

procedures, and respond to particular disputes by negotiating and litigating. Indeed, our idea of what is a traditional lawyer's job may flow largely from what this part of the bar does for clients who can afford to pay for these services. As Hazard (1978: 152) puts it, "One of the chief reasons why competent lawyers go into corporate work is precisely that business clients are willing to invest enough in their lawyers to permit them to develop the highest possible levels of professional skill. Indeed, it is not far wrong to say that lawyers for big corporations are the only practitioners regularly afforded latitude to give their technical best to the problems they work on." But even when we turn to business practice, the classical model of lawyering is only a rough approximation of what happens. This suggests that the amount of the potential fee is not the only factor prompting problems with the classical view. I will consider each of these traditional kinds of lawyer's work in the business setting, looking at what is done for clients, which lawyers do what kinds of work, and the degree of independent control exercised by lawyers in each instance.

Lawyers working for manufacturers, distributors, retailers and financial institutions are likely to be present at the creation of any law that purports to aid the consumer. For example, the decision of the Supreme Court of Wisconsin (1970) that found the revolving charge account plan of the J.C. Penney Company to run afoul of the state's usury statute was a major chapter in the story of consumer protection in Wisconsin (see Davis, 1973). Lawyers from several of the state's largest and most prestigious law firms were involved in defending revolving charge accounts in the challenge before the courts and in the complex negotiation which led to legislation reversing the Supreme Court's decision in exchange for support of what became the Wisconsin Consumer Act. Perhaps less dramatically, lawyers representing both state and national businesses have been involved in the process of administrative rulemaking that has produced such consumer protection regulations as those governing warranties on mobile homes, procedures for authorizing repairs on automobiles, and door-to-door sales.

Not surprisingly, the role of the lobbyist for business is a specialized one, usually played by a small number of lawyers from the larger firms in Milwaukee or Madison, or by lawyers employed by industry trade associations. Smaller businesses seldom hire lobbyists. They rely on being represented by larger businesses or trade associations, or they contact their

representatives in the legislature directly. Often legislators who are lawyers find themselves representing home-town businesses before state agencies as a matter of constituent service.

The lobbying role is a familiar one (see Horsky, 1952). Lawyer-lobbyists alert their business clients to what consumer advocates are proposing in the legislature and before various administrative agencies. These lawyers then attempt to influence the shape of the statutes and regulations so that their clients can live with them. This can involve drafting and advocacy, but it is also likely to involve bargaining and mediation. In an era when consumer protection is generally popular, business lawyers usually take a cooperative stance. Their key argument seems to involve painting their clients as honest people who want to do the right thing and who should not be burdened by regulations aimed at a few bad actors. They also play on traditional anti-regulation arguments about red tape and the cost of meaningless procedures and forms.

In order to gain concessions from those pushing consumer protection, business has to give something. These lawyer-lobbyists make judgments about which regulations are reasonable, acceptable or inevitable, and then try to sell this view to their clients. Only a few lawyer-lobbyists have the power to make decisions without consulting their clients, and some clients will not accept their lawyers' opinions about what is reasonable and what is not. Nonetheless, the lawyers generally have great influence on the decisions about which laws must be accepted and which ones can be fought. One reason for this is that often they control much of the information necessary for making such judgments (cf. Protas, 1978; Ross, 1970). For example, to a great extent they are the experts both about the political situation facing the agencies and legislators and about the intensity of commitment to a particular proposal of those who speak for consumers.

After consumer laws and regulations are passed, business lawyers help their clients cope with them. Much of the work involves drafting documents and setting up procedures for using these forms. For example, both the federal Truth-in-Lending Law and the Wisconsin Consumer Act required a complete reworking of most of the form contracts used to lend money and sell on credit. The Magnuson-Moss Warranty Act demanded that almost every manufacturer, distributor and retailer selling consumer products rewrite any warranty given with the product and create new procedures to make

information about these warranties available to consumers. (See Fayne and Smith, 1977; Wisdom, 1979, for a description of how national manufacturers' lawyers have coped with this statute.) This is traditional lawyers' work, requiring a command of the needs of the business, a detailed understanding of the law, and drafting skills. Moreover, the uncertainties and complexities of many consumer protection laws call for talented lawyering if the job is to be done right.

Counseling business clients about consumer protection laws and drafting the required contracts and forms is the stock-in-trade of the largest firms in the state and a small group of lawyers with a predominantly business practice; some of this work is also done by the inside legal staff of some large corporations (McConnell and Lillis, 1976). Some of this work can be mass-produced by lawyers for trade associations. Many lenders, retailers, and suppliers of services in smaller cities rely on standard forms supplied by these trade associations. Small manufacturers and financial institutions may send problems concerning consumer protection laws to lawyers in Milwaukee or Madison, either directly or through a referral by their local attorney. There is also a "trickle-down" effect: lawyers who are not expert in consumer law often collect copies of the work product of the more expert, receiving them from clients who get them from trade associations or through friends who work for the larger law firms. They may simply copy these forms or they may produce variations on them but with little or no independent research.

Several lawyers commented that the flood of regulation of the past ten years has made it hard for a smaller law firm or a solo lawyer to keep up with all the new law and to maintain the resources needed to advise business. Some do very well for their business clients, but it is difficult for younger lawyers to gain all the needed knowledge quickly. Lawyers who represent business must be ready to alert their clients to changes in the law which require review of the way business is done. These lawyers usually have their own copies of the federal and state administrative regulations as well as the expensive loose-leaf services necessary to keep up to date. Large law firms and corporations with house counsel can afford to have someone in their office specialize in the various consumer laws. They can send them to continuing legal education programs put on at the state or national level. Indeed, many of these law firms face the problem of coordinating their large staff so that all of their lawyers will recognize a problem of, say, the Truth-in-Lending

Act and then call on the resident expert in the area. A consumer law specialist in a large law firm often can call on people working for the various agencies for informal advice about how the agency is likely to respond to particular procedures or provisions in form contracts. Of course, any lawyer can call on the agency, but often these specialists from the large firms will know the administrative officials from previous contacts or from participating in continuing legal education programs.

Some of the lawyers who have been involved in this redrafting of forms and fashioning of new procedures saw the task as one of making the least real change possible in traditional practices while complying with the new laws or regulations. They designed new forms to ward off both what they saw as the unreasonable governmental official and the unreasonable consumer—in the unlikely event that the matter ever came close to going to formal proceedings before agencies or courts. Other business lawyers, however, used the redrafting exercise as a means to press their clients to review procedures and teach their employees about dispute avoidance and its importance. In some cases the lawyer's views significantly influenced the client's response to a new law. For example, many business people are proud of their product and service and want to give broad warranties, but their lawyers usually convince them that this is too risky. The Magnuson-Moss Warranty Act attempts to induce manufacturers of consumer products to create informal private processes for mediating disputes. At least some business people have expressed interest in taking such steps to avoid litigation and in experimenting with new procedures for dealing with complaints by consumers. However, lawyers, in at least two of the largest firms in Wisconsin strongly advise their clients to avoid creating private dispute resolution processes. These lawyers see the benefits as unlikely to be worth the risks, and they are in the position to have the final word with many clients about such matters. This is an area about which lawyers are supposed to be expert; a business person who has paid for an expert opinion is likely to listen to it.

Finally, business lawyers do become directly involved in the process of settling particular disputes when attempts to avoid or otherwise deal with them have failed; lawyers in the largest firms seldom have to help ward off individual consumers, but some lawyers for business regularly are involved in particular cases. For example, lawyers represent

banks and other creditors in collections work. At one time this was a routine procedure that yielded a default judgment and made clear the creditor's right to any property involved. However, many of the traditional tactics of debt collection have been ruled out of bounds or are now closely regulated by state and federal laws. Lawyers who do collections work describe what seems to them to be a new legal ritual to be followed whenever a debtor who is armed with legal advice resists a collection effort. The lender first attempts to collect by its own efforts, and then it files suit, often in a small claims court. The debtor responds, asserting that something was wrong with the credit transaction under the Truth-in-Lending Act or the Wisconsin Consumer Act, or by asserting that the creditor engaged in "conduct which can reasonably be expected to threaten or harass the customer . . ." or used "threatening language in communication with the customer . . ." as is prohibited and sanctioned by the Wisconsin Consumer Act (Wis. Stat. §§ 427.104 [g], [h] [1975]). The lender then has to respond, either by offering to settle or by claiming to be ready to litigate the legal issues. Then the lawyers on both sides negotiate and, occasionally, battle before a judge.

