Tomorrow: The Future Role of the Lawyer

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It is time we begin to think about tomorrow.

In law, the emphasis has been on yesterday. Past, which we call precedent, has been a persistent and overriding concern in the law. There are many signs which indicate that the solutions of the past may not be appropriate to solve the problems of the present. It has been observed:

"Never in human history have so many people, or has such a large portion of mankind, been engaged in attempting to remake the environment, to increase our capacity to use the environment for human purposes and to remodel the rules and social arrangements that govern man's interaction with his fellows."

Our concern today is with one segment of people: Lawyers. Lawyers, too, must react to the contemporary emphasis on inventing new forms of relationship of man to his legal environment. Indeed, the lawyer is so charged, by necessary implication. He must react to the demands made by the environment around him. Concerning this role of lawyers, it has been said:

"Concerted action to meet crises, to extend power, or to resist tyranny is very old in human history. Concerted action to create crises, to institute change as a regular feature of social life, is rather new. In most societies through most of human history, the predominant human effort has been directed toward holding things steady or restoring a steady state if it is disrupted by some natural or man-made crisis. The phenomenal thing about modern industrial societies, and others attempting to follow the same path, is the great energy devoted to deliberate disruption of existing conditions and the creation of new ones. A rather remarkable proportion of the legitimately employed labor force is devoted to 'messing up the system' rather than holding things steady. These honored disturbers of the peace include scientists and engineers, scholars and many teachers, lawmakers and many judges, and myriads of experts in public and private employment..."
whose mission in life is to improve everything from the farmer's seed to the techniques of estimating consumer demand for products not yet invented."

In our present era of rapid social change, many of the learned professions have undergone profound transformations. The doctor, the minister, the university scholar—all have developed new social roles, new skills, new relationships with the public they serve. The lawyer, perhaps, has witnessed fewer modifications in his profession than any of the others, but he too is caught up by the forces of expanding technology, new forms of economic organizations, changing social expectations, and so on; and it appears likely that the rate of change of the legal profession will increase markedly in the next several decades.

The work of the legal profession has both broadened and suffered erosion. Many tasks, formerly the exclusive concern of the lawyer, are now being carried out to an even greater extent by non-lawyers in agencies such as insurance firms, mortgage companies, banks. But at the same time that these "quasi-legal" occupations have been absorbing a portion of the lawyer's role in society, the legal profession has extended its activities into new areas, such as the management of business enterprises, political and economic counseling, and social planning. And with the sharp impetus of the civil rights movement and the war on poverty, the shape of the demand for legal services shows indications of major alterations in the years ahead. Legal services are no longer viewed as a privilege of the well-to-do and a gesture of charity for the poor. It seems likely that federal programs to extend legal services will have an effect far greater than their original intention and will introduce new concepts to legal practice.

Lawyers may profit by recalling the words of Alexis deTocqueville who early observed the influence which the members of the legal profession exert on democracy. He said, in part: "... [T]hey are the masters of a science which is necessary, but which is not very generally known, they serve as arbiters between the citizens; and the habit of directing to their purpose the blind passions of parties in litigation inspires them with a certain contempt for the judgment of the multitude... in matters of civil law the majority are obligated to defer to the authority of

the legal profession, and the American lawyers are disinclined to innovate when they are left to their own choice.\(^3\)

Reflection on these words of deTocqueville produces mixed emotions. The legal profession wishes to be considered a leader. Yet, in this society of rapid change and innovation the profession will suffer disaster should it assume an unbending posture declaring: “Let them eat cake.”

My hypothesis is quite simple: the role of the lawyer in American society is changing rapidly. And, the change occurring is, unfortunately, without the full awareness of lawyers; the change is occurring despite the lawyers.

There is change all about us. The role of the lawyer is changing, in part, because American social structure is changing. By social structure I mean, “The persistent and recurring ways in which people live, work, play and react.” The presently observable structure, to say nothing of predictable changes in existing social structures, makes demands on law and its administrators—lawyers. And the ways in which lawyers work are changing—they, too, are subject to contemporary social realities. The demands made on the law and lawyers alike call for the assignment of new goals and tasks for lawmen.

As precis to the development of the new goals and tasks, I would like to attempt two things in this discussion: (1) Consider the present ways in which law is practiced, and (2) Make some observations, albeit sophistic, about future social structure, or styles of life, in America and its consequent impact on the structure of providing services which we now label “legal services,” in short, a prediction of the ways in which law will be practiced.

