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The Future of the Legal Profession

J. Clay Smith Jr.

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DR. J. CLAY SMITH, JR.
NATIONAL PRESIDENT
FEDERAL BAR ASSOCIATION
BEFORE THE
ANNUAL FEDERAL BAR CONVENTION
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THE FUTURE OF THE LEGAL PROFESSION

THE LEGAL PROFESSION, LIKE MANY OTHER PROFESSIONS, HAS RAPIDLY BECOME DRIVEN BY TECHNOLOGICAL ADVANCES.

ONE NEED NOT THINK BACK VERY LONG AGO TO REMEMBER WHEN THE LEGAL PROFESSION WAS COMPOSED SUBSTANTIALLY OF SMALL PRACTITIONERS. NOR DOES ONE HAVE TO THINK BACK A LONG TIME AGO TO REMEMBER WHEN THE STANDARD EQUIPMENT USED WAS A COPY MACHINE WHICH PRODUCED SLICK, SEMI-LEGIBLE COPIES. OF COURSE BEFORE WE CRITICIZE THE SLICK COPY WE MUST NOT FORGET THAT TYPED CARBON COPY WAS THE STANDARD NOT VERY LONG AGO.

WHAT IS IN STORE FOR THE LEGAL PROFESSION IN THE FUTURE? THE PREDICTIONS INCLUDE LEGAL CLINICS OPERATING FROM SHOPPING CENTERS, WITH PARALEGALS IN MANY FIRMS OUTNUMBERING LAWYERS. NON-LEGAL PERSONNEL MAY HANDLE MANY INTERVIEWS, EXAMINE RECORDS, PERFORM INVESTIGATIVE TASKS, AND EVEN ARGUE DISPUTES IN SMALLER CASES. COURTHOUSE RECORDS WILL BE COMPUTERIZED AND A TITLE EXAMINATION WILL BE PROVIDED BY A COMPUTER PRINTOUT FURNISHED BY A TITLE COMPANY. CERTAINLY, RESEARCH WILL BE COMPUTERIZED. COMPUTERIZED LEGAL RESEARCH SYSTEMS WILL PROVIDE CITATIONS AND SYLLABUS RETRIEVAL AT THE PUNCH OF A BUTTON. MUCH OF THE TRADITIONAL LEGAL SERVICES PROVIDED TO MIDDLE INCOME CONSUMERS WILL BE PROVIDED BY THE LEGAL CLINICS WHICH MASS PRODUCE SERVICES ON A VOLUME BASIS. THE LAW FIRM WITH AS MANY AS FIVE HUNDRED LAWYERS WITH BRANCH

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OFFICES IN VARIOUS CITIES THROUGHOUT THE COUNTRY AND THE WORLD WILL BECOME COMMON, SOME ARE PREDICTING.

EQUIPMENT OF THE FUTURE

TEN YEARS AGO, THE NOTION OF PUTTING A LAW LIBRARY INTO A COMPUTER SO THAT CASES AND PRECEDENTS COULD BE MADE TO FLASH ACROSS A TELEVISION SCREEN WAS EMBODIED ONLY IN A FEASIBILITY STUDY DONE BY SOME CONSULTANTS FOR A PAPER GOODS COMPANY IN OHIO. TODAY THAT PAPER GOODS COMPANY, LEXIS, HAS A COMPUTER IN MOST MEDIUM SIZED FIRMS AND IN EVERY FIRM IN THE COUNTRY WITH MORE THAN 100 LAWYERS, AND IS USED IN SEVERAL FEDERAL AGENCIES. TODAY TWENTY THOUSAND LEXIS AND JURIS (ANOTHER COMPUTER RESEARCH SYSTEM) SEARCHES ARE BEING MADE DAILY.

TEN YEARS AGO, LAWYERS HAD TO WORRY ABOUT THE SIZE OF THEIR NAMES ON BUSINESS CARDS. TODAY THEY CAN ADVERTISE THEIR NAMES ACROSS BILLBOARDS OR TELEVISION SETS, AND I SUSPECT, ACROSS THE WORLD VIA SATELLITE. AND, ONE DAY WE ARE SURE TO EXPERIENCE INTER-PLANETARY ADVERTISING BY LAWYERS.

