The Law Men and Women of La Mancha

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CCL, the bar association for the advancement of law—not of lawyers

By Rob Warden

"There are alternatives to force and to violence," said Ben W. Heineman Sr., businessman, civic leader, and member of the bar, "but there are no alternatives to change."

That was 15 years ago—May of 1969. The statement was quoted at the beginning of a letter inviting lawyers to help start a new bar association which would be known as the Chicago Council of Lawyers and which would be dedicated to the advancement of the law—not to the advancement of lawyers.

The basic idea for the Council of Lawyers originated in 1968. Two young lawyers came up with it independently of each other. They were Judson H. Miner, a 1967 graduate of the University of Chicago Law School who was working under a university fellowship at the Mandel Legal Aid Clinic, and Joseph V. Karaganis, a 1966 University of Chicago graduate who clerked for U.S. District Court Judge Hubert L. Will and then helped form a law firm to represent a new organization called Businessmen for the Public Interest (BPI).

The Democratic National Convention violence may have been the principal catalyst, but Miner, Karaganis, and others who joined them in starting the Council were primarily concerned with issues directly involving the legal profession—the screening and selection of judges, legal ethics, criminal justice, and legal services for the poor.

After several preliminary meetings in various lawyers' homes, Miner approached the leadership of the Chicago Bar Association about the possibility of forming a young lawyers' group within the CBA, but the idea was not warmly received.

Then, at a meeting hosted by Robert W. Bennett and Robert M. Berger at Mayer Brown & Platt, the letter was drafted inviting interested lawyers to attend an organizational meeting for "a council of lawyers" the afternoon of June 6, 1969, in the basement of the People's Gas Building.

The letter was signed by Bennett, Berger, Miner, Karaganis, and 13 other lawyers—Charles Barnhill Jr., David Currie, Allison S. Davis, Thomas L. Eovaldi, Jerald P. Esrick, Philip Ginsberg, Joel F. Henning, Philip W. Moore, Franklin W. Nitikman, Dallin Oaks, Gordon Scott, David S. Tatel, and Neil Komesar.

In addition to quoting Heineman, the invitation quoted two other distinguished members of the legal profession.

One was Justin A. Stanley, a past president of the Chicago Bar Association: "What is challenged is whether or not our laws are being applied with equal fairness to all of our citizens, and whether or not our legal institutions are so designed that the goal of fair treatment is for many citizens more than a mocking ideal."

The other was Supreme Court Justice William J. Brennan Jr.: "The legal profession must purge itself of the inbred concepts of another day, re-think its code of practice, and re-shape its internal mechanisms for meeting its public responsibilities."

The letter lamented that the legal profession had failed to act with urgency to solve the problems so eloquently referred to by Heineman, Stanley, and Brennan.

"We must do more," said the letter, "to improve the substance and procedure of the law in areas as diverse as the administration of existing welfare programs and the high cost of routine legal services to the middle class. Locally, the quality of the judiciary is at the mercy of canons of expediency conceived and applied by political slatemakers, instead of by standards of professional ability and experience."

The letter continued, "The offices of the Cook County state's attorney and public defender are overworked, underfunded, and infested with politics. The result is low level representation of both the public and the accused."

In response to the invitation, about 300 lawyers attended the June 6 meeting, which opened with a call to action by a well-known lawyer allied with liberal causes—Alexander Polikoff.

Polikoff, who later would head BPI (and change its name to Business and Professional People for the Public Interest), was a Schiff Hardin & Waite partner. As an American Civil Liberties Union cooperating attorney in a class action called Gautreaux v. Chicago Housing Authority, he was on the verge of winning a sweeping federal court order requiring that a fair share of future Chicago public housing be built in white neighborhoods.

He began his speech with a quote from *A Tale of Two Cities:* "It was the best of times, it was the worst of times. It was the age of wisdom, it was the age of foolishness. It was the epoch of incredulity. It was the season of light, it was the season of darkness. It was the spring of hope, it was the winter of despair. We had everything before us, we had nothing before us . . ."

Charles Dickens, according to Polikoff, might have said that about Chicago in the late 1960s.

It was the worst of times: The Great Society was a slogan of the past, a cruel joke; two-thirds of the national budget was being spent on the military; segregation was increasing in most northern cities; Chicago police were repressing lawful First Amendment activity and, a few months earlier, had been ordered by Mayor Richard J. Daley to shoot to maim looters and shoot to kill arsonists.

It was the best of times: A movement had been born; moral concerns dominated the national debate; poverty, racism, and other injustices were attacked as never before; ". . . the times," sang Bob Dylan, "they are a-changin'."

That is what Polikoff came to talk about—the changin' times. "I believe," he said, "that lawyers and judges represent our greatest potential force for changing the basic institutions of society, short of violence."

And the times had changed. Lawyers from La Salle Street and Wall Street were working pro bono to represent the downtrodden, from Lawndale, to Harlem, to Jackson, Mississippi. Major law firms had contributed to forming the Lawyers Committee for Civil Rights Under Law in Chicago and other cities.

However, the overall picture was not encouraging. "The institutionalized bar has not responded adequately to the pace and profundity of change in our society," said Polikoff. "The profession has not come close to dealing with the basic evils of the system as it should. I am not only talking about such things as the failure of the southern bar to provide counsel in civil rights cases, its hounding out of the State of Mississippi the northern lawyers who try, and the failure of the organized bar to react to that outrage. I am talking about vital areas which are properly within the profession's own back yard right here in Chicago."

He mentioned three areas specifically:

- "The judiciary and the court system, including the selection of judges, is shot through with politics, and the quality of justice suffers grievously as a result. . . . Judicial procedure in the lower state courts within our city is frequently a mockery. How is it that lawyers have not long since put the operation of the judicial system on a sensible basis?"
- "Assembly line criminal justice for the poor in Cook County is a special subject all of its own, and the Chicago bar will never be able to justify its callousness to the injustices which permeate that system."
- "The provision of legal services to the great body of poor who need them most and have them least is a problem which the organized bar, with all its contribution to legal aid, has not come close to dealing with adequately. . . . [M]any governmental wrongs are, as a practical matter, beyond redress and cannot be responded to intelligently by the ordinary layman because of the maze of procedural obstacles which are thrust in his path."

Judson H. Miner

Polikoff continued that the legal system does not even purport to offer remedies for a variety of evils which have not been viewed as traditional "rights"—poor garbage collection in slum areas, for example.

"I believe," he said, "there will be no solution to the fundamental problems of justice and the quality of life in our society until we have established mechanisms—viable and visible—by which the aggrieved individual can deal with the aggrieving institution. That, my friends, is a technical lawyers' problem, a problem of procedure, if you will."

He criticized "the absurdities that pass for a welfare system, which . . . is designed to save money instead of people; the landlord law which lawyers call 'landlord-tenant' law; the neat complex of arrangements which makes it perfectly lawful for each of our suburbs to bar its doors to low-income persons, and so on." And he added, "I put it to you that these are matters which are vital if our great cities are not to fester and die, or become a battleground between blacks and whites, rich and poor. I also put it to you that these are matters for which lawyers, by commission or omission, are largely responsible."

After Polikoff's speech, the group agreed that Miner and Bennett would serve as co-chairmen of a steering committee to oversee the drafting of bylaws and planning for the Council's first meeting in October, at which bylaws would be adopted and permanent officers elected.

By October, about 300 lawyers had joined, at $10 each, but serious differences had arisen, or had become apparent, between Miner and Karaganis. The two agreed that a small reformist bar organization could effect significant reforms in the legal profession, but they disagreed over the style, goals and structure of the organization.

Miner was brash and outspoken in his criticism of local courts and the organized bar. "As far as the Chicago Bar Association is concerned," said Miner, "a qualified judge is anything above a moron." To him, the need for a reform bar group without strong ties to powerful institutions was driven home when a lawyer in a major firm tried to pressure the U of C into severing its relationship with Miner, due to his involvement in a controversial lawsuit.

Miner's style, with his seemingly infinite capacity to be incensed, contrasted sharply with that of Karaganis, a disciple of Judge Will. Karaganis envisioned a soft-spoken creme de la creme organization modeled after the Association of the Bar of the City of New York, the formation of which had been sparked a century earlier by the Tammany Hall scandal. He even suggested naming the organization the Association of the Bar of the City of Chicago, and he thought the president should be someone more established in the legal community than either he or Miner, someone, to be precise, like Alexander Polikoff. He tried to persuade Polikoff to run for president, but to no avail.

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The conflict between Miner and Karaganis burst into the open at the October meeting, over an inconsequential but perhaps symbolic procedural issue. It had been agreed in advance that the candidate speeches would be given in alphabetical order. Karaganis assumed this meant that he would speak and then Miner would speak. However, at the last minute, Bennett decided to speak on Miner's behalf, giving rise to a heated controversy over whether "alphabetical order" applied to the candidates' names or to the speakers' names.

This point was resolved in favor of Miner, whose virtues were then extolled by Bennett. Karaganis extolled his own virtues, and the meeting was thrown open to the audience. After a rousing speech by Kermit Coleman, a black American Civil Liberties Union lawyer, the new bar association narrowly elected Miner, age 27, its first president.

Karaganis never became active in the Council, although his early infuence was both significant and lasting. At his urging, four older and widely respected liberal lawyers agreed to serve on the first board—William W. Brackett, Alex Elson, Polikoff, and Calvin P. Sawyier. Their names, interspersed among those of a dozen younger lawyers on the first board, immediately gave the Council legitimacy in the legal community, particularly because Elson and Sawyier had served on the CBA Board of Managers.

Michael Powell, an American Bar Foundation social science research associate who studied the Council a decade later, observed that it was fortunate to have survived the early division between Miner and Karaganis. "Such differences among founders have often derailed new organizations in the past," he wrote in the Summer 1979 *ABF Research Journal*, "but did not in this case, perhaps because although Miner won the election and was certainly the dominant figure in the Council's early years, the presence on the board of older lawyers, recruited by Karaganis, assured a degree of stability and professionalism which allayed the fears of the Council's more cautious supporters."

After the election, Miner moved fast to maximize publicity. Within a week of his election he persuaded 14 Northwestern University law professors to join with the Council board in opposing Richard M. Nixon's nomination of Clement F. Haynsworth Jr. to the Supreme Court. Miner sent telegrams over their signatures to Nixon, Senators Charles H. Percy, Ralph Smith, Birch Bayh, and James O. Eastland, and the American Bar Association opposing not only Haynsworth's confirmation but also questioning his "eligibility to serve on any federal court."

The telegram cited Haynsworth's "insensitivity" to the appearance of impropriety created by dealing in securities of corporations involved in litigation before him, his "lack" of sufficient intellectual capacity to serve on the court, and the "bias he has displayed" against minorities. "Any of these would be adequate reason for disqualifying Judge Haynsworth," said the telegram. "All of them in combination render his appointment inappropriate."

After Haynsworth's nomination was rejected, the Council also opposed Nixon's replacement nominee, G. Harrold Carswell, and later took much pride in having been the first bar association to oppose Carswell. Also on the national level that first year, the Council opposed no-knock legislation before Congress, opposed occupational draft deferments, and opposed cuts in federally funded legal services for the poor.

But the Council's real province, as Polikoff had said the previous summer, was "the profession's own back yard right here in Chicago." To attack "back yard" issues, the Council formed several committees.

A constitutional convention committee, for instance, proposed a new Illinois Judicial Article. A criminal justice committee put together a program whereby volunteer lawyers would represent indigent defendants in misdemeanor courts, and 75 lawyers volunteered to serve and studied the consequences of delays in premilinary hearings in murder cases. A housing committee studied eviction procedures—a study that led to substantial reform. And a state judiciary committee was formed to report to the public on party nominees for Cook County Circuit Court judgeships and on judges seeking retention in office.

But a major "back yard" issue arose unexpectedly at 4:40 a.m. on December 4, 1969, less than two months after the Council was born, when raiders sent by Cook County State's Attorney Edward V. Hanrahan burst into a West Side "crib" of the Black Panther Party and, in a blaze of gunfire, killed Fred Hampton and Mark Clark.

After Hanrahan put out a false and self-serving version of what happened —a version which the *Chicago Tribune* splashed across its front page, identifying rusty nail heads in photographs as bullet holes "proving" that the Panthers had fired on the raiders—the Council, the Illinois Division of the American Civil Liberties Union, and the newly formed BPI joined in a

Robert W. Bennett

demand that a special prosecutor be appointed to investigate the raid.

The Field Enterprises papers, the *Chicago Sun-Times* and *Daily News*, seconded the idea and a distinguished Chicago lawyer, Barnabas F. Sears, was appointed special prosecutor. A special grand jury indicted Hanrahan and several others involved in the raid. The case ultimately ended in directed verdicts of acquittal by Judge Philip Romiti, but the scandal was enough to prompt Richard J. Daley to dump Hanrahan from the Regular Democratic Organization ticket. Hanrahan beat the machine in a three-way primary, after a BPI-led investigation of apparent forgery of nominating petitions for the Daley-backed candidate, Raymond K. Berg. The twin scandals of the fatal Panther raid and the Berg petition fraud gave Republican Bernard Carey just the boost he needed to defeat Hanrahan in the general election. Carey was supported by all four major daily newspapers—the Tribune Company was still publishing *Chicago Today* nee *Chicago's American*—and, to be sure, the Chicago Council of Lawyers.

Another "backyard" issue into which Miner promptly led the Council was the Conspiracy 7 trial—known as the Conspiracy 8 until the case of a bound and gagged Bobby Seale was severed at mid-trial. The Council's concern was not only with the fairness of the trial but also with a local federal rule that restricted out-of-court comment by lawyers on pending cases—the issue of free speech for lawyers.

The local rule had been adopted almost verbatim from the American Bar Association Code of Professional Responsibility years before but had been sparingly enforced, if enforced at all, until the Conspiracy trial.

The Council filed a suit, Chicago Council of Lawyers v. Bauer, complaining that the rule was overbroad and unconstitutional. The suit was dismissed by the District Court but the U.S. Court of Appeals for the Seventh Circuit struck the gag rule with a unanimous opinion by Chief Judge Luther M. Swygert. The opinion overturned the rule entirely with respect to civil cases and mandated that restrictions on lawyer comment in criminal trials, such as Conspiracy 7, could be imposed only if the comment posed a "serious and imminent" threat to the fair administration of justice.

At for the Conspiracy trial itself, the Council expressed "grave concern" over the legal issues raised by U.S. District Court Judge Julius J. Hoffman's handling of contempt citations against the defendants and their lawyers, William M. Kunstler and Leonard I. Weinglass. It filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit in support of the defendants and their counsel.

The Council's position, which would be vindicated years later by the Seventh Circuit and U.S. Supreme Court, was harshly criticized by the institution that most symbolized virtually everything against which the Council stood, the *Chicago Tribune*. The "World's Greatest Newspaper" editorialized:

"Judge Hoffman has been abused by the same revolutionary and irresponsible elements that have defamed Chicago and decried the riot-conspiracy trail. The Chicago Council of Lawyers has added its two cents' worth to this clamor, expressing 'grave concern,' about the summary contempt sentences imposed by Judge Hoffman. These pettifoggers should wait and see what the Supreme Court says. Meanwhile, the whole country should be grateful to Judge Hoffman, the jury, and United States Attorney Thomas Foran, and his staff for doing their duty."

The Field papers thought differently, though, and cautiously gave the Council support both on their editorial pages and in their news columns. "Chicago's new breed lawyers," said a September 1970 headline over a 2,000-word article by Lois Wille in the *Daily News*. The article was almost fawning in its praise for Judd Miner, beginning with a description of his cluttered office "decorated with a crocus plant dead so long it looks like garlic cloves." Miner, wrote Wille, refused to throw the plant away because it was "the only fee" he had ever received in his brief legal career.

Miner was the son of a popular federal judge, recently deceased, Julius H. Miner. Judge Miner had been appointed to a second "Jewish seat" on the U.S. District Court for the Northern District of Illinois—against the wishes of the occupant of the first "Jewish seat," Julius J. Hoffman, who had written a letter to the Justice Department suggesting that Miner's loyalty might be open to question because he was a Russian immigrant. Later, Miner was known in some circles as "Julius the Just" and Hoffman as "Just Julius." In other circles the nicknames may have been transposed, but in any event Judd Miner's legacy was an entree to certain high-powered legal circles closed to most of his comtemporaries. Judd Miner was able, for instance, to elicit the support for the Council from his father's good friend, Albert E. Jenner Jr., senior partner in one of the city's most prestigious law firms, Jenner & Block.

The younger Miner's own connections may have made it possible for him to enlist troops from the University of Chicago, such as Professor Philip B. Kurland, who was active in the Council from the beginning and who keynoted its annual luncheon in 1970. But family connections undoubtedly helped when he recuited the following year's speaker, Judge Swygert.

Linking himself with the Council of Lawyers by accepting its speaking invitation may have required more soul searching by a Seventh Circuit judge than by Kurland, owing not only to their different stations in life, but also to timing. When Kurland spoke to his fellow members, the Council had not yet thurst itself into the thick of the issue that has dominated it ever since—the selection of judges.