At an AALS Curriculum Committee meeting, Sociologist Wilbert E. Moore outlined some changes in American social structure. With sociological discipline, Moore suggests, or predicts, trends of sequences of change likely to occur in the years future. He assumes that there are important societal forces which will produce change in the legal process, whether the law likes, desires, or is readily able to accommodate to the change. In this context, Moore discusses certain pervasive processes of change, processes that impinge on the family, the economy, the polity, and, necessarily, the law.\(^4\) The processes which he identifies are:

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3. 1 A. deTOCQUEVILLE, DEMOCRACY IN AMERICA 288, 290 (1955).
4. Moore, CHANGES IN AMERICAN SOCIAL STRUCTURE, 44 DENVER L.J. 1 (Fall 1967 Special Issue).
differentiation, organization, and participation. I should like to organize these remarks around Moore's three processes of change: differentiation, organization, and participation.

**DIFFERENTIATION**

The first process of change is Differentiation. In sum, we can expect relationships between people to be more and more different, rather than standard or similar. In Moore's words:

"Despite mountainous molehills of prose from subterranean critics of contemporary society, I can find no substantial and credible evidence for the dismal doctrine of "mass culture." The supposedly stultifying standardization produced by the mass media has at most resulted in some superficial commonalities: fashions, fads, and the latest, volatile "in" vocabulary and status symbols. Yet even language, which would seem most subject to standardization, retains its authentic regional accents, and all sorts of other differences abide and abound."  

5. Id. at 2.

6. See Greenwood & Frederickson, *Specialization in the Medical and Legal Professions—Part 1*, LAW OFFICE ECONOMICS & MANAGEMENT 175, 179 (1964) for a historical treatment of development of specialization in the legal profession.

A. Growth and Specialization: New Divisions of Labor

One manifestation of differentiation is the creation and expansion of new divisions of labor—in common jargon: Specialization.

Occupational specialization is conspicuous in current legal practice. We might take a lesson in efficiency from our English legal brothers who maintain a dichotomy between solicitors and barristers. Though we imitate them now to a certain extent, in the future we shall imitate them even more.  

Today, almost every lawyer has a specialty. Look around. There are trial lawyers and office lawyers. Generally, the office lawyer brings in a trial man when an occasional case reaches the courthouse steps. A trial lawyer relies on his office counterpart to handle strictly office matters. Some of the specialization is by exclusion. It is usual that even the "general practitioner" has certain areas in which he will not practice, notably domestic relations and criminal law. With the exponential growth of law and legal principles, it becomes increasingly difficult for one to be an effective "general practitioner." Indeed, for the protection
of the public, specialized training would seem to be demanded. The fact of specialization follows in part from the explosion of knowledge in areas such as science and technology where legal principles have grown, multiplied and become more specific at an extremely rapid rate. With the intricacies of American life, not only is specialization in knowledge of the law required but expertise concerning the field which the law covers is frequently and axiomatically demanded of legal counselors. Accordingly, it is increasingly important that the lawyer know not only the law of a certain field, but the subject matter as well.

I am suggesting that, in ten short years, the fiction of generalism in legal practice will have caved in. The definition of what we now call "the practice of law" will be much more specific: for example, there will be certified tax specialists, labor specialists, and the like. But there will be generalists of sorts—the counterpart of the medical diagnostician.7 They, too, will be professionally certified—certified to identify problems and refer them to specialists.

Specialization raises some serious value questions. To a certain extent, specialization protects one from a moral obligation. It is more comfortable to draw away and be protected from large policy questions by announcing your technical expertise. If it be true that "humanity is overcome by competence," then the lawyer’s obligation to understand the place of his specialty in the larger value structure of his community and society is intensified.

The judiciary is not exempt from specialization. Specialization of judicial function has begun already. There has always been a magistrates court in which traffic offenses, mainly, are handled. It is frequent that probate, juvenile, and criminal functions of courts are separated; that is to say, the judge of a specialized court becomes a specialist by practice.