Large retailers who sell relatively expensive products or services face a regular flow of consumer complaints. Almost all of them are resolved without the participation of lawyers, but an attorney may have to enter the picture occasionally. This may not happen until the consumer files a complaint in court. Often the business lawyer will be facing an unrepresented consumer in a small claims court. Several of these lawyers commented that the consumer was only formally unrepresented since the judge often seemed to serve both as judge and attorney for the plaintiff, particularly in pre-trial settlement negotiations. These are expensive cases for a business to defend if the consumer gets a chance to present the merits of the claim to the court. One law firm in Madison represents one of the largest automobile manufacturers in such matters, but it sees only three or four such cases a year. Interestingly, these cases almost never involve an application of the many consumer protection laws or even the Uniform Commercial Code; the real issue is almost always one of fact concerning whether the product or service was defective. The law firm's recommendation about whether to settle is almost always final. Their recommendation will be rejected only where the manufacturer wants to defend a particular model of its automobiles against a series of charges that the model has a

particular defect; the manufacturer may be far more worried about a government order to recall that model than a particular buyer's claim.

Another situation that brings out lawyers is the consumer complaint that prompts a state agency to begin a regulatory enforcement action. Typically, a business lawyer will try to settle rather than litigate this kind of case, but, of course, the possibility of formal action affects the bargaining by both sides. Here, too, the lawyer has great influence on the client's decision about whether to settle or fight. The lawyer's advice is likely to involve a mixture of predictions about the practical consequences of the proposed settlement, the outcome of a formal enforcement proceeding, and the risks of adverse publicity if the matter goes to a public forum.

It should be stressed that most of these lawyers for business do not see themselves as hired guns doing only their clients' bidding. However, most of our sample viewed their clients as responsible people trying to do the right thing. Members of the elite of the bar seldom see any "but the most reasonable business people," at least when it comes to consumer problems. Of course, it is not surprising that these lawyers tend to see their clients as reasonable people, since the lawyers are likely to hold the same values as the clients. Business lawyers concede that consumer protection laws make more work for them, and thus increase their billings (see Beal, 1978; Dickinson, 1976; Galluccio, 1978), but they also see their clients as being swamped by governmental regulation and paper work which serves little purpose (cf. Bugge, 1976). They are unhappy because they cannot explain these laws to their clients in commonsense terms. Some business lawyers are concerned about easy credit practices and how simple it is for consumers to evade debts when they become burdensome. They worry that the importance of keeping promises and paying one's debts is being undermined by reforms directed at problems which politicians invented. Several remarked that when they left law school, they were strongly in favor of consumer protection, but after a few years in practice, they see matters differently. In short, as we might expect, Wisconsin business lawyers are not radicals and are comfortable representing business interests.

At the same time, some business lawyers concede that occasionally they must persuade their clients to change practices or to respond to a particular dispute in what the lawyers see as a reasonable manner. For example, these

lawyers may tell their clients that they must appear to be fair when they are before an agency in order to have any chance of winning in this era of consumer protection. In this way, they may be able to legitimate sitting in judgment on the behavior of their clients and occasionally manipulating the situation to influence clients' choices.

A few of the lawyers we interviewed reported having to act to protect their own self-interest when dealing with a business client. One prominent lawyer, for example, described a case where he represented an out-of-state book club in a proceeding before one of the state regulatory agencies; he took the case only as a favor to a friend who had some indirect connection with the club's officers. As the case unfolded, the lawyer discovered that the book club had failed to send books to many people who had paid for them. It was not clear whether the situation involved fraud or merely bad business practices. The lawyer insisted that the book club immediately get books or refunds to all of its Wisconsin customers and sign a settlement agreement with the agency which bound the club to strict requirements for future behavior. The attorney explained that the business had been trading on his reputation as a lawyer when it got him to enter the case on its behalf. Once it became clear that the administrative agency had a good case against the client involving conduct at least on the borders of fraud, the lawyer felt that the client was obligated to help him maintain his reputation as an attorney who represented only the most ethical businesses.

In conclusion, there is evidence of the continuing truth of Willard Hurst's (1950: 344-345) observations about the historical role of the bar:

The lawyer's office served in all periods as what amounted to a magistrate's court; what was done in lawyers' offices in effect finally disposed of countless trouble cases, whether preventively, or by discouraging wasteful lawsuits, or by settling claims over the bargaining table. After the 1870's, as the lawyer assumed a broader responsibility in his client's business decisions, a corollary result was to extend the occasions and degree to which the lawyer was called on to judge the rights and duties of his client, with a decisive effect on future action. . . . Elihu Root remarked, ". . . about half the practice of a decent lawyer consists in telling would-be clients that they are damned fools and should stop."

About the only amendment of Root's statement needed to bring it up to date is that it is not necessary for a business lawyer to tell a client anything in order to bring much damned fool behavior to an end. The lawyer often has the power to channel the behavior of clients without their awareness of what is being done. Of course, the business lawyer is likely to share the

views of his or her clients that consumer protection statutes, rather than customary business practices, call for damned fool behavior.

### III. DISCUSSION

In this section I will try to integrate the findings of this study into a broader picture of the practice of law, with some special attention to a question central to other recent research on the legal profession: are lawyers agents of social control or are they so tied to their clients as to lack the professional autonomy so often ascribed to them?

A descriptive model of practice would accept much of the classical view as a starting point. Traditionally, we have emphasized lawyers being involved in certain transformations: clients bring problems to lawyers who, in Cain's terms (1979: 343), "translate [issues] into a meta-language in terms of which a binding solution can be found." For example, lawyers translate client desires to transfer property to others into such legal forms as declarations of trust, deeds, and wills. Lawyers try to convert some of the many factors involved in an automobile accident into a winning cause of action for negligence (cf. Hosticka, 1979). Indeed, as Abel (1979a) points out, it is the lawyer's authority over this meta-language which gives the profession much of its status and market control; one goes to law school to master it in order to enter the profession, and entry usually is gained by passing a bar examination where that mastery can be displayed.

However, even when clients come to lawyers for relatively defined services such as drafting a will or a contract, the lawyers' work may involve often overlooked interactions whereby lawyers influence the outcome, and these interactions also must be part of our sketch of practice. For example, some may hesitate to ask for certain provisions in their will if they fear even implicit disapproval by a lawyer who, with his grey hair, three-piece suit, and symbols of membership in the legal profession, may be seen to represent conventional morality. The lawyer, also, may ask questions necessary for counseling or drafting which force the client to consider possible consequences and make choices that he or she has not foreseen or has avoided thinking about. The lawyer may tell a client that the law blocks taking certain action, but sometimes an attorney can suggest other ways of achieving at least some of the client's purposes. Just by explaining the requirement for a cause of action in negligence, the lawyer can affect the



client's memory, or willingness to lie, and thus affect the outcome (cf. Fair and Moskowitz, 1975).

If our model is to have a wider focus, we will have to recognize other translations and transformations which only indirectly involve legal rules but which often take place in interactions between attorneys, clients, opponents, and legal officials. As I have pointed out in this article, lawyers play many roles in these interactions, including the gatekeeper who teaches clients about the costs of using the legal system, the knowledgeable friend or therapist, the broker of information or coach, the go-between or informal mediator, the legal technician, and the adversary bargainer-litigator. In playing these roles, lawyers often have to transform their clients' perception of the problem and their goals. Sometimes clients do come to lawyers seeking fairly specific services—a client may want to make a will, to convey property, or gain a license to run a television station. However, the lawyer is often involved in transforming both the client's perception of the problem and the goals. Sometimes the lawyer will turn away a client, saying that (1) the client has no case legally, (2) it is against the client's best interest to pursue the matter as the costs will exceed the likely benefits, (3) the client is unreasonable to complain or seek certain ends as judged by standards other than the law, or (4) some mixture of these arguments. On the other hand, the lawyer may seek, in Aubert's terms (1963), to redefine a conflict of value into a conflict of interest which can be settled by payment of a reasonable amount of money rather than by a public declaration of right and wrong.

And the lawyer may be involved in transforming the views of the opponent about both the client and the situation so that an acceptable settlement will be forthcoming. Sometimes lawyers use their status as experts in the law, legal arguments, and express or implied threats of legal action in this process of persuasion. Often, however, a legal style of argument fades into the background. The attorney may not be too sure about the precise legal situation or may worry about seeming to coerce the other party. In such situations lawyers are likely to appeal to some mixture of the interest of the opponent and to standards of reasonableness apart from claims of legal right. Then, as I have stressed, if there is a settlement offer, the lawyer must sell it to the client, and here again appeals are likely to be made primarily in terms of reasonableness or interest rather than right.

