

Lawyers' Ethics

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Lawyers' Ethics

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A Survey of the New York City Bar

by Jerome E. Carlin

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To Joy

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Contents

Foreword by <i>Geoffrey C. Hazard, Jr.</i>	xix
Preface	xxvii
1 Introduction	3
Traditional Approaches to Professional Misconduct	4
The Approach of This Study	7
The Sample Design	8
2 The Social Structure of the Metropolitan Bar	11
An Overview of the New York City Bar	11
Areas of Practice	11
Clientele	13
Courts and Agencies of Government	16
The Office Colleague Group	17
Social Background and Training	18
Stratification in the Bar	22
Differences in Clientele	23
Differences in Area of Practice	25
Differences in Contacts with Courts and Agencies	26
Differences in Lawyers' Incomes	27
Social Background and the Status Hierarchy of the Bar	28
Mobility Within the Bar	32
Social Distance	34
Conclusion	36

3	Ethical Norms in the Metropolitan Bar	41
	Selection of Items for the Ethics Measure	42
	Differential Acceptance of Ethical Norms	47
	Acceptance and Status Structure of the Bar	49
	The Ethical Behavior Index: Violators and High Conformers	53
	Adherence and Acceptance	57
	The Problem of Class Bias	57
	Ethical Behavior and Ethical Concern	61
4	Client Relations	66
	Temptation	66
	Opportunity to Exploit Clients	71
	Client Pressure	73
	Area of Practice	76
	Client Relations and Conformity to Higher Level Norms	79
5	Contacts with Courts and Government Agencies	84
	Court Level and Pressures to Violate or Conform	85
	The Court Culture	87
	Nature and Extent of Court Contact and Violation	93
	Conformity to Higher-Level Norms	94
6	Colleague Controls	96
	Ethical Climate	96
	Office Climate and Violation	98
	Office Climate and External Pressures	101
	Office Climate and Inner Disposition	102
	Formal Control in the Stratified Office	103
	Allocation of Work by Status	106
	Direct Colleague Support for Violation in Newer Offices	107
	Colleague Controls and Higher-Level Norms	109
	Summary and Conclusion	116
7	Size of Firm, Ethnicity, and Ethical Conduct: An Interpretation	119
	Stratification and Violation	120
	Stratification and High Conformity	122
	Social Background and Ethical Conduct	124
	Conclusion	129

8	Inner Disposition	133
	Ethical Concern: A Measure of Inner Disposition	133
	Ethical Concern and Violation	135
	Inner Disposition and the Social Structure of the Bar	139
	Size of Firm and Ethical Concern	140
	Pressures of Practice	141
	Age	142
	Professional Training	143
	Social Background	146
	Conclusion	148
9	Formal Controls	150
	Flow and Disposition of Complaints	151
	The Offenses and the Offenders	151
	Severity of the Sanction	155
	Possible Functions of Formal Controls	159
	Policing the Bar	160
	Deterring Violators	161
	Conclusion	161
10	Conclusion	165
	Summary of Findings	165
	Nature of Ethical Norms	165
	Social Organization and Ethical Conduct	166
	Clientele	166
	Institutional Setting	166
	Work Setting	167
	Social Stratification and the Distribution of Pressures	167
	Career Lines and Social Background	169
	Inner Disposition	169
	Formal Controls	170
	A Model for the Analysis of Deviant Behavior	170
	Implications for the Legal Order	176
	Appendices	183
	A The Sample	185
	B Distribution of Responses for the Thirteen Ethics Items	194
	C Formation of Certain Indices and Typologies	201
	D The Interview Schedule	215
	Index	261

Tables and Charts

TABLE

1	Distribution of Lawyers by Main Area of Practice	12
2	Distribution of Lawyers by Type of Business Represented	14
3	Religious Affiliation of Clientele	14
4	Distribution of Lawyers by Court in Which Most Time Is Spent	15
5	Distribution of Lawyers by Time Spent in Courts and Government Agencies	16
6	Distribution of Lawyers by Level of Principal Agency Contact	17
7	Distribution of Lawyers by Size of Firm	18
8	Distribution of Lawyers by Law School Attended	19
9	Composition of the New York City Bar by Parents' Country of Birth, 1900 and 1960	21
10	Clientele Characteristics by Size of Firm	24
11	Client Status by Size of Firm	25
12	Main Area of Practice by Size of Firm	25
13	Court and Agency Contacts by Size of Firm	26
14	Level of Principal Court and Agency Contact by Size of Firm	27
15	Social Background and Education by Size of Firm	28
16	Type of College Attended by Religion and Social Background	29
17	Attendance at a Full-Time University Law School by Quality and Location of College	30
18	Attendance at a Full-Time University Law School by Religion, Social Class Background, and Type of College Attended	30
19	Membership in Large Firms by Type of Law School and Law School Standing	31

TABLE

20	Membership in Large Firms by Type of Law School, Law School Standing, and Religion	31
21	Present Position by Starting Position	32
22	Social Origin and Educational Background by Career Patterns	33
23	Membership in Large Firms by Starting Position and Religion	34
24	Extent of Interstrata Professional and Social Contacts	35
25	Extent of Intrastratum Professional and Social Contacts	35
26	Membership in the Two Main City Bar Associations by Size of Firm	36
27	Synopsis of Ethics Items Used in Final Survey and Their Discriminating Power in the Preliminary Study	44
28	Normative Significance of Various Types of Ethics Items for Informants and Respondents	47
29	Comparison of Acceptance Rates in Preliminary Test Study and Larger Survey for 13 Hypothetical Ethical Conflict Situations	48
30	Acceptance of Ethical Norms by Size of Firm	50
31	Acceptance of Various Types of Norms	51
32	Acceptance of Various Types of Norms by Size of Firm	52
33	Per Cent Reporting Ethical Action in Each of the 13 Ethics Items	53
34	Distribution of Ethical Behavior Scores	54
35	Ethical Behavior Index Ratings by Size of Firm	55
36	Type of Norms Adhered to by Ethical Behavior Index Score	56
37	Adherence to Norms by Acceptance of Norms	57
38	Occurrence of Ethical Conflict Situations by Size of Firm	58
39	Average Actual Violations Reported by Occurrence of Ethical Conflict Situation and Size of Firm	59
40	Average Hypothetical Violations by Occurrence of Ethical Conflict Situation and Size of Firm	59
41	Ethical Behavior by Ethical Concern	60
42	Violation by Client Status	67
43	Insecurity of Practice by Client Status	67
44	Violation by Two Measures of Insecurity of Practice	68
45	Violation by Insecurity of Practice and Client Status	68
46	Various Attitudes by Insecurity of Practice and Client Status	69
47	Violation by Status of Clientele, Insecurity of Practice, and Attitude Toward Liberalizing the Canons	70
48	Violation by Opportunity to Exploit Clients and Client Expendability	72

TABLE

49	Violation by Effective Opportunity to Exploit Clients and Client Status	72
50	Violation by Client Pressure	73
51	Violation by Client Pressure and Economic Dependence on Clients	74
52	Violation by Effective Client Pressure and Client Status	75
53	Violation by Effective Client Pressure, Status of Clientele, and Control Involvement	75
54	Violation by Client Status and Main Area of Practice	76
55	Main Area of Practice by Client Status	77
56	Instability of Clientele, Opportunity to Exploit, and Client Pressure by Client Status and Main Area of Practice	77
57	Violation by Client Status, Area of Practice, and Client-Related Pressures	78
58	High Conformity by Client Status	79
59	High Conformity by Client-Related Pressures	79
60	High Conformity by Control Involvement and Contact with Clients (for Lawyers with High-Status Clients Only)	80
61	High Conformity by Rank in Office and Control Involvement	81
62	Violation by Level of Court and Agency Contact	84
63	Attributes of Judges in New York City by Level of Court	85
64	Attributes of Judges and Lawyers by Level of Court	88
65	Size of Firm and Client Status by Level of Court	89
66	Distribution of Judges at Each Court Level by First Judicial Position	89
67	Main Activity in Court by Court Level	90
68	Various Attitudes by Level of Court Contact and Exposure to Court Culture	92
69	Attitude Toward Liberalizing the Canons by Discussion of Ethics and Level of Court Contact (for Lawyers Exposed to a Court Culture)	92
70	Violation by Level of Court Contact and Amount of Time Spent in Court (for Lawyers Most Exposed to a Court Culture)	93
71	High Conformity by Level of Court and Agency Contact	94
72	High Conformity by Amount of Time Spent in Court and Level of Court	94

TABLE

73	Various Office Attitudes by Office Climate and Age of Office	97
74	Violation by Office Climate	98
75	Violation by Office Climate and Number of Years in Office (for Lawyers in Old Offices Only)	98
76	Violation by Number of Years in Office and Office Climate (for Lawyers Who Favor Liberalizing the Canons)	99
77	Violation by Office Climate and Office Sociability	100
78	Violation by Office Climate, Office Sociability and Number of Years in Office	100
79	Office Climate by Average Level of Court and Agency Contact and Average Client Pressure	101
80	Violation by Office Climate and Client-Related Pressures	102
81	Violation by Ethical Climate, Concern with Ethics, Office Age, and Number of Years in Office	102
82	Violation by Ethical Climate and Office Structure (for Lawyers in Old Offices Only)	103
83	Various Office Characteristics by Office Structure	104
84	Office Climate by Office Age and Office Structure	105
85	Characteristics of Lawyers in Stratified Offices by Rank in the Office	105
86	Violation by Rank in Office and Level of Court and Agency Contact (for Lawyers in Stratified Offices Only)	106
87	Level of Court and Agency Contact by Rank in Office and Religion (for Lawyers in Stratified Offices of Mixed Religious Composition)	107
88	Membership in an "Out" Religion by Rank in Office (for Lawyers in Stratified Offices of Mixed Religious Composition)	107
89	Office Rate of Discussion of Ethical Questions by Office Age and Office Structure	108
90	Violation by Frequency of Discussion of Ethical Questions and Office Structure (for Lawyers in New Offices Only)	108
91	Violation by Client-Related Pressures and Frequency of Discussion of Ethical Questions (for Lawyers in New Offices Only)	109
92	Violation by Level of Court and Agency Contact and Frequency of Discussion of Ethical Questions (for Lawyers in New Offices Only)	109

TABLE

93	High Conformity by Ethical Climate and Number of Years in Office (for Lawyers in Old Offices Only)	110
94	High Conformity by Office Climate, Office Age, Years in Office, and Concern with Ethics	110
95	High Conformity by Ethical Climate and Office Structure (for Lawyers in Old Offices Only)	111
96	High Conformity by Rank in Office and Size of Office (for Lawyers in Stratified Offices Only)	111
97	Contact with Federal Courts and Agencies by Rank in Office and Office Size (for Lawyers in Stratified Offices Only)	112
98	High Conformity by Office Size, Status in the Office, and Level of Court and Agency Contact (for Lawyers in Stratified Offices Only)	113
99	Membership in Elite Bar Associations by Rank in Office and Size of Office (for Lawyers in Stratified Offices Only)	113
100	High Conformity by Office Size, Rank in Office and Elite Bar Association Membership (for Lawyers in Stratified Offices Only)	114
101	High Conformity by Client Status, Level of Court and Agency Contact, and Membership in Elite Bar Associations (for Lawyers in Nonstratified Offices Only)	115
102	Various Clientele Attributes by Size of Firm	120
103	Violation by Size of Firm and Client-Related Pressures	121
104	Violation by Size of Firm and Level of Court and Agency Contact	121
105	Violation by Client-Related Pressures and Level of Court and Agency Contact	121
106	Violation by Size of Firm and Situational Inducements to Violate	122
107	High Conformity by Court and Agency Contact and Size of Firm	123
108	High Conformity by Court and Agency Contact, Membership in Elite Bar Associations, and Size of Firm	123
109	Ethical Behavior by Religious Background	124
110	Ethical Behavior by National Origin	125
111	Ethical Behavior by Religious Background and National Origin	125
112	Ethical Behavior by Ethnicity	126

TABLE

113	Type of Practice by Ethnicity (for Lawyers in Small Firms and Individual Practice Only)	127
114	Ethical Behavior by Ethnicity, Size of Firm, and Type of Practice	127
115	Client Pressure, Opportunity to Exploit, Lower Court Contact, and Elite Bar Association Membership by Ethnicity and Status of Practice	128
116	Various Professional Attitudes by Concern with Ethics	134
117	Violation by Concern with Ethics	135
118	Violation by External Pressures and Ethical Concern	136
119	Discussion of Ethical Questions by Situational Inducements to Violate	137
120	Attitude Toward Liberalizing the Canons by Discussion of Ethical Questions, Level of Court and Agency Contact, and Client-Related Pressures	137
121	Violation by Discussion of Ethical Questions, Attitude Toward Liberalizing the Canons, and Client-Related Pressures	138
122	Attitude Toward Liberalizing the Canons by Discussion of Ethical Questions, Level of Court and Agency Contact, Client-Related Pressures, and Concern with Ethics	138
123	High Conformity by Membership in Elite Bar Associations and Concern with Ethics	139
124	Concern with Ethics by Size of Firm and Employment Status	140
125	Main Area of Practice by Concern with Ethics and Age (for Employees Only)	141
126	Concern with Ethics by Client Pressure and Employment Status	142
127	Concern with Ethics by Client Pressure and Area of Practice (for Employees Only)	142
128	Ethical Concern by Age	143
129	Ethical Response to Five Ethics Items for Law Students and Practitioners	144
130	Concern with Ethics by Quality of Law School Attended	146
131	Concern with Ethics by Generation and National Origin	147
132	Concern with Ethics by Religion, Generation, and National Origin	147

TABLE

133	Comparison of Years in Practice and Law School Attended for Officially Disciplined and Sample Lawyers	152
134	Distribution of All Disciplinary Cases Adjudicated by the Appellate Division, 1929-1962, by First Charge	154
135	Severity of Sanction by Ethical Salience of the Charge	155
136	Severity of Sanction by Amount of Money Involved	156
137	Severity of Sanction by Number of Counts and Charges	156
138	Severity of Sanction by Notoriety of the Case	157
139	Number of Counts and Charges by Amount of Money Involved	157
140	Disbarment by Amount of Money Involved and Number of Counts and Charges	158
141	Notoriety by Amount of Money Involved and Number of Counts and Charges	158
142	Disbarment by Visibility of the Offense and Ethical Salience of the Charge	159
143	Disbarment by Seriousness of the Offense, Ethical Salience of the Charge, and Notoriety	160

CHART

1	Quality Ratings of Mixed Law Schools	20
2	Graphic Presentation of Ethical Response to Five Ethics Items for Law Students and Practitioners (Table 129)	145
3	A Model for the Analysis of Deviant Behavior	171

Foreword

This is an important book about an important subject. The legal profession in the United States has a major social role. It performs for us the function universally associated with lawyers, that of juridical advocacy. It also performs a wide variety of other functions, wider than any analogous professional group elsewhere in the world. American lawyers serve not only as advocates in courts but also in administrative agencies and before legislative bodies; as counselors not only in law but also in matters of business, government, and politics; as negotiators and mediators; and as architects of business, social, and governmental enterprises. Indeed, there are few processes of social "interface" to which the American lawyer's function is not in some fashion apposite.

The manifold functions performed by members of the legal profession involve the common elements of an agency relationship to their clients, of which fidelity is the essence, and a stated commitment to the employment of legitimate means to ends. The absence of these elements in the lawyer's performance of his function begets betrayal of client interest or of the public interest, or both. Disloyalty to client undercuts the client's ability to build and hold the position in the social milieu that the lawyer is employed to protect. Use of illegitimate means to ends weakens the threads of the social

web itself. Lawyers have no monopoly of the fiduciary function, nor of legal ordering, but in contemporary American society they are key figures in both processes.

It is a matter of some moment, then, that lawyers be true to ethical standards. These standards include those of ordinary honesty—fornearance from lying, cheating, and overreaching. The standards of ordinary honesty have special significance for the lawyer because the functions he performs make them specially relevant to his conduct. Since the lawyer is a fiduciary and an instrument of legal ordering, the occasions for his having to satisfy the standards of ordinary honesty are more frequent and more trying than for social operatives in less sensitive positions. Beyond these standards, and partly to reinforce them, the lawyer is expected to observe ethical rules peculiar to his calling, rules that call for restrained and honorable deportment. If some of these rules are obsolete, their ostensible purpose is the maintenance of virtues that are no less worthy for being old-fashioned.

Professor Jerome E. Carlin, who is both a lawyer and a sociologist, marshals persuasive evidence that many lawyers do not consistently adhere to the standards of ordinary honesty, still less to the special professional rules in the canons of legal ethics. It is not true, as public prejudice sometimes has it, that all lawyers are crooks. On the other hand, it is also not true, as the bar is wont to reassure itself, that "the overwhelming majority" of lawyers is ethical in the strict sense. There is a majority of adherents in the bar, but it is only substantial both in numbers and degree of conformity.

Professor Carlin's study is based on field work limited to New York City and it can be said therefore that his findings are not indicative of the situation generally. There is no basis to suppose that this is so, except for the important qualification that the situation may be different in middle-sized and small communities from what it is in metropolitan areas. Among metropolitan communities, New York is not greatly different from the rest of the country in any other known attribute and it is difficult to see why it should be

dramatically so in regard to the ethics of its lawyers. In this connection, it is appropriate to note that the findings of the present study are paralleled by those in Professor Carlin's earlier study of Chicago solo practitioners, *Lawyers on Their Own*. My own acquaintance with the problem, limited to practice on the West Coast and to idle contact with lawyers elsewhere, supports my belief that Professor Carlin's study is not parochial in significance.

The study is likely to provoke debate. There is room for disputing the significance of some aspects of Professor Carlin's data and more ample room for doubting some of his interpretations of the evidence. I will take the opportunity to open some of the issues here. Wishfully, the debate will center on these more doubtful points and proceed in detachment. More likely the debate will be hottest over the points that are most clear, for the evidence is perhaps strongest where it is most hurtful to illusions.

These facts developed by Professor Carlin, at any rate, seem pretty clear:

1. There is a material discrepancy between the ethical standards that lawyers acknowledge are binding on them and the standards of conduct that many of them observe in fact. This is true not only of the rules of deportment peculiar to the canons of legal ethics but also of the rules of ordinary honesty.

2. Deviation from ethical standards of conduct is not significantly inhibited by formal devices for fostering compliance. Education in ethical responsibility at the law school level seems to have little normative effect. Disciplinary sanctions appear similarly limited in efficacy. Sanctions are applied in only a small fraction of the apparent violations and then in largely fortuitous circumstances. The deterrent effect of disciplinary proceedings, even when they are brought, has been muted by the silence in which they are conducted.

3. Violation of ethical norms is to an important degree random in the sense that it is a function of the individual lawyer's personal (rather than professional) commitment to behaving ethically. Subject to this personal variation, however, there are patterns of viola-

tion. Violation of ethical standards turns out to be strongly related to the characteristics of the type and situation of the lawyer's practice.

What are the characteristics of practice that conduce to ethical deviation thus becomes the central question. The full answer is not simple and there is in any event no answer that is uniformly true. The intricacies of the question are, indeed, what Professor Carlin's analysis is mostly about. Nevertheless, the characteristics of practice that are most frequently related to ethical deviation can be stated with some simplicity: The lawyer most prone to ethical deviation is the lawyer who is on his own or in a small firm, representing "ordinary" clients in the ordinary courts and agencies concerning the general run of ordinary matters such as personal injury claims and real estate transactions.

The lawyer so situated has no coterie of colleagues to sustain him in stresses and strains of his practice. (Having partners and associates is, however, no guarantee that a lawyer will be disposed to act ethically, for, as Professor Carlin shows, colleagues may help to sustain deviant behavior.) The lower echelon lawyer, as the author calls him, has a shifting base of clientele with whom he has comparatively short and weak attachments and from whom he gets relatively little continuing business. He appears in the lower echelon tribunals that are the "people's courts," handling law business that is minor civil, minor criminal, minor administrative. These tribunals are often irregular in the substance and procedure of their activities, creating a contaminating practice environment for the lawyers that appear in them.

The practitioner most susceptible to ethical violation is not part of a big impersonal organization. He acts on behalf not of large impersonal corporate clients but of real individuals whom he deals with face-to-face. He is not a narrow technical specialist but one who encounters in his practice a range of human problems that ordinary everyday people run into, though he is not as general in his practice as the general practitioner in smaller communities. He

is, in short, an approximation of the stereotype of the lawyer as he appears in the lore of the legal profession, Abraham Lincoln gone urban.

It is surely a disconcerting revelation that the lawyer whose situation in practice most nearly approximates the traditional ideal of what it should be is also the lawyer most susceptible to violation of the traditional ideal of what his conduct should be. This is disconcerting not merely because it is distressing on moral grounds. It is disconcerting also because it confounds conventional assumptions concerning what makes a practitioner of law a lawyer in the honorific sense. The "shingle," "independence," "general practice," "personal relationship," "service to real people"—these, it is held, are the marks by which a "true" lawyer is identified. Lawyers in large firms, in government, in corporation legal staffs are "true" lawyers only in virtue of the legal fictions by which they are assimilated to the ideal type. It has not previously been suggested that, in so far as any concrete statements can be made, precisely the reverse may have become the fact in metropolitan law practice: The traditional badges of the profession no longer are unequivocally those of honor.

Professor Carlin develops the evidence suggesting this conclusion with great thoroughness and persuasiveness. The task of gathering it and putting it together was monumental, as few who have not tried such an undertaking can appreciate. The debt to him incurred by those who care about the legal profession is correspondingly great. He has not only told us more than we have ever known before about the ethical climate of the legal profession but also has opened our eyes to new and tough questions about the way the practice of law is organized. Above all, in view of the evidence he has brought forward, some important old beliefs about law practice and practitioners can no longer be cherished, if, indeed, they can plausibly be held at all.

Some of the conclusions that Professor Carlin draws, especially in his last chapter, are even more provocative, if necessarily more

conjectural. He suggests that the "elite" of the bar is isolated from the lower echelon lawyer; that the "elite" lawyer is able to avoid a lot of legal dirty work because the lower echelon lawyer is available to do it; that only the "elite" lawyer accepts the more exacting ethical standards peculiar to the legal profession, and this largely because he is insulated from contaminating influences; and that the "elite" lawyer is such not only ethically but technically, being generally speaking better trained and more highly specialized. He offers the further proposition that it is the lower echelon lawyer who serves the lower and lower-middle income groups, while the "elite" lawyer serves large business enterprise and wealthy individuals. All these propositions seem borne out by the evidence, so that, as Professor Carlin says, "This leaves the least competent, least well-trained, and least ethical lawyers to the smaller business concerns and lower-income individuals."

The consequences that, in turn, flow from this circumstance, in Professor Carlin's view, are not only the provision of inferior legal services for lower income groups but the neglect of the substantive legal problems of the poor and near-poor as well. And this seems probably true also.

The question then arises as to the obstacles to the reform of these conditions. Professor Carlin suggests that reform is "blocked by the insulation of the elite from those parts of the bar and the administration of justice most affected by the problems that we have examined." He refers to the weaknesses of Legal Aid, the controversy over group legal services in California, and the turmoil over the *Brotherhood* case (*Brotherhood of Railroad Trainmen v. Virginia*, 377 U. S. 1, 1964), as evidence that the bar "may be less concerned with extending legal services than with preserving its monopolistic control over the provision of such services." There has been, he says, a "lack of effective leadership."

It is clear the reform has been slow in forthcoming and it is possible that the organized bar is as much concerned with preserving its competitive position as it is with the wider public interest. What

is far from clear, however, is that the principal sources of resistance to reform are found in the leadership of the bar, which is comprised, if Professor Carlin's argument is a sequitur, of its "elite" members.

It is undoubtedly true that many leaders of the bar do not perceive the need for reforms along the lines Professor Carlin suggests and, indeed, strongly oppose them. But it is also true that in regard to Legal Aid, the legal assistance component of the Federal Anti-Poverty Program, consideration of group legal services, and the problem of the representation of the criminal indigent, the impetus for reform has been at least as strong among the leaders of the bar as it has been in the rank and file, and by and large a good deal stronger. Much of the resistance appears to emanate from the lower echelon lawyers, who are especially influential at the state and local levels of professional organization, and those members of the profession that for one reason or another identify with them.

The sources and bases of this resistance is a complex subject, worthy of careful study itself. One of the contributing causes of resistance is suggested, however, in the very evidence Professor Carlin adduces. The lower echelon lawyer, not the "elite," feels the edge of intra- and extra-professional competition cutting into his unstable economic situation. If he could develop his practice as he wishes, it would be upward toward the "better" law business that the elite enjoy. As it is, he must develop a practice at the marginal level where he finds himself. It is precisely here that the proposed new forms of legal services—well financed, attracting better trained lawyers, organized in larger scale operations, just like the "big firms"—are proposed. And if there should emerge such new forms of legal service, of which the public defender office is an established type, Professor Carlin's evidence suggests that the better ethical climate characteristic of larger scale, better financed, and better manned offices would prevail in them. It is possible to suppose, moreover, that the existence of such "semi-elite" legal service organizations might help to reform the processes of minor justice whose

corruption now corrupts the lawyers that participate in it. In that event, the lower echelon lawyer not only could no longer sell his technical legal services competitively, but he also might not be able to sell his soul.

GEOFFREY C. HAZARD, JR.

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Preface

This book examines the social conditions of moral integrity in the legal profession. It is based on information obtained in interviews with lawyers in private practice in New York City. The research grew out of an earlier study of individual practitioners of law in Chicago and was designed, in part, to explore more fully and systematically, and with a much larger sample of lawyers, the findings and insights obtained in that study. While the earlier work considered the practice and problems of low-ranking lawyers, attention here is focused on variations in lawyers' adherence to ethical norms, and on the conditions, including status in the bar, affecting adherence. It is hoped that the results will be of benefit not only to students of the professions, but also to members of the bar and the public at large in critically assessing the role of the legal profession in the administration of justice.

This study was carried out as part of the Program on the Legal Profession at the Columbia Law School sponsored by Russell Sage Foundation. Ellis L. Phillips, Jr., then assistant dean of the Law School, was chairman of the Program. I wish to express my gratitude to Russell Sage Foundation for its generous financial aid, and to Leonard S. Cottrell, Jr., for his unflagging interest in, and sup-

port of, the study. I am also grateful to the Walter E. Meyer Research Institute of Law for additional research funds.

The design of the research, the collection, analysis, and interpretation of the data, and the preparation of the final report represent the combined efforts of many individuals. I am especially indebted to Allen H. Barton, director of Columbia University's Bureau of Applied Social Research, for encouraging me to undertake this study, and for his collaboration in the planning and execution of the study. Whatever I have learned about survey research I owe to Allen Barton and to other former colleagues at the Bureau: Bernard Berelson, David Caplovitz, Amitai Etzioni, Albert E. Gollin, Rolf Meyersohn, David L. Sills, and Wagner P. Thielens, Jr. Without their guidance and friendship this study could not have been made. I am particularly grateful to Wagner P. Thielens, Jr., for his valuable counsel and to Saul H. Mendlovitz, of the Rutgers Law School, for assisting me in the exploratory interviews.

Gertrude Jaeger must be credited with whatever logical coherence and readability has been achieved in this manuscript. The problems of survey analysis are equaled only by the difficulties of organizing and presenting the results of such research. I was indeed fortunate in having the benefit of her interpretive skill and editorial experience in this task. My gratitude to her can hardly be expressed in this simple acknowledgment.

I am greatly indebted to Philip Selznick, Sheldon L. Messinger, and Philippe Nonet, my present colleagues at the University of California's Center for the Study of Law and Society, for their patient and searching criticism of the issues raised by the study, and to the Center itself for the opportunity generously provided me for further reflection on and revision of the manuscript.

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J. E. C.

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Lawyers' Ethics

1

Introduction

Members of the legal profession in the United States are bound by a set of ethical rules. These are designed to protect clients from exploitation by lawyers, to promote solidarity and effective working relations among colleagues, and to guard against interference with the proper functioning of courts and agencies of government. In addition, the ethical standards of the bar serve to promote a more basic responsibility:

The lawyer's highest loyalty is at the same time the most intangible. It is a loyalty that runs not to persons, but to procedures and institutions. The lawyer's role imposes on him a trusteeship for the integrity of those fundamental processes of government and self-government upon which the successful functioning of our society depends.¹

Frequent ethical violations tend to undermine public confidence in the legal profession, and to weaken the integrity of the administration of justice. Thus, the Preamble to the Canons of Professional Ethics warns:

In America, where the stability of Courts and all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be . . . so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. . . . It cannot be so maintained unless the conduct and motives of our profession are such as to merit the approval of all just men.²

Compliance with ethical norms cannot be taken for granted, particularly in view of the nature of lawyer's work. As an advocate asserting or challenging claims of right, as counselor and draftsman fashioning the legal framework of collaborative effort, as negotiator and mediator accommodating interests and manipulating institutional structures, the practicing lawyer is constantly confronted with contending interests and conflicting loyalties. He may not only find himself in situations where his own interests run counter to those of his clients, but where service to clients may be inconsistent with his responsibilities as officer of the law. A critical research task, therefore, is to explore the conditions supporting and impairing the lawyer's capacity to carry out his ethical obligations.

Traditional Approaches to Professional Misconduct

Unethical behavior is most often explained as a product of inadequate training, as a failure on the part of the professional school to instill in students a commitment to professional norms and values. Eliot Freidson has observed:

Deficient behavior on the part of a professional tends to be seen as the result of being a deficient kind of person, or at least of having been inadequately or improperly "socialized" in professional school. The most common remedy for such behavior is to reform the professional curriculum.³

The underlying assumption is that commitment to professional norms and values can be learned in the course of professional training, and that, armed with this firm commitment, the practitioner will be disposed to conform to ethical standards. This position is evident in the following statement regarding the functions of medical education:

Since numerous kinds of pressures may be exerted upon private practitioners to depart from what they know to be the most appropriate kind of medical care, it becomes functionally imperative that they acquire, in medical school, those values and norms which will

make them less vulnerable to such deviations. It is in this direct sociological sense that the acquisition of appropriate attitudes and values is as central as the acquisition of knowledge and skills to training for the provision of satisfactory medical care.⁴

Similar views are voiced by commentators on legal education. At the Seton Hall Conference on Professional Responsibility, a law school dean asserted:

It is necessary for the law school wherever possible to incorporate in the curriculum sufficient scientific ethics to enable a well-meaning lawyer to know what he should do and sufficient incentive to lead him to it.⁵

And a panel discussant at a meeting of the American Bar Association maintained that the way to achieve greater professional responsibility is "to engender in each lawyer a higher sense of dedication to the fullest service of mankind. . . . *It must come from the inside.*"⁶

Although there are disagreements over methods, and doubts about specific programs, there is little wavering in the conviction that the professional school can influence ethical behavior and that this task "is or should be one of the major concerns of professional education."⁷ All that is required, according to the author of a recent article in the *Journal of Legal Education*, is "an understanding of the intrapsychic factors that so largely determine the shape of manifest behavior."⁸

Professional misconduct is also seen as a result of inadequacies in the canons of ethics, and in the machinery for their enforcement. The usual solution is to modernize the canons and to increase the effectiveness of disciplinary measures. For example, a special committee has recently been established by the American Bar Association to undertake a "broad re-evaluation of the adequacy and effectiveness of the Canons of Professional Ethics."⁹ The committee will "carefully evaluate the extent to which departures from high ethical standards and lapses in strict enforcement are related to the content of the Canons."¹⁰ And it is further noted that "appropriate revisions or additions could contribute significantly to more

effective grievance procedure, as well as to increasing the level of voluntary compliance."¹¹

Both approaches to the problem of unethical conduct focus on *rules* or *norms* as the principal, if not exclusive, instrument of social control. The assumption is that if the rules were properly defined, effectively internalized, and actively enforced they would be faithfully observed.

This point of view tends to conceive of professional norms as existing independently of the social and organizational context within which they are meant to operate. The focus of attention is on what the professional brings with him to the situation—his norms, values, or commitments—and on the punishment of infractions. Little or no attention is given to the context of action except to emphasize the need for more effective internalization of norms to counteract situational pressures.

Commitment to certain norms and values undoubtedly plays a role, and an important one, in the regulation of professional conduct. It is by no means certain, however, that such commitment can be instilled during professional training; indeed, data presented here and in other studies indicate that this is most unlikely. Nor is it certain that norms and values are the principal determinants of behavior. In fact, the main research problem is to examine the varying significance of norms for behavior within particular social contexts.

Ethical conduct is also undoubtedly affected by formal disciplinary measures. How much of an effect these measures have and the way in which they are brought about raise complex and largely unexplored issues. It seems to be the case in the New York City bar that only a small fraction of violators are officially disciplined. It is possible that if more violators were punished the level of conformity might rise. However, even if enforcement proceedings were carried out against a larger proportion of violators, this would still fail to affect the structural conditions leading to widespread violation of ethical standards. Until these conditions are in some way altered,

little can be accomplished by merely increasing the number of punitive actions.

In short, neither internalization nor formal enforcement of norms is sufficient to bring about or fully account for differences in adherence to ethical standards. *The social setting of the lawyer's work*, especially the pattern of opportunities and pressures to which he is exposed in his practice, is equally if not more important.

The Approach of This Study

The perspective adopted in this study is to center attention on how the social organization of the profession affects the ethical behavior of lawyers. We shall be principally concerned with influences on ethical conduct arising from characteristics of the lawyer's clientele, of the courts and agencies of government with which he deals, and of his colleague group, and with the patterning of these influences by the system of social stratification in the bar. We shall also examine lawyers' ethical commitments and the contribution of formal disciplinary measures to the maintenance of professional standards.

The critical importance of situational factors rests in part on the obstacles the lawyer encounters in maintaining his professional independence. Threats to his integrity may arise from the character of the market for legal services, from captivity to clients, and from the contaminating effects of certain courts and agencies.

The market for legal services is highly competitive, particularly in areas of practice calling for low-level, standardized skills. In these areas, the lawyer's work frequently overlaps that of other occupational groups such as realtors and accountants, resulting in intense competition if not open rivalry with these groups. The insecurity of the lawyer's practice is intensified, moreover, by the weak and intermittent demand for legal services among lower- to middle-income individuals. Lawyers who handle these nonrepeating matters are forced to seek continually for new legal business, and often find it necessary to establish illicit connections with runners

and other intermediaries. Consequently, lawyers who face these market conditions may be unable to preserve either their professional identity or moral integrity.

Lawyers are also likely to become captives of their clients. This is more often the case for practitioners who provide a continuous and broad range of service to their business clients, and who therefore often become involved in client affairs. Thus, 60 per cent of the lawyers in our sample assist their business clients in obtaining financing; an equal proportion are on the lookout for investment opportunities for these clients; close to half are either officers or board members of client corporations (generally taking an active part in corporate affairs); approximately a third hold stock or have other financial interests in such corporations. Under these conditions lawyers may find it extremely difficult to exercise independent judgment or authority. Moreover, involvement may also increase the lawyer's opportunities to exploit clients and make him more vulnerable to improper client demands.

Finally, the very institutions involved in the administration of justice—the courts and agencies of government—may themselves contribute to undermining the professional integrity of lawyers. In so far as these institutions are subject only to weak professional or bureaucratic controls and are open to political influence, practices are likely to develop which may undermine ethical standards. The inability of the legal profession to make more effective use of the courts for controlling the ethical behavior of lawyers stands in sharp contrast with the increasing use of the hospital for maintaining standards in the medical profession.

The Sample Design

The report which follows is a case study of the New York City bar. The data, collected in 1960, are drawn primarily from interviews conducted with approximately 800 lawyers in active private practice in Manhattan and the Bronx.

The study is designed to explore as fully as possible at least one major setting of the lawyer's work. Since the lawyer spends the greater portion of his time in his office, and since colleague controls are presumed to be significant in regulating professional conduct, most interviews are clustered by office suites; that is, after choosing a sample of law office suites, we interviewed all lawyers in those suites.¹² The final sample consisted of 881 lawyers in 247 law office suites of 1 to 14 lawyers, plus 61 additional lawyers in larger suites. Interviews were successfully completed with 801—or 85 per cent—of the 942 lawyers. In 73 per cent of the 247 suites, at least 80 per cent of the lawyer members were interviewed.¹³

It should be emphasized that the sample of lawyers does not constitute a cross-section of the New York City bar. It is representative only of the lawyers practicing in the central business core of the city. Thus, it excludes most of the neighborhood and subcenter (mainly Brooklyn) lawyers and all of those in the peripheral areas of the city. The sample also excludes the 13 per cent of active practitioners in Manhattan and the Bronx who are employed in legal departments of corporations or other private associations, the 5 per cent who work for agencies of government, a smaller percentage who are judges and law teachers, and many part-time lawyers.

Unless otherwise indicated, statistics in the following chapters are based on interviews with our sample of New York City lawyers. It is most important to keep in mind that the frequent references to the "metropolitan bar" pertain only to the New York City bar and, more specifically, to a sample from this bar. The findings cannot necessarily be generalized to all metropolitan bars, and certainly not to bars in the smaller cities. Nevertheless, of lawyers in large metropolitan centers (over one-half million population) of the United States, approximately one-third are located in New York City. Furthermore, such data as there are from these other metropolitan bars are strikingly similar to our findings in New York City.¹⁴

Notes to Chapter 1

1. "Report of the Joint Conference on Professional Responsibility," *American Bar Association Journal*, vol. 44, December, 1958, p. 1159.
2. Cited in Drinker, Henry S., *Legal Ethics*, Columbia University Press, New York, 1953, p. 3.
3. Freidson, Eliot, "The Organization of Professional Behavior." Paper read at the Annual Meeting of the American Sociological Association, Montreal, Canada, 1964.
4. Merton, Robert K., "Some Preliminaries to a Sociology of Medical Education" in Merton, Robert K., George G. Reader, and Patricia L. Kendall, editors, *The Student-Physician*. Harvard University Press, Cambridge, Mass., 1957, pp. 78-79.
5. *Addresses on Professional Responsibility*. Seton Hall University, School of Law, South Orange, N. J., 1956, p. 52. View expressed by Reverend Joseph T. Tinnelly, Dean, St. John's University Law School (discussant in panel on professional responsibility).
6. Remarks of James A. Pike cited in Cheatham, Elliott E., *Cases and Materials on the Legal Profession*, 2d ed., The Foundation Press, Inc., Brooklyn, N. Y., 1955, p. 127. (Italics added).
7. Watson, Andrew S., "Some Psychological Aspects of Teaching Professional Responsibility," *Journal of Legal Education*, vol. 16, no. 1, 1963, p. 1.
8. *Ibid.*, p. 4.
9. *American Bar News*, American Bar Association, vol. 9, September, 1964, p. 1.
10. *Ibid.*, p. 2.
11. *Loc. cit.*
12. The suite is defined as a set of offices with a common entrance and rented as a single unit.
13. See Appendix A, p. 185, for more detailed discussion of sampling design.
14. See Ladinsky, Jack, "Careers of Lawyers, Law Practice, and Legal Institutions," *American Sociological Review*, vol. 28, February, 1963, pp. 47-54; and Carlin, Jerome E., *Lawyers on Their Own*, Rutgers University Press, New Brunswick, N. J., 1962.

2

The Social Structure of the Metropolitan Bar

The social structure of the metropolitan bar furnishes a key to the ethical behavior of lawyers. An understanding of this social organization is indispensable not only to achieve familiarity with the metropolitan lawyer and his professional community, but also to provide a foundation for later analysis of the links between social structure and ethical conduct.

An Overview of the New York City Bar

In 1960 there were approximately 26,000 lawyers in Manhattan and the Bronx, about 20,500 of whom were active practitioners.¹ Of these 20,500 lawyers, we estimated that almost 17,000 were engaged in private practice; the remainder were with business firms or in government legal service. The private practitioners are highly varied in their work, social background, and training.

Areas of Practice

Legal practice falls into four principal areas: business, probate, personal injury, and real estate.² More lawyers (45 per cent) work

mainly in the business area than in any other field (Table 1).³ Of these business lawyers, almost 75 per cent have a general practice: they negotiate and prepare contracts, draw up articles of incorporation, give advice on general business policy, and, somewhat less frequently, handle personal matters for their clients. The remaining business lawyers engage in various specialties—labor relations, defense work for insurance companies, security and credit financing, antitrust cases, and so forth.

Personal injury lawyers (15 per cent) handle claims against insurance companies on behalf of individual clients;⁴ probate lawyers (17 per cent) draw up and probate wills and handle the legal and business problems involved in administering decedents' estates; real estate lawyers (14 per cent) either handle closings on residential property for individual purchasers or carry out transac-

Table 1. Distribution of Lawyers by Main Area of Practice

Main area of practice ^a	Per cent of lawyers ^b
Business	45
General business	33
Business specialties	9
Corporate specialties	3
Probate	17
Personal injury	15
Real estate	14
Matrimonial	2
Criminal	1
Workman's compensation	1
Individual income tax	1
Other (international law, administrative law, immigration)	1
No answer	3
Total	100

^a Main area of practice is determined by the area from which the respondent derives the largest part of his income.

^b Percentages reported in Tables 1-8 are projections from the sample of 801 lawyers to the New York City bar adjusted for differences in sampling ratios. See Appendix A, p. 188.

tions for clients buying and selling real estate. Fewer than 10 per cent of the lawyers are primarily engaged in the remaining areas of practice which consist principally of matrimonial and criminal work and workman's compensation.

Most lawyers specialize. Over 70 per cent spend at least one-half of their time, and almost 40 per cent at least three-quarters of their time, in a single area of practice.

The lawyer's work involves him in three interwoven sets of relationships: with clients, with courts and administrative agencies, and with colleagues. In terms of time involved, the most important is his relation to clients.

Clientele

The business community is the principal consumer of lawyers' services in New York City. Almost all lawyers serve some business clients;⁵ 70 per cent earn at least half their income in this area. Manufacturing, real estate, retail trade, and wholesale trade, in that order, are the principal types of business for which lawyers provide services (Table 2). Manufacturers of nondurable goods (such as textiles, food, and apparel) are the most frequently mentioned manufacturing clients; real estate investors, owners, and speculators are the most frequently mentioned real estate clients.

Most business lawyers represent medium-sized manufacturers, wholesalers, and retailers, organized usually as closely held corporations (that is, with fewer than ten shareholders). About 20 per cent work mainly for the large industrial and major financial firms. Only 15 per cent have individual proprietors—the smaller retail and service enterprises—as their principal clients.

Individual clients⁶ are primarily in the middle- to upper-income brackets: more than 70 per cent of the lawyers represent a clientele with a median income of \$10,000 a year or more, and 46 per cent have a clientele whose median income is \$20,000 a year or more. It is a significant fact that although 50 per cent of families and unrelated individuals in New York City have incomes under \$5,000

Table 2. Distribution of Lawyers by Type of Business Represented^a

Kinds of business clients	Per cent of lawyers
Manufacturing	54 ^b
Nondurable goods	36
Durable capital goods	18
Durable consumer goods	14
Other	3
Real estate	37 ^b
Buying and selling	25
Building and development	6
Management	1
Other	7
Retail trade and stores	27
Wholesale trade	20
Major financial	18 ^b
Security and commodity brokers	8
Banks, trust companies	6
Insurance	5
Utilities, transportation, communication	13
Education, welfare, foundations	8
Construction	7
Entertainment	6
Personal services, auto repair and service	6
Business services	4
Factors, commercial finance	3
Check cashing, auto finance services	2
No answer	2

^a Excluded are employees of individual practitioners and small- and medium-sized firm associates who spend less than one-third of their time on their own practice, and lawyers who derive less than 10 per cent of their law income from work on business matters. The total exceeds 100 per cent because some respondents mentioned more than one principal type of business.

^b This figure represents the percentage of lawyers whose principal business clients fall in any of the subcategories. The indented figures exceed this figure because some lawyers are classified in more than one of the subcategories.

Table 3. Religious Affiliation of Clientele

Religion of clientele	Per cent of lawyers
Mainly* Jewish	35
Mainly Protestant	17
Mainly Catholic	13
Mixed	19
Don't know; no answer	16
Total	100

* That is, more than 50 per cent.

Table 4. Distribution of Lawyers by Court in Which Most Time Is Spent

Level ^a	Court ^b	Jurisdiction	Per cent of lawyers who are in court at all ^c
Local	Magistrates'	Traffic; other violations below grade of misdemeanor; misdemeanors, with consent of defendant	2
	Special Sessions	Misdemeanors; paternity	2
	Municipal City	Claims, \$3,000 maximum	28
	Domestic Relations	Claims, \$6,000 maximum Support; juvenile delinquency	
State	General Sessions	Indictable crimes	1
	Supreme	Trial court of unlimited, general jurisdiction	28
	Surrogates'	Decedents' estates; adoptions; infant guardians	22
	U. S. District	Claims, \$10,000 minimum; diversity of citizenship; cases arising under Constitution and laws of the United States	16
Federal; state appellate	Appellate Division (of State Supreme Court)	Mainly appellate	4
	Court of Appeals (State)		
	U. S. Circuit		
	U. S. Supreme		
No answer			2

* The distinction between state and local courts refers principally to a difference in level of the judicial hierarchy. As Sayre and Kaufman properly point out, "In a strict sense, there is no such thing as a wholly local court in New York State. . . . The power of the state over the court system . . . is so extensive, and the measure of freedom allowed the city is so restricted, that all courts other than federal are generally regarded, and most realistically considered, as organs of the state." Sayre, Wallace S., and Herbert Kaufman, *Governing New York City*, Russell Sage Foundation, New York, 1960, pp. 522, 523. Nevertheless, there are marked differences between "state" and "local" courts, as indicated by differences in the educational background and experience of judges (see Table 63, p. 85), and in their salary and tenure. Judges in local courts earn between \$16,000 and \$21,000 a year compared to \$34,000 for judges in state courts. They have a ten-year term of office compared to the fourteen-year term of judges in state courts.

^b As of 1960, prior to reorganization of the judicial system in New York State.

^c Percentages do not total 100 because some respondents mentioned more than one court.

a year, only 5 per cent of the lawyers have a clientele with so low a median income.⁷

Thirty-five per cent of the lawyers have a "mainly Jewish" clientele (Table 3). Only 11 per cent have even a moderate number (13 per cent or more) of Negro clients, and even fewer a similar percentage of Puerto Rican clients.

Courts and Agencies of Government

Next to conferring with clients, the most time-consuming activity of lawyers is appearing in courts and government agencies.⁸ Different lawyers come into contact with different levels of the judicial hierarchy. Of those who deal at all with the courts, 20 per cent come into contact mainly with federal or state appellate courts; 22 per cent with the Surrogates' Court; 28 per cent with the New York Supreme Court; and 28 per cent with local courts, principally the City, Municipal, or Domestic Relations Court (Table 4). Time in court is given about equally to trying cases, handling routine matters, and "waiting around."

Lawyers spend less time in government agencies than in the courts (Table 5). Fifty per cent of those who deal with government agencies report contact mainly with federal agencies (Table 6). Most frequently mentioned is the local office of the Bureau of Internal Revenue on tax matters; less frequently, such regulatory

Table 5. Distribution of Lawyers by Time Spent in Courts and Government Agencies

Time spent per day	Per cent of lawyers	
	Courts	Government agencies
One or more hours	32	8
Less than one hour	48	60
None	15	28
No answer	5	4
Total	100	100

agencies as the Securities and Exchange Commission, Federal Trade Commission, and Interstate Commerce Commission. Almost 30 per cent deal mainly with state agencies, notably the liquor authority, tax commission, and rent commission. Finally, 20 per cent have most contact with local agencies: in order of frequency, the building department, tax department, law department, and various licensing agencies.

In sum, lawyers have most contact with tax agencies, somewhat less with real estate and housing agencies, and least with regulatory and licensing agencies. They also spend some time with bank and mortgage company officials, accountants, insurance adjustors, real estate and insurance brokers, and other nongovernment personnel.

The Office Colleague Group

The law office is the principal work setting for the private practitioner. It is also the place where he has most contact with his

Table 6. Distribution of Lawyers by Level of Principal Agency Contact

Level	Agencies*	Per cent of lawyers having any agency contact
Federal	Tax: Internal Revenue Service Regulatory: Securities and Exchange Commission, National Labor Relations Board Other: Immigration, U. S. District Attorney, Justice Department, Patent	50
State	Regulatory: Liquor (Alcoholic Beverage Commission), Labor Tax: Taxation and Finance, New York State Tax Commission Other: Motor Vehicle, Attorney General, Secretary of State	27
Local	Real Estate: Building Department Tax: Comptroller's Office, City Collections Regulatory: Licenses, Police, Board of Health Law Department and Other: District Attorney, Transit Authority	20
No answer		3
Total		100

* Agencies at each level are listed in order of frequency of contact.

colleagues. In Manhattan and the Bronx, there are approximately 4,300 law office suites (defined as a set of offices with a common entrance and rented as a unit), accommodating one to more than 100 lawyers. The largest suites, with 15 or more lawyers, are invariably occupied by a single firm (defined as two or more partners plus any associates). Of suites with fewer than 15 lawyers, about one-half (generally the smaller ones) are occupied by groups of unaffiliated, individual lawyers. Single firms occupy another quarter of the suites, while the remaining quarter are held by combinations of firms and independent lawyers.⁹

Not the suite, but the firm, is the significant unit for the system of social stratification in the bar. A little over half of all lawyers in New York City are members of firms. Seventeen per cent are in small firms (fewer than five), 15 per cent in medium-sized firms (5 to 14), and 21 per cent in large firms (15 or more). The other 47 per cent are individual practitioners or employees of individual practitioners (Table 7).

