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Cover Page Footnote

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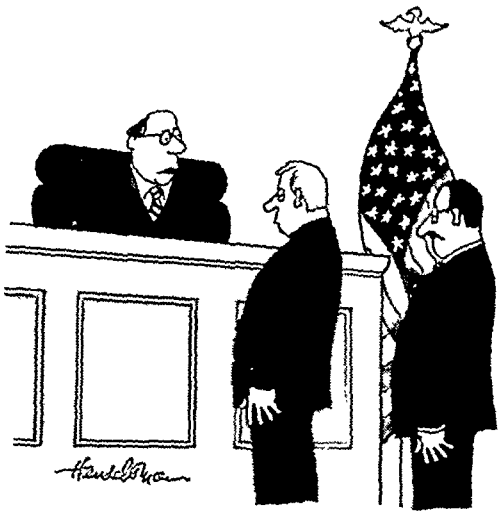
I am grateful to Jon Bauer and Jim Stark for their thoughtful comments on earlier drafts of this Article and to Susan Silbey and Joyce Sterling for their willingness to answer my questions relating to sociological methodology. I would also like to thank the forty-one attorneys who generously gave me one of their most precious commodities-time-in order to meet with me and answer my questions.

PRELIMINARY REFLECTIONS ON THE PROFESSIONAL DEVELOPMENT OF SOLO AND SMALL LAW FIRM PRACTITIONERS

*Leslie C. Levin**



"Apparently, you have very little respect for our judicial system, sauntering in here with only one lawyer."

INTRODUCTION

Solo and small firm practitioners occupy the mid-to-lower rungs of the legal profession's hierarchy. Lawyers who practice in these settings tend to receive significantly less income[2] and substantially

* Professor of Law, University of Connecticut School of Law. I am grateful to Jon Bauer and Jim Stark for their thoughtful comments on earlier drafts of this Article and to Susan Silbey and Joyce Sterling for their willingness to answer my questions relating to sociological methodology. I would also like to thank the forty-one attorneys who generously gave me one of their most precious commodities—time—in order to meet with me and answer my questions.

1. © 2001 The New Yorker Collection from http://cartoonbank.com. All Rights Reserved.

2. Richard L. Abel, American Lawyers 206-07 (1989); Dean Kilpatrick & Robert L. Nelson, *Professionalism from a Social Science Perspective*, 52 S.C. L. Rev. 473, 478 (2001); Richard H. Sander & E. Douglas Williams, *Why Are There So Many Lawyers?*

more discipline than their big firm colleagues.[3] They face stiff competition from a variety of sources and their numbers, relative to larger firm practitioners, have been on the decline.[4] They have received far less attention in the recent academic literature than the lawyers who practice in large law firms.[5] Indeed, as Jerome Carlin has noted, "compared to the research done on large firms, relatively little attention has been directed to solo practitioners or small firm lawyers—resulting in a seriously neglected area of inquiry."[6]

As a result of this inattention, assumptions are sometimes made about the work lives and professional development of these lawyers when the realities are much more complex. To begin with, while the percentage of lawyers practicing in these settings has decreased over the last forty years, this is hardly a dying breed of lawyers. According

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Perspectives on a Turbulent Market, 14 Law & Soc. Inquiry 431, 466-67, 474-75 (1989).

3. *See, e.g.*, Abel, *supra* note 2, at 144-45; Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721, 756 & n.119 (2001); Report by the State Bar of California, Investigation and Prosecution of Disciplinary Complaints Against Attorneys in Solo Practice, Small Size Law Firms and Large Size Law Firms (June 2001), *at* http://www.calbar.org/2rel/nw01/biassolo01.htm (reporting that 78.37% of disciplinary cases prosecuted and completed were against solo practitioners).

4. In 1960, 64% of all lawyers who worked in private practice worked in a solo practice setting. Clara N. Carson, The Lawyer Statistical Report: The U.S. Legal Profession in 1995, at 7 (1999) [hereinafter Lawyer Statistical Report]. By 1995, only 47% of all private practitioners worked in solo practice settings. *Id.* In 1980, 44% of all lawyers who worked for law firms did so in firms of two to five lawyers. *See id.* at 8. By 1995, only 28% of firm practitioners worked in small firm settings. *See id.*; *see also* John P. Heinz et al., *The Changing Character of Lawyers' Work: Chicago in 1975 and 1995*, 32 Law & Soc'y Rev. 751, 768-69 (1998) [hereinafter Heinz et al., *The Changing Character of Lawyers' Work*].

5. The large firm experience has captured the attention of many scholars over the last dozen years. *See, e.g.*, Marc Galanter & Thomas Palay, Tournament of Lawyers (1991); Robert L. Nelson, Partners With Power: The Social Transformation of the Large Law Firm (1988); Dennis Curtis, *Can Law Schools and Big Firms Be Friends?*, 74 S. Cal. L. Rev. 65 (2000); Robert W. Gordon, *The Ethical Worlds of Large Firm Litigators: Preliminary Observations*, 67 Fordham L. Rev. 709 (1998); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 Va. L. Rev. 1581 (1998); Symposium, *Attorney Well-Being in Large Law Firms: Choices Facing Young Lawyers*, 52 Vand. L. Rev. 953 (1999).

In contrast, the best-known study concerning solo practitioners was conducted forty years ago. *See* Jerome E. Carlin, Lawyers On Their Own (1962). This was followed by studies of lawyers in a mid-sized city and rural lawyers, who tended to be solo and small firm practitioners. *See* Joel F. Handler, The Lawyer and His Community: The Practicing Bar in a Middle-Sized City 13 (1967); Donald D. Landon, Country Lawyers: The Impact of Context on Professional Practice (1990). Some other studies have focused on lawyers in practice specialties that tend to be comprised of solo and small firm practitioners, but in recent years, only Carroll Seron, and to a lesser extent, Jerry Van Hoy, have focused directly on the subject of solo and small firm practitioners. *See* Carroll Seron, The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys (1996); Jerry Van Hoy, Franchise Law Firms and the Transformation of Personal Legal Services (1997).

6. Jerome E. Carlin, Lawyers On Their Own xvi (Austin & Winfield eds., 1994) (1962) [hereinafter Carlin, Lawyers On Their Own].

to *The Lawyer Statistical Report*, which provides the best nationwide picture of the demographics of the legal profession, almost 46% of all lawyers practice in solo and small law firms of five or fewer lawyers.[7] The actual percentage of solo and small firm lawyers may be higher.[8] Moreover, the percentage may very well increase in the coming years. More women work in solo practice than in any other practice setting and with the rising number of women entering the profession, more can be expected to enter this form of practice.[9] The trend toward early—and often forced—retirement of lawyers from large firm practice has also led big firm refugees to turn to small firm practice.[10] Reports that lawyers in solo and small firm practice are generally more satisfied with their work lives than big firm lawyers[11] may also

7. Lawyer Statistical Report, *supra* note 4, at 7-8. This represents less than a 3% decline during the period between 1980 and 1995. *See id.* Moreover, from 1991-1995 the percentage of lawyers engaged in private practice increased and the rate of increase was greater in the solo sector than in the firm sector. *See id.* at 7.

These figures are seemingly at odds with reports that the corporate client fields have grown much more quickly than the personal client fields, the latter of which tend to be dominated by solo and small firm practitioners. It has been reported that in 1995, the corporate sector consumed more than twice the amount of Chicago lawyers' time than personal and small business client work. Heinz et al., *The Changing Character of Lawyers' Work*, *supra* note 4, at 767. The explanation may be due, in part, to the fact that more solo and small firm practitioners once worked in larger practice settings, and are capable of doing, and attracting, more sophisticated corporate work. *See* Marc Galanter, *"Old and In the Way," The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 Wis. L. Rev. 1081, 1094-95, 1098-1101. It may also be explained in part by the fact that solo and small firm lawyers tend to work somewhat fewer hours than lawyers in large practice settings. ABA Young Lawyers Division Survey: Career Satisfaction 14-15 (2000) [hereinafter Career Satisfaction 2000]; ABA Young Lawyers Division, The State of the Legal Profession 1990, at 22-23 (1991) [hereinafter State of the Legal Profession].

8. The Lawyer Statistical Report relies on data from the *Martindale-Hubbell Law Directory* records, which under report the number of solo and small firm practitioners because many of those lawyers do not send in the information required to be listed in *Martindale-Hubbell*. Remarks from lawyers interviewed for the study I conducted indicated that most of them felt that being listed in *Martindale-Hubbell* provided them with little benefit because they would not obtain clients as a result of being listed there. Indeed, of the forty-one solo and small firm practitioners whom I interviewed for the study, eight did not appear in the *Martindale-Hubbell Law Directory*.

9. *See* Lawyer Statistical Report, *supra* note 4, at 10 (reporting that 36% of all women lawyers are solo practitioners); Ted Gest, *Law Schools' New Female Face*, U.S. News & World Rep., Apr. 9, 2001, at 76 (reporting that more women than men are applying to law school); *see also* Paul Mattessich & Cheryl Heilman, *The Career Paths of Minnesota Law School Graduates: Does Gender Make a Difference?*, 9 Law & Ineq. 59, 88-89 (1990) (noting that comparison of first jobs to present jobs show both men and women moving toward solo practice).

10. Galanter, *supra* note 7, at 1094-95.

11. *See, e.g.*, Kenneth G. Dau-Schmidt & Kaushik Mukhopadhaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. Legal Educ. 342, 362 (1999); Boston Bar Association Task Force on Professional Fulfillment: Expectations, Reality and Recommendations for Change 11 (1997) [hereinafter Boston Bar Task Force]. *But*

lead to increases in the number of lawyers who practice in solo and small firm settings.

Other negative assumptions that are made about these lawyers are based on Jerome Carlin's ground-breaking studies in the early 1960s. Carlin's study of solo practitioners in Chicago and his subsequent study of New York City lawyers' ethics powerfully portrayed the solo and small law firm lawyers who work in metropolitan areas as a marginal group of lawyers with less sophisticated practices and lower ethical standards than lawyers who worked in larger firms.[12] Although lawyers in these practice settings handled business matters, Carlin noted that a far greater proportion of this segment of the bar than large firm lawyers represented individuals in personal injury, real estate, matrimonial, criminal and workers' compensation matters.[13] These lawyers graduated from less prestigious law schools than their counterparts in larger firms, they came from lower social classes and their income often lagged behind the income of lawyers in other practice settings.[14] Solo practitioners, in particular, received spotty skills training once they entered practice, they rarely exercised a high

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see Marc S. Galanter & Thomas M. Palay, *Large Firm Misery: It's the Tournament, Not the Money*, 52 Vand. L. Rev. 953, 955 (1999) (contending that evidence about career satisfaction is mixed); Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 Vand. L. Rev. 971, 977-82 (1999) (arguing that large firm lawyers are no less satisfied than other private practitioners). It is unclear whether large firm lawyers are in fact less satisfied with their jobs than lawyers in other practice settings, but the conventional wisdom seems to be that large firm lawyers are not a happy group. *See, e.g.*, Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871 (1999) [hereinafter Schiltz, *On Being Happy*]; *Happier Lawyers Found at Small Firms: ABA Survey Polls Young Attorneys*, N.J. Law., Mar. 5, 2001, at 16; Chris Klein, *Big-Firm Partners: Profession Sinking*, Nat'l L.J., May 26, 1997, at A1; Robert Kurson, *Who's Killing the Great Lawyers of Harvard?*, Esquire Mag., Aug. 2001, at 83.

12. Carlin referred to solo practitioners as "a lower class of the metropolitan bar." Carlin, Lawyers On Their Own, *supra* note 6, at 17; *see also* Jerome Carlin, Lawyers' Ethics: A Survey of the New York City Bar 22-23 (1966) [hereinafter Carlin, Lawyers' Ethics] (referring to solo and small firm practitioners as the "lowest stratum" of the bar).

The same negative assumptions do not attach to solo and small firm lawyers in small towns because all lawyers in those towns share similar practice patterns. *See* Donald D. Landon, *Lawyers and Localities: The Interaction of Community Context and Professionalism*, Am. B. Found. Res. J. 459, 485 (1982) [hereinafter Landon, *Lawyers and Localities*].

13. Carlin, Lawyers' Ethics, *supra* note 12, at 25. Within the business area, these lawyers were more likely to work on labor relations problems, minor matters for employees, personal matters for officers of a business, building and zoning permits, liquor or other licenses, and incorporation. *Id.* at 26.

14. *Id.* at 27-32. In their studies of Chicago lawyers, John Heinz and Edward Laumann reached many of the same conclusions when they demonstrated the systematic differences between lawyers who serve major corporations and those who work for individuals and small businesses. John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Social Structure of the Bar 319-20 (1982).

level of professional skill and they were, in general, dissatisfied and disappointed men.[15]

When Carlin studied New York City lawyers, he explored the social setting of the lawyers' work and in particular, how the law offices in which they worked affected their ethical attitudes and behavior.[16] He observed that lawyers often worked in suites and that their ethical orientation was affected in some offices by the number of years they spent in the suite and the ethical orientation of the lawyers in the suite.[17] He reached some damning conclusions, including that solo and small firm lawyers were, on the whole, less ethical than their big firm counterparts.[18]

Although some of Carlin's conclusions were questioned even at the time,[19] his findings about the ethics and training of these lawyers are seemingly supported by other data. For example, discipline statistics show that solo and small firm lawyers receive a disproportionate amount of discipline compared to lawyers who practice in other settings.[20] Frances Zemans and Victor Rosenblum's study of Chicago lawyers in the mid-1970s indicated that the smaller the firm in which

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15. Carlin, Lawyers On Their Own, *supra* note 6, at 8-10, 168, 207.

16. Carlin used the term "ethical" in a narrow sense to refer to compliance with rules of professional conduct promulgated by the organized bar. A more recent study of large firm litigators revealed that practicing lawyers tend to use the term in the same way and that they differentiate between "ethical rules" and "morals" (*i.e.*, substantive issues of right and wrong). Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 Fordham L. Rev. 837, 843 (1998). Unless otherwise noted, when the term "ethical" is used in this Article, it is also used to refer to compliance with bar or court-promulgated rules of professional conduct.

17. Carlin, Lawyers' Ethics, *supra* note 12, at 18, 96-101.

18. *Id.* at 51-52, 55-61, 119-24.

19. *See* Monroe H. Freedman, *Book Reviews*, 16 Am. U. L. Rev. 177 (1966); Howard R. Sacks, *Book Reviews*, 62 Nw. U. L. Rev. 264, 265-66 (1967).

20. Discipline statistics reflect that solo and small firm practitioners receive much more discipline than big firm lawyers. *See supra* note 3 and accompanying text. These statistics may be misleading, however, at least with respect to the relative amount of lawyer wrongdoing in large and small firm practices. The clients of lawyers in corporate law firms are less likely to bring wrongdoing to the attention of disciplinary authorities than are the clients of solo and small firm practitioners, who have fewer mechanisms for seeking redress when their lawyers engage in wrongdoing. *See* Bruce L. Arnold & Fiona M. Kay, *Social Capital, Violations of Trust and the Vulnerability of Isolates: The Social Organization of Law Practice and Professional Self-regulation*, 23 Int'l J. Soc. Law, 321, 343 n.10 (1995); David B. Wilkins, *Who Should Regulate Lawyers?*, 105 Harv. L. Rev. 799, 828-29 (1992). The difficulty of proving which lawyers within a large firm bear responsibility for wrongdoing makes it more difficult to impose discipline on large firm lawyers. *See* Ted Schneyer, *Professional Discipline for Law Firms?*, 77 Cornell L. Rev. 1, 8-9 (1991). Solo and small firm practitioners may also have fewer resources available to defend against discipline complaints. *See* James Evans, Lawyers at Risk, Cal. Law., Oct. 1989, at 45, 47. In addition, bias may account for the disproportionate imposition of public discipline on solo and small firm practitioners. *See* Leslie C. Levin, *The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 Am. U. L. Rev. 1, 62 n.275 (1998).

the lawyer practiced, the more likely the lawyer was to believe that the skill was learned in law school rather than from attorneys in the lawyer's own office.[21] When coupled with ABA reports suggesting that solo and small firm practitioners are isolated,[22] receive little mentoring[23] and rely on independent study to learn practice skills,[24] it is not surprising that these lawyers continue to be viewed as unethical, unmentored and inadequately trained members of the bar.

It would appear, however, that the office settings and training opportunities available to solo and small firm lawyers have changed greatly over the last few decades. Technology has expanded the concept of the "law office" in every practice setting so that lawyers with formal affiliations need not work in the same office—or even in the same city. Lawyers can now communicate with one another in ways that could barely be imagined in the 1960s. While Carlin described solo lawyers who typically entered unhappy apprenticeships for a few years before moving out on their own,[25] Carroll Seron's 1990 study of solo and small firm practitioners revealed that many lawyers follow more varied career paths to those practice settings.[26] Her findings suggest that they may now receive more assistance with skills training than previously believed.[27] The growing availability of continuing legal education, bar mentoring programs, "how to" books and skills training tapes has also increased skills training opportunities for these lawyers.

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21. Frances Zemans & Victor Rosenblum, The Making of a Public Profession 152-55 (1981).

22. *See, e.g.*, ABA, The Report of At the Breaking Point: A National Conference on the Emerging Crisis in the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services 7-8 (1991) [hereinafter At the Breaking Point]; ABA Task Force on Solo and Small Firm Practitioners: Report With Recommendations 39 (Nov. 1991).

