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DECOLLECTIVIZATION AND DEMOCRACY: CURRENT LAW PRACTICE IN ROMANIA

KANDIS SCOTT*

The legal profession was organized on the principle of bourgeois individualism. The lawyer's activity is to beat the competition, chase after big fees and after clients, while despoiling justice. The rich lawyers exploit colleagues without clients.¹

Although some analysts would say this quote portrays the practice of law in both the United States and Romania today, it was written to describe the Romanian legal profession before the rise of the communist regime. The text may be an amusing, appalling, or exaggerated depiction of the avaricious lawyer, but after forty-five years of working in collectives, today's Romanian lawyers have moved towards 1944 practices with surprising ease. Equally impressive is that privatized law practice now so resembles U.S. solo and small-firm practice as to belie the influence of the communist past on the behavior of contemporary Romanian lawyers.

The correspondence between the two nations disappears upon comparison of their lawyers' participation in civil society. Despite similar economic justifications for community engagement, Romanian lawyers are largely non-participants while U.S. lawyers are active participants. Here the nations' political histories and cultures account for the difference. Although limited, this inertial vestige of the communist past is unfortunate: if Romanian lawyers were active in civil society, they would be important agents in the process of consolidating the new democracy. Those few Romanian lawyers who volunteer in civic organizations are advance scouts of a profession making the transition from communist control.

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1. See ALEXANDRU NEGOIȚĂ, ORGANIZAREA INSTANTELOR JUDECĂTOREȘTI 126 (1965).

Avocats are the sole focus of this Article. *Avocats* may represent clients in transactions and litigation in all courts without restriction as U.S. attorneys do.² In 2003 there were 12,880 *avocats* practicing in Romania, of which 10,488 were full lawyers and 2392 were apprentices who practiced only in lower courts.³ As in many other nations, Romanian law school graduates may choose among several career paths: notary public (*notar*)⁴; in-house or government lawyer (*jurisconsult*)⁵; lawyer or advocate (*avocat*)⁶; and prosecutor (*procuror*).⁷ Notaries are a small, exclusive segment earning large fees to authenticate signatures and draft certain documents. In-house counsels represent state enterprises and other organizations such as unions, and private businesses in all matters, including transactional work, litigation, and a limited kind of lobbying. By law, each in-house counsel may represent only his or her employer.⁸ A final kind of Romanian lawyer is the prosecutor. Romanian prosecutors have broad authority extending beyond criminal cases to encompass some tasks typically performed by a state attorney general in the United States.⁹ All these jurists and judges study the same material in the same undergraduate law schools.¹⁰ Only upon graduation do they make a choice of career and satisfy separate eligibility requirements, including entry examinations and further formal training in the case of judges.¹¹ Private

2. Here, *avocat* will be used interchangeably with attorney, practitioner, and lawyer in discussions about Romania; *avocat* will never be used, however, when referring to lawyers in the United States.

3. E-mail from Veronica Morecuț, Protocol Department Chief, Union of Romanian *Avocats*, to author (Sept. 2, 2003) (on file with author). For the county-by-county tally of Romanian *avocats*, see *infra* Appendix.

4. Lege No. 36, Monitorul Oficial No. 92, May 16, 1995 [hereinafter Law 36/1995].

5. Lege No. 514, Monitorul Oficial No. 867, Dec. 5, 2003 [hereinafter Law 514/2003], *abrogating* Decretul 143, Buletinul Oficial No. 8, Apr. 30, 1955 (in-house lawyers). *Jurisconsults* are also called *consilier juridic*. See e-mail from Cristiana I. Stoica, Senior Partner Stoica & Asociatii, to author (April 1, 2004) (on file with author).

6. Lege No. 51, Monitorul Oficial No. 116, June 9, 1995 [hereinafter Law 51/1995].

7. Lege No. 92, Monitorul Oficial No. 197, Aug. 13, 1992 [hereinafter Law 92/1992] (prosecutors); see NEGOTĂ, *supra* note 1, at 131 (these alternatives also existed under the communists).

8. Law 514/2003, *supra* note 5, art. 6.

9. Law 92/1992, *supra* note 7.

10. Romanian high school graduates complete their legal education in four years, as is true in most nations. See, e.g., MARY ANN GLENDON ET AL., *COMPARATIVE LEGAL TRADITIONS* 130 (2d ed. 1994).

11. New judges may study for two years at the National Institute of Magistrates or complete a two-year apprenticeship followed by an examination. Law 92/1992, *supra* note 7, arts. 46(f), 52.

tization of *avocats* eased the process of changing careers,¹² and some judges and prosecutors have since become *avocats*.

This Article briefly describes collectivized law practice in Romania and then summarizes the statutes that privatized the *avocats*' bar in 1995. Based on information garnered in interviews of *avocats* in four Romanian cities in 1999–2000¹³ and a variety of studies concerning U.S. lawyers, the Article describes the reality of Romanian law practice after privatization and compares it to practice under communism and to solo and small-firm U.S. practice.¹⁴ This discussion concludes by exploring Romanian practitioners' outlook on their profession. The Article specifically examines Romanian lawyers' civic participation and its importance in the future of democracy in Romania. The Appendix describes the research and the demographics of the interview subjects.

Romania, the largest country in the Balkans, boasts the natural beauty of the Black Sea coast, the rolling hills of Transylvania, and the Carpathian Mountains with their rushing rivers. In contrast, it has not enjoyed such a felicitous modern political history.¹⁵ After World War II, Romania fell into the Soviet Union's sphere of influence, an event long resented by a nation proud of its Romance language and its westward focus. Early in Romania's communist years, Communist Party Secretary Gheorghe Gheorghe-Dej instituted strong Stalinist policies and jailed most dissidents, thereby suppressing resistance to the state for decades. When Nicolae Ceaușescu took office, he extended the industrialization of this essentially agricultural nation. Once a darling of the West for condemning the Soviet incursion into Czechoslovakia, he soon lost the image of the reasonable, independent socialist and revealed himself as an authoritarian leader whose informers permeated society. Ceaușescu imposed enormous hardship on the citizens when he sought to repay the national debt by denying them consumer goods. Unlike other East Europeans, Romanians violently rejected

12. Law 51/1995, *supra* note 6, arts. 14, 17; Lege No. 51, Monitorul Oficial No. 113, Mar. 6, 2001, arts. 16(2)(b), 19(1) [hereinafter Law 51/1995 amended].

13. Because this research was federally funded and involved human subjects who were promised confidentiality, by law the subjects may not be identified. See 34 C.F.R. §§ 97.101(a), 102(f), 122 (2002). Much of the information in this Article is taken from these interviews and, because attribution or identification of the speaker would breach the obligation of confidentiality, it is footnoted only by reference to anonymous *avocats*. Interview notes, surveys, and compilations of them on file with author [hereinafter Interviews with Romanian *avocats*]. For further description of the interviews, see Appendix.

14. Interviews with Romanian *avocats*, *supra* note 13.

15. See, e.g., JOSEPH HELD, DICTIONARY OF EASTERN EUROPEAN HISTORY SINCE 1945, at 23, 379 (1994); 23 ENCYCLOPEDIA AMERICANA 673-75 (1998).

their communist past with street protests culminating in the brief trial and execution of Ceaușescu on December 25, 1989. Lacking an organized opposition or dissident movement, the nation struggled to restore individual rights, a democratic system, and a market economy. One small part of this process was decollectivizing the *avocats*.

I. LAW PRACTICE IN THE COLLECTIVE

To appreciate what privatization means in the professional lives of Romanian lawyers, one should begin with a general understanding of practice in a lawyers' collective under a regime that controlled lawyers closely. Unlike Yugoslavia, where lawyers worked in individual private offices despite a collective system, or Hungary, where the state permitted private practice although it was rarely successful,¹⁶ "ultra-communism at home"¹⁷ marked Romania. That nation organized its bar based on the Soviet model, a tightly regulated scheme¹⁸ loosened only by unauthorized actions.

In the Romanian People's Republic, all *avocats* practiced in collectives after 1954.¹⁹ One might visualize the collectives as local bar associations operating law offices in the courthouses. Physically, the lawyers had to work in the collective's lawyer rooms,²⁰ where people came seeking legal assistance.²¹ These rooms contained several desks, unenclosed in any way. In many counties the lawyers shared them, making parts of desks their offices, offering no privacy.²² The lawyer rooms, however, were less crowded than they are now because there were only three law schools for *avocats*

16. William D. Meyer, *Facing the Post-Communist Reality: Lawyers in Private Practice in Central and Eastern Europe and the Republics of the Former Soviet Union*, 26 LAW & POL'Y INT'L BUS. 1019, 1029 nn.63 & 64 (1995).

17. H.B. JACOBINI, ROMANIAN PUBLIC LAW 33 (1987); see also CRISTIANA I. STOICA & JANICE H. WEBSTER, AVOCATUL ROMÂN ÎN SISTEMUL DE DREPT EUROPEAN 28 (1997).

18. Liviu Corvin, *The Independence of Lawyers in Rumania: Some Reflections*, 29 INT'L COMM'N JURISTS REV. 50, 51 (1982).

19. Decret No. 281, Buletinul Oficial No. 34, July 21, 1954 [hereinafter Decree 281/1954]; STOICA & WEBSTER, *supra* note 17, at 28. For a survey of comparable structures in other socialist states, see Meyer, *supra* note 16, at 1038-41.

20. Decree 281/1954, *supra* note 19, art. 33(a). In Bucharest the courthouse lacked space for *avocats*' rooms.

21. Telephones were uncommon, as was the practice of making appointments for any service, so potential clients appeared at the lawyers' room and waited for an *avocat*.

22. Decree 281/1954, *supra* note 19, art. 33(c). Although the attorney-client privilege existed during the communist era, it did not apply when the client's secret was "detrimental" to the security and peace of the Socialist Republic of Romania, which usually meant to the interests of the Communist Party. See STOICA & WEBSTER, *supra* note 17, at 22, 28. Some *avocats* insisted that lawyers did protect their clients' secrets, but others assert that there were no secrets.

in the Romanian People's Republic.²³ Interviewees report that until the recent explosion of new law schools, only approximately 300 students graduated each year to satisfy the nation's need for judges, prosecutors, notaries, legal counselors, and *avocats*.²⁴

Avocats received no salary. A client paid a fee to and executed a retainer agreement with an official of the collective, called the Bureau of Legal Assistance, not with an individual lawyer.²⁵ The Minister of Justice set the fees based on the kind of legal problem, not on the hours required, the result obtained, or the difficulty of the problem or the client.²⁶ The *avocat* received approximately fifty percent of the fee,²⁷ twenty-five percent went to the lawyers' pension fund, and the remainder covered the collective's taxes and expenses.²⁸ The Minister of Justice set a maximum monthly income, the *plafond*, and upon reaching the maximum, a lawyer could accept no more cases that month.²⁹ Approximately double the average salary in Romania, according to interviewees' estimates, lawyers' high incomes assured a special status for these professionals.

Avocats responded to being governed by the Minister of Justice in various ways, as reflected by their attitudes to privatization. Some *avocats* believe they were treated as state functionaries and consider it significant that the privatization law now characterizes advocacy as a "free and liberal profession."³⁰ Many others insist that *avocats* were never government bureaucrats, so privatization was not a critical status change. They support this perspective with certain facts. For example, a lawyer was not salaried and his or her income varied with the number of clients and kinds of cases³¹; the

23. The law schools were located in the Universities in Bucharest, Cluj, and Iași. LAW AND JUDICIAL SYSTEMS OF NATIONS 622 (Charles S. Rhyne ed., 1978).

24. Interviews with Romanian *avocats*, *supra* note 13; e-mail from Cristiana I. Stoica, Senior Partner Stoica & Asociatii, to author (Apr. 1, 2004) (on file with author); e-mail from Cristian Pup, Justice of Romanian Court of Appeals, to author (Apr. 1, 2004) (on file with author).

25. Decree 281/1954, *supra* note 19, art. 34.

26. *Id.* art. 23(b); *see also* Corvin, *supra* note 18, at 52.

27. The lawyer's percentage varied over time and once was as high as 70%, before pension contribution and taxes. Decree 281/1954, *supra* note 19, art. 36. More experienced lawyers received a larger percentage of the fee paid, and the Minister of Justice occasionally changed the proportions.

28. *See* Corvin, *supra* note 18, at 52.

29. Decree 281/1954, *supra* note 19; Corvin, *supra* note 18, at 52; *see also* STOICA & WEBSTER, *supra* note 17, at 28-29.

30. Law 51/1995, *supra* note 6, art. 1.

31. Decree 281/1954, *supra* note 19, art. 36. Not all lawyers reached the *plafond* each month.

avocats' pension plan was separate from the general national pension plan³²; and the lawyer had duties to clients as well as to the state.³³ Like other government employees, however, *avocats* were subject to evaluations by inspectors sent by the Ministry of Justice, which had the authority to discipline incompetent lawyers.³⁴

The reality of collectivized law practice differed importantly from the legislative design. As in the German Democratic Republic when ninety-six percent of the lawyers were collectivized, "the profession never lost its faintly capitalist perfume of manipulative and clever contentiousness [and] . . . excessive preoccupation with private interests."³⁵ Although some *avocats* remember a greater spirit of collegiality in the collectives than currently exists among lawyers, the socialist structure did not prevent all economic competition for lawyers found ways to avoid the monthly earnings limitation.

Unlike the practice in most U.S. legal services offices, Romanian clients could choose their lawyers. *Avocats* thus had a financial incentive to preserve their relationships with former or potential clients who could become repeat clients or refer new business. To build a clientele, *avocats* managed the flow of work to keep a client's case without exceeding the monthly maximum income.³⁶

Successfully competing for a large clientele could increase real income substantially. Lawyers sought or accepted "presents" from clients that they did not report to the collective, a practice the penal law prohibited as a form of corruption.³⁷ Although the generality of this practice is disputed, the consensus among lawyers is that gifts, such as food (especially valuable during the austerity Ceaușescu created), perfume, and liquor, were universal, as were

32. Decret No. 60, Buletinul Oficial No. 88 (1951) [hereinafter Decree 60/1951]; Decree 281/1954, *supra* note 19, art. 52.

33. Decree 281/1954, *supra* note 19, arts. 4, 33–35.

34. Decret No. 281, Buletinul Oficial No. 34 (1954), *amended by* Decret No. 11, Buletinul Oficial No. 11, art. 15 (1958) [hereinafter Decree 11/1958].

35. See Inga Markovits, *Children of a Lesser God: GDR Lawyers in Post-Socialist Germany*, 94 MICH. L.REV. 2270, 2300 (1996).

36. *Avocats* asked clients to manage the immediate court appearance alone, and the lawyer appeared the following month, or asked another attorney to handle a client's matter with the understanding that the client belonged to the first lawyer. Wanting to reach the maximum earnings each month, Romanian lawyers remained available to new clients, unlike Bulgarian lawyers who simply went skiing or to the beach after reaching their maximum monthly earnings. See William D. Myer, *Bulgarian Lawyers in Transition*, 18 J. LEGAL PROF. 123, 131 (1993).

37. See Corvin, *supra* note 18, at 52–53; see also Decree 281/1954, *supra* note 19, art. 33(b).

cash payments.³⁸ Practice diverged from the law in one other important way. Although the law prohibited lawyers from consulting clients anywhere other than in the courthouse collective,³⁹ they regularly conferred in *avocats*' homes. Lawyers justified this by the crowded condition of the lawyers' rooms and the need for privacy.⁴⁰ Nevertheless, this practice also permitted secret receipt of gifts and fees in excess of those set by law and paid to the collective. Consultation in the *avocat's* home was well-known and accepted despite its illegality.⁴¹

Although these unenforced rules suggest the legal authorities were no threat, the opposite was often true in Ceaușescu's oppressive regime. After establishing a lawyer-client relationship, an *avocat* represented a client as would any other lawyer in the restricted world of a socialist legal system. Because most people did not own significant property—only their personal effects, perhaps an apartment or house, and in some regions a farm or garden plot⁴²—many legal problems that occur in non-socialist countries did not arise in Romania. Private business was nonexistent as were issues like bankruptcy, large loans, and securities fraud. Administrative law, consumer claims, and many simple transactions basic to Western law practice were rare at best. The prosecutor's office litigated most torts as a part of related criminal prosecutions. Informal tribunals in the workplace, where *avocats* could not appear, resolved minor disputes, such as petty crimes, family disputes, and grievances between employees.⁴³ Moreover, many people represented themselves in court, and law was relatively unimportant under socialism.⁴⁴ The core of most lawyers' work was criminal defense (including a broad group of political crimes), divorce (involving both custody and division of small amounts of prop-

38. Interestingly, while many lawyers stress the danger of accepting gifts, they acknowledge the prevalence of the practice.

39. Decree 281/1954, *supra* note 19, art. 33.

40. *See supra* note 22.

41. Several lawyers mentioned the threat of undercover police posing as clients to test whether an attorney would consult at home or take additional fees. Allowing clients into one's home also risked reports to authorities about one's possessions and the suggestion of unexplained wealth. I heard no reports of a specific case of this, and the Bar's belief that the practice occurred, if sincerely held, did not seem to have a strong deterrent effect. Corvin does not claim that arrests were common. *See Corvin, supra* note 18, at 53.

42. *See JOHN N. HAZARD, COMMUNISTS AND THEIR LAW* 156 (1969).

43. Some lawyers served as observers or advisors at these meetings and report that the non-lawyer "judges" used publicity and shame or perhaps wage deduction to sanction anti-social behavior.

44. *See Kathryn Hendley et al., Agents of Change or Unchanging Agents? The Role of Lawyers Within Russian Industrial Enterprises*, 26 *LAW & SOC. INQUIRY* 685, 686 (2001).

erty), some probate, and occasional employment disputes. Lawyers report that because the legal questions fell within a very narrow field, they could become well versed in all the relevant law.⁴⁵

In sum, communist Romania's lawyers were privileged professionals able to earn decent wages, supplemented by gifts, while practicing rather mundane law in an unstressed atmosphere. They wanted more, however, and pined for the pre-communist professional life.

