Remarks by Honorable Frank M. Coffin,
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for the First Circuit,
at the Honorable Morell E. Sharp Memorial Luncheon
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# The Law -- A Humanistic Profession?

In 1983 I do not think many lawyers, professors or judges were concerning themselves with the future of their profession. One would carry on pretty much as his father and grandfather before him. But today the pace of economic, cultural, and technological change since the 1960's has put all the major occupations on the block -- education, medicine, industry, agriculture, government, and, not least, the law. To speak of change is an understatement. Mutation is nearer to the truth. I propose that we take a few minutes from this conference to try to see where we of the legal profession are heading, whether we like what we see, and what, if anything, we can do about it.

The futurology of the law is already a flowering field, with at least a dozen states having undertaken studies in the past five years. Conferences, essays, statistical surveys, committees, task forces have addressed five major areas: how to increase and maintain competence; how to broaden accessibility to legal services; how to manage effectively; how better to insure integrity and good governance; and how to acquire a better public image. One aspect that is rarely mentioned is what, if anything, can be done to keep alive the highest if often elusive traditions of the law as a humanistic profession graced with breadth of vision, depth of emotional satisfaction, and height of civic aspiration.

Let us look at what already are two quite separate worlds of the law -- the world of the big, Megalawpolis, and the world of the small, Minilawpolis. Their continuing evolvement promises to create systems whose structure, purposes, and functions differ as much as do those of the right and left hemispheres of the brain.

First -- Megalawpolis. I come not to bury it but to describe it. Its world is urban, super urban. By definition the megafirm is large; it is headed for giantism. To some extent expansion is a response to a desire to realize economies of scale, to provide a full range of specialty services, to maximize profits, to provide a cushion of flexibility to meet emergencies, and even to accumulate the ready capital and extra personnel to open new branches.[1] But at bottom, client needs and desires are a major reason.[2] From June 1982 to June 1983 the largest ten firms added some 311 lawyers -- the equivalent of the eleventh largest.[3] Mergers multiply, and out of state branches have tripled. Firms with thousands of lawyers are already in sight. And, with some 300 schools turning out paralegals, their use by firms is ready for dramatic take-off.

Along with size, costs are on the escalator. People, space, equipment, and insurance. Beginning lawyers' salaries are already at the $47,000 mark.[4] New York office space is now

[1] Quintin Johnstone, The Future of the Legal Profession in Connecticut, Vol. 55 Connecticut Bar Journal, No. 4, August 1981, 256, 266. For many of my observations I am indebted to this groundbreaking article, in which Professor Johnstone reported on a study sponsored by the Connecticut Bar Foundation.

[2] Id., p.265.

[3] The National Law Journal, August 1, 1983, p.56.

[4] The National Law Journal, August 1, 1983, p.58.

renting at $57.50 a square foot.[5] The largest firms are now into third or even fourth generation computers and microcomputers for administrative tasks, calendar, docket, and conflict of interest systems, litigation support, research and instant communication between field and office; copiers, [6] video cassettes, electronic mail; and software guiding the crafting of deeds, contracts, leases, wills, trusts.

This steady, heady increase of numbers of highly paid lawyers, paralegals, and support staff in a high cost urban environment dominated by high technology spells increased pressure on the solitary mechanism for making all this possible -- the lawyer's fee for his time. Life tends not to be seen as a whole, or in terms of seasons, months, or weeks, or days. The vital unit is the billable hour -- not the inspired hour, the useful hour, the frustrating hour, the wasted hour, but the billable one. One partner I know bills 4000 hours a year with a straight face . . . . This is an 80 hour week, 50 weeks of the year. What concerns me is that this is an authentic total, absolutely accurate.

All this leads inexorably to heightened competition of a sort we have never experienced -- client hustling, marketing plans, raiding experts, acquiring the hottest rainmakers, dickering with corporate house counsel over annual budgets and fees. Headlines in national law periodicals read "Firms Turn to Selling Themselves", "Battle for Clients is Heating Up", "Future of the Practice: Survival of the Fittest". No longer are associates generally assured of partnership status.

Size, costs, fees, and competition all point in one direction -- that of the ascendancy of business management in law firms . . . as this very conference signals. Cost consciousness, systems, procedures, equipment acquisition and maintenance, personnel administration, recruiting methods, in-house training of secretaries and paralegals, continuing education of lawyers, collective bargaining, yearly partners' goal-setting sessions, advertising, public relations -- all of this is work that lawyers, usually allergic to bureaucracy and supervising others, are turning over to the new centers of power, bearing such job titles as general manager, managing director, business manager, facilities manager, personnel supervisor, administrator, or administrative partner.

