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ARTICLE

SPECIALTY BARS AS A SITE OF PROFESSIONALISM: THE IMMIGRATION BAR EXAMPLE

LESLIE C. LEVIN*

INTRODUCTION

Lawyers are not all alike. For more than a century, U.S. lawyers have been differentiated by client type, workplace setting, and social class.[1] Specialty bar associations emerged due, in part, to these differences, and these associations have served as sites where lawyers construct the meaning of being a legal professional within the particular context in which they work.[2]

Specialty bars are composed of lawyers with shared interests and perspectives. Some specialty bar associations attract members based on lawyers' individual characteristics, personal experiences, or political ideology.[3] Other specialty bars attract lawyers who work in the same organizational settings or practice specialties.[4] Recently, these specialty bar associations

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* Professor of Law, University of Connecticut School of Law. I am grateful to Jon Bauer, Gregory Liegel, Lynn Mather, and Lesley Salafia for their helpful comments on earlier drafts of this article. I would also like to thank Neil Hamilton and the Holloran Center for Ethical Leadership for inviting me to participate in the conference on Empirical Professional Ethics.

1. *See, e.g.*, RICHARD L. ABEL, AMERICAN LAWYERS 85–90, 178–84 (1989); JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR 3–8, 10–11, 44, 48–49 (2005). In fact, the differentiation can be seen even earlier. *See, e.g.*, LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 305–11, 634–643 (2d ed. 1985); JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 253–255 (1950); Alan F. Day, *Lawyers in Colonial Maryland, 1660–1715*, 17 AM. J. LEGAL HIST. 145, 145–49 (1973). Stratification and specialization rapidly increased during the twentieth century, thereby exacerbating the differences among lawyers. *See* ABEL, *supra* at 122–23, 202–07; HEINZ ET AL., *supra*, 35–38, 48–50, 57–73, 99–101.

2. *See* Judith Kilpatrick, *Specialty Lawyer Associations: Their Role in the Socialization Process*, 33 GONZ. L. REV. 501, 503–04, 506–08 (1998).

3. Specialty bars that attract members based on individual characteristics include, inter alia, women's bar associations, gay and lesbian bar associations, bar associations for lawyers with disabilities, and bar associations whose members share racial, ethnic, or religious backgrounds. Specialty bars that attract members based on personal experiences or political ideology include, inter alia, the Veterans Bar Association and the Republican National Lawyers Association.

4. The Association of Corporate Counsel is an example of a bar association whose members work in the same organizational setting. The National Association of Criminal Defense Lawyers is an example of a specialty bar whose members work in the same practice specialty. There are also

have been growing at the expense of general membership bar associations.[5] The largest such specialty bar, the American Association for Justice (formerly known as the American Trial Lawyers Association or "ATLA"), has 56,000 members and is a powerful lobbying force in the United States.[6]

Specialty bars sometimes begin not only because of shared interests, but due to lawyers' frustrations with general membership and elite bar associations.[7] Specialty bars such as ATLA and the National Association of Criminal Defense Lawyers (NACDL) formed because lawyers who worked in some specialties felt strongly that the existing bar associations were not meeting their needs. As Samuel Dash, the first president of NACDL explained, "I and a group of other criminal defense lawyers, feeling ostracized by the organized bar and demeaned by the profession and the public for the law we practiced, decided to upgrade the reputation of the practice of criminal law."[8]

Robert Nelson and David Trubek identify bar associations as one of the four institutional settings or "arenas" in which lawyers' conceptions of professionalism are produced.[9] The other arenas are legal education, disciplinary enforcement, and the workplace.[10] In each arena, groups construct,

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national, state, and local bar associations that have sections whose members work in particular practice specialties. For example, the American Bar Association has sections on Antitrust Law, Health Law, Intellectual Property, etc. It is possible that in some locales, active practice sections of state and local bar associations operate in the same manner as the specialty bar described in this article.

5. *See* HEINZ ET AL., *supra* note 1, at 280. One commentator estimates that there are more than 1000 specialty bars in the United States. Kilpatrick, *supra* note 2, at 508. In contrast to specialty bars, general membership bar associations are voluntary bar associations that seek to attract all lawyers, regardless of individual characteristics, beliefs, or practice specialty. Examples of general membership bar associations are voluntary state bar associations such as the New York State Bar Association and local bar associations like the New York County Lawyers' Association.

6. *See, e.g.*, RICHARD S. JACOBSON & JEFFREY R. WHITE, DAVID V. GOLIATH: ATLA AND THE FIGHT FOR EVERYDAY JUSTICE 286, 308 (2004); Leslie C. Levin, *Lawyers in Cyberspace: The Impact of Legal Listservs on the Professional Development and Ethical Decisionmaking of Lawyers*, 37 ARIZ. ST. L.J. 589, 593 (2005); Jeffrey H. Birnbaum, *A Case of Trial Lawyers v. Trial Lawyers*, WASH. POST, Nov. 30, 2007, at D1.

7. MICHAEL J. POWELL, FROM PATRICIAN TO PROFESSIONAL ELITE: THE TRANSFORMATION OF THE NEW YORK CITY BAR ASSOCIATION 29 (1988); Kilpatrick, *supra* note 2, at 508. Elite bar associations such as the ABA and the Association of the Bar of the City of New York (ABCNY) appeared in the 1870s. ABEL, *supra* note 1, at 44–45. The elite bar associations were initially comprised of white Protestant lawyers from "good" families and for many decades their admissions practices excluded much of the bar. *See* JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 62–64, 66 (1976); POWELL, *supra* at 11–17, 85. Although the ABA and the ABCNY are now general membership bars, they are still often viewed as "elite" bars. *E.g.*, POWELL, *supra* at 228.

8. Jack King, *Origins of the Organized Criminal Defense Bar: The National Association of Criminal Defense Lawyers—Part One*, THE CHAMPION, May/June 2008, at 44.

9. Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, *in* LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 179, 185 (Robert L. Nelson et al. eds., 1992).

10. *Id.* at 185. These arenas are interacting, and the notions they produce about the proper role of lawyers influence what occurs in other arenas. *Id.*

explicitly or implicitly, models of lawyering, and different groups may construct different versions of the professional ideal.[11] These conceptions of professionalism in the various arenas may be contradictory, but they all have some influence on lawyers' conceptions of their roles and responsibilities.[12] Scholars have devoted considerable effort to exploring the ways in which the other three arenas shape lawyers' understandings of their professional role and practice norms.[13] In contrast, the role of bar associations in the construction of lawyers' norms and values has been relatively underexplored.[14]

This is unfortunate because bar associations are important sites where many lawyers develop their understanding of professional norms.[15] Lynn Mather, Craig McEwen, and Richard Maiman use the term "communities of practice" to describe the groups of lawyers with whom other lawyers interact and to whom they compare themselves and look for their understanding of practice norms.[16] Lawyers work in overlapping communities of practice that may have variable or even inconsistent norms. They include, inter alia, the bar as a whole, specialists and non-specialists, lawyers in local courts, and office colleagues.[17] They can also include lawyers encountered in bar associations.

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11. *Id.* at 179.

12. *Id.* at 184.

13. For studies of the ways in which law schools communicate various professional norms and values, see, for example, ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND (1992); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" (2007); DEBRA J. SCHLEEF, MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS (2006). For discussions of the impact of disciplinary enforcement (or the lack thereof) on lawyers' views of their professional obligations, see, for example, Stephen Daniels & Joanne Martin, *Plaintiffs' Lawyers and the Tension between Professional Norms and the Need to Generate Business*, *in* LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT (Leslie C. Levin & Lynn Mather eds.) (forthcoming 2012); Fred C. Zacharias, *What Lawyers Do When Nobody's Watching: Legal Advertising as a Case Study of the Impact of Underenforced Professional Rules*, 87 IOWA L. REV. 971 (2002). For studies of the ways in which lawyers' norms and values are constructed in the workplace, see, for example, LYNN MATHER ET AL., DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE (2001); Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. MEM. L. REV. 631 (2005).

14. One of the few efforts to explore how specialty bars socialize its members can be found in Judith Kilpatrick's study of ATLA and the American College of Real Estate Lawyers. Kilpatrick, *supra* note 2. There are also some excellent studies of elite bar associations that provide rich insights into how the leaders of those bar organizations worked to improve the conduct of lawyers and raise their professional standing. *See, e.g.*, TERENCE C. HALLIDAY, BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT (1987); POWELL, *supra* note 7. These studies have limitations, however, because they rely heavily on archival research. *See, e.g.*, HALLIDAY, *supra*, at xi-xii, xix. They also primarily recount the actions of bar leaders. There has been virtually no effort to look at the impact of bar associations on lawyers' norms and values by talking directly to their rank and file members.

15. *See* MATHER ET AL., *supra* note 13, at 42 n.1.

16. *Id.* at 6.

17. *Id.* at 6, 42.

The role of bar associations in fostering lawyers' understanding of professional norms and values is not as straightforward as it might appear. Bar associations are organizations. They espouse official positions through their leaderships' statements, publications, and law reform efforts. They also informally communicate norms through training, educational materials and programming, through pro bono initiatives (or the lack thereof), and through other organizational efforts. The official stance of bar organizations typically supports compliance with formal professional rules.[18] After all, bar associations strive to improve the ethical conduct of lawyers as a means of raising the profession's status.[19] But bar associations are also composed of individual members who must negotiate the real world of practice.