Social Background and Training

Members of the New York City bar are almost all native-born white males, but they come from a variety of ethnic and class back-

Table 7. Distribution of Lawyers by Size of Firm

Size of firm	Per cent of lawyers
<i>Individual practitioners^a</i>	47
<i>Small firm</i>	17
2	8
3 or 4	9
<i>Medium-sized firm</i>	15
5 to 7	7
8 to 14	8
<i>Large firm</i>	21
15 to 49	9
50 or more	12
Total	100

^a Includes lawyers employed by individual practitioners.

grounds. Slightly over 60 per cent are Jewish; 18 per cent are Catholic; 18 per cent are Protestant; the remaining 2 per cent report no religious affiliation. Of the Jewish lawyers, nearly 70 per cent are of eastern European origin. Sixty-three per cent of the Catholics are of Irish descent. The Protestants are 56 per cent British or Canadian in origin.

About one-fifth of the lawyers are sons of professionals or semi-professionals (one-tenth are sons of lawyers). More than one-half have fathers with business or managerial backgrounds. Fewer than one-fourth are sons of manual or white-collar workers.

Almost all of the lawyers attended college, about half an Ivy League or other top-quality school.¹⁰ Although only 56 per cent completed a full four years of college, 99 per cent have law school degrees. Of these, 36 per cent graduated from high-quality university law schools having full-time programs only, the remainder from a mixed law school with both a part-time evening and a full-time day division (Table 8). Of those who attended a mixed law

Table 8. Distribution of Lawyers by Law School Attended

Law school attended	Per cent of lawyers
<i>Full-time university</i>	36
Columbia	15
Harvard, Yale	14
Other (Cornell, Michigan, etc.)	7
<i>Higher-quality mixed^a</i>	27
New York University	18
Fordham	9
<i>Lower-quality mixed</i>	36
Brooklyn	17
St. John's	11
New York Law School	7
Other	1
<i>Did not attend law school</i>	1
Total	100

^a See Chart 1 for basis of quality ratings.

Chart 1. Quality Ratings of Mixed Law Schools

Quality rating	Law school	Date approved by Council on Legal Education	Date joined AALS ^a	Years of college required for admission		
				1940	1950	1960
Higher	New York University	1930	1900	2	3	4
	Fordham	1937	1936	2	4	4
Lower	St. John's	1940	1946	2	2	3
	Brooklyn	1940	^b	2	2	3
	New York Law School	1954	^b	2	2	3
		(provisional)				

^a Association of American Law Schools.

^b Not a member as of 1960.

SOURCE: *Annual Review of Legal Education*, Carnegie Foundation for the Advancement of Teaching, New York, 1921-1934; *Law School and Bar Admissions Requirements*, Section on Legal Education and Admissions to the Bar, American Bar Association, Chicago, 1935-1960.

school, more than half went to a lower-quality mixed law school. Chart 1 shows the basis for the quality ratings of mixed law schools.

Trends in Recruitment. In 1900, a little more than half the lawyers in the New York City bar were "Old Americans" (that is, at least third generation). The remainder were newer Americans, primarily of German or Irish descent. In 1960, only about one-third of the lawyers were Old Americans, and the newer Americans were now primarily of eastern European, Jewish origin. A study of New York City lawyers conducted in the mid-thirties indicates that the proportion of Jewish lawyers coming into practice in New York City increased from 26 per cent between 1900 and 1910, to 56 per cent between 1924 and 1929, and to 80 per cent between 1930 and 1934.¹¹ Our data show about the same proportion of Jews among the lawyers admitted to the New York City bar from 1924 to 1929,¹² but a somewhat smaller proportion for the group admitted between 1930 and 1934.¹³ From the mid-thirties to the end of the forties, the percentage of Jews among the lawyers admitted declined to about 50 per cent. Since that time it has leveled off at about 65 per cent.

During this same period (1900 to 1960), the percentage of Catholic lawyers admitted to the bar remained relatively constant.

Table 9. Composition of the New York City Bar by Parents' Country of Birth, 1900 and 1960^a

Country of birth of lawyer's parents	Per cent of lawyers		Percentage change 1900-1960
	1900 ^b	1960 ^c	
United States	53	34	-19
United Kingdom, Canada	8	4	-4
Ireland	13	4	-9
Northwestern and central Europe (mainly Germany)	18	16	-2
Eastern and southeastern Europe (mainly Russia)	3	40	+37
Other (and mixed)	5	2	
Total	100	100	

^a The two populations are not entirely comparable since the census data are based on all lawyers and our data are restricted to lawyers in private practice.

^b SOURCE: *Eighteenth Census of the United States*, vol. 4, *Population*, 1960. U. S. Department of Commerce, Bureau of the Census, Washington, D. C.

^c SOURCE: Study sample, weighted figures.

The proportion of Protestants declined from more than 25 per cent before 1920 to 10 per cent of those admitted since 1955. The proportion of Negro lawyers in the bar increased only slightly—from 0.3 per cent in 1900, to 0.6 per cent in 1930, to 1 per cent in 1960.¹⁴

Changes in Training. The duration of undergraduate training of practicing lawyers has increased substantially since 1900. The percentage of lawyers admitted to the bar with two years or less of college decreased from 50 per cent prior to 1920 to only 4 per cent between 1955 and 1960; the percentage with no college education decreased from 26 to zero. Conversely, lawyers with four years of college training increased from 35 per cent prior to 1920 to almost 70 per cent of those admitted from 1955 to 1960.

The continuing pattern of one ethnic group succeeding another in the bar, with newer immigrants (principally eastern European Jews) following the older (mainly German and Irish), was facilitated by the rapid expansion of the mixed law schools during the twenties. Many of these institutions were, at that time, primarily

interested in the tuition fee.¹⁵ Admission requirements were virtually nonexistent, and scholastic standards were minimal. When the sons of newly arrived immigrants from eastern Europe came of age, they began to cast about for occupations that might take them out of the ghetto. A good many turned to the law, and the mixed law schools eagerly welcomed them. The number of students enrolled in these schools in New York City between 1920 and 1929 quadrupled from 2,351 to 10,176 students. The enrollment at Brooklyn Law School, for example, increased from 453 students in 1920 to 3,312 in 1929, one-third of all law students in New York City. During the same period the number of students enrolled at Columbia Law School (with its full-time program) increased by only 4 per cent, from 613 to 638.

Subsequently, the depression cut very sharply into mixed law school enrollments: by 1932 the number of students in these schools had declined to almost half of the 1929 figure.¹⁶ Only since 1955, however, has a majority of lawyers admitted to practice in New York City completed the professional training provided by a full-time university law school.

The mixed law school eased the entry into the bar of the sons of recent immigrants. But it also helped to put them in a marginal position within the bar. If eastern European Jewish lawyers are generally at the lowest status levels of the New York City bar, it is partly because their degrees are from the night law schools. It should be noted, however, that regardless of type of law school attended or level of academic achievement, Jewish lawyers are less likely than their non-Jewish colleagues to gain access to a high-status position in the bar.

Stratification in the Bar

A stable system of social stratification lies behind the diversity of practice among New York City lawyers. The elite in this system are the lawyers in large firms (21 per cent of the bar), while the lowest stratum is composed of lawyers in small firms and individual prac-

tice (64 per cent of all lawyers); the remaining 15 per cent are the middle-stratum lawyers in the medium-sized firms. Large-firm lawyers have the highest average income, represent the most affluent and highest-status clients, and have most contact with higher levels of the judiciary and government. Individual practitioners and small-firm lawyers have the lowest incomes, represent the least affluent and lowest-status clients, and deal largely with lowest-level courts and agencies.

As the findings are developed in this study, it will be seen that many of the factors that serve to mark and separate the various strata are the very factors that determine the kinds of ethical controls to which lawyers are exposed in their practice. Understanding the stratification of the bar is essential, therefore, to understanding the forces affecting lawyers' adherence to ethical norms.

Differences in Clientele

There are substantial differences in clientele among the various-sized firms. Lawyers in the large firms provide services primarily for business clients; small-firm lawyers and individual practitioners serve both individual and business clients. The principal business clients of large-firm lawyers are large, wealthy corporations in heavy industry and major finance, while small-firm lawyers and individual practitioners work mainly for small, closely held corporations and, to a lesser extent, for individual proprietors in retail, personal service, real estate, and light manufacturing industries.

The individual clients of large-firm lawyers are generally well-to-do Protestants; those of small-firm lawyers and individual practitioners are usually middle-income Jews. Very few of the large-firm lawyers have any Negro or Puerto Rican clients. In contrast, two-thirds of the individual practitioners and small-firm lawyers have some Negro clients, and about half represent some Puerto Ricans (Table 10).

An Index of Client Status was constructed to show clearly the relation between size of firm and social characteristics of clients.¹⁷

Table 10. Clientele Characteristics by Size of Firm^a

Clientele characteristics	Per cent of lawyers			
	Large firm (15+)	Medium (5 to 14)	Small (2 to 4)	Individual practice
80 per cent or more of lawyer's income derived from work on business matters	74 (60) ^b	57 (119)	30 (139)	30 (329)
Median net worth of business clients over \$500,000 ^c	84 (56)	40 (103)	9 (122)	10 (285)
36 per cent or more of business clients are public corporations ^a	72 (56)	30 (103)	2 (122)	7 (285)
Principal business clients ^a				
Heavy industry or major finance	75 (56)	47 (103)	31 (122)	25 (285)
Retail or personal service	7 (56)	18 (103)	45 (122)	47 (285)
Individual clients mainly Jewish ^d	14 (49)	34 (116)	46 (138)	44 (326)
Any Negro clients ^d	14 (49)	28 (116)	66 (138)	65 (326)
Any Puerto Rican clients ^d	6 (49)	16 (116)	44 (138)	44 (326)
Median income of individual clients over \$20,000 a year ^d	65 (49)	54 (116)	32 (138)	20 (326)

^a Excluded are employees of individual practitioners and associates in small and middle-sized firms who spend less than one-third of their time in their own practice. Questions about clients were not included in their interview schedules.

^b In this table and subsequent tables in this report, figures in parentheses refer to the total number of cases on which percentages are based.

^c Excluded are respondents with less than 10 per cent of their income from work on business matters.

^d Excluded are respondents with no individual clients.

Four criteria of status were used in constructing the Index: size and wealth of the business firms represented, and income and race of individual clients. When these are combined into a single measure, and client status is divided into high, medium, and low, over 60 per cent of large-firm lawyers are classified as having a high-status clientele and none as having a low-status clientele. Conversely, 58 per cent of small-firm lawyers and individual practitioners have a low-status clientele (Table 11).

Table 11. Client Status by Size of Firm

Client status ^a	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
High	62	49	15	12
High-medium	38	38	27	30
Low	0	13	58	58
Total	100 (60)	100 (204)	100 (161)	100 (376)

^a See Appendix C, p. 202, for Index of Client Status.

Differences in Area of Practice

Almost all large-firm lawyers deal primarily in business or probate matters: 68 per cent designated business and 23 per cent probate as their main area of practice (Table 12). Although more individual and small-firm lawyers handle business matters than other types of cases, a far greater proportion of this segment of the bar than of large-firm lawyers are in personal injury, real estate, criminal, matrimonial, and workman's compensation practice.

Table 12. Main Area of Practice by Size of Firm

Main area of practice	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
Business	68	66	27	36
Probate	23	20	17	15
Real estate	5	2	18	17
Personal injury	2	6	26	22
Criminal, matrimonial, and workman's compensation	2	4	11	9
No answer	0	2	1	1
Total	100 (60)	100 (204)	100 (161)	100 (376)

Within the business area, type of work done also differs by size of firm. Large-firm lawyers are more likely to handle antitrust cases and securities and credit financing; individual practitioners are more likely to work on labor relations problems, minor matters for employees, personal matters for officers of the business, building and zoning permits, liquor or other licenses, and incorporation.

Lawyers from large firms are also more likely to specialize: 77 per cent of them devote three-fourths or more of their time to a single area of practice compared to only 28 per cent of individual practitioners.

Differences in Contacts with Courts and Agencies

The larger the firm, the less time its members spend in court. Of those who do spend at least two hours a week in court, lawyers in large firms are more likely to spend most of that time trying cases, while individual practitioners are more likely to "wait around" (Table 13).

Table 13. Court and Agency Contacts by Size of Firm

Court and agency contacts	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
Spend less than two hours a week in court	63 (60)	49 (204)	35 (161)	27 (376)
Mainly try cases ^a	53 (19)	42 (92)	27 (100)	26 (256)
Mainly "wait around" ^a	11 (19)	23 (92)	34 (100)	45 (256)
In contact mainly with federal and appellate courts ^b	55 (40)	36 (164)	10 (140)	8 (354)
In contact mainly with local courts ^b	3 (40)	10 (164)	32 (140)	42 (354)
In contact mainly with federal agencies ^c	94 (46)	64 (135)	36 (114)	33 (261)

^a Excludes respondents who spend less than an average of two or more hours a week in court.

^b Excludes respondents with no court contact during the previous year.

^c Excludes respondents who spent no time in government agencies during the previous year.

The level of the courts and government agencies where most time is spent also varies considerably with size of firm. A combined measure, the Index of Court and Agency Contact,¹⁸ shows that 67 per cent of the large-firm lawyers, but only 11 per cent of the small-firm lawyers, come into contact mainly with federal (upper-level) courts and agencies (Table 14). Lawyers with an elite practice (handling business and probate matters for a high-status clientele) are most likely to be in contact with federal courts and agencies, but even among this group, small-firm lawyers and individual practitioners have less upper-court contact than do large-firm lawyers.

Differences in Lawyers' Incomes

Almost 70 per cent of the partners in large firms, as against 13 per cent of individual practitioners, report a total net income before taxes of \$35,000 or more.¹⁹ This relation between size of firm and income persists regardless of type of practice. Thus, 75 per cent of lawyers in large firms with the most prestigious practice (handling probate and business matters for a high-status clientele, and having contact mainly with upper-level courts and agencies) report incomes of \$35,000 a year or more compared to 44 per cent of individual and small-firm lawyers with a similar practice.

Table 14. Level of Principal Court and Agency Contact by Size of Firm

Level of court and agency contact ^a	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
High	67	46	10	12
High-middle	28	35	38	33
Low-middle	5	13	26	26
Low	0	5	26	29
No answer	0	1	0	0
Total	100 (60)	100 (204)	100 (161)	100 (376)

^a See Appendix C, p. 207, for construction of Index of Court and Agency Contact.

Social Background and the Status Hierarchy of the Bar

Lawyers find their way into firms of different sizes through a complex process of self-selection and recruitment. Religion, social class origin, choice of college and law school, and grades in law school all play important roles.

Most individual practitioners and small-firm lawyers are first- or second-generation Americans, of eastern European Jewish origin. The large-firm lawyers are predominantly Old Americans of British, Irish, or northwestern European Protestant origin.

Large-firm lawyers come from higher social-class backgrounds: their fathers have had more education, were in higher-status occu-

Table 15. Social Background and Education by Size of Firm

Characteristics of lawyer	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
At least one native-born grandparent	57	21	11	9
Foreign-born or second generation	17	45	55	63
Of British, Irish, or northwestern European descent ^a	77	39	24	21
Of eastern European descent ^a	15	45	57	59
Protestant	43	15	7	9
Catholic	27	20	14	12
Jewish	25	63	76	77
Father attended college	60	47	38	29
Father a professional	35	25	22	13
Father's income \$12,000 a year or more	40	21	29	17
Has a four-year college degree	77	56	52	47
Attended a college outside New York City	79	42	42	20
Attended a full-time university law school	77 (60)	43 (204)	22 (161)	19 (376)

^a Descent is determined by country of origin of the most recent foreign-born male ancestor. Northwestern Europe includes Scandinavia, The Netherlands, Germany, France, Belgium, and Switzerland. Eastern Europe includes Russia, Poland, the Baltic countries, Rumania, and Yugoslavia.

pations, and have made more money than fathers of small-firm and individual practitioners.²⁰ In addition, lawyers in large firms are more likely to have earned a four-year college degree and to have attended one of the prestige colleges outside New York City.²¹ Finally, 77 per cent of the large-firm lawyers are graduates of full-time university law schools (principally Columbia, Harvard, and Yale—the Ivy League law schools), compared to about 20 per cent of small-firm and individual attorneys²² (Table 15).

A lawyer's chance of reaching a high-status position in the bar is fixed at a relatively early stage; the process begins, in effect, when the young lawyer-to-be enters college. His religion and social class largely determine the college he attends. Religion, social class, and college are important factors in deciding the quality of law school to which he will be admitted. And ultimately, his law school standing, the school he has attended, plus his religious background determine the size of firm into which he will be recruited.

Table 16 shows the close relation of parental socioeconomic status to the quality of the college attended. But it also shows that Protestant lawyers are more likely to have gone to an Ivy League or top-quality college outside New York City than either Catholic or Jewish lawyers, regardless of class background.

Table 16. Type of College Attended by Religion and Social Class Background

Religion	Per cent of lawyers who attended an Ivy League or top-quality college outside New York City		
	High parental socioeconomic status ^a	Middle parental socioeconomic status	Low parental socioeconomic status ^b
Protestant	70 (64)	42 (12)	28 (18)
Catholic	19 (47)	10 (21)	10 (52)
Jewish	34 (169)	17 (133)	9 (211)

^a See Appendix C, p. 201, for construction of the Parental Socioeconomic Status Index.

^b Low parental socioeconomic status includes low-middle and low.

While it is evident that status of college strongly influences the type of law school attended (Table 17), both religion and class background remain important (Table 18). Lawyers who attended an elite college are more likely to have gone on to a full-time university law school if they were Protestants and/or came from a higher social class background²³ (Table 18).

Table 17. Attendance at a Full-Time University Law School by Quality and Location of College

Type of college attended	Per cent of lawyers who attended a full-time university law school	
	College outside New York City	College in New York City
Ivy League	89 (63)	64 (53)
Other top-quality	67 (55)	18 (202)
Middle-quality	61 (65)	12 (165)
Lower-quality	30 (50)	2 (65)

Table 18. Attendance at a Full-Time University Law School by Religion, Social Class Background, and Type of College Attended

Religion and social class background	Per cent of lawyers who attended a full-time university law school	
	Ivy League college or top-quality college outside New York City	All other colleges
<i>Protestant</i>		
High parental SES ^a	90 (51)	^b (3)
Low parental SES	80 (20)	^b (8)
<i>Jewish</i>		
High parental SES	70 (87)	20 (70)
Low parental SES	52 (54)	2 (251)
<i>Catholic</i>		
High parental SES	59 (29)	7 (14)
Low parental SES	15 (26)	4 (45)

^a Socioeconomic status.

^b Too few cases upon which to base a percentage.

The probability of a lawyer's entry into a large (elite) firm is greatly affected not only by the status of his law school and his own class standing (Table 19), but also by his religion. Lawyers who attended both a top-quality college and an Ivy League law school are less likely to be members of large firms if they are Jews than if they are not: 19 per cent of Jews with such training are in large firms compared to 45 per cent of non-Jews of comparable educational background.²⁴ Protestants also are more likely than Jews to become members of large firms, even if they attended lower-ranking law schools and had lower academic standing. Thus, a Jewish lawyer who achieved high academic standing (that is, was selected for

Table 19. Membership in Large Firms by Type of Law School and Law School Standing

Law school standing	Per cent of lawyers now in a large firm			
	Full-time university law school	Higher-quality mixed law school	Lower-quality mixed law school	
Law review	31 (46)	9 (44)	10 (29)	
Other top third	21 (112)	1 (98)	1 (153)	
All others	11 (82)	2 (96)	1 (120)	

Table 20. Membership in Large Firms by Type of Law School, Law School Standing, and Religion

Type of law school and law school standing	Per cent of lawyers now in a large firm			
	Protestant	Catholic	Jewish	
<i>Full-time university</i>				
Law review	69 (13)	* (5)	11 (27)	
Other	26 (54)	40 (20)	8 (116)	
<i>Mixed law school</i>				
Law review	* (2)	24 (17)	3 (59)	
Other	10 (30)	5 (82)	0 (343)	

* Too few cases on which to base a percentage.

the staff of law review) in an Ivy League law school has no better chance of being in a large firm than a Protestant lawyer who did not "make law review" and who attended a non-Ivy League law school (Table 20).

The strong correlation between social origin, educational background, and present position in the bar, plus the highly selective process of recruitment, particularly into the larger firms, suggests a marked degree of continuity and stability among the various status groups. Just how stable and continuous these groups are is apparent from an examination of patterns of career mobility within the bar.

Mobility Within the Bar

Lawyers tend to remain in the same stratum of the bar in which they begin their professional careers, and movement is generally limited to no more than one step up or down. Table 21 shows that very few lawyers move up to large firms from any other strata; no more than 2 per cent have done so. A considerable number of lawyers do move down from large firms, but they generally move only one step, into medium-sized firms.²⁵ Lawyers who start in medium-sized and small firms frequently go into individual practice; in fact, those beginning in small firms are more likely to move to individual practice than to remain in a small firm.²⁶

Table 21. Present Position by Starting Position

Present position	Per cent of lawyers			
	Starting position			Individual practice
	Large firm	Medium	Small	
Large firm	47	2	2	1
Medium	31	56	20	11
Small	8	12	30	22
Individual practice	15	30	48	66
Total	100 (107)	100 (170)	100 (206)	100 (318)

For lawyers who shift from one stratum to another, the probability and direction of the shift appear to depend largely on background characteristics (Table 22). Lawyers who begin and *remain* in a large firm are more likely than those who move "down" to be Protestant, to come from a family of high socioeconomic status, and to have attended a prestige college and an Ivy League law school. Moreover, lawyers who move "up" from individual practice more often have these same characteristics than those who remain at the lower level.

Religion continues throughout his career to be significant in determining a lawyer's position (Table 23). In each religious group lawyers who started in a large firm are more likely to have re-

Table 22. Social Origin and Educational Background by Career Patterns

Starting position	Present position			
	Large firm		Medium	Small and Individual practice
	Per cent of lawyers from higher class backgrounds*			
Large firm	72	(50)	58	(33)
Individual practice	37	(38)	30	(70)
	Per cent of lawyers who are Protestant			
Large firm	40	(50)	36	(33)
Individual practice	18	(38)	4	(70)
	Per cent of lawyers who attended an Ivy League college or top- and middle-quality college outside New York City			
Large firm	68	(50)	64	(33)
Individual practice	37	(38)	19	(70)
	Per cent of lawyers who attended a full-time university law school			
Large firm	76	(50)	76	(33)
Individual practice	40	(38)	14	(70)

* Score "high" on the parental SES index.

Table 23. Membership in Large Firms by Starting Position and Religion

Starting position	Per cent of lawyers now in a large firm					
	Protestant		Catholic		Jewish	
Large firm	45	(29)	35	(23)	17	(30)
Medium	18	(17)	0	(19)	0	(91)
Small and individual practice	12	(35)	0	(42)	1	(355)

mained in such a firm than those who began in a lower stratum. Protestant lawyers, however, regardless of their starting position, had a better chance than Catholic or Jewish lawyers of ending their careers in a large firm. Catholic or Jewish lawyers have virtually no likelihood of advancing to a large firm from a small firm or individual practice. By contrast, a Protestant lawyer, beginning in a small firm or in individual practice, has almost as much likelihood of moving up to a large firm as a Jewish lawyer, starting with a large firm, has of remaining in such a firm.

Movement of lawyers among the various strata of the bar is highly selective. A consequence of this selectivity is that partners in large firms have the highest status background characteristics. They are most likely to be Protestant, to come from an upper-class family, and to have attended an elite college and law school.

Another consequence is that lawyers in the upper and lower strata do not share a common professional experience. No more than 10 per cent of the lawyers in large firms have ever been in individual practice or a small firm, and only 7 per cent of individual practitioners have ever been in a large firm. This lack of a shared experience is reinforced by a relative absence of professional and social contact between lawyers in these two strata.

Social Distance

The farther his professional colleagues are removed from a lawyer's own social stratum, the less likely he is to have contact with them. Three-fourths of individual practitioners have no contact at

all with lawyers in large firms, and over one-half of the lawyers in large firms have no contact with either individual practitioners or small-firm lawyers (Table 24).

Lawyers tend to have contact primarily with other lawyers in their own stratum; this is particularly true for the upper and lower extremes of the bar (Table 25). Over 60 per cent of lawyers in the highest and lowest strata report that most nonoffice lawyers with whom they come into contact are in their own stratum, and no more than 7 per cent report that most of their contacts are with lawyers in strata other than their own.²⁷

Table 24. Extent of Interstrata Professional and Social Contacts

Size of firm of lawyers with whom respondent has no contact	Per cent of lawyers*			
	Size of lawyer's own firm			Individual practice
	Large firm	Medium	Small	
Large firm	14	57	70	75
Medium	46	40	57	67
Small	59	41	27	40
Individual practice	50 (56)	30 (172)	17 (147)	11 (328)

* Percentages exceed 100 because some lawyers report no contact with lawyers in more than one category.

Table 25. Extent of Intrastratum Professional and Social Contacts

Size of firm of lawyers with whom respondent has 50 per cent or more of his contacts	Per cent of lawyers*			
	Size of lawyer's own firm			Individual practice
	Large	Medium	Small	
Large firm	62	18	5	6
Medium	9	24	5	8
Small	7	23	36	20
Individual practice	7 (56)	35 (172)	49 (147)	68 (328)

* Percentages do not total 100.

Table 26. Membership in the Two Main City Bar Associations by Size of Firm

Bar association	Per cent of lawyers			Individual practice
	Large firm	Medium	Small	
Association of the Bar of the City of New York	61	36	13	10
New York County Lawyers' Association	27 (60)	41 (202)	50 (157)	47 (375)

Social distance between upper and lower strata is also reflected in the fact that membership in the two principal bar associations in the city is highly correlated with size of firm. Lawyers in large firms tend to belong to the Association of the Bar of the City of New York, individual practitioners and small-firm lawyers to the New York County Lawyers' Association (Table 26).

Leadership in these bar associations follows status lines. In the Association of the Bar of the City of New York, individual practitioners who belong are less likely to hold positions of leadership than lawyers from the large firms (9 per cent of the former and 28 per cent of the latter). The reverse is true of the New York County Lawyers' Association. Here none of the large-firm members is in a leadership position, but about 15 per cent of the lawyers in smaller firms are.²⁸

The very existence of two bar associations—one elite, one non-elite—serves to formalize the system of stratification.

Conclusion

The metropolitan bar is, upon the evidence of our sample, a highly stratified professional community. Substantial differences in clientele, type of practice, and income mark the divisions among the principal strata. The striking differences in background between lawyers of the upper and lower strata indicate a highly systematic process of selection, recruitment, and retention; they suggest that

the strata are persisting social entities capable of replenishing themselves with lawyers from similar backgrounds. Although some lawyers move from one stratum to another, they tend to do so in the early years of their practice, and the shifts follow highly predictable patterns. Finally, lawyers at the two extremes of the bar are largely isolated from professional or social contact with one another, a phenomenon which tends, no doubt, to reinforce and solidify the established status divisions.

Before turning to an analysis of the ethical conduct of lawyers and how it is related to this system of stratification, we must first consider what the *norms* of ethical conduct in the bar are and whether we can measure adherence to them.

Notes to Chapter 2

- Figures were estimated from the principal listings of lawyers in New York City: *Martindale-Hubbell Law Directory*, Martindale-Hubbell, Inc., Summit, N. J., 1960, and the *Red Book* for Manhattan and the Bronx.
- For a more detailed description of lawyers' work see the following empirical studies of particular segments of the bar: Carlin, Jerome E., *Lawyers on Their Own*, Rutgers University Press, New Brunswick, N. J., 1962; Hale, William H., *The Career Development of the Negro Lawyer*, unpublished doctoral dissertation, Department of Sociology, University of Chicago, 1959; Lortie, Dan C., *The Striving Young Lawyer: A Study of Early Career Differentiation in the Chicago Bar*, unpublished doctoral dissertation, Department of Sociology, University of Chicago, 1958; O'Gorman, Hubert J., *Lawyers and Matrimonial Cases*, The Free Press of Glencoe, New York, 1963; Smigel, Erwin O., *The Wall Street Lawyer*, The Free Press of Glencoe, New York, 1964; Wood, Arthur L., *The Criminal Lawyer*, unpublished report prepared for the Survey of the Legal Profession of the American Bar Association, American Bar Foundation, Chicago, 1955.
- The descriptive data presented in this chapter are weighted proportions based on the final sample of 801 lawyers adjusted for differences in sampling ratios. All correlations are based on the unweighted figures drawn from the sample interviews. See Appendix A, p. 188.
- Lawyers defending against personal injury or property damage claims are defined as business "specialists."
- That is, clients who are either organized as business entities (corporations, partnerships, and so forth) or otherwise require advice on business matters.
- That is, clients with personal matters not arising in the course of business, and individual proprietors and principal owners of closely held corporations.
- Income distribution of population in New York City is drawn from *Characteristics of the Population and Labor Force of New York State, 1956 and 1957*, vol. 2, December, 1960.
- About 60 per cent rank conferring with clients first in a list of various

- activities, and only 1 per cent report spending little or no time conferring. Next are negotiating with other parties (principally with opposing attorneys) on behalf of clients and doing research on current legal problems; roughly half the lawyers rank these activities second or third. Less time is spent conferring with lawyer associates and partners, developing clientele, working on case files, and reading legal material to keep up.
9. The suite of median size contains two lawyers; nearly 75 per cent have fewer than five lawyers. Half of the lawyers are in suites of five or more attorneys, and almost 30 per cent work in the 4 per cent of the suites that have ten or more.
 10. College quality ratings taken from Berelson, Bernard, *Graduate Education in the United States*, McGraw-Hill Book Co., New York, 1960.
 11. Fagen, Melvin J., "The Status of Jewish Lawyers in New York City," *Jewish Social Studies*, vol. 1, 1939, pp. 73-104.
 12. It should be noted that our data include only those lawyers who are still actively engaged in private practice. Similarly, the figures drawn from the Fagen study are based on lawyers still in practice in the mid-thirties.
 13. This discrepancy may reflect a higher dropout rate for Jewish than non-Jewish lawyers during the depression. The 80 per cent figure is based on data collected in the mid-thirties and refers, therefore, to the lawyers most recently admitted to practice; our figures for the same period include lawyers still in practice twenty-five years later.
 14. Earlier figures drawn from the *Twelfth and Fifteenth Census of the United States*, vol. 4, *Population*, 1900 and 1930. Government Printing Office, Washington.
 15. See Carlin, Jerome E., *op. cit.*, chap. 1.
 16. Figures drawn from *Annual Review of Legal Education*, Carnegie Foundation for the Advancement of Teaching, New York, 1921-1934.
 17. See Appendix C, p. 202, for construction of the Index of Client Status.
 18. See Appendix C, p. 207, for construction of the Index of Court and Agency Contact.
 19. When associates and employees are included in the comparison, the income difference between large-firm lawyers and those in individual practice is reduced: 35 per cent of the former and 11 per cent of the latter report incomes of \$35,000 or more a year. This reflects in part the uniformly smaller incomes of associates and employees and the fact that there are proportionally more associates in large firms than there are employees of individual practitioners.
 20. These class background factors were combined to form a Parental Socio-economic Status Index described in Appendix C, p. 201. Subsequent references to socioeconomic background are based on this Index.
 21. The greater prestige attached to colleges located outside New York City is indicated by the fact that, at each quality level, lawyers from advantaged backgrounds are more likely than those from disadvantaged backgrounds to have attended a college outside the City. Furthermore, as we shall see later, attendance at a college outside New York City enhances the lawyer's chances of admission to a top-quality law school.
 22. These differences in social background and training between large-firm lawyers and individual practitioners are probably characteristic of metropolitan bars in general. Strikingly similar findings were obtained in a study of Detroit lawyers as shown in the table opposite:
 23. A national survey of recent entrants to American law schools found that, if anything, Jewish students gain entrance to elite law schools slightly more easily than Protestants, even among those of equivalent talent (based on Law School Admission Test scores) from high-quality colleges. Warkov, Seymour, *Lawyers in*

Social Background and Training by Size of Firm in New York City and Detroit^a

Background and training characteristics	Per cent of lawyers:			
	Large firm ^b		Individual practice	
	New York City	Detroit	New York City	Detroit
<i>Third generation or more</i>	83	90	37	41
<i>National origin</i>				
Northwestern Europe	77	75	21	32
Central Europe	7	20	19	18
Southeastern Europe	15	6	59	50
<i>Religion^c</i>				
Protestant	43	69	9	31
Catholic	27	26	14	34
Jewish	25	6	77	35
<i>A four-year college degree</i>	77	87	47	43
<i>Full-time university law school</i>	77	73	19	14
	(60)	(107)	(376)	(100)

^a Detroit figures reported in Ladinsky, Jack, "Careers of Lawyers, Law Practice, and Legal Institutions," *American Sociological Review*, vol. 28, February, 1963, pp. 47-54.

^b Large-firm lawyers in the Detroit study are in firms with ten or more partners and associates. Individual practitioners in the Detroit study include two-man family partnerships, but exclude lawyers employing other lawyers.

^c While there appears to be a larger proportion of Protestants in the Detroit bar, the size-of-firm differences in religious background are roughly of the same order of magnitude in the two cities.

the Making: The 1961 Entrants to American Law Schools, Report No. 96, National Opinion Research Center, University of Chicago, Chicago, 1963. Our apparently contradictory finding—that in New York, Jewish lawyers are less likely to have attended an elite law school—may be interpreted as a reflection of quotas based on geography rather than religion. If the Ivy League law schools prefer non-New York City residents, Protestants would have an advantage because more of them were born outside New York City. It is true that in our sample Protestants and Jews born outside New York City attended elite law schools

in about equal proportions. However, Protestants born in New York still maintained a decided advantage over Jews. Among New York-born lawyers from high socioeconomic-status families who graduated from an elite college, 90 per cent of the Protestants, compared to 67 per cent of the Jews went on to an Ivy League law school. These findings suggest that, at least for New York City applicants, religion does affect admission to elite law schools. This situation may have changed since 1960.

24. While Catholics are less likely to have attended a top-quality college or law school than Protestant lawyers, when

we take into account the type of college and law school attended, Catholics have about the same chance of being in a large firm as Protestant lawyers.

A recent study of hiring practices based on questionnaires sent to members of the Yale Law School classes of 1951 to 1962 practicing in New York City concludes that "Gentiles were more successful than Jews in getting good jobs [getting into large firms], and in getting the jobs of their choice." See "The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices," *Yale Law Journal*, vol. 73, March, 1964, p. 635. Moreover, as shown in the following table, regardless of their rank in law school, Jewish graduates started out in smaller firms than gentiles (drawn from Tables I and II, *Ibid.*, p. 648):

Class rank	Average size of firm in which lawyers took first job	
	Gentiles	Jews
Top third	73	41
Middle third	52	27
Lower third	54	19
All	60	31

25. These findings undoubtedly reflect the policy of the larger firms to take in recruits as soon after they graduate from law school as possible and to move them up within the firm or out

of it. See Smigel, Erwin O., *op. cit.*, chaps. 3 and 4.

26. The figures presented in Table 21 include both older lawyers, who have presumably arrived at their final destination in the bar, and younger lawyers who may still be moving. When lawyers over forty are considered separately, a somewhat smaller percentage have remained at their starting level (except for individual practitioners) and a larger proportion who started in firms of all sizes are now in individual practice. But again no more than 2 per cent have moved up to large firms from a lower stratum.
27. As might be expected, individual practitioners and small-firm lawyers who have moved down from large firms are more likely to come into contact with lawyers in the large firms than those who started in medium-sized or small firms. Similarly lawyers in medium-sized and large firms who have moved up are more likely to have some contact with individual practitioners and small-firm lawyers than those who have always been in large firms.
28. Individual practitioners and small-firm lawyers who have moved down from the larger firms are more likely to be members (and leaders) of the Association of the Bar of the City of New York than those who started out in small firms and individual practice; 42 per cent of the former and 7 to 11 per cent of the latter are members.

3

Ethical Norms in the Metropolitan Bar

There are differences in the ethical behavior of lawyers. To study these differences we needed meaningful and reliable ways of measuring lawyers' conduct in relation to ethical norms. One possibility might have been to observe lawyers in practice, noting instances of conformity or violation. The high costs and other problems involved in making such observations of many hundreds of lawyers are readily apparent. We might also have used official records of professional misconduct as the basis of our classification. Too few lawyers, however, are publicly sanctioned to make this method feasible. Finally, we might have used the ratings or judgments of colleagues. It is unlikely, however, that we could have obtained enough reliable informants to make these judgments. We did follow this technique in a smaller preliminary study, but only as a check on the accuracy of other procedures.

The method we finally chose was simply to ask lawyers how they had acted in certain situations where norms might be violated. Success here obviously depends on the candor of the lawyers interviewed. Candor, we discovered, depends largely on the ethical conflict situation presented.

Before turning to the problems involved in measuring conformity to ethical norms, we shall briefly describe the norms themselves.

Lawyers are informed of their ethical obligations through several official or quasi-official sources: the canons of ethics of the various bar associations;¹ the published opinions of committees on professional ethics;² court rules for the regulation of lawyers' conduct;³ court decisions in disciplinary and other cases involving lawyers;⁴ legislative provisions "that the conviction of certain specified offenses shall necessitate the lawyer's disbarment;"⁵ and finally, the definition and interpretation of standards contained in the various texts, treatises, and casebooks on legal ethics.⁶ Lawyers are also guided by unwritten norms, customs, and practices that have evolved out of the needs and problems of the legal profession.

The standards gleaned from these sources speak to three main areas of ethical responsibility: obligations to *clients*, to *colleagues*, and to the *administration of justice*. Official standards respecting clients include rules relating to the conversion of clients' funds, commingling, overcharging, conflicts of interest, abuse of confidential information, misinforming, and client neglect. Norms for dealing with colleagues prohibit solicitation of cases, breaking an agreement with a colleague, bypassing him and dealing directly with his client, or deceiving him. Finally, rules affecting the administration of justice prohibit payoffs (bribes and gifts to obtain preferential treatment) and fraud (false representation, concealment of evidence, pressing unfounded claims), principally in the courts and administrative agencies.

Selection of Items for the Ethics Measure

As mentioned earlier, we decided to measure lawyers' ethical behavior on the basis of their own reports of how they had acted in certain situations where norms might be violated. The initial task, therefore, was to devise questionnaire items setting forth a variety of ethical conflicts.⁷ A large number of such items were assembled

from information obtained in informal interviews with selected lawyers⁸ and from texts and other materials on legal ethics, including the published opinions of committees on professional ethics.

To narrow down the number of ethics items, a preliminary study was conducted. The main purpose of this study was to select items that met the following criterion: the item should represent the kind of conflict situation in which lawyers judged as unethical by their colleagues would actually report taking the unethical action. In other words, we wanted items such that a lawyer rated ethical or unethical by his colleagues would also be rated ethical or unethical by us.

As a first step, each of six lawyer-informants was asked to rate 10 to 12 colleagues as ethical or unethical.⁹ This produced a list of 64 rated lawyers, 51 of whom were actually interviewed.¹⁰ We refer to these lawyers as "lawyer-respondents." We then presented the 51 lawyer-respondents with the various ethical conflict situations and asked them a number of questions about each situation.¹¹ To determine whether a lawyer-respondent actually conformed to a particular norm, we asked whether he himself had ever taken the unethical action described. If the situation had not come up in his practice, he was asked whether he would take the unethical action described.¹² Thus, for every item we had a measure of the extent to which lawyer-respondents adhered to or violated the norm in question.

The final step was to retain only those items where there was a reasonable correspondence between the ratings of lawyer-informants and the self-reported behavior of lawyer-respondents. If lawyers rated unethical actually reported taking the unethical action more frequently than lawyers rated ethical, the item was retained; if they did not, the item was eliminated on the ground that it failed to discriminate between ethical and unethical lawyers.

One reason for the failure of an item to discriminate between lawyers rated ethical and unethical was the lack of *salience* to informants of the norm contained in the item. For example, the

Table 27. Synopsis of Ethics Items Used in Final Survey and Their Discriminating Power in the Preliminary Study^a

Item number ^b	Type of item	Summary of ethical conflict situation (Action taken by Lawyer A is the unethical action)	Discriminating power ^c
99	Colleague: solicitation ^d	<i>Client Kickback:</i> Previous client refers another client to Lawyer A and says he expects some small reward. A provides gift, dinner, free legal advice, or reduced fee.	48
101	Client	<i>Conflict of Interest:</i> A decides to represent one of two business partners he has previously represented after a controversy develops between the partners.	44
93	Client	<i>Syndicate Sale:</i> While representing a corporation in receivership, Lawyer A enters into an agreement with a syndicate to buy stock in a new corporation to which the old corporation will transfer its assets. When syndicate forms new corporation, A buys stock.	42
100	Colleague: solicitation ^d	<i>Christmas Cards:</i> A sends Christmas cards to all his active clients.	38
95	Justice: payoff	<i>Client Payoff:</i> Client failed to report income on tax return, and is offered a deal by tax agent to overlook the matter for a sum of money. A tells client payment is his business, not to tell A anything about it; or that it would be risky to make payment, but if he wants to, that's his business.	35
91	Client	<i>Commission:</i> Lawyer A helps client to obtain a title insurance policy in connection with a real estate transaction. The title company sends A its usual 15 per cent commission. A accepts commission without informing client, or "takes it into consideration" in setting client's fee.	34
96	Client	<i>Package Deal:</i> Lawyer A agrees with insurance adjuster to hold down the settlement in present personal injury claim in return for concessions in future claims. Settlement offer is almost fair.	27

Table 27. Synopsis of Ethics Items Used in Final Survey and Their Discriminating Power in the Preliminary Study^a—Continued

Item number ^b	Type of item	Summary of ethical conflict situation (Action taken by Lawyer A is the unethical action)	Discriminating power ^c
103	Colleague: direct ^d	<i>Referral Fee:</i> Lawyer A accepts one-third referral fee from Lawyer B. A's only connection with the case was to hear client and telephone B to say he was sending client to him.	25
97	Client	<i>Assault Charge:</i> Lawyer A does not tell client that the state's case against him on criminal assault is probably too weak to bring conviction because he wants to ensure continued installments on fee.	22
102	Justice: fraud	<i>Divorce:</i> Lawyer A decides to take divorce case in which both parties agree to a consent decree on grounds of adultery, though adultery was not committed. ^e	19
92	Colleague: direct ^d	<i>Oral Contract:</i> At insistence of client, A disregards a prior oral agreement with lawyer for a prospective real estate buyer and represents client on a new transaction with new buyer at higher price.	16
98	Justice: payoff	<i>Police Payoff:</i> Lawyer A makes or arranges for payment to police official to get a charge of homosexuality against a promising youth removed from the books.	16
94	Client	<i>Stock Purchase:</i> Lawyer A learns of client's projected stock purchase that would greatly increase the value of stock. Without informing client, A has friend buy same stock for him in friend's name.	15

^a The items are presented in full in Appendix D, pp. 248-254.

^b Item number corresponds to the number of the question in the Interview Schedule, Appendix D.

^c Difference between per cent respondents rated unethical and per cent rated ethical who report taking the unethical action.

^d A distinction is made between "colleague: solicitation" and "colleague: direct" items. The former involve solicitation of clients; the latter more direct breaches of colleague obligation, such as breaking an agreement with another lawyer.

^e Adultery is the only legal ground for divorce in New York State.

practice described in the following item was not salient to any of the lawyer-informants: according to them, the lawyers they had rated as ethical were just as likely as others to engage in the practice.¹³

An elderly client of Lawyer A shortly after a serious heart attack decides to make a sizable gift to his son. A advises the client to develop evidence that the gift was not made in contemplation of death but with a lifetime motive to avoid paying a higher tax.

This officially prohibited practice evidently did not enter into their evaluation of colleagues. Consequently, it was not surprising to find that the item failed to discriminate: lawyers rated ethical reported taking the unethical action about as frequently as those rated unethical.

It was found that certain items that should have discriminated because they were salient to lawyer-informants nevertheless failed to discriminate. We inferred from this that some unethical lawyers simply did not tell the truth. They were apparently unwilling to reveal their actual conduct in such situations.¹⁴ The following "colleague" item is an example of this type of situation.

Lawyer A represents a client in an impending criminal assault case and a related civil suit for damages. Smith, the complaining witness in the criminal case (and plaintiff in the civil action) is represented by lawyer Jones. A approaches Smith without Jones's knowledge, and in return for a sum of money convinces Smith to drop the complaint in the criminal suit and to sign a release in the civil action.

The net result was the selection of 13 ethical conflict situations for the final survey. All 13 discriminated well between lawyers judged ethical and those judged unethical (see Table 27 for synopsis of items and their discriminating power). Ten of the items embody norms salient to a majority of informants. Only one was not considered salient by any informant. This item describes Lawyer A as sending out Christmas cards to all his active clients. According to our lawyer-informants, this is so common a practice that it does not enter into their judgments of the ethical standing of colleagues. (Approximately two-thirds of the lawyers in our sample send out

Christmas cards.) Nonetheless, the Christmas card item was found to discriminate well. This means that lawyers who do not send Christmas cards are highly likely to conform to more salient standards as well.

Differential Acceptance of Ethical Norms

In the preliminary study we asked lawyer-respondents whether they approved or disapproved of what Lawyer A had done under the circumstances set forth in the hypothetical situation. On the basis of answers to this question we developed a measure of the *acceptance* of ethical standards.

As might be expected, the official standards of the bar are differentially accepted. This differential acceptance was consistently evident in the preliminary study: the same results appeared whether acceptance was measured by lawyer-respondents' disapproval of unethical action, by the saliency of norms to lawyer-informants, or by lawyer-respondents' estimates of the prevalence of particular unethical practices.

Degree of acceptance of norms is associated with the type of ethical obligation involved (Table 28). Norms dealing with lawyer-

Table 28. Normative Significance of Various Types of Ethics Items for Informants and Respondents

Type of item	Mean per cent* of informants for whom item involves a salient norm	Mean per cent* of respondents who: Disapprove "unethical" action	Report "unethical" action common	Number of items
Client	86	75	43	7
Justice: payoff	79	71	41	8
Colleague: direct	71	51	57	4
Justice: fraud	48	48	71	9
Colleague: solicitation	26 (6)	37 (51)	75 (51)	4

* Average for specified number of items.

client relations are most likely to be accepted. Justice norms that prohibit bribing officials and colleague norms concerning specific types of unfairness find somewhat less acceptance. Justice norms involving manufacture of evidence and various omissions in dealings with courts, agencies, or other parties to a controversy are much less frequently accepted, while colleague norms concerning solicitation of legal business are deemed least important of all.

In the final survey we again asked lawyers whether they approved or disapproved of Lawyer A's action in the 13 conflict situations selected on the basis of the preliminary study. Virtually the same rank order of acceptance emerged (Table 29).

Table 29. Comparison of Acceptance Rates in Preliminary Test Study and Larger Survey for 13 Hypothetical Ethical Conflict Situations

Item number ^a	Ethics item ^b	Per cent of lawyers disapproving unethical action		Percentage difference
		Preliminary study	Survey	
	<i>Client Items</i>			
94	Stock Purchase	89	94	+ 5
96	Package Deal	79	82	+ 3
97	Assault Charge	73	63	-10
93	Syndicate Sale	62	75	+13
91	Commission	43	50	+ 7
101	Conflict of Interest	35	50	+15
	<i>Justice Payoff Items</i>			
98	Police Payoff	83	84	+ 1
95	Client Payoff	65	81	+16
	<i>Justice Fraud Item</i>			
102	Divorce	72	73	+ 1
	<i>Colleague Direct Items</i>			
92	Oral Contract	47	40	- 7
103	Referral Fee	23	29	+ 6
	<i>Colleague Solicitation Items</i>			
99	Client Kickback	50	45	- 5
100	Christmas Cards	9	9	0
		(51)	(801)	

^a The item number corresponds to the number of the question in the Interview Schedule, Appendix D.

^b See Table 27 for synopsis of ethics items.

Acceptance and the Status Structure of the Bar

Not only are ethical standards differentially accepted by lawyers, there appears to be a distinct pattern of acceptance that reflects the status structure of the bar. In considering whether there is such a pattern, it is useful to bear in mind three possible models that might be encountered in the absence of complete consensus on norms:

1. Random Disagreement: where knowing the lawyer's social status in the bar would not allow us to predict which norms he accepts. Thus, for any given norm or set of norms lawyers in each stratum would have an equal probability of accepting or rejecting the standard; there would be no *patterned* acceptance or rejection of standards by social strata.

2. Plural Standards: where members of various strata uphold different or opposing norms. Acceptance of standards would be patterned, but members of each stratum would hold to their own unique norms. If this were the case, we would be in the position of measuring one group's behavior in terms of another's standards.

3. Norm Hierarchy: where everyone upholds certain basic norms, but a subgroup accepts additional, more demanding norms.

Which model best describes the situation in the New York City bar? The pattern of acceptance of ethical norms is revealed in Table 30. Here it is shown that on eight of the items a large majority of lawyers in each stratum (as defined by size of firm) disapprove of the unethical action; the standards involved in these items will be known as *bar norms*, that is, they are norms generally accepted in the bar as a whole. On four items, less than half of the lawyers in each stratum disapprove of the unethical action; these are classified as *paper norms*, that is, norms not generally accepted in any stratum of the bar. Finally, the ethical standards embodied in three items are accepted by most large-firm lawyers, but by a much smaller proportion of small-firm lawyers; these are defined as *elite norms*.¹⁵

Table 30. Acceptance of Ethical Norms by Size of Firm

Item number ^a	Ethics item ^b	Per cent of lawyers disapproving the unethical action				
		Large firm	Medium	Small	Individual practice	Percentage difference
<i>Bar Norms</i>						
99-1	Client Kick-back: money	98	93	95	90	+ 8
94	Stock Purchase	97	89	84	90	+ 7
98	Police Payoff	87	83	82	83	+ 4
96	Package Deal	82	83	80	77	+ 5
97	Assault Charge	75	73	73	72	+ 3
102	Divorce	68	70	79	72	- 4
93	Syndicate Sale	72	65	60	60	+12
95-4	Client Payoff: "don't tell me"	72	70	50	59	+13
<i>Elite Norms</i>						
91-4	Commission: accept without informing client	94	75	52	51	+43
95-1	Client Payoff: "risky but your business"	62	46	42	39	+23
103	Referral Fee	55	29	16	16	+39
<i>Paper Norms</i>						
99-2,3	Client Kick-back: gift, free advice	45	44	46	39	+ 6
101	Conflict of Interest	35	35	30	36	- 1
91-1	Commission: take into consideration	20	10	8	7	+13
100	Christmas Cards	13	7	8	6	+ 7
92	Oral Contract ^c	58 (60)	52 (204)	45 (161)	45 (376)	+13

^a The item number corresponds to the number of the question in the Interview Schedule, Appendix D.

