

1978

# Lawyers in Colombia: Perspectives on the Organization and Allocation of Legal Services

Dennis O. Lynch

*University of Miami School of Law*, [dlynch@law.miami.edu](mailto:dlynch@law.miami.edu)

Follow this and additional works at: [https://repository.law.miami.edu/fac\\_articles](https://repository.law.miami.edu/fac_articles)



Part of the [Comparative and Foreign Law Commons](#)

---

## Recommended Citation

Dennis O. Lynch, *Lawyers in Colombia: Perspectives on the Organization and Allocation of Legal Services*, 13 *Tex. Int'l L. J.* 199 (1978).

This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# Lawyers in Colombia: Perspectives on the Organization and Allocation of Legal Services.\*

DENNIS O. LYNCH†

## INTRODUCTION

This article describes the Colombian legal profession's organization, career patterns, and methods of allocating and delivering legal services. It is primarily based on data gathered in early 1974 through interviews with a sample of Colombian lawyers in Bogotá.<sup>1</sup>

The roles of Latin American lawyers and the distribution of their services merit careful study for a number of reasons.<sup>2</sup> First, Latin American governments rely heavily on law to organize and regulate a wide range of activities and to implement public policies. Judges, government lawyers, and the practicing bar are in a position to shape these laws, and the policies underlying them through their daily work. Depending on the strength of their monopoly over legal roles, lawyers may control access to law, to legal and administrative institutions, and to other sources of state power. They can use legal reasoning to alter or reinforce the policies embodied in laws, they disseminate information about the law to private parties, and they provide advice on how to use the law for private gain.

---

\* The field research for this study was carried out while the author was a research fellow with Yale Law School's "Law and Modernization" program and the complete study is being submitted for the J.S.D. degree at Yale Law School. The research was partially financed by a grant from the International Legal Center. The full study will be published as a part of the series of "Studies of Law in Social Change and Development" being jointly published by the International Legal Center and the Scandinavian Institute of African Studies. I wish to thank these institutions for their financial assistance. For their encouragement and helpful comments, I would like to thank Richard Abel, Clarence Dias, Yash Ghai, Thomas Heller, Quintin Johnstone, Robin Luckham, Robert Means, James Paul, Fernando Rojas, and David Trubek. The responsibility for all errors remains mine.

† B.A. 1965, University of Oregon; J.D. 1969, Harvard University; Associate Professor of Law, University of Miami.

1. For a brief description of the sample design, see text at note 50 *infra*.

2. There are few empirical studies of the legal profession in Latin America. The most comprehensive is S. LOWENSTEIN, *LAWYERS, LEGAL EDUCATION AND DEVELOPMENT* (1970). See also Urzua, *Sociedad y. Sistema Legal: El Papel del Abogado*, 11 CUADERNOS DE LA REALIDAD NACIONAL (Jan. 1972); L. Zollezi, *La Profesión de Abogado en Lima* (1976) (unpublished paper based on research carried out by the Instituto de Investigaciones Jurídicas de la Pontificia Universidad Católica del Perú). Cf. J. FUSTER, *LOS ABOGADOS DE PUERTO RICO: FUNDAMENTAS PARA UNA SOCIOLOGÍA DE LA PROFESIÓN LEGAL* (1974).

Second, by looking at the profession's control over access to public institutions and over information about law, it may be possible to learn more about the way the organization of economic and political power shapes the legal order. To the extent that the profession is dependent on particular economic or political interests to maintain its financial security, lawyers will have an incentive to use their monopoly position and legal skills to shape policies to the advantage of their dominant clientele. This tendency would be strongest among the practicing bar who sell their services in the market place to the highest bidder. The fee for service method of allocating legal services may forge linkages between the most influential and skilled lawyers and the groups who control the nation's capital and productive resources. In the same sense, it may operate to preclude partial access to public decisionmaking procedures by those who lack the resources to purchase legal services.

The purpose of this paper is to examine the validity of this perspective on the legal profession in the light of the data collected on practicing lawyers in Bogotá. Of course, legal roles in the judiciary and government agencies are central to a more comprehensive understanding of the profession, but this article will focus primarily on the practicing bar.<sup>3</sup> The first section gives a brief overview of the recent economic, political, and social trends in Colombian society which are important to an understanding of current legal roles. It is followed by a description of the relationships among the social origins of lawyers, the law schools they attend, and the extent of stratification in the bar. The third section describes the internal organization of the private bar and its recent efforts to restrict access to membership. The fourth is devoted to an analysis of the costs and distribution of legal services, and the final one examines some of the implications of this pattern of distribution and provides a few thoughts on alternative ways of increasing access to legal services.

### I. THE NATIONAL CONTEXT

The prominence of Colombian lawyers in the nation's political life can be traced back to the country's colonial heritage. The Spanish crown relied heavily on legal decrees and legal institutions to regulate economic production and to control the colony's political and social development.<sup>4</sup> Legally trained men staffed the key institutions, and the Colombian system of higher education,<sup>5</sup>

---

3. For a more complete analysis of legal roles in the judiciary, government agencies and the practicing bar, see D. LYNCH, *LAWYERS IN A CHANGING SOCIETY: A CASE STUDY OF THE COLOMBIAN LEGAL PROFESSION* (forthcoming 1978).

4. The major decrees were included in a codification published in Madrid known as the *RECOPIACIÓN DE LEYES DEL REINO DE LAS INDIAS* encompassing approximately 6,500 decrees divided into nine books regulating the exploitation of land, mines, labor, foreign trade, the obligations of the Catholic Church, the organization of the colonial government, and the structure of the education system. *RECOPIACIÓN DE LEYES DE LOS REINOS DE LAS INDIAS* (Consejo de la Hispanidad ed. 1943).

5. The acts of the colonial government and its relations with private parties were controlled by a legal institution known as the Real Audencia. See 14 M. AGUILERA, *HISTORIA EXTENSA DE COLOMBIA: LA LEGISLACIÓN Y EL DERECHO EN COLOMBIA* 73-74 (1965).

modeled after Spain's universities, stressed law as the basic training for the children of the dominant classes who were interested in a career other than medicine or the clergy.<sup>6</sup> As a result, men trained in law tended to dominate many of the nation's most prominent public and private roles throughout the nineteenth century.<sup>7</sup>

Over the past fifty years, the traditional importance of lawyers in public roles has been declining, but their influence in the private sector appears to be increasing. Changes in the division of labor and the diversification of higher education have contributed to the formation of new professions. Lawyers now compete with economists, engineers, and trained administrators for many public sector roles not directly related to the legal process. At the same time urbanization, the growth of commerce, and the expansion of government regulation have transformed the demand for legal skills in the private sector.

Colombia's change from a predominantly agrarian society with the bulk of the population engaged in subsistence farming to an urban economy with growing industrial and commercial sectors began in the 1920's. The high international price of coffee generated the capital and foreign exchange earnings to stimulate a sustained period of economic growth.<sup>8</sup> From 1938 to 1967 the percentage of Colombians in major urban centers increased from 30% to 50%.<sup>9</sup> During this same period the percentage of the work force engaged in agriculture, mining, and fishing decreased from around 76% to 45%.<sup>10</sup> Many, but not all, of the urban migrants were absorbed by the growth in industry and commerce.<sup>11</sup> In fact, over the past decade unemployment has been estimated at an average of around 20-25% of the work force.<sup>12</sup>

These changes have stimulated the demand for legal services in many areas. For example, the larger percentage of Colombians working for a wage with

---

6. For a description of the Spanish university system and the development of higher education in Latin America, see M. RODRIGUEZ CRUZ, *HISTORIA DE LAS UNIVERSIDADES HISPANO AMERICANAS* (1973).

7. Over half the country's presidents have been graduates of her law faculties. For biographical information on them, see M. MANUEL, *COLOMBIA POSESIONES PRESIDENCIALES 1810-1954* (Bogotá 1954); J. DE MENDOZA VELEZ, *GOBERNANTES DE COLOMBIA (500 AÑOS DE HISTORIA)* (Bogotá 1957). From 1825 to approximately 1860 there was also a sharp conflict over the orientation of legal education which reflects the important role it played in the education of the nation's political leaders. See Rojas, *La Batalla de Bentham en Colombia*, 29 REV. DE HISTORIA DE AMÉRICA 37 (1950).

8. See R. DIX, *COLOMBIA: THE POLITICAL DIMENSIONS OF CHANGE* 31-36 (1967); W. MCGREEVEY, *AN ECONOMIC HISTORY OF COLOMBIA 1845-1930*, at 183-340 (1971).

9. R. Parra Sandoval, *Dependency and Education in Colombian Under-development* 14 (1973) (Land Tenure Center at the University of Wisconsin, Research Paper No. 51) (citing the population censuses of 1938, 1951, and 1964); DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICA [DANE], 227 BOLETIN MENSUAL DE ESTADÍSTICA (1970) [hereinafter cited as BOLETIN].

10. BOLETIN, *supra* at 17.

11. Over the past decade Colombia has maintained a growth rate of 5% to 6%. For discussions of the relationship between economic growth, migration and unemployment, see the collection of essays in *EMPLEO Y DESEMPLEO EN COLOMBIA* (Centro de Estudios Sobre Desarrollo Económico ed. 1968).

12. See OFICINA INT'L DEL TRABAJO, *HACIA EL PLENO EMPLEO* 18 (1970) [hereinafter cited as *HACIA EL PLENO EMPLEO*].

minimum benefits guaranteed by law has fostered a specialization in labor. Urban migrants need housing and credit which has led to more legal work concerned with property transfers, mortgage foreclosures, actions of ejectment, and the collection of debts through garnishment or attachment.<sup>13</sup> Similarly, an increase in urban crime means more legal work for prosecutors, judges, and criminal defense attorneys.

The most significant change in the demand for legal services, however, has been caused by the growth of private business and financial institutions. A few large corporations, banks, and insurance companies control a major portion of the nation's capital.<sup>14</sup> They are in a position to hire the best legal talent and this is having an impact on legal career patterns. The increase in United States foreign investment by the oil industry and manufacturing enterprises has also contributed to the formation of Colombian law firms.<sup>15</sup>

The basic structure of the Colombian legal order was formed in the middle of the nineteenth century through the importation and enactment of European legal codes. The first penal code was adopted in 1837 and the first commercial code in 1853.<sup>16</sup> Both were based on Spanish models. The adaptation by Andres Bello of the French Napoleonic Civil Code was first enacted by two departments (states) in 1859<sup>17</sup> and then by the central government in 1887.

This early codification process appears to have been relatively isolated from the realities of Colombian life. It may be more linked to the efforts of legally trained men to build a new nation state patterned after the European metropolis than any specific economic or legal needs of Colombia. For example, Professor Means, who has done extensive research on the sources of the commercial code, found little evidence of any concern over the substantive provisions of the code governing commercial contract rights or over the lack of government power to regulate the process of incorporation under the code.<sup>18</sup> He concludes that for some time after the enactment of the commercial code, Colombian commercial groups were largely unaware of its contents.<sup>19</sup>

The lack of relation between the codes and Colombia's social system does not mean, however, that the orientation of the codes has not been a significant factor

---

13. For a discussion of the areas of specialization of practitioners serving individual clients in low income areas, see text at note 112 *infra*.

14. In 1964 only 10% of the Colombian corporations had taxable earnings of over one million pesos and they earned 85% of the total corporate income for that year. See *Reforma de la Estructura Tributaria de las Sociedades en Colombia: Análisis de los Problemas y de las Propuestas Alternativas para su Solución*, in LECTURAS SOBRE DESARROLLO ECONOMICO COLOMBIANO 527-75 (O. Gomez Otalora & E. W. Duran eds. 1974) (published by Fundación Para La Educación Superior y el Desarrollo).

15. From 1929 to 1966 direct investment from United States sources increased from \$124 million to \$576 million. 239 BOLETIN 76 (June 1971). The members of two law firms serving foreign interests appeared in the sample and the senior partner of another firm was interviewed during early meetings with select leaders of the legal profession.

16. Means, *Codification in Latin America: The Colombian Commercial Code of 1853*, 52 TEXAS L. REV. 18, 22 (1973).

17. *Id.* at 22, n. 16.

18. *Id.* at 25-37.

