Review Essay

The Practice Dynamics of Solo and Small Firm Lawyers

Jerry Van Hoy

Carroll Seron, *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys.* Philadelphia: Temple University Press, 1996. xiv + 224 pages.

Jerome E. Carlin, *Lawyers on Their Own: The Solo Practitioner in an Urban Setting.* San Francisco: Austin & Winfield Publishers, Inc., 1994. xxxvi + 234 pages. $59.95 cloth

The American legal profession has experienced dramatic change in the late 20th century. Attorneys have witnessed vast growth in new entrants (Curran 1986; Curran & Carson 1991; Sander & Williams 1989), the abolition of restrictions on new methods of finding clients and price competition (Abel 1989; Reidinger 1987; Seron 1992), changes in the delivery of legal services and law firm organization (Nelson 1988; Seron 1992; Van Hoy 1995, 1997), the growth of large law firms (Galanter & Palay 1991), and an increase in employed lawyers (Abel 1989; Spangler 1986).[1]

Nelson and Trubek (1992) credit this sense of change with stimulating renewed interest in the study of the legal profession. Yet when we look at the two works being reviewed in this essay, Carroll Seron's *The Business of Practicing Law* and Jerome Carlin's 1962 classic (reissued in 1994) *Lawyers on Their Own,* continuity, not change, remains a defining characteristic of sole and small

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[1] For a general discussion of changes in the U.S. legal profession, see Abel 1989; Auerbach 1976; Nelson & Trubek 1992.

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firm attorney practices.[2] Seron shows us that despite opportunities to engage in modern, entrepreneurial business practices, most solo and small firm attorneys do not engage in mass advertising or seek volume legal practices. The question raised by reading Seron and Carlin together is whether this apparent resistance to change is based in the social organization or in the professional ideology of solo and small firm practices. Carlin's work draws general themes out of an analysis of the work practices of solo attorneys. In contrast, Seron's analytical framework relies heavily on the normative orientations these lawyers bring to their work.

This essay is divided into three sections. The first part describes Seron's and Carlin's different approaches to studying solo and small firm lawyers. In this section key differences in their conceptual perspectives are highlighted. The second part compares Seron's recent findings about the work and organizational practices of individual and small firm attorneys with Carlin's findings from the 1950s. This comparison allows us to identify where there has been continuity and where there has been change. The third part returns to the issues of ideology and social organization by comparing Seron's findings with my own work on sole and small firm practitioners, franchise law firms, and plaintiff's personal injury attorneys. Much of my work is (loosely) based on the approach taken by Carlin.

Methodological and Conceptual Approaches

Seron and Carlin both follow similar basic methodological approaches to studying sole and small firm practitioners. Each personally interviewed a sample of attorneys using semistructured interview schedules. Completing his research in the late 1950s, Carlin (p. 215) drew a random sample of 93 individual practitioners from the city of Chicago. Seron's study, completed in 1990, includes 102 sole and small firm attorneys from the New York Regional Metropolitan Area (p. 158). However, while Carlin's analysis includes only those attorneys engaged in full-time, independent private practices (only 67 of the 93 attorneys interviewed; p. 215), Seron includes 8 part-time practitioners among her attorneys.

Seron and Carlin both use inductive approaches to analyzing the data. The inductive research method means that salient issues and theoretical concepts are allowed to emerge from the

[2] This comparison also raises important questions about current assumptions of increased competition among attorneys. It is often assumed that more lawyers and the potential to advertise attorney services increases competition. However, there is little evidence from these two studies that levels of competition for personal legal services clients have changed dramatically. Perhaps future studies should consider the differences between styles of competition and intensity of competition among attorneys.

data rather than being imposed on the data. Nonetheless, researcher orientations inevitably color how research projects are conceptualized. Carlin (p. xxxiii) viewed his work as a report to the public and the bar on the state of the practice of law. He looked for "meaningful regularities" in the *work* of individual practitioners (p. xxxiv). Carlin's conceptual framework for discussing sole practicing attorneys places them along two dimensions. First, he divides individual practitioners into upper and lower levels. Second, he identifies a division between sole practitioners and large firm attorneys as an important social characteristic of the legal profession.

