The Androscoggin Bar -- Past and Future

(Address of U. S. Circuit Judge Frank M. Coffin to the Bar of Androscoggin County, Martindale Country Club, May 23, 1983)

Only one who has moved away from his home community can appreciate what place it holds in the expatriate's heart. In my case all of my growing up was done here, all of my undergraduate schooling, my baptism in the law, virtually all of my community service, and all of the building of my political life. In a sense, just like philosophers after Plato, every other place I have lived and worked has merely supplied the footnotes.

To this bar, which I joined 36 years ago this summer, I should make the confession of any returning long-absent native son: the Androscoggin Bar is forever as fixed in my mind as would be a group photograph taken at a particular time. In the center of the front row is pipe-smoking Supreme Court Justice Harry Manser who admitted me to your company. Next are Frank Linnell and Don Webber who, as elders at the bar although only in their early 40's, encouraged me to start my practice here, since there was a lack of young lawyers. On the other side of the Justice are the Cliffords, John D., Jr., who asked me to clerk for him, and taught me that so much more than scholarship went into the making of a lawyer and judge, and his brother Bill, whose massive bulk and bulldog face radiated the simple integrity of the man. Then the fabled Bermans, Ben the consummate trial lawyer and David the constant student -- a combination very much like my grandfather, Frank A. Morey, and his more oratorical partner, Daniel J. McGillicuddy.

The analytical, tactical, and courtroom powers of these lawyers were first rate. I usually compare the best advocates who appear before my court rather unfavorably to the top products, of which there were more than a few, of the Androscoggin bar. All, without exception, were unfailingly generous in helping me avoid mistakes, even more appreciated; helping me correct mistakes, and helping me do better next time. But once in court one did not ask for favors. In my early days the moisture behind my ears rather rapidly disappeared after encounters with or against these titans and Foxy Frank Powers, the resourceful and durable John Marshall, the indefatigable John Platz. The model of wise, long headed counsellors was provided by such sages as W. B. Skelton and Peter Isaacson . . . and quintessential sense and good humor by such as Blackie Alpren and the apparently immortal Harold Redding. Free advice and help always were to be cheerfully obtained from our judges -- municipal, probate, superior, supreme -- from Adrian Cote, Fern Despins, and Harris Isaacson, to Don Webber. I must always put in a special niche my first office sharer, mentor, and support, one of our first and valiant women members of this bar, Marguerite L. O'Roak.

Some of those I've mentioned happily still survive and thrive. To a remarkable extent there is a second and even a third generation of many. Bermans, Cliffords, Delahantys, Cotes, Linnells, Webbers, Isaacsons, Skeltons, and Traftons continue to flourish. And there is a lively if dwindling coterie of my contemporaries in the second row of this photograph -- Justices Dufresne and Delahanty, Scolnik and Scales, Eddie Beauchamp, Irving and Philip Isaacson, Bill Trafton, Irving Friedman, and such youngsters as Curtis Webber , Paul Cote, and Larry Raymond.

Others, both living and dead, I have not intentionally omitted but only because the constraints of time force me to draw only an impressionistic sketch. But that impression is of a bar of highly competent and dedicated professionals, respecting their colleagues and the court,

superbly serving their clients, both rich and poor, giving much to their community, and in general having the time of their life -- every day.

This view of this bar in the late 40's and early 50's is undoubtedly a rose-colored one. But that's the way I want to leave it. The more important if perhaps less rose-colored task is to look ahead. I want to share some of my thinking with you about both judges and lawyers. At the end, if you don't think it an imposition, I'd like to solicit your help.

After seventeen and a half years of judging, I am, like most judges, concerned about our ability to do our work at the high quality level all are entitled to receive from courts and yet keep pace with the remorseless tide of litigation. In 1965, when I joined our court, our three judges disposed of 200 cases a year. Now, with four judges, our annual caseload is near 1200, more than a six-fold increase. So far we have not reduced our standards, which I regard as high, not because of any intrinsic superior ability on our part but because we are a small court, intimately know each other professionally, take time to discuss and compose differences if possible without sacrificing principle. We have, accordingly, much the lowest rate of dissents of all the federal appeals courts. We have written far more published opinions per judge than have the others. We also can point to much the lowest rate of reversals of all such courts. Between 1975 and 1980, reversals of First Circuit decisions by the Supreme Court were by far the lowest in the country: 29 per cent of our cases which were reviewed were reversed, compared to 42 per cent for our closest runners-up, and 75 to 80 per cent for the most reversed.[1]

What chills me is the contemplation of an ever-increasing caseload. Not only does this in itself strain our energies which on the whole are operating at their maximum, but the rush to cope with this problem involves diluting the very deliberativeness of appellate review which justifies the system. Equally important, there looms the unpleasant possibility that judges will lose their pride and sense of creativity in reflection, research, and careful writing.