USE OF PARALEGALS

TEN YEARS AGO, PARALEGALS WERE A CONVERSATION PIECE. THERE WERE TWO OR THREE AT THE MOST SOPHISTICATED FIRMS, AND HARDLY ANY IN THE FEDERAL SECTOR. TODAY, ACCORDING TO THE PRICE WATERHOUSE ANNUAL SURVEY OF LAW FIRMS, THERE IS ONE PARALEGAL FOR EVERY FOUR OR FIVE LAWYERS IN THE AVERAGE SIZED FIRM, AND THE NUMBER OF PARALEGALS IS INCREASING FOUR TIMES FASTER THAN THE NUMBER OF ASSOCIATES. THE NUMBER OF PARALEGALS HAS INCREASED IN THE FEDERAL GOVERNMENT.

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MANAGING LAWYERS

RECENTLY, AT LEAST 60 PARALEGALS RECEIVED EXTENSIVE TRAINING FOR THE FIRST TIME IN THE HISTORY OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TEN YEARS AGO, ASSOCIATES USUALLY STAYED AT THE FIRM THEY STARTED WITH UNTIL THEY WERE TOLD, SIX, SEVEN OR EIGHT YEARS AFTER ARRIVING THAT THEY WEREN'T MAKING PARTNER. TODAY ASSOCIATE TURNOVER AT LARGE FIRMS IS RUNNING AT ABOUT 20 PERCENT A YEAR AND LEGAL HEADHUNTERS (A PROFESSION ALMOST UNHEARD OF TEN YEARS AGO) ARE MAKING SIX-FIGURE INCOMES PLACING THE REFUGEES. MANY OF THESE LAWYERS HAVE FOUND A HOME IN THE FEDERAL SECTOR AND ARE INFLUENCING NATIONAL POLICY AS ADVISORS, DEPENDING ON THE GOVERNMENT OR PROSECUTING VIOLATORS OF THE LAW.

TEN YEARS AGO, THE "MAG CARD" AUTOMATIC TYPING MACHINE WAS A BREAKTHROUGH. TODAY IT'S VIRTUALLY A MUSEUM PIECE.

TEN YEARS AGO, THE FIRM ADMINISTRATOR WAS USUALLY THE SECRETARY WHO HAD BEEN THERE THE LONGEST AND, THEREFORE, HAD BEEN GIVEN THE JOB OF ORDERING PENCILS, PADS AND WHITE-OUT. TODAY LEGAL ADMINISTRATORS ARE SPECIALISTS RESPONSIBLE FOR ALL PERSONNEL AND OFFICE MANAGEMENT DECISIONS.

THE FUTURE

WHAT WILL THE LEGAL PROFESSION BE LIKE IN THE FUTURE? IN MANY WAYS THERE WILL NOT BE SIGNIFICANT DIFFERENCES; BUT IN MANY RESPECTS, FUTURISTS ARE PREDICTING THAT TECHNOLOGY, MANAGEMENT, BILLING PRACTICES AND PERSONNEL, ARE AREAS IN WHICH WE WILL SEE MAJOR CHANGES.

SOME OF THESE PREDICTIONS ARE:

By 1990, AT JUST ABOUT ALL LARGE FIRMS, AT MOST MEDIUM-SIZED AND AT MANY SMALL FIRMS, EVERY LAWYER WILL HAVE A COMPUTER TERMINAL AT HIS OR HER DESK. THE TERMINAL WILL PROVIDE EASY ACCESS TO LEXIS, JURIS, WESTLAW AND OTHER COMPUTERIZED RESEARCH LIBRARIES, TO FIRM CASE FILES, TO DOCKETING AND OTHER CALENDAR INFORMATION, TO INFORMATION NECESSARY TO DETECT A CONFLICT OF INTEREST BEFORE ACCEPTING A NEW CLIENT, TO FIRM FINANCIAL RECORDS AND TO DRAFTS OF CURRENT BRIEFS AND MEMOS THAT LAWYERS WILL BE ABLE TO EDIT OR REDRAFT RIGHT ON THE TERMINAL.

