Program and Proceedings Southeastern Regional Conference of Law Teachers of the Association of American Law Schools
Program and Proceedings

SOUTHEASTERN REGIONAL CONFERENCE
of
LAW TEACHERS
of the
ASSOCIATION of AMERICAN LAW SCHOOLS
SEPTEMBER 1, - 4, 1948
Robert Richter Hotel
MIAMI BEACH, FLORIDA
Host
UNIVERSITY OF MIAMI LAW SCHOOL
Co-Sponsors
JOHN STETSON UNIVERSITY
UNIVERSITY OF FLORIDA
FLORIDA STATE BAR ASSOCIATION
DADE COUNTY BAR ASSOCIATION
MIAMI BEACH BAR ASSOCIATION

Program

WEDNESDAY — SEPTEMBER 1st
7 p.m. - 9 p.m.
Registration, Robert Richter Hotel Lobby

THURSDAY — SEPTEMBER 2nd
9:30 a.m. - 4:00 p.m.
Registration

FIRST PART OF MORNING SESSION
10:00 a.m.
Meeting called to order by Dean R. A. Rasco, University of Miami School of Law — Host
Call of Conference Roll
Presentation of Co-Sponsors:
John Stetson University
University of Florida
Florida State Bar Association
Dade County Bar Association
Miami Beach Bar Association
Address of Welcome by The Honorable Will M. Preston of the Miami Bar, President of the Orange Bowl Committee
Greetings by Dr. Bowman F. Ashe, President, University of Miami

SECOND PART OF MORNING SESSION
Announcement of Presiding Officers
Dean L. Dale Coffman, Presiding Officer
Address by Russell N. Sullivan, Professor of Law, University of Illinois, Official Representative of the Section of Legal Education and Admission to the Bar of the American Bar Association and Official Representative of the Association of American Schools on “The Value of the American Bar Association and Association of American Law Schools to the Law Schools and the Relationship Between the Associations and Member Schools.”
Leader of Discussion: Professor Brainerd Currie, Duke University
Responses: Prof. John Fox, University of Mississippi; Asst. Dean John Ritchie, III., University of Virginia; Prof. Otis P. Dobie, University of Louisville; Dean O'Neal, Mercer University
FRIDAY — SEPTEMBER 3rd

FIRST PART OF MORNING SESSION

10:00 a.m.
Sightseeing Boat Ride for the Ladies

9:30 a.m.
Dean Henry Anderson Fenn, Presiding Officer
Address by The Honorable Ralph H. Ferrell of the Miami Bar, member of the Florida State Board of Law Examiners, Official Representative of the National Conference of Bar Examiners on "The Relationship of Law Schools and the Bar Examiners and Their Mutual Problems."
Leader of Discussion: Dean Samuel L. Prince
Responses: Prof. A. E. Papale, Loyola University; Prof. J. H. Barnett, Jr., University of Richmond; Dean Hosch, University of Georgia

SECOND PART OF MORNING SESSION

11:00 a.m.
Dean L. A. Haslup, Presiding Officer
Address by Dr. George L. Fahey, Associate Professor of Education at the University of Miami on "Teaching Problems and Classroom Techniques."
Leader of Discussion: Prof. Thomas Henderson, Stetson University
Responses: Dean Haslup, Stetson University; Prof. Henry Quillan, Emory University

2:00 p.m.
Sightseeing, Conducted Tour (University of Miami Busses

5:00 p.m.
Tea Dance and Fashion Show

SATURDAY — SEPTEMBER 4th

FIRST PART OF MORNING SESSION

9:30 a.m.
Dean Elvis J. Stahr, Jr., Presiding Officer
Address by Dr. Jess Spirer, Coordinator of the University of Miami Guidance Center and Professor of Psychology on "Examination Problems and Techniques." (Such as open-book, objective, essay, etc.)
Leader of Discussion: Asst. Dean John Ritchie, III
Responses: Prof. Elvin Overton, University of Tennessee; Prof. Frank Maloney, University of Florida

SECOND PART OF MORNING SESSION

11:00 a.m.
Dean Samuel L. Prince, Presiding Officer
Address by The Honorable Millard F. Caldwell, Governor of the State of Florida, on "The Law School of the Future."
Leader of Discussion: Dean Elvis J. Stahr, Jr., University of Kentucky
Responses: Prof. Henry Quillan, Emory University; Prof. Harold Verrall, Vanderbilt University; Dean Robert E. Lee, Wake Forest College; Prof. Ray Forrester, Tulane University

1:00 p.m.
Luncheon by Dean R. A. Rasco
Address by Hon. Arthur Brandt

1:00 p.m.
Ladies' Luncheon by Mrs. R. A. Rasco

2:00 p.m.
Prof. John G. Stephenson, III, Presiding Officer
"The Law Review as an Essential Part of the Curriculum"
Leader of Discussion: Prof. George Miller, University of Florida
Responses: Asst. Dean John Ritchie, III, University of Virginia; Dean Wicker, University of Tennessee; Dean F. Hodge O'Neal, Mercer University; Prof. Hugh Sowards, University of Miami, Prof. John Fox, University of Mississippi

5:00 p.m
Reception — Dade County Bar Association and Miami Beach Bar Association — Hosts

8:00 p.m.
Dinner — Address by The Honorable Claude Pepper, Senior Senator of the State of Florida. Subject, "Some Observations of an ex-Law Teacher."
After-Dinner Dance under the stars by the side of the ocean.
The Southeastern Regional Conference of Law Teachers of the Association of American Law Schools convened on Sept. 2, 1948, at the Robert Richter Hotel, Miami Beach, Florida, the first part of the morning session commencing at ten o'clock, Dean R. A. Rasco, University of Miami School of Law, presiding and host.

The Conference Roll was called by Professor Hugh L. Sowards of the University of Miami, and the following schools were registered as being in attendance:

- Duke University
- Emory University
- Louisiana State University
- Loyola University
- Mercer University
- Stetson University
- Tulane University
- University of Florida
- University of Georgia
- University of Kentucky
- University of Louisville
- University of Miami
- University of Mississippi
- University of Richmond
- University of South Carolina
- University of Tennessee
- University of Virginia
- Vanderbilt University
- Wake Forest College

DEAN RASCO: I want you to profit by these addresses and discussions and to carry them back to your schools. It is my hope that they will prove to be of great benefit to the teaching profession. That is in reality the purpose for which we came here.

I would now like to present the co-sponsors. (Dean Rasco first introduced Dean Haslup of John B. Stetson University.)

DEAN HASLUP: We are indeed grateful for the opportunity of being co-sponsor with the University of Miami.

(Dean Rasco next introduced Dean Henry Anderson Fenn of the University of Florida.)

DEAN FENN: It is a genuine pleasure to be here and a privilege to be a co-sponsor. Although we have not pulled our weight in the past, I hope that we will do so in this Conference.

DEAN RASCO: Dean Fenn, we are indeed happy to have you here. Dean Fenn is the new dean at Florida. Many of you know him. I hope that our association will be pleasant down through the years. We have other co-sponsors; the Dade County Bar Association, and the Miami Beach Bar Association. I would like to recognize at this time Mr. Will Preston, who is representing the Florida State Bar Association, another co-sponsor of this Conference, Mr. Pleus, the President of the Florida State Bar Association, was unable to be here at this time, and he has appointed Mr. Preston in his place. Knowing that Mr. Will Preston has a keen sense of humor and wit, and is extremely practical, and a very fine lawyer, I now present him to you. He will give you the address of welcome for and on behalf of the Florida State Bar Association and the citizens of Greater Miami:
HON. WILL M. PRESTON: Mr. Chairman and participants in this Conference: On behalf of the Florida State Bar Association and the citizens of this area, I welcome you to this Conference and to its opportunities. This Conference is a recognition of the Apostle Paul that, “None of us liveth to himself.” This Conference also carries out that great mandate, “Look not every man on his own things, but every man also on the things of others.” The opportunities of this Conference are many-fold; you will renew and cement old friendships; you will make new friendships; you will obtain and retain new ideas as you look on the things of others and hear men speak and discuss matters of great value and importance to your profession. It will be a time for you to square your thinking with that of others. It will present an opportunity to evaluate yourself and your institution’s greater capacity for service. You will have new horizons created for you, new goals to attain, difficulties presented to be overcome by discussion and conference. It will give you the desire to take back to your colleagues, your institution and your students, extended horizons of service, and to reach and pass them for the benefit of all.

In extending this welcome, it would be amiss on my part not to pay tribute to you gentlemen who have honored the legal profession as its teachers. You thus perpetuate the legal profession, a necessary institution at all times in our American way of life. You have devoted yourselves and your talents to the fundamental teaching of the law. You have sacrificed the possible benefits of private practice in the interest of mankind. You labor for small monetary compensation, but with the knowledge in your heart that your compensation is reflected in men, men of the bench and bar, and other great men of this nation and this now small world. In this connection I call to your attention what Chancellor Kent said over 150 years ago at the time of his first lecture at Columbia University: “If he to whom is entrusted in this seat of learning the cultivation of our laws can have any effect in elevating the attention of some of our youth from the narrow and selfish objects of his profession to the nobler study of the principle of our Government and the policy of our laws; if he in any degree can illustrate their reason, their wisdom and their influence on the freedom, order and happiness of society, and thereby produce a more general interest in their support, he will deem it a happy consolation for his labors.”

You are most important men in the life of our nation. That study and influence that come from your law schools influences all mankind. You are the allies of knowledge, humanity and faith in our constituted form of government. You are not frowning and snarling taskmasters, but friendly and sympathetic teachers. You teach men to work in harmony with the constitutional and legal forces of today and tomorrow, instead of against them. You teach men not how to think, but to think, with respect to legal matters. You
are not interior decorators of the mind, but you free the mind for participation in constitutional and legal matters. You do not teach men to be clever competitors in the art of law, but creative cooperators in the constitutional way of life and the administration of justice.

You must necessarily teach of the past in order that one may wisely know of the future. You free minds of the fuzzy, legal limitations and inhibitions of yesterday that would shackle legal and constitutional thinking in the modern world of tomorrow. And you should make a student realize that his clinic of the law and his research therein are just as important as clinics and research laboratories for all other sciences. You teach—and if you do not you should—that in these the decisions of the United States Supreme Court are not terminal points, but are starting points for new fields of law and for social expansion within the framework of our Constitution.

You teach that law is a food for digestion, for discussion, for criticism, for the greater application of justice and right. You teach that law is a genesis, and while it has its change in revelations in these days and times, it has no omega except its constitutional limitations. You teach that law is not a dead body, but a living body to meet problems as they arise from time to time. You teach the ethics of the legal profession and thus teach the Christian golden rule of life.

You not only touch the lives of your own students, but of their families and their families to be, and of their fellow men—in other words, our entire framework of life, because law permeates throughout that entire framework. You teach the dynamic and constitutional evolution of the law and thus contribute to the Christian evolution of man. As a man among men, you build men as cathedrals of learning. Their accomplishments will live long after you have gone to your reward. As those entrusted with the sacred duty of molding the character of our youth, and as those responsible for the type of education they receive, you should be loyal to and take pride in our form of American Constitutional Government. If such is not the case with respect to any participant in this Conference, then your immediate resignation as a teacher of young men would be in the public interest. And if you ever become discouraged—as I know you do—remember and take comfort from these words of Pendar, about 522 B.C., and continue your individual and collective work for the benefit of humanity: “The long toll of the brave is not lost in darkness; neither has counting the cost fretted away the zeal of their hope. Over the fruitful earth and across the sea have passed the lights of noble deeds unquenchable forever.”

I welcome you here. I wish for you the joy and accomplishment of a successful Conference. May it result in you, your law schools and your students going forward with greater influence and capacity for service, not
only to the legal profession, to this nation and to the now small world, but also to Almighty God in his teachings and principles.

DEAN RASCO: Thank you, Mr. Preston for your splendid address of welcome. Now I am very sorry that Dr. Ashe, President of the University of Miami, could not be here this morning. He sends me, however, a letter of welcome which I will read:

"To the Law Teachers of the Southeastern Regional Conference of the Association of American Law Schools, Greetings: The University of Miami welcomes you as our guests at this Conference. The board of trustees and the faculty join me in wishing you a very profitable, successful and enjoyable Conference. We want you to enter into the spirit of the occasion, to participate liberally in the program, and to carry back to your various law schools something of value. We hope that you learn to know each other and to know us. All of the facilities of the University of Miami are at your disposal—please use them. When you are not working, relax and enjoy Greater Miami to the utmost. It is our wish that you will remember this Conference always. If there is anything you want, call upon Dean Rasco and the Faculty of the School of Law, and I am sure that they will take care of you. It is with a great deal of regret that I find that I am not able to be with you in person, but please accept this just the same as if I were speaking to you face to face. Sincerely yours, Bowman F. Ashe, President of the University of Miami."

DEAN RASCO: I have asked certain visiting deans to preside at the various sessions. I am asking Dean Dale Coffman of Vanderbilt University to preside this morning. There is a reason for that. At our last Conference, in Columbia, South Carolina, Dean Coffman was made Chairman of the committee on future Conferences. At the annual meeting of the Association of American Law Schools in Chicago this committee accepted the invitation extended by the University of Miami to have this year’s Conference here. Then I have asked Dean Henry Anderson Fenn, the new dean at the University of Florida, to preside at the morning session Friday. And I have asked Dean Haslup of Stetson University to preside at the second part of the session tomorrow morning. To act as presiding officer of the first morning session on Saturday I have asked another new dean, Dean Stahr of Kentucky. Then there is a special reason for having Dean Prince preside at the closing session on Saturday. After the wonderful Conference he conducted in Columbia I cannot but ask him to assist us at this Conference, and I know that it will be a pleasure for all of us to have Dean Prince close the Conference proper.

I would like to call to your attention at this time a meeting to be held on Saturday afternoon. This meeting is entirely optional; it is for those persons interested in the publication of law reviews, and I have asked John Stephenson III to preside at that session. I would also like at this time to introduce two visitors from law book publishing companies and to state that
we are happy to have you gentlemen here, for we feel that it is indeed a recognition of our Conference. (Dean Rasco then introduced Mr. Hobart Yates of West Publishing Company and Mr. Edward Brundage of Harrison and Company.) I will now turn this session over to Dean Hale Coffman of Vanderbilt University.

DEAN COFFMAN: Dean Rasco, I know I express the sentiments of all of us when I say that the last 40 or 44 hours we have had a most delightful time, and the pleasure of these last few hours is exceeded only by the prospect of the next few hours. Dean Rasco told you that I was on this committee to decide where the 1948 meeting would be held. We looked towards Miami as a delightful place to convene and knew that Dean Rasco would put on both a stimulating and entertaining Conference, which, of course, he is doing. With no reflection at all on the Columbia meeting last year, I know Dean Rasco has planned a most enjoyable time for us, and I know we can get this intellectual stimulation in a delightful atmosphere, and personally I like intellectual stimulation in this kind of an atmosphere.

Before we get on to the paper I must compliment the Hon. Will Preston for his excellent address of welcome. He has set high standards for us.

And I am happy also to welcome Dean Henry Fenn, the new dean of the Florida law school, to the Southeastern meeting, and I think Florida is to be congratulated in securing the services of such an outstanding teacher.

The paper this morning is entitled "The Value of the American Bar Association and Association of American Law Schools to the Law Schools and the Relationship between the Association and Member Schools." Prof. Russell N. Sullivan, of the University of Illinois, tells me that his talk will be primarily upon the relationship between the Associations—the professional Associations and the Law Schools. Without further ado I would like to present Prof. Russell N. Sullivan:

PROF. SULLIVAN: (Russell N. Sullivan, Professor of Law, University of Illinois): Dean Coffman, law teachers from the Southeastern region, guests: I first want to bring you the greetings of Chris Clark, the chairman of the Section of Legal Education and Admission to the Bar of the American Bar Association; of John Hervey, the present adviser to the Section, and of the members of the council of that Section. As you know, the annual American Bar Association meeting is going on at Seattle at the present time, and no members of the council were able to be present. I also have the pleasure of bringing you the greetings of Bernard Gavit for the Association of American Law Schools. Bernard was sorry that he could not be here, because of course, he was at Seattle.

It is somewhat difficult to know what to say on this topic to a group of teachers who may know more about the Association of American Law Schools and the American Bar Association than I do.
I do want, however, to call attention to some of the aspects of the programs of these associations and the relationships to the job of the schools.

It is a pleasure for me to be present at this Conference and to participate in this program. The topic assigned to me is one upon which I am glad to have the opportunity to speak. I am glad to talk about this topic, because I think there is a good deal of misinformation and misunderstanding about the relationship of the law schools to the accrediting associations.

Perhaps a little bit of history will show how closely interwoven are the aims and objectives of the American Bar Association's Section on Legal Education and Admissions to the Bar and the Association of American Law Schools. The Articles of Association of the A.A.L.S. were drafted and adopted at a meeting in Saratoga, New York in August of 1900. The invitation to attend this meeting was extended to representatives of the law schools by a Committee of the Section of Legal Education of the A.B.A. The first annual meeting of the Association of American Law Schools was held in Denver in 1901 at the time of the A.B.A. meeting. There were twenty-seven charter members of A.A.L.S. and five additional schools were admitted to membership during the first year. The president of the Association was James B. Thayer of Harvard. The annual meetings from 1901 through 1913 were all held at the time and place of annual meetings of the A.B.A. The proceedings of the law school Association were published during those years by the older professional organization. In 1914 the law school group met in Chicago during the Christmas vacation and since that time it has gone its separate way entirely and has published its proceedings in its annual handbook.

In the original Articles of the A.A.L.S., membership was limited to those schools which required as a condition of admission to the law school graduation from high school or passing an examination equivalent to that required of high school graduates. Two years of law school study of not less than thirty weeks each constituted the minimum professional study in schools eligible for membership. The original Articles provided that three years of law should be required in member schools after 1905.

It is interesting to note that as we now have difficulty defining the required pre-legal training, the Association early met this problem. In 1905, high school graduation or its equivalent was defined as sufficient for admission to college at the principal college or university in the state where the high school was located or the state of the law school. You will all recall that this question has been debated again in recent years.

From 1910 to 1921 the A.A.L.S. was the organization primarily engaged in attempting to raise the standards of admission to law schools and the qualifications of law graduates.

In 1921 the American Bar Association adopted its Standards of Legal Education at the Cincinnati meeting. The leader in this action was Elihu Root.
It may be that without his forceful leadership the A.B.A. might not have taken this forward step. I want to call to your attention that at the time the A.B.A. adopted as a standard a minimum of two years of pre-legal college work, the Articles of the A.A.L.S. required only a high school education for admission to member schools. It is fair to say, however, that at this time over one-half of the member schools required two or more years of college education.

At the law school meeting in December of 1921, the Articles were amended to require one year of college work of all students admitted to member schools on or after September 1923 and two years beginning in September 1925. Thus it was that the two associations adopted the same requirement of preliminary education. One of the arguments in favor of the action of the A.A.L.S. was that adoption of the amendment would make the standards of the two associations uniform. It is interesting to note that there has been no further increase in the quantity of pre-legal or legal education since that time. Some attention has been given to quality and now the student must achieve a reasonable grade average in his college work to be eligible for admission to law school.

Our present minimum law school standards are the result of a continuing cooperation between the Association of American Law Schools, the American Bar Association, state and local bar associations and the individual law schools. The number of law schools meeting those minimum standards has steadily increased so that the schools approved by the A.B.A. now exceed 110.

It was feared that the higher standards of admission of approved schools would increase the number of students attending the unapproved law schools. The reverse has been the case. In 1928 only 33.2% of the students in law schools in this country were enrolled in approved schools. By 1938 that figure had increased to 54.9% and by the fall of 1946 to approximately 83%. In the current year there were only two states in which the students in the unapproved schools were in the majority. Those two states are in this region.

During this same period the bar admission requirements were also being increased. In only two states was it necessary to have any pre-legal college training. Now 43 states have the two years of pre-legal college training as a condition of admission to the bar. Approximately half of the states now demand that applicants for admission to the bar be graduates of approved law schools.

These advances did not come without effort. In 1927, Mr. Silas Strawn induced Professor H. Claude Horack of the Iowa State University to become the first full-time adviser to the Section of Legal Education and Admissions to the Bar of the American Bar Association. Claude and his successor, Will Shaffroth, did much of the missionary work, but their efforts would have met
with little success if they had not had the cooperation of the law schools and the local bar organizations.

During Will Shafroth's tenure as adviser to the Section of Legal Education a map was prepared annually showing in black those states in which the two year pre-legal requirement had not been adopted. On the 1942 map five states were still shown in black, all of them in the southeastern region. At the present time, however, progress is being made, and the abolition of the diploma privilege in South Carolina and the effort to raise standards in Tennessee indicate that eventually the map will be entirely white.

When I became acting adviser to the Section of Legal Education and Admission to the Bar of the American Bar Association, there were in unapproved law schools in the city of Washington, D.C. approximately 3,000 students. With the help of Judge Justin Miller and Wiley Rutledge, then on the Court of Appeals in the District of Columbia, the standards for admission to the bar of the Court of Appeals of the District were raised to the A.B.A. standards. We were then able to get the District Court, the United District Court of the District, to approve the same rules. And then it was our pleasure to go in and work with the schools in meeting that minimum requirement.

If you want to see the effect of that requirement on all the schools in the District, just look at the enrollment figures for the last two years; where there were over 3,000 students in law schools, in those particular schools, there are now less than 750. In my judgment those schools are now doing a very decent job of legal education. But I assure you the task of bringing them up to that standard was not an easy one. It seemed to me there was a time when I was commuting to Washington on that so-called "Washington problem." We had the assistance in that effort of the judges I have already mentioned, and of Joseph W. Henderson of Philadelphia, who was then President of the American Bar Association, and was very active and helped very materially in this effort.

I give you that illustration to show that the American Bar Association and the Association of American Law Schools and the schools have worked together for the purpose of increasing standards.

During this same period in which enrollments in approved schools were increasing, the bar admission requirements were also being increased. One of the problems in this area is the one with which you are all familiar, and that is the problem of legal education for Negroes. Now I do not know the answer to this problem. Some of us have felt that a regional law school, supported by the several states in the region, which could give an adequate legal education, would be the answer. But certainly, however the problem is solved, we will have a responsibility to sponsor or to make some effort to provide that a standard, minimum legal education is available to Negroes
in this area. It has been my pleasure to work very closely for a long period of time with Lincoln University law school at St. Louis; I still act as general adviser to the president of the university on the development of the law school. I think they are doing a fine job, and I think the Negroes who attend there are probably getting a better legal education because of their association with their fellows than they would get in some of your schools. But certainly that opportunity ought to be available to Negroes in this area. I don't know how the problem is to be met; certainly the Supreme Court decision in the *Sipuel* case and some of the implications of that opinion may require that each state have a standard law school. That seems hardly a solution if you are going to have a half a dozen students.

So we have come a long way in the quantitative standards in the past 27 years. At the meeting of the A.A.L.S. last winter, the member schools defeated a proposal which would limit membership in the Association to schools which admit only those applicants who have completed three years of college work. This proposal is to be submitted again at the meeting in Cincinnati, in December. Although I come from a school which would be unaffected by the change, I doubt its wisdom at this time. Dean Robert Leflar of Arkansas was quite convincing in the speech from the floor when the proposal was before the Association last year. I suppose that we are in agreement that a better education is essential for the lawyer in 1948. The only question seems to be what the measure of that better education should be.

The professional associations have contributed much in sponsoring these increases in the quantity of training for the profession. We still must admit that emphasis has been placed too much on quantity rather than on the quality of education. It does not necessarily follow that because a school requires two years of pre-legal college work for admission, employs three full-time teachers and has a minimum library, the graduates are better prepared for the practice of law. Even though they have not *always* resulted in an improvement in the quality of legal education, these standards have aided in raising the level of the schools of the country.

Unfortunately, these requirements have been in some cases regarded as ends in themselves, the gateways to approval by the A.B.A. or membership in the A.A.L.S. The primary purpose has always been to assist the schools, rather than to establish a set of police regulations which are to be enforced by some distant organization. During my years with the Section of Legal Education, we were able to assist deans of some schools to secure more adequate budgets for their libraries, for additional full-time staff members and for more adequate quarters. At the University of Illinois where we are now requesting a new building, we are grateful for the accrediting standards which make it necessary for each full-time faculty man to have a private office. Our building committee has objected to this phase of our building
needs, for no other college on the campus provides an individual office for each member of its faculty. We might have attempted to convince the committee that we should be treated differently but that was not necessary, for when we called attention to the Articles of the A.A.L.S. and the standards of the A.B.A. no further objection was voiced by the committee. We wished that the Associations had done something definite about library space, for we had some difficulty in securing a sufficiently large reading room. In some of the smaller schools only the insistence of these Associations that the teaching loads should not exceed an average of eight hours per week has protected the teachers against a teaching program so heavy that individual research and development would be impossible.

What I’m trying to say is that the accrediting standards, though expressed in terms of quantity, have been intended as devices to assist the school in its own program of development. When the Special Committee of the A.A.L.S. was drafting the new constitution which was adopted last December, emphasis was placed on assistance to the schools rather than on policing. For that reason the Executive Committee was directed to take into account in recommending a school for membership, the total performance rather than only its literal compliance with specific provisions.

One can hope that some day in the not too distant future graduation from a school approved by the A.B.A. will be a condition to admission to the bar in all of the states of the Union. I should not be adverse to retaining law office study as a possible method of admission, so long as it must be pursued over a period of four years with annual examinations, and so long as the lawyer in those offices where the applicant prepares gives some assistance to the student. Very few persons will come to the bar in that manner. The real problem lies in the substandard law schools. Some of you are much more familiar with this problem than I am. The cooperative effort of the schools, the local and state bar associations and the national associations is essential if a decent minimum law school training is to be offered by every school whose graduates are to be admitted to the bar.

As I indicated before, our present goal should be the improvement of the quality of legal education. The teachers in the schools through their individual experiments in new methods and the teachers through the reports of the committees of the association are responsible for the advances now being made. “The object of the Association (of American Law Schools) is the improvement of legal education, especially in the law schools.” So read the Articles until the adoption of the new constitution. The proceedings of the annual meetings contain some of the most provocative writing available on this subject.

The change in the constitution of the A.A.L.S. includes a restatement of the object of that Association. Article I, Section 1-2 now reads, “Purpose:
The purpose of this Association is the improvement of the legal profession through legal education." Dean Harno in the first issue of the Journal of Legal Education suggests that the education of the lawyer is a lifetime job. If that is so, and I believe it is, the law schools should concern themselves with the so-called pre-legal education and with post-admission legal education. Until now the schools and the national associations have given relatively little attention to the content of the two or more years of college work which every student must have completed before enrolling in law school. This period is certainly a part of his total preparation for practice. At meetings of the associations many law teachers insist that these two or more years are solely the concern of the college. But more and more law teachers are recognizing that pre-legal and legal education are not things which are separate and distinct. A few law schools, notably the University of California and the University of Minnesota, have attempted to assure that all students will have some common background by prescribing some of the college courses. Integration of non-legal courses in the law school curriculum may be substituted for the prescribed college work. It seems, therefore, that the associations and the schools may explore this period of the lawyer's education with profit.

The Survey of the Legal Profession, which was undertaken by the A.B.A. with the financial assistance of the Carnegie Corporation, may help us in the solution of some of our educational problems. The Survey should tell us more about what the lawyer does and, therefore, what the purpose of our education should be. The Survey will undoubtedly record the comments of the practicing profession on the training in the law schools.

As you all know, one phase of the Survey is a study of all of the law schools of the country. Dean Harno is to be the director of this study. Each law school in the United States will receive a visit from a representative of the Survey. Dean Harno will need the assistance of all of the law schools if this part of the Survey is to produce a useful report. I am sure that it is unnecessary for me to solicit your cooperation in this important venture.

I should like finally to discuss an aspect of legal education in which the law schools have been slow to engage and in which cooperation between the schools and the associations should prove most fruitful. I refer to the so-called post-admission or continuing legal education program. For some fifteen or twenty years attempts have been made to provide an opportunity for lawyers to continue their education. The Iowa Bar Association conducted a series of district "Institutes" in the middle thirties. The Cincinnati Bar Association with the assistance of Dean Ferson of the University of Cincinnati Law School offered lectures and discussions which met with enthusiastic support. Milwaukee, San Francisco, Cleveland and others all presented programs for lawyers. These were unusually successful. More recently, the discussions of the Federal Rules of Civil Procedure attracted large numbers
of lawyers in many cities. These "Institutes" were all good, but they lacked continuity and organization. The first effective, sustained program was begun in New York by Harold Seligson. This has now become the Practising Law Institute, and it offers a wide range of courses to large classes of lawyers in New York. This was the agency selected by the A.B.A. to prepare refresher courses for veterans at the termination of the war. P.L.I. developed two series of courses in Trial Practice and Office Practice to supplement the excellent courses on Fundamentals of Federal Taxation and Tax Problems which had been given in approximately fifty different cities. The Practising Law Institute made an outstanding contribution in the refresher course program. When that program was completed, the A.B.A. and the P.L.I. formed a committee to recommend a long-range program for continuing legal education of the bar. After careful consideration, the American Law Institute was chosen as the national agency to develop courses for lawyers. The A.L.I. secured funds to finance the preliminary stage of the program. Mr. John Mulder, a Philadelphia practitioner and a former professor at the University of Pennsylvania, was named director of this activity.

The Institute is now prepared to assist law schools and local bar associations or to conduct for the local associations lecture courses on a group of topics. It expects to develop syllabi and monographs on a fairly wide range of subjects.

Among the schools which are developing their own programs for lawyers are New York University, Southern Methodist and the University of Illinois. At Urbana we had two-day sessions on three different topics during the past year. The attendance at each was approximately 100. The lectures were reproduced and sold to persons who did not attend. Our first session was on Labor Law, the second on Problems of Federal Taxation, and the third was on Traffic Law Enforcements. We have been both surprised and pleased at the enthusiastic response to these courses. Lawyers come from all over the state; they are present for the first session and they stay through the final hours. It seems to us that this is a most worthwhile project. Our students attend the sessions along with the lawyers and they have an opportunity to learn from the questions as well as from the lectures. This year our three programs will be on the following topics: The Trial of a Negligence Action; Corporation Organization in Illinois; and Problems in Insurance Law. So far we have developed our courses after consultation with lawyers who are actively practicing in the state. We should like in the future to coordinate our program with that of the American Law Institute. Now we are contemplating a course of twelve hours, two hours on each of six evenings in an Illinois city at some distance from Urbana. The idea for this comes from California which conducted courses on Taxation in about fifteen centers in cooperation with the University of California Extension Division. Certainly
in the field of education for lawyers, the law schools, the bar associations, and the American Law Institute may all contribute.

I would like to interpolate here. I remember an occasion at the time the University of Georgia problem was before the Council. Judge Powell came before the council and made an impassioned plea concerning legal education in Georgia. It was not persuasive, but very very thorough, and the thing that I remember so well was that Powell said (pounding the table) "You people just don’t understand us, we have got to have hog lawyers," hog lawyers being ones who handle a case equal to the value of one hog. Now in Illinois at the present time after feeding hogs on corn, a hog lawyer would have to be pretty good, because the value of a hog is pretty great.

But when you get persons who are prominent in the bar with that attitude, the local situation presents a very difficult problem. And I assume that you will still have the W.W. law school and schools of that kind in Atlanta for some time to come.

The professional associations and the law schools have worked together to raise the standards of law school legal education. This effort will continue, for we shall always want to improve. New fields are now open for our combined efforts. We shall participate in the continuing legal education of lawyers, recognizing that “getting a legal education, properly conceived, is an undertaking for a lifetime, and that the period a prospective lawyer spends in law school is but a phase of a lawyer’s education.”

DEAN COFFMAN: Thank you, Prof. Sullivan, for a most interesting and stimulating paper.

You mentioned, during the course of your talk, that there were two states in 1946 and ’47 with more students in unapproved law schools than in approved law schools. You kindly refrained from naming those states. I shall. They were Tennessee and Georgia. We have done something about it in Tennessee, and I hope Georgia can, too. You mentioned in Illinois the Abraham Lincoln tradition. We have a tradition in Tennessee, too—the Cordell Hull tradition of legal education. And we fully realize the difficulty that approved schools have in talking to some very able lawyers who happened to have gotten their start in legal education in an unapproved school or in a law office. The University of Tennessee College of Law and Vanderbilt Law School have been bringing some pressure to bear on the courts to increase the standards for admission to the bar in Tennessee.

You talked about the old Georgia “hog lawyer.” We had a similar experience when the problem was before the Central Council of the Tennessee Bar Association. A leader of the bar, of Nashville, a very good friend of mine and a good trial lawyer, was pleading the case for the Y.M.C.A. Night Law School in Nashville. They have had some very fine graduates from that school. It is not approved by the American Bar Association. I think on the
whole they do a very good job in legal education. But Dean Wicker and I were asking for the American Bar Association standards for legal education in Tennessee before a man should be permitted to take the bar examination in Tennessee. And this old lawyer got up and made a very impassioned plea for this law school that he started. And he said, "Gentlemen, this is my baby; this night law school is my baby, and I love my baby." And the more he talked the more enthusiastic he became, until literally tears were running down his face, saying "Gentlemen, please don't kill my baby." He said that at least three dozen times during the course of his talk to the Central Council: "Gentlemen, please don't kill my baby." Of course nobody was attempting to kill his baby. And after he got through, I said, "Billy, let's get one thing straight; nobody is trying to kill your baby; I am not trying to kill your baby—but where I come from, I think it's just time that you married her mother."

I am happy to report that on August 14th, last, the Tennessee Supreme Court announced new rules for admission to the bar in Tennessee. Those rules now require not just two years of college, but two years of college passed with an average equal to or exceeding that required for graduation. Which means that a boy cannot flunk out of college after two years or have less than a C average and then enter a night law school. Now he must have even a C average to enter a night law school. Now, in Tennessee, night school education requires four years of study, with a minimum number of classroom hours of 50 minutes in length, study of certain subjects, qualifications for the teachers in the night law schools and the school must be approved by either the American Bar Association or the Board of Bar Examiners of Tennessee before they can accept students this fall. In other words these rules went into effect the first of this month, and those schools must be approved and the students must have graduated from these schools before they are eligible to take the bar examination in Tennessee.

The rules, of course, apply also to the full-time schools. There again, the two years of college is minimum before entrance into the law schools, two years with a C average, and three years of study in the full-time school, which means 27 months (they define it in weeks also, three times 36 weeks) or 1080 classroom hours of 50 minutes each. The Board of Bar Examiners are given a great deal of discretion, and I am happy to find that they are exercising that discretion on the liberal side, rather than trying to cut courses.