19. *Id.* at 36.

in the formation of the Colombian state. Since its enactment, the Civil Code has provided the basic framework and set of rules for resolving conflicts between private parties engaged in civil litigation.<sup>20</sup> The study of the Code and the first principles underlying it have dominated the content of Colombian legal education for almost a century.<sup>21</sup> The Code is based on the sanctity of private property and the individual's right to exploit his property as he wishes as long as his actions do not infringe on the rights of others. The discretion of judges to interpret the law or give it new meaning with changing social and economic contexts is strictly limited.<sup>22</sup> Judges are to interpret the rules in terms of their literal meaning. While legal doctrine or scholarship can be used to clarify the norm's literal meaning, the purpose of the law or its spirit can only be consulted where other sources still leave its literal meaning vague. Custom is only important in situations where there is no relevant provision of any code which is applicable. Even in these situations, the judge should deduce the result by reasoning from the first principles which give the code its logical consistency. These principles are formal legal equality, private property, and the moral precepts of the Catholic faith.<sup>23</sup>

Most legal reforms in this century appear to be more closely linked to specific economic or political goals. The first major development was in 1923 when the Colombian government retained a commission of experts from the United States headed by E. W. Kemmerer to make a study and recommend legislation in the fields of finance, banking, and commerce in anticipation of more foreign investment.<sup>24</sup> A national bank was created to regulate credit and to manage the money supply, and foreign exchange controls were reformed. These developments were followed in the 1930's by the enactment of labor legislation, changes in corporate law to allow for limited liability corporations, and the first of Colombia's agrarian codes designed to initiate a land reform policy.<sup>25</sup>

Over the following thirty years, there were a variety of legal changes in all of these fields, but the next major wave of code reforms occurred in the late 1960's after the two major parties formed a coalition government known as the National Front based on an agreement to alternate the presidency between the two parties over a sixteen year period.<sup>26</sup> This agreement eased political tensions among the

---

20. The Civil Code of Colombia is basically the same one adopted by Law No. 153 of 1887. See I A. VALENCIA ZEA, *DERECHO CIVIL: PARTE GENERAL Y PERSONAS* 33-44 (5th ed. 1972).

21. After the adoption of Andres Bello's Civil Code all Colombian law students were required to study the sections of the civil code on legal personalities, family law, property, contracts, and extra-contractual obligations. They remain as basic required courses in all Colombian law schools today. See Decree-Law No. 225 of 1977, *DERECHO COLOMBIANO* No. 183, at 267-73 (Mar. 1977).

22. See *CÓDIGO CIVIL*, arts. 25-32 (Ortega Torres ed, 1972) [hereinafter cited as *CÓDIGO CIVIL*].

23. *CÓDIGO CIVIL*, arts. 8, 25-33.

24. M. AGUILERA, *supra* note 5, at 309-17.

25. *Id.*

26. The conservative and liberal party leaders agreed to divide evenly the positions in all public elective bodies, executive departments and administrative posts. The presidency was to alternate between the two parties every four years for a sixteen year period. See R. Dix, *supra* note 8, at 136.

dominant groups who had been in a struggle to control the central government, and it enabled them to focus their attention on bureaucratic reforms and economic planning. The court system was reorganized; there were reforms of the codes in criminal law, commercial law, civil procedure, and mining and oil. There were three new efforts at agrarian reform, and finally, a constitutional reform weakened the legislature's power and strengthened that of the executive and the office of national planning.<sup>27</sup>

Another trend with important implications for the legal profession has been the expansion and diversification of the university system to meet the demands for higher education from the growing middle class and to provide the technological skills needed in the industrial sector. At the beginning of this century, there were five universities in Colombia, four public and one private.<sup>28</sup> From 1900 to 1940, four new private universities were opened and one new public university.<sup>29</sup> The private ones were essentially law faculties founded by political parties as alternatives to the public law schools controlled by the opposition party.<sup>30</sup> The fields of specialization were still mostly limited to law, medicine, dentistry, engineering, education, and agronomy.<sup>31</sup>

After 1940 there was a boom in higher education. Thirty-two new universities were founded from 1941 to 1967, over half of them after 1960.<sup>32</sup> Degrees began to be offered in economics, public administration, the social sciences, and the humanities. Prior to this time students interested in these fields had studied law. This caused a decline in the percentage of university students graduating from law faculties from 54% in the late thirties, to about 15% in the late sixties.<sup>33</sup> During the same period, the number of students enrolled in higher education increased from approximately 3,000 to over 62,000.<sup>34</sup> This is an admirable expansion in higher education, but it is still only 3.7% of the university age population.<sup>35</sup>

This rapid expansion in higher education has directly influenced the legal profession in two ways. First, law graduates must now compete in the public and private sectors for positions they had previously occupied because law was a basic field of study for most nonscientific occupations. This is a natural result of specialization and diversification in higher education, but it does make lawyers

---

27. For an analysis of the reforms initiated under the National Front agreement, see 1 F. LEAL BUITRAGO, ESTUDIO DEL COMPORTAMIENTO LEGISLATIVA EN COLOMBIA: ANALISIS HISTORICO DEL DESARROLLO POLITICO NACIONAL 1930-1970, at 151-84 (1973).

28. The private university was Rosario and the four public ones were Antioquia, Cartagena, Cauca, and Nacional. For a complete list of the universities founded from 1653 to 1967, see G. RAMA, EL SISTEMA UNIVERSITARIO EN COLOMBIA app. cuadro 4 (1970).

29. *Id.*

30. Liberal party leaders founded Externado de Colombia and Universidad Libre and the conservative party encouraged the Catholic Church to found the law schools at Universidad Javeriana and Universidad Pontificia Bolivariana.

31. G. RAMA, *supra* note 28, app. cuadro 18.

32. *Id.* app. cuadro 4.

33. *Id.* app. cuadro 18.

34. *Id.*

35. See HACIA EL PLENO EMPLEO, *supra* note 12, at 455.

less prominent at the highest levels of government, industry, and commerce. The change has contributed to a general image of the legal profession's declining prestige.

Second, a wider segment of the Colombian population is also obtaining access to the legal profession due to the founding of more urban night law schools. Colombian law faculties have traditionally operated with little or no full-time faculty and only limited library facilities.<sup>36</sup> All that has been needed to open a law school is classroom space, a limited collection of law books, and practicing attorneys who are willing to teach part time for a small salary and the additional contacts and prestige which come with being a professor. Given the demand for higher education and the large classes in law faculties, operating a law school became a potentially profitable activity for a university.

There were at least twenty-seven law faculties operating in 1974, five of which still lacked government approval. Sixteen of these had been founded since 1950 and about eight had been started in the early 1970's.<sup>37</sup> Most of the recently founded faculties have structured their curriculum to allow students to work a full day and still obtain a law degree within the basic five years.<sup>38</sup> These urban night law schools accounted for approximately two-thirds of the students enrolled in law in 1973, and in the eight years prior to 1973, the overall number of law students approximately tripled.<sup>39</sup>

The legal profession has recently responded to these developments to protect its monopoly position. Lawyers argue that the increased access to membership in the profession and the lower quality education is destroying the profession's prestige.<sup>40</sup> In 1974, the Ministry of Justice established a more stringent set of minimum standards for the operation of a law faculty and government supervision was increased.<sup>41</sup> Whether these steps will eventually mean a reduction in the size and number of law faculties remains to be seen.

The most important trend in the political sphere has been the increase in

---

36. In 1966 only 4.5% of Colombia's law professors taught full time. This compares with 43.6% in medicine and health related fields, 16.4% in economics, 30% in education, 33% in engineering, and 71% in agronomy. 219 BOLETIN 183 (June 1969).

37. The ones founded prior to 1950 are Rosario, Antioquia, Cartagena, Cauca, Atlántico, Nacional, Narino, Externado, Libre, Javeriana, Bolivariana, and Caldas. After 1950 came Medellín, Santo Tomás en Bogotá, La Gran Colombia en Bogotá, La Gran Colombia en Armenia, La Libre en Pereira, Santiago de Cali, Autónoma Latinoamericana, San Buenaventura, Autónoma de Bogotá, La Católica, Los Andes, Santo Tomás en Bucaramanga, Libre en Cúcuta, Libre en Barranquilla, Inca de Colombia. The information was obtained from the records of the Colombian Institute for Higher Education (ICFES).

38. Classes are held from 7:00 a.m. to 9:00 a.m. and after 5:00 p.m..

39. Evolución de la Matricula en las Facultades de Derecho durante 1965-1973 (a table prepared for the internal reporting of ICFES).

40. Eighty percent of respondents felt that the profession had a negative public image and 65% felt its prestige was declining. When asked about the reasons for the profession's declining prestige 30% mentioned the growth of the urban night schools and 44% pointed to the excessive competition and lack of ethical standards. Forty-two percent also felt that the decline in the quality of legal education was the bar's greatest problem.

41. See Decree-Law No. 1189 of 1974.



government planning and the use of regulatory laws. Recent analyses of the Colombian political process have stressed the emergence of a "modernization" trend among the leadership of the Liberal and Conservative parties.<sup>42</sup> The "modernists" are described as sharing the belief that the public sector must take the lead in the development process.<sup>43</sup> Their critical policy instrument is the public investment budget. They advocate using it to develop an economic infrastructure and to eliminate economic bottlenecks.<sup>44</sup> Decentralized government agencies and public development corporations which operate directly under the President and outside of the normal forms of legislative control have been created to pursue these goals.<sup>45</sup> There is also detailed government regulation of the market mechanisms and control over the allocation of scarce resources such as foreign exchange.<sup>46</sup> The government regulations are different in their character than traditional legal codes in that they embody specific policies to direct private economic activity rather than setting a general framework to facilitate private action.<sup>47</sup> Nevertheless, they are legal rules, and lawyers play a major role in their implementation and interpretation.<sup>48</sup>

These trends raise many interesting questions about the way the legal profession will adjust its roles, organization, and skills to the changing circumstances. The increase in the bar's size and the heterogeneity which must accompany the growing access to legal education will have an impact on the organization of legal services. Legal career patterns and working environments will be altered by the demand for new types of legal skills in the private sector. At the same time, the government's expanding role in the distribution of scarce resources

---

42. See R. DIX, *supra* note 8, at 50-55; R. NELSON, T. P. SHULTZ & R. SLIGHTON, *STRUCTURAL CHANGE IN A DEVELOPING ECONOMY: COLOMBIA'S PROBLEMS AND PROSPECTS* 213-35 (1971) [hereinafter cited as R. NELSON].

43. R. NELSON, *supra* note 42, at 225.

44. *Id.*

45. For a political science perspective on these reforms, see F. LEAL BUITRAGO, *supra* note 27, at 151-84. The best historical account is J. VIDAL PERDOMO, *HISTORIA DE LA REFORMA CONSTITUCIONAL DE 1968 Y SUS ALCANCES JURÍDICAS* (1970).

46. Some of the major areas where the Colombian government is using planning and regulatory law to achieve developmental objectives are as follows: foreign exchange and the balance of payments through the Central Monetary Board; the public investment budget by National Planning; the import-export activity through INCOMEX and PROEXPO; the agrarian sector through the institute for agrarian reform (INCORA) and 13 additional decentralized development corporations, credit sources, and marketing agents; housing and urban growth by the public housing agency (ICT), the Mortgage Bank (BCH), and municipal planning offices which regulate private urbanizations; 12 public development corporations to administer the implementation of the investment budget; and regulatory agencies charged with the regulation of corporations, banks, cooperatives, and insurance companies. For an overview of the budgetary allocations among these institutions from 1964 to 1973, see CONTRALORIA GENERAL DE LA REPUBLICA DE COLOMBIA, *CIFRAS FISCALES* (1974). For a discussion of the limitations the dominant economic groups exercise over public sector planning by the National Front coalition, see F. LEAL BUITRAGO, *supra* note 27, at 151-93.

47. See Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 *YALE L.J.* 1, 30-31 (1972); R. UNGER, *LAW IN MODERN SOCIETY* 193-200 (1976).

48. For an analysis of the way this change in the use of law has influenced legal roles in the Colombian public sector see D. LYNCH, *supra* note 3.

and the benefits of economic growth makes more critical an understanding of the way the organization of legal services influences access to public institutions. To explore these issues such variables as the social origins of lawyers, legal career patterns, the size of the bar, the cost of legal services, the type of clientele lawyers serve and the tasks they perform must be examined in the light of their relationship to the society's class structure, economic order, and political system.

As noted in the introduction, the basic research which is used to analyze these issues was conducted in early 1974. Interviews were carried out with a random sample of law school graduates from law faculties located in Bogotá. Five of the Bogotá law schools had only recently begun offering degrees in law so a decision was made to concentrate on the six faculties which had educated the majority of the city's attorneys over the past twenty-five years. They included private law schools with a reputation for educating the leaders of the bar and many prominent political figures, the public supported national law school, and two schools with large night sections which were regarded as avenues of upward mobility for the middle class.<sup>49</sup> The sample population was stratified by combinations of schools to ensure that a cross section of the bar would be interviewed and the sample included one graduation period in the early fifties and another in the mid-sixties to make sure an age spread was obtained.<sup>50</sup>

The sample design created a bias in the data because a similar number of lawyers were interviewed from both the elite private schools and from the faculties with large night sections; the latter actually make up the largest percentage of the practicing bar. Any adjustment for this bias would have limited the interviews with the elite school graduates, however, and it was assumed that their careers and work would be the most interesting in terms of the relationships between legal services and the needs of the most powerful econom-

49. A 1967 study of the legal profession had included data on the social origins of lawyers by law school and it provided a basis for the following groupings: (a) Javeriana and Rosario, (b) Externado de Colombia and National U., and (c) Libre and Gran Colombia.