I PREDICT THAT THE LAWYERS IN THE FEDERAL GOVERNMENT WILL ALSO PROVIDE TERMINALS FOR THEIR LAWYERS PROGRAMMED FROM A CENTRAL DATA LEGAL LIBRARY. THIS WILL ALLOW LAWYERS IN THE COMMON CARRIER BUREAU AT THE FEDERAL COMMUNICATIONS COMMISSION TO KNOW THE REGULATORY PRINCIPLES IN THE BUREAU OF COMPETITION AT THE FEDERAL TRADE COMMISSION OR THE ANTI TRUST DIVISION OF THE DEPARTMENT OF JUSTICE.

AT MANY FIRMS THE COMPUTER WILL PROVIDE INSTANT REPORTS TO PARTNERS OF WHICH ASSOCIATES ARE AVAILABLE FOR NEW ASSIGNMENTS, AND WHICH ONES HAVE EXPERIENCE IN HANDLING A CERTAIN TYPE OF PROBLEM.

IN BOTH THE FEDERAL AND PRIVATE SECTORS, VIDEO TELEPHONES WILL BE USED. AT&T PLANS TO MARKET INTER-OFFICE VIDEO CONFERENCE SET-UPS WITH CAMERAS THAT ZOOM IN ON WHOEVER IS SPEAKING. ALSO HOOKED UP TO THE PHONE WILL BE A COPY MACHINE THAT WILL ALLOW INSTANT LONG DISTANCE TRANSMISSION OF WHATEVER DOCUMENT IS BEING DISCUSSED AT THE VIDEO TELEPHONE CONFERENCE.

SOME FIRMS WILL GROW TO 500 OR MORE LAWYERS, BUT MOST WILL NOT. PARTNERS OF MANY LARGE FIRMS WILL BREAK AWAY AS THE FIRMS REACH 300 OR 400 LAWYERS.

PARTNERSHIPS OFFERED TO ASSOCIATES WILL DECLINE DRASTICALLY, WHILE TURNOVER AMONG ASSOCIATES WILL CONTINUE TO INCREASE. IN FACT, TO STAVE OFF A VIRTUAL DROUGHT OF SENIOR ASSOCIATES (THE KEY PROFIT CENTER AT LAW FIRMS), FIRMS WILL HAVE TO FOLLOW THE LEAD OF A HANDFUL WHO HAVE ALREADY ESTABLISHED AN INTER-MEDIATE SUB-PARTNERSHIP CATEGORY AS A LURE TO KEEP ASSOCIATES FROM LEAVING.

THE TREND TO LEAVE MANAGEMENT TO MANAGERS WILL ACCELERATE. ALL NONLEGAL MATTERS AT A FIRM WILL BE HANDLED BY HIGHLY PAID PROFESSIONAL MANAGERS WHO WILL REPORT TO A BOARD OF DIRECTORS CONSISTING OF EITHER ALL THE PARTNERS OR AN EXECUTIVE COMMITTEE OF PARTNERS.

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THE PROPORTION OF FEMALE LAWYERS AT LAW FIRMS WILL APPROACH 50 PERCENT, FORCING DRASTIC CHANGES IN MATERNITY AND PATERNITY LEAVE POLICY.

REGULATORY REFORM IN THE FEDERAL SECTOR IS LIKELY TO CONTINUE TO BE AN ISSUE IN THE POLITICAL ARENA. HOWEVER, REGULATORY REFORM WILL GENERATE MORE JOB OPPORTUNITIES IN THE FEDERAL SECTOR. THE GROWTH OF LAW FIRMS WILL CONTINUE TO RESULT FROM GOVERNMENT REGULATION AND POLICIES--WHETHER DERIVED FROM THE EXECUTIVE, LEGISLATIVE OR JUDICIAL BRANCHES OF THE GOVERNMENT.

LITIGATION

BOTH THE FEDERAL AND THE PRIVATE LITIGATORS ARE GOING TO CONTEST MORE IN ECONOMIC AND TRADE AREAS. I PREDICT THAT THE CONDITION OF THE NATIONAL ECONOMY IS GOING TO TEMPT COMPANIES MORE TO FIX PRICES, AND TO BOYCOTT COMPETITION. THE TERM--MONOPOLY MAY BE REDEFINED.

