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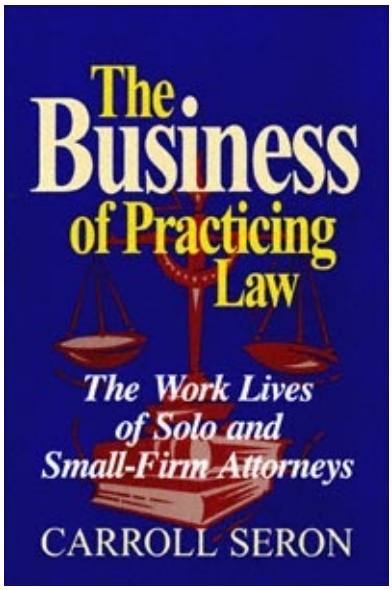

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THE BUSINESS OF PRACTICING LAW

The Work Lives of Solo and Small-Firm Attorneys

Carroll Seron

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In memory of my father, Arthur Seron

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Preface

Denise Dewey (not her real name) is a successful personal injury attorney with a long list of well-known cases. She works on her own in lower Manhattan in a more businesslike manner than one traditionally associates with a professional practice. Dewey has systematized all her legal work and linked it to her support staff. She speculates that her newly installed computer network should greatly improve the efficiency and productivity of her legal business. She has plans to work out a design with a computer consultant to connect her office to both her Manhattan home and her country home. She intends to expand her production and reputation through more computerization and advertising. She is developing a video about her legal work for presentation to women's groups, and she expects to hire a public relations person to expand the news coverage of her cases and coordinate her marketing plan. When asked about her work with clients, Dewey explains that serving clients is actually a matter of selling consumers on what kind of legal assistance they need. She and her entrepreneurial colleagues are creating legal businesses premised on marketing, automating, and merchandising services.

Dewey's situation illustrates that success as a professional continues to require much more than a nine-to-five commitment. It also reflects the relationship to gender of the demands of professionalism: Her husband does a majority of the chores for her and her children at home so that she can work professional overtime. This kind of support sets her apart from many female lawyers, who must cope by other means with the time demands of their practice.

This book looks at (1) the ways in which solo and small-firm lawyers in the New York metropolitan area solve the problems of getting business, organizing work, and serving clients in the presence of an increasingly accommodating boundary between professionalism and commercialism; (2) the expansion of a service-based, postindustrial economy;

and (3) the need to negotiate time in light of the gender shift in the composition of the professional labor force.

All service occupations must get enough business, organize delivery cost-effectively, and serve clients efficiently. Professionals offer a somewhat special case, however, because of the rules by which their tasks are guided. To get business, lawyers are encouraged to wait for clients to call and to become known by cultivating social networks through family, friends, religious organizations, and other associations. To organize their practices, lawyers are encouraged to follow a collegial model and make decisions collectively in order to ensure equity and fairness among professional partners. To serve clients, lawyers are guided by an ethic of quality treatment, which assumes that they will devote whatever time is needed to each case and will treat each client as special, if not unique. And to serve the public interest, lawyers are urged to volunteer their time through pro bono activities.1

Lawyers have thus secured an elevated status in the occupational hierarchy and staked out special claims to professionalism. Nonetheless, because they face the same basic issues as do all service occupations, Denise Dewey and some of her colleagues have responded by advertising, soliciting business through the media, circulating newsletters, and using other nontraditional techniques to bring in clients. They may borrow postindustrial designs, including professional homework, and introduce flexible, more consumer-oriented systems that emphasize cost and timeliness over service and care. And they may claim that their ads, by informing the public of citizens' legal rights, are a form of pro bono service.

But opportunities to innovate require more than changes in professional rules or the economy of a region. Change occurs equally through the ideologies, values, norms, and hopes that individuals bring to their careers. Denise Dewey's professional biography suggests that she is planning and positioning herself for the future: She is an innovative entrepreneur of legal service delivery, and she has renegotiated gender roles with her spouse to have the time she needs to develop her business. Although Dewey is not alone, she is part of a rather distinct minority. Many men and women follow much more traditional paths. Within the profession there is a deep tension between innovative businesspeople who provide legal services and conservatives of a more traditional professionalism. Even though some of these men and women discuss the business of the profession in the context of commercialism and postindustrialization, or of negotiating time in a two-wage-earner economy, most

tend to defer to a familiar notion of professionalism and gender roles and to identify with the familiar ways of getting business, organizing work, and serving clients.