More particular specialists can assume adjudicative functions. Persons with specialized training in the culture of youth can, and do, act as referees in juvenile courts. Labor arbitrators are usually specialists in labor relations, and sometimes they are lawyers. Financial experts appraise, and decide values, for stocks, properties and other investments. It is therefore only a short step from present practice to general acceptance of spe-

7. Cheatham, The Growing Need for Specialized Legal Services, 16 Vand. L. Rev. 497, 500 (1963) takes the position that:
"There is a need for a lawyer who has the judgment and wisdom to see and to deal with the client's problem and its specialized elements as an integrated whole, while in the context of a specialized 'group practice of law.'"
cialists in our formal and informal adjudicative process. Such acceptance could have no other effect than increasing the likelihood of informed decision making.

The potential evil inherent in this suggestion is lack of understanding, or misunderstanding, of an established system of legal process. When we later discuss paralegal training, this problem will be examined again.

In our survey of the profession, today, it reveals another pattern, probably inseparable from specialization: legal practice is collective not solo (contrary to the abundant lore). This matter will be discussed at a later point.

B. Inequality, Old and New

With increasing differentiation, what happens to equality? Is it true that "all animals are equal, but some animals are more equal than others"? Moore observes:

"The notion of America as a 'classless' society has not been taken seriously by scholars, but I feel, with decreasing justification. Not that the United States has ever had a genuinely equalitarian social order, nor is that precisely the trend." 9

The problem of maintaining empirical justification for our legal insistence on equality, in all of its social manifestations, is a herculean challenge to law and lawmen.

Equality can be seen in at least two contexts: financial and social. At a later point, other dimensions of equality will be discussed. For now, let us think about the present inequalities in availability of legal services, with some thoughts about changes in structure which might tend to make the consequences of observed inequality less threatening.

Harry W. Jones observed that: "The administration of justice is no longer a handicraft like custom tailoring or cabinet-making. Law has become a mass production operation, perhaps the biggest assembly line of them all." 10 In American society, we have come to think of alternate choices in most of our consumer goods and services. One may obtain a custom-tailored suit at

rather large expense; yet most people buy the "mass-produced" ready-made suits. In law, all is custom-tailoring. Jones has observed and warned that the days of handicraft, largely, are gone. It is true that some can afford the custom work. The size of the legal bills of some of our industrial giants attests to the custom services which they are obtaining. As a matter of fact, many of the giants have their own "tailors" on a full-time basis as employees. But the rank and file legal consumer cannot afford the handicraft.

The legal system has not devised structures to provide legal services for large numbers of people. The structures which have emerged are patchwork. The demand for legal services has increased and the response has been overwhelmingly unimpressive. The Office of Economic Opportunity, through its legal service programs, now admits that it cannot possibly handle all the problems that the neighborhood law offices have uncovered.

The legal profession and the law schools, as well as legislators and administrators, have not put their minds to developing alternate systems of justice which can meet the growing awareness of legal problems. There have been some attempts and some suggestions. Unfortunately, the response has been "who needs them?" The answer, not normally given, is "Everybody!" But too often the legal profession continues to solve the problem by ignoring it.

Some of the solutions pose a threat to the bar. Keeton and O'Connell proposed a method of handling automobile tort cases.\(^\text{11}\) Some insurance companies have reacted favorably to their suggestions. Indeed, the proposal poses a threat since it contemplates elimination of lawyers from the process of administration of automobile tort justice.

There have been other proposals as well. One striking example is that which is presently being employed in the Domestic Relations Division of the Denver District Court. After a case is filed, and it is determined that there will be a contest on financial matters, the case is assigned to a special group of "domestic relations investigators." The investigators interview the parties, and various witnesses, to determine the nature of assets, ability to support, and level of living during the marriage. The investigators prepare a report which includes a multitude of facts. The

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report is presented to the parties, their attorneys, and to the court. In summary, the investigators provide the information, in a condensed report, which information would otherwise, through witnesses on the witness stand, take days to amass. There is more information, all relevant to the hearing in the matter, than would normally be introduced in the contested case. All of this service is at the maximum cost of $50 to the parties. After the report is filed, the parties have an opportunity to file objections to the facts found. Should there be no objections, or after the objections are resolved, the report is introduced into evidence. Counsel for the parties argue the law based on these facts—like a stipulation of facts. Indeed, the report is treated as a stipulation of facts.