THE COST OF LITIGATION IS NOT GOING TO DECLINE. LITIGATION COSTS ARE GOING TO INCREASE THEREBY PLACING GREATER DEMANDS ON THE FEDERAL LAWYER TO LITIGATE IN THE PUBLIC INTERESTS. THE PRIVATE BAR WILL CONTINUE TO DO ITS SHARE, BUT VOLUNTEER LEGAL SERVICES BY PRIVATE FIRMS MAY NOT BE ABLE TO ABSORB THE INCREASED COSTS. FEDERALLY FUNDED LEGAL SERVICES MAY WELL HAVE LOST ITS BATTLE TO SURVIVE AND SOCIAL LEGAL ADVOCACY GROUPS MAY HAVE TO MERGE DUE TO INCREASED LITIGATION AND ADMINISTRATIVE COSTS, AND BECAUSE OF A TEMPORARY DECLINE OF GOVERNMENT SUPPORT.

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BEFORE THE END OF THE CENTURY, THE LITIGATION GRAVYTRAIN IS LIKELY TO SLOW DOWN BECAUSE THE COST OF LITIGATION AND ABUSE OF DISCOVERY HAS BECOME TOO INTOLERABLE. "YOU'LL SEE LIMITS ON DISCOVERY AND MOVES TO FORCE ARBITRATION," SAYS FORMER ABA PRESIDENT BERNARD SEGAL, A PARTNER AT PHILADELPHIA'S SCHNADER, HARRISON, SEGAL & LEWIS.

"THE DAYS OF THE FIVE-PERSON FIRM ARE OVER," SAYS JAY FOONBERG, A PARTNER AT THE 18-LAWYER SLAVITT, KING, & FOONBERG IN LOS ANGELES AND AUTHOR OF THE POPULAR BOOK, HOW TO START AND BUILD A LAW PRACTICE. FOONBERG, WHO FREQUENTLY LECTURES AT BAR ASSOCIATION SEMINARS ON THE LAW OFFICE OF THE FUTURE, CLAIMS HE'S DEVELOPED A "SECRET 20-YEAR MASTER PLAN" FOR HIS FIRM TO BECOME AN INTERNATIONAL OPERATION WITH SEVERAL THOUSAND LAWYERS. "YOU'RE EITHER GOING TO BE BIG OR DIE," HE EXPLAINS.

LARGE LAW FIRMS WILL MAKE IT MORE DIFFICULT FOR THE FEDERAL LAWYER TO REPRESENT THE PUBLIC INTERESTS. THE FEDERAL LAWYER IS SIMPLY NOT GOING TO BE ABLE TO KEEP UP GIVEN REDUCTIONS IN GOVERNMENT SPENDING AND REDUCTIONS IN FORCE. THESE FACTORS MAY MAKE GOVERNMENT LESS ATTRACTIVE, ESPECIALLY IF THE PAY OF GOVERNMENT EMPLOYEES REMAINS STATIC.

IF THE SMALL FIRM DOES AS SOME ARE PREDICTING, THIS WILL EITHER ELIMINATE MINORITY LAWYERS AND COMPEL MINORITY LAW FIRMS TO MERGE WITH OTHER MINORITY OR NON-MINORITY LAW FIRMS OR FORCE ASSOCIATION WITH THIRD WORLD LAWYERS IN ORDER TO COMPETE.

THE CONFLICT OF INTEREST PROBLEM:

THE RULES AGAINST REPRESENTING ONE CLIENT AGAINST ANOTHER WILL CRAMP MANY AMBITIOUS FIRMS' MARKET POTENTIAL. THE BEST EXAMPLE OF THIS PROBLEM IS THE 1978 ANTITRUST SUIT IN WHICH A CHICAGO'S BASED FIRM WAS DISQUALIFIED FROM REPRESENTING WESTINGHOUSE AGAINST URANIUM SELLERS BECAUSE ITS WASHINGTON BRANCH HAD DONE SOME TOTALLY UNRELATED WORK FOR A TRADE GROUP OF OIL COMPANIES, THREE OF WHICH ALSO HAPPENED TO BE URANIUM SELLERS.