50. For the three groupings of the law faculties, see note 49 *supra*. The two periods were 1950-51 and 1966-67, with the exception of Gran Colombia which had its first graduating class in 1957. A 1957-58 list of graduates was used from that school and combined with the 1950-51 graduates of Libre for purposes of drawing the sample. An effort was made to interview approximately 20 law graduates from the two different time periods for each of the three groupings of law faculties. The difficulties I encountered locating the Libre and Gran Colombia graduates led to the following final distribution of persons interviewed:

	1950-51	1966-67
Rosario and Javeriana	19	20
Externado and National U.	17	20
Libre and Gran Colombia	<u>14*</u>	<u>13</u>
totals	50	53

\* 1957-58 for Gran Colombia.

A more complete explanation of the research methodology can be found in D. LYNCH, *supra* note 3.

ic and political interest groups. This methodology also forced the author to interview lawyers in a wide variety of work settings. In a sense, the results should be viewed primarily as impressionistic in terms of what was learned through the interviewing process.

## II. THE SOCIAL ORIGINS OF LAWYERS, CAREER PATTERNS, AND STRATIFICATION IN THE BAR

Most lawyers enjoy a relatively privileged position in Colombian society, but they are far from a homogeneous group. Career patterns reflect a combination of the respondents' social origins, personal and family contacts, and the law school where they studied. The bar is stratified internally by the type of client served, area of specialization, and the working environment. Attorney-client relations vary widely depending upon the position of a client in the class structure.

As a group, lawyers tend to be a part of the Colombian upper middle class.<sup>51</sup> They are, by definition, university graduates which places them in approximately the upper 2% of all Colombians in terms of education.<sup>52</sup> The respondent with the lowest income was a lower level judge earning 6,500 pesos a month, (U.S. \$260),<sup>53</sup> and his monthly salary still left him in the upper 10% of the Bogotá working population.<sup>54</sup> The mean income of all respondents was approximately 24,400 pesos monthly (U.S. \$976.00) which placed the average respondent's personal income in the upper 1% of the work force in Bogotá.<sup>55</sup>

The lawyer's social relations with other Colombians also confirmed this upper-middle class status. Only 16% of the respondents included someone other than another professional, a large landowner, or a business executive among their best friends. Approximately 70% only interacted socially with other professionals, and one-third of the respondents limited themselves to close friendships with other lawyers.

In addition, most law graduates come from families which have already achieved some degree of middle class status. This conclusion is based on comparisons of the relationship between the education and occupation of the respondents' fathers and similar information on all Colombian men who were in the forty to fifty-nine age group at the time of the 1964 census. As Table I illustrates, only 3% of the respondents' fathers never finished primary school, as compared with 78% of all Colombian men of a similar age. Sixty-eight percent of the law graduates' fathers had attained an educational level which placed them in the upper 3.3% of their generation. Even in the case of the law faculties

---

51. For an analysis of the Colombian class structure, see T. L. SMITH, *COLOMBIA: SOCIAL STRUCTURE AND THE PROCESS OF DEVELOPMENT* (1967).

52. HACIA EL PLENO EMPLEO, *supra* note 12, at 455.

53. The average exchange rate during the interviews from Jan. - June 1974 was US \$1=25 Colombian pesos.

54. See DANE, *ENCUESTA DE HOGARES 120*, cuadro 18 (1970) [hereinafter cited as *ENCUESTA DE HOGARES*]. The 1970 income figures given in this table were adjusted by a factor of 170% for inflation between 1970-1974 before making the comparison with the monthly incomes of respondents.

55. *Id.*

with large night school sections, over 54% of the respondents' fathers had finished secondary school.

TABLE I  
COMPARISON BETWEEN THE EDUCATIONAL LEVEL OF RESPONDENTS'  
FATHERS AND THE EDUCATIONAL LEVEL FOR ALL  
COLOMBIAN MEN BETWEEN THE AGES OF  
FORTY TO FIFTY-NINE IN 1964\*

	1	2	3	4	5
	All Colombian Men Between the Ages of Forty to Fifty-Nine in 1964**	All Respondents' Fathers [N=102]	Fathers of Respondents from Javeriana and Rosario [N=39]	Fathers of Respondents from Externado and National University [N=37]	Fathers of Respondents from Libre and Gran Colombia [N=26]
LEVEL OF EDUCATION					
No Formal Schooling	30.1%	0%	0%	0%	0%
Primary Incomplete	47.8%	3%	3%	3%	4%
Primary Complete	11.4%	15%	5%	16%	27%
Secondary Incomplete	7.4%	14%	13%	13%	15%
Secondary Complete	1.6%	35%	38%	30%	38%
University Incomplete	.3%	6%	0%	11%	8%
University Complete	1.4%	27%	41%	27%	8%

\* In 1964 the youngest of respondents would have been between the ages of twenty to twenty-five so most of their parents would have been in their forties. Most of the older respondents would have been between thirty-six and forty-five which would correspond with their fathers being in their late fifties and early sixties. The educational level for all Colombian men over sixty in 1964 is lower than that of the men forty to fifty-nine, thereby resulting in a bias in Column 1 which overestimates slightly the educational level for all Colombians in the exact same age group as respondents' fathers.

\*\* Source: G.W. RAMA, *EL SISTEMA UNIVERSITARIO EN COLOMBIA* 76 (Bogotá 1970) (citing 8 CENSO DE POBLACION (July 1964)) [hereinafter cited G. W. RAMA].

There are, however, some differences among the law schools in the status of the families from which they draw their students.<sup>56</sup> The fathers of graduates

56. A test of the relationship between the three groupings of the law schools and the level of father's education yielded a Spearman correlation coefficient of .28, significant at the .002 level.

from the two small private law schools, Rosario and Javeriana, are the most likely to hold a university degree and very few have failed to finish at least a primary education. At the other extreme, few of the graduates of Gran Colombia or Libre come from families where the father has achieved the education of a professional.

The results were similar in the case of their fathers' occupations. Table II gives a picture of the relationship between the occupational distribution of the Colombian work force in 1964 and the occupations of the interviewees' fathers. The distribution among respondents' fathers is the inverse image of the distribution among all economically active Colombians. Ninety-four percent of the respondents' fathers were engaged in occupations which placed them in the upper 25% of Colombia's occupational structure. The relationships among law

**TABLE II**  
**THE MAJOR OCCUPATIONS OF RESPONDENTS' FATHERS COMPARED**  
**WITH THE DISTRIBUTION OF ALL ECONOMICALLY ACTIVE**  
**COLOMBIANS IN 1964\***  
**[N=102]**

OCCUPATION	<i>Respondents'</i> <i>Fathers</i>	<i>1964 Census</i> <i>of the Colombian</i> <i>Population</i>
1. Day Laborers	0%	45%
2. Small Farmer	4%	
3. Small Merchant	2%	26%**
4. Salaried Employees without Special Formal Education	13%	15%
5. Medium Size Landowners with Permanent Employees	12%	
6. Medium Size Commerce with Staff of Permanent Employees	20%	9%***
7. Salaried Employees with Special Formal Education or Technical Training after Secondary Education	8%	2%
8. Professionals and High Level Public Officials and Administrators	29%	1%
9. Owner or Executive of Large Industrial, Commercial, or Financial Enterprise		1%****
10. Large Landowner	13%	

\* Source: G.W. RAMA, *supra* Table I, at 82, citing the 8 CENSO DE POBLACION (July 1964)).

\*\* The occupational categories used for the 1964 census do not correspond exactly to the ones used in this study. This figure in the census includes all independent workers, other than professionals and technically trained individuals, who are not employees with a permanent staff. It comes the closest to matching this study's category of the independent merchant and individual farmer.

\*\*\* This figure actually includes all employers from the smallest to the largest. Thus, a small percentage of this group actually belongs in occupational categories nine and ten and some may be small merchants with one permanent employee.

\*\*\*\* Since this figure represents the high level executives in the private sector and administrators in the public sector, it partially overlaps with category 8.

schools parallel the findings on the educational level of fathers.<sup>57</sup> Over half of the fathers of graduates of Rosario and Javeriana were professionals, important public figures, large landowners, or executives in private institutions. The same figure for Gran Colombia and Libre was only 16%. (See Table III).

TABLE III

OCCUPATION OF RESPONDENT'S FATHER BY RESPONDENT'S LAW SCHOOL  
AND DATE OF GRADUATION  
OCCUPATIONAL GROUPINGS

	1	2	3	4	5
	Small Farmer Small Merchant	Salaried Employees Without Technical Training	Employees with Formal Training & Owners Medium Size Farms & Commercial Enterprises	Professionals High Level Public Officials & Adminis- trators	Large Landowners Owner or Executive of Large Industrial Commercial or Financial Entity
<b>LAW SCHOOLS</b>					
<i>Javeriana &amp; Rosario</i>					
1950-51					
Graduates	0%	15%	32%	32%	21%
1966-67					
Graduates	5%	0%	35%	45%	15%
All Graduates	3%	8%	33%	38%	18%
<i>National U &amp; Externado</i>					
1950-51					
Graduates	6%	6%	24%	47%	17%
1966-67					
Graduates	5%	20%	50%	20%	5%
All Graduates	5%	14%	38%	32%	11%
<i>Libre &amp; Gran Colombia</i>					
1950-51					
Graduates*	8%	23%	61%	0%	8%
1966-67					
Graduates	16%	17%	42%	17%	8%
All Graduates	12%	20%	52%	8%	8%
All Respondents	6%	13%	39%	29%	13%

\* 1957-58 for Gran Colombia

57. A statistical test of the relationship between law school and father's occupation resulted in a Spearman correlation coefficient of .32, significance .001.

The pattern in the differences among the law schools also appears in the data on the respondents' careers and current occupations.<sup>58</sup> To a limited degree, Rosario and Javeriana still play the role of educating the generalists of the dominant economic groups, particularly in the financial and corporate sector. (See Table IV). A majority of the graduates from these two schools are either executives in a bank, insurance company or a public utility or they are independent legal advisors with private companies as their major clientele.<sup>59</sup> In contrast, 70% of the respondents from Libre and Gran Colombia are litigators in private practice representing individual clients, primarily from the middle and lower classes.<sup>60</sup> None of them are business executives or corporate legal advisors. The occupational distribution for the National University and Externado is again between these two extremes.

---

58. The Spearman correlation coefficient for law school and current occupation is .41, significance .001.

59. Fourteen of the 21 respondents engaged in nonlaw occupations are graduates of Rosario and Javeriana. Ten of the 14 are executives in the following types of institutions: financial institutions, three; semi-public corporations, three; a cooperative, one; a private lobbying association, one; a private university, one; and a foreign corporation, one.

60. Of the 19 litigants from Libre and Gran Colombia, 12 (63%) represented primarily small merchants, employees, small farmers and blue-collar workers. Only one had a corporation as his major client and this was in the labor field. The remaining six had a mixture of individual clients from different strata of Colombian society.

TABLE IV  
CURRENT OCCUPATION OF RESPONDENTS BY LAW SCHOOL

CURRENT OCCUPATION	1	2	3	4
	All Respondents [N=101*]	Javeriana & Rosario [N=38]	Graduates of Externado & National U. [N=36]	Gran Colombia & Libre [N=27]
1. Judge, Prosecutor, or Other Position in a Legal Institution below the Level of a Superior Court of a Department	5%	0	8%	7%
2. Salaried on the Legal Staff of a Government Agency	1%	0	3%	0
3. Salaried on the Legal Staff of a Private Institution	3%	3%	6%	0
4. Independent Commercial Activity	4%	3%	6%	4%
5. Head of a Department with Non legal Functions in a Government Agency	1%	3%	0	0
6. Head of a Department with Non law Functions in a Private Institution	1%	0	0	4%
7. Head of Legal Department in a Government Agency	5%	0	8%	7%
8. Head of a Legal Department in a Private Institution	4%	3%	8%	0
9. Private Practitioner Primarily Engaged in Litigation	40%	24%	33%	70%
10. Magistrate on the Superior Court of a Department or the Colombian Supreme Court or Counsel of State	3%	5%	0	4%
11. Law Professor (Full-time)	2%	3%	0	4%
12. High Level Administrator in Public Agency or Politician	3%	5%	3%	0
13. Executive in Private Institution	12%	26%	6%	0
14. Private Attorney Primarily Serving as Legal Advisor or Planner	17%	26%	19%	0

\* Two respondents had retired.



