

## COMMENTS:

### Discussant

ALLAN F. SMITH\*

Mr. Chairman, President Fawcett, ladies and gentlemen, I am reminded by the number of titles that Harry gave me, Professor, Dean, Vice-President that these are listed in descending order of capability of affecting anyone. I'm glad he wound up with the proper title at the end. The story is told of Eva Peron, at the height of the Peronist movement, when she visited Franco in Spain. He had arranged for a motorcade down the street, but it didn't go off as planned because the assembled populace instead of shouting, "Viva Eva," or whatever they were supposed to, shouted "Prostitute," "Whore," and this was very upsetting to Eva. When they got back to the Palace she was weeping and Franco in an effort to pacify her said, "Do not worry Madam, I haven't been in the Army for thirty years and they still call me General." So, I don't really object anymore to almost any title that is given to me.

To comment on these provocative remarks of President Levi is a pretty difficult job, because, as is his usual wont, he has presented ideas which he has carefully reviewed in his own mind and carefully challenged in his broad experience in education. We are expected in a brief time to find comments that can either supplement or challenge the ideas that have been thus expressed. I don't think I want to get into the question with him of whether a two-year preparatory session is enough for pre-legal education. I can join whole heartedly in the proposition that if we cannot find a way to complete an educational process, not only for our professions, but for our general citizens, in a shorter time, we are indeed not going to be able to supply the resources that are needed for our educational job.

I heard another story not long ago about a man who was driving down a dirt road and found himself behind a very large truck, was unable to get around and it was very distressing. Moreover, the truck would stop about every mile, the driver would get out of the cab, go back and beat on the side of the van and get back in and drive another mile and repeat the process. After about the third of these incidents the man could stand it no longer so at the next stop he got out and asked the truck driver, "What in the world are you doing? I'm observing your conduct here, and I just want to know why?" The truck driver said, "It's very easy, this is a two-ton truck, there are four tons of canaries in there and if I don't keep a lot of birds flying, I'm not going to get where I'm going!"

My friend in the Physics Department tells me that his knowledge of Physics is somewhat less than perfect, but nonetheless I think his idea ex-

---

\* Vice President for Academic Affairs, University of Michigan.

presses a definition today of a University that is very apt. Every University today has the job of keeping a lot of birds flying if it is going to get where it is supposed to get. This assumes that it knows its destination and can define its destination, but as Mr. Levi has said, the University is being called upon today to add to its burdens another ton or so of canaries, some of which have no place, nothing to do with a University, and I would certainly share the expressed view here that the University as an institution is ill-equipped and undesirable as an instrument of direct social action. We do not recruit our faculties for the purpose of running social action experiments or certainly not of maintaining social action agencies. A society that calls now upon universities, because they have so successfully done some of the jobs for which they were created, to carry out that kind of activity is one of the sad parts of today's operation of a University.

They don't do practical things well. They don't do anything well that is not involved, as Mr. Levi has said, with the intellectual pursuit of truth. Experiment, yes. Analysis, yes. Speculation, yes. Talk, yes. Exchange of ideas, good, bad, well thought out or poor, yes. But to engage in activity that is designed to make our society run more smoothly in a particular social way, is not a function of a University.

There have been disputes, of course, about the place of professional schools in a University. Charges are made that professional schools are parasitic to the basic undergraduate liberal arts program of the university, that they absorbed those students who are produced at the undergraduate level. There have been reciprocal charges. I think Mr. Levi makes this point, that indeed the professional education is the flower which the rest of the university labors to produce. I guess I prefer not to join the dispute, for I think that the balance of trade between the professional school and the undergraduate schools is probably not constant. There are times when the professional schools certainly depend upon the life, the strength, the liberal arts faculties at the college in order to maintain their own vitality. There are also times when the presence and the activities of professional schools in a university gives it a flavor, a direction for the efforts of the disciplinary scholars which would certainly otherwise be missing. I think in point of fact that many of the professional schools have not taken advantage of their presence in a university to maintain that kind of dialogue and interchange that would strengthen both aspects of the university. They have remained too isolated from their colleagues in the disciplines. It's very dangerous to generalize, but I would certainly agree that it is pretty hard right now to get a member of the professional staff of a law school to leave his rostrum in the professional school and move to a rostrum which would be confronted by undergraduate students. Yet I can think of no more important part of education for general citizenship than an understanding of our legal system, and an understanding of the

role of law as a social institution. It is to me somewhat criminal that a great many holders of the baccalaureate degree (by which we purport to measure the existence of an educated man or woman) have so little understanding of our legal system, its limitations, its strengths and its role in our society. We're sadly deficient if the general citizen lacks that understanding. We leave that kind of job to others, sometimes the political scientists, the historian, the sociologist. In all deference to their capabilities, I incline to the belief that the professional law teacher, if he would, could do a better job of undertaking the responsibility to bring to the liberal arts training an understanding of our legal system.

I suppose it's a compliment in some ways to our legal system that society is always asking it to become the forum for the resolution of more and more of societies' problems. I have the uneasy feeling, however, that there may be some serious misconceptions about the limits of the capabilities of our legal system. A system that is designed to resolve disputes about contracts, labor relations and a number of other things, anti-social conduct known as crimes, may not be the best system in which to solve for example, the horrendous environmental problems that we now face. Lawyers are not noted for their timidity or their humility. Indeed, they do generally assume that they can, through our legal system, and through their own skills, solve any problems and dispose of them. I suggest that if we have in our profession and in our professional education any reservations about the limits of its capability that we ought to make them known and understood by the members of society lest they impose burdens upon our system that will break it down. A non-professional society must know of those limitations and those fears if they are to be effective.

I was strictly limited in my time and I have probably exhausted most of it. I do want for one moment to comment on the suggestion that perhaps two years of professional training in a law school is enough. I think it may be. There is a fashionable expression that has been around for a long time that law schools traditionally scare their first-year students to death, work their second-year students to death and bore their third-year students to death. I'm not at all sure that's a real attitude but if it is we could probably do without the year of boredom. We could, perhaps, accomplish in two years the kind of training that would permit a man to operate professionally in our society. It is very clear that one could go to law school ten years and not expose himself to all the knowledge that is accumulated and necessary to function effectively in our legal system. We have to depend in the final analysis upon a training which produces methodology, skills, attitudes, capabilities that will let the lawyer operate in a wide range of areas with which he has not previously been concerned and perhaps two years is enough to bring about that kind of professional education, that kind of capacity to search for truth as well as developing the

professional skills. It is certainly clear that many of the so-called professional skills of the lawyer are developed very heavily after he leaves law school, whether it is two or three years in length. I think we probably would have some explaining to do to the profession were we to move perceptibly in that direction, but I am concerned and I thought Mr. Levi was going to make a remark or two about this with the move toward increasing clinical training in the law school itself. We're going to have a whole session on that tomorrow and I suspect that a case will be made for increasing the quantum of clinical training that is included in the professional education of the law student. I have great reservations about whether that should be substituted for what we are now doing or added to what we are now doing in the professional education. I think there is a great place for clinical training as an extracurricular activity, as summer work. It's very clear that the professional man needs it, but I'm not sure that law schools are the place in which that is best carried out. That's the job of the profession of which Mr. Levi spoke outside of the university. That's the job of which that profession is well equipped; it is not a job for which the law schools are particularly well-equipped. I probably should not have mentioned this subject since I won't be around to defend that idea tomorrow and you will discuss it with others who have thought far more extensively and probably far more wisely. As I say, it's difficult to comment on Mr. Levi's basic proposition other than to say, I concur.