As Mather, Maiman, and McEwen have noted, the formal rules of the legal profession have some impact on the behavior of lawyers, but "[c]ollegial standards and norms provide grounding for independent decisions and legitimate them."[20] Bar associations—and especially specialty bars—put lawyers in touch with other lawyers who are confronting very similar challenges. These lawyers are not only shaped by the norms of this community of practice, but they help shape the norms of the community. Bar associations are sites where professional norms and values are transmitted not only through official channels, but by facilitating information exchange among its members.[21] These exchanges occur through face-to-face interactions at conferences, meetings, and social functions. They also occur via listservs and through the development of advice networks among members.[22]

This article seeks to examine more closely the process by which specialty bars operate as a site of professionalism for individual lawyers. It is based on semi-structured interviews of immigration lawyers engaged in private practice that I conducted in 2006 in the New York City metropolitan area. Most of the lawyers devoted more than 75% of their practice to immigration law, and most belonged to the American Immigration Lawyers Association (AILA), which is the largest immigration lawyers' specialty bar. The lawyers were randomly selected from a list I compiled of lawyers in

18. There are occasional exceptions. *See, e.g.*, *Bounds of Advocacy: Goals for Family Lawyers*, AM. ACAD. OF MATRIMONIAL LAWYERS (Nov. 2000), http://www.aaml.org/library/publications/19/bounds-advocacy (advocating shift from the "zealous advocacy" orientation toward one that encourages problem solving and concern for the interests of children).

19. POWELL, *supra* note 7, at 18–20. In addition, specialty bars whose members work in lower status specialties strive to improve the conduct of their members in order to raise the status of those specialists within the profession.

20. MATHER ET AL., *supra* note 13, at 10; *see also* Nelson & Trubek, *supra* note 9, at 180 (noting that codes of ethics and their enforcement "contribute to the social production of professionalism, but are neither the only nor necessarily the most significant sources of ideas about lawyering").

21. Kilpatrick, *supra* note 2, at 514, 549–51.

22. Levin, *supra* note 6, at 591–92, 615–16.

private practice who appeared to practice immigration law.[23] The list included all private practitioners who belonged to AILA's New York City Chapter as well as other private practitioners.[24] The final sample of seventy-one lawyers included sixty-two current members of AILA,[25] sixteen of whom did not belong to any other bar association. Of the nine lawyers in the sample who did not belong to AILA, most had previously belonged to AILA or had connections to the organization.[26] Many of the other lawyers belonged to additional bar associations, but only ten lawyers in the sample belonged to the ABA. Four of the lawyers did not belong to any bar association.

The original study was designed to look at immigration lawyers—and not at AILA. As the interviews progressed, however, it became clear from the frequency with which lawyers referenced AILA that it was an important community for many immigration lawyers. As a result of the study design, the questioning about AILA was not as systematic as it could have been, and a more focused study may yield more nuanced findings. My goal here is simply to begin to explore how a specialty bar operates as an arena of professionalism for its members. I make no claim that this bar is representative of other specialty bars and, indeed, the lawyers who belong to AILA view it as unique. The lawyers' comments are instructive, however, in the ways in which a specialty bar can communicate professional norms and values to its members and provide a site in which professional norms and values are constructed.

Part I of this article briefly describes some of the characteristics of the New York City private immigration bar and the work it performs. It also provides some background about the history and current work of AILA. Part II looks at some of the ways in which AILA creates a sense of commu-

23. For a more detailed description of the sample, see Leslie C. Levin, *Guardians at the Gate: The Backgrounds, Career Paths and Professional Development of Private US Immigration Lawyers*, 34 LAW & SOC. INQUIRY 399, 404–05 (2009).

24. In addition to AILA members, the list included names that appeared on LEXIS in connection with published immigration decisions, lawyers listed in the *New York Martindale-Hubbell Law Directory* (via LEXIS) who indicated they practiced immigration law, and names that appeared in yellow page and internet advertising, and on websites.

25. Since I used the AILA membership roster to help construct the list from which the sample was drawn, it is likely that AILA members were overrepresented in the original list. In addition, there were more than twice as many names on the original list from which the sample was drawn than there were AILA members in private practice, indicating that AILA members were more likely to agree to participate in an interview than other lawyers. Thus, this is not an entirely representative sample of the New York City immigration bar, although it may be representative of New York AILA members.

26. Four of the nine lawyers had previously belonged to AILA and two said that they intended to rejoin. One of the other lawyers worked in a two-person firm and said his "firm" belonged to AILA, and two others said that they worked in firms in which other lawyers belonged to AILA and that the information "filtered down." Another non-member said he attended AILA's annual New York conferences for CLE. Three of the non-members devoted only 15–20% of their time to immigration work. The most common reason cited for not belonging to AILA was the expense.

nity by providing early training, educating its members about changes in the law, and fostering information sharing. Part III discusses some of the norms and values that are communicated within this bar, including what it means to be a "good lawyer." It also considers what happens when AILA raises its members' awareness of difficult ethical issues but fails to clearly communicate what response is required of lawyers. Part IV identifies the conditions that seemingly permit a specialty bar to flourish and become an important site of professional learning.

I. Overview of the Immigration Bar

In order to explore how AILA operates as an arena of professionalism, it is necessary to first understand something about immigration lawyers, the work they perform, and the office settings in which they work. It is also important to understand the information and services that AILA offers to immigration lawyers. A brief overview appears below.

A. *Immigration Lawyers*

There appear to be some significant commonalities among members of the New York City immigration bar. One-third of the lawyers in the study are immigrants and almost one-third of the U.S.-born lawyers have at least one foreign-born parent.[27] Some others had a strong connection with the immigrant experience. As one large firm lawyer explained:

> I think overwhelmingly most immigration attorneys that I know have some background of some immigration in their own family. . . . [W]e have a number of them here at [this firm] who went through the process themselves, or whatever.
>
> And myself, my parents were both born here; my father's family, his grandparents came over from Italy, like off the boat, and all that. And we grew up with a very Italian American heritage feeling on my father's side. And my mother's side, my grandfather was from Lithuania . . . all his like, older sisters, were born in Lithuania. He was like the first one born in America. . . . So you had that feeling. I kind of had those roots.[28]

Most of the lawyers in the study did not attend elite law schools. Many are drawn to the work because of a desire to help others. A solo lawyer who was born in India explained:

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27. This group may not be representative of immigration lawyers elsewhere, because New York is one of the few jurisdictions that will allow applicants to take the bar examination without obtaining a J.D. or LL.M. from a U.S. law school. *See* Nat'l Conference of Bar Exam'rs, Comprehensive Guide to Bar Admission Requirements 2011 Chart IV (2011), http://www.ncbex.org/uploads/user_docrepos/2011_CompGuide_03.pdf.

28. Interview with Attorney # 28 in Manhattan, N.Y. (Aug. 18, 2006). Citations to "Attorney # __" refer to the transcript of the interview with particular study participants.

> I am [in] this legal profession not only because there's the power, prestige and money in this profession, but I get an opportunity to serve people in the community also—immigration is one area where you can serve—you can really serve needy people, all right? In all other areas like say real estate, it's basically financial gain to your clients, but in immigration law area it's a lifelong gain to your client—that's one reason.[29]

Immigration is comprised of several sub-specialties. Business immigration lawyers perform the work that must be done for organizations to sponsor a foreign national to enter and work legally in the United States.[30] Most immigration lawyers who do not focus primarily on business immigration do at least some family-based immigration work.[31] Family-based immigration lawyers represent foreign nationals who seek legal status based on their familial relationship to someone who is already legally residing in the United States. Some immigration lawyers also handle asylum claims or deportation defense work, the latter of which involves removal proceedings brought against individuals based on criminal convictions or against persons who lack authorization to be in the United States.

Many immigration lawyers work in solo and small firms (two to five lawyers).[32] Even business immigration lawyers who work in this setting may represent large corporate clients. Immigration lawyers also work in larger boutique immigration firms, typically of less than twenty lawyers, although the largest immigration firm, Fragomen LLP, had sixty-three lawyers in its New York City office and 250 lawyers world-wide at the time of the study.[33] A small number of large corporate law firms (over 100 lawyers) employ a few business immigration lawyers, primarily as a way to service their existing corporate clients.[34]

Business immigration lawyers often work from offices in midtown Manhattan or in White Plains, New York.[35] A few work from home. Since they do not go to immigration court or routinely attend hearings, proximity to federal buildings is not essential. They may work in relative isolation from other immigration lawyers. In contrast, the offices of many lawyers who do other types of immigration work are clustered in a few office buildings on lower Broadway in Manhattan, close to 26 Federal Plaza, where the immigration courts, the United States Citizenship and Immigration Ser-

29. Interview with Attorney # 69 in Queens, N.Y. (Nov. 13, 2006).

30. Levin, *supra* note 23, at 413.

31. *Id.* at 414.

32. *Id.* at 415. The lawyers in the study were disproportionately solo practitioners because only one lawyer from any given firm was interviewed. The breakdown was 54% solo practitioners, 24% in firms of 2–5 lawyers, 11% in firms of 6–20 lawyers, 6% in firms of 21–49 lawyers, and 4% in firms of over 50 lawyers.

33. *Id.*

34. *Id.*

35. White Plains is a major suburban commercial center located in Westchester County.

vices' (USCIS) New York City district office, and most of the other immigration enforcement offices are located. Alternatively, those who have family-based or asylum practices work near the immigrant communities they service.

