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# CONDITIONALS OF BAR HARMONY: PERSPECTIVES ON NORTH DAKOTA LAWYERS\*

ALBERT P. MALONE\*\*

## I. INTRODUCTION

Available studies point to the conclusion that the metropolitan bar is a highly stratified professional community. Substantial and persistent differences in type of practice, clientele represented, firm recruitment practices, and bar participation divided the bar into informal status groupings. Large firm lawyers possessing the highest average income, representing the wealthy and high status clients, and having the greatest contact with the higher echelons of government generally compose the elite class of lawyers. Conversely, individual practitioners and small-firm attorneys generally command the lowest incomes, tend to represent the less affluent and low status clients, and confine their courtroom appearances to courts of first instance. Class differences in the New York City bar, for example, are sharp and the different strata of lawyers live and work in isolation. Many non-elite lawyers are hostile toward bar associations allegedly controlled by the elite lawyers.<sup>1</sup>

Yet the extent of stratification found in the studied metropolitan bars cannot be generalized to all communities. Professor Handler's study of a middle-sized midwestern community bar, fictitiously named Prairie City, indicates that, although stratification is present, the stratification system is more fluid than that found in

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\* This is a revised version of a report entitled: A. MELONE, L. BRAUD, B. OUGH, NORTH DAKOTA LAWYERS: MAPPING THE SOCIO-POLITICAL DIMENSIONS (North Dakota Institute for Regional Studies, North Dakota State University, Social Science Report, 2d Series, No. 1, 1975). The tables have been removed at the request of the editors. For complete statistical documentation see the original report.

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1. See generally J. CARLIN, LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO (1962) [hereinafter cited as CARLIN]; J. CARLIN, LAWYERS ETHICS: A SURVEY OF THE NEW YORK CITY BAR (1966); Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 AM. SOC. REV. 47-54 (1963); Ladinsky, *The Impact of Social Background of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127-44 (1963); A. L. WOOD, CRIMINAL LAWYERS (1967); E. SMIGEL, THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN? (1964) [hereinafter cited as SMIGEL]; M. J. GREEN, THE OTHER GOVERNMENT: THE UNSEEN POWER OF WASHINGTON LAWYERS (1975).

the New York City bar. In addition to greater social and economic homogeneity, Prairie City lawyers, unlike the metropolitan lawyers studied, are linked by work and social contacts, by greater physical proximity, and by fuller participation in local bar association affairs.<sup>2</sup>

The Wells study of the Carr law firm of Manchester, Iowa, is also helpful. Wells found that small-town Iowa lawyers have individuals for clients rather than the business or corporate clients of the high status metropolitan lawyers. Less than 10 per cent of the sample of small-town Iowa lawyers had a practice which could be described as statewide. Legal specialization was not the typical small-town pattern and very few of these practitioners had firms larger than two or three lawyers.<sup>3</sup>

This article analyzes data on the legal profession in North Dakota, one of the nation's most rural states. During the fall of 1972, data for this study was obtained from three sources: *The 1971 Lawyer Statistical Report*,<sup>4</sup> the 1971 edition of the *Martindale-Hubbell Law Directory*,<sup>5</sup> and a mail questionnaire sent to all attorneys then currently licensed in North Dakota.<sup>6</sup> We find that those conditions normally associated with the rather desperate and abased picture of the urban attorney competing in a stratified and isolated environment are, for the most part, absent in North Dakota. The evidence tends to support the notion that the North Dakota legal profession possesses the requisites for bar harmony.

## II. SOCIO-DEMOGRAPHIC FACTORS

### A. LAWYERS PER CAPITA

With approximately 800 lawyers in the state, North Dakota ranks 46th nationally in lawyers per capita with a ratio of 1 to 764 compared

2. J. HANDLER, *THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE SIZED CITY* 69 (1967) [hereinafter cited as HANDLER].

3. Wells, *The Legal Profession and Political Ideology: The Case of the Carr Law Firm of Manchester, Iowa*, 211-13 (unpublished Ph.D. dissertation, Univ. of Iowa, 1963) [hereinafter cited as Wells].

4. *THE 1971 LAWYER STATISTICAL REPORT* (B. Sikes, C. Carson, and P. Goral, ed., 1972) [hereinafter cited as *THE 1971 LAWYER STATISTICAL REPORT*]. The Report was utilized to compare the socio-demographic characteristics of all North Dakota lawyers to all U.S. lawyers.

5. *III MARTINDALE-HUBBELL LAW DIRECTORY* (1971). This source was useful in obtaining discrete data on lawyer ratings, net worth, style of practice, specialization, clientele and other relevant characteristics.

6. The questionnaire data and the *MARTINDALE-HUBBELL LAW DIRECTORY* were used to identify relationships and conditions associated with conflict and harmony within the legal fraternity and lawyer involvement in politics. An unusually high return rate of 45 per cent of the North Dakota lawyers responded to the questionnaire. It should be noted, however, that too few older and too few female attorneys responded to constitute an ideal sample. Yet, so far as style of practice and size of town are concerned, we have a "good fit" with the known population. While some caution is required, the survey is sufficiently representative of the known population to warrant guarded generalizations. The questionnaire, tables, and complete codebook are provided in the original report.

with a national ratio of 1 to 572.<sup>7</sup> The national ratio suggests that North Dakota could easily employ substantially more lawyers if a predominantly agricultural state has the same need for legal activities as more economically diversified regions. Most North Dakota attorneys do, in fact, practice in the more densely populated areas, suggesting that commercial, rather than agricultural, activity supplies the need for legal services.

Two-thirds of the lawyers practice in the 10 cities of 10,000 or more, containing only 56 percent of the state's population, but fewer than 7 percent practice in communities under 1,000 even though these areas contain over 18 percent of the total population. The volume and kind of commercial activity in the smaller communities probably explains this fact. For example, small towns with a single service station, a general store, an elevator, and perhaps a bar and grill simply do not need and cannot support many attorneys. More legal services are needed in locales with banks, wholesale distributors, retail, and trade enterprises.

Sexual equality has long been an issue. Even before Iowa led the way by admitting women to the bar in 1869, first Michigan, and later Yale and Cornell, had opened their law schools to women. Nevertheless, women have traditionally constituted a small proportion of the legal profession, in part because of discrimination by bar associations and the profession itself. Even today, many of the nation's large firms refuse to interview women.<sup>8</sup> Only 2.2 percent of North Dakota lawyers are women; this is not significantly below the national average of 2.8 percent.<sup>9</sup>

All professions need newcomers to replenish their ranks. Moreover, as the demand for services increases, more young professionals are needed. In this respect the legal profession, both nationally and in North Dakota, is in an excellent position. Slightly over 70 percent of all U. S. lawyers are under the age of 56; in North Dakota the figure is even higher, 74.3 percent. Although for several decades the state has steadily lost population, young people enter the North Dakota legal profession at a rate comparable to the national average.