II. PRIVATIZATION

Privatization of Romanian *avocats* began quickly, nine days after the fall of the communist state,⁴⁶ but the process required five years for completion.⁴⁷ Decree-Law 90/1990⁴⁸ made *avocats* subject to only "the laws and their consciences" when exercising their profession, thereby abolishing the Minister of Justice's control of lawyers.⁴⁹ Nevertheless, the new lawyer-controlled administrative system paralleled the old one.⁵⁰ Explicitly acknowledging the similarity, the privatization statute specified that bar association officials, who would exercise what had been the state's authority, were not government employees.⁵¹ There was no change to the daily operation and location of the courthouse Bureaus of Legal Assistance or in client representation.⁵²

45. Interviews with Romanian *avocats*, *supra* note 13.

46. A temporary government formed and quickly repealed many Communist-era laws. For example, less than seven weeks after the fall of Ceaușescu, Romania's provisional leadership "legalized free enterprise on a much larger scale than existed in 45 years of Communist rule" by allowing "profit-making businesses with up to 20 employees" and permitting "families and individuals to start their own businesses." Associated Press, *New Bucharest Leaders Give Go-Ahead to Free Enterprise*, N.Y. TIMES, Feb. 6, 1990, at A18.

47. See Flavius Antonius Baias, *Principiile Profesiei de Avocat in Lumina Dispozițiilor Legii, No. 51/1995*, VI DREPTUL 29 (1995); see also Jane Ryder, *The Legal Profession in Romania and Bulgaria*, 1994 J.L. SOC'Y SCOT. 59, 60.

48. Decret-Lege No. 90, Monitorul Oficial No. 32, Jan. 3, 1990 [hereinafter Decree-Law 90/1990].

49. *Id.* art. 2.

50. *Id.* arts. 3–8, 12. Article 12 specifically identifies the new organizational titles with those under the communists. Ten of the twelve Articles in the law are dedicated to the organizational structure of the profession rather than actual practice, the thrust of this Article.

51. *Id.* art. 2.

52. See Ilie Tudor, *Considerații în Legătură cu Recenta Reglementare a Organizării și Exercițiului Avocaturii*, V DREPTUL 57, 59 (1994); see also Stoica & Webster, *supra* note 17, at 29; see also Ligia Dănilă, *Reprezentarea Avocațială* 29 (1998) (unpublished doctoral thesis, Babeș-Bolyai University, Cluj-Napoca) (on file with author).

Without specifically addressing *avocats'* freedom to set legal fees, Decree-Law 90/1990 abrogated the limitation on earnings.⁵³ Even after more extensive privatization of the bar, however, many lawyers are unable to identify any "important" changes that followed the initial fee deregulation.⁵⁴ The practical effect of Decree-Law 90/1990 permitted *avocats* to increase their client base and income without the overhead expenses of private law offices.⁵⁵ During this period, many judges and prosecutors left their positions to become financially successful *avocats*. From the Romanian public's perspective, the higher cost of privatized law practice was all that differed from law practice during the communist period.

Avocats became fully privatized in 1995. Law 51/1995, modified only slightly in 2001 and 2002,⁵⁶ makes the profession "free and independent, autonomously organized and functioning, under [the privatization] law and the regulations of the profession."⁵⁷ Only the statutorily created Romanian bar organizations regulate lawyers, unsupervised by court or legislature.⁵⁸ Much of the privatization statute is dedicated to the structure, duties, and authority of those private organizations: the powerful county bar associa-

53. Decree-Law 90/1990, *supra* note 48.

54. This was despite the fact that many have opened offices outside of the courthouse, which was authorized only in the 1995 law. *See* Tudor, *supra* note 52, at 59; *see also* STOICA & WEBSTER, *supra* note 17, at 29.

55. Between 1990 and 1995, *avocats* could prepare financially to open private offices. The 1995 privatization law permitted *avocats* to deduct investment in offices and equipment from income for three years. Law 51/1995, art. 77.

56. Law 51/1995 amended, *supra* note 12 (amended 2000, 2002); Lege No. 231, Monitorul Oficial No. 635, Dec. 7, 2000 [hereinafter Law 231/2000] (amending Law 51/1995). Lege No. 489, Monitorul Oficial No. 578, Aug. 5, 2002 [hereinafter Law 489/2002], promulgated additional revisions permitting foreign lawyers to practice in Romania under certain conditions, but Law 51/1995 was not republished to contain those amendments, which are of no importance to this Article. As noted *supra* note 12, the final, republished version of Law 51/1995 (Law 51/1995 amended) is found in Monitorul Oficial No. 113, Mar. 6, 2001.

57. Law 51/1995 amended, *supra* note 12, art. 1. An attenuated form of this concept existed in the early part of the communist regime. *See* Baias, *supra* note 47, at 29.

58. U.S. lawyers commenting on a proposed law on the organization of the Romanian legal profession prepared by the American Bar Association Central and East European Law Initiative observed that the law provided no oversight of the profession by non-lawyers, courts, government agencies, or consumer interest groups, while at the same time over-regulating certain aspects of practice. Correspondence of Prof. Lisa Lerman (July 31, 1993) and Edmund B. Spaeth, Jr. (July 29, 1993); CENTRAL AND EAST EUROPEAN LAW INITIATIVE, AM. BAR ASS'N, ANALYSIS OF THE ROMANIAN DRAFT LAW ON THE ORGANIZATION AND PRACTICE OF THE LEGAL PROFESSION (Aug. 27, 1993) (summary of comments) (on file with author).

tions; the national Union of Romanian Avocats; and the Avocats' Insurance Fund, the lawyers' pension plan.⁵⁹

Additionally, Law 51/1995 provides for practical changes in the practice of law. For example, lawyers are specifically entitled to fees,⁶⁰ the national Union of Avocats establishes a minimum fee schedule,⁶¹ and county bar associations resolve fee disputes with a right of appeal to the Union of Romanian Avocats.⁶² One highly visible difference is that *avocats* may leave the lawyer rooms and open private offices if they wish.⁶³ The law also expands protection of client confidences.⁶⁴ The rules continue to flatly prohibit advertising and publicity.⁶⁵ Bar rules require malpractice insurance in specified amounts of hard currency.⁶⁶ Jobs for law school graduates are no longer guaranteed or assigned.⁶⁷

59. See Law 51/1995 amended, *supra* note 12, arts. 47–56 (county bar associations), arts. 57–67 (national Union of Romanian Avocats), arts. 75–80 (pension plan). *Avocats* had a separate and desirable pension plan under the communists. Assuring its preservation delayed the adoption of a full privatization law. Under Law 51/1995 amended, the Union of Romanian Avocats administers the independent pension plan (art. 75), the bar entrance exams (art. 65(2)(c)), and hears appeals of disciplinary actions (art. 72(2)). The local bar associations determine a lawyer's admission to practice in the county (art. 53(2)(e)–(f)) and discipline attorneys (art. 72(1)), as they did before the communist takeover. See Corvin, *supra* note 18, at 50.

60. Law 51/1995 amended, *supra* note 12, art. 30(1).

61. *Id.* art. 63(e); Statut 284, Monitorul Oficial No. 284, May 31, 2001 [hereinafter Bar Regulation 284/2001], art. 94(2).

62. Law 51/1995 amended, *supra* note 12, art. 31; Bar Regulation 284/2001, *supra* note 61, art. 95.

63. Statut profesiei de avocat, Monitorul Oficial No. 237, Oct. 17, 1995, art. 96. The *avocat's* choice of location for a law practice was originally subject to the local bar associations' obligation "to assure legal services in all the legal forums." Law 51/1995, *supra* note 6, art. 31. Amendments to the privatization law abrogated that authority over office location. Law 231/2000, *supra* note 56, art. 1 § 18. Some lawyers, anticipating a change, found office space and opened their new quarters on the day the legislation took effect. Other lawyers economize by practicing out of courthouse lawyer rooms or their homes.

64. Law 51/1995 amended, *supra* note 12, arts. 33, 44(2); Bar Regulation 284/2001, *supra* note 61, art. 5. *Contra* Decree 281/1954, *supra* note 19, art. 33(c) (requiring lawyers to report client communications when detrimental to state security and the peace).

65. Law 51/1995 amended, *supra* note 12, art. 46(2); Bar Regulation 284/2001, art. 115. The advertising regulations are highly detailed; for example, they specify the maximum size of a sign outside a lawyer's office and of the notice a lawyer is allowed to place (in the written press only) when opening or changing an office's location or his or her form of practice.

66. Bar Regulation 284/2001, *supra* note 61, art. 106.

67. Under the communists, the Minister of Justice allocated law school graduates by allowing them to choose among designated positions according to their final grade point average. Decret No. 281, amended, Buletinul Oficial No. 11, Mar. 6, 1958, art. 20. Those ranked low in their class were assured of work somewhere but had little choice. Six of the *avocats* interviewed began their legal careers other than where they practice now. Most were judges at the time the state assigned them to smaller, often unattractive, cities. All moved for personal and family reasons when they could.

Another revision gives lawyers the authority and freedom to associate in forms comparable to U.S. lawyers' arrangements. Under the law, Romanian lawyers can now work as solo practitioners (*cabinetul individual*) and such solo practitioners may share space and expenses (*cabinele grupate*). The lawyers may also form partnerships (*cabinetul asociat*), or professional corporations (*societatea civila profesionala*).⁶⁸ *Avocats* may employ other lawyers.⁶⁹ A sole practitioner (*avocat colaborator*) may use the infrastructure of another *avocat* and earn a small payment for any work done on that lawyer's cases while representing his or her own clients.⁷⁰ Despite this new freedom to associate, the number of Romanian law firms (*grupate*, partnerships, or professional corporations) in 2000 was negligible, especially outside Bucharest.⁷¹ Seven of forty-seven *avocats* interviewed worked in professional corporations, three of which were located in Bucharest.⁷² The largest of these firms, which represented important international clients, had thirteen professionals: three partners, six apprentice lawyers, and four law students.⁷³

Lawyers began affiliating by 2003. The number of professional corporations in Bucharest increased from twenty-six in 2000, to 149 in 2003, but the number of partnerships increased from twenty-six to only thirty-four.⁷⁴ In Timișoara, the number of professional corporations increased from two to ten. Nevertheless, in 2003, Târgu Mureș had one professional corporation and Iași had none, a fact that reflects continued resistance to formal grouping.

Many sections of the privatization law perpetuate the communist-era rules with only slight modifications. The organizational structure of the bar and its disciplinary procedures are not significantly different, although they are now independent of state con-

68. Law 51/1995 amended, *supra* note 12, art. 5; Bar Regulation 284/2001, *supra* note 61, arts.16–22. An arrangement other than sole practice must be registered with the local bar association.

69. Bar Regulation 284/2001, *supra* note 61, arts. 17, 18, 19, 22.

70. Collaborating attorneys are more like independent contractors than employees. This arrangement is attractive to young and elderly *avocats* who cannot or do not choose to invest in their own solo practices. Law 51/1995 amended, *supra* note 12, art. 5(2), (5); Bar Regulation 284/2001, *supra* note 61, arts. 17, 18, 22.

71. See *infra* text accompanying notes 170, 240.

72. Interviews with Romanian *avocats*, *supra* note 13.

73. *Id.*

74. *Id.*; Morecuț, *supra* note 3 (year 2003 data); Fax from Dragomir Toma, President of Bucharest Bar Association, to author (May 8, 2000) (year 2000 data) (on file with author).

trol.⁷⁵ The separate and beneficial pension plan for *avocats* remains in existence.⁷⁶ Procedures for entry to the profession do not differ significantly from the past. Although the national Union of Romanian *Avocats* administers uniform national bar examinations⁷⁷ and formally approves admission to the bar,⁷⁸ a specific county bar must first accept an applicant.⁷⁹ Romania, approximately the size of Oregon, continues to limit nationwide practice by restricting *avocats*' movement or expansion.⁸⁰ Like its communist precursor, the current law obliges lawyers to represent poor litigants.⁸¹ Bar leaders divided each communist-era collective into small groups in which the lawyers heard communist propaganda, learned about new laws, and discussed their cases. The privatization law perpetuates this idea of continuing legal education, but not the communist-era format.⁸²

In several respects *avocats* avoid the new privatization law when it interferes with their practice, just as they evaded the communist regulations. For example, most Romanian lawyers are uninterested in bar meetings, and attendance is spotty despite the statutory obligation to participate.⁸³ In addition, *avocats* with few clients charge less than the national minimum fee schedule.⁸⁴ Financially successful lawyers tolerate this transgression because they do not need to compete for low-income clients.

75. Law 51/1995 amended, *supra* note 12, arts. 70–74; Bar Regulation 284/2001, *supra* note 61, arts. 149–81. Compare Decree 102/1958, arts. 39–45; JACOBINI, *supra* note 17, at 30–31.

76. Law 51/1995 amended, *supra* note 12, art. 32.

77. *Id.* arts. 63(c), 65(b), 65(c); Bar Regulation 284/2001, *supra* note 61, art. 48.

78. Law 51/1995 amended, *supra* note 12, art. 63(g).

79. Bar Regulation 284/2001, *supra* note 61, arts. 28(1), 50. County-by-county admission is implicit in Law 51/1995 amended, art. 35.

80. If an applicant wishes to be admitted to the bar in a county other than where domiciled, the applicant must give notice to the bar in the county of domicile. Bar Regulation 284/2001, *supra* note 12, art. 50(2). To move an existing practice, an *avocat* must show the new county's bar association good cause for the move and must provide a certificate of good status from the bar association in the county being left. *Id.* art. 8(1), (2). Opening a second office in a different county requires another application. Law 51/1995 amended, *supra* note 12, art. 35; Bar Regulation 284/2001, *supra* note 61, art. 97. Each of these procedures requires payment of a fee and reportedly requires a large bribe.

81. Law 51/1995 amended, *supra* note 12, art. 39; Bar Regulation 284/2001, *supra* note 61, arts. 105, 142–48; Decree 281/1954, *supra* note 19, arts. 37–38.

82. Law 51/1995 amended, *supra* note 12, art. 63(j); Bar Regulation 284/2001, art. 15. *Avocats* must participate in the programs of the independent nonprofit educational Institute for the Preparation and Improvement of *Avocats*.

83. Law 51/1995 amended, *supra* note 12, art. 41.

84. *Id.* art. 63(e); Bar Regulation 284/2001, *supra* note 61, art. 94(2); see *infra* text at note 216.

Avocats use control over their professional lives to protect their financial and other personal interests. Lawyers avoid doing *pro bono* work despite legal requirements.⁸⁵ Apprentice lawyers and beginning advocates receive priority in criminal defense assignments, which are reimbursed by the State, while lawyers receiving a pension are excused from such work. The State thus diverts some small fees to struggling novices in need of experience, meanwhile limiting the *pro bono* duties of experienced lawyers.⁸⁶ Both effects suggest a lawyer-oriented rather than client-oriented view of public service.⁸⁷ Moreover, the law strongly favors local, established *avocats* by making admission to the bar and relocation or expansion of a law practice difficult and costly⁸⁸ and by imposing barriers to entry by other legal professionals, such as in-house counsel.⁸⁹ Nonetheless many judges and prosecutors, well known and respected for their former powers, quickly changed careers and became successful *avocats*.⁹⁰ Despite their own advantages, many

85. Law 51/1995 amended, *supra* note 12, art. 39; Bar Regulation 284/2001, *supra* note 61, arts. 105, 142–48.

86. Bar Regulation 284/2001, *supra* note 61, art. 105. Indigents apply to the county bar president for unpaid counsel in civil cases. Law 51/1995 amended, *supra* note 12, arts. 39, 53(2)(1), 68–69; Bar Regulation 284/2001, *supra* note 61, art. 105. The Ministry of Justice compensates criminal defense poorly. *See infra* text at note 222. There is no pay for representing indigents in civil matters. Law 51/1995 amended, *supra* note 12, art. 69. In reality many lawyers beg off all *pro bono* work.

87. Conversations with lawyers reflect the same attitude. *Cf.* Rodney J. Uphoff, *Why In-house Live Client Clinics Won't Work In Romania: Confessions of a Clinician Educator*, 6 CLINICAL L. REV. 315, 327–28 (1999) (discussing Romanian law school clinical programs reflecting similar values).

88. Underemployed lawyers want to leave counties with little legal work for counties which appear to offer more opportunities. Lawyers in counties with substantial legal business do not wish to share that with more lawyers and so restrict entry. *See supra* note 80.

89. Law 51/1995, *supra* note 6, art. 14. Law 51/1995 permitted judges, prosecutors, and notaries to become *avocats* without taking the entry bar exam if they had four years experience. *Id.* art. 16. Parliament privatized notaries public earlier. They organized quickly, and were doing well financially, so did not utilize this right. The *avocats* vigorously resisted admitting in-house counsel to their ranks and successfully excluded them from the reclassification law. As expected, in-house counsel chose not to begin again from the start, taking all exams and serving an apprenticeship. Since 2001 in-house counsel can become *avocats* without taking the initial bar exam if they have ten years' experience. *See* text accompanying note 149. Although now meaningless to *jurisconsults*, the requirement of five years' experience for excusing jurists from the apprentice stage and final bar exam has not changed. Career changes are no longer significant because law students now make their professional choices understanding the privatized forms of the legal profession.

90. *See* Peter Murrell, *Demand and Supply in Romanian Commercial Courts: Generating Information for Institutional Reform* (2d draft) (2001), available at http://www.iris.umd.edu/adass/proj/murrell_courts.pdf (last visited Apr. 9, 2004). Judges' salaries are lower than many lawyers' salaries.

avocats envy the great financial success of the notaries public who privatized quickly and restricted entry to their profession.⁹¹

IV. LAW PRACTICE IN ROMANIA TODAY

A. Overview

The law practice of a typical Romanian lawyer remarkably resembles his or her practice under communism. Litigation on behalf of individual clients continues to dominate the *avocat's* work. These clients are not a stable source of income because most present "one-shot, trouble" problems.⁹² Rather than specialize, lawyers accept nearly all clients in order to maximize their income. As a result, Romanian *avocats* must be entrepreneurial,⁹³ constantly seeking to enlarge their clientele. Although they may have private offices, *avocats* continue to crowd the lawyer rooms in the courthouses. Only recently have they begun to exercise the statutory authority to form firms or even share office space. Legal problems are now a little more varied, and most *avocats* work harder and enjoy their work and clients more than under the communist regime. On balance, however, the look of law practice now is much like it was when lawyers were collectivized.