^b See Table 27 for synopsis of ethics items. This list contains 16 instead of 13 items because three check-list items (items in which respondents were presented with two unethical as well as various ethical actions) were split into two separate items. The two unethical alternatives in each of the three check-list items (numbers 91, 95, and 99) were defined as distinct items for purpose of this analysis.

^c Since the oral contract item does not fit into the bar, elite, or paper norm category, it was excluded from this classification.

In the New York City bar, then, the patterning of norms appears to correspond most closely to the third model, the normatively hierarchical system. A large majority of lawyers at all status levels accept certain basic standards (the bar norms) and reject others (the paper norms), and a subgroup, the upper-status lawyers, accept certain additional (elite) norms that are matters of indifference to lower-status lawyers. The lower-status lawyers do not appear to have their own professional norms which elite lawyers do not accept.

The hierarchical character of commitment to norms in the metropolitan bar is also indicated by the fact that acceptance of the three types of norms (bar, elite, paper) is ordered in accordance with the following scale: some lawyers accept elite or paper norms in addition to the bar norms; some accept only the bar norms; and others, none of the three. Only 8 per cent of the respondents fall into one of the nonscale types (Table 31).

Important substantive differences distinguish bar norms from elite and paper standards. Bar norms proscribe such generally disapproved behavior as bribery, fraud, cheating, and stealing. They are, therefore, closest to, and may be indistinguishable from,

Table 31. Acceptance of Various Types of Norms

Type of norm accepted ^a	Per cent of lawyers
<i>Scale types</i>	
Bar, elite, and/or paper	40
Bar only	30
None	22
<i>Nonscale types</i>	
Elite only	5
Paper only	2
Elite and paper	1
Total	100 (801)

^a Acceptance of bar norms is defined as disapproving the unethical action in at least 6 of the 8 items in this category; acceptance of elite norms as disapproving in 2 of the 3 elite items; and acceptance of paper norms as disapproving in 2 of the 4 paper items. It should be noted that "none" is an exaggeration.

community-wide standards of morality. Most of the operative norms of the legal profession simply require lawyers to conform to ordinary standards of honesty and fair dealing. That these norms are officially reiterated undoubtedly arises from the fact that lawyers are under special pressure to violate general moral standards, and encounter more opportunities to do so.

Elite and paper norms, on the other hand, proscribe behavior not necessarily immoral or unethical in the wider community.¹⁰ Indeed such behavior may be perfectly proper within the business community. Examples are norms that prohibit lawyers from advertising their services and from accepting (or giving) commissions for sending (or receiving) business. Other paper and elite norms involve fairly technical considerations, such as conflicts of interest among clients and adjustment of colleague relations. The paper and elite norms are thus peculiarly incident to the lawyer's role as a professional and his membership in a professional community. Moreover, his claim to being engaged in a "higher" calling, of being more than a businessman, is based largely on these distinctively professional norms.

If we now consider the pattern of acceptance within the different status groups in the bar, we find that two out of three high-status (large-firm) lawyers accept more than the bar norms, while low-status lawyers (in small firms and individual practice) for the most part accept only the bar norms (Table 32).

Table 32. Acceptance of Various Types of Norms by Size of Firm

Acceptance scale	Per cent of lawyers			Individual practice
	Large firm	Medium	Small	
Bar plus	65	51	35	32
Bar only	12	22	35	36
None	5	18	22	26
Nonscale	15	9	8	6
Total	100 (60)	100 (198)	100 (158)	100 (362)

The Ethical Behavior Index: Violators and High Conformers

The preceding sections have discussed *acceptance* of ethical norms. We now turn to a closer examination of *adherence* to ethical norms. Adherence, as was indicated earlier, is measured by lawyers' reported behavior in particular ethical conflict situations. The proportion of respondents who report taking the ethical action for each item is shown in Table 33.

Table 33. Per Cent Reporting Ethical Action in Each of the 13 Ethics Items

Item number ^a	Ethics item (Ethical action)	Per cent reporting ethical action
94	Stock Purchase: would not purchase stock without client's permission	89
96	Package Deal: would not go along with adjuster's deal	84
98	Police Payoff: would not pay police to remove charge or suggest how this could be done	81
95	Client Payoff: strongly urges client not to make payment, or states he will not represent him further if he does	74
97	Assault Charge: would not withhold information to ensure fee	70
102	Divorce: would not handle the case	69
93	Syndicate Sale: would not purchase without consent	68
91	Commission: would not accept commission without informing client	50
99	Client Kickback: refuses to give previous client any compensation for referral	49
101	Conflict of Interest: would not represent one of the partners without consent of other	46
100	Christmas Cards: would not send out cards to active clients	44
92	Oral Contract: would not represent client on new deal	44
103	Referral Fee: would not accept the fee	25
		(801)

^a The item number corresponds to the number of the question in the Interview Schedule, Appendix D.

An Ethical Behavior Index was constructed using all 13 of the ethics items included in the survey questionnaire. In analyzing the responses to these items by the 801 lawyers in the final survey, it was found that the items were all positively correlated with one another; those who gave the ethical response to one item (would take or had taken the ethical action) were likely to give the ethical response to each of the other items. The respondent's score on the Ethical Behavior Index was calculated by giving a point for each response indicating conformity with the official standard. Respondents' scores on this Index could range from 0 to 13. These scores were then grouped into three categories: respondents who reported they had taken (or would take) the ethical action on 10 to 13 items were classified as "high"; those reporting the ethical action on 7 to

Table 34. Distribution of Ethical Behavior Scores

Ethical behavior score	Per cent of lawyers	Ethical Behavior Index group ^a
0	0	25 per cent—Low
1	1	
2	1	
3	2	
4	5	
5	7	
6	9	45 per cent—Middle
7	13	
8	16	
9	16	
10	14	27 per cent—High
11	7	
12	4	
13	2	
No answer ^b	3	
Total	100 (801)	

^a When corrections are made for sampling ratio, the projected figures for lawyers in private practice in Manhattan and the Bronx are as follows: 22 per cent, Low; 45 per cent, Middle; 32 per cent, High.

^b Three or more "no answers" on the 13 items.

9 items were rated "middle"; and those reporting the ethical action on fewer than seven were rated "low." Those scoring high are designated as "high conformers"; those scoring low as "violators." Table 34 presents the distribution of ethical scores for the lawyers in the sample: about a quarter score as high conformers, and a quarter as violators.

We have seen that the status structure of the bar is related to a particular patterning of *acceptance* of ethical standards. If we now cross-tabulate size of firm with the Ethical Behavior Index ratings, we find that there is also a strong correlation between a lawyer's status in the bar and *adherence* to ethical norms (Table 35). The majority of lawyers in the large firms are high conformers. As firm size decreases, the proportion of high conformers decreases from 57 per cent of large-firm lawyers to 20 per cent of individual practitioners. Correspondingly, as size of firm increases, the proportion of violators decreases, from 30 per cent of individual practitioners to only 5 per cent of large-firm lawyers.

Although the division of our sample into these three Ethical Behavior Index groups is necessarily somewhat arbitrary, the groupings do have substantive meaning. To begin with, if we classify the items in the Index by type of norm involved (bar, elite, or paper), we find that there is the same definite scaling of responses with

Table 35. Ethical Behavior Index Ratings by Size of Firm

Ethical Behavior Index rating	Per cent of lawyers			
	Large firm	Medium	Small	Individual practice
High (conformers)	57	39	22	20
Middle	38	38	50	47
Low (violators)	5	20	26	30
No answer	0	3	2	3
Total	100 (60)	100 (204)	100 (161)	100 (376)

respect to adherence as was found with respect to acceptance. Thus, all but 6 per cent of the respondents fall into one of the following scale categories: conformity to paper or elite norms in addition to the bar norms; conformity to the bar norms only; and conformity to none. Relating this conformity scale to the Ethical Behavior ratings, we see in Table 36 that 66 per cent of the lawyers rated "high" on the Index are conforming not only to the bar norms but also to elite and/or paper norms, that 61 per cent of the lawyers rated "middle" are generally conforming only to the bar norms, and that 85 per cent of those rated "low" are violating all three sets of norms. Therefore, the per cent "high" on the Index is an approximate measure of those adhering to norms over and above the generally accepted bar norms; and they are appropriately designated as the "high conformers." Likewise, the per cent "low" on the Index is an approximate measure of those who are not conforming even to the bar norms; and these lawyers are meaningfully termed the "violators."¹⁷

Two problems are raised by the high correlation between size of firm and adherence to ethical norms: Is differential adherence to

Table 36. Type of Norms Adhered to by Ethical Behavior Index Score

Type of norm adhered to ^a	Per cent of lawyers			Total
	<i>Ethical behavior index ratings</i>			
	High (conformers)	Middle	Low (violators)	
<i>Scale types</i>				
Bar plus	66	9	0	23
Bar only	28	61	12	39
None	1	23	85	32
<i>Nonscale types</i>	4	8	3	6
Total	100 (222)	100 (358)	100 (198)	100 (778)

* Adherence to bar norms is defined as choosing the ethical action for at least 7 of the 8 items in this category; adherence to elite or paper norms as reporting the ethical action for all items in each category.

norms simply a reflection of differential acceptance of norms? Is our measure of adherence biased in favor of higher status lawyers?

Adherence and Acceptance

As might be expected, adherence to ethical norms is related to acceptance of ethical norms.¹⁸ Yet, as seen in Table 37, the two are far from identical. While a large majority of high acceptors are high conformers, 24 per cent are not high conformers. And although low acceptors tend to be violators, 41 per cent are not. Furthermore, as many as half of the high conformers adhere to some norms they do not entirely accept. Moreover, 22 per cent of the violators are "guilty violators"; that is, they engage in some unethical practices of which they themselves disapprove. This is most likely to be the case with respect to the bar norms. For example, we find that 23 per cent of the violators take the unethical action on the police payoff item (make or arrange for the payment) even though they disapprove it; 24 per cent would participate in a fraudulent divorce suit even though they disapprove it.¹⁹

The Problem of Class Bias

Class bias could enter into the ethics measure by the inclusion of items involving situations that are more likely to come up in the

Table 37. Adherence to Norms by Acceptance of Norms

Ethical Behavior Index rating	Number of lawyers			Total
	Acceptance Index ^a			
	High (10 to 13)	Middle (7 to 9)	Low (0 to 6)	
High	111	105	6	222
Middle	33	224	101	358
Low	1	41	156	198
Total	145	370	263	778

* Lawyers are classified on the Acceptance Index by the number of ethics items in which they disapprove the unethical action.

practice of small- than of large-firm lawyers. In such a case, the likelihood that small-firm lawyers would report more instances of unethical behavior might be increased, not because they are in fact more unethical but simply because the items present more opportunities peculiar to their level of practice.

It is indeed the case that most of the items included in the Ethical Behavior Index are more likely to occur in the practice of small- than of large-firm lawyers. In fact, only the stock-purchase item is more likely to occur in the practice of large-firm lawyers (Table 38). This condition, however, would bias the Index in favor of large-firm lawyers only if lawyers are most likely to violate on items that are distinctive to their stratum in the bar. But the data show that large-firm lawyers are *less* likely than small-firm lawyers

Table 38. Occurrence of Ethical Conflict Situations by Size of Firm

Item number ^a	Ethics item ^b	Per cent of lawyers reporting situation has occurred in their practice			Percentage difference
		Large firm	Medium	Small ^c	
99	Client Kickback	12	23	56	+44
91	Commission	56	66	87	+31
102	Divorce	14	26	42	+28
101	Conflict of Interest	24	33	52	+28
103	Referral Fee	37	53	60	+23
96	Package Deal	12	10	30	+18
97	Assault Charge	2	3	11	+9
92	Oral Contract	9	11	15	+6
95	Client Payoff	20	16	24	+5
93	Syndicate Sale	4	4	4	0
98	Police Payoff	8	6	8	0
94	Stock Purchase	25 (60)	17 (204)	11 (537)	-14

^a The number of the item corresponds to the number of the question in the Interview Schedule, Appendix D.

^b Christmas card item excluded because it did not ask for occurrence.

^c Includes individual practitioners.

to violate on *both* large-firm and small-firm items (Table 39). Therefore, altering the Ethical Behavior Index to include more large-firm items would not diminish the difference in the rate of violation between large- and small-firm lawyers.

Table 39. Average Actual Violations Reported by Occurrence of Ethical Conflict Situation and Size of Firm

Relative occurrence of situation ^b	Average per cent of lawyers who report actual violations ^a			Percentage difference
	Large firm	Medium	Small ^c	
More likely for large-firm lawyers, or occurs about equally in all strata	3	19	27	+24
More likely for small-firm lawyers	32	65	63	+31
Much more likely for small-firm lawyers	33 (60)	42 (198)	55 (520)	+22

^a The figures presented in this table are arrived at by determining the average proportion of lawyers reporting that they had *actually* taken unethical action.

^b There are four items in each category. The Christmas card item is not included.

^c Includes individual practitioners.

Table 40. Average Hypothetical Violations by Occurrence of Ethical Conflict Situation and Size of Firm

Relative occurrence of situation	Average per cent of lawyers who would violate ^a			Percentage difference
	Large firm	Medium	Small ^b	
More likely for large-firm lawyers, or occurs about equally in all strata	12	18	20	+8
More likely for small-firm lawyers	27	31	37	+10
Much more likely for small-firm lawyers	37 (60)	39 (198)	40 (520)	+3

^a The figures presented in this table are arrived at by determining the average proportion of lawyers reporting that they *would* take unethical action.

^b Includes individual practitioners.

Table 39 considered only actual violations. However, the Index includes hypothetical as well as actual violations: what lawyers said they would do as well as what they said they have done. In Table 40, which presents only hypothetical violations, we see that once again large-firm lawyers are *less* likely than small-firm lawyers to violate (to say they would violate) on *both* large-firm and small-firm items.

It could also be argued that inclusion of hypothetical violations might bias the Index in favor of large-firm lawyers insofar as they might be more likely than small-firm lawyers to underestimate possible violations. However, if we compare Table 39 with Table 40, we find that large-firm lawyers are more likely to report hypothetical than actual violations, while the reverse is the case for small-firm lawyers. On both counts, then, inclusion of hypothetical violations tends to minimize, rather than exaggerate, status differences in ethical behavior.

Class bias might also enter into the ethics measure by inclusion of items involving standards more likely to be accepted by high- than by low-status lawyers. In this case we would be measuring the ethical behavior of lower-status lawyers by standards they themselves may not accept. Acceptance of standards *is* related to status in the bar. However, as we have seen in Table 36, lawyers rated low on the Index of Ethical Behavior are violating not only elite and paper

Table 41. Ethical Behavior by Ethical Concern^a

Ethical Behavior Index rating	Per cent of lawyers			
	High concern	High-middle concern	Low-middle concern	Low concern
High	39	32	24	11
Middle	51	47	49	36
Low	10	21	27	53
Total	100	100	100	100
	(206)	(162)	(309)	(101)

^a See Appendix C, p. 213, and Chapter 8 for construction of the Index of Ethical Concern.

norms, but even the bar norms which are accepted by a large majority of lawyers in all strata of the bar.

Ethical Behavior and Ethical Concern

Additional evidence of the validity of the Ethical Behavior Index is the internal consistency found between responses to the ethics items and ratings on an Index of Ethical Concern. The Concern Index, discussed in Chapter 8, is a measure of the lawyer's *internal disposition* to be ethical or unethical. If the Ethical Behavior Index is valid, ethical behavior rates should be higher for lawyers with high ethical concern. This is the case (Table 41).

Assuming that lawyers would have less reason to be untruthful about a value question than a behavior question, and assuming that a correlation should be found between the value placed on ethics and ethical conduct, the fact that there is a relation between the two lends additional credibility to the ethics measure.

A major finding presented in this chapter is that status in the bar as measured by size of firm is strongly associated with ethical behavior. Large-firm lawyers tend to score much higher on the Index of Ethical Behavior than lawyers in small firms and individual practice. In Chapter 2 it was shown that size of firm largely determines the nature of a lawyer's clientele and the level of the court or agency with which he comes into contact. Small-firm lawyers have a low-status clientele, large-firm lawyers a high-status clientele. Similarly, small-firm lawyers come into contact mainly with lower-level courts and agencies, large-firm lawyers deal mainly with upper-level courts and agencies. Chapters 4 and 5 will explore the relations among client status, level of court and agency contact, and ethical behavior.

Notes to Chapter 3

1. Though they do not have the force of law, the canons are regarded by the courts "as wholesome standards of professional ethics," *Herman v. Acheson*, 108 F. Supp. 723 (1952); and a lawyer "may be disciplined for not observing them," *People v. McCallum*, 341 Ill. 578 (1930).
2. For a comprehensive collection of opinions, see *Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association*, Columbia University Press, New York, 1956.
3. In New York State the power to adopt such rules is given to the court by the legislature; see Article 4, Section 90 of the Judiciary Law. For rules adopted by New York State courts, see *Cleaver's Practice Manual*, Baker Voorhis and Co., New York, 1960, pp. 21-11 to 21-14.
4. For example, in actions for damages against lawyers, or in proceedings for the denial of lawyers' fees or liens.
5. Drinker, Henry S., *Legal Ethics*, Columbia University Press, New York, 1954, pp. 41-42.
6. Used were *Ibid.*; *Opinions of the Committees . . . op. cit.*; Cheatham, Elliott E., *Cases and Materials on the Legal Profession*, 2d ed., The Foundation Press, Brooklyn, 1955; Prigig, Maynard E., *Cases and Materials on the Standards of the Legal Profession*, West Publishing Co., St. Paul, Minn., 1957; MacKinnon, F. B., "Study of the Ethical Problems of Lawyers in Private Practice," Harvard Law School Project, unpublished manuscript, 1955; and the *Report of the Special Committee of the American Bar Foundation on Canons of Ethics*, American Bar Foundation, Chicago, 1958.
7. The items were constructed in accordance with the following standards: (1) they should be stated in a concrete and realistic manner; (2) they should involve unethical practices to which lawyers are likely to admit—common or borderline practices rather than flagrantly criminal or vicious ones; (3) they should cover a wide range of ethical obligations—to clients, colleagues, and the administration of justice; and (4) they should include problems faced by lawyers working in different areas of practice.
8. Detailed interviews were conducted with a dozen lawyers. They were asked certain general questions relating to professional ethics; also, they were asked to identify borderline unethical practices. Among the general questions were the following: In what ways do lawyers take advantage of clients? In what ways do lawyers take advantage of other lawyers? In what ways do lawyers act unethically toward public officials? What kinds of activities do you consider unethical or improper? How do you distinguish more from less ethical lawyers? How important are such distinctions in your judgments of other lawyers?
9. Informants were instructed to rate only colleagues whom they knew well enough to place on a scale of ethical conduct. They were then asked to select for the two ends of the scale the most extreme cases and to give us two lists: one with the names of the rated lawyers in alphabetical order and another in a sealed envelope with the ratings. The envelope containing the ratings was not opened until the rated lawyers had been interviewed and scored.
10. Five refused to be interviewed, five were not fully interviewed, and three had to be excluded.
11. The preliminary study was conducted in two rounds. Thirty items were used in the first round with three raters and 20 respondents. The original pool of items was narrowed to 30 by eliminating unnecessary duplication with respect to type of ethical obligation and area of practice. On the basis of the

results of the first round, ten items were dropped, eight were revised, and two new items were added. Twenty-two items, then, were used in the second round with three other raters and 31 additional respondents.

The informants were selected to represent different types or levels of practice. In the first round we chose as a "high-level" informant a lawyer who practiced on his own in an office with several other lawyers, handling matters primarily for labor unions and city employees in the labor and civil liberties areas. He had impressed us not only as a very competent practitioner, but also as a man with a strong sense of professional and moral obligation. For our "middle-level" informant we chose a lawyer who was a partner in a medium-sized firm, specializing in Title I real estate promotion and syndication, whom we regarded as a "wheeler and dealer" type and a practical realist in matters of professional ethics. For our "lower-level" informant we chose a lawyer who practiced with his father in an office in a low-income section of the city, handling collections and landlord-tenant matters for a neighborhood clientele, largely of minority ethnic background.

For the second round our high-level informant was a partner in a large Wall Street firm; our middle-level informant, formerly an associate in a large midtown firm, had just gone into partnership with another lawyer; our low-level informant was an individual practitioner specializing in personal injury work.

12. Lawyer-respondents were first asked how often in the past five years a situation like the one presented in the item had come up in their practice. If it had come up, they were then asked what they had done, and if it had not, what they would do. They were also asked whether they approved or disapproved of what Lawyer A had done in the situation, and how common this (unethical) practice is. For each

item, what the lawyer-respondent said he had done or would do under the circumstances was labeled as ethical or unethical on the basis of the previously indicated official sources.

13. The lawyer-informants were asked as to each item: Do all of the lawyers on your list do this (take the officially unethical action); none of them; or are the ethical lawyers less likely to do so than those you rated ethical; or what?
14. Although the justice-payoff items should have discriminated well because they were generally considered salient by informants, only a somewhat smaller proportion of respondents rated unethical reported taking the unethical action than respondents rated ethical. Lawyers rated unethical were rated this way in part because informants said that these lawyers were more likely to bribe or influence public officials, but respondents who were presumably engaging in these activities did not admit it. Fortunately, the client items, which were most salient to the informants, were also the most effective in predicting informants' ratings. These items discriminated best between lawyers rated ethical and unethical. In other words, there was a very high correspondence between respondents' ethical behavior scores and the overall informant ratings of respondents on the client items: of the 18 lawyers rated high by the informants, 14 scored high (generally reported taking the ethical action); of the 17 rated middle by informants, 8 scored middle; and of the 16 rated low, 7 scored low. Twenty-nine of the 51 respondents were classified identically on both ratings; only 4 were classified oppositely, that is, high on one rating and low on the other. Results for the colleague items were positive but less satisfactory; for the justice items, the results indicate no overall correspondence.

Informant misperception is another reason for the failure of an item to discriminate. One way of determining the likelihood of informant mispercep-

Informants' Ratings of Respondents' Ethics by Respondents' Ethics Scores

Lawyer-respondents' ethics scores, by type of item ^a	Number of respondents				Correlation: Informants' rating and respondents' scores ^b
	High informant rating	Middle informant rating	Low informant rating	All respondents	
<i>Client items</i>					
High score (0-17 per cent)	14	4	2	20	r = .64
Middle score (20-40 per cent)	2	8	7	17	
Low score (41-100 per cent)	2	5	7	14	
<i>Colleague items</i>					
High score (0-43 per cent)	9	8	2	16	r = .39
Middle score (50-67 per cent)	6	5	3	19	
Low score (71-100 per cent)	3	7	6	16	
<i>Justice items</i>					
High score (0-13 per cent)	9	3	4	16	r = .16
Middle score (22-42 per cent)	3	8	7	18	
Low score (43-100 per cent)	6	8	5	17	
Total	18	17	16	51	

^a Scores based on per cent of client, colleague, and justice items in which lawyers report unethical action.

^b Another way of summarizing the results is by the Goodman and Kruskal measure of association for ordered classifications. This measure indicates the probability that a pair drawn at random will have the same rank order on variable A as on variable B, excluding tied ranks. Goodman, Leo A., and William H. Kruskal, "Measures of Association for Cross Classifications," *Journal of the American Statistical Association*, vol. 49, December, 1954, pp. 732-764.

tion is to assume that respondent admissions of unethical behavior are probably true. That being the case, if an informant underestimates respondent wrongdoing we may infer that he was mistaken in his ratings. We found that there were ten instances in which an informant stated that none of the respondents on his list would take the unethical action when, in fact, almost half of the re-

spondents on his list admitted taking the unethical action. Seven of these ten instances were attributable to a single informant. Indeed, this particular informant was the only one whose ratings correlated little better than zero with respondent scores. Moreover, the two respondents who scored low on the client items although they had been rated high by the informant were supplied by this informant.

Thus, the only evidence of gross misperception was linked to this one informant.

15. One item (Oral Contract) falls somewhere between these last two types of norms, and therefore was not classified.
16. Durkheim has noted with reference to these more specifically professional norms: "There are no moral rules whose infringement, in general at least, is looked upon with so much indulgence by public opinion. [Their] transgressions . . . come in merely for rather vague censure outside the strictly professional field. They count as venial." Durkheim, Emile, *Professional Ethics and Civil Morals*, The Free Press, Glencoe, Ill., 1958, p. 6.
17. Lawyers who violate the basic bar norms may, without too much difficulty, be considered unethical. But are lawyers who conform to the bar norms, or even to higher level professional standards, really "ethical?" Is a lawyer, for example, who obtains a divorce on fraudulent grounds for a client whose marriage has become intolerable and who has therefore violated an official norm of the bar, less ethical than a lawyer who refuses to do so and thereby conforms to the official norm? Such questions are obviously not unimportant, but, for purposes of this study, they are irrelevant. Our concern rather is with the conditions under which lawyers conform to standards of ethical conduct which they accept as a group and collectively purport to maintain.
18. One would assume that acceptance of

a norm would increase the likelihood of conforming to it. However, this relation could also result from a tendency for lawyers to make their acceptance or repudiation of standards consistent with their actual behavior. Table 37 suggests that this latter process is not the primary one, since acceptance is a much better predictor of adherence than adherence is of acceptance.

19. Although adherence is not simply a reflection of acceptance, degree of acceptance helps to explain the relation between size of firm and adherence. When lawyers are classified by their rating on the Acceptance Index, the relation between size of firm and violation is eliminated, and that between size of firm and high conformity somewhat reduced. This might suggest the desirability of focusing the analysis on differences in *acceptance* of ethical norms rather than on differences in *adherence*. However, since we are principally concerned with explaining variation in the ethical conduct of lawyers, we decided to give primary attention to the Index of Ethical Behavior. This decision was also influenced by the fact that lawyers' reported behavior was a much better indicator of informants' ratings in the preliminary study than lawyers' approval or disapproval of such behavior. Although not specifically instructed to do so, it appears that informants based their evaluation of respondents' ethics primarily on adherence rather than acceptance.

4

Client Relations

The lawyer's clientele has considerable influence on his ethical conduct. Our principal finding is: the lower the status of the clientele, the higher the rate of violation by members of the bar (Table 42).

Lawyers with low-status clients serve a disproportionate number of individual proprietors and small, closely held corporations in retail, personal service, and light manufacturing industries, and middle- to low-income individuals of minority ethnic background. Lawyers with this type of clientele are subject to far more temptations, opportunities, and client pressures to violate ethical norms than are lawyers with high-status clients who serve primarily large, wealthy corporations, and well-to-do individual clients from old American families. Moreover, because of the nature of their practice, lawyers with low-status clients are less able to resist these temptations, opportunities, and pressures.

Temptation

The lower the status of the lawyer's clientele, the more precarious and insecure his practice. Lawyers with low-status clients tend to have an unstable clientele; that is, they have a higher rate of turnover in business and individual clients (Table 43). The small

businessman is more likely than a large corporation to shop around and switch attorneys: he may be on the lookout for a less expensive, sharper, and more compatible lawyer. This type of client is also more likely to divide his legal business among several lawyers, and to have only occasional need for legal service. Lower- to middle-income individuals are less likely to use lawyers, and when they do, they are likely to bring matters of a nonrepeating character. Lawyers with low-status clients also report more competition from other lawyers in obtaining clients, and that they have been hurt by such competition. This reflects the weak and intermittent demand for legal services from lower-status clients, the relatively large number of lawyers whose practice is restricted to such clients, and the many

Table 42. Violation by Client Status

Client status ^a	Per cent violators
Low	42 (188)
Low-middle	29 (137)
High-middle	20 (253)
High	15 (194)

^a See Appendix C, p. 202, for Index of Client Status.

Table 43. Insecurity of Practice by Client Status

Per cent of lawyers who report:	Low status clients ^a	High status clients
Unstable clientele ^b	59	28
High competition from other lawyers ^c	43 (332)	24 (460)

^a "Low" includes both low and low-middle; "high" includes both high and high-middle.

^b Includes both unstable and moderately unstable. Stability of Clientele Index defined in terms of degree of turnover in both individual and business clients. See Appendix C, p. 203.

^c That is, lawyers who report a great deal of competition among lawyers in obtaining clients and that they have been hurt by this competition.

nonlawyers who are willing and able to perform similar services often at a lower price.

Insecurity of practice leads to violation of basic bar norms, whether this insecurity is measured by instability of clientele or competition from other lawyers (Table 44). Indeed, it is the combination of instability and competition that produces the highest rate of violation. Moreover, the effect of insecurity on violation is especially marked among lawyers who have a low-status clientele (Table 45).

On common sense grounds, one would expect the lawyer who must rely on a precarious, low-status clientele to be more tempted than other lawyers to violate. He has less to lose and perhaps something to gain. Some client-related items in the Ethical Behavior

Table 44. Violation by Two Measures of Insecurity of Practice^a

Stability of clientele	Per cent violators	
	High competition	Low competition
Unstable	52 (44)	32 (66)
Moderately unstable	34 (79)	28 (120)
Stable	23 (90)	13 (208)

^a This and subsequent tables based on the Stability Index exclude associates and employees who have no clients of their own.

Table 45. Violation by Insecurity of Practice and Client Status

Insecurity of practice ^a	Per cent violators	
	Low client status	High client status
Insecure	53 (83)	18 (40)
Moderately insecure	34 (150)	20 (126)
Secure	22 (60)	9 (148)

^a Lawyers with an insecure practice are defined as those having an unstable or moderately unstable clientele and reporting "high" competition. Lawyers with a secure practice have a stable clientele and report "low" competition. All others are defined as having a moderately insecure practice.

Index contain norms forbidding the lawyer to realize financial gains that might be perfectly proper in the business community: for example, accepting a title company commission without the client's consent. Colleague-related canons that enjoin client solicitation and advertising hamper the lawyer who is dependent on a transient clientele and is in a highly competitive market. Furthermore, in such a market, concessions to client demands to violate ethical standards may be viewed as one way of getting and retaining clients.

It is not surprising, therefore, to find that lawyers with an insecure practice tend to adjust their attitudes to what they conceive are the realities of their situation. These lawyers are skeptical of their chances for success in the legal profession; they are also more likely to feel unfairly constrained by existing canons; that is, they are more likely to agree that the canons discriminate against the small practitioner and should be liberalized (Table 46). "The canons," a respondent ruefully observed, "tie us up hand and foot." It may be inferred that these lawyers attribute their limited chance for success, at least in part, to the restrictions imposed by the official

Table 46. Various Attitudes by Insecurity of Practice and Client Status

Per cent of lawyers who:	Low-status clients			High-status clients		
	In-secure	Moderately insecure	Secure	In-secure	Moderately insecure	Secure
Report that the chances of getting to the top are only poor or fair	79	71	68	75	60	47
Agree that the canons restrict the smaller practitioner but the large firms get around them	48	46	40	33	34	18
Agree that the canons should be liberalized to permit certain practices now forbidden	55 (84)	52 (155)	30 (60)	45 (40)	33 (130)	21 (149)

canons. They are apparently saying that, given their circumstances, they cannot succeed through legitimate channels.

This view of the canons not only provides an explanation for failure, but also prepares lawyers psychologically for breaking the rules by neutralizing the binding force of ethical norms deemed unduly restrictive.¹

Lawyers with an insecure practice do not necessarily oppose regulation of professional conduct by the organized bar. Along with their more fortunate colleagues, they overwhelmingly subscribe to the view that lawyers should be governed by special rules, and they generally favor more strict enforcement of the canons.² What they are seeking, rather, is exemption from those canons that prevent them from competing effectively and succeeding even at the lower levels of the bar.

Table 46 shows that insecurity leads to these attitudes for lawyers with a high-status clientele as well as for those with a low-status clientele. However, lawyers having both a low-status clientele and an insecure practice are the most likely to perceive limited opportunities for success, to feel that the canons are unfairly restrictive, and that they should be liberalized.

That lawyers who favor liberalization of the canons apparently succeed in freeing themselves from the morally binding effect of

Table 47. Violation by Status of Clientele, Insecurity of Practice, and Attitude Toward Liberalizing the Canons

Canons should be liberalized	Per cent violators					
	<i>Low-status clients</i>			<i>High-status clients</i>		
	In-secure	Moder-ately insecure	Secure	In-secure	Moder-ately insecure	Secure
Agree	67 (46)	43 (77)	28 (18)	28 (18)	24 (41)	28 (32)
Can't say; don't know	54 (13)	24 (25)	19 (16)	* (7)	14 (29)	10 (30)
Disagree	21 (24)	25 (48)	19 (26)	13 (15)	20 (56)	2 (86)

* Too few cases on which to base a percentage.

official norms is indicated by the higher rate of violation among those who take this view of the canons. Insecurity of practice, then, along with a low-status clientele induces a *willingness* to violate norms, which leads in turn to actual violation. And the more insecure the lawyer's practice, particularly if he has a low-status clientele, the more likely willingness to violate (favoring liberalization of the canons) will result in ethical infraction (Table 47).

The harsh realities of an insecure practice also increase vulnerability to opportunities and pressures to violate. An insecure practice means high client turnover. Clients are unlikely to return; they tend to be "one-shot" clients. Since the lawyer has little stake in such nonrepeating clients, he is more likely to take advantage of opportunities to exploit them. In addition, these lawyers are highly responsive to pressures for engaging in unethical practices exerted by their few more stable clients.

Opportunity to Exploit Clients

To the extent that lawyers have access to secret or confidential information about their clients' business affairs, they are likely to encounter opportunities to realize some financial gain to the detriment of their clients.³ Low-status clients are much more likely to provide such opportunities than high-status clients: 70 per cent of lawyers with low-status clients encounter frequent opportunities for exploiting clients, compared to 43 per cent of lawyers with high-status clients.⁴ Opportunity to exploit clients is a major source of norm violation. As one respondent noted, "An unscrupulous lawyer can burn his client alive." Examples include selling out or compromising the interests of certain clients, taking an undisclosed or unauthorized brokerage commission, dipping into clients' funds in the lawyer's possession, "taking the client for a ride" by going into a case that can't be won. (See the "client" ethics items in Appendix C.) However, the exploitability of clients leads to violation only when the lawyer has an expendable clientele (many one-shot

clients, none of whom contributes a significant portion of his income), and is, therefore, highly susceptible to temptation.⁵ Conversely, client expendability is most likely to result in violation when the lawyer has frequent opportunities to exploit his clients (Table 48). Susceptibility to temptation must be accompanied by opportunity, and opportunity by temptation, before either becomes a significant source of violation.

Table 48. Violation by Opportunity to Exploit Clients and Client Expendability

Client expendability ^b	Per cent violators		
	<i>Opportunity to exploit clients^a</i>		
	High	Moderate	Low
High	61 (41)	32 (28)	22 (45)
Moderate	37 (73)	29 (76)	21 (95)
Low	16 (49)	21 (72)	17 (69)

^a Defined by the number of client-related ethical conflict situations occurring in a lawyer's practice: 4 to 6 items classified as "high," 2 to 3 as "moderate," and one or none as "low" opportunity to exploit.

^b Lawyers with an unstable or moderately unstable clientele whose largest client accounts for less than 13 per cent of their income are defined as "high" on client expendability. Those with a stable clientele whose largest client accounts for 13 per cent or more of their income are defined as "low." All others are "moderate."

Table 49. Violation by Effective Opportunity to Exploit Clients and Client Status

Effective opportunity to exploit ^a	Per cent violators	
	Low-status clients	High-status clients
High	50 (105)	24 (37)
Moderate	30 (86)	17 (82)
Low	29 (82)	15 (150)

^a Combines Opportunity to Exploit Clients and Client Expendability. See Appendix C, p. 204, for construction and scoring of Index of Effective Opportunity to Exploit Clients.

Opportunity to exploit clients can be combined with client expendability to form a measure of Effective Opportunity to Exploit Clients. As effective opportunity increases, violation rates rise regardless of the status of the lawyer's clientele (Table 49). Nevertheless, violation rates are always higher for lawyers with a low-status clientele.

Client Pressure

In the preceding discussion, the low-status client was seen as victim. But the client himself can put pressure on the lawyer to violate ethical norms. Examples are pressures from clients to bribe or use improper influence with public officials, to press unfounded or fraudulent claims, or to break a promise to another lawyer.⁶

Lawyers with low-status clients report more frequent client pressure than lawyers with high-status clients: 30 per cent of the former said that their clients had put pressure on them, either sometimes or often, compared to 16 per cent of the latter. This may reflect the marginal economic position of the low-status client, who, like his counterpart in the bar, is more willing to engage in certain illegitimate practices.⁷

That client pressure leads to violation is shown in Table 50. There are, however, substantial differences in lawyers' capacities to resist, depending upon the nature of their practice. Lawyers who have an unstable clientele, and who derive a major portion of their income from their largest client, are the most sensitive to client

Table 50. Violation by Client Pressure

How often have clients exerted pressure on you to engage in practices contrary to your standards?	Per cent violators
Very often	48 (23)
Sometimes	35 (140)
Rarely or never	22 (594)

pressure. As seen in Table 51, client pressure makes for a 35 percentage point difference in violation rates for these lawyers while it has very little effect for other lawyers. Under conditions of economic dependence, a lawyer tends to become the captive of his few more secure clients, and is understandably reluctant to resist their illegitimate demands. Lawyers with a high-turnover clientele who are not economically dependent on any particular clients can afford to resist these demands. As one of these lawyers remarked:

It occasionally happens [that clients put pressure on us to do something improper] but we make short work of it. The answer is no, and the reasoning behind it is we have hundreds of clients, and many of the clients we had ten years ago we can't remember their names. So we certainly aren't going to jail for some client whose name we can't even remember. . . . We're not in a position where we're hungry for any particular case. One case more or less isn't going to make any difference in this office.

The highly vulnerable position of the dependent lawyer can be represented by an Index of Effective Client Pressure that combines instability of clientele, proportion of income from largest client, and client pressure. For all lawyers, regardless of the status of their clients, the higher the rating on this Index, the greater the likelihood

Table 51. Violation by Client Pressure and Economic Dependence on Clients

Economic dependence ^a	Per cent violators		
	High client pressure	Low client pressure	Client pressure difference
High	60 (20)	25 (55)	+35
Moderate	37 (68)	29 (230)	+ 8
Low	24 (34)	14 (124)	+10

^a Lawyers with an unstable or moderately unstable clientele whose largest client accounts for 28 per cent or more of their income are defined as "high" with respect to economic dependence. Those with a stable clientele whose largest client accounts for less than 28 per cent of their income are defined as "low." All others are "moderate."

of violation (Table 52). But, like Effective Opportunity to Exploit Clients, Effective Client Pressure is more likely to result in violation for lawyers with low- than with high-status clients.

We can further specify the conditions under which dependence leads to violation. Not all lawyers with low-status clients give in to pressure under conditions of economic dependence. As Table 53 shows, Effective Client Pressure has virtually no impact on violation *except* when lawyers are involved as officers or stockholders in their

Table 52. Violation by Effective Client Pressure and Client Status

Effective client pressure ^a	Per cent violators	
	Low-status clients	High-status clients
High	61 (23)	28 (18)
Moderate	36 (122)	18 (125)
Low	33 (132)	15 (121)

^a Combines client pressure, proportion of income from largest client, and stability of clientele. See Appendix C, p. 204, for construction and scoring of Index of Effective Client Pressure.

Table 53. Violation by Effective Client Pressure, Status of Clientele, and Control Involvement

Effective client pressure	Per cent violators		
	High control involvement ^a	Low control involvement ^a	Control involvement difference
<i>Low-status clients</i>			
High effective client pressure ^b	60 (48)	35 (72)	+25
Low effective client pressure	35 (55)	33 (63)	+ 2
	+25	+ 2	
<i>High-status clients</i>			
High effective client pressure ^b	14 (86)	27 (44)	-13
Low effective client pressure	10 (70)	22 (47)	-12
	+ 4	+ 5	

^a High control involvement is defined as being a stockholder and/or an officer in a client business. See Appendix C, p. 207, for construction and scoring of the Control Involvement Index.

^b Includes lawyers encountering "moderate" effective client pressure.

clients' businesses. This suggests that for these lawyers intimate business involvement with clients is a prerequisite for transforming economic dependence into actual captivity.

For lawyers with high-status clients, Table 53 indicates an opposite effect of involvement, namely, that it *decreases* the rate of violation. Involvement has this effect, moreover, whether these lawyers are exposed to a high or a low degree of Effective Client Pressure. Consideration of how this is to be interpreted will be deferred to a later section of the chapter.

Area of Practice

So far we have considered the effect of client status on violation of ethical norms. Area of practice also has an influence on violation rates. For lawyers with high- as well as low-status clients, those handling mainly probate matters have the lowest rates of violation. Those handling personal injury, criminal, and divorce matters, on the other hand, generally have the highest rates of violation (Table 54). In fact, lawyers who work mainly in the latter areas have uniformly high rates of violation regardless of the status of their clientele.

Area of practice is, of course, closely related to client status: lawyers with high-status clients work primarily in the business and corporate areas, while lawyers with low-status clients tend to handle

Table 54. Violation by Client Status and Main Area of Practice

Client status	Per cent violators				
	<i>Main area of practice</i>				Probate
	Personal injury*	Real estate	Business		
Low	39 (153)	39 (66)	34 (74)	24 (33)	
High	37 (38)	19 (32)	18 (270)	11 (101)	

* Includes personal injury, criminal, matrimonial, and workman's compensation matters.

personal injury matters (Table 55). Nevertheless, both area of practice and client status influence violation because each has an independent effect on the conditions that lead to violation, namely, instability of clientele, opportunity to exploit clients, and client pressure (Table 56). Lawyers handling personal injury and real estate cases have a higher turnover in clients regardless of the status of their clientele, since these matters tend to be nonrepeating. Because opportunity to exploit clients generally arises in a business context, we find that the relation between client status and opportunity to exploit is most pronounced for lawyers with a business and probate practice. A high rate of client pressure continues to be

Table 55. Main Area of Practice by Client Status

Main area of practice	Client status			
	High	High-middle	Low-middle	Low
Business	81	46	31	17
Probate	13	31	11	10
Real estate	6	8	16	22
Personal injury	0	15	42	51
Total	100 (194)	100 (247)	100 (136)	100 (188)

Table 56. Instability of Clientele, Opportunity to Exploit, and Client Pressure by Client Status and Main Area of Practice

Per cent of lawyers who report:	Low-status clients		High-status clients	
	Real estate or personal injury	Business or probate	Real estate or personal injury	Business or probate
Unstable and moderately unstable clientele	69 (193)	57 (101)	55 (54)	33 (277)
High and high-middle opportunity to exploit	68 (215)	76 (104)	51 (69)	43 (374)
High client pressure	35 (219)	20 (107)	13 (70)	16 (371)

found among lawyers with a low-status clientele, but it is heightened when they have a real estate and personal injury practice.

Throughout the chapter we have seen that lawyers with low-status clients have higher rates of violation. It has been shown that they are not only more likely to experience Effective Opportunity to Exploit Clients and Effective Client Pressure, but that they are also more likely to succumb. However, if we combine these two measures into an Index of Client-Related Pressures, it appears that those who are most exposed to these pressures have high rates of violation regardless of the status of their clientele or their main area of practice. Nevertheless, lawyers handling business or probate matters for high-status clients maintain fairly low rates of violation until they are exposed to a high degree of Client-Related Pressures (Table 57).

Table 57. Violation by Client Status, Area of Practice, and Client-Related Pressures

Client status	Per cent violators									
	<i>Client-related pressures^a</i>									
	High		High-middle		Low-middle		Low		Total	
<i>Low-status clients</i>										
Real estate or personal injury	54	(76)	41	(69)	21	(66)	^b	(7)	39	(218)
Business or probate	35	(26)	32	(37)	29	(34)	^b	(9)	31	(106)
<i>High-status clients</i>										
Real estate or personal injury	^b	(6)	38	(24)	26	(27)	8	(12)	28	(69)
Business or probate	41	(29)	16	(102)	16	(160)	8	(83)	16	(375)

^a Combines client pressure, Opportunity to Exploit Clients, and Stability of Clientele. Note that neither Effective Client Pressure nor Effective Opportunity to Exploit was used as such to construct the Index of Client-Related Pressures. They could not be combined because each included stability of clientele. Furthermore, one combined instability with *high* proportion of income from largest client, the other with *low* proportion of income from largest client. See Appendix C, p. 205, for construction and scoring of Index of Client-Related Pressures.

^b Too few cases on which to base a percentage.

Client Relations and Conformity to Higher Level Norms

The preceding discussion has inquired into the influences of clientele and practice on rates of violation of generally accepted norms of conduct. We shall now consider briefly the effect of the lawyer's clientele on conformity to higher-level, more demanding norms.

Once again the status of the clientele seems to be of paramount importance. The higher the status of his clientele the more likely the lawyer is to conform to distinctively professional norms (Table 58).

Lawyers with high-status clients, as we have seen, are less likely to be exposed to Client-Related Pressures to violate. It is plausible to assume that the higher rates of conformity among lawyers with high-status clients are the result of their greater insulation from such pressures. However, Table 59 shows that even under similar degrees

Table 58. High Conformity by Client Status

Client status	Per cent high conformers ^a
High	44 (195)
High-middle	34 (254)
Low-middle	18 (137)
Low	14 (189)

^a Defined as reporting the ethical action in 10 or more of the 13 ethics items.

Table 59. High Conformity by Client-Related Pressures

Client status	Per cent high conformers			
	Client-related pressures			
	Low	Low-middle	High-middle	High
High	44 (97)	41 (189)	33 (127)	22 (36)
Low	29 (17)	21 (100)	9 (107)	15 (102)
Client status effect	+15	+20	+24	+ 7

action with others facing similar problems, that is, by a mutual process of seeking and getting support for violation. Neutralization is a shared experience, and in time may become an established feature of the normative climate of certain groups. The group processes supporting neutralization are discussed in following chapters.

2. If anything, a somewhat larger proportion of lawyers with an insecure practice favor more strict enforcement than do those with a secure practice: close to 70 per cent of the former compared to 62 per cent of the latter.
3. Opportunity to exploit clients is measured by the number of client-related ethical conflict situations that the lawyer reports as having occurred in his practice. There are six so-called client items in the Ethical Behavior Index. In most of these situations the lawyer is in a position of realizing some financial gain at the expense of his clients. That opportunity to exploit clients reflects access to exploitable information is indicated by the fact that the more financially involved the lawyer is in the business affairs of certain clients (on the lookout for investment opportunities for business clients, assisting them in obtaining financing), the higher his opportunity score. This relation holds for lawyers with high as well as low-status clients:

<i>Per Cent High Opportunity to Exploit Clients</i>			
Financial involve- ment	Low-status clients	High-status clients	
High	83 (152)	60 (134)	
Middle	70 (57)	49 (78)	
Low	59 (65)	35 (92)	

It should be noted, however, that it is not financial involvement, but the opportunity to exploit clients resulting from financial involvement that leads to violation. See Appendix C, p. 206,

for construction and scoring of the Financial Involvement Index.

4. Since financial involvement in the business affairs of clients is so closely related to opportunity to exploit (see note 3), and since this form of involvement is more typical of lawyers with low-status clients, it follows that they would more frequently encounter such opportunities. Control involvement (holding office or stock in the corporate client), on the other hand, is more typical of lawyers with high-status clients.
5. Since our measure of insecurity of practice reflects situational as well as psychological inducements to violate, and since we will be mainly concerned in this and later sections of the chapter with the situational components of temptation, we shall use instability of clientele rather than perceived competition from other lawyers as an indicator of temptation. We have added a further situational characteristic—proportion of income derived from the largest client—to our measure of temptation, since it bears on susceptibility to opportunities to exploit clients and on the likelihood of giving in to client pressure.
6. The degree to which lawyers encounter such pressures is ascertained from answers to the following question: "How often have clients exerted pressure for you to engage in practices contrary to your standards?" Those who replied "very often" or "sometimes" are classified as reporting "high" client pressure. That these reports may be used as a meaningful indication of client pressure is suggested by the fact that the more frequently ethics items involving situations of client pressure occur in the lawyer's practice, the more likely he is to report frequent pressures from clients. Further, the more important the norm depicted in the item (the larger the proportion of lawyers who disapprove the unethical action) the greater the likelihood that client demands lead to a sense of being improperly pressured:

Item	Per Cent High Client Pressure			Per Cent Disapprove Unethical Action
	Occurrence of item		Occurrence difference	
	Sometimes-often	Never		
Justice*				
Police payoff	40 (61)	20 (705)	+20	84
Client payoff	33 (173)	19 (599)	+14	81
Divorce	31 (276)	17 (494)	+14	73
Colleague				
Client kickback	29 (340)	16 (432)	+13	45
Oral contract	28 (116)	20 (653)	+ 8	40
				(801)

* If we combine the three justice items into an index, we find that 52 per cent of those in whose practice all three situations have occurred report high client pressure, compared to 14 per cent of those indicating that none of the situations have come up in their practice.

7. This interpretation would seem to be supported by the fact that the highest frequency of client pressure is reported by lawyers representing low-status real estate clients, many of whom are undoubtedly marginal speculators and operators in New York City's highly

competitive real estate market. Moreover, low-status business clients are in a less favorable position to pass on to their customers whatever additional costs may result from a more ethical way of conducting their business.

5

Contacts with Courts and Government Agencies

The courts and agencies of government provide one of the principal settings for the lawyer's work. These institutions have a marked influence on his ethical behavior. Our major finding is: the lower the level of the courts and agencies with which he comes into contact, the more the lawyer is likely to violate generally accepted ethical norms (Table 62).