The Council had in that first year lobbied Illinois' freshman senator, Charles H. Percy, to appoint John Paul Stevens and Frank J. McGarr to federal judgeships over three other candidates it considered less qualified, but this was not generally known and, consequently, provoked little controversy.

Within days after Kurland spoke in 1970, however, the Council issued a blistering judicial report, calling the Cook County Regular Democratic

Sheli Z. Rosenberg

Organization's slate of 25 judicial candidates in the upcoming general election "an out-and-out disgrace." Lest anyone get the idea there was any partisan politics involved, the Council struck preemptively by declaring that the Republican slate was also "extremely unqualified."

The report criticized candidate selection by both parties "on the basis of partisan political considerations, usually as out-right rewards for service to the party and with little regard for judicial qualifications." But it cited three Democratic candidates—Henry W. Dieringer and Francis S. Lorenz, running for the First District Appellate Court, and Louis J. Giliberto, running for the Circuit Court—as examples of "the crassest use of judgeships as political patronage."

The Council's remarks concerning the three contrasted sharply with the official view of the CBA, which had rated Lorenz "well qualified" and Dieringer and Giliberto "qualified." The Council report charged that the CBA had been "paralyzed because of internal politics and fear." It added, "While the failures of individaul lawyers [to criticize unqualified judicial candidates] cannot be condoned or justified by any means, it is a fact that the greatest and most damaging failures have been those of the organized bar, particularly the Chicago Bar Association."

Such injudicious remarks were not appreciated either by Circuit Court Chief Judge John S. Boyle, who suggested that judicial candidates should ignore all future Council requests for information, and by the CBA, which pretended to ignore the Council. Neither were they appreciated by enough Cook County voters to perceptibly affect the election results. Dieringer, Lorenz, and Giliberto won overwhelmingly.

The Council further irritated the CBA and Boyle in June 1971 by issuing a report saying that 82 of 107 Cook County magistrates scheduled to be automatically elevated to associate judge were unqualified. The report said that only two, Joseph Schneider and Lawrence I. Genesen, were fully qualified, while many were "so flamboyantly unqualified that it is shocking that they have been permitted to sit as magistrates." Of one, the report said it was "difficult to believe he ever attended law school."

A law degree and service to the Regular Democratic Organization—of Republican Party in the suburbs—long had been the only qualifications magistrates needed, and consequently they were known as "precinct captain judges." They served renewable one-year terms, earning $23,000 a year handling traffic and other misdemeanor cases. As associate judges, which they would become on July 1 under a provision of the new Illinois Constitution, they would earn $32,500 and their authority would be greatly expanded. The Supreme Court had ordered the circuit courts statewide to review the qualifications of every magistrate and remove the unqualified ones prior to the automatic elevation.

It seemed apparent to the Council that all 107 were likely to be elevated. "Only a strong demonstration of concern by the public and the bar has a chance to substantially amellorate the disaster scheduled to take place on July," said the Council. Circuit Court Judge Daniel A. Covelli, chairman of the judges' committee evaluating the magistrates, called the Council's strong demonstration of concern a "vicious, cowardly, and unwarranted attack."

Whatever it was called, the campaign was not particularly effective. All but six of the magistrates were elevated, and when the rhetoric died down the only thing that could be said with certainty about the Council was that it had guts and good contacts in the media. Thus, it may have been with trepidation that Swygert accepted the invitation from Miner, who was then ending his second and final one-year term as president, to speak at the second annual luncheon in November 1971.

Few judges , however, could overcome the lower degree of trepidation attached to just accepting the invitation to hear Swygert speak. Regret letter after regret letter arrived on fancy stationery from the federal and state courthouses. One note said, "I am very sorry . . . but I think you understand. I remember many pleasant luncheons that I had with your father. . . . I have also enjoyed the many times that I have had dinner with the judges at your mother's." Said another, "I deeply regret a previous engagement. . . . I wish for you all a most pleasant occasion together." And another, from a judge's secretary, apologized that the judge would be tied up but added, "All of us associated with the court know this will be a most successful luncheon with such a distinguished honoree."

There were several exceptions—five members of the Seventh Circuit and seven District Court judges—including one who had been quite unexpected.

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"For your kind invitation to attend the annual general membership meeting of the Council on November 22, you have my most appreciative thanks," wrote Julius Hoffman. "I shall, of course, be happy to attend and to hear Judge Swygert." But only two Cook County Circuit Court judges attended, James H. Felt and Marvin E. Aspen.

Miner spoke first. "From the start there have been misconceptions about the Chicago Council of Lawyers," he said. "The press, for example, would refer to us as a group of young militants. That would upset me, but Alex Elson or Irv Friedman [Irving M. Friedman, a well-known labor specialist elected to the Council board in 1970] would take it as a compliment that had not been bestowed for many years, and Phil Kurland took it as a compliment that had never before been bestowed at all."

Then he asked rhetorically, "So who are we? As our members know, with their dues remittance they were asked to fill out a questionnaire requesting their age, type of practice, other bar groups affiliated with, and related questions. Based on the approximately 350 questionnaires that have been returned to date, we are starting to get a clearer picture of who we have attracted. And some of the data is quite surprising. Mr. Average Council Member is over 35. He is a partner in a law firm, and probably has a civil practice either in litigation or in a business-related field. He is a member of the Chicago Bar Association, the Illinois State Bar Association, and the American Bar Association."

He continued that there must be a difference between Council members and other lawyers. "That difference is, I submit, one of attitude and vision—and, although much less significant, a difference in style. The average Council member thinks differently—he has a different perception of his own role, as well as the role of his profession, in society. It is that difference that the Council is all about.

"Quite simply, the Council is about the awakening of the legal profession to its society responsibilities, first to the public and then to the bar. The Council is about the acceptance of the fact that we are not just any profession, but rather a very special profession, vested with a very special power. A power that stems from the fact that we hold a monopoly over a third of our government—the judicial branch. We are the only citizens who can enter that branch of government either to assert and protect the rights of the rest of society or to serve as judges. And as life becomes even more complex, society becomes increasingly dependent on us.

"With such awesome power, one might have expected the imposition, perhaps even from without, of certain public responsibilities. Because of their monopoly, radio and television are legally required to serve the public interest. The legal profession, on the other hand, has often acted as though it had little or no public obligation.

"One of the primary differences between the Council, on the one hand, and the traditional professional legal trade associations, on the other, is that the Council has tried, at every turn, to weigh the interest of the public."

Judge Swygert had a prepared text which concluded with a quotation from Anthony Lewis of the *New York Times* that could be taken as a compliment to the Council but that did not mention it by name: "If lawyers want to retain their traditional place of honor and influence in American life they will have to remember and live by the words of Justice Holmes. 'The law is the witness and external deposit of our moral life. Its history is the history of moral development of the race.'"

But sitting at the dias, as Miner summarized the Council's activities to date, Swygert added three sentences to his speech: "Finally, I wish to pay my respects to the Chicago Council of Lawyers and to your president, Judson Miner. It has been my impression that your organization has recognized the obligations of the lawyer about which I have spoken. I congratulate you and extend to you my sincere best wishes."

Perhaps this endorsement provided the impetus that the council needed to reach a membership goal set by Miner in the waning months of his presidency: To reach the minimum size required for a seat in the American Bar Association House of Delegates—1,000 lawyers.

The Council had applied for ABA affiliation in the summer of 1971, but requested that consideration be postponed because it had not reached the 1,000 mark when the ABA met in August. Council membership stood at just slightly more than 850 in October when Miner turned the gavel over to his staunch supporter and friend, Robert Bennett, who had left Mayer Brown & Platt to join the faculty of Northwestern University Law School.

Ronald E. Kennedy

Bennett, who was unopposed in the election, as all of his successors have been, hired the Council's first executive director, a young lawyer named Richard K. Means. With a major effort on membership development, Bennett and Means pushed the Council over the 1,000-member mark and achieved ABA affiliation in August 1972.

Means subsequently decided to seek a Circuit Court judgeship but the Council rated him not qualified and he lost. He ultimately was replaced as executive director by Julie O'Brien and went on to help start Project LEAP (Legal Elections in All Precincts) and, later, to help form a utilities division in the Chicago Department of Law under Corporation Counsel James D. Montgomery.

Under Bennett, the Council undertook a federal judicial survey in which lawyers who filed appearances in the U.S. District Court for the Northern District were asked to answer a questionnaire evaluating the performance of each member of the court with whom they had experience.

The purpose of the survey, and two like it that have been done since, was to provide guidance to the judges themselves and guidance to the White House, Justice Department, and Senate in picking future judges or considering sitting judges for elevation to the U.S. Court of Appeals. Only four of 13 sitting Northern District judges were rated "worthy of advancement to higher judicial office" by 60 percent or more of the lawyers who responded to the questionnaire—McGarr, Will, Alexander J. Napoli, and Thomas R. McMillen. Based on the survey, the Council five of the judges ought not be on the bench—James B. Parsons, William J. Lynch, Joseph Sam Perry, William J. Campbell, and Hoffman.

Over the years, the federal judicial surveys have drawn much favorable comment. ABA President Chesterfield Smith praised the Council survey as "a model which ultimately will be embraced nationwide." Senator Percy, in a speech on the Senate floor, commented, "I would like to call to the attention of my distinguished colleagues the work that has been done by a relatively young but very influential and prestigious bar association in the State of Illinois to provide those of us involved in the selection of federal judges with valuable information about their performance on the bench."

Bennett also put the Council into the seminar business. It co-sponsored with the Lawyers Committee for Civil Rights Under Law a conference dealing with an Illinois Supreme Court case called Jack Spring V. Emma Little. In that case, the court rejected the application of traditional contract law to the landlord-tenant relationship, holding that a lessee's convenant to pay rent is interdependent with a lessor's implied warranty of habitatibility which is fulfilled by substantial compliance with pertinent provisions of the Chicago Building Code. The Council and the Cook County Bar Association, an organization of black lawyers, co-sponsored a seminar on civil damage actions in police brutality cases.

The Council strongly supported Proposition 2B, the merit selection amendment to the new Illinois Constitution, in a statewide referendum. The proposal was defeated statewide, although it carried in Cook County. Paradoxically, the

passage of 2B, or any of the subsequent merit selection proposals which have been beaten back by foes of the Council, might have deprived the young bar association of the single issue that has made it thrive. "Judicial evaluation has . . . proved to the an ideal organizing theme, concrete enough so that improvement can be demonstrated, yet large enough and sufficiently intractable that it retains its motivating force," Michael Powell observed in his aforementioned *ABF Research Journal* article. "Social movements that achieve their goals either find new ones or quietly fade away."

In 1972, Arnold B. Kanter, a young lawyer with Sonnenschein Carlin Nath & Rosenthal, was elected president of the Council. He was a graduate of Brandeis University, Northwestern University Law School, and the London School of Economics, but he was the sort to devote the major part of his autobiographial sketch to more significant facts:

"Arnold B. Kanter was born of natural causes in Chicago's Michael Reese Hospital on October 12, 1942. After whiling away several days at the hospital, he moved in with his parents on the South Side. On, before long, to Kenwood Grammar School, where he acquired a collection of baseball cards that the envy of everyone in his class. Generally regarded as a fair-fielding second baseman and a good clutch bunter, he became a lieutenant in the Kenwood patrol boy force and president of his graduating class. Both Rodfei Zedek Congregation and Camp Indianola had significant impact on his formative years, although how is not yet fully understood."

A few days after Kanter took office, the Council released a report on three First District Illinois Appellate Court and 43 Circuit Court uudges seeking retention .

The Council rated 19 of the Circuit Court judges not qualified for retention, including Chief Judge Boyle about whom it said: "The prevailing view among lawyers is, in words used by many, that Judge Boyle is 'a politician, not a judge.' His primary concern appears to be a political one—maintaining the power of his office and its authority over the court system as an arm of the Democratic Organization with which he is allied."

For the third time, however, the Council appeared to be tilting at windmills in its judicial evaluations. All retention judges were returned to office.

With the help of foundation grants, the Council opened a Lawyer Referral Service for victims of police misconduct, and sponsored a seminar to train lawyers to bring police misconduct cases. The Council also sponsored seminars on the press and criminal process, evaluation of judges, and on the scandal that rocked the nation, Watergate. John R. Schmidt, a Mayer Brown & Platt lawyer, 1967 graduate of Harvard Law School, and *Harvard Law Review* editor, became the Council's first elected representative to the ABA House of Delegates.

Significantly, the Council was invited to participate in the swearing in of U.S. District Court Judge Prentice H. Marshall, whose nomination it had backed.

A Council women's rights committee surveyed women attorneys in Chicago in the hope of increasing the number of women in judicial positions, an effort that would prove fruitful in the future. The committee also filed an amicus brief in a state court case in which contractors had challenged non-discriminatory hiring guidelines for state-supported construction projects.

Women moved more into the forefront of the Council in October 1973 when Sheli Z. Rosenberg, a Northwestern Law School graduate who had headed the women's rights committee, succeeded Kanter as president, and O'Brien succeeded Means as executive director.

The women's rights committee sent questionnaires to all women lawyers in Illinois—an extension of the local project begun previously—and cataloged data on their qualifications in an effort to encourage more to seek judgeships.

With the help of a grant from the Playboy Foundation to the Fund for Justice, the Council's tax-exempt foundation, the committee also wrote and distributed 8,000 copies of a booklet titled "Women: Jobs & Justice." And it provided legal support for a new group called Women Employed, drafted a position paper adopted by the Council board condemning any effort to restrict abortion rights, joined the ACLU in a case alleging job discrimination in the Chicago Police Department, and backed a citywide anti-rape coalition.

A new committee on rights of the mentally impaired was formed and began working on a position statement for presentation to the Governor's Commission to Revise the Mental Health Code, to which Governor Dan Walker the following year named John Schmidt, who also succeeded Rosenberg as president of the Council.

Involuntary civil commitment based solely on the likelihood that a person might harm himself or others was opposed by the committee. "Although a prediction of future dangerous conduct has generally been accepted as a basis for involuntary commitment," said the position paper, "the Council is persuaded that there is no sufficient evidence that such prediction can be done with any degree of accuracy. Indeed, all evidence appears to indicate that the commitment of persons on the basis of such predictions inevitably entails the commitment of large numbers of persons who would in fact never commit a dangerous act. Under these circumstances, the total deprivation of civil liberties involved in involuntary commitment, based upon such a prediction; is unjustified."

The position paper said that involuntary commitment sould be based on other determinations, such as a person's inability to physically care for himself due to a mental condition, that legal representation ought to be provided for anyone whose involuntary commitment is sought, and that in each case the burden ought to be on the state to show that treatment could significantly benefit the person.

The 36-member governor's commission in 1976 issued sweeping recommendations which incorporated in large part the Council's recommendations. From the commission's report, four bills were drafted. These were introduced into the General Assembly early the next year and, with the strong backing of State Senator Richard M. Daley, approved by substantial margins. Governor James R. Thompson promptly signed what the *Washington Post* described as the most important mental health reform in the history of the United States.

"What is new," Daley said in a talk before the Council's mental health committee after the package became law, "is the way the new code ensures that voluntary patients really are voluntary patients and that involuntary patients really are committable."

In the area of judidicial reform on the first major success shortly after Schmidt took office when Cook County voters in the November 1974 election rejected Circuit Court Judge David Lefkovits's bid for retention.

In 1975, the Council released a comprehensive report on Cook County associate judges, rating 35 unqualified and 39 qualified. The latter group included seven termed "outstanding"—Milton H. Solomon, Matthew Moran, David J. Shields, Lawrence I. Genesen, Myron T. Gomberg, David Linn, and Frank M. Siracusa.

At the same time, the Council opposed the appointment of Elgin attorney Alfred Y. Kirkland to the U.S. District Court, although without public fanfare. It restricted its efforts to quietly lobbying Senator Percy, who had always been responsive to Council recommendations in the past. He was not responsive this time, however, and Kirkland was appointed by President Gerald R. Ford.

The Council's second federal judicial survey was completed during Schmidt's term. In it, five judges fell short of a 60-percent favorable response to the overall question of whether they were worthy to be on the bench—Parsons, Lynch, Campbell, Hoffman, and, this time, McMillen too.

In days leading up to the March 1976 Democratic primary, the Council played a prominent role in helping James A. Dooley and William G. Clark defeat the CBA-backed Regular Democratic Organization candidates, Henry W. Dieringer and Joseph A. Power, for two Supreme Court vacancies. The CBA's had found Clark not qualified, which many lawyers and journalists regarded as scandalous. This enanced the the credibility of the small alternative bar association in the eyes of the public, and set the Council on the path toward its most comprehensive candidate evaluation project ever: In the November 1976 election, 32 Circuit Court judges were seeking retention, and there were 29 contested partisan Circuit Court races, plus 14 candidates seeking First District Appellate Court seats.

Shortly before Schmidt was succeeded as president by John C. Christie Jr., the Council released voluminous reports on the candidates. It opposed the retention of Joseph Power as presiding judge of the Criminal Division, and voters ousted him. But, as Schmidt sadly reported to the membership later, "the

(see following page)

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entirely predictable happened." The Democratic candidates won all countywide races, and Republicans won all suburbs-only races.