At the more general level, approximately 70% of respondents are engaged in occupations reserved by law for members of the bar. Most work in the private sector as litigators or legal advisors to corporations.<sup>61</sup> Only 8% were working in the legal process as judges, magistrates, or prosecutors, and 6% as legal advisors to government agencies. These results, however, are more a reflection of the current level of the respondents' legal careers than an indication of the actual percentage of Bogotá law graduates working in public sector legal positions.

As Table V illustrates, most young Colombian lawyers obtained their first practical legal experience working as a judge or in a government agency. The typical respondent obtained his first position as a municipal court judge shortly after graduation. After one or two promotions in the judiciary, he moved to a position on a government legal staff. These positions provided practical legal training and the opportunity to develop contacts among a network of lawyers and potential clients. After about four to five years in these public sector positions, the lawyer normally enters private practice or seeks a higher salaried position in a private institution. If he cannot make more in private practice after a couple of years than he would earn on the legal staff of a government agency or at an intermediate level in the judiciary, he often returns to a public sector legal position. He then remains in the public sector until he retires with a pension and can enter private practice to supplement his guaranteed pension income.

TABLE V  
OCCUPATIONAL HISTORY OF RESPONDENTS  
[N=103]

TYPE OF WORK	Respondents' First Position after Graduation from Law School	Percentage of Respondents Working in Each Occupation at Some Time during Their Career	Current Occupation
1. Private Practice	11%	74%	55%
2. As a Judge or Prosecutor in the Court System	47%	70%	8%
3. In a Government Position other than the Legal Process	25%	50%	10%
4. In a Private or Semi-public Institution	15%	31%	20%
5. Other	2%		7%

61. Respondents were classified as litigators or legal advisors according to the following criteria: (a) if they devoted more than 50% of their time to legal problems involving court litigation, they were classified as litigators; (b) if they devoted more than 50% of their time to planning the legal affairs of clients to prevent future legal problems, they were classified as legal advisors; and (c) if neither of these functions absorbed more than 50% of their practice because of the time they devoted to settling existing legal conflicts prior to the initiation of court litigation or administrative procedures, then they were classified according to whether their overall practice was more oriented to litigating or legal planning.

There were many variations of this typical pattern. If the lawyer was successful in private practice, he still might return to government for a limited period of time to hold a political office or to work as a high level administrator or legal advisor to a ministry. His public salary would normally be less than his income from private practice during this period, but he could anticipate making up for any loss when he returned to private practice. His government experience and contacts would increase the value of his subsequent legal services representing private interests before government agencies.

This pattern of moving from the judiciary to a government agency and then into private practice with the option to return to the public sector is not common to many civil law nations. In fact, the tradition in most European civil law jurisdictions is for young law graduates to make a choice among a variety of distinct career lines shortly after graduation. Professor Merryman describes the law graduate's situation in a typical civil law jurisdiction as follows:

He can embark on a career as a judge, a public prosecutor, a government lawyer, an advocate, or a notary. He must make this decision early and then live with it. Although it is theoretically possible to move from one of these professions to another, such moves are comparatively rare.<sup>62</sup>

There are undoubtedly many reasons why legal careers in Colombia deviate from the typical European civil law jurisdiction, but the major cause is probably the low salaries of judges and government lawyers and their lack of prestige within the legal community. The government's recent efforts to create a career judiciary have not been supported by sufficient public funds to pay judges a salary similar to the earnings of the average private attorney. Prior to the expansion of the private demand for legal services due to the growth in commerce and industry, public legal positions may have been comparatively more attractive, but today they are mostly a training ground for young lawyers and a fallback for the attorney who does not do well in private practice.

These observations are supported by the data on the respondents' incomes. At the time of the interviews, judicial salaries ranged from approximately 5,400 pesos monthly for a municipal court judge to 12,000 pesos for a magistrate of the highest district court.<sup>63</sup> Of course, a justice of the Supreme Court enjoys considerable prestige, but he earns only 20,000 pesos monthly. The average private practitioner in the sample earned around 25,000 pesos monthly and no private attorney admitted to earning less than 10,000 pesos. (See Table VI). Similarly, the top salary for a government lawyer is about at the level of the average private attorney. A government staff lawyer earned from 6,500 pesos to 10,500 pesos which makes the salary of the best staff attorney's job about equivalent to that of the least well off practicing lawyer. Public sector salaries appear to set the lower limits on the cost of private legal services.

---

62. J. H. MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 109 (1969).

63. These figures are based on the income information provided by a young judge who was just starting his career and who was interviewed during the pretest, and the Magistrates interviewed as a part of the sample.

**TABLE VI**  
**A COMPARISON OF THE MEAN AND MEDIAN INCOME OF**  
**GOVERNMENT LAWYERS, PRIVATE PRACTITIONERS,**  
**AND LAWYERS IN PRIVATE OR SEMI-PRIVATE**  
**INSTITUTIONS**

	1 Top Government Legal Advisors from Sample of Government Lawyers* [N=20]	2 Salaried Lawyers in Government Posi- tions from Sample of Law Graduates [N=10]	3 Private Practitioners from Sample of Law Graduates [N=45]	4 Salaried Lawyers in Private or Semi- Private Bureaucracies from Law Graduate Sample [N=17]
<i>Mean Income</i>	14,450	16,500	25,300	23,800
<i>Median Income</i>	13,500	16,000	22,000	25,000
<i>Range</i>	8,000 to 22,500	6,500 to 26,500	10,000 to 99,000	7,000 to 70,000

\* This sample was selected at random from a list of the fifty-six most influential national government agencies. From the fifty-six, a sample of twenty institutions was drawn. From each of the sample institutions either the head of the legal staff or the principal legal advisor was interviewed.

The implications of these career patterns are difficult to assess, but some tentative conclusions are possible. The fact that lawyers tend to work for the government when they are young and inexperienced or when they do not succeed in private practice suggests that the quality of legal services in the public sector is likely to be inferior to the legal counseling obtained by private clients. In addition, the more competent young attorneys have an incentive to use their government position to develop contracts which will eventually advance their private legal careers. If this is true, one would expect to find tension in public legal roles when the legal or policy interests the government attorney represents are in conflict with the interests of the clients the attorney eventually hopes to serve in the private sector.<sup>64</sup>

A second important consequence of the career patterns is the limited legal capability of the judiciary. The low salaries increase the potential for legal outcomes to be determined by bribery. The backlog in the court calendar and the low quality of the judiciary may also reduce the predictability of legal outcomes. This, in turn, will probably encourage the use of alternative methods to resolve disputes.

One cannot automatically assume that fostering more private dispute resolution is a negative result. The amount of public resources needed to attract better quality lawyers to the judiciary and to hire enough judges to reduce the backlog would be substantial. In a developing society with limited public investment funds, the costs in terms of the alternative uses of the resources may be high. The benefits are not clear.

64. See D. LYNCH, *supra* note 3.

Disputes between business entities or members of the dominant economic class are normally resolved through negotiations and settlements in which private attorneys play an important role.<sup>65</sup> The one area in which the courts are relatively effective today is that of conflicts between institutions and individuals, such as the collection of debts, the repossession of property, or the foreclosure on a mortgage. The procedures are quick and they permit few defenses if the plaintiff satisfies the formal written requirements. Improving these procedures might make credit cheaper, but it is difficult to believe it would improve the overall position of low income groups.

Little is known about the way individuals in the lower classes resolve conflicts among themselves. Studies have found that local public officials, priests, political party officials, community patrons, and neighborhood governing bodies all have the potential to play roles as mediators or arbitrators of disputes.<sup>66</sup> Improving the quality of the judiciary will not influence these patterns of conflict resolution unless these groups have access to private attorneys to present their case. The access issues are related to the distribution and costs of private legal services discussed in Part IV. Before turning to these issues, however, some additional discussion is needed of the factors which influence legal careers and the pattern of stratification in the bar, and in Part III, the implications of these findings for the internal organization of the profession.

Family connections are important for an attorney's career, but interestingly, the data suggests that the law school a person attends is the most important variable. In fact, the relationship between the status of a respondent's family and his current occupation and income disappears when controlled for the influence of the law faculty.<sup>67</sup> A family's status is an important factor in determining where a person studies, but once a student is enrolled in law school, his place of study becomes the most important element for his future career.

These conclusions are consistent with the respondents' general observations on the factors which determine a lawyer's career. Table VII summarizes respondents' specific views on this topic, but their general comments were actually more interesting. In discussing how a young lawyer obtains a good job and becomes a success, the graduates of the night schools combined a

---

65. This observation is based on respondents' answers to a question about the percentage of their clientele's conflicts which they normally settle without initiating any legal action.

66. See *Fundación para la Educación Superior y el Desarrollo, Derecho y Desarrollo Urbano: configuraciones jurídicas sobre relaciones de propiedad de terrenos en las urbanizaciones* (Aug. 1974) (a report on research in progress); cf. K. KARST, M. SCHWARTZ & A. SCHWARTZ, *THE EVOLUTION OF LAW IN THE BARRIOS OF CARACAS* (1973).

67. An indicator of social and economic status (SES) was constructed out of a combination of father's education, mother's education, and father's occupation. The correlation between the SES variable and current occupation was only .13, significance .089, and when controlled for university there was no relationship. The correlation coefficient between law school and current occupation is .41, significance .001. When it is controlled for the effects of SES, the relationship is reduced to .23, significance .020.

graduate's law school, social relations and political contacts. They claimed the deans and professors of Rosario, Javeriana and Externado form the core of a network which guides the careers of their law graduates. The schools use the influence of their older graduates and professors to place young lawyers. The professors serve as contacts who recommend the graduates for better positions as they obtain more experience. The graduates, in turn, are expected to help other young lawyers from their alma mater and to perform political favors for members of the school's network. Since most law schools are linked to a political party, the extent of their network can also be an important factor in determining the outcome of more general political conflicts.<sup>68</sup>

**TABLE VII**  
**RESPONDENTS' VIEWS ON THE RELATIVE IMPORTANCE OF**  
**DIFFERENT FACTORS TO AN ATTORNEY'S**  
**PROFESSIONAL CAREER**

	<i>Very Important</i>	<i>Important</i>	<i>Unimportant</i>
1. Professional ethics	61%	15%	24%
2. Legal knowledge	73%	15%	12%
3. Family's social status	45%	28%	27%
4. Being a professor	40%	39%	21%
5. Publishing	57%	28%	15%
6. Political connections	60%	22%	18%
7. Knowledge of foreign languages and legal systems	21%	24%	55%
8. Law School	56%	20%	24%
9. Social relations	78%	15%	7%

There is less cohesion among the graduates of Gran Colombia, Libre, and National University. These law schools lack continuity in their leadership and do not have a cohesive alumni association. As a result, many respondents from these schools feel they have been deprived of the best career opportunities irrespective of their legal capabilities.

The overall relationship between family status<sup>69</sup> and law school<sup>70</sup> on the one

68. Historically, Externado, National University, and Libre have been identified with the liberal party. Javeriana and Gran Colombia are more closely linked to the conservative party. Rosario graduates appeared to be more of a mixture of both parties. During the prior conservative government of President Pastrana, Javeriana was commonly regarded as being very influential.

69. This is the SES variable. See note 67 *supra*.

70. This variable is based on the three groupings of law schools ranked as follows: 1) Gran Colombia and Libre, 2) Externado and National U., and 3) Rosario and Javeriana.

hand, and occupation,<sup>71</sup> type of client,<sup>72</sup> field of specialization,<sup>73</sup> and income on the other, is consistent with this picture of the way legal careers develop. (See Table VIII). As noted earlier, the students with well-educated parents work in high status occupations and are more likely to attend Rosario or Javeriana. The graduates of these schools have a greater probability of earning a high income working for business or financial interests as an executive or legal advisor specializing in commercial law. A graduate of Gran Colombia or Libre tends to work as a judge or prosecutor for four to five years and then to represent white collar employees, small merchants, farmers, or workers with problems in civil, labor, or criminal law.

TABLE VIII  
MATRIX OF SPEARMAN CORRELATION COEFFICIENTS AMONG INDICATORS  
OF SOCIAL ORIGINS, EDUCATIONAL BACKGROUND AND  
CURRENT WORKING ENVIRONMENT\*

	1	2	3	4	5
	Law School [N=103]	Type of Clientele or Employer [N=103]	Current Occupation [N=103]	Field of Specialization [N=103]	Income [N=82]
Social and Economic Status	.31 <i>Sig.</i> .001	.32 <i>Sig.</i> .001	.13 <i>Sig.</i> .089	.20 <i>Sig.</i> .023	.18 <i>Sig.</i> .049
Law School		.55 <i>Sig.</i> .001	.41 <i>Sig.</i> .001	.23 <i>Sig.</i> .009	.37 <i>Sig.</i> .001
Type of Clientele or Employer			.25 <i>Sig.</i> .006	.27 <i>Sig.</i> .003	.24 <i>Sig.</i> .015
Current Occupa- tion				.27 <i>Sig.</i> .003	.55 <i>Sig.</i> .001
Field of Speciali- zation					.24 <i>Sig.</i> .013

\* For the ranking of categories on SES, Law School, Clientele, Occupation and Field of Specialization, see notes 69-73 *infra*.