Table 62. Violation by Level of Court and Agency Contact

Level of court and agency contact ^a	Per cent violators
Lower	50 (160)
Lower-middle	29 (158)
Upper-middle	17 (266)
Upper	14 (191)

^a See Appendix C, p. 207, for construction and scoring of the Index of Level of Court and Agency Contact.

This relation, we submit, may be accounted for by the fact that lower-level courts and agencies generate pressures and supports for violation of ethical norms, while higher-level courts and agencies produce pressures and supports for conformity to these norms.¹

Court Level and Pressures to Violate or Conform

Why should lower-level courts create pressures to violate and upper-level courts pressures to conform? The answer lies partly in differences in court structure and personnel (Table 63).

First, lower-court judges are less experienced and less adequately trained than upper-court judges. On the whole, lower-court judges are younger; they have been on the bench and in their

Table 63. Attributes of Judges in New York City by Level of Court^a

Per cent of judges	Court level		
	Local	State trial	Federal or state appellate
Admitted to practice since 1925	79 (108)	56 (54)	34 (36)
On bench 10 years or less	70 (77)	38 (53)	14 (36)
In present post 6 years or less	56 (70)	36 (49)	3 (29)
Have held a political club or party position	35 (60)	38 (40)	13 (23)
Graduated from:			
Lower-quality mixed law school	38 (108)	25 (54)	8 (36)
Full-time university law school	17 (108)	28 (54)	53 (36)
Members of:			
Association of the Bar of the City of New York	45 (86)	57 (47)	79 (33)
American Bar Association	22 (86)	44 (47)	73 (33)
Term of office	10 years	14 years	14 years to life

^a Based on data on all judges within the First Judicial Department, all judges in the U.S. District Court for the Southern District of New York, and all judges in the U.S. Circuit Court of Appeals, Second Circuit. For much of this information I am indebted to an unpublished manuscript by Arthur Bolstein, "The Judges of the First Department," Columbia Law School, 1961. Bolstein drew upon the following sources: *Directory of American Judges*, American Directories, Chicago, 1955; *Annual Reports of the Committee of the Judiciary*, Association of the Bar of the City of New York, 1953-1961 inclusive; *New York Lawyers Diary and Manual*, Legal Diary Publishing Co., Newark, N. J., 1962; *New York Times*, March 25-31, 1962; various records and publications of the Citizens Union. Additional sources include: *Women's Who's Who*, 1961; *Who's Who in Colored America*, 1950; *Who's Who in New York*, 1960; *Who's Who in the East*, 1962; *Year Book of the New York County Lawyers' Association*, 1960; *Year Book of the Association of the Bar of the City of New York*, 1960; *Martindale-Hubbell Law Directory*, 1959. Data on judges from the 1955 *Directory of American Judges* were, where possible, brought up to date.

current positions for a shorter period of time; and a larger proportion of them are graduates of lower-quality, mixed law schools.

In addition, judges in the lower courts appear to be more dependent on political ties and more susceptible to political influences. They are more likely to have been members or officers of a political club, or party functionaries. And they tend to be more beholden to particular political leaders not only for their present jobs but also for their advancement.² This greater dependence of lower-court judges on political sponsors is probably heightened by shorter terms of office and higher rates of turnover in office.

Judges in lower-level courts are also subject to fewer professional controls; at any rate, they are less likely to be members of either the American Bar Association or the Association of the Bar of the City of New York.

Finally, lower-court judges have considerably more discretion in making decisions. This arises from the greater informality and flexibility of judicial proceedings in lower courts. Lower courts have these characteristics for a variety of reasons: (1) Parties in lower courts generally do not have enough at stake or command sufficient resources for a full-scale, formal adjudication. (2) Decisions in these courts are less likely to be based on or guided by carefully elaborated standards or rules. Rather, they are likely to concern poorly developed areas of the law, which often involve local statutes and ordinances that are vague and unrealistic, and, in some instances, virtually unenforceable. It should be noted that the relative absence of counsel, or of competent counsel, in the lower courts undoubtedly contributes to the weak development of the law administered in these courts. Decisions in upper-level courts, on the other hand, are more likely to be based on federal statutes, which tend to be more carefully drafted and traditionally are more narrowly construed by the courts. Moreover, upper-court judges tend to give greater weight to legal precedent in their decisions. (3) Decisions of lower-court judges are less likely to be reviewed by an appellate tribunal, or otherwise subjected to the scrutiny of colleagues.

A major consequence of these differences is that judges and other officials in the lower courts tend to give more weight to extralegal considerations in their decisions, which sometimes results in their being more receptive to and more likely to initiate such illegitimate practices as bribery and fraud. It seems reasonable to conclude, then, that lawyers who practice in lower-level courts are subject to more pressures and have more opportunities to violate ethical norms than lawyers whose contacts are mainly with upper-level courts. This is not merely a matter of cash payments or gifts to court clerks for preferential treatment, although, as the following comment suggests, such is the common practice.

I heard a story the other day. A lawyer in the ——— Court was sending a case of liquor to the clerk every Christmas. This year the clerk calls up and says: "You know, I don't really drink up all that liquor." So cash went up instead. He was making a suggestion, that's all.

Of greater import is the "fixing" of cases by bribing judges, suborning perjured testimony, and "taking care" of jurors. One respondent noted: "In court practice political contacts are very important. There the fixing is enormous; this is even more true in the lower courts." These practices are said to be most characteristic of, although by no means restricted to, the criminal courts.

There is a feeling on the part of a lot of lawyers that if you're a criminal lawyer in this town you bribe judges, bribe cops, and fix testimony, and that you have to do so to be effective. . . . Some guys will sell or pretend to sell influence. They'll say, "I know that DA, I've got him in my pocket."

The Court Culture

Each level of the court system exposes lawyers to a stable, normative climate supporting either violation of, or conformity with, ethical standards. The necessary conditions for the development and maintenance of a stable court culture are provided by uniformities in the background, training, and outlook of judges and

lawyers at each level, by similarities in the legal practice of lawyers dealing with each level, by a relative lack of mobility of judges within the judicial system, and by the continuity and frequency of interaction among participants at each level.

Both judges and lawyers in the local courts are more likely than their counterparts in the upper courts to be Catholic or Jewish, to have graduated from a lower-quality, mixed law school, and to be Democrats; they are also less likely to be members of the Association of the Bar of the City of New York (Table 64).

Table 64. Attributes of Judges and Lawyers by Level of Court

Per cent of judges and lawyers who are:	Court level ^a		
	Local	State trial	Federal or state appellate
<i>Catholic or Jewish</i>			
Judges	93 (48)	95 (33)	64 (28)
Lawyers	96 (192)	88 (369)	71 (113)
<i>Graduates of lower-quality mixed law schools</i>			
Judges	38 (108)	25 (53)	8 (36)
Lawyers	56 (212)	24 (351)	26 (126)
<i>Members of ABCNY^b</i>			
Judges	45 (86)	56 (47)	79 (33)
Lawyers	5 (165)	24 (277)	46 (107)
<i>Democrats</i>			
Judges	78 (60)	74 (42)	65 (23)
Lawyers	85 (212)	69 (351)	57 (126)

^a Court level for lawyers refers to level of judicial system with which they mainly come into contact.

^b Association of the Bar of the City of New York.

Lawyers dealing with each level of the judicial system have similar types of practice. Those who come into contact with local courts are predominantly in individual practice or small firms and represent lower-status clients; lawyers who practice before federal and state appellate courts are predominantly in medium-sized or large firms and represent higher-status clients (Table 65).

Table 65. Size of Firm and Client Status by Level of Court

Size of firm and client status	Per cent of lawyers		
	Local courts	State trial courts	Federal or state appellate courts
<i>Large firms^a</i>			
High-status clients	7	27	58
Low-status clients	2	2	7
<i>Small firms^b</i>			
High-status clients	19	37	21
Low-status clients	72	34	14
Total	100 (205)	100 (338)	100 (126)

^a Includes medium-sized firms.

^b Includes individual practitioners.

The basis for a court culture is also provided by the relative absence of mobility within the judicial system, which tends to segregate upper- and lower-level court judges. Judges generally remain at the same level at which they began their judicial careers. The only exceptions are state trial court judges, roughly half of whom began in local courts (Table 66).

Table 66. Distribution of Judges at Each Court Level by First Judicial Position

First judicial position	Per cent of judges			
	Present court level			
	Local	State trial	State appellate	Federal
Local court	99	52	12	12
State court	1	48	69	0
Federal or state appellate court	0	0	19	88
Total	100 (76)	100 (50)	100 (16)	100 (17)

current positions for a shorter period of time; and a larger proportion of them are graduates of lower-quality, mixed law schools.

In addition, judges in the lower courts appear to be more dependent on political ties and more susceptible to political influences. They are more likely to have been members or officers of a political club, or party functionaries. And they tend to be more beholden to particular political leaders not only for their present jobs but also for their advancement.² This greater dependence of lower-court judges on political sponsors is probably heightened by shorter terms of office and higher rates of turnover in office.

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A major consequence of these differences is that judges and other officials in the lower courts tend to give more weight to extralegal considerations in their decisions, which sometimes results in their being more receptive to and more likely to initiate such illegitimate practices as bribery and fraud. It seems reasonable to conclude, then, that lawyers who practice in lower-level courts are subject to more pressures and have more opportunities to violate ethical norms than lawyers whose contacts are mainly with upper-level courts. This is not merely a matter of cash payments or gifts to court clerks for preferential treatment, although, as the following comment suggests, such is the common practice.

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There is a feeling on the part of a lot of lawyers that if you're a criminal lawyer in this town you bribe judges, bribe cops, and fix testimony, and that you have to do so to be effective. . . . Some guys will sell or pretend to sell influence. They'll say, "I know that DA, I've got him in my pocket."

The Court Culture

Each level of the court system exposes lawyers to a stable, normative climate supporting either violation of, or conformity with, ethical standards. The necessary conditions for the development and maintenance of a stable court culture are provided by uniformities in the background, training, and outlook of judges and

lawyers at each level, by similarities in the legal practice of lawyers dealing with each level, by a relative lack of mobility of judges within the judicial system, and by the continuity and frequency of interaction among participants at each level.

Both judges and lawyers in the local courts are more likely than their counterparts in the upper courts to be Catholic or Jewish, to have graduated from a lower-quality, mixed law school, and to be Democrats; they are also less likely to be members of the Association of the Bar of the City of New York (Table 64).

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Per cent of judges and lawyers who are:	Court level ^a		
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^a Court level for lawyers refers to level of judicial system with which they mainly come into contact.

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Table 65. Size of Firm and Client Status by Level of Court

Size of firm and client status	Per cent of lawyers		
	Local courts	State trial courts	Federal or state appellate courts
<i>Large firms^a</i>			
High-status clients	7	27	58
Low-status clients	2	2	7
<i>Small firms^b</i>			
High-status clients	19	37	21
Low-status clients	72	34	14
Total	100 (205)	100 (338)	100 (126)

^a Includes medium-sized firms.

^b Includes individual practitioners.

The basis for a court culture is also provided by the relative absence of mobility within the judicial system, which tends to segregate upper- and lower-level court judges. Judges generally remain at the same level at which they began their judicial careers. The only exceptions are state trial court judges, roughly half of whom began in local courts (Table 66).

Table 66. Distribution of Judges at Each Court Level by First Judicial Position

First judicial position	Per cent of judges			
	Present court level			
	Local	State trial	State appellate	Federal
Local court	99	52	12	12
State court	1	48	69	0
Federal or state appellate court	0	0	19	88
Total	100 (76)	100 (50)	100 (16)	100 (17)

A stable culture at each level is further supported by the continuity and frequency of interaction among participants. At the local level, continuity is provided by the lawyers, since there is fairly high turnover of judges (Table 63, page 85). These local-court lawyers spend more time in court than do upper-court lawyers,³ and, while they are there, they spend more time "waiting around" (Table 67). Since they spend more time waiting in court, they have more opportunities to meet informally with one another. In fact, local courts may well be one of the principal settings in which individual practitioners and small-firm lawyers meet to discuss their common problems and experiences.

In the federal and state appellate courts, continuity is supplied largely by the personnel of the court. As we have seen, over 70 per cent of the judges at this level have been in their present positions at least nine years. Lawyers in upper-level courts may have less contact with one another than their counterparts in lower-level courts since they spend less time in court and less time waiting, but they may still constitute a kind of exclusive "club" by virtue of their fewer numbers.

Exposure to the court culture affects lawyers' attitudes and ethical behavior. However, sheer amount of time spent in court is not as important as how that time is spent. Analysis showed that lawyers who spend their time mainly "waiting around" appear

Table 67. Main Activity in Court by Court Level

Main activity in court	Per cent of lawyers		
	Local courts	State trial courts	Federal or state appellate courts
Waiting	55	32	22
Neither waiting nor in trial	29	36	29
In trial	16	32	49
Total	100 (205)	100 (338)	100 (126)

more receptive to the court culture than those who are mainly in trial. This also seemed to be indicated in the following comment:

I like to be around the courts. You get to see judges and other lawyers, and you get to know what's going on. You have to hang around if you want to find out what's going on.

Consequently, not sheer amount of time but the relative proportion of time spent *waiting* is used as a measure of exposure to the court culture.⁴

The more lawyers are exposed to a particular court level, the more likely they are to adopt its perspective toward violation and conformity. High exposure to local courts (spending more time waiting than trying cases) is associated with the belief that political connections are very important in determining the lawyer's treatment in court and that the canons discriminate against low-status lawyers. Exposure decreases the likelihood that lawyers favor more strict enforcement of the canons and that they accept basic bar norms (Table 68). In short, extended exposure to local courts appears to neutralize the binding force of ethical norms by exposing lawyers to a rationale that permits violation.

The reverse situation occurs in the federal and state appellate courts. Lawyers exposed to this environment are more likely to express attitudes supporting conformity to ethical norms: they attach less importance to political connections as a means of getting results in court, are more certain that the canons are fair and should be more strictly enforced, and are more likely to accept basic bar norms.

Exposure to a particular court culture does not in and of itself result in the lawyer's acceptance of its characteristic perspective. As shown in Table 69, it is only among lawyers who frequently discuss ethical questions with one another that we find an association between court level and the lawyer's attitude toward liberalizing the canons. Among these lawyers, 57 per cent in the lower courts but only 31 per cent in the highest level courts favor liberalizing the

Table 68. Various Attitudes by Level of Court Contact and Exposure to Court Culture

Court level	<i>Low</i> (Mainly in trial)		Exposure <i>Moderate</i> (Neither)		<i>High</i> (Mainly waiting)		Exposure effect
<i>Per cent who hold that political connections are very important in court</i>							
Local	26	(31)	44	(59)	53	(109)	+27
State	35	(99)	46	(113)	50	(103)	+15
Federal or state appellate	40	(58)	34	(35)	33	(27)	- 7
<i>Per cent who hold that the canons discriminate against low-status lawyers</i>							
Local	34	(32)	45	(58)	46	(111)	+12
State	36	(102)	35	(113)	32	(105)	- 4
Federal or state appellate	25	(57)	21	(34)	15	(27)	-10
<i>Per cent who disagree that canons should be more strictly enforced</i>							
Local	25	(32)	41	(58)	46	(111)	+21
State	31	(102)	26	(113)	42	(105)	+11
Federal or state appellate	35	(57)	32	(34)	30	(27)	- 5
<i>Per cent who accept neither paper, elite, nor bar norms</i>							
Local	31	(32)	35	(60)	44	(111)	+13
State	13	(102)	16	(116)	26	(105)	+13
Federal or state appellate	14	(58)	14	(35)	11	(28)	- 3

Table 69. Attitude Toward Liberalizing the Canons by Discussion of Ethics and Level of Court Contact (for Lawyers Exposed to a Court Culture^a)

Frequency of discussion of ethics	Per cent who agree canons should be liberalized			
	Local courts	State trial courts	Federal or state appellate courts	Court level effect
High	57 (126)	41 (151)	31 (39)	+26
Low	33 (42)	32 (72)	35 (23)	- 2

^a Excluded are lawyers classified as mainly in trial.

canons. When lawyers infrequently discuss ethical questions their attitude toward the canons is wholly independent of the courts to which they are exposed. Exposure, therefore, must be accompanied by a high degree of relevant interaction before the court culture can help shape and reinforce basic ethical attitudes.

Nature and Extent of Court Contact and Violation

If, as contended, lower-court experience encourages deviation from ethical norms, while upper-court experience supports conformity, we should expect that the more frequently lawyers are exposed to the lower courts, the more likely they are to violate, while the more frequent their exposure to upper courts the less likely they are to violate. And this is what we find. As seen in Table 70, among those who "mainly wait" at lower courts the percentage of violators increases from 26 per cent of those who spend under two hours a week in court to 52 per cent of those who spend more time. Conversely, among lawyers who wait mainly at upper courts, the percentage of violators decreases from 27 per cent of those who spend less than two hours a week in court to only 13 per cent of those who spend more time there.

Table 70. Violation by Level of Court Contact and Amount of Time Spent in Court (for Lawyers Most Exposed to a Court Culture^a)

Court level ^b	Per cent violators	
	Spend less than two hours a week in court	Spend two hours a week or more in court
Upper	27 (33)	13 (32)
Lower	26 (42)	52 (131)

^a Includes only lawyers classified as mainly waiting.^b Upper courts include federal, state appellate, and Surrogates' courts; lower courts, all others.

Conformity to Higher-Level Norms

Contact with higher-level courts and agencies increases conformity to the distinctively professional elite and paper norms (Table 71). The more time lawyers spend in federal or state appellate courts, the more likely they are to be high conformers; the more time they spend in other state and local courts, the less likely they are to be high conformers (Table 72). These findings support the conclusion reached earlier: the higher the court or agency, the greater the pressures and supports for conformity to ethical norms. Apparently this holds for both the distinctively professional standards and the basic bar norms.

Table 71. High Conformity by Level of Court and Agency Contact

Level of court and agency contact	Per cent high conformers
Upper	42 (191)
Upper-middle	37 (266)
Lower-middle	18 (158)
Lower	9 (160)

Table 72. High Conformity by Amount of Time Spent in Court and Level of Court

Hours per week spent in court	Per cent high conformers		
	Federal or state appellate courts	State trial or local courts	Court level effect
Less than two	31 (39)	29 (151)	+ 2
Two or more	42 (77)	20 (368)	+22

Notes to Chapter 5

1. The analysis focuses on the courts since we have more information on lawyers' participation in them than in government agencies.

Court level refers to the court's position in the local-state-federal hierarchy. "Lower-level" courts are local courts; "middle-level" courts are state trial courts; "upper-level" courts are state appellate and federal courts. See Table 4, Chapter 2.

2. Opportunities for advancement are often paid for in part with cash: "A man who wants to be a judge . . . must be prepared in many cases to donate substantial sums of money to the organization of the appropriate party leader whose influence will be the chief factor in his nomination for appointment or election. . . . And he is expected, once in office, to contribute generously to his party and its fundraising campaigns." (Sayre, Wallace S., and Herbert Kaufman, *Governing New York City*, Russell Sage Foundation, New York, 1960, p. 542.) While it is undoubtedly the case in New York City "that nearly everybody in a more important position in the court system owes his position in good part to the support of some party functionary" (*Ibid.*, p. 544), the lower the court level, the closer and more direct the tie between judges and party functionaries. A Municipal Court judgeship may be "owned" by a particular district leader, whereas nominees for the

Court of Appeals "are chosen largely by bargaining among County Leaders from all parts of the state" (*Ibid.*, p. 545).

3. Of lawyers primarily in local courts, 53 per cent spend an average of at least three hours a week in court, compared to 35 per cent of higher-court lawyers.
4. Lawyers were asked to estimate the proportion of their court time spent in: (1) waiting around; (2) filing papers, making court calls, arguing motions; (3) trial work; (4) conferring in the judge's chambers. They were then classified as "mainly waiting," "mainly in trial," or neither, according to the following scheme:

Per Cent of Court Time Spent Waiting Around	Per Cent of Court Time Spent in Trial		
	None	1 to 49	50 or more
50 or more	1	4	7
1 to 49	2	5	8
None	3	6	9

The 253 respondents in cells 1, 2, and 4 (31 per cent of the total) are classified as mainly waiting. The 205 lawyers (26 per cent) in cells 6, 8, and 9 are classified as mainly in trial. The 224 lawyers (28 per cent) in cells 3, 5, and 7 are defined as neither. The 119 (15 per cent) who spend no time in court or who did not answer are excluded from this measure.

6

Colleague Controls

The major portion of the lawyer's time is spent in his law office, in contact with office colleagues. What effect does membership in the office colleague group have on the lawyer's ethical behavior? Our findings indicate that these groups play a crucial role in restricting or supporting violation of ethical norms.¹

How the office group influences the ethical behavior of its members depends upon the structure and age of the office. In older offices composed of peers, the influence of the colleague group is exercised primarily through the *ethical climate* of the office. In stratified offices, it is achieved by *formal organizational controls*. And in newer offices, particularly newer peer-group offices, ethical behavior is influenced through an informal process of direct *seeking and giving of support for violation*.

Ethical Climate

The ethical climates of law offices are identified by the attitudes of member-lawyers toward liberalizing the canons to permit certain practices now forbidden. Those offices whose members favor liberalization are defined as having an *ethically permissive* climate; those in which lawyers oppose liberalization, as *ethically strict*; and all others, *ethically mixed*.²

The character of these different ethical climates is suggested by the following: Offices with an ethically permissive climate generally reject most ethical standards and oppose their stricter enforcement. Offices with ethically strict climates generally accept most ethical standards, including the distinctively professional standards, and favor stricter enforcement.³ Furthermore, as the age of the office increases, permissive offices become more permissive, strict offices still more strict, indicating that there develops over time a consistent, integrated normative climate that either supports the ethical norms of the profession or permits their violation (Table 73).

Table 73. Various Office Attitudes by Office Climate and Age of Office

Office climate	Age of office ^a	
	Less than four years	Four or more years
<i>Per cent offices where lawyers favor more strict enforcement of canons^b</i>		
Permissive	42 (26)	33 (18)
Mixed	40 (29)	48 (44)
Strict	57 (14)	65 (31)
<i>Per cent offices where lawyers accept at least 8 of the 13 ethics items^b</i>		
Permissive	15 (26)	11 (18)
Mixed	24 (29)	25 (44)
Strict	36 (14)	69 (32)
<i>Per cent offices where lawyers reject 8 or more of the 13 ethics items^b</i>		
Permissive	42 (26)	45 (18)
Mixed	38 (29)	39 (44)
Strict	36 (14)	9 (32)
<i>Per cent offices where at least half of members accept more than bar norms</i>		
Permissive	19 (26)	17 (18)
Mixed	21 (29)	27 (44)
Strict	43 (14)	65 (31)

^a Defined as the number of years in the office of the two lawyers who have been there longest.

^b The procedure used to characterize office climate was also used to characterize offices with respect to these other attitudes. See Appendix C, p. 209.

Numbers in parentheses refer to total number of offices.

Office Climate and Violation

As might be predicted, lawyers in offices with an ethically permissive climate have the highest rates of violation and lawyers in offices with an ethically strict climate, the lowest (Table 74).

The longer a lawyer has been a member of an established office, the more his ethical behavior conforms to the office climate. In older offices, office climate has virtually no effect on violation among lawyers who have been in the office less than five years. But it is very influential among lawyers who have been there longer, and especially for those there more than ten years (Table 75). In other words, the longer lawyers are exposed to an ethically permissive climate, the more they tend to violate; the longer they are exposed to an ethically strict climate, the less likely they are to violate. This

Table 74. Violation by Office Climate

Office climate	Per cent violators
Permissive	41 (136)
Mixed	28 (288)
Strict	15 (198)

Table 75. Violation by Office Climate and Number of Years in Office (for Lawyers in Old Offices Only^a)

Office climate	Per cent violators			
	Less than 5 years in office	5 to 10 years in office	11 or more years in office	Years in office effect
Permissive	27 (22)	50 (14)	62 (13)	+35
Mixed	30 (63)	43 (47)	15 (71)	-15
Strict	22 (41)	14 (29)	4 (49)	-18
Climate effect	+ 5	+36	+58	

^a Offices that are at least five years old: that is, in which the two lawyers who have been in the office longest, have been there for at least five years.

effect of office climate seems to be indicated in the following observation of a respondent:

I worked in the ——— office. It was a small, elite group, and we had very high standards. I would be ashamed to do anything that group would not think was right.

A further indication of the influence of office climate is that the longer a lawyer has been in an established office, the more the collective attitude of his colleagues toward liberalizing the canons is likely to prevail over his own attitude. Among *older* members of established offices who personally favor liberalizing the canons, only 4 per cent are violators in strict offices, compared to 63 per cent in permissive offices. *Newer* members who favor liberalization, on the other hand, have uniformly high rates of violation, regardless of office climate (Table 76). This finding strongly suggests that the relation between office climate and violation cannot be accounted for in terms of differential retention of members on the basis of their ethical attitudes.

The impact of office climate on violation is facilitated by informal social interaction in the office. The higher the rate of office sociability—as indicated by the frequency of lunching and meeting socially with other lawyers in the office⁴—the greater the effect of climate on violation (Table 77). In offices characterized by a high degree of sociability, 52 per cent of the lawyers exposed to an ethically permissive climate and only 15 per cent of those exposed to

Table 76. Violation by Number of Years in Office and Office Climate (for Lawyers Who Favor Liberalizing the Canons)

Years in office	Per cent violators			
	Permissive	Mixed	Strict	Climate effect
Less than five	39 (13)	35 (26)	43 (14)	- 4
Five or more	63 (19)	40 (48)	4 (23)	+59
Years in office effect	+24	+ 5	-39	

Table 77. Violation by Office Climate and Office Sociability

Office sociability ^a	Per cent violators			Climate effect
	Permissive	Mixed	Strict	
High	52 (64)	32 (62)	15 (60)	+37
Middle	40 (40)	29 (138)	13 (105)	+27
Low	25 (32)	27 (88)	20 (30)	+ 5

^a See note 4 of this chapter.

an ethically strict climate are violators. In offices with a low degree of sociability, on the other hand, violation rates are virtually unrelated to office climate. The mere existence of a normative consensus in the office is not sufficient in itself to affect the ethical behavior of office members. This consensus must be accompanied by a process of communication and personal influence. Moreover, the longer a lawyer is exposed to this process, the greater should be the effect of office climate. And we do find that, in socially cohesive offices, it is the oldest members who are most likely to conform to the prevailing ethical climate of the office.⁵ As seen in Table 78, lawyers who have been members of high sociability offices for five or more years have

Table 78. Violation by Office Climate, Office Sociability, and Number of Years in Office^a

Office sociability	Per cent violators			
	<i>Permissive climate</i>		<i>Strict climate</i>	
	Less than 5 years in office	5 or more years in office	Less than 5 years in office	5 or more years in office
High	48 (48)	62 (13)	26 (34)	4 (23)
Middle	42 (24)	38 (16)	19 (48)	9 (57)
Low	24 (21)	36 (11)	21 (14)	19 (16)

^a Lawyers in offices with a mixed climate are excluded from this table.

the highest rate of violation in ethically permissive offices, and the lowest rate of violation in ethically strict offices.

Office Climate and External Pressures

An ethically permissive climate is most likely to be found in offices where members come into contact mainly with lower-level courts and agencies and report frequent pressures from clients to engage in unethical practices. An ethically strict climate, on the other hand, is usually an attribute of offices where members come into contact with upper-level courts and agencies and rarely encounter pressures from clients to violate⁶ (Table 79). Since most lawyers are already disposed to act in a way consistent with the climate of their particular office, the predominant effect of office climate is to reinforce, over a period of time, these other ethical influences.

Office climate, however, may override outside ethical influences, as suggested in Table 80. There it is shown that older members of permissive offices have high violation rates even when they are little exposed to client-related pressures. Conversely, older members of strict offices have very low violation rates even when they encounter high client-related pressures.

Table 79. Office Climate by Average Level of Court and Agency Contact and Average Client Pressure

Average level of court-agency contact and average client pressure ^a	Per cent offices with strict climate	Per cent offices with permissive climate
<i>Upper court-agency contact</i>		
Low-client pressure	53 (36)	6 (36)
High-client pressure	31 (61)	23 (61)
<i>Lower court-agency contact</i>		
Low-client pressure	18 (17)	35 (17)
High-client pressure	11 (47)	45 (47)

^a See note 7 of this chapter for definition of these measures. Numbers in parentheses refer to total number of offices.

Table 80. Violation by Office Climate and Client-Related Pressures^a

Office climate and client-related pressure	Per cent violators	
	New members ^b (new and old offices)	Old members (old offices)
<i>Permissive climate</i>		
High pressure	48 (57)	60 (15)
Low pressure	31 (36)	50 (12)
<i>Strict climate</i>		
High pressure	30 (47)	7 (27)
Low pressure	14 (49)	8 (51)

^a Lawyers in offices with a mixed climate, and old members of new offices, are excluded from this table.

^b New members have been in the office for less than five years. New offices are less than five years old.

Office Climate and Inner Disposition

The impact of the office climate is manifested most dramatically in its capacity to "force" lawyers to act contrary to their own dispositions (Table 81). For lawyers most disposed to act ethically (those rated high on the Index of Ethical Concern),⁷ the long-term effects of climate can be observed in an increase in the percentage of violators in ethically permissive offices from 27 per cent of the newer members (in older and newer offices) to 60 per cent of the

Table 81. Violation by Ethical Climate, Concern with Ethics, Office Age, and Number of Years in Office^a

Ethical concern, ^b years in office, office age	Per cent violators		
	Permissive climate	Mixed climate	Strict climate
<i>High concern</i>			
New members (new and old offices)	27 (37)	17 (64)	6 (49)
Old members (old offices)	60 (15)	17 (54)	6 (47)
<i>Low concern</i>			
New members (new and old offices)	50 (56)	43 (95)	38 (47)
Old members (old offices)	50 (12)	34 (64)	10 (31)

^a Old members of new offices are excluded from this table.

^b See Appendix C, p. 213, for Index of Ethical Concern.

older members (of older offices). Conversely, for lawyers who are least disposed to act ethically, the influence of an ethically strict climate is evident in a reduction in the percentage of violators from 38 per cent of the new members (of older and newer offices) to only 10 per cent of the older members of older offices.

Formal Control in the Stratified Office

Office climate has its most pronounced impact on ethical conduct in older offices composed of peers, where members are similar in age and income⁸ (Table 82). In older stratified offices (where there is a considerable range in age and income, and where age and income are highly correlated), there is no relation between climate and violation.⁹ These offices, as we shall see, exhibit a different form of colleague control, one based on a division of labor and keyed to status within the office.

The peer-group office is characterized by the relative absence of formal status distinctions and a functional division of labor. The stratified office, on the other hand, is much more likely to be formally organized as a firm (with at least five lawyers), and to be highly differentiated with respect to the status and functions of its members. This formal division of labor is associated with a high degree of functional integration: members of stratified offices are more likely than those of peer-group offices to collaborate with one

Table 82. Violation by Ethical Climate and Office Structure (for Lawyers in Old Offices Only)

Office structures ^a	Per cent violators			
	Permissive	Mixed	Strict	Climate effect
Peer-group	75 (16)	38 (24)	14 (21)	+64
Heterogeneous	44 (18)	25 (84)	10 (49)	+34
Stratified	8 (12)	27 (74)	10 (49)	- 2

^a See Appendix C, p. 211, for typology of office structure based on age and income.

another on legal matters, to seek one another's advice on legal problems, and to refer matters to one another (Table 83). While lack of formal organization in the peer-group office seems to encourage the development of an office climate and to enhance its impact, the functionally differentiated and integrated structure of the stratified office appears to have just the opposite effect. Thus, when we compare older with newer offices, we find an increase over time in the proportion of peer-group offices with a distinctive ethical climate, whether strict or permissive, but a *decrease* in the proportion of stratified offices with a distinctive climate (Table 84).

In stratified offices, violation is primarily a function of the lawyer's status within the office. Only 5 per cent of lawyers in the highest-ranking positions (the oldest partners with the largest incomes) are violators, compared to 36 per cent of those in the lowest-ranking positions (the youngest lawyers with the smallest incomes).¹⁰

Table 83. Various Office Characteristics by Office Structure

Per cent of offices:	Office structure		
	Stratified	Heterogeneous	Peer-group
Which are firms with five or more lawyers	58	12	2
With a high rate of work collaboration ^a	76	39	34
With a high rate of seeking and giving advice ^b	64	47	44
With a high rate of office referrals ^c	52 (33)	26 (84)	25 (44)

^a The office rate of work collaboration is based upon the average proportion of respondents' time spent collaborating on legal matters with one another in the office during the previous year. Because of the absence of information a few offices were classified by the average number of legal matters on which respondents had collaborated.

^b The Office Advice Rate combines the average frequency of seeking advice on legal matters and giving such advice among members of the office.

^c The Office Referral Rate combines the average frequency of referring legal matters to other members of the office and the average frequency of receiving such matters on referral from other office members.

Type of office structure is not related to the office sociability rate.

Numbers in parentheses refer to total number of offices.

Moreover, if the lowest-ranking lawyers are further divided by number of years in the office, we find that the violation rates of those who have been members for under two years are 50 percentage points higher than those of the highest-ranking lawyers in the office (Table 85).

Table 84. Office Climate by Office Age and Office Structure

Office structure	Per cent offices with a strict or permissive climate		
	New offices ^a	Old offices	Office age effect
Stratified	64 (11)	45 (22)	-19
Heterogeneous	59 (41)	46 (45)	-13
Peer-group	56 (18)	69 (26)	+13
Office structure effect	+ 8	-24	

^a New offices are less than four years old. Numbers in parentheses refer to total number of offices.

Table 85. Characteristics of Lawyers in Stratified Offices by Rank in the Office

Per cent of lawyers:	Rank in office ^a				
	Oldest partners with highest incomes	Other partners	Other associates or employees	Youngest lawyers with lowest incomes	
				2 or more years in office	less than 2 years in office
Who are violators	5	19	25	25	56
Come into contact with mainly lower courts and agencies	11	13	25	31	45
Report high competition from other lawyers	56	61	66	74	78
Score low on Index of Ethical Concern	54	40	47	34	67
Rank conferring with clients as first activity	82	76	38	28	22
Accept more than bar norms	63	54	41	35	29
Accept at least bar norms	93 (44)	87 (53)	75 (32)	71 (32)	61 (18)

^a See Appendix C, p. 213, for determination of rank in office.

Allocation of Work by Status

Underlying, and largely accounting for, the close relation between status and violation in stratified offices is the differential allocation of work on the basis of rank (Table 85). Lawyers with lower office standing are more likely to deal with lower courts and agencies. The senior men, in contrast, tend to deal exclusively with upper-level courts and agencies. As a result, if we classify lawyers according to their main level of court and agency contact, we find that violation is more closely related to level of court and agency contact than it is to rank in the firm (Table 86).¹¹

More than half of the stratified offices have a mixed religious composition.¹² In these offices lawyers who occupy a low rank and are of an "out" religion (different from that of the high-ranking lawyers) get the most undesirable work. Among low-ranking lawyers, 40 per cent of those of an "out" religion, and only 13 per cent of those of the "in" religion, deal mainly with the lowest courts and agencies (Table 87). Consequently, a greater percentage of low-ranking "out" group lawyers are violators than low-ranking "in" group lawyers (40 per cent compared to 27 per cent). The fact that the proportion of lawyers who are of an "out" religion increases as we move down the office status ladder (Table 88) suggests that these lawyers are hired partly to handle the "dirty work" but are passed

Table 86. Violation by Rank in Office and Level of Court and Agency Contact (for Lawyers in Stratified Offices Only)

Rank in office ^a	Per cent violators	
	Upper courts and agencies	Lower courts and agencies
High	5 (39)	^b (5)
Middle	17 (70)	40 (15)
Low	25 (32)	56 (18)

^a Oldest partners with highest incomes are "high"; youngest lawyers with lowest incomes are "low"; all others in the office are "middle."

^b Too few cases on which to base a percentage.

over when promotions are made.¹³ These results, moreover, apply whatever the "out" religion happens to be—Protestant, Catholic, or Jewish.

Direct Colleague Support for Violation in Newer Offices

The newer offices, particularly those composed of peers, exhibit a more elementary, but equally effective, form of colleague control of ethical behavior: the explicit seeking and giving of support for violation.

Table 87. Level of Court and Agency Contact by Rank in Office and Religion (for Lawyers in Stratified Offices of Mixed Religious Composition)

Rank in office	Per cent who come into contact with lower courts and agencies	
	"In" religion ^a	"Out" religion ^a
High	17 (18)	^b
Middle	11 (37)	0 (20)
Low	13 (15)	40 (15)

^a The "in" religion is that of the high-ranking members of the office; and "out" religion is any other.

^b No cases because by definition the religion of high-ranking lawyers in the office is the "in" religion.

Table 88. Membership in an "Out" Religion by Rank in Office (for Lawyers in Stratified Offices of Mixed Religious Composition)

Rank in office	Per cent who are of an "out" religion
High	^a (18)
Middle	
Partner	32 (41)
Associate	44 (16)
Low	50 (30)

^a No cases because by definition the religion of high-ranking lawyers in the office is the "in" religion.

Newer offices tend more than older ones to be small and socially cohesive, and their members more frequently discuss questions of ethics with one another. New peer-group offices, moreover, are most likely to be characterized by a high rate of discussion of ethical questions (Table 89). The more often lawyers in new offices discuss ethics, the more likely they are to violate.¹⁴ And once again, this is particularly so for peer-group offices (Table 90).

As lawyers in these newer offices encounter increased pressures to engage in unethical practices, they tend to discuss ethical problems more frequently, apparently seeking support for norm violation. And it is only among these lawyers who do frequently discuss ethics that client-related pressures lead to violation (Table 91). When they seldom discuss ethics, degree of client-related pressure is

Table 89. Office Rate of Discussion of Ethical Questions by Office Age and Office Structure

Office structure	Per cent high office rate of discussion of ethical questions*	
	New office	Old office
Peer-group	73 (18)	42 (26)
All others	37 (51)	18 (67)

* At least three out of four office members report frequent discussion of ethical questions.

Figures in parentheses refer to total number of offices.

Table 90. Violation by Frequency of Discussion of Ethical Questions and Office Structure (for Lawyers in New Offices Only)

Office structure	Per cent violators		
	Frequently discuss ethics	Infrequently discuss ethics	Discussion effect
Peer-group	48 (44)	14 (14)	+34
Other offices	32 (149)	25 (60)	+ 7

unrelated to violation (Table 91). Table 92 presents essentially the same finding with respect to court and agency pressures.

Colleague Controls and Higher-Level Norms

The effect of office climate on lawyers' conformity to higher level norms parallels its effect on violation of basic bar norms. As seen in Table 93, the longer lawyers have been exposed to an ethically strict climate the higher their rates of conformity; the longer they have been exposed to an ethically permissive climate the lower their rates of conformity. In fact, there are no high conformers among lawyers who have been in ethically permissive offices for more than ten years.

Table 91. Violation by Client-Related Pressures and Frequency of Discussion of Ethical Questions (for Lawyers in New Offices Only)

Client-related pressures	Per cent violators	
	Frequently discuss ethics	Infrequently discuss ethics
High	56 (52)	25 (12)
Middle	38 (63)	25 (16)
Low	21 (78)	22 (46)

Table 92. Violation by Level of Court and Agency Contact and Frequency of Discussion of Ethical Questions (for Lawyers in New Offices Only)

Level of court and agency contact	Per cent violators	
	Frequently discuss ethics	Infrequently discuss ethics
Lower	46 (114)	27 (30)
Upper	22 (79)	20 (44)

As in the case of violation, office climate can override the effects of external pressure and internal disposition. Lawyers who are most exposed to either a strict or permissive climate have a uniformly high or low rate of conformity regardless of the degree of their ethical concern (Table 94). Lawyers who are little disposed to act ethically have their rates of conformity increased from 21 per cent

Table 93. High Conformity by Ethical Climate and Number of Years in Office (for Lawyers in Old Offices Only)

Years in office	Per cent high conformers			Climate effect
	Permissive	Mixed	Strict	
11 or more	0 (13)	30 (71)	53 (49)	+53
5 to 10	14 (14)	15 (47)	45 (29)	+31
Less than 5	23 (22)	25 (63)	27 (41)	+4
Years in office effect	-23	+5	+26	

Table 94. High Conformity by Office Climate, Office Age, Years in Office, and Concern with Ethics^a

Years in office, office age and office climate	Per cent high conformers			Ethical concern effect
	High ethical concern	Low ethical concern		
<i>Old members (old offices)</i>				
Strict	51 (47)	48 (31)		+3
Mixed	26 (54)	22 (64)		+4
Permissive	7 (15)	8 (12)		-1
Climate effect	+44	+40		
<i>New members (new and old offices)</i>				
Strict	41 (49)	21 (47)		+20
Mixed	25 (64)	15 (95)		+10
Permissive	38 (25)	5 (56)		+33
Climate effect	+3	+16		

^a Excludes old members of new offices.

to 48 per cent the longer they are in offices with a strict climate. Conversely, lawyers who are most disposed to act ethically have their rates of conformity reduced from 38 per cent to 7 per cent the longer they are in offices with an ethically permissive climate.

The relation between climate and conformity to distinctively professional norms is most pronounced in offices composed of peers; in the older stratified offices, climate has no apparent effect (Table 95). In stratified offices adherence to professional norms is a function of office size and the lawyer's rank in the office (Table 96).

Table 95. High Conformity by Ethical Climate and Office Structure (for Lawyers in Old Offices Only)

Office structure	Per cent high conformers			Climate effect
	Permissive	Mixed	Strict	
Stratified	33 (12)	34 (74)	35 (49)	+2
Heterogeneous	14 (21)	21 (84)	45 (49)	+31
Peer-group	9 (16)	8 (24)	52 (21)	+43
Office structure effect	+33	+26	-17	

Table 96. High Conformity by Rank in Office and Size of Office (for Lawyers in Stratified Offices Only)

Rank in office	Per cent high conformers			Office size effect
	Large firm	Medium	Small ^a	
High	80 ^b (20)	63 (30)	29 (14)	+51
Middle	57 (21)	30 (73)	31 (13)	+26
Low	32 (19)	32 (35)	0 (15)	+32
Office rank effect	+48	+31	+29	

^a Includes seven small firms and eight employer units (individual practitioners and their employees). With one exception these employer units have fewer than five lawyers; four have only two.

^b All nine high-ranking lawyers in the *very* large firms (50 or more lawyers) are high conformers.

Both factors have an equally strong, cumulative impact on conformity. Thus, 80 per cent of high-ranking lawyers in large firms are high conformers, compared to none of the low-ranking lawyers in the smaller stratified offices.

The larger the office and the higher the lawyer's rank in the office, the more likely the lawyer is to come into contact with the highest level courts and agencies (Table 97). Nevertheless, court and agency level accounts only in part for the relation between high conformity and lawyer's rank and office size. When level of court and agency contact is held constant, higher-ranking lawyers in the larger offices still tend to have substantially higher rates of conformity (Table 98).

Membership in elite bar associations is also highly correlated with status in the office and office size: 70 per cent of the high-ranking lawyers in large firms are members of at least two of the three elite bar associations, compared to only 7 per cent of the low-ranking lawyers in the smaller stratified offices (Table 99). The more of these associations lawyers belong to, the higher their rates of conformity: in stratified offices, of lawyers who belong to none, 21 per cent are high conformers, compared to 65 per cent of those who belong to all three.¹⁵ Like level of court and agency contact, however, elite bar association membership is only partly responsible

Table 97. Contact with Federal Courts and Agencies by Rank in Office and Office Size (for Lawyers in Stratified Offices Only)

Rank in office	Per cent having main contact with federal courts and agencies			Office size effect
	Large firm	Medium	Small	
High	80 (20)	57 (30)	22 (14)	+58
Middle	57 (21)	56 (73)	15 (13)	+42
Low	63 (19)	34 (35)	0 (15)	+63
Office rank effect	+17	+23	+22	

for the relation between lawyer's rank and office size, on the one hand, and high conformity on the other (Table 100).

We strongly suspect, however, that it is the combination of upper-level court and agency contact *and* elite bar association mem-

Table 98. High Conformity by Office Size, Status in the Office, and Level of Court and Agency Contact (for Lawyers in Stratified Offices Only)

Office rank-size index ^a	Per cent high conformers				Total
	Upper courts and agencies	Upper-middle courts and agencies	Lower, or lower-middle courts and agencies		
High	4	87 (16)	^b (3)	^b (1)	80 (20)
	3	62 (29)	63 (19)	^b (3)	61 (51)
	2	31 (55)	33 (37)	15 (13)	30 (106)
	1	36 (14)	40 (20)	13 (16)	31 (48)
Low	0	^b (0)	^b (7)	^b (8)	0 (15)

^a High office rank and being in a large firm were each scored 2. Middle rank and being in a medium-sized firm were each scored 1. Low rank and being in a small firm were each scored 0.

^b Too few cases on which to base a percentage.

Table 99. Membership in Elite Bar Associations by Rank in Office and Size of Office (for Lawyers in Stratified Offices Only)

Rank in office	Per cent who are members of at least two elite bar associations ^a			Office size effect
	Large firm	Medium	Small	
High	70 (20)	54 (30)	29 (14)	+41
Middle	34 (21)	25 (73)	15 (13)	+19
Low	42 (19)	17 (35)	7 (15)	+35
Office rank effect	+28	+37	+22	

^a The three elite bar associations are: The American Bar Association, the New York State Bar Association, and the Association of the Bar of the City of New York.

bership that largely accounts for the effect of lawyer's rank and office size on high conformity. Unfortunately, the small number of cases does not permit us to test this hypothesis. If we are correct, then the stratified office brings about different degrees of adherence to higher level norms within the office by exposing some members more than others to external supports for conformity to ethical norms. (It may also be the case, however, that stratified offices use conformity as a criterion for promoting lawyers: see note 11 of this chapter.)

A question still to be considered is why elite bar association membership increases the rate of high conformity. Important to note in this regard is that the effect of elite bar association membership on high conformity increases as lawyer's rank and size of firm increase (Table 100). The figures presented in Table 100 refer only to lawyers in stratified offices, but a similar process may be observed among lawyers in nonstratified offices. In stratified offices we have a clear indicator of rank or status. In nonstratified offices this is not so. In order to measure the status position of such lawyers, serving a high-status clientele and contact with upper-level courts and agencies were selected as indicators of a more prestigious type of practice.

Table 100. High Conformity by Office Size, Rank in Office, and Elite Bar Association Membership (for Lawyers in Stratified Offices Only)

Office rank-size index (status in office and office size)		Per cent high conformers		
		One or more elite bar memberships	No elite bar memberships	Elite bar membership effect
High	4	78 (18)	* (2)	—
	3	66 (41)	40 (10)	+26
	2	40 (63)	16 (43)	+24
	1	40 (20)	25 (28)	+15
Low	0	* (7)	0 (11)	—

* Too few cases on which to base a percentage.

Using these indicators of status, it appears that the higher their status position the more likely lawyers in nonstratified offices are to be members of elite bar associations, and the more likely that membership will lead to high conformity (Table 101).

Membership in elite bar associations tends to validate the high prestige of the lawyer. It symbolizes formal recognition of his acceptance into the professional elite. Such membership also tends to increase his visibility (and perhaps that of his firm or associates) not only to other high-status lawyers, but also to other elite groups in the community. He may thus become a spokesman for the bar and a defender of its special standards and ideology. With high visibility, the symbolic significance of his behavior for his own reputation, his firm's reputation, and the reputation of the bar is substantially heightened. The lawyer now has a much greater incentive to act in an exemplary manner, and to conduct his professional affairs so as to be beyond reproach.

Table 101. High Conformity by Client Status, Level of Court and Agency Contact, and Membership in Elite Bar Associations (for Lawyers in Nonstratified Offices Only)

Prestige of practice	Per cent high conformers		
	Two or more elite bar memberships	One elite bar membership	No elite bar membership
High (High-status clientele or upper court and agency contact)	56 (59)	42 (57)	24 (208)
Low (Neither)	* (9)	10 (29)	9 (170)

* Too few cases on which to base a percentage. Of these nine respondents, however, only one was a high conformer.

Summary and Conclusion

The office colleague group affects lawyers' ethical behavior in several ways:

1. *By an informal process of seeking and giving support for violation among peers in newer offices.*

Potential violations of basic bar norms are most likely to result in actual violations if lawyers are supported in their decisions by discussions with colleagues facing similar problems in the context of a small, informally organized, yet socially cohesive peer group. It is precisely this kind of informal social interaction that is most likely to facilitate the process described in Chapter 4 by which lawyers under pressure become psychologically prepared to violate. The same phenomenon has been observed in other areas of social life.¹⁶

2. *By the constraint of the normative climate in older peer-group offices.*

The older and more established the peer-group office, the more it is likely to develop a distinctive ethical climate. The longer a lawyer has been in such an office, and the more socially cohesive the office, the greater the impact of the climate on his behavior. The principal effect of the office climate is to support or reinforce external pressures either to violate or to conform with ethical norms. The climate seldom encourages behavior in conflict with these other pressures because the very pressures that lead lawyers to violate or conform also largely determine the character of the office climate.

3. *By formal organizational controls in hierarchically structured offices.*

The stratified office may affect ethical behavior in two ways: by weeding out and promoting members on the basis of their ethical predispositions or attitudes, and by differentially exposing members to pressures to violate or conform with ethical norms. Some evidence of the first process is provided by the data, but it is far from conclusive. Of the second, however, there can be little doubt. Lawyers in stratified offices are exposed to pressures to violate or conform to a degree directly related to their status in the office. Behavior is largely controlled by the allocation of work and profes-

sional honors rather than by direct colleague sanctions. Moreover, the purpose of social control in the stratified office is apparently not to bring everyone in line, but only the higher-ranking lawyers. So long as some of the office practice necessitates dealing with lower-level courts and agencies, certain members will have to carry out these tasks. If their effective execution requires engaging in ethically questionable activities, it is in the interest of the office that the activities be carried out, even though they may be recognized and condemned as unethical and improper. The deterioration of professional norms and breakdown of social control that might result if high-ranking lawyers were to assume these tasks are avoided by assigning such jobs to lawyers who occupy the most marginal positions in the office structure and whose activities are least threatening to the integrity of the firm. In this way, lawyers higher up in the status hierarchy of the office are effectively insulated from pressures to violate and maximally exposed to pressures to conform.