Beyond a certain point, the elimination or further restriction of oral argument and summarily deciding simple cases will begin to erode the quality of justice. Certain institutional changes, such as procedures for pre-appellate argument conferences to simplify issues and explore settlement and wider resort to mediation and other out of court dispute resolving methods have significant, if limited, promise. Other such changes carry with them their own costs, such as giving appellate courts the discretion not to accept certain appeals, transferring all diversity cases to state courts, and establishing more specialized courts.

Just beginning to be talked about are the taxing of costs and attorney's fees to the loser, as is done in England, and taxing costs and attorney's fees to counsel who bring an unwarranted appeal. Although these latter steps may seem harsh, they may make sense. If, as I think, and as Cardozo observed 60 years ago, three fourths of all appeals would be decided the same way no matter what the ideology, background, or judicial philosophy of judges, it ought to be possible for astute counsel and his or her colleagues to identify at least the most obvious of such cases. If so, it may not be unfair to subject the losing side of such cases to rather draconian sanctions.

Talking about such remedies brings us back to where we should be -- you, the bar. As we approach the end of the 20th century, it is clear that many professions and occupations face the deepest currents of change. Education, medicine, industry, and both your and my sections of the legal profession. It seems to me that this active bar in this busy but not metropolitanized center of the state has something to contribute. But I am not sure that you are being observed; that your experience, expectations, aspirations, and apprehensions are being gathered for consideration.

My chief impression of the legal profession these days comes from reading various bar

[1] The National Law Journal, May 9, 1983 (Vol. 5, No. 35), pp. 1, 24-25.

journals and such weeklies as The National Law Journal. Here I read such headlines as "Firms Turn to Selling Themselves", "Battle for Clients is Heating Up", "275 Lawyers and Growing; Building a National Law Practice Through Mergers", "Hidden Costs in Buying a Computer", "Compensation Packages for Firm Administrators". An article entitled "Future of the Practice: Survival of the Fittest" discusses the profit squeeze, increased competition, and the impact of technology in making law practice capital intensive. It underscores the need for a marketing plan, systems and operators to "avoid burnout and encourage enthusiasm", development of an "entrepreneurial attitude" (as opposed to an insistence on "quality of life"), fiscal management, and long range planning. Advertisements sing the praises of low cost legal software, legal data and litigation support systems, office automation, word processing magnetic media for wills and trust agreements, the lawyer's microcomputer, not to mention a full page ad of Arabian and Paso Fino horses as investment opportunities for surplus funds.

The Annual Institute on Law Office Management lists as workshop leaders such new centers of power in a law firm as Managing Director, General Manager, Executive Director, Business Manager, Personnel Supervisor, Coordinator of Word Processing, Administrator, Director of Administration, Legal Administrator, Facilities Manager, Administrative Partner.

Reading about this world made me pause and look ahead a few years. Just under a month ago, I spoke to the alumni of Northeastern Law School on the occasion of the dedication of a fine new building facility, Cargill Hall, and asked them to accompany a descendant of Swift's Lemuel Gulliver as he surveyed the state of the practice of law fifty years hence. I entitled this extravaganza "Gullible's Travails".

Young Gulliver, reared on Nantucket, has visited several of the smaller Boston firms such as Ropes, Dorr, and Hall, and Foley, Proctor, Ely, and Barlow. He now, in 2033, visits the largest. This is how he described his visit:

> This was a multi-ethnic conglomerate formed by Antonio Brob, Jacob Ding, and Cuthbert Nag. It was called Brobdingnag, a Professional Corporation. I was given a tour of the firm by an assistant to a junior associate paralegal. It was only a 20 minute tour because that eats up the $250 budgeted for such remote recruiting possibilities as me. But what I saw was impressive. Each floor of the 50 was arranged something like a department store, with clusters of cubicles surrounding their own computer complex and word processing center. Signs overhead said "Building Code Violations", "Anti-Environmental Defense Unit", "Litigation Stonewalling Strategy Coordination", or "Tender Offers - Shark Repellent Division". A pneumatic walkway whisked me to the Discovery Warehouse where hundreds of associates were working away at interrogatories. My guide was very proud of the library. There were, of course, no books but it had a law dictionary and 500 carrels where operators were silently punching away, getting printouts of statutes, regulations, cases and treatises.
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> As I walked along a corridor, I saw a more senior associate sitting behind his desk. He looked friendly and I begged his pardon and asked him how he liked being with the firm. He pushed a button on his time clock, explaining that this conversation would be recorded under "pro bono", and said that he was in his 7th year

and hoped to be chosen next year as "junior apprentice tenured partner". This would place him in the $200,000 income bracket and in the 100 person leadership group in pension plans. I was about to ask him more, but his clock buzzed; he had used up his pro bono quota for the day.