Under Christie, a trial lawyer, the Council filed a complaint with the Illinois Judicial Inquiry Board against Circuit Court Judge Paul F. Elward, who prior to the 1976 election had run a campaign advertisement quoting the Council as having called him "a person of substantial intellectual ability who works hard . . . to achieve wrothy objectives—such as avoiding delays in the court process."

The sentences were taken out of context. The words omitted where the elipse appeared in the ad were "but reports from many lawyers also indicate clearly that he has a terrible judicial temperament characterized by extreme rigidity, unreasonable demands and positions, and close-mindedness." And the full quotation had concluded that because "of his clear lack of judicial temperament, the Council concludes that he should not be retained as a judge."

The Judicial Inquiry Board, however, dismissed the Council complaint, with the seemingly incredible finding that Elward's "excerpts" from the Council statement "did not create the false impression that the Council had recommended him for retention. . . "

When Senator Adlai E. Stevenson III recommended the appointment of Rockford lawyer Stanley Roszkowski to the U.S. District Court, Christie broke the silence that had prevailed during the Kirkland nominating process. He had an excuse, in that the *Chicago Daily News* had incorredtly reported that the Council had highly recommended Roszkowski. Christie corrected the error, labeling the prospective appointment "a return to the old tradition of non-merit appointment of federal judges."

In contrast to the Council, the CBA rated Roszkowski "highly qualified," and Stevenson would not back down. President Jimmy Carter sent Roszkowski's name to the Senate, which promptly confirmed the appointment.

In 1977, the Council elected its second female president, Elaine E. Bucklo, under whom the third federal judicial survey was launched. The report ranked the active members of the court from best—John Powers Crowley, Prentice H. Marshall, and Joel M. Flaum—to worst—McMillen and Parsons. This time, senior judges were omitted, so Hoffman and Perry escaped wrath.

During Bucklo's tenure, the Council and Legal Assistance Foundation of Chicago completed a two-year study of 8,000 Cook County housing eviction cases. The study concluded that most tenants appearing in Eviction Court were unrepresented, that unrepresented tenants who presented defenses were ignored, that landlords often did not appear but won judgments anyway, and that demands for jury trials were ignored. The response from then-Chief Judge Boyle was netative, but some reforms were instituted. Judge Jerome T. Burke, one of two judges who heard eviction cases, was reassigned. The other, Judge Eugene R. Ward, was subjected to disciplinary proceedings as a result of conduct disclosed in the Council-LAFC investigation.

Julie O'Brien was succeeded as executive director by Lois Weisberg, former development director for BPI, and Ronald E. Kennedy, a black Northwestern University law professor, succeeded Bucklo as president.

Having succeeded in ousting Lefkovits and Power, the Council took aim at Chief Judge Boyle himself. Kennedy and Weisberg hurried plans launch a new Chicago legal publication, *Chicago Lawyer.* into publication in order to help in this effort. The first issue of *Chicago Lawyer* rolled off the press on November 1, 1978. In a bylined editorial, Kennedy called the defeat of Boyle "a matter of great urgency for the Chicago bar."

Chicago Lawyer originally had been envisioned by the Council as a newsletter, but several Council members became intrigued with the idea that its potential might be greater than that after the second issue exposed a major assignment scandal in the Illinois Appellate Court: Five criminal appeals in a row filed by politically connected criminal lawyer Harry J. Busch had been assigned tc a single division of the court.

The court had five divisions. Thus, a truly random assignment procedure—which the court professed to have—placed the odds at 3,125 to one against five cases in a row being assigned to one division. And after these assignments, four of the five cases were reversed—the fifth was still pending—in decisions written by Judge Dieringer.

The publication's editorial board, which was dominated by Schmidt, Kennedy, and Weisberg, saw almost immediately that it would be better if *Chicago Lawyer* could be sustained independently of the Council. Thus, early in 1979, a limited partnership was formed. More than a score of lawyers and business leaders purchased limited partnership interests in increments of $2,500 each to finance the publication. The only connection between the Council and *Chicago Lawyer* today is that the Council purchases subscriptions each of its approximately 1,200 members. For these, it pays $8 per year each, or half the rate charged other subscribers.

The Council celebrated its 10th anniversary. It accepted an "Award of Merit" in August 1979 from the ABA for its successful launch of *Chicago Lawyer.* Later in the year, the Michael Powell *ABF Research Journal* article was published.

Kennedy was succeded in October 1979 by Robert L. Graham, a Jenner & Block lawyer, who thought that there were many reasons for the Council's viability but that the most important was that it never lost sight of its original goals to address itself outwardly to social problems rather than inwardly to the selfish preoccupations of the bar.

Under Graham, the council urged passage of the Equal Rights Amendment in Illinois, issued a position paper analyzing its impact, criticized the new federal criminal code, and continued its support for merit selection of judges. It also completed a massive candidate evaluation for the November 1980 election, in which 62 candidates were on the ballot in Chicago and 49 in the suburbs. The report formed the basis of a 16-page election guide published in *Chicago Lawyer* containing a biography of each candidate.

Mayer Brown & Platt provided its second Council president when Gary T. Johnson succeeded Graham in 1981. He saw one priority issue—legal services to the poor in the face of Reagan administration budget cuts. "Events in Washington have given us a tremendously challenging issue of professional responsibility," he said. "Given the current climate in Washington, if the private bar does not respond vigorously, both with money and with service, the effect on the poor will be devastating."

A committee appointed by Johnson proposed establishing a non-profit Illinois Justice Foundation to be funded by interest from client trust accounts in order to fund legal services. The idea was embraced by the CBA, Illinois State Bar Association, and, ultimately, by the Illinois Supreme Court.

To some it seemed that the Council had lost the fire of its youth, but Johnson claimed that was not so. He noted that David Hilliard, an early Council supporter, had been elected president of the CBA, thus contributing to "the prevailing ecumenical spirit among bar associations in Illinois."

He added, "I do not believe that the intensity of our commitment to the cause of justice has waned. . . . The difference today is that we are the competition, not the opposition."

In 1983, Johnson was succeeded by a partner of Judd Miner's, George W. Galland, and Eva Dziekonski became executive director when Weisberg left to become city director of special events in Mayor Harold Washington's administration. The political climate was very different than it was when Miner headed the Council.

Regular Democratic Organization candidates for countywide Circuit Court vacancies in the March 1984 primiary election were without exception rated qualified by the Council, as well as by the CBA, while independent challengers were found not qualified by the Council. Voters, however, went against the regulars, opting for challengers whose main qualification appeared to be Irish surnames.

The benefit that over the years had accrued to the Regular Organization from the political selection of judges had suddenly evaporated and with it the reason for resisting merit selection of judges.

Chicago had come a long way in 15 years, from a having a shoot-to-kill order to having its first black mayor, and from having absolute Machine domination of the judicial election process to having a political apparatus unable to elect even well qualified judges.

And when the Council in April 1984 released a massive report by Malcolm Rich on shortcomings of the Chicago Department of Law, Corporation Counsel Montgomery welcomed it as constructive cirticism. In another time, city fathers might have dismissed it as a vicious, cowardly, and unwarranted attack.

Chicago indeed had come a long way, and the Council of Lawyers had come a long way too. It lowered its voice, but it was being heard better, and lost some of its early excitement, but not its sense of purpose. That's what comes with growing up. ☐

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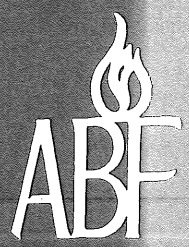
Anatomy of a Counter-Bar Association: The Chicago Council of Lawyers

Michael Powell



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Anatomy of a Counter-Bar Association: The Chicago Council of Lawyers

Michael Powell

There have been few successful attempts in the history of the organized bar since 1870 to establish alternative bar groups that challenge the dominance of the large comprehensive local and state bar associations over the representation of lawyers' interests. Founded in 1969, a product of the social ferment of the 1960s, the Chicago Council of Lawyers provides an example of one such attempt. This paper examines the conditions under which a reform-oriented counter-bar association is likely to arise, the factors that permitted its successful establishment in Chicago, and the functions it serves within the legal profession as an alternative to the Chicago Bar Association.

While the violence surrounding the 1968 Democratic National Convention in Chicago may have sparked the formation of an alternative bar association, it was intraprofessional matters that deeply concerned the founders of the Council—particularly the performance of the organized bar in providing legal services to the poor and in improving the quality of the judiciary. Within the legal profession itself there was also a striking disjunction between the age of the leadership of the bar and of the numerous young lawyers who flooded into the bar in the 1960s. Preexisting networks of young activist lawyers greatly facilitated organizational formation.

As a reformist group with a small and relatively homogeneous membership, and lacking strong ties to powerful institutions, the Council can afford to take strong stances on controversial issues. By aggressively supporting positions at odds with those of the more established bar associations, and thus providing the media, the public, and legislators with an alternative viewpoint, the Council contributes to shattering the myth of a unified profession and to the demystification of professional authority.

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INTRODUCTION

Since the beginnings of the "bar association movement" in the 1870s, lawyers in the United States have formed and joined a plethora of associations to promote collegial fellowship and to represent their interests.[1] The initial founding of major metropolitan associations and of the American Bar Association (ABA) was quickly followed by that of comprehensive county and state bar associations and numerous ethnic and special interest groups. It has been the large comprehensive metropolitan and state associations, however, that have dominated the representation of the profession's interests, with the ethnic and special interest groups playing a merely supplementary role. While the organized bar has never achieved the appearance of monolithic unity of the medical profession, in which the American Medical Association sits astride an inclusive hierarchy of local, county, and state medical societies, the relative collegial consensus of the legal profession has been rarely challenged.[2] Such a lack of competition within the organized bar is surprising, given that membership in most local and state associations and in the ABA has remained voluntary, and given the American penchant for group formation.

Not that the comprehensive associations have been totally immune to challenge or secession. There have been segments within the profession that have felt excluded from the existing groups and have formed rival associations, or that have felt that their interests were not being sufficiently represented and so seceded from the parent organization. Thus, nationally the National Bar Association was formed in 1925 by black lawyers who were excluded from the ABA,[3] and locally groups have seceded from the comprehensive associations to represent either side of the adversarial cleavage. In Kansas City and St. Louis during the Great Depression, for example, rump associations representing the defense bar and the plaintiffs' bar respectively broke away from the established bar organizations.[4] But such expressions of discontent have been particularistic in their concerns and have not disturbed the overall dominance of the large comprehensive associations.

A more serious challenge to the organized bar establishment was the formation of the National Lawyers Guild in the 1930s by lawyers committed to the liberal issues of the day who despaired of the conservatism

1. Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (New York: Oxford University Press, 1976).

2. For information on the development and organization of the AMA, see Oliver Garceau, The Political Life of the American Medical Association (Cambridge, Mass.: Harvard University Press, 1941).

3. Auerbach, *supra* note 1, at 211.

4. Richard A. Watson & Rondal G. Downing, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan 20–32 (New York: John Wiley & Sons: 1969).

of the ABA and determined that the ABA should no longer be permitted to speak for the profession as a whole.[5] In other words, the founders of the Guild sought to shatter the appearance of professional consensus perpetuated by the existence of only one national organization of lawyers. The Guild was to be a progressive national professional association, "the first national answer to the Liberty League and the American Bar Association,"[6] based on national, grassroots support. Much of its support proved illusory, however, and the leadership of the new organization was soon rent by internal political discord. Hamstrung by such internecine squabbling between the radicals and the liberals, the Guild limped into the 1950s only to be labeled a Communist front organization in the Cold War period and thus lose its professional credibility entirely.[7] Although the Guild successfully established neighborhood legal clinics in Chicago and Philadelphia, its challenge to traditional professional values and roles never materialized. The Guild was regarded as beyond the professional pale and therefore could be safely ignored.

It was not until the late 1960s, after a decade of social ferment not unlike that of the 1930s, that another challenge was to issue forth from the liberal wing of the bar. What F. Raymond Marks termed a "counter-bar movement" emerged seeking to redirect the bar's attention to the public's unmet needs for legal services. According to Marks, who examined the public interest responses of the private bar, the counter-bar movement "attempts to restructure the core of lawyer association so that the organized profession addresses itself outwardly, as a profession should, rather than inwardly, as a trade association does."[8] This movement spawned new bar organizations, leading Marks, somewhat prematurely, to compare this movement with the revival period of a hundred years ago "which saw the birth of the Association of the Bar of the City of New York and of the American Bar Association."[9]

Counter-bar groups arose independently in New York, Chicago, Los Angeles, and San Francisco, and a little later in Washington. While such organizational activity reflected a general nationwide movement, no national organization similar to the National Lawyers Guild was created.[10]

5. The discussion of the National Lawyers Guild that follows relies heavily on Auerbach, *supra* note 1, at 199–204 and 234–37.

6. Morris Ernst to President Roosevelt, quoted by Auerbach, *supra* note 1, at 199.

7. In 1950 the House Un-American Activities Committee issued a report denouncing the Guild as "the foremost legal bulwark of the Communist Party," and in 1953 Attorney-General Herbert Brownell attacked the Guild as "the legal mouthpiece of the Communist Party." Auerbach, *supra* note 1, at 352 nn.7–9.

8. F. Raymond Marks, The Lawyer, The Public, and Professional Responsibility 194 (Chicago: American Bar Foundation, 1972).

9. *Id.*

10. There were suggestions that representatives of the counter-bar organizations should meet regularly, but nothing came of them.

Of the new "councils" of lawyers, those in San Francisco and Los Angeles seem no longer to be active, while the New York Council of Law Associates limits itself to bringing together young associates and possibilities for public interest law. The Washington Council of Lawyers[11] seeks to do more than merely broker public interest law opportunities but concentrates its limited resources on pressing the profession to adopt a more active concern for the public interest.[12] Of all these new groups, then, the Chicago Council of Lawyers "comes closest to being a full-range professional organization."[13] It is the only such group to have a seat in the House of Delegates of the ABA, it has a broader base of support within the Chicago bar, and it has been involved actively in a wide range of professional issues. The Chicago Council of Lawyers, about to celebrate its tenth anniversary, has succeeded in establishing itself as an alternative professional organization in Chicago and in challenging the monopoly of the representation of lawyers' interests long held by the Chicago Bar Association (CBA).

The rarity of such challenges to the dominance of the comprehensive associations makes the Chicago Council of Lawyers of considerable interest to scholars of the legal profession. This paper examines the conditions that led to the formation of the Council and determined its successful establishment, and it discusses the functions the Council has served within the legal profession as a reformist alternative to the Chicago Bar Association.

The Formation of the Chicago Council of Lawyers

The sociologist Robert Perucci, discussing the formation of radical movements in the professions during the 1960s, suggests that the origins of such movements are to be traced to dissatisfaction with the traditional values, norms, and practices of the professions which seemed to hinder equal access to professional expertise, rather than to the more generalized discontent with societal institutions which was so much a feature of that turbulent decade.[14] Although the Council does not fit Perucci's radical mold, the deep concerns that gave rise to it were intraprofessional concerns. Dissatisfaction was rife within the legal profession, particularly among younger lawyers. There was little evidence that the profession put the public interest before its own. Indeed, to many observers the profes-

11. Raymond Marks notes that the term "Council of Lawyers" seems to have replaced "Association" as a generic description. He suggests that it may reflect a conscious avoidance of the connotations of "association" or "guild." Marks, *supra* note 8, at 194 n.14.

12. Information received from Larry Mirel, former Executive Director of the Washington Council of Lawyers. Interview, July 13, 1979.

13. Marks, *supra* note 8, at 195.

14. Robert Perucci, In the Service of Man: Radical Movements in the Professions, Sociological Review Monograph no. 20, at 179 (University of Keele, 1973).

sion and its associations seemed at best self-serving and at worst tied to special interests. Philip B. Kurland, professor of constitutional law at the University of Chicago Law School and keynote speaker at the Council's first annual meeting, identified two criticisms of the bar that he felt led to the formation of groups like the Council. First, the bar had clearly failed to provide quality legal services to the poor; second, the bar was perceived, correctly according to Kurland, as having lost its independence and as being too closely tied to its clients.[15]

Born of the growing awareness, following the "rediscovery" of poverty in the early sixties, that large segments of the population were without legal representation, the legal services movement gained momentum in the mid-sixties with the support of President Johnson's "Great Society" programs. The Legal Services Program of the Office of Economic Opportunity (OEO) was created in 1965 and the Lawyers' Committee for Civil Rights Under Law established its Urban Areas Project in 1968.[16] Not only were many in the legal services movement frustrated by the difficulties placed in the way of the development of neighborhood law offices by the organized bar, but changes in the norms and rules that governed the practice of law came to be viewed as necessary to permit the provision of legal services to take new organizational forms. In a 1967 address on the responsibilities of the legal profession, Associate Justice William J. Brennan, Jr., reiterated Justice Harlan Fiske Stone's warning of 33 years earlier: "Our Canons of Ethics for the most part are generalizations designed for an earlier era." Justice Brennan went on to comment that little had been accomplished since then; indeed, "the obsolescence of our code of ethics and institutions has been dramatically compounded."[17] Justice Brennan called on the profession to "purge itself of the inbred precepts of another day, rethink its code of practice and reshape its internal mechanisms for meeting its public responsibilities."[18] The reluctance or inability of the organized bar to take significant steps to follow such a prescription for reform heightened dissatisfaction with established bar associations that seemed loath to abandon monopolistic tendencies. Eventually, of course, many of the changes sought by the reformers—the abolition of minimum fee schedules, the extension of group legal services, the authorization of attorney advertising—were wrung from a reluctant bar by Supreme Court decisions. It appeared to many young activists that bar asso-

15. Philip B. Kurland, The Law Men of La Mancha 7 (Address given at the Second Annual Meeting of the Chicago Council of Lawyers, Chicago, Oct. 7, 1970).