Notes to Chapter 6

1. The analysis in this chapter is limited to data on 163 offices having 2 to 12 lawyers. These offices are of three types: *firms*—two or more partners plus associates; *employer units*—an individual practitioner with one or more lawyer-employees; and *sharing units*—two or more independent individual practitioners in a rent-sharing arrangement. Excluded are large firms of 15 or more lawyers, all one-man offices, and 22 offices in which interviews were completed with less than a specified number of respondents. In the final section on conformity to higher level norms, lawyers in the large firms are included in the analysis.
2. See Appendix C, p. 209, for the construction of this typology. See also Sills, David L., James A. Davis, John A. Michael, Martin L. Levin, and James S. Coleman, "Three 'Climate of Opinion' Studies," *Public Opinion Quarterly*, vol. 25, Winter, 1961, for discussion of problems of measuring climates and analyzing their effects.
3. Office consensus on these attitudes was defined exactly as it was for Ethical Climate (note 2, above).
4. The Office Sociability Index combines the average rates for each office of the frequency of having lunch with other lawyers in the office and the frequency of meeting socially with other lawyers in the office. See Appendix C, p. 211, for construction and scoring of the Index.
5. This finding, namely, that the more cohesive the group, the greater the pressure toward uniformity within the group, is frequently reported in small group research. See Festinger, L., S. Schachter, and K. Back, *Social Pressure in Informal Groups*, Harper and Bros., New York, 1950.
6. Average Level of Court and Agency Contact is the mean of the scores of all lawyers in an office on the Court

and Agency Level Index. Average Client Pressure was computed by giving numerical scores of 1 to 4 to the responses to the client pressure question: never was scored 1, rarely 2, sometimes 3, and very often 4. Scores were averaged for each office.

7. The Index of Ethical Concern is discussed in Chapter 8. See Appendix C, p. 213, for the construction and scoring of this Index.
8. See Appendix C, p. 211, for the classification of office structure by age and income. There are three types: peer-group, stratified, and heterogeneous.
9. The appropriateness of determining office climate in stratified offices in the same manner as in peer-group offices is open to question. In the latter, where every lawyer presumably has the same capacity to influence his office-mates, we are probably justified in measuring climate by giving the attitude of each lawyer equal weight. In the stratified office, however, where higher-ranking lawyers may have more influence over their colleagues than lower-ranking lawyers, more weight perhaps should be given to the attitudes of high-ranking lawyers in determining office climate. However, when the climate of stratified offices is defined by the attitude of high-ranking lawyers toward liberalizing the canons, the relation of climate to violation is even weaker.
10. See Appendix C, p. 213, for determination of rank in the office on the basis of age and income.
11. It is difficult to say how much the lower violation rates of higher-ranking members result from fewer pressures to violate and more supports for conformity and how much they reflect the weeding-out of the more flagrant violators. Low-ranking members who are least concerned with ethics do seem to be weeded out; the proportion of these lawyers diminishes from

two-thirds of newer members to one-third of older members (Table 85).

12. Of the 35 stratified offices, 18 are religiously mixed: in 10 of the 18 offices the senior men are Jewish; in 3 they are Catholic; in 4 Protestant; and in the remaining office, one is Catholic and the other is Jewish.
13. Support for the contention that "out" religion lawyers are passed over on promotions is suggested by the following: Out-religion lawyers tend to remain in low-ranking positions longer than in-religion lawyers: 80 per cent of the former compared to 67 per cent of the latter have been in a low-ranking position for two or more years. Furthermore, middle-ranking partners of an "out" religion are somewhat older than those of the "in" religion, and they generally earn less money: the top income bracket in these offices includes 32 per cent of the "in" and none of the "out" middle-ranking partners. Law school background may also play a role in the failure to promote "out" religion lawyers, a disproportionate number of whom come from lower quality law schools.
14. In older offices, there is little or no correlation between discussion of ethics and violation.
15. Membership in the New York County Lawyers' Association (the principal nonelite bar association) has little or no effect on conformity with higher-level standards. Moreover, membership in this association is negatively correlated with size of stratified office, especially among high-ranking lawyers: 86 per cent in the smaller stratified offices are members, and 30 per cent in the larger firms.
16. See Matza, David, *Delinquency and Drift*, Chapter 2, "The Subculture of Delinquency"; John Wiley and Sons, New York, 1964; Cohen, Albert K., *Delinquent Boys*, The Free Press, Glencoe, Ill., 1955; and Becker, Howard S., *Outsiders*, The Free Press, New York, 1963.

7

Size of Firm, Ethnicity, and Ethical Conduct: An Interpretation

One of the major findings of this study is that the size of the lawyer's firm is highly correlated with his rating on the Index of Ethical Behavior. The larger the firm to which lawyers belong, the more likely they are to be high conformers, the smaller the firm, the more likely they are to be violators (Chapter 3, page 55). In Chapter 2 it was shown that size of firm largely determines the status of the lawyer's clientele and the level of his main court and agency contacts. In Chapter 4 we considered the role of client status, and in Chapter 5 the role of court and agency contact in producing violation and conformity. The question before us now is whether these two sources of ethical influence help to explain the higher rates of violation and lower rates of conformity among lawyers in the smaller firms. In other words, do large and small firm lawyers have similar rates of conformity and violation when they are practicing under similarly favorable or unfavorable circumstances?

Stratification and Violation

The small-firm lawyer is more likely than his colleague in the large firm to have a low-status, unstable clientele. Consequently, he tends to have more vulnerable, exploitable clients, and to be more exposed to client pressures to violate (Table 102). Furthermore, small-firm lawyers are much more likely to experience a combination of these client-related pressures (Table 102, last row).

Classifying lawyers by degree of exposure to client-related pressures, we find that those least exposed to such pressures have a very low rate of violation regardless of the size of firm. Of those exposed to greater pressures, however, small-firm lawyers still have higher rates of violation. Nevertheless, the relation between size of firm and violation is considerably reduced when client-related pressures are taken into account (Table 103).

Small-firm lawyers are more likely to come into contact with lower-level courts and agencies than large-firm lawyers. They encounter, therefore, more pressures for norm violation in this area as well. Classifying lawyers by level of main court and agency contact, we find that where it is possible to compare large- and small-firm lawyers at similar levels of the court and agency structure there is little relation between size of firm and violation (Table 104).

Further analysis reveals that neither exposure to client-related pressures nor contact with lower-level courts and agencies will alone

Table 102. Various Clientele Attributes by Size of Firm

Per cent of lawyers who report:	Large firm	Medium	Small ^a
Low status and unstable (or moderately unstable) clientele	0 (59)	10 (113)	40 (460)
High and high-middle opportunity to exploit clients	32 (60)	41 (196)	62 (520)
High client pressure	5 (60)	17 (196)	26 (530)
High and high-middle client-related pressures	20 (60)	41 (198)	65 (520)

^a Includes individual practitioners.

result in a high rate of violation. Rather, it is the combination of the two that substantially increases violation rates (Table 105). And,

Table 103. Violation by Size of Firm and Client-Related Pressures

Client-related pressures	Per cent violators			Size of firm effect
	Large firm	Medium	Small	
High	* (1)	38 (21)	48 (117)	—
High-middle	0 (11)	26 (58)	30 (165)	+30
Low-middle	10 (21)	16 (86)	22 (184)	+12
Low	4 (27)	12 (33)	13 (54)	+ 9
Total	5 (60)	21 (198)	30 (520)	+25

* Too few cases on which to base a percentage.

Table 104. Violation by Size of Firm and Level of Court and Agency Contact

Level of main court-agency contact	Per cent violators			Size of firm effect
	Large firm	Medium	Small	
Lower	* (0)	47 (17)	49 (142)	—
Lower-middle	* (3)	35 (20)	28 (134)	—
Upper-middle	6 (17)	13 (69)	20 (180)	+14
Upper	5 (40)	18 (90)	13 (60)	+ 8

* Too few cases on which to base a percentage.

Table 105. Violation by Client-Related Pressures and Level of Court and Agency Contact

Level of main court-agency contact	Per cent violators		
	Client-related pressures		
	High	Middle ^a	Low
Lower and lower-middle	61 (84)	34 (206)	14 (28)
Upper-middle	29 (38)	18 (188)	5 (40)
Upper	13 (16)	14 (129)	13 (46)

* Includes high-middle and low-middle categories.

it is precisely the small-firm lawyer who is most likely to be exposed to this combination of situational inducements to violate. Combining client-related pressures and level of court and agency contact into an Index of Situational Inducements to Violate, we find that within each Index group the relation between size of firm and violation is even further reduced (Table 106). Large-firm lawyers, then, have low rates of violation because they are largely insulated from client and court-agency pressures, while small-firm lawyers and individual practitioners have high rates of violation because they are most exposed to these situational inducements to violate.

Table 106. Violation by Size of Firm and Situational Inducements to Violate

Situational inducements to violate ^a	Per cent violators			Size of firm effect
	Large firm	Medium	Small	
High	^b (0)	55 (11)	57 (119)	—
High-middle	^b (3)	30 (60)	27 (242)	—
Low-middle	5 (20)	14 (57)	15 (102)	+10
Low	5 (37)	13 (69)	11 (55)	+ 6
Situational inducement effect	—	+42	+46	—

^a The Index of Situational Inducements to Violate combines the Index of Client-Related Pressures and Level of Court and Agency Contact. See Appendix C, p. 209, for construction and scoring.

^b Too few cases on which to base a percentage.

Stratification and High Conformity

The greater insulation of large-firm lawyers from situational inducements to violate helps to explain their higher rates of conformity to distinctively professional norms. Nevertheless, there is still a larger proportion of high conformers among large-firm than small-firm lawyers even when the latter are minimally exposed to situational pressures (Table 107).

We have seen in Chapter 6 that membership in elite bar associations tends to reinforce conformity to higher level norms, and that lawyers in the large firms are more likely to belong to these associations. Consequently, when we take into account not only level of main court and agency contact, but also membership in elite bar associations, we find that size of firm differences in rates of conformity are reduced (Table 108). Thus, the proportion of high

Table 107. High Conformity by Level of Court and Agency Contact and Size of Firm

Situational inducements to violate	Per cent high conformers			Size of firm effect
	Large firm	Medium	Small	
Low	57 (37)	46 (69)	42 (55)	+15
Low-middle	55 (20)	51 (57)	27 (102)	+28
High-middle	^a (3)	23 (60)	22 (242)	—
High	^a (0)	27 (11)	5 (119)	—
Total	57 (60)	40 (197)	21 (518)	+36

^a Too few cases on which to base a percentage.

Table 108. High Conformity by Level of Court and Agency Contact, Membership in Elite Bar Associations, and Size of Firm

Level of main court-agency contact and number of elite bar memberships	Per cent high conformers			Size of firm effect
	Large firm	Medium	Small	
<i>Upper</i>				
Two or more	68 (28)	58 (47)	55 (44)	+13
One	62 (16)	46 (44)	40 (40)	+22
None	33 (12)	31 (68)	22 (153)	+11
<i>Lower</i>				
Two or more	^a (2)	^a (5)	22 (18)	—
One	^a (1)	27 (11)	17 (42)	—
None	^a (0)	24 (21)	10 (216)	—

^a Too few cases on which to base a percentage.

conformers among those few small-firm lawyers who deal with upper-level courts and agencies and are members of two or more elite bar associations is about as high as that of their large-firm counterparts. On the other hand, when large-firm lawyers belong to no elite bar associations, they have about as low a rate of conformity as their small-firm counterparts.

We have now shown that there is, indeed, very little difference in rates of violation and high conformity between large- and small-firm lawyers when they are practicing law under similar conditions. However, they rarely do practice under similar conditions, and it is for this reason that we find a relation between size of firm and ethical conduct.

Social Background and Ethical Conduct

The lawyer's social background plays a major role in determining the size of the firm of which he is a member and, therefore, his position in the status hierarchy of the bar (Chapter 2). Size of firm, we have just seen, considerably affects the kinds of ethical influences to which the lawyer will be exposed in his practice. We should expect to find, therefore, a relation between social background and ethical behavior. And this is the case. Protestant lawyers have a higher rating on the Index of Ethical Behavior than Catholic lawyers, and Catholics have a higher ethics rating than Jews (Table 109).

Table 109. Ethical Behavior by Religious Background

Ethical Behavior Index	Per cent of lawyers		
	Protestant	Catholic	Jewish
High (conformers)	52	37	22
Middle	40	50	47
Low (violators)	8	13	31
Total	100 (97)	100 (125)	100 (541)

Moreover, lawyers of British, Canadian, and Irish descent have a higher ethics rating than lawyers of eastern European descent¹ (Table 110).

Religious background and national origin are, of course, highly correlated. Since each has an effect on ethical behavior even when the other is taken into account (see Table 111), they were combined to form three ethnicity groups. Group I includes Protestants of British, Canadian, and northwestern European (mainly German)

Table 110. Ethical Behavior by National Origin

Ethical Behavior Index	Per cent of lawyers				
	United Kingdom and Canada	Ireland	North-western Europe	Central Europe	Eastern Europe
High (conformers)	44	43	43	24	21
Middle	45	48	37	49	46
Low (violators)	11	9	20	27	33
Total	100 (84)	100 (81)	100 (74)	100 (122)	100 (412)

Table 111. Ethical Behavior by Religious Background and National Origin

Ethical Behavior Index	Per cent of lawyers					
	<i>United Kingdom, Canada, Ireland, and Northwestern Europe</i>			<i>Central and Eastern Europe</i>		
	Protestant	Catholic	Jewish	Protestant	Catholic	Jewish
High (conformers)	52	37	37	*	29	20
Middle	42	54	35	*	46	48
Low (violators)	6	9	28	*	25	32
Total	100 (88)	100 (97)	100 (54)	(6)	100 (28)	100 (500)

* Too few cases on which to base a percentage.

origin, and Irish Catholics. Group II consists of Protestants from central and eastern Europe, Catholics from northwestern, central, and eastern Europe, and Jews from the United Kingdom, Canada, and Ireland. Group III includes central and eastern European Jews. Table 112 shows the distribution of ethics ratings for each ethnicity group.²

Viewed alone, Table 112 suggests a direct connection between cultural or religious characteristics and conformity with ethical norms. However, further analysis of the data indicates that the significance of ethnicity is largely confined to the role it plays in allocating lawyers to different status positions in the bar and in exposing them to different pressures.

Of Group III lawyers (members of newer immigrant groups), 75 per cent are in small firms or individual practice compared to 44 per cent of Group I lawyers. Moreover, among lawyers in smaller firms, Group III lawyers are more likely to have a less prestigious type of practice; that is, to handle personal injury and real estate matters for a low-status clientele and to come into contact with lower-level courts and agencies (Table 113).

When lawyers are classified by size of firm and type of practice, the relation between ethnicity and ethical behavior is virtually eliminated at the two status extremes of the bar. Among lawyers in

Table 112. Ethical Behavior by Ethnicity

Ethical Behavior Index	Per cent of lawyers		
	<i>Ethnicity group</i>		
	I	II	III
High (conformers)	47	34	20
Middle	45	39	48
Low (violators)	8	27	32
Total	100 (173)	100 (100)	100 (500)

large firms, ethnicity is unrelated to ethical behavior. These two factors are also unrelated among lawyers in small firms or individual practice who have the least prestigious type of practice (Table 114).

Table 113. Type of Practice by Ethnicity (for Lawyers in Small Firms and Individual Practice Only)

Type of practice ^a	Per cent of lawyers		
	<i>Ethnicity group</i>		
	I	II	III
High	48	25	17
Middle	32	31	19
Low	20	44	64
Total	100 (75)	100 (70)	100 (355)

^a Lawyers classified as having a "high" type of practice represent high-status clients in business and probate matters before upper-level courts and agencies. Those classified "low" represent low-status clients in real estate and personal injury matters before lower-level courts and agencies. All others are classified as "middle."

Table 114. Ethical Behavior by Ethnicity, Size of Firm, and Type of Practice

Ethical Behavior Index	Per cent of lawyers								
	Large firm			Medium-sized or small firm with high or middle type of practice			Small firm with low type of practice		
	<i>Ethnicity group</i>			<i>Ethnicity group</i>			<i>Ethnicity group</i>		
	I	II	III	I	II	III	I	II	III
High (conformers)	55	^a	50	50	36	30	12	17	10
Middle	40	^a	43	46	39	47	53	46	48
Low (violators)	5	^a	7	4	25	23	35	37	42
Total	100 (38)	— (8)	100 (14)	100 (116)	100 (61)	100 (242)	100 (17)	100 (30)	100 (235)

^a Too few cases on which to base a percentage.

Lawyers at the two status extremes of the bar encounter maximum pressures either to conform or to violate regardless of ethnicity. Lawyers in the middle-status categories, however, are exposed to varying pressures depending on their ethnic background. For example, among these lawyers, members of newer immigrant groups tend to report more client pressure to violate and more opportunities to exploit clients. They are also more likely to come into contact with lower-level courts, and less likely to be members of an elite bar association (Table 115). By taking these situational factors into account, the relation between ethnicity and ethical behavior can be greatly reduced for practically all the lawyers in these middle-status groups.³

Table 115. Client Pressure, Opportunity to Exploit, Lower Court Contact, and Elite Bar Association Membership by Ethnicity and Status of Practice

Per cent of lawyers who report:	Ethnicity group	Status of practice			
		Large firm	Medium-sized firm and high or middle practice	Medium-sized firm and low practice; small firm and high or middle practice	Small firm and low practice
High client pressure or high and high-middle opportunity to exploit	II and III I	22 (18)	34 (118)	39 (184)	53 (264)
		16 (37)	8 (51)	16 (61)	53 (17)
		+6	+26	+23	0
Main contact with local and state courts	II and III I	6 (16)	35 (102)	51 (148)	84 (249)
		8 (38)	22 (55)	32 (63)	82 (17)
		-2	+13	+19	+2
Membership in an elite bar assn.	II and III I	78 (18)	51 (123)	33 (184)	16 (269)
		78 (37)	74 (55)	57 (63)	23 (17)
		0	-23	-24	-7

We are led to conclude that the relation between ethnicity and ethical behavior results primarily from the fact that lawyers in different ethnic groups practice under different conditions. Under similar conditions, members of newer immigrant groups behave in much the same way as members of older immigrant groups.

Conclusion

In Chapter 2 we suggested that the social structure of the bar provides a key to understanding differences in the ethical behavior of lawyers. We have seen that the lawyer's location in the system of stratification in the bar, as indicated primarily by the size of his firm, determines the nature of his clientele, the level and character of his participation in courts and agencies, and his contacts with colleagues and professional associations. These characteristics, in turn, determine the types of ethical influences to which lawyers are exposed. The relation, therefore, between size of firm and ethical behavior can be explained by the substantially different conditions under which large- and small-firm lawyers practice. Their different rates of violation and conformity are the product not of firm size but of the varying ethical influences that are so highly correlated with size of firm.

Much the same story accounts for the relation between ethnicity and ethical behavior. Lawyers' ethnic background serves to channel them into different sized firms (and into higher or lower ranking positions within firms) and, hence, into very different contexts of legal practice. As a result, Protestant lawyers who are more likely to be in the upper strata of the bar, are maximally exposed to pressures to conform, and Jewish lawyers, in the lower strata, encounter maximum pressures to violate. Moreover, even in the middle strata of the bar there is apparently a hierarchy of legal practice largely keyed to ethnicity, members of older immigrant groups enjoying a more prestigious type of practice, and members of newer immigrant groups handling the less prestigious and ethically more compromising types of practice.

Ethnicity and size of firm are related to ethical behavior, then, primarily because they affect the *process* by which lawyers become exposed to situational pressures to violate or conform.

Notes to Chapter 7

1. The only class background factor that is at all related to ethical behavior is father's education: lawyers whose fathers went to college have a higher ethics rating than lawyers whose fathers had less than a grade school education. Father's education, however, is related to his religion and nationality, and when these are taken into account the relation between father's education and lawyer's ethical behavior is sharply reduced.
2. Ethnicity is highly correlated with generation in the United States. Close to 70 per cent of Group III lawyers (central and eastern European Jews) are foreign-born or second-generation, compared to about half of Group II lawyers, and 15 per cent of Group I lawyers. However, it is the recency of immigration of the ethnic group as a whole of which the lawyer is a member, not his own generation in the United States, that is related to ethical behavior: members of the oldest immigrant groups have high ethics ratings and members of newest immigrant groups low ratings, regardless of their own generation.
3. This proposition is supported by the following tables in which the findings are summarized by a statistical measure of relationship, Kendall's tau-b. This form of analysis is dictated by the fairly large number of variables included in most of the tables and the relatively small number of cases contained in many of the table cells. Only respondents in the middle-status groups in the bar are included in these tables. The measure focuses on the overall re-

lation between the Index of Ethical Behavior and ethnicity. Kendall's tau-b is an appropriate measure of relationship for contingency tables in which the two variables have ordered categories. The possible values of tau-b range from minus one to plus one. The extreme value of plus or minus one would occur when all observations fall on the diagonal of the table, and a zero value indicates no association between the two variables. See Somers, Robert H., "A New Asymetric Measure of Association for Ordinal Variables," *American Sociological Review*, vol. 27, December, 1962, pp. 799-811.

The first table below shows that among lawyers who have either an unstable clientele or encounter frequent client pressures and opportunities to exploit clients, the relation between ethical behavior and ethnicity is virtually eliminated.

The second table shows that there is very little relation between ethical behavior and ethnicity for lawyers who come into contact mainly with federal or state appellate courts, or for those who are not in court at all.

The third table shows that among lawyers who are most likely to find support for conformity as a result of membership in an elite bar association (those in middle-sized firms with a high-status type of practice) the relation between ethical behavior and ethnicity is substantially reduced. The relation is also reduced for lawyers who are not members of an elite association and occupy a lower-status position in the bar.

Ethnicity and Ethical Behavior by Client Pressure, Opportunity to Exploit, and Stability of Clientele

Clientele stability, client pressure, and opportunity to exploit	Kendall's tau-b ^a	P ^b	
<i>Unstable and moderately unstable clientele</i>			
High client pressure and high opportunity to exploit	.04	.40	(44)
All others	.02	.44	(78)
<i>Stable clientele</i>			
High client pressure and high opportunity to exploit	.07	.33	(54)
All others	<u>.32^c</u>	.00	(126)
Other (no clients of own)	<u>.37</u>	.00	(118)

^a The very low value of tau-b for the first three categories (.04, .02, .07) indicates only a negligible relation between ethnicity and ethical behavior in these groups.

^b The probability of obtaining a value of tau-b that is equal to, or greater than, the observed value if the true value is zero. The relatively high value of P in the first three categories strongly suggests that within these groups there is *no relation at all* between ethnicity and ethical behavior in the population from which the sample was drawn; more precisely, that in at least three samples out of ten drawn from the population of New York City lawyers we might have obtained the same or even a higher value of tau-b when in fact the true value is zero.

^c In this and the following tables those values of tau-b which represent substantial and statistically significant relationships are underlined.

Ethnicity and Ethical Behavior by Level of Main Court Contact

Main court level	Kendall's tau-b	P	
Not in court	.10	.24	(60)
Federal and state appellate	.07	.29	(86)
Other state	<u>.23</u>	.00	(224)
Local	<u>.31</u>	.04	(40)

Ethnicity and Ethical Behavior by Status of Practice and Membership in Elite Bar Associations

Practice status ^a and elite bar association membership	Kendall's tau-b	P	
<i>Upper-middle status</i>			
Member	.06	.27	(101)
Nonmember	<u>.25</u>	.05	(74)
<i>Lower-middle status</i>			
Member	<u>.21</u>	.02	(98)
Nonmember	.09	.18	(142)

^a Upper-middle status lawyers have a high and middle type of practice in middle-sized firms; lower-middle status lawyers have a low type of practice in middle-sized firms and a high and middle type of practice in smaller firms.

The final table shows that when lawyers occupy a high rather than a low rank in an office, the relation between ethnicity and ethical behavior is re-

duced, and that when they have high rank in a stratified office, the relation is virtually eliminated.

Ethnicity and Ethical Behavior by Office Structure and Rank in the Office

Office structure and rank in office	Kendall's tau-b	P	
Stratified			
High rank	.05	.31	(100)
Low rank	<u>.27</u>	.02	(64)
Heterogeneous			
High rank	<u>.15</u>	.07	(124)
Low rank	<u>.51</u>	.00	(45)
Peer-group	<u>.14</u>	.21	(33)

8

Inner Disposition

The evidence presented thus far indicates that adherence to ethical norms is greatly influenced by circumstances arising from the nature of the lawyer's practice and position in the bar. Chapter 4 noted that situational pressures are in part translated into violation by inducing willingness to violate. This suggests that differences in ethical conduct may result from a combination of situational and psychological factors. This chapter considers the way in which lawyers' ethical conduct is affected by basic ethical orientations or dispositions, and how these are related to situational pressures and the system of stratification in the bar.

Ethical Concern: A Measure of Inner Disposition

Some indication of the lawyer's inner disposition to conform to ethical norms is provided by responses to one of the interview questions. Lawyers were asked to rank a list of traits in order of importance in choosing a partner or office-mate. On the basis of these rankings we constructed an Index of Ethical Concern. Lawyers who gave high priority to "loyalty to clients" and "honesty in dealing with officials," as against "type of practice" and "business-getting ability," were rated "high" on the Index.¹

Although the Index appears to have a limited reference, the relation between the Index ratings and other attitudes suggests that it measures a more general commitment to moral and professional values. The higher their rating on the Index of Ethical Concern, the more likely lawyers are to emphasize moral characteristics rather than personality traits in judging other lawyers, to oppose liberalizing the canons and to favor their more strict enforcement, to disapprove violation of the more distinctively professional norms, and to perceive law as a profession rather than as a business

Table 116. Various Professional Attitudes by Concern with Ethics

Per cent of lawyers with following professional attitudes: ^a	Ethical concern				Ethical concern effect
	Low	Low-middle	High-middle	High	
What do you admire most in other lawyers? Honesty, integrity	23	34	33	51	+28
What do you like least in other lawyers? Dishonesty, lack of integrity	26	38	35	47	+21
Negative personality traits	53	36	39	30	-23
Rank "personality" first, second, or third in selecting: Office-mate	88	77	72	50	-38
Partner	71	61	50	35	-36
Consider lawyers to be more like: Businessmen	52	48	41	33	-19
Doctors	40	39	52	57	+17
Oppose liberalizing the canons	28	41	47	51	+23
Favor more strict enforcement of the canons	52	63	70	66	+14
Disapprove violations of higher level norms	14	33	36	41	+27
	(104)	(320)	(164)	(213)	

^a See Interview Schedule, Appendix D, questions 79, 80, 29, 76, 105d, 105a.

(Table 116). The best evidence that the Index of Ethical Concern may be used as an indicator of a stable, inner disposition to conform is provided by the effect of ethical concern on the relation between situational pressures and violation.

Ethical Concern and Violation

The lower the lawyer's rating on the Index of Ethical Concern, the higher his rate of violation: 54 per cent of those rated low are violators compared to only 10 per cent of those rated high (Table 117). Although the correlation between ethical concern and violation is very high, there is by no means a perfect correspondence between the two. The degree to which disposition is reflected in actual behavior depends on the nature of the situation, that is to say, on the presence or absence of external pressures to violate or conform. This interpretation is strikingly supported by Table 118.

Norms are most frequently violated when lawyers of low ethical concern are exposed to strong situational pressures: 80 per cent of those who come into contact with lower-level courts and agencies are violators as are 79 per cent of those who encounter maximum client-related pressures. The opposite outcome occurs when the two variables are reversed. Among lawyers of high ethical concern who come into contact with upper-level courts and agencies only 4 per cent are violators; of those who are least exposed to client-related pressures only 5 per cent are violators.

Of particular interest is the apparent resistance to pressures shown by lawyers who have the greatest ethical concern. Even when

Table 117. Violation by Concern with Ethics

Concern with ethics	Per cent violators
Low	54 (101)
Low-middle	28 (303)
High-middle	22 (161)
High	10 (206)

subjected to the combination of high client-related pressures and exposure to lower-level courts and agencies, only 20 per cent of those with high ethical concern are violators, as against 77 per cent of those with low concern. Moreover, high concern lawyers are far less responsive to an increase in situational pressures than their less ethically concerned colleagues. Finally, it should be noted that the least ethically concerned lawyers are likely to violate when exposed to *either* type of situational pressure, moderately concerned lawyers tend to violate only when exposed to *both* types of pressure, and the most concerned lawyers violate very little even when they are exposed to both types of pressure.

One of the ways in which ethical concern influences ethical conduct is through its impact on the relation between situational pressure and willingness to violate. As we have previously noted, lawyers who are under pressure to violate tend to weaken or neutralize the

Table 118. Violation by External Pressures and Ethical Concern

External pressures	Per cent violators			Ethical concern effect
	High	Middle	Low	
<i>Level of court-agency contact</i>				
Lower	30 (30)	47 (100)	80 (30)	+50
Lower-middle	15 (41)	26 (88)	59 (29)	+44
Upper-middle	5 (81)	20 (157)	36 (28)	+31
Upper	4 (53)	16 (124)	29 (14)	+25
Court-agency effect	+26	+31	+51	
<i>Client-related pressure</i>				
High	10 (21)	46 (94)	79 (24)	+69
High-medium	10 (58)	28 (149)	63 (27)	+53
Low-medium	12 (90)	17 (163)	47 (38)	+35
Low	5 (37)	14 (65)	8 (12)	+ 3
Client effect	+5	+32	+71	
<i>Combined pressures</i>				
Lower court-agency contact:				
High client-related pressure	20 (30)	47 (118)	77 (35)	+57
Low client-related pressure	22 (41)	20 (70)	59 (24)	+37
Upper court-agency contact:				
High client-related pressure	4 (48)	24 (123)	56 (16)	+52
Low client-related pressure	5 (86)	15 (158)	19 (26)	+14
Combined pressures effect	+15	+36	+58	

moral force of official norms that restrict their opportunities for success. We have also seen how this tendency is facilitated by interaction among peers facing similar problems in the course of which lawyers appear to seek out and give support to one another for engaging in unethical practices. The sequence seems to be as follows: Exposure to situational pressures leads to frequent discussion of ethical problems among peers (Table 119). These discussions, in turn, result in favoring liberalization of the canons especially when lawyers are exposed to situational pressures to violate (Table 120).

Table 119. Discussion of Ethical Questions by Situational Inducements to Violate

Situational inducements to violate ^a	Per cent high discussers
High 6	83 (58)
5	74 (71)
4	72 (136)
3	61 (175)
2	60 (181)
1	50 (115)
Low 0	39 (46)

^a Combines Index of Client-Related Pressures and Level of Court and Agency Contact. See Appendix C, p. 209, for Index of Situational Inducements to Violate.

Table 120. Attitude Toward Liberalizing the Canons by Discussion of Ethical Questions, Level of Court and Agency Contact, and Client-Related Pressures

Level of court-agency contact and client-related pressures	Per cent favoring liberalization		
	Frequently discuss ethics	Infrequently discuss ethics	Discussion effect
Lower court-agency contact and high client-related pressure	67 (66)	44 (18)	+23
Lower court-agency contact and moderate client-related pressure	51 (140)	32 (68)	+19
Lower court-agency contact and low client-related pressure; upper court-agency contact and high and moderate client-related pressure	35 (244)	28 (158)	+7
Upper court-agency contact and low client-related pressure	21 (39)	15 (48)	+6

Finally, favoring liberalization of the canons is most likely to lead to violation when lawyers are under pressure and frequently discuss ethical questions (Table 121).

Lack of ethical concern contributes to this process of translating external pressures into willingness to violate by heightening the effect of discussion on the neutralization of norms. As seen in Table 122, discussion of ethical questions is more likely to result in

Table 121. Violation by Discussion of Ethical Questions, Attitude Toward Liberalizing the Canons, and Client-Related Pressures

Attitude toward liberalization	Per cent violators			
	<i>High client-related pressures</i>		<i>Low client-related pressures</i>	
	Frequently discuss ethics	Infrequently discuss ethics	Frequently discuss ethics	Infrequently discuss ethics
Favor liberalization	55 (125)	35 (43)	38 (80)	28 (36)
Do not favor liberalization	25 (135)	18 (66)	13 (148)	12 (138)
Attitude effect	+30	+17	+25	+16

Table 122. Attitude Toward Liberalizing the Canons by Discussion of Ethical Questions, Level of Court and Agency Contact, Client-Related Pressures, and Concern with Ethics

Discuss ethical questions	Per cent favoring liberalization			
	<i>High combined pressures*</i>		<i>Low combined pressures*</i>	
	Low ethical concern	High ethical concern	Low ethical concern	High ethical concern
Frequently	63 (119)	46 (87)	40 (144)	25 (139)
Infrequently	36 (50)	33 (36)	21 (101)	28 (106)
Discussion effect	+27	+13	+19	-3

* High combined pressures are defined as contact with lower courts and agencies and high and medium client-related pressures. All others are classified as low combined pressures.

favoring liberalization of the canons among lawyers with low than with high ethical concern. Moreover, discussion is most likely to have this effect when lawyers of low ethical concern are exposed to a combination of external pressures.

Ethical concern also increases the likelihood of conformity to higher level norms: 39 per cent of those rated high on the Index of Ethical Concern are high conformers, compared to 11 per cent of those rated low. We previously noted that membership in elite bar associations reinforces the tendency to conform to higher-level norms. Now we find that elite bar membership has the greatest influence on high conformity when accompanied by high ethical concern. Conversely, high ethical concern is most likely to result in a high rate of conformity for lawyers who are members of at least two elite bar associations; in the absence of these institutional supports high ethical concern has considerably less effect on high conformity (Table 123).

Table 123. High Conformity by Membership in Elite Bar Associations and Concern with Ethics

Number of elite bar memberships	Per cent high conformers		
	High ethical concern	Middle ethical concern*	Low ethical concern
Two or three	71 (41)	48 (89)	29 (14)
One	43 (37)	36 (100)	29 (17)
None	27 (124)	17 (276)	3 (70)

* Middle ethical concern includes high-middle and low-middle ethical concern.

Inner Disposition and the Social Structure of the Bar

Our data show that ethical concern is of critical importance for adherence to ethical norms. A remaining question is whether inner disposition like external pressure is related to the lawyer's position in the social hierarchy of the bar.

Size of Firm and Ethical Concern

Large-firm lawyers have somewhat higher rates of ethical concern than lawyers in small firms. These differences, however, are found primarily among employees (Table 124); among partners there is virtually no relation between size of firm and ethical concern. This suggests that while larger firms may be more desirous of recruiting ethically concerned associates, they are no more interested than smaller firms in choosing ethically concerned partners. In fact, in the larger firms partners show a *lower* level of ethical concern than associates.

Consistent with this interpretation is the fact that ethically concerned lawyers are more likely to start out in practice in large or medium-sized firms, and that those who do are more likely to be retained in the initial weeding out process than less ethically concerned lawyers. For example, of the younger lawyers (age forty or under) who started out in a large firm, only 27 per cent of the more ethically concerned have moved into smaller firms, compared to 53 per cent of the less ethically concerned. However, firms seem to prefer the *less* ethically concerned in selecting partners, while the more ethically concerned tend to remain as senior associates. Thus, 52 per cent of the less ethically concerned lawyers who started out in large or medium-sized firms are now partners, compared to 38 per cent of the more concerned.

Table 124. Concern with Ethics by Size of Firm and Employment Status

Size of firm	Per cent with high ethical concern	
	Partner or individual practitioner	Employee ^a
Large	52 (29)	64 (31)
Medium	47 (116)	60 (83)
Small	46 (468)	41 (68)
Size of firm effect	+6	+23

^a "Employee" includes both associates in firms and employees of individual practitioners.

Concern with ethics seems to be involved also in the distribution of employees among different areas of practice. For partners and individual practitioners there is no relation between area of practice and concern with ethics. However, among employees 96 per cent of those in probate and estate work have high concern ratings compared to only 37 per cent in personal injury, criminal, and divorce work. Furthermore, the likelihood that ethically concerned employees will be working in the probate area increases with increasing age. Hardly any associates with low concern ratings work in this area regardless of age (Table 125).

If lawyers of high ethical concern may be characterized as more "methodical, prudent, and disciplined," they would quite understandably be selected for work that requires carrying out routine, detailed tasks and is also farthest removed from the conflicts and pressures of the market place. According to Erwin Smigel, it is precisely the lawyers with these personality attributes who are most likely to be found in the senior associate slots of large firms handling this more routine type of practice.²

Pressures of Practice

Degree of ethical concern is unrelated to various measures of situational pressure, such as level of court and agency contact (if we control for size of firm) and opportunity to exploit clients. It is related to pressure from clients, but only for employees; among

Table 125. Main Area of Practice by Concern with Ethics and Age (for Employees Only)

Age	Per cent mainly in probate and estate		
	High ethical concern	Low ethical concern	Concern effect
51 years or over	50 (20)	0 (11)	+50
41 to 50 years	20 (15)	0 (10)	+20
40 years or under	13 (63)	3 (65)	+10

these lawyers low-client pressure is associated with high rates of concern (Table 126). In line with our previous interpretation, this could be explained on the ground that the more ethically concerned employees are more likely to be assigned to areas of practice that least expose them to pressures from clients to engage in unethical activities. This seems to be confirmed by the fact that, when employees work in the same area of practice, there is little or no relation between client pressure and ethical concern (Table 127).

Age

Does concern with ethics increase with age and tenure? Or does the presumed idealism of the new recruit dwindle with exposure to the problems and inevitable moral conflicts of practice? The data

Table 126. Concern with Ethics by Client Pressure and Employment Status

Client pressure	Per cent with high ethical concern	
	Partner or individual practitioner	Employee
Low	46 (453)	58 (153)
High	40 (140)	35 (29)
Client pressure effect	+6	+23

Table 127. Concern with Ethics by Client Pressure and Area of Practice (for Employees Only)

Client pressure	Per cent with high ethical concern		
	Probate	Business	Real estate or personal injury
Low	88 (25)	56 (90)	43 (37)
High	* (1)	48 (21)	* (7)

* Too few cases on which to base a percentage.

indicate that age is largely unrelated to ethical concern. Although the oldest lawyers (over sixty) have the highest concern rate, less than a 10 per cent difference separates them from the youngest lawyers (Table 128).

Professional Training

Since concern with ethics is little affected by increasing age or the varying conditions and pressures of practice, it may well indicate a predisposition established before a lawyer enters practice. This raises the question of the role of the professional school in the development of ethical concern.

Chapter 1 noted the widely held conviction that commitment to professional norms and values can be learned in the course of professional training. Those who take this position, moreover, believe that the professional school is the most appropriate place for instilling this commitment. Data collected in this and other studies do not support this view.

Recent panel studies of law students indicate little change in ethical orientation during the period of law school training. In the first study, students from Columbia, Fordham, Brooklyn, and the University of Pennsylvania law schools were interviewed immediately before entering law school and again at the end of their second year.³ Included in the interview were five of the same ethics items developed in this study. With the second interview the proportion

Table 128. Ethical Concern by Age

Age	Per cent with high ethical concern
61 years or over	56 (80)
51 to 60 years	53 (232)
41 to 50 years	42 (173)
31 to 40 years	42 (191)
30 years or under	48 (89)

of students giving the ethical response increased on each item, but not by more than 8 per cent (Table 129). Moreover, Table 129 and Chart 2 show that there is no difference in the relative ranking of these items between entering and second-year law students and lawyers at various stages of practice. As judged by the proportions reporting that they would take (or had taken) the ethical action, *all* groups appear to assign the same relative ethical significance to all five items.

The second study gathered information from students in eight law schools across the country in order to evaluate the effect of clinical programs designed to instill a greater sense of professional responsibility in students.⁴ Four of the schools had such programs, and four others were selected as "control schools." Included in the questionnaire were eleven ethics items, most of them drawn from the present study. Each student was asked to report the action he would be most likely to take if he were an attorney in the described

Table 129. Ethical Response to Five Ethics Items for Law Students and Practitioners

Ethics item ^c	Per cent reporting they would take or had taken ethical action				
	Students ^a		Practitioners ^b		
	Pre-law school	End of second year	Under 30	AGE 31 to 40	Over 40
Client Payoff	85	87	75	68	81
Syndicate Sale	78	86	63	65	72
Commission	62	65	60	48	55
Conflict of Interest	28	34	28	52	49
Referral fee	20	22	25	24	32
	(943)	(838)			

^a Data drawn from Thielens, Wagner P. *op. cit.* (See note 3 of this chapter.) The proportions reported here were approximately the same for all four law schools in the study.

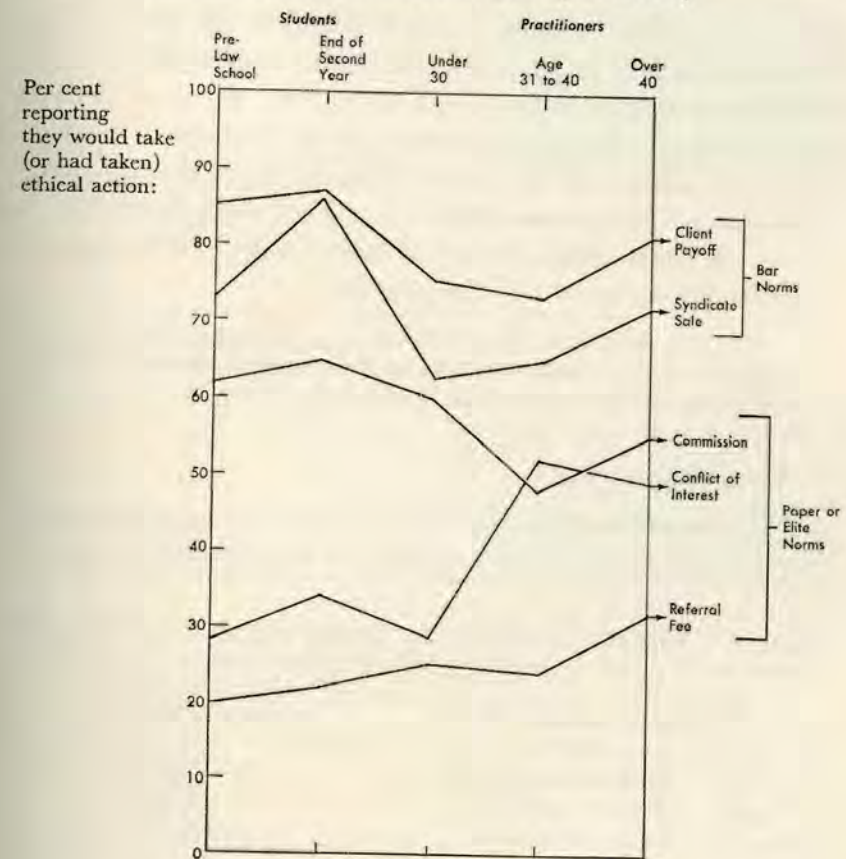
^b These proportions based on figures which have been corrected for differences in sampling ratio.

^c See p. 44 for synopsis of ethics items.

situation. The results of the study show no significant change in students' ethics scores between the beginning and end of their third year in either the schools with the program or the control schools. The report of the study concludes: "Innovations in the curricula of professional schools, no matter how radical, cannot expect to seriously alter students' outlooks. . . ."⁵

Similar results were obtained in a study of medical students. The researchers sought to analyze the processes involved in the acquisi-

Chart 2. Graphic Presentation of Ethical Response to Five Ethics Items for Law Students and Practitioners (Table 129)



tion of professional norms and values.⁶ The findings, however, generally failed to show any significant changes in acceptance of norms or values during the period of medical training.

Our data also point in the same direction. We find that quality of law school attended is not appreciably related to ethical concern: graduates of full-time university law schools have only slightly higher rates of concern than graduates of lower-quality mixed law schools (Table 130). Since law school has little effect on the lawyer's inner disposition to conform, we should not expect it to have any direct influence on his ethical behavior. And this is the case.

Although there is a relation between quality of law school attended and ethical behavior, it can be accounted for by the importance of law school background in channeling lawyers into different-sized firms and types of practice. Lawyers who end up at the same level of the bar, therefore, have similar rates of adherence to ethical standards regardless of the quality of the law school they attended.⁷ This conclusion is perhaps implicit in the following observation in response to the question of whether there are any Ivy League law school graduates in the criminal practice:

Oh yes, there are many of them. . . . They just become acculturated and wear diamond rings and the sharpie clothes and talk from the corner of their mouths and smoke cigars.

Social Background

If, as the data suggest, concern with ethics is acquired before the lawyer begins his professional training, it may be related to certain

Table 130. Concern with Ethics by Quality of Law School Attended

Quality of law school	Per cent with high ethical concern
Full-time university	50 (241)
High-quality mixed	48 (236)
Lower-quality mixed	44 (313)

features of his social background. Although unrelated to social class background, degree of ethical concern is affected by both generation in the United States and national origin. Thus, the highest rates of concern appear among lawyers who are at least fourth-generation Americans and of British, Irish, or northwestern European descent (Table 131). Moreover, these "old stock" Americans have a consistently high rate of concern in all three religious groups (Table 132). These findings suggest that the source of ethical concern may be certain cultural values held and transmitted by groups long established in our society and still committed to the Protestant Ethic with its premium on strict morality and inner direction. Further consideration of this matter is beyond the scope of our data.

Table 131. Concern with Ethics by Generation and National Origin

National origin	Per cent with high ethical concern	
	Generation in the United States Fourth or more	All others
United Kingdom, Ireland, or northwestern Europe	64 (112)	49 (130)
Central or eastern Europe	50 (10)	43 (534)

Table 132. Concern with Ethics by Religion, Generation, and National Origin

Religion	Per cent with high ethical concern	
	Fourth generation from United Kingdom, Ireland, or northwestern Europe	All others
Protestant	65 (63)	47 (30)
Catholic	64 (33)	58 (92)
Jewish	64 (14)	41 (530)

Conclusion

Inner disposition and external pressures have a combined, cumulative effect on ethical conduct, and are about equally influential. The lawyer's inner ethical orientation makes a considerable difference in his response to situational pressures, and consequently in his capacity to conform to ethical standards. The stronger his ethical concern, the less likely is he to succumb to pressures to violate ordinary standards and the more likely he is to respond positively to supports for conformity to higher level standards. Adherence to ethical norms, then, is a product of *both* inner disposition, which is more or less evenly distributed in the bar, and situational controls, which are patterned in accordance with the system of stratification in the bar.

Notes to Chapter 8

1. Not all respondents rated high on this Index of Ethical Concern gave top priority to loyalty to clients and honesty in dealing with officials, but at least 50 per cent ranked one of these characteristics first, second, or third in selecting office-mates or partners, compared to less than 5 per cent of the lawyers rated low on the Index.
2. Erwin Smigel characterizes permanent associates in large firms who work in areas like probate and estate as most likely to be, in Merton's terminology, "methodical, prudent, and disciplined." Smigel contends: "The permanent associate . . . is certainly considered [by his colleagues] in this MPD category. An associate on the brink of partnership locates this group: 'We have men here who are past fifty who work well but have no imagination or initiative.' . . . Men who are doing the more routine legal chores involved in blue-sky work or in some phases of real estate and banking law probably have to be more MPD. They are not called on to be particularly imaginative—a requirement for those who deal in the grey area of the law." Smigel, Erwin O., *The Wall Street Lawyer*, The Free Press of Glencoe, New York, 1964, pp. 334 and 336.
3. Thielens, Wagner P., "Socialization Processes Among Law Students," Bureau of Applied Social Research, Columbia University. (Research in progress.)
4. Simon, Rita James, "An Evaluation of the Effectiveness of Curriculum Innovations in Law Schools," National Council of Legal Clinics, Chicago, 1965. Mimeographed.
5. *Ibid.*, p. 19.
6. "We have provisionally assumed that in the course of their social interaction with others in the school, of exchanging experiences and ideas with peers, and of observing and evaluating the behavior of their instructors . . . students acquire the values which will be basic to their professional way of life." Merton, Robert K., "Some Preliminaries to a Sociology of Medical Education" in

Merton, Robert K., George G. Reader, and Patricia L. Kendall, editors, *The Student-Physician*, Harvard University Press, Cambridge, Mass., 1957, p. 42. (Italics added.)

7. The absence of a relation between

quality of law school and ethical conduct when size of firm and type of practice are held constant is shown in the following table by the low values of Kendall's tau-b for the three groups of respondents. (See Note 3, Chapter 7.)

Quality of Law School and Ethical Behavior by Size of Firm and Type of Practice

Size of firm and type of practice	Kendall's tau-b ^a	P	
Large firm	.07	.36	(60)
Medium-sized or small firm with high or middle type of practice	.01	.42	(425)
Small firm with low type of practice	.04	.22	(288)
Total	.14	.00	(773)

^a The value of tau-b expresses the relation between quality of law school and ethical behavior under the specified firm and practice conditions.

9

Formal Controls

In New York City, as in most other jurisdictions in the United States, the organized bar relies primarily upon formal disciplinary measures to maintain and enforce standards of professional conduct.¹ In this chapter we consider the operation of this system.²

The Appellate Division of the Supreme Court in New York State has the principal responsibility for disciplining lawyers.³ Preliminary investigation into professional misconduct is carried out by the bar associations.⁴ Complaints against lawyers in New York City are almost all (98 per cent) referred initially to the Grievance Committee of the Association of the Bar of the City of New York.⁵ After an initial inquiry, unsettled cases with sufficient merit and evidence are heard before a panel of the committee, which may drop the charges, admonish the lawyer, or recommend prosecution. The final decision on recommendations to prosecute rests with the Executive Committee of the Association.