I would suggest that the domestic relations Investigation Report is a step toward “mass-production.” It exists within the present framework. While the report is legally hearsay, the safeguards which the hearsay rule attempts to preserve are still present: Counsel can challenge evidence in violation of the rule. And, Wigmore’s “circumstantial probability of trustworthiness” standard seems satisfied.

The one ingredient missing in the domestic relations report procedure is adequate training of the investigators. Preparing a report, the investigator should know something about evidence, if only to assure that the report does not include facts that would normally be excluded at a trial. The system could be improved by adequate training of these paralegal people. The system, with properly trained functionaries, might meet the needs of those who cannot afford custom tailoring in their legal services, yet provide those services efficiently and inexpensively.

C. Ecological Redistribution

Another manifestation of increasing differentiation is found in the fact that people are physically relocating. It is common today for a family to have been residents of at least three different political subdivisions in the course of life. Moore observes:

“Another form of social differentiation might appear at first glance to represent increasing homogeneity through urbanization. Certainly the rapid pace of rural-urban migration, together with the impact of modern transportation and communication on towns and villages, has radically reduced the ‘cultural’ and even the organizational differences between
city and country. However, the urbanization process has led to new forms of differentiation that seriously challenge the capacity of 'inherited institutions' to cope with the complexity. 12

The ecological redistribution of the total population is replicated in the lawyer population. We have thought of the lawyer as an independent, solo, entrepreneur—aloft from urban bureaucracy—in short, the sketch of the "country lawyer." This picture is a distortion, if not fictitious; this picture does not take account of the fact of ecological redistribution.

Between 1948 and 1963, the proportion of lawyers in "private practice" (not employed by business, political, social organizations) dropped from 89.2% to 74.7%. Of those in "private practice" in 1948, 61.2% were "individual practitioners"—practiced alone. In 1963, only 42.1% were "individual practitioners"—practiced alone. Outside private practice, the proportion of lawyers employed by private concerns (business, political, social organizations) jumped from 3.2% in 1948 to 11% in 1963. Young attorneys (born after 1934) constitute a diminishing portion of a group engaged in "individual" or solo practice, rather they start as associates in law firms; there is a decline absolutely and percentage-wise of "individual" or solo practitioners. Indeed, the average net income in 1961 of individual or solo practitioners was $7,870, and for partners in law firms it was $18,200. 13

The "young lawyers" (born 1930 and later) are concentrated (57.5% of them) in cities of more than 200,000; the "middle-aged lawyers" (born 1905-1929) are found predominantly in cities under 200,000; the "older lawyers" (ante 1905) are more concentrated in the smaller cities and towns. 14

Moreover, the future legal practitioner, the young practitioner, practices in the large city, in a firm or with a private concern. With obvious rural exceptions, the practice of law is becoming collective. It is collectively of two types: In-house practice for a non-legal organization and firm law practice.

Business, political, social, and legal aid organizations are realizing the need for house counsel. Legal departments in non-legal organizations increase daily.

12. Moore, Changes in American Social Structure, 44 Denver L.J. 1, 5 (Fall 1967 Special Issue).
14. Id.
Each year the number and size of law firms increases. To hang out one's shingle becomes increasingly difficult. And, with specialization, as in clinical medicine, a team of legal advisors is used. Further, lawyers in large firms who specialize earn more than solo practitioners, hence, the pressure toward collectivity is intensified.

Society is centralizing. Bureaucracy is the organizing theme in this setting. And with an organization of this sort, the functionaries in the system need not be so wise, so omniscient. When our society was agrarian, the legal profession and judiciary needed to "know all." But today, in an urban, industrial society, functionaries are specialized.

D. Pluralism

A final manifestation of increasing differentiation is observed differences in the styles of life among people. The sociologists call this phenomenon "pluralism." Whatever the label, we are aware of the importance of individuality in America and we are committed, as lawmen, to protection of this trend. Moore, in characterizing our growing pluralism, observes:

"The notion of American society as a 'melting pot,' assimilating diverse national and ethnic stocks into a single, homogeneous amalgam, had the disadvantage of most metaphors: exaggeration. Regional, ethnic, political, and religious differences persist, intersect, and add new elements of diversity in American social behavior. These differences represent a partial conspectus of tolerable disagreements; others include such preferences as cuisine, artistic taste, or form of recreation. Arguments may occur, with occasional emotion and even hostility, but divisions are either highly regularized—as in political parties—or recognized as not commanding pre-emptive allegiance."¹¹⁵

Protect individual differences, we, the lawmen, must! Yet, are we committed only to the principle, without concurrent appropriate action?

