessible he is when a medical problem arises, and whether he is affiliated with a reputable hospital. While a client might use equivalent criteria for judging a lawyer,[5] most consumers are less able to do so simply because so few are repeat players. More fundamentally, using such criteria in law or medicine will not necessarily yield a quality practitioner. Nor will the other common forms of judging—relying on general reputation as conveyed through kin, friends, and acquaintances. We know that in medicine patient judgments very often are a manifestation of *satisfaction* with a relationship rather than the quality of service. There certainly is evidence that the same process operates in the legal sphere. Consider the Casper (1972a: 100) finding that defendants overwhelmingly prefer privately retained criminal lawyers to public defenders despite the fact that there is little difference in the outcomes of equivalent cases handled by each.

The challenge for the legal consumer movement and for the legal profession is to find ways to enhance the capability of consumers to make decisions at the extensive and the intensive margins. Mechanisms are needed to expand consumers' abilities to test the market, and to strengthen their confidence in the trust they inevitably must place in the lawyers they choose. The gap certainly can be narrowed at both margins, although it will never be closed entirely. The knowledge possessed by the attorney is far greater than that of the average client. If it were not, the client would have little or no need for the attorney. The uncertainty of outcome remains; if it did not, we undoubtedly could standardize the process and turn it over to computers and lay officials. This is exactly what is being

5. Time spent with a client would be a misleading indicator in law, since lawyers more than doctors are likely to do the bulk of their work in the client's absence. Lawyers typically bill on the basis of total time spent rather than by the number of visits. Thus, if the quality of outcome and hourly rate are held constant, the better lawyer from the client's perspective would be the one who spent less time on the case.

suggested in no-fault personal injury and divorce arrangements. In seeking solutions to the problems of extensive and intensive information we must not ignore the fact that the client-lawyer relationship is characterized by a heavily one-sided dependency.

Following Arrow, we also must not ignore the fact that new communication schemes are not cost free. There is not only the direct cost of providing new information channels, but the indirect costs of negative side-effects and, to the individual, of mastering the information available. Thus, it is necessary to consider costs and benefits of new procedures in a broad way. In the study of legal services we have neither the techniques of measurement nor substantive knowledge about lawyer abilities, both of which would be necessary to calculate alternative cost-benefit ratios. Such research is only now developing in medicine and has not progressed very rapidly. New forms for delivering legal services after the bans on advertising and solicitation have been relaxed should be sensitive to the relationship between the costs of providing information and the benefits to be derived by consumers.

The Dynamics of Information Networks.

How do consumers really search for lawyers? How rational are they? For a long time economists overemphasized the rationality that formal organizations could introduce into imperfect market information situations, while ignoring the everyday interpersonal behavior of consumers. However, in recent years this emphasis has changed rather dramatically. In a very important piece of research on employers' search for workers, and workers' search for jobs in Chicago labor markets, Rees and Shultz (1970: 199) showed that most workers found jobs through informal information networks (fellow-worker and employer referrals), and that most employers preferred informal information networks (see also Yavitz *et al.*, 1973; Lewin *et al.*, 1974). Formal sources (state or private employment service, newspaper ad, school placement, union) were more often used by white-collar employees, but for all occupations fellow-worker referrals were by far the most important source of information. Rees and Shultz point out that this process is perfectly rational. Informal referral provides *qualitative* information to both parties—it is cheap, it efficiently narrows selection to qualified candidates, and it provides more detailed information than do want ads or employment agencies. Granovetter (1974), in a study of job search behavior of professional, technical, and managerial workers in the Boston area confirms these findings about the rationality and the vitality of informal contact networks (see also Parnes, 1970: 54). Of course, informal processes have both desirable and undesirable consequences. While they are efficient for employers, they may

perpetuate *de facto* job segregation, an otherwise undesirable outcome (Mayhew, 1968).