This pattern of stratification in the bar has created at least two different worlds of legal practice. The legal advisor<sup>74</sup> has a large private office with separate

71. For the ranking of occupations, see Table IV.

72. For the methodology used to determine the major clientele served by each respondent, see text at note 99 *infra* and Tables IX, X, & XI. For the correlations, the respondents' clientele or employers were ranked as follows: 1) mixture of small merchants, workers and *campesinos*; 2) mixture of white collar employees and small merchants; 3) mixture of individual clientele and business corporations; 4) unions; 5) medium size business; 6) government agencies; and 7) large business, foreign interests, large landowners, high level executives, and professionals.

73. The rankings for field of specialization from low to high prestige were as follows: 1) generalist; 2) debt collection; 3) criminal law; 4) labor law; 5) general practice only in civil area; 6) administrative and other public law; and 7) commercial law and other business law fields.

74. For a definition of the difference between legal advisors and litigators, see note 61 *supra*.

locations for his secretary and his clients. Most clients either have a permanent relationship with the legal advisor or have used him previously for specific legal problems. Clients are treated with deference and have considerable control over the terms of their relationship with the attorney and the legal actions he takes on their behalf.

The setting for litigators representing middle and lower-middle class clients is distinct. Approximately 60% of these lawyers have one small room for an office. The lawyer's desk is normally on one side of the room, the secretary's on the other, and clients sit in chairs along the wall or stand in the hall while waiting to speak with the lawyer. In numerous offices, this researcher waited with four or five clients and we all overheard the lawyer's discussion with each client before our turn came. There was little concern for the client's privacy. Social distance between attorney and client was maintained and there was little effort to explain legal procedures to the client. The relationships were of a patron-client character with the lawyer firmly in charge and able to shape the transaction to protect his economic needs as well as his client's legal interests.

The attorneys working in these two distinct environments have little in common. The litigators regard legal advisors as business consultants or professional intermediaries who use personal contacts and a knowledge of government to make a living. They are disdainful of the legal advisor's inability to litigate. Similarly, the legal advisors make a point of their distance from the "unethical" and "undesirable" world of litigation. These divisions within the bar reflect the class structure and help to maintain class differences. Lawyers serving the dominant economic interests have higher incomes and enjoy more prestige and influence in the bar. They, in turn, can use their influence to protect their clients' interests through the bar's law reform activities and through their control over legal education and the training of young lawyers. In their legal work, the attorneys provide the legal forms their clients use to aggregate wealth and to control the society's productive resources.

Class differences contribute to the individual litigator's capacity to dominate the attorney-client relationship with middle and lower income groups. Lawyers serving these clients maintain an aura of expertise combined with social distance. They can use this aura to help shape an acceptance of the existing social hierarchy by determining what is a legitimate demand on the political or economic system. In other words, the demands or needs which people perceive as legitimate are partially determined by the organization of legal services and by what the attorneys recognize as a legal right.<sup>75</sup>

### III. THE ORGANIZATION OF THE PRACTICING BAR

The Colombian bar has been able to protect its monopoly without being highly organized. Ethical standards are regulated by a special tribunal and, when functioning, by the superior court of each department.<sup>76</sup> Apparently this regula-

---

75. See Mayhew, *Institutions of Representation: Civil Justice and the Public*, 9 LAW & SOC'Y REV. 401, 404 (1975).

76. Decree-Law No. 320 of 1970.

tory power is rarely applied, however, since 76% of the respondents blamed the profession's poor public image on the unethical practices of attorneys and felt that the special tribunal had little impact.

There is a weak national bar association, but few lawyers are members and many do not even know it exists.<sup>77</sup> The strength of city bar associations varies, and in Bogotá one did not exist. The professional association with the most membership among respondents was CONALBOS, which was founded primarily to offer individual attorneys the chance to participate in group insurance and pensions plans.<sup>78</sup>

The only organizations which enjoyed some degree of success as professional associations were limited to a specific field of expertise such as commercial law, labor law, or administrative law.<sup>79</sup> There seemed to be three major reasons for their strength as compared with the national bar association.

First, an association of recognized experts in a specific field is in a good position to protect its members and the needs of its clients by influencing the orientation of legal codes and regulations. The government normally relies on the association to assist in the early drafting of code reforms or relevant legislation, and even when it is not formally consulted, the association can claim a special expertise which places it in a strong position to lobby against legal reforms adverse to its clients' needs.

Second, shared interest in a specific subject matter makes it easier to host speeches or discussions which are interesting for all members.

Third, the pattern of stratification in legal career patterns described in the prior section has led to more homogeneity in the social origins, income, and working environments of lawyers specializing in a particular field than exists among the profession as a whole.<sup>80</sup> This may make it easier to identify common interests and to cooperate in group activities. At the same time, these differences cannot be accepted as a complete explanation for the lack of a national association because there are strong professional associations in other Latin American countries and there is little reason to believe that the pattern of stratification in these countries is much different than in the Colombian bar. In addition, the differences between the practice of large firms and solo practitioners in the United States are as great as those encountered in Colombia, but the bar

---

77. Three percent of respondents said they belonged to a National *Colegio de Abogados*, but many respondents also stated that there was no national bar association. The *Colegio* did not have an office in Bogotá, and no meetings were held during 1973-74 which the author could discover. The Academy of Jurisprudence, a small group of distinguished legal scholars, judges, and practitioners, said that they often represented the Colombian Legal Profession at Inter-American Bar Association meetings.

78. CONALBOS stands for the *Corporación Nacional de Abogados*. Information on the association was obtained from the Association Secretary who would not discuss any group objectives other than the creation of group insurance, retirement programs, and credit to finance housing.

79. The most active appeared to be the Associations of Commercial Lawyers and Labor Lawyers.

80. See Spearman correlation coefficients in col. 4 of Table VIII.



association is able to identify sufficient shared interests to maintain its strength.<sup>81</sup>

An additional explanation may be the profession's past ability to protect its monopoly and to limit access without a formal association. Lawyers have always dominated the legislature. No formal pressure group was necessary to obtain favorable laws. One of the first acts of the original Colombian Congress in 1819 was the enactment of legislation creating a system of national courts and specifying the requirements to represent a private party in litigation.<sup>82</sup> Over a century later, in 1928, members of Congress complained about the competition "honorable members of the profession" were enduring from uneducated and unethical persons representing unsuspecting laymen.<sup>83</sup> Legislation was passed to limit future access to the graduates of law schools.<sup>84</sup> Finally, in 1945, lawyers managed to have the requirement of a university degree in law included as an article in the Colombian Constitution.<sup>85</sup>

These restrictions were sufficient to keep down the size of the official profession prior to this decade because of the limited access to higher education. Paraprofessionals, or *tinterillos* as they are called in Colombia, offered legal services parallel to the official profession, but the competition between the two groups could not have been very great given the upper class origins of university graduates and their employment opportunities.

Today the rapid growth of the urban night law schools is changing the situation. Until recently, the only criterion for access to the bar has been a university degree.<sup>86</sup> Consequently, the expansion of law schools has under-

---

81. For an interesting picture of the cross sections of the profession in large United States cities, see J. CARLIN, *LAWYERS ETHICS* (1966) and *LAWYERS ON THEIR OWN* (1962).

82. The requirements were as follows:

- (a) four years of study in a public school with at least two years devoted to Civil Law;
- (b) a bachelor's degree in law and a two-year apprenticeship under a practicing attorney;
- (c) monthly visits over two years to a court with attendance certified by a court clerk;
- (d) a public examination before three distinguished attorneys;
- (e) a second examination before the Supreme Court or a superior court; and
- (f) to be twenty-one years of age or married.

See H. AGUILERA, *supra* note 5, at 380.

83. Antecedentes de ley 62 de 1928 in 2-3 COLOMBIA: HISTORIA DE LAS LEYES 556-58 (1928).

84. The legislation finally enacted as Law No. 21 of 1931 required a university degree for lawyers in order to represent private parties in the future with the exception of lawyers who had already practiced for five years, taught law for three years, served on a superior court for four years or the Supreme Court for two years, or had been a high level government legal advisor for two years. An exception was made for rural areas where there was no authorized lawyer registered for practice in the local court.

85. COLOMBIA CONST. art. 40.

86. Decree-Law No. 225 of 1977 now requires law graduates to spend one year in public service as a judge or government attorney or two years as an apprentice in private law practice according to regulations to be promulgated by the Ministry of Justice. A requirement of one year's service as a rural judge also existed for a period in the early sixties, but it was eliminated because of widespread evasion. There is no national bar examination.

mined the bar's system for controlling access and limiting competition. At the time of the interviews, 88% of respondents favored the formation of a national bar association to cope with the increase in lawyers and competition. The organizational objectives mentioned most frequently were the regulation of unethical practices and competition, the formation of group plans to provide practicing lawyers with the same welfare benefits as salaried professionals, the regulation of the law schools, and the creation of a fixed fee structure to reduce competition.<sup>87</sup> In response to a different question about the profession's major problems, the most frequently mentioned subjects were the unethical practices caused by too much competition, the decrease in the quality of legal education caused by the night schools, and the excessive number of lawyers. In both cases, the answers provide a picture of a profession worried about its prestige and economic security. Given the strength of these shared views, one would expect some action to protect the value of their monopoly position.

Certain steps have been taken, but by the government rather than by an autonomous private bar association. In 1970 the Ministry of Justice initiated a new system by presidential decree to register all practicing attorneys.<sup>88</sup> Attorneys are now required to carry an identification card and the number of the card must appear on all legal documents filed with the court.<sup>89</sup> This was done to restrict the practice of law by paraprofessionals. This same decree charged the Ministry of Justice with the duty to develop and support a national bar association.<sup>90</sup>

More significant action was taken in 1974. Standards for the operation of a law faculty were enacted by decree.<sup>91</sup> To open a law school, there must be a five year lease on an adequate physical plant, 20% of the faculty must be full-time, the library must have at least 1,000 volumes with 50% in basic areas of study, and the faculty must offer a complete student welfare program including medical examinations, a cafeteria, and a sports program.<sup>92</sup> For eventual certification the requirements increase. No classes can be larger than 100 students and there can be no more than two parallel groups of 100 students in any entering class without prior approval of the Colombian Institute for Higher Education

---

87. The following were the objectives of a stronger bar association mentioned by at least five percent of respondents:

- (a) improve ethical standards—50%;
- (b) regulate fees and competition—16%;
- (c) control the growth and quality of legal education—13%;
- (d) regulate access by reducing the number of law schools and the size of the night schools—6%;
- (e) reform codes and procedures—10%;
- (f) develop a program of continuing legal education—5%; and
- (g) act as an organized pressure group to obtain welfare benefits and increase salaries—34%.

88. See Decree-Law No. 320 of 1970.

89. Decree-Law No. 320 of 1970, art. 18.

90. *Id.* art. 34.

91. Decree-Law No. 1189 of 1974.

92. *Id.* arts 1, 6.

(ICFES).<sup>93</sup> This decree gives the Ministry of Justice and ICFES ample power to restrict access to the profession.

Both regulations are examples of the private bar's use of government power to restrict access to the profession and to reduce competition. Neither the leadership of the private bar nor respondents expressed any concern over the implications of this government control for the autonomy of the bar. Instead they criticized the Ministry of Justice for not creating a stronger institutional infrastructure to enforce ethical standards. This willingness to use the ministry as a focal point for group organization and control appears to be a reflection of the linkages between the profession's leadership and the dominant political groups.

#### IV. THE ALLOCATION AND COSTS OF LEGAL SERVICES

The Colombian legal profession enjoys a statutorily protected monopoly over access to the legal process and to government procedures where the applicant is asking the state to recognize a claim to legal rights or property.<sup>94</sup> There are few circumstances where the law permits a claimant to take action on his own behalf or through a nonlawyer intermediary to protect property or individual rights.<sup>95</sup> This state-sanctioned monopoly makes the distribution of private legal services an important factor in the protection of vested interests or in the recognition of new rights, and the recent increase in public planning and state control over the allocation of resources has further enhanced the importance of access to public decisionmaking.