Insiders to the legal system, lawyers, make assumptions about their relationship to clients, and to the law: the lawyer's job is primarily one of fitting the interests of a client to a body of fixed rules. This view of the lawyer's task essentially places the

¹⁵. Moore, Changes in American Social Structure, 44 Denver L.J. 1, 6 (Fall 1967 Special Issue).
lawyer in a passive role. He ascertains the interests of the client. He warns the client of possible legal consequences for a certain course of action. He makes out documents which will advance the wishes of his client. But he does not manipulate the interests of his client or tell him what he should do. Rather, the reverse is true and the client directs the lawyer.

But, lawyers are more “active” than the assumption implies. They often advise clients about what they should do. This is far more than a matter of pointing out possible legal implications. Instead, it is a matter of guiding a client through a set of possible courses of action, each with their consequences, and saying this is the best thing for you to do.

The lawyer is not like a scientist saying, “If this, then that.” Instead, he is saying, “Do this, because that will follow.” And the moment he is in this role, he is in the role of a social planner—for an individual, a group, or a community—making value decisions.

Clearly observable is the participation by lawyers, qua lawyers, in the planning and deciding role. Agreements on numerous subjects—labor, real property, insurance—provide for arbitration, frequently by lawyers, in lieu of resort to the courts for redress. In representing his clients, the lawyer is a mediator—he manages tensions before they become specific problems.

Because different people do things differently, we can expect the lawyer to function as a planner, advisor, manager of tensions. The difference among people throws doubt on the rationale for one unbending standard. Instead, as lawyers already know, there are a number and great variety of standards, in actual practice.

The War on Poverty has made more people aware of the availability of the law and legal system. The indigenous people served are involved in policy-making functions. A heretofore rarely consulted constituency has formal power. It need not be repeated that the values of this new group are not necessarily identical with the values expressed in present law. Lawyers will mediate, as persons concerned with the specific problems of the poor and as persons concerned with the policy questions which

16. Economic Opportunity Act of 1964, 42 U.S.C. § 2782 (1964) provides: “The term ‘community action program’ means a program . . . (3) which is developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served . . . .”
The traditional decisional role of the judge must change: he becomes a balancer of individual and societal interests. The issue before him is: What is the disposition most likely to further the competing interests of society and the individual. At the conference of the Eighth and Tenth Judicial Circuits (U.S.) in July 1966, Dr. Joseph Satten observed:

“The role of the judge is changing. He is not the traditional decision maker, rather he is a balancer of various recommendations and a determiner of relative importances of the society and the individual, etc. He needs to know how to ask the right questions, not necessarily to have full knowledge of the specialists. Judges get in this manner a working relationship with behavioral scientists. It is important that the judge feed back facts to the specialists for further research.”

ORGANIZATION

A. Bureaucratization

The second process of change, outlined by Moore, is Organization. In sum, we can expect at least one form of organization, bureaucracy, to increase—proliferate most of human society. Moore says:

“By now the word has finally got around: bureaucracy is not an evil, do-nothing complex of offices uniquely characterizing national governments, but a type of organization to be found wherever numbers of specialized task-performers are coordinated in a system of graded steps of authority. Private corporations are as bureaucratic, by any of the standard tests, as are public agencies. The extension of bureaucracy, or administrative organization, into most of the world of work has not entirely dissipated the negative connotation of the original term. The reason for that is that size and specialization produce formalization of rules and procedures, of job specifications and the jurisdictions of components. There is as much tendency to formulate and apply rules mindlessly in the corporate world as in the publicly-supported agency.”

The predictable bureaucratic organization of legal services

17. Moore, Changes in American Social Structure, 44 Denver L.J. 1, 7 (Fall 1967 Special Issue).
has created and is creating some important needs. Let us examine the implications which bureaucratization hold in one sphere of legally-related activity.

The ombudsman idea has appeared on the contemporary scene. This appearance seems curiously symptomatic.

The report of the American Assembly on the “Ombudsman” begins,

“Millions of Americans view government as distant and unresponsive, if not hostile. . . . Many devices—governmental and private, formal and informal—already serve to amplify the voice of the individual in the halls of government.18

Why do “millions of Americans” have a distant view of government? Who are, and were, the voices of individuals before government?