Now the American Bar Association was very helpful to us in our attempt to raise the standards in Tennessee. Besides supplying us and the Supreme Court of Tennessee with vital statistics when the matter was before the Bar Association; and a written ballot was taken—and incidentally the Bar of Tennessee voted 3 to 2 in favor of the Association of American Law School standards, and better than 3 to 1 in favor of the American Bar
Association standards, by a secret written ballot. When those ballots were sent out, the American Bar Association was most helpful and this is an illustration of the cooperation by the Association with the law schools of the state—they sent out letters to every member of the American Bar Association in Tennessee, stating the problems and urging them to support the higher standards for admission to the Bar of Tennessee. We are deeply grateful for that assistance and I am certain that it played no small part in the successful result in raising the standards for admission to the Bar in Tennessee.

Now Tennessee instead of trailing is in the vanguard of the states in standards for admission to the bar, due in no small measure to the assistance and cooperation of the American Bar Association.

The leader of the discussion on Mr. Sullivan's paper is Prof. Brainerd Currie of Duke University. Prof. Currie is identified pretty closely with the publication at Duke, Law And Contemporary Problems, and as if that did not involve enough headaches, he now, I understand, is assisting in the publication of the new Association Journal, which is published at Durham. I am certain that Prof. Currie will have some illuminating—and I hope provocative—remarks on this general subject of cooperation and relationship between the Associations and the law schools. Prof. Currie:

PROFESSOR BRAINERD CURRIE (Duke University): Thank you, Dale. Whenever anybody talks about the relations between one thing and another, I seem to remember the story about the young Congressman who was talking to Uncle Joe Cannon about the organization of the committees of the House and of the Senate. He had noticed that the committee organizations in both houses were marked by parallelism pretty much throughout; the House had a Committee on the Judiciary, so did the Senate, and so on. But the one outstanding exception was the difference between the nomenclature applied to the committees in the field of foreign relations. Whereas the House Committee was called the "Committee on Foreign Affairs," the Senate Committee was called the "Committee on Foreign Relations." And the young Congressman puzzled over that and wondered whether there was an explanation for it, and he asked Uncle Joe Cannon about it, and Uncle Joe said, "Well, son, you just have to remember that the House of Representatives is the junior organization and it is appropriate to the status of the House of Representatives that their doings in this area should be on the plane of 'affairs'—you must attain to the status of Senator before you can have 'relations.'"

I confess I don't know what a leader of discussion is supposed to do, except that Dean Coffman has told me that I am supposed to provoke or stimulate discussion, as if law teachers would not be provoked into discussion without prodding, and I feel fairly secure, because I see that Dean Rasco
has taken the precaution to plant about four discussers in case I should not be sufficiently stimulating.

Perhaps there is just one thing in addition that might be included in the function of leader of discussion; perhaps that carries with it the privilege of suggesting the direction which the discussion might take. Mr. Sullivan’s talk has been, itself, I am quite sure, sufficiently stimulating, and about the best thing I could do in the direction of stimulation would be to sit down quickly so that none of the stimulation afforded will wear off before you get a chance to talk about it, your reactions to it.

I found it inspiring to have reviewed again, among other things, the record of the American Bar Association and of the Law School Association over the last half century, and their accomplishments in improving the legal profession through setting standards. And my suggestion as to the course that this discussion might take is that we might recall Mr. Sullivan’s emphasis on what he calls quality instead of quantity. I suspect that our temptation might be great to dwell on the problems of these two organizations, the Bar Association and the Law School Association simply as accrediting agencies, and as I say, I think that over the past half century they have done marvelous work in that direction. But to me the significant thing about Mr. Sullivan’s analysis this morning is that he points out a new phase is at hand now—not of course that that battle has been completely won; we can hardly be complacent about that in the Southeast—but it is a phase of the activities of these organizations which I think can be fairly regarded as having been brought almost to a successful conclusion, bringing us to the threshold of a new opportunity in the relations between the law schools and these organizations. What that is, I will not attempt to define. I will not attempt to improve Mr. Sullivan’s own indications as to the direction these developments might take. But it seems clear to me that Mr. Sullivan has called for a new development directed not so much at accreditation, not so much at setting standards, certainly in quantitative terms, but it calls for a period of consultation and help and interchange of ideas between these organizations and the law schools on the substantive question of what can be done to improve legal education.

There are no doubt mechanical expedients which can be resorted to; there are no doubt all sorts of less tangible influences than can be interchanged, but it seems to me that perhaps a most constructive discussion could result here if you should talk in your discussions of Mr. Sullivan’s topic, the relations with these organizations, about what can be done from here on by way of utilizing these relationships for the qualitative improvement of what we try to do in these law schools.

I think there is another reason for that: we are all here as teachers in approved law schools. We can never on that account, of course, shirk the responsibility for what goes on in our states and cities around us in unapproved
schools, as members of the bar; and as specially responsible guardians of
the integrity of the legal profession, we can never avoid that responsibility.
Nevertheless, I suspect that our day by day interest, our problems that we
take home from school, are going to relate more and more to the question
of how we can do our own job better, admitting there are schools around and
about who don't do the job as well as we do.

I suggest specifically, therefore, that in discussing this matter, it might
be well if we should address ourselves to the question, first, what would this
group like to see the Association of American Law Schools do, now, to
help us in the job of teaching young men law? What would we like to see
the American Bar Association do now in the direction of qualitative help in
the problems that we face every day?

DEAN COFFMAN: Thank you, Prof. Currie. Our next responder is
Prof. John Henry Fox, Jr., of the University of Mississippi School of Law.
Prof. Fox:

PROF. FOX: As far as I know, I realize that the American Bar Asso-
ciation is in our lineage; we admit our lineage, both as American Law School
Associations and as Law Schools. We are proud of our lineage. We realize
that they created us and brought us up to what we are.

On the other hand, it is difficult for me to understand—I think most of
you who were present at Columbia last year will remember that I attempted
to and very effectively moved that we adjourn when the discussion of the
Negro question came up. I stopped that discussion, I think, last year. I didn't
mean to bring it up this year, but I have been asked—I suppose I am invited
to be provocative as well—since that question has been brought to us, we
have been told this morning that we have a responsibility in this section to
give the Negro a legal education. We have been told that we don't know what
the answer is. I am quite certain that as far as my law school is concerned
we have answered that question. We have never had the opportunity to
answer it publicly, but I can only say that if a Negro presented himself to
the University of Mississippi, it is my confident belief that the faculty would
accept him immediately. We do not like that, but we think that is the answer
we have adopted.

But the point I am making is: that I appreciate as a representative of
the American Bar Association that it is our responsibility. The thing I
would like to know now, if it is our responsibility, will the American Bar
Association and will the Supreme Court back us up in the answers that we
make to those questions which are our own local responsibility?

The American Bar Association has set up a Mosaic law. It is set up for
the things thou shalt not do and the things that thou shalt do. It has set up
a number of things and says if you believe in us you will be saved. It
has set up a list and has said if you are on the list you are accredited. The
Association of American Law Schools has done the same thing. No one in Mississippi fails to realize the value of an Association of American Law Schools to a law school. We have had the "treatment." And none of you can really appreciate the treatment, and the help, that you get from the Association of American Law Schools until they have lent you a helping hand with an iron fist in it and knocked you in the head and knocked you out of the Association. That is what happened to us and it was the most appreciated thing that has ever happened to a law school in Mississippi, we being the only one. It was the finest thing that ever happened to us. We had a rabble-rouser who violated some of the thou shalt nots and thou shalts. And when that rabble-rouser, within the state, created enough publicity toward the law schools and what the law schools should and should not do—a thing which the American Bar Association had completely failed to do—when that rabble-rouser drew the attention of the public-spirited citizens of Mississippi to what legal education ought to be and what college education in general ought to be, the people of Mississippi answered him. And they set up standards which got us back into every accredited association, on the proper list, and we now exceed in our law schools the Association of American Law Schools' requirements. The University of Mississippi adopted a three-year requirement of pre-legal education for admission, voluntarily, at a time when I don't think there were any neighboring states who had adopted that three-year requirement.

I was at the Association meeting last year and I heard Dean Lefler make his speech, in which he plead that we were about to kill his baby. I heartily disagreed with him. Because we, without any board of trustee action, without any legislative approval, without any assistance from the American Bar Association or the Association of American Law Schools, or any other source, had simply raised our standards for admission. A few people told us that it would wreck us and that we would hear from it, that it would ruin our law school, that it would send students back to the unaccredited law schools. Fortunately it has not sent anybody away from our law school; we now have more students than we can handle and we are crying for space.

Now all of us in this section know what it means to recover from a body blow. We have recovered from what we call the Civil War. We have recovered to a certain extent from a lack of legal education in the South. We have done it practically by our own efforts, but nevertheless our lawyers in this section—we call them cow lawyers over in Mississippi, not hog lawyers—our cow lawyers, none of them went to an approved law school, or at least very few of them. I attended an unapproved law school and then an approved one, I may add. But we do not have a member of the Supreme Court of the State of Mississippi who ever graduated from an approved law school. We also have a bar association that has taken until the year 1948 to recommend that ad-
mission to the bar requirements be raised. For the first time, last year, we were successful in getting that recommendation passed by the bar association. They made the unfortunate mistake of recommending it to the legislature. As far as publicity is concerned, however, there are no laymen at all, and very few lawyers, who realize that the legislature had nothing in the world to do with the requirements for admission to the bar, except a permissive control that has been granted to it by the courts through laziness; the courts cannot simply set up what the requirements for admission to the bar are and shall be in that particular state.

If the American Bar Association will publicize that fact to the various Supreme Courts, to the legislature, as well as they publicized the court-packing plan that our late President Roosevelt attempted, that will be, in my opinion, positive action. My complaint is that most of the Association of American Law Schools and the American Bar Association act in a negative way in setting up the requirements and saying “Meet ‘em or we’ll conk yuh.”

Now then, the American Bar Association, in my opinion, should take a much more positive action in publicizing facts. I think that the American Bar Association is resting too well on its laurels of being one of the older professions. We are too nice to do certain things. We have other associations representing much less important professional people who exert a much more active influence over the local state situation, over the legislature, over the accrediting associations and everything else, than does the Bar Association. I don’t know why the American Bar Association took such a pronounced stand on the court-packing plan, nor do I care. The only thing that interests me is that it did take a stand. It investigated something and had somebody fighting, publicizing every postmaster in the country against the court-packing plan, a thing which had been attempted by almost every President since George Washington. The American Bar Association did not have a list of Presidents who were on their accredited list and a list of Presidents who were not on their accredited list on this thing. For the first time by the American Bar Association, something was tabooed. Whether the Bar Association was correct on its stand on that or not I am not interested, but I do think that they took an active, participating, publicizing, propagandizing attitude in that situation to help accomplish a purpose, right or wrong.

It seems to me that is the attitude that we should take with reference to admissions to the bar; that is the attitude we should take with reference to “what are we going to do about the Negro question,” what are we going to do about raising standards of pre-legal education, and of legal education, quantitatively and qualitatively.

The Association gives a helping hand, but can you imagine the American Medical Association sitting back in utter complacency while the Congress of the United States donates money to people to go to an unapproved medical
school? It may be done, but I just can’t conceive of that being done. It seems to me the American Bar Association should publicize the facts of the accrediting situation, the fact that a school is accredited, a great deal more than it has done, not only for the sake of the schools, to lift that school, not only for the sake of lifting the requirements for admission to the bar, but for the sake of that boy who spends his money to go to an unaccredited school and doesn’t know what he is doing. I know one school that is operating in the closest city to which I live, Memphis. It is an unapproved school as far as I know, but every morning a past-president of the American Bar Association has an opportunity to read in his newspaper where such and such a law school is advertising for students and a part of its advertisement says “Fully Accredited.” It is out of our state, but it is doing it. I don’t know what “fully accredited” means. I don’t know what it means accredited with. It may mean accredited simply with the former Tennessee situation, when you could get into the bar with a high school education or its equivalent. But at least they are advertising the words “fully accredited” under the nose of a past-president of the American Bar Association, and I haven’t heard of anything being done about it—as a matter of fact it is on my desk now to make a report to the American Bar Association about it. If the student and the lay public were-acquainted with what it means to the student to go to an accredited law school or not to go to an accredited law school, after the United States Government stops spending our money to send people to unaccredited schools, that in itself is a sufficient purpose to awaken the American Bar Association and the Association of American Law Schools into an active campaign explaining what their membership means.

Now as far as pre-legal education is concerned, I don’t believe that there is a half-way decent unaccredited school in the United States whose work is not eligible to be accepted by member schools of the Association as meeting their pre-legal requirements. For instance, I recently had an application from a boy who resided in one of our almost-neighboring states, who had attended two years at an accredited school, and he had attended one other year at an unaccredited pre-legal school; it was unaccredited by any regional agency, and yet I was informed by our registrar that if we wanted to we could accept the credits from that unaccredited school because of the fact that the state university in which that unaccredited school was located did accept it, and therefore our rules provide that we take pre-legal work from the accredited schools or from the principal university, whatever they accept from that particular state. Whenever your state university will accept unaccredited work, it is perfectly permissible under our rules to accept that as pre-legal education. Something ought to be done to define what is an accredited school, and to tell us whether it means accredited by some regional accrediting agency or
accredited simply by a state university in that state who will accept work from that school.

Now I am not trying to be provocative, that is just my nature, but I simply won't be satisfied with the "cooperation" of the American Bar Association and of the Association of American Law Schools until they have been joined as co-defendants with the American Medical Association in violation of the anti-trust laws.

DEAN COFFMAN: Thank you, Mr. Fox. Your comments are provocative. I think you have hit a very important nail on the head in reference to the American Bar Association. Of course we lawyers do belong to the second oldest profession, and are apt to be a little too complacent.

I am certain that the members of the Supreme Court of Tennessee did not have true information—statistics—on what other states have done in the way of providing rules for admission to the bar until the American Bar Association was asked for the information and those statistics and Dean Wicker and I supplied the Supreme Court with factual information which they didn't have before. Now query: should not the American Bar Association take the initiative in supplying the responsible officers with the states whose standards or whose rules are below the standards of the American Bar Association? Let these judges know just where their states stand and what the facts are. In some situations there is nothing quite so devastating as facts.

Our next commentator is Assistant-Dean John Ritchie of the University of Virginia School of Law.

DEAN RITCHIE: This has been quite the most satisfying legal Conference that I have attended—up to this moment. Mr. Preston's brilliant eulogy of the law teacher is the most eloquent understatement of the contributions which we make to the public that it has been my privilege to hear. Very gratifying, of course, to find the bar and so distinguished a member of the bar giving voice in recognition of our contribution.

Now my friend Brainerd Currie suggested that he was supposed to be a provocator. I am glad he enlightened me on that because I am listed here somewhere as a leader of discussion and not having had the opportunity of attending the Columbia meeting last year, I was a little dubious about what the function of a leader of discussion was. Now I will try to emulate, though I am sure I will fail, his brilliant example.

I have been responding thus far to our gracious host in this meeting. I will respond briefly to Prof. Currie's suggestion. As I understand it, he desires to channel discussion along the lines of improving the quality of the legal education. All of us have been talking about improving the quality of legal education as long as we have been identified with legal education, and I don't believe there is any open sesame to that problem. So long as we don't become complacent about legal education as is, so long as we recognize that
we must go forward, so long as we recognize that legal education is not now what we should like it to be, then I think we are in a healthy state and I am not too concerned about the particular manner in which that improvement in quality is going to find reflection.

I should, however, like to suggest this. It seems to me appropriate that the Association of American Law Schools and the American Bar Association through the member schools of the Law School Association, and all others who we are able to enlist in the campaign, try to indoctrinate state bar examiners on desirable bar examinations. I am a firm believer in a bar examination. I am agin the diploma privilege, but when I say that I am in favor of a bar examination I mean that I am in favor of what I regard (and what I believe most of us should regard) as a representative testing of a student's training, a testing of the skills which he has developed (we hope) under our tutelage. Not merely a memory proposition. And above all not simply a sampling of relevant state factors, setting up a pinpoint question which turns on some minute provision in your state code and which puts a premium only on memory and affords subsidization of code factors, which is about all those sort of questions amount to.

Now it seems to me that much is to be done in the realm of bar examination, and I believe that these associations and the faculties of the member schools, if they should unite in a program, might well succeed. Prof. Sullivan, I am sure, is better acquainted than I with the situation in California. Cullen Elliott, whom I taught with at Michigan the first half of this summer, opened my eyes on what is possible with bar examinations when there is wholehearted cooperation between your various associations and member schools. I hope you won't think it unbecoming if I mention my state. We have a very healthy cooperation in Virginia between the bar examiners and the various law schools in the state. Representatives of the law schools meet with the bar examiners after each examination is given. Not, I assure you, gentlemen, before the examination is given. We have nothing to do with the preparation of questions. But we do criticize questions for a day and a half. Not only the particular question, but the type of question which is being offered on that examination. It is a slow process of education. Our bar examiners are practicing attorneys. The tendency of the practicing attorney, at least with us, is to take the latest case that came across his desk, because he has had difficulty in solving it himself, and to prepare an examination question from it. Frequently that isn't a desirable type of examination question.

I think we are making progress; I am confident, however, that more progress should be made, and I believe that it can be achieved through the support of the Law School Association, the American Bar Association, and the member schools, in an enterprise to improve the nature of bar examination questions. And I would suggest this: presently we have an examination after
the student has graduated from law school, and that is the definitive and final and only examination. I would suggest the wisdom of considering, at least, progress examinations for the bar, that is, an examination to be given, let us say, at the end of a student's first year, possibly at the end of his second year. I should be content if we had a progress examination (as I term it) at the end of the student's first year and then the cleanup examination after his graduation.

Now you will say, one, that there is this business of the disadvantage that would tend to standardize first year curricula. That objection, of course, can be surmounted by use of the elective question, which is done, by the way, as I understand it, at California and in some other states. The real value, it seems to me, would be in alerting a student at the end of his first year—if the examination be a valid test—to his aptitude and capacity for going forward with law study and becoming a member of the bar.

Now we think we do that in our schools, and undoubtedly we do do a first-grade job of it. Nevertheless if it be desirable to have a check on us in the form of a bar examination at the end of three years, why isn't it equally desirable to have a check on it in the form of a progress examination at the end of the year. Now that examination need not exclude the student's impossibility of becoming a lawyer. It might be, as is true of the final examination, that he is given from two to three opportunities. That is something to be thought through. The idea I throw out to you is the wisdom of progress examinations for admission to the bar, in the first place, and in the second place, the necessity, so it seems to me, of educating bar examiners on what are representative and desirable and fair types of bar examinations.

Now one last word and I will subside. Prof. Sullivan, in his address, mentioned the anarchy which exists in most of our schools concerning pre-legal education. Now a school such as Minnesota, and California, and I should suppose Illinois, might control (I don't know the situation there)—but if most of your students are received from a particular university into your law school, then you can exercise a control over pre-legal education, whereas on the other hand—if you are in a school that draws students from a wide variety of other schools where they get their pre-legal education, it is exceedingly difficult. We have been faced with that problem. We have now—and I don't say this pridefully—practically a degree requirement for admission from all these people. Now I don't say that pridefully, because this is embarrassing. We have made a number of examinations correlating law school records with pre-law school records. We have broken them down in a number of ways, among others, the three-year student against the degree student. We have found in terms of law school grades—and I don't say this is a valid denominator—however, we have found in terms of law school grades that it does not make much difference whether a man has three years
or four years when he comes into law school. The first correlation is be-
tween his pre-law school record—his pre-law school grades—and his law school
grades. Now I suppose that would be true if you pushed it back to two
years; it has been a long time since we have been on a two-year requirement,
so we didn’t have the basis for doing that. But insofar as at least our ex-
perience runs, the correlation between grades in law school—which seems
to be a valid correlation, is the quality of the work a man did in his under-
graduate training, not the number of years he spent in his undergraduate
training. I suspect, then—I didn’t mean to get off the subject as I am—I
suspect, then, that if we are going to justify quantitative requirements—two
years, three years or degree, as the case may be—it must be because we
believe there are certain practical values which are not directly measured in
law school, but perhaps in later life, which stem from that pre-legal train-
ing. That you are developing, perhaps, a better citizen, if not a better tech-
nician, because he has had that pre-law school background.

Now, to come back to the controlling of the pre-legal education. In the
first place, there is the problem, as I have mentioned, where you draw your
students from all over as distinguished from where you draw them from a
single school, which makes the exercise of control extremely difficult. In the
second place, there is difficulty in getting law teachers to agree on what
should go into a pre-law program. Now Fraser has one, and I am sure it is an
excellent one, in Minnesota. I understand that in Chicago, Judge Cox has
worked out a pre-law program. They have been able to agree on that and a
good many other things. And it is difficult. Because if you translate—not
only in terms of law school grades, but also in future terms of success in
life, if you measure success in terms of dollar value of a practice or positions
of public distinction—it doesn’t seem to make much difference what the pre-
law discipline of the student was so long as it was good discipline; we have
engineers, for example, who have done brilliant work in law school, and who
had little or no social science. On the other hand we have an architect, a man
who had his pre-law work as an architect, on our faculty and he is doing a
splendid job. The yardstick, I don’t suppose is valid. But it suggests to me
that prelaw training is for a cultural purpose, to give him a cultural back-
ground and grasp that will contribute to his being a good citizen.

I have intended merely to throw out two suggestions. One, improve-
ment of bar examinations with the suggestion of the wisdom of a progress
examination at the end of the first year, and two, the difficulty which you
are faced with when you try to provide for a prelaw program.

MR. SULLIVAN: Jack, I did not mean to imply from what I said
that we are going to prescribe a pre-law program, because, certainly, the
schools which I mentioned would never accept a pre-law program. What I
was trying to imply was that the preparation for practice includes whatever
cultural values there are in pre-legal training, and for us to say, as lawyers, and as members of the profession that what he does until he comes to us does not concern us at all is certainly not progressive.

MR. RITCHIE: I am in complete agreement, Russell. You remember what Dean Bell said some years ago: that he didn't care what a man took or what grades he made as long as he had a B.A. degree. What I have stressed is the indifference toward and unwillingness to think about pre-law training—

MR. SULLIVAN: I have no objection at all about what should constitute pre-law training. And I wasn't pointing to the University of Minnesota and the University of California as the ideal solution. I meant to point out that they had prescribed what was for them a method.

DEAN COFFMAN: Any school which draws most of its students from its own college, of course, has a much easier problem in prescribing a so-called "pre-law course". Now frankly I don't know what a pre-law course is. The political scientists of the college know much better than I what a real pre-law course should contain. However, we do draw men from all over the country from schools from coast to coast. And to specify particular courses is impossible. We do suggest that in college the student should have had some training in certain fields or at least have a nodding acquaintance with the fundamentals of certain fields of study. That is about as close as we have been able to come to any pre-law course. Also, as far as the three- and four-year men are concerned, I think our experience has been the same as that at the University of Virginia. The quality of the work is much more important, as far as our statistics go, than the fact the degree was obtained for admission to law school or at the end of the first year of law school in a combined course. That fourth year of college to a C man many times, it seems to be, crystallizes him as a C college man who may be a flunk in law school.

Our next response was listed as from Dean Russell of the University of Louisville School of Law, but Dean Russell exercised his prerogative as dean and named Professor Otis P. Dobie to respond. Prof. Dobie:

PROF. DOBIE (University of Louisville): I would like to make two points in connection with the subject under discussion: relations of the teachers with the schools and with the bar associations and the practicing profession. Of course we all have recognized, as stated here this morning, that our cooperation is necessary, that the practitioners and their organizations must cooperate with us by directing our work, by advising us as to our work, by helping us with our problems of class and standards and otherwise. I think another way in which they can help us is through their complaints as to the teaching we are doing, the training we are giving the lawyers. Of course they do that. You go to any kind of teachers' association meeting at which a practitioner appears and eventually he manages to get in a word of complaint. You are not training your law graduates, he says, in practical office opera-
tion; you don't teach them how to interview clients; you don't teach them the personal equation problem; you don't teach them how to draft instruments as you might. Well, personally, I have considerable qualms about how well we can ever do those jobs. I know at Yale and Columbia and various other schools, they have introduced recently and some of them for several years past, courses in drafting and in cooperation of the preparation of briefs, and all that kind of thing, brief court work. Undoubtedly that does help some. But certainly in the practical office problems and the personal equation element of the practice, I wonder how much we can do.

Some years ago I went to a bar association meeting in Kentucky and got together with a group of lawyers from a particular community and I mentioned the fact that our school had sent them down a boy recently whom we thought rather well of, and I said, "How is he getting along?" And the reaction was rather hesitant. It was their impression that this fellow wasn't going over so well in his personal relations. Why? Well, because, they said, he will never do his brother practitioners any favors. He won't postpone cases for them, he won't grant postponements, he won't close arguments when they want to, and all that kind of thing. That caused trouble. And now of course that boy was a very conscientious boy with a rather doctrinaire personality and type of mind, and he felt that to postpone a case at the request of a brother practitioner in order for the other practitioner perhaps to take his wife somewhere, possibly to play golf or something like that, that that would be injuring the interest of his client—which it frequently does in some cases. But I wonder if the lawyer could ever be taught that in law school. He has to have his knuckles rapped by having his own request for postponement refused a couple of times before he will finally come around and play ball.

But certainly the practicing bar can call our attention to more serious problems and deficiencies which may exist in our training and which we can catch up with if we know about them. They could take the trouble to call our attention to deficiencies in curricula perhaps, due to the changes in times. Felix Frankfurter and Ernest Froin more or less made their reputations as law professors by discovering a new course in administrative law, and even though men like Elihu Root recognized the birth of this new child, it was a quarter of a century before law schools actually got around to teaching it on a wide range. That was due, in some part, at least, to the fact that the practicing bar didn't sufficiently have the attention of the school in the need for such work.

And I hope of course that our practitioner brethren do not complain so widely as to say that we had better let the law schools go and train our men somewhere else. But that would be a problem we would have to meet if they bring it up. And I think they could do a very practical service to the school
world if they would call our attention to experiences which they have had on
the firing line, dealing with all phases of the training in the school.

One more point which I would like to raise. An eminent English judge
said some years ago, "The law is no longer interesting; it is no longer a mat-
ter of principles; all the judge has to do is interpret damn statutes." And
that is in large part true. Certainly in this age in which the sphere of govern-
ment has extended so that the politicians are encompassing almost every-
thing, a large per cent of our problems, as I have said before, are being
handled by the legislatures in the form of statutes of one kind or another.
Certainly, I think the law school world could make a great contribution, and
should do it, to the background for these statutes, for the public problems
which are coming up to be resolved in the legislative halls. I suppose some
consultation goes on, of course, but far too often, probably, a great political
question comes up, some important group wants something done. They ask
the legislature for a statute and the legislature goes ahead and passes a
statute on highly political grounds, with some consultations, perhaps with
legislative reference committees and advisory committees which have come
into being within the last several years. They would have improved their
problem somewhat and their handling of it, if they had consulted some of the
law school people. I don't say that any of us are specialists on it; maybe some
of us are not so good; others are. Some of us would contribute something,
others not. But most of us have dealt with a particular field, perhaps at least
have read some cases and done some research work and obtained some informa-
tion, even if accidentally, in the course of our researches, that might perhaps
help these people, and give a relatively objective flavor to the rancorous politics
which might result from the passage of the statute under more ordinary
processing.

Of course we must be rather self-denying about it. We have to let the
bar know that we are not out to steal any practice and that we are not aiming
for a supreme court judgeship or even a local judgeship; that we are content
with our professorial standard and position, and that our advice, if any,
certainly any help that we may give them, will be a matter of altruism without
any immediate compensation to either us or our schools.

DEAN COFFMAN: I believe that Prof. Dobie has a fundamental
thought by the tail there, that the American Bar Association might be of
some material help in giving the schools data, statistics, on the changing
importance of practice in different communities and in the country as a whole.
I don't propose that we should get into a learned discussion of policy schools
versus trade schools, but we all know the problems we have with some lawyers
in suggesting what the law schools should do and how law schools should
teach law. The idea of the lawyers seems to bear some direct relationship
between quality and quantity of the individual lawyer's practice.
When I came to Vanderbilt two years ago last March from the practice, I found that the lawyers who had the most violent ideas as to what the law school should do were usually lawyers from Leaky Point, Tennessee, whose principal case had been a bent fender case, not even a cow lawyer or a hog lawyer in these days. They say, "You sure you are going to give the boys something practical?" Well, a little investigation and a little inquiry convinced me that their idea of something practical was to tell them where the men's room is in the courthouse or where the spittoons are kept. We must assume that certain native ability on the part of our graduates to discover those things they must discover as they enter the practice of law.

We can't be a trade school on one hand and on the other hand, it seems to me, we do have an obligation to do something more than talk about law and give this nebulous background for thinking without giving them any idea what to think. Certain positive education must be given in any legal education. But as I said we don't want to get into that discussion here now.

Our last commentator on this morning's program is Acting Dean F Hodge O'Neal of Mercer University School of Law. Dean O'Neal:

DEAN O'NEAL (Mercer University): Dean Coffman, delegates to the Conference. Usually when the time comes for me to talk, I find myself confronted by a freshman law class, and I find myself without the speaking aids which we have here on the desk. Therefore I have developed a method of speaking loud and repeating often.

I shall try to adapt my delivery to the high level of this group, but if I fail you have my apologies in advance. It is not from a lack of deference, but purely from habit.

We have heard about the contributions of the American Bar Association and the Association of American Law Schools to legal education. There is one doubt which has been touched on which I think my own observation verifies. That is the fact that many of us, particularly in the smaller schools, have a tendency to become complacent when we are safely within the standards which have been set up. I think that we tend to rely too much on the thinking of the American Bar Association, the Association of American Law Schools and the large national schools. Our smaller schools, at least, are becoming stereotyped. They have to make themselves as nearly like the large national schools as their resources will permit them to become. I don't think there is really too much effort, at least at a great many of the smaller schools, to adapt themselves to suggestions which are made to them for improving legal education for their own local needs and to the faculty talent which they are able to obtain with the money which they have available. It seems clear to me that many of the graduates that we turn out, probably the most of the graduates that we turn out, will not have exactly the same type of practice
as the graduates turned out at the larger schools. So it doesn’t seem too unreasonable to believe that there should be some differences in the methods that we use to teach our students and perhaps some differences in emphasis.

I would suggest that the smaller schools make an effort to experiment—of course stay safely within the standards—but to experiment and branch out on their own to attempt to take some part in the leadership in improving legal education. I know that Dean Farley at the University of Mississippi told the Conference last year about the course which he has installed at Mississippi for general practice. I was at Oxford this past summer and I can vouch for the fact the faculty and the students at the University of Mississippi are unanimous in their praise of that particular course. They seem to be completely sold.

At Mercer we are attempting a few experiments, all too few, I must confess. I have attempted a course which for the lack of a better name I call “Legal Composition.” I will talk more about that the day after tomorrow in connection with a different discussion. Also we have a weekly speaking program and bring in Georgia lawyers, outstanding Georgia lawyers. There is of course nothing new about a speaking program, but I do think that the emphasis that we place on it and the exact method that we use to amplify that program is a little different. I don’t go into the details, I won’t take the time of the Conference for that, but I would be glad to talk to anyone who is interested in it, later.

One great field that I think is open for some additional work is this: a great portion of our graduates go into public life and become politicians. Yet I don’t think that the law schools in the South or the Southeast or for that matter anywhere in the nation, really prepare their graduates to do the type of work which they are destined to do. We are turning out the politicians, yet the men in public life attest to the fact that we are not doing a good job of preparing our graduates for what they are actually going to do. I don’t believe that most law schools, or the graduates of most law schools, can really draft a decent statute, a statute which will hold up, when they graduate from law school. And then there is another thing. We teach our law graduates legal ethics, the duty of a lawyer to his client. But we don’t tell them anything about a broader duty, a duty which they owe to the public; we don’t instill in them any social consciousness. I don’t know what the answer to that problem is, but I do think that there is room for some experimenting and some thinking along those lines.

In conclusion, let me reiterate that I don’t mean to underestimate the value of the American Bar Association or the Association of American Law Schools. I am merely saying that I do think that the smaller schools should try to bear a part of the burden of improving legal education. And I think that this Southeastern Regional Conference is a step in the right direction.
I know that it was very helpful to me last year. It gave me a good many new ideas when I was starting out on this Acting Dean's job. And I feel very sure that this one is going to be equally as helpful.

Professor Oliver Rice, of Mercer, and I are very glad to be here; we are having a very enjoyable time.

DEAN COFFMAN: Thank you, Dean O'Neal. It seems that the consensus is that the American Bar Association and the Association of American Law Schools have been most helpful in the past, but there are many fields in which they can be more active and can be of more real help. The situation is not hopeless. I think that in our regional meetings here we are doing something rather than just sitting back and letting somebody else carry the ball. I think we have shown the way to schools in other parts of the country, in the real value that can be derived from these regional meetings. These meetings are smaller; we can meet as a committee of the whole and we don't have to do most of our business in the hallways of the Edgewater Beach or in the cocktail lounge.

The situation, therefore, seems far from hopeless. We have a lot of accomplishments of which we can be justly proud, but there is still room for improvement.

I declare the meeting adjourned until 9:30 tomorrow morning.

The Conference continued on Friday, September 3, 1948, Dean Henry Anderson Fenn, Presiding Officer.

DEAN FENN: We have this morning a paper on "The Relationship of Law Schools and the Bar Examiners and Their Mutual Problems." I personally am very much interested in that problem. I understand that it is an important problem, particularly in the Southeastern states. I have had little contact with it personally, since Yale pays very little attention to what happens to its students after we get through with them. I am not too sure that we pay very much attention to what happens to them while we are working with them. But although we send our students out all over the country we have had very little contact with the bar examiners of the various states. I am a complete neophyte on this problem. I will be very much interested in the discussion.

We are privileged to have Mr. Ferrell deliver the address on this subject. He has been active here as a member of the Florida State Board of Law Examiners and an official representative of the National Conference of Bar Examiners. I know he will have a great deal to say that will be of importance to all of us and I will not take further of his time. Mr. Ferrell:

MR. FERRELL: Mr. Chairman and gentlemen of the Conference: I
regret very much that the meeting of the American Bar Association in Seattle at this time deprives you of the privilege of hearing a distinguished member of the American Bar discuss at this time the subject which has been assigned to me. The attendance of these men upon that meeting, and the ones that Dean Rasco first desired to speak to you at this time has thrust its greatness on me. Nevertheless, I trust, and you will understand, that I do appreciate the privilege and the honor that I have in speaking to you at this time.