The introduction to this article raised a series of hypotheses about the relationship between the allocation of legal services and the economic order where the profession enjoys a monopoly of this type. It was suggested that the fee for services system of distribution would create a relationship between the highest paid and most prestigious members of the bar and the groups who control the country's capital and productive resources. The pattern of stratification within the Colombian bar is consistent with this hypothesis. The wealthy are more

---

93. *Id.* art. 1.

94. *See* Decree-Law No. 320 of 1970, art. 25.

95. According to Decree-Law No. 320 of 1970, art. 25, which regulates the legal profession, a nonlawyer can represent himself or someone else in civil litigation or government procedures only as follows:

- (a) when the Constitution or laws grant him the right of individual petition. This is primarily in reference to article 120 of the Constitution which gives any individual standing to challenge the constitutionality of a law;
- (b) in small claims with a process similar to a small claims court;
- (c) at the court of first instance if it is located in a rural community where less than three lawyers are registered to litigate cases before the municipal judge;
- (d) in labor conciliation procedures;
- (e) in the limited jurisdiction of police inspectors in a community with less than three lawyers;
- (f) in defense to a legal claim which must be filed by an attorney;
- (g) before administrative officials if the purpose is not to obtain the recognition of legal rights or property except in the case of title to less than 50 hectares of unexploited rural land or in a municipality with less than three lawyers; or
- (h) in a challenge to a tax assessment.

likely to aggregate their interests through a business corporation or an investment company. They have property to protect, a variety of legal needs, and an incentive to employ the best available legal talent to protect their interests.

In contrast, lower income groups are less likely to have developed institutionalized methods of aggregating their shared interests. The legal services they purchase will be oriented toward individual problems where the impact on a particular family is great enough to justify hiring a attorney.

Those groups who have institutionalized methods of combining legal needs will be able to use legal services more effectively.<sup>96</sup> To the extent that expert and continuous advocacy can make a difference in the outcome of government decisions, the organized groups should be favored over time.<sup>97</sup> In the case of Colombia, this means private corporations and interest associations of landowners.

These hypotheses raise a number of complex issues about the relationship between the allocation of legal services on the one hand and the outcome of legal conflicts and government programs to distribute resources on the other. The data generated by this study is inadequate to test these ideas, but it does provide some basis for general impressions about the cost and allocation of legal services among different types of clientele.

Many respondents were sensitive to questions concerning the cost of their services and their typical clientele, therefore the inquiries had to be posed in a way which would not undermine the interviewee's willingness to speak openly. First, they were asked to estimate the percentage of their income coming from the following types of clients: (1) large Colombian business (more than fifty employees), (2) foreign business, (3) medium size business (ten to fifty employees), (4) small business (less than ten employees), and (5) individual clients. The results are summarized in Table IX.

---

96. See Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

97. See *id.*

**TABLE IX**  
**THE PERCENTAGE OF INCOME OF RESPONDENTS ENGAGED IN**  
**PRIVATE PRACTICE COMING FROM PUBLIC AND PRIVATE**  
**INSTITUTIONS AND FROM INDIVIDUAL CLIENTS**  
**[N=61]**

SOURCE OF INCOME	1 No Income from the Source	2 Five Percent or More of Respondent's Income	3 Twenty-Five Percent or More of Respondent's Income	4 Fifty Percent or More of Respondent's Income	5 Mean Percentage of Income from this Source for All Respondents
Large Colombian Business (fifty or more employees)	57%	43%	31%	25%	20%
Foreign Business in Colombia	84%	16%	5%	3%	5%
Medium Size Business (ten to fifty employees)	65%	35%	16%	3%	5%
Governmental Agencies Using Outside Counsel	89%	11%	8%	3%	10%
Small Business (less than ten employees)	77%	33%	6%	0%	5%
Unions	92%	8%	3%	3%	5%
Individual Clients	10%	87%	74%	56%	60%

The major source of income for the practicing lawyers was individual clients, but 44% of them earned more than half of their income from institutional clients.<sup>98</sup> About 38% worked primarily for the business community and a select few in this group worked for foreign companies.

A second question was designed to facilitate the classification of attorneys who work primarily for individuals. Each of the practicing attorneys was asked about the frequency of his contact with different types of individual clients categorized by a combination of social class and occupation. These results are given in Table X. The responses to the two questions are combined in Table XI to yield the overall distribution of private attorneys among different clients.<sup>99</sup>

98. This includes 7% who have a mixed institutional clientele as well as the 37% who earn more than 50% of their income from one type of institutional client.

99. Categories one through six of Table XI are based on the percentage of practicing attorneys receiving 50% or more of their income from the client group. Categories seven through ten include the private attorneys who earn more than one-half of their income from individual clients. Category seven includes the attorneys who only have frequent contact with upper-class clients. The lawyers in category eight have frequent contact with both upper and middle-class clients. The lawyers in category nine have frequent contact with employees and small merchants but do not have frequent clients from the upper two groupings. Category ten includes lawyers who serve mostly small farmers and workers. Some of them also have frequent contact with small merchants as clients.

Table XII provides a picture of the relationship between the private attorney's primary clientele and his field of specialization.

**TABLE X**  
**FREQUENCY OF CONTACT OF PRIVATE PRACTITIONERS WITH**  
**DIFFERENT TYPES OF INDIVIDUAL CLIENTELE**  
**[N=61]**

TYPE OF INDIVIDUAL CLIENTELE	<i>Frequently</i>	<i>Sometimes</i>	<i>Never</i>
1. Professionals or High Level Public Functionaries	31%	28%	41%
2. Executives in Private Sector or Large Landowners	33%	31%	36%
3. Clerical and Middle-level Administrative Employees in Public and Private Sectors	38%	11%	51%
4. Small Merchants	59%	20%	21%
5. Workers	26%	15%	59%
6. <i>Campesinos</i>	24%	15%	61%

**TABLE XI**  
**THE DISTRIBUTION OF PRACTICING LAWYERS AMONG**  
**THEIR POTENTIAL CLIENTELE**  
**[N=61]**

TYPE OF CLIENT	<i>Percentage of Practicing Lawyers Working Primarily for that Client</i>
1. Large Colombian Business	25%
2. Foreign Business	3%
3. Medium Size Business	3%
4. Mixed Business Clientele	7%
5. Unions	3%
6. Government Agencies	3%
7. Professionals, Executives in the Public and Private Sector and Large Landowners	3%
8. Mixed Individual Clientele with Some Income from Business Institutions	20%
9. White Collar Employees and Small Merchants	13%
10. Small Merchants, Workers, and <i>Campesinos</i>	20%

**TABLE XII**  
**THE RELATIONSHIP BETWEEN TYPE OF CLIENTELE AND**  
**FIELD OF SPECIALIZATION FOR PRIVATE ATTORNEYS**  
**[N=61]**

TYPE OF CLIENTELE	FIELD OF LAW							
	1 Commercial Law	2 Administrative Law	3 General Civil Law	4 Labor Law	5 Criminal Law	6 Debt Collection	7 Generalist	8 All Private Practitioners
Business [N=23]	44%	9%	4%	9%	13%	17%	4%	38%
Government Agencies [N=2]		100%						3%
Unions [N=2]				100%				3%
Large Land-owners, Executives, or Professionals [N=2]			100%					3%
Mixed Individual Clientele [N=12]	8%	8%	42%	8%	25%	8%		20%
Small Merchants and White Collar Employees [N=8]	13%		37%		13%	25%	13%	13%
Small Merchants, Small Farmers, and Workers [N=12]			33%	25%	33%	8%		20%
All Private Practitioners [N=61]	20%	8%	25%	13%	18%	13%	3%	100%

Several aspects of the results of these questions merit special emphasis. First, approximately 60% of the practicing attorneys have frequent contact with small merchants as clients. This is mostly debt collection work which is one of the "bread and butter" areas for private practitioners.

Second, only about one-third of the practicing attorneys have regular contact with individual clients from the upper income groups. Over half of these lawyers already earn most of their income from business institutions. Only two attorneys had developed a practice which enabled them to serve exclusively large land-owners, executives, and other professionals.

Third, the results indicate that a sizeable percentage of private practitioners often have workers and small farmers as clients. Approximately one-fourth of

the private attorneys frequently work for these clients and about 20% of the practicing lawyers almost exclusively serve these groups.

These results should not be exaggerated, however, because many skilled workers make relatively high wages and some *campesinos* own sizeable amounts of land.<sup>100</sup> On the other hand, the sample probably underestimates the actual percentage of the Bogotá profession serving these lower-middle and lower class groups because it is biased toward the elite schools and the more prestigious occupations.<sup>101</sup>

The night school graduates account for a much larger percentage of young practicing attorneys than is reflected in this study.<sup>102</sup> Such a result is due to the stratification of the sample by university without adjustment to account for the greater number of lawyers graduating from the night schools than from the two elite schools. This bias is important for any estimate of access to legal services among the middle and lower-middle classes because approximately one-half of the respondents providing services to these groups were young graduates of Libre and Gran Colombia.<sup>103</sup>

The recent expansion in the night law schools and the lower quality education they offer, if respondents are to be believed, suggest a number of hypotheses related to the cost and quality of legal services. An increase in the supply of lawyers with more limited social connections and a lower quality education should cause more competition among litigators representing low income clients. In the past these people may have been represented by paraprofessionals or they may have dealt with problems without using the legal process. The complaints of respondents practicing at this level about excessive competition from other lawyers and from *tinterillos* in the form of fee cutting are consistent with this hypothesis. If it is true, one would also expect the average hourly cost of an attorney's time serving this group to be less than the hourly fee of an attorney serving middle or upper income clients.

No direct information about the cost of private legal services could be obtained to assess the validity of these observations. With the exception of a few large firms, private attorneys charge clients on the basis of a fee the lawyer and client agree on in advance. If a claim is involved, it is normally a contingent fee.

---

100. A number of respondents specializing in estate planning and the probate of wills claimed that many of their *campesino* clients, whose appearance made them seem poor, actually had sizeable estates.

101. See text at note 50 *supra*.

102. According to the statistics kept by ICFES, the government body regulating higher education, in 1973 there were 8,363 students enrolled in eight officially approved law schools located in Bogotá. Seventy percent of these students were enrolled in a law faculty with a large night section (Libre, Gran Colombia or Santo Tomás, a Catholic Law School started in 1969). In addition to this, there were at least two more unapproved night schools operating with approximately 2,000 additional students. These estimates are based on data collected by a research assistant who reviewed the ICFES statistics and interviewed the personnel responsible for legal education.

103. Nine of the twenty respondents working for small merchants, white-collar employees, small farmers, and workers are 1966-67 graduates of Gran Colombia or Libre. All but one had been a judge or prosecutor prior to starting in private practice.



Otherwise, the fee is set according to the attorney's estimate of the amount of time the case will take and the amount at stake in the outcome of the legal conflict. Almost no attorneys charge by the hour and few are kept on retainer by business clients. In Bogotá the bar is disorganized and there is no schedule of even suggested minimum fees.<sup>104</sup>

Indirect estimates can be calculated, however, from the income information given by the forty-five private practitioners who were willing to answer questions about their current economic situation. The estimates are probably high because the private attorneys at the lower end of the income scale were less inclined to discuss personal information. In addition, their offices were small and often clients were waiting in the same room while the interview was being conducted. This made asking questions about income and fees almost impossible.

The mean and median monthly incomes of the forty-five private practitioners according to the clientele they service are given in Table XIII. The median was selected for subsequent analysis to keep the high income of any one attorney from skewing the final results.<sup>105</sup> By assuming twenty-two working days in a month and eight working hours in a day, it was possible to calculate the daily earnings of the average lawyer serving business and individual clients.<sup>106</sup>

	1	2	3	4	5	6	7
	All Private Practitioners as a Group [N=45]	Private Practitioners Serving Business [N=20]	Private Practitioners Serving Government [N=2]	Private Practitioners Serving Unions [N=1]	Private Practitioners Serving Individual Clients [N=22]	Private Practitioners Serving Employees, Small Merchants, Workers and Campesinos [N=11]	Lowest Monthly Income of Private Practitioners [N=5]
Mean Income	25,300	28,900	65,000	22,000	21,700	20,900	10,000
Median Income	22,000	30,000	65,000	22,000	20,000	16,000	10,000
Range	10,000 to 99,000	12,000 to 55,000	30,000 to 99,000	22,000	10,000 to 65,000	10,000 to 65,000	10,000

104. One respondent claimed that the local *Colegio* (bar organization) in the city of Medellín did have a suggested minimum fee schedule.

105. The private practitioner with the highest income claimed to earn 100,000 pesos a month. Fifty percent of his income was from administrative agencies, 20% from large Colombian business, 20% from foreign business, and 10% from individual clients. He shared an office with a national political figure who could not practice according to law. He regarded himself as a legal advisor to government agencies, but his primary function was as an intermediary between government and powerful private interests. The next highest income was 65,000 pesos.