We can see the gigantic growth of the formal bureaucratic system for maintenance of order—government—which is occurring. Indeed, the bigness, and the consequent impersonality, of government is a benchmark of our contemporary social scene. With bigness and impersonality comes misunderstanding, distance, and distrust.

I would suggest that there has always been distance between man and the mechanisms for official social control. In United States history, the distance has been bridged via the phenomenon of “go-betweens.” The “go-betweens” have been the lawyers. What has happened to the lawyer in contemporary America? It may be that he was “fiddling” while social change was occurring. Accordingly, a new institutional role herebefore occupied by the lawyer is being invented—the ombudsman.

The need for a “go-between” has intensified. With the growth of administrative adjudication of controversies, organized on less than adversarial principle, a great unmet demand has been created. The lawyer must look to spending a good deal of his professional time acting as “go-between,” or suffer loss of this important and pervasive role to others—not lawmen. In the private sector the demand for the “go-between” is increasing. Large associations and organizations, such as labor unions, exert great control over their members. Frequently, the control becomes oppressive on the members. There is a growing demand for profes-

sionals to mediate the disputes between individual members of
the organization and the organization itself.

PARTICIPATION

The final process of change is participation. We may expect,
in the future, more and more people to be active participants in
the guildhalls of American life. Moore observes:

"American society has always fallen well short of the
democratic ideal of universal adult participation in political
processes. Aside from residential, educational, and property
qualifications for the franchise — qualifications gradually
liberalized over the long term — the citizenry has exhibited
considerable apathy. Some of the apathy certainly has been
associated with lack of local community ties, poor education,
and poverty, even if those impediments do not constitute for-
mal disqualifications. The extremely low participation by
urban Negroes in anti-poverty programs designed to elicit
some sharing of decisions is now widely known. Yet civil
rights activities have attracted somewhat wider participa-
tion. Indeed, there may be a somewhat justifiable suspicion
that conventional political organizations, and perhaps even
novel ones that are externally sponsored, aim at co-opting
rather than genuinely representing Negroes and other essen-
tially disfranchised sectors of the population. As broader par-
ticipation is pressed, we may continue to witness various
forms of unconventional politics. New forms of participation
may well challenge the constituted order, and may indeed
here and there go well beyond the tolerable limits for the
maintenance of public safety. Yet they bespeak involvement
rather than apathy, and may lead to genuine improvement in
society's operation."19

Akin to the problem of equality, the growing opportunity and
desire for more people to become involved in the institutions of
our society and to consume the services available in our society,
presents challenges to the law and its trusted administrators,
the lawyers.

A recent study of legal services available to the poor in Den-
ver, Colorado reveals some significant facts—not generally ex-
pected (or at least unknown).20

19. Moore, Changes in American Social Structure, 44 Denver L.J. 1, 10
(Fall 1967 Special Issue).
20. G. Sykes, Legal Services for the Poor (Mimeo. 1968).
Of all households included in the survey sample (drawn from two target poverty areas containing high proportions of Negroes and Spanish-Americans) estimated as being below the poverty line, approximately 62% had one or more legal problems (as judged by a panel of seven practicing lawyers). There was variation by income in the household suggesting that legal problems tend to increase with income levels. The same pattern was found with respect to education. Then, on limited data, it appears likely that the number of legal problems an individual has reflects in part the individual's participation in society. "As paradoxical as it might seem, it may be that as the income level of a family increases, its members become more involved with those situations which are likely to generate legal questions—such as buying and driving an automobile, purchasing consumer goods on the installment plan, etc." 21 The importance of this observation is intensified when it is noted that the study uncovered, by the same seven lawyer-evaluators, that in the 13,000 or so households which the sample purports to represent, there were 5,400 legal needs recognized and 14,000 legal problems recognized by lawyers but which the people themselves were unaware of.

An analogy of the doctor to his patient serves to emphasize the many situations which the individual himself might fail to define as containing legal difficulties: It is as if the doctor limited his examination of the patient and neglected to apply his medical skills to symptoms beyond the patient's ken.