23. *See, e.g.*, ABA Satisfaction/Dissatisfaction Survey 1984 (reporting that 13.5% of solo practitioners and 31% of small firm practitioners had mentors); ABA Section of Legal Education and Admissions to the Bar, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum 47 (1992) [hereinafter Narrowing the Gap]; ABA Standing Commission on Lawyers' Professional Liability, Legal Malpractice Claims in the 1990s, at 24 (1997) (reporting that young lawyers were starting in practice without supervision or mentoring); State of the Legal Profession, *supra* note 7, at 39 (reporting that lawyers in solo practice and small firms have "major" transition problems in some skills areas due to lack of mentoring); *see also infra* notes 132-37 and accompanying text (describing reports indicating that few solo or small firm practitioners have mentors).

24. *See* Narrowing the Gap, *supra* note 23, at 47; *see also* Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. Legal Educ. 469, 480 (1993) (reporting that rural lawyers, who are typically in solo and small firms, rely on independent study to learn practice skills).

25. Carlin, Lawyers On Their Own, *supra* note 6, at 8-13.

26. Seron, *supra* note 5, at 8.

27. *See infra* note 130 and accompanying text.

Technology has also fundamentally changed the economics and efficiency of solo and small firm practices, enabling lawyers in these settings to compete with larger firms. Computers have reduced the need for extensive support staff in many law offices, permitting lawyers to do their own word processing and billing without substantial secretarial support.[28] Legal research has also become less costly as on-line services, free legal databases and CD-ROMs have eliminated the need for these lawyers to travel to libraries or to maintain their own.[29] Cellular telephones, voice mail and e-mail enable lawyers to do more work with less legal staff and to remain accessible to their clients while in transit. Technology has even freed some lawyers of the need to maintain costly law offices, allowing them to compete with large firm lawyers from the comfort of their homes.[30]

In addition, the influx of women into the profession has changed the demographics of solo and small firm practice, possibly more than it has changed any other practice setting. Almost one-quarter of all solo practitioners are female.[31] More than 60% of all women who work in private practice do so in solo and small firm settings.[32] There is evidence that some women choose these settings for quality of life reasons.[33] Whether they practice law any differently than their male counterparts, and whether their ethical orientation varies in any significant way, is unclear.[34]

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28. *See* ABA Legal Technology Resource Center, 1999 Legal Technology Survey Report 159 (2000) [hereinafter Legal Technology Survey] (reporting that more than 40% of solo lawyers do all of their own word processing and almost one-third of small firm practitioners do all or most of their own word processing); Claudia MacLachlan, *Closing the Capability Gap: Internet Resources Put Small Firms and Solos on a More Equal Footing with Bigger Competitors*, Legal Times, Oct. 11, 1999, at 27.

29. *See, e.g.*, Parry Aftab, *WWW: Solo Practitioner's Best Friend*, Legal Intelligencer, Mar. 22, 1999, at 3-4; Charles Davis, *Here Comes David with Techno Stones: Help for Attorneys Choosing to Fly Solo*, Ariz. Att'y, May 1995, at 20; Ritchenya A. Shepherd, *Law Firms Thrive on Virtual Libraries in Cyberspace*, N.Y. L.J., July 11, 2000, at 5. Computer research has also increased the efficiency of lawyers by reducing the time a lawyer must devote to finding relevant legal authority and making it easier to delegate the task of research to non-lawyers. *See* Shepherd, *supra* at 5; Legal Technology Survey, *supra* note 28, at 17 (reporting that more than 25% of solo lawyers and more than 50% of small firms that use online research have non-lawyers perform some legal research).

30. *See, e.g.*, Davis, *supra* note 29, at 20 (describing solo practitioner who represents large corporate clients from her converted garage); MacLachlan, *supra* note 28; *see also* Jennifer J. Rose, *Ten Rules for Staying Sane and Professional at Home*, ABA Solo, Winter 1999, at 1 (reporting that an increasing number of lawyers practice from home).

31. Lawyer Statistical Report, *supra* note 4, at 14.

32. *Id.* at 25.

33. *See* Seron, *supra* note 5, at 12-13, 42-44; *infra* pp. 861-62 .

34. Although scholars have suggested that the entry of women into the profession may lead to more sensitivity to clients and more ethical practices, this has not yet been confirmed by empirical research. *See* Seron, *supra* note 5, at 109-14; Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. Kan. L. Rev. 733, 734-35

So much has changed in recent years that there are good reasons to look again at these lawyers. As suggested by the inclusion of this Article in the *Fordham Law Review's* issue on *Lawyering for the Middle Class*, solo and small firm lawyers often *are* the lawyers for the middle class. The work settings, training, mentoring and ethical attitudes of these lawyers are of importance to the individuals who must rely on them for legal representation. Not only do these factors affect the quality of representation that middle-class clients receive, but their experiences with these lawyers also affect how they feel about the courts, the legal system and their place in society. Obviously the quality of these experiences also affect the likelihood that the middle class will continue to use these lawyers, or whether they will increasingly rely on legal clinics, franchise law firms, non-lawyer service providers or self-help guides to navigate the legal system.

In order to gain a clearer understanding of the current state of the professional development of solo and small firm lawyers,[35] I interviewed forty-one such lawyers about their work lives and entry into the profession. Broadly speaking, I wanted to know whether these lawyers are as isolated, unmentored and unassisted in their professional development as previous reports suggest.[36] The questions I posed were designed to explore how, if at all, office settings, mentors and other colleagues contribute to the skills development of these lawyers and their ethical attitudes and decision-making in practice. Since this was a preliminary effort to study a somewhat neglected segment of the bar, I asked a wide-ranging set of questions in an effort to learn more about who these lawyers are, the office settings in which they work, the people from whom they seek advice, and the ways in

(2001). Indeed, Seron's findings suggest that at least with respect to communications with clients or "bedside manner," male and female solo and small firm attorneys both place high importance on that skill. Seron, *supra* note 5, at 112-13.

35. Throughout this Article I use the term "professional development" very broadly to include all aspects of the transition from law student to lawyer, with particular emphasis on the process of learning skills and acquiring an understanding of ethical norms. I also include the ongoing education of a lawyer that is necessary to represent clients competently and to comply with ethical rules.

36. It is important to distinguish here between academic studies and reports by the organized bar, on the one hand, and anecdotal reports by practitioners that appear in the legal press, on the other. The academic studies and bar reports mostly suggest that solo and small firm practitioners are isolated, typically unmentored and largely unassisted in skills training. *See* Boston Bar Task Force, *supra* note 11, at 11-12; *supra* notes 22-24 and accompanying text. *But see* Seron, *supra* note 5, at 8-9 (suggesting that while only a minority of these lawyers have mentors, some learn from an informal network of lawyers and court clerks). The anecdotal reports from practitioners more often suggest that they receive substantial help from mentors and other lawyers in their professional development. *See, e.g.*, Jill Schachner Chanen, *Solo But Not Alone: Mentors' Guidance Can Keep Inexperienced Lawyers on Track*, A.B.A. J., June 1997, at 92; Raymond E. DiBiagio, Jr., *Ups and Downs: The First Steps of Going Solo*, Nat'l L.J., Apr. 12, 1993, at 54; Frederick Hertz, *Going Solo: Coming to Grips with Practicing Alone*, Legal Times, Sept. 19, 1994, at 33.

which they acquire their skills.[37] I also indirectly sought information about the development of their ethical attitudes and their ethical decision-making.[38] The study is small and the conclusions are necessarily quite tentative, but the study provides a window through which to observe and listen to lawyers who represent the middle class, to reassess some of the assumptions that are made about these lawyers and to consider, in a preliminary fashion, the effects of the social settings in which they practice law on their professional development.

Part I of this Article describes the study and the characteristics of the lawyers who participated in it. Part II describes the law schools they attended, their career paths following graduation and the factors that led them to solo and small firm practice. Part III addresses the social settings in which these lawyers work, starting with their office relationships, and moving into informal associations that they have with other lawyers, including their advice networks. These networks are explored in some detail because of their potential impact on the professional development of these lawyers. Part IV describes the ways in which solo and small firm lawyers learn to practice law, focusing specifically on the help they receive from mentors and advice networks. Part V explores—very tentatively—how the colleagues with whom these lawyers work may affect their socialization concerning ethical norms and their ethical decision-making in practice. It also points to evidence that these lawyers demonstrate independence in choosing how they will conduct themselves as professionals. The Article concludes by noting that while solo and small firm practitioners receive much more collegial support than previously believed, the ways in which these lawyers increasingly use technology to facilitate their relationships with other attorneys may ultimately have an adverse effect on their professional development.

37. Some of this work has already been done, most notably by Carroll Seron, but her discussion of office settings focused mainly on formal relationships among lawyers (*e.g.*, partners and associates), and between lawyers and support staff, and her study included law firms that were as large as 15 lawyers. Seron, *supra* note 5, at 68-79, 155.

38. Although I was very interested in the ethical acculturation of these lawyers, the interview questions in this preliminary study were, for the most part, focused on other topics in order to avoid some of the resistance or other difficulties encountered when asking directly about ethical attitudes or ethical decision-making. *See* Peter Cleary Yeager & Kathy E. Kram, *Fielding Hot Topics in Cool Settings: The Study of Corporate Ethics*, *in* Studying Elites Using Qualitative Methods 40, 45, 47 (Rosanna Hertz & Jonathan B. Imber eds., 1995). Even indirect inquiries generated useful information about how these lawyers developed their ethical attitudes in practice and how they went about their ethical decision-making. For example, discussions of how they were mentored sometimes elicited information about how they developed their ethical attitudes. Late in each interview, I approached the subject of ethics more directly by asking the lawyers to describe ethical problems they encountered in practice and how they resolved them.

I. THE STUDY

The study of solo and small firm practitioners focused on lawyers practicing in the New York City metropolitan area, including four of the boroughs of New York City and four nearby suburban counties.[39] The lawyers' names were obtained from a random sample of lawyers registered with the New York Office of Court Administration. Letters were sent to 181 attorneys who were believed to practice in solo or small firm settings, asking them to agree to participate in a study of the work lives and professional development of solo and small firm practitioners.[40] I then contacted the attorneys by telephone and forty-one of those lawyers were ultimately interviewed in semi-structured sessions typically ranging from ninety minutes to two hours in length.[41] I conducted the interviews during early 2001 with solo practitioners and with lawyers who practiced in small firms that were mostly comprised of five or fewer lawyers.[42]

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39. This geographic area was chosen both to coincide with the area studied by Caroll Seron in 1990 when she interviewed solo and small firm practitioners, *see* Seron, *supra* note 5, at 154-55, and to obtain the views of lawyers in both urban and suburban settings. Lawyers were interviewed who practiced in Manhattan (16), Brooklyn (5), Queens (2), Staten Island (1), Nassau County (8), Suffolk County (4), Westchester County (3), and Rockland County (2).

No solo or small firm lawyers from the Bronx agreed to be interviewed. This is probably one of the most economically depressed counties in the metropolitan area and thus the sample is not representative in that important respect.

40. The names of attorneys were obtained by randomly selecting the names of registered attorneys who listed an address in the New York City metropolitan area. After those names were selected, lawyers who were obviously practicing in corporations, government agencies or larger firm settings were deleted from the group. Letters were then sent to the remaining lawyers who appeared in *Martindale-Hubbell* as practicing in solo or small firm settings or whose practice setting could not otherwise be identified.

41. Of the 181 letters that were mailed, eighty-one attorneys were not interviewed because: (1) they could not be contacted by telephone (because they were deceased or their telephone numbers could not be located); (2) they were not solo or small firm practitioners working at least ten hours a week; or (3) their age group (over seventy) was already over-represented. Of the remaining 100 lawyers, forty-one agreed to be interviewed, while seventeen solo and small firm lawyers declined to be interviewed. Six other lawyers contacted by telephone indicated that they might make themselves available at a later date and thirty-six lawyers did not return telephone messages that were left with answering services, secretaries, family members or on answering machines. Their failure to respond makes it impossible to determine whether they received the initial letter, whether they received the telephone messages, whether they were in fact solo or small firm practitioners, or whether by their silence they were refusing to participate in the study.

42. Any definition of "small firm" is necessarily somewhat arbitrary. Initially I sought to limit the study to firms of five or fewer lawyers because I believed that such firms would have more organizational and relational similarities than they would with larger firms. As it turned out, the attorneys who were interviewed practiced in the following settings: solo practitioners (17); two-lawyer firms (6); three-lawyer firms (4); four-lawyer firms (6); five-lawyer firms (2); and six-lawyer firms (2). The remaining three attorneys were affiliated with firms that were nominally as large as seven attorneys, but were somewhat hard to categorize. *See, e.g., infra* pp. 867-68. When

Reliable demographic information is not available for the solo and small law firm population in the New York City metropolitan area and it is therefore difficult to say whether the lawyers I interviewed were representative of that population. Even the percentage of New York City lawyers who practice in solo and small law firms is not known, although the concentration of large law firms in Manhattan suggests that the percentage of lawyers who practice in solo and small firms is less than 45%, which is the state-wide figure.[43] In order to account for the likelihood that a smaller percentage of solo and small firm practitioners work in Manhattan than work in the rest of the metropolitan area, a somewhat smaller percentage of Manhattan lawyers were interviewed than lawyers in the other boroughs and in suburban settings.[44]

Using the figures supplied by *The Lawyer Statistical Report*, it appears that women are slightly over-represented in this study.[45] Lawyers over the age of thirty-nine are probably also over-represented.[46] The majority of the solo and small law firm lawyers in the study are Jewish, with the second largest ethnic group being Italian. Only two of the lawyers interviewed are African-American.

The solo and small firm lawyers I interviewed represented predominantly individuals and small to medium-sized businesses. They practiced mainly in the areas of family law, personal injury, real

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calculating the size of a firm, lawyers who were "of counsel" to the firm, but who did not have offices on the premises, were not counted as part of the firm.

43. *See* Lawyer Statistical Report, *supra* note 4, at 157, 159 (indicating that approximately 45% of all lawyers admitted in New York State practice in solo or small law firms). This assumption is supported by the statistics for Chicago. In 1995, only 13% of all Chicago lawyers reportedly worked in solo practices. Heinz et al., *The Changing Character of Lawyers' Work*, *supra* note 4, at 768. This percentage is considerably lower than the Illinois state-wide figure of 32% reported by the ABA. *See* Lawyer Statistical Report, *supra* note 4, at 81, 83.

44. Data provided by the Office of Court Administration reflect that substantially more lawyers practice in Manhattan (66,837) than in the other boroughs (14,018) or in the suburbs (25,842). N.Y. Office of Court Administration (August 2000). If the sample were based strictly on the percentage of lawyers in each locale, almost 63% of the lawyers should have been from Manhattan. Nevertheless, the percentage of solo and small firm practitioners who practice in Manhattan is probably considerably less than the percentage of lawyers who practice in those settings in the outer boroughs and in the suburbs. For this reason, I reduced the proportion of Manhattan lawyers so that only about 40% of the lawyers interviewed in this study worked in Manhattan.

45. According to the 1995 Lawyer Statistical Report, 24.3% of solo and small firm practitioners in New York State are women. Lawyers Statistical Report, *supra* note 4, at 159. Approximately 29% of the population of the study I conducted was comprised of women.

46. Approximately 30% of the lawyers interviewed were under the age of forty, although 39.4% of the lawyers in New York State who practice in solo and small firm settings are under forty. *Id.* This does not necessarily mean, however, that the lawyers under age forty are under-represented in the survey. It is possible that proportionally fewer lawyers under forty work in solo or small firm practices in the New York metropolitan area, because many of the younger lawyers start their careers in the numerous large and medium-sized firms concentrated in Manhattan.

estate, commercial work, workers' compensation, and trusts and estates. Reflecting the trend toward specialization in the legal profession, about half of the lawyers I interviewed specialized.[47] Areas of specialization included fields typically associated with solo and small firm practice as well as intellectual property, education law, common carrier law, banking, and securities. A small number of lawyers in this group represented predominantly large corporations, sophisticated investors or governmental entities such as school districts.[48]

The practice environments of the solo and small firm practitioners I interviewed were widely varied rather than monolithic. Some practiced in expensive office buildings in Manhattan or in large commercial office buildings, inhabited by lawyers or other professionals, in other locations. Other lawyers rented storefronts in commercial areas that were located at street level or above shoe stores or delicatessens. Still others worked in large Victorian houses renovated to serve as commercial space. In some law offices the support staff greatly outnumbered the lawyers, sometimes by a ratio of more than four to one. In other practices, lawyers had no support staff and more than one lawyer shared a single small room with other lawyers. Some of the lawyers worked in firms with, or in physical proximity to, another lawyer who was a family member. A few of them practiced law from their homes.

This is not a rigorously scientific study and there may have been some hidden biases within the group of lawyers that agreed to be interviewed.[49] The lawyers' different practice specialties, different office organizations, different client bases and different locations within the New York City metropolitan area create many distinctions among the lawyers interviewed. Some of those differences may have a profound impact on their professional development. At the same time, these very differences highlight the need to look more closely at these lawyers. Their stories suggest the need to re-examine some of

47. "Specialization," as used here, means that they devoted 70% or more of their time to a single practice area. The areas of specialization represented in this study are similar to the categories used by Heinz and Laumann. *See* Heinz et al., *The Changing Character of Lawyers' Work*, *supra* note 4, at 761.