If we were to settle on a satisfaction index on a scale of 1 to 10, I think we might find two groups. The leadership partners and the upwardly mobile young partners would still thrill to practicing law on the fast track at its sophisticated summit -- although I have to observe that not a few appellate briefs and arguments from megafirms seem to have been crafted by some invisible pygmies in the lair of the giants. For others, however, this elixir may have palled. Professor Quintin Johnstone in his survey of The Future of the Legal Profession in Connecticut[7] comments on some of the reactions he found:

> "Several of our informants [said] that they no longer had much pride in being lawyers and that they found growing market place practices to be disreputable and demeaning . . . . There is a trend toward clients being processed rather than counseled with warmth and understanding."

Young lawyers seem even more alienated. Megafirm is apt to be a dehumanized environment. Not only do the associates often have little sense of community, but they seldom have much to say about the way their firm is run or even about the handling of the cases to which

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[5] Christian Science Monitor, July 19, 1983.

[6] 69 A.B.A. Journal, August 1983, 1048, 1049. David L. Foster, The New Wave in Office Copiers Copiers Copiers.

[7] Vol. 55 Connecticut Bar Journal, No. 4, August 1981, 256, 298.

they are assigned. They see themselves increasingly as employees, not future partners. Women, especially women with children, seldom feel on the partnership track. Their satisfaction stems not so much from client contact or legal craft as from large pay checks and the perquisites billable to wealthy corporate clients.

The situation in Minilawpolis , in the middle-sized cities, smaller towns, suburbs, and rural areas of the country reflects the same forces. The number of lawyers is increasing in small and middle-sized America as much as in the huge cities. By the end of the this decade we shall have increased by one half from over 525,000 to 750,000, with a million lawyers by 2000, one for every 250 persons. For young people, one third of them women, still feel there is prestige, intellectual challenge, opportunity for socially significant service, flexibility, and adequate remuneration in the law. As we all sense, at least in the short run, many are headed for marginal practice or disappointment. The solo practitioner is an endangered species. In 1948, the year after I hung out my shingle (or had my name painted over a shoe store) 61% of all lawyers were solo practitioners. In 1980, only 28% were soloists.[8] The difficulties of starting up and maintaining an individual practice are awesome. In 1980 startup and first-year operating costs for a soloist in Connecticut were $33,000.[9] When one realizes that many a young law graduate is saddled with a $25,000 or $30,000 debt, the size of the problem becomes even more clear. In California and other states, the lawyer population in urban neighborhoods, towns, rural areas has dwindled. On the other hand, firms and corporate law offices are expanding in size.

Recently I talked to my own old bar association in Androscoggin County, Maine. I handed out a small questionnaire asking how each lawyer saw the future and whether it would be more satisfying or less. Here is what one lawyer, who answered "less", wrote. I think it is representative:

> "There is constant pressure from clients to become a larger firm, or to offer the services they offer. I expect this to make our practice increasingly impersonal. The impact on costs of operating requires billings and hourly rates to keep pace with costs. This will make us less able not only to provide services to low income clients, but also to 'carry' clients experiencing financial difficulties.
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> As firms get larger, I expect the level of dissatisfaction among solo-practitioners and 'small' firms to grow. I suspect that the cost of technology will quite possibly make them less able to compete with larger firms and may relegate them to 'low end' business."

What are we to make of this shape of things to come? If all the forces of size, specialization, costs, systems, competition, and fees are given their heads, the threefold answer is: increasingly sophisticated legal weaponry for the few; less accessibility for the many; and frustration and dissatisfaction for the practitioner. Against this drab possibility, the plea of American Bar Association President Morris Harell in the A.B.A. Journal for July takes on urgency:

> "[E]ven as we adjust to change, it is vital that we retain the essential personal dimension of service to the individual client, which is the hallmark of any true professional calling . . . . We

[8] Id., p.263 n.15.
[9] Id., p.272 n.29.