Increased participation of people in the legal system, which means increased use of lawmen's skills, portends another of our contemporary explosions. The services of law-trained people will become a scarce commodity. I suggest the J.D. cannot and should not attempt to provide the service which is becoming demanded. He, with a broad education focusing on a study of the changing social system and the place of the law in that system, must lead the way to new structures to assure liberty, fairly. The study of, and practical application of, legal rules and procedures are best left to paralegal assistants.

Implications for Legal Education

To this point, the discussion has focused on the abstract issue of changes in American social structure and the implications of those changes for the structure of the legal profession. One further matter needs to be considered. What implications do changes

21. Id. at 34.
in the structure of legal practice have for the aspiring participant in the legal structure, the law student?

The young man or young woman today considering the study of law is in a most enviable position. He or she is faced with an exciting challenge, the resolution of which makes more than a little difference to the world in which we are about to live.

In my days of formal legal study, the focus was simple and direct: learn those concepts, techniques, in sum-total, that knowledge which will allow one to practice a profession, the dimensions of which seemed rather well defined. The perimeters of the profession were stable; the task of the lawyer seemed relatively simple to define. The lawyer was one who advised individual clients, operating from a variety of structures which included the solo-practitioner, the firm practitioner, the house counsel and even the attorney in governmental service. The problems on which advice would be given also seemed clear—they were those traditional problems of relationships which the traditional law school course titles encompass.

In only a few short years, the conception of the role of law in society has drastically changed. Indeed, it is necessary to have counselor-advisors as in the days of legal practice of which I reminisce in my own personal experience. But some new variables, some new factors, have entered the picture. Lawmen are being called upon to perform some different tasks.

A linchpin of the new demands made upon the lawyer was the establishment of legal services to the poor on a systematic and well-funded basis. It only took a little experience in these programs to reveal that legal services to the totality of Americans could not be provided under the present structure of legal practice. There were too many problems, not enough lawyers, and for that matter, not enough money to pay the fees for legal services performed in the traditional manner.

Another step in the changing socio-legal milieu was the formal and legal recognition of legal rights for people heretofore left behind. Courts, and notably the United States Supreme Court, legislatures and executive departments of governments, national, state and local, began to wrestle with the problems of equal, fair, and professional treatment of the poor, minorities and other groups heretofore not given a great deal of individual attention. By extending equality of citizenship to new groups, constituting more numbers than those who had
therefore been the sole recipient of professional advice, the
dawn of the new era of lawyers' tasks was upon us.

A recent catalytic agent has been civil unrest, particularly in
the cities. Large groups of people, acting as aggregates, have
been vocally and forcefully questioning their systematic exclu-
sion from the process of just treatment. These people are not
only raising the sticky question of why they are not legally
represented, they are questioning the performance of the duties
of the functionaries of law, notably the police and welfare de-
partments, with respect to rights that are announced to be
guaranteed them.

This set of circumstances, and other circumstances which
seem daily obvious, indicates that indeed Shakespeare was
right: "The law is too important to be left to the lawyers." At
least, the law is too important to be left in that state which
emphasizes exclusive jurisdiction by lawyers of all things legal
including exclusion by lawyers of paralegal functionaries. At-
torney General Katzenbach reported at the American Bar Asso-
ciation Convention in 1965:

"Too often the poor see the law as something which gar-
nishes his salary, which repossesses his refrigerator, which
evicts him from his house, which channels his welfare, which
binds him to usury, which deprives him of his liberty be-
cause he cannot afford bail. Small wonder, then, that the
poor man does not respect the law."22

This is all to say that the role of law in society is changing,
and changing rapidly. There is law for all people. It is law
which is far more inclusive than professionally practiced law.
It is a real and living law. Its practitioners are not just mem-
bers of the bar. Its more visible practitioners are policemen,
welfare workers, social workers and all of the others that have
immediate contact with the law and who communicate the
goals and content of the law to the various publics which law
announces it serves.

I suppose that lawyers could insist that their jurisdiction
is limited to continuing the tasks traditionally defined at the
exclusion of all the other legal relationships so obvious today.
But that step would be abdication not only of leadership but
also of responsibility, a situation which we cannot put up with.
Rather, lawyers must continue to be leaders. They must be

part of the answers and not part of the problems of the turbulent generation in which we live. To most effectively give the answers, leaders must assume a new role in society and discard a good share of that old one which we have always thought to be the exclusive task and charge of the graduate of a professional law school.

