

Commencement Address
Senior U.S. Circuit Judge Frank M. Coffin
Boston College Law School
Newton, Mass., May 26, 1996

One of the many sayings inherited from our unconventional ancestor, Henry David Thoreau, is this one: "I have lived thirty years on this planet, and I have yet to hear the first syllable of valuable or even earnest advice from my seniors." Now of course, this is nonsense. No one invested more of his life dispensing valuable and earnest advice than the recluse of Walden. Nevertheless, it is a suitably humbling thought for a Commencement speaker.

So I shall not give you the benefit of my accumulated wisdom, valuable though it would have been. Instead, I shall assume the role of a latter day Nostradamus and try to track the doings of this graduating class during the next few decades. This will be difficult because those decades haven't yet appeared. Moreover, if I am right, you are also cursed with a social conscience, which complicates matters. So bear with me.

Our story begins with Commencement, 2001. This was your fifth reunion and you were making a big time of it. After your own disastrous commencement experience in 1996, graduating classes had refrained from inviting judges to speak. The class of 2001 had invited the beloved and newly retired Dean Soifer, recently named chair of the United Nations tribunal to arbitrate all intellectual property disputes arising out of the Internet.

The former Dean, apparently emboldened by his new exalted position, launched a scathing indictment of the legal profession, which he described as "profoundly dysfunctional." The large firms, he charged, were succumbing to global giantism, ignoring human values, demanding the ultimate from their servitors, selling their super-sophisticated wares only to the very wealthy and the multinational corporation, more often than not paying only lip service to pro bono programs.

The lower half of the vast middle class, he continued, had been effectively priced out of the legal services market. They, as well as the indigent, increasingly flooded the courts as pro se litigants, finding the forms and procedures of even the simpler actions incomprehensible, and driving judges and clerks up the wall.

As for the poor, the Dean's indignation reached a high point as he recalled how, in the year you had graduated, the Congress had wreaked its most savage vengeance on the Legal Services Corporation, whose budget was a minuscule one to begin with. The next year, Congress abolished it, even though the objects of its spleen -- class actions, advocacy with legislatures, representation of immigrants, and fee-generating cases -- had all been declared out of bounds. This quarter century hallowed safety net for those who had fallen through safety nets was abolished without a murmur. Lawyers in general were in such bad odor that their voices were buried under the strident rhetoric of Congressmen who were quick to charge that only a pitifully small fraction of lawyers were doing pro bono. Their rationalization: if only the bar did its job, all would be served.

Pointing out the paradox of rising needs for legal services among the vast and increasing underclass and the withering away of openings for young lawyers, the Dean ended with a passionate cry for concern, commitment, and action.

Among those of your class who had come back for reunion, there were a dozen or so who were particularly close friends. Being deeply moved by the Dean's talk, and having nothing else to do, they convened in a nearby, familiar bistro, and talked.

All of them had spent the last five years in large law firms. They had to. Your average debt on graduation had been \$60,000. Over half of your class winding up in law firms joined either very large firms (over 100 partners) or large ones (50-100 partners). So you had a common base. But not a consensus.

Arnold waxed lyrical about his firm, his cherished working relationships with his senior partners and his very bright associates, his joy in being on the cutting edge of hi-tech law, the thrill of developing specialized knowledge that would give his firm a competitive advantage, the exciting plans for new branches in far off places, and, of course, the income level.

But Beth took him on. She pointed out that he was still single. Speaking for herself, she confessed to having been through an awful time. She confessed that, when pregnant with her first child, she could not fulfill the 2400 billable hour requirement that was expected. Her specialty was invaluable, but highly technical and narrow. She seldom saw a client or even many lawyers in her firm. And the option of part time work was a ticket to second class status. Partners felt that she did not share their commitment, that she would not be available on week-ends, that her professional growth would lag, and, most important, that she couldn't do her share of "business development."

Another classmate, Caleb, joined in, protesting the amount of reports, meetings, and management overburden one had to participate in, the plethora of written proposals and "beauty contests" involved in seeking new clients, the increasing disloyalty of old clients egged on by their penny-pinching house counsel, and the disillusioning banality of litigation, which often turned into endless discovery charades. There was no real security, no guaranteed path to partnership, no deep firm loyalty. The rain maker was the paradigm and the firm was often just a series of franchises licensed to use the firm name.

