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AND THE CHANNELING OF CLIENTS

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I. Introduction

Since 1965 when the legal services program under the Economic Opportunity Act¹ came into being, there has been extensive development of efforts to expand the definition of legal rights. Concomitantly, there has been a rapid blooming of experiments to champion these rights through alternative delivery systems for providing lawyer services in counseling, drafting, and representation of clients. In ten years we have seen the development of civil rights and race relations law, housing and education and health law, welfare rights, women's rights, and most recently, environmental law--in short, in poverty, consumer and public interest law broadly.² And to secure these rights and broaden representation of legal interests, we have witnessed conscious and unconscious delivery experiments: public and private neighborhood law offices, judicare programs, public interest law firms, law communes, community law offices, group legal programs, legal insurance schemes, and private practice legal clients.³ Organizationally some of these devices do not differ in fundamental ways, but systematic and careful study of organizational similarities and differences, and of outcomes has not progressed beyond the descriptive stage. Yet the legal rights movement has attracted attention--praise and criticism--far out of proportion to the size of the effort. The movement stands as a symbol of needed changes, indeed, a challenge to the limits of the traditional mode of providing legal services to Americans. In

courts and legislatures and bar associations across the nation a consumer dimension has emerged prominently, exerting pressure for experimentation and demonstration in delivery of legal services. There are clear signs that some reshaping of the organization and practice of traditional legal services in America are in the making. In the 1960s the unions managed to break the restrictions on group legal practice.⁴ More recently, in the Goldfarb⁵ decision, the Supreme Court held that enforcement of the minimum fee schedule constituted price-fixing and therefore was in violation of the Sherman Act. The Court refused to hold state bar activity in this case as exempt from Sherman Act coverage because it was "state action" or "professional practice," which opened the way for consideration of the ban on advertising as equally monopolistic. Spurred by the Goldfarb decision on the pressures of lawsuits, the American Bar Association's Committee on Ethics and Professional Responsibility in December 1975 officially proposed that the ban on advertising be relaxed. As this is being written, news comes that the American Bar Association House of Delegates has revised the Canon of Ethics to permit limited advertising, such as display ads in the yellow pages of telephone directories. It is now simply a matter of time before many state bar associations adopt the revised Canon, or parts of it, and lawyer advertising of hours, field of concentration, and initial consultation fee will be a reality.

This paper is an effort to comprehend what might come from these changes by drawing upon social science concepts and evidence about how legal problems get defined and brought before providers of legal services. It draws upon the available studies of professions and the

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

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

Authorities who write about professions have not come to agreement on what all the elements are that comprise a profession, and many writers today have called for abandonment of the "attribute" approach to professions.⁶ However, we do not escape the problems in delivery of professional services by avoiding the definitional issue. There may be no hard-and-fast definition, no single test of what a profession is, as Lewis and Maude noted some 20 years ago.⁷ But there are certain clear-cut generating traits that form the core of the ancient professions of medicine and law. These generating traits are (1) advanced training in a highly specialized body of knowledge, and (2) the use of that knowledge in the service of mankind.⁸ T. H. Marshall defined professions in just this way, and pointed to some of the significant derivative attributes that follow from these basic

traits.⁹ Marshall defined professions as a select body of superior occupations where commercialism cannot be tolerated and which are pursued not for pecuniary gain but out of a sense of duty to serve society. Thus the essence of professionalism, said Marshall, is service to individuals in a private relationship of trust between practitioner and client. Marshall is undoubtedly a classicist, a purist, in so defining professions. But he is by no means alone. Roscoe Pound in a similarly classical interpretation defined professions as, "callings in which men pursue a learned art and are united in the pursuit of it as a public service--no less a public service because they may make a livelihood thereby."¹⁰ To Pound there were three ingredients to the professional idea: (1) organization, the bar; (2) a spirit of public service; and (3) learning. Livelihood is incidental, not a primary consideration. "Indeed, the professional spirit, the spirit of public service, constantly curbs the urge of that instinct."¹¹