16. See Marks, *supra* note 8, and Earl Johnson, Jr., Justice and Reform: The Formative Years of the OEO Legal Services Program (New York: Russell Sage Foundation, 1974).

17. Associate Justice William J. Brennan, Jr., The Responsibilities of the Legal Profession, *in* Arthur E. Sutherland, ed., The Path of the Law from 1967, at 89, 91 (Cambridge, Mass.: Harvard Law School, 1968) (footnote omitted).

18. *Id.* at 92.

ciations found it difficult to put the public interest above the self-interest of lawyers.

The legal services movement resulted in pressure not only to permit new organizational forms for the provision of legal services but also to reverse the long-standing indifference of the private bar to systemic social injustice. The new "public interest lawyers" called for "a shift in primary loyalty—from the corporate interests of the establishment toward the unrepresented interests of society."[19] Such a shift meant the deployment of legal resources in the forgotten areas of consumer protection, welfare, and landlord-tenant problems and the development of new legal strategies in representing consumers, welfare recipients, and tenants. Consumers could be represented as a class, federal agencies should be monitored, and tenants could legitimately withhold rent. Activism of this sort on the part of the public interest lawyer challenged traditional models of the lawyer's role—as a CBA leader noted in 1969, "young lawyers nowadays have an entirely different philosophy of the legal profession"[20]—and ultimately led to a political reaction on the part of conservative interests which was to destroy the OEO.

Some lawyers at the local level sought to clip the wings of these ardent advocates for the previously unrepresented, disliking their legal tactics and perhaps also reflecting the fears of their clients. Judson H. Miner, one of the founders of the Council and a Reginald Heber Smith Fellow associated with the University of Chicago, relates that it was attempts made by such conservative lawyers to pressure him into withdrawing from controversial litigation in which he was involved that first caused him to think about forming a new organization of lawyers. Philip W. Moore, a classmate of Miner's and an attorney with the American Civil Liberties Union (ACLU) at the time, had a similar experience independent of Miner.[21] As Professor Kurland pointed out, there was the widespread feeling that the upper echelons of the bar were too closely identified with the interests of their corporate clients and therefore unlikely to speak out on issues that threatened those interests.[22] Miner and Moore wanted an organization independent of client interests and political pressures and willing to pursue more aggressively the ideal of equal justice under the law.

The sense of disillusionment with traditional professional values and with the performance of the bar associations was felt most acutely by younger practitioners, particularly those admitted to the bar during the

19. Marks, *supra* note 8, at 202.
20. CBA Project Files. Unless there is a strong intellectual reason for attribution, names will be omitted and confidentiality of sources will be maintained throughout this paper.
21. Interview, May 14, 1976.
22. Kurland, *supra* note 15, at 7.

middle and late 1960s. And, of course, there were more of these young lawyers than ever before. The rapid expansion of the bar since the war had resulted in a significant reshaping of the age structure of the bar, reshaping that was not reflected in bar association leadership. One CBA leader, commenting on the impending formation of the Chicago Council, referred to it as "a youth struggle" and admitted that "we probably have not brought the young lawyers into the Association to the extent that we might have."[23] His intuitive feelings are supported by the findings of American Bar Foundation researchers Terence Halliday and Charles Cappell, who in 1978 undertook an analysis of the leadership of the CBA as part of a larger study of the Chicago bar. Halliday and Cappell have found that the average age of the officers and board members of the CBA hovered around 50 "with a truly remarkable degree of stability" and that it took board members on average 20 years of service within the organization to reach the board.[24] There was only minimal representation of lawyers in the first 10 years of practice. They also suggest that the age differential between the leadership and the bar was increasing, not decreasing, in the 1960s, that while younger lawyers entered the bar in thousands, more experienced lawyers, 25 years older, remained entirely resistant to any adaptation to the new age profile of the bar.[25] It was among younger lawyers, disenchanted with the dominant professional ethos and seeing little chance of exercising influence and power in the CBA, that the nascent Chicago Council was to find its constituency. A president of the CBA commented that these young lawyers "want a piece of the action"[26]; a new organization provided a way to sidestep the seemingly insurmountable hurdle that age placed in the way of concerned and ambitious young lawyers eager to effect change in the legal system and not prepared to wait in line.

In addition to the intraprofessional discontent that Perucci and Kurland emphasize, the legal profession was particularly sensitive to the manifestations of society-wide structural strain characterizing the 1960s. Lawyers, vested with special power through their monopoly of access to the judicial branch of government, were unavoidably involved in the maelstrom of demands for change and of conservative reaction. The courts were a major arena for the battle of competing interests and, indeed, had become a vehicle for institutionalizing social change. Civil rights groups such as the NAACP, disillusioned with the legislatures, turned to the courts and the legal process as a means of achieving their

23. CBA Project Files.
24. Terence C. Halliday & Charles L. Cappell, Indicators of Democracy in Professional Associations: Elite Recruitment, Turnover, and Decision Making in a Metropolitan Bar Association, in a forthcoming issue of A.B.F. Res. J.
25. *Id.*
26. CBA Project Files.

ends.[27] To a greater extent than members of any other profession, lawyers were involved in the process of redefining the societal values and norms that underlay the tensions of that decade.

The heightened concern over the responsiveness of American institutions was given immediacy and urgency by a series of events in Chicago in 1968 and 1969—the widespread rioting following the assassination of Martin Luther King, Jr., and Mayor Daley's subsequent shoot-to-kill order, the violent clashes between police and demonstrators accompanying the 1968 Democratic National Convention, the revelation of corruption in the Illinois Supreme Court, and the raid on the Black Panther Party headquarters resulting in the bloody deaths of Fred Hampton and Mark Clark. The sociologist Neil Smelser, in developing a natural history of the origins of collective movements, suggests that there needs to be a "dramatic event" dramatizing the "generalized belief" that change is needed.[28] Coming so soon after the shock of the assassination of Dr. King and the following riots, the Democratic National Convention was that dramatic event, serving not only to demonstrate the inadequacies of the justice system in dealing with mass arrests but also to throw into question the legitimacy of the entire system. There was a feeling that "things had broken down" and that the organized bar needed to do more than simply ensure the representation of those arrested, that it should speak out strongly about the accountability of the police. It was not until the fall of 1968, however, after the dust raised by the convention had settled, that the possibility of forming an alternative legal association was seriously discussed. Yet the shock and anger resulting from the convention remained. So while it was the widespread discontent with the performance of the organized bar in providing legal services to the poor and in redefining the profession's public responsibility that gave rise to the generalized belief that reform was needed, it was the Democratic convention with its numbing violence that indirectly spawned a new legal association. It was from these ad hoc meetings of young lawyers that the organization call was to come some six months later.

The political scientist James Q. Wilson has noted that "association building is facilitated if it can draw upon already existing networks of personal relations."[29] The University of Chicago and the legal services movement were the dominant connections at the outset of the Council's

27. For a discussion of the court strategies of the ACLU and the NAACP see Robert L. Rabin, Lawyers for Social Change: Perspectives on Public Interest Law, 28 Stan. L. Rev. 207, 210-24, *reprinted in* Research Contributions of the American Bar Foundation No. 1 (Chicago: American Bar Foundation, 1976).

28. Neil J. Smelser, Theory of Collective Behavior 16-17 (New York: Free Press of Glencoe, 1962).

29. James Q. Wilson, Political Organizations 204 (New York: Basic Books, 1973).

life. Of the 17 signatories to the call for a new organization, 8 had close ties to the University of Chicago either as faculty (David P. Currie and Dallin H. Oaks) or as members of the classes of 1966 and 1967. In addition, another member of the class of 1966 served on the first board together with Chicago professor Kurland.[30] Of the signatories 4 were recent graduates of Harvard Law School, but the Harvard link seems merely incidental while the Chicago ties were clearly instrumental in bringing together some of the original movers of the Council.[31]

Involvement in the legal services and public interest law movements overlapped with law school background. Eight of the signatories to the organization call either were working in that area at the time or had been recently. Robert M. Berger, Robert W. Bennett, and Judson Miner, all of whom played a prominent part in the founding of the Council, were successively Reginald Heber Smith Fellows at the Legal Aid Bureau where they tied into a larger network of lawyers working for the public interest. Joseph V. Karaganis, a very important figure in the founding of the Council, was a classmate of Berger's at the University of Chicago Law School and a partner in Chicago's first public interest law firm, Patner & Karaganis. Interwoven with these networks were the anti-Vietnam War movement and the McCarthy-for-President campaign. Joel F. Henning, another founder, and Robert Bennett were trustees of the Viet Nam Coalition, and John R. Schmidt, a long-serving board member later to be president, and Henning were involved in the McCarthy group's struggle over credentials at the 1968 Democratic convention.[32]

Law firm connections overlapped with law school, legal services, and anti-Vietnam War ties to consolidate these networks. Bennett, Berger, and Schmidt, all mentioned above, were at Mayer, Friedlich, Spiess, Tierney, Brown & Platt (later simply Mayer, Brown & Platt) when the Council was formed; two of the signatories of the organization call were at Sidley & Austin,[33] Henning was at Sonnenschein, Carlin, Nath & Rosenthal, and two young associates at Devoe, Shadur, Mikva & Plotkin (now Devoe, Shadur & Krupp) were involved in the early life of the Council.[34] So when the suggestion of forming a reformist bar association

30. Of the signers, Robert M. Berger, Joseph V. Karaganis, and David S. Tatel were of the class of 1966, while Neil K. Komesar, Judson H. Miner, and Philip W. Moore were of the class of 1967. In addition, Michael L. Shakman, who served on the first board, and George A. Ranney, Jr., a charter member of the Council and later a member of the board, were also of the class of 1966.

31. Robert W. Bennett '65, Jerald P. Esrick '66, Philip Ginsberg '64, Joel F. Henning '64. Robert C. Howard '67, the first vice president of the Council, and John C. Christie, Jr. '62 and John R. Schmidt '67, later presidents, were also recent graduates of Harvard Law School.

32. Robert Bennett, Judson Miner, Philip Moore, and John Schmidt were also on the Lawyers Action Committee to End the War.

33. Neil Komesar and David Tatel.

34. Robert Howard and Michael Shakman.

was raised in the aftermath of the Democratic convention there was already a pool of young activist lawyers, linked to one another through these overlapping networks, on which to draw. The fact that many of the founders of the Council already knew each other certainly facilitated the early organization.

The belief that significant reforms in the legal system and in the legal profession were "both necessary and possible" was shared by all the participants in the early discussions,[35] but there was no such consensus on the way in which such reforms could be accomplished. Despite their shared dissatisfaction with the performance of the CBA, and the feeling that it was either too closely tied to the political establishment or too large and amorphous to permit independent and concerted action, there were those who advocated working through it to effect change. The possibilities of capturing the leadership or of setting up an action committee within the Association were seriously considered. Given the generally conservative nature of the bar as a whole, the large membership of the CBA, and the centralized nominating procedures controlled by its establishment, a takeover of the Board of Managers did not seem likely; similarly, working within the organization as a constituent part did not appear promising, particularly given the highly centralized structure of the CBA as a whole whereby all committee reports had to be approved by the board prior to publication. While working through the CBA would certainly have been problematic, necessarily entailing the risk of compromise and frustration, it would have provided an organizational base and thus avoided the difficulties and hard work involved in starting a new organization. In contrast, forming a new group was fraught with uncertainty including the possibility of ignominious failure but would result in a smaller body of lawyers presumably all interested in reform and thus more consensual. An organization of like-minded lawyers would find it much easier to take strong positions on issues and to mobilize support.

The decision to establish a separate organization was made some time in the spring of 1969. More than 300 lawyers attended the organization meeting held on June 6 in the basement auditorium of the Peoples Gas Company. An ad hoc committee was elected to draw up by-laws and to run the affairs of the embryo organization over the summer of 1969, and committees were established. At the second meeting, on October 3, by-laws were adopted and officers and a board of governors elected. The Council was in business.

It is clear that by the end of the tumultuous sixties there were conditions that permitted, and even encouraged, the emergence of a reformist

35. Judson H. Miner, An Introduction to the Chicago Council of Lawyers 3 (informational paper with application form, n.d. [1970]).

counter-bar association in Chicago. Not only was there a striking disjunction between the bar leadership and the changing age structure of the bar which left young lawyers feeling powerless, but also there was among these same younger lawyers a widespread discontent with the performance of the organized bar. Bar associations had hardly taken the lead in ensuring equal justice for all Americans. Indeed, outmoded Canons of Ethics, still giving rise to cases prosecuted by zealous bar officials, and protectionist bar associations appeared to obstruct the delivery of legal services to the disadvantaged.[36] The violence of the Democratic convention in Chicago, and what many considered to be the inadequate response of the Chicago Bar Association, caused younger liberal lawyers to countenance the formation of a separate and independent voice within the legal profession, a voice that would not be muted by strong ties to any established interests. Organization of a new group was considerably facilitated by the prior existence of networks of concerned young liberal lawyers from which the core people could be readily recruited.

The Establishment of the Council

It is not enough for the establishment of a new organization, however, that there be a general awareness of the need for reform that even a precipitating event have occurred, and that preexisting networks of like-minded people be in place. The political scientist Robert Salisbury, known for his analysis of the formation and growth of interest groups, argues that all such new organizations need an organizational entrepreneur who is prepared to expend a great deal of energy and time in getting the embryonic group established.[37] The core founders of the Council—Bennett, Berger, Thomas L. Eovaldi, Henning, Karaganis, Miner, Moore, David S. Tatel—were all very able young lawyers who have since established themselves in different segments of the profession,[38] but it was Judson Miner, the Council's first president, who, more than any other person, was to leave his mark on the nascent organization. Miner was the Council's entrepreneur. Unlike the organizers of the farm groups in Salisbury's study, he did not have prior experience in organizational leadership, but he did have a great deal of energy and enthusiasm, and his name was an additional asset, for his father had been a prominent

36. See Associate Justice Brennan's remarks referred to in note 17 *supra*.

37. Robert H. Salisbury, An Exchange Theory of Interest Groups, 13 Midwest J. Pol. Sci. 1, 12 (1969).

38. Robert Bennett and Thomas L. Eovaldi are now professors of law at Northwestern University; David Tatel is Director of the Office for Civil Rights in HEW; Joel Henning is Assistant Executive Director of the Division of Communications and Education at the ABA; Robert Berger is a partner with Mayer, Brown & Platt; Karaganis and Miner both have their own firms (Karaganis & Gail, Ltd., and Davis, Miner & Barnhill); Moore is of counsel to Price, Grove, Engelberg & Fried, P.C. (Washington, D.C.) and also has an individual practice (in Easton, Maryland).

and popular federal judge in Chicago for many years. As the son of Julius H. Miner, the first Council president had entrée into legal circles that might otherwise have been denied him.[39]

Miner shared the chairmanship of the founding group over the summer of 1969 with Robert Bennett, who later succeeded Miner as president. It was Miner, however, as the first Council president, with his own reputation on the line, who did much of the leg work necessary to get a new association going. Miner believed the president had to be an activist, to lead from the front, and that is what he did. As he invested huge amounts of time and energy in Council affairs, serving in effect as both president and executive director, it was suggested during Miner's second year of office that he be paid a salary.[40] He was never to receive remuneration for his work as the president of the Council but did earn himself wide recognition in the legal community of Chicago.[41]

Miner was not the only one with a vision for the Council. An early rival for the leadership, Joseph Karaganis, had a rather different perspective on what the Council should become. He saw the Council as a prestigious association of reform-oriented lawyers led by men of stature and credibility within the profession, modeled somewhat on the Association of the Bar of the City of New York, which had been formed originally to fight corruption in Tammany Hall and on the bench.[42] Miner was not convinced that those who had worked hard to float the Council, even though they were young, relatively inexperienced, and without widely known reputations, should give way to older and more established figures in the Chicago bar. Miner asked where older liberals had been when the preliminary work was being done.[43] And while the presence of such

39. For example, Judge Miner had been good friends with Albert E. Jenner, senior partner in Jenner & Block and a notable figure on the Chicago legal scene; consequently, Miner was able to gain Jenner's support for the Council soon after its formation.