While Romanian legal practice is much the same as it was in the collectives, it is also similar to solo general practice in the United States in terms of clients, cases, work life, and remuneration.⁹⁴ In

91. See *infra* notes 138–141 and accompanying text. The notaries public charge substantial fees to authenticate the many documents required by the formalistic Romanian system, including property transfers. As real property is being denationalized, these fees have provoked criticism by the citizenry, but no open protest. Notaries adhere to their "minimum fee schedule" and protect their economic advantage. *Avocats* said that one can become a notary in a sizeable city only if one's parent is a notary.

92. JOEL F. HANDLER, *THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY* 55 (1967).

93. Entrepreneurial lawyers are economically vulnerable solo and small-firm lawyers. They must earn a living while building a practice, which requires strategy, initiative, and building relationships with clients, not colleagues. They measure their success financially. They have much autonomy but few prestigious clients. See DONALD D. LANDON, *COUNTRY LAWYERS: THE IMPACT OF CONTEXT ON PROFESSIONAL PRACTICE* 51–52 (1990) (citing Dan C. Lortie, *Institutional and Entrepreneurial Careers in Law and Medicine* (1960) (unpublished paper)).

94. There have been substantial empirical studies of U.S. lawyers. I have chosen solo and small-firm practitioners as my point of comparison with Romanian lawyers because most Romanians do practice alone and the similarities with the United States are greatest. U.S. researchers have studied practitioners in rural areas, small or medium-sized towns, and urban areas separately. The differences among these groups are of little significance in an examination of post-socialist Romanian law practice, but I often preserve the original specifications. Some firms in Bucharest engage in the kind of large-scale corporate work done by large U.S. urban law firms, see JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO*

both countries, the majority of lawyers practice as individuals or in small firms,⁹⁵ experiencing similar competitive pressures from both lawyers and non-lawyers. These similarities belie any controlling influence of communism on the profession in Romania today.

B. Clients

Romanian *avocats* have “person-intensive” practices like those in small towns in the United States.⁹⁶ Even in their limited business work, they serve individual owners of small retail establishments, such as beauty shops or corner stores.⁹⁷ Very few *avocats* (almost all of whom are in Bucharest) represent major privatized or privatizing companies comparable to the client base of large U.S. metropolitan firms.⁹⁸ Similarly, fifty-seven percent of the U.S. solo and small-firm lawyers surveyed in one study derived half or more of their income from small retail and service businesses.⁹⁹

Additionally, the incomes of clients in both countries are modest. Few Romanians are wealthy; most are poor—the official reported average monthly income in 2000 was \$132¹⁰⁰—but not

LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 18–20 (1982), but they are not representative of Romanian lawyers so a comparison with these lawyers would be less enlightening.

95. In 1995, 62% of private practitioners in the United States were in solo practice or firms of five or fewer attorneys. In 1960, 64% of lawyers in private practice were solo. Despite the decline in the proportion of solo practitioners, their number increased in this time from 131,840 to 297,724. CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT 1995*, at 7–8 (1995).

96. Ninety per cent of a rural Missouri lawyer’s clients are individuals and in a small city 62% of the clients are individuals. LANDON, *supra* note 93, at 25.

97. Private businesses presenting commercial law problems arose only in 1990 after the fall of communism. Large state enterprises have been slow to liquidate or privatize in Romania. They continue in their old form with in-house counsel from the communist era. See Cristî Cretzan, *Romania Worries IMF—Progress on the Economy Doesn’t Mask Concerns Over Privatization, Wages*, WALL ST. J. EUR., July 29, 2002, at M10.

98. HANDLER, *supra* note 92, at 32. Chicago lawyers averaged 35% of their income from corporate clients, but rural Missouri attorneys averaged only 8% of their income from corporations. LANDON, *supra* note 93, at 25.

99. HANDLER, *supra* note 92, at 14; see also Leslie C. Levin, *Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners*, 70 *FORDHAM L. REV.* 847, 857 (2001).

100. The exact average monthly gross salary in 2000 was \$132.61. This figure is derived by dividing the average monthly salary in *lei* by the average exchange rate, as reported by the National Institute of Statistics and Economic Studies (NISES). In 2000, the average monthly salary was 2,876,645 lei. NISES, <http://www.roembus.org> (last visited Mar. 15, 2004). The average exchange rate was 21,692 lei per dollar. NISES, http://tpb.traderom.ro/En/Cd/frame_gen.htm (last visited Mar. 15, 2004). There is a significant but unquantifiable “under the table” economy. But even including that the nation is generally poor, one study estimates that Romania’s “shadow economy” was the equivalent of 18.3% of GDP in 1994–95. Friedrich Schneider & Dominik Enste, *Shadow Economies Around the World: Size, Causes, and Consequences*, 38 *J. ECON. LIT.* 77, 101 tbl. 5 (2000) (citing Simon

destitute. Most are able to afford with some effort the relatively low fees for legal representation.¹⁰¹ In U.S. rural communities, clients are older and have less income and less education than those in cities,¹⁰² characteristics shared with Romanian rural clients.¹⁰³

For sole practitioners representing individual clients in one-shot matters, developing new relationships is paramount. Romanian lawyers, inhibited by stringent prohibitions on advertising or other publicity,¹⁰⁴ find clients just as U.S. lawyers did before they could advertise.¹⁰⁵ In both nations, former clients are the greatest source of new business. Former clients recommend a lawyer to others or return with new problems.¹⁰⁶ Otherwise, new clients in Romania are most likely to be found in the courthouses: indigent criminal defendants assigned by judges, people referred by court personnel, and walk-in clients.¹⁰⁷

A walk-in client is a person in need of legal services and who, having no *avocat's* name, conducts an in-person Yellow Page search. The continued use of the lawyers' rooms¹⁰⁸ is sustained by such clients, who know from their own or others' experience during the communist-era that one can find legal services there. It is not easy to find a lawyer outside the court building. The law pro-

Johnson et al., *Regulatory Discretion and the Unofficial Economy*, 88 AM. ECON. REV. 387, 391 (1998)). Another study, using different methodology, estimated 31.6%. *Id.* (citing MARIA LACKO, HIDDEN ECONOMY AN UNKNOWN QUANTITY? COMPARATIVE ANALYSES OF HIDDEN ECONOMIES IN TRANSITION COUNTRIES IN 1989-95 (Econ. Dep't U. Linz, Aus., Working Paper No. 9905, 1999)).

101. See *infra* note 219 and accompanying text.

102. Blue-collar clients average 45% of the rural practitioner's caseload and 39% of the small city lawyer's caseload. LONDON, *supra* note 93, at 25 table 2.4. *But see* HANDLER, *supra* note 92, at 14.

103. Interviews with Romanian *avocats*, *supra* note 13.

104. See *supra* note 65.

105. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (permitting lawyer advertising). Most U.S. solo and small-firm lawyers now advertise in some way, especially in the Yellow Pages. CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL-FIRM ATTORNEYS* 52-58 (1996).

106. SERON, *supra* note 105, 52-57.

107. Only a very small percentage of new clients are walk-ins in the United States. *Id.* at 53.

108. Nine of thirty-four attorneys worked in the lawyer rooms 30-60% of their business day. Five never worked there and three worked in the courthouse rooms 90-100% of the time. These data represent *avocat* behavior outside the capital. The only available space in the Bucharest courthouse is an overcrowded waiting area, full of smoke and people surrounding a few lawyers conversing with clients. In Bucharest lawyers seem to have worked in their homes, despite the interviewees' reluctance to admit that and the statutory prohibition of it.

hibits advertising¹⁰⁹; it restricts the size of office signs¹¹⁰; many offices are located in ordinary apartment buildings that are difficult to find¹¹¹; and telephone service remains limited.¹¹² In Iași, the bar association opened a large lawyer room with new matching desks arranged in neat rows in a building just across a pedestrian walkway from the courthouse. The room is nearly empty, however, and most lawyers linger in the court halls, where potential clients approach them. Under these conditions, it is unsurprising that the courthouse should be a marketplace for lawyers.

Notaries public and public functionaries including the police also refer clients in Romania,¹¹³ and a few *avocats* compensate them. Comparable referral sources in the United States are professionals such as realtors, accountants, bankers, and bondsmen, who may receive gifts from lawyers.¹¹⁴ Referrals from other lawyers are not a meaningful source of clients in Romania but are sometimes significant in the United States.¹¹⁵ In both Romania and the United States, lawyers initially draw clients from the pool of their family and old friends.¹¹⁶ Lawyers in the United States differ from *avocats* in that they expand these social circles by participating in local organizations and political activities.¹¹⁷

The Romanian lawyer's situation lies between that of the urban and rural general practitioner in the United States. Urban lawyers are anonymous and, therefore, resigned to the residue of cases left by the major firms. Rather than trying to become known, they use "brokers" who refer clients.¹¹⁸ U.S. rural practitioners, although at

109. See *supra* note 65. Some litigants are not confident of obtaining justice out of the courthouse, and a few continue to think of lawyering as a government profession.

110. *Id.*

111. Zoning regulations do not bar such mixed uses, but one office in Iași was not identified as anything more than an apartment because neighbors objected to its presence.

112. See *infra* note 175 and accompanying text.

113. Attorneys tend to use the services of one or two notaries for all their work, so notaries public have an economic incentive to refer clients to helpful attorneys.

114. U.S. lawyers give oranges, rather than money. SERON, *supra* note 105, at 53–54.

115. Where lawyers avoid certain kinds of cases, they will refer clients to other attorneys. See *id.* at 53; HANDLER, *supra* note 92, at 120.

116. LONDON, *supra* note 93, at 86; SERON, *supra* note 105, at 54–55.

117. LONDON, *supra* note 93, at 85. Ambitious *avocats* cut costs, but do not increase income with marketing efforts. Regardless of experience, only a few Romanian lawyers develop strategies to increase their number of clients, such as joining with more experienced attorneys willing to share their work or going weekly to a small town outside the county seat to serve clients. See *infra* Part IV (discussing community participation).

118. LONDON, *supra* note 93, at 57. Brokers include doctors, insurance agents, building contractors, mechanics, ministers, undertakers, and personnel directors. JEROME E. CARLIN, LAWYERS ON THEIR OWN: THE SOLO PRACTITIONER IN AN URBAN SETTING 135, 142, 148 (1994); see also text accompanying notes 107–08.

first drawing on the residue of other lawyers, are known in their small communities. By cultivating their reputations, they build their practices.¹¹⁹ Like urban lawyers in the United States, Romanians are unknown beyond their family and social circles when they begin practice. Like their rural counterparts, however, they desire great success and want to build reputations as great, wealthy lawyers. In other words, Romanian *avocats* aspire to resemble rural lawyers, but behave like urban general practitioners in the United States.

C. Competition

Both nations' lawyers find the competition for clients from lawyers and non-lawyers among the most challenging aspects of solo general practice.¹²⁰ In a middle-sized U.S. city, eighty-eight percent of the bar acknowledged that there was some or even a great deal of competition among lawyers, and twenty-two percent said they had been hurt by such competition.¹²¹

The problem is worse in Romania due to the sudden surge in the number of new *avocats* competing for clients.¹²² The number of Romanian law schools increased from three to twenty-six¹²³ between the fall of communism in 1989 (effectively the 1990 school year) and 2000. The number of law students increased from 3,975 in 1990-1991 to 53,445 in 1997-1998.¹²⁴ Although a few of these students take other legal positions, and some fail to pass the bar, the majority become *avocats*.¹²⁵ Some new lawyers have family connections that bring them clients, and a tiny number

119. LONDON, *supra* note 93, at 57.

120. CARLIN, *supra* note 118, at xx-xxi, 115-16. Sixty per cent of Romanian interviewees rated competition for clients of average or greater difficulty. Thirty per cent found this competition of least difficulty.

121. HANDLER, *supra* note 92, at 31, 119-20.

122. Less than one-fourth of the surveyed subjects are age thirty and younger and therefore had no more than nine years of experience. Some older subjects have little experience because they transferred into advocacy, but most of these had been known judges and prosecutors.

123. The three original public law schools have great prestige. In total eleven schools are public institutions that applicants prefer because they are nearly free. The remaining fifteen schools charge tuition. Fax from Romanian Ministry of Education, Post-Secondary Education (May 5, 2000) (on file with author). Most law professors teach at more than one institution and all maintain busy practices. Uphoff, *supra* note 87, at 320.

124. Fax from Romanian National Ministry of Education, Higher Education 2 (May 11, 2000) (on file with author).

125. The notary public field is largely closed to entry. Few graduates become in-house counsel given that many business entities do not have a staff lawyer, but rather retain *avocats* as needed.

become associates in the few existing firms, but most are sole practitioners competing for the same small group of financially capable clients. Because Romanian law graduates, like U.S. law graduates, tend to stay in the counties where they grew up or attended law school,¹²⁶ they share the same social circle, a group that is young and unlikely to consume legal services. Those without any connections suffer more; one young lawyer, who was practicing away from her home, moaned, "How could I, who had the best score in this county and fifth highest in the nation on the final bar exam, not be succeeding?"¹²⁷ Lack of income among some young lawyers breeds talk of career change. It is a sad paradox that older lawyers, who do not choose to learn new laws, have clients, while novice *avocats*, trained in the new statutes, lack them.

Competition from non-lawyers is another challenge. In the United States, for example, banks compete for estate work and real estate brokers do the work that lawyers once did.¹²⁸ Similar economic threats arise in Romania where "intermediary firms," often staffed by non-*avocats*, place newspaper advertisements for low-fee services such as incorporations, probate, and property sales.¹²⁹ Even more troubling to them, *avocats* lose clients to non-*avocat* law school graduates, such as *jurisconsults*.

Jurisconsults (counselors) are in-house counsel and government lawyers whose expertise is related to the interests of their employer.¹³⁰ Officially forbidden to represent clients other than the employer who pays their salary,¹³¹ they nevertheless routinely represent several organizations as well as individuals. Although some *avocats* assert that these law school graduates had the lowest grades and so were relegated to low positions in the communist-era job allocations, in-house counsel were able to do very well in the communist era. One present-day *avocat* began his career as in-

126. Eighty-seven per cent of U.S. rural lawyers grew up in rural settings and 70% went to the nearby state university law school. More than 75% of the Chicago bar grew up in the metropolitan area. LONDON, *supra* note 93, at 22. Forty-nine per cent of the lawyers practicing in a middle-sized city were born or raised in that community; 75% were born in the state; and 63% chose the town because of family living there. HANDLER, *supra* note 98, at 22, 31.

127. Interviews with Romanian *avocats*, *supra* note 13.

128. Over 71% of non-metropolitan U.S. lawyers described competition from non-lawyers (real estate brokers, insurance agents, and court personnel), and 22% acknowledged its economic impact. CARLIN, *supra* note 118, at 103; HANDLER, *supra* note 92, at 31, 119–20.

129. Some advertise that an *avocat* will do the legal work, see, for example, ROMANIA LIBERA, Apr. 12, 2000, at 12, despite the prohibition on lawyer advertising. See *supra* note 65.

130. Law 514/2003, *supra* note 5.

131. *Id.*

house counsel for a large manufacturer that exported its products. In that position, he negotiated with foreign lawyers and traveled abroad to non-socialist nations when that conduct was generally prohibited. This background prepared him to open a firm where he now practices international business law. Regardless of such contrary examples, most *jurisconsults* would concur with the *avocat* who said the counselors are “the Cinderellas of the legal profession.”¹³²

There is stunning unanimity in lawyers' criticism of counselors; no *avocat* in Timișoara or Iași offered any favorable comments. One reason for such widespread criticism is the in-house lawyers' admitted “clandestine lawyering.”¹³³ Clients give them power of attorney and falsely claim they are family members; notaries authenticate the powers; and the counselors then appear in court on behalf of individuals.¹³⁴ Not only does this deprive *avocats* of clients, but lawyers report that the counselors do not pay tax on their private fees, which allows them to earn more or undercut *avocats'* prices.

A second criticism is that in-house counsel, who receive a salary regardless of their success, do not work hard or adequately prepare their cases. Although *avocats* might encounter such incompetence in litigation against a business enterprise or government body, the criticisms go beyond observed behavior to character traits: “in-house counsel are uninterested in their work,” “they do not learn new law,” “they are not responsible or conscientious,” and “they enjoy no autonomy because they must do what their boss instructs” (connoting lower status than *avocats*).¹³⁵ The few *avocats* with a good word for their corporate colleagues acknowledge the counselors' mastery of their specialties, but even that is a subtle criticism because it emphasizes their narrow horizon.

Although many in-house counsels would like to become *avocats*, as judges and prosecutors have done, the privatization law imposes difficult conditions on their ability to change their status.¹³⁶ If counselors could change their status more easily, almost all of them would convert and increase competition, especially for desirable business clients. *Avocats* successfully lobbied Parliament to

132. Interviews with Romanian *avocats*, *supra* note 13.

133. *Id.*

134. CODUL DE PROCEDURA CIVILA [CPC] art. 68 (Rom.). These powers of attorney also existed in the communist era. See Corvin, *supra* note 18, at 52.