LAWYERS AND OUTER SPACE

THE FUTURE LAWYER WILL ALSO BE INVOLVED IN THE NEW FRONTIER OF OUTERSPACE. WITHIN THE NEAR FUTURE WE WILL WITNESS THE DAY WHEN FLIGHTS INTO OUTERSPACE WILL BE AS COMMON AS AIRPLANES TAKING OFF. LAWYERS WILL BE ON THESE FLIGHTS IN ORDER TO DEAL WITH THE LEGAL PROBLEMS THAT INEVITABLY WILL ARISE. MOREOVER, SPACE LAW OFFICES MAY BE REQUIRED TO DEAL WITH PROBLEMS THAT WILL EVOLVE FROM DISPUTES BETWEEN DIFFERENT NATIONS IN OUTERSPACE. NATURALLY, THE FEDERAL GOVERNMENT WILL HAVE OR SEEK INTERESTS IN OUTERSPACE. FEDERAL LAWYERS WILL BE CALLED UPON TO DEFINE THE FEDERAL INTERESTS. FEDERAL LAWYERS WILL BE SENT TO OUTER SPACE WITH AN INCREASED PER DIEM AND OUTER SPACE TRAVEL ORDERS.

NEW INTERNATIONAL FORUMS

THE FUTURE OF LAW WILL ALSO BE REFLECTED IN MORE INTERNATIONAL AND EVEN GLOBAL LEGAL FORUMS. THE INCREASINGLY SHRINKING WORLD AND THE UNIVERSE BECAUSE OF TECHNOLOGY, WILL ALSO DICTATE THAT MORE GLOBAL AND UNIVERSAL DISPUTE MECHANISMS BE ESTABLISHED. CERTAINLY THE FEDERAL LAWYER WILL PLAY A ROLE IN THESE AREAS.

WILL THE TECHNOLOGICAL ADVANCE IN THE PRACTICE OF LAW MAKE THE LEGAL PROFESSION LESS HUMAN?

ALONG WITH MORE ELECTRONIC GADGETS USED IN LAW PRACTICE, WE MUST BE CAREFUL NOT TO ALLOW THESE MECHANICAL DEVICES TO MAKE THE PRACTICE OF LAW MECHANICAL.

THE ROLE OF THE LAWYER HAS ALWAYS BEEN A PERSONAL ONE BETWEEN A CLIENT WITH A HUMAN PROBLEM AND A LAWYER CONTENDING FOR A HUMAN SOLUTION. ON THE ONE HAND WE CANNOT SIT BACK AND LET THE TECHNOLOGICAL REVOLUTION PASS US BY. HOWEVER, ON THE OTHER HAND WE CANNOT PERMIT A MECHANIZED REVOLUTION MAKE US LOSE ONE OF OUR MOST CHERISHED ATTRIBUTES, OUR HUMANITY. USING MECHANICAL DEVICES TO SOLVE HUMAN PROBLEMS IS DESIRABLE. WE MUST NOT, HOWEVER MAKE THE FATAL MISTAKE OF ALLOWING MECHANICAL DEVICES FORCE US TO MAKE MECHANICAL DECISIONS.

THE FEDERAL BAR ASSOCIATION--ITS FUTURE

IN CLOSING, I WOULD ADD THAT THE FUTURE OF THE FEDERAL LAWYER IN THE LEGAL PROFESSION SHOULD BE TIED TO THE PRINCIPLES OF THE FEDERAL BAR ASSOCIATION. THE FEDERAL BAR ASSOCIATION

MUST HAVE THE VISION TO ASSESS THE VITAL NEEDS OF GOVERNMENT LAWYERS. THE FEDERAL BAR ASSOCIATION MUST CONTINUE TO SPEAK IN A CLEAR AND AUDIBLE VOICE FOR THE INTERESTS OF ITS MEMBERS AND FOR THE INTERESTS OF THE JUDICIARY. THE FEDERAL BAR ASSOCIATION MUST BE THE FORUM IN WHICH THE PRIVATE AND PUBLIC SECTOR LAWYERS COME TOGETHER TO BETTER UNDERSTAND THEIR COLLECTIVE INTERESTS. THE FUTURE OF THE FEDERAL BAR ASSOCIATION IS TIED TO THE FUTURE OF THE LEGAL PROFESSION.

J. Clay Smith, Jr.

J. CLAY SMITH, JR.
NATIONAL PRESIDENT