

Ruminations on the occasion of the 35th Reunion of
the Harvard Law School class of 1943

Frank M. Coffin

Shape of the Law -- Eve of the Third Millenium

What would be the most arrant presumption in essaying to predict the most significant change in the practice of the law at the end of the current millenium -- and therefore the beginning of the next one -- becomes more understandable and more modest when it is made clear that all we have been asked to do is to come up with a reasonable speculation as to what things will be like when our ageing class of 1943 meets for its fiftieth reunion in 1993.

This is a lovely, fanciful, refreshing assignment. I began my approach to it by trying to recall whether, thirty-five years ago, we ever gave thought to what the lineaments of the law might be three and one half decades in the future. The short answer is that we did not. Not only were we not captivated by futurism, but we hardly glimpsed at the present; our eyes were on the past, its values, traditions, heroes, and triumphs. If we did not aspire exactly to be Daniel Websters, more of us came closer to John W. Davis, and even more to the bright and useful Happy Hotdogs whom this school sent to Washington a decade before our unleashing. But I suspect that none of us pictured where we would be today, thirty-five years later.

We could not have begun to imagine the forces at work on our future -- World War II, the atomic bomb, the computer, globe circling satellites, the forces of social justice pushing desegregation, the inexorable growth of population. No doubt we shall be as helpless in looking ahead now. But there is no harm in trying.

I thought a way of going about this business of being a Nostradamus was to spread out before us all of the probable trends in practice and institutions, like iron filings on a magnetized grill, and see if any overall pattern emerges, even dimly. After all, we should not expect too much change in a decade and a half. A few decades ago we wouldn't have expected any; today one of the distinctive marks of the times is that we expect each decade to register cataclysmic change even though we don't have the faintest idea what the change will be.

Let us first ask: Who will enter the practice of law? Lawyers are already over 450,000 strong, about one to every 530 people, and increasing at an accelerating rate. Is it too much to predict that by 1993 we shall have a million lawyers, one for every 250 persons? And can we not expect that many of these new lawyers will be women? I suspect also that the lawyers who are men will have wives with a craft, trade, or profession of their own. And, unless there is a reversal of an already clearly etched life style, these new lawyers, whether men or women, will have a mix of goals and values quite different from ours. The office and firm will not be allowed quite so much sway; the home, family, leisure will come in for more attention. Husband and wife will equally share office and home time. With both partners working, and with more emphasis on home, leisure, and personhood, individual high incomes will not be so high a priority.

What kind of law will be practiced? There will be both ebb and flood tides, carrying some kinds of problems to points of solution outside the formal playing field of the law and ushering in new kinds. No-fault insurance, divorce, probate of small estates, small claims, landlord-tenant disputes -- these are some of the areas which will find resolution outside of courts and formal lawyering. But think of the new world we are entering: we will be changing

from a goods-producing society into a service-rendering one; we will be moving from a society of plenty to one of scarcity in energy, space, and materials where fairness and equality of treatment will be more highly treasured than ever before; just because of the shrinking material world around us we shall be prizing privacy and extending the boundaries of personhood; by the same token we shall, each of us, develop an increasing personal interest in what is happening to the environment; with the twin presence of scarcity and inflation we shall elevate consumerism to a high and legally sophisticated art; antidiscrimination law will be part of our basic equipment. Remember this catalogue. It is one which lends itself to the practice of preventive rather than crisis law. And it is one which is in each particular relevant to the vast middle class.

Where and in what forums will law be practiced? I see an explosion in the practice of law. I see strength building on strength. That is, I can envisage the giant firms in the metropolises and the big firms in the cities becoming gianter and bigger; specifically, I can -- reluctantly -- see thousand person law firms and hundred-person firms in cities where 30 is the top figure today. Business, industry, labor, and government will grow and with them "big law".

I can see -- perhaps through rose colored glasses -- increasing international practice. Maybe 15 years is too short a time perspective. But I think that it has to be soon that some processes and functions of international living are turned over to international tribunals and the law created by them. But then, going from the cosmic to the parochial, I see all kinds of development of law at the local level. I see family law handled by some extra-court instrumentality; I see such responsible entities as universities, mental institutions, prisons developing their own subsystems of justice; I see arbitration expanding its domain, and neighborhood courts and ombudsmen.

How will law be practiced? All kinds of things are in the works. There is the computer. This will increasingly take care of the bookkeeping, billing, research, and document management functions of law firms. The gigantism of the law practice of the near future poses new problems. So does specialization of the bar. Also, the vexing question whether and how standards should be set for admission to bars.

So far, we have just been taking inventory. Now for prediction. Mind you, I am only picking out an area of emphasis. I think the law will be growing, as indeed much of our society will be, but I am trying to isolate the area of distinctiveness in its growth. I think that the raw materials of our prediction are already before us. The first question we asked -- who would be practicing -- starts us off. While the law, and particularly what I call "big law" will continue to draw gifted people, it will have to pay increasing wages until it's ridiculous. I think that big business will have to afford this, but the market is limited. I picture the day of saturation -- when all of the big corporations, represented by big law firms, are being sued by big government; each unit boasts a thousand lawyers; each employed lawyer does less and less better and better. But beyond this Nirvana, I see what some analysts call a "dysfunction" in big law. Even moderate sized firms have to turn away friends and contemporaries of partners who have only a moderate estate to be probated, a non-fatal automobile accident injury to be requited, or a few thousand dollars contract suit.

All of this leads me to limn the major boundaries of the most significant change in the practice of law in the next 15 years:

While big practice will become bigger, there will develop a new subculture of law by and for the middle class, very broadly defined. Two quite different hemispheres of practice will be seen to exist. The first will be an extension of the present profile: bigger firms, hardening specialties and sub-specialties, sophisticated equipment. The practice of what I have called "big

law" will characterize not only lawyers serving big business, big government, and big labor, but many of the lawyers engaged in metropolitan legal aid for the indigent, in public defender organizations, and in key, centrally located public interest law firms.

The second kind of law practice will be so different in its demands, rewards, values, pace, and discipline as almost to be called a separate profession. If the profession is to double in the next couple of decades, then I see most of the added half million lawyers finding their place in this new hemisphere of the law. While specialties will play a prominent part of this practice, there will be more opportunity for a lawyer to cross over from one to another and, indeed, more room to exercise the skills and judgment of the old time general practitioner. For I see a great, present, unrecognized need for continuing prepaid "preventive" legal advice and service in people-oriented fields such as probate, service contracts, housing and tenancy, environment, consumerism, health care, antidiscrimination law, and privacy. The market for this kind of practice is vast, including all who are not quite wealthy and yet not quite indigent, the people whose problem solving needs more and more fail to justify sufficient billable time to warrant big firm attention.

The new breed of lawyers will be almost evenly divided between the sexes. They will practice in small groups, representing relevant specialties much like medical group practice; frequently their clients will, as individuals or members of some organization, have paid for service on a prepaid or insurance basis. The lawyers will work from four to eight hours a day, from two to five days a week, and earn the equivalent of \$20,000 to \$40,000 at today's prices; most of the lawyers will have spouses earning a similar amount. Their practice will not take them to court so much as to other forums in what we might call the "extrastructure" of the law, the justice subsystems which must be set up and made to work without rolling out the cumbersome, costly, and slow machinery of the courts. I refer to university justice systems, arbitration, neighborhood courts, ombudsmen, and such.

If there is any validity to this set of predictions, I shall feel that the legal profession will have demonstrated a creative resilience to meet a vast need in an increasingly justice oriented society without overburdening either the consumers or the courts.