48. Six lawyers worked almost exclusively for large corporate clients, sophisticated investors or school districts. Seven other lawyers devoted most of their time to land use work, commercial litigation and estate planning for relatively well-to-do individuals who probably should be described as upper middle-class clients.

49. It is important to note that I am not a sociologist. Moreover, I did not conduct interviews with all of the randomly selected lawyers who were solo and small firm practitioners. *See supra* note 41. As a result, lawyers who felt unsuccessful in their careers may have been less likely to participate. Lawyers who had more free time may have been more likely to agree to be interviewed. Lawyers with a greater interest in the legal profession, or with a strong sense of belonging to a profession, or with an interest in making solo and small firm practitioners "look good" also may have been more willing to participate.

the traditional assumptions about the lawyers who practice in these settings, starting with assumptions about their entry into the profession.

II. STARTING OUT IN PRACTICE: CAREER PATHS AND CHOICES

While the solo and small firm practitioner of forty years ago typically graduated from a lower echelon local law school in an evening program,[50] that is somewhat less true today. Seron found that slightly less than half of the solo and small firm lawyers she interviewed attended "local" law schools.[51] Using Seron's definition of a local law school,[52] it similarly appears that less than half of the lawyers in this study attended local law schools.[53] Very few of the lawyers attended evening programs.[54] A sizable minority of the lawyers attended more selective "regional" law schools such as Boston University, Emory and Fordham.[55] Over twenty percent of the lawyers graduated from an "elite" or "prestige" school,[56] which was slightly higher than the figure in Seron's study.[57]

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50. Carlin found that individual practitioners in Chicago typically received their training in one of the proprietary or Catholic night schools. Carlin, Lawyers On Their Own, *supra* note 6, at 6, 25 (reporting that two-thirds of solo practitioners attended these schools); *see also* Heinz & Laumann, *supra* note 14, at 192-93 (noting tendency of solo and small firm lawyers to be graduates of local and regional law schools); Zemans & Rosenblum, *supra* note 21, at 101-02 (noting that the "local" Chicago schools were significantly more likely to send their graduates into solo practice).

51. Seron, *supra* note 5, at 158, 160.

52. Seron defined "regional" schools as schools that are attached to major public universities or private universities that tend to serve a local constituency. *Id.* at 160. "Local" law schools have easier admission standards, tend to be proprietary and maintain a night program. Utilizing this definition, Brooklyn Law School, St. John's School of Law and New York Law School were identified as the main local law schools. *Id.*

53. Using Seron's definition, *see supra* note 52, the local law schools attended by the lawyers who were interviewed for this study were Brooklyn (4), St. John's (5), New York Law School (4), Touro (1), Capital (1), Thomas Cooley (1) and Vermont (1). Although Albany Law School (1) and Northeastern Law School (1) have no evening division, they also arguably should be considered local law schools because of the relative ease of admission to the law school. *See News You Can Use/Graduate Guide Exclusive Rankings*, U.S. News & World Rep., Apr. 9, 2001, at 82.

54. Evening programs historically have been associated with lower tier law schools. *See* David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 Suffolk U. L. Rev. 249, 255-56 (1997). However, there is increasingly little justification for this view as the demographics of evening students have changed and ABA Standards make no substantive distinctions between the quality of instruction that must be offered in full-time and part-time or evening programs. *See* ABA Section of Legal Education and Admissions to the Bar, Standards for Approval of Law Schools 402-04 (2000).

55. Other regional schools attended by the lawyers surveyed included, *inter alia*, the University of Arizona (1), SUNY-Buffalo (1), Cardozo (2), Hofstra (4), and the University of Miami Law School (1).

56. The schools represented in this group were Cornell (1), Harvard (1), Yale (1), University of Pennsylvania (1), New York University (4), and Georgetown (1). This corresponds with the "elite" and "prestige" schools described by Heinz and Laumann.

Before leaving this subject it is important to note that the definition of a "local" law school used in the past is problematic and probably overstates the extent to which these solo and small firm practitioners attend lower tier law schools. The problem, among others, is that law schools can change considerably over the course of forty years.[58] If a more recent ranking of law schools were used, such as the one prepared by *U.S. News & World Report*, it would reveal that only about one-third of the lawyers I interviewed graduated from law schools in the lower two tiers of *U.S. News & World Report's* four-tiered ranking. The *U.S. News & World Report* rankings have been subjected to criticism for a variety of valid reasons,[59] but they provide a somewhat better measure of the reputation and admissions selectivity of the law schools attended by these lawyers than historical rankings.

Following graduation, the lawyers who participated in the study followed diverse career paths to solo and small firm practice. Less than half of the lawyers began as employees of solo or small firm practitioners. A minority of the attorneys began practice in large Manhattan law firms and a slightly smaller number started their careers by working for the government.[60] Five attorneys entered solo practice immediately after they were admitted to the bar.[61] Almost half of the attorneys worked in government positions or in law firms with more than twenty attorneys at some point before they moved into their present practice, which meant that they probably were

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See Heinz & Laumann, *supra* note 14, at 15-16.

57. Seron found that 15.7% of the lawyers she interviewed attended elite or prestige law schools. Seron, *supra* note 5, at 158.

58. For example, some of the traditionally "local" New York law schools, such as Brooklyn Law School and to a lesser extent, St. John's, have significantly tightened their admission standards and have begun to draw their student body from outside the metropolitan area. They have been replaced by the newer "local" law schools such as CUNY-Queens College and Touro.

Some of the other problems with distinguishing "local" schools from "regional" schools have been noted previously. *See* Zemans & Rosenblum, *supra* note 21, at 232-33.

59. *See, e.g.*, Nancy B. Rapoport, *Ratings Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek—or the New Yorker*, 60 Ohio St. L.J. 1097 (1997); Yamada, *supra* note 54, at 251-56; Jerry L. Anderson, *Ranking Isn't Everything: U.S. News Law School Study Overlooks Important Indicators of Success*, A.B.A. J., Mar. 1997, at 112.

60. Seron reported that starting with government employment was "a fairly typical" career trajectory for the group of lawyers she studied. Seron, *supra* note 5, at 8. This was less true of the lawyers I interviewed. Only six of them started their careers in government.

61. Studies suggest that in recent years, somewhere between 2.5% and 10% of law school graduates go directly into solo practice after graduation. *See* ABA Commission on Women in the Profession, Women in the Law: A Look at the Numbers 46 (1995) [hereinafter Women in the Law]; Narrowing the Gap, *supra* note 23, at 35-37; National Association of Legal Placement, Class of 2000 National Summary Report (June 2001); Mattessich & Heilman, *supra* note 9, at 71.

exposed to more office procedures and controls than are present in the typical solo or small law firm.

Many of those who entered solo or small firm practice immediately after law school described the lack of opportunity at the time to go into a larger firm practice; however, their lack of options sometimes had to do with constraints imposed by geographic preferences or specialization interests. For example, one lawyer who graduated from Georgetown Law School wanted to work in Nassau County and explained that at the time he was first looking for a job, the largest firms on Long Island had fewer than a dozen lawyers. A Rockland County lawyer who grew up in that area also noted that there are no large firms in that county. A few lawyers noted that their choices of firm size were constrained by the type of practice desired. As one lawyer explained:

> Well, I wanted to do criminal defense without question. I was in a clinical program at NYU that was really terrific and I'd also wanted to do criminal defense once I decided to go to law school and it was really a choice between working at a small defense firm or Legal Aid and I struggled with it because my heart really was in indigent defense but Legal Aid . . . . Legal Aid lawyers are underpaid, there was constant turmoil between labor and management and I just didn't want to be in a position where I felt torn between doing what was right for me and being exploited by management. And I also felt that there are not that many high quality criminal defense lawyers who can afford to hire associates and I had an entree to a guy who was very well-regarded professionally—maybe not personally by some people but professionally—and I thought it was an entree into the private criminal defense bar that very few lawyers, young lawyers have the opportunity to gain so I went with that.[62]

In contrast to the men, most of the women reported that their decision to enter into a solo or small firm practice was due, at least in part, to quality of life considerations. Some of them explained that they had never wanted to try large firm practice because of the time demands of that type of practice. These comments were typical:

> Well, the particular field that I do is elder law, and so there are a few larger firms, but most of the firms in elder law are small, solo or something of that nature. I didn't want to work for one of [those] huge firms that, you know, does crazy hours and pressure and all that. So I was looking for a small firm, a firm that wasn't as pressurized and a little more easy going and within the field. The two kind of went together.[63]

62. Interview #3 with solo attorney practicing in New York, N.Y. (Jan. 24, 2001) (all interview transcripts on file with author).

63. Interview #18 with attorney practicing in three-lawyer firm in New York, N.Y. (Feb. 13, 2001).

> I had absolutely no interest in going to work in a large firm, sitting in the library for 80 hours a week. It was just not a career goal that I ever had. I wanted to get out and work; I wanted to meet people; I wanted to interact and I wanted to be in a courtroom; I wanted to do family and matrimonial law, and that was nothing that I was going to find in a large law firm. It just wasn't an area that large law firms dealt with, so it wasn't the choice for me.[64]

Another woman explained that "I knew I didn't want to work in the City, and I didn't want to work in a firm that was, you know, 18-hour days and to have a job that was my life, and so I concentrated where I lived in Rockland and Westchester."[65] Yet another female lawyer noted that she had decided to join a small family law firm immediately after law school because it provided her with the flexibility to have children.

While many lawyers of both genders seemed to make affirmative choices that placed them in solo or small firm settings, a sizable minority seemed to lack alternatives to going into solo or small firm practice after graduation due to the economic environment at the time of graduation, the reputation of the law school from which they graduated or their class rank at the time of graduation. Even among these lawyers, however, opportunities sometimes arose later in their careers to go into larger practice settings, but were sometimes declined because of a preference to be in a solo or small firm practice. One lawyer who noted the difficulty of getting a big firm job after graduating from New York Law School, practiced for eight years in a two-person firm and was subsequently offered a partnership in a 10-lawyer Long Island firm:

> But at that point in time I realized that I could probably never—I could never work in a big firm. I had to have my total independence. I'm a very controlling kind of person. I like the work product that comes out of my office. I've seen other, you know work that other attorneys do who have staff who help them out or partners who help them out, and the work that comes out is not, I think, as professional as the work that comes out of my office because of the personal attention which I give to the work and to the clients. So I made a determination at that point in time that I just could not work in any kind of an arrangement more than myself basically.[66]

A few other lawyers in the study who seemingly had little choice when they started in small firm settings described decisions that they made

64. Interview #33 with solo attorney practicing in Staten Island, N.Y. (Mar. 13, 2001).

65. Interview #32 with attorney practicing in two-lawyer firm in Rockland County, N.Y. (Mar. 12, 2001).

66. Interview #20 with solo attorney practicing in Nassau County, N.Y. (Feb. 14, 2001).

or offers that they turned down later in their careers that would have placed them in somewhat larger practice settings.[67]

Like the lawyers studied by Carlin and Seron, many of the lawyers I interviewed discussed their desire for control or independence.[68] Unlike the lawyers in Carlin's study, however, more of them seemed to have had real opportunities to practice law in settings other than the solo and small law firm practices that they chose. As one solo practitioner explained, "my experience [working in a large firm] was I didn't want to work for anybody else. I'd rather be impoverished and be self-employed."[69] In the majority of cases, these lawyers had made an affirmative choice to work as a solo or small firm practitioner.[70]

III. THE SOCIAL SETTINGS OF PRACTICE

Any attempt to understand the professional development of solo and small firm lawyers must consider the social settings in which they practice. A lawyer's training and professional socialization can be deeply affected by the other attorneys with whom the lawyer works and the people from whom she seeks assistance.[71] The contours of the formal relationships among small firm partners and associates, and

67. For example, one lawyer who began his career in a two-person firm later joined a partnership in a seventy-five lawyer firm which he subsequently left because he believed he could make more money in his own small firm. Two other lawyers talked about deliberately reducing the size of their 10-15 lawyer firms because they did not want to be financially responsible for firms of that size. These accounts suggest that reports of lawyer mobility that compare first jobs to current positions, *see, e.g.*, State of the Legal Profession, *supra* note 7, at 9, may not fully capture the mobility of solo and small firm practitioners. *See also* Zemans & Rosenblum, *supra* note 21, at 84 (reporting that lawyers who start as individual practitioners were no more likely to remain in that practice context than lawyers who start practice in other settings).

68. *See, e.g.*, Carlin, Lawyers On Their Own, *supra* note 6, at 185-87; Seron, *supra* note 5, at 12-13.

69. Interview #9 with solo attorney practicing in Nassau County, N.Y. (Feb. 1, 2001).

70. Support for the finding that solo and small firm lawyers affirmatively choose to work in those settings can be found in a recent ABA study of career satisfaction. When members of the ABA Young Lawyers Division were asked about their willingness to consider a change in their employment situation, solo and small firm practitioners (1-4 lawyers) were significantly more likely than lawyers in larger firms to say that they would "definitely not" consider a change in their employment setting in the next two years. Career Satisfaction 2000, *supra* note 7, at 31. Only 23.4% of the solo and small firm practitioners said they would "strongly consider" a change, as compared to 33.1% of lawyers in the largest firms. *Id.*; *see also* Seron, *supra* note 5, at 79 (reporting that solo practitioners prefer to work for themselves); Hull, *supra* note 11, at 979 (reporting that slightly more lawyers in solo or small firm practice reported themselves "very satisfied" than lawyers in larger firms).

71. *See, e.g.*, Carlin, Lawyers' Ethics, *supra* note 12, at 7, 96-117; David B. Wilkins, *Everyday Practice* Is *the Troubling Case, in* Everyday Practices and Trouble Cases (Austin Sarat et al. eds., 1998); Douglas N. Frenkel et al., *Bringing Legal Realism to the Study of Ethics and Professionalism*, 67 Fordham L. Rev. 697, 698-99 (1998).

among lawyers and support staff, have been explored by Seron.[72] The present study goes further by also exploring some of the more informal and fluid relationships with colleagues with whom the lawyers shared space or to whom they turned when they needed advice. Particularly in solo and small firm practices, these informal relationships may influence the professional development of lawyers as much as the more formalized partnership and associate relationships. At a minimum, they need to be identified and considered when analyzing the social context in which these lawyers practice law.[73]

A. *Office and Work Relationships*

With few exceptions, the lawyers I interviewed reported that the office arrangements in which they worked provided an important source of information, professional training, referrals and social contact. Few of the lawyers worked in settings with no other lawyer physically present and even those lawyers had at one time worked in offices with other attorneys.[74] The solo attorneys relied heavily on the availability of other lawyers in the office suite in which they practiced and on relationships with other lawyers outside their office space as a source of help in getting their legal work done. The lawyers in firms, not surprisingly, relied first on the lawyers within their own law firms, but often also relied on lawyers who were physically—or virtually—accessible.

Suite Sharing Arrangements. Suite sharing arrangements, in which unaffiliated lawyers or small law firms share a suite of offices, have long played an important role in the work lives of many of the solo and small firm attorneys who practice in urban areas.[75] Most of the

72. Seron, *supra* note 5, at 68-85; *see also* Van Hoy, *supra* note 5, at 14-16, 84-85 (discussing division of labor between lawyers and support staff in small firm practices).

73. Of course, lawyers can also be deeply affected by their experiences with adversaries, judges, clerks, clients and the organized bar, which all constitute part of the social setting in which lawyers practice. My focus in this preliminary study, however, is limited to office colleagues and other colleagues who provide advice because of my belief that the colleagues with whom lawyers share space and from whom they seek advice are most likely to affect a lawyer's professional development.

74. Each of the six lawyers who worked in settings with no other lawyers present had previously worked on a full-time basis in office sharing arrangements or law firms. Most of those lawyers now worked from their homes. For example, one woman worked primarily from her home in the suburbs, but is "of counsel" to a Manhattan firm and worked in the firm's offices one day a month. Prior to entering into this arrangement, she had worked for many years in that firm's office on a three-day-a-week basis and before that, in a larger law firm on a full-time basis.

75. Carlin studied lawyers in suite sharing arrangements forty years ago. Carlin, Lawyers' Ethics, *supra* note 12, at 9; *see also* Eve Spangler, Lawyers for Hire 207-08 (1986) (describing the office sharing arrangements of solo and small firm practitioners); Sara Parikh, Professionalism and Its Discontents: A Study of Social Networks in the Plaintiffs' Personal Injury Bar 69 (2001) (unpublished Ph.D.

lawyers who were interviewed for this study worked in suite sharing arrangements and virtually all of them had worked in such office arrangements at some point in their careers. The suites were comprised of anywhere from two to twenty-five lawyers who worked in solo practices or small law firms.[76] They typically shared a reception area and receptionist, a conference room that doubled as a small library, secretarial staff, a photocopy machine and other office equipment. The lawyers occupying the suites usually practiced in different substantive areas of the law.