135. Interviews with Romanian *avocats*, *supra* note 13.

136. In the first full privatization law, *avocats* successfully excluded experienced counselors from the lateral reclassification process. See *supra* note 89.

prevent admission of in-house counsel to their ranks. The problem should disappear over time because those law students who now choose a career in-house or for a government entity make the decision understanding the difference between their careers and those of *avocats*. The negative feelings in 2000 between *avocats* and *jurisconsults* were acute, but recent legislation regulating *jurisconsults* may ameliorate this animosity.¹³⁷

Not all non-*avocats* are competitive threats. The contrast between *avocats*' reactions to *jurisconsults* and to notaries public demonstrates the lawyers' concern with competition. Notaries have their own monopoly formalizing documents and do not take cases from *avocats*. Lawyers use notaries in their work and notaries in turn refer clients. Rather than offering criticism, *avocats* almost invariably comment first on notaries' large incomes. In Iași the language used was most dramatic: "exorbitant," "fantastically rich," and "more than Bill Clinton earns."¹³⁸ One lawyer claimed that in Iași, "The weakest notary makes more than the best *avocat*."¹³⁹ In Timișoara, a notary was estimated to have earned \$5500 per month in 1999.¹⁴⁰ *Avocats*' descriptions of the notaries' fee structure hint at resentment: "the fees are based on the value of the transaction, not the work needed" and "the fees are high because notaries are in a closed caste, which should be opened to competition."¹⁴¹ *Avocats*' envy of notaries, however, is much different from their censure of in-house counsel. *Avocats* resort to vituperative comments referring to *jurisconsults*, calling them "bandits."¹⁴²

Lawyers commonly characterize the notary's field as requiring only a little bit of easy work. One disdained a notary's work as "ministerial tasks such as done by a public bureaucrat."¹⁴³ This criticism is exaggerated. Notaries authenticate contracts written by lawyers that would be invalid but for the notary's seal, but they also draft documents. Sometimes the question of who writes contracts for some clients creates tension between notaries and *avocats*. In this domain lawyers offered a few substantively critical anecdotes. One notary drafted an unlawful contract that an *avocat* later litigated; another failed to read a contract to an illiterate person.¹⁴⁴

137. Law 514/2003, *supra* note 5.

138. Interviews with Romanian *avocats*, *supra* note 13.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

The comment of a Bucharest lawyer, who sarcastically claimed to respect notaries for their ability to do such simple work all day long, reflects a general observation, one that echoes the demeaning references to *jurisconsults'* narrow specialties. On balance, however, the *avocats* think the notaries' work is good. (Criticism is strongest in Iași and weakest in Târgu Mureș.) They believe, however, that this simple work does not merit the large fees earned.

Survival instincts overcome philosophical views. Interviewees favor competition in the abstract, but seek to preserve as much of their monopoly advantage as possible, in the face of a dramatic increase of new entrants and ambitious *jurisconsults*. As of yet the inadequacies of their monopoly have hurt the professional opportunities of only the new *avocats*, not those of established practitioners.

D. Practice Areas

Typical Romanian *avocats* and U.S. non-metropolitan lawyers are general practitioners. Both accept almost any kind of case¹⁴⁵ and handle similar caseloads. Their days are filled with "personal plight" cases, such as criminal, divorce, and inheritance cases where clients recognize their need for legal assistance.¹⁴⁶ Among the Romanian *avocats* surveyed here, twenty-nine indicated they perform some criminal defense work, while thirty indicated they practice divorce law, and twenty-seven have probate practice experience. When asked to opine whether law practice areas remained the same after privatization of the bar, twenty-six of thirty-two lawyers disagreed or strongly disagreed.¹⁴⁷ Nonetheless contemporary *avocats* most commonly practice in areas in which socialist lawyers practiced. A possible explanation for this discrepancy between

145. Less than 23% of U.S. rural lawyers claim a specialty; 8% identify that specialty as general litigation. LANDON, *supra* note 93, at 129. Even firms in a middle-sized city that did all the large-corporation work did not specialize, and included "one-time, trouble" cases on their dockets. HANDLER, *supra* note 92, at 15, 41. Contrast New York City, where more than 70% of attorneys spend the majority of their time in one practice field, with middle-sized cities, where only 17% of the lawyers do that. *Id.* at 33 (citing JEROME E. CARLIN, *LAWYERS' ETHICS: A SURVEY OF THE NEW YORK CITY BAR* 13 (1966)). But change is coming. See Levin, *supra* note 99 at 858. Increasingly general practitioners refer out family law cases, which (along with personal injury plaintiff's work) are becoming a specialization. LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 52 (2001).

146. In the United States this phrase includes personal injury cases. See LANDON, *supra* note 93, at 9 (citing JEROME E. CARLIN, *LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962)); HANDLER, *supra* note 92, at 55; see also Levin, *supra* note 99, at 858.

147. Interviews with Romanian *avocats*, *supra* note 13.

opinion and reality is that the new types of cases have more significance to the *avocats*. One bar official emphasized that older lawyers have not adapted to new freedoms and continue to perform the same work they performed during the communist era. For example, litigation dominates *avocats*' practices as it dominated communist-era lawyers' practices. Although administrative appeals and restitution of nationalized property claims¹⁴⁸ are new causes of action, in reality they are only more litigation on behalf of individuals, the core of Romanian lawyers' work. U.S. lawyers, on the other hand, are moving away from litigation.¹⁴⁹

The United States and Romania have dissimilar economic systems, cultural practices, and institutions that explain the small differences in practice areas. Only one-third of Romanian adults have a bank account. Credit cards are rare even in the cities.¹⁵⁰ There are few debt problems because both tradition and recent high inflation create a largely cash economy where personal bankruptcy is unknown. Mortgages are nearly non-existent,¹⁵¹ and the high degree of home ownership minimizes problems of uncollected rent. Unpaid electricity and water bills produce shutoffs, not legal work. Unlike U.S. citizens, Romanians traditionally do not seek a professional for merely facilitative assistance such as transferring land, making a private loan, negotiating with government agencies, or learning about the law. Group representation is unknown. When asked whether they had any group clients, other than formalized organizations, most *avocats* did not understand the question.¹⁵² The best they could come up with was representing several people going into business together.¹⁵³

148. Lege No. 18, Monitorul Oficial No. 37 (Feb. 20, 1991) [hereinafter Law 18/1991]; Lege No. 112, Monitorul Oficial No. 279 (Nov. 29, 1995) [hereinafter Law 112/1995]. These new causes of action are a significant source of lucrative work for many *avocats*.

149. Now U.S. lawyers also do real estate closings for individuals, small business and commercial matters, and wills and estates. See SERON, *supra* note 105, at 168 n.13; see also CARLIN, *supra* note 118, at 17, 146 (explaining that U.S. urban general practitioners do the small cases that large firms do not want). In California attorneys do not participate in real estate closings, an example of regional variations in fields of practice.

150. Cretzan, *supra* note 97.

151. *Id.*

152. Contrast this with the views of "rebellious" lawyers who see themselves as having an active role in mobilizing groups to fight for fundamental social change in the United States. See GERALD P. LOPEZ, *REBELLIOUS LAWYERING* 335 (1992).

153. Romanian law does not authorize class actions. Individuals may sue jointly but each party must be named and sign a separate retainer agreement with the attorney. CPC art. 47. That *avocats* do not see beyond the legal form (joinder of individual actions) is consistent with their self-image as legal technicians. One lawyer, however, did represent a group of persons injured by a restaurant's food poisoning but was uncomfortable discuss-

Commercial cases remain uncommon in Romania because private businesses began developing only in 1990, and in-house counsel continue to work at large enterprises.¹⁵⁴ Moreover, even when *avocats* help entrepreneurs form business entities, the new entrepreneurs often manage the business without further legal assistance, for example, by drafting their own contracts.¹⁵⁵ This unwillingness to turn to *avocats* for legal assistance may have several sources, including a desire to economize financially, the socialist legal system's self-help bias,¹⁵⁶ or the sense that lawyers should be retained only when indispensable, as in litigation. Additionally, many older *avocats* choose not to learn the new commercial code and refuse business clients. Tort work is rare in Romania; prosecutors pursue claims for money damages resulting from harm as part of criminal litigation. Few *avocats* use contingency fee contracts.¹⁵⁷ Finally, the poverty of many tortfeasors makes them judgment proof.

The effect of privatization in Romania seems limited to increased fees because so many *avocats* still populate the former Legal Assistance Bureaus' rooms performing communist-era type work for communist-era type clients. The legacy of communist regulation, however, does not adequately explain this continuity, given the resemblance between Romanian sole practitioners and those in the United States where there has been no communist influence. Under the communists, there was negligible private property, and the only available work was minor individual litigation. In the United States, solo and small firm lawyers do the same work, not because of government policies, but because the large-scale economic effect of the market economy fails to reach them. Privatization puts the Romanian lawyers in the same position as their U.S. counterparts, not because of their communist past, but because both lack clients who need the type of legal work found in metropolitan law offices.

ing this activity. Interestingly, while he had a separate retainer for each client, he met with the parties as a group and identified them as a group just as any U.S. lawyer would.

154. In the few Bucharest large firms where commercial work, including corporate work, is significant, the clients are primarily foreign businesses and international institutions, such as the World Bank. See Cretzan, *supra* note 97.

155. Contrast U.S. practices. HANDLER, *supra* note 92, at 39, 40 tbl.3.5.

156. See Hendley et al., *supra* note 44 at 686.

157. Compare *infra* text accompanying note 201.

E. Working Arrangements

Law offices in the United States vary from elegantly furnished rooms with dramatic skyscraper views to small business-like commercial spaces to home offices.¹⁵⁸ Urban sole practitioners often share space in a downtown building.¹⁵⁹ Work space is simply an economic issue; no socialist State ever dictated where one practiced.

In Romania, lawyers are now free from having to practice in the courthouse rooms, but those rooms remain filled, and *avocats* still share desks. Many *avocats* practice from their homes, full of family life,¹⁶⁰ but that may be no more common than when it was prohibited by the communists. Almost no *avocats* go to their clients' homes or places of business.¹⁶¹ Rather, in some counties, many lawyers confer with clients in restaurants near the courthouses. A well-established lawyer used the phrase "radiator lawyers" to refer to Bucharest lawyers whose offices are note pads on the radiator in the courthouse corridor.¹⁶² While some lawyers, especially those with foreign business clients, work in comfortable offices, most claim a lack of resources as a barrier to improving their business environments.¹⁶³

Staffing of law offices is lean. Many U.S. solo practitioners have little or no staff, distinguishing them from even their small-firm peers.¹⁶⁴ Similarly, only about ten percent of the Romanians interviewed have a paid associate, but over half have apprentice lawyers working with them,¹⁶⁵ and one firm hires law students.¹⁶⁶ Approximately one-third of these professionals receives a salary. One-half receives a part of the fee from cases they work on and a few receive

158. Levin, *supra* note 99, at 858.

159. CARLIN, *supra* note 118, at 41.

160. I interviewed some *avocats* in their apartments. Only one had a separate room with a desk arranged as an office and, even there, clothes were hanging to dry.

161. Almost half of the respondents saw clients only in the *avocat's* office, home, or the courthouse. Given that most clients are individuals, the failure to see the client in his or her home is an unsurprising respect for privacy as well as a professional norm.

162. Interview with Romanian *avocats*, *supra* note 13.

163. *Id.*

164. SERON, *supra* note 105, at 80. On the other hand, some U.S. attorneys had a large support staff, even outnumbering the lawyers. See Levin, *supra* note 99, at 858.

165. The salary is usually only the national minimum wage in the case of apprentices, many of whom actually paid their employer to accept them. See Kandis Scott, *Additional Thoughts on Romanian Clinical Legal Education: A Comment on Uphoff's "Confessions of a Clinical Educator,"* 6 CLINICAL L. REV. 532 (2000) (describing the exploitation of new graduates (*stagiaires*) during the mandatory two-year apprenticeship).

166. *Avocats* may not hire law students or graduates as personal assistants or secretaries. Bar Regulation 284/2001, *supra* note 61, art. 24.

both. Half the *avocats* had a secretary, seventy-five percent of whom worked a full-time week although the hours might differ from the U.S. business day.¹⁶⁷ Of forty-six interviewees, thirty-eight used a computer in 2000, primarily for research, and four others would like to have computers. Few Romanian *avocats* are now using the computer to obtain the efficiencies of standardization, a common practice among budget-conscious sole practitioners in the United States.¹⁶⁸ More generally, however, computer use and ownership are spreading rapidly in Romania.

As is the case with many lawyers in the United States,¹⁶⁹ Romanian lawyers continue to practice alone. Despite legal authority to do so, almost none formed firms by 2000, five years after full privatization. They also shunned other structures that permit sharing expenses.¹⁷⁰ Without experience practicing in a shared-cost or shared income arrangements other than the detested collective, Romanian lawyers are unfamiliar with managing such arrangements. To the extent that law firms are formed to permit individual specialization,¹⁷¹ many *avocats* believe themselves financially unable to specialize¹⁷² and conclude that a group practice offers no advantages. Despite this slow start, there has been growth in the number of firms and other collaborations in the last three years.¹⁷³

167. I encountered few secretaries during my interviews. Possible explanations are false survey responses, missed timing, interviews away from the offices, and misunderstanding of "secretary," for example one *avocat's* wife greeted me with cookies at the lawyer's office/apartment.

168. CARLIN, *supra* note 118, at xx.

169. See *supra* note 95 and accompanying text.

170. There seemed to be some sharing of space that interviewees did not identify as such, especially in Bucharest. Possibly these *avocats* did not want to register with the bar association as practicing with others or saw their arrangements as something different from the statutory arrangements. The use of collaborating attorneys may be a way to gain some of the benefits of association. The financial arrangements vary according to a negotiated contract, but collaborators never receive salaries or employee benefits so differ from hired associates. See *supra* note 70 and accompanying text.

171. MATHER ET AL., *supra* note 145, at 184 (citing RICHARD L. ABEL, AMERICAN LAWYERS 235 (1989)) (explaining that expenses drive the formation of firms). There is a long-term trend towards specialization in the United States. *Id.* at 182, 184. Small town lawyers who work in groups they call firms behave like individual general practitioners and do not develop the efficiencies of specialization. HANDLER, *supra* note 92, at 147-49. Romanian practitioners who share the courthouse space with other *avocats* may be practicing in that same way.

172. See *infra* text accompanying notes 209-213.

173. See *supra* text accompanying note 74.

F. *The Work*

An *avocat's* workday reflects regional differences, but is usually different in emphasis rather than kind from that of lawyers in the United States. The telephone controls the work of U.S. lawyers by disrupting their daily activity.¹⁷⁴ That is less true in Romania, where only recently do clients commonly have telephone service, and many villages still lack land lines.¹⁷⁵ Although *avocats* make cellular phones their surrogate offices, Romanians do not telephone their lawyers as much as U.S. clients do because mobile calls are expensive, face-to-face meetings are traditional, and *avocats* spend most of their days in court.

In Romania, court appearances control a lawyer's day much like the telephone controls a lawyer's day in the United States. Although U.S. small-firm and solo practitioners spend a lot of time in court,¹⁷⁶ most *avocats* are in court daily, often until the court closes. Not only do they appear in hearings, but they prepare cases by reviewing the files in the clerk's office, an important task in the civil law system. The Romanian courts open at 8:00 a.m. and most close at approximately 2:00 p.m. without a break for lunch. Most lawyers go home for their main meal at 3:00 p.m., but some are beginning to adopt an 8:00–5:00 schedule.

Litigation proceeds slowly in Romania through a series of court appearances characteristic of trial procedure in the civil law system.¹⁷⁷ Most *avocats* blame the profession for the delay. For example, in Timișoara, one divorce with property division took three years in the lower court and five years after appeals.¹⁷⁸ Because laws are frequently amended, a conscientious lawyer might intentionally delay a case hoping for a more favorable controlling stat-

174. SERON, *supra* note 105, at 118.

175. Despite their expense, mobile or cellular telephones are increasingly common in Romania. As of 2001 there were 3,845,100 cellular mobile subscribers in Romania, amounting to 17.17% of the population; 48.3% of those with telephone service had a cell phone. International Telecommunication Union, *available at* http://www.itu.int/ITU-D/ict/statistics/at_glance/cellular01.pdf (last visited Mar. 15, 2004).

176. SERON, *supra* note 105, at 119. Sole practitioners in Chicago spend a little over an hour a day in court and another hour at administrative agencies, leaving an average of four to five hours in the office. CARLIN, *supra* note 118, at 41.

177. See JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* 112 (2d ed. 1985).

178. *Avocats* report that in Iași a civil case takes one year with appeals, but that would be two to three years in Târgu Mureș. A criminal infraction or divorce by agreement can take as little time as five weeks to three months, but that is uncommon. In Bucharest cases that should conclude in about three months take six. Interviews with Romanian *avocats*, *supra* note 13.

ute, but that is not typical.¹⁷⁹ A more common but less worthy motive is to earn more money through additional court appearances.¹⁸⁰ Given that most *avocats* charge a flat fee for a case, delay increases income only because a client pays a “gift” at each court appearance.¹⁸¹ If *avocats* do not report these payments for tax purposes, each postponement is especially lucrative. Lawyers who accept fees on an installment plan do not allow a case to end until the full fee is paid. Two unusual interviewees wanted cases to move quickly so that they could take on additional work, indicating that they had enough incoming matters to fill their dockets.¹⁸² Almost all who responded said that lawyers encourage appeals for financial reasons (an appeal costs an additional fee) as well as to satisfy their competitive desire for victory.¹⁸³

Unlike their communist era practice, judges and courts also slow down litigation now. The system of proof invites delays with its dependence on experts and government service of subpoenas. *Avocats* criticize judges for incompetence, claiming they allow unnecessary proof, and prepare files insufficiently, or rely excessively on experts due to inexperience.¹⁸⁴ Judges permit lawyers to succeed with dilatory tactics. A common complaint is that long dockets overwhelm the courts and encourage postponements to the next month’s term. Courts are closed for vacation two months in the summer and approximately one month during Christmas and New Year holidays.

Avocats settle few cases in comparison to U.S. lawyers, thus further crowding dockets. Some *avocats* estimate that they had settled only ten to twenty cases in their careers, although one believed he

179. *Avocats* recognize that delay benefits debtors and defendants because inflation quickly devalues a debt.

