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A Judge's Advice to Today's Law Graduates

Roger J. Miner '56

Roger J. Miner
U.S. District Judge
Northern District of New York

NEW YORK LAW SCHOOL

Mid-Year Graduation

January 13, 1985

Congratulations are first in order on this happy occasion -- congratulations to each of you graduates upon the completion of a strenuous and demanding curriculum; to your families for their encouragement and support and for their understanding of the difficult task each of you has undertaken and accomplished; to the Dean and Faculty Members, whose instruction, guidance and interest have inspired in you a sense of justice as well as a knowledge of the law; and to the Chairman and Members of the Board of Trustees, because their continuing quest for excellence has established and maintained this institution as a law school of the first rank and a source of pride to us all.

I have long held the opinion that the mid-year graduates of New York Law School are the most intelligent and capable law students anywhere, and that they inevitably become the most outstanding lawyers, judges and legal scholars in the nation. The fact that I graduated from this institution in January of 1956 does not influence my opinion in any way, of course. In my day, there was no ceremony to honor the mid-year graduates, and we were constrained to await the June commencement exercises for appropriate recognition of our achievements. Although I

participated in those exercises, I do not remember the name of the speaker, nor do I recall the speaker's topic. This should give you some perception of the importance of what I am about to say. I do recall that I attended with a great deal of satisfaction and happiness, since I previously had received notice of a passing grade on the February bar examination. The joy of the June graduates was mixed with apprehension, however, because, for them, the final test was yet to come. There are, indeed, many advantages to concluding one's studies at mid-year.

When Dean Simon invited me to be your guest speaker, he asked that I furnish you with some advice you might find helpful as you go out into the world of the law. My advice is this -- don't go!! Having provided you with this guidance, I turn to an examination of the special place in society you now assume. Judge Alfred Conkling, a distinguished predecessor in the office I now hold, put it this way in a speech to the graduating class of an upstate law school in 1856: "You belong to a profession potent for good or evil, and I need not remind you that your responsibilities are commensurate with your power. These responsibilities are as lasting as life, and you cannot escape from them for a single hour."[1] It is, therefore, no small matter to take on the mantle of a lawyer. With the title and the privileges come significant life-long obligations -- obligations to your clients; to the Courts; to your brothers and sisters at

the bar; to your employers, be they public or private; to opposing parties; and to your fellow citizens.

I speak to you today of your responsibilities to your fellow citizens and of your duty to act in the public interest. You must not be neglectful in these matters, because justice for all is an aspiration requiring the ever-vigilant attention of the legal profession. My favorite legal cartoon portrays the foreperson of a jury announcing a verdict in these words: "Your Honor, we have decided not to get involved." Unlike that foreperson, you cannot refuse to be involved. The Canons of Ethics command you to assist in improving the legal system.[2] The Ethical Considerations instruct that "lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients."[3] The Ethical Considerations also provide: "If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed."[4] You

are admonished to educate the public to recognize the need for legal services, to provide methods for the intelligent selection of counsel, and to see to the provision of legal services for those unable to pay for them.[5] You are enjoined to assist in the selection of those qualified for judicial office and to avoid intemperate remarks as well as criticisms motivated by reasons other than the desire to improve the legal system.[6] It is the obligation of each lawyer to insure that those who practice law are qualified to do so,[7] and attorneys seeking administrative or legislative changes are obligated to indicate whether they do so on behalf of themselves, their clients or the public.[8]

The American Bar Association, in adopting the new Model Rules of Professional Conduct in August of 1983, again recognized the societal obligations of the profession. The Preamble to the Model Rules, entitled "A Lawyer's Responsibilities," includes the following:

> As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.[9]

The new Model Rules, presently being studied by the New York State Bar Association with a view toward their adoption in this state,[10] bring no change in the traditional obligation of the bar to serve the public interest.[11] The Canons of Professional Ethics adopted by the ABA in 1908 informed the bar that "a lawyer will find [the] highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest [person] and as a patriotic and loyal citizen.[12]

The distinct responsibilities of the lawyer as citizen were brought to my attention early on, and I recall the occasion vividly. It took place during my interview with the Committee on Character and Fitness, just prior to the formalities of bar admission. An elderly member of the committee asked me if I had ever voted. I replied that I had not yet gotten around to it, having just turned twenty-two and having been deeply involved in law studies for the past several years. (The voting age then was 21). My interviewer was enraged by my response, and he told me that a person who failed to perform one of the basic duties of citizenship had no business seeking admission to the bar. So vehement was his response that I really feared that I would not be admitted and that my years of study had gone for naught. The Committee provided a favorable recommendation only after receiving my assurance that I would register to vote immediately,

and I can assure you that I have been casting my ballot regularly ever since.