In their more successful forms, suites provide individual practitioners with many of the economic and other advantages of being in a larger firm. Several lawyers extolled the advantages of these arrangements:

> Very symbiotic relationship here. And there's a lot of collegiality on the floor. We have lunch together, we have a party every so often, birthday parties in the conference room. We're friends—most of us are friends and we do exchange matters and we exchange information, too.... Indeed, [lawyer's name], one of my partners in our firm, was a sole practitioner here with an expertise in real estate and it just became clear because we had a good chemical relationship that he would be great to have as a partner, so [another partner] and I invited him as a partner about two years ago.[77]

A solo lawyer noted that suites with many offices give clients the impression that they are dealing with a larger firm. Another attorney described the referrals he obtained from being in a suite arrangement early in his practice and then added:

> [Y]ou don't come out of law school knowing how to practice law, especially not on that level, and so, it gives you a chance to observe more experienced lawyers in practice—how they do things. And, of course, there is the more obvious, is the sounding board. You can go to someone, hopefully, you can, and you can say, "gee, someone asked me this question and well, how do you do it?"[78]

A few suites were so successful that the lawyers moved together to another suite when their leases ran out. There were some long-term suite relationships of ten or more years among the attorneys interviewed.

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dissertation, University of Illinois) (on file with author) (noting that space sharing is something of a tradition among personal injury attorneys, who tend to work in solo and small firms).

76. In some cases the suites included tenants who were non-lawyers. The non-lawyer tenants were most often accountants.

77. Interview #7 with attorney practicing in four-lawyer firm in New York, N.Y. (Jan. 31, 2001).

78. Interview #34 with attorney practicing in two-lawyer firm in Queens, N.Y. (Mar. 13, 2001).

While suite sharing arrangements were a great source of advice and social contact for some lawyers in the study, the growing commercialization of suite arrangements may reduce the collegiality and sense of community they can create.[79] Some entrepreneurial lawyers in the study described how they had formed relationships with other law firms or lawyers primarily for the purpose of becoming prime tenants in office space that they would then sublet to other lawyers. One lawyer reported that her firm rents desks to lawyers who come in with lap top computers on a few-day-a-week basis. Other lawyers practicing in the largest suites said they did not know many of the other lawyers who practiced there. In these cases, the relationships among lawyers in the suite were less collegial and more like an arms-length landlord-tenant arrangement.[80]

Partnerships. Although the image of the small law firm conjures up visions of partners, only about one third of the lawyers I interviewed practiced in partnerships.[81] Ten of the partnerships had lasted ten years or more and four of those long-term partnerships were composed of family members. Like the small firms studied by Seron, the partnerships in this study were largely homogenous and were mostly comprised of white males.[82] In most of the partnerships, the partners did not work in the same substantive areas of the law. As a

79. For example, executive suite firms have reduced these relationships to pure financial arrangements by renting space and providing other services to unaffiliated lawyers who need offices, support staff and equipment on a short-term or long-term basis. Some executive suite firms also provide virtual offices for lawyers who actually work from their homes. *See, e.g.*, John Roemer, *The Perils of Sharing*, Cal. Law., Jan. 1997, at 28 (describing firm that provides address, voice mail, receptionist and fax facilities for lawyer who practiced from home, giving clients the impression she worked from a traditional law office).

80. *Cf.* Parikh, *supra* note 75, at 70 (indicating that suite sharing arrangements among high-end personal injury lawyers and their suite mates were less collaborative and more like a landlord-tenant relationship). This is not to say that all of the benefits of a suite are lost in large commercial suites. In two such suites, lawyers reported that they had formed advice or referral relationships with a few other lawyers in the suite, although those relationships seemed to occur less frequently than in some of the smaller suite arrangements.

81. Twenty-four of the interviewed lawyers worked in law firms. Of that group, fourteen of the firms were comprised of partnerships and ten of the firms were comprised of a principal attorney and one or more associates.

82. Seron, *supra* note 5, at 68; *see also* Richard O. Lempert et al., *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 Law & Soc. Inquiry 395, 433 (2000) (noting that small firms often have a substantial proportion of same-race colleagues); Women in the Law, *supra* note 61, at 23 (noting that less than one-fifth of two-lawyer and three-lawyer firms had female partners). In the present study, only two of the women interviewed were members of partnerships. In one firm the woman's partners were both male family members and in the other firm, the female partner was the "inside" junior partner who deferred to the male rainmaker senior partner. Three of the male lawyers who were interviewed worked in partnerships that included a woman partner; once again, two of those firms were "family" firms and in the third, the woman was the junior "inside" partner. Neither of the African-American lawyers who participated in the study worked in partnerships.

result, while partners often consulted one another about issues concerning firm administration, they typically did not work together on client matters. Instead, they worked alone on those matters or with the help of an associate or paralegal. Almost invariably, partners and associates worked in the same suite of offices.

The extent to which these small firm partnerships operated as a joint enterprise varied significantly. Several lawyers used a marriage metaphor when discussing small firm partnerships. Yet some of the lawyers observed that small firm partnerships often operated more like a collection of solo practitioners than like true partnerships.[83] One lawyer in a Manhattan law firm observed that "it is and it isn't a partnership." He explained:

> It's a partnership in the sense that there's very good communication but it's not a partnership in the sense of the books of the firm. Now let me take you through that, what I mean by that. At [his former two-person partnership] I paid [his partner] as though he was an associate. It was a partnership but I paid him as an associate because most of the business was mine. At [his current partnership] it was the same thing. Now when we added [a third partner], he has his own separate books and records, where he bills his clients that he's working on and I'm not and [their other partner is] not working on and he has his own bank account and very much his own practice so there's sort of a niche practice within the firm that he has. When we're working on a client matter together then its very much we share information, we share fees, we bill together, but his practice, and this is very true in the small firms here, it's very similar, partners within the firm are operating almost in a real sense as separate practitioners, but they're coming together by name, they communicate a lot together, share work, and that sort of thing. We have the same professional liability carrier. We share the same secretary. The same postage meter. Those kinds of things are all shared. Expenses are shared. But actually [the third partner] pays for his own room rental, I pay [the second partner's] and mine. It's just sort of a common sense thing that sort of evolves until it makes sense.[84]

Generally speaking, partnerships comprised of family members and law school friends resembled the more traditional partnership model, in which employees and clients were shared. On the other end of the spectrum, one seven-lawyer firm that held itself out as a partnership was operating as two separate groups of practitioners with separate

83. A similar observation has been made about rural lawyers who typically work in small firm settings. *See* Landon, *Lawyers and Localities*, *supra* note 12, at 464-65 (noting that law firms in rural settings "are often primarily office sharing arrangements rather than a collection of specialists").

84. Interview #7 with attorney practicing in four-lawyer firm in New York, N.Y. (Jan. 31, 2001).

clients, separate files, separate financial records, separate support staff and separate escrow accounts.

Some lawyers noted that small firm partnership arrangements did not provide any greater financial rewards, social benefits or "back up" than could be obtained through more flexible suite sharing and employment arrangements.[85] Perhaps for this reason, unless partners were relatives or long-time friends, the decision to form a partnership of this size was often motivated primarily by a concern about the negative perception associated with being on one's own. For example, one Nassau County lawyer who served an ethnic community described plans to form a firm within the next two months with two lawyers of the same ethnic origin. While part of the reason for forming the new firm was to reduce competition among the three lawyers, another significant reason was the desire to appear to the public to be a more substantial operation. As the lawyer explained:

> [W]hen you have Law office of [lawyer's name]—there's a perception there. OK. It's a solo practitioner. That's the immediate perception you have, you don't know how many associates there are, but that's the impact. If you have A, B & C, P.C., that leaves an entirely different impression. You need it. Even though qualitatively, quantitatively, it may not have—be a difference at all, I think that many times perception is more important than reality. And so that had a lot to do with the way we're approaching this. I think that having a firm and having three names on a letterhead certainly from a perception standpoint, from a layperson's standpoint, means that you've got more clout although you know, for all intents and purposes it doesn't [matter]. But we have to treat this as a business. And perception is important for too many people.[86]

The importance of appearing to the public as a larger and more substantial firm was mentioned by several lawyers in this study. For some of them the decision to form a partnership or to enter into one of the other work arrangements described below was due, at least in part, to the desire to avoid the perceived stigma associated with being on one's own.

Solo practitioners and sole principals. Lawyers who did not practice in partnerships either practiced as true solo practitioners, without any partners or associates, or in firms consisting of a sole principal who employed one or more associates.[87] Most of the lawyers in these

85. Similar views have also been expressed in the legal press. *See, e.g.*, Di Mari Ricker, *Is Bigger Better?*, Cal. Law., Sept. 1996, at 25.

86. Interview #21 with attorney practicing in two-lawyer firm in Nassau County, N.Y. (Feb. 14, 2001).

87. Among the lawyers interviewed, seventeen practiced as solo practitioners and ten worked in firms comprised of a sole principal who employed one or more associates. Four of the solo practitioners were women and none of the women interviewed worked as the sole principal in a firm, although two women worked for

settings affirmatively preferred to have no partners. One sole principal avoided partnership arrangements because he believed that they were like a "loveless marriage." A solo practitioner explained, "I don't want to have to think about a single other human being."[88]

Lawyers in both of these types of practices typically relied upon a network of "per diem"[89] lawyers and formal or informal "of counsel"[90] arrangements to help them cover court appearances, write briefs, conduct depositions and otherwise complete the work required for their clients.[91] In some cases these networks were quite large. One sole principal who estimated that he had as many as twenty of counsel lawyers on his per diem book explained:

> As overhead got expensive and as settlements went down because of the whole economy of the business, it's created lots of cottage industries. There are—I don't want—I probably could use seven associates, eight associates. I have one person in each county who is an of counsel independent. Anytime I have an appearance in Queens, I generally hire a judge's kid or somebody, all right, and they become my presence in that county. I mean we cover nine counties.[92]

Some of the solo practitioners were themselves of counsel to other lawyers or performed per diem work to supplement their practices. In many cases, even the formal of counsel lawyers did not work on the premises with the attorneys with whom they were affiliated and may have had of counsel relationships with more than one other lawyer or law firm.

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sole principals.

88. Interview #9 with solo attorney practicing in Nassau County, N.Y. (Feb. 1, 2001).

89. "Per diem" lawyers typically are paid a flat rate to appear in court and handle a routine calendar call, conference or administrative hearing.

90. In formal "of counsel" relationships, the lawyers hold themselves out to the public in marketing materials, websites, stationery or signage as having an of counsel relationship. They may have written agreements memorializing their relationships. The of counsel lawyer often does substantive work for the firm with which she is affiliated on a fairly regular basis. Some of the lawyers I interviewed also used the term "of counsel" to describe less formalized and more sporadic working arrangements. In these informal of counsel arrangements, the work might consist of very occasionally writing a brief or serving as a consultant or helping out at a trial. In some cases, the lawyers used the terms "of counsel" and "per diem" lawyer interchangeably.

91. Some lawyers in small partnerships also used per diem lawyers and informal of counsel relationships, but it was somewhat less common for them to use lawyers with whom they did not have formal relationships for anything other than routine court appearances.

92. Interview #24 with attorney practicing in five-lawyer firm in New York, N.Y. (Feb. 17, 2001). Echoing the view that per diem relationships have become a cottage industry, another Manhattan lawyer reported that after filing cases in Nassau and Suffolk County courts, he received unsolicited letters from per diem lawyers letting him know that they were available to do per diem work in those counties.

Technology has greatly facilitated this use of formal and informal of counsel relationships and per diem arrangements. Solo lawyers who worked for other attorneys on a per diem basis described receiving telefaxes to communicate which hearings they would need to attend the following week. Lawyers who hired per diem attorneys often used software programs to keep track of the hearings that needed to be covered.[93] One solo practitioner who maintained a formal of counsel relationship with another lawyer in a different county described how he could write correspondence for the lawyer using software that allowed him to access the lawyer's files. Another lawyer described his "virtual" law firm which included two associates who worked in his office suite and of counsel relationships with lawyers with whom he communicated by e-mail.

> And the rest are of counsels who maintain separate practices but—see [they] have a formal affiliation with me. I put them on my website, everything they do is through my letterhead, they're on my malpractice, but they also—I don't have overhead associated with them. So there's a guy in this space, [name], he does intellectual property litigation for my clients and he shares 75-25. And as far as my clients know, we're together. And I have a guy who only does state securities or blue sky law. I have a guy who does tax and trust and estates. I have a guy who does bankruptcy. And all in the same arrangement, you know, but none of them are physically here. Although my tax guy now is here one day a week because we're getting a lot of T & E business.
>
> My feeling is that the future of boutique firms is going to be a combination of these real and virtual relationships because it's the overhead that kills you. You know, it's a labor intensive business. It's unfortunate that the only way you grow is by adding overhead, but we're trying to avoid that.[94]

The accounts of these lawyers repeatedly illustrated the ways in which technology and informal relationships permitted them to work with other lawyers to service their clients and thereby remain competitive with larger law firms. They also permitted these lawyers

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93. Similarly, a lawyer described the use of sophisticated software to process and track cases that are referred to a network of attorneys who serve as local counsel in insurance defense cases. In local counsel relationships, the work performed by the out-of-town lawyers may range from doing most of the substantive work on a matter, to working jointly as co-counsel with the referring lawyer, to placing her name on documents that have been prepared exclusively by the referring counsel. Two lawyers I spoke with had developed extensive networks of local counsel based on personal contacts. These were different than the commercial networks that some small firms reportedly pay to join for the purposes of obtaining referrals and sharing information with other law firms. *See, e.g.*, *Networks Give Small Firms a Chance to Compete for Big Business*, Texas Law., July 23, 2001, at 29 (noting that there are now 300 networks of small law firms).

94. Interview #29 with attorney practicing in three-lawyer firm in New York, N.Y. (Mar. 8, 2001).

to compete for business they might not otherwise be able to obtain by creating the aura of a larger, more substantial firm. Yet the lack of physical proximity and sporadic work arrangements may create firms with more attenuated relationships among lawyers who service the firm's clients, making supervision of work, communication among lawyers and the assurance of competent client representation more difficult.[95]

B. *Advice Relationships*

Any attempt to explore the social settings in which these lawyers practice must consider not only the people with whom they share space or practice law, but also the larger set of lawyers with whom they talk when they need advice. Since lawyers in solo and small firm settings are generally thought to receive less support from colleagues than lawyers who practice in some other settings, I sought to explore whether they in fact reach out to their colleagues when they need advice, to what extent and for what purposes. These lawyers' reports about their advice seeking suggest that the social environment in which they operate, and in which they learn the skills they need to

95. *See infra* pp. 899-900. While touching upon the darker side of some of these office and work relationships, some of the ethical problems raised by these arrangements also deserve mention. For example, the use of common secretaries, common telefax machines and shared file rooms in office suites pose risks to client confidentiality when lawyers are not formally affiliated. *See, e.g.*, N.Y. County Bar, Op. 680 (1991) (noting that access to files gives access to clients' confidences and secrets); N.Y. City Bar, Op. 80-63 (1982) (noting risks of inadvertent disclosure of client confidences when secretaries of different law firms cover for one another). Casual conversations with suite mates and the use of speaker phones present similar risks. *See, e.g.*, D.C. Bar, Op. 303 (2001) (noting risks when unaffiliated lawyers in office sharing arrangements rely on each other as sounding boards for advice on legal issues). The imprecise use of the "of counsel" title, which is supposed to be reserved for lawyers who have a close and regular relationship, *see, e.g.*, N.Y. City Bar, Op. 1996-86 (1996); N.Y. Code of Prof'l Responsibility DR 2-102(A)(4) (2000), often suggests more significant relationships among lawyers than in fact exist. In addition, the office practices and virtual arrangements of these lawyers frequently present potentially serious, yet unrecognized, conflict of interest problems. *See, e.g.*, N.Y. State Bar, Op. 715 (1999) (requiring any firm that hires a contract lawyer for work that could be deemed to constitute a "representation" of the client to perform a conflicts check); N.Y. City Bar, Op. 1995-8 (1995) (noting that if "of counsel" designation is employed, for purposes of analyzing conflict of interest, "counsel" and the firm are one unit).

These are difficult issues, especially because many of the practices which give rise to problems are not ones that should be altogether discouraged. For example, when lawyers seek advice from office colleagues or other members of their advice networks, they are often improving their ability to provide competent and cost effective representation to their clients. *See infra* notes 112-16 and accompanying text; *see also* Hertz, *supra* note 36 (noting that to provide good service to clients, solo lawyer may need to ask colleagues for help). While the best ways in which to address these problems are beyond the scope of this Article, when attempting to devise solutions, care must be taken to avoid imposing restrictions that interfere with the ability of solo and small firm practitioners to competently represent their clients.

practice law, is richer than previously imagined.[96] For lawyers who have well-used advice networks, those networks can profoundly influence their professional development and can also enhance their ability to provide competent representation to their clients.

Although I use the term "advice" throughout this section, the term has a formal connotation that does not fully capture the more informal discussion and consultation that these lawyers described. When I asked the lawyers whether there were people to whom they reached out when a question or problem arose in their practice, some of them noted that they did not consider themselves to be "reaching out" for "advice" when they consulted with other lawyers. As one lawyer explained:

> You know, as I said, it's very informal, it's the sort of thing that you can, that you can just do in court. You know, you're sitting around, waiting for a case to be called, some friend of yours walks into the room and hey, blah, blah, blah, what do you think of this? It's a very, very informal thing and it's not anything that I ever even think of as "this was what was worked out on that."[97]

Others preferred to describe their use of a "sounding board."

Most of the lawyers I interviewed reported that they regularly sought advice from other lawyers when a question or a problem arose in their practice. Advice seeking occurred not only in a deliberate fashion, but casually as well, in the course of ordinary social interactions, while waiting in court, and at lunch. They often spoke to other lawyers in their firms or to their suite mates. When they sought advice beyond their offices, it was to speak to lawyers who they knew from prior practice experiences, either as colleagues or as adversaries, or to consult with lawyer-relatives. Less often, lawyers reported that they spoke with attorneys they knew from school or who they met through bar association mentoring programs or other bar activities. All of these attorney-advisors, both within and outside the lawyer's office, form what I refer to as the lawyer's advice network.