Three of the most conspicuous figures in American life today, James F. Byrnes, Secretary of State in the period closing World War II; Warren R. Austin, United States representative to the United Nations; and Robert H. Jackson, Justice of the Supreme Court of the United States and United States Prosecutor at the great international trials at Nürnberg, are eminent lawyers but without law degrees. As long as law schools and boards of law examiners of this country face this fact, they will have problems and objectives which will make them restless until ideal conditions obtain in each of their respective fields. This is because all of us are star-gazers and, consciously or unconsciously, are hitching our wagons to stars. From the point of view of the public, these men are successful and have the qualifications which both law schools and bar examiners covet for the products of their labors.

The accomplishments of each of these agencies, during the past 25 years, are sufficient evidence of the fact that neither the better law school nor the conscientious bar examiner is content with prevailing standards and both welcome constructive criticism.

I believe this organization has offered proof of this fact by giving a place on its program to the subject which has been assigned to me for this occasion: “The Relationship of Law Schools and Bar Examiners and Their Mutual Problems.”

That these agencies have a vital relationship and have urgent mutual problems is well attested by the earnest discussions of these subjects before the American Bar Association, the Association of American Law Schools, and the National Conference of Bar Examiners and in their official publications.

For instance, Dean Arthur T. Vanderbilt, in the September, 1946 issue of the American Bar Association Journal, declares “that the law can only be taught adequately in the light of its economic, political and social environment, and not as a set of technical rules.”

Reginald Heber Smith, of the Boston Bar, in reviewing Professor John S. Bradway’s book, “Clinical Preparation for Law Practice,” frankly expresses the warning that some among us “are determined to put a stop to the present hypocritical system under which the public is allowed to believe that when the state admits a man to the Bar and licenses him as an attorney, it signifies he is fully qualified to practice.”
Mr. Phil Stone, of Oxford, Mississippi, in discussing in the May, 1947 issue of the *American Bar Association Journal* the subject: "What is the matter with our Law Schools," graciously confesses that the graduates of our law schools are thoroughly trained in virtually all of the branches of the law, nevertheless, he says, we are told that they are pitifully lacking in what Professor Karl Llewelyn of the Columbia Law School characterizes as "lawyering"; and that the product of the law school is one lacking in practical judgment, who knows "too much law and too little of human nature," who seems like an actor who knows his "lines letter-perfect, but cannot act the play." The pessimism of this criticism culminates in the following questions: "Is there something in the intellectual atmosphere of our law schools that unfits their students, their best students, for the active practice of law in the trial courts? Do the law teachers unconsciously train their best students into a turn of mind that unfits them for anything but the rarefied legal intellectuality that scorns common application? Are these students over-intellectualized? Are the law professors, possibly in their own defense, unconsciously reproducing themselves intellectually? Do they tend to breed a race of legal scholars and that alone?"

As late as 1944 Dean Charles T. McCormick of the University of Texas Law School, expressed grave doubt of the sufficiency of the basis of the teaching in our law schools. He admits that there should be an adjustment of legal education to the needs of a post-war America; that schools should recognize the fact that "there is a widening responsibility upon the law trained men to participate in molding the broader policies which will shape the development of our society; that there must be a widening of the horizons of law school training; that a larger share of our teaching should be directed to a consideration of the major policy problems of city, state, and nation in a democratic society; and that upon these must be marshalled not only the legal but also the social, economic and political data for the guidance of the makers of policy."

Dean Albert J. Harno, of the University of Illinois Law School, speaking before the National Conference of Bar Examiners, definitely puts the law school on notice that it owes a responsibility not only to its students, but also to the public at large and that the public interests require that "the stamp of its approval should be placed only on those who have shown marked promise to measure up to the standards society rightfully should demand of members of the profession. . . . "Likewise and equally," says he, "it should seek to develop in them an appreciation of the highest ethical standards and to inspire a consciousness of the place a lawyer should assume in society in coordinating social and economic forces and in promoting the wise development of the law."

Dean Harold Shepherd of Duke University Law School has sounded a
note that often is heard: “Far more important,” says he, is it “to be certain
that the applicant, in addition to a general academic training, possesses the
mental equipment to analyze, to reason and to think logically; that he is
familiar with legal materials and the judicial process and that he is proficient
in the fields he has studied. The other qualifications so essential, mental and
moral integrity, and habits of industry and work, are factors that can only
be judged over a period of personal contact, supervision, and observation”;
and who can adequately perform this essential public service but the law
school?

Some years ago Dean Harno asked the Conference of Bar Examiners
a question which is still before us and should be answered without equivoca-
tion. Said he: “Should law schools fashion their courses of study on the
level of the bar examination questions?” And he answers it with a question:
“Why should a school not do so, since this is the hurdle its graduates must
cross on the way into the profession?”

But all is not in the negative, for in the September, 1947 issue of the
Journal there is recognition that, “The better law schools are concerned not
only with the presentation and understanding of the ‘fundamentals’ but are
as much concerned with the development of an independent mind in the
application of principles to the facts of a given case. “The real test,” after
all, says H. Claude Horack of Duke University Law School, “should be his
approach to the problem based on a knowledge of principles, and whether
he handles it in a lawyer-like manner, considering the contents and extent
of his law school study.”

These, it seems, are some of the most pressing problems of the law
schools, as seen by distinguished teachers and practitioners.

Now, let us consider the bar examiners who have been called by Dean
Harno “the official gate-keepers to the profession and, who, he says, “ask
only the password of these who seek to enter the gates and if it is spoken
as they believe it should be, the candidate is passed into the jurisdiction of
the profession.”

Mr. Leon Warmke, a bar examiner for the State of California, cautions
the bar examiner that: “After all, the bar examination should not be the
final step, but, only a part of the process of legal education, not simply a
barrier to be hurdled in that process,” and that if it is “to serve its purpose
of separating legal wheat from non-legal chaff, should correlate as closely
as possible with the fund of knowledge that the average applicant from any
good law school has acquired.”

After advising the bar examiner as to what an examination should not
be, Mr. Warmke turns constructive and states very satisfactorily what should
be the objective of a bar examination:

“First, to determine whether the applicant has at least the minimum
amount of legal knowledge which a lawyer must possess as the tools of his trade.

"Second, to ascertain the applicant's power of legal analysis: His ability to sift the relevant from the irrelevant and to recognize the legal issues raised by a given set of facts—for after all, recognition of the legal problems raised by a factual situation is the key, and the only key, which will unlock the doors of the law library.

"Third, to judge the applicant's ability to apply the law to pertinent facts and reach a logical result."

A convincing understanding of these objectives by the law school and the examiner will solve some of our urgent mutual problems.

Because examiners are regarded as official gatekeepers to the profession, Dean Harno has suggested that examiners everywhere define their objectives, since it is important for the school to teach the candidate the proper password. For, says Dean H. W. Arant, formerly of Ohio State University College of Law: "It is obvious that, if the law schools offer a program that emphasizes the development of certain types of abilities or skills, while the bar examiners require evidence of the possession of others, the product of the law schools will fail to satisfy the examiners . . . for," he continues, "however able the individual, and however well the law school may have done its job, as it conceived it, the applicant may experience disaster if the bar examiners require him to evidence on the examination abilities or skills which the law school program has not emphasized."

For these reasons, he suggests the necessity for understanding and cooperation by the law schools and bar examiners.

The practicing lawyer views with considerable concern the fact that there are many licensed lawyers who are not really qualified to practice law; that there are also too many lawyers; and that there are entirely too many admitted by their diplomas from law schools. That these are problems of both school and bar examiners goes without argument. Contributing to this situation is the fact that of the law schools sending out men to enter the profession, there are 109 approved by the American Bar Association and some 66 which are not approved. In 1947 there were 43,043 students enrolled in law schools approved by the American Bar Association, and 7,319 enrolled in law schools unapproved by the American Bar Association. In the State of Tennessee, there were, as of 1947, 727 students in unapproved schools, compared with 504 in approved schools. In Georgia there were 899 in unapproved law schools and 470, without the University of Georgia reporting, in approved law schools. Both law schools and bar examiners should bear in mind that, according to the last figures of the Bureau of Census, in 1940, there were 179,554 lawyers in the United States. Our present law student enrollment equals 28% of that number. In eight states the present enrollment
equals one-half or more of the total number. In the light of these figures, well may we ask: "What will be the status of the legal profession in 1950?"

There is no question about the great advances which have been made in the field of legal education. Yet there is much doubt, said Warren F. Cressy, before the National Conference of Bar Examiners, "whether we have advanced very rapidly in the field of bar examinations, whether we have improved very greatly the form of our questions or the method of marking, or whether we have arrived at any satisfactory solution to the problem of bar examinations." Because of this fact, there is much discussion and many advocates of an annual standard bar examination to be "formulated at the national level by experts in the art of drafting bar examination questions and graded at the national level by the experts or their assistants who have drafted the questions." Of course, any standard national examination would necessarily have to be supplemented in each jurisdiction by questions applicable to local law and formulated by the local examiners. This is a matter that merits your earnest consideration.

Bar examiners are aware of the fact that for years examinations given in many if not all of the several jurisdictions in this country have been the subject of adverse criticism by professional law teachers. "There is no question," says Professor George Neff Stevens, of Western Reserve Law School, in his timely and helpful article in the February 1948 issue of the American Bar Association Journal on "A Factual Survey of Bar Examination Subjects," that "the selection of bar examination subjects has been and will continue to be a difficult assignment. It is a problem of concern not only to the young men and women who are looking forward to entering the profession, but also to every lawyer, law teacher, bar examiner and judge."

Dean Shepherd some time ago stated that the committee on bar admissions appointed by the Association of American Law Schools was "convinced that the problem of bar admissions is much more than a routine, hastily drawn examination. In determining the right to practice," says he, "other factors, including general educational qualifications, capacity and progress as evidenced by law school records, moral character and professional aptitude should be taken into account." These vital requirements make the bar examiner a debtor to the law school.

Dean Harno, speaking before the National Conference of Bar Examiners, frankly stated that "it has been said of bar examinations that they have not proved successful as methods for determining the intellectual capacity and fitness of candidates for admission to the bar."

Nevertheless, he would not do away with bar examinations, for he says that "bar examiners should remain in this scheme to make the final check on the qualifications of the aspirants and they should also be the means, as public representatives, through which the profession and the public may
learn of the way the schools are performing.” And so we may safely conclude that the best authorities and experience suggest that the diploma privilege be abandoned and that all applicants for a license to practice law be required to take an examination given by an enlightened bench and bar.

The views of the distinguished men as expressed in this hasty survey may lead you to wonder if Orville C. Snyder, Dean of Columbus College of Law of Franklin University, was not right when he concluded: “It is impossible for any man to say that he knows just what qualifications constitute a guarantee that an applicant will make a good lawyer; and it is equally impossible to say that we know how to test to find these qualifications.”

In the present state of our affairs which has all too long existed, is it any wonder that Dean Vanderbilt, speaking before the Association of American Law Schools, stated: “Practicing lawyers in general are as skeptical of law teachers in general as laymen are of lawyers in general.”

Is it not obvious, therefore, that there is much for us to consider at this time if we are to solve the problems of coordination or correlation of the work of those who prepare and those who examine aspirants for admission to the bar?

“From what has been said so far, it appears,” says Dean Arant, “that the function of educating lawyers having been committed to the law schools while the courts and the profession continue to determine whether applicants are fit for admission to the bar, there is urgent need for the adoption of some means of bringing those who educate and those who examine into a closer relationship.”

It is truly gratifying that we can now assure you that more and more is our face turning in this direction. Marjorie Merritt, executive secretary of the National Conference of Bar Examiners, wrote me a few days ago that: “There has been much progress towards this coordination during the past ten years. Today we find in many states cooperating committees composed of law school personnel and examining boards which meet regularly to discuss their common problems and to take concrete action toward improvement. An example of cooperation lies in your own state, Florida.”

Our Board recently revised the list of subjects upon which it will hereafter examine applicants for admission to the bar. We did not prepare an arbitrary list as a result of our own ideas. Instead we consulted with the law school deans of the state, and with the leaders in legal education elsewhere, and then, after the preliminary research and study had been accomplished, we prepared a list of subjects in accordance with the best thought obtainable. Not only have we worked together in this respect, but for the past two years our Board has asked the University of Miami, the University of Florida, and Stetson University, in rotation, to submit to the Board full and complete
examination questions for our applicants. Of course, the Board has been free to accept or reject any or all questions so submitted.

Cooperating committees have been very effective elsewhere. New York has had a Joint Conference on Legal Education since 1932 and has accomplished wonders in that state. If your state does not have such a committee composed of law school men and examiners, I suggest that you make the effort to organize one.

In closing I wish to state that which I consider the most important of all the mutual problems facing the law school and the bar examiner. It is the matter of the moral character of the applicant who desires to practice law. During the past few years examining boards have made progress in improving their systems of investigating the morals and reputations of bar applicants. Many state examining committees have elaborate machinery for checking on the men and women filing applications to take the bar examination. Since the war, the law schools have striven earnestly to accept only those students who are qualified from the standpoint of character. Many law school deans and their assistants are giving prospective students aptitude tests and personal interviews, both of which are of material aid in determining character and fitness for the practice of law. This is a very important factor in the bar admission process, and the overwhelming numbers of applicants must not cause our strained machinery to break down and become ineffective as to this all important factor.

"Certainly," says Marjorie Merritt, "there is only criticism to be gained from taking an applicant who lacks good character. I have in mind the case of a student who completed his course in an approved law school in a certain state and then was unable to obtain a certificate as to his good moral character from his own county character committee or bar association in that same state. Imagine the effect on the morale of the other students in that particular law school when they learned that a graduate from that school had been denied a license to practice law on the ground that he lacked good moral character." Was the school at fault for failure to discover before admitting him what his reputation was in the community in which he had grown up? Should not there be some system which will reveal these misfits or unqualified persons before the law school faculty has spent three or more years in giving them a legal education, and before the persons themselves have spent three or more years of expensive time towards qualifying for a bar which will later not grant them admission? Bar examining boards and character committees can do much towards screening out the undesirable, but this part of the qualifying process is one which should also receive serious consideration and action by the law schools, who are best qualified to handle this problem.

Yes, the wisdom of exalting this quality above the other accomplishments of a lawyer is found in the tribute paid by Joseph H. Choate to Rufus Choate,
a fellow lawyer: "Emerson most truly says that 'Character is above intellect' and this man's character surpassed even his exalted intellect and controlling all his endowments made the consummate beauty of his life."

DEAN FENN: Thank you very much, Mr. Ferrell.

I found Mr. Ferrell's talk most illuminating. There were problems there which had never occurred to me personally. I am sure it is my own ignorance and not the ignorance of this group in many respects, but I am certain that all of us derived a great deal of benefit from the clarity of the presentation of the problems with which we are faced.

The law schools certainly should lend all the force and devote all of the effort and energy necessary to cooperate in every possible way with the bar examining group. I am particularly interested in Mr. Ferrell's address of the character qualifications of the applicant. It occurs to me that perhaps the cooperation between the faculties of the law schools and the Board of Law Examiners at the outset of the student's entrance in the school might place us in a more advantageous position to judge the moral character and the integrity of the men that we are teaching and that will ultimately be admitted to the bar. I feel that the law schools can do a great deal more than they have in the past, and speaking for my own school, Mr. Ferrell, I should like to say that we will do everything that we possibly can and will look forward to a fuller cooperation in the future.

The leader of the discussion this morning, Dean Prince of the University of South Carolina, has had wide experience in dealing with these particular problems and I am sure that he will have a great deal of pertinent comment to make. Dean Prince:

DEAN PRINCE: There has been in progress in our school this past year a program of improvement. I do not mean by that remark to criticize any condition that existed before, because we know that we must have a certain amount of improvement always—just as an aeroplane must have a certain amount of momentum in flight just to maintain flight. But I want to say that the Conference at Columbia gave me a great deal of inspiration, and it was a wonderful help in some things that we did accomplish. For example, we have four or five hundred thousand dollars tucked away for a brand new law school and we hope to let the contract the last part of October or the first of November; the plans have all been decided and are now in the hands of the architect; and the legislature was so determined in this matter that they made it a must, that is, that the building must be ready for occupancy by September, 1949, so that there is no building committee or anything else that can stop it; it is going right through.

Then, too, we have succeeded this year in combining the efforts of our school with that of the South Carolina Bar Association. Beginning in September, we will have the South Carolina Law Quarterly, which will not attempt
to imitate some of yours in the broad national field. Although it will be con-
ventional, it is going to be directed chiefly to the benefit of and interest to
South Carolina attorneys.

Then we have succeeded during the year in establishing a good school
for Negroes at Orangeburg, and the chaos which ensued regarding the admis-
sion into our school of Negroes has been concluded by adjudication before
the courts that the school at Orangeburg is comparable, and the legislature
has appropriated $200,000 for a brand new building to house this law school.
They are developing a splendid library and have a good corps of Negro
teachers—and we are cooperating with them.

And largely, too, through the similar Conference in Columbia we were
able to abrogate the diploma privilege in South Carolina by July, 1950. That
gave everyone who was in the law school an opportunity to graduate prior
to the new law going into force.

So that you have been a great benefit to us, and as kind as you have
been in your remarks about the Conference, I don't think that any of you
derived the benefit from it that we did.

If we should consider that the purposes and functions of a Board of
Law Examiners and the purposes and functions of law schools are incon-
sistent or antagonistic and on different sides of the fence, then I would
think that we would be in error. It so happens that I served as a member of
a State Board of Law Examiners for South Carolina for a period of seven
years. Before I went on that Board, if you will permit me to make this ap-
plause for them, they had been judged to be among the upper third in
proficiency. I served on the Board from 1932 to 1939, and now I have left
the practicing profession and have joined you and I want to tell you that
you have been most gracious in welcoming me to your ranks. As far as I
can tell, the efforts of both these groups are parts of the same system and
function, that is, of so educating the law student who has the natural abilities
that he will in time be a successful lawyer. And in my opinion, testing is an
important part of this overall effort.

In a sense the Board of Law Examiners is doing the thing which in my
opinion might well be done, possibly should be done, in the law school, by
the faculty of the law school, that is, of providing a comprehensive examina-
tion after a law student has taken all his regular courses of study.

To some it may appear that the law schools are remiss in that only about
85%, on the average, of men in the United States, possessing LL.B. degrees
pass the bar examinations on the first attempt, I must confess that was
from my investigation of eight or nine years ago; I do not know what this
figure is now. This fact evidences a lack of proper functioning of the law
schools. One explanation of the failures of some LL.B. applicants for these
examinations is a tendency on the part of some law teachers to misjudge
the developing or the non-developing ability of the student, or to carry him on in the hope that he will bloom a little later, and that such a law student is carried through his course with this hope until he gets to be a senior and then the faculty is reluctant to fail him at this time; he becomes a casualty before the Board of Law Examiners.

But I do not know that this fellow is the only fellow that becomes a casualty. Some students may work hard, take good notes, get fair grades, yet not possess those qualities which it takes to perform the function of the needed lawyer in society.

Regent Lucy of the Georgetown University Law School states that one of his problems with law teachers is to get them not to take into consideration what a student is making under some other teacher. For where the student is unsatisfactory under one professor, another teacher hates to also report him a failure even though it is a fact, because he doesn't want to see the student go out of the school altogether, hoping that he may yet develop. This regent states that this, in his opinion, explains why about 10% of his graduates fail before the District of Columbia Bar Examining Board. No doubt this is an element, and may be an explanation, but when we take into consideration the fact that the law examiners are but human beings of varying degrees of preparedness for their job, and the further fact that there are so many gradations of law schools issuing LL.B. diplomas (there being all told—I judge from what Mr. Ferrell says—170 law schools in America with only about 103 in our Association) it is almost a miracle that no more than 15% of those possessing LL.B. degrees fail on their first examinations.

I stated that in my opinion the law examiners perform a function that the law schools themselves should perform, and that is furnishing comprehensive examinations at the end of the law school courses. There are schools that operate on this basis, such as Oxford, England; and I understand the University of Chicago and possibly others hold such examinations. I have been so conscious of the educational value of such final comprehensive examinations, wherever held, that this year I was able to convince the legislature of South Carolina that it would be doing the Law School of the University of South Carolina a favor and a benefit if it should take away the diploma privilege. This privilege has now been abolished. First I had to convince the faculty and then the educational committee of both Houses of the Legislature. I had in support of this position the pronouncements of the American Bar Association, and the fact that only seven other state universities in America had this privilege; that one of these seven wanted to get rid of it (that was West Virginia); that another of these seven was decidedly in favor of keeping the privilege because of the fact that the bar of that particular state (Wisconsin) was apparently anxious to limit arti-
Officially the number of new lawyers; and apparently there was much division of sentiment among the faculties of the other universities included. I had further in support of this position the fact that Dr. John B. Minor, the great law teacher of the University of Virginia, fought for years to get rid of the diploma privilege at the University of Virginia on the ground and for the reasons that he thought it was best for the student and best for the faculty. Had we not abolished this diploma privilege so as to require our graduates to stand a comprehensive examination before entering the bar, I would have, in a year or two, advocated such examinations in our school. Without such there is too much danger in my opinion of the law student checking off his semester or quarter-hour credits like a traveler checking off his Baedeker. I think it is a stimulant to the faculty and it is a stimulant to the student.

It is my observation that the schools in the Southeast are teaching, in the main, similar subjects. We made a diagram of that, a chart of all the schools in the South on this subject. I have seen no effort on the part of the bar examiners to get out of the orbit of these principal subjects plus adding thereto the provisions of the Code in a particular state covering procedure, and modifying common law principles and regulating those matters which are peculiarly to be regulated by each state separately, such as corporations—wills—registration of deeds—and the like. In my opinion we can leave to the good judgment of these law examiners the fields in which they will conduct their examinations.

It is my opinion that the bar examiner should be searching for four things by his examination: Does the applicant have imagination? Does he have reasonably accurate knowledge of the general principles of law in the fields of law where the paths have more or less been made plain or beaten down? As best I can learn from talking with you gentlemen and with judges and others, about 70 to 80% of our law fields are more or less beaten down and definite. I think the examination should be confined to those fields rather than branching out into the speculative fields, except where you are looking for the ability of legal reasoning. Does he have resourcefulness in the use of this knowledge? Does he have a reasonable ability to use his mother tongue and to express his ideas with a reasonable degree of clarity?

From the standpoint of the faculty member, I think the faculty member is looking for these elements, and in addition—does the student have intellectual curiosity accompanied by a willingness to work? The great Dr. William Osler, who revolutionized the teaching of medicine, in this country, stated that “work makes the dull bright, that work makes the bright brilliant, and work makes the brilliant steady.”

My conclusion is that the bar examiners and the law faculties are very close together in a common enterprise. There is no room in our economy for
CONFERENCE DISCUSSION LEADERS
From left to right: Dean Rasco, Dean Haslop, Prof. John Stephenson, III, Dean Prince, Dean Fenn, Dean Coffman, Prof. Russell Sullivan, Dean Stahr.
the sub-marginal lawyer. He is not capable of making a living any more than a farmer is capable of making a living on a sub-marginal land, but I cannot entertain the fear entertained by some members of the bar, that is, that we are turning out too many lawyers. For as society becomes more and more complex, socially and economically, the good business man is more and more in need of the legal mind. I recognize that the study of law has been greatly stimulated during the war, because our armies were made up of students, and some of the students tell me this: that where a man has legal training he was much better able to take on new processes than the man who had been trained on some particular point and had not had the broadening effect of legal training. Although all the men who are studying in law school will not attempt to practice law, in view of the fact that the legal mind is needed by so many people in enterprises other than the practice of law, these men have been attracted to this particular field.

At our school we try to instill into the student that there is always room at the top; that many fishermen do not gather together excepting where there are fish to be caught, and as to whether or not a young lawyer will make a living is going to depend upon his conduct and his ability to create a place for himself. If he has legal skills, if he studies the economic needs around him with a view and hope of being a better banker than the banker is himself, with a view and hope of being a better executive in business organization—that the executives around him are, if he understands the economic problems of the little fellows around him, all to the end he can act as a good sounding board when such a client comes into his office, there will be no danger of his not making the grade.

In my own opinion, possibly the profession of medicine has too greatly artificially limited the number of doctors coming into the profession and has created a doctor's market out of balance with a patient's market, and thereby has brought the medical profession before the bar of public opinion, and this despite the fact that their method has produced a very superior and a very proficient physician. At the same time, though we should not artificially limit those coming into the bar, we should avoid letting our emotions and sentiments for war veterans lower the requirements for entrance into the bar to the extent that we do many of them a disservice by permitting ill-prepared applicants for admission to either be admitted without examination or to be admitted upon a lower standard of proficiency.

We have not, in South Carolina, changed the requirements of a legal education from the face of a high school diploma. But the experience in that hasn't hurt; there has been but one man of that level, nearly 40 years old, who has been admitted to the bar in the last 20 years. It is possible that South Carolina will this next year require two years of pre-legal study in academic school before a man is permitted to stand the bar. But as a practical matter
It doesn't make much difference. It does give the state some bad advertising, but if people knew the real facts, it wouldn't amount to much.

You gentlemen who will follow me have heard Mr. Ferrell and you know better about the things that he brought out and should like to discuss.

DEAN FENN: Thank you, Dean Prince. The first response will be by Prof. A. E. Papale of Loyola University. Prof. Papale:

PROF. PAPALE: Before making any response, I wish to take this opportunity to bring to the sponsors of this meeting greetings from Dean Miller and the other members of the faculty at Loyola. They join me in wishing the Conference continued success.

Without committing the officials of Loyola University, I also wish to express the hope that a similar meeting will be held in New Orleans in the not-too-distant future. I feel reasonably certain that the officials will be willing to sponsor such a Conference, possibly alone, or in cooperation with our good neighbors, Louisiana State University and Tulane University.

With regard to "The Relationship of Law Schools and the Bar Examiners and Their Mutual Problems," I feel that in Louisiana we have achieved an enviable position: Prior to March 15, 1941, Louisiana was in the unfortunate position of having two-state bar associations. One was referred to as the "old voluntary bar association," which used to have charge of admissions to the bar, and the other was the State Bar of Louisiana, created by an act of the legislature, to which all lawyers had to belong in order to practice law.

Without going into details as to the sponsors of such legislation and the resulting abuses, it was an unhealthy situation which screamed for improvement. The improvement came in 1940 when the legislature addressed a memorial to the Supreme Court of Louisiana to create an agency of the Court to be known as the Louisiana State Bar Association. Pursuant to the memorial, the Supreme Court appointed a representative committee to draft articles of incorporation for such an agency. This was done and approved by the Court on March 15th, 1941. The law school representatives on that committee appointed by the Supreme Court did an excellent job of keeping the law schools closely connected with the problem of bar associations. In addition to making full-time faculty members of the Louisiana Law School that belonged to the Association of American Law Schools eligible to membership in the Association, provision was made for the election of one full-time faculty member from each law school belonging to the Association of American Law Schools to the Board of Governors of that Association.

Coming still closer to the problem being discussed, provision was made in the articles of incorporation for the appointment of a standing committee to be known as a Bar Admissions Advisory Committee, to be composed of one full-time member of the faculty from each Louisiana Law School belonging to the Association of American Law Schools. The duties of this
Committee are stated in Section 6, Article XII of the articles of incorporation. I shall read that section: "It shall be the duty of the Bar Admissions Advisory Committee to counsel and assist the Committee on Bar Admissions in the performance of its function and to perform such services in connection therewith as the latter committee may direct, short of the preparation or grading of examination problems. To this end it shall meet with the Committee on Bar Admissions at a session which shall be convened by the chairman of the latter committee at least 30 days prior to each bar examination and at such other times as the latter may designate. It shall also be the duty of the Bar Admissions Advisory Committee to submit to the Committee on Bar Admissions within 60 days following each examination a written report on the examination and related matter, evaluating it and them in terms of recognized educational and bar examination practices. Copies of this report shall be sent to the Chief Justice and the Associate Justices of the Supreme Court of Louisiana and to the Board of Governors of this Association."

Now needless to say, this Committee took its work seriously. A plan was adopted to distribute the bar questions to the various faculty members for comment and criticism. In other words, to operate as a sort of committee of the whole. From these comments and criticisms the Committee drafts its report. If my memory serves me well, the first report was so critical in nature that one or two members of the Bar Admissions Committee resigned, and that it had a salutary effect upon the other members of that Committee. After the storm, however, came the calm, and much improvement has been accomplished with regard to the bar examinations in Louisiana. There is now a most friendly spirit of cooperation between these two Committees. As evidence thereof I wish to read the opening statement of a few of the more recent reports of the Bar Admissions Advisory Committee. In the report dealing with the bar examination of November, 1947, the Committee said:

"The November bar examination continues to maintain the high standard that the Committee on Bar Admissions has achieved in previous examinations. On the whole the questions were well drafted and covered a sufficient range to test the applicant's knowledge of the law and his power of analysis. It was a fair test to determine the applicant's ability to commence the practice of law. The Bar Admissions Advisory Committee appreciates the task and responsibility of the examiners and wishes to commend the fine work that they are doing. It commends also the fine spirit of cooperation that has prevailed in the matter of minor criticism and suggestions made in previous reports of this Committee."

In a more recent report, the report of March, 1948, our Committee again says, "That this Committee is happy to report that the March, 1948 bar examination, according to the concensus of the faculties of the law schools generally continues to maintain the high standard of the past several
examinations. Perhaps the best indication of the general approval with which these examinations are being met is the increasing difficulty which this Committee is experiencing in eliciting specific adverse criticism from the faculties.

"While the all-important caveat must be continued to be sounded that the grading method is really the crucial factor, it is clear that the decreasing use of the hypothetical fact-situations which test hours of legal analysis and a growing emphasis on only those broad issues appropriate to a comprehensive examination at the end of the three years of law study are bringing the law faculties and the committees on bar admissions closer and closer to complete agreement in their approach to law examinations.

"This Committee wishes to express to the Committee on Bar Admissions its keen appreciation of the splendid contribution the members of that committee are making to the progress of the legal profession of Louisiana by giving so generously of their time and energy in carrying out a most arduous assignment.

"The brief review of the various examinations set out below is offered as usual in the hope that it will be helpful in keeping the Louisiana bar examination at a consistently high level."

And that, gentlemen, is the tenor of all of the reports that the Advisory Committee on Bar Admissions has made.

As further evidence of the cooperation of the law schools with the Committee on Bar Admissions the law schools now supply the Bar Admissions Committee with copies of all law school examinations. This has resulted in the giving of questions of the law school type. In fact, in the last report of the Advisory Committee we were forced to criticise a question as being unreal—the type of question that we law teachers are sometimes prone to put on examinations. All in all, however, we in Louisiana feel that this system has produced fruitful results and is very much in line with the system outlined yesterday by Acting Dean Ritchie of the University of Virginia and as I understand is being done in some of the other states. We feel that the purpose of a bar examination is not to determine whether or not the applicant is a lawyer or has all of the qualifications of a lawyer, but whether he is qualified to commence the practice of law.

Coming specifically to Mr. Ferrell's remarks, I think all of us will agree that law schools are conscious of the fact that lawyers must be trained to take their place in society and to cope with the social, economic and political problems of our time.

Personally, I think that the law schools are striving to do that job.

Reference has also been made to the diploma privilege. Fortunately, I am glad to report that we have no such privilege in Louisiana. While there may be some dissenting voices, on the whole the law schools are in favor of a bar examination. Personally, I am in favor of a bar examination to serve
as a check on the law schools. And I think it is very essential to have a bar examination for all applicants in a state where you still permit the study of law under the tutelage of an older lawyer. I feel that as long as that condition continues, and we have that in Louisiana, the bar examination serves a useful purpose in keeping up the standards of legal education. If a bar examination were given only to the lawyer-trained lawyer and not to the law graduate as well, I feel that there would be a natural lowering of the standards. I think that the paper of the office-trained lawyer suffers by comparison when it is graded along with the paper of a law school graduate. As a result only the exceptional individual will ever make the grade and pass the bar examination under those circumstances.

Reference has been made to non-approved schools turning out law graduates. Fortunately I am happy to report that all law schools in Louisiana are approved schools, so we don't have that problem.

As to the moral character, Mr. Ferrell, I seem to feel that a certain amount of training should be done by not only the Bar Admissions Committee but by law schools. It is a mutual responsibility. However, I do think that no amount of training will teach the undesirables or keep all undesirables out of the profession. There is always the fellow who comes to law school, has a clean slate morally and a clean slate when he appears before the Committee on Bar Admissions, but when he gets out into the practice may go off on the wrong track. That is the function of the grievance committees of the bar association.

Reference has been made to overcrowding. On that point I want to agree with the opinion of Dean Prince: in our age a legal education will hurt no one. We also know that there are agencies operating, partnerships and corporations, that increase the potential of legal business. And always, I say, it is the poor lawyer who can't make a go of it; then just as in another trade or occupation, he has to suffer the consequences.

DEAN FENN: Thank you. Prof. Papale.

The next discusser will be Prof. James H. Barnett, Jr. of the University of Richmond School of Law. Prof. Barnett:

PROF. BARNETT: Dean Fenn and gentlemen of the Conference: I want to say first that we recognize at the University of Richmond that we missed a rare opportunity in not being able to attend the meeting at Columbia. Unfortunately we were not able to be present. Now I have not prepared any paper.

I am supposed to make a provocative address. I want to make this statement: at the University of Richmond our graduates for a long time had a very good record for passing the bar—I think probably 20 years before a graduate failed. The fact of the matter is we were rather criticized about it. But I want to report that we have completely reformed. I think eight per
per cent of the candidates passed this year. So we feel that we are above criticism
on that score.

Now since I haven't made any notes on this, my remarks will be rather
haphazard.

A great deal of criticism is leveled against the law schools because they
do not train men to step right into the field of practice. I suppose we will
never be able to create what Pope called that "great institution of the inns of
court." They were able to do the whole job and I suppose they did it very
well. I am opposed to the law schools' attempting too much. We have a big
job to do in three years and I am persuaded that it is big enough for us.
If there could be some internship or clerkship I think it would be a long
step forward.