40. Minutes, Meetings of the Board of Governors, Chicago Council of Lawyers, Mar. 8, 1971. It was also suggested at the same meeting that Miner should step down as president since the Council was becoming too closely identified with him—the classic problem of the organizational entrepreneur. In any event, following the completion of his two-year term as president in October 1971, Miner himself saw the need to withdraw from representing the Council so that it could develop a public identity independent of him.

41. Since the early days of the Council, Miner has established a thriving small practice serving largely personal clients rather than corporate, and with a higher proportion of minorities and blue-collar workers represented. It should be noted that the recognition Miner gained was by no means all positive. With his assertive style he certainly alienated the leaders of the CBA.

42. For the origins of the Association of the Bar of the City of New York, see George Martin, Causes and Conflicts: The Centennial History of the Association of the Bar of the City of New York 1870–1970 (Boston: Houghton Mifflin Co., 1970).

Karaganis was not the only one who saw the Association of the Bar of the City of New York as a model; so too did Dallin H. Oaks, then Professor of Law at the University of Chicago and Executive Director of the American Bar Foundation, who suggested at the first organizational meeting that the new group call itself the Association of the Bar of the City of Chicago, thus not only recalling its New York model but also when written in acronymic fashion (ABC) making the exact reverse of the CBA.

43. Interview, May 14, 1976.

respected members of the bar would no doubt add to the legitimacy of the new group, Miner felt it could also be counter-productive, resulting in compromise and the blunting of the Council's cutting edge from the outset.

Karaganis's view prevailed in the beginning. He was successful in persuading four such older, respected liberal lawyers to stand for the first board, and all were elected. None would run for the presidency, however, leaving Karaganis himself to run against Miner, thus focusing attention on their contrasting visions and styles.[44] Miner saw the Council acting as a goad within the profession, being assertive and aggressive, not hesitating to speak out on controversial issues, whereas Karaganis viewed the Council as certainly reformist but acting more deliberately and cautiously. Miner won the election, and it was to be his assertive style that characterized the Council in its formative years.

The Council was fortunate to survive this early division among its leaders, particularly as both Karaganis and Miner were strong personalities. Such differences among founders have often derailed new organizations in the past but did not in this case, perhaps because although Miner won the election and was certainly the dominant figure in the Council's early years, the presence on the board of the older lawyers, recruited by Karaganis, ensured a degree of stability and professionalism which allayed the fears of the Council's more cautious supporters. Also, Karaganis drifted away from the Council shortly after the election and did not continue to play a leadership role in its affairs, thus diminishing the likelihood of any continuing internal division. The older practitioners on the Council's first board, William W. Brackett, Alex Elson, Calvin P. Sawyier, and Alexander Polikoff, were respected and well-known liberal members of the Chicago bar and certainly brought the fledgling bar association a degree of legitimacy and acceptability in the profession as did Professor Kurland.[45] Other important figures in the bar also lent their moral support to the Council in its early days: Albert E. Jenner, Jr., patriarch of the large firm Jenner & Block, became a member; Milton I. Shadur, on the board of the CBA at the time of the Council's formation, defended the integrity of its leaders within the CBA; and Frank D. Mayer, Jr., the grandson of one of the founders of Mayer, Brown & Platt, served on the board of the Fund for Justice set up by the Council. A willingness on the part of older established members of the bar to identify with the council was clearly important to its successful establishment.[46]

44. The differences between Karaganis and Miner were important at the time. Strong ideological and personal feelings were involved. Several of the other founders commented that the Council would have been a quite different organization had Karaganis won the election.

45. Alex Elson and Calvin P. Sawyier had both served on the Board of Managers of the CBA.

46. Miner was also able to persuade Chief Judge of the Seventh Circuit of the U. S. Court of Appeals Luther M. Swygert to speak at the Council's second annual meeting in October of 1971. Judge

Miner quickly gained for the Council maximum public exposure with caustic and colorful criticisms of the judiciary and of the established legal institutions in Chicago. While Miner's rather aggressive style was foreign to the natural caution of the Council's elder statesmen,[47] it certainly brought the Council public notice. With a limited power base within the profession, and thus little immediate likelihood of effecting change through intraprofessional channels, the Council saw the media and the public as its allies. "Going public" on important and controversial issues was its early policy even at the cost of respectability. James Q. Wilson has suggested that while "respectability" is an important resource for an organization, its "influence is . . . probably greatest over time rather than in the formative years."[48] Certainly, the Council's outspokenness in those early years carried the risk of losing a degree of professional credibility, especially in a profession in which caution and accuracy are important norms;[49] yet media exposure and public support provided a legitimation of their own. The media, always keen to highlight disagreement, promoted the Council's image as a legitimate alternative to the CBA.[50]

The remarkably receptive response to the idea of a new reformist bar organization (more than 300 lawyers attended the initial organization meeting in June, and some 10 months later the Council boasted approximately 800 members)[51] owed a great deal to the succession of extraordinary events that occurred in Chicago in 1969. With the violence of 1968 still vivid in the collective memory, the grand jury hearings and the subsequent Chicago Conspiracy Trial, the revelations of corruption in the state's highest trial court, and the Black Panther raid—events directly affecting the justice system—all seemed to confirm the need for an aggressive, alternative voice within the bar and afforded the Council opportunities for participation in public debate.

Swygert's willingness to identify with the Council, and the attendance of many of his fellow judges, certainly added to the legitimacy of the new organization. See Miner, Remarks—Third Annual Meeting—Chicago Council of Lawyers (n.d. [1971]).

47. The difference between Miner's assertive style and the more cautious approach of sympathetic older lawyers can be seen in the exchange between Miner and Milton I. Shadur as to whether the Council should sponsor a planned seminar on extrajudicial comment. Shadur felt that Council sponsorship would mean the seminar would lose credibility and suggested law school sponsorship to remove the discussion from an atmosphere of partisanship. Miner strongly disagreed, stating that such problems "should be forthrightly confronted by lawyers with the help of academicians and not vice versa." Miner, Memorandum to Symposium Participants, Apr. 15, 1970.

48. Wilson, *supra* note 29, at 208.

49. Several CBA leaders regarded the Council and its early leaders as "irresponsible." CBA Project Files.

50. Council leaders had good relations with the press; indeed, some of them had personal contacts with media figures such as Walter Jacobson of Chicago's Channel 2.

51. The figures are from Miner, Introduction, *supra* note 35, at 1, and Chicago Council of Lawyers newsletter, Aug. 18, 1969, at 1.

In the controversy surrounding the Chicago Conspiracy Trial and the Black Panther raid, the Council frequently took positions in conflict with the established bar associations, thus confirming its independent identity.[52] Whereas the CBA and the Illinois State Bar Association (ISBA) consistently defended United States District Court Judge Julius J. Hoffman's conduct of the trial and attacked the behavior of the defendants' counsel, William Kunstler and Leonard Weinglass, the Council openly criticized Hoffman and supported Kunstler and Weinglass. Likewise the Council stood out among local bar groups in condemning State's Attorney Edward V. Hanrahan's actions with regard to the Chicago police raid on the Black Panther headquarters which had resulted in the deaths of Fred Hampton and Mark Clark. Not only did the Council demand an investigation into the conduct of the raid itself but it also petitioned the Illinois Supreme Court for the appointment of a special commission to determine whether the comments and conduct of Hanrahan immediately after the December 4 raid warranted disciplinary action.

Legal actions consequent to the Chicago Conspiracy Trial continued to occupy the Council's attention well into the 1970s, as Council members prepared amicus curiae briefs for submission to the U.S. Court of Appeals opposing the contempt citations slapped on Kunstler and on Frank W. Oliver, a local lawyer who had publicly criticized the tight security surrounding the trial.[53] Concerned over *In re Oliver*, the Council sponsored a symposium to consider the proper roles of attorneys, the bench, and the press as "participants, observers, and critics of the judicial system." The board of the Council also authorized an affirmative lawsuit in the district court challenging the constitutionality of the federal court's rules limiting out-of-court comment by lawyers.[54]

The quality of the local and state judiciary was a primary concern of many of the founders of the Council; indeed, judicial selection was the first item on their reform agenda as presented in the original organizational call. The validity of such an emphasis was underscored by a number of scandals involving lower court judges in 1969 followed by the sorry spectacle of Chief Justice Roy J. Solfisburg, Jr., and Justice Ray I. Klingbiel of the Illinois Supreme Court having to resign because of acts

52. The Council's first press conference was with reference to the Chicago Conspiracy Trial and in response to criticisms by the leaders of the CBA and ISBA of the behavior of the defendants and defendants' counsel. Chicago Council of Lawyers newsletter, Mar. 31, 1970.

53. *In re Oliver* (452 F.2d 111 (7th Cir. 1971)) became something of a cause célèbre in Chicago legal circles with the Council strongly defending the profession's freedom of expression and directly challenging the Illinois district court on the matter.

54. In 1975 the Council won the case on appeal when the U.S. Court of Appeals for the Seventh Circuit overruled on constitutional grounds the rules adopted by the U.S. District Court for the Northern District of Illinois, which restricted public comment by lawyers on pending criminal and civil cases. Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (1975), discussed in Chicago Council of Lawyers newsletters, Oct. 21, 1970, at 3–4, and Aug. 18, 1975, at 1.

"giving the appearance of impropriety" in financial dealings relating to matters under litigation before them.[55] These scandals seemed an indictment of the entire system of judicial selection and of the organized bar that acquiesced in it. The Council, which was just under way when the Solfisburg and Klingbiel scandal broke, demanded high standards for judicial selection. Its position was that "only demonstrably highly qualified persons are entitled to be judges," a position it maintained ruthlessly in its first exercises in evaluating judicial candidates. In October 1970, it found only 2 of the 25 Democratic candidates qualified, in sharp contrast with the CBA, which found all 25 qualified, and the Council went on to attack "the shameful failures of the organized bar in connection with the selection and operation of our judiciary."[56] The report explicitly criticized the CBA, which has "by its action and inaction . . . rendered . . . cooperation to those whose interests are served by the serious and dangerous shortcomings of our legal and judicial systems."[57]

The Council's next report on judicial candidates was equally scathing. In June 1971, the Council found only 2 of the 107 magistrates about to be elevated *en masse* to associate judge, following the provisions of the judicial article in the new Illinois Constitution, qualified for the judiciary.[58] In commenting on the unqualified judges, the Council's report used very strong language indeed, referring to various magistrates as unintelligent, ignorant, arbitrary, prejudiced, inept, and so on.[59] These caustic indictments of the bench early in the history of the Council reflected the anger and frustration of the leaders of the Council at the state of affairs in the lower courts and at the methods of judicial selection that resulted in such a situation. It was also, however, the Council's desire "to

55. For an outline of the scandals involving the lower court jurists and the development of the Solfisburg and Klingbiel affair, see Herman Kogan, The First Century: The Chicago Bar Association, 1874–1974, at 263–64 (Chicago: Rand McNally & Co., 1974).

56. Chicago Council of Lawyers, A Report to the Citizens of Cook County by the Chicago Council of Lawyers: The Judicial Candidates in the November 1970 Election 2 (unpublished report, Oct. 19, 1970) (underlining deleted).

57. *Id.* at 7.

58. The mass elevation of magistrates was provided for in the "Transition Schedule" (§ 9) of the new Illinois Constitution. However, as magistrates were appointed by the circuit court judges to serve "at their pleasure," the Illinois circuit court could discharge any magistrate deemed unfit prior to July 1, 1971, the date on which all the magistrates would become associate judges of the circuit court. See A Report to the Citizens, *supra* note 56. For comments on the consequences of the new Illinois Constitution, see Rubin G. Cohn, The Illinois Judicial Department—Changes Effected by Constitution of 1970, 1971 U. Ill. L.F. 355, 365–67 (1971).

59. A Report by the Chicago Council of Lawyers: The 107 Cook County Magistrates Who Are Scheduled to Become Associate Judges of the Circuit Court on July 1, 1971, at 1, 18, 21, 22 (n.d. [June 1971]). The credibility of this report was enhanced when a number of Chicago lawyers, many of whom were not members of the Council, petitioned the Illinois Supreme Court to stay the mass elevation of the magistrates. Although the petition was organized by Miner, it was headed by Albert Jenner and included the names of other prominent Chicago lawyers.

call public attention to the abysmal quality of the local bench," and this was achieved through hard-hitting reports that were given widespread publicity.[60] Such injudicious reports certainly antagonized some members of the bar who viewed these attacks on the bench and the organized bar as demonstrating the immaturity and irresponsibility of the rebel bar association.[61] On the other hand, the damning reports may well have spoken to the need many lawyers felt for fearless criticism of the existing standards and methods of judicial selection and of the quality of the bench, "by saying publicly the things that in the past lawyers have had the courage to say only in private."[62]

The patterns of support reflected by the overlapping networks from which the founders of the Council came continued to shape its recruitment of members and leaders. Strong links with the top law schools of Chicago, with organizations in the legal aid and public interest law fields, and with certain of the large firms provided the necessary sustenance to establish the Council. The University of Chicago Law School continued to have faculty representation on the Council's board after Kurland's departure,[63] but the Council's growing ties to Northwestern University soon superseded its early special relationship with the University of Chicago. Of the eight presidents the Council has had thus far, three have been recent graduates of Northwestern's School of Law (Arnold B. Kanter, Sheli Z. Rosenberg, and Elaine E. Bucklo) and two have been members of the faculty when serving as president (Bennett and, most recently, Ronald Kennedy). Three professors of law were signatories of the original call for a new organization, and academics, particularly from Northwestern, have continued to exercise leadership in Council affairs.[64]

Likewise leadership and support have continued to come from lawyers involved in legal aid, public interest law, and civil rights. As noted above, 8 of the 17 signatories of the original call to organize had worked in those areas. Of the Council's first board, Philip Moore and Alexander Polikoff were with Businessmen for the Public Interest, Kermit Coleman was with

60. Report to the Board of Governors on the Council's Judicial Evaluation Procedures (internal memorandum, n.d. [1974]). This report calls for a change in strategy on the part of the Council, from making blanket condemnations of the Illinois bench "to pragmatic efforts to improve the judiciary by locating and promoting competent persons and removing those who are totally unqualified."

61. CBA Project Files. It should be noted that the Chief Judge of the Cook County Circuit Court, John S. Boyle, regularly advised Cook County Circuit Court judges and associate judges not to cooperate with the Council's evaluations. See Report to the Citizens, *supra* note 56, and Report on 107 Cook County Magistrates, *supra* note 59.

62. Miner, Remarks, *supra* note 46, at 7.

63. Gerhard Casper replaced Kurland on the Council's board; he was followed by Geoffrey R. Stone and H. Douglas Laycock, younger members of the faculty.

64. In addition to those already mentioned, other members of the faculty at Northwestern University's School of Law have supported the Council and been involved in its activities from time to time, including John P. Heinz and Francis O. Spalding.

the Legal Assistance Foundation, and David Tatel was soon to become Director of the Chicago Lawyers' Committee for Civil Rights Under the Law, a position that was successively held by Robert Howard, the first vice president of the Council, and then by William J. McNally, who was elected to the Council's board in 1972. In addition, David Goldberger, an attorney with the ACLU, was to serve either on the board or as treasurer of the Council for several years. Thus it was that the Council was quickly embedded in a larger network of liberal and reformist organizations. Having such close ties with the liberal wing of the bar was to be expected, given the Council's founding concerns, and it was a source of strength to the Council; however, it did mean that the Council had some difficulty in differentiating itself from the numerous other liberal groups and in establishing its own identity.[65]

The Maintenance of the Council

Membership, Recruitment, and Professional Acceptance

Although it was clear from the outset who constituted the Council's primary constituencies—academics, public interest lawyers, and associates in large firms—and although the Council experienced initial rapid growth, problems associated with expanding its membership base loomed large during its early years. If its claim to speak for the profession was to have any legitimacy, the embryo organization needed a broad basis of support within the legal community. A membership that was too small or too narrow would open the Council to the criticism that it was merely the advocate of a particular interest within the profession.[66] Professional standing was not the only thing that depended on attracting a sizable membership: the Council's financial well-being rested almost entirely on membership dues. The early years of the Council were dogged by financial uncertainty, and the pressure to increase the membership was considerable. The Council could not inflate its dues since the bulk of its members were younger lawyers; nor could it follow the route of the New York Council of Law Associates and appeal to the large firms to underwrite its activities since it was not the neutral broker of public service opportunities that its New York counterpart was to become. Undoubtedly, there were senior partners in the large, prestigious firms who looked on the birth of the Council with considerable suspicion and, for its part, the Council did not want to be obligated to these firms.

65. This difficulty was recognized by the Council's leaders. In an early memorandum, Michael Shakman discussed whether the Council was simply duplicating the ACLU. Michael L. Shakman to William Brackett, Jerry Esrick, Judson Miner, Aug. 25, 1970.

66. Leaders of the CBA frequently refer to the Council in such a way, not as a rival or competing bar association but as a special group within the profession representing a special viewpoint. CBA Project Files.