Lower-level practitioners tend to be neighborhood based, act as services brokers who bring clients together with another party, and exercise little legal skill in the performance of these tasks. In contrast, upper-level attorneys find their clients beyond the boundaries of any particular neighborhood—often through attorney referrals—and either exercise somewhat more legal skill or have developed mass production practices. Not surprisingly, Carlin found that upper-level attorneys complained little of competition—whether from other attorneys or other occupations—while lower-level lawyers seemed more besieged.

Seron (pp. 152–53) is interested in examining how differing professional norms guide practice decisions since the advent of advertising and other "new" forms of soliciting business. Seron's contribution is to highlight how apparent changes in the practice of law—particularly the entrance of entrepreneurial and women attorneys—nonetheless translates into "professional" rather than "commercial" legal practices for most attorneys.[3]

Seron began with a pilot study of "key players in both the for-profit and the not-for-profit legal services movement" (p. 153; see also Seron 1992). After she identified three *value orientations* among the attorneys, she designed a larger study to find out if these views are "shared by a broader cross section of solo and small-firm attorneys" (p. 154).

In *The Business of Practicing Law* Seron groups attorneys into three conceptual categories: entrepreneurs, traditionalists, and experimenters.[4] In contrast to Carlin and others who have emphasized the segmented social structure of the bar (see, e.g., Heinz & Laumann 1982), Seron argues that her conceptual framework cross-cuts all private legal work (p. 144). At one extreme, entrepreneurial attorneys explicitly advertise and seek to use innovations in their practices. At the other extreme, traditionalists shun advertising and the use of computer technology.

[3] Carlin viewed the work practices of solo attorneys as relatively unprofessional when compared with those of attorneys in large law firms.

[4] In the pilot study the categories differed—managerial, entrepreneurial, and professional—because Seron focused specifically on self-defined entrepreneurs (p. 154; see also Seron 1992).

In between entrepreneurs and traditionalists are experimenters. Experimenters accept advertising and new technologies in principle but do not organize their practices to take advantage of these new developments to the degree that entrepreneurs do.

A problem with Seron's typology is that it often forces her to focus on the extremes of traditionalists and entrepreneurs to the exclusion of experimenters. Like much of the professions literature, this book attempts to distinguish professional orientations and conduct from that which is considered nonprofessional.[5] Traditionalists represent attorneys Seron considers most professional. Entrepreneurs represent those who are business people first, attorneys second. Experimenters, it seems, are defined by what they are not (i.e., not traditionalists and not entrepreneurs) rather than being a distinct group with specific characteristics. The conceptual dichotomy Seron relies on leaves the majority of solo and small firm attorneys—a clearly diverse group—undefined and uninteresting.

Continuity and Change: Individual and Small Firm Legal Practices

Although it is fair to call most sole practitioners generalists, Carlin established that some attorneys' practices are concentrated in particular areas. Carlin identified eight major areas of concentration: business-corporate, real estate, tax, personal injury, divorce, will-probate-estate, criminal, and collections.[6]

Within each of these areas of concentration Carlin discusses the differences between lower-level and upper-level practices. For example, lower-level business-corporate attorneys tend to supply small businesses with routine documents that might also be handled by accountants, bookkeepers, or the small business owners themselves. Upper-level attorneys in this area have steady clients for whom they offer general business advice (by sitting on or advising boards of directors) as well as the more routine matters handled by lower-level attorneys. In a similar vein, Carlin finds that lower-level real estate attorneys are mainly involved in routine residential closings, while upper-level practitioners help to negotiate and finance commercial deals.

In the areas of tax (mainly foreclosure), personal injury, and divorce, the distinctions between upper- and lower-level practitioners are somewhat greater. Practices in these areas are defined by an attorney's ability to gain a steady flow of clients rather than

[5] For an overview of this popular sociological approach to the professions see Abbott 1988; Freidson 1994; and Larson 1977.

[6] Carlin (p. 118, table 17) asked attorneys which legal areas they practiced in and how much time they spent working in each area. Attorneys were considered specialized when they reported spending at least 30% of their time providing services in particular practice areas.

by the level of legal skill applied. Carlin describes all of the work in these areas as requiring relatively little skill. Lower-level attorneys are less successful at maintaining a steady client flow. Upper-level practitioners emphasize the "mass production character of their practice" (p. 115).