Now in Virginia we have a situation which I think is bearing fruit. And
when I make criticisms, do not misunderstand me. It is very easy to criticize.
I think that the type of questions has improved immeasurably in the last
30 years. I am going to address myself primarily to the type of question and
the content of the question. For example many years ago they asked this
question: "What is a continual claim?" Some student asked me. I had not
the slightest idea. That is a type of question that tests only memory and
nothing else. Ancient law. The bar examiners in Virginia, for about 10 years,
have very graciously invited us—they have been the host sometimes; some-
times we have been the host. There are three law schools and there are excel-
lent relations between the three law schools. And we usually meet on the
evening after the bar examination and it covers two days and we go over
the questions. Much light is thrown on it, but the light is not quite as pure
as the fireside; there is a little heat—I think there should be a little heat—
there is criticism: we even argue as to what is a proper answer. But on the
whole I think we are making progress. I think the type of question which
simply asks for a legal rule is gradually going out, and they are coming more
to the factual questions. But my criticism is this: that they will take a half
a page to state a series of facts and there is just one little rule of law in there.
I know I have talked to some students and they think "Oh, my goodness,
there must be four or five points in that question" and frequently they go off
on some point that the examiners did not have in mind and the examiner
thinks "Well, he was just throwing up dust to cover his tracks"—the courts
do that sometimes. In other words, drawing these questions requires a lot
of time and thought. I have spent a lot of time drawing up questions. Some-
times I am not sure I knew the answer myself, but I knew what was involved
and I wanted the man to wrestle with it. I wanted to see how he would handle
it. And then too, I think sometimes we bar examiners haven't studied all
of the cases very well. The point I am making is that when you draw up an
examination, you have to study very carefully the cases in that jurisdiction. It is not an easy job to draw up examination questions.

Then I have another criticism—pardon me if I am specific because with my limited knowledge, I have only brought to mind certain questions—for example—I talked to Mr. Campbell, a very good friend of mine, about this.

The examiners asked a question about the death of the drawer of a check. I asked him at one of our meetings up at White Sulphur, “What do you think is the answer to that?” . . . “Well,” he said, “I think the drawee is liable.” I said, “Why do you think that?” He said, “Well, there is a textbook written by a distinguished professor of law and in a footnote he suggested that he would be liable under our statute.” I am sure that 90% of the students who took that examination had never read that footnote. I think it is an unfair question. I think it is unfair to question a student on some statute that is not of great importance. Of course he should be examined on the statute of wills, fraudulent conveyances, dealing with crimes, and the like, but to pick out some unimportant statute to ask of a law student is, in my opinion, very unfair. He is not supposed to carry all these statutes in his mind. No prudent lawyer would pass on it until he had examined the recent cases. They have a tendency to ask their questions based on the recent cases. Well, if you have read the recent cases you stand a much better chance than if you have not read them.

Do not misunderstand me. I think that we are moving forward in Virginia. Very cordial relations exist between us.

DEAN FENN: Thank you, Prof. Barnett.

We will now have a response by Dean J. Alton Hosch of the University of Georgia School of Law.

DEAN HOSCH: Dean Fenn and Ladies and Gentlemen: I have listened with interest to what has been said. I appreciate the opportunity of being here. I was on leave for almost six years from the law school and I could attend the meeting in Columbia for only one evening last Spring. This is a peculiar privilege for me at this meeting and I am enjoying it.

Mr. Barnett said he had no notes; I don't either. I asked a United States Senator last weekend how long he could talk. He said with notes he could talk for two years. I said, “Well, how long can you talk without notes?” and he said, “Indefinitely.” I am not going to talk indefinitely because the ground has been pretty well covered. I remember when I became Dean of the Law School at the University of Georgia, in 1935, the diploma privilege had been abolished shortly before that time. I had not studied much since I had stood the bar examination years before. But a study disclosed that far too many of the problems were devoted to Georgia practical procedure. The approved law schools have an association called the Association of Georgia Law Schools. That Association is composed of the University of
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Georgia, Emory and Mercer. We took the matter up with the Georgia Bar Association and the Board of Bar Examiners, and as Mr. Ferrell states you have in Florida, we outlined a program in cooperation with the examiners allocating to the examination questions on the field of law according to some sensible arrangement. I understand from the examiners that it is still in practice. But it seems on the last two examinations that they are putting the old line into the so-called new model.

We are still back, it seems, into the so-called old plan, to some extent, but I think that some progress has been made. We are cooperating with the Board of Bar Examiners. The Association of Georgia Law Schools has a representative on the Board of Governors of the Georgia Bar Association, and that position is rotating among the three deans of Emory, Mercer and Georgia; and we are working in harmony with the Board of Governors and the Board of Bar Examiners.

We hope that soon we will have an end to the no-educational requirements in Georgia, and we are working toward that end, and I think progress is being made, and definite progress. Last year the Georgia Bar Association unanimously approved a recommendation to the Supreme Court and the legislature urging educational requirements for admission to the bar. And we are moving in the right direction.

I remember Dean Prince referred to Dr. Osler and what he had to say. I remember in addressing the graduating class at Yale one time he quoted Carlyle and he said, "It is not for us to see clearly what dimly lies ahead, but to do what clearly lies at hand."

(Meeting adjourned for five-minute recess).

The meeting was continued at 11 o'clock A.M., Dean L. A. Haslup, presiding.

DEAN HASLUP: In the previous programs we have heard the objectives of the law school set out as to the type of student we are supposed to be producing. But I suppose most of you are familiar with the type of student, of which we had at least one at Stetson last year who caused Professor Schultz considerable concern, along with the rest of us. All he wanted for his legal education was a set of rules, blackface rules which could be taught to him in two or three months. The rest of it was all a mistake.

We again, some of us, I suppose, read Prof. Jacobs' article in the Bar Journal not too long ago, where he points to the fact that we are developing two professions of professional law teachers, which the bar is sometimes not too able to recognize as part of the bar. I think perhaps that is unfortunate from our viewpoint as well as theirs. I think the objective we
must keep in mind is that we are all lawyers and all working towards the same end.

Getting to a question of "How," I think many of us realize that a few years ago Langdell in putting out his case book method practically revolutionized or at least changed law school methods of teaching.

I wonder sometimes whether or not an adherence to the case book technique, so to speak, unless it is considerably supplemented, during both morning and afternoon, probably doesn't have to stop. Sometimes I think we might very well take a page from the book of the other branch of the teaching profession. We are told we must correlate our teaching with the social sciences.

I think we are fortunate this morning, however, in having Dr. George L. Fahey, Associate Professor of Education at the University of Miami, who has done his graduate work at the University of Wisconsin, and who has taught at the University of Pittsburgh and who is now at the University of Miami—I think we are fortunate to have this discussion of "Teaching Problems and Classroom Techniques." Dr. Fahey:

DR. FAHEY: I approach this situation with a good deal of fear and trembling but I will try not to show it. I feel in a rather unique position here. I cannot claim to know anything in particular about law teaching; I aspired at one time as an undergraduate. I entered college in the first place thinking that I was going to be a lawyer but I never got beyond some of the rudiments of pre-law training. I certainly never attended law school and have no familiarity with law school procedure except in general.

I can, however, offer some generalizations out of terms and concepts based on graduate school training and professional training in some other areas. One of the fundamental principles that we get out of the psychology of learning is that organization is an extremely important factor. Any organization is better than chance order. So I have adopted a form of organization for this discussion which I hope will be helpful.

As I see it, the teacher's total task is his supply of aspects. First of those, the determination of the objectives of instruction. Secondly the selection of the learning exercises that lead toward those objectives. Thirdly the selection of the materials of instruction to implement those learning exercises leading to the objective. Fourth, motivating the learning, and fifth, evaluating the outcome of the instruction. If I may I would like to expostulate some rules with respect to each one of those.

A good teacher has clearly defined objectives in mind. Judging from the remarks I have heard here in the last hour, you will devote a good deal of attention in this Conference and probably have in the past on the determination of law school objectives. What should the lawyer accomplish? (The student lawyer, I mean to say.) Certainly those objectives should be clear at
all times in the mind of the teacher, and should be passed on to the student lawyer; also, so that he knows as well as the teacher knows what are the objectives of the instruction program. What is he supposed to accomplish? I don't know whether it occurs in law school or not, but it does in some other professional schools, and it occurs very commonly in undergraduate situations, and in public schools, where teachers cover a body of subject matter, that they have a textbook and proceed from one end of it to the other, but if you pin them down very much they cannot tell you why they are teaching certain things; they cannot give you any basic principles which they hope to accomplish. I think, perhaps, in the specialized school you have more clear-cut objectives; you can have; it becomes more possible for you than in some other areas. But I think the law school teacher, along with any other teacher, should question his own understanding of the objectives of his program.

It may be helpful to subdivide objectives. They fall into three rather general classes. At one level in this sort of hierarchy we have habits and skills and bits of information. Typically in school programs at all levels we have done a pretty good job of teaching habits and skills and bits of information. Certainly we have to go on doing a good job at those levels, because they are essential pieces of information, essential habits and skills that must be acquired by anyone, whether he is a high-powered specialist, an expert, or merely a novice who will have to earn a living and live a life. Dr. Spirer gave me an illustration of that when in the state of Pennsylvania, he said, a legal brief must be filed on a piece of paper which is 8½" x 13"; it cannot be 8¼" x 14" or x 12"; it has to be 8½" x 13". Now that is a fact. That is a bit of information. We can carry that fact, of course, and others like it, including many definitions and terms and so forth to a higher level.

The second class of objectives is knowledge, understanding and sensing of meaningful relationships between materials, and between concepts. I suppose it is possible to understand why a legal brief is supposed to be 8½" x 13". We used to wonder, sometimes, when we were first in the Army, why Army correspondence—I happened to be one of the paper-work soldiers—had to be in such a highly precise form. After we had been around for a while we saw some justification for it. Army correspondence has to be filed on a universal system; it has to have a whole system of endorsements and so on. There were certain reasons why very careful and precise margins had to be observed. That would be an objective learned or accomplished at what we might call the second level. The level of understanding and comprehension and sensing of meaningful relationships.

The third level in this hierarchy of objectives, and apparently from the remarks I have heard you have been paying some attention to it, is that of attitudes and appreciation. You will note that the first two are rather closely
related. The habits and skills and bits of information lead to knowledge and understanding; they make it possible; they don't assure it by any manner of means. One may know the size of a legal brief without knowing why. But the second level, knowledge and understanding, depends upon habits and skills and bits of information. Attitudes, perhaps fortunately, and sometimes unfortunately, we can acquire without any knowledge. We don't have to have any facts that are basic to them. Someone made reference earlier this morning to the fact that the lawyer frequently has to look up information and that he has to extend his knowledge. But the lawyer, I suppose, like everyone else, carries his attitudes around with him; they are not in the library; they are not something that he looks up on certain occasions. They are a part of his personality that colors everything that he does and he projects them into every situation. Attitudes that he holds, appreciations that he has are certainly extremely important objectives.

I cannot say very much about the attitudes of lawyers; I do not have a very wide acquaintance with lawyers. Again referring to the Army, I did have some experience during the time I spent around Army hospitals, the last year at the Army Medical School at Fort Sam Houston, Texas, with the young physicians and dentists who were inducted into the Service and were getting a course in indoctrination there. Certainly the attitudes which they carried forward did not reflect credit upon the institutions which had trained them. They were not concerned particularly with the patriotic duties that they had to perform, although a great many of them, the great majority of them, were fellows who had gone through school under the S.E.C. program, and a great many of them, were it not for the Army, would not have been able to be in the medical profession. The big complaint seemed to be all the time and the major preoccupation seemed to be the $20,000 they could be clearing if they were out in civilian practice. That seemed to be the thing that most of them were concerned with. Perhaps it was the result of the accelerated program; I don't know. But it would seem to me that those fellows had not acquired certain attitudes and appreciation toward the profession of medicine that they perhaps should bring into it from the standpoint of good citizenship. Certainly a doctor should be a good citizen. Certainly it would seem as if a lawyer ought to be a good citizen. I suppose most lawyers are good citizens. I am not in position to evaluate that, merely to lay it before you. You know better than I do how many lawyers turn out good and how many lawyers turn out bad. I think we might consider, in passing on these objectives, though, that it is the knowledge that a lawyer has, I suppose, that makes the difference between a good lawyer and a poor lawyer. Would that be a reasonable statement? How much he knows, how much he understands, the facts that he has at his command and how he understands the relationship between those. It is at the level of attitudes and appreciations that distinguish between whether
a lawyer is a good lawyer or a bad one. We can do some moral connotation there on which perhaps it is not appropriate for me to generalize.

Certainly the first task of the teacher is a clear definition of the objectives of his instruction. I don't see how one can instruct very effectively without knowing what is to be accomplished in the future. Those objectives should stand out clearly in the mind of the teacher and the teacher should continue to keep those objectives in the minds of the students, continually pointing out the reasons why certain things are such, the basic justifications for them, the application values that can be derived from them, and so on.

Coming back to the second point, a good teacher should devise his learning exercises to attain the objectives of the instruction. Those learning exercises take innumerable forms. I understand that in law school practice you stick rather closely to case book procedure, which has advantages undoubtedly for a legal brain, and maybe some disadvantages. I would like to say a little bit more about that later.

Now learning exercises may be verbal or they may be laboratory, they may be merely reading, or may be discussion, they may be in form of work books and blanks to be filled in, examinations to be taken—examinations are learning exercises—and they may be actual practice. The old-fashioned lawyers who read law I suppose got more of that than perhaps some of the modern graduates of the modern law school and who, I presume, got to be good lawyers too, although there may be objections to the system, generally.

The schools of medicine seem to be requiring increasing participation in actual clinical situations. I refer to schools of medicine; I don't know about law schools. Now the schools of medicine seem to be paying more attention to actual clinical practice rather than emphasis upon questions of anatomy and physiology and materia medica and diseases and disease processes and so on. Actual practice under controlled conditions, of course, is always possible and a good education technique in many situations. The controlled laboratory system that we all went through as undergraduates in sciences was actual practice under controlled conditions; sometimes the conditions were so highly controlled that the situation became something that never existed outside the laboratory, purely abstract and hypothetical, nothing that anyone who was actually in the chemical business, for example, would ever do—but perhaps there was some learning done anyway.

I suppose you have—maybe you will not like the phrase—but from a layman's point of view, mock trials, on which the individual practices his legal procedures under controlled conditions. Certain criteria may be applied to learning exercises generally. The learning exercise must be based, first of all, upon the objectives of instruction. We should aim at those objectives of instruction as economically and as efficiently as possible. Sometimes learning exercises that we devise go around Robin Hood's barn when we attempt to
get at the objectives. Learning exercises should be thought through clearly in advance and planned in terms of the objectives. The performance of the learning exercise just because it is difficult has particular value in the psychology of learning. A good many faculty members of the university and graduate school level still subscribe to a doctrine of mental discipline. I don’t suppose there are any of them in law schools, but they exist in other professional schools and graduate schools. Certainly difficult learning assignments cultivate in the individual (if he finds a solution for them) desirable habits and attitudes of study which cultivate the sort of thing that someone referred to here earlier as the legal mind. The legal mind consists of habits and attitudes of thinking. The process of teaching, as I see it, should not be a matter of making instruction difficult but making difficult situations easy, and teaching the individual how to find the easy solution, the best solution, the most efficient and economical solution to problems which present these difficulties.

A good many teachers—and again I cannot speak of law schools—seem to take a good deal of delight in making their material confusing. Now confusion is a good teaching device sometimes. If confusion in the mind of the student were deliberately created, would you deplore it? You certainly would not, provided it ends up in something other than confusion. But if all the student carries away with him is confusion, then nothing has been gained except to disappoint him, frustrate him, make him wonder if the whole thing is worth while. Confusion is an admirable state of affairs if it leads the individual into a solution of the confusion, but merely to confuse him seems to have no particular advantage.

Good learning exercises do not depend upon some emotional or mental discipline, and if a piece of learning is to be accomplished, probably the best attack on it is direct. Now there is such a thing as transfer of training, of course. The whole system of college training and professional training assumes that one transfers learning from one situation to another, although the transfer is never guaranteed. That comes out clearly from the research in the psychology of learning. You cannot be sure that when a student learns something in one situation he will carry it over to another. If you want to be certain that he will illustrate a certain kind of behavior in a given situation, then you had better teach it to him as directly and clearly as possible.

Good learning exercises present variety. Any one form of instructional technique becomes monotonous, and there is a clear disadvantage that I will refer to later. Good learning exercises appeal to the confidence of the learner. There seems to be another fundamental principle in the psychology of learning, that we can acquire new experiences only by a process of adding them to that experience which we have previously had. It seems to be impossible for the human animal to acquire something which is entirely new and different and unrelated to that which he has previously known. We can accumulate
new learning by a process of adding experiences to that which we previously have acquired. If learning exercises which you devise are beyond the comprehension of the student they are not going to be profitable experiences. It seems to be a pretty sound principle in education practice that we have to begin where the learner is. Maybe if he is not where we think he ought to be we are going to have to begin at an earlier level and lead him faster, but we are going to have to start where he is. If we start at some cloudland beyond him, he is not going to get profitable and economical instruction.

Learning exercises, of course, have to be adjusted to the time available. A late and lamented professor at the University of Iowa, Prof. T. J. Kirby, used to say there are three characteristics of a good assignment: what to do, how to do it, and how to know when it is done. Sometimes when students are given assignments which are vague or indefinite, the student does not know what he is supposed to do; he does not know how he is supposed to do it, and much more often he does not know when he is done with what he is supposed to do. You have had the exasperating experience, I am sure, as a student yourself, of receiving an assignment and of doing a good deal of work on it requiring mastery perhaps of the concept and then of finding out that the professor only wanted you to be passingly familiar with it. That is an exasperating experience. Maybe it was good for your soul, but it was not very pleasant at the time. A good assignment makes clear what to do, how to do it and how to know when it is done. What standards are to be observed?

There are certain things in law, I am sure, that every lawyer must learn, without qualms or quibbling; he must have certain information and certain knowledge. Now we would not graduate him from law school unless he had that knowledge. There are other things, as the previous speaker has indicated, with which he should have only a passing familiarity. He should be able to say he has heard of the authority but he does not need to have mastery of the concept. Good teaching procedure indicates how extensive or intensive the learning is supposed to be in a particular situation.

The third aspect of the teacher’s total task is that of selecting the materials of instruction. Again I understand that is a fairly ready-made process in law schools, that you make use of case books and textbooks. You can depend on those rather regularly. I do not know enough about your curricula to say whether or not that is good procedure. Your students may visit a courtroom; that courtroom becomes one of the materials of instruction. Materials of instruction present variety. They are first of all, perhaps I should have said, adapted to the learning exercises. That is, you determine the objective, you figure out what objectives the exercises lead to and then figure out the materials that best implement those exercises.

The materials of instruction must also be within the capacity of the lawyer. There have been an enormous number of fads in public school educa-
tion in recent years, with different types of instructional material. One of the current fads is the use of motion pictures. That must have hit the Army very hard too. Many of you who were in the Service saw a good many motion pictures, as training films, and sometimes a man got to see the same film six, eight or ten times, and found it a rather unprofitable and unpleasant experience. The chief value of such techniques seems to lie in their novelty. Novelty does introduce an interest factor, it does induce somewhat better motivation, and insofar as you can present novelty in a particular situation you tend to stimulate learning. Movies are not necessarily better than some other technique of instruction, but they may be helpful.

The fourth aspect is that of motivating learning exercises. No matter how beautifully you phrase your objectives, no matter how cleverly you devise learning exercises and select materials of instruction, unless you get the learner to do something about them, you are not going to have any learning. The psychology of learning indicates clearly that practice makes perfect, but practice without content, practice without motivation, is practically profitless, that there is very little gain from practice alone. That shows up repeatedly in occupations: where a man does the same job all day long, over and over again, without doing it any better, and then he gets a bonus of some kind for piecework and doubles his output. Motivation is an extremely important factor and we are sometimes inclined to assume that it exists; just because we see the value of something we teach we assume that it is evident to the learner; that is not necessarily the case. In the professional school you have a somewhat different situation than in the undergraduate departments, where sometimes the students are there in that particular area because they want to be, their parents sent them to school or it is the thing to do. In a law school, of course, you have men who are more motivated by the study of law originally. But even the best of them probably need some stimulation from time to time. There are many motives to which the teacher can appeal; one to which we very frequently appeal, of course, is the fear of failure—either you get it or else. You work hard on this and do this assignment or you do not graduate from law school or whatever school you happen to be in. Not necessarily the most effective or most desirable technique, but it works.

There is a good deal of motivation that comes out of doing just what other people are doing. It sometimes surprises me to stop and think about how much study students do just out of sheer momentum. Now what would you do about it if the whole class decided not to prepare a particular assignment? Or a whole series of assignments? It might be an embarrassing situation if the group as a whole elected that procedure.

Students do a good deal of studying on the basis of social approval; it is the thing to be done. Competition is an extremely strong motivating factor, of course, and we utilize it very commonly. Sometimes we are apt to utilize
it a little too frequently. It would seem perhaps in teaching generally we emphasize competition more than we do cooperation. We have to learn both in order to live in the world, but we are as good citizens supposed to learn a good deal about cooperation. In general, however, a school program will teach competition rather than cooperation. It motivates a lot of learning, but sometimes it results in undesired learning. This is a digression; I don’t know whether it pertains to law school or not, but on campuses all over the country, I understand from national literature, the problem of cheating in examinations is a very common one. On different campuses where I have been it has been flagrant and it seems to be even more widespread at the present time than it was before the war. Whether we can blame it on the veterans or not is another question. It may be only coincidental. But I think in many cases we teach the students to cheat on examinations by setting unreasonable objectives and by too much emphasis on competition, that is by too much emphasis on competition with other people rather than with one’s own record.

That which is novel is always motivating, or almost always motivating. Variety is satisfying. One of Thomas’ basic four wishes, you will remember, was the desire for new experience which is supposed to characterize all of us. New experiences can be motivating. Perhaps there is no motivating factor in learning exercises much stronger than success. We, as adults and students, and the students we now have, will work diligently at things where we find success, tending to avoid those things in which we are not very strong. If you play a good game of golf the chances are you will practice a good deal. If you play a mediocre or poor game of golf the chances are you stay away from the links. We tend to do best those things at which we succeed. In public schools we recommend that teachers create, so far as possible, success experience for students, that they project students into situations where they do meet with success. It is surprising how motivating school success experiences are—how much more effectively an individual will work for satisfaction than he will for fear of punishment, although in the graduate schools commonly we depend upon that fear of punishment even though we may be aware of its disadvantages.

The fifth aspect of the teacher’s total task is evaluating the learning outcomes. That is Dr. Spirer’s topic for tomorrow morning and I don’t want to poach on it very much. There are a couple of points I would like to make to round out my own argument. To me teaching and testing are inseparable things. Testing is a teaching procedure—finding out what it is that the student does not know. The basic justification, of course, for testing is finding whether or not the objectives of instruction that we started out with have been attained, to what degree they have been attained, what omissions exist and how to correct those omissions. A few years ago the so-called “Morrisonian” formula was very popular and probably is still sound pedagogy.
"Teach, test, reteach to the point of mastery." That is, find out what it is the individual does not know and make sure that he gets it. Testing is an integral part of the teaching process, it would seem to me.

Of course tests can take a variety of forms, as I understand it, in your law school practice. The oral examination is a very common procedure, so that you are testing almost continuously. That is sound. Tests do not necessarily have to be reduced to pencil and paper work. All too often, of course, in testing—and I am sure Dr. Spirer will raise this point tomorrow—we attest to some glowing objectives of education and then we test for trivial bits of information, like the isolated footnote which the gentleman referred to this morning. That makes a good examination question. You sort the sheep from the goats that way, don't you? But you are not sure when you get through with it whether you have really got sheep sorted out; whether the individuals really understand it or not; whether they really have knowledge; whether they have actually gained the objectives of education or whether they have happened to hit upon the technique of reading footnotes.

That aspect of my talk title here which says "... and classroom techniques" seems very difficult for me to attack, except on the foregoing basis, and of course one can enumerate many, many classroom techniques. You can as well as I. The lecture, which is either formal or conversational. The recitation which may be merely an oral examination. The so-called "socialized" recitation, which is a close relative of your case book procedure, I understand, where you have recitation of the problem and discussion of it. The so-called "Socratic" questioning method which goes beyond mere recitation and leads the student into thinking situations. We have the project method and the laboratory method and the demonstration method and the activity method and so on. There are innumerable ones.

There is no evidence to support—drawing on the psychology of learning—the contention that any one method is superior to any other method. How good a method is depends on how effectively it is used by the teacher and student. Now lectures, as you know as well as I do, may be dynamic; they may be inspiring; they may fill the student with zeal to do something, or lectures may be very dull and flat and uninteresting and create nothing on your part except general diversion and sleepiness. Recitations can be a mere conning over of empty words and phrases. I am reminded of a situation in public school, the senior class of high school: the teacher and the pupils spent the whole period going over consideration of the Reconstruction Finance Corporation. This was a class of so-called "Problems in Democracy". They spent the period discussing it. The students previously had read the chapter of the textbook devoted to the Reconstruction Finance Corporation. The teacher also had apparently read that chapter. They spent the whole period going over and reciting the material out of that chapter. At the end of the
period the teacher made the serious mistake of asking if there were any questions. And some young heretic raised his hand and asked, "Teacher, what is the Reconstruction Finance Corporation?" She replied, "It's like the Federal Reserve Bank; are there any other questions?" She did not know either what the Reconstruction Finance Corporation was, but it was quite possible to spend the whole period in reciting material without understanding it at all. Recitations may be that sort of thing. Recitations, on the other hand, can be genuinely challenging; they can push students to the very heights of constructive thinking, depending of course on how skillfully you manage them, how well you ask questions, and so on.

Demonstration teaching is sometimes very educative. You put on a demonstration, perhaps using your own equipment or some student's also, and it may be very informal. Sometimes demonstrations are merely confusing. I remember some of those out of science instruction which merely ended up in what William James called "Big, buzzing, booming confusion"; we were worse off after we saw them than we had been before. It all depends on how well you use a technique, not on what you name it.

In general we may say that good teaching technique or the use of good teaching techniques does not depend upon any one technique to the exclusion of others. I mentioned that point before, that the exclusion of others tends to make such things monotonous. There is another disadvantage to the use of one exclusive technique: that is, the students sometimes become adept at learning how to counter or cope with that technique without knowing the information that is involved. As an illustration, I refer to something from Dr. Spirer's address to the Conference, the true-false examination. You are familiar with them. They are very useful in many cases. Sometimes they are set up so as to make good tests. It is also possible to learn how to take true-false examinations. I used to use them fairly frequently and have gotten away from them almost entirely, because I have discovered that success on the examination was conditioned quite often by the ability of the student to read the true-false question with just exactly the meaning intended. Now that is good legal training, isn't it? The student should read the words that are there and not read in some other words. Maybe the true-false questions are good learning exercises in legal reading. But they may not be good devices for evaluating how much color the individual has in his legal knowledge; he may be getting 40 points on the test merely by his ability to pick out clues from the examination items. Research indicates, for example, that if the true-false question includes the words "always," or "never" or "invariably" (there are not many situations in life that are always, never or invariably), nine times out of ten—there is some research evidence to back that up—such statements are false. When a student answers the question on that basis, you don't know whether he knew the answer or not; he merely has become adept
in the technique. Sometimes the students do get the depth of techniques and merely skirt the fringes; they know how to handle the situation, particularly some of the glib ones. The use of any one technique is apt to encourage an adeptness of the technique rather than skill in the subject matter involved. Techniques are suited to personalities. One man's meat is another man's poison is certainly true with reference to teaching techniques. One teacher may be a very good lecturer and another one may be a very good leader of discussion. They may not be able to reverse the situation very effectively. A good teacher, however, shops around and tries different techniques and continually tries something new and different in the interest of variety.

I had a friend who taught as an Assistant Professor in Psychology; he taught five introductory sessions of general psychology; every Monday, Wednesday and Friday, he met with five comparable groups of sophomores and led them through the same procedure in a course in introductory psychology. How he kept his sanity doing it I don't know. To me that would be extremely monotonous. Following the same technique continuously would get monotonous for the teacher. You get out of any technique that which you put into it. If you throw yourself into a teaching situation you get results. The teacher who is dynamic about his teaching gets dynamic response. One who is lackadaisical gets lackadaisical results. That is a pretty fair generalization. Teachers who plan ahead usually get the best results. Teachers who keep fresh in their own thinking and their own experience tend to keep their classes alive. Many teachers get in a rut. Prof. Presse, professor of psychology at the University of Ohio, tells about two teachers he knew who started teaching about eight years ago. At the present time, Presse said, one of them has had eight years' experience; the other one has had one year's experience repeated eight times.

Good teachers, I think, are experimenters as far as classroom techniques are concerned and there is not any high-powered specialist—expert, to use the Dean's word—who can say that one technique is better than another; that one technique is more effective or more economical or more profitable. A good teacher adapts techniques to his own personality within the limits of the objectives of the instruction. He introduces some creative activities and attempts to get variety.

DEAN HASLUP: Thank you very much, Dr. Fahey. I am sure that you have given us all something that will be of benefit to us. I think we have gathered from our previous programs that we have not too much room for complacency, either with our accomplishments or our techniques.

I believe that Dean Rasco has an introduction to make at this time.

DEAN RASCO: I take pleasure in presenting to you at this time Mr. Tom Smith, head of the Convention Bureau of the City of Miami Beach.
TOM SMITH: Dean Rasco, Dean Haslup and Gentlemen of the Conference: I want to take this opportunity to extend to you a warm welcome to Miami Beach. For your information, we have a department here in the city government called the Department of Public Relations, of which I am Director. And on behalf of the Department I am here to serve you. Please realize that we are honored by your coming here. We hope that you will have a most pleasant stay until the Conference is over and that you will remain with us as long as you possibly can. Please do not hesitate for an instant to call on me any time I can be of service.

DEAN HASLUP: Thank you very much, Mr. Tom Smith.

The discussion leader for this part of the program is Professor Thomas Henderson of Stetson University.

PROF. HENDERSON: Dean Haslup and fellow associates: The other morning, in his discussion, Dean Coffman made some facetious remarks indicating that every time a lawyer talked to him about getting a practical legal education that he seemed to have in mind teaching the young student where to find the toilet and other facilities around the court house. In order to provoke a little thought, I want to make use of that illustration to say that I am wondering whether it might not be a good idea to instruct that young man how to find the combination to that particular room if in the course of his three-year law school curriculum we will fill him up with doses of salts and graduate him and he then finds himself in a situation rather embarrassing when he attempts to carry out some of our teachings.

Now it seems to me in the discussion of our techniques that we are stewing in a brew which has been prepared and cooked a long time ago and as a result of that cooking we find it very difficult to change the ingredients. The early study of law, you remember, was through practice and reading. The law school came into being about 1784 and when that first Litchfield School was created it was created through a necessity, in that the only method available at that time was the lecture method; and it was followed for a period of 50 years, and some great names in American jurisprudence were trained in that school and under that leadership.

It is interesting to note that in Vol. 1 of the American Law Review that 120 years ago the outline of that program consisted of this: law divided into 48 titles, which was the result of more than 30 years of reading and studying, by the lecture method, presented to the students together with modern adjudication. One hour and a half of lecture daily, with numerous authorities cited and practical illustrations used, the remainder of the day given over to the examination of these authorities and reading in the library such as it was at the time, largely consisting of Coke and Blackstone, together with a moot court; this constituted the course of study, which was prescribed for a period of 14 months. Out of that, two months were to be given to vaca-
tion time and the expense was to be $100 a year for the first year, $60 a year for the second year, payable in advance or at the end of each year.

The second type of school, which was inaugurated in 1817 at Harvard, was started as the result of circumstances, for by that time we had been able to accumulate in some kind of tangible form a series of studies, written studies, which could be handed to the student in order that the student might be able to read and digest in the form of textbook materials. There were many chairs established in law, as you know, in this country, but very few of them had a regular law school until the law school at Harvard was set up.

Now let's think about these particular methods just for a moment in our technique. I want to suggest this to you. Do you know why you are teaching? And I am trying to present this thought: discretion from the viewpoint of the classroom teacher. Am I attempting to educate practitioners? Am I attempting to educate graduates of my school? Or am I attempting to combine the two? In Florida we have a unique situation and have a greater responsibility than some of you have in other states. We still have the diploma privilege. And when that young man graduates at the end of three years and passes his work and he goes out and he is unable to find the combination to the toilet, the school gets the blame. Remember Vanderbilt said that it takes three elements to make a law school: "The student, the teacher and the library." And he blames the teacher most of all for the lack of practical application of law upon the graduation from a college. The lecture method is suitable today in the teaching of some subjects. At Columbia when Prof. Theodore Wright first gained fame through the use of the textbook method, he was using a method which had been used before at Yale University. But as a result of the theories for textbook development over a period of a few years, that method became the foundation for the teaching of law. And then Langdell started his case book method at Harvard, which method was very unpopular at the time, and did not gain its full popularity until about 1897. At that time we went overboard in the use of case books. We have case books for every type of subject that is taught today—even for our procedure courses. And I am wondering as a matter of suggestion whether in the unstewing of this brew in which we find ourselves in conflict with the practicing attorney, we should not stop to re-evaluate the subject matter of our classroom procedure, and the content of the subject itself.

I was reading a case the other day in Corporations that took some 14 or 15 pages. Ballantine explains it in one paragraph, and there is one Florida case which has been decided on the point in this state. In one page it explains the entire principle of law which the students were reading in 14 pages. Are we being absorbed too much in the time-consuming reading of cases as a
Undoubtedly subjects like Contracts and Torts can be taught very efficiently under the case system. They are adapted to it, but there are other subjects which are not so adapted to it. Real Property, for instance, has many, many ramifications of principles of law which cannot possibly be covered in toto by the case book method. There are many other subjects. It was suggested to me some time ago that we might be able to teach Agency and Contracts better through the textbook method. I know that I am causing some considerable disagreement with you, but I know this: as men who are interested in the teaching profession and the turning out of young attorneys, if we do not clean our own house with reference to the procedures and techniques which we are using, then we are going to continue to have trouble with the bar, which has to work with the products we turn out.

Now let me go on. What is the fundamental purpose of the teaching of law? Is it to teach a few general principles? It is said that there are three million different principles of law, and that if a young law student attempted to read cases covering those points of law that he would live a lifetime and never get through. That is probably true. What are you setting up? Should we adopt a book just because it is a book on the subject and follow it through as the cases are presented?

I will tell you frankly that I have talked with many law teachers. I do not believe that some of them know what the objective is. Second, I do not believe we know when we do a good job. We know we teach a textbook correctly, but we have no way of knowing whether the results of our work have been successful. Examinations, yes. We examine them on the material which we teach. This is just my way of suggesting some things which might be done and which I would like to have done.

I would like to know when I am teaching in my subject whether I am fitting in with this great change in the social order and fulfilling a requirement which these young men are to have as good practicing attorneys when they graduate. And how am I going to find that out? I would like to know what the practicing attorneys find is a weakness among my pupils. And when these bar examinations are given and when we get criticized as a result of our work, I would like to know wherein those examinations show a weakness upon the part of our students, so that we as teachers may correct that. It is easy enough for us to be criticized, but it is very difficult for those who criticize to tell us wherein we are wrong.