Sara Parikh has studied the advice networks of personal injury lawyers in Chicago and found that advice sharing was pervasive within the plaintiffs' personal injury bar.[98] She identified two types of advice and information sharing among personal injury lawyers. The first occurred in ongoing advice networks that lawyers routinely used to obtain input on cases the lawyers were handling or considering

96. I do not mean to suggest that there are no previous reports of such advice seeking in the literature. Carroll Seron has noted that some lawyers cultivate advice networks early in their careers in order to learn how to practice law, Seron, *supra* note 5, at 9, but the prevalence and duration of these networks were not described in her study.

97. Interview #16 with attorney practicing in two-lawyer firm in Nassau County, N.Y. (Feb. 9, 2001).

98. Parikh, *supra* note 75, at 172.

handling and were highly embedded long-term relationships.[99] The second type, which she called information exchange, was more sporadic and less embedded, and was activated by a particular information need.[100] She found that these networks were largely confined to members of the personal injury bar and were used to reduce the uncertainty inherent in evaluating personal injury cases. While acknowledging that advice sharing was probably not unique to the personal injury bar, she questioned how prevalent it might be in other sectors of practice.[101]

No formal network analysis has been performed on the responses obtained from the lawyers who participated in the present study,[102] but many of Parikh's insights are echoed in the comments of the solo and small firm practitioners I interviewed. The personal injury lawyers in this study reported that they frequently reached out to other lawyers for advice, but so did lawyers in some other practice areas.[103] This seemed particularly true of general practitioners and civil litigators who worked in firms and in suites. When asked how often they reached out to someone in their office with a question or a problem, this response from a civil litigator was not uncommon:

> Daily. Not to every lawyer in the suite. But daily. I mean [suite mate A], the guy that I was on the phone with this morning in his car phone, talked to him about this client who died and getting advised by him about what I needed to do.... And he's coming into the office at 12 noon and he said he'd come in here and brief me a little bit more about what I needed to do. So that's typical. Another lawyer in the suite here named [suite mate B], brought me in on a very sensitive matter with a college professor who was charged with plagiarism and it was a disciplinary matter by the college. And so he tried to utilize my skills there to help bring about a good result where this professor did not lose her tenure, did not lose her job and we were successful and we [devised a] strategy. Another sole practitioner in the suite here, his name is [suite mate C] and he is particularly effective at getting employer identification numbers. It seems like a very easy thing to do but it's not always easy to do, so

99. *Id.* at 173-75.

100. *Id.* at 176-79. She gave as examples a request for information about a particular expert witness or a particular defendant.

101. *Id.* at 226-28.

102. In other words, while I asked about advice partners and about the frequency and types of advice seeking, I have not counted the number of contacts that each lawyer had with each member of her advice network or used a network analysis software program to analyze the data more systematically as a sociologist might do when studying advice networks.

103. *Cf.* Boston Bar Task Force, *supra* note 11, at 11 (reporting on sole practitioners' informal networking groups which they turn to for discussion, advice or support).

> when I need an employer identification number for a client I've used him on that. And he's referred some matters to me.[104]

The daily use of advice networks by these lawyers typically did not go beyond the firm or suite. As one general practitioner explained:

> When you have other attorneys in the office, it just makes things much more—much easier to deal with. Because you have somebody who you can bounce something off of. It's invaluable. I think that that in and of itself as a single issue, whether it's somebody you can pick up the phone and call somebody, but having somebody in the office itself who you can just bounce something off of or discuss something with, is certainly a lot more important than being able to pick up the phone because you're not going to call that person 10 times a day.[105]

While the law office served as a frequent source of advice for some generalists,[106] specialists and those who appeared before adjudicative boards seemed more likely to rely primarily on advisors outside their offices for advice. In some cases, this may be because the lawyers spent little time in their offices or because their offices had no other specialists in their fields. When these lawyers reached out for advice, they looked to other lawyers who practiced in their areas of specialization and in many cases, the exchange of information would occur while waiting to appear in court, before workers' compensation boards or zoning boards.

Some of the general practitioners who sought advice outside the office talked about reaching out to the community of lawyers to which they belonged, which they conceived in terms of their common backgrounds with other lawyers.[107] For example, one solo lawyer who practiced on Court Street in Brooklyn, described that legal community as one to which he could easily reach out for advice about areas of the law with which he was unfamiliar:

> It is not like being out in Uniondale or in Suffolk County where you have a law office and you are in a building. I mean, this is a community here and you can get anything you want. If you want—

104. Interview #7 with attorney practicing in four-lawyer firm in New York, N.Y. (Jan. 31, 2001).

105. Interview #21 with attorney practicing in two-lawyer firm in Nassau County, N.Y. (Feb. 14, 2001).

106. Although business litigation is viewed as a specialty, *see* Heinz et al., *The Changing Character of Lawyers' Work*, *supra* note 4, at 759, the lawyers whom I refer to as "civil litigators" did not confine their practices to business litigation. They were often generalists in the sense that they needed to learn many different areas of substantive law and about many different types of litigation during the course of their careers.

107. This is consistent with the theory that networks should be most common in work settings in which participants have a common background, whether it be geographic, ethnic or professional. *See* Walter W. Powell, *Neither Market Nor Hierarchy*, 12 Res. Educ. Behav. 295, 326 (1990).

> and I know loads of people. If I wanted to talk about bankruptcy, I can call next door and pick somebody's brain for hours upon hour and I've done that. Without referring a case so I can make decisions for my client as to what they have to do. And he is not going to bill me because he is my friend.[108]

Another solo practitioner from Suffolk felt that he had a community of lawyers to draw on as well:

> Once I started, and then I met the other single practitioners and, you know, there is some camaraderie there and you feel that you can call them and now they are calling me, which is nice. I mean I can certainly say that as a group, single practitioners are really 99% terrific people. We are all in the same boat, and there is good camaraderie and there is just something there. Simpatico.[109]

For other attorneys, the community to which they reached out was an ethnic community of lawyers, such as the Italian-American Columbia Lawyers Association. In most cases, the community of advisors were from other solo and small firm practices.

Technology has greatly facilitated the process of advice seeking for these lawyers, as it has facilitated many other aspects of practicing law. Lawyers described using e-mail to ask colleagues questions. They located other lawyers who were experts in particular areas through Internet searches and then made "cold calls" to obtain information. Some also enthusiastically described the advantages of obtaining advice through the New York State Trial Lawyers listserve or the now-defunct Counsel Connect.[110] Nevertheless, their reports suggest that technology is not without its disadvantages: While it provides the capacity to greatly expand their advice networks and the amount of advice seeking in which lawyers engage, it may reduce the instances of more highly textured oral advice giving.

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108. Interview #39 with attorney practicing in two-lawyer firm in Brooklyn, N.Y. (Mar. 19, 2001).

109. Interview #38 with solo attorney practicing in Suffolk County, N.Y. (Mar. 19, 2001).

110. Two lawyers described frequent use of the New York State Trial Lawyers' listserve, which is open only to members, when they needed advice. Another lawyer used Counsel Connect, an on-line discussion forum for lawyers, for advice about everything from office space to how to find a lawyer with whom he formed an of counsel relationship. Until Counsel Connect ceased to operate in 1999, it hosted special purpose discussion groups and allowed its 35,000 lawyer subscribers to post questions for other lawyers. Eugene Volokh, *Computer Media for the Legal Profession*, 94 Mich. L. Rev. 2058, 2079-80 (1996). Since then, the ABA has launched Solosez, a discussion group for solo and small firm practitioners, but it has not achieved the popularity of Counsel Connect. *See* Bruce L. Dorner, *Technology in Practice: Solo Assist*, 27 Law Prac. Mgmt. 11 (Jan./Feb. 2001); Hope Viner Samborn, *Colleagues in Space: Online Discussion Groups Prove Uniquely Informative—And Addictive*, A.B.A. J., Dec. 1999, at 80.

Not surprisingly, the advice seeking in which these lawyers engaged changed somewhat as they became more experienced practitioners.[111] Early in these lawyers' careers, many of their questions concerned requests for legal forms or advice on how to perform a routine legal task, such as how to file a civil court appeal.[112] As the lawyers became more experienced, they sought advice about handling matters in their own areas of expertise, which usually involved a question of judgment, a question about a legal issue they had not previously confronted, or a question seeking factual information relating to a particular matter.[113] Less often, they sought advice about areas of substantive law or procedure with which they were not as familiar, for example, when a tax or bankruptcy question arose in a matter being handled by a general practitioner. Lawyers reported relatively little advice seeking concerning issues of professional ethics.[114]

The majority of lawyers reported that they engaged in advice seeking at least once a week and more often when the lawyers worked in firms or in suites with other lawyers. It does not appear that advice networks were viewed as quite as important to the decision-making of most general practitioners or specialists as they reportedly are in the personal injury sector,[115] but more research of a larger sample would be needed to confirm this general impression. It is clear, however, that these advice networks are viewed as "invaluable" by a number of solo and small firm practitioners. As one lawyer who specializes in securities law noted, "[i]t is so essential to my survival that I have the network I do."[116]

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111. In order to accurately categorize the types of advice seeking in which lawyers engage with a high level of confidence it would be necessary to analyze the advice seeking patterns of lawyers in particular practices, office settings and stages of experience. The description here is provided only for the purpose of giving the reader a very general sense of the types of advice seeking that occurs.

112. This advice seeking is described in more detail *infra* notes 149-51 and accompanying text.

113. Questions of judgment might include the settlement value of a case, whether to raise a particular defense or how to handle a difficult client. A question seeking factual information might include information about the attitudes of a particular judge toward a particular practice or recommendations concerning who might serve as local counsel on an out-of-state matter.

114. Exploration of the extent to which lawyers sought advice from others concerning issues of professional ethics was approached by: (1) asking lawyers about the content of their advice seeking generally; (2) asking specifically how they had handled ethical problems that arose in their practice and whether they had reached out for advice in those instances; and (3) asking about how they had learned certain practice skills that are fraught with ethical challenges (*e.g.*, deposition practice). For further discussion of this advice seeking, *see infra* notes 179-87 and accompanying text.

115. *See* Parikh, *supra* note 75, at 173-74.

116. Interview #29 with attorney practicing in three-lawyer firm in New York, N.Y. (Mar. 8, 2001); *cf.* C. Theresa Beck, *Solo Practice: The Joys of Independence*, Maryland B. J., Jan.-Feb. 1993, at 35, 36 (referring to advice sharing in an office arrangement as "invaluable"); Hertz, *supra* note 36, at 33 (stating that solos must

Nevertheless, a significant minority of the lawyers do not regularly seek advice. The lawyers who reported that they did not reach out to others for advice or that they did so less than once a month tended to be men in solo practices, women partners, lawyers who specialized and had practiced law more than twenty years,[117] or lawyers over the age of seventy. There are several different reasons why these lawyers did not regularly seek advice. A few of the solo practitioners suggested that their personalities prevented them from reaching out. One explained his reluctance to reach out by saying that he was "stubborn." Another noted:

> I'm the kind of person that doesn't like to ask advice [laughs], doesn't like to take advice, you know likes to learn the hard way. Do things their own way and learn by their mistakes. No, no, I didn't ask much.[118]

The two female partners in the study seemed to feel that advice seeking was at odds with their role as a problem-solver within the firm or as a specialist.[119] As one of them explained, "I'm supposed to know all the answers. So I can't undermine my position."[120] In the case of some of the attorneys who specialized and had practiced more than twenty years, they felt that they had little need to reach out for advice because they were very familiar with the areas in which they practiced.[121] Speaking for this group, one lawyer explained, "I talk to myself. It's unusual that I don't know the answer."[122] Some older attorneys reported that they rarely used advice networks because their

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develop a good system of colleagues of whom they can ask advice).

Of course, the fact that these attorneys seek advice does not mean the advice is actually sound advice, and I made no attempt to test its quality. However, given that some lawyers term their advice networks as invaluable and many of them continue to engage in this time-consuming behavior, one might infer that if lawyers were asked about the overall quality of the advice they receive, they would say that it is good.

117. I am using the term "specialized" here to include lawyers who devoted more than 50% of their time to a single area of practice. Among the lawyers I interviewed, however, there were specialists who practiced more than twenty years who continued to make weekly use of their advice networks. These lawyers worked in the areas of civil rights law, education law, intellectual property and personal injury law.

118. Interview #19 with solo attorney practicing in New York, N.Y. (Feb. 13, 2001).

119. A third woman, a senior associate who had a great deal of responsibility in her personal injury firm, also reached out for advice within her firm very infrequently. Obviously more research would be needed to know whether this is generally true of female lawyers in responsible positions.

120. Interview #10 with attorney practicing in six-lawyer firm in New York, N.Y. (Feb. 1, 2001).

121. Parikh also noted in her study of personal injury lawyers that some more experienced lawyers felt that they did not need much advice. Parikh, *supra* note 75, at 193-94.

122. Interview #2 with attorney practicing in two-lawyer firm in Westchester County, N.Y. (Jan. 23, 2001).

networks were no longer present. As one lawyer noted, "my contemporaries are no longer contemporary."[123]

In concluding this description of advice relationships, the positive functions served by the regular advice seeking of many solo and small firm practitioners deserve mention. To the extent advice seeking enables experienced lawyers to obtain information about the law, test their judgments or generate legal strategies that they cannot generate or evaluate alone, it permits them to compete with larger or more specialized competitors in an increasingly stratified, complex and specialized profession. For these same reasons, advice seeking can promote more competent representation of clients. Advice relationships can also promote a sense of professional community among lawyers and with it, a sense of shared professional values.[124] The feeling of belonging to such a community may also enhance feelings of job satisfaction among lawyers.[125] Finally, as described in more detail below, advice relationships can directly assist new lawyers in their efforts to learn how to practice law.

IV. HELP IN LEARNING TO PRACTICE LAW

The finding that solo and small firm practitioners work in a rich social environment naturally raises the question of how that environment contributes to the lawyers' professional training.[126] As it turns out, the view of the typical solo and small firm practitioner as unmentored and unassisted in skills development is oversimplified, if not inaccurate. Indeed, the lawyers in the study who performed complex work often received training early in their careers in a larger office setting. Even the lawyers who always practiced in solo and small firm settings reported that they received training from mentors and colleagues. Of course, the fact that they received some assistance with their skills development from other lawyers does not mean that the training was extensive with respect to every important legal skill. Nor does it mean that solo and small firm practitioners may not have to work somewhat harder than attorneys in other settings to create learning opportunities. Nevertheless, both the accounts of these lawyers and prior research suggest, at a minimum, that the *manner* in

123. Interview #22 with solo attorney practicing in Brooklyn, N.Y. (Feb. 15, 2001).

124. *See, e.g.*, Parikh, *supra* note 75, at 218-19 (noting that advice sharing promotes cohesion within the personal injury bar and promotes professional values); *see also* Steve Keeva, *Good Act to Follow*, A.B.A. J., Mar. 1995, at 74, 77 (discussing benefits of advice sharing in mentoring context).

125. *See* Boston Bar Task Force, *supra* note 11, at 11 (reporting that informal networking added to sole practitioners' sense of professional fulfillment).

126. When I refer to a lawyer's "training" throughout this section, I use this term broadly to include everything from deliberate initiatives by an attorney to teach the less experienced lawyer, to a willingness to answer questions when asked, to allowing a lawyer to observe the performance of a task, even though no conscious plan to teach is involved.

which these lawyers develop skills in practice is not substantially different than the manner in which lawyers in larger firms traditionally acquire their skills.[127]

In fact, urban lawyers in both large and small firm settings believe that observation of or advice from other lawyers in their office is among the most important sources of the development of their skills.[128] Although Zemans and Rosenblum found that significantly more large firm lawyers than small firm lawyers ranked observation of or advice from the attorneys in their office as an important source of their development of certain skills, a sizable number of small firm lawyers also reported that their office colleagues contributed significantly to the development of those skills.[129] Seron found that solo and small firm lawyers rely on overlapping strategies to learn how to practice law, which include the cultivation of an informal network of attorneys and court clerks of whom they ask questions, a process of watching other lawyers and then trying out what they observe, and learning (by a minority) through mentors.[130]

In an effort to explore further the role that colleagues play in the professional development of solo and small firm practitioners, I asked specifically about mentors and the other ways in which these lawyers

127. Comparisons of the *quality* of the training are difficult because different skills and different levels of skill sophistication are required in different types of practices. *See, e.g.*, Van Hoy, *supra* note 5, at 84 (noting that many of the tasks performed by lawyers in the personal legal services market may not be highly complex). Similarly, there seems to be no satisfactory way to directly measure competence. *See* Lempert et al., *supra* note 82, at 444.

128. *See* Zemans & Rosenblum, *supra* note 21, at 153-54; Garth & Martin, *supra* note 24, at 486-87; Boston Bar Task Force, *supra* note 11, at 10.