The research reported here shows lawyers for individuals playing these nonadversary roles without great knowledge of the contours of consumer law, while the lawyers for corporations act more traditional parts—lobbying, counseling, drafting documents, and defending cases after complaints are filed. However, lawyers for corporations are at least occasionally pushed out of the character of legal technician. For example, a lawyer for one of the nation's largest law firms, who has an extensive corporate practice, sees himself as engaged in "the lay practice of psychiatry." He explains that a manager of a large corporation often is worried about making a decision, but he or she has few people with whom to talk openly. Others in the corporation tend to be rivals; psychiatric help is unthinkable as it would indicate weakness. However, it is legitimate to see an attorney seeking legal advice. Often this lawyer finds himself asking questions which lead the manager to see the options and their likely costs and benefits. The questions are justified as necessary in the process of giving legal advice; their actual function, the lawyer says, is a very directive short-term therapy. Sometimes he does not need to ask many questions, because it is enough to serve as an audience while the manager thinks aloud. Another lawyer engaged in corporate commercial litigation sees lawyers as curbing the influence of ego and pride on the part of business executives in dispute resolution. Frequently, the lawyer is the one raising cost-benefit considerations which point towards settlement to engineers who refuse to admit that they have ever made a mistake or to managers who want to teach the other side a lesson. Of course, this is but anecdotal evidence, but it suggests that if we are to make our model of practice more true to reality, we need to investigate corporate as well as individual lawyers' nontraditional roles.

One builds models for a purpose, and an expanded view of lawyering could offer a number of benefits. First, it should enable us to plan and evaluate reforms better. Individual rights created by such reforms are almost meaningless unless people can get a court or agency to enforce them or make a credible threat to do so. Here is where lawyers enter the picture, serving as gatekeepers to the legal system and sometimes offering only transformations instead of vindication of legal rights. But vindication of rights may not be the best solution in all or most cases.

An evaluation of what I have discovered about lawyers in the consumer protection area suggests a number of things

about the strategy of creating individual rights to bring about social change. On the positive side, one might view the practices of the lawyers I studied as yielding a kind of rough justice. Lawyers for business, prompted by federal and state statutes and regulations, work hard to help their clients comply with the disclosure requirements that have been demanded. Of course, there is reason to doubt whether disclosure regulation actually benefits consumers (see Whitford, 1973). We can wonder, for example, how far consumer behavior is influenced by the now common disclosure, mandated by the Magnuson-Moss Warranty Act, that the seller offers only a "limited warranty." But this is the disclosure that the drafters of the statute required, and business lawyers have seen to it that their clients have made it. Although they may interpret it to their clients' advantage, these lawyers are a force pushing for compliance with the law.

Lawyers for individuals have guarded an expensive social institution—the legal system—from overload by relatively minor complaints. Consumers who are dissatisfied with such things as warped phonograph records, defective hair dryers, or inoperative instant cameras can return them to the seller. Almost always, the seller will replace them or offer a refund if they cannot be fixed. If the seller refuses, the buyer can shop elsewhere next time, and the buyer has an "atrocious story" with which to entertain friends which, in turn, may affect the seller's reputation. In short, many problems can be left to the market (see Diener and Greyser, 1978; Ramsay, 1978; Ross and Littlefield, 1978; Wilkes and Wilcox, 1976). At the other extreme, consumers who have suffered serious personal injuries as the result of defective products usually can find a lawyer to pursue their case aggressively, since the growing law of products liability offers generous remedies which will support contingent fees. Moreover, products liability and government-ordered product recalls together give manufacturers a great incentive to pay attention to quality control and avoid problems.

It is necessary to sort out claims falling between these poles. Defects in new automobiles and mobile homes, for example, often warrant buying at least a little of a lawyer's time, especially when manufacturers and sellers fail to remedy the problem after a customer makes a complaint. But a full-scale war using elaborate legal research and expert testimony usually would be a waste of resources. A telephone call or a letter from a lawyer may be all the effort the claim is worth. If

all clients with cases supporting substantial fees had to subsidize cases involving only small sums, then lawyers might buy all of the necessary law books and learn all the details of consumer law, but this might price legal services out of the reach of some who now can afford them. Alternatively, lawyers could be subsidized by governments to master consumer laws and litigate, but many citizens would see better uses for tax revenues.

Also on the positive side, those lawyers who are willing to do something for clients with a consumer case may be defending the values of social integration and harmony. In Laura Nader's (1969) phrase, they are seeking "to make the balance" by restoring personal relations to equilibrium through compromise. They do this by clearing up misunderstandings and promoting reasonableness on both sides, avoiding vendettas aimed at hurting the opponent. They offer their clients their status and contacts—but rarely an expensive-to-acquire legal knowledge—which allow them to reach the person who has power to apologize, to offer a token gesture, or to make a real offer of settlement. The fact that a manager or owner accepts the blame and apologizes may be as effective in placating the client as a recovery of money. The real grievance may rest on a sense of being taken, insulted, or treated impersonally. Lawyers can help their clients see themselves not as victims but as people with minor complaints; they can help them get on with the business of living rather than allowing a \$200 to \$300 problem to become the focus of their lives.

One can emphasize this point by stressing what these lawyers are not doing. Lawyers often are portrayed as promoting disputes in order to make work for themselves. A partner in a consulting firm that, in its words, aids corporations to "manage change" recently charged that,

It is probably not coincidental that the United States, the country with the highest proportion of lawyers in its population, is the most litigious country in the world. All those lawyers are looking for work, and they are sure to find it among a self-centered, demanding, dissatisfied population which has grudges—real or imagined—against institutions or individuals (*Behavior Today*, 1978: 3-4).

Rather than pour gasoline on the fire of indignation in members of a "self-centered, demanding, dissatisfied population which has grudges," almost all of the lawyers interviewed in this study seem far more likely to use some type of fire extinguisher. Even lawyers who see themselves as progressive and those who work for group legal service plans try to push aside potential clients whom they judge to be

"crazy," to want something for nothing, or to be acting in bad faith.

It would be difficult deliberately to plan and create a system such as the one I have described. Perhaps it could only have arisen in response to laws that created a number of individual rights which could not be fully exercised. By relying on lawyers as gatekeepers, we get enough threat of trouble to prompt apologies, gestures, and settlements which are acceptable, but not enough litigation to burden legal or commercial institutions. We avoid having to reach complete agreement on the precise boundaries of the appropriate norms governing a manufacturer's and seller's responsibility for quality defects and for misleading buyers short of absolute deliberate fraud. We avoid having to live with inappropriate norms which might result from the confrontation of interest groups in the legislative and administrative processes. We avoid having to resolve difficult questions of fact concerning the seller's responsibility for the buyer's expectations and for the condition of the goods—questions which often cannot be resolved in a satisfactory manner. Finally, we offer some deterrence to consumers who want to defraud sellers or creditors or to those who are eager to get something for nothing (see Wilkes, 1978).

On the negative side, one could highlight the unequal access consumers have to remedies, despite the merits of their cases. Some do not see lawyers at all, but we cannot be sure that their complaints lack merit or are trivial or that they are resolved in some other manner. Those few who do seek legal services will get only what the lawyer sees as appropriate—some will get turned away with little more than token gestures, while a very few will recover their full statutory remedies through legal action. The pattern is not as simple as it was before the creation of various legal services programs, but here, too, the "haves" are likely to come out ahead (Galanter, 1974). Lawyers are likely to want to please middle-class and rich consumers, to whom they may offer "loss-leader" services. Lawyers are also more likely to persuade a merchant that the goodwill of a "better off" person is worth some substantial gesture.