Prosecuted cases are heard in the Appellate Division of the Supreme Court of New York. A court-appointed referee hears the evidence presented by the Association prosecutor and by the respondent, and recommends acquittal, censure, suspension, or disbarment.⁶ The court then makes its decision and enters an appropriate order.

The record of the proceeding does not become public until final action is taken by the court. In cases of consent disbarment, however, which account for one quarter of the disciplinary matters processed through the court, the record is never made public. In these noncontested cases, the charges against the attorney are sealed and placed on file at the Appellate Division.

Flow and Disposition of Complaints

Between 1951 and 1962 an average of 1,450 complaints a year were filed against lawyers with the Grievance Committee. Over 65 per cent involved charges of client neglect or disputes over fees. Virtually all these complaints were disposed of informally by the staff of the Committee by a telephone call to, or brief meeting with, the complaining client or the lawyer in question.⁷ Apparently one of the Committee's more important functions is to smooth over the hurt feelings of clients and to clear up misunderstandings between lawyers and clients.

Each year from 1951 to 1962, on the average, 60 cases (4 per cent of the complaints) were brought to a formal hearing before a panel of the Grievance Committee.⁸ Of these, a little over 20 per cent were dismissed, 37 per cent ended with an admonition, and 40 per cent, or an average of 19 cases per year, brought a recommendation for court prosecution. Thus, of the approximately 1,450 complaints filed each year, only about 19 were adjudicated by the Appellate Division.

Of the total number of cases handled by the Appellate Division from 1951 to 1962, 9 per cent were dismissed, 12 per cent brought censure, 23 per cent led to suspension, and 56 per cent, or an average of 10 cases per year, resulted in disbarment.

The Offenses and the Offenders

The limited data available show that lawyers who have been disciplined by the court (disbarred, suspended, or censured) tend

to be newer to the practice of law and more frequently graduates of lower-quality law schools than other lawyers. In these traits officially disciplined lawyers are fairly comparable to the violators in our study: 43 per cent of the disciplined lawyers and 48 per cent of the violators had been practicing law for less than eleven years, compared to 21 per cent of the high conformers. Similarly, 51 per cent of the disciplined lawyers and 46 per cent of the violators were graduates of lower-quality law schools, compared to 23 per cent of the high conformers (Table 133).

The offenses for which lawyers have been formally processed are shown in Table 134 by type of first charge. The most frequent charges against lawyers involve wrongdoing against clients, usually misappropriation of clients' funds. Much less frequent are accusations of offenses against the administration of justice, mainly the

Table 133. Comparison of Years in Practice and Law School Attended for Officially Disciplined and Sample Lawyers

Years in practice and quality of law school attended	Per cent of officially disciplined lawyers ^a	Per cent of sample lawyers ^b		
		<i>Index of Ethical Behavior rating</i>		
		Low (violators)	Middle	High (conformers)
<i>Years in practice</i>				
10 or less	43	48	29	21
11 to 20	37	15	19	18
21 to 30	16	23	36	32
31 or more	4	14	16	29
Total	100 (617)	100	100	100
<i>Quality of law school attended</i>				
Lower-quality mixed	51	46	41	23
Higher-quality mixed	38	26	29	26
Full-time university	11	28	30	51
Total	100 (614)	100	100	100

^a Excludes lawyers admitted to practice before 1920 to ensure comparability with the sample; also excludes cases resulting in acquittal.

^b Based on data corrected for differences in sampling ratio.

submission of false or misleading testimony in a court or administrative agency. Also infrequent are offenses against colleagues, usually some form of client solicitation. Twenty per cent of the lawyers dealt with by the court have pleaded guilty to, or have been convicted of, a felony or a misdemeanor involving moral turpitude; they are automatically disbarred.

Aggrieved clients are more likely to institute and pursue complaints against lawyers than are colleagues or courts and agencies. Lawyers are notoriously unwilling to lodge complaints against colleagues. This reluctance may result from a fear of retaliation, as suggested by the following comment:

You don't like to get involved. . . . It's a long road, and not a pleasant road. . . . Naturally you make a bitter enemy of the other lawyer and his friends. There's no question about that.

It may also be the case that economic sanctions, such as cutting off referrals, are felt to be more effective.⁹ Finally, the unwillingness to file complaints against colleagues may simply reflect a lack of concern:

I don't feel that my job is to be a cop.

I would never call the cops. Why should you? You aren't a policeman.

The unethical guys can't hurt you if you take care not to put yourself into their hands. Guys who are cutting up their own clients don't really concern you. It's the fellow who knows his business that you want to be careful of.

Court and agency officials rarely report offenses either because they have become inured to them or because of their own involvement.

A comparison of the distribution of offenses in disciplinary cases to the misconduct reported by lawyers in our sample discloses that the most frequent type of violation (client solicitation) is least likely to constitute the main charge in the adjudicated cases. The least frequent type of violation (misappropriating funds from or otherwise taking advantage of clients), on the other hand, constitutes the largest proportion of main charges in the adjudicated cases.

Table 134. Distribution of All Disciplinary Cases Adjudicated by the Appellate Division, 1929-1962, by First Charge

First charges ^a	Per cent of cases (in which charges are known)	Number of cases ^b
<i>Client: financial</i>	32	207
Conversion		178
Overcharging, commingling		29
<i>Client: other</i>	12	77
Neglect		61
Misinforming		11
Other		5
<i>Justice: payoff</i> (bribery, fixing—mainly of court officials)	1	8
<i>Justice: fraud</i>		
Court (misrepresentation, concealing evidence, actions in bad faith, submission of false testimony)	9	54
Government agencies (mainly submission of false or misleading evidence)	5	29
<i>Colleague: direct</i> (breaking agreements, deceiving another attorney)	3	21
<i>Colleague: solicitation</i>	9	53
<i>Other professional misconduct</i> (not arising out of regular practice of law, abuses in connection with admission to the bar or disciplinary proceedings)	4	25
<i>Nonprofessional misconduct</i> (offenses not related to the lawyer role, such as passing bad checks, failing to pay debts, filing fraudulent income tax return)	5	31
<i>Felonies</i> (lawyer has pleaded guilty to or been convicted of a felony or misdemeanor involving moral turpitude)	20	130
Larceny		43
Conspiracy		14
Forgery		13
Other		60
<i>Charges not known</i>	—	364
Total	100 (635)	999

^a The first charge is the offense given the greatest attention and weight in the opinion of the court.

^b Excludes cases resulting in acquittal.

Since client solicitation is only rarely condemned by rank and file members of the bar, and taking advantage of clients most widely condemned, it would appear that official enforcement simply reflects the ethical priorities set by the majority of lawyers in practice. In other words, lawyers are more likely to be charged with violations of ordinary standards of morality (the bar norms) than with violations of less widely accepted, but more distinctively professional norms.

Severity of the Sanction

Neither number of years in practice nor quality of law school attended is related to the severity of the sanction. Older lawyers are as likely to be disbarred as newer lawyers, and graduates of Ivy League law schools as likely to be disbarred as graduates of lower-quality schools.

Important in determining the severity of the sanction is the kind of charge brought. Violations of bar norms are most likely to result in disbarment. Of lawyers charged with client-related financial offenses or bribing public officials, 54 per cent were disbarred compared to 37 per cent of lawyers charged with client solicitation

Table 135. Severity of Sanction by Ethical Salience of the Charge^a

Sanction	Per cent of officially disciplined lawyers		
	<i>Ethical salience of charge^b</i>		
	High (client-financial; justice-payoff)	Middle (justice-fraud; colleague-direct)	Low (colleague- solicitation)
Disbarment	54	42	37
Suspension	36	36	38
Censure	10	22	25
Total	100 (215)	100 (103)	100 (53)

^a Excludes consent and felony disbarments, and acquittals.

^b The ethical salience of the charge is defined in terms of the proportion of lawyers in the sample who disapprove of the disciplined conduct. Those offenses not included in the sample survey could not be classified, and do not appear in this table.

(Table 135). Thus, lawyers who offend ordinary standards of morality are more likely both to be caught and severely sanctioned than those charged with violations of more uniquely professional norms.

Three other factors are positively correlated with the severity of the sanction: the amount of money, if any, involved in the alleged

Table 136. Severity of Sanction by Amount of Money Involved^a

Sanction	Per cent of officially disciplined lawyers				
	Amount of money involved ^b				No information
	\$5,000 or more	\$500 to \$4,999	Less than \$500	None	
Disbarment	83	55	36	31	51
Suspension	17	38	42	39	33
Censure	0	7	22	30	16
Total	100 (46)	100 (106)	100 (143)	100 (129)	100 (109)

^a Excludes consent and felony disbarments, and acquittals.

^b Based on the estimated total amount of money involved in the financial misdeeds for which the lawyer has been charged.

Table 137. Severity of Sanction by Number of Counts and Charges^a

Sanction	Per cent of officially disciplined lawyers			
	3 or more charges or 5 or more counts ^b	2 charges and 2 to 4 counts	1 charge and 2 to 4 counts	1 charge and 1 count
Disbarment	64	44	34	27
Suspension	25	39	48	45
Censure	11	17	18	28
Total	100 (203)	100 (107)	100 (85)	100 (138)

^a Excludes consent and felony disbarments, and acquittals.

^b The number of charges refers to the number of different *types* of offense; the number of counts refers to the number of specific *instances* of an offense.

offense (Table 136); the number of acts of misconduct (Table 137); and the extent of publicity or notoriety connected with the violation. Notoriety was presumed present when there was some indication in the record of a public inquiry, involvement of a large number of individuals or a prominent lawyer in the commission of the offense, or coverage by the mass media (Table 138).

The amount of money and the number of acts of misconduct are related: the more money involved in the case, the greater the number of charges and counts against the lawyer (Table 139). Where a large amount of money figures in the offense, the result is

Table 138. Severity of Sanction by Notoriety of the Case^a

Sanction	Per cent of officially disciplined lawyers	
	Some evidence of notoriety	No evidence of notoriety
Disbarment	64	38
Suspension	27	40
Censure	9	22
Total	100 (151)	100 (368)

^a Excludes consent and felony disbarments, and acquittals.

Table 139. Number of Counts and Charges by Amount of Money Involved^a

Amount of money	Per cent of cases with many counts or charges ^b
\$5,000 or more	50 (46)
\$500 to \$4,999	46 (106)
Less than \$500	36 (143)
None	22 (129)
No information	48 (109)

^a Excludes consent and felony disbarments, and acquittals.

^b Three or more charges, or five or more counts.

very likely to be disbarment regardless of the number of acts of misconduct. In all other cases, however, both amount of money and number of acts affect likelihood of disbarment (Table 140).

Combining amount of money involved in the case and the number of acts of misconduct into a measure of seriousness, we find that the seriousness of the offense and the ethical salience of the charge have an additive effect on disbarment. Amount of money and number of acts may also be considered as indicators of the visibility of the offense. Thus, as the amount of money and number of acts increase, so does the likelihood of some notoriety or publicity in the case¹⁰ (Table 141).

Table 140. Disbarment by Amount of Money Involved and Number of Counts and Charges^a

Number of counts and charges	Per cent of lawyers disbarred		
	\$5,000 or more	Amount of money \$500 to \$4,999 ^b	Less than \$500
High	79 (23)	68 (101)	55 (79)
Medium	* (5)	49 (37)	39 (65)
Low	89 (18)	34 (77)	18 (128)

* Excludes consent and felony disbarments, and acquittals.

^b Includes cases with no information on amount of money involved. The distribution of sanctions for these cases resembles that of the \$500 to \$4,999 category.

^c Too few cases on which to base a percentage.

Table 141. Notoriety by Amount of Money Involved and Number of Counts and Charges^a

Number of counts and charges	Per cent of cases receiving some notoriety	
	Amount of money \$500 or more	Less than \$500
High	50 (119)	29 (79)
All others	28 (131)	17 (188)

* Excludes consent and felony disbarments, and acquittals.

We have combined these three factors—amount of money, number of acts of misconduct, and notoriety—into a Visibility Index.¹¹ Considering the joint effect of the visibility of the offense and the ethical salience of the charge, it appears that, although both increase the likelihood of disbarment, visibility has a somewhat greater impact (Table 142). A lawyer charged with soliciting whose offense is highly visible is more likely to be disbarred than a lawyer who is alleged to have misappropriated his client's funds yet whose act received little or no attention. The importance of visibility is further demonstrated by the fact that even when we control for amount of money, number of acts, and ethical salience of the norm violated, notoriety still increases the likelihood of disbarment (Table 143).

Possible Functions of Formal Controls

Two of the ostensible functions of official enforcement of ethical norms are to police the bar and to deter potential violators. We turn now to an examination of the extent to which these aims are realized.

Table 142. Disbarment by Visibility of the Offense and Ethical Salience of the Charge^a

Visibility of the offense ^a	Per cent disbarred				Salience effect
	<i>Ethical salience of charge^b</i>				
	High	Middle	Low		
High	83 (74)	73 (30)	43 (23)	+40	
Middle	58 (47)	58 (19)	41 (23)	+17	
Low	30 (98)	19 (59)	8 (12)	+22	
Visibility effect	+53	+54	+35		

* Excludes consent and felony disbarments, and acquittals.

^b Includes only cases which could be classified on the basis of information obtained in the sample survey.

^c Combines amount of money involved, number of counts and charges, and notoriety. See Appendix C, p. 214, for construction and scoring.

Table 143. Disbarment by Seriousness of the Offense, Ethical Salience of the Charge, and Notoriety^a

Seriousness and salience of charge ^b	Per cent disbarred		
	Some notoriety	No notoriety	Notoriety effect
High	95 (21)	80 (25)	+15
High-middle	82 (28)	55 (82)	+27
Low-middle	54 (28)	32 (102)	+22
Low	37 (27)	17 (54)	+20

^a Excludes consent and felony disbarments, and acquittals.

^b The Index of Seriousness was combined with the salience of the offense to construct this Index.

Policing the Bar

On the average, 85 lawyers a year are either brought before a panel of the Grievance Committee of the Association of the Bar of the City of New York for a formal hearing or are investigated by the Coordinating Committee on Discipline of the Association of the Bar of the City of New York and the New York County Lawyers' Association. Let us assume that the number of lawyers in private practice in New York City who commit serious violations of professional standards may be estimated on the basis of the proportion of lawyers classified "low" on the Index of Ethical Behavior. The estimated number of serious violators would then be about 4,500 (22 per cent of the 20,500 active practitioners of law in Manhattan and the Bronx).¹² If this estimate is reasonable (it is more likely to be an underestimation of violations, since it is based on lawyers' self-reporting of unethical activities), in any given year fewer than 2 per cent of lawyers who violate the generally accepted norms of the bar are formally handled by the official disciplinary machinery; only about 0.02 per cent are publicly sanctioned by being disbarred, suspended, or censured.

It appears that the formal machinery of the bar does not, and probably could not, do an effective job of policing the profession.

Too few violators are formally charged and punished to suggest that this activity by itself does much to weed out or discipline unethical lawyers.

Detering Violators

While very few violators are caught and punished, it might be argued that the penalties are so severe, and the damage to reputation so serious, that the mere possibility of detection deters lawyers from engaging in unethical activities. Two factors probably limit this deterrent effect. First, the most widespread violations (fraud and solicitation of clients) generally receive the mildest sanctions and are least likely to be formally adjudicated.

A second fact difficult to reconcile with the deterrent function is that over half the disbarments (excluding automatic disbarments for felony) are by consent, in which case the record of the proceedings and the charges are not made public. Thus, the deterrent effect, which depends in part on publicity, is minimal.

Conclusion

The organized bar through the operation of its formal disciplinary measures seems to be less concerned with scrutinizing the moral integrity of the profession than with forestalling public criticism and control. We have seen that although violations of ordinary, community-wide standards are far less frequent than violations of standards peculiar to the profession, they are far more likely to receive the attention of official enforcement agencies, and to result in disbarment. The official agencies, therefore, to the extent that they enforce any norms, not only reflect the ethical priorities set by the rank and file of the bar, but do little more than discipline those regarded in the wider community as committing essentially criminal offenses. Standards that are distinctive to, and that arise from, the special requirements of the legal profession are only weakly enforced.

Further evidence that the organized bar is responding primarily to a concern for preserving its public image is the considerable importance of the visibility of the offense to the general community in the handling of disciplinary cases. Although visibility in general tends to force the hand of enforcement officials, it seems here to be the overriding consideration, having an even greater effect on the severity of the official sanction than the nature of the offense itself. It is consistent, however, with a desire to avoid lay interference and control that the most widely publicized violations should be the most severely and publicly sanctioned. Failure to punish visible violations might result in public criticism of the bar, and the visibility itself offers the profession an opportunity to demonstrate to the public that it can discipline its own members. Without publicity, the decision-maker has more leeway. He can offer to preserve the secrecy of the charge in return for a confession of guilt, or if there has been no confession, he is free to impose a relatively mild sanction.¹³ Furthermore, if little attention is focused on the violation, little if any official effort need be made to apprehend, let alone punish, the violator.

Finally, in assessing the significance of formal controls for the integrity of the bar, it should not be forgotten that the few lawyers who are officially disciplined are, for the most part, precisely those whose low status renders them least capable of conforming to the ethical standards of the bar.

Notes to Chapter 9

1. The bar also attempts to screen out potentially immoral or unethical practitioners in the process of admission to the bar. However, examination into the moral character of the applicant is uniformly of a limited and routine nature, except for those suspected of political nonconformity. See, for example, *In re Anastopolo*, 366 U.S. 82 (1961). Only a very small fraction of

applicants are rejected on character grounds. Of 1,712 applicants investigated by the Committee on Character and Fitness of the First Judicial Department from 1944 through 1948, only 55 (less than .03 per cent) were rejected on these grounds. Shafroth, Will, "Character Investigation," *American Bar Association Journal*, vol. 45, 1959, pp. 255-256.

Formal Controls

2. This chapter is based mainly on data from the following sources: an analysis of the approximately 1,000 disciplinary cases handled by the Appellate Division, First Department, of the Supreme Court of New York State from 1929 to 1962; statistics on the number, type, and disposition of complaints filed against lawyers with the Grievance Committee of the Association of the Bar of the City of New York from 1951 to 1962; and various other published materials (such as statutes, rules of court, the constitutions and by-laws of the bar associations, bar association reports, and articles) pertaining to the disciplinary procedures of the New York City Bar.

There are a number of gaps in the data. We have statistics on the number of complaints filed against lawyers and the distribution of these complaints by type of offense, but we have no information on the factors affecting the decision to bring certain of these complaints before a panel of the Grievance Committee for a hearing on the charges. Nor do we know anything about the factors affecting the subsequent decision of the panel as to the disposition of these cases. Furthermore, with respect to the adjudicated cases, we have virtually no information on consent disbarments and most acquittals, and little information on felony disbarments. Finally, as to the individual characteristics of respondents, we have fairly complete information only on the number of years respondents had been in practice at the time of the proceedings and the name of the law school they attended.

3. The Appellate Division is authorized by the legislature to "censure, suspend from practice or remove from office any attorney or counsellor at law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor or any conduct prejudicial to the administration of justice." Article 4, Section 90, Paragraph 2, of the Judiciary

Law of New York State, 29 McKinney Consolidated Laws of New York 107, 1948.

4. Although not specifically provided for by statute, this custom has long been recognized and approved by the court. See *Matter of Turk*, 1917, 180 App. Div. 924.

5. Under the by-laws of the Association, the Committee may consider and investigate the conduct of any attorney who resides or maintains an office in New York City or who was admitted to practice in the First Judicial Department. It may receive complaints from the courts, from members of the bar, and from the general public. The Committee or its chief attorney may also initiate investigations without a complaint.

6. Disbarments resulting from criminal convictions or from disciplinary action taken in another jurisdiction can be ordered by the court on petition of the Association without a preliminary hearing.

7. Of all complaints, those of client neglect are most frequently disposed of informally. This is indicated by the fact that 44 per cent of the complaints filed with the Committee, but only 10 per cent of the adjudicated cases, alleged client neglect.

8. Between 1959 and 1962, an additional 25 cases a year, on the average, have been investigated by the Coordinating Committee on Discipline of the Association of the Bar of the City of New York and the New York County Lawyers' Association, an average of 8 a year being recommended for adjudication.

9. In our preliminary study, 31 lawyers were presented with a list of possible sanctions for use against a colleague who had engaged in an unethical activity of which they disapproved. Most frequently selected (by 28 out of 31) was ceasing to refer matters to such a lawyer. Reporting the lawyer to the bar association was least frequently mentioned (by 9 out of 31).

10. Client solicitation cases are more likely to involve notoriety than misappropriation of clients' funds (43 per cent of the former compared to 23 per cent of the latter). The greater likelihood of notoriety in the solicitation cases is apparently a reason for their survival in the disciplinary process. Cases containing charges unrelated to the practice of law also tend to involve notoriety, which may explain their survival as well.
11. The scores for the Visibility of Offense Index are weighted according to the amount of money involved, the number of counts and charges, and the presence of various indicators of notoriety (a public inquiry, involvement of many people or a prominent lawyer, coverage by the mass media). See Appendix C, p. 214, for construction and scoring.
12. This percentage is based on data corrected for differences in sampling ratios.
13. The implication is, of course, that consent disbarments are likely to involve offenses which have not been visibly committed. While we have no direct evidence to support this conjecture, it does seem that a lawyer would be more likely to confess guilt if little or no attention has been called to his case. Under these conditions he would be able to "retire" from practice with very few people knowing why. If, however, considerable attention has been focused on him, he has something to gain perhaps, and little more to lose, by going through with the proceedings.

10

Conclusion

We have examined in detail some of the conditions affecting the capacity of metropolitan lawyers to meet their ethical obligations. Let us now summarize the findings and then consider their implications for the administration of justice and for an understanding of the social conditions of deviant behavior.

Summary of Findings

Nature of Ethical Norms

Two kinds of ethical standards are found in the bar: those that proscribe behavior considered immoral and unethical by society generally, such as bribery, stealing, and cheating; and those that deal with professional problems, such as relations among colleagues, methods of obtaining business, and conflicts of interest. While the more general standards are accepted by most lawyers in all strata of the bar, the distinctively professional standards are accepted for the most part only by elite lawyers. The limited acceptance of these professional standards is undoubtedly due to the special constraints they impose; they tend to cut off the practitioner "from many immediate opportunities for financial gain . . . legitimately open to the businessman."¹

Ethical norms of metropolitan lawyers are thus largely indistinguishable from the norms of the lay or business community: they demand conformity only to ordinary standards of honesty and fair dealing. Moreover, these are the standards that are most often enforced by the organized bar.

Social Organization and Ethical Conduct

Clientele. The type of clientele a lawyer serves has a profound effect on his ability to conform even to basic ethical standards. Lawyers with low-status clients are subject to far more temptations, opportunities, and client pressures to violate than are lawyers with high-status clients. And given the nature of their practice, these lawyers are far less able to resist. The lower the status of the lawyer's clientele the more precarious and insecure his practice, and the more willing he is, therefore, to violate basic standards of ethical conduct. Because of the instability of his practice, the lawyer with a low-status clientele is also more vulnerable to opportunities and pressures. Thus, we found that lawyers who have frequent opportunities to exploit clients are most likely to commit violations if they have an expendable clientele; and client pressure is most likely to result in violation for lawyers who become economically dependent upon a few more secure clients in an otherwise unstable clientele.

Institutional Setting. Different levels of the court and agency structure place lawyers under very different types of ethical constraints. Lower courts tend to expose lawyers to corrupting influences and upper courts to benign. The lower the court, the more weight its officials give to extralegal considerations in their decisions, and the more likely they are to initiate (as well as be receptive to) such illegitimate practices as bribery and fraud. Consequently, lawyers who deal with these courts have greater opportunities and are subject to more pressures to violate than are those in contact with upper-level courts. Moreover, at each level a normative climate emerges that reinforces pressures to violate or conform; and the more exposed lawyers are to a particular court setting the more influenced they are by its moral tone.

Work Setting. In theory, collegueship should provide strong group support for professional goals and norms, making lawyers more resistant to outside pressures. While the office colleague group does affect conformity to ethical standards, it mainly reinforces outside pressures or determines exposure to them.

The form of control exercised by the colleague group depends largely on its structure:

(a) *The Peer-Group Office:* In peer-group offices (where members are similar in age and type of practice) colleague controls tend to reinforce the influences to which their members are exposed in their client and court-agency contacts. The more socially cohesive the office, the more likely this outcome. Newer offices of this type are characterized by an informal process of seeking and giving support for violation among lawyers facing similar problems. In older, more established peer-group offices, ethical conduct is controlled by the normative climate of the office. The longer a lawyer has been a member of the office, and the more socially cohesive the office, the more likely it is that his behavior will be in line with the attitudes of his colleagues.

(b) *The Stratified Law Office:* In hierarchically organized offices, the ethical behavior of members is affected by the allocation of work rather than by the office climate or by direct colleague sanctions. An individual's adherence to ethical norms in these offices depends on his rank in the status hierarchy of the firm. Rank determines the kinds of work the lawyer does and, hence, the ethical influences he faces. In peer-group offices the absence of status distinctions facilitates uniformity of behavior in line with the prevailing ethical climate. In stratified offices, status distinctions probably lessen the effect of office climate on ethical behavior, and may even prevent development of a normative consensus.

Social Stratification and the Distribution of Pressures

Situational pressures do not operate independently of one another. Nor are they randomly distributed within the bar. Pressures

are systematically "allocated" among different groups of lawyers in accordance with their position in a system of social stratification.

The metropolitan bar is a highly differentiated and highly stratified professional community. There are marked differences in what lawyers do and the kinds of clients they serve. This diversity of practice is, in turn, related to size of the law firm. Lawyers in the larger firms are at the top of the status ladder; individual practitioners and small-firm lawyers are the lowest group; members of medium-sized firms fall between. Large-firm lawyers have the highest average incomes. They represent the most affluent clients and come into contact with the highest levels of government, including the judiciary. Individual practitioners and small-firm lawyers have the lowest incomes. They represent the least affluent clients and deal with the lowest levels of government.

The magnitude of these differences—in clientele, type of practice, and income—brings into focus the caste-like divisions which characterize the metropolitan bar. The striking differences in background between lawyers in the upper and lower strata suggest lasting social entities, capable of replenishing their ranks with lawyers from similar backgrounds. Continuity of status groups is indicated by the tendency of a lawyer to remain in the same stratum in the course of his career. While there is some movement from one level to another, this most often occurs in the early years of practice and follows highly predictable patterns. Finally, there is relatively little contact between the two extremes of the bar; the upper stratum is very largely isolated from the lower in work, in social activities, and in professional associations.

The stratification system determines the pattern of pressures and constraints to which lawyers are exposed. As we have seen, exposure to these pressures depends primarily on type of clientele and level of court and agency structure with which lawyers come into contact; these factors, in turn, are a function of the lawyer's position in the status hierarchy of the bar. As a result, lawyers at the top experience maximum pressure to conform to distinctively professional stand-

ards, as well as the more ordinary, ethical norms; at the same time they are insulated from pressures to violate. Conversely, lawyers at the bottom of the status ladder are maximally exposed to pressures to violate, and least subject to pressures to conform.

Career Lines and Social Background

Lawyers are distributed among firms of different sizes by a process of self-selection and recruitment in which religion, parents' social class, quality of college and law school attended, and law-school standing all play important parts. The process begins when the future lawyer enters college. His religion and class origin strongly affect his chances of attending a top-quality college and law school. Law school, class standing, and religion are the most important determinants of the size of the firm the young lawyer will enter.

As social background and academic training determine the lawyer's status in the bar, so they determine the ethical influences to which he will be exposed in his practice. Social background and professional training, however, have little or no *independent* effect on conformity to ethical standards. Jewish and Catholic lawyers have a lower ethics rating than Protestant lawyers because they are more likely to be exposed to pressures to violate ethical norms. Under similar conditions of practice, Jewish and Catholic lawyers are no more likely to violate norms than Protestant lawyers.

Inner Disposition

The lawyer's inner disposition to conform plays an important role in maintaining or weakening his adherence to ethical standards. The stronger the lawyer's inner disposition to be ethical, the greater his capacity to resist pressures to violate basic standards, and the more positive his response to influences that encourage conformity to distinctively professional standards. A weak inner disposition, on the other hand, reduces the lawyer's capacity to resist pressure.

The lawyer's ethical concern is not markedly influenced by his professional training, his status in the bar, or the vicissitudes of his practice. More important is national origin and generation in the United States, which suggests that early family influence may be decisive in the development of ethical concern.

Formal Controls

Very few violators are caught and punished by the formal disciplinary machinery of the bar. We estimate that only about 2 per cent of the lawyers who violate generally accepted ethical norms are processed, and fewer than 0.2 per cent are officially sanctioned. This leads us to question whether the policing function is effective or even important.

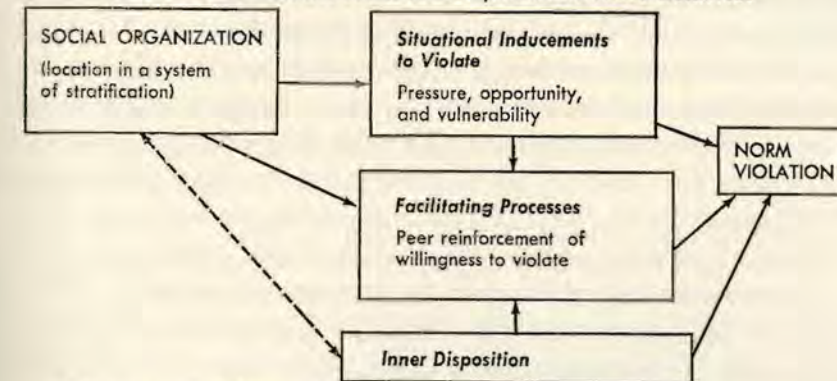
A more likely function of these formal controls is the forestalling of public criticism of the legal profession. This interpretation is suggested by our finding that the visibility of the offense is the principal factor accounting for the severity of the official sanction imposed. This may also explain why so few violators are caught and punished. It is not the punishment of all violations, or even of all serious violations, that is crucial for avoiding public criticism and control; only the *highly visible* violations are really important. If only some violations are highly visible, few violators need be caught and punished.

While violations of distinctively professional norms are far more widespread than violations of ordinary, community-wide standards, violators of professional norms are far *less* likely to be officially charged and sanctioned than violators of ordinary standards. This greater commitment to ordinary standards of morality underscores the overriding concern of the organized bar for its public image.

A Model for the Analysis of Deviant Behavior

The findings of this study with respect to violation of ethical norms suggest a theoretical model for the analysis of deviant behavior. This model is presented schematically in Chart 3.

Chart 3. A Model for the Analysis of Deviant Behavior



The essential features of the model are as follows:

Social Organization. The pattern of social organization (for example, of a profession or industry) determines the variety and the ordered distribution of the particular settings, or situations, within which action takes place. Some system of social stratification is usually a decisive feature of patterned social organization. Where one stands in the status hierarchy largely determines the setting of action.

Situational Inducements. Situations are marked by constraints and opportunities that encourage or limit deviant behavior. Individuals who occupy a low position in the social hierarchy are under greater pressure to violate norms, have more opportunity to do so, and are more vulnerable to the hazards of their situation. This stems from their marginal position in the system, their lack of control over the circumstances in which they act, their weaker institutional stakes and commitments, and the marginal character of those with whom they deal. Since the disadvantaged have little to lose and possibly something to gain by violating the norms of the system, they are generally more willing to violate them. As individuals become skeptical of their chances for success, and attribute their failure to the restrictive character of certain conventional norms, they are likely to seek exemptions.

Facilitating Processes. One of the ways in which situational pressures and opportunities are translated into violation is through the

creation and reinforcement of attitudes justifying exemption from certain norms. This process of seeking exemption is facilitated by interaction with others facing similar problems, who will generally reinforce one another in the desire to loosen the bonds of restrictive norms. Peer reinforcement may entail the direct seeking and giving of support for violation. As the peer group develops into a more permanent structure, this process may lead to the institutionalization of a permissive subculture within the larger system.

Inner Disposition. Like situational constraints, weak inner disposition can increase the likelihood that interaction among peers will result in the adoption of attitudes permitting norm violation. The most favorable conditions, therefore, for norm violation occur when individuals with weak inner disposition are assigned to positions in the social hierarchy most subject to situational inducements to violate.

Different types of individuals are chosen for different types of tasks: some to uphold the moral order, others to provide the moral resilience necessary for the maintenance of a dynamic social system. It is reasonable to assume that those with a strong inner disposition to conform would be placed in high-status positions as guardians of the moral order, and that those with weak inner disposition would be assigned to the lowest status and most vulnerable positions to carry out whatever accommodative tasks are considered necessary. Our data suggest that this is only partly the case. Moral resilience entails not only the willingness to respond to illegitimate demands, but also the capacity to deal effectively in areas where imagination and initiative are called for. And since at least one if not both of these functions may be required at the top as well as at the bottom of the status hierarchy, individuals less rigidly bound by inner constraints may be selected for both extremes of the system. The guardianship function may then be reserved to individuals who are assigned to and retained in middle-status positions precisely because they are more likely to be bound by inner moral constraints. The conformity, therefore, of those at the top may be largely independent of moral considerations: it may simply reflect the presence of situa-

tional inducements to conform and the absence of situational pressures to violate. Indeed, the purity of those at the top may be partly purchased by the morally questionable practice of personally assigning contaminating tasks to those in subordinate positions. This kind of transaction is suggested in the following incident recalled by a respondent:

I've been shocked by members of the large firms who bring clients here and suggest I should fix this thing—talk to the cops or the judge. It's these "respectables" who suggest that we go in and try and put in the fix. They are surprised when I tell them I don't handle matters in that way.

Finally, a distinction must be made between a *general* disposition to conform and acceptance of *specific* norms. While acceptance of specific norms is partly a product of an individual's present position in the social hierarchy, inner disposition may be unaffected by present position.

Some sociologists have assumed that nonconforming behavior necessarily involves the repudiation of conventional norms (or the failure fully to internalize them in the first place), or the acquisition of new moral standards arising from participation in a deviant subculture.² This interpretation further assumes that behavior is largely, if not wholly, determined by norms. Indeed, for most of these authors the principal task of research is to account for the adoption or retention of particular norms; the focus of attention shifts from present behavior to past socialization processes.

This approach to deviant behavior has been most evident in studies of juvenile delinquency, and has been criticized by David Matza. He summarizes the conventional view:

The precepts of the delinquent subculture are the immediate cause, according to current sociological theorists, of delinquent acts. All that intervenes between subcultural precept and delinquent act are the standard mechanisms of learning, conformity to reference group, and the seeking of status and reputation within that reference group. It is in the peculiar subculture to which they owe allegiance that we may find the fundamental difference between juvenile delinquents and other youth. The subcultural affiliations set them apart.³

A similar perspective has been adopted with respect to the professions. The professional is seen as having certain unique characteristics: lack of concern for monetary gain and dedication to the service of others. These, in turn, are viewed as products of socialization into a professional "subculture." We are told that one *learns* to be a professional not only by acquiring a body of specialized knowledge and skill, but also by internalizing certain standards and values uniquely appropriate to the professional role. This learning process is said to occur in the course of professional training, at which time "students acquire the values which will be basic to their professional way of life."⁴ During this period the profession has an ideal opportunity,

. . . [to] isolate . . . recruits from important lay contacts for several years, furnish new ego ideals and reference groups, impress upon the recruit his absolute social dependence upon the profession for his further advancement, and punish him for inappropriate attitudes and behavior.⁵

As in the case of the juvenile delinquent, the behavior of the professional is seen as governed by norms and values different, if not deviant, from those of the larger society. In both cases a radically different pattern of behavior is said to be necessarily paralleled by a radically different set of norms.

The principal difficulty with this line of argument is its basic tenet—that behavior is essentially a response to a set of governing norms. It is a common experience, however, that we sometimes act in ways that we ourselves disapprove; we also refrain from certain activities without necessarily condemning them. As Blake and Davis have observed: "No one can doubt that norms exercise *some* influence on behavior, but the question of *how much* influence they exercise is highly debatable."⁶

Those who would extend the explanatory power of norms are faced with a dilemma. On the one hand, if each bit of behavior is seen as governed by a corresponding norm, then norms would have to be extremely specific and almost infinite in number in order to cover every conceivable act. This, of course, is highly fanciful, if not

impossible. On the other hand, if *general* norms are postulated to explain a diverse set of acts, additional variables would have to be introduced in order to translate general norms into specific decisions; this, however, would weaken the explanatory power of norms. There is an understandable reluctance on the part of these theorists to consider the possibility of an *independent* effect of situational constraints on behavior. Such factors are seen as having an impact on behavior *only* insofar as they affect the actor's commitment to conventional norms or his adoption of deviant norms. However, it is suggested here that situational factors also affect the *relation* between commitment and behavior. Thus, our data show not only that exposure to external pressures increases the likelihood that lawyers will weaken the moral force of restrictive norms, but also that it is precisely among those most exposed to these pressures that neutralization is most likely to result in violation.

Those who rely heavily on norms to explain behavior must also assume that norms are given in any situation in which they are to govern behavior. In part, this may well be the case. If norms are to have any significance as stabilizing points of reference, if they are to operate as guides for conduct and as standards of judgment, they may have to be viewed by those in the situation as existing prior to action. Insofar as behavior is judged or evaluated, some agreement on standards is probably necessary to justify punishment, to preserve one's right to judge, and to minimize the often unpleasant burden of judgment. Moreover, if the person judged is to accept the validity of the judgment, he may have to be convinced that it is not arbitrary or unfair, that it is grounded on generally accepted, prior standards of conduct.

With respect to certain kinds of behavior, however, appropriate norms simply may not exist. Furthermore, there may be considerable doubt as to whether a given norm actually applies to a particular situation; it is also frequently the case that norms are in conflict or inconsistent with one another. More important, perhaps, is the fact that norms are often in flux: old norms are modified and new norms emerge with changing conditions. As we have already

indicated, rules or standards necessarily entail a certain degree of generality. This affects their capacity not only to explain behavior but to guide it as well. Whether a particular action is proscribed or prescribed usually requires a decision. How that decision is made determines what is included and excluded from the operative scope of the standard and therefore serves to define the norm. Consequently, norms are generally recognized, established, and changed as they are applied to particular cases in the process of judging or responding to particular acts or events.

A final difficulty of the approach to norms adopted by many theorists is the strategic importance assigned to late socialization. Professional conduct, like delinquent behavior, is often viewed as governed by a distinct set of norms that are inconsistent with, or even in opposition to, conventional norms. When professional conduct is viewed in this way, it becomes necessary to postulate a process of resocialization in the course of professional training through which these "deviant" or "unconventional" norms are acquired. Whether such a basic change in norms or values can be brought about at a late stage of the individual's development and over a relatively short period of time is highly doubtful. The evidence from the psychoanalytic literature suggests that these changes can be effected only in certain individuals under conditions that closely approximate early childhood socialization, and that when these changes do occur, they are not always lasting.

Implications for the Legal Order

The metropolitan bar, over the past fifty to seventy-five years, has evolved into a highly stratified professional community with a distinct elite consisting of lawyers in the very large firms. This arrangement raises a number of serious problems for the lower levels of the bar, for certain parts of the administration of justice, and for the development of the legal system, including its capacity to meet new demands on it.

Although the elite segment of the bar is able to insulate itself from ethically contaminating influences, lower-status lawyers are forced to bear the brunt of these pressures; in the process they become deprofessionalized. This moral division of labor in the profession is described by Everett Hughes:

. . . the division of labor among lawyers is as much one of respectability (hence of self-concept and role) as of specialized knowledge and skills. One might even call it a moral division of labor, if one keeps in mind that the term means not simply that some lawyers, or people in the various branches of law work, are more moral than others; but that the very demand for highly scrupulous and respectable lawyers depends in various ways upon the availability of less scrupulous people to attend to the less respectable legal problems of even the best people. I do not mean that the good lawyers all consciously delegate their dirty work to others (although many do). It is rather a game of live and let live. . . .⁷

The system of social stratification in the bar, by undermining the integrity of lower-status lawyers also tends to weaken the quality and authority of the legal order, particularly at the lower levels of the administration of justice. The insecurity of low-ranking lawyers increases their willingness to influence official decision-makers through such illegitimate means as bribery or the prospect of political favor. Consequently, whatever corrupt tendencies are exhibited by lower-level courts and agencies are unlikely to be countered by the lawyers who characteristically practice before them. Moreover, those attorneys who are capable of resisting such practices rarely appear before these agencies.

Stratification of the bar also has much to do with the highly uneven character of the legal services provided to different classes in our society. The best trained, most technically skilled, and ethically most responsible lawyers are reserved to the upper reaches of business and society. This leaves the least competent, least well-trained, and least ethical lawyers to the smaller business concerns and lower-income individuals. As a result, the most helpless clients who most need protection are least likely to get it. Lower-status

clients are most likely to provide lawyers with opportunities for exploitation and to end up with lawyers who are least capable of resisting temptation.

The uneven character of legal services, moreover, leads to a highly selective development of the law itself. Those areas that reflect the interests of large corporations and wealthy individuals are most likely to be elaborated; law dealing with the poor and other disadvantaged groups, particularly in the consumer, landlord-tenant, welfare, and domestic relations areas, remains largely neglected and underdeveloped.

Whatever efforts have been made by leaders of the profession to cope with these problems have been largely ineffective. Lack of leadership is particularly evident in the failure of the organized bar to seek or support new forms of legal representation that might help in extending legal services to a larger segment of the population. Lower-income individuals are, for all practical purposes, denied access to and effective use of the legal system.⁸ In New York City we have seen that fewer than 5 per cent of the lawyers report that the median income of their clients is under \$5,000 a year, although half the total families and unrelated individuals have incomes under this amount. Conversely, 70 per cent of the lawyers report that the median income of their clients is in excess of \$10,000, though fewer than 10 per cent of New York's families and unrelated individuals receive incomes that high. Furthermore, the traditional substitutes for private lawyers, such as Legal Aid and assigned counsel, have apparently done little to overcome these class differences in legal representation and may even have worked against the interests of the poor by undermining their capacity for asserting legal rights.⁹

The inability of the bar to increase the availability of its services has compelled the Supreme Court of the United States to assume responsibility in this area as in others. Two recent landmark decisions—*Gideon v. Wainwright*¹⁰ and *Brotherhood of Railroad Trainmen v. Virginia*¹¹—have critical implications for the traditional organization of the profession. In the *Brotherhood* case the Court guaranteed

the right of a private organization to advise its members to obtain legal services and to recommend particular attorneys to handle their cases, including attorneys selected by the organization for such purpose. The *Brotherhood* opinion states in part:

Virginia undoubtedly has broad powers to regulate the practice of law within its borders; but we have had occasion in the past to recognize that in regulating the practice of law a State cannot ignore the rights of individuals secured by the Constitution. . . . Here what Virginia has sought to halt is not a commercialization of the legal profession which might threaten the moral and ethical fabric of the administration of justice. It is not "ambulance chasing." The railroad workers, by recommending competent lawyers to each other, obviously are not themselves engaging in the practice of law, nor are they or the lawyers whom they select parties to any soliciting of business. . . . A State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries . . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights.¹²

Shortly after the *Brotherhood* decision was handed down, the Virginia State Bar Association petitioned for a rehearing of the case, and 45 state bar associations and 4 major local bar associations joined with the American Bar Association in an *amicus curiae* brief stating:

. . . [The opinion] severely and unnecessarily damages the canons of ethics and the rules of law prohibiting unauthorized practices, so as to make future enforcement of the canons almost impossible.¹³

Walter E. Craig, a former president of the American Bar Association, is reported as having "urged the organized bar to stand firmly behind its present position against solicitation of clients despite implications of the recent Supreme Court decision in *Brotherhood of Railroad Trainmen v. Virginia*."¹⁴ And a report of the Committee on Lawyer Referral Service has asserted:

These decisions strike at the very heart of the traditional standards of the profession, and they open the gates for lay organizations of all kinds to provide legal services to their members with little or no regard for the Bar's traditional ethical standards and controls.¹⁵

Ironically, according to our findings, client solicitation is not a matter of great moment to most lawyers, nor does it show up as an important reason for discipline by the organized bar. More important, broadening the availability of legal services by encouraging new forms of group representation might well serve to increase the financial security of lawyers practicing at the lower levels of the bar, thereby strengthening their capacity to conform to ethical norms.

The response of the organized bar to the *Brotherhood* decision suggests that it may be less concerned with extending legal services than with preserving its monopolistic control over the provision of such services. This orientation is also reflected in the bar's stance with respect to the legal service component of the federal poverty program. The House of Delegates of the American Bar Association in a resolution of February 8, 1965, authorized full cooperation with the Office of Economic Opportunity in the development and implementation of programs for extending the availability of legal services to indigents.¹⁶ As of June, 1965, however, only one-half of one per cent of all applications to the Office of Economic Opportunity for community action programs contained some provision for legal services.¹⁷ A major obstacle seems to be fear of lay control. Thus at a recent National Conference on Law and Poverty the president of the National Legal Aid and Defender Association expressed grave concern over "several dark threats that are looming on the horizon." He went on to say:

Our apprehension . . . stems from the recent suggestion to the New York Legal Aid Society that, after 90 years of service, it reorganize its board of directors and admit one third of its members from the poor and representatives of the poor. If this occurs, many legal aid societies may withdraw from the program. . . .¹⁸

Informed, responsible leadership is needed, capable of mobilizing the very considerable talents and resources of the legal profession

for bringing about and supporting basic structural reforms. Top priority should be given to expanding and rationalizing the market for legal services. Measures such as government subsidy, prepaid insurance plans, and group legal practice would serve to increase and stabilize the demand for legal services, thereby enhancing the economic security of marginal practitioners. If this requires altering certain canons of ethics, then let it be done, since it would permit a *genuine* improvement of ethical conduct in the bar. The effective extension of legal services is thus entirely consistent with, if not an indispensable condition for, strengthening the moral integrity of the legal profession.

Attention should also be directed to the lower levels of the administration of justice. Improving the quality and character of these institutions will not only enhance the ideals of our legal system, but will also help to remove a major source of ethical contamination affecting the legal profession. Certain changes in the organization of these agencies of law administration will be necessary to provide more effective control over the exercise of official discretion, and to ensure greater independence from political pressure and other corrupting influences. The accomplishment of these tasks may be facilitated by increasing the number of lawyers appearing in these agencies, particularly from the ranks of the more competent and less vulnerable members of the bar. Moreover, reducing the insecurity of lawyers presently practicing before these tribunals may well stiffen their commitment to orderly procedure and reasoned argument.

Isolation of the elite from rank and file members of the bar and from lower reaches of the administration of justice partly accounts for the unwillingness of bar leaders to accept responsibility for seeking reform. Elite lawyers, as we have seen, are cut off from meaningful contact with lower-status lawyers. They have little in common with the rank and file in social background and professional training, and the two groups are largely segregated from each other in work, social activities, and participation in professional associa-

tions. Under these conditions elite lawyers cannot be expected to have much sensitivity to, or understanding of, the problems faced by their less fortunate colleagues, nor an adequate appreciation of their own role in supporting a viable legal profession. The elite lawyer's isolation from the lower levels of the administration of justice tends to weaken his concern for the problems of these institutions and, more generally, for the capacity of the legal system to enlarge its scope and relevance.

Notes to Chapter 10

1. Parsons, Talcott, *The Social System*. The Free Press, Glencoe, Ill., 1951, p. 464.
2. Cohen, for example, asserts that "the hallmark of the delinquent subculture is the explicit and wholesale repudiation of middle-class standards and the adoption of their very antithesis." Cohen, Albert K., *Delinquent Boys*, The Free Press, Glencoe, Ill., 1955, p. 129.
3. Matza, David, *Delinquency and Drift*. John Wiley and Sons, New York, 1964, pp. 33-34.
4. Merton, Robert K., "Some Preliminaries to a Sociology of Education," in Merton, Robert K., George G. Reader, and Patricia L. Kendall, editors, *The Student-Physician*. Harvard University Press, Cambridge, Mass., 1957, p. 42.
5. Goode, William J., "Community Within a Community: The Professions," *American Sociological Review*, vol. 22, April, 1957, p. 196.
6. Blake, Judith, and Kingsley Davis, "Norms, Values, and Sanctions," in Faris, Robert E. L., editor, *Handbook of Modern Sociology*, Rand-McNally and Co., Chicago, 1964, p. 461.
7. Hughes, Everett C., *Men and Their Work*. The Free Press, Glencoe, Ill., 1958, p. 71.
8. See U.S. Department of Health, Education, and Welfare, *The Extension of Legal Services to the Poor*, Washington, 1964; Cahn, Edgar S., and Jean C., "The War on Poverty: A Civilian Perspective," *Yale Law Journal*, vol. 73, July, 1964, pp. 1317-1352; and "The Availability of Counsel and Group Legal Services: A Symposium," *U.C.L.A. Law Review*, vol. 12, January, 1965, pp. 279-463.
9. Carlin, Jerome E., and Jan Howard, "Legal Representation and Class Justice," *U.C.L.A. Law Review*, vol. 12, January, 1965, p. 432.
10. 372 U.S. 335 (1963).
11. 377 U.S. 1 (1964).
12. *Ibid.*, pp. 6-7.
13. American Bar Association, *American Bar News*, vol. 9, May, 1964, p. 1.
14. *Loc. cit.*
15. *Loc. cit.*
16. See McCalpin, F. William, "The Bar Faces Forward," vol. 51, *American Bar Association Journal*, June, 1965, p. 548.
17. Noted in remarks presented by Lewis F. Powell, Jr., president of the American Bar Association, at the National Conference on Law and Poverty, Washington, June 25, 1965.
18. "Legal Aid—Current Needs and New Directions," address delivered by Theodore Voorhees, president of the National Legal Aid and Defender Association at the National Conference on Law and Poverty, Washington, June 24, 1965, p. 6.