This moral element, public service above pecuniary interest, has been stressed by many writers as the primary distinguishing characteristic of professions.¹² But it was Karl Llewellyn who so pointedly noted that in law this ideal has been conspicuous by its absence--more honored in the breach than the observance.¹³ The same conclusion most certainly has been reached with respect to other professions, notably medicine. There has been continually a hiatus between the high ideals of service and the realities of practice. Talcott Parsons, the social theorist, has shed some light on this hiatus in the context of the classical tradition of Marshall and Pound.¹⁴ Self-interest,

noted Parsons, is not a motivation exclusively characteristic of business occupations as opposed to professional people. Occupations vary in the types of recruits they seek and obtain, but all well-organized occupations attempt to institute patterns of motivation to high ideals. The difference between the businessman and the lawyer lies not in personal motivation but in the institutional sphere. The moral element that sustains ethical professional behavior is an institutional constraint. Society historically surrendered to professionals a near-complete monopoly over practice, in return for professional self-control to protect citizens from exploitation and inadequate service. As Marshall and Pound recognized, caveat emptor must not be tolerated in professional behavior, but the subordination of pecuniary motivation to client interest must come from the pervasive affirmation of professional service by the organized bar and only indirectly from public opinion.

There are additional derivative attributes that emerge from the ideal of service and the capability that comes with a learned art. The list offered by Lewis and Maude has hardly been improved upon: (1) registration or state certification, which embodies standards of training and practice in some statutory form; (2) a practitioner-client relationship of confidentiality and trust, i.e., a fiduciary relationship; (3) an ethical code which includes a ban on advertising and other forms of commercial solicitation.¹⁵

What consequence does all of this have in the legal profession for the way in which clients and lawyers relate? The traditional professional model has important consequences, as Christensen and

Rosenthal have noted.¹⁶ The major consequence was aptly expressed in Canon 27 as originally adopted by the American Bar Association in 1908: "The most worthy and effective advertisement possible even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust."¹⁷ Although the wording has been changed, this idea that the proper way to build a practice is through the development of a reputation as an honest and competent practitioner, is still very much the standard of the bar. The traditional model holds that accessibility of a prospective client to a qualified lawyer to handle his problem is secured by reputations of lawyers among colleagues and in the community, and only secondarily by the provisions made by the bar for information when a person is new to the community or for some other reason does not know a lawyer. There are additional consequences of the professional model for the relationship between clients and lawyers. Rosenthal, in his study of the effectiveness of lawyer services in solving personal injury claims suggests the following:

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

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

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

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

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

If the cause is not evil men and monolithically self-serving organizations how shall we understand this phenomenon? I suggest that we begin by tracing the path which legal problems take in a population, from their origins in the vaguely felt needs of citizens to their appearance in the office of an attorney. What we strive to comprehend is the social psychological and organizational factors that

influence (1) how felt needs are translated into problems deemed amenable to solutions by attorneys, and (2) how citizens with presumed problems find their way to lawyers. This two-step process is quite complex; it undoubtedly differs for different types of problems. The research necessary to specify the determinants and the dimensions of the process has not been done. The following pages build upon the discussions and studies presently available. The literature is neither comprehensive nor definitive, but hopefully it can direct us to the critical issues, and can stimulate us to ask the relevant questions which research should answer. And we shall also want to ask what difference reforms might make, if any, given what we know about the reality of lawyer help-seeking and legal practice.

II. Factors Influencing the Definition of Legal Problems

How does a person come to perceive a problem as needing a solution that an attorney can provide? It is a common observation in medicine as well as law that consumers come to providers with problems that they understand in one way only to discover that the problems are altogether different, or they are not problems at all from the providers' perspectives. Sykes found in Denver that attorneys and clients frequently saw different problems in the same cases brought to neighborhood law offices. Often the attorneys saw more problems and more serious problems than did the clients.¹⁸ Particularly in the search for help with psychological problems, patients are apt to see their problems very differently than do psychiatrists.¹⁹ Let us allow for the possibility that some attorneys are incompetent, and

others exaggerate rather than minimize legal problems. Still there will remain many consumers who are not aware of the precise meanings of their felt needs. Indeed, there are many who may not know that the problems they have are in the nature of legal problems. Having a legal problem is to a great extent culturally defined. Medical sociologists note that having a medical problem is also culturally defined. We do not define all of our bodily malfunctions and pains as ailments to take to a doctor. Likewise, and perhaps even more so, we do not define all of our social conflicts as problems to take to a lawyer. Sociocultural and social psychological factors influence the predisposition to perceive felt needs as amenable to professional intervention. A recent study of Greenley and Mechanic led them to conclude the following about help-seeking for psychological problems:

...sociocultural characteristics, attitudes, knowledge, and reference group orientations, and psychological problems all have an independent effect on the use of helping services. Moreover, some sociocultural characteristics, attitudes, and orientations affect, on the one hand, generalized help-seeking behavior and, on the other, the specific sources of help consulted.²⁰

More specifically, they found three factors that were related to the willingness to seek assistance: being female, psychological readiness, and orientations toward introspective others. I suspect that we would find that similar factors, perhaps not exactly the same ones, operate in legal help-seeking behavior. We do have evidence, for example, that significant others play critical roles in the definition of legal problems. Lochner's study of no fee and low fee clients shows that lay intermediaries not only assist prospective clients to find lawyers, they also are important in helping them to define their

problems as legal ones.²¹ Mayhew notes that the ombudsman project in Buffalo, by using neighborhood aids, turned up large numbers of complaints.²² OEO neighborhood law offices have had similar experiences.²³ Hunting and Neuwirth, in their study of personal injury suits in New York City found that the presence of an authority figure substantially increased the chances that a person would file a personal injury claim.²⁴ In all these instances influential persons, whether operating informally or as formal representatives of organizations, acted so as to help bring about a definition of a situation as being a legal problem. We do not understand the dynamics of this interactional process of problem defining. There is no tradition of research on this topic in the legal area as there is in medicine. Nor do we know if and how attitudes toward lawyers and the law, knowledge about law, experience with law and lawyers, age, sex, education level, income, race, ethnicity, marital status, rural-urban origin--how these common social and social psychological attributes influence the propensity to define a problem as one for which to seek legal assistance.

It is probably true that culturally we are more predisposed to think in health-seeking terms than in legal-seeking terms. Rosenthal is correct in noting that people have more experience with selection of doctors than with selection of lawyers.²⁵ We are socialized from an early age into familiarity with medicine and with doctors. No such early and sustained socialization exists for law and lawyers. Along the same line, Mayhew has noted that legal need studies as presently carried out do not tell us much about help-seeking behavior in law.²⁶ Legal issues cannot be listed and meaningfully checked

off the way diseases are. There are many acts in life that could generate legal actions--disputes, disorders, wrongs, discriminations, which people suffer all the time. To a great extent whether a problem will be perceived as subject to legal action depends upon cultural currents about the problem in society, the level of development of legislation and court precedent, the organization of legal services to deal with the problem as peculiarly a legal one, and the availability of nonlegal solutions for the problem. By and large cultural currents, law, and the organization of legal services are biased heavily toward the treatment--and thus the perception of--property rights questions. Women's rights and environmental protection are clear examples of where shifting cultural ideologies, political pressures, and legislative and court developments have radically altered the prospect that individuals and organizations will define a sex discrimination act or an instance of widespread environmental pollution as subject to formal legal action. And the fact that informal and nonlegal solutions have not proven satisfactory, has helped to press these problems into more formal legal molds.

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

III. Factors Influencing the Linkage Between Clients and Lawyers

Defining a problem as legal is but the first step. It does not automatically follow that a person who defines his problem as in need of legal assistance will find his way to a lawyer. Rosenthal, Mayhew, and Sykes all report that many people do not take their legal problems to lawyers. In Mayhew and Reiss' Detroit data, 20 percent reported occasions when they wanted to see a lawyer but did not.²⁷ One can think of many factors that would explain this lack of carry through: concerns about cost and time, seriousness of the problem, knowing a lawyer to go to, previous experiences with lawyers, and attitudes toward law and lawyers. To understand how lawyers and clients make connections, we will profit by considering the studies by labor economists and sociologists, as well as the studies of the accessibility of lawyers to consumers.