Your fellow citizens will remind you constantly of your public obligations. Even as law students, your relatives, friends and acquaintances have brought to your attention perceived deficiences in the law and in the legal system. As members of the law profession, each of you is held to answer for these deficiencies, and each of you is held responsible to propose and promote appropriate remedies. Since the founding of the Republic, the lawyers of this nation have been engaged in an ongoing effort to formulate the rules necessary for the establishment of a just society. The undertaking is an enormous one, and your contributions to it will be critical as the effort continues in the years to come.

It seems to me that there has been abroad in the land for some time a general dissatisfaction with the processes by which disputes are resolved. Because of your direct involvement in those processes, the citizenry will expect you to address the problems giving rise to their dissatisfaction. I predict that, before the end of this century, the bar will propose and implement drastic changes in the way disputes are resolved in court and will utilize alternate forms of dispute resolution to an extent unknown today. My prediction is based on the simple fact that the courts cannot keep pace with their staggering

caseloads under the burden of current procedural and jurisdictional requirements. Civil case filings in the federal courts have increased 72.8% from 150,000 to 260,000 in the last five years.[13] During the same period, filings have increased by 110% in my own court, where each judge carries approximately 900 cases.[14] The end of this multiplication is nowhere in sight. Congressional legislation, enacted without regard to judicial impact, constantly adds to the work of the federal judiciary, and little effort is being made to reduce jurisdiction previously conferred. Inevitably, the burgeoning caseload will develop into a massive backlog of cases, and the time and expense involved in pursuing the traditional forms of litigation will become prohibitive in the face of this judicial gridlock.

The public clamor for a streamlining of the way courts operate already has produced some results. Early judicial intervention for case management and scheduling, sanctions for frivolous suits, and restrictions on the use of discovery all have been mandated in the federal courts by recent rules amendments.[15] Programs for the more efficient use of jurors[16] and for the application of computer technology to the business of the courts have been implemented.[17] The new Chief Judge of New York, who will preside over one of the largest judicial structures in the world, has proposed that the courts of this state adopt the individual case assignment system, a method used

in most federal courts and long-overdue in New York.[18] He also has supported proposals for merger of the New York trial courts, and I am certain that there will be other efforts made for modernization under his leadership. One suggestion for improvement in New York procedures is for restrictions on appellate review of interlocutory orders, especially in discovery matters. Telephone conferencing,[19] mini-trials,[20] summary jury trials,[21] court-annexed arbitration,[22] and incentives for early settlement[23] are some of the innovative proposals now being advanced. Fee shifting statutes, and the movement toward the English Rule for the payment of attorneys' fees, provide additional possibilities.[24] We shall look to you for better ideas to improve the efficiency of the courts and to make litigation affordable for all.

Increasingly important to the reduction of costs and delay in federal court is the need to modify or eliminate certain types of jurisdiction. Diversity of citizenship, when the amount in controversy is $10,000 or more,[25] forms the jurisdictional basis for 25%[26] of the cases brought into federal court. I have dealt recently with a sidewalk falldown and a dogbite case for no better reason than that the litigants were citizens of different states. (I think that the dog was a resident of Massachusetts). In spite of the opposition of the organized bar to any modification of this outmoded basis for federal jurisdiction,[27]

the need to relieve judicial overload eventually will outweigh the need for a federal forum in these matters. An additional benefit will be a retardation in the continuing demand for new district court judgeships.[28] Social Security ligitation represents nearly 12%[29] of the filings in federal courts, and is an example of due process run wild. After an administrative determination and one review by an appeals board in the agency, there frequently follow, in succession, reviews by a United States Magistrate, a District Court Judge, and a United States Court of Appeals. A question you must answer is: how many appeals are enough? Prisoners' litigation is another problem crying out for a drastic curtailment of jurisdiction in the federal courts. These cases are a matter of particular concern in my court, since more than 10,000 state prisoners reside in various institutions within the jurisdiction of the Northern District, thanks to the criminal courts of the City of New York. Some days it seems to us that every one of these prisoners has filed a habeas corpus petition or a civil rights complaint relating to conditions of confinement. These cases are clogging the federal courts of the nation and hindering the progress of worthy causes of action. It is no secret that 91% of the prisoners' cases eventually are determined to have no merit whatsoever.[30] The habeas cases involve the constitutional complaints of prisoners who necessarily have exhausted all their