Appendices

- A The Sample
- B Distribution of Responses for the Thirteen Ethics Items
- C Formation of Certain Indices and Typologies
- D The Interview Schedule

Appendix A

The Sample

Definition of the Population

The population consists of all lawyers in private practice in Manhattan and the Bronx who are listed in one of the main directories of lawyers: *Martindale-Hubbell Law Directory* or the Manhattan or Bronx *Red Book*.¹ Use of these directories presumably excludes only those who are not holding themselves out to the public as lawyers. The population was limited to private practitioners on the ground that lawyers employed in the legal departments of corporations or in agencies of government face different problems and are subject to different kinds of ethical controls. The geographical area was restricted to Manhattan and the Bronx partly because the Martindale-Hubbell list is similarly restricted and partly because these two boroughs constitute a single jurisdictional unit (the First Judicial Department) within which lawyers come into contact with the same courts and are subject to the same judicial controls.

A Clustered Sample

Since the law office was presumed to be a meaningful social unit and a source of social control in the bar, we clustered the interviews by suites, that is, we interviewed all of the lawyers in a sample of suites. The method used for obtaining a representative sample of both law offices and lawyers is described below.

Names were selected from *Martindale-Hubbell* by taking two names at random from each column of lawyers in the Manhattan-Bronx listings. If a selected lawyer was seventy or older or a judge, the next name was used. Additional names were drawn in a similar manner from the *Red Book*, excluding those also listed in *Martindale-Hubbell*. A preliminary sample of 969 lawyers was drawn.

A one-page questionnaire was mailed to these 969 lawyers asking if they were engaged in the private practice of law and, if they were, to supply

¹ *Martindale-Hubbell Law Directory*, Martindale-Hubbell, Inc., Summit, N. J., vols. 1 and 2, 1960; *Red Book*, New York Telephone Co., New York, 1960.

the number and names of the other lawyers in their office or firm. Nineteen refused to respond, 25 had died or retired, 30 were practicing law outside Manhattan and the Bronx, 76 could not be located, 6 were excluded because we had already talked to them in another phase of the study, and 207 were not in private practice.² The remaining 606 responded and all were actively engaged in private practice. (Lawyers were considered to be engaged in private practice if at least 20 per cent of their working day was devoted to the private practice of law.) These 606 lawyers in private practice constituted a representative sample of lawyers in private practice in Manhattan and the Bronx. A further operation was required to arrive at a representative list of suites.

The 606 lawyers were classified by the total number of lawyers in the suite in which they were located (Table A below). Since the probability that a suite would be represented in our preliminary sample of suites was proportionate to the size of the suite (a three-man suite was three times as likely to be selected as a one-man suite), the list of suites was adjusted by excluding one-half of the two-man suites, two-thirds of the three-man suites, and so on. This procedure produced a random sample of suites and reduced the original sample of lawyers. A clustered but representative sample of lawyers was obtained by including all lawyers in the selected suites.

Table A. Distribution of Respondents by Size of Suite

Number of lawyers in suite	Per cent of respondents
1	15
2	14
3	15
4	10
5 to 6	9
7 to 9	6
10 to 14	7
15 or more	19
Total	100
	(606)

² Of the last group, 73 were not engaged in the practice of law at all; 95 were house counsel; 28 were employed in a government legal department; and 11 others were employed in legal aid, as court clerks, and so forth.

The Target Sample

From this list of suites and lawyers, a target sample was obtained by assigning different sample ratios to different sized suites (Table B below). Suites of fewer than 3 lawyers were underrepresented since a smaller number of cases sufficed for the analysis. Suites of 7 to 9 lawyers were overrepresented in order to obtain a sufficient number of suites having more than a handful of lawyers. Had we overrepresented still larger suites, the number of lawyers to be interviewed would have exceeded our budgetary resources. Considerations of time and cost were involved in the decision not to include suites of 15 or more lawyers in the sample of suites. However, we did select at random a sample of 67 lawyers in such offices; no effort was made to see that these lawyers all came from the same offices.

Table B. The Target Sample

Suite size	Number of lawyers in pre- liminary sample	Step 1 Number of lawyers, adjusted ^a	Step 2 Doubled ^b		Step 3 Target sample ^c		Sample ratio
			Suites	Lawyers	Suites	Lawyers	
1	89	89.0	178.0	178.0	59	59	.33
2	87	43.5	87.0	174.0	58	116	.67
3	90	30.0	60.0	180.0	60	180	1.00
4	61	15.3	30.6	122.4	31	124	1.00
5	54	10.8	21.6	108.0	22	110	1.00
6	30	5.0	10.0	60.0	10	60	1.00
7	16	2.3	4.6	32.2	14	98	3.00
8	10	1.3	2.6	20.8	8	64	3.00
9	9	1.0	2.0	18.0	6	54	3.00
10	16	1.6	3.2	32.0	3	30	1.00
11	8	.7	1.4	15.4	1	11	1.00
12	7	.6	1.2	14.4	1	12	1.00
13	9	.7	1.4	18.2	1	13	1.00
14	3	.2	.4	5.6	1	14	1.00
15+	116	—	—	232.0	—	67	.30
Total	605	202.0	404.0	1,211.0	275	1,012	

^a Number of lawyers adjusted to arrive at a representative sample of different-sized suites.

^b This step was necessary to arrive at a target sample with an adequate number of lawyers from the larger suites.

^c The number of suites and lawyers in the target sample was obtained by multiplying the figures in Step 2 by sample ratios in last column.

The Revised Sample

The target sample had to be revised to take into account the fact that suites were not always of the size indicated by responses to the initial questionnaire. Only 5 suites, however, proved to have substantially more or less lawyers than expected. In addition, 26 suites were excluded because it was found that the original lawyer responding to our questionnaire did not meet all our requirements as to age, geographical location, and proportion of time in private practice. The revised sample of suites and lawyers and the revised sample ratios are presented in Table C.

The Final Sample

Of the revised sample of 942 lawyers, 801 (85 per cent) were ultimately interviewed. The number of lawyers interviewed and the number of suites in which varying proportions of lawyers were interviewed for each suite size are shown in Table D.

Correcting for Differences in Sample Ratios

To ascertain the effect of the varying sample ratios on the findings, we first computed a correction weight. For example, if lawyers in a given suite

Table C. Revised Sample

Suite size	Revised number of suites	Revised number of lawyers	Revised sample ratio
1	46	46	.37
2	55	110	.55
3	54	162	.94
4	28	112	1.00
5	21	105	.94
6	10	60	1.38
7	8	56	2.96
8	14	112	2.33
9	1	9	3.33
10	5	50	.79
11	1	11	1.00
12	4	48	1.22
15+	—	61	.29
Total	247	942	

size comprise 10 per cent of the private practitioners in Manhattan and the Bronx but only 5 per cent of our sample, their sample ratio would be .05/.10 or one-half. To restore their true proportion, the number of respondents in the given suite size would have to be corrected by a factor of 2 or doubled within our sample. The original sample ratios and correction weights for lawyers in suites of various sizes are given in Table E.

Table D. The Final Sample

Suite size	Lawyers		Suites		
	Number in final sample	Per cent interviewed	Number in final sample	Per cent in which all members were interviewed	Per cent in which 80% or more were interviewed
1	46	81	46	81	81
2	110	76	55	65	65
3	162	81	54	69	69
4	112	85	28	64	64
5	105	92	21	67	95
6	60	87	10	60	90
7	56	91	8	63	75
8	112	88	14	29	79
9	9		1		
10	50	82	5	46	82
11	11		1		
12	48		4		
15+	61	100	—		
Total	942	85 ^a	247	51	73

^a Includes two lost interviews. The total number of interviews actually used in the analysis is 801.

Table E. Original Sample Ratios and Corrected Weights

Suite size	Sample ratio	Correction weight
1	.37	2.7
2	.55	1.8
3 to 5	1.00	1.0
6	1.38	0.7
7 to 9	2.56	0.4
10 to 12	.95	1.1
15+	.29	3.5

This correction procedure was incorporated into our data-processing program on an IBM 7090 computer and was rendered automatically. If a cell in one of the contingency tables contained three individuals in one-man suites, two individuals in eight-man suites, and a large-firm lawyer, the uncorrected cell frequency would be $3+2+1=6$, and the corrected cell frequency would be $(3 \times 2.7) + (2 \times 0.4) + (1 \times 3.5) = 12.4$.

In view of the fact that (1) our sampling procedure yields a distribution by suite size differing from that of the true population, (2) suite size is highly correlated with one of our principal independent variables, size of firm, and (3) firm size is related to many other important variables such as social background, clientele, type of practice, and ethical conduct, all *descriptive* data are presented with corrections for sampling ratios. See Table F for the distribution of lawyers by firm size, using corrected and uncorrected figures.

Table F. Corrected and Uncorrected Distributions of Lawyers by Firm Size

Firm size	Uncorrected per cent	Corrected per cent	Correction effect
Large (15 or more)	8	21	+13
Medium (5 to 14)	26	15	-11
Small (2 to 4)	20	17	-3
Individual practice	46	47	+1
Total	100	100	

The main categories affected by correction are medium and large firms. However, as seen in Table G, correction makes little difference for the three variables (aside from size of firm) which manifested the greatest disparity between corrected and uncorrected figures. Had descriptive data been presented without correcting for sample ratios, it would have made little difference in the figures.

Although descriptive data are based on corrected figures to provide a more accurate estimate of the true population proportions, the analysis of *relations* among variables is based on uncorrected figures. Table H shows how little the relation between violation and a variety of independent variables is affected by using corrected figures. Table I shows the same result for high conformity.

Table G. Corrected and Uncorrected Figures for Religion, Law School, and Agency Contact

Variable	Uncorrected per cent	Corrected per cent	Correction effect
<i>Religion</i>			
Protestant	12	18	+6
Catholic	16	18	+2
Jewish	69	61	-8
Other, no answer	3	3	0
Total	100	100	
<i>Law school</i>			
Full-time	30	36	+6
Higher-quality mixed	29	27	-2
Lower-quality mixed	40	36	-4
None	1	1	0
Total	100	100	
<i>Main agency level</i>			
Federal	32	38	+6
State	20	16	-4
Local	16	15	-1
None	29	29	0
No answer	3	2	-1
Total	100	100	

In tables with three or more variables, once again the vast majority of the relations were unchanged by correcting, but a few tables did evince some differences (Table J). Correcting increases the correlation between office climate and violation in offices with a low rate of informal social interaction. However, the principal finding remains unchanged, namely, the higher the rate of informal social interaction in the office the greater the effect of climate on violation.

Table H. Violation by Some Independent Variables Using Corrected and Uncorrected Figures

Variable	Per cent violators	
	Uncorrected figures	Corrected figures
<i>Size of firm</i>		
Individual practice	31	29
Small	27	26
Medium	21	20
Large	5	5
Size of firm effect	+26	+24
<i>Client status</i>		
Low	42	40
Low-middle	29	31
High-middle	20	16
High	15	10
Client status effect	+27	+30
<i>Court-agency contact</i>		
Lower	50	49
Lower-middle	29	27
Upper-middle	17	15
Upper	14	10
Court-agency contact effect	+36	+39
<i>Concern with ethics</i>		
Low	54	51
Low-middle	28	25
High-middle	22	19
High	10	9
Concern with ethics effect	+44	+42
<i>Office climate</i>		
Permissive	41	45
Mixed	28	29
Strict	15	15
Office climate effect	+26	+30

Table I. High Conformity by Some Independent Variables Using Corrected and Uncorrected Figures

Variable	Per cent high conformers	
	Uncorrected figures	Corrected figures
<i>Client status</i>		
High	44	51
High-middle	34	36
Low-middle	18	17
Low	13	14
Client status effect	+31	+37
<i>Court-agency contact</i>		
Upper	42	47
Upper-middle	37	40
Lower-middle	18	20
Lower	9	3
Court-agency contact effect	+33	+39
<i>Concern with ethics</i>		
High	39	40
High-middle	32	39
Low-middle	24	28
Low	11	14
Concern with ethics effect	+28	+26

Table J. Violation by Office Climate and Rate of Informal Social Interaction, Using Corrected and Uncorrected Figures

Office climate	Per cent violators					
	<i>Low informal social interaction</i>		<i>Moderate informal social interaction</i>		<i>High informal social interaction</i>	
	Un-corrected	Corrected	Un-corrected	Corrected	Un-corrected	Corrected
Permissive	28 (32)	35	40 (40)	39	51 (61)	55
Mixed	27 (88)	26	29 (138)	29	32 (62)	30
Strict	20 (30)	16	13 (105)	14	17 (57)	16
Climate effect	+8	+19	+27	+25	+34	+39

Appendix B

Distribution of Responses for the Thirteen Ethics Items Used in the Final Survey

Presented below are the responses of the 801 lawyers in the final sample to each of the 13 hypothetical situations comprising the Index of Ethical Behavior. Note that situations 1, 5, and 9 are check-list items; the others were open-ended questions.

1. (COMMISSION) Lawyer A represents the buyer in a real estate transaction in connection with which he helps to obtain a title insurance policy for his client. After the transaction is effected, the title company sends A its usual 15 per cent commission on the price charged the client for services rendered. Which of the following alternatives comes closest to what you have done (would do) in this situation?¹

<i>Unethical action</i>	Per cent
Accept the commission without informing the client	15
Accept the commission but take it into consideration in setting the client's fee	33
<i>Ethical action</i>	
Accept the commission and inform the client (or with client's prior approval)	25
Accept the commission but deduct the amount from the fee and indicate it on the client's bill	20
Refuse the commission	5
No answer	2
Total	100 ²

¹ Alternatives given in check-list.

² Fifty-three respondents indicated more than one choice; in these cases, the least ethical choice was coded.

Distribution of Responses for the Thirteen Ethics Items

195

2. (ORAL AGREEMENT) Lawyer A is given authority by his client to sell a certain piece of real estate for a certain sum of money. After negotiating with attorney Jones, representing a prospective buyer, an oral agreement is reached, A giving Jones his word that Jones' client has the deal. Before any documents are signed, A's client has found a purchaser willing to pay a greater amount, and learning that there is no written agreement with Jones, refuses to permit A to go ahead with the deal with Jones. A calls Jones and, explaining the situation, asks to be released. Jones refuses. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Represent client	43
Represent client, but reluctant, unhappy, or angry with client	3
<i>Ethical action</i>	
Not represent client	44
No answer or answer not relevant	10
Total	100

3. (SYNDICATE SALE) Lawyer A, attorney for the receiver of the Doe Corporation, negotiated a sale of all of the corporation's property to a syndicate for a large sum of money. The sale was approved by the court and was at the best price obtainable. The syndicate then turned over the property to a new corporation. Prior to the receiver sale the syndicate had a general understanding with A that he should receive an interest in the new corporation. Some months later, after the receiver sale, A is given the opportunity, which he exercises, of purchasing stock of the new corporation for which he pays the same proportionate amount as members of the syndicate. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Purchase stock	28
<i>Ethical action</i>	
Not purchase stock or not accept option	59
Purchase with consent or disclosure	9
No answer	4
Total	100

4. (STOCK PURCHASE) Lawyer A learns that his client is planning on purchasing a large amount of stock in a small privately held company which will result in a substantial increase in the value of the stock of that company. Without informing his client, A has a friend purchase stock of the company for him in the friend's name. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Purchase stock	9
<i>Ethical action</i>	
Not purchase stock	68
Purchase with permission of client	21
No answer	2
Total	100

5. (PAYOFF REVENUE AGENT) Lawyer A's client, with A's knowledge, failed to report a sizable amount of income on his tax return. The client was subsequently contacted by an agent of the Bureau of Internal Revenue who offered to overlook the matter for a sum of money. The client tells A that he (the client) is determined to make the payment.³

<i>Unethical action</i>	Per cent
Lawyer A tells the client that if he wants to make the payment that's his business, but not to tell A anything about it	12
Lawyer A tells the client that it would be very risky to make the payment, but if he wants to, that's his business	11
<i>Ethical action</i>	
Lawyer A strongly urges his client not to make the payment, but continues to represent him on other matters	51
Lawyer A tells the client that if he pays off the revenue agent he will no longer be able to represent him	23
No answer	3
Total	100 ⁴

³ Alternatives given in check-list.

⁴ Twenty-three respondents indicated more than one choice; the least ethical was coded.

6. (PACKAGE DEAL) Lawyer A is negotiating a personal injury claim with an insurance company adjuster. The adjuster, with whom A has had previous dealings, is under pressure from his supervisors to hold down the amount of recovery of this particular claim and indicates this fact to A, saying that if A will cooperate this time he (the adjuster) will be able to take care of him next time. The offer is in striking distance of a fair amount. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Go along with adjuster	12
Go along after telling client, but not necessarily the whole story	1
<i>Ethical action</i>	
Not go along with adjuster	73
Not go along unless amount is fair, not just within "striking distance"	5
Tell client the entire story and let him decide	6
No answer	3
Total	100

7. (ASSAULT CHARGE) Lawyer A, who is defending Jones on a criminal assault charge, learns from the district attorney that the latter's case is so weak he probably will not be able to get a conviction. A withholds this information from Jones, knowing that if Jones finds out he will stop paying installments on A's fee. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Withhold information	18
Withhold information, but for other reasons	5
Tell client the case is weak and doubtful of conviction, but not that he got the information from the district attorney	4
<i>Ethical action</i>	
Tell client entire story	70
No answer	3
Total	100

8. (POLICE PAYOFF) A young man at the beginning of a very promising career in public service is picked up by the police for making homosexual advances to another man. The father of the young man comes to Lawyer A and begs him to do what he can to have the charge removed from the books, believing it would ruin his son's career. A knows that the charge can be removed by making a substantial payment to someone in the police department. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Make payment to police	6
Send father to someone else who will make payment	2
Suggest father make payment; tell father how to do it—how it can be done; make arrangements for father to make payment	8
<i>Ethical action</i>	
Not have anything to do with case, not make payment	71
Not make payment because too risky, unwise, inexpedient	1
Advise father not to pay	1
Not make payment; try to persuade police or district attorney to remove the charge	4
Not make payment, but try to beat case	4
No answer	3
Total	100

9. (CLIENT KICKBACK) A previous client of Lawyer A refers another client to A and indicates that he expects some small compensation from A for his services. Which of these actions comes closest to what you have done (or would do) under these circumstances?⁵

<i>Unethical action</i>	Per cent
Lawyer A gives the previous client a small amount of money	3
Lawyer A gives the previous client a small gift, or takes him out to dinner	30
Lawyer A gives the previous client free legal advice or reduces his fee the next time he represents him	17

Ethical action

Lawyer A refuses to give the previous client any compensation whatsoever for his services	49
No answer	3
Total	100 ⁶

⁵ Alternatives given in check-list.

⁶ Forty-one respondents indicated more than one choice, the least ethical was coded.

10. (CHRISTMAS CARDS) Lawyer A sends out Christmas cards to all his active clients. Do you do this?

<i>Unethical action</i>	Per cent
Yes	55
<i>Ethical action</i>	
No	44
No answer	1
Total	100

11. (CONFLICT OF INTEREST) Smith and Jones, partners in several business ventures, have been represented by Lawyer A on both business and personal matters. A controversy has arisen between Smith and Jones, and Smith retains another attorney to commence legal action to dissolve the business partnership. Jones asks A to represent him. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Represent Jones	46
Not represent Jones if there were any confidential information involved	5
Represent Jones while dispute is still amicable, but withdraw when it reaches formal action (any representation prior to court action)	1
<i>Ethical action</i>	
Not represent Jones	32
Represent Jones with consent of Smith	14
No answer	2
Total	100

12. (DIVORCE) A woman comes to Lawyer A seeking a divorce. Her husband has agreed to a consent decree on grounds of adultery, although in fact no such act was committed. Lawyer A knows this. The client asks A to take the case. What have you done (would you do) in such a situation?

<i>Unethical action</i>	Per cent
Handle case	16
Refer to another lawyer for handling out-of-state	9
Refer to another lawyer (unspecified referral)	3
<i>Ethical action</i>	
Not handle case	69
No answer	3
Total	100

13. (REFERRAL FEE) Lawyer A refers a matter to Lawyer Jones for which A accepts a one-third referral fee. A's only connection with the case has been to hear the client's story and telephone Jones and inform him that he is sending over the client on the matter in question. A has no further contact with the client or with Lawyer Jones in this matter. What have you done (would you do) in this situation?

<i>Unethical action</i>	Per cent
Accept fee	67
Take more than one-third	1
Take less than one-third	2
Accept if client's fee is not affected	1
<i>Ethical action</i>	
Not accept fee unless some work performed	25
No answer	4
Total	100

Appendix C

Formation of Certain Indices and Typologies

Appendix C describes the construction and scoring of selected indices and typologies not sufficiently explained in the text or notes.

Parental Socioeconomic Status Index

Parental socioeconomic status has a range of 0 to 6 based on scores for father's occupation, income, and education. Scoring is shown below.

<i>Father's occupation</i>	<i>Score</i>
Professional or semiprofessional	2
Manufacturer, businessman, broker, higher white-collar	1
Lower white-collar, blue-collar	0
<i>Father's annual income</i>	
\$9,000 or more	2
\$5,000 to \$8,999	1
Less than \$5,000	0
<i>Father's education</i>	
At least some college	2
No college but at least grammar school graduate	1
Less than a grammar school graduate	0

For each item, a response of "No Answer" or "Don't Know" was scored 1. The distribution for the Parental SES Index is as follows:

Distribution of Lawyers by Parental Socioeconomic Status

Parental SES	Index score	Per cent
High	4, 5, 6	37
High-middle	3	24
Low-middle	2	15
Low	0, 1	24
Total		100
		(801)

Index of Client Status

The Index of Client Status combines size and legal form of business clients, wealth of individual and business clients, and proportion of Negro clients. Each component is scored from 0 to 2 and the Index ranges from 0 to 6.

Respondents were asked: "What proportion of your business clients fall into the following categories: (1) individual proprietorship; (2) partnership; (3) closely held corporation—fewer than 10 stockholders; (4) public corporation?" Respondents who represent at least one public corporation but only a small proportion of individual proprietors score 2. Those who represent no public corporations and for whom individual proprietors represent at least 18 per cent of their business clients score 0. All others score 1.

The scoring of clients' wealth combines the median net worth of business clients and the median income of individual clients. Medians were calculated from the proportion of respondent's clients reported as falling in specified income categories.

<i>Score for clients' wealth</i>				
Median income of individual clients				
Median net worth of business clients	More than \$20,000	\$10,000–20,000	Less than \$10,000	No answer or no individual clients
More than \$500,000	2	1	1	1
\$50,001 to \$500,000	1	1	0	1
\$50,000 or less	1	0	0	0
No answer or no business clients	1	1	0	1

The proportion of Negro clients is scored as follows:

<i>Per cent of clientele that is Negro</i>	<i>Score</i>
0	2
1 to 3 (and no answer)	1
4 or more	0

Questions on client attributes were not included in interviews with employees of individual practitioners and associates in small and medium-sized firms. Employees are classified by the score of their employers, and associates by the average score of the partners in their firm.

Following is the distribution of lawyers on the Index of Client Status.

Distribution of Lawyers by Client Status

Client status	Index score	Per cent
High	5,6	25
High-middle	3,4	33
Low-middle	2	18
Low	0,1	24
Total		100 (801)

Index of Stability of Clientele

The Stability Index is based on the turnover of business and individual clients. Respondents are scored as follows:

Per cent individual clients represented at least once before	Per cent business clients represented for over five years				No answer or no business clients
	88 to 100	73 to 87	48 to 72	0 to 47	
88 to 100	2	2	2	2	2
0 to 87	2	1	1	0	1
No answer or no individual clients	2	2	1	0	*

* Excluded from Index.

The 133 associates and employees who have no clients of their own (that is, spend less than one-third of their time on their own matters) and the 22 respondents who gave no answer to both items are excluded from the Index. Those who gave no answer on one item or have either no business or no individual clients are classified on the basis of their response to the other item. The distribution for the Stability Index is shown below.

Distribution of Lawyers by Stability of Clientele

Stability of clientele	Index score	Per cent
Stable	2	40
Moderately unstable	1	26
Unstable	0	14
Excluded from index	—	20
Total		100 (801)

Effective Opportunity to Exploit Clients

This measure combines client expendability and opportunity to exploit clients (see Table 48, p. 72), and is scored in the following manner:

<i>Client expendability</i>	<i>Opportunity to exploit clients</i>		
	High	Moderate	Low
High	4	3	2
Moderate	3	2	1
Low	2	1	0

Excluded from the Index are lawyers who have no clients of their own, and lawyers who did not answer the question: What proportion of your income is accounted for by your largest client? The distribution of lawyers on the Index of Effective Opportunity to Exploit Clients is as follows:

Distribution of Lawyers by Effective Opportunity to Exploit Clients

Effective opportunity	Index scores	Per cent
High	4,3	18
Moderate	2	20
Low	0,1	30
Excluded from Index	—	32
Total		100 (801)

Effective Client Pressure

This Index combines measures of economic dependence and client pressure. Economic dependence is defined and scored in the following manner:

Per cent of income from largest client	<i>Stability of clientele</i>	
	Unstable and moderately unstable	Stable
28 to 100	3	2
23 to 27	2	1
0 to 22	1	0

Client pressure is determined on the basis of response to the question: How often have clients exerted pressures for you to engage in practices contrary to your standards? The Effective Client Pressure Index was scored as follows:

Economic dependence	<i>Reported frequency of client pressure</i>	
	Very often, sometimes	Rarely, never
3,2	2	1
1,0	1	0

Excluded from the Index are lawyers who have no clients of their own, and lawyers who did not answer the question: What proportion of your income is accounted for by your largest client? Distribution of lawyers on the Effective Client Pressure Index is tabulated below.

Distribution of Lawyers by Effective Client Pressure

Effective client pressure	Index scores	Per cent
High	2	5
Moderate	1	31
Low	0	32
Excluded from Index	—	32
Total		100 (801)

The Index of Client-Related Pressures

This Index combines client pressures, opportunity to exploit clients, and stability of clientele. Client pressure is determined on the basis of the lawyer's response to the following question: How often have clients exerted pressure on you to engage in practices contrary to your standards? Very often? Sometimes? Rarely? Never? Opportunity to exploit clients is inferred from the number of ethics items in the client area reported by the lawyer to have occurred in his practice during the past five years. There are six client items, and each lawyer was given a score of 0 to 6 on this measure. These two measures were combined into an Opportunity-Pressure Index, as indicated below.

<i>Client pressure</i>	<i>Score on Opportunity-Pressure Index</i>			
	Opportunity to exploit clients			
	High (4 to 6)	Middle (2, 3)	Low (0, 1)	No answer
Very often, sometimes	2	2	1	1
Rarely, never	2	1	0	1
No answer	2	2	0	—

Those who gave no answer to one item were classified on the basis of their response to the other item. The Opportunity-Pressure Index was then combined with the Index of Stability of Clientele to form the Index of Client-Related Pressures, as follows:

Stability index	<i>Client-Related Pressure Score</i> Opportunity-pressure index		
	High (2)	Middle (1)	Low (0)
Unstable	3	3	2
Moderately unstable	3	2	1
Stable	2	1	0
No answer or no clients of their own	3	2	1

The distribution of lawyers on the Index of Client-Related Pressures is shown below.

Distribution of Lawyers by Client-Related Pressures

Client-related pressures	Index score	Per cent
High	3	18
High-middle	2	30
Low-middle	1	37
Low	0	15
Total		100 (801)

Financial Involvement Index

This Index measures the extent to which lawyers are involved in finding investment opportunities or obtaining financing for business clients. Lawyers who report being "on the lookout" for investment opportunities or who assist clients in obtaining financing are given a score of 1 on the Financial Involvement Index. Scores can range from 0 to 2. Lawyers who did not answer or have no business clients or no clients of their own are excluded from the Index.

The distribution of lawyers on the Financial Involvement Index is shown below.

Distribution of Lawyers by Financial Involvement

Financial involvement	Index score	Per cent
High	2	36
Moderate	1	17
Low	0	19
Excluded from Index	—	28
Total		100 (801)

Control Involvement Index

Respondents who indicate that they are an officer or board member of any client corporation, or who have stock or financial holdings in any client corporation or enterprise receive a score of 1 on the Control Involvement Index. All lawyers who did not answer or who have no business clients or no clients of their own are excluded from the Index.

The distribution of lawyers on the Control Involvement Index is shown below.

Distribution of Lawyers by Control Involvement

Control involvement	Index score	Per cent
High	2	18
Moderate	1	22
Low	0	33
Excluded from Index	—	27
Total		100 (801)

Index of Level of Court and Agency Contact

The Index of Level of Court and Agency Contact combines level of main court contact and level of main agency contact. Main court contact is defined by the court level at which lawyers spend the most time. Level of court contact is defined and scored as follows:

<i>Main court level</i>	<i>Score</i>
Upper (federal and state appellate)	2
Middle (New York Supreme, General Sessions, Surrogates')	1
Lower (Magistrates', Special Sessions, Municipal, City, Domestic Relations)	0
Not in court	2
No answer	2

Respondents who divide their time equally between courts in two categories are classified so that those citing upper and middle are placed in the upper category, and those citing middle and lower, in the lower category.

Respondents are also classified and scored by the agency level at which they spend the most time.

<i>Main agency level</i>	<i>Score</i>
Upper (federal, or state and federal)	2
Middle (state, or local and federal, or all three)	1
Lower (local, or local and state)	0
No time spent in agencies	2
No answer	2

The court-level score and agency-level score for each respondent are added to form the Court-Agency Level Index. The Index ranges from 0 to 4.

Five respondents gave no answer to both the court and agency questions and were excluded. The distribution on the Index of Level of Court and Agency Contact is shown below.

Distribution of Lawyers by Level of Court and Agency Contact

Main level of court-agency contact	Index score	Per cent
Upper	4	25
Upper-middle	3	34
Lower-middle	2	20
Lower	0,1	20
No answer to both items	—	1
Total		100 (801)

Situational Inducements to Violate

This Index combines the Index of Client-Related Pressures and the Index of Level of Court and Agency Contact, and is scored in the following manner:

Client-related pressures	<i>Main Level of Court-Agency Contact</i>			
	Lower	Lower-middle	Upper-middle	Upper
High	6	5	4	3
High-middle	5	4	3	2
Low-middle	4	3	2	1
Low	3	2	1	0

The distribution of lawyers by Situational Inducements to Violate is shown below.

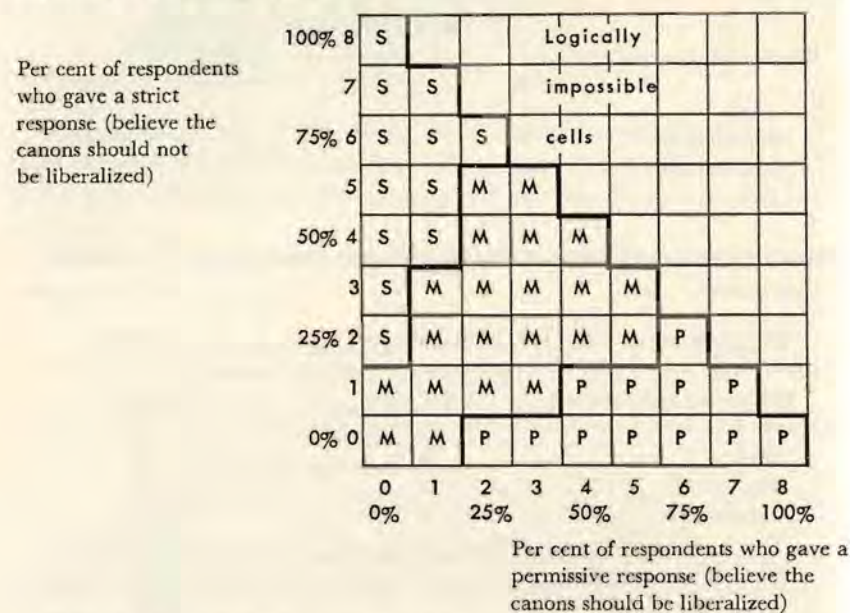
Distribution of Lawyers by Situational Inducements to Violate

Situational inducements	Index score	Per cent
High	6,5	16
High-middle	4,3	39
Low-middle	2	23
Low	0,1	21
Excluded from Index	—	1
Total		100 (801)

Index of Ethical Climate

This Index is based on the combination of the proportion of respondents in each office who *agree* that the canons should be liberalized and the proportion who *disagree*. It may be recalled that there were three possible responses to the proposition that the canons should be liberalized: agree (which we defined as a permissive attitude toward the canons), disagree (a strict attitude), and don't know (a neutral attitude). Offices could be characterized by a variety of combinations of proportions of respondents giving one or another response to this item: for example, 100 per cent permissive; 80 per cent permissive, 20 per cent neutral; 80 per cent permissive, 10 per cent neutral, 10 per cent strict; 30 per cent permissive, 30 per cent neutral, 40 per cent strict; and so on. A decision had to be made as to the classification of offices not clearly or unambiguously per-

missive, strict, or neutral. The cells in the diagram below show how these decisions were made, where P stands for offices classified as Permissive, S for Strict offices, and M for Mixed offices. (The proportions of lawyers reporting a permissive or strict attitude is arbitrarily presented in eighths).



The first thing to be noted is that the upper-right sector of the diagram represents logically impossible combinations of percentages in excess of 100 per cent. Secondly, all nine cells on the upper-left, lower-right diagonal represent offices in which all lawyers gave either a strict or permissive response and none gave a neutral response. This is evident from the fact that in each case the two percentages equal exactly 100. In all other cells, the percentages do not add up to 100; the difference represents the percentage of neutral lawyers.

Offices in which all lawyers interviewed had an opinion (offices on the diagonal) and at least three-fourths gave a permissive or strict response were classified as ethically permissive or strict (20 and 23 offices, respectively). Offices in which some but less than half of the respondents gave a neutral response (the next three tiers of cells down from the diagonal) and at least four-fifths of the remaining lawyers gave either a permissive or a strict response were classified as permissive or strict (14 and 11 offices, respectively). Offices in which one-half to three-quarters of the respondents gave a neutral response (the next three tiers of cells) and all of the remaining

lawyers gave a permissive or a strict response were classified as permissive or strict (12 and 14 offices, respectively). The remaining 73 offices were classified as ethically mixed rather than neutral. In only 4 did half or more of the lawyers give a neutral response, and in 41 none of the lawyers gave a neutral response.

The distribution of offices by Office Climate is as follows:

Office climate	Per cent
Strict	28
Mixed	44
Permissive	28
Total	100
	(163)

Index of Office Sociability

The Office Sociability Index combines the average rates for each office of lunching together and getting together socially. If members of the office have lunch with another member on an average of at least twice a month, the office is classified as frequently lunching together. If members meet socially with other lawyers in the office on an average of at least six times a year, the office is classified as frequently socializing. Classification of offices appears below.

	Office sociability score	
	Frequent office lunching	Rare office lunching
Frequent office socializing	2	0*
Rare office socializing	1	0

* Only 5 offices in this cell.

The distribution of offices by Office Sociability is as follows:

Office sociability	Score	Per cent
High	2	33
Moderate	1	39
Low	0	28
Total		100
		(163)

Type of Office Structure

To develop a typology of office structure, each office is classified as having a wide or narrow age range, and a wide, moderate, or narrow income range.

An office has a narrow age range if the difference in age between the oldest and youngest lawyer is less than ten years, and a wide range if this difference is greater than ten years.

In order to facilitate explanation of income ranges, income categories are identified, as shown below, by code numbers.

Code number of income category	Lawyer's net personal income before taxes from the practice of law in the calendar year 1959
0	Under \$2,500
1	\$ 2,500 to 4,999
2	5,000 to 6,999
3	7,000 to 8,999
4	9,000 to 11,999
5	12,000 to 14,999
6	15,000 to 19,999
7	20,000 to 34,999
8	35,000 to 49,999
9	50,000 to 74,999
X	75,000 and over

Offices were defined as having a *narrow* income range if (a) all lawyers in the office fall into the same income category, (b) all lawyers fall into two neighboring income categories and the highest income is less than \$20,000, or (c) the lowest and highest income categories are as follows:

Lowest income category	Highest income category
0	2 to 5
1	3 to 6
2	4 to 6
3	5 to 6
4	6
6	7

Offices have a *moderate* income range if the lowest income category is 1 to 5 and the highest is 7, or the lowest is 7 and the highest is 8. Offices have a *high* income range if the lowest category is 0 and the highest is 7 or higher, or the lowest is 1 to 6 and the highest is 8 or higher.

On the basis of these age and income ranges, offices were classified as peer-group, stratified, or heterogeneous. Peer-group offices are defined as having a narrow age range and a narrow or moderate income range. Stratified offices are defined as having a wide age range and a wide income range where age and income are highly correlated. All other offices were classified as heterogeneous. The category designated as heterogeneous includes offices with a wide age and income range where, however, the correlation between age and income was weak.

The distribution of offices by office structure is shown below.

Office structure	Per cent
Peer-group	27
Heterogeneous	53
Stratified	20
Total	100
	(163)

Rank in the Office

Lawyers in stratified offices were classified as to their rank in the office. The oldest lawyers with the highest incomes (in the top third of the office age and income range) were defined as having the highest rank, the youngest lawyers with the lowest incomes (in the bottom third of the office age and income range) as having the lowest rank, all others as having a middle rank. All lawyers defined as high ranking are either partners or employers. Of the 51 low-ranking lawyers only 3 are partners.

As noted earlier, the larger firms of 15 or more lawyers were not taken as sampling units, consequently, we rarely had more than one interview in any large firm. To classify lawyers in the larger firms, all 60 were treated as if they were members of a single firm, and rank was assigned as described above.

Index of Ethical Concern

The Index of Ethical Concern has a range of 0 to 8 based on the relative importance to respondents of "loyalty to clients" and "honesty in dealing with officials," in choosing office-mates and partners. Scores of 0, 1, and 2 were assigned to the rank given by respondents to these attributes.

Item	Attribute	Rank given by respondents	Score
Choosing an office-mate	loyalty to clients	1st to 3rd	2
		not ranked	1
		of no concern at all	0
	honesty in dealing with officials	1st to 3rd	2
		not ranked	1
		of no concern at all	0
Choosing a partner	loyalty to clients	1st to 3rd	2
		not ranked	1
		of no concern at all	0
	honesty in dealing with officials	1st to 3rd	2
		not ranked	1
		of no concern at all	0

INDIVIDUAL PRACTITIONERS

4. What was your main area of practice when you first went out on your own? _____
(PRESS FOR MAIN AREA.)

Suite Organization

5. When did you come into this suite? _____ (YEAR)
6. At that time were there any other lawyers in the suite? YES _____
NO _____

If yes:

Did you know any of them personally? YES _____
NO _____

If yes:

Did you know them— VERY WELL OR _____
ONLY SLIGHTLY _____

If no:

Did you know any of them by reputation? YES _____
NO _____

7. Do you rent space, or are you in a space for service arrangement? RENT _____
SPACE FOR SERVICE _____

If tenant:

How much rent do you pay a month for your own space? \$ _____

If space for service:

- a. With whom do you have the arrangement? _____
- b. Approximately how many hours a week, on the average, do you devote to such services? _____ PER WEEK
8. Here is a list of law office services and facilities. Please tell me for each whether you have sole use of it, regularly share it with other lawyers in the suite, or don't have it at all. (Card 2.)

	Sole Use	Share Use	Don't Have
Switchboard			
Answering service			
Receptionist			
Secretary-stenographer			
Law clerk service			
Library			
Furniture			
Filing cabinets and office equipment			
Supplies			

(Questions in the following section refer to partners (P) or associates and employees (A))

PARTNERS

- P 4. What was your main area of practice when you first went out on your own? _____
(Press for main area.)

Firm Organization

- P 5. *If entered firm as associate:*
- a. When did you become a partner? _____ (YEAR)
- b. Did you know any of the lawyers in the firm personally? YES _____
NO _____
- If yes:*
- Did you know them— VERY WELL OR _____
ONLY SLIGHTLY _____
- If no:*
- Did you know any of them by reputation? YES _____
NO _____
- P 6. When you came into this suite, were there any other lawyers in it, aside from the members of the firm? YES _____
NO _____

If yes:

Before you entered the suite, did you know any of these other lawyers (those not connected with the firm) personally? YES _____ NO _____

If yes:

Did you know them— VERY WELL OR _____ ONLY SLIGHTLY _____

If no:

Did you know any of them by reputation? YES _____ NO _____

P 7. Over the past 12 months, roughly how many hours a week on the average have you spent in law practice on matters not connected with the firm, excluding unpaid charitable service? _____ PER WEEK

If any:

a. What percentage of your total income from the practice of law is accounted for by your nonfirm practice? _____%

b. In what areas is your nonfirm practice? _____

P 8. Are any of the clients of the firm identified as clients of a particular partner, as distinguished from firm clients? YES _____ NO _____

If yes:

a. Is this primarily in terms of—
Who brings in the client or _____
Who does most of the work on the client's matters? _____
Other: _____

b. What proportion of the clients of the firm are clients of a particular partner? _____%

c. Are there any clients of the firm who are considered to be your clients? YES _____ NO _____

If yes:

1. Are these clients— YOU BROUGHT IN _____
CLIENTS YOU WERE
ASSIGNED TO WORK ON _____
BOTH _____

2. What proportion of your time is given to your "own" clients? _____%

P 9. In handling client matters, do you invariably review major issues with your partners? YES _____ NO _____

P 10. How important are the following factors in allocating work among partners—very, somewhat, not at all?

	Very	Somewhat	Not at All
Who is free			
Specialty			
Whose client it is			
Client's wishes			
Other			

P 11. In important matters that you handle, do you generally take full responsibility for setting the fee, or do you review it with your partner? ON OWN _____ REVIEW _____

P 12. What arrangements are there for distributing fees among partners? _____

a. How often are the percentages reviewed? _____

b. Which of the following factors is most important in the distribution of fees among partners? Which is next (and so on)? (Put 1 for most, 2 for next, etc.)

AMOUNT OF BUSINESS BROUGHT IN	_____
WORK DONE	_____
SENIORITY	_____
PARTNER'S OUTSIDE INCOME	_____
OTHER:	_____

c. During the past five years, have there been any disagreements concerning the distribution of fees? YES _____ NO _____

If yes:

What were the disagreements about, and how were they resolved? _____

P 13. *If other than equal distribution among partners:* How many percentage levels are there? _____

- a. How many partners in the top percentage level? _____
 b. What is the difference between the highest and lowest percentage? _____ (% difference)

P 14. Is the firm on the lookout for investment and business opportunities for itself? YES _____
 NO _____

ASSOCIATES AND EMPLOYEES

A 4. At the time you came into the firm, did you know any of the other lawyers in the firm? YES _____
 NO _____
 DNA _____

If yes: Did you know them— VERY WELL OR _____
 ONLY SLIGHTLY _____

If no: Did you know any of them by reputation? YES _____
 NO _____

A 5. When you came into this suite, were there any other lawyers in it, aside from the members of the firm (or employer and fellow employees)? YES _____
 NO _____

If yes:

Before you entered the suite, did you know any of these other lawyers personally? YES _____
 NO _____

If yes:

Did you know them— VERY WELL OR _____
 ONLY SLIGHTLY _____

If no:

Did you know any of them by reputation? YES _____
 NO _____

A 6. How is your time divided with respect to work done on the following types of matters, and roughly what percentage of your income from the practice of law is derived from each?

	% Time	% Income
a. Matters that are exclusively your own—your clients, you set fees, employer gets no share of the fees.		
b. Matters where you share fees with your employer—where <i>you</i> bring in the matter.		
c. Matters where you share fees with your employer—where the matter is the employer's.		
d. Matters that are exclusively the employer's—his clients, he sets fees.		

A 7. What is your percentage of the fee in matters where you share fees with your employer—
 (1) WHERE YOU BRING IN THE MATTER? _____ %
 (2) ON EMPLOYER'S MATTER? _____ %

A 8. Does your employer object to time spent on your own matters? YES _____
 NO _____

A 9. How are you paid for time spent on employer's matters—
 SALARY _____
 PERCENTAGE _____
 OFFICE SPACE _____
 OTHER (SPECIFY) _____

A 10. On matters that you handle for your employer, do you *generally* do all or only part of the work? ALL _____
 PART _____

- A 11. On matters that you handle for your employer, do you generally have principal contact with the client on major issues?

YES _____
NO _____

Firm Interaction and Activities

INDIVIDUAL PRACTITIONERS: I want to ask you some questions about your participation in these activities with other lawyers in your office. (*Omit if respondent is only lawyer in the suite, and go on to question 13.*)

Card IP3

- Talking over a legal problem with another lawyer on a case or matter where there is *no sharing of fees*.
- Helping another lawyer as a courtesy, *without sharing fees*: e.g., filing a paper, witnessing a document, taking care of a matter while the other is absent.
- Referring or turning over a case or matter more or less completely (although some work may have been done previously on it).
- Collaborating or working with another lawyer on a case or matter involving more or less continuous contact, where *you share fees*.

ASSOCIATES: I want to ask you some questions about your participation in these activities with other lawyers in the firm.

EMPLOYEES: I want to ask you some questions about your participation in these activities with your employer, and fellow employees if you have any.

Please note that in the following questions the phrase "another lawyer in your firm" refers to your employer, and fellow employees if any.

Card AE3

- Talking over a legal problem with another lawyer in your firm on a case or matter.

- Helping another lawyer as a courtesy, e.g., filing a paper, witnessing a document, taking care of a matter while the other is absent.
- Referring or turning over a case or matter more or less completely (although some work may have been done previously on it).
- Collaborating or working with another lawyer in your firm on a case or matter involving more or less continuous contact.

PARTNERS: I want to ask you some questions about your participation in these activities in your firm. (*Omit if firm is sole occupant of suite.*)

Card P3

- Talking over a legal problem with another lawyer on a case or matter.
- Helping another lawyer as a courtesy, e.g., filing a paper, witnessing a document, taking care of a matter while the other is absent.
- Referring or turning over a case or matter more or less completely (although some work may have been done previously on it).
- Collaborating or working with another lawyer on a case or matter involving more or less continuous contact.

ALL RESPONDENTS

- During the past year, roughly how many times a week, on the average, have you gone to another lawyer in the office to talk over _____ PER a legal problem on a case or matter you WEEK; MONTH; YEAR were handling? (*Circle appropriate time unit.*)
 - How many times a week has another lawyer in the office come to you to talk over a _____ PER legal problem on a case or matter he was WEEK; MONTH; YEAR handling? (*Circle appropriate time unit.*)

If at all a or b:

With whom have you discussed such problems most frequently?

10. How many times a month have you helped or been helped by another lawyer in the office [firm] (filing a paper, witnessing a document, etc.) _____ PER WEEK; MONTH; YEAR

If at all:

With whom in the office have you engaged in these activities most frequently? _____

11. a. How many times in the past year have you referred a matter to another lawyer in the office? _____ PER YEAR

If at all:

(1) To whom most frequently? _____

(2) What types of matters? _____

(3) What was your share of the fee? _____

- b. How many times in the past year has another lawyer in the office referred a matter to you? _____ PER YEAR

If at all:

(1) From whom most frequently? _____

(2) What types of matters? _____

(3) What was your share of the fee? _____

12. Approximately how many times in the past year have you collaborated with another lawyer in the office on a case or matter he was handling? _____ PER WEEK; MONTH; YEAR

If at all:

(1) With whom most frequently? _____

(2) At whose initiation usually? OWN _____ OTHER'S _____

(3) What types of matters? _____

(4) What fee arrangements? _____

(5) What proportion of your time during the past year was given to such activities? _____ %

*Interaction and Activities with Lawyers in Suite
Who Are Not in the Firm (Same as questions 9-12.)*

(Omit if Individual Practitioner.)

ASSOCIATES AND EMPLOYEES

(Omit if firm or employer unit is sole occupant of suite.)

PARTNERS

Interaction and Activities with Lawyers Outside the Suite

I want to ask you now about how often you engage in these same activities with lawyers outside the office.

13. a. During the past year, approximately how many times a month on the average have you gone to another lawyer outside the office to talk over a legal problem on a case or matter you were handling? _____ PER WEEK; MONTH; YEAR

- b. Approximately how many times a month has another lawyer outside the office come to you to talk over a legal problem on a case or matter he was handling? _____ PER WEEK; MONTH; YEAR

14. Approximately how many times during the past year have you helped or been helped by another lawyer outside the office (filing papers, witnessing documents, etc.)? _____ PER WEEK; MONTH; YEAR

15. a. Approximately how many times in the past year have you referred a matter to another lawyer outside the office? _____ PER YEAR

If at all:

(1) What types of matters? _____

(2) What was your share of the fee? _____

- b. Approximately how many times in the past year has another lawyer outside the office referred a matter to you? _____ PER YEAR

If at all:

(1) What types of matters? _____

(2) What was your share of the fee? _____

16. Approximately how many times in the past year have you collaborated with another lawyer outside the office? _____ PER WEEK; MONTH; YEAR

If at all:

- (1) At whose initiation, usually? OWN _____ OTHER'S _____
- (2) What types of matters? _____
- (3) What fee arrangements? _____
- (4) What proportion of your time during the past year was given to such collaborative efforts? _____ %

Social Interaction

(Omit questions 17 and 19 if respondent is only lawyer in suite.)

17. During the past year, how many times a month, on the average, have you had lunch with other lawyers in the office? _____ PER WEEK; MONTH; YEAR

If at all:

With whom most frequently? _____

18. How many times a month with lawyers outside the office? _____ PER WEEK; MONTH; YEAR

19. During the past year, how many times have you gotten together socially with the other lawyers in the office—visiting each other's homes, going to the theatre, parties, etc.? _____ PER WEEK; MONTH; YEAR

If at all:

With whom? _____

20. How many times in the past year have you gotten together socially with lawyers outside the office? _____ PER WEEK; MONTH; YEAR

21. Would you please name the three lawyers in New York City with whom you are most friendly? _____

Miscellaneous

Considering now the lawyers *outside the office* with whom you engage in both work and social activities:

22. How many such lawyers are there? _____

23. What proportion (or, how many, if fewer than 10) are (Card 4):

Individual practitioners _____ %

Lawyers in firms with fewer than 5 lawyers _____ %

Lawyers in firms with 5 to 15 lawyers _____ %

Lawyers in firms with 15 or more lawyers _____ %

24. What proportion (how many) are night law school graduates? _____ %

25. Do you carry on your law practice from any other office? YES _____ NO _____

If yes:

- a. What proportion of your time is spent in the other office? _____ %
- b. Where is it? _____ (Address)

26. (Omit if respondent is only lawyer in suite.)