Immigration lawyers navigate and advocate within an unusually challenging legal system. It is difficult for their clients to obtain legal status to work or live in the United States. Immigration has an overlapping administrative structure with rules that are in continual flux. The judges work under difficult conditions which may contribute to harsh outcomes.[36] Some are insensitive and even abusive.[37] There is also great disparity in judges' decisions.[38] The USCIS Service Centers, where visa applications are processed, are also reportedly inconsistent in their decisions. As one lawyer noted, it is a "really lousy" system with a "total lack of logic."[39] Another lawyer explained, "[i]f you read *Alice in Wonderland*, *Catch 22*, *Metamorphosis*, *The Trial*, and Machiavelli, you will know more about immigration law than most attorneys. You see so many things that don't make sense."[40]

B. AILA and its Membership

AILA was formed in New York City in 1946.[41] Twelve of the original nineteen members had recently worked for the Immigration and Naturalization Service (INS), and AILA's founders saw an opportunity to utilize the professional standing of these individuals "to elevate the standard and reputation of the practitioner appearing before the Immigration Service. . . ."[42] They also believed that the former government attorneys "would provide the immigration bar with an insider's view of the then prevailing perceptions and attitudes held among INS officials."[43] The association's stated purpose was, inter alia, to "promote reforms in the law," to "cherish the

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36. *See* APPLESEED, ASSEMBLY LINE INJUSTICE: BLUEPRINT TO REFORM AMERICA'S IMMIGRATION COURTS 10, 11 (2009), *available at* http://www.appleseeds.net/Portals/0/Documents/Publications/Assembly%20Line%20Injustice.pdf; Stuart L. Lustig et al., *Inside the Judges' Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey*, 23 GEO. IMMIGR. L.J. 57, 58 (2008).

37. *See, e.g.*, Benslimane v. Gonzales, 430 F.3d 828, 830 (7th Cir. 2005); Lauren Gilbert, *Facing Justice: Ethical Choices in Representing Immigrant Clients*, 20 GEO. J. LEGAL ETHICS 219, 221 (2007).

38. *See* Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007) (discussing the substantial disparities among immigration judges in asylum case outcomes).

39. Interview with Attorney # 19 in Manhattan, N.Y. (Aug. 15, 2006).

40. Interview with Attorney # 24 in Bronx, N.Y. (Aug. 16, 2006).

41. AILA was originally known as the Association of Immigration and Nationality Lawyers. *About AILA: Sixty Years of Service . . . Sixty Years of Excellence*, AILA'S IMMIGR. L.TODAY 8, 8 (Sept./Oct. 2006).

42. Arthur S. Schapira, *in* AILA CELEBRATES 50 YEARS: REFLECTIONS OF PAST PRESIDENTS 18, 18 (1996).

43. *In Memoriam*, *in* AILA CELEBRATES 50 YEARS, *supra* note 42, at 9.

spirit of brotherhood among the members," and "to elevate the standard of integrity, honor and courtesy in the legal profession."[44]

AILA has grown significantly in recent years: Today it has over 11,000 members with 34 chapters nationwide.[45] AILA describes itself as a "national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members."[46] It brings together lawyers who practice immigration law in solo, medium and large firms, in-house in corporations, in legal services organizations, community-based organizations, and law school clinics.[47]

Membership in AILA is not cheap, but it provides a wide range of services to its members.[48] AILA has a well-developed website that provides information about how to practice immigration law.[49] It also maintains InfoNet, which provides its members with constant updates about changes in both substantive and procedural aspects of immigration practice. AILA has a "Message Center" listserv on which lawyers can post questions and obtain answers from other lawyers about a variety of topics.[50] It hosts an annual three-day conference with close to 100 educational sessions that is typically attended by more than 2000 members. AILA also has a liaison program

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44. Schapira, *supra* note 42, at 18.

45. AM. IMMIGRATION LAWYERS ASS'N, AILA 2010 ANNUAL REPORT (2011), *available at* http://www.aila.org/content/fileviewer.aspx?docid=35028&linkid=231808. AILA's membership increased from fewer than 4000 members in 1996 to 10,000 members in 2006. Carlina Tapia-Ruano, *Celebrating Our Association's Accomplishments and Those Who Made it All Possible*, AILA'S IMMIGR. L. TODAY 5, 5 (Sept./Oct. 2006).

46. *Mission and Goals*, AILA INFONET, http://aila.org/content/default.aspx?docid=12130 (last visited Mar. 28, 2011).

47. While AILA is the oldest and largest association of immigration lawyers, there were a few other organizations that lawyers in the study mentioned. IMMLAW is a small national consortium of immigration law firms that cross-refer matters and share expertise and information. *See* IMMLAW: The National Consortium of Immigration Law Firms, IMMLAW, http://www.immlaw.com/about_immlaw.html (last visited Mar. 28, 2011). Some lawyers also participated in the immigration sections of their local bar associations. A few said they drew on the resources of the National Immigration Project of the National Lawyers Guild.

48. AILA's dues for lawyers who have practiced more than seven years are $455 annually. *2011 AILA Dues Structure*, AILA INFONET, http://www.aila.org/content/fileviewer.aspx?docid=12627&linkid=208463. In contrast, the ABA charges dues of $250 for lawyers who have been in practice 7 years and a maximum dues rate of $399. *Membership Rates*, AM. BAR ASS'N, http://www.americanbar.org/membership/membership_rates.html (last visited May 17, 2011). The dues rate for solo and small firm lawyers is lower.

49. The front page of the website provides a wealth of information about current developments in the law and educational opportunities. It also provides a variety of links, including to "Recent Postings," which contains announcements and updates from the State Department, USCIS, the Department of Labor, and other news; "Cases and Decisions"; "Practice and Professionalism"; "Advocacy and Media Tools"; "Conferences and CLE"; and "Career Center." *See* AILA INFONET, http://www.aila.org (last visited May 17, 2011).

50. Topics are grouped under major categories such as "Adjustment of Status," "Asylum and Protection," "Business Immigration-Immigrant Visas," "Consular Practice," "Criminal Removal/Deportation," "Family Immigration," etc.

with the government that enables its members to inquire about the status of individual cases. AILA works to combat the unauthorized practice of law by non-lawyer providers (variously known as multiple service agencies, travel agencies, or notarios).[51] It also conducts some media advocacy and lobbying efforts.[52]

The New York City area chapter of AILA has more than 1350 members,[53] making it the largest in the U.S. The chapter includes the five New York City boroughs and nine other downstate New York counties.[54] It has a "mentor" system that designates experienced lawyers who can be called by AILA members about particular areas of immigration law.[55] The chapter holds monthly meetings that provide a means of learning about new developments in the law. It also sponsors an annual one-day symposium.[56]

II. AILA as a Source of Community and Information

The nature of immigration practice may help create an environment conducive to a strong feeling of community among immigration lawyers. Immigration lawyers, unlike many other lawyers, do not negotiate or litigate against one another. Instead, their opponent is the Government, which may stand in the way of their clients' efforts to legally live or work in the United States. These lawyers are competitors for business, but the competition does not negate the feeling of community. One experienced lawyer explained why:

> [O]ne, we're not generally in an adversarial situation with each other. Okay, so we're not! I mean, there is competitiveness . . . I would like that big client; they would like that big client. Some are more cutthroat than others, in terms of that.

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51. Non-lawyer providers take money from immigrants, often promising that they will obtain legal immigration status for the immigrants. These non-lawyers typically live and work in immigrant communities and they directly compete (illegally) with lawyers. As one commentator explained, they often "charge high fees, submit fraudulent applications, mislead clients, refuse to give clients copies of their paperwork, and disappear into the woodwork overnight." Susan Bibler Coutin, Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency 81 (2000).

52. Some law reform efforts, including impact litigation, are conducted through the American Immigration Council (formerly known as the American Immigration Lawyers Foundation), a non-profit spin off of AILA which is supported in part by AILA dues and is housed in the same building as AILA's national headquarters. *See Who We Are*, American Immigration Council, http://www.americanimmigrationcouncil.org/who-we-are (last visited May 17, 2011).

53. Email from Alexis Axelrad, Chair of New York City Area AILA chapter, to Leslie C. Levin (Oct. 26, 2010) (on file with author) (stating that the chapter had 1371 members). Not surprisingly, the next largest AILA chapters are Texas AILA and Southern California AILA, where many immigrants reside.

54. *New York State Chapters*, AILA InfoNet, http://www.aila.org/content/ default.aspx?bc=20616 (last visited Mar. 28, 2011).

55. *See infra* note 63 and accompanying text.

56. *E.g.*, *13th Annual AILA New York Chapter Symposium*, AILA InfoNet Doc. No. 10051263 (Sept. 13, 2010), http://www.aila.org/content/default.aspx?docid=31970.

> But we're non-adversarial. . . . [W]e're not in court on opposite sides of the table, and I guess because we are helping. We are helping. . . . [T]he main focus of my practice is business immigration, and you know, that's less helping than when—when I'm representing a French banker, it's less helping and nurturing than [when] I'm helping a housekeeper from Jamaica come here and make a better life for her children, which I do, too. . . . But nonetheless, it still is, even the French banker, it's still his personal issues. You know, he's still moving with his family, and his wife's issues, and his children's issues, and he's still switching careers, or whatever. And then the cases that are even more are when you're dealing with humanitarian issues, and helping issues. So that's still the roots of it. I mean, even if you have a total business practice, I think your roots are somewhere in that, and so I think that that makes a difference.[57]

Several of the lawyers in the sample described the immigration bar as "a small community," a "family," or "a little world unto itself." A few expressed the view that they did not believe that any other practice specialty enjoyed as collegial a community as the immigration bar.

AILA membership appears to contribute to this perception. Several lawyers' comments suggest that AILA positively affects their sense of belonging to a supportive legal community.[58] One lawyer observed:

> I feel like it is a very sort of collegial, not real competitive—like, people are very open, and sharing with information: you know, just anecdotes about how they've prepared this case, what happened on this case. . . . [I]f you go to a conference, or an [AILA New York chapter] meeting . . . whoever happens to be speaking on a panel will almost always say, "Here's my number; give me a call." And it's very open, you know, very giving. Because I think people really want to, you know, further the practice, and get the best results that we can for the folks who need to use us. So I feel like it's very open and giving in that way, which is kind of nice. . . . [O]ther lawyers who I know who practice in other areas don't have that sentiment.[59]

For some lawyers, AILA membership also contributes to their sense of satisfaction with their work lives. A closer look at how AILA contributes to this collegiality and sense of community appears below.