Arguably, whether or not a claim is trivial or significant does not turn on whether there is enough at stake to support a substantial legal fee. For example, in this era of inflation, perhaps, the \$400 many spent to replace four defective "Firestone 500" steel-belted radial tires would have seemed

trivial to successful lawyers, or many consumers would have thought that to be the case. Nonetheless, the amount was not trivial to many of those faced with this problem. After clerks in local Firestone stores denied responsibility for the problem, few buyers had "the balance" restored; they felt cheated or taken by a large impersonal bureaucracy, and some were upset by a sense of "near miss," since the defective tires which had been purchased to provide added safety might have killed or injured them or their families. They suffered an injury to their expectation interest which could not be redressed (Bernacchi, 1978). They were likely to have been even more unhappy with lawyers and their lack of remedy when they watched the General Counsel of Firestone testify before a congressional committee that the problems were entirely the consumer's fault, because consumers did not keep these tires adequately inflated. As one who faced this problem, I can report that it does not seem enough just to avoid ever again buying Firestone products, to learn that Firestone's president took "an early retirement" as a result of the situation, or to watch Firestone lose ground in the stock market, despite the efforts of an aging actor—James Stewart—to prop up its reputation in television commercials about how Harvey Firestone always wanted to make the best tires. Of course, Congress and an administrative agency ultimately induced Firestone to offer a remedy to some, but not all, of the buyers of the "500 Steel-Belted Radial"; but the recall does not serve to legitimate the system described in this study, because this happy outcome for some consumers was not prompted by lawyers handling individual claims.

The Firestone case illustrates the possibility that even more important interests may be badly served by the present system. Even if a lawyer had obtained some gesture from Firestone for an individual before publicity forced it to recall the tires, Firestone still might have been rewarded for its incompetent engineering and production techniques had the problems with the tire not become a scandal to be featured on the evening news broadcasts. These individual settlements probably would not have added up to very much as compared to the profits being made from the tire.<sup>6</sup> Conciliatory

---

<sup>6</sup> Perhaps the most dramatic reaction to a manufacturer's judgments about the value of human suffering and death involved the Ford Pinto. In *Grimshaw v. Ford Motor Co.*, (Orange Co. Calif. Superior Ct. [1978]), reported in 21 ATLA L. Rep. 136 (April, 1978), a 13-year-old boy suffered burns over 90 percent of his body when a Ford Pinto's gas tank ruptured and ignited. The jury was shown a Ford memorandum in which it considered installing a check-valve on its fuel tanks to increase their safety. The authors of the memorandum estimated that if the valve were not installed, there would be 180

settlements may subvert the purposes of consumer protection law because they can shield socially harmful practices from effective scrutiny by the public or some legal agency. The Firestone affair eventually did come to light after people were injured and killed. Such claims cannot be resolved by gestures and token recoveries, but it seems to take death or serious injury to trigger the system; and passengers in cars equipped with the Firestone tire were at risk for a long time before the recall. The conciliatory tactics favored by lawyers may block the market correction called for by consumer protection legislation and prevent public awareness that the markets are not being corrected.

We can ask whether we should be satisfied to delegate the power of deciding which claims will be asserted, and to what extent, to individual lawyers who are typically white, middle-class males well integrated into their communities. P.H. Gulliver (1977: 34) notes that a mediator "inevitably brings with him certain ideas, knowledge and assumptions, as well as certain interests and concerns, his own and those of the people whom he represents." Gulliver goes on to point out that when a mediator acts as a go-between with the parties physically separated and not in direct communication, as is commonly the case when a lawyer is playing this role, the mediator's own ideas and interests are given scope to operate. Mediators can change the content, emphasis and implications of the messages

---

lives lost and 180 burns suffered. The study valued each life at \$200,000 and each severe burn at \$67,000, and it estimated the cost of the valve as \$11 per car. It concluded that the benefits to be anticipated did not outweigh the cost. A retired Ford engineer, testifying for the plaintiff, produced other internal Ford documents and test films. He showed that Ford had found it could save \$20.9 million by delaying certain safety improvements on gas tanks for two years. There was other evidence about the safety of Pinto gas tanks, and the foreman of the jury later described the Pinto as "a lousy unsafe product" (*Wall Street Journal*, Feb. 14, 1978: 1, 14).

The jury awarded the plaintiff \$2,841,000 compensatory and \$125 million punitive damages. The foreman explained that "We came up with this high amount so that Ford wouldn't design cars this way again." One juror said the jury thought that Ford had saved \$100 million by not installing safe gas tanks on the Pinto, and so it was necessary to award substantially more than that to be really punitive. Even though the amount awarded might be reduced by the courts, the jurors "wanted Ford to take notice." It has been reported that the award was later reduced to \$3.5 million for punitive damages (*Wall Street Journal*, June 12, 1978: 2).

One cannot tell whether the jury was offended by Ford's procedure in balancing the costs of safety measures against human life or by what the jury viewed as an inadequate valuation of life and severe burns. It is likely that both the Firestone and the Pinto episodes have taught manufacturers of consumer goods lessons about public relations if not about safety engineering. Whatever the rationality of deciding which safety improvements are cost-efficient, many people will react negatively to attempts to assign a cost to burns over 90 percent of a 13-year-old boy's body to be balanced against \$15 per car for safety improvements, particularly when the balancing is to be done by a manufacturer's engineers.

they pass back and forth, because neither party is able to monitor the mediator's activities. In addition, in the guise of telling clients what the law says they must do, lawyers have some power to tell them what the lawyers think they should do. These considerations are likely to be important in any area where reformers have created individual rights but where the attitudes of conventional society have not embraced the cause. For example, lawyers who respect university faculty members, honor the idea of liberal education, enjoy teaching part time in the law school, and doubt the reality of discrimination against women are not likely to be willing to take a case against a university for a woman denied tenure who thinks she was discriminated against. Most lawyers who do take such cases are likely to handle them very differently than lawyers who are feminists. The nonfeminist lawyer is unlikely to press very hard for, say, language in a settlement agreement that might help the women's movement on campus in addition to seeking a payment of money to settle the complaint.

Lawyers who play "counsel for the situation" may leave the rest of us a little uneasy (see Frank, 1965: 702). What qualifies these lawyers as experts in problem solving? Certainly this was not the approach of their law school training, and we can wonder if their professional experiences have produced wisdom in finding good solutions to such problems as are involved in women's rights, consumer protection, racial discrimination, or environmental protection. In short, there is a problem of legitimacy. As is true in the case of so many empirical studies related to law, once again we have stumbled on the problem of discretion and the expert whose skill rests on experience rather than on training and science (see Macaulay and Macaulay, 1978). And a counsel for the situation has little accountability to much beyond his or her own conscience (cf. Brown and Brown, 1976).

The mystification involved in the gap between the classical picture of the lawyer's role and the portrait painted here also may be objectionable. Clients may find themselves manipulated and fooled. Few clients probably go to lawyers seeking to have their situations redefined or their problems solved by apologies and token gestures. At least some clients do not want a "counsel for the situation" but a lawyer who will take their side. The settlement worked out after a five-minute telephone call may be the best possible in light of the lawyer's and the business's interest, and an objective observer might be able to defend it as serving some social interest. But do clients



know how their interests regularly are offset by all of the others involved? If they knew, would they accept the situation?

Conciliatory strategies require little investment of professional time as compared to more adversarial ones. Mediation does not require much knowledge of consumer law, and a lawyer can negotiate a settlement based on rules of thumb rather than hard legal research. However, lawyers get an exclusive license to practice because they are supposed to be expert in the law. Indeed, Chief Justice Burger (1976: 93) comments that "if lawyers refuse minor cases on economic grounds they ought not insist that only lawyers may deal with such cases." Many who have never seen the inside of a law school might be better conciliators than lawyers, since legal education does little to train students for this part of practice, but non-lawyers are not given the privilege of representing clients. In theory, lawyers are qualified to negotiate and mediate because they assess the legal position and work from this as a baseline. Lawyers who know almost nothing about consumer law are operating from a different baseline. Earlier I quoted Geoffrey Hazard's (1978: 152) comment that people go into corporate law because they have the opportunity to "give their technical best to the problems they work on." Hazard continues by saying that the "rest of the bar ordinarily has to slop through with quickie work or, as one lawyer put it, make good guesses as to the level of malpractice at which they should operate in any given situation." Indeed, an official of the Federal Trade Commission who was concerned about the failure of the Magnuson-Moss Warranty Act condemned Wisconsin lawyers who were not fully acquainted with that statute two years after it had become effective as being guilty of serious malpractice. He thought that perhaps a malpractice action or two might wake up the Wisconsin bar. Several lawyers interviewed in this study commented that many lawyers do not know enough consumer law to recognize that it offers a good legal theory and that if they did see this, it might change the course of their negotiations.