To my knowledge all of the available studies on how clients in fact do find lawyers come to the same conclusion as the employment studies regarding the importance of informal contacts (Carlin, 1962; Christensen, 1970: 128; Rosenthal, 1974a: 128; O'Gorman, 1963; Wardwell and Wood, 1956). Lochner's study of no-fee and low-fee clients among private practice attorneys in Buffalo is unique in describing how the process operates. Intermediaries are part of the chain of relationships by which private practitioners establish and maintain reputations and build clienteles. This process is similar to what Freidson (1961) calls the lay referral system in medicine. Unpublished findings by Reiss and Mayhew provide a unique insight into how extensive informal information networks really are in a metropolitan center.[6] Respondents who had consulted an attorney at least once (N = 433) were asked how they had located a lawyer the first time. Among high status respondents, 30 percent said they had friends, neighbors, or relatives who *were* lawyers. Among middle status respondents 21 percent found lawyers this way; and among low status respondents the figure was 16 percent. Thus, a substantial number of urbanites, especially those at the top of the socioeconomic system, were informed about legal services through relatively close personal contacts with lawyers. Reiss and Mayhew asked the other respondents, who had never used lawyers, what routes they would take to find a lawyer if they needed one. When both sets were combined the responses were distributed as follows:

Actual or claimed source	*Percentage*
Relative, friend, or neighbor lawyer	21
Relative, friend, or neighbor referral	52
Formal organization referral	17
Mass society information	10

Thus, 73 percent of the respondents did or would use informal contacts in locating a lawyer. Only 27 percent did or would use formal means, and of these only 10 percent did or would draw upon the mass media information. Of course, these findings are heavily influenced by the fact that there is very little media information to draw upon because of the ban on advertising. But surely we would not expect many of the 73 percent who used relatives, friends, or neighbors to prefer advertising media had they been available.

Yet despite this evidence the legal literature tends to see informal networks as ineffective. Just as economists at one time em-

6. I am indebted to Leon Mayhew for making available these statistics from the Detroit Area Study; see Mayhew and Reiss (1969).

phasized the rational bureaucracy of the state employment service, lawyers emphasize well-organized lawyer referral services, ignoring the far more important informal relationships in which people are enmeshed as a part of everyday living.

One reason that informal networks are suspect is that they are presumed to have deteriorated in modern society. Christensen (1970: 131), for example, expressed the common concern that urban networks have eroded as a result of the impersonality of city life. This belief is also written into the ABA Code of Professional Responsibility, which asserts that changed social conditions have restricted the effectiveness of the traditional, informal lawyer selection process (1974: Canon 2, EC 2-6, 2-7; see also Cheatham, 1963). This theme of isolation and alienation in the metropolis was voiced some decades back by urban sociologists who saw the destruction of intimate ties in city life (Wirth, 1938). But it has not survived the test of empirical study (Wilensky and Lebeaux, 1958: 121; Greer, 1972; Suttles, 1968). There is no clear evidence that the urban complex of informal relations is less rich or extensive than that of smaller communities. Over time the form has changed as urban dwellers and the conditions of city life have changed. Informal interpersonal ties are probably as vital as they ever were.

Moreover, there is reason to believe that it is not only intimate and strong personal attachments that count in information contact networks, but what Granovetter calls "weak ties." In his study of job searching, Granovetter (1973) discovered that many of his respondents found their jobs through "acquaintances," not kin or friends. It is likely that weak ties are also significant in searching for a lawyer. For example, when a person has financial or domestic problems he may prefer to seek the name of a lawyer from an acquaintance rather than kin or close friends, to whom it might be awkward or embarrassing to reveal private problems.

A second reason that informal contacts are deemphasized is that they appear to be "haphazard." Rosenthal (1974a: 129) expressed a common concern when he noted that his respondents took the first lawyer they found. They did not "shop around." The presumption is that it is irrational to take the first name of a lawyer when it comes from a trusted intermediary. But this disregards the opportunity costs of shopping, particularly when it is impossible, in any case, to make a quality judgment on the basis of independent criteria. Moreover, we are not socialized to do so for lawyers, and I doubt that very many people do so for doctors either, at least until they have had an unsatisfactory experience.

There is another stream of sociological research that reveals the meaning of informal information networks, and also has implica-

tions for the role of advertising of lawyer services. In the late 1940s and throughout the 1950s Paul Lazarsfeld and his students at Columbia University carried out research on the impact of the mass media on social behavior. Out of their efforts came the "two-step flow of communication" hypothesis, which has continued to influence research in this area (Katz, 1957; Katz and Lazarsfeld, 1955). The hypothesis says, simply, that people do not behave on the basis of direct media stimuli, but rather as a result of the reinforcement of media stimuli by personal influences. Subsequent studies of the diffusion of innovations generally showed similar processes at work (Rogers, 1962; Coleman *et al.*, 1966). Innovations tend to be adopted as a result of involvement in communication networks where influential intermediaries reinforce media messages. Lawyer-seeking behavior appears to operate the same way, which suggests that if mass media information about lawyers—type of work, fees, quality—is to have personal meaning as a basis for action it must be grounded in a network of interpersonal relationships.