Legal services as an imperfect market. Professional services markets, such as medical services and legal services, are regarded by economists as highly imperfect. Services are distributed inefficiently because of (1) the uncertainty of outcome of legal work, and (2) the elusiveness of information procurement by consumers. Arrow, who has most developed the concept of imperfection in professional markets, notes that professional organization and ethical codes can be seen as the conventional mechanisms to overcome market failure created by the nonmarketability of the bearing of risks, and the imperfect marketability of legal information.²⁸ Arrow's thesis obviously is the reverse of the argument by critics of the legal profession who prefer to see professional organization and ethical codes as little more than

successful self-serving efforts to create market failure and defeat competition.²⁹ This is not the place to argue the merits of these alternative interpretations. We can agree that legal services are not distributed in a free competitive market; regardless of reason for origin or preservation, one consequence of professional ethical restrictions is to stifle competition. It is not clear the extent to which this is true, and it is not clear whether the benefits of restrictions outweigh the disadvantages. The critical research question is to determine whether and how well conventional organizational mechanisms operate to overcome market barriers and whether in the process they erect more barriers than they remove.

The issue of unsuitability of risk-bearing in professional markets has to do primarily with the difficulty actuarialists encounter in specifying objective criteria around which to draw up insurance coverage. It is true in both medicine and law that insurance carriers have difficulty finding procedures to spread known risks across a population for adequate coverage at predictable rates that will remain stable once in operation. The ideal, of course, is life insurance, where willful overuse of the program (dying) is not a problem, and stable life tables are easily prepared. The problem of uncertainty of need and of demand is very real in legal services, and has important implications for the limits of prepaid legal insurance. However, it is but the tip of the iceberg. The client faces deeper uncertainty because he is not able to judge in advance what service he needs, and because the lawyer is rarely in a position to guarantee a favorable outcome to the case. For these reasons the client is heavily

dependent upon the lawyer. The traditional professional response to this extensive uncertainty and dependency has been to build between the client and the lawyer a condition of trust, as part of the fiduciary relationship. Rosenthal has aptly illustrated how uncertainty plagues personal injury suits. He has also shown that passivity by the client serves him poorly in the outcome of his case.³⁰ There is no doubt that the "participatory" model that Rosenthal recommends can be helpful. However, it should not distract us from the fact that even when the client actively participates in the case uncertainty remains. There is simply no way a consumer can fully guarantee the outcome of his case by rational selection of an attorney and by participating in the development of the case. I suspect that most clients are not able to assist the attorney with critical decisions about a case. The fiduciary relationship in theory says "trust me to do the very best that any lawyer can for you."

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

The first and second problems come under what Albert Rees has called the extensive information margin.³¹ In legal services this would involve "shopping" among various lawyers for information on the kinds of cases they handle and what their fees are for services.

Most of the debate about consumer accessibility to legal services has focused here in particular on the barriers to information created by the bans on advertising and solicitation. These are real and important problems. There remains, however, the equally critical third problem, that of procuring information which will allow the consumer to evaluate quality--what Rees calls the intensive information problem. Because the product of legal services is uncertain, information at the intensive margin is elusive in contrast to market information about commodities and even other human services. Most consumers of legal services are what Galanter calls "one shot players," i.e., single time or occasional users of lawyers who lack experience in the legal marketplace, as opposed to "repeat players" who regularly use legal services and have extensive experience in the legal marketplace.³² One shot players cannot readily evaluate a lawyer's services prospectively. They must "buy" it, "consume" it, and can only evaluate it when it is too late to shop further. However, even repeat players have some difficulties evaluating the outcomes, if for no other reason than that no two cases are alike.