The chapters that follow—which are based on interviews with 102 attorneys, 73 men and 29 women, in the New York Regional Metropolitan Area2—present a close look at how solo and small-firm attorneys carve out a professional practice between a comfortable past and an unfolding present.

Acknowledgments

First, I thank the many lawyers scattered in and around New York City who shared their hopes, aspirations, and experiences. In a profession where I came to appreciate the importance of time, I am especially grateful to each attorney who answered my many questions about the ways of getting, organizing, and serving clients. I hope that I have captured some of the complexities of private professional practice and repaid a part of my debt.

Like all professional tasks, scholarship takes times. Among the institutions that gave me financial support and time to develop and complete this project, I am especially grateful to the National Science Foundation. In the earliest phase NSF, along with the American Bar Foundation and the PSC-CUNY Research Foundation, provided money for a pilot study. With additional NSF support I was able to return to the field to complete interviews with attorneys from a wider cross section of practice. Moreover, it was under the auspices of the National Science Foundation that I had the special opportunity to spend a year as Visiting Professor for Women in Science at the University of California, Los Angeles; I am also grateful to PSC-CUNY for the Scholar Incentive Award that provided partial support for my year at UCLA, where I was able to slip into writing a first draft with very few other demands on my time. It is an honor to be affiliated with the many women scientists who have participated in this program.

During the course of that year I also had the opportunity to share my work with new and old colleagues. I owe many thanks to Rick Abel, who pushed me to share a very unpolished draft with a wonderful group of supportive critics. Thanks go as well to Bob Emerson, Joel Handler, Carrie Menkel-Meadow, Ruth Milkman, and Karen Orren, who took time from their busy schedules to provide invaluable suggestions at an early stage in the writing. I had two great research assistants at UCLA, Elizabeth Boyd and Kerry Ferris of the Department of Sociology. I am espe-

cially grateful to Kerry Ferris, with whom I coauthored an article of which portions appear in Chapter 3.

Spending a year at UCLA also allowed me to return to the town where I grew up. I thank my family — especially my parents, Agette and Arthur Seron — for reading some rough chapters, for reminding me of the ways in which communities continue to play an important role in our personal and professional lives, and for helping to make the return a memorable year.

Throughout this project, Daniel Poor of the Department of Sociology at the Graduate Center, City University of New York, bailed me out of numerous technical difficulties, assisted with interviewing, and made many insightful suggestions. My thanks go as well to Jean Kovath for preparing, cleaning, and analyzing the survey data; Stephanie Waterman, who transcribed endless interviews and sent them back with wonderful notes when she found observations of special interest; Florence Eng, who double-checked the accuracy of the transcriptions and provided many helpful suggestions along the way; and Deepti Chadha, who prepared tables and checked references.

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Chapter 1
Professionalism versus Commercialism

Hyatt Legal Services and Jacoby and Meyers, the early leaders in for-profit legal clinics, began with a remarkably similar vision. Len Jacoby and Steve Meyers were classmates at UCLA Law School in the early 1970s. Inspired by the political values of the movement to provide legal servies to the poor, in 1972 they opened three offices in easily accessible, lower-middle-class communities in the greater Los Angeles area. The California bar brought charges against them, claiming that they were violating the professional code by using a fictitious name, Jacoby and Meyers Legal Clinic, and that they had transgressed the lines of permissible solicitation by holding a press conference to talk about their law business. When they were temporarily suspended from practice, the incident had the ironic effect of propelling the firm into the national limelight. The California Supreme Court eventually ruled in its favor, holding that even though their practice might ‘‘create an atmosphere of commercialism rather than professionalism,” the partners had the right to use these tactics.1

In 1977 the question of advertising reached the U.S. Supreme Court. The Court held in *Bates* that lawyers may “advertise prices at which services are performed” and that the use of the terms “legal clinic” and “very reasonable” prices are not misleading.2 Thereafter, Jacoby and Meyers were among the first to advertise widely on television. At Hyatt Legal Services the story is told that on the day the Supreme Court handed down the *Bates* decision in 1977, Joel Hyatt, a graduate of Yale Law School, packed his bags at the prestigious Wall Street law firm of Paul Weiss, Rifkind, Wharton, and Garrison and returned to his hometown of Cleve-

land to open a storefront law office and plan an expansion of his services to other cities.