I am not willing to change my methods because some lawyer does not like the way my graduates act when they are entering the practice of law, because I know that that practicing attorney had the same difficulty when he started to practice. But I do know this: there may be a method whereby,
through the cooperation of investigation and study, I might be told wherein I might improve the techniques of my teaching. I do not know whether you have made any study of that in your state or not. We are attempting to do something like that in our own state now, and the results may be beneficial.

I would like to suggest this to you: what can we do? We have three methods: the case method, the textbook method, and the lecture method. Many teachers teach the case book method almost exclusively. There is one man in this room who told me that he never studied any outside work except the cases he used in law school. He studied the cases and the teacher, and he got more out of the teacher than he did the case book, because in answering his examination, he answered according to what his teacher wanted; he was a Phi Beta Kappa and made A’s straight through. That may be a technique which the students are using, but which is not going to be successful after they get into the actual practice of law.

Now I do not want to criticize the practical teaching of law today, but I am firmly of the belief that we should take three or four steps. It seems to me that we ought, in connection with studying this great overall problem, to re-evaluate the methods and procedures in each individual subject. We ought to set up more clearly our objectives, so that they are clearly defined in the schools in which we teach. We need to make some state surveys to find out from the practicing attorneys in what way we are weak in presenting to them a more finished product. Third, we ought to re-examine all our textbooks in the light of new needs.

Now with the reorganization of subjects and shifts of importance in the study of law, the importance of statutes, the importance of Governmental and Administrative Law are practically taking over in a great many of our jurisdictions. We need to re-evaluate our course with the idea of reorganizing. If we do that we are going to meet with opposition from our faculties because we are going to have to cut down on some of the older subjects. We are going to have to unite and combine together, as some of our new textbooks have done, some of our subjects, in order to follow through. The smaller schools cannot, under the present system of continually increasing their curricula, follow through and keep all of the subjects as they have been prescribed in the past and teach adequately our students in a three-year period. We are either going to have to extend our time, give more pre-legal training in law, or we are going to have to combine our subjects as a means of a better technique of presenting the subject matter. I would like to know what we can do rather than to receive so much criticism.

Now in discussing the techniques of teaching with those of you who are actually in the practice of teaching law, I want to have a better reason for
changing than just because we are criticized for the fact that we are not being
too practical. But at the same time, if we can find out wherein we can im-
prove through some practical investigation and suggestions, I, for one, would
like to have them. I would like to do a better job. Thank you.

DEAN HASLUP: Thank you, Tom. I think you raise the point of
whether we teach the practitioner or the theorist. My answer is that I am
expected to teach both. I think we are all familiar with the suggestion made
some time ago that the law schools abandon any idea of teaching anything but
the theory of law and leave to the practicing bar the question of teaching
our procedural courses. I think Prof. Henderson's obsession is very much
the same as my own, that in some things perhaps the schools are limited as
presently constituted.

Our first responder is Prof. Henry Quillan of Emory University. Prof.
Quillan:

PROF. QUILLAN: Dean Haslup, lady, and fellow law teachers. I did
not know that I was to attend until just a few days before it was time for me
to take a plane to reach here, so I have not prepared an address.

A teacher's influence is eternal. No one knows where it terminates. I
heard that over the radio. I do not know who said it. But it is true. My first
year of teaching is probably the one that has exerted the most influence of
any year. I was teaching a small class of three boys and six girls. One of
those boys had an appointment to West Point. That was Lucius Clay. I
wish that I had had the opportunity to have taught him contracts instead of
chemistry. Perhaps he would have realized the importance of requiring a
promise by people who do not recognize promises as sacredly as we do to be
in writing and under seal, and the problem of feeding Berlin might not have
been as it is today.

I am going to confine the few remarks that I have to "Classroom Tech-
nique." I have taught the subject of contracts now for over a quarter of a
century, and all of my work in contracts was under Prof. Williston. And I
have tried to use the Socratic method. In the first classes I give them some
hypothetical cases that are modern. I am talking about a 1949 Ford that is
for sale. Very soon I find these boys begin to commit themselves as to what
they think is right, what they think is just. This is the way it ought to be.
And soon we have a live discussion going on. Very soon I see some of
them are siding with each other, and one will have the label "This is the
Jones view, or this is the Smith view," and very soon I bring out that Mr.
Jones, have you read Cooke v. Oxley. "Oh, yes." "Now, give that case
please." And when he finishes I say, "You differ with Lord Kenyon?" He
hesitates and says, "Oh, no," and I say, "Let's go back over it again, you
said this and you said this, now reconcile your position." And very soon he realizes that he does differ with Lord Kenyon and two or three other justices of that time. And I have with me an official report, or a reprint of it, and point out what the other justices said. And very soon I will ask the class, "How many of you agree with Lord Kenyon?" and a good many hold up their hands. They are agreeing with him because they think they ought to because of the prominence of the man. How many agree with the view of Tom Jones? And very soon they realize that Tom Jones has the correct solution and that is the first case on contracts. As time goes on questions and answers are going on all the time. I am under fire constantly and glad to be under fire. Sometimes I group three or four cases together. The Socratic method is used entirely for offer and acceptance and for consideration. As I find time running out I may do a little lecturing on the Statute of Frauds and joint and several obligations. I use the Socratic method for assignments. I find that the boys' interest is aroused. Usually the last seven minutes is devoted to making a quick summary of what we have been having, and oftentimes we wind up with a supposititious case and I say, "I leave that with you." They argue that hypothetical case out in the halls, in the smoking rooms, and sometimes come to me with "What's the answer?" Frequently I will tell them that they will get assistance from such and such a Law Review article or two or three Law Review articles. I find that is the best method for contracts. I have been hampered by the length of time that I have to devote to the subject. It is true that some students are very much confused, just as you have been speaking of being confused.

The boys do get confused. That is part of it. Now what is the objective? The objective is primarily one thing. It is to teach the students to think. To think for themselves and not to go down a groove.

I do think that presentation of problems is one way. Some mimeographed copies of problems are given to students to let them study and work on them. They will learn most of their law from each other and from the library—that those two places. I think some students learn more law in the smoking room than they do anywhere else and it is a good place for them to learn it, because they talk back and forth to each other and go to the library and look it up.

I think that law students should be taught how to read and interpret regulations. So much of our administration of justice today is by administrative methods, and they should learn a great deal about the proper way to interpret regulations.

I think that we are working along the lines of training men to be lawyers, to be judges, to be administrators, and I hope that we will see the results of our teachings as the years go on. Thank you.

(Dean Haslup then adjourned the meeting.)
On Saturday, September 4th, at 9:30 A.M., the Conference was continued, Dean Elvis J. Stahr presiding.

DEAN STAHR: I am very happy to be here. That is something everybody else has said and I am happy to join in it. Kentucky was not represented last year. I was not there myself at the time the plans were apparently being made for the Conference. This year I have been asked by Dean Evans, who is retiring as our Dean at Kentucky, to bring his personal greetings and also the good wishes of the law faculty of Kentucky for the success of the Conference, and I can assure you personally that in future Conferences we will be steady customers.

The subject this morning is one of considerable interest to everybody in legal education. When I was in the Army I spent a little over a year on the staff of the Infantry School at Fort Benning, Georgia, and I thought that teaching was a lot of fun, because examinations presented very little trouble, all of them being machine-graded. They would just take a piece of paper with the student's answers on it and shove it in a machine and turn on the juice and a needle would record the grade and some clerk would take that off and write it down and that is all there was to grading papers. All we did was to have some sergeant collect them and turn them over to the clerk, and if any question ever arose we could just look in the files and find what a particular man's grade had been, any officer or officer-candidate.

So when I began teaching law about a year ago I found to my dismay at the end of the first term that the examination problem was a little different when you were teaching law. I think one of the main difficulties is with the fact that we are testing for something over and above knowledge, in law examinations. Just what we are testing for no doubt the speaker this morning will bring out. But I hope that our principal speaker can give us some ideas on how we can check a man's ability to do what we may call legal reasoning and still not have to spend the best part of a good vacation period which usually follows immediately on the end of the term in grading papers.

Our speaker is Dr. Jess Spirer who is Coordinator of the University of Miami Guidance Center and Professor of Psychology at the University of Miami, and his subject is "Examination Problems and Techniques." Dean Rasco tells me that this gentleman is very well qualified indeed to give us some assistance on that one great bugaboo (at least to my mind) of our profession. Dr. Spirer:

DR. SPIRER: I do not know how much I can help you on this problem, because as a teacher I am faced with the same problem myself. I think that most of us dislike examinations. Most of us would much rather teach. We are more interested, I think, in our students than we are in the examinations that they hand in, which is as it should be.

Thurstone, in a recent article, says that, "The purpose of an examination
is to appraise the effect of instruction and to certify students as to their degree of mastery or accomplishments in a specified field or subject.” And I think that is a rather reasonable statement of the purpose of examinations. The difficulty arises when we try to determine what the criteria of competence or mastery ought to be.

Now in this business of teaching, in which I gather most of us here are engaged, we deal first of all with facts. We try to put across a certain amount of factual information to our students. And then secondly, we deal with ideas which stem from these facts or are associated with these facts. So that in testing our students I think we ought to test first for the amount of factual knowledge which they have acquired from a given course or subject and secondly we ought to test their ability to relate this factual knowledge to a particular problem. I am sure that all of us here have had experience with the kind of student who has an encyclopedic mind. If you ask this given student any question on fact he can not only give you the fact that you want but he can give you many, many more, some of which are unrelated to the question that you have asked. And this kind of student, although he has acquired the factual information, yet falls down on his ability to relate this factual information to any particular problem that he might be asked to deal with.

It seems to me that particularly in the field of law this ability to relate facts to problems involves several things. In the first place it involves the ability of the student to find the problem; what is the problem that he is supposed to look for in this mass of words that most law instructors manage to throw at their bewildered students? As a matter of fact—this is my own reaction to some of the legal questions that I have seen—I do not know of a single profession in which so much irrelevant material can be thrown into a problem as can be thrown into a law problem. Whether that is necessary or not is not for me to answer, but it is amazing to me how many red herrings can be introduced into a single law problem to distract the attention of the student from the core of the problem, and it may be that that is one of the criteria by which one can determine the competency of a student, that is, his ability to find a core problem within a mass of apparently unrelated problems.

The second criterion that I see in this ability to relate factual knowledge to a problem is his ability to find the many inner relationships that exist within what seems to be at first glance a very simple problem. Because one might start out with a very simple problem in a given area of law and discover that this problem relates perhaps to six or seven different areas of law, and somehow it is important that this ability to find the inner relationships between the various fields of law within a given problem ought to be measured.

And then finally, it seems to me, that we ought to measure the student’s ability to solve this problem that has been presented to him.
Now there are a variety of types of examinations that are available to test the competency of a student. The best-known of these, of course, is the essay-type of examination. The second best-known is the so-called "objective" type of examination. And then there are several more. There is the oral quiz and a sub-variety of that is the oral interview. And finally there is the so-called "research" type of examination. One variety or sub-variety of that is the open-book examination, where you present a problem to a student and let him dig around wherever he pleases to find the answer.

Each type of examination is extremely valuable. But this morning I would like to limit myself essentially to a discussion of the essay examination and to the so-called "objective" examination.

I would like to start with the objective examination. The objective examination as far as I know is not widely used in most law schools. Nevertheless it can be an extremely valuable instrument. It is especially valuable, as I see it, in determining the extent to which students have acquired specific factual knowledge that is necessary for their understanding of a given field of law. For example, I can see how, in an objective type of examination, one could very well examine in the field of legal procedure; under a given set of facts what action should be brought? It seems to me that is largely a yes-no type of question or multiple choice type of question. Under a given set of facts does the statute of limitations apply? Yes or no. Under a given set of facts does the statute of frauds apply? Under a given set of facts will a specific writ issue? Or in the field of crime, what are the elements that are necessary for the existence of a crime at common law, a specific crime at common law? It seems to me that within this area, where factual knowledge is necessary, where it is almost on the yes-and-no basis, there the objective type of examination is valuable.

For example, in the state of Pennsylvania if you file an action it must be filed on 8½ x 13 paper, glazed, with a 1” border; it cannot be filed with a 2” border, it cannot be filed on unglazed paper, it cannot be filed on 8½ x 11 paper. Well, that is a far-fetched example of what I am trying to tell you, but there the law is specific and in those instances where you want the student to know yes or no as to a specific type of question, I think that the so-called "objective" examination is extremely valuable.

Whenever memorization is involved I think that one might well use the objective type of examination. Now it has certain advantages which I would like to mention to you, that is, the objective type of examination. In the first place, handwriting and peculiarities of expression have no influence on the score; a professor is not going to grade his student because he writes with large loops rather than with the scrawly, scratchy kind of writing and because he keeps saying things that rub the instructor the wrong way. You cannot run into that problem in the true-false or multiple choice type of question, unless
perhaps the student does not draw his X's the right way or does not draw his lines heavily or lightly enough.

Another advantage, as I see it, in the objective type of examination is that in this type of examination one can test for breadth, because you can ask a lot of questions. As a matter of fact, in a well-constructed objective type of examination there should be at least a hundred questions. And so you can spread your questions out over much more breadth than one can in the so-called essay-type examination.

Of course, the third great advantage of the objective type of examination is that the grading is easier. One simply inserts the sheet into the machine and machine goes whoomp and the dial registers the number and that is the score. You do not have to give up long vacations to grade examinations administered in this way.

Furthermore, it seems to me that where factual knowledge is absolutely essential to an understanding of a given field of law the teacher has, in the objective type of examination, a quick check on his own deficiencies in teaching, or on the deficiencies of knowledge which the student might have. Do all of the students in this class know these facts? And you can find that out in a hurry in a well-constructed objective examination.

And the final advantage, as I see it, of this type of examination is that one can check on the reliability and the validity of the examination. How reliable is this test? And are you testing what you think you are testing when you give an examination? You can find that out quickly in the objective examination—much more quickly than you can in the essay type.

Now the objective examination has certain disadvantages, too, that you ought to know about. In the first place, it is difficult to prepare. The essay type question is not particularly difficult in law because all you have to do there is dream up a set of facts and make it more or less complicated depending on how vindictive you want to be with your students. You can knock out an essay-type question in short order. But that is not true in a well-prepared objective examination; it takes a lot of work to get the questions clear, so that the students will know what you are talking about. In the first place, you need a large number of items. I indicated that you should have at least a hundred. And then you must have your questions very carefully drawn, so that the student will not have any idea of what the answer is simply by reading the question. I remember one instance that we ran into at the University, where an instructor complained about the fact he could not prepare an objective type examination that would differentiate his poor students from his good students. And so we examined his questions and discovered that invariably the right answer on his objective examination was twice as long as the wrong answer in a multiple choice situation, so that any student who caught on to the key could determine what the right answer was simply
by looking at the number of words in the selection, and the result was that the students were all getting high grades, from 90 to 100. You have to draw them very carefully and you have to draw them so that there is little room for quibbling. The questions really ought to be yes or no in one fashion or another.

The second disadvantage, as I see it, in addition to this difficulty in preparing the objective examination, is that this type of examination does not test the creativity of the student. This is essentially a test of his memory and although sometimes objective examinations can be administered which call for reasoning on a higher level than just sheer memory, by and large it is hard to create an objective examination which does demand that the student put something into the answer.

I would like to make a suggestion to you gentlemen who are connected with law schools, and that is this. If you are interested in the use of objective examinations I would suggest that you contact the testing bureau of your university and have your testing bureau work with you in the construction of test items. We have a testing bureau at our university. Dr. Fahey who was here yesterday is in charge of the testing bureau. And thus far we have not had the privilege of writing examinations for the law school, though we have had that privilege for a number of other units of our university, and it seems to be working out very well; that is, since the construction of this type of examination demands a high degree of technical skill, it seems to me that this type of examination ought to be written by someone who has the skill in writing it. And I am sure that your universities would have people on their staffs who are capable of writing good objective examinations that can be checked for reliability and validity, and it may be that if you will contact your test director that what you think now is an impossible test can be worked out. I know, for example, that we have worked out examinations at the University for your English department, which are doing well. We are in the process now of working out a set of examinations for the Language Department, and it is our hope—as a matter of fact, it is the administration's hope—that eventually the test bureau of the university guidance center will be preparing standardized examinations on subject matter covered in any given course for the entire university, perhaps including the law school. I don't know. I have not talked to Dean Rasco about that yet.

Well, so much for the objective type of examination. I would like to speak briefly now about the essay type of examination which really serves a different purpose, as I see it. When a student turns in an essay examination—if I might draw an analogy between law and mathematics—he essentially turns in his work sheet just as in math he turns in a work sheet. I think in the essay type exam he also turns in a work sheet. And you can see many things in that work sheet if you look carefully.
In the first place, in the essay type of examination you can determine whether or not a student has the ability to find a problem. It is pretty hard to do that in the objective type of examination. As a matter of fact, it has been my experience with the essay type of examination as compared with the objective type, on this problem of finding a problem, that the student who is better equipped and knows more is likely to be confused in the objective type of examination when he is asked to cull out a problem because the student who knows more sees more problems, and the relatively lower-grade student who just knows one thing and confines that one thing in the question, can come up with a yes or no much more readily than the better student.

In this essay type of examination one can also discover the ability of the student to understand the relationships between many branches of law, and also in the essay type of examination one can analyze one's own students pretty carefully. For example, I give both objective and essay examinations to my classes at the University and usually I save my essay examinations until late in the semester. I give a series of objective tests during the first part of the semester. And it is always a revelation to me to find that I do not know my students on the basis of the scores they have given me on the objective examinations, but when I give them an essay examination it seems that I finally get to know them as people, and I can see how they think, I can see whether they are logical or illogical, I see whether they think clearly, I see whether they think concisely; and it seems to me that particularly in a profession such as law, where the schools have the responsibility of sending out people into the community who will play an important role in that community, it is important that each instructor know as intimately as possible the way in which a student goes at a problem. You can discover that in the essay type examination if you take the time to analyze a student's thinking method as well as finding out whether he put the right material into the answer.

Also, in the essay type of question, it seems to me, here we have a wonderful opportunity to discover how a given student handles an abstract principle of law. Especially where the formulation of that principle, perhaps, is not yet clear, or where there is even conflict in the principles. You cannot possibly discover that, as I see it, in the so-called "objective" examination.

Now there are certain advantages, some of which I have already enumerated, in the essay type of question. It seems to me that one of the paramount advantages in the essay question is this: As you all know, the great tool of law is language, as someone has said, and in the essay type of examination one has the opportunity to discover whether a given student has this tool, the ability to manipulate language as a lawyer should be able to do so. And the second great advantage, I think, is that it gives a better understanding of the student.

Now it has certain disadvantages, the essay type of question. In the
first place—and this, I think, is the paramount objection to the essay examination—the scoring must necessarily be subjective to a certain extent. This was first dramatically brought to light in a monumental study made back in 1912, when two students, two educators, decided that perhaps the essay type of examination was not all that it was supposed to be. And so they gave an essay examination to a large number of students in English, geometry and history; and then they took these papers that they had obtained from the students and gave these same papers to a large number of teachers to grade. And some really unbelievable things developed.

For example, in the English examination that was administered, one paper was scored by 142 teachers. It developed that the range in grades extended from 50 to 98. Some people thought that the student was a failing student and some people thought that he was a 98 student. In geometry the same paper was graded by a large number—over a hundred, as I recall—of teachers and the range in grades in geometry extended from 28 to 92. And in history the range extended from 42 to 90.

And so it was decided that perhaps the best thing to do with the essay type of examination was to throw it out the window because of this subjectivity in grading. Many factors enter into that. Handwriting, the ability to express oneself forcefully, the use of a pet phrase that the teacher may like, are many of the things that may determine whether a paper ought to get a good grade, beyond the content of the examination paper.

Then scoring. One of the things that always must be looked for is this: a good person with a limited amount of knowledge in a given field, with very positive language—almost as if he were a Supreme Court justice—can talk his way all the way around the problem without ever touching it. And if you are not careful you can be swept away by the language without bothering to find out whether the student really knows what he is talking about. So scoring must be very carefully done on this type of examination.

And the third great disadvantage, as I see it, of the essay type of examination is that it is terribly time-consuming. If you want to do a thorough job it takes a long time to score it. I can remember when I was studying law one time with an instructor who used to give us an examination and would take two months to return our papers. He did a very thorough job on grading. But two months elapsed, and as a matter of fact, the final grades in the course were not available until you were well on the next semester. I do not know that there is any short cut to that. It does take a lot of time to score this type of examination.

I have several suggestions to offer here. It seems to me that one of the things that perhaps the law schools ought to consider is instruction specifically designed to teach the student how to answer the questions. I know that many universities throughout the country today are instructing students on almost
a high school level of English and writing. And it might be that that sort of thing ought to be continued into the first year of law school, not to teach grammar, but perhaps to teach how to write, so that what comes out sounds legalistic. It seems to me that in our public school situation, as I have been able to observe it, we pay less and less attention today to the fine art of expressing oneself in writing, and then we run into a profession like law which demands that the individual express himself well and fluently. And he has difficulty simply because he has not been trained. And it may be that the law schools will have to take the burden of teaching their students how to write.

A second suggestion that I would have to make regarding the essay question is that the problems ought to be very carefully stated. If you are interested truly in finding out whether or not a student can turn in a reasonable answer to a given problem, then it seems to me that you owe the student an obligation to state that problem in such a way that he knows what you are talking about, which is not often the case.

And finally it seems to me that one can make one's life easier in scoring of problems by preparing a list of objectives. The teacher should prepare this list of objectives for himself and say to himself, "Now in this problem are inherent these sub-problems and a good answer ought to touch on all of them." You ought to outline your problems—answer your problems yourself before you give them to the student. So that if there are five main objectives in a given problem and the student touches on all five of them adequately, then he gets a perfect score; if he touches on four of them, then he gets a four-fifths score; if he touches on three of them he gets a three-fifths score. You should answer your questions to yourself before you have the student answer them, so that you will know what to expect of the student.

I would like to summarize briefly what I have said. It seems to me that perhaps there is a philosophy of law, too, involved in the preparation of examinations. If one believes that the law is unchanging and fixed and constant, then perhaps the objective type of examination has a paramount place in the curriculum, because if it is fixed and unchanging, then the answers are simply yes and no answers. But if one believes that skillful argument and awareness of social conditions, and an understanding of the kaleidoscopic nature of society have anything at all to do with the formation of law, then it seems to me that the essay type of question, which allows the student to make qualifications to a given problem, is probably the best single instruction for evaluating the student's ability and progress. I would not want to imply here that the objective examination, even with this philosophy of law, has no place in the law school. On the contrary, where exact, factual material is essential to a student's full training, then his acquisition or non-acquisition of these facts can best be determined, it seems to me, by the objective type of examination.
So that in a full law curriculum, in an adequate law curriculum, both forms of examinations are necessary to an adequate instructional program.

DEAN STAHR: I am sure that you all realize now something I did not explain when I introduced Dr. Spirer, and that is, he is a lawyer. His familiarity with legal terminology is not something that he just boned up on for the purposes of this talk.

I would like to comment, Dr. Spirer. You mentioned you were not sure—you did not propose to try to answer the question whether there was any real value in this matter of having a good deal of irrelevant material from which the student had to sift out the wheat, so to speak. But I think if you will recall any interview that you may have had with a client who came in to tell you his story, you will realize that lawyers are confronted with a great deal of irrelevant material, that it is up to them to ask the proper questions and decide for themselves what the important facts are. However, I have seen, perhaps they were posed, questions in which there was so much irrelevant material that the student wasted a good deal of the time, when he might have been writing, just in reading the problem. And when we consider the time factor involved in the examination perhaps we do overdo that sometimes.

The leader of the discussion is Assistant Dean John Ritchie, III, of the University of Virginia Department of Law who has appeared before us previously and therefore requires no detailed introduction. Dean Ritchie:

DEAN RITCHIE: Dean Stahr, gentlemen: Not an introduction, but an apology, I suppose, should preface my appearing on the rostrum again.

I listened with great interest to Dr. Spirer's enlightening and helpful talk. I shall do my best to observe the time limitation, and therefore I am going to plunge into what little I have to say in a why-when-how-what manner.

Why examinations? It seems to me that there is one factor which Dr. Spirer did not mention in accounting for examinations, and that is that they coerce a review on the part of the student of his material. It is, I believe, in preparation for an examination that a student integrates his material, that he sees the forest, not the trees. As an instructional device, therefore, it occurs to me that the principal value of the examination lies in that fusion of material which the review coerces. Otherwise, of course, it serves as a basis by which we place students in their relative position in the class according to the yardstick which we happen to apply, and likewise serves as a check on our own effectiveness in instruction; we think we have dealt with the Rule in Shelly's Case in a brilliant manner and then learn to our sad disillusionment that it has been confused with the worthless title of abstracts. Disheartening experience, but next time perhaps we will do better.

So much for the why. Now the what. By the what I mean this. On what are we really trying to examine the student? One item is knowledge. I believe that Dr. Spirer suggested relating knowledge to a problem and the ability to
solve the problem. There seems to be in that an admirable description of what we are after on examinations. Throwing that perhaps into a little different syntax, we might say that we are interested in testing knowledge and interesting lawyerlike skills and in testing what we term "legal reasoning."

Now it seems to me, to merge into the next of my catalysts of discussion here, the how. That one type of examination may be more effective in realizing one of those objectives than is another, and that another may be more effective in realizing a third. For instance, it seems to me that the objective examination—and by the way, I should like to suggest a particularization there—I think that in the interest of time, Dr. Spirer referred to the objective examination as imputing both the true-false and the multiple choice. Now I have no defense whatsoever for the true-false. I am against the true-false.

DR. SPIRER: Goebel has published a rather extensive study by him on that and has computed by formula the odds on that.

DEAN RITCHIE: Yes, of course, that is true. Of course, my meager mathematical attainments make it difficult for me to work out that formula. . . .

I have been squelched on that front. Now I am going on the affirmative. And that is that the multiple choice examinations which I have used have given me satisfying results—although I don't know how my students feel about it—in two courses, trusts and wills. I think the multiple choice examination does more than test memory. I think that the multiple choice examination can be so formulated as to test what we know as legal reasoning, or the ability to relate the knowledge to the problem and indeed to work through the problem. And to my mind it is the most effective device we have for that, because you are able to cover so many more situations in a multiple choice examination than it is possible to cover on an essay examination. Dr. Spirer talked of the glib student who went around the problem. All of us, I am sure, have had experience with him. Remember, however, that a certain glibness is doubtless going to be useful to him later on in his practice. We can test by the multiple choice examination the ability of the student to express himself. Sometimes we may be a little doubtful as to how he reached the conclusion, but I believe if the examination is properly formulated overall, over the hundred questions which have been suggested, you can feel fairly confident that he is averaging out in terms of his ability to apply, according to the score which he receives on the examination.

Now many of you are familiar, I am sure, with the report of the Law School Association Committee on Examinations. I believe Goebel submitted in that report a series of sample objective questions on contracts. Professor Goebel was one of the pioneers in it and this has been an extremely effective examining device.

However, the essay examination obviously makes a contribution that no other testing device that I am familiar with has achieved. The ability, for
instance, to recognize a problem in such and such a situation. The ability to assert oneself in the solution of that problem. His ability to recognize the relevant and to exclude the irrelevant, which, it seems to me, can only be achieved by something approximating an essay examination.

Now that brings me to the when. We have, most of us I think, a unitary concept in an examination. We think of it as being a three to five hour experience coming perhaps once a semester or perhaps once a year. That represents to our minds the examination in the course. And the customary compromise, I believe, today at least a fairly customary one, is multiple choice questions supplemented by two to three essay questions—shooting at them from both angles. But I should like to suggest that the examination is not inherently a unitary, single thing that you encompass within the course three to five hours. There is no reason why, for example, the term paper may not be regarded as part of the examination. You place at the disposal of the student the tools and materials he is going to have when he comes to the practice. You are not just testing knowledge, you are testing his ability to grapple with the problem and solve it.

Now it seems to me that the term problem of that sort can be used as a very effective supplement to the multiple choice aspect of a final examination, and that it combines the values of the essay question and perhaps a more realistic context than is true in the examination room where the student is limited, of course—unless you permit him to take his book with him and that is a very limited library.

Problems and exercises in draftsmanship likewise can be usefully sandwiched in during the course of instruction and serve as part of the examining and appraising process. Now of course there is a very practical and real advantage to the use of those supplementary devices. In the first place, you do not have that load of books staring you in the face; you can spread the load over the semester. You may be fortunate enough to get the student to help you in the scoring; you indoctrinate the student assistant, the student assistant goes to work, you go over the top papers and the failing papers. That I have found very useful.

Now a final suggestion, and I think I will be well within my time limit. Those of us who have tried to prepare multiple choice examinations realize the validity of Dr. Spirer's suggestion that it is an exceedingly difficult job. It is a time-consuming job. It requires a skill and a patience which mean, I believe, overall, that you are going to spend as much time on a multiple choice examination as you do on an essay examination. On the multiple choice you do it before you give the exam; the essay you do after the examination is given. But if you count the time, the man-hours, which you devote to that examination, I submit that you are going to find—at least that has been my
experience—that you are putting in just about as much if not more time on the multiple choice.

Now I would suggest, thinking back to Thursday's meeting—I am being provocative—and as a provocateur I am throwing out something that I think you all will tear to pieces and I wish you would. Why would it not be desirable for multiple choice questions in particular areas to be prepared by some central agency, perhaps under the sponsorship of a Committee of the Association of American Law Schools? Now those questions could be sent out, perhaps on cards. You could use such of them as you desired with respect to your particular course. You do not give the same course, and therefore you might want to give more questions. It seems to me that would be a real contribution which could be made to the teaching profession as a whole. It would be useful, I should think, if we had such a central group for providing these objective examinations; then the students would be tested by someone other than yourself. You would have another yardstick in terms of proportions and emphasis. I am sorry I have taken so long and I thank you again, Dr. Spirer, for a most entertaining talk.

DEAN STAHR: Thank you, Dean Ritchie. Our next speaker is Professor Elvin Overton of the University of Tennessee.

PROF. OVERTON: It seems to me that our basic problem—we never get away from it—it comes up year after year at every one of our meetings—is this big problem of objectives. I know that some of my associates throughout the country give examination questions which consist of perhaps thirty definitions. Usually they are old teachers or very busy teachers. Some of them are practitioners. And they get only to the fact level in their questions; they do not get above it.

The other extreme, of course, is Mortimer Adler, who many years ago, at one of my earlier Association of American Law School meetings, bored a good many of the older evidence teachers by explaining rather blandly that of course he assumed that the student could learn the rules of evidence; the student began with those rules of evidence and went forward. I do not remember specifically Eddie Morgan being there but I think his jaw dropped considerably. And yet I believe in the meantime that Mr. Morgan has come awfully close to that. At least his students at Harvard in 1940 bemoaned the fact that he never told them a single rule of evidence, that all he did was to ask them questions and never even indicated yes or no. I did not take the course in evidence under Mr. Morgan in 1940 so I do not know the truth of that allegation.

But I do know that I, myself, cannot give a grade better than a C simply for a student who knows all the facts. One hundred per cent of the facts is the threshold of the second and third steps which mark a lawyer as far as I am concerned. Somebody estimated—I think it was Dean Prince—or some expert
told him that 80% of the law is well-known and the other 20% is uncertain. I wish I had the experience of those experts. I have never yet found a problem in any state in which I have taught—and I have taught in a half dozen states—where I in that state cannot find an authority on each side of the question. The conflict in authority may be in a rule of law, more probably the conflict in authority will be in an interpretation of the facts. The jury interprets many facts for many types of cases, but in some fields of the law, for instance Constitutional Law, the judge himself is the interpreter of the facts. His rule of law is phrased in terms of facts. What is reasonable is constitutional, to make it very simple. Any of my students in Constitutional Law get told that the first day. Under the due process clause that is the rule. And of course they do not know a thing. They know the law. If it is a reasonable end and a reasonable means it is constitutional under the due process clause.

Some of the objections that have been made to the essay type examination I object to most strenuously. One of the objections is that you get a glib answer, I mean teachers get a glib answer to their question in the paper. For heaven's sake, I am sure that if I mark Mr. Warner's real property papers I would get a different set of grades than he does and I am perfectly willing to admit that Mr. Warner gets a different set of grades on Monday than he might get on Tuesday on the same set of papers. I do not know whether he does or not, but he might. The point is that one teacher marks those papers at one time and I think he probably marks them on a comparative basis. He takes a certain question which may be good or bad and he marks it a certain way; it does not make any difference whether it is 35 or 85. Then he gets another paper and he says, "My goodness, this fellow is even worse than that fellow, so I give him 25, and this fellow is a lot better than that fellow and he gets 92."

It has been objected that the psychological factors, the subjective factors in grading an essay paper are important. I mean that is an important defect. Of course I do not think it is at all. I think it is an important percentage. Lawyers win cases, I am convinced, because they can get themselves into the subjective frame of mind of the jury and the judge quite frequently. I think that the experience of a friend of mine who won the Ames Competition at Harvard was very enlightening. This friend of mine is a young lawyer about five or six years younger than I am and is one of the best trial patent lawyers in the United States. He has tried a good many cases for the Howard Hughes tool machine company and a year ago he successfully won a three-quarter of a million dollar suit. He is a good lawyer. In the Ames Competition he went to Dean Pound and asked him for the names of the judges. Dean Pound, of course, was horrified and said, "Well, what do you want to know the names of the judges for?" . . . "Well, I want to read some of their
opinions and read some of their briefs..." He said, "That has nothing to do with this case. The law is the law," said Dean Pound. My friend said, "Maybe so, but will you tell me the names of the judges?" and Dean Pound said, "Yes, here they are." (One a federal court judge, one a state judge and one a leading lawyer.) So my young friend went down to the library and he read half a dozen opinions of each of the judges and he went down to the Harvard Library and got the briefs filed by this leading Massachusetts lawyer in a half dozen cases; and he thought he knew what their philosophy of advocacy was and what their philosophy of any type of thing was. He won the Ames Competition by a vote of 2 to 1. One of the judges voted against him and said that the reason he voted against him was because the other side had a hopeless case, and with that hopeless case they had done a pretty fair job. The truth of the matter was that the side my young friend won had not won the case in the past 15 years at that same Ames Competition. They had lost. My friend won. Now the relevancy of that is this. If the student can convince a large number of his teachers that he is "A" caliber because of his ability to recognize the kind of facts the teacher thinks are important facts, and the kind of problems that the teacher thinks are important kinds of problems, he has gotten a mighty good headstart on a man who can only do that with one-third of his teachers or with one of his teachers. You all know the story of the student who claimed he was discriminated against at another law school because he could quote his tort book from memory and he still flunked the course. I had a student down at Mercer many years ago who came from Michigan and he was convinced that Michigan was prejudiced against him because Michigan had flunked him in torts although he could quote his notebook verbatim from page 1 to page 200. That was all the proof I needed that he should have flunked long ago. Any fool who will memorize 200 pages of the kind of junk he wrote down has no business practicing law.