But it seems unfair to blame lawyers who almost never see a consumer case involving more than a few hundred dollars for not mastering a complicated and extensive body of law and for not purchasing expensive loose-leaf services to keep up to date. While, perhaps, we can ask lawyers to do some charity work, they cannot provide reasonably priced services for every case that comes in the door (cf. Schneyer, 1978). There is no way that any lawyer can know much about all branches of the law;

lawyers naturally become expert in the areas they see regularly.

The lawyers studied seem to be responding predictably to the social and economic structures in which the practice of law is embedded. Liberal reforms such as consumer protection laws create individual rights without providing the means to carry them out. Grand declarations of rights may be personally rewarding to those who struggle for legislative and appellate victories, but, in practice, justice is rationed by cost barriers and the lawyer's long-range interests. Even lawyers working for lower-income clients must pick and choose how much of their time and stock of goodwill to risk investing in a particular case.

We could see most of the individual rights created by consumer protection laws, as well as many other reforms of recent times, as primarily exercises in symbolism. The reformers gained the pretty words in the statute books and some indirect impact, but the practice of those to be regulated was affected only marginally. We can wonder whether those who wrote these reforms understood that the individual rights they had created would be converted into little more than an influence on the bargaining process if lawyers learned about and chose to make use of them. As the issues embedded in these reforms become less fashionable, even these indirect influences may wane (see Stuart, 1979). Of course, it is possible that as time passes, lawyers will become more and more aware of at least some reform laws. It may take a generation or two for some of them to penetrate into day-to-day practice. Perhaps as new forms of delivering legal services develop and old areas of practice are reformed out of existence, lawyers will turn to some of these new reforms as an unmined resource and find ways to make exploitation commercially feasible (see Falk, 1978; Ross, 1976). Nonetheless, if awareness of a more empirically accurate view of legal practice is not developed, reformers are likely to go on creating individual rights which have little chance of being vindicated, and, as a result, they may fail to achieve their ends repeatedly. And a gap between the promise of the law and its implementation may have consequences for the society (see Viera-Gallo, 1972).

A kind of classic response to the empirical picture of professional practice that I have drawn is to call for a return to the adversary model with, perhaps, some additional legal services supported as a government or group benefit and with new institutions for dispute resolution, such as neighborhood

justice centers (see, e.g., Abel, 1979b; Danzig, 1973; Felstiner, 1974; 1975; Danzig and Lowy, 1975; Johnson, 1974; Johnson and Schwartz, 1978; McGillis and Mullen, 1977; *Yale Law Journal*, 1975). Whatever the merit of any of these new measures and the philosophically comforting virtues of such proposals, the issues raised by the empirical sketch I have drawn are not likely to go away so easily. This study just adds another instance to our growing catalogue of other-than-adversary roles played by lawyers (see Shaffer, 1969). For example, legal literature recently has paid some attention to the problems lawyers face in proceedings for involuntary commitment of a client to a mental institution when the lawyers themselves believe that their client needs treatment (see e.g., Cyr, 1978; Dawidoff, 1975; Galie, 1978; Zander, 1976). Other articles have considered the problems of lawyers who learn that their clients are violating the regulations of the Securities and Exchange Commission now that the SEC is trying to impose a duty on these lawyers to blow the whistle (see Lorne, 1978; Miller, 1978; Solomon, 1979; Williams, 1978). Still other articles look at the problems of lawyers assigned to represent young children in child custody disputes—one cannot just ask a four-year-old whether he or she wants to live with Mommy or Daddy and seek to carry out this preference using all of the skills involved in evidence gathering and cross examination (see, e.g., Church, 1975; Deutsch, 1973; Elkins, 1977; Spencer and Zammit, 1976; *Yale Law Journal*, 1976; 1978). In all these situations, lawyers are pushed to play counsel for the situation and to mediate. It is likely that their activity will reflect some mixture of their values and long-term interests and be only indirectly related to their expert status relating to the formal law. All of this suggests that our empirical model of practice reflects the structural constraints on practice, social needs, and difficulties with adversariness as a solution for all our problems.

Moreover, many would see the conciliatory counsel-for-the-situation stance as the right one for lawyers to take despite all of the problems it poses (see Griffiths, 1977; cf. Abel, 1978; Crowe, 1978; Simon, 1978). Most non-lawyers likely would question the desirability of telling attorneys always to act as hired guns rather than as problem solvers. President Carter, for example, said, "Mahatma Gandhi, who was himself a very successful lawyer, said of his profession that 'lawyers will as a rule advance quarrels rather than repress them.' We do not serve justice when we encourage disputes in our society rather than resolving them." (*New York Times*, May 6, 1978). If

anything, we may be witnessing pressure to move even further from adversariness with current demands that lawyers and other professionals take responsibility for their clients' compliance with the law. The counsel-for-the-situation role, as troublesome as it is, is unlikely to fade away. Therefore, it makes sense to think seriously about how the values, personality traits, and structural constraints of the bar influence the choices that are made.

Apart from mediating and acting as counsel for the situation, this study seeks to add to the classical model of practice the idea that the lawyer's own interests and values play an important role whatever the ideal of service asserted in professional theory. Others have made this point: Reed (1969) talks of the lawyer-client situation as one managed by the lawyer; Blumberg (1967) goes so far as to talk of the practice of laws as a "confidence game." On the other hand, Heinz and Laumann (1978) see the legal profession as one where the problems addressed generally are "defined by clients rather than professionals." The legal profession, they say, is "shaped and structured by its clients"; it manifests client interests rather than its own concerns, interests and values to such an extent that it is deprived of autonomy so that it cannot determine its own social organization or set standards of conduct.

There is no necessary inconsistency between Heinz and Laumann's position and that of this study or Reed and Blumberg. Lawyers typically pursue their *long-range* interests. This means positioning themselves to serve those clients they are likely to see and those who occasionally bring them cases they prize. For example, a partner in a large Milwaukee law firm decided that he could not be the campaign manager for a law school classmate's race for Congress in the early 1960s. The friend was a Democrat, and the law firm's major clients were large family-controlled corporations locally famous for supporting right-wing causes. The lawyer did not know and did not ask whether these clients would object; even raising the question carried more risk than he wanted to take. Muir (1967) studied one of the few cities in which there was real compliance with the Supreme Court's school prayer decisions. A major part of the explanation was the presence of a Jewish lawyer on the school board who thought the decisions were right and as a legal expert punctured the common evasions and rationalizations for noncompliance offered by the educators who did not want unhappy parents. But this Jewish lawyer

was relatively free to take a civil libertarian stance, since he did not expect those who favored prayers and Christmas programs in the schools to be his clients. One can imagine what would have happened to the practice of any lawyer member of the school boards in the down-state Indiana communities studied by Dolbeare and Hammond (1971) had he or she blown the whistle and pressed for compliance with the law. In these communities prayers continued as before the decisions, to be offered at the discretion of the teachers.

However, a lawyer's long-range interest is not always that of any particular client, even a fairly good one. For example, a president of a sizeable corporation complained:

[M]any attorneys['] . . . practice before . . . administrative bodies consumes much more of their time than the time spent in litigation before the courts. It has therefore become very important to an attorney to maintain strong and close relationships with these respective agencies so that he can get informal rulings, hints as to the agencies' attitudes and other "favors." These are necessary, he believes, if he is to adequately advise his many clients. However, if I want to take a position that is very unpopular with that particular agency and which will almost certainly lead to litigation, I will have difficulty in getting my counsel to go along. If I am unaware that such a position can be taken, he may not suggest it to me. He fears that by serving as an aggressive advocate for my position, he may estrange himself to some extent with the members of the agency and thereby reduce his ability to serve his many other clients who also deal with that same agency. This is not an abstract or imagined problem; it is a very real one and others have written even more forcefully about it (Rast, 1978: 845).

Moreover, lawyers have some discretion in selecting what cases to take and how to handle them without being forced to make hard choices and risking their careers. Perhaps if clients had perfect information, lawyers would have little control over relationships with clients. However, even sophisticated buyers of lawyers' services usually have far less than perfect information.