In March 1970 the possibility of the Council's seeking affiliate status with the ABA was first raised, along with the observation that to achieve such a goal the Council would need to make a concerted effort to increase its membership to the minimum of 1,000 needed for a seat in the ABA House of Delegates.[67] Not all the members of the Council's board viewed the prospect of a membership drive with equanimity, fearing that it might distract the Council from its larger concerns.[68] Yet recognition by the ABA was important as it would not only provide the Council with a voice in decisions with respect to the profession as a whole—a voice Council leaders felt essential to their wider effort to remove the obstacles to equal justice that the organized bar seemed to them to encourage—but would also give the Council a mantle of professional standing and respectability. If it had a seat in the House of Delegates as a bone fide local bar organization, then it could legitimately present itself as an alternative professional organization in Chicago.

Just where the potential members were, and how to attract them, was not clear. Some members of the Council's Board of Governors pressed for the Council to offer selective material benefits, available only to its members, such as charter flights and insurance schemes, as a means of attracting new members. The supporters of charter flights (usually including the treasurer!) argued that more members would provide more income and thus enable the Council to be more effective; the opponents feared that an influx of new members for the wrong reasons would eventually dilute the Council's effectiveness. With the majority of the board consistently decrying such incentives as worthy only of a "trade association," the Council made only one abortive excursion into the charter flight business and did not establish any insurance schemes.[69]

Nor was the Council prepared or able to offer solidary (collegial) benefits. The established bar associations place considerable importance on encouraging collegiality. With their elaborate dining and lounge facilities, the major urban bar associations provide opportunities for social and professional contact. Even the substantive law committees serve a collegial function in bringing together lawyers who practice in the same field. The "clubbish" atmosphere of these associations encourages the growth of professional friendships, facilitates the development of referral networks, and may tend to break down adversarial and specialty barriers. The Council had neither the resources nor the desire to follow such a pattern of bar association activities, to compete with the CBA as a center of

67. Chicago Council of Lawyers newsletter, Mar. 31, 1970.
68. Minutes, Board of Governors, Apr. 20, 1970.
69. Minutes, Board of Governors, Chicago Council of Lawyers, Jan. 25, 1972. Robert Bennett pointed out that the Council's sponsorship of a trip to London had been disastrous, receiving little support from members.

professional collegiality in Chicago. Even though its New York counterpart, the New York Council of Law Associates, maintained a thriving basketball league, held regular luncheons, and sponsored wilderness trips, the Chicago Council remained more ideologically pure.[70] In addition to its concern to bring young lawyers and opportunities for volunteer legal service together, the New York Council was interested from the beginning in breaking down the isolation of associates buried in the large firms and establishing a community of young lawyers. As Neal Johnston, the first executive secretary of the New York Council, explained, "One of the novel organizational principles we followed was consciously to serve our own interests together with those of the public."[71] In contrast, the Chicago Council's first president presented the Council as "an association committed to the improvement, the elevation of the legal system and all of its elements," and the membership as having to be willing to "transcend its own selfish interests."[72] Whereas the New York Council welcomed members who joined because of its social activities,[73] the leaders of the Chicago Council remained wary of activities that might attract members for the "wrong" reasons.[74]

Thus, the Council has not taken on many of the trappings of traditional associations. It lacks the lounges, dining rooms, and libraries other bar associations provide to support professional collegiality or to offer as a service to their members; it has not established the substantive law committees that keep a practitioner up to date and in touch with colleagues in his field, and it has avoided the common practice of offering material inducements to prospective members. Thus, when Judson Miner, the first president, was asked by a prospective member what benefits the Council offered, he replied: "You will have the satisfaction of knowing that you are actively participating in an organization intent on effecting meaningful reforms in the legal profession."[75]

Miner assumed that the satisfaction of supporting reform would in itself be enough to attract members to the Council. In addition, influential members of the board preferred that the Council remain a minority bar association, composed of lawyers "who share our belief in the need for reform" and "are of like mind with the Council."[76] They were well

70. For information on the New York Council of Law Associates, see Neal Johnston, "The Council of New York Law Associates"—What Is It? 25 Rec. Ass'n B. City N.Y. 312 (1970), and Eric Hass, The Council of the Concerned, 1 Juris Doctor 20 (Apr. 1971).
71. Hass, *supra* note 70, at 20.
72. Miner, Remarks, *supra* note 46, at 6, 10.
73. Hass, *supra* note 70, at 20.
74. Minutes, Board of Governors, Chicago Council of Lawyers, Jan. 25, 1972.
75. Miner to Joseph D. Wolger, Sept. 24, 1969.
76. Miner to David Parsons, Aug. 13, 1969. See also Robert Bennett, Memorandum to Officers and Members of the Board of the Chicago Council of Lawyers 2 (n.d.).

aware that a large membership representing the diversity of a stratified bar could dull the Council's decisiveness and hamstring its reform efforts. Consequently, the predominant method of membership recruitment was through personal contacts: members were regularly exhorted to seek out those of their colleagues who were closet reformers and bring them into the fold.[77]

The Council achieved its target of 1,000 members and did gain a seat in the House of Delegates of the ABA after a drawn-out and acrimonious struggle with the Illinois State Bar Association, which stood to lose a seat, but was not to grow much beyond that minimal level.[78] Thus the Council continued to experience a degree of financial uncertainty as its membership was never large enough, or its dues high enough, to ensure a secure financial base.[79] The rewards it provided for participation remained simply what Miner had earlier offered—the satisfaction of knowing one's view was being expressed—with the risk that entailed. Historically, organizations based on such "purposive" incentives alone, James Q. Wilson points out (as did Mancur Olson and Robert Salisbury before him), have been notoriously unstable: "Purposive incentives are most sensitive to rapid environmental changes—shifts in the public mood, the passage of new legislation, the emergence of more appealing organizational rivals—and thus organizations experiencing a sudden decline are frequently those using these incentives."[80] The early leaders of the Council were prepared to live with that uncertainty. If the Council was to remain at the "cutting edge of the profession," it had to remain "lean and hungry"; its instability was its virtue.[81] Such idealism may be admirable, but financial insecurity has been the rock on which many new organizations have foundered.[82] It is a problem the Council had to resolve if it was to achieve

77. Robert Bennett, in a memorandum, *supra* note 76, at 1, pointed to the problems the CBA faces as a large organization: "To keep its membership happy, the CBA must avoid offending significant groups among its members." Bennett went on to express the hope that the Council would always be a minority bar association and thus avoid any like development.

78. In 1975 Council President John Schmidt noted that the size of the Council had remained relatively constant for the past two years and asked for increased effort to solicit new members: "we need more members to expand our activities, establish a strong financial base, and give added public impact to our actions." Chicago Council of Lawyers newsletter, May 19, 1975.

79. There have been recurrent efforts to place the Council on a more secure financial basis. In 1971 a finance committee was established to consider various alternatives for raising money and soon after a special category for sustaining members was introduced. Currently the executive director is attempting to get law firms to contribute to the support of the Council in an indirect way despite the earlier opposition to such a move. Her success will provide some indication of how well accepted the Council has become in the legal community.

80. Wilson, *supra* note 29, at 210. See also Mancur Olson, Jr., The Logic of Collective Action: Public Goods and The Theory of Groups (Cambridge, Mass.: Harvard University Press, 1965) and Salisbury, *supra* note 37.

81. Henning, Interview, Apr. 5, 1976.

82. For a study of the reasons for the success or failure of protest groups, see William Gamson, The Strategy of Social Protest (Homewood, Ill.: Dorsey Press, 1975).

permanence. Leaders and executive staff quickly tire of a constant struggle to make ends meet.

Although the Council's membership was not to reach the ideal of 2,500 or so suggested by one of its board members,[83] its eventual size was sufficient to support its claim to represent a substantial viewpoint within the profession. Recognition by other parts of the organized bar, and by other legal institutions, was also important to the continued life and effectiveness of the Council. The fact that the Council had an ABA seat greatly enhanced its professional standing and visibility, as did its listing by *Sullivan's Law Directory* as a local bar association (achieved only after a bitter and protracted struggle with the publishers).[84] Acceptance by the two established associations available to Chicago lawyers, the CBA and the ISBA, was not readily forthcoming. The CBA leadership, apparently identifying the Council as a competitor, refused it the use of any of its facilities, and during the first years of the Council's life the leaders of both the CBA and the ISBA refused to participate in any activities in which the Council was represented, presumably not wanting to lend their credibility to the upstart organization. Much to the chagrin of the CBA and the ISBA, however, the Illinois Supreme Court recognized the Council as representative of a legitimate viewpoint different from that within the profession and gave the Council equal representation with the two older associations on a special committee it established to hammer out an agreement on an acceptable code of ethics for Illinois. Such recognition did not come to the Council easily: it had to fight long and hard for its seat in the House of Delegates and its listing in *Sullivan's*, and its acknowledgment by the state supreme court followed intense activity on the part of the Council in opposition to a code of ethics jointly sponsored by the CBA and the ISBA. Yet professional acceptance was necessary. Performance of an effective role within the legal system depended on achieving and maintaining professional credibility in the long term.

Goal Crystalization and Boundary Definition

In discussing the development of past reformist movements in the legal profession, Robert Rabin of Stanford Law School points out that "agreement on relatively general principles is crucial if the movement is to resist the centrifugal forces that threaten any organization as the first flush of enthusiasm passes."[85] Council leaders have found difficulty in defining

83. Bennett, Memorandum, *supra* note 76.

84. In the July 30, 1970, newsletter (p. 3), Miner reports that the *Daily Law Bulletin* was refusing to give any coverage to the Council. Commenting that the Council's statements and activities should be covered as well as those of the older, established bar associations, Miner urged members to write to the editor of the *Bulletin* to protest such discrimination.

85. Rabin, *supra* note 27, at 220.

and specifying the Council's goals beyond a general reformist orientation. An unusually sympathetic CBA leader noted of the Council's organizers in 1969, "although they are strong about their motivation, it is a kind of undifferentiated feeling which is shared by a great many of us, that there are a great many things wrong with the judicial system, the bar, and, indeed, with the Chicago Bar Association."[86] The Council sought to provide an organized voice for lawyers unhappy with the status quo of the legal system and to show that there was an alternative to the viewpoint of the CBA. Under the general reform umbrella two more specific concerns predominated: reform of the judiciary and the provision of legal services.

Involvement in other areas of reform has tended to rise and fall with the interest of members or in tandem with the wider public interest. For rather than operating under well-defined goals the Council has been largely issue or problem oriented. Much of its work has been either in response to controversial issues impinging on the legal system or prompted by the enthusiasm and interest of particular members who have initiated projects in areas of concern. Thus, the Council's long-standing interest in housing law arose from the concern of legal aid lawyers about tenant problems. Consequently the committee structure is relatively fluid and oriented toward contemporary problem areas. Such fluidity enhances the Council's responsiveness to new problems but certainly endangers its long-term stability. Established, substantive committees, on the other hand, enable an organization to monitor developments in an area and make a longer-term contribution. Not surprisingly the tension toward continuity has meant that some problem-centered committees have become more like substantive committees; this development is particularly observable with the committees in the areas of housing law, environmental law, and women's rights.

At the outset of the Council's life, there were several issues of wide public and professional concern to which the early members applied themselves. The aftermath of the Black Panther raid and the celebrated Chicago Conspiracy Trial were two such issues. But as these issues faded and other initial projects were completed, one concern increasingly dominated Council activities: judicial reform.[87] Philip Selznick has suggested that the process of institutionalization involves establishing a distinctive competence and thus developing a recognized jurisdiction.[88] If the Council has been able to develop such a distinctive competence, it has been in

86. CBA Project Files.

87. Robert Bennett, second president of the Council, claimed that improvement of the quality of the judiciary became "the central organizing goal" of the Council. The Council's activities in this area were the reason for many lawyers joining. Interview, May 4, 1976.

88. Philip Selznick, Law, Society, and Industrial Justice 44–45, with Philippe Nonet and Howard M. Vollmer (New York: Russell Sage, 1969).

the area of judicial evaluation, a subject that provided the Council with media exposure and the opportunity to establish a public identify.

The American Bar Foundation survey of the Chicago bar asked a random sample of Chicago lawyers to rate a number of possible objectives for a bar association in order of importance.[89] The objective of improving the quality of the judiciary was ranked second in importance, but in the same survey the CBA's effectiveness in achieving this objective was "uniformly rated low."[90] It is clear that there was considerable dissatisfaction with the CBA's achievements in improving the quality of the bench, and it is in this area that the Council has concentrated much of its attention. Taking a strong stand on judicial selection was bound to gain the Council a wide audience and considerable support. In addition, it was a problem not likely to go away quickly, particularly given the political realities in Chicago. Regular elections, necessitating regular evaluations, provided the Council with a readymade, ongoing organizational spur.

Judicial selection is not only an issue of public interest serving as a regular source of fuel for the Council's furnaces but also an issue on which the Council can demonstrate some success. Any organization needs to be able to demonstrate movement toward the accomplishment of its goals.[91] As an encouragement to its members the Council can legitimately point to a degree of success in this area: its generally acknowledged influence on Senator Percy's appointments to the federal bench in Illinois;[92] its contribution to the failure of Cook County Circuit Court Judges David Lefkovits, Joseph A. Power, and, most recently, John S. Boyle to gain sufficient votes for retention; and its contribution to the defeat of the Regular Democratic candidates, Henry W. Dieringer and Joseph A. Power, in the primaries for seats on the bench of the Illinois Supreme Court. Obviously, other organizations also contributed to these results, but since the Council's outspoken criticisms of these judges received

89. For a full description of the design and implementation of the Survey of the Chicago Bar, see John P. Heinz, Edward O. Laumann, Charles L. Cappell, Terence C. Halliday, & Michael H. Schaalman, Diversity, Representation, and Leadership in an Urban Bar: A First Report on a Survey of the Chicago Bar, 1976 A.B.F. Res. J. 717 (hereinafter cited as Report on Chicago Bar Survey; the survey alone cited as Chicago Bar Survey). It is sufficient to note here that the survey consisted of personal interviews with a random sample of 777 lawyers practicing in Chicago. The sample appears to be a reasonably representative cross section of the population, although nonmembers of the Chicago Bar Association and solo practitioners may be slightly underenumerated.

90. *Id.* at 746.

91. For a discussion of the importance of being able to demonstrate some forward movement, see Mayer N. Zald & Roberta Ash, Social Movement Organizations: Growth, Decay and Change, 44 Social Forces 327 (1965–66).

92. In September of 1970 John Paul Stevens and Frank J. McGarr, two of the five potential nominees for federal judicial positions who were evaluated by the Council's Subcommittee on Judicial Nominees, were recommended by the Council in a report to U.S. Senators Percy and Smith; in October their nominations were accepted by the Senate as they were named, respectively, to federal circuit and district judgeships. Discussed in Chicago Council of Lawyers newsletter, Oct. 21, 1970, at 5.

wide press coverage and, in some cases, editorial support, the Council probably was an important factor in their defeat. Although there may have been some improvement in the quality of the judiciary as a result of the Council's efforts, however, the ideal of a qualified and nonpolitical judiciary remains distant, as elusive as the larger goal of legislating the merit selection of judges. Judicial evaluation has thus proved to be an ideal organizing theme, concrete enough so that improvement can be demonstrated, yet large enough and sufficiently intractable that it retains its motivating force. Social movements that achieve their goals either find new ones or quietly fade away. Paradoxically, it is fortunate for the Council that merit selection is as far away as ever.

Just as the development of supportable goals is important to the establishment of a new organization's identity, so is the definition of the boundaries of its legitimate activity. Such a definition is not easy, particularly for a reformist group experiencing both internal and external pressures to tackle a range of public issues, some of which may be only marginally related to its original concerns. Alienated from the Nixon administration and angered by the spreading war in Southeast Asia, there was the temptation to use the Council as a political weapon. On the war issue, Council leaders exercised considerable restraint, restricting themselves to a condemnation of the invasion of Cambodia and support for Illinois State Representative Robert E. Mann's anti-war bill in the Illinois legislature, which outlawed sending Illinois citizens into an undeclared war. On domestic matters, the Council spoke out more frequently, its opposition to the Nixon Administration manifesting itself in resolutions calling on the Senate not to confirm the nominations of Judges Clement Haynsworth and G. Harrold Carswell to the U. S. Supreme Court, criticizing the dismantling of the Office of Economic Opportunity, and calling for the appointment of an independent prosecutor to investigate the Watergate morass. All of these issues were clearly relevant to lawyers and the legal system, though it was obvious, of course, on which side of the political fence the Council was to be found.[93]

93. There was regularly pressure from within the organization on the Council to get involved in issues not related so clearly to the legal system. In 1970 the Council's board was urged to convene a special meeting of the members to consider a resolution opposing the Vietnam War. The board decided not to hold such a meeting but did agree to support a symposium on the war called by the Lawyers Action Committee to End the War. Minutes, Board of Governors, May 25, 1970. In 1973 a member of the Council's board advocated Council action in areas relating to welfare and public aid, including Council support for relaxing public aid eligibility standards, revisions of the Illinois Public Aid Code, and the expansion of public knowledge of welfare benefits. Memorandum, Michael F. Lefkow to Arnold Kanter (n.d. [1973]). The Council did not take on all these public policy issues but it did make public statements critical of Governor Walker's "massive crackdown on welfare cheaters," and it testified at public hearings called to consider the proposed shift to a "flat grant" method of making payments under which persons on welfare would receive set amounts based on family size, away from the present system of allowances for special needs. Chicago Council of Lawyers newsletter, Oct. 10, 1973.