Of course I admit that I want my student to know a lot of facts. Of course, we all do. That is the beginning point: We cannot test his ability to recognize a problem unless he knows a few rules about some of the problems. We cannot test his ability to analyze unless he knows up to the beginning point. Now an objective test, as Dean Ritchie suggested, can begin at that level too. You can test the ability to recognize a problem and to "analyze," as we like to call it.

It seems to me that we have the ever-present problem of what we are trying to do before we can successfully talk about examinations. After we all know, individually, what we are trying to do, then we can begin to work on the examination problem, and after we get that all settled then we come to the final philosophy; what are you going to do with the grades. Personally, I think the biggest fallacy that ever occurred in the grading system any place is to have numbers. You all possibly know about some teachers, usually practi-
tioners, who give the student an "A" when everybody else gives him "B," and the teacher says, "I have to give him an A, he made 93, what else can you do with him?" If everybody else in the class got 95, maybe 93 should flunk if he is below the average sufficiently far.

Many of us are proud that we are now beginning to flunk 15 or 20% or 50% of the first-year class. I throw out to you the idea that maybe if some of us started flunking 30% of the second-year class as well, and 30% of the third-year class as well, we would have better lawyers.

DEAN STAHR: Nobody can accuse you of not being provocative, Prof. Overton.

Prof. Frank Maloney of the University of Florida School of Law will give the next response. Prof. Maloney:

PROF. MALONEY: Dr. Spirer, I think your talk has provoked a lot of thought, as far as I am concerned at least. I know that I have not had as much experience as both you gentlemen have had with preparing law examinations. When I left the Army and took up the teaching profession I had an idea that a law examination had to consist of ten written questions. I do not know why there was any magic in the number ten except perhaps I had been brought up on that system. So that when, due to the fact that our registrar insisted that we get our grades in within about a week from the time we had given our examinations, plus the fact that I was faced with a class of 280 students, I found it necessary to make about 50% of my first-course examination objective. When I told the students about that fact I deplored the fact that it had to be done. I felt rather apologetic about my first examination, because I had perhaps only three of my ten brain children on it and the rest was an objective type examination. But since then I have tried to evaluate what I am trying to do on an examination.

I think that most of us will probably agree that there are two objectives in both teaching and testing: first, we want to impart a certain amount of subject matter information, and secondly, we are trying to develop legal skills in the student. Most of us will agree that probably the second is by far the more important of our objectives.

What skills are we trying to develop? I think we have to look into that and I think we have had that pointed out to us already. We have to look into that before we can see what type of examination we should give. First I think we try to teach legal analysis. And by that I mean the capacity to determine the legal principle that governs any particular case. Second, we try to teach factual analysis. At least the student has to gain an ability at factual analysis, the ability to distinguish between relevant and irrelevant facts in any particular situation. And then finally, we try to develop in students the power to reach a legal solution, to apply legal principles to the governing facts in the situation.

I think that we can accomplish some of these ends by the so-called
"essay type" examination, but I think that also after using the objective type of examination for a while I found that we can better accomplish some of the other aims with it. What do we accomplish by the essay type examination? Well, in the first place, we certainly test the student's ability to analyze, if we make the questions complicated enough. And that itself I suppose presents a problem: what is a complicated enough question? There is one school of thought which says you must have ten questions and that they must be answerable in four hours and therefore perhaps you can put in two or three essential facts in each question. And then perhaps on the other end of the scale there is the idea that was advocated by Dean Goebel of the University of Richmond in an article in Vol. VIII of the American Law School Review in which he said there should be only one question on the examination which should be sufficiently complicated that it would take the whole time of the student in analyzing it and applying the law to it.

Well, I have my own personal preference, and I think that some of the other men on our faculty have come about to the same answer, that is perhaps three or four essay type questions, supplemented with enough of the true-false or objective type of questions to test the rest of the field. If we limit ourselves to two or three essay type questions, the student may criticize us on the basis that we haven't covered the course, that we have tested him only in a limited field and he says, "I did not spend sufficient time on that particular problem or those two problems when I was studying the course and it does not truly test my knowledge of the course." Well, we can test his factual knowledge with the objective type of questions on the remainder of the course and perhaps learn something about his reasoning power in the three or four essay questions that we give. We can test his power to analyze by providing him with a sufficiently complicated set of facts. We can test his informational knowledge—certainly we do test that by requiring that he know enough law to apply it to the facts, and certainly we test his ability to solve the problem by applying the principles that he has to know to the factual situation.

We have done experimenting with so-called "open book" examinations at our school. I personally do not have enough experience with them to feel that I can evaluate them properly. I have come to a couple of conclusions about them and perhaps some of you will agree. In the first place, they do serve to de-emphasize the value of pure memory and certainly I do think that is something we all strive to get away from. But I think that they also create a sort of psychological hazard, at least that was the reaction of my students. They have the book, they have to do something with it. Perhaps they do not have time to do very much with it but they begin to paw through it madly and try to quote from it and the result is that they do not use their time properly on the examination.

What about the objective part of the examination? I think that the
biggest criticism of it or biggest difficulty with it was pointed out by Dr. Spirer and perhaps the answer was suggested by Dean Ritchie, that it is difficult to prepare a good objective type question, or at least a fair number of them, that will not simply test the power to memorize but will test some of the student's other legal skills. And I think that it is possible to prepare such questions. We can test the power of legal analysis perhaps better by an objective type question than we can in the so-called "essay" type question. We can state, perhaps quote from a case, and then give a number of choices as to ratio decidendi, if you want to call it that, of the legal principle that was involved. We can test factual analysis. It is not necessary to make up the questions so that they simply state or restate principles of law; we can state factual situations. It will not be very complicated, but we still can test his factual analysis. And of course we can test for the knowledge of legal principles.

I think that the suggestion by Prof. Thurstone of the University of Chicago in the most recent bulletin of the Association of American Universities goes along with what Dean Ritchie suggests. Thurstone suggests that a sufficiently large number of objective questions be prepared in all fields of university education, so that they can be distributed to all schools. They will be sufficient in number that even if the students got hold of them, if they learned the answers to all of them they would have spent more time and learned more law than if they had read only their textbooks.

And that certainly brings to mind a problem that we all realize exists. After we work up a number of objective type questions or essay questions, we find it difficult to work up more. Perhaps we get a little bit lazy or we do not want to work up more, so we repeat the examination questions. What does that accomplish? Simply this: we get back all our examination questions, but each student in a certain fraternity is going to do the job of copying one question verbatim and in time he builds up a file on those questions and the non-fraternity students do not have the questions; and the result is that if we repeat them the fraternity students have the decided advantage. I know that happens at our school. I imagine it happens at yours too. So if we could work out some system even in this regional area of interchanging examination questions—now I know we are all perhaps individualistic—I think law teachers are perhaps more individualistic than any other group of teachers—but if we all saw that we were going to get something of benefit out of it, I think that we might be willing to exchange questions, both objective and essay type. And then we could let the students have the questions. Suppose that he does get the old examination. We are not going to have to repeat it and we can get some good ideas out of somebody else's examination. Well, I just throw out those few thoughts, and thank you.

(Ten minutes recess.)
(The meeting continued with Dean Prince presiding.)

DEAN PRINCE: In order for society to function we must have government. And apparently government must perform three functions, that is, the function of the executive, the function of the rule-making power, and the function of the administration of justice. It is in this latter field that you and I are engaged.

Today we are very fortunate to have with us the great governor of the great state of Florida who performs part of this other function, that is, the administrative or executive end. And when I say a great governor I say that advisedly, because Governor Caldwell of Florida has been in the forefront in the field of education and he is tackling some of the greatest problems of education and bringing his fine abilities to their solution.

Governor, we are happy to have you with us to talk to us about "The Law School of the Future." Governor Caldwell:

GOVERNOR CALDWELL: Thank you, sir. I have the feeling that Dean Rasco had his tongue in his cheek when he asked me to discuss "The Law School of the Future" because I imagine the Dean agrees with me that I know little about law schools and not too much about law. That he savored the possibility in contemplating the course I would take is easily imagined. But, if Dean Rasco thought I would endeavor to tell this group of distinguished deans and professors how to do their job, he was in error.

My remarks will be based upon the view of the citizen observer. I know of no better way to indicate my views on the law school of the future than to point up the shortcomings of today and suggest ways and means to correct the difficulties.

I hold the conviction that the one agency of the educational world more responsible than any other for the welfare of this nation and universal welfare is the law school. The law schools must answer to posterity for a large part of the responsibility for what has occurred in this country and what is now taking place internationally. Perhaps that statement may be considered as a rather harsh one but I am sure that many of you are as apprehensive as I about present-day trends and conditions.

Certainly, those who have served in responsible positions with state and national governments have observed the good and bad influences of the law school and will agree that in too many instances the product is not acceptable. Too often, our experiences tempt us to say that about the only governmental philosophy taught in the schools is the wrong kind of philosophy. It is unfortunate that the sound and capable teachers are prone to leave the task of indoctrination to the wordy disciples of ultra-liberalism. To an even greater extent, the professional economists have reflected the same sort of training.

As a member of Congress for several terms during the so-called "New Deal" era, I watched the Washington braintrusters closely and with keen interest. It is no exaggeration to say that they came with a plenitude of
theories and no experience. They seemed utterly incapable of understanding the practicalities of government.

The law school of today is groping under tremendous handicaps not of your own making. The raw material which comes to you is too often untrained. Your students are not sufficiently grounded in history nor in the philosophy of the governments of the world. You are confronted with fiscal problems on every hand. You do not have the funds to permit the employment of the best in instruction. You are overcrowded to the extent that personal influence in character development and in instruction is almost non-existent. You are working under physical conditions that make it impossible to do the job that you would like to do and that you and I know should be done. Too often the net result is a product deficient both in academics and the law.

Most important, your graduate is seldom thoroughly grounded in the fundamentals which made this country great and in a knowledge of the mistakes which resulted in the collapse of other nations. Notwithstanding this handicap, your graduate is turned loose on the public as an important cog in the civic life of the community, as a potential legislator at both the state and national levels and as a public official. He is the man to whom a large part of our citizenship will look for opinion and he will influence the convictions of the public to a great extent.

The net result of it all is a sort of hit or miss government which is directing the destinies of America and controlling the future of many other nations. I point to these deficiencies, not in a spirit of criticism but for the purpose of emphasizing the course which I feel should be followed in the future. Considering the difficulties under which you are working, it must be admitted that you have done and are doing a good job. If, by retaining the best of what we now have and pressing unceasingly for improvements, we can assure finer citizenship and public officials and a brighter future for the country, your efforts will have been justly rewarded.

I entertain some pretty definite views about education generally. The present system needs overhauling. Here in Florida we have devoted several years of effort and painstaking study to the general problem. We have completely revised the elementary and secondary systems, growing out of the recommendations submitted by outstanding experts drawn from all over the country. Our state aid to education has been increased several fold and the qualifications of our instructional personnel improved. If we exercise unceasing vigilance and see to it that these improvements are extended and refined each year, you may depend upon better trained youngsters when they apply at the colleges and universities and a finer citizenship when they have matured. Care must be taken to guard against waste and against crystallization at the top.

Our institutions of higher learning have had their share of attention.
Millions of dollars have been expended in the improvement of the physical plants, salaries for faculty and personnel generally have been increased substantially and, all in all, we feel that genuine progress has been made. But, even so, we have accomplished about half the job. We should continue the improvement of the plants, further raise the qualifications for faculty positions and improve on the courses of instruction.

The privilege and responsibility for education rests with the states. So long as they can meet the needs, there is no great likelihood that the federal government will move into the field. There is no place in higher education for either federal assistance or intervention and, with few exceptions, the state level should do the job in the secondary schools. There may be a few states that fall short of the financial ability to provide training but those exceptions should be treated as such and not be used as an excuse for the federal government to move into that field generally.

Education in America should not be regimented. Neither should education within a state be regimented. Liberty—I believe the educational term is "academic freedom"—must be observed if we are to grow. But academic freedom means more than irresponsible fulmination on nebulous theories. It is the task of the institutions of higher learning and, especially of the law schools of America, to see that complete freedom is exercised by those who have the training and the background which authorize them to speak authoritatively on any given subject.

There is a perfectly sound reason why most of the strange ideas have developed in institutions of higher learning. To begin with, they are institutions of learning and the natural haven of the thinker. It is there—that those who think in the abstract, and too often without qualifying experience in practical affairs, gather.

The fallacy of the theories the braintrusters brought to Washington in the 30's was that those theories represented the product of the classroom untried in the crucible of practical experience. Those theories may have been fairly good from the academic standpoint but, before application, they should have been tempered with practicality.

I am not sure that I know just what the remedy is. The present dangerous trend toward unfettered liberality would be of no particular significance if we could be assured that all of the students would mature mentally. It is the boring from within which destroys. The teaching of truth and facts, whether political, religious or sociological, cannot injure mature students so long as those facts are presented fairly. If we could be sure that our students would all grow up mentally and emotionally, I would have no objection to a Communist teaching in the University, provided he is known to be a Communist and would present his views as a Communist. But unfortunately a small percentage of the students in institutions of higher learning never
mature. As an illustration, look at the sorry spectacle recently publicized in Washington. I dare say most of those who have been charged are in themselves fairly decent individuals but we find them hanging out on some emotional limb without the ability to get their feet on the ground. The University must not only have academic freedom—that freedom must be accompanied by academic ability and academic integrity. The secret subversives, the pseudo-Pinks must give way to capable, forthright, mentally honest instructors who will teach the pure and unslanted truth.

When we contemplate the law school of the future, I think of one which has the wholehearted support of the public. When we recognize how much the right kind of law schools can mean to the country and to the world, there will be no reluctance in that support. The country is looking forward to the law school that works with students who have been trained to think and who have been selected by a stern weeding-out process before admission to the professional classes. It is obvious that the student who has spent four years in pre-legal training and still is unversed in English literature, history and economics represents a poor risk for the law school.

As I visualize the law school of the future, I see dormitories and dining rooms so arranged that the students and certain members of the faculty may live and eat together as a community of mutual interest. Work done under such conditions will enable the student to absorb the ethics and the spirit of the law.

The ideal school will have classrooms arranged and equipped for small classes—say six to twelve students—with lecture rooms large enough to take care of the exceptional needs which will occur from time to time. The library facilities should be so designed and arranged as to encourage earnest and interested research and study. However zealous a student may be, he is still human and his inclination to follow the easy road should be used in such a way as to encourage him to do more and better work.

The present-day method of grading students leaves much to be desired. In your school of the future I rather think the system will be changed. The way the grading is now done puts a premium on shallow scintillating brightness and quickness of tongue and penalizes the student who is earnestly endeavoring to do the job. The brighter the student, the heavier should be his load. Present-day schools are geared to the dull. The fact that many of our best lawyers, judges and citizens stem from that group of so-called “dull” students should convince us that the brighter students have been damaged in the making. If they were required to work as hard as do the less bright, we should enjoy the true benefits of brilliance.

Some portion of each day should be assigned to constructive work. The poor, the average and the bright mind should be treated alike—not alike in the assignment but alike in the time required to do the assignment. A given
daily load which would require the average student to spend three hours in the study room may only require the brighter members of the class to devote an hour to the work. That results in an unduly large amount of time for recreation and encourages laziness and the "getting by" way of living. The country needs the advantage of the better minds and they should be put to work.

The method of grading should be changed to recognize effort as well as results. That sort of thing is not possible now because, with your classes of thirty or fifty or seventy, the instructors cannot know the student or know his work. They probably see him once a week and hear him once a month. With small classes there would be an intimate relationship between the professor and student. The instructor would know his student personally, would know how his mind works and could be quite certain whether he is working or loafing. And when the policy is established that a loafer, whether he passes a subject or not, is eliminated, we will find an ever increasing quality of product.

Then the small class becomes more than desirable in another way. The law schools must insist upon a higher degree of mental integrity. That phase of the work cannot be stressed under present conditions because the classes are too large. Of course if a student is found cribbing or otherwise engaged in some moral turpitude, action is taken, but that is not what I am talking about. I refer to and stress mental integrity. Unless the candidate for a degree is basically and mentally honest, the law school should not permit him to graduate. The student who graduates from the law school of the future will be grounded in honor and will know that insincere promises made to secure a client or to secure ballots for public office are just as dishonest as robbing a bank or stealing chickens. He will see through the froth and know the fundamentals of personal and professional integrity.

Unfortunately, under the conditions which prevail today, with large classes and great student bodies, the lack of personal relationship between the faculty and the student is inevitable. The opportunity to determine how the man thinks and what he thinks is not there. You can do no more than guess that the student is dealing squarely with himself and with you. He may have taken a short cut which made it possible for him to submit a paper which, on its face, is worthy, but whether it is his paper and reflects his training and ability is a matter of conjecture.

I cannot emphasize too much the influence of law schools on the affairs of this State and the Nation. For the most part the people who are directing the affairs in Florida, the Legislature which makes the laws for the State, are lawyers. There are more lawyers in high places in the national government than there are of any other group. The lawyers predominate in Congress. The responsibility rests upon the profession to see that its membership is composed of good timber. The law school of the future will not only be an institution designed to impart some learning of the law, but, also, it will be an
institution created for the purpose of grounding students in the foundation stones of government, in logic, psychology and ethics. It will develop the ability to analyze and see through, and to despise sham and hypocrisy. That type of institution can be founded and developed when the public realizes its importance and evidences its willingness to pay the cost.

DEAN PRINCE: Governor, we are greatly indebted to you, sir. I can understand now why the people of Florida have honored you so consistently.

There are some key men who will follow the governor and who will continue the discussion of “The Law School of the Future.” Dean Stahr will lead our discussion. Dr. Stahr:

DEAN ELVIS STAHR: Ladies and gentlemen: There was a peculiar parallel between the law school of the future as presented by Governor Caldwell and the type of legal education which I had as an undergraduate in law. I had thought, perhaps, that the system of legal education at Oxford (although it may sound strange indeed to select Oxford), which has had a law school for several hundred years, was the law school of the future. Yes, there is a peculiar parallel between the picture drawn by Governor Caldwell and the Oxford type of legal education.

And in a moment I want to tell you just one or two of what I consider the rather salient features of the English type of legal education, not in any spirit of advocating their adoption here, because most of them are impractical for us, but more as an idea of one type of legal education which has a number of good points which we might adopt, and whose broad outline is very much like what I should like to see in the law school of the future.

Now this is a wonderful subject, the law school of the future. This is the larger subject which embraces all of what we have been talking and thinking and dreaming about, not just in this three-day Conference, but daily, one way or another, throughout the combined years of our service in legal education. Here is our chance to look at the big picture. Not really to look but to paint our own picture of the school of our dreams. Brush strokes of basic importance to the final picture have already been applied to the canvas, boldly or tentatively as the case may have been, in every address during this three-day Conference. Most of those who have talked—probably all—have had in the back of their own minds the background of their own imagined law school, their ideal school of the future, even if they were sketching it with a particular bit of detail in the foreground.

Now, gentlemen, for the next few minutes, all of us have a chance to be dreamers. Unfortunately—and I really mean unfortunately—all of us are not going to have a chance to present our views—but we can all sit here and think while others are talking—I haven’t been around as long as a few of you, in fact, as long as most of you, but I have been around just long enough to learn one thing which appeals to me as a school fundamental: you get only
one chance at this thing called life; we are given in effect a choice of weapons, if you please, we are given our choice of careers. You and I, by whatever change of cause and effect, have chosen legal education as a career, to which we shall make during our own one chance of life. Our ideas of the school of the future, then, should reflect our more deep-lying dreams. What do we picture as the result of our labors? What structure do we visualize as one day emerging from the raw materials, the brick and mortar of the careers of ourselves and our colleagues? I realize, of course, that the big picture can only with difficulty be described except piece by piece. But a mere jumble of pieces, a mere pile of bricks, a mere pail of colors has no value except as it embodies the potential of becoming the realization of the master design of the dream. Can we sketch the outlines of our dream this morning? Toward what are we working? How does the faith of the law schools of the future look to you? Do we have a common view? I hope that those who follow me will let their hair down for a half hour or so, whichever the time allotted may be, and give a clear picture—their sketch at least—of the big picture. That much I might conclude with as the leader of the discussion, hoping that it simply sets a sort of keynote.

As long as I am up here, as I said, I would just like to take a minute or two to tell you about one type of legal education under the common law system which is a little different from that in effect in American law schools as a whole.

When I arrived at Oxford in 1936, I went to my college (which happened to be Merton). The porter (the gateman), who was a very important functionary, incidentally, sent me a little note after I had been there a day or so and had settled down a bit, saying that Mr. F. H. Lawson would be pleased if I would call upon him on Tuesday night at ten o'clock. So upon Tuesday night at ten o'clock, I, having been tipped off by the porter, put on my academic gown (they never wear the cap but they always wear the gown) and I went over to my tutor's rooms. In the rooms were a great many books and comfortable furniture, plenty of ash trays and a desk and so forth.

After I knocked and had been told to enter I walked in and there sat my future tutor (the principal one), who greeted me very cordially, saying, "Come in, Stahr, I have been expecting you." He said, "Before we settle down to business I just want to tell you one or two things I think you should know about how we are going to operate." He said, "I have been in America and have had the pleasure of teaching in American universities at one time or another and have had some rough idea, although I certainly do not claim to be an expert of how they work, and I am afraid you are going to find things are a little different over here than you found when you were working for what I believe you call A.B. over there; we call it B.A. but that is of no consequence. Probably the thing that will startle you most is the fact that we do
not make very much use of the lecture system.” He said, “I believe in most
of your work previously you have gone to classes where anywhere from 15
to 50 students would collect in a room and the professor would talk to them,
thereafter asking questions and carry on what I believe you call recitations,
and a sort of combination of lecture and recitation, which would be a lecture.”
He said, “We used to use the lecture system at Oxford, but since the invention
of printing we have found that it is no longer of very much value. However,
there are two situations in which it would still be useful. One of them would
arise in that case where a man has done some research and simply hasn’t had
an opportunity to publish it as yet and therefore the only way you can get it is
to go and have him tell you about it. And the other is that instance where the
lecturer himself is so inspiring, has such a dramatic and lucid presentation
that he actually does more than you can get yourself”; but, he added, “we
have very few of those here, and I rather suspect that you didn’t have too
many of them at Kentucky.” He said, “However, here is a lecture list. The
faculty of law, when is composed of all the law dons and the law professors
in the university, a rather loosely knit organization, does publish this list of
lectures, and you will notice that Holdsworth is going to be talking on torts
over at All Souls at nine o’clock Mondays and Thursdays, and you will notice
that Briarly is going to be talking about international law over at the examina-
tion schools on Wednesday at ten,” and so forth and so forth on down the
list. He said, “You can go if you wish. That is what they are for. Although
I must warn you that many of them are given because the series of lectures
were endowed and they have to give them in order to get their stipend,” but,
he said, “some of them are good, some of them are pretty good. And just to
help you get started you might go over and attend two or three of these
lectures and see what you think of them. They help you sort of get your claws
into the study of law.”

Of course I think as Americans think and went religiously to lectures.
But I found I could learn a great deal more just by sitting down with him, as
the only member of the class (if you could call it a class), once or twice a
week from anywhere from one to four hours, depending upon how enthusiastic
I was. I spent the rest of time in the library working out the answers to the
questions he had asked, writing the papers, the essays as we call them, on the
subject he had assigned—it would be much better, as I say, that way, than
just going over and listening to somebody tell me about it and writing down
a synopsis of what he said.

The law school of the future, as Governor Caldwell pointed out, should
have the close relationship of the teacher and the learner. The only reason I
mentioned the Oxford system is because it seems to me that their great
strength lies in the fact that the law student is not tied to the other students;
you don’t have to pitch the level of instruction at the level of the dull, as the
Governor put it; the tutor will work each individual just as hard as that individual ought to work; poor students will not even be studying the same subjects at the same time; the tutor sort of supervises—he doesn't teach, he supervises—your learning of the law.

As I said in the beginning, that is an impractical system. Our law school of the future cannot operate that way for the very simple reason that it is very unlikely that we shall ever have funds sufficient to provide outstanding legal tutors for every four or five students who want to take law, and that is about all that a tutor can handle under that type of system.

However, it seems to me that in our law school of the future we might think a little bit more about the desirability of that sort of job. We should not let this great rush of veterans that have descended upon us since the War form any fixed habits among us of staying clear of the students outside the classrooms. I do not think any of us are actually closing our doors, but I am afraid that many of us are tending to lose interest in our students as individuals. We think of them more as names on the roster with a certain standing, and perhaps we give a good deal more of our time, actually, to the borderline cases about whom we are worrying, as to whether they should be flunked out or not, than we are to the man who has the potentialities of becoming a really fine lawyer.

In any event, it seems to me that we should have, or should try, in some way, to work out a different approach for the “A” student and the “C” student. The “C” student is going to be a lawyer, but if the old adage has any merit in it, he is going to be the one that makes the money while the others make the teachers and judges. He is important. The public will see more of him perhaps than of the “A” student who goes to Washington or the law school faculty, or the “B” student that goes to the bench.

We cannot give our “B” students or “A” students the kind of tutoring, the kind of leadership, the kind of mental inspiration and individualized instruction and understanding and helpfulness that we should, unless we try. In my law school of the future I am, at least, always going to be trying to think of the student as a person, and as a potential lawyer, and not just a name on the roster.

Thank you.

DEAN PRINCE: We can congratulate the University of Kentucky for having chosen this fine young man for his position.

Another key man is Professor Henry Quillan.

PROF. QUILLAN (Emory University): Mr. Chairman, Ladies and Gentlemen. I was very much interested in hearing of the operation of the tutorial system of teaching in England. Several of my friends have studied law there and they certainly have produced wonderful scholars and teachers.

Princeton and Harvard have been using the tutorial system in their
undergraduate work very effectively. And in some of the graduate work at Harvard the tutorial system is being used to some extent.

Professor Frankfurter's course, in which about 15 or 17 students would be present, used that to some extent. He was a very inspiring man. The students enjoyed working a great deal on their own in studying under him, and he produced some of the brain trust boys that the Governor was speaking of.

The law school of the future is a difficult problem, I think, to discuss. I never have been successful in making a forecast, and I hesitate to attempt to try to outline what the law school of the future will be or should be. I do think that a law school should teach the students quickly and briefly what the law has been, and certainly try to teach as best they can what the law is, and try to teach what it will be, and perhaps surmise as to what it ought to be.

Our society is becoming more complicated, people are living closer together, things are changing quickly; the law had to change quickly too. I had a little experience with the problem of rent control when it came up. And it came up suddenly. And how was that to be handled quickly? Some of the men that had worked under Mr. Frankfurter were those who wrote the rent regulations under the authority of the Emergency Price Control Act. One sentence in the act defined rent as a commodity and on that basis the OPA could regulate rent.

Then the regulations were written and they were ground out by groups of 12 to 15 or 20 meeting together, drinking a great deal of black coffee and grinding out those regulations; and they worked satisfactorily for the objective in view, and that was, to hold down the price of conducting the war.

We are living right now in a city that is a green city. The architecture that we see up and down this avenue is an entirely different type of architecture from that I have seen. I can see buildings, one or two or three. We are also in a place where most occupants are at leisure. Will this type of housing accommodations extend to other parts of the United States in the next 40 or 50 years?

Someone has said that the ordinary citizen today lives in about the same comfort and ease that a man would have lived 100 years ago if he had 250 slaves.

Now will there be a great deal of leisure, and will the law be changed entirely because of that? And what will be the law that will come up as time goes on? I cannot tell. But I do think that the law schools will be the place where the seeds of the future law will be planted. I really think that the law teacher has the finest chance of making the law of anyone. And I think he should seriously consider the thoughts that he is planting, as to what effect that will have on the future.

I think that the lawyers that we produce are going to be good lawyers.
I can see the effect of some of the men who have been to law school in our state; the boys who are 30 and 35 years old are different from the men who practice law on personalities. They were "fixers" in that day and time. I think that we are going to have facilities that will help a great deal. I think we will have more women taking law as time goes on. And we will be teaching men who will not necessarily take up the practice of law, but who will use their legal training in working toward people living together closely and harmoniously and peacefully. Thank you.

DEAN PRINCE: Dr. Stahr's next key man is Mr. Verrall of Vanderbilt.

PROF. VERRALL: I would like to see the group enter into a group discussion of the law school of tomorrow. We have not had any discussion from the floor. We can allow our imaginations to run riot and talk about a law school which we would like to see tomorrow. But the subject is "The Law School of the Future." What will it be? In fact?

I can get down from the higher level now to a most primary level and talk about the law school of tomorrow. What will it actually be?

The number of students will, of course, be determined by the law of supply and demand over a period of time; the number of schools will be determined by the law of supply and demand. The poorer schools will drop out of the picture. What can we actually see in the immediate future and what kind of school will that be? I wish we all had Governors Caldwell in our states willing to spend money and to think about the problem and give us real support. He seems to have done that in the educational field in Florida. I hope his successor does as good a job. That is some real assurance of progress.

I am reminded of the time I went to a county fair. I walked down the midway and the Barker said, "Come on in and see this wonderful animal, a thing you have never seen before. Come on in and see this wonderful horse with his tail where his head out to be. 15¢ to see the wonderful horse with its head where its tail ought to be." Well, I spent my 15¢ and went in. To find a horse tied to a manger by its tail. It was fundamentally the same horse as would be a horse tied to a manger by its halter over its head.

And I think you can say the same with respect to our law schools. I mean with respect to our better law schools. They are fundamentally the same. And in the law school of the future I think you will find it a school which you and I would recognize as a law school. It will be fundamentally the same as our schools are today. None of us will live long enough to see one of these imaginary law schools which is fundamentally different. The law of evolution is too slow for us to see a fundamentally different school in the immediate future.

Some of them will be better than others, just as some of our schools today are better than others. They will be better, sometimes, because of better
facilities. But generally they will be better not because of better facilities but because of better faculties—men of broader training—men of greater skill—men with more knowledge of current economics, current course of history, current social and business problems of the day. Our teachers will be broader and more stimulating in the future.

Such faculties maintained for years, generations, will build great law schools. Such faculties, losing their powers, will leave a great law school great for a few years, when it will drop back to its proper level; others, by maintaining such faculties, will have great schools. Now the number of schools which will be great schools, probably, will be larger than the number today. The number of good schools probably will be more than today. The cost of operating a school and an enlightened bar will do away with the marginal and sub-marginal school. And I think our future will necessarily be much brighter.

Now in these schools, the one thing I feel sure about is that they will not be great because of frills. Frills never made a great school great, nor a mediocre school good. These schools will not be great because they publicly announce that they recognize that law is that body of rules and principles and standards that society adopts to control itself. You can say that all you want; it won't make a school great. A school won't be great because of the names of those who give the courses we teach. The school won't be great merely because it recognizes the fact that lawyers are in places of leadership more frequently than many other people. I think the school will be great when it teaches the fundamentals so well that the student goes out into the world not a chief justice, not a president, not a governor, but capable of the routine practice of law, and capable of developing his real ability of leadership. In other words, he has to be trained in the skills of the legal profession and in the basic knowledge of the economic, social and political world in which he lives.

He will develop the leadership within himself after he leaves the law school. We cannot graduate presidents, chief justices and leaders. We can only graduate the man who thinks in a way which will permit him to become a great leader in the future.

Our good schools of today were not built overnight, and neither will our school of the future be built overnight. It will be built in a competitive world, and will become great only when the graduates of that school, in this competitive world, prove the merits of this school.

Fundamentally, the school will be the school of today. The facilities will be the same; probably our libraries will be somewhat different. I know they will cost us much more to operate. With the great increase in the number of books, with the older books no longer available, the libraries of the future may be on cards and our facilities may be reading devices to read books on
cards, or microfilm. Card-books, of course, will be as they are today. The cost of building libraries such as those of Harvard and Yale is just out of all reason today. We wouldn't have the space in the average school to do it.

The objective of the school would be much the same as the objectives of the school of today. Firstly, to train lawyers to handle the daily routine of the professional career—professional life—the every-day routine of law office practice.

But the lawyer can also be trained to take his place in his community, then in his state, and then on a national and international scale, if he is trained properly. Maybe we could say what we should not do is as important as what we should do, or—I do not want to use the word “should”—will do. I doubt very much if the school of the future will do what the colleges are supposed to do. We are not going to teach the social sciences and we are not going to teach business practices in a law school; that is impossible. We can put a few frills on and we can recognize the fact that social materials, materials in the other fields of training can be used by the lawyers, and we can teach these basic skills in their youth, but we are not going to undertake the job of pre-legal education in a law school.

Secondly, we are not going to undertake the job of post-admissions education in all of our law schools. But the law school of the future will be interested in the education of the lawyer after he enters into practice far more than is true today. We are not going to teach our students the routine details of office practice. We are not going to teach them to be chief justices solely, nor are we going to become teachers of trades.

The law school of tomorrow will be a school of increased standards and increased costs. The enlightened profession—and it is becoming more enlightened every day—recognizes that it cannot live as one of the great professions and admit every “Tom, Dick and Harry” to its membership. The law schools of the future will realize that an unsuccessful law practitioner is not necessarily a good law teacher, and they will select men of training. Many of our law schools of today have been forced to take teachers who are not real teachers. They are in business as a law school to profit. We have too many such law schools. I am not speaking of the approved schools of today or the better schools today. I am speaking of the schools which are flooding our profession with untrained men. The result of these men being in our profession is a leadership not capable of leading, and lawyers not capable of practicing law. The law of supply and demand and an enlightened profession will do away with that danger to the profession. I think we will see in the future law schools very much as they are today, but very much better than they are today, with a few great schools numbering more than they number today.

DEAN PRINCE: Thank you ever so much, Professor.
We are greatly indebted to Dean Robert E. Lee for coming down to the Southeast here from Wake Forest.

DEAN LEE: Dean Prince, Ladies and Gentlemen: In discussing the subject of the Law School of the Future, I shall define the future as the second half of the twentieth century, that period of our history which will probably be known as the Atomic Age. I shall leave to others the planning of law schools beyond the period of atomic energy.

It is exceedingly difficult for lawyers to look into the future because we are precedent worshipers, accustomed to looking into the past. Yet those of us who are charged with the responsibility of training future lawyers must from time to time evaluate the trends, and endeavor to fortify our trainees for the practice of our profession in the years which lie ahead.