Although the youthful character of the bar is healthy from an organizational viewpoint, we doubt that this will result in radical changes within the profession. Much has been written about the new genera-

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7. THE 1971 LAWYER STATISTICAL REPORT at 26.

8. See generally J. BERNARD, WOMEN AND THE PUBLIC INTEREST (1971); A. BLAUSTEIN & C. PORTER, THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION 29-32 (1954); SMIGEL, *supra* note 1, at 46-47; G. MARTIN, CAUSES AND CONFLICTS: THE CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 1870-1970, at 245 (1970); Read & Peterson, *Sex Discrimination in Law School Placement*, 18 WAYNE L. REV. 639 (1972); Sassower, *The Legal Profession and Women's Rights*, 25 RUTGERS L. REV. 54 (1970).

9. As of fall semester, 1975, however, there are 50 women enrolled at the University of North Dakota School of Law.

tion of radical lawyers. These young people allegedly constitute a new reform movement within the profession.<sup>10</sup> However, this so-called radical movement has probably been over estimated, as a recent study of Chicago area law students suggests.<sup>11</sup> It is difficult to believe that North Dakota law students are any more committed to change than those interviewed in Chicago.<sup>12</sup>

## B. EDUCATION

Education is another factor profoundly affecting the character of the legal profession. Indeed, improving standards for admission to law school was one reason for the establishment of the nation's first bar associations.<sup>13</sup> Commercial and industrial development resulted in a consequent growth in the legal profession. There were few standards requisite for admission to the bar apart from residency, age, and good character until 1921 when the American Bar Association attempted to establish the standard of two years of pre-legal college study and three years of formal legal education. Though none of the state admission boards immediately adhered to standards that high, by 1950, 45 of the 49 jurisdictions and 164 of the 169 law schools did meet this ABA requirement.<sup>14</sup>

Until very recently one could become a member of the North Dakota bar by completing two years in a reputable American college and by studying law for three full calendar years in the office of a member of the bar, or with, or under, the immediate direction of a judge of the supreme court, district court, or county court of increased jurisdiction. The candidate then was admitted upon motion before the supreme court, or by examination of the state bar board.<sup>15</sup> Today those aspiring to be North Dakota lawyers must complete three years of undergraduate training prior to beginning a three-year, full-time or equivalent part-time course, in law school. Or they must complete two full years of undergraduate education prior to beginning a four-year, full-time or equivalent part-time course in law, resulting in a bachelor of law or equivalent degree.<sup>16</sup> The law school graduate must then pass a bar examination administered by the state bar board.<sup>17</sup> It should be noted, however, that the University of

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10. LAW AGAINST THE PEOPLE: ESSAYS TO DEMYSTIFY LAW, ORDER AND THE COURTS (R. Lefcourt ed. 1971).

11. Becker & Meyers, *A Survey of Chicago Law Students and Career Expectations*, 67 NW. U.L. REV. 628, 642 (1973).

12. While one might suppose that different law schools will have differing effects upon their products, the evidence suggests that no such relationship is apparent. See Melone, *Legal Education and Judicial Decisions: Some Negative Findings*, J. LEGAL ED. 566-79 (1974); Nagel, *Multiple Correlation of Judicial Backgrounds and Decisions*, 2 FLA. ST. U.L. REV. 258, 270 (1974).

13. G. WINTERS, BAR ASSOCIATION ORGANIZATIONS AND ACTIVITIES 89 (1954).

14. *Id.* at 90.

15. N.D. CENT. CODE § 27-11-03(1) (1974).

16. N.D. CENT. CODE § 27-11-03(2) (1974).

17. *Id.*

North Dakota School of Law, like most law schools, will not admit a student without a bachelor's degree. In addition to the resulting rise in average educational attainment, we can expect, because of the recent increase in applications, that law schools will be more selective in admission qualifications, thereby assuring a higher level of under-graduate scholastic performance from future members of the bar.

Although 91 percent of all American attorneys have attended college, only 73 percent of all American, and 69 percent of all North Dakota lawyers, are college graduates. These figures probably reflect the prevalence of the three years of college preparation pattern of the past since 97 percent of all lawyers, and 93 percent of North Dakota practitioners have attended law school. Likewise, the percent of law school graduates, as distinct from lawyers who attended law school but did not graduate, is slightly lower in North Dakota. Nationally about 93 percent of all attorneys graduated from law school, but only 89 percent of North Dakota lawyers are law school graduates. These slight but statistically significant differences may reflect the late settlement and statehood of North Dakota. In any event, given the current bar admission standards, a similar proportion of North Dakota lawyers will soon possess formal legal training.

### C. STRATIFICATION

As previously noted, the legal profession, like the medical profession stratifies its members into differentiated classes. Studies conducted in large urban centers have found that the style of legal practice, that is, whether an attorney is an individual practitioner, a member of a small firm or of a large firm, is an excellent indicator of probable status, income and prestige. There are also some indications that public sector attorneys comprise still another stratum.

The classic study of individual practitioners was conducted in Chicago where it was found that such practitioners tended to work in bitter isolation from their law firm brethren. They tended to be members of ethnic and religious minorities, graduates of low-prestige law schools, resentful toward bar association leadership and performed the "dirty work of the profession."<sup>18</sup> The "dirty work" includes criminal matters, matrimonial disputes, debt collection, and personal injury cases. The solo practitioners suffer a great deal of competition from within the legal profession and from such outsiders as accountants, real estate brokers, and marriage counselors.<sup>19</sup>

Metropolitan large-firm lawyers, as distinct from individual practitioners and small-firm attorneys, tend to be Protestant and of Bri-

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18. CARLIN, *supra* note 1, at 168.

19. *Id.* at 41-116.

tish, Irish and Northwest European origin. Their fathers are generally of high socio-economic status and these large-firm lawyers usually have attended more prestigious schools, including Ivy League schools.<sup>20</sup> In a studied middle-sized community, it was found that most lawyers shared many common social background characteristics,<sup>21</sup> yet, as in other communities, large and small, the large firm lawyers enjoyed wealthier clients than did the solo practitioners. Large-firm lawyers usually have corporate clients and resist accepting low-status cases such as criminal, matrimonial, and personal injury matters.

The greater opportunity to specialize seems to be the best factor in explaining this difference between firm lawyers and sole practitioners. Although there is some evidence of stratification among various sizes and types of partnership arrangements, the principal differentiation is apparently between individual practice and the partnership style.<sup>22</sup>

The adversary system creates an institutional antagonism between the private- and public-sector attorney. Whether he be legislator, executive, judge, or government attorney, the public-sector attorney is expected to represent the public interest. Private-sector attorneys, including sole practitioners, partners, associates, and house counsel for businesses or corporations, owe a duty to their clients which may operate against popular opinion and prevailing conceptions of the common good. Additionally, there is some evidence that private practitioners are suspicious of the public-sector attorneys.<sup>23</sup> It may well be that government attorneys, because they are salaried, are disparaged by those in private practice who have opportunities for substantially higher incomes.