106. The private practitioners who provided services primarily to government agencies or to unions were included only in the average daily earnings for all practitioners because

Due to the fact that the lawyers serving business tend to have larger offices, better furnishings, and more secretarial services, their estimated daily earnings were increased by 20% to take account of overhead costs. The adjustment figure used for lawyers serving individual clients was 10% and a figure of 15% was used to prepare the estimates for the forty-five private practitioners as a group. Table XIV provides some idea of the average cost of a lawyer's time according to the clientele he serves based on these figures.

**TABLE XIV**  
**AVERAGE DAILY EARNINGS OF PRIVATE PRACTITIONERS AND**  
**ESTIMATE OF AVERAGE COST OF A LAWYER'S TIME**  
**ACCORDING TO CLIENTELE SERVED\***

	1	2	3	4	5
	All Private Practitioners [N=45]	Private Practitioners Serving Business [N=20]	Serving Individual Clients [N=22]	Serving Employees, Small Merchants, Workers and <i>Campesinos</i> [N=11]	Least Cost Attorney [N=5]
Daily Earnings Based on Medi- an Income	1,000	1,364	909	727	455
Plus Overhead	1,150**	1,636***	1,000****	800****	500****
Cost of ½ Day	575	818	500	400	250
Cost of One Hour	144	204	122	100	62

\* based on an assumption of twenty-two working days a month and eight working hours each day.

\*\* An overhead charge of fifteen percent was added to the base salary.

\*\*\* An overhead charge of twenty percent was added to the base salary.

\*\*\*\* An overhead charge of ten percent was added to the base salary.

In Table XV the estimates of the average cost of a lawyer's time according to the clientele he serves are related to the capacity of different types of clients to purchase one-half day (or four hours) of a practicing attorney's time. The capacity to pay of each occupational group is based on the median incomes for each of the seven occupational groupings derived from the National Department of Statistics information on income distribution in Bogotá by occupation.<sup>107</sup> Professionals and high level functionaries normally use an attorney who also works for business interests. At the other end of the spectrum, workers and laborers probably select an attorney from among those who charge the least. Thus, the four boxes in Table XV represent the sector of the market for legal services where the average person in each occupational group would be expected to look for an attorney.

107. See ENCUESTA DE HOGARES *supra* note 54, at 26-27, cuadro 19. The DANE data gives the income distribution for seven occupational categories in 1970 prices. They were adjusted upward by an index of 170% to allow for the inflation from 1970 to 1974; the median monthly income for each occupational group then was derived from the table. Their median daily income was calculated on the basis of 22 working days a month. This figure provides the basis of the estimate of how many days an average person in each occupational group must work to purchase four hours of an attorney's time.

TABLE XV

NUMBER OF DAYS AVERAGE PERSON IN EACH OCCUPATIONAL GROUPING MUST WORK TO PURCHASE 1/2 DAY (FOUR HOURS) OF A PRACTICING ATTORNEY'S TIME IN BOGOTÁ, BASED ON MEDIAN MONTHLY INCOMES

TYPE OF PRIVATE PRACTITIONER	DAYS EACH GROUP MUST WORK TO HIRE ATTORNEY FOR 1/2 DAY							
	1	2	3	4	5	6	7	8
	Professionals	Executives	Clerical and Middle-level Administrative Personnel	Employees in Small Commerce and Street Vendors	Workers in Service Sector	Workers in Agriculture	Laborers	Total Population
All Private Practitioners	3.1	1.5	5.0	8.0	10.1	10.0	9.3	7.8
Private Practitioners Serving Business	4.4	2.1	7.0	11.4	14.4	14.1	13.2	11.1
Private Practitioners Serving Individual Clients	2.7	1.3	4.3	7.0	8.8	8.6	8.1	6.8
Private Practitioners Serving Employees, Small Merchants, Workers & <i>Campeños</i>	2.2	1.0	3.4	5.5	7.0	6.9	6.5	5.4
Least Cost Attorney	1.3	.6	2.1	3.5	4.4	4.3	4.0	3.4

While the average cost of an attorney's time in serving the lower income groups is much less than the cost of an attorney serving private institutions and upper income clients, there is some similarity in the amount of time each occupational group works to hire an attorney in the market defined by the boxes. It ranges from a high of 5.5 days to a low of 1.3 days, but most choices are centered around the three to four day range. The supply of lawyers graduating from the night schools appears to be fostering a fairly competitive market for legal services among all types of potential clientele.

As long as the marginal purchasers of legal skills have information on lawyers' backgrounds, the difference in the price of an attorney's time should reflect distinctions in the quality of the services. This does not mean it can be assumed that the higher priced attorney has much better legal skills, since the client may also be paying a higher fee because of the attorney's social and political contacts among government decision-makers or judges. In addition, there is no basis in this study to arrive at any conclusions about whether the cheapest legal services available in the market are still adequate for the most common legal problems of low income groups. This is an important issue,

however, because of the bar's efforts to restrict the continued expansion of the night law schools by arguing that the education the night schools offer is inferior and that their graduates are incapable of practicing law.<sup>108</sup> No one mentions the fact that if these night schools are closed or excessively restricted in the size of their student body, the result may be to drive up the cost of legal services so that low income groups have no access to lawyers.

These comparisons of the cost of legal services also fail to reflect the economies of scale which some firms or individual lawyers may realize through specialization. By handling similar claims at the same time, an attorney may be able to reduce the time needed for each without altering the quality of his services. For example, one respondent divided among three attorneys the legal work involved in representing laid-off government workers making claims for welfare benefits from a public agency. No procedural form such as a class action was available, but by dividing the gathering of evidence, the preparation of court documents, and the handling of hearings, the firm could process many more cases than three attorneys working alone. This firm was developing a reputation for doing good work at a relatively low cost, and the members claimed they could attract as clients more than half of the people laid off by certain government agencies.

This type of reorganization in the delivery of legal services to meet the needs of low income clientele was rare. Normally, the attorney serving these groups was an individual practitioner specializing in labor, property, wills, or criminal law. These tended to be the fields where individual low income clients identified a problem as legal and as having sufficient impact on their lives to merit seeing an attorney. The labor cases could be handled on a contingency fee basis. In a conflict over real property or the probate of an estate, the family's basic economic security would be at stake. Criminal law problems involved the client's personal liberty.

Attorneys rarely mentioned working for a low income client outside of these areas. This is not surprising since low income groups in Colombia barely earn enough to obtain food, housing, and a minimal education for their children. Hiring an attorney on any basis other than a contingency fee means foregoing some basic necessity of life for a period of time.

Almost nothing is known about the way the bulk of the population copes with problems that the more wealthy classes would take to an attorney. Some studies, focusing on disputes over property, have identified community conflict resolution procedures which the disputants can use in lieu of the legal process.<sup>109</sup> If the same problem, such as the failure of a public service, is shared by members of a community, the political parties often provide an avenue for access to the appropriate government body.<sup>110</sup> There are also a variety of non-lawyer inter-

---

108. See note 40 *supra*.

109. See note 66 *supra*.

110. During the 1970 Presidential campaign the surprising showing of ANAPO was partially attributed to the efforts of the ANAPO party over the prior two years to use its members in government positions and in public utilities to provide new and improved services to the *barrios*.

mediaries who make a living by obtaining important documents or government rulings for private parties.<sup>111</sup> They are not formally recognized by the system, but one only has to visit such places as the office for tax declarations, the public land registry, or the center for identification of documents to see how prevalent the intermediaries are. They depend on a system of informal contacts built up over time through favors and small bribes.

The point of these observations is to stress how little is known about the way private parties identify a problem as "legal" and about the role lawyers play within any overall set of alternatives for dealing with problems. Such knowledge is necessary, however, to assess the potential unintended consequence of any proposed governmental action to reduce the number of lawyers or to alter the distribution of legal services through legal aid or other form of public subsidy.

To understand the significance of the way legal services are allocated, it is also necessary to have some idea of what lawyers do for different clientele. As noted above, the lawyers representing middle and lower income individual clients tend to be litigators specializing in property, wills, domestic relations, labor, and criminal law.<sup>112</sup> The other major area of legal work for litigators is the representation of banks and commercial enterprises in the collection of debts through expedited procedures providing for the attachment of a debtor's property.

Attorneys who litigate rarely have time to research a case. (See Table XVI). Approximately two-thirds of their working day is taken up by interviewing clients and visiting the judicial offices where their cases are pending. For example, one of the respondents described a typical day as follows:

From 6:00 a.m. to 9:00 a.m., I prepare my written arguments, study the cases, and organize my day. By about 10:00, I am in the office and from then until approximately 1:00 p.m. I see one client after another. After lunch I make my daily visits to the judicial chambers where I have pending cases and usually I am back in the office between 4:00 and 4:30. Then I see another group of clients until about 6:00 in the evening.

---

111. Cf. Rosenn, *The Jeito: Brazil's Institutional Bypass of the Formal Legal System and Its Developmental Implication*, 19 AM. J. COMP. L. 514 (1971).

112. See Table XII.

TABLE XVI  
THE PERCENT OF TIME PRACTICING ATTORNEYS DEVOTE TO  
DIFFERENT TASKS OR FUNCTIONS DURING AN  
ORDINARY WORKING DAY

BY TASKS	<i>Average Percent of Time Devoted to Task Each Day</i>	
	Litigators [N=39]	Legal Advisors [N=17]
1. Preparing Legal Documents	25%	30%
2. Legal Research	10%	25%
3. Meeting with Clients	35%	20%
4. Visiting the Courts	30%	10%
5. Meeting with Administrative Officials	<u>0%</u>	<u>15%</u>
	100%	100%
BY FUNCTIONAL TYPE OF LEGAL PROBLEMS	Litigators [N=39]	Legal Advisor [N=17]
1. Problems Being Litigated in the Courts	85%	15%
2. Problems Settled without Litigation	15%	35%
3. Legal Planning to Prevent Fu- ture Legal Problems	<u>0%</u>	<u>50%</u>
	100%	100%

In contrast, the legal advisors to corporations spend most of their time negotiating agreements and planning the future affairs of their clients to avoid legal problems. They tend to work primarily in commercial law, administrative law, tax, labor, or mining law. Most legal advisors have a few major corporate clients who are well-organized and who have a precise idea of the legal problems they want their lawyers to study. Legal advisors spend less time with their clients than do litigators, and they concentrate on researching legal questions, drafting contracts or other legal documents, and preparing an analysis of potential legal problems.<sup>113</sup> Only the legal advisors spend much time negotiating with government officials on behalf of their clients.

In a sense, the legal advisors are intermediaries between private corporations

113. There was a strong statistical relationship between respondent's classification as a litigator or legal advisor and the percent of time devoted to each task with the exception of the preparation of legal documents. The correlation coefficient (Kendall's Tau C) between the two classifications and each task was as follows: documents .17, significance .0289; research .47, significance .0000; clients, -.29, significance .0006; visiting court, -.60, significance .0000; meetings with administrative officials, .50, significance .0006. Positive value indicates that legal advisors primarily perform the task and negative value reflects the importance of the activity for litigators.

or between the state and private centers of power and wealth.<sup>114</sup> The litigators are intermediaries between individuals in conflict or between private institutions and individuals. Litigators offer primarily an individualized type of legal service. Their clientele in the middle and lower classes lack the information to identify shared legal needs as well as the methods to aggregate their interests and to purchase legal services on a group basis. Lawyers have provided the corporate legal forms to facilitate the organization of the dominant economic interests, but no similar legal methods have been developed to unify other groups in Colombia.

#### V. PROGRAMS TO ALTER THE DISTRIBUTION OF LEGAL SERVICES

There are a variety of ways to supplement the fee for service method of allocating legal services and thereby to increase access to lawyers by lower income groups or by unorganized interests which share legal needs. In Colombia there has been some experimentation with legal aid, and recently a small public interest law firm was started with partial funding from the Ford Foundation.<sup>115</sup> Serious questions, however, can be raised about the potential success of these alternatives in the Colombian context.

In the early 1970's, the Colombian government encouraged a bank to establish and fund a Legal Aid Foundation.<sup>116</sup> In a parallel action the Ministry of Justice promulgated an executive decree requiring all Colombian law faculties to establish legal aid clinics offering free legal assistance to indigents.<sup>117</sup> The Foundation was to employ approximately ten young attorneys who would devote half their time to the organization and supervision of the law school legal aid clinics. The other half would be spent on cases taken directly by the central Foundation office.

