

Gullible's Travails

A Prospective Law Student Visits Brobdingnag, a Professional Corporation

A spurious fantasy delivered to the alumni of the School of Law of Northeastern University on the occasion of the dedication of its new facility at Gryzmish Hall, Saturday, April 23, 1983, by United States Circuit Judge Frank M. Coffin, of the U. S. Court of Appeals for the First Circuit

Disclaimer: Since the events described herein take place in the year 2033, any resemblance to law schools, law firms, or the legal profession is purely coincidental.

The time is April in the year 2033. An unimpressive young man, indifferently garbed, shuffles along Huntington Avenue in the direction of the Prudential Center. Behind him is the mammoth Museum of Fine Arts, some 20 stories high. Ahead, as far as the eye can see, are even more towering buildings overawing the subdued avenue. To the right of the young pedestrian is the only break in the alpine skyline, a tiny triangle of truncated buildings, three rather dwarfed old structures giving on Huntington, and one building in the rear, quite new, spanning the breadth of all three, and rising some ten stories. A small, chaste brass plaque proclaims this as the School of Law of Northeastern University.

The young man somewhat apprehensively opens the door and is soon shown to the Admissions Office in the rear, near Forsyth Street, where it has been for full fifty years. The Assistant Director of Admissions talks to the young man, makes a few notes, and receives the customary essay which applicants are required to submit on the subject, "Why I seek admission to this School." She makes an appointment for him to see the Director later in the week and he departs. There being something both odd and winsome about the stranger, the Assistant Director, after reaching her desk, unrolls the somewhat soiled sheaf of papers, and reads:

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My name is Lemuel Gulliver. I am descended from that very odd gentleman of Nottinghamshire, England, who, in his youth, the only part of his life that is today of any interest, visited the lands of Lilliput, Brobdingnag, Laputa, and the Houyhnhnms. He was, as is obvious to any who have read Jonathan Swift's account, endlessly curious. And I am as inquisitive as my ancestor, likely to accept anything on faith. That is why I earned the name of Gullible. It is also why my story is as it is.

But on one point we differed. He had no use for lawyers. As he told the houyhnhnm who was temporarily his Master:

"I said there was a society of men among us, bred up from their youth in the art of proving by words multiplied for the purpose, that white is black, and black is white, according as they are paid. To this society all the rest of the people are slaves."

He was even more strident on the subject of judges:

"Now, your Honour is to know that these judges are persons appointed to decide all controversies of property, as well as for the trial of criminals, and picked out from the most dexterous lawyers, who are grown old or lazy, and

having been biased all their lives against truth and equity, are under . . . a fatal necessity of favouring fraud, perjury, and oppression. . . ."

On these points I deeply disagreed. I had grown up on the little island of Nantucket where, many years ago, there used to be several lawyers. Although there have been none for most of this century, I have read about them. The summer people would talk about them and, indeed, some of the summer people were lawyers themselves. One in particular talked to me with such enthusiasm that I began my odyssey in search of a legal career.

My first step was to submit to a kind of examination administered by the Princeton Testing Service. It used to be entirely a written test, but not now. They made a videotape of me, having me walk about to see if I could pace impressively, sneer convincingly, and shake a finger self-righteously. When they finally gave me a multiple choice test I begged off saying that my island school had never given us written examinations. They then had me answer "yes" to the question, "Are you a member of a minority?" They said that, being from Nantucket, I was clearly a member of an "insular" minority. They said I was one of the Carolene Products footnote people. I said I guessed so. There are a lot of weird groups on Nantucket, especially in the summer, and they must have meant one of those. In any event they told me not to worry, that all the good schools had "affirmative action" plans. This shows how gullible I was. I would have been content with just plain action -- but affirmative action, golly.

My next step was to visit law schools. Since I was so insular, I was told to go only to the best ones. They gave me a list. Well, that was a great experience. Each one claimed to be the best, and for very good reason, too. One was the oldest. Another had the highest tuition. One was the biggest. Another was the smallest. Another could boast that its faculty had published the most, or that its faculty was the youngest. Others bragged that it had the most students becoming judicial clerks, or that its alumni were the richest, or that its endowment was the biggest. One claimed the largest number of judges and Justices among its alumni. One had the widest variety of courses such as Antitrust among the Australian Aborigines to Game Theories of the Guelphs and Ghibellines. Others preened themselves on having the most celebrated mixture of law and economics, law and political science, law and history, law and social science, law and communications, law and astrology, law and Atari, the toughest marks, the largest number of academic journals, the greatest variety of clubs.