state remedies by pursuing their contentions through all the state appellate processes available. While habeas jurisdiction should not be abolished altogether, there is no reason why some changes should not be made with a view toward limiting access and imposing a period of limitations. As to the conditions of confinement cases, jurisdictionally based on a statute originally designed as a remedy for racial discrimination,[31] there is no reason why prior resort to state administrative remedies should not be required. When it comes to burdening the courts with frivolous complaints, these cases take the prize. One prisoner filed a complaint in my court asking that longer pencils be provided to allow him to file more complaints. Another alleged that he was improperly subjected to prison discipline for maintaining some pieces of fruit in a glass of water. What he neglected to say, of course, was that he was trying to ferment an alcoholic beverage. Surely, an administrative procedure can be devised to screen out those few prisoners' cases worthy of scrutiny for constitutional deprivations.

Alternate forms for dispute resolution are growing by leaps and bounds, and new ones will be developed with your input and the fresh approach you will bring to the law. Arbitration, mediation and conciliation outside the formal court framework will serve to reduce costs and to expedite the disposition of controversies in appropriate cases.[32] But always remember that

most disputes are resolved by compromise with the help of lawyers. Abraham Lincoln said: "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough."[33]

My fellow Alumni, it has been about thirty years since I first walked in the door at 244 William Street, where New York Law School was then located. I well remember the sense of excitement I felt as I began my law studies, a sense that has not diminished to this very day. I have enjoyed every minute of my association with the law and with lawyers -- in private practice, in public service and in the judiciary. I wish for each of you that same enjoyment, satisfaction and excitement. May you all have successful and rewarding careers at the bar, and may Alma Mater always occupy the same place in your affections as she does in mine.

FOOTNOTES

1. Alfred Conkling, An Address to the Graduating Class of the Law School of the University of Albany 30 (Mar. 27, 1856) (available in Archives of New York State Library) (Published by the Class -- W.C. Little & Co., Law Book Publishers, Albany).

2. N.Y. Code of Professional Responsibility Canon 8 (McKinney 1975).

3. N.Y. Code of Professional Responsibility EC 8-1 (McKinney 1975) (footnotes omitted).

4. N.Y. Code of Professional Responsibility EC 8-2 (McKinney 1975) (footnote omitted).

5. N.Y. Code of Professional Responsibility EC 8-3 (McKinney 1975).

6. N.Y. Code of Professional Responsibility EC 8-6 (McKinney 1975).

7. N.Y. Code of Professional Responsibility EC 8-7 (McKinney 1975).

8. N.Y. Code of Professional Responsibility EC 8-4 (McKinney 1975).

9. Model Rules of Professional Conduct Preamble (1983), reprinted in 52 U.S.L.W. 1 (U.S. Aug. 16, 1983).

10. See Fox, State Bar Panel Prepares Final Draft of Ethics Code, N.Y.L.J., Jan. 4, 1985, at 1, col. 3.

11. See Model Rules of Professional Conduct Rules 6.1 - 6.4 (1983), reprinted in 52 U.S.L.W. 1, 23 (U.S. Aug. 16, 1983).

12. Canons of Professional Ethics of the American Bar Association Canon 32 adopted at 31st Annual Meeting, Seattle, Washington, Aug. 27, 1908, reprinted in Am. Jur. 2d Desk Book, Doc. No. 91 (1962).

13. Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, Federal Judicial Workload Statistics 7 (1984).

14. Administrative Office of the U.S. Courts, Federal Court Management Statistics 1984, 26 (1984).

15. See Fed. R. Civ. P. 11, 16, 26; see also Sanctioning Attorneys for Discovery Abuse -- The Recent Amendments to the Federal Rules of Civil Procedure: Views from the Bench and Bar, 57 St. John's L. Rev. 671 (1983); A. Miller, The August 1983 Amendments to the Federal Rules of Civil Procedure (Federal Judicial Center 1984).

16. See, e.g., Committee on Juries of the Judicial Council of the Second Circuit, Report on Seven Experiments Conducted by District Court Judges in the Second Circuit (1984); G. Bermant, Jury Selection Procedures in United States District Courts (Federal Judicial Center 1982); G. Bermant, Conduct of the Voir Dire Examination: Practices and Opinions of Federal District Judges (Federal Judicial Center 1977); Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, 1983 Grand and Petit Juror Service in United States District Courts 22 (1983).