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57. Interview with Attorney # 31 in Manhattan, N.Y. (Aug. 22, 2006).

58. Not everyone, however, is entirely satisfied with AILA. As one lawyer noted: "Oh! For the record: They suck! They suck!" Interview with Attorney #10 in Manhattan, N.Y. (Aug. 8, 2006). This lawyer, like a few others I interviewed, was critical of AILA's leadership. Other complaints included criticism of AILA's lobbying efforts. One lawyer expressed the view that the liaison program advantages AILA liaison volunteers who can use their position to contact USCIS service centers with their own questions but are slower to respond to requests from other AILA members. Nevertheless, even the harshest critics belong to AILA.

59. Interview with Attorney # 1 in Manhattan, N.Y. (July 28, 2006).

A. *Learning to Practice Immigration Law*

For some lawyers, AILA plays an important role in learning how to practice law. More than two-thirds of the lawyers in the study had taken no immigration law course or clinic during law school. (Almost all who had done so had graduated from law school within the past dozen years.) Only 40% of the lawyers reported that they received some systematic training in the workplace in how to practice immigration law. As a result, many immigration lawyers in the study had to teach themselves how to practice immigration law. Several lawyers reported that early in their careers, they relied on AILA's mentors, materials, or seminars to learn how to practice immigration law. This was especially likely if the lawyer worked in an office with no other experienced immigration lawyers. One solo lawyer who was relatively new to immigration practice explained his learning process:

> I sort of did it on my own, and took some seminars. . . . And then I keep reading a lot, and then I think that the difficult thing, maybe for me and maybe for others, is [seeing] things in the abstract? Because when you're reading them, the immigration law is sort of dry. . . .
>
> And so what I have been trying to do is to concentrate on books that are—AILA has a lot of books that are more practical. . . . And I use that [sic] as resources, and AILA has a lot of publications, also, that are like tips, particular to how you handle Immigration officers, and what to do, or not to do—things like that. Those are, I think, are very helpful, for learning.[60]

It is no accident that new lawyers turn to AILA to learn how to practice law. AILA deliberately seeks to train new immigration lawyers. As one experienced immigration lawyer explained about AILA's national convention: "[T]he convention is geared primarily toward entry-level attorneys. They've made a business out of it. AILA's making a lot of money! This is the law school for the twenty-five year old associate who does not know any immigration law, but who is now an associate."[61] AILA's New York City chapter also has a New Members Division (formerly known as the "Young Lawyers' Division"), which aids its effort to target training at newer lawyers.

Several lawyers reported that they joined AILA very shortly after starting out in their own immigration practices. One lawyer recalled, "When I got into this business, I went to . . . the seminars. I signed up—I became a member of AILA."[62] For some of these lawyers who were teaching themselves how to practice law, the AILA listserv and the AILA mentor system

60. Interview with Attorney # 39 in White Plains, N.Y. (Sept. 1, 2006).

61. Interview with Attorney # 40 in White Plains, N.Y. (Sept. 6, 2006).

62. Interview with Attorney # 53 in Manhattan, N.Y. (Sept. 14, 2006).

were important sources of advice. As one lawyer who taught herself immigration law explained:

> The AILA mentor program is tremendous! It's absolutely amazing, how helpful other AILA attorneys are, and I reached out to them tremendously, and I still do. It may be less frequent now [laughs], but still. . . . [T]hey have mentors based on the practice areas. They have multiple mentors, so you can write to all, call, email. And they're extremely responsive. Also, being an AILA member, they have a website, AILA, and . . . a message board, or a chat board. You put your questions up. People will either write in with their responses, or similar experiences, or advice. And that is just amazing.[63]

This lawyer, who had previously worked in the personal injury field, recalled the "extremely steep learning curve" she encountered when she moved into the immigration field. She reported that not only was AILA's mentor program extremely important to her ability to service clients, but it "was the nicest and the best experience that I've had as an attorney."

B. Staying up to Date with the Law

One of the biggest challenges that immigration lawyers face is staying up to date with the changing law and procedures in the immigration field. One of the words most often mentioned by these lawyers during their interviews was the frequent "change" in the laws. The involvement of so many administrative agencies (e.g., Department of Labor, USCIS, U.S. Immigrations and Customs Enforcement) contributes to the lawyers' common perception that the law and procedures are constantly changing. Indeed, some lawyers claimed that "it changes every day."[64] The changes may relate to filing fees or forms, or they can be more substantive.

The constant changes create a sense of insecurity among some lawyers. As one lawyer confessed, "I never feel like I'm completely up to date. I'm always feeling like maybe there's something new, I should go back and check the USCIS website or the AILA website, or get another book! I mean, it's very frustrating!"[65] Another lawyer noted, "[Y]ou know, it's very scary, because you say, 'Did a new memo come out that superseded that other memo?[66] Did I miss it?' Because it can change something com-

63. Interview with Attorney # 25 in Manhattan, N.Y. (Aug. 17, 2006). AILA mentors are available on a wide range of topics including, inter alia, adjustment of status, asylum, consular affairs, ethics, labor certification, and law office management.

64. Interview with Attorney # 7 in Manhattan, N.Y. (Aug. 4, 2006).

65. Interview with Attorney # 32 in Manhattan, N.Y. (Aug. 28, 2006).

66. The USCIS frequently issues policy memos intended to provide guidance on a variety of substantive and procedural issues, including the implementation of new laws and how existing law should be applied.

pletely!"[67] When asked about the challenges of practicing immigration law, a third lawyer responded:

> Keeping up with the law, knowing what's going on. There's so much to know in this area! A day doesn't go by when I'm not reading cases on the computer, or reading *Interpreter Releases*[68] on the train. Not one—every day I'm on it. Sometimes I sit at home at night, and I'm thinking about something, and I have a set of books, and I'll crack the books, or I'll go on the computer.[69]

This same lawyer spent "at least an hour" trying to keep up to date with the law each day. His experience was not atypical.

Many of the lawyers in the study credited AILA's InfoNet with enabling them to stay up to date with changes in the law. A lawyer who was asked whether she felt she could keep current on the changes provided a typical answer:

> A: Yes, and that's because of AILA—it's absolutely because of AILA.
> Q: What else do you—if anything—do you look at to—
> A: Nothing.
> Q: Okay. How much time a week do you spend—or month—do you spend staying up to date?
> A: Lots and lots and lots and lots because they send you updates every hour.[70]

Several lawyers explained that they regularly consulted AILA's resources as part of their morning work routine. One lawyer stated, "[T]hey send me updates every night at midnight. [The] first half hour of my day, every day, is to come in and look at all the updated information on AILA, figure out what's going on today, because things change every single day!"[71] Another lawyer explained, "Sometimes you're hit with stuff five or six times a day, and I'm very religious about reading it, and following up."[72]

While most of these lawyers were intent on staying up to date with the law, they rarely consulted the *New York Law Journal*, which is the five-day-a-week legal newspaper in the New York City metropolitan area. When asked whether she read the periodical, this response was typical: "The *New York Law Journal*? It doesn't apply to my practice, no."[73] In fact, relatively few of the lawyers in the sample reported that they read the *New York Law*

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67. Interview with Attorney # 31 in Manhattan, N.Y. (Aug. 22, 2006).

68. *Interpreter Releases* is a weekly publication that reports on, and provides analysis of, current information concerning many aspects of immigration law.

69. Interview with Attorney # 9 in Manhattan, N.Y. (Aug. 7, 2006).

70. Interview with Attorney # 60 in Manhattan, N.Y. (Sept. 19, 2006).

71. Interview with Attorney # 4 in Manhattan, N.Y. (Aug. 1, 2006).

72. Telephone Interview with Attorney # 41 (Sept. 6, 2006). One of the few AILA members in the study who did not rely heavily on AILA's InfoNet worked at the largest immigration firm, Fragomen LLP, where lawyers rely on information that is gathered for them from a variety of sources by in-house research attorneys.

73. Interview with Attorney # 10 in Manhattan, N.Y. (Aug. 8, 2006).

Journal even once a week, and most of these lawyers devoted a substantial amount of their practice to areas other than immigration. This suggests that immigration lawyers were not especially attuned to the activities of the larger legal community. Rather, the most important communities of practice for most immigration specialists were likely to be the lawyers with whom they shared offices[74] and other lawyers in the immigration bar.

C. Other Information Sharing

AILA not only regularly conveys information to its membership, but it also facilitates lawyer-to-lawyer information sharing. This information sharing among members seems to enhance the feeling of belonging to a community. As one business immigration lawyer noted:

> I think it is the most helpful, collegial bar that you're going to find in any practice of law. I don't know of any other bar where you will have a message board where people will answer questions . . . giving you ten sites of research. I talk to my sister, who is a criminal defense attorney, and when I tell her about this, she's like, "You've got to be kidding me! People share that information?" I'm like, "Yeah! You can pose a question and you will get answers! Either that, or if you email people privately, they will answer you." You know, I don't think there's another bar that cooperates and mentors and trains and shares information the way the immigration bar does.[75]

Of course, many immigration lawyers also engage in information sharing that is not directly facilitated by AILA, including through work relationships and chance encounters in the immigration courts. For some lawyers, however, AILA plays a very important role in lawyer-to-lawyer exchanges.

Some of the information sharing arises in connection with AILA's formalized offerings, such as its mentor program and Message Center listserv.[76] Information sharing is also facilitated through monthly meetings and annual symposia where lawyers meet one another. In addition, as one lawyer explained, "[S]ometimes some of their . . . informal mixer type things I

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74. For immigration lawyers in boutique firms, this would mean other immigration lawyers. For solo immigration lawyers who worked in office sharing arrangements, and for immigration lawyers who worked in other types of firms, this may include lawyers practicing in other fields of law.