It is probably the case that if a new reform law can be seen as likely to yield substantial fees, some lawyers will gear their practice toward clients who want to bring such cases. Laumann and Heinz (1977) tell us that personal injury practice has relatively low prestige among the attorneys they studied. Nonetheless, the development of the doctrines of products liability during the 1960s prompted many lawyers to become specialists in the area—contingent fees, a good chance to win high verdicts and settlements, and real advantages from specialization have produced a recognizable segment of the bar. Moreover, causes such as civil rights may draw the attention of organizations such as the NAACP which will provide the lawyers. But if one has neither an organized cause

nor the chance of a real monetary payoff, reforms resting on individual rights are likely to produce no more than the conciliatory gestures reported by this study. In such situations, the inability to mobilize needed legal services may be a form of social control blunting the impact of efforts at reform through law.<sup>7</sup>

Undercutting the conventional picture of practice may have costs. Law, as is the case with many professions, justifies its position by the mastery of a special body of knowledge, and this mastery is produced by training and certified by examinations. Law school and bar examinations deal with the rule of law and not deals reflecting cost-benefit calculations and the emotions of clients. This view may help give or defend a measure of status and wealth for those who learn the law so that some will be induced to try to master it. And it may be useful in our kind of society to have a group of people capable of calling governmental, corporate and private power to account by legal standards. The theory of the adversary system may offer unpopular or powerless people some degree of protection from bias or a politically expedient solution to the problem they present to the powerful. This theory is a major part of the reason why our government provides some amount of legal service to those accused of a crime when they cannot afford their own lawyer. It is a major part of the rationalization that a lawyer for an unpopular client can offer in an attempt to ward off pressures against causing difficulties by vigorous advocacy. The ideal of disinterested service to clients may draw some

---

<sup>7</sup> The failure of statutes which create individual rights to provide the means for their vindication does not necessarily indicate that such laws are ineffective. As Willard Hurst (1960: 137-152) emphasizes, the passage of a law may become a rallying point for an interest group and may force a definition of means and ends. Moreover, a particular law, such as the Magnuson-Moss Warranty Act, cannot be viewed in isolation. Magnuson-Moss is but one event in the entire consumer movement. All of the many consumer protection laws may only reflect a general dissatisfaction with the marketing of modern consumer goods and services, and this dissatisfaction itself may be what has prompted an ever-increasing concern by manufacturers with improving quality and using public relations techniques to avoid complaints and minimize those that do occur. Of course, the process likely involves complicated interactions: dissatisfaction prompted the laws, and they in turn helped focus the dissatisfaction and make it newsworthy; the scandals then may have made jurors more willing to find against manufacturers and administrators more willing to enforce regulations vigorously. Even laws which may appear to have but a limited impact may be part of a general vague threat—if the dissatisfaction that prompted the law continues and the law is seen by those who can press for legislation as flawed, then new and more distasteful legislation may be forthcoming. And such threats may affect behavior (see Scheingold, 1974: 205-219). This article is part of a larger study of the Magnuson-Moss Warranty Act. Kenneth McNeil's interviews with officials of the large American automobile manufacturers indicate that this statute did play some part in placing the issues of product and service quality on their agenda.

people into the profession and offer nonpecuniary rewards to lawyers so that more of this kind of service exists than it would in a system where the single-minded pursuit of self-interest was recognized as fully legitimate.

Of course, this argument rests on untested empirical assumptions. We do not know whether these normative ideals have enough influence on behavior to be worthy of concern. It may be that the classical view has had little importance beyond making lawyers who do little public service feel bad on occasion. However, the empirical assumptions are only untested. They have not been disproved, and the argument is plausible enough for attention. Nonetheless, many of the nonadversary roles played by lawyers also seem to have some social value—experts in coping with the claims of other individuals, corporations or the government by using all available tools including, but not limited to, legal rules can offer useful help to citizens. Perhaps the classical position does serve as a golden lie (Plato, *The Republic*, Book III), misleading both lawyers and the public for a good purpose. Yet it has costs, particularly as more and more people discover that lawyers' behavior so often fails to conform to the model. There seems, moreover, no reason to assume—without even making an attempt—that we cannot rationalize when a lawyer can be expected to refuse a case, to mediate and play counsel for the situation and when to vindicate rights. Perhaps no ideological statement ever can be without flaw (cf. Unger, 1976), but the classical picture of the practice seems to fit the legal profession of the 1980s so poorly as to be embarrassing.

## REFERENCES

- ABEL, Richard L. (1978) "From the Editor," 12 *Law & Society Review* 189.
- (1979a) "The Rise of Professionalism," 6 *British Journal of Law and Society* 82.
- (1979b) "Socializing the Legal Profession: Can Redistributing Lawyers' Services Achieve Social Justice?" 1 *Law & Policy Quarterly* 5.
- ALPANDER, Guvenc G. and Jordan I. KOBRTZ (1978) "Prepaid Legal Services: An Emerging Fringe Benefit," 31 *Industrial and Labor Relations Review* 172.
- AUBERT, Vilhelm (1963) "Competition and Dissensus: Two Types of Conflict and of Conflict Resolution," 7 *Journal of Conflict Resolution* 26.
- BEAL, Dave (1978) "Big Boom at the Bar," *Milwaukee Journal* (Oct. 29), part 9, 4.
- BEHAVIOR TODAY (1978) "Coping with the Eighties: The Struggle," 9 *Behavior Today* 3 (October 16).
- BERNACCHI, Michael D. (1978) "A Behavioral Model for Imposing Strict Liability in Tort: The Importance of Analyzing Product Performance in Relation to Consumer Expectation and Frustration," 47 *Cincinnati Law Review* 43.

- BEST, Arthur and Alan R. ANDREASEN (1977) "Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress," 11 *Law & Society Review* 701.
- BLOOMFIELD, Maxwell H. (1976) *American Lawyers in a Changing Society, 1776-1876*. Cambridge: Harvard University Press.
- BLUMBERG, Abraham S. (1967) "The Practice of Law as Confidence Game: Organizational Cooptation of a Profession," 1 (2) *Law & Society Review*, 15.
- BRAKEL, Samuel J. (1973) "Free Legal Services for the Poor-Staffed Office Versus Judicare: The Client's Evaluation," 1973 *Wisconsin Law Review* 532.
- (1974) *Judicare: Public Funds, Private Lawyers, and Poor People*. Chicago: American Bar Foundation.
- BRICKEY, Kathleen F. (1978) "The Magnuson-Moss Act—An Analysis of the Efficacy of Federal Warranty Regulation as a Consumer Protection Tool," 18 *Santa Clara Law Review* 73.
- BROWN, Louis M. and Harold A. BROWN (1976) "What Counsels the Counselor? The Code of Professional Responsibility's Ethical Considerations—A Preventive Law Analysis," 10 *Valparaiso University Law Review* 453.
- BUGGE, Lawrence J. (1976) "Is Consumer Protection Becoming Legal Pollution?" 49 *Wisconsin Bar Bulletin* 15 (June).
- BURGER, Warren (1976) "Agenda for 2,000 A.D.—A Need for Systematic Anticipation," 70 *Federal Rules Decisions* 79.
- BUSINESS WEEK (1975) "Regulators: The Guesswork on Warranties," July 14, 1975: 51.
- CAIN, Maureen, (1979) "The General Practice Lawyer and the Client: Towards a Radical Conception," 7 *International Journal of the Sociology of Law* 331.
- CASE, Karen A. (1977) "Legal Service Plans—The Newest Tax Benefits to Employees," 50 *Wisconsin Bar Bulletin* 9 (January).
- CERRA, Frances (1977) "Dispute over Truth-in-Lending Act Grows," *New York Times* (July 4) 22.
- CHURCH, Virginia Anne (1975) "Innovations in Legal Counseling," 49 *Florida Bar Journal* 10 (January).
- COHEN, Dorothy (1975) "Remedies for Consumer Protection: Prevention, Restitution, or Punishment," 39 *Journal of Marketing* 24 (October).
- COLVIN, Diane Tremmel and Victor H. KRAMER (1975) "Group Legal Service Plans in Wisconsin," 48 *Wisconsin Bar Bulletin* 47 (February).
- CONSUMER REPORTS (1975) "Product Warranties: Congress Lends a Helping Hand," 40 *Consumer Reports* 164 (March).
- CONWAY, Gregory B. (1975) "One Firm's Experience With a Group Legal Service Plan," 48 *Wisconsin Bar Bulletin* 8 (October).
- CORNELL LAW REVIEW (1977) "Note: Consumer Product Warranties Under the Magnuson-Moss Warranty Act and the Uniform Commercial Code," 62 *Cornell Law Review* 738.
- CROWE, Patricia Ward (1978) "Complainant Reactions to the Massachusetts Commission Against Discrimination," 12 *Law & Society Review* 217.
- CURRAN, Barbara A. (1977) *The Legal Needs of the Public: The Final Report of a National Survey*. Chicago: The American Bar Foundation.
- CYR, Joseph (1978) "The Role and Functions of the Attorney in the Civil Commitment Process: The District of Columbia's Approach," 6 *Journal of Psychiatry and Law* 107.
- DANZIG, Richard (1973) "Toward the Creation of a Complementary, Decentralized System of Criminal Justice," 26 *Stanford Law Review* 1.
- DANZIG, Richard and Michael J. LOWY (1975) "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner," 9 *Law & Society Review* 675.
- DAVIS, Jeffrey (1973) "Legislative Restriction of Creditor Powers and Remedies: A Case Study of the Negotiation and Drafting of the Wisconsin Consumer Act," 72 *Michigan Law Review* 1.
- DAWIDOFF, Donald J. (1975) "Commitment of the Mentally Ill in New York: Some Comments and Suggestions," 3 *Journal of Psychiatry and Law* 79.
- DEUTSCH, Phyllis Z. (1973) "The Family Law Practitioner as Legal Psychiatric Worker," *State Bar of California Journal* (March-April) 158.
- DICKINSON, Ernest (1976) "Lawyers Proliferate and Prosper: Workload Raised by Regulation and Delays," *New York Times* (January 25), Section 3: 7.
- DIENER, Betty J. and Stephen A. GREYSER (1978) "Consumer Views of Redress Needs," 42 *Journal of Marketing* 21 (October).