17. See Administrative Office of the U.S. Courts, 1983 Annual Report of the Director of the Administrative Office of the U.S. Courts 24, 27 (1983).

18. See N.Y.L.J., Jan. 3, 1985, at 3, col. 1.

19. See Nejelski, With Justice Affordable for All, Judges' J., Summer 1980, at 9.

20. See Green, Growth of the Mini-Trial, Litigation, Fall 1982, at 12.

21. See M. Jacoubovitch & C. Moore, Summary Jury Trials in the Northern District of Ohio (Federal Judicial Center 1982).

22. See Administrative Office of the U.S. Courts, Report of the Proceedings of the Judicial Conference of the U.S. 49-50 (1984); E.A. Lind & J. Shapard, Evaluation of Court-Annexed Arbitration in Three Federal District Courts (Federal Judicial Center 1981); Nejelski & Ray, Alternatives to Court and Trial, in The Improvement of the Administration of Justice 263 (F. Klein ed. 1981).

23. See Judicial Conference of the U.S., Committee on Rules of Practice and Procedure, Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure 7-13 (1983) (proposed Rule 68).

24. See J. Shapard, The Influence of Rules Respecting Recovery of Attorneys Fees on Settlement of Civil Cases (Federal Judicial Center 1984).

25. 28 U.S.C. § 1332.

26. M.C. Butler, Diversity in the Court System: Let's Abolish It, in Abolition of Diversity Jurisdiction: An Idea Whose Time Has Come? 1, 3 (National Legal Center for the Public Interest 1983).

27. See, e.g., J. Frank, Diversity Jurisdiction: Let's Keep It, in Abolition of Diversity Jurisdiction: An Idea Whose Time Has Come? 21 (National Legal Center for the Public Interest 1983); American Bar Association Governmental Affairs Office, Washington Letter 5 (Jan. 1, 1985); Betz, For the Retention of Diversity Jurisdiction, N.Y. St. B. J., July 1984, at 35.

28. See Administrative Office of the U.S. Courts, Report of the Proceedings of the Judicial Conference of the United States 55 (1984).

29. Administrative Office of the U.S. Courts, Federal Court Management Statistics 1984, 129 (1984).

30. Hon. Frank J. McGarr, Identifying and Reducing the Burden of Frivolous Litigation 8, Remarks at Workshop for Judges of the Eighth and Tenth Circuits (Jan. 19, 1984).

31. See 42 U.S.C. § 1983.

32. See, e.g., Greenawalt, Alternatives to Court Resolution of Disputes: Report of NYSBA's Special Committee, N.Y. St. B. J., Oct. 1984, at 36; Nejelski & Ray, Alternatives to Court and Trial, in The Improvement of the Administration of Justice 263 (F. Klein ed. 1981).

33. 2 The Collected Works of Abraham Lincoln 81-82 (Basler ed. 1953) quoted in Brown, The Decline of Lawyer's [sic] Professional Independence, N.Y. St. B. J., Nov. 1983, at 11, 17.

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On the Cover: Messrs. Johnson and Andrist, authors of *Historic Courthouses of New York State,* tell us that in 1821 four acres of Geneseo village, including the present site of the Livingston County Courthouse, were deeded to the county by William and James Wadsworth, two pioneer settlers, for one dollar. The Livingston County Courthouse, pictured on our cover, has been described as an "excellent example of brickwork." The *Journal* is indebted to Miss Joyce Fitzgerald, Clerk of the Board of Supervisors of Livingston County, Geneseo, New York, for the photograph.

ROGER J. MINER**

A Judge's Advice to Today's Law Graduates*

As our nation's law schools prepare to graduate a new generation of lawyers, I find myself reflecting on the special place in society these new members of the bar will come to assume. To these young men and women about to embark upon promising and fulfilling careers, I wish to offer some modest thoughts by which they may guide themselves in the honored profession they will soon join. Judge Alfred Conkling, a distinguished predecessor in the office I formerly held as a District Court Judge, put it this way in a speech to the graduating class of an upstate law school in 1856: "You belong to a profession potent for good or evil, and I need not remind you that your responsibilities are commensurate with your power. These responsibilities are as lasting as life, and you cannot escape from them for a single hour."[1] It is, therefore, no small matter to take on the mantle of a lawyer. With the title and the privileges come significant life-long obligations — obligations to your clients; to the Courts; to your brothers and sisters at the bar; to your employers, be they public or private; to opposing parties; and to your fellow citizens.