The success of this experiment has been limited. Some law faculties have taken advantage of the free half-time assistance in the organization of a clinic, but others refused to cooperate because they feared student political problems would be caused by the Foundation's link to the government. The Foundation itself has pursued a cautious course of action. It has kept its services on an individualized basis and has avoided conflicts which would involve the representation of group or community interests against government agencies.<sup>118</sup>

---

114. Fifteen of the seventeen legal advisors did receive as much as 20% of their income from private individual clients. Six devoted this time to representing wealthy individuals, primarily in the areas of estate planning and contracts, but they also acted as intermediaries before government agencies in some cases. Eight represented a mixed clientele, but only with private law problems, labor difficulties, or tax problems. One, who worked for the unions, represented individual workers in labor grievances.

115. This small firm was in the planning stage at the time of this study. It has now been operating on a small scale for three years, but it is not yet possible to assess its potential importance.

116. The *Banco Popular* provided the early funding for the *Fundación Servicio Jurídico Popular*.

117. See Decree-Law No. 971 of 1970, Decree-Law No. 1189 of 1974, and Decree-Law No. 225 of 1977.

118. These observations are based on informal conversations over a three year period with the Director of the legal aid program and various staff members.

One of the primary difficulties with this legal aid approach is the underlying assumption that the fundamental problem is the poor's lack of resources to purchase legal services. This is a major concern, but it is a limited perspective on the question of legal services for low income groups. Very little is known about what low income groups regard as their primary needs and the relevancy of the legal process to these problems. The criteria they use to identify what is a "legal problem" will depend partially on the view of the legal process they have developed over time. Leon Mayhew has succinctly stated the problem:

Needs for legal services and opportunities for beneficial legal action cannot be enumerated as if they were so many diseases or injuries in need of treatment. Rather, we have a vast array of disputes, disorders, vulnerabilities, and wrongs, which contain an enormous potential for the generation of legal actions. Whether any given situation becomes defined as a "legal" problem, or even if so defined, makes its way to an attorney or other agency for possible aid or redress, is a consequence of the social organization of the legal system and the organization of the larger society—including shifting currents of social ideology, the available legal machinery, and the channels for bringing perceived injustices to legal agencies.<sup>119</sup>

If one applies this view of legal services to the Colombian context, there is little reason to assume the poor would use free legal services in a way different than the way they have used services for a fee.<sup>120</sup> Their contact with the legal system will normally be a negative experience. Inherent in the legal order of a capitalist society is the protection of relationships concerned with the allocation of productive resources.

Security in property and contract rights are basic to the society's incentive structure, but from the perspective of the poor, these legal rules perpetuate inequalities in control over property.<sup>121</sup> The poor's past contacts with the legal system will often have involved a threat to personal liberty through the criminal process, the taking of personal property to satisfy a debt, the taking of the land they have farmed if the owner decides to change its use, or, if they have some family property, the probate of their estate through a complex procedure they do not understand.<sup>122</sup>

---

119. Mayhew, *supra* note 75, at 404.

120. Without "proactive" organizations demonstrating different ways of using law the tendency will be to follow established routines and to turn to lawyers in those situations where the poor know, based on past experience, that the legal process may provide some relief. For a theoretical overview of some of the problems involved in allocating legal services to the poor, see J. CARLIN, J. HOWARD & S. MESSINGER, *CIVIL JUSTICE AND THE POOR* (1967); Galanter, *supra* note 96; Galanter, *The Duty Not to Deliver Legal Services*, 30 U. MIAMI L. REV. 929 (1976); Hazard, *Legal Problems Peculiar to the Poor*, 26 J. SOC. ISSUES 47 (1970); Marks, *A Lawyer's Duty to Take All Comers and Many Who Do Not Come*, 30 U. MIAMI L. REV. 915 (1976); Mayhew, *supra* note 75.

121. For an interesting critique of the view that law sanctions poverty, see Hazard, *supra* note 120.

122. See Table XII for an overview of the areas where low income persons are most likely to have contact with the legal process.



When the negative nature of their most frequent contacts with the legal process is combined with the social distance between the lower class and lawyers, there is little reason to believe they would identify a problem as "legal" if an alternative means of coping with it existed. To make the point another way, if the public funds which would be necessary to mount a meaningful legal aid program were granted to the potential clientele in the form of a direct payment, there is no reason to believe they would use these funds to purchase more legal services in the market place.

The organization of a typical legal aid program in Colombia would not tend to ameliorate their view of the legal process. The normal pattern in Colombia would be to hire young attorneys willing to work for a lower salary while they obtain experience and prepare themselves for a legal career serving institutional clients or the middle and upper classes. They would have no long-run identification with the needs of their clients, and their perspective would be that of a patron who knows what is best for his client. Since the services would not be on a fee basis, some alternative mechanism such as queuing would be needed to allocate the services. There is no reason to assume the costs of waiting in line or similar alternatives will allocate the subsidy in a way that matches the clientele's most critical legal needs.<sup>123</sup> In addition, legal aid would have to be funded by the government or powerful private institutions acting at the request of the government. The recipient of such funds always operates under a constraint. If they begin to represent the interests of lower class groups in a fashion which presents a fundamental challenge to the allocation of power or wealth, their funds can be cut off and the institution terminated. Consequently, they will tend to favor individualized legal problems which do not challenge or attempt to change the existing allocation of legal rights.

In addition, one cannot automatically assume that discouraging people from identifying a problem as "legal" is necessarily negative. Given the costs of any comprehensive legal aid program, the resources which would be needed for the courts to handle more cases, and the social distance of judges and lawyers from low income clients, encouraging and developing alternative forms of dispute resolution may be a more sensible course of action. Access to public decision-making, as contrasted with access to the courts is more fundamental because of the government's role in resource distribution, but there is no necessary reason why lawyers should dominate the avenues of access. Political parties, their leaders, or other types of intermediaries may have a more long-run identification with the interests of low income groups than university-trained lawyers. It may be worthwhile to consider ways to encourage other types of community advocates while reducing the scope of the profession's legal monopoly.

This analysis is not meant to suggest that legal aid programs should be eliminated. The purpose of the criticism is to focus attention on the idea that legal aid is just one aspect of a much broader perspective on access to law and

---

123. See Mayhew, *supra* note 75, at 418-20, for a discussion of the problems inherent in the alternatives to rationing by fees.

government by low income groups, and that there may be meaningful alternatives to legal aid which should also be considered.<sup>124</sup>

As noted above, the poor's lack of resources to purchase better quality legal services is partly a function of the organization of the services they have received. Since the system has primarily offered individualized services, they lack the information to identify shared legal needs and methods to aggregate resources for the purchase of legal services on a group basis. The results of this study indicate that the fundamental disparities in the use of law are less between rich and poor than between organizations and individuals. Individuals seek out the services of an attorney in times of personal crisis when their liberty or a basic property interest is at stake. In contrast, organizations routinely use the same lawyers on a recurring basis to collect debts, handle claims against the organization, draft contracts, and mediate with government agencies.

Professor Galanter has pointed out the advantages that "recurrent organizational players" enjoy over infrequent individual users of the legal process. He briefly summarizes them as follows:

(1) ability to utilize advance intelligence, structure the next transaction, and build a record;

(2) ability to develop expertise and have ready access to specialists, economies of scale, and low start-up costs for any case;

(3) opportunity to develop facilitative informal relations with institutional incumbents;

(4) ability to establish and maintain credibility as a combatant (i.e., interest in bargaining reputation serves as a resource to establish "commitment to bargaining positions." With no bargaining reputation to maintain, the one-time litigant has more difficulty in convincingly committing himself in bargaining);

(5) ability to play the odds. The larger the matter at issue looms for the one-timer, the more likely he is to avoid risk (i.e., minimize the probability of maximum loss). Assuming that the stakes are relatively smaller for recurrent litigants, they can adopt strategies calculated to maximize gain over a long series of cases, even where this involves the risk of maximum loss in some cases;

(6) ability to play for rules as well as immediate gains. It pays a recurrent litigant to expend resources in influencing the making of the relevant rules by lobbying. Recurrent litigants can also play for rules in litigation itself, whereas a one-time litigant is unlikely to.<sup>125</sup>

Professor Galanter's analysis suggests that the poor's limited capacity to use law is not just a question of resources. There is a need to create the opportunity for them to identify and pursue shared legal needs on a recurrent basis through the aggregation of resources and rights. The most common method of aggregation in Colombia is through the formation of interest group associations such as unions, agricultural federations, and neighborhood community groups. These

---

124. See Galanter, *supra* note 96, for a conceptual overview of the alternatives.

125. Galanter, *supra* note 120, at 937.

types of associations are common among the more wealthy and politically powerful segments of the society, but with the exception of the unions, they are rare among lower income groups.<sup>126</sup>

Even if the poor were highly organized, however, there is again no reason to assume they would make more use of the legal process. The status quo orientation of the law is inherent in the first principles, which emphasize the protection of property and contract. Young judges, concerned about their future legal careers and the impressions they make on powerful interests in the private sector, are not likely to alter this orientation. Direct political action through administrative channels or political party structures will probably yield more results. At the same time, law is an important institution, and there may be some types of rule or institutional changes which could increase its potential use.

Rule changes to facilitate the representation of aggregated claims are an example. There is no procedural form in Colombia similar to the class action. Under some circumstances this procedural device enables the claimants to achieve the same economies of scale in litigation as an organization. Claims which, relative to the cost of litigation, are too small or too speculative in outcome can be combined and made economical. Class actions can also be used prior to undergoing the cost of organizing and can become a means of disseminating information about shared interests and an avenue to overcome the transaction costs of organizing.<sup>127</sup>

There are other rule changes of a procedural nature which would also create an economic incentive for private attorneys to identify and represent aggregate claims. For example, the legal system could recognize the assignment of fragmentary rights, not worth the cost of an individual suit, to a "legal manager" who would monitor the protection of the assigned rights and seek damages in case of a violation.<sup>128</sup> A somewhat different approach would be to require the losing party in a law suit to reimburse the winning party's attorney fees, but this could also operate to discourage litigation by lower income groups given their lack of confidence in the court system.

Both of these alternatives also raise problems.<sup>129</sup> They tend to separate the real client's claim from the litigation process so that the actual victim may never be compensated. The absence of a real client may also undermine the lawyer's incentive to seek a solution in the interests of the class of claimants.<sup>130</sup> The attorney is interested in the size of his fee and not the final judgment. Defend-

---

126. There is a national association of *campesinos* with some links to the political parties and there are *juntas de Acción Comunal* in the *barrios* organized by the government, but they tend to be a political instrument of the party in power rather than a grass roots organization seeking a way to represent the interests of the community. For a description of some of the more powerful interest group associations among the dominant economic groups, see R. DIX, *supra* note 8, at 322-59.

127. See Galanter, *supra* note 120, at 943; R. POSNER, *ECONOMIC ANALYSIS OF LAW* 349-51 (1972).

128. Galanter, *supra* note 120, at 941.

129. See R. POSNER, *supra* note 127, at 350-51.

130. *Id.*

ants will have an incentive to make a settlement offer that maximizes the attorney's gain and minimizes the harm to defendant. Unless the judge carefully controls the settlement process, the results may not be in the best interests of the actual aggrieved parties.<sup>131</sup>

Each of these alternatives is also contrary to the typical rules against champerty. They make lawyers entrepreneurs rather than agents of a client, but this is also to their advantage. They do not depend on the reallocation of resources. Instead, they create an economic incentive for lawyers to represent aggregated private rights.

Finally, there is the example of the labor attorney who reorganized the way his office delivered legal services to low income groups to take advantage of economies of scale in handling similar claims. This is an outgrowth of the new competition among lawyers for low income clients which has accompanied the expansion in the profession's size. The attorney was a night school graduate, and he planned to continue in the same type of legal practice. He has a long-run interest in the development of labor laws which will favor his clients and thereby improve his fees. Changes in the organization and delivery of legal services of this type, which are based on the private bar's economic incentives, may have more impact on meaningful access than any government-subsidized legal aid program.

The example also suggests that even without such rule changes, there may be more flexibility in the current legal system than is apparent from this study. The transaction costs involved in organizing groups, aggregating small claims, and identifying existing procedural methods to represent group interests are high. One important role for legal aid or the new outside-funded public interest law firm is to obtain information of this type and to litigate highly visible group claims. This could foster the dissemination of information about the economic potential of group claims and encourage more low income individuals and private attorneys to explore the alternative of group legal actions.

#### CONCLUSION

This study has examined the relationship between the distribution of economic power in Colombia on the one hand, and legal career patterns, stratification in the bar, and the allocation of legal services on the other. While the organization of the bar tends to favor and reinforce the existing social and economic order, lawyers are less a homogenous profession than a loose mixture of subgroups allied to different types of clientele. There are differences between the formal rights guaranteed to the bulk of the Colombian population by law and the reality of the benefits they receive. Whether the legal order can be a useful avenue to point out these contradictions and to pressure for change seems to depend in large measure on the development of institutionalized methods for unorganized groups to identify and pursue shared legal and political goals.

---

131. *Id.*