

## **Working Notes**

# **Deliberations of the Committee on Research About the Future of the Legal Profession On the Current Status of the Legal Profession**

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## INTRODUCTION

The Standing Committee on Research About the Future of the Legal Profession, chaired by Robert J. Grey, Jr. of Richmond, Va., took as its charge this year to develop a report on the current state of the profession, which will serve as a platform to examine the challenges and opportunities of change and how the legal profession can and should define its own future.

Three subcommittees were appointed to look at different aspects of the legal system and legal practice. The first, which examined the trends relating to globalization, was chaired by Judah Best of Washington, D.C. The second examined how Americans access legal services, and was chaired by M. Joe Crosthwait Jr. of Midwest City, Okla. The third, which looked at the state of private law practice, was chaired by James Lee Thompson of Rockville, Md.

This report gathers the information developed by all three subcommittees, and presents a list of trends affecting the profession and a list of questions the committee has identified, some provocative, that should be discussed as work moves forward.

## PREFACE

The soul of any society is its law and its legal system. The American legal system, and hence our profession, are undergoing unprecedented change. The profession's clear and unalterable goal must be the preservation and advancement of those principles essential to the rule of law grounded in truth, justice and equality. The most fundamental of these are an independent bar and an independent judiciary. Our biggest challenge in reaching this goal is to recreate ourselves with a culture and a regulatory structure that preserves our core principles, protects our clients, and maintains our relevance.

We are in the midst of the biggest transformation of civilization since the caveman began bartering. The practice of law and the administration of justice are at the brink of change of an unprecedented and exponential kind and magnitude. This Age of Technological Revolution, together with the globalization of business and competition, are transforming our profession and our system of justice with at least the same intensity as they are everything else around us.

The symptoms of these monumental changes are becoming all the more familiar, while their implications, and the course of action to be taken, become increasingly enigmatic and complicated. We are increasingly seeing the many examples of how the Age of Technology and the Internet are rapidly transforming our world into a smaller and decidedly more complicated place. Be it good or bad, boundaries are blurring, and in many instances disappearing altogether. Globalization is a fact of life. Traditional and comfortable approaches and solutions are often ineffective, or even counter-productive, to addressing modern day problems, demands and needs. In so many respects, "This is the way we've always done it!" simply doesn't do it any more.

What does this unprecedented change imply for a precedent-oriented profession? How should the practice of law and the administration of justice change to take advantage of this rapidly changing world? How do we assure the survival of our core principles - those fundamental and enduring beliefs essential to the Rule of Law - in this Age of Revolution? What must we do now?

## **The Lodge Meets the Strategic Inflection Point**

Jennifer James, an urban cultural anthropologist, in her book *Thinking in the Future Tense*, includes the organized bar with the medical profession and others as a "lodge culture" – one that enforces and maintains a nostalgic and no longer tenable view of the world. Lodges are cooperative alliances in which the members bond together for power or protection, or both. James argues that lodges are rarely visionary, but rather content with the status quo, and unwilling to acknowledge change. In times of rapid change, they become irrelevant.

In his 1996 book *Only the Paranoid Survive*, Andy Grove, co-founder and chairman of the board of Intel Corp., gave birth to the term "Strategic Inflection Point." A strategic inflection point is a moment, often unforeseen and more often not perceived until too late, when massive, unprecedented, and fundamentally unforeseen change occurs. All bets are off, and all the rules change. The premises and assumptions upon which success had been predicated are no longer true. A strategic inflection point is not an incremental or peripheral change. It is a fundamental and revolutionary transformation.

Strategic inflection points are not unique to this new world of technology, nor are they unique to business. Indeed, human history has been and will forever be defined by them. In business, a strategic inflection point is not merely price competition or incremental change, such as a "newer, better" widget. Rather, it is a radically new product, an innovative new technology, or a novel process or provider that renders widgets and the way they have been made or provided fundamentally obsolete. It is that point at which one industry is destroyed or becomes unrecognizable, and another is created. Electricity, the horseless carriage, the telephone, the airplane, and many other new technologies and products – not the least of which are the computer and the Internet – all created new businesses and enterprises and fundamentally altered those that survived strategic inflection points.

While certainly the law itself has changed dramatically over the past 225 years, the institution we call "the law" has changed very little. Until relatively recently, lawyers have been the unique providers of legal services, in and out of court, and have been the few to possess the "mystery" of the law through law books and training and to have, if you will, the key to the courthouse.

But like the rest of the world, the legal profession and the administration of justice are in the eyes of a strategic inflection point. Heritage is no longer our destiny, for we are in an age of revolution from which we will emerge distinctly, and perhaps unrecognizably, different. But will we be the ones to lead and define that change? Or are we going down the same road as the medical profession?

How a person, company or profession responds to a strategic inflection point determines their fate. To survive and prosper, we must envision, embrace, and create the future.

If the law were just another company, or just another industry about to become obsolete, it would matter little in the overall order of things what, if anything, we do. But the law is not just another business or industry. It is the foundation upon which our entire society and our system of justice and enlightened self-government are founded. Indeed, without lawyers this change would likely never have occurred! The risk is not about just our livelihoods and our businesses, although they are clearly in jeopardy. Our greatest peril is that if we cannot survive as an "industry" and as a profession, then the underlying core principles and the Rule of Law are themselves at risk.

### **Are We Just a Train?**

Much to the chagrin of many members of our profession and to the surprise of yet others, the legal profession is not generally perceived by the public to be the center of the universe. The public, at least, is behaving accordingly. For us, the rapidly expanding delivery of legal services by non-legal entities should be seen as a symptom of an insidious, complicated and systemic condition that will sooner, rather than later, determine our future to the extent we do not first create it.

Peter Drucker, the famed organizational expert, in writing about the bankruptcy of Penn Central Railroad, said that the reason Penn Central failed is because it asked the wrong question. Penn Central said, "We have a train. Would you like to get on?" Drucker said the question should have been, "We are in the transportation business. Where would you like to go?" And so it is for the legal profession and the organized bar. We must first get the question right.

If all we do is drive trains to fixed destinations, and our potential passengers wish to go elsewhere (faster and cheaper, of course), we will not be able to meet their needs.

The best questions for us must look beyond what we already know we do, and address the very basics. Do we have a train that can go only where the tracks go, or do we provide a form of transportation with the destination to be determined by our passengers?

Why do we exist?

If we didn't exist would we, or society, invent us?

If so, what then would we look like and what then would we do?

Are we, as some argue quite persuasively, more concerned about preserving our track right-of-way than we are with transporting our passengers? If, in the final analysis, we have no passengers, then what is the worth of all that right-of-way? What will become of those seemingly important destinations to which perhaps only we go, or to which our passengers arrange different transportation?

Most lawyers charge by the mile of track covered rather than by the destination achieved. And that, together with the fact that all we appear to have is trains, has encouraged others to enter the transportation business. We have allowed others to transport our passengers, and indeed have encouraged some of our former passengers to walk, hitchhike, or ride with strangers who lack our knowledge of and commitment to the rules of the road.

We must now critically examine who we are, what we do, and – perhaps most important – what we do that only we can do. We must be willing to share that which does not require us, and staunchly defend that which demands our unique abilities and highest of standards. We must be willing and able to discard old paradigms and engender and embrace manifest change.

This self analysis calls upon us to examine the entirety of our legal profession and of our justice system, including the manner in which we select and train law students, the manner in which we strive to make legal services accessible and affordable, how we can assure the fair and impartial application of the law across the board, and, ultimately, how we preserve inviolate the Rule of Law.