The style of practice figures for North Dakota show minimal internal bar conflict within the state. Over half of the lawyers in the state belong to partnerships, whereas fewer than 40 percent on the national level are engaged in this desirable style of practice. Hence, both the lawyer and the public may fare better in North Dakota. Associates of firms comprise 10.5 percent of the nation's private-practice attorneys while in North Dakota the figure is only 3.6 percent. We will explore differences among private practitioners in greater detail at a later point. But upon first inspection it can be argued that, relatively speaking, the general picture for North Dakota private practitioners is very good. Most are in partnerships, presumably

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20. CARLIN, *supra* note 1, at 28-32; SMIGEL, *supra* note 1, at 36-60.

21. HANDLER, *supra* note 2, at 45.

22. A summary of various studies concerning bar stratification is found in Melone, *Lawyers and the Republic: The American Bar Association and Public Policy* 57-106 (unpublished Ph.D. dissertation, Univ. of Iowa, 1972) [hereinafter cited as Melone].

23. See, e.g., B. TWISS, *LAWYERS AND THE CONSTITUTION* (1942); Editorial, *A Dangerous Tendency*, 37 A.B.A.J. 915 (1951), cited in J. SCHMIDHAUSER, *CONSTITUTIONAL LAW IN THE POLITICAL PROCESS* 281-82 (1963).

affording them a more congenial work situation than that enjoyed by many attorneys in large metropolitan areas of the nation.

Some lawyers choose employment in private concerns rather than the traditional private legal practice. These individuals work in private industry, education, or an assortment of occupations in which legal skills are deemed useful. Only 12.4 percent of the nation's attorneys elect this path, while in North Dakota the figure is even lower—7.4 percent. Perhaps the low figure in North Dakota is due to the relative lack of economic diversity and, therefore, fewer opportunities to be employed by private concerns. Alternatively, these figures may reflect the beneficial conditions for practicing attorneys in the state.

Public-sector attorneys (judicial, executive, and legislative) constitute a greater percentage of the North Dakota bar than the nationwide figures for all lawyers. The 28.1 percent figure for North Dakota, when compared to 14.3 percent for all U.S. lawyers, may represent a healthy condition for the state. Theoretically, public-sector attorneys quite properly serve the interests of their clients. Since public and private interests sometimes clash, the relatively high percentage of public-sector attorneys may counter the occasional excessive zeal of private attorneys serving their client's special interests.

#### D. ETHICAL AND RELIGIOUS CONSIDERATIONS

A complete enumeration of the ethnic background and religious preferences of North Dakota attorneys is not available. As expected, however, the results from our mail questionnaire indicate what appears to be a relatively high rate of ethnic and religious homogeneity. Over 70 percent of the respondents are Northern European and 66.3 percent are Protestant. Less than 1 percent are Southern European and only 29.4 percent are Catholic. The Scandinavians amount to 28.2 percent of the total, while Jewish attorneys amount to less than 1 percent. Only one North American Indian responded to the survey.

Because of their shared ethnic and religious experiences, it is probable that North Dakota attorneys are less apt to become embroiled in internal controversies stemming from social biases. Contrary to the findings in Chicago and New York, there is less chance for North Dakota attorneys to create social distinctions based on ethnic and religious affiliations. This relative lack of ethnic and religious heterogeneity may contribute to a cohesive and harmonious bar.

#### E. SUMMARY

In summary, several socio-demographic factors suggest that the North Dakota legal profession is relatively free from those condi-



tions contributing to internal conflict and dissent. There is little evidence to indicate great heterogeneity among North Dakota lawyers in terms of population distribution, age, sex, ethnic, and religious affiliation. Two factors, however, remain as potential sources of conflict, and consistently appear as contributors to bar stratification elsewhere. They are legal education and style of private practice. The data for North Dakota indicate that this state is different.

### III. ELEMENTS OF POTENTIAL CONFLICT

#### A. EFFECT OF LAW SCHOOL ATTENDED

Large law firms across the country carefully select individuals for employment; the law school attended is an important factor in the selection process.<sup>24</sup> The University of North Dakota School of Law, North Dakota's only law school, produces over 70 percent of the state's lawyers. Most of the remainder attended law school out of state, some at prestige law schools. It is difficult to determine accurately what is a prestige law school, but certain schools do appear repeatedly on lists of prestige law schools. They include Harvard, Yale, Columbia, Cornell, Pennsylvania, Chicago, Michigan, and Virginia.

In view of the importance nationally of legal education as a source of social stratification within the bar, is this factor also operative in North Dakota? Do out-of-state graduates differ from University of North Dakota graduates? Are prestige law school graduates more successful? The independent variables used in measuring success were the net worth of the lawyers, clients, legal specializations, ratings of each lawyer, domain of legal practice, style of practice, and law firm status.

Unlike the urban situation, the type of law school attended makes little difference in North Dakota. Neither net worth, kind of clientele, type of specialized practice, or public versus private practice bear any significant relation to the law school attended.<sup>25</sup> Though these results again support the emerging picture of a far more homogeneous and harmonious bar in North Dakota, some of the other findings more nearly conform to the national picture.

*The Martindale-Hubbell Law Directory* rates lawyers according to their "legal ability," even though objective rules of determining legal ability admittedly cannot be formulated. According to the Martindale-Hubbell Company, the *Law Directory* endeavors to reflect a consensus of reliable opinions obtained from a variety of sources.

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24. SMIGEL, *supra* note 1, at 315.

25. For a discussion of the statistically insufficient variables see A. MELONE, L. BRAUD & B. OUGH, *NORTH DAKOTA LAWYERS: MAPPING THE SOCIO-POLITICAL DIMENSIONS* 5-6 (1975).

There are three basic ratings. A lawyer first becomes eligible for a "C" (fair) rating after practicing law for a minimum of three years. Five years of practice is required for the "B" (high) rating. And a minimum of ten years for the "A" (very high) rating. The absence of a rating should not be interpreted as an unfavorable assessment since the company does not attempt to publish ratings for all lawyers.