75. Interview with Attorney # 22 in Middlesex County, N.J. (Aug. 16, 2006).

76. The lawyers in the study did not report that they availed themselves of the Message Board as often as might be expected. This may be due, in part, to the uneven quality of responses received. It may also be because there were other listservs available, such as *ImmTalk* on YAHOO! GROUPS, which describes itself as "the OLDEST and LARGEST independent immigration lawyers' forum linking 449 immigration lawyers." *ImmTalk*, YAHOO! GROUPS, http://groups.yahoo.com/group/immtalk/#ans (last visited Apr. 15, 2011). One lawyer suggested that the AILA Message Board was slow to develop because there were already well-established listservs being frequented by immigration lawyers. Nevertheless, AILA reported that in 2009 there were 44,330 new postings in the Message Center. AILA 2010 Annual Report, *supra* note 45, at 22.

think are good, just to meet other people who are in very different areas of the practice than I am, just to sort of exchange ideas, and things like that. . . ."[77]

The mentor service seemed to be particularly important to some AILA members. Even experienced lawyers sometimes reached out to AILA mentors. Some practitioners noted that, as a general matter, competition among lawyers could have inhibited information sharing, but AILA's mentor program helped surmount this obstacle. One lawyer, when asked whether he reached out to other lawyers with questions, responded, "Really, no. It's funny, because face-to-face, people are very competitive about these things, and they don't want to give you that much advice. Unless they happen to set themselves up as [an AILA] mentor, and then they'll take your questions."[78] This was, however, a minority view.[79] Several lawyers reported that other AILA members shared information with them even though the individuals were not formal AILA mentors.

Indeed, AILA sometimes enables its members to meet other lawyers who become very important sources of information and support. For example, early in her career, a solo lawyer met a woman who became a true mentor as a result of a chance meeting in small claims court:

> [S]he happened to see the bag I have, which was the AILA bag. She says, "Come here!". . . . [T]hat was the type of person she was. I said, "Yeah?" She says, "You went to the [AILA] conference? You're a young attorney; how did you afford that?" I [said], "You know, I really had to go." And ever since that, she gave me her card; we just became buddies, you know. . . . And we just bonded. I called her my Jewish mother, which was really nice![80]

This lawyer subsequently attended conferences with her mentor and "bounced off ideas" with her, including ethical issues. A few other lawyers described how they had met other lawyers who became part of their regular advice networks by attending AILA meetings.[81]

III. AILA as a Source of Norms and Values

As previously noted, bar associations espouse adherence to the legal profession's formal rules. AILA is no exception. And for many New York immigration lawyers—all of whom must satisfy a bi-annual requirement of

77. Interview with Attorney # 1 in Manhattan, N.Y. (July 28, 2006).

78. Interview with Attorney # 32 in Manhattan, N.Y. (Aug. 28, 2006).

79. Nevertheless, it was corroborated by another business immigration lawyer who belonged to AILA and said that he would not offer to share information through AILA because he did not want to give away the secrets of his success.

80. Interview with Attorney # 36 in Queens, N.Y. (Aug. 29, 2006).

81. It appeared that foreign-born lawyers with no J.D. may have been somewhat less likely than lawyers with J.D.s to develop informal personal connections with AILA members. Further study would be needed to confirm the accuracy of this observation.

four hours of ethics CLE[82]—AILA is their sole source of formal ethics training. As a practical matter, AILA's formal training sessions and written materials may more directly affect lawyers' day-to-day understanding of their ethical obligations than the New York Lawyers' Code of Professional Responsibility. Immigration lawyers, like other lawyers, do not often consult the rules of professional conduct in their day-to-day practice. The following exchange is instructive:

> Q: Do you ever look at the Rules of Professional Responsibility?
> A: Yes! [Smiling broadly]
> Q: Seriously?
> A: No! [Laughs] No! I don't even know where it is![83]

Another lawyer explained why she did not often look at the formal rules: "I don't use the rules . . . as much because now we have a whole section devoted to ethics on AILA and they have them in here and in each of those books every year there's a section devoted just to that."[84]

This is not to say, however, that AILA members believe or adhere to all of the formal messages that they receive from AILA about ethical conduct. One very experienced lawyer remarked:

> I always stay for the ethics part [of the New York conference], and I walk away and go, "There's nobody who could possibly practice law under these rules!" And then when they pontificate, and I walk away and say, "I know that guy. Stop! I don't want to hear this from you especially!" and then walk out.[85]

Another lawyer echoed this view:

> I mean, I've heard people say things at AILA conferences and other CLE kind of things about how you're supposed to inform Immigration if there's anything improper about the employment situation. And everyone's looking like, "What are you talking about?" That's a good way to lose all your clients in about a week, you know! [Laughs] So you know he's just saying that because he has to. Nobody could take that seriously, you know? . . .
>
> But, so, practically, I think most lawyers would not do that. But you know, that's the kind of advice you get in a public forum.[86]

Nevertheless, AILA has a significant influence on immigration lawyers' construction of the norms and values of that bar. Some of the norms are discussed below.

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82. New York requires its lawyers to take a minimum of 24 hours of CLE every two years, including at least four hours of ethics and professionalism. N.Y. COMP. CODES R. & REGS. tit. 22 § 1500.22 (2010).

83. Interview with Attorney # 18 in Manhattan, N.Y. (Aug. 15, 2006).

84. Interview with Attorney # 53 in Manhattan, N.Y. (Sept. 14, 2006).

85. Interview with Attorney # 18 in Manhattan, N.Y. (Aug. 15, 2006).

86. Interview with Attorney # 16 in Manhattan, N.Y. (Aug. 11, 2006).

A. *The Definition of a Good Lawyer*

Not all immigration lawyers are good lawyers. In fact, some lawyers in the sample were openly critical of many of the lawyers who practice immigration law—including other AILA members. But in the view of many of the interviewed lawyers, a lawyer cannot even begin to be a good immigration lawyer unless he or she belongs to AILA. As one noted, "AILA represents, [I] . . .wouldn't say all of the immigration lawyers, but probably most good immigration lawyers belong to AILA."[87] Another lawyer, when asked whether there were other immigration lawyers working in his building responded:

> Yes, there's one. And I think there actually might be two. But the one I know is—let's just say "yes," okay? [Laughs] Yeah, they're not AILA members. They are lawyers; I have to give them that, because a lot of people are these notarios. But they have no business practicing. They do not know, care, follow-up. They just hurt people.[88]

In the view of these lawyers, anyone who is serious about practicing immigration law needs to belong to AILA. Not surprisingly, when AILA members need to refer a case to an out-of-town immigration lawyer, they look for other AILA members.[89]

Closely connected to the conception of being a "good lawyer" is staying up to date with the law. When one experienced lawyer at a boutique immigration firm was asked whether he could stay up to date, he responded, "Yeah. I mean it's my job!"[90] And for many lawyers, this simply is not possible without AILA. A small firm lawyer, when asked whether she was able to stay up to date, responded:

> Pretty well, and AILA is fabulous for that! Invaluable for that! I mean, anyone who's practicing immigration law who is not a member of AILA, I would say, is practically not practicing, to tell you the truth. Because they have . . . an incredible website. Just incredible! And any new thing that comes out is up there. And it's up there, and they've synthesized it, and they've summarized it, and they're having panels. I mean, they're just amazing! They're just amazing. . . .
>
> I mean, I don't see how anyone could possibly manage without it. I just don't see it![91]

Another lawyer, when asked whether she belonged to AILA responded, "Yes. You have to belong to it." When asked why, she continued, "Because you can't function without the InfoNet, without the information. If you are

87. Interview with Attorney # 55 in Manhattan, N.Y. (Sept. 14, 2006).
88. Interview with Attorney # 2 in Manhattan, N.Y. (July 28, 2006).
89. The exception may be lawyers who participate in IMMLAW. *See supra* note 47.
90. Interview with Attorney # 20 in Manhattan, N.Y. (Aug. 15, 2006).
91. Interview with Attorney # 31 in Manhattan, N.Y. (Aug. 22, 2006).

doing this, and you're not a member, that is a clear indicator that you ought not to be doing it."[92] A solo lawyer, who read AILA's InfoNet daily, noted:

> But I worry about the people who don't do that! And there's a lot of people who either are not members of AILA, or then even if they are members of AILA, you know, somehow in the course of conversation, I'll be, like, "Oh, I saw such-and-such on InfoNet," and they're like, "Oh, how is that? I've never looked at that before." And I just think to myself: "How do you find out about changes in the law?" [Laughs] You know? . . . [I]f you're not reading *Interpreter* [*Releases*], you're not on AILA InfoNet, I really wonder about whether or not these people are committing malpractice.[93]

Of course, staying up to date with the changing law and procedures is not an end in itself, but is an essential component of providing competent representation to clients. Something as simple as filing the wrong form, or filing it in the wrong place, can delay a client's application for months or even years, creating serious hardships for the client. Membership in AILA helps lawyers avoid these mistakes, not only through access to InfoNet, but by providing the Message Board for lawyers who have specific questions and mentors who can also provide advice.

B. AILA and Sensitizing Lawyers to Ethical Issues

Through formal efforts, AILA sensitizes its members to certain ethical issues. As one lawyer noted, "[T]hey certainly put an emphasis on ethical behavior, on educating people about ethics. All the conferences have ethics panels. They put out publications on it."[94] Indeed, AILA routinely posts ethics materials on its website,[95] and it provides mentors in the area of ethics. The AILA Message Board also has an "Ethics and Law Practice" section where lawyers post questions. As one lawyer explained, "I do go on the message boards every now and then, just to see what conflicts or situations other attorneys are facing. And I just learn from that. You know, you read other people—it may not apply to me, but you still gain knowledge."[96] In addition, AILA facilitates the transmission of informal messages among its members about appropriate ethical conduct. And it is the combination of messages from which lawyers construct their understanding of acceptable norms of behavior.