In terms of practice characteristics, Seron's traditional practitioners are similar to Carlin's upper-level business-corporate lawyers. Traditionalists tend to be located in Manhattan or suburban business hubs and have long-term relationships with business clients. In addition, Seron describes these attorneys as being members of firms that "tend to be 'big,' 'old,' and 'specialized' by the standards of small-firm practice" (p. 57). Just as Carlin found that most sole practitioners were not business-corporate lawyers (p. 118, table 17), Seron identifies only 17 traditionalists out of 102 attorneys (p. 174 note 6).

Carlin argued that most successful solo practitioners had to cultivate relationships with people or organizations that would refer work to them. Carlin (p. 135) called these referring agents "brokers." Brokers could be attorneys, for example, lower-level plaintiff's personal injury lawyers who refer their trial work to upper-level practitioners. But for many solo practitioners, brokers were likely to be personal injury "investigators," real estate agents, accountants, savings and loan associations, politicians, current or former clients, or other nonlawyers. Because few solo practitioners have steady business clients, brokers provide an important network to a steady flow of clients.

Seron (pp. 52–54) shows us that most personal services attorneys—her experimenters—still rely on brokers (particularly real estate agents and accountants) as a source of clients. Young attorneys continue to join civic organizations and social clubs in the hopes of gaining clients. Family members remain a discounted but sometimes important source of initial clients as well. However, the major development in gaining clients that Seron points to is advertising. Though few personal services attorneys advertise on television, Yellow Pages advertisements have become the norm. Beyond the Yellow Pages experimenters may try newspaper or radio ads or affiliate with prepaid legal services plans. Nonetheless, most have apparently concluded that minimal advertising is best. Thus, Seron identifies experimenters as having a "professional" orientation toward advertising (p. 59). The principle of advertising is widely accepted, but actions are restrained by a relatively conservative professional ideology.

Entrepreneurs, then, are defined by their enthusiasm for gaining clients through advertising and other "new" forms of solicitation. Entrepreneurs have most clearly responded to the new "postindustrial" economy. But like traditionalists, this is a very

small group of attorneys.[7] In addition to the use of planned advertising campaigns, these firms use computer technology and support staff to serve efficiently the large numbers of clients who seek services in response to the advertising. For entrepreneurs, access to clients is gained through advertising rather than from other, more traditional, client brokers; advertising allows a renewed emphasis on mass production techniques. Of course, experimenters also use computers and support staff whenever and wherever possible. But experimenters are more likely to emphasize the personal ("bedside manner") and expert qualities of client interactions than are entrepreneurs (p. 110).

When viewed as professional ideological categories, traditionalist, entrepreneur, and experimenter seem to convey the broad range of views about advertising and organizational practices found in the legal profession today. However, these categories also largely reproduce the social organization of the legal profession identified by Carlin (1994, 1966) and others (Heinz & Laumann 1982). Traditionalists are corporate lawyers with a history of steady client relationships. They can afford to reject advertising and volume legal practices in favor of social club memberships (Seron, pp. 54–56). Traditional attorneys seek clients in a market less accessible through advertising and with different market dynamics than personal legal services work.

The distinction between experimenters and entrepreneurs is less problematic. Experimenters "do not construct organizations designed to anticipate a volume business" (Seron, p. 68). Small firm organization remains largely collegial. Most small partnerships are founded on "handshake" deals rather than written contracts. The organization of work at these firms tends to be fluid and open to renegotiation on a regular basis.

Entrepreneurs tend to have more rigid roles built into their organization of work, rely more on standardized practices, and are clearly profit oriented (Seron pp. 89, 98–103). Nonetheless, experimenters and entrepreneurs seek similar clients in an increasingly competitive market. As independent business people, attorneys in small practices are constantly looking for ways to become more efficient and cut costs. In addition, Seron (p. 2) notes that entrepreneurs must constantly experiment and innovate to stay ahead of the competition. Thus, while traditionalists are not highly comparable to the other attorneys in the sample, experimenters and entrepreneurs differ only in the level of advertising and organizational structure each set of attorneys adopts. Perhaps Seron is best read as identifying two types of sole and small firm practices: traditionalists and experimenters. En-

[7] Not counting the pilot study, which focused solely on entrepreneurs, there are only six entrepreneurs in Seron's sample (p. 170 note 27).

trepreneurs can then be viewed as one group—or a specific market niche—among attorneys who serve individual clients.