- DINGWALL, Robert (1977) "Atrocity Stories and Professional Relationships," 4 *Sociology of Work & Occupations* 371.
- DOLBEARE, Kenneth M. and Phillip E. HAMMOND (1971) *The School Prayer Decisions, from Court Policy to Local Practice*. Chicago: University of Chicago Press.
- EDDY, Jonathan A. (1977a) "Effects of the Magnuson-Moss Act Upon Consumer Product Warranties," 55 *North Carolina Law Review* 835.
- (1977b) "On the 'Essential' Purposes of Limited Remedies: The Metaphysics of UCC Section 2-719(2)," 65 *California Law Review* 28 (1977).
- ELKINS, James R. (1977) "A Counseling Model for Lawyering in Divorce Cases," 53 *Notre Dame Lawyer* 229.
- FAHLGREN, George W. (1976) "Unconscionability: Warranty Disclaimers and Consequential Damage Limitations," 20 *Saint Louis University Law Journal* 435.
- FAIR, Daryl R. and David H. MOSKOWITZ (1975) "The Lawyer's Role: Watergate as Regularity Rather than Aberration," 2 *Journal of Contemporary Law* 75.
- FALK, Carol H. (1978) "Legal Upheaval: Lawyers Are Facing Surge in Competition as Courts Drop Curbs," *Wall Street Journal* (October 18) 1.
- FAYNE, Steven N. and Marsha J. SMITH (1977) "Dealing with Magnuson-Moss," 8 *Cumberland Law Review* 205.
- FELSTINER, William L.F. (1974) "Influences of Social Organization on Dispute Processing," 9 *Law & Society Review* 63.
- (1975) "Avoidance as Dispute Processing: An Elaboration," 9 *Law & Society Review* 695.
- FENDELL, Bob (1975) "'Lemon Law' Effect Uncertain," *New York Times* (October 12) Section 11: 13.
- FIELD, Thomas G., Jr. (1978) "Appraising Private and Public Roles in Returning Small Economic Losses to Consumers: A Comparative Inquiry," 29 *Mercer Law Review* 773 (1978).
- FLINK, Marc D. (1978) "Note: Private Enforcement Under the Fair Debt Collection Practices Act," 28 *Case Western Law Review* 710.
- FRANK, John P., (1965) "The Legal Ethics of Louis D. Brandeis," 17 *Stanford Law Review* 683.
- FREEDMAN, Audrey (1977) "Legal Services—The New Fringe Benefit?" 14 (5) *Across the Board* 60 (May).
- FRENZEL, Lawrence D. (1977) "Fair Credit Reporting Act: The Case for Revision," 10 *Loyola of Los Angeles Law Review* 409.
- GALANTER, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Review* 95.
- GALIE, Lawrence P. (1978) "An Essay on the Civil Commitment Lawyer: or How I learned to Hate the Adversary System," 6 *Journal of Psychiatry and Law* 71.
- GALLUCCIO, Nick (1978) "The Rise of the Company Lawyer: Government Red Tape Costs American Consumers Plenty But it is Creating New Opportunities for Law School Graduates," *Forbes* (September 18) 168.
- GRANELLI, James S. (1979) "The Client as Deadbeat: When to Sue," *The National Law Journal* (January 8) 1.
- GRIFFITHS, J.E. (1977) "The Distribution of Legal Services in the Netherlands," 4 *British Journal of Law and Society* 260.
- GULLIVER, P.H. (1977) "On Mediators," in Ian Hamnett (ed.), *Social Anthropology and the Law*. New York: Academic Press.
- HAEFNER, James and John LECKENBY (1975) "Consumers' Use and Awareness of Consumer Protection Agencies," 9 *Journal of Consumer Affairs* 205.
- HAGY, James C. (1977) "Note: Simultaneous Representation: Transaction Resolution in the Adversary System," 28 *Case Western Law Review* 86.
- HARRIS, Roy J., Jr. (1977) "Prepaid Legal Insurance is Seen Becoming Unions' Next Big Fringe-Benefit Demand," *Wall Street Journal* (July 29) 24.
- HAZARD, Geoffrey C., Jr. (1978) *Ethics in the Practice of Law*. New Haven: Yale University Press.
- HEINZ, John P. and Edward O. LAUMANN (1978) "The Legal Profession: Client Interests, Professional Roles, and Social Hierarchies," 76 *Michigan Law Review* 1111.
- HORSKY, Charles A. (1952) *The Washington Lawyer*. Boston: Little, Brown.
- HOSTICKA, Carl J. (1979) "We Don't Care About What Happened, We Only Care About What is Going to Happen: Lawyer-Client Negotiations of Reality," 26 *Social Problems* 599.

- HURST, James Willard (1950) *The Growth of American Law: The Law Makers*. Boston: Little, Brown.
- (1960) *Law and Social Process in United States History*. Ann Arbor: University of Michigan Law School.
- INDIANA LAW JOURNAL (1976) "The Magnuson-Moss Warranty Act: Consumer Information and Warranty Regulation," 51 *Indiana Law Journal* 397.
- JOHNSON, Earl, Jr. and Elizabeth SCHWARTZ (1978) *A Preliminary Analysis of Alternative Strategies for Processing Civil Disputes*. Washington, D.C.: Government Printing Office.
- JEFFRIES, James (1974) "Protection for Consumers Against Unfair and Deceptive Business," 57 *Marquette Law Review* 559.
- KENDRICK, Rosemary (1978) "\$31,000 Fee for Bias Suit," *The [Madison, Wisconsin] Press Connection* (August 10) 3.
- LADIES HOME JOURNAL (1976) "Ralph Nader Reports," Oct., 1976: 66.
- LADINSKY, Jack (1976) "The Traffic in Legal Services: Lawyer-Seeking Behavior and the Channeling of Clients," 11 *Law & Society Review* 207.
- LADINSKY, Jack, Stewart MACAULAY and Jill ANDERSON (1979) "The Milwaukee Dispute Mapping Project: A Preliminary Report," Working Paper 1979-3, Dispute Processing Research Program, University of Wisconsin-Madison, Law School.
- LANDERS, Jonathan M. (1977) "Some Reflections on Truth in Lending," 1977 *University of Illinois Law Forum* 669.
- LAUMANN, Edward O. and John P. HEINZ, (1977) "Specialization and Prestige in the Legal Profession: The Structure of Deference," 1977 *American Bar Foundation Research Journal* 155.
- LOCHNER, Philip R., Jr. (1975) "The No Fee and Low Fee Legal Practice of Private Attorneys," 9 *Law & Society Review* 431.
- LORNE, Simon M. (1978) "The Corporate Securities Adviser, The Public Interest, and Professional Ethics," 76 *Michigan Law Review* 423.
- MACAULAY, Jacqueline and Stewart MACAULAY (1978) "Adoption for Black Children: A Case Study of Expert Discretion," in Rita J. Simon (ed.), *Research in Law and Sociology: An Annual Compilation of Research*. Greenwich: JAI Press.
- MACAULAY, Stewart (1963) "Non-Contractual Relations in Business: A Preliminary Study," 28 *American Sociological Review* 55.
- McCONNELL, Jon P. and Charles M. LILLIS (1976) "A Comment on the Role, Structure, and Function of Corporate Legal Departments," 14 *American Business Law Journal* 227.
- McGILLIS, Daniel, and Joan MULLEN (1977) *Neighborhood Justice Centers: An Analysis of Potential Models*. Washington, D.C.: Government Printing Office.
- McNEIL, Kenneth, John R. NEVIN, David M. TRUBEK, and Richard E. MILLER (1979) "Market Discrimination Against the Poor and the Impact of Consumer Disclosure Laws: The Used Car Industry," 13 *Law & Society Review* 695.
- MASON, Joseph and Samuel HIMES (1973) "An Exploratory Behavioral and Socio-Economic Profile of Consumer Action About Dissatisfaction with Selected Household Appliances," 7 *Journal of Consumer Affairs* 121.
- MAYHEW, Leon and Albert J. REISS, Jr. (1969) "The Social Organization of Legal Contacts," 34 *American Sociological Review* 309.
- MILLER, Judith (1978) "What a Lawyer Owes His Client: A.B.A., S.E.C. Study Change in Corporate Law Standards," *New York Times* (December 17) Section 3: 1.
- MUIR, William K. (1967) *Prayer in the Public Schools: Law and Attitude Change*. Chicago: University of Chicago Press.
- NADER, Laura (1969) "Styles of Court Procedure: To Make the Balance," in L. Nader (ed.), *Law in Culture and Society*. Chicago: Aldine.
- NASH, Gary B. (1965) "The Philadelphia Bench and Bar, 1800-1861," 7 *Comparative Studies in Society & History* 203 (1965).
- PAUL, Roland A. (1976) "A New Role for Lawyers in Contract Negotiations," 62 *American Bar Association Journal* 93.
- PERHAM, John C. (1977) "The Dilemma in Product Liability," 109 *Dun's Review* 48 (January).
- PROTTAS, Jeffrey Manditch (1978) "The Power of the Street-Level Bureaucrat in Public Service Bureaucracies," 13 *Urban Affairs Quarterly* 285.
- RAMSAY, Iain D.C. (1978) "Empirical Study of Edmonton Retailers' Policies