The lawyer must come to realize he cannot, nay, should not, continue to perform particularistic individual problem-solving tasks. Those matters should be left to paralegal people whom he will assist in the training. In short, the lawyer must encourage development of the "legal nurse" and in turn delegate to that paralegal person the technical tasks of legal practice. This the lawyer must do, not only by accepting competence of paralegal people but also by encouraging his alma mater law school, nay, insisting that his alma mater law school provide this training for him. He, then, would be free to take advantage of his seven years of college training, to consider the best alternate manners in which the legal needs of his clients and the clients of others might be met.

The law student, or potential law student of today, will experience a luxury which an earlier generation could not afford. And, the law student of today faces problems that the earlier generation did not or could not see. Legal developments have emphasized the importance of individuality and the equality of man. At the same time, all are painfully aware of the need for maintenance of order in a turbulent and heterogeneous world. The law student must then, today, grapple with the pesky problem of making these seemingly dichotomous interests compatible. To do so, he must go well beyond common law principles and neat technical distinctions. He must survey the social setting in which law and formal social control is found. He must spend his greatest effort thinking about alternate solutions to problems so painfully defined and other crafty problems not yet revealed. This exercise is a vastly different thing from studying time honored precedent. It will take great imagination, great courage, wise insight, and restraint to consider and develop new legal relationships demanded by the forces of change and at the same time maintain a modicum of order and stability, lest the system of control decay, deteriorate, and collapse by either the sheer force of its own weight or the centripetal force of unreasoned innovation for its own sake.
Where do we go from here?

At the present time it is difficult to compile even a simple list of the tasks lawyers now perform, or a list of legal tasks performed by members of other occupations. The borders of the legal profession's domain have become blurred and new demands on the law are producing further tensions which must be resolved if the law is to maintain its position as a profession in the full meaning of the term.

Several points, however, are clear.

First, lawyers are increasingly called on for skills in which they have little systematic training. Corporate management and reorganization, city planning, personal counseling, the social problems of the poor—all of these are changing, demanding new kinds of expertise. The lawyer requires specialized expertise. Furthermore, the lawyer cannot deal with the legal aspects of these and similar matters without an understanding of the larger issues which are involved. But as these issues grow more complex in a changing society and as knowledge about them grows, the lawyer stands in danger of being reduced to an amateur or a minor technician in an army of technicians.

Second, many of the tasks formerly within the province of the lawyer have been taken over by others and it seems likely that these tasks are often performed with a high level of skill and a sense of public responsibility. But if this process continues—and it probably will—there is no assurance that emerging, quasi-professions providing legal services will maintain the standards that the legal profession has struggled to develop in the past. The legal profession, of course, may feel that it can abdicate its responsibility in this matter, trusting in the growth of a true professionalism in these new occupational groups. The legal profession may fight to restrain the activities of these new occupations, although such a fight may turn out to be both futile and demeaning. But it is also possible that the legal profession will come to believe that it must take a hand in developing and maintaining standards in this area of activity, particularly in the form of providing adequate legal training for individuals in quasi-legal roles.

Third, law schools have traditionally been geared to the production of practitioners, of students by no means completely
versed in the law but sufficiently competent to sally forth and earn a living. This is an admirable and necessary goal, but it may not be enough. Rather, the law school might have a multi-purposed mission: to train a variety of lawmen, including lawyers. In this sense the law school could justify its omniscient title—become the institution in which people are trained in law and legal ways. The emerging paralegal people could be trained in subject matter and professional responsibility. The lawyers could be trained for their expanded role, for their specialized functions, for their proper relationship to paralegal assistants—in the same manner as medical schools purport to concurrently train physicians and their assistants: nurses.

Even if it does not assume the obligation of paralegal training, as presently constituted, the law school as a training ground for lawyers is in some danger of becoming a trade school—lawyers are likely to assume technical roles thereby relegating them to the position of legal plumbers. Some reorganization is demanded. Merely the addition of new areas of study to make lawyers more competent as lawyers will not solve the problem. What may be necessary is the infusion of the law school with the tradition of the liberal arts which takes as its highest aim the preparation of free men for a free society. The spirit of scientific inquiry, the love of knowledge for its own sake, and an awareness of the legitimacy of competing values in a pluralistic society should quite possibly be as much a part of the law school as any other institution of higher education. Without this the law may remain a profession—but it will not be a learned profession.