To illustrate the intensive margin problem, let us consider Rosenthal's point that a person seeking medical help has more familiar criteria for judging a provider's ability than a person seeking legal help. A patient at a minimum can judge a doctor according to the amount of time he spends with a patient, how accessible he is when a medical problem arises, and whether he is affiliated with a reputable hospital.³³ In fact a client can use equivalent criteria for judging a lawyer, although I agree that most consumers have less familiarity with such possibilities in the judging of lawyers simply

because so few are repeat players. Nonetheless, using such criteria in law or medicine will not necessarily yield a quality practitioner for the consumer. Nor will the other common forms of judging--relying on general reputation as conveyed through kin, friends, and acquaintances. We know in medicine that very often patient judgments are a manifestation of satisfaction, not quality of service. There certainly is evidence that the same process operates in legal services. Consider Casper's finding that defendants overwhelmingly prefer privately retained criminal lawyers to public defenders despite the fact that there is little difference in the outcome of equivalent cases handled by each.³⁴

The challenge for the legal consumer movement and for the legal profession is to find ways to enhance the capability of consumers to make decisions at the extensive and the intensive margins. Mechanisms are needed to expand consumers' abilities to test the market, and to strengthen their confidence in the trust they inevitably must place in the lawyers they choose. The gap certainly can be narrowed at both margins, although it will never be closed entirely. The knowledge held by the attorney is far greater than that held by the average client. If it was not, the client would have little or no need for the attorney. The uncertainty of outcome of the case remains; if it did not we undoubtedly could standardize the process and turn it over to computers and lay officials. This is exactly what is being suggested in no fault personal injury and divorce arrangements. In seeking solutions to extensive and intensive information search problems we must not ignore the fact that the client-lawyer relationship remains one of largely one-sided dependency.

Following Arrow, we also must not ignore the fact that new communication schemes are not cost free. There is not only the direct cost of providing new information channels, but the indirect costs of negative side-effects, and, to the individual, the indirect cost of mastering the information available. Thus, it is necessary to consider costs and benefits of new procedures in a broad way. In the study of legal services we do not yet have the techniques of measurement and substantive knowledge about lawyer abilities to provide the information from which to calculate alternative cost-benefit ratios. Such research developments are only now going on in the medical area, and have not progressed very rapidly. New forms of legal services delivery and the lowering of bans on advertising and solicitation must cope with this problem of the costs of information in relationship to the benefits to be derived from them by consumers.

The dynamics of information networks. How do consumers really search for lawyers? How rational are they? For a long time economists overemphasized the rationality that formal organizations could introduce into imperfect market information situations, while ignoring the everyday interpersonal behavior of consumers. However, in recent years this emphasis has changed rather dramatically. In a very important piece of research on employers' search for workers, and workers' search for jobs in Chicago labor markets, Rees and Schultz showed that most workers found jobs through informal information networks (fellow-worker and employer referrals), and that most employers preferred informal information networks.³⁵ Formal sources (state or private employment service, newspaper ad, school placement,

union) were more often used by white collar employees, but for all occupations fellow-worker referrals were by far the most important source of information. Rees and Schultz point out that this process is perfectly rational. Informal referral provides qualitative information to both parties--it is cheap, it efficiently narrows selection to qualified candidates, and it provides greater details of information in comparison to want ads or employment agencies. Granovetter's study of job search behavior of professional, technical, and managerial workers in the Boston area confirms these findings about the rationality and the vitality of informal contact networks.³⁶

To my knowledge all of the available studies on how clients in fact do find lawyers come to the same conclusion regarding the importance of informal contacts.³⁷ Lochner's study of no fee and low fee clients among private practice attorneys in Buffalo is unique in describing how the process operates. Intermediaries are part of the chain of relationships by which private practice lawyers establish and maintain reputations and build clienteles. This process in principle is the same as what Freidson calls the lay referral system in medicine.³⁸ Previously unpublished findings by Reiss and Mayhew in Detroit provide a unique insight into how extensive informal information networks really are in a metropolitan center.³⁹ Respondents who had ever seen an attorney (N=433) were asked how they had located a lawyer the first time. Among high status respondents, 30 percent said they had friends, neighbors, or relatives who were lawyers. Among middle status respondents 21 percent found lawyers through this route; and among low status respondents the figure was 16 percent. Thus, a

substantial number of urbanites, especially those at the top of socio-economic system, were informed about legal services through informal contacts with lawyers. Reiss and Mayhew also asked the remainder of respondents, those who had not used lawyers, what routes they would take to find a lawyer if they needed one. When both sets of respondents were combined the sources distributed as follows:

<u>Actual or claimed source</u>	<u>Percent</u>
Relative, friend or neighbor lawyer	21
Relative, friend or neighbor referral	52
Formal organization referral	17
Mass society information	10

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

Yet despite the evidence the tendency in the legal literature is to see informal contact networks as ineffective. Just as economists at one time emphasized the rational bureaucracy of the state employment service, lawyers emphasize well organized lawyer referral services, ignoring the far more important informal relationships in which people are enmeshed as a part of everyday living.

One reason informal networks are suspect is because they are presumed to have deteriorated in today's society. Christensen, for

example, expressed the common concern that urban networks have eroded as a result of the impersonality of city life.⁴⁰

This belief is also written into the Code of Professional Responsibility, where it is asserted that changed social conditions have restricted the effectiveness of the traditional, informal lawyer selection process.⁴¹

This theme of isolation and alienation in the metropolis was voiced some decades back by urban sociologists who saw an erosion of intimate ties in city life.⁴² But it has not survived the test of empirical study.⁴³ There is no clear evidence that the urban complex of informal relations has deteriorated over that of smaller communities. Over time the form has changed as the dwellers and conditions of city life have changed. Informal interpersonal ties are probably as vital as they ever were. Moreover, there is reason to believe that it is not only the intimate and strong personal attachments that count in information contact networks, but what Granovetter calls "weak ties." In his study of job search, Granovetter found that many of his respondents found their jobs through "acquaintances," not kin or friends.⁴⁴ It is quite likely that the strength of weak ties also holds for certain problems in lawyer-search behavior. For example, when a person has financial or domestic problems he may prefer to ask an acquaintance for the name of a lawyer rather than kin or close friends, in front of whom it might be awkward or embarrassing to reveal private problems.

A second reason that informal contacts are deemphasized is because they appear to be "haphazard." Rosenthal expressed a common concern when he noted that his respondents took the first lawyer they found.

They did not "shop around."⁴⁵ The presumption is that it is irrational to take the first name of a lawyer when it comes from a trusted intermediary. But this disregards the opportunity costs of shopping, particularly when it is impossible to make a quality judgment on the basis of independent criteria anyway. Moreover, we are not socialized to do it for lawyers, and I doubt that very many people do it for doctors either, at least not until they have had an initial experience.

There is another stream of sociological research that informs the meaning of informal information networks, and also has implications for the role of advertising of lawyer services. In the late 1940s and into the 1950s Paul Lazarsfeld and his students at Columbia University carried out research on the impact of the mass media on social behavior. Out of their efforts came the "two-step flow of communication" hypothesis, which has continued to influence research in this area.⁴⁶ The hypothesis says, simply, that people do not behave on the basis of direct media stimuli, but rather as a result of the reinforcement of media stimuli by personal influences. Subsequent studies of the diffusions of innovations generally showed similar processes at work.⁴⁷ Innovations tend to be adopted as a result of involvement in communication networks where influential intermediaries reinforce media messages. Lawyer-seeking behavior would appear to operate, in principle, the same way, which suggests that if mass media information about lawyers--type of work, fees, quality--is to have personal meaning as a basis for action it must be grounded in a network of interpersonal relationships.

What implications do these facts have for relaxing the regulation of professional conduct on advertising? They suggest at a minimum that

only relaxing the ban on advertising may do very little to "open up" information channels. The limits of advertising can be suggested from recent research on want ads and job search done by the Olympus Research Corporation for the Manpower Administration of the U.S. Department of Labor.⁴⁸ The research was carried out in Salt Lake City and in San Francisco. It was found that in 86 percent of listings by employment agencies it was not possible for workers to identify the employer's type of business. Industry information was missing in a third of all ads by employers directly, and they were weak in wage information because employers prefer to negotiate pay and not discourage jobseekers. Workers even had trouble identifying geographic location of the employer in close to two-thirds of ads in San Francisco and one-third in Salt Lake City. Interestingly, and quite contrary to expectations, nearly half the jobs listed by employers in San Francisco were outside the city and 15 percent were outside the metropolitan area. In short, the ads generally were inadequate in allowing jobseekers to decide whether they wanted or were suited for jobs being advertised. We must assume that similar types of problems could easily emerge when lawyers are allowed to advertise. Clearly, it is only a first step to call for relaxing the ban on advertising. Ultimately we must address questions of what to advertise, where to advertise, and what differences these facts make for consumers in their search for lawyers.