- for Dissatisfied Consumer Purchases," Unpublished study, The Institute of Law Research and Reform, The University of Alberta, Canada.
- RAST, L. EDMUND (1978) "What the Chief Executive Looks for in his Corporate Law Department," 33 *The Business Lawyer* 881.
- REED, John P. (1969) "The Lawyer-Client: A Managed Relationship?" 12 *Academy of Management Journal* 67 (March).
- RHEINGOLD, Paul D. (1977) "Tackling Corporate Defendants in Product Cases," 1 *Journal of Product Liability* 33.
- ROBERTS, Barry S. (1978) "The Magnuson-Moss Federal Warranty Act and Failure of its Essential Purpose, Uniform Commercial Code 2-719(2)," 33 *The Business Lawyer* 1845.
- ROSENTHAL, Douglas E. (1974) *Lawyer and Client: Who's In Charge?* New York: Russell Sage Foundation.
- ROSS, H. Laurence (1970) *Settled Out of Court: The Social Process of Insurance Claims Adjustments*. Chicago: Aldine.
- ROSS, H. Laurence and Neil O. LITTLEFIELD (1978) "Complaint as a Problem-Solving Mechanism," 12 *Law & Society Review* 199.
- ROSS, S.D. (1976) "The Role of Lawyers in Society," 48 *The Australian Quarterly* 61 (March, 1976).
- ROTHSCHILD, Donald P. (1976) "The Magnuson-Moss Warranty Act: Does It Balance Warrantor and Consumer Interests?" 44 *George Washington Law Review* 335.
- RUGABER, Walter (1974) "Federal Warranty Standards and Consumer Aid Agreed On," *New York Times* (Dec. 11) 1.
- SAXE, David B. and David I. BLEJWAS (1976) "The Federal Warranty Act: Progress and Pitfalls," 22 *New York Law School Law Review* 1.
- SCHEINGOLD, Stuart A. (1974) *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven: Yale University Press.
- SCHNEYER, Theodore J. (1978) "Uncharitable Thoughts on Mandatory Pro Bono: Internal Subsidy, External Subsidy, and Professional Ideology as Ways to Affect the Market for Legal Services," Presented at Law & Society Association Meeting, Minneapolis (May 18th).
- SCHROEDER, Milton R. (1978) "Private Actions under the Magnuson-Moss Warranty Act," 66 *California Law Review* 1.
- SHAFFER, Thomas L. (1969) "The 'Estate Planning' Counselor and Values Destroyed by Death," 55 *Iowa Law Review* 376.
- SIMON, William H. (1978) "The Ideology of Advocacy: Procedural Justice and Professional Ethics," 1978 *Wisconsin Law Review* 29.
- SNIDERMAN, Paul M. and Richard A. BRODY (1977) "Coping: The Ethic of Self-Reliance," 21 *American Journal of Political Science* 501.
- SOLOMON, Stephen (1979) "The Corporate Lawyer's Dilemma," 100 *Fortune* 138 (Nov. 5, 1979).
- SPENCER, Janet Maleson and Joseph P. ZAMMIT (1976) "Mediation-Arbitration: A Proposal for Private Resolution of Disputes Between Divorced or Separated Parents," 1976 *Duke Law Journal* 911.
- STATE BAR OF WISCONSIN (1979) *LawInfo: A Report to the Bar—1*. Madison: State Bar of Wisconsin.
- STEELE, Eric H. (1975) "Fraud, Disputes, and the Consumer: Responding to Consumer Complaints," 123 *University of Pennsylvania Law Review* 1107.
- STUART, Reginald (1979) "Hot From Detroit: Service Warranties," *New York Times* (February 16) D 1.
- THOMPSON, Frank (1979) "U.W. Researchers 'Mapping' Consumer Complaints," *The Public I* (July, 1979) 6.
- TIME (1976) "Marketing: Anti-Lemon Aid," (February 9) 76.
- UNGER, Roberto M. (1976) *Law in Modern Society: Toward a Criticism of Social Theory*. New York: Free Press.
- VIERA-GALLO, José Antonio (1972) "The Legal System and Socialism," 1972 *Wisconsin Law Review* 754.
- WARLAND, Rex H., Robert O. HERMANN, and Jane WILLITS (1975) "Dissatisfied Consumers: Who Gets Upset and Who Takes Action," 9 *Journal of Consumer Affairs* 148.
- WHITE, James J. (1977) "Evaluating Article 2 of the Uniform Commercial Code: A Preliminary Empirical Expedition," 75 *Michigan Law Review* 1262.
- WHITFORD, William C. (1968) "Strict Products Liability and the Automobile Industry: Much Ado About Nothing," 1968 *Wisconsin Law Review* 83.
- (1973) "The Functions of Disclosure Regulation in Consumer Transactions," 1973 *Wisconsin Law Review* 400.
- WHITFORD, William C. and Spencer KIMBALL (1974) "Why Process

- Consumer Complaints? A Case Study of the Office of the Commissioner of Insurance of Wisconsin," 1974 *Wisconsin Law Review* 639.
- WILKES, Robert E. (1978) "Fraudulent Behavior by Consumers," 42 *Journal of Marketing* 67 (1978).
- WILKES, Robert E. and James B. WILCOX (1976) "Consumer Perceptions of Product Warranties and Their Implications for Retail Strategy," 4 *Journal of Business Research* 35.
- WILLIAMS, Harold M. (1978) "Corporate Accountability and the Lawyer's Role," 34 *The Business Lawyer* 7.
- WISDOM, Michael T. (1979) "An Empirical Study of the Magnuson-Moss Warranty Act," 31 *Stanford Law Review* 1117.
- YALE LAW JOURNAL (1975) "Note: The Role of Counsel in the Civil Commitment Process: A Theoretical Framework," 84 *Yale Law Journal* 1540.
- (1976) "Project: The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis," 86 *Yale Law Journal* 104.
- (1978) "Note: Lawyering for the Child: Principles of Representation in Custody and Visitation Disputes Arising from Divorce," 87 *Yale Law Journal* 1126.
- ZANDER, Thomas (1976) "Civil Commitment in Wisconsin: The Impact of Lessard v. Schmidt," 1976 *Wisconsin Law Review* 503.

### CASES

- State v. J.C. Penney Co.*, 48 WI2d 125, 179 NW2d 641 (1970).