What implications do these facts have for reducing the regulation of professional advertising? They suggest that change which only relaxes the ban on advertising may do very little to "open up" information channels. The limits of advertising are suggested in recent research on want ads and job search in Salt Lake City and San Francisco (Walsh and Johnson, 1974). The Olympus Research Corporation found that in 86 percent of listings by employment agencies it was not possible for workers to identify the employer's type of business. Industry information was missing in a third of all ads inserted by employers directly, and the ads also withheld wage information because employers prefer to negotiate pay and not discourage jobseekers. Workers even had trouble identifying the geographic location of the employer in almost two-thirds of the ads in San Francisco and one-third in Salt Lake City. Interestingly, and contrary to expectations, nearly half the jobs listed by employers in San Francisco were outside the city and 15 percent were outside the metropolitan area. In short, the ads were often of little help to jobseekers who needed to decide whether they wanted or were suited for jobs being advertised. Similar problems could easily emerge when lawyers are allowed to advertise. Those who feel that relaxation of the ban on advertising will improve the delivery of legal services must recognize that it is only a problematic first step. Ultimately one must address questions of what to advertise, where to advertise, and what differences modes of advertising will make for consumers in their search for lawyers.

If informal lawyer search behavior is not as irrational or ineffective as is commonly believed, neither is it a panacea for

lawyer-finding. First, it does not adequately solve the consumer's problems in making qualitative judgments. But then, neither will advertising. Indeed, advertising could create problems if low quality practitioners advertise disproportionately or with disproportionate effectiveness. Some consumers are likely to select an attorney on the basis of their own experiences, because of the visibility or other characteristics of the advertisement, criteria that may not bear a strong relationship to the practitioner's capacity to solve legal problems adequately. Whatever its defects, the brilliance of the OEO neighborhood law office idea is that it places in the residential area some reasonably well qualified practitioners whose work is monitored by colleagues. It has the potential of falling naturally into the information channels of everyday social traffic, where "hearsay" based on good work travels quickly.

Informal lawyer search behavior has a second defect. As Lochner (1975: 449) points out, poor people rarely become no-fee/low-fee clients of private attorneys. They do not know intermediaries who know lawyers, which suggests that most *pro bono* work by private practitioners is not done for the poor. Findings by Handler *et al.* (1975) on who does *pro bono* work are consistent with this conclusion. Sole practitioners do significantly more *pro bono* work than firm lawyers. If Lochner is correct, we might interpret the data as revealing that sole practitioners turn away few clients, if any, and clients who turn out to be no-fee or low-fee cases become contributions of those attorneys to the ethical norm of *pro bono publico*. But these clients generally are not the poor in our society. There is a chance that advertising can change this pattern somewhat, if it induces the poor to go to sole practitioners more frequently. However, what little evidence we have suggests that, with the possible exception of television, the poor tend not to utilize the mass media as frequently as middle income citizens (Greenberg and Dervin, 1970). But our evidence is weak, and it remains an empirical question, worthy of study, whether lawyer advertising will have a differential impact by socioeconomic status.

IV. CONCLUSION

The above reflections have a skeptical tone. I do not wish to convey the impression that relaxing the ban on advertising would have deleterious effects, as is often asserted by traditional defenders of professional ethics. My concern is that relaxing the ban may not have any effects. However, it also is possible that advertising will make a substantial difference for many middle income consumers by reducing the opportunity costs of shopping. Much could depend upon the kind of information that is disseminated and

where it is allowed to appear. What a sociological perspective emphasizes is that careful attention must be given to the structural conditions in which legal problems are defined and in which communication networks bring users and providers in contact. In principle, ethical rules that inhibit the open communication of information about cost, type of service, and ability should always be changed unless there is overriding evidence that undesirable consequences will outweigh gains. I do not think that there is evidence for undesirable side effects, but neither can the case for substantial gains be made at this time. The demonstration programs and research have not been carried out.

I have tried in this paper to apply perspectives not commonly brought to bear on client-lawyer relationships in order to generate some issues that research could properly address. The delivery of legal services has never been a mainstream issue of social science research. Even that branch of social science which purports to deal with the sociology of law has largely ignored it. It is time for such research to begin.