The ratings are presumably used by fellow attorneys when referring clients and hence may be used as an indicator of success in the practice of law. Some lawyers have objected to the ratings and at least one North Dakota lawyer has sued the Martindale-Hubbell company for defamation of character.<sup>26</sup> Whatever the difficulties in assessing legal ability, the *Martindale-Hubbell Law Directory* provides a useful method for assessing the relationship between educational background and legal "ability." Interestingly enough, North Dakota lawyers display no meaningful differences between their educational background and their legal ability ratings. There is a slight tendency for the graduates of out-of-state law schools to have a higher rating, but University of North Dakota graduates have the highest percentage of "B" (high) ratings and the differences are not very great. For example, slightly less than 42 percent of out-of-state graduates, 40 percent of the non-graduates, and over 38 percent of the UND graduates have "A" (very high) ratings. Thus, less than four percentage points separate the extremes.

The relationship between legal education and the style of private practice displays a very slight advantage for the out-of-state and prestige law school graduates. Our three-fold classification for examining differences within the private sector of the bar—sole practitioners, two-to four-member firm, or five or more—yields findings which meet our expectations.

Style of practice and educational background do conform to national patterns as far as non-degree lawyers are concerned, 80 percent of whom are sole practitioners. Yet, when University of North Dakota and out-of-state graduates are compared, there is little difference, with 53 and 50 percent of the University of North Dakota and out-of-state graduates in private practice as sole practitioners. Since a slightly higher percentage of out-of-state graduates are in large firms (five percent or more), than either the University of North Dakota graduates or those without a law degree, apparently, out-of-state graduates have a slight advantage in securing positions in a large law firm.

Although not statistically significant, this same relationship holds for prestige and non-prestige law school graduates with 31 percent of

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26. *Ellsworth v. Martindale-Hubbell Law Directory, Inc.*, 66 N.D. 578, 268 N.W. 400 (1936).

the prestige and only 13.0 percent of the non-prestige law school graduates being associated with large law firms. Moreover, being an out-of-state or prestige law school graduate is not associated with obtaining partnership status within law firms. Indeed, though the differences are not very great, both University of North Dakota and non-prestige law school alumni are better represented in the partnership ranks than are out-of-state and prestige law school graduates.

The findings point to the conclusion that, contrary to the situation in large urban settings, legal education does not contribute dramatically to success differences of North Dakota lawyers. Graduates of a prestige law school are not placed in a position of significant advantage over University of North Dakota graduates. Out-of-state graduates have a very moderate advantage over University of North Dakota graduates in possessing high legal ratings and affiliations with large law firms. Thus, when all seven success measures are compared, it is clear that the North Dakota bar is remarkably homogeneous and should be free of many of the hostilities characteristically associated with differences in legal education background.

#### B. STYLE OF PRACTICE

Heretofore, we have viewed style of practice as a possible effect of bar stratification, as the dependent variable. We now focus on style of practice as a possible source of conflict, as an independent variable. We do so because, as already noted, research conducted in large urban centers indicates that sole practitioners, as distinguished from firm lawyers, constitute something of a lower class within the legal profession. Coming from relatively disadvantaged social backgrounds, attending the less prestigious law schools, often with undistinguished academic records, and dealing with the least desirable clientele, individual practitioners usually earn considerably less money in performing what legal sociologist Jerome Carlin has termed the "dirty work of the profession." Success is often measured by membership in a large law firm, specializing in corporate and property matters, confining courtroom appearances to the appellate benches and having clients among the rich and the well-born. Small-firm attorneys could be viewed as occupying the profession's middle class since, although they do not usually serve the wealthiest clients, they do engage in some specialization. What is the case in North Dakota? Are individual practitioners less successful than small and large law firm lawyers?

#### C. NET WORTH, ABILITY RATINGS, AND SPECIALIZATION

While it is a crude measure, an analysis of comparative net worths indicates that sole practitioners do not differ significantly

from firm attorneys. Though the *Martindale-Hubbell Law Directory* lists net worth for less than half of the private practitioners in the state, the incompleteness of the data is undoubtedly offset by the fact that a slightly greater percentage of sole practitioners have a larger net worth than do partnership attorneys.

Ability ratings, like net worth, seem to bear little relation to style of practice, though a higher percentage of large-firm attorneys have "A" ratings than do small-firm attorneys, and the differences are statistically significant. But the sole practitioners, with nearly 47 percent "A" ratings, are five percentage points below the large firm members.

As would be expected, there is a significant difference between the kind of legal work done by the firm specialist and by almost half of the sole practitioners. The latter report their specializations in the *Martindale-Hubbell Law Directory* as being criminal law, collection, matrimonial matters, personal injury and trial work. These specialities are generally regarded in the large urban centers as low-status endeavors. The small-firm lawyer percentage is 36 and the figure for the large firm attorney is even lower, 23.7 percent. The figures for high-status specializations indicate a somewhat similar pattern. About 61 percent of the large-firm lawyers, 36.5 percent of the small-firm attorneys and 32.7 percent of the sole practitioners list high-status specializations. A noteworthy finding is the slight difference between small-firm and sole practitioners. Perhaps in this respect North Dakota sole practitioners and small-firm lawyers have more in common than attorneys elsewhere.

The general practice category may be subject to misinterpretation. Erwin Smigel indicates that when a large-firm lawyer says he is in general practice, he really means business law.<sup>27</sup> There is no evidence that the same can be said for sole practitioners and small-firm lawyers. Therefore, while it might be safe to include the 15.8 percent of the large-firm lawyers who state that they are general practitioners in the high-status category, the same interpretation cannot safely be applied to the sole practitioners and the small-firm lawyers. On the other hand, it is well to remember that insofar as status is conferred by the income derived from a particular class of client, there is apparently no such status difference in North Dakota, for as already noted there is no significant difference in net worth between sole and firm practitioners.

The variation in representative clients is the most dramatic difference found between the various styles of private practice. Sixty-seven percent of the large-firm lawyers, compared to 40 percent of the small-firm lawyers, and 17 percent of the sole attorneys, list

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27. SMIGEL, *supra* note 1, at 150.

"Fortune Directory" enterprises as representative clients. Clearly, the large firm has a decided advantage over the small firm and sole practitioners. The large firm attracts, for whatever reasons, the wealthier clients, if not the larger fees from within the economic system.

Thus of all the indicators of success, only legal specialization and client status vary with style of practice. The first of these, specialization, is an indicator which, to some degree, might be expected to differentiate a firm composed of specialists from an individual practicing alone. In view of the lack of specialization among single practitioners, it is also perhaps not surprising that the "Fortune Directory" firms seek out firms rather than individuals. It may even be asked whether, in an agricultural state, big, but distant industrial and financial clients confer much status upon the recipients of their business. Many local firms and individuals may well be better known and have more prestige in most North Dakota communities.

#### D. SUMMARY

Apparently there is a distinctive pattern of homogeneity among North Dakota lawyers which differentiates them from the urban attorneys upon whom most research has heretofore been focused. Since the heterogeneous bar of the urban and industrial regions manifests considerable tension and conflict within the profession, it is well to ask whether the absence of these differences in North Dakota is reflected in a similar absence of divisiveness and conflict within the legal profession of the state.