180. Few respondents gave reasons for court delays. Seven blamed *avocats*; three, the judges. A few others offered the following administrative/institutional explanations and suggestions. Court administration is inefficient so files are lost. Police postpone service of subpoenas so witnesses do not appear. (One attorney suggests service by mail to ameliorate this problem.) The traditional time consuming courtroom culture of oral argument is changing, albeit slightly, as *avocats* file more written briefs. One lawyer proposes an ethics code that would prohibit intentional delay. Interviews with Romanian *avocats*, *supra* note 13.

181. *Id.*

182. *Id.*

183. *Id.*

184. To select an expert and hear his or her testimony usually takes three to four months. One *avocat* in Târgu Mureș claimed that experts and evaluations made probate cases take the longest. Given sufficient delay at a time of high inflation, experts must revalue property and return to testify a second time. *Id.*

had settled ten percent of litigation matters.¹⁸⁵ Divorces with property division and inheritance disputes, in that order, are the most likely to settle.¹⁸⁶ Lawyers also resolve commercial disputes, sometimes before filing a complaint, especially those involving foreign businesses familiar with settlements and the time value of money. The only plea bargaining options in criminal cases are civil compromises in which a victim retracts the initial complaint and the accused offers some satisfaction in return.¹⁸⁷

Avocats, judges, and clients are resistant to settlement, which explains its rarity in Romania. *Avocats* are unenthusiastic about settlement because they benefit financially from litigation. Moreover, *avocats* define the lawyer's goal as an in-court victory.¹⁸⁸ Judges do not press for settlements, except in divorce cases. A judicial project in alternate dispute resolution commenced in 1999 may begin to change judicial reluctance to encourage settlements.¹⁸⁹ *Avocats* contend that clients resist settlements for several reasons. First, clients distrust a lawyer who wants to make a deal. One interviewee said he never settled a Romanian's case without the client present.¹⁹⁰ The conviction that any case may be won by bribing the judge¹⁹¹ deters settlement of weak claims. Some interviewees assert that lawyers do not explain settlement adequately to their clients.¹⁹² Litigants intent on vengeance, however, are unlikely to appreciate any explanation of an out-of-court resolution of their case. Some clients believe they can get justice only from a judge, a need unsatisfied by an informal settlement. One *avocat's* analysis of client behavior ties together several of these factors. Because legal services are expensive, clients sue only when they cannot resolve their own problems. By that time, the client may already be angry and inflexible, wanting an authority figure to step into the situation. Alternatively, the failure of private resolution may

185. Of course some new practitioners had settled no cases, and one elderly lawyer claimed 100 settlements in his career. The small numbers show only that settlement is not a common dispute resolution technique. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. Kandis Scott, Alternate Dispute Resolution in the United States, Address Before Justices of the Court of Appeals, in Timișoara, Romania (Nov. 26, 1999).

190. Interviews with Romanian *avocats*, *supra* note 13.

191. See *infra* text accompanying notes 245–249.

192. Interviews with Romanian *avocats*, *supra* note 13.

demonstrate that there is no settlement range and the matter must be tried.¹⁹³

Finally, factors specific to the Romanian situation make settlement more difficult than in the United States, where over ninety percent of litigation is resolved before trial.¹⁹⁴ Non-owners, who answer to a government Minister, manage State enterprises including their litigation. The managers fear criticism for making atypical decisions (e.g. settlement), and the Minister responds to political rather than legal or economic concerns. In actions between average citizens, poverty inhibits settlement. Poor people could not live up to their agreements and enforcement of settlements is difficult. This theory is supported by the relatively frequent settlements in divorces or inheritance cases where there are assets to divide without the complexity of execution and without future obligation to the other party.

Time in court is only one of the reasons Romanian and U.S. practitioners find themselves working in the evenings. The Romanian litigation regimen and mid-day meal mean Romanian lawyers schedule client conferences in the late afternoon or the evening. Six *avocats* saw clients as late as 10 p.m. and met with this interviewer during those hours.¹⁹⁵ The majority make appointments for most or all clients, but that might refer to client interview hours open to all comers rather than to individual appointments. That is tolerable to Romanians with experience waiting in communist-era lines. In the United States, by contrast, the demands of the telephone require lawyers to occasionally see clients and more often to do paper work after the business day,¹⁹⁶ much the same as Romanian lawyers.¹⁹⁷ *Avocats* work much harder after privatization than under the socialist system: ten of fourteen

193. *Avocats'* ability to influence their clients makes one skeptical of these explanations. See *infra* text accompanying note 269.

194. A 1995 study estimates that only 2.9% of civil cases in the United States go to trial. See Samuel R. Gross & Kent D. Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1, 2 n.2 (1996) (citing Theodore Eisenberg et al., *Litigation Outcomes in State and Federal Court: A Statistical Portrait* 7 (May 25, 1995) (draft manuscript)).

195. Interviews with Romanian *avocats*, *supra* note 13.

196. SERON, *supra* note 105, at 121.

197. The importance of paper work in the professional lives of U.S. and Romanian lawyers is unclear. In both countries the legal issues in small, routine litigation matters are not complex (U.S. lawyers do some paperwork watching TV), but lawyers find research burdensome. *Id.* at 121-23. The Romanian laws change frequently making research difficult. See *infra* text accompanying notes 228-230.

avocats worked more than forty hours/week and five worked over fifty hours/week—long hours for Romanian workers.¹⁹⁸

G. Fees

Almost all *avocats* bill according to the client's ability to pay. Because all interviewees bill on more than one basis, it is also typical to charge by the type of case, as was done in the collectives,¹⁹⁹ adjusted in light of the client's apparent ability to pay. The adjustment is a direct way to capture the "gifts" received from clients during collectivized practice. The Union of Romanian *Avocats*' minimum fee schedule allows for fees calculated as a percentage of the claim.²⁰⁰ Approximately one-half of the lawyers interviewed used this method of billing. True contingency fee arrangements are uncommon, and some lawyers insist that they are prohibited. Where they anticipate a substantial recovery, as in restitution of nationalized property cases, some *avocats* levy "success fees" or "reward bonuses," which amount to informal contingency fee arrangements.²⁰¹ *Avocats* without specific arrangements complain about plaintiffs' parsimony after a success. This is consistent with a general diminution of gifts from clients, which lawyers attribute to their clients' assumption that the fee charged is now satisfactory to the lawyer. *Avocats* explained this with equanimity, but some appeared eager for gifts. No one remarked on the clients' smooth acceptance of market economics and rejection of tradition.

Almost one-third of the *avocats* claimed to bill hourly in the written questionnaire.²⁰² In oral interviews, however, there was no mention of that practice, with the exceptions of in-office consultations and the billing systems of Bucharest firms with corporate clients. In the United States solo and small-firm lawyers do not use an hourly rate and only some use a fee-for-service system. Instead, they negotiate the fee with each client in light of the complexity of the case, location, and "sometimes the client's ability to pay."²⁰³

198. Although one male *avocat* stated that his practice had given him less time with his family, the females found their work to be especially stressful. Romanian women feel great time pressure (they work outside the home and also perform all the household tasks) and express more dissatisfaction with their careers than men do.

199. Approximately one-third of the interviewees charged flat fees, perhaps with adjustments.

200. In 1999 the percentage fee ranged from 10% of claims under \$278 to 0.25% of recoveries over \$27,778. These year-1999 fees are converted at 18,000 lei/\$1.00.

201. Many plaintiffs seeking return of nationalized property are émigrés for whom success is a windfall. They are also usually able to afford substantial fees.

202. Interviews with Romanian *avocats*, *supra* note 13.

203. SERON, *supra* note 105, at 116–17.

This similarity is understandable given lawyers' desire in both nations to secure every potential client's business.

Most *avocats* increase their income by taking fees greater than reported in the client's receipt and not reporting the excess for tax purposes. The openness and prevalence of this system is captured in one law professor's questioning in a worldly tone, "[d]on't American lawyers take more than the amount they enter on the receipt?"²⁰⁴ *Avocats* do not have difficulty collecting fees from clients, despite their poverty,²⁰⁵ because they almost universally collect fees in advance when the retainer is signed. In Iași especially, where the bar is large and the citizenry poor, many accept installments with payment in full by the end of the case.²⁰⁶

Both *avocats* and U.S. solo practitioners measure their success in financial terms.²⁰⁷ During the communist era, collectivized Romanian lawyers earned more than average workers. This disparity persists between *avocats* and average Romanian workers. Interviewees did not disclose exact incomes, especially their unreported income. In 2000, however, it was not uncommon for lawyers to earn gross monthly incomes²⁰⁸ of \$1000–2000 in cities outside Bucharest, while other lawyers earned only \$40–70 per month.²⁰⁹ One *avocat* estimated that eighty percent of the local bar association earned \$150–250 monthly.²¹⁰ In another city, the estimated average monthly income was \$500.²¹¹ Lawyers in Bucharest charged foreign entities \$175–500/hour.²¹² Bucharest offers the most opportunity to earn \$500 or more monthly on retainer to a business.²¹³ This disparity in financial success among Romanian

204. Interviews with Romanian *avocats*, *supra* note 13.

205. U.S. attorneys do have difficulty collecting fees. SERON, *supra* note 105, at 116.

206. One *avocat* said she accepted "large fees, such as \$50" on an installment plan. Interviews with Romanian *avocats*, *supra* note 13.

207. LANDON, *supra* note 93, at 52.

208. *Avocats* pay approximately 50% of their gross income in taxes, dues, and pension plan contributions. On January 18, 2000, attorneys went on a one-day strike to protest an income tax hike and a value-added tax to be paid by their clients. They ended the strike after the Government promised to honor their claims, but then resumed striking for several days in February. Paula Dumitrescu, *Lawyers' Strike Freezes Justice System*, NINE O'CLOCK, Feb. 2000, available at <http://www-old.nineoclock.ro/2000FEB/2108pol.html>.

209. Interviews with Romanian *avocats*, *supra* note 13.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Avocats'* incomes have risen substantially since 2000; some lawyers reputedly gross in excess of \$100,000 annually. In 2003 the annual gross salary (net would be approximately 60% of gross) of a lower court judge is approximately \$9,600; a trial court of general jurisdiction judge, \$10,900; a court of appeals judge, \$12,000; and a Supreme Court

lawyers mirrors disparity among U.S. lawyers' financial success.²¹⁴ Metropolitan lawyers prosper by collecting large fees from relatively few clients while non-metropolitan U.S. lawyers and Romanian *avocats* succeed by receiving small fees from many clients.²¹⁵

Not all Romanian *avocats* are comfortable financially if arrears in bar dues and pension payments are any measure.²¹⁶ In Timiș county, in 2000, approximately fifty of 300 lawyers had paid up to date, and some *avocats* had been suspended until their debt was cleared.²¹⁷ Some lawyers competing for clients charge less than the minimum fees set by the Avocats' Union,²¹⁸ a practice denounced with the English word "dumping." This surprises some established *avocats*, who consider the set minimums to be absurdly low, such as \$2.80 for an hour consultation with an individual, \$8.40 for an hour with a business, and \$28 for a divorce without property or custody issues.²¹⁹ In comparison, one lawyer charges \$18 for a one hour consultation.²²⁰ Apprentices and new *avocats* accept appointments to represent indigent criminal defendants for small fees paid by the Ministry of Justice (\$6 for a misdemeanor and \$12 for a felony) or local government agency.²²¹

New lawyers with enough clients have unusual entrepreneurial skills²²² or, in Romania, family connections. As in Chicago, where beginning solo practitioners can not support themselves without

judge, \$14,600. One interviewee reported that about half the lawyers in Timișoara "earn less than a judge" because of competition for clients.

214. In a middle-sized city, attorneys' median net income was "almost three times as great as median family income." HANDLER, *supra* note 92, at 28.

215. LANDON, *supra* note 93, at 32.

216. Because *avocats* perpetuate some of their communist-era strategies for income maximization, it is impossible to accurately link average gross income to the amount of pension contributions.

217. Interviews with Romanian *avocats*, *supra* note 13.

218. Law 51/1995 amended, *supra* note 12, art. 63(e) authorizing the Union of Romanian *Avocats* to set the fees; Bar Regulation 284/2001, art. 94(2). In the United States a minimum fee schedule might violate antitrust laws. See Superior Court Trial Lawyers Ass'n v. F.T.C., 493 U.S. 411 (1990).

219. Other minimum fees were \$32 for a divorce with minor children, but where there is marital property to be divided the fee ranges from 10% of a small amount of assets to 0.25% where the property was worth over \$2,320. Forming a family corporation costs \$174. Uniunea Avocaților din România Fee Schedule, 26 April 1999 (on file with author). These year-2000 fees are converted at the 2000 exchange rate of 21,700 lei/\$1.00.

220. Interviews with Romanian *avocats*, *supra* note 13.

221. Law 51/1995 amended, *supra* note 12, art. 69; Bar Regulation 284/2001, *supra* note 61, art. 146. Sometimes no *avocats* appear to take criminal appointments in outlying courts in Mureș county despite being fined by the judges. The small fees the government pays do not justify the time it takes to reach these courts.

222. LANDON, *supra* note 93, at 31.

income from other than law practice,²²³ novices in Romania depend on in-kind income (housing and meals) from the *avocat's* family. The professional struggle discourages young lawyers in both countries.²²⁴

The majority of interviewees stated that economic issues make their practice more difficult. There are strong extremes in responses regarding the effect of the market economy system on law practice: fifteen said that it presents the least difficulty, while twelve found that it presents a great problem.²²⁵ Most *avocats* beginning their careers bemoan their plight, hope for better times, and, like their experienced colleagues, are unaware of how to build larger practices. The vast majority of lawyers believe that an improvement in the Romanian economy, rather than a change in their behavior, is the key to improving their professional lives.

U.S. and Romanian lawyers have contrasting perspectives on lawyering even though their daily professional lives are similar. While motivated by similar bottom-line pressures, the lawyers strongly diverge in their attitudes toward civic participation. This dissimilarity is rooted in their different political histories, whose effects even economic self-interest cannot overcome.

III. AVOCATS' PERSPECTIVES

In response to open-ended questions about their profession and its future, Romanian *avocats* return frequently to two overarching issues: new legislation²²⁶ and career satisfaction, the latter implicating intangible values such as personal relationships and status. Their anecdotes, while not verifiable in a rigorous sense, reflect common perceptions. To the extent these *avocats* are representative, their statements convey their experience of their world if not necessarily that world itself.

A. *New Legislation*

New statutes make *avocats'* work more interesting and more stressful than during the communist era. Specifically, client mat-

223. CARLIN, *supra* note 118, at 14. In rural America too, beginning attorneys struggle financially. A practitioner's income after fifteen years of practice may be double that after five years. LONDON, *supra* note 93, at 31.

224. RICHARD L. ABEL, *AMERICAN LAWYERS* 165 (1989).

225. Interviews with Romanian *avocats*, *supra* note 13.

226. The emphasis on new legislation is understandable. Post-communist statutes have generated a great deal of legal work (for example, litigation to restore nationalized property and commercial cases). Less relevant to average lawyers are various business reorganization laws dealing with bankrupt communist companies.

ters are more varied and include transactional work as well as litigation. Additionally, litigation is more exciting because lawyers can express themselves freely in court and take pride in being “courageous” advocates.²²⁷

Avocats are burdened by the tasks of knowing all the new laws and keeping up with their constant revisions. Law students typically learn statutes through memorization. This method was sufficient during the communist era because statutory changes were rare, and the laws governed a limited variety of legal problems. Memorization of statutes during law school, however, is no longer sufficient because new laws are enacted more frequently and encompass a greater number of legal problems. Computerized statutory research systems are available but too costly for many *avocats*. When asked what change in the laws they would like to see, many lawyers answer with the same word: “stability.”²²⁸

This perception is not unique to the legal profession. U.S. Deputy Commerce Secretary Samuel Bodman recognized this phenomenon in reporting that foreign

businesses have the general perception that the Romanian government frequently imposes economic regulations that often contradict existing laws and come into effect very rapidly. People . . . want to know that the rules that are in place when they start an arrangement will be in place . . . five years later . . .²²⁹

This instability leads many *avocats* to plead for increased permanence, clarity, and consolidation of laws. One lawyer pointed out a statute that had been revised several times in a two-year period, even twice in one week.²³⁰ This situation frustrates careful lawyers, but one cynic joked that the changes, while bad for clients, were good for lawyers, who could bill for additional research.

The legislative changes are especially difficult for older *avocats* who are sometimes overwhelmed by the new developments. Such lawyers limit their practices to the kinds of cases they accepted in the collectives. Older lawyers are thus able to continue leading successful careers while losing only the opportunity to expand their practices, an opportunity of less value to those nearing retirement. Although some lawyers assert that older lawyers benefit from privatization, others describe them as unable to make the

227. Interviews with Romanian *avocats*, *supra* note 13.

228. *Id.*

229. *U.S. Trade Representative Wraps Up Three-Day Visit to Romania*, Radio Free Europe/Radio Liberty Newswire, 18 July 2003, at <http://www.rferl.org/newswire/2003/07/4-see/see-180703.asp> (last visited Mar. 15, 2004).

230. Interviews with Romanian *avocats*, *supra* note 13.

transition. One *avocat* said unsympathetically, “[t]hey should not complain because they already complained about their fees during communism.”²³¹

Among the new statutes to which older lawyers must adapt is the one privatizing the bar and inviting new modes of practice. One lawyer stated that *avocats* with substantial experience under the communists are more reluctant than younger colleagues to ask for large fees.²³² Senior lawyers can afford to open private, professional offices, but do not because they refuse to assume the responsibility or lack the financial and administrative ability to manage an office. It is surprising that among the interviewees only one pair of semi-retired lawyers joined with novices to open an office so as to maximize the strengths of both groups.²³³ Mid-career lawyers are the great beneficiaries of decollectivization. They have profitable practices and the ambition to take advantage of privatization.