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92. Telephone Interview with Attorney # 41 (Sept. 6, 2006).

93. Interview with Attorney # 22 in Middlesex County, N.J. (Aug. 16, 2006).

94. Interview with Attorney # 31 in Manhattan, N.Y. (Aug. 22, 2006).

95. *Ethics*, AILA InfoNet, http://www.aila.org/content/default.aspx?docid=15764 (last visited May 18, 2011).

96. Interview with Attorney # 25 in Manhattan, N.Y. (Aug. 17, 2006).

1. Fraud

Clients sometimes lie. Whether this is any truer of immigration clients than of clients who consult securities lawyers or tax lawyers or divorce lawyers is unclear. But there is no question that immigration clients sometimes lie, seek to lie, or otherwise commit fraud during the immigration process.[97] Based on experiences in their home countries, some clients believe that it is the lawyer's role to help them lie. In other cases, they are desperate: the laws are harsh and sometimes immigration clients feel that the best or only way to obtain legal status is to lie.[98]

Many factors affect lawyers' responses to lying clients. Personal morality and office colleagues seem to influence lawyers' decisions about how to respond.[99] For some of the lawyers in the sample, AILA also plays a role. For example, when one lawyer was asked whether he reached out to anyone to determine how to resolve this ethical issue he said:

> A: No, I've pretty much learned it. Doing this for ten years, you know when to show someone the door.
> Q: And did you learn any of that from the partner you worked with?
> A: I learned it from the partner. I learned it from attending the [AILA] ethics courses, blah, blah, blah. But it's just, you know, it's just common sense.[100]

Another lawyer, when asked how he learned to respond to a client whom he thought might not be in a bona fide marriage, replied:

> I guess in law school and in seminars where they've talked about that . . . . I [have gone] to the AILA seminars from the beginning—I went to my first one when I formed my partnership back in '95 I went to the AILA conference—I think it was in Orlando that year—I mean that was one of the things they said, you know, "people are going to ask you to do this and you better be ready and you better know" and I was.[101]

AILA promotes the view that immigration lawyers need to be hypervigilant because otherwise, as the lawyer above noted, "you can get in trouble." In fact, a few of the lawyers mentioned that immigration lawyers are, on the whole, a suspicious group. One noted:

> I'm very paranoid about getting in trouble, and I'm not going to [get in trouble]. I've seen—there are a lot of immigration lawyers who get in trouble, and it's always for this kind of thing. It's

97. *See, e.g.*, COUTIN, *supra* note 51, at 91; Leslie C. Levin, *Immigration Lawyers and the Lying Client*, *in* LAWYERS IN PRACTICE, *supra* note 13. I use the term "lie" to mean the making of an untrue statement with the intent to deceive. I do not mean to include the client who changes her story as she recalls more facts or who does not volunteer information that is not requested.

98. *See* Levin, *supra* note 97; Gilbert, *supra* note 37, at 238.

99. Levin, *supra* note 97.

100. Interview with Attorney # 12 in Manhattan, N.Y. (Aug. 9, 2006).

101. Interview with Attorney # 70 in Nassau County, N.Y. (Nov. 16, 2006).

> manufactured stories, using these travel agents as their source of business. Just basically letting the travel agents cultivate the whole business, and they just put their name on everything. And you know, the hallmark of that is making up stories.[102]

A lawyer who initially resisted being tape recorded for the interview explained that immigration lawyers are "a very nervous group"[103] because they never know who is wearing a wire. Another lawyer said, "Outside, I never discuss any ethical thing with any client on the phone, because it's very dangerous. And I do suspect the government! Wiretapping one's conversations! [Laughs]"[104]

This "paranoid" attitude is fostered, in part, by AILA. As one lawyer explained:

> A: The old adage is that any time people talk to you, always pretend that they have a microphone—not sitting on the desk like that, but hidden, because you never know when the government might be running a scam. That's the way all immigration lawyers are taught, with, "Always think that the person you are talking to has a hidden microphone."
> Q: Where did you learn that? . . .
> A: Every time you go to [New York CLE]. So AILA, and all these others, every year they have numerous immigration conferences, and part of it, you know, during the lunch hour, is always the ethics course. And the guy always comes up, always says the same thing: "Always make it seem that the person you're talking to has a microphone," because the last thing you want to say is, "Oh, yeah! I'll gladly—" and the next thing you know, you're walking off with handcuffs.[105]

Some lawyers who posted responses to ethics questions on AILA's Message Board also voiced concerns about hidden microphones, thus illustrating how lawyers are both affected by the norms of their communities of practice and simultaneously shape them.

While AILA makes immigration lawyers mindful that they need to be cautious when speaking to clients, this does not mean that these lawyers routinely decline to represent clients whom they believe are not telling the truth. Some do.[106] But several immigration lawyers expressed the view that their clients were entitled to representation even if they personally did not believe their stories, as long as they did not "know" the stories were false. A few lawyers adopted a "don't ask, don't tell" policy to avoid "knowing" a

102. Interview with Attorney # 16 in Manhattan, N.Y. (Aug. 11, 2006).
103. Interview with Attorney # 10 in Manhattan, N.Y. (Aug. 8, 2006).
104. Interview with Attorney # 26 in Manhattan, N.Y. (Aug. 17, 2006).
105. Interview with Attorney # 12 in Manhattan, N.Y. (Aug. 9, 2006).
106. Levin, *supra* note 97; *see also* COUTIN, *supra* note 51, at 91. For some lawyers, concerns about being wiretapped may cause them to be hypervigilant—to the point that they turn down meritorious cases.

marriage was not real. Some made affirmative statements to their clients to avoid learning the truth. The lawyer quoted in the preceding paragraph explained:

> [T]he rule of thumb is, you know, what I tell my Eastern European clients, because it's knowingly providing false information: 'If you don't tell me, then I'm protected. So I know you look like a duck and quack like a duck, but if you don't tell me you're a duck, then I'm protected.'"[107]

This lawyer learned from AILA to be cautious when speaking to clients, but he constructed his own understanding—from the workplace arena—of how to deal with the client who may be lying.

2. *Conflicts*

AILA also raises its members' awareness of certain other ethical issues, such as the prevalence of conflicts of interest. Immigration lawyers regularly confront conflicts of interest in their practice. As one lawyer explained:

> [E]very day is a conflict! It's a problem, the way the whole system is set up. For example, there are times when you're representing a husband and wife, and that's just the way it is in the practice, but really, you shouldn't. I mean, if it was any other part of the law, you wouldn't want them, you know, one attorney representing both parties. But it just has evolved, and that's the way [it has] become acceptable. So to me, I find it to be really a conflict, but two people aren't going to two different attorneys to prepare the paperwork for that.
>
> And the same thing with an employer and an employee, in terms of a visa. You're hired by the employer, but a lot of times you end up between the employer and the employee, and it's just—the system is problematic in that way.[108]

Conflicts of interest in business immigration practice are "inherent at the outset."[109] Both the sponsor/employer and the beneficiary/employee have an interest in the employee obtaining permission to work in the United States, but their interests are not always perfectly aligned. For example, the foreign national may have personal information she does not wish to dis-

107. Interview with Attorney # 12 in Manhattan, N.Y. (Aug. 9, 2006).

108. Interview with Attorney # 32 in Manhattan, N.Y. (Aug. 28, 2006).

109. Cyrus D. Mehta, *Finding the "Golden Mean" in Dual Representation*—Updated, IMMIGR. BRIEFINGS 1, 3 (Aug. 2006). As noted, conflicts can also arise in the family immigration context. For example, a lawyer may represent a married couple in an effort to obtain legal residence for a non-citizen wife, based on the husband's legal immigration status. If marital problems arise, the husband may no longer wish to sponsor the application for his wife, creating a conflict. Or the wife may advise the lawyer that the husband has abused her, which may provide a basis for her to self-petition to obtain legal residence, but could threaten the husband's immigration status. *See* N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Formal Op. 761 (2003).

close to the employer, such as a prior conviction. Alternatively, the employer may become uncertain about whether to proceed with the hire, or later in the process, whether to terminate the employee. Questions then arise as to whether the information conveyed to the attorney may, or must, be disclosed to the other party and whether the attorney can provide advice to each party.

Ideally the employer and the employee/beneficiary would have separate counsel, but as a practical matter, that almost never occurs.[110] As one lawyer noted, "I think if they ever quantified how you were supposed to resolve it we'd all be dead because we can't do it. The nature of the practice is such that you're representing two interests at the same time."[111] This happens for a variety of reasons. The foreign national may be overseas or may be unable to pay for counsel. Alternatively, the employer may be unwilling to pay for a lawyer in order to hire the foreign national. In such cases, the employee rather than the employer pays the lawyer, even though the law requires that the employer apply for the benefit.

One attorney described the problem as follows: "It starts to become a little confusing. Who is your client? This is an age-old question in immigration law: Who's your client? And what do you do when there's a conflict?"[112] Another lawyer explained the problem as follows:

> Usually where the conflicts arise is with the dual representation situation, where I'm already representing the employer. I'm already representing the employee. And then the employee starts asking me questions: "What happens if I leave and find another job? What happens to my green card application?" And I had that happen to me . . . I was like, "What do I do? Do I answer her?" Obviously, she's entitled to an answer, but then, do I now have a duty to disclose to the employer that this person is looking for another job?[113]

A business immigration lawyer who had been practicing for eight years confessed, "[A]s you can tell, I have no clue who's my client."[114]

AILA has sought to bring this issue to the attention of its members,[115] and it appears to have succeeded. When I asked lawyers whether they ever

110. *See, e.g.*, Austin T. Fragomen & Nadia H. Yakoob, *No Easy Way Out: The Ethical Dilemmas of Dual Representation*, 21 GEO. IMMIGR. L.J. 621, 621 (2007) ("Given the nature of the immigration practice, practitioners end up representing both the sponsor and the beneficiary . . . .").