Even apart from these superlatives you could tell the very best schools. The students all had graduate degrees, most of them Ph. D's in English Literature, philosophy, sociology, psychology, history, political science. They were waiting for another baby boom to fill the colleges so they could teach. Now, of course, it's been years since colleges have taught anything but computer science, laser beam weaponry, and particle physics. In the meantime law is, to put it mildly, a paying profession. But it is considered not good form to say, "I always wanted to be a lawyer."

The caliber of the student body is matched by the faculties at these top schools. Indeed, the average faculty member is only two or three years older than the students. Law professors used to be older but all the elders have been siphoned off to be judges. These younger ones are what people call "superstars". This is a term of art meaning top officer of a journal, author of a published article applying regression analysis to some legal problem, law clerk to both a judge and a Supreme Court Justice, and summer clerk for Cadwallader, Covington, or Cleary, Gottlieb. They have written or are writing the definitive treatise on the Constitution, the law of antitrust, sex, privacy, or satellite leasing. They talk entertainingly about their contribution to a brief or argument before the Supreme Court, but their record is unsullied by contact with inferior courts

and local judges, not to mention clients, associates, partners, conferences, discovery, pleadings. The legal profession is a remote and irrelevant concept.

One thing you can say about the students and the faculties of these schools: they are idealistic and endlessly searching. Each of the schools I visited had a faculty committee looking into curriculum changes. They all sense that after the first eye-opening, mind-blowing month, the bloom is off the rose and it's all down hill. Some want to end law school at this point. Others want to sustain interest by having the second year spent abroad and the third at sea. At the most prestigious of schools the committees are over a half century old. Reports are expected almost any year.

But the students. They are the ones who feel social injustice most keenly. Of course the very wealthy don't go in for this too much -- or, if they do, it's sort of a vacation before taking on their . . . responsibilities. But there are plenty of students who are far from rich, who know what poverty and inequality can mean. Their student associations are robust; they reflect every ethnic group, minority, and issue. Those who don't make the journals give some legal service to the poor. They have speakers almost every night of the week. And they don't let the administration push them around, not for a minute. They are into everything -- the marking system, library hours, recruiting protocol, the curriculum, faculty hiring, monitoring investments and screening potential contributors in fund raising campaigns. Their bill of rights is a model: the basic law student's fifth amendment right, established in the last century, was to remain silent when called on by a professor. Now they are insisting on equality: a student, by reason of paying tuition, is entitled to grades equal to those given all others. When they aren't doing anything else, they are raising consciousness.

But there's a problem. With tuition at the best schools now over \$50,000 a year, the average student has had to borrow upwards of \$200,000 or a quarter of a million dollars. I've talked to some third year students. They are just now facing the music. The fact is that even if there were more public interest jobs, they can't afford to take them. They can't even afford the luxury of clerkships. They have to go with the big firms. But they face up to this bravely and even seem to look forward to the prospect.

Since this seemed to be the name of the game, I thought I would drop around and see some firms . . . try to see what was in store for me if I was lucky.

To a Nantucketer, these firms are really something. To begin with, there is a local Boston firm that was formed earlier this century by the merger of several small old firms: Ropes, Dorr, and Hall. They are on the point of outgrowing their two buildings. Yet with only 750 partners, 1500 associates, and 3000 paralegals, they are feeling the hot breath of competition from the biggies. Even the Boston branch of Skadden, Arps is almost as large, and it is only one of twenty similar branches . . . in this country. Indeed there's another takeover rumor going around. Skadden may be making a bid for Foley, Proctor, Ely, and Barlow.

I decided to visit the biggest. 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. The sign overhead might say "Building Code Violations", "Anti-Environmental Defense Unit", "Litigation - Stonewalling Strategy Coordination", or "Tender Offers - Shark Repellent Division". One small sign said "Sundries": an attractive kiosk was manned, or womanned, by

one paralegal. 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. It had a law dictionary and 500 carrels where operators were silently punching away, getting printouts of statutes, regulations, cases, and treatises.

As my guide left me, I thought I would try to sample local opinion. I spoke to a young woman rushing toward the Discovery Warehouse. I asked her how things were going. This was her first year with the firm. She was exhilarated. Not just over the \$95,000 starting salary but she was part of a litigation team of 150 involved in a mammoth antitrust case. She had actually seen a junior partner depose a witness.

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, jokingly of course, call by its acronym, 'SCOLD'. Then of course the Business Management Group handles our computer purchases and our firm's acquisitions and investments." The partner added, "If you really want to see the latest in elegant decor, you should drop by the suite of the Chair of the Group. Boy, has she got a set up!"

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 -- and we do our full share -- we simply have to charge to pay the rent. All the firms I know are in the same boat."