New legislation is especially taxing because *avocats* are general practitioners. Among the thirty-five interviewees who offer a breakdown of their workload, only five show any specialization: four whose caseload is eighty to ninety percent criminal defense and one who does ninety percent commercial work.²³⁴ *Avocats* justify accepting matters outside their special interests as financially necessary. Nonetheless, established Romanian *avocats*, who report having sufficient clients, continue to accept almost all comers.²³⁵ Romanian lawyers echo the explanation given by their mid-sized U.S. metropolitan counterparts for the pressure towards adopting general practice: “Survival . . . means serving the full range of clients and cases that small settings generate.”²³⁶

Despite justifications for general practice, many *avocats* support specialization in law practice, or at least predict the desire for increased competence will spur specialization in the future.²³⁷

231. *Id.*

232. *Id.*

233. *Id.*

234. The last may not really show much specialization given the variety of work included within that category: contract drafting, business formation, mergers, acquisitions, liquidation, bankruptcy, and international business transactions.

235. A few lawyers refuse specific types of cases (for example, criminal law) and others refuse certain clients (for example, gypsies), but those areas of exclusion are usually narrow.

236. LONDON, *supra* note 93, at 62; *see also* HANDLER, *supra* note 92, at 58–64, 148–50.

237. Only three of thirty-two *avocats* expressed reservations about the desirability of specialization. Several supporters acknowledged economic pressures against specializing now. One *avocat* addressed the quality issue by denying that the law was complex enough to justify specialization. Interviews with Romanian *avocats*, *supra* note 13.

Two *avocats* actually characterize present practice as “incipient specialization” or “semi-specialization.”²³⁸ Tradition, however, works against change: some lawyers are awaiting positive authorization for specialization. The consensus is that specialization is an inevitability.

To many interviewees, especially in Bucharest, specialization is a trend accompanying the formation of law firms, which entails other problems.²³⁹ One young Bucharest lawyer explained why so few firms had formed by 2000: Romanian lawyers are hesitant to risk working with and depending on a financially unsuccessful partner. An obligation to one’s partners, sometimes competing with responsibility to clients, is an important price for the efficiency of firm practice in the United States as well.²⁴⁰ Discomfort with change also slows the development of practice groups. On the other hand, the financial need to share costs and clients’ beliefs that firms have more power support the creation of firms and specialization within them. Not surprisingly, the number of firms has grown since 2000.²⁴¹

Romanian lawyers wish new statutes were precise, simple, and clear like older statutes. These newer statutes are not poorly drafted, given the influence of European Community requirements on new legislation. Rather, Romanian lawyers, who as a result of communist tradition have no experience with new legal rights, find the statutes more ambiguous than would a lawyer from a different legal and political tradition. Another generally supported proposal is to “integrate, consolidate, [and] harmonize” laws such as the tax and property laws.²⁴² The sheer quantity of new types of legislation during the post-communist era makes it difficult for lawyers to determine applicable rules. Finally, the *avocats*’ cry for stability and clarity represents a preference for less judicial interpretation so that resolutions are more predictable. The *avocats*’ frustration is their response to the growing complexity of laws required by a market economy and the challenge of adjusting to this legal universe.

The *avocats*’ desire to avoid judicial interpretation reflects their concern with corruption, a threat to the rule of law. Many Romani-

238. *Id.*

239. *Id.*

240. Duty to one’s partners diminishes the *pro bono* contributions of former solo practitioners. MATHER ET AL., *supra* note 145, at 184.

241. *See supra* note 74.

242. Interviews with Romanian *avocats*, *supra* note 13.

ans speak of lawyers asking for money to bribe judges, sometimes retaining that bribe money, and attributing lost cases to the opposing party's larger bribe.²⁴³ Unsurprisingly, the written survey of interviewees reveals that corruption is the second most intensely criticized problem in legal practice.²⁴⁴ This statistic is consistent with ordinary Romanians' views in 2002: fifty-six percent believed only one-half or less of the judicial system is corrupt, but twenty-four percent asserted that about all of it is corrupt.²⁴⁵ A World Bank for Reconstruction and Development report identified Romania as having the largest increase in bribe-taking by public officials of any country now a candidate for European Union membership.²⁴⁶ Even the Romanian Prime Minister, Adrian Nastase, has acknowledged the problem saying, "Romania is ten years late in implementing anticorruption measures."²⁴⁷ The public's lack of confidence in the judiciary is understandable; twenty-four percent of surveyed Romanians who had contact with the justice system (excluding police) had to "offer 'presents' (money, products, services) to personally solve a problem" in 2000.²⁴⁸

243. Lawyers and judges deny such acts, but recognize that others may behave that way. Partially inconsistent with these reports, only 2% of Romanians surveyed believed that legal advocacy had the most corrupt people. However, 12% believed the judiciary contained the most corrupt people, second after Parliament with 13% of the responses. If the top four choices of respondents are aggregated, the judiciary again comes in second with 26%, behind the police with 30%. Lawyers continued to rank low in perceived numbers of corrupt individuals with only 6%. MetroMedia Transilvania, Barometrul de Opinie Publică, iunie-iulie 2002, at 19–20 [hereinafter Metro Media], <http://www.mmt.ro/Cercetari/Barometrul%20national%20MMT%20iunie%202002%20.pdf> (last visited May 10, 2004).

244. Subjects described the intensity by which any given factor caused difficulty in their professional activities. Corruption drew "highest level" of intensity for fourteen of forty-nine respondents. The only factor which drew more responses at that high level of intensity was "bad laws," with eighteen of fifty-three responses. That category, the only one mentioning the laws themselves, is closely related to the behavior of judges. Interviews with Romanian *avocats*, *supra* note 13.

245. MetroMedia, note 243, at 24. In another survey, only 19% of Romanians trust the courts. The mean percentage of the populations of Central and East European countries trusting the courts was 25% and only three nations showed a lower proportion of trust in courts than in Romania. Richard Rose, *Advancing into Europe: Contrasting Goals of Post-Communist Countries*, in *NATIONS IN TRANSIT* 39, 45 (fig. 2), 46 (tbl. 3) (2002).

246. Companies in the Bank survey allege that the "bribe tax" increased 53%, to 2.6% of their annual revenue, between 1999 and 2002. Brian Grow, "Duty-Free Dispute Erupts in Romania," *WALL ST. J. EUR.*, Nov. 25, 2002, at A3.

247. *World Briefing Europe: Romania: Action Urged On Corruption*, *N.Y. TIMES*, Mar. 20, 2003, at A8.

248. MetroMedia Transilvania, Barometrul de Opinie Publică, mai, 2000, at 16, at <http://www.mmt.ro/Cercetari/bop%202000.pdf> (last visited May 10, 2004). The form of the survey question is unusual because few citizens would have personal contact with judges. The response may underestimate the level of corruption by excluding the alleged role of attorneys in passing on bribes.

It is unsurprising that oral interviews implicate the judiciary in corruption given that sixty-six percent of Romanians lack confidence in the institutions of justice,²⁴⁹ and that litigation comprises the largest part of average lawyers' practices. Lawyers in Iași and Timișoara openly expressed more concern about judicial corruption than did other lawyers. The *avocats* recommend increasing judicial salaries and other benefits, such as providing a car and driver, to attract judges who would not need illegal supplemental income.²⁵⁰ Such proposals assume that economic need drives judges to unethical behavior.

Limiting judicial discretion in the application of statutes would alleviate some problems. Many *avocats*, however, proposed larger scale improvements in the judiciary. To improve the quality of the judges, *avocats* suggest rigorous testing, internships, and supervision.²⁵¹ These suggestions apply for the most part to new, young judges, the same ones *avocats* respect for courage in their decisions. The era when a Communist Party member telephoned the court and dictated the result in a case has ended. Over sixty-five percent of the interviewees rated political pressure as least significant in causing difficulties in their work.²⁵² The concern about judicial ability is not universal; lawyers in Timișoara did not complain much about judges' abilities until corruption was included in the quality calculation. New laws have stimulated more litigation and longer court calendars. Demand for more judges is especially strong in Iași, where courts hear forty to one hundred cases daily.²⁵³ *Avocats* believe lighter court dockets would improve the quality of decisions and shorten trial delays. They also suggest other efficiencies.²⁵⁴

In sum, the increased number of statutes, frequently revised and encompassing new areas, generates more work and more interest-

249. "Justice institutions" did not include the police. Public opinion of the justice system should be compared with the facts that only 23% of Romanians surveyed had little or very little confidence in the army, but 86% had that low opinion of parliament. Finally, 78% of the Romanians surveyed were dissatisfied and very dissatisfied with government activity in fighting corruption. *Id.* at 19.

250. Many lawyers feel that weaker or less ambitious students become judges. The Minister of Justice now imposes two additional years of training on law graduates entering the judiciary.

251. Interviews with Romanian *avocats*, *supra* note 13.

252. *Id.*

253. *Id.*

254. Among these suggestions were loudspeakers in the halls so that lawyers might know when their cases were called, longer open hours for the clerks' offices, hiring more clerical staff, computers in the courthouses, more courtrooms, and specialized courts. A more imaginative idea is rewarding judges based on the number of cases decided.

ing work for *avocats*. Specialization among *avocats* is likely to grow as a result. Statutes in formerly unknown fields of law require more frequent and more difficult interpretation by judges, who too often are unpredictable. *Avocats* also attribute unpredictable results to judicial corruption, which interviewees report presents challenges almost as great as the deficient laws.²⁵⁵

B. Career Satisfaction

Personal satisfaction is the second major issue of concern to *avocats*. The lawyers ground their positive evaluations of privatized law practice on financial success, as in the United States.²⁵⁶ *Avocats* generally believe that they are now serving a better type of client, meaning that the client is wealthier and brings more lucrative legal work.²⁵⁷ Many believe that *avocats'* status in society, largely identified with wealth, has increased since privatization. All lawyers insist that financial well-being—more than education, influence, independence, and other sources of intangible satisfaction—is essential to their professional satisfaction.²⁵⁸ Those with unmet financial aspirations, like many novice lawyers, were dissatisfied with their careers. On the whole, however, *avocats* are more optimistic about their future than Romanians in general.²⁵⁹

Established *avocats* are sensitive to their new colleagues' plight. One gave a deep sigh before describing how new lawyers must compete for clients: they must "fight" for even poorly-paid court appointments in criminal cases.²⁶⁰ Almost all new lawyers survive because they are unmarried, living at home, and supported by

255. Interviews with Romanian *avocats*, *supra* note 13.

256. The intellectual challenge of an area of practice or public service did not matter; lawyers who practiced law profitably gained the greatest prestige. In Donald Landon's study income generation was linked to specific fields of practice, which were ranked for prestige. LANDON, *supra* note 93, at 70, 76, 79. The absence of specialization in Romania makes such linking impossible.

257. These written survey responses vary from some oral comments describing work and clients as not dissimilar from those under the Communists. One explanation is that general satisfaction with their professional lives influenced their written answers, i.e. their cases and clients "felt" better than those in the communist era.

258. Lawyers in Iași were most open about their financial aspirations.

259. In October 2002, only 2% of all Romanians believe they would live much better in one year; 5% believe they would live much worse; and 33% believe they would live much the same, which reflects a small increase in optimism from May 2001. MetroMedia Transilvania, Barometrul de Opinie Publică, octombrie 2002 at 17, at <http://www.mmt.ro/Cercetari/bop%20octombrie%202002.pdf> (last visited May 10, 2004). U.S. middle-sized city lawyers were also generally optimistic about their future, despite some dissatisfaction in the lower groups that mirrored Romanians' attitudes. HANDLER, *supra* note 92, at 67.

260. Interviews with Romanian *avocats*, *supra* note 13.

their parents.²⁶¹ Yet *avocats* think that young lawyers will become a competitive force that will improve the quality of the profession.²⁶² This evaluation, however, is not universal. In Bucharest and Târgu Mureș, for example, *avocats* disparage the quality of novice *avocats*. Young lawyers respond to the older *avocats*' criticisms. One young lawyer characterized such criticisms as defenses against an "attack from more educated, elegant, forceful, and unexpectedly ambitious" novices.²⁶³ Most likely, both old and young lawyers are responding to the unsettling competitive effects of privatization and the flood of newcomers to the profession.

Almost all lawyers attribute unsatisfactory earnings to the general economy of Romania. They predict that lawyers' financial success will grow as Romania's economic wealth increases, or "law practice will be as Romania is."²⁶⁴ Acknowledging the unpleasant "law of the jungle"²⁶⁵ that competition imposes on law practice today, *avocats* trust that the future will be brighter despite the number of new law graduates entering the field. Their confidence in the market as a meritocratic force may seem surprising. Given Romanians' brief exposure to the market economy, communist experience, indoctrination in Marxist theory, and life in a society touched by petty and major corruption, one might expect the lawyers to be more skeptical about the effects of capitalism. Contradicting their averred faith that market forces will bring the cream to the top, *avocats* vigorously resist competition from what they insist is the skim milk—the *jurisconsults*²⁶⁶—and pity struggling novices. Integrating these views, one sees Romanian lawyers' optimism as grounded in the conviction that the nation's economy will grow such that there will be sufficient legal fees from wealthier clients to enrich all the good lawyers.

Although intangible satisfaction is less important to *avocats* than financial success, consideration of these satisfactions opens interesting windows to the culture. Like sole practitioners in the United States, *avocats* pride themselves on the professional and individual

261. This economic support, traditional family and social ties, statutory barriers, and costs of transferring to a different county bar deter migration from counties saturated with lawyers to those with less competition. See *supra* note 80.

262. Interviews with Romanian *avocats*, *supra* note 13.

263. *Id.*

264. *Id.*

265. For example, both experienced and new *avocats* say that novice attorneys "steal" clients from older lawyers after being assigned to work on that client's case. *Id.*

266. See *supra* notes 130–37 and accompanying text.

autonomy²⁶⁷ that permits them to exercise discretion in deciding to accept or reject work, to be responsible only to their clients, and to stand free from state control or other supervision.²⁶⁸ Even clients do not greatly restrict Romanian lawyers' freedom to act. The lawyers play a dominant role because clients generally defer to lawyers' expertise.²⁶⁹ In discussing autonomy, *avocats* use dramatic phrases such as, "I am my own lord," "I am my own master," and "I am distinct from others, not a member of a collective."²⁷⁰ Many subjects balance the disadvantage of increased responsibility for clients and payment of overhead with the pleasure of freedom: "I can work with my own team [firm]"; "I am independent, responsible, and pay for what I do."²⁷¹ Valuing this intangible benefit is especially common in Timișoara.

Working relationships with clients are also a source of satisfaction for *avocats*. During the collectivist period, lawyers accepted all clients. Now they enjoy the power to select clients²⁷² and have better relationships with clients as a result. The vast majority of respondents report that current clients' primary goal—to win—is not different from that in the communist era. Like U.S. counterparts, one *avocat* complained that overly optimistic clients expect a victory but do not appreciate that laws and judges are inconsistent, ambiguous, and change frequently. Despite that unpredictability, lawyers competing for clients promise what the clients want to hear and earn fees even when the client loses. This observation puts

267. Sole general practitioners in the United States place a high value on their independence from a supervisor, but their difficulties in making their practices economically viable suggest to Carlin that this is merely denying their low status in the Bar. CARLIN, *supra* note 118, at 184–85, 200. Solo practitioners in the United States see themselves as the last rugged individualists, see EVE SPANGLER, *LAWYERS FOR HIRE* 208 (1986), the kind of people "who do not want even the entanglements of jointly owned office supplies." *Id.* at 210.

268. Autonomy characterizes solo and, to a lesser extent, small firm practice in America. MATHER ET AL., *supra* note 145, at 177; SERON, *supra* note 105, at 12. Autonomy includes both the authority of the *avocats'* bar to govern itself independently and the individual's ability to use his or her professional expertise freely. Pamela Jordan, *The Russian Advokatura (Bar) and the State in the 1990s*, 50 EUR-ASIA STUD. 765, 785 n.2 (1998).

269. Small-town U.S. lawyers, more than urban practitioners, dominate one-shot clients but not repeat players. This is also seen in divorce lawyers influencing their clients' goals. In this sense solo and small-firm lawyers are more autonomous than large firm lawyers who enjoy more status, power, and money. Richard L. Abel, *Revisiting Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 15 (Richard L. Abel & Philip S. C. Lewis eds., 1995); SERON, *supra* note 105, at 106–07; MATHER ET AL., *supra* note 145, at 90.

270. Interviews with Romanian *avocats*, *supra* note 13.

271. *Id.*

272. This is a direct measure of an attorney's financial position. Most solo *avocats* do accept every client. See SPANGLER, *supra* note 267, at 209 (describing similar attitude of solo practitioners in the United States).

into doubt the *avocats'* confidence about good client relations. There were none of the typical U.S. complaints of "impossible clients," but a U.S. lawyer might find disrespectful the Romanian client consultations in the public lawyer rooms and office waiting rooms full of people without specific appointments. Under the communists, the public saw the *avocat* as part of a government system. Clients did not feel a very direct relationship to their lawyers. Now clients believe themselves entitled to attention, and to a victory—and to blame the *avocat* if they lose. One Timișoara lawyer said that clients now feel like the "*avocat's* employer," a threat to *avocats'* autonomy.²⁷³

Survey responses about other relationships are confusing. *Avocats* complain that poor professional standards cause difficulties in practice, but deny in written surveys that their colleagues or prosecutors create problems. The difficulty of prevailing in criminal cases frustrates defense lawyers, but in written answers they do not blame prosecutors. There were no criticisms of *avocats*, other than of some novices, in the interviews. Survey responses stating that judges are not a cause of difficulty (an inquiry different from the one about corruption) are most inconsistent with interviewee responses. When writing *avocats* depersonalize the difficulties of practice.