111. Interview with Attorney # 60 in Manhattan, N.Y. (Sept. 19, 2006).

112. Interview with Attorney # 16 in Manhattan, N.Y. (Aug. 11, 2006).

113. Interview with Attorney # 22 in Middlesex County, N.J. (Aug. 16, 2006).

114. Interview with Attorney # 60 in Manhattan, N.Y. (Sept. 19, 2006).

115. The seminal article on this issue was published by Bruce Hake, Assistant Editor of *Interpreter Releases*, who later became chair of the Ethics Committee of the Washington D.C. AILA chapter. Bruce A. Hake, *Dual Representation in Immigration Practice: The Simple Solution Is the Wrong Solution*, 5 GEO. IMMIGR. L.J. 581 (1991) [hereinafter Hake, *The Simple Solution*]. The topic was a part of AILA's annual conference proceedings that year. Bruce Hake, *Publications*

encountered ethical issues in their practice, many of them immediately cited to this conflict of interest. Not surprisingly, lawyers often turn to AILA for the answer. One lawyer recalled:

> So the first time it came up, I did get on to AILA, because it was an ethical question. . . . I went to a mentor. I didn't want to post it on a message board. I went directly to a mentor, because it was a question of my obligation as an attorney: How do I handle this? You know, I represent both parties! And I got very good advice back, and that's pretty much the strategy I've been following.[116]

Another lawyer, when asked where he learned to have both clients sign the retainer agreement, answered, "[I]t would have come somewhere from AILA, maybe a publication of theirs, that [said], 'you should do that, and here's a format for it.'"[117]

Yet many of the lawyers did not feel like they received clear guidance from AILA about how to proceed. One lawyer explained:

> A: [I]t's a very tricky issue. . . . And every time I go to conferences, and there'll be ethics seminars—"Oh, great, I'm going to go to this." And the bottom line is: Yeah, this is a problem! But there's never any, like—
>
> Q: Good solutions?
>
> A: —"Here's what is the best thing," yeah. So I don't think there's any good answer.[118]

Another lawyer recalled, "[T]here's an ethics CLE on this and there's no resolution to it."[119]

In fact, AILA did not communicate a clear message about how this conflict must be handled. In a 2004 AILA publication that was distributed to all members, the author noted "in all immigration cases involving a petitioner and a beneficiary, the lawyer has a lawyer-client relationship with both . . . ."[120] The author went on to suggest:

> All parties should be advised in writing regarding the nature of the representation, what will happen in the event of conflicts, and what is expected regarding confidential information. In particular, it should be explained in writing that representing two parties si-

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and Professional Activities, BRUCE A. HAKE, P.C., http://www.hake.com/pc/pub.htm (last visited May 3, 2011) [hereinafter Hake, *Publications*]; *see also infra* note 120.

116. Interview with Attorney # 25 in Manhattan, N.Y. (Aug. 17, 2006).

117. Interview with Attorney # 42 in Manhattan, N.Y. (Sept. 7, 2006).

118. Interview with Attorney # 1 in Manhattan, N.Y. (July 28, 2006).

119. Interview with Attorney # 2 in Manhattan, N.Y. (July 28, 2006).

120. Bruce A. Hake, *Dual Representation in Immigration Practice*, *in* ETHICS IN A BRAVE NEW WORLD: PROFESSIONAL RESPONSIBILITY, PERSONAL ACCOUNTABILITY, AND RISK MANAGEMENT FOR IMMIGRATION PRACTITIONERS 28, 28 (AILA ed., 2004) [hereinafter Hake, *Dual Representation*]. Reportedly 8000 copies of this publication were distributed to all AILA members. *See* Hake, *Publications*, *supra* note 115.

> multaneously in one matter requires the lawyer to disclose information and to be equally loyal to both parties.[121]

But while most AILA publications and CLE presenters warned that business immigration lawyers were likely engaged in dual representation, they simultaneously acknowledged that not all lawyers agreed with this view.[122] Moreover, even if there was dual representation, the commentators' understanding of the lawyer's duties to both parties differed.[123] Shortly after the study, Austin Fragomen, a well-known commentator, suggested that "[a] uniform approach to dual representation that fits all clients is untenable," because the degree of dual representation "depends on the clients, the types of immigration matters they pursue, and how legal counsel is obtained and given."[124]

Thus, AILA members were free to construct their own understandings of how they should respond to this problem and their approaches vary greatly. Some lawyers adopt the "simple solution," maintaining that the employer is the sole client.[125] One lawyer explained:

> [You hear] this kind of thing at the conferences, they'll go right down the straight line of, "My client is the employer; I'm going to tell the employer everything, I'm going to make sure the employer doesn't have any trouble," and then they'll kind of whisper: "Because it's the employer who will sue you if there's a problem. . . ."[126]

A few lawyers said that they represented whichever party paid them. Many lawyers maintained that they represented both the employer and the em-

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121. Hake, *Dual Representation*, *supra* note 120, at 28. Other sources, including the publisher of *Interpreter Releases*, were also advising lawyers to obtain written and informed consent in dual representation situations. Laurie Joyce, *Ethical Issues for Immigration Lawyers*, IMMIGR. BRIEFINGS 1, 15 (Oct. 1998).

122. *See, e.g.*, Hake, *The Simple Solution*, *supra* note 115, at 582–84, 587; Mehta, *supra* note 109, at 4; Kristina K. Rost, *Managing Ethical Conflicts in a Business Practice*, *in* IMMIGRATION AND NATIONALITY LAW HANDBOOK 2006–07, at 38, 41 (AILA ed., 2006).

123. For example, one AILA commentator recommended a "golden mean" approach, in which dual representation is offered, but representation of one of the parties is expressly limited, if necessary. Mehta, *supra* note 109, at 5–7. Thus, for example, if the lawyer attempted to provide joint representation to an employer and a foreign national, it would be disclosed that the representation of the latter would be limited to obtaining the H1-B visa and that there would be no further representation once the visa was obtained or if the employee wished to consider options beyond H1-B status. *Id.* at 6.

124. Fragomen & Yakoob, *supra* note 110, at 636–37. By way of example, they note that there are corporate clients that control communication with the foreign nationals so that the employee has no direct contact with the attorney. They assert that this precludes the formation of an attorney-client relationship. *Id.* at 637. On the other end of the spectrum are foreign nationals who drive the immigration process and attorney communication is primarily with the foreign national.

125. The "simple solution" is "the practice of regarding an alien as a nonclient in a situation where, as a matter of law, a lawyer is actually conducting a dual representation of the alien and another client, who is seeking an immigration benefit for the alien." Hake, *The Simple Solution*, *supra* note 115, at 585.

126. Interview with Attorney # 16 in Manhattan, N.Y. (Aug. 11, 2006).

ployee, regardless of who retained them. Some take a case-by-case approach. As one experienced lawyer explained:

> I don't have as solidified an approach as I probably should have. Clearly, the corporate clients that I represent all the time—because I represent a couple of major law firms—I mean, there it is very clear. But then you have the situations, the foreign national comes to you.
>
> They hire you, but, I mean, there are some lawyers that I think take the position that they only represent the employer, and they let everybody know that, and that's it. But I am not so sure that that really completely insulates them, if someone really goes so far as to sue you for malpractice, or report you to the bar association.
>
> So I do make decisions somewhat on a case-by-case basis, and probably should have some more clear rules in place. It is sometimes difficult, because a lot of the rules are muddy.[127]

AILA's failure to take a stronger stance may reflect the disparate views and positions of its membership; business immigration lawyers have very different clients with very different needs, which may yield different responses.[128] Or it may indicate that bar associations cannot maintain credibility if they espouse positions that are deeply at odds with lawyer self-interest and the norms of legal practice. But as a result (or perhaps, inevitably), lawyers construct their approaches to this ethical issue based upon their own interests and sympathies in any given case.[129] For example, one lawyer explained the problem that arises when the foreign national is paying the fee:

> [T]he employer is your client, too. So, how you keep a balance on what you tell one, and what you tell the other, and how you balance that relationship, too, because . . . I don't want to piss off the employer, because I know that the employer, he's probably going to hire me, or he's going to refer other employees to me in the future.[130]

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127. Interview with Attorney # 31 in Manhattan, N.Y. (Aug. 22, 2006).

128. For example, some lawyers may represent Fortune 100 companies and only deal with foreign nationals through the company's human resources department. Others may be hired by foreign nationals already in the U.S. who are seeking to change jobs or to become employed by a small business.

129. Donald Langevoort suggests that where there is ambiguity about what is "right," people will often subconsciously construe the situation in a self-interested fashion. Donald C. Langevoort, *Taking Myths Seriously: An Essay for Lawyers*, 74 CHI.-KENT L. REV. 1569, 1588–90 (2000).

130. Interview with Attorney # 39 in Manhattan, N.Y. (Aug. 21, 2006). Since mid-2007, the Department of Labor has prohibited employers from accepting payment from employees for certain of the employers' attorneys' fees associated with the immigration process. 20 C.F.R. § 656.12(b) (2007). Nevertheless, there is evidence that this practice still continues.