On an impulse I took an elevator to the top floor, hoping I might see a real partner. I looked forward to seeing commodious quarters, elegantly decorated according to the tastes of the particular partner. Instead, I saw offices not much larger than those of the associates. More lavishly furnished, to be sure, but with identical prints of upended pheasants and pointing retrievers on every wall. An affable partner invited me into his cell. He had a window. I admired the view of the office building next door, where the prints on the walls were abstract. I expressed my respect for the austerity of his office. He grimaced a bit and said, "You should have seen what we used to have. But that was before our Business Management Group took over."

I looked questioningly. He went on, "Yes, our corporation is managed by the Group. It has about 100 business executives. They are the ones who concentrate on our basic goal: to maximize income and minimize expenses. They plan our marketing campaigns, hustling strategies, and presentations to prospective clients; they identify areas of the law that we should be moving into and the likeliest clients to make up a strong future client base; they oversee our advertising and maintain liaison with our public relations firm; they keep alert to the opportunity of luring experts away from other firms; they monitor our time sheets, maintain and update our compensation system and participate in the yearly goal-setting sessions with each partner; they handle all the collective bargaining; they allocate office space and implement our "Standardized Cost-effective Office Layout Decor". . . which we sometimes call by its acronym, 'SCOLD'.

I asked him about the firm's policy on billable hours. "We're pretty easy-going around here", he replied. "Our new associates are expected to put in 2000 billable hours a year. Of course, that means 1000 or so additional actual hours. Senior associates do 2500 and", he coughed deprecatingly; "any partner worthy of his salt substitute will rack up 3500 to 4000 billable hours." I am slow but even I figured that this meant 70 to 80 hours a week, and so commented. The partner replied, "Well, I know, but sometimes you think of two things at once; a really good hour goes by quicker than others. You can often, if you're good at it, compress two hours into one." By this time I was a bit worried about his losing all this time -- especially when I learned of his $1000 hourly charge, the amount the firm needed to receive double

his $1,000,000 take-home. But he seemed relaxed enough.

> I had one final question. I asked him what people did who could not afford to hire Brobdingnag. He mused, "People? We don't really have people. Most of our clients are corporations, unions, funds, foundations. There are times when I wish we could take on some, well, ordinary people. But aside from our pro bono quota -- we do our full share -- we simply have to charge to pay the rent. All the firms I know are in the same boat."

If anything is vulnerable about this fantasy, it is that it is likely to be realized in one decade rather than five. Indeed, I suspect some firms are approaching this condition today. But what about the bar outside Megalopolis? What about the practice of law in the middle and smaller sized communities of this country? What about you? I would very much like to know in general how you are doing, and whether you are enjoying practice, what kinds of law you are practicing, whether you think you can do a top quality job, and if so how are you able to do it, what kinds of law or cases you leave to someone else, whether you are a solo practitioner or practice with others, whether your costs and fees make it impossible or difficult for you to serve some people, whether you have time for some sort of community or public service. Most of all, I'd like to know what you think is ahead for the legal profession in this country during the next decades.

I have had distributed a sheet with these questions on it. I would be greatly obliged if, sometime during this week you take a breather of just two or three minutes and either jot down your response or put pen to paper and write whatever you want to on the subject. If you prefer anonymity in order to make some particularly cutting remark, fine; just mail your response in a blank envelope. What I shall do with what you send me is to use your data in talks I shall be giving on the future of the profession in Colorado, Washington State and elsewhere around the country. I would intend also sending in a summary to such groups as that of Professor Heymann at the Harvard Law School which has embarked on a study of the future of the profession. I suspect that he is not inundated with inputs from lawyers such as you. The universe he is studying may not be the universe you inhabit.

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In conclusion I sense all of us share to an unusual degree the same basic values as to both living and working. I can remember talking with a senior partner of a large Boston firm which I had interviewed before leaving law school. I had to tell him as tactfully as I could that when Fred Lancaster of this bar offered to let me use his office and books if I would only help Marguerite pay the rent, this opportunity seemed more attractive than becoming an associate in his fine firm. He looked at me sadly, shook his head and said, "I'm sorry. I had thought you would become a better lawyer than that." Obviously I have never regretted that decision. And, I hope, neither have you. I can only wish you the same thrills and rewards of practice and warmth of fellowship bridging the generations that I knew and cherish.