I rose to go. The partner hesitated a moment, cleared his throat, and said, "Son, you look like a good sort. Let me give you this advice. If I were your age, just starting out, do you know what I'd go for, rather than the law? Software! That's where the money is. Take our probate department. They've been tied up for weeks trying to decide what shelf inventory of wills and trusts agreements to buy. They can get 50 disks of Radio Shack Model X-500 Scripts for \$30,000 or 35 disks of IBM Displaywriter, Mark 2025, for \$40,000. The person who can deal with this kind of problem can name his price. As someone once said, 'I care not who builds the hardware for this firm if I may but supply the software.'"

I thanked him and left. Only when I was halfway down the elevator did I realize that the partner's clock had been ticking all through our conversation.

Out in the sunlight once again, I realized that I wasn't up to the mark. The best schools and Brobdingnag were not for me. I had been unfortunate to be an islander. I really was insular. The times had passed me by. I wondered if there was any place where I could afford to go, where I could learn to be just a lawyer and then have a chance to go out and help, well, people. And if weren't asking too much, I'd like pretty much to be my own boss. At this point I thought I might go back to scalloping.

Then, one day, after seeing a retrospective exhibit at the Museum of Fine Arts of one of the Old Masters, Andy Warhol, I was walking back to the Y.M.C.A. about to enter a canyon between overpowering skyscrapers. My gaze fell upon a small enclave of buildings occupying no more than an acre or two, the tallest being no higher than 10 stories. A small plaque pronounced the cluster as Northeastern's Law School. I obtained a brochure. What it said seemed to answer all my problems.

-- Item. The tuition was low, a mere \$10,000. Moreover, the famous Cooperative Legal Education plan, now 65 years old, enabled one to earn even more than this, and get some experience in the bargain. I could hope to graduate with the prospect of being able to choose what I wanted to do, without becoming an indentured servant to pay off my debts.

-- Item. Although Gryzmish, Volpe, and Stearns Halls looked a bit worse for wear -- they are now National Historic Landmarks -- the long new 10 story building behind them, built just a few years ago, is something else. The basement and ground floor, although half a century old, are still most attractive and useful; they really set the tone for the whole superstructure. The next three floors house what they call a "law school teaching and yardstick firm". Staffed partly by faculty, partly by veteran practitioners on sabbatical leave from their firms, and partly by students, it takes four kinds of cases: criminal defense of indigents; civil matters for indigents; a few significant "teaching" cases in different areas of the law such as products liability, privacy, and commercial relations; and matters of any kind that are submitted to the firm's well respected Mediation Service. The first gives students trial and appellate experience in criminal matters; the second gives counseling and trial experience in civil matters; the third gives in depth experience in strategy, negotiation, pleading, discovery, motions, trial, and appeal in complex cases; and the

last gives students a first hand exposure to what should be a major part of their work as lawyers - to resolve problems out of court.

A second kind of enterprise in the building also intrigued me. The school seems to have been worrying as I have been over whether it is possible any longer to practice anything but megalaw in a megafirm for giant corporations who pay megafees. Well, what the school is doing is to make five floors of its new building available to its recent graduates and other young lawyers, offering office space at low rent, the rent covering access to the school's library, computers, word processors, and even consultation with the practitioners in residence who are on sabbatical. This is called the People's Legal Community. Here young lawyers serve people who can pay, but not Brobdingnagian prices. Here they try their wings, build their confidence, attract a clientele. After a few years they are usually ready to move out and make space for new fledglings.

I liked also the top floor of the new building, although I wouldn't be able to use it for some time. It's called the Lawyers' Enrichment Center. Here, on a year round basis, Northeastern puts on week-end retreats, workshops, longer seminars, and lectures for practicing lawyers and judges. The subjects are not what you would expect: taxes, trial techniques, estate planning, examining an expert witness. No. What the Center tries to do is to recharge the batteries, widen the vision, enrich the insights of the veteran, successful, overpressured attorney and judge. In short it seeks, in its words, "to do our best to ennoble and humanize the profession." Biography, history, fiction, drama, poetry, philosophy, psychology -- all are grist for this antique kind of continuing education. My learned ancestor would have applauded this, for in one of his bitterest passages he had this to say:

"Here my master interposing, said it was a pity that creatures endowed with such prodigious abilities of mind as these lawyers . . . must certainly be, were not rather encouraged to be instructors of others in wisdom and knowledge. In answer to which I assured his Honour that in all points out of their own trade, they were the most ignorant and stupid generation among us, the most despicable in common conversation, avowed enemies to all knowledge and learning, and equally disposed to pervert the general reason of mankind in every other subject of discourse, as in that of their own profession."

All this gives me hope that it still may be possible to be a compleat lawyer, to practice a learned profession that helps real people, and to enjoy doing it. But of course I may be wrong.

I am Gullible.