I address here only your responsibilities to your fellow citizens and your duty to act in the public interest. You must not be neglectful in these matters, because justice for all is an aspiration requiring the ever-vigilant attention of the legal profession. My favorite legal cartoon portrays the foreperson of a jury announcing a verdict

* This article is based upon Judge Miner's address to the mid-year graduates of New York Law School.

** Judge Miner, formerly United States District Judge for the Northern District of New York, has just been invested as a judge of the Circuit Court of Appeals, Second Circuit. He served as a First Lieutenant in the Judge Advocate General's Corps in Japan and Korea, and as Corporation Counsel for the City of Hudson. He is a teacher, author and in private practice as a lawyer, he specialized in trial work.

[1] Alfred Conkling, An Address to the Graduating Class of the Law School of the University of Albany 30 (Mar. 27, 1856) (available in Archives of New York State Library) (Published by the Class — W.C. Little & Co., Law Book Publishers, Albany).

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The public clamor for a streamlining of the way courts operate already has produced some results. Early judicial intervention for case management and scheduling, sanctions for frivolous suits, and restrictions on the use of discovery all have been mandated in the federal courts by recent rules amendments.[15] Programs for the more efficient use of jurors[16] and for the application of computer technology to the business of the courts have been implemented.[17] The new Chief Judge of New York, who will preside over one of the largest judicial structures in the world, has proposed that the courts

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[12] Canons of Professional Ethics of the American Bar Association Canon 32 adopted at 31st Annual Meeting, Seattle, Washington, Aug. 27, 1908, *reprinted in* Am. Jur. 2d Desk Book, Doc. No. 91 (1962).

[13] Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division, *Federal Judicial Workload Statistics* 10 (1984).

[14] Administrative Office of the U.S. Courts, *Federal Court Management Statistics 1984*, 26 (1984).

[15] *See* Fed. R. Civ. P. 11, 16, 26; *see also Sanctioning Attorneys for Discovery Abuse — The Recent Amendments to the Federal Rules of Civil Procedure: Views from the Bench and Bar*, 57 St. John's L. Rev. 671 (1983); A. Miller, *The August 1983 Amendments to the Federal Rules of Civil Procedure* (Federal Judicial Center 1984).

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[17] *See* Administrative Office of the U.S. Courts, *1983 Annual Report of the Director of the Administrative Office of the U.S. Courts* 24, 27 (1983).

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Continued on Page 58

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[18] *See* N.Y.L.J., Jan. 3, 1985, at 3, col. 1.

[19] *See* Nejelski, *With Justice Affordable for All*, Judges' J., Summer 1980, at 9.

[20] *See* Green, *Growth of the Mini-Trial*, Litigation, Fall 1982, at 12.

[21] *See* M. Jacoubovitch & C. Moore, *Summary Jury Trials in the Northern District of Ohio* (Federal Judicial Center 1982).

[22] *See* Administrative Office of the U.S. Courts, *Report of the Proceedings of the Judicial Conference of the U.S.* 49-50 (1984); E.A. Lind & J. Shapard, *Evaluation of Court-Annexed Arbitration in Three Federal District Courts* (Federal Judicial Center 1981); Nejelski & Ray, *Alternatives to Court and Trial*, in The Improvement of the Administration of Justice 263 (F. Klein ed. 1981).

[23] *See* Judicial Conference of the U.S., Committee on Rules of Practice and Procedure, *Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure* 7-13 (1983) (proposed Rule 68).

[24] *See* J. Shapard, *The Influence of Rules Respecting Recovery of Attorneys Fees on Settlement of Civil Cases* (Federal Judicial Center 1984).

[25] 28 U.S.C. § 1332.

[26] M.C. Butler, *Diversity in the Court System: Let's Abolish It*, in Abolition of Diversity Jurisdiction: An Idea Whose Time Has Come? 1, 3 (National Legal Center for the Public Interest 1983).

[27] *See, e.g.*, J. Frank, *Diversity Jurisdiction: Let's Keep It*, in Abolition of Diversity Jurisdiction: An Idea Whose Time Has Come? 21 (National Legal Center for the Public Interest (1983); American Bar Association Governmental Affairs Office, *Washington Letter* 5 (Jan. 1, 1985); Betz, *For the Retention of Diversity Jurisdiction*, N.Y. St. B. J., July 1984, at 35.

[28] *See* Administrative Office of the U.S. Courts, *Report of the Proceedings of the Judicial Conference of the United States* 55 (1984).