If informal lawyer-search behavior is not as irrational or ineffective as commonly held, neither is it a panacea for lawyer-finding. First, it does not solve very adequately the problem of making quality

decisions. But neither will advertising. Indeed, advertising could create problems if the low quality practitioners disproportionately advertise. Some consumers are likely to make selections from their own experiences, and from advertising on the basis of satisfaction, visibility or other criteria, not capability of the practitioner for adequately solving their problems. Whatever its defects, the brilliance of the OEO neighborhood law office idea is that it places in the residential area some reasonably well qualified practitioners whose work is monitored by colleagues. It has the potential of naturally falling into the information channels of everyday social traffic, where "hearsay" based on good work travels quickly.

Informal lawyer search behavior has a second defect. As Lochner points out, poor people rarely become no fee/low fee clients of private attorneys.⁴⁹ They do not know intermediaries who know lawyers, which suggests that most pro bono work by private practice attorneys is not done for the poor. Findings from our research at the Institute for Research on Poverty on who does pro bono work is consistent with this conclusion.⁵⁰ Lone practitioners do significantly more pro bono work than do firm lawyers. If Lochner is correct we might interpret our findings as saying that lone practitioners turn away few if any clients and clients who turn out to be no fee or low fee cases become the attorneys' contributions to the ethical norm of pro bono publico. These clients generally are not the poor in our society. There is a chance that advertising can change this pattern somewhat, if as a result of advertising poor citizens go to lone practitioners more frequently. However, what little evidence we have suggests that

with the possible exception of television, the poor tend not to utilize the mass media as frequently as middle income citizens.⁵¹ But our evidence is weak, and it remains an empirical question worthy of study as to whether lawyer advertising will have a differential impact by socioeconomic status.

IV. Conclusion

The above reflections have a skeptical tone. I do not wish to convey the impression that relaxing the ban on advertising would have deleterious effects, as is often asserted by traditional defenders of the canons of ethics. My concern is that relaxing the ban may not have any effects. However, it also is possible that advertising will make a substantial difference for many moderate income consumers by reducing the opportunity costs of shopping. It remains an empirical question, and much could depend upon the kind of information that is allowed and where it is allowed to appear. More important from a sociological perspective is that careful attention is given to the structural conditions in which legal problems are defined and in which communication networks bring users and providers in contact. In principle, insofar as ethical rules at all inhibit the open communication on information about cost, type of service and ability, they should be changed unless there is overriding evidence that undesirable consequences will outweigh the gains. I do not think that there is evidence for undesirable side effects, but neither can the case for substantial gains be made at this time. The demonstration programs and research have not been carried out.

I have tried in this paper to apply perspectives not commonly brought to bear on client-lawyer relationships in order to generate some issues that research could properly address. The delivery of legal services has not been in the mainstream of social science research as has the delivery of health services. It is time that we began.

FOOTNOTES

¹Economic Opportunity Act of 1964, P.L. 88-452, September 20, 1964, 42 U.S.C., par. 2701, et seq., as amended.