It should be noted, however, that the manner in which lawyers in the very largest firms are learning skills may be changing as these firms turn to the use of much more formal training programs and simulations to recruit and retain associates, to justify their higher billing rates, and to address complaints about recent inadequacies in large firm training. *See, e.g.*, *Associate Salary Shock Increasing Retention and Productivity*, N.Y. L.J., Aug. 14, 2001, at 1; Jo Piazza, *First-Year Associate Training on the Rise: Simulations and Mentoring Put to Use By Firms*, Legal Intelligencer, June 1, 2001, at 5; Mark Schauerte, *Kirkland's Goal is to Bring Out the Hammond in Everyone*, Chicago Law., Apr. 2001, at 2. *But see* Wendy Davis, *Shadowing of Partners Returns to Associate Training*, N.Y. L.J., July 7, 2000, at 1.

129. For example, 73% of large firm lawyers ranked attorneys in their own office as the first or second source contributing to their development of negotiation skills as compared to 50.9% of lawyers in small firms. Zemans & Rosenblum, *supra* note 21, at 154. While 76.9% of large firm lawyers ranked attorneys in their office as important contributors to their skills in drafting legal documents, so did 50.8% of small firm lawyers. *Id.*; *see also* Garth & Martin, *supra* note 24, at 482-83, 485, 498 (noting that observation and advice from lawyers in the office were among the most important sources for development of certain skills for young urban lawyers in large and small firm settings). Unfortunately, it is not possible to determine whether "observation of" or "advice from" office colleagues predominated as the method of learning. Moreover, these studies do not separately analyze the responses of solo practitioners, apparently due to the mistaken belief that they did not have office colleagues from whom they might learn. *See* Zemans & Rosenblum, *supra* note 21, at 173.

130. *See* Seron, *supra* note 5, at 8-9.

learned a skill they use in practice. Like the small firm lawyers in previous studies, the lawyers I interviewed often learned to practice law through observation, asking questions and their own repeated experiences.[131] Nevertheless, many of the lawyers also reported that they had had mentors during their legal careers. Advice networks also aided many of these lawyers in their early years of practice.

These lawyers' reports about their mentors conflict with the standard conception of the young solo and small firm practitioner who navigates the early years of practice without a mentor.[132] This image of the solo and small firm lawyer is supported in part by a 1984 ABA survey in which solo and small firm practitioners reported less mentoring than lawyers in larger firms.[133] The ABA survey asked: "Do you have a mentor in your place of work who furthers your career and gives you advice"?[134] This question yielded a response that only 13.5% of solo practitioners and 31% of small firm practitioners (2-3 lawyers) had a mentor in their place of work. However, because these lawyers may receive mentoring from attorneys who did not work in the same office, this survey may have understated the extent of mentoring.[135] A 1989 study of Georgia lawyers which remedied this particular problem by asking, "do you have a mentor in your place of work or elsewhere who gives you advice and furthers your career" revealed that almost twice as many solo lawyers (26.3%) had mentors.[136] Nevertheless, these lawyers were still significantly less likely than law firm lawyers to report that they had mentors.[137]

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131. *See id.* at 8; Zemans & Rosenblum, *supra* note 21, at 154-55; Garth & Martin, *supra* note 24, at 483, 486.

132. *See supra* note 23 and accompanying text; *see also* Gary Schumann & Scott Herlihy, *The Impending Wave of Legal Malpractice Litigation—Predictions, Analysis and Proposals for Change*, 30 St. Mary's L.J. 143, 189 (1998) (noting that solo practitioners are more susceptible to malpractice claims due to a lack of mentoring); Robert A. Stein, *Law Schools and the Legal Profession: What the Legal Profession Expects of Law Schools: A Response*, 34 Ind. L. Rev. 15, 17 (2000) (noting that for solo and small firm lawyers, there is little if any on-the-job mentoring available); Rodney J. Uphoff et al., *Preparing the New Law Graduate To Practice Law: A View From the Trenches*, 65 Cinn. L. Rev. 381, 409 (1997) (noting that many solo or small firm practitioners do not have access to "qualified" mentors); Keeva, *supra* note 124, at 74 (reporting that lawyer saw an absence of mentoring most vividly among solo practitioners and two-lawyer firms).

133. *See* ABA Survey, *supra* note 23; David N. Laband & Bernard F. Lentz, *Workplace Mentoring in the Legal Profession*, 61 S. Econ. J. 783, 794 (Jan. 1995).

134. ABA Survey, *supra* note 23, at 20.

135. For example, some solo and small firm practitioners I interviewed reported that they received mentoring from family members with whom they did not practice or from other individuals with whom they never shared office space. By asking whether the lawyer currently works in the same office as the mentor, the ABA survey probably fails to capture the true level of mentoring received by lawyers in all practice settings.

136. *See* G. Melton Mobley et al., *Mentoring, Job Satisfaction, Gender and the Legal Profession*, 31 Sex Roles: A Journal of Research 79, 90 (1994) (reporting that 26.3% of solo practitioners have a mentor as compared to 38% of law firm partners and approximately 55% of law firm associates). Comparison of the figures derived

Although it seems likely that lawyers in larger law firms have more opportunities for mentoring than solo and small firm practitioners, the questions posed in previous surveys contain unintentional biases against solo and small firm lawyers which may have caused them to report less mentoring than they in fact received. These questions asked whether the lawyers currently have a mentor, rather than whether they ever had one. Since solo practitioners, in particular, do not typically go into this form of practice immediately after law school, and they tend to be older than the average lawyer, it is quite possible that these lawyers once had a mentor but do not currently have one. Similarly, it seems possible that by defining a mentor as someone who "furthers your career and gives advice," the question unintentionally creates a bias against the types of mentoring that occur in solo and small firms, which may consist almost exclusively of advice giving.[138] Indeed, the possibility that mentoring opportunities are not substantially different in solo practices and law firms is suggested by a survey of Minnesota law school graduates showing that while 24% of solo practitioners were dissatisfied with their opportunities to work with a mentor, so are 20% of the lawyers in law firms.[139]

When I asked a broader question about mentors that did not limit the question to current mentors or attempt to define the term "mentor" for these lawyers, the solo and small firm lawyers in this study responded differently than in previous reports. Most of the lawyers in this study reported that they had had mentors in their legal careers.[140] These mentors were typically someone they encountered in their first or second job and someone with whom they worked in physical proximity. A significant minority of the lawyers reported that their mentors were family members who were lawyers. Lawyers who started in solo or small firm practice were no less likely to report that they had had mentors than lawyers who began practice in other settings.

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from the ABA study to the Georgia study must be done with some care. Women and minorities are over-sampled in the Georgia study, and females appear to be more likely than males to report that they have mentors. *Id.* at 88.

137. *Id.*

138. For example, a lawyer in a larger firm may further an associate's career by steering choice assignments to her, insuring that she works for an array of powerful partners, and advocating her interests in partnership meetings. A mentor of a solo practitioner is unlikely to do any of those things, and may even view the mentee as a potential competitor, but may provide substantial advice about the practice of law.

139. Mattessich & Heilman, *supra* note 9, at 96. Again, comparisons must be made with great care. It may be that only 24% of solo practitioners were dissatisfied because they had lower expectations of being mentored or are more independent and less interested in mentoring. Moreover, the figure for law firm dissatisfaction with mentoring opportunities does not differentiate between small and large law firms, and the differences could be substantial.

140. Lawyers were asked, "have you had any mentors in your legal career"? Thirty-three of the forty-one lawyers said that they had had mentors.

It should be noted that my failure to define the term "mentor" when interviewing these lawyers can be criticized because there is little consensus about the meaning of the term.[141] At the same time, since little is known about the types of mentoring that occur in these practice settings, any definition presents the risk of excluding responses from some lawyers who had people in their lives who performed some mentoring roles.[142] Because the conventional wisdom seems to be that solo and small firm practitioners rarely have mentors, it seemed useful to ask the broad question in this preliminary study.[143]

Most of the mentoring that these lawyers described involved teaching them lessons about practicing law.[144] Many of the attorneys who were identified as mentors taught more by example and a willingness to answer questions than through their own deliberate initiatives to provide training. A smaller but significant number of the lawyers reported that their mentors made conscious efforts to train them by creating opportunities for observation, commenting on the younger attorneys' written work, showing them how to do research, or critiquing the less experienced lawyer's performance. The mentoring most often related to how to perform legal work (*e.g.*, the steps needed to handle a real estate closing), how to deal with clients, how to evaluate client matters, and how to think through and resolve problems that arose in practice. While the length of the mentoring relationship and the amount of mentoring varied significantly, in some cases the lawyers credited their mentors with teaching them a great deal about how to practice law.

The lawyers who credited their mentors with providing them with extensive instruction usually were talking about employers, who had

141. *See* Cathlin Donnell et al., Gender Penalties: The Results of the Career and Compensation Study 52 (1998); Sandra Riley & David Wrench, *Mentoring Among Women Lawyers*, 15 J. Applied Psych. 374, 376 (1985).

142. *See generally* Donnell et al., *supra* note 141, at 53-54; Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 Fordham L. Rev. 291, 351 (1995) [hereinafter Epstein et al., *Glass Ceilings and Open Doors*] (noting that a full range of mentoring roles were not present in the case of each person interviewed).

143. It bears repeating that I asked this question about mentoring of solo and small firm practitioners who started practice in a variety of settings. It may be that analysis of a larger sample may show differences in the mentoring experienced by lawyers who start practice in solo and small firms and those who start in larger settings. It is also possible that a larger study that included lawyers who currently practice in other settings would find that lawyers in larger practice settings had *more* mentors than solo and small firm practitioners.

144. Large firm lawyers have described their mentors as (1) teachers; (2) advisors and exemplars; and (3) career advocates within the organization. Epstein et al., *Glass Ceilings and Open Doors*, *supra* note 142, at 344-46. Not surprisingly, the lawyers in the present study discussed mentoring that fell within the third category only if they started practice in a large law firm.

an economic interest in well-trained associates.[145] Nevertheless, two of the lawyers who went directly into a solo practice after graduation described extensive instruction that they received from mentors with whom they shared office space. As one of them recalled:

> I was always impressed by the fact that [mentor's name] was never afraid, he was fearless of the law. He was never afraid to take on—he didn't care what it was—he would take it on. He would figure out how to do it if he didn't know. And I remember [clients] coming to us with a seizure case—a federal forfeiture case—they had some money and they were going to Las Vegas in the airport and they came out and the DA picked them up with $ 40,000 worth of money, in cash, and seized the money, and I mean I had absolutely no idea how to handle it. He said, "don't worry about it." We went down to the library, in those days people didn't have computers... we go down do the library, he'd find all the cases and he'd show me how to do good legal research, how to do—you know, I think it was, it was impressive to me because it allowed me to be more bold in the beginning in dealing with issues and learning.[146]

In addition, family members who were mentors were credited with providing extensive training to some of the lawyers I interviewed, even when they were not working in a firm with the lawyer.[147]

In addition to benefiting from mentoring relationships and from models they observed in practice,[148] lawyers often used advice networks early in their careers to learn how to practice law. Like the lawyers in Seron's study, these lawyers relied on networks of court clerks as well as other attorneys.[149] These attorney-advisors often worked within the same office suite or building, were friends of office colleagues, or were people they had met in practice. The attorneys in these networks often provided advice about forms, described customs

145. There are anecdotal reports to the same effect. *See* Beck, *supra* note 116, at 35 (describing the "excellent training" she received in a small firm due, in part, to the advice she received from her employers).

146. Interview #28 with attorney practicing in four-lawyer firm in Brooklyn, N.Y. (Mar. 1, 2001).

147. Unlike the solo practitioners of forty years ago who tended to be the sons of immigrants, Carlin, Lawyers On Their Own, *supra* note 6, at 3, several of the lawyers I interviewed had received instruction from their parents, spouses or from other relatives who practiced law. A significant minority of the lawyers had worked at one time in the same office with a lawyer-relative or had a lawyer-family member who was a mentor.

148. Some of the lawyers I interviewed drew a distinction between attorneys whom they would call a "mentor" and other attorneys who had taught them something about practicing law. In some cases the lessons they had learned from particular attorneys were described as very valuable, and may have resulted from direct instruction, but the lawyers did not view those attorneys as mentors for a variety of reasons including, *inter alia*, that they felt the attorney did not have a personal interest in them or they had negative feelings about the attorney. The attorneys who provided memorable lessons, but who the interviewed lawyers were reluctant to identify as "mentors," are termed "models."

149. *See* Seron, *supra* note 5, at 8.

in different courts and answered substantive legal questions. One lawyer described the process as follows:

> I got a consultation. I called [a friend] up one day and I said, "do I do bankruptcy?" And he said, "of course you do." And I said, "well, how much do I charge?" You know, I mean that's a joke, and that's how you start doing these things.
>
> Q: So, actually, I was curious about how you got into it, but I guess that's how.
>
> A: That's how you do it. You're young; you have time on your hands; you need the business. Someone comes in; you call up someone you know who says, "yeah, you do that. Sure, I can teach you."[150]

Newer lawyers who were employed by law firms tended to seek advice from lawyers within their firms and had very small advice networks outside those firms during their early years in practice.[151]

Although much concern has been expressed about the solo and small firm practitioner who hangs out a shingle without the benefit of mentors or advisors, only one of the lawyers I interviewed among those who participated in the study did not have the benefit of mentors, models or advice networks in her areas of practice. In that case, the lawyer, who worked in a small family practice, described a painful process of self-education:

> If it has anything to do with litigation, there's nobody that I can ask. And this dates back to '87. Now, I didn't go to school here. I didn't grow up here. I didn't have any friends here; and my father-in-law, even though he had colleagues of his, they don't do any litigation, and so I had absolutely no one to ask....
>
> [I]t's just been me, going—digging in the books is probably the biggest thing that I've done. I've read the Law Journal. I have picked up tips from the Law Journal. I enrolled before we had the continuing legal education requirement. I was like one of those people who would see "How to Try an Auto Accident," and I would buy the tape and watch it over and over again and then try to memorize what they did and then try and do it myself.[152]

A few other lawyers also noted that when they did not have mentors or advisors to whom they could readily reach out for help in developing specific skills or answering particular questions, they relied

150. Interview #34 with attorney practicing in two-lawyer firm in Queens, N.Y. (Mar. 13, 2001).

151. This may be due to the willingness of lawyers within the firm to readily provide assistance or to the fact that the newer lawyers in those settings were encouraged to use the advice networks of their employers when a question could not be answered within the firm.

152. Interview #36 with attorney practicing in four-lawyer firm in Brooklyn, N.Y. (Mar. 15, 2001).

on books, tapes, seminars and observation of lawyers outside the office to help them learn how to practice law.

The accounts described up to this point of collegial assistance provided to these lawyers should not obscure the fact that the training received from mentors and colleagues was often less than complete, at least with respect to learning certain skills. Regardless of whether they started their legal careers in a large firm or in some other practice setting, most of these lawyers reportedly did not receive much training from other lawyers with respect to certain oral skills[153] such as deposition practice or trial advocacy.[154] Instead, the lawyers I interviewed learned these oral skills mainly by being thrown into a situation and learning by doing.

For example, trial practice seems to be an area in which these lawyers do not receive much training from mentors or other colleagues,[155] possibly because the training requires the investment of so much time. As a result, some of the lawyers told stories about their first trials that were humorous only in retrospect:

> You know I tried my first case, I was admitted maybe a week, my father hands me a file and says, "it's a rear ender, come back with 1,500 bucks, there's nothing to it." And he said, "go pick a jury tomorrow," and I said, "first question, where's the courthouse? Second question, how do you pick a jury?" He said, "you read fast, I don't know, buy a book." So I ran into New York to an old Prentice-Hall store and I bought a book on how to select juries. I read half of it on the train back and the next morning my wife is driving me to Riverhead and I'm frantically reading the rest on how to select a jury and I walked in and I lucked out, and I selected a

153. I did not ask the lawyers about all of the skills they use in practice and so I do not mean to suggest that oral skills were the only ones in which they may not have received much training. It does appear, however, that generally speaking, they received more extensive training in written skills. For example, the solo and small firm lawyers who did more sophisticated drafting and who had practiced in larger firms early in their careers reported that they benefited from the drafting instruction and feedback they received in those practices, although that feedback was sometimes solicited by the lawyer rather than offered as part of systematic skills training. Lawyers who started in smaller practice settings and who had family members who were mentors sometimes reported that they learned their drafting skills from extensive feedback from those mentors.

154. This is not to say that big firms do not train associates in these oral skills more extensively at some point in their careers. It is possible that some of the attorneys interviewed were identified as associates who were not likely to stay in the large firm or that the attorneys left the firm before they progressed to a higher level of responsibility that would have induced the firm to invest in such training. *See generally* Wilkins & Gulati, *supra* note 5, at 1609-12 (describing the circumstances under which training work, as opposed to paperwork, is assigned to large firm associates). *But see infra* notes 159, 162, 204 and accompanying text.

155. This finding is supported by an ABA survey which revealed that many solo and small firm practitioners had "great difficulty" in the transition from law school to practice when it came to conducting a trial. *See* State of the Legal Profession, *supra* note 7, at 39.