### IV. ATTITUDES TOWARD THE BAR

#### A. EFFECTS OF STRATIFICATION ON ATTITUDE

Divisions within the profession may be manifested in attitudes toward the organized bar. Carlin found in Chicago, for example, that some attorneys, especially those from the lower reaches of the bar, possess hostile feelings and attitudes toward bar leaders.<sup>28</sup> Additionally, since the American Bar Association on a national level generally represents the point of view of the lawyers in the urban large- and middle-size firms,<sup>29</sup> the attitude of North Dakota lawyers toward the American Bar Association should reflect the presence or absence within the North Dakota profession of those tensions present

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28. CARLIN, *supra* note 1, at 177-80. For a more contemporary commentary of conflict within the Chicago bar, see Royko, *Bar Association Hardly Model of Democracy*, *The Forum* (Fargo-Moorhead), June 16, 1975 at 4.

29. Melone, *supra* note 22, at 79-99; see also Melone, *System Support Politics and the Congressional Court of Appeals*, 51 N.D.L. REV. 600 (1975).

elsewhere. To identify the existence of negative attitudes toward the bar we asked North Dakota attorneys to respond to a series of questions about the North Dakota bar and the American Bar Association.

Although other research reports have intimated that there may be some relationship between law school background and attitudes toward the bar, the more compelling explanatory factor is style of private practice. However, in North Dakota, legal education is not related to differential attitudes toward the bar and perhaps more importantly, style of practice is not a sufficient condition for explaining bar attitudes. Thus North Dakota's attorneys are apparently quite different in that they lack the divisiveness usually generated by professional, economic and social differences.

This relative harmony might have been expected in view of the homogeneity of the people and the equalitarian character of the political and social background of the state. Differences within the bar do exist, however, and in view of the state's political history and the emphatic character of political issues in the past, it is not surprising that these differences are political rather than professional.

Almost 76 per cent responded affirmatively to the following question: "In your opinion, do the leaders of the North Dakota Bar Association generally share your views?" The responses indicated no significant differences among sole, small- and large-firm attorneys. Party affiliation, however, accounts for an important and statistically significant relationship. Democrats, whether they be sole, small- or large-firm attorneys, differ significantly from Republicans and independents in their opinions toward bar leaders. Fewer than 50 per cent of the sole and large law firm Democrats generally agree with the views of the leadership; Independents profess agreement by no less than 67 percent. The Republicans exhibit the highest rate of agreement, the lowest level being 86.9 percent. What emerges from these data is a heretofore unsubstantiated hypothesis, namely that party affiliation does affect lawyer attitudes toward the organized bar. Style of practice, while an important consideration elsewhere in analyzing bar stratification, is less important than party affiliation when measuring lawyer agreement with North Dakota bar leaders. This phenomenon is even more pronounced when assessing attitudes toward the American Bar Association.

The ABA is a nation-wide voluntary organization of lawyers. It is afforded high respect, unusual governmental access and presumably great influence. It purports to speak for the legal profession in America, although that assertion is subject to debate.<sup>30</sup> In the words of the Association's constitution its objective is "to apply its know-

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30. Melone, *supra* note 22, at 39-78.

ledge and experience in the field of the law to the promotion of the public good."<sup>31</sup>

As part of its regular activities the Association lobbies before state and federal legislatures in matters affecting not only the legal profession directly but also the whole range of issues facing the nation. For example, the ABA has testified before Congressional committees on Medicare, Presidential treaty making power, reapportionment, and anti-trust matters.<sup>32</sup> While in some circles the ABA has the image of a dispassionate observer, the evidence indicates that its recommendations are most often consistent with those offered by the big business community.<sup>33</sup> There is some evidence, moreover, that ABA leaders tend to be most representative of the middle- and large-size law firms whose clientele tend to be rich and powerful.<sup>34</sup> Consequently, in view of attitudes expressed toward the North Dakota Bar Association, there is an expectation of some hostility toward the ABA from those Democrats with "liberal" political leanings.

#### B. ATTITUDE OF NORTH DAKOTA LAWYERS TOWARD THE BAR

We asked North Dakota lawyers to outline their views toward the ABA. Forty-seven per cent of the respondents exhibited favorable responses, 16 per cent had ambivalent or indifferent feelings, and 36 per cent responded negatively. The following are some responses reflecting positive attitudes toward the ABA:

The ABA numbers about 155,000 members—about half of the practicing lawyers of the country. Its representative leadership is sincerely dedicated not only to the bread and butter interests of its membership but vitally interested in improving the ethical standards of lawyers and judges, providing legal services to the poor, promoting the adoption of many uniform state laws, preserving our constitutional system of government, improving the constitution by amendment where desirable, rendering low-cost legal services to those able to pay something but not the going rate, and striving to accomplish the ideal of "equal justice under the law."

The ABA provides a forum for a cross-section of the legal profession. Through the individual sections groups of like-minded lawyers are brought together to make group decisions and take group action on the decisions. The ABA is the only legal organization of national stature where lawyers interested in a specific area of the law can get the backing of a national organization for propositions they support.

I believe the Association is a desirable and necessary organization. Its publications are excellent, although I often

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31. ABA CONSTITUTION, art. I.

32. Melone, *supra* note 22, at 107-68.

33. Melone, *Agency Politics: The American Bar Association, Business and Public Policy* (1973) (paper presented at the Western Political Science Association Meetings).

34. Melone, *supra* note 22, at 84-98.

disagree with published views of writers and some positions of the ABA itself. I doubt if the ABA can ever be a reflection of law and lawyers, as we stand in mid-America. Yet, I believe that mid-America must be strongly represented and heard within the ABA.

I believe that it is far better to be an active, if somewhat disgruntled member of the ABA than to be a carping non-member who can contribute nothing. Further, I believe there is a tendency on the part of laymen to exaggerate the power and influence bar associations.

Representing an ambivalent or indifferent attitude are these:

I have been a member of the ABA for quite a number of years and do not think that I have derived any specific benefits from my membership other than having the opportunity to read a few articles each month that provide me with the current thinking on subjects in which I have little expertise. I do feel, however, that the ABA is making a conscientious effort to upgrade the profession and that it would behoove all lawyers to belong.

It presumes to represent all lawyers in the USA and thus misrepresents many.

However, lawyers of the USA need a national organization to represent them.

The following emphatic and colorful responses are among those expressing disapproval of the ABA:

I strongly feel that the ABA has come to be a "stooge" for the big firms representing large commercial and monopolistic interests. Only incidentally and as a "fringe benefit" has the general bar or public been the beneficiary of ABA activities. I would rate ABA functions as 70 per cent big business, and 30 per cent for general good.