Other liberal organizations with which the Council enjoyed close ties from time to time exerted pressure on the Council to take stands on a variety of public issues. The Council received requests for support from Businessmen for the Public Interest, the Afro-American Patrolmen's League, the Urban League, the League of Women Voters, and the Independent Voters of Illinois. Care had to be exercised in order that the Council avoid being viewed as "more of a political wing of the liberal establishment than an alternative bar association."[94]

Questions as to what public issues were of legitimate interest to a professional association and how to distinguish between political and professional actions were not merely academic. For a start the tax-exempt status of the Council depended on its identification as "nonpolitical."[95] More importantly, the internal harmony of the Council and its external legitimacy as a professional association depended on its resolution of these questions. Older liberals among the Council's members undoubtedly recalled the disastrous effects of the politicization of the National Lawyers Guild on its internal consensus and its professional credibility.[96] Fortunately for its maintenance, the Council did not experience the sharp division between the left and the center, between the radicals and the liberals, that so undermined the Guild's effectiveness. The Council never became a haven for the radicals of the profession. Council members were largely associates and junior partners in large firms, scarcely the stuff of which revolutionaries are made, rather than members of law communes. The somewhat surprising absence of a strong radical voice within the Council may be due to the continued existence of the Guild; its Chicago chapter may have served to attract those lawyers with a more radical vision and thus spared the Council considerable internal dissension. Thus, the Council has successfully avoided being labeled and dismissed as a radical group seeking to overturn the system.

Internal Structure and Participation

Another problem a new organization faces is the balancing of demands for openness and democracy with the need for cohesiveness and efficiency. Having observed and disapproved of the heavily centralized structure of the CBA, the Council's first constitution placed a premium on openness and democracy.[97] Each officer and board member was to be

94. Steven N. Klein, Secretary of the Council in 1970, accused the Council of becoming that when he resigned from his office in May 1971. Steven N. Klein to Judson H. Miner, May 18, 1971.

95. At the outset of the Council, Miner expressed some concern as to whether the Council would qualify for tax exempt status "in view of the quasi-political nature of many of the Council's proposed activities." Minutes, Board of Governors, Chicago Council of Lawyers, Nov. 10, 1969.

96. For a discussion of the effect of the politicization of the Guild see Auerbach, *supra* note 1, at 199–204.

97. As Miner put it: "we were obsessed with democracy." Interview, May 14, 1976.

elected annually, there were to be no nominating committees or lines of succession to control the selection of leaders, board meetings were to be open to the membership, and committees were to be formed in response to members' initiatives and were to be open to any member and independent of the board. Committees were even authorized to publish their reports without board approval provided that the reports were identified as representing only the committee's views. Such openness and fluidity was soon found, however, to result in organizational difficulties: the annual election of the board meant a rapid turnover in board membership and thus a lack of continuity, the openness of leadership positions meant it was possible for someone unsympathetic to Council aims to gain control, and the independence of the committees meant that in reality there was little contact between them and the board. As early as July 1970 the president noted that "we have failed to develop the type of internal structure that will assure the perpetuation of the Council as an effective organization."[98]

Changes in the structure of the Council were soon to appear. At its first annual meeting, a by-law amendment was passed extending the term of office of members of the Board of Governors from one or two years, creating a staggered election process and so permitting a greater continuity of leadership. Ensuring continuity, however, was not the only reason for the change; at least some of the founders of the Council opposed mandatory turnover provisions as excluding those best qualified to serve, those with the original vision. Subsequent to the by-law changes a board member could serve for two consecutive two-year terms, and an officer for yet another two years for a maximum of six consecutive years. Suggestions at various times that the board develop mechanisms to control the selection of leaders more closely, such as a nominating committee and the election of a president-elect, have been successfully opposed as oligarchical, while attempts to amend the by-laws to make it mandatory for committees to obtain the approval of the board prior to releasing public statements, filing amicus curiae briefs, or presenting testimony to legislative or administrative bodies have been defeated as interfering with committee autonomy.[99] Thus far the commitment of the leadership to "participatory democracy" has counterbalanced the demands of efficiency and integration.

The real danger to the Council's participatory democracy lies not in any overt bureaucratic takeover, however, nor in changes in procedures and rules, but rather in a decline in membership participation and enthu-

98. Judson H. Miner, Chicago Council of Lawyers newsletter, July 30, 1970.

99. For the suggestion of establishing a nominating committee, see Shakman memorandum, *supra* note 65; for president-elect, see Minutes, Sept. 4, 1974; for board control over committees, see Minutes, Nov. 6, 1974.

siasm as the momentum of the founding period slows. Even in its early years, despite the theoretical openness of the Council's leadership to any member, the accusation was made that the Council was run by a clique—a self-perpetuating oligarchy.[100] And, indeed, there has been a small group of individuals, including presidents Miner, Bennett, Kanter, Rosenberg, Schmidt, and Christie, serving on the board or as officers of the Council for five to six years, much longer than the average term of service of two years. Of these long-serving leaders, Miner, Bennett, Kanter, and Schmidt have all either continued in leadership positions or recently resurfaced on the board. That in itself is not evidence of the dominance of a clique, nor is it to say that there is no room at the top for newcomers; rather, it indicates the continued importance of those with the early vision for the Council in maintaining that vision and suggests that the circulation of the Council elite is taking place within a narrow network of association. The transfer of leadership to the next generation, and the transfer of the vision, is always a problem for new organizations or social movements.[101] This difficulty is accentuated in the case of the Council, born as it was out of the disenchantment of the 1960s when graduates of the mid-1970s appear to be less interested than their immediate forebears in social reform.[102] Of those who were new to officers' positions or the Council's board for 1978, only three were members of what might be called the post-1960s generation (two were older pre-1960s while ten were at either college or law school during the ferment of the mid-and late 1960s). Yet the continued vitality of the Council depends on its ability to attract the graduates of the 1970s as members and to encourage them to take leadership positions.

Important also to the Council's maintenance is its ability to engender active participation by its members. Despite the early hope that all Council members would be active, serving on at least one committee,[103] the Council has faced the problem of nonparticipation common to most voluntary associations.[104] Unlike radical ideological and political movements the Council cannot demand the exclusive attention of its members. As Salisbury notes, "for most people the act of joining an expressive

100. "It was once charged rather frequently that the Council was run by a small clique. We worried about this at past soul-searching sessions." Bennett, Memorandum, *supra* note 76, at 4.

101. Gamson, *supra* note 82.

102. Joel F. Handler, Ellen Jane Hollingsworth, & Howard S. Erlanger, Lawyers and the Pursuit of Legal Rights 6 (New York: Academic Press, 1978).

103. Minutes, Nov. 24, 1969.

104. For a more detailed discussion of the level of participation in voluntary associations see David L. Sills, Voluntary Associations: II Sociological Aspects, *in* David L. Sills, ed., 16 International Encyclopedia of the Social Sciences 362 (n.p.: Crowell Collier & Macmillan Inc., 1968), and Constance Smith & Anne Freedman, Voluntary Associations (Cambridge, Mass.: Harvard University Press, 1972).

group . . . is a marginal act."[105] Participation is not mandatory, and members belong to other organizations that compete with the Council for their commitment and time. There have been suggestions at times to restrict membership to those who are active, to cull the committee lists, but if the Council is to maintain its status as a more-or-less representative professional association, it cannot afford to do so. Besides, it depends on the financial support of nonparticipating members. Thus, the Council has retained an open membership, demanding only minimal levels of initial commitment and no evidence of continued support other than the payment of dues.

Generally, voluntary associations are run by a small minority of members, but the Council, as a reform organization, places considerable value on membership participation. In part the problem is that while concerned to reform the profession, most of the members of the Council remain committed to success within it. There has been the suggestion that Council members, apart from those who work in somewhat protected environments (the legal aid movement, law schools, or firms with a tradition of civil libertarianism), cannot afford to be too active in the Council, perhaps for reasons of professional status but more particularly because of the considerable work pressures of succeeding in a large firm. Prospective Council leaders are unlikely to be awarded a year's leave of absence to serve as president of the Council or to be given time to spend on Council affairs. In addition, the advantages to one's career of leadership in the Council are not immediately obvious; whereas leadership in the CBA can be important in establishing referral networks or in gaining prestige, leadership in the Council may be negatively evaluated by one's colleagues.[106] The Council is in no position to demand active participation or even to reward it. Consequently, there is danger that participation in the leadership will remain restricted to a dedicated few, a tendency that opens the Council to the criticism that it is elitist.

The political scientists Olson and Salisbury both argue that if a social movement or a reformist organization is to survive as a voluntary association based on mass support, it has to reward both membership and active participation. Olson argues that the successful lobbies of large pressure groups, including professional and occupational associations and

105. Salisbury develops the category of "expressive" group from the concept of "expressive" social actions used by the sociologist Peter M. Blau *in* Exchange and Power in Social Life (New York: J. Wiley, 1964). An expressive group provides a mechanism for the expression of values such as affirmation of free speech of civil rights or opposition to war or poverty, or opposition to abortion on demand, and so on. Salisbury, *supra* note 37, at 16, 19.

106. Clearly there are some advantages to being president of the Council: the president receives wide exposure in the legal community through the media and through his representation of the Council on various occasions.

trade unions, are by-products of those organizations' capacities to mobilize a latent group with selective benefits (benefits available only to members).[107] Salisbury points out that those groups that set out offering only "purposive" incentives or, in his term, "expressive" benefits (merely the personal satisfaction of knowing your views are expressed) generally have to develop some form of solidary or material rewards for membership.[108] The alternative is for reformist organizations to recognize that they cannot maintain themselves as organizations run by volunteers and to pay professional organizational entrepreneurs to do the job for them. In Chicago, that is the pattern of reformist pressure groups such as the Better Government Association and the Businessmen for the Public Interest, where the professional staff do the work under the direction of a board. Members support the operations by their subscriptions and, although they may be mobilized on a particularly vexatious issue, they generally play little part in the activities of the organization. Such a development would be antithetical to the identity of the Council as a bar association with the active participation of Chicago lawyers in its projects.

The rather dismal scenario drawn by Olson and Salisbury, based on their analyses of voluntary associations and pressure groups in the past, need not lead to predictions of the Council's demise or of its transformation into a reformist pressure group with a professional staff on the model of the Better Government Association. What it does indicate is the difficulty reform movements face in sustaining their activities. This difficulty is magnified when, as in the Council's case, the reformist body also seeks to be a professional association. There is considerable tension between developing and sustaining a critical pose within an essentially conservative profession on the one hand and maintaining professional acceptance as a legitimate professional organization on the other. Consequently, a reform organization within the profession has to resolve a number of dilemmas if it is to survive and have any influence. To ensure its professional standing it needs to develop a broadly based constituency, yet to retain its decisiveness it must remain a minority and relatively homogeneous group; to gain media exposure and public attention the reformers need to be assertive and even controversial, but this may cost them the support of those who place a high value on professionalism and restraint; to maintain its credibility the reform organization must avoid the "radical" label and remain within the mainstream of professional life, yet it must equally avoid cooptation and an emphasis on respectability that dulls its cutting edge; to encourage membership and participation beyond the ideologically committed it may have to offer selective benefits

107. Olson, *supra* note 80, at 132, ch. VI.
108. Salisbury, *supra* note 37, at 15–17.

of some sort, but these entail the risk of goal displacement. Balancing these contrary pressures is not easy, which may well be why there have been very few successful rump organizations in the legal profession. Reforming the profession at the same time as seeking advancement within it is a precarious path to follow.

Functions of the Council

Elite Reform?

As the sociologist Howard Becker observed, "moral crusades are typically dominated by those in the upper levels of the social structure"; consequently, "they add to the power they derive from the legitimacy of their moral position, the power they derive from their superior position in society."[109] Examination of the law school backgrounds and practice situations of the leaders and members of the Council bears out Becker's observation.

We have already noted that Harvard and University of Chicago law school graduates predominated among the founders of the Council. Of the 90 lawyers who have held leadership positions (board members or officers) in the Council from its inception in 1969 until 1978, 54 (or 60 percent) graduated from "elite" law schools compared with only 20 percent in the Chicago bar generally.[110] A further 18 (20 percent) of the leaders graduated from "prestige" law schools (predominantly Northwestern University). Only 10 percent are graduates of the "local" Chicago law schools, De Paul, Kent, Loyola, and Marshall, compared with almost half of the bar generally (46 percent).

The results of the Chicago Bar Survey indicate that a much higher proportion of the membership of the Council are also graduates of the "elite" law schools; conversely a smaller proportion are graduates of

109. Howard Becker, Outsiders 149 (New York: Free Press, 1963).

110. The classification of law schools into elite, prestige, regional, and local is the one developed by Heinz, Laumann, Cappell, Halliday, & Schaalman for their 1976 report on the Chicago bar, *supra* note 89, at 726 n.5. The elite classification was based on two reports by Peter M. Blau and Rebecca Zames Margulies reporting the rankings of law schools by law school deans: The Pecking Order of the Elite: America's Leading Professional Schools, 5 Change 211 (Nov. 1973) and A Research Replication: The Reputations of American Professional Schools, 6 Change 42 (Winter 1974–75). Additional categories were developed on the basis of informed local reputation. The categories and schools are:

Elite	*Prestige*	*Regional*	*Local*
Chicago	Georgetown	Boston University	DePaul
Columbia	N.Y.U.	Illinois	I.I.T. Chicago-Kent
Harvard	Northwestern	Indiana	Loyola
Michigan	Wisconsin	Iowa	Marshall
Stanford		Minnesota	
Yale		Notre Dame	
		Ohio State	

The only law schools listed in these categories are those whose graduates appeared in the Chicago sample in any number.

"local" law schools, although as can be seen from table 1, local law graduates are not as underrepresented among the members as they are among the leaders.

As the large law firms tend to recruit from the more prestigious law schools, it would be expected that a disproportionate percentage of the Council's members would work in such a setting. The data presented in table 2 confirm such an expectation: 38 percent of Council members, more than twice the percentage of the bar at large, work in large firms (more than 30 members). Conversely, more than 19 percent of the Chicago bar are engaged in the solo practice of law compared with only 9 percent of Council members.

Table 3 presents a comparison of certain law practice characteristics of members of the Council, members of the CBA, and lawyers who belong to neither organization. Of the three groups, Council members receive the highest proportion of their incomes from business clients, and more of

TABLE 1 Proportion of Council Leaders, Members, and Nonmembers from Elite, Prestige, Regional, and Local Law Schools

	Elite		*Prestige*		*Regional*		*Local*		*Totals*	
	%	(No.)	%	(No.)	%	(No.)	%	(No.)	%	(No.)
Council leaders . . .	60.0	(54)	20.0	(18)	10.0	(9)	10.0	(9)	100.0	(90)
Council members .	38.2	(21)	20.0	(11)	16.4	(9)	25.5	(14)	100.0	(55)
Nonmembers	18.8	(134)	17.6	(125)	16.2	(115)	47.4	(337)	100.0	(711)

SOURCE: Information on Council leaders was gathered from biographical statements published by the Council supplemented by the Martindale-Hubbell Law Directory; data on Council members and nonmembers were taken from the Chicago Bar Survey, *supra* note 89.

TABLE 2 The Practice Categories of Members of the Chicago Council of Lawyers Compared with all Respondents of the Chicago Bar Survey

Category	All Respondents Percent	CCL Members Percent
Solo	19.2	9.1
Firm Size:		
Fewer than 10 lawyers	23.8	18.2
10 to 30 lawyers	9.6	9.1
More than 30 lawyers	16.0	38.1
Government	12.4	14.5
House counsel	13.0	5.5
Nonpracticing	6.0	5.5
Total	100.0	100.0

SOURCE: The Chicago Bar Survey, *supra* note 89.

that proportion of their income is derived from work done for major corporations (those with sales more than $10 million) than is the case with CBA members or lawyers who are members of neither. Further, when Council members' clients are individuals they are more likely to be professional or managerial people than sales or clerical workers or blue-collar workers. Again note that a higher percentage of Council members have individual clients who are professionals than do CBA members or members of neither group. It is interesting to note that on each of the variables the three groups are aligned consistently, with lawyers who do

TABLE 3 Breakdown of Certain Practice Characteristics by Bar Affiliation (Means)

	Percent by Bar Affiliation			
Practice Characteristic	CCL	CBA	Neither	Significance Level[a]
Percent income from "business" clients.....	65.73	60.68	51.05	.05
Percent income from major corporation	45.83	35.00	26.58	.05
Percent clients professional	63.96	53.52	37.77	.01

SOURCE: The Chicago Bar Survey, *supra* note 89.