> jury, and I got my brains beat in the first day by an old insurance company war horse . . . .[156]

A solo practitioner recalled trying his first case alone and seeking advice from another practitioner in the courthouse parking lot during his lunch breaks. A few of the luckier lawyers reportedly received feedback on their trial skills from their employers, although the critique was of questionable value:

> [Employer's name] would come to court. He would sit in the first row of the audience when I was on trial and you'd hear "are you going to object or did you die, you piece of shit?" [laughs] And I'd look back and I'd—he would throw things at me. I mean he would interrupt my summation and suggest I say things. Most of the people in the Bronx to this day think I was [his employer's] son. . . . And I must have tried in my first year with him 35, 40 verdicts—an unheard of number on absolute dribble cases. And I was actually getting pretty good at it.[157]

Some of the older lawyers reported that they had learned to improve on their courtroom skills not from colleagues, but through feedback they received from judges.[158]

The need to self-teach oral skills was especially common for lawyers who engaged in deposition practice. Some of these lawyers who described how they learned to take a deposition used a "sink or swim" metaphor. Many of the lawyers had never observed a deposition before they were asked to conduct one. Lawyers who started practice in firms of over fifty lawyers did not report any more systematic training in this skill than lawyers in other settings.[159] As one former large firm lawyer recalled:

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156. Interview #35 with solo attorney practicing in Suffolk County, N.Y. (Mar. 14, 2001).

157. Interview #24 with attorney practicing in five-lawyer firm in New York, N.Y. (Feb. 17, 2001).

158. Unfortunately, the role that judges have played in helping to train young attorneys who appear before them may be on the decline. *See* Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 Minn. L. Rev. 705, 738-39, 745 (1999) [hereinafter Schiltz, *Legal Ethics in Decline*]; *see also* Lucy Isaki, *From Sink or Swim to the Apprenticeship: Choices for Lawyer Training*, 69 Wash. L. Rev. 587, 588 (1994) (describing the reasons why judges are unable to mentor or train lawyers as they once did).

159. Again, this may be because the lawyers I interviewed left the large firms before they were considered "senior" enough to take depositions. There is some evidence, however, that large firms do not provide much training in this important skill. *See* Curtis, *supra* note 5, at 75; Suchman, *supra* note 16, at 868 (noting that more than one informant at a big firm "commented that he or she learned important deposition skills primarily by observing opposing counsel"); Molly Peckman, *Getting Inside Associates' Minds*, Legal Intelligencer, Dec. 1, 2000, at 9. *But see* Robert L. Nelson, *The Discovery Process as a Circle of Blame: Institutional, Professional and Socio-Economic Factors that Contribute to Unreasonable, Inefficient and Amoral Behavior in Corporate Litigation*, 67 Fordham L. Rev. 773, 784 (1998) [hereinafter

> In fact the first time I did one I had never even seen one. [laughs] I just did it. I just did it. And of course you start to see other people do them and I just sort of picked up by copying how to do it and you see what works and what doesn't work and what's completely obnoxious and what's going to get you what you need to get and I would say really by osmosis, not because anybody sat down and taught me how to do it.[160]

Several of the lawyers recounted "horror stories" about their first depositions. Only two of the interviewed lawyers reported that they received any feedback on their deposition performance from their employers or mentors, and both of them were working in small law firms at the time. Only a slightly larger number had helped another lawyer prepare to take a deposition. Instead, most reported that they learned to handle depositions through observation of other lawyers and experience. Several resorted to books, tapes or CLE courses to help them learn or improve their deposition skills.

These accounts are offered only to illustrate the point that while solo and small firm practitioners receive more support and skills training from mentors and advice networks than previously believed, that training is not necessarily extensive with respect to each of the skills they need to practice law.[161] I do not mean to suggest, however, that the skills training of lawyers in other practice settings is substantially more thorough. As noted, lawyers who had practiced in large firms did not report that they received more deposition training than lawyers who started in smaller practice settings and anecdotal accounts suggest that deposition skills are often self-taught, even within larger firms.[162] The point is simply that while this study reveals

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Nelson, *Circle of Blame*] (noting that some of the large firms have instituted training programs run by outside professionals); Piazza, *supra* note 128, at 5; Schauerte, *supra* note 128, at 12.

160. Interview #14 with attorney practicing in seven-lawyer firm in New York, N.Y. and Westchester County, N.Y. (Feb. 8, 2001).

161. *Cf.* State of the Legal Profession, *supra* note 7, at 39 (noting that solo and small firm practitioners had great difficulty in transition from law school to practice with respect to certain skills); John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 William Mitchell L. Rev. 327, 360, 362, 364 (2000) (suggesting that Minnesota lawyers, who were mostly working in solo and small firms, rely heavily on their own experience to learn oral skills).

162. *See supra* note 159 and accompanying text. Moreover, accounts of dissatisfaction with the training provided in large firms are common. *See* Boston Bar Task Force, *supra* note 11, at 10 (suggesting that their training is often haphazard and incomplete); Curtis, *supra* note 5, at 74 (reporting that associates complained they received no direction about document production and were left to fashion their own responses); Schiltz, *On Being Happy*, *supra* note 11, at 926-28; Stacey Beck, *Study Shows Why Attorneys Leave and Suggests Strategies to Keep Them*, Legal Intelligencer, Feb. 26, 2001, at 5; Peckman, *supra* note 159, at 9. Reports that "lawyers hoard work rather than delegating it to younger attorneys and training them along the way" also suggest that these associates may receive less training than previously believed. *See* Schiltz, *Legal Ethics in Decline*, *supra* note 158, at 741. In fact, complaints about the inadequate training of large firm associates have reached

that solo and small firm practitioners receive more training from colleagues than previously reported, the quality and extent of that training with respect to various skills remain to be explored.

V. SNAPSHOTS OF ETHICAL ATTITUDES AND DECISION-MAKING

In this final section, I return to one of the questions that prompted this preliminary study: How do colleagues in the work place affect the ethical attitudes and decision-making of solo and small firm practitioners? I use the term "snapshots" to convey the idea that the information I obtained on this subject provides mere glimpses into a complex and dynamic process.[163] To begin this inquiry, I use the lawyers' own descriptions of the impact of colleagues on their socialization concerning ethical norms and broader notions of morality. I then offer explanations for their reports that they rely relatively little on their colleagues for advice when they confront ethical problems. I also discuss their descriptions of how some of them learned to conduct themselves as "professionals." Throughout the discussion I attempt to draw some connections to reports about large firm practice culture, with the caveat that direct comparisons are difficult and any connections that I suggest remain to be confirmed through future research.

It is clear even from this preliminary study that office colleagues and mentors contribute in important ways to the ethical acculturation of these lawyers. This is not a surprising finding. Indeed, when Carlin studied lawyers in the 1960s, he found that office groups play a crucial role in restricting or supporting violations of bar norms and that in groups of peers, the ethical climate of the office affected ethical behavior.[164] Zemans and Rosenblum subsequently found that more than half of all small firm lawyers reported that observation of or advice from other lawyers in their offices was very important to the resolution of questions of professional responsibility.[165]

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the point that firms are now attempting to take corrective measures. *See supra* note 128.

163. Since I did not ask directly about the ethical culture in which these lawyers worked or how ethical norms were conveyed in practice, *see supra* note 38, I want to be clear that the comments described below were only obtained in response to questions about how they were mentored or how they handled ethical problems that arose in practice. Other lawyers in the sample might have answered quite differently if they had been asked about the subjects more directly.

164. Carlin, Lawyers' Ethics, *supra* note 12, at 96. More specifically, Carlin found that in "older" offices of peers (*i.e.*, where lawyers in an office had been together five years or more), the ethical climate of the office affected ethical behavior. *Id.* at 96-101.

165. Zemans & Rosenblum, *supra* note 21, at 174 (noting that 58.6% of lawyers in small firms reported that lawyers in their own office were very important in the resolution of such questions). In order to place this information in context, it is important to note that lawyers in all practice settings viewed their own general upbringing as the most important source contributing to their resolution of

The effects of office colleagues on the ethical and moral acculturation of solo and small firm practitioners I interviewed can be seen in the stories the lawyers told of ethical lessons they learned early in their careers. For example, one sixty-five-year-old lawyer explained his method for dealing with a recurrent ethical problem he confronted in workers' compensation cases:

> [Once a week I get a client] with larcenous intentions who is basically interested in how long he has to stay out of work in order to get a substantial sum of money from the insurance carrier. My policy, which I inherited from my father, is basically to throw them out immediately, and I do. They always manage to find someone that will represent them but we won't.[166]

Younger lawyers frequently made spontaneous references to the morals of their "bosses" or the ethical culture in which they worked. One lawyer described her firm as being a place where "the attitude here is everything has to be above board." Some of these lawyers told stories about a boss who "fired" clients who could not be trusted to tell the truth or an employer who was unyielding in his refusal to allow the misuse of a notary stamp. Another lawyer, when explaining her current ethical practices, noted that "I basically adopted a lot of [her prior firm's] attitudes that I agreed with as my own."[167]

Mentors also played an important role in the ethical and moral acculturation of some of these lawyers. Although the lawyers were not asked directly whether or how their mentors taught them ethical norms, a few lawyers who started in solo and small firm practices reported that they were mentored in ethics because of the way in which an attorney in the office had conducted himself.[168]

> [W]hen I was [brought] to this suite, this arrangement that I've been in since 1981, the one who brought me in was kind of a mentor to me, he was [mentor's name]. He served as, I think that would fit the description. A mentor is someone like—you know who is sort of a model for you of how to practice, of how to act professionally, how to model yourself, how to shape your practice and model. And really set up your scruples and your standards and your scruples. All of those things. And that's what [mentor's name] was. I kind of patterned myself a little after his way of doing things.[169]

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professional responsibility issues. *Id.* at 171-72; *see also* Garth & Martin, *supra* note 24, at 485 (reporting that Chicago lawyers in large and small offices ranked office colleagues as one of the most important sources for learning sensitivity to ethical issues).

166. Interview #35 with solo attorney practicing in Suffolk County, N.Y. (Mar. 14, 2001).

167. Interview #12 with attorney practicing in three-lawyer firm in Nassau County, N.Y. (Feb. 6, 2001).

168. The masculine form is used here because the mentor was male in each of the cases described *infra*.

169. Interview #19 with solo attorney practicing in New York, N.Y. (Feb. 13, 2001).

> He's mentored me in a lot of ways I think in terms of how to deal a lot with the people involved and quite diplomatically he's been able to—he's mentored me—even if he doesn't know what he's imparted, it's sort of his demeanor and his attitude and his way of getting along with people, his way of getting along with difficult people, his sort of moral compass, those kind of ways. I feel very fortunate to be working for somebody who has been around for so long and holds a certain moral compass.[170]

> What I learned actually during the course of my let's say, my tutelage, or my law clerkship or my employment by [lawyer's name] is what I applied. I really did not—other than [lawyer's name]—speak to anyone concerning how to set up the office. I generally, I can say this. That the first attorney for whom you are, by whom you are employed, if he is good, if he is conscientious, if he has integrity, you'll follow that path. If shortcuts are taken, if there's semi-chicanery, you may do that, but I never had that. He was an honorable attorney, knowledgeable, did not practice by ear but would check the law himself and in effect I emulated his modus operandi with variations of my own.[171]

Not surprisingly, however, not all of the mentoring reported by these lawyers would be considered ethical. A few of the lawyers described experiences that suggested that they had encountered questionable ethical mentoring or modeling in early practice. For example, one lawyer recounted stories about an early employer, a sole principal, from whom he "learned how to break every rule in the universe."[172] Another lawyer, who had worked in a large Manhattan firm, recalled how a partner mentored him in unethical billing practices.

Nevertheless, the "talk" of an ethical culture in small firm practice stands in contrast to reports by large law firm associates that those firms may not have distinctive ethical cultures, at least with respect to certain issues that arise in practice.[173] Although large law firms have a powerful influence on the professional socialization of young lawyers,[174] large firms reportedly may have grown so large and heterogeneous that their ethical culture may be difficult to discern.[175]

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170. Interview #37 with solo attorney practicing in New York, N.Y. (Mar. 16, 2001).

171. Interview #22 with solo attorney practicing in Brooklyn, N.Y. (Feb. 15, 2001).

172. Interview #24 with attorney practicing in five-lawyer firm in New York, N.Y. (Mar. 17, 2001).

173. *See, e.g.*, Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of Ethics and Civility in Litigation*, 67 Fordham L. Rev. 809, 827-28 (1998).

174. For example, in the mid-1970s, 81% of lawyers in large firms reported that observation of and advice from lawyers in their office were very important to the resolution of professional responsibility issues, suggesting that large law firms had a powerful effect on the ethical acculturation of these lawyers. Zemans & Rosenblum, *supra* note 21, at 174.

175. Frenkel et al., *supra* note 71, at 704-05; Gordon, *supra* note 5, at 716-17; Sarat,

Partners may not be in a position to observe one another or even to monitor the associates with whom they work.[176] Discussions of professional responsibility issues are often not billable activities.[177] In contrast to large firms where there may be many powerful partners, new lawyers in solo or small firm practices may find it easier to identify a definite culture when they are working with only one or two employers, or with a mentor or family member. Lawyers in these smaller practices settings may also find it easier to raise questions with their colleagues than do large firm associates, who reportedly feel that they work in relative isolation.[178]

It is important to stress that while it may be relatively easy for solo and small firm lawyers to identify the ethical culture of their office, it is not at all clear that they talk much to their colleagues when confronted with an actual ethical problem. As previously noted, the lawyers I interviewed did not appear to reach out often for advice when an ethical problem arose in their practice.[179] This was true even

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supra note 173, at 825-26; *see also* Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture and the Effects of Billable Hour Requirements*, 69 UMKC L. Rev. 239, 254-56 (2000) (describing associates' efforts to identify firm practices concerning billing clients).

The observation that the ethical culture within larger firms is amorphous is not necessarily inconsistent with the finding that large firm lawyers are very affected by other lawyers in their firms in their resolution of professional responsibility issues. Particularly where lawyers tend to work on teams, in hierarchical organizations and on matters for sophisticated clients who are often not their own, it is not surprising that lawyers would be affected by the advice and observation of other lawyers with whom they work in their resolution of issues of professional responsibility.

176. *See* Fortney, *supra* note 175, at 256; Gordon, *supra* note 5, at 716.

177. For example, the consideration of whether a firm can take on a new client that might have conflicting interests with an existing client is not one that can typically be billed to either client. While there may be questions within the firm about whether travel time and other time expended by lawyers can be billed to clients, clients will not cheerfully pay for time spent discussing these issues. In general, as clients have become more cost-conscious, they are less willing to absorb the cost of the time required to consider attorneys' professional responsibilities. Moreover, good arguments can be made that they should not be asked to do so.

178. *See, e.g.*, Gordon, *supra* note 5, at 716; Sarat, *supra* note 173, at 827 (reporting associates felt that they were working mostly on their own); Schiltz, *Legal Ethics in Decline*, *supra* note 158, at 724-25 (describing factors that contribute to feelings of isolation). Some big firm associates report that there was no one to whom they could turn to ask questions. At the Breaking Point, *supra* note 22, at 5 (reporting that lawyers in firms no longer felt comfortable talking with colleagues about anything but "legal" matters); Curtis, *supra* note 5, at 74 (reporting that associates found firms "impersonal" and received no help with questions). As a result, lawyers may not raise ethical concerns with supervisors. *See* Fortney, *supra* note 175, at 256. In contrast, lawyers in small firm practice typically work in close physical proximity to one another and often described themselves as having "daily" work-related conversations with their colleagues and office mates when questions or problems arose in their practice. *See supra* text accompanying notes 103-06.

179. *See supra* note 114 and accompanying text. When I asked the lawyers about ethical "problems" or "issues" they encountered in practice in the last few years, I did not provide a definition of those terms. By using the terms "problems" or "issues," I hoped to learn about matters that the lawyers regarded as raising a question for them

though some of the lawyers reported that they confronted ethical issues on a "daily" basis. When the problem was unusual, lawyers would sometimes speak to their partners, associates or suite mates or (less often) to other members of their advice groups, although a few lawyers said that they never did so and most lawyers described this reaching out as occurring infrequently over the last few years.[180]

The apparent infrequency of advice seeking when ethical problems arose in practice can be explained in several different ways. The absence of advice seeking was sometimes due to the lawyers' failure to recognize that they may be confronting ethical issues. As one lawyer noted: "Ethical issues? I don't think there's really a problem. When you're dealing with big companies, it doesn't seem to come up."[181] The tendency of some lawyers to believe that they just "knew" what they were supposed to do when they confronted an ethical problem also accounted in part for the infrequency of advice seeking. In some other cases, the absence of advice seeking was due to the failure to reconsider their responses to recurring ethical issues once they became socialized to a particular office or bar norm.

These last two explanations for the failure of these lawyers to seek advice more often when an ethical problem arose may be attributable to a clear ethical office culture. Lawyers may be profoundly affected by the ethical culture of the office (positive or negative) when they work with only a few other lawyers. As a result, the "answer" to ethical questions may be clear and readily observable in small firm practice, accounting for the feeling that lawyers just "know" the answer to ethical questions that arise and need not ask. Similarly, even if lawyers seek advice the first time a particular ethical issue arises in practice, the effect of the office culture may be so powerful that these lawyers do not subsequently question the office norm by seeking advice when the ethical issue resurfaces in practice.

Of course, there are other explanations for the failure to seek advice concerning ethical problems that are less suggestive of a clear or powerful office culture, but further research would be required to confirm any theories.[182] For example, even when the ethical culture of an office is ambiguous, once a lawyer determines "the answer" to a

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so that I could determine whether they sought help from colleagues in those instances.

180. Lawyers reached out to bar-sponsored ethics hotlines or officials on bar ethics committees even less frequently. Most of the lawyers did not indicate they had ever done so. Only two of the lawyers suggested that they had done so on more than two occasions in the last few years.