[29] Administrative Office of the U.S. Courts, *Federal Court Management Statistics 1984*, 129 (1984).

[30] Hon. Frank J. McGarr, *Identifying and Reducing the Burden of Frivolous Litigation* 8, Remarks and Workshop for Judges of the Eighth and Tenth Circuits (Jan. 19, 1984).

[31] *See* 42 U.S.C. § 1983.

Bulletin Board

Robust Growth of D.C. Law Offices Led By Branches of Major Firms

SPURRED BY significant growth in the D.C. offices of national firms, Washington, D.C., law offices reported increases in staffing surpassing those of each of the last three years, according to the eighth annual Legal Times survey of D.C. law firms and branch offices.

The 1985 survey indicates that the 25 largest law offices in the city increased their complement of attorneys by 7.0 percent. Those 25 law offices employed 2,691 lawyers (including of counsel), as opposed to 2,516 last year. The growth percentage is up from 4.8 percent last year and is higher than the 1.8 and 5.9 percent reported the two previous years.

But the growth picture was particularly dramatic among the six of those firms that have their largest offices outside of the city. Those firms reported a whopping increase 18.3 percent, compared to a much more modest 4.1 percent increase for native D.C. firms.

Overall, the 20 largest branch offices increased their staffs by 14.7 percent in the past year. Two years ago, the 20 largest branch offices in the city reported an average overall decrease in staffing.

Branch offices reporting large increases were the D.C. office of Dallas' Akin, Gump, Strauss, Hauer & Feld—the city's largest branch office with 126 lawyers up from 110 a year ago—and the D.C. office of New York's Skadden, Arps, Slate, Meagher & Flom, which reported the greatest percentage increase among all branch offices with 20 or more lawyers.

While many of the larger branch offices thrived, the wave of firms opening in the city seems to have ended. Only nine firms reported opening a D.C. office in the past year.

On the other hand, 12 firms decided to close their D.C. offices, including Minneapolis' Dorsey & Whitney which ranks among the largest 40 firms nationwide. All of the offices that closed had fewer than five attorneys.

Overall, the Legal Times survey found 237 branch offices in the city, down from 241 last year and from 246 two years ago. (In order to be listed, an out-of-town firm must have at least one full-time lawyer stationed in its D.C. office.) The 237 figure does not include seven firms classified as "dual-city firms"—those firms have D.C. as one of two primary offices of roughly equal size.

Covington & Burling remains the largest law office in the city with 209 lawyers. But Hogan & Hartson is now tied as the second largest firm in the city with Arnold & Porter. Hogan & Hartson grew from 169 lawyers to 191.

Our Adaptable Constitution

The greatest expounders of the Constitution, from John Marshall to Oliver Wendell Holmes, have always insisted that the strength and vitality of the Constitution stem from the fact that its principles are adaptable to changing events.

—JACKSON, Robert H., *The Struggle for Judicial Supremacy* (New York: Alfred A. Knopf, 1941), p. 174.

A Judge's Advice to Today's Law Graduates

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When it comes to burdening the courts with frivolous complaints, these cases take the prize. One prisoner filed a complaint in my court asking that longer pencils be provided to allow him to file more complaints. Another alleged that he was improperly subjected to prison discipline for maintaining some pieces of fruit in a glass of water. What he neglected to say, of course, was that he was trying to ferment an alcoholic beverage. Surely, an administrative procedure can be devised to screen out those few prisoners' cases worthy of scrutiny for constitutional deprivations.

Alternate forms for dispute resolution are growing by leaps and bounds, and new ones will be developed with your input and the fresh approach you will bring to the law. Arbitration, mediation and conciliation outside the formal court framework will serve to reduce costs and to expedite the disposition of controversies in appropriate cases.[32] But always remember that most disputes are resolved by compromise with the help of lawyers. Abraham Lincoln said: "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough."[33]

[32] *See, e.g.*, Greenawalt, *Alternatives to Court Resolution of Disputes: Report of NYSBA's Special Committee*, N.Y. St. B. J., Oct. 1984, at 36; Njelski & Ray, *Alternatives to Court and Trial*, in The Improvement of the Administration of Justice 263 (F. Klein ed. 1981).

[33] 2 The Collected Works of Abraham Lincoln 81-82 (Basler ed. 1953) *quoted in* Brown, *The Decline of Lawyer's [sic] Professional Independence*, N.Y. St. B. J., Nov. 1983, at 11, 17.