It was Holmes, I believe, who said that a lawyer in advising his client is a mere prophet of what the court will decide. As law teachers standing on the threshold of the Atomic Age, we are prophets of what the public will expect of our profession in the years ahead.

As the dean of a small law school, which in the course of four or five years will transfer its vein of operations from a quiet village of 1200 persons to the suburbs of an industrial city of almost 100,000 persons, I am especially interested in what the law school of the future is going to be like.

In addition to the thoughts which have been expressed here at this Conference, I expect to get a great deal of information from the survey which is now being conducted by the American Bar Association. In my opinion, this survey will greatly influence the law school of the future. It is going to chart the course for many of us. I do not expect the law school of the future to follow any one general pattern. It would be unwise if such should be the case. There will always be law schools conducting experiments in curriculum and teaching methods, and on every faculty there will be at least one member who will be using methods not followed by his colleagues.

The law school of the future will be accepting for admission better qualified beginning law students. We shall eventually get around to a point where we will, to a very large extent, prescribe the content of a pre-law course. We shall demand that pre-law students major in the social sciences and business administration. The basic course in economics and accounting, for example, I think, should be required of every student aspiring to enter the legal profession.

The small law school or the law school which sends 75% or more of its graduates forth to practice law in a particular state, namely the state in which the law school is located, must be organized along lines slightly different from the great, national law schools. We cannot expect every school in the South to be a miniature Harvard, Yale or Columbia. We cannot offer within the limitations of our budget a wide variety of specialized courses.
There must be required of our students certain core subjects which cover the fundamental principles of the substantive and adjective law. Our students should be qualified to practice law alone, if they so desire, immediately upon graduation from law school. Very few law graduates in the Southeast go into large law firms as researchers and specialists. There are not many so-called “Wall Street law firms” in this area.

Our graduates should possess craftsmanship and the legal technique of analysis, but they should have at the same time considerable knowledge of those principles which will enable them to solve the problems of their clients during the first year of practice.

A lawyer is primarily a counsellor. He must advise his clients. He must advise on the basis of statutes, knowledge and decisions. I think it is incumbent upon us to analyze the type of courses offered. I think at the present time we are all insisting that our students take such courses as taxation, administrative law and labor law. I have some difficulty in getting students coming from rural counties to take labor law, but I try to point out that in North Carolina—we think we are the most progressive state in the Union—we are becoming highly industrialized, and that the future will require that the young lawyer know something of labor law.

I do not lose sight of the fact that I am associated with an institution maintained by the Baptists of North Carolina. Wake Forest College is among the smallest law schools in the country. The people of our state who support our institution expect us to send out trained men who will assume roles of leadership in the civic, religious, and community life. Yes, they expect our graduates to be leaders in the churches, in the Rotary Club, and to work on committees and commissions. Those of you in this area know that lawyers are men of public affairs. This is different from lawyers who are practicing in Boston, New York, Chicago or elsewhere. We have something here a little bit different from the large national schools of the trained, urban lawyers. We shall see in the years immediately ahead more use of the laboratory and clinical method of instruction. We shall go to great lengths to make our instruction, especially in the third year, more practical.

I know some of you will say, we will not make our institutions trade schools. But I will remind you of the kind of instruction that was given in the inns of courts, the kind of instruction that is presently being given in our schools of medicine, of religion and dentistry. Yet, are those schools stigmatized? We are going to, and we are—and I note that since the War, looking over the courses offered—leaning that way to make our courses in instruction a little more practical.

If you have trustees and influential lawyers who are alumni, you know what I mean by “the pressure.” I tell these critics that we are making the courses more practical. We are doing this through moot courts, legal aid
clinics, law reviews, problems requiring sustained research, and courses or seminars in legal draftsmanship, office practice, and the like. The physical plant, as well as most of the functions and services of the law school, will depend upon the amount of money appropriated and made payable to the law school.

In the final analysis, the law school of the future, at any institution, will depend largely upon its financial resources.

DEAN PRINCE: Gentlemen, in presenting a case in court you always see that you have a cracker-jack to make the final argument and a splendid witness to be the last witness on the stand. We are very fortunate today to have Professor Forrester of Tulane to perform this function for us. Prof. Forrester.

PROF. FORRESTER: Dean Prince, gentlemen. As I sat here during the early part of this program I intended to make some remarks, particularly in response to some of the statements made by Governor Caldwell. But my friend Harold Verrall has made some statements which are definitely provocative to me, and he said that he wanted some discussion here and I do not want to appear to be disagreeing with the wisdom and soundness of what he said. I agree with what Mr. Verrall said. The point of cleavage is: that I consider Harold's approach to cover only one-third of the overall problem of the law schools in this country.

Harold said that a law school is concerned with the teaching of law, which consists of rules, standards and principles. I, however, am inclined to add on to that two other elements. I think, personally, that law consists of three basic elements: the rules and the standards which Harold is concerned with and which I am concerned with, but also method, and purpose. Rules, method and purpose. Those to me are the three elements of law.

Now the average American law school is a standardized, typical, rules school. We do a beautiful job of teaching positivist law, in teaching the rules and standards and in explaining how those standards should be used in order to win cases. We do a provincial job, in my opinion, in connection with the second element of law, that is, method. We teach common law, empirical method. We are nearly totally naive in relation to the other methods of law in the world, particularly the civil law method. The civil law method, of course, starts out with a priori assumptions, broad principles in an effort to formulate all the rules of law into a code, as compared with the common law method where—and I greatly prefer it personally—we approach the problem from a pragmatic standpoint, looking at the facts and problems in each situation and deciding that problem and adding that little solution to our sandpile of judicial results. Starting at the bottom and leveling at the top.

I maintain that we neglect at least some consideration of other types of methods in the average American law school. But where I think we fall
down most completely is in connection with the third element of law, as I see it, and that is in connection with purpose. Now I admit that this sounds like a "frill," Harold, and it may well be a frill, but, to me it is a very practical and a very substantial frill. I have acquired this viewpoint from teaching public law. I practiced law for six years and I was never concerned with element number two or element number three in my analysis; I was interested in winning cases, in learning what the rules were and finding the rules to fit my situation and in insisting that the judge stick to those rules.

But as a law teacher I have learned that there is a great deal more involved. For example, in the law of real property, which I taught this summer, the thing that impressed me most there was the fact that the common law of property, the whole basic theory it would seem, all the basic rules of property in its origin in England were centered around a political purpose, and that is the preservation of political allegiance to the lord paramount. And I know that Prof. Verrall will agree with me in at least the fact that that was the basic, practical consideration in the formulation of the rules of real property in early England. The purpose in law was permeated with the entire body of the rules and standards of English property—and if you go back far enough you find that purpose applying itself in case after case to reach that practical result which the King or the lord paramount or the mean lord wanted to impose upon the lesser fry. That is significant to me. Yet I will say that we should not neglect the rules. I certainly would say that.

In the field of American Constitutional Law you had exactly the same thing. The American Constitution was written in 1787 and construed largely by John Marshall for about 34 years as an instrument of political purpose. They set up the rules again based upon a particular, overall, political purpose. And we have been playing the game of marbles under those rules most of the time since then.

Now several times in our discussion during this meeting statements have been made about the law teachers carrying with them a sense of responsibility concerning "the Constitution." And this morning Governor Caldwell—who I think made a very splendid address and reflected a fine approach to legal education—made statements concerning the necessity of responsibility on the part of the law professor of finding a man, even though he is a communist, who has had practical experience and responsibility. Well, I am inclined to think that what men who speak that way are really concerned about is finding men, fundamentally, who at least can go along with them in a general way in connection with their practical and their sensible interpretation of "the Constitution," and if any of you have taught Constitutional Law you will know what I mean by "the Constitution." Try to find it. What does "due process" mean? What does the word "reasonable" mean in connection with substantive due process? It has no precise meaning except
in the subjective sense. And what these men, the conservatives—and I am inclined to be that way myself—what the conservatives are afraid of is not what they say they are concerned with, that is impracticality or lack of responsibility but actually they are concerned with results. And results which have been reached within the last 12 years have not been the results they want. Now if the shoe were on the other foot and if the liberals had a conservative court construing “the Constitution” their way in connection with their purpose, they also would find these men to be “reactionary.” And they also would be concerned with results. In other words they are both concerned with purpose, that is, the object of the law. In connection with this the rules are applied and the method is used.

I want to make this clear, because I do not want to appear to be a complete screwball. I think that a faculty should have men who are positivist teachers, who teach rules and who teach standards and who teach principles per se. But I see no reason why a good law school cannot have one or two men on the faculty who are also concerned with, perhaps, comparative law in connection with methods of law, and one or two having some interest—in addition to teaching rules, do not forget that very important factor—but also concerned with purpose in law and the direction of law and what direction we are really taking in a particular decision.

The reason we stick to our rules for political stability, which the English have enjoyed, and the Americans too, to a large extent since the Napoleonic Wars, since about the time of Burke, who died at the close of the 17th Century, is that we have not had to worry about the ultimate purposes and truths in law. Yet those problems have always been there. The Europeans have been facing them consistently. If you will look at the writing of most European legal teachers you will find it of highly theoretical content. For example, one of their outstanding law professors is basically a theorist; in his pure theory of law he discusses the proposition that purpose is at the top of all rules and that permeating all rules is that overall purpose of law that he called, as you know, the grand norm. We must, in my opinion, face those realities, particularly in a world such as we have today where America is entering into a period of world domination and control, where our lawyers must go forth into other lands, particularly the Near East at the present time in connection with oil, and deal with the methods and purposes of law there. We have to face perhaps in this era of conflict with Russia the ancient antinimies of purpose in law. Aristotle, 2500 years ago, looked at the problems of law and posed the issues. They have been discussed by Plato. Aristotle posed them just as our student is supposed to pose the issues in a fact problem, and the great issues according to him were: collectivism vs. individualism; democracy vs. autocracy, and a number of others, but those are the ones with which we are particularly concerned today.
And Governor Caldwell and the gentleman representing the Florida Bar are really representing a particular point between those two purposes in connection with their approach to law. They are either inclined to be more individualistic or they are inclined to be more collectivist. In the New Deal you find the collectivist. The Republican Party is inclined to individualism. I would like to find the middle spot, as far as I am personally concerned, and keep America there. But I have no illusion that there is any middle spot. But those basic purposes should be brought to the attention of students, those ancient antinimies of the law; those fundamental issues should be posed. We have never solved them; we have made a step in the direction of solution in the form of the American Government, in my opinion; the Russians say they have made a step in the form of their government. I think the American solution is the proper one. But our students must realize that there is no firm, fixed, simple book where you can find “the Constitution” and no handbook of rules where you can find all the answers as to what the New Dealer or the Republican should do when he gets to Washington.

Now before I close I again want to make a couple of conciliatory remarks. If I had a law school I would want men who are concerned with rules to be in that law school, particularly men—and I am not saying this just to flatter him—who are competent in the field of property as Harold Verrall. But I would also want other men—you can call them dreamers if you like—I think they are perhaps the most practical men of all, because they are getting down to the fundamentals of this problem. And we mix up the tough, fundamental, practical problems with dreams, and, pardon me, “frills.” But I do believe that a law school should teach rules. I think that we should stick to our positivism, because it is extremely important for a practical lawyer to be able to predict what the result of a case will be. And we have worked on that basis in American and English law under the positivist philosophy which we have followed. I do believe that we should, as law professors and as law administrators, at least keep in mind those other elements of law. Thank you.

DEAN RASCO: Thank you ever so much, Professor Forrester. Now, I am extremely grateful for Dean Prince, who first fathered these conferences. And I think because of the Conference he sponsored in Columbia, South Carolina, last year, that this has been a much better Conference than it would have been if we had started anew. And Dean Prince has made what I believe to be some excellent suggestions regarding future conferences of this kind. Specifically, he has suggested that those persons who are going to present the addresses should advise all discussion leaders and responders of the nature of their talk. In this way the discussion leaders and responders would know in advance the substantial content of the speaker’s address, and could plan in advance to channel their discussions and responses along proper lines.
Now I am going to appoint a committee (I have no authority to appoint a committee, but I have taken the liberty of doing so in order to start plans and discussion regarding future conferences). This committee will determine whether we shall have another conference; and if one is to be held, the committee will determine when and where it will be held. I am going to appoint Dean Prince as Chairman of that committee; Prof. Papale as Vice-chairman; Dean Wicker; Dean Russell; Prof. Forrester; Dean Hosch; Dean Ritchie; and Dean Lee. This committee can meet at the annual meeting of the Association of American Law Schools in Cincinnati this December.

Now, there are three appendages to this Conference. This noon, at the Dean’s luncheon, we will be most fortunate in having an internationally known lawyer, Dr. Arthur Brandt, address us. This afternoon there will be a meeting and discussion for all those members interested in Law Review work. Finally, after the dinner this evening, Hon. Claude Pepper, Senior U. S. Senator from Florida, will address us. I will therefore declare the Conference proper adjourned at this time, but we will adjourn sine die after Senator Pepper’s talk this evening.

DEAN’S LUNCHEON

DEAN RASCO: We are going to add just a bit of the international today. We have a very prominent man who comes to us from Germany, a former law teacher in Berlin. At one time he was Attorney for the German government. He has lectured in International Law and has written many books. Now a citizen of the United States, he is also a member of the Federal Bar and the Bar of Massachusetts. Dr. Arthur Brandt:

DR. BRANDT: Thank you, Dean Rasco. I am from Berlin, Germany. As a matter of fact, I am one of the few persons in the world who has anything to be grateful to Hitler for; were it not for him I never would have seen Miami.

Hitler and I had a kind of understanding; that we could not live together in the same country, so one of us had to leave, and I gave him 24 hours to move and he didn’t move so I moved.

I would like to tell you how we came to this gentlemen’s agreement. Hitler and I happened to be at the same trial while I was the Attorney in Berlin to cross-examine Hitler. It was a court trial. You might perhaps remember that many times in the years before 1933 there were clashes between the so-called “Democrats” in Germany and the members of the Nazi Party, and it happened very often in these clashes that people were injured or killed, and one day I had the pleasure and honor of being retained as counsel for
the Democratic Party because three members of the Party had been killed in one of the clashes by Nazi members.

So when I came to court I understood that Hitler was to be called as a witness by the defense counsel. I had never expected to meet this interesting person and was fascinated to see him in person and to have the chance of examining him. My first experience was when I approached the court in Berlin and stuck my head out of my car and was greeted by a thunderous "Heil Hitler"—apparently I had a slight similarity to him and I hope you forgive me for it. I had a little mustache like his and apparently I was mistaken for him. After a while the court opened and when Hitler was called as a witness—the procedure is slightly different in Germany—there was again a "Heil Hitler"; even the State Attorney jumped up and raised his hand for a moment. Soon it was my turn to take over the examination.

I remember still a few of the questions I put to the witness and I think they are still quite interesting. I asked him first about his age and name and he politely refused to answer. There was a little chat going on between Hitler and me and I told him that if he refused to answer he might have to go to jail for contempt of court and finally he changed his mind and he answered.

Thereafter all the questions I still remember, but I will give you only the last question I put to him. Weeks before this trial Hitler, in a public speech at the Sport Palace, made the remark or declaration that, "Whenever the Nazi Party would come to power heads would litter the streets of Germany." Since he had been called at that time to testify for the Nazi Party, that they had nothing but peaceful aims and absolutely no possible violence, I put this question to him: "Is it true that you made this speech and if so how, Mr. Hitler, can you explain that the Party has only peaceful aims and still it would be possible that when the Party comes to power that heads will roll down the streets, how do you explain that statement as being consistent with your present testimony?" And he thought a moment and he said, "The heads will get in the street only by peaceful means," and he gave me a dirty look and continued, "It is very simple; when we come to power we will see to it that the courts will use their duty and sentence all those traitors to the gallows and then you will see heads roll down the streets of Berlin," and he banged his fist on the table, "many, many heads will roll down the streets of Germany."

This was the end of the cross-examination and he sat down with the other witnesses. And now comes the little story which I clearly remember. As he sat down and I watched him, he took out a little notebook, and I saw him scribble something into his little book, and there is no doubt in my mind at this moment that my name was being added to the stock of rolling heads of the Nazi Party. And being very much attached to my head at that time and at this time, I said to myself that whenever he came to power I would leave
at the same moment, and I did. And long after the trial and after I had left
Germany I heard that the Fuehrer many, many times was looking for me.

Gentlemen, I do not want to get away too far from the subject of this
Conference. I have listened with great interest this morning to the address of
Governor Caldwell and to the speech of Dr. Stahr, and I feel that I may be
able in a humble way to contribute something to the problem of the law school
of the future. First of all, I feel I shall give you a little idea of how the system
of legal education works in the Continental part of Europe. Dr. Stahr told you
this morning how it works in England, and I can only confirm his observa-
tions, for I was there practically five years. And I know that the type of legal
education in Europe is entirely different from that of England, so I can con-
centratin on just Central Europe.

The main feature of difference of the legal education system was, at the
time I was there—and I hope it has not changed too much since I left—a dis-
tinct division of training into two parts: the theoretical part and the practical
part. In other words, a student, after he has observed the maturity examination,
that is, high school and junior college, must spend a minimum of three years in
the law school of the university he is attending. After these three years—and
please note that during this time he is entirely at liberty to choose what he is
to work at—he must check in at the beginning of the three-year term and
what he worked on or studied was entirely up to him. If he was passed after
a three-year minimum, the entire examination, at this time entitled him to
enter the practical course and to receive a degree of apprentice of the courts.
After having passed this theoretical examination it was now the practical
course on which was laid the most stress. As an apprentice of the courts he must
practice from any one of the small claims courts to the Supreme Court of Ger-
many. Year by year another court was added to his court work, practical work
in court. And while the practical education was going on he was being coached
scientifically by prominent members of the practice, lawyers as well as judges,
who handle the theoretical, scientific part, completing his training at court.

The natural effect was that he did not have to wait until his examination
to get a practical experience, but for at least four years, day by day in court
he received the practical court training which he needed so badly later on in
his practice.

The examination given on this practical court work was the same for
lawyers and judges; in other words, having passed the second and final ex-
amination, he was entitled to either become a judge or to make a choice and
become a member of the bar, which if he chose, he became automatically.
Once he made the choice there was very seldom a switchover from the bar to
the career of judge or prosecutor or state attorney. In other words, he became a
government member, being a judge, or a private, individual lawyer, like a
barrister in England. It is an absolutely divided system. I might add here that
the decision of a man who had passed the final examination to become a
dependent on any vote from any election, and no one could remove him from his office. In other
words, no re-election from four years on to the next four years term and all

And now, gentlemen, please allow me to try to add something else to the
problem of the future of the law school. Governor Caldwell this morning
made an observation which is still in my mind. He said, and I can only agree
with him wholeheartedly, that the law schools have much more influence on
the educational and mental training of a nation than we believe, and I might

It would be idle to deny that at this moment the international situation
is quite grave. At this time we cannot deny that there is a strong international
tension which sooner or later might lead to war. Seven years ago I had the
honor of addressing Dartmouth College. I had at that time the opportunity to
talk in a similar way and if I might add at a similar occasion at a moment of
similar international tension. When the College of Dartmouth heard my views
I could sense a certain feeling: “This man is apparently from Europe; he al-
ways shows an overly-pessimistic concern,” but later when I returned they
agreed with me that the situation had been much more serious than anticipated.

I do not want to warn or predict anything. What I want is only to try to
do my little bit to pave the way for future peace. The war is hardly over; the
peace is not even formally signed with most of the aggressor nations; and
already we are talking of war again; the boys are still in the hospitals, physical
and mental cripples, and still we are preparing for war again. The old
Latin “Status para bellum”; again it is force.

Did it ever occur to you that there is a War Department in every country,
but no country in the world has a “Peace Department”? Forces are preparing
day and night for war. The forces for peace are not actually even apparent.
And for that reason I have a little plan which I offer to you for your con-
sideration. I shall not go into detail.

Peace, gentlemen, is not a weed that grows more when neglected. Peace,
gentlemen, is a precious flower which has to be watered, cared for, and I feel
that if humanity wants peace it will find a way to get the peace so urgently
needed.

Let me just give you a little example of what we law teachers may be able
to do if we really want to and if we follow the idea. There are universities in
every country in the world. Every state has its national domestic university
or college. There is not such a thing as a world university. There is not such
a body. The law teachers—or let us say, general scientific teachers—from all
over the world may come in and teach, may learn to understand each other;
may learn what is going on in the mind of others, friendly and enemy nations. I humbly and in all sincerity submit to you the following idea: wouldn’t it be good if we could create a world forum for interested science—let’s call it a “World University” with an international law faculty on this world university? The League of Nations, still having the Palace at Geneva, Switzerland, could be converted into the world university. Teachers from all nations could collect from year to year and get to know each other, not domestically but nation-wide and world-wide, and students from all over the world could come and study the rules and laws, and that might be the foundation for future peace.

I firmly believe that such an institute might contribute to the peace of the world. Even if you don’t succeed, gentlemen, and the war comes, at least we would have a feeling that by creating such a forum, such a body of world understanding, we could say with a good conscience, “We did our share.”

May I add in conclusion that I thank Dean Rasco and all of you gentlemen for the privilege and honor of being able to speak to you this day.

DEAN RASCO: Thank you, Dr. Brandt, you have given us a great deal to think about, but I believe all of us are thinking along these lines, and just knowing that people in other countries have been forced to leave those countries makes us want the same things you do.

We stand adjourned.

LAW REVIEW SESSION

The afternoon session commenced at two o’clock for a Conference on Law Review Work, Professor John G. Stephenson, III, presiding.

PROF. STEPHENSON: A few years ago, largely through the engineering of our new Professor Hugh Sowards, at Vanderbilt University, the southern law schools came together for a meeting to discuss the problems of publishing the Law Review, and at the meeting they discussed mostly the technical problems of putting out a Law Review, the problems of personnel, the problems of the faculty adviser, and the selection of material, notes, and the like. It was suggested, however, that when the entire group convened, not only those who were working on the Law Review, it would be appropriate to bring up the question. “Is the Law Review an essential part of the Law School training program?”

We can approach this question from one of training objectives—What are we trying to do with the Law Review program? I have asked the gentlemen who are speaking today to direct their attention to that question. The
first speaker is Professor George John Miller, of the University of Florida, who is the Faculty Adviser of the Florida Law Review.

PROFESSOR MILLER: Professor Stephenson, Members of the Conference: Our fundamental purpose on the Law Review of Florida has been to improve the jurisprudence of Florida, and I use that word in the true Latin sense of "learning in the law." That breaks down into three categories: first, how does it help the students, and secondly, how does it help learning in the law throughout the State, and how does it help relations with the law schools?

My plea this afternoon is for a Law Review, not so much as one might present it to the bar, not so much as one might present it to a conference of Law Review students and their advisers, but more with the idea in mind why a Law Review is worth while to a university.

I think that there is a real mission for a Law Review. I want to break this down into the questions of how it helps the students and how it helps the general knowledge of law in the state, and the relations between the bench and bar in the state and the law students or the law school.

In Law Review work it seems to me that we are teaching law as it is actually practiced. The student gets the point and he tries to button it up, but he finds to his horror that everything he has learned is all wrong; instead of there being too much law, there is far too little law. He would give his right arm for one good case in point. He begins to learn how to use cases and decisions by analogy and how to ferret out useful dicta, how to put that together, how to argue policy to a court without saying so, and all those other little tricks of the trade that a man must learn if he is going to enjoy any success in the practice.

I talked recently with the former editor-in-chief of our Law Review. He said that the one course he had in law school that did him any practical good when he got into the law office was his Law Review work.

I suppose that Law Reviews have been open to very serious criticism with regard to what one might call the rather banal style that they were originally written in and that some of them are still written in today. There has also been criticism of what I call the "headnote style"—"Where the plaintiff did so and so," and "Where the defendant did so and so." Now, after about six "where" clauses, if you are not lost by then, you finally run into something near the end of the note which gives you some semblance of what the point was about. Now, I am not criticizing the headnote system. I think that it is a good thing, provided that the student is thoroughly indoctrinated in the notion that the headnote is merely a glorified index.

Then you get the other usual banal comment that goes along with some rather good discussion and finishes up, perhaps not in these exact words, but this is what it amounts to, "The outcome and ultimate decision on this issue will be extremely interesting and requires the intense study and cooperation
of all.” But a good Law Review should attempt to get away from this type of writing.

The whole theory of Law Review work is not competition, it is teamwork. Nobody knows exactly whose part goes in where. The value of that comes out in the fact that the members of the Law Review are working together to turn out a topnotch publication. For once their thoughts of value concern group effort. There is no question on the Law Review as to who did what. And there is none of this spirit of trespassing in someone else’s bailiwick.

When the leading articles come in, it is perhaps a rather odd thing to see a group of students looking with a weather eye upon something which was written by a former President of the State Bar Association, and yet when you realize the factors that enable you to become President of the State Bar Association, you realize that style is not necessarily one of them. As Karl Llewellyn once said, “The most striking thing about a Law Review is the sheer impossibility of it.” The notion that you have a bunch of youngsters who are passing on material which is supposedly way over their heads, working on problems that have bothered the bench and bar, and yet, oddly enough, they turn out work that the bench and bar think is useful. That also inculcates tolerance in them.

Finally, I want to mention one thing we have done in Florida, something I feel very strongly about. It is that while a man has to be a “B” student to write for the Law Review for credit, any student, even if he is on the border line of staying in law school, can still take a whirl at it. He puts in one semester of apprenticeship during which the Research Editor goes to work on him. We have found that the interest in a great many of those men was good, was intent, and not only that, but the work they turn out is sometimes surprisingly capable work. I have always been rather opposed to intellectual snobbery, and doubly so when one finds it is more frequently than not practiced by those who are not quite qualified to indulge in the illusion.

Now we heard something this morning from Dean Stahr about the Oxford System. The Law Review comes closer than any other medium, I think, to approaching, at least to some small extent, that Oxford System. A man comes in with a note or comment and he is constantly getting advice on original research as he goes along. Not only does he get advice from the senior members on the Law Review staff, but he gets the benefit of advice from the faculty. Now, I don’t mean by that that we write his note or comment for him. It would be much simpler to write it ourselves, but that would destroy practically all of the value of the training. The chances are that his note is not ready for final print until he has gone through anywhere from five to seven drafts of it. But at least by the time he gets through he has some concept of what the law is, what it is to look law up, and what style is.

I have often thought that the business staff ought to get some credit for
the work they do. If you ever open up a law office or become managing partner in a bigger firm, you will find it is rather important to know where and how to buy books, how to get furniture, how to deal with the janitor, how much you ought to pay a typist, how you can get one that is at all accurate nowadays, and so on.

Well, so much for what it does for the students. That is not the only value of the Law Review to the law school. That merely covers the question as to whether it can hold its weight along with torts and contracts. We now get into the question of what relationship it has to the knowledge of the law throughout the state, and the relationship of the school with the bench and bar.

Now, there again, I will admit that we are in a rather peculiar position. Louisiana with her civil law and Florida with her common law—we are closer to the old common law today than England is—are rather the renegades of the crop. Nobody is going to look up our problems for us because nobody is interested, except for the matter of legal history, or, in the case of Louisiana, comparative law. Consequently, we are not faced with this exact problem of division which comes up among Harvard, Yale, Pennsylvania and Columbia, and so forth, in which they have to get together and have conferences as to who is going to write on what for the next issue. In this state we have a mecca, and I think that perhaps the other states in the South are closer to our position than they are to the position of Harvard, Yale or Columbia. We have enough work here to be done to keep a good five Law Reviews busy for ten years. Consequently, we do not have to get in each others' hair at all. I have used comments out of the Miami Law Quarterly in my course on the Florida Constitution, in which I might add we have no case book and no treatise as yet, and between us we are gradually trying to cover some of that field. When we get through, it will be infinitely better than a case book. I don't say it will be quite as good as a good treatise, but at least the material will be there in the form a student can understand without that wonderful confusion that Professor Fahey mentioned that never resolves itself into anything.

We feel that the Miami Law Quarterly is a definite answer to us at the University of Florida, and I say that in all sincerity. We found some very useful material in the Florida Law Journal which is the organ of the state bar. Stylistically, it is no wonderful piece of work because they have to turn out ten issues a year. They do a good job on it, and it is our sincere hope that Stetson will join us in this type of venture in the very near future. There is room for all of us in this particular state.

In closing, I believe that by stressing the work that a student is going to be confronted with after he leaves law school, and on the other hand, by giving the bar something direct, something they can get their teeth into, something to save them time, and by giving the judges some background that a busy court has no opportunity to acquire, even though they obviously have
the brain power, if they could only find the time, we can reduce radically the
width of that gap between the practitioner and the teacher. And it seems to
me that if we accomplish that, that the Law Review justifies itself as an
essential part of a law school.

I might add that I am still reading some of these questions that John
Stephenson has laid here, and I will be very interested to see what some of
you have to say about them because we are confronted with those very prob-
lems now.

Thank you.

PROFESSOR STEPHENSON: Thank you very much, Professor
Miller. Certainly that is a very capable argument for the addition of the Law
Review as a training medium.

We should mention that Dean O'Neal, who has already spoken to the
group, was chairman of the second annual meeting and I shall ask him to say
something about the problem from the standpoint of the faculty advisers and
the Law Review Editors who assembled there. Dean O'Neal.

DEAN O'NEAL: Professor Stephenson, Ladies and Gentlemen: I
would like to talk briefly about the view law school administrations should
adopt toward Law Review work and on the Southern Law Review Confer-
ence. It was mentioned that the First Southern Law Review Conference was
held at Vanderbilt in April of 1947. Thirteen southern schools sent repre-
sentatives. Those representatives, differing from the group here, were com-
posed of both students and faculty members. I would say there were probably
three times as many students at both the first meeting at Vanderbilt and the
second meeting at L.S.U. At the second Conference at L.S.U. seventeen
schools sent representatives, and I would say that we probably had as many
representatives, counting the students, as we have at this whole meeting of
the Southeastern Regional Teachers.

Professor A. Smedley has been selected as the chairman for next year,
and I understand that the meeting will probably be held at the University of
Mississippi. The University of Mississippi has offered its facilities for the
Law Review meeting, and they have requested that the Law Review Confer-
ence be held in connection with their celebration of the University of Mis-

As Professor Stephenson has said, the Law Review Conference dealt
more with the technical aspects of Law Review work. We did not go into
policy. That brings me now to the second point of my assignment. It is prac-
tically universally accepted Law Review training is very helpful. And the
question naturally arises, why not give the benefit of Law Review training,
not only to the top men on the Law Review, but also to the students who really
need it (in the lower parts of the class), the students who can't write effective
legal composition.
Also the idea has been advanced that perhaps the Law Review should be put under the control of faculty members, that the students leave year after year—they stay there one year—and as soon as they learn really how to put out Law Reviews, you have a new group coming in, and there might be some advantage of having a continuity on the Law Reviews—somebody in charge who would be there year after year, who would benefit by his experience.

The idea has also been advanced that credit should be given for Law Review work. As most of you are probably aware, most of the Reviews now do not give academic credit for work on the Law Review. The problem is so broad that I hardly know where to start in on it.

I guess our first point should deal with the subject of whether credit should be given for Law Review work, and I have been asked to express the opinion of the Law Review Conference. I cannot very well do that as all of you know when all of these teachers get together they never agree. Well, the same thing applies to the Law Review Editors, to the students and the faculty editors, and I can merely advance my own opinion. I think that probably three or four hours credit should be given for the satisfactory completion of Law Review work. I do not think that any more credit than that should be given. Of course, if you gave more credit, the result would be that the students would not have to take the other courses listed in the curriculum. They would avoid courses which are generally considered to be useful. I do think, however, that the three or four hours credit should be given.

We now turn to what I consider to be a more important problem, the question of whether a greater proportion of the entire student body should be included on the Review. I think you will find in most of the southern schools that not over 15 per cent of the entire student body is capable of doing Law Review work. I think that if you put a greater number of students on the Review, you are going to ruin the Review. I think you will lower the quality of a product that is turned out, I think you will overburden the supervising editors and the faculty editor advisers, and I think you will destroy the incentive which many students now have to be on the Review, because the select group who are on the Review realize that they are pretty much the cream of the crop and have certain privileges; they know that when they get out they will get the best jobs, and I do believe that if you try to put all the students on the Review, or if you try to put more than 15 or 20 per cent of the students on the Review, you will find that your Review will break down. I say that not only in the abstract, but I have done some experimenting with the students to see just how low you could cut without finding that the Review would suffer. Yet the fact remains and is entirely obvious that the ones who need the Law Review training are not getting it. I think it is beyond question that any lawyer must be able to use language effectively. I think that
he must be able to present complex and technical legal materials, and he must be able to make his writing both unambiguous and persuasive. I do not believe that you will find that your students, when they come to the law school, will be able to do that. After checking over most of the colleges, I find that there is offered only one course in legal composition. Quite often that is merely a review of what they have learned in high school. They write perhaps one term paper of some sort. That is all the training in legal composition that they get before they come to your school.

The problem is not limited to the South, although it is probably more acute there. I read in the *Journal of Legal Education*, in the first issue that just came out, that the University of Chicago has a program which they have been experimenting with for ten years in the tutoring of students in legal life. They have a full-time staff, one faculty member and four teaching fellows. The teaching fellows are selected, as I understand the system, from the leading graduates of our law schools, and are usually Law Review Editors. Their full time is devoted to tutoring the students at the University of Chicago Law School in the art of writing, preparing legal memoranda and various other types of legal material.

Of course, that type of solution is not practical for most of us. We do not have the facilities or the money or the opportunity to go into a program that large. My own personal opinion is that the job can be done fairly well by means of a course in legal composition, taught by a regular member of the faculty, but that the course in legal composition must differ radically from the courses in legal composition which now exist.

Sometime back I wrote to practically every school which lists a course in legal writing or a course of that type. I found that, invariably, the courses in legal writing are composed simply of writing an appellate brief. My belief is that the instructor will tell the students to write an appellate brief. He will lead them to believe that he expects them to exhaust the job of research, that he expects a certain form to be followed. I do not think that the instructor in these legal writing courses goes into the question of effective legal writing, persuasive legal writing, unambiguous legal writing at all. In fact, I am pretty certain about that.

At Mercer and before there, at the University of Mississippi, I experimented with a course. I was far from satisfied with it. I did not have the materials worked up right. It is going to require considerably more effort. But here is what I attempted to do. The first week there was spent in reviewing English composition. I did not try to go into the technical rules of English. I did not especially even worry about whether or not a man knew what an adverb was. I found from reading the exam papers that I received on essay-type questions, and in reading the material which comes into the Law Reviews, that the main trouble with the students is that they can’t organize the mate-
rial, that they don't know anything about coherence or sequence. They just cannot arrange their material so that it is in the best order.