A commercialized approach to doing business and getting clients requires risk-taking and innovation to stay ahead of the competition. “Jacoby and Meyers and Joel Hyatt taught very important lessons … [and] today more lawyers see the legal field as just another business,” according to the *Wall Street Journal* (September 6, 1994). Indeed, new, even more innovative law firms forced Jacoby and Meyers and Joel Hyatt to close many storefront offices around the country because they could not match the “small, local firms [that] … started competing at Jacoby and Meyers' prices” *(Wall Street Journal*, September 6, 1994; see also *National Law Journal*, September 5, 1994). In this increasingly competitive market, it is reported that Jacoby is now suing Meyers, claiming that Meyers “undertook a deliberate course of action to isolate'” Jacoby from the remains of their business *(New York Times*, October 20, 1995).3

Creators of for-profit prepaid plans (a form of quasi-insurance) drew upon advances in the direct mail industry, as well as a relaxation of professional rules following a number of Supreme Court decisions.4 Like medical insurance, these plans claim to protect consumers should they require extensive legal representation. Firms such as Hyatt Legal Services, Signature Group, and Nationwide, the major players in the business, market prepaid legal services to working and middle-class consumers. While there are variations across the plans, each one retains a network of participating attorneys and sells plans to consumers who gain access to an attorney's services at a “reduced” fee (see Seron 1992). With some flamboyance, one Long Island attorney explained to me that he got involved with prepaid legal plans because he saw them as part of a “socialist-activist’’ strategy. Combining the social movements to provide legal services to the poor with the consumer movement and with advertising and telemarketing captured the “fresh creative infusion from the counterculture [when] hip young people … began to invade” advertising, beginning in the 1970s (Ehrenreich 1989:175-76).

More recent conflicts over appropriate advertising and solicitation involve the Internet. When two attorneys from Arizona, Laurence A. Canter and his wife, Marsha S. Siegel, advertised their services over the global computer network, the initial challenge to their solicitation came, interestingly, from other Internet users because it “violated the unwritten rules of the electronic global community by sending unsolicited commercial messages” (*New York Times*, April 19, 1994; p. D1). Despite the threat of disconnection from Internet, the legal team tried to advertise again. In an in-

teresting twist, Siegel reported receiving “obscene phone calls and ‘carloads’ of magazines to which she never subscribed” after their second Internet advertising campaign. However this controversy is resolved, it underscores the broader development: “Entrepreneurial” professionals continue to find new and creative tools to expand their service businesses.5

Other attorneys are extensively advertising “free” 800 telephone numbers to expand their services. In a highly controversial step, Robert L. Shapiro, attorney for O. J. Simpson, installed a toll-free line (incorporating the numbers on Simpson's football jerseys) to take information on the case and, of course, to solicit other business. Thus, even if one does not have a tip for Shapiro about the case, it is possible to get additional information about legal representation (*New York Times*, July 23, 1994).

Each of these strategies reflects innovative marketing ideas of the moment and pushes the boundaries of state bar regulations.6 As a former Jacoby and Meyers attorney suggested, “in its day” the idea that ‘‘law is a business,” that it is “possible to market to middle-class consumers,” that “offices can be opened in malls,” or that “paralegals could be used for a host of straightforward legal matters” were “novel.” Similarly, ads on the Internet or getting your name in the paper through a clever marketing scheme are “novel.” As the inevitable demise of Jacoby and Meyers suggests, that is the key: to solicit legal business through clever, provocative, catchy, and ever-changing concepts.

Although the profession's authority (through bar associations) to control client-getting has slipped in the last few decades, it continues to regulate formal admission into the profession. Almost all lawyers share the experience of law school, where they continue to learn through a case method and are imbued with the values of a shared professional community. Beginning in the 1870s there were moves to restructure access to the profession through education, including a requirement that one must have an undergraduate degree before commencing professional education and then complete a law school degree. Today, aspirants may follow various routes into the profession, from Harvard or Yale to proprietary and night school programs, but virtually all must acquire that law degree in order to sit for the bar and represent a client in a court of law.77 Lamenting a decline in the ideals of lawyers, Anthony Kronman writes about the importance of legal education as the initial and most important building block of a shared professionalism:

A lawyer's professional life begins the day that he or she starts law school… . However diverse their professional experiences may be in other re-

spects, therefore, lawyers still share at least one thing in common: they have all been law students at one time or another, and it is as students that their professional habits take shape.