Women Lawyers

Both Seron and Carlin (in a new introduction to his book) conclude that little has changed among the work practices of individual and small firm attorneys. Unfortunately, this means that women remain at a disadvantage in the practice of law. In an intriguing and sensitive analysis, Seron shows how women solo and small firm attorneys have fewer opportunities to develop their legal practices and less time to devote to their legal work.

Whether attorneys are female or male, Seron (p. 31) points out, creating successful legal practices takes time. All attorneys tend to report spending long hours at work. This may include early mornings, late nights, weekends, or all three combined. But women attorneys find themselves in a different position from that of their male counterparts. Few women have spouses who share a significant portion of the domestic duties. "More typically . . ., regardless of whether professional women work expanded or normal professional hours they carry the most of the burden for private obligations" (p. 33). Fully half of the women in Seron's study report that they reduce their time at the office to make time for their domestic roles. In contrast, the men who work expanded hours "tend to be relieved of time-consuming private obligation[s]" by their spouses (p. 36). Few women have been successful in renegotiating the balance of domestic labor chores.

The reduction of working hours does not necessarily mean that women attorneys hold part-time positions. Some women are forced to match their work schedules to their childcare providers' schedules. This inevitably shortens the working day. But it is also important to note that all the women who report working reduced professional hours have husbands who provide "ample" financial support and have a fairly "traditional" orientation toward domestic labor. Though these women "express a strong 'domestic orientation,'" they are also in a weak position to renegotiate household chores (p. 43). Thus, half the women attorneys in Seron's analysis may not be able to change the division of labor in their homes significantly to benefit their legal practices!

The cost of the division of domestic labor for women who are trying to build sole or small firm practices is particularly high. Whether entrepreneur, experimenter, or traditionalist, lawyers find that the key to a successful small legal practice is developing a steady flow of clients. Seron (p. 56) argues that female attorneys are disadvantaged in three ways—all of which are related to the informal client networks attorneys tend to build. First, men find family and friends to be better sources of business than do women. Second, men report that being active in social clubs

leads to productive business relationships but women do not. Third, male associates in small law firms more often tend to view bringing in new clients as part of their job than do women associates.

These disadvantages relate back to the issue of how working time is defined differently for men and for women. For example, none of the women Seron interviewed had active memberships in social clubs. The time these women spend completing domestic labor chores frees their husbands to engage in social activities while the wives pay the price in their professional careers. This dynamic also works against women associates in small corporate law firms. Dinners with clients and golf games at the country club are precluded by "personal" responsibilities. The entrance of women into the practice of law has been a major change in the composition of the profession. However, the experiences of women in solo and small firm practices suggest a commonality with most working women. Even professional women continue to be burdened with informal and unrecognized work that men successfully avoid.

Professional Ideologies and Practice Experiences

That solo and small firm legal practices have changed little in the past 30 years is a significant finding. Despite complaints from the leaders of the American bar, the media, and the public that there is a crisis of legal professionalism,[8] Seron shows us that few attorneys stray far from the accepted norms of "professional" practices. The view that "all attorneys advertise" apparently stems from a small number of lawyers who attempt to saturate their target markets with advertisements. The question that remains, then, is why more attorneys don't exploit the postindustrial opportunities available to them and become mass producers of legal services.

Seron's answer to this "irony" is that professional norms mitigate against such a development (p. 68). To set up her argument, in the first chapter of the book Seron suggests that all attorneys share the experiences of law school. "The profession's control over legal training acts as a strong social hedge against innovative alternatives in legal practice" (pp. 7–8). In her concluding chapter Seron also connects attorney experiences with the history of professionalization (professional projects) of law.

While this argument may be plausible, Seron does not offer any empirical or theoretical connections between law school training and attorney practices. One such connection may be the practice experiences of the attorneys. Experimenters, as the

[8] On this topic see Seron's (p. 144) brief discussion and Budiansky et al. 1995; Solomon 1992; and Van Hoy 1993.

name suggests, have often tried various means of advertising and organizational or technological innovations. These lawyers tend to adopt the practices that appear to be beneficial and drop those that do not. Interviews I conducted with solo and small firm lawyers in Chicago during 1991–92 (using Carlin's [1994] interview schedule) support this explanation (Van Hoy 1997). Because personal services attorneys perceive competition for clients to be intensifying, they are often willing to try new forms of gaining clients. But through what they perceive as negative experiences, solo and small firm attorneys often conclude that the benefit of the new strategies is not worth the cost. For example, a solo practicing divorce lawyer in Chicago who had been affiliated with a prepaid legal services plan complained that he "could lose money on my own without taking [those] cases." Other attorneys describe referral services as providing "real marginal" clients. Personal services attorneys who have advertised in newspapers or real estate brochures found that "those haven't gotten me a penny."

The attorneys who do advertise heavily and develop mass production practices tend to be players in specialized market niches—most notably plaintiff's personal injury lawyers and franchise law firms[9] (Van Hoy 1996, 1997). Both franchise law firms and plaintiff's attorneys have found that for advertising to be effective, the potential market for clients must be saturated. Therefore, although attorneys gained the legal right to advertise in the 1970s, not all attorneys are in a position to advertise effectively. Mass advertising, particularly on television, requires access to significant start-up capital. And such advertising, if successful, may necessitate the hiring of support staff and other organizational changes. This is why franchise law firms often develop management companies that seek investments from nonlawyers and then funnel the money back to the law firm. Alternatively, some franchise law firms are funded by selling equity stakes in branch offices to managing attorneys (Van Hoy 1997).

In an ongoing study of plaintiff's personal injury attorneys in Indiana, I have found that those who advertise most (on television, radio, billboards, etc.) are often in firms where the attorneys can pool their resources to cover the start-up costs and share any risks. Another strategy some plaintiff's firms are implementing involves seeking bank loans to cover capital costs. Plaintiff's personal injury attorneys are in a particularly good position to benefit from mass advertising. They are seeking clients with specific problems or experiences and can offer services on a contingency fee basis. Nonetheless, most plaintiff's attorneys still do not advertise on television, radio, or billboards. In Indiana it is still

[9] What I call franchise law firms are also sometimes referred to as large legal clinics. These are personal services law firms that provide standardized legal services through networks of store-front law offices (see Van Hoy 1995, 1997).

common to rely on former clients, attorneys, and reputations to gain access to clients (Van Hoy 1996).

It also seems that mass advertising does not dictate the style of organization a plaintiff's law firm may develop. Some plaintiff's firms using mass advertising do not employ mass production techniques for handling cases. Nor do they regularly settle large volumes of cases expeditiously. Instead, these firms employ a number of secretaries and paralegals who screen cases for characteristics such as large damages and clear liability (Van Hoy 1996). Also, as Carlin shows, attorneys may have "mass production" styles of practice without engaging in large-scale advertising. In my Chicago study I found that many residential real estate and will/estate specialists have highly routinized practices with little use of advertising (because they rely on brokers for client referrals). For example, the routine nature of residential real estate practices in Chicago allows these attorneys to turn a file over to their office staff "and not look at it again until you go to the closing" (Van Hoy 1997).

What I am suggesting is that the level of "innovation" among solo and small firm lawyers is patterned by attorney experiences, resources, and areas of practice specialization as well as by professional ideologies. When faced with the choice of making costly—and uncertain—investments in advertising or doing very little, most attorneys choose the risk-averse path. Unless a contingency fee is involved, mass advertising and volume legal practices often compete on the basis of price rather than quality of service. When competition emphasizes the cost of services, profit margins on each case may be very small. By emphasizing the personalistic quality of services they deliver, many attorneys are avoiding this more intense price competition. These attorneys justify charging higher fees by spending more time "holding hands and stroking" fewer clients (Van Hoy 1997).

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Seron shows that ideological orientations are an important part of understanding the practice dynamics of personal services attorneys. While most attorneys approach their work according to some set of "professional" norms, a small number of attorneys identify themselves with a movement toward business planning and efficiency. But reading Seron and Carlin together reminds us that ideologies are only one piece of this puzzle. Seron's emphasis on professional orientations tends to assume that all attorneys have equal access to resources such as advertising, new technology, and differing styles of firm organization. In reality the types of clients one serves, access to capital, and levels/types of competition within areas of specialization mediate access to these resources along with ideological orientations. Future research should attempt to put these equally important pieces together.

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