Some *avocats* believe the legal profession is changing its *mentalitate*. This cognate carries cultural implications because Romanians usually use *mentalitate* in national self-criticism attributing the country's ills to a mindset left over from the time of the Ottoman Turks and not easily changed.²⁷⁴ For example, corruption is blamed on the Romanian *mentalitate*, so it will take generations to die out.²⁷⁵ People litter the street, do not work hard, or act in their short-term self-interest despite societal harm "because it is their *mentalitate*."²⁷⁶

273. Interviews with Romanian *avocats*, *supra* note 13.

274. There is a Romanian joke in which God insists he has balanced things out after giving Romania beautiful mountains, rivers, forests, and sea by giving it the Romanian people. The joke does not specify what is wrong with the people because everyone believes it is their *mentalitate*.

275. Two percent of surveyed Romanians attributed corruption to *mentalitate*. MetroMedia *supra* note 243, at 23. In Romania, 89% think most or almost all public officials take bribes and are corrupt. In only two Central and East European countries did a larger proportion of the population believe bribery was prevalent. Even in Russia only 75% shared this skepticism. See Rose, *supra* note 245, at 39, 45 (fig.2), 46 (table 3); see also *supra* text accompanying notes 248–249. The fact that a large portion of the Romanian public believes that there is a great deal of corruption in the nation, but only 12% have personally encountered it typifies the nation's cynical *mentalitate*. MetroMedia *supra* note 243, at 27.

276. Interviews with Romanian *avocats*, *supra* note 13.

One lawyer, with a rare democratic sensibility, explained that he “fights the mentality of government bureaucrats who do not realize that he pays them [with his taxes] because they are used to the old ways.”²⁷⁷ Those old ways included Communist Party influence, favors, bribes—the communist-era *mentalitate*. The opposite would be a Western, cultured, or civilized view. Whether there is a Romanian *mentalitate* is unimportant here because the word is a way to label certain attitudes as intractable impersonal cultural norms.

Optimists see members of the bar beginning to care about more than their own material success and showing an interest in social goals. The change in *mentalitate* is subtle, but may be perceived in the *avocat* who proudly explained, “I created something [his practice] and I want it to grow.”²⁷⁸ That very non-communist statement captures the tone of a successful solo practitioner in the United States. One element of this attitudinal change is increased professionalism. For example, criticism of low standards for both malpractice and bar admission shows a changed *mentalitate* arising out of a concern for the quality of practice and client service. Lawyers who do not talk loudly to clients in public areas or shout across the lawyer rooms have increased their professionalism. A few *avocats*, especially in Bucharest and Timișoara, went so far as to predict that Romanian lawyers will become more like those in the West,²⁷⁹ meaning lawyers who are more ethical, less mercenary, or better practitioners. *Avocats* foresee themselves playing a role as “partners in the justice system” rather than as mere judicial aides, their label under the communists.²⁸⁰ *Avocats* distinguish Romanian from Western law practice, which they see as “a prestigious profession where the public opinion is that lawyers contribute to society, not just get rich.”²⁸¹ One *avocat* was disgusted by a law student’s mother who said on television that she wanted her child to earn lots of money without working.²⁸² That lawyer’s response evidences a change in *mentalitate*.

277. *Id.*

278. *Id.*

279. Romanians mean the United States and Western Europe when they talk of the West. They also mean a culture uninfluenced by the Ottoman Empire or the Soviet Union. To be Western is socially desirable.

280. Interviews with Romanian *avocats*, *supra* note 13.

281. *Id.*

282. *Id.* The televised mother explained her attitude by the fact that she had worked hard all her life.

Lawyers' frustration with judges' treatment of them demonstrates another element of attitudinal change. *Avocats* claim judges do not respect lawyers as necessary parts of the justice system and give "stupid" responses to *avocats*, "humiliating" them in public because they do not take them seriously and "would like *avocats* to disappear."²⁸³ For example, *avocats* reported that judges openly comment about how well a lawyer is dressed or, after looking at the retainer in the case file, how high the fee is, and call the cases of people representing themselves or of public lawyers before those of paid counsel. Even if the lawyers' talk of humiliation is overly dramatic, the desire for respect demonstrates a concern about public image and personal esteem and sensitivity to the societal role of professionals. This is consistent with the *avocats*' belief that their social status is higher than it was under the communists and could become comparable to that existing in the United States,²⁸⁴ if lawyers were to be known as necessary and respected components of the justice system.

Similar to most U.S. solo and small-firm lawyers, the majority of *avocats* are satisfied with their professional lives post-privatization but not without reservations.²⁸⁵ Several describe legal practice now as "half good and half bad" because the Romanian economy is weak. The most dissatisfied lawyers are the younger ones, who cannot compare work life under the communists. A majority of *avocats* would like their children to enter the bar, but a significant minority (disproportionately women) think otherwise, usually explaining that "stress, instability, and struggle" for success is too difficult.²⁸⁶ A few *avocats* express professional dissatisfaction with a judicial system that is unable to give justice to the people.²⁸⁷ Some wish they had chosen a different career and one bemoaned the loss of col-

283. This resentment and criticism of the judiciary was especially common in Timișoara county, which is probably attributable to a dispute at the time of the interviews between the bar association and the judiciary about courthouse facilities. In the written questionnaire *avocats* expressed generally good feelings about the judiciary.

284. The Romanian view of status in the United States is wrong. Prestige in the rural bar is associated with income and profitability. LONDON, *supra* note 93, at 71, 76.

285. Of U.S. small-city lawyers, 61% were very satisfied with their field and 70% were very satisfied with law practice, and no one was very dissatisfied with either. Nonetheless 6% would not be lawyers if they did it again. HANDLER, *supra* note 92, at 31. The rural bar expressed greater satisfaction: 87% stated that their current situation is the one in which they would most like to find themselves. LONDON, *supra* note 93, at 62-64.

286. Interviews with Romanian *avocats*, *supra* note 13.

287. *Id.*

legality, the increased financial stress, the changing laws, and the lack of security after privatization.²⁸⁸

Nonetheless, *avocats* are generally optimistic. Many expect the pace of legislation to slow and their own economic situation to improve with the nation's. Many also expect that *avocats'* prestige, professional standards, and public responsibility will match that of Western lawyers. The difference in the community activity of the two nations' lawyers may inhibit the Romanians' success.

V. CIVIC LIFE

Paradoxically the most significant difference between U.S. and Romanian general practitioners arises out of their strongly similar economic need to find clients. U.S. lawyers participate in their communities to build their clientele and for other motives²⁸⁹; for example, in 1995 seventy percent of a random sample of Chicago lawyers were active members or leaders in at least one voluntary association.²⁹⁰ *Avocats*, on the other hand, are not engaged civically.²⁹¹ As suggested, economic forces and context apparently create most of the parallels in solo and small-firm practices. The differences in community participation, however, arise out of the nations' civil societies and the lawyers' understandings of self-inter-

288. *Id.*

289. Rural lawyers participated in a mean of 6.9 organizations, while those from middle-sized cities participated in 5.6 or 5.2, and those in metropolitan areas joined only 2.1. LONDON, *supra* note 93, at 86–87 (citing Thomas J. Mathews, *The Lawyer as Community Leader: One Dimension of a Professional Role* 62 (1952) (unpublished Ph.D. dissertation, Cornell University) (on file with Yale University Law Library) and Dan C. Lortie, *The Striving Young Lawyer: A Study of Early Career Differentiation in the Chicago Bar* 212 (1958) (unpublished Ph.D. dissertation, University of Chicago) (on file with Santa Clara University Law Library)). In declining order of popularity rural attorneys participated in church (68%), political party, business organization, country club, and service club (63%). *Id.* at 87. Religious organizations once again are the most common arena for lawyer participation. John P. Heinz et al., *Lawyers' Roles in Voluntary Associations: Declining Social Capital?*, 26 LAW & SOC. INQUIRY 597, 612, 624 (2001). An average of over 74% of the lawyers in a middle-sized city participated in at least one civic club and 66% in at least one social club, although membership in other organizations, such as ethnic-religious organizations, was much smaller (10.75%). HANDLER, *supra* note 92, at 48. Two-thirds of beginning urban general practitioners actively participate in organizations, especially ethnic-religious groups. CARLIN, *supra* note 118, at 129.

290. Heinz et al., *supra* note 289, at 605. Solo practitioners participated at a rate a little above average: 74%. *Id.* at 608.

291. There are exceptions to this. For example, one young interviewee volunteers at an orphanage. More expected is the business lawyer who gives occasional talks to the Chamber of Commerce. Several lawyers teach at a law school for modest compensation. One serves on the local symphony board. Nonetheless, these are not typical lawyers. Interviews with Romanian *avocats*, *supra* note 13.

est and professional role. Here the past does influence the behavior of *avocats*.

Under the communists, Romania had no independent civil society; all organizations, even chess clubs, were organs of the Party.²⁹² Forming and joining private organizations is a norm of political culture in the United States.²⁹³ These dissimilar traditions illuminate the profound differences between the civic societies in the two nations today. The communist experience exhausted Romanians' desire to volunteer in community organizations. Under communism, "volunteering" was actually compulsory work for the nation, whether harvesting crops or sweeping streets on one's day off. Often a condition of getting desirable jobs and other tangible benefits, membership in communist organizations and participation in civic life were all but obligatory. The resulting distrust of community participation generated an antipathy to unpaid community work that has deterred the development of civil society throughout East Europe and Russia. The Romanians' strong reaction to participation in the public sphere is "repulsion."²⁹⁴ To them liberalization means the freedom to not engage in civic affairs.²⁹⁵

Because of Ceaușescu's authoritarian rule, the problem of weak civil society is acute in Romania. "Romanians must learn the 'art of association,' and unlearn the dynamics of fear that foster atomization."²⁹⁶ For example, omnipresent secret police under the Ceaușescu regime have made Romanians leery of civic activities even now, fearing they might present ways for the secret police to continue their influence of society.²⁹⁷ Although Romanians participate in voluntary organizations, especially the church, more than citizens of most other former socialist States, their participation rate is low compared to that in older democracies.²⁹⁸ Romanian history has fostered a culture of little civic engagement;

292. "[T]he Communist Party [was in] complete control over all aspects of public life. . . . The communist party effectively destroyed the space for civil society." Maria Bucur, *Philanthropy, Nationalism and the Growth of Civil Society in Romania* 17–18, in *WORKING PAPERS* (Johns Hopkins Comparative Nonprofit Sector Project, 1998).

293. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 189, 242–43 (J.P. Mayer ed., George Lawrence trans., 1969).

294. Interviews with Romanian *avocats*, *supra* note 13.

295. Bucur, *supra* note 292. "Post-communist civil society is significantly weaker than in other regions of the world." Marc Morje Howard, *Free Not to Participate: The Weakness of Civil Society in Post-Communist Europe* 4, 41, in *STUDIES IN PUBLIC POLICY MONOGRAPH SERIES* (Centre for the Study of Public Policy ed., 2000).

296. Gail Kligman, *Civil Society in Romania*, 4 E. EUR. POL. & SOCIETIES 393, 426 (1990).

297. Bucur, *supra* note 292.

298. Howard, *supra* note 295, at 14–15.

consequently lawyers have fewer vibrant community organizations to join. Moreover, *avocats*, like other Romanians, distrust voluntary public activity and do not join the existing associations.²⁹⁹

Self-interest, understood first in careerist or economic terms, drives U.S. solo practitioners into civic life.³⁰⁰

That law practice, politics, and community activity are deeply intertwined is clear. It is also clear that there are at least two motivations for lawyers to be involved in their communities both politically and organizationally. First, such involvement may be the simple discharge of what is perceived to be civic responsibility. Second, such involvement is a practical strategy for building clientele and supplementing income.³⁰¹

Like U.S. lawyers, *avocats* want to increase the number of their clients and their contacts with helpful people, but they do not see a connection between those goals and community participation. For example, after bemoaning his lack of success building his practice and pressing this interviewer for business development suggestions, a young Romanian lawyer said he had resigned from the board of a foreign organization because it was not worth the time.³⁰² Although foreign business clients are most desirable in Romania, this lawyer saw no connection between the distinction of having been chosen for the board of this charity and his economic future. This astounding blindness arises in part from the hangover of communist pseudo-volunteering and the experience of communist law practice when skill in market competition was not important. The *avocats*, however, may be behaving rationally. Few potential clients join indigenous organizations. Many new civic groups have arisen with the support of foreign aid, but they have paid staffs that obviate the need for volunteers. Furthermore, these groups are not

299. In an unscientific survey of Romanian cab drivers, not a single one admitted to participating in any non-family, regular group activity whatsoever, not even a regular soccer game with friends. There are many vital indigenous groups and others funded by foreign sources in Romania, but most average people do not join them. "According to the National Commission of Statistics, at the start of the year [1999] there were 42,944 nongovernmental organizations, which means, on average, one for every 500 persons, the most numerous of which being associations of a religious character." TIMIȘOARA AGENDA, Oct. 23, 1999, at 8. "Statistically strong civil society," organized without grass roots participation, is based on the "pseudo existence" of paper organizations. Howard, *supra* note 295 (citing Ferenc Miszlivetz & Jody Jenson, *An Emerging Paradox: Civil Society from Above?*, in PARTICIPATION AND DEMOCRACY EAST AND WEST (D. Rueschemeyer et al. eds., 1998)); Bucur, *supra* note 292.

300. Heinz et al., *supra* note 289, at 599. In smaller towns, attorneys also enjoy indirect professional benefit from working to improve the region, which increases the need for legal services in general. LONDON, *supra* note 93, at 151.

301. LONDON, *supra* note 93, at 83.

302. Interviews with Romanian *avocats*, *supra* note 13.

grassroots associations of members who could become clients or contacts. Consequently, there is little careerist justification for contributing to their efforts.

Self-interest entails more than financial well-being.³⁰³ Community activities may satisfy lawyers' wishes for pleasurable social interaction in the United States,³⁰⁴ as seen in country clubs, choruses, or sports.³⁰⁵ In contrast, Romanian community activities are not a source of enjoyment after the communist experience. The family is the core of Romanian society,³⁰⁶ so even ambitious *avocats* are unlikely to join a formal group to satisfy social needs. Romanians delight in personalities, and would like to become VIPs or famous persons. Experience, however, deters people from becoming known publicly. In the communist era secret police informers were common,³⁰⁷ and one learned not to call attention to oneself. Even though publicity could increase a lawyer's client base, *avocats* may be reluctant to rely on it. For example, one young *avocat*, representing a group in a tort action, did not want to publicize the case because publicity had "hurt him" in an earlier case.³⁰⁸ An inclination towards anonymity inhibits some lawyers, especially older lawyers, from becoming publicly active and building professional reputations like those so valued by U.S. small-town lawyers.

U.S. lawyers are also interested in advancing their ideological goals,³⁰⁹ as seen in their work for religious, civil liberties, and other

303. Rural U.S. lawyers are more active in civic affairs the longer they practice, that is when they need fewer contacts to potential clients. LONDON, *supra* note 93, at 96.

304. In metropolitan law firms, the highest income attorneys are more active than lower earners, so more than economic self-interest may move lawyers to participate in voluntary associations. One interpretation of this phenomenon is that older lawyers are specialists in developing clients for the younger lawyers, who are substantive specialists, and therefore engage in community activities as an economic necessity. On average 66% of big-firm attorneys and 74% of solo practitioners were community leaders in Chicago, where the average was 70%. Heinz et al., *supra* note 289, at 608.

305. SERON, *supra* note 105, at 55.

306. Urban young Romanians do participate in sport clubs, patronize dance clubs, and occasionally collaborate in community activities. This usually tapers off in college and certainly after marriage. See generally Steven L. Sampson, *National Integration Through Socialist Planning: An Anthropological Study of a Romanian New Town*, in EAST EUROPEAN MONOGRAPHS (1984).

307. One estimate is "that one in every four or even three Romanians was an informer," but that estimate was never documented. NESTOR RATESH, *ROMANIA: THE ENTANGLED REVOLUTION* 9 (1991).

308. This *avocat* refused to explain the earlier event. He also insisted that his non-lawyer brother be present during his interview, the only subject to request a witness. Interviews with Romanian *avocats*, *supra* note 13.

309. This is true in more urban areas and may include participation that furthers their clients' interests, such as joining a bankers' association. Heinz et al., *supra* note 289, at 599.

advocacy organizations; but Romania's communist past inhibits public championing of political or policy goals. Most lawyers showed little interest in political or policy goals that would motivate them to work in concert with others.³¹⁰ In fact, fifteen of forty *avocats* denied any political activity, distinguishing themselves from eighteen others who acknowledged having an ordinary citizen's involvement (voting, but no party membership). Political parties, however, typically offer free legal advice at their offices, where some young practitioners volunteer to serve their party and to find paying clients. These few lawyers foreshadow greater community involvement by *avocats*.

Another explanation for the difference between the civic lives of Romanian and U.S. lawyers is rooted in their conceptions of the lawyer's role or place in society. Both *avocats* and the larger community view the Romanian lawyer as a technician, especially in the courtroom context. In contrast, in the United States only eighteen percent of rural lawyers regard their community role as "solving technical legal problems," and only twenty-six percent of urban lawyers view themselves that way; sixty-four percent of rural lawyers see their work as "helping individuals," while only thirty-five percent of urban lawyers characterize their objectives as such.³¹¹ Representatives of one Romanian community organization explained that they did not use an *avocat* even to incorporate because there was no need for legal counsel. This group identified a "manager" as better suited for such organizational services. A more familiar example of the importance of role expectations would be a doctor who, when asked to work *pro bono*, would understand he or she was to provide medical services to the poor. U.S. lawyers, on the other hand, claim an "omnicompetent problem solv[ing]" ability and so serve on symphony boards and referee softball games, where they can offer leadership, counsel, and a good eye.³¹² If *avocats* and the community view Romanian lawyers as technicians, skilled in litigation but rarely counseling clients about affairs, one would not

Lawyers with a few large clients tend to avoid politically sensitive organizations lest they alienate clients with different views. HANDLER, *supra* note 92, at 32.