The single most prominent feature of twentieth-century American legal education is its heavy reliance on the so-called case method of instruction. (1993:109-10)

A legal education and the bar examination are the formal hurdles that define the profession's rite of passage. Despite a more open embrace of commercial strategies to get business, all lawyers are stamped by the rigors of professional legal education, Kronman reminds us. The question arises, in what way do the decision to be a lawyer and the rite of passage into the profession leave their mark? Do these attorneys expect to be men and women of commerce or of law?

The Decision to Become a Lawyer

For most practitioners, the call of the mobility escalator emerges as the defining ingredient in the decision to go to law school. Both older and younger attorneys might explain that they commuted to college and worked their way through school.8 When it came to finding a career, many reported, they selected law because it would be “lucrative” or “respected.” Seymour Kaplowitz, a solo lawyer in Manhattan, told the story that his father, who owned a small business in Brooklyn, came home from seeing his lawyer in about 1947 and reported that he was charged $250. He turned to his son and said “That's it… . I think it would be a good idea if you became a lawyer.”9

A group of attorneys from a range of social backgrounds spoke of having been on their way to get another degree: They were “definitely going to continue [their] education”; they were very “career motivated”; or they were going to enter a profession — it was just a matter of which one. As David Friedman, an entrepreneur in Queens, put it, echoing others, Jewish boys become either doctors or lawyers, “unless they are really retarded — then they become accountants.” Vincent Federici explained, “I was the oldest of a very large Italian family without tremendous education, and the oldest of a large number of grandchildren. I was sort of the star. Ergo, education. Ergo, law school.” They made it clear that they had had aspirations to be a professional — a doctor, lawyer, or accountant — and several joked about having chosen law because they could not stand the sight of blood or the boredom of numbers. All those whose fathers were lawyers reported that this too was a positive influence.

An equally common refrain revolved around a process of “backing into” the specific decision. It was, for example, a “natural progression” from their undergraduate studies in sociology, political science, English, history, journalism, or psychology. In a slightly more cynical vein some said that they “crossed out” other options, that it was the “line of least resistance,” or that it was “getting to the crunch’’ of graduation and law school was still available. Here too, however, the underlying theme was gearing one's career toward a profession. Many attorneys, then, men and women alike, decided to become lawyers because the law was, as Ann Stein summed it up, a “safe career.”

Careerism was only a part of the picture. Another theme to emerge from these work histories was a concern to “be of service” and to “help” other individuals by working with them at moments of legal difficulty. Celebrating this point, Amy Moskowitz, an associate in a small firm in suburban Queens, said: “Just from the little bit you've seen here, I'm a very … hands-on, person-to-person kind of person. And I felt that I either wanted an area like law, where I could make a difference, or I wanted to pursue psychology.”

In addition to those with career and service orientations, there were others who claimed that they selected law because they had just *always* wanted to be a lawyer, from the time they were little, even though many could not really explain it and had had “no idea what lawyers actually did.” Some elaborated by noting that they had read a biography of Louis Nizer, Melvin Belli, or Clarence Darrow, that they had gone to watch trials, that they remembered Perry Mason. Two attorneys — Bruce Ross, a criminal lawyer at Jacoby and Meyers, and Denise Dewey — said they loved acting and this was the next best thing. A shared, almost romantic sentiment emerged from one group; as Robert Cohen, in a two-person Long Island partnership, put it with much pride, “Like a lot of people I always wanted to be a lawyer; what separated me from a lot of other people I've spoken to is that I did it! And, I went [to school] at night.”

This diffuse sense of passion about the law was somewhat more commonly expressed by women. For example, Reva Ackerman, in a three-person Manhattan partnership, graduated from college in the 1950s and went to law school when her children were young. She noted that she had “always” wanted to be a lawyer but that “girls” could not pursue such a career in her day if they wanted to get married. Other women explained that they wanted the “intellectual challenge” and the opportunity for a career that offered “diversity” or “independence” (see Harrington 1994:42-43). A concern for autonomy was shared by some men but was slightly more typical of the women. Lest the wrong impression