Would you characterize the lawyers in the office as—

A VERY FRIENDLY GROUP _____

A MODERATELY FRIENDLY GROUP _____

AN IMPERSONAL GROUP _____

(If friendly with some but not others, note this.)

27. Have you recently considered leaving this suite? YES _____ NO _____

If yes:

What have you considered doing?

28. a. What kind of office would you like to be in five years from now—for example, sharing space, in a small or large firm, and so on?
- b. What kind of practice would you like to have? (*Probe for area.*)
29. a. Which of the following characteristics would you most want to know about another lawyer before deciding to share office space with him? Which would you want to know about next? Which next? (*Card 5: Rank only 1, 2, 3.*) Which would you not be concerned about at all? (*Check ✓*).

	<i>Office-sharer</i>	<i>Partner</i>
Type of practice	_____	_____
Personality	_____	_____
Loyalty to clients	_____	_____
Competence	_____	_____
Fairness in dealing with colleagues	_____	_____
Honesty in dealings with officials	_____	_____
Business-getting ability	_____	_____

- b. Which of these characteristics would you most want to know about another lawyer before going into partnership with him? Which would you want to know about next? Which next? (*Rank only 1, 2, 3.*) Which would you not be concerned about at all? (*Check ✓ above.*)

II. Type of Practice

INDIVIDUAL PRACTITIONERS AND PARTNERS

In this section we want to go into the nature of your practice.

Area of Practice and Activities

30. During the past year, how many hours a week, on the average, have you devoted to the practice of law? _____ (HOURS)
31. Looking back over the past year, how has your time been divided among these areas of practice? Give approximate percentages. (*Card 6.*)

	Time (%)	Largest Income (check)	In- creased (check)	De- creased (check)
*Will, probate-estate, trust				
a. Wills				
b. Probate				
c. Trust				
d. Tax (estate)				
Business, Corporate, Commercial				
*Real Estate				
a. Residential closings				
b. Commercial				
c. Landlord-tenant				
d. Syndication				
Collections				
Personal Injury				
Matrimonial				
Federal (individual)				
Income Tax				
Criminal				
Municipal				
Patent, Trademark, Copyright				
Other (specify)				

* If less than 10 per cent, check in which subcategory *most* time is spent.

32. From which area did you derive the largest portion of your income? (*Check above.*)
33. In which area has your practice increased over the past five years in terms of proportion of time spent on such matters? (*Check above.*)
34. In which areas has it decreased? (*Check above.*)
35. Do you consider yourself to be a specialist in any area? YES _____
NO _____

If yes:

In which area? _____

36. (If 10 per cent or more business, corporate, commercial work.)

a. Do you generally do all or only part of the legal work for your principal business clients?

ALL _____

PART _____

If part:

What part generally do you do? _____

37. (If 10 per cent or more in any one: business-corporate-commercial; commercial real estate; estate; or trust practice.)

How frequently, if at all, do you engage in the following activities for your business, real estate, estate, or trust clients? (Card 7.)

		Occa-	
Never	Rarely	sionally	Often

Incorporation and preparation of minutes of directors' meetings				
Routine filings, such as federal tax, social security, employee's withholding tax, state tax, unemployment compensation, annual report				
Handling of building and zoning, liquor (etc.) licenses, permits, franchises, or violations				
Negotiation and drawing up of leases, contracts, etc.				
Minor work for employees (garnishments, etc.)				
Handling personal matters for officers				
Advice on general business policy				
Labor relations (contract renewals, grievances)				
Personnel work (pension plans, etc.)				
Securities and credit financing				
Corporate tax advice				
Patent-trademark				
Anti-trust, unfair competition				
Other (specify)				

38. a. Which of the following activities do you engage in most often?
Next, most often? Next, most often? (*Card 8: Write in only 1, 2, 3.*)

Ranks (1, 2, 3)	Little or No Time (check)
--------------------	---------------------------------

Conferring with and advising clients (in person, on the phone, etc.)	
Doing research on legal problems coming up in your practice (including preparation of legal briefs, memoranda, etc.)	
Negotiating on behalf of client	
Developing clientele and maintaining good will with clients	
Updating and working on case files	
Reading legal material, periodicals, etc., in order to "keep up"	
Conferring with lawyer associates or partners	
Other (specify)	

- b. On which do you spend little or no time? (Check ☒ above.)

39. Have you been in court at all during the past 12 months?

YES _____

NO _____

If yes:

- a. Roughly speaking, how many hours a *week*, on the average do you spend in court? _____ (HOURS)

- b. How is your time in court divided among the following (*Card 9a*):

Waiting around—talking informally
to other lawyers, etc. 07

Filing papers, court calls, motions	70
	00

In trial	70
	0%

In the judge's chambers

(100 %)

(100 %)

- c. In which of these courts have you been during the past 12 months? (Card 9b.)

	If at All (check)	Most of Time (check one)
Magistrates' Court		
Municipal and City Court		
Special Sessions Court		
County Courts		
Surrogates' Court		
Supreme Court		
Federal District Court		
Appellate Courts		
Others (specify)		

- d. In which have you spent the most time? (Check above.)

40. During the past 12 months have you spent any time in the various government agencies or with government officials? YES _____ NO _____

If yes:

- a. Roughly speaking, how many hours a month, on the average, do you spend in such agencies? _____ (HOURS)
 b. How is your time divided among local, state, and federal agencies?
 c. Name the principal agencies at each level with which you have contact.

	b. %	c. Principal Agencies
Local		
State		
Federal		

(100 %)

Clientele

41. During the past 12 months, approximately how many clients have you done some work for—more than just going through a file, or turning over a file to another lawyer? _____

42. During the past 12 months, what proportion of your income was derived from work on business matters, and what proportion from work on personal matters for individuals (matters not arising in course of business)?

- a. Work on business matters _____ %
 b. Work on personal matters _____ %

If work on business matters equals 10 per cent or more of respondent's income, ask questions 43 to 48. If less than 10 per cent, go to question 49.

43. What proportions of your business clients fall into the various categories under each of the following headings (Card 10):

Legal Form of Enterprise:

- Individual proprietorship _____ %
 Partnership _____ %
 Closely held corporation—fewer than 10 shareholders _____ %
 Public corporation _____ %
 (100 %)

Net Worth of Enterprise:

- Under \$20,000 _____ %
 \$20,000 to \$50,000 _____ %
 \$50,000 to \$100,000 _____ %
 \$100,000 to \$500,000 _____ %
 \$500,000 and over _____ %
 (100 %)

- a. What proportion of your business clients have you represented more or less continuously for a year or more? _____ %
 b. What proportion have you represented more or less continuously for over five years? _____ %

44. What are the main kinds of businesses you have done work for in the past 12 months—for example, restaurant owners, real estate developers, dress manufacturers, and so on? (If "all kinds," ask for three main kinds, or three that come most readily to mind.) _____

45. Do you have any annual retainer clients? YES _____
 NO _____
If yes:
 What proportion of your income during the past year was accounted for by all fees from such clients? _____ %
46. Are you an officer or member of the board of directors of any corporation clients? YES _____
 NO _____
If yes:
 a. Of how many? _____
 b. Do you take an active part or are you just a "paper" officer? ACTIVE _____
 "PAPER" _____
47. Do you hold stock or have other financial holdings in any client corporation or enterprise? YES _____
 NO _____
If yes:
 a. How many clients? _____
 b. Were they taken to help finance a client venture? YES _____
 NO _____
48. a. Are you on the lookout for investment opportunities for your business clients? YES _____
 NO _____
 b. Do you assist them in obtaining financing? YES _____
 NO _____
49. Let's consider your individual clients, including those individuals who are principal owners of closely held corporations. Within the past year, what proportion of all the individual clients you have done work for were people for whom you had previously done work, as opposed to people coming to you for the first time?
- | | |
|-----------------------|---------|
| PREVIOUSLY WORKED FOR | _____ % |
| FIRST TIME | _____ % |
| | (100 %) |
50. Of all the individual clients you have done work for in the past year, roughly what proportion are (*Card 11*):
- | | |
|---|---------|
| People earning under \$5,000 a year | _____ % |
| People earning from \$5,000 to \$10,000 a year | _____ % |
| People earning from \$10,000 to \$20,000 a year | _____ % |
| People earning over \$20,000 a year? | _____ % |
| | (100 %) |

51. Do a substantial proportion of these clients fall into a particular occupational category? YES _____
 NO _____
If yes:
 Which occupational category? _____
52. What proportion of your clients are drawn from:
- | | |
|----------------------|---------|
| YOUR NEIGHBORHOOD | _____ % |
| THE REST OF THE CITY | _____ % |
| OUTSIDE THE CITY | _____ % |
| | (100 %) |
53. What proportion of your individual clients are:
- | | |
|------------|---------|
| JEWISH | _____ % |
| CATHOLIC | _____ % |
| PROTESTANT | _____ % |
| | (100 %) |
54. Does a substantial proportion come from a particular national background—for example, Italian, Irish, Polish, Chinese, and so on? YES _____
 NO _____
If yes:
 From which? _____
55. What proportion of your clients are Negro? _____ %
56. What proportion are Puerto Rican? _____ %
57. a. During the past year, what proportion of your income from the practice of law was accounted for by your largest business or individual client, or largest single case? _____ %
 b. By your next largest client or case? _____ %
58. What percentage of your practice in terms of income is drawn from other lawyers on referral? _____ %
- (Questions in following section refer to Associates and Employees (A).)

ASSOCIATES AND EMPLOYEES

In this section let us consider your work for your employer.

Area of Practice and Activities for Employer

A 30. During the last year, how many hours a week, on the average, have you devoted to your employer? _____ (HOURS)

A 31. Looking back over the past year, how was your time given to your employer divided among these areas of practice? Give approximate percentages (Card 6):

Time (%)

*Will, probate-estate, trust

- a. Wills
- b. Probate
- c. Trust
- d. Tax (estate)

Business, Corporate, Commercial

*Real Estate

- a. Residential closings
- b. Commercial
- c. Landlord-tenant
- d. Syndication

Collections

Personal Injury

Matrimonial

Federal (individual) Income Tax

Criminal

Municipal

Patent, Trademark, Copyright

Other (specify)

* If less than 10 per cent, check in which subcategory *most* time is spent.

A 32. Do you consider yourself to be a specialist in any area?

YES _____ NO _____

If yes: In which area? _____

A 33. (If 10 per cent or more in any one: business-corporate-commercial; commercial real estate: estate; or trust practice, patent, trademark, copyright.)

a. How frequently, if at all, do you engage in the following activities for your employer's business, real estate, estate, or trust clients? (Card 7.)

	Never	Rarely	Occasionally	Often
Incorporation and preparation of minutes of directors' meetings				
Routine filings, such as federal tax, social security, employees' withholding tax, state tax, unemployment compensation, annual report				
Handling of building and zoning, liquor (etc.) licenses, permits, franchises, or violations				
Negotiation and drawing up of leases, contracts, etc.				
Minor work for employees (garnishments, etc.)				
Handling personal matters for officers				
Advice on general business policy				
Labor relations (contract renewals, grievances)				
Personnel work (pension plans, etc.)				
Securities and credit financing				
Corporate tax advice				
Patent-trademark				
Anti-trust, unfair competition				
Other (specify)				

- A 34. Which of the following activities do you do most often for your employer? Next most often? Next, most often? (*Card 8: Write in only 1, 2, 3.*)

	Rank (1, 2, 3)	Little or No Time (check)
Conferring with and advising clients (in person, on the phone, etc.)		
Doing research on legal problems coming up in your practice (including preparation of legal briefs, memos, etc.)		
Negotiating on behalf of client		
Developing clientele and maintaining good will with clients		
Updating and working on case files		
Reading legal material, periodicals, etc. in order to "keep up"		
Conferring with lawyer associates or partners		
Other (specify)		

- b. On which do you spend little or no time? (*Check ✓ above.*)

- A 35. Have you been in court for your employer at all during the past 12 months? YES _____ NO _____

If yes:

- a. Roughly speaking, how many hours a *week*, on the average, do you spend in court? _____ (HOURS)
- b. How is your time in court divided among the following (*Card 9a.*)
- | | |
|--|---------|
| Waiting around—talking informally to other lawyers, etc. | _____ % |
| Filing papers, court calls, motions | _____ % |
| In trial | _____ % |
| In the judge's chambers | _____ % |
| | (100 %) |

- c. In which of these courts have you been during the past 12 months? (*Card 9b.*)

	If at All (check)	Most of Time (check one)
Magistrates' Court		
Municipal and City Court		
Special Sessions Court		
County Courts		
Surrogates' Court		
Supreme Court (State)		
Federal District Court		
Appellate Courts		
Others (specify)		

- d. In which have you spent the most time? (*Check above.*)

- A 36. During the past 12 months have you spent any time for you employer in the various govern- YES _____ ment agencies or with government officials? NO _____

If yes:

- a. Roughly speaking, how many hours a *month* on the average do you spend in such agencies? _____ (HOURS)
- b. How is your time divided among local, state, and federal agencies?
- c. Name the principal agencies at each level with which you have contact.

b. %

c. Principal Agencies

Local
State
Federal

(100 %)

If associate or employee devotes less than one-third of his time to his own practice, go to question 59. If he devotes one-third or more of his time to his own practice ask questions 30 to 58 as to his own practice.

ALL RESPONDENTS (To end of questions)

59. What was your net personal income before taxes from the practice of law in the calendar year 1959? (Card 12.)

	Law	All
Under \$2,500		
\$2,500 to \$4,999		
\$5,000 to \$6,999		
\$7,000 to \$8,999		
\$9,000 to \$11,999		
\$12,000 to \$14,999		
\$15,000 to \$19,999		
\$20,000 to \$34,999		
\$35,000 to \$49,999		
\$50,000 to \$74,999		
\$75,000 and over		

- a. What proportion of this was salaried income? _____ %
 b. What was your total net income before taxes from *all* sources? (Check above.)

60. In addition to your legal practice, are you also: (Check.)

	Yes	No
a. An accountant		
b. An insurance broker		
c. A real estate broker		

If yes to any of these:

What proportion of your total net income is derived from these activities? _____ %

61. Are you actively engaged in any *other* businesses? YES _____
 NO _____

If yes:

- a. What businesses? _____
 b. Your function (position)? _____
 c. What proportion of your total net income is derived from such interests? _____ %

62. During the past 12 months, how many hours a month did you spend on unpaid legal services to civic, charitable, and other such organizations? _____ PER

WEEK; MONTH; YEAR

The Interview Schedule

63. During the past 12 months, how many hours a month did you spend on unpaid legal services to individuals (from whom you did not expect to be paid)? _____ PER

WEEK; MONTH; YEAR

64. Are your present earnings more or less than you expected three or four years ago you would be earning today? MORE _____
 LESS _____
 SAME _____

If more or less:

How much more (or less)? \$ _____

65. Do you think you have reached your maximum income? YES _____
 NO _____

If no:

a. How many years do you think it will take to reach it? _____ (YEARS)

b. How much do you think it will be? \$ _____

III. Organizational Participation

Let me ask you now a few questions about your participation in professional and other organizations.

66. a. To which bar organizations do you belong?

	a. Belong (check)	b. Section (check)	c. Committee (check)	d. Office (check)
American Bar Association				
New York State Bar Association				
Association of the Bar of the City of New York				
New York County Lawyers' Association				
Bronx County Bar Association				

- b. Are you a member of any section? (If yes, check above.)
 c. Are you on any committees? (If yes, check above.)
 d. Have you held office in any of these associations? (If yes, check above.)

67. Would you say—

- a. That both the Association of the Bar of the City of New York and the New York County Lawyers' Association speak for the average lawyer? _____
- b. That one does so more than the other? _____
- c. That neither does? _____

If one more so than the other:

Which one? A.B.C.N.Y. _____
N.Y.C.L.A. _____

68. Do you think that either association primarily represents any one group of lawyers? YES _____
NO _____

If yes:

- a. Which group? _____
- b. In which bar association? A.B.C.N.Y. _____
N.Y.C.L.A. _____
BOTH _____

69. Here is a list of bar association activities. (Card 13.)

- a. In which of these activities do you think the bar associations should engage?
- b. In which are they now doing a good job?
- c. In which are they *not* doing a good job?

	a. Should Engage	b. Good Job	c. Not a Good Job	d. Don't Know
Defining and clarifying ethical standards—giving guidance on ethical problems				
Disciplining lawyers—enforcing professional standards, censuring, etc.				
Improving the economic condition of the bar				
Helping lawyers to keep up on the law				
Public relations—helping to create a more favorable public image of the bar				
Participating in efforts at political reform				
Making recommendations in the selection of judges				
Efforts at judicial reform				
Working for improvements in the law (local, state, federal)				

Defining and clarifying ethical standards—giving guidance on ethical problems

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Participating in efforts at political reform

Making recommendations in the selection of judges

Efforts at judicial reform

Working for improvements in the law (local, state, federal)

70. a. Do you think the bar associations should establish minimum fee schedules? YES _____
NO _____
- b. Do you think the bar associations should promote the regulation of contingent fees? YES _____
NO _____

71. Would you favor an integrated bar (i.e., compulsory membership in a state bar association) for New York? YES _____
NO _____

Why? _____

72. Are there any civic, religious, or other organizations in which you are at present *active* i.e., where you attend meetings more or less regularly? YES _____
NO _____

If yes:

What are the names of the organizations?

1. _____ 3. _____ 5. _____
2. _____ 4. _____ 6. _____

73. Are you active in local politics? YES _____
NO _____

If no:

Were you ever active? YES _____
NO _____

If yes to either:

In what capacity—for example, district or precinct captain, county committeeman, candidate for office, and so on?

74. Are you active in state or national politics? YES _____
NO _____

If no:

Were you ever active? YES _____
NO _____

If yes to either:

In what capacity? _____

75. Do you consider yourself a Democrat or a Republican?

DEMOCRAT _____
 REPUBLICAN _____
 INDEPENDENT DEMOCRAT _____
 INDEPENDENT REPUBLICAN _____
 OTHER (specify) _____

If "independent"

Which way do you lean, toward the Democrats or Republicans?
 (Check above.)

IV. Professional Attitudes

I would like to ask you now some general questions about lawyers and the legal profession.

76. a. Would you say a lawyer is more like a doctor or more like a businessman? DOCTOR _____
 BUSINESSMAN _____

b. Why? _____

77. a. How would you rank the following occupational groups with respect to how important a contribution they make to society?
 (Card 14. 1=Most important, etc.)

b. How does the public rank these occupations in terms of prestige?
 (1=Most prestige, etc.)

Contribution	Rank (1-5)	Prestige	Rank (1-5)
--------------	---------------	----------	---------------

Teachers	
Engineers	
Lawyers	
Businessmen	
Doctors	

Teachers	
Engineers	
Lawyers	
Businessmen	
Doctors	

		L	D
78. a. What proportion of lawyers would you say are generally doing less than a competent job for their clients? (Interviewer check.)	0-10 %	_____	_____
	11-20	_____	_____
	21-30	_____	_____
	31-40	_____	_____
b. What is your guess about doctors? (Interviewer check.)	41-50	_____	_____
	51-60	_____	_____
	61-70	_____	_____
	71-80	_____	_____
	81-90	_____	_____
	91-100	_____	_____
	CAN'T SAY	_____	_____

79. What do you admire *most* in other lawyers? _____

80. What do you like *least* in other lawyers? _____

81. When do you feel *most* like a lawyer? _____

82. How important are political connections for a lawyer with respect to (Card 15.):

Very Somewhat Not

- a. How he is treated in court
 b. How he is treated in government agencies
 c. Court appointments (guardian ad litem, etc.)
 d. Getting business, generally

83. a. How much competition is there among lawyers for law business? VERY LITTLE _____
 SOME _____
 A GREAT DEAL _____

If some or a great deal:

Have you been hurt by it? YES _____
 NO _____

b. As far as you know, is there more competition among lawyers than among doctors? YES _____
 NO _____
 Why? _____

84. How much competition is there from nonlawyers for law business?
- | | |
|--------------|-------|
| VERY LITTLE | _____ |
| SOME | _____ |
| A GREAT DEAL | _____ |

If some or a great deal:

- a. From which groups mainly? _____
- b. Have you been hurt by it? YES _____
- NO _____

85. How often have clients exerted pressure for you to engage in practices contrary to your standards?
- VERY OFTEN _____
 SOMETIMES _____
 RARELY _____
 NEVER _____

86. a. How satisfied are you with your own field of practice?

VERY SATISFIED _____

MODERATELY SATISFIED _____

SOMEWHAT DISSATISFIED _____

OR _____

VERY DISSATISFIED _____

- b. How satisfied are you with the practice of law generally? (*Check above.*)

- c. If at all dissatisfied:
Why? _____

87. What are the chances of getting to the top for a young man of modest means just starting out in the practice of law? Would you say they are—
- | | |
|-----------|-------|
| POOR | _____ |
| FAIR | _____ |
| GOOD | _____ |
| EXCELLENT | _____ |

88. Would you still be a lawyer if you had it to do all over again?
(Interviewer check.)
- | |
|----------------------|
| DEFINITELY YES _____ |
| QUALIFIED YES _____ |
| NO _____ |

(Interviewer check.)

(Note all qualifications or comments.)

If no, or qualified yes:

What occupation would you now prefer? _____

89. Here are a number of recommendations that one or another group has advanced for dealing with certain problems of special interest to law-

yers. Would you please tell me whether you agree or disagree with each statement? (Card 16.)

Strongly Agree	Agree	Can't Say	Dis- agree	Strongly Disagree
-------------------	-------	--------------	---------------	----------------------

- a. State and local judicial positions should be filled by appointment rather than by election.
- b. The grounds for divorce in New York should be liberalized.
- c. Losses arising out of injuries in automobile accidents should be handled through a program like Workmen's Compensation.
- d. The part-time, night law school should be eliminated.
- e. Laws preventing racial discrimination in housing should be more strictly enforced.
- f. There should be more effective protection of individual rights in loyalty-security proceedings.
- g. The death penalty should be abolished in New York State.
- h. The U. S. should grant compulsory jurisdiction to the World Court over disputes arising between the U. S. and other nations, and should grant the Court the right to decide which matters fall under its jurisdiction.
- i. There should be a tax-supported program to provide free or low cost legal services to needy individuals in criminal and civil matters.

90. a. Of the present United States Supreme Court justices, whom do you most admire? _____
- b. Of all the justices of the Supreme Court, past or present, whom do you most admire? _____

V. Professional Ethics

Here are a number of hypothetical situations which a lawyer might face. With respect to each we want to know: (1) whether such a situation ever arises in your practice; (2) what you would do under the circumstances; and (3) whether you approve or disapprove of a lawyer taking a particular course of action. It should be emphasized that we are not interested *per se* in what the canons or official rules may be; we want rather to get an idea of what the sense of the bar is on these matters, and how the bar *in fact* deals with these problems.

91. Lawyer A represents the buyer in a real estate transaction in connection with which he helps to obtain a title insurance policy for his client. After the transaction is effected, the title company sends A its usual 15 per cent commission on the price charged the client for services rendered. (Card 17.)
- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____
- b. Which of the following alternatives comes closest to what you have done (would do) in this situation?
1. Accept the commission but take it into consideration in setting the client's fee. _____
 2. Accept the commission and inform the client (or with client's prior approval). _____
 3. Accept the commission but deduct the amount from the fee and indicate it on the client's bill. _____
 4. Accept the commission without informing the client. _____
 5. Refuse the commission. _____
- c. Which alternative do you approve of? _____
- d. Which do you disapprove of? _____
92. Lawyer A is given authority by his client to sell a certain piece of real estate for a certain sum of money. After negotiating with Attorney

Jones, representing a prospective buyer, an oral agreement is reached, A giving Jones his word that Jones's client has the deal. Before any documents are signed, A's client has found a purchaser willing to pay a greater amount and, learning that there is no written agreement with Jones, refuses to permit A to go ahead with the deal with Jones. A calls Jones and, explaining the situation, asks to be released. Jones refuses. (Card 18.)

- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

c. *If never:*

What would you do? _____

- c. Suppose A proceeds to represent his client on the deal with the new purchaser at the higher price, would you—
- | | |
|-----------------|-------|
| APPROVE | _____ |
| DISAPPROVE | _____ |
| NEITHER APPROVE | _____ |
| NOR DISAPPROVE | _____ |

93. Lawyer A, attorney for the receiver of the Doe Corporation, negotiated a sale of all of the corporation's property to a syndicate for a large sum of money. The sale was approved by the court and was at the best price obtainable. The syndicate then turned over the property to a new corporation. Prior to the receiver sale, the syndicate had a general understanding with A that he should receive an interest in the new corporation. Some months later, after the receiver sale, A is given the opportunity, which he exercises, of purchasing stock of the new corporation for which he pays the same proportionate amount as members of the syndicate. (Card 19.)

- a. How often in the past five years have you been in a position where an offer like this came up? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

If never:

If it came up, what would you do? _____

- c. With respect to A's purchase of stock in the new corporation, do you—
- | | |
|-----------------|-------|
| APPROVE | _____ |
| DISAPPROVE | _____ |
| NEITHER APPROVE | _____ |
| NOR DISAPPROVE | _____ |

94. Lawyer A learns that his client is planning on purchasing a large amount of stock in a small, privately-held company which will result in a substantial increase in the value of the stock of that company. Without informing his client, A has a friend purchase stock of the company for him in the friend's name. (Card 20.)
- How often in the past five years has an opportunity like this come up in your practice?

NEVER	_____
SOMETIMES	_____
OFTEN	_____
 - If ever:

What have you done? _____

If never:

If it came up, what would you do? _____
 - With respect to A's purchase of stock, do you—

APPROVE	_____
DISAPPROVE	_____
NEITHER APPROVE NOR DISAPPROVE	_____
95. Lawyer A's client, without A's knowledge, failed to report a sizable amount of income on his tax return. The client was subsequently contacted by an agent of the Bureau of Internal Revenue who offered to overlook the matter for a sum of money. The client tells A that he (the client) is determined to make the payment. (Card 21.)
- How often in the past five years has a situation like this come up in your practice?

NEVER	_____
SOMETIMES	_____
OFTEN	_____
 - Which of these actions comes closest to what you have done (or would do) under these circumstances:
 - Lawyer A tells the client that it would be very risky to make the payment, but if he wants to, that's his business. _____
 - Lawyer A tells the client that if he pays off the Revenue agent he will no longer be able to represent him. _____
 - Lawyer A strongly urges his client not to make the payment, but continues to represent him on other matters. _____
 - Lawyer A tells the client that if he wants to make the payment that is his business, but not to tell A anything about it. _____
 - Which alternative do you approve of? _____
 - Which do you disapprove of? _____

96. Lawyer A is negotiating a personal injury claim with an insurance company adjuster. The adjuster, with whom A has had previous dealings, is under pressure from his supervisors to hold down the amount of recovery of this particular claim and indicates this fact to A, saying that if A will cooperate this time he (the adjuster) will be able to take care of him next time. The offer is in striking distance of a fair amount. (Card 22.)
- How often in the past five years has a situation like this come up in your practice?

NEVER	_____
SOMETIMES	_____
OFTEN	_____
 - If ever:

What have you done? _____

If never:

If it came up, what would you do? _____
 - Suppose A decides to go along with the adjuster, would you—

APPROVE	_____
DISAPPROVE	_____
NEITHER APPROVE NOR DISAPPROVE	_____
97. Lawyer A, who is defending Jones on a criminal assault charge, learns from the district attorney that the latter's case is so weak he probably will not be able to get a conviction. A withholds this information from Jones, knowing that if Jones finds this out he will stop paying installments on A's fee. (Card 23.)
- How often in the last five years have you been faced with a problem like this?

NEVER	_____
SOMETIMES	_____
OFTEN	_____
 - If ever:

What have you done? _____

If never:

If you were faced with it, what would you do? _____
 - With respect to what A did, do you—

APPROVE	_____
DISAPPROVE	_____
NEITHER APPROVE NOR DISAPPROVE	_____
98. A young man at the beginning of a very promising career in public service is picked up by the police for making homosexual advances to

another man. The father of the young man comes to Lawyer A and begs him to do what he can to have the charge removed from the books, believing it would ruin his son's career. Lawyer A knows that the charge can be removed by making a substantial payment to someone in the police department. (Card 24.)

- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

If never:

If it came up what would you do? _____

- c. Suppose A makes the payment, would you—
APPROVE _____
DISAPPROVE _____
NEITHER APPROVE _____
NOR DISAPPROVE _____

99. A previous client of Lawyer A refers another client to A and indicates that he expects some small compensation from A for his services. (Card 25.)

- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____

b. Which of these actions comes closest to what you have done (or would do) under these circumstances:

1. Lawyer A gives the previous client a small amount of money. _____
2. Lawyer A gives the previous client a small gift, or takes him out to dinner. _____
3. Lawyer A gives the previous client legal advice, or reduces his fee the next time he represents him. _____
4. Lawyer A refuses to give the previous client any compensation whatsoever for his services. _____

c. Which alternative do you approve of? _____

d. Which do you disapprove of? _____

100. Lawyer A sends out Christmas cards to all his active clients. (Card 26.)

a. Do you do this? YES _____

NO _____

b. Is this something you—
APPROVE _____

DISAPPROVE _____

NEITHER APPROVE _____

NOR DISAPPROVE _____

101. Smith and Jones, partners in several business ventures, have been represented by Lawyer A on both business and personal matters. A controversy has arisen between Smith and Jones, and Smith retains another attorney to commence legal action to dissolve the business partnership. Jones asks A to represent him. (Card 27.)

- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

If never:

If it came up, what would you do? _____

- c. Suppose Lawyer A decides to represent Jones, would you—
APPROVE _____
DISAPPROVE _____
NEITHER APPROVE _____
NOR DISAPPROVE _____

102. A woman comes to Lawyer A seeking a divorce. Her husband has agreed to a consent decree on grounds of adultery, although, in fact, no such act was committed. Lawyer A knows this. The client asks A to take the case. (Card 28.)

- a. How often in the past five years has a situation like this come up in your practice? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

If never:

If it came up, what would you do? _____

- c. Suppose A agrees to take the case, would you—
APPROVE _____
DISAPPROVE _____
NEITHER APPROVE _____
NOR DISAPPROVE _____

103. Lawyer A refers a matter to Lawyer Jones for which A accepts a one-third referral fee. A's only connection with the case has been to hear the client's story, telephone to Jones and inform him that he is sending over the client concerned. A has no further contact with the client or with Lawyer Jones in this matter. (Card 29.)

- a. How often in the past five years have you been offered a referral fee under these circumstances? NEVER _____
SOMETIMES _____
OFTEN _____

b. *If ever:*

What have you done? _____

If never:

If it came up, what would you do? _____

- c. With respect to A's acceptance of the referral fee, do you— APPROVE _____
DISAPPROVE _____
NEITHER APPROVE _____
NOR DISAPPROVE _____

104. a. Do you happen to know what the canons or opinions dealing with the canons have to say about accepting commissions on title insurance policies? YES _____
NO _____

If yes:

What is the official position? _____

b. Do you happen to know what the canons or opinions dealing with the canons have to say about representing a party in a controversy with a previous client? YES _____
NO _____

If yes:

What is the official position? _____

105. Here are some commonly voiced opinions about the canons of ethics. Do you strongly agree, agree, disagree, or strongly disagree with each of these statements? (Card 30.)

Strongly
Agree Agree Can't
Say Dis-
agree Dis-
agree

a. The canons of ethics need much more active enforcement by the bar and the courts.

b. The canons restrict the smaller practitioner but the large, established firms get around them.

c. Lawyers should not be restricted by special rules any more than businessmen are.

d. The canons should be liberalized to permit certain practices now forbidden.

106. How often, during the past few years, has a question of professional ethics come to your attention under each of the following circumstances? (Card 31.)

Less
Than Once or Several One or
Once Twice Times More
Never a Year a Year a Year Times a
Month

a. While reading a legal journal or periodical

b. During informal discussions with other attorneys

c. In the course of handling a case or matter

d. Other (specify)

121. What was your father's approximate income at that time (or before, if deceased then)? (Card 32.)
- | | |
|----------------------|-------|
| UNDER \$1,000 | _____ |
| \$ 1,000 TO \$ 2,499 | _____ |
| \$ 2,500 TO \$ 4,999 | _____ |
| \$ 5,000 TO \$ 6,999 | _____ |
| \$ 7,000 TO \$ 8,999 | _____ |
| \$ 9,000 TO \$11,999 | _____ |
| \$12,000 TO \$14,999 | _____ |
| \$15,000 TO \$19,999 | _____ |
| \$20,000 TO \$29,999 | _____ |
| \$30,000 AND OVER | _____ |

122. How many years of schooling did your father have? (Card 33.)

NONE	_____
SOME GRAMMAR SCHOOL	_____
GRAMMAR SCHOOL GRADUATE	_____
SOME HIGH SCHOOL	_____
HIGH SCHOOL GRADUATE	_____
SOME COLLEGE	_____
COLLEGE GRADUATE	_____
PROFESSIONAL SCHOOL	_____

123. What are the present occupations of your brothers and sisters? _____

124. At the time you entered practice, did you have any relatives (including members of your immediate family) who were lawyers, doctors, dentists, engineers, teachers, or other professionals? YES _____ NO _____

If yes:

- a. How many? _____
- b. In which profession(s)? _____

125. What is your marital status?
- | | |
|-------------|-------|
| MARRIED | _____ |
| SINGLE | _____ |
| DIVORCED OR | _____ |
| SEPARATED | _____ |
| WIDOWED | _____ |

126. How many children do you have? _____
- a. If any: What are their ages? _____
- b. If any children over 16: What are they doing? (If in college or professional school, get name of institution; if working, get occupation.) _____

127. What legal periodicals or journals do you read regularly? _____

128. What other magazines do you read regularly? _____

129. Where do you now reside? _____ (BOROUGH OR TOWN)

Interviewer's Remarks

1. Breakdown of total time spent on the interview:

- a. Time entered office _____
- b. Time interview actually began _____
- c. Time interview ended _____
- d. Time left suite _____
- Total time spent in the suite (a to d): _____
- e. Total traveling time _____
- f. Total editing time _____
- g. Other (specify) _____
- Total time spent on the interview (a to g): _____

2. Expenses for the interview:

- a. Carfare _____
- b. Telephone calls _____
- c. Other (specify) _____
- Total expenses for the interview _____

3. Describe the physical appearance and manner of the respondent. _____

4. What was the respondent's reaction to the interview generally (i.e., in terms of cooperativeness, frankness, interest in the study)? _____
5. Note any questions or remarks made by the respondent about the study, and indicate how you answered them. _____
6. Note the nature of any interruptions occurring during the course of the interview. _____
7. Was anyone else present (or sitting in for a time) at the interview? YES _____
NO _____
If yes:
 - a. Who? _____
 - b. What effect on the interview? _____
8. Was there any indication of a *suite reaction* to the interviewing, or of an "impact" of the study on the suite? YES _____
NO _____
If yes:
Please describe it. _____
9. What was the respondent's demeanor during the ethics hypotheticals, and how candid do you think he was in his answers? _____
10. How would you rate the respondent in terms of "ethics"? (Circle appropriate number on scale below.)

High		Mid.		Low
1	2	3	4	5

Index

Index

- AGENCIES: ethical conduct and contact with, 166; lawyers' contact with, 8, 16, 17, 177, 181; levels of, 16, 17
 American Bar Association, 5, 86, 179, 180
 Areas of practice: business, 11, 12; client status and, 76-78; criminal, 13; distribution of lawyers by, 12; matrimonial, 13; personal injury, 11, 12; probate, 11, 12; real estate, 11, 12-13, 83n7; stratification and, 25-26; violation and, 76-78; workmen's compensation, 13
 Association of the Bar of the City of New York, 36, 86, 150, 160
- BACK, Kurt, 117n
 Bar norms, 51-52
 Barton, Allen H., xxviii
 Becker, Howard S., 118n
 Berelson, Bernard, xxviii, 38n
 Blake, Judith, 174, 182n
 Bolstein, Arthur, 85n
 Brim, Orville G., Jr., xxix
Brotherhood of Railroad Trainmen v. Virginia, xxiv, 178, 179, 180
 Business. *See* Areas of practice; Clients
- CAHN, Edgar S., 182n
 Cahn, Jean C., 182n
 Canons of professional ethics, 3-5; American Bar Association study of, 5
 Caplovitz, David, xxviii
 Captivity by clients, 8, 74-76
 Carlin, Jerome E., xx, xxi, 10n, 37n, 38n, 182n
 Cheatham, Elliott E., 10n, 62n
 Clientele: and ethical conduct, 166; and stratification, 23-25, 120; general characteristics of, 13-16; insecurity of, 66-71; instability of, 66-68
 Client-related pressures: and high conformity, 79-81; and stratification, 120-122; and violation, 78
 Client-Related Pressures Index, 78, 205-206
 Client Status Index, 23-25, 202-203
 Clients: area of practice and status of, 76-78; business, 13, 14; captivity by, 8, 74-76; exploitability and expendability of, 71-73; individual, 13, 16; involvement with, 8, 75-76, 80-81, 82nn3, 4; opportunity to exploit, 71-73 (definition, 82n3); pressure from, 73-76 (validation of measure, 82n6); relations with, and conformity to higher-level norms, 79-81; violation and status of, 66-67, 76-78
 Cohen, Albert K., 118n, 182n
 Coleman, James S., 117n
 Colleague control, 9, 96, 107, 116-117, 167
 Colleagues. *See* Office colleague group
 Columbia Law School, xxvii
 Competition, 7, 67-69
 Conard, Alfred F., xxix

- Conformity to higher level norms: client relations and, 78-81; court and agency contact in stratified offices, 112, 113; court contact and, 94; elite bar association membership and, 112-115; inner disposition and, 139; stratification and, 122-124
- Control Involvement Index, 207
- Cottrell, Leonard S., Jr., xxvii
- Court and Agency Contact Index, 27, 207-209
- Court contact: and conformity to higher-level norms, 94; ethical conduct and, 166; violation and, 93
- Court culture: and court level, 87-93; ethical attitudes and exposure to, 90-93
- Courts: ethical pressures and levels of, 85-87; judicial discretion and levels of, 86-87; judges' attributes and levels of, 85-86, 87-88; lawyers' contact with, 8, 15, 16, 93, 94, 166; levels of, 15, 16
- Craig, Walter E., 179
- DAVIS, James A., 117n
- Davis, Kingsley, 174, 182n
- Deviant behavior. *See* Violation
- Disbarment, 150, 151, 155, 156, 157, 158, 159, 160, 161, 163nn2, 6, 164n13
- Disciplinary measures: ethical conduct and formal, 170; formal, 6-7, 150-162
- Discussion of ethical questions. *See* Interaction; Ethical norms, neutralization of
- Drinker, Henry S., 10n, 62n
- Durkheim, Emile, 65n
- EFFECTIVE Client Pressure Index, 204-205
- Effective Opportunity to Exploit Clients Index, 204
- Elite lawyers, 22, 23, 37, 122, 168-169; insulation from pressures to violate, 122, 168-169, 173, 177; isolation from lower strata, 37, 181-182; practice of, 27; religion and recruitment of, 31-32, 39n24
- Elite norms, 51-52
- Ethical Behavior Index: definition of, 54; construction of items in, 62n7; the problem of class bias and, 57; responses to items in, 194-200; selection of items in, 42-43, 46-47, 62nn8, 11, 63n14; synopsis of items included in, 44-45; validity of, 42-46, 57-61, 63n14
- Ethical Climate Index, 209-211
- Ethical climate of offices, 96-103, 104-105; and high conformity, 109-111; and inner disposition, 102-103; and practice pressures, 101-102; and violation, 98-101, 102, 103; facilitation by office sociability, 99-101
- Ethical concern. *See* Inner disposition
- Ethical Concern Index, 61, 133-135, 213-214
- Ethical conduct. *See* Ethical norms, adherence to; High conformity; Violation
- Ethical norms: adherence vs. acceptance of, 57, 65n19; clientele insecurity and neutralization of, 68-71; differential acceptance of, 47-48; differential adherence to, 53-57, 61; hierarchy of, 49, 51; nature of, 165-166; neutralization of, 68-71, 81n1, 91, 138; salience of, 43, 46-47; social background and adherence to, 124, 169; sources of, 42; stratification and acceptance of, 49-52; types of (bar, paper, elite), 51-52. *See also* Conformity; Professional norms; Violation
- Ethnicity: and adherence to ethical norms, 124-130, 131-132; changing composition of the bar by, 20-21; and changing enrollment in mixed law schools, 21, 22
- Etzioni, Amitai, xxviii
- Extension of legal services, 178-181

- FACILITATING processes. *See* Interaction;
- Ethical norms, neutralization of
- Fagen, Melvin J., 38n
- Faris, Robert E. L., 182n
- Festinger, Leon, 117n
- Financial Involvement Index, 206-207
- Freidson, Eliot, 4, 10n
- GELB, Patricia, xxix
- Gellhorn, Walter, xxix
- Gideon v. Wainwright*, 178
- Gollin, Albert E., xxviii
- Goode, William J., 182n
- Goodman, Leo A., 64n
- Goslin, David A., xxix
- Grodzins, Ruth, xxix
- HALE, William H., 37n
- Hazard, Geoffrey C., Jr., xix-xxvi, xxix
- Herman v. Acheson*, 62n
- High conformers, 55, 56
- High conformity. *See* Conformity to higher level norms
- Higher level norms. *See* Ethical norms, types of; Professional norms
- Hirshfeld, Sarina, xxviii
- Howard, Jan, 182n
- Hughes, Everett C., 177, 182n
- INNER disposition: and age, 142-143; and distribution of work and rank in stratified offices, 140-142, 148n2; and ethical conduct, 169-170; and high conformity, 139; and neutralization of ethical norms, 172; and office climate, 102-103, 110-111; and placement in the status hierarchy, 172-173; and practice pressures, 141-142; and professional training, 143-146; and resistance to situational pressures to violate, 136; and social background, 146-147; and stratification, 140-141; and violation, 135-139, 148; definition of, 133-135
- In re Anastopolo*, 162n
- Insecurity of practice, 7, 66-71, 166, 177, 181
- Interaction: and adoption and reinforcement of ethical attitudes, 91, 92, 93, 99-101, 108-109, 137-139, 171-172. *See also* Ethical norms, neutralization of
- JAEGER, Gertrude, xxviii
- Judges: absence of mobility among, 89; characteristics of, by court level, 85-86, 87-88, 89
- KARP, Lois, xxix
- Kaufman, Herbert, 15n, 95n
- Kendall, Patricia L., 10n, 149n, 182n
- Kruskal, William H., 64n
- LADINSKY, Jack, 10n, 39n
- Law office. *See* Office colleague group; Peer-group offices; Stratified offices; Suites
- Law schools: changing enrollment in mixed, 21-22; quality ratings of, 19, 20; religion and admission to, 38n23
- Leeds, Stephen J., xxviii
- Legal education, functions of, 5. *See also* Law schools
- Lendt, Lee, xxviii
- Level of Court and Agency Contact Index, 27, 207-208
- Levin, Martin L., 117n
- Lizars, Jane, xxix
- Lortie, Dan C., 37n
- MACKINNON, Frederick B., 62n
- Market for legal services, 7-8, 69; need for rationalizing and expanding, 181
- Matza, David, 81n, 118n, 173, 182n
- McCalpin, F. William, 182n
- Medical education, functions of, 4-5
- Mendlovitz, Saul H., xxviii

Merton, Robert K., 10*n*, 148*n*, 149*n*, 182*n*
 Messinger, Sheldon L., xxviii
 Meyersohn, Rolf, xxviii
 Michael, John A., 117*n*
 Mobility: absence among judges, 89;
 and social background characteristics
 of lawyers, 32-34
 Moore, Mario, xxviii
 Moral division of labor, 177

NATIONAL Conference on Law and
 Poverty, 180
 National Legal Aid and Defender Asso-
 ciation, 180
 Neutralization. *See* Ethical norms, neu-
 tralization of
 New York County Lawyers' Associa-
 tion, 36, 160
 Nixon, Julian H., xxix
 Nonet, Philippe, xxviii
 Norms. *See* Ethical norms; Professional
 norms

OFFENSE. *See* Disciplinary measures;
 Violation
 Office climate. *See* Ethical climate
 Office colleague group, 7, 17-18, 96,
 116. *See also* Peer-group offices; Strati-
 fied offices; Suites
 Office of Economic Opportunity, 180
 Office Sociability Index, 99-100, 211
 O'Gorman, Hubert J., 37*n*

PAPER norms, 51-52
 Parental Socioeconomic Status Index,
 201
 Parsons, Talcott, 182*n*
 Peer-group offices: and ethical conduct,
 167; support for norm violation in,
 107-109, 116
People v. McCallum, 62*n*
 Personal injury. *See* Areas of practice
 Phillips, Ellis L., Jr., xxvii
 Pike, James A., 10*n*

Powell, Lewis F., Jr., 182*n*
 Probate. *See* Areas of practice
 Professional misconduct: traditional ap-
 proaches to, 4-7. *See also* Violation
 Professional norms, 4, 6, 52, 79, 155,
 156, 161, 165
 Prisig, Maynard E., 62*n*
 Punishment. *See* Disciplinary measures;
 Sanctions

RANK in office, 80, 111, 112, 113, 114,
 116, 117, 213
 Reader, George G., 10*n*, 149*n*, 182*n*
 Real estate. *See* Areas of practice
 Recruitment: and stratification, 28-32;
 into the bar, 20-22; into the elite, 28-
 32; into the elite, and religion, 31-32,
 39*n*24
 Religion: and law school admission,
 38*n*23; and rank in stratified offices,
 106-107, 118*n*13; and recruitment
 into the elite, 31-32, 39*n*24; changing
 composition of the bar by, 20, 21; of
 lawyers, 19
 Rohan, Patrick J., xxix
 Rosenberg, Maurice, xxix
 Rueshemeyer, Dietrich, xxix
 Russell Sage Foundation, xxvii

SAMPLE design, 8-9, 185-193
 Sanctions: severity of formal, 155-160;
 visibility of offense and severity of,
 159, 162
 Sayre, Wallace S., 15*n*, 95*n*
 Schacter, S., 117*n*
 Selznick, Philip, xxviii
 Shafroth, Will, 162*n*
 Shapiro, Clara, xxix
 Sills, David L., xxviii, 117*n*
 Simmel, Arnold, xxix
 Simon, Rita James, 148*n*
 Situational Inducements to Violate In-
 dex, 122, 209
 Size of firm, 18, 22-29, 32-36, 49-50,
 52, 55, 56, 58-61, 65*n*19, 88-89, 119-

124, 126-130, 140-141, 168, 169. *See*
also Stratification of the bar
 Smigel, Erwin O., 37*n*, 40*n*, 148*n*
 Social background: and adherence to
 ethical norms, 124, 169; and inner
 disposition, 146-147; and mobility
 among lawyers, 32-34; and stratifica-
 tion, 28-32, 33, 38*n*22, 124, 169;
 and training 18-22. *See also* Ethnicity;
 Religion.
 Socialization: and deviant behavior,
 173-176; and disposition to conform,
 4-5; and functions of legal education,
 5; and functions of medical educa-
 tion, 4-5
 Somers, Robert H., 130*n*
 Stability of Clientele Index, 203
 Status hierarchy of the bar. *See* Strati-
 fication
 Stratification: and acceptance of ethical
 norms, 49-52; and area of practice,
 25-26; and bar association member-
 ship, 36; and clientele, 23-25; and
 client-related pressures, 120-122; and
 court and agency contact, 26-27; and
 distribution of ethical pressures, 167-
 169; and high conformity, 122-124;
 and inner disposition, 140-141; and
 integrity of lower courts and agen-
 cies, 177; and lawyers' incomes, 27;
 and mobility of lawyers, 32-34; and
 recruitment of lawyers, 28-32; and
 selective development of law, 178;
 and situational inducements to vio-
 late, 171; and social background char-
 acteristics of lawyers, 28-32, 38*n*22;
 and social distance, 34-36; and un-
 even character of legal services, 177-
 178; and violation, 120-122; of the
 bar, 22-36; size of firm as defining
 characteristic of, 22-23
 Stratified offices: and ethical conduct,
 167; division of labor and rank in,
 105-107; formal control in, 103-107;

office size, rank and high conformity
 in, 111; religion and rank in, 106-
 107, 118*n*13
 Suites, 9, 18, 186, 187, 188, 189, 190
 Sykes, Gresham M., 81*n*

THIELENS, Wagner P., Jr., xxviii, 148*n*
 Tinnelly, Joseph T., 10*n*
 Typology of Office Structure, 211-213

UNDERGRADUATE training, 19; changes
 in, 21

VIOLATION: area of practice and, 76-78;
 client pressure and, 73-76; client-
 related pressures and, 78; client status
 and, 66-67, 76-78; court contact and,
 93; deterrence of, 161; ethical climate
 of office and, 98-101; formal com-
 plaints of, 151, 153; inner disposition
 and, 135-139, 148; level of court and
 agency contact and, 84; official charges
 of, 152-155; opportunity to exploit
 clients and, 71-73; situational induc-
 ements to violate and, 120-122; strati-
 fication and, 120-122; support for, in
 peer-group offices, 107-109, 116; visi-
 bility of, 158-159, 162, 170

Violators, 55, 56; characteristics of offi-
 cially disciplined, 151-152; deter-
 rence of, 161

Visibility of Offense Index, 159, 214

Voorhees, Theodore, 182*n*

WALTER E. Meyer Research Institute
 of Law, xxviii

Warkov, Seymour, 39*n*

Watson, Andrew S., 10*n*

Wood, Arthur L., 37*n*