I agree we do need a national bar association, in the interest of the bar and "All" of the public. In my opinion the ABA is no better than the AMA and they have a foul odor too.

Incredibly stodgy! Archaic! Pedantic! Controlled by the large, city law firms who respond to corporate clients—perpetuating a subtle corporate feudalism.

Unfortunately the ABA has taken a rather weak stand against unethical practice and conduct in court, disbarments, and the national disgrace that lawyers generally have brought upon themselves as a professional group. The convictions for income tax evasion, embezzlement and other crimes of lawyers is overwhelming. Politicians in high places and who are lawyers, as well as judges have committed crimes and have become involved in illegal and improper activity which reflects on every lawyer in the country.

These comments suggest some interesting reasons for intense conflict. The notion that the ABA represents the interests of the big



law firms and is not concerned with the plight of small-firm or individual practitioners is consistent with the suggestions elsewhere. Although a greater percentage of large-firm attorneys expressed positive ABA attitudes than either the small-firm or sole practitioners, these differences are not statistically significant.

On the other hand, party preference is associated with ABA attitudes. Whereas only 34.1 percent of the Democrats had positive attitudes toward the ABA, 53.3 and 52.2 percent of the Republicans and Independents were favorable and, unlike style of practice, the party preference relationship is statistically significant. Apparently party preference is the best predictor of attitudes toward the ABA. Unlike attitudes toward the North Dakota bar leaders, party preference alone and not a combination of party preference and style of practice suffices to explain the range of attitudes toward the ABA.

Sometimes the suggestion is offered that some law firms have a partisan political bias. They often hire only those attorneys who share their party and/or ideological proclivities. We asked North Dakota lawyers if they agreed that law firms are often identified as being Republican or Democrat. Thirty-seven percent responded positively. Sole-practicing Democrats are the only attorneys who differ significantly from their brethren. Interestingly, almost 63 percent of the Democrats who are also individual practitioners indicated that there are partisan law firms. This attitude is not reflected by small or large-firm Democrats, Republicans or Independents. Something about being a sole-practicing Democrat makes possible such a perception. Party preference is not, however, always a related factor in bar cohesion matters.

Style of practice is most closely related to membership in a local bar association; party preference and other independent variables are not. Unlike the state bar association, membership in local associations is voluntary.<sup>35</sup> Almost 52 percent of the surveyed attorneys belong to local associations. Approximately 27 percent of the sole practitioners, 60 percent of the small-firm, and 49.4 percent of the large-firm attorneys join such associations. Perhaps local bar associations possess relatively little influence within the bar and lack sufficient public visibility to cause large participation. Individual practitioners might either have little time for attending local bar association meetings or find these organizations to be of minimal assistance to their practice. The same might also be said for large-firm lawyers. The relatively high small-firm membership is an interesting finding. Perhaps as Carlin has suggested, the small firms constitute something of a middle class, and local associations may

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35. North Dakota in 1921 was the first state to integrate its bar. See D. MCKEAN, *THE INTEGRATED BAR* 23 (1968).

provide an opportunity for developing leadership. While small-firm attorneys may have some difficulty becoming bar leaders at the state or national level, the local scene may be open. This plausible hypothesis may be worthy of future research.

For years state and national bar associations have attempted to convince the public that nonpartisan selection of judges is desirable, but several attempts to legislate such a plan in North Dakota have failed. Although these plans purport to remove politics from judicial selection, the empirical findings suggest otherwise.<sup>36</sup> Additionally, the election process provides a method by which little-known attorneys can become known. Are there differences within the bar on this question? Obviously not. North Dakota attorneys are in overwhelming agreement with nonpartisan plans for judicial selection. Differences in style of practice and party preferences do not exhibit variation on this issue. Apparently, the lawyers have achieved a near consensus, an agreement not shared by North Dakota voters who have rejected altering the current mode of judicial selection.<sup>37</sup>

Do public-sector attorneys or those engaged in a mixed practice (public and private) have differing attitudes toward the bar than other attorneys? Because of differences in clientele and practical needs, the public-practice attorney may reasonably view the organized bar with some reserve. The data do not sustain this hypothesis. Public-sector attorneys agree with the views of the leaders of the North Dakota Bar Association at a 68.8 percent rate; this figure is not significantly lower than that of private and mixed-sector attorneys. But once again we find party preference to be the distinguishing factor. Democrats in both the public and private practice realms differ significantly from Republicans and Independents. Party preference is not a factor for those attorneys who combine a private and public practice, however.

With respect to the ABA, public- and mixed-practice attorneys turn out to have a somewhat higher rate of negative attitudes toward the American Bar Association. This difference, however, is not statistically significant as is also the case for party preference. Nor was there a difference with respect to approval of a nonpartisan plan of judicial selection. As a matter of fact, the public- and mixed-sector attorneys are in 100 percent agreement with such a proposal. At this point, one might conclude that there are no differences between private- and public-sector attorneys. But this is not the case.

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36. See R. WATSON & R. DOWNING, *THE POLITICS OF THE BENCH AND THE BAR: JUDICIAL SELECTION UNDER THE MISSOURI NONPARTISAN COURT PLAN* (1969).

37. Only small-firm Democrats demonstrated a statistically significant difference from Republicans and Independents. But even here the difference is not very great.

### C. SUMMARY

Sector of practice is apparently a good predictor with respect to membership in local bar associations. At a 20 percent rate, our public-sector respondents belong to local bar associations compared to the mixed-practice rate of 28 percent and the private-sector percentage of 56. Perhaps public-practice attorneys find local bar activities of little interest. Local bar groups may concentrate on matters primarily affecting private- but not public-practice attorneys.

Social background, clientele, legal education, specialization, and style of practice have all been related, in some fashion, to bar stratification and internal bar conflict. Except for the kind of practice and large corporate clients, style of practice did not differentiate significantly among North Dakota lawyers. The notion that there was a relative absence of socio-demographic conflict among North Dakota lawyers was confirmed when these data revealed no differences in attitude toward the ABA. On the other hand, political party preferences were revealed to be a significant source of cleavage within the North Dakota bar, as measured by attitudes toward North Dakota bar leaders and, especially, the ABA.

Bar conflict is possible to the extent that party preference is related to socio-economic issues. The obviously difficult task of the leadership's phrasing issues in apolitical terms may be an important requisite for the maintenance of cohesion within the bar. As relatively well-educated citizens, lawyers are aware of the implicit difficulties in separating political from non-political issues. An apolitical stance belongs primarily to the world of mythology; but nevertheless it is possible to avoid the "political thicket" until relative consensus is achieved on a given issue. This path may lack moral rectitude, but does diminish the probability of internal disunity.