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³Edgar S. Cahn and Jean Camper Cahn, "Implementing the Civilian Perspective--A Proposal for a Neighborhood Law Firm," Yale Law Journal 73 (1964):1317; Kenneth Fisher and Charles Ivie, Franchising Justice: The Office of Economic Opportunity Legal Services Program and Traditional Legal Aid (Chicago: American Bar Foundation, 1971); Symposium, "Structuring the Public Service Efforts of Private Law Firms," Harvard Law Review 84 (1970):410; Symposium, "Neighborhood Law Offices: The New Wave in Legal Services for the Poor," Harvard Law Review 80 (1967):805; F. Raymond Marks, Kirk Leswing and Barbara A. Fortinsky, The Lawyer, The Public and Professional Responsibility (Chicago: American Bar Foundation, 1972); David P. Riley, "The Challenge of the New Lawyers: Public Interest and Private Clients," George Washington Law Review 38 (1970):547; Murray Schwartz, "Forward: Group Legal Services in Perspective," University of California Los Angeles Law Review 12 (1965):279; Symposium, "The New Public Interest Lawyers," Yale Law Journal 79 (1970):1069; Douglas E. Rosenthal, Robert A. Kagan and Debra Quatrone, Volunteer Attorneys and Legal Services for the Poor: New York's CLO Program (New York: Russell Sage Foundation, 1971); Allan Ashman, The New Private Practice: A Study of Piper and Marbury's Neighborhood Law Office (Chicago: National Legal Aid and Defender Association, 1972); Samuel J. Brakel, Judicare: Public Funds, Private Lawyers and Poor People (Chicago: American Bar Foundation, 1974); F. Raymond Marks, Robert Paul Hallauer and Richard Clifton, The Shreveport Plan: An Experiment in the Delivery of Legal Services (Chicago: American Bar Foundation, 1974).

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⁵Goldfarb v. Virginia State Bar, 95 S. Ct. 2004 (1975).

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⁸Harold L. Wilensky, "The Professionalization of Everyone?" American Journal of Sociology 70 (1964):137.

⁹T.H. Marshall, "The Recent History of Professionalism in Relation to Social Structure and Social Policy," Canadian Journal of Economics and Political Science 5 (1939):325; on Marshall's sociology of professions, see Everett C. Hughes, "The Professions in Society," Canadian Journal of Economics and Political Science 26 (1960):54.

¹⁰Roscoe Pound, "The Professions in the Society of Today," New England Journal of Medicine 241 (1949):351; also see Roscoe Pound, The Lawyer from Antiquity to Modern Times (St. Paul, Minn.: West Publishing Co., 1953), pp. 353-362.

¹¹Pound, "The Professions in the Society of Today," note 10.

¹²See Wilensky, note 8.

¹³Karl N. Llewellyn, "The Bar Specializes--With What Results?" Annals of the American Academy of Political and Social Science 167 (1933): 177.

¹⁴Talcott Parsons, "The Professions and Social Structure," in Parsons, Essays in Sociological Theory (Glencoe, Ill.: Free Press, 1954), pp. 34-49.

¹⁵Lewis and Maude, note 7.

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¹⁸Gresham M. Sykes, "Legal Needs of the Poor in the City of Denver," Law and Society Review 4 (1969):255.

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²²Leon H. Mayhew, "Institutions of Representation: Civil Justice and the Public," Law and Society Review 9 (1975):405, quoting from Lance Tibbles and John H. Hollands, Buffalo Citizens Administrative Service: An Ombudsman Demonstration Project, Berkeley: Institute of Governmental Studies, University of California, Monograph 61, 1970.

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²⁴ Roger Bryant Hunting and Gloria S. Neuwirth, Who Sues in New York City? (New York: Columbia University Press, 1962), pp. 65-70.

²⁵ Rosenthal, Lawyer and Client, note 16 at 129-130.

²⁶ Mayhew, note 22 at 404. Also see Leon Mayhew and Albert J. Reiss, Jr., "The Social Organization of Legal Contacts," American Sociological Review 34 (1969):309.

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²⁸ Kenneth J. Arrow, The Limits of Organization (New York: Norton, 1974), pp. 33-43.

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³¹ Albert Rees, "Information Networks in Labor Markets," American Economic Review Papers and Proceedings 56 (1966):559.

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⁴⁹Lochner, note 21 at 449.

⁵⁰Joel F. Handler, et al., "Public Interest Activities Among Private Practice Lawyers," Madison: Institute for Research on Poverty, University of Wisconsin-Madison, Discussion Paper No. 244-74 (1974).

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