181. Interview #27 with attorney practicing in three-lawyer firm in Nassau County, N.Y. (Feb. 28, 2001).

182. All of the explanations that appear in this discussion were suggested by the lawyers when I asked whether they had sought advice when dealing with ethical problems. Unfortunately, I did not systematically ask all of them why they did not seek advice. Consequently, I cannot say with confidence what the predominant reasons were for the infrequency of advice seeking.

question she may not be inclined to re-examine it for psychological or practical reasons. The lawyers who responded that they just "knew" the answer to the problem sometimes suggested that they had a general understanding of formal bar rules or that they had a strong moral code and need not consult a professional code of conduct or any other lawyer. For example, one lawyer explained:

> Honestly, you know, I think I'm a good person, so I think if you, you know, if you're a good person, you don't really have to keep looking back at that book to see, you know, what you can do and what you can't. If something doesn't feel right, I'm not going to do it.[183]

Other explanations for the failure to seek advice concerning ethical problems include, *inter alia*, time pressures that prevent careful decision-making, confidentiality concerns, the unavailability of advisors when a decision needs to be made, and the general reluctance to seek any type of advice.

More research would also be needed to know whether the relative infrequency of advice seeking among these lawyers is, on the whole, a good or bad thing. Carlin concluded that potential violations of basic bar norms were more likely to result in actual violations if lawyers were supported in their decisions by discussions with colleagues facing similar problems in the context of small, yet socially cohesive peer groups.[184] Certainly the advice seeking experiences of some lawyers I interviewed suggested that the input from other lawyers produced unethical advice that supported unethical behavior. For example one solo practitioner described the first time she confronted a situation where the parties wanted to pay cash under the table in a real estate transaction.[185] In that case she spoke separately to three lawyer-relatives in her advice network:

> Q: OK, and what did they tell you?
>
> A: That that's just how it works sometimes. Just make sure that you're not in the room where the cash is happening, you know? Go get a cup of coffee.[186]

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183. Interview #32 with attorney practicing in two-lawyer firm in Rockland County, N.Y. (Mar. 12, 2001).

184. Carlin, Lawyers' Ethics, *supra* note 12, at 116. The basis for this claim is not entirely clear. Carlin found more frequent discussion of ethical issues in newer offices of peer groups (defined as lawyers with similar age and income). However, it is not clear from the question he asked whether those lawyers were discussing problems that arose in their own practices or whether the comments of peers actually supported the violations. *See id.* at 255.

185. Real estate transactions that include "cash under the table" present ethical problems for lawyers because they typically require false statements on federal disclosure forms, mortgage documents and income tax returns that constitute crimes including perjury, bank fraud and tax fraud.

186. Interview #1 with solo attorney practicing in Westchester County, N.Y. (Jan. 23, 2001).

In other cases, however, lawyers described instances of colleagues bringing bar rules to their attention of which they were unaware or of counseling compliance with ethical rules.

In fact, many lawyers' comments suggested that they were selective in following the ethical advice that was offered and that they were selective in adopting the behavior of other lawyers as their own. These reports of independence are seemingly consistent with Zemans and Rosenblum's finding that small firm lawyers are somewhat less likely than large firm lawyers to say that colleagues are very important contributors to their resolution of questions of professional responsibility.[187] These reports are also consistent with reports that lawyers who work in these settings are, by nature, independent.[188] It also appears that the informal and collegial settings in which solo and small firm lawyers work,[189] and the seemingly common practice of reaching outside the office for advice of various types from other lawyers, may contribute to independence in their concept of how they should conduct themselves as professionals.

For example, several lawyers noted that they had learned by negative example of what not to do, and those lessons often related to issues of "professionalism."[190]

> I think a lot of the learning that I've done about how I wanted to behave as a lawyer was often by negative reaction to things I saw that I didn't like and I think that that's particularly true for women who didn't start out having role models. I think that certainly historically some of the early women in the business found such difficult situations they became the tough-bitch style and I knew I didn't want to do that. I understand why some people fell into that pattern because, you know, it was very difficult. But I think I quickly came to see that was sort of counter-productive often and I really set out to behave in a way that could be forthright and productive without being a *horrible* person.[191]

> I think, maybe what's happened more is when I've encountered other attorneys, and I see how other attorneys have behaved with clients, and I realize that to me, looking at it from the eyes of a layperson, I would not want to have that guy represent me. And so I've learned the skills really by seeing how other attorneys operate and doing sometimes the opposite of how they behave.[192]

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187. Zemans & Rosenblum, *supra* note 21, at 173-75.

188. *See supra* note 68 and accompanying text.

189. *See* Seron, *supra* note 5, at 68-69.

190. In the examples that follow, lawyers refer to issues that some might argue are closer to etiquette than to "ethics," but the attitudes they suggest may indicate independence with respect to ethical decision-making as well.

191. Interview #14 with attorney practicing in seven-lawyer firm in New York, N.Y. and Westchester County, N.Y. (Feb. 8, 2001).

192. Interview #20 with solo attorney practicing in Nassau County, N.Y. (Feb. 14, 2001).

> [T]he first lawyer I ever worked for was [lawyer's name]. He never returned phone calls, never. And his secretaries and staff would get the brunt of it. And I swore I would always return phone calls. [laughs] So I think I patterned myself against that. So I know what I don't want to be as opposed to what I want to be because I'm my own person, there's not much I can do to change my behavior in my own self.[193]

It is possible that large firm lawyers also draw their own conclusions from behavior they observe and learn by negative example what not to do. The reports that make it into print, however, suggest that associates in large firms feel pressured by the office culture or by specific lawyers to conform to certain arguably unethical or uncivil practices.[194]

The women I interviewed were more likely than the men to report that they learned how to conduct themselves by observing negative models and resolving to act differently. When asked who had affected the ways in which they conducted themselves, they were also somewhat less likely than men to say that the way they conducted themselves in practice had been affected by a particular lawyer. As a female partner explained:

> The way I conduct myself as a lawyer is the result of the way I am. I'm a person first and then I'm a lawyer because I'm a lawyer. So people in my life that have impacted me as an individual, just as a person, indirectly shall we say, have affected me as a lawyer.[195]

The reports of these women that their conduct was usually unaffected by any specific lawyer and that they had often learned how to conduct themselves as a lawyer by negative example may have been due, in part, to the paucity of female mentors and models for them to comfortably emulate. It is also possible that women who work in these practice settings have less free time than men to talk to their colleagues or to form advice networks.[196] If future research shows that women in fact have less time to seek advice, or less access to advice networks,[197] then this may negatively affect their professional development.

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193. Interview #31 with attorney practicing in seven-lawyer firm in Nassau County, N.Y. (Mar. 11, 2001).

194. *See* Fortney, *supra* note 175, at 275-79; Gordon, *supra* note 5, at 716-17; Nelson, *Circle of Blame*, *supra* note 159, at 778-89; Sarat, *supra* note 173, at 826-27; *see also* Schiltz, *On Being Happy*, *supra* note 11, at 916-19.

195. Interview #10 with attorney practicing in six-lawyer firm in New York, N.Y. (Feb. 1, 2001).

196. *See* Seron, *supra* note 5, at 33-35, 40-42; Donnell et al., *supra* note 141, at 505. Although the responses of the lawyers I interviewed did not reveal gender differences in advice seeking other than the difference described above, *supra* note 119 and accompanying text, a formal network analysis may show more differences between men and women in the frequency or nature of advice seeking than identified here.

197. In addition to time limitations, other factors may limit women's access to

CONCLUSION

In a volume devoted to *Lawyering for the Middle Class*, it is appropriate to ask what all this means for the middle-class client. It appears that the typical solo or small firm practitioner who represents the middle-class client is not the undereducated and disillusioned lawyer who Carlin described forty years ago, but rather someone who often has chosen that form of practice and is generally satisfied with it. She increasingly specializes, and her practice is often devoted to areas of importance to middle-class clients, including family law, personal injury, workers' compensation, and elder law.[198] She receives more mentoring and training than previously reported, usually while working in a law office with other lawyers who can provide substantial opportunities for observation. In addition, the solo and small firm practitioner often has advice networks comprised of lawyers, both within and outside the law office, that help provide answers to questions that arise in practice. These advice networks not only assist the lawyers in the development of skills and the delivery of competent legal representation, but they may also promote a sense of cohesion and professionalism among these lawyers.

While it is clear that colleagues can profoundly affect the professional development of solo and small firm practitioners, the full impact of colleagues on the ethical acculturation and decision-making of these lawyers remains to be explored. It appears that lawyers in these settings are well-aware of the ethical norms and culture of the law offices in which they practice. Paradoxically, while some of them are deeply affected by that culture or the conduct of their mentors, and they often rely on advice networks in their day-to-day work, they report little advice seeking from their colleagues concerning ethical issues, even when attempting to resolve ethical problems that arise in practice. Their reports suggest that advice seeking early in their careers may strongly affect their professional behavior, because they

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advice networks. At least within the personal injury bar, advice networks tend to be homogeneous and are comprised primarily of white males. *See* Parikh, *supra* note 75, at 187. Moreover, for some women, creating social relationships with male superiors is uncomfortable. *See* Donnell et al., *supra* note 141, at 50-51 (noting discomfort women feel at creating "guy-type" relationships). If women spend less time engaged in advice seeking, there are likely to be fewer advice networks available to them.

198. One very important question that I cannot answer based on the interviews I conducted is whether the practice areas of the solo and small firm practitioner are changing. There is some evidence that lawyers are representing a more varied mix of clientele than they did twenty-five years ago. *See* Heinz et al., *The Changing Character of Lawyers' Work*, *supra* note 4, at 764. It also appears that since 1975, an increasing amount of legal time is being devoted to large corporations rather than to personal and small corporate representation. *Id.* at 767. Whether this means that more solo and small firm lawyers are increasingly devoting time to representing wealthier clients is unclear. Certainly within the group I interviewed, there was a solid minority of solo and small firm practitioners who were not representing middle income individuals. *See supra* note 48.

may not seek advice on the same issue on more than one occasion. Their comments also suggest that they are independent thinkers about how they will conduct themselves as lawyers and that many of them make their own choices about how they wish to conduct themselves as "professionals."[199]

Not surprisingly, a preliminary study of this sort raises more questions than it answers. Future research into the professional development of solo and small firm practitioners should look more carefully at their training in order to learn more about their actual opportunities to observe and to obtain advice concerning the fundamental skills needed to practice law. Particular attention should be given to the training opportunities available to those who go directly into solo and small firm practice after graduation. It is quite possible that these lawyers may receive sufficient training in easily taught and observable skills, but they may not receive adequate training in more sophisticated skills, such as negotiation and trial practice. It is also important to look closely at whether more transitional education should be required to supplement training opportunities in these practice contexts.[200]

The role of mentors in solo and small firm practice also deserves more study. A more systematic study of mentoring should attempt to replicate the finding that mentors are prevalent in this practice setting, and should focus specifically on lawyers who spend their first few years in solo and small firm practice. Future research should also focus on the role of mentors in providing skills instruction, shaping attitudes concerning ethical (or unethical) norms, and introducing the new lawyer to the professional community. Another area that deserves inquiry is whether mentoring relationships in small firm practice affect success as lawyers, satisfaction with practice, willingness to mentor others, and feelings about being part of a profession.[201]

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199. This is not to suggest that all of these lawyers do so or that those choices may not be affected in some cases by their practice specialty or the communities in which they practice. For example, in the case of personal injury lawyers, their conduct may be highly constrained by the cohesive segment of the bar within which they operate. *See, e.g.*, Parikh, *supra* note 75, at 208-09, 224-25.

200. New York recently instituted a requirement that its new lawyers complete thirty-two hours of transitional education within the first two years of admission to the bar, including six hours of skills and seven hours of law practice management. N.Y. Comp. Codes R. & Regs. tit. 22, § 1500.12 (1999). Consideration should be given to whether additional mandatory continuing legal education requirements during the first few years of practice are needed to provide instruction with respect to specific skills that solo and small firm practitioners are not likely to readily learn in practice.

201. *See, e.g.*, Riley & Wrench, *supra* note 141, at 380-85 (reporting that women lawyers who were highly mentored had a higher level of perceived success and job satisfaction than other lawyers).

Advice networks should also be more systematically analyzed to determine when, to whom, to what extent, and for what purposes solo and small firm lawyers reach out for advice and how that advice affects the quality of client representation. Questions about advice networks should be asked of lawyers who specialize in a variety of practice areas and of lawyers who work in particular ethnic and geographic communities, because advice seeking may be limited to certain practice specialties or affinity groups.[202] If women are not equal participants in this advice seeking process, it is important to explore why. In addition to learning more about the advice these lawyers seek, it would be helpful to learn more about the consequences, if any, for those who do not seek advice.

Future research into the ethical acculturation of solo and small firm practitioners should look at the effect of office colleagues on lawyers' understanding of ethical norms, but must also think more flexibly about the broader networks of lawyers from whom they seek advice. Solo and small firm practitioners should be asked how much, and what type, of "talk" about professional ethics occurs among these lawyers. Another important question is how lawyers develop their responses to ethical challenges in practice and the role that office colleagues, mentors and other members of advice networks play in the development of these responses. In order to trace the ethical acculturation of these lawyers, they should be asked in detail how they learned to respond to a particular ethical problem, such as the client who wishes to commit financial fraud, and the manner in which the lawyer currently responds to that problem.[203]

Finally, these preliminary findings provide some good news and some bad news, not just for the middle-class client, but for the profession. Solo and small firm practitioners are finding ways to survive—and even thrive—in an increasingly competitive and specialized legal world. They are reasonably satisfied lawyers who often work in a collegial, relatively non-competitive office environment. Their fluid affiliations and advice seeking connect them to other practitioners and provide them with a sense that they are part of a larger legal community. Their reports are strikingly different

202. The extent to which these advice networks are linked to their referral networks should also be analyzed because referral networks may affect the quality of advice received. Moreover, this analysis may reveal whether these networks serve, as they do in the personal injury bar, as self-regulating social systems which help control the conduct of lawyers. *See* Parikh, *supra* note 75, at 219, 225.

203. Client fraud might be a fruitful area of inquiry because the comments of many lawyers in this study indicated that they often confronted efforts by clients to commit some form of financial fraud. *Cf.* Leslie C. Levin, *Testing the Radical Experiment: A Study of Lawyer Response to Clients Who Intend to Harm Others*, 47 Rutgers L. Rev. 81, 112-13 (1994) (indicating that many New Jersey attorneys surveyed had confronted situations in which they believed a client intended to engage in financial fraud that would seriously injure financial interests or property of another).

from recent accounts of large firm practice, which suggest that concerns about the "bottom line" and billable hour targets have adversely affected the training, mentoring and advice seeking of big firm associates.[204] In contrast, the availability of office mates, mentors and other advisors who are less likely to be concerned with billing their time on an hourly basis[205] and who are not competing within a large hierarchical organization, may contribute in positive and as yet unexplored ways to the professional socialization of solo and small firm practitioners.[206] The manner in which solo and small firm lawyers work with their colleagues—including their willingness to provide mentoring and to freely share advice—could serve as a model for more satisfying professional practice in other law office settings.

At the same time, it appears that the manner in which solo and small firm lawyers are increasingly organizing their practices is likely to have negative implications for their professional socialization and professional satisfaction. Although the norm continues to be that solo and small firm lawyers practice in physical proximity to one another, an increasing number of lawyers work at home or maintain affiliations with other lawyers who work at great distances. The lack of physical proximity necessarily reduces the amount of time spent in collaboration, advice giving and oversight. The abbreviated and immediate nature of e-mail communication discourages more nuanced discussion about client matters and more expansive advice giving that can benefit the recipient and enhance the advice giver's sense of professionalism. Virtual firms reduce the opportunities for strong mentoring relationships to develop and for new lawyers to learn skills through observation and direct instruction. Virtual and temporary relationships also reduce the opportunities to convey a clear and consistent ethical culture to other lawyers in the firm.

While the problems noted above unquestionably also arise in larger firm practices, they are exacerbated in solo and small firm practice, where there may be no core group of lawyers who work in physical

204. For a description of the effect of the billable hour requirements on the large law firm experiences of associates, see At the Breaking Point, *supra* note 22, at 5-6; Boston Bar Task Force, *supra* note 11, at 21; Curtis, *supra* note 5, at 69-74; Fortney, *supra* note 175, at 281-83; Nelson, *Circle of Blame*, *supra* note 159, at 784; Schiltz, *Legal Ethics in Decline*, *supra* note 158, at 742-46; Schiltz, *On Being Happy*, *supra* note 11, at 927-28.

205. Many of the lawyers I interviewed performed all or part of their work on a contingent fee basis. Even when lawyers bill by the hour, those who work in solo and small firms are less likely to work in firms with billable hour policies than lawyers in larger firms. *See* State of the Legal Profession, *supra* note 7, at 22.

206. By way of example, lawyers who work in this environment may become socialized to pass along those benefits to other colleagues through their willingness to provide training and advice to other lawyers. The sense of belonging to a professional community may promote instincts that encourage civility in the treatment of other lawyers and their clients. *See* Keeva, *supra* note 124, at 77; *supra* note 124 and accompanying text.

proximity and can provide training, mentoring and advice to less experienced lawyers. At a time when technology is permitting more solo and small firm lawyers to compete with larger firms, provide more competent representation and achieve some control over their work lives, it is facilitating work arrangements that may undermine some of the best features of these forms of practice.