> must not permit the practice of law to become just another business . . . . [T]he essential role of the lawyer as adviser, counselor, teacher, and friend must not change. To preserve this role will require vigilance and discipline."[10]

What is missing for the practitioner is the opportunity to see problems whole as a generalist, to engage in the preventive and healing act of counseling; to enjoy a stable and emotionally rewarding relationship with clients. In a sense our problem is shared with other professions. Recently the highly respected dean of Harvard's faculty of arts and sciences, Henry Rosovsky, said:

> "When I look at the professions today . . . it is perfectly obvious that what is needed is not more technocracy, but more understanding of life in its varied dimensions."[11]

Is there any alternative? Is there any place for Humanism in the profession? I see quite a difference in the strength and inevitability of the forces bearing on Megalaw and those bearing on Minilaw. I suspect that the thrusts toward giantism can no more be controlled than could one stem the tide of supermarkets and shopping centers which remorselessly pushed out or down many a Mom 'n Pop grocery store. This does not mean that the lawyers in the superfirms need to forego all efforts to enhance the quality of life. In both hemispheres of the Iaw a deliberate effort can be made, in every firm and bar association, to preserve some claim of the law as a humanistic profession.

I once asked the Massachusetts Bar Foundation a series of questions along this line:

> "Is it not time to bring once again to center stage the view of the lawyer as the essential humanist in a technologically dominated society, as a centripetal force, helping shape and smooth the contours of change, as a see-er possessed of the broad view and the long view, looking backward whence we have come and forward where we should go? Cannot this be the focus for conscious self study by the profession? If we can develop useful insights about tax shelters and marketing strategies -- about how to do -- is it unrealistic to hope for insights about how to be and how to grow?"

Some of their replies I want to pass on to you. A solo practitioner in a small town stayed up beyond midnight, sacrificing part of a billable hour, to send me a quotation from the first secretary of the Smithsonian Institution, admirably encapsulating our theme: "Narrow minds think nothing of importance but their own favorite pursuit, but liberal views exclude no branch of science or literature, for they all contribute to sweeten, to adorn, and to embellish life." One lawyer in a mid-size firm suggested an office conference every Friday at 4:00 on anything but business or law. A woman lawyer in a legal clinic wrote that she felt many of her co-workers tended to be self-destructive or to have a low self-image. She suggested the therapy of “storytelling”, telling laymen just how lawyers had helped people in their various crises. A young lawyer suggested that the title "Counselor at Law" be used far more than "Attorney". A senior partner in a large metropolitan firm observed that there was indeed a great deal of lonely desperation, that much time was wasted in boring actions, that office parties and events could not replace "complete serenity or the happy practice of the law that some of us seek". He suggested

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[10] Vol. 69, A.B.A. Journal, July, 1983, Preserving Professionalism, p.864.

[11] Boston Globe, June 9, 1983, p.2.

that more effort be made to identify role models or exemplars. One young lawyer in a large firm, about to split off and form a two-person firm, hoped to carry on with the same high standards, but also, as he said, to try to fit the description of "the lawyer as 'the essential humanist in a technologically dominated society'".

These responses, not very concrete, reveal a widespread interest in investing life and law practice with broader perspectives, more attention to counseling wisely, adding the insights of the generalist to the devices of specialist. Even large firms can respond to this interest. I know one firm where the different specialties regularly and frequently sponsor luncheon programs, with nearly full attendance from the rest of the firm -- a way of simulating the breadth of experience of the generalist. There are other firms where the retired partners are sought out, not so much to learn their solutions to current client problems as to acquire from them a sense of continuity and tradition, and a feeling of what a lawyer should be. Some leading firms now offer their associates an impressive array of courses and seminars in litigation techniques. Perhaps the time has come for them to devote equal time to the quieter and less combative advisory and counseling techniques that may not only forestall litigation but also serve the client better. Counseling, given some determination and persistence, can be restored as the glory of the profession, perhaps less seductive than her sister Litigation, but far more reliable.

I have no doubt that, if the preservation of nobility, spaciousness, serenity were considered to be an important value, lawyers, firms, and bar associations could devise many useful approaches. Some already are being pursued at a number of large and mid-size firms -- sabbaticals, lawyers in residence at law schools, academicians and judges in residence at law firms, non-vocational seminars and retreats, videotaped oral histories and biographies, ideas for law firm and bar meeting programs.