310. The same political inactivity is found in Russian lawyers. Jordan, *supra* note 268, at 765.

311. LANDON, *supra* note 93, at 128. In the United States the big-firm specialists are technicians, but their sense of public duty distinguishes them from *avocats*. In Russia in-house counsel also see themselves as technicians, not decision-makers. Hendley et al., *supra* note 44, at 707-08.

312. See Heinz et al., *supra* note 289, at 625. "The country lawyer is a desirable participant in the community because of his or her high level of education and understanding in a broad range of affairs." LANDON, *supra* note 93, at 15.

expect lawyers to participate in civic life. Community leadership is not a professional norm among Romanian lawyers as it is among U.S. lawyers.³¹³

A sense of public duty is implied in society's understanding of "lawyer" in the United States, where an advocate is more than a technician. This differs from the Romanian view of the *avocat's* role, a technician with no moral duty to serve the public. *Avocats* enjoy high social status but without the personal sense of *noblesse oblige* many U.S. practitioners feel.³¹⁴ One Romanian said of her countrymen, "[t]hey are still influenced by the Ceaușescu hardships and cannot see beyond their own bellies."³¹⁵ This observation explains the absence of altruism or ideological motivation to join organizations but not the blindness to the economic advantage in so doing.

Civic involvement supports democracy. Heinz and Schnorr have captured the essence of Robert Putnam's research on civic community³¹⁶ showing that participation in all forms of group activities, even lawyers' luncheon clubs, builds up social capital.³¹⁷ Social capital in turn strengthens the connections that bind a diverse society and permit it to function efficiently.³¹⁸ Galston details the many functions of voluntary associations in society:

They can serve as sites of resistance against tyranny. . . . By strengthening social bonds, they can reduce the dangers of anomie. They can foster the bourgeois virtues that modern democratic societies need, and . . . nourish the habits of civic engagement. They can help form opinions that shape deliberations in democratic public institutions. They provide vehicles for the noninstrumental expression of moral convictions as norms for the wider society. . . . [T]hey offer opportunities for

313. LONDON, *supra* note 93, at 57.

314. Heinz et al., *supra* note 289 at 616.

315. Like Romanian *avocats*, urban general practitioners in the United States are consumed by the competition for clients and less concerned about the profession's responsibility to society than are rural lawyers. LONDON, *supra* note 93, at 59 (citing Dan C. Lortie, *The Striving Young Lawyer: A Study of Early Career Differentiation in the Chicago Bar* 212 (1958) (unpublished Ph.D. dissertation, University of Chicago) (on file with Santa Clara University Law Library)). Hungarian lawyers, like their Romanian neighbors, are absorbed by opportunities to become wealthy and do not volunteer for social reform projects. Andras Sajo, *The Role of Lawyers in Social Change: Hungary*, 25 CASE W. RES. J. INT'L. L. 137, 144-45 (1993).

316. ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK* (1993).

317. A vibrant civic community enhances democracy because trust and reciprocity are implicit in groups of people working together as equals in a horizontal interaction. LARRY DIAMOND, *DEVELOPING DEMOCRACY: TOWARD CONSOLIDATION* 225 (1999).

318. Heinz et al., *supra* note 289, at 601.

groups . . . to conduct important public work through collective action outside the control of government.³¹⁹

A civic community leads to a strong civil society and, with the participation of lawyers, assumes special significance in a distrustful nation consolidating its democracy, such as Romania.³²⁰

In the United States lawyers bring helpful knowledge to organizations such as familiarity with government processes and institutions, understanding of how to mediate private and public interests,³²¹ and a sensitivity to social environment derived from their work in a profession rooted in changing social, political, and economic institutions.³²² A Romanian *jurisconsult* understood better than the *avocats* how lawyers can help groups: advise about legislation, litigate, appeal to an international organization, plead before public authorities, and "appeal to the people for solidarity."³²³ Organizations benefit greatly from the capacity of lawyers to anticipate legal problems and solve them. Finally, U.S. society expects lawyers to have the personality and character that enhance people's organizing to work together: trustworthiness and practical wisdom.³²⁴ In contrast, these are not characteristics of the Romanian legal profession today.

The narrow range of Romanian law practice impedes lawyers' taking leadership roles in the community. The average *avocat* does little work with government agencies or institutions other than the courts. For example only those lawyers with large business clients process tax or licensing documents; small businesses manage these matters themselves. Non-profit organizations follow this pattern. To the frustration of *avocats* with new ideas of practice, clients do not seek counsel from lawyers; preventive lawyering is thus an underutilized skill. Mediation rarely occurs and few cases settle. A legal practice limited to courtrooms and traditional statutory claims demands little worldly knowledge or sensitivity to the social environment. Classic civil/socialist legal education, centered upon

319. William A. Galston, *Civil Society and the "Art of Association,"* J. DEMOCRACY, Jan. 2000, at 64, 69. "[D]emocracy is not simply a political system or the process of choosing leaders through free political competitions, but a way of life, a culture, a set of values." Carl Gershman, *Introduction to THE DEMOCRATIC REVOLUTION: STRUGGLES FOR FREEDOM AND PLURALISM IN THE DEVELOPING WORLD*, at xiii (Larry Diamond ed., 1992).

320. Kligman, *supra* note 296, at 414.

321. Heinz et al., *supra* note 289, at 600-01.

322. Landon, *supra* note 93, at 5-7.

323. Interviews with Romanian *avocats*, *supra* note 13.

324. Heinz et al., *supra* note 289, at 625-26 (citing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 363-64 (1993)).

memorizing statutes, does not invite the breadth of exploration required by the problem solving approach of U.S. law schools.

The situation is not entirely bleak. Romanian *avocats* are making the transition towards the public behavior of their U.S. counterparts. Of the fifty-five *avocats* interviewed, sixteen belong to community groups,³²⁵ and approximately three others had belonged to a group in the past. Human rights activities are the most popular (six *avocats*), but several *avocats* had pursued them only immediately after the fall of Ceaușescu. Bar activities are the second-most popular activity (five *avocats*).³²⁶ Two of the three who are active in their political parties had been equally involved before communism, as well.³²⁷ Other activities include charities, sports, religion, and culture. In reality, only four of fifty-five interviewees have an active community life, outside of the bar association.³²⁸ Nonetheless, this group of *avocats* may be harbingers of change in Romanian civic life.

One *avocat's* life suggests that personality, not political pressure or professional ambition, drives a person to community participation. This forty-eight year-old man was a typical lawyer who preferred criminal and divorce cases, but also performed estate work and property litigation. Under the communists, he studied Marxism at a university for three years, two nights a week, after completing his law degree. Subsequently, he lectured about political theory in factories and other institutions. He also served monthly as a lawyer-advisor to factory and small town judicial commissions. In addition, he participated in a communist political organization and the local bar collective's governance. After Ceaușescu fell, this attorney volunteered for a non-communist political party to verify candidates' eligibility for the ballot, ultimately litigating that issue. He declined the invitation to sue former secret police on behalf of a human and political rights organization because such a case would be too burdensome. Now he is active with the county bar association. This man's career contradicts societal explanations for *avocat* civic inactivity and suggests that *avocats* may engage in their communities in the future.³²⁹

325. Among the participants, there were real "joiners": two belonged to three organizations each and one belonged to two groups. Interviews with Romanian *avocats*, *supra* note 13.

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.* Persons who participated in four or more communist organizations "probably developed positive association with organizations, and had positive experiences . . . which

VI. CONCLUSION

Romanian *avocats* made a smooth transition into private law practice after the startling transformation of their nation and privatization of the bar. They found themselves working much as their predecessors had before the communists collectivized the bar. In some ways this was to be expected. Lawyers, after all, had not always behaved as the collectivization law required; for example, they had freely met clients at home and accepted gifts to increase their incomes. A more influential force in *avocats'* professional decisions was the pressure of small firm practice itself, a pressure inherent in the profession and thus felt by Romanians and U.S. citizens alike.

The many similarities between U.S. and Romanian lawyers belie the significance of the communist experience on current Romanian legal practice. In both nations, most lawyers are solo, general practitioners with individual clients who bring them one-shot, trouble cases. As such, both groups of lawyers enjoy autonomy, and once their practices are established, their careers reward them economically and in less tangible ways.

Avocats' concerns about their profession differ from those of U.S. lawyers. *Avocats* frequently confront revised statutes and new fields of regulation which are a result of the market economy. Not only must *avocats* master new laws, but the laws themselves are subject to interpretation by judges and bureaucrats, some of whom are corrupt, overworked, and/or inexperienced. Additionally, established lawyers desire the status enjoyed by U.S. lawyers. They are trying to set aside the *mentalitate* of the past in favor of a new professionalism that incorporates a sense of public duty.

Lawyers in Romania and the United States differ significantly in their participation in community life. U.S. lawyers strive to assume leadership positions in response to several motivations including ambition to build their practices, sense of social obligation, self-image as community leaders, and community expectations that compel them to fill leadership positions. Other than the economic impetus to build their practices, *avocats* share none of these motivations.

The communist experience influences Romanian lawyers' participation in civic activities. Among the period's lingering effects is the relegation of lawyers to the role of technical experts, rather

have translated into higher levels of participation in voluntary organizations today." See Howard, *supra* note 295, at 39.

than general counselors, in a nation with a crippled civil society. Romanian lawyers' narrow understanding of their role inhibits them from making the omnicompetent contributions to the community in contrast with U.S. lawyers who routinely contribute to their communities to satisfy their sense of public duty. The lack of a societal norm requiring Romanian lawyers to act as community problem solvers or leaders reinforces this narrow understanding. U.S. lawyers have skills important to supporting civil society, but Romanian lawyers are only beginning to develop such skills. *Avocats*, however, have the same need for clients that encourages many U.S. lawyers to serve voluntary organizations. The economic value of communicating with potential clients may overcome *avocats*' failure to appreciate the societal benefits of community activity and thereby motivate more active participation. When they recognize the benefits of civic engagement, *avocats* should turn outward to become actors in the consolidation of Romanian democracy.

APPENDIX

For five months in 1999 and 2000, the author interviewed and surveyed Romanian legal professionals to find what, if any, differences arose in the actual practice of law after the Romanian *avocats*' bar was privatized in 1995. She conducted semi-structured interviews with fifty-five *avocats* and ten others working in the legal arena (two in-house counsel, two judges, two prosecutors, one private notary public, two bar leaders, one university president, and one public law school dean)³³⁰ and asked the *avocats* to complete a written questionnaire in Romanian. The interviews lasted one to two hours and were conducted in English, Romanian, or a combination of the languages. Most interviews took place in the subject's office, but others occurred in restaurants, the subject's home, the author's apartment, and the courthouse lawyer rooms.

The lawyers were from four cities with different characteristics. Timișoara is a city of 330,000 in western Romania known for an anti-communist, pro-Western attitude. It is the city in which the 1989 public demonstrations leading to Ceaușescu's ouster began. In 2003, 354 full *avocats* and sixty-nine "apprentice" lawyers³³¹ constituted the Timișoara county bar.³³² There are seven partnerships and ten professional corporations.

Iași is an old city of 346,000 in northeastern Romania. The Iași bar had 378 full *avocats* and seventy-seven apprentices at the time of the survey. It is the second largest bar in Romania, even though Iași lawyers practice in a poor Soviet border region that was a stronghold and economic beneficiary of the communist regime. There are no registered partnerships or professional corporations in Iași. The regions around Iași and Timișoara are very different in terms of politics and wealth.

The population of Târgu Mureș (163,000) is predominantly Hungarian as is the surrounding central region of Transylvania. This city's 141 full *avocats* and seventeen apprentices compose the smallest bar in the survey, and there is only one professional corporation here. Unlike the other three cities, Târgu Mureș has no

330. Some subjects participated in only part of the written survey and oral interview and all were free to decline to answer any questions. This causes total responses to vary with the question. Others, such as judges, were interviewed without use of the protocol, which was not applicable to them, but were asked some questions like those addressed to the attorneys.

331. During their apprentice period, *stagiaires* may represent clients in lower courts.

332. Morecuț, *supra* note 3. All the 2003 data regarding numbers of *avocats* and group practices in this Appendix are taken from this source.

public university and is therefore tied educationally, culturally, and economically to the larger city of Cluj, also largely Hungarian.

Bucharest (population 2,009,000), the capital, has the largest bar, comprised of 4271 full *avocats* and 1255 apprentices. Business practice reflects the city's domination of the national economy and government. The *avocats* of this metropolis have formed thirty-four partnerships and 149 professional corporations.

The survey is not random even though the interviewer did not control the selection of interviewees. Acquaintances, including but not limited to judges and a stranger the author met on a train, suggested interviewees. Despite substantial numbers of female *avocats* in Romania, twenty-nine interviewees were male and only eighteen female. This bias in the survey was inadvertent.

The interviewed *avocats'* ages were well-distributed: nine *avocats* were thirty and under; ten were thirty-one to forty; sixteen were forty-one to fifty; and ten were over fifty-one. The author targeted *avocats* over forty-one because most would have had experience practicing under both communist and private systems. Late in the surveys, the impact of the large number of new entrants to the profession became apparent and thus the author sought out young lawyers. The large number of interviewees over fifty-one is most unusual. Although many lawyers in this group were in their professional prime, two were in their sixties and two in their seventies. Men can retire with a pension at age sixty and women at fifty-five, so these lawyers are old workers in Romanian terms. Their activity reflects the fact that post-privatization lawyers may practice while receiving their pensions.

Interviewees' graduation dates were also well-distributed. Many subjects were recent graduates—including young lawyers as well as those who changed careers post-privatization—while others finished school during communist control of Romania and the bar. Twelve graduated into a privatized bar, after 1996; only three graduated between 1990 and 1996, after the initial legislation privatizing the bar but before entrepreneurs opened many private law schools. Ten finished law school between 1980 and 1989; fourteen, between 1970 and 1979; three, between 1960 and 1969; and four, between 1950 and 1959. To set these dates in context, those who graduated between 1950 and 1979 matured during the height of communist power.³³³ These lawyers graduated from several law

333. In the 1950s the regime was consolidating power with severe oppression and imprisonment of dissidents. By 1979 the country was enjoying economic benefits, foreign

schools, most from the three state institutions operating before Ceaușescu's fall. Twelve graduated from Babeș-Bolyai in Cluj, fifteen from the University of Bucharest, and fourteen from Ion Cuza in Iași. Although many subjects practiced in Timișoara, only one graduated from the law school there, a public university which opened after the fall of the Communists. Five graduated from the new private law schools, four in Iași and one in Sibiu.

Twenty-two of the *avocats* performed non-legal work before entering the profession. Many were in the sciences: mechanical, laboratory, and electrical work as well as engineering. This is unsurprising given Romania's emphasis on the sciences in the 1970s. Many others were public employees, including a teacher, court stenographer, museum historian, policeman, general bureaucrat, and public relations assistant in a Culture Palace. The others had varied backgrounds, including work in translation, athletics, journalism, business, and secretarial work. There is no single explanation for this earlier non-law work phenomenon. *Avocats* may have attended school part-time while holding other jobs. Communists assigned some pre-war *avocats* to new careers in the 1940s. Also some *avocats* left their employment and enrolled in recently established private law schools, which admit almost every applicant. For example, one *avocat* who had been an athlete and then an engineer made a mid-life career change after the communists fell, wishing to be free of supervisors.

The vast majority claimed that one reason for entering law was because it is interesting work. The second most popular reason was its social status, a more common motive than financial success. Many interviewees decided to become lawyers when Romania was poor, and most expressed a strong interest in financial success, so one would have predicted financial well-being was the *avocats'* strongest incentive for choosing their career (as it was, for example, for those who left state-salaried careers as judges and prosecutors to become *avocats*).

The social status motivation is also interesting because communist ideology did not regard lawyers as holding positions of high status, but they were well-respected.³³⁴ The subjects' responses reflect the conviction that their prestige has risen since privatiza-

travel, and high literacy. After that time Ceaușescu became increasingly irrational and authoritarian.

334. See Hendley et al., *supra* note 44, at 685–86.

tion. Accurate or not, this belief explains some new *avocats'* choice of a career.³³⁵

Two other popular reasons for becoming an *avocat* merit comment. Those who chose law because of family tradition were making a practical choice. Admission to the local bar, a pre-requisite to becoming an *avocat*, is much easier for the child of a lawyer than for other law school graduates.³³⁶ The lawyer's child is guaranteed a supervising lawyer, i.e., a parent, during apprenticeship. Moreover, many of those parents want their children to become lawyers so that they can pass on the practices they have built.

Much more puzzling is the equivalent number of *avocats* who were motivated by the profession's influence in Romanian society. Such influence is not apparent. There are not so many lawyers in elected government in Romania as there are in the United States. *Avocats* expressed a lack of interest in politics. Although one subject was a professional political candidate, only three said they were members of a party. Eighteen self-identified in the passive role as mere citizens and fifteen denied even that role in politics. Romanian lawyers are not community leaders. It is difficult to understand the social influence that drew students to the legal profession.

A final point may be of interest. Of the fifty-five *avocats* interviewed, eighteen had attended professional seminars in Romania after decollectivization. Foreign organizations sponsored most of these seminars, which centered on business law topics. The United States hosted seven conferences for lawyers in Romania, the largest number of any country. The U.S. programs focused largely on business, especially international commercial activity, but two *avocats* attended human rights programs, and two participated in a meeting on democracy and social organization. This high level of participation points to the extensive efforts of Europe and the United States to assist Eastern Europe's transition to market economics and democracy after the fall of the Berlin Wall. Especially remarkable is that ten interviewees had attended one or more seminars and conferences abroad. That ten *avocats* attended a total of twenty-three programs abroad shows that once a person is identified as a "player" in the international arena, he or she receives more invitations. The fact that only ten traveled to these meetings suggests, however, that, Romanian solo, general practitioners have

335. See *supra* notes 279, 257–258 and accompanying text.

336. *Avocats* in Timișoara report that their children are excused from the first entry bar exam. Interviews with Romanian *avocats*, *supra* note 13.

as little interest as their U.S. counterparts in leaving their work to learn about capital markets, international financing, or comparative law.