I did give them a week's review in English composition and I mimeographed extracts from judicial opinions, extracts from statutes, extracts from law review articles, handed that material out to them, and asked them to study it to see if they could make it better from the point of view of brevity, persuasiveness, clarity; and the next day we would go over that material, sentence by sentence, and paragraph by paragraph, and the students did do a very remarkable job.

After that, I assigned them a recent case—each student a single case—and asked them merely to write me a brief of the case, the set of facts and the holdings. They were required to rewrite that several times, trying to get the material in as concise a form as possible, a shorter form, without leaving out any positive facts.

Next, they took the very same case which they had worked on, and I asked them to do a very hurried job of research, not to spend but a few hours looking at general encyclopedias or looking in very general treatises, and to write a one-paragraph comment on the case that they had briefed. Finally, I asked them to do an exhaustive job of research, and before the students realized what they were doing, they had written a case note, and you will find—all of you who have started Reviews, at least it has been my experience—that the main job that you face is getting your students started. They are afraid to try. The same is true of any writing, not only legal writing. When a man wants to write something, he keeps putting it off, but get your students started, get them into the process without realizing what they are doing (I would not tell them that they were going to write a case note until you have gotten well along, gotten the case briefed, until they have done part of the research). Once they get started, they can turn out a very good case note, even the inferior students.

The main job, of course, is to get the students started, and then the correcting of the student material. That is where you face your greatest difficulty, getting the student around to doing a considerable portion of it himself. If you do have a supervisory editor of the law review, you can have more students take the course, and use them to do a great deal of the correcting of the papers. Of course, they cannot do as good a job as the instructor, but nevertheless, it is better to get something done of this great deficiency than not get anything done at all. The professor will not be able to correct all the papers, but some of the preliminary work he can turn over to the supervisory editors or the students who are trying out for supervisory editorships, and I think you will find that the result will be very effective. You will serve another purpose in that you will train your students in editing.

QUESTION: How many hours credit did you give for that?
DEAN O'NEAL: I gave two hours. That is not sufficient time; the course should be longer and should require the student, in addition to writing a case note in the legal composition class, to write an appellate brief where the emphasis is more on persuasion. In other words, in a law review article, you are supposed to be impartial. You are presenting your law, you are presenting comments; you have to advance your opinion in the last little paragraph, but the emphasis in a brief would be on persuasion. I think you should require your students to draft an appellate brief, and if you have enough time, to require them to draft a statute. As I mentioned the other day, I think that one of the greatest deficiencies in our legal education set-up is the fact that we are turning out people who are going to be politicians—roughly a third of our classes—yet we are not doing anything to train them for that type of job. Most of them never practice law as we understand it; they do not have any clients. Their clients, if they have any, are the people, and they do not represent them in the way that they should.

In concluding, I merely want to say that I do not think that you can take the whole law school student body on your Reviews. I think that the Review will break down. I do think that they should be given some training which is roughly the same. On the law review, of course, you have to work with these people individually. They need plenty of attention by lectures and by going through these mimeographed materials. That way you can get over the same material and save much time, and you will be giving to the bottom portion of your class some of the training which you owe them and which the people who already have a comparative advantage are getting on the Review. Thank you.

PROFESSOR STEPHENSON: At the first meeting of the Southern Conference of Law Reviews, the University of Virginia was represented by the student editors and not by the faculty, and we were told at that time that that was because the law review of the University of Virginia is published by the student editors, is entirely self-supporting—for it is a separate corporation with a certain amount of endowment of its own—that the faculty has nothing to do with it, and that they did not consider the invitation to them to include the faculty.

Now, we have overworked Dean Ritchie, from the University of Virginia, in the other sections of the Conference, but because that is the only Law Review in our Conference where we find that attitude, which is probably more typical of the schools of the Northeast, I have asked Dean Ritchie if he will not say a word about what he thinks of the Law Review in the school curriculum.

DEAN RITCHIE: Our Review is student-founded, student-managed, student-edited and student-operated. There is no faculty adviser and there is no formal faculty participation. Membership on the editorial board of the
Law Review is the most sought after honor in the student body. Competition for it is tremendously keen. That has, I think, a very healthy lift on the general academic level of the student body. A continuity is maintained through selection of members of the editorial board in a competition conducted at the beginning of the third semester. Those eligible for the competition are students who have a 3.3 average or better with us—a 4 average would be a straight “A” average, a 3 average would be a “B” average, so you can see it is not quite a “B” plus average. The entering class is targeted at 200; we generally run a little larger than that. It limits the number of competitors normally to about 20. They write three decisions. Those decisions (case notes) are graded by the editorial board of the Law Review. They are graded, incidentally, by number to eliminate any question of favoritism. A student competitor is issued a number by the article chairman, who is in charge of the student competition. The papers are scored, as I say, by the student editorial board. After the conclusion of the third decision, the editorial board then elects to membership typically ten students from that class on the strength of their decision, plus their academic average.

We now are running a student body much too large, about 752 students. There are 30 students on the editorial board of the Law Review and five on the business staff. The business staff is subsidized through scholarship help and also through advertising revenue. Therefore, the business manager of the Law Review holds the most lucrative position, from a financial point of view, of the members of the Law Review board. His assistants are next in order. That is somewhat misleading, however, because of the job value from being a member of the Law Review. As you know, it translates into an assured job on graduation and typically, particularly in your New York offices, these men are bid for and are paid more to begin with than all the non-Law Review members of your student body. Because, therefore, of assurance of a job, a job with more money than the rest of the students will receive, the competition, I repeat, for membership on the board is terrifically keen.

Now, of course, those participating are a small segment of your student bodies—a very small proportion. You can inquire, then, as to the justification for maintaining such an enterprise with such a small element actively participating. I think the answer lies in the lift it gives to the entire school. However, we have tried other means of making available to those not selected for Law Review membership some of the values of Law Review participation. We have presently one other publication in operation in my school, a reader’s guide, with which some of you may be familiar. That is student-operated and student-edited but there is a faculty adviser. Mr. Butler, who originated the idea, serves as faculty adviser. That picks up the group just below Law Review calibre.

Now, we are inaugurating this year still a third publication which will
be called, I believe, "The Virginia Weekly" and is frankly something of a
steal from the Harvard Record. Ours, however, will contain a section on
student contributions. They will be in the nature of decisions or notes appear-
ing in the Law Review, minus the strait-jacketed form which has become
conventionalized with us and which I do not defend, but which our editorial
board ardently defends.

We hope that this third publication will make available to students who
are below the Law Review and the reader guide level an opportunity to
participate.

Now the fourth means we have sought to adopt to make available the
values we believe incident to Law Review training is in a course we have on
legal writing. I do not think it is as good a course as Dean O'Neal's descrip-
tion of his course on legal composition, nor can we afford the tutorial system
which is in operation at Chicago. We allot half of a faculty member's teach-
ing load to supervising the course on legal writing. He has six student assistants
—all Law Review members, incidentally—selected by him. They act as tutors.
He indoctrinates them, supervises their work, but they are the ones who work
directly with the students. This course is required in the first year. All first-year
students are required to take it. It consists of, first, an office memorandum;
it consists, secondly, in writing an appellate brief. That appellate brief then
stems into our Law Club work. Participation after the first year is optional
in terms of Law Club competition which culminates in an honor trial at the end
of the third year.

Our students, the members of the editorial board, voted against receiv-
ing academic credit for Law Review participation. I pass that out because it
may be of interest to some of you. Our boys were presented the question by
us, and I should like to emphasize that because it is rather significant. The
editorial board voted unanimously against receipt of academic credit for Law
Review work, viewing it as something of a privilege, and being very jealous
of any faculty intervention in the work of the Law Review.

Frequently, a student who has a note or decision to write will consult a
faculty member in whose field that note falls, but there is no obligation on
his part to follow the faculty member's suggestion, and very frequently he
does not, somewhat to our embarrassment. In connection with a note which
appeared in an issue of the Review a couple of days ago, it may have cost
the University a sizeable amount in contributions for an endowment. But if
you are going to have a student-operated Review—and I myself am firmly
convinced of the desirability of it—then you must give them a free hand and
there can be no censorship exercised, no faculty control exercised; otherwise
you will destroy the entire basis on which you are erecting your structure,
which to my mind is the most effective teaching media we have in the law
school. I agree, however, with what Dean O'Neal said—that it is impossible
to make that media effective beyond the very top group of your class. Otherwise, it spreads too thin, and when you get down to the lower level, you do not find—at least, such has been my experience—that you get the sort of participation necessary.

It has been a great pleasure for me to attend this Conference and appear before you.

PROFESSOR STEPHENSON: Thank you, Dean Ritchie.

Getting on with the discussion, I would like to call on Dean Wicker, of the University of Tennessee, to see whether his problems at Tennessee are those we have down here.

DEAN WICKER: The faculty adviser to the *Tennessee Law Review* is Dix Noel. If he were here, I feel sure that he would follow along the lines which have gone before and give a highly critical but a highly favorable appraisal of the Law Review as an essential part of the curriculum. It is natural to expect a law teacher to emphasize the importance of his own spectrum.

Professor Miller has covered the advantages of a Law Review so thoroughly that there is little or nothing I can add, so I am going to sound the sour note. Law schools may be divided into two classes, those which have Law Reviews as going concerns, and those that have them in the embryo stage. Schools which have Reviews, going concerns, particularly when they have been planned along the lines outlined by Professor Miller, would simply not think of abandoning them; but with regard to those schools which have a Law Review in the embryo stage, I might suggest throwing a bucket of water on the embryo. I will even go so far as to suggest that the temperature of the water be 32° F.

There are so many Law Reviews at the present that there is simply not enough good material to go around. The result is that a lot of material being published in Law Reviews is not worth publishing. I am speaking, primarily, about some of these Law Reviews which the students run, or Law Reviews in which the students do the major portion of the writing. I am not referring, of course, in any way to those fine legal periodicals like the *Journal of Legal Education* or *Law And Contemporary Problems* with which the students have little or nothing to do. The only objection that I have to the Law Review as an essential part of the curriculum is that it is not entirely an educational device. A good deal of time and energy is put on pleasing the subscriber. I, reluctantly, have come to the conclusion that what is pleasing to a law professor from an educational standpoint is generally not pleasing to the practicing lawyer. I will hand it to the University of Tennessee for some very fine articles from an educational standpoint published in the Law Review. We have had papers by Roscoe Pound and Erwin Griswold of Harvard; Judge Charles E. Clark, formerly of Yale; Karl Llewellyn, of Columbia; Lloyd Garrison, formerly of Wisconsin; and Edson R. Sunderland, of Mich-
igan. Now those articles were tops, we thought, from an educational stand-
point, and yet the leader response from practicing lawyers to that fine
group of articles was practically nil.

About the same time we published those articles, we get an article from
a very prominent practicing lawyer in Tennessee. The student editor read it
and thought it was not worth publishing. It was a rather delicate matter to
turn this particular article down. So we asked the faculty adviser about it;
the faculty adviser passed it around among the law faculty. It was the unani-
mous opinion of the law faculty that that particular article was not worth
the paper on which it was printed. It just happened to come at a time, however,
when we needed a space-filler in order to keep up the continuity of the Law
Review, which sometimes happens. So, we published it. We had more than a
dozen favorable letters about that particular article. And the Tennessee Su-
preme Court cited it in an opinion.

The series of articles which we have had in the Tennessee Law Review
that met with the greatest response from practicing lawyers was a series of
sketches about Tennessee justices—just bare, biographical sketches, with no
attempt at critical appraisal of opinions by the subjects of the sketches. It
was illustrated with pictures. This series of articles was not solicited. The
articles came in voluntarily, and yet we have had more comment from prac-
ticing lawyers about that particular series than anything else that has ever
been published. The pictures were reasonably well done, which was about all.
So if you want reader response from practicing lawyers apparently you ought
to publish more pictures.

If the same amount of time and energy were put on a briefing service
for lawyers, the benefits would be spread among the entire group, and every
student would have an opportunity to participate. At the University of Ten-
nessee, last fall, we started a briefing service for practicing lawyers. We have
had by far more enthusiastic letters about that particular service than we have
ever had about the Law Review. It has much the same incentive for sustained
legal writing that the Law Review has, and in addition to that it has certain
incidental advantages. Every senior is required to prepare, for a practicing
lawyer of his own choice, an appellate brief, a trial brief, and a memorandum on
some problem of law. That service enables Johnny Jones, the law student, to
come in contact with a practicing attorney in his own community, and it also
enables a practicing attorney to know Johnny Jones as a lawyer, rather than
as a High School athlete. That possible substitute for Law Review work
means that instead of being available for the top 15 percent of the class, it is
available for all students in the senior class. The bar of the future will be
recruited primarily from that 85 percent, and if the Law Review is not an
essential part of the curriculum for that 85 percent, then I submit that it is
not an essential part of the curriculum for the “cream of the crop.”
In addition to that, that service does not involve high printing costs, and also it does not force on the legal profession materials that are not worth publishing. I am sure that you appreciate that I am just trying to spoof a bit.

PROFESSOR STEPHENSON: Thank you very much, Dean Wicker, even if it is a bit on the discouraging side. I feel a little like that sometimes, having given the next ten years of my life in the last eighteen months to being Faculty Adviser of the Miami Law Quarterly. But I am fortunately in the position of being retired in favor of Professor Hugh Sowards, formerly Faculty Adviser of the Vanderbilt Law Review, who has just joined our faculty here. Since Hugh was in charge of the first Southeastern Law Review Conference, I know he will have something to add to our discussion.

PROFESSOR SOWARDS: If you will pardon me, I would like to take just a moment, Mr. Miller, to disagree with you—and I know that you will condone this disagreement. You and others who have spoken before you at this Conference have condemned the lack of practical training in today’s law school curriculum. I want to agree with you that such is the situation in general, but to disagree with you by stating that there are notable exceptions. The most outstanding of these exceptions that I know of is one of the finest teachers I have ever had the pleasure of studying under—your new dean, Henry Fenn. I can truthfully testify, and Mr. Fenn will bear me out, that I worked many hours late at night preparing the briefs, memoranda, opinion letters and other instruments which he required us to prepare in his course on Estates at the Yale Law School. He thoroughly grounded his students in practical application of theory. His students were not necessary evils between him and his writing. Rather they were individuals in whom he took an intense interest, even if it meant that he had to sacrifice many of his personal desires. The Florida Law School is to be congratulated on acquiring such a fine teacher and a man who will make a great dean.

Mr. Miller, Dean O’Neal, Dean Ritchie, and Dean Wicker have all very well expressed the place of the Law Review in the curriculum.

And I think that Dean Wicker posed what is a definite problem with regard to those Law Reviews published in conjunction with a state or local bar association. You will recall that Dean Wicker spoke of the necessity of “pleasing the subscriber.” The subscribers, in this case, are for the most part, practicing attorneys in the particular jurisdiction. And Dean Wicker found that the greatest response came when a biographical sketch of some practicing attorney or judge was published. But I also know that Dean Wicker would be the last to assert that that type of legal reading is all that interests the practicing attorney. In fact, his Tennessee Law Review offers the best answer to such an assertion. And that brings me to the main point of my discussion—the symposium as a means of pleasing the subscriber and at the same time of making valuable contributions to the field of legal literature.
As you all know, a symposium is a Law Review issue containing articles devoted to one subject, or even to one phase of a subject. The Duke legal periodical, *Law And Contemporary Problems*, was one of the originators of the symposium. That publication, of course, is operated entirely by the faculty. Every issue is a symposium. I certainly do not advocate that approach in the usual Law Review, but I do suggest that one issue each year might well take the form of a symposium.

The University of Tennessee has in recent years held an annual Institute. The members of the Tennessee Bar received this Spring a letter from the *Tennessee Law Review* asking their opinion on what subject they would like to have discussed at the Institute. All of the members of the Tennessee Bar were circularized, and the subject of the Institute was selected on that basis. The University of Tennessee then brought the most distinguished men in the chosen field to Tennessee to read papers on that subject. Out of the Institute came a symposium on that field of law. It is my understanding that the response from practicing attorneys, both to the Institute and the symposium, was excellent.

I hope you will pardon me if I speak also of my own experience with the symposium. Of course, at Vanderbilt we published a Law Review whose circulation extended into several other states. In large part, however, its readers consisted of Tennessee attorneys. I also circulated a questionnaire, and I found that there was a great deal of interest in corporate and financial law. Accordingly I requested articles from outstanding men in the field. Somewhat to my surprise, I had little difficulty in convincing very distinguished men to contribute to that symposium. The President of the New York Stock Exchange, the Vice President of the World Bank, the Chief Counsel for the Securities and Exchange Commission, authors of noted financial works, members of investment banking houses, and others, each discussed different phases of the financial picture. These men did not contribute because of me; I did not know them. They did not contribute because of the *Vanderbilt Law Review*; they had never heard of it. But what *did* interest them was that they were all vitally concerned with finance. More than that, knowing that other people in their field were going to write on the same topic, they were much more willing to contribute than they would have been if I had just written them to ask them to "write something."

I can say, with some pride, that the response to that symposium was excellent. Practicing attorneys wrote me to express the hope that such a policy would be continued.

In conclusion, I want to agree once more with Dean Wicker that there is no use in publishing a Law Review just to publish one. But there is a definite reason for publishing one if it is going to be of value not only to the students
and faculty involved but to the subscribers and others who read the Review. I suggest that the symposium can be most useful in this respect.

I want to take this opportunity to thank each and every one of you for coming to this meeting and exchanging ideas. Thank you.

PROFESSOR STEPHENSON: Thank you very much. Our final speaker of the afternoon is Professor John Fox of the University of Mississippi.

PROFESSOR FOX: Since Dean O'Neal left the University of Mississippi his legal composition course has been abandoned to a certain extent, but we are now toying with a different idea, and I want to make a few remarks in connection with what Dean Ritchie said and with what Dean Wicker has said also. We feel at the University of Mississippi that membership on the Law Journal board is an honor, and I am quite sure that membership on that board at the University of Mississippi is just as much sought as is membership on the board at the University of Virginia. But we feel that you do not have to have a stimulant to induce people who ordinarily make the Law Journal board to do the work that is necessary to get on it. The good students are going to make the grade and be on there any way, and the inducement of being superior students is a sufficient inducement to put them to work.

Now, in connection with the lower standard of student, the one whom we originally shoved off on Mr. O'Neal and his legal composition course. To my mind, the idea there with which we are toying is a combination of his legal composition course and credit for doing that work. We have already granted two hours credit at the University of Mississippi for Law Journal work, but we raised the requirements for graduation two hours to correspond with that. (laughter) We did that for this purpose: in recognition of the fact that the good student does not need an inducement; on the other hand, the "C" and "D" students do need inducement, and consequently, we make them do this Law Journal work by presenting a publishable article. And we are now toying with the idea of requiring each one of those who get on the Law Journal board via that method to take a course in legal composition under some member of the faculty who would train him to prepare that work, and he in that way will get two additional hours and it serves as an incentive to him to do the work and lower the standard down to the student.

Now, to my mind, a Law Journal has at least a two-fold purpose: one is literary attainment, where members of the various faculties over the United States will write leading articles which will permit them to report to the graduate school that they have done such-and-such work during the year; for faculty advancement, that part of the Law Journal does not suffer any decline by allowing the "C" and "D" students to participate in Law Journal work. The case work part of the Law Journal does suffer by allowing the lower standard of students to participate; but if you look at your Law Journal
as a means of being a literary attainment and something that the faculty can brag on as well as a teaching device for the lower grade of student, I think that the literary suffering that the student part of it is subjected to, is much more offset by the fact that it is a good teaching device for those lower students. And in that respect, we do not care about holding it up simply for the upper standard students. I just wanted to point out that we are toying with the idea of adding that legal composition course as a necessary requirement only for the lower standard students who obtain membership on the Law Journal board by writing a publishable article.

I also want to renew our invitation to you to be present at the next Southeastern Regional Conference of Law Teachers when, as, and if we invite you.

PROFESSOR STEPHENSON: Thank you, Mr. Fox. I want to thank you, gentlemen, on behalf of Dean Rasco and our co-sponsors, the University of Florida and Stetson University, for your participation in the program this afternoon. I now declare the meeting adjourned.

DINNER

DEAN RASCO: Ladies and Gentlemen: We have come to the grand finale of the Meeting of Law Teachers of the Southeastern Region of the Association of American Law Schools. It has been with a great deal of pleasure that we have had you down here in Miami. We have had very fine speakers from the various law schools. We have had the Honorable Millard Caldwell, Governor of the State of Florida, dignify our Conference.

Now we have come to what I think is one of the best things on the program—maybe I am a little prejudiced. Over 20 years ago I met a young lawyer who had graduated from Harvard Law School and had settled in one of the small towns in north Florida. I watched this young lawyer grow in stature. He eventually ran for Senator of the United States and after his second try he was elected Junior Senator.

I saw this young lawyer grow into a powerful politician and out of that he has developed into one of our Nation's great statesmen.

During one of his campaigns I heard him tell this campaign story. It seemed that old Uncle Zeke Brown who lived out in the country in Alabama had a neighbor, Sam Langston, who had died. On the day they were burying old Sam, Uncle Zeke was sitting on the front porch and one of Zeke’s sons was describing the funeral procession to him. Old Uncle Zeke was sitting in the rocking chair with his feet on the side of the house and with his back
towards the road. The son said to Uncle Zeke, "They're buryin' old Sam this afternoon and the procession is coming around the bend of the road."

As the procession of surreys, carriages and buckboards came up the road and passed in front of the house, passed the house, and went out of sight, the son said, "Pa, that's the biggest funeral procession I ever saw in my life," and Uncle Zeke said, "That must have been a wonderful sight, but I was a settin' wrong."

Many people have accused Claude Pepper of a settin' wrong in Washington, but if we look at his record we find that most of the time the Senator has been a settin' right.

I now have the great honor and privilege of presenting to you as the principal speaker this evening my old and sincere friend, Senator Claude Pepper.

SENATOR PEPPER: Dean Rasco, Mrs. Rasco, distinguished visitors and friends: It is a great honor for me to be here with you and with my old friend, Dean Rasco, this evening. It brings to my mind very warm and sentimental thoughts whenever I am in the company of a group of people identified with one of the greatest of all callings, the teaching art.

I am reminded of what my old college professor, Dr. George A. Denny, said not very long ago at the University of Alabama Alumni dinner in Washington. He said that a great ministerial alumnus of a certain college, meeting with his fellow alumni on one of the class anniversaries opened the invocation with the words: "O Lord, if it be in Thy will, justify our opinion of ourselves." And I hope that the public justifies the sense of responsibility that those who have taught feel and seek to discharge.

Teaching is a great experience and those who continue to dedicate themselves to it render an immeasurable service. I guess that my blood was a bit too warm, or perhaps I was sidetracked in some unfortunate way; it led me away from teaching. But I can say that I have never had a happier experience in my life than the time I was in the school room and I rather envy those of you who continue to enjoy that very grand and noble opportunity.

It seems to me that today the one who teaches as an instructor of the law faces challenging opportunities. The first of those is, that he is engaged in the expanding science of the law. My friend Dean Rasco has made a great Law School here, and he has wielded a magnificent influence in this state and in our beloved country. He is one of those who, like many of you, has made a continuing contribution to the expanding science of the law, its adaptation to changing demand and circumstance, its meeting of imperative and growing and transitional needs. And today the one who has the time and privilege to speak about the law and what it means to build it in greater majesty and adequacy is one of those making an immeasurable contribution toward a better and a greater and a happier world.
So I rather envy, as I say, those of you who are engaged in that intellectual architecture of building nobler edifices that are the social and political structures of this, the greatest nation in the world, and leaving your impress upon all the institutions of mankind.

I think also that the teacher who does not have a sense of dedication to his work, who only trains technicians as lawyers, and has not instilled in
them not only a sense of technical competency and pride, but also a full awareness of public and social responsibility, has more than half failed.

I think the teacher is born and not made. Aside from my dear mother and father, and the president of my college, a high school teacher did more to open the windows of my ambition and to quicken the pulse of my aspirations than anybody else who ever touched my life. I sometimes shudder to think of the darkened areas of my experience had I not had those intellectual windows opened by that man who was born to teach and who gave me, the first time ever, I think, an aspiration to be some little part of some greater forces that were moving upward through the world. So I think that you have a magnificent opportunity and responsibility.

The lawyer who is not pro-social, who is anti-social, is like the scientist—the chemist, if you please—who has wrested her dangerous secrets from nature and turns them to destructive instead of constructive purposes. The lawyer who uses the skill he has acquired from your instruction, who feels no sense of public responsibility, is one who takes advantage of a social order and seeks by the skill he has to undermine and to destroy.

From the beginnings of our Government those of our profession have been the leaders in the fashioning of our institutions and our way of life; even though they but walk in private capacity among their fellow citizens, they wield an influence in their communities and in their states and in their nation of which, I fear, they are sometimes hardly aware. The good lawyer, therefore, is the man who is not only plying his trade with skill and adequate tools, but the man who is also building constantly a better craftsmanship into his own people's way of life.

And then I think also that especially the teacher, and to a lesser degree the lawyer, has a responsibility of being a public counsellor. Today, when the people have to follow responsibility for guiding their way through this troubled world, they need all the help they can get. The men and the women who have official responsibility need all the assistance they can possibly derive from those willing and able to advise. And it seems to me that the teacher, who has more time than the practicing lawyer, the teacher who has a wider perspective than the mere professional man, the teacher who as an impersonality the practitioner cannot always experience, has a unique opportunity and responsibility to be a free and a public counsellor to the people in one of the crucial periods of human history.

At the present time most of us who come from the South are aware of the tragic schism which divides one part of our people from another; the bitterness of the controversy which rages; the depth of disturbance which many feel about these issues. There are some, I fear, who would make political capital, who would be willing to misrepresent in an honest if perhaps an ineptly handled effort to make available to all the people of this country
their constitutional rights, privileges and prerogatives. Surely the teacher and
the lawyer, dedicated and devoted to the Constitution and what it means,
might at least have sympathy for an honest effort to give constitutional pro-
tection to all the people in this country; surely the teacher and the lawyer
are aware from their knowledge of the world in which we live that today the
institution of democracy is on trial in every part of the earth, and that the
selfish and the totalitarian are seeking some Achilles’ heel in our armor at
which they can point as an object of vulnerability to show that while we
preach democracy we don’t practice it at home and therefore that it is not
in our hearts.

Now it seems to me that whatever one’s political opinions may be about
the subject, a lawyer might make some little contribution toward clarifying
the legal and constitutional issues which are involved. And it seems to me
that the lawyer can at least be clear in telling the people that if any President
ever intended to say and to propose what it is claimed the present President
has advocated, neither he nor the Congress nor the tools that govern have
any power under the Constitution and the decisions of the courts of the land
to implement any of such assumed recommendations.

It is only a little while ago that my mother said to me, “Claude, I wish
you would come and say something to the people here in Tallahassee about
this matter; they tell me that the Government is going to determine the mem-
bership of our church; they tell me the Government is going to determine
the personnel of our schools; they tell me that the Government is going to
determine who swims in our pools; that the Government is going to deter-
mine who goes to our theaters; that the Government is going to determine
about the social and personal relationships of person to person and citizen
with citizen. Can that be true?” I said, “Not under the Constitution of the
United States as it is presently interpreted by the Supreme Court of this
land.” There is a field in which the Federal Government may function. There
are many of us who conscientiously believe that the Federal Government may
lower the condition for the right to vote, for federal officials, by removing
the requirement of payment of a poll tax and not avoid the qualification pro-
vision of the Constitution. Opinions honestly differ on the subject. There
are some who think that, as the last bill provided, if you connect a
sheriff and a marshal with a group of people acting as a lynch mob and you
require wilfulness of conspiracy on the part of the federal or the state
official, you may bring a lynching expedition within the proper scope of the
congressional power. There are those who think that Congress may properly
regulate the conditions of employment in interstate commerce. But beyond
that I think it is generally agreed the federal power cannot reach as we
know the Constitution in this day, and that the state alone has the power to
invade these other and more intimate and more local fields that are more
proximate to the daily lives of the people. And there is a vast area, larger than any of the others, in which not even the state power may transgress—that of personal matters.

And I think that it would quiet the fears of a good many people if a lawyer would simply tell the people what the law is, what Congress has the power to do, and let them be their own judges of what may be attempted by any who have political position in the public life of the country.

Now there is another matter: I think that it is entirely possible for the constitutional rights of every citizen in this land to be adequately protected and preserved, and wherever necessary, implemented by the federal power, without at the same time interfering with what has been learned by experience.

As a lawyer, therefore, I find myself embarrassed to associate myself with any right that may be opposed to human rights and with any position that I cannot as a lawyer square with the Constitution of the United States of America, whatever may be the political aspects of the matter. But also as a lawyer I do not consider that that assumption requires me to invade the sanctuary of the state and the realm of private people, to break down a certain amount of freedom of experimentation and progress that may emerge from long knowledge and earnest endeavor to find a solution to our problem in human association and relations.

So I think the lawyer can be of great help in proving that we mean what we say when we have a constitutional democracy, without at the same time having to take a political position obnoxious to what may happen to be his personal experience.

Now there is a second matter: I was, last year, a member of the War Investigating Committee. I saw an instance, while a member of that committee, where a private citizen was charged with irregularities in his relationship to the Government. This private citizen charged the chairman of the Senate committee with having made a corrupt proposal to him in private, with having proposed that he would discontinue the public hearing if this gentleman, as a private citizen and the owner of an enterprise, would make such concessions as it was alleged the chairman of the committee wanted made. I of course do not judge the facts. I only speak of the incident that occurred. Yet, notwithstanding that incident, the nature of that charge, the private citizen was forbidden the right of cross-examination, although he strenuously insisted upon the right to cross-examine. The private citizen was denied the right to bring his own witnesses to testify in his own behalf, and to be confronted by a fair display of what the evidence presented against him was. I mention only a case which has come within my own personal knowledge. And I raise this question: Whether or not the teachers and the lawyers of this country, in another one of those vast excursions into that nebulous area where you are trying to make a proper adjustment between
the public and the private interest, are going to have to devise some method by which the right of Congressional inquiry and investigation imperative in the protection of the public interest may be preserved, may even be augmented and implemented, but at the same time the private citizen may be free of being deprived of his reputation or his patriotism or his property, perhaps by an unfair Congressional procedure or by techniques that would not be countenanced in any forum of the law. It has taken a long time for lawyers to build up the protection that we today enjoy when we come into the forum of a court. A citizen has a right to be confronted by his hostile witnesses; he has the right of cross-examination; he has the right, even at the expense of the state, to bring witnesses in his own defense; he is assured that he will be protected against hearsay and irrelevant and prejudicial testimony that may not be germane to the issues which are being tried. And it is inherent in the whole Anglo-American system of jurisprudence that we do not try a man for everything that has ever happened in the whole realm of his experience; we try him upon an issue, and he must be convicted or acquitted of that particular issue. Yet in a Congressional inquiry there are no rules whatever. It depends entirely upon the character and the temperament and the disposition and the sense of fair play or the sense of publicity of the chairman of the committee or those who happen to constitute a majority of the committee's personnel.

Now it was only a short time ago that a similar situation existed in the executive department. A citizen could be brow-beaten in almost any measure; he had no protection. They could deny him every semblance of due process of law. And he hardly had any redress. But finally the remonstrance of the bar and the concern of the citizen led to a public opinion which demanded the Congressional action which today has thrown some protection around the citizen when he comes before an administrative tribunal of the Government of the United States. I don't know of anybody who would propose the discontinuance of that Act, the Administrative Procedure Act, that we passed a year or two ago, and I wonder if the next step in a similar field may not be the necessity of preserving this right of public inquiry as a basis for legislation and public disclosure, but at the same time throwing around the citizen some of the basic safeguards that we think of as the most meagre principles of justice when anyone is brought to account upon anything that he holds dear.

Now the last matter that I might mention for your consideration is that I know of nobody better qualified than the teacher and the lawyer to help public people and the people generally to guide their way through the Scylla and Charybdis of too little and too much Government. It may have been said by Thomas Jefferson at one time that that Government is best which governs least, but I am sure that he would not have said that through all the ages since his death. Too little government means that the strong
oppress the weak; and too much government means that the tyranny of the
government oppresses both the weak and the strong, and the aspiration of all
that believe in our way of life, therefore, is to find the happy medium, then
you will have enough, neither too little nor too much.

I do not think today we can have a successful, multiple society preyed
upon by the multiple problems of the present without having an effective,
functioning government. That is democracy. And I think that wherever you
find any other kind of government in the world, if they ever had a democracy,
the democracy collapsed because it did not serve the people, it did not protect
the people, it did not protect their interests, and failing the
people, something else came along to take its place.

I have so many times thought about being in Germany in the days of
1938 and hearing stories after World War I of the chaos and the confusion
and the collapse that occurred in that country, which was the very womb out
of which the evil Hitler was spawned; and had there been a successful demo-
cracy functioning in Germany there would not have been Nazism in Germany
that struck the world into the maelstrom of the most awful war. And I also ven-
ture to predict that communism does not exist in any nation in the earth today
which had before that time had a successful democracy. A successful democracy
would have fended it off. But when democracy fails to function, when it fails
to protect the people against extortionate prices, or interests, or the tyranny
of the strong, or when it fails to take into account and supply the needs of the
people and to offer them a way out of their dilemmas and give them guidance
and be their sword and their buckler and their shield, then the people, of course,
naturally turn to the quacks of politics who come along with some fantasy,
and after awhile their old institutions are degraded and disgraced and they
have followed some Pied Piper who leads them like the children of ancient
Hamlin to their own destruction.

And so today it takes level heads; it takes vigor; it takes fearless candor
and courage: it takes somebody, who, like Mirabeau, has an eye to see and to
observe the functioning of our institutions, that they need to be strengthened;
a replacement needs to be added here, an edifice is needed there, and a crown
there and a gable over here, before it can satisfactorily house the great demo-
cratic institution which is ours.

It seems to me, therefore, that in this troubled time when there is warring
against us every alien ideology, I know of no group in all of our midst better
qualified to give continuous guidance to the people, no class of men who in
this troubled era can better guide in the channels of safety and sanctuary and
security the people than the ancient mariners with their ancient wisdom of the
law, the teachers and the practicing practitioners of that most noble and dis-
tinguished of the professions. Thank you very much for the honor of being
here.
DEAN RASCO: Thank you, Senator Pepper. We are indeed grateful to you for helping us make this Conference the wonderful and successful Conference that it has been.

With deep appreciation to you teachers who have joined us in Miami Beach, I now declare this Conference adjourned sine die.