## V. LAWYER INVOLVEMENT IN POLITICS

### A. WHY LAWYERS ARE INVOLVED IN POLITICS

Over the years several explanations for lawyer participation and dominance in politics have been proposed.<sup>38</sup> Alexis de Tocqueville thought that the social status of lawyers was the determining factor because they constituted the real and only aristocracy in America and were therefore called upon to occupy governmental seats of

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38. The several explanations have been summarized by Pedersen, *Lawyers in Politics: The Deviant Case of the Danish Folketing* (1969) (paper presented at the Conference on Comparative Legislative Behavior Research, the Univ. of Iowa. *Published in* COMPARATIVE LEGISLATIVE BEHAVIOR: FRONTIERS OF RESEARCH 25-63 (S. Patterson & J. Wahlke eds. 1972)). Our outline of the explanations is based upon Pedersen's original manuscript [hereinafter cited as Pederson].

power.<sup>39</sup> Others have maintained that lawyers have special skills not possessed by other occupational groups. These skills permit attorneys to plead effectively the cause of interested clients and to write and to interpret the law.<sup>40</sup> A third common explanation is that of economic independence. The lawyer is able to leave his profession for a time to pursue a political career without doing permanent damage to his career. As a matter of fact, participation in politics may aid his practice by providing wide but ethical advertisement.<sup>41</sup> And the last, but less common explanation, is the professional convergence proposition. If two professions share characteristics that are especially relevant to the performance of the other, then they are said to be convergent. Many lawyers tend to become politicians because law and politics are considered to be convergent professions.<sup>42</sup>

These various explanations are not mutually exclusive. But if they are sufficient explanations, lawyer dominance in politics should occur in any culture where these factors are present. Danish lawyers, however, enjoy all the attributes of American attorneys but they are not elected in overwhelming numbers to the Danish Folketing. Therefore, the so-called common explanations are not explanations at all. The explanation may be found in the differences between American political parties which tend to be pragmatic and the ideological and programmatic Danish party system. The lack of strong ideological beliefs permits U. S. lawyers to be elected from either major political party. The lawyer is after all a pragmatist. In a political culture where ideology is important, such as is in Denmark, lawyers may be viewed as part of a conservative coalition.<sup>43</sup>

The political culture argument is appealing. Alexis de Tocqueville's observation seems as applicable today as it was in the early 19th century:

Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question. Hence all parties are obliged to borrow, in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings. As most public men are or have been legal practitioners, they introduce the customs and technicalities of their profession into the management of public affairs. The jury extends this habit to all classes. The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice gradually pen-

39. A. TOCQUEVILLE, *DEMOCRACY IN AMERICA* 275-76 (1945) [hereinafter cited as TOCQUEVILLE].

40. D. MATHews, *THE SOCIAL BACKGROUND OF POLITICAL DECISION-MAKERS* 80-1 (1954).

41. See J. BARBER, *THE LAWMAKERS: RECRUITMENT AND ADAPTATION TO LEGISLATIVE LIFE* 67-70 (1965); Schlesinger, *Lawyers and American Politics: A Clarified View*, 1 *MIDWEST J. POL. SCI.* 26-39 (1957).

42. H. EULAU & J. SPRAGUE, *LAWYERS IN POLITICS: A STUDY IN PROFESSIONAL CONVERGENCE* (1964).

43. Pedersen, *supra* note 38.

etrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and tastes of judicial magistrates. The lawyers of the United States form a party which is but little feared and scarcely perceived, which has no badge peculiar to itself, which adapts itself with great flexibility to the exigencies of the time and accommodates itself without resistance to all the movements of the social body. But this party extends over the whole community and penetrates into all the classes which compose it; it acts upon the country imperceptibly, but finally fashions it to suit its own purposes.<sup>44</sup>

### B. EFFECT OF POLITICAL INVOLVEMENT

Conclusive evidence is not available to support Tocqueville's contention. Yet it is true that the Americans are one of the world's most litigious peoples. Besides affording lawyers high social prestige, our daily conversations are riddled with legalistic jargon and our political theory is saturated with legal terms and concepts. Within such a culture, lawyers and non-lawyers have a propensity to perceive the political world through legally-sensitive receptors. Given this cultural milieu, attorneys are ideally situated to define, alter and re-define the boundaries of legitimate political debate. North Dakota attorneys, whether they understand their important role in politics or not, thus carry a heavy political responsibility. It is appropriate, therefore, to ascertain which lawyers run for political office and what is the nature of lawyer involvement in North Dakota politics.

### C. BAR STRATIFICATION AND POLITICAL INVOLVEMENT

There is no significant relationship between age, law school affiliation, or clientele and running for political office.<sup>45</sup> Yet there are some noteworthy relationships.

Sole attorneys and firm practitioners are both involved in politics, but in different ways. The individual practitioner runs for office more frequently, but the firm attorney is more likely to participate in politics in other ways. It may be that firm lawyers find political contacts important while the sole practitioner values more the publicity. The prominence of individual practitioners in small towns, however, may provide relatively greater opportunities for them to seek office.

An expected and rather obvious finding is that public-sector attorneys report a lower incidence of running for elective political office and engaging in a variety of campaign activities than either private or mixed-sector attorneys. For the career public servant,

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44. TOCQUEVILLE, *supra* note 39, at 280 .

45. For a summary of various findings on political participation, see generally L. MILBRATH, *POLITICAL PARTICIPATION* (1965).

public visibility is not so desirable. Some of the public-sector attorneys have been elected or appointed to their positions and are, therefore, involved in political affairs. Though not always statistically significant, the private-sector attorneys uniformly outnumber the public attorneys in each of the political involvement categories. Perhaps many public-sector attorneys feel constrained by either lawful prohibition or convention from intense political activity.

There is little doubt that the attorneys surveyed have considerably more interest in politics than the general population. But the relationship between party preference and political involvement shows a marked similarity between attorneys and what is known about the general public. Independents are less concerned and less knowledgeable about politics than the party partisans.<sup>46</sup>

Independents differ considerably from Democrats and Republicans in general political interest, keeping abreast of political reporting, urging persons to vote for a particular political candidate, displaying political propaganda, engaging in political work and running for elective office. This relationship was further dramatized in responses to the question about party preference. Respondents were asked to rank themselves on an eight-point scale ranging from strong Democrat, weak Democrat, independent Democrat, Independent, independent Republican, weak Republican and strong Republican. The data indicate that the greater the sense of party identification, the greater is political involvement. This finding holds for each measure of political involvement. Measuring these factors for the general public would add little to what is already known. However, this may be the first time a large number of lawyers has been studied in this respect and the results suggest that lawyers are no different from the remainder of the population.

## VI. CONCLUSIONS

This report explored some basic questions concerning the legal profession in North Dakota. When compared to the profession in other parts of the nation, similarities as well as important differences were discovered.