[a]The differences among these three groups of lawyers on these variables are all large enough to be considered statistically significant at the level indicated. The statement that a research finding is "statistically significant" means that the probability that the observed result could have occurred by chance is no greater than some minimum level specified in advance. The level most commonly used in social science research is a probability of .05, which means that the result observed could be expected to occur by chance 5 times in each 100 studies conducted in the same way. The other level of significance reported here, the .01 level (1 chance in 100), specifies an even smaller probability of error.

The significance levels reported above refer to the *F* test, based on a one-way analysis of variance. Even though the cell sizes varied considerably (consequent to the different sizes of each group), the variances did not. In all three cases the ratio of the largest to the smallest variance was less than 1.5, indicating that the test is appropriate in this instance.

not belong to either association deriving the lowest percentage of their work from business clients, with a smaller proportion of that income coming from major corporations, and enjoying the smallest percentage of professionals as clients.

In 1977 Edward O. Laumann and John P. Heinz developed a prestige ranking of legal specialties from their research on the Chicago bar.[111] They found that the general pattern of the prestige ranking was unambiguous, "with specialties serving 'big business' clients at the top and those serving individual clients (especially clients from lower socioeconomic groups) at the bottom."[112] From table 3 we find that Council members consistently have the most corporate and the least personal types of practice. These findings, together with those from tables 1 and 2 showing the percentage of Council members who graduated from prestigious law

111. Edward O. Laumann & John P. Heinz, Specialization and Prestige in the Legal Profession: The Structure of Deference, 1977 A.B.F. Res. J. 155.

112. *Id.* at 202–3.

schools and are employed in large firms, suggest that Council members disproportionately come from the more "elite" segments of the bar. Does the Council, then, represent merely another example of the elite reform that periodically sweeps through American institutions? While Council spokesmen certainly believe in "the legitimacy of their moral position,"[113] and while a tone of moralism may accompany the Council's pronouncements, the Council is not pervaded by the moralistic and religious fervor of the Women's Christian Temperance Union or the Anti-Saloon League, the organizations that Becker uses as examples. But is the Council in the same mold as earlier reform movements within the professions? Auerbach has documented the reform efforts of the white Anglo-Saxon Protestant elite of the bar during the early decades of this century.[114] These powerful Protestant corporate lawyers, dominant in the bar associations, consistently sought to "cleanse" the bar, to lift its moral tone, and to improve its standards; and their instruments were those of "professionalizers" everywhere—higher educational standards, increased requirements for bar admission, and promulgation and enforcement of codes and ethics. Auerbach criticizes such reform as a thinly disguised effort to maintain elite, white Protestant dominance in the face of the challenge posed by the entry of immigrant ethnic groups into the bar in increasing numbers. Whether Auerbach's criticism is valid or not, the Council differs from the earlier reform movement in its composition and orientation. For one thing, the Council's leaders and members can scarcely be characterized as "WASPS."[115] Indeed, the first four presidents of the Council were Jewish. Nor have the traditional concerns of the cleansers of the bar been those of the Council. The Council has not bothered itself with tightening bar admission requirements, with raising educational standards, or with catching "ambulance chasers"; rather, the delivery of legal services and judicial reform have been the matters of paramount importance to the Council.

Redefinition of Professional Responsibility

If the Council, then, is not leading a moral crusade in the pattern of the temperance movement, and is not pursuing elite reform in the fashion of Elihu Root and Harlan Fiske Stone, what sort of reform is the Council engaged in?

113. Miner, *supra* note 35.
114. Auerbach, *supra* note 1, especially chs. 1–5.
115. See the Appendix for data on the ethnicity and religious affiliation of Council members. "Nonreligious lawyers" refers to those lawyers who specified no religious affiliation in response to the questions: "Do you have a religious preference? That is, are you either Protestant, Roman Catholic, Jewish, or something else?"

Exemplifying a rather different reform impulse, the Council was part of a larger movement reassessing, and seeking to redefine, the professional responsibilities of the organized bar and the individual practitioner to the public. This movement led to the development of new organizational forms for the provision of legal services, offered on the part of the private bar as well as of the counter-bar groups—the public interest law firm, the public interest or pro bono departments within established firms, and the law commune. These efforts were all part of an attempt by the bar to respond to increasing public criticism. One of the Council's first organizational efforts was to draft an amendment to the "restrictive proposal" on group legal services in the ABA's proposed new Code of Professional Responsibility, and to seek to have the House of Delegates of the ABA adopt that amendment.[116] Further, in 1970 the Council filed a petition with the Supreme Court of Illinois requesting the adoption of their proposed disciplinary rule on group legal services as a Supreme Court Rule, just anticipating the joint submission by the CBA and the ISBA of the new ABA Code of Professional Responsibility to the same court. The Council subsequently (in 1971) filed a report with the Illinois Supreme Court on the Code submitted by the CBA and ISBA recommending amendments not only to the legal services provision but also to provisions relating to specialization, contingent fees, referral fees, minimum fee schedules, the use of paralegal personnel, and trial conduct and publicity.[117] This report represented the efforts of the Council "to re-examine some traditional notions of legal ethics,"[118] and while the Council was not successful in having the Illinois Supreme Court adopt its amendments it did block the adoption of the CBA-ISBA Code, so that for several years Illinois was without an officially recognized code of ethics.

The Council's participation in this sort of activity, reflecting its disenchantment with traditional professional norms and practices, was quite different from the predominant concern of the reformers, in the first decades of this century, with raising professional standards. By directly challenging in court the traditional ethical conceptions, and by publicly advocating alternative positions, the Council has caused the established bar associations to consider carefully the policy positions they adopt. Other counter-bar groups have served a similar function although their interests have not been as broad as those of the Chicago Council. Both the Washington and the New York Councils of Lawyers have sought to push the bar toward a more active concern for their conception of the public inter-

116. Judson H. Miner, Chicago Council of Lawyers newsletter, Aug. 18, 1969.
117. Chicago Council of Lawyers, Report on Code of Profesional Responsibility, Feb. 1972.
118. *Id.*

est. The Washington Council was instrumental in persuading the organized bar to establish a public interest law coordinator in Washington, D.C.,[119] and the New York Council encouraged the Association of the Bar of the City of New York to create a new organization called the New York Lawyers for the Public Interest to bring public interest law opportunities to the notice of the large firms.[120]

Small, reformist bar groups such as the Chicago Council serve a function within the profession and the body politic rather different from that of the older and larger established bar associations. The membership of the comprehensive metropolitan and state associations generally reflects the diversity of the bar at large and thus internalizes within the association all the differences of interest present in a highly stratified profession. The Chicago Bar Survey found that the CBA's membership was representative of the Chicago bar.[121] Such a heterogeneous membership can affect decision making and policy formation in two ways. First, it means, as Terence Halliday pointed out in his examination of the CBA's policy-making processes, that the bar association can serve a "quasi-legislative" function in hammering out compromise policy positions in highly controversial areas because many of the interests of the wider society are represented within the walls of the association itself.[122] Halliday and Powell suggest that the CBA played such a quasi-legislative role in developing a new draft compromise revenue article for the Illinois Constitution in 1970.[123] Secondly, a heterogeneous membership can effectively hamstring an association so that it acts slowly if at all. The Report on the Chicago Bar Survey points out that internal "veto groups" may prevent "an organization with a membership as diverse as that of the CBA from taking action on any but the least controversial, most innocuous questions."[124] Or, of course, its final policy positions may be so general and vague as to be ineffectual while serving the internal purpose of not alienating any substantial constituency within the organization.

In contrast, the homogeneity of the Council's membership (see the Appendix) means that it is not only easier to reach consensus on policy positions but also possible to take clearer stands on controversial issues. In addition, the lack of strong ties binding the Council to other organiza-

119. Information received from Larry Mirel, former Executive Director of the Washington Council of Lawyers.

120. Barbara Schact, Executive Director of the New York Council of Lawyers, Interview, Aug. 1978.

121. Report on Chicago Bar Survey, *supra* note 89, at 770–71.

122. Terence C. Halliday, Parameters of Professional Influence: Policies and Politics of the Chicago Bar Association, 1945–70, at 338–49, 433–50 (Ph.D. diss., University of Chicago, 1979).

123. Terence C. Halliday & Michael J. Powell, Crime, Taxation, and Racism: Legal Associations and the Organizational Mediation of Social Change 30–31 (Paper presented at the Annual Meeting of the American Sociological Association, Chicago, Aug. 1977).

124. Report on Chicago Bar Survey, *supra* note 89, at 769.

tions or institutions facilitates taking positions that might antagonize people in those institutions.[125] An established bar association, such as the CBA, has developed over time strong ties with numerous organizations both within and without the profession, ties that are valuable in many contexts but that might cause the bar association to hesitate before adopting controversial policy positions.[126] A young, reformist minority organization with a homogeneous membership and without strong ties need not fear losing either an internal or an external constituency. On the other hand, small size, homogeneity, and weak ties are not without their disadvantages. As the Report on the Chicago Bar Survey pointed out, organizations with these characteristics "have a more limited membership appeal, fewer organizational resources and services, and increased vulnerability to charges of special pleading for particular ideological or political interests."[127]

Not only is the membership of the Council relatively homogeneous, but it is also, as we noted above, recruited largely from the "elite" segments of the bar. Lawyers from elite law schools, working in large law firms and engaged in corporate law, tend to be much more secure in their legal careers than their counterparts involved in small or solo practices with a high turnover of personal clients. Consequently, it has been these "elite" lawyers who have generally been able to adopt policies apparently in the public interest but perhaps not in the best economic interests of more marginal practitioners. In the past the "elite" segment of the bar sought to limit contingency fees and eliminate "ambulance-chasing."[128] Similarly, the Council has supported the extension of group legal services and the use of paraprofessionals, certainly moves that would make legal services more readily accessible but threaten to damage the practices of the small neighborhood lawyers. More dramatically, the Council has sponsored a "true" (meaning uncompromised, compared with the CBA version) "no-fault" automobile insurance bill.[129] With few personal injury plaintiff lawyers on its membership rolls, the Council is able to take a strong position on the no-fault issue even though that position may adversely affect the income of a sizable portion of the bar. The leadership sees the Council's willingness to take positions such as this as reflecting its commitment to the public interest over and above the professional self-interest. But, the lawyers whose livelihood would be affected by such

125. For example, the Council directly confronted the Illinois Federal District Court on its rules relating to extra judicial comment.

126. In comparing the role of a young group such as the Council with that of the CBA, a member of the CBA's board noted that the Council "can make statements that, in a sense, you might call irresponsible, whereas the Bar Association cannot do that." CBA Project Files.

127. Report on Chicago Bar Survey, *supra* note 89, at 771.

128. See Auerbach, *supra* note 1.

129. Report of the Chicago Council of Lawyers on No Fault Insurance (n.d.).

policies are not substantially represented within the Council; extension of group legal services and no-fault insurance do not threaten the self-interest of corporate lawyers or of academics.

By taking strong positions on issues such as no-fault, clearly of wide professional and public interest, a minority bar organization such as the Council opens the area to debate, presents the public and the legislators with an alternative viewpoint, and, perhaps, encourages the established group to adopt a more liberal position.

CONCLUSION

In addition to encouraging the established bar association to reconsider its position on controversial issues, the formation of a rival organization competing for public attention may also have the unintended consequence of reinvigorating and strengthening the original group. In the early 1970s, following the initial successes of the Council in attracting young lawyers to its banner, the CBA underwent certain organizational changes to encourage the participation of younger lawyers. In 1970 Robert Berger, a founder of the Council, was nominated and elected to the CBA Board of Managers even though he was simultaneously serving on the board of the Council. Such an action seems to have been intended to undercut the Council's appeal to moderate young reformist lawyers rather than to bring the two groups together as at the same time the CBA leadership was eschewing contact with the Council. From 1970 on, however, there was always a "seat" on the CBA Board of Managers for a young lawyer.

The most dramatic way in which the leadership of the CBA sought to bring younger lawyers more directly into the affairs of the association was by the complete reorganization of its Younger Members Committee, which by 1971 was moribund. The new Young Lawyers Section was semi-autonomous, with its own rules, budget, and staff, and its chairman generally has occupied the seat for younger lawyers on the CBA board. Interestingly, the rejuvenated Young Lawyers Section's primary objectives are not unlike the concerns of the Council, focusing on public interest activities and community services. It may be that such reorganization would have occurred even without the formation of the Council, but its timing and direction certainly make it appear more than coincidental. The CBA, confronted with the fact of the Council's continued existence, had to act to ensure the continued support of the bulk of the younger members of the profession.

The existence of two separate organizations of lawyers in Chicago that openly disagree on controversial matters must surely affect the overall authority and mystique of the profession. In the past, professional associa-

tions have valued consensus or at least the appearance of consensus; indeed, the American Medical Association regarded the presentation of a united front to the public and the government as essential to its purposes.[130] Professional authority appeared to be contingent on professional agreement. The traditional sociological theory of the benevolent professions developed by British social scientists such as A. M. Carr-Saunders and P. A. Wilson[131] and T. H. Marshall,[132] and by the noted American sociologists Talcott Parsons,[133] W. J. Goode,[134] and Bernard Barber,[135] emphasized the unitary character of the professions—"a community within a community" is how Goode described them.[136] A new group, such as the Council, within the mainstream of the profession and rivaling the established associations, certainly challenges notions of a unitary profession and raises questions as to the authority of the profession.

Of course, the organized bar nationally has scarcely presented a consistently unified front, with occasional disagreements between metropolitan or state associations and the American Bar Association. Even regionally, there have been differences between "upstate" and "downstate" lawyers, particularly in states such as New York and Illinois that boast a large metropolitan center. However, before the birth of the Council, the CBA purportedly spoke for the Chicago bar; now, the media and policy makers find two different viewpoints issuing forth from the profession, and they can choose between them. In the very important area of judicial evaluation the marked differences between positions taken by the Council and those of the CBA have certainly served to undermine the authority of the CBA's pronouncements. That the Council finds only 2 of a slate of 25 Democratic candidates qualified whereas the CBA finds all of them qualified raises questions about the rigor of the CBA's screening processes. Expert authority no longer speaks with only one voice. The effect on the carefully engendered professional mystique must be considerable, particularly with the omnipresent media always eager for controversy. In providing an alternative viewpoint, the Council, and other reformist bar groups like it, encourages the demystification of the profession and increases the discretion of the public and of policy makers.

130. Garceau, *supra* note 2.
131. A. M. Carr-Saunders & P. A. Wilson, The Professions (Oxford: Clarendon Press, 1933).
132. T. H. Marshall, The Recent History of Professionalism in Relation to Social Structure and Social Policy, 5 Canadian J. Eco. & Pol. Sci. 325 (1939).
133. Talcott Parsons, The Social System (New York: Free Press, 1951).
134. W. J. Goode, Community Within a Community: The Profession, 22 Am. Soc. Rev. 194 (1957).
135. Bernard Barber, Some Problems in the Sociology of the Professions, 92 Daedalus 669 (1963).
136. Goode, *supra* note 134.

APPENDIX

Table 4 shows the representation of Chicago lawyers in the Council and the Chicago Bar Association (note that memberships may overlap). Of the lawyers in the age group 20–34, 12.4 percent belong to the Council, but in the 46–65 age group only 2.1 percent of those are members. The variation in the representation of lawyers of different age groups in the Council is statistically significant; that is, the variation is greater than might be expected just by chance. One should also note that while there is no significant difference in the representation of various ethnic groups, there is in religious preference. Jewish and nonreligious lawyers are more heavily represented; Catholic lawyers, however, are poorly represented. Independent Democrats and Independents are also significantly better represented than are Regular Democrats or Republicans.

TABLE 4 Percentage of Each Subgroup of Chicago Lawyers who are Members of the Chicago Bar Association and of the Chicago Council of Lawyers

Attribute	Chicago Bar Association	Chicago Council of Lawyers
Full sample	**64.7**	**7.1**
Age group:	N.S.	***
20–34	64.5	12.4
35–45	61.5	8.7
46–65	66.4	2.1
66–90	70.0	1.4
Ethnicity:	N.S.	N.S.
Irish	75.5	3.2
Black	57.1	9.5
Northwestern European	63.9	6.0
Southern and Eastern European	60.3	9.8
Other	64.1	5.8
Religious preference:	N.S.	***
Catholic	65.6	2.7
Jewish	65.6	9.1
Protestant	67.1	7.0
None	53.7	12.6
Chicago political preference:	N.S.	***
Republican	66.7	0.0
Regular Democratic	74.2	1.6
Independent Democratic	62.7	11.9
Independent	59.5	9.2
Not applicable	64.6	3.1

N.S. = not statistically significant.
*** = significant at the .001 level.

SOURCE: Report on Chicago Bar Survey, *supra* note 89.

On each of the first four attributes, then, there is significant variation in the rates of representation of these groups in the Council. Some groups are distinctly better represented than others. In marked contrast, there are no significant differences on any of the four for the membership of the CBA, indicating that all groups are relatively well represented. Thus the CBA appears to be more heterogeneous and representative than the Council, which has a predominantly young, Jewish, or nonreligious politically independent membership.