This effort to keep a place for the humanist, individualist, generalist should take place in both the large and smaller legal communities. So also should opportunities be seized in such meetings as this not only to see what the latest in management techniques has to offer lawyers and law firms, but to get a sense of what one does not need to have, to buy, to systemize. Both large and small firms need to know both what they need and what they do not need. What they do not need is the Sorcerer's Apprentice in Paul Dukas' symphonic poem -- a potentially helpful assistant who becomes so helpful that he inundates, overwhelms, and devastates his master with his helpfulness.

In Megalawpolis the forces of technology, specialization, size and costs may mean that the struggle to preserve humanism must be content with such interstitial efforts to create oases of repose and reflection. But in Minilawpolis, the structural outlines of the future are not yet so rigidly established. The compulsions of size are not universally inescapable.

In other words, in states like Washington there is yet room to move, to experiment, to innovate, to try to find ways to combine quality law with quality life on a smaller, that is to say more human scale. For, just as bigness is no guarantee of quality, smallness need not be inconsistent with high standards. Here there is still a chance to influence the development of new firms and combinations of practice, new groupings of both lawyers and clients. The Census Bureau projects a 40% increase in population for this state by the year 2000; there is no better time to prepare to deal with such growth than now. The effort, if successful, will accomplish two supremely important goals -- not only the preservation of the law as a continually satisfying profession but increased accessibility to that profession by the non-wealthy segments of our society.

The leadership in such a future shaping enterprise should be broadly shared by all parts of

the profession. Bar foundations, lawyers, and firms, mega, median and mini, can help generously in the financing. Law schools can devote their considerable intellectual and research capacities. And bar associations can provide the vehicle for focused studies, the development of consensus, and the implementation of legislation, regulations, experiments and pilot projects. The effort is not a one-shot affair – a report issued in a flurry and then laid on the shelf; it should be an ongoing activity.

Here are some of the areas of possible inquiry.

-- The first area is solo practice. How can it be preserved? What kinds of legal services can an individual expect to render -- in high quality? What kinds of continuing education are the most useful for the individual? Should law schools play more of a role in the continuing education of the profession? Are there ways in which solo practitioners can share space, library, computers, and support staff? Can law schools sponsor low-rent facilities for young lawyers with library and faculty consultation available? What are the gaps between service and need? Should there be some financial assistance or incentive to induce young lawyers to go back to rural areas? Should firms, individually or in groups, sponsor rural circuit riders with scheduled office hours, or even small branches? What about the suburbs and urban neighborhoods? According to the Census Bureau, the number of people living in places with fewer than 50,000 inhabitants increased 30 percent in the 1970's while the populations of the biggest cities grew only 1.9 percent.[12]

Should firms, large or small, share space and support facilities with public interest law practices? What kinds of specialists should a solo practitioner associate with? What are effective combinations of skills in a rural area? in a town? in a middle sized community? Should certification of specialists and referrals to them be encouraged? and fee-splitting allowed? Could lawyers associate statewide under a common logo or symbol, with ability to draw on specialized services of a large firm?

-- A third area s the small firm. How can it best survive? What are optimal ranges of numbers of lawyers, paralegals, other staff in towns, middle-sized cities? What is the best evidence as to balance among specialties, investment in technology, delegation to paralegals? What combination of skills seems most responsive to needs?

-- Finally, access to legal services. How can middle and lower income group persons obtain adequate legal service on both a preventive and crisis basis? Should we obtain more experience with legal clinics, both closed and open panel prepaid legal insurance, bargain basement law store service, judicare schemes, legal advice as part of a one-stop package service at counseling centers, pro bono branches of one or a group of large firms? Can networks of small law offices efficiently serve members of prepaid plans? What parts of the spectrum of legal services can adequately be provided by non-lawyers? And, without settling for second-class quality, what kinds of problems can well be resolved outside the court system entirely? What can we learn from European countries where, despite industrial, governmental, and legal complexity, the small grouping or solo practitioner remains typical?

Here then, in Minilawpolis, is where the profession will double in the next twenty years. Here is where all those live who are not big corporations or wealthy persons and who are increasingly unable to afford the legal services they need. Here is where all these people want to be – where the challenge is to make the quality of law practice match the quality of life.. Here also is where the forces of industry, costs, bigness are not yet so strong that structure is

[12] Christian Science Monitor, July 11, 1983, p.3, New census means 1,000 new mailboxes for Crab Orchard.

foreordained. And here is where there is the possibility for the most creative and fruitful work that any bar association of any state has ever faced: how to keep the practice of law a humanistic profession on a human scale.