Another lawyer, when asked who her client was when the employer was paying, stated:

> [I]t's really difficult for me to answer. Who do I talk to more often than not . . . ? [The] employer. . . . [F]or example, this huge shipping company—we do hundreds of applications for this company a year—if I had to talk to each and every single [employee] I'd kill myself. . . . So, for the most part, I talk to the HR director and that's that. . . .
>
> However, if these kids do e-mail me to ask about the status of their application or what's going to happen if they go home and get married—the HR girl wants me to say, "Listen, send your question to [the HR person] she'll take care of it," but because I have that—that, you know, everybody has to be happy with me and everybody has to like me problem—I respond to them anyway. Because, you know what? This guy might leave or . . . have a friend and, you know, I have too much work to handle right now but, you know, you can never have enough work.[131]

As a consequence, even though most of the lawyers were well-aware of the potential conflict, they rarely provided both the employer and the beneficiary with a written explanation of the terms of the representation or the possibility of a conflict. While a few lawyers did have a retainer agreement or other document stating whom they considered to be the "client," or that it was a dual representation situation, the lawyers typically did not clearly articulate to both parties how information obtained from either of them would be handled in situations where their interests diverged. A few lawyers reported that they would orally explain their approach to handling communications from both parties at the outset of the representation, but this was the exception and not the rule. More often, the lawyers addressed the issue if and when it arose.

This approach is problematic, because most clients are unaware of the professional rules providing that information disclosed by one client in a joint representation will ordinarily not be kept confidential from the other client.[132]AILA's failure to communicate a single required approach to this common conflict may contribute to the feeling among some lawyers that their failure to have a well-conceived approach to the problem is acceptable—or at least excusable.

IV. Specialty Bars as a Site of Professionalism

Many immigration lawyers derive and construct their understanding of what it means to be a professional, in part, from membership in AILA.

131. Interview with Attorney # 60 in Manhattan, N.Y. (Sept. 19, 2006).

132. The theory underlying these rules is that no privilege exists between joint clients and the lawyer owes an equal duty of loyalty to both clients. *See, e.g.*, Hake, *Dual Representation*, *supra* note 120, at 35; Restatement (Third) of the Law Governing Lawyers § 60, cmt. 1 (2007).

AILA is one of the communities of practice that "help[s] shape and [is] shaped by the conduct and values of individual attorneys."[133] But AILA is not a monolith that espouses values to its membership that are then dutifully incorporated into lawyers' work lives. Rather, it is one of the sites where individual lawyers construct the norms and values that guide them in their work.

The conditions of immigration practice no doubt contribute to the importance of AILA to its members. The fact that these lawyers do not litigate or negotiate against one another—and share a common opponent—creates conditions conducive to cooperation within that bar. The constantly changing law makes information sharing with other lawyers important, and fosters reliance on the information flow generated by AILA. Their perceptions that they work in a harsh—and even unfair—legal system causes them to reach out to one another for professional and emotional support.

The fact that solo and small firm practitioners predominate in the immigration field may also create the conditions for a successful and collegial specialty bar. Generally speaking, lawyers in larger firms may rely heavily on office colleagues for information and for their understanding of professional norms. But many immigration lawyers are the only ones in their firms or office-sharing arrangements who practice immigration law. For such lawyers, AILA helps to provide collegial support not otherwise readily available. Indeed, membership in AILA seemed especially important for lawyers who worked on their own. As one solo lawyer who attended almost every monthly AILA meeting explained:

> See, the thing is, again, I'm my own boss! I don't have anybody—I have to try to collect information here, you know, and see if my thoughts and my solutions to a problem is something acceptable, or if I'm totally off the wall! You know, you don't know, 'til you talk to somebody about certain things. My approach may be really smart, or might be the dumbest thing ever. So yeah, sure, you need that.[134]

Another solo lawyer said of AILA: "We support each other. It's really necessary! You just can't do this kind of stuff alone. It's just too hard, I think. You could really miss a vital, vital piece of information that could really hurt your client. . . ."[135]

This study raises the question of whether other specialty bars are equally important to their members and their construction of professional norms and values. Although many immigration lawyers believe that their bar is unique, it shares certain similarities with other practice specialties in which solo and small firm lawyers predominate. Notably, personal injury lawyers generally do not oppose one another in court, and they share a

133. MATHER ET AL., *supra* note 13, at 14.
134. Interview with Attorney # 19 in Manhattan, N.Y. (Aug. 15, 2006).
135. Interview with Attorney # 14 in Manhattan, N.Y. (Aug. 9, 2006).

common enemy: insurance companies. Personal injury lawyers also belong to a very collegial specialty bar association, the American Association for Justice, in which there is a great deal of information sharing.[136] Criminal defense lawyers, like immigration lawyers, work in a system they consider unfair and they share a common opponent: the Government. Criminal defense attorneys also have a well-established specialty bar, the NACDL, which provides services similar to AILA.[137] Closer examination of these specialty bars, and other bars such as the tax bar (whose members do not litigate or negotiate against each other) and the family bar (which is composed primarily of solo and small firm lawyers) may shed light on the characteristics that can make specialty bars an especially influential site of professional learning.[138]

This study also raises the question of whether it is possible for the leadership of specialty bars to do more to positively affect the professional norms and values of its members. As noted, notwithstanding its members' generally favorable views of AILA, their receptivity to AILA's official messages is mixed. AILA members are positive about the training that teaches them the nuts and bolts of practice. And AILA's constant updates through the InfoNet convey the importance of staying up to date with changes in the law. But ethics training that focuses on "the rules" without sufficiently acknowledging the realities of practice may have more limited success.[139] Real-life cautionary tales *(e.g.*, the "hidden microphone") may be a more effective way to sensitize lawyers to certain ethical issues. It is important to note, however, that sensitizing lawyers to ethical issues is not the same as teaching them to resolve them appropriately. On the contrary, training that identifies an ethical problem but provides ambiguous messages about acceptable responses leaves individual lawyers free to construct their own self-interested approaches.

CONCLUSION

Specialty bars serve not only as a site where lawyers' norms and values are constructed, but they also create a forum where like-minded lawyers come together and at least occasionally consider their relationship to the

136. *See, e.g.*, Kilpatrick, *supra* note 2, at 512–15, 519; Levin, *supra* note 6, at 592, 597–99.

137. *See, e.g.*, *News and the Champion*, NAT'L ASS'N OF CRIMINAL DEFENSE LAWYERS, http://www.nacdl.org/champion.aspx (last visited May 5, 2011) (publication offering news and articles tailored to the practice of criminal defense).

138. It seems likely, for example, that open membership specialty bars—as opposed to elite specialty bars that select its members—will have a greater influence on lawyers who practice in those specialties. Open membership specialty bars typically include more members of the legal community and therefore can communicate directly with more lawyers. These specialty bars are also more likely to reflect the mainstream norms of the practice specialty and not the elite norms, which may promote more "buy in" from its members. In addition, specialty bars that select members based on existing expertise do not recruit, mentor, or socialize new lawyers. *See* Kilpatrick, *supra* note 2, at 552, 555.

139. *See supra* notes 85–86 and accompanying text.

legal profession at large. One final question, then, is how specialty bars affect lawyers' views of the larger profession and of themselves as members of that profession. Lawyers in certain specialties have—at least occasionally—been at odds with the larger organized bar since the early twentieth century.[140] Indeed, some specialty bars were created precisely because lawyers in particular fields were looked down upon by the rest of the bar. At times, the divide between specialists and the larger bar was so great that a sense of alienation was palpable.[141]

The immigration bar example suggests, however, that specialty bars do not necessarily have a distancing or negative effect on its members' views of the profession at large. This is somewhat surprising, since immigration practice really is sui generis in certain respects. Immigration lawyers work in relative isolation from lawyers in other practice specialties. They rarely read the *New York Law Journal* and some belong to no bar association except AILA. Immigration lawyers have traditionally ranked low in the profession's status hierarchy[142]—perhaps unfairly. Yet neither AILA's official rhetoric nor the statements made in interviews suggest that immigration lawyers resent the larger organized bar or resist its values.[143]

Indeed, as Judith Kilpatrick observed, there appears to be a unity of vision among legal practitioners who otherwise have little in common, probably due, at least in part, to shared training in law school, concerns about professional prestige, and the need for self-protection.[144] She notes that particularly a bar association such as the American Association for Justice, whose members suffer from low prestige, "needs the company of the rest of the profession to help withstand criticism and attacks."[145] The same may be true for AILA. Specialty bars are also interested in protecting their business interests and, "[a] shared definition of the role of the legal profession presents a monolithic defense against attacks on lawyer monopoly of the practice of law."[146]

Certainly immigration lawyers benefit from their association with the rest of the legal profession in these ways. But it is important to note that immigration lawyers' identification with the larger profession's values is

140. For example, elite bar organizations sought to create rules that limited the business-getting activities of the personal injury bar. *See, e.g.*, AUERBACH, *supra* note 7, at 41–50; GEORGE MARTIN, CAUSES AND CONFLICTS: THE CENTENNIAL HISTORY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 374–76 (1970).

141. *See* Ted Schneyer, *Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct*, 14 LAW & SOC. INQUIRY 677, 710–13 (1989); King, *supra* note 8 and accompanying text.

142. HEINZ ET AL., *supra* note 1, at 86–88.

143. In contrast, this may not be as true of members of the NACDL, *see supra* note 8 and accompanying text, or the personal injury bar, which for many years was the target of the elite bar. AUERBACH, *supra* note 7, at 46–50.

144. Kilpatrick, *supra* note 2, at 561.

145. *Id.* at 562.

146. *Id.*

not simply strategic—it goes much deeper than that. Immigration lawyers—or at least AILA members—genuinely share with other lawyers the desire to practice competently. They are staunch advocates for their clients. They will not knowingly facilitate a client fraud. Most important, although the challenges they face may be different than those encountered in other practice specialties, they share the desire to be a "good lawyer."