As the hour grew late, the debate waxed hot and heavy. Finally, Diana, who had been silent, asked for the floor and said, "Some of us are very happy with what we're doing, but that doesn't mean that things can't improve. And others want out, to find other ways of practicing law. I have an idea. Isn't this the time, in view of the Dean's speech, to put principle to work? We've all been lucky. We've been paid well the past five years, enough to break the back of our debts. I suggest that we spend the next five years going our separate ways, doing what we can to bring our profession back to its senses, and bring the Dean back here five years from now to hear what we've done." And this is what they did.

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Reunion, 2006. The graduating class looked exceedingly young to you and even the faculty didn't seem so elderly any more. Dean Soifer was sporting a salt and pepper beard. The group repaired to their bistro. Arnold and his big firm survivors, clearly the better dressed of the group, were eager to report.

"We've got a lot to tell you," he began. "A half dozen of us formed a sort of cabal. We got together about every month to talk about what we were doing in our various firms. Some of us are on the management committees. We've made progress in four areas. First, we're beginning to make a dent in the value system. Part time and flex time are becoming respected options, as are special counsel and permanent senior associates. Second, several of our firms are making progress toward more lasting relationships with our large clients, participating more in strategic decision making, in return for thinning out the numbers of associates assigned to their work."

"Thirdly, we've really improved quality time, time when we get together to discuss something other than the matter at hand. One of our firms sets aside 4:00 P.M. on Fridays for a quiet time to discuss books, week-end plans, Supreme Court decisions, war stories, and to hear

the reflections of some of our retired elders. Several have started to give sabbatical leaves. And, most important, we're taking a much harder line on pro bono. We've persuaded most of our seniors that pro bono is not only part of our obligation but adds to our quality of life and even makes for better lawyers. So our firms now have written pro bono policies, involve senior partners, give billable hour credit, provide training and supervision, lend associates and contribute funds to legal aid organizations. My firm even serves as a resource for Beth's group."

Beth could restrain herself no longer. "Just listen to this," she began. "We've invented a new way of delivering legal services. Ten of us got together, decided we wanted to practice good law in a small group, make an adequate living, be useful to others, and have time for life outside the law. So we fixed up some remarkable warehouse space, installed our computers, and hung out our collective shingle. Some of us job share; one is part time; and an old timer drops in several times a week. We all figured out what we would need and the time it would take to net this amount. Beyond this we seldom go, except that we all try to do three or four pro bono hours a week.

"We picked our specialties. Family, elder, and health law are all hot fields and blend together. Commercial law for small businesses, real estate, and environmental law also blend and help pay the rent. Then we have to have two or three of us able to litigate in any court. We've been lucky. Some of our smaller clients followed us when we left our big firms. Several discrimination and civil rights cases have given us healthy fees. And Arnold's firm has been a great source of help on some technical matters beyond our competence. We've even produced some alumni who have spun off to form their own similar group. We find that there's a great middle class out there willing to pay our charges, which don't reflect billable hours so much as results."

Beth's report gave rise to much discussion. Finally, however, Caleb chimed in, rather shamefacedly. He said, "Well, I can't say that I did anything earthshaking. I didn't begin to turn big firms around and I certainly didn't invent a new kind of law firm. I joined a firm of 25 lawyers in a fairly small city. Much of my own practice takes me into local district court. I found that this is where the action is for most people. Particularly for divorce, child support, custody, child abuse, domestic violence, and paternity cases -- the family law explosion. And I saw that so many came in to court without lawyers without a ghost of an idea where to go, what forms to fill out, what procedures to follow. So the idea came to me that if only these folk had some human being to explain the procedures and walk them through the forms, they wouldn't have to wait hours to bother the judge, they wouldn't have to come back repeatedly, and they'd not leave, disgusted with the system. Who better to help them than knowledgeable legal secretaries and paralegals, who know more about this field than we do anyway? So that's what we've done. We've persuaded firms in the city to give their secretaries two mornings a month so they can hold regular office hours at district court. They have given hundreds of these litigants real access to court, to the immense relief of the judges."

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By this time it was very late at night. The Dean had listened intently to all the discussion. He was visibly moved, obviously proud, his eyes shining. "What a group," he was thinking. But then he checked himself. This was no time for too much self-congratulation. This is what he said:

"This is terrific. It is far more than I could have hoped. But what about the world beyond your offices -- the fifth of our people at or near poverty level?

"One basic fact you have established -- your credentials. Now you can lobby your governors and state legislators, some of whom are your classmates.

You can lobby your Congressmen and your Senators. You can testify - with the authority that comes from doing all you can to involve your fellow lawyers.

"Soon, if not now, you can lead the biggest march on Washington since Martin Luther King told of his dream."

And you resolved to do just that. I can hardly wait to hear your report at your fifteenth reunion.