For example, fewer attorneys per capita practice in North Dakota. Within the state, attorney location is associated with population density and economic considerations. Women are under-represented in the lawyer ranks at about the same percent as the national figure. Educationally, North Dakota attorneys are lagging slightly behind the national norm, though because of higher bar admission standards, this condition will soon change.

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46. A. CAMPBELL, P. CONVERSE, W. MILLER & D. STOKES, *THE AMERICAN VOTER* 142-45 (1960).

The conditions normally associated with stratification along economic and social lines are less prevalent in North Dakota than in other locations. Style of legal practice, ethnic and religious affiliations are less diverse—pointing to a relatively homogeneous bar. Yet this conclusion should be tempered by the knowledge that factors contributing to social stratification in large metropolitan areas may not be the same in a rural state such as North Dakota. For example, traditions may dictate that the family's nonprestigious alma mater should be attended. Influential and powerful cliques may exist which discriminate against outsiders. This study is not sensitive to such possibilities. In short, existence of conditions normally associated with bar stratification was not found, but this does not mean that stratification does not exist. It is clear, however, that because the various socio-demographic factors do not exhibit great variation, a minimum amount of internal bar conflict seems to exist.

Because there is only a very modest relationship between differences in legal education backgrounds and measures of success, internal bar conflict stemming from differences in legal education is, therefore, highly unlikely. The notion that variations in style of practice may lead to some difficulties is offset by equality in net worth among those engaged in various styles of practice even though, in client prestige, large-firm attorneys are more "successful" than small-firm and lone practitioners. It is doubtful that this difference can be a source of internal conflict since discussion with practicing attorneys suggests that, at present, internal bar conflict caused by factors normally associated with bar stratification are not prominent. The probable reason is economic; as one attorney put it: "There is enough business to go around." Since the North Dakota legal profession is not highly competitive, the functional role of bar stratification is unnecessary. Perhaps at some future time when the profession experiences over-population, North Dakota may exhibit the same characteristics as Chicago or New York. But for today, the situation appears relatively equalitarian and healthy.

The examination of attitudes toward the organized bar yielded some interesting results. Other researchers have found, in some fashion, a relationship between social background, legal education, specializations, clientele, style of practice, and negative attitudes toward the organized bar. Our research does not lead to the same conclusion for North Dakota. The findings point to an additional factor, which, with the possible exception of a study of a small-town Iowa law firm, has been overlooked.<sup>47</sup>

In North Dakota party preference and, to some extent, style of

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47. Wells, *supra* note 3.

practice are often related to negative bar attitudes. Democrats have a greater propensity to manifest negative attitudes toward the organized bar than either Republicans or Independents. Apparently, those identifying with a political party perceive bar association activities, at least in part, as involved in the political process. Certainly it is true that bar associations, generally, and the American Bar Association, in particular, have not avoided political involvement. The success of bar leadership in maintaining internal organization cohesion may depend upon how well they avoid direct confrontation over partisan and politically-explosive issues.

As expected, political involvement of North Dakota lawyers is high. In addition, findings support the public visibility argument. A higher percentage of sole practitioners report running for elective political office than either small- and large-firm attorneys. Individual practitioners may do so because they are in greater need of public exposure, given their relatively poor competitive position within the legal profession. Firm attorneys are more secure and, therefore, feel less need to overtly participate in electoral politics. Yet firm attorneys engage in behind the scene political work to a greater extent than do sole practitioners. In this way firm attorneys might establish valuable contacts without running for elective office. An additional but rather obvious finding is that public-sector attorneys report a lower incidence of running for elective political office and engage in less campaign activities than either private- or mixed-sector attorneys.

The relationship between intensity of party identification and political involvement is an interesting finding. In this respect lawyers do not differ from the rest of the population. Although it is safe to surmise that lawyers identifying themselves as independents have a much higher level of political involvement than the average citizen, the general pattern between intensity of party identification and political involvement is the same.

The importance of party preference to North Dakota lawyers is in harmony with findings assessing the impact of legal professionalism on congressional roll-call behavior.<sup>48</sup> It has been found that lawyers do not vote as a bloc on legislative matters. Presumably, something other than legal professionalism explains roll-call behavior. Despite rival explanations for voting behavior, the North Dakota case argues

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48. See generally, Schmidhauser, Berg & Melone, *The Impact of Judicial Decisions: New Dimensions in Supreme Court—Congressional Relations 1945-1968* 1971 WASH. U. L.Q. 209-51 (1971); Green, Schmidhauser, Berg, and Brady, *Lawyers in Congress: A New Look at Some Old Assumptions*, 26 W. POL. Q. 440-52 (1973); Brady, Schmidhauser, and Berg, *House Lawyers and Support for the Supreme Court*, 35 J. POL. 724-29 (1973); Derge, *The Lawyer as Decision-Maker in the American State Legislature*, 21 J. POL. 408-33 (1959); Schmidhauser, Berg and Green, *Judicial Secrecy and Institutionalized Legitimacy: Max Weber Revised*, 22 BUFF. L. REV. 867-85 (1978).



that lawyers are subject to the same partisan and ideological demands as other citizens.

This conclusion should not be interpreted as a denial of the importance of lawyers in politics. The evidence is not sufficient to concede the working hypothesis that lawyers have an extraordinary influence in political affairs. Nor is Tocqueville's observation denied that "lawyers form a party which is but little feared and scarcely perceived . . . but this party extends over the whole community and penetrates into all the classes which compose it; it acts upon the country imperceptibly, but finally fashions it to suit its own purposes."<sup>49</sup>

The conditions for relative bar harmony seem to be present in North Dakota. Only political affiliation significantly divides the lawyers. Perhaps in this respect, North Dakota attorneys are in the tradition of the state as a whole.<sup>50</sup>

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49. TOCQUEVILLE, *supra* note 39.

50. No doubt more research is needed. At present, additional reports have been presented at professional social science meetings. These papers are entitled: Melone, *Lawyer Recruitment in Politics: The Professional Factor in a Rural Setting*, prepared for the Annual Meeting of the Southwestern Political Science Association, held in conjunction with the Southwestern Social Science Association, at the Hotel Palacio del Rio and the Convention Center, San Antonio, Texas, March 27-29, 1975, and Melone and McDonald, *Lawyers in a Rural Setting: Mapping the Socio-Political Subculture*, paper presented at the 39th Annual Meeting of the Midwest Sociological Society, Chicago, April 9-12, 1975. These two papers address in detail lawyer recruitment in politics and whether the place of lawyer practice bears a significant relationship to success and attitudes. A third paper is planned which measures lawyer attitudes toward the use of social science information in the legal decision-making process. By the end of the decade, a new study taking into consideration the possible shortcomings in the present research and addressing additional questions relevant for both the legal community and scholars interested